



## **HUNGARY: PHASE 2**

### **FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS**

#### **APPLICATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE 1997 REVISED RECOMMENDATION ON COMBATING BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 7 September 2007.

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## **SUMMARY AND CONCLUSIONS BY WORKING GROUP ON BRIBERY**

### **Introduction**

1. In June 2007, the Working Group on Bribery reviewed the Phase 2 Written Follow-Up Report supplied by Hungary (the "Follow-Up Report"), which reports on actions taken by Hungary in response to the recommendations in the Working Group's May 2005 Phase 2 report (the "Phase 2 Report"). The Follow-Up Report and the summary and conclusions of the Working Group on the report have been consolidated for publication.

2. Hungary reported that it has 22 indictments for foreign bribery or trafficking in influence in international relations, an encouraging level of prosecutorial activity. During the discussion in the plenary session, Hungary reported preliminary information about convictions entered by the relevant court in some of these cases just prior to the plenary session; the Working Group looks forward to obtaining additional information about the decisions in these cases.

### **Review of Implementation of the Phase 2 Recommendations**

3. Hungary has satisfactorily implemented a number of the Working Group's recommendations in the Phase 2 Report. With regard to awareness-raising in the public sector, special efforts were made in order to provide annual training for employees of the International Trade Development Agency and training on foreign bribery issues is also now provided for diplomats on a regular basis. The website of the Ministry of Justice also has information for consultation. Hungary also intends to play an important role in building a 12-country expert network in Central Europe and the Western Balkans involving, inter alia, cooperation in criminal matters. The OECD Convention was discussed at a conference on corruption was held in Budapest in May 2006 for the participating countries and relevant Hungarian agencies.

4. With regard to ensuring resources for efforts to prevent foreign bribery, Hungary has indicated that efforts are now divided between three parts of the Ministry of Justice: (1) the Strategic Unit, coordinating governmental work in this area, including awareness raising; (2) the Advisory Board, coordinating input from civil society and the private sector; and (3) the Department for Criminal Law Legislation and Law Enforcement, responsible for preparing legislation. Resources appeared sufficient for awareness raising and training measures.

5. The Ministry of Finance has included the topic of foreign bribery in the compulsory vocational training for accounting and auditing professionals. A new action plan has been developed to improve the flow of information in the anti-money-laundering system, which has resulted in better communication. The Financial Intelligence Unit provides feedback to those who do not follow reporting rules, participates in the training provided to reporting entities, and has worked in coordination with the Financial Supervisory Authority to develop guidelines.

6. With regard to the competence of the Central Investigation Office of the Public Prosecution Service (CIOPPS) over foreign bribery cases and measures to ensure that CIOPPS is promptly informed about such cases, Hungary has clarified the Decree relating to CIOPPS competence and it now specifically mentions CIOPPS's exclusive competence over the foreign bribery offence. Training has been provided to relevant agencies relating to competence. Hungary gave CIOPPS status as a special agency within the prosecution service in late 2005, which means it is now an independent prosecutorial office with national competence. As an independent agency, CIOPPS receives a separate budget for its investigations and prosecutions. Hungary indicated that CIOPPS has increased its staff to approximately 20 prosecutors, which now allows the same person to follow a case from the opening of the investigation to the trial phase.

7. Hungary gave exclusive competence over false accounting offences to the Financial Control Guard in 2006, which is expected to strengthen enforcement in this area. Hungary has also supplied general statistics demonstrating a significant increase in the number of indictments and convictions for all types of false accounting offences over the last four years.

8. The Public Procurement Act 129 of 2003 and the new Act IV on Business Associations of 2006 allow the imposition of additional administrative sanctions on natural persons convicted of bribery including exclusion from public procurement and prohibitions from exercising certain functions in a company.

9. The Working Group further identified certain areas where Phase 2 recommendations have been partially implemented, calling for Hungary to make further progress. With regard to practical training for those actively involved in enforcement of the foreign bribery offence, including in particular for CIOPPS and the Anti-Corruption Unit (ACU) at the National Police Headquarters, Hungary has provide some training to prosecutors, but it does not appear to have focused on the foreign bribery offence and its particularities. Nothing specific has been directed at the police.

10. With regard to the awareness of companies about the foreign bribery offence, the Ministry of Justice has published a 206 page book, but it is not designed for companies. The Ministry of Justice is finalising the production of a new short brochure in Hungarian specifically aiming at informing firms active in foreign markets about foreign bribery issues, which it has developed by pro-actively seeking precedents from other Working Group countries. Apart from the brochure, however, coordinated and planned communication efforts to raise awareness in the private sector have been lacking; Hungary has reported that a decree adopted shortly before the June meeting of the Working Group will require awareness-raising in this area.

