LEARNING REVIEW

INTEGRITY PACTS

FOR PUBLIC PROCUREMENT

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Final Report

Learning Review
Integrity Pacts for public procurement

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Blomeyer & Sanz (established in 2004) specialises in regulatory impact assessment and evaluation assignments. Over the last ten years, the firm has provided research and consultancy services to the European Commission, the European Parliament, the Committee of the Regions, as well as international organisations (e.g. European Patent Office, UN organisations, OSCE, Council of Europe). Based in Spain, the firm's work has covered all European Union Member States as well as countries in Latin America, North Africa and South East Asia.

Blomeyer & Sanz has established a strong track record of cooperation with academic partners across the world. Moreover, Blomeyer & Sanz has developed a specific expertise in the area of governance via its long-standing work for the European Parliament's Committee on Budgetary Control as well as other European Union institutions and international organisations (e.g. United Nations Development Program).

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1 Abbreviations

BG	Bulgaria
CS	Civil Society
DE	Germany
EU	European Union
HU	Hungary
IEM	Independent External Monitor
IT	Italy
LR	Learning Review
LV	Latvia
MO	Monitoring organisation
MOC	Latvian Ministry of Culture
MS	Member States
NLL	National Library of Latvia
PA	Procurement Authority
TI	Transparency International
TI BG	Transparency International Bulgaria
TI HG	Transparency International Hungary
TI Italia	Transparency International Italy
TI NC	Transparency International National Chapter
TI-S	Transparency International Secretariat

2 Executive summary

Integrity Pacts are a tool developed by Transparency International to facilitate greater civil society oversight of public procurement processes and thereby increase transparency and reduce opportunities for corruption. After two decades of experience, this report reviews the experiences of working with this tool as a learning process in order to help further improve and strengthen the tool and broaden its application into the future.

BACKGROUND

In the 1990s, Transparency International developed Integrity Pacts as a tool to improve procurement processes. Integrity Pacts are agreements between government agencies (e.g. procurement authorities) and economic operators (e.g. companies) participating in public procurement processes. The agreement commits parties to refrain from paying, offering, soliciting or accepting bribes, and from colluding with other bidders during the procurement process as to thwart the competition. A third party to the agreement (e.g. civil society) monitors compliance of the stakeholders. Integrity Pacts include activities that promote key criteria for anti-corruption in public procurement, such as transparency, professionalism and accountability.

OBJECTIVES AND METHODOLOGY

This review assesses the design and implementation of Integrity Pacts according to their effectiveness and impact, sustainability, and flexibility and replicability. The review prioritizes Integrity Pacts in the EU Member States and aims to identify how the model can be carried out efficiently and best adapted to various contexts and needs.

The methodology employed to deliver this review combines desk research, survey work, stakeholder interviews, and case studies.

- Stakeholders included representatives from civil society, independent monitors, procurement authorities, economic operators, and external experts.
- Surveys of TI NCs and external experts on anti-corruption in the European Union (EU) resulted in feedback from fourteen EU Member States.[1]
- Field visits were conducted to Bulgaria, Hungary, and Latvia. Case studies included Integrity Pact projects from six EU Member states.[2]

[1] AT, ES, ET, PL, SK, BG, CZ, HU, HR, LT, LV, PT, RO, SV.
[2] LV, HU, BG, DE, IT, RO

MAIN FINDINGS AND LESSONS LEARNED

EFFECTIVENESS AND IMPACT

1. This review finds that Integrity Pacts can effectively detect and follow-up on irregularities in public procurement processes. However, the tool is predominantly a mechanism to prevent corruption.

In practice an Integrity Pact addresses good governance of public procurement processes, part of which is detection of corruption and following up to prosecute and sanction corrupt behaviour. The main focus of civil society monitoring organizations is the detection and follow-up of 'red flags' indicating bad governance. In practice, when such red flags arise, rather than taking a punitive approach to irregularities detected, the monitor takes a more constructive approach. Ideally a solution is found to the specific problem whether it be a potential malpractice or corruption risk in collaboration with the other stakeholders in the Integrity Pact.

The wider governance lens of the Integrity Pact makes the tool predominantly a corruption prevention mechanism. The civil society monitoring organisations prioritize enhancing transparency in order to achieve effectiveness of the Integrity Pact. This is done through access to information as well as public outreach. As with activities relating to detection, all Integrity Pact participants have a role to play here. The IP requires a proactive approach from public authorities as well as from the private sector. Civil society monitoring organisations need to continuously engage these actors in order to ensure effective execution of the Integrity Pact.

2. This review finds that Integrity Pacts have contributed to changes to civil society monitoring organizations, procurement authorities, and economic operators.

Civil society monitoring organizations increased their knowledge and capacity due to Integrity Pacts. Furthermore, Integrity Pacts have a positive impact on procurement authorities, especially by engaging them in outreach to the public. The tool drives authorities to engage either in proactive outreach or forces authorities to react to public debate instigated by the findings from the monitoring. For economic operators the Integrity Pact provides them with the opportunity to show dedication to fair competition.

3. This review finds that civil society monitoring organisations systematically feel responsible to avoid problems relating to delays regardless of whether these can be attributed to Integrity Pacts. Monitoring organisations further fear reputational damage.

The main concern for civil society monitoring organisations is reputational damage given that Integrity Pacts cannot fully exclude corruption. The organisations are also vigilant about the possibility that procurement authorities and economic operators can use the

Integrity Pact for window-dressing. A shared concern between all stakeholders is delay in procurement. Regardless of whether delays are attributed to the Integrity Pact, civil society monitoring organizations systematically feel the responsibility to avoid this. This feeling of responsibility is not always shared equally among the stakeholders.

SUSTAINABILITY

4. This review finds that sustainability of changes relating the Integrity Pact is not always guaranteed.

An important driver behind achieving change during the Integrity Pact implementation is the visibility of the procurement project. This driver remains important after project activities end. Also at this point, civil society monitoring organisations need to maintain a certain degree of pressure on the procurement authorities and economic operators. For civil society, the most important factor for sustainability through follow-up activities is funding. Important factors that contribute to achieving sustainable change are technical expertise, presence during decision-making moments and good relations with stakeholders.

FLEXIBILITY

5. This review finds that in order to effectively and efficiently implement an Integrity Pact, stakeholders should carefully plan the project and adapt activities of the project to the specific context and circumstances they are facing.

Integrity Pacts by default have a required degree of in-built flexibility which allows them to be designed according to the relevant context so as to be effective, to be manageable, and to be sustainable. There is no one-size-fits-all approach for the tool. It is important to provide the stakeholders involved with the adequate criteria for implementation and subsequently tools to design and implement an Integrity Pact. Careful preparation allows for its adaptation to different procurement projects, different sectors, types of procurement, and legal, cultural and economic contexts. Regardless of the situation, designing Integrity Pacts is each time over again a learning process. Civil society monitoring organisations should undertake careful preparation in order to allow for setting high standards for implementation.

6. This review finds that financial and human resources need to be fully thought through and strategically allocated to counter risks throughout the implementation of the Integrity Pact.

Before deciding whether to enter into an Integrity Pact, civil society monitoring organizations should take into account the available resources to implement the project. In case limited resources are available, activities need to be adjusted. The independent

monitoring function of the Integrity Pact is its strongest attribute. Organizations frequently hire external technical experts and struggle primarily with defining the workload for monitors as well as securing sufficient funding. It exposes the organization to the risk of under-budgeting with the consequence of not being able to effectively conduct activities up until the project closure.

MAIN RECOMMENDATIONS

The main issues and recommendations of this Learning Review are:

Issues	|	Integrity Pacts require collaboration with all stakeholders. The procurement authority and the economic operator need to engage proactively throughout the project. Civil society monitoring organizations are challenged with ensuring engagement of those stakeholders.
Recommendations	|	The civil society monitoring organisation should consider engaging external expertise to build knowledge capacity on the procurement project. This could increase confidence vis-a-vis other stakeholders and ensure added-value of the Integrity Pact to the procurement project.
Issues	|	Delays in procurement are perceived to potentially undermine popular perception of a good procurement process, jeopardizing the success of the Integrity Pact project, and subsequently damaging the reputation of the stakeholders involved. Regardless of whether delays are attributed to the Integrity Pact, civil society monitoring organizations systematically feel the responsibility to solve this. This feeling of responsibility is not always shared equally among the stakeholders.
Recommendations	|	Clearly define what outcomes can be attributed to the Integrity Pact and what outcomes can be attributed to the procurement project as a whole. Identify risks and mitigate these from the start.
Issues	|	Civil society monitoring organisations risk not capitalizing on the capacity development resulting from the Integrity Pact due to staff turnover and temporary use of external technical expertise.
Recommendations	|	Document and monitor Integrity Pact activities.

Use a monitoring team consisting of internal and external experts.

Actively pursue Integrity Pact specific funding for follow-up activities post-project.

Issues | Achieving impact through an Integrity Pact is put at risk if its inherent flexibility is not exploited at the outset.

Recommendations | Careful preparation of an Integrity Pact project allows for its adaptation to different procurement projects, different sectors, types of procurement, and legal, cultural and economic contexts.

Understand the legal, political and economic conditions at hand before and during the Integrity Pact.

Study the other stakeholders involved in the project, as well as the corruption risks involved in the procurement.

Plan activities based on the objectives you want to achieve for the Integrity Pact.

Adapt the communication and monitoring activities planned for the Integrity Pact to the available capacity.

Issues | Corruption in procurement is complex. It can occur in all of the phases of the procurement process and can take different shapes and forms. Integrity Pacts cannot fully rule out corruption.

Recommendations | To have the greatest chance of ruling out corruption, the Integrity Pacts should cover the entire procurement process or at least cover (part of) the bidding phase and the contract implementation phase.

Integrity Pacts should also include the proactive engagement of all stakeholders, meaning procurement authorities and economic operators.

3 Introduction to the Learning Review

Transparency International Secretariat (TI-S) has commissioned Blomeyer & Sanz to conduct a learning review (LR) of the movement's Integrity Pacts (IPs) model. This section provides an introduction on IPs and presents the purpose and scope of the LR as well as the structure of this report.

3.1 Introduction to IPs

In the 1990s, Transparency International (TI) developed IPs as a tool to improve procurement processes. IPs are agreements between government agencies (e.g. procurement authorities) and economic operators (e.g. companies) participating in public procurement processes. The agreement commits parties to refrain from paying, offering, soliciting or accepting bribes, and from colluding with other bidders during the procurement process as to thwart competition. A third party to the agreement (e.g. civil society) monitors compliance of the stakeholders. IPs include activities that promote key principles for anti-corruption in public procurement, such as transparency, professionalism and accountability.

A solid sample of cases is now available for review, covering 16 countries across the world.[3] The characteristics of each case differ, requiring the IP model to be flexible and context sensitive in order to be an effective anti-corruption tool. In principle, four main elements are crucial for its implementation:[4]

- Political will of the authorities;
- Transparency and professionalism throughout the contracting process;
- External independent monitoring;
- And a participatory/multi-stakeholder involvement.

By applying a collaborative approach, the tool aims to establish a level playing field in a contracting process. Broadly speaking, the role and level of involvement of stakeholders varies in time and effort. Civil society (CSOs) or monitoring organisations (MOs), often in the form of a TI National Chapter (TI NCs), and procurement authorities play an important role in the design and implementation of the IP.[5] CSOs and procurement authorities formally agree on a process for independent monitoring of a procurement project including details on transparency requirements, sanctions for breach and methods for dealing with conflicts. In principle, the independent monitoring is done by the CSO and focuses on the interaction between the procurement authority and bidders. Despite fulfilling a key role in the procurement process, during the IP bidders are primarily subject to monitoring activities and do not contribute to the design of the IP.

[3] Argentina, China, Colombia, Ecuador, Germany, Hungary, India, Indonesia, Italy, Latvia, Mexico, Pakistan, Panama, Paraguay, Peru and South Korea.
[4] See Integrity Pact Guide, 2013, p. 25.
[5] Throughout this report we will refer to civil society as 'monitoring organisations' in light of their role in the Integrity Pact.

Nonetheless, bidders play an active role in implementing the IP primarily by refraining from corruption but also by blowing the whistle if necessary.

3.2 Purpose and scope of the LR

The purpose of this learning review is to '*critically assess the strengths and weaknesses of the Integrity Pacts approach and thereby inform the potential scaling up of Integrity Pacts*'. In other words, this learning review aims to identify how the model can be carried out efficiently and best adapted to various contexts and needs.

We have prioritised the review of IPs in the EU Member States. This is complemented with a selective review of other IPs (outside the EU) or civil control tools to monitor public procurement. This LR includes IP experiences from the perspectives of participants from civil society, procurement authorities and bidders. The report further addresses the potential scaling up of IPs for procurement projects funded through EU funds.

3.3 Report structure

This report is divided in eight chapters. Following this introductory chapter (chapter 3), we outline the methodology of the learning review (chapter 4). After this we present the main findings in relation to the outcome of the learning review (chapter 5), recommendations (chapter 6), conclusions (chapter 7) and annex (chapter 8).

4 Methodology

This section outlines the methodology for the development of the LR.

4.1 Learning Review framework

Our team developed a review framework on the basis of the Terms of Reference document[6], TI's Integrity Pacts in Public Procurement Implementation Guide[7], and TI's Curbing Corruption in Public Procurement Practical Guide[8]. The framework also incorporates feedback received from TI-S and other TI external experts. Based on this, three review criteria were established and sub-divided into review questions. Specific indicators[9] were elaborated to assist with extracting answers to those questions, primarily through an analysis of existing cases.

REVIEW CRITERIA 1 | EFFECTIVENESS AND IMPACT

Review questions:

- Have IPs achieved their stated outcomes? If yes, why? If not, why not?
- What changes/benefits (including economic and social) have IPs contributed to? And why did these changes happen?
- Did IPs make procurement more efficient? Is there cost or time savings associated with their application?
- Did IPs have any negative effects? How can this be addressed?
- What are the best approaches for the independent monitoring component of the IPs?

Indicators

To determine EFFECTIVENESS[10], we looked at whether IPs have managed to prevent, detect and follow-up on corruption through moving detected irregularities forward to investigation, prosecution and sanction. Importantly, as each IP is unique, we looked at the extent to which IPs have detected irregularities as defined in the specific IP agreement. Follow-up was determined by notification of irregularity to authorities or

[6] For the full Terms of Reference for this LR, see Annex 8.2.
[7] See: http://www.transparency.org/whatwedo/publication/integrity_pacts_in_public_procurement_an_implementation_guide
[8] See: http://www.transparency.org/whatwedo/publication/curbing_corruption_in_public_procurement_a_practical_guide
[9] These are quantitative or qualitative factors that provide a simple and reliable means to measure achievement, to reflect the changes linked to an intervention, or to help assess the performance of a project actor.
[10] This relates to the extent to which IP objectives were achieved, or are expected to be achieved, taking into account their relative importance.

complaint management activities[11]. Prevention was considered by assessing the degree of transparency achieved throughout the process of IP implementation in relation to the degree of transparency required by law.

To determine IMPACT, we referred for this LR to positive and negative, primary and secondary long-term effects produced by the IP, directly or indirectly, intended or unintended. For example, did IPs contribute to visible procurement projects or allow for credible and legitimate procurement activities by contracting authorities? Factors that indicated such changes included media coverage, public perception, as well as absence of scandals. Negative impact was measured by looking at additional procurement costs or administrative burden.

REVIEW CRITERIA 2 | SUSTAINABILITY

Review questions

- To what extent did the benefits of IPs continue or lead to other follow-up activities after the project ended?
- What were the major factors that influenced the achievement or non-achievement of sustainability of IPs?

Indicators

To determine SUSTAINABILITY, we referred for this LR to the continuation of benefits from the IP intervention after major activities have been concluded. This was measured by looking at reform of contracting processes on an organisational and institutional level as a result of the IP. An important sustainability factor was securing funding for IPs post project as well as the engagement of stakeholders beyond the project related activities.

REVIEW CRITERIA 3 | FLEXIBILITY AND REPLICABILITY

Review Questions

- How can the model be adapted to small procurement projects and to diverse sectors, types of procurement, and legal, cultural and economic contexts?
- Is there any ideal size and type of procurement for the implementation of IPs? Conversely, are their types / sizes of procurement for which an IP is not an appropriate tool?
- Are there any elements in the IP model that are useful only under certain circumstances? Can any element be added in some (or all) contexts?
- How can IPs be used to monitor EU-funded procurement projects? How should they be adapted?

[11] Activities relate to actions taken or work performed through which inputs (funds, technical assistance and other types of resources) are mobilized to produce specific outputs. Outputs refer to specific services resulting from the IP.

Findings resulting from the review of the effectiveness and sustainability criteria allowed us to better reflect on the flexibility criterion. We aimed to extract conditions from the review of these two criteria that allowed us to recommend the most adequate approach for IPs depending on the procurement project characteristics.

4.2 LR data collection methods

This section starts by describing in more detail the data collection methods used. Information has been collected through desk research, survey questionnaires, interviews and field visits. The rationale for choosing a mix of methods has been because of the sparse availability of information on the use of IPs across the EU, limited time frame for the LR, and the geographical spread of stakeholders involved in IPs. Desk research and survey questionnaires have been used to collect basic information on the use of IPs in the different countries. Interviews were used to complement this data with more qualitative feedback on effectiveness, impact and flexibility of the IPs.

Data collection activities took place from February 2015 to April 2015.

DESK RESEARCH

Documentation was collected from TI NCs, TI-S, and other stakeholders (e.g. donors, bidders, procurement authorities). Desk research was used to establish a preliminary factual basis for answering the review questions. The preliminary answers to the review questions were subsequently substantiated with information derived from the survey questionnaire, interviews, and case studies. A full list of consulted documents has been included in Annex 8.1.

SURVEYS

For this learning review, two survey questionnaires have been administered to TI NC and external anti-corruption experts, respectively.

The first survey questionnaire targeted TI NCs in the European Union and sought to gather basic data on their experience with civil monitoring tools for public procurement. This questionnaire allowed for better understanding of experience and expertise within the TI movement and for better targeting of the learning review activities.

The TI NCs were subsequently asked to map risks in public procurement in their respective countries on the basis of their expert judgement. With this exercise we aimed to reflect on whether the IPs as an anti-corruption tool could provide added-value in addressing these risks. To enlarge the sample, this exercise was also posed to a group of external experts from EU MS.

The survey questionnaires can be found in Annex 8.3 and the results in Annex 8.10.

INTERVIEWS

A total of 24 interviews were conducted with relevant stakeholders. The main purpose was to gather information about the actual practices and institutional behaviour in working on public procurement and anti-corruption. Since this necessarily involved subjective views and assessments, we aimed for a balanced sample of interviews. This included interviews with representatives of civil society (TI and non-TI), independent monitors, procurement authorities (national and local level), bidders (construction and IT sector), and external experts (former and current TI).

Interviews were conducted in the form of individual and group interviews. Face-to-face interviews were conducted at on-site meetings with TI-S and TI NCs. Initial feedback from TI NCs was collected during a workshop in Berlin on 23 February 2015 in which 15 TI NCs participated. Additional interviews have been conducted over the phone / Skype.

A full list of consulted stakeholders can be found in Annex 8.4.

FIELD VISITS

Three on-site country missions were carried out to allow for an in-depth study of specific IP projects. Based on a selection matrix and in agreement with TI NCs and TI-S, field visits were conducted to Hungary, Latvia and Bulgaria. Due to time-restraints, Germany was selected as a fourth case and assessed off-site.

The aim of the field visits was to learn from and reflect on IP experiences in the EU MS with the purpose to develop evidence-based recommendations. For each field visit we aimed to meet with a variety of stakeholders individually. This included: TI NCs; procurement authorities; bidders; donor organisations; and other civil society / academic stakeholders. TI NCs supported in the organisation of the meetings and provided initial information on potential IP case studies based on suggested criteria.[12]

The selection matrix for the field visits can be found in Annex 8.5.

