Groupe d'Etats contre la corruption
Group of States against corruption

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Evaluation Report on the United Kingdom

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I. INTRODUCTION

1. The United Kingdom was the eleventh GRECO member to be examined in the First Evaluation Round. The GRECO Evaluation Team (hereafter "the GET") was composed of Mr Michael De Feo, Assistant Director of the Federal Bureau of Investigation (United States, law-enforcement expert), Mr Endre Bocz, former Chief Public Prosecutor of the Metropolitan Prosecution Service (Hungary, criminal-justice expert), and Mr John Buckley, Director of Audit at the Office of the Comptroller and Auditor General (Ireland, general-policy expert). This GET, accompanied by one member of the Council of Europe Secretariat, visited the United Kingdom from 26 to 30 March 2001. Prior to the visit, the GET experts were provided with a comprehensive reply to the Evaluation Questionnaire (document GRECO Eval I (2001) 4) as well as with copies of the relevant legislation.

2. The GET met with the Parliamentary Under-Secretary of State for Home Affairs, officials from the Home Office, the Lord Chancellor's Department, the Scottish Executive, the Northern Ireland Office, the Serious Fraud Office, the Crown Prosecution Service, the Crown Office (Scotland), the Metropolitan Police, the National Criminal Intelligence Service, the National Crime Squad, Strathclyde Police (Scotland), H.M. Inspectorate of Constabulary, the Police Complaints Authority, H.M Customs and Excise, the Department of Environment, Transport and the Regions, the Office of Government Commerce, Inland Revenue, the National Audit Office, the Foreign Office and the Cabinet Office. At the House of Commons the GET met a group of MPs (members of the International Development Committee) as well as the Parliamentary Commissioner for Standards and the House of Commons' Registrar of Members' Interests.

3. Moreover, the GET met with representatives of Transparency International (UK), Public Concern at Work, the Institute of Chartered Accountants in England and Wales, the Law Society of England and Wales and the Confederation of British Industry.

4. It is recalled that GRECO agreed, at its 2nd Plenary meeting (December 1999) that the First Evaluation Round would run from 1 January 2000 to 31 December 2001, and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would be based on the following provisions:

   - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
   - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
   - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).

5. Following the meetings indicated in paragraph 2 above, the GET experts submitted to the Secretariat their individual observations concerning each sector concerned and proposals for recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the authorities of the United Kingdom, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in the United Kingdom, the general anti-corruption policy, the institutions and authorities in charge of combating it - their functioning, structures, powers, expertise, means and specialisation - and the system of immunities preventing the prosecution of certain persons for acts of corruption. The

second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place in the United Kingdom is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to the United Kingdom in order for this country to improve its level of compliance with the GPCs under consideration.

II. GENERAL DESCRIPTION OF THE SITUATION

a. The phenomenon of corruption and its perception in the United Kingdom

6. The United Kingdom is an island-State separated from continental Europe by the English Channel and the North Sea. Its only land border is that with the Republic of Ireland. In 1997 the population of the United Kingdom was approximately 59,000,000, of whom 52,200,000 lived in England and Wales, 5,100,000 in Scotland and 1,700,000 in Northern Ireland. In 1999 its GDP per capita was $ 22,861, just above the European Union average[1].

7. Since it took its present form in 1921 the United Kingdom has always had three criminal-law jurisdictions, England and Wales, Scotland and Northern Ireland, each with its own set of courts. Scots law differs substantially from that in force in the other 2 jurisdictions. Moreover, in 1998 a process ("devolution") was set in motion for the transfer of some of the powers held by the central executive and parliamentary institutions in London, i.e. the United Kingdom Government, the House of Commons and the House of Lords (the two Houses constitute the Parliament in Westminster), to the following bodies that were set up in Scotland, Wales and Northern Ireland: the Scottish Parliament and the Scottish Ministers (the "Scottish Executive"), the National Assembly for Wales with its Cabinet (also called "Ministers") and the Northern Ireland Assembly and the Northern Ireland Executive Committee. As a result of "devolution", the Scottish Parliament now has wide-ranging powers over policing and criminal law. In Wales and Northern Ireland, these responsibilities have not been devolved and continue to fall within the competence of the Westminster Parliament and central government.

8. While the UK authorities recognise corruption is insidious and difficult to measure, it is not generally perceived as a major problem in the United Kingdom. According to Transparency International's Corruption Perceptions Index for 1999 (TI report 2000), it was the thirteenth least corrupt country in the world. Moreover, according to the last crime-statistics figures for England, Wales and Northern Ireland, in the period between 1993 and 1999 the number of convictions for corruption in these jurisdictions remained constantly very low[2]. As for Scotland, the GET was assured that in recent years there had not been any convictions for corruption in that jurisdiction. The International Crime Victim Survey for 2000 shows a low level of public sector corruption in the UK: out of about 5500 respondents in the UK only 3 replied affirmatively to the question whether a government official (defined to include police and customs) had sought a bribe from them.

9. However, despite the relatively few reports about corruption in the United Kingdom itself, the country's authorities recognise the need for constant vigilance against the threat that this

[1] This evaluation covers only the United Kingdom of Great Britain and Northern Ireland and not the Crown Dependencies or the Overseas Territories.

[2] In 1999, for example, there were 8 prosecutions and 7 convictions under section 1 of the Prevention of Corruption Act of 1906 and 7 prosecutions and 3 convictions under section 1 of the Public Bodies Corrupt Practices Act 1889 in England and Wales, while in Northern Ireland there were none. These figures do not include cases where corruption was not the principal offence and, of course, cases where corrupt behaviour was reflected in a different charge.

phenomenon presents for the international and domestic economy, the right to equal treatment and democracy itself. As a result, the Home Office, the central government ministry responsible for "law and order", has recently undertaken to modernise and rationalise the relevant criminal legislation. This initiative comes on the heels of another major drive to raise standards in public life in general. In addition, two recently enacted pieces of legislation on the right to inform and be informed are expected to make an indirect but important contribution to the prevention of corruption. Finally, the visit of the GET to the United Kingdom coincided with a significant debate about the role of the country in the international fight against corruption, which was largely generated by a major inquiry conducted by the International Development Committee of the House of Commons.

Criminal-law on corruption

10. Corruption is currently dealt with by both common (unwritten, based on custom and precedent) and statute (parliamentary) law in the United Kingdom. More specifically, the common law of England and Wales as well as that of Scotland contains public-official bribery offences, which are not, however, necessarily of the same scope (although the bribery of judges would be punishable under common law in both jurisdictions). Provisions on corruption are also contained in three different criminal statutes, the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 (collectively called the Prevention of Corruption Acts 1889 to 1916), which apply to the entire United Kingdom.

11. The Acts cover both active and passive corruption in both the public and private sectors. Their definition of corrupt behaviour refers to all persons in an agent-principal relationship and to any type of gift or valuable consideration. Under the Interpretation Act 1978 the term "person" includes all legal persons. The offences under the Prevention of Corruption Acts 1889 to 1916 are 'triable either way', which means either on indictment (before a judge and jury) or summarily (where there is no jury). The maximum penalty is seven years' imprisonment.

12. Corruption is a predicate offence for the United Kingdom money-laundering legislation.

Criminal-law reform

13. The problem with the Prevention of Corruption Acts 1889 to 1916 is that they use the term "corruptly" to describe the offence without, however, defining it. Moreover, although the corruption offence under the 1906 Act concerns any agent acting "in relation to his principal's affairs or business" and, as such, applies to both the public and the private sector, none of the statutes appears to apply to judges. The bribery of a member of either the House of Commons or the House of Lords, or the acceptance of a bribe by a member, is not a statutory offence either. And although it seems likely that the common law bribery offence in England and Wales applies to MPs (that was the view of a trial judge, though it was not tested on appeal), there is no doubt that the one in Scotland does not. Finally, the differentiation that the three Acts make between "a member, officer or servant of a public body" and other agents acting in relation to their principal's affairs or business is not irrelevant. Notably, the 1916 Act contains in section 2 the following presumption that only applies in relation to public bodies:

> 'Where in any proceedings against a person for an offence under the Prevention of Corruption Act 1906 or the Public Bodies Corrupt Practices Act 1889, it is proved that any money, gift or other consideration has been paid, or given or received by a person in employment of Her Majesty, or any Government Department or public body, by or from a person, or agent of a person, holding or seeking to obtain a contract from Her Majesty, or any Government Department or public body, the

money, gift or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such Act, unless the contrary is proved."

