

EU OFFICE

Advocating
the EU Council:
A Civil Society Guide

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Introduction

The Council of the European Union brings together the ministers from member state governments. Together with the European Parliament, the EU Council is responsible for passing EU legislation. It meets in 10 different formations (e.g. agriculture and transport) and is composed of the 28 national ministers responsible for the respective portfolio. Despite its decisive role in the legislative process, the Council remains the least transparent of the three main institutions involved in the law-making process, as outlined in our 2014 EU Integrity Study and the 2015 report on Lobbying in Europe.

The Council has a rotating presidency which alternates between the member states every six months. The Council is supported by the Secretariat, which assists its members, provides continuity and ensures the smooth running of business. The Council of Ministers is the highest configuration of the Council responsible for the top level political decisions. COREPER I and II are comprised of the Permanent Representatives (ambassadors) of the member states supported by hundreds of working groups dedicated to specific issues, often quite technical, composed of embassy or national ministry staff. The lack of transparency, the many different Council configurations, as well as procedures that are not always clear for an external observer, make advocacy or lobbying work towards the Council challenging.

This guide seeks to provide information on how this machinery can be influenced and how civil society can advocate the Council to bring about meaningful change in EU decisions and laws. This guide stems from a two-year long pilot project called the "EU Presidency Anti-Corruption Scorecard" conducted jointly by Transparency International EU (TI EU) and four national chapters in Lithuania, Italy, Greece and Latvia. It assessed the performance of the rotating presidencies of these four countries on progress in the areas of transparency, integrity and anti-corruption. The project was co-funded by the European Commission.

The broader aim of this exercise was to increase the Council's engagement in the fight against corruption through evaluation of the consistency of member states' approach to transparency, integrity and anti-corruption measures, and to hold governments accountable for their anti-corruption track record.

Background

EU Presidency Anti-Corruption Scorecard: Leveraging the EU presidency in the fight against corruption

In 2012 TI EU was awarded a grant by the European Commission to conduct a biannual written assessment of the transparency and accountability of four consecutive presidencies of the European Union. The project ran from July 2013 to June 2015 and covered four presidencies – Lithuanian, Greek, Italian and Latvian.

The main aim of the project was twofold: to raise greater awareness on EU member states' anti-corruption commitments at the EU level through more effective information exchange, and to promote a greater prioritisation of anti-corruption policies on the EU Council agenda through targeted advocacy.

The scorecard is based on research by TI EU and corresponding national chapters in countries holding the presidency and on ongoing monitoring of developments in the Council. This assessment was carried out biannually and was used as a tool to evaluate member states' track records and commitment to the anti-corruption agenda at national and EU levels.

The scorecard is divided into three pillars:

- Pillar I evaluates access to information provided by the government and administration of the country holding the rotating EU presidency during the preparation phase;
- Pillar II evaluates the accountability of the government during the presidency, such as its engagement with civil society stakeholders, and budget and spending transparency;
- Pillar III evaluates how the presidency prioritised key anti-corruption issues and how much progress was achieved on the selected legislative files in the EU Council.

Concrete deliverables included a position paper published by TI EU in the run up to each presidency outlining key recommendations on transparency and anti-corruption legislative files, an anti-corruption scorecard following the completion of each presidency and presented at a public launch event in the country under evaluation, and this advocacy handbook for European CSOs delivered at the end of the project.

A full list of previous position papers, scorecards and other publications related to this project is available on the <u>website</u> of TI-EU.

The Council of the European Union (EU Council)

The Council of the European Union (informally known as the EU Council), is the main legislative and decision-making institution in the EU. It brings together national ministers of the 28 EU member states responsible for various topics and meets under 10 different configurations depending on the subject (justice and home affairs, foreign affairs, agriculture, fisheries, etc.). Its decisions are made by qualified majority voting in most areas, although in practice consent remains the norm. Under what is known as the "ordinary legislative procedure" the EU Council and the European Parliament share legislative and budgetary powers equally, meaning both have to agree for a proposal to pass. EU Council represents the national interests and views of each member state.

The EU Council should not be confused with the European Council, which is the supreme political authority of the EU composed of EU heads of states usually meeting four times a year¹. The European Council sets the general political direction and priorities for the EU and takes major political decisions, such as amendments of the treaties, structural changes to the institutions, internal and external crisis situations etc. According to the treaties, the European Council is not supposed to interfere with the legislative procedure.

