



# **PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN HUNGARY**

**March 2012**

This Phase 3 Report on Hungary by the OECD Working Group on Bribery evaluates and makes recommendations on Hungary's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on 16 March 2012.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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## EXECUTIVE SUMMARY

The Phase 3 report on Hungary by the OECD Working Group on Bribery evaluates and makes recommendations on Hungary's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business transactions and related instruments. It focuses on horizontal issues, which concern the Working Group as a whole, particularly enforcement, and also considers country-specific (vertical) issues arising from progress made since Hungary's Phase 2 evaluation in May 2005, taking into account progress observed in Hungary's written follow-up report in September 2007.

Hungary has made progress in its enforcement actions since the Phase 2 evaluation, with the recent conviction of 26 individuals in connection with one case that involved bribes in small amounts provided to border officials in a neighbouring country. In addition, two foreign bribery investigations of legal persons have been opened so far, of which one is still ongoing. The Working Group notes that the number of convictions for foreign bribery remains low and considers that, in the context of companies, this may be due to difficulties in applying provisions on the criminal liability of legal persons. Those provisions require, in virtually all cases, that a natural person must be convicted and punished as a prerequisite to the liability of a legal person. The Working Group insists that Hungary eliminate this requirement of its law. It also recommends that Hungary take steps to ensure that a legal person cannot avoid responsibility by committing an act of foreign bribery through an intermediary.

The Working Group welcomes improvements in the framework in Hungary to strengthen its ability to enforce the offence. For example, Hungary has recently hired additional specialized prosecutors and established units at the regional level to deal specifically with corruption cases, including foreign bribery. As well, Hungary has lengthened the statute of limitations period for prosecuting this offence and has passed a law requiring public officials to report foreign bribery offences. Hungary has also introduced new legislation to protect whistleblowers. The report also notes Hungary's efforts to facilitate the provision of mutual legal assistance.

The report also notes shortcomings as regards awareness of the offence among the private sector and therefore recommends that Hungary take step in this matter, including by encouraging companies to adopt and develop internal controls or ethics and compliance programmes to prevent and detect bribery, Hungary should also engage in further awareness raising activities targeting the public administration and public agencies that work with Hungarian companies active in foreign markets. The failure to take proactive steps to discover suspicions of foreign bribery is also noted.

The Phase 3 report and its recommendations reflect findings of experts from Denmark and New Zealand and were adopted by the Working Group on Bribery. The report is based on legislation and other materials provided by Hungary, as well as information obtained by the evaluation team during its three-day on-site visit to Budapest from 18 to 20 October 2011, during which the evaluation team met representatives of Hungary's public administration, the private sector and civil society. Within one year of the Working Group's approval of the report, Hungary will make an oral follow-up report on its implementation of certain recommendations. It will further submit a written report on the implementation of all recommendations within two years.

## A. INTRODUCTION

### 1. The on-site visit

1. A team from the OECD Working Group on Bribery in International Business Transactions (the Working Group) visited Hungary from 18 to 20 October 2011 as part of the Phase 3 peer evaluation of implementation of the Convention on Combating Bribery of Foreign Public Officials (the Convention), the 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business (the 2009 Recommendation) and the Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions (the 2009 Recommendation on Tax Measures). The aim of the visit was to evaluate Hungary's implementation of the Convention and the 2009 Recommendations.

2. The Phase 2 evaluation of Hungary took place in May 2005. A written follow-up report was presented to the Working Group in June 2007. The Phase 3 on-site visit therefore focused mainly on developments in Hungary's implementation of the Convention and its related instruments since 2007 and any measures Hungary had taken to implement recommendations made at the time of the Phase 2 evaluation.

3. The evaluation team consisted of lead examiners from Denmark and New Zealand and members of the OECD Secretariat.<sup>1</sup> During the on-site visit, the lead examiners met representatives of both the public and the private sectors; representatives of the Hungarian authorities did not take part in meetings with non-governmental representatives.<sup>2</sup> The high level of participation of Hungarian public officials throughout the visit and the goodwill and openness shown by the panellists enabled the evaluation team to focus on the most important issues and helped greatly to optimise the visit. Hungary showed an excellent spirit of cooperation not only in the preparation phase but also during and after the on-site visit. In preparing the visit, the Hungarian authorities provided many documents and answered the Phase 3 questionnaire and supplementary questions. Overall, the answers to these questions provided a sound basis for the meetings during the on-site visit. Following the visit, the Hungarian authorities answered clarification requests that helped the evaluation team to better understand certain aspects of the Hungarian system.

### 2. Structure of the report

4. Part B of the report looks at Hungarian's efforts to implement and apply the Convention and the 2009 Recommendations. It considers key issues of interest to the whole Working Group (horizontal

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1 Denmark was represented by Mr. Flemming Denker, Deputy State Prosecutor, The Public Prosecutor for Serious Economic Crime; and Mr. Jesper Friedrichsen, Chief Super Intendent, The Public Prosecutor for Serious Economic Crime. New Zealand was represented by Mr. Boris van Beusekom, Senior Advisor, Ministry of Justice; and Ms. Deborah Marshall, General Counsel, Serious Fraud Office. The OECD Secretariat was represented by Dr. Frederic Wehrle, Phase 3 Evaluation Coordinator, Anti-Corruption Division; Ms. Olga Savran, Policy Analyst, Anti-Corruption Division; and Ms. Melanie Reed, Legal Analyst, Anti-Corruption Division.

2 A list of participants is provided in Annex 2. See paragraph 26 of the Phase 3 Procedure, which states that the evaluated country may attend, but should not intervene, during the course of non-government panels.

issues), with a particular focus on enforcement efforts and results, specific issues arising from the progress made by Hungary and the shortcomings identified in Phase 2 (vertical issues) and issues raised by changes in national legislation or Hungary's institutional framework. Part C contains the recommendations made to Hungary by the Working Group and the issues that will be followed up.

### **3. Economic situation**

5. Hungary is a medium-sized economy with a gross domestic product of USD 198.1 billion in 2008.<sup>3</sup> The country has a population of approximately 10 million people and a GDP per capita of USD 19 732. Hungary was one of OECD countries hardest hit by the recent recession; its projected fall in real gross domestic product (GDP) was double the OECD average in 2009.

6. Hungary's exports and imports are both at very high levels compared to its GDP. Export and import levels are nearly at par. In 2008, commodity exports were at 82.1% of the GDP, while imports were at 81.1% of the GDP.<sup>4</sup> The primary category for both exports and imports is machinery and transport equipment (60.2% of exports and 50.4% of imports in 2010), followed by manufactured goods (26.5% of exports and 31.9% of imports in 2010).<sup>5</sup> Germany is Hungary's primary trading partner, and trade with Germany accounted for an estimated 25.5% of exports and 26.1% of imports in 2010.<sup>6</sup> Other trading partners include European countries, although Russia and China also account for some of Hungary's imports (7.7% and 6.8%, respectively).<sup>7</sup> Major countries of Hungary's foreign direct investment include Korea, Slovakia, Croatia, Switzerland, Bulgaria and Romania.

### **4. Bribery of foreign public officials**

#### ***a) Hungary's exposure to bribery of foreign public officials***

7. Hungary is a medium-sized country, and its domestic market is correspondingly narrow. This means that international trade and foreign investment are of vital interest to the largest companies registered there. This increases the risk for those companies of exposure to situations where a bribe might be paid to a foreign public official. While individuals and companies appear to be increasingly aware of the of the offence of foreign bribery, the perception about the potential risk of being held liable appears to be low, particularly since no companies have been sanctioned under this offence. The concern that private individuals in Hungary may view bribery as a cost of doing business was a concern raised in Phase 2 (see paragraphs 13-17 of the Phase 2 Report) that appears to persist, based on the view of several panellists in the on-site visit. By contrast, Hungary, likely because it is not a major financial centre, is not generally viewed as a high-risk country for money-laundering in connection with foreign bribery.

#### ***b) Hungary's approach to cases of foreign bribery***

8. Since the offence of bribery in connection with international business transactions (foreign bribery) entered into force in March 1999, Hungary has prosecuted and convicted 26 individuals for

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3 OECD Country Statistical Profile of Hungary (2010), [http://www.oecd-ilibrary.org/economics/country-statistical-profile-hungary\\_20752288-table-hun](http://www.oecd-ilibrary.org/economics/country-statistical-profile-hungary_20752288-table-hun).

4 OECD Economic Survey of Hungary, at 7 (2010).

5 Except where otherwise indicated, statistics throughout this section are available on the website of the Hungarian Central Statistics Office, at <http://portal.ksh.hu/>, accessed 29 September 2011.

6 US Central Intelligence Agency, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/>.

7 *Ibid.*

bribery in connection with international business transactions. All of these individuals were convicted in connection with the same case, which involved bribes in the range of a few hundred Euros each paid by truck drivers to customs officials in the Slovak Republic in connection with obtaining licenses to transport goods across the Hungarian–Slovakian international border. That is, all of the individuals were convicted in connection with small sum payments in a neighbouring country (most of which were between approximately EUR 25 and 50), not in connection with expansive business operations.<sup>8</sup> Hungary has not charged, prosecuted or sanctioned any legal persons for foreign bribery.

9. At the time of the on-site visit, Hungary reported that it had two ongoing investigations into foreign bribery; both cases have been publicly reported. The first involves the activities of Magyar Telekom Plc in the Former Yugoslav Republic of Macedonia (FYROM). In February 2006, Magyar Telekom announced that it was conducting an internal investigation into potential violations of company policy and national laws that may have resulted in connection with contracts between its subsidiaries in FYROM and a consulting company in Cyprus. During the investigation, Magyar Telekom discovered approximately HUF 2 billion (EUR 6.5 million) in errors in its financial reports. In light of the investigation, the company suspended a number of senior officers, who later resigned. Magyar Telekom voluntarily disclosed its findings to the Hungarian Financial Supervisory Authority and to Hungary’s law enforcement agencies, as well as to the US Securities & Exchange Commission and Department of Justice.<sup>9</sup> The investigation is still ongoing in Hungary.

10. The second investigation involved the activities of MOL Nyrt. (Hungary’s oil and gas group) in Croatia. According to media reports, an ex-premier of Croatia was accused of accepting a EUR 10 million bribe from MOL in 2008 in exchange for securing MOL’s dominant position in Croatian oil and gas company INA d.d. GT.<sup>10</sup> Croatia started an investigation and in July 2011 requested MLA from Hungary, which was declined by Hungary on national security grounds. According to information provided by Hungary to the evaluation team, Croatian authorities suspected that a high-ranking executive of MOL paid the bribe via transfers from off-shore companies registered in Cyprus – supposedly affiliates of the MOL – to a company registered in Switzerland. Although Hungary declined Croatia’s July 2011 request for MLA, the data contained in the request triggered an investigation by Hungarian authorities. Specifically, Hungarian authorities conducted house searches, seized documents and computer data, acquired banking data, conducted witness interviews and searched public databases. As part of the investigation, Hungary also requested MLA from Croatia, in the course of which the Croatian Public Prosecution Service provided Hungary with documents implicating a high-ranking MOL official.<sup>11</sup> Although this investigation was ongoing at the time of the on-site visit, Hungarian authorities closed the investigation in January 2012, concluding that “the evidence gathered did not support the suspicion” raised by Croatian authorities that the high-ranking MOL official committed the crime of bribery of a foreign official. According to

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8 Annex 2 to this report contains a complete list of completed prosecutions under Hungary’s foreign bribery offence. Note that in 2003 Hungary also tried and convicted 9 additional individuals under Article 258B CC. These individuals paid bribes in connection with obtaining visas, rather than in connection with the offence of foreign bribery, however, so these convictions have not been included in these counts.

9 A related case has been resolved by US authorities. See [“Magyar Telekom and Deutsche Telekom resolve Foreign Corrupt Practices Act investigation and agree to pay nearly \\$64 million in combined criminal penalties”](#), DOJ press release, 29 December 2011; [“SEC charges Magyar Telekom and former executives with bribing officials in Macedonia and Montenegro”](#), SEC Litigation Release No. 22213, 29 December 2011; see also Ewan Sutherland, *Bribery and Corruption in Telecommunications – Prosecutions under the Foreign Corrupt Practices Act*, 15 September 2011. The facts are also under investigation in Germany and FYROM.

10 See, e.g., [“UPDATE 1 – Hungary prosecutors say MOL had no role in INA bribe”](#), Reuters, 30 January 2012; [“Croatia Seeks To Quiz Hungary's MOL Chief Over Bribes”](#), AFP, 20 December 2011.

11 Source: Croatian anti-corruption bureau USKOK website.

information provided by Hungary to the evaluation team, the evidence gathered in Hungary disproved any affiliation between MOL and the off-shore companies in Cyprus. These companies belonged to a different oil-trading group that had interests in Croatia, but not in connection with the contract in question. In addition, while Hungarian authorities identified the source of the funds, the facts did not support a conclusion that the funds were connected to MOL. At the time of the publication of this Phase 3 report, the investigation was still ongoing in Croatia, where Croatia's ex-premier has been indicted as part of the case.<sup>12</sup>

## **B. IMPLEMENTATION AND APPLICATION BY HUNGARY OF THE CONVENTION AND THE 2009 RECOMMENDATION**

### **1. The offence of foreign bribery**

#### *a) In general*

11. Hungary's foreign bribery offence, which entered into force in 1999, is set forth in Title VIII of the CC, entitled Crimes against the Integrity of International Public Life (see article 258B, which is also included in Annex 4 to this report). It was first amended in 2001 (prior to Phase 1) and again in 2009. In addition, the portion of the CC defining the term "foreign public official" has been updated twice, first in 2003 (in response to the Phase 1bis report) and again in 2010. Finally, recent amendments to the CC setting forth a new statute of limitations and two new offences came into force at the beginning of 2012. Changes to the law since the Phase 2 review in 2005 are discussed below.

#### *b) Issues identified in Phase 2 as needing specific monitoring by the Working Group*

##### *(i) Definition of foreign public official*

12. During Phase 2, the Working Group decided to follow up on application of the foreign bribery provisions with respect to the definition of foreign public officials (follow-up issue 7(b)). This was due to uncertainty raised by the lead examiners regarding whether Hungary's definition of a "foreign official" would apply to (i) all persons holding public office (not just those performing officials duties); (ii) persons commissioned by state administrative organs; (iii) employees or members of foreign state-owned companies carrying out public functions; and (iv) persons performing public duties without remuneration.

13. During the Phase 3 on-site visit, Hungary explained that, given the specifics of the cases handled thus far by Hungary (petty corruption relating to the bribery of foreign customs officials instead of large transnational cases), it has no relevant practice on the issues of whether the individuals listed above would be considered foreign officials.

