

DIRECTORATE GENERAL I – LEGAL AFFAIRS
DEPARTMENT OF CRIME PROBLEMS

Strasbourg, 12 May 2006

Public
Greco RC-I (2006) 1E

First Evaluation Round

Compliance Report on the United States of America

Adopted by GRECO
at its 28th Plenary Meeting
(Strasbourg, 9-12 May 2006)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on the United States of America (USA) at its 17th Plenary Meeting (22-25 March 2004). This Report (Greco Eval I Rep (2003) 2E) was made public by GRECO, following authorisation by the US authorities on 26 April 2004.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the US authorities submitted their Situation Report (RS-report) on the measures taken to follow the recommendations on 18 February 2006.
3. GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Malta and the United Kingdom to provide Rapporteurs for the compliance procedure. The Rapporteurs appointed were Dr. Anton Bartolo on behalf of Malta and Mr Paul Stephenson on behalf of the United Kingdom. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The RC-Report was adopted by GRECO, following examination and debate pursuant to Rule 31.7 of the Rules of Procedure, at its 28th Plenary Meeting (Strasbourg, 9-12 May 2006).
5. Under Article 15 para. 6 of the GRECO Statute and Rule 30.2 of the Rules of Procedure, the objective of the RC-Report is to assess the measures taken by the authorities of the USA and, wherever possible, their effectiveness in complying with the recommendations contained in the Evaluation Report.

II. ANALYSIS

6. It was recalled that GRECO in its Evaluation Report addressed 12 recommendations to the USA. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended the expansion of existing programmes and the development of additional endeavours with regard to prevention and detection strategies on corruption; to support more effective coordination and cooperation among the entities through, for example, cooperation and training, the dissemination of trend analyses and the sharing of information on effective practices; in particular, GRECO recommended that the Criminal Division of the Department of Justice alerts the Executive Working Group on the importance of fighting corruption at the State and local levels.*
8. The authorities of the United States of America (hereinafter the US authorities) have emphasised that the federal system does not allow the federal agencies to intervene in the affairs of state and local authorities as these enjoy constitutional independence. Instead co-ordination between the federal, state and local levels exists through "cross cutting" exercises, taskforces etc on subjects, such as organised crime, which may include corruption.
9. In the area of prevention of corruption the Office of Government Ethics (OGE), which is a member of the Council on Governmental Ethics Laws (COGEL) co-operates with a number of state and local government agencies which provide similar preventive services (training, counselling etc) at the local level. In this context OGE has shared the GRECO report with COGEL and has discussed the contents of the Report at conferences.

10. Moreover, the US authorities have reported that the Executive Working Group (EWG), which was formed in the mid 1980's, provides a venue for coordinating, at a senior level, the activities of the federal, state and local law enforcement agencies. The EWG, which meets regularly to address law enforcement issues of mutual concern, has been informed on two occasions (April 2004 and May 2005) of the contents of the GRECO Report. The EWG collectively represents all the prosecutorial agencies at all levels of government and maintains close relationships with the Chiefs of Police Association. Information can be readily disseminated to all levels of the law enforcement community via the EWG.
11. GRECO takes note of the information provided, in particular, that the OGE, as a member of COGEL, a majority of whose members are state and local government agencies, have informed the latter about the contents of the GRECO Report and that, similarly, the EWG, which is a co-ordinating mechanism for the law enforcement at federal, state and local levels, has been informed of the contents of the GRECO Report. GRECO welcomes these efforts to approach the state and local levels. It is fully aware of the difficulty of the federal agencies' projects and programmes when they might interfere with states' sovereignty. However, it is of the opinion that what has been reported, the provision of information on the contents of the GRECO Report, does not fully comply with the recommendation which mentions "the expansion of existing programmes" and the "development of additional endeavours" in respect of co-operation, training, and sharing of information etc. GRECO is of the opinion that the Recommendation is drafted in an open way to avoid clashes with constitutional independence and encourages further efforts on the part of the US authorities.
12. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

