



EU PRESIDENCY ANTI-CORRUPTION SCORECARD

An assessment of the transparency and accountability of the Italian Presidency and of the progress on key anti-corruption issues in the Council of the European Union

Transparency International (TI) is the leading civil society organisation in the fight against corruption and in the promotion of integrity, transparency and accountability around the world. Through more than 100 chapters worldwide TI works with partners in government, business and civil society to put effective measures into place to tackle corruption.

Transparency International EU Office (TI-EU) is the EU liaison office for the Transparency International Secretariat. It is the mission of TI EU to prevent and address corruption and promote integrity, transparency and accountability in the EU's internal and external policies, programmes and legislation.

Transparency International Italy (TI-Italy) was founded in 1996 in Milan. Its aim is to prevent and fight corruption in all its forms through analysis of the phenomenon of corruption, awareness raising in young people and adults and through elaboration of anti-corruption instruments in the public and private sector.

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FOREWORD

The Italian Presidency of the Council of the EU took over the reins at a critical moment, just after European elections that were hailed as an “end to backroom deals” because they enabled European citizens to have a say in who would become the new President of the European Commission. That election did indeed see Jean-Claude Juncker elevated to Commission President as the lead candidate of the political group that received the greatest share of votes, albeit in the context of low voter turnout and an upsurge in support for Eurosceptic parties.

These elections placed a significant time constraint on the Italian Presidency, which had to work with a group of newly elected MEPs and a Commission College that was only approved by the European Parliament at the end of October. This meant that in the Parliament many legislative dossiers were effectively put on hold until September while new committees were constituted and new rapporteurs appointed.

Nevertheless, the Presidency was able to successfully overcome these constraints. In addition, it efficiently provided timely information on all its activities. Coupled with a special initiative for the involvement of stakeholders in the drafting of the Presidency priorities, this enabled the public to meaningfully contribute to the discussions. The very cooperative attitude of the Italian Presidency Office in our

assessment mirrored this drive to constructively involve civil society on all fronts.

The Italian Presidency also prioritised all the key anti-corruption dossiers that we had identified in our position paper published in July 2014. As a result, the Italian Presidency managed to achieve a compromise on the Anti-Money Laundering Directive by which EU governments agreed to create centralised registers of beneficial ownership for companies. While these registers are not public, they can be accessed by members of the public, NGOs and journalists who can prove a legitimate interest, and so mark a step forward in the fight against corruption. The Presidency also made significant progress on the establishment of the European Public Prosecutor, a special legislative initiative that has been under discussion since 2012. In line with the Presidency's stated objective of taking strides towards the conclusion of an EU-US Free Trade Agreement Italy managed to push the publication of the TTIP negotiating mandate through the Council. Though the declassification of this document can be seen as a largely symbolic step, it certainly reflects Prime Minister Matteo Renzi's personal commitment to "total and open transparency".

However, despite this strong performance the picture that emerges is not all rosy: When it came to financial accountability the Italian Presidency failed to publish a detailed budget before the start of its Presidency and only

published a more detailed budget subsequent to an official request for this document. On the legislative front, the negotiations for the Directive on the fight against fraud to the Union's financial interests by means of criminal law (a directive which will define the types of crimes that fall under the competence of the European Public Prosecutor) have stalled and there is now a considerable risk that adoption of this Directive will be delayed until a new basis for compromise is agreed by EU Member States in the Council.

The Italian Presidency also saw the new Juncker Commission assume office on November 1, which was quickly accompanied by a new transparency initiative. Since December, meetings between lobbyists, Commissioners and senior officials have been published on the Commission website. Transparency and anti-corruption are also priorities at the European Parliament, which formally established an intergroup on integrity, transparency, anti-corruption and organised crime in December 2014.

These developments support the notion that transparency is increasingly on the agenda of the EU legislative institutions. In contrast the Council of the EU, the third institution of the EU legislative triangle, does not have the best track record of ensuring transparency in its proceedings. Our own study on the integrity of EU institutions identified weaknesses such as the absence of common integrity rules

and sanctioning mechanisms for national representatives and a lack of internal whistleblowing provisions. Crucially, the triologue negotiations continue to take place largely in secret and the broader public is often completely oblivious to the contribution of their government to EU legislation.

