

HUNGARY

REVIEW OF IMPLEMENTATION OF THE CONVENTION AND THE 1997 RECOMMENDATION

Updated March 2003

A. IMPLEMENTATION OF THE CONVENTION

Formal Issues

Hungary signed the Convention on December 17, 1997, and completed the ratification procedure in Parliament on September 29, 1998. It deposited the instrument of ratification on December 4, 1998. On December 22, 1998, it enacted implementing legislation in the form of an amendment to the Hungarian Criminal Code, which came into force on March 1, 1999.

Convention as a Whole

Amendments have been made to the Hungarian Criminal Code¹ in order to implement the requirements of the OECD Convention² on Combating Bribery of Foreign Public Officials in International Business Transactions as well as the Council of Europe's Criminal Law Convention on Corruption.³ These include inclusion of the offence of bribing a foreign public official and a definition of "foreign public official", which have been placed under the new title "Crimes against the Integrity of International Public Life". To a large extent, the foreign bribery offences were framed in conformity with the offences already in existence in the Criminal Code in respect of domestic officials. In addition, changes have been made to the provisions in the Criminal Code on confiscation and money laundering.

Other existing laws, including Act XXXVII of 1996 on International Legal Assistance in Criminal Matters and Act XVIII of 1991 on Accounting contain provisions relevant to the other obligations under the OECD Convention.

1. ARTICLE 1. THE OFFENCE OF BRIBERY OF FOREIGN PUBLIC OFFICIALS

The relevant amendments to the Criminal Code under the new title "Crimes against the Integrity of International Public Life" are as follows:

Section 258/B.

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1. Additionally, the commentary on the Criminal Code contains explanations about the new offences.
 2. The OECD Convention will be published in the form of an Act of Parliament by the end of this year or the beginning of next year.
 3. The Council of Europe's Criminal Law Convention on Corruption existed in draft form at the time the amendments to the *Criminal Code* were made.

(1) *The person who gives or promises a favour to a foreign official person or with regard to him to another person, which may influence the functioning of the official person to the detriment of the public interest, commits a misdemeanour⁴, and shall be punishable with imprisonment of up to two years.*

(2) *The briber shall be punishable for a felony with imprisonment of up to three years, if he gives or promises the favour so that the foreign official person violate his official duty, exceed his competence or otherwise abuse his official position.*

(3) *The perpetrator of the crime defined in subsection (1) shall not be punishable, if he gave or promised the favour upon the initiative of the official person because he could fear unlawful disadvantage in case of his reluctance.*

Section 258/F

For the purposes of this Title

(1) foreign official person is:

- a) a person holding a legislative, administrative or judicial office in a foreign state,*
- b) a person at an organ or body entrusted with public power, public administration duties, (or) who fulfil tasks of public power, or state administration,*
- c) a person serving at an international organisation which is constituted by international treaty , whose activity forms part of the proper functioning of the organ,*
- d) a person elected to the assembly or other elected body of an international organisation which is constituted by international treaty,*
- e) a member of an international court which has jurisdiction over the Republic of Hungary, a person serving the international court, whose activity forms part of the proper functioning of the court.*

Section 258/B establishes the offence of bribing a foreign public official. This is the offence that implements the requirements of the Convention, and it is this offence upon which this report is based.

In the Annex to Hungary's response to the questionnaire, Hungary included section 258/C, which criminalises the offence of bribing an employee or member of a foreign economic organisation. It is not clear what type of organisation this offence is meant to capture, but it seems very unlikely that it is one that is contemplated by the Convention. The definition of a "foreign economic organisation" under subsection 258/F (2) is restricted to an organisation "entitled to exercise economic (business) activity", whereas the definition of "foreign public official" in Article 4 of the Convention does not include an official, etc. of an entity that exercises business activity. Additionally, according to Commentary 15 on the Convention "an official of a public enterprise shall be deemed to perform a public function unless the enterprise operates on a normal commercial basis in the relevant market". As this offence does not address the bribery of foreign public officials, it is not discussed in this report.

Additionally, two other offences are included in the Annex that are not contemplated by the Convention. The first is the passive bribery offence in respect of an official of an international organisation, under section 258/D, and the second is the offence of trafficking in influence, under section 258/E. By establishing these offences, Hungary has taken steps that exceed the requirements of

4. The term "misdemeanour" does not imply that the offence is a petty/minor/summary offence. It is simply the term used under article 11 of the Criminal Code to identify crimes that are committed with negligence, and crimes that are committed intentionally and are punishable with up to 2 years imprisonment.

the Convention. However, since these offences do not implement the requirements of the Convention they will not be discussed in this report.

Subsection 258/B (3) creates a defence to the foreign bribery offence that is not contemplated by the Convention. A person who gives, etc. a bribe to a foreign public official can escape liability if the favour was given or promised upon the initiative of the official person in fear of “unlawful disadvantage”.⁵ This defence must be raised and proved by the defendant. The Hungarian authorities explain that there is no judicial guidance in respect of this defence and they believe this indicates that the courts do not often apply it. They provide that the commentary on the Criminal Code states that an “unlawful advantage” is “any disadvantage” that would not be suffered by the person giving, etc. the bribe, if the foreign public official were to perform his/her functions legally. If this can be interpreted to cover cases where the official states, for instance, that he/she won’t award a particular contract without a bribe, this defence could create obstacles to the effective implementation of the Convention.

1.1 The Elements of the Offence

The offence of bribing a foreign public official under section 258/B of the Criminal Code corresponds exactly to the domestic offence under section 253.⁶ Therefore, the experience of the Hungarian courts with respect to the domestic offence should be instructive on the likely interpretation of the foreign offence.

1.1.1. any person

Subsection 258/B (1), which establishes the basic offence of bribing a foreign official, applies to a “person”. The Hungarian authorities state that “person” means “any natural person”. Subsection 258/B (2), which provides for an increased penalty where the bribe was given under subsection (1) so that the foreign official would violate his/her official duty, applies to a “briber”. And subsection 258/B(3), which provides for the defence to the crime defined in subsection 258/B (1), applies to “the perpetrator of the crime”. The Hungarian authorities state that use of different terms to describe the briber does not denote different categories of persons, and that to their knowledge this has not created any confusion in application in the past.