14. The above state of affairs has been criticised by many, including the Law Commission for England and Wales[3]. In a report published in March 1998 the Law Commission found the law on corruption "outmoded, uncertain and inconsistent" and proposed a new statutory bribery offence. Another report on the need to clarify the law relating to the bribery of or receipt of a bribe by a Member of Parliament was published by the Joint Committee on Parliamentary Privilege in March 1999. A further important impetus for law reform was provided by the ratification by the United Kingdom of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("the OECD Convention"). On that occasion, the OECD Working Group on Bribery in International Business conducted a review of the domestic legislation with a view to assessing whether it complied with the Convention requirements. The conclusion of the Group was that "it was not in a position to determine whether the bribery of foreign public officials came within the statutory or common-law offences". Moreover, the Group encouraged the United Kingdom authorities to consider extending nationality jurisdiction[4] to the foreign bribery offence.

15. Reacting to all the above, the Home Office published, in June 2000, a White Paper ("the White Paper") containing the following proposals for the reform of the criminal law of corruption in England and Wales: there should be a single offence of corruption to cover both the public and private sector (the offence would apply to judges and MPs); the presumption of corruption for public servants in section 2 of the Prevention of Corruption Act 1916 should be abolished; the statute should define what is meant by "acting corruptly" as well as the concept of "agent"; "trading in influence" should be included in the offence of corruption where the decision-making of public officials by intermediaries is targeted[5]; the corruption of, or by, a public official should not be confined to the public of the United Kingdom (i.e. the offence would extend to foreign public officials); and the domestic courts should have jurisdiction over offences of corruption committed by UK nationals abroad as well as over offences of corruption committed in whole or in part within the jurisdiction[6].

16. At the time of the visit of the GET, the Home Secretary (the minister responsible for the Home Office) had not committed himself to a specific time-schedule for the introduction of the relevant bill (draft law) in Parliament. However, he had indicated that this would be done "at the earliest opportunity"[7]. As for Scotland, the GET was informed that it was the intention of the Scottish Executive to introduce provisions on corruption into the Scottish Parliament as soon as possible. Both the Scottish Executive and the Northern Ireland Office had been involved in the discussions for the reform of the law of corruption and the GET was assured that, although Scotland wanted its own legislation, the policy goals of the latter would be the same as of that for England and Wales[8].

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[3] The Law Commission is an independent body set up by the Parliament in Westminster in 1965 (along with a similar Commission for Scotland) to keep the law of England and Wales under review and to recommend reform when it is needed.

[4] As the law stands now, the United Kingdom courts do not have jurisdiction over corruption offences committed entirely abroad, except for those committed by civil servants in the course of their duties. However, domestic law does not prohibit the extradition of nationals.

[5] In a statement made after the visit of the GET, the Home Secretary announced that the new offence of trading in influence would apply to both the public and the private sectors.

[6] The new offence of corruption would continue to be "triable either way" and maximum penalty would continue to be seven years' imprisonment.

[7] On 20 June 2001 the Queen announced the Government's intention to introduce legislation on corruption in the 2001-2 Parliamentary session.

[8] After the end of the visit, the Home Secretary announced that the proposed bill would also cover Northern Ireland.

Raising standards in public life

17. The legislative proposals described above, in so far as they concern the public sector, are just one part of a continuing, general effort to ensure high standards of propriety in the sector. In response to public concern about a number of high profile cases a committee was set up in 1994 to examine the area. The Committee on Standards in Public Life is an advisory Non-Departmental Public Body (NDPB) that has been entrusted by the Prime Minister of the United Kingdom ("the Prime Minister") with "examining current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and making recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life." The mandate of the Committee was enlarged in 1997 when it was asked "to review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements."

18. The Committee has so far reported on MPs[9], Ministers, civil servants and "quangos"[10] (first report), local public spending bodies[11] (second report), local government in England, Wales and Scotland (third report), the funding of political parties in the United Kingdom (fifth report) and the House of Lords (seventh report). It has made a number of recommendations, the majority of which have been accepted by Government or Parliament[12].

19. One of the major concerns of the Committee has been the establishment of appropriate codes of conduct, which would provide for disclosure of private interests relating to public duties and compliance with which should be supported by independent scrutiny. The first such Code to be established was the Civil Service one in January 1996[13]. The code does not have a statutory basis[14] and, as a result, it is not clear whether its breaches can give rise to actions in court. Although the Code is largely values-based, it forms part of a more detailed Civil Service Management Code[15]. Both form part of civil servants' terms and conditions of service. The Codes provide guidance for handling conflicts of interest but do not provide for the registration of such interests. Appeals by civil servants in propriety and conscience cases under the Civil Service Code are heard by the Civil Service Commissioners. The civil servants in Northern Ireland are subject to a separate but largely similar Code and their appeals are heard by a special set of Commissioners. As regards Ministers, the Prime Minister issues a Code of Conduct that provides detailed guidance to them on handling conflicts of interest and requires confidential registration of private interests (to the Permanent Head of Department), but there is no requirement for central registration of interest or any mechanism of independent scrutiny. The Code is made under the Civil Service Order in Council (an exercise of the Royal Prerogative) rather than through a statute. As Members of the House of Commons and House of Lords, Ministers are subject to the conduct rules and codes that apply to all members.

[9] The House of Lords was not examined in the first report.

[10] Executive NDPBs and National Health Service bodies.

[11] Higher and further education institutions, grant-maintained schools, training and enterprise councils and local enterprise companies, and registered housing associations.

[12] In its fourth and sixth reports the Committee reviewed how some of its recommendations had been followed up.

[13] Following devolution, an amended Code was issued to reflect its applicability to civil servant of the United Kingdom Government, the Scottish Executive and the National Assembly of Wales..

[14] At the time of the visit it was envisaged, however, to present a Civil Service Bill in the Westminster Parliament.

[15] The Civil Service Code and Provisions of the Civil Service Management Code are incorporated into detailed staff handbooks prepared within each government department and agency to reflect local arrangements.

20. The members of the House of Commons also acquired a non-statutory code and a non-statutory guide to the rules relating to the conduct of Members in July 1996. The Code provides for registration and declaration of financial interests, although some of the MPs interviewed by the GET considered that more clarity is required in this connection. It is policed by the Standards and Privileges Committee. Complaints are examined by the Parliamentary Commissioner for Standards, who, however, does not have any statutory powers to compel disclosure and attendance. The members of the House of Lords are subject to two non-statutory resolutions adopted in November 1995, which provide for compulsory registration of interests in what was described to the GET as "very limited circumstances".

21. Following devolution, Codes of Conduct were also adopted by the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly[16] for their members as well as the Scottish and Welsh Ministers and the members of the Northern Ireland Executive Committee.

22. Currently, a major effort is undertaken to update[17] the ethical framework for local authorities, especially since a number of high-profile corruption cases in a small number of them have caused some concern. The Local Government Act 2000 provides for a Model Code of Conduct for local-government members and employees to be adopted by the Secretary of State (central government minister) for Transport, Local Government and the Regions for the local councils (municipalities) in England and the police authorities[18] in Wales and by the National Assembly for Wales for local councils in Wales. The Act requires local authorities to monitor the operation of their codes of conduct through their own standards committees[19]. It also provides for several central organs that will be ultimately responsible for policing the code, the Standards Board for England with its ethical standards officers, the Commissioner for Local Administration in Wales and the Adjudication Panels for England and Wales. Similar arrangements are contained for Scotland in the Ethical Standards for Public Life etc. (Scotland) Act 2000. The standards, which will be adopted by the Scottish Ministers, will be policed by the Standards Commission for Scotland with the assistance of a Chief Investigating Officer.