13. *GRECO recommended that the Department of Justice emphasise to Directors of Federal law enforcement agencies the need to maintain, at all levels, including through periods of intense recruitment drives, a rigorous vetting process in order to recruit personnel of the highest standards.*
14. The US authorities have reported that following the events of 11 September 2001, the hiring, without adequate vetting, of additional personnel to protect the United States from future terrorist attacks has been the subject of considerable attention and, as a result, quality assurance in recruiting has been emphasised throughout the Nation. The current recruitment processes contain many quality assurance mechanisms. No recruitment swells or problems have occurred among federal agencies since that time. Moreover, with the establishment of the Department of Homeland Security (DHS) in 2003 and the combination of a number of agencies under its umbrella, the DHS and the Department of Justice (DOJ) are the two primary law enforcement agencies at the federal level. GRECO's Evaluation Report has been provided by the DOJ to the DHS. In addition, the recruitment situation is constantly being monitored by the DHS and the DOJ.
15. GRECO notes that the present recommendation is limited to the federal level. The US authorities have reported improved recruitment procedures throughout the Nation, following the events of 11 September 2001. This information was already known at the time of the evaluation visit and is included in the Evaluation Report. Since then, the main federal law enforcement agencies, DHS and DOJ, which have a supervisory function with regard to recruitment of staff, are fully aware of GRECO's Report.

16. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

Recommendation iii.

17. *GRECO recommended that the Department of Justice maintain a regular process for evaluating and assessing the adequacy of Federal investigative and prosecutorial resources directed at Federal, State or local corruption, with a view to ensuring that resources are allocated where needed.*
18. The US authorities agree with the importance of maintaining a regular process for evaluating and assessing the adequacy of federal investigative and prosecutorial resources. They state, however, that it is not possible under the Constitution for the Department of Justice (DOJ) to control the resources that are devoted to state or local corruption by non-federal authorities, this being a matter reserved to state and local government entities. However, DOJ does ensure that this issue is raised and discussed among state and federal law enforcement leaders and it does provide leadership in preventing and controlling crime, including corruption.
19. The question of dedication of resources to detect, investigate, and prosecute corruption, along with the issue of allocation of resources to combat all criminal activity, has been raised and discussed by the Executive Working Group (EWG) during its meetings. As noted above, the EWG includes representatives of the National District Attorneys Association, the Association of Attorneys General and the Criminal Division of DOJ and corruption resources are regular topics of discussion.
20. With regard to federal resources devoted to State and local corruption, DOJ and the Federal Bureau of Investigation (FBI), routinely analyses the resources directed at these areas. These analyses extend to case-by-case examinations of the personnel assigned and the shifting of resources and personnel on an as-needed basis to ensure that sufficient attention is directed to deterring and combating corruption. Moreover, combating white-collar crime and corruption are priority matters for DOJ and the U.S. Government. Expenditures in this area are included in the federal budgets that are submitted to the Congress for approval every year. These budgets are made public and the final budget authorisations are the subject of media attention.
21. The US authorities have added that DOJ has achieved success in its efforts to deter and prosecute corruption crimes: During the years 2003 and 2004 (the two years following the Evaluation visit to the United States) more than 2,300 federal, state, and local officials, as well as ordinary citizens were charged with federal corruption offences. During those two years the conviction rate was approximately 80%. In an attempt to ensure that this continues, DOJ plans to continue to align its resources as new priorities arise.
22. GRECO is of the opinion that what has been reported by the federal authorities complies with recommendation iii, to the extent possible under the US Constitution.
23. GRECO concludes that recommendation iii has been dealt with in a satisfactory manner.

Recommendation iv.

24. *GRECO recommended that, in order to encourage and facilitate effective law enforcement (in particular, the sharing of information), the Criminal Division of the Department of Justice, in training programmes and otherwise, emphasise the critical importance of full cooperation and*

coordination between prosecutors and investigators as soon as possible after an investigation is initiated.

