

Position Paper: The fight against corruption in the EU

1. What is the current state of play of anti-corruption policy?

Corruption undermines the rule of law, distorts markets, erodes trust in public institutions and has serious impact on both society and the economy. Estimates by the European Commission (EC) put the monetary cost of corruption at 120 billion Euros per year¹, 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, this numbers demonstrates that the problem of corruption is simply too costly to be ignored.

Despite some encouraging developments in recent years there remain significant challenges for anti-corruption work in the EU: 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 come from a 2013 survey from Transparency International² which revealed that almost two thirds of the respondents in Lithuania believe that corruption has increased in the last two years. More than one third of the respondents in **Lithuania** had to **pay a bribe to receive medical treatment** and 77% are convinced that it is **vital to have personal contacts** to get things done when dealing with the public sector. In **Greece**, 83% of respondents believe that the **government is run by a few big entities that act in their own best interest** and almost three out of four respondents believe that their **government's actions in the fight against corruption are ineffective**.

2. What is the EU competence in the policy areas affected by corruption?

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**.

¹ See communication from the European Commission: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0308:FIN:EN:HTML>

² Transparency International, Global Corruption Barometer 2013. www.transparencysy.org/gcb2013/report

3. The EU anti-corruption agenda: recommendations to the Lithuanian Presidency

This position paper identifies **six key issues** where progress is necessary in order to advance the anti-corruption agenda at EU level. A central criterion for the selection of key issues is that they fall within general EU legislative competence as outlined in Chapter 2 – In the absence of such a legal mandate the basis for Council engagement is clearly not given. The selected issues also take into account the sectors that have been identified as the most problematic in an in-depth assessment of corruption risks in Europe “Money, Politics, Power: Corruption risks in Europe”³ conducted by Transparency International over the course of two years. The issues also relate to Transparency International’s 2015 Strategy and address both the internal and external EU policy dimension. The issues have been identified with a view to capitalise on the wealth of existing expertise at Transparency International EU and its project partners and they also take into account public interest. Finally, the main defining criterion for the selection of these key issues is their inclusion in the legislative [agenda of the Lithuanian Presidency](#) of the Council of the EU. The focus issues have to take into account the EU legislative cycle as the basis for engaging with the Council during the Lithuanian Presidency.

I) Financing of European Political Parties

Status quo: 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, for example, 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. Negotiations of this legislative dossier (which are building on the work of the Irish Presidency) are expected to continue during the Lithuanian Presidency. It would be crucial to have this statute in place at European level, especially with a view to the upcoming European elections next year. 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.⁴

Recommendations: European party finance should be made available in a citizen-friendly, searchable database. Downloadable data in an open data format, instead of the commonly used PDF format, would constitute a major step towards more transparency of the system. Reporting donations should include in-kind donations (e.g. reporting support by companies to Europarty events) and other types of direct and indirect support and should be reported promptly. A special European Parliament (EP) finance report after the EP elections should assess 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.⁵

II) Public Procurement

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. However, corruption

³ Transparency International. Money, politics, power: Corruption risks in Europe. <http://www.transparency.org/enis>

⁴ Transparency International, Global Corruption Barometer 2013. www.transparencsy.org/gcb2013/report

⁵ 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>

scandals and irregularities tied to public procurement are still quite common in EU member states⁶. Furthermore, the complexity of the legal framework regularly poses challenges and has come to be regarded as an administrative burden by the contracting authorities. In 2011 a package of several procurement directives was proposed. Following political agreement under the Irish presidency and general approval by the Council (ambassadorial level) during the Lithuanian Presidency, the final vote is expected to be on the Council agenda late into the Lithuanian Presidency on December 9, 2013.

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.⁷

III) Anti-money laundering

Status quo: Money laundering enables the corrupt to legitimise the illegal. It distorts economies and is a major obstacle to a stable EU internal market. Every time that dirty money is laundered in EU financial markets corruption is facilitated and good governance standards are seriously undermined. Time and time again one can see that the world's most corrupt individuals are able to launder their ill-gotten gains in European financial centres with relative ease. The proposal for the 3rd anti-money laundering directive was adopted by the Commission in February and will be on the Council Agenda during the Lithuanian Presidency.

Recommendations: The current review of the EU's Third Anti-Money Laundering Directive provides a significant opportunity to strengthen EU rules to combat financial crime, the proceeds of organised crime, and corruption. However, to achieve this EU money laundering regulations need to be better enforced, and more information is required so that the source of questionable funds can be properly identified. National regulators need to be able to identify more easily where the assets they are dealing with have come from, whether that source is legitimate, and who might ultimately be benefitting. This is even more important for business relationships with Politically Exposed Person, where additional due diligence procedures should be put in place. Crucially, member states should establish public registers of who ultimately controls and benefits from anonymous shell companies and other opaque legal structures such as trusts and foundations. Punitive measures should be strengthened to act as a credible deterrent to those who might be tempted to assist corrupt individuals.⁸

⁶ For example the "gorilla" scandal in Slovakia: <http://www.economist.com/node/21543398>

⁷ 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

⁸ For more information see TI's position paper on fighting corruption at the European Union's forefront: <http://bit.ly/1goKW6r>

