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Addendum

First Evaluation Round

Addendum to the Compliance Report on the United States of America

Adopted by GRECO
at its 38th Plenary Meeting
(Strasbourg, 9-13 June 2008)

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. The USA submitted the Situation Report requested by GRECO's compliance procedure on 18 February 2006. On the basis of this report and a plenary debate, GRECO adopted the First Round Compliance Report (RC Report) on the USA at its 28th Plenary Meeting (Strasbourg, 9-12 May 2006); the report was made public on 27 June 2006. The Compliance Report (Greco RC-I (2006) 1E) concluded that recommendations iv, v and xii had been implemented satisfactorily, recommendations ii, iii, vii-xi had been dealt with in a satisfactory manner and recommendations i and vi had been partly implemented; GRECO requested additional information on their implementation. The information requested was submitted on 1 December 2007 by the US authorities.
3. Pursuant to Rule 31, paragraph 9.1, of GRECO's Rules of Procedure, the purpose of the present Addendum to the First Round Compliance Report is to appraise the implementation of recommendations i and vi in the light of the additional information submitted by the US authorities.

II. ANALYSIS

Recommendation i.

4. *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.*
5. GRECO recalls that in the Compliance report this recommendation was considered partly implemented as the measures reported - the distribution of GRECO's First Round Evaluation Report on the USA and the provision of information on its content to the Executive Working Group (EWC) and through the Council on Governmental Ethics Laws (COGEL) to state and local government agencies as well as to law enforcement agencies at federal, state and local levels - were not sufficient in order to comply fully with the recommendation. Further efforts were requested.
6. The US authorities refer to long-standing programmes designed to prevent and detect corruption such as financial disclosure by all senior officials (both career and political); codes of conduct for officers and employees of all three branches of government; education, training and counseling programmes; standardised internal controls; financial audits; and anonymous whistleblower hotlines etc. Such programmes are at the federal level, primarily under the responsibility of organisations such as the Office of Government Ethics (the OGE) and not the Executive Working Group of the Department of Justice, which is more concerned with the investigation and prosecution of corruption offences. The authorities also refer to a number of new or enhanced programmes aimed at prevention and detection of corruption as described hereafter.

7. In March 2007, during the OGE's 15th National Ethics Conference, the Director of the OGE introduced a new initiative focusing on the role of high-level leadership at Federal agencies. The Conference was attended by over 600 agency ethics officials and staff from the Office of the Inspector General (IG). This initiative was said to be the result of the OGE's coordination with the ethics community and the recognition that leadership support is a critical component of a successful agency ethics programme and instrumental in promoting an ethical culture. The initiative has resulted in the formation of several inter-agency working groups of ethics officials. The OGE holds various meetings with Cabinet Secretaries and those in other leadership positions in Departments and agencies and these have begun to develop action plans for agency leadership support of ethics programmes.
8. Another tool to prevent and detect corruption stemming from conflicts of interest is the financial disclosure system. In the Executive Branch, approximately 250,000 officials in positions below the senior level, who have significant professional interaction with the public (for example, in the field of procurement, licensing, grant issuing etc.) file confidential financial disclosure forms which are reviewed by ethics officials at their respective agencies. Senior officials continue to file publicly available forms. The OGE has surveyed the ethics officials and has published a revised financial disclosure regulation and confidential reporting form (effective for use since 1 January 2007) in order to streamline the reporting requirements and to provide for a more accurate definition of who has to file a report, as well as to develop a system specifically tailored to the various conflicts of interest that might arise in particular agencies. The OGE has also developed an online training course regarding the new regulation, available on the OGE website.
9. In respect of corruption prevention through education programmes, the OGE compiles an annual summary of federal conflict of interest prosecutions by the Department of Justice, to be used, in part, in training of employees and ethics officials. The summary, available on the Internet, can also be used as a compendium of examples for investigators and prosecutors of cases that have been handled in other jurisdictions. In this respect the OGE surveys all of the 94 U.S. Attorneys' Offices.
10. The US authorities also stress that the OGE maintains consistent liaison with the IG community through monthly meetings of the President's Council on Integrity and Efficiency's (PCIE) and the Executive Council on Integrity and Efficiency's (ECIE). As a part of the PCIE and ECIE meetings, members exchange information about new programmes, effective practice, trends and legislation. Specifically with regard to the interface between prevention and detection/investigation programmes, the Director of the OGE, in a July 2006 meeting of the PCIE, emphasised the importance of notifying the OGE of any referrals for prosecution of possible conflict of interest law violations made to the Department of Justice (DoJ) in order to help determine whether an agency should separately proceed to impose disciplinary sanctions and to identify possible weaknesses in the ethics training programmes.
11. The authorities recall that as a principal means of engaging the state and local levels in issues of corruption prevention and detection, the OGE is continuously participating in the Council on Governmental Ethics Laws (COGEL), which is an organisation of federal, state and local government agencies responsible, in part, for subjects such as government ethics, elections, campaign finance, lobbying registration, and access to information. All these programmes have elements aiming at supporting the prevention and detection of corruption. The OGE participated in COGEL's December 2006 and September 2007 conferences, during which the OGE highlighted GRECO's reports on the USA. The 2007 COGEL Conference also had a panel session on the co-operation between federal, state and local law enforcement authorities.

