



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 October 2012

15305/12

**GENVAL 75
DROIPEN 148
COSCE 26**

COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 19 October 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No Cion doc.: COM(2012) 604 final

Subject: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND
SOCIAL COMMITTEE
Participation of the European Union in the Council of Europe Group of States
against Corruption (GRECO)

Delegations will find attached Commission document COM(2012) 604 final.

Encl.: COM(2012) 604 final



Brussels, 19.10.2012
COM(2012) 604 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

**Participation of the European Union in the Council of Europe Group of States against
Corruption (GRECO)**

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

**Participation of the European Union in the Council of Europe Group of States against
Corruption (GRECO)**

1. INTRODUCTION

This Communication sets out how the Commission intends to step up cooperation between the EU and the Council of Europe Group of States against Corruption (GRECO), following the Commission's 'anti-corruption package' of 6 June 2011¹.

It envisages a two-stage approach consisting first of a 'full participant' status² based on Article 220 of the Treaty on the Functioning of the EU (TFEU) that may, in a second stage, lead to full EU membership of GRECO.

That approach will allow cooperation to be increased, within a relatively short time-frame, on the basis of full participant status and pending an analysis of how full membership, including evaluation of EU institutions by GRECO, would be organised in practice.

2. FORM OF PARTICIPATION CONSIDERED AND SPECIFIC OBJECTIVES OF EU PARTICIPATION IN GRECO

The main principles of cooperation, shared priorities and focused areas for cooperation between the Council of Europe and the European Union are set out in a Memorandum of Understanding concluded in 2007³. According to the Memorandum, legal cooperation between the two parties covering the rule of law, including the fight against corruption, should be further developed to ensure coherence between EU law and Council of Europe conventions. Under '*Inter-institutional cooperation*', the Memorandum also states that the Council of Europe and the EU will further cooperate using the opportunities provided by existing partial agreements⁴.

Within this legal context, the Commission intends, in a **first phase**, to discuss with GRECO full participant status for the EU. After those discussions have been concluded with GRECO, an EU analysis will be prepared of the impact of possibly making EU institutions subject to GRECO's evaluation procedures. This will be the basis for deciding whether, in a second

¹ Communication from the Commission on Fighting Corruption in the EU (COM(2011) 308 final) and Report from the Commission on the modalities of European Union participation in the Council of Europe Group of States against Corruption (GRECO) (COM(2011) 307 final).

² 'Full participant status' is the expression commonly used to refer to situations in which, albeit not a full member of an organisation, the EU enjoys very similar rights to those enjoyed by members except for voting rights (see also the EU's status in the World Health Organisation, Unesco, the International Civil Aviation Organisation, the Council of Europe or the OECD).

³ CM(2007)74, adopted on 10 May 2007 by the Committee of Ministers of the Council of Europe.

⁴ Paragraph 48.

phase, to seek full EU membership of GRECO. To this end, a working group will be set up at EU level to deliver such an analysis.

With full participant status, the EU would participate in GRECO with a degree of involvement in the evaluation system to be tailored for this first phase, but it would not be subject to the mutual evaluation and would thus not have voting rights, nor would it be able to have a representative on GRECO's Bureau, which consists only of full members. EU full participant status in GRECO should aim to achieve the following specific objectives:

- Involvement in the country visits forming part of the evaluations of EU Member States and/or candidate countries and potential candidates, should the latter agree;
- Possibility to formulate suggestions on draft evaluation reports and participate in the debates of the GRECO plenary on the evaluation/compliance reports for EU Member States and/or candidate countries and potential candidates, should the latter agree;
- Possibility to formulate proposals to GRECO's Bureau⁵, which has an important role in preparing evaluations and drafting the reports;
- Comparative analysis⁶ to be carried out by GRECO on the basis of the existing evaluation and compliance reports on the Member States to be considered in the preparation of the EU Anti-Corruption Report;
- Access to information gathered and updated by GRECO in the framework of the evaluation process;
- Flagging of outstanding GRECO recommendations of relevance for the EU, for which the EU Anti-Corruption Report may provide additional impetus for adequate follow-up.

During the first phase, to ensure synergies between GRECO's evaluation system and the EU Anti-Corruption Report established by the Commission's 'anti-corruption package' of 6 June 2011⁷, the Commission will consider involving a GRECO representative in the expert group on corruption established to help prepare the EU Anti-Corruption Report.

In a **second phase**, not later than four years after the EU has begun participating in GRECO, the form of the EU's participation will be reassessed. Depending on the findings of the EU analysis mentioned above, full membership may be considered.

GRECO's plenary, when analysing the outcome of the preliminary discussions between the Commission and the GRECO Secretariat, has expressed the view that the evaluation of the

⁵ The Bureau is composed of GRECO's President and Vice-President, and five other representatives of the GRECO members entitled to vote. The Bureau prepares the draft annual programme of activities and the draft annual activity report, makes proposals on the draft budget, organises country visits, proposes the composition of evaluation teams, prepares the agenda for the GRECO plenary, and proposes the provisions to be selected for evaluation.

