

## HUNGARY

### REVIEW OF IMPLEMENTATION OF THE CONVENTION AND 1997 RECOMMENDATION

#### PHASE 1 BIS REPORT

*February 2003*

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#### **A. INTRODUCTION**

1. General remarks
2. Methodology and structure of the report

#### **B. NEW PROVISIONS ADOPTED IN ORDER TO COMPLY WITH THE PHASE 1 EVALUATION**

1. The elements of the offence – defences
2. The liability of legal persons
  - 2.1. The criminal liability of legal persons
    - Legal entities subject to criminal liability
    - Meaning of criminal liability
    - Implementation of the criminal liability
  - 2.2. The criminal liability of legal persons and provisions on granting of mutual legal assistance
  - 2.3. The criminal liability of managers of businesses
    - Links between the criminal liability of managers and the criminal liability of legal persons
3. Sanctions
  - 3.1. Sanctions applicable to legal persons
  - 3.2. Confiscation and confiscation of assets
4. Statute of limitations
  - 4.1. Partial extension of the statute of limitations
  - 4.2. Immunity, a new reason for suspending the statute of limitations

#### **C. OTHER LEGISLATIVE CHANGES THAT HAVE HAD AN IMPACT ON ANTI-BRIBERY PROVISIONS**

1. Elements of the offence
  - 1.1. In order that the official act or refrain from acting in relation to the performance of official duties
  - 1.2. An undue advantage
    - To the detriment of the public interest
    - The presumed influence on the functioning of the foreign public official
  - 1.3. The definition of a foreign public official
    - The content of the definition of a foreign public official
2. Sanctions - Penalties of imprisonment for natural persons

## **D. EVALUATION**

### **ANNEXES:**

- Previous and new definitions of the offence of active bribery of a foreign public official
- Previous and new definitions of the notion of foreign public official

## **A. INTRODUCTION**

### **1. General remarks**

The Hungarian legislation implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which entered into force on 1 March 1999, was reviewed by the Working Group on Bribery in International Business Transactions at the meeting held from 25 to 27 October 1999.

The evaluation adopted by the Working Group focused in particular on the following: a defence applicable to the foreign bribery offence, the absence of liability of legal persons, the level of sanctions and the statute of limitations for public action. The Working Group made several recommendations on possible legislative work to ensure full compliance with the standards laid down by the Convention.

In light of the recommendations made by the Working Group at its 1999 evaluation and with a view to complying with the obligations of the Convention, the Hungarian government has revised its legislation by making amendments to the Criminal Code and passing a new law on the criminal sanctions applicable to legal persons.

*Act CXXI of 2001 amending the Criminal Code* was adopted by Parliament on 18 December 2001, published in the Official Gazette on 28 December 2001, and entered into force on 1 April 2002. *Act CIV of 2001 on Measures Applicable to Legal Entities under the Criminal Code* was adopted by Parliament on 11 December 2001, published on 24 December 2001 and will become effective at the time of the entry into force of the Act publishing the international instrument of Hungary's accession to the European Union (circa 2004).

### **2. Methodology and structure of the report**

The purpose of Phase 1 bis of the monitoring process is to review the progress made by Hungary in complying with the Working Group's recommendations since the adoption of the Phase 1 report, with a view to assessing the implementation of the Convention. The Phase 1 bis report is not intended to replace the Phase 1 report but rather to supplement it, since the Phase 1 report and evaluation remain valid and continue to represent the Working Group's views, inasmuch as they have not been altered by the Phase 1 bis report. Consequently, both reports must be read in conjunction in order to obtain an overview of the Hungarian legislation on combating bribery of foreign public officials.

This report will begin by reviewing the issues raised by the evaluation of the Working Group (B), and will then examine the other amendments that have had an impact on the anti-bribery provisions (C). For each issue a summary of the previous legislative situation and the Working Group's evaluation will precede an analysis of the new legislative provisions introduced by the Acts of 2001. Lastly, this review is supplemented by an evaluation of the new Hungarian legislative provisions on combating bribery of foreign public officials (D).

## **B. NEW PROVISIONS ADOPTED IN ORDER TO COMPLY WITH THE PHASE 1 EVALUATION**

### **1. The elements of the offence – defences**

The former Article 258B, paragraph 3, of the Hungarian Criminal Code in force at the time of Hungary's Phase 1 review specified that "The perpetrator of the crime [of active bribery of a foreign public official] 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."

The Working Group considered that although this defence was also applicable to domestic crime and there was no known case law, it could have presented a potential loophole for effective implementation of the Convention, which had raised concerns in the Working Group. The Working Group had therefore recommended that the Hungarian authorities examine this issue with a view to eliminating this provision.

Hungary has responded to this concern, since this defence has been eliminated by Act CXXI of 2001 amending the Criminal Code. Furthermore, the Hungarian authorities state that the new legislation contains no exceptions and that there are no special legal means for escaping criminal liability for a foreign bribery offence.

### **2. The liability of legal persons**

Article 2 of the OECD Convention lays down that "Each Party shall take such measures as may be necessary to establish the liability of legal persons for the bribery of a foreign public official". It was observed in the Phase 1 evaluation carried out in October 1999 that Hungarian law, including the legislation implementing the Convention, does not provide for either criminal or non-criminal liability of legal persons for bribery. The Working Group, considering that this situation resulted in a lack of conformity of Hungarian legislation with the Convention, urged the Hungarian authorities to proceed as soon as possible with the enactment of the appropriate legislation in order to comply fully with the provisions of the Convention. Since then, two laws have been enacted. *Act CIV of 2001 on Measures Applicable to Legal Entities under the Criminal Code* introduced the concept of the criminal liability of legal persons, while *Act CXXI of 2001 amending the Criminal Code* introduced the criminal liability of managers of businesses.

#### **2.1 The criminal liability of legal persons**

*Act CIV of 2001 on Measures Applicable to Legal Entities under the Criminal Code* was adopted by Parliament on 11 December 2001 and published in the official gazette on 24 December 2001. It will enter into force at the same time as the Act publishing the international instrument on Hungary's accession to the European Union. Hungary is scheduled to join the European Union before the European Parliamentary elections of June 2004. This postponement of the entry into force of Act CIV of 2001 in any event delays the compliance of Hungarian law with the provisions of the Convention on the liability of legal persons. The Hungarian authorities have explained that the purpose of this postponement was, on the one hand, to allow judicial authorities and law practitioners to acquire training<sup>1</sup>, and, on the other hand, to take into account possible commentaries or recommendations before the entry into force of the new law.

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1. The Hungarian authorities have indicated that conferences have already been organised and commentaries already drafted and publicised.