4.3 Methodological limitations

In reviewing IPs we face methodological challenges when assessing the impact of civil monitoring mechanisms[13] for public procurement. IPs arguably have reduced corruption, improved the quality of procurement, and strengthened the call for more long-term reform. However, evidence is largely anecdotal. The main methodological challenges we faced were:

[12] Criteria for selection of IP case studies, inter alia, included: completed / recent case; available project data / documentation; if possible involving EU funds; access to stakeholders involved.
[13] For the purpose of this report the concept includes a wide range of social accountability related interventions aimed at mobilising/involving citizens, beneficiaries, communities, civil society, in the monitoring of public procurement.

- Few impact studies have been done and these often are limited to one specific initiative, each with their specific characteristics[14];
- Establishing the preventative effect of IPs is difficult due to the challenge of measuring something that has not happened;
- Resource restraints for IP implementation affect the quality of collected data. Organisations implementing IPs do not always monitor and document their activities. Establishing baseline information to allow for comparison over time is therefore not always evident;
- It is difficult to attribute change to specific actions (the attribution problem of causes to effects).

In order to allow for measurement of effectiveness and impact of the IP, we aimed to bundle activities and attribute the likelihood of this contributing to specific outcomes. In our methodology we attempted to isolate specific factors of success. We are aware that within the TI movement there are different views on what constitutes success of an IP. Although we welcome this debate, we find that the flexible nature of IPs mean that they cannot benefit from a set of pre-established success indicators. The final decision on which indicators should be used to measure success of an IP may vary depending on decisions taken by the stakeholders for each specific IP. Therefore the indicators presented below should be considered as guidance to organisations designing and implementing an IP rather than a complete set that must be applied in each case.

[14] See: http://integrity.transparency.bg/media/uploads/news_images/TI_Book_IndikatoriEN_web_m.pdf
See: http://archive.transparency.org/global_priorities/public_contracting/integrity_pacts#resources
See: http://www.integritypact.in/download/Assessment%20of%20Integrity%20Pact%20in%20IP%20compliant%20PSUs.pdf

5 Main findings in relation to the outcome

This section presents the main findings from the three review criteria. Each section is subdivided according to the review questions. In order to answer the review questions, all subsections start with discussing the main lessons-learned followed by a reality-check. The latter illustrates the findings through examples collected by reviewing IP cases in the EU, including those from the missions to Bulgaria, Hungary and Latvia. The final section on flexibility is illustrated by a case-study on the external monitoring function of IPs, and presents key tools for organisations when designing and implementing IPs.

Before presenting the findings from the review criteria, we first present an overview of experience with IPs in the EU and introduce the reviewed cases from Bulgaria, Hungary, and Latvia.[15]

[15] Please refer to Annex 8.6 for a comprehensive introduction to the reviewed IP cases.

REALITY-CHECK | INTEGRITY PACT EXPERIENCE IN THE EU

Data collected for this LR shows that TI NCs in six EU MS have had relevant experience with IPs, namely Germany, Latvia, Austria, Hungary, Bulgaria, and Italy (see figure 1 in green). Two EU NCs are currently starting to work with IPs, namely Spain[16] and Romania (see figure 1 in orange). Eleven EU TI NCs have no experience with IPs (Lithuania, Cyprus, Luxembourg, Poland, Czech Republic, Slovenia, Croatia, Belgium, the Netherlands, France and Portugal). The UK and Poland explored IPs relating the defence sector. These efforts did not materialise in a concrete project. Greece acquired knowledge on the IP by having supported relevant efforts in 2011.[17]

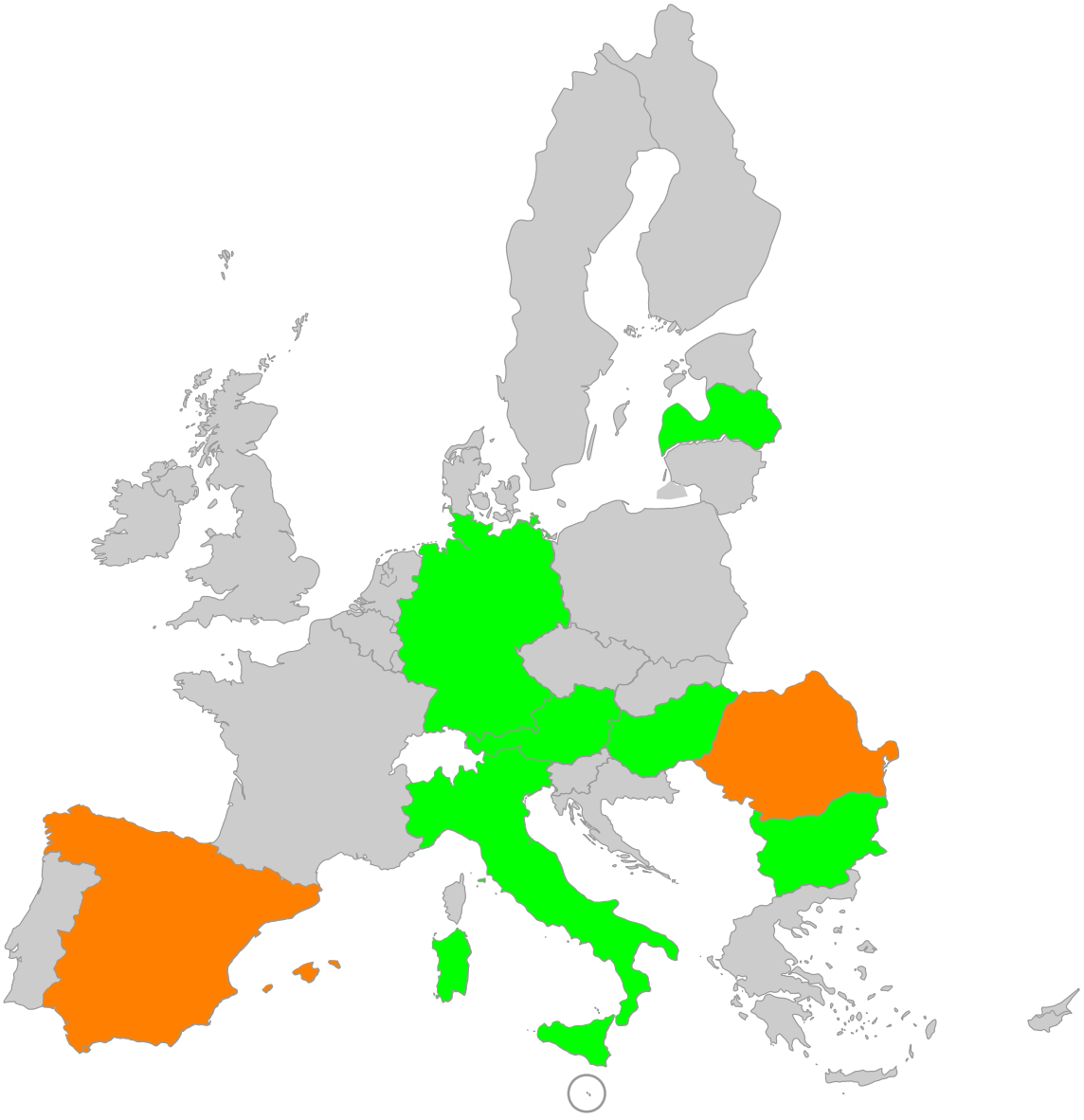

Figure 1: IP experience across the EU

[16] TI Spain is currently in the very first phases of preparing IPs as part of the Siemens Integrity Initiative.
[17] The tool was not applied but advocacy to authorities resulted in expected forthcoming legislative changes.

SNAPSHOT REVIEWED IP CASES

Case country	IP case	Role TI	Size IP	Date	Sector	Agencies	Size public procurement	Governmental level
Hungary	XIII-District Nursery	Independent monitor	1% of EUR 1,3 million	January 2013 – December 2014	Construction Education	XIII-District of Budapest	EUR 1,3 million	Local
	Ózd Water Supply Rehabilitation Project	Advisor	EUR 40 500	January 2011 – January 2016 (present)	Water supply Construction	National Development Agency Managing Authority Municipality of Ózd	EUR 5 million	Local International
Bulgaria	Struma Motorway	Independent monitor	N/A	May 2012 – December 2013	Construction	Road Infrastructure Agency Ministry of Regional Development and Public Works	EUR 102 million	National
	Renovation medical care homes for children	Independent monitor	N/A	July 2012 – July 2013	Construction Health care	Ministry of Health	EUR 105 million	National
	E-Data exchange system for social security	Independent monitor	N/A	July 2012 – October 2013	Consultancy IT	Ministry of Labour and Social Policy	EUR 46 000	National
Latvia	National Library of Latvia	Independent monitor	N/A	September 2005 - Present	Construction	Ministry of Culture	EUR 163,1 million	National

Table 1: reviewed IP cases

5.1 Effectiveness and impact

This section addresses the following review questions:

- Have IPs achieved their stated outcomes? If yes, why? If not, why not? (5.1.1)
- What changes/benefits have IPs contributed to? And why did these changes happen? (5.1.2)
- Did IPs have any negative effects? How can this be addressed? (5.1.3)
- Did IPs make procurement more efficient? Is there cost or time savings associated with their application? (5.1.4)

5.1.1 Achievement of stated outcomes

LESSONS-LEARNED | DETECTION AND FOLLOW-UP OF IRREGULARITIES

This LR finds that IPs can effectively detect and follow-up irregularities in public procurement processes. Various lessons can be drawn from the cases we have reviewed.

FIRST of all, this LR finds that IPs provide stakeholders with the means to detect corruption and particularly corruption risks (red flags). Access to information together with presence during key decision-making moments in the procurement process allow MOs to identify forms of corruption such as bribery and collusion. However, from our study, the likelihood for direct detection of corruption cases through an IP is not as strong as detecting the *risk* of corruption. MOs have therefore directed their attention to wider governance of the procurement process, and in particular the detection of irregularities in the process. Such irregularities are identified as '*red flags'* of corruption but do not necessarily have to be corruption. The main reason why MOs focus on wider governance of public procurement is that they struggle with collecting evidence to prove corruption, and especially with answering the question whether irregularities are intentional or unintentional.

This brings us to the SECOND lesson-learned. In cases where the MO feels that sufficient evidence is gathered of a suspected corruption case, they normally inform the signatories to the IP agreement and subsequently inform the relevant authorities. Procedures are overall clear-cut given that the national legal systems have mechanisms in place to investigate and prosecute corruption. However, as set out above we have established that IPs focus more on bad governance of public procurement, rather than only on one of its symptoms, namely corruption. This motivates MOs to raise concerns of corruption red flags (and other bad practices) and allow for intervention within the context of the IP (rather than involving law enforcement authorities).

In other words, while mechanisms for following-up a corruption case are rather straight forward, dealing with detected irregularities requires a different approach. This requires a constructive approach in which the MO aims to find a mutual solution to the problem of the irregularity together with the other parties to the IP. In a case where no solution

can be found, the MO's strongest message is to take the decision to step out of the IP. In case of a clear violation of the IP clauses, the agreement can also provide also for other sanctions. Such sanctions only apply to the signatories of the IP and are secondary to sanctions foreseen by law. However, we find that overall the IP stakeholders prefer a constructive approach to dealing with irregularities rather than a punitive approach. One reason is the difficulty to prove intention as mentioned above. Yet, we find that the main reason is the fact that MOs have a long-term interest in successfully completing an IP project.

This brings us to the THIRD lesson learned. MOs face challenges when following-up and pursuing sanctions for irregularities. Once an irregularity is detected, the team is confronted with the need to take decisions as to how to proceed. Clear procedures defined through the IP agreement can assist MOs in how to follow-up. However, detailed procedures cannot fully provide answers to all possible scenarios. For example, the MO can be confronted with the need to take a strategic decision based on a subjective assessment, such as whether the clarification received by the PA after a suspected breach is deemed sufficient to continue the IP. Such a clarification can also include promises to change, which require trust from the MO. Together this exposes the MOs to reputational risks. In other words, following-up and sanctioning of violations gives the MO the choice to be punitive and risk discontinuing an IP project or gives the MO the choice to be constructive and risk reputational damage.

REALITY-CHECK | DETECTION AND FOLLOW-UP OF IRREGULARITIES

LV

To illustrate our findings we refer to the Latvian IP case for the construction of the National Library. The MO (Delna[18]) managed to detect and follow-up on possible irregularities. In order to do so, the organisation planned various activities.[19] These activities resulted in cases of suspected irregularities. For example, the review of contracts signed prior to the IP exposed concerns regarding irregularities involving civil servants. The case led to an investigation by the prosecutor general. A second case identified by the MO concerned the possible circumvention of public procurement laws by several cabinet ministers. The MO successfully submitted an application to the Constitutional Court to investigate this case.

Apart from the concrete detected cases, the MO throughout the IP primarily exposed risks of corruption. The majority of risks were adequately addressed by the authorities; however one particular case stood out. In this case, the MO raised concerns regarding the decision of the PA to impose an emergency situation for a procurement procedure. This meant that a contract was awarded through a negotiated procedure without announcing a public procurement tender. After receiving explanation from the PA, the

[18] Delna is the Latvian chapter of Transparency International.
[19] Delna provided training on the principles and practices of integrity pacts; attended weekly planning meetings in the MoC; attended meetings of the Procurement Committee; visited the building site: liaised with the Library Support Foundation and State Advisory Council; analysed procurement requirements and the signed contracts, including those from before the IP; monitored public data from the previous three years on the bidders.

MO analysed this and decided to continue the IP and not raise this issue to law enforcement authorities and attempt to initiate an infringement procedure with the European Commission.[20] The internal deliberation proved difficult given that team members of the MO had opposing views as to whether the clarification was sufficient to clear the issue and continue with the IP project. Finally through external mediation a decision was taken by the MO Board to continue the IP despite the detected concerns. This decision was based on the fact that an irregularity was detected and this was communicated to the PA. Subsequently the PA provided clarification on their decision. In concrete terms, by providing transparency, the PA fulfilled the IP agreement's requirements. The leading monitoring staff at Delna disagreed with this approach and argued that the MO took the wrong decision to continue and this way tarnished its reputation.

In the case of the Latvian MO, the decision to continue was taken by the organisation in a transparent manner. However, there are clear indications from the interviews conducted that the decision was not fully a result of an internal compromise. This is not always required as each organisation has its own decision-making procedures and mechanisms. However, in this case the decision had effect on key persons involved in the implementation of the IP. The leading monitoring staff at the time left the organisation. Whether this was as a direct or indirect consequence of the internal dissent that emerged is perhaps not relevant in this case. This situation requires us to reflect on whether internal management structures can mitigate such a scenario.

LESSONS-LEARNED | PREVENTION OF CORRUPTION

This LR finds that IPs effectively contribute to the prevention of corruption. Various lessons can be drawn from the cases we have reviewed.

FIRST of all, prevention of corruption through IPs is perceived more effective than detection of corruption. The interviewed stakeholders argued that IPs cannot rule out corruption, and therefor primarily is meant as a preventive tool. Transparency is seen together with accountability as the main factor to ensure integrity in public procurement. Across the LR, stakeholders confirmed that IPs prioritised transparency as the key objective.

SECONDLY, this LR identified various ways to assess the objective of increasing transparency. First of all, transparency is directed inwards from the PA to the MO and outwards from the PA and MO to the public. Outward transparency is primarily linked to media outreach. Inward transparency is primarily linked to access to documents and information.

When we break this down further, we conclude that a key strength of the IP is to enhance transparency towards the public. Outreach to the public is either directly done by the PA

[20] Desk research, IP summary_EN.doc

and / or directly via the MO. The main activity identified is the publication of the (periodical) monitoring reports. These translate the findings of the technical independent monitors and communicate these to the public. The quality of these reports is intrinsically linked to the degree of transparency provided by the PA to the MO. Confidentiality is the only possible restriction.

A more problematic factor in the IP implementation is inward transparency, specifically the information exchange arrangement between the PA and the MO. The arrangement is primarily pre-defined through the IP agreement, stipulating which documents are made available, and in which meetings monitors can participate. However, within this arrangement challenges are identified. The main issue is whether information streams are 'pull' or 'push' based. Arrangements on pull information mean that the MO requests and receives information. A push system is based on the PA anticipating the needs of the MO and automatically informing without specific requests. We find that a pull based system risks that the MO adopts a reactive approach in the IP and increases the possibility of late detection of irregularities. Such an approach could further result in the PA not taking ownership of the IP objectives, and failing to engage in the project. This is problematic given that successful implementation of an IP is a collaborative effort and dependent on the engagement of all stakeholders. It is therefore important to enforce, promote and expect a degree of proactive behaviour regarding information disclosure from the PA - push information arrangements are preferred.

A THIRD lesson learned from this LR is the fact that IPs can increase access to information beyond the foreseen access by law. In addition, IPs can expose or close gaps that have been identified in EU countries relating the implementation of access to information laws.[21] IPs can allow MOs access to information that under normal circumstances would be confidential. However, as mentioned before, confidentiality could also be considered a restriction on transparency towards the public and consequently the effectiveness of the IP. This LR found no concrete examples where confidentiality clauses restricted the role of the MO. Having said that, in cases where MOs due to confidentiality restrictions cannot use public outreach as a pressure tool to call for change, other tools are available to internally exercise pressure such as meetings with the stakeholders.

The FOURTH important lesson learned from this LR is that the potential preventative effect of IPs is comprehensive, meaning potentially covering all stakeholders. Stakeholders confirmed that IPs have a disciplinary effect on those involved. This, very importantly, also applies to bidders / contractors and therefore has effect on the private sector. We find that IPs promote a solution to corruption in the private sector according to best practices promoted by Transparency International. These practices include: private companies taking internal preventive measures; authorities enforcing measures and; stakeholders engaging for transparency.[22]

[21] See: http://www.transparency.org/whatwedo/publication/money_politics_and_power_corruption_risks_in_europe

[22] See: http://www.transparency.org/topic/detail/private_sector

REALITY-CHECK | PREVENTION OF CORRUPTION

To illustrate the findings on prevention of corruption we will look in more detail at our case studies.

The Hungarian XIII District-case provides a good insight into which documentation the MO (TI Hungary) consulted. On the website of the organisation an introduction is given of the IP, including contact details in case of complaints.[23] Four monitoring reports are published outlining the information accessed by the monitors and conclusions drawn. Monitoring reports are published after concluding a specific phase in the procurement process. Overall, conclusions from the monitoring are positive. Whenever needed, the information disclosed is complemented with additional documentation on request of the MO. The PA took a proactive stance by automatically consulting the MO before taking decisions. The team would receive via email documentation after which they were given two days to respond. Loosely speaking the working arrangement between the MO and the PA was largely based on information push[24] with information pull[25] whenever needed.

The table below (table 2) provides an overview of the disclosure requirements for each phase in the procurement process for the Hungarian case. The MO ensured that by pre-defining this list the PA provided sufficient documentation to allow for effective monitoring. The selection of documents requires careful consideration for which technical understanding of procurement is required. Deciding on which documents will be made available during the IP is a key part of the preparatory phase of the project. The detailed disclosure list for the Hungarian case can be considered good practice.

[23] See: http://transparency.hu/Local_government_of_the_13th_district
[24] The agent anticipates the needs of the user and sends information without a specific request.
[25] The user requests and receives information.

Procurement phase	Documents disclosed
- Preparation of contract award procedure - Contract notice - Tender documentation	- Investment programme and target plan regarding the investment - Draft of preparatory documents of the procedure including inspection of the possibility to divide the contract into lots, the inspection of the process determining the estimated project value, and the inspection of the issue of one-off payment and green procurement - Draft notice launching the contract award procedure - Draft of documentation process
- Monitoring the process starting from the dispatch of the notice launching the contract award procedure - The rectification concerning previously submitted recommendations - The provision of additionally necessary information	- Request for supply of missing information concerning the notice launching the contract award procedure sent by the Notice Control Department of the Public Procurement Authority and the accordingly completed notice - Records of on-the-site inspections - Extension of the time limit for submission of tenders in case supply of additional information is required - Amendment notice - Amended schedule - Provided information to the requests for additional information and their dispatch - Demolition records - Request for supply of missing information and for provision of information and their dispatch - Request of justification
- Monitoring the process starting with the evaluation of tenders and finishing with the conclusion of the contract	- Proposal for decision and written expertise opinion of the Evaluation committee - Evaluation sheets - Resolution of the Council closing the public procurement procedure - Summary of the evaluation of the tenders and documents verifying the dispatch of the summary - Draft contract - Signed contracts and their annexes - Information notice about the result of the procedure - Request regarding the dispatch of the information notice about the result of the procedure
- Monitoring the process staring with the conclusion of the contract conducted as a result of the public procurement procedure and finishing with the completion of public works	- Draft of the contract amendment - Contract amendment - Minutes from the meeting on cooperation - Notice and request of contract amendment - Partial invoices - Documents regarding the implementation of the contract - Draft instructions of the CEO of XIII District Public Service Ltd, based on experiences collected during the renovation works of the nursery school.