The EU Council is responsible for:

- The adoption of laws and the Union's annual budget (jointly with the European Parliament);
- The coordination of economic policies across Europe;
- The definition and implementation of the EU's Common Foreign and Security Policy (CFSP);
- The conclusion of international agreements (jointly with the Parliament);
- The adoption of measures in the area of police and judicial cooperation in criminal matters.

¹ In reality the President of the Council has the right to convene additional meetings to address urgent political issues.

The EU Council is supported by the Permanent Representatives Committee (COREPER) which is responsible for the preparatory work for all Council meetings.² COREPER meetings are in turn supported by more than 250 highly specialised thematic working groups and committees composed of the Permanent Representations' staff members (often seconded civil servants from national ministries) meeting on a regular basis.

The presidency of the EU Council is assigned to a single member state and rotates every six months. The presidency is responsible for the organisation and management of the Council's business and is considered one of the main driving forces through which the member states can advance their political priorities.

Rotating presidencies work in a "Trio" – in close cooperation with the preceding and next presidencies³. These configurations are required to present a joint programme to ensure thematic coherence and efficient planning over 18 months. The presidency is also supported by the Council Secretariat, which provides logistical support, interpretation, as well as ensuring consistency and expertise.

How are laws made in the EU?

When adopting legislation, the EU Council generally acts upon a proposal by the European Commission and in cooperation with the European Parliament. This structure is commonly referred to as the "Institutional Triangle".

The Commission submits a legislative proposal to the Parliament and the 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.

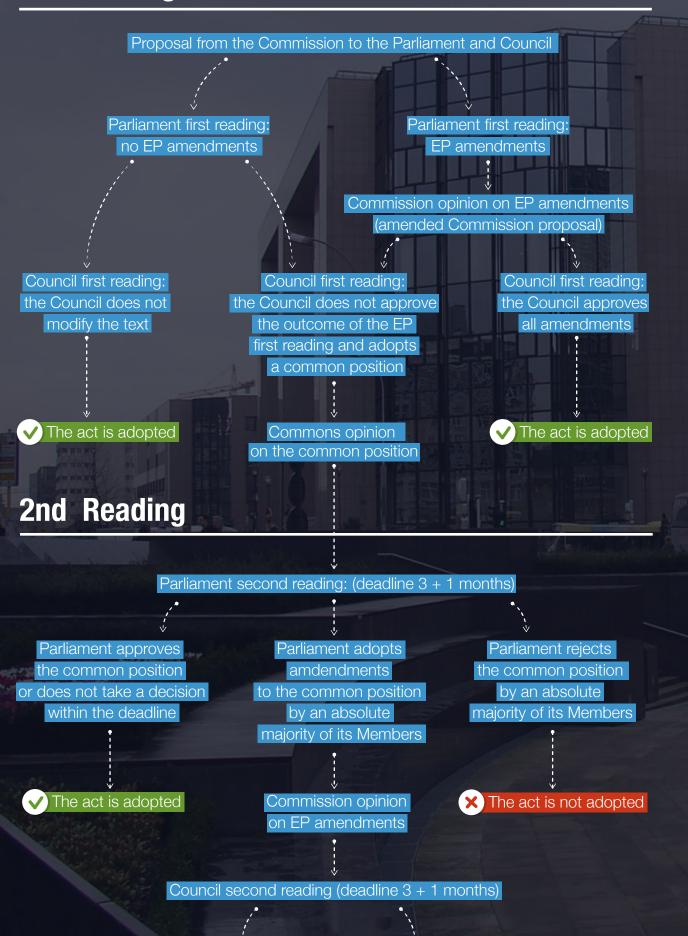
² Technically COREPER operates on two levels: COREPER II, which consists of each member states' permanent representatives (ambassadors) and deals with economic and financial affairs, foreign affairs, general affairs and justice and home affairs; and COREPER I, which consists of each country's deputy permanent representatives and deals with the six remaining issues (transport, energy, agriculture, etc.).

³ Member states holding or preparing to hold a presidency work in groups of three, called "trios". This system allows member states to set long-term common goals and ensure continuity over an 18 month period.

