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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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

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Delegations will find attached document COM(2020) 793 final.

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE COURT OF
JUSTICE OF THE EUROPEAN UNION, THE EUROPEAN CENTRAL BANK and
THE COURT OF AUDITORS**

**on the review of the European Union under the Implementation Review Mechanism of
the United Nation Conventions against Corruption (UNCAC)**

I. Context and background

The European Union is based on a set of common values, including respect for human rights, democracy, equality and the rule of law. Corruption undermines the functioning of the state and of public authorities at all levels and is a key enabler of organised crime. Effective anti-corruption frameworks, transparency and integrity in the exercise of state power can strengthen legal systems and trust in public authorities. This Communication reinforces and complements other EU instruments and the Commission's efforts to fight corruption. As set out in the Commission's first rule of law report adopted earlier this year, the fight against corruption is essential for maintaining the rule of law and in view of its importance it is one of the four pillars of the report.¹ A strong rule of law and anti-corruption culture is the result of the citizens' trust that integrity is the norm and that compliance with the law is safeguarded.

The EU has on many occasions underlined its commitment to the review process.² Both the European Parliament and the Council have emphasised the need to step up the EU's leading role in the global fight against corruption and to take forward the review process under the United Nations Convention against Corruption (UNCAC; hereafter 'the Convention'). The European Parliament and the Council have specifically recalled the importance for the EU to fulfil the review obligation.³

The EU became a member to the Convention in 2008.⁴ This is the most comprehensive international anti-corruption treaty both in terms of geographic coverage (187 parties) and issues covered. All EU Member States are parties to the Convention.⁵ The EU has also played a major role in the adoption of the resolution on the fight against corruption adopted by the UN General Assembly on 1 June 2020. This resolution opened the way for the Special Session of the UN General Assembly on challenges and measures to prevent and combat corruption and strengthen international cooperation, planned for June 2021.

The Convention is also the only legally binding universal international anti-corruption instrument. It covers five areas: preventive measures (Chapter II); criminalisation and law

¹ COM(2020) 580 final.

² At the Eighth Conference of UNCAC States Parties in 2019, the Commission, speaking on behalf of the EU and its Member States, reaffirmed the EU's commitment to the review process and pointed out that, as such a review would concern all EU institutions, preparatory work between the European Commission, the European Parliament and the Council has started. EU opening statement at the Conference of States Parties to the United Nations Convention against Corruption, Abu Dhabi, 16-20 December 2019, <https://www.unodc.org/documents/treaties/UNCAC/COSP/session8/V2001911e.pdf>, pp. 61-62.

³ See e.g. 2019 European Parliament public hearing 'Towards a common EU strategy to fight corruption and organized crime – strengthening instruments and enhancing cooperation between relevant actors'; European Parliament resolution of 10 July 2020 on protection of the European Union's financial interests - combating fraud - annual report 2018 (2019/2128(INI)) https://www.europarl.europa.eu/doceo/document/TA-8-2016-0403_EN.html. The October 2019 Justice and Home Affairs Council focused on the future of the fight against corruption in the EU. In the Council, in a discussion on EU action against corruption held under Finland's Presidency in 2019, Member States sent a clear message that the EU institutions should be subject to the anti-corruption monitoring mechanism. EU Action against Corruption, Report from the Finnish Presidency (13630/19; <https://data.consilium.europa.eu/doc/document/ST-13630-2019-INIT/en/pdf>, p. 4).

⁴ Council Decision of 25 September 2008 on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption, 2008/801/EC, OJ L 287, 29.10.2008, p. 1.

⁵ Also, the Union was granted observer status in the Council of Europe's Group of States against Corruption (GRECO) in July 2019.

enforcement (Chapter III); international cooperation (Chapter IV); asset recovery (Chapter V); and technical assistance and information exchange (Chapter VI). In the Convention, anti-corruption is addressed in a broad sense and its provisions cover many different forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in both the public and the private sector. The Convention introduces a set of standards, measures and rules that countries can apply to strengthen their legal and regulatory regimes to fight corruption. Its main aims are to strengthen measures in order to prevent and combat corruption more efficiently and effectively, promote the integrity, accountability and proper management of public affairs and public property, and facilitate and support international cooperation and technical assistance against corruption.