⁶ The analysis would be based on the existing evaluation and compliance reports — i.e. it would not give rise to additional procedures, nor an additional step in the evaluation of the EU Member States; it would only assess in a comparative manner what has already been produced by GRECO.

⁷ COM(2011) 307 final Report from the Commission to the Council on the modalities of European Union participation in the Council of Europe Group of States against Corruption (GRECO).

EU institutions by GRECO should be one of the key items in the discussions and that it has to be considered as more than just a remote possibility.

Nonetheless, a further assessment of the requisites, feasibility and potential impact of such an evaluation is needed. Indeed, GRECO has developed an evaluation system geared to countries and not organisations; this means that, for instance, the applicability to the EU of the Council of Europe's Twenty Guiding Principles for the Fight against Corruption, which are conceived as commitments by countries, would have to be assessed.

EU institutions have their specific features, which do not coincide with those of classic state institutions. There are limitations to EU competences as opposed to those of a country. Questions arise also as to how the evaluation teams would be established for evaluating EU institutions. The GRECO evaluation system would therefore need to be adapted to the specifics of the EU legal and institutional framework. Given that such a system has not been tested before, both sides would need to carefully analyse the practicalities and legal aspects of such evaluations. That assessment would require time and thought, and the fact of the EU being already involved in GRECO activities would support the EU analysis on this matter.

This two-stage approach would be in line with the stance of GRECO's plenary, since it would establish a clear deadline for the reassessment of the form of EU participation and a decision by the EU would be taken in this regard based on the concrete findings of a working group set up at EU level.

3. LEGAL AND PROCEDURAL STEPS

The first step foreseen for the EU participation in GRECO ('full participant status') does not amount to an accession to an international organisation or to an international treaty requiring the conclusion of an agreement under Article 218 TFUE⁸. It is rather about establishing an appropriate form of cooperation with GRECO for which Article 220 of the Treaty on the Functioning of the European Union (TFEU) is applicable. Article 220 TFEU states that: '*1. The Union shall establish all appropriate forms of cooperation with (...) the Council of Europe (...). 2. The High Representative of the Union for Foreign Affairs and Security Policy and the Commission shall implement this Article*'. EU status in the Council of Europe is also a full participant status, as established by the Commission from the beginning (ex-Art. 302 TEC)⁹. Since GRECO's activities do not deal with common foreign and security policy, it is for the Commission to establish an appropriate form of cooperation with the GRECO under Article 220 TFUE.

EU participation in GRECO will not affect the competences of the Union, nor the rights and obligations of the Member States under GRECO.

Participation of the EU in GRECO will follow the procedure consisting of an invitation from the Council of Europe's Committee of Ministers to the Union to participate in GRECO and not that of accession to the Council of Europe's Conventions on corruption.

⁸ The Report on modalities of EU participation in GRECO of 6 June 2011 stated that the Council will be requested to authorize the opening of negotiations on behalf of the EU with a view of a membership. However, the approach for which the Commission has eventually opted after an assessment of all modalities available does not consider in a first phase full membership of the EU in GRECO.

⁹ The same applies for instance with respect to UNESCO and the OECD in line with what Article 220 TFUE foresees.

In GRECO's Statute, a specific provision (distinct from that on membership) is dedicated to the participation of the European Community and reads as follows: '*The European Community may be invited by the Committee of Ministers to participate in the work of the GRECO. The modalities of its participation shall be determined in the resolution inviting it to participate*'. This invitation is to be officially sent to the EU after the modalities of participation of the EU in GRECO have been agreed between the Committee of Ministers of the Council of Europe and the EU on the basis of a proposal made by GRECO and endorsed by the Statutory Committee¹⁰.

In other words, the text of the Resolution to be adopted by the Committee of Ministers inviting the EU to participate in the GRECO will be in fact the text discussed and agreed by both the Committee of Ministers and the Commission, acting on behalf of the Union. The Commission will accept this invitation through a unilateral decision and will inform the Council, the European Parliament and the European Economic and Social Committee of the result of the discussions.

4. FINANCIAL ISSUES

If the special objectives described above were to be met, a financial contribution of the Union to the GRECO budget of 300.000 EUR/year is to be envisaged, subject to further negotiation with GRECO. The fees paid by the GRECO members are set by a decision adopted by the GRECO Statutory Committee updated on a regular basis. This contribution should reflect the costs that the EU participation in the GRECO will generate for the Group, as well as the degree of actual EU involvement in GRECO's activities (i.e. no voting rights in the first phase). A further 150 000 EUR/year will be used for joint activities with GRECO such as data gathering and preparation of studies for background to the EU Anti-Corruption Reports.

Taking into account the legal framework under which the establishment of a full participant status for the EU will occur (i.e. Article 220 TFEU), the Commission will consider the payment of its financial contribution through the signing of joint programmes with the Council of Europe. The necessary sum will be covered by the Internal Security Fund¹¹.

