

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

### **1. Preface**

The first half of 2014 is an important time for European democracy. Late May will see the elections for the European Parliament, the largest supranational democratic assembly in the world. The newly-elected Parliament will then in turn have a say in the appointment of the next European Commission President. With both European Parliament and European Commission undergoing substantial reshuffling in 2014, the focus shifts to the third institution of the legislative triangle, the Council of the European Union. The Greek Presidency of the Council inherited the place at the helm of the EU from the Lithuanians on January 1. The next six months present Greece with an ideal opportunity to mainstream anti-corruption in the EU agenda and to ensure that EU policy-making is transparent and accountable to the citizens it is designed to serve. This policy paper outlines seven key areas where progress is necessary to advance the anti-corruption agenda at EU level during the first half of 2014 and in the context of the Greek EU Presidency.

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

The Greek government's debt crisis and six consecutive years of recession, triggered by the global economic slowdown of 2008, have demanded many sacrifices from the citizens of Greece. It is not surprising then that the [top priority of Greece's Presidency](#) is to tackle unemployment and to create economic growth. Transparency International believes that one of the most effective ways to improve economic performance is to tackle corruption. Aside from the € 120 billion that are lost to corruption in the EU every year, studies indicate that there is a [correlation between economic performance and corruption](#): Corruption not only distorts markets and lowers both domestic and foreign direct investment; it also [creates socio-political instability](#) which leads to uncertainty that further lowers productivity and economic growth. Conversely, curbing corruption and addressing integrity issues can be a critical factor for achieving economic growth and protecting EU money.<sup>i</sup>

Corruption continues to affect all echelons of European society: According to a [Special Eurobarometer survey](#) on citizen's attitudes **three out of every four EU citizens see corruption as a major problem in their country** and almost half of all Europeans believe that the **level of corruption** in their country has **increased in the last three years**. Even more alarming, numbers from the [Global Corruption Barometer](#) show that two thirds of respondents in Greece believe that the judiciary, public officials and civil servants are corrupt. Problems in Greece are further compounded by public perception: Almost three out of four Greeks believe that their **government's actions in the fight against corruption are ineffective**. The same survey indicates that 83% of respondents in Greece believe that the **government is run by a few big entities that act in their own best interest** – This is by far the highest percentage of the 28 surveyed OECD countries. However, the [2013 Transparency International Corruptions Perceptions Index](#) shows that Greece's perceived level of corruption has improved since last year. Now is the time to build on this wind of change, and as these numbers demonstrate, much indeed remains to be done. The EU has the legal competence to tackle corruption.<sup>ii</sup> The Greek Presidency of the EU therefore has a rare opportunity to challenge corruption both on the home front and at European level over the next six months.

There are encouraging signs that corruption concerns have been taken on board; at the introduction of its presidency priorities Greece announced that it wants to improve the transparency and accountability of the

economic governance of the EU. While this is a welcome approach to the Council agenda for the next six months, it remains to be seen how much of this commitment remains as a result of the demands in chairing negotiations between Member States, and between the Council and European Parliament (EP). The search for compromise will surely have an impact on the presidency's priorities. The people of Greece understand the damaging effects of corruption and the political leadership has expressed its determination to tackle the problem. The appointment of the National Coordinator<sup>iii</sup> against Corruption, accountable to the Prime Minister, and the adoption of a national strategy against corruption, the "[Road Map on Anti-Corruption](#)", in 2013 are evidence of a newfound political will that will hopefully translate into firm action. Transparency International hopes to see similarly strong commitments and action from the Greek Presidency when it comes to confronting corruption at EU level.

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

#### 1. A robust and comprehensive EU Anti-Corruption policy

Problem: Corruption in EU member states is estimated to cost 120 billion Euros per year, which is almost equivalent to the entire annual budget of the EU. Despite the existence of several international and EU-level anti-corruption instruments, implementation across EU member states remains uneven. The Anti-Corruption Report aims at identifying trends, weaknesses and causes of corruption and to stimulate an exchange of best practices among member states.

Status Quo: In June 2011 the European Commission (EC) adopted an EU Anti-Corruption package including the EU Anti-Corruption reporting mechanism of EU member states. The rationale is to assess country-specific corruption problems and to provide tailor-made recommendations. The first EU Anti-Corruption Report was scheduled for publication in June 2013. However, this has been repeatedly delayed. Council discussions indicate that a number of member states, including Italy, which will assume the EU Presidency in the second half of 2014, continue to criticise the report.<sup>iv</sup> At a [conference on anti-corruption](#), held in December 2013 in Brussels, the European Commission indicated that the new envisaged launch date is in early 2014.

