

Position Paper: The Latvian Presidency of the Council of the European Union

1. Preface

Latvia is taking over the Presidency of the EU Council at a time when the EU is facing a particular set of challenges. 2014 was a tumultuous year that witnessed European elections with a meagre voter turnout, election of a more Eurosceptic European Parliament, appointment of the new leadership of the European Commission and a new President of the European Council compounded with the Ukraine crisis and increasing migratory pressure at the EU's southern borders. 2015 promises to be no less challenging: the crisis in Ukraine is leading to a re-evaluation of the Eastern Partnership approaches of the EU, while the recent terrorist attacks in Paris and following arrests in France, Belgium and Germany have shifted public attention to Justice and Home affairs of the member states, the fight against terror as well and the EU's internal and border security.

Against the backdrop of this scenario there is a clear risk that anticorruption and transparency will slide down the list of priorities as harder topics such as the fight against extremism take centre stage and capture the attention of the media and politicians alike. Latvia's Presidency therefore comes at an important crossroads as it has to carefully balance these competing priorities when chairing the Council of the EU in the first half of 2015.

Latvia's Presidency is the second segment of the current Presidency trio programme which consists of Italy, Latvia and Luxembourg. In this context Latvia's first Presidency is a great opportunity to ensure that transparency and anti-corruption remain firmly anchored in the political agenda at EU level for years to come. To this end, Transparency International has identified five legislative files that will be on the Council agenda in the next six months and should be a priority for the Latvian Presidency and the other member states in the Council.

2. Context - Corruption in Latvia & the EU

2014 was a historic year for Latvia and marked the culmination of an economic recovery when it joined the single currency area and became the 18th EU member state to adopt the Euro on January 1, 2014. Latvia's progress is indeed remarkable, considering that only five years ago Latvia suffered a recession where the economy contracted by 20%, public salaries were cut by 25% and the unemployment rate rose to an alarming 20%, a situation which brought the Latvian economy precariously close to bankruptcy.

However, Latvia bounced back from the recession and returned to growth in 2011. Since then it enjoyed the strongest growth in the EU (averaging 4% per year) and as a result was hailed as a European success story. Be that as it may, the austerity has had dire consequences for Latvia, namely the continued exodus of Latvia's skilled and educated, a trend that has the political leaders worried about how to sustain robust economic performance in the face of a brain drain that has led to Latvia's population dropping from 2.4 million to 2 million in just over 20 years.

According to a [World Bank study](#) Latvia has traditionally enjoyed low levels of administrative corruption relative to other post-communist states. However, Latvia has suffered from high levels of grand corruption and serious problems with the subversion of key state institutions by individuals and firms for private advantage, also known as state capture. In Latvia's case this state capture carried a political price: the subversion of democratic processes, discouragement of civic participation and, most significantly, the deterioration of the trust of citizens towards state institutions and politicians. Indeed, according to the [2013 Global Corruption Barometer](#) more than two thirds (68%) of Latvians think that their political parties are corrupt and almost two thirds of Latvians (63%) felt that public officials and civil servants are corrupt.

Things were set to improve in May 2011 when Latvian President Zatlers announced a referendum on dissolving the Parliament because of allegations of tolerance towards corruption. These elections marked a defeat for the two major governing parties that were largely seen as responsible for the economic crises and cronyism of the system. Subsequent to their exit from Parliament these parties were dissolved entirely. However, 2014 saw a return to 'business as usual' as the governing coalition was joined by a party coalition of Greens and Farmers backed by Mr. Lembergs, a man who has been charged with the most serious corruption crimes in Latvia. The case of Mr. Lembergs, a mayor of the town of Ventspils, has been in the courts since 2009 and continues to reveal considerable weaknesses of the justice system to tackle serious corruption charges.