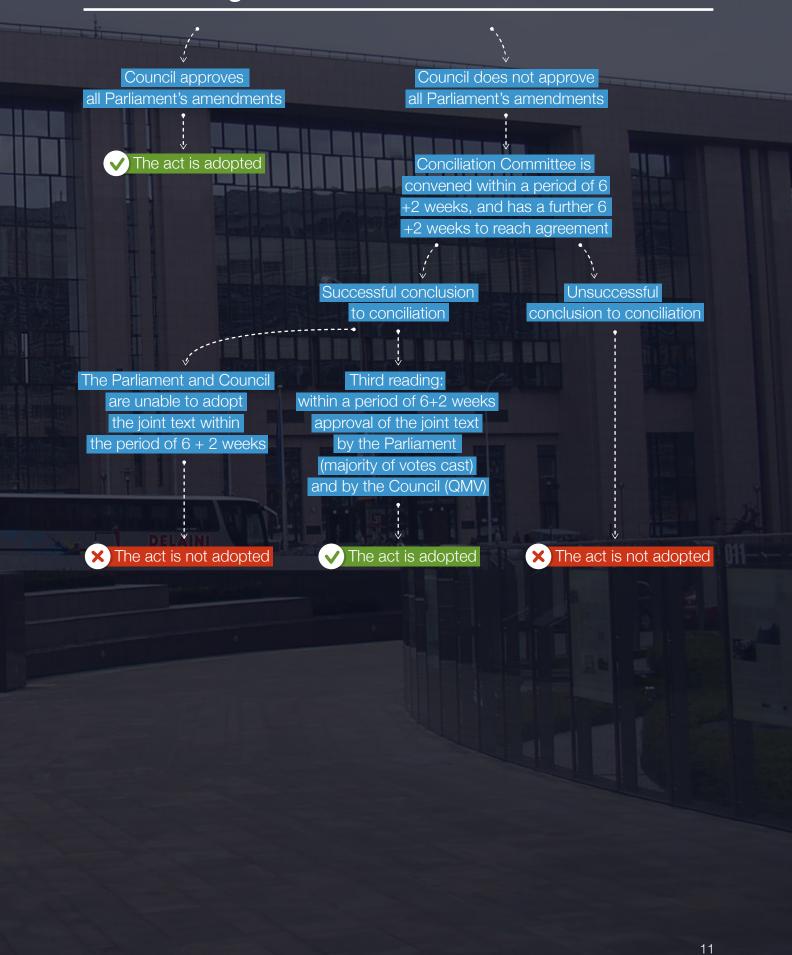
At the second reading, the act is adopted if the Parliament approves the Council's text or fails to take a decision. The Parliament may reject the Council's text, leading to a failure of the law, or modify it and pass it back to the Council, where the Commission is required to give its opinion once again. If the Commission rejects the amendments in its opinion, the Council must act unanimously rather than by majority.

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

1st Reading



3rd Reading



What are the trilogues?

The previous chapter and the explanatory scheme explain how the EU legislative procedure is described in the EU treaties. In reality, more than 95% of legislation is now passed through the so called "fast-track procedure". After the first vote in a committee in the European Parliament, the three institutions enter informal negotiations behind closed doors to agree on a compromise. These negotiations, which are not mentioned in the treaties and are not codified, are called trilogues. These trilogues can vary in structure and composition from one file to the other and from one parliamentary committee to the other.

Trilogues are convened at two different levels: political and technical. At the political level these negotiations bring together the Commissioner, the relevant minister from the EU Council presidency (who chairs the trilogue) as well as the Parliament negotiating team composed of the committee chair, the rapporteur and the shadow rapporteurs from all political groups. At the technical level trilogues are usually attended by the assistants and/or group policy advisors of the MEPs, a representative from Permanent Representation of the presidency country, a civil servant from the Council secretariat and a high ranking civil servant from the European Commission (usually the relevant Director General). The role of the representatives of the EU Council presidency in these negotiations is guite substantial as they are tasked with relaying the outcomes of the trilogues to the member states and ensuring that there is an internal agreement on a common position.

