

To the **European Commission** and **DG REGIO**

To the **Romanian Government** and **Ministry of European Investments and Projects**

## Proposal for Integrity Pacts and Whistleblowing

integrated in implementation of the Partnership Agreement 2021-2027 and its subsequent programmes

**Dear Commission President von der Leyen,**

**Dear Commissioner Ferreira,**

**Dear Prime Minister Cîțu,**

**Dear Minister Ghinea,**

The extraordinary influx of European financial resources to be invested in Romania in the next programming period, including the National Recovery and Resilience Plan, along with the need to spend them swiftly – mainly during the first three years – significantly raises the risks of mismanagement, misappropriation, and fraud. Therefore, comprehensive measures to protect EU-funded investments from corruption attempts must be considered, granting contracting authorities the tools needed to identify and tackle the risks these will be exposed to timely. Otherwise, projects could face significant delays or authorities could be subject to sanctions. **In addition to the existing internal and auditing controls, there is no better and more opportune complement to respond to corruption risks than openness and collaboration with citizens.**

**In this context, we, the undersigned civil society organisations from Romania propose the integration of Integrity Pacts and Whistleblowing mechanism in the implementation of the Partnership Agreement 2021-2027 and its subsequent programmes.** Our proposals are in line with Romanian government engagement to transparency and integrity standards, as undertaken in numerous declarations and the text of the National Recovery and Resilience Plan proposed.

### CONTEXT

*The risk of fraud in using European funds in Romania is high. Many fraud and corruption risks in managing European funds are related to public procurement*

**More than a tenth of the total of 100 cases in 42 countries<sup>1</sup> solved in 2019 by the European Anti-Fraud Office (OLAF) are related to the use of European funds in Romania.<sup>2</sup>** This places Romania at the highest level of risk concerning compliance with EU regulations and integrity when using European Funds.

At EU level the European Commission estimates that about 48% of European funds are allocated for public procurement.<sup>3</sup> Therefore, the implementation of projects is largely influenced by the public procurement processes. In Romania, the complexity of the procurement process and the instability of the legal framework are among the main factors delaying or hindering the use and effectiveness of European Structural and investment Funds. Evaluations already conducted for the Operational Program Technical Assistance, the

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<sup>1</sup> Investigations are done in Member States, candidate and neighbouring countries and other countries benefiting from European funds (including development aid).

<sup>2</sup> The OLAF Report 2019, [https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf\\_report\\_2019\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf_report_2019_en.pdf)

<sup>3</sup> European Commission, Public procurement - Guidance for practitioners on the avoidance of the most common errors in projects funded by the European Structural and Investment Funds [https://ec.europa.eu/regional\\_policy/sources/docgener/informat/2014/guidance\\_public\\_proc\\_en.pdf](https://ec.europa.eu/regional_policy/sources/docgener/informat/2014/guidance_public_proc_en.pdf)

Operational Programme Administrative Capacity, Operational Programme Large Infrastructure<sup>4</sup> show the negative influence of procurement processes over the efficacy and effectiveness of European funds in Romania.

On the other hand, **procurement is the most importance source of irregularities in using European funds in Romania**. OLAF<sup>5</sup>, the Romanian Audit Authority<sup>6</sup> and civil society organisations<sup>7</sup> show in separate reports that many of the irregularity and frauds in European projects are linked to public procurement.

One type of fraud is related to corruption issues. Corruption is the abuse of entrusted power for private gain. In public procurement corruption means awarding public contracts without the due fair competition, to the advantage and financial gain of some public officials and their preferred businesses. Huge funds allocated in any country to purchase goods and services and to build public infrastructures are great opportunity and temptation for corruption when fair competition and integrity mechanisms are not in place or they are not working well. Moreover, a by-product of fraud in public procurement is the low quality of goods, services and works purchased with the aim of making an easy good deal, rather than addressing the public interest. In some cases, corruption in procuring medical supplies costs lives, and corruption in large infrastructure projects can deprive people of their homes, if the expropriations are not done correctly.