But there are deeper issues at play in Latvia. According to a [2013 European Commission Eurobarometer](#) 77% of Latvians don't feel like their voice matters in the EU, a percentage that is only surpassed in Greece and Cyprus. More alarmingly, more than two thirds (69%) of the population considers corruption to be a serious problem in the country, but only 48% would be willing to report corruption and approximately 50% do not see that ordinary people can even make a difference in the fight against corruption. On the other hand, Latvia has been commended by the OECD and the European Commission for having established several best-practice examples of anti-corruption systems such as the regulations around party finance and the independent anti-corruption bureau. Consequently, Latvia's ranking in the *Corruptions Perceptions Index* has steadily improved from 2.7/10 in 1998 to a score of 55/100 in 2014.

In February 2014 the European Commission published the [EU Anti-Corruption Report](#) (EU ACR), which constitutes a snapshot of the state of play in the fight against corruption – though notably not in relation to the EU's institutions themselves. The report delivers a stark warning that much more needs to be done, as several member states experienced high-profile cases of fraud and money laundering by politicians, episodes of large-scale corruption and the widespread abuse of party financing rules. As the chapter on Latvia in the report points out, Latvia needs to promote greater competition in public procurement which faces a particular set of challenges. Moreover, the focus should also lie on improving the governance of state-owned companies and strengthening the ability of the judiciary to handle corruption cases in an independent manner. Finally, Latvia needs to rigorously enforce its Parliament's code of ethics and to provide more guidance on conflicts of interest (see the complete chapter on Latvia [here](#)).

Despite these challenges, integrity issues seem to have somewhat lost the urgency in the eyes of the public, which is chiefly focused on the close geographic proximity to Russia and the resulting security

implications. However, the situation outlined above demands a resolute response from the Latvian Presidency, which now has the opportunity to significantly shape the EU's approach to some of these issues. Transparency International therefore calls on the Latvian Presidency to be a credible partner in the fight against corruption and to demonstrate its leadership to that end when chairing Council discussions in the first half of 2015.

3. Key Anti-Corruption files for the Latvian Presidency

1. Protection of the EU's financial interests – establishment of the European Public Prosecutor's Office

Problem:

In a globalised world that is characterised by increasingly porous borders, corruption and fraud have progressively become transnational phenomena. EU member states often fail to investigate and prosecute corruption cases, particularly when it comes to complex cross-border cases. Indeed, only [46% of the cases](#) passed on to member states by the European Anti-Fraud Office (OLAF) receive national-level judicial follow-up and the conviction rate of these cases is only 42%. One key obstacle to successful prosecution is that there are significant differences between national criminal and criminal procedural laws of the 28 EU Member States. Since no single national administration is capable of protecting the EU budget against fraud and corruption, investigations and prosecutions would clearly benefit from an integrated approach. Transparency International believes that a coordinated approach to fraud, corruption and money laundering by an independent EU-level agency has the potential to increase the number of successful investigations and prosecutions across the EU, which would result in more justice, equality and accountability for citizens across the Union.

Status Quo:

In July 2013, the European Commission proposed the establishment of the European Public Prosecutor's Office (EPPO) and a reform of the European Union's judicial cooperation unit Eurojust to better fight fraud and to make prosecution across the Union more effective. The UK, Ireland and Denmark have opted out, while the support of the remaining EU Member States is not yet secured. However, France and Germany as well as some newer EU member states support the establishment. The Commission's proposal has received a critical response from many national parliaments, who expressed strong reservations about the proposal and its compliance with the subsidiarity principle by making use of the 'yellow card' procedure, which forced the European Commission to review its legislative proposal. However, the EC decided to maintain the proposal and declared that it did not breach the subsidiarity principle since the EPPO would be part of the different national justice systems through embedded nationally delegated, 'double-hatted' prosecutors.¹ Specifically, the EPPO will be headed by a European Public Prosecutor and its investigations will in principle be

¹ The European Delegated Prosecutors will be an integral part of the EPPO but also continue to exercise their functions as national prosecutors.

carried out by European Delegated Prosecutors who are located in each Member State. The exact number of these Delegated Prosecutors will be left up to Member States, but they should have at least one each.