14. An issue related to the definition of a foreign public official during Phase 2 was whether article 258B would apply to bribery of an employee of a state enterprise (see paragraphs 134-137 of the Phase 2 report). Such individuals would be foreign public officials under the Convention, which covers bribery of a

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12 See, e.g., ["Croatia confirms new corruption indictment for ex-PM"](#), Reuters, 7 November 2011.

foreign person exercising a public function for a “public agency or public enterprise” (Article 1.4(a)).<sup>13</sup> However, it is not clear that such employees would be covered by article 258B CC because that article only applies to bribery of persons “empowered with legislative, judicial, public administration or law enforcement duties in a foreign state”,<sup>14</sup> and it is not clear that an employee of a foreign state enterprise would be deemed to possess such duties.

15. As noted in Phase 2, a separate provision of Hungary’s CC deals with active bribery of an employee or member of a “foreign economic undertaking” (article 258C), a term that refers to a legal person “entitled to perform economic activities” (as defined by article 258G) and arguably covers employees of a foreign state enterprise). This provision only applies where the briber seeks to have the employee or member of the foreign economic organisation “breach his/her duties”, whereas the offence in article 258B CC applies to any bribe paid “on account of such [foreign] public official” or, in more serious cases, to a bribe paid to induce a foreign public official “to breach his/her official duty, exceed his/her competence or otherwise abuse his/her official position” (see paragraphs 134-138 of the Phase 2 Report). In addition, sanctions under article 258C are limited to two or three years imprisonment, depending on the severity of the offence, whereas sanctions under article 258B may be as great as five years imprisonment. In response to questions raised on-site about this concern, prosecutors explained that whether a person would be prosecuted under article 258B or 258C would depend on the function being performed by the state employee who was bribed. If the employee were performing a public function, 258B would apply, but if the employee were performing a purely “business” function, 258C would apply. While this interpretation would be in line with Article 1.4 of the Convention, no cases demonstrating this interpretation have come up in practice.

(ii) *Jurisdiction*

16. Given the absence of case law on the topic, during Phase 2, the Working Group decided to follow up on “jurisdiction over cases of bribery of foreign public officials, notably as regards legal persons and offences committed in whole or part abroad” (follow-up issue 7(d)). During the Phase 2 written follow-up, Hungary had no relevant cases to report. Given the absence of relevant case law or practice on the question of jurisdiction in foreign bribery cases since then, it remains difficult to assess the breadth of Hungary’s jurisdiction in foreign bribery cases, especially over legal persons.

(iii) *Intermediaries*

17. Because of the limited case law available in Phase 2, the Working Group decided to follow up on the application of the foreign bribery provisions with regard to “the question of bribery through intermediaries” (follow-up issue 7(b)). As with the previous issues, Hungarian authorities have explained that Hungary has no relevant practice on this issue. Article 258B CC covers bribes given not only directly to public officials, but also bribes given “to another person on account of such public official”. In addition, Hungarian authorities have explained that general rules on complicity in article 21 CC would cover intermediaries. Those provisions define an “abettor” as “a person who intentional persuades another person to commit a crime” and an “accomplice” as “a person who knowingly and voluntarily helps another person commit a crime”. An abettor or an accomplice can be punished to the same extent as the person who commits the crime. As discussed further in Part B.2 below, the issue of whether a legal person may be held liable for actions by its intermediaries raises significant concerns.

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13 The Commentary to Article 1.4 clarifies that a “public enterprise” is any enterprise, regardless of its legal form, over which a government, or governments, may, directly or indirectly, exercise a dominant influence”.

14 Definition of “foreign public official”, as set forth in article 137(3) CC.

(iv) *Defence of duress*

18. During Phase 2, Hungarian authorities asserted that the defence of duress would only apply if the offender were to prove that an offence was committed “under a direct threat of physical or psychological damage”; however, because of the lack of case law supporting this position, the Working Group decided to follow up on how the defence was applied in practice (follow-up issue 7(c)). In the Phase 2 written follow-up, Hungary stated, “It remains settled case law that duress as described by the Criminal Code cannot successfully be raised in relation to corruption”, but Hungary did not provide any case law supporting this position. In response to the Phase 3 questionnaire, Hungarian authorities explained that the defence only applies when a threat is so serious as to make the perpetrator unable to act according to his or her own conviction or will (for instance, because threat to life). For example, a person who pays a bribe cannot avoid punishment due to a threat of losing a business. However, in response to additional questions submitted prior to the on-site visit, Hungarian authorities explained that the defence of duress has not been raised in any bribery case, either domestic or foreign. Following the on-site visit, Hungarian authorities explained that duress rarely arises in relation to corruption cases (whether domestic or international) because both parties act voluntarily. It noted that the defence was raised in an embezzlement case, but the claim was rejected based on the facts.

**Commentary**

***The lead examiners view Hungary’s existing legislation as comprehensive, robust and workable insofar as it applies to natural persons. However, in the absence of much practical experience in applying the law, it is difficult to come to a definitive view as to the adequacy of the legislation. This is particularly the case when Hungarian companies engage intermediaries to act on their behalf in foreign countries. Therefore, the lead examiners recommend that Hungary take steps to ensure that its foreign bribery offence covers bribery through intermediaries, particularly in cases involving legal persons. Due to a lack of cases, the lead examiners also recommend that the Working Group follow up on the issues raised in Phase 2: (i) the application of the foreign bribery provisions with regard to the definition of a foreign public official, including in cases involving employees of state enterprises; and (ii) jurisdiction over cases of bribery of foreign public officials, notably as regards legal persons and offences committed in whole or part abroad.***

**2. Liability of legal persons**

**a) Issues identified in Phase 2 as needing specific monitoring by the Working Group**

**(i) Requirement of conviction of a natural person**

19. A legal person can be liable for foreign bribery if any of the following persons engages in foreign bribery while acting within the legal entity’s scope of activity: (i) the entity’s executive officer; (ii) a member, employee, officer or chief executive entitled to represent the entity; or (iii) a member of the entity’s supervisory board and/or its agents (see article 2 of Act CIV of 2001, as amended by Act XXVI of 2008, in Annex 3). In Phase 2, the Working Group recommended that Hungary (a) amend its law on the criminal liability of legal persons<sup>15</sup> to eliminate “the requirement that a natural person be convicted and punished as a prerequisite to the liability of a legal person” and (b) “consider ... 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” (recommendation 4(a)(1), (b)).

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15 Act CIV on Measures Applicable to Legal Persons under Criminal Law, 1 May 2001, entered into force 1 May 2004 (Act CIV of 2001).

20. In 2008, Hungary amended its law to partially address the concerns raised by these recommendations.<sup>16</sup> First, Act XXVI of 2008 makes clear that certain measures may be taken against a legal person not only if the court has imposed a punishment on the individual who perpetrated the crime, but also if the court applies a reprimand or probation to the individual. Second, the Act contains an exception that a legal person may be punished if (i) the individual perpetrator is not punishable because of the perpetrator's mental illness or death or (ii) criminal proceedings have been suspended because of the perpetrator's mental illness, which occurred after commission of the offence. Law enforcement may (and often does) engage in investigations of a legal person at the same time as it investigates the individual perpetrator; however, the law still contains the requirement that in circumstances other than mental illness or death, other types of measures against a legal person may only be instituted if the individual perpetrator is punished. Third, the Act XXVI of 2008 provides that failure to supervise by "the executive officer, the chief executive or the supervisory board" can now subject a legal person to liability.

21. In the view of the Working Group, a regime that requires, in virtually all cases, the conviction and punishment of the natural person who perpetrated the offence does not meet the standard established by the Working Group, as captured in Articles 2 and 3.2 of the Convention, particularly given the Working Group's adoption of the 2009 Recommendation and its accompanying Annex I.<sup>17</sup> The Good Practice Guidance at Annex I.B specifically provides that the system for liability of a legal person "should not restrict the liability to cases where the natural person or persons who perpetuated the offence are prosecuted or convicted". As noted by the Working Group in Hungary's Phase 2 evaluation, a regime that requires the conviction and punishment of a natural person "fails to address increasingly complex corporate structures, which are often characterized by decentralised decision-making".<sup>18</sup>

22. The level of knowledge or intent that a company must have of bribery by a third party, such as an intermediary, was somewhat unclear to the lead examiners. During the on-site visit, prosecutors explained that the foreign bribery offence creates a duty for a company to supervise its own employees, but that this duty does not extend to third parties. Thus, according to prosecutors, Hungary's law does not cover the situation where a bribe is paid through a third party, such as an agent or intermediary, *unless* one of the persons listed in paragraph 19 above (i) is directly involved in paying the bribe and (ii) has an actual intent to pay a bribe. On the other hand, following the on-site visit, the Ministry of Public Administration and Justice indicated that under article 2(2) of Act CIV of 2001, a company can be held liable for foreign bribery by a third party, so long as one of the persons listed in paragraph 19 above has "knowledge of the commission of the criminal act". The Commentary to Act CIV of 2001 indicates that this knowledge must include knowledge that the "act may result in any benefit for the legal entity". Due to these differing interpretations of article 2(2), it is unclear what level of knowledge or intent a person at the company would have to have in order to subject a company to liability for foreign bribery. The possibility that intent or "actual" knowledge may be required would create a significant loophole by which a company can avoid liability simply by "turning a blind eye" or being "wilfully blind" to the acts of its intermediaries and agents in foreign countries. Thus, in its current form Hungary's law may not be in accordance with the Good Practice Guidance in Annex I.C to the 2009 Recommendation, which indicates that each Party should ensure that "a legal person cannot avoid responsibility by using intermediaries, including related third persons, to offer, promise or give a bribe to a foreign public official on its behalf". This is particularly notable, given the fact that business and trade association representatives who participated in the on-site visit confirmed that a significant portion of business abroad occurs through local intermediaries or agents. Furthermore, if the intermediary or agent operated solely in the foreign country, it might be difficult to

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16 Act XXVI of 2008, effective 1 September 2008.

17 Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

18 Paragraph 145 of the Phase 2 Report.

establish jurisdiction over that individual. Thus, the foreign bribery could potentially be unsanctioned by Hungary.

(ii) *Standards for appropriate supervision*

23. Act CIV of 2001 provides that a legal entity may be liable for foreign bribery if its member or employee bribes a foreign public official and the bribery “could have been prevented by the executive officer, the managing clerk or the supervisory board by fulfilling his/her/its supervisory or control obligations” (article 2(1)(b)). During Phase 2, the Working Group recommended that Hungary “consider ... establishing minimum standards with regard to appropriate supervision” by the persons whose actions can subject a legal person to liability (recommendation 4(b)). Hungary has not taken any steps to establish such standards or to promote Annex II to the 2009 Recommendation (Good Practice Guidance on Internal Controls, Ethics, and Compliance).

(iii) *Requirement of an intended or actual financial advantage*

24. Hungary has implemented a recommendation made during Phase 2 to amend its law on the criminal liability of legal persons to eliminate the requirement that “the bribe must have aimed at or resulted in the legal entity gaining ‘financial’ advantage or profit” (recommendation 4(a)(2)). Through Act XXVI of 2008 (amending article 1(1) of Act CIV of 2001), Hungary replaced the term “financial advantage”, which was previously in the statute, with the term “benefit”. Under the statute, a “benefit” is any “object, right of pecuniary value, claim or preference, irrespective of whether it was registered pursuant to the Act on Accounting”, as well as “cases where the legal entity is exempt from an obligation arising from a law or contract or from expenditure required according to rules of reasonable business management”. Hungarian authorities have explained that the notion of a “benefit” also applies to domestic bribery cases. Although no foreign bribery cases to date interpret the term “benefit”, in domestic bribery cases the term has been interpreted to include any business or other improper advantage, which would be in line with the requirements of Article 1.1 of the Convention if the same interpretation were applied to foreign bribery cases.

(iv) *Requirement of an intended or actual benefit for the legal person being prosecuted*

25. In Phase 2, the Working Group also recommended that Hungary amend its law on the criminal liability of legal persons to eliminate 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*” (recommendation 4(a)(3), emphasis added). This recommendation aimed at eliminating Hungary’s requirement that the legal person being prosecuted for bribery also needed to be the intended beneficiary of the bribe – a requirement that is not supported by the Convention.<sup>19</sup> Hungary has not amended its statute to change this requirement.

**b) *Number of cases***

26. During Phase 2, the Working Group decided to follow up on “the absence of case law” regarding the liability of legal persons (follow-up issue 7(a)). Although the law has allowed a judge to assign criminal responsibility to a legal person in foreign bribery cases since 2001, in practice, no legal person has been charged in a foreign bribery case. In cases involving other crimes, investigators have notified the

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19 The Convention covers a person who pays a bribe “in order to obtain or retain business or other improper advantage in the conduct of international business” (Article 1.1), but does not indicate who must be the beneficiary of the business or improper advantage. Thus, for example, a legal person who pays a bribe in order to gain an improper advantage for another legal person (for example, an intermediary paying a bribe on behalf of a company) would be covered by the Convention.

Public Prosecutor's Office (PPO) of the possibility of applying measures against a legal person in 31 cases and the PPO has moved in the indictment to apply sanctions against a legal person in 21 cases.<sup>20</sup> The court has only applied sanctions against a legal person in four cases.<sup>21</sup> When asked about this during the on-site visit, prosecutors explained that it is not an "established practice" to indict the legal person involved in a case because often the "substance" of a case against a legal person is not available, either because investigation of the offence was not extended to cover activities by the legal person or because the legal person is no longer in existence at the time of the indictment. The prosecutors explained that an internal order of the police provides guidance on how to investigate legal persons, but no guidelines are available to prosecutors or judges regarding how to establish criminal liability against a legal person. They also indicated that there are some differences in how prosecutors and judges in different regions approach such cases. For example, representatives of the Central Investigation Office of the Public Prosecution Office (CIOPPS) noted that judges may turn down motions for sanctions by prosecutors because, according to CIOPPS prosecutors, judges might not fully understand the law and might view potential sanctions as disproportionate to the crime. In addition, if the company is no longer operating, it is viewed as preferable that any available money go to creditors rather than be used to pay sanctions. These are indicators, in the view of the lead examiners, that criminal policy in this area is not yet completely harmonized throughout the country and that additional training for prosecutors, judges and law enforcement may be appropriate.

27. A judge who participated in the on-site visit reiterated the fact that it is often difficult to find a legal person to prosecute in criminal cases. The judge explained that the legal person involved in criminal activities is often a shell company that is dissolved prior to the time of trial. If it is a legitimate, operating company, it has usually already commenced bankruptcy proceedings prior to trial, which means further sanctions against the company are not possible. Nevertheless, the judge said that she had at times wished that a legal person had been indicted along with a natural person.

