



FACTI submission on recommendations to the Panel's Interim report

18 November 2020

First up, we would like to thank you for your Interim Report and for your open consultation process to integrate external input.

The Interim Report's focus is rightly on the fight against the corrosive effects of dirty money, highlighting enablers and impediments for curbing it. We appreciate that you have highlighted the causes of those illicit flows and what can be done to stop them. **The report could offer still stronger and clearer recommendations on the preventive measures to stop public money being stolen in the first place.**

We recommend the following specific and actionable points relating to our area of expertise - public contracting and procurement - which has been widely recognized as government's number one corruption risk as it is where the money, discretion and favouritism collide in government.

Evidence why public procurement matters

The [OECD](#), [UNODC](#) and [EU](#) have cited public procurement as a government's number one corruption risk. Some [57% of foreign bribery cases](#) prosecuted under the OECD Anti-Bribery Convention involved bribes to obtain public contracts. Detailed analysis of the typologies of corruption in reports such as the [World Bank's Puppet Masters report](#) (and numerous academic articles) show public procurement and spending are a major source of illicit funds.

A recent [OLAF study](#) shows that direct public loss in public contracts amounted to **18% of the overall project budgets concerned, of which 13% can be attributed to corruption.** [Another study](#) suggests the EU loses around EUR 5 billion to corruption in procurement every year.

A best estimate of the scale of global government spending on procurement from our own expert analysis suggests that [governments spend over \\$13 trillion a year on goods, works and services](#) (up to 15% of global annual GDP). [Approximately one in every three dollars is spent on public contracts with private business.](#) We also estimate that key information including values and start and end dates on public contracts are only easily accessible for only **3% of that spending (\$363 billion)**. This shuts out opportunities to mitigate the risks of theft, identify systemic loopholes and to improve governance of that spending.

We would strongly encourage the Panel to offer more guidance on both the role of public contracting in illicit money flows and what can be done to prevent it. We have responded to your guiding questions to that end below.

Panel's guiding questions & answers

- 1) What needs to be done to ensure transparency in public procurement, financial integrity and what accountability measures need to be in place given the failures to prevent money-laundering?**

Transparency in public procurement and the availability of open data about procurement plans, tenders, contracts, bidders and their beneficial owners will enable better prevention and detection of corruption risks, improving opportunities to spot abuses.

As the the World Bank, OECD and UNODC's [new guide to preventing and managing conflicts of interest](#) in the public sector says (p.9):

“Transparency, or the lack of it, in the bidding process plays an important role in properly preventing/managing COI [Conflicts of Interest]. Publicizing the selection and evaluation criteria, as well as the justification for awarding the contract is a good practice that allows competitors a better opportunity to properly participate in a procurement procedure and civil society and the media to engage in public oversight of procurement decisions. Establishing and reinforcing a requirement for ad hoc disclosure and immediate recusal for a potential COI for all officials involved in any stage of a procurement process is also a good practice that will help protect the procurement process from COI as it proceeds.

Early reporting and recusal will also allow another official to make a timely determination of the best way to manage the conflict of interest going forward. In addition to recusal and ad hoc disclosures, a good practice for preventing COI in public procurement is to have a register or declaration of interests held by officials with influence over decisions. Another

useful practice is to establish certain rules that focus on the composition of the evaluation committee for specific procurements.

Assigning the tasks of bid evaluation and award to different public officials may also be helpful in avoiding COI. The simple fact of publicizing the names of officials in charge of awarding contracts can also contribute to the transparency of the process and help in preventing and managing COI.¹³ The use of e-procurement systems has expanded the opportunities both for transparency and for cross checking information in ways that are useful.”

In addition, access to high-quality, standardized information about the *full cycle* of money flows, especially in line with the globally recognized open data standards, such as Open Contracting Data Standard (OCDS) or Beneficial Ownership data Standard (BODS), allows for better analysis and detection of these risks.

Using complete high-quality, high definition open data about public spending and companies, financial institutions can conduct a more efficient oversight of money flows, can perform better due diligence checks, conduct external audits, identify systemic loopholes and sanction bad behavior. **For example, the Ukrainian State Audit System transitioned to open data-driven monitoring in 2018 and immediately tripled the amount of monitored cases in just over a year (from 3,000 in 2018 to 9,000 in 2019).** Access to open data on contracting in a standardised format through the OCDS meant that [state auditors from the Kyrgyz Chamber of Accounts](#) in the Kyrgyz Republic can now conduct 60% of their audit planning off site.

Finally, proper functioning independent complaint mechanisms can help identify individual wrongdoers and system errors to help clean the public spending. Good information, convenient feedback channels and, most importantly, transparent and effective redress mechanisms can illuminate public contracting systems, narrowing loopholes for shady deals.

[A World Bank survey of 34,000 companies in 88 countries](#) found that competition was higher and kickbacks were fewer and smaller in places where transparent procurement, independent complaint procedures and external auditing are in place.

- 2) How to better incorporate civil society and the media in the fight against money-laundering and corruption? Would international norms/standards strengthen the fight against corruption and other financial crimes?**

High-quality open data empowers civil society, journalists, academics and businesses to understand whether the money that has been spent genuinely delivered for citizens or siphoned off. The recent COVID-19-related [investigations](#) by the Organized Crime and Corruption Reporting Project (OCCRP) showed that access to good data makes or breaks opportunities to investigate whether public funds have been spent well. It concluded that in many places we simply can't tell how money is spent, because many countries did not publish the relevant information, with the exception of Lithuania, Portugal and a few others.