Section 2 of Act CIV introduces the criminal liability of legal persons for any intentional breach of the Criminal Code, and thus also for the offence of the active bribery of foreign public officials provided for in Article 258/B of the Code. Section 2 provides:

- “(1) The measures defined in the present Act are applicable to legal entities in the event of the commission of any wilful criminal act defined in Act IV of 1978 on the Criminal Code (CC) if the perpetration of such an act was aimed at or has resulted in the legal entity gaining financial advantage, and the criminal act was committed by
- a) the legal entity’s member or officer entitled to manage or represent it, its supervisory board member and/or their representatives, within the legal entity’s scope of activity,
  - b) its member or employee within the legal entity’s scope of activity, and the act could have been prevented by the chief executive by fulfilling his supervisory or control obligations.
- (2) Other than the cases defined in paragraph (1), the measures defined in this Act shall be applicable even if the commission of the criminal act resulted in the legal entity gaining financial advantage and if the legal entity’s member or officer entitled to manage or represent it had knowledge of the commission/perpetration of the criminal act.”

#### *Legal entities subject to criminal liability*

Section 1 of Act CIV defines legal persons as: “... any organisation or organisational units thereof vested with rights of individual representation, which the governing rules of law recognise as legal entities, as well as organisations that can be subject to conditions of civil law in their own right and possess assets distinct from that of their members, including companies active prior to registration pursuant to the Act on Economic Associations”. (See also below, the concepts of economic organisation and of legal persons, paragraphs 40 *et seq.*).

The Hungarian authorities have explained that both *de jure* legal persons and *de facto* legal persons are thus covered by Section 1. According to the Hungarian authorities, since the new act does not distinguish Hungarian legal persons from foreign legal persons, foreign legal persons are subject to criminal liability. Similarly, public enterprises are covered.

The following are excluded from the scope of the Act, and are therefore not subject to criminal liability: “the State of Hungary, foreign States, the institutions listed in the Constitution of the Republic of Hungary, the Office of the National Assembly, the Office of the President of the Republic, the Constitutional Court, the Office of the Ombudsmen, and any bodies which are, according to the law, responsible for tasks of governance<sup>2</sup>, public administration and local government administration, and international organisations established under international agreements.”

The Hungarian authorities have indicated that, among these institutions, only communities are entitled to carry out economic activities. However, a community may not carry out such activities directly, but is legally obliged to create an economic enterprise, which will be subject to criminal liability. Hence, local governments are always excluded from the scope of criminal liability.

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2. There is no legal definition of governance tasks or prerogatives. This term is defined by legal theory and constitutional case law, and covers, in the case, for instance, of a body in charge of matters of public interest, the decisions taken by that body which involve the obligations and rights of the citizens.

### *Nature of criminal liability*

Under Section 2 of Act CIV of 2001, the criminal liability of legal persons has several features. Firstly, liability is indirect (or derived), inasmuch as offences alleged to have been committed by legal persons must have been committed by one or more individual naturalised persons within the entity [Section 2(1)] or by a person outside the legal entity, on the condition that a natural person within this entity was aware of the facts [Section 2(2)]. Secondly, the liability is one of representation and not of substitution: the fact that the criminal liability of legal persons results from acts committed by natural persons cannot serve as a shield for natural persons who also, directly or as an accomplice, commit offences, since the legal person is sanctioned only if the natural person also is, except in case of death or mental illness (Section 3). Lastly, it should be noted that the principle adopted in Hungarian law is that of the cumulative liabilities of natural and legal persons except in cases of death or mental illness of the natural person (Section 3). Action is taken against natural and legal persons in the same proceedings.

### *Invoking criminal liability*

Invoking the criminal liability of legal persons implies that three conditions have been met.

First condition: the gain of a financial advantage for the entity. The purpose [Section 2 (1)] or the result [Section 2 (1) and (2)] of the offence must have been to gain a financial advantage for the legal person. This is defined in Section 1(1)(2) of the CIV Act as “any object, right of pecuniary value, claim or preference irrespective of whether they have been registered pursuant to the Act on Accounting, as well as cases where the legal entity is exempt from expenditure according to an obligation arising from a rule of law or contract or according to the rules of reasonable business management.”

According to the Hungarian authorities, this definition also includes “business or other improper advantage” as provided in the Convention. The authorisation to carry out an activity for a factory which does not meet the regulatory conditions constitutes another improper advantage under the Convention (cf. Commentary 5), and an obligation arising from the law which the legal person is exempt from under Hungarian law. Furthermore, according to the Hungarian authorities, the fact that the legal person is not subject to this obligation and the profit deriving from this, can, most likely, be financially evaluated, and is thus considered to be of a financial nature. Similarly, according to the Hungarian authorities, the fact of obtaining or retaining business, whether the enterprise was or not the best qualified bidder, has a financial value for the enterprise, and could be qualified as a preference. Finally, whether the enterprise was or not the best qualified bidder is irrelevant with respect to qualification under criminal law.

Where the act has been committed by a person not associated with the legal person, a financial advantage must have been actually obtained, and not only sought, by the legal person.

Second condition: the person committing the offence. Several types of person may be involved in the commission of the offence, namely:

- a) one of the members or officers [of the legal entity] entitled to manage or represent it, or a supervisory board member and/or their representatives [Section 2 (1)a)]. The Hungarian authorities have specified that the term “member” includes natural or legal persons which hold a share in the subscribed capital of the legal person (for instance, a shareholder in a corporation). Regarding the concept of “officer”, it is very broad, covering managers, directors of the board, administrators, members of the supervisory board, and the manager (*gérant*). In other words, it covers all the enterprise’s senior executives. An “officer” does not need to be a member of the legal entity, as long as he/she is entitled to manage or represent it.

- b) one of its members or an employee, where there is a failure of supervision on the part of a chief executive with control or supervisory obligations [Section 2(1)b)]. This applies to simple members or employees without any power of management or representation. The Hungarian authorities have indicated that the term “employee” covers any natural person working for the legal person linked to the legal person by a contract of employment. They have specified that the functions of member and employee can be cumulative. The concept of “chief executive” covers some of the officers within the legal entity, the exact scope depending on the type of company. Generally speaking, a chief executive is someone with a power of management: the Chairman, director, manager (gérant), day-to-day executive managers/ directors of the board or, in certain cases, the chairman or members of the supervisory board.
- c) a third person, on condition that a member or an officer entitled to manage or represent the legal entity had knowledge of the facts [Section 2(2)]. In this case, it is not enough for a simple employee or a member of the supervisory board or their representative to have knowledge of the facts.

The Hungarian authorities have explained that the purpose of Section 2(2) is to prevent the legal person from avoiding criminal liability by using a third person -- who commits the offence but has no “visible” contact with the legal person, for example a de facto manager -- to gain a financial advantage. Thus, if a legal person obtains a financial advantage from the commission of an offence, the courts may apply sanctions against this legal person. But there is an important condition: the member or officer entitled to manage or represent the legal entity must have had knowledge of the commission of the offence.