It is crucial to strengthen the authority of the EU in the fight against corruption and therefore to ensure that the EU's pending obligations stemming from the Convention are addressed by the time of the Special Session of the UN General Assembly (UNGASS). This means participation in the implementation review.⁶

In November 2009, the Conference of the States Parties, the main decision-making body⁷ of the Convention, adopted Resolution 3/1, which established an Implementation Review Mechanism for the Convention. The EU supported the establishment of this Implementation Review Mechanism.⁸ According to Resolution 3/1, States parties must undergo a review of the implementation of the Convention. The mechanism, based on a peer-review, results in an evaluation assessing how each States party's rules and practices comply with the Convention's principles, objectives and requirements. These evaluations help identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms.

International agreements concluded by the EU are binding upon the institutions of the Union and on its Member States⁹ and the review mechanism established under this Convention is binding upon all the parties to the Convention. Therefore, the review obligation applies to the European Union as well. However, the unique position of the European Union as the only regional economic integration organisation that is a party to the Convention adds some complexity as regards the modalities of the EU's participation in the exercise.¹⁰

Under Article 17 of Treaty on European Union, the Commission exercises coordinating, executive and management functions in implementing international agreements to which the Union is a party and ensures the Union's external representation, and therefore carries the

⁶ All other parties to the Convention have launched their participation in the review; apart from the EU, only one other State party has not undergone review but had expressed reservations at the time of ratification.

⁷ The Conference of the States Parties is the main decision-making body established under the UN Convention, and its subsidiary bodies, namely the Implementation Review Group, the Working Group on Asset Recovery, the Working Group on Prevention and the Expert Meeting on International Cooperation. Among other substantive and technical services, it prepares background papers; receives, translates and distributes documents, reports and decisions; interprets speeches made at the meetings; prepares and circulates the records of the sessions; has the custody and proper preservation of the documents in the archives; and assists the bureau of the Conference in the performance of its functions.

⁸ Through a series of Common Positions recorded in document ST 15012/1/06 REV 1; document ST 15233/1/07 REV 1; document ST 11452/2/09 REV 2.

⁹ Article 216 (2) of the Treaty on the Functioning of the European Union.

¹⁰ Resolution 3/1 does not contain specific rules or procedures applicable for parties to the Convention that are not "states" as such.

responsibilities in steering the review process under the Convention with a view to ensuring that the Union is fulfilling its obligations under the Convention.

This Communication therefore puts forward the Commission's approach to the review process. The Union as a whole is bound to implement the Convention and thus to submit to the review process which has been established by the Convention. This exercise, which is to be coordinated by the Commission, will require the involvement of all relevant Union institutions and possibly certain agencies or bodies, depending on the tasks conferred on them by the Treaties or by the Union's legislation in the area of relevance for the Convention. Their involvement should be governed by the principle of the administrative autonomy of each institution, in matters relating to their respective operation.

The Commission has analysed the implications stemming from the unique status as a party to the Convention of the EU as a regional economic integration organisation. In order to proceed with the review, first the declaration of competence needs to be updated to reflect the legal consequences of the entry into force of the Treaty of Lisbon (**section II** below). On the practical modalities of the review, some necessary adaptations would need to be defined to allow the European Union to participate in the review (**sections III, IV and V** below).

II. Update of the declaration of competence

The Convention provides that the instrument of ratification, acceptance or approval of a regional economic integration organisation is to contain a declaration on the extent of its competence.¹¹ The *Declaration concerning the competence of the European Community with regard to matters governed by the United Nations Convention against Corruption* duly notified to the Secretary-General of the United Nations at the time of the Union's conclusion of the Convention.¹² The Convention also provides in Article 67(3) that the regional organisation concerned is to inform the depositary of any relevant change in the extent of its competence.¹³

With the entry into force of the Treaty of Lisbon, the scope and exercise of the Union's competence have changed to a certain degree. For example, the EU acquired new competences under Title V of the TFEU (articles 82 and 83 of the Treaty on the Functioning of the European Union). The Secretary-General of the United Nations must therefore be informed of these developments.¹⁴

¹¹ Based on Article 67(3) of the Convention.

¹² Annex to Council Decision 2008/801/EC.

¹³ Article 67(3) of the Convention.

¹⁴ Paragraph 4 of the Declaration of competence reads: 'The scope and exercise of Community competence are, by their nature, subject to continuous development and the Community will complete or amend this declaration, if necessary, in accordance with Article 67(3) of the Convention.'

Action 1: *The Commission will take the necessary steps to inform the Secretary-General of the United Nations about relevant changes in the extent of the Union's competence before the launch of the review.*

III. Launching the review of the EU under the Convention

Each party is reviewed by two other States parties to the Convention, the selection of the reviewing parties being done by drawing of lots.¹⁵ Each party must also act as a reviewer. The drawing of lots to select the reviewing parties can be done at any of the meetings of the Implementation Review Group. The review is formally launched when the Secretariat of the Convention (UNODC) informs the party under review of the beginning of the conduct of the country review.¹⁶ Parties must also communicate a focal point to coordinate its participation in the review as well as notify a list of governmental experts for the purpose of the review process (when the party acts as a reviewer to other parties¹⁷).