In February 2014 both the Legal Affairs Committee and the Budget Control Committee of the European Parliament adopted their opinions which fully backed the Commission's proposal. A Franco-German ministerial meeting also resulted in a [joint declaration in support of the EPPO](#). The Greek Presidency devoted a lot of attention to this file, [focusing on the structure and powers of the EPPO](#), and achieved significant progress including general agreement by the Justice and Home Affairs Council on revised provisions in these respects. The Italian Presidency then signaled its intention to steer ongoing review of the proposal around the issues of judicial control and review, and on the admissibility of evidence collected by the EPPO in national courts. At the European Council on 26-27 June, 2014 Heads of State called on EU institutions and member states to move forward with discussions on the EPPO in its [strategic guidelines for the next EU legislative period](#).

Discussions under the aegis of the Italian Presidency commenced immediately and focused mainly on the concept of a single legal area, procedural safeguards, the independence of the office and the role of the EPPO in supervising national prosecutors. While these constructive discussions resulted in critical progress for this file various issues (such as the independence and accountability of the EPPO) remain on the table for the Latvian Presidency.

Recommendations:

Latvia should leverage its role at the helm of the Council to work with all EU member states towards the required unanimous Council adoption of the proposal. Transparency International recommends that Latvia steers discussions with all EU member states with a view to jointly strengthening the legal set-up in the EU in order to catalyse the momentum for the fight against fraud, corruption and money-laundering. To fight these crimes more effectively, it will also be crucial for the Latvian Presidency to ensure the independence of the EPPO from EU and national institutions. To enhance efficiency in the investigation and prosecution across Europe, the mandate of the EPPO should be robust and include serious cross-border corruption, as stipulated in Art. 86 (IV) of the [Lisbon Treaty](#). Finally, the Latvian Presidency should work towards full respect for fundamental rights, including the right to be heard before a court and the right to a fair trial.

2. Protection of the EU's financial interests – Directive on the fight against fraud to the Union's financial interests by means of criminal law

Problem:

According to the 2014 European Commission [Report on the protection of the EU's financial interests](#) suspected fraud and related illegal activities amount to more than € 300 million annually despite the legal framework that is currently in place. Particularly in times of austerity and fiscal consolidation this drain on taxpayers' money actually erodes the EU's ability to improve the lives of its citizens through the generation of jobs and growth. There is currently a patchwork of diverging rules and definitions across the Union, which in practice means differing levels of protection for the EU budget across EU member states. While the offense of fraud itself is defined in different forms of legislation, the accompanying sanctions also vary widely, with maximum sentences ranging from six months to twelve years. This uneven playing field greatly hampers the EU in protecting its money and actually induces criminal networks towards "jurisdiction shopping". Perhaps most importantly, the credibility

of the EU and that of its institutions will continue to be undermined by these illegal activities until the EU will be able to protect its own money. This state of affairs clearly calls for equivalent protection of the EU's financial interest and effective deterrents to such crimes, at EU level and across all Member States.

Status Quo:

In July 2012 the European Commission published a proposal for [a directive on the fight against fraud to the Union's financial interests by means of criminal law](#) (PIF Directive, see the Commission's Press release [here](#)). The purpose of this directive is to move the basis for criminal laws to protect the financial interests of the EU from the 1995 PIF Convention to a basis under the provisions of the Lisbon treaty. Once adopted, the 2012 Directive will replace the 1995 PIF Convention and provide a legal basis for the EU to legislate on fraud and related crimes that harm the Union's financial interests.

The special significance of this proposal is that article 86 TFEU also provides for the establishment of the European Public Prosecutor's office (EPPO,) which would be responsible for the investigation and prosecution of offences against the Union's financial interests. However, article 2 of the EPPO regulation refers to "criminal offences affecting the financial interests of the Union means criminal offences *as defined in the PIF Directive*", which means that the EPPO cannot effectively be established until the PIF Directive is adopted.

Within the Council, the working party on procedural criminal law met several times [between October 2012 and January 2013](#) to discuss the proposal. Following lengthy negotiations at working group, counsellor and COREPER level, member states [agreed on a general approach](#) at the Justice and Home Affairs Council on June 6, 2013. The European Parliament adopted its report on the PIF Directive on April 16, 2014.