25. The US authorities have reported that the importance of early cooperation and coordination between prosecutors and investigators has been a point of emphasis in all federal criminal prosecution training provided by the Department of Justice (DOJ) in recent years. This topic has been covered extensively in the two required courses that federal prosecutors take upon entering service and in many other training courses including those covering complex investigations, white collar crime, and computer crimes. In September 2005, the Criminal Division's Training Center featured a panel discussion on this topic by a group of federal investigators and prosecutors. Additionally, Criminal Division attorneys have provided numerous training sessions for federal investigators on various topics in recent years and early cooperation between investigators and prosecutors is always emphasised and encouraged. Also, the Office of Legal Education for DOJ, which trains the prosecutors assigned to the various United States Attorneys Offices throughout the United States, offers team training for federal prosecutors and law enforcement personnel to encourage coordination throughout the investigation and prosecution.

26. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

27. *GRECO recommended that the Criminal Division of the Department of Justice, based on a review of investigations, meet periodically with representatives of the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) in order to discuss significant completed cases, investigative issues, apparent trends and effective practices relating to the fight against corruption.*

28. The US authorities have reported that for more than 10 years the Public Integrity Section of the Criminal Division of the Department of Justice (DOJ) has met periodically with a number of different committees of the PCIE and the ECIE and with other intergovernmental bodies. The Section serves as a legal advisor to the Integrity Committee of the PCIE and the ECIE, which meet every three months. The Integrity Committee reviews administrative allegations of wrongdoing against Inspectors General and members of their senior staff. Prior to this review, the Section reviews the allegations to determine whether a criminal investigation is warranted. In addition, representatives of the Public Integrity Section attend meetings of the Integrity Committee approximately every two months to discuss allegations the Committee has received. If the Integrity Committee refers allegations for administrative investigation to an Office of Inspector General, the Public Integrity Section is consulted whenever any potential criminal issue arises. The Section also meets with the PCIE/ECIE's Investigations Committee and other representatives of the intergovernmental community to discuss investigative trends and issues. Recent such meetings have resulted in the drafting of "Model Warning Notices" for federal administrations and "Guidelines for Undercover Investigations". The Section also participates as a faculty at the inter governmental training centre and has coordinated policy issues such as the implementation of uniform warning statements to computer users, witnesses, and federal employees suspected of wrongdoing.

29. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

30. *GRECO recommended that the Criminal Division of the Department of Justice endeavour to devise a method to facilitate the sharing of information between law enforcement agencies in similar corruption matters.*
31. The US authorities have reported that the Department of Justice (DOJ) provides information to support the law enforcement agencies by a variety of information sharing programmes. The FBI's Criminal Justice Information System (CJIS) provides law enforcement information on criminal records, uniform crime reporting and fingerprint identification to meet the needs of federal, state, and local law enforcement entities. State and local partners join in this effort by reporting data that meet the requirements of the programme, they adhere to CJIS system requirements, and they share responsibility for the operation and management of the system. Another example given of information sharing among law enforcement agencies is the National Law Enforcement Telecommunications Systems (NLETS) which is essentially the electronic backbone for the system which connects state and local agencies for a majority of interstate and national law enforcement information sharing. NLETS is wholly owned and operated by the states and works cooperatively with the FBI and CJIS in setting standards for connectivity and communication.
32. The authorities have furthermore reported that DOJ since September 2001 intensively has been exploring additional methods for sharing law enforcement information among the various agencies. This effort has focused on an attempt to provide "real time sharing" via linked computer networks of law enforcement information among federal, state and local entities, the "Law Enforcement Information Sharing Program (LEISP). At the same time, various local law enforcement sharing programmes have been proceeding. One of these is centred in the Pacific Northwest of the United States and headed by the US Attorney in Seattle, and provides the real time sharing of the text of entire documents among all participating law enforcement agencies. In 2006, the LEISP is jointly participating with that programme in a pilot to see if the LEISP concepts and the less structured sharing that has been ongoing in the Northwest region can be joined into a successful combination.
33. The US authorities have stated, however, that while the purpose of these pilot programmes is to systematically improve the investigation and prosecution of criminal activity, the sharing initiatives do not include at present the dissemination or sharing of corruption information. The primary DOJ programme, LEISP, specifically provides that information relating to certain areas (corruption is one of these areas) is to be excluded. Paragraph 3.1.2 of the LEISP strategy document excludes corruption information from being included in the programme. Moreover, a current policy is that corruption information, which can frequently involve state or local law enforcement agencies, especially in the political corruption context, is too sensitive to be included in a general, decentralised sharing programme. However, it has been reported that corruption information will continue to be shared, and controlled, among the agencies involved in particular corruption investigations. Task forces consisting of federal, state, and local authorities will continue to be used to address specific corruption offences and corruption information will be shared among the members of those task forces. Additionally, information potentially pertinent to corruption is also being shared with respect to other offences, such as narcotics offences and organised crime. Finally, the Criminal Division of DOJ's expertise on corruption has been extended to all federal law enforcement agencies.
34. GRECO takes note of the information provided. It recalls that the Evaluation Report (paragraph 143) states *inter alia* that there was a lack of intelligence co-ordination amongst the law

