

Voluntary oversight of procurement procedures

Summary

To increase the integrity of public procurement, some MS have introduced a mechanism of voluntary oversight of procurement procedures, whereby a third party oversees a select number of procurements with an agreement from the respective contracting authority to open the selected procurements to such external monitoring.

The precise scope of oversight generally includes the legality, transparency and efficiency of procurement. Although the main objective of this oversight mechanism is ultimately to prevent and deter corrupt practices in procurement, it can bring a much wider range of benefits, such as increased transparency and accountability, enhanced trust in authorities and government contracting, contributing to a good reputation among contracting authorities, saving costs and improving competition. In principle, it can be used for any type of public procurement; however, from a cost-effectiveness point of view, it is often used for high-risk or complex procurement, major work projects, or projects with high national or regional public interest and sensitivity, where an additional layer of control is needed to ensure that public funds are handled correctly.

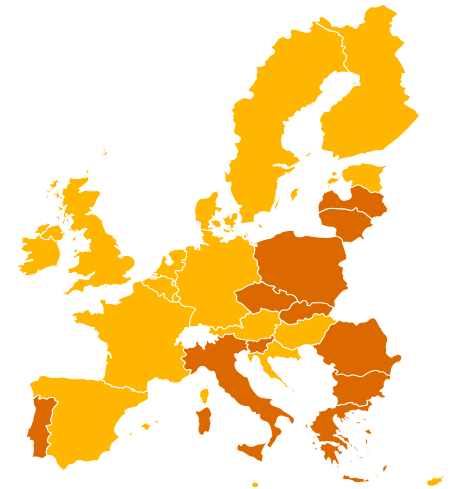
In some MS, voluntary oversight is conducted by national oversight authorities, which are called for support by contracting authorities where the latter consider that a procurement procedure may be at risk of corruption. In other MS, civil society may act as the overseeing party. In a voluntary oversight mechanism, economic operators may also be involved, by formally committing to abstain from unlawful practices and to open themselves up to oversight. If the commitments in this formal agreement are not met, sanctions may be applied in accordance with the agreement entered into.

Voluntary oversight typically entails the third party carrying out *ex ante* checks of tender documents at all stages before procurement has been published, in order to verify not only their legality but also that the principles of public procurement and the legal rules detailing the principles are given practical effect and that public procurement is opened up to competition. The checks are based on a predefined framework of checklists and guidance, as well as on the independent expertise of the external monitor, which, on the one hand, allows for standardised verifications, and, on the other hand, contributes to speedy checks. Within a set time frame, the third party makes recommendations on the conduct of the procurement at hand. The contracting authority should implement the overseeing body's recommendation or provide additional information/clarification on its choices and explain its decision to disregard the recommendation. Failure to adequately clarify or explain its decisions may be disclosed publicly.

Additionally, voluntary oversight may be used for monitoring two other areas of risk in public procurement: the set-up of contractual requirements for guaranteeing quality of execution and the performance of the contract itself.

Good Practice Examples

- ✓ Bulgaria
- ✓ Czech Republic
- ✓ Greece
- ✓ Hungary
- ✓ Italy
- ✓ Latvia
- ✓ Lithuania
- ✓ Poland
- ✓ Portugal
- ✓ Romania
- ✓ Slovenia



Input

Cost – €€€

- High set-up cost: infrastructure expenditure for setting up the voluntary oversight mechanism, e.g. web interface with the public
- High operation cost: wages and expenses for the independent external monitor



Time – Over 12 months



Complexity – High

- Setting up collaboration mechanisms between various authorities
- Defining a standard process for procurement controls
- Identifying the right skill set for performing the controls



Related Good Practices

- Transparency platforms
- Develop procurement risk assessment tools

Strengthen anti-corruption efforts



The main goal of voluntary oversight is to prevent illegal, corrupt practices in procurement by conducting early and thorough *ex ante* controls of the selected procurements. Additional oversight reduces risks of unlawful and non-transparent practices and is a deterrent for corruption.

Increase transparency



Voluntary oversight aims at ensuring that provisions related to transparency in procurement are implemented correctly, allowing fair access to procurement opportunities by all market participants.

Improve accountability



With voluntary oversight, the contracting authority discloses key information to a third party on how it runs a procurement procedure and responds to criticism brought to its attention, making it more accountable to stakeholders and the general public. This can foster a culture of public demand for accountability in the allocation and disbursement of public funds.

Ensure better compliance



Voluntary oversight helps contracting authorities navigate the complexity of the procurement process more efficiently and with greater legal certainty to ensure compliance. This eventually enables contracting authorities to reduce irregularities and ultimately spend public funds more efficiently. Furthermore, the number of judicial disputes is likely to decrease and institutional changes can take place as a result, such as, increased use of e-procurement systems, simplified administrative procedures, and improvements in the regulatory environment, as well as better governance.