This Scorecard attempts to remedy this transparency deficit. It aims to do so by shedding some light on the process, with a focus on key anticorruption issues that were

discussed under the Italian Presidency. As our assessment shows, while Member States in the Council made progress on a number of fronts, much indeed remains to be done and governments need to seriously commit to tackle corruption as part of the Council of the European Union. The Italian Presidency made great strides in this regard and it is now up to Latvia and Luxembourg to continue to advance the transparency and anti-corruption agenda as part of the Presidency trio in 2015.

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WHAT IS THE SCORECARD? WHY PUBLISH A SCORECARD?

This Scorecard evaluates the transparency and accountability of the Presidency of the Council of the European Union (“EU Council”) and the anti-corruption track-record of Member States acting as part of the EU Council. It provides an assessment of their performance on a selection of key anti-corruption topics in the course of any Presidency. The assessment is divided into three parts: Pillar I evaluates the transparency of the preparations for the Presidency by the government and administration of the country that holds the rotating EU Presidency. Pillar II evaluates the accountability of these actors during the Presidency. Pillar III evaluates how the Presidency prioritized key anti-corruption issues and how much progress member states made with regard to the selected issue in the EU Council. The Scorecard is based on research by the Transparency International EU Office and Transparency International Italy and on-going monitoring of developments in the EU Council. This assessment is carried out biannually for the precedent (Lithuania and Greece) and subsequent Presidencies (Latvia) and is used as a tool to evaluate member states’ track records and commitment to the anti-corruption agenda at national and EU level.

The ability to hold governments to account for the commitments they make at EU level is a crucial aspect of the fight against corruption. The EU Council represents Member States and is one of the most powerful institutional actors in the EU legislative triangle, which also includes the European Parliament and European Commission. Yet the Council also remains the least accessible institution for civil society. This state of affairs contributes to the lack of transparency in the EU decision making process. By providing an independent assessment of the consistency of member states’ approach to transparency, integrity and anti-corruption measures, this scorecard helps to hold governments accountable for their track record.

KEY FINDINGS

1. The Presidency was very efficient in communicating events through a comprehensive and user-friendly website as well as a detailed section devoted to other institutional events.
2. It was possible for civil society to participate in open events and a specific initiative for the involvement of stakeholders in drafting the Presidency priorities was organised far in advance of the Presidency.
3. There was a gap in budgetary and expense information on the official Presidency website which was partially closed after the end of the Presidency. Inconsistencies were partly due to the fact that two different government bodies shared responsibility for the Presidency.
4. The Presidency team was very cooperative and made efforts to ensure that budgetary information was more transparent and accessible.
5. The Italian Presidency prioritised all four issues that had a relevant anti-corruption dimension during its time at the helm of the EU.
6. While the Italian Presidency was efficient in prioritising files that had a relevant anti-corruption dimension, Member States in the

Council were less eager to capitalise on the opportunities that the semester offered: The AML Directive establishes central registries of beneficial ownership for companies, but Member States have restricted access to the public and refused access entirely to information on the ownership of entities other than companies; progress on the PIF Directive seems to have stalled and a compromise on the scope of the Directive is currently far out of sight.

7. Substantial progress was made on the proposal for the establishment of the European Public Prosecutor despite outright opposition by some Member States.
8. Despite the European Commission’s transparency offensive with regards to the Transatlantic Trade and Investment Partnership there has been no progress on the inclusion of an anti-corruption chapter in the agreement and the Council failed to publish any documents from the meetings of the relevant working group (the Trade Policy Committee).

METHODOLOGY

Pillar I evaluates access to information and budget transparency. Each aspect is assessed in two steps: One Yes/No question and one corresponding nominal question.