Table 2: consulted documentation Hungary

LV

In the Latvian NLL-case, a different working arrangement materialised between the PA and the MO (Delna). The team was granted access to all relevant documentation relating the construction, including financial documentation.[26] In addition, the PA supported the MO to obtain information through the State Audit Office. This included information that normally would not be accessible to the

[26] Desk research, PTF book Chapter 9, p. 124

public. However, in the Latvian case restrictions on access to information were also incorporated. These resulted from negotiation between the parties at the stage of IP design.[27] These restrictions primarily had an effect on the freedom to communicate with the public. The MO did not perceive this as a problem because they felt that the overall access to information through the IP was more important than the few confidentiality restrictions on that information.

The working arrangement between the MO and the PA in Latvia was largely based on a pull system. Team members involved in the implementation of the IP confirmed that the PA always delivered information once requested. According to the MO, the arrangement did not impede them from conducting effective control. It is important that in addition, the team was able to attend meetings and this way actively participated in the debates. However, in practice, the limitations of the pull system were acknowledged. Especially given that the MO at times suffered limited capacity, which affected the degree of monitoring. Not being able to exert continuous pressure on the PA exposed the team to the risk of missing out on important decision-making moments. Various examples have been identified in which the MO was forced to respond retroactively to potential concerns. Push information could have limited the risk of not being present at all times.

[27] Desk research, comments on Delna's 03.03.11 report.doc

5.1.2 Changes and benefits

LESSONS-LEARNED | CHANGES ATTRIBUTED TO INTEGRITY PACTS

This LR finds that IPs have contributed to changes to the monitoring organisations, procurement authorities, and economic operators. Various lessons can be drawn from the cases we have reviewed.

An important driver behind the changes is the visibility of the procurement project. This was primarily achieved through media outreach. The IP activities focused on publicity, public education, and (to a lesser extent) on collecting input from the public. There was limited indication that the activities focused on public interaction, meaning exchange of information and ideas between decision-makers and citizens, or more formal public partnerships, meaning direct citizen involvement to shape decisions. Nevertheless the increased visibility ensured that greater social awareness and pressure was felt by in particular PAs and resulted in changes in behaviour towards greater transparency.

Impact on MOs

FIRST of all, the IP required MOs to acquire a high degree of technical expertise in order to effectively monitor procurement. Given the fact that some of the reviewed MOs have limited staff and capacity in terms of technical knowledge, external expertise was hired in order to undertake the IP activities. This had a positive impact on the professionalization of the MOs, especially on their knowledge on corruption in public procurement. The main challenge identified is the risk that the MOs do not capitalise on the capacity development resulting from the IP. This will be further addressed in the section on sustainability. A second impact of the IPs on MOs was the need to adapt or adjust their approach to fighting corruption to the requirements of IPs. As mentioned above, IPs require a constructive and proactive approach vis-a-vis stakeholders. MOs therefore need to adopt a long-term vision to achieve change rather than reactive short-term approach to fighting corruption. This LR finds that an IP is a tool that requires coalition building between stakeholders dedicated to fight corruption. It therefor falls in line with Transparency International's guiding principles.[28]

Impact on PAs

SECONDLY, the IPs had positive impact on PAs. This primarily relates to operational aspects of the procurement process, meaning that IPs have impact on the way procurement is being done. However, more importantly the IPs had impact on the visibility of public procurement, which could translate to increased legitimacy and credibility of the PA in cases where it is acting legitimately. This LR shows that outreach activities conducted by MOs incentivises PAs to participate in such outreach. IPs drove PAs to engage either in proactive outreach or forced PAs to react to public debate

[28] See: https://www.transparency.org/whoweare/organisation/mission_vision_and_values/0/

instigated by the MO. Feedback from the PAs confirmed that public exposure ultimately increased legitimacy and credibility of the public authority and expenditure.

Bidders / contractors

THIRDLY, the IPs had positive impact on economic operators, meaning bidder and/or contractors. Based on the feedback received from the economic operators, the business sectors they operate in are not free of corruption. The main impact of the IPs on the companies was that they participated in a presumably clean procurement process and this way can improve their reputation. A main concern voiced by the economic operators was unfair competition due to low price offers of contractors working partially in the shadow-economy. Their participation in the IP provides operators with the opportunity to show dedication to fair competition and at the same time limit access to companies working according to unfair practices.

REALITY-CHECK | CHANGES ATTRIBUTED TO INTEGRITY PACTS

To illustrate the findings, we will look into various examples of IPs.

LV

The Latvian NLL-case had a significant impact on the MO (Delna), especially due to the need to attract external expertise. In addition, the IP forced the organisation to adjust from a short-term, reactive approach to fighting corruption, to a more long-term approach in order to achieve change. Part of this has to do with the nature of IPs. In the Latvian case, the IP took multiple years covering different governments. With the change of government, the relations between stakeholders involved in the IP changed. As a consequence, the MO had to adapt and sometimes re-invent its approach to the IP. For example, with each government change, the MO had to invest efforts into ensuring political will for the IP. Another external factor that contributed to different conditions was the economic situation. This made the contracted construction company slightly more prone to reach compromises. This allowed the MO to influence the company and provided for an opportunity to change practices.

The Latvian case did not only affect the MO. Also the PA went through a positive change because of the IP. During the first stage, the MO concentrated efforts on assisting the PA (Three Brothers' Agency) in setting up anti-corruption procedures inside the organisation as well as in relation to outside interactions. In addition, the MO prepared a code of ethics for the Ministry of Culture.[29] Feedback during the stakeholder interviews highlighted the added value of the public presentation of monitoring reports. The public discussion between the MO and the PA on the conclusions of the monitoring report increased visibility. The PA confirmed that the public comments they received, including criticism, opened up the procurement project to the public and eventually benefitted credibility.

[29] Desk research, PTF book Chapter 9, p. 124.

The bidder in Latvia showed commitment to IP principles from the start of the procurement procedure. The winning bidder included in the proposal a code of conduct and established a whistle-blowers policy. This can be directly attributed to the IP given that the bidder used templates from TI-S in order to develop the proposals. During the contract execution, the bidder / contractor disseminated the code through information panels at the building site and enacted channels for staff to submit complaints. Direct staff and sub-contractors were able to anonymously file complaints or directly contact the CEO of the building company. These systems were complemented by hotlines to the MO and the PA.

Also the MO in Latvia acknowledged wider impact of the project as a result of making findings known to the public. This raised awareness in this specific construction project but also impacted general understanding of corruption risks in public procurement. It has facilitated public inquiry and has initiated official investigations more easily.[30] Another wider impact of the project has been the pressure monitoring has placed on other institutions apart from the PA, such as audit and supervision institutions.

BG

In Bulgaria, the MO (TI BG) conducted an assessment of the achieved results. Overall, they perceived increased transparency and publicity. Especially the pre-bidding phase of the procurement process benefitted from this as in normal circumstances this phase remains behind closed doors. The IP opened this to the media and the general public. In concrete terms, transparency was ensured by disclosing information on the website of the monitoring organisation and on the website of the PAs.

HU

In Hungary, the PA in the XIII-District case highlighted the importance of the involvement of the MO (TI HG) in order to increase the visibility of the procurement project. While in normal circumstance the media attention would be limited to the local level, the IP raised nation-wide visibility. While throughout the IP, the MO in Hungary closely interacted with the PA, the economic operators were only actively involved during the contract implementation. Most IP activities were directed towards the PA and only once the contract was executed the economic operator, in this case the constructor, interacted with the technical monitors of the MO. During the interview with the bidder it was confirmed that the IP adds value to their work. First of all because of the high popular perception of corruption in the construction sector. Secondly, the bidder was supportive of the IP given the importance to the client, meaning the PA. Thirdly, the bidder added that the IP strengthened the fact that the contract was fairly awarded.

[30] Desk research, final report latvia lp 2011.doc

5.1.3 Negative effects

LESSONS-LEARNED | NEGATIVE EFFECTS ATTRIBUTED TO INTEGRITY PACTS

This LR finds that the IPs, apart from contributing to positive change also have potential negative effects. Stakeholders raised concerns relating to additional costs, delays and reputational damage. Risks of window-dressing and duplications of monitoring activities were tested but not confirmed. Various lessons can be drawn from the cases we have reviewed.

We find that stakeholders are concerned about delays and additional costs to procurement projects that could be the consequence of implementing an IP. However, we were not able to confirm whether IPs actually caused these effects. An important driver behind the concern is possible reputational damage that can result from increased costs or delays. MOs are aware of the potential negative effects of IPs. Consequently, they actively engage in activities to avoid such effects.

MOs are aware of their own exposure when engaging in an IP. The main concern is reputational damage given that IPs cannot fully exclude corruption and the possibility that PAs and economic operators use the IP for window-dressing. MOs also expressed awareness of potential negative effects for other stakeholders involved in the IP. This is expressed by the fact that we identified cases in which MOs attempted to solve problems during the procurement process beyond those that relate specifically to corruption. Primarily they were concerned with problems that could delay procurement. It was argued that delays could undermine popular perception of a good procurement process, jeopardising the success of the IP, and subsequently damaging the reputation of the stakeholders involved. In theory, MOs share with the PAs and economic operators the responsibility to avoid delays to the procurement process. In practice we find that MOs systematically felt the responsibility to avoid delays, regardless of whether these were attributed to the IP. The share of this responsibility was not perceived as equally divided between the stakeholders.

We argue that MOs struggle to distinguish what constitutes a success for an IP, from what constitutes a success for a procurement project. In other words, the success of the IP and the procurement project are perceived as interdependent. Given the complexity of an IP this is understandable, however we want to stress that an IP is primarily about preventing corruption, while a procurement project covers a wider array of objectives, such as value for money and / or social and environmental objectives. MOs should not be required to carry the larger share of the burden to succeed. Success of the IP, and with that the procurement project, is a shared responsibility which requires a degree of collaboration and trust between stakeholders.

Trust between the PA and the MO repeatedly played a role in order to mitigate possible negative impact of the IP. By building strong relations with stakeholders, MOs attempted to mitigate that IPs were abused to keep up the appearance of a clean procurement

process. Repeatedly, MOs and PAs stressed the importance of good relations in order to effectively implement IP activities. However, MOs also highlight the risk that close relations could jeopardise the monitor's independence. The way MOs mitigate this varies. We will further address this issue in the case study on the monitoring function in section 5.3.

To conclude, this LR finds that economic operators are foremost concerned with direct additional costs relating to any anti-corruption measures that they need to adopt due to the IP, such as a code of conduct or a whistleblowing mechanism. Companies perceive anti-corruption measures as costs with no direct benefits. These concerns seem to have some relation to the exposure of the economic operators to the international market. Those primarily operating locally do not seem to weigh in the potential financial damage of not complying with anti-corruption standards. This could relate to impunity on the local level. Those operating on the international market stress the importance of compliance due to international enforcement of legislation, such as anti-bribery. In addition, these companies also seem to factor in the social value of complying with anti-corruption and good governance standards. Finally, this LR also identified concerns of economic operators as to the timeliness of procurement projects. Economic operators are under financial and time pressure to comply with contract requirements. Some concerns were raised as to possible delays resulting from the additional scrutiny from the IP.

REALITY-CHECK | NEGATIVE EFFECTS ATTRIBUTED TO INTEGRITY PACTS

To illustrate the findings, we will look into various examples of IPs.

LV

In the Latvian NLL-case, the contracted construction company highlighted that the measures they took to comply with the IP were only included due to the IP. The interviewed representatives expressed reluctance as to whether they would repeat such efforts in future projects if this was not forced upon them. The reason given was the cost associated with introducing such measures. A different position was adopted by a contractor responsible for construction oversight. The company stressed their dedication to compliance with international anti-corruption standards, partially based on the fact that they are listed on the New York Stock Exchange. Therefore the company responsible for construction oversight ensured efforts to actively engage the MO. This resulted in a close cooperation in which effective control was exercised over the construction.

HU

In Hungary, the contractor in the XIII-District case commented that some decisions in the contract execution phase suffered minor delays due to the required approval of the MO. The contractor did confirm that the benefits from additional technical expertise through the independent monitoring outweighed this problem. Concerning duplication of monitoring activities, the contractor confirmed that the project benefitted from 'two' sets of eyes monitoring the activities. The PA in the Hungarian case acknowledged that the external monitoring activities could overlap with internal control. However, the former was perceived as a more holistic form of control

throughout the entire procurement process while internal control is more sporadic and limited to audit.

In Bulgaria the MO (TI BG) clearly pursued ways to avoid delays in the procurement project. It could be argued that the organisation took full responsibility regardless of whether delays were the result of external factors beyond the IP itself. The main reason identified why the organisation feared delays, was the effect these might have on public perception and in result their image.

5.1.4 Cost and time savings

LESSONS-LEARNED | COST AND TIME SAVINGS ATTRIBUTED TO INTEGRITY PACTS

This LR finds that attributing costs and time savings to IPs is difficult to determine. However, we find evidence that monitoring organisations do play a role in reducing costs and avoiding delays.

For this review we looked at various indicators to assess whether IPs make procurement more efficient. We looked at whether observable reductions in costs compared to the original budget could be attributed to IPs. In addition, we looked at whether the use of an independent monitor had an effect on the resources allocated by the PAs to the procurement process. Also we looked for this review at timeliness and the question whether IPs reduced time needed to resolve conflicts.

FIRST of all, we did not find evidence of IPs causing specific delays in the procurement activities. Various procurement projects with IPs suffered overall delays. However, these delays were primarily attributed to external factors such as political changes and the economic crisis.

SECONDLY, establishing whether IPs make procurement activities more cost efficient is difficult. One possibility to do so is to look at the cost of corruption in public procurement and allocate a figure to potential savings in case corruption is prevented.[31] However, such an approach exposes us to various methodological challenges given we cannot determine the degree of corruption prevented. After all, not all procurement processes are by definition corrupt. If we expand the scope of IPs from an anti-corruption tool to a good governance tool, we arguably could allocate a wider array of cost savings that could be attributed to the IP based on the notion that efficient procurement processes can save costs. However, also here we ask the question what economic value can be attributed to the IP.

This leaves us to conclude that costs savings through IPs are case specific and cannot be generalised. For example, concrete cost savings can be made by carefully supervising

[31] See: http://ec.europa.eu/anti_fraud/documents/anti-fraud-policy/research-and-studies/pwc_olaf_study_en.pdf

construction activities and quality of materials. This activity might go beyond the technical expertise or capacity of the MO. The focus of the IP's value perhaps should be sought in the area of social value. For example, one might be able to convince PAs that the MOs' services provided through the IP are efficient from an internal management perspective, i.e. through the independent monitor, rather than efficient from a procurement corruption cost savings perspective. After all, a donor or public authority is willing to pay / cover costs of a service that is affordable and implementable.

REALITY-CHECK | COSTS AND TIME SAVINGS ATTRIBUTED TO INTEGRITY PACTS

To illustrate the findings, we will look into various examples of IPs.

LV

The Latvian NLL-case showed clear cost savings compared to the estimated budget. The MO (Delna) and the PA highlighted that the involvement of a construction supervisor (Hill International) had strong impact on expenditure. The company supervised the construction site which included over 40 000 different items. The company would scrutinise these by applying a price-quality check in order to ensure best value for money. Despite delays in the project, the construction of the National Library of Latvia cost significantly less than planned. The cost savings cannot directly be attributed to the IP, however both the PA and the construction supervisor stressed that the successful monitoring during the construction was a team effort including that of the MO.

The delays in Latvia are primarily attributed to changes in the political landscape and the economic crisis. Despite these, the MO took initiatives whenever possible to reduce further delays. For example, they took the initiative to organise a mediation meeting after an unhappy bidder appealed a decision taken by the procurement committee. This meeting brought the different stakeholders around the table and allowed for discussion. The appeal was not withdrawn. However, it is important that the MO undertook activities to ensure increased efficiency in dispute resolution. The PA confirmed that this was a valuable contribution. By discussing directly the concerns of the bidder, similar situations can be avoided for future procurement processes.

IT

In Italy, IPs allowed according to public authorities for 30% savings on the procurement budget calculated as the difference between expected and incurred costs. The MO (TI Italia) confirmed reduced costs in various major construction projects.[32] According to the organisation, the main impact of their activities was an increased quality of bidders as well as more transparency in the process.

BG

In Bulgaria, the MO (TI BG) took efforts to avoid delays by using the IP as a tool to bridge communication gaps between stakeholders. They argue that the mere role as independent observer already influences interaction between the

[32] Desk research, Italy (draft 3) 2010.doc

PA and the contractor. The organisation positioned itself as an independent third party ready to mediate in case of conflict and in this way avoiding cost increase or delays.[33]

[33] Desk research, Integrity Initiative report, p. 42, and personal communications, field visits.

5.2 Sustainability

This section addresses the following review questions:

- To what extent did the benefits of IPs continue or lead to other follow-up activities after the project ended? (5.2.1)
- What were the major factors that influenced the achievement or non-achievement of sustainability of IPs? (5.2.1)

For this review we have looked at the extent to which achieved effects of IPs were sustainable. The question was raised as to which benefits of IPs continued or resulted in follow-up activities after the IP project ended. We looked at whether IPs became permanent tools in public procurement, or whether anti-corruption measures were included in procurement reform. Also we looked at indications of continuous engagement in IPs by stakeholders such as PAs, bidders / contractors, and political actors. From a more societal point of view, we attempted to filter out change in perception of corruption in public procurement as a result of IP activities. From a more operational point of view, we looked at which activities were conducted to secure resources for future IPs.

5.2.1 Follow-up activities after the project ends

LESSONS-LEARNED | SUSTAINABLE CHANGES AND BENEFITS

This LR finds that IPs have contributed to positive organisational changes to the monitoring organisations, procurement authorities, and economic operators. However, the sustainability of these benefits is not always guaranteed. Various lessons can be drawn from the cases we have reviewed.

As discussed in section 5.1.2, IPs contributed to positive changes in relation to MOs, PAs and economic operators. We argued that an important driver behind the change is the visibility of the procurement project. This driver remains important also after project activities end, especially for PAs and the economic operators. The visibility created during the IP can be used for MOs to maintain a certain degree of pressure on the PAs and economic operators also after the IP finishes. Concerning the MOs, the most important factor for sustainability through follow-up activities is funding. Important factors that contribute to achieving sustainable change are technical expertise, presence during decision-making moments and good relations with stakeholders.

Securing sufficient funds for an IP is the main problem MOs face before, during and after projects. Lack of funding during an IP can result in MOs suspending or limiting concrete monitoring activities which jeopardises success of IPs. At the same time, lack of funding limits the ability to achieve sustainable change. This primarily can be achieved by following-up on IP results once the project is finished. We find that MOs use their general budget (core budget within the organisation not specifically intended for its IP activities) to cover post-project activities. MOs do include activities to follow-up on IP results, such

as outreach activities in the form of presentations to academia. We found limited indications of active pursuing of funding specifically for future IPs during or after the project. The main reasons we identified are the low capacity of some organisations, high staff turnover, and the role of external monitors post-project. Concerning the latter, the monitors enjoy a degree of independence and are normally contracted specifically for the IP. This means that the MO risks not always being able to capitalise on the knowledge and network this person acquires during the course of the IP.

Regardless of the funding challenges, we found some indications of impact continuing post-project. It has to be noted that the cases we focused on for this LR were recently concluded or are still on-going. Nevertheless, IPs have contributed to changes in the contracting process, such as internal changes with relation to control of public procurement. It could be argued that such policy changes are easier to achieve given that public authorities can do so within existing legal frameworks. A particular strength we identified of the IP is the real-time control that is being exercised through the IP. This is perceived as more complete compared to internal control mechanisms of public authorities that are more reactive and audit oriented.