23. In addition to the establishment of codes, the Committee on Standards in Public Life has laid the groundwork for the adoption of some rules on the funding of political parties, an area that until recently remained almost completely unregulated in the United Kingdom. In 2000 Parliament adopted the Political Parties, Elections and Referendums Act, which bans foreign donations to most holders of elective office ("regulated donees") and requires the latter to report donations of more than £ 1,000 from the same source (including aggregate donations). Although the Act applies in principle to the entire United Kingdom, it has not yet been introduced in Northern Ireland.

The Public Interest Disclosure Act and the Freedom of Information Act

24. In addition to the Political Parties, Elections and Referendums Act, the Parliament in Westminster recently adopted two other pieces of legislation that are likely to contribute to the prevention of corruption. The Public Interest Disclosure Act 1998 protects "whistleblowers" from dismissal and

[16] Parts of the three codes are included in the statutes setting up the respective bodies. The Scottish Parliament intends to put its code entirely on a statutory basis.
[17] A system for the registration of interests was already provided for in the old system.
[18] For the difference between a police force and a police authority see below paras. 28 and 29.
[19] The Department (central government ministry) of Transport, Local Government and the Regions also encourages the linking of ethics and corporate governance through training.

victimisation[20]. It covers England, Wales and Scotland (Northern Ireland has its own parallel legislation) and applies to the private and large parts of the public sector. It was suggested to the GET that there was room for more promotion of the Act among civil servants. The GET was also informed that while there is no statutory duty for civil servants to report corruption cases to the law-enforcement authorities, the Civil Service Management Code does impose a duty to report to "the appropriate authorities". The Freedom of Information Act 2000 makes provision for the disclosure of information held by public authorities. Private sector companies may be brought within the scope of the Act by order (delegated legislation), if they carry out functions of a public nature. Investigations and proceedings conducted by public authorities are exempt from its scope of application. The Act will replace a voluntary code of practice on access to government information and will extend to England, Wales and Northern Ireland. The Act also created a new Electoral Commission that now covers this area. Scotland intends to enact similar legislation in due course.

The role of the United Kingdom in the international fight against corruption

25. All of the above initiatives appear to have been largely welcomed by "civil society" in the United Kingdom. However, the GET received one complaint about the absence of a precise time-schedule for the introduction of the bill on the criminal law on corruption in the Westminster Parliament. To remedy what they viewed as a shortcoming, some of those interviewed by the GET went as far as to propose a much narrower piece of legislation the principal aim of which would be to ensure compliance with the OECD Convention and which, presumably, would be adopted by Parliament more speedily.

26. This proposal reflects a more general approach to the problem that focuses not so much on "home-grown corruption" but on the transnational dimension of the phenomenon, i.e. on how United Kingdom companies behave abroad, on attempts to launder the proceeds of foreign corruption in United-Kingdom-based financial institutions and on the judicial assistance that the United Kingdom can give to other countries in their fight against corruption, including the issue of freezing and repatriation of foreign assets.

27. These aspects were at the centre of a major inquiry on corruption that had been conducted by the International Development Committee of the House of Commons just before the GET visit. Although the report had not yet been published when the GET was in London[21], the members of the Committee informed it that they were concerned about, among other things, the possibility that bribes paid abroad may be tax deductible, the difficulties that foreign countries encountered in general in obtaining legal assistance and the freezing of assets in the United Kingdom and the overall limited number of prosecutions under the money-laundering legislation . In connection with the latter, they pointed out that money-laundering prosecutions and seizures were not commensurate with the number of suspicious transactions reported[22].

28. The Inland Revenue (tax authorities) accepted that some acts of corruption by United Kingdom citizens or companies abroad would not constitute criminal offences under UK law and the bribes

[20] All public and private employees (with the exception of the Security Services and currently the police) are covered by the Act. The Act forms part of the employment legislation and affords protection to the workers who are dismissed or subject to detrimental treatment as a result of having "blown the whistle". The Act applies where a worker has a genuine and reasonable suspicion of a breach of civil or criminal law. Its intention is to provide workers with a safe alternative to silence.

[21] The Fourth Report from the International Development Committee, Session 2000-01, Corruption Volumes II & I was published after the visit.

[22] In 1999 there were 14,500 reports of suspicious transactions coming from 126 of the estimated 500 deposit-taking institutions.

involved would, therefore, be tax-deductible unless they were considered gifts or hospitality[23]. Home Office officials accepted that there was a backlog of requests for legal assistance (a general backlog, not referring to corruption). However, temporary personnel were being employed to deal with it. As for foreign assets, United Kingdom law, as it stood at the time of the visit, made the issuing of a freezing order dependent, first, on the request coming from a "designated"[24] country and, secondly, on the existence of proceedings leading to confiscation in the State concerned. However, the GET was informed that there were plans to dispense with the designation requirement[25]. Finally, the competent officials maintained that there were many legal and technical reasons why it might not be possible to correlate a report of a suspicious financial transaction with a seizure or prosecution.

29. As for the Council of Europe Criminal and Civil Law Conventions on Corruption, both of which have been signed by the United Kingdom, the International Development Committee urged the authorities to take them into account when legislating in the field. When the GET inquired about the prospects of ratification, it was informed that the adoption of the Home Office's proposals for criminal-law reform would open the way for the ratification of the first. As for the second, its ratification appeared to be dependant on finding legislative time to address the problem of the absence of appropriate limitation periods for civil actions in domestic law.

b. Bodies and institutions in charge of the fight against corruption

30. In so far as institutions are concerned, the United Kingdom authorities consider that the existing arrangements provide an adequate response to the threat of corruption[26].

b1. The police forces

31. In the United Kingdom the residual power to investigate corruption offences, as well as crime in general, belongs to the police. The country, however, does not have a national police force. Policing has traditionally been entrusted to local forces. In England and Wales, in addition to the Metropolitan Police Service (MPS)[27] and the City of London Police, there are 41 such forces of various sizes. Alongside the local police forces in England and Wales, there operates the National Crime Squad (NCS), which is responsible, within the particular jurisdiction, for domestic and transnational serious and organised crime. Scotland has eight local police forces and Northern Ireland the Royal Ulster Constabulary (RUC). The only policing body with United Kingdom-wide jurisdiction is the National Criminal Intelligence Service (NCIS), a multi-agency organisation providing tactical and strategic intelligence on serious and organised crime to all law-enforcement agencies. Its Economic Crime Unit is the United Kingdom's Financial Intelligence Unit receiving reports on suspicious financial transactions under the relevant money-laundering legislation from everywhere in the country.

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[23] UK tax law disallows gifts, hospitality and payments that are criminal offences (which is interpreted to mean offences which fall within the UK's jurisdiction).

[24] A list of "designated countries" exists in secondary legislation.

[25] Proceeds of Crime Bill.

[26] The members of the International Development Committee and Transparency International felt that the response of the United Kingdom was too "fragmented", in the sense that there did not exist a single authority with competence over serious fraud, corruption and money-laundering. They also felt that there was little coordination among existing bodies.

[27] The territorial responsibility of the MPS covers most of London apart from "the City", a square mile in the centre of the capital.

32. Each police force is "maintained" by a police authority. The authority is usually[28] composed of local councillors, magistrates and independent members and is competent, inter alia, for appointing the force's head, subject to approval by the competent Minister[29]. Co-ordination among the police forces is ensured by the Association of Chief Police Officers (ACPO)[30] and the Association of Chief Police Officers (Scotland).

33. The input of the police to the criminal-justice system differs from jurisdiction to jurisdiction.

34. In England and Wales the police are in principle responsible for handling criminal investigations and deciding whether or not criminal proceedings should be formally instituted against the suspects ("charge"). However, the advice of the Crown Prosecution Service (CPS), an independent authority, is increasingly sought by the police prior to charge. All charges brought by the police, except for certain minor offences, are taken over, in accordance with criteria set out in the Code for Crown Prosecutors, by the CPS, that has power to discontinue proceedings.