The law on public procurements, in conjunction with Law no. 544/2001 on the access to public interest information, ensure robust transparency of key aspects of the public procurement process (planning, bidding, evaluation, implementation and monitoring). At the same time, although access to open data is progressing in Romania, there are no provisions regarding the availability of the procurement information in widely used formats. Moreover, citizens cannot use the information on public procurement and cannot understand fully how European funds are spent because this information is presented in a technical, unfriendly way, designed to serve administrative procedures, not for public communication purposes.

According to the Global Competitiveness survey, businesspeople perceive Romania as one of the worst countries as far as government favouritism and wastefulness of government spending are concerned. Moreover, investigative journalists and Romanian public opinion have always claimed that public funds for infrastructure are granted only to favour companies and squandered.<sup>8</sup>

(Anti-)corruption in public procurement in Romania seems to be affected by a vicious circle. In order to include anti-collusion and anti-corruption mechanism, the procurement procedures are more and more complex and more prone to irregularities. As irregularities, fraud or corruption occur, they are often discovered too late to be prevented. The European Court of Accounts audits the use of funds and concluded in 2016 that even European institutions could do more to facilitate access of economic operators (especially of small and medium-sized enterprises) for example by simplifying the rules to the fullest possible extent and by removing unnecessary hurdles which make life difficult for potential tenderers who want to access procurement opportunities.

**Other fraud and corruption risks for use of European funds in Romania are linked to employment and management of human resources.** Conflicts of interest, nepotism and favouritism in implementing EU funded projects have been headlines for news in Romania since pre-accession funds, but official

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<sup>4</sup> See the Evaluation Library: <https://www.evaluare-structurale.ro/web/guest/biblioteca-de-evaluare>

<sup>5</sup> The OLAF Report 2019, [https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf\\_report\\_2019\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf_report_2019_en.pdf)

<sup>6</sup> Report on 2018 of the Court of Accounts, <http://www.curteadeconturi.ro/Publicatii/Raportul%20public%20pe%20anul%202018.pdf>

<sup>7</sup> Institute for Public Policy, "Strengthen an effective control system to prevent fraud with European funds in the new Member States in the period 2014-2020", [http://www.ipp.ro/wp-content/uploads/2015/06/IPP\\_Comparative-Study\\_ENG.pdf](http://www.ipp.ro/wp-content/uploads/2015/06/IPP_Comparative-Study_ENG.pdf)

<sup>8</sup> Irina Mădălina Doroftei, Valentina Dimulescu, 2015, "Romanian public procurement in the construction sector. Corruption risks and particularistic links", ANTICORRP project, Editor: Alina Mungiu-Pippidi, Romanian Academic Society.

investigations (of the National Integrity Agency and the National Anticorruption Directorate) and journalistic investigations showed these practices continue.

## SOLUTIONS

### A. Whistleblowing

#### *Whistleblowing to protect European funds*

Unlawful activities and abuse of law may occur in any organisation, whether private or public, big or small and, as shown, they can impact the effectiveness and efficiency of European funds. They can take many forms, corruption, fraud, businesses' malpractice or negligence. And if they are not addressed, it can result in serious harm to the public interest. Whistleblowers, i.e. persons who report (within the organisation concerned or to an outside authority) or disclose (to the public) information on a wrongdoing obtained in a work-related context, help preventing damage and detecting threat or harm to the public interest that may otherwise remain hidden.

**Whistleblowing is seen as a very effective tool to combat fraud.** Indeed, in its 2016 ACFE Report to the Nations on Occupational Fraud and Abuse, the Association of Certified Fraud Examiners found that the most common detection method for fraud was tips (more than 40% of cases). The same report also states that companies and institutions with whistleblowing services, that include the possibility of anonymous reporting, suffer smaller losses from fraud.<sup>9</sup>

**According to OECD, whistleblower protection is the ultimate line of defence for safeguarding the public interest.** Protecting whistleblowers promotes a culture of accountability and integrity in both public and private institutions, and encourages the reporting of misconduct, fraud and corruption.<sup>10</sup>

#### *Implementing whistleblowing channels*

Pillars of an effective whistleblowing system are:

- **TRUST**, built based on the reputation of the institution/organisation implementing the system;
- **ETHICAL CULTURE**, built on training and effective communication of values;
- **INDEPENDENCE**. Perceptions on independence of the administrator of the whistleblowing system and channels are important to building trust and thus facilitating the whistleblowing process. This means an independent organisation administrating the whistleblowing system and channels or a department separated from a structural point of view, reporting directly to the head of institution;
- **RESPONSIVENESS**. Responsiveness to a complaint in terms of taking steps to rectify the behaviour which was reported was identified as another key success factor. Several studies have demonstrated that inadequate responses from management can be a key factor influencing the decision to not report illegal or immoral behaviour;
- **REPORTING CHANNELS**. Researchers also found that preferences for certain reporting channels within an institution/organisation may change over time. Furthermore, individuals may hold different preferences as to their favoured reporting methods.
- **ACCESSIBILITY**. **Ensuring the accessibility of reporting channels to all potential whistleblowers is central to avoiding external reports and maintaining the integrity of a system. As the Whistleblower Directive protects whistleblowers who are not employees,**

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<sup>9</sup> Association of Certified Fraud Examiners, 2016, Report to the Nations <https://www.acfe.com/rtn2016/resources/downloads.aspx>

<sup>10</sup> OECD, „Committing to Effective Whistleblower Protection”, <https://www.oecd.org/corruption/Committing-to-Effective-Whistleblower-Protection-Highlights.pdf>

**institutions/organisations should consider opening the whistleblowing channels to all potential whistleblowers.**

## B. Integrity Pacts

### *A tool available to minimise fraud and corruption risks in public procurement*

The **INTEGRITY PACT (IP)** is a tool developed by Transparency International (TI) that has been used in countries across the world since the 1990s. It seeks to improve the transparency, accountability and integrity of public procurement by involving external (civil society) monitors and experts in the procurement process.

**The Integrity Pacts includes (1) an agreement between the contracting authorities, bidders/contractors and the independent civic monitor and (2) a monitoring mechanism introducing the independent civic monitor from civil society in the procurement procedure.** Integrity Pacts bring citizens closer to public administration and the management of public and European funds and provide the contracting authority and bidders/contractors with the point of view of the civil society.

Exploring innovative ways of improving efficiency in projects funded by EU funds, DG REGIO and Transparency International have joined forces since 2015 to promote the use of Integrity Pacts as a tool to increase transparency and accountability, enhance citizens' engagement and trust in public institutions, bring cost savings and improve competition and promote awareness and better understanding of public procurement. The initiative is part of the broader action undertaken by the Commission in tackling fraud and corruption, as well as enhancing administrative capacity in the use of EU funds. The Integrity Pact pilot project is being implemented in 11 European Member States: Bulgaria, Czech Republic, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Romania and Slovenia. The project is implemented with a clear learning objective, lessons learnt from the 18 pilots will be disseminated and can be applied to many other EU co-financed projects in the future.<sup>11</sup>

The initiative has been widely recognised as a success in bringing EU policies and administrations closer to citizens. It received the **European Ombudsman's Award for Good Administration 2019** in the category "Excellence in open administration." The project was also **included in the special G20 Compendium** as a global good practice for promoting integrity and transparency in infrastructure development.<sup>12</sup>

*In Romania Integrity Pacts are implemented by Transparency International Romania, in partnership with the Institute for Public Policy and by the Romanian Academic Society. Procurements monitored are part of the following projects: the Cadastre project implemented by the National Agency for Cadastre (and funded by the Regional Operational Programme), the E-culture project implemented by the Ministry of Culture, the Electronic School Management System implemented by the Ministry of Education (and funded by the Operational Programme Competitiveness), the technical assistance projects implemented by the Management Authority for the Operational Programme Administrative Capacity. In a separate initiative, Transparency International Romania is implementing an Integrity Pact monitoring procurement within a project implemented by the National Agency for Public Procurement.*

In this context, the National Anticorruption Strategy 2016-2020 included Integrity Pacts as an action to support other anti-corruption activities in the field of public procurement (under specific objective 3.6).