Due to the informal nature of these meetings there is no standard format. Timing is often unknown, no agendas or minutes are published and understanding the situation is often difficult even for MEPs who do not constitute a part of the negotiating team. Once an agreement has been reached in a trilogue the compromise goes back to the Parliament and the EU Council and is voted upon. Re-opening negotiations is naturally somewhat difficult and in most cases the compromise is adopted without further discussion by the institutions.

Why transparency of the EU Council is important

Our research has repeatedly shown that the EU Council is the least transparent of the main EU institutions. Contrary to the practice in the European Parliament where meetings are open to the public, most sessions are web-streamed and voting results for each MEP and minutes are published online, the EU Council still largely works behind closed doors. COREPER and working group meetings are not public, member states' positions are kept secret and even requests to access documents long after a vote has taken place are often refused.

The Council does not provide any transparency on the lobbyists seeking to influence it and does not participate in the Joint Transparency Register launched as a register for Brussels interest groups by the Commission and the Parliament in 2011. So lobbying and lobby influence at the Council remain completely opaque.

Even now, with the imminent prospects of a new Inter-Institutional Agreement (IAA) for a mandatory lobby register⁴, the member states remain sceptical and bring up a number of justifications preventing them to join, such as legal obstacles due to differences in national legislations, additional administrative burdens and a supposed lack of tangible benefits.

Article 10 of the EU treaties stipulates that decisions should be taken as openly and as close to the European citizens as possible. In this trilogue system however, basic transparency and accountability principles that apply to the ordinary legislative procedure are circumvented. EU Council transparency should of course be one of the basic principles of European democracy, but for citizens, journalists or civil society organisations it is often difficult or even impossible to hold the Council or their respective government representatives to account. Accountability cannot be assured through the relevant committees in 28 different Parliaments working in 24 different languages. It must be possible to hold the Council accountable as a whole. This opaque nature of the Council's activities contributes to the lack of transparency in the EU decision-making process and constitutes a significant obstacle for holding the Council and the member states accountable for their decisions and commitments made at the EU level.

⁴ A proposal for an Inter-Institutional Agreement for a mandatory lobby register was announced by the European Commission in early 2015. The new agreement would replace the existing system and would cover all three legislative institutions and would aim to change the participation from voluntary to mandatory by 2016.

Advocating The EU Council

Advocacy targets

Even though the EU Council is considered the least accessible for civil society stakeholders, it does not mean that it cannot be approached at all. Indeed, if your goal is to have EU legislation passed or modified, you will need to engage with the EU Council at the early stage. Successful advocacy does require discipline, planning, coordination and careful intelligence gathering. You also need to know which level or function to approach and when. We speak about timing in more detail below, but here we distinguish main targets or channels for your advocacy toward the EU Council: permanent representations in Brussels, the Council presidency, and national governments.

Approaching permanent representations of the member **states in Brussels** is one of the most effective ways to influence the EU Council's policies. Permanent representations are staffed with national civil servants tasked with monitoring EU activities on a daily basis and serving as an intermediary between the EU Council and national governments. These officials exchange detailed information about the views of the other member states and EU institutions with their national capitals and ensure that the views of their own governments are heard in Brussels. Most of the daily coordination and negotiation of the EU Council's work is handled by staff members of permanent representations, who participate in specialised working groups and who discuss much of the technical issues. This makes members of working groups the main target of lobbying because they are generally more receptive to the kind of specialist information and evidence that interest groups can provide. Their influence should not be underestimated, as much EU legislation is highly specialised and higher-ranked officials may defer to those who are considered to have the expertise in the matter under discussion. The choice of which representations to approach is usually determined by a number of factors, such as the importance of a topic for the particular member state, the quality of the relationship between a CSO and a representation, etc.

- The Council presidency is another important advocacy target for interest groups because of its priority setting powers in the lead-up and during its term. This power (even though not absolute since presidencies operate in trios - in partnership with a former and an upcoming one - and inherit issues from their predecessors) allows them to highlight several priority areas during their mandate. This makes presidencies a useful target for interest groups wishing to promote their issues. Given that preparations for the presidencies usually start some 18 to 24 months in advance of their actual term, CSOs wishing to influence EU Council policies via the presidency are strongly encouraged to plan their advocacy strategies and to approach officials based in member states or in Brussels well in advance of the start of the presidency itself. The presidency permanent representation can be intensely lobbied in the period immediately preceding and during the presidency, so you may need to work particularly hard to make your case and to be heard.
- National governments are another important route for direct advocacy since it is national ministers who sign off on EU legislation and are ultimately accountable. CSOs may find it more useful to address a relevant ministry or a relevant national authority of a particular member state who could take their positions into account. It is vitally important to understand how decisions are made in the relevant ministry, for example the degree to which decision-making is delegated downward. If your advocacy is falling on the deaf ears of certain officials, this analysis will help you assess whether appeals to more senior levels are more likely to be fruitful. Advocacy activities toward national governments also help ensure transparency and accountability of their administrations during their mandate at the helm of the EU Council.