The question arises whether the court will have to determine which natural person within the legal entity was aware of the acts committed by a third person.

According to the Hungarian authorities, acts of corruption committed by a natural person related to a foreign subsidiary can be covered by this provision, if a member or officer entitled to manage or represent the legal entity has had knowledge of the facts, and if the parent company has obtained a financial gain.

The Hungarian authorities have indicated that, although differences may exist between the hierarchical structure of private and public entities, with regard, for instance, to the names of the different bodies, these differences are not such that they would have any consequences for the implementation of Section 2. The Hungarian authorities have indicated that the terms used in Act CIV are sufficiently broad and general to cover the hierarchy and the different bodies and persons entitled to manage or represent public and private entities.

Third condition: the sanctioning of the natural person. Hungarian law goes further than the possible cumulating of liabilities since the sanctioning of a natural person is a precondition/prerequisite for invoking the liability of the legal person. Section 3(1) of Act CIV specifies that “if the court has imposed punishment on the person committing the criminal act defined in Section 2, it may take the following measures against the legal entity (...)”. Thus, if the natural person is not identified and sentenced, no sanction can be applied against the legal person, except in the event of the death or mental illness of the natural person (thus preventing him from being held criminally liable; Section 3 (2)).

There exist, however, other defences which may exclude the liability of a natural person and which may be applicable in the case of corruption, i.e. being under the age of criminal responsibility (14 years old), constraint and menace, error, justifiable defence, and extreme necessity (Section 22 of the Criminal Code). Furthermore, events preventing sanctions against the natural person, and occurring in the course of the criminal proceedings may exist, such as prescription or remission. If these defences are applicable to the natural person, thus excluding sentencing, it will consequently be impossible to sentence the legal person.

On the contrary, the Hungarian authorities have indicated that the courts refuse to apply to corruption offences exceptions based on the negligible degree of danger caused by the offence to the community, whether before or after the beginning of the proceedings. Similarly, if the perpetrator of the offence has been identified but has fled abroad or cannot be found, it will be possible to prosecute and convict this perpetrator “in absentia”.

This condition prevents sanctioning of the legal person where the natural person committing the acts of corruption cannot be identified, due to, for instance, the dilution of the decision-making process in some large corporations, even where it may appear that the entire commercial strategy of this legal person is based on corrupt practices.

## **2.2. *The criminal liability of legal persons and provisions on granting of mutual legal assistance***

The new *Act CIV of 2001 on Measures Applicable to Legal Entities under the Criminal Code* does not contain provisions as to mutual legal assistance relating to legal persons. The Hungarian authorities have indicated that the *Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters* applies to them.

## **2.3. *The criminal liability of managers of businesses***

Act CXXI of 2001 amending the Criminal Code introduced two new paragraphs (3 and 4) to Article 258/B of the Code, which constitute the legal basis for the criminal liability of managers as regards the perpetration of the offence of corrupting a foreign public official. These provisions implement the Council of Europe Criminal Law Convention on Corruption, as well as the Convention established on the basis of Article K.3 (2)(c) of Treaty on the European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union.<sup>3</sup>

These new provisions make it possible for heads of businesses or any person having power to take decisions or exercise control within an enterprise to be declared criminally liable for the bribery of a foreign public official committed on behalf of the enterprise by a person under their authority, when the perpetration of the offence would have been prevented had they carried out their control or supervisory obligations. The fourth paragraph makes it an offence to commit unintentionally (through negligence) the offence defined above.

Article 258/B: “(3) The head of the economic organisation, or any member or employee of it who is authorised to exercise control or supervision is punishable according to paragraph (1) of this Article if the crime specified in paragraphs (1)-(2) is committed by a member or employee of the economic organisation in the interest of the organisation and if the exercise of the controlling or supervisory duty could have impeded the commission of the offence.

(4) The head of the economic organisation or a member or employee of it who is authorised to exercise control or supervision is punishable for a misdemeanour with imprisonment of up to 2 years, or a fine, or community work/labour in the public interests, if he commits the crime described in paragraph (3) through negligence.”

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3. Article 6 of the European Union Convention, relating to the criminal liability of heads of businesses: “Each Member State shall take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the principles defined by its national law in cases of corruption, as referred to in Article 3, by a person under their authority acting on behalf of the business.”

The court will need to determine whether or not better control or supervision by the head of the organisation could have prevented the commission of the offence of bribery. The Hungarian authorities have explained that, in order to do so, the court must take into account the internal regulations and other documentation of the legal person relating to the obligations and rights of the head (such as the employment contract or the act of nomination or election defining the scope of his/her action), the statutes or contract establishing the legal person, and the legal provisions regarding economic organisations which provide for certain obligations. The public prosecution has the burden of proof as to the negligence of the head involved.

For the liability of legal persons to be incurred, the offence must “aim at or result in the gaining of financial advantage” (Act CIV of 2001), but the head of an economic organisation cannot be held responsible unless the offence was committed “in the interest of the economic organisation” (Article 258/B of the Criminal Code). According to the Hungarian authorities, these two expressions cover in practice the same facts.

The term “head of the economic organisation” (gazdálkodó szervezet vezetője) is not defined by the Act. However, the Hungarian authorities consider that it covers the same persons as the term “chief executive” (vezető tisztségviselő) of the legal entity used in Section 2 of Act CIV of 2001 on Measures Applicable to Legal Entities under the Criminal Code.

Notions of economic organisation and legal person: Regarding the concept of economic organisation, it is defined in Article 137(17) of the Criminal Code as “the economic organisations listed in Section 685(c) of Act IV of 1959 on the Civil Code<sup>4</sup>, as well as organisations which, under the Civil Code, are subject to the provisions relating to economic organisations as concerns the civil law relations which such organisations have in connection with their economic activities”. The Hungarian authorities have explained that the concept of economic organisation is an old Civil Code concept which covers legal persons as well as organisations without legal personality engaging in economic activities. Article 137(17) of the Criminal Code has broadened the scope of this concept to include all organisations which, without being economic organisations under the Civil Code, can have economic relations and take (legal) civil measures. Thus, the concept covers nearly all organisations.

This concept is very similar to that of a legal entity, as defined in Section 1 of Act CIV of 2001 on Measures Applicable to Legal Entities under the Criminal Code. The Hungarian authorities have specified that the concept of legal entity in Act CIV of 2001 is a new one, which covers organisations whether they have legal personality or not. They then explained that the Hungarian legislator first thought of using the concept of economic organisation, which is a traditional term in Hungarian law, but ultimately opted for the term legal entity to comply with international requirements and the terminology in international treaties.

