

## **Position Paper: The Italian Presidency of the Council of the European Union**

### **1. Preface**

The second half of 2014 is a critical juncture for the European Union. The European elections in May saw a disappointing voter turnout despite the novelty of the “Spitzenkandidaten” process, which was meant to personalise and democratise the selection of the President of the European Commission and lead to a higher voter turnout. Instead, participation in the EU elections stagnated at 43% and Eurosceptic parties performed well in a number of countries which can partly be seen as a reflection of citizens’ lack of trust in the EU and a growing dissatisfaction with the performance of the EU’s institutions.

Against the backdrop of these results it is clear that the EU faces a challenge to persuade people of its relevance and effectiveness. One of the ways to achieve that mission is by demonstrating accountability for political actions and by enabling those outside the “Brussels bubble” to understand how and why decisions are taken. Moreover, if this is to be successful it also needs to be complemented by member states that enact robust anti-corruption policies which protect citizen’s fundamental rights, create a level playing field and put in place credible sanctions for those who engage in illegal and corrupt practices. Ultimately, curbing corruption can be a driver for economic growth. As the Italian Presidency is placing growth and employment “at the centre of European policies”, it should recognise that addressing corruption would increase investment and improve confidence in the business environment, thereby helping to create jobs.

The Italian Presidency is responsible for chairing the Council of Ministers at a transitional moment for the EU. Italy’s Presidency is also the first segment of the upcoming Presidency trio programme (Italy, Latvia, Luxembourg) In this context Italy’s Presidency is a unique opportunity to firmly anchor transparency and anti-corruption onto the political agenda at EU level for years to come. To this end, Transparency International has identified four legislative files that will be on the Council agenda in the next six months and should be a priority for the Italian Presidency and the other member states in the Council.

### **2. Context - Anti-Corruption in Italy & the EU**

Italy is still reverberating from the recession and restrictive measures that were enacted in response to the economic crisis. Aside from the political impact of effecting a change of government which brought Prime Minister Matteo Renzi into office, this critical period was characterised by the forced closure of many SMEs and demanded many sacrifices from the Italian people. At the same time a cascade of high level corruption scandals continued to undermine people’s trust in politics. Most recently two of the major infrastructure projects in Italy, the EXPO 2015 in Milan<sup>i</sup> and the “MOSE” dam in Venice<sup>ii</sup>, have been tarnished by alleged cases of corruption involving bid rigging practices in public tenders.

According to the [2014 Edelman Trust Barometer](#) the percentage of Italians that trust business, media and non-governmental organisations decreased from 51% in 2013 to just 43% in 2014. The level of trust in Italy’s government actually saw the largest drop of all 27 nations surveyed and arrived at an all-time low of 24% (down from 35% in 2013). This lack of trust is further compounded

by widespread doubts on whether the government's efforts to curb corruption are effective: the [2013 Global Corruption Barometer](#) revealed that currently only 14% of Italians agree that the government is fulfilling its anti-corruption obligations in a credible.

The European Commission's [2014 special Eurobarometer on corruption](#) revealed further disconcerting data: more than a half of all Italians (58%) think that corruption is widespread in their country (compared with a European average of 39%), almost half (49%) believe that corruption is part of the business culture in the country and almost three quarters (74%) of those polled perceived corruption to actually have increased in the last three years. At the same time, the survey acknowledges that corruption is not exclusively a problem of national institutions but, according to 70% of European citizens, also affects EU institutions.

Against this background, the Transparency International EU Office released an assessment of corruption risks in the EU institutions - the [EU Integrity System Report](#) - in April 2014. This report finds that despite recent progress regarding EU-level anti-corruption safeguards, e.g. on internal financial controls, the institutions remain vulnerable to corruption through a combination of complex rules, complacent monitoring and a lack of follow-up on suspected wrongdoing. In particular, systemic risks are identified which relate to opaque decision-making and lobbying at the EU-level, poor management of conflicts of interests, weaknesses in whistle-blower protection and in the mechanisms to protect EU contracts from corrupt companies. Furthermore, problems are underlined regarding how well member states follow-up suspected fraud against EU funds.

In February 2014 the European Commission after much delay finally published its own [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 Italy in the report points out, more than 30 former Italian MPs have been or are currently being investigated for corruption-related offences or illegal party financing. In addition, criminal investigations and pre-trial arrests of several regional politicians were reported in almost half of the 20 Italian regions for 2012 (see the chapter on Italy [here](#)).