1.1.2. intentionally

Hungary explains that pursuant to subsection 258/B (1) a person must promise, etc. a favour that is suitable for influencing the functioning of the foreign official to the detriment of the public interest. It would appear that under this subsection the requirement of intention would be considered satisfied if a person offered, etc. a favour to a foreign public official without the intention to obtain an exercise of official duties, but wilfully blind to whether there would be such a result (i.e. the principle of *dolus eventualis*). This offence is considered completed without the foreign public official having done anything in response to the offer, etc.

Pursuant to subsection 258/B (2), the briber is subject to a more severe sanction if the bribe was given or promised so that the foreign official “violates his official duty, exceeds his competence or otherwise abuses his official position”. Again for the offence to be considered completed it is not necessary for the foreign public official to have done anything in response to the offer, etc.

5. The Hungarian authorities state that the aim of this provision in respect of domestic public officials was to facilitate the reporting of the passive bribery offences committed by official persons.

6. The domestic bribery offence was established in its present form in 1978.

1.1.3 to offer, promise or give

Subsection 258/B (1) applies to a person who “gives or promises” a favour. The Hungarian authorities explain that although the act of offering is not expressly included, it is covered by the notion of promising. The word “promises” does not imply that an agreement has been struck between the person offering the bribe and the foreign public official. In fact the act of promising is considered completed and an offence committed in the case where the public official refuses to accept the bribe.⁷

1.1.4 any undue pecuniary or other advantage

Subsection 258/B (1) prohibits the giving or promising of a “favour” rather than “any undue pecuniary or other advantage” as required by the Convention. The Hungarian authorities state that according to the commentary to the Criminal Code, “favour” means any kind of pecuniary/financial or personal advantage.

“Pecuniary advantage” means, for example, an advantage in cash, a monetary advantage, loan, or cancellation of debt, etc.

“Personal advantage” means any kind of “service” that could be important to one’s existence or livelihood or another interest.

The Hungarian authorities add that advantages such as small gifts for Christmas, an invitation for coffee or a business lunch are excluded because they do not have the potential of influencing the functioning of a public official “to the detriment of the public interest”.

There is no exception to the offence for “small facilitation payments”.

1.1.5 whether directly or through intermediaries

Subsection 258/B (1) does not expressly apply to a person who offers, etc. a favour to a foreign public official through an intermediary. Hungary explains that the term “or with regard to him/her to another person” means that bribes given “indirectly” are covered by the offence. The Hungarian authorities explain that in the original text, the wording covers the following two situations:

1. Where the advantage is given to a third party. (This situation is discussed under 1.1.7 on “for that official or for a third party”.)
2. Where the advantage is given to a third person in order for him/her to transfer it to a public official.⁸

The Hungarian authorities confirm that the foreign bribery offence would apply to the case where an intermediary has been used to communicate an offer or promise to a foreign public official, but no advantage has been given to the intermediary to transfer to the official.

1.1.6 to a foreign public official

7. See the decision published in Courts Decisions (BH 1984.215).

8. This interpretation is supported by the College (Council, Board) of Criminal Law of the Supreme Court and the commentaries in the Criminal Code on the meaning of the term “to another person” in subsection 253 (1).

Subsection 258/B uses the term “foreign official person” rather than “foreign public official”. The definition of “foreign official person”, which is contained in subsection 258/F (1), appears at the beginning of the discussion of section 1 of this report.

The Hungarian authorities state that the definition of “foreign official person” complies with the requirements of the OECD Convention and the Council of Europe’s Criminal Law Convention on Corruption. There are differences between the Criminal Code definition and the definition in the OECD Convention. In some cases these may be due to the translation from Hungarian, and, therefore, may be more stylistic than substantive.

Paragraph 258/F (1) (a) is meant to correspond to the first part of the definition in Article 1.4.a of the Convention. Although, unlike the Convention, paragraph (a) does not expressly state that it refers to the persons therein whether they have been “appointed or elected”, and it does not break down the term “foreign country” to include “all levels and subdivisions of government”, the Hungarian authorities state that this is the intent.

Paragraph 258/F (1) (b) is meant to correspond to the second part of the definition in Article 1.4.a of the Convention. It applies to a person “at an organ or body entrusted with public power, public administration duties, (or) who fulfils tasks of public power or state administration”. The corresponding part of Article 1.4.a of the Convention applies to a person “exercising a public function for a foreign country, including for a public agency or public enterprise”. Although the Criminal Code definition does not expressly specify that the public power, etc. must be exercised for a “foreign country”, the definition would not make sense without it, and, therefore, it appears likely that it was mistakenly left out in producing the translation. The absence of the term “agency” is not critical, as this would, likely, be covered by the term “organ or body”. In addition, although it is not clear from the text that the term “organ or body” necessarily applies to a “public enterprise”, the Hungarian authorities state that an “organ or body” includes any kind of organisation entrusted with public power regardless of its form.

Paragraphs 258 (1) (c) and (d) define a foreign official person in relation to an “international organisation” and, thus, are intended to correspond to the part of the definition in Article 1.4.a of the Convention that refers to “any official or agent of a public international organisation”. Paragraph (c) applies to a person “serving at an international organisation...whose activity forms part of the proper functioning of the organ”. Hungary explains that the definition is restricted to persons “whose activity forms part of the proper functioning of the organ” in order to exclude from its ambit those persons who are involved in food preparation, maintenance, etc. Paragraph (d) applies to a person “elected to the assembly or other elected body of an international organisation”.

Paragraph 258/F (e) applies the definition of a foreign public official to a “a member of an international court which has jurisdiction over the Republic of Hungary”. This goes beyond the definition in the Convention, which includes a person holding a “judicial office of a foreign country”.

1.1.7 for that official or for a third party

The Hungarian authorities provide that the wording “or with regard to him/her to another person” is intended to apply to both the case of intermediaries (as discussed under 1.1.5 on “whether directly or through intermediaries”) and the case where the advantage is given to a third person on behalf of the public official because of the special personal relationship between the official and the receiver of the advantage (e.g. relative, friend, etc.).

1.1.8 in order that the official act or refrain from acting in relation to the performance of official duties

Under subsection 258/B (1) an offence is committed where a favour is promised or given that is suitable to “influence the functioning of the official person to the detriment of the public interest”. This would appear to provide a higher threshold to be met than under the Convention as acting or refraining from acting “in relation to the performance of official duties” does not necessarily mean that the official must act “to the detriment of the public interest”.

