

Strasbourg, 25 March 2004

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**Public**

## **First Evaluation Round**

### **Evaluation Report on the United States of America**

Adopted by GRECO  
at its 17<sup>th</sup> Plenary Meeting  
(Strasbourg, 22-25 March 2004)

## **I. INTRODUCTION**

1. The United States of America was the 29<sup>th</sup> GRECO member to be examined in the first evaluation round. The GRECO evaluation team (hereafter referred to as the “GET”) was composed of: Team 1: Mr. John Barlow, Detective Chief Superintendent, National Crime Squad (United Kingdom, law-enforcement expert), Mr. Jacek Garstka, Judge, Department of International Co-operation and European Law (Poland, prosecution and judicial expert) and Mrs Marie-Odile Baur, Public Prosecutor, Tribunal de Grand Instance de Troyes (France, policy expert); Team 2: Mr. Drago Kos, State Undersecretary, Office for the Prevention of Corruption (Slovenia, law enforcement expert), Mr. Antti Pihlajamäki, Chief Public Prosecutor, Public Prosecutor’s Office of Turku Administrative District (Finland, prosecution and judicial expert) and Mr. Eberhard Siegismund, Head of Subdivision of Criminal Procedure Law, Bundesministerium des Justiz (Germany, policy expert)<sup>1</sup>. This GET, accompanied by two members of the Secretariat, held together with representatives of the US Government a preparatory meeting in Paris on 31 May 2002. Subsequently, the GET and the Secretariat visited Washington, D.C., Baltimore, Maryland and Harrisburg, Pennsylvania from 1 to 8 June 2002. Prior to the visit, the GET was provided with a comprehensive reply to the Evaluation questionnaire (Greco Eval I (2002) 26E).
  
2. The GET met with officials from the following U.S. Government Executive branch institutions: The U.S. Department of Justice (Criminal Division and the Public Integrity and Fraud Sections of this Division, Office of Professional Responsibility, Office of the Inspector General, Office of Enforcement Operations, Executive Office of U.S. Attorneys, U.S. Marshals Service including the Witness Security Unit, Office of the U.S. Attorney for the District of Columbia, the Federal Bureau of Investigation including the Public Corruption Unit, the Office of Professional Responsibility and representatives of an FBI Field unit); the U.S. Department of the Treasury including the Customs Service and Financial Crimes Enforcement Network; the U.S. Department of State Office of the Inspector General; the U.S. Department of Defense Office of the Inspector General; the U.S. Office of Government Ethics; the Office of Personnel Management; the Office of Special Counsel; and the Office of Federal Procurement Policy. Moreover, the GET met with officials from the following U.S. Government Legislative and Judicial branch institutions: The U.S. House of Representatives (Committee on Standards and Official Conduct and Judiciary Committee); the U.S. Senate (Select Committee on Ethics, Judiciary Committee, Committee on Governmental Affairs); the General Accounting Office; the Federal Judicial Conference, the Administrative Office of U.S. Courts (including the Federal Judicial Center), and the U.S. Sentencing Commission. The GET also met with officials from State and local government institutions: Pennsylvania State Ethics Commission, Superior Court of the District of Columbia, State’s Attorney’s Office for Baltimore City, District Attorney’s office for Cumberland County, Pennsylvania judiciary, Pennsylvania legislature, Pennsylvania State Police, Pennsylvania Attorney General’s office, Maryland State Attorney’s office, Baltimore Police Department, Montgomery County Police Department). The GET also participated in non-governmental meetings hosted by the American Bar Association and the Transparency International-USA, and met with representatives from the International Center for Journalists, the Government Accountability Project, the Center for Public Integrity, the Center for Budget Policies and Priorities, the George Washington School of Law, Common Cause, League of Women Voters and various private sector representatives from the local and national media and law and accounting firms. Moreover, the GET participated in civil society meetings with State and local associations such as the National District Attorneys Association, the National Association of Attorneys General, the National Governor’s Association, the National Criminal Justice Association and the National Association of Police Organizations.

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<sup>1</sup> The GET composed of two sub-teams: Sub-team 1 in charge of the examination of the federal system and institutions and Sub-team 2 in charge of the State level, which reviewed the situation in Pennsylvania and Maryland.

3. GRECO had agreed, at its 2<sup>nd</sup> Plenary meeting (December 1999) that the First Evaluation Round 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).
4. Following the meetings indicated in paragraph 2 above, the GET experts submitted to the Secretariat their individual observations regarding 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 U.S. authorities, 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 USA, 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 USA is fully compatible with GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to the United States of America in order for this country to improve its level of adherence with the GPCs under consideration.
5. Considering the size of the United States of America and its specific legal system where the competences are divided between the Federal and State level, as well as taking into consideration the limits of the evaluation visit, the present report focuses principally on the features of the Federal level, and, in so far as it has been possible, also makes references to the State and local levels, where Pennsylvania and Maryland were representative States visited by the GET.

## **II. GENERAL DESCRIPTION OF THE SITUATION<sup>2</sup>**

6. The United States of America (hereafter referred to as “the USA”) is the world’s third largest country in population (approximately 280 million) and the fourth largest country in area. It consists of a Federal District (the capital Washington, D.C.) and 50 States (the conterminous part of which – excluding Alaska and Hawaii – stretches across central North America). The USA is a multicultural society with a large number of minority groups representing a variety of ethnic origins, religions and languages. The USA has the largest and most technologically powerful, market-oriented economy in the world, with a per capita GDP<sup>3</sup> of \$37,600 (as of 2002).

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<sup>2</sup> Since the visit of the GET, the US Government has experienced changes in organisation and legislation primarily addressing the need to enhance domestic security. The names and placement within the Federal Government of some of the offices mentioned in this report have changed.

<sup>3</sup> The GDP composition by sector: agriculture 2 %; industry 18 %, services 80 %.

7. The United States of America became the world's first modern democracy after its separation from Great Britain in 1776 and the adoption of its Constitution in 1789. During the 19<sup>th</sup> century, many new states joined the original 13 as the nation expanded across the North American continent. Power in the USA is decentralised, divided, dispersed and limited. This distribution of powers derives from the Constitution, the oldest written charter for a National Government, amended 17 times (27 amendments) since its adoption. The Constitution imposes strict limitations on the powers of the Federal Government, as it relates to the States and the people, and establishes a clear system of checks and balances among the three branches of government. It is the source of enumerated and implied powers for each of these branches. The federal system created by the Constitution is the dominant feature of the American governmental model, composed, in reality, by thousands of smaller units.
8. Governmental power and functions of the Federal (or US) Government in the USA, as defined in Articles 1-3 of the Constitution, rest in three branches of Government, namely: the executive, the legislative and the judicial. The Executive branch of the US Government is headed by the President, who is the Chief of State and the Head of Government. The President is obliged to see that the laws are faithfully executed. The President is elected, formally through an electoral college, every four years for a maximum of two elected four-year terms, whilst the Cabinet is appointed by the President with Senate approval. The Legislative branch is represented by a bicameral Congress, which consists of the Senate (100 seats, one-third are renewed every two years; two members are elected from each State to serve six-year terms) and the House of Representatives (435 seats apportioned among the States according to population; members are directly elected to serve two-year terms). The Judicial branch consists of the Supreme Court, United States Courts of Appeal, US District Courts. Each State has at least one Federal district court. The Supreme Court justices and lower Federal court judges are appointed, by the President by and with the advice and consent of the Senate, for life or "during good behaviour" (see also paragraph 109).
9. The 50 States have their own constitutions, similar to that of the US Constitution; however, the laws of the individual states may not conflict with the national Constitution. Each State must have a republic form of government. State governments also have three branches: executive, legislative and judicial, which are roughly equivalent in function and scope to their national counterparts. In general, matters that lie entirely within State borders are the exclusive concern of State governments. These include internal communications; laws and regulations relating to property, industry, business and public utilities; the State criminal code; and working conditions within the state. Within this context, the Federal Government requires that State governments must be democratic in form and that they adopt no laws that contradict or violate the Federal Constitution or the laws and treaties of the USA. The chief executive of a State is the Governor, elected by direct vote, typically for a four-year term. All States have a bicameral legislature, except for the mono-cameral body of Nebraska, with the upper house usually called the Senate and the lower house called the House of Representatives, the House of Delegates or the General Assembly. Under the State level, there are also city, county, town and local governments.
  - a. **The phenomenon of corruption and its perception in the USA**
    - i) *Perception of corruption*
10. There is a prevailing view that the strict separation of powers, which exists in the USA, provides for sufficient 'checks and balances' to prevent, detect and prosecute corruption. However, it is

also recognised that corruption exists in various forms and to different degrees in public authorities at Federal, State and local levels as well as in commercial organisations.

11. The GET was informed that public corruption in the USA affects every branch of government at Federal, State and local levels, although systemic corruption of government institutions is considered to be extremely rare. The vast majority of corruption offences involve small groups of individuals.
12. One of the more significant forms of corruption that occur in the USA concerns government contracting for public procurement, which involves the payment of bribes and kickbacks to government officials or other contractors. Another is facilitation payments made to public servants in charge of the oversight of governmental licensing requirements. The law enforcement area, especially the police, raises particular concern as it seems to be exceedingly hard to investigate allegations or suspicions of corruption because police officers often protect their colleagues and do not step forward with incriminating information. According to some of the authorities met by the GET customs officers, border patrol officers, politicians or even bankers and lawyers are also involved in bribery cases connected with the movement of consignments of drugs and the laundering of narcotics related proceeds. Some further types of corruption are linked to organised crime in a number of areas, including bribes paid to avoid law-enforcement. Occasionally, corruption cases have also involved the legislative framework, the judiciary and the electoral process.
13. The business sector has also been confronted with the need to deal with corruption scandals and major commercial organisations have been brought into disrepute by illegal activities concerning corruption, money laundering and fraud. Corruption reaches to bankers, financiers, lawyers, accountants and doctors as well.
14. According to the authorities met by the GET, organised criminal elements within the USA often are the catalyst for public corruption in a number of areas. There are corrupt connections between some institutions - both public and private - and organised crime. As early as the 1920s, it became evident that labour unions and the leadership of some major US cities had ties with or were controlled or influenced by organised criminal groups, (e.g. La Cosa Nostra), which exerted diverse forms of intimidation, violence, and bribery on officials, elected representatives, members of the judiciary and law enforcement community. Although the USA have enacted powerful laws aimed at enhancing the ability of Federal law enforcement to effectively detect, prosecute and punish organised crime offences, these efforts have not completely eradicated organised crime-related corruption. Moreover, the USA now faces the additional threat brought about by non-traditional organised crime groups and the globalisation of organised crime. Thus, detection, investigation, and prosecution of organised crime groups, as well as corruption involving organised crime groups, remain a significant law enforcement priority.
15. The United States of America, according to Transparency International's corruption perception index 2002, was ranked 16 out of 102 countries (rating 7.7 out of 10).

ii) *Statistics provided by the Department of Justice*

16. Nationwide Federal prosecutions of public corruption offences

Year	1996	1997	1998	1999	2000	TOTALS
<b>FEDERAL OFFICIALS</b>						
Indicted	456	459	442	480	441	2278
Convicted	459	392	414	460	422	2147
<b>STATE OFFICIALS</b>						
Indicted	109	51	91	115	92	458
Convicted	83	49	58	80	91	361
<b>LOCAL OFFICIALS</b>						
Indicted	219	255	277	237	211	1199
Convicted	190	169	264	219	183	1025
<b>PRIVATE CITIZENS INVOLVED IN PUBLIC CORRUPTION OFFENCES</b>						
Indicted	200	292	364	302	256	1414
Convicted	170	243	278	306	242	1239
<b>TOTALS</b>						
Indicted	984	1057	1174	1134	1000	5349
Convicted	902	853	1014	1065	938	4772

17. During the five-year period between 1996 and 2000, a total of 5349 persons were indicted, whilst 4772 persons were convicted of corruption offences as a result of Federal prosecutions of public corruption offences. However, the statistics are not complete and may not show all indictments and convictions for corruption owing to the fact that many cases are prosecuted as other offences, e.g. wire fraud.

iii) *Anti-corruption Policy*

18. The GET was informed that fighting corruption at domestic level or abroad is a law enforcement priority of the USA. The means put in place to support this anti-corruption priority is a combination of prevention, detection and sanctions. There is no single national anti-corruption strategy, nor, the GET was informed, could there practically be, given the structure of the Federal and State Governments. As already indicated, the US Constitution has put in place a series of checks and balances between the branches of the Government (and reserves to the States significant powers) and ensures that power is not concentrated on one person or function within the Federal Government. Moreover, the USA devotes substantial resources to the prevention of corruption, which concentrates mainly on training and financial reporting.