Finally, we stated above that stakeholders perceived increased legitimacy of procurement processes due to IPs. One possible way to measure this, as well as determining sustainability, is by looking at the perception of corruption. The question whether the IP changed the perception of corruption in public procurement was posed to stakeholders during interviews. Respondents highlighted that this was difficult to determine. The main problem with identifying change is connected with the fact that most IPs did not measure perception before or after the IP. This touches upon a more general problem identified during this LR, namely the fact that MOs did not always clearly set out their objectives at the start and documented their conducted activities to achieve these objectives. Consequently there has been limited effort by MOs to assess impact.

REALITY-CHECK | SUSTAINABLE CHANGES AND BENEFITS

To illustrate the findings, we will look into various examples of IPs.

HU

In Hungary, the PA explained that currently they are revising their regulations for internal control of public procurement. They aim to implement a control system that is more aligned with practices used by the external monitors during the IP. The underlying thought is that control becomes a real-time rather than a reactive activity. In addition, the PA clearly expressed their interest into follow-up IP projects. The municipality argued that good governance had been a priority of the current mayor and therefore lessons-learned from the IP could be beneficial for future procurement. With strong political will of the mayor, the likelihood for more IPs was acknowledged. However, sustainability would possibly be jeopardised in case of political change. It was confirmed by the MO (TI HU) that this could be a possible obstacle. Therefore the organisation also actively promotes the IP with opposition parties. According to the PA, the opposition party in the municipality generally supported the IP

during its implementation. This expressed itself primarily by no public objection against the procurement process. An interesting added value of the IP in this case was that the municipality perceived high pressure to comply with procurement rules. This pressure allegedly is exerted due to the fact the ruling party in the municipality is on the central level in the opposition. This arguably could make them a target for State institutions dealing with control. The IP functioned in a way as a tool to protect from political persecution.

In Latvia, the IP identified a potential risk in procurement based on the lack of a Public Works Department. This questions the model upon which authorities design and procure without in-house staff capable of undertaking pre-feasibility studies or preparing design briefs. The MO (Delna) raised this issue with the PA project manager due to good working relations during the IP. The expression of these concerns led to reforms in Latvian public procurement. According to the organisation, factors that have contributed to this, inter alia, are: [34]

- A developed understanding of major construction projects;
- Having a seat at the table;
- Developing good relations with involved actors;
- Acting as a silent observer.

The MO in Latvia also managed to change procurement practices. For example, the organisation argued that government agencies should not charge bidders a fee for procurement documentation. As a consequence, agencies agreed to put all procurement documentation online. Also, the agencies accepted the procedure of public discussion with potential competitors before each competition. Although it is not certain that this practice will be sustained for future operations, the MO perceives that it has contributed to the final establishment of a project management structure at the PA that is equipped to withstand pressure from economic operators.[35]

Concerning funding, the IP in Latvia continuously suffered from budget constraints. Some of these restraints were lifted when an external donor (Partnership for Transparency Fund) stepped up. The MO confirmed that without the intervention of the donor, successful monitoring would have been challenged and consequently jeopardising the possibility to further secure funding. Correspondence between the donor and the MO refers to planned activities directed to post-project interests. Based on our field visits it is not clear whether these interests will materialise given that the project manager at the time maintained contacts with the donor and currently has left the MO. This is a clear example in which continuity of the IP is jeopardised due to staff turnover.

[34] Desk research, comments on Delna's 03.03.11 report.doc
[35] Desk research, final report latvia lp 2011.doc

5.3 Flexibility

This section addresses the following review questions:[36]

- How can the model be adapted to small procurement projects and to diverse sectors, types of procurement, and legal, cultural and economic contexts? (5.3.1)
- Is there any ideal size and type of procurement for the implementation of IPs? Conversely, are their types / sizes of procurement for which an IP is not an appropriate tool? (5.3.2)
- Are there any elements in the IP model that are useful only under certain circumstances? Can any element be added in some (or all) contexts? (5.3.3)
- What are the best approaches for the independent monitoring component of the IPs? (5.3.4)
- How can IPs be used to monitor EU-funded procurement projects? How should they be adapted? (5.3.5)

5.3.1 Adapting the model

The LR finds that the IP can be adapted to different types of projects, sectors and contexts. In order to effectively and efficiently implement an IP, monitoring organisations should carefully plan the IP project on a case-by-case basis. During the preparation of the IP, it is key for monitoring organisations to adapt activities of the IP to the capacity available.[37]

TI's Implementation Guide highlights that IPs are both a document (a legal contract) and a process (a series of activities). [38] Within this framework, there is room for debate as to which elements should or should not be included. When we take stock of activities of TI NCs across the EU relating to corruption in public procurement, we see that various initiatives have a systemic approach by addressing public procurement in general (more information on these initiatives can be found in Annex 8.7). It could be argued that such an approach primarily aims at reforming procurement systems in a specific region or sector. This is shared by IPs, which in theory could aim for long-term impact through reform.[39] However, IPs do not primarily focus on system process review, but more so look into specific procurement projects. Its activities not only enhance transparency based on existing public information, but also by entering into informal decision-making structures. IPs thus require a different set of skills than other approaches.

[36] This section presents the findings based on the conclusions from the effectiveness, impact and sustainability review. Recommendations made in order to adapt the IP model are based on concrete experiences in EU MS and / or have been discussed with stakeholders during the field missions. This section will not illustrate findings by using the reality-check model.
[37] Note that also the name 'IP' is adapted within the movement. Not all countries that have implemented the tool used the name IP. For example, in Mexico the program is called 'Social Witness'. In Spain, the NC is considering changing the name IP due to language reasons.
[38] Implementation Guide, p. 25
[39] Implementation Guide, p. 85

Overall we find that IPs require a degree of flexibility in order to be effective, to be manageable, and to be sustainable. Although the debate on the definition of the IP tool within the TI movement is relevant from an institutional perspective, from an operational perspective it could limit its potential. Rather than pre-defining IPs, it is more important to provide the stakeholders involved with the adequate criteria for action and subsequently tools to design and implement an IP project resting on the foundations of integrity.

Careful preparation of an IP project allows for its adaptation to different procurement projects, different sectors, types of procurement, and legal, cultural and economic contexts. Regardless of the situation, designing IPs is each time over again a learning process. IP expert Juanita Olaya stressed that: *'each IP makes you smarter, not necessarily faster*'. With this, she highlights that the MO can learn from each IP, but that this does not avoid careful planning. MOs need to set high standards when entering into an IP. This means that first of all MOs need to understand the legal, political and economic conditions at hand before and during the IP. Secondly, MOs should study the other stakeholders involved in the IP, as well as the corruption risks involved in the procurement. This allows them to effectively focus their activities in order to maximise the impact of the IP. At the same time, understanding the other parties and their problems strengthens their position when negotiating an IP. Thirdly, MOs should carefully plan their activities based on the objectives they want to achieve for the IP. The project plan should allow the organisation to monitor their achievements and ensure that during the IP they do not lose track of their goals. Finally, MOs should adapt the communication and monitoring activities planned for the IP to the available capacity. In case the MO has limited resources for a large procurement project, it should prioritise what will be monitored.

Annex 8.8 introduces a set of methods / tools that MOs can and have used to adapt the IP model. These include:

- Context analysis;
- Communication strategy;
- Risk mapping and mitigation measures;
- Risk assessment;
- Results chain;
- Evaluation indicators.

5.3.2 Ideal size and type of procurement

In this LR we have established that IPs can in theory be adapted to diverse sectors, types of procurement, and contexts. We therefore ask ourselves the question whether there are any ideal circumstances for the implementation of an IP.

First of all, this review found no overwhelming evidence that under certain circumstances, IPs were to be ruled out as an appropriate tool. For example, IPs implemented in the EU by TI NCs included all relevant types of public contracting such as: provision of goods and services; public works; privatisation; and concession contracts. Also, IPs have been implemented on the local, regional and national level, with different cultural, legal, and economic contexts. In fact, we have seen in this review that IPs can be adapted during implementation in case these contexts change. Annex 8.5 provides more information on the contexts in which the different IPs reviewed for this report have been implemented. Section 5.3.3 will discuss in more details some of the identified limitations of IPs.

Establishing ideal size and type of procurement for the implementation is subject of debate. Some IPs are classified by the MOs as too large in order to effectively monitor procurement. This is perceived as such for the IP conducted for the construction of the Berlin-Brandenburg airport in Germany. However, arguably with sufficient monitoring capacity, this IP could have been implemented according to the expectations of the stakeholders. Other procurement types are perceived as irrelevant for IPs. Some interviewed stakeholders mentioned that off-the-shelf procurement would not necessary benefit from an IP. For example, for the purchase of pencils or stationary paper an IP would not be relevant. The main reason was given that such procurement did not raise interest of the public. However, it could not be ruled out that also for this product variation within procured goods, an IP could help improve a procurement process.

Overall we cannot provide a one-size fits all approach for the IP. In fact, this is in line with our argument that IPs per definition have to be tailor-made to specific situations. However, the next section sheds some light on limitations in order for IPs to be effectively implemented.

5.3.3 Conditions for success

Arguably the only concrete general limitation of the IP is the fact that the tool cannot fully rule out corruption in public procurement. Therefore, we rather address the conditions that provide an obstacle to effective implementation. Within the TI movement, there is general consensus that in order to be effectively implemented, various elements need to be present such as:[40] political will of the authorities; external independent monitoring; and a participatory/multi-stakeholder involvement.

[40] See Integrity Pact Guide, 2013, p. 25.

Indeed these elements are relevant in order to effectively implement an IP. At the same time they point us in the direction of the limitations of IPs. For example, without political will, it is difficult (perhaps nearly impossible) to effectively implement an IP. After all, it is a collaborative tool that requires shared-responsibility of all stakeholders involved.

Apart from political will, we believe there are two factors that should be taken into consideration by MOs before entering into an IP. First of all, the available resources to implement an IP. We have repeatedly throughout this LR highlighted that MOs need to adjust their activities to the resources at hand. In case limited resources are available, activities need to be adjusted. A good tool to prioritise where to put resources is a corruption risk assessment.

Secondly, MOs should aim to conduct an IP covering the entire procurement project. We argued before that one added value of the IP is the fact that it includes all relevant stakeholders in a procurement process. Along these lines we need to add a second strength, meaning the potential to scrutinize an entire procurement cycle, starting from the pre-bidding phase and ending once the contract is delivered. Based on the survey we conducted for this LR, we were able to map corruption risks in the EU based on the views of TI[41] and other anti-corruption experts[42]. We measured the likelihood of corruption risk scenarios to occur as well as the severity of such a risk. Our aim was to map risks in public procurement and reflect on whether the IPs, as an anti-corruption tool, can provide added-value by addressing these risks. The fact that the experts highlighted risks throughout the process strengthens the added-value of control that covers all phases. We therefore argue that IPs should at least cover (part of) the bidding phase and the contract implementation phase. Apart from the identified priority risks by the experts, another relevant factor is that corrupt practices during the bidding phase could in theory become visible later in the process. It is therefore relevant to apply holistic control. More detailed feedback on the assessment can be found in Annex 8.10.

5.3.4 Best approach to independent monitoring component

An important, if not the most important, attribute to the IP is the independent monitoring function. For this review we asked the question: what are the best approaches for the design of the independent monitoring component of the IPs?

TI's Implementation Guide provides a comprehensive analysis on the monitoring component of IPs. We therefore refer readers to the chapter in the guide. For this LR we will highlight some components and illustrate this with findings from the examined case studies.

PROFILE OF THE MONITOR

[41] Data was collected from BG, CZ, HG, HR, LT, LV, PT, RO, SV
[42] Data was collected from AT, ES, ET, HG, HR, PL, SK

According to the IP Implementation Guide, a monitor requires: independence; knowledge; reputation; accountability; capacity and commitment. Independence is important for the monitor to do his/her job objectively. Its work needs to be performed independently but should also be perceived as such by all stakeholders. Knowledge, or expertise, is required both from a legal perspective, when looking at the contracting process, but also from a technical perspective, when looking at the specific procurement sector. Such expertise can be found in one monitor or ensured through a team of monitors. Monitors need to have a spotless reputation in order to ensure that their activities are credible. Monitoring activities require time and resources, including a high level of commitment. Sufficient capacity should be assigned to effectively conduct monitoring. The monitor should be accountable to the MO as well as to the bidders, PAs and to the public. Ensuring this 'fourfold' accountability to stakeholders, with different and sometimes opposite interests, is difficult to operationalize. Such difficulties need to be emphasised when designing the IP.

Figure 2: requirements for the monitor

Based on the experience of the stakeholders consulted for this review, the relevant additional requirements were added. In Hungary, the bidders stressed that monitors needed to have a practical and constructive / collaborative mind-set. Construction projects are characterised by interactions between expertise from architects, financial controllers, lawyers, and engineers, etc. The design lays out construction processes, which subsequently are followed during the building phase. Within this framework, constructors have a degree of manoeuvrability in order to cope with any (unforeseen) challenges they might face. This manoeuvrability is in itself a risk area for irregularities and therefore subject to monitoring. A practical monitor understands these processes and thinks with the contractors. The constructor in the Hungarian XIII-District case spoke highly of the selected technical monitor as a person thinking with the project manager and coming to collaborative solutions to challenges.

HU

DE

The constructive and practical nature of monitors was also mentioned in Germany, Latvia and Bulgaria. The role of the monitor in effect was also meant to build bridges between stakeholders, especially in case of conflict. In Germany and Bulgaria, the role of the monitors went beyond anti-corruption and transparency to ensuring the procurement complied with good governance. In Germany, monitors for the Hannover and Bremen IPs were perceived to have gone beyond their task to monitor corruption and provided broader management advice. This was attributed

to commitment to the project, but also good personal relations between the monitor and the stakeholders involved.[43]

The second requirement concerns communication skills given that outreach to the public is a key IP activity. In general, outreach activities are conducted by the MO. However, the technical monitor can play a key role especially when drafting and presenting the periodical monitoring reports.

ACTIVITIES OF THE MONITOR

Monitors conduct a wide variety of activities. In principle, they could include:

- Review of documentation;
- Participation in meetings / inspection;
- Communication activities.

The activities of the monitors were either conducted on-site or off-site. On-site activities included attending meetings and visiting building sites. Off-site activities primarily concern documentation review. The arrangements between the monitoring organisations in our cases differed. The monitor teams consisted of in-house and external experts. In Hungary, a mixed team was monitoring from the start until the end of the project. In Latvia, the organisation relied primarily on in-house expertise in combination with *ad hoc* external expertise. In Bulgaria, monitoring activities primarily relied on external experts with strong support of the MO, especially with relation to communication activities. The degree of direct contact with the procurement stakeholders varied. In Bulgaria, most contact with the PA and the bidders first went through the monitoring organisation. In Hungary, the in-house expert focused primarily on the contracting phase given her legal background. Technical monitoring during the contract implementation phase was externalised.

BG

For this review we spoke to two external monitors involved in the Bulgarian IPs. One monitor had a legal background and specialised in public procurement. The second expert was an engineer, specialised in road infrastructure. Both took a proactive approach in monitoring the IPs. This approach expanded beyond the formal requirements focussing on anti-corruption. The monitoring organisation TI BG played an important role by ensuring that the scope of their activities did not lose track of the anti-corruption objectives set for the IP. Together the team managed to effectively monitor anti-corruption, transparency, but also value-for-money aspects relating to public procurement.

[43] Personal communications, interview 9 April 2015.

In Latvia, the MO (Delna) relied primarily on in-house staff but insisted to have a stronger technical involvement in the project. [44] In 2010 this matured when the MO was able to direct resources to this purpose and attract external expertise. The organization prior to this depended on public relations, good governance rhetoric, and suggestions and recommendations based on international experience. With more technical expertise, the MO was able to analyse in more detail the particular construction project. Consequently their interactions carried more weight with project stakeholders. Also their confidence increased when communicating with the public.

This review finds that the role of an MO such as TI could be threefold:

- Communication;
- Project management;
- Public procurement monitoring.

The strength of the MO is to communicate the activities and findings of the monitors to the public. The main added value of the organisation is the capacity to translate technical information to more accessible language. In addition, civil society organisations can have good access to the public. A second role for the MO is the management of the IP as a project. This included monitoring the project (meaning IP) implementation and documenting activities. In addition, the MO should manage the external monitors. This primarily ensures managing their resources in order to allow for sufficient capacity. If needed, the MO can also protect the external monitors from possible pressure or obstacles they might face. The third role civil society can play is monitoring itself. TI in-house staff holds expertise in anti-corruption and transparency. Such expertise can be used to monitor the contracting phase but also to ensure that external experts remain focussed on the core objectives of IPs, namely detecting and preventing corruption, increasing transparency, etc.

SELECTION OF THE MONITOR

The selection method of the monitor largely depends on the context of the IP. Regardless of whether this selection takes place through an open call or another more restricted procedure, key requirements described above should always be taken into account.

This LR found that MOs struggle primarily with defining the workload for monitors. It is difficult to estimate the amount of time and effort that should go into the work of the monitor. It exposes the organisation to the risk of under-budgeting with the consequence of not being able to effectively conduct activities up until the project closure. A possible safety mechanism applied by MOs is relying partially on in-house staff. Above all, this concern highlights the importance of engagement of the external monitor as well as effective management throughout the project to ensure that the monitor has sufficient

[44] Desk research, final report Latvia Ip 2011.doc

resources. Initially the MO should adapt the level of monitoring to the resources available. A possible way to avoid the risk of missing out on important moments in the procurement process is to assess *ex-ante* where to direct monitoring efforts. We asked monitors how they would divide efforts in case of limited resources. The main approach was through a risk assessment. This could identify the key areas for concern. It was stressed that this would allow monitoring to be most effective, however, as long as activities would be able to span the entire procurement process. In other words, monitors recommended not applying monitoring only to one specific procurement phase.

FUNDING FOR THE MONITOR

Securing funding for the monitor is a challenging task for a MO. Various methods have been used. In Latvia and Bulgaria, the MOs relied on external funding. In the case of Latvia, this funding was *ad hoc* and did not cover the entire project cycle. The donor was the Partnership for Transparency Fund. In Bulgaria the IPs were financed through the Siemens Integrity Initiative. This covered almost the entire project cycle and ensured the full coverage of all activities, including the funding for external experts. The PA financially covered the monitoring activities in Hungary.

5.3.5 Adapting to EU funds

Over the period 2007-2013, the EU had EUR 976 billion to spend on funds divided over areas such as; sustainable growth; natural resources; security, justice and citizenship; pre-accession and external assistance.[45] Through the Structural Funds (European Regional Development Fund, European Social Fund and the Cohesion Fund), more than one third of the EU budget is allocated. For the period 2014-2020 funding for regional and cohesion policy amounts up to EUR 351,8 billion.

The European Commission (EC) and the EU Member States (MS) share management responsibility for the funds.[46] Regional and national authorities manage three-quarters of the funding. The priorities are established at the EU level.[47] MS set out their policy framework including national objectives.[48] Operational Programmes (OPs) are established per region or theme reflecting their specific needs. The EC approves the national objectives and OPs after negotiation with the MS and based on the EU priorities. The MS are responsible for the selecting, controlling and assessing of projects while the EC monitors the overall programme, makes the payments after expenditure is approved and verifies national control systems.

[45] See: http://ec.europa.eu/budget/figures/fin_fwk0713/fwk0713_en.cfm#cf07_13
[46] The Community Programmes are directly managed by the EC.
[47] For the 2014-2020 period this is called the Common Strategic Framework.
[48] For the 2014-2020 period these are called the Partnership Contracts.

The process of allocating funds has checks and balances built in to avoid fraud[49] and errors. National authorities are required to thoroughly check eligibility of expenditure before submitting payment claims to the EC. First of all, the efficiency and effectiveness of the checks and balances established in this process depend on the functioning and independence of the different authorities. For example, in case that MSs incorporate procurement and control authorities under one ministry, independency might be jeopardised. Secondly, the EC has limited control over the individual project implementation, as this is the responsibility of the MS. In other words, the EC's effectiveness in controlling spending is partially dependent on the quality of national control. Thirdly, the EC lacks the human resources to monitor all the projects on the ground. In this context there could be a good reason to propose IPs allowing CS monitoring of EU money being spend.