Pillar II evaluates whether stakeholders were able to contribute to the discussion and how the money was spent during the Presidency. Each aspect is assessed in two steps: One Yes/No question and one corresponding nominal question. The answers were categorized according to a traffic light system:

Evaluation process	Type of scale			
Step 1	No / Yes	No		Yes
Step 2	Low / High	Low	Neutral	High

Pillar III evaluates the progress of the key anti-corruption issues. The selection of the key anti-corruption issues that are assessed is based on a specific set of indicators: The selected issues fall within the areas where the EU has the legal competence to act and they are at relevant stage in the legislative cycle. The issues relate to the movement's broader advocacy goals as elaborated in the TI 2015 Strategy and cover the sectors that have been identified as the weakest and most problematic in the fight against corruption.

Each issue is assessed by two aspects: If the

Presidency prioritized the issue and how much progress was made in the Council of the EU with respect to key anti-corruption or transparency reforms. The answers to these questions were categorized according to a traffic light system where the following ratings apply:

- **Red** – The issue was not a priority for the Presidency / there was no progress in the Council and/or TI's recommendations were not taken on board.

- **Yellow** – The issue was a medium priority for the Presidency/ there was only been some progress in the Council and/or many of TI's recommendations were not included in the directive.

- **Green** – The issue was a high priority for the Presidency/The Council has made substantial progress on the issue and/or TI's main recommendations were included in the adopted text.

Our assessments are based on publicly available information and on documents which are subject to EU rules on access to documents. The methodology was developed in consultation with EY.

Comments on the approach taken are welcome as we continually seek to refine our methodology.

SCORECARD

PILLAR I – PREPARATION OF THE PRESIDENCY

1.1 Access to information / Justification of Presidency Agenda

1.1.1 Is information about the goal of Presidency publicly accessible?

Why is this important?

The earlier the preliminary goals of the Presidency are known publicly, the easier it is for stakeholders to contribute to the discussion of the issues.

Results:

- While programmatic lines were known beforehand, the official programme of the Italian Presidency was published on July 2, 2014 after the official presentation by the Italian Prime Minister.
- The comprehensive and user-friendly website was launched one month before the start of the Presidency.
- A specific initiative for the involvement of stakeholders in drafting the Presidency priorities took place in 2012 and a competition for the design of the Presidency logo was organised in 2014.



1.1.2 Were the goals of the presidency aligned with National and EU Agendas?

Why is this important?

A strong divergence between the goals of the Presidency and the priorities of national and European agendas could indicate that various interest groups exerted undue influence in the planning stage.

Results:

- The Italian Presidency goals were well rooted in the Trio Programme, all topics were aligned with the agenda of the EU and its strategic framework.
- The goals of the Presidency refer to the Europe 2020 strategy and they were also consistent with national priorities.



1.2 Budget and expense justifications

1.2.1 Is information about the budget of the Presidency publicly available?

Why is this important?

By publishing the foreseen budget, the Presiding country ensures transparency and accountability for the planned expenses.

Results:

- A foreseen general budget of the Presidency was published on the Ministry of Foreign Affairs website but was not available on the official Presidency website until the end of January 2015.
- A request of access to information regarding a detailed budget was granted in a timely fashion by the Ministry of Foreign Affairs and the Prime Minister's Office.



1.2.2 How transparent is the Presidency budget?

Why is this important?

Only a budget with clear and precise disclosure of the expenses creates the conditions for public monitoring; if the information is not available in open data formats it severely hampers the public's ability to hold the government to account.

Results:

- A very general budget was published at the beginning of the Presidency as part of the budget of the Ministry of Foreign Affairs
- A more detailed budget with different categories, dated June 2014, was published in the specific section of the Ministry of Foreign Affairs subsequent to an official request for access to this document.



PILLAR II – ACCOUNTABILITY OF THE PRESIDENCY

2.1 Inclusiveness of stakeholders

2.1.1 Was it possible for stakeholders to contribute to the discussions? Why is this important? If the Presidency does not proactively provide public information about the main events and discussions the public is not able to contribute to the discussions.

Results:

- The majority of events of the Italian Presidency were published well in advance on the official Presidency website and included key information.
- A user-friendly search option allowed identification of events by type
- Stakeholders had the opportunity to sign up to attend subscribe to open events.
- The Presidency provided a comprehensive list of responsible staff for each issue.