19. In the area of training, the USA has implemented extensive programmes at every Federal government agency to ensure compliance with ethical standards and requirements. High- and mid-level employees must receive annual ethics training, in addition to the initial ethics orientation upon entering service, and many agencies require employees to attend additional annual ethics trainings. Furthermore, the Office of Government Ethics (hereinafter "OGE"), formed in 1978, oversees several training programmes throughout the whole Executive branch. Each agency is also required to appoint a designated agency ethics official for ensuring ethics counselling programmes for employees. Moreover, law enforcement personnel receive additional training regarding professional conduct in investigation and prosecution of cases.

20. In addition to and as a basis of training, there exist a number of statutes that address the behaviour of elected and appointed officials. There are administrative codes of conduct that govern the activities of officers and employees of each of the branches of Government. Education and counselling services on the various codes of conduct and the statutory restrictions are provided by the OGE and designated agency ethics officials in the Executive branch. As far as the Legislative branch is concerned, these issues are dealt with by the Committee on Standards of Official Conduct of the US House of Representatives and the Select Committee on Ethics of the US Senate. For the Judicial branch the Committee on Codes of Conduct of the Judicial Conference oversees the respect of ethical standards. Each individual State has statutes dealing with official misconduct and most states have codes of conduct for public officials. In addition, at State level, the individual licensing procedures regulate professions especially exposed to corruption, e.g. lawyers and accountants. Generally, each of the states has a code of conduct to which individuals licensed in those professions must adhere.
21. All officials and employees employed in agencies, services, units, and bodies within the Executive branch of the US Government must abide by a series of criminal conflict of interest statutes, civil ethics statutes, and the administrative Standards of Ethical Conduct for Executive Branch Employees (5 C.F.R.) of the Executive branch. In addition to the branch-wide Standards of Conduct, individual agencies may have, with the OGE's approval, placed further administrative restrictions upon the conduct of employees of that agency through a supplement to the Standards of Conduct. The statutes have criminal and/or civil penalties for violations. The Standards of Conduct are administrative in nature, and appropriate disciplinary action is imposed by the employing agency.
22. In the USA, Federal officials are required to report instances of corruption directly to appropriate authorities, such as an agency's IG. In addition, all executive agency heads are required, pursuant to 28 U.S.C. 535, to report to the Attorney General or other authorised investigative authorities any information, allegation or complaint received regarding a violation of the U.S. criminal code. The Standards of Conduct have as a basic principle that "employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities". Any official is entitled to report directly such activities to the appropriate authorities, even without the consent of his/her superior.
23. The Council on Governmental Ethics Laws<sup>4</sup> (hereinafter "COGEL"), provides for the exchange and dissemination of information in the ethical field as well as in the elections, campaign financing, lobbying and freedom of information fields. COGEL is a professional organisation, of a voluntary membership, open to governmental authorities, organisations and persons responsible for and interested in the above-mentioned areas.
24. Concerning financial reporting, at the Federal level, candidates for elected office, elected officials and high-level appointed officials are required to submit a publicly available personal financial disclosure report. These reports are to be filed initially upon entering service, thereafter annually; a termination report is also required upon leaving the position. In the Executive branch, there is also a confidential financial disclosure requirement for those who serve in positions that are not covered by the publicly available financial disclosure report system (the most senior positions) but

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<sup>4</sup> COGEL's roots go back to 1974 in the Watergate Hotel in Washington where a group of executives who were responsible for the newly founded Federal and State Ethics Agencies met for an ad hoc conference. Their concern was improving information exchange amongst ethics agencies. This was followed by a series of panel discussions, conferences, lectures, and workshops on current issues relating to ethics in the public service. In 1978 representatives of various ethics agencies decided to establish a loosely structured organisation in order to continue the exchange of ideas and information.

who nonetheless serve in responsible and decisive positions<sup>5</sup>. Similar public reporting requirements are imposed on, *inter alia*, elected representatives in the Legislative branch as well as on Federal judges.

25. However, public or confidential disclosure of financial interests alone does not resolve potential conflicts of interest. Therefore, all officers and employees of the Federal Government are governed by a series of conflict of interest statutes with criminal and civil penalties (chapter 11 of Title 18, US Code).

iv) *Transparency of actions of public interest*

26. The Federal Election Campaign Act (FECA) regulates the financing of certain political activities in the United States. Generally, the FECA imposes quantitative limits on the amounts that individuals and political committees may contribute to political parties, Federal candidates and political committees that support or oppose Federal candidates. It also prohibits contributions to such parties, candidates and political committees from the treasury assets of corporations, labour organisations, banks, government contractors, foreign nationals and minors. Also, the law requires political parties, Federal candidates and the political committees that support or oppose them to file detailed reports on the contributions they receive and the expenditures they make to influence Federal elections at frequent intervals.

27. The FECA is administered and enforced primarily by the Federal Election Commission, which is comprised of an equal number of Commissioners from the two major political parties in the United States. The role of the United States Department of Justice in matters arising under the FECA is confined to prosecuting criminal violations.

28. The transparency of most Federal governmental processes (and personal financial information of its most senior officers and employees) favours a close scrutiny by media and the public of the functioning of the Government. The Administrative Procedures Act, the Government in the Sunshine Act and the Freedom of Information Act require agencies to use public processes following standard procedures and to make government documents publicly available. The Federal Acquisition Regulations provide for standardised government contracting procedures. Under this legal framework the public and the media are able to play a significant role in the detection of corruption.

29. The Freedom of Information Act (5 U.S.C. § 552) states the general rule that any person has a right, enforceable in court, to obtain access, by a simple letter of request to Federal agency records. An exception to the Act provides that such records are protected from disclosure by one of nine exemptions<sup>6</sup>. The nine exemptions of the Freedom of Information Act ordinarily provide

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<sup>5</sup> Positions that require the employee to participate personally and substantially through decision or the exercise of significant judgment in: taking a Government action regarding contracting or procurement; administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits; regulating or auditing any non-federal entity; or other activities in which the final decision or action will have a direct and substantial economic effect on the interest of a non-federal entity. The requirements for this system are found at 5 C.F.R. 2634.901 et. seq.

<sup>6</sup> 1. data to be kept secret, pursuant to an executive order, in the interest of national defence or foreign policy;

2. data related solely to the internal personnel rules and practices of an agency;

3. data specifically exempted from disclosure by statute, provided that such statute requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

4. trade secrets and commercial or financial information obtained from a person and privileged or confidential;

5. inter-agency or intra-agency memorandums or letters;

6. personnel and medical files and similar;



the only bases for nondisclosure of an agency record, and generally they are discretionary, not mandatory, in nature. Dissatisfied record requesters are empowered to challenge the refusal by seeking a speedy remedy before the US district courts. Systems for providing public access to state and local information also exist at these levels of government.

v) *Legislation*

30. The principle of double sovereignty is an essential feature of the US legal system. According to it, the Federal system and the State systems are separate and independent of each other. Each State has sovereignty with respect to its own laws, and the Federal state is sovereign with respect to Federal laws. In most instances, Federal law does not have primacy over State legislation. However, in very limited circumstances, subject to constitutional requirements, the Federal authorities may intervene if they believe it is in the public interest to do so. Moreover, State offences may be subject to Federal jurisdiction if the offence crosses State boundaries.
31. Corruption offences are covered by Federal and State laws. There is often an overlap between Federal and State legislation on corruption. In the USA the reach of corruption statutes is wide-ranging and covers bribery, graft, and criminal conflict of interest involving, generally, public officials and witnesses, as well as corruption involving government officials, legislators, the judiciary, law enforcement, bank examiners, loan officers, bankruptcy proceedings, bribery in sports contests, government contracts, corruption involving labour unions (officials and members), abuse of position, and abuse of fiduciary positions.
32. Corruption offences include domestic public and private corruption and foreign public corruption. There are also a number of criminal law provisions which address corruption in forms other than bribery.
33. Domestic public corruption, whether active or passive, is criminalised under both Federal and State law. Under a broad range of Federal laws corruption committed by and against Federal State and local officials is a criminal offence. Generally, under the US Constitution, the Federal authorities may establish jurisdiction over a corruption case on grounds such as the following: the involvement of Federal employees or officials, the possibility of an effect on interstate or foreign commerce, or the involvement of Federal funds, through direct payments or grants. Thus the role of the Federal Government in investigating and prosecuting public corruption at the State and local levels is quite significant. In addition, perpetrators of corruption offences can be subject to State prosecution for breach of State or local laws on corruption. Often, criminal statutes at each level overlap in prohibiting corrupt conduct.
34. The primary provision on domestic public corruption is § 201 (a) and § 201 (b) of the United States Criminal Code (hereafter referred to as "18 U.S.C."). The provisions on domestic public corruption cover both active and passive forms of bribery. According to § 201 (b) (1), "*whoever directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent: (A) to influence any official act; or (B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude*

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7. records or information compiled for law enforcement purposes;

8. data contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

9. geological and geophysical information and data, including maps, concerning wells.

*in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or (C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person” commits the active form of bribery. Under § 201 (a) (2), “ whoever being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for: (A) being influenced in the performance of any official act; (B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud on the United States; or (C) being induced to do or omit to do any act in violation of the official duty of such official or person” commits the passive form of bribery. (“Value” means anything of value, whether tangible or intangible.)*

35. Concerning the scope of perpetrators, §201 (a) defines the term “public official” as well as the “person who has been selected to be a public official”. Under this definition, “*Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror*”; as well as any other person “*who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed*” may be sanctioned for committing domestic public corruption with “*a fine not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisonment for not more than fifteen years, or both, and may be disqualified from holding any office of honour, trust, or profit under the United States*”.
36. The basic corruption provision (18 U.S.C. § 201.) is then complemented by additional specific penal provisions concerning corruption/conflicts of interest committed by:
- members of Congress, Federal officers and employees, or Federal judges, acting in a representational capacity in any proceeding in which the United States is a party or has a direct and substantial interest; (18 U.S.C. § 203 and § 205)
  - any officer or employee of the Executive branch or of an independent agency of the United States, participating in any matter in which he or a member of his family or business or organisation with which he or she is associated has a financial interest; (18 U.S.C. § 208)
  - any officer or employee of the Executive branch or of an independent agency of the United States, receiving, and any person paying such officer or employee, any supplementation of his official salary in respect of his official duties; (18 U.S.C. § 209)
  - any person from paying another using his or her influence to procure any appointive office or official position; (18 U.S.C. § 210), in the case of which the sanction shall be a fine or imprisonment of not more than one year, or both;
  - any candidate for public office promising to use his influence or to appoint any person to a public or private office in exchange for their support in the election; (18 U.S.C. § 599)
  - any person promising any public post or government contract in exchange for political activity in connection with any election to any political office; (18 U.S.C. § 600) and

- any person receiving any income derived from a pattern of racketeering activity, including bribery in violation of § 201, from investing in, acquiring, or establishing any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce (the Racketeer Influenced and Corrupt Organizations Act or RICO); (18 U.S.C. §§ 1961-1963).

The first three offences are sanctioned under 18 U.S.C. § 216. Under this section, penalties can be fines and/or imprisonment of one year (or for wilful conduct, up to 5 years). For bribery, the penalty can be up to five years of imprisonment and / or fine.

37. The Federal Government also has authority to prosecute active and passive bribery involving State and local officials under the Interstate Travel in Aid of Racketeering Act (hereinafter the "Travel Act"), which prohibits any interstate or foreign travel or the use of any facility in interstate or foreign commerce in furtherance of, *inter alia*, violation of State bribery laws and under 18 U.S.C. 666 which prohibits theft or bribery in programs receiving Federal funds. In addition, under the Federal mail and wire fraud statutes, any person is prohibited from using the USA mail, equivalent interstate and international delivery services, or interstate wires in furtherance of a "scheme or artifice to defraud<sup>7</sup>." (18 U.S.C. §§ 1341, 1343) Under this law, a person who bribes a State (or foreign) official and the State (or foreign) official who accepts the bribe is deemed to have deprived the Government and the people of the State of the intangible right of honest services of their elected and appointed officials.
38. Domestic private corruption is not explicitly defined by Federal law. The Federal prosecution may be carried out through the mail and wire fraud statutes (18 U.S.C. 1341, 1343, 1346) as well as the Travel Act when there is a Federal nexus (*i.e.*, interstate or foreign commerce). Further, the Federal Government may use the mail and wire fraud statutes to prosecute private bribery. In addition, there are several Federal statutes that specifically prohibit bribery and kickbacks in particular industries.
39. On the State level, concerning domestic private corruption, approximately 37 states have explicitly prohibited commercial bribery (*i.e.* the bribery of an employee or agent that owes a duty of loyalty or other fiduciary duty to an employer or principal), whilst some states prosecute commercial bribery using generally applicable fraud statutes.
40. Concerning foreign public officials, active bribery is penalised under the Foreign Corrupt Practices Act (hereafter "FCPA" – 15 U.S.C. § 78dd-1 *et seq*) of 1977. The FCPA concentrates on bribery in business activity, and applies to US citizens and companies, whether operating in the USA or abroad and with respect to foreign nationals and companies (including foreign political parties), provided that the conduct occurs within the US jurisdiction. Violation of the FCPA may result in a civil enforcement action by the Securities and Exchange Commission or by the Department of Justice, or in a criminal prosecution. In civil enforcement actions, the penalties may include both a fine and an injunction, under the 15 U.S.C<sup>8</sup>. For criminal cases, sanctions are severe, as the FCPA provides that a legal person may be sentenced to pay a fine of not more than \$2,000,000 and that a natural person may be sentenced to pay a fine of not more than \$100,000 and imprisoned not more than five years<sup>9</sup>. Moreover, it should be noted, as described above, active

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<sup>7</sup> Such a scheme is specifically defined to include "a scheme or artifice to deprive another of the intangible right of honest services." 18 U.S.C. § 1346

<sup>8</sup> Paragraphs 78u(c); 78dd-2(d) & (g); 78dd-3(d) & (e); 78ff(c) of the 15 U.S.C.