Recommendations: A robust and comprehensive report, looking at the full range of corruption risks, could lend new impetus to the fight against corruption at EU level. If European governments are serious about promoting economic growth and employment in the years to come it is essential to foster anti-corruption reforms in all corruption prone sectors and on all levels. TI expects a **swift publication** of the report, as any further delay in launching the EU's first Anti-Corruption Report in 2014 will also lower the chances for the European Parliament to **substantively follow up on the Report's findings**. Transparency International hopes that the [upcoming Greek EU Presidency](#) will ensure that there is a collective response to the Commission's report in the form of Council Conclusions, which will state clearly how EU member states will follow-up on the report's analysis and recommendations. This would send a strong signal to member states and civil society that anti-corruption remains a central element in the promotion of good governance and economic growth across the Union.

Apart from the monitoring of EU member states' efforts in the fight against corruption, much remains to be done to **close existing legal loopholes and to foster the enforcement** of anti-corruption measures. Transparency International also strongly encourages the Greek Presidency to work towards shaping the post-[Stockholm Programme](#) (i.e. the 5 year roadmap for the EU in the area of Justice and Home Affairs, 2009-2014) to **ensure that anti-corruption remains a political priority** for the EU beyond 2014. Anti-

corruption should be firmly anchored in the Union's future priorities in the area of Justice and Home Affairs for the next 5 years (see Transparency International's [recommendations](#) here).

## 2. Political Party Financing

**Problem:** Political party finance at European level is not yet fully regulated and enforced to an extent that ensures the integrity and accountability of the system. There is a lack of transparency regarding the timely publication of donations and party expenses during election campaigns. The monitoring role is not clearly assigned to an independent oversight body. Currently there is also a lack of effective sanctions for infringements.

**Status quo:** Negotiations of this legislative dossier, which are building on the work of the Irish Presidency, continued during the Lithuanian Presidency. In December 2013 a preliminary agreement on some of the issues such as the future oversight mechanism was reached between the Lithuanian Presidency and the European Parliament, but a full Council position has yet to emerge and further triologue negotiations are necessary during the Greek Presidency on a number of points. The Greek Presidency has indicated that it attaches great importance to this file and that it will strive to conclude it before the European elections.

**Recommendations:** European party finance should be made available in a **citizen-friendly, searchable database**. Reporting donations should **include in-kind donations and sponsoring** (e.g. reporting support by companies to events of European political parties) and other types of direct and indirect support and should be reported promptly. It would be crucial to have such rules in place at European level for future European elections. In addition, a **special European Parliament (EP) finance report after the EP elections** would allow an assessment of whether political finance and expense rules were adhered to by all parties at European level. Monitoring and sanctions should be clearly assigned to an **independent oversight body**.<sup>1</sup> This is also a pressing issue at national level: In Greece, for example, 90% of respondents consider political parties to be corrupt, which in effect means that political parties are regarded as the most corrupt institution in the country.<sup>2</sup>

## 3. Review of the Joint Transparency Register

**Problem:** Throughout the on-going [study of the integrity of EU institutions](#) (due to be published in April) weaknesses of the EU lobby regulation and the lack of participation of member states and the Council have been identified as potential integrity risks at EU level. Lobbying activities at the EU level clearly need to be made more transparent. An estimated 3000 lobbying entities have an office in Brussels and target European institutions to influence legislation, so it is crucial for transparent EU decision-making that their goals and methods are made clear. Lobbying regulation can ensure that laws and decisions are made in an accountable manner and with due procedure, with equal opportunities for different interests to be heard and with public decision-making as the common interest.

**Status Quo:** Transparent lobbying rules have always been a focus area of Transparency International's campaign work at EU level. When the Joint Transparency Register (JTR) was eventually launched in June 2011 Transparency International welcomed this milestone, as it marked the first time that both the

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<sup>1</sup> For more information see TI's position paper on the Statute and Financing of European Political Parties:

<http://transparencyinternational.eu/wp-content/uploads/2012/11/TI-EU-Position-Paper-Europarty-Financing.pdf>

<sup>2</sup> Transparency International, Global Corruption Barometer 2013. <http://www.transparency.org/gcb2013/report>

European Commission and the European Parliament had a shared register for organisations that want to access these institutions and influence EU policy making. Initially the Council stated that [it would consider having a role](#) in the Register. While the Council has participated in the weekly meetings of the Joint Transparency Register Secretariat in an observer role, it is currently 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. This recommendation for a review was 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. The conclusion of this process is expected at the end of the legislative period in April 2014.