Further, the offence under section 258/B does not expressly apply to omissions of public officials. However, Hungary states that, consistent with the requirements of the Convention, the offence applies to both acts and omissions of the official person.⁹

1.1.9/1.1.10 in order to obtain or retain business or other improper advantage/in the conduct of international business

It is irrelevant under section 258/B whether a bribe is given “in order to obtain or retain business or other improper advantage in the conduct of international business”. Thus, in this respect Hungary’s foreign bribery offence exceeds the requirements of the Convention.

1.2 Complicity

Article 1.2 of the Convention requires Parties to establish as a criminal offence the “complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official”.

Pursuant to subsection 21(3) of the Criminal Code the “abettor” and “accessory” of a crime are subject to the same penalty for a crime as is applicable to the principal perpetrator.

An “abettor” is defined under subsection 21(1) as a “person who intentionally persuades another person to perpetrate a crime”. This would cover incitement of an act of foreign bribery.

An “accessory” is defined under subsection 21(2) as someone who “intentionally grants assistance for the perpetration of a crime”. This would cover aiding, abetting and authorisation, according to the usual meaning of the terms.

1.3 Conspiracy and Attempt

Article 1.2 of the Convention further requires Parties to criminalise the conspiracy and attempt to bribe a foreign public official to the same extent as they are criminalised with respect to their own domestic officials.

Conspiracy

Pursuant to subsection 21(3) of the Criminal Code, “co-principal perpetrators” are subject to the same penalty for a crime as is applicable to a principal perpetrator. “Co-principals” are defined under subsection 20(2) as “the persons who jointly realise the legal facts of an intentional crime, in awareness

9. The Hungarian authorities also provide that the passive domestic bribery offence is committed if the public official omits to perform an act and by doing so infringes his/her duty.

of each other's activities". This appears broad enough to include a person who is acting in a conspiracy, as the term is commonly understood.

Attempt

The Hungarian authorities state that an attempt to commit an intentional crime is “generally punishable”. The relevant section of the Criminal Code is section 16, which states as follows:

The person, who commences the perpetration of an intentional crime, but does not finish it, shall be punishable for attempt.

However, the Hungarian authorities state that it is not possible to apply this provision to the bribery of a foreign public official because the offence already incorporates the notion of an attempt by applying to a promise to give a favour.

2. ARTICLE 2. RESPONSIBILITY OF LEGAL PERSONS

Article 2 of the Convention requires each Party to “take such measures as may be necessary, in accordance with its legal principles, to establish liability of legal persons for the bribery of a foreign public official”.

2.1 Criminal Responsibility

Criminal responsibility of legal persons does not exist in Hungary, and it is very unlikely that this kind of responsibility will be introduced in the near future in view of the opinions of the Supreme Court, general prosecutors and legal scholars.

2.2 Administrative Responsibility

At this time administrative penalties do not exist in relation to legal persons for criminal offences committed by their employees, representatives, etc. The only administrative penalties currently available in relation to legal persons are imposed pursuant to various statutes for the violation of those statutes. The most comprehensive example is Act CXLV of 1997 on the Registration of Companies, Public Company Information and Court Registration Proceedings. Penalties are imposed under this act where, for example, a company enters unlawful data in the Register of Companies. The penalties include a fine between 50,000 and 500,000 HUF, suspension of the company’s resolution for a specific period or a declaration that such resolution is null and void.

The Hungarian authorities also identify Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices, pursuant to which fines without any upper limit may be imposed on companies. They remark that the imposition of such a fine could deprive a company of the profit obtained through an act of bribery. According to Article 9.1, the penalties would apply to both public and private enterprises.

Plans to introduce a comprehensive administrative sanctioning system that were to be finalised by the end of 1999 have been delayed due to a recent change in Government, and a renewed constitutional debate amongst legal experts on whether legal persons should have criminal or civil responsibility for crimes committed on their behalf.

3. ARTICLE 3. SANCTIONS

The Convention requires Parties to institute “effective, proportionate and dissuasive criminal penalties” comparable to those applicable to bribery of the Party’s own domestic officials. Where a Party’s

domestic law does not subject legal persons to criminal responsibility, the Convention requires the Party to ensure that they are “subject to effective, proportionate, and dissuasive non-criminal sanctions, including monetary sanctions”. The Convention also mandates that for a natural person, criminal penalties include the “deprivation of liberty” sufficient to enable mutual legal assistance and extradition. Additionally, the Convention requires each Party to take such measures as necessary to ensure that the bribe and the proceeds of the bribery of the foreign public official are subject to seizure and confiscation or that monetary sanctions of “comparable effect” are applicable. Finally, the Convention requires each Party to consider the imposition of additional civil or administrative sanctions.

3.1/3.2 Criminal Penalties for Bribery of a Domestic and Foreign Official

The corresponding domestic and foreign bribery offences for active bribery employ identical language and carry the following penalties:

- A maximum of 2 years imprisonment for giving or promising a favour to an official person that may influence his/her functioning to the detriment of the public interest.¹⁰
- A maximum of 3 years imprisonment for giving or promising a favour so that the official person violates his/her duty, exceeds his/her competence or otherwise abuses his/her official position.¹¹

The Hungarian authorities indicate that pursuant to the General Part of the Criminal Code, a fine between 3.000 HUF¹² and 10.800.000 HUF may be imposed where the court considers imprisonment to be too severe a penalty for the offence in question. Additionally, a fine between 10.000 HUF and 10.000.000 HUF may be imposed on a person who has been sentenced to imprisonment of a definite term if he/she committed the crime for profit-making or the imposition of a fine would more effectively deter him/her from committing a new crime. A fine cannot be imposed as a supplementary punishment where property has been confiscated.

Section 83 provides sentencing “principles” on the imposition of imprisonment. These include the principle that punishment shall be imposed “consistent with the danger to society represented by the nature of the criminal act and by the perpetrator, with the degree of culpability and with other aggravating and mitigating circumstances”. Pursuant to subsection 87(1), it is possible to impose a penalty of imprisonment lower than the minimum term prescribed for a particular offence if it is too severe in view of the principles under section 83. However, subsection 87(2) stipulates that where the term prescribed is between 2 to 8 years (as is the case with respect to bribery of a foreign public official), a term of least 1 year and 6 months of imprisonment must be imposed.