enforcement agencies. GRECO understands that some corruption information may be too sensitive to be disseminated widely as part of general information sharing arrangements. This, however, should not rule out the appropriate sharing of information on corruption throughout the LEISP. The Situation Report indicates that information at present will continue to be shared among agencies and taskforces involved in particular corruption cases. GRECO appreciates that the United States is making considerable efforts to devise systems for sharing information and recognises the complex issues involved. GRECO notes, however, that at this stage no decision on the final content of the system has been made especially with regard to corruption.

35. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

36. *GRECO recommended that the Department of Justice, in order to enhance the trust of the public and to avoid any issues of possible impropriety, consider introducing a procedure whereby significant events in the course of a sensitive corruption prosecution be memorialised as appropriate.*
37. The US authorities have reported that there is a federal government-wide policy that requires that all significant events, i.e. all events that ensure the accountability of federal agency programmes, be recorded. The Office of Management and Budget in Circular No. A-130 (November 2000), addressed to the heads of Executive Departments and Agencies, established an executive branch policy for the management of federal information resources. In that Circular, the term "records" was defined as any documentary material, regardless of physical form or characteristics, that evidenced "the organization, functions, policies, decisions, procedures, operations, or other activities of the government." Such documents were considered "a valuable national resource" which provides the public with knowledge of the government and "a means to ensure the accountability of the government's operations." The heads of executive agencies were tasked by this Circular with recording, preserving, and making accessible sufficient information to ensure the management and accountability of agency programmes.
38. The authorities have more particularly reported that the Department of Justice (DOJ) issued an order entitled "Recordkeeping For Litigation Case Files" (OBD 2710.6) (1990), which established department wide standards for the management of official litigation records. That order requires that litigation case files contain complete documentation of events and makes the attorney responsible for the case at the time of closing also responsible for ensuring that "all original documentation" has been placed in the file. Moreover, the DOJ Criminal Division has set forth requirements for the preservation of all case files, not just relating to corruption in the Administrative Policy Memorandum No. 40-1 (September 2002), which spells out the general policy and procedures regarding government records. That policy informs all division personnel that they are "obligated to create and maintain records that are sufficient to: document the persons, places, things, or matters dealt with by the Division," "make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government," and document "the formulation and execution of basic policies and decisions and the taking of necessary actions, including all significant decisions and commitments reached orally person to person, by telecommunications, or in conference." To ensure that the policy is understood, it defines "case file" as "a collection of all official papers necessary to understand and document the nature, course, and outcome of an individual case" and it should include "all substantive records necessary to understand the nature, course, and outcome of a case and the Division's legal and

administrative handling of it." Under these rules, all significant events in the course of a corruption investigation are being documented.

39. GRECO welcomes the information provided. It understands that events, such as the closing of an ongoing case or the removal of a prosecutor - situations which were highlighted in the Evaluation report (paragraph 146) - are covered by the described regulation.
40. GRECO concludes that recommendation vii has been dealt with in a satisfactory manner.