The Commission considers that the EU should announce its readiness to launch the implementation review process as soon as possible ahead of the UN General Assembly Special Session in 2021. In accordance to Article 17 TEU, the Union's position will be expressed by the Commission. The Commission will also act as the focal point to coordinate the implementation review process for the Union and invites the other institutions to designate experts for when the EU would be called on to review other States parties.

Action 2: *The Commission considers that the EU should announce that it is ready for the launch of its implementation review process as soon as possible, ahead of the UN General Assembly Special Session in 2021 and will prepare the EU statement in this regard, after consulting the Council.*

The Commission will act as the EU focal point for the EU's implementation review process.

The Commission will invite the other institutions to designate experts for the purpose of the review process concerning other parties

IV. Modalities and organisation of the EU review

¹⁵ See Terms of Reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, https://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf.

¹⁶ Within one month after the drawing of the lots. See Section II of the Guidelines for governmental experts and the secretariat in the conduct of country reviews, https://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf.

¹⁷ The Implementation Review Mechanism provides that each Party is to appoint up to 15 governmental experts for the purpose of the review process. These experts then act as reviewers on behalf of their party.

In 2009, the Conference of the States Parties, adopted the terms of reference of the *Mechanism for the Review of Implementation of the Convention* and created the Implementation Review Group to supervise the review process under the authority of the Conference. Parties are assessed in accordance with the terms of reference of the Mechanism for the Review of Implementation. A model timeframe for completing the review has been developed by the Secretariat.¹⁸

1. Preparing the EU self-assessment

For each cycle, the process requires the party under review to draft and submit a **self-assessment**, on the basis of which the review will be carried out.

The self-assessment contains a description of the measures (programmes, legislative and non-legislative measures, administrative acts) taken by that Party to comply with the requirements of the Convention in the areas under review, as well as an indication of the effectiveness of such measures.¹⁹ The self-assessment shall essentially concentrate on describing: (i) acts which the EU has adopted in the areas covered by the Convention and (ii) measures relevant to the Convention that apply to the EU institutions and their staff. When referencing the relevant legal acts, the self-assessment should include a brief description of the purpose of each instrument, the date of entry into force, and any direct obligations on the EU institutions (reporting obligations, or other tasks allocated directly to the institutions, etc.). Where available, the document shall include examples to illustrate the effectiveness of measures listed in the self-assessment.

The implementation review under the Convention takes place in two cycles:

- Cycle 1 focuses on criminalisation and law enforcement (Chapter III) and international cooperation (Chapters IV) and will include reporting on a) offences and law enforcement; b) protection of witnesses, experts, victims and whistleblowers; c) consequences of acts of corruption; d) cooperation and within and between international organisations; e) cooperation of international organisations with the EU and Member States; and f) joint investigations.
- Cycle 2 covers asset recovery (Chapter V) and prevention (Chapter II), which includes law enforcement and public procurement legislation.

The review process would therefore start with Cycle 1, and then be followed by Cycle 2.

The **scope of the self-assessment** would cover those areas that are directly relevant to the EU and its institutions (and staff), in respect of matters subject to the Convention, and depending on which Cycle was involved: such as preventive measures against corruption, international cooperation and asset recovery.

¹⁸ https://www.unodc.org/documents/treaties/UNCAC/Review-Mechanism/IRG_model_country_review_schedule.pdf. Experience has shown that reviews last in practice between 12-18 months for the first cycle and somewhat longer for the second cycle.

¹⁹ In general, parties are encouraged to conduct self-assessments using the comprehensive self-assessment checklist developed by the Secretariat and endorsed by the Conference of State Parties in November 2009. However, this checklist (and the IT tool used for answering it) are not well adapted to the EU. As a result, contacts with the Secretariat have signalled full flexibility on using a different format that is suitable for the EU.

The EU self-assessment will not enter into questions of implementation of EU law by Member States, which is covered by their own review processes, but rather explain the obligations on the EU institutions stemming from the Treaties and relevant EU legislation.