3.3 Penalties and Mutual Legal Assistance

The Hungarian authorities state that the penalties of deprivation of liberty for the foreign bribery offence are sufficient to enable mutual legal assistance. There is no limit concerning imprisonment in either Act XXXVIII on International Legal Assistance in Criminal Matters or in the Council of Europe Convention.

10. See subsection 253(1) of the Criminal Code for the domestic bribery offence and subsection 258/B (1) for the foreign bribery offence.

11. See subsection 253(2) of the Criminal Code for the domestic bribery offence and subsection 258/B (2) for the foreign bribery offence.

12. 1 U.S. dollar was valued at 241.88 Hungarian Forints (HUF) on 13 October 1999.

3.4 Penalties and Extradition

The Hungarian authorities state further that the penalties of deprivation of liberty for the foreign bribery offence are sufficient to enable extradition. Pursuant to subsection 11(2) of Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters, extradition is permitted in respect of offences that are punishable by “at least 1 year” imprisonment under the laws of Hungary and the requesting state.

3.5. Non-criminal Sanctions applicable to Legal Persons

At this time administrative sanctions are not available for the offence of bribing a foreign public official. This issue is discussed under 2.2 on “Administrative Responsibility”.

3.6 Seizure and Confiscation of the Bribe and its Proceeds

The Hungarian authorities explain that the amendment to the Criminal Code for the purpose of implementing the Convention also modified the provisions on confiscation. These amendments were made for the purpose of broadening the range of property that can be confiscated and removing the discretion for the imposition of a confiscation order.¹³ Furthermore, the amendments remove the previous requirement that the crime be committed “with the aim of profit-making”. The amendments have not changed the requirement that confiscation be ordered “in addition to imprisonment”.

Pursuant to subsection 62(1), a person subject to imprisonment shall be subject to the confiscation of property that was “derived from the commission of the act of crime, (or) which was obtained by the perpetrator during or in connection with the commission of the crime”. The Hungarian authorities indicate that the proceeds of bribery would be subject to confiscation pursuant to this provision.

Pursuant to paragraph 77(1)(a), “the thing...that has been used or designated as an instrument for the perpetration of a crime” shall be confiscated. And pursuant to subsection 77(2), a “pecuniary/material object” that was used for committing a crime or was “intended” to be used in the commission of a crime shall be confiscated. The Hungarian authorities indicate that the bribe is subject to confiscation pursuant to these provisions.

Subsection 63(1) provides that all or part of the property concerned is subject to confiscation, and clarifies that money is also subject to confiscation. Subsection 62(2) clarifies that property obtained to replace the original property derived from the commission of a crime can be confiscated.

Subsection 63(2) permits the confiscation of property from a third party, where he/she obtained the property with knowledge of its “origin”. (Before the amendments the transferee had to have knowledge of the “aim of the transfer”.) And where a third party has bona fide possession of the property, “confiscation of property shall be ordered in a definite amount of money”. (This option was not available before the amendments.)

Additionally, subsection 77/A (1) provides that where confiscation of a “pecuniary/material object” cannot be executed, or the “pecuniary advantage” is not in the form of an object, the perpetrator shall be ordered to pay an amount equal to the value of the object or advantage. Subsections 77/A (2) and (3) provide for the payment of an amount equal to the value of the object or advantage instead of

13. Before the amendments, confiscation was only mandatory in relation to the crime of establishing a criminal organisation or a crime that was committed through participation in a criminal organisation (where this constituted an aggravating circumstance).

confiscation where confiscation would create an undue hardship in view of the gravity of the crime, or in view of the hardship this would impose on the owner (where it is not the perpetrator). Subsection 77/A (4) provides discretion in certain cases to not order confiscation or to order only partial confiscation where confiscation would be an undue hardship in view of the gravity of the offence.

Moreover, pre-trial seizure is available under Act 1 of 1973 on Criminal Procedure. Subsection 101(1) provides for the seizure of an object that is evidence of a crime, and section 106 provides for the “attachment” of property to secure its availability for confiscation in the event that confiscation may be ordered.

3.8 Civil Penalties and Administrative Sanctions

Subsection 23(1) of Act CXLIV of 1997 on Business Associations provides that a person who has been sentenced to imprisonment for the commission of a crime may not act as an executive officer until “relieved from the detrimental legal consequences related to his criminal record”. The legal consequences continue for 3 years after the serving of a punishment or the expiration of a sentence where a term of imprisonment of 1 year was imposed for an intentional crime; they continue for 5 years where a term of imprisonment exceeding 1 year was imposed for an intentional crime.

4. ARTICLE 4. JURISDICTION

The Criminal Code contains the following provisions on jurisdiction:

Section 3

(1) Hungarian law shall be applied to crimes committed in Hungary, as well as to acts committed by Hungarian citizens abroad, which are crimes in accordance with Hungarian law.

(2) The Hungarian law shall also be applied to criminal acts committed on board of Hungarian ships or Hungarian aircraft situated outside the borders of the Republic of Hungary.

Section 4

(1) Hungarian law shall also be applied to acts committed by non-Hungarian citizens abroad, if they are

a) criminal acts in accordance with Hungarian law and are also punishable in accordance with the law of the place of perpetration,

b) criminal acts against the state (Chapter X), regardless of whether it is punishable in accordance with the law of the place of perpetration,

c) crimes against humanity (Chapter XI) or any other crime, the prosecution of which is prescribed by an international treaty.

(2) In the cases of subsection (1), the institution of the criminal proceedings shall be ordered by the Attorney General.

4.1 Territorial Jurisdiction

Article 4.1 of the Convention requires each Party to “take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in

whole or in part in its territory”. Commentary 25 on the Convention clarifies that “an extensive physical connection to the bribery act” is not required.

Subsection 3(1) of the Criminal Code establishes jurisdiction over crimes committed in Hungary, including the offence of bribing a foreign public official. It does not expressly state that jurisdiction is established if an offence is committed in whole or in part in Hungary, but the Hungarian authorities state that according to the commentaries to the Criminal Code, an offence is committed in Hungary if any element of the crime is committed in Hungary or the result of the crime is realised in Hungary.