### *Commentary*

***The situation in Hungary as it relates to legal persons is problematic. The requirement that a natural person must be punished in order for a legal person to be prosecuted creates a significant loophole by which legal persons can escape liability. Therefore, the lead examiners reiterate the Phase 2 recommendation that Hungary amend its law on the criminal liability of legal persons to eliminate the requirement that a natural person be convicted and punished as a prerequisite to the imposition of sanctions on a legal person, in accordance with Annex I.B to the 2009 Recommendation (recommendation 4(a)(1)).***

***The lead examiners are also concerned that Hungary is currently unable to ensure that a legal person cannot avoid responsibility by committing an act of foreign bribery through an intermediary. The lead examiners therefore recommend that Hungary take steps to ensure that its foreign bribery offence covers bribery through intermediaries, in accordance with Article 1.1 of the Convention and Annex I.C of the 2009 Recommendation. In addition, they recommend that Hungarian authorities consult with Hungarian businesses to establish "minimum standards with regard to appropriate supervision" by the persons whose actions can subject a legal person to liability, in line with the Phase 2 recommendation (recommendation 4(b)).***

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20 Act XXVI of 2008 requires the investigating authority to extend the investigation "to trace the connection between the criminal act underlying the proceedings and the legal entity" in cases where "any data revealed in the course of the investigation" shows that measures could be taken against the legal entity. In addition, "The investigating authority shall immediately notify the prosecutor of this fact". Article 12(1) of Act CIV of 2001, as amended by Act XXVI of 2008.

21 The cases involved misuse of harmful consumer goods (two cases), tax fraud and violation of waste management regulations.

*The lead examiners commend Hungary for making its foreign bribery offence applicable regardless of whether the benefit sought, obtained or retained is financial or not financial and suggest that the Working Group follow up on how this provision is interpreted in practice in foreign bribery cases. However, they reiterate the Phase 2 recommendation that Hungary remove the requirement that “the bribe must have aimed at giving or have actually given ... an advantage to the specific legal entity subject to prosecution” (recommendation 4(a)(3)).*

*The lead examiners also recommend that Hungary provide additional training to prosecutors, judges and law enforcement regarding the application of the foreign bribery offence to legal persons. Finally, they recommend that the Working Group continue to follow up on the absence of case law dealing with the liability of legal persons in foreign bribery cases.*

### **3. Sanctions**

28. Article 3 of the Convention requires Parties to apply effective, proportionate and dissuasive sanctions to natural and legal persons convicted of a foreign bribery offence. The Convention also requires Parties to consider the imposition of additional civil or administrative sanctions. Section III(vii) of the 2009 Recommendation recommends that each Party to the Convention “take concrete and meaningful steps ... to examine or further examine ... public subsidies, licences, public procurement contracts, contracts funded by official development assistance, officially supported export credits, or other public advantages, so that advantages could be denied as a sanction for bribery in appropriate cases, and in accordance with sections XI and XII of this Recommendation”.

29. During Phase 2, the Working Group decided to follow up on “the application of sanctions by the courts ... in cases of bribery of foreign public officials, to ensure they are effective, proportionate and dissuasive” (follow-up issue 7(f)). Since Phase 2, Hungary has introduced a new criminal sanctions regime that allows for a wide variety of sanctions. This new regime is discussed further below. At this point it is difficult to determine whether this new regime of sanctions that may be imposed in foreign bribery cases are effective, proportionate and dissuasive because the 26 individuals prosecuted for foreign bribery were all involved in one case, and that case involved relatively small monetary amounts.

#### **a) For individuals**

30. Through Act LXXX of 2009, Hungary overhauled its criminal sanctions regime to allow for a wide variety of sanctions against individuals. Specifically, an individual can be subject to the following types of punishments: (i) imprisonment, (ii) community service work, (iii) financial penalties, (iv) restraint of profession, (v) disqualification from driving, and (vi) expulsion from Hungary for individuals who do not have Hungarian citizenship (article 38(1)). These sanctions can be applied in any combination, subject to a few rules: If a crime carries a maximum sentence of three years of imprisonment, the term of imprisonment may be replaced by any combination of the other possible punishments, subject to two exceptions (article 38(3)). First, imprisonment may not be imposed jointly with community services work, and, second, expulsion may not be imposed simultaneously with community service work or financial penalties (article 38(6)). Ancillary punishments, such as “deprivation of public affairs”<sup>22</sup> and banishment from certain localities or areas of Hungary, may be imposed in addition to imprisonment (article 38(2), (7)). The Act also significantly increased the amount of fines that can be imposed in criminal cases. They now range from HUF 75 000 to 108 million (approximately EUR 238 to 342 216).

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22 The sanction of “deprivation of public affairs” is set forth in article 62 CC and includes deprivation of the right to vote; to hold public office; to serve in representative bodies; to hold office in non-governmental organisations, public bodies and public foundations; to be promoted to any military rank; or to receive a domestic decoration or permission to accept a foreign decoration.

31. Any sentence of imprisonment imposed must be proportionate to the severity of the offence, the danger the offender represents to society, the culpability of the offender and other mitigating and aggravating circumstances (article 83 CC). Act LVI of 2010, which entered into force on 23 July 2010, clarified this requirement by providing that when a sentence of imprisonment is delivered for a definitive term, the median of the prescribed scale of penalties serves as a guiding principle for the length of the sentence. The median is determined by adding to the minimum sentence half the difference between the minimum sentence and the maximum sentence. After determining the median, the sentencing judge may use his or her discretion to adopt individualised sanctions for a particular convict, taking into account the defendant's personal character, age (e.g. very young or very old), job and/or regular income, and recidivism, as well as the number of occasions on which the offence was committed, the financial advantage foreseen, whether a person breached an official duty, the offender's repentance and other factors, to determine an appropriate prison term.<sup>23</sup>

32. As noted above, 26 individuals have been convicted of foreign bribery under article 258B CC. Sanctions were issued against all of these individuals in 2008, under the regime in place prior to Act LXXX of 2009. These individuals were part of a large case that involved 83 defendants in total, but only 26 of them were charged and tried for the offence of bribing foreign government officials under 258B CC. Twenty-one of the individuals convicted under article 258B CC paid bribes ranging from EUR 25 to 50 each to customs officials in the Slovak Republic in connection with obtaining licenses to transport goods across international borders. Of the others convicted, one paid a bribe of approximately EUR 500 and five were convicted as either abettors or accomplices. The sentences imposed are listed in Annex 5 to this report. Six individuals (including the four abettors and accomplices, but only two individuals who actually paid bribes) were sentenced to terms of imprisonment, ranging from eight months to three years, and in three of these cases the terms of imprisonment were suspended. Six individuals (each of whom paid bribes) were sentenced to probation, all in cases alongside another sanction. Two individuals were sentenced to a deprivation of public affairs in addition to other sanctions. On the other hand, four individuals involved in the bribery scheme only received a reprimand of the court, and for two additional individuals the prosecutor terminated the investigation and applied reprimand/warning.<sup>24</sup>

33. Financial penalties were imposed in cases against 18 of the 26 defendants. These penalties ranged from HUF 30 000 (approximately EUR 100) to HUF 3 000 000 (approximately EUR 9 972). Although these defendants paid bribes of relatively small amounts, the bribes were paid on multiple occasions, which likely accounts for some of the higher financial penalties. However, given that financial penalties have only been imposed in this one case and that the total amount of bribes paid by any one defendant is not available, it is difficult to determine whether – based on the amount of the crime – the financial or other penalties are effective, proportionate and dissuasive.

**b) For legal persons**

34. During Phase 2, the Working Group recommended “that Hungary consider taking measures to improve the effectiveness of sanctions on companies convicted of bribery” (recommendation 6(b)). Possible sanctions against legal persons remain unchanged since Phase 2, however, and include (i) winding up the legal entity, (ii) limiting the legal entity's activities, and (iii) fines. Hungary has taken steps to

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23 According to the Ministry of Justice, the Supreme Court has issued guidelines (no. 56/2007) dealing with this standard.

24 Article 71 CC provides that a reprimand may be an appropriate sanction against a person “whose act is no longer dangerous or is dangerous to the society to such a minor extent that the imposition of the most lenient punishment or the application of any other measure provided by law – except for confiscation and confiscation of property – is found unnecessary”.

change its method of computing sanctions since Phase 2,<sup>25</sup> including providing additional guidance to explain how the sanctions regime applies if a legal person gains a “benefit” from the illegal activity (as opposed to a financial advantage, see part 2(a)(ii) above). Specifically, Act XXVI of 2008 provides, “If the benefit gained or intended to be gained through the criminal act is not a financial advantage, the court imposes the fine considering the financial situation of the legal entity, but at least HUF 500,000” (approximately EUR 1 585). According to Hungarian authorities, the phrase “considering the financial situation of the legal entity” gives courts a great degree of flexibility in determining the amount of a fine, so long as the fine is no less than HUF 500 000. In addition, a court may estimate the rate of the financial advantage if it is impossible or would cost a high amount to compute the financial advantage gained or intended to be gained.

**c) Non-monetary sanctions**

35. During Phase 2, the Working Group recommended that Hungary “consider introducing additional civil or administrative sanctions for natural persons convicted of foreign bribery, analogous to those applicable to legal persons”. Hungary passed legislation creating administrative sanctions for individuals in 2003 and 2006. Based on this legislation, the Working Group deemed this recommendation satisfied during the Phase 2 follow-up. Specifically, according to information provided by Hungarian authorities during the Phase 2 follow-up and in response to the Phase 3 questionnaire, the Public Procurement Act CXXIX of 2003 stipulated that both natural and legal persons who commit bribery shall be excluded from public procurement procedures. Since then, new legislation (the Public Procurement Act CVIII of 2011), which entered into force on 1 January 2012 and superseded the 2003 Act, contains the same exclusion criteria as the 2003 Act (more details about this new legislation are provided below in part 11(c)). In addition to this, individuals convicted of bribery may be prohibited from exercising certain functions in a company pursuant to the Business Associations Act IV of 2006.

**Commentary**

*The lead examiners commend Hungary on expanding the types of sanctions available against individuals who are convicted of the foreign bribery offence, including by increasing the amount of fines that can be imposed against individuals in criminal cases. However, because the prosecutions against individuals have involved bribes of relatively small amounts (and no legal persons have been convicted of the foreign bribery offence), it is difficult to assess whether sanctions are, in practice, “effective, proportionate and dissuasive”, as required by Article 3.2 of the Convention. The lead examiners also consider that the requirement of a conviction of a natural person as a prerequisite to the liability of a legal person will prevent the application of effective, proportionate and dissuasive sanctions to legal persons. Accordingly, the lead examiners recommend that the Working Group follow up on “the application of sanctions by the courts ... in cases of bribery of foreign public officials, to ensure they are effective, proportionate and dissuasive”, especially in cases against legal persons (Phase 2 follow-up issue 7(f)).*

**4. Confiscation of the bribe and of the proceeds of bribery**

36. Section 3.3 of the Convention requires each Party to “take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to attachment and confiscation or that monetary sanctions of comparable effect are applicable”. During Phase 2, the Working Group decided to follow up

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25 As in Phase 2, the highest fine that can be imposed is three times the financial advantage gained or intended to be gained through the criminal act, but at least HUF 500 000 (approximately EUR 1 661).

on “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” (follow-up issue 7(f)).

37. As explained in the Phase 2 report, article 77B(1) CC prescribes mandatory confiscation of any property (i) resulting from criminal activities and obtained in the course of or in connection with a criminal act; (ii) obtained in connection with crimes committed in affiliation with organised crime; (iii) replacing property resulting from criminal activities and obtained in the course of or in connection with a criminal act; (iv) supplied or intended to be used to commit a criminal act; or (v) embodying the object of the financial advantage (see the full text of the provision in Annex 4). This provision applies to both natural and legal persons, including their successors. The National Police Headquarters has decreed asset recovery to be compulsory, and there is a separate unit for asset recovery in the National Bureau of Investigation (NBI).

38. Nonetheless, in spite of the mandatory nature of confiscation, Hungary imposed confiscation measures on only one of the 26 defendants convicted of foreign bribery. Because of the difficulty in collecting statistics on confiscation, Hungary was not able to confirm exactly how many of the 787 persons convicted of *domestic* bribery between 2007 and 2010 were subject to confiscation measures. In addition, following the on-site visit Hungarian authorities explained that, prior to amendments of article 77B(1)(e) CC in April 2010, confiscation measures could be applied only against a given benefit – not against a promised benefit.<sup>26</sup> They explained that under the new confiscation rules, “confiscation of the bribe given, received or promised should be quasi automatic”. That said, during the on-site visit, representatives of the CIOPPS admitted that there was insufficient expertise regarding confiscation amongst CIOPPS staff. This might be a result of lack of cases and may develop over time as CIOPPS prosecutors gain more experience. This situation might also result from difficulties in interpreting the relevant legal provisions. At the time of the on-site visit, internal guidelines aimed at improving the practice of asset recovery were under preparation at the Prosecutor General’s Office.

39. During the on-site visit, prosecutors explained that the amount of confiscation is determined based on the entire (gross) value of the contract (or other benefit) obtained through the payment of a bribe. It is unclear whether the amount of the bribe itself may also be confiscated, as required by Article 3.3. Because only one foreign bribery case has involved confiscation measures, it is difficult to assess on a broad level how confiscation works in practice. In the one case where confiscations measures were imposed (Individual 1 in Annex 4), the court ordered that HUF 7 893 600 (approximately EUR 26 267) be confiscated. (In addition, the individual was sentenced to three years imprisonment, three years deprivation of public affairs and a HUF 3 000 000, approximately EUR 9 972, fine.) Following the on-site visit, Hungarian authorities explained that the person subject to confiscation was the abettor of the bribery and the amount confiscated represented the value of seized cargo that crossed the border illegally because of the crime. Thus, in this case, the benefit of the bribe was confiscated. Hungarian authorities explained that, in theory, the amount of the bribe itself is to be confiscated, along with all other benefits of pecuniary value resulting from the bribe. However, the amount to be confiscated is the subject of proof. For example, in this case, the exact amount of the bribe given in relation to this cargo was not determinable based on the evidence, so confiscation of the amount of the bribe did not occur.

### **Commentary**

***The lead examiners note that, as with other sanctions, confiscation of assets of a legal person is tied to the liability of a natural person. They also note that confiscation measures do not appear to have been***

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26 Prior to April 2010, “property that was the object of the given financial advantage” was subject to confiscation. Now “property that was the object of the given *or promised* financial advantage” (emphasis added) is subject to confiscation. See article 77B(1)(e) CC.