Improve competition



Restoring confidence in the procurement process through better oversight provides an incentive for greater participation, as companies have greater trust in the possibility of winning through a transparent and fair procurement process.

Reduce administrative burden



Voluntary oversight involves an additional procedural layer, which may slow down the overall procedure. Thus, it is key to design the process in such a way that it balances effectiveness and speed.

Key success factors and potential pitfalls (1)

Start early and have a broad mandate

To maximise the preventive effect of voluntary oversight, it is key that its coverage is comprehensive and that monitoring activities are in place from a very early stage of the procurement process. The checks must examine the entire procurement process from early on and must include the execution phase of the contract, where many risks for illicit behaviour lie. Furthermore, voluntary oversight must be based on collaboration between multiple relevant institutions, even including the anti-mafia police in some MS.

Have the right team and organisational set-up

The success of voluntary oversight relies heavily on the skills and competencies of the team that put it in place. Thus, setting up a dedicated team and establishing a functioning governance mechanism with clear reporting duties enables voluntary oversight to be performed effectively.

Establish effective communication channels

In order to ensure that voluntary oversight will not create additional administrative burdens and delays in the exiting procedures, all practical aspects of information-exchange channels, roles and responsibilities should be agreed before the start of the oversight exercise. This includes, for instance, information exchange between the contracting authority and the independent monitoring body. Digital technologies can be used to streamline communication between the relevant partners involved.

Oversight is not a rubber stamp

Some contracting authorities may pursue voluntary oversight with an expectation to superficially improve their reputation. However, to be effective, voluntary oversight must be binding and enforceable, involving real commitment from participants. This must be communicated clearly from the outset.

Foster collaboration and learning

Contracting authorities should not feel under scrutiny, but rather supported by the oversight body in order to establish a successful and truly collaborative oversight mechanism. Successful implementation will require joint effort from all partners involved, but should also bring benefits to all involved partners. Thus, it is key to build working relations between stakeholders based on trust and open and regular communication. This will enable the contracting authority to continuously learn from the experience of voluntary oversight and improve its own processes.

Key success factors and potential pitfalls (2)

Ensure third-party integrity and impartiality

The professionalism and integrity of independent monitors is essential for guaranteeing a fair oversight process based on trust among the stakeholders involved.

Consider the cost-effectiveness of voluntary oversight

Given that voluntary oversight is relatively resource-intensive, its cost-effective application must be considered. As a result, it is often implemented for high-risk or complex procurement, for major work projects or projects with high national or regional public interest, which benefit from increased controls.

Limit the administrative burden related to voluntary oversight

Voluntary oversight needs to be designed in such a way that it does not create additional administrative burden or slow down existing procedures, thus limiting the efficiency of the public administration. To minimise delays and related costs, while ensuring thorough and systematic checks, effective communication and support tools can be put in place.

Similarly, to balance the efficiency of controls with their effectiveness, oversight may be limited to selected procedures.

Make the case to economic operators

The benefits of voluntary oversight must be visible and clearly communicated to economic operators as well. For instance, economic operators, e.g. bidders for public contracts, would benefit from the fair and transparent conduct of procurement procedures. Not least, they are less exposed to reputational risks if the integrity of procurement procedures is ensured by a third party.

Aim for the highest level of transparency

By implementing voluntary oversight, stakeholders should aim for the highest level of transparency in line with international open contracting standards such as those promulgated by the G20, the OECD and the Open Contracting Partnership (OCP). The public eye is a very powerful disincentive to corruption and could compensate for the lack of detailed controls or advanced technical skills.

Case Studies (1)

Italy – Collaborative supervision for the preventive monitoring of procurement*

A series of corruption scandals around the procurement process of Expo 2015 in Milan prompted Italy's National Anti-corruption Authority (ANAC) to intervene more strongly to safeguard the integrity of procurement of the Universal Exhibition. Based on the Expo experience in 2014-2015, whereby ANAC introduced a special operational unit (UOS) tasked with *ex ante* monitoring of procurement, the process of 'collaborative supervision' was set up as a new form of oversight in special cases. The goal of this oversight mechanism is to ensure correct tendering and contract execution, as well as to prevent potential criminal infiltration in the procurement process.

ANAC's oversight can be imposed by law, such as in the case Expo, or may be requested by the contracting authority for a specific number of procurement contracts. Typically, requests are made for priority procurement procedures, such as major events or large-scale infrastructure projects. This marks a cultural shift, as collaborative supervision is focused on preventive action in reducing risks in the integrity of the procurement process, instead of sanctioning illicit behaviour *ex post*.¹ Indeed, to underline the collaborative element of this supervision, no sanctioning by ANAC is foreseen during the process unless formalised procurement documentation exhibits illegal elements.

To start the process, ANAC and the contracting authority establish a Memorandum of Understanding (MoU) defining the conditions and methods for implementing collaborative supervision. Then, the special operational unit carries out the *ex-ante* controls on the basis of a predefined framework for controls, which comprises the following elements:

- An operational guide;
- Seven checklists;
- Guidelines; and
- Recommendations.