<sup>9</sup> However, the actual fines that may be imposed are substantially higher due to an alternative fines provision of the U.S. Code. Thus, the maximum fine is the greater of \$250,000 for an individual or \$500,000 for an organisation or twice the gross pecuniary gain to the defendant or the gross pecuniary loss to the victim of the crime. 18 U.S.C. § 3571

and passive corruption involving foreign officials may be prosecuted under the Travel Act, mail and wire fraud, and the Racketeer Influenced and Corrupt Organizations statutes (hereinafter referred to as "RICO"), as appropriate.

41. Legal persons may be held responsible for bribery and other corruption offences. According to 18 U.S.C. § 1 words: "person" and "whoever" include corporations, companies, associations, partnerships, societies, joint stock companies as well as individuals. Legal persons are responsible for acts committed by their officers, employees or agents. According to the *respondeat superior* theory, there are two preconditions for the criminal responsibility of legal persons: the natural person must act within the scope of his/her duties and for the benefit of the legal person. Both of these concepts are interpreted broadly.
42. In cases where corruption is committed in an organised manner, it is often punished pursuant to 18 U.S.C. 371 as a separate offence; and the illegal act becomes the object of the separate offence of conspiracy (two or more individuals who conspire together). The RICO statute, originally enacted by the Federal Government to combat the types of crime generally committed, caused, or ordered by members of the traditional American mafia, are used to this end in corruption cases when appropriate. However, the Constitution sets extremely high barriers to criminalising mere membership or association with any group. Criminal conduct that arises from an association or membership in an enterprise or organisation, whether it be a legitimate or an illegal enterprise or organisation, may be subject to prosecution under the RICO statute. These statutes provide both criminal and civil remedies for violations. To prosecute under RICO, there must be proof that each defendant was engaged in a "pattern of racketeering activity" and that each defendant had a specified relationship to a broadly-defined enterprise engaged in or affecting interstate commerce. Under RICO, racketeering activity includes only certain serious State and Federal offences (designated as "predicate offences"). These also include corruption offences.
43. The United States of America does not permit the tax deductibility of commissions paid in order to commit an act of corruption. It has been prohibited since 1958.
44. Other relevant legal provisions in the context of corruption include:
  - the False Statements Act (18 U.S.C. § 1001.)
  - the Mail and Wire Fraud Statutes (18 U.S.C. §§ 1341, 1343, and 1346)
  - the General Conspiracy Statute (18 U.S.C. § 371)
  - the Major Fraud Act (18 U.S.C. § 1031)
  - the Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801 et seq)
  - the Criminal False Claims Act (18 U.S.C. § 287)
  - the Civil False Claims Act (31 U.S.C. §§ 3729 et seq)
  - the Contract Disputes Act (41 U.S.C. § 604)
  - the Truth in Negotiation Act
  - the Federal Property and administrative Services Act (41 U.S.C. § 254b; 10 U.S.C. § 2306a).
45. Money laundering was criminalised as a separate offence in 1986, through the enactment of the *Money Laundering Control Act of 1986*, Pub. L. 99-570, codified as 18 U.S.C. §§ 1956 and 1957. The penalties for violations of these provisions are up to 20 years of imprisonment and a fine of up to \$500,000 for each count. The Money Laundering Control Act currently prohibits the laundering of proceeds of over 130 domestic criminal offences and eleven categories of offences

against foreign nations, including domestic and foreign corruption (active and passive bribery), as predicate offences. Legal persons may be held liable for money laundering offences.

46. The USA asserts broad territorial jurisdiction, under 18 U.S.C. § 7, including the territorial boundaries of the 50 states, as well as territories, possessions, and commonwealths. In addition, jurisdiction includes areas within its territorial waters, aboard ships and airplanes flying under its flag, and aboard aircraft en route to the USA. In 1998, to implement the OECD Convention, the USA amended the Foreign Corrupt Practices Act (FCPA) to expand its jurisdictional reach over foreign corruption.

vi) *International commitments*

47. The USA has signed and ratified a number of multilateral and bilateral agreements, including: the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Inter-American Convention on Corruption. The Council of Europe Criminal Law Convention on Corruption (ETS. 173) was signed in October 2000, but it has not yet been ratified. The USA has not signed the Civil Law Convention on Corruption (ETS. 174) and, as the GET was told, for the time being does not anticipate becoming a signatory or party because the Civil Law Convention is viewed as being incompatible with US civil law practice and procedure. Furthermore, neither the Convention on Extradition (ETS. 24), nor the Convention on Mutual Legal Assistance in Criminal Matters (ETS. 30) has been signed by the USA. The USA has also signed and ratified 46 bilateral Mutual Legal Assistance Treaties (MLATs) that are in force worldwide, and include MLATs in force with the following Council of Europe countries: Austria, Belgium, the Czech Republic, Estonia, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Russia, Spain, Switzerland, Turkey, Ukraine, and the United Kingdom. In addition, the USA has negotiated bilateral MLATs that have not yet entered into force with the following Council of Europe countries: Cyprus, Ireland, and Sweden. Since the 1970's, the USA has concluded over 60 case-specific agreements that provide for legal assistance with respect to corruption cases. Some of these have been superseded by the bilateral MLATs listed above.

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

**b1. General investigative authorities**

i) *Federal level*

48. The USA detects public corruption through multiple mechanisms and organisations at all levels of Government. The United States Department of Justice (hereinafter "DOJ") is the principal Government entity responsible for investigating and prosecuting public corruption offences at the Federal level. The DOJ directs the primary Federal investigative function through the Federal Bureau of Investigation (hereafter "FBI"), a Federal agency placed under the umbrella of the DOJ, and also the Federal prosecutorial function through the United States Attorneys' Offices in ninety-four districts all over the USA and through specialised prosecutorial units in Washington, D.C. Most Federal agencies also have Inspectors General whose responsibility is to identify waste, fraud and mismanagement in Federal agencies. Other Federal agencies also have specialised components, such as the Internal Revenue Service or the Securities and Exchange Commission, responsible for addressing pertinent aspects of public corruption.

## **The United States Department of Justice (DOJ)**

49. The United States Constitution places responsibility for the investigation and prosecution of Federal crimes in the Executive branch. The DOJ, established in 1870, is the principal Government entity responsible for detecting and prosecuting public corruption offences. The DOJ has 39 separate components, which are based on a well-organised field structure. Although headquartered in Washington, D.C., the Department conducts much of its work in offices located throughout the country and overseas. The 39 components<sup>10</sup> include the United States Attorneys who prosecute offenders and represent the United States Government in court; the major investigative agencies - the Federal Bureau of Investigation and the Drug Enforcement Administration - which prevent and deter crime and arrest criminal suspects; the Criminal Division, whose mission is to serve the public interest through the development and enforcement of criminal statutes in a vigorous, fair and effective manner; and to exercise general supervision over the enforcement of all Federal criminal laws; the United States Marshals Service which protects the Federal judiciary, apprehends fugitives and detains persons in Federal custody; and the Bureau of Prisons which confines convicted offenders.
50. Several components of the DOJ deal with corruption matters, however, the FBI investigates the majority of cases against Federal officials. The Attorney General, as the Head of the Department of Justice and chief law enforcement officer of the Federal Government, represents the USA in legal matters generally. The Attorney General may appear in person to represent the Government before the U.S. Supreme Court in cases of exceptional gravity or importance.
51. The Attorney General, the Deputy Attorney General, and each of the Assistant Attorneys General in charge of DOJ's divisions, as well as each United States Attorney in each district are appointed by the President with the advice and consent of the Senate. The DOJ is staffed by career prosecutors, some of whom handle a general docket, while others are experts in investigating and prosecuting complex and specialised matters.

## **The Federal Bureau of Investigation (FBI) under the U.S. Department of Justice**

52. The Federal Bureau of Investigation (FBI), under the umbrella of the DOJ, has, *inter alia*, the authority to investigate corruption matters throughout the Federal Government (involving civilian employees, military soldiers and officers, judges and legislators) and also at the State and municipal level, whenever there is a violation of Federal laws at either of these levels<sup>11</sup>. The FBI was established in 1909, following the order of the Attorney General for creating an investigative

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<sup>10</sup> The 39 components are: the Office of the Attorney General (AG), the Office of the Deputy Attorney General (DAG), the Office of the Associated Attorney General (ASG), the Office of the Solicitor General (OSG), Office of the Inspector General (OIG), Office of Legal Counsel (OLC), Office of Legal Policy (OLP), Office of Intelligence Policy and Review (OIPR), Office of Professional Responsibility (OPR), Office of Legislative Affairs (OLA), Office of Intergovernmental and Public Liaison (OIPL), Office of Information and Privacy (OIP), Office of Public Affairs (PAO), Office of Dispute Resolution (ODR), Justice Management Division (JMD), Executive Office for United States Attorneys (EOUSA), Antitrust Division (ATR), Civil Division (CIV), Civil Rights Division (CRT), Criminal Division (CRM), Environment and Natural Resources Division (ENRD), Tax Division (TAX), Federal Bureau of Prisons (BOP), Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Immigration and Naturalization Service (INS), United States Marshals Service (USMS), Interpol - United States National Central Bureau (USNCB), Executive Office for Immigration Review (EOIR), Office of the Pardon Attorney (OPA), United States Parole Commission (USPC), Executive Office for United States Trustees (EOUST), Community Relations Service (CRS), Foreign Claims Settlement Commission (FCSC), Office of Justice Programs (OJP), Office of Community Oriented Policing Services (COPS), National Drug Intelligence Center (NDIC), Professional Responsibility Advisory Office (PRAO), Office of the Detention Trustee (ODT).

<sup>11</sup> In case federal employees and officials are involved, or if there is a possibility of an actual effect on interstate or foreign commerce, or provided that federal funds are involved.

agency within the Department of Justice. The present name, Federal Bureau of Investigation (FBI), was designated by Congress in 1935. The mission of the FBI is to uphold the law through the investigation of violations of Federal criminal law; to protect the United States from foreign intelligence and terrorist activities; to provide leadership and law enforcement assistance to Federal, State, local, and international agencies.