4.2 Extraterritorial Jurisdiction

4.2.1 Nationality Jurisdiction

Article 4.2 of the Convention requires that where a Party has jurisdiction to prosecute its nationals for offences committed abroad it shall, according to the same principles, “take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official”. Commentary 26 on the Convention clarifies that where a Party’s principles include the requirement of dual criminality, it “should be deemed to be met if the act is unlawful where it occurred, even if under a different criminal statute”.

Subsection 3(1) of the Criminal Code establishes jurisdiction over acts committed by Hungarian citizens abroad that are crimes under Hungarian law. The Hungarian authorities do not indicate that there is a requirement of dual criminality.

4.2.2 Extraterritorial Jurisdiction over non-Nationals

Paragraph 4(1)(a) of the Criminal Code establishes jurisdiction over acts committed by non-Hungarian citizens abroad that are crimes under Hungarian law and under the law of the place where they took place. The requirement of dual criminality is deemed to be met regardless of what the offence is called. In addition, paragraph 4(1)(c) establishes extraterritorial jurisdiction over non-Hungarian citizens for crimes against humanity and any other crime, “the prosecution of which is prescribed by international treaty”. There is no requirement of dual criminality pursuant to paragraph (c).

The Hungarian authorities confirm that Hungary has jurisdiction over a non-Hungarian who works for a Hungarian company and bribes a foreign public official abroad, and indicate that paragraph 4 (1)(a) and (c) are relevant thereto.

4.3 Consultation Procedures

Article 4.3 of the Convention requires that where more than one Party has jurisdiction, the Parties involved shall, at the request of one of them, consult to determine the most appropriate jurisdiction for prosecution.

Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters contains provisions that establish the circumstances under which it is “advisable” to transfer proceedings to another state and the procedure to be followed.

Subsection 37(1) states that proceedings may be surrendered where it is “advisable” that the proceedings be conducted in a different state. Subsection 37(2) provides further that “surrender of

criminal proceedings, with due consideration of the rights of the injured party, is advisable in particular” in the following cases:

- Where the suspect is in Hungary and is a citizen of the state to which proceedings are being surrendered or has his/her permanent residence or usual residence in the state to which proceedings are being surrendered.¹⁴
- Where the suspect is in a foreign state during the proceedings and there is no possibility of extradition, or extradition has not been granted or requested.¹⁵

Further provisions include those that establish the procedure for proposing a surrender of proceedings¹⁶; terminating proceedings in Hungary when the authorities of a foreign state accept a transfer of proceedings¹⁷; and arresting the suspect for the purpose of surrendering him/her to the foreign state¹⁸.

4.4 Review of Current Basis for Jurisdiction

Article 4.4 of the Convention requires each Party to review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials, and if it is not, to take remedial steps.

The Hungarian authorities state that its current basis for jurisdiction is broad enough for the effective fight against the bribery of foreign public officials.

5. ARTICLE 5. ENFORCEMENT

Article 5 of the Convention states that the investigation and prosecution of the bribery of a foreign public official shall be “subject to the applicable rules and principles of each Party”. It also requires that each Party ensure that the investigation and prosecution of the bribery of a foreign public official “shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved”.

5.1 Rules and Principles Regarding Investigations and Prosecutions

The rules and principles for investigations and prosecutions are contained in the Act on Criminal Procedure. They require that the police or a public prosecutor order an investigation where there is a “well-founded suspicion” that a crime has been committed or that a particular individual has committed a crime. Before an investigation is formally ordered, it is only possible to conduct an investigation in cases where a delay would produce a risk, as would be the case where a suspect is hiding or a new crime may be committed.

At the end of the investigation, the investigating authority shall send the documents from the investigation to the prosecutor, who shall review them and within 15 days either lay a charge, order further investigation, or suspend or terminate the investigation.

14. Paragraph 37(2)(a) of *Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters*.

15. Paragraph 37(2)(b) of *Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters*.

16. Section 38 of *Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters*.

17. Section 39 of *Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters*.

18. Section 40 of *Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters*.

An investigation or prosecution shall be suspended in the following cases:

- The suspect cannot be located.
- A court or authority in another jurisdiction must determine a preliminary question.
- A decision must be obtained in relation to diplomatic or personal immunity, the prosecution of a judge or prosecutor or the institution of proceedings against a non-Hungarian citizen who has committed an offence abroad.
- It is impossible to continue an investigation due to the suspect's mental condition.

Discretion exists to suspend an investigation or prosecution in the following cases:

- The suspect remains abroad without violating the law.
- It is necessary to monitor the suspect's mental condition.
- The suspect is suffering from a serious illness.
- Legal assistance will be obtained from a foreign authority.

An investigation or prosecution shall be terminated in the following cases:

- The act in question does not constitute a criminal offence, or the suspect has not committed it.
- It will not be possible to establish the identity of the perpetrator.
- There is a ground for "preclusion or termination of punishability". Grounds for "preclusion" include infancy, insanity, error, justifiable defence, extreme necessity and absence of a private motion. Grounds for "termination of punishability" include the death of the perpetrator, the danger to society of the act is negligible or was eliminated and remission.
- The case has already been tried and cannot be appealed (*res judicata*).

Injured parties (i.e. persons whose rights or interests were affected by the decision of the prosecutor to not prosecute an alleged offence) may submit a complaint to the prosecutorial authorities.

5.2 Considerations such as National Economic Interest

The Hungarian authorities state that neither the investigation nor the prosecution of the offence of bribing a foreign public official could be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

6. ARTICLE 6. STATUTE OF LIMITATIONS

Article 6 of the Convention requires that any statute of limitations with respect to the bribery of a foreign public official provide for "an adequate period of time for the investigation and prosecution" of the offence.

Pursuant to paragraph 33(1)(b) of the Criminal Code, the statute of limitations for an offence that is not punishable by life imprisonment is the period equal to the upper limit of the punishment, but not less than 3 years. Thus the limitation period in relation to the offence of bribing a foreign official is 3 years regardless if the briber is subject to the maximum term of imprisonment of 2 years under subsection 258/B(1) or 3 years under subsection 258/B (2).¹⁹

19. See the discussion under 3.1/3.2 on "Criminal Penalties for Bribery of a Domestic and Foreign Official" on the 2 different terms of imprisonment for the foreign bribery offence.