11. With regard to considering the expansion of the scope of article 255B CC, which sanctions the failure by public officials to report domestic bribery offences, to the failure to report foreign bribery offences, the Follow-Up Report notes that the Hungarian authorities considered the issue but decided against an extension of art. 255B to foreign bribery. The Follow-Up Report notes that the decision was based on the view that "Hungarian public officials are very unlikely to learn of a possible act of bribery that is committed abroad." The Working Group is concerned about this view and considers that there are many public officials who may learn of possible foreign bribery, including the staff of trade development agencies, diplomatic representations, export credit agencies, etc. Hungary also noted a possibility of disciplinary sanctions under current law, but it did not identify any specific applicable provisions; it remains unclear whether such sanctions (if they exist) would apply specifically to the failure to report foreign bribery. While recognising that criminal sanctions were not required, the Working Group encouraged Hungary to reconsider the issue of the law applicable to the reporting by public officials of suspicions of foreign bribery.

12. The Working Group welcomed the adoption in 2007 of legislation that enables Hungary to provide mutual legal assistance (MLA) in relation to administrative proceedings against legal persons. However, the Follow-up Report does not provide any information with regard to resources for MLA, notably within the Ministry of Justice, to allow for review of progress on MLA requests or maintenance of statistics.

13. Hungary has clarified that instructions from senior prosecutors do appear in written form in the case file, which should assist in ensuring that decisions on prosecutions are taken based on the merits of the case. However, Hungary has not addressed the question of private prosecutions since the Phase 2 Report.

14. Hungary has amended the Criminal Procedure Act to allow investigations to be in effect suspended for an unlimited period when MLA is requested and a response is expected. The period of suspension does not count for purposes of the two-year time limit for investigations. However, while the change with regard to MLA is welcome, the Working Group remains concerned that the two-year time limit may be insufficient in many foreign bribery cases because of their complexity. In addition, Hungary has not taken any action with regard to extending the statute of limitations for foreign bribery offences under article 258/B(1) of the Criminal Code (CC).

15. The government's efforts to tighten the categories of persons protected by immunities that could apply to foreign bribery cases, such as a 2006 law that has restricted the immunity within the prosecution service to lay judges, are welcome. However, no measures have been taken to date with regard to the scope of immunity and in particular with regard to immunity from investigative measures. Immunity that extends to preclude even investigative measures with regard to immune persons can significantly hinder the investigation of other non-immune natural and legal persons involved in the same bribery transactions (for whom the statute of limitations continues to run).

16. With regard to ensuring that bribes are not tax deductible, Hungary has made efforts to disseminate the OECD Bribery Awareness Handbook for Tax Examiners and has affirmed that no conviction is required under Hungarian law to deny deductibility of a bribe payment. However, the Working Group considers that further training and measures are necessary, including to ensure that tax officials are aware of the absence of any need for a conviction to deny deductibility. In addition, no consideration has been given since the Phase 2 Report to the question of applicable time limits for reopening a tax case where bribery is discovered.

17. The Working Group considered that some Recommendations had not been implemented. With regard to efforts to improve awareness about Article 5 of the Convention (which provides in relevant part that considerations of national economic interest, the potential effect on relations with another State, or the identity of the natural or legal person involved must not be taken into account in the investigation or prosecution of foreign bribery cases), Hungary has noted, as it did in Phase 2, the constitutional status of the prosecution and the applicable guarantees of independence. However, the Working Group noted that no action had been taken since the Phase 2 Report to address the concerns noted at that time and in particular to raise awareness about Article 5 of the Convention. The Working Group noted that the law did not present any difficulties, but that additional efforts to raise awareness could help ensure that there were no improper influences as a matter of day-to-day practice. The Working Group encouraged Hungary to consider this matter further with regard to its ethics code for prosecutors and other awareness raising efforts.

18. There has been no change since the Phase 2 Report in the rules and standards governing the reporting by external auditors of suspicions of foreign bribery. Similarly, with regard to whistleblowing protection, the Working Group noted that the situation has not evolved since the Phase 2 Report and that no new measures have been considered.

19. With regard to recommended amendments to the law on the liability of legal persons for foreign bribery, Hungary reported that it plans to present a new law before Parliament in the second half of 2007. However, although presentation of draft to Parliament was thus expected to be imminent, no draft could be supplied because it remained confidential. While the Working Group welcomes the government's intent to modify the law and efforts in this area, it considers that the recommendations addressing the liability of legal persons remain unimplemented at this time and encourages Hungary to take into account the recommendations in this regard. The Working Group considered that improving the effectiveness of sanctions on companies convicted of bribery remains primarily linked with the unimplemented recommendations relating to strengthening the liability of legal persons.