IV) Protection of the EU's financial interests

Status quo: At present few cases of fraud and corruption are brought to trial in the 28 EU member states, despite the loss of millions of Euros every year and the damage it causes to the EU's budget. Domestic law enforcement authorities often lack financial and human resources to properly investigate and prosecute cases of fraud and corruption, particularly when it comes to complex cross-border cases. A **European Public Prosecution Office (EPPO)** vested with the authority to direct and coordinate the work of national law enforcement authorities is the missing link in the procedural chain for more efficiency, justice and accountability. The European Commission's legislative proposal on the protection of the EU's financial interests, adopted under the Lithuanian Presidency, proposes the establishment of the European Prosecutor and a reform of the European Union's judicial cooperation unit Eurojust to better fight fraud and to make prosecution at EU level more accountable. It seems likely that not all EU member states will assist in the creation of the Prosecution Office with view to the UK's, Ireland's and Denmark's opt-out. However, big member states such as France and Germany as well as the new EU member states support the establishment. In October, 14 national chambers from 11 EU member states have used the opportunity to raise [subsidiarity concerns](#) towards the legislative proposal triggering a review process on the Commission end. In response to this and after careful consideration, the Commission has come to the [conclusion](#) not to amend but to maintain the proposal as it stands, taking due account of the reasoned opinions of the national parliaments during the political dialogues to follow.

A minimum of nine EU member states is needed for the Office to become reality (through "enhanced cooperation"), with the Commission indicating it is certain to already have more member states on board.

Recommendations: Especially in times of austerity and the current crisis affecting Europe's economies, it is of greater importance than ever that EU taxpayers' money and the EU's budget is better protected against crimes that affect the EU's budget. Transparency International holds that fraud, money-laundering and corruption should be systematically followed up through criminal investigations and prosecutions by an EPPO. Crucially, this office should be provided with a broad mandate that includes not only crimes that directly affect the financial interests of the Union, but also serious cross-border crimes, such as cross-border corruption and other crimes. The EPPO set up should reflect its independence from national and EU authorities. Recent cases have shown that cross-border corruption and fraud in the EU require a cross-border response in order to complement national judicial authorities that all too often face time- and capacity constraints in effectively pursuing complex cases. As an added bonus this EU agency would have the potential to restore trust in EU institutions' ability to deal with fraud and corruption-related crimes in an effective manner.⁹

V) Non-financial reporting

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 is expected to go through the ordinary legislative procedure (co-decision by Parliament and Council) during the Lithuanian Presidency of the Council of the EU.

⁹ For more information see TI's blog post "The Public Prosecutor is coming":

<http://www.transparencyinternational.eu/2013/07/a-holiday-package-the-european-public-prosecutor-is-coming/>

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 10th 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.¹⁰

VI) Association and trade agreements

Status quo: The EU is currently negotiating important political association and Deep and Comprehensive Trade Agreements (DCFTA) with its partners in the Eastern Neighbourhood including Ukraine, Armenia, Azerbaijan, Moldova, and Georgia. These agreements will be initialled with Moldova and Georgia and signed with Ukraine during the Vilnius Eastern Partnership summit in November. They include commitments to tackle corruption and special chapters on public procurement and transparency.

Recommendations: The EU has in the past failed to capitalise on its influence in the Eastern Partnership region to promote democratic transition and accountable government. In order to address previous shortcomings, Transparency International recommends to: (1) Make the negotiations around Association Agreements more transparent and better communicate its implications to citizens. (2) Ensure a consistent and principled approach towards Eastern Partners, in particular when assessing elections and other democratic processes. (3) Support civil society in their watch dog function by making information on direct budget support to partner governments available and including them systematically in the monitoring process.¹¹

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¹⁰ 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/>

¹¹ For more information see TI’s position paper on Eastern Partnership: http://www.transparencyinternational.eu/wp-content/uploads/2013/11/2013-11-27_Press-Release-Taking-a-stand-against-corruption-at-the-Eastern-Partnership-Summit.pdf

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 antecedent awareness of such an evaluation will **increase government’s commitment to 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 main objectives of the project are to:

- (I) improve the capacity of TI National Chapters (NCs) located in the EU to monitor and compare their governments' commitments and actions at EU and national level;**
- (II) provide a platform for more effective information sharing and advocacy;**
- (III) increase member states' commitments to the EU anti-corruption agenda through, inter alia, real-time monitoring their positions in the Council and the implementation at national level.**

The project will last for 2 years from the 1 August, 2013 to 31 July, 2015. This period encompasses four EU Presidencies. In chronological order they are: **Lithuania, Greece, Italy and Latvia**. The project partners for this period will be 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**. The expected result of this approach is **greater public awareness of Member States’ anticorruption commitments at EU and national level**.

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About Transparency International at the EU level

The Transparency International [EU Office](#) is part of the global Transparency International (TI) movement, the leading civil society organisation in the fight against corruption around the world. The mission of the EU Office in Brussels is to promote integrity, transparency and accountability in the EU institutions and EU internal and external policies, programmes and legislation. Our objective is to create lasting, structural change at the EU level so that government, politics, business, civil society and the daily lives of people are free from corruption and characterized by integrity, justice and security.

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