



DUTCH EU PRESIDENCY

ANTI-CORRUPTION

SCORECARD



Transparency International (TI) is the global civil society organisation leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, Transparency International raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it.

Transparency International Nederland (TI-NL) is the Dutch chapter of TI. We work with government, business and civil society to put effective measures in place to tackle corruption and promote integrity.

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of August 2016 for the main part of the report, and as of August 2017 concerning the expenses of the EU Presidency. Nevertheless, Transparency International Nederland cannot accept responsibility or legal liability for the accuracy, completeness or the consequences of its use for other purposes or in other contexts.

Acronyms

BEPS	Base Erosion and Profit Shifting
CBCR	(Public) country-by-country reporting
CCCTB	Common Consolidated Corporate Tax Base
CFC	Controlled Foreign Companies
COMPET	Competitiveness Council
COPEN	Working Party on Cooperation in Criminal Matters
DAC4	Fourth Directive on Administrative Cooperation
DROIPEN	Working Party on Substantive Criminal Law
EPPO	European Public Prosecutor's Office
EU	European Union
IIA	Inter-Institutional Agreement
OECD	Organisation for Economic Co-operation and Development
PIF	Protection of the Union's Financial Interests
SRD	Shareholder Rights Directive
TI	Transparency International
TTIP	Transatlantic Trade and Investment Partnership
VAT	Value Added Tax

What is the Scorecard?

This Scorecard evaluates the transparency and accountability of the Presidency of the Council of the European Union (“EU Council”) and the anti-corruption track-record of Member States acting as part of the EU Council. It provides an assessment of their performance on a selection of key anti-corruption topics in the course of any Presidency.

The assessment is divided into three parts: Pillar I evaluates the transparency of the preparations for the Presidency by the government and administration of the country that holds the rotating EU Presidency. Pillar II evaluates the accountability of these actors during the Presidency. Pillar III evaluates how the Presidency prioritized key anti-corruption issues and how much progress member states made with regard to the selected issue in the EU Council.

The Scorecard is based on research by the Transparency International Nederland (TI-NL), with support from the Transparency International EU Office. It is used as a tool to evaluate member states’ track records and commitment to the anti-corruption agenda at national and EU level. On

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.

EU Presidency Anti-Corruption Scorecard

This report presents an assessment of the transparency and accountability of the Dutch Presidency of the Council of the European Union during the first half of 2016, and a scorecard of progress on key anti-corruption issues in the Council of the European Union (EU).

Key findings

1. The priorities of the Dutch Presidency of the Council of the EU were known well in advance. However, communication with stakeholders and citizens could have been better. The website of the Presidency – the preferred channel for communications with citizens – was launched quite late (the month before the Presidency started). Furthermore, there are no public records of any stakeholder meetings that took place before the Netherlands took up the Presidency. Transparency International Nederland was not engaged in any discussions, even though transparency was presented as one of the main priorities of the Dutch Presidency.
2. The budgetary transparency of the Presidency was problematic. Initially, only the bulk costs of the Presidency were released, without any details. In April 2016, the Presidency presented a very general budget to members of the House of Representatives. A more detailed budget with a breakdown of the costs was published in July 2016 on the website of the Dutch House of Representatives, but not on the website of the Presidency. Further details were not provided on the actual incurred costs until June 2017, but again these details were not included on the website of the Presidency.
3. Transparency of EU decision-making was said to be a priority of the Dutch Presidency in general.¹ The Presidency organised different events on the topic such as an online Q&A session with Minister of Foreign Affairs Bert Koenders and TransparencyCamp Europe in Amsterdam. It also published the agendas of members of the Permanent Representation of The Netherlands to the EU. However, no political action was undertaken by the Presidency at Council level on this issue.
4. Transparency of trilogues (the informal meetings between the Council and the Parliament with oversight of the Commission) was put on the agenda of the Council in June 2016 in the context of the Inter-Institutional Agreement. The first discussions

¹ For instance, by the European Ombudsman:

www.ombudsman.europa.eu/en/press/release/faces/en/68704/html.bookmark.

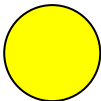
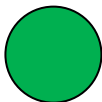
focused on the possible options to increase the transparency of EU decision-making and were based on a Presidency note on the topic.

5. The Presidency has been waiting for the European Commission to present its proposal for a mandatory EU Transparency Register. The public consultation on the proposal took place during the Presidency. However, since the consultation ended the topic has not yet appeared on the agenda of the Council, nor has the Commission presented its proposal. In early May 2016, the Dutch Permanent Representation participated in a joint event on the topic together with the European Parliament and the European Commission. Nevertheless, there has been little visible progress on the EU Transparency Register.
6. During the Dutch Presidency, progress was made in measures aimed at tackling corporate tax avoidance, which was another priority of the Dutch Presidency. In March 2016, the Economic and Financial Affairs Council reached an agreement on a directive foreseeing an automatic exchange of country-by-country reporting information between tax authorities based on the Organisation for Economic Co-operation and Development (OECD)'s Base Erosion and Profit Shifting (BEPS) Action Plan. This measure does not provide information to the public. Furthermore, the Anti-Tax Avoidance Directive was adopted in June 2016. In substance, the adopted directive was relatively weak.
7. Trilogue negotiations on the Shareholder Rights Directive (SRD), including an amendment foreseeing public country-by-country reporting by EU multinationals introduced by the European Parliament, did not progress during the Dutch Presidency. Although the Presidency expressed its determination to reach an agreement on the revisions of the SRD at the beginning of its term, it was not discussed in an official Council setting. The Presidency claims to have made progress in discussions on the topic with the European Parliament, but this cannot be verified by official documents.
8. During the Dutch Presidency, the negotiations on the Transatlantic Trade and Investment Partnership (TTIP) were continued. A leak of negotiation documents revealed that anti-corruption measures had already been discussed during the ninth round of negotiations in April 2015. Transparency of TTIP has increased due to the special reading rooms for members of national parliaments, but this development cannot be attributed to the Dutch Presidency.
9. Although the European Public Prosecutor's Office (EPPO) was not explicitly mentioned as a priority in official documents, the Dutch Presidency did make considerable progress on the dossier. The Council expressed broad conceptual support for a number of technical articles concerning financial and staff provisions, provisions on relations with partners, the case management system and data protection, as well as simplified prosecution procedures. This support brings an agreement on EPPO closer.

10. The Presidency has not made substantial progress on the adoption of the Protection of the Union's Financial Interests (PIF) Directive.² The Presidency has tried to overcome the deadlock on the topic of the inclusion of Value Added Tax (VAT) fraud to the directive by organising technical meetings between experts. However, the Council did not reach a consensus on the topic by June 2016 (the end of the Presidency).

² [http://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-protection-of-the-union-s-financial-interests-\(pif-directive\)](http://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-protection-of-the-union-s-financial-interests-(pif-directive))

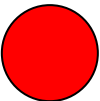
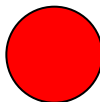
Pillar I – Preparation of the Presidency

1.1 Access to information/Justification of Presidency Agenda	
1.1.1 Is information about the goal of Presidency publicly accessible?	<p>Why is this important?</p> <p>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.</p>
	<p>Results:</p> <ul style="list-style-type: none"> • The priorities of the Dutch Presidency were published on the website of the House of Representatives on 28 January 2015. • The comprehensive and user-friendly website was launched in mid-December 2015, three weeks before the Presidency commenced. This was quite late. The final programme was published on the same website on 6 January 2016. • There are no public records of any stakeholder meetings taking place before the start of the Presidency. Therefore it seems that these meetings did not take place.
1.1.2 Were the goals of the Presidency aligned with National and EU Agendas?	<p>Why is this important?</p> <p>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.</p>
	<p>Results:</p> <ul style="list-style-type: none"> • The Dutch Presidency goals were well rooted in the Trio Programme³ and all topics were aligned with the strategic agenda of the European Council.⁴ • The goals of the Presidency aligned with the Europe 2020 strategy and Horizon 2020 and they were also consistent with national priorities.

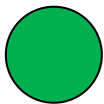
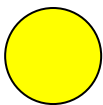
³ <https://www.eu2017.mt/en/Pages/Trio-Programme.aspx>

⁴ https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/framework/europe-2020-strategy_en and <https://ec.europa.eu/programmes/horizon2020/>

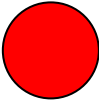
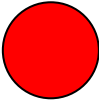
1.2 Budget and expense justifications

<p>1.2.1 Is information about the budget of the Presidency publicly available?</p>	<p>Why is this important?</p> <p>By publishing the anticipated budget, the presiding country ensures transparency and accountability for planned expenses during the Presidency.</p>
	<p>Results:</p> <ul style="list-style-type: none"> • On the website of the Presidency, the total expected costs were published on 12 January 2016. No explanation about the breakdown of costs was given. • On 1 March 2016, the Minister of Foreign Affairs declared that a more detailed budget would be published in July 2016, together with an overview of the costs incurred. • After questions from the House of Representatives, the Minister decided to publish a more detailed budget of the project organisation in April 2016. Nevertheless, the level of detail was minimal. • On 7 July 2016, a foreseen budget of the Presidency was published as an attachment to a letter to Dutch Parliament about the results of the Presidency.
<p>1.2.2 How transparent is the Presidency budget?</p>	<p>Why is this important?</p> <p>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 format, it severely hampers the public's ability to hold the government to account.</p>
	<p>Results:</p> <ul style="list-style-type: none"> • A very general budget of the project organisation was published after pressure from the House of Representatives in April 2016. A textual explanation for the different costs was given but no numerical details were presented. • A more detailed budget was published in July 2016 after the end of the Presidency. A detailed breakdown of expected expenses was given. Since no overview of incurred costs was published simultaneously, a comparison could not be made.