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<sup>11</sup> <https://www.transparency.org/programmes/overview/integritypacts>

<sup>12</sup> [https://ec.europa.eu/regional\\_policy/en/policy/how/improving-investment/integrity-pacts/](https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/integrity-pacts/). See as well: <https://transparency.eu/award-winning-integrity-pacts-showcased-at-the-european-week-of-regions-and-cities/>

IPs are generating benefits to the society, to economic operators participating in the procurement, the communities and the funder (the European Commission and national Management Authorities). Among these advantages, in Romania and other EU Member States, it is worth mentioning:

- IPs help BRINGING PUBLIC PROCUREMENT INTO THE DAYLIGHT. The monitoring mechanism provided the community with an independent third-party observer, who informed citizens regularly through online websites, reports, and other activities.
- IPs can help RAISE RED FLAGS BEFORE IT IS TOO LATE. Monitoring teams contributed to observing qualification and evaluation criteria by contracting authorities, according to the established contracting documentation.
- IPs help IDENTIFYING LOOPHOLES AND BOTTLENECKS IN THE CURRENT PROCUREMENT LEGAL FRAMEWORK OR PRACTICE. Contracting experts in monitoring teams provided opinions and recommendations to uphold regulation and prevent any breach to the law, reducing the chances of legal challenges.
- IPs ensure STRENGTHENING CLEAR PROCUREMENT PROCESSES for better accountability, value for money and compliance. During the planning and tendering stages, monitors provided feedback to contracting authorities that allowed to uphold public contracting rules and improve conditions to grant fairness and increase competition
- IPs help to INCREASE ADMINISTRATIVE AND MANAGEMENT CAPACITY OF CONTRACTING AUTHORITIES AND OTHER STAKEHOLDERS AND SUPPORT EXISTING OVERSIGHT ACTORS BY INCREASING THEIR REACH. Early warnings and collaboration with managing and anti-corruption authorities allowed to halt and redesign a contracting project.

The clauses of each separate IP agreement vary case by case; nevertheless, there are some core principles that are always embedded in it. In 2018, TI published the ***Model Monitoring Agreement and Integrity Pact for Infrastructure***<sup>13</sup> Some of the KEY ELEMENTS of an ideal IP agreement include:

- An undertaking by all parties that they will NOT DEMAND AND/OR ACCEPT AND/OR OFFER ANY BRIBES, GIFTS OR PAYMENTS of any kind and preserve a conduct in the spirit of integrity;
- Description of the role of the INDEPENDENT CIVIC MONITOR and the specific monitoring system;
- A COMMITMENT FOR DISCLOSURE OF INFORMATION NECESSARY FOR THE MONITORING – since the independent monitor is not a party to the procurement process, the IP agreements include clauses that detail the process of information sharing;
- CONFIDENTIALITY – confidentiality clauses regulate the various scenarios that the new party to the procurement process - the monitor - might face, including personal data protected under data protection laws, information shared prior to the tender launch or during its evaluation, sensitive business information, etc.;
- PUBLICITY – IPs are meant as a process that make the procurement more transparent and open to the wider public, affected communities especially, and make it more accessible and easier to understand. To achieve this, IPs detail special information disclosure mechanisms.
- CONTRACT MONITORING. IPs have the capacity to extend their benefits and results from the procurement processes to public contracts. While procurement and contracting phases are highly standardised and there are European standards of transparency, contracts implementation is less

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<sup>13</sup> Jacqui de Gramont et. Al., “Model Monitoring Agreement and Integrity Pact for Infrastructure. An implementation guide for civil society organisations”, Transparency International, 2018, [https://www.transparency.org/whatwedo/publication/model\\_monitoring\\_agreement\\_and\\_integrity\\_pact\\_for\\_infrastructure](https://www.transparency.org/whatwedo/publication/model_monitoring_agreement_and_integrity_pact_for_infrastructure)

regulated. Therefore, IPs are needed, because they are capable and appropriate to monitor public contracts with high corruption risks and, based on these particular cases, to identify systemic problems, if existing.