**Recommendations:** The indicative timeline provides the Council with a window of opportunity to decide on its participation in the JTR. The Greek Presidency should leverage its leading position to push for the **Council to join the Transparency Register**. The Council should aim to include EU-related lobbying to member states, in particular towards a current and upcoming Presidency, into the scope of the JTR. Crucially, the Council ought to decide on its participation at its earliest convenience, as otherwise there is a serious risk of losing the political momentum when Brussels will grind to a halt during the upcoming EP elections.

This would be a watershed moment for legislative transparency. The Greek Presidency has stated the objective of increasing the transparency and accountability of the EU's economic governance. Steering discussions with a view to the Council's participation in the Transparency Register is a **unique opportunity for Greece to extend that accountability to lobbying** efforts that influence political processes at EU level, which will result in greater integrity and transparency of the EU decision making cycle.

#### **4. Clean financial flows in the EU**

**Problem:** Money laundering enables the corrupt to legitimise the proceeds of crime and corruption. When dirty money is laundered in EU financial markets these markets facilitate such illegal activities and seriously undermine other countries' attempts to deal with this problem. The world's [most corrupt individuals are still able to launder](#) their ill-gotten gains in European financial centres with relative ease.

**Status Quo:** The proposal for the revision of the 3<sup>rd</sup> anti-money laundering directive was presented by the Commission in February 2013. It has since been discussed in the Council during the Lithuanian Presidency but progress is slow because contested issues like monitoring mechanisms, registries for beneficial ownership information and the role of European supervisory authorities have not been resolved yet. The [new indicative timeline](#) for the adoption of this proposal is May 2014, just before the end of the current Parliament's term. Given the outstanding issues it is likely that this will not be adopted under the Greek Presidency, but instead be carried over to the Italian Presidency.

**Recommendations:** The Greek Presidency should seek to advance discussions on the revision of the 3<sup>rd</sup> anti-money laundering directive during its Presidency, potentially seeking a political agreement before the end of the current parliamentary term. However, a swift agreement should not come at the expense of a robust set of reforms. Specifically, the revised proposal should include provisions for a public register of **beneficial ownership** information for companies, trusts and other legal structures across all EU Member States. This information should be collected in **public registers** that are **freely available in open-data** format.

The Greek Presidency has the opportunity to raise the EU standard for fighting financial crime. Although some Member States are already in favour of public registers, much work will be needed to **reach consensus on this issue** at EU level. Transparency of beneficial ownership information is needed to **aid law enforcement in their money laundering investigations**, help banks to carry out their due diligence procedures, and give valuable information to companies on who they are doing business with. Making this information public will **enable civil society**, ordinary citizens and investigative journalists to scrutinise who actually owns companies and detect false information, which can be an indicator for crime and corruption.

## 5. Justice for corruption victims: Protection of the EU's financial interests

Problem: EU member states often fail to investigate and prosecute corruption cases, particularly when it comes to complex cross-border cases. The magnitude of such cases cannot be underestimated (one recent example of such grand corruption is the [Latvenergo bribery case in Latvia](#), the country that will assume the EU Presidency in January 2015). The problems are further compounded by the significant differences between national criminal and criminal procedural laws of the 28 EU member states. On the other hand, a coordinated approach to fraud, corruption and money laundering by a centralised 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 the public.

Status Quo: In July 2013, the European Commission [proposed the establishment of the European Prosecutor's Office](#) (EPPO; Art. 86 TFEU) 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, member states such as France and Germany as well as newer EU member states support the establishment. In October 2013, national legislative chambers from 11 EU member states raised concerns of whether action at EU level is necessary, justified and even in the competence of the EU ([subsidiarity concerns](#)). If member states raise such a "yellow card", the European Commission is bound to review the legislative proposal. In response, the Commission came to the [conclusion](#) not to amend but to maintain the proposal as it stands since the proposal complies with the principle of subsidiarity: The EPPO will be part of the different national justice systems through embedded nationally delegated, double-hatted prosecutors. In detail, the EPPO will be headed by a European Public Prosecutor. 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. The European Delegated Prosecutors will be an integral part of the EPPO but also continue to exercise their functions as national prosecutors. If the regulation does not provide for more specific provisions the EPPO will mainly rely on national rules of investigation and procedure. Action at EU-level is also necessary to tackle the prevailing impunity and lack of prosecutions of crimes costing the Union approximately 120 million EUR per year.