35. In Scotland, on the contrary, it is the Procurator Fiscal who has under common law the duty to investigate all crime in his/her area with a view to considering whether or not to institute criminal proceedings. Strictly speaking, therefore, the police act as agents of the Procurator Fiscal in criminal investigations. In practice, this means that, in serious cases like corruption, the Procurator Fiscal is likely to be involved in the investigation at an early stage and give detailed instructions. Of course, the Procurator Fiscal does not act as a detective. Rather his/her role is to complement that of the police by ensuring that the appropriate legal expertise is brought to bear on the investigation of the crime.

36. Finally, in Northern Ireland the police not only investigate but also prosecute – together with the Department of the Director of Public Prosecutions (DPP) – crime.

37. The 44 local police forces in England, Wales and Northern Ireland[31] are subject to periodic general-programme audits, as well as thematic inspections, by H.M. Inspectorate of Constabulary, the reports of which are public. The Scottish police have their own separate HM Inspectorate.

38. An important issue of concern, at least for the police in England, Wales and Northern Ireland, has been some cases of "internal corruption", a term used to designate serious abuse of authority by officers. The first force to react to the internal corruption threat was the MPS, whose effort to eradicate corruption from its ranks started in 1993 with an extensive intelligence gathering operation aiming at determining the extent of the phenomenon and developing a strategic analysis of the threat. This operation, which also involved targeted integrity testing whenever good grounds justifying such a course existed, revealed that a limited number of officers were engaging in serious corruption. In response, a specialist unit was created in January 1998. As a result of the operation of this unit, over 40 convictions for a variety of "serious corruption" offences had been secured at the time of the visit. In addition to police officers, lawyers, customs officials, prison officers, journalists[32] and members of private investigation and security firms

[28] The police authority for the City of London Police is the Common Council of the City of London, while the Secretary of State for Northern Ireland appoints all members of the police authority for the RUC. Special arrangements have been made for the composition of the authorities of NCS and NCIS to reflect their special role and territorial jurisdiction.

[29] New arrangements are, however, envisaged for the RUC, the NCS and the NCIS.

[30] Also covering Northern Ireland.

[31] The MPS, the City of London Police, the 41 other local police forces of England and Wales and the RUC.

[32] The cases concerned bribery of police officers by journalists to secure information.

have been arrested. During the visit the GET was assured that the specialist unit of the MPS had at its disposal adequate staff, resources and expertise. It was also informed that the MPS had already introduced a regime of random quality assurance testing to heighten sensitivity to the related issues.

39. However, "internal corruption" does not appear to be confined to the MPS. In a report published in 1999 H.M. Inspectorate of Constabulary recognised that public confidence in police integrity was being shaken. Outside the MPS, most cases of police corruption are dealt with by forces' Professional Standards Unit (or Complaints and Discipline Departments), but these have tended to be smaller and less well-resourced units. The Inspectorate called for increased emphasis on anti-corruption and integrity-reinforcing measures within the police.

40. The GET was informed of some such measures that are being taken. ACPO, for example, has recently created a Professional Standards Committee and put in place a comprehensive strategy to "protect the police service from the effects of corruption", which the local forces are invited to implement[33]. The Greater Manchester Police has established a specialist unit for combating "corruption" in its ranks. And both the NCS and the NCIS consider that they have a special role to play in the effort to combat corruption. The National Crime Squad carries out professional standards investigations into the most serious and/or difficult cases of police corruption. It also profiles its own staff to ensure high levels of probity.

41. The GET was also informed that, generally speaking, the police did not lack adequate tools, in the form of witness protection programmes, informants and surveillance techniques, to meet the challenge of internal corruption. Moreover, according to proposals for legislative change[34], the tax authorities will be given, for the first time, authorisation to disclose, under a "gateways" scheme, information to the police to initiate, carry through and complete an investigation into offences relating to illegal earnings.

42. The measures mentioned above will be useful in tackling corruption in the wider community. Such cases are generally dealt with by force Fraud Squads, in a reactive rather than a pro-active way. However, doubts were expressed by both the police and prosecutors about the adequacy of the resources and expertise available to local forces outside the major metropolitan areas in England, Wales and Northern Ireland[35] to work on complex fraud cases.

b2. General prosecuting authorities

43. In the United Kingdom the residual competence to prosecute corruption belongs to the general prosecuting authorities. There are different arrangements for each jurisdiction.

<u>England and Wales</u>

44. Until 1985 it was the police and the Director of Public Prosecutions (DPP) who were responsible for the prosecution of criminal cases in England and Wales. In order, however, to encourage consistency and independence in prosecution, the CPS was set up under the Prosecution of Offences Act 1985 as a single independent authority for that jurisdiction.

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[33] Half of the police forces have a published strategy on corruption, almost all (97%) want to do more in the area and most of them (92%) have procedures to deal with confidential reporting of wrongdoing.

[34] The Criminal Justice and Police Bill, which was before Parliament at the time of the visit.

[35] In Scotland there are fraud squads or fraud officers in all police forces although smaller forces might face difficulties in undertaking a large-scale enquiry.

45. The CPS is headed by the DPP[36] who is appointed by the Attorney General. The latter is a member of the central government appointed by the Prime Minister and is answerable to Parliament for the CPS, the conduct of which s/he "superintends". The CPS is organised in 42 areas corresponding to the areas of the local police forces with the exception of London where the CPS area corresponds to the area of both the MPS and the City of London Police. Each CPS area is headed by a Chief Crown Prosecutor who manages a team of lawyers and caseworkers. Within each area there are one or more local branches headed by a Branch Crown Prosecutor responsible for teams of lawyers and caseworkers. The 42 areas are subject to a centralised inspectorate, H.M. Crown Prosecution Service Inspectorate. On the whole, the CPS employs 5,800 members of staff, a third of whom are lawyers. Between April 1999 and March 2000 it handled 1,400,000 cases. The GET was informed that the CPS's resources and capabilities "have significantly improved since its founding in 1985".

46. The CPS Headquarters is home to the Casework and Policy Directorate where a specialised anti-corruption unit operates since 1988. Although the unit was initially formed to support the MPS's effort to combat "internal corruption", the GET was told that its mandate had gradually expanded to include other major corruption cases involving public officials. The specialised unit deals with top-end corruption cases. In other words, certain criteria must be fulfilled before a case can be taken up by it. The unit has four full-time prosecutors, all of them chosen because of their past experience with serious and complex cases involving for example undercover operatives, informants and covert surveillance techniques. Each prosecutor is expected to spend three years with the unit. At the CPS Headquarters there is also the Central Confiscation Branch, which would deal, at the time of the visit, with the confiscation aspects of a corruption case. However, the GET was also informed of new legislative proposals[37] involving, inter alia, the creation of a National Confiscation Agency that were intended to make the recovery of criminal proceeds more effective.

47. The CPS is not, strictly speaking, under a legal obligation to prosecute all corruption cases that come to its attention ("discretionary prosecution"). However, under the Code for Public Prosecutors issued by the DPP under section 10 of the Prosecution of Offences Act, all decisions on whether to prosecute or not must be made in accordance with a set of criteria ("the evidential and public interest test"). The prosecutors interviewed by the GET maintained that all corruption cases would be seriously pursued. The reasons for every decision by the CPS are recorded internally. Moreover, although the CPS is not under a legal obligation to do so, it provides the reasons to the police and there are plans to start providing them to the victim of the offence.

48. Under English and Welsh law victims also have the possibility of instituting private prosecutions. However, the GET was informed that this is a rather rare occurrence in corruption cases and, in any event, the DPP may take over and continue or discontinue any private prosecution.

49. All decisions of the CPS are subject to judicial review in England and Wales.

50. The power of the DPP to discontinue private prosecutions is distinct from the power of the Attorney General to refuse to give his/her consent for the prosecution of any of the offences

[36] A different officer from the DPP in Northern Ireland.
[37] The Proceeds of Crime Bill referred to above.

under the corruption statutes[38]. Such consent is required for both public and private prosecutions[39].