The Italian Presidency initiated discussions as soon as the EP had appointed the two rapporteurs for this file in September. Several working level meetings then fed into a compromise proposal that the Presidency circulated to prepare the trialogue negotiations, which commenced in October 2014. During the trialogues some progress was made but it soon became apparent that the EP and the Council were not able to overcome their differences with regards to whether or not to exclude VAT-fraud and public procurement fraud from the scope of the Directive. The exclusion of revenues arising from VAT from the scope of this directive has proven to be a severely contested issue on which, despite lengthy discussions in working parties and during trialogues, the parties were not able to reach an agreement. There is now a real risk that adoption of this directive may be considerably delayed since no possible solution or basis for compromise with regard to VAT has been identified.

Recommendations:

It is imperative that the Latvian Presidency overcomes the deadlock in the trialogues and pushes for a speedy adoption of the PIF directive, as it is intrinsically linked to the establishment of the

European Public Prosecutor's Office. Any delay in the adoption of the PIF directive would come at the expense of the European tax payer, whose money remains at severe risk of fraud and related crimes such as corruption and money-laundering.

3. Free Trade free from Corruption – Anti-Corruption provisions in the Transatlantic Trade and Investment Partnership

Problem:

The EU and the US are currently in negotiations to establish a Transatlantic Trade and Investment Partnership (TTIP), an accord that would be the largest bilateral trade agreement ever negotiated. Corruption and bribery affect competition and investment flows and the TTIP provides both the US administration and the EU with a unique platform to combat bribery, secret dealings and the abuse of power for private gain. However, recent free trade agreements that the EU has finalised have limited themselves to provisions relating to transparency of regulatory and procurement procedures but did not contain specific anti-corruption provisions that are a [standard feature of recent US trade agreements](#). There is also widespread concern among civil society about the general [lack of transparency](#) in the ongoing negotiations.

Status Quo:

The US government has made the conclusion of a free trade agreement with the EU one of [the core economic priorities of Obama's second term](#) (a trade deal with Asia is being discussed separately). In February 2013 US President Obama and EC President Barroso announced the launch of negotiations for a free trade agreement between the US and the EU in an effort to overcome non-tariff barriers to bilateral trade and investment. The European Parliament voiced its support for TTIP via its [resolution in May 2013](#). EU Member states approved the mandate and authorised the European Commission to negotiate on behalf of the EU at the [Foreign Affairs Council in June 2013](#).

The first round of consultations took place in Washington in July 2013 and lasted one week. In January 2014, following severe public criticism of the proposed Investor-State Dispute Settlement mechanism, the European Commission halted the negotiations [and launched a public consultation](#) on this aspect of TTIP. While the Commission usually only allows three months for a public consultation the deadline to submit to this [consultation was extended](#) to June 13 due to the high interest and overall number of submissions.

An informal meeting of the Trade Policy Committee took place under the aegis of the Greek Presidency [in Athens on March 27, 2014](#). Continuation of the TTIP negotiations featured prominently on the [agenda of the Italian Presidency](#), which saw the sixth and seventh negotiating rounds taking place under its aegis. Notably, at the request of the Italian Presidency, Member States in the Council agreed by common accord to publish the negotiating mandate of the TTIP. However, there has not been any tangible progress on the inclusion of an anti-corruption chapter in the TTIP.

The Latvian Presidency has stated in its [work programme](#) that it considers TTIP as one of the top priorities in the area of the EU's bilateral trade. The heading of "Engaged Europe" within the work programme also includes a commitment towards strengthening the transatlantic partnership by

making all efforts to conclude negotiations on an ambitious, comprehensive and mutually beneficial TTIP by the end of 2015.

The role of the Council of the European Union:

The Directorate General Trade of the European Commission is tasked with drafting the mandate for negotiation in consultation with other DGs and forwards its proposal to the college of commissioners. The proposed mandate is then scrutinised in the Council of Ministers by the Trade Policy Committeeⁱ which may amend the mandate before it goes to ambassador level (COREPER). Finally, the Foreign Affairs Council (FAC) votes on the proposal and authorises the Commission to initiate negotiations on behalf of the EU.