The concept of legal entity, properly so-called, is not expressly defined in the Civil Code, which nevertheless stipulates its characteristics. Different Acts may define an organisation as a legal entity. The provisions of the Civil Code on the characteristics of legal entities are set out in its Title III, Chapters V and VI.

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4. The term “economic organisation” is defined in Article 685(c) of the Civil Code as “State-owned companies, other State-owned economic agencies, co-operatives, business associations, professional associations, non-profit companies, companies of certain legal entities, subsidiaries, water management organisations, forest management associations, court bailiffs’ offices, and private entrepreneurs. The provisions governing economic organisations shall be applied to the State, local governments, budgetary agencies, associations, public bodies and foundations in connection with their economic activities, unless the law provides otherwise for such legal persons”.

The Hungarian authorities have indicated that this dual terminology should disappear when the new criminal code and the new civil code are adopted. As the notion of economic organisation has been gradually broadened to cover all legal persons, only the notion of legal persons will remain.

#### *Links between the criminal liability of managers of businesses and the criminal liability of legal persons*

If the offence falls under Section 2(1), three persons could be found guilty: the employee or the member who committed the offence [Article 258/B(1) or (2)], the manager who failed to exercise his controlling or supervisory duty [Article 258/B(3) or (4)], and the legal entity (Section 2 of Act CIV of 2001).

However, in cases where the employee who committed the act of corruption has not been identified, only the manager could be found guilty, but not the legal person.

### **3. Sanctions**

The new Acts of 2001 address two aspects of the 1999 evaluation regarding sanctions. Firstly, in line with the preceding section, sanctions will be applicable to legal persons for offences of active bribery of foreign public officials. Next, modifications have been made to confiscation and confiscation of assets. The length of the sentences of imprisonment applicable to the offence of active bribery of foreign public officials was also raised (see part C, section 2 on sanctions).

#### **3.1. Sanctions applicable to legal persons**

Section 3 of the new Act CIV of 2001 on criminal sanctions applicable to legal persons provides for the following measures:

- a) winding up the legal entity,
- b) limiting the activity of the legal entity,
- c) imposing a fine.

The Act lays down that the measures to limit the activity and impose a fine may be ordered independently or jointly, but winding up the legal entity may not be combined with other sanctions.

Fine: The maximum fine is equal to three times the amount of the financial advantage gained or intended to be gained through the criminal act, and at least 500 000 Hungarian forints.<sup>5</sup> If the amount of the advantage cannot be estimated or is difficult to estimate, the court may make its own estimate.

Limiting the activity: The court may sentence a legal entity to refrain from one or more of the following activities for a period of 1 to 3 years: a) issuing public offerings; b) participating in public procurement procedures; c) entering into concession contracts; d) benefiting from non-profit status; e) obtaining public subsidies from local or central governments, foreign states, the European Union or other international organisations; f) engaging in any other activity prohibited by the court. Furthermore, if a legal entity has been sentenced to limit its activities, once the judgement has become final, any public procurement and concession contracts that it has been awarded are rescinded and it is deprived of its non-profit status. In addition, it may no longer receive the public funds mentioned in item e) above, and will be required to reimburse any such funds already received in connection with the offence.

Winding up: A legal entity engaging in activities, whether legal or illegal, established for the purpose of covering up criminal activities, or in actual activities covering up criminal activities, may be wound up by

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5. As of 21 November 2002, 500 000 Hungarian forints was equal to 2 107 euros.

the court, unless the legal entity running legal activities is recognised as acting in the public interest, is considered as being of strategic importance to the national economy, or performs national defence-related or other special tasks.

Confiscation of assets: the measures in Article 77/B of the Criminal Code applies to “economic organisations”. Furthermore, it is no longer necessary for persons with management or representative functions to have had knowledge of the illegal origin of the asset, as was the case previously. Confiscation of assets is also applicable to the successor of the economic organisation, if its status has changed, for instance, under Article 77/B(3). However, confiscation provided under article 77 is not applicable. Indeed, as this article does not mention legal persons or economic organisations, it applies only to “citizens”, whether Hungarian or not, under Articles 3 and 4 of the Criminal Code relating to jurisdiction, and legal persons are not considered as citizens.

### 3.2. *Confiscation and confiscation of assets*

The evaluation of Hungary carried out in October 1999 states that during the Working Group discussions doubts were raised as to whether the provisions on confiscation could be efficiently applied in all cases of bribery covered by the Convention, since in the Hungarian legislation, the confiscation of the proceeds of bribery (as defined in the Convention) is dependent on the imposition of imprisonment for the bribery offence. In the case where only a fine is imposed, the result would be that such confiscation would not be possible.

A change in the nature of the confiscation of assets: With Act CXXI of 2001 amending the Criminal Code, the Hungarian authorities have changed the legal status of the confiscation of assets, thereby abolishing the requirement that the person convicted should be sentenced to imprisonment. Previously, confiscation was a “supplementary sanction”, and could only be applied if a sentence of imprisonment had been imposed. Act CXXI of 2001 made confiscation of assets a “measure” with the same status as confiscation<sup>6</sup>. From now on, the measures of confiscation and of confiscation of assets are applicable either independently or in addition to a sanction<sup>7</sup> or another measure<sup>8</sup>. Thus, confiscation of assets is now possible even when the author is not held responsible (being under the age of criminal liability or mentally ill), as well as in cases where the offence represents only a minor danger to society [Article 77/C(2)].

#### Definitions of confiscation and confiscation of assets

The new criminal provisions relating to the confiscation of assets<sup>9</sup> (Article 77/B) prescribe the mandatory confiscation of assets: originating from a criminal offence or obtained in the course of or in relation to the perpetration of a criminal act [paragraph 1(a)]; replacing those mentioned above [(c)]; which were made available or were intended to provide the conditions required, or designed to facilitate the perpetration of a criminal act [(d)]; obtained by the perpetrator while he was involved in a criminal organisation [(b)]; and those being the financial advantage given [(e)].

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6. This change in legal status resulted in a different numbering of the provisions on confiscation of assets in the Criminal Code. Articles 62 and 63 have been repealed and replaced by the new Articles 77B and 77C.

7. The main sanctions are imprisonment, community work and fines. The supplementary sanctions consist of several types of prohibition of activity, withdrawal of driver’s licence, prohibition of residence and expulsion (Article 38 of the Criminal Code).

8. The measures are a reprimand, probation, mandatory medical treatment, mandatory treatment for alcoholics, confiscation, confiscation of assets, monitoring by a probation officer and sanctions applicable to legal persons (Article 70 of the Criminal Code).

9. “Assets” are defined in Article 77/C(4) as also meaning any benefit derived therefrom, rights and titles, claims and any other advantage representing a pecuniary value.

