

EESC Fundamental Rights and Rule of Law (FRRL) Group

Fundamental rights, the rule of law and the post-COVID-19 recovery

09.03.2021 | 10:00-12:00 | Virtual Public Hearing

ENSURING CIVIL SOCIETY INCLUSION AND OVERSIGHT

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I would like to start by thanking the EESC Fundamental Rights and Rule of Law Group for the invitation.

On behalf of TI Portugal, and all my friends and colleagues piloting Integrity Pacts across the EU, I am proud and honored to share our best practices and lessons learned, trusting that these will illuminate and inspire the active engagement of civil society in the EU post-COVID-19 recovery and resilience.

The times we face are extraordinary. Therefore, we believe that extraordinary measures should also be put in place to secure and to safeguard EU-funded investments, not only to potentiate the recovery by enhancing the quality of life of European citizens, but to assure that no one is left behind.

Member states have agreed on an unprecedented budget of €1.8 trillion for the 2021-2027 period, and approximate one third of the funds will be spent through the Recovery and Resilience Facility¹.

Over the coming months and years, national governments will invest much of the EU funding through public contracting projects.

We have seen how the pandemic has tested many governments' ability to respond to communities' needs swiftly and efficiently.

We have seen how Public agencies are facing greater scrutiny and increased expectations to deliver services and meaningful projects to expedite an equitable recovery from the crisis.

We also know that despite the positive benefits that EU Funds can yield, some countries face challenges.

According to some studies, corruption across the EU put the loss to GDP somewhere between €179 billion and €950 billion each year²

The extraordinary influx of funds to be invested through the Recovery and Resilience Facility, along with the need to spend them quickly, significantly raises risks of fraud and corruption.

Not only do fraud and corruption divert taxpayers' money away from investments that promote sustainable development, but it attack fundamental rights and the rule of law.

That is why we believe that there is no better time to complement existing controls with open and participatory civil society oversight measures, such as the Integrity Pacts³.

¹ https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en

² <https://www.greens-efa.eu/en/article/document/the-costs-of-corruption-across-the-european-union/>

³ <https://www.transparency.org/en/projects/integritypacts>

The Integrity Pacts offer a timely opportunity to the authorities across the EU to collaborate with civil society and create greater transparency and accountability in public contracting.

In collaboration with the European Commission, Integrity Pacts were embedded in 18 contracting projects across 11 EU countries from 2015 to 2021⁴, exploring strategies based on openness, citizen engagement and external monitoring, aiming at reducing the likelihood of corruption and fraud in public procurement.

In Portugal, we are piloting the first Integrity Pact in the country together with the General Directorate of Cultural Heritage⁵.

The tool, applied to two construction works in the Alcobaça Monastery, ensures that the Contracting Authority and bidders act within the constraints set out by law, address corruption risks and foster public trust, by committing to enhance transparency and accountability along the public procurement process, and foster cooperation with an independent monitor from civil society.

From what we have learned during project implementation, it becomes clear that Integrity Pacts:

- **Improve contracting design and documentation leading to better outcomes.** For example, during the planning and tendering stages, we provided feedback to contracting authorities that allowed them to uphold public contracting rules and improve conditions to grant fairness and increase competition.
- **Provide legally sound and robust contracting procedures and prevent undue influence and corruption attempts.** Contracting experts in monitoring teams provided opinions and recommendations to uphold associated regulation and prevent any breach of the law, reducing the chances of legal challenges or undue influence, and assisting the mitigation of corruption risks.
- **Improve trust and bringing the contracting project closer to beneficiaries and affected communities.** Through communication and engagement activities such as on-site guided tours, monitoring training, videos, and other initiatives, Integrity Pacts are translating complex technical decisions into accessible language, informing the involved communities and beneficiaries.
- **Highlight new opportunities for improving contracting policies and regulation.** By working closely with authorities, we were able to document shortcomings in policy and regulation affecting public contracting and to provide guidance to policymakers and legislators.

That is what we did recently in Portugal, when our government presented a proposal for changing the Public Procurement Code, explaining how the changes could present a negative impact on transparency, integrity and competition standards, and significantly increase the risks of corruption and wrongdoing.

So, how to ensure that the recovery funds will be properly managed in a transparent way and that civil society's oversight and interest will be ensured?

A necessary step towards an EU anti-corruption regime is the timely, accurate and increased exchange of information related to all aspects of the use of the EU budget and EU funds.

That can be achieved by making the existing volunteering schemes/ data mining tools such as ARACHNE mandatory. ARACHNE itself allowed the EU to recover €134 million from beneficiaries as a result of fraud cases.

⁴ https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/integrity-pacts/

⁵ <https://pactodeintegridade.transparencia.pt/inicio/>

The further development and mandatory use of similar tools will allow to identify risks and detect conflicts of interests and fraud at the EU level from the earlier stages of the distribution and management of EU funds.

Therefore, we call the EU institutions to proceed with the legislature to roll Arachne and existing information sharing tools out for all the member states and make them compulsory instruments.

Another step is to secure transparency and independence in the EPPO prosecutors' selection process.

Respect for the integrity of this procedure is crucial to protect trust in the independence of the EPPO, as these prosecutors will have significant powers in conducting investigations in their Member States of origin.

For the candidates of three member states, Belgium, Bulgaria, and Portugal, the Council chose a different candidate than the one recommended by the independent panel, without providing any clarification or making any public deliberation.

The way the decision of the Council in appointing the new prosecutors was taken undermines this objective and the role of the independent committee.

The Council must, at least, provide the reasons when it opts for a different candidate, otherwise, the trust of European citizens in the independence of the prosecutors is diminishing.

If the EU wishes to defend the Rule of Law, it needs to secure that while manning EPPO, the Rule of Law and transparency is respected.

Also, it is important to stimulate the widespread use of civic monitoring tools, such as the Integrity Pacts, and the publishing of procurement data in open formats and public accessible.

When authorities make information available as open data, they can unlock an even greater potential of Integrity Pacts and citizen-led oversight.

For example, the availability of open data allows the development of visualizations and tools that bring beneficiaries closer to the contracting project and involved authorities.

Some Integrity Pacts have fostered greater transparency through complementary actions to provide and disclose contracting data in open formats or in line with national or global standards such as the Open Contracting Data Standard (OCDS).

We urge all Member States and the European Commission to embrace these measures and ensure these vital funds will be directed towards progress and the common good.

They should not fund politics or the pockets of the corrupt.

In the coming months, we hope to see the Portuguese Presidency and the European Commission – through the Recovery and Resilience Task Force – acting in a coordinated manner and with clear leadership, encouraging authorities across Europe to include open and participatory oversight measures in the Recovery and Resilience Plans.

In the case of Portugal's Government, its actions and commitments should also be a reference and example for other governments across Europe.

Thank you very much. Merci beaucoup. Muito obrigada.