Important principles to bear in mind when planning your advocacy:

(i) Timing is everything

Like comedy, timing in advocacy is everything. Half of officials in Brussels believe that the most common mistake made by CSOs in their advocacy is intervening too early or too late in the process⁵. The key to successful advocacy is to present the right information to the right person at the right time. The EU Council is no exception to this rule.

An example of being too early in the process is to advocate EU Council representatives on a legislative file which has not been agreed by the European Commission. Until the Commission proposal has been agreed, they are unlikely to give the issue their full focus. An example of being too late is to approach the EU presidency with proposals for topics that it should address two-three months before the start of its mandate. Themes, events and diaries will in general be fixed well in advance. In some cases, where agreement has been brokered by working groups and ambassadors following long discussion, appeals to ministers at the end of the process will be fruitless. Unless there is a clear alignment with their political goals, they will be reluctant to overturn the outcome of many weeks and months of low-level diplomacy. It is not impossible to review decisions at this stage, but it is very challenging.

The issue of timing is related to what precisely you wish to influence. Technical input to legislative files should generally only be considered once the issue has been placed on the agenda of the relevant working group, otherwise your request may get neglected in light of more urgent priorities. Unless there is an agreement that a contentious issue can only be resolved by ministers or heads of state, appeals to this political level may only result in being referred back to the working level.

The priorities and agendas of presidencies are announced long ahead of the official start date. While new and unexpected political developments (e.g. violent conflict, migration crisis etc.) can always reorient a presidency's working priorities, it is powerful and flexible enough to highlight and advance issues it deems important.

The presidency agenda will be fixed well in advance. In order to influence the priority setting of a presidency, it is essential for CSOs and campaigners to target and influence decision-makers at least a year in advance. Ideally, it is advisable to think about this at least 24 months before the start date. The last two to six months preceding a presidency are always particularly intensive, and it is highly unlikely that your efforts will yield any results at this stage.

When seeking to influence the presidency it is also important to bear in mind its place within the trio structure. The programme of the trio is published at the start of each new trio and aims to ensure coherence and continuity between successive presidencies. Advocacy activities should target the trio governments in the 12 months before the start date of the trio.

At the same time you should keep in mind that oftentimes governments within the same trio do not share the same political interests and priorities. This means that you need to research their individual agendas, adjust your advocacy campaign accordingly and approach them separately.

(ii) Be clear about what you want to achieve

Different aims will require different advocacy strategies. If your aim is to use the presidency as a platform to raise awareness about an issue on the European stage, then this will require engagement with the national authorities up to two years in advance. If your aim is to amend a Commission proposal or to get approval of legislation, this will require building a broad coalition of support from member states, and you will need to work intensively in those countries within a relatively short timeframe (around six months). If your aim is to 'block' a piece of legislation, either a proposal from the Commission or a Parliamentary amendment, this can be done by gaining sufficient support within the EU Council to prevent agreement (sometimes known as a "blocking minority" – see below).

Currently member states vote using double majority rule, which means that two different criteria are needed to reach a decision: 55% of member states must be in favour of a proposal and these 55% of member states must represent 65% of the total EU population.

A blocking minority is the number of votes needed to block a decision.

A blocking minority can be established if at least four countries vote against the proposal (if not all countries participate in the vote, the minority needs the minimum number of countries representing more than 35% of the population of the participating countries, plus one country). Thus, a blocking minority can be established by a little more than 45% of the member states or by countries representing at least 35% of the member states with a minimum of four states.

(iii) Invest in intelligence-gathering

A constant stream of reliable information is essential in a campaign that aims to influence negotiations between 28 national governments, the European Parliament with seven major political groups, and the European Commission. Luckily there are many sources of such information.