12. The authorities also refer to the Association of Inspectors General (AIG), which include federal, state, and local government agency Inspector Generals and their staff who have as one of their responsibilities to detect corruption. AIG's mission is to foster and promote public accountability and integrity in the general areas of prevention, examination, investigation, audit, detection, elimination and prosecution of fraud and abuse, through policy research, analysis, standardisation of practices, policies, conduct and ethics and encouragement of professional development by providing and sponsoring educational programs and the establishment of professional qualifications, certifications and licensing. AIG conducts biannual conferences and the AIG's autumn 2007 conference included particular sessions on auditor's role in protecting public trust, fraud detection and trends in Government fraud, topics which all were related to corruption.
13. The authorities furthermore state that continued support has been provided in the areas of detection, investigation and prosecution through information sharing, training and collaboration among federal, state and local law enforcement and prosecutorial authorities by federal agencies or NGO's, using federal funds. For example, the DoJ's Public Integrity Section (PIS) is since 1976 charged with supervising the national effort to combat public corruption and in that role PIS receives and shares information on public corruption matters with prosecutors and law enforcement agencies across the country on a daily basis.
14. Finally, the authorities refer to the funding of and participation in programmes to encourage collaboration on cross-cutting issues that include corruption components. One such example is the National White Collar Crime Center (NW3C), a Federally funded NGO that provides training, investigative support and research to agencies and entities involved in the prevention, investigation and prosecution of economic and high tech crime. Through a combination of training and support services, NW3C equips state and local law enforcement agencies with skills and resources they need to tackle in respect of economic and cyber crime problems. As an example, in October 2007, NW3C hosted a Global Conference on Economic and High Tech Crime, a seminar on law enforcement's need for cutting edge techniques and information for investigation and prosecution of white collar crimes including corruption, in which officials of the federal, state and local levels participated. NW3C also provides information and research to the larger public.
15. GRECO takes note of the information provided, which indicates that measures and programmes with regard to prevention and detection strategies on corruption have been conducted in the USA for a long time. Even though most of the measures reported may not have been initiated as a direct result of the recommendation, but are rather of a continuous character, these meet the concerns raised in the recommendation and appear to represent a multifaceted approach to the fight against corruption at federal, state and local level. Moreover, the programmes are implemented through public and private entities. GRECO is satisfied that the federal authorities continue to expand and develop programmes against corruption and that this approach is also reflected at the state and local levels as far as is possible.
16. GRECO concludes that recommendation i has been dealt with in a satisfactory manner.

Recommendation vi.