## **Conclusion**

20. Based on the findings of the Working Group with respect to Hungary's implementation of its Phase 2 Recommendations, the Working Group determines that:

- Recommendations 1(a), 1(b), 1(f), 2(e), 3(a), 3(b), 5(a), 6(a) have been satisfactorily implemented;
- Recommendations 1(c), 1(e), 2(a), 2(b), 3(c), 3(d), 3(e), 3(f) and 5(b) have been partially implemented; and
- Recommendations 1(d), 2(c), 2(d), 4(a), 4(b) and 6(b) have not been implemented.<sup>1</sup>

21. The Working Group invited Hungary to report orally to the Working Group within one year on the implementation of the Recommendations not fully implemented at this time. The Working Group will continue to monitor the follow-up issues identified in the Phase 2 Report as practice develops.

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<sup>1</sup> [Note by the Secretariat] The Recommendations of the Working Group are located at the end of the Phase 2 Report. Due to formatting issues, the paragraph numbering differs from that used in this summary and in Hungary's follow-up report. Recommendation 1 (and its subparts) herein corresponds to paragraph 207 (and its subparts) of the Phase 2 Report, Recommendation 2 corresponds to paragraph 208 and so on.

## Written Follow-up to Phase 2 Reports

**Name of country:** Hungary

**Date of approval of Phase 2 Report:** 6 May 2005

**Date of information:** 24 May 2007

### Part I. Recommendations for Action

#### Text of recommendation:

1. With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Hungary:
  - a) take further action to raise the level of awareness of the foreign bribery offence and the need for its enforcement among those agencies that work with Hungarian companies active in foreign markets, including trade promotion agencies and officials [Revised Recommendation, Paragraph I];

#### Actions taken as of the date of the follow-up report to implement this recommendation:

1. Following the Phase 2 report, special efforts were made in order to provide **training for the employees of the International Trade Development Agency** on the 11<sup>th</sup> of July 2005, hosted by the Ministry of Economy and Transport. Although the ITDH has been integrated into the governmental structure (see below), this has become a regular practice, the organisation of this event takes place on annual basis.

Training has been also provided for diplomats on a regular basis. The **single foreign market network** was established on the 1st of January 2006. It is a new system in which the vocational training and the supervision of diplomats with other delegates to foreign countries are ensured in a unified structure. This means that regular training, including awareness raising on foreign bribery, is available for both embassy employees and trade development / investment advisors. The annual meeting of the foreign diplomats on the 10-11<sup>th</sup> of July 2006 also included training on the Bribery Convention, held by the deputy state secretary of the Ministry of Justice and Law Enforcement.

2. Since many tasks related to the administration of private entrepreneurs are placed at local level, measures have also been taken to raise awareness at regional / municipal level. The so-called **Regional Operative Program** contains in its component III.1.1. a vocational training aiming specifically at awareness raising among members of the public service working in decentralised authorities. Thus, approx. 3000 leaders at regional/departmental/municipal level have received or receive a two day training from 2006 September. This training generally focuses on the methods to fight corruption, but has many components specifically targeting the OECD recommendation An outline of this program is available on the internet (only in Hungarian) at the following address:  
[www.rop.mki.gov.hu](http://www.rop.mki.gov.hu) click on “*Képzési Programok*” (menu on the left); scroll down and search for:

*A korrupció elleni küzdelem elvei és módszerei, a közszolgálati etika érvényesítése (=title)*

“*Tematika letöltése*” = downloading a word document with detailed information on the training. You will find the OECD recommendation mentioned at several places.

3. As part of the pre-accession assistance and regional partnership, Hungary intends to play an important role in building an expert network in Central Europe and the Western Balkan in a programme called **Budapest Forum** which regroups 12 participating countries. The cooperation in the field of cooperation in criminal matters is conducted by Hungary, and the first topic proposed was corruption. As a result, a conference was held in Budapest on the 19<sup>th</sup> of May 2006 for the participating countries in which the OECD Convention was also discussed. This conference was also attended by representatives of those Hungarian agencies who may have an interest in fighting corruption, i.e. by member of the Anti-corruption unit, prosecutors, civil servants from Hungarian ministries.

4. The official website of the Ministry of Justice has information for consultation.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

NA

**Text of recommendation:**

1. With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Hungary:

- b) ensure that, in light of the transfer of anti-corruption responsibilities from the Prime Minister's Office Secretariat Responsible for Public Assets to the Ministry of Justice in December 2004, the Ministry of Justice has appropriate resources to carry out its new role. [Revised Recommendation, Paragraph I];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The Ministry of Justice and Law Enforcement restructured its responsibilities in the related field and conferred those powers to three units within the Ministry. Thus, (1) the Strategic Unit coordinates the governmental work in this area, and prepares draft concepts underlining the short term and long term anti-corruption strategy of the government. (2) The Advisory Board, the presidency and administration of which are provided by the Ministry, ensures that the necessary input from civil society and professionals be channelled into the corruption strategy. Plans have been made to reorganise the board in order to strengthen their role, the adoption of a related governmental decision is however due nearer the time. (3) The Department for Criminal Law Legislation and Law Enforcement is responsible for the preparation of the necessary legislative action in the relevant field.