51. When reviewing the compatibility of the law of the United Kingdom with the OECD Convention, the competent OECD Working Group invited the authorities to reconsider the requirement that the prosecution of foreign public officials should not be instituted without the Attorney General's permission. However, the Home Office's White Paper proposes to maintain the requirement of consent in respect of the new statutory offence as a protection against frivolous or malicious prosecutions. The position of the United Kingdom Government is that, under the United Kingdom Constitution, the Law Officers do not exercise their prosecution functions as members of the Government but act as impartial guardians of the public interest. When deciding to give consent to the commencement of criminal proceedings the Law Officers apply the criteria set out in the Code for Crown Prosecutors and take into account the advice of the Crown Prosecution Service. The GET was informed that it was never suggested that there were instances where the power to refuse consent had been exercised improperly.

52. The GET was assured that the prosecutors of the CPS would hardly ever rely on the presumption in section 2 of the 1916 Act, especially since under the law of England and Wales it was possible, under certain circumstances, to draw inferences from the silence of the accused. According to the prosecutors, rather than granting immunity, a witness may, in a very rare case, be given an undertaking that his testimony will not be used in a prosecution against him. However the most routine mechanism for securing cooperation from an accomplice is to have him give evidence as a Crown witness, which is usually done after he has pled guilty but prior to sentence. No dissatisfaction was voiced by the prosecutors with these mechanisms.

Scotland

53. In Scotland it is the Lord Advocate who is entrusted with the prosecution of crime. The Lord Advocate is appointed by and a member of the Scottish Executive demits office with it and is answerable to the Scottish Parliament. His/her deputy is the Solicitor General, also appointed by the Scottish Executive. The Lord Advocate is assisted by a number of Advocate Deputes, who are nominated and act under "deputations" granted personally by him/her and who deal with High Court and appeal cases. The above are based at the Crown Office, which is also home to the Fraud and Specialist Services Unit. The Unit, which enjoys the same powers as the Serious Fraud Office (SFO) in England, Wales and Northern Ireland[40], would be involved in the treatment of any corruption cases. The Lord Advocate's local agents are the Procurators Fiscal, equally appointed by him. Each Procurator Fiscal is in charge of a district and is assisted by a number of Procurator Fiscal Deputes. There are 49 such districts, which are grouped together in regions. There are six regions headed by a Regional Procurator Fiscal, who is also the head of a district. Scottish prosecutors are subject to internal quality practice review and audit procedures.

54. Like their counterparts in England and Wales, the Procurators Fiscal have discretion as to whether to prosecute or not. The criteria they use (sufficient evidence and public interest), which are the subject of internal guidance and have not yet been published, are similar but not exactly the same as those of the CPS. The GET was again assured that in a corruption case in which there was sufficient evidence, it would be most unlikely that it would be considered that the public

[38] The relevant provisions enable such consent to by given by the Attorney General or the Solicitor General, who are collectively referred to as the "Law Officers".
[39] The United Kingdom authorities have identified some 230 offences that have a similar consent provision.
[40] See below.

interest did not require a prosecution[41]. Only the Lord Advocate can oblige a Procurator Fiscal to prosecute and no one can oblige the Lord Advocate to do so. A decision to prosecute or not is not subject to judicial review in Scotland. Nor is there a public explanation of the grounds on which it was taken. Moreover, there are not any private prosecutions.

55. Since Scottish prosecutors also prosecute cases for the tax authorities, and have an overall investigative role, they have power to compel, if necessary by warrant, the latter to provide information. The powers available to the SFO (see para 55) are also available to the Lord Advocate. However, the Procurators Fiscal interviewed by the GET were concerned about the possible abolition in Scotland of the presumption in section 2 of the 1916 Act, Scottish law requiring a higher standard of corroboration and not allowing for the drawing of inferences from the exercise of the right to silence.

Northern Ireland

56. In Northern Ireland prosecutions are conducted by the police and the Department of the DPP, who exercises his/her powers under the oversight of the Attorney General[42]. The principle of prosecutorial discretion applies here as well.

b3. The Serious Fraud Office and other prosecuting authorities

57. Apart from the general prosecuting authorities described above, cases of corruption can also be prosecuted by a number of bodies, all of which also have investigatory powers.

58. The most important such body is the SFO created in 1987 to investigate and prosecute cases of "serious or complex fraud"[43] in England, Wales and Northern Ireland. The SFO is an independent Government department headed by a Director under the oversight of the Attorney General. Its investigations are conducted by multi-disciplinary teams comprising lawyers, financial investigators, police officers and IT and other support staff. Section 2 of the Criminal Justice Act 1987 grants the SFO investigators special powers to enable them to obtain information in a timely and efficient manner. Section 3 of the 1987 Act allows the Inland Revenue to pass information to the SFO for the purposes of an Inland Revenue investigation, and for the SFO to use that information for any prosecution. Currently, there are not any similar provisions in respect of the police or the CPS[44]. The SFO has 150 members of staff, 35 of whom are lawyers. At any one time, the SFO will be conducting approximately 80 cases at various stages of investigation and prosecution. The SFO has had the occasion to prosecute a number of corruption cases and give assistance to several foreign investigations. However, the SFO believes that an expansion of its mandate to cover all corruption cases or international bribery transactions is unwarranted. Its position is that any significant corruption case will involve fraudulent conduct.

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[41] A decision to prosecute under the corruption statute will be always reviewed by the Lord Advocate, Solicitor General or Crown Counsel. This is not a legal requirement: the Lord Advocate is the sole prosecutor in any case, so there is no need for a specific consent provision on corruption.

[42] The Attorney General for England and Wales is, by virtue of his/her office, also Attorney General for Northern Ireland. S/he must again give his/her consent for all prosecutions for corruption.

[43] The SFO determines whether a case falls within its competence in accordance with a set of criteria that refer to the need for its special powers to be used or for specialised knowledge, the value of the alleged fraud (more than £1 million) and the existence of a significant international dimension or widespread public concern.

[44] See comments above about the Criminal Justice and Police Bill.

59. Other authorities in England, Wales and Northern Ireland that could prosecute cases of corruption within their sphere of competence are H.M. Customs and Excise, the Inland Revenue and the Department of Trade and Industry.

60. In order to combat internal fraud, H.M. Customs and Excise established a new Internal Investigation Division in September 2000. This division would also deal with cases of internal corruption.

b4. The courts

61. In the United Kingdom the judiciary has adjudicative functions but no power of inquiry.

62. United Kingdom judges are not required formally to register interests. However, all interlocutors of the GET were in agreement that the historical record demonstrated that judicial corruption was virtually unheard of, except on the most rare occasion and then only at the lowest level of a lay magistrate. Similarly, none of the persons interviewed considered that there existed a significant problem of political influence upon judicial decisions.

b5. Other authorities

63. Besides the police forces, the various prosecuting authorities and the judiciary, there are other State authorities in the United Kingdom, which, although competent in areas different than criminal law, have an important role to play in the prevention and disclosure of corruption. Similar institutions exist, obviously, in every State but the role they play in the fight against corruption differs from one country to another. In the United Kingdom the following bodies and institutions should be mentioned: the audit authorities, the Office of Government Commerce (OGC), the Police Complaints Authority (PCA) and the Police Ombudsman for Northern Ireland.

i. Audit authorities

64. In the United Kingdom all government spending must be authorised by the Parliament in Westminster. The local authorities are mainly financed by grants from the central government, although some local taxation is allowed. The Scottish Parliament was also given, on its creation, limited tax-levying power, which, however, it has not exercised so far.

65. All spending by central government and a wide range of public bodies in England and Wales is subject to audit by an officer of the Westminster Parliament, the Comptroller and Auditor General. S/he exercises this function through the National Audit Office. The local authorities in England and Wales are subject to the Audit Commission. The National Assembly for Wales has its own officer, the Auditor General for Wales, who is assisted by the National Audit Office. Scotland has its own Auditor General, who audits the Scottish Executive, and the Accounts Commission, which commissions and receives the audits of local authorities. Both are supported by Audit Scotland. Finally, the audit authority for Northern Ireland is the Comptroller and Auditor General for Northern Ireland who heads the Northern Ireland Audit Office. Local authorities there are audited by the Department of the Environment in Northern Ireland.