As the initiating institution the European Commission has to keep the other two institutions of the legislative triangle informed about the progress. To that end it reports regularly to the European Parliament's Committee on International Trade (INTA) and to the Council's Trade Policy Committee (TPC).ⁱⁱ The TPC is regularly consulted by the Commission, assists it in the negotiations and plays a crucial role in the policy-making process. The TPC acts as a sounding board for the Commission's initiatives and enables member states to monitor whether the European Commission fulfils its negotiating mandate.ⁱⁱⁱ In order to complete a trade agreement the consent of both the European Parliament (single vote based on INTA recommendation) and the Council of Ministers (Foreign Affairs Council) is required. The FAC concludes trade agreements by adopting a decision by qualified majority.^{iv}

Recommendations:

The Transatlantic Trade and Investment Partnership should include strong anti-corruption and legal and regulatory transparency requirements in order to achieve the highest level of commitment to government transparency and combating corruption. As outlined in a [letter from TI EU to Trade Commissioner De Gucht](#) in March 2014, such provisions would have the potential to raise the standard of anti-corruption and transparency rules in other bilateral, regional and multilateral trade and investment agreements as well. The Latvian Presidency should use its chairmanship of the TPC to ensure that it scrutinises the Commission's progress in the negotiations with a view to including the strongest anti-corruption requirements in TTIP. Inclusion of robust anti-corruption provisions in such a major trade and investment accord would send a strong message to the rest of the world and set a benchmark for future trade and investment agreements. To ensure meaningful public scrutiny Latvia should continue to encourage a highly transparent negotiating process.

4. Enhancing corporate transparency – Tax Transparency

Problem:

Most companies continue to reveal too little about their financial payments to governments on a country-by-country basis. This means that for the most part, large public companies are not doing enough to foster the transparency and accountability that are needed to ward off corruption. Recent scandals have shown that multinational companies are using complex and opaque structures to avoid paying tax. TI's [Transparency in Corporate Reporting](#) assessment found that ninety of the 124

companies assessed do not disclose the taxes they pay in foreign countries. By adopting greater corporate transparency – publicly reporting on activities and operations – companies provide the necessary information for investors, journalists, activists and citizens to monitor their behaviour. Multinationals operate through networks of related entities incorporated under diverse legislation but that are inter-related through myriad legal and business connections. Without transparency, many of these are almost impossible to trace. Reporting on anti-corruption programmes, organisational transparency and country-by-country reporting gives a clear and comprehensive picture of a company's operations, revenues, profits and taxation. While even good reporting cannot ensure good company behaviour, it is an indication of commitment, awareness and action. It also enables wrongdoing or misinformation to be more readily uncovered. Ultimately, companies with a good track record of reporting on their anti-corruption programmes and global activities are more likely to be part of the solution than the problem.

Status Quo:

On 18 February 2015, the European Commission announced two Tax Transparency packages to be presented in March and June. The March package is expected to include a legislative proposal for the automatic exchange of information on tax rulings. In December the European Commission stated in its work programme that it would clamp down on tax evasion and tax avoidance, to ensure that taxes are paid in the country where profits are generated. No commitments have been made so far for country-by-country reporting.

Reporting requirements are already in place for oil, gas, mining and logging companies, which will be obliged to disclose financial data for each country and project from July 2015 under the revised Accounting and Transparency Directives. Financial institutions also have to disclose financial information for each country under the Capital Requirements Directive IV from January 2015. In 2018 the EU is due to discuss the extension of country-by-country reporting rules to all sectors of the economy.

Most recently, in February 2015 members of the European Parliament Legal Affairs Committee (JURI) tabled amendments to the "Shareholders Rights Directive" requiring all listed and large undertakings to disclose financial data on a country-by-country basis. The JURI committee is expected to vote on these amendments on 23 March.