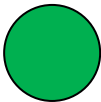
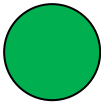
Pillar II – Accountability of the Presidency

2.1 Inclusiveness of stakeholders	
2.1.1 Was it possible for stakeholders to find information on the events of the Presidency?	<p>Why is this important?</p> <p>If the Presidency does not proactively provide public information about the main events and discussions, members of the public are not able to contribute to the discussions.</p>
	<p>Results:</p> <ul style="list-style-type: none"> • All of the events of the Dutch Presidency were published well in advance on the official Presidency website. Most of the event announcements included key information. • A user-friendly search option allowed identification of events by type. • The Presidency provided a list of spokespeople. The list did not give a breakdown by subject, but a specific spokesperson was provided for most events. • There was extensive use of social media to inform the public about the ongoing work of the Council and to communicate results.
2.1.2 How inclusive was the EU Presidency process?	<p>Why is this important?</p> <p>The Presidency should make efforts to ensure that interested parties are able to engage and to contribute to the discussions taking place in public events of the EU Presidency.</p>
	<p>Results:</p> <ul style="list-style-type: none"> • The official website of the Dutch Presidency provided logistical details for most of the public events, which made it possible for interested parties to be informed about the organisation and the content of the events. • In most cases it was possible to find a contact person for an event. • A few open events provided the opportunity to sign up via the website of the Presidency or were linked to another website. For many events, however, it was unclear whether stakeholders were able to sign up. • The Presidency provided extra space for stakeholder discussion by organising a TransparencyCamp. • Other Brussels-based events e.g. “Better Governance Seminar” were open to key stakeholders.

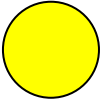
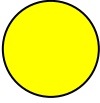
2.2 Management of expenses of the EU Presidency

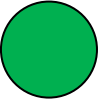

<p>2.2.1 Is information about the expenses and distribution of costs disclosed?</p>	<p>Why is this important?</p> <p>By disclosing the actual budget, the Presidency ensures that it is transparent and accountable for the way that allocated money was spent.</p>
	<p>Results:</p> <ul style="list-style-type: none"> • During the Presidency, only total expenses were published. There were no other publications about detailed expenses during the Presidency term. • No detailed budget was published on the website of the Presidency or the Ministry of Foreign Affairs. Only after questions from the House of Representatives were more details made available about expected expenses on 22 April 2016. However, the level of detail was minimal. • Documents about the budget were not easy to find for ordinary citizens and no direct link was provided on the official Presidency website.
<p>2.2.2 How transparent and how well disclosed are the expenses of the EU Presidency?</p>	<p>Why does this matter?</p> <p>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.</p>
	<p>Results:</p> <ul style="list-style-type: none"> • As there was no initial budget published, any possible deviations could not be identified. • The information about expenses was provided with little detail and under somewhat vague categories (i.e. "security" or "catering"). • The information was not presented in open data format, but in answer to questions from MPs between 67 other questions about the annual budget of the Ministry of Foreign Affairs. • The information was not disclosed proactively and in a timely manner, but was given one year after the end of the Presidency and only in answer to questions from the House of Representatives.

Pillar III – Key Anti-Corruption Files

<p>Key Issue:</p> <p>3.1 Transparency of trilogues</p>	<p>Why is this important?</p> <ul style="list-style-type: none"> Many policy decisions are taken in trilogues: informal meetings between the Council and the Parliament with oversight of the Commission. However, due to the informal character of these meetings, there are no minutes or direct records of these meetings. Since they are used very often in the EU, their transparency should be improved. <p>What was the key recommendation?</p> <ul style="list-style-type: none"> Transparency of trilogues should be put on the agenda of the Council by the Dutch Presidency. There should be more information available about the meetings, such as agendas, positions of negotiators, proposals for compromises and minutes.
<p>What level of priority was given to transparency of trilogues?</p> 	<ul style="list-style-type: none"> In the working programme of the Dutch Presidency, priority was given to increasing the transparency of the EU decision-making process. Although it could be expected that the transparency of trilogues was part of this priority, it was not explicitly stated. The same holds for the trio programme. On 1 March 2016, the Dutch government informed the House of Representatives about the different initiatives the Presidency was undertaking to increase transparency within the EU. Increasing transparency of trilogues was one of the initiatives. This would be done in the context of the Inter-Institutional Agreement (IIA) on Better Law-making, together with the Parliament and the Commission.
<p>What progress was made during the Presidency?</p> 	<ul style="list-style-type: none"> On the 15 March 2016, the Council adopted the IIA on Better Law-making. Part of the agreement includes improving transparency of the work of the Council, the Parliament and the Commission. At the General Affairs Council in June 2016, the Member States were briefed by the Presidency on the state of play of the implementation of the IIA. Views were exchanged on the transparency aspects of the IIA based on a Presidency note.⁵ In the Presidency note, three possible ways to increase transparency were presented: one included increasing the transparency of the trilogue process. According to the Presidency note, increasing the transparency of the negotiation mandates and more pro-active communication of the results would be options to increase the transparency of trilogues.

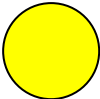
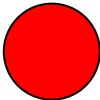
⁵ See the Presidency note: data.consilium.europa.eu/doc/document/ST-10120-2016-REV-1/en/pdf.

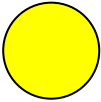
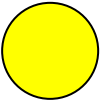
<p>Key Issue:</p> <p>3.2 Reforms EU Transparency Register</p>	<p>Why is this important?</p> <ul style="list-style-type: none"> The current EU Transparency Register for lobbyists is inefficient: it is voluntary, vulnerable for mistakes and there is no good oversight over the entries in the register. In addition, there are no adequate sanctions for providing incomplete, inaccurate or false information. <p>What was the key recommendation?</p> <ul style="list-style-type: none"> Registering in the Joint Transparency Register should be made mandatory for lobbyists who want to speak to members of the Council, the Parliament and the Commission and their staff members. False or incomplete entries should be filtered out and adequate penalties should be in place for not complying with the rules.
<p>What priority was given to the reforms of the Joint Transparency Register?</p> 	<ul style="list-style-type: none"> Transparency was one of the priorities of the working programme of the Dutch Presidency, but no mention was made of the Joint Transparency Register. In March 2016, the Dutch government informed the House of Representatives of its plans to increase transparency. In this document it was mentioned that the Presidency was waiting for the proposal on the Joint Transparency Register. In relation to the prioritisation of transparency, the Dutch Presidency decided to publish the meetings of staff members of the Permanent Representation on their website. It should have urged other Member States to do the same. In June 2016, the Presidency sent a letter to the European Commission to stress its position on the Joint Transparency Register. The Dutch Presidency expressed the opinion that the Council should be included in the obligatory register. At a public debate on EU Lobbying Transparency, organised by the European Parliament and the European Commission, Permanent Representative of the Netherlands to the EU Pieter de Gooijer contributed to the programme as well, being part of a panel and giving closing remarks. Although this event was not initiated by the Presidency, Mr. De Gooijer was a member of the Presidency and his attendance at this meeting shows the priority given to the subject.
<p>What progress was made during the Presidency?</p> 	<ul style="list-style-type: none"> On 1 March 2016, the European Commission launched the public consultation on the proposal for a reformed EU Transparency Register. The consultation period ended at the beginning of June 2016. The Commission came forward with a proposal in September 2016. In the Council, the topic has not been addressed yet since the Commission proposal has not yet been presented. However, in June 2016 there were some discussions in the Council on transparency in general in the context of the IIA.

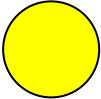
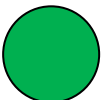
<p>Key Issue:</p> <p>3.3 Anti-Tax Avoidance Package and the Action Plan for Fair and Efficient Corporate Taxation</p>	<p>Why is this important?</p> <ul style="list-style-type: none"> Thanks to smart corporate planning, a lack of regulations and intensive tax competition, multinational companies can avoid paying taxes within the EU. Tax avoidance by companies cost EU countries between €160-190 billion in lost revenues every year, undermining tax bases and fair competition.⁶ <p>What was the key recommendation?</p> <ul style="list-style-type: none"> The two packages of measures against corporate tax avoidance should be adopted and implemented. Also, the Presidency should put pressure on the proposals for public country-by-country reporting (CBCR) and the Common Consolidated Corporate Tax Base (CCCTB).
<p>What priority was given to the measures against tax avoidance?</p> 	<ul style="list-style-type: none"> In the national programme for the Dutch Presidency, presented on 6 January 2016, combating corporate tax avoidance was listed as one of the priorities. It has been a general priority in the trio programme as well. Corporate tax avoidance has been on the agenda of the Council since the beginning of the Dutch Presidency and the topic has received attention via the official government channels and Dutch media.
<p>What progress was made during the Presidency?</p> 	<ul style="list-style-type: none"> On 28 January 2016, the Commission presented its Anti-Tax Avoidance Package, including several measures aimed at fighting corporate tax avoidance. One of these measures, included in the Fourth Directive on Administrative Cooperation (DAC4), foresees financial country-by-country reporting by multinationals to tax administrations, implementing the OECD's BEPS Action Plan. On 8 March 2016, the Council reached an agreement on this directive. Companies with a minimum turnover of €750 million operating in the EU will have to report their key financial and accounting information on a country-by-country basis to tax authorities. This information will be exchanged by (tax authorities of) EU Member States. On 24 April 2016, the Council agreed on plans to draft a list of tax havens, sanctions for these countries and easier exchange of information on beneficial ownership of shell companies. On 17 June 2016, the Council adopted the Anti-Tax Avoidance Directive. Unfortunately it was much weaker than intended. The switchover clause has been taken out, an exemption possibility for Controlled Foreign Companies has been added,⁷ and transitional arrangements have been made for interest limitation rules.



⁶ www.europarl.europa.eu/news/en/news-room/20160530STO29669/corporate-taxation-the-fight-against-tax-avoidance

⁷ For explanation of the switchover clause, please see the Scorecard Annex.