53. The FBI's investigative mandate is the broadest of all Federal law enforcement agencies. Among the 18 divisions under the umbrella of the FBI, the Criminal Investigative Division coordinates investigations into organised crime, including drug matters, racketeering, and money laundering; investigations into violent crimes, including theft of government property; investigations into white-collar crime, fraud against the government, corruption of public officials, election law violations, business and economic frauds and corruption crimes. Apart from the 18 central divisions, the FBI has also 56 field offices all over the USA, many of which have specialised corruption squads with a staff amounting to 460 altogether.
54. At the investigative level, the FBI has Public Corruption, Governmental Fraud and Color of Law Units within the Integrity in Government/Civil Rights Section of its Criminal Investigative Division. These units address corruption both within the national government structure and in State and local agencies, with a particular emphasis on police and other official corruption related to drug trafficking, and the malicious denial of civil liberties by police or other public officials. Actual investigations are conducted by Special Agents assigned to one of the field offices. In the Public Corruption Unit there are 5 supervisors who supervise the work of 460 agents in field offices working on public corruption. There are also field supervisors in each of the 56 field offices supervising special agents assigned to corruption matters.
55. The FBI is headed by the Director who is appointed by the US President and confirmed by the Senate for a term of 10 years (thus exceeding the 4-year term of the President's Administration). However, all Federal investigators and prosecutors are in a hierarchic relationship to the US Attorney General, the Head of the DOJ, and his subordinates, who are entitled to set investigative and prosecution policies. In the FBI there are approximately 11 500 Special Agents and 15 500 support employees. Both categories are trained and experienced in law, accounting, engineering, electronics, financial practices and other branches. The need for particular skills is regularly evaluated and recruiting programmes are targeted accordingly. The Public Corruption Unit within the FBI organises in-service training courses for the investigation of corruption and other types of white-collar crime. The FBI may also call upon other parts of the Federal Government and retain consultants from outside Government as appropriate.
56. Measures to ensure investigative independence include the provisions of a ten-year term for the Director of the FBI, as contrasted with the four-year term of a Presidential administration. The Inspector General Act of 1978 was also intended to create an oversight mechanism in each Federal department or agency reporting certain specified information directly to Congress and the public twice each year. The general jurisdiction of these Inspectors General offices was reinforced by the passage in 1989 of the Whistle Blower Protection Act, providing a specialised body, the Office of Special Counsel, to enforce legislative protections against retaliation for the reporting of a broad range of protected disclosures, which would include any allegation of undue pressure from superiors or the political power.
57. An essential responsibility of the Public Corruption Unit of the FBI is the organisation of in-service training courses, and occasional follow-up trainings, for the investigation of corruption and other types of white-collar crime. The Federal investigative agencies also teach ethics and anti-

corruption awareness as an integral element of the training of new agents. At the FBI that training is conducted by the Office of Professional Responsibility which is responsible for ensuring the seamless integration of the realities of how corruption can arise into the training curriculum.

### **The Criminal Division of the U.S. Department of Justice**

58. The Criminal Division, one of the 39 components under the DOJ, established in 1919, develops, enforces, and supervises the application of all Federal criminal laws except those specifically assigned to other divisions. The Division, and the 93 U.S. Attorneys have the responsibility for overseeing criminal matters under the more than 900 statutes as well as certain civil litigation. Criminal Division attorneys prosecute many nationally significant cases. In addition to its direct litigation responsibilities, the Division formulates and implements criminal enforcement policy and provides advice and assistance. For example, the Division approves or monitors sensitive areas of law enforcement such as participation in the Witness Security Program and the use of electronic surveillance; advises the Attorney General, Congress, the Office of Management Budget and the White House on matters of criminal law; provides legal advice and assistance to Federal prosecutors and investigative agencies; and provides leadership for coordinating international as well as Federal, State, and local law enforcement matters.

#### *The Public Integrity Section (PIS)*

59. The Public Integrity Section (hereafter "PIS"), established in 1976, is a unit within the Criminal Division of the DOJ, responsible for investigating and, if necessary, prosecuting corruption cases in which public officials are involved. The PIS oversees the Federal effort to combat corruption through the prosecution of elected and appointed public officials at all levels of government. Generally, the PIS also investigates and prosecutes, where appropriate, election crimes and conflict of interest crimes. PIS attorneys prosecute selected cases against Federal, State, and local officials, and are available as a source of advice and expertise to other prosecutors and investigators. The PIS operates in the suppression of election crimes and conflicts of interest crimes, as well. Every year 125 to 150 cases are investigated of which 35 to 50 cases are prosecuted, in addition to cases handled by the U.S. Attorneys' offices.
60. The PIS is involved mainly in the most important corruption cases, usually through FBI field offices who inform their headquarters on all corruption cases and who send a copy of their report to the PIS. PIS officials operate in three main areas: (1) replacing the local United States attorney in politically sensitive cases in order to exclude eventual conflicts of interest; (2) handling sensitive and multi-district cases to optimise co-ordination; (3) investigating and prosecuting cases referred by Federal agencies, including the Offices of Inspectors General.

#### *The Fraud Section*

61. The Fraud Section, created in 1955, oversees and coordinates the federal effort against fraud and white-collar crime. The Fraud Section's cases focus primarily on business crimes such as financial institution and insurance fraud, and fraud involving Government programmes. Other Fraud Section priorities include international criminal activities, e.g. the bribery of foreign government officials in violation of the FCPA. The Fraud Section formulates and implements economic crime policy for the DOJ and coordinates information sharing about economic crime with Federal and State law enforcement agencies. The Fraud Section is staffed by 55 prosecutors.



### *The Organized Crime and Racketeering Section (OCRS)*

62. The Organized Crime and Racketeering Section (hereinafter "OCRS") was created in 1954 to oversee and handle the investigation and prosecution of traditional organised crime cases, which often involve aspects of corruption. Late in the 1950s, the OCRS recruited an elite group of prosecutors to investigate and prosecute organised crime cases in cities entrenched with organised crime. These prosecutors were later designated as "Strike Force" attorneys and were moved into United States Attorney Offices in cities known, historically, to have significant organised crime presence. Today, there are twenty-three "Strike Force" Units. In addition, the OCRS also maintains a cadre of attorneys who travel across the United States investigating and prosecuting cases in conjunction with "Strike Force" attorneys.
63. The OCRS is involved in setting national priorities for the organised crime programme by coordinating with investigative agencies such as the FBI, the Drug Enforcement Administration, and others, and by working with the Attorney General's Organized Crime Council, which is ultimately responsible for the Federal Government's policy in this area. In addition to its close supervision of all Federal organised crime cases, OCRS reviews all proposed Federal prosecutions under the Racketeer Influenced and Corrupt Organizations (RICO) statute and provides extensive advice to prosecutors about the use of this powerful statute.
64. The Executive Working Group (EWG), which has existed since the end of the 1970s has among its objectives to discuss and coordinate law enforcement and justice matters (such as combating corruption) of concern to all levels of government (Federal, State and local). The EWG disseminates information and coordinates statutory proposals and legislation etc. It consists of representatives on the policy level of the Department of Justice, representatives of the State Attorney Generals and District Attorneys Association and it meets at least twice a year.

### **U.S. Customs Service**

65. The U.S. Customs Service is the primary enforcement agency, protecting the nation's borders. It is the only border agency with an extensive air, land, and marine interdiction force and with an investigative component supported by its own intelligence branch. The U.S. Customs Service investigates smuggling and fraudulent practices designed to circumvent customs laws, also it attempts to detect violations of law pertaining to bribery of Customs officers through the Office of Internal Affairs.
66. The Office of Internal Affairs is staffed by 180 agents and 17 field officers and deals with an average of 2,500 allegations of criminal offences and misconduct each year. The GET was informed that about 30 employees were arrested and nearly 300 employees were suspended during the 18 months prior to the evaluation visit.

### **Inspectors General**

67. In addition to the investigative bodies described above, each agency of the Federal Executive branch is also submitted to the control exercised by statutory Offices of Inspectors General (hereafter "IG"), designed, *inter alia*, to assist in the legislative oversight of executive agencies. The IG of a Department or agency has a quasi-independent status within the organisation<sup>12</sup>. The IGs are charged with combating fraud, waste and abuse, including corruption. However, their

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<sup>12</sup> The status of IGs is subject to Senate confirmation, they are removable only by the President, and have specific reporting responsibilities to Congress.

responsibilities include programme and financial auditing, management studies, and responding to complaints of retaliation against whistle-blowers. Many Departments' IGs work in partnership with the FBI in long-term, complex inquiries.

68. IGs are required by statute to report their findings to their respective agency heads and to Congress. The reporting mechanism ensures appropriate independence and limits the ability of agency heads or others to improperly interfere with activities of the IGs. The resources of information are enhanced by hotlines, in almost all offices of IGs, that invite employees to report fraud and abuse over the telephone.
69. The principal characteristics of the Offices of Inspector General are independence, direct access to the agency head, freedom to investigate and access to information. Within the structure of the DOJ, the IG is selected without regard to partisan political loyalties and can be removed from office under only limited circumstances and with a requirement that the removal be explained publicly. The IG has a right to meet with the agency head whenever the IG deems it necessary, and may only receive general directions from the agency head or the deputy agency head. The IG is free to initiate and conduct an investigation into any matters he/she deems appropriate, without interference or termination even by the agency head. In a very few instances, such as the DOJ or the Department of Treasury, the agency head is given limited power to stop an investigation where disclosures would involve a "serious threat to national security." When this provision is used, however, the law requires that the agency head report the circumstances to Congress. Finally, the IG is authorised by statute to have access to all the records, information, and data in the agency – even materials that are classified.
70. The larger Federal investigative agencies, such as the Drug Enforcement Agency, US Customs Service and the FBI, also maintain their own internal integrity components for conducting inspections aimed at ensuring administrative regularity. Reports and allegations of either crime or misconduct concerning members of the FBI are investigated internally by the Office of Professional Responsibility (hereafter "OPR"), staffed by 30 agents and 35 support staff, or delegated to a field office for investigation under the supervision of the OPR. According to the information provided to the GET, one or two cases each year result in prosecution, while about 50 % of the cases result in disciplinary action. Employees can be dismissed for failing to co-operate with an OPR investigation. However, internal corruption is not viewed as a significant problem in the FBI and the majority of cases concern unprofessional behaviour as opposed to serious criminality<sup>13</sup>.

*ii) State level*

71. At the State level, there is a myriad of specialised anti-corruption bodies. However, the GET was informed that the level of development of such bodies differs from State to State. Among the

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<sup>13</sup> A number of reasons were provided to the GET as to why the FBI is relatively unaffected by corruption:

- (i) A regime which over a long period has imposed strict codes of conduct and supervision creating a climate whereby the manifestly corrupt as well as weaker and more easily influenced characters cannot survive.
- (ii) Recruitment of high quality personnel who are on average 30-31 years old and have one successful career behind them.
- (iii) A high percentage of support staff employees has created a culture of integrity and early reporting of wrong-doing, which is dominant over a traditional law enforcement philosophy which can be viewed as defensive and protectionist.
- (iv) Sixteen hours of ethics training for new employees places an emphasis on prevention.
- (v) A vigorous inspection system every three years during which 60% of case files are reviewed.
- (vi) Anonymous reporting of wrongdoing is carefully considered.
- (vii) Employees can be the subject of polygraph tests.

states with well-developed structures are New York and Pennsylvania, the latter of which was visited by the GET. Since there are approximately 19,000 State and local police agencies and 2,300 State and local prosecution offices in the USA, it is extremely difficult to generalise as to their characteristics, but many have units to address governmental corruption. Almost every major local police organisation maintains a special anti-corruption unit, which is usually focused on developing anti-corruption intelligence, integrity testing and reacting to information received. The GET was informed that, local and State authorities alone rarely engage in the detection and investigation of corruption. Others take issue with this information.

72. The State of Pennsylvania, visited by the GET, may serve as an example for the investigation of corruption offences at State level. Within the Pennsylvania State Police, which has 7 field offices, the Bureau of Criminal Investigation (BCI) deals with the investigation of corruption offences, which are divided into two categories: "public corruption" (of elected officials) and "official corruption" (of public employees). Ten to fifteen cases of corruption are dealt with in this State every year. The BCI cooperates especially with the FBI, the Internal Revenue Service and the local law enforcement agencies which cede to them the cases they cannot deal with themselves (their own employees, conflict of interests, etc.). The officers dealing with corruption are highly specialised. The Commissioner of the State Police and his 3 assistants are appointed by the Governor of Pennsylvania and approved by the Senate. The Governor can replace the Commissioner at any time and without any specific reason.
73. Beside the BCI of the State Police, the Criminal Law Division of the Office of Attorney General of Pennsylvania, through its Bureau of Investigations, which employs 30 experienced and specialised agents and 12 prosecutors, is entitled to conduct criminal investigations in corruption cases. The Bureau of Investigation investigates corruption of State public officials, while it only investigates local public officials if the cases are referred to it by the State Ethics Commission or one of the 67 District Attorneys (in cases of a conflict of interests or a complex nature of the investigation). Each corruption case involves two investigators and two prosecutors, who have all police powers. Co-operation is functioning well with the other authorities, mostly with the State Police; however, they do not inform each other about investigations conducted independently. An investigation can always be terminated by the Attorney General, who is elected for a period of 4 years, with a possible second term. The Attorney General can also direct the work of the investigators with budgetary measures.
74. Concerning the investigation of internal corruption offences, typically, at both State and municipal level, there are agencies of general authority and agencies of special authority that investigate corruption. For example, at the municipal level, there is a police department or other agency with general investigative authority that includes corruption in the municipal government. At the State level, similarly, there is at least one law enforcement authority with general authority to investigate corruption involving State officials. In addition, other entities may have over-lapping or related authority to investigate corruption. Special anti-corruption units, sometimes called Inspectors General, a State Bureau of Investigations, a legislative investigative entity, as examples, may exist.
75. The system applied by the State of Maryland may show an example for the State and municipal level of internal corruption investigation. Under the umbrella of the Baltimore Police Department, visited by the GET, there is a special unit, the Internal Affairs Division (hereafter "the IAD"), where 41 officers are dealing with internal corruption of the 3200-person strong department. The division is structured in two sections: the General Complaints Section and the Ethics Section. The latter is dealing with corruption cases. The IAD is overseen by the Chief of Staff of the Police

Commissioner, who is appointed by the mayor for “his pleasure” for 6 years, renewable. The IAD deals with 350-400 cases of alleged or suspected corruption among police officers per year, of which about 10% are justified. In the case of criminal offences, the IAD hands the case over to the public prosecutor, while administrative violations are deliberated by superior officers and by a board of three police officers in the final stage. Sanctions for administrative violations include the termination of employment and divestment of pension entitlement. In the case of conflicts of interest, the case may be handed over to another service, usually the FBI, and advice is sought from the State Attorney's Office, with which they cooperate on a daily basis.