66. The scope of the audit conducted by the above authorities includes regularity (whether public moneys have been used for the purpose intended and in accordance with applicable laws and rules) and propriety (whether public business has been conducted in a proper, even-handed and fair manner). Recently there has been a movement towards extending this scope to cover the

adequacy of the mechanisms that the auditees have put in place to ensure the proper conduct of their financial affairs. In the case of the local authorities it is the law that prescribes such an audit. Elsewhere the extension of the scope of the audit is achieved through the phased introduction by the Treasury (the central government ministry of finance) to the public sector of applicable aspects of the Combined Code issued by the United Kingdom's accounting profession.

ii. The Office of Government Commerce

67. Although there is no central procurement authority in the United Kingdom, a new authority, the OGC, has been entrusted with setting strategic direction and providing guidance to the various procurement offices. The competence of the OGC extends over central civil government[45] but not over local authorities. The direction given by the OGC is based on value-for-money and the coordination of commercial relationships. At the time of the visit, the Office was developing a new gateways initiative in order to assist procuring offices by establishing teams to monitor projects. There was also a move to introduce electronic tendering.

iii. The Police Complaints Authority

68. The PCA is an independent body, composed of civilian members, that was set up in 1985 to supervise the investigation of certain categories of complaints against the police. Other internal investigations can also be referred to it by individual police forces. The role of the PCA consists in approving the appointment of the investigating officer (usually an officer from another police force), giving directions, whenever necessary, on the conduct of the investigation and issuing a statement, at the conclusion of the investigation, as to whether the latter has been conducted to its satisfaction. The PCA also reviews all reports of internal investigations, whether supervised or not, and can direct that misconduct proceedings be preferred against any police officer. The work of the PCA focuses on allegations of abuse of individuals by the police. However, it has also supervised corruption inquiries. Some concern was expressed to the GET about the number of complaints that actually reach the PCA and the number of investigations it can actually supervise. However, the GET was also informed that the PCA's resources were in the course of expansion. It was also envisaged to extend its mandate, by, inter alia, granting it the power to investigate serious complaints itself, and rename it the Independent Police Complaints Commission.

69. In Northern Ireland, similar functions were performed by the Independent Commission for Police Complaints for Northern Ireland up until November 2000, and since then by a new system operated by the Police Ombudsman for Northern Ireland.

c. Immunities

70. The only adult person who enjoys absolute[46] immunity from criminal jurisdiction under the laws of the United Kingdom is the sovereign.

71. Although MPs do not enjoy immunity from jurisdiction as such, Article 9 of the Bill of Rights 1688 prevents evidence being given in court that questions proceedings in Westminster. However, the

[45] It does not cover defence procurement.

[46] In addition to the traditional immunity for foreign diplomats, the United Kingdom grants conditional immunity to members of visiting forces. These cannot be tried in the United Kingdom, except when they are not subject to the jurisdiction of the criminal courts of their own country or when the authorities of their own country notify the United Kingdom ones that they will not deal with the case.

recent White Paper of the Home Office provides that evidence relating to a corruption offence committed or alleged to have been committed by a Member of either House of Parliament should be admissible notwithstanding Article 9 of the Bill of Rights. The proposed change in the law concerning the MPs is being invoked as one of the reasons for continuing to make prosecutions for corruption dependent on the Attorney General's consent. The representatives of the Joint Committee on Parliamentary Privileges pointed out in this connection that the DPP lacks parliamentary experience.

72. As regards, finally, United Kingdom diplomats abroad, since 1948 these (in common with any other civil servant) can be prosecuted before a United Kingdom court for most of the serious offences, such as corruption, that they might commit abroad in the course of their duties. Moreover, the GET was informed that the Foreign and Commonwealth Office (the ministry of foreign affairs) would "consider seriously" lifting the immunity of a United Kingdom diplomat who had committed fraud or corruption. However, there were no records of any such cases. In the past few years there had been only one request for the lifting of a United Kingdom diplomat's immunity. The case was not related to corruption, the immunity was lifted, the diplomat was prosecuted, fined and remained in post.

III. ANALYSIS

a. The general policy against corruption

73. There can be no doubt that the situation in the United Kingdom, in so far as the fight against corruption is concerned, is not easy to analyse. Rather complex arrangements surround both the manner in which the bodies and institutions that are entrusted with this fight have been set up and operate and the system of immunities. Many factors can explain this complexity, including the following: the legal system, which is based on both statute and common law, the historical origin of the bodies, institutions and immunities and the way in which these have evolved in time, the recent process of devolution and, finally, the somewhat intricate nature of the United Kingdom society itself. This state of affairs necessarily dictates caution in arriving at any generalised conclusions. Nevertheless the GET, having reviewed the situation in England, Wales and Scotland and to a lesser degree in Northern Ireland as carefully as the available time permitted, noted relatively few significant problems in the functioning of the bodies and institutions in charge of the fight against corruption. Moreover, the system of immunities is in general rather restrictive and will become even more so if some of the legislative proposals that were pending at the time of the visit are adopted. Its potential to inhibit the anti-corruption struggle, which is already quite limited, will then become almost non-existent.

74. This overall positive assessment is inevitably coloured by the fact that there are relatively few reports about corruption in the United Kingdom itself. The GET was informed that this was related to various societal factors that did not encourage corruption. However, the GET was also positively impressed by the aggressive manner in which the United Kingdom authorities are dealing with the most serious corruption-related issue that has come to their attention so far, abuse of authority by police officers, and the success they have achieved in this connection.

75. Moreover, the GET noted with satisfaction that, in addition to using effectively the law-enforcement mechanism to curb corruption wherever it risks assuming menacing dimensions, the United Kingdom authorities have recently taken various major policy initiatives aiming at or expected to have an impact on prevention of corruption.

76. The most important such initiative is, of course, the Home Office's White Paper for the reform of the criminal law on corruption. The GET cannot but look favourably on the proposals contained therein, since they will result in an explicit definition of corrupt intent, harmonise criminal liability in the public and private sectors and permit the ratification of the relevant Council of Europe Criminal Law Convention. Moreover, they will focus attention on international corruption matters to a degree that is desirable in a global economy by settling the question of whether the bribery of foreign officials is punishable and giving United Kingdom courts jurisdiction over corruption offences committed abroad by nationals. Incidentally they will also help achieve an integrated approach to corruption in criminal and tax law by ensuring that bribes paid abroad by UK nationals are not tax deductible. The only aspect of the White Paper that the GET would take issue with is the proposal to maintain the existing provision under the Prevention of Corruption Acts requiring the Law Officers' consent to prosecutions (see para 87).

77. The GET noted that the proposals only concern England and Wales[47]. The existing Prevention of Corruption Acts apply throughout the UK. There are differences in the common law but it is – though effective – not used in modern practice. In GET's view, measures should be taken to eliminate the risk of excessive divergence. Of course, the GET noted that the Scottish Executive and the Northern Ireland Office were involved in the discussions for the reform of the law of corruption and that, although Scotland wants its own legislation, it has made it clear that its policy goals would be the same as of that for England and Wales. However, the GET observed that it would be preferable if the "pro-coordination" approach were taken one step further. In its view, for the risk of excessive divergence to be minimised, the central government should consider whether a protocol should be drawn up with the authorities in Scotland and Northern Ireland concerning both the timing and the general approach to any legislation introduced in the United Kingdom in response to international conventions in the field of corruption.

78. Two other legislative proposals pending at the time of the visit that retained GET's attention were the proposals on information gateways mentioned in para 38 and the Proceeds of Crime Bill. The GET considered that the adoption of these bills will have a positive impact on the fight against corruption, since their aim is, inter alia, first, to allow the tax authorities to cooperate in certain circumstances with criminal investigators and, secondly, to render more effective the procedure for the seizure of assets brought to the United Kingdom as a result of corrupt activities. These will be new effective tools for the authorities entrusted with the anti-corruption struggle in the United Kingdom and, therefore, the GET recommended the adoption of both sets of proposals.