<p>Key Issue:</p> <p>3.4 Revision of the Shareholder Rights Directive</p>	<p>Why is this important?</p> <ul style="list-style-type: none"> Revising the Shareholder Rights Directive (SRD) would tackle corporate governance shortcomings related to company boards, shareholders, intermediaries and proxy advisors. The revisions would provide more information for and over shareholders, thereby also shedding light on beneficial ownership. Public country-by-country reporting is also part of the planned revisions due to an amendment included in the draft directive by the European Parliament. <p>What was the key recommendation?</p> <ul style="list-style-type: none"> The negotiations about the revisions of the SRD are in their final stages. However, they have not been concluded and are currently stalled. It is important that the negotiations are resumed and concluded during the Dutch Presidency, so there can be more transparency about shareholders and strong country-by-country reporting.
<p>What priority was given to the revision of the SRD?</p> 	<ul style="list-style-type: none"> The revision of the SRD was not taken up in the working programme of the Dutch Presidency. However, it was present in the Trio Programme. At the beginning of the Dutch Presidency, on 11 January 2016, Minister of Security and Justice Ard van der Steur told the Committee on Legal Affairs of the European Parliament that he was determined to reach an agreement on the SRD revisions.
<p>What progress was made during the Presidency?</p> 	<ul style="list-style-type: none"> At the meeting with the Legal Affairs Committee of the European Parliament on 11 January 2016, Minister of Security and Justice Van der Steur noted the Parliament's call for the inclusion of public country-by-country reporting in the directive but said he was waiting for the impact assessment from the Commission. The European Commission's impact assessment on corporate tax transparency was published on 12 April 2016, as well as its legislative proposal on public country-by-country reporting. Since the publication of the impact assessment, the revision of the SRD has not appeared on the agenda of the Justice and Home Affairs Council. According to the Dutch Presidency, negotiations on the revision of the SRD with the European Parliament have progressed. Because the negotiations take place in trilogues, there is no official report on the progress. The last trilogue talks presumably took place on 27 June 2016.

<p>Key Issue:</p> <p>3.5 Anti-corruption & transparency in the Transatlantic Trade and Investment Partnership</p>	<p>Why is this important?</p> <ul style="list-style-type: none"> • EU free trade agreements have never contained specific anti-corruption provisions and there is widespread concern among civil society about the general lack of transparency in the ongoing negotiations on Transatlantic Trade and Investment Partnership (TTIP). <p>What was the key recommendation?</p> <ul style="list-style-type: none"> • TTIP should include strong anti-corruption and transparency requirements in order to achieve the highest level of commitment to government transparency and combating corruption on an international level. • To enable meaningful public scrutiny and debate, the Dutch Presidency should encourage a highly transparent negotiating process.
<p>What level of priority was given to anti-corruption & transparency in TTIP?</p> 	<ul style="list-style-type: none"> • The negotiations on TTIP were taken up in the Presidency programme and the Trio Programme as a priority; yet in both there was no mention of anti-corruption measures or transparency. • In a letter to the Dutch parliament on 1 March 2016, Minister of Foreign Affairs Koenders indicated that the Presidency was aware of the call for more transparency surrounding the negotiations on TTIP.
<p>What progress was made during the Presidency?</p> 	<ul style="list-style-type: none"> • From 1 February 2016 onwards, each Member State was allowed to open a reading room for national parliamentarians to read the EU confidential negotiation documents. For members of the European Parliament a similar room exists in Brussels. • On 2 May 2016, Greenpeace published the so-called 'TTIP-leaks', consisting of 15 consolidated chapters of the TTIP negotiations. These documents show that a proposal by the United States for anti-corruption measures was discussed during the ninth round of negotiations in April 2015. This indicates that it was indeed the intention to include these measures in TTIP.

<p>Key Issue:</p> <p>3.6 The creation of the European Public Prosecutor's Office</p>	<p>Why is this important?</p> <ul style="list-style-type: none"> The establishment of the European Public Prosecutor's Office (EPPO) should help the EU to protect its budget. Every year an estimated €500 million is lost due to suspected fraud and corruption. This money originates from EU tax payers. The EPPO should investigate and prosecute – in the Member States' courts – any crimes affecting the EU budget. <p>What was the key recommendation?</p> <ul style="list-style-type: none"> For the EPPO it is of utmost importance that it becomes an independent body. The mandate of the EPPO should be strong and broad and include cross-border corruption.
<p>What level of priority was given to the creation of the EPPO?</p> 	<ul style="list-style-type: none"> The establishment of the EPPO was not added to the working programme of the Dutch Presidency. In the Trio Programme, there is no mention of the EPPO. There was little or no attention paid to the creation of the EPPO on the website of the Dutch Presidency or in Dutch politics. It has not been shown to be a priority. In a meeting at the beginning of the Dutch Presidency, representatives stressed that the subject would be one of the dossiers the Presidency would like to make progress on. This was not reflected in the official texts. Nevertheless, the (informal) prioritisation can be deduced from the amount of progress made.
<p>What progress was made during the Presidency?</p> 	<ul style="list-style-type: none"> In January and February 2016, the Dutch Presidency organised five working days on the creation of the EPPO in the Working Party on Cooperation in Criminal Matters (COPEN), where technical discussions on the issue were held. At the meeting of the Justice and Home Affairs Council in March 2016, a policy debate on the proposal was held. The Presidency had made progress at the technical level on articles concerning external relations, financial, staff and general provisions. The debate focussed on what costs would fall under the 'operational expenditures' of the EPPO. At the meeting of the Justice and Home Affairs Council in June 2016, the discussions were continued. There was broad conceptual support for a number of articles discussed at expert level, covering the case management system and data protection, the simplified prosecution procedures, general provisions and financial and staff provisions.

<p>Key Issue:</p> <p>3.7 Directive on the fight against fraud to the Union's financial interest by means of criminal law</p>	<p>Why is this important?</p> <ul style="list-style-type: none"> The current protection against fraud regarding the EU's financial interests is a patchwork of different national legislations, sanctions and definitions. The Directive on the fight against fraud to the Union's financial interest by means of criminal law (PIF Directive) should harmonise this and make an EU-wide uniform approach possible. It will also define the scope of action for the EPPO. <p>What is the key recommendation?</p> <ul style="list-style-type: none"> The Dutch Presidency should work to overcome the current deadlock on this topic in the Council. The Council cannot agree on the inclusion of VAT fraud in the Directive. However, for a well-functioning EPPO it is important that it has a harmonised legal basis for the prosecution of cross-border crimes, including VAT fraud.
<p>What level of priority was given to the PIF Directive?</p> 	<ul style="list-style-type: none"> There was no mention of the PIF Directive in the Presidency programme. In the Trio Programme, some general attention was paid to the protection of the EU's financial interests against fraud, but this focused on the establishment of the EPPO. As with the EPPO, there was little attention given to the PIF Directive on the website of the Presidency and in the Dutch parliament. The directive was not a priority. Unlike the creation of the EPPO, there was no mention of the PIF Directive in meetings with representatives of the Presidency.
<p>What progress was made during the Presidency?</p> 	<ul style="list-style-type: none"> In February 2016, the Presidency set up a meeting of the Working Party on Substantive Criminal Law (DROIPEN) with experts on VAT from the Working Party on Tax Questions. There were discussions about how the VAT system in Member States works, how fraud with VAT occurs, how it is fought in Member States and what the effects for the Union are. The Presidency also started exploratory discussions among experts on whether VAT fraud could be covered in the directive. At the Council meeting in June 2016, the discussion among the Member States was continued on the basis of the work the Presidency had undertaken at working level. Still, there was no consensus on the inclusion of VAT fraud in the directive nor on the way this should be done.

SCORECARD ANNEX

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?

Score: **YELLOW**

Presidency programme

The broad policy priorities of the Dutch Presidency were first published on the website of the House of Representatives on 28 January 2015.⁸ Initially, the Presidency priorities did not receive much attention from the media. However, in the few months leading up to the Presidency more attention was given in Dutch media. The Trio Programme of the Netherlands, Slovakia and Malta was discussed at the General Affairs Council on 15 December 2015.⁹ The Council endorsed the 18-month programme and it was published afterwards on the website of the Council.¹⁰

On 15 December 2015, Minister of Foreign Affairs Bert Koenders visited the European Parliament in Strasbourg to present the priorities of the Dutch Presidency.¹¹ The detailed Presidency programme was published on the website of the Presidency on 6 January 2016 at the start of the Presidency¹² and was subsequently presented to the House of Representatives the next day.¹³ More details about the priorities were put on the Presidency website gradually.¹⁴ Media attention regarding the priorities increased as the Dutch Presidency began. On 20 January 2016, Prime Minister Mark Rutte discussed the priorities in the plenary meeting of the European Parliament.¹⁵ Prime Minister Rutte's speech was published on the website of the Presidency the same day.¹⁶

Presidency website

The official website of the Dutch Presidency was launched on 15 December 2015, three weeks before the start of the Presidency.¹⁷ In order to inform citizens about the priorities and engage them with the Presidency, an earlier launch of the website would have been desirable. According to a letter from Minister of Foreign Affairs Koenders to the House of Representatives in October 2014, the Presidency would be a good opportunity to increase the knowledge of Dutch citizens about EU decision-making and its importance.¹⁸ The late launch of the website may have affected this goal. Anyone looking for information about the Presidency in the two months ahead of the Presidency, when media attention increased, would not have been able to find the official website. Some

⁸ www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2015Z01423&did=2015D02941

⁹ www.tweedekamer.nl/kamerstukken/detail?id=2015D47789&did=2015D47789

¹⁰ www.consilium.europa.eu/en/meetings/gac/2015/12/15/

¹¹ www.rijksoverheid.nl/regering/inhoud/bewindspersonen/bert-koenders/buitenlandse-reizen/bezoek-strasbourg-15-december

¹² www.eu2016.nl/documenten/publicaties/2016/01/06/nationaal-programma

¹³ www.tweedekamer.nl/kamerstukken/detail?id=2016D00233&did=2016D00233

¹⁴ www.eu2016.nl/eu-voorzitterschap/programma-en-prioriteiten

¹⁵ www.rijksoverheid.nl/actueel/nieuws/2016/01/20/minister-president-rutte-spreekt-in-europees-parlement

¹⁶ www.eu2016.nl/documenten/publicaties/2016/01/20/speech-by-prime-minister-mark-rutte-of-the-netherlands-to-the-european-parliament-20-january-2016

¹⁷ www.eu2016.nl/

¹⁸ www.rijksoverheid.nl/documenten/kamerstukken/2014/10/31/kamerbrief-verzoek-inzake-nederlands-eu-voorzitterschap-2016

communication about the preparations for the Presidency was carried out via Twitter in the months before the Presidency started. However, this was mostly information of a practical nature instead of political information.