Formal sources

Basic information on all the Permanent Representations, their personnel and contact details are available on their websites, but also through reference works such as the <u>European Public Affairs Directory</u> [EPAD].

The website of the EU Council is a good and improving source of information about the general secretariat and on official Council documents, such as agendas, minutes, conclusions, non-papers, general approaches etc.

Informal sources

There are limitations to how much you can find out about ongoing and evolving negotiations through formal sources. Timely information about policy positions, 'red lines' and so on is best sourced through informal channels, such as conversations with personnel close to or directly involved in the negotiations. This is a challenge even for the best resourced NGOs, so you will need to work in coalition with other CSOs, if possible.

It is extremely important to cross-reference this information with other reliable sources, ideally written ones. It is too easy in these complex discussions to conflate gossip, hearsay and speculation with fact.

(iv) Advocate the right level

This is linked to timing, as the seniority level of officials you target will depend on, among other things, the stage of the legislative process, what you want to change, the degree of opposition to your proposals. If the subject-matter is politically uncontentious, then you may get a lot of purchase simply by talking to lower-level technical officials. In many areas of EU policy making, ministers may give a lot of discretion to ambassadors to reach agreement. This will change from national administration to national administration, so there is no rule of thumb – as always it is a question of intelligence-gathering.

(v) Advocate the right countries

Not all member states are equal in every discussion. This is true because of voting weights (see text above), but also because member states will often defer to those members with a serious national interest in the issue under discussion. For example, legislation on financial markets regulation disproportionately affects those member states with large capital markets, such as the UK, Germany and France.

(vi) Build coalitions

Influencing the EU Council and its presidency is a complex process given the large number of member states and actors involved. For this reason it is highly advisable to work in coalitions with like-minded organisations and networks which are present at national level. When advocating the EU Council it is also important to mobilise and coordinate efforts with national partners who will likely have better contacts, access, knowledge of national political issues, and importantly can overcome any potential language barriers.

In general, coalition building can be extremely useful to share intelligence, divide targets and activities, and draw on different organisations' unique expertise and resources. In order for coalitions to be effective it is important that its members have the same priorities and are consistent in their messaging.

As part of Transparency International's campaign to unmask the corrupt through the EU's Anti-Money Laundering Directive, a crucial component was advocating the Italian EU Presidency (July – December 2014). TI recommends public disclosure of the real 'beneficial' owners behind companies and trusts in the EU as a means to prevent the laundering of the proceeds of corruption. In the summer of 2014 the EU institutions were divided, with the European Parliament supporting public disclosure, and member states split. Italy presided over the trilogue negotiations for the Directive during October-December 2014, making it a key player with the potential to broker an ambitious deal between the EU Council, the European Parliament and the European Commission.

In June 2014, less than one month before the start of the Italian Presidency, TI organised an advocacy mission to Rome to meet relevant officials and other stakeholders. The group consisted of representatives from TI Italy, TI EU and the Financial Transparency Coalition. The aim was to gain support for the introduction of European rules on public disclosure of beneficial ownership information and encourage the Italian Presidency to take an active role in reaching an ambitious agreement. The meetings were also within the scope of TI EU's project on monitoring the EU Council presidency.

TI met with officials from the Ministry of Finance, and in particular with the official in charge of the Directive for the Italian Presidency; the Italian Financial Intelligence Unit, the body responsible for preventing money-laundering and terrorism financing; the Chamber of Commerce, which keeps Italy's company register; Italian CSOs working in the field of financial transparency and anti-money laundering; and an Italian journalist of a main national newspaper and co-author of a book on money-laundering.

These meetings allowed TI to collect additional information on Italian anti-money laundering measures and its positions on public register of beneficial owners and to share our recommendations with government and other officials ahead of the presidency's launch. As a result of these activities we were also able to build alliances with relevant stakeholders in the capital. The advocacy activities proved to be very useful for progressing the negotiations and for bringing attention to transparency of beneficial ownership. The trilogues for the Anti-Money Laundering Directive spanned several months, with beneficial ownership transparency being one of the most contentious issues. In December 2014 an agreement was reached, which went much further than the initial European Commission proposal, and provides for partial public access to the beneficial ownership information.