To date, efforts to address irregularities and fraud in the Structural Funds have been dominated by a control and audit approach. Starting with the programming period 2000-2006, the control and audit arrangements governing the Structural Funds have been strengthened substantially. The EC headed these efforts, addressing demands from the European Parliament's Committee on Budgetary Control, the latter reacting to European Court of Auditor findings of high error rates affecting the Structural Funds.[50] For the period 2014-2020, the EC prioritises administrative capacity development. This is founded on the notion that MS gain most from cohesion policy if European Structural and Investment Funds are effectively managed. In addition, the EC expressed interest in the IP as a tool to prevent potential irregularities with regard to procurement.

The IP initiative is noteworthy, since the efforts to date on the EU level have been of a rather '*punitive'* than '*constructive'* nature. MS authorities expressed concerns relating possible administrative burden / cost associated with financial control and audit. Considering that the regulatory framework for the current programming period 2014-2020 has introduced a series of new management and control requirements, the success of the IP initiative will depend strongly on demonstrating that benefits outweigh any additional administrative burden. The experience, in the programming period 2000-2006, with '*Contracts of Confidence'* might provide some useful inspiration for the IP initiative. The Contracts of Confidence were agreements between the EC and a MS or regional Structural Funds authorities on the quality of the concerned authority's audit work and enabling the EC to rely on national / regional audit work. For the 2000-2006

[49] The EC stated in March 2013 that throughout the EU an estimated 120 billion euros is lost to corruption. According to the EC, this amounts to 20 to 25 per cent of the value of public contracts.[49] Regarding corruption affecting EU funding or its institutions, OLAF and the European Court of Auditors are seen to be the principle institutions addressing the problem. Data from OLAF indicated that in 2012, the EU anti-fraud office opened 718 cases and closed 465. Most cases were relating to the Structural Funds followed by external aid and EU staff related cases. [49] The recommendations made based on the investigations were primarily financial followed by judicial, disciplinary and administrative. OLAF recommended a total of 284 million euros for recovery of which around 100 million related to the Structural and Agricultural funds. An amount of 94,5 million euros was recovered in 2012 as a result of investigations.

[50] For a comprehensive overview of these developments, see Blomeyer & Sanz, on behalf of the European Parliament's Committee on Budgetary Control, What are implications of the current legislation for cost effectiveness and quality control in structural fund spending? What role for performance auditing? 2011

programming period, contracts of confidence were established in Wales, Austria, Denmark, Estonia, Slovenia and Portugal.[51]

Currently the EC and TI are collaborating to launch pilot IPs dealing with EU funds. These efforts could allow us to draw in the near future comparative lessons from implementation of IPs across the EU. For the EC, positive impact from IPs could result in:

- Reduced credit risks;
- Better return on investments;
- Funds provided are more likely to achieve objectives;
- And a greater likelihood that funds will achieve stated regional development impacts.

To conclude, we find that the aims of the IPs fall in line with public procurement objectives applied in the European Union (EU), namely ensuring a level playing field for all actors, and ensuring value for money by avoiding corruption.[52] In operational terms, the general need to adapt each IP to the procurement conditions also applies when adapting the tool to procurement involving EU funds.

[51] See European Commission communication on contracts of confidence (SEC(2004)632/2), 18 May 2004
[52] See: https://www.nottingham.ac.uk/pprg/documentsarchive/asialinkmaterials/eupublicprocurementlawintroduction.pdf

6 Conclusions

This section summarizes the main findings of this LR according to the review criteria: effectiveness and impact; sustainability; flexibility.

6.1 Effectiveness and impact

REVIEW QUESTION | HAVE IPS ACHIEVED THEIR STATED OUTCOMES?

This LR finds that IPs can effectively detect and follow-up irregularities in public procurement processes.

An IP in practice addresses good governance of public procurement processes, part of which is detection and follow-up of corruption. The main focus of MOs is the detection and follow-up of 'red flags' indicating bad governance. Rather than taking a punitive approach to detected irregularities, MOs in practice take a constructive approach. Ideally a solution is found to the problem in collaboration with the other stakeholders in the IP. One reason for this approach is the difficulty to proof intent of irregularities. A more dominant reason is the long-term goals of the parties to ensure a successful completion of the IP and the procurement project. The objective to come to a constructive solution poses challenges to internal decision-making mechanisms.

This LR finds that IPs effectively contribute to the prevention of corruption.

The wider governance angle of the IP makes the tool predominantly a mechanism to prevent corruption. The MOs prioritise enhancing transparency in order to achieve effectiveness of the IP. This is done through access to information as well as public outreach. MOs managed to strike a balance between the degree of transparency and the protection of sensitive information relating to procurement. As with activities relating to detection, also here transparency requires collaborative action. It requires a proactive approach of the public authorities as well as the private sector. Civil society / MOs are challenged with the need to continuously engage these actors in order to ensure effective execution of the IP.

REVIEW QUESTION | WHAT CHANGES/BENEFITS HAVE IPS CONTRIBUTED TO?

This LR finds that IPs have contributed to changes to monitoring organisations, procurement authorities, and economic operators. An important driver behind the change is the increased visibility of the procurement project. This was primarily achieved through media outreach. This review however finds limited evidence of direct citizen's participation and interaction in the monitoring process.

MOs increased knowledge and technical capacity due to IPs. Organisations that normally cover a wide array of anti-corruption campaigns are forced through the IP to target one specific area and abstain from general anti-corruption rhetoric. The main challenge

identified is the risk that the MOs do not capitalise on the capacity development resulting from the IP. A second effect on MOs is the need to adopt a long-term vision to achieve change rather than reactive short-term approach to fighting corruption.

IPs have positive impact on PAs, especially on the way procurement is done, i.e. more transparent and compliant with best practices. However, more importantly the IPs have impact on visibility of public procurement, which could translate to increased legitimacy and credibility of the PA. Despite the fact that PAs are spending public money, engaging in outreach to the public is not always evident. IPs drive PAs to engage either in proactive outreach or force PAs to react to public debate instigated by the MO.

IPs have positive impact on the procurement environment in which economic operators participate. The main impact of the IPs on the economic operators is that they participated in a presumably clean procurement process. Their participation in the IP provides operators with the opportunity to show dedication to fair competition.

REVIEW QUESTION | DID IPS HAVE ANY NEGATIVE EFFECTS?

This LR finds that the IPs, apart from contributing to positive change also have potential negative effects. Stakeholders raised concerns relating to additional costs, delays and reputational damage. Risks of window-dressing and duplications of monitoring activities were tested but not confirmed.

Stakeholders are concerned about delays and additional costs to procurement projects that could be the consequence of implementing an IP. However, this LR could not confirm whether IPs actually caused these effects. An important driver behind the concern is possible reputational damage that can result from increased costs or delays. MOs are aware of the potential negative effects of IPs. Consequently, they actively engage in activities to avoid such effects, regardless of whether these can be attributed to the IP. This is however a shared responsibility between all participating stakeholders. Nonetheless, this LR finds that PAs and economic operators do not always act according to their share of responsibility.

Trust between the PA and the MO repeatedly played a role in order to mitigate risks of cost overrun and delays. Repeatedly, MOs and PAs stressed the importance of good relations in order to effectively implement IP activities. However, MOs also highlight the risk that close relations could jeopardise the monitor’s independence.

Economic operators are primarily concerned with costs relating any anti-corruption measures that need to be adopted due to the IP. These concerns seem to have some relation to the exposure of the economic operators to the international market. Those primarily operating locally do not seem to weigh in the potential financial damage of not complying with anti-corruption standards.. Those operating on the international market stress the importance of compliance due to international enforcement of anti-bribery legislation.

REVIEW QUESTION | DID IPS MAKE PROCUREMENT MORE EFFICIENT?

This LR finds that attributing costs and time savings to IPs is difficult to determine. However, the role of monitoring organisations in reducing costs and avoiding delays has been confirmed by stakeholders.

This LR did not find evidence of IPs relating to specific delays suffered in the procurement activities. Various procurement projects with IPs suffered overall delays. However, these delays were primarily attributed to external factors such as political changes and the economic crisis. Whether IPs make procurement activities more cost efficient is difficult to determine. Costs savings through IPs are case specific and cannot be generalised. For example, concrete cost savings can be made by carefully supervising construction activities and quality of materials. This activity might go beyond the technical expertise or capacity of the MO.

6.2 Sustainability

REVIEW QUESTION | TO WHAT EXTENT DID THE BENEFITS OF IPS CONTINUE OR LEAD TO OTHER FOLLOW-UP ACTIVITIES AFTER THE PROJECT ENDED?

REVIEW QUESTION | WHAT WERE THE MAJOR FACTORS THAT INFLUENCED THE ACHIEVEMENT OR NON-ACHIEVEMENT OF SUSTAINABILITY OF IPS?

This LR finds that IPs have contributed to changes to the monitoring organisations, procurement authorities, and economic operators. However, the sustainability of these benefits is not always guaranteed.

As set out above, IPs contributed to positive changes in relation to MOs, PAs and economic operators. The visibility driver which underpinned those changes remains important also after project activities end. The visibility created during the IP can be used for MOs to maintain a certain degree of pressure on the PAs and economic operators also after the IP finishes. Concerning the MOs, the most important factor for sustainability through follow-up activities is funding. Important factors that contribute to achieving sustainable change are technical expertise, presence during decision-making moments and good relations with stakeholders.

Securing sufficient funds for the IP is the main problem MOs face. Funds for post-project activities seem to be covered by general budget lines within the organisations. As a consequence, concrete monitoring activities post-project are either suspended or limited to the minimum. There are few indications of active pursuing for funding specifically for IPs. The main reasons identified are the low capacity of some organisations, high staff turnover, and the role of external monitors post-project. Concerning the latter, the monitors enjoy a degree of independence and are normally contracted specifically for the IP. This means that the MO risks not always being able to capitalise on the knowledge and network this person acquires during the course of the IP.

6.3 Flexibility

REVIEW QUESTION | HOW CAN THE MODEL BE ADAPTED?

This LR finds that in order to effectively and efficiently implement an IP, monitoring organisations should carefully plan the IP project. During the preparation of the IP, it is key for monitoring organisations to adapt activities of the IP to the capacity available.

Overall this LR finds that IPs by default have the required degree of in-built flexibility in order to be effective, manageable, and sustainable. Rather than pre-defining IPs, it is more important to provide the stakeholders involved with the adequate criteria for IP implementation and subsequently tools to design and implement an IP project. Careful preparation of an IP project allows for its adaptation to different procurement projects, different sectors, types of procurement, and legal, cultural and economic contexts. Regardless of the situation, designing IPs is each time over again a learning process. Each time there are four critical steps that need to be taken to ensure the IP is suited to the particular circumstance. 1. MOs need to understand the legal, political and economic conditions at hand before and during the IP. 2. MOs should study the other stakeholders involved in the IP, as well as the corruption risks involved in the procurement. 3. MOs should carefully plan their activities based on the objectives they want to achieve for the IP. 4. MOs should adapt the communication and monitoring activities planned for the IP to the available capacity.

REVIEW QUESTION | IS THERE ANY IDEAL SIZE AND TYPE OF PROCUREMENT FOR THE IMPLEMENTATION OF IPS?

This LR finds no overwhelming evidence that under certain circumstances, IPs were to be ruled out as an appropriate tool.

In this LR we have established that IPs can in theory be adapted to diverse sectors, types of procurement, and contexts. We therefore ask ourselves the question whether there are any ideal circumstances for the implementation of an IP. Establishing ideal size and type of procurement for the implementation is subject of debate. Some IPs are classified by the MOs as too large in order to effectively monitor procurement. However, arguably with sufficient monitoring capacity, large IPs could be implemented according to the expectations of the stakeholders. Overall we cannot provide a one-size fits all approach for the IP. In fact, this is in line with our argument that IPs per definition can be tailor-made to specific situations.

REVIEW QUESTION | ARE THERE ANY ELEMENTS IN THE IP MODEL THAT ARE USEFUL ONLY UNDER CERTAIN CIRCUMSTANCES?

Arguably the only concrete limitation of the IP is the fact that the tool cannot fully rule out corruption in public procurement. There is general consensus that in order to be effectively implemented, various elements need to be present such as: political will of

the authorities; external independent monitoring; and a participatory/multi-stakeholder involvement.

Indeed these elements are relevant in order to effectively implement an IP. At the same time they point us in the direction of the limitations of IPs. Two factors that should be taken into consideration by MOs before entering into an IP: the available resources to implement an IP; the procurement process cycle. Concerning the former, in case limited resources are available, activities need to be adjusted. Concerning the latter, IPs should at least cover (part of) the bidding phase and the contract implementation phase.

REVIEW QUESTION | WHAT ARE THE BEST APPROACHES FOR THE INDEPENDENT MONITORING COMPONENT OF THE IPS?

This LR confirms that the independent monitoring function of the IP is its strongest attribute.

According to the IP Implementation Guide, a monitor requires: independence; knowledge; reputation; accountability; capacity and commitment. This LR adds two relevant additional requirements: the need for a practical and constructive mind-set; the need for communication skills. A practical monitor understands procurement and contract implementation and thinks with the stakeholders. The role of the monitor is meant to build bridges between stakeholders, especially in case of conflict. In addition, the role of the monitors can go beyond anti-corruption and transparency to ensuring the procurement complied with good governance. Communication skills are important especially when having to translate technical knowledge to the general public.

Monitors conduct a wide variety of activities. In principal, they include: review of documentation; participation in meetings / inspection; communication activities. Monitor teams consist of in-house and external experts. The degree of direct contact with the procurement stakeholders varies. Some MOs opt for filtering information from the PA before passing this to the monitor. This allows for effective management of large procurement processes. Monitors generally take a proactive approach in monitoring the IPs. This approach expands beyond the formal requirements focussing on anti-corruption. Relying on technical expertise, the MO is able to analyse in more detail the particular procurement project. Consequently their interactions potentially carry more weight with project stakeholders.

The role of MO varies. The strength of the MO is to communicate the activities and findings of the technical monitors to the public. The main added value of the organisation is the capacity to translate technical information to more accessible language. In addition, civil society organisations can have good access to the public.

This LR found that MOs struggle primarily with defining the workload for monitors as well as securing sufficient funding. It is difficult to estimate the amount of time and effort that should go into the work of the monitor. It exposes the organisation to the risk of under-

budgeting with the consequence of not being able to effectively conduct activities up until the project closure. A possible safety mechanism applied by MOs is relying partially on in-house staff.

REVIEW QUESTION | HOW CAN IPS BE USED TO MONITOR EU-FUNDED PROCUREMENT PROJECTS?

The European Commission (EC) and the EU Member States (MS) share management responsibility for the EU funds. The process of allocating funds has checks and balances built in to avoid errors. The efficiency and effectiveness of the checks and balances established in this process depend on the functioning and independence of the different authorities. The EC has limited control over the individual project implementation, as this is the responsibility of the MS. In addition, the EC lacks the human resources to monitor all the projects on the ground. In this context there is a strong justification to propose IPs allowing CS monitoring of EU money being spend.

To date, efforts to address irregularities and fraud in the Structural Funds have been dominated by a control and audit approach. For the period 2014-2020, the EC prioritises administrative capacity development. This is founded on the notion that MS gain most from cohesion policy if European Structural and Investment Funds are effectively managed. Considering that the regulatory framework for the current programming period 2014-2020 has introduced a series of new management and control requirements, the success of the IP initiative will depend strongly on demonstrating that benefits outweigh any additional administrative burden. Currently the EC and TI are collaborating to launch pilot IPs dealing with EU funds. These efforts could allow us to draw in the near future comparative lessons from implementation of IPs across the EU. For the EC, positive impact from IPs could result in: reduced credit risks; better return on investments; a greater likelihood that funds will achieve stated regional development impacts.

7 Recommendations

This section summarizes the main recommendations of this LR according to the review criteria: effectiveness and impact; sustainability; flexibility.

7.1 Effectiveness and impact

ISSUES	|	Monitoring activities are technical and time-consuming. MOs risk missing the detection of irregularities.
RECOMMENDATIONS	|	Ensure that PAs proactively involve the MO in decision-making.
ISSUES	|	IPs in practice adopt a constructive approach to identified irregularities rather than a punitive approach. This poses challenges to internal decision-making mechanisms of MOs given that established procedures in the IP agreement do not always provide for an adequate response to each situation.
RECOMMENDATIONS	|	Adopt an internal decision-making mechanism adjusted to the needs of IP. This could be done by establishing an advisory committee with a degree of decision-making power, consisting of national board members, IP project director, external IP or procurement experts, etc. Establish 'red lines' which pre-establish conditions under which circumstances MOs will exit from the IP in case of conflict with the PA.
ISSUES	|	IPs in practice require collaboration with all stakeholders. A degree of proactive behaviour is required from the PA and the economic operator. MOs are challenged with ensuring engagement of those stakeholders.
RECOMMENDATIONS	|	Involve stakeholders actively from the start of the IP, including the design phase of the IP. Consider external expertise to build knowledge capacity on the procurement project. This could increase confidence vis-a-vis other stakeholders and added-value of the IP.
ISSUES	|	Despite the fact that PAs are spending public money, engaging them in outreach to the public is a challenge.

RECOMMENDATIONS | Establish a communication strategy that involves outreach by the PA.

ISSUES | Delays in procurement are perceived to potentially undermine popular perception of a good procurement process, jeopardising the success of the IP, and subsequently damaging the reputation of the stakeholders involved. Regardless of whether delays were attributed to the IP, MOs systematically felt the responsibility to solve this. This responsibility is not always shared equally among the stakeholders.

RECOMMENDATIONS | Clearly define what outcomes can be attributed to the IP and what outcomes can be attributed to the procurement project as a whole. Identify risks and mitigate these from the start.

ISSUES | IPs can be used for window-dressing by PAs and economic operators.

RECOMMENDATIONS | MOs should as a general rule abstain from embarking on IPs in procurements clearly affected by biased, dubious or highly questionable rationales, as this could be perceived as legitimising corrupt decisions.

ISSUES | MOs and PAs stressed the importance of good relations in order to effectively implement IP activities. However, MOs also highlight the risk that close relations could jeopardise the monitor's independence.

RECOMMENDATIONS | Ensure independence of the monitor by: providing sufficient resources to oversee the project; granting him/her final say over the monitoring report; providing him/her a way to pull out of the project under certain conditions.

7.2 Sustainability

ISSUES | Sustainability of positive impact of IPs is not always guaranteed, primarily due to lack of funding.

RECOMMENDATIONS | Ensure that funding to pursue follow-up activities post-project is incorporated into the IP funding package from the outset.

ISSUES | MOs risk not capitalising on the capacity development resulting from the IP due to staff turnover and temporary use of external technical expertise.

RECOMMENDATIONS | Document and monitor IP activities.

If available, ensure parallel support of the international coordinating body of your organisation (such as TI-S).

ISSUES | MOs risk not capitalising on the capacity development resulting from the IP due to the use of temporary external technical expertise.

RECOMMENDATIONS | Use a monitoring team consisting of internal and external experts.

ISSUES | Due to staff turnover, previous relations with external donors are not maintained.

RECOMMENDATIONS | Facilitate relations between the external donor and the international coordinating body of your organisation.

ISSUES | MOs have limited experience with monitoring and evaluation.

RECOMMENDATIONS | Include external monitoring and evaluation in your project design.

Seek support from the international coordinating body of your organisation.

7.3 Flexibility

ISSUES | Achieving impact through an Integrity Pact is put at risk if its inherent flexibility is not exploited at the outset.

RECOMMENDATIONS | Understand the legal, political and economic conditions at hand before and during the IP.

Study the other stakeholders involved in the IP, as well as the corruption risks involved in the procurement.

Plan activities based on the objectives you want to achieve for the IP.

Adapt the communication and monitoring activities planned for the IP to the available capacity.

ISSUES | Corruption in procurement is complex. It can occur in all of the phases of the procurement process and can take different shapes and forms. Integrity Pacts cannot fully rule out corruption.

RECOMMENDATIONS | IPs should cover the entire procurement process or at least cover (part of) the bidding phase and the contract implementation phase.

IPs should include all stakeholders, meaning PAs and economic operators.

