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EU OFFICE



EU PRESIDENCY ANTI-CORRUPTION SCORECARD

An assessment of the transparency and accountability of the Lithuanian 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.

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FOREWORD

EU legislation has a growing influence on all our lives, from the safety of the food we eat to the stability of the financial system. More and more of that legislation is also important to the anti-corruption movement, with the EU driving improvements to the transparency of public contracting procedures, for example.

Just how that legislation is shaped and agreed is a matter of some complexity and obscurity, however, even for seasoned EU-watchers. This is mainly because of the role of the Council of the European Union, a unique legislative body composed of representatives of the 28 member states. In theory, this body has equal status with the European Parliament in agreeing legislation, but in practice it often has the final word on legislation, acting like an upper chamber in other political systems. The position the Council agrees is more often than not decisive in shaping legislation.

For this reason, the transparency of EU decision-making depends to great extent on the transparency of the Council. Unfortunately, it has a poor track-record in this regard compared to other EU institutions. Although there have been improvements in recent years, information about negotiations between member states is still the exception rather than the rule, a relic of an older inter-governmental mind-set. Although information on discussions is often available to Brussels 'insiders', the broader public is

often unaware of the contribution of their representatives to EU legislation

As the EU is becoming a more important anti-corruption actor (witness the recent EU anti-corruption report) it will be important to remedy this transparency deficit. This scoreboard is an attempt to shed some light on this process, with a focus on key transparency anti-corruption reforms that were discussed under the Lithuanian Presidency of the Council. Each Presidency has an important agenda-setting role over a six-month period and the transparency and accountability of the Presidency is also an important indicator of the transparency and accountability of the wider process. It also provides an opportunity to assess how individual national governments approach what is still a prestigious international role, with the possibility of setting new standards and consolidating governance reforms. Over the next two years, we will also publish scorecards for the Greek, Italian and Latvian presidencies, with the aim of encouraging best practice in the conduct of the EU Presidency.

The Agenda of the Lithuanian Presidency was clearly dominated by the commitment to advance the Economic and Monetary Union and to put Europe back on a path to growth and job creation. The priorities that Lithuania set for its Presidency reflected this imperative.

While this Presidency was successful in pushing for compromise in a number of economic and financial related matters, our assessment of progress on key anti-corruption dossiers presents a mixed picture, as the Council failed to make progress on several important anti-corruption dossiers in the second half of 2013.

The hesitancy of the Lithuanian Presidency to place anti-corruption issues more centrally on the agenda and the lack of political will by member states in the Council contributes to this state of affairs. Above all, this assessment illustrates that much remains to be done if member states are serious about tackling corruption as part of the Council of the European Union.

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WHAT IS THE SCORECARD?

This Scorecard evaluates the transparency and accountability of the Presidency of the Council of the EU and the anti-corruption track-record of Member States acting as part of the Council of the European Union (“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 two 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 prioritised 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 Lithuania and on-going monitoring of developments in the EU Council. This assessment will be carried out biannually for the subsequent Presidencies (Greece, Italy and Latvia) and used as a tool to evaluate member states’ track records and commitment to the anti-corruption agenda at national and EU level.

WHY PUBLISH A SCORECARD?

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 Although Lithuania made efforts to ensure that its activities are publicly known, there is still much more room for transparency and accountability
- 2 Lithuania set a good example with regard to the amount of information available about the events of the Presidency in open data format
- 3 The format of data that Lithuania provided about its events shows that the public sector is capable of providing information in a user-friendly way even without legal regulations in place