79. However, improving the legislation for the seizure of corruption-related assets will be an exercise in futility if the authorities that are charged with providing international legal assistance do not have enough resources to deal with the corresponding requests expeditiously. The GET noted in this connection that the UK Central Authority in the Home Office has been understaffed for a long period of time. To deal with the backlog of untreated requests, temporary staff has been employed. The GET appreciated the efforts made by the authorities to redress the situation. Given, however, that the problem might be of a structural nature and given the ever increasing importance of effective international assistance arrangements, the GET recommended that the United Kingdom authorities should consider whether additional permanent resources are needed.

80. In addition to commending the United Kingdom authorities for their recent efforts to improve the country's capacity to fight corruption-related crime, the GET wished to stress the importance of

[47] After the end of the visit, the Home Secretary announced that the proposed bill would also cover Northern Ireland.

the more general campaign that they have pursued for the last seven years to "raise standards in public life". It is clear that significant ground has been covered in this connection, since the establishment of the relevant committee in 1994. However, the GET considers that the wish of the Committee for Standards in Public Life to see the drafting of codes of conduct accompanied by systems of independent scrutiny has been met only in part.

81. Up to now there is just one government-ethics system that appears to be fairly complete. This is the system that is being currently implemented for local authorities in England, Wales and Scotland and which has a statutory basis and will be effectively policed by a number of independent bodies. The GET recommended that the authorities should review whether local authorities in Northern Ireland could also benefit from a similar statutory framework.

82. The only other body that can rely on a mechanism for the registration of interests and the investigation of complaints is the House of Commons. The GET wished to stress the importance of such arrangements and considers that, if the public is to have confidence in the integrity of its democratic institutions, MPs must be held to the highest standards of probity. Thus, notwithstanding the anticipated impact of the Political Parties, Elections and Referendums Act, the GET recommended that, if the registration system is to become an effective tool for the prevention of corruption, the competent authorities should consider tightening it up. They should consider making it clear in the relevant House rules that Members should register the exact amounts paid by donors, in addition to the latter's identity (at present, the only time when exact amounts have to be stated is when MPs provide Parliamentary services to outsiders - i.e. consultancies or regular media work on Parliamentary issues). Moreover, they should consider whether the registration requirement should be also extended to the interests of other key persons connected with Members and to all Members' and "key connected" persons' shareholdings (at present, the requirement only applies to certain hospitality offered to, and joint shareholdings held by, an MP and his spouse and/or children).

83. As for the complaints procedure, the GET noted that the Parliamentary Commissioner for Standards has recently encountered difficulties in securing the production of documents she considered essential for her investigation. These difficulties derive from the fact that her powers do not rest on a statutory basis. As a result, she has turn to the Standards and Privileges Committee for support, which does not always appear to be forthcoming. The GET considered that any doubts as to the integrity of MPs must be dispelled in the context of procedures that inspire confidence in the public. The GET, therefore, recommended that the authorities should consider whether the Parliamentary Commissioner of Standards' powers and duties should be put on a statutory basis to remove any possible doubts about his/her authority to compel production of information and attendance.

84. Finally, the GET noted that the House of Lords has neither a meaningful system of registration of interests nor a mechanism for the investigation of complaints. For the reasons stated above, the GET recommended that the authorities should consider whether the House of Lords should adopt a system of registration of interests with a commissioner along the lines of those of the House of Commons.

85. Having reviewed the ethical framework for the local authorities and the Parliament in Westminster, the GET must now turn to the system for ministers and civil servants. Although both these categories of public officials are endowed with codes of conduct and guidance which includes arrangements for handling conflicts of interest, there exists no central mechanism for the registration of interests. Moreover, although there exist commissioners for hearing appeals by

civil servants who feel that the code has not been complied with in their case, there is no equivalent central authority for reviewing whether the civil servants themselves are complying with the standards in the code. The same also holds true for ministers. In the light of the above, the GET recommended that the authorities should consider whether a central mechanism should be created for the registration of interests by senior civil servants and ministers and for recording and investigating complaints; this might well presuppose that the codes for civil servants and central government ministers should be put on a statutory basis.

86. As regards the other major policy initiatives, the GET recognised the importance of the Political Parties, Elections and Referendums Act and favours its extension to Northern Ireland, as the circumstances permit. The Freedom of Information Act appears to balance adequately the requirement of transparency, which is a major force for inducing proper conduct in public life, with the need to respect the confidentiality of certain investigations. The GET, however, observed that Scotland has not yet enacted similar rules. As for the Public Interest Disclosure Act 1998, the GET considered that the information provided by whistleblowers can often prove instrumental in curbing corruption effectively and, therefore, recommends that appropriate disclosure mechanisms under the 1998 Act should be more widely promoted in the public sector.

b. Bodies and institutions in charge of the fight against corruption

87. As regards the institutions that are entrusted with the fight against corruption, the GET noted that judges in the United Kingdom are not required to register their interests. Given, however, that the United Kingdom judiciary is generally perceived as conforming to social demands for observance of high integrity standards, the GET did not consider it necessary to address a recommendation in this connection.

88. The GET was also heartened to be informed that there exists in England and Wales a group of prosecutors specialising in corruption cases. However, the relevant unit's limited resources cast doubt on its ability to develop its mandate beyond the domain with which it was initially entrusted, namely corruption within the MPS. As a result, it can be expected that most other corruption cases will be passed by the local police forces on to non-specialised prosecutors. Moreover, corruption cases connected with serious fraud will be treated by the SFO. Finally, it cannot be excluded that corruption can be also prosecuted by H.M. Customs and Excise, the Inland Revenue and the Department of Trade and Industry. It goes without saying that outside England and Wales, corruption cases will be dealt with according to the local prosecuting regimes.

89. Faced with this proliferation of prosecuting authorities competent to deal with corruption, the GET considered it imperative to recommend that all decisions on whether to prosecute or not should be taken with reference to a set of clearly defined criteria to be found in either the Code of Crown Prosecutors of the CPS or counterpart provisions. This will ensure a measure of public control over an area where, as a matter of law, prosecutors in all three jurisdictions enjoy discretion.

90. The second recommendation that the GET wished to address in this connection concerns the requirement that the Attorney General or the Solicitor General, who are legally qualified members of the executive, should give his/her consent before any prosecution for the offences under the Prevention of Corruption Acts can be instituted. The GET notes that this is one of the occasions where the Attorney General can interfere with the autonomy of the DPP when making decisions to prosecute or not. The GET considered that there does not seem to be any evident justification why decisions to prosecute made by professionals pursuant to established standards should be reviewed by the Law Officers (which might be interpreted as a form of political control) in

corruption cases[48]. On the contrary, the existing arrangement carries the risk of undermining public confidence in the functioning of the system. GRECO, therefore, recommended to the United Kingdom authorities to ensure that there are safeguards to prevent any undue exercise of the Attorney General's power to refuse consent to prosecutions under the Prevention of Corruption Acts.

91. As regards the various police forces and H.M. Customs and Excise, the GET was satisfied with their ability to recognise realistically the internal corruption peril and provide a constructive nationwide response. The GET considered that their internal systems are sufficiently well-developed and vigorous to provide a real deterrent against corruption, as evidenced by the various prosecutions for abusive and dishonest behaviour against police officers which they have generated. The GET only wished to stress in this connection the merits of information sharing and of implementing "best practice" in all anti-corruption units. It also stresses the need for all forces to become integrated in the anti-corruption strategy of the Association of Chief Police Officers.