ISSUES | MOs struggle primarily with defining the workload for monitors as well as securing sufficient funding. It is difficult to estimate the amount of time and effort that should go into the work of the monitor. It exposes the organisation to the risk of under-budgeting with the consequence of not being able to effectively conduct activities up until the project closure.

RECOMMENDATIONS | Ensure sufficient funding from the start.

Combine in-house expertise with external technical expertise.

Use the tools proposed in this LR such as: context analysis; communication strategy; risk mapping and mitigation measures; risk assessment; results chain; evaluation indicators.

8 Annex

8.1 References

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- final report latvia lp 2011.doc
- Italy (draft 3) 2010.doc
- Integrity Initiative report
- Italy_Integrity_Pact 2000.pdf
- IP Italy_final versión 2008.doc

8.2 Terms of References

Find attached to the report.

8.3 Surveys

Find attached to the report.

8.4 Interview and workshop activities

Name	Organisation
Field mission Hungary (18-22 March 2015)	
[redacted]	Nimród-Bau
[redacted]	13th District Budapest
[redacted]	K-Monitor
[redacted]	K-Monitor
[redacted]	TI Hungary
Field mission Latvia (23-25 March 2015)	
[redacted]	Delna
[redacted]	Zverinats Advocats
[redacted]	Hill International
[redacted]	European Institute for Gender Equality (former Delna)
[redacted]	Delna
[redacted]	Delna
[redacted]	Lawyer (former Delna)
[redacted]	National Latvian Library
[redacted]	Ministry of Culture
[redacted]	National Builders Association
Field mission Bulgaria (31 March – 02 April 2015)	
[redacted]	Siemens Bulgaria
[redacted]	Ministry of Regional Development and Public Works (Bulgaria)
[redacted]	Peterkap Partners
[redacted]	PMI Bulgaria Chapter
[redacted]	TI Bulgaria
[redacted]	TI Bulgaria
[redacted]	Independent consultant
Others (February – April 2015)	
[redacted]	Independent consultant (TI-S)
[redacted]	Independent consultant (former TI-S)
[redacted]	UNDP (former TI-S)
[redacted]	TI Germany
[redacted]	TI-EU office
[redacted]	TI Spain

[redacted]	TI India
Workshop Berlin (23 February 2015)	
[redacted]	TI Lithuania
[redacted]	TI Lithuania
[redacted]	TI Greece
[redacted]	TI Cyprus
[redacted]	TI Hungary
[redacted]	TI Luxembourg
[redacted]	TI Latvia
[redacted]	TI Italy
[redacted]	TI Poland
[redacted]	TI Czech Republic
[redacted]	TI Czech Republic
[redacted]	TI Bulgaria
[redacted]	TI Slovenia
[redacted]	TI Croatia
[redacted]	TI Romania
[redacted]	DG Regio
[redacted]	TI-Secretariat
[redacted]	TI-Secretariat
[redacted]	TI-Secretariat
[redacted]	TI-Secretariat
[redacted]	[redacted]
[redacted]	TI-EU Office

Table 3: list of interviews

[53] Workshop in Berlin, 26 April 2015

8.5 Matrix for field visit selection

Possible case study countries (our proposal in bold)	NC experience with IP or similar initiative[54]	IP Sector (alignment with ESI Thematic Priorities?)[55]	NC interest[56]	NC experience with ESI Funds (cooperation on DG Regio seminar series)[57]	NC experience with monitoring ESI Funds[58]	ESI Funds in 2014-2020 (EUR billion)	Major Projects in 2014-2020[59]	ECA reporting on breach of public procurement rules in relation to Structural Funds in 2013[60]	EC reporting on number of 'irregularities reported as fraudulent' in relation to Cohesion Policy in 2013[61]
AT	Yes		No	No		1.24	No	No	0
BG	Yes	?	High	Yes		7.59	Yes	Yes	5
CT	No		Medium	Yes		8.61	Yes	No	Not applicable
CY	No		High	No		0.735	No	No	3
CZ	Yes	?	High	Yes	Yes	21.98	Yes	Yes	20
DE	Yes	Airport (works), Hospital	No	No		19.23	No	yes (Brandenburg, Berlin, Saxony)	38
EL	Yes		High	No		15.52	Yes	No	30
HU	Yes		High	No	Yes	21.91	Yes	No	2
IT	Yes	Metro, Rail, Airport (works)	High	Yes	?	32.82	Yes	Yes	72
LV	Yes	Cultural Heritage (works)	High	Yes		4.51	Yes	No	27

Table 4: field mission selection matrix

LT	Yes (public procurement)		High	No	Yes	6.82	Yes	No	2

[54] TI-S Feedback, 9 January 2015.
[55] The thematic priorities under the European Structural and Investment Funds are:. We recommend the selection of IPs coinciding with the ESI thematic priorities to facilitate replicability.
[56] TI-S Feedback, 9 January 2015.
[57] TI-S Feedback, 9 January 2015.
[58] See http://transparency.lt/en/initiatives/transparency-public-finance/ / http://gateway.transparency.org/tools/detail/403
[59] Note on 'Major Projects': Article 100 of the 'Common Provisions Regulation' (i.e. the main legal text governing the European Structural and Investment (ESI) Funds in 2014-2020) defines major projects as 'operation comprising a series of works, activities or services intended in itself to accomplish an indivisible task of a precise economic or technical nature which has clearly identified goals and for which the total eligible cost exceeds EUR 50 000 000 and in the case of operations contributing to the thematic objective under point (7) of the first paragraph of Article 9 where the total eligible cost exceeds EUR 75 000 000'. We consider the Major Projects to be a suitable 'target' for IPs since they regularly involve substantial procurement activity; they are also specifically dealt with by the OP Monitoring Committees (Article 110, CPR), and the latter might be a forum allowing civil society participation in monitoring activity.
[60] European Court of Auditors, Annual Report 2013, 2014.
[61] European Commission, Protection of the European Union's financial interests — Fight against fraud, 2013 Annual Report, 2014.

PL	Yes (former NC)	Defense	High	Yes		77.57	Yes	Yes	48
PT	No		Medium	No		21.47	Yes	No	4
RO	Yes	Road, Rail, Drinking Water, Waste Water, Communication, Energy	High	Yes	Yes	22.99	Yes	Yes	23
SK	Yes (public procurement)		No	Yes		13.99	Yes	No	4
SV	No		High	Yes		3.07	Yes	No	4
ES	Yes		medium (involved in Siemens initiative)	yes		28.56	yes	yes (Andalucía)	0

8.6 TI experience with IPs in the EU

Data collected for this LR shows that six EU MS have had relevant experience with IPs, namely Germany, Latvia, Austria, Hungary, Bulgaria, and Italy. Two EU MS are currently starting to work with IPs, namely Spain[62] and Romania. Eleven EU MS have no experience with IPs (Lithuania, Cyprus, Luxembourg, Poland, Czech Republic, Slovenia, Croatia, Belgium, the Netherlands, France and Portugal). The UK and Poland explored IPs relating the defence sector. In Poland, these efforts did not materialise in a concrete project. Greece acquired knowledge on the IP by having supported relevant efforts in 2011.[63]

Various reasons are provided when asked why TI NCs did not engage in IPs. The main concerns relate to capacity, in particular funding. Another concern expressed is the need to develop an IP model that could be implemented on the national level with strong monitoring procedures. Finally, some NCs mention that there is insufficient political will for such a project and that the right moment needs to be found.

The following sections introduce in more detail IPs that have been reviewed for this report.

LATVIA

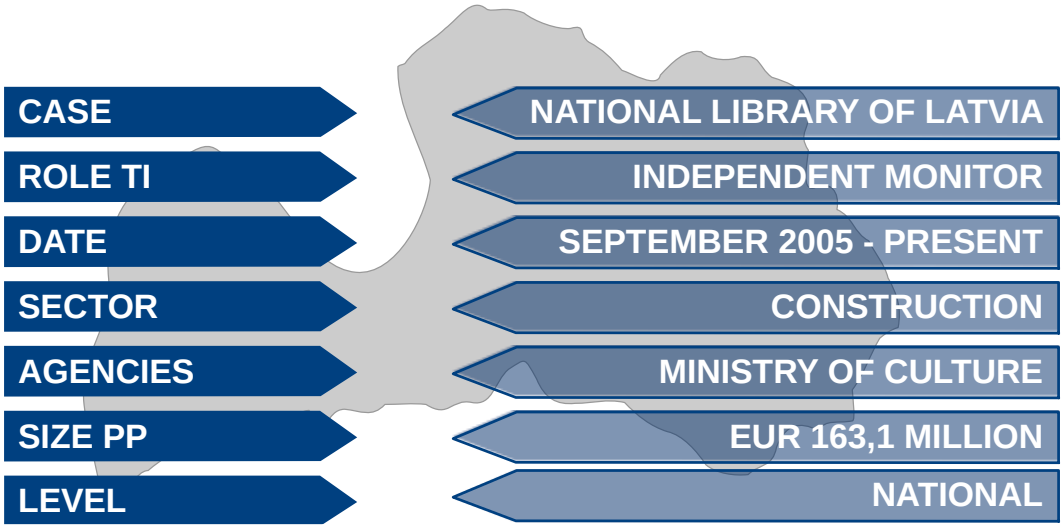

Figure 3: IP data Latvia

The Latvian Chapter of Transparency International, Delna has been involved in two civil monitoring of public procurement projects, one tracking the privatisation of the Latvian Shipping Company and one concerning the construction of the National Library of Latvia (NLL). This review will focus on the latter.

[62] TI Spain is currently in the very first phases of preparing IPs as part of the Siemens Integrity Initiative.
[63] The tool was not applied but advocacy to authorities resulted in expected forthcoming legislative changes.

In 2004, the Minister of Culture invited Delna to monitor the construction of the new National Library in Riga. The construction was launched with political and public support. The decision to procure was made in 2002, but it was not until 2004 that a new government declared the construction a national priority. A special state agency was created under the responsibility of the Ministry of Culture and was called the Three Brothers (*Jaunie Tris Brali*). This agency had to manage the construction of the library and two other projects, a concert hall and a museum for contemporary arts. The total cost of the library was estimated at roughly EUR 270 million (USD 300 million). The economic implications of the project can be considered relevant, as Latvia is a small country with approximately 2 million inhabitants and compared to the EU average a low GDP per inhabitant in PPS.[64] Since the start of the project in 2004, the economic and political support declined with new governments taking office, and economic uncertainty increasing while the global economic and financial crisis unfolded. The construction took place against a backdrop of perceived corruption in the construction sector. All these factors challenged Delna from the start of the IP in September 2005 until the NLL was commissioned in August 2014.

The agreement aimed to stop corruption, unethical behaviour and inefficient procedures during the construction and promote transparency. The IP established terms of participatory monitoring of the NLL construction in order to ensure good governance. Delna was assigned the role as monitor of decisions and activities of the ministry and the agency. In order to do so, Delna was given permission to:[65]

- Monitor decisions of MoC staff at all levels;
- Participate in internal meetings and with third parties;
- Ask for clarifications in written and orally;
- Explore third party complaints;
- Analyse documentation prepared by project parties from a good governance and anti-corruption perspective;
- Attract external construction, legal and other experts when needed.

Specific objectives set for the IP were that:

- Anti-corruption declarations were to be included by the MoC for every procurement contract, including for subcontractors;
- All suppliers that violated or refused to sign the declaration were to be excluded from further participation in tenders and existing contracts with them were to be terminated;
- Suspicions of corruption were to be communicated to the prosecutor general.

Long-term objectives of Delna included that the IP would lead to improvements in the legislation governing public procurement and contracting.

[64] In 2004 this was 52% below the EU average. This increased over time to 36% below EU average. See: http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tec00114&plugin=1
[65] Desk research, final report latvia lp 2011.doc

HUNGARY

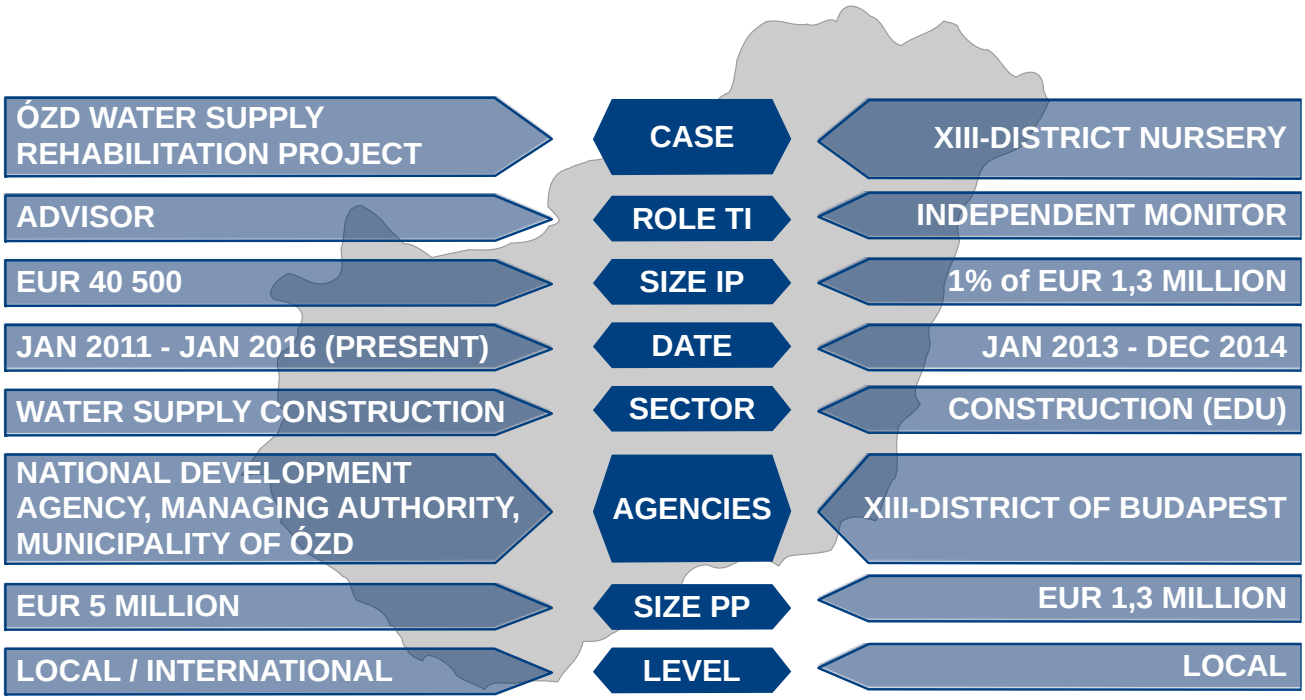

Figure 4: IP data Hungary

Since 2011, nine IPs were implemented in Hungary, two of which on the national level and seven on the local level. Procurement types varied from public relations and financial management services, to technical controller, planning, construction, taxi services, and computer hardware acquisition.

The 2010 Global Corruption Barometer shows that citizens perceive political parties as the most corrupt institutions. The negative perception of political parties is worsened by apparent links between business and politics. TI Hungary in 2012 warns that an estimate of 65-75% of procurement is affected by corruption. An estimated 25% of large-scale procurement works is affected.[66] Apart from problems with political party financing, a second area of concern according to the EU Anti-Corruption Report (EU ACR) is the link between business and politics. TI's National Integrity System (NIS) assessment report states that corruption risks arise from the interdependent relationship between the political and business elite, concerns regarding the independence of control institutions, and the lack of transparency in the legislative process. Together these risks raise concerns on state capture.[67] An example is the case of Közgép Incorporated, which has won over EUR 710 million in public procurement. The owner of the company was considered a close friend of the Prime Minister, former finance director of the ruling party,

[66] See: http://magyarnarancs.hu/belpol/a-beletorodes-a-legrosszabb-80853/?orderdir=novekvo
[67] Burai P. and Hack P. (2012) *Corruption Risks in Hungary 2011*. Budapest: Transparency International Hungary, p. 232

and former head of the national tax authority. The company's success in public procurement also has been noted through EU's Operational Programmes.[68]

Against this background, the Government adopted in 2012 a two-year anti-corruption programme. This included important steps in the fight against corruption, such as reviewing laws on public procurement and distribution of funds. Unfortunately, the measures generally failed to address vulnerable sectors such as the business sector, local governments and the legislature. For the development of the anti-corruption strategy, the civil society participated in initial consultations through hearings. The impact of the anti-corruption strategy on the state public administration can be considered effective from the perspective that this level is not widely regarded as a corruption risk environment. Nonetheless, concerns are voiced that politicization of the administration can spill over to lower levels of governance. The 2011 and 2012 Integrity Reports by the State Audit Office identified several irregularities in the public institutions.[69]

IPs were introduced in Hungary for all procurement procedures relating the project Development of Ózd town's drinking water supply infrastructure and distribution systems and its sustainable control. In the IPs, the municipality signed as contracting authority, together with the bidders, independent monitors, TI Hungary and managing authorities and development agency. The Swiss Contribution Office covered costs for the IP. TI Hungary developed a visualization tool for the project allowing visitors to track easily the process of procurement and the project's current phase. Bidders could voluntarily sign the IP in the agreement pertaining to the construction investment. Adherence to the IP was possible by signing the declaration, which was part of the tender documentation. All bidders signed the declaration.

The municipality of the XIII-District of Budapest has signed an IP with TI Hungary as monitor for the public procurement and the implementation of a nursery refurbishment. Bidders joint the IP during the procedure. The municipality contracted an independent company in charge of the procurement procedure. Prior to monitoring the public procurement, TI reviewed the procurement regulations of the municipality and called for changes. Costs for the TI monitor were covered by the municipality. This learning review will primarily focus on this case.

The Hungarian Public Procurement Act (PPA) does not foresee exclusion of bidders. In Hungary experience shows that breaching the contract can result in disclosure to the public, which has a preventive effect. In case the monitor identifies or suspects a violation of the provision of Act LVVII of 1996 or that of the Treaty of the EU, he/she will notify the CA. On the basis of the PPA, the CA will notify the competition authority. The monitor can also turn to the procurement authority, the police or the public prosecutor.

[68] See: http://magyarnarancs.hu/belpol/kozgep-tul-a-200-milliardon-78425
[69] See: http://integritas.asz.hu/uploads/files/2012-es%20eredmények_összefoglaló.pdf

TI HG has prepared e-learning material to inform and brief every single employee/colleague in the institutions signing IPs. If an IP is not correctly implemented it could become an appearance-measure and an additional administrative burden.

BULGARIA

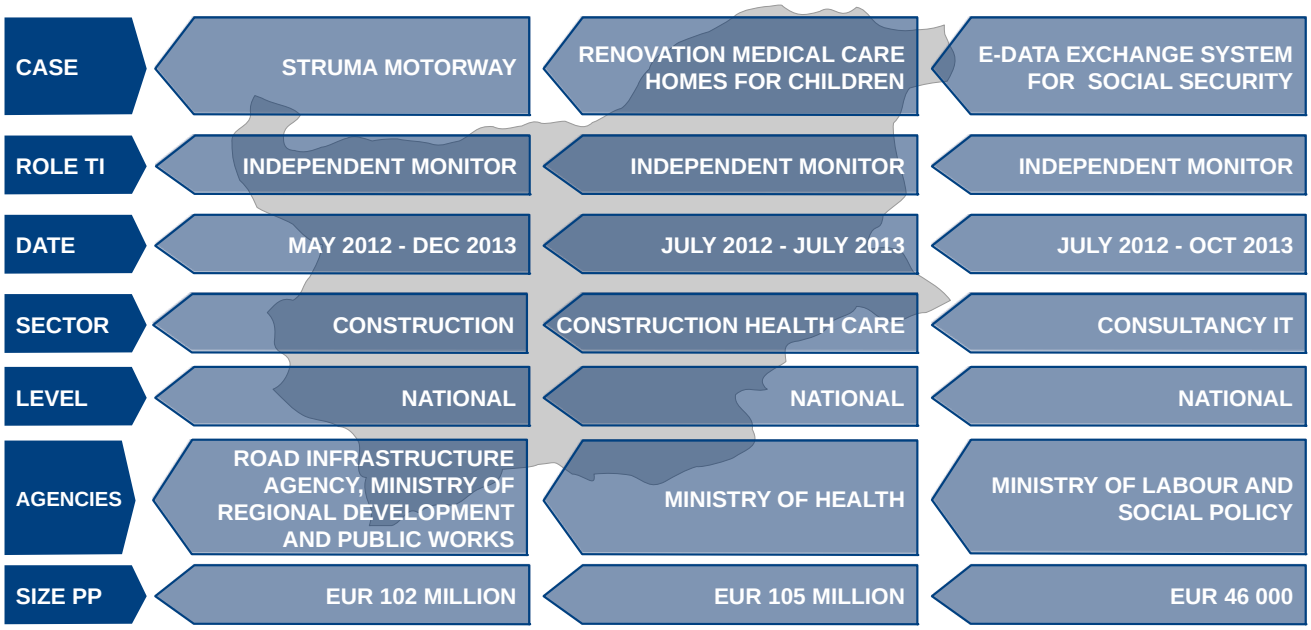

Figure 5: IP data Bulgaria

The European Union's Cooperation and Verification Mechanism (CVM) monitors Bulgaria's progress made since the accession to the EU in 2007. The most recent CVM report from January 2015 highlights the effect of political uncertainty on public opinion concerning corruption.[70] The Special Eurobarometer showed that citizens are concerned about the fight against corruption, judicial reform and tackling organised crime.[71] The CVM reports clearly show progress in the country's efforts to strengthen rule of law however the EC finds anti-corruption deficiencies. Two key issues repeatedly addressed are the need to develop and implement a sound evidence-based policy-making strategy, and strengthening the institutional independence and the capacity of anti-corruption units to develop and monitor the execution of anti-corruption policies.