Recommendations: Greece should leverage both its expertise, gathered through the implementation of the [national strategy against corruption](#), as well as its leading role in the Council to work with all EU member states towards the required **unanimous Council adoption** of the proposal, which will pave the way for the establishment of the EPPO.<sup>v</sup> Transparency International recommends that the Greek Presidency steers discussions with all EU member states and Members of the European Parliament, before the end of its term, with a view to jointly strengthening the legal set-up in the EU in order to create a new momentum for the fight against fraud, corruption and money-laundering. The Greek Presidency should focus on **making the EPPO an independent entity**. 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) TFEU. Finally, the Greek Presidency should facilitate discussions to address the differences in admissibility of evidence among Member States and to ensure respect for Fundamental Rights (right to a fair trial, right to be heard before a court, etc.).

## 6. Public Procurement

**Problem:** Public Procurement accounts for a significant share of public expenditure across the EU, roughly equivalent to 20% of the entire GDP of the EU. Despite the relatively rigorous public procurement rules set at the EU level, corruption scandals and irregularities tied to public procurement are still common in member states.<sup>3</sup> The complexity of the legal framework regularly poses challenges, and has come to be regarded as an administrative burden by the contracting authorities. Therefore it is crucial that anti-corruption is at the heart of the revision of EU rules. Effective legislation and enforcement of rules can guarantee the best value for money in public expenditure.

**Status quo:** The EU directive 2004/18/EC on public procurement currently in place created relatively stringent public procurement rules and was a promising first step in the right direction. In 2011 a package of several procurement directives was proposed. Political agreement under the Irish presidency was followed by general approval by the Council (at ambassadorial level) during the Lithuanian Presidency. Subsequent to the [vote of the European Parliament](#) the Council is expected to discuss this file at an [early stage](#) of the Greek Presidency.

**Recommendations:** A simplification of the rules will have a positive impact on the issues of transparency and anti-corruption. Specifically, the revised public procurement directive should **include stronger monitoring systems**, and stipulate that **all documentation is publicly available**; this would be helpful in ensuring that public stakeholders can get involved in the process and significantly increase the accountability and legitimacy of public procurement processes. The **inclusion of whistleblowing provisions** and clearer **definitions on what constitutes direct vs. indirect conflicts of interest** would be another crucial step. A specific timeframe should be foreseen for the ‘maturity’ of information which is subject to declaration of interest. There need to be **clear rules regarding the timeline or ‘cooling off period’ for the conflict of interest** to elapse and/or be relevant. Finally, we strongly recommend **unified thresholds** for all types of public procurement and stricter rules on references to specific products. Transparency International urges the Council for a swift adoption of the Directives and would welcome it if the Council also supplied additional guidance for member states on conflict of interest provisions in the form of a public statement accompanying the Directives’ adoption.<sup>4</sup> Following a [recent corruption scandal](#) in which at least 10 high-ranking military officers have been implicated for taking bribes to approve contracts for foreign arms manufacturers, Greek Prime Minister Antonis Samaras [pledged to overhaul contract award procedures](#) and to crack down on corruption in Greece. A firm response from the Council to the Public Procurement Directives would send a strong signal that Greece is equally serious about addressing this issue at European level.

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<sup>3</sup> For example the “gorilla” scandal in Slovakia: <http://www.economist.com/node/21543398>

<sup>4</sup> For more information see TI’s recommendations on the EU Directive on Public Procurement:

[http://www.transparencyinternational.eu/wp-content/uploads/2013/08/2012\\_05\\_08\\_TI\\_Recommendations\\_on\\_Public\\_Procurement\\_pdf.pdf](http://www.transparencyinternational.eu/wp-content/uploads/2013/08/2012_05_08_TI_Recommendations_on_Public_Procurement_pdf.pdf)

## 7. Disclosure of non-financial information

**Problem:** Corruption is a risk for multinationals on a number of fronts. Corruption destroys entrepreneurship, inhibits free markets and undermines the stability vital to successful economies. It also enables enormous flows of illicit money outside the real economy – in the form of unpaid taxes, bribes and laundered funds. 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:** The non-financial reporting directive aims at increasing EU companies' transparency and performance on environmental and social matters, anti-corruption and bribery efforts. It would require companies to disclose in an annual report: risks, programmes and results relating to their anti-bribery and anti-corruption efforts. In May 2013, The European Council has recommended that the proposal should also include provisions for mandatory country-by-country reporting of financial information by all large EU companies. It was [adopted by the European Commission in April 2013](#) and was expected to go through the ordinary legislative procedure (co-decision by Parliament and Council) during the Lithuanian Presidency. However, due to delays this directive remains on the table for the Greek Presidency.