*consistently applied in foreign bribery cases. Because of limited case practice, it is also unclear whether both the amount of the bribe and the proceeds of the bribery are confiscated. With these concerns in mind, the lead examiners recommend that the Working Group follow up on whether, in practice, both the bribe and the proceeds of the bribe “are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable” (Article 3.3).*

## **5. Investigation and prosecution of foreign bribery offences**

### **a) Principles of investigation and prosecution, resources and coordination**

#### *(i) Competent authorities for enforcing the foreign bribery offence*

40. In Hungary, the investigation and prosecution of the criminal offence of bribery of foreign public officials is the exclusive competence of CIOPPS. At the time of Phase 2, this competence did not appear to be readily understood by all the relevant law enforcement authorities. The Working Group therefore recommended that Hungary clarify the competence of CIOPPS regarding its responsibility for foreign bribery cases 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 such cases to CIOPPS (recommendation 3(a)). This recommendation was considered implemented at the time of the written Phase 2 follow-up, given that Hungary had clarified the exclusive competence of CIOPPS by means of an official text and that training had been provided to relevant agencies relating to this competence. Since then, the Hungarian authorities have further clarified the exclusive competence of CIOPPS in an amended version of the General Prosecutor’s Directive no. 11/2003, which entered into force on 2 April 2011. During the on-site visit, it was apparent that there was a high level of awareness among all panellists interviewed, including representatives of law enforcement agencies, corporate and criminal lawyers and civil society representatives, that the agency responsible for investigating and prosecuting foreign bribery cases is CIOPPS.

41. As already noted in the Phase 2 report, given the exclusive competence of CIOPPS – which has its own investigative powers similar to those of law enforcement agencies – in investigating as well as prosecuting the foreign bribery offence, the role of Hungary’s law enforcement agencies – primarily the National Police and the Special Service for National Security (SSNS) – in this respect is consequently rather limited. Nonetheless, CIOPPS prosecutors may rely, and do rely, on Hungary’s law enforcement agencies where they require additional support, for example, when covert data gathering is required, on the SSNS, which is Hungary’s special authority to enforce the measures in questions. The National Bureau for Investigation (NBI), which has been established in the National Police Headquarters and employs highly-qualified experts in the field of economic crime, can also assist CIOPPS with search and seizure. Any relevant law enforcement agency can also assist CIOPPS with asset recovery. Officers from the NBI can also be seconded to CIOPPS for large investigations. At the time of the on-site visit, this was happening on a large case (although not related to foreign bribery); this case also involved the participation of Eurojust and Europol.

#### *(ii) Co-operation and coordination of relevant law enforcement bodies*

42. With regard to possible overlaps and parallel operations, authorities such as the police, the SSNS or the National Tax and Customs Administration (which conducts investigations into criminal offences, such as violation of accounting regulations and tax fraud) are obliged to report any complaint or suspicion of foreign bribery to CIOPPS. Cooperation among CIOPPS and law enforcement agencies was described as working well in practice. Europol can also assist with intelligence and analytical work, but their intelligence database is focused on terrorism and organised crime.

43. The lack of an overarching strategy influencing the behaviour of stakeholders, either nationally or locally, appears to be one of the main weaknesses of the system in force in Hungary. The on-site discussions confirmed that there is no overall concerted effort to uncover breaches in relation to corruption in general, and to foreign bribery in particular; cooperation and collaboration among law enforcement bodies is primarily complaints driven. In particular, as admitted by CIOPPS representatives, the prosecution service is a reactive body with no overall strategy that drives its work. Prosecutors react to what is put before them by other law enforcement agencies (including foreign agencies), complainants, or information published in the foreign press or passed along by Hungarian news media. For example, as noted earlier in the report, Magyar Telekom itself triggered foreign bribery investigations by Hungarian authorities, after it has launched an internal investigation into contracts that might have violated company policy and national laws (following concerns raised by its auditors) and voluntarily disclosed the results of its internal investigation to Hungarian law enforcement agencies. The investigation, initially conducted by the NBI under the offence of misappropriation of assets, was subsequently taken up by CIOPPS after the NBI referred the case to it due to suspicions of foreign bribery. In the MOL-Nyrt. (Hungary's oil and gas group) case, Croatian magistrates triggered a foreign bribery investigation by Hungarian authorities, after they launched investigations of the offence in Croatia and extended the investigation to Hungary.

(iii) *Prosecution resources*

44. Recommendation 3(b) from Phase 2 stated that Hungary "should 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". This recommendation was considered implemented at the time of the written Phase 2 follow-up after Hungary indicated in its written assessment that CIOPPS had increased its staff to 20 prosecutors. Since then, a special group, consisting of 10 prosecutors exclusively in charge of corruption offences (including foreign bribery), has been established within CIOPPS, in addition to the previous staff of CIOPPS. According to data provided by CIOPPS during the on-site visit, in 2011 CIOPPS had a total of 27 prosecutors.

45. The situation at CIOPPS is likely to further improve in the relatively near future. At the beginning of 2012, three additional prosecutors were staffed in the Department of Preferential Cases of the Prosecutor General's Office, which exercises supervision of CIOPPS. At the same time, five new regional departments were established under the CIOPPS. In these new regional offices, approximately 40 additional prosecutors and office staff, acting within the competence of and subordinated to CIOPPS, will deal with investigation of cases such as corruption, including foreign bribery. According to representatives of the Public Prosecutor's Office (PPO) met during the on-site visit, the existence of these new offices should result in more efficient and faster investigations and prosecution of corruption offences and will further enable the same prosecutor to follow a case throughout the entire investigation and prosecution, including at the trial stage, as recommended in Phase 2. Yet, given that many of the prosecutors likely to be staffing the five regional units were previously in charge of enforcing military law, the lead examiners were told that there will be some pressure on CIOPPS to ensure that these prosecutors have the requisite training.

(iv) *Expertise and training*

46. At the time of Phase 2, the Working Group recommended that Hungary put in place practical training for those actively involved in enforcement of the foreign bribery offence, in particular for CIOPPS and the police. The written follow-up noted that, although Hungary had provided some training to prosecutors since Phase 2, it had not focused on the foreign bribery offence. The report also noted that no specific training had been provided to the police. The Working Group therefore considered that the Phase 2 recommendation had been only partially implemented.

47. Not much has changed since then: the prosecutors' training on the foreign bribery offence has not been formalized in any way. During the on-site visit, the Hungarian authorities indicated that, although no special course has been organised specifically on the offence of foreign bribery and investigation of this offence, the offence is usually dealt with in training covering other types of economic and financial crime, including domestic bribery. Prosecutors also often take part in programmes organised by other institutions, such as the police (on criminalistics and investigative techniques) or the SSNS (on using covert investigative techniques). Participation in international training programmes or conferences is common.<sup>27</sup> According to CIOPPS representatives, this additional training is taken into account by superiors when distributing cases. Furthermore, the lack of formal specialisation for prosecutors is offset, to some extent, by the very existence of CIOPPS. The police force also engages in a training program, which is provided by the Police College of Hungary, a training facility for both the police and the National Tax and Customs Administration. The curriculum of the College covers specialised modules such as economic crime investigation (tax law, company law, financial and accounting law), criminalistics (which includes training on general theoretical problems of bribery) and, in the area of penal law, bribery and trading in influence in international relations.

(v) *Investigative tools*

48. As noted in the Phase 2 report, Hungarian criminal law allows for a wide variety of investigative tools and techniques: Hungarian authorities have at their disposal a well-established and effective legal framework for investigation and prosecution, including data gathering and covert operations that are undertaken by the SSNS. They also have access to numerous databases, including an on-line Internet based company register accessible directly by investigating services.<sup>28</sup> The law also provides that bank secrecy does not apply with respect to investigating authorities and the PPO, acting in a pending criminal procedure and seeking additional evidence. Tax authorities are obliged to disclose confidential tax information to the investigating authority upon request of the latter.<sup>29</sup> They also can share tax-related information with law-enforcement agencies on their own initiative.

49. All agencies were on the whole satisfied with the tools at their disposal to conduct investigations and prosecutions, which they deemed adequate in light of the many means of proof required in complex cases of international bribery. In particular, the point was made during the on-site visit that the removal of certain obstacles to the investigation of bribery offences in 2009 (e.g. removal on certain restrictions on use of and admissibility of evidence obtained by electronic surveillance techniques) has enable authorities to be more active in the investigation space. What criticism there was concerned the lack of a central bank account database. Since the system is decentralized, the lead examiners were told that it was a difficult task to map all bank accounts held by a particular person in different financial institutions, as there are approximately 200 credit institutions in Hungary. The procedure was described as lengthy (banks have as many as 30 days to provide information) and as potentially impeding various law enforcement measures, such as seizure.<sup>30</sup> The situation was, however, expected to improve in the near future, as implementation of

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27 For example, in May 2011, in the framework of a five-day conference for deputy chief prosecutors, a one-hour lecture was given on the topic of investigating corruption offences.

28 The company registers, which are held and maintained by Company Courts that are organised within County Courts and the Metropolitan Court, contain, in addition to the names and addresses of managers and members, the names, identification numbers, sets, time of registration, capital, main activities and numbers of bank accounts of a given company.

29 Since 2011, the consent of the prosecutor is not required anymore for the investigating authority to request data from the tax authority.

30 The FIU can only secure interim restraining order on bank accounts for up to 3 days pending application for more permanent orders. Because of the 30 day rule, the ability to effectively restrain the flow of financial assets is limited.

the European Commission Directive on Payment Services brought about the foreseen establishment of a centralised bank account database.<sup>31</sup>

### *Commentary*

*While welcoming the clear attribution of competence to the CIOPPS, the increased resources within CIOPPS and the recent establishment of specialized units at regional level, and the availability of a broad variety of investigative tools, the lead examiners are concerned about what appears to be a certain lack of capacity to actively identify foreign bribery cases within the system. The lead examiners consider that a coherent, overreaching policy towards foreign bribery and investigations and prosecution related to it should be drawn up. The policy should be supported by comprehensive and practical training for all those actively involved in enforcement of the foreign bribery offence. The lead examiners also recommend that Hungary increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage both to increase sources of allegations and to enhance investigations. The lead examiners also recommend that the Working Group follow up with Hungary regarding the number of reports of suspected foreign bribery received by CIOPPS.*

*In order to further increase the effectiveness of investigation and prosecution of the offence, the lead examiners consider that quick access for investigators to relevant bank-related data needs to be facilitated and are encouraged by the news that the Hungarian Government is developing proposals to establish a centralised bank account database. They recommend that the establishment of such a central database be followed up.*

#### *b) Commencement and termination of proceedings*

##### *(i) Possibilities for challenging decisions to close investigations*

50. Prosecution in Hungary is mandatory. In Phase 2, the Working Group noted that public prosecutors have broad discretion at every stage of the procedure to determine the direction and outcome of a case. From the preliminary phase, during which the prosecutor is entitled to decide whether or not a criminal investigation should be initiated, to the committal of the accused to the court which will try the case, the prosecutors oversee each proceeding step by step. Although this poses no problems in cases covered by the general law, the Working Group expressed its view that the decision on whether to prosecute or dismiss a case could be subject to inappropriate considerations in sensitive cases, such as those involving bribery of foreign public officials, notwithstanding that, in Hungary, the prosecution service is independent and not subject to instruction by the government or the Minister of Justice. This echoed concerns expressed in the European Union Accession Report on Hungary, which pointed out criticisms raised by parliamentarians regarding the alleged lack of action in investigating domestic corruption cases.

51. In this context, the Working Group noted the possibility for the victim of a criminal offence to bring a “supplementary private prosecution” as a way to overcome a prosecutor’s decision not to proceed

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31 See Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC Text with EEA relevance.

with a case.<sup>32</sup> Given the lack of practice in this area (supplementary private prosecution was relatively new in the Hungarian system at the time of the Phase 2 evaluation of Hungary), it was however unclear as to whether the notion of “victim” – defined in Hungarian law as “the party whose right or lawful interest has been violated or jeopardized by the criminal offence” – would encompass third parties (e.g. competitors or a foreign state whose public official received a bribe from a Hungarian national). As a result, the Phase 2 report expressed scepticism about the actual possibility to challenge decisions not to prosecute through substitute private prosecutions in cases of foreign bribery. During the on-site visit, CIOPPS representatives confirmed that, given that bribery is considered as a crime against public life, there is no victim as such and therefore a supplementary private prosecution cannot be brought in a foreign bribery case.

52. Similar scepticism was expressed about the effectiveness of the provisions providing for the possibility for anyone affected by a decision by a public prosecutor to exercise a right of hierarchical appeal to the superior prosecutor against a decision to terminate investigation or shelve the case (articles 195-196 of the Criminal Proceedings Act). Not only was it unclear whether the persons entitled to exercise such right would go beyond the persons specifically mentioned in the decision or complainants and therefore include competitors or foreign states, but also, given the fact that the PPO is organised hierarchically, it was seen as unlikely that, if a superior prosecutor had instructed the public prosecutor in charge of an investigation to close it, he/she would sustain objections and that the case would be reopened. For all these reasons, the Working Group recommended that Hungary “include instructions by senior prosecutors in the case file and review possibilities for challenging decisions to close investigations” (recommendation 3 (d)). Given that Hungary did not report any measures aimed at specifically addressing this recommendation at the time of the written follow-up, the Working Group considered that the recommendation had not been implemented.

53. An amendment to the Criminal Proceedings Act (CPA), which entered into force in July 2011, has tightened the ability to exercise a right of hierarchical appeal to the superior prosecutor against a decision to terminate investigation or shelve the case. Under the amendment, only those who are “directly affected” by the prosecutor’s decision can exercise this option, in contrast to the previous legal provision which referred to persons “affected” by the decision. During the on-site visit, representatives of CIOPPS suggested that a person indirectly affected by the decision could lobby the senior prosecutor directly and present justifications, pursuant to article 191 CPA, under which a prosecutor is not prevented from reopening a procedure if new circumstances make it reasonable to do so. However, civil society representatives and criminal lawyers met during the on-site visit explained that this is not a realistic option.

54. According to the PPO, the risk of improper considerations affecting a decision of whether or not to prosecute and bring charges would be tempered by several factors. First, strict separation and independence of the prosecution, which is enshrined in the Constitution, prevents the government or the Minister of Justice from giving instructions or orders for a case to be shelved. Second, certain mechanisms set limits on the prosecutor’s power to shelve cases, including provisions in the CPA that specify the conditions under which a prosecutor may decide to dismiss the case and the fact that, if the Prosecutor General may issue instructions for a specific case, which the prosecutor in charge of it is bound to follow, these must be set down in writing and included in the case file in accordance with an Order of the General Prosecutor.