2.1.2 How inclusive was the EU Presidency Process? Why is this important? The Presidency should make efforts to ensure that interested parties are able to engage and to contribute to the discussions in public events of the EU presidency.

Results:

- The official website of the Italian Presidency provided logistical details for all the public events, which made it possible for interested parties to be informed about the organization and the content of the events.
- It was always possible to find a contact or to subscribe to an event by email (with different levels of accuracy).

2.2 Management of expenses of the EU Presidency

2.2.1 Is information about the expenses and distribution of costs disclosed? Why is this important? By disclosing the actual budget, the Presidency ensures that it is transparent and accountable for the way that allocated money was spent.

Results:

- Some expenses were continuously published in different sections of the website of the Ministry of Foreign Affairs during the Presidency and in January 2015.
- A detailed budget was published on a specific section of the website of the Ministry of Foreign Affairs on February 10, 2015.
- During the Presidency these documents were not very easy to find for ordinary citizens and no direct link was provided on the official Presidency website.

2.2.2 How transparent and how well disclosed are the expenses of the EU Presidency? Why is this important? Only a budget with clear and precise disclosure of the expenses creates the conditions for public scrutiny. If the information is not available in open data formats it severely hampers the public's ability to hold the government to account.

Results:

- The budget is in open data format and provides a clear comparison with the provisional budget.
- While some very detailed expenses are provided it is not possible to establish a direct correspondence with the budget lines.

PILLAR III – KEY ANTI-CORRUPTION FILES

Key Issue:	Why is this important?
Anti-Money Laundering Directive	Money laundering enables the corrupt to legitimise the illegal, distorts economies and is a major obstacle to a stable EU internal market.
	What is the key recommendation?
	Member States should establish public registers of who ultimately controls and benefits from anonymous shell companies and other opaque legal structures to enable public scrutiny.

What priority was given the Anti-Money Laundering Directive?	<ul style="list-style-type: none">• The finalisation of the Anti-Money Laundering (AML) Directive was a priority for the Italian Presidency as stated in the work programme and by Minister Pier Carlo Padoan during his hearing at the European Parliament (EP).• The Italian Presidency organised four trialogue meetings to reach a compromise between the position of the EP and that of the Council.• In part due to Italy's leadership on the file, the Commission, the EP and the Council were able to agree on a compromise for the 4th AML Directive at the final trialogue meeting on December 16, 2014.
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What progress did the Council make?	<ul style="list-style-type: none">• The opposition of the Commission and Member States to public registers became clear during the first two trialogues.• After the third trialogue the Italian Presidency stated its concern that the momentum might slow down if a compromise was not reached by the end of the year.• In preparation for the final trialogue the Presidency circulated a compromise proposal to the Committee of Permanent Representatives• The parties reached a compromise during the final trialogue on December 16, 2014.• The compromise establishes centralised registers of beneficial ownership of companies that can be accessed by law enforcement and relevant government bodies (partial access will be available to the public, such as investigative journalists and civil society organisations, if they can prove a legitimate interest).• While the final compromise constitutes a landmark in the fight against money laundering, it falls short of full transparency of the real beneficial owners behind companies; and fails to cover all trusts.
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Key Issue: Why is this important?
Establishment of the European Public Prosecutor's Office (EPPO) Despite the loss of billions of Euros every year and the damage it causes to the EU's budget few cases of fraud and corruption are ever brought to justice in the 28 EU member states.
What is the key recommendation?
The European Prosecutor's Office (EPPO) should be provided with a broad mandate that includes serious EU crimes such as cross-border corruption and related financial crimes (fraud, money laundering, etc.).


What priority was given to the establishment of the EPPO?


- The Italian Presidency prioritised the establishment of EPPO under part two of its strategic framework Moving Europe closer to its citizens: an area of democracy, rights and freedom.
- Minister Andrea Orlando confirmed this during his hearing at the European Parliament on July 22, 2014.
- The EPPO was a separate agenda item during the informal Justice and Home Affairs Council that took place in Milan on July 8, 2014.