- 4 Unfortunately, the same standards were not applied when it came to financial accountability: while Lithuania disclosed the overall expenses of its Presidency, there is a lack of information about public procurements, tendering processes, and concrete goods and services purchased
- 5 The Presidency prioritised three key anti-corruption issues: financing of European-level political parties, the establishment of the European Public Prosecutor's Office and the Association and Trade Agreements with the Eastern Partnership countries
- 6 Substantial progress was made on the proposal for the establishment of the European Public Prosecutor's Office despite concerns by several Member States
- 7 Three other crucial anti-corruption files were not high on the list of priorities: The Public Procurement reform package (which aims to modernise and increase transparency in public procurement), Non-Financial Reporting Directive (which contained provisions that required companies to report on their anti-bribery and anti-corruption programmes) and the Anti-Money Laundering Directive (which has the potential to enable scrutiny by civil society)
- 8 The Non-Financial Reporting Directive lacks teeth and leaves a number of reporting loopholes and exemptions that can be exploited. In addition, crucial provisions which would require companies to report on key financial information such as taxes paid in each country where they operate (country-by-country reporting obligations) were dropped from the Council mandate for trialogue negotiations. The latter provisions had been recommended by the European Council in May 2013 following a summit on the internal energy market and tackling tax fraud and tax evasion.
- 9 The overall lack of progress in key anti-corruption areas can be attributed to a diverse number of factors: opposition from Member states (*Non-Financial Reporting Directive, 4th Anti-Money Laundering Directive*), complex legal aspects of the EC proposal (*Political Party Financing*), *the advanced stage of the legislative process (Public Procurement)*, and in one instance the refusal of Ukraine to sign agreements that it had been negotiating with the EU (*Association and Trade agreements at the Eastern Partnership Summit*)

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 discussions 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 categorised 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 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 a 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 was assessed by two aspects: Did the Presidency prioritise 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 categorised 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 has 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 Ernst + Young Baltic.

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

PILLAR I – PREPARATION OF THE PRESIDENCY

1.1 Access to information / Justification of Presidency Agenda

1.1.1 Is information about the goals of the 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:

- Preliminary goals and the main sectors were publicly accessible on the website of the Lithuanian Parliament in 2011
- Upon final confirmation the programme of the Presidency was available on the official Presidency website. The Website featured the agenda, the calendar of events, relevant publications, interviews and articles and is available in four languages



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:

- With the exception of *Financing of European Political Parties* all the key transparency issues were aligned with either National or EU agendas
- No specific goals related to the financing of European Political Parties were identified in any of the official documents/ programmes



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:

- The total Presidency budget and the cost distribution over the years were publicly available since 2011 (the Presidency budget was part of the Inter-Institutional Action Plan for 2012-2014)
- The final budget was available online after the government introduced changes in the Inter-Institutional Action Plan and confirmed the budget for the Presidency in 2012
- The budget was published on the official website of the Presidency before the start of the Presidency



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:

- The foreseen bulk sum expenses of the Presidency were available online
- Online information about the ongoing public procurements was provided in the official website
- It was not possible to obtain financial details in open data format



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:

- Information about all events was provided on the official website in open data format (html, pdf, xml)
- In a majority of cases all necessary information about the events was public



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:

- Logistical details were provided about the majority of events, which means that it was technically possible for interested parties to provide written contributions
- No information was provided about whether interested parties could actually access the events or whether there was any follow-up



2.2 Management of expenses of the EU Presidency

2.2.1 Is information about the expenses and distribution of costs disclosed?

Why does this matter?

By disclosing the actual budget, the Presidency ensures that it is transparent and accountable for the way that allocated money was spent.

Results:

- The overall expenses of the Presidency, sources of funding and cost distribution in certain sectors were available online (including separate documents for each quarter)
- Financial and narrative reports for each quarter of 2013 were available online in analyst-friendly format
- Reports of the Parliamentary Committee on European Affairs and additional financial documents were available online



2.2.2 How transparent and how well disclosed are the expenses of the EU Presidency?

Why does this matter?

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:

- Information about the expenses was provided either in bulk sums or specifically for certain groups of goods and services
- All goods and services were obtained via public procurements
- Reports of concluded public procurements were provided in the central public procurement database but did not contain detailed information about procurement relating to the Presidency was provided
- There is no way to learn about public procurements conducted during the Presidency in one place. Information is not provided in open data formats
- The National Audit Office of Lithuania prepared a state audit report "Preparations for the EU Presidency" which evaluated the process, outlined recommendations and is available online



PILLAR III – KEY ANTI-CORRUPTION FILES

Key issue: **Political Party Finance**

Why is this important?

The current regulation of political party finance at European level has a number of loopholes and grey areas which risk undermining the integrity and accountability of the system, especially in view of the upcoming European elections

What is the key recommendation?

Monitoring and sanctions should be clearly assigned to an independent oversight body and European party finance information should be made available in a citizen-friendly, searchable database

What priority was given to Political Party Finance?