76. At the State level, Inspectors General or similar structures exist. There is at least one law enforcement authority with general authority to investigate corruption involving State officials. This entity usually has an internal unit with responsibility for investigating corruption committed by its own investigators and employees. For example, in Pennsylvania the IG's institution was established in 1987 with a decree of the Governor, who appoints and releases the IG. The IG deals with fraud, waste and corruption of public officials in the Executive branch of State of Pennsylvania, and has 400 employees. Sources of information for their work are reports, also on the basis of the Whistleblower Act, and complaints. They report about the results of their work to the General Counsel of the Governor and the head of the unit whose official they dealt with. Further action against such an official depends on the head of the unit, however, he must inform the IG of the measures taken.
77. There are approximately 750,000 sworn law enforcement officers at the State and local level. The National Association of Police Organisations, founded in 1978, is a coalition of more than 2,000 Police unions and associations and serves to promote the interests of State and local law enforcement officers through legislative and legal advocacy, political action and education.

**b2. Criminal investigation of corruption**

*i) Co-operation between the investigative and prosecutorial authorities*

78. Co-operation among Federal investigative and prosecution agencies takes place under both formal and informal procedures and agreements. There is no comprehensive series of rules that controls or requires cooperation; rather, a web of laws, rules, agreements, policies, practices, and procedures facilitate effective cooperation among Federal entities. Similar formal and informal mechanisms facilitate coordination and cooperation with State and local officials and governments as appropriate.
79. Formal co-operation appears mainly in the form of reporting and sharing of information. Section 535 of title 28, U.S.C. provides that all Federal departments and agencies must report to the DOJ information indicating possible violation of Federal criminal law, e.g. public corruption. In addition, Offices of IGs are required by statute to report possible violations of Federal criminal law to the DOJ. Also, Offices of Internal Affairs, Professional Responsibility, and others responsible for similar functions in various agencies routinely report allegations to the DOJ. Particularly with respect to matters involving possible public corruption, the FBI maintains close working relationships with the IGs and other Federal, State, and local law enforcement agencies. The Attorney General has directed that where investigations include allegations invoking both criminal and civil laws, there must be co-ordination between the criminal and civil investigative and prosecution components.

80. Many forms of informal co-operation take place. The most notable may be the formation of local, regional and national task forces to focus on corruption issues. Task forces may consist of representatives from multiple Federal and State investigative agencies, and from one or more prosecution offices, if they have received formal permission to appear in each other's districts. The task forces often have broad anti-corruption agendas, but sometimes are formed to address specific, narrowly defined issues, such as alleged corruption of legislators, judges, or law enforcement officers. The development of joint training programmes is often a direct result of the formation of task forces. Task forces bring together very experienced investigators and prosecutors who are in an excellent position to develop training programmes for others.
81. In addition to task forces, there are numerous bilateral agreements, referred to as "Memoranda of Understanding". These agreements are reached between individual Federal investigative and prosecution agencies in order to establish mechanisms by which two agencies assist each other and cooperate in matters of mutual concern, including investigations involving public corruption. The agreements create co-operative working environments so that joint investigations can focus on substantive issues rather than protocol. The agreements provide a context of previously established procedural guidelines to effectively delegate responsibilities and functions between the components involved as they handle ongoing and newly emerging issues.
- ii) Special investigative techniques*
82. A broad array of investigative techniques may be applicable and appropriate in Federal criminal corruption investigations. Federal investigations include pro-active methodologies (such as undercover or other covert operations), techniques used in financial investigations that are document based, and the use of witnesses to develop evidence. Depending upon the nature of the allegations under investigation, any combination of techniques may be used. However, investigators and prosecutors have neither unfettered discretion nor unfettered capabilities in conducting investigations. Statutory, administrative and ethical constraints are designed and implemented to ensure that criminal investigations are conducted in a manner consistent with Constitutional protections and judicial precedents provided within the common law tradition.
83. Covert techniques include: undercover operations, including "sting" operations; physical surveillance (photo, video and audio); use of co-operating individuals who assist in obtaining evidence from the subjects and/or targets of the investigation; consensual recordings; court ordered electronic surveillance (wiretaps, pen registers and trap and trace devices); and mail covers. All techniques involving intercepted oral and wire communications are strictly governed by statute, 18 USC 2510 et seq. Other covert techniques are regulated by internal Executive branch regulations. For example, DOJ and FBI follow internally mandated guidelines for the use of consensual recordings, use of co-operating individuals, use of undercover agents and use of undercover operations.
84. Overt investigative techniques are also used in corruption investigations. These include search warrants, document subpoenas, and investigative grand jury proceedings and voluntary witness interviews. Search warrants can only be obtained from a Federal judge or magistrate judge on the basis of a showing of probable cause that certain evidence, as described in the application for the warrant, is likely to be located at a specific site.

*iii) Protection of witnesses, whistleblowers and collaborators of justice*

85. As the evidence by an "anonymous witness" may not be used against that defendant to convict the defendant, the USA relies on a wide range of protections for witnesses, including witness relocation with a new identity. Protection of both victims and collaborators if either agree to testify as witnesses and their immediate family members, may be secured through the Federal Witness Security Program (hereafter referred to as "the FWSP"). If such victims, collaborators of justice, and witnesses do not qualify for participation in the Program, or do not wish to be considered for participation in it, procedures are in place by which the investigative agencies with which they co-operated can provide limited protection to them by providing them with money to relocate to another area. If protection is needed just for a short period of time before trial and during trial, the investigative agencies have the ability to secure safe housing for them. The Federal prosecuting offices also have funds set aside to provide money to individuals to enable them to move to another area temporarily, while the danger is at its greatest, through the Emergency Witness Assistance Program (hereafter referred to as "the EWAP").
86. The Chief of the Investigative Service Division of the US Marshal's Service (hereafter "USMS"), under the umbrella of the DOJ, administers the daily operation of the Program for witnesses relocated in the community, whilst it is the Office of Enforcement Operations of the DOJ's Criminal Division authorising witnesses into the FWSP. The Executive Office for U.S. Attorneys authorizes the expenditure of EWAP funds on witnesses.
87. In the Office of Enforcement Operations, the Associate Director who is the Head of the Program makes the decisions as to who should receive Program services, and is responsible for the overall operation for the Program. That Associate Director supervises the Witness Security Unit (WSU), which is comprised of a Chief, two Deputy Chiefs, and, at the present time, five Criminal Intelligence Analysts. The GET was informed that there was need for additional staff at the WSU. The WSU is the liaison between all entities that are involved in the FWSP; including law enforcement bodies; all requests concerning witnesses in the Programs must come through the WSU. In order for a witness to qualify for participation in the Programs, the case, including cases of corruption, must be extremely significant, there must be an intention that the witness testify, the witness' testimony must be crucial to the success of the prosecution, and the threat to the witness must be such that there is no alternative to placement of the witness in the Programs.
88. For witnesses relocated in the community, among the services that the USMS provides are: moving the witness to a safe area; providing documentation in a new identity through a legal name change; providing monthly funding until the witness is able to obtain employment; and assistance in obtaining employment. In the USMS, there are two Branch Chiefs: one is responsible for supervising Case Managers who coordinate with USMS Witness Security Inspectors in the field concerning services being provided to relocated witnesses, and with a Supervisory Analyst, responsible for handling documentation (providing documentation in a new identity); the other is responsible for administrative matters and for protective operations. Witness Security personnel are drawn from a pool of already trained Deputy United States Marshals who have undergone a 13-week basic Federal law enforcement training course and 4 weeks of special training in personal protection service and in the history, policy, and procedures relative to the Program.
89. Any employee may report suspected misconduct to any appropriate authority. However, under the Whistleblower Protection Act, employees who believe that they have suffered retaliation for reporting may file a complaint with an independent investigative and prosecutorial agency called

the United States Office of Special Counsel. The person or employee blowing the whistle must act in good faith. The Office of Special Counsel will investigate their complaint and, where it finds that an improper reprisal has occurred, will seek voluntary corrective action from the employing agency. It may also ask the employing agency to take disciplinary action against the agency official who engaged in retaliation. If the employing agency declines to provide voluntary relief, the Office of Special Counsel may prosecute a case on behalf of the injured employee and against the retaliating official.

90. The GET was informed by the Government Accountability Project (hereafter "the GAP") that its mission is to protect the public interest by promoting government and corporate accountability through advancing occupational free speech and ethical conduct, defending whistle-blowers, and empowering citizen activists. Founded in 1977, the GAP is a non-profit, public interest organisation and law firm that receives funding from foundations, individuals, and legal fees. The GAP promotes government and corporate accountability by litigating whistle-blower cases, publicising whistle-blower concerns, and developing policy and legal reforms of whistleblower laws.
91. Obtaining evidence necessary to convict persons involved in public corruption is particularly difficult. However, the special powers of U.S. prosecutors to "immunise" witnesses / collaborators in criminal cases often allows the prosecutors to obtain important testimony in these cases. This "immunisation" may occur in two ways. First, in rare cases, the prosecutor may determine that the co-operation or expected testimony of a minor criminal will be especially significant, and that the importance of the testimony or co-operation outweighs the need to prosecute a less culpable criminal. In these cases, the prosecutor may agree not to prosecute the person at all for the crimes about which he is to testify or co-operate ("transactional immunity"). Second and more commonly, the prosecutor may determine that a narrower grant of immunity is appropriate ("use immunity"), which is designed to overcome a witness's assertion of the privilege against self-incrimination. In these cases, the prosecutor asks the court to compel the witness to testify, and the witness is assured that the testimony s/he gives (and any information derived from that particular testimony) may not be used in a prosecution against him/her. The Federal immunity statute (18 U.S.C. §§ 6001-6005) centralises the decision to grant transactional or use immunity in the Attorney General and his or her designees down to the level of Assistant Attorneys General.

### **b3. Prosecution**

92. In the USA, both Federal and State authorities are empowered to bring criminal charges. The respective prosecutorial systems operate independently and without authority over each other. Federal prosecutions enforce Federal criminal laws; that is, laws passed by Congress pursuant to an explicit grant of authority in the Constitution. State prosecutions, on the other hand, enforce State criminal laws, i.e., statutory and common-law crimes of the fifty States, as well as territories and commonwealths. For the most part, the same basic considerations govern prosecutions in the state and federal systems, although there may be differences in procedures.
93. Positive conflicts of jurisdiction arise quite often, as both the Federal and the States' legal orders qualify certain deeds as criminal offences. Some State laws preclude prosecution for conduct that has already been prosecuted by Federal authorities (double jeopardy). Nonetheless, Federal and State jurisdictions are independent from one another and a prosecution by one does not automatically preclude a prosecution for the same offence by the other jurisdiction. However, the GET was informed that in such instances, pursuant to long-standing policy, the DOJ would not

initiate a Federal prosecution following a State one unless Federal interests have not been vindicated by the earlier case. Some States, by operation of law, preclude prosecution once a Federal prosecution has been conducted involving the same offence.

94. The Attorney General is ultimately responsible for setting federal law enforcement policy. The US criminal justice system is predicated on the exercise of prosecutorial judgment by the prosecutor who, in the final analysis, is not obliged to prosecute cases even when there is sufficient evidence to do so. The prosecutor's obligation is to take account of numerous factors that may impact on a case, as explained below, see paragraph 99. The prosecutor is answerable to the Attorney General who has the authority to overrule any prosecutorial decision.