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32 A supplementary private prosecution is allowed if the report of the case was rejected, the investigation was terminated, the public prosecutor decided not to indict a particular offence (partial indictment), he/she dropped the charge after lodging the indictment to the court or he/she did not deem the evidence available sufficient to support prosecution. The consequence of this procedure is to deprive the prosecutor of his/her power to close a case. Bringing a civil party petition also gives the victim a further significant advantage: the possibility to be heard during the proceedings and to supply evidence.

55. The large number of cases of domestic bribery prosecuted annually in Hungary would suggest that political and other considerations are not taken into account in the decision to prosecute corruption cases that involve Hungarian public officials. The practice of conducting foreign bribery investigations is still limited, however. As noted earlier, there were only two ongoing investigations of foreign bribery during the on-site visit and one of these investigations – the MOL case – has since been discontinued due to, according to the Hungarian authorities, lack of evidence of a crime. In the view of the lead examiners, it may be useful to follow Hungary’s practice of investigating foreign bribery to determine whether national economic and other improper considerations may influence the decision to close investigations. Hungary should also consider extending the possibility to challenge decisions to shelve a case to those indirectly affected by the decisions, such as competitors or foreign states.

(ii) *Immunity from prosecution*

56. During Phase 2, the Working Group examined the legal framework and the scope of immunities in Hungary. It noted that the circle of persons immune from investigation and prosecution was rather large, including the President, Members of Parliament (MPs) and members of several state bodies, such as the Constitutional Court<sup>33</sup>. Considering that such immunities could hinder effective investigation and prosecution of the foreign bribery offence where MPs or other immune officials are allegedly involved in bribery of foreign public officials, the Working Group recommended that Hungary consider measures to ensure that immunity does not impede effective investigation and prosecution in foreign bribery cases (recommendation 3(f)).

57. The Working Group’s concerns were two-fold. First, while recognizing that immunity is temporary and may be lifted (by the Parliament when it pertains, for example, to an MP, the General Prosecutor, the parliamentary commissioner for fundamental rights or his/her deputies or the President; or by the Constitutional Court when it pertains to judges), the Working Group expressed concern that decisions on lifting immunity could nevertheless be made on the basis of political or other improper considerations rather than in the interest of justice. Second, the Working Group noted that persons whose immunity has not been lifted cannot be interrogated as suspects (except where they have been caught in the process of committing the offence) and therefore expressed concerns that this extension to immunity from certain investigative measures might constitute an obstacle to investigating other persons involved in the same bribery scheme, for whom the statute of limitations continues to run. During the Phase 2 follow-up, the Working Group, while welcoming a new law that has restricted immunity within some bodies, noted that no measures had been taken to reduce the scope of immunity, in particular with regard to immunity from investigative measures. It therefore concluded that the Phase 2 recommendation was only partially implemented.

58. As already noted in the Phase 2 report, the Parliament’s Committee for Immunities, with the support of all political parties represented in Parliament, issued in 2004 a general guidance concerning corruption cases. This guidance provided that Hungarian MPs are ready to suspend or lift immunity in every potential case of corruption, without being subject to political considerations. A look at the practice of the Hungarian Parliament over the past six years shows that an increased number of requests for the lifting of immunity have been granted, including requests concerning former members of the government. During the on-site visit, the lead examiners were also told that requests for lifting the immunities of judges is now being almost systemically granted. That said, statistics provided by Hungary indicate that a rather large number of requests (almost half) made by the PPO were not granted between 1 January 2005 and 31 December 2010: only 27 of 53 motions for the suspension of immunity initiated by the PPO were successful, while in 26 cases the lifting of immunity requested by the PPO was not granted (none of the 53

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33 Members of government, if they are not MPs, are not entitled to immunity.

motions were related to bribery).<sup>34</sup> In 2011, on the other hand, only five requests to lift immunity were filed, and all five requests were granted. Following the on-site visit, the Ministry of Public Administration and Justice (MOJ) explained that in 2012 Hungary's Parliament hopes to enact a new law regulating the legal status of MPs. According to the MOJ, this act will set forth the "exact scope of immunity" for MPs.

(iii) *Statute of limitations*

59. As noted in the Phase 2 report, Hungary applies two time limits to the offence of foreign bribery – (i) a statute of limitation (SoL) and (ii) an investigation time limit. During Phase 2, the SoL for the foreign bribery offence was three years and began to run when the crime was committed. By the end of this three-year period, an investigation must have been started. On the other hand, the investigation time limit was two years and began to run at the time the defendant was first interviewed by law enforcement authorities. By the end of this two-year period, all investigative measures against the defendant must have been carried out.

60. At the time of Phase 2, the Working Group found that both time limits were too short. The Working Group recommended that Hungary extend the SoL to an appropriate time (five years), so as to ensure the effective prosecution of the offence; however, it did not issue an explicit recommendation regarding the investigation time limit. In the 2007 written follow-up, the Working Group noted that, although Hungary had implemented, since Phase 2, mechanisms to account for the late discovery of bribery cases and had established MLA and extradition requests as grounds for suspension of the SoL (with no time limit attached to these suspensions), Hungary had not taken any action with regard to extending the SoL to an appropriate time for starting an investigation of foreign bribery offences. It also expressed concerns with regard to the two-year investigation time limit. The Working Group therefore concluded that the Phase 2 recommendation was only partially implemented.

61. Since January 2012, with the entry into force of Act CL adopted on 18 November 2011, Hungary has increased the SoL for the foreign bribery offence to five years, as recommended by the Working Group in Phase 2. The SoL requires only that an investigative step occur within five years. As soon as an investigative step occurs, the five-year period is interrupted and starts running again. The SoL applies to investigations of natural persons. There is no specific SoL for legal persons, and the liability of the legal person is linked to the liability of a natural person.

62. The investigation time limit has not been changed since Phase 2. During the on-site visit, the lead examiners were told that the investigation time limit does not apply until a person on well-founded reasons is suspected and interrogated. As long as a suspected person is not identified and interviewed, the investigation will run with no time limit; it is only once the investigatory authorities interrogate the suspected person that the time limit will commence with respect to that person. The lead examiners were further told that the investigation time limit may be interrupted for various reasons and that the suspension of the time limit does not prevent the conduct of the investigation unless that investigation directly affects the suspected person: thus, enforcement agencies can interview witnesses without affecting suspension (but not interview the suspect or seize the suspect's bank records). It was explained that this procedural time limit was in place in order to fulfill the requirements of Article 6 of the European Convention on Human Rights ("the right to a fair and public hearing within a reasonable time") and that it had never caused an obstacle in practice for prosecuting bribery offences, since most of the investigations have normally already been carried out at the point of confronting the suspect. Comprehensive statistics regarding domestic bribery and domestic trading in influence have been provided to support this contention. While recognizing that a short time limit might be desirable in the context of petty corruption, the lead examiners

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34 The alleged offences ranged from battery to bribery, a significant proportion of which were road traffic offences (e.g. drunk driving).

are of the opinion that the two-year deadline for the investigations of large foreign bribery cases appears rather short, given the complexity of the cases and the difficulty in identifying perpetrators.

### **Commentary**

*The lead examiners welcome the recent amendment extending the statute of limitations for the foreign bribery offence from 3 to 5 years. The lead examiners note, however, that the procedural investigation time limit of 2 years within which criminal investigations are to be completed still applies. They are of the opinion that, given the complexity of foreign bribery cases, this period appears rather short, despite the fact that the time limit only runs once the suspected person is interrogated and may be interrupted for various reasons. The lead examiners recommend that Hungary extend the two-year investigation time limit in cases of foreign bribery.*

*The lead examiners also remain concerned that persons whose immunity is not lifted cannot be interrogated as suspects and note that in this context, according to data provided by the Hungarian authorities covering the period 1 January 2005 to 31 December 2010, the lifting of immunity requested by the PPO has been refused in almost half of the cases. The lead examiners therefore reiterate the Phase 2 recommendation that Hungary, within the constitutional principles of the state, consider taking appropriate measures to ensure (i) that such immunities are lifted in the context of foreign bribery investigations and prosecutions and (ii) that immunity does not prevent the effective investigation and prosecution of foreign bribery offences.*

*The lead examiners also note the assurances given by Hungary that investigation of bribery cases are not influenced by political and other undue considerations and, in this context, note positively the measures taken by Hungary to require inclusion of instructions by senior prosecutors in the case file. They note, however, that the possibility to challenge decisions not to prosecute has been further restrained since the Phase 2 and its written follow up. Given the central role assigned to prosecutors to prosecute offences of bribery involving foreign public officials, the lead examiners recommend that the Hungarian authorities consider allowing those indirectly affected by decisions not to prosecute, such as competitors or foreign states, to challenge such decisions. In addition, they invite the Hungarian authorities to gather statistics regarding the number of foreign bribery proceedings that lead to prosecution or are discontinued, along with information about investigatory measures taken in and grounds for discontinuance of any foreign bribery investigation, so that the Working Group can evaluate Hungary's implementation of Article 5 of the Convention.*

## **6. Money laundering**

63. During Phase 2, the Working Group recommended that Hungary “take appropriate steps to improve the flow of information and feedback between the relevant actors in the anti-money-laundering system” (recommendation 2(e)). During the Phase 2 follow-up, taking note of efforts made by the Hungarian Financial Intelligence Unit (FIU) to improve the flow of information in the AML system (through, in particular, feedback to agencies failing to report, training to reporting entities, and guidelines directed at these entities), the Working Group concluded that Hungary had satisfactorily implemented the Phase 2 recommendation.

64. Since then, as noted in the Report on Fourth Assessment Visit of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval) published in 2010, Hungary had worked continuously to improve its money laundering enforcement regime, in

particular to strengthen its legal and institutional framework<sup>35</sup>. From 2008 to 2010, the FIU received 23 260 STRs. During the period under consideration, over 4400 STRs resulted in an investigation or other enforcement actions. Statistics presented during the on-site visit do not show any criminal investigation for money-laundering with foreign bribery as a predicate offence since 2007. Given the absence of criminal investigations or prosecutions for money-laundering with foreign bribery as a predicate offence, the Working Group's ability to assess the performance of the regime in relation to the foreign bribery offence remains limited.

65. In its September 2010 report, Moneyval noted that there were still very low numbers of prosecutions for money laundering after 16 years of criminalization of money-laundering. The report recommended that Hungary increase training for prosecutors, judges, and law enforcement personnel to promote the successful prosecution of money laundering cases. The report, echoing the Phase 2 recommendation, also recommended that the police, the National Tax and Customs Administration and the FIU "should take steps in order to make sure that the FIU receives relevant feedback on the STRs disseminated". Finally, increased anti-money laundering training for employees of financial institutions and other obligated entities was also seen as necessary to improve the quality of filed STRs. During the on-site visit, the FIU told the examiners that improving the flow of information in the AML system has been the Unit's constant objective, in particular by providing the reporting service providers with general feedback on the use of the reported information by means of an annual report and a bi-annual report, including accounts on the efficiency of the reports and proposals for improving efficiency and typologies. In addition to this general feedback, the FIU notifies the reporting service provider concerning the utilization of the information unless this would violate or threaten the outcome of the proceedings. Since 2009, the FIU has observed a reduction in the volume of reports and a noticeable improvement in their quality, which has been assessed as a positive outcome of a various factors, including feedback to and training for obliged entities by the FIU.

### *Commentary*

*The lead examiners welcome the constant improvement of Hungary's anti-money laundering regime and efforts made by the Hungarian Financial Intelligence Unit (FIU) to improve the flow of information in the AML system. Given the absence of criminal investigations, prosecutions or convictions for money-laundering with foreign bribery as a predicate offence, the lead examiners recommend that the Working Group follow up on the measures taken by Hungary's FIU to monitor STRs and improve quality of reports, including by taking steps to make sure that it receives relevant feedback on the STRs disseminated.*

## **7. Accounting standards, external audit and corporate compliance and ethics programmes**

### **a) Enforcement of accounting standards**

66. As noted in the Phase 2 report on Hungary, accounting requirements are regulated in Hungary by the Act on Accounting. The Act is supplemented by government decrees based on special requirements for various financial entities as well as for non-profit institutions. The Act includes detailed accounting requirements based on the 4<sup>th</sup>, 7<sup>th</sup> and now the 8<sup>th</sup> EU Company Law Directives. The making of accounting documents or records containing false or incomplete information or double invoices is sanctioned both under criminal law and taxation law. In 2005, the Working Group recommended that Hungary take appropriate measures to enforce accounting and auditing offences more effectively. Since then, as already

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35 Moneyval, Report on Fourth Assessment Visit – Anti-Money Laundering and Combating the Financing of Terrorism: Hungary (Council of Europe, 30 September 2010), [www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/HUN-MERMONEYVAL\(2010\)26\\_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/HUN-MERMONEYVAL(2010)26_en.pdf).

noted in the 2007 follow-up report, Hungary has given exclusive competence over false accounting offences to the Hungarian Customs and Finance Guard (HCFG) (now the National Tax and Customs Administration, which is the legal successor of the Finance Guard since 1 January 2011 and is, as was its predecessor, an armed law enforcement agency that has nationwide jurisdiction). This has strengthened enforcement in this area as testified by the statistics supplied by Hungary during the on-site visit. Almost 10 000 indictments for violation of accounting regulation under criminal law were handed up from 2007 to 2010. They demonstrate a significant number of indictments for all types of false accounting offences over the last five years, although none of the indictments were connected to cases of foreign bribery. At the time of the 2007 follow-up the Working Group had concluded that the recommendation had been satisfactorily implemented.

**b) External audit requirements**

67. Under the 2009 Recommendations, Parties are requested to maintain adequate standards to ensure the independence of external auditors and to require reporting of suspected acts of bribery discovered in the course of an external audit.

*(i) Auditing standards*

68. As noted in the Phase 2 report on Hungary, Hungarian auditing practices are governed by the Act on Accounting, under which, at the time of the Phase 2, audit was required for all companies whose annual net sales over the past two years exceeded HUF 50 million (equivalent to approximately EUR 180 000). Since then, the threshold has raised to HUF 100 million (equivalent to approximately EUR360 000), that is to a level corresponding to that applied in other EU Member States.<sup>36</sup> This rule does not apply to branches of foreign companies and subsidiary companies that must always be audited, except for branch offices of foreign companies established in the EU or in a state outside the EU where the national legal requirements on the audit are in conformity with the relevant regulations of the EU: these are not required to be submitted to an external audit. Some 25 000 business entities are audited each year in Hungary.

