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PROPOSAL

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

date of receipt: 6 June 2019

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2019) 273 final

Subject: Proposal for a COUNCIL DECISION on the position to be taken, on behalf
of the European Union, in the 83rd Plenary Meeting of the Group of States
against Corruption (GRECO) as regards the participation of the European
Union as observer in GRECO

Delegations will find attached document COM(2019) 273 final.

Encl.: COM(2019) 273 final



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Proposal for a

COUNCIL DECISION

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EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on behalf of the European Union in the Group of States against Corruption (GRECO) in connection with the envisaged adoption of a decision concerning the observer status of the European Union.

2. CONTEXT OF THE PROPOSAL

GRECO was established in 1999 by the Council of Europe to monitor States' compliance with the anti-corruption standards set out in the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption. GRECO's objective is to improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe's anti-corruption standards through a dynamic process of mutual evaluation and peer pressure. Through a system of evaluations it helps to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms.

GRECO currently has 49 full members¹ and 10 observers².

The EU's participation in GRECO has been a priority for cooperation between the European Union and the Council of Europe. While the EU has been cooperating with the Council of Europe on the basis of a Memorandum of Understanding agreed in 2007³, GRECO is one of the few bodies of the Council of Europe with which the EU has no dedicated legal framework of cooperation. The EU is not present in GRECO meetings, and opportunities for exchanging views with GRECO and its members and cooperating on matters of common interest in the area of rule of law and the fight against corruption are therefore very limited.

In 2011, the Commission defined the main objectives of strengthened cooperation between the EU and GRECO and analysed possible ways for the EU to participate in GRECO's work and the benefits this would bring⁴. This was followed in 2012 by a Commission

¹ Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and United States of America.

² Four Council of Europe bodies, namely the Parliamentary Assembly, the European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC), and the Council of Europe Development Bank (CEB); the Organisation for Economic Cooperation and Development (OECD); the United Nations, represented by the United Nations Office on Drugs and Crime (UNODC), the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Cooperation in Europe (OSCE), the International Anti-Corruption Academy (IACA); the International Institute for Democracy and Electoral Assistance (IDEA), and the Organisation of American States (OAS).

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

⁴ COM(2011)307 final.

Communication⁵ setting out a two-step approach for the EU's accession to GRECO that implied *full participant* status⁶ in a first stage and *full membership* status in a second stage.

The European Parliament expressed continuous support to the EU's participation in GRECO through numerous reports and resolutions, such as the 2016 resolution on the fight against corruption and follow-up of the 2015 resolution on organised crime, corruption and money laundering, and also in a debate in Plenary in 2018.

On 20 March 2019, the Executive Director of GRECO sent a letter to the Presidency of the Council, suggesting to consider the EU becoming an *observer* in GRECO. The *observer status* would allow the EU to participate in GRECO meetings and have access to all documents discussed. As an observer, the EU would not have the right to vote, not be subject to evaluation and would not take formal position in evaluation processes or participate in evaluation missions. There is no financial contribution requested from observers. It should be noted that the rules are the same for every observer.

Under Article 220 TFEU, the Union establishes all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development. The High Representative of the Union for Foreign Affairs and Security Policy and the Commission shall implement this Article. The Commission officially informed the European Parliament and the Council of its intention to seek observer status in GRECO for the European Union. The Council expressed its support for the Union to become an observer in GRECO at its meeting of 6 June 2019.

On 6 June 2019, the Commission submitted to the Secretary General of the Council of Europe the EU request to become observer⁷.

The EU seeking now to become an observer in GRECO does not preclude other possible forms of participation in the future, including full membership.

The GRECO Plenary is likely to consider the EU request at its meeting on 17-21 June 2019. It shall decide by unanimous decision. If unanimity is not reached in the Plenary, the matter may be referred to the Committee of Ministers which will decide by a two-thirds majority of all its representatives. All Member States of the EU are members of GRECO and will participate in the decision to be taken on granting the EU observer status in GRECO.

Member States are under an obligation to support the request in accordance with the principle of loyal cooperation. The Commission has nonetheless decided on this occasion to make a proposal based on Article 218(9) TFEU. This will ensure with even more certainty that the EU Member States speak with one voice in support of the EU being granted the observer status at the GRECO Plenary Meeting and, if needed, at the subsequent meeting of the Committee of Ministers.

⁵ COM(2012)604 final.

⁶ The full participant status would imply that the European Union would not be subject to the mutual evaluation system, would not enjoy any voting rights, and would not be able to send a representative to GRECO's Bureau; a certain involvement of the European Union in the evaluation system was also foreseen.

⁷ Under the Council of Europe's procedure, an organisation can be granted observer status in GRECO by addressing a letter to the Secretary General of the Council of Europe requesting such a status. See in particular Council of Europe Statutory Resolution No. (93) 28.

3. LEGAL BASIS

The main objective of GRECO is to improve the capacity of its members to fight corruption. The legal basis of the proposed decision should therefore be Article 83 TFEU in conjunction with Article 218(9) TFEU.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Council of Europe Statutory Resolution No. (93)28 provides for the possibility for non-member States and international organisations to become observers in partial and enlarged agreements such as the one establishing GRECO,
- (2) On 6 June 2019, the Commission submitted to the Secretary-General of the Council of Europe a request for the Union's participation in GRECO as an observer,
- (3) The participation of the European Union in GRECO as an observer does not preclude its possible future participation in GRECO as a full member,
- (4) All Member States of the European Union are members of GRECO,
- (5) It is expected that the GRECO Plenary will be called upon to decide on the European Union's observer status at the 83rd Plenary Meeting of GRECO (Strasbourg, 17-21 June 2019),
- (6) If that decision is not taken at the 83rd GRECO Plenary of 17-21 of June 2019 or at the subsequent GRECO Plenary Meeting, the Member States of the European Union should support that the matter be referred to the Committee of Ministers, where they should support admitting the EU as an observer to GRECO,
- (7) It is therefore appropriate to establish the position to be taken on behalf of the European Union in relation to the adoption of the decision on the observer status of the European Union,
- (8) This decision is without prejudice to the principle of sincere cooperation and the obligation already existing on all Member States to support the EU request for observer status,
- (9) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Decision,]
- (10) [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed

to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption and application of this Decision and are not bound by it or subject to its application,]

- (11) [In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,]

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the European Union in the 83rd Plenary Meeting of the Group of States against Corruption (GRECO) of 17-21 of June 2019 or, if necessary, in the subsequent Plenary Meeting, shall be the following:

The Member States of the European Union shall support the adoption of the decision on the European Union becoming an observer to GRECO.

If the decision is not taken at the 83rd GRECO Plenary Meeting of 17-21 of June 2019 or at the subsequent GRECO Plenary Meeting, the Member States of the European Union shall support that the matter be referred to the Committee of Ministers, where they shall support admitting the EU as an observer to GRECO.

Article 2

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*