The corruption chapter of the ministerial budget contains 8 000 000 HUF for the rest of the year 2007. This sum is meant to provide support for programs and projects related to the fight against corruption, i.e. publications and conferences, and does not include the expenses for human resources, which are ensured



under a different heading in the budget.

The draft governmental decision on the government's duties against corruption expressly states that the short term corruption strategy has to give the necessary consideration to the recommendations of the OECD and the GRECO.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

NA

**Text of recommendation:**

1. With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Hungary:

- c) put in place practical training for those actively involved in enforcement of the foreign bribery offence, including in particular for the Central Investigation Office of the Public Prosecution Service (CIOPPS) and the Anti-Corruption Unit (ACU) at the National Police Headquarters [Revised Recommendation, Paragraph I];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

**Prosecutors and members of the police** regularly participate in national and international training programmes. The Department of the General Prosecutors Office supervising the investigation of the most serious crime organised on the 22-26<sup>th</sup> of May 2006 a vocational training for prosecutors, where among other topics foreign bribery was specifically discussed.

The foreign bribery issue gets more and more attention in national and international conferences targeting all practitioners working in the field of criminal justice, i.e. police officers, prosecutors, judges, lawyers. The so-called "**Kriminálexpo**" is such a yearly event; held in November each year. In the framework of the conference, one of the key events was the international conference for a cleaner public life.

In February 2007, the **Ministry of Justice and Law Enforcement organised a conference on corruption** where one of the topics discussed was the foreign bribery. The representative of the General Prosecutor's Office (the responsible authority for investigating foreign bribery) explained the problems related to foreign bribery to the audience. This conference, open to anyone interested in the fight against corruption, was attended by many members of the police, as well as prosecutors, judges, legal professionals.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

NA

**Text of recommendation:**

1. With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Hungary:

- d) ensure that considerations of national economic interest, the potential effect on relations with another State, or the identity of the natural or legal person involved shall not be taken into account in the investigation or prosecution of foreign bribery cases [Convention, Article 5];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

Through the **constitutional status** of the General Prosecutor, it is ensured that no outside interest, i.e. national economic interest shall be taken into account in the investigation of foreign bribery cases. As guaranteed by Chapter XI of the Hungarian Constitution, the PPO is independent of both the Judiciary and the Government, including the Ministry of Justice. The administration of all PPOs is the responsibility of the Prosecutor General of Hungary and his Office. The Prosecutor General is elected by Parliament on the proposal of the President of the Republic for six years. He shall not receive instructions on specific cases from anyone and is only answerable to Parliament, to whom he submits general reports annually.

The constitutional place of the Prosecutorial Service is such as it is able to exclude all potential efforts to influence the investigation. This independence, also endorsed explicitly by the constitution, led to the recognition that the investigation of foreign bribery cases should be exclusively the responsibility of the prosecutors (as opposed to the Police which is under the supervision of the government) The investigation of such criminal offences now belongs to the exclusive competence of the Public Prosecution Service. The exclusive competence of the Prosecutorial Service has been further clarified (please see below at point 2.)

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

NA

**Text of recommendation:**

1. With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Hungary:

- e) take appropriate action to improve awareness among companies and others of the foreign bribery law and of the intention to enforce it [Revised Recommendation, Paragraph I];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

As part of the awareness raising effort in general, the Ministry of Justice published an **information booklet** in English / Hungarian. This book includes chapters on both domestic and foreign bribery. This book targets generally everyone who may become aware of bribery, and foreign bribery, including diplomats, accounting, auditing and tax experts, firms and explains the very severe consequences of such act.

Following the OECD's recommendations, the government also wishes to produce a short **leaflet** specifically aiming at informing firms active on foreign markets.

Measures have also been taken to raise awareness at regional / municipal level. The so-called **Regional Operative Program** contains in its component III.1.1. a vocational training aiming specifically at awareness raising among members of the public service working in decentralised authorities. Thus, approx. 3000 leaders at regional/departamental/municipal level have been received or receive training from 2006 September. An outline of this program is available on the internet (only in Hungarian) at the following address: For more detail please see at Recommendation 1. a)

The Ministry of Justice published the relevant legislation and other necessary information under a thematic heading. Please consult

<http://irm.gov.hu/>

“Szakmai Munka”

Korrupció elleni Küzdelem

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

NA

**Text of recommendation:**

1. With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Hungary:

- f) take measures to raise awareness of the foreign bribery offence among the accounting, auditing and legal professions, and to ensure that accounting and auditing issues related to bribery are regularly examined in the context of the mandatory training requirements for auditors. [Revised Recommendation, Paragraph I].