When it was launched, the website itself was clear and user friendly. On the home page, links were provided to an explanation about the Presidency and its priorities, important dossiers and practical information. The most recent news stories were also featured. The information on the website was clearly written and often accompanied by clear explanations using video¹⁹ or infographics.²⁰ The positions of the Dutch Presidency and the progress made on some topics were presented in digital magazines on the topics.²¹

The menu included links to the agenda and published documents. A search feature made it easier to find specific topics, articles and documents. The calendar was user-friendly and contained detailed information about most of the events during the Presidency. Unfortunately, however, there was not a built-in option for stakeholders to sign up for events and it was not always clear whether signing up would even be possible. Spokespeople were listed for most events but not all.

As well as the website, the Dutch Presidency used different social media platforms such as YouTube, Twitter, Flickr and Instagram to communicate what was happening (account details are in the footnote).²² This facilitated the promotion of events and contributed to the interaction with citizens. The Presidency placed 60 videos on YouTube which together had more than 20,000 views. It is not possible to determine anymore how many posts and followers the Presidency had on Twitter as their account has now been closed. On Flickr, the Presidency posted detailed photo reports of events, with a total of 7,313 photos. With only 82 followers, the reach was not very broad. The Presidency Instagram seems to have had more success with 1,173 followers and 692 messages (during the duration of the Presidency).

Stakeholders' involvement

It is not clear whether the Dutch Presidency organised stakeholder meetings in advance of the Presidency; there was no information available on any such meetings. During the Presidency, it was possible for stakeholders to filter out events of interest on the website of the Presidency and in some cases to sign up. However, it was unclear whether many of the events were open for stakeholders or whether they were invitation-only.

1.1.2. Were the goals of the Presidency aligned with the national and EU agenda?

Score: **GREEN**

The goals of the Dutch Presidency were well rooted in the Trio Programme. The Presidency gave priority to four different main topics: a comprehensive approach to migration and international security; Europe as an innovator and job creator; sound, future-proof European finances and a robust Eurozone; and a forward-looking policy on climate and energy.²³ Each of these topics can be found in detail in the Trio Programme as well.²⁴ The priorities were also in line with the Strategic Agenda of the European Council, published in June 2014, which states that the EU should focus on what is important for citizens and businesses, offering solutions to major challenges.²⁵ The same

¹⁹ english.eu2016.nl/media/video

²⁰ english.eu2016.nl/media/infographics

²¹ magazines.government.nl/fa/eu2016-ezine/

²² YouTube: www.youtube.com/channel/UCAnfypd0o2ijj73n0XvIErg, Twitter (not active anymore): twitter.com/EU2016NL, Flickr: www.flickr.com/photos/eu2016nl/, Instagram: www.instagram.com/eu2016nl/

²³ english.eu2016.nl/documents/publications/2016/01/07/programme-of-the-netherlands-presidency-of-the-council-of-the

²⁴ english.eu2016.nl/documents/publications/2015/12/30/trio-programme-2016-17

²⁵ www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/143477.pdf

can be said for alignment with the goals set in the Europe 2020²⁶ and Horizon 2020 strategies.²⁷ Finally, the priorities were reflecting the national interests of the Netherlands within the EU as well, such as sustainable economic growth, immigration, employment and democratic legitimacy.²⁸

1.2. Budget and expense justifications

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

Score: **RED**

Before the start of the Presidency, little was known about its budget. Dutch media did report that the total costs of the project organisation would be €46 million, but no detailed breakdown of the costs were given. The costs of the individual ministries would also have to be added to this amount.²⁹ On 12 January 2016, with the start of the Presidency, more details were published on the website of the Presidency. The total costs would reportedly amount to €62.8 million, of which €46 million would be used for the central infrastructure, organisation and events and €16.8 million for the costs of the meetings for the individual ministries. Some explanation of the costs was given, but again no detailed breakdown was provided.³⁰

In a letter on the transparency of the EU sent to the Dutch parliament in March 2016, the government did recognise the importance of a clear and publicly available budget for a transparent Presidency.³¹ However, it was decided to publish the budget in July 2016, after the end of the Presidency. This was done by providing an overview of the estimated and incurred expenses.

In April 2016, in response to requests by the Dutch Parliamentary Committee on European Affairs,³² the Minister of Foreign Affairs decided to give a more detailed report of the expected expenses of the Presidency.³³ In this document, the textual explanation on the different items on the budget was more comprehensive, yet the level of numerical detail remained minimal.

In July 2016, an overview of the expected costs of the Dutch Presidency was presented to the parliament, together with a letter on the results and performance of the Presidency.³⁴ A detailed breakdown of the expected costs was given but unfortunately no details about the incurred costs were presented. The incurred costs have not yet been published and because of this, it is difficult to draw any budgetary conclusions about the Presidency. According to the letter accompanying the overview of expected costs, a final report of the costs will be published 'later this year',³⁵ meaning later in 2016.

It would also have been useful to publish a detailed budget before the Presidency began so that citizens could get an idea of what the organisation of the Presidency might entail and what their tax

²⁶ ec.europa.eu/europe2020/index_nl.htm

²⁷ ec.europa.eu/programmes/horizon2020/

²⁸ www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2015Z01423&did=2015D02941

²⁹ www.nu.nl/politiek/4171919/eu-voorzitterschap-van-nederland-wordt-sober.html

³⁰ www.eu2016.nl/actueel/nieuws/2016/01/12/eu-voorzitter-zijn-wat-kost-dat

³¹ www.rijksoverheid.nl/documenten/kamerstukken/2016/03/01/kamerbrief-over-transparantie-van-de-europese-unie

³² www.rijksoverheid.nl/regering/inhoud/bewindspersonen/bert-koenders/documenten/kamerstukken/2016/04/22/kamerbrief-met-verzoek-veantwoording-feitelijke-vragen-inzake-transparantie

³³ www.rijksoverheid.nl/documenten/kamerstukken/2016/04/22/verantwoording-uitgaven-van-centrale-projectorganisatie-voor-het-eu-voorzitterschap

³⁴ www.rijksoverheid.nl/documenten/publicaties/2016/07/07/overzicht-uitsplitsing-geraamde-kosten-eu-voorzitterschap-2016

³⁵ www.rijksoverheid.nl/documenten/kamerstukken/2016/07/07/kamerbrief-over-resultaten-en-uitvoering-van-het-nederlandse-eu-voorzitterschap

payments would be spent on. It is even more difficult for citizens to get an idea of the budget of the Presidency because the detailed breakdown of expected costs has not been published on the website of the Presidency; this was only published on the websites of the Dutch government and parliament. In the letter accompanying the breakdown of the expected costs, the government does claim to have increased transparency by releasing the budget of the Presidency beforehand, but because of a lack of detail this may be an overstatement.

1.2.2. How transparent is the Presidency budget?

Score: **RED**

The level of detail on the Presidency budget was minimal until April 2016, when the Minister of Foreign Affairs decided to provide the Parliamentary Committee for European Affairs with more details. Until then, the only information available on the budget was very generic and could be found on the website of the Presidency or in Dutch media.³⁶ On 22 April 2016, more information on the items on the budget was published on the website of the parliament.³⁷ The information was available in PDF format and thereby searchable and machine-readable. Only numerical details were provided on the different items of the budget; no breakdown was given. The PDF format was used as well for the document with detailed expected expenses that was published on 7 July 2016.³⁸ However, looking back at the transparency of the budget during the Presidency, it must be concluded that it was insufficient.

Pillar II – Accountability of the Presidency

2.1. Inclusiveness of stakeholders

2.1.1. Was it possible for stakeholders to find information on the events of the Presidency?

Score: **GREEN**

All events and meetings of the Dutch Presidency and the European Council could be found on the interactive calendar on the official Dutch website.³⁹ On the English website, the meetings of the Council and informal meetings were not included in the calendar.⁴⁰ On the website, key information was provided, such as the title of the event, the date and the location. In many cases, a short description of the event was given and in some cases, contact information was provided. The website had an interactive search function where different events could be filtered out, such as Council meetings, informal ministerial meetings, expert or political meetings, conferences or seminars and other meetings.

A first draft of the institutional calendar of the Dutch EU Presidency was published in September 2015 on the website of the parliament.⁴¹ The document was in PDF format and displayed all meetings of the European Council and the European Parliament during the six months that the Netherlands held the Presidency. Unfortunately the PDF document was not shared on the website of the Presidency itself. It would have been advisable to include a concise overview of all the activities during the Dutch Presidency on the website of the Presidency.

2.1.2. How inclusive was the EU Presidency process?

Score: **YELLOW**

³⁶ www.rtlnieuws.nl/economie/home/eu-voorzitterschap-kost-628-miljoen-hier-gaat-het-aan-op

³⁷ www.rijksoverheid.nl/documenten/kamerstukken/2016/04/22/verantwoording-uitgaven-van-centrale-projectorganisatie-voor-het-eu-voorzitterschap

³⁸ www.rijksoverheid.nl/documenten/publicaties/2016/07/07/overzicht-uitsplitsing-geraamde-kosten-eu-voorzitterschap-2016

³⁹ www.eu2016.nl/kalender

⁴⁰ english.eu2016.nl/events

⁴¹ www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2015Z16364&did=2015D33295

For many events, it was not clear whether they were open for stakeholders or whether they were invitation-only. On the event page itself, there was no clear option to register. In some cases, there was a link provided to the website of the event itself where registration was possible. For other events, a contact person was provided, but it was not clear whether registration would be possible via this person. On the website of the Presidency, a list of all relevant contacts for each policy area could be found as well so that stakeholders would be able to get in contact in case of questions.⁴²

The website did make it possible for stakeholders to filter out events that were of interest to them. By selecting 'other meeting', stakeholders could find events that were open to them. A specific policy area could be selected and it was also possible to search for keywords. The events showed various different ways of bringing the event to the attention of stakeholders: where some events provided an extensive introduction, others only introduced the topic briefly and linked to the website of the event. Often, these dedicated websites were detailed and very clear. There were also varying levels of opportunity for stakeholders to participate as it was not always clear on the website of the Presidency whether participating would be possible.