17. *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.*

18. GRECO recalls that in the Compliance report this recommendation was not fully complied with as the measures reported, in particular, sharing of information on corruption between law enforcement agencies was not included in the “Law Enforcement Information Sharing Programme” (LEISP) of the Criminal Law Division of the Department of Justice. Although GRECO agreed with the authorities that certain corruption information might be too sensitive for such a register, that should not rule out an appropriate sharing of information on corruption.
19. The US authorities report that the DoJ, since September 2001, has been exploring methods for sharing law enforcement information on a “real time basis” via linked computer networks of law enforcement information among federal, state and local entities. Various local law enforcement sharing programmes have been proceeding simultaneously.
20. The authorities furthermore report that the LEISP provided for the real time sharing of the texts of entire documents among all participating law enforcement agencies. In December 2006, the Deputy Attorney General issued a policy memorandum in which the goals of the LEISP were reiterated. That memorandum also directed the DoJ participation in several additional regional information sharing initiatives (in San Diego, California; St. Louis, Missouri; Jacksonville, Florida; Kings Bay, Georgia; the Organized Crime Drug Enforcement Task Force Fusion Center, the National Gang Intelligence Center; and the National Data Exchange Program). The Memorandum stated, however, that the DoJ, while participating in these additional programmes, would not disclose corruption information. This was a reflection of a policy decision that such information frequently involves state and local government officials and sometimes law enforcement officials, for which reason such information would be too sensitive to be included in a general information sharing arrangement. The authorities underline in this respect that, between 2000 and 2007, there were 120 Group I (those involving sensitive circumstances and requiring approval at FBI Headquarters) undercover investigations aimed at public corruption. Of these, 112 targeted state and local officials and 8 federal officials. During the same period, the FBI conducted 3942 other public corruption investigations; 3215 were directed at state and local officials and 727 were directed at federal officials.
21. The authorities refer to a number of areas where efforts to enhance cooperation among federal enforcement agencies have increased. For example, experienced federal public corruption prosecutors and investigative agents gather annually at a three-day public corruption conference organised by the DoJ’s Public Integrity Section. The conference includes presentations and discussion groups regarding notable cases, investigative techniques and strategies, legal issues and trends in the field of public corruption. The Conference is said to be used increasingly as an opportunity to share information widely, but securely, about ongoing investigations and to seek guidance and effective practice between prosecutors and agents on the issues that arise in public corruption cases. In addition, the Public Integrity Section is charged with supervising the national effort to combat public corruption and, in that role, the Section receives and shares information on public corruption matters with prosecutors and law enforcement agencies across the country on a daily basis.
22. Furthermore, the authorities report that corruption information will continue to be shared, and controlled, among the agencies involved in specific corruption investigations. To this end, various task forces at federal, state and local authorities will continue to address specific corruption offences and corruption information will be shared among the members of those task forces. The DoJ has created several task forces designed to combat corruption and to strengthen cooperation and coordination within the Department and with other federal, state and local law enforcement bodies. One such example is the “Katrina Fraud Task Force” which was established by the

Attorney General in September 2005 with the mission to deter, detect, and prosecute instances of fraud relating to the disaster of the hurricane "Katrina", including the associated public corruption crimes. In addition to fraudulent claims for disaster relief benefits and schemes to defraud potential hurricane donors, the Task Force also investigates and prosecutes allegations of bribery, extortion, and fraud involving public officials associated with disaster relief or recovery efforts. The Katrina Fraud Task Force, chaired by the Assistant Attorney General for the Criminal Division, is comprised of representatives such as the DoJ and other federal agencies, federal Inspectors General, representatives of state and local law enforcement agencies, including the National Association of Attorneys General and the National Association of District Attorneys. The Task Force also operates in a close partnership with the American Red Cross and a variety of private-sector organisations that have been assisting law enforcement agencies in identifying fraud schemes.