5. CONCLUSION

The Commission will start discussions on a full participant status of the EU in GRECO on the basis of this Communication. The Commission will inform the Council, the European Parliament and the European Economic and Social Committee of the outcome of these discussions.

¹⁰ See Rule 2 of the GRECO's Rules of procedure.

¹¹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, COM(2011) 753 final.

Annex

SCOPE OF DISCUSSIONS ON THE FULL PARTICIPANT STATUS

The Commission will discuss on behalf of the Union the modalities of participation of the European Union in GRECO. The outcome of the discussions will be reflected in a Resolution of the Council of Europe's Committee of Ministers inviting the Union to participate in GRECO ('the Resolution'). The Resolution (including its appendices) should contain clear statements on the EU's rights and obligations in GRECO and the practical arrangements for the participation of the EU as a distinct legal entity, vested with autonomous powers alongside all its Member States.

The EU's participation in GRECO should be governed by the following basic **principles** that should be reflected, where necessary, in the Resolution:

- Participation should take into account the specificity and limits of the Union's competence. It should also allow the EU to establish higher standards within its borders. Participation should therefore not affect the competences of the Union, or the powers of its institutions, bodies, offices or agencies. Special regard should be given to the division of competences between the EU and its Member States, and also to the preservation of Union law and its unique legal system (principle of neutrality regarding Union powers).
- Participation should not affect the rights and obligations of the Member States under GRECO (principle of neutrality regarding Member States' obligations).
- Participation should not affect the principle of conferral of powers stipulated in Article 13(2) of the Treaty on the European Union and the principle of institutional balance deriving from the case-law of the Court of Justice of the European Union.
- GRECO and its specific bodies, the Statutory Committee and the Council of Europe's Committee of Ministers should not be called upon to interpret, even implicitly or incidentally, Union law and in particular its rules regarding the powers of the institutions, bodies, offices or agencies and regarding the content and scope of Member States' obligations under Union law (principle of autonomous interpretation of Union law).
- The EU representative should seek to obtain the right to participate in other Council of Europe bodies to the extent that their activities are linked to the purpose of GRECO, in proportion to its level of participation.

The discussions should ensure that EU participation in GRECO guarantees a special working relationship to secure a coordinated approach at European level towards corruption. For the EU, access to the early stages of evaluation rounds, preparation of country reports and updated information gathered in the context of the evaluation process, participation in the GRECO plenary, the comparative analysis of Member States' evaluations and the flagging of outstanding recommendations are of considerable importance.

The discussions should ensure that EU participation in GRECO creates synergies with the EU Anti-Corruption Report. Any unnecessary additional burden on Member State administrations and duplication of activities should be avoided.

The discussions should ensure that EU participation in GRECO does not impinge upon the Commission's powers with regard to the EU Anti-Corruption Report. The discussions should ensure that the specific objectives mentioned in Section 2 of this Communication are met to the greatest possible extent.

The discussions on a full participant status for the EU in GRECO should also entail a commitment by the Union to carry out an analysis of the requisites, feasibility and potential impact of possibly making the EU institutions subject to GRECO evaluation procedures. Depending on the findings, that analysis could lead to full EU membership of GRECO. The analysis should take into account the specifics of the EU legal and institutional framework, and the competences of the Union as set out in the Treaties. A new form of EU participation in GRECO would require a negotiation process.

With full participant status, the EU should be allowed to participate in GRECO plenary meetings.

The discussions should ensure that the EU can appoint a delegation of up to two representatives to GRECO and, if appropriate, one substitute per representative.

The discussions should ensure that the EU representatives enjoy the privileges and immunities applicable under Article 2 of the Protocol to the General Agreement on Privileges and Immunities of the Council of Europe, on an equal footing with all other GRECO members.

The discussions should aim to ensure that the EU is allowed to appoint up to five experts who would be able to undertake the tasks provided by GRECO's Statute and Rules of Procedure regarding the evaluation process, within the limits of the form of the EU's participation.

The discussions should aim to ensure that the EU's experts are allowed to be involved in the process of evaluating EU Member States and possibly candidate countries or potential candidates, if the latter agree, at least as observers, and that they are able to formulate comments, remarks and proposals relating to the preparations of evaluations and to the evaluation procedures. The discussions should also ensure that the EU has access from the early stages to draft evaluation and compliance reports, and addenda to compliance reports regarding EU Member States and, if these countries agree, candidate countries or potential candidates.

The EU's participation in GRECO should not affect the direct representation of individual Member States, nor their right to participate in an individual capacity in any votes during GRECO plenary sessions.

The discussions should ensure that, at the latest four years after the EU has begun participating in GRECO, the form of the EU's participation is reassessed.

The discussions should consider the possibilities for the EU to participate in meetings of the Statutory Committee and those of the Council of Europe's Committee of Ministers when the latter is dealing with GRECO matters.

The Directorate General Home Affairs will designate among its officials the person who shall discuss the modalities of the appropriate form of cooperation. The outcome of the discussions will have to be endorsed by the College of Commissioners and confirmed by a Commission decision.