The report identifies systematic failures to address conflicts of interest between politicians and business, particularly in party financing, public contracting and revolving doors between government and industry. Crucially, the report also illustrates that the nature and levels of corruption, and the effectiveness of measures taken to fight it, vary dramatically from one Member State to another. It confirms Transparency International's [findings from two years ago](#) that across the EU there are systematic corruption risks and governance failings in such areas as party financing and whistleblower protection. While its' overarching theme is that corruption remains a serious problem and therefore deserves greater attention from all EU Member States it also conveys the message that there is a clear need to translate principle into practice.

While the above facts illustrate the urgency to act in their own right, the most compelling argument for why corruption needs to be addressed under the Italian Presidency relates to its economic dimension: in addition to the €120 billion that is lost to corruption in the EU every year, studies have shown that there is a [correlation between economic performance and corruption](#). Corruption distorts markets, lowers domestic and foreign direct investment and it also [creates socio-political instability](#) which leads to uncertainty that further lowers productivity and economic growth.

Conversely, curbing corruption and addressing increasing integrity can be a critical factor for achieving economic growth, which is the [core priority of the Italian Presidency](#).<sup>iii</sup>

At national level, the Italian supreme Audit Institution puts the annual cost of corruption and related phenomena (such as the cost of delays, price inflation and loss of private investment) in Italy at € 60 billion.<sup>iv</sup> These numbers demonstrate that for Italy and Europe, the fight against corruption is inseparable from the economic agenda. Growth and employment are among the top priorities of European policies and of the Italian Presidency. Transparency International therefore calls on the Italian 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 second half of 2014.

### 3. Key Anti-Corruption files for the Italian Presidency

#### 1. Clean financial flows in the EU – the 4th Anti-Money Laundering Directive

##### Problem:

Corruption around the world is facilitated by people's ability to launder and hide the proceeds of corruption. All too often dirty money finds its way into [EU banks](#) and financial centres, undermining governance standards, distorting the economy and fostering corruption and other crimes. Moreover, illicit financial flows to the EU also deprive developing countries of public revenues, far exceeding the amount of EU development assistance.<sup>v</sup>

##### Status Quo:

The EU is currently reviewing its 3<sup>rd</sup> Anti-Money Laundering Directive (AMLD). The European Commission published its proposal in February 2013, after which the file went into first reading by the European Parliament and Council. Several delays were experienced due to procedural changes and divisions among MEPs and Member States. The adoption of the Council general approach was [scheduled for May 2014](#), and was finally agreed in June 2014 [under the Greek Presidency](#). The Italian Presidency expects the AMLD proposal to enter into trialogue negotiations in October and aims to finalise this file by the end of the year. Provisions for the regulation of beneficial ownership transparency have been especially difficult to agree and will remain contested during the upcoming negotiations. While the [European Parliament overwhelmingly supports public disclosure](#) of beneficial ownership information several Member States have voiced [opposition to such public registers](#).<sup>vi</sup> The Italian government is considered to be supportive of public registers of beneficial ownership, and the file is highlighted in their [official work programme](#).

##### Recommendations:

The Italian Presidency should steer discussions between the Council, Parliament and the Commission towards an ambitious agreement on beneficial ownership transparency for the AMLD. The Presidency should seek to achieve a consensus on establishing mandatory EU-wide public registers of beneficial ownership information as part of the final directive. Beneficial ownership information

should be provided by companies, trusts and other legal structures in the EU and be available in public registers in open-data format. Such ownership transparency would aid law enforcement in investigations, help banks to carry out their due diligence procedures, give valuable information to companies on who they are doing business with and enable civil society to scrutinise the information for irregularities. Furthermore, an ambitious AMLD could set new global standards and place the EU at the forefront of the fight against financial crime.

## **2. 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 are progressively becoming 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. 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, upon which 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.<sup>1</sup> Specifically, the EPPO will be headed by a European Public Prosecutor and its investigations will in principle be 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.

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

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. It is notable that heads of state at the European Council on 26-27 June 2014 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](#).

#### Recommendations:

Italy 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 Italy 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 Italian 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 [Treaty on the Functioning of the EU](#). Finally, the Italian 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.

### **3. 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 2013 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:

The [Convention for the protection of the financial interests of the European Communities](#) (PIF Convention) was signed in 1995 and subsequently ratified by almost all EU member states. Additional EU criminal law measures for the fight against activities harmful to the EU economy (such as corruption and money laundering) complement the EU Anti-Fraud framework.