**Actions taken as of the date of the follow-up report to implement this recommendation:**

As a result of the Phase 2 report, the Ministry of Finance included the topic of foreign bribery in the **compulsory vocational training** for both **the auditing and the accounting professionals**. Please note that this obligation is for regular training, i.e. not only for this year. Information on the OECD Convention now forms part of the vocational training programme, and the relevant information appears in the handbook of the yearly vocational training. The vocational training material provided for the accounting professionals

appears in print in the publication of the Chamber of Accountants. The latter chamber organises a conference on a yearly basis, i.e. a vocational training for the trainers of the accountants, where, in July 2006, the representative of the Ministry of Justice held a presentation specifically focusing on the tasks of accountants when the suspicion of bribery is present. The auditors received the necessary training in September 2006 on their annual vocational conference (attended by more than 200 accountants), where, again, a specific presentation was prepared for them treating issues dealing with issues related to foreign bribery.[presentation downloadable at:

[http://www.mkvk.hu/pages/kezdolap/kezdolap.cgi?pg=kv&sp=6\\_a](http://www.mkvk.hu/pages/kezdolap/kezdolap.cgi?pg=kv&sp=6_a)]

Conferences now regularly treat the OECD convention and the implementing legislation, for example see, the annual **Kriminalexpo** and the **Ministry of Justice conference in 2007**. These events are followed by a great number of legal and other professionals.

The assets related to corruption are also a source for money laundering. Thus, **the FIU, since March 2005, organises once every year (in June 2006 and April 2007 thus far) a conference**, where the representatives of the professionals mentioned above are also invited. On this occasion the FIU shares their experience and encourages a dialogue with those professionals. The members of the FIU also describe the typical errors so as to prevent their occurrence in the future. Further, the FIU transfers the knowledge acquired from international conferences.

The FIU held presentations similar to those described above to the National Bar (i.e. *Barreau des Avocats*) and to the Chamber of Notaries in 2006.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

NA

**Text of recommendation:**

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Hungary:

- a) consider expanding the scope of article 255B CC, which sanctions the failure to report domestic bribery by public officials, to provide sanctions for the non-reporting of foreign bribery offences [Revised Recommendation, Paragraph I];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The government considered amending the Criminal Code in order to sanction the failure to report foreign bribery offences. It appeared that there would be no practical use to such an extension. Art. 255/B. of the Criminal Code provides that any public official who has learned from credible sources of an act of bribery yet undetected, and who fails to report it to the authorities at the earliest possible time commits a criminal offence. A Hungarian public official is, however, very unlikely to learn of an act of bribery that is committed abroad, thus, such amendment was proved to be unnecessary.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation:**

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Hungary:

- b) provide guidance and training to tax officials on the application of the new rules prohibiting tax deductibility, including the detection of bribe payments disguised as legitimate allowable expenses [Revised Recommendation, Paragraph 1];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The Awareness Handbook for Tax Examiners is now available in Hungarian.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation:**

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Hungary:

- c) take appropriate measures to require auditors by law to report all suspicions of bribery by any employee or agent of the company to management and, as appropriate, to corporate monitoring bodies, and consider requiring auditors, in the face of inaction after appropriate disclosure within the company, to report all such suspicions to the competent law enforcement authorities [Revised Recommendation, Paragraph V.B];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

Under the new legislation on companies in force from the 1<sup>st</sup> of July 2006, auditors must convene the supreme body of the company whenever they learn from an act that may raise the question of responsibility of an executive. This is the case when the suspicion of bribery arises. Hungarian law with regard to auditor reporting obligations is fully consistent with ISA 240. ISA 240 requires the reporting by auditors to the executive bodies of the company. Furthermore, auditors have to report the suspicious transactions to the Court of Registration. All Hungarian authorities have an obligation to report all crime that they are aware of. Thus, the Court of Registration is under an obligation to forward such a report to the investigating authorities.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

NA

**Text of recommendation:**

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Hungary:

- d) consider introducing stronger measures to protect employees who report suspicious facts involving bribery in order to encourage them to report such facts without fear of retaliatory action [Revised Recommendation, Paragraph 1];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The Hungarian authorities recall that persons reporting on other persons' suspicious enrichment are afforded protection under the Act on Equal Treatment and Promotion of Equal Opportunities. The Act states in particular that all provisions, as a result of which a person receives less favourable treatment as compared to another person or group in a comparable situation due to the person's "other status, feature or characteristics" shall be qualified as direct negative discrimination and violation of the principle of equal treatment. Claims related to the violation of the principle of equal treatment may be enforced through procedures set forth in Chapter II of the aforementioned Act or in other relevant legal provisions.