2.2. Management of expenses of the EU Presidency

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

Score: **RED**

The total costs were published on the website of the Presidency.⁴³ The only breakdown of costs that was presented was between the costs of the central organisation and the costs for the individual ministries. In the accompanying text, it was explained that the Presidency in 2016 would be cheaper than that of 2004, but no further numerical information was given. Besides that publication, no other information on the budget was provided on the website of the Presidency, or on the website of the ministry, parliament or government. The same information was circulated to Dutch media, but again most outlets could not give a further breakdown of the costs.⁴⁴ It seems that some outlets got their hands on the overview of expected expenses in March 2016, because more details found their way into the public domain.⁴⁵ No attention to the more detailed breakdown was given on the website of the Presidency.

After the end of the Presidency, the government published a more detailed list of the expected expenses on the website of the Dutch parliament.⁴⁶ The document was not shared on the website of the Presidency. This made it much harder for citizens to find the detailed information. There has also not yet been any information available on the actual costs of the Presidency, even though it was promised in March 2016 that both expected expenses and incurred expenses would be published.⁴⁷

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

Score: **RED**

The government did not publish a more detailed list of the expenses until June 2017 in answer to questions from parliament about the annual report of the Ministry of Foreign Affairs.⁴⁸ This means it was not published separately on the website of the Presidency and was not given in an open format. The document can be found on the website of the Dutch parliament, as part of a large

⁴² www.eu2016.nl/media/woordvoering

⁴³ www.eu2016.nl/u-en-de-eu/europagebouw-open-voor-publiek/kosten

⁴⁴ www.nu.nl/politiek/4171919/eu-voorzitterschap-van-nederland-wordt-sober.html

⁴⁵ www.rtlnieuws.nl/economie/home/eu-voorzitterschap-kost-628-miljoen-hier-gaat-het-aan-op

⁴⁶ www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2016Z14339&did=2016D29332

⁴⁷ www.eu2016.nl/documenten/publicaties/2016/03/01/kamerbrief-over-transparantie-van-de-europese-unie

⁴⁸ www.rijksoverheid.nl/documenten/publicaties/2017/06/02/vragen-en-antwoorden-over-jaarverslag-ministerie-van-buitenlandse-zaken-2016

document containing 67 questions about the annual report of the Ministry of Foreign Affairs. This makes it difficult for citizens to find the detailed information.

The information about expenses was provided with minimal detail and under somewhat vague categories (i.e. “security” or “catering”) and was not dated as such. Regarding explanatory notes, all that is mentioned is that they stayed within the budget of €46 million. All in all, budget transparency surrounding the EU Presidency has been minimal.

Pillar III – Key Anti-Corruption Files

3.1. Transparency of trilogues

3.1.1. What priority was given to transparency of trilogues?

Score: **GREEN**

Transparency of EU decision-making was one of the main priorities of the Dutch Presidency. In the Presidency programme, it was stated that the Netherlands would put transparency on the agenda of the General Affairs Council. The Presidency would also work to put transparency into practice within the existing frameworks.⁴⁹ In the Trio Programme, transparency was listed as one of the core principles of EU regulation.⁵⁰ Although trilogues are not explicitly mentioned, they are a vital part of the decision-making process and therefore they should be part of the initiatives for improved transparency.

The fact that transparency of trilogues was a priority for the Presidency could also be concluded from the non-paper⁵¹ on the transparency of the EU that the Dutch wrote together with Denmark, Estonia, Finland, Slovenia and Sweden in April 2015.⁵² Here it was stated that it was essential to make the trilogue negotiations more transparent. Similar wording was used in the letter from the Dutch Minister of Foreign Affairs to the Dutch parliament on transparency in the EU on the 1 March 2016.⁵³

Finally, the topic of transparency received much attention on the official website of the Presidency.⁵⁴ The developments surrounding transparency of the EU were reported extensively with different articles and the Dutch Minister of Foreign Affairs addressed the topic as well in a Reddit Q&A session.⁵⁵ Ample attention was given as well to the App Competition to make EU decision-making more transparent and the TransparencyCamp Europe that was held on 1 June 2016.⁵⁶ Unfortunately not much attention was given to the trilogues themselves.⁵⁷

3.1.2. What progress was made during the Presidency?

Score: **GREEN**

At the meeting of the General Affairs Council on 15 March 2016, the Council adopted the Inter Institutional Agreement (IIA) on Better Law-making.⁵⁸ Part of the agreement is about improving the

⁴⁹ english.eu2016.nl/documents/publications/2016/01/07/programme-of-the-netherlands-presidency-of-the-council-of-the

⁵⁰ english.eu2016.nl/documents/publications/2015/12/14/persbericht-trioprogramma

⁵¹ An informal document, usually without explicit attribution, put forward in closed negotiations within EU institutions in order to seek agreement on some contentious procedural or policy issue.

⁵² www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/68703/html.bookmark

⁵³ english.eu2016.nl/documents/publications/2016/03/1/transparantie-brief

⁵⁴ english.eu2016.nl/search?keyword=transparency&period-from=&period-to=&type=All+documents

⁵⁵ english.eu2016.nl/latest/news/2016/02/09/koenders-uses-reddit-session-to-highlight-the-issue-of-eu-transparency

⁵⁶ transparencycamp.eu/

⁵⁷ english.eu2016.nl/search?keyword=trilogue&period-from=&period-to=&type=All+documents

⁵⁸ www.consilium.europa.eu/en/meetings/gac/2016/03/14/

transparency of the work of the Council, the Parliament and the Commission. The agreement offers three ways in which the transparency of EU decision-making can be improved: by setting up a joint database on the progress on legislative files; by creating a joint register of delegated acts; and by giving more transparency on trilogues.⁵⁹

The topic of transparency was addressed for the first time in the Council at the meeting on 24 June 2016. The Member States discussed the state of play in the implementation of the transparency aspects of the IIA. The discussion was based on a Presidency note that explored the three options for increased transparency that were given by the IIA. For trilogues, the Presidency suggested that two paths could be explored. On the one hand, it was an option to be more transparent about the negotiation mandates of the Council. On the other hand, there could be more pro-active communication about the results of the trilogue negotiations.⁶⁰

By discussing the transparency of trilogues in the context of the IIA, the Dutch Presidency placed the topic on the agenda of the Council. In its Presidency note, it suggested two options that needed further exploration, with which it created a base for further technical and political discussion of the topic. Although the concrete results of the Dutch Presidency on this topic seemed minimal and more work needed to be done, a first step was taken.

3.2. Reforms of the Joint Transparency Register

3.2.1. What priority was given to the reforms of the Joint Transparency Register?

Score: **YELLOW**

The transparency of EU decision-making was one of the priorities of the Dutch Presidency. According to the programme, the Presidency would try to improve transparency by putting it into practice within the existing frameworks and by including transparency in the agenda of the General Affairs Council. There was no explicit mention of the reforms of the Joint Transparency Register even though this would be able to contribute to increased transparency of EU decision-making. In the letter on transparency of the EU sent to the Dutch parliament in March 2016, the reforms of the register were mentioned.⁶¹ The Presidency said it was waiting for the European Commission to come with its official proposal.

Since the public consultation period had just started and would end at the beginning of June 2016, a proposal could not be expected any sooner. After the public consultation had ended, the Presidency sent a letter to the European Commission on the topic.⁶² In this letter, the Presidency welcomed the planned reforms of the Joint Transparency Register. It also stressed the importance of taking up information on lobbying at the Council in the register as well. This did not include information on the meetings the Permanent Representation held and the activities conducted by Member States themselves.

3.2.2. What progress was made during the Presidency?

Score: **YELLOW**

As mentioned above, the Council was waiting on the proposal for the reforms of the European Commission. The Commission launched the public consultation on 1 March 2016. On 1 June 2016, the consultation was closed. Because there is not a proposal yet, the topic has not yet been addressed in the Council. It has been addressed in the European Parliament, which held a

⁵⁹ eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2016:123:FULL&from=EN

⁶⁰ data.consilium.europa.eu/doc/document/ST-10120-2016-REV-1/en/pdf

⁶¹ english.eu2016.nl/documents/publications/2016/03/1/transparantie-brief

⁶² www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2016Z13433&did=2016D27547

conference on the topic on 2 May 2016 where European Commissioner Frans Timmermans was one of the speakers.⁶³

The Council did talk about transparency of EU decision-making in general in June 2016 in the context of the Inter-Institutional Agreement, but the lobby register was not part of these discussions.⁶⁴ The Presidency could have pushed with the Commission for the proposal but it seems that this did not happen. EU Ombudsman Emily O'Reilly did ask for a strong proposal with strong sanctions for lobbyists who violated the rules of the register in May 2016.⁶⁵ Still, the Commission is bound to its own timelines and priorities and the Presidency did send a letter to the Commission to inform it on its position in June 2016.⁶⁶ Therefore it seems the Presidency cannot be held responsible that little progress was made on this topic.

3.3. Anti Tax Avoidance Package and the Action Plan for Fair and Efficient Corporate Taxation

3.3.1. What priority was given to the measures against tax avoidance?

Score: **GREEN**

In the programme of the Dutch Presidency, reforming the corporate tax system in the EU was made one of the priorities. Part of the reforms were the measures designed to end tax avoidance. The Dutch Presidency specifically stated that it would prioritise action against tax evasion and tax avoidance based on the Base Erosion and Profit Shifting (BEPS) Action Plan of the Organisation for Economic Co-operation and Development (OECD).⁶⁷ This was prioritised as the Commission was expected to present a proposal to transpose the BEPS action points into EU law. As a matter of fact, the European Commission implemented Action 13 of the BEPS plan, foreseeing country-by-country reporting and exchange of information among tax administrations, through its Fourth Directive on Administrative Cooperation (DAC4). The measures against tax avoidance were also part of the broader goal of ensuring social fairness stated in the Trio Programme.⁶⁸ Therefore it is fair to say that the priority was well-rooted in the Trio Programme.

The prioritisation of measures against tax avoidance was also reported in the Dutch media. The official Presidency website reported regularly on the progress on the measures against tax avoidance.⁶⁹ After the revelations of the Panama Papers,⁷⁰ the topic was widely reported in the Dutch media. The increased attention may have put increasing pressure on the EU to curtail the problem of tax avoidance.