In the case of a finished crime, the limitation period begins to run on the day when the “legal facts are realised”. Pursuant to subsection 35(1) of the Criminal Code, when criminal proceedings are “effectuated”, the limitation period restarts on the day of interruption. This means that the limitation period is restarted by every investigative act initiated by the relevant authorities in relation to the suspect of a crime. There is no limit to the length of the extension of the limitation period in the case of an interruption.

Pursuant to subsection 35(2), if criminal proceedings are suspended, the period of suspension shall not be included in the period of time of prescription. This provision may not be applied where criminal proceedings are suspended because the suspect stays at an unknown place, or has become mentally ill.

7. ARTICLE 7. MONEY LAUNDERING

Article 7 of the Convention requires that where a Party has made bribery of a domestic official a predicate offence for the application of money laundering legislation, it must do so on the same terms for bribery of a foreign public official, regardless of where the bribery occurred.

7.1/7.2 Domestic and Foreign Bribery

The Hungarian authorities state that the bribery of a domestic and foreign official was established as a predicate offence for the application of the money laundering offence on 1 March 1999. Pursuant to subsection 303(1), offences that are subject to a minimum term of imprisonment of 5 years are considered predicate offences. Additionally, there is a short list of offences that are considered predicate offences independent of the term of imprisonment that they carry. The Hungarian authorities explain that the offence of bribing a foreign public official as well as the domestic bribery offences (both passive and active bribery) was added to this list as part of the amendments.

In summary, the money laundering provisions apply as follows:

Subsection 303(1) applies to a person who conceals the “pecuniary assets gained in connection with the perpetration of a crime...committed by somebody else”. The Hungarian authorities state that “theoretically” this provision could apply to either the bribe or the proceeds. However, there is no case law in this regard.

Pursuant to subsection 303(1), the money laundering offence applies to a person who conceals the pecuniary assets by disguising their nature or providing the authorities with false information about their true origin. This offence is restricted in application to a person other than the perpetrator of the predicate offence. It does not apply to “self-laundering”. Subsection 303(2) extends liability to a person who obtains, uses, handles, converts or performs any financial or banking operation with the assets if he/she had knowledge of the origin of the assets at that time. Under both subsections the penalty is a maximum of 5 years imprisonment.

Under subsection 303(3) the penalty is increased where the money laundering is committed like a business enterprise or as part of a criminal organisation. The increased penalty is also applied to other persons who hold positions of trust, including officers and employees of financial institutions, official persons and attorneys.

Subsections 303(4) to (6) impose a penalty of a maximum of 3 years imprisonment on financial service providing organisations, etc. that fail to fulfil their reporting obligations under Act XXIV of 1994 on the Prevention of Money Laundering.

The Hungarian authorities state that the money laundering provisions apply regardless if the predicate offence of bribing a foreign public official takes place in Hungary or abroad.

8. ARTICLE 8. ACCOUNTING

Article 8 of the Convention requires that within the framework of its laws and regulations the maintenance of books and records, financial statement disclosures and accounting and auditing standards, a Party prohibits the making of falsified or fraudulent accounts, statements and records for the purpose of bribing foreign public officials or of hiding such bribery. The Convention also requires that each Party provide for persuasive, proportionate and dissuasive penalties in relation to such omissions and falsifications.

8.1 Accounting and Auditing Requirements

Act XVIII of 1991 on Accounting contains reporting and bookkeeping obligations, as well as disclosure, publication and audit requirements. Its aim is to provide an authentic and true overall picture in respect of the income producing capability, the development of the assets, the financial situation and the future plans of the entities falling under the effect of the Act.

8.1.1 Accounting Requirements

Subsection 15(2) of the Act on Accounting states that an “economic organisation” shall enter into its books all the economic events of the year and the effect these events have on its assets and liabilities. An “entrepreneur” (see definition below under 8.2) is required to keep double-entry books and ensure that the books reflect economic events that become known after the end of the accounting year but before the preparation of the balance-sheet.

Subsection 15(3) requires economic organisations to comply with the principle of authenticity, which requires that items entered in the books are verifiable.

Pursuant to subsection 15(13) economic organisations are obliged to follow the principle of content over form, and, therefore, must ensure that the recordings of transactions reflect their true nature.

Additionally, pursuant to subsection 83(1) a certificate must be prepared in relation to all economic transactions that change inventory or the composition of assets, or the sources thereof and the data on the certificate must be entered into the bookkeeping register.

Pursuant to Act CXI of 1996 on the Offering of Securities, Investment Services and on the Stock Exchange, companies whose shares are traded on the Stock Exchange have a more detailed and frequent information providing obligation. Companies that issue bonds or other securities are also subject to more onerous data providing obligations.

The Hungarian authorities indicate that the tax provisions contain detailed regulations concerning accounting, verification and registration of incomes and losses of enterprises. They add that the Act on Corporate Tax and Dividend Tax contains accounting regulations that are much stricter than those under the Act on Accounting.

8.1.2 Auditing Requirements

“Entrepreneurs” other than “private entrepreneurs” are required under section 73 of the Act on Accounting to commission a registered auditor to audit their annual reports.

The Hungarian authorities state that sections 29 and 30 of Act LV of 1997 on Auditors and Auditing Activities ensure the independence of external auditors.

8.2 Companies Subject to the Accounting and Auditing Requirements

According to subsection 2(2) of Act XVIII of 1991 on Accounting, the accounting requirements apply to the following entities:

1. Entrepreneurs
2. Economic organs operating on the Central Budget
3. Other organisations
4. The National Bank of Hungary

The Hungarian authorities explain that “entrepreneurs” are defined under subsection 3(1) as “all legal entities and economic organisations without legal entity” that perform on their own behalf and at their own risk business-like activities for the purpose of making a profit. These include credit institutions, financial enterprises, investment enterprises and insurance companies.

8.3 Penalties

Section 88 of Act XVIII of 1991 on Accounting provides that a violation of the accounting rules is subject to liability under the Civil Code provisions on general liability, the Criminal Code and the Act on Petty Offences. Subsection 88(3) states that where the tax authorities establish that the annual report or simplified annual report published according to subsection 72(4) does not comply with the provisions under the Accounting Act, a default fine may be imposed on the entrepreneur according to the Act on the Rules of Taxation.