*(ii) Independence*

69. Section X.B(ii) of the 2009 Recommendation recommends that Parties to the Convention and professional associations should maintain adequate standards to ensure the independence of external auditors. Since the Phase 2 of Hungary, there have been important developments regarding auditor independence with the entry into force on 1 January 2008 of the Act on Auditors (Act LXXV of 2007). The Act is based on the 8<sup>th</sup> EU Directive and represents a significant step in the direction toward greater auditor independence. In particular, pursuant to the law, it is mandatory for public-interest companies to set-up an audit committee whose primary responsibility is, in addition to monitoring the financial reporting and the internal control system of the entity, to monitoring the activity and the independence of the auditor. A registered auditor is only allowed to carry out the statutory audit of a public-interest company over a maximum period of five years; following the expiry of the original term of appointment, the auditor may not undertake to carry out the statutory audits of the same entity within two financial years of the date of expiry.

70. The Chamber of Hungarian Auditors (MKVK), in addition to its role as the national auditing-standard-setter, is responsible for the issuance of ethical regulations and the discipline of auditors. In particular, it is required to organize and oversee the quality control regime of the work of auditors, including the evaluation of the quality control systems employed by the audit firms. In keeping with the quality control regulation, the MKVK conducts inspections focusing on compliance with professional

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36 In 2014, this threshold will be further raised to HUF 300 million in accordance with EU Directives.

standards and the application of national auditing standards. With regard to professional conduct, the MKVK has developed its own code of ethics based on the International Federation of Accountants (IFAC) Code of Ethics. At the time of the on-site visit, the Chamber had translated and issued the most recent version of the IFAC code into Hungarian.

(iii) *Training and awareness-raising*

71. In Phase 2, the Working Group recommended that Hungary “take measures to raise awareness of the foreign bribery offence among the accounting, auditing ... 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” (recommendation 1(f)). As a follow-up to this recommendation, the Ministry of Finance – which is responsible for accounting and auditing regulation in Hungary – included in 2006 the topic of foreign bribery in the compulsory vocational training for accounting and auditing professionals, a step which led the Working Group to conclude, at the time of the 2007 written follow-up, that recommendation 1(f) had been satisfactorily implemented. Since then neither the Ministry of Finance nor the Chamber of Hungarian auditors has undertaken additional bribery-specific guidance or awareness-raising with respect to the auditing professions: when training covering bribery issues, such as such as spotting red flags and reporting suspicions of unlawful conduct, is provided, it is done in the framework of in-house training of major accounting and auditing firms. During the on-site visit, the lead examiners also noted that no steps had been undertaken by the relevant authorities to make the 2009 Recommendation, and in particular Annex 2 of the 2009 Recommendation, known among the accounting and auditing profession. The Hungarian authorities reported that the monthly magazine of the auditors’ society SZAKMA issues regular information and professional articles on the topic of fraud and money-laundering; however, there have been no articles dedicated specifically to anti-bribery or to detecting “red flags” for foreign bribery in companies’ accounts.

(iv) *Reporting requirements*

72. There has been no change since the Phase 2 follow-up in the rules and standards governing the reporting by external auditors of suspicions of foreign bribery. In 2005, the Working Group recommended that Hungary take appropriate measures to legally oblige auditors to report all suspicions of bribery by any employee or agent of the company to management and, as appropriate, to corporate monitoring bodies. It further recommended that Hungary consider requiring auditors, in the face of inaction after appropriate disclosure within the company, to report all such suspicions to competent law enforcement authorities. The 2007 follow-up report noted that there was still a need to change the rules governing external reporting by external auditors of suspicions of foreign bribery. Since then, the 2009 Recommendation recommends, in Section X.B(v), that Parties to the Convention “should consider requiring the external auditor to report suspected acts of bribery of foreign public officials to competent authorities independent of the company, such as law enforcement or regulatory authorities”.

73. Since then, the most recent version of the code of ethics developed by the MKVK prohibits the disclosure of any indication of a suspected act of foreign bribery outside the company, unless the client company gives its written consent to do so. The prohibition is also contained in the International Federation of Accountants Code of Ethic (Section 140.1), which requires confidentiality to be maintained unless there is proper and specific authority or there is a legal or professional right or duty to disclose. Thus, currently in Hungary, external auditors have no choice but to report suspicions of the bribery of foreign public officials internally, unless the management of the client company gives its authorization to report this discovery to the relevant public authorities. According to the accounting and auditing firms met during the on-site visit, all members of the auditing profession are bound to this rule. Thus, Hungary does not appear to have addressed the Phase 2 recommendation to its full extent. In addition, to date, no cases of the bribery of foreign public officials have been detected by the accounting and auditing profession. It

should be noted that there are some legal exceptions to the confidentiality requirement. One exception is embedded in the Anti-Money Laundering Act, which requires auditors to report a suspicious transaction when the facts indicate money laundering or financing of terrorism. Such transactions must be reported to Hungary's FIU.

### *Commentary*

*In Hungary the external reporting of foreign bribery by the accounting and auditing profession is constrained by confidentiality requirements in the code of ethics developed by the Chamber of Hungarian Auditors and in the International Federation of Accountants Code of Ethic (Section 140.1), which also applies to Hungary's auditing profession. In addition, regular training is not provided by either the regulatory authorities or the profession on the foreign bribery offence. The lead examiners therefore recommend that Hungary consider (i) amending the Act of Auditors and Code of ethics, so that external auditors are required to report suspected acts of bribery of foreign public officials to competent authorities independent of the company, such as law enforcement or regulatory authorities, as is the case with money-laundering offences; and (ii) ensuring that auditors making such reports reasonably and in good faith are protected from legal action. They further recommend that Hungary takes appropriate steps to raise awareness of the foreign bribery offence among auditors and accountants, including by ensuring that auditors and accountants benefit from regular training specifying the nature and accounting and auditing aspects of the offence, in order to facilitate the detection of such acts.*

#### *c) Corporate compliance and ethics programmes*

74. During Phase 2, the Working Group noted that relatively few Hungarian companies have developed ethics codes or active compliance policies as part of their internal management and that, when they exist, such codes generally did not directly address foreign bribery.

75. Representatives of private sector interviewed during the Phase 3 on-site visit noted that the recent increase of law-enforcement efforts by the Hungarian government has contributed to the growing awareness and anti-corruption measures of companies. They further noted that while companies were willing to comply with the government's regulations, cultural transformation of the society would be needed to change the climate of tolerance of corruption. The private sector representatives were well aware about the corruption risks that the Hungarian companies could face when operating in foreign markets, and about Hungary's legal obligations under the OECD Anti-Bribery Convention. The awareness about responsibility of legal persons for foreign bribery was lower, probably due to the lack of such cases in the Hungarian legal practice. One representative of private sector as well as representatives of the Hungarian Bar Association interviewed during the on-site visit were aware of the 2009 Good Practice Guidance on Internal Controls, Ethics and Compliance (Annex II to the 2009 Recommendation), however, as noted later in this report, they acknowledged that the government of Hungary has not taken any steps yet to promote this Guidance.

76. Representatives of the private sector interviewed during the Phase 3 on-site visit opined that an increasing number of Hungarian companies have developed internal compliance programmes addressing bribery issues, especially large companies operating abroad and subsidiaries of large multi-national enterprises (MNEs) exposed to the US Foreign Corrupt Practices Act and UK anti-bribery legislation. The Chamber of Commerce and the Hungarian Bar Association have provided advice to companies on compliance programmes; large companies have conducted in-house training and engaged international law and audit firms to provide such training. At the same time, Hungarian small and medium size enterprises (SMEs) operating in foreign markets have faced serious challenges in practical implementation of the

OECD Anti-Bribery Convention, and have not had the capacity to develop measures to address these challenges.

77. None of the interviewed private sector delegates were aware of any steps taken by the Hungarian government to encourage companies to adopt and develop internal controls, ethics and compliance programmes or measures for the prevention and detection of foreign bribery. They could not recall any training, practical brochures or other advice related to internal control, ethics and compliance programmes to prevent foreign bribery that was provided by the Hungarian public authorities. Some of them opined that soft measures such as advice and assistance were not necessary, as the government should only establish and publish legislative requirements, while it is the obligation of companies to comply.

### *Commentary*

*The lead examiners commend the Hungarian private sector, including companies and business associations, for their efforts to increase awareness about the risks of and liability for foreign bribery. They welcome the efforts of the large Hungarian companies operating abroad as well as the subsidiaries of MNEs to develop internal control, ethics and compliance programmes. However, they are concerned about the lack of steps taken by the government of Hungary to encourage companies to adopt and develop such programmes for the prevention and detection of foreign bribery, as recommended by the 2009 Good Practice Guidance on Internal Controls, Ethics and Compliance. They are particularly concerned that Hungarian SMEs, which have limited capacity to develop such programmes, have not received assistance from the Hungarian government in order to address serious challenges of bribe solicitations that they may face when operating abroad. The lead examiners recommend that Hungary take measures to encourage companies, and especially SMEs, to develop internal control, ethics and compliance programmes and measures for the prevention and detection of foreign bribery.*

## **8. Tax measures to combat bribery**

### *a) Non-deductibility of bribes*

78. Section I (i) of the 2009 Recommendation on Tax Measures requires Parties to explicitly disallow the tax deductibility of bribes to foreign public officials. As found in Phase 2, Hungarian law explicitly prohibits deducting bribes as business expenses on tax statements.

79. In Phase 2, the Working Group noted that this prohibition only applied where there had been a conviction for a foreign bribery offence and that the time limit for reopening a tax case might be too short to obtain a conviction of foreign bribery. The Working Group recommended that Hungary take measures to ensure that no conviction for foreign bribery would be required to deny the deductibility of the suspected bribe and to review the operation of the time limit for reopening a tax case (recommendation 5(b)). In the Phase 2 follow-up, Hungary informed the Working Group that no conviction was required. Hungarian authorities explained that tax regulations did not allow any expense to be deducted when they originated from illegal source; however, these regulations did not require the conviction for a crime, and only referred to the relevant criminal provisions for the purpose of definition. During the Phase 3 examination, the Hungarian authorities further explained that the time limits and procedures for reopening of tax cases are regulated in the subsection (1) of the Section 164 of the Act on Taxation, which establishes that “the right of tax assessment shall lapse five years after the last day of the calendar year in which the taxes should have been declared”. During the on-site visit, the Hungarian authorities did not refer to any difficulties in reopening tax cases due to the time limits.

**b) *Guidance to taxpayers and tax authorities, detection and reporting***

*(i) Guidance to taxpayers and tax authorities*

80. Section I(ii) of the 2009 Recommendation on Tax Measures guides Parties to the Convention to “assess whether adequate guidance is provided to taxpayers and tax authorities as to the types of expenses that are deemed to constitute bribes to foreign public officials”. The National Tax and Customs Administration of Hungary provides general information on corporate taxation on its website, including information about tax non-deductibility of bribes. Guidance for taxpayers on completing tax returns also contains information about the prohibition against deducting bribes on tax returns. No specific measures have been taken to raise awareness among taxpayers of the types of expenses that may constitute bribes to foreign public officials and, therefore, may constitute criminal offences established under the Criminal Code.

81. With regard to guidance to tax authorities, the Working Group recommended in Phase 2 that “Hungary 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” (recommendation 2(b)). In the Phase 2 follow-up, the Working Group, while noting Hungary’s efforts to disseminate the OECD Bribery Awareness Handbook for Tax Examiners, suggested that further training for tax officials was necessary. During Phase 3, the Hungarian authorities confirmed that the Handbook remains the main methodological guidance for tax inspectors on bribery. They further explained that internal rules regarding identifying fraudulent tax statements have been developed by the tax administration. These internal rules clarify the procedures to be followed in the course of a tax inspection; however, they do not contain an explicit reference to the foreign bribery offence. Training provided to tax examiners on detection of economic crime covers bribery, among other subjects, but does not have a specific focus on the foreign bribery offence. The lead examiners believe that adding foreign bribery to the agenda of training courses available to tax inspectors would help them focus on identifying bribes.

*(ii) Reporting of suspicions of foreign bribery by tax authorities*

82. Section II of the 2009 Recommendation on Tax Measures recommends that Parties establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties to the appropriate domestic law-enforcement authorities. Section IX(i)-(ii) of the 2009 Recommendation further recommends that Parties should ensure (i) that “easily accessible channels are in place for reporting of suspected acts of foreign bribery”; (ii) that “appropriate measures are in place to facilitate the reporting by public officials ... to law enforcement authorities” of such suspected acts; and (iii) that appropriate measures are in place to protect private and public sector employees who report such acts. The legal requirements of reporting of criminal violations to the competent authorities have evolved in Hungary since Phase 2; as of 1 January 2011, the CC (article 258F) establishes a duty of public officials (including taxation officers) to report any suspicion of foreign bribery that arises in the exercise of their official function (see part 10(b) of this report for more information on reporting obligations). In addition, according to Act LXXXV of 2009 on the Pursuit of the Business of Payment Services, the tax authority must disclose confidential tax information to courts and investigating authorities if such information is necessary in the interest of opening or conducting criminal proceedings.

83. Although representatives of the tax administration detect several thousand suspicions of fraud or tax evasion every year and such suspicions are systematically reported to law enforcement authorities, only thirteen corruption related suspicions were reported by the Hungarian tax authorities between 2009 and September 2011, and no irregularity relating to possible foreign bribery had been detected by the taxation authorities at the time of Phase 3. According to representatives of the tax administration, this could be

because tax inspectors focus primarily on tax fraud issues, rather than on bribery; thus, although they are generally aware of bribery risks, it is difficult for them to detect such concealed bribes in practice. On this point, discussions with the tax administration show that, while taxation officers receive training regarding tax fraud and evasion, specific training on the non-deductibility of hidden commissions paid to foreign public officials has still been lacking (see part 8(b)(i) above on guidance to taxpayers and tax authorities).

### *Commentary*

*The lead examiners welcome the introduction of a reporting obligation of suspicions of foreign bribery for tax officials. The examiners note, however, that tax officials are not sufficiently trained about this offence, and recommend that Hungary reinforce training for tax officials with respect to types of expenditures which could hide foreign bribes and detection techniques. They further suggest that such training should be provided to tax inspectors on a regular basis to help them detect concealed bribes in practice, as suggested by the 2009 Recommendation.*

#### *c) Information sharing with foreign authorities*

84. Hungary shares tax information with foreign countries principally through double taxation agreements (DTAs). These agreements allow the sharing of information with foreign countries for tax purposes only. So far, only one DTA has included the optional language on information sharing from paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention.<sup>37</sup> At the time of the on-site visit, Hungary was considering signing the Multilateral Convention on Mutual Assistance in Tax Matters. In addition to the provision of administrative assistance, the Hungarian tax administration can also respond to tax information enquiries sent by criminal law enforcement authorities under bilateral agreements on criminal legal assistance.