In September 2011 the European Commission published a communication (“[Towards a European criminal policy](#)”) and commissioned a [Thomson Reuters study](#) on this topic. The ensuing consultations with criminal law academics, the European Parliament’s LIBE Committee and Member States’ prosecution services revealed the underlying weaknesses of the existing legal framework for the protection of the Union’s budget. During these consultations the experts stressed that EU criminal law should only be developed as far as necessary and proportionate with due regard for the principles of subsidiarity and proportionality, while respecting the civil liberties and fundamental rights of future suspects and accused citizens. 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 Directive is now set to enter trilogue negotiations during the Italian Presidency.

### Recommendations:

It is imperative that the Italian Presidency push 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. Due to the unusually short timeframe of the Italian semester this is an ambitious schedule, but the Italian ministry of justice has indicated that this is a priority for the Italian presidency.<sup>vii</sup>

#### **4. 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 an EU-US Free Trade Agreement (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 features prominently on the [indicative agenda for Council meetings](#) during the second half of 2014, which was supplied by the General Secretariat of the Council. TTIP also features prominently on the [agenda of the Italian Presidency](#), which states that Italy will give “particular attention to encourage concrete results in the TTIP negotiations” (p.26) and that the Presidency will accord special priority due to its “positive short and medium-term impact on EU competitiveness” (p.49).

##### 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 Committee<sup>viii</sup> 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).<sup>ix</sup> 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.<sup>x</sup> 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.<sup>xi</sup>

#### 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 Italian 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. Furthermore, since the standards and regulations that will be adjusted in TTIP affect many aspects of citizens' daily lives, member states should open the negotiation process to the public. To enable meaningful public scrutiny Italy should encourage a highly transparent negotiating process. Publication of the negotiation mandate is a necessary first step in this regard.



**For more information please contact:**

Jonny Koerner  
Project Coordinator  
Transparency International  
Liaison Office to the EU  
Rue de l'Industrie 10  
B-1000 Brussels (Belgium)  
Phone +32 2 28 93 2463  
Email: [jkoerner@transparency.org](mailto:jkoerner@transparency.org)

Chiara Putaturo  
Project Coordinator  
Transparency International  
Italy  
Via Zamagna 19  
20148 Milano  
Phone: +39 0240093560  
Email: [info@transparency.it](mailto:info@transparency.it)

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<sup>i</sup> Guy Dinmore, *Politicians and executives with links to Expo 2015 arrested*, The Financial Times, 8th May 2014

<sup>ii</sup> Rachel Sanderson, *Venice mayor Giorgio Orsoni arrested on bribery charges over dam*, The Financial Times, 4th June 2014

<sup>iii</sup> Corruption has serious impacts on both society and the economy: It undermines the rule of law and erodes trust in public institutions. Estimates by the EC put the monetary cost of corruption at 120 billion Euros per year, which is almost the equivalent of the entire annual budget of the EU. While the financial crisis has put a renewed emphasis on protecting the EU budget and on ensuring that taxpayers' money is not wasted through corruption and other illicit activities, these numbers demonstrate that the problem of corruption is simply too costly to be ignored.

<sup>iv</sup> Joint Sections of the Court of Auditors, written memory of the Attorney General at the Court of Auditors, Dr. Furio Pasqualucci in the examination of the Report of the State for the year 2008, Rome, June 17, 2009, page 236 et seq.

<sup>v</sup> In 2011, the developing world lost over US \$946 billion in illicit outflows (Global Financial Integrity, "Illicit financial flows from Developing Countries: 2002-2011" 2013) while in the same year the Official Development Assistance to developing countries was 141 billion \$ (OECD statistics, 2014).

<sup>vi</sup> The division of Member States was on display at the ECOFIN Council on November 15, 2013. Watch the video here: <http://video.consilium.europa.eu/webcast.aspx?ticket=775-979-13671>

<sup>vii</sup> This was stated during an interview that Transparency International conducted with the Ministry of Justice in Rome on June 18, 2014.

<sup>viii</sup> 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.

<sup>ix</sup> see for example the [Commission's letter](#) to the Trade Policy Committee ahead of the first round of negotiations

<sup>x</sup> 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>

<sup>xi</sup> 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](http://www.ritsumei.ac.jp/acd/re/k-rsc/ras/04_publications/ria_en/11_01.pdf)