What progress did the Council make?

- The EPPO was discussed at a meeting of the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) on the second day of the Italian Presidency (July 2, 2014).
- Subsequently, the EPPO was discussed during twelve meeting days at expert group level, four meetings of CATS and at the Justice and Home Affairs Councils in October and December 2014.
- Discussions focused on the concept of a single legal area, procedural safeguards, the independence of the office, the role of the EPPO in supervising national prosecutors and investigative procedures at the disposal of the office.
- Ministers at the Justice and Home Affairs Council on Dec 4-5, 2014 continued to deliberate on how to best ensure the independence of the decision-making of the office and agreed to discuss the rules on appointment and dismissal of the European Prosecutor in more detail along the lines of the Presidency compromise of November 28, 2014.
- While the constructive discussion resulted in significant progress for this file various issues (such as the independence and accountability of the EPPO) remain on the table.
- Progress was achieved in spite of strong objections to the idea of the EPPO in several EU Member States.

Key Issue: Why is this important?
Directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive) This directive is intrinsically linked to the proposed regulation for the establishment of the European Public Prosecutor's Office (EPPO) in that the PIF Directive defines the scope of action of the future EPPO.
What is the key recommendation?
It is imperative that the Italian Presidency push for a speedy adoption of the PIF directive, as it is directly linked to the establishment of the EPPO; progress on the EPPO is dependent on progress in this directive.

What priority was given to the PIF Directive?
 • The PIF Directive was included on the official work programme of the Presidency.
• Italy's Justice Minister Andrea Orlando indicated during his hearing before the Civil Liberties Committee (LIBE) in the European Parliament that the Presidency would like to start negotiations on the PIF Directive swiftly and with a view to reaching agreement between the co-legislators as a matter of high priority.

What progress did the Council make?
 • On June 6, 2013 the Justice and Home Affairs Council reached a general approach on the compromise.
• The Italian Presidency provided a background and state of play document to CATS in the beginning of September, emphasising the importance of swift negotiations and rapid progress in order to enable the discussion on the EPPO to proceed.
• Major differences remained between the position of the Council and the European Parliament (the EP's position in effect exempted MEPs from the definition of public official).
• In the discussion in CATS on September 16, 2014 a majority of delegations rejected the position of the European Parliament and stated their preference for the wording of the general approach.
• Two technical meetings and two political dialogues took place in October and November 2014.
• Some swift progress was made in the dialogues but one substantive issue (whether or not to exclude VAT-fraud and public procurement fraud from the scope of the Directive) remains unsolved.
• While there are opportunities to reach agreement on most issues in the relatively near future, there is now also a risk that the adoption of this directive may be considerably delayed, since no possible solution or basis for compromise with regard to VAT has been identified.

Key Issue:
**Transatlantic
Trade and
Investment
Partnership
(TTIP)**

Why is this important?

EU free trade agreements have never contained specific anti-corruption provisions and there is widespread concern among civil society about the general lack of transparency in the ongoing negotiations.

What is the key recommendation?

The TTIP should include strong anti-corruption and transparency requirements in order to achieve the highest level of commitment to government transparency and combating corruption.

To enable meaningful public scrutiny Italy should encourage a highly transparent negotiating process, including publication of the negotiation mandate.

What level of
priority was given
to TTIP?

- The TTIP was prominently included in the Presidency work programme and presented as a strategic issue that will define Europe in the medium to long term.
- Italian deputy Minister for Economic Development Carlo Calenda stated before the EP Trade Committee that the TTIP was the EU's top trade priority and promised to strive for more transparency in the process.
- On August 25, 2014 Minister Calenda sent a letter to EU Trade Ministers which urged EU Member States to declassify the TTIP negotiating mandate, which had already been leaked online).
- On October 14-15, 2014 the Italian Presidency dedicated an informal Foreign Affairs Council on trade to the TTIP.

What progress did
the Council make?