Various key corruption risk areas are identified in Bulgaria, such as impunity of political corruption, influence peddling between members of political parties and members of organised crime, and public procurement. Key vulnerable sectors identified are the health care and energy sectors. The former experienced decentralisation from the State to the regional level which has not objectively been assessed. The latter requires transparency in market regulation and execution of large public procurement tenders.

[70] See: http://ec.europa.eu/cvm/docs/com_2015_36_en.pdf
[71] See: http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf

Transparency International Bulgaria (TI BG) implemented three IPs in light of their involvement in the Siemens Integrity Initiative. Three different kinds of procurement projects were selected covering three different public bodies[72] managing national and EU funds. From February 2012 to December 2013, TI BG implemented the IPs, which in total covered five public procurement contracts (two public works and three for the provision of goods and services).

GERMANY

TI Germany (TI DE) has implemented four IPs.[73] In Bremen and Hannover, the NC implemented IPs for the procurement of two health care projects. In Berlin, the NC implemented IPs for a housing project and for the construction of the Berlin-Brandenburg International Airport.

The procurement of the construction of the hospital in Bremen included an investment of EUR 230 million. TI DE monitored both the planning and construction of the works. In Bremen, the IP (signed June 2009) was seen as a pioneer project warranting transparency and anti-corruption. A monitor was assigned to the IP with a legal and construction background. The CA acknowledged the importance of having an independent monitor on their side portraying both such qualifications.[74]

The construction of the hospital in Hannover included investments of EUR 180 million.[75] A construction expert was publically appointed as monitor for the duration of the IP (signed June 2010). The CA in its press release highlighted the importance of the IP as a tool to signal fair competition, corruption prevention and no collusion.

The IP for the Berlin housing project (signed July 2010) included a team of two monitors with technical, economic and legal backgrounds. The monitors were required to scrutinise the entire planning and construction phase for the modernization and repair of 2 300 apartments in Berlin. The rehabilitation of the apartments started in the 1990s and in total sums up to around EUR 1.2 billion.

The first and largest IP in Germany was signed in 2005 to monitor the construction of the Berlin-Brandenburg International Airport. Being one of the largest construction projects in Europe, the total cost of the procurement project was initially estimated at EUR 2.4 billion. Due to numerous project changes, delays and technical problems, the final cost will be significantly higher. At this stage the date of opening of the airport is still uncertain. In 2005, TI DE and the limited company Flughaven Berlin-Schönefeld GmbH (FBS) issued a public call for a monitor team lead. This resulted in the appointment of an independent external monitor with a strong professional record in public

[72] Ministry of Regional Development and Public Works, Ministry of Health, and Ministry of Labour and Social Policy.
[73] See: http://www.transparency.de/Integritaetspakt.80.0.html
[74] See: http://www.transparency.de/fileadmin/pdfs/Themen/Verwaltung/PM_Integritaetspakt_Bremen_09-09-24.pdf
[75] See: http://www.krh.eu/unternehmen/presse/pm2010/Seiten/schutz_vor_korruption.aspx

procurement. For ten years the TI NC engaged in IP activities. In March 2015, the NC decided to end cooperation due to reported corruption incidents. The way these incidents were handled by the authorities made TI DE question the effectiveness of the IP.

ROMANIA

TI Romania started providing technical assistance for large procurement processes. Collaboration with a utilities company called *Electrica* resulted into an IP. The company needed to comply with new regulations.

The IP includes a conflict of interest provision, disclosure of anti-corruption policy, monitoring obligations, budget, and quality review. The IP legal contract was part of the tender documents. All parties that participated in the bidding were required to sign the IP. At the time of this review, the Romanian IP has not started monitoring activities.

In case of breach, the IP foresees a complicated scheme of financial corrections. Further, provisions for a dispute resolution mechanism stated that complaints first had to be mediated. If not successful, the contractor, bidder and Independent Monitor (IM) have the right to appeal to an arbitration panel of experts. If no solution is foreseen, the CA can impose sanctions and initiate formal legal proceedings.

Romania plans to organise a platform of civil society to discuss the monitoring report before launching this. The aim of such a platform is to ensure full CS coverage and, this way, improve the report. At this stage, concrete results from the IP have been the successful advocacy to government stakeholders of the IP process for *Electrica*. The EBRD is also a shareholder together with the government and investment funds and other small shareholders.

ITALY

In 2000, TI Italy analysed the IP model and its applicability to the Italian system based on IP experiences from other countries and based on findings from the workshop in Bogota. The TI NC undertook training and education activities and attempted to implement IPs.

The research team dealing with the IP first carefully analysed the tool and systematically assessed which elements are optional or required for the Italian system.[76] Subsequently, the organisation drafted a model agreement and started approaching municipalities to explore interest. Despite expressions of interest, the IPs did not materialize quickly. They were confronted by a 'climate of suspicion and inertia/apathy' perceived as a general characteristic of public environments.[77] In 2000, six municipalities were contacted (Bergamo, Como, Genoa, Milan, Palermo, and Varese). The municipalities of Milan and Genoa tentatively committed.

[76] Desk research, Italy_Integrity_Pact 2000.pdf, p. 47
[77] Desk research, Italy_Integrity_Pact 2000.pdf, p. 47

Feedback received by the organisation in 2008 provides insight into the workings of IPs in Italy. In the sequence of activities associated to the implementation of an IP, the organisation first collects information about the entities that have problems with integrity of procurement processes. Key is to identify champions within the public administration to allow for support of the IP concept. After this, they establish contact and offer support, i.e. through the use of an IP. Once an agreement has been made at the management level, training is foreseen on IPs for procurement staff. Support is given when preparing general purchase conditions in order to introduce the clauses of the IP. After this, bidders are informed about the need for integrity and transparency. Contracting authorities are asked to establish clear mechanisms for contract awarding. Bribes are to be excluded and real competition to win a bid should be based on technical-commercial advantages. The TI NC recommends offering the authority continued support throughout the project implementation.

In Milan, an IP materialized.[78] The IP included an undertaking of the public authority and the bidders. For the latter, the IP includes provisions not to bribe, not to use facilitation payments, not to collude and disclose information regarding payments related to the contracting process. Sub-contractors were excluded. The TI NC highlighted that collusion was the most difficult hurdle. In addition, it was noted that facilitation payments were a common practice and the organisation expressed concerns that could also affect a certain range of projects abroad. In order to dispel misunderstandings, bidders were urged to signal grey areas. Provisions concerning the authorities included: not to demand or accept bribes; not to demand or accept facilitation payments; to disclose relevant and equal information to all bidders; to guarantee protection of restricted information; to report any attempted or completed breaches; and to provide public information on the contracting process. Disciplinary sanctions were included such as: loss or denial of contract, forfeiture of bid and performance bonds; liquidated damages to principal and competitors; and debarment for a period of five years. Breaches would be dealt with through national arbitration.

[78] Desk research, see IP Italy_final versión 2008.doc

8.7 Other TI experience in the EU

This section will present a snapshot of the experience across the EU TI movement with civil monitoring of public procurement.

Eleven TI NCs provided feedback through our survey.[79] The majority conducts research (9/11) and advocacy (11/11) activities relating corruption in public procurement. Apart from those countries engaged in IPs, Czech Republic and Croatia are involved in other types of monitoring activities. TI Czech Republic monitors public procurement cases once they are red flagged through their Anti-Corruption Legal Advisory Centre (ALAC). The experience gained with monitoring activities is subsequently used to advocate for legislative improvements and training activities. TI Croatia commented through the survey that they provided technical assistance to the Ministry of Health on audit procedures and public procurement procedures. This resulted in the cancellation of four tender procedures estimated worth EUR 2,6 million. TI Italy and Czech Republic specifically highlight their experience with training public officials on corruption in public procurement. In the context of an EU-funded project, TI Greece 'reviewed complaints regarding lack of transparency in public procurement processes relating to staff selection, works and supplies, and offered the complainants guidance, advice and support in order to pursue their complaints successfully'.

A review of TI's tool database, focusing on monitoring tools in public procurement in Europe and Central Asia, provides various interesting examples.

TI Slovakia in collaboration with Fair-play Alliance has designed the 'OPEN CONTRACTS PORTAL' that helps citizens to read, search and assess the profitability of public contracts.[80] Through automated analysis and public involvement in the evaluation of contracts, it draws attention to those contracts that most require review. Since 2011, all contracts relating to management of public resources, state and local property in Slovakia have to be disclosed. TI Czech Republic, through the establishment of 'INDICATORS OF TRANSPARENCY IN PUBLIC PROCUREMENT', developed a related initiative. The organisation established a set of indicators designed to assess the transparency of the public procurement market in the country. It is based on the assumption that the greater number of open tenders with no limit on bidders, the greater the pressure for efficiency and the lower the likelihood of corruption.

It is important to highlight that both examples allow for better public control but do not necessarily scrutinise directly procurement processes or authorities themselves. An example focusing more on the institutional level is the TI Czech Republic's 'EFFICIENCY OF CONTROL SYSTEMS IN PROCUREMENT' initiative. The organisation examined the competences and impact of the Supreme Audit Office and the Office for Protection of Competition. Another example looking into procurement from an institutional level is TI

[79] Bulgaria, Czech Republic, Croatia, Hungary, Slovenia, Lithuania, Latvia, Portugal, Italy, Romania, Greece.
[80] See: http://otvorenezmluvy.sk

Bulgaria's initiative titled: 'MONITORING THE TRANSPARENCY OF PUBLIC PROCUREMENT WITH HIGH PUBLIC INTEREST IN BULGARIA: THE CASE OF HIGHWAY'. Together with the America for Bulgaria Foundation, the NC initiated the project in order to help reduce the risk of misuse of public funds when awarding and carrying out transactions of substantial public interest in Bulgaria. A key element of the project is the development of a methodology for independent civil monitoring of large-scale public works. The methodology is applied to the procedure for selecting a contractor for the construction of the Trakia highway.

TI Bulgaria's initiative shows similarities to IPs, however, it does not necessarily provide for a methodology on monitoring procurement contract implementation. It does address key characteristics such as independent monitoring, tailor-made application, and public outreach. The Trakia project is seen by the organisation as a step towards a full IP project.[81] TI Romania provides us with a project example that also includes execution of contracts. Its 'MONITORING STRUCTURAL FUNDS MANAGEMENT' project is designed to monitor the management of structural funds by public authorities in Romania. The monitoring process aims to evaluate the extent to which integrity standards are respected by both the public institutions and authorities disbursing the funds, as well as by eligible beneficiaries. The project also established a mechanism for monitoring the implementation of structural funds, parallel to the public one.[82]

SOME NON-TI TOOLS

ANTI-CORRUPTION TRANSPARENCY MONITORING METHODOLOGY: The NGO Access Info developed a practical guide for civil society, journalists, academics and others to evaluate whether the key information needed to prevent and/or identify corrupt practices within government is in fact readily available. The methodology draws on international anti-corruption treaties such as the United Nations Convention against Corruption (UNCAC), as well as other international standards and best practices, to propose some core classes of information, which should be published by democratic and accountable governments. These include, for example, copies of public procurement contracts, assets declarations by public officials, and information on decision-making in privatisation processes.

METHODOLOGY FOR MEASURING THE INDEX OF RESPONSIBILITY, TRANSPARENCY AND ACCOUNTABILITY AT LOCAL LEVEL: This tool has been developed by the UNDP and aims to measure the exposure of a given institution to corruption and/or corruption risks. It covers three areas: public procurement, urban planning and financial management in local government. It can be used as a mechanism for self-evaluation by the local government or for identification and monitoring by independent agencies. It has been applied in Macedonia.

[81] Personal communications, field visit, 31 March 2015, 1 April 2015.
[82] See: http://www.fonduricomunitare.ro/RMonitorizare.pdf

8.8 Methods / tools to adapt the IP model

In order to carefully plan and design an IP we suggest various methods / tools that MOs can and have used to adapt the IP model:

- Context analysis;
- Communication strategy;
- Risk mapping and mitigation measures;
- Risk assessment;
- Results chain;
- Evaluation indicators.

CONTEXT ANALYSIS

A LEGAL FEASIBILITY STUDY has been used by various MOs (i.e. TI Spain and TI BG) to better understand the legal system and the limitations of the IP as a legal contract. It is important to include an assessment of, inter alia, data protection laws, access to information laws, anti-corruption, and of course procurement legislations.

STAKEHOLDER MAPPING is an important exercise from a project management perspective in order to understand which groups are likely to affect or be affected by proposed activities. MOs can assess the background and the role of the stakeholders in the procurement process and target activities to these actors. Also, a mapping exercise could be used to collect baseline and endline information, which allows for better evaluation. Such information can be used to evaluate wider impact of IPs, including the social acceptance of the investment. Finally, it is important to understand the stakeholders involved when designing the IP. For example, understanding the procurement authorities will strengthen a MO's position during 'negotiating' the IP agreement. Understanding the universe of possible regularly participating bidders and their interconnections as a 'social group' can help prevent collusion.

COMMUNICATION STRATEGY

The COMMUNICATION STRATEGY of the monitoring organisation ideally is tailored to the needs of the IP. Such a strategy should have the purpose to:

- Inform bidders, contractors and sub-contractors of their rights and responsibilities under the IP;
- Inform regulators, government control agencies and other governmental departments on how the IP works;
- Inform citizens in general and those specifically affected by the procurement project on the findings and workings of the IP.

We find that the relevance of a communication strategy falls in line with the main strength of the MO, namely the outreach aspect of the IP. The organisations have access to

citizens. In the cases we have reviewed, this access was mainly ensured through their own websites as well as indirectly through media. Another channel was through hotlines or other similar channels. We have found no indication that organisations monitored closely the visits to their website. In addition, it is unclear whether MOs set up IP-specific communication strategies as opposed to general strategies in place. We find that MOs especially should strengthen efforts to inform the bidders. Support of economic operators to the IP could be considered an important opportunity for the MO in order to follow-up and ensure sustainable impact.

RISK IDENTIFICATION AND MITIGATION MEASURES

A first step for MOs is to map which corruption risks could occur during the procurement process and identify activities that could detect or identify such risks. It allows MOs to target their IP activities efficiently. We found that in Bulgaria the MO (TI BG) took a proactive approach by identifying for each step in the procurement process specific risks (labelled by the organisations as deficits) and linking IP activities (labelled as transparency and integrity indicators) to these risks. For example, the organisation identified a potential deficit concerning the contract implementation, namely 'failure to take prompt actions due under the contract, indifference and / or slowness in carrying out actions by the contracting authority'.[83] An activity in order to mitigate this risk is according to the organisation the scheduling of working meetings concerning the progress, on-the-spot checks, and inspection of documentation and assessment of proofs related to contract execution.

RISK ASSESSMENT

This exercise links into the previous mapping exercise. It represents a deeper assessment of the socio-economic and political context in which the procurement is going to take place. It is particularly crucial in big public works investments and long-term concessions, including privatisations. Once MOs know which risks can occur in the procurement process, an assessment can be made on the likelihood of this occurring and the severity. The likelihood of each scenario to occur could be assessed by taking into account the present situation. In other words, how likely is it that this risk occurs? One can try to assess the risk without considering current controls in place to avoid such risks. Some factors that could be considered are:

- Incidents that occurred in the past relating the specific activity or stakeholder;
- Culture of openness in the public administration or private sector;
- Level of contact between the different stakeholders;
- Complexity of the activity related to the risk;
- Political connections and interests that led to decide the public investment in question (pork barrelling);
- The quality and deepness of the studies that preceded the procurement decision (on public works, concessions and privatisations).

[83] Document Indicators for transparency and integrity under public procurement procedures, p. 78.

Subsequently, each scenario could be assessed by looking at the potential severity or impact. The impact of the scenarios can vary from financial, legal, operational and reputational damage. Some factors that could be taken into consideration are:

- Impact of past incidents on key stakeholders;
- Severity of penalties / sanctions imposed in past incidences;
- Impact on the procurement process;
- Etc.

Applying values to the rating allows for an assessment table which MOs can use to prioritise the areas in need of specific attention. We argue that such an exercise could help a monitoring organisation with limited resources to narrowing their target to high-risk scenarios in public procurement. Various interviewed stakeholders have expressed concerns regarding the potential reputational damage due to the complexity of the public procurement, a complexity that entails the risk of failing to identify irregularities. We find that the fluid nature of IPs always carry a degree of uncertainty when it comes down to what to expect. It is safe to say that implementing an IP never excludes the MO from taking risks. Therefore, applying such an assessment can ensure that the MO at least reduces the risk of suffering reputational damage.

RESULTS CHAIN

In this report we highlighted various times the role of the MO to manage the IP project. From a project management perspective, we believe that organisations can benefit from establishing a clear results chain before starting an IP. A results chain reflects the desired results of a project team relating to a particular action. Coupling this back to the IP, it represents the MO's assumptions about how the IP project will contribute to reducing or preventing corruption and increase transparency.

The figure below provides an example of a result chain for an IP. This example is fictitious and can be adapted to the needs of the IP project managers. To summarize:

Certain resources, such as money and expertise, need to be mobilized to operate an IP (INPUTS). Once these resources are available, they can be used to accomplish planned ACTIVITIES. Roughly spoken, for an IP this translates to monitoring and communication activities. If you accomplish the planned activities you will (optimistically) deliver the services you intended. These will then provide for independent control, a system for public access to information and better-informed stakeholders (OUTPUTS). Once the outputs are achieved these could benefit the beneficiaries. For example, this effective outreach could result in empowered citizens. These can raise concerns which generates a response of the public authorities. Such a response can result in mitigation measures or concrete sanctions in case of corruption (OUTCOMES). On the medium term, the outputs could prevent corruption, hold stakeholders accountable and make procurement more transparent (INTERMEDIATE OUTCOMES). On the long term such outcomes could generate expected change, such as increased public trust and less perception of corruption (IMPACT).