**Recommendations:** The non-financial reporting directive should provide for a robust reporting procedure by making **specific reference to the United Nations Global Compact (UNGC) reporting guidance as a base-line** set of requirements. The reporting guidance on the [10<sup>th</sup> Principle against Corruption](#) was jointly developed by the UN and Transparency International as part of a multi-stakeholder process that included private corporations and is considered the "gold standard" in this area. In addition, the directive should stipulate that **data which goes into companies' reports should be subject to independent external review**. The directive should also contain provisions that require all **large companies 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.<sup>5</sup>

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<sup>5</sup> For more information see TI's blog post on non-financial reporting:  
<http://www.transparencyinternational.eu/2013/05/no-horse-trading-but-where-is-the-beef/>

**For more information please contact:**

Jonny Koerner  
Project Coordinator  
Transparency International  
Liaison Office to the EU  
Rue Breydel 40  
B-1040 Brussels (Belgium)  
Phone +32 2 23 58 644  
Email: [jkoerner@transparency.org](mailto:jkoerner@transparency.org)

Nagia Mentzi  
Project Coordinator  
Transparency International  
Greece  
Thetidos 4  
11528 Athens  
Phone: +30 210 7224 940  
Email: [nmentzi@transparency.gr](mailto:nmentzi@transparency.gr)

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### **Annex – About this Project:**

*This paper was written in the framework of the project “**Engaging the EU Presidencies in the Fight against Corruption**”, implemented by the Transparency International EU Liaison Office with financial support from the Prevention of and Fight against Crime Programme of 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.***

*This transnational advocacy project will engage with the rotating EU Presidency to facilitate the exchange of best practice in policies to fight corruption and related crimes in the EU. It will use the power of the EU Presidency as an agenda-setter and convenor to **monitor the commitment of Member States** to anti-corruption measures at EU level and to **hold them to account**.*

*Throughout each presidency TI will **collect evidence and track the activities** and the commitment of each Council Presidency to the anti-corruption agenda. These indicators will constitute the basis for a quantitative and qualitative assessment: Subsequent to each EU presidency TI will publish a **Presidency Scorecard**. This Scorecard will **evaluate the anti-corruption track-record of the Council of the EU under each Presidency**. Specifically, the scorecard will provide an assessment of the **Council’s performance on a selected range of anti-corruption topics in the course of each Presidency**. It is envisaged that prior awareness of such an evaluation will **increase governments’ commitment to transparency and the anti-corruption agenda**, and consequently translate to a greater **prioritisation of anti-corruption policies on the agenda of the Council of the European Union**.*

*The project will last for 2 years from the 1 August, 2013 to 31 July, 2015. This period encompasses four EU Presidencies (**Lithuania, Greece, Italy and Latvia**). The project partners for this period are the Transparency International National Chapters located in these countries.*

*The **main target** of the advocacy actions will be **media and opinion-formers** in Brussels and across the EU, but in particular those countries that hold the EU Presidency. Therefore, particular attention will be given to designing and implementing an effective media outreach programme, replicable in other contexts. EU policy makers will also be interested in an **independent and comparable assessment of the commitment of member states to an EU anticorruption programme**.*



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<sup>i</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>ii</sup> EU competence is defined in Articles 2-6 of the [Treaty on the functioning of the European Union](#) (TFEU): It specifies that in certain set of policy areas (e.g. competition rules for the functioning of the internal market, monetary policy and common commercial policy) the EU enjoys exclusive competence to legislate and adopt legally binding acts, whereas in a second set of policy areas (internal market, environment, social policy, justice and home affairs, etc.) competences are shared between the EU and member states. Specifically, Article 67(3) of the TFEU assigns the EU the task of ensuring a high level of security within the area of freedom, security and justice. To achieve that objective it is necessary for the EU to prevent and combat crime, organised and other, including corruption. The EU is therefore mandated to act against corruption, within the scope of its competence. Furthermore, the EC stressed in its communication on the EU Internal Security Strategy ([Five Steps towards a More Secure Europe](#)) that sustaining political will to combat corruption is of key importance and that action at Union level and sharing of best practice is necessary.

<sup>iii</sup> The National Coordinator is responsible for the implementation of the national strategy on anti-corruption. An Advisory Body with representatives from international institutions (Council of Europe, OECD, Transparency International Greece, and others) was also established to facilitate the implementation of the national strategy.

<sup>vi</sup> Failing this the Member States will be divided into two camps – those willing to participate in the newly created EPPO and those who do not support the idea of creating an EPPO through enhanced cooperation – thus, the territory on which the EPPO would be able to exercise its powers will be limited. Practical problems would also arise if crimes are then committed on the territories of many Member States and one or several of these Member States are not taking part in the European Public Prosecutor project.

<sup>iv</sup> See Council document here: <http://bit.ly/1fEJNei>