*i) Federal level*

95. The U.S. Department of Justice (DOJ) is the central authority for the prosecution of Federal laws in the USA. DOJ has 93 United States Attorneys Offices located in different judicial districts across the country. (One serves two districts.) The vast majority of Federal criminal prosecutions are handled by the United States Attorney's Office in the district where the offence occurred. Corruption cases, however, routinely raise unique problems of public perception or require particular expertise. Therefore, if the United States Attorney's Office has had a significant business, social, political, or other relationship with any subject or principal witness in a corruption case, or the United States Attorney's Office does not have the expertise or resources to handle a complicated corruption case, the matter is referred to the DOJ headquarters in Washington, D.C., where specialised sections investigate and, if appropriate, prosecute the matter. Sections of the criminal division in Washington, D.C. are dedicated especially to public corruption and government fraud.
96. Combating domestic corruption has been generally entrusted to the Public Integrity Section (PIS) of the Criminal Division of the DOJ. In general terms, PIS is investigating and prosecuting cases involving public officials, election offences and conflict of interest cases, although no particular offence lies within exclusive competence of the PIS<sup>14</sup> – formally, in all cases U.S. Attorneys are competent. Usually it is the relevant U.S. Attorney Office who would inform the PIS about a case and request its involvement in it. It should be stressed that the Attorney General is empowered to assign the handling of a matter to a headquarters component, such as the PIS. Foreign corruption cases under the FCPA lie within the competence of the Fraud Section of the DOJ. Most of the U.S. Attorney's Offices in large cities have specialised sections to deal with corruption offences, e.g. in Washington D.C. it is the Economic Crime and Corruption Section, staffed by 26 prosecutors.
97. Federal investigators and prosecutors are in a hierarchic relationship to the Attorney General and his subordinates, who are legally and ethically entitled to set policy and to make discretionary determinations as to the appropriateness and necessity for prosecutorial action. The Deputy Attorney General exercises the power and authority vested in the Attorney General in matters of employing Federal prosecutors. If an employee believed that improper partisan or materially corrupt influences were being exercised, the avenues of complaint would include the Inspector General, or the Office of Professional Responsibility within the DOJ.
98. Within the federal system, the DOJ brings all prosecutions. Although some statutes provide for a civil private right of action, and criminal statutes may be a predicate for civil racketeering lawsuits

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<sup>14</sup> See points 30. and 31. of the report.



brought by private parties, there is generally no provision in the federal system for private criminal actions.<sup>15</sup>

99. The prosecutor may file a case only if s/he believes that “a person’s conduct constitutes a Federal offence and that admissible evidence will probably be sufficient to obtain and sustain a conviction”. However, even if those criteria are met Federal prosecutors are entrusted with discretion to decide whether or not to bring a criminal prosecution<sup>16</sup>. A prosecutor may decline prosecution, even when there is sufficient evidence to proceed, if “(1) no substantial federal interest would be served by prosecution; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative to prosecution” (such as revocation of licenses). Prior to or after charges have been brought, a prosecutor may negotiate a plea agreement with the defendant. In the exercise of their discretionary powers Federal prosecutors are guided by the *Principles of Federal Prosecution* and the *Principles of Federal Prosecution of Corporations*. It should be noted, that although they are not statutory based the said Principles form a part of the U.S. Attorneys Manual, a “binding handbook”, drafted and issued by DOJ.
100. Most prosecutions are brought on the basis of FBI or other agencies’ reports. Generally, there is no formal prosecutorial supervision over investigations that do not reach the Grand Jury stage, but, according to the information received by the GET, investigators often consult prosecutors. Although formally prosecutors are not entitled to give instructions to investigators, it frequently happens that the latter require informal advice from the former, advice that is often followed, due to the fact that at the end the power to decide to bring charges lies with the prosecutor. Generally, prosecutors do not have the authority to order investigators to undertake specific actions. However, there are mechanisms in place to resolve disputes.
101. Being Bar members, Federal prosecutors are bound by respective Bar ethics rules. On the other hand, being members of the Executive branch of Government they are also bound by the ethical standards set by the OGE in Standards of Conduct for Executive Branch Employees. The executive office of U.S. Attorneys via its Office of Legal Education conducts training for Federal prosecutors. Each year one of the seminars is devoted to public corruption, which is attended not only by prosecutors, but also by investigators from different law enforcement agencies. About 100 participants attend every seminar.
102. The Office of Professional Responsibility (OPR) is an independent office within DOJ that investigates allegations that DOJ attorneys violated applicable laws or rules of professional ethics or conduct. OPR is headed by a Counsel who reports directly to the Attorney General, and is staffed by career attorneys. Any person may report alleged misconduct by DOJ attorneys to OPR. Decisions on disciplinary sanctions, depending upon their severity, are taken either by the Deputy Attorney General or by the head of the attorney’s component.

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<sup>15</sup>One partial exception to this rule is the *qui tam* statute, 31 U.S.C. § 3730, which permits a private citizen to allege a fraud on the government and to bring a civil lawsuit in the name of the government. In such a case, the government may seek a stay of the civil lawsuit and commence a criminal prosecution or it may assume the responsibility of prosecuting the civil lawsuit.

<sup>16</sup> In the federal system, except in misdemeanour or minor cases, any criminal charges must be brought by an indictment returned by a grand jury. A grand jury is made up of sixteen to twenty-three citizens who sit periodically for a specified term. The grand jury is viewed as a mechanism to prevent prosecutorial overreaching and is instructed by the court to return an indictment only upon a showing that there is probable cause to believe a crime has, in fact, been committed and that the person or persons charged committed it.

*ii) State level*

103. In general, the state systems replicate the Federal system with regard to the relationship between prosecutors and investigators. In many states, the prosecution of State and local corruption offences falls under the competence of the Office of the (state) Attorney General (hereafter referred to as “the OAG”) and/or the local prosecutors’ offices. Altogether, over 2,300 prosecutors’ offices function within the geographic jurisdiction of the USA, employing some 80,000 chief prosecutors, attorneys, investigators, victim advocates and support staff. The competence of the OAG varies much from State to State. Where the OAG does have authority to investigate and prosecute corruption, a special corruption service in charge of prosecuting corruption generally exists.
104. Chief prosecutors, such as district, commonwealth and State attorneys are elected or appointed attorneys advocating for the public in felony cases and in a variety of less serious offences. In most states, with the exception of Alaska, Connecticut, Delaware, the District of Columbia, Hawaii and New Jersey, chief prosecutors are elected and generally for a four-year term.
105. The authority of the OAG is defined by a jurisdiction’s constitutional and statutory framework. Where dual-jurisdiction exists between the OAG and the local prosecutor’s office in corruption matters, conflicts of authority are generally resolved by cooperation. Although in some jurisdictions the OAG may take exclusive control over any particular criminal prosecution at the discretion of the Attorney General, respect for local tradition is normally considered prior to the intervention of the OAG in local prosecution.
106. Prosecutors – the district attorneys as well as the attorneys general– are generally involved in the pre-trial investigation at an early stage. Most of the larger prosecutor’s offices have investigative staff of their own. This staff are normally experts, such as accountants or experts on regulatory matters. If the case is under the investigation of a local police unit, the cooperation between the prosecutor and the police is usually quite close but it is also possible that there is overlap between the activities of prosecutors, investigators and the police. Investigators in the Prosecutors’ offices are usually helping prosecutors prepare for trial rather than performing original investigations of criminal offences.

**b4. Courts**

*i) Federal level*

107. The Federal judiciary is a separate, self-governing branch of the United States Government. According to Article III of the U.S. Constitution, judicial power of the State is vested on the Supreme Court and inferior courts created by the decision of the Congress. Currently, under the Supreme Court, the Federal court system is composed of 94 U.S. District Courts, which are the “trial courts”, adjudicating at first instance, and 13 U.S. Courts of Appeal, adjudicating at second instance<sup>17</sup>.
108. The Supreme Court does not supervise administrative functions of other Federal courts. However, it has the statutory authority (28 U.S.C. § 2072) to issue rules of practice and procedure

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<sup>17</sup> There are also Bankruptcy Courts, Court of International Trade and Court of Federal Claims. But there are also other courts, which are not within Judicial branch, e.g. Military Courts, U.S. Tax Court, U.S. Court of Veterans Appeals and others, created by different Executive branch authorities in order to make a decision in particular matters assigned to those authorities.

as well as rules of evidence, which are binding for district courts and courts of appeal. The Chief Justice of the Supreme Court is also the Chairman of the Judicial Conference of the United States.

109. Federal Judges who are appointed pursuant to Article III by the President of the United States and confirmed by the Senate, hold a life time appointment. These judges can be removed from their post only in an impeachment procedure, provided for in the Constitution, by the Congress. Federal judges are bound by a Code of Conduct for United States Judges, established by the Judicial Conference.
110. The Judicial Conference of the United States is a statutory based self-government body with substantial competencies related to Federal courts and judiciary. It is composed of the Chief Justice, chief judges of all circuits, 12 district judges elected in each circuit<sup>18</sup> and the chief judge of the Court of International Trade. The Conference meets twice a year, but it works through its Committees throughout the year. All members of the committees are appointed by the Chief Justice.
111. The central role in vocational education of all Federal judges is played by the Federal Judicial Center. There is no obligation for judges to undergo any training as the attendance at training organised by the Federal Judicial Center is voluntary. Although it is not a formal requirement, every Federal judge after being nominated undergoes a 2-week "introduction training". The Center organises vocational training in the form of 3-day seminars. The GET was told, that the judiciary shows great interest in attending those training sessions. No special training on corruption issues has been conducted, so far.
112. Within the Federal Judicial branch, a statutory mechanism exists by which each Federal judicial circuit, or regional grouping, may designate a special committee of judges to consider allegations that a trial or appellate judge of that circuit is disabled or has engaged in conduct prejudicial to the effective and expeditious administration of the courts, which would include corrupt behaviour. Such committees may temporarily prevent new cases from being assigned to a judge under inquiry, and may issue a public censure, but cannot remove a judge from office or initiate a prosecution. Criminal prosecutions may only be undertaken by the Department of Justice.
113. Sentencing guidelines of a statutory nature, created and recently adjusted by the Sentencing Commission, are mandatory for all Federal judges since 1 November 1988. Some States have adopted this system in a similar fashion. The GET was told the reason for introducing strict sentencing guidelines lay particularly in public disquiet about lenient and inconsistent sentencing practices, although judges may deviate from these guidelines in unusual cases.

*ii) State level*

114. The organisation of the judicial system varies much from one State to another. For example, in Pennsylvania, which the GET visited, there are county courts of common pleas and district justice courts at the local level, while at the State level the Commonwealth Court, the Superior Court and the Supreme Court.
115. In the fifty State systems, the principle of judicial independence is, similarly to the Federal level, well established, although in some states judges are elected, following a campaign. Campaigns

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<sup>18</sup> There are 13 circuits, but 12 of them are geographical. The 13<sup>th</sup> is the Federal Circuit, which has a nation-wide jurisdiction in certain cases, e.g. patent cases.

are financed by donations and support provided by individuals, including lawyers. For example, in Pennsylvania, the judges in courts are elected by partisan elections for a fixed-term. In some states all judges are elected through partisan elections whereas in other states the election may be non-partisan. Appointed judges normally serve for life.

**b5. Other institutions**

*i) Federal level*

116. In addition to the above-mentioned law enforcement authorities, there are other authorities playing a role in prevention and detection of cases of corruption. These bodies include the Houses of Congress, the Financial Crimes Enforcement Network, the Office of Federal Procurement Policy, the Internal Revenue Service and the Securities and Exchange Commission.

*Houses of Congress*

117. Each House of Congress (the House of Representatives and the Senate) has the right to appoint special investigative committees in order to explore conditions that may need to be addressed by legislation, and oversight jurisdiction to address possible corruption within executive agencies. The Permanent Subcommittee on Investigations of the Governmental Affairs Committee has for decades been active in conducting investigative hearings on organised criminality, which often have involved aspects of corruption. Separate ethics committees (the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives) consider allegations of ethical and other misconduct by members of their respective chambers for purposes of imposing sanctions, such as reprimand or removal. Criminal prosecution may be carried out only by the DOJ.

*General Accounting Office*

118. In addition to the special investigative committees, the General Accounting Office (hereafter "GAO"), an audit, evaluation and investigative arm of the Congress, can independently audit and evaluate government programmes and activities. It has a staff of professional investigators available when GAO auditors and evaluators encounter possible criminal and civil misconduct. The General Accounting Office also maintains the FraudNET to facilitate reporting of allegations of fraud, waste, abuse, or mismanagement of Federal funds. The Office of Special Investigations within the GAO is responsible for conducting congressional oversight investigations of alleged violations of Federal criminal law and serious abuse and for integrating such work within GAO's audit and evaluation work. These powers and authorities derive from those vested in the Office of the Comptroller General, as codified in 31 U.S.C., namely to investigate all matters related to the receipt, disbursement, and use of public money; to make an audit, evaluation, or investigation ordered by either house of the Congress or a congressional committee with jurisdiction over revenue, appropriations, or expenditures; and to give a congressional committee with jurisdiction over revenue, appropriations, or expenditures the help and information it requests. GAO is an instrument of the Congress and reports to the Congress. However, it may also refer a matter to DOJ for criminal investigation.