Recommendations:

The Latvian Presidency should promote country-by-country reporting in the EU Council, and coordinate a formal Council response to the European Commission's Tax Transparency Package. The Council response should provide political support for a European Commission proposal on public country-by-country reporting by 2016. The Latvian Presidency should encourage EU Council support for rules that require all listed companies and large undertakings based in the EU to disclose details of revenues, sales, profits, taxes paid, political party contributions and other community contributions for every country in which they operate around the world.²

² See TI's blog post on country-by-country reporting: <http://www.transparencyinternational.eu/2015/01/how-country-by-country-reporting-could-have-made-lux-leaks-unnecessary/>

5. Better lobby regulations - Inter-institutional Agreement for a mandatory lobby register

Problem: Lobbying activities and influence at the EU level need to be made more transparent. There are around 25,000-30,000 lobbyists in Brussels, targeting the European Institutions to influence legislation. Many more lobby national governments in the capitals across Europe. For fair, open and transparent EU decision-making it is crucial that their influence is made public.

Status Quo:

When the Joint Transparency Register (JTR) was launched in June 2011, Transparency International welcomed this milestone, as it marked the first time that both the European Commission and the European Parliament had a shared register for organisations that were seeking to influence EU policy making by these institutions. Initially the Council stated that [it would consider](#) having a role in the Register. Since, Council has participated in the weekly meetings of the Joint Transparency Register Secretariat in an observer role, but it is still not an active participant in the Register. As laid down in the [inter-institutional agreement](#) between the EC and EP, a review of the JTR was initiated two years after its launch. This review was conducted by a working group of the EP Bureau and the EC and they published their [draft conclusions](#) on December 12, 2013. Amendments to the Agreement were then submitted to the Bureau of the European Parliament and to the College of Commissioners, and subsequently to the Parliaments Committee on Constitutional Affairs (AFCO) and plenary for approval. AFCO tabled [its report](#) on March 31, 2014 and the [revised text](#) was adopted in plenary on April 15, 2014.

Following the European elections and Juncker becoming new Commission President, the European Commission has included a proposal for a new Inter-Institutional Agreement for a mandatory lobby register in its [2015 work programme](#). The proposal would cover all three legislative institutions: Parliament, Council and Commission. Transparency International has welcomed this and other [recent transparency efforts](#) by the European Commission, particularly the publication of lobby meetings and the exclusion of meetings with unregistered lobbyists. TI also very much supports EC Vice President Frans Timmermans in his call that the other EU institutions follow the example of the European Commission. The example of the Commission shows that political will is more important than the legal instruments.

Recommendations:

Transparency International believes that a mandatory register for lobbyists – covering the European Parliament, the European Commission and the Council of Ministers – is an important and necessary tool to prevent undue influence and to strengthen EU citizens' trust in European institutions.

The European Commission transparency initiative and the proposal for a new Inter-Institutional Agreement provide the Council with a renewed opportunity to decide to join the Transparency Register. The Latvian Presidency should leverage its leading position to push for such a move. Council should aim to include EU-related lobbying of member states' officials, in particular towards current and upcoming Presidencies, into the scope of the register.

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This project has been funded with support from the European Commission. This publication reflects the views only of the author, and the European commission cannot be held responsible for any use which may be made of the information contained therein.



With financial support from the Prevention of and Fight against Crime Programme
European Commission - Directorate-General Home Affairs

ⁱ The Trade Policy Committee in the Council of Ministers assists the European Commission in the negotiations for trade agreements and advises the Commission on commercial policy. It is composed of senior trade officials from each member state and the Commission and chaired by the delegate of the Member State that holds the Presidency.

ⁱⁱ see for example the [Commission's letter](#) to the Trade Policy Committee ahead of the first round of negotiations

ⁱⁱⁱ Other TTIP-relevant Council bodies besides the Trade Policy Committee are the Working Party on Trade Questions, the Working Party on Commodities, the Working Party on the Generalized System of Preferences, the Export Credits Group, the Working Group on Dual-Use goods and the Working Party on Transatlantic Relations. The full list of Council preparatory bodies is available here: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%205312%202014%20INIT>

^{iv} For more detailed information on the process consult *The European Union's Trade Policy* by Sieglinde Gstöhl: http://www.ritsumei.ac.jp/acd/re/k-rsc/ras/04_publications/ria_en/11_01.pdf