The new criminal provisions relating to confiscation (Article 77) require the mandatory confiscation of the *res*<sup>10</sup>: either used or intended to be used as an instrument to perpetrate a criminal act [paragraph 1(a)]; whose possession either endangers public security or is in conflict with the provisions of law [paragraph 1(b)]; that came about as a result of the perpetration of some criminal act (proceeds) [paragraph 1(c)]; that was subject to a criminal act (object of the criminal act) [paragraph 1(d)].<sup>11</sup>

Although these two provisions are very similar, the Hungarian authorities have explained that, with Act CXXI of 2001, they have aimed to modify the concept of confiscation and confiscation of assets. On the one hand, the purpose of the confiscation of assets is to deprive a person of the ownership or possession of an asset with financial value and originating from the commission of the offence, or obtained in the course of or in relation to the commission of the offence. It is regulated by the new Articles 77/B and 77/C. On the other hand, the purpose of confiscation is to deprive a person of the ownership or possession of an object which constitutes a danger to public safety. It is regulated by Articles 77 and 77/A.

Thus, the Hungarian authorities have explained that the main measure in the case of corruption is the confiscation of assets, since the bribe and the proceeds represent a financial value and not an object which constitutes a danger to public safety.

Act CXXI of 2001 has abolished the possibility of parallel application of the two measures: Article 77(6) regulates the question of the competing application of the provisions on confiscation and confiscation of assets, since it indicates that objects will not be confiscated if they are covered by the confiscation of assets. Thus, confiscation of assets has priority over confiscation.

Concerning the new criminal provisions relating to the confiscation of assets (Article 77/B), it is essentially the provisions concerning confiscation of the advantage, third persons and organised crime which are new. The Hungarian authorities have specified that the advantages covered under [(e)] are those which are no longer in possession of the perpetrator but not (yet) in the possession of the person receiving the bribe (for instance, due to police intervention at the time).

The new provision has significantly broadened the scope of application of the confiscation of assets by allowing confiscation from a third party if the assets originate from a criminal offence or if the third party obtained them in the course of or in relation to the perpetration of such an offence [on the basis of Article 77/B(2)]. Assets must be confiscated even if the third party was unaware of their origin, i.e. even if the third party did not know that the assets in question were the proceeds of a criminal offence. For assets not to be confiscated from a third party acting in good faith, he must in addition have obtained them in exchange of consideration [Article 77/B(5)(b)]. Similarly, the confiscation of assets is applicable to economic organisations.

The provisions relating to the confiscation of assets do not allow for the possibility for the judge not to impose this sanction where it would constitute a disproportionate punishment in relation to the seriousness of the offence, which is an option in the case of confiscation.

Where confiscation of assets is not possible, the Hungarian law, in Article 77/C, allows for substitution by confiscation of assets of equivalent value. This option covers cases where the assets are no longer

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10. The notion of *res* is not defined in the Code, but the Hungarian authorities have specified that this would cover any material object.
  11. The provisions remain as to confiscation from third parties, the statute of limitations, cases where the author is not held responsible (being under the age of criminal responsibility or mentally ill) and offences representing a minor danger to society, as well as the transfer of title to the confiscated assets to the State. The printed media through which criminal acts are perpetrated are also confiscated (paragraph 2).

identifiable, are very difficult to distinguish from other assets, or where they were obtained by a third party in a bona fide manner in exchange of consideration. Beyond this provision, Article 77/B(1)(c) also allows for a form of substitution.

Concerning the new criminal provisions relating to confiscation (Article 77), their application is mandatory. However, the new paragraph 1 of Article 77/A (which corresponds to the former paragraph 4), leaves it, in certain cases, to the discretion of the court as to whether or not to confiscate the instrument or object of the offence, when confiscation may constitute a disproportionate punishment in relation to the seriousness of the offence (this option does not apply to the proceeds of offence). The new paragraph 2 excludes application of paragraph 1 if the perpetrator committed the criminal act as part of a criminal organisation. However, confiscation may not be waived if this is “excluded under commitments in international law”. The same applies to the waiving of confiscation from third parties acting in good faith.

Article 77/A, paragraphs 1, 2 and 3, provided for the possibility of substituting confiscation of an amount equal to the value of the object or advantage when the confiscation was not possible<sup>12</sup>. These provisions were abolished by Act CXXI of 2001 amending the Criminal Code. The Hungarian authorities have explained that since this new confiscation aims essentially at destroying objects which constitute an endangerment to public safety, where such objects do not exist or are no longer existing, it would not be necessary to confiscate an equivalent value. For similar reasons, certain provisions initially falling under confiscation have been transferred to the confiscation of assets since they essentially concern assets which have a value, rather than assets which constitute a danger to public safety (see Article 77/B(1)(a)(d) and (e)).

#### Bribes and proceeds of bribery

The Hungarian authorities have explained that a bribe given or promised may be confiscated as being the asset which was given or offered (promised) to provide the conditions required or to facilitate the perpetration of an offence [pursuant to Article 77/B(1)(d)], or, if it has been given as being the asset which constituted the financial advantage given (e).

The Hungarian authorities then explained that the profits or other benefits that the perpetrator obtained from the transaction or any other advantage obtained or retained by means of the bribery can be confiscated as being assets originating from a criminal offence obtained by the perpetrator either in the course of or in relation to his criminal act [on the basis of Article 77/B(1)(a)].

## **4. Statute of limitations**

Article 6 of the Convention requires that there be an adequate period of time for investigation and prosecution. Taking note of the explanation given by the Hungarian Delegation regarding the possibility of interrupting this period, in October 1999, the Working Group expressed concern that the three-year limitation period in Hungary for bribery of foreign public officials might be too short.

### **4.1. *The partial extension of the statute of limitations***

Under Article 33, paragraph 1b, of the Criminal Code, the statute of limitations for an offence that is not punishable by life imprisonment is the period equal to the maximum sentence applicable to the offence, but may not be less than three years. As the penalties of imprisonment have been changed (see *infra*), the

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12. This covered cases where confiscation could not be imposed or carried out, where the asset did not take the form of an object, or where confiscation would have constituted an unreasonable burden in view of the seriousness of the offence or of the constraint which would be imposed on a third party owner.

statute of limitations provided for in Article 258/B paragraph 2<sup>13</sup> has thus been extended from three to five years. However, the statute of limitations for offences provided for in paragraph 1<sup>14</sup>, remains three years.

The statute of limitations for enforcement of the sanction is also partially changed by the fact that penalties of imprisonment have been extended. The statute of limitations is five years when the penalty is less than five years, but ten years for a penalty of five years, which is now possible for an offence against Article 258/B, paragraph 2 (Article 67 of the Criminal Code).