Section 289 of the Criminal Code subjects a person to a maximum term of imprisonment of 2 years for violating the rules in the Act on Accounting on reporting, bookkeeping, certificates or other obligations where he/she makes “impossible or difficult” the “survey or inspection of his/her property situation”. The commentary on the Criminal Code clarifies that the offence is completed where the perpetrator makes it impossible to overview all or part of his/her property. The condition is not satisfied where the acts of the perpetrator cause temporary difficulties, or unnecessary work, etc. For example, a crime would be committed where a person does not provide exact data and information regarding his/her financial situation, hides the relevant documents and invoices and thereby causes significant difficulties for the authorities to complete their overview.

9. ARTICLE 9. MUTUAL LEGAL ASSISTANCE

Article 9.1 of the Convention mandates that each Party cooperate with each other to the fullest extent possible in providing “prompt and effective legal assistance” with respect to the criminal investigations and proceedings, and non-criminal proceedings against a legal person, that are within the scope of the Convention.

In addition to the requirements of Article 9.1, there are two further requirements with respect to criminal matters. Under Article 9.2, where dual criminality is necessary for a Party to be able to

provide mutual legal assistance, it shall be deemed to exist if the offence for which assistance is sought is within the scope of the Convention. And pursuant to Article 9.3, a Party shall not decline to provide mutual legal assistance on grounds of bank secrecy.

9.1 Laws, Treaties and Arrangements Enabling Mutual Legal Assistance

9.1.1/9.2 Criminal Matters/Dual Criminality

Hungary is a member of all the relevant European treaties on mutual legal assistance and has concluded mutual legal assistance treaties with Canada, U.S.A. and Australia. In addition, Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters shall apply “unless otherwise stipulated by an international treaty”.

Pursuant to paragraph 5(1)(a) of the Act on International Legal Assistance in Criminal Matters, mutual legal assistance may only be provided where the act in question “is punishable according to both Hungarian law and the law of the foreign state”. The Hungarian authorities state that where the requirement of dual criminality is not satisfied, mutual legal assistance may be granted if reciprocity is guaranteed by the requesting state. Subsection 6(1) provides that the Minister of Justice “may request statements of reciprocity from foreign states”. Moreover, pursuant to subsection 6(2), where there is no reciprocity the Minister of Justice or the Chief Public Prosecutor, in agreement with the Minister of Foreign Affairs, may decide to provide mutual legal assistance.

Hungary explains that where the offence is within the scope of the Convention, dual criminality should exist if the requesting Party has fulfilled its obligation under the Convention in establishing the offence.

The forms of mutual legal assistance that can be provided under the Act on International Legal Assistance in Criminal Matters include extradition, surrender or acceptance of criminal proceedings, surrender or acceptance of sentences of imprisonment or enforcement of such measures, and procedural assistance.

9.1.2 Non-Criminal Matters

Hungary cannot provide mutual legal assistance to Parties requesting assistance in relation to non-criminal proceedings against legal persons.

9.3 Bank Secrecy

The Hungarian authorities state that it is not possible to decline to render mutual legal assistance for criminal matters within the scope of the Convention on the ground of bank secrecy. They provide the relevant provisions on bank secrecy in Act CXII of 1996 on Credit Institutions and Financial Enterprises in support thereof.

Section 51 of Act CXII sets out the circumstances under which “bank secrets” may be disclosed to third parties. Pursuant to paragraph 51(2)(d) of Act CXII, the obligation of bank secrecy does not apply “in respect of investigating authorities and the prosecution, acting in a pending criminal procedure and carrying out the complementation of a denunciation”. This provision would appear to permit the lifting of bank secrecy in relation to the investigation by the Hungarian authorities of criminal offences. However, it does not expressly apply to requests from foreign states for assistance in investigations and prosecutions.

Additionally, paragraph 52(d) requires that financial institutions immediately release bank account data upon the written application of the “investigating authorities, the national security service and the prosecution”, if there is any evidence that the account is associated with the trade of narcotics, terrorism, illegal arms trading, money laundering or organised crime. Not only is foreign bribery not included in the list, the provision does not expressly apply to requests from foreign states.

10. ARTICLE 10. EXTRADITION

10.1/10.5 Extradition for Bribery of a Foreign Public Official/Dual Criminality

Article 10.1 of the Convention obliges Parties to include bribery of a foreign public official as an extraditable offence under their laws and the treaties between them. Article 10.4 of the Convention states that where a Party makes extradition conditional on the existence of dual criminality, it shall be deemed to exist as long as the offence for which it is sought is within the scope of the Convention.

Pursuant to subsection 11(2) of Act XXXVIII, extradition is “permitted for the purposes of conducting criminal proceedings, if the act on the grounds of which extradition is requested is punishable under the laws of both Hungary and the requesting state by imprisonment of at least 1 year”. Hungary indicates that the condition of dual criminality should be satisfied if the offence is within the scope of the Convention, and the requesting Party has fulfilled its obligation under the Convention in establishing the offence.

In addition, pursuant to section 12, extradition is not permitted where the relevant limitation period has expired in Hungary or the requesting State; the person sought for extradition has been pardoned; a final judgement has already been passed by a Hungarian court; or a “private motion or motion of similar effect” required for initiating criminal proceedings in the requesting State has not been filed or consent thereto has not been granted.

10.2 Legal Basis for Extradition

Article 10.2 states that where a party that cannot extradite without an extradition treaty receives a request for extradition from a Party with which it has no such treaty, it “may consider the Convention to be the legal basis for extradition in respect of bribery of a foreign public official”.

The Hungarian authorities state that in the absence of an extradition treaty they would consider the Convention as a legal basis for extradition in respect of the foreign bribery offence. From this response it would appear that a treaty is normally required for extradition. However, there is no provision to this effect in the Act on International Assistance in Criminal Matters.

10.3 Extradition of Nationals

Article 10.3 of the Convention requires Parties to ensure that they can either extradite their nationals or prosecute them for the bribery of a foreign public official. And where a Party declines extradition because a person is its national, it must submit the case to its prosecutorial authorities.