As the Convention is binding on all EU institutions, the scope of the self-assessment cannot be limited to a single EU institution or a small subset of EU institutions. That does not mean, however, that each EU institution must carry out a separate self-assessment. The EU's self-assessment will cover horizontal rules, including common rules applicable to all institutions (such as the Staff Regulations and the jurisprudence of the Court of Justice). Concerning the areas where different institutions and bodies have put in place different – normally additional – rules, those institutions and bodies should set out these rules in the self-assessment.²⁰ The review process under Cycle 2 is of most relevance to the internal workings of different EU institutions.

Action 3: *The Commission will prepare the EU self-assessment for each of the cycles, in close coordination with all EU institutions concerned. All institutions concerned need to provide timely input to the self-assessment, and will determine the content referring to their own institution.*

2. Desk review and on-site visit

Once the self-assessment has been submitted, the reviewing experts conduct a desk review of the completed self-assessment. If agreed by the party under review, in the spirit of establishing a constructive dialogue, the desk review can be complemented with any further means of direct dialogue, such as a country visit or a joint meeting at the United Nations Office in Vienna. The on-site visit consists of meetings held between experts designated by the reviewing parties and experts of the reviewed party, with the assistance of the secretariat. Stakeholders are encouraged to participate at these visits, which held at expert level. The purpose of these meetings is to clarify certain aspects of the submitted answer and gather additional information as need be. As foreseen by the Terms of Reference of the mechanism, the reviewing States parties and the secretariat shall maintain the confidentiality of all information obtained in the course of, or used in, the country review process.

The Commission's approach to the review process is that it should be conducted transparently and with the involvement of all relevant stakeholders. Civil society participation is crucial for all anti-corruption efforts. The EU's long-standing position has been that States parties to the Convention should make optimal use of all available information and expertise, including from civil society. Constructive dialogue between States Parties and civil society will improve the impact and implementation of the convention. The EU has called for an effective civil society involvement in review cycle as well as in the Conference of States Parties and its working groups.

²⁰ For Cycle 1, it appears that almost all aspects are matters for the EU on a horizontal level. For Cycle 2, while chapter II concerns all institutions Chapter III and IV are more specific and only concern a limited number of institutions, offices or bodies as (mainly the Commission, EPPO, Europol, Eurojust) and Chapter V: mainly Commission, EPPO, Europol, Eurojust, European Central Bank, future Euro Financial Investigation Unit.

Action 4: *The Commission will coordinate with the other institutions the input to the self-assessment check list and the organisation of the onsite visit related to the review, making optimal use of all available information and expertise, including from civil society and will seek to include civil society in the review.*

If agreed, an on-site visit could be organised in Brussels with meetings at the main institutions.

3. Publication of the evaluation report and general transparency commitments

At the end of the review, a review report is drafted by the secretariat of the Convention with the support of the reviewing States parties, based on contributions from the reviewers and in close cooperation and coordination with the Party under review. The final content of the report is decided by consensus between the reviewers and the Party under review. The full report remains confidential unless the Party under review agrees to publish it, while the executive summary is always published. Some parties choose to publish their self-assessment checklist, the full country report, and/or information provided as a follow-up to the review. The Commission will also seek the agreement of the other institutions on the text of the report and on its publication. The publication of the full report has been highlighted as good transparency practice.

The United Nations Convention against Corruption Coalition²¹ initiated a Transparency Pledge in 2014. The Pledge consists of six transparency principles.²² Several EU Member States are signatories.²³ The Commission will support the EU adherence to the Transparency Pledge. This transparency pledge envisaged that the full report will be published.

Action 5: *The Commission will consult in due course the other institutions with regard to the publication of the full review report and the self-assessment report.*

VI. Conclusion

By the present Communication, the Commission informs all EU institutions of its intention to launch the review process as soon as possible, following consultations with the institutions in the spirit of loyal cooperation. The Commission intends to make swift progress in fulfilling the legal obligations of the Union under the Convention with the aim to launch the review as soon as possible ahead of the UNGASS 2021.

²¹ The United Nations Convention against Corruption Coalition global network of over 350 civil society organisations in over 100 countries, committed to promoting the ratification, implementation and monitoring of the Convention.

²² <https://uncaccoalition.org/uncac-review/transparency-pledge/#:~:text=The%20UNCAC%20Coalition%20is%20seeking,in%20the%20UNCAC%20review%20mechanism.>

²³ Austria, Belgium, Bulgaria, Cyprus, Estonia, France, Germany, Italy, Latvia, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden.

This Communication sets out the approach to conduct the necessary steps in the review process, in full respect of the principle of sincere cooperation and administrative autonomy of the institutions. The Commission invites the EU institutions to fully participate and cooperate at all stages of the process and in a timely fashion.