*Financial Crimes Enforcement Network (FinCEN)*

119. The Financial Crimes Enforcement Network (hereafter "the FinCEN"), a bureau of the U.S. Department of Treasury, was established in April 1990 with defined objectives to support law

enforcement investigations, encourage and facilitate inter-agency and global co-operation against financial crimes, including money laundering, and advise policy makers as to trends concerning money laundering both within the US and globally. The FinCEN uses the Bank Secrecy Act to require reporting and record keeping by banks and other financial institutions. FinCEN has 200 employees consisting of analysts and experts in finance and technology. Additionally, about 40 attachments are assigned to the FinCEN from 21 different regulatory and law enforcement agencies. However, the FBI is the only agency which has direct access to the FinCEN database.

#### *Office of Federal Procurement Policy*

120. The Office of Federal Procurement Policy (OFPP), under the umbrella of the Office of Management and Budget, which assists the President in the development and execution of his policies and programmes, is the body responsible for providing overall direction for procurement policies and practices used by the Executive branch. The OFPP plays a central role in the efforts to improve Federal procurement laws (such as the Federal Property and Administrative Services Act) and regulations (Federal Acquisition Regulation). In addition, there are well-established appeal procedures, both administrative and through legal proceedings, in the courts that afford fair and impartial review of the Federal contracting process.

#### *Internal Revenue Service*

121. The Internal Revenue Service (hereafter referred to as the "IRS"), the largest bureau under the umbrella of the U.S. Department of Treasury, is responsible for determining, assessing, and collecting internal revenue in the United States. Within the IRS, the Division of Criminal Investigation (CI) serves as an investigative arm, comprised of approximately 2,900 special agents, who co-operate actively with the FBI. The CI is responsible for the enforcement of tax, money laundering and Bank Secrecy Act laws.
122. The Division of Criminal Investigation (CI) participates in numerous investigations involving individuals who violate public trust. The subjects of these investigations include both elected and appointed officials from all levels of government including, local, county, State, Federal, and foreign officials. Public corruption investigations encompass a wide variety of criminal offences including bribery, extortion, embezzlement, illegal kickbacks, entitlement and subsidy fraud, bank fraud, tax fraud, and money laundering. The CI concentrates its resources on the tax and money laundering aspects of these investigations in cooperation with other Federal, State, and local law enforcement agencies. The CI's expertise in conducting financial investigations has established its reputation as a leading contributor in the fight against corrupt public officials.

#### *Securities and Exchange Commission*

123. The Securities and Exchange Commission (hereafter "the SEC") was established in 1934. Its primary mission is to protect investors and maintain the integrity of the securities markets. The SEC also oversees key participants in the U.S. capital markets, including stock exchanges, broker-dealers, investment advisors, mutual funds, and public utility holding companies. The SEC is concerned primarily with promoting disclosure of important information, enforcing the Federal securities laws, and protecting investors who interact with these various organisations and individuals.
124. For the SEC's effectiveness, its enforcement authority is crucial. Each year the SEC brings between 400-500 civil enforcement actions against individuals and companies to enforce U.S.

Federal securities laws. Typical actions involve insider trading, accounting fraud, bribery of foreign public officials and providing false or misleading information about securities and the companies that issue them. The Division of Enforcement investigates possible violations of securities laws, recommends Commission action when appropriate, either in a Federal court or before an administrative law judge, and negotiates settlements on behalf of the Commission. While the SEC has civil enforcement authority only, it works closely with various criminal law enforcement agencies throughout the country and refers cases to these authorities when the misconduct warrants more severe action.

*ii) State level*

125. Similar institutions as those described under the Federal level also exist at the State level.

**c. Immunity**

126. The United States Constitution and laws do not provide procedural immunities (inviolability immunity) whatsoever allowing certain persons to avoid being charged with offences, including offences relating to corruption. No immunities or privileges apply to members of the Congress, of the Executive or of the Judicial branch; they are subject to criminal prosecution to the same degree as other citizens. The Speech and Debate Clause<sup>19</sup> of the Constitution constitutes the only exception to this rule, ensuring the independence and non-liability immunity of individual legislators, Senators and Representatives, for opinions and votes cast in Congress.

127. The President in office does not enjoy immunity from criminal investigation. Concerning the inviolability of the President in office, the Office of Legal Counsel within the DOJ, which provides legal interpretations to the Attorney General, ruled: "that by virtue of his unique position under the Constitution, the President cannot be the object of criminal proceedings while he is in office"<sup>20</sup>. This issue has not been addressed by the Supreme Court. If, however, the President were impeached and removed from office, there would be no barrier to criminal prosecution.

**III. ANALYSIS**

**a. Perception of corruption and anti-corruption policy**

128. Corruption is a widely recognised problem in the USA. It occurs not only in most branches of public administration, whether at Federal, State or local level but also in the private sector. The GET noted a very open attitude of US authorities, which recognize that corruption is present in the country. This awareness of corruption and its dangers was also generally confirmed during the various meetings between the GET and public officials - at all levels - throughout the visit. At the same time, the GET noted a very strong commitment within US authorities (public officials) and civil society to fight corruption and corruption-related crimes.

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<sup>19</sup> U.S. Constitution, Article 1, Section 6, Clause 1: "The Senators and Representatives [...] shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place."

<sup>20</sup> See Memorandum from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, Re: Amenability of the President, Vice President and other Civil Officers to Federal Criminal Prosecution while in Office (Sept. 24, 1973).

129. Furthermore, the GET noted that there was a large number of different law-enforcement bodies, which specialise in the fight against corruption. Even if the detection side is more in focus in this respect, there are also several preventive systems and measures in place.
130. The anti-corruption legislation on the Federal as well as on the State level is generally well developed with regard to the penalisation and sanctions for public corruption offences as well as with regard to other aspects, such as conflicts of interest etc. Also in this respect, the GET noted a high degree of specialisation with regard to fighting corruption.
131. Moreover, the GET recognized a high degree of transparency in the Federal administrations and institutions as a result of legislation on access to public documents (among others Freedom of Information Act). This transparency plays an important role in providing the public with a wide array of information about corruption. The general public is, accordingly, well aware of corruption in the country, including notorious cases of corruption.
132. The GET was of the opinion that the existence of corruption in the USA, in particular with regard to its immense trade and business activities and its rather complex constitutional, legal and administrative systems, may be a significant threat to the good functioning of the political and economic life of the country. Despite that, the GET was of the overall opinion that the USA is, in general terms, rather successful in fighting corruption. In relation to public corruption, this position is supported by available data on prosecutions at Federal level and international surveys as referred to above.
133. This general positive assessment is not contradicted by the GET's opinion that there is room for improvement with regard to a number of issues and situations and that some additional efforts would be possible to further the fight against corruption. These concern for example the overall questions concerning the functioning of certain bodies and the coordination of the overall policy against corruption. Moreover, there are other improvements with a more pragmatic approach, which are addressed in this report.

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

134. The GET was impressed by the great number of institutions, bodies and agencies dedicated to the fight against corruption. Even if all of them share the same objectives and work in the same direction, the GET perceived that full co-ordination was not, at least not fully, ensured. The GET noted with satisfaction the good level of co-operation which prevailed between various Federal law-enforcement bodies dealing with the detection of corruption. In the GET's opinion, however, there was a lack of a wider, long-term policy co-ordination at Federal level as well as between the Federal level and the State level in the area of corruption. The GET was, at the same time, fully aware of the constitutional position of the States and of the difficulties, on occasions even impossibility, for Federal institutions to interfere in fields falling under a State's sovereignty.
135. The GET remained convinced, in any case, that the efficiency of the efforts within the US to prevent, detect, investigate and prosecute corruption could be enhanced through further cooperation among the responsible parties. It recalled in this respect the role of the Executive Working Group (EWG) being a multidisciplinary and intergovernmental (Federal, State, local levels) coordinating body. **The GET 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, the GET recommended that the Criminal Division of the Department of Justice alerts the Executive Working Group on the importance of fighting corruption at State and local levels.**

136. The GET took note of the fact that the activities of the Council of Governmental Ethics Laws (COGEL) have had a substantial impact, e.g. in the field of ensuring the right to free access to government information based on the Freedom of Information Act and equivalent laws of the States, or in the field of raising public awareness about electoral financing of state and local judges, although COGEL itself has only a limited number of members. Through information and training programmes as well as published materials, COGEL has sharpened public awareness regarding the importance of financial disclosures for preventing corruption. The GET took the view that COGEL's activities are of substantial importance in the fight against corruption. The successful activities of an organisation of Federal, State and local government agencies assisting each other through sharing best practices and information in order to enhance the implementation of these government programmes in every jurisdiction was a model appreciated by the GET.

**b1. General investigative authorities**

137. The GET noted with satisfaction that at the Federal level there exists an impressive array of institutions to detect and prosecute corruption both in their own ranks and in general. Despite such a large number of institutions and the potential overlap of their competencies, the GET was of the opinion that the existing organisations, relations between the institutions and the existing system of checks and balances ensure an effective reaction to corruption, supplemented by the awareness of the danger it represents at all levels of the Government and the public.
138. Furthermore, the GET noted that Federal agencies dealing with the detection and prosecution of corruption do not seem to experience major difficulties to obtain the funds and staff necessary for an adequate execution of the duties entrusted upon them. In this respect, the GET was able to underline another positive feature of the USA anti-corruption system, namely the attention paid to ethical standards in the general systems of recruitment of new staff, in their career-system, as well as in the initial and further training of public officials. In the GET's opinion, the Office of Professional Responsibility of the FBI has developed a robust anti-corruption strategy to prevent and detect internal corruption. More generally, it appears that the FBI has created a sound professional anti-corruption culture. The recruitment of high quality personnel and adequate remuneration are crucial elements of a clear policy aimed at maintaining the reputation of an organisation which places great value upon integrity.
139. In spite of this overall positive assessment, the GET was made aware of a number of concerns relating to certain cases of lowering of standards in the recruitment of employees for Federal agencies and State police forces. The GET was informed, in particular, that since the events of "September 11<sup>th</sup>" considerable efforts had been made for hiring staff required to protect more efficiently the US borders and airports. In this context, concern was raised in particular about the level of quality assurance being applied to checking the background and references of potential employees. However, the GET was given clear indications by a number of interlocutors in key positions, that current police recruitment processes contain sufficient quality assurance mechanisms. Moreover, representatives of the FBI (Public Corruption/Government Fraud Unit) referring to the cycles of corruption which have impacted upon the Police Departments of New York, Los Angeles and Washington, confirmed that corruption often arose because of the recruitment of poor quality employees, easily enticed into corrupt practices by the prospect of financial reward. These very authorities referred to the fact that lessons had been learnt and



adequate counter-measures taken to avoid repetition of such corruption cycles. **The GET recommended that the Department of Justice emphasise to Directors of Federal law enforcement agencies the need to maintain, at all levels, including through periods of intense recruitment drives, a rigorous vetting process in order to recruit personnel of the highest standards.**

140. The workload of FBI offices as regards corruption is considerable, especially in light of the fact that was presented to the GET, namely that some State and local authorities lack initiatives and are not active enough in detecting and prosecuting corruption. The latter deficiencies further increase the workload of Federal agencies units on State and local levels. **Therefore, the GET recommended that the Department of Justice maintain a regular process for evaluating and assessing the adequacy of Federal investigative and prosecutorial resources directed at Federal, State or local corruption, with a view to ensuring that resources are allocated where needed.**
141. The GET had a positive impression of the work and activities of the Public Integrity Section (PIS) of the Criminal Division of the DOJ. The nation-wide deployment of experts with great experience in clearing up and prosecuting corruption crimes underlines, in the eyes of the public as well, the high importance the U.S. Government attaches to fighting all manifestations of corruption, and such deployment also has preventive effects. Based on discussions with staff of the PIS and other Federal prosecutors, the GET recognised that in the US system it is critically important that prosecutors and investigators closely coordinate their activities and share information from the earliest appropriate point of an investigation as there is no formal subordination of investigators to prosecutors. The GET was concerned therefore that prosecutors be assured of receiving necessary information from investigators at an early stage. The GET was aware that mechanisms exist to facilitate an effective relationship between prosecutors and investigators, in particular, the Attorney General has authority over the FBI and in the rare case that a prosecutor might determine that an investigator was not forthcoming with information, the matter would be resolved within the hierarchy of the Department, even reaching the Attorney General if necessary. Mechanisms are also in place to facilitate the resolution of such matters involving other Federal investigators. Moreover, a Federal investigator who improperly withholds or conceals relevant information from a prosecutor can be subject to disciplinary sanctions. Furthermore, if a matter involves criminal intent on the part of the investigator to impede or obstruct the investigation, a criminal prosecution pursuant to obstruction of justice statutes can be initiated. Although the GET was not informed of problems relating to the issue of cooperation arising in any specific case, it nonetheless concluded that the issue should be emphasised. **The GET recommended that, in order to encourage and facilitate effective law enforcement (in particular, the sharing of information), the Criminal Division of the Department of Justice, in training programmes and otherwise, emphasise the critical importance of full cooperation and coordination between prosecutors and investigators as soon as possible after an investigation is initiated.**
142. The GET was informed that the Criminal Division of the DOJ (which includes the Public Integrity and Fraud Sections) does not automatically inform the internal government organisations of Inspectors General – the President’s Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) - of issues of good and bad practice arising from corruption investigations. It is acknowledged that this occurs occasionally but there is no requirement for this to be done as a matter of course. As a responsibility of the various Inspectors General is to ensure that agencies act in a transparent and accountable way and do not conceal wrongdoing, it is essential that all significant issues that materialise in corruption investigations