### *Commentary*

*The lead examiners welcome the progressive inclusion in bilateral tax treaties of the option contained in paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention. They encourage Hungary to sign the Multilateral Convention on Mutual Assistance in Tax Matters and to ensure that the optional language in paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention is systematically included in new bilateral tax treaties entered into by Hungary.*

## **9. International cooperation**

### *a) Mutual legal assistance*

#### *(i) Legal framework*

85. As set out in the Phase 2 report of Hungary, legal provisions for providing mutual legal assistance (MLA) are laid down in domestic law, as well as in bilateral and multilateral treaties, and apply to the foreign bribery offence. According to Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters, Hungarian judicial authorities may co-operate without concluding a treaty, since the national legislation allows co-operation on the basis of reciprocity and in the absence of it. The possible types of international co-operation cover a wide range of forms, including extradition and procedural legal assistance (such as investigative activities, searches for evidence, questioning of suspects and witnesses, hearing of experts, inspections of sites, and seizure).

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<sup>37</sup> Other countries did not request the inclusion of this language.

86. Although article 5(1)(a) of Act XXXVIII imposes a dual criminality requirement on requests for MLA, during the on-site visit the PPO indicated that such requirement has never been problematic in practice. So long as the alleged conduct would have been a crime if committed under Hungarian jurisdiction, the requirement of dual criminality is met with respect to the provision of MLA. In addition, article 62 of Act XXXVIII provides a possibility to exchange MLA on the basis of reciprocity, even if the requirement of dual criminality is not fulfilled. PPO representatives also declared that, in cases where MLA cannot be provided, they are ready to exchange information through other channels of cooperation.

87. Hungary has taken action to resolve an issue that arose in Phases 1 and 2 with regard to whether bank secrecy could interfere with MLA. Article 51(7) of Act CXII of 1996 on Credit Institutions and Financial Enterprises (CIFE Act) states that “bank secrecy obligation does not apply where Hungarian law enforcement agency makes written request in order to fulfil written foreign MLA request made pursuant to international agreement and containing signed confidentiality clause”. Article 51(2) of the CIFE Act applies to cases where bank secrets may be disclosed to investigating authorities and/or the PPO, acting in a pending criminal procedure and seeking additional evidence, as well to as courts acting in criminal proceedings.

88. Since 2005, pursuant to Act CXVI (which entered into force on 23 November 2005), Hungary can provide MLA to European Union countries with regard to certain requests concerning cases involving administrative proceedings against legal persons for foreign bribery. However, MLA remains unavailable to non-EU Parties to the OECD Convention that have adopted regimes of administrative or civil liability for legal persons that engage in bribery. The lead examiners believe this limitation in the law might be an obstacle to effective co-operation with foreign states that are not members of the European Union. In the Phase 2 evaluation of Hungary, the Working Group recommended that Hungary 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 (recommendation 3(c)). The issue of the difficulty of providing MLA has been identified as a horizontal issue by the Working Group.

(ii) *Incoming and outgoing MLA requests*

89. It is not possible to know the exact number of incoming and outgoing requests for MLA in relation to foreign bribery, as no comprehensive and adequately detailed statistics on MLA and other forms of international cooperation are kept and maintained by the Hungarian authorities specifically on the foreign bribery offence. Under Act XXXVIII of 1996, the Ministry of Public Administration and Justice (MOJ) and the PPO are the two central authorities responsible for receiving and sending requests for international cooperation. Although they also have a responsibility to keep statistics, the only figures available are those contained in the PPO’s files. Based on the data in these files, since 2006, Hungary received only 1 incoming MLA request regarding bribery of a foreign public official committed by Hungarian natural or legal persons: a request in relation to the possible bribery of Croatian officials by Hungary’s oil and gas group MOL Nyrt. In addition to this, Hungary has received a few requests for international cooperation in relation to bribery of Hungarian public officials committed by foreigners. For example, Hungary received a request for assistance in connection with a case involving the possible bribery of Hungarian officials by Romanian citizens with the help of Romanian and Hungarian perpetrators in order to obtain driving licenses in Hungary without passing the necessary exams. Hungary executed the MLA request from Romania and, at the time of the on-site visit, the Romanian authorities were still conducting their own investigations.

90. Hungarian authorities indicated that they deny few requests. When a request does not meet the conditions for granting MLA, Hungary informs the requesting authority and invites it to supplement its request, so that it can be carried out. Hungary has refused assistance in cases where providing MLA would prejudice Hungary’s sovereignty, security or public order. This was the case with a request for MLA

Croatia submitted in July 2011, in order to obtain information relating to MOL.<sup>38</sup> Hungarian authorities denied the request on grounds of national interest and national security; nevertheless, the data contained in the July 2011 request triggered a foreign bribery investigation by Hungarian authorities. As discussed above in part A.4(b), Hungarian authorities discontinued their investigations in January 2012 (although Croatian authorities were continuing the investigation at the time of the issuance of this report).<sup>39</sup> Similarly, based on information originating from abroad, Hungary reopened an investigation into whether one of Magyar Telekom's subsidiaries bribed FYROM officials. As in these two cases, requests for MLA under criminal laws (including not only foreign bribery, but also embezzlement and misappropriation of assets) generally give rise to an investigation in Hungary.

91. Hungary has not submitted many requests for MLA from other countries. Since the Phase 2 evaluation, Hungary has requested assistance from only one foreign authority in a case involving suspicions of foreign bribery: Croatia, in the MOL case. That does not mean that Hungary does not request MLA where needed, however. An example is the case of alleged bribery of Hungarian public officials in relation to ÖBB's acquisition of MAV Cargo (rebranded as Rail Cargo Austria) that was being pursued by CIOPPS at the time of the on-site visit; in that case, Hungarian authorities asked the Viennese Anti-Corruption Prosecution to assist in investigating the case.

(iii) *Resources and process for execution of MLA requests*

92. As noted above, the MLA process is administered in Hungary by two central authorities. For requests that arise during the investigative stage (prior to the indictment), the PPO is competent; for requests that arise after the indictment, the MOJ is competent. According to the Hungarian authorities, most requests (over 90%) are sent and received by the PPO. In Phase 2, the Working Group recommended that Hungary consider taking appropriate measures to ensure that sufficient resources are available to effectively carry out MLA obligations. As the Hungarian authorities did not provide information on specific implementation measures in the context of the Phase 2 follow-up in 2007, the Working Group concluded that the part of recommendation 3(c) addressing the issue of resources had not been implemented.

93. During the on-site visit, the lead examiners were told that, in general, MLA requests are dealt with quickly (Hungary can provide responses within 36 days, 14 days in urgent cases) and that sufficient resources are available to effectively carry out MLA obligations. The Hungarian authorities were generally of the opinion that the MLA mechanism works smoothly. Given the limited number of instances where foreign authorities have asked for the assistance of the PPO concerning foreign bribery, it remains, however, difficult to evaluate Hungary's performance in this area. For similar reasons, given Hungary's lack of experience since Phase 2 with foreign requests concerning the identification, freezing, seizure, confiscation and recovery of the proceeds of bribery of foreign public officials, no specific assessment can

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38 Under article 2 of Act XXXVIII of 1996 (in the absence of an international agreement) the provision of mutual legal assistance in criminal matters, requests for legal assistance may not be performed nor submitted if they would prejudice the sovereignty, security or public order of Hungary. That rule corresponds to Article 2(b) of the European Convention on Mutual Assistance in Criminal Matters and to Article 18(21)(b) of the Palermo Convention, according to which the requested State Party may refuse to grant mutual legal assistance if it considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests. The other MLA request denied was a MLA request issued by the Russian authorities; the case was not about foreign bribery, however.

39 Information regarding discontinuation of the investigation is publicly available. See, e.g. "Hungary prosecutors say MOL had no role in INA bribe", Reuters, 30 January 2012.

be undertaken of the mechanisms in place as they relate to foreign bribery.<sup>40</sup> It should be noted that as a party since 2009 to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Hungary should now be in a better position to deliver procedural legal assistance to the other contracting parties of the Convention with regards to asset recovery.<sup>41</sup>

(iv) *Other forms of international cooperation*

94. As indicated in the Phase 2 report, Hungary may provide and seek assistance through informal channels, such as through direct communication between law enforcement authorities in other jurisdictions. Cooperation with other law enforcement agencies is legally defined<sup>42</sup> and, during the on-site visit, was described by Hungarian law enforcement agencies as working well in practice. Hungary's membership in several global and regional police co-operation organisations and initiatives was also described as effective.<sup>43</sup> These international and regional law enforcement networks have, however, never been used yet by either Hungary's law enforcement agencies or foreign authorities in investigations and other legal proceedings concerning specific cases of foreign bribery. Therefore, the effectiveness of the system in relation to the foreign bribery offence cannot be established.

b) *Extradition*

95. In the context of Phase 2, the Working Group agreed to follow up with regard to actions taken when Hungary refuses to extradite based on the Hungarian nationality of the person whose extradition is requested. Generally, Hungary does not extradite its citizens: Article 13(1) of Act XXXVIII of 1996 only permits the extradition of Hungarian citizens who are citizens or permanent residents of another State. Within the EU, the European Arrest Warrant is applicable, based on the implementation of the Council Framework Decision 2002/584/JHA on European arrest warrant and surrender procedures to the national law. Since 1 May 2004, as already noted in the Phase 2 report, Hungary does not refuse extradition on the basis of Hungarian nationality if the extradition request originates from an EU Member State.

96. The MOJ is the competent authority to decide on an extradition matter. If extradition is refused (for instance, because of the individual's Hungarian nationality), the MOJ is required to forward the case to the General Prosecutor for consideration of initiation of proceedings in Hungary, based on nationality jurisdiction. Prosecutors met during the on-site visit indicated that such prosecutions have taken place, albeit not in the context of foreign bribery. At the time of the Phase 3 evaluation of Hungary, only one

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40 The Phase 2 Report stated that with regard to seizure and confiscation, one case involving a request from Germany had been resolved and confiscation granted.

41 The aim of the Council of Europe Convention is to facilitate international co-operation and mutual assistance in investigating crime and tracking, seizing and confiscating the proceeds thereof. The convention is intended to assist States in attaining a similar degree of efficiency even in the absence of full legislative harmony.

42 Act LIV of 2002 on International Co-operation of Law Enforcement Agencies (ICLEA) sets forth a framework for co-operation of Hungarian law enforcement agencies with foreign authorities. It applies to any agency authorised by law to perform crime prevention and law enforcement activities and to engage in international cooperation. Under the act, the International Law Enforcement Cooperation Centre (NEBEK) coordinates the receipt of, and response to, foreign requests for assistance.

43 Examples are INTERPOL, the Schengen Agreement, the European Union law enforcement Agency (Europol) and the SECI Centre (the Southeast Europe Cooperative Initiative Regional Centre for Combating Trans-border Crime), which is a regional organisation that brings together police and customs authorities from 13 member countries in Southeast Europe.

incoming extradition request was made in relation to a foreign bribery case. The request related to a non-Hungarian citizen, and the requested person was surrendered to the requesting foreign authority.

### **Commentary**

*The lead examiners note the efforts made by Hungary to facilitate the provision of MLA. To further improve the legal framework, the lead examiners recommend that the Working Group follow up on Hungary's measures to make MLA available to all Parties to the Convention in cases involving administrative or civil proceedings against legal persons for foreign bribery. Given that requests for MLA in the context of foreign bribery have remained exceptionally rare, the examiners are not in a position to evaluate in detail Hungary's practice with regard to granting international MLA under the foreign bribery offence. They invite the Working Group to monitor developments depending on case law and practice. They also recommend that Hungary put in place a mechanism to compile comprehensive annual statistics on all MLA and extradition requests – including requests relating to freezing, seizing and confiscation – that are sent or received, relating to the foreign bribery offence, including the nature of the request, whether it was granted or refused and the time required to respond.*

## **10. Raising public awareness and the reporting of foreign bribery**

### **a) Awareness of the Convention and of foreign bribery in the public and private sectors**

#### **(i) Policy and institutional framework**

97. During the Phase 2 examination of Hungary, the Working Group noted that Hungarian authorities were in the process of developing an anti-corruption strategy; however, it was not clear at that time whether the strategy would address foreign bribery issues. In the written follow-up to Phase 2, Hungary explained that the strategy would address the OECD recommendations concerning foreign bribery, but that the strategy had not yet been developed. Since then, Hungary has been in the process of developing the strategy, with the MOJ responsible for this task. According to MOJ authorities, the draft strategy, “Program of the Prevention of Corruption”, was prepared and will be submitted for the approval process at the end of March 2012. MOJ authorities have explained that it is to primarily focus on public integrity and ethics, including codes of ethics for public officials, clear rules on conflict of interest and other measures necessary to change the culture of tolerance of corruption in the society. They have also said that the strategy will cover foreign bribery. Nonetheless, because the main focus of the strategy is to be the prevention of corruption in the public administration and the decision to include foreign bribery in the strategy was recent, the lead examiners have a concern that the draft strategy may not give the appropriate level of emphasis to foreign bribery. The lead examiners have not had a chance to review the draft strategy.

98. At the time of Phase 2, the MOJ was responsible for awareness-raising related to foreign bribery. The Working Group welcomed this role and recommended that Hungary ensure that the MOJ be given “appropriate resources to carry out its new role” (recommendation 1(b)). Given Hungary's assurance during the written follow-up to Phase 2 that resources had been allocated to the MOJ to fulfil this role, the Working Group concluded that recommendation 1(b) was implemented satisfactorily. During the Phase 3 on-site visit, however, the Hungarian authorities explained that responsibility for awareness raising is not the task of the MOJ alone and all the agencies that have responsibility for fighting corruption are

responsible for awareness rising within their field of operation.<sup>44</sup> The new anti-corruption strategy is expected to establish clear allocation of responsibilities, in particular with regards to awareness-raising activities, and improve coordination among various agencies. Nonetheless, at the time of the on-site visit, it was not clear yet which agencies were involved in the development of the foreign bribery section of the anti-corruption strategy.