3.3.2. What progress was made during the Presidency?

Score: **YELLOW**

The Action Plan for Fair and Efficient Corporate Taxation in the EU was introduced on 17 June 2015. The most important part of the action plan was the re-launch of the proposal for a Common Consolidated Corporate Tax Base (CCCTB). The proposal stems from 2011 and negotiations have

⁶³ www.europarl.europa.eu/news/en/news-room/20160429STO25312/Lobbying-Parliament-hosts-conference-on-mandatory-EU-transparency-register

⁶⁴ data.consilium.europa.eu/doc/document/ST-10120-2016-REV-1/en/pdf

⁶⁵ euobserver.com/institutional/133608

⁶⁶ www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2016Z13433&did=2016D27547

⁶⁷ english.eu2016.nl/documents/publications/2016/01/07/programme-of-the-netherlands-presidency-of-the-council-of-the

⁶⁸ english.eu2016.nl/documents/publications/2015/12/30/trio-programme-2016-17

⁶⁹ english.eu2016.nl/search?keyword=tax+avoidance&period-from=&period-to=&type=All+documents&sort-by=date&page=1

⁷⁰ www.transparency.nl/2016/04/de-panama-papers/

stalled, but the Commission wanted to revive the discussions by offering a step-by-step approach.⁷¹ According to the Council, plans for a CCCTB were presented in early 2016,⁷² but soon it became clear that the proposal would be delayed.⁷³

Another important part of the action plan was increasing tax transparency within the EU and vis-à-vis third countries. Within the EU, the Commission envisaged that this could be done by obliging companies to publicly disclose tax information on a country-by-country basis, called public country-by-country reporting (CBCR). A public consultation was launched in 2015 and the Commission worked on an impact assessment, which was published in April 2016.⁷⁴ For more transparency vis-à-vis third countries, the Commission launched a list of non-cooperative tax jurisdictions.⁷⁵ This would help with a more uniform EU approach to non-cooperative tax jurisdictions.

On 28 January 2016, the European Commission presented its Anti-Tax Avoidance Package – a concrete package of measures that would help to fulfil goals similar to those in the Action Plan. The package consisted of the Anti-Tax Avoidance Directive, a Recommendation on Tax Treaties, the Revised Administrative Cooperation Directive and a Communication on External Strategy.⁷⁶ The Anti-Tax Avoidance Directive consisted of six different measures: a Controlled Foreign Company rule; a switchover rule; an exit taxation; an interest limitation; a rule to limit hybrid mismatches; and a general anti-abuse rule.⁷⁷ As well as the Anti-Tax Avoidance Directive, CBCR between Member States' tax authorities on tax-related information on multinationals was introduced as part of the revision of the Fourth Administrative Cooperation Directive (DAC4).⁷⁸ Further steps in the field of CBCR will be taken based on the impact assessment of the Commission and the public consultation launched as part of the Action Plan.

CBCR

An agreement on the topic of CBCR between tax authorities was reached relatively quickly during the Dutch Presidency. The topic was first introduced and discussed at the Economic and Financial Council on 12 February 2016. On 8 March 2016, the Council reached an agreement.⁷⁹ The Member States agreed on a CBCR-obligation for multinationals with a revenue of at least €750 million operating in the EU. The information to be reported consisted of revenues, profits, taxes paid, capital, earnings, tangible assets and the number of employees for each Member State in which a company was active. The obligation also counted for companies that were not EU tax residents but had subsidiaries in the EU – so-called “secondary reporting”.⁸⁰ This was optional for 2016 and mandatory as of the 2017 fiscal year. The information will be offered to tax authorities within 12 months after the end of the fiscal year, after which it will be exchanged automatically within three months of reporting.

The agreement was criticised by civil society organisations, including Transparency International.⁸¹ Since multinationals' CBCR information is not going to be made public under the arrangements, civil society, citizens, journalists as well as policy-makers are not able to gain any insights into the tax

⁷¹ [europa.eu/rapid/press-release MEMO-15-5174_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5174_en.htm)

⁷² www.consilium.europa.eu/en/meetings/ecofin/2015/12/08/

⁷³ www.politico.eu/article/europe-cracks-down-on-tax-dodgers/

⁷⁴

ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/lists_of_countries/index_en.htm

⁷⁵ Ibid.

⁷⁶ ec.europa.eu/taxation_customs/taxation/company_tax/anti_tax_avoidance/index_en.htm

⁷⁷ ec.europa.eu/taxation_customs/taxation/company_tax/anti_tax_avoidance/key_measures/index_en.htm

⁷⁸ ec.europa.eu/taxation_customs/taxation/company_tax/anti_tax_avoidance/index_en.htm

⁷⁹ english.eu2016.nl/latest/news/2016/03/08/agreement-on-the-exchange-of-tax-information

⁸⁰ www.consilium.europa.eu/en/press/press-releases/2016/03/08-corporate-tax-avoidance/

⁸¹ www.transparency.nl/2016/03/raad-niet-openbare-cbcr/

payments of big companies operating in their country. This goal would be reached by separate proposal for public CBCR.⁸²

On 3 April 2016, the world was shocked by the revelations of the Panama Papers,⁸³ which showed that taxes were being dodged on a massive scale via offshore shell companies registered in tax havens. The millions of leaked documents showed many networks of companies that only existed on paper. These networks were mainly used by individuals, showing that tax avoidance and evasion is very much a problem. The leak also made clear that anyone can set up a structure to avoid taxes. The Panama Papers provided a catalyst for further measures against tax avoidance: it focused the public's attention on the topic and it made clear that only a coordinated, worldwide approach would be able to tackle tax avoidance and evasion effectively.

On 12 April 2016, the European Commission finally published a legislative proposal on public CBCR.⁸⁴ However, the country-by-country element of the proposal had been reduced to a bare minimum. According to this proposal, multinationals would only have to disclose information on a country-by-country basis for activities within the EU and a list of tax havens that is still to be decided upon. For the rest of the world, one aggregate figure is enough. In effect, this means that most of the world will not be covered by the public CBCR requirement. In addition, citizens in developing countries, who already suffer disproportionately from illicit financial outflows,⁸⁵ will not have access to information on the operations and tax payments of multinationals in their countries. It thus becomes impossible for them to monitor potential cases of collusion between corrupt governments and multinationals. Finally, there is a concrete risk that many tax havens will not be put on the EU's blacklist since this is a highly politicised act. In previous attempts mostly the small tax havens were listed whereas bigger tax havens were not included in the list.⁸⁶ EU Member States will try to keep their strategic allies and overseas territories off the list.⁸⁷

As well as the limitations of the country-by-country element, the proposal has other shortcomings too. Just like it did with DAC4, the Commission set the revenue requirement at €750 million in its proposal. This is too high to banish tax avoidance effectively. It will exclude many relatively big companies from reporting CBC information. Another criticism is that the information will only be published on the website of the company. A central database would make monitoring for inconsistencies and comparing different companies, activities and countries a lot easier. Finally, there would only be a limited set of disclosure categories. Citizens would not have access to a full list of subsidiaries, payments to governments and public subsidies received, even though these categories can be very important to uncover corruption, bribery and tax avoidance or evasion.

The proposal has not yet been formally discussed in the Competitiveness Council (COMPET), which is responsible for this proposal. The topic was not on the agenda at the one meeting the COMPET has had since the presentation of the proposal, in May 2016.⁸⁸ It therefore seems that the Dutch Presidency had other priorities for the remainder of its term.

Third country measures

The Council discussed tax transparency in relation to third countries at the May 2016 meeting. Here the Council adopted a conclusion on the Commission communication on an external strategy for effective taxation and the Commission recommendation on the implementation of OECD measures against tax treaty abuse, both part of the Anti-Tax Avoidance Package.⁸⁹ The communication of the

⁸² www.transparency.nl/2016/02/openbare-cbcr-eu/

⁸³ www.transparency.nl/2016/04/de-panama-papers/

⁸⁴ europa.eu/rapid/press-release_IP-16-1349_en.htm

⁸⁵ [africaprogresspanel.org/wp-](http://africaprogresspanel.org/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_HR.pdf)

content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_HR.pdf

⁸⁶ www.theguardian.com/world/2015/jun/17/luxembourg-tax-haven-blacklist-brussels-european-commission

⁸⁷ www.theguardian.com/technology/2016/jan/30/google-tory-battle-protect-30bn-tax-haven-bermuda

⁸⁸ www.consilium.europa.eu/en/meetings/compet/2016/05/26-27/

⁸⁹ www.consilium.europa.eu/en/meetings/ecofin/2016/05/25/

Commission identified measures to promote good governance in tax matters globally, while the recommendation advised Member States to include a general anti-tax-avoidance rule in tax bilateral tax treaties between individual Member States and between Member States and third countries.

Both parts of the package were discussed during the Presidency. According to the communication by the Council, the Presidency mentioned at the Council meeting of 12 February 2016 that the Council would draft a conclusion on these topics. The discussion of the communication and recommendation were discussed further at the High Level Working Party on Tax Questions, which met on 23 February and 10 May 2016. Here Member States agreed on the draft conclusions.⁹⁰ On 25 May 2016, the conclusions were officially adopted by the Council.⁹¹

In its conclusions, the Council agreed on the establishment of a list of third country non-cooperative jurisdictions by the Council. This idea was discussed during the informal Council meeting on 22 April 2016.⁹² It also stressed that this work needed to be done in parallel with the OECD work on international criteria for non-cooperative tax jurisdictions. The criteria have to be in line with internationally agreed standards on transparency and exchange of information for tax purposes. The work on the 'black list of tax havens' was to be conducted by the Code of Conduct Group from September 2016 onwards. The list should be accompanied by defensive measures that the EU can take. The whole package was supposed to be endorsed by the Council in 2017. As well as the list, the Council invited the Commission to consider legislative initiatives on Mandatory Disclosure Rules to uncover ultimate beneficial ownership.⁹³

The conclusions showed the willingness of the Council to combat tax avoidance, both within and outside of the EU. At the same time, the question remains whether the 'black list' of uncooperative tax jurisdictions is going to make a big difference. Currently the Member States have very diverging definitions of what an uncooperative tax jurisdiction is and it will have to be seen which definition the Council will embrace.⁹⁴ Further, the inclusion of a country on the list will be a political decision as well. It can be expected that countries like Switzerland and the United States will not be included, even though they provide ample opportunity to avoid taxes.⁹⁵ The black list will most probably leave open options for tax avoidance, but it can be a starting point for talks with uncooperative tax jurisdictions. Besides the list of uncooperative tax jurisdictions, Transparency International welcomes the initiative taken by Member States to exchange information on ultimate beneficial ownership and hopes the Commission will respond to the call of the Council for legislative initiatives on this topic.