## *Implementing Integrity Pacts*

### *Selecting the monitor*

An IP should be led and implemented by a civil society organisation or a coalition of organisations with recognised independence. Because of the nature of the collaboration, it is important that these have proven experience and track record and public recognition in related fields such as anti-corruption and public contracting. **Therefore, the selection the civil society organisation leading the monitoring process can be done using competitive procedures with strong experience criteria and criteria focusing on the expertise of proposed experts for the monitoring activities.**

### *Funding the Integrity Pact*

**The cost of implementing an Integrity Pact can vary depending on the complexity of the procurement and contract it applies to, the implementation arrangements and the activities included in the process.** Contracting authorities are able to absorb most of these costs, as the integrity standards promoted by IPs are in line with other obligations of public institutions and resources shall be already allocated. In a nutshell, what the IPs are bringing in addition are the formal commitments to integrity standards and monitoring, generating additional costs especially for the civil society independent monitor. In most cases, the monitor is more than one individual, it represents actually a team. Therefore, the most important costs of the IP are borne by the independent monitors teams (NGOs) and represent human resources costs (salaries and fees) for management and monitoring experts.

**Regardless of the funding method, attention should always be given to protecting the independence of the monitor, so his/her credibility and efficacy are never affected.** Transparency International experience across the world shows there are different ways to finance Integrity Pacts implementation:

- by the contracting authority;
- by the superior institution of the contracting authority (if existing)
- by fees paid by the tenderers
- by contributions from donors, e.g. by the Operational Programme funding investment projects monitored
- by a combination of these sources.

Contributions from donors and project financiers represent one of the less risky solutions when considering Integrity Pacts funding. Donors and financiers have a great interest to ensure the integrity of the project implementation including project procurements representing in many cases the largest share of the project's budget. This interest corresponds with the aim of the Integrity Pact.

**For European Funded projects (in EU Member States, candidate countries and development aid beneficiaries), Integrity Pacts can be funded from the Technical Assurances budgets related to the European funds' management.**

## NEXT STEPS

### *Introducing a secure whistleblowing line for European Funds at the Ministry of European Investment and Projects*

In 2019, the European Union adopted the “Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law” (Whistleblower Protection Directive). The directive protects whistleblowers in a wide range of positions, as well as individuals who help them. It prohibits retaliation, safeguards their identities in most circumstances, and offers them several reporting avenues. The Directive generates obligations for a wide range of entities to establish internal whistleblowing mechanisms, to follow up on reports and to keep the whistleblower informed.

**The attention payed by the European Union on regulating whistleblower protection when noncompliance with EU regulations is observed and reported shows the importance of encouraging and using whistleblowing for detection of any problems in the management and use of European funds.**

EU Member States are required to transpose the provisions of the Directive into national law by 17 December 2021. On the other hand, institutional procedures and channels are needed and have to be established by institutions, companies and organisations.

**THE MINISTRY OF EUROPEAN INVESTMENT AND PROJECTS CAN IMPLEMENT AN WHISTLEBLOWING SYSTEM AND A DEDICATED CHANNEL TO IDENTIFY THE WRONGDOING IN THE USE OF EUROPEAN FUNDS, complementing thus the methodologies used by monitoring and oversight authorities (Management Authorities, DLAF and OLAF, the Audit Authority and the Court of Accounts).**

This system and channels should be:

- supported by activities aiming at building and promoting trust and the ethical culture;
- opened to all persons involved in the use of European funds, projects and investment implementation and monitoring (employees of Management Authorities, intermediary bodies, project beneficiaries and partners and their employees, bidders, contractors and subcontractors resulting from public procurement procedures used for projects’s implementation etc.);
- endowed with procedures and technical equipment to ensure confidential and anonymous reporting and reaction to whistleblowing: feedback to whistleblowers and transfer of information to oversight authorities;
- organised in a way ensuring its independence and capacity:
  - o to react to whistleblowing by sending feedback on the measures taken
  - o to interact directly (without the intervention of other structures) with oversight authorities able to conduct investigations on frauds or corruption.