In legal proceedings launched for violation of the principle of equal treatment, the party that has suffered prejudice or the entity entitled to enforce a claim with public interest shall be obliged to prove that: a) the person or group having suffered prejudice was unfavourably affected, and b) the person or group having suffered prejudice either in fact or according to assumption of the violator had one of the features set forth in the Act's Section 8. In such cases the other party shall be obliged to prove that it: a) actually observed or b) was not obliged to observe the principle of equal treatment with respect to the given legal relation.

Under the act No. LXXV. of 1996, the elements above may also be investigated in the framework of a procedure which is aimed at supervising the proper maintenance of regulations related to labour in the working place.

Furthermore, under section 257 of the Criminal Code, it is a criminal offence to take detrimental action against the person who reports cases of a form of corruption.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation:**

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Hungary:
- e) take appropriate steps to improve the flow of information and feedback between the relevant actors in the anti-money laundering system [Revised Recommendation, Paragraph 1].

**Actions taken as of the date of the follow-up report to implement this recommendation:**

**Consultation** on a yearly basis between the FIU and the larger reporting bodies

**The FIU, since March 2005, organises once every year (in June 2006 and April 2007 thus far) a conference**, where the representatives of the accounting and auditing professionals are also invited. On this occasion the FIU shares their experience and encourages a dialogue with those professionals. The members of the FIU also describe the typical errors so as to prevent their occurrence in the future. Further, the FIU transfers the knowledge acquired from international conferences.

The FIU participates in the training of those who are obliged to make reports, as well as in assisting the Financial Supervisory Authority in developing guidelines intended to them. The FIU also provides feedback to those who do not follow the rules of the reporting. A new action plan was developed after the IMF/Moneyval report, as a result, the communication has become considerably better. There is an ongoing software-development for the FIU, and continuously growing efforts to provide better IT infrastructure.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

NA

**Text of recommendation:**

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Hungary:
- a) clarify the competence of CIOPPS regarding foreign bribery cases, and take effective measures to ensure that CIOPPS promptly receives relevant information concerning such cases, notably by ensuring that the police and prosecutorial authorities are aware that they should refer foreign bribery cases to CIOPPS [Convention, Article 5; Revised Recommendation, Paragraph 1];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The necessary legislative action was taken right after the publication of the OECD report, and the point of confusion was eliminated from the text of the decree erroneously establishing the competences for investigation within the Police. All investigating authorities received training related to the competences shared by the PPO and the Police.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

NA

**Text of recommendation:**

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Hungary:

- b) ensure that the necessary resources are made available, in particular at CIOPPS, for the effective investigation and prosecution of the foreign bribery offence, and consider enabling the same prosecutor to follow a case throughout the entire investigation and prosecution, including at the trial stage [Convention, Article 5; Revised Recommendation, Paragraph 1];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The CIOPPS (Central Investigating Office of the Public Prosecutions Service) was given a special agency-status within the general structure of the Prosecutions Service. It is now an independent prosecutorial office, with a national competence. The rules of competence are known and followed by the prosecutors. It conducts criminal investigations (for instance in foreign bribery cases), but also present the charges before the court, so the same person follows the case and appears from the opening of the investigation to the trial phase. As a separate agency, it has a separate budget and sufficient staff devoted to the investigation and prosecution of all those cases in which the legislator decided to establish exclusive competence in investigation for the prosecutor.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation:**

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Hungary:

- c) consider taking appropriate measures to make MLA available to all Parties to the Convention in cases involving administrative or civil proceedings against legal persons for foreign bribery and ensure that sufficient resources are available to effectively carry out MLA obligations [Convention Article 9(1); Revised Recommendation, Paragraph VII(iii)];



**Actions taken as of the date of the follow-up report to implement this recommendation:**

In 2007, the Parliament has adopted the act on mutual legal assistance in cases of administrative offences. While this is a big step forward and enables the Hungarian authorities to receive requests from abroad, the practice in relation to legal persons will follow the requests coming from foreign countries.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation:**

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Hungary:

- d) in order to increase transparency, include instructions by senior prosecutors in the case file, and review possibilities for challenging decisions to close investigations, notably through private prosecutions by competitors [Convention, Article 5; Revised Recommendation Paragraph 1];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

According to the order of the General Prosecutor, the instructions of the senior prosecutors within the prosecutors office appears among the PRO DOMO documents. Instructions to the police are always given in a written form.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation:**