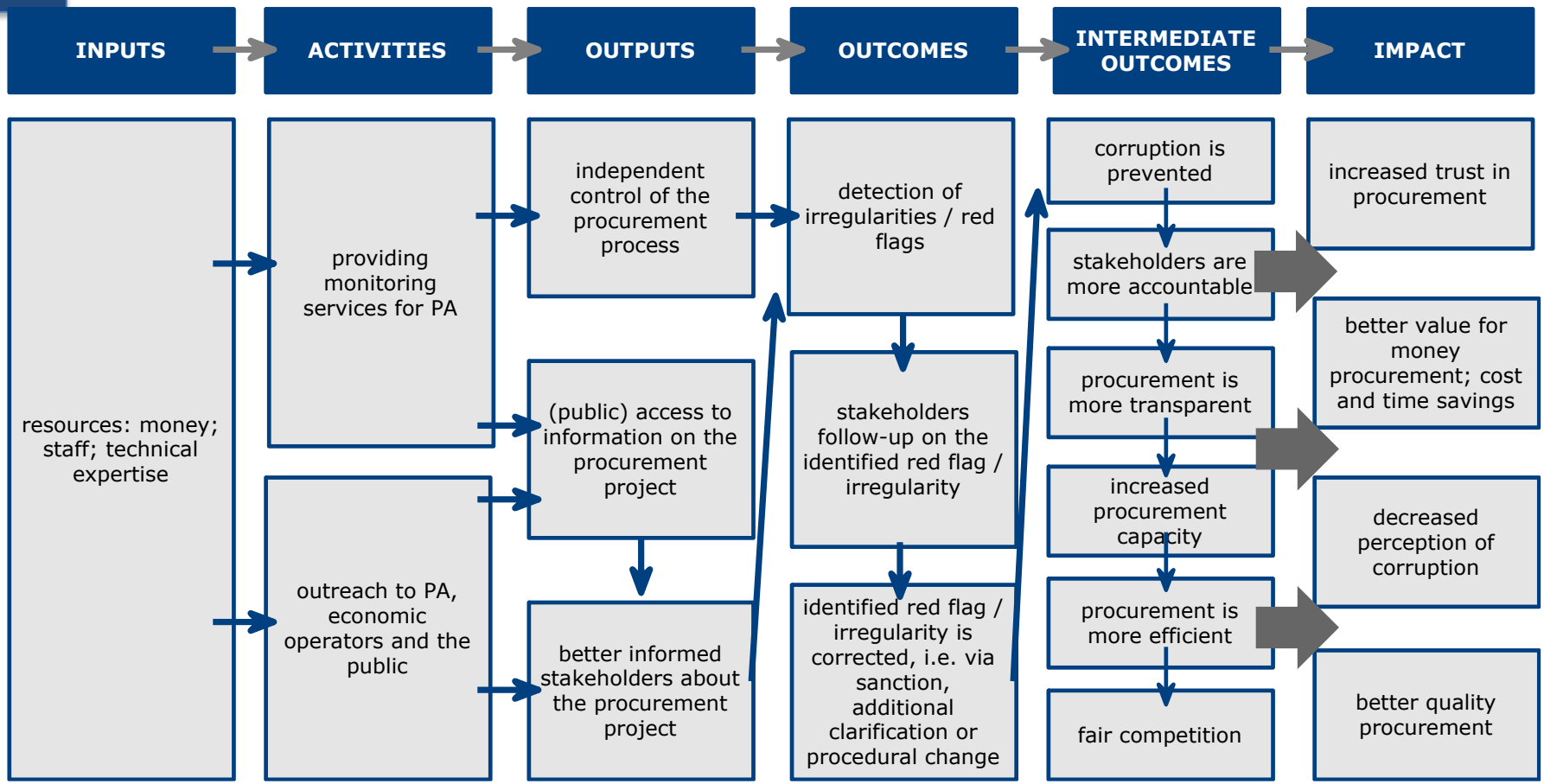

Figure 6: example IP result chain

One non-TI initiative could be of interest as an example, namely the CONSTRUCTION SECTOR TRANSPARENCY INITIATIVE (CoST). CoST supports countries to deliver better value from investment in public infrastructure. The aim of the initiative is to achieve the delivery of good quality infrastructure projects at lower costs, with increased predictability of outcomes. The programme can be considered an interesting initiative from the perspective of establishing a clear result chain. A brief explanation of the result chain can be found in Annex 8.8.

EVALUATION INDICATORS

Finally we present a list of possible indicators that that MOs could use to construct their own data sets that allow for monitoring and reviewing whether projects have been effective, efficient and sustainable. The list has been based on the review criteria used for this LR, including feedback from TI-S and stakeholders involved in IPs.

Efficiency	
Indicators	Judgement criteria
Costs procurement project	**Observable reduction in costs compared to the original budget** Possible questions: - Have cost savings been observed between the estimated project's budget and the final expenditure? Are there indications that costs were saved on the procurement process?
Resources procurement monitoring	**Observable decrease in resources required** Possible questions: - Did the use of an independent monitor have effect on the resources allocated by the contracting authority to the process?
Time needed to resolve conflicts	**Increased efficiency dispute resolution system** Possible questions: - Has there been an observable increase in efficiency due to the dispute resolution systems applied through the IP? - In which way does the dispute resolution mechanisms differ from formal mechanisms already in place?
Duration of the procurement activity	**Cases in which the procurement projects suffered no delay** Possible questions: - Has there been a delay in the procurement process? - In which way did this relate to the IP?
Effectiveness	
Indicators	Judgement criteria

Detection	Extend to which IPs have detected irregularities as defined in the IP agreement (such as: bribes, kickbacks, gifts, facilitation payments, collusion, bid rigging, etc.) Extend to which IPs have detected risks of corruption in public procurement	**Cases have been detected in IPs in a country** Possible questions: - In how may IP cases have irregularities / risks been detected? - Which activities were conducted to detect corruption?
Prevention	Degree of access to information by monitor / public / bidders as specified in the IP	**Access has always and often been provided to types of documentation through the IPs** Possible questions: - Did IPs provide access to all the relevant documentation? - Which activities were conducted to ensure access to information? (Inclusion in MoU with PA, Access to Information requests)
	Disclosure of transactions	**Transactions are disclosed** Possible questions: - Were transactions from economic operators relating the project disclosed?
	Media outreach	**Media covered the IP during the project** Possible questions: - Has the media covered the IP? - Which activities were conducted to reach out to the media?
Follow-up	Notification of irregularity to authorities	**Cases of irregularities have been always notified to authorities** Possible questions: - Which procedures were in place once irregularities were detected? - Have irregularities been notified to authorities?
	Complaints in relation to the contracting process	**Complaints are made to the monitor** Possible questions: - Were complaints made in relation to the procurement process? - In how many IP cases have complaints been made to the monitor?
Impact		
Indicators		Judgement criteria

Visible procurement project through citizens participation	**Public participated in the procurement project** Possible questions: - Was the public engaged in the procurement project? - Which activities relating the public engagement can be attributed to the IP?
Visible procurement project through media outreach	**Media covered the IP during the project** Possible questions: - Has the media covered the IP? - Which activities were conducted to reach out to the media?
Credible and legitimate public procurement activities	**Perception of credible and legitimate public procurement activities** Possible questions: - Has there been opposition to the procurement project? - In which way was opposition voiced? **Absence of scandals** Possible questions: - Were there public scandals in relation to the bidding process / contract implementation or in relation to the contractor / contracted? - In which way were scandals voiced? **No over-expenditure** Possible questions: - Has there been over-expenditure during the bidding process / during contract implementation? - Which factors contributed to this?
Sustainability	
Indicators	Judgement criteria
Reform of contracting processes on an organisational and institutional level	**IPs become permanent tool in public procurement** Possible questions: - Have any activities been undertaken to ensure that IPs become a permanent tool in public procurement - In which way can contracting authorities ensure permanent inclusion of IPs in procurement processes? **Anti-corruption measures have been included in the reform** Possible questions:

	- Have activities been undertaken to ensure that anti-corruption measures have been included in a reform of the procurement process? - In which way can the IP be used as a tool to call for reform of the procurement process?
Funding / resources secured for IPs post project	**Funding secured for follow-up activities** Possible questions: - Has funding been ensured for follow-up activities relating corruption in public procurement? - Have activities been undertaken to secure funding for follow-up activities such as training on IPs, promotion material, research on public procurement? **Funding secured for follow-up IP project** Possible questions: - Has funding been ensured for follow-up IP? - Which activities have been undertaken to secure funding for follow-up IP projects?
Engagement key stakeholders for IPs post project	**Commitment made to continue civil monitoring public procurement** (public authority, bidders, civil society) e.g. code of conduct adopted by bidder / anti-fraud policy adopted beyond legal requirements Possible questions: - Have stakeholders made statements? - Which activities have been undertaken to ensure commitment beyond the IP agreement?
Engagement politicians	**Expression of political will to fight corruption in public procurement** Possible questions: - Did politicians express political will to fight corruption in public procurement? - To which extent does this expression relate to the IP? - Which activities have been undertaken to ensure engagement of politicians after the IP?
Corruption in public procurement	**Levels remain same level or decrease from the end of IP to [X] period of time** Possible questions: - Has there been an observed change in corruption cases relating public procurement? - To which extent does this change relate to the IP?
Perception of corruption in public procurement	**Perception of corruption in public procurement remain the same or decrease from the end of IP to [X] period of time** Possible questions:

	- Has there been an observed change in perception of corruption in public procurement? - To which extent does this change relate to the IP?

Table 5: possible evaluation indicators

8.9 CoST results chain

The results chain used by CoST provides a clear overview on the way the initiative aims to achieve good quality delivery of infrastructure projects.[84] Summarized this translates to services being provided to governments in order to put systems in place that allow for public access to information relating the project. At the same time, the initiative facilitates a multi-stakeholder platform to oversee and validate this information. This results directly in a system in place giving public access, and better-informed stakeholders. Once empowered with information, stakeholders can raise concerns over poor governance, mismanagement or corruption. As a consequence governments will investigate and sanction, build capacity and improve procedures and regulations. The outcome of this is more accountability, corruption prevention, more efficient spending, increased competition and better governance. The wider impact could be cost savings that can subsequently be allocated to different priorities and increased public trust.

The initiative shows similarities to IPs. Based on a comparison of projects across the globe, CoST identified potential benefits for the different stakeholders. For governments this includes[85]: greater efficiency of public spending; improved quality of public services; improved business environment; building public confidence; enhanced political reputation; reduction in risks to public safety resulting from poor building practices; increased prospects for investment. For the private sector this includes: greater confidence that a 'level playing field' exists; the potential to invest in new markets based on fair competition; a more predictable business environment and improved levels of trust; reducing reputational risks and improved access to financial markets. For civil society this includes: greater opportunities for public involvement; identify if value for money is being achieved; demand improved service deliver; provides assurances that corruption is being mitigated.

8.10 Findings corruption in public procurement risk assessment

TI distinguishes three phases in the procurement process in which IP activities can take place. The summary of activities is based on IP experience across the movement. These are activities can take place: [86]

- Before bidding process;
- During bidding process;

[84] See: http://www.constructiontransparency.org/the-initiative/objectives?forumboardid=3&forumtopicid=3
[85] See http://www.constructiontransparency.org/the-initiative/benefits?forumboardid=4&forumtopicid=4
[86] TI Implementation Guide, p. 58

- After bidding process.

Various risk scenarios have been identified by TI during the process phases. Through the survey we conducted a risk assessment targeting TI[87] and other experts[88] across the EU to measure their views on the likelihood of risk scenarios to occur as well as the severity of such a risk. We aimed with this exercise to map risks in public procurement and reflect on whether the IPs, as an anti-corruption tool, can provide added-value by addressing these risks.

BEFORE THE BIDDING PROCESS

The main risk scenarios identified by international organisations (such as the OECD and TI) show a LACK OF ADEQUATE NEEDS ASSESSMENT, PLANNING, AND BUDGETING OF PUBLIC PROCUREMENT. The following table breaks this down and highlights which risks are, according to the surveyed experts, most relevant from the perspective of likelihood and severity.

Lack of adequate needs assessment, planning, and budgeting of public procurement	Risk assessment (Likelihood[89] / Severity[90])
The lack of adequate needs assessment, deficient business cases, poor procurement planning	6 (3,3/2,4)
Failure to budget realistically, deficiency in the budget	5 (3/2,2)
Procurement is not aligned with the overall investment decision-making process in departments	4 (2,4/1,8)
Interference of high-level officials in the decision to procure	6 (3,2/2,4)
Informal agreement on contract	5 (2,9/2,4)

Table 6: corruption risks pre-bidding process 1

We find that the focus of the IP on the process addresses these common risks in public procurement. The clear added value of the IP is the outward focus on engaging the public

[87] Data was collected from BG, CZ, HU, HR, LT, LV, PT, RO, SV
[88] Data was collected from AT, ES, ET, HU, HR, PL, SK
[89] Likert-scale 1-4 (Very unlikely, Unlikely, Likely, Very likely)
[90] Likert-scale 1-3 (Slightly severe, Moderately severe, Very severe)

to increase legitimacy of the decisions taken by the authorities to invest public money. Benchmarking this to other initiatives aiming to enhance accountability and transparency in public spending shows that IPs meet key requirements needed for success. For example, the application of participatory budgeting in Porto Alegre in Brazil.[91]

Concerning the second stage of relevance to the IP, namely the contracting preparation, common risks relate to: REQUIREMENTS THAT ARE NOT ADEQUATELY OR OBJECTIVELY DEFINED; INADEQUATE OF IRREGULAR CHOICE OF THE PROCEDURE; TIMEFRAME FOR THE PREPARATION OF THE BID IS INSUFFICIENT OR NOT CONSISTENTLY APPLIED ACROSS BIDDERS.

Repeating the exercise above and breaking down the common scenarios provides an overview of 'risk hotspots' during pre-bidding phase.

Requirements that are not adequately or objectively defined	**Risk assessment (Likelihood[92] / Severity[93])**
Technical specification are vague or not based on performance requirements	5 (3/1,8)
Technical specifications are tailored for one bidder	6 (3,1/2,4)
Selection and award criteria are not clearly and objectively defined	5 (2,8/2,0)
Selection and award criteria are not established and announced in advance of the closing of the bid	3 (1,6/1,6)

Table 7: corruption risks pre-bidding process 2

Inadequate of irregular choice of the procedure	**Risk assessment (Likelihood[94] / Severity[95])**
Lack of procurement strategy for the use of non-competitive procedures based on the value and complexity of the procurement which creates administrative costs	4 (2,3/1,5)

[91] See: http://siteresources.worldbank.org/INTEMPOWERMENT/Resources/14657_Partic-Budg-Brazil-web.pdf
[92] Likert-scale 1-4 (Very unlikely, Unlikely, Likely, Very likely)
[93] Likert-scale 1-3 (Slightly severe, Moderately severe, Very severe)
[94] Likert-scale 1-4 (Very unlikely, Unlikely, Likely, Very likely)
[95] Likert-scale 1-3 (Slightly severe, Moderately severe, Very severe)

Contract splitting in order to remain below monetary thresholds from which public competition is mandatory	6 (3,2/2,4)
Abuse of the "extreme urgency" clause to avoid competitive tendering	5 (2,7/2,0)
Abuse of other exceptions to competition based on a technicality or exclusive rights	5 (2,8/2,2)
Untested continuation of existing contracts	4 (2,6/1,7)

Table 8: corruption risks pre-bidding process 3

Timeframe for the preparation of the bid is insufficient or not consistently applied across bidders	Risk assessment (Likelihood[96] / Severity[97])
A time frame that is not sufficient for ensuring a level playing field	4 (2,0/1,8)

Table 9: corruption risks pre-bidding process 4

The risk assessment clearly points to specific concerns of experts across the EU. As we have seen in this report, in some IP cases the MO raised doubts as to the adequate choice of procedure (i.e. Latvian NLL-case). The choice of irregular procedure is a common concern, which to a certain degree can be identified fast through public channels. The motivation behind the choice of procedure could be more secretive and difficult to identify. It could be argued that the increased transparency through the IP can shed more light on the decision behind the choice of procedure.

The more technical details of the tender documentation arguably are not easy to digest for the general public. In order to limit risks in these activities, the IPs monitoring activities can be an added value through independent vetting.

DURING THE BIDDING PROCESS

The second phase in the procurement process includes the bidding process itself. The transition between the previous phase and this one is not always very evident. However, generally this includes: THE INVITATION TO BID; HE AWARDING OF THE CONTRACT.

Our surveyed experts generally do perceive risks in these stages less likely or severe. This arguably could relate to respective EU and national legislative frameworks in the EU.

[96] Likert-scale 1-4 (Very unlikely, Unlikely, Likely, Very likely)
[97] Likert-scale 1-3 (Slightly severe, Moderately severe, Very severe)

The invitation to bid	Risk assessment (Likelihood[98] / Severity[99])
Information on the procurement opportunity not provided in a consistent manner	4 (1,9/1,7)
Absence of public notice for the invitation to bid	4 (2,0/1,8)
Sensitive or non-public information disclose	3 (1,4/1,1)
Lack of competition or in some cases collusive bidding that leads to inadequate process or even illegal price fixing	5 (2,9/2,6)

Table 10: corruption risks bidding process 1

The awarding of the contract is a more conflictive stage with especially risks of conflict of interest. Additional areas for added value for the IPs lie in the contract negotiation as well as the bid evaluation. These are areas that often fall under confidentiality. The IP can ensure access and at least grant independent control.

The awarding of the contract	Risk assessment (Likelihood[100] / Severity[101])
Obligation to include a sub-contractor pre-defined by the contracting authority	3 (2,0/1,4)
Inadequate, discriminative modification of the call for tenders	3 (1,9/1,4)
Conflict of interest and corruption in the evaluation process such as familiarity with bidders over the years	5 (2,8/2,3)
Conflict of interest and corruption in the evaluation process such as personal interests such as gifts or additional/secondary employment	5 (2,8/2,3)

[98] Likert-scale 1-4 (Very unlikely, Unlikely, Likely, Very likely)
[99] Likert-scale 1-3 (Slightly severe, Moderately severe, Very severe)
[100] Likert-scale 1-4 (Very unlikely, Unlikely, Likely, Very likely)
[101] Likert-scale 1-3 (Slightly severe, Moderately severe, Very severe)

Conflict of interest and corruption in the evaluation process such as no effective implementation of the four-eyes principle	4 (1,9/1,6)
Conflict of interest and corruption in the approval process such as no effective separation of financial, contractual and project authorities in delegation of authority structure	4 (2,0/1,8)
Lack of access to records on the procedure in the award that discourages unsuccessful bidders to challenge a procurement decision	3 (1,9/1,5)

Table 11: corruption risks bidding process 2

AFTER THE BIDDING PROCESS

The start of this phase is clearly marked with the signing of the contract. Despite this, contract implementation can be tainted by corrupt transactions that occurred in the first two phases. While in the first two phases procurement experts can take the lead, in this phase the technical expert could provide added value. The main added value of the IP is that it allows for a holistic overview of the entire process, including all phases and stages.

Our surveyed experts clearly mark these scenarios as risk sensitive. We find that especially here the IP independent monitor can play a constructive role. In addition, the IP also allows for inclusion of sub-contractors, which would clearly reduce the risk.

Contract management	Risk assessment (Likelihood[102] / Severity[103])
Failure to monitor the performance of the contractor, in particular lack of supervision over the quality and timing of the process, that results in substantial change in contract conditions to allow more time and higher prices for the bidder	6 (3,0/2,5)
Failure to monitor the performance of the contractor, in particular lack of supervision over the quality and timing of the process, that results in product substitution or sub-standard work or service not meeting contract specifications	6 (3,2/2,4)
Failure to monitor the performance of the contractor, in particular lack of supervision over the quality and timing of the process, that results in theft of new assets before delivery to end-user or before being recorded in the asset register	3 (2,0/1,4)

[102] Likert-scale 1-4 (Very unlikely, Unlikely, Likely, Very likely)
[103] Likert-scale 1-3 (Slightly severe, Moderately severe, Very severe)

Failure to monitor the performance of the contractor, in particular lack of supervision over the quality and timing of the process, that results in that subcontractors and partners are chosen in a non-transparent way, or not kept accountable	6 (3,1/2,4)

Table 12: corruption risks post-bidding process 1

Order and payment	Risk assessment (Likelihood[104] / Severity[105])
Deficient separation of duties and/or lack of supervision by public officials that results in false accounting and cost misallocation or cost migration between contracts	4 (2,2/1,9)
Deficient separation of duties and/or lack of supervision by public officials that results in late payments of invoices, postponement of payments to have prices reviewed to increase the economic value of the contract	4 (2,2/1,8)
Deficient separation of duties and/or lack of supervision by public officials that results in false or duplicate invoicing for goods and services not supplied and for interim payments in advance of entitlement	4 (1,9/1,8)

Table 13: corruption risks post-bidding process 2

[104] Likert-scale 1-4 (Very unlikely, Unlikely, Likely, Very likely)
[105] Likert-scale 1-3 (Slightly severe, Moderately severe, Very severe)