- The Lithuanian Vice Minister of Foreign Affairs stated the intention to adopt the *Proposal on the statute and funding of European political parties and European political foundations* in his initial address to the Constitutional Affairs Committee at the European Parliament on July 15, 2013
- The Minister announced this was a priority for Lithuania and that all institutions had to reflect hard on how to unblock the outstanding issues

What progress did the Council make?



- The Council working party on general affairs met several times to discuss the proposal with more frequent meetings during October and November
- Due to the complex legal aspects of the proposal the Council did not adopt a full position by the end of the Presidency term
- On December 17, 2013 the Presidency succeeded in reaching a preliminary agreement on which institutions would be responsible for party financing and established an independent authority that will be in charge of the registration of political parties
- The Council agreed that the rules that govern political party funding will be streamlined and adapted to their specific situation and needs
- As part of this compromise the overall amounts made available under the EU budget will stay the same

Key Issue: **Public Procurement**

Why is this important?

Despite the rules currently set at the EU level, corruption scandals and irregularities tied to public procurement are still quite common in member states. This was also emphasised in the recent EU anti-corruption report

What is the key recommendation?

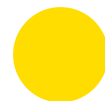
The Public procurement reform should result in stronger monitoring systems, include whistleblower protection provisions, supply clear definitions of conflicts of interest and ensure that documentation is publicly available

What priority was given to Public Procurement?



- The adoption of the public procurement reform package featured in the presidency programme, but due to its advanced stage in the legislative process this was not declared a priority
- The Presidency prioritised an unrelated *directive on e-invoicing in public procurement* which had been proposed by the Commission in June 2013
- The Presidency held that the e-invoicing directive has the potential to increase transparency and competition in public procurement

What progress did the Council make?



- After long negotiations the Council and the European Parliament reached a provisional political agreement in June 2013
- The Committee of Permanent Representatives (COREPER I), i.e. national ambassadors to the EU, endorsed this agreement in July 2013
- Following endorsement by COREPER no further action was possible for the Council, due to delays in the translation of the agreed text > The Lithuanian Presidency had no room for manoeuvre to push for additional changes
- The adopted reform package includes definitions of conflicts of interest but lacks crucial provisions for whistleblower protection
- On December 2, 2013 the Council agreed on a general approach on the *Directive on e-invoicing in public procurement*

Key Issue:	Why is this important?
Establishment of the European Public Prosecutor's Office	Despite the loss of billions of Euros every year few cases of fraud and corruption are ever brought to justice in the 28 EU member states
	What is the key recommendation?
	The EPPO should be provided with a broad mandate that includes serious EU crimes including cross-border corruption and related financial crimes (such as fraud, money laundering, etc.)

What level of priority was given to the EPPO?	<ul style="list-style-type: none"> • This was one of the priority issues in the field of criminal law • The Lithuanian Minister of Justice stated that while new ways to fight crimes that affect the EU's financial interest are absolutely necessary, sufficient time needs to be devoted for discussion amongst Member States • To ensure that negotiations are accompanied by in-depth analysis the Presidency organised a high level conference in Vilnius to bring together various stakeholders for an exchange of ideas
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What progress did the Council make?	<ul style="list-style-type: none"> • Upon publication of the proposal in July 2013 the Presidency immediately invited member states to provide an assessment via questionnaire • Discussions in the coordinating committee (CATS) soon revealed concerns by some delegations as to structure and competence of the EPPO • The proposal was presented at the Justice and Home Affairs (JHA) Council in October 2013 • an "article-by-article" examination of the proposal took place during meetings of the Council's working party on Cooperation on criminal matters (COPEN) • The Presidency steered negotiations by contributing a discussion paper which focused on the contentious issues • national parliaments raised subsidiarity concerns with the proposal which triggered an automatic review by the Commission (yellow card procedure) • The Commission dismissed the concerns raised by the member states • In its recommendations to the next Presidency Lithuania stressed that the setting up of the EPPO should be pursued further
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Key Issue:	Why is this important?
Association and Trade Agreements	The European Neighbourhood Policy (ENP) agreements have not included concrete anti-corruption objectives and civil society participation, which undermines local ownership of anti-corruption efforts and limits the ability for citizens to hold their governments accountable
	What is the key recommendation?
	The negotiations around Association Agreements should be made more transparent and include concrete anti-corruption objectives in ENP Agreements