92. The only real issue of concern for the GET in connection with law enforcement is related to the recognised limited ability of Fraud Squads in many police forces to tackle complex cases of corruption in the wider community. Naturally, the GET is conscious of the fact that corruption is not a major problem in the United Kingdom in general. This is a factor that is inevitably taken into consideration by Government when it makes, in consultation with local police authorities, choices concerning the allocation of scarce resources. Therefore, when local policing priorities are determined, high-volume crime, such as theft, assault, drug trafficking and burglary may well be favoured. However, the GET wished to stress that corruption is a crime that can erode the integrity of local government and business without immediately arousing concern. As a result, it recommends that the authorities should ensure that adequate and qualified resources always exist in the police to provide a "trip-wire" warning capability on the incidence of corruption. The authorities of the United Kingdom are, of course, in the best position to determine whether such resources should be organised at the local, regional or national level, whether they should have an intelligence or operational orientation and what the best liaison and reporting arrangements are. The GET wished, therefore, to make it clear that its recommendation is simply that a constant and geographically comprehensive capability should exist to identify corruption if and wherever it develops to worrisome proportions. This observation is by not any means intended to suggest that existing bodies, such as the NCIS and the NCS, are not capable of fulfilling this task, but merely to call for the continuous dedication of qualified resources to control the constant threat of corruption even outside the police.

93. Having examined the ability of the courts and the different prosecuting and investigating authorities to rise to the various challenges that the particularity of the offences under examination creates for the criminal justice system, the GET must now turn to the other bodies that contribute in a less direct but nevertheless equally significant manner to the fight for corruption prevention.

94. As regards auditing, the United Kingdom's system is undoubtedly well-developed. It is becoming further improved by the implementation of those aspects of the Combined Code that are applicable to public-sector organisations. The GET wished to urge the United Kingdom authorities to move further down this road; therefore, it recommends that any remaining aspects

[48] The issue of consent does not arise in Scotland where the Lord Advocate may, in any event, give instructions in all criminal cases, being the head of the prosecution service.

of this Code that might be applicable to the public sector should be implemented and the auditing reporting should be extended accordingly.

95. As regards procurement, the GET considered that the OGC's gateways initiative will be of great assistance to authorities that only procure capital projects occasionally and may, therefore, lack resident expertise. However, this should not be regarded as a panacea. The GET considered that it is very important to keep the balance between propriety, on the one hand, and the values promoted under the new approach ("value for money" and "coordination of commercial relationships"), on the other, constantly under review. The same holds true in respect of the capabilities and environmental exposure of the various procurement offices.

96. Finally, the GET recognised the importance of the role of the PCA in the prevention of corruption within the police (of course, in respect of the police forces that come within its competence). However, the GET also recognised that there is an apparent expectations gap between what the public believe that such an organ can achieve and the limitations it currently faces because of the limited number of complaints that actually reach it and of investigations that it can actually supervise. Some proposals for the expansion of the PCA's competence and resources have been made domestically. The GET recommended that the authorities should consider the most effective means of allaying public concern about effective oversight of police actions, including corruption. These could include an expansion of the PCA's competence and resources or an independent police complaints authority.

c. Immunities

97. The GET noted that United Kingdom law provides for immunity from prosecution in very limited situations. The only issue that appears to exist is Article 9 of the Bill of Rights, which prevents evidence being given in court that questions proceedings in Westminster. The GET already commented on the need to hold Members of Parliament to the highest standard of probity. The Home Office's White Paper, which proposes exempting the new corruption offence from the application of Article 9, seeks to achieve precisely that and the GET would naturally support this change. The GET, therefore, recommended that corruption offences be exempted from the application of Article 9 of the Bill of Rights.

98. The GET recognised that a frivolous or vexatious prosecution can potentially influence some voters. However, the risk should not be exaggerated in a democracy with free media and an educated population. Moreover, although a person with parliamentary experience as the Attorney General can arguably recognise the politics behind an attempted prosecution more easily than the DPP, the United Kingdom court system can be ultimately relied upon to dispense justice of the highest possible standard in all circumstances.

IV. CONCLUSIONS

99. Although reported corruption is altogether a relatively rare occurrence in the United Kingdom itself, the arrangements for the fight against it and the impact thereon of existing immunities are not easy to analyse. This is due to a number of factors including the following: the legal system, which is based on both statute and common law, the historical origin of many of the bodies and institutions involved in the anti-corruption struggle and of the immunities, the way in which these bodies and institutions have evolved in time, the recent process of devolution and, finally, the somewhat intricate nature of the United Kingdom society itself. This state of affairs necessarily dictates caution in arriving at any generalised conclusions. Nevertheless the GET, having

reviewed the situation in England, Wales and Scotland and to a lesser degree in Northern Ireland as carefully as the available time permitted, noted relatively few significant problems in the functioning of the bodies and institutions in charge of the fight against corruption. Moreover, the system of immunities is in general rather restrictive and will become even more so if some of the legislative proposals that were pending at the time of the visit are adopted. Its potential to inhibit the anti-corruption struggle, which is already quite limited, will then become almost non-existent.

100. The most serious corruption-related issue that has come to the United Kingdom authorities' attention so far is abuse of authority by some police officers. The fact that this issue has been dealt with in an aggressive and successful manner is a positive sign of the system's ability to cope with corruption when it manifests itself. Moreover, the country has recently embarked on a process of modernising its criminal-law on corruption. A more general campaign to raise standards in public life was launched in 1994 with the establishment of a special committee and a lot of ground has been covered in this connection since then. Some other recent legislative initiatives, such as the Public Interest Disclosure and the Freedom of Information Acts, are also expected to make a significant contribution to the struggle for corruption prevention.

101. Naturally, there is room for improvement in some areas, including that of the scrutiny of the codes of conduct for different categories of public officials, the criteria for the exercise of prosecutorial discretion, police resources for detecting corruption outside its ranks, Home Office resources for processing international legal assistance requests and the mechanisms for authorising prosecutions for corruption.

102. In view of the above, GRECO recommended to the United Kingdom:

i. the adoption of (a) the gateway provisions mentioned in para 38, to allow the tax authorities to cooperate with police investigators in areas where they are currently unable to; and (b) the Proceeds of Crime Bill, to render more effective the procedure for the seizure of assets brought to the United Kingdom as a result of corruption;

ii. that additional permanent resources should be allocated to the UK Central Authority in the Home Office;

iii. that local authorities in Northern Ireland should benefit from a government-ethics statutory framework similar to the one contained in the Local Government Act 2000 and the Ethical Standards for Public Life etc. (Scotland) Act 2000;

iv. that the system for the registration of the interests of the Members of the House of Commons should be extended to cover the exact amount of donations, the interests of all "key connected persons" and all shareholdings; that the Parliamentary Commissioner of Standards' powers and duties should be put on a statutory basis to remove any possible doubts about his/her authority to compel production of information and attendance; and, finally, that the House of Lords should adopt a system of registration of interests with a commissioner along the lines of those of the House of Commons;

v. that a central mechanism should be created for the registration of interests by senior civil servants and ministers and for recording and investigating complaints;

vi. to promote more widely appropriate disclosure mechanisms under the Public Interest Disclosure Act in the public sector;

vii. that the decisions by all United Kingdom prosecuting authorities on whether to prosecute or not should be taken with reference to a set of clearly defined criteria to be found in either the Code of Crown Prosecutors or counterpart provisions; the aim of this recommendation is to extend such criteria to United Kingdom prosecuting authorities not currently bound;

viii. to ensure that there are safeguards to prevent any undue exercise of the Attorney General's power to refuse consent to prosecutions under the Prevention of Corruption Acts;

ix. to ensure that adequate and qualified resources exist in the police to provide a constant and geographically comprehensive warning capability on the incidence of corruption;

x. to implement the remaining aspects of the Combined Code (issued by the United Kingdom's accounting profession) that might be applicable to public sector and to extend the auditing reporting accordingly;

xi. to implement the most effective means of allaying public concern about effective oversight of police actions, including corruption; these could include an expansion of the PCA's competence and resources or an independent police complaints authority;

xii. to exempt corruption offences from the application of Article 9 of the Bill of Rights.

103. Moreover, the GRECO invites the authorities of the United Kingdom to take account of the observations made by the experts in the analytical part of this report.

104. Finally in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of the United Kingdom to present a report on the implementation of the above-mentioned recommendations before 31 December 2002.