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Hungary:

- e) extend the statute of limitations applicable to the offence under article 258/B(1) CC to an appropriate time so as to ensure the effective prosecution of the offence, in line with the period for the offence under article 258/B(2), and allow for sufficiently long investigation periods [Convention, Article 6; Revised Recommendation Paragraph 1];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

This recommendation was implemented relatively shortly after the publication of the report, by being taken into account during the preparations of the amendment of the criminal procedure act, that entered into force in early 2006. The **amended rules of the Criminal Procedure Act** ensure that the **statute of limitations is not an obstacle to the prosecution of foreign bribery cases**. Once the MLA request has been made, the investigation is suspended temporarily. Thus, this period of time does not count from the point of view of the statute of limitations. Therefore, the time used for the MLA does not obstruct the effective investigation of foreign bribery.

Sub-section (1) of Section 5 of the 1990 Act on the Legal Status of the Members of Parliament clearly states that the right of immunity shall be secured only to members of parliament and MP candidates and that in the case of expiration of electoral mandate or non-election of the candidate, there is no bar to criminal proceedings. Consequently, immunity in Hungary has always been granted only for the duration of a mandate.

According to the current rules, the time during which immunity impede the prosecution does not count for the purposes of the statute of limitations. The Criminal Procedure Act and the Criminal Code allows for the prosecution of such cases. Section 35 of the Penal Code sub-section (3) reads as follows:

“(3) The deadline of limitation is also not affected by the period in which penal proceeding could not be launched or continued due to personal immunity, because the entity entitled to decision-making did not suspend the immunity provided for by law or did not consent to launching or continuing the proceeding. This provision may not be used for private motions in case of punishable crime, where prosecution is represented by the private prosecutor.”

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

NA

**Text of recommendation:**

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Hungary:

- f) consider, within the constitutional principles of the State, measures that may be taken in order to ensure that immunity does not impede effective investigation, prosecution and adjudication in foreign bribery cases [Convention, Article 5; Revised Recommendation Paragraph 1].

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The new government in its program set the goal of restricting the number of professions to be protected by the immunity. In accordance with this program, act no LXXXVII. of 2006l on the amendment of certain provisions related to the right of immunity restricted those who are affected by this right, i.e. within the

prosecutions service, also among lay judges (*assises*)

There is a well established and constant practice according to which – in cases other than blackmail – the right to immunity is suspended by the Parliament in all cases. Furthermore, the amended rules of the Criminal Procedure Act ensure that the statute of limitations is not an obstacle to the prosecution of foreign bribery cases. Please see the answer above.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

NA

**Text of recommendation:**

4. With respect to the criminal liability of legal persons for foreign bribery, the Working Group recommends that Hungary:

- a) amend the law on the criminal liability of legal persons to eliminate, insofar as they apply to foreign bribery cases, (1) the requirement that a natural person be convicted and punished as a prerequisite to the liability of a legal person; (2) the requirement that the bribe must have aimed at or resulted in the legal entity gaining "*financial*" advantage or profit; and (3) the requirement that the bribe must have aimed at giving or have actually given such an advantage to the specific legal entity subject to prosecution. [Convention, Articles 2 and 3];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The amendment of the relevant act be appears on the legislative agenda in the second half of 2007. Due to the fact that no draft has been made public, the meaning of such amendment cannot be discussed with certainty as yet.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

The amendment of the relevant act be put on the agenda in the second half of 2007.

**Text of recommendation:**

4. With respect to the criminal liability of legal persons for foreign bribery, the Working Group recommends that Hungary:

- b) consider (1) defining more clearly and more broadly than by the reference to a "*chief executive*" the class of persons whose failure to supervise can trigger the liability of the legal

person; and (2) establishing minimum standards with regard to appropriate supervision by such persons in order to avoid liability [Convention, Articles 2 and 3].

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The amendment of the relevant act be appears on the legislative agenda in the second half of 2007. Due to the fact that no draft has been made public, the meaning of such amendment cannot be discussed with certainty as yet.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

The amendment of the relevant act be put on the agenda in the second half of 2007.

**Text of recommendation:**

5. With respect to related tax and accounting/auditing offences, the Working Group recommends that Hungary:

- a) take appropriate measures to enforce accounting and auditing offences more effectively, particularly in connection with bribery cases [Convention, Article 8];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

During the investigation, members of the investigating authority and prosecutors work in close cooperation. In those investigations, internationally accepted methods of investigations are used. In 2006, the exclusive investigative competence was given to the Financial Control Guard in order to channel the investigations and all information gathered into a uniformed structure where cooperation is better ensured..