A Yale and MIT [study analyzing the impact of open data on procurement in Europe](#) before and after they were made available as open data in 2015 found that bids received per tender increases by 12% for contracts above EU publication thresholds. Public officials are also more likely to award government contracts to new vendors after 2015. Prices for contracts decreased by 8%.

Importantly, Freedom of Information regimes should cover public contracts and governments should not use commercial confidentiality as a shield against the public interest.

Our [report on Mythbusting Confidentiality](#) instructs how to strike a balance between confidentiality and public interest. Analysing over 20 countries and speaking to over 70 global experts, we found almost no examples where publishing contracting information has led to demonstrable commercial harm to a company and lots of examples where improved information had decreased corruption risks, identified poor performance and overspending and overall encouraged an increase in competition. [For example, in Slovakia government contracts are published by default and evidence suggests that competition has almost doubled over the same period as the changes were brought in.](#)

Next to good data and the existence of strong civil society, effective channels for complaint and redress can accelerate effective monitoring, if they are independent and backed up by sufficient resources. For example, the award-winning public contracting feedback mechanism in Ukraine, [Dozorro](#), have mobilised dozens of organizations to constantly watch procurement and since 2016, they spotted over 30,000 of questionable tenders, 35% of which got fixed.

We hope that a clear recommendation from the Panel will be to support and empower civil society and journalists to monitor public contracts. The evidence of its impact is compelling, including in randomised control trials. In Peru, a [study from Columbia University](#) looked at the impact of transparency and monitoring of contracts on the procurement process of infrastructure projects and found that monitoring decreased costs by 50%. [A randomized control study of road works projects in Afghanistan](#) found that new roads were of significantly

higher quality and more durable in neighborhoods where the community had monitored the implementation of the project.

International bodies have already recognized the role of transparency in making public spending work, including the European Commission, the European Bank for Reconstruction and Development (that has a separate [open contracting work stream](#)), [World Trade Organization](#), [the World Bank](#), [Organization for Economic Cooperation and Development](#). In 2019, the [G7 Biarritz declaration](#) recognized the role of open contracting and open data standards in the fight for a fairer, efficient and transparent public procurement market. It reinforced the [previous recognition](#) of the role of open data in public procurement during G20 in Toronto in 2015.

We think that an important additional recommendation from the Panel is that **it is time to update the outdated procurement implementation guidance for State Parties to the UN Convention Against Corruption, in the UNCAC review process, and in the UNCITRAL model law**. Although worthy, these are now approximately five to ten years out of date, and do not include any of the state of the art solutions of open data-driven monitoring and mass civil society engagement and feedback. These solutions simply did not exist back in 2005 when the Convention against Corruption was signed but are now [a consistent part of successful anti-corruption strategies in procurement](#).

3) How can better data and information help build the capacity of States to combat corruption?

Open data and data standards such as the OCDS are at the core of a better way of sharing data across different government information silos and building a wealth of analytics and data use tools off that information. Standardised data will also be core to harness artificial intelligence and other solutions to monitor corruption red flags. There are over 30 government agencies publishing OCDS around the world both in the OECD (such as Australia and the UK) and the non-OECD (from say Argentina to Zambia).

Ukraine for example has tools to detect and report risks in real time built off open data coming from their procurement platform called Prozorro. Audit institutions, anti-corruption agencies and procuring agencies themselves use [red flags](#) driven by artificial intelligence, comprehensive business intelligence, feedback system, etc to monitor procurement, which has helped [cut corruption perception in half](#) in just one year. As a result, Ukraine made it mandatory to use the newly published procurement data and monitoring mechanisms when controlling and auditing procurement in the country.

Linking open contracting and beneficial ownership

One of the key enablers of money laundering is secrecy of owners of companies that win public contracts. The ability to match public contracts with beneficial owners allows curbing on the sources of illicit funds, ensuring the maximum transparency in how public funds are distributed and where they end up. [This is a link to our analysis of the complementary](#) relationship between beneficial ownership and open contracting, arguing that one supports the other to maximize oversight of financial flows.

4) What needs to be done to curb on public contracting as a source of illicit funds?

First of all, as a primary source of illicit money, public contracting should be a high priority for good governance reforms and to embed better corruption prevention. This case should be made in the final report of the FACTI Panel.

Secondly, to enable better control and monitoring, governments should publish open high-quality information about all five stages of procurement, from planning to implementation, using the globally accepted publication standards, i.e. the Open Contracting Data Standard (OCDS). This information, especially when linked to beneficial ownership information will allow better tracking of illicit money from its production to further laundering schemes. The FACTI Panel should make this recommendation as clear as the one surrounding the beneficial ownership information.

Thirdly, as mentioned, it is time to update procurement best practices implementation guidance for State Parties to the UN Convention Against Corruption and the UNCAC review process reflecting new best practices involving open data, end to end transparency and real time monitoring. The FACTI Panel should include it in the Final Report as one of the specific recommendations.

Once again, we thank you for being so open to feedback and for the hard work thinking about how to improve the global anti-money laundering efforts. We remain at your disposal should you need any clarifications, additional evidence, or other support.