23. The "Katrina Fraud Task Force" established hotlines and formed working groups designed to bring together law enforcement agents from the federal, state, and local levels. In addition, the task force created a Joint Command Centre in Baton Rouge, Louisiana to coordinate efforts, handle deconfliction, problem-solve and house databases with the capacity to track complaints and lead referrals and to analyse trends and data. The Command Centre receives and processes more than 200 complaints and leads of disaster related fraud each week and has referred more than 14,000 leads to law enforcement agencies around the USA. The principal types of crime on which the Task Force is now concentrating include government contract, procurement fraud and public corruption.
24. The authorities also refer to the creation (by the DoJ) of the "National Procurement Fraud Task Force" in October 2006. This Task Force was created to promote the prevention, early detection and prosecution of procurement fraud and is composed of representatives of the Attorney General, the DoJ, as well as other federal agencies. Since the Task Force was created, more than 200 procurement fraud cases involving approximately 300 defendants have resulted in criminal charges, convictions, civil actions etc. The Task Force has sponsored its first procurement fraud training conference in 2007 and there are plans to make this programme an annual event. The Task Force has, as one of its components, an "Information Sharing Committee", which has established the Law Enforcement Online (LEO). All Task Force members are able to join LEO and members may use the secure network to share sensitive information. Moreover, within LEO a Special Interest Group (SIG) has been created for information sharing. The SIG will be the principal vehicle for sharing confidential investigative information of common interest to multiple agencies. Moreover, it is planned to establish a procurement and grant fraud database.
25. Furthermore, the authorities make reference to the National Gang Targeting, Enforcement & Coordination Centre (GangTECC) with the objective of facilitating the sharing of information between law enforcement agencies, which – in the authorities' view - may also have an indirect impact on the fight against corruption. GangTECC began its operations in summer 2006. In accordance with the Attorney General's directive, GangTECC is a multi-agency designed to serve as a catalyst in a unified federal effort to help disrupt and dismantle the most significant and violent gangs in the USA. The senior investigators at GangTECC come from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Federal Bureau of Prisons (BOP), the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), the U.S. Marshals Service (USMS) and the U.S. Immigration and Customs Enforcement (ICE) at the Department of Homeland Security. These federal agents work in close collaboration with the Gang Squad prosecutors in the Criminal Division of the DoJ and with analysts and others at the

National Gang Intelligence Centre (NGIC). To further the objectives of GangTECC, it is intended to provide for "one stop shopping" via phone and e-mail for federal, state, and local investigators and prosecutors engaged in significant anti-gang efforts. Specific assistance, coordination or access to information will be invaluable to an ongoing gang investigation or prosecution, according to the authorities.

26. Finally, the US authorities mention that the DOJ has created the International Contract Corruption Task Force (October 2006) as an operational task force that deploys criminal investigative and intelligence assets world wide to detect and investigate corruption and contract fraud resulting primarily from the "Global war on terror". This Task Force is led by a Board of Governors and is comprised of law enforcement and investigative bodies from several agencies at federal level.
27. GRECO takes note of the information provided. It appears that the DOJ has endeavoured to devise electronic methods to facilitate the sharing of information between law enforcement agencies in criminal matters, and that this has an impact in respect of corruption as well. After the initial trial period of the LEISP, which seems to be one of few registries of a general and central character in the USA, the LEISP system has been extended for other information than such relating to corruption and there is a policy against including corruption information in this system for the specific reasons noted above (see paragraph 20). Instead of initiating a centralised registry for corruption cases, the coordination methods used in the USA for information sharing purposes are based on a sector division between various task forces, each one focusing on specific fields of interest, which appear to be particularly "acute" and could deal with as different matters as fraud in the aftermath of the hurricane "Katrina" or the fight against criminal groups. On the one hand, the lack of a centralised approach may imply that there are instances where more than one investigative group is reviewing the same conduct. On the other hand, the law enforcement systems in the USA are based on "checks and balances" and may also contain numerous purposeful redundancies. While the lack of a centralised sharing of information in corruption cases was seen as a weakness by GRECO in the evaluation report, GRECO does not doubt that the multifaceted approach provided for in the USA - including taskforces - may be efficient for their purposes and that it may have a positive impact on the detection and investigation of corruption offences. GRECO regrets that the LEISP or any other centralised registry does not contain information on corruption and it maybe concluded that the approach described in the Evaluation report (paragraph 143) that there is no single agency responsible for receiving information and developing and disseminating intelligence in cases of corruption largely remains the same. However, GRECO welcomes the several initiatives reported and accepts that these have facilitated the information sharing capabilities between law enforcement agencies in similar corruption matters.
28. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

III. CONCLUSIONS

29. In addition to the Conclusions contained in the First Round Compliance Report on the United States of America and in view of the above, GRECO concludes that recommendations i and vi have been dealt with in a satisfactory manner.
30. The adoption of the present Addendum to the Compliance Report terminates the First Evaluation Round compliance procedure in respect of the United States of America.