The Hungarian authorities have indicated that, since the statute of limitations is an integral part of the imprisonment sanction for a given offence, it would not be possible to extend the statute of limitations for the offence provided for in paragraph 1 without modifying the sanctions, in line with those provided for under paragraph 2. In this respect, the Hungarian authorities wish to maintain a differentiation between the sanctions, according to the seriousness of the offence.

#### **4.2. Immunity, a new reason for suspending the statute of limitations**

Further changes have been made to the provisions on the statute of limitations with the addition of a new paragraph 3 to Article 35 of the Criminal Code. These changes are aimed at ensuring that the immunity of Members of Parliament and other persons 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 after the immunity has ended the competent authorities may initiate criminal proceedings against the suspect.

### **C. OTHER LEGISLATIVE CHANGES THAT HAVE HAD AN IMPACT ON ANTI-BRIBERY PROVISIONS**

#### **1. Elements of the offence**

Three elements have been modified by Act CXXI of 2001 amending the Criminal Code: the “functioning/behaviour” expected of foreign public officials and the definitions of the terms “advantage” and “foreign public official”.

##### **1.1. In order that the official act or refrain from acting in relation to the performance of official duties**

Article 258/B on active bribery of foreign public officials envisages two types of behaviour that bribery seeks to produce. Paragraph 1, prior to 2001, referred to a favour “which might influence the functioning of the official person to the detriment of the public interest”. Act CXXI of 2001 replaced this with “an undue favour in connection with the functioning of the official”. In paragraph 2, the favour is aimed at inducing “the foreign official (to) violate his official duties, exceed his competence or otherwise abuse his official position”. This provision has remained unchanged.

During the Phase 1 review, the Working Group had not mentioned this element of the offence in its evaluation of the Hungarian legislation. However, it was indicated in the body of the report that this element, as transposed into the Hungarian legislation, appeared to provide a higher threshold 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 is acting “to the detriment of the public interest”.

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13. The giving or promise of a favour so that the foreign official person violates his official duty, exceeds his competence or otherwise abuses his official position.

14. The giving or promise of an undue favour to a foreign official person, in connection with his/her functions.

### *To the detriment of the public interest*

With Act CXXI of 2001, the phrase “detriment of the public interest” has been removed from the definition of bribery and therefore no longer needs to be proven to constitute bribery. The Hungarian authorities indicate that this element is a “natural” (inherent) element of the offence since all acts of bribery are contrary to the public interest. Following this amendment, it suffices (is enough?) to prove that the undue advantage was given or promised in connection with the duties of the foreign public official.

During the Phase 1 review, the Hungarian authorities had indicated that advantages such as small gifts for Christmas, an invitation for coffee or a business lunch were excluded because they do not normally have the potential to influence the functioning of a public official “to the detriment of the public interest”. The Hungarians still consider that these small advantages do not have the potential to influence the functioning of a public official, and do not constitute an undue advantage.

### *The presumed influence on the functioning of the foreign public official*

Act CXXI of 2001 amending the Criminal Code changed the definition of the element of the offence concerning the action or inaction expected of the foreign public official: the former article referred to a favour “which might influence the functioning of the official person to the detriment of the public interest”, while the new article refers to an undue favour “in connection with his functioning”.

Although the words “which might influence the functioning of the official person” have been removed from the definition of bribery, the Hungarian authorities still refer to this subjective element of the presumed influence on a public official, which in their view is contained in the adjective “undue” now used to describe the favour given or promised.

According to the Hungarian authorities, an “undue” favour is any type of pecuniary or personal advantage prohibited by law or by the ethical codes of civil servants.<sup>15</sup> Beyond this category, the adjective “undue” covers any other advantage (favour given or promised) which by its nature or value might influence the work or functioning of civil servants or might induce them not to perform their duties impartially. The Hungarian authorities specify, however, that in order to judge a case of bribery of a foreign public official, the courts will not have to refer to the Hungarian law or codes of ethics for civil servants, for it is a generally recognised principle that civil servants must perform their duties in the public interest and in a professional, impartial and fair manner.

Thus, it appears that the removal of the words “which might influence the functioning of the official person to the detriment of the public interest” is counterbalanced by the addition of the adjective “undue” to describe the favour.

According to the Hungarian authorities, these terminological changes aim to simplify interpretation of this text, thus facilitating the proceedings regarding establishment of proof by clarifying the elements of the offence.

### *The connection with the duties of the foreign public official*

Regarding the addition of the words “in connection with the functioning of the foreign official person”, the Hungarian authorities indicate that a connection between the favour and the functioning of the foreign public official is required in order to prevent sanctioning persons giving gifts to public officials in a private

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15. Section 37 of Act XXIII of 1992 on civil servants specifies that “civil servants must perform their duties in the public interest in accordance with the law and the decisions of governance bodies, in a professional, impartial and fair manner, according to the rules of civilised government”.

capacity. To constitute (commit) the offence of bribery, the favour must be related to the public official's work.

### **1.2. *An undue advantage***

During the Phase 1 review, the Working Group had not mentioned in its evaluation of Hungarian legislation the absence of the adjective "undue" to describe the advantage offered to a foreign public official. However, it was indicated in the body of the report that Paragraph 1 of Article 258/B prohibited the giving or promising of a "favour" rather than an "undue pecuniary or other advantage" as required by the Convention.

Act CXXI of 2001 amending the Criminal Code adds the adjective "undue" to describe the advantage offered to a foreign public official. The Hungarian authorities say that this will make it possible to distinguish between criminal and lawful behaviour.

Although the Hungarian authorities consider this amendment to be "symbolic", the addition of the adjective "undue" enables Hungarian legislation to apply Commentary 8 on the Convention, which states that "It is not an offence, however, if the advantage was permitted or required by the written law or regulation of the foreign public official's country, including case law." Application of this commentary makes it possible not to sanction a person who has committed no offence and complied with the law in a given country, but who might have been considered guilty in Hungary.

### **1.3. *The definition of a foreign public official***

During the Phase 1 review, the Working Group had not mentioned the definition of a foreign public official in its evaluation of the Hungarian legislation. With Act CXXI of 2001, Hungary has changed this definition.

Firstly, the provision defining a foreign public official has been moved to a different part of the Criminal Code. It is no longer contained in the Special Part of the Code<sup>16</sup> but in the General Part<sup>17</sup>, which makes it applicable to the Criminal Code<sup>18</sup> in its entirety. By making this change, the definition has been amended with regard to the public officials of foreign States (the definitions of public officials of international organisations, international assemblies and international courts have not changed).

***Former Article 258/F: For the purposes of this Title***

***1. a foreign official is:***

***a) a person holding a legislative, administrative or judicial office in a foreign state.***

***b) a person in an organ or body entrusted with public power, public administration duties (or) who fulfils tasks of public power, or state administration, (...)***

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16. Paragraph 1 of Article 258/F of Title VIII on crimes against the integrity of international public life, of Chapter XV on crimes against the integrity of the State administration, the administration of justice and public life.