Tax Avoidance Directive

After the presentation of the package with measures against corporate tax avoidance on 28 January 2016, the topic was discussed for the first time in the Council on 12 February that year.⁹⁶ It became immediately clear that the Presidency had set an ambitious timetable for the package in the hope of reaching an agreement within six months, before the end of June 2016. Work was taken forward at a technical level by the Presidency to make an agreement possible.

At the Council meeting on 8 March 2016, no discussion about the directive took place. The Presidency prioritised reaching a political agreement on the exchange of tax-related information

⁹⁰ data.consilium.europa.eu/doc/document/ST-8792-2016-REV-1/en/pdf

⁹¹ www.consilium.europa.eu/en/meetings/ecofin/2016/05/25/

⁹² data.consilium.europa.eu/doc/document/ST-8792-2016-REV-1/en/pdf

⁹³ Ibid.

⁹⁴

ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/lists_of_countries/index_en.htm

⁹⁵ www.marketnews.com/content/eus-moscovici-switzerland-wont-be-eu-tax-haven-blacklist

⁹⁶ www.consilium.europa.eu/en/meetings/ecofin/2016/02/12/

about multinationals between tax authorities or CBCR. At the meeting in March 2016, an agreement on this topic was reached and therefore the directive could be discussed at the informal meeting on 22 April 2016 and the next formal meeting on 25 May 2016.⁹⁷ At the informal meeting, weeks after the revelations of the Panama Papers, the Presidency argued that it was of utmost importance to reach an agreement on the directive before the end of the Presidency.⁹⁸ Unfortunately, no agreement on the directive could be reached in May. However, at the last meeting of the Economic and Financial Council during the Presidency, on 17 June 2016, the Member States did reach a political agreement.⁹⁹

The political agreement on the directive was much weaker than was originally proposed by the European Commission. On five of the six proposed topics, new rules were adopted. The switchover clause was left out of the agreement altogether.¹⁰⁰ The rule would have enabled Member States to tax profits made abroad over which no taxes or few taxes had been paid. Many Member States, including the Dutch Presidency, were in favour of removing the clause from the directive.¹⁰¹

As well as leaving out the switchover clause, the Council made some adjustments to the rules for Controlled Foreign Companies (CFC). The rule would have made it possible for Member States to tax profits that a company has shifted to more favourable tax jurisdictions where it has an artificial subsidiary. This can be done when the tax rate in the other country is less than 50 per cent of that of the EU Member State. During earlier elaborations the tax rate minimum was raised from 40 to 50 per cent, making the rule more stringent.¹⁰² However, in June 2016 the Council added one important exception to the rule that made it less strong. A *substance-escape* was added, which states that Member States can decide not to apply the CFC-rule when the subsidiary has “substantial economic activity,” depending on personnel, activities, buildings and other indicators.¹⁰³ Thereby the application itself becomes dependent on the interpretation of Member States.

Two final changes that were made to the proposal in June 2016 were limitations of the application of the interest rate limitation rule. The interest rate limitation would limit the percentage of interest payments that a company could deduct from its tax payments to 30 per cent of its profits. This would apply to companies with more than €3 million in profits. The proposal of the European Commission originally spoke of companies with a profit higher than €1 million, but this requirement was increased earlier on in the negotiation process.¹⁰⁴ At the last negotiations in June 2016, it was decided that Member States would be allowed to apply their own targeted measures instead of the fixed percentage agreed upon, as long as the targeted measures were at least as effective as the fixed rate. This exception would be allowed until January 2024. A second limitation that was added means that the interest rate limitation will not apply to already concluded loans. Therefore no *grandfathering* clauses will be applied and the use of currently existing loan structures will not be restricted.¹⁰⁵

Although the agreement is a step in the right direction, it must really be seen as a first step with many more to take. It is remarkable that the Dutch Presidency managed to reach an agreement on

⁹⁷ www.consilium.europa.eu/en/meetings/ecofin/2016/05/25/

⁹⁸ www.eu2016.nl/documenten/publicaties/2016/04/22/informal-ecofin---line-to-take-nl-presidency

⁹⁹ www.consilium.europa.eu/en/meetings/ecofin/2016/06/17/

¹⁰⁰ www.rijksoverheid.nl/documenten/kamerstukken/2016/06/21/bijlage-1-verslag-eurogroep-en-ecofinraad-16-en-17-juni-2016

¹⁰¹ www.rijksoverheid.nl/documenten/kamerstukken/2016/05/13/kamerbrief-over-stand-van-zaken-rond-de-besprekingen-eu-richtlijn-anti-belastingontwijking

¹⁰² www.ey.com/NL/nl/Services/Tax/EY-tax-alert-voortgang-anti-belastingontwikkingsrichtlijn

¹⁰³ taxlive.nl/-/dubbel-gevoel-over-eu-akkoord-tegen-belastingontwijking

¹⁰⁴ www.ey.com/NL/nl/Services/Tax/EY-tax-alert-voortgang-anti-belastingontwikkingsrichtlijn

¹⁰⁵ www.rijksoverheid.nl/documenten/kamerstukken/2016/06/21/bijlage-1-verslag-eurogroep-en-ecofinraad-16-en-17-juni-2016

the directive within six months of publication of the proposal. According to some, this was a record.¹⁰⁶ However, looking at its contents one must wonder whether this record speed has done the directive any good. In the Dutch parliament reactions were mixed¹⁰⁷ and civil society reacted critically as well.¹⁰⁸ Many aspects of the proposal have been watered down; for example, the CFC-rule by introducing a *substance escape* and the interest rate limitation by leaving out the possibility for *grandfathering*. The switchover clause was also taken out, which leaves open the possibility for *double non-taxation*. Finally, because it is a directive, the Member States have to transpose the agreement into national law, which some fear will lead to a patchwork of different national laws.¹⁰⁹ In summary, the agreement can be seen as a good start in combating corporate tax avoidance, but more work needs to be done.

3.4. Revision of the Shareholder Rights Directive (SRD)

3.4.1. What priority was given to the revision of the SRD?

Score: **YELLOW**

The revisions of the Shareholder Rights Directive (SRD) to enhance long-term shareholder engagement were not part of the Dutch Presidency programme.¹¹⁰ However, they have been taken up in the Trio Programme under the heading of the single market.¹¹¹ The initial lack of prioritisation is also revealed on the website of the Presidency: there was no reporting on the issue whatsoever.¹¹²

It seemed that the Dutch Presidency had given priority to different legislative dossiers. However, at the discussion of the Dutch priorities in the Legal Affairs Committee of the European Parliament, Minister Van der Steur told the committee that the Presidency was determined to reach an agreement between Parliament and Council on the revisions of the directive.¹¹³ The Minister told the committee he was waiting on the impact assessment on CBCR before re-opening discussions. The impact assessment was published by the European Commission in April 2016.

3.4.2. What progress was made during the Presidency?

Score: **RED**

On 11 January 2016, Minister Van der Steur spoke to the Legal Affairs Committee of the European Parliament about the Dutch priorities. He noted that the European Parliament had called for inclusion of stringent CBCR requirements but stated he was waiting for the impact assessment on the topic by the European Committee.¹¹⁴ This impact assessment was published on 12 April 2016, together with the presentation of the Commission proposal for public CBCR.¹¹⁵ Since then, the topic has not resurfaced on the agenda of the Council.

In July 2015, the European Parliament voted in favour of the directive's review as well as approving an amendment mandating public CBCR for EU companies.¹¹⁶ However, to date the Council has not

¹⁰⁶ fd.nl/economie-politiek/1155518/tsjehie-dreigt-feestje-dijsselbloem-te-bederven

¹⁰⁷ www.transparency.nl/2016/06/tweede-kamer-belastingontwikking-oeso/

¹⁰⁸ fd.nl/economie-politiek/1156922/aanpak-belastingontwikking-dreigt-te-versnipperen

¹⁰⁹ Ibid.

¹¹⁰ english.eu2016.nl/documents/publications/2016/01/07/programme-of-the-netherlands-presidency-of-the-council-of-the

¹¹¹ english.eu2016.nl/documents/publications/2015/12/30/trio-programme-2016-17

¹¹² english.eu2016.nl/documents?keyword=shareholder&period-from=&period-to=&type=All+documents

¹¹³ www.europarl.europa.eu/news/nl/news-room/20160112IPR09521/Dutch-Presidency-priorities-discussed-in-committee

¹¹⁴ Ibid.

¹¹⁵ eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016SC0117

¹¹⁶ www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0257+0+DOC+XML+V0//EN

agreed on the inclusion of public CBR in the Shareholders Rights Directive.¹¹⁷ This has caused a standstill that needs to be solved by talks between the Council and the Parliament. During the Dutch Presidency such informal talks, called trilogues, have taken place. In the letter to the Dutch parliament at the beginning of July 2016, the Presidency claims to have made progress in the discussions with the Parliament on the revisions of the Shareholder Rights Directive during its term.¹¹⁸ The last talks with the Parliament on the subject reportedly took place on 27 June 2016.¹¹⁹ However, since the talks have been informal and there are no minutes or reports of the meetings, it is difficult to trace exactly what progress was made during the Dutch Presidency. There has been no further communication about details of any progress made via official channels and since the deadlock still seems to be in place, it cannot be said with certainty that real clear progress was made.