Recommendation viii.

41. *GRECO recommended that the Department of Justice remind State and local authorities that, to the greatest extent possible, practices for the selection of District and State prosecutors should be transparent and that the selection procedure should take account of the need to exclude or restrict the risks of jeopardising the independent and impartial exercise of the prosecutorial functions.*
42. The US authorities have reported that - as noted above in response to recommendation i - the Executive Working Group (EWG), which includes representatives of state and local authorities, was presented with copies of GRECO's Evaluation Report, on two occasions (April 2004 and May 2005) and its attention was called *inter alia* to recommendation viii.
43. GRECO, aware of the practical difficulties in implementing this recommendation at state and local level, concludes that recommendation viii has been dealt with in a satisfactory manner.

Recommendation ix.

44. *GRECO recommended that the Department of Justice remind State and local officials to take account of the need to provide sufficient resources for prosecutors' offices.*
45. The US authorities have reported that - as noted above in response to recommendation i - the Executive Working Group (EWG), which includes representatives of state and local authorities, was presented with copies of the GRECO evaluation on two occasions (April 2004 and May 2005) and its attention was called *inter alia* to recommendation ix. The authorities have emphasised that the EWG is aware of this issue and understands the need to allocate anticorruption and other law enforcement resources wherever they are needed.
46. GRECO, aware of the practical difficulties in implementing this recommendation at state and local level, concludes that recommendation ix has been dealt with in a satisfactory manner.

Recommendation x.

47. *GRECO recommended the Department of Justice to facilitate the participation of an increasing number of practitioners in specialised training on prosecuting corruption cases, including prosecutors from offices where no specialised units for the fight against corruption exist.*
48. The US authorities have reported that the Department of Justice (DOJ), through its Office of Legal Education and coordinated efforts by individual component training offices and the Criminal Division Public Integrity Section, has improved the capacity of all federal white collar crime prosecutors (those in specialised corruption units and other white collar specialists) to handle the

issues presented in public corruption investigations and prosecutions. This has increased and will continue to effectively increase the number of prosecutors available to work on corruption cases. In recent years, training has focused on advanced, practical aspects of grand jury practice, dealing with cooperators and informants, use of electronic surveillance and complex trial advocacy techniques. Every effort is made to select participants from all United States Attorneys Offices throughout the country, not only those with dedicated public corruption units. The authorities have also reported that new "corruption prosecutors" are trained through live courses on public corruption prosecution presented at the DOJ's national training academy, that the Criminal Division's Public Integrity Section has been increasingly providing hands-on mentoring to prosecutors new to the area of corruption prosecutions and that plans are for these training practices to continue. Moreover, the National District Attorney's Association, which is the National organisation for state and local prosecutors, provides training for such prosecutors on a wide variety of topics, including corruption.

49. The US authorities have also reported that within the Department of Homeland Security (DHS), the Federal Law Enforcement Training Center (FLETC) provides training on subjects, such as fraud, cyber crime and money laundering etc, some of which have particular concern for the handling of investigations at the state and local level. This training is open to federal, state and local law enforcement personnel.
50. GRECO takes note of the information provided. It welcomes that the US authorities have reported a variety of training possibilities for law enforcement personnel. It accepts that DOJ is exclusively involved in the training of federal staff and that employees at state and local levels are primarily trained by their respective agencies. However, it has now been reported that some training organised at the federal level also apply to state and local law enforcement staff. The reported situation reflects what was the aim of the present recommendation, highlighted in the Evaluation Report (paragraph 150).
51. GRECO concludes that recommendation x has been dealt with in a satisfactory manner.

Recommendation xi.