### **Commentary**

***The lead examiners welcome the efforts of the Hungarian authorities to develop an anti-corruption strategy, which will also address foreign bribery. In this context, the lead examiners recommend that Hungary ensure that foreign bribery is addressed in the strategy as an explicit priority in order to promote a proactive and coordinated approach to this type of corruption. The strategy should be developed in cooperation with relevant agencies and stakeholders and should establish a clear allocation and coordination of responsibility for prevention and combating of foreign bribery.***

#### **(ii) Raising awareness efforts targeting public agencies**

99. In Phase 2, the Working Group recommended that Hungary take further actions to raise awareness among public agencies that work with Hungarian companies active in foreign markets, including trade promotion agencies and their officials (recommendation 1(a)). During the written follow-up, the Working Group noted that Hungarian authorities had made efforts to raise awareness by (i) providing annual training to employees of the Investment and Trade Development Agency (ITDH) and officials of the Ministry of Foreign Affairs (MFA) and (ii) publishing an informational booklet; thus, the Working Group concluded that recommendation 1(a) was satisfactorily implemented.

100. Since then, the Hungarian government appears to have undertaken minimal public sector awareness raising activities concerning foreign bribery. While the Hungarian export credit agencies MEHIB and Eximbank provide awareness raising and training to their employees on anti-bribery regulations, including foreign bribery, officials in other key agencies such as the Hungarian Investment and Trade Agency (HITA, which has replaced ITDH), MFA (including staff at overseas missions) and the tax administration were not given any training about risks of foreign bribery and about methods to prevent, detect and report suspicions, or about their responsibilities to raise awareness among the private individuals and businesses with whom they interact. The institutional changes, the closure of the previous trade agency ITDH and establishment of the new agency HITA in its place, were among the reasons for the situation. However, the HITA has indicated that it will provide training to its staff in the near future.

### **Commentary**

***The lead examiners note with concern that since the Phase 2 review Hungary has only engaged in limited awareness raising activities targeting the public administration and public agencies that work with Hungarian companies active in foreign markets, in spite of this being an issue identified by the Working Group in Phase 2 and a key aspect of the 2009 Recommendation (Recommendation III(i)). They urge the HITA, MFA and other public agencies working with the Hungarian companies operating***

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44 At least 10 agencies have a responsibility for fighting corruption in Hungary, including the following: State Audit Office, Competition Authority, Public Procurement Authority, Financial Supervisory Authority, Ministry of Public Administration and Justice, Ministry of Interior, Government Control Office, National Tax and Customs Administration, Constitution Protection Office, National Protective Service (this Service is an integral part of the Police, and is responsible for the protection of the personnel of civilian intelligence service, law enforcement agencies and administrative bodies), Police, Prosecution Service, Courts.

***abroad to develop, without delay, awareness raising and training programmes specifically focusing on foreign bribery and to deliver these programmes on a regular basis to their staff.***

*(iii) Raising awareness in the private sector*

101. During Phase 2, the Working Group observed that awareness of the foreign bribery offence among Hungarian companies was low and recommended that Hungary undertake activities to raise awareness in the private sector regarding Hungary's framework for combating foreign bribery and the legal consequences of foreign bribery (recommendation 1(e)). During the Phase 2 follow-up, the Working Group noted that the MOJ planned to produce a short leaflet and was finalising a brochure specifically targeted at informing private persons, including companies, active in foreign markets about foreign bribery issues. However, given that further efforts to raise awareness in the private sector were lacking, the Working Group concluded that recommendation 1(e) was implemented partially.

102. As noted earlier in this report, representatives of the private sector interviewed during the Phase 3 on-site visit appeared to be well aware of the corruption risks that Hungarian companies may face when operating in foreign markets, as well as Hungary's legal obligations under the Convention. However, this increase of awareness was largely due the efforts of the private sector itself and the level of awareness has been described as "patchy". MOJ authorities reported that a booklet it published in 2007 contained a collection of legislation related to corruption and foreign bribery. However, it appears that the Hungarian government has not taken any other steps since Phase 2 to raise awareness of the foreign bribery risks among Hungarian companies, business associations or lawyers. In this context the HITA representative confirmed that, thus far, HITA has not provided advice to businesses regularly and on a pro-active basis, but that HITA's educational plan includes such advisory and training programmes for 2012.

***Commentary***

***The lead examiners are concerned that since Phase 2 the government of Hungary has not implemented any measures to raise awareness of the issue of foreign bribery in the private sector. They urge the Hungarian authorities to promote a comprehensive and coordinated approach by relevant public bodies for the implementation of the 2009 Good Practice Guidance on Internal Controls, Ethics and Compliance. The lead examiners also urge relevant public agencies, including HITA, to provide practical guidance about risks of and measure to prevent foreign bribery to the Hungarian companies operating abroad.***

***b) Reporting of foreign bribery by public officials***

103. During Phase 2, the Working Group recommended that Hungary consider expanding the scope of article 255B of the CC, which sanctions the failure to report domestic bribery by public officials, to provide similar sanctions for a failure to report foreign bribery (recommendation 2(a)). In the context of the written follow-up in 2007, Hungarian authorities reported that they had decided against the recommended extension, based on the view that "Hungarian public officials were very unlikely to learn of a possible act of bribery that was committed abroad". Therefore, the Working Group concluded that recommendation 2(a) was only partially implemented. Since then, the 2009 Recommendation recommends that Parties put into place (i) easily accessible channels for reporting suspected acts of bribery of foreign public officials in international business transactions to law enforcement authorities and (ii) appropriate measures to facilitate reporting by public officials to law enforcement authorities of suspected acts of bribery of foreign public officials in international business transactions detected in the course of their work (either directly or indirectly through an internal mechanism).

104. An important legislative change has taken place since then. As noted earlier in the report, as from 1 January 2011, pursuant to a new provision introduced in the CC (article 258F) “any public official, who has learned from credible sources of an act of bribery in international relations (articles 258B to 258D CC) yet undetected, and he/she fails to report it to the authorities at the earliest possible time, is guilty of misdemeanour and may be punished by imprisonment not to exceed three years”. Such reports can be made to any investigating authority (e.g. police, PPO, tax administration or customs administration). This provision is supplemented by a right to report any other irregularities under the Act on the Protection of Fair Procedure (Act CLXIII of 2009), which entered into effect on 1 April 2010 (see part 10(c) below addressing whistleblowing). Some public officials interviewed during the Phase 3 on-site visit appeared to be aware of their reporting obligation under this new law, but it appeared that many agencies had not introduced policies and procedures to support the implementation of this requirement. Consequently, at the time of the Phase 3 evaluation there have been no cases where the new offence of failure to report bribery in international relations has been applied. The MOJ indicated that it was willing to introduce measures to facilitate reporting as part of the anti-corruption strategy.

105. The amendments to the Criminal Code allow Hungary respond in large measure to the Phase 2 Recommendation and meet the requirements of the 2009 Recommendation. To promote the implementation of the recent amendments, more attention should now be paid to developing policies and procedures to facilitate reporting and to providing training for public employees. This is especially important in light of the fact, that there was no strong tradition of reporting of suspicions of crime in the Hungarian society and that important efforts are required to change the culture of Hungarian society still tolerant to corruption, as noted by representatives of the Hungarian authorities as well as non-governmental representatives met on-site. This suggests that special efforts are needed to facilitate such reporting, as recommended by Section IX, “Reporting Foreign Bribery”, of the 2009 Recommendation, and may include training public officials concerning the new reporting obligation, as well as establishing accessible channels for reporting either directly or indirectly through an internal mechanism.

### *Commentary*

*The lead examiners note with satisfaction the introduction into legislation of an obligation for public officials to report foreign bribery offences. To improve the system and to support the implementation of the legislation now in place, the lead examiners recommend that Hungary develop appropriate policies and procedures to facilitate reporting and raise awareness of the obligation to report suspected foreign bribery and the policies.*

### *c) Whistleblower protection*

106. In Phase 2, the Working Group noted an absence of specific legal provisions protecting whistleblowers who report suspicions of foreign bribery and recommended that Hungary considered introducing stronger measures to protect employees who report suspicious facts involving bribery, in order to encourage them to report without fear of relation (recommendation 2(d)). During the Phase 2 follow-up, the Working Group, noting that no new measures had been considered by Hungary, concluded that the recommendation was not implemented. Since then, Section IX of the 2009 Recommendation recommends that Parties ensure that measures are in place to protect private and public sector employees who report suspected acts of foreign bribery.

107. An important legislative change has taken place in this area since the written follow-up. Act CLXIII on the Protection of Fair Procedures was adopted in 2009 and came into force on 1 April 2010. The Act protects employees who report potential or actual damage to public interests, both in the private and the public sectors (see article 20 of the Act in Annex 4). The Act applies to the reporting of acts by a person or decision-making body that, in exercising its duties or discretionary powers, fails to act

objectively and without prejudice and reasonable consideration to lawful interests of participants of various procedures. The Act applies to reports of misconduct in the following areas: (i) grants of public monies; (ii) procedures by public administration bodies or authorities entrusted to exercise duties of public administration; (iii) public procurement procedures; and (iv) the use or changing ownership of state-owned or local government assets. The Act establishes procedures for examining such potential infringements, including possible sanctions in a form of fines. Act CLXIII provides that if an employee becomes aware of any acts that lead to damage to public interests, he or she may file a report to the employer, to the employer's supervisor or directly to the responsible authority. The Act further provides that the reporting employee should be protected from possible retaliation in relation to his or her employment and promotion, his or her working conditions, his or her salary and other benefits, and disciplinary sanctions. Upon the employee's request, the responsible authority must provide protection, including legal advice, legal representation and financial support. The Act also provides that the whistleblower will receive an award in the amount of 10% of the fine imposed. Unfounded or malicious reports may entail a fine and other sanctions for the whistleblower.

108. While Act CLXIII establishes very broad protection for whistleblowers reporting damage to public interests, the examination procedures are to be applied only in areas related to the use of public funds. Therefore, it is not clear whether the procedures may also be applied to bribery of foreign public officials by Hungarian nationals or legal persons in relation to international business transactions. Some questions also remain open as to enforcement of the Act, as the Act provides that the responsible authority with the competence for its implementation should be "a body designated by law to perform tasks related to public procurement and protection of public interests", and no such body has yet been established. In addition, Hungarian authorities have not engaged in any training or awareness raising activities to promote practical implementation of the Act. Finally, during the on-site visit, civil society representatives raised concerns about the lack of certainty about meaningful protection for whistleblowers or opportunity to obtain independent advice, which may be a barrier to persons willing to disclose incidents.

### *Commentary*

*The lead examiners note with satisfaction the adoption of new legislation protecting whistleblowers reporting damage to public interests in both the public and private sectors. They call upon Hungary to clarify that the protection of whistleblowers reporting foreign bribery is provided under this legislation, and that responsibility for its enforcement is clearly allocated. They further note that implementing the new legislation in practice will require an important cultural change and therefore recommend that steps are taken to raise awareness and educate public officials, the private sector and other non-governmental stakeholders about the new protection. The lead examiners recommend that the Working Group follow up on the implementation of the new legislation.*

## **11. Public benefits**

### **a) Official development aid (ODA)**

109. The 1996 Recommendation of the Development Assistance Committee on Anti-Corruption Proposals for Bilateral Aid Procurement calls upon Parties to require anti-corruption provisions in bilateral aid-funded procurement, to promote the proper implementation of anti-corruption provisions in international development institutions and to work closely with development partners to combat corruption in all development cooperation efforts. The 2009 Recommendation further requires that there be a possibility to suspend from competition for public advantages (such as contracts funded by official development assistance) enterprises determined to have bribed foreign public officials.

110. In Hungary, aid projects are managed and supervised by the Ministry of Foreign Affairs (MFA). During the Phase 3 on-site visit, representatives of the MFA explained that about one half of the bilateral ODA is funded through NGOs; the other half of the bilateral ODA is implemented through memorandums of understanding with the recipient governments. They further noted that ODA represents a small budget and involves small scale projects that are not based on the public procurement rules (due to their small size). The MFA has adopted a rather limited approach to preventing foreign bribery in ODA-funded projects. The Hungarian embassies and foreign missions examine ODA project proposals. However, representatives of the MFA interviewed during the Phase 3 on-site visit were not aware of any procedure in place to supervise such projects during the selection or execution in relation to anti-corruption risks. There is no requirement of anti-corruption declarations or internal control and financial audits within implementing organisations. It also appears that there are no procedures for suspending companies convicted for foreign bribery from ODA contracts or for the use of blacklists established by development banks for these purposes. The usefulness of such blacklists itself was questioned (since it is very easy to form a new company). In addition, to be useful, any blacklist would need to identify the individuals associated with the blacklisted company. This lack of anti-corruption measures appear to fall short of 1996 and 2009 Recommendations, which requires anti-corruption provisions to guide bilateral aid-funded procurement, and that there is a possibility to deny public advantages, such as contracts funded by official development assistance, as a sanction for bribery.

111. The representative of Eximbank (one of the Hungarian export credit agencies discussed in part 11(b) below) interviewed during the on-site visit noted that Eximbank was involved in ODA contracts by providing tied aid credits under bi-lateral government agreements with foreign states, and that these contract included references to the 2006 OECD Recommendation of the Council on Bribery and Officially Supported Export Credits to the OECD DAC provisions.

### *Commentary*

*The lead examiners recognise that the Hungarian ODA represents a small budget. However, they regret that apart from the efforts of the Hungarian export credit agencies to prevent the risk of foreign bribery in tied aid credits, no efforts have been made by the MFA to establish mechanisms to prevent risks of foreign bribery in ODA funded operations. As the ODA sector develops in Hungary, the MFA should introduce such mechanisms, including anti-corruption provisions during selection and control of ODA funded projects, as well as sanctions to allow suspension from such contracts for companies convicted for corruption, as required by the 1996 Recommendation and the 2009 Recommendation provisions related to ODA.*

### *b) Export credits*

112. Section XII of the 2009 Recommendation recommends that parties to the Convention should also (i) adhere to the 2006 Recommendation of the Council on Bribery and Officially Supported Export Credits (2006 Recommendation) and (ii) support the efforts of the OECD Working Party on Export Credits and Credit Guarantees to implement and monitor the implementation of the 2006 Recommendation. Hungary adhered to the 2006 Recommendation and is a member of the OECD Working Party on Export Credits and Credit Guarantees. The Hungarian Credit Insurance (MEHIB) and the Hungarian Export-Import Bank (Eximbank) are the main export credit agencies in Hungary.

113. During Phase 2, the Working Group noted that, according to both MEHIB and Eximbank, a final court judgment setting forth a conviction for foreign bribery was required before a beneficiary's existing insurance or export credits could be terminated. Sanctions included terminating the contract