(vii) Working with national media

There are a number of specialised EU publications such as EU Observer, Euractiv, Politico Europe. However, the policy makers you are trying to influence will in most cases pay more attention to national media coverage. This is true even for those policy makers who operate in the EU institutions.

The following example from TI Greece is very useful to demonstrate how cooperation with national media can help raise awareness around your advocacy cause.

TI Greece attracted important media attention due to the press conference organised on the occasion of the official launch of the Scorecard for the Greek Presidency of the EU Council. The launch was followed by a press release sent out to increase media attention and facilitate pitching of targeted articles to selected media outlets.

These activities were reflected in some 30 media references in local, national and international media, including some of the most prestigious and popular Greek newspapers nationwide. The launch of the scorecard was featured in the leading news portal in Greece and was presented by the national news agency. In addition, three articles on the European Public Prosecutor's Office (EPPO), Anti-Money Laundering Directive and Tl's key anti-corruption recommendations for the Greek Presidency signed by the Chairman of Tl Greece were published in prominent newspapers.

(viii) Always keep the political context in mind

Positions of member states are not fixed and always dependent on the political context back home, which can change. Be alert to this context and always expect surprises, most obviously in the case of national elections and changes to governments.

For instance, it was no surprise that the priority of the Greek Presidency was the economy, with a special emphasis on nurturing jobs and growth and further integration of the Eurozone, as the country has been under financial crisis since 2008.

Accessing EU Council Documents

The Council is bound by a stringent public access to documents law, and has to pro-actively publicise its legislative work. However, large sections of the activities of national policy makers in Council matters, such as foreign policy, are excluded as exceptions to EU transparency rules. Furthermore, a complete absence of rules regulating visibility (e.g. the publication of agendas and minutes) in lower-level meetings poses a concern for transparency.

EU institutions, including the Council of the EU, are obliged to conduct decision-making in as open a manner as possible, whilst doing so in as close a way as possible to the citizen. This applies in particular in the context of legislative decision-making, where Council discussions and votes are legally subject to publication and public access, while otherwise deliberations are subject to professional secrecy. The obligation for public deliberations is legally applied only to Council meetings at ministerial level, and legislative decisions can also be taken by written procedure. Deliberations on certain non-legislative proposals, or proceedings in EU Common Foreign and Security Policy (CFSP), do not have to be public.

Public documents can be accessed via the <u>Public register of Council documents</u>. There are two search options: by clicking on <u>Search for documents</u> you will be taken to the standard search engine which allows you to perform a search based on a single or a combination of search criteria. Clicking on the <u>Latest documents added to the Public register</u> will allow you to see all the documents published in a reversed chronological order regardless of their topic, with the newest first.

For the purposes of this project we found the first option more practical. Search for documents allows you to search by the document or the institutional file number (if you have such specific information) or by typing in the keywords into the "Words in text" field. Alternatively, you can also search for acronyms: for example, if you are looking for documents relating to the Transatlantic Trade and Investment Partnership you might also want to search for its acronym "TTIP". Results are displayed in a reverse chronological order and are in downloadable PDF format.

Sometimes documents are displayed in the search results but are only partially available or not publicly available at all, in which case you can request them via "Request a document" form. Such requests are usually processed and addressed within 15 working days following the request submission.

If you are still struggling to find what you are looking for, you can get in touch with the Council's <u>General enquiries</u> service, which might be able to assist. Requests or questions can be submitted in any of the 24 official languages of the EU and are similarly handled within 15 working days.

Another great resource is the European Parliament's <u>Legislative</u> <u>Observatory</u>. Click on the search tab on the top and look for your file. Once found, the website displays information outlining the key players, events, next steps, technical information and related documents. For instance for the Public Prosecutor's Office, it looks like <u>this</u>.

In addition to the institutional search engines, you may find useful the <u>StateWatch</u> – a database dedicated to monitoring the state, justice and civil liberties in Europe. Often documents not yet available in the Council's public register can be found here.

If you are struggling to find documents or your online request for a document got rejected, you can use services provided by AsktheEU.org - a body created by civil society organisations to help the public get the information about the EU.

For additional information on the Council of the EU, its internal rules, procedures but also its integrity practices, you can consult TI's EU Integrity Study.

TRANSPARENCY INTERNATIONAL EU OFFICE

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