17. Paragraph 3 of Article 137 of Chapter IX on interpretative measures.

18. This change was made because new offences refer to the concept of foreign public official, but these offences do not relate to the integrity of international public life, but to murder and violence, in accordance with the United Nations Convention on the Safety of United Nations and Associated Personnel adopted in New York on 9 December 1994.

***New Article 137, Paragraph 3:***

*a foreign official person is:*

*a) a person vested with legislative, judicial or public administration duties in accordance with the laws of a foreign state (...)*

*The content of the definition of a foreign official*

Elimination of the criterion of the “body” to which the official belongs: items a) and b) of paragraph 1 of the former Article 258/F have been consolidated in paragraph 3 item a) of the new Article 137 which now covers the contents of the two previous items. The distinction between items a) and b) was based on the type of “body” to which the person in question belonged, and the fact that the person held a public office or performed public duties. These distinctions have been eliminated, for the law no longer is concerned with the “body” to which the person belonged, but with the nature of the duties performed, i.e. administrative, legislative or judicial duties.

According to the Hungarian authorities, the new item a) therefore covers persons who perform these duties in a State administrative institution (such as a ministry), a legislative institution (such as a parliament) or a judicial institution (such as a magistrate’s court) or in any type of organisation or body entrusted with public power or public administrative duties, irrespective of their form. Furthermore, the Hungarian authorities assert that, in accordance with the Convention, all levels and subdivisions of government, from the national to the local level, are covered, since what is important is not the organ or body to which the person belongs, but the nature of the duties performed. By the same reasoning, the Hungarian authorities state that persons performing public duties for a public enterprise are covered.

On the other hand, the new provision continues to refer to a foreign “State” rather than a foreign “country”, as stated by the Convention. But the concept of State seems to be more restrictive than that of country, as indicated in Commentary 18 on the Convention.<sup>19</sup>

Elimination of the criterion of office: Similarly, a distinction is no longer made between persons holding public office and those performing public duties. The Hungarian authorities explain that the concept of “office” is covered by that of “duties” since logically persons holding a public office have the right (possibility) to perform public duties.

The new criterion of duties: the fundamental criterion of the new definition of a foreign public official is the nature of the duties performed: administrative, legislative or judicial duties.

The Hungarian authorities indicate that the important thing is not the fact that officials actually perform the public duties mentioned, but that they are able to do so, whatever the form of the organisation or institution to which they belong. Lastly, this provision covers all public officials, whether they are appointed or elected, since how the person obtained his position is immaterial to the application of Article 137.

Whereas, with regard to internal corruption, the Criminal Code distinguishes public officials (article 253) from employees and members of state organs (article 254), the Hungarian authorities have indicated that the members and employees of foreign state organs are covered by the definition of foreign official, provided they perform administrative, legislative or judicial functions.

The lack of autonomy of the definition of a foreign public official: Act CXXI of 2001 introduces a condition that did not exist previously, i.e. reference to the law of the foreign State; as a result, the new

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19. Commentary 18: “‘Foreign country’ is not limited to states, but includes any organised foreign area or entity, such as an autonomous territory or a separate customs territory”.

definition of a foreign public official is not autonomous. Previously, the person had to hold an office in a foreign State; now he must perform administrative, legislative or judicial duties in accordance with the laws of a foreign State.

According to the Hungarian authorities, the definition of foreign public official does not lack autonomy, since the judge does not need to refer to the foreign legal definition of public official, but is only required to make sure that, according to the foreign laws and other foreign legal norms, the person concerned performs administrative, legislative or judicial functions. Thus, the Hungarian judge may refer to the foreign laws, as well as to any legal mandate for the performance of such functions (for instance, the act nominating that person) so as to ensure that this person performs these duties on the basis of an Act (or a regulation, court decision, etc.).

The Hungarian judge must therefore refer to the laws (acts, regulations, etc.) of the foreign State in order to determine whether the person performs or might be able to perform public duties, although certain categories of public officials covered under the Convention may not be covered under the definition of administrative, legislative or judicial functions applicable in the foreign State. This direct reference to the legislation of the foreign State clearly differs from the standards of the Convention and might affect its implementation.

## **2. Sanctions - Penalties of imprisonment for natural persons**

During the Phase 1 review, the Working Group did not mention in its evaluation the penalties of imprisonment applicable in cases of active bribery of foreign public officials. With Act CXXI of 2001, Hungary has increased these penalties. The corresponding domestic and foreign bribery offences for active bribery employ identical language and carry the following new sanctions:

- a maximum of 3 rather than 2 years' imprisonment for giving or promising a favour to an official in connection with his duties<sup>20</sup>;
- 1 to 5 rather than a maximum of 3 years' imprisonment for giving or promising a favour to induce the official to violate his duty, exceed his competence or otherwise abuse his official position<sup>21</sup>.

The Hungarian Criminal Code has two levels of offences, felonies and misdemeanours, depending on whether the maximum term of imprisonment is or not greater than two years. With Act CXXI of 2001 amending the Criminal Code, the offence covered by paragraph 1 has been changed from the category of misdemeanour to that of felony. The minimum sentence for offences covered by the first paragraph remains two months (Article 40, paragraph 2, of the Criminal Code). The offence covered by the second paragraph remains a felony, but the maximum sentence has been lengthened. The fines that can be imposed remain unchanged for both types of offence.

Furthermore, as was indicated in the Phase 1 report, pursuant to Article 87, it is possible to impose a penalty of imprisonment lower than the minimum term prescribed for a particular offence if it is considered to be too severe in view of the principles set out in Article 83 regarding sentencing. For example, when the term of imprisonment is a maximum of 3 years (as is the case for an offence covered by the new paragraph 1 of Article 258/B and as was the case for both offences prior to amendment), a sentence of community work may be imposed instead of imprisonment. For offences covered by the amended paragraph 2, the minimum sentence may only be lowered from one year to six months.

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20. See Paragraph 1 of Article 253 of the Criminal Code for the offence of domestic bribery and Paragraph 1 of Article 258/B for the offence of foreign bribery.

21. See Paragraph 2 of Article 253 of the Criminal Code for the offence of domestic bribery and Paragraph 2 of Article 258/B for the offence of foreign bribery.

## D. EVALUATION OF PHASE 1 BIS<sup>22</sup>

Hungary's legislation was reviewed under a rigorous process of monitoring carried out by the Working Group on Bribery in October 1999. The Group identified some problems in implementing legislation and called for remedial actions. In view of addressing the concerns expressed in Hungary's Phase 1 Evaluation, amendments to the Criminal Code which delete the specific defense, partially extend the statute of limitation and restructure the confiscation regime, were adopted by Hungary in December 2001 and entered into force on 1<sup>st</sup> April 2002.