- On October 9, 2014 Member States in the Council agreed to Italy's request and took the decision to declassify the TTIP negotiating mandate by common accord.
- On October 17 the Working Party on Information in the Council discussed how the EU's communication strategy on the TTIP could be enhanced.
- On October 24, 2014 the Presidency proposed draft Council conclusions on the TTIP negotiations, which were discussed in the Trade Policy Committee on November 7 and in the Committee of Permanent Representatives on November 12, 2014.
- On November 21, 2014 the revised Council conclusions were adopted by the Foreign Affairs Council.
- On December 18, 2014 Heads of State at the European Council called for the conclusion of bilateral trade agreements with all key partners
- There has not been any tangible progress on the inclusion of an anti-corruption chapter in the TTIP.

BACKGROUND

HOW ARE LAWS MADE IN THE EU?

The Commission submits a legislative proposal to the Parliament and Council. At the first reading Parliament adopts its position. If the Council approves the Parliament's wording then the act is adopted. If not, it adopts its own position and passes it back to Parliament with explanations. The Commission also informs Parliament of its position on the matter. At the second reading, the act is adopted if Parliament approves the Council's text or fails to take a decision. The Parliament may reject the Council's text, leading to a failure of the law, or modify it and pass it back to the Council. The Commission gives its opinion once more. Where the Commission has rejected amendments in its opinion, the Council must act unanimously rather than by majority.

If, within three months of receiving Parliament's new text the Council approves it, then it is adopted. If it does not then the Council President, with the agreement of the Parliament President, convenes the Conciliation Committee composed of the Council, an equal number of MEPs and the European Commission as moderator for trialogue discussions. The committee draws up a joint text on the basis of the two positions. If within six weeks it fails to agree a common text, then the act has failed. If it succeeds and the committee approves the text, then the Council and Parliament (acting by majority) must then approve said text (third reading). If either fails to do so, the act is not adopted.

WHAT ARE TRIALOGUES?

Trialogues are conciliation meetings where negotiating teams from the European Commission, the European Parliament and the Council of the EU hash out compromises that are acceptable to all parties in order to speed up the legislative process. Trialogues are always chaired by the Permanent Representative of the country that holds the Presidency of the Council of the EU and the content may vary from very technical issues with working level officials and assistants from the three institutions to political discussions between high level politicians and ambassadors. Due to the informal nature of these meetings there is no standard format, there are no minutes taken and any agreement reached in the meeting is preliminary and still has to be approved via the applicable procedure.

ABOUT THE COUNCIL OF THE EU

- The Council of the EU is the institution representing the member states' governments. Also informally known as the EU Council, it is where national ministers from each EU country meet to adopt laws and coordinate policies.
- The Council is an essential EU decision-maker. It negotiates and adopts new EU legislation, adapts it when necessary, and coordinates policies.
- The Council is a single legal entity, but it meets in 10 different "configurations", depending on the subject being discussed (e.g. Justice and Home Affairs Council, Foreign Affairs Council, etc.)
- It takes decisions by a simple majority, qualified majority or unanimous vote, depending on the decision that needs to be taken.
- The Council is supported by the Permanent Representatives Committee (COREPER) and more than 150 highly specialised working parties and committees, known as the 'Council preparatory bodies'. These bodies examine legislative proposals, and carry out studies and other preparatory work which prepares the ground for Council decisions (e.g.
- The presidency of the Council of the EU rotates among member states every six months. The presidency chairs meetings at all levels: Council, Permanent Representatives Committee (COREPER) and working parties. It puts forward guidelines and draws up the compromises needed for the Council to take decisions

LIST OF ABBREVIATIONS

AMLD	The 4th Anti-Money Laundering Directive
CATS	Coordinating Committee in the area of policy and judicial cooperation in criminal matters
CONT	Committee on Budgetary Control
COREPER	Committee of Permanent Representatives (the national ambassadors to the EU)
ECON	European Parliament Committee on Economic and Monetary Affairs
EPPD	European Public Prosecutor's Office
JHA	Justice and Home Affairs Council
LIBE	Civil Liberties, Justice and Home Affairs Committee in the European Parliament
PIF	Directive on the fight against fraud to the Union's financial interests by means of criminal law
TTIP	Transatlantic Trade and Investment Partnership

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