The assets related to corruption are also a source for money laundering. Thus, **the FIU, since March 2005, organises once every year (in June 2006 and April 2007 thus far) a conference**, where the representatives of the accounting and auditing professionals are also invited. On this occasion the FIU shares their experience and encourages a dialogue with those professionals. The members of the FIU also describe the typical errors so as to prevent their occurrence in the future. Further, the FIU transfers the knowledge acquired from international conferences.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation:**

5. With respect to related tax and accounting/auditing offences, the Working Group recommends that Hungary:

- b) take all necessary measures to ensure that no conviction for foreign bribery is required to deny the deductibility of the suspected bribe, and review the operation of the time limit for reopening a tax case [Revised Recommendation Paragraph IV].

**Actions taken as of the date of the follow-up report to implement this recommendation:**

In the tax administration procedure, the origin of the expenses is not considered. The only factor taken into account is whether the expenses could be claimed or not. None of the acts on tax payments require the conviction for bribery, but refers to the relevant criminal provisions for the purposes of definition. The tax authority does not allow any expense to be taken into account in the form of tax reduction when it emerges from illegal source.

Legislative measures were adopted to ensure greater transparency, i.e. firms are not allowed to keep their financial assets in cash at their own premises.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation:**

6. With respect to sanctions, the Working Group recommends that Hungary:

- a) consider introducing additional civil or administrative sanctions for natural persons convicted of foreign bribery, analogous to those applicable to legal persons, and compile relevant statistical information [Convention, Article 3; Revised Recommendation, Paragraph 1];

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The respective acts on public procurement, on the administration of firms and on public subsidies contain administrative sanctions similar to those foreseen by the act on criminal measures applicable against legal persons.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation:**

6. With respect to sanctions, the Working Group recommends that Hungary:
- b) consider taking measures to improve the effectiveness of sanctions on companies convicted of bribery [Convention Article 3(1), (4)].

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The respective acts on public procurement, on the administration of firms and on public subsidies contain administrative sanctions similar to those foreseen by the act on criminal measures applicable against legal persons.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

## **Part II. Issues for Follow-up by the Working Group**

**Text of issue for follow-up:**

7. The Working Group will follow-up on the issues below, as practice develops, in order to assess:
- a) in light of the recent entry into force of the law on the liability of legal persons, the absence of case law and the inability to review the Explanatory Memorandum concerning the new law, the application and interpretation of the law as it applies to foreign bribery [Convention, Articles 2, 3];

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

No criminal case applying measures against legal persons has come to the final judgment yet. Indictments have been made on two occasions.

**Text of issue for follow-up:**

7. The Working Group will follow-up on the issues below, as practice develops, in order to assess:
- b) the application of the foreign bribery provisions as case law develops, including with regard to the definition of foreign public official and the question of bribery through intermediaries [Convention, Article 1];

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

Please find attached the relevant statistics. Please note that none of those cases raised any **doubt** as to the definition of foreign public officials within the meaning of the Criminal Code or to the question whether an intermediary is punishable.

**Text of issue for follow-up:**

7. The Working Group will follow-up on the issues below, as practice develops, in order to assess:
- c) whether the defence of duress is limited to threats of physical or psychological damage [Convention, Article 1];

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

The concept of duress is a very well known ground for defence in most European criminal codes. As an example, the case in which it could be successfully raised concerns, a homicide case where one of the perpetrators threatened the other of killing her. The translation of this case is available in English. It remains settled case law that duress as described by the Criminal Code cannot successfully be raised in relation to corruption. This is confirmed by the fact that there has been no cases, (related neither to foreign nor to other forms of bribery) in which such defence could successfully be raised.

**Text of issue for follow-up:**

7. The Working Group will follow-up on the issues below, as practice develops, in order to assess:
- d) jurisdiction over cases of bribery of foreign public officials, notably as regards legal persons and offences committed in whole or in part abroad [Convention, Article 4];

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

In those 22 cases where the prosecution for foreign bribery was at issue, the question of jurisdiction has not been raised, thus no problem has been signalled as yet.

**Text of issue for follow-up:**

7. The Working Group will follow-up on the issues below, as practice develops, in order to assess:
  - e) actions taken when Hungary refuses to extradite based on the Hungarian nationality of the person whose extradition is requested [Convention, Article 10(3)];

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

The number and the importance of those international instruments that does not allow for the refusal of extradition even in cases of own nationals is growing, see specifically actions taken at EU level. Also, in practice there has been no refusal, to our knowledge, of anyone who was requested for foreign bribery.

**Text of issue for follow-up:**

7. The Working Group will follow-up on the issues below, as practice develops, in order to assess:
  - f) the application of sanctions by the courts and the use of confiscation and confiscation of assets measures in cases of bribery of foreign public officials, to ensure they are effective, proportionate and dissuasive [Convention, Article 3].

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**