Subsection 13(1) of the Act on International Assistance in Criminal Matters only permits the extradition of Hungarian citizens that are citizens and permanent residents of another State. Subsection 13(2) contains a very narrow exception to subsection 13(1) in that it permits the extradition of Hungarian citizens where they were extradited to Hungary under the condition that they would be extradited to a foreign state following completion of criminal proceedings or a sentence in Hungary.

The Hungarian authorities explain that although the general rule is that Hungarian citizens cannot be extradited, since Hungary exercises jurisdiction over acts committed by Hungarian citizens abroad, these cases would be prosecuted in Hungary.

11. ARTICLE 11. RESPONSIBLE AUTHORITIES

Article 11 of the Convention requires Parties to notify the Secretary-General of the OECD of the authority or authorities acting as a channel of communication for the making and receiving of requests for consultation, mutual legal assistance and extradition.

Hungary has notified the Secretary-General of the OECD that the Ministry of Justice is the authority responsible for the matters listed in Article 11.

B. IMPLEMENTATION OF THE REVISED RECOMMENDATION

3. TAX DEDUCTIBILITY

The Hungarian authorities state that bribes to foreign public officials are not tax deductible in Hungary. The relevant provisions in Act CXVII of 1995 on Personal Income Tax and Act LXXXI of 1996 on Corporate Tax and Dividend Tax have been provided in support thereof.

Section 4 the Act on Personal Income Tax states as follows:

Only expenses directly connected to income earning activities, actually paid during the calendar year exclusively for the purpose of generating revenues and for pursuing the activities, which are duly substantiated shall qualify as expenses, unless this Act defines an item as an expense irrespective of the actual payment of the expenditure.

A list of the allowable deductions from the consolidated tax base is provided in Chapter VIII. They are as follows:

- Allowances on social security, private pension fund and voluntary mutual insurance fund payments.
- Tuition allowances.
- Allowances for housing purposes.
- Allowances on certain activities.
- Personal and family allowances.
- Allowances on charitable donations.
- Allowances on insurance contracts.

Pursuant to section 1 of Act LXXXI of 1996 on Corporate Tax and Dividend Tax, a corporation may use any rule that provides a tax advantage or tax relief to the extent that it can demonstrate that it is applicable to a particular “legal transaction”. The Act provides a list of allowable expenses, which includes food, drinks and additional services provided in the course of business hospitality; business gifts; expenses for commemorative events related to state holidays at the workplace, anniversaries and social events, members’ meetings, general meetings, meetings of the board of directors and of the board of supervisors.

Evaluation of Hungary - Phase 1

General Remarks

The Working Group compliments Hungary for its rapid ratification and implementation of the Convention into Hungarian law by adding to the Criminal code a new title “Crimes Against the Integrity of International Public Life”. The Working Group also appreciates Hungary’s thorough responses to the questions raised during the evaluation process. While several questions raised by the Working Group have been answered satisfactorily during the evaluation process, the following points merit further consideration.

Specific Issues

Article 1: Elements of the Offence

Section 258B/3 of the Hungarian Criminal Code provides a defence in the case of the bribe being given upon the initiative of the public official because the briber feared unlawful disadvantage in case of his refusal. Although this defence is applicable also to the domestic crime and there is no known case law, it could present a potential loophole for effective implementation of the Convention and raises concerns in the Working Group. The Working Group therefore recommends that Hungary examine this issue with a view to eliminating the defence.²⁰

Article 2: Responsibility of Legal Persons

The Hungarian legal system, including the implementing legislation, does not provide for either criminal or non-criminal liability of legal persons for bribery. The Working Group, while taking note that the Hungarian authorities are aware of the problem and are studying the introduction of appropriate solutions, considers that the absence of implementing legislation currently results in a lack of conformity with the Convention. The Working Group urges Hungary to proceed as soon as possible with the enactment of appropriate legislation in order to fully comply with the provisions of the Convention. This issue is also relevant for the provision of mutual legal assistance.²¹

Article 3: Sanctions

During the discussions, doubts were raised whether the provisions on confiscation could be efficiently applied in all cases of bribery covered by the Convention as confiscation of the proceeds of bribery (as defined in the Convention) in the Hungarian legislation is dependent on the imposition of imprisonment for bribery offences. In the case where only a fine is imposed, the result would be that such confiscation would not be possible.²²

20. Following adoption of this report, this defence was eliminated by Act CXXI of 2001 amending the Criminal Code, which no longer contains exceptions nor special legal means for escaping criminal liability for a foreign bribery offence.

21. Criminal liability of legal persons was introduced in Hungarian law by Act CIV of 2001 on Measures Applicable to Legal Entities under the Criminal Code, which will enter into force at the same time as the Act publishing the international instrument on Hungary’s accession to the European Union. (See Phase 1bis)

22. The condition of imposition of imprisonment as a prerequisite for application of measures of confiscation of assets was eliminated by Act CXXI of 2001 amending the Criminal Code. (See Phase 1bis)

Article 6: Statute of Limitations

The Working Group expressed concern that the three-year limitation period in Hungary for bribery of foreign public officials could be short. The Hungarian delegation explained that the law provides for instances of interrupting the period of limitation during criminal proceedings. This means that the limitation period is restarted by every investigative act of the relevant authorities effectuated against the suspect of the crime. There is no limit to the length of the extension of the limitation period in the case of an interruption.²³

Article 6 of the Convention requires an adequate period of time for investigation and prosecution. The Working Group took note of the explanation given by the Hungarian delegation but considers the question, as pointed out in previous evaluations, to be a general issue for a comparative analysis of the legal situation in Member countries.²⁴

23. Act CXXI of 2001 amending the Criminal Code introduced a new reason for suspending the statute of limitations: immunity of members of parliament and other persons, which is only effective during their term of office and does not constitute a permanent obstacle to criminal proceedings. Consequently, the statute of limitations does not run during the period of immunity, and, once the immunity has ended, the competent authorities may initiate criminal proceedings against the suspect.

24. The statute of limitations was partially extended by Act CXXI of 2001 amending the Criminal Code. As the penalties of imprisonment have been modified, the statute of limitations for the offence provided for in Article 258/B paragraph 2 (favour so that the foreign official person violates his official duty, exceeds his competence or otherwise abuses his official position) has been extended from three to five years. However, the statute of limitations for offences provided for in paragraph 1 (favour in connection with the functioning of a foreign official person) remains three years.