Act CIV of 2001 on Measures Applicable to Legal Entities under the Criminal Code, adopted by Parliament on 11 December 2001, introduced the criminal liability of legal persons, and will enter into force at the time of the entry into force of the Act publishing the international instrument of Hungary's accession to the European Union.

The Working Group congratulated Hungary on taking significant steps to implement the recommendations arising from the Phase 1 review. The Working Group however expressed concerns with regard to some of these measures, as well as the amendment to the Criminal Code adopted after Phase 1 concerning the definition of a foreign public official.

### 1. Definition of foreign public officials

Since the Phase 1 evaluation, Hungary adopted Act CXXI of 2001 amending the definition of a foreign official in the Criminal Code. A "foreign official" was previously defined as "a person holding a legislative, administrative or judicial office in a foreign state, or a person in an organ or body entrusted with public power, public administration duties (or) who fulfils tasks of public power, or state administration" and is now defined as "a person vested with legislative, judicial or public administration duties in accordance with the laws of a foreign State".

The Working Group recognised that the new criterion of "duties" is in conformity with the Convention. However, the reference made to the laws of a foreign State is not in compliance with the autonomous definition in Article 1 as well as with the objectives of the Convention which aim at guaranteeing a homogenous application of the Convention. In this respect, the Working Group recommends that the Hungarian authorities review the definition of foreign public officials in the Criminal Code with a view to ensuring that the definition of article 137(3) is in full conformity with the Convention.<sup>23</sup>

### 2. Criminal liability of legal persons

The criminal liability of legal persons has been introduced in the Hungarian law by Act CIV of 2001 on Measures Applicable to Legal Entities under the Criminal Code and will enter into force at the time of the entry into force of the Act publishing the international instrument of Hungary's accession to the European

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22. This evaluation resulted from the examination by the Working Group on Bribery on 25-26 February 2003 of the amendments to Criminal Code adopted by Hungary and of the new Act CIV of 2001 on Measures Applicable to Legal Entities under the Criminal Code.

23 **Following the examination dated February 2003, article 137(3)(a) of the Hungarian Criminal Code was amended by Parliament on 22 December 2003. This amendment, which is to come into effect in March 2004, eliminates the reference made to the laws of a foreign State and creates a definition of foreign officials in conformity with the Convention. Pursuant to the new definition, a foreign official is "a) a person vested with legislative, judicial, public administration or law enforcement duties in a foreign State (...)". The Hungarian authorities indicate that persons vested with law enforcement duties are the members of the authorities responsible for investigating and prosecuting criminal offences.**

Union, planned for 1<sup>st</sup> May 2004. The Working Group noted that Hungary has enacted a law that, with the exceptions below, implements Article 2 of the Convention. The Working Group expressed concern that the effective date of entry into force of the new law is contingent upon outside factors and thus the law will not become effective, at the earliest, until May 2004.

The criminal liability of a legal person can be invoked only on condition that a natural person having perpetrated the bribery act has been identified, convicted and sanctioned. The person might be a person entitled to manage or represent the legal person, a member or an employee, where there is a failure of supervision on the part of a chief executive with control or supervisory obligations, or a person not associated with the legal person, if a person entitled to manage or represent it had had knowledge of the facts. Furthermore, Hungary introduced in the Criminal Code the criminal liability of managers of businesses for the bribery of a foreign public official committed on behalf of the enterprise by a person under their authority, when the perpetration of the offence would have been prevented had they carried out their control or supervisory obligations.

The Working Group is concerned about certain features of the liability of legal persons, in particular the requirement, in most cases, of a prior punishment of the natural person having committed the bribery act, and the requirement of a gain of a financial advantage in case the act has been committed by a person not associated with the legal person. As a consequence, the Working Group recommends that Hungary examines whether the standard of effective, proportionate and dissuasive sanctions has been fully met and recommends that this issue should be re-examined in Phase 2 in light of Articles 2 and 3.1 of the Convention.

Active bribery of a foreign public official	
<p style="text-align: center;"><b>Former Article 258/B</b></p> <p>(1) Any 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 misdemeanour, and shall be punishable with imprisonment of up to two years.</p> <p>(2) The briber shall be punishable for a felony with imprisonment of up to three years, if he gives or promises a favour so that the foreign official person violates his official duty, exceeds his competence or otherwise abuses his official position.</p> <p>(3) The perpetrator of the crime defined in paragraph (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.</p>	<p style="text-align: center;"><b>New Article 258/B</b></p> <p>(1) Any person who gives or promises an undue favour, in connection with the functioning of a foreign official person, to the official person himself or with regard to him to another person, commits a felony, and shall be punishable with imprisonment of up to three years.</p> <p>(2) The briber shall be punishable for a felony with imprisonment from one year to five years, if he gives or promises the favour so that the foreign official person violates his official duty, exceeds his competence or otherwise abuses his official position.</p> <p>(3) The head of an economic organisation, or any member or employee of it who is authorised to exercise control or supervision is punishable according to paragraph (1) of this Article, if the crime specified in paragraphs (1)-(2) is committed by a member or employee of the economic organisation in the interest of the economic organisation and if the exercise of the monitoring or supervisory duty could have prevented the commission of the offence.</p> <p>(4) The head of an economic organisation or a member or employee of it who is authorised to exercise control or supervision is punishable for a misdemeanour with imprisonment of up to two years, or a fine, or community work, if he commits the crime described in paragraph (3) through negligence.</p>
Definition of a foreign public official	
<p style="text-align: center;"><b>Former Article 258/F</b></p> <p>For the purposes of this Title</p> <p>(1) a foreign official person is:</p> <p>a) a person holding a legislative, administrative or judicial office in a foreign state,</p> <p>b) a person in an organ or body entrusted with public power, public administration duties, (or) who fulfils tasks of public power, or state administration,</p> <p>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,</p> <p>d) a person elected to the assembly or other elected body of an international organisation which is constituted by international treaty,</p> <p>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.</p>	<p style="text-align: center;"><b>New Article 137</b></p> <p>3. a foreign official person is:</p> <p>a) a person vested with legislative, judicial or public administration duties in accordance with the laws of a foreign state,</p> <p><b>[December 2003 amendment: “a person vested with legislative, judicial, public administration or <u>law enforcement duties in a foreign State</u>”]</b></p> <p>b) a person serving in an international organisation created by virtue of an international treaty, whose activity forms part of the proper functioning of the organisation,</p> <p>c) a person elected to the general assembly or another body of an international organisation created by virtue of an international treaty,</p> <p>d) a member of an international court having jurisdiction in the Republic of Hungary, a person serving the international court, whose activity forms part of the proper functioning of the court.</p>