Complementarily, all persons involved in the use of European funds should benefit from adequate information and training about what is whistleblowing, what are the channels and the protection measures available. This can be done by:

- **including whistleblowing training and information as an eligible activity and civil society organizations together with the information centre or the independent administrative authority provided by article 20 of the Directive (EU) 2019/1937 as eligible beneficiaries under Priority no. 3 of the Operational Programme Technical Assistance 2021-2027.** In this case, the authority competent to provide support to the whistleblowers in partnerships with knowledgeable civil society



organisations will be able to propose cross-sectoral projects to meet the information and training gap of potential whistleblowers involved in the use of European funds.

- **including whistleblowing training and information as a condition for the eligibility of high-risk projects (Operational Programmes: Health, Transport, Sustainable Development; Just Transition).** In this case, at least 0.2%-1% of eligible costs (depending on the total eligible costs) should cover whistleblowing training and information for the project management, experts, contractors and other staff involved.

### *Introducing Integrity Pacts in the framework for European Structural and Investment funds in Romania*

Considering their public impact, the risk of fraud or corruption, efficiency of the monitoring, the interest of stakeholders, and advantages of the IPs, they are more appropriate for large and complex projects. IPs work very well in:

- **CONSTRUCTION** projects in any sector (transportation, environment, water management, public buildings etc.);
- **LARGE AND COMPLEX SERVICES CONTRACTS** - IT development projects, technical assistance, some trainings and consultancy projects;
- **SUPPLY CONTRACTS FOR HIGHLY SENSITIVE AND RISKY SECTORS:** health care and public transportation means (trains, trams, plains etc.).

Large and complex contracts carry the highest risk of being brought to court over technicalities or procedural errors. They are also the most appealing targets for non-competitive allocation or other forms of corruption. Mistakes in the implementation phase are also most likely to be costly, so prevention mechanisms such as additional pairs of eyes from independent monitors have the potential to save time and money by signalling red flags early.

**TAKING ALL THESE ELEMENTS INTO ACCOUNT, WE RECOMMEND INCLUDING INTEGRITY PACTS AS AN ACTION WITHIN PROJECTS FUNDED BY EUROPEAN STRUCTURAL AND INVESTMENT FUNDS.**

Specifically, including Integrity Pacts in the framework of European Structural and Investment Funds 2021-2027 can be done by:

- **including Integrity Pacts as an eligible activity and civil society organizations as eligible beneficiaries under Priority no. 3 of the Operational Programme Technical Assistance 2021-2027.** The OPTA could support the implementation of integrity pacts by funding civil society monitoring activities. Calls will be possible for civil society organizations to become independent monitors in partnership with EU fund beneficiaries who want to be more transparent and to implement additional integrity checks. Civil society monitoring reports can be submitted to the Monitoring Committee of the programme and discussed, underlying specific and systemic issues identified by the independent monitor.
- **including Integrity Pacts as eligible activities of large infrastructure and IT projects and in other projects in the health sector (Operational Programmes: Health, Transport, Sustainable Development; Just Transition).** In this case, beneficiaries of such large projects will be able to select partners from civil society to ensure procurement monitoring, but in order to support the independence of the civic monitor monitoring reports should be submitted to the Monitoring



Committee of the programme and discussed, underlying specific and systemic issues identified by the independent monitor.

- **including the Integrity Pacts as a condition for the eligibility of high-risk projects (within the National Recovery and Resilience Plan, Operational Programmes: Health, Transport, Sustainable Development; Just Transition).** In this case, the beneficiaries of such projects with high risks of delays, irregularities or fraud will be determined to accept close independent monitoring from civil society and this will ensure better information of the public and oversight authorities.

**The undersigned civil society organisations stand ready to work together with you to make this happen through a constructive dialogue.**

We look forward to your feedback and to the opportunity to discuss these proposals with you further.

**SIGNATORIES:**

Transparency International Romania

Romanian Academic Society

Institute for Public Policy

Syene Centre for Education

Centre for Legal Resources



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