52. *GRECO recommended that the US authorities promote a public policy discussion with the participation of all interested parties, addressing the process of selection of Federal judges with a view to enhancing the efficient functioning of the judicial process.*
53. The US authorities have stated that the process by which federal judges are selected is, and has been, the topic of a great deal of public discussion for a long time. This attention has only increased in recent years, primarily due to the selection of two Supreme Court Justices and a Senate agreement in 2005 regarding the voting procedures. Moreover, the attention that the media and academic communities have traditionally paid to this topic, and the vast means of communication that are publicly available, provide that the federal judicial process receives a great deal of attention throughout all strata of society. In many of the events on this topic, senior officials of all three branches of government participate. Furthermore, the attention has been reported to be so pervasive that the public discussion on the processes of the federal judiciary, including the selection of federal judges, is highly advanced.
54. The authorities have in addition listed a vast number of titles relating to the system of federal judges and their election, contained on various websites, radio programmes etc, for example, the official White House Website called "Ask the White House", which provides periodic on-line

question and answer sessions with executive branch officials. One such discussion involved the Attorney General who responded to questions about the judicial selection. The website of the American Constitution Society for Law and Policy contains a list of upcoming events. The January 2006 list included 17 (out of 32) discussions on the nomination of a particular judge to the Supreme Court. These panel discussions included academics, representatives from NGOs, current and former government officials, media spokesmen, private attorneys, and union leaders and they were open to any member of the U. S. public. Another example given by the authorities on the federal judicial process is the "Jurist Legal News and Research" website, which includes "Judicial Nominations.", which recently ran an online symposium entitled "The Judicial Confirmation Process: Selecting Federal Judges in the Twenty-First Century". Leading academics from throughout the United States offered their views on the federal judicial selection process. Moreover, the American Judicature Society (AJS), which in its subtitle states that it is in the business of "promoting the effective administration of justice," has its own website which includes a section of "Judicial Selection". AJS has organised seminars on this issue

55. GRECO takes note of the general information provided. It has no doubt that there is a constant and broad debate in the United States with regard to the issue of the process of the selection of federal judges. The authorities have shown that this is the case with regard to the selection of particular judges and that many parts and levels of the society, including officials from various branches of government, participate in the on-going debate on this subject. In this situation GRECO agrees with the US authorities that there is no need for them to further promote this debate. GRECO is of the opinion that the US authorities have explained the situation in such a way that no further action is required, although the recommendation has not been implemented to the letter.
56. GRECO concludes that recommendation xi has been dealt with in a satisfactory manner.

Recommendation xii.

57. *GRECO recommended that the Criminal Division of the Department of Justice offer its technical assistance in presenting information at courses for judges organised by the Federal Judicial Centre on specialised subjects (such as special investigative techniques) that often arise in corruption cases.*
58. The US authorities have reported that the Department of Justice (DOJ) has in recent years offered to present information at courses at the Federal Judicial Center on issues that arise in corruption cases. However, these offers have not been accepted as the federal judiciary is entirely independent from the Executive and Legislative branches of the United States Government and fiercely values that independence. Nonetheless, the offer of assistance by the DOJ in presenting information at the Federal Judicial Center on matters that arise in corruption cases has been renewed and is currently under consideration by judiciary officials. The authorities have added that the Federal Judicial Center has a website, www.fjc.gov, which provides information on various criminal law topics, including corruption related subjects. That site includes Department of Justice publications and links to them.
59. GRECO is pleased to learn that the Department of Justice offers assistance to training courses for judges. It is of the opinion that information on the technical side of corruption investigations should be important for those who are placed to adjudicate cases of corruption and hopes that the judicial training institutions shall accept the offers in the future.

60. GRECO concludes that recommendation xii has been implemented satisfactorily.

III. CONCLUSIONS

61. **In view of the above, GRECO concludes that the United States of America has implemented or dealt with in a satisfactory manner the vast majority of the recommendations contained in the First Round Evaluation Report.** Recommendations iv, v and xii have been implemented satisfactorily, recommendations ii, iii, vii-xi have been dealt with in a satisfactory manner. Recommendations i and vi have been partly implemented.

62. GRECO invites the Head of the delegation of the United States of America to provide additional information by 30 November 2007 on the progress of the implementation of recommendations i and vi.