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

## **b2. Criminal investigation of corruption**

143. The USA is particularly aware of the threat posed by organised crime groups and the clear links which exist between organised crime and corruption. Indeed, there are substantial resources devoted to tackling serious and organised crime both in terms of the law enforcement effort and dedicated teams from the US Attorney Office. However, it was evident to the GET that there is a lack of intelligence co-ordination amongst the law enforcement agencies in their effort to combat serious and organised crime. This potential vulnerability has been caused as no single agency has the responsibility for receiving information and developing and disseminating intelligence to the most appropriate agency. This uncoordinated approach can result in more than one agency unwittingly targeting the same criminal or crime group and a failure to identify intelligence gaps. Whilst this situation has been recognised at the highest Government level in relation to terrorism there appears no similar response in relation to corruption. **The GET 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.**
144. The GET took note with satisfaction of the broad array of special investigative techniques facilitating the tasks of investigators and prosecutors in the course of criminal proceedings in corruption cases. Moreover, the means of protection of witnesses and collaborators of justice available in the investigation and prosecution of corruption offences are appreciable.

## **b3. Prosecution**

145. As already indicated above, the GET took note with satisfaction of the general awareness about corruption among the USA authorities and their strong commitment to reduce this criminal phenomenon to the minimum extent possible. This attitude was equally, or even more acutely, present among the representatives of the prosecution authorities met by the GET. In particular Federal prosecuting authorities took, in the GET's eyes, a very firm and serious stand against corruption and openly acknowledged the existence and significance of the phenomenon. In general, there seem to be good opportunities for the effective prosecution of corruption cases also at State level. Having reached this overall positive assessment, the GET considered appropriate, however, to draw attention to a few issues, which may on certain occasions endanger the effective prosecution of certain cases.
146. The GET recalled that all Federal prosecutors are officials and employees of, or special representatives of the Department of Justice, which, in turn, is part of the Executive branch of Government. Besides, it found that the rights of Federal prosecutors do not differ from those of other employees of the Executive branch. They enjoy the same rights and benefits of all Executive branch officers and employees and may challenge any prohibited personnel practice, internally before the Office of Professional Responsibility and at a specialised agency, the Merit Systems Protection Board (MSPB). Although the GET was genuinely impressed by the high level of professional ethics in the prosecution authorities it could not disregard the potential threat of

pressure being exerted upon them. The replacement of a prosecutor may in certain cases be a significant event. The hierarchical organisation of the DOJ may provide opportunities to try to influence improperly the handling of a particular case. The closing of a case or a simple move of a prosecutor to another division or section, for unsubstantiated reasons could be examples thereof and there is no legal obligation to provide any written reasoning for such a decision. The GET, it is true, was not made aware of any case where the problem was at stake and it was also convinced that the system of checks and balances in place (including possibilities for victims to complain in the hierarchy and review by courts) and the high level of transparency of the US administration were likely to prevent most cases of this kind from occurring or would bring them to light should they occur. The GET nevertheless considered that a protection afforded to prosecutors against "hidden pressures" would result in a better exercise of prosecutorial functions in corruption cases. **The GET recommended that the Department of Justice, in order to enhance the trust of the public and to avoid any issues of possible impropriety, consider introducing a procedure whereby significant events in the course of a sensitive corruption prosecution be memorialised as appropriate.**

147. The GET noted that the prosecution system at the State level is very diverse and varies from one State to another. The GET does not consider this fact, as such, as problematic, taking into consideration the effectiveness of the prosecution. This situation might give rise to difficulties relating to the co-operation between Federal and local authorities. The GET also noted that there were overlaps between the jurisdictions of the various prosecuting authorities within the State itself. This state of play could lead to situations where more than one authority is handling a criminal case. The authorities interviewed during the visit unanimously explained to the GET that such problems were solved by good co-operation and with the help of good personal relationships. The GET observed that the jurisdictions of District Attorneys and State Attorney Generals should be well defined and detailed in order to promote efficiency in prosecutorial functions directed at fighting corruption.
148. Moreover, the GET was concerned about the election system of Chief prosecutors. On the one hand, the election of Chief prosecutors brings prosecutorial powers close to the public. On the other - in the GET's view - this does not offer the best possible guarantee of the independence of prosecutors. These prosecutors must, in fact, campaign all the time in order to ensure re-election. They must also in some way finance their campaign which may cause doubts about the objectivity and impartiality of their future performance, including the public's perception of this. Moreover, these elected prosecutors can choose very freely their policies and priorities. The GET was fully aware that this system is deeply rooted in the USA as a feature of its democracy. While State and local practice vary, **the GET recommended that the Department of Justice remind State and local authorities that, to the greatest extent possible, practices for the selection of District and State prosecutors should be transparent and that the selection procedure should take account of the need to exclude or restrict the risks of jeopardising the independent and impartial exercise of the prosecutorial functions.**
149. The GET had the impression that in certain counties the financial resources available for the prosecutors were clearly insufficient. This represents a threat to the effective prosecution of criminal cases, including corruption cases. **Therefore the GET recommended that the Department of Justice remind State and local officials to take account of the need to provide sufficient resources for prosecutors' offices.**
150. The organisation of training events at Federal level devoted exclusively to corruption issues should be seen as a very positive step. However, the GET took note of the fact that usually no

such training is available to State and local prosecutors. In the GET's view, developing of training programmes for prosecutors, possibly organised by the State authorities, on different types of white-collar crime, including corruption, would remarkably improve the capabilities of prosecutors to combat corruption and other related forms of criminality. **Thus, the GET recommended the Department of Justice to facilitate the participation of an increasing number of practitioners in specialised training on prosecuting corruption cases, including prosecutors from offices where no specialised units for the fight against corruption exist.**

#### **b4. Courts**

151. The GET observed that the legal framework for an independent judiciary at the Federal court system is in place, allowing for judicial independence and impartiality. As to the State judicial systems, however, the GET expressed concern that the system of selection of judges may have a bearing on their independence. According to judges with whom the GET discussed these questions, the election system entails limited risks for the professions concerned, since members of these professions were said to be well able to maintain their "inner independence" in spite of third party financing of their election campaign. According to the information made available to the GET during the visit by NGO representatives, the system of election of State and local judges requires the collection of high sums of money -ranging from \$10,000 to \$500,000, depending on the importance of the office sought. This could be highly problematic considering the independence expected of the judiciary and of judges and the tangible risk of conflicts of interests which may result. The GET acknowledged that the US Constitution gives every citizen the right to support candidates in elections. Nevertheless, it has to be seen that the system of outside financing of election campaigns for State and local judges, just as in the case of prosecutors, may have the undesirable side-effect of impairing the productive efforts to achieve high ethical and moral standards.
152. Although Federal judges are not allowed to perform political activities, they are appointed through a patronage system which has a political dimension. The practice of the nomination process gives the result, that it is unlikely for a person unrelated to the party in power to become a Federal judge. The GET understood very well that the USA model and Constitution rules in this respect are anchored in deep traditions, tested throughout History which deserve full respect. Nevertheless, the GET was of the opinion, that within the legal limits of the Constitution there would be some room for improvement in this area. **The GET recommended that the US authorities promote a public policy discussion with the participation of all interested parties, addressing the process of selection of Federal judges with a view to enhancing the efficient functioning of the judicial process.**
153. The GET noted that no specialisation within the Federal judiciary exists, although, in general, a proper system of training for Federal judges conducted by the Federal Judicial Centre was in place. Nevertheless, the GET had the impression that certain issues that might arise in corruption cases were not sufficiently covered, especially when compared to training provided to prosecutors. **The GET recommended that the Criminal Division of the Department of Justice offer its technical assistance in presenting information at courses for judges organised by the Federal Judicial Centre on specialised subjects (such as special investigative techniques) that often arise in corruption cases.**

**c. Immunity**

154. The GET noted with satisfaction that the USA system hardly provides any immunities. Only Members of Congress (House of Representatives and Senate) benefit from protection but solely in respect of opinions and votes cast. Not even the President enjoys immunity against criminal investigation. The GET considered that the US system is fully in line with the requirement of GPC n° 6.

**IV. CONCLUSIONS**

155. The United States of America recognises that corruption is a danger which must be guarded against in both the public and the private sectors. Considering the potential risks of corruption in a large and multi faceted State like the USA, it appears that the anti-corruption machineries in place, particularly the Federal ones, are rather successful. This is *inter alia* supported by available data at the Federal level. There are numerous preventive mechanisms in place and the law enforcement bodies are not only several in number, but also specialised on corruption to a large degree. Moreover, there is a well-developed transparency policy in the USA. The awareness of corruption and its dangers is not only limited to professionals in this field, but largely spread among the general public.
156. Despite the rather favourable situation described, there is still room for improvement. Some of the problems encountered are closely related to the fact that the USA is a Federal State with a large number of independent States. Co-ordination between various Federal bodies and State bodies is one area of concern as well as the establishment of an overall common policy in the fight against corruption. Another is the independence of some judicial bodies at the State level. The furthering of skills of professionals dealing with corruption is yet another area of concern.
157. In view of the above, GRECO addressed the following recommendations to the United States of America:
- i. 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, the GET 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;**
  - ii. that the Department of Justice emphasise to Directors of Federal law enforcement agencies the need to maintain, at all levels, including through periods of intense recruitment drives, a rigorous vetting process in order to recruit personnel of the highest standards;**
  - iii. that the Department of Justice maintain a regular process for evaluating and assessing the adequacy of Federal investigative and prosecutorial resources directed at Federal, State or local corruption, with a view to ensuring that resources are allocated where needed;**
  - iv. that, in order to encourage and facilitate effective law enforcement (in particular, the sharing of information), the Criminal Division of the Department of Justice, in**

training programmes and otherwise, emphasise the critical importance of full cooperation and coordination between prosecutors and investigators as soon as possible after an investigation is initiated;

- v. that the Criminal Division of the Department of Justice, based on a review of investigations, meet periodically with representatives of the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) in order to discuss significant completed cases, investigative issues, apparent trends and effective practices relating to the fight against corruption;
  - vi. 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;
  - vii. that the Department of Justice, in order to enhance the trust of the public and to avoid any issues of possible impropriety, consider introducing a procedure whereby significant events in the course of a sensitive corruption prosecution be memorialised as appropriate;
  - viii. that the Department of Justice remind State and local authorities that, to the greatest extent possible, practices for the selection of District and State prosecutors should be transparent and that the selection procedure should take account of the need to exclude or restrict the risks of jeopardising the independent and impartial exercise of the prosecutorial functions;
  - ix. that the Department of Justice remind State and local officials to take account of the need to provide sufficient resources for prosecutors' offices;
  - x. the Department of Justice to facilitate the participation of an increasing number of practitioners in specialised training on prosecuting corruption cases, including prosecutors from offices where no specialised units for the fight against corruption exist;
  - xi. that the US authorities promote a public policy discussion with the participation of all interested parties, addressing the process of selection of Federal judges with a view to enhancing the efficient functioning of the judicial process;
  - xii. that the Criminal Division of the Department of Justice offer its technical assistance in presenting information at courses for judges organised by the Federal Judicial Centre on specialised subjects (such as special investigative techniques) that often arise in corruption cases.
158. Moreover, the GRECO invites the authorities of the United States of America to take due account of the observations made by the experts in the analytical part of this report.
159. Finally, in conformity with Article 30.2 of the Rules of Procedure, GRECO invites the authorities of the United States of America to present a report on the implementation of the above-mentioned recommendations by 31 October 2005.