3.5. Anti-corruption & transparency in the Transatlantic Trade and Investment Partnership (TTIP)

3.5.1. What priority was given to anti-corruption & transparency in TTIP?

Score: **YELLOW**

The negotiations of TTIP themselves were taken up in the Dutch Presidency programme.¹²⁰ However, the focus was specifically on closing the free trade agreement and not so much on increasing transparency and taking up anti-corruption measures. In the programme there was recognition of the public's interest in the subject and its sensitivity. However, besides paying attention to the public debate, the Presidency did not speak of any other measures to deal with this. In the programme there was attention focused on increasing the transparency of the EU decision-making in general. Taking up anti-corruption measures in TTIP was not mentioned at all. A similar pattern can be found in the Trio Programme.¹²¹

In the letter to Dutch parliament on the transparency of the EU sent on 1 March 2016, the Dutch Presidency did pay attention to the transparency of the TTIP negotiations.¹²² It pointed out that steps have been taken to improve transparency: for example, by publishing negotiation texts, explanations of the contents of TTIP and fact sheets. There is no mention of any other steps still to be taken, but it shows that transparency of the TTIP negotiations has been a topic for the Presidency.

3.5.2. What progress was made during the Presidency?

Score: **YELLOW**

In October 2015, the European Commission wrote and sent the Council and the Parliament an EU approach to anti-corruption provisions in TTIP and future free trade agreements, which indicates that anti-corruption provisions were the subject of discussion in the TTIP negotiations.¹²³ Up until then, it was unclear whether an anti-corruption chapter would be part of TTIP. Still, in the reports of the negotiation rounds published by the European Commission, there was no mention of

¹¹⁷ www.reuters.com/article/us-panama-tax-eu-idUSKCN0X11JZ, <http://www.bna.com/eu-states-parliament-n57982069848/>

¹¹⁸ www.rijksoverheid.nl/documenten/kamerstukken/2016/07/07/kamerbrief-over-resultaten-en-uitvoering-van-het-nederlandse-eu-voorzitterschap

¹¹⁹ www.tweedekamer.nl/kamerstukken/verslagen/detail?id=2016Z09260&did=2016D24831

¹²⁰ english.eu2016.nl/documents/publications/2016/01/07/programme-of-the-netherlands-presidency-of-the-council-of-the

¹²¹ english.eu2016.nl/documents/publications/2015/12/30/trio-programme-2016-17

¹²² www.eu2016.nl/documenten/publicaties/2016/03/01/kamerbrief-over-transparantie-van-de-europese-unie

¹²³ trade.ec.europa.eu/doclib/press/index.cfm?id=1381

discussions on anti-corruption measures. For a long time, it seemed that the topic would still have to be discussed.

On 2 May 2016 it became clear that this was no longer the case, when Greenpeace published the 'TTIP-leaks' consisting of 15 consolidated chapters of the TTIP negotiations and one overview document.¹²⁴ The documents show that, during the ninth round of negotiations in April 2015, a proposal by the United States for anti-corruption measures was discussed as part of the chapter on government procurement.¹²⁵ It does not show the original proposal nor the consolidated version of the proposed measures, so it remains to be seen to what extent the leaked document will represent the final outcome of the negotiations. Still, it is positive that the subject has been discussed and probably will be added to the trade agreement. The measures proposed by the United States also seem to be very much in line with suggestions made by Transparency International.¹²⁶

During the Presidency, some progress was made in the transparency of TTIP negotiations as well. From 1 February 2016 onwards, Member States were allowed to open a reading room for national parliamentarians to read the EU confidential negotiation documents. This is the result of an agreement between the United States and the Commission in December 2015.¹²⁷

Since the addition of anti-corruption measures had taken place before the Dutch Presidency, it cannot be said that this progress is the result of the work of the Presidency. The increased transparency on the negotiations cannot be attributed to the Dutch Presidency either. The information on the anti-corruption measures became available through a leak and the opening of the reading rooms is thanks to the work of the Commission. Looking back, it can be concluded that transparency of negotiations and adding anti-corruption measures to the TTIP agreement were not real priorities of the Dutch Presidency, but appropriate steps in the right direction were taken.

3.6. The creation of the European Public Prosecutor's Office

3.6.1. What priority was given to the creation of the EPPO?

Score: **YELLOW**

There has been no mention of the creation of the EPPO in the Dutch Presidency programme.¹²⁸ In the Trio Programme, there was attention turned on the work of the EPPO as part of the focus on the continued fight against fraud regarding the financial interest of the EU.¹²⁹ Apart from the Trio Programme, little to no attention was given to the EPPO on the website of the Dutch Presidency or in Dutch politics.¹³⁰

However, in talks with representatives of the Presidency, it was indicated that the creation of EPPO would indeed be one of the dossiers the Presidency would like to advance further. Although it did not show up in official documents, the creation of EPPO has been on the agenda of the Dutch Presidency.

3.6.2. What progress has been made during the Presidency?

Score: **GREEN**

¹²⁴ www.transparency.nl/2016/05/ttip-anti-corruptie/

¹²⁵ www.ttip-leaks.org/nestor/doc6.pdf

¹²⁶ www.transparencyinternational.eu/wp-content/uploads/2014/03/2014-03-07_TI_Letter-to-Karel-de-Gucht-FINAL-doc.pdf

¹²⁷ epthinktank.eu/2016/07/15/eu-us-negotiations-on-ttip-state-of-play/ttip-reading-rooms-in-eu-member-states/

¹²⁸ english.eu2016.nl/documents/publications/2016/01/07/programme-of-the-netherlands-presidency-of-the-council-of-the

¹²⁹ english.eu2016.nl/documents/publications/2015/12/30/trio-programme-2016-17

¹³⁰ english.eu2016.nl/search?keyword=European+Public+Prosecutor

During the Presidency, quite some progress was made on the proposal for the creation of EPPO. In January and February 2016, the Dutch Presidency organised five working days on the topic in the Working Party on Cooperation in Criminal Matters (COPEN).¹³¹ Here, the provisions on relations with partners, financial and staff provisions and general provisions were discussed. Because of the technical nature of the articles, it was possible to advance rapidly on the text of the proposal. After the meetings, the Member States were very close to a compromise on the articles about financial provisions, staff provisions, relations with partners and general provisions. A compromise was also reached on three provisions related to the establishment of the Administrative Directive of the EPPO.

After the progress on the technical level, the political discussions on the creation of the EPPO continued in the Justice and Home Affairs Council in March 2016.¹³² Of special interest during these talks was the concept of operational expenditure. The main point of discussion was whether the costs of the European Delegated Prosecutors would fall within the bounds of the operational expenditures of the EPPO or whether these expenditures would have to be borne by national budgets. The different options would have to be explored further at the technical level, after which the political debate could be continued.¹³³

On 9-10 June 2016, the topic was discussed in the Council once again.¹³⁴ There was broad conceptual support for the articles discussed at expert level about the case management system and data protection, simplified prosecution procedures, general provisions and financial and staff provisions. It was decided that the negotiations could be continued on an expert level. Because some Member States have had reservations about certain aspects of the proposal, no official agreement can be reached yet.

In summary, the Dutch Presidency has done a considerable amount of work to advance the negotiations on the creation of the EPPO. By organising working days on the topic, progress was made on technical articles of the proposal. Within the Council, the topic was addressed twice and it became clear where further work was needed.

3.7. The Directive on the fight against fraud to the Union's financial interest by means of criminal law (PIF Directive)

3.7.1. What priority was given to the PIF Directive?

Score: **RED**

As with the EPPO, the PIF Directive was not mentioned in the Dutch programme, nor was there any mention of the protection of the financial interest of the EU against fraud.¹³⁵ The directive was not specifically named in the Trio Programme either, even though it did talk of the financial interests of the EU. Remarkably enough, the creation of the EPPO was mentioned, which is dependent on the adaption of the PIF Directive for its operational scope. On the website of the Dutch Presidency, little to no mention of the directive was made.¹³⁶ As there was no mention of the PIF Directive in talks with representatives of the Presidency, it can be concluded that the adoption of the PIF Directive was not a priority.

3.7.2. What progress was made during the Presidency?

Score: **YELLOW**

¹³¹ data.consilium.europa.eu/doc/document/ST-6667-2016-INIT/en/pdf

¹³² www.consilium.europa.eu/en/meetings/jha/2016/03/10-11/

¹³³ Ibid.

¹³⁴ www.consilium.europa.eu/en/meetings/jha/2016/06/9-10/

¹³⁵ english.eu2016.nl/documents/publications/2016/01/07/programme-of-the-netherlands-presidency-of-the-council-of-the

¹³⁶ english.eu2016.nl/search?keyword=PIF+Directive&period-from=&period-to=&type=All+documents

During its term, the Dutch Presidency tried to advance discussions on the PIF Directive further, both on a technical as well as a political level. On a technical level, it organised a meeting of the Working Party on Substantive Criminal Law (DROIPEN) on the topic in February 2016.¹³⁷ The meeting was a follow-up on the outcomes of the Justice and Home Affairs Council of December 2015, at which it was concluded that experts should examine the VAT issue.¹³⁸ At the meeting, experts on VAT from the Working Party on Tax Questions were invited to talk about the topic. Under discussion was how the VAT system works in the different Member States, how VAT fraud is conducted, how it is fought in the different Member States and what the effects are for the EU. As well as this meeting, the Presidency initiated exploratory discussions among experts on whether or not to include VAT fraud in the scope of the directive.¹³⁹

On a political level, the Presidency reopened the debate in the Council on the basis of the work carried out at working level in June 2016.¹⁴⁰ Member States exchanged views on whether or not to include VAT fraud and it soon became clear that it would not yet be possible to reach a consensus. Efforts to find a solution for this standstill would have to continue during the Slovak Presidency.

The Dutch Presidency has made some progress on the technical level of the PIF Directive. However, it has been unable to overcome the deadlock that exists around the inclusion of VAT fraud to the scope of the directive. In conclusion, even though the Presidency put in some effort on this front, the outcome has not been satisfactory.

¹³⁷ www.eu2016.nl/documenten/publicaties/2016/03/10/ongoing-legislative-files

¹³⁸ data.consilium.europa.eu/doc/document/ST-14281-2015-INIT/en/pdf

¹³⁹ www.eu2016.nl/documenten/publicaties/2016/03/10/ongoing-legislative-files

¹⁴⁰ www.consilium.europa.eu/en/meetings/jha/2016/06/9-10/