What level of priority was given to the Eastern Partnership?	<ul style="list-style-type: none"> • This was a core priority for the Lithuanian Presidency under its stated objective to create an "open Europe, promoting democratic values and contributing to safe neighbourhood" • Lithuanian President Dalia Grybauskaitė promoted the Third Eastern Partnership Summit, which took place in Vilnius in November 2013, as the "summit of opportunity for both the EU and its neighbours" during her opening address to the European Parliament • The Lithuanian Presidency devoted considerable attention and resources to the Eastern Partnership and organised a number of assemblies, seminars, youth forums, civil society forums and conferences in Vilnius, Luxembourg and Moldova around the Third Eastern Partnership Summit
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What progress did the Council make?	<ul style="list-style-type: none"> • The aim of the Eastern Partnership Summit was to initial and sign political association agreements with Armenia, Georgia, Moldova and Ukraine • While Georgia and Moldova initialled political association agreements at the Summit the EU failed to initial an agreement with Armenia and also failed to sign the agreement with the Ukraine • The Presidency organised a joint ministerial Justice and Home Affairs meeting, which will be held on a regular basis to monitor reforms and provide political guidance • The joint declaration of the Summit included a commitment to strengthen multilateral cooperation in the fight against corruption and positions anti-corruption and good governance in Eastern Partnership countries as an important priority for the EU agenda • The Council conclusions provide backing for further anti-corruption reforms and state clearly that there is a real need to take action in this field
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Key Issue: **Anti-Money Laundering**
Why is this important?
 Money laundering enables the corrupt and criminal 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 like trusts and foundations to enable public scrutiny

What level of priority was given to the 4th Anti Money- Laundering Directive (AMLD)?

- Despite previous European Council conclusions which stipulated that the 4th AML Directive should be adopted by the end of 2013 this file was a low priority for the Presidency
- AML was on the indicative agenda of the Economic and Financial Affairs (ECOFIN) Council of October 15 but was eventually dropped from the final agenda
- AMLD was also not included on the ECOFIN Council agenda of November 15 but was eventually added at the request of France, Italy and Germany
- The Presidency did not organise any high-level events to push discussions



What progress did the Council make?

- The compromise text drawn up by the Presidency on August 30 did not include public registers of beneficial ownership
- On November 4, 2013 the Presidency informed the Committee of Permanent Representatives that, despite having met eight times, the working party on Financial Services was not able to overcome the outstanding issues
- Following submission of a French issues paper to the Council this was added to the Economic and Financial Affairs (ECOFIN) Council agenda on November 15, 2013
- The November ECOFIN Council took stock of the work in progress but in a context of strongly divergent views amongst Member States was not able to agree on a general approach
- The creation of public registers of beneficial ownership remains the main outstanding issue



Key Issue: **Corporate Reporting**
Why is this important?
 Citizens must also have adequate information in order to assess the activities of companies operating in their territory, including financial information. In the absence of country-by-country reporting, the local public is unaware of how much profit such operations generate and what, if any, special arrangements their governments may have entered into with multinational companies

What is the key recommendation?

The Directive should require that all large companies based in the EU should (i) disclose information on their anti-bribery and anti-corruption programmes and (ii) 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

What level of priority was given to Corporate Reporting?

- Despite previous European Council conclusions which called for rapid progress on this proposal this file was a low priority for the Lithuanian Presidency
- While this proposal was included in the Presidency agenda the Lithuanian authorities displayed no great enthusiasm for this file
- The presidency programme merely stated that Lithuania would “launch discussions within the Council”
- The intention to start discussions in the Council working groups was reiterated by the Lithuanian Minister of Economy in his address to the Internal Market and Consumer Protection Committee at the European Parliament on July 9, 2013
- Subsequent backing at ministerial level did not materialise and the Presidency scheduled no high-level events to advance this proposal



- Key Issue:**
- Corporate Reporting (continued)**
- What progress did the Council make?
- The working party on company law examined this proposal five times
 - The Presidency's first compromise text reflected the desire by a group of member states to weaken the proposal
 - On December 13, 2013 Member states met in the Council to finalise their position
 - The critical review clause which stipulated country-by-country reporting was not included in the Council mandate for the triilogue negotiations
 - The watered down proposal severely reduces the scope of companies that have to report, it lacks robust reporting provisions and crucially makes no reference to country-by country reporting
 - The speed with which this dossier advanced came at the expense of substance



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