In order to minimise delays in the procurement procedure, the ANAC's average control time is approximately five days.

Collaborative supervision proved to be an effective tool in quickly restoring confidence, transparency and legality in the procurement process during Expo 2015. In fact, the UOS detected non-conformities and other issues in 109 procedures (72% of operations analysed), which led to amendments, corrections or additional clarifications by Expo for 107 procedures.²

Beyond the Expo experience, this mechanism appears to respond to a widespread need among contracting authorities, as a number of them have already requested intervention from ANAC or are in the process of doing so.

Bulgaria and Italy – Integrity Pacts in public procurement

Integrity Pacts have been developed by the NGO Transparency International since the 1990s to support governments, businesses and civil society in fighting corruption in public procurement. They have already been implemented in a number of countries and are currently being piloted in 11 MS as a part of a DG REGIO-funded pilot project.³ Essentially, Integrity Pacts consist of an agreement between a contracting authority and an economic operator bidding for a public contract, which defines each party's rights and obligations and, in particular, includes the obligation to refrain from corrupt practices, such as paying or accepting bribes or colluding with other tenderers. Additional obligations may be included in the formal agreement, for instance regarding the disclosure of expenses paid out in connection with the contract, or similar. Importantly, the Integrity Pact defines a monitoring system, including a process for determining whether the Pact has been violated and what sanctions apply. An independent third-party monitor is further identified to determine compliance with these commitments, detect any potential red flags and bring these to the attention of the participating parties or other relevant parties if no action is taken to address shortcomings.

While there are a number of standard parameters to an Integrity Pact, the tool is adaptable to local circumstances. In **Bulgaria**, for instance, Integrity Pacts have been piloted by the Ministry of Regional Development and Public Works, the Ministry of Health and the Ministry of Labour and Social Policy. The experience acquired in implementing Integrity Pacts led to the development of the Bulgarian model for an Integrity Pact, in accordance with national legislation.⁴ The Pact is established as a contract between three parties, namely the contracting authority, the tenderer and the independent observer. The contracting authority is committed to providing the information necessary to facilitate the independent observer's work. The observer monitors the entire procurement process and reports publicly on it. The monitoring activities include on-site checks, reviewing documentation, etc., but also participating in key meetings, such as the evaluation committee. As part of the Bulgarian model for Integrity Pacts, the so-called White List was developed, which lists economic operators that have undertaken to comply with the Integrity Pact. Thanks to the White List, participants benefit from the publicity of being a 'responsible' business, and thus have a greater incentive in signing up to an Integrity Pact in the first place.

In **Italy**, Integrity Pacts have been piloted in the City of Milan since 1992, subsequent to the major bribery scandals *Tangentopoli*.⁵ Integrity Pacts take the form of a clause within tender documents, to which each tenderer must adhere. If a bidder fails to do so, it is automatically excluded from the procedure. In Milan, Integrity Pacts have supported the exclusion of companies on the grounds of so-called 'substantial links.' If a 'substantial link' exists, it means that companies bidding for the same contract are officially independent but are actually linked to the same owner. Between 2002 and 2013, 164 companies were excluded from procurement in Milan.⁶ Furthermore, the Italian Anti-Corruption Law (190/2012) formalised the legal basis for the use of Integrity Pacts by specifying that non-compliance with their provisions constitutes grounds for exclusion from the bid.

*Feasibility study on implementing voluntary oversight of procurement procedures based on the EXPO Milan case study - available on the [e-library of public procurement good practices](#).



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¹ Raffaele Cantone, "The New Italian Anti-Corruption Authority: Duties and Perspectives" (2015), see: <http://digest.syr.edu/wp-content/uploads/2016/04/Cantone-7-10.pdf>

² OECD, "Public Procurement Toolbox. Country case: The EXPO MILANO ex-ante control mechanism in Italy" (2016), see: <https://www.oecd.org/governance/procurement/toolbox/search/expo-milano-ex-ante-control-mechanism.pdf>

³ European Commission, "InfoRegion, Integrity Pacts", see: http://ec.europa.eu/regional_policy/en/policy/how/improving-investment/integrity-pacts/

⁴ Transparency International Bulgaria, "Integrity Pact Bulgarian Model" (2016), see: http://integrity.transparency.bg/en/wp-content/uploads/sites/2/2016/04/IP_BGModel_EN.pdf

⁵ *Tangentopoli* ("Bribe City") or *Mani Pulite* ("Clean Hands") was a nation-wide investigation into political corruption in Italy during the 1990s

⁶ Transparency International Italia, "Integrity Pact Best Practice – Italy, From to the Anti-Corruption Law" (2012), see: <https://transparency.hu/wp-content/uploads/2016/05/Chiara-Putaturo-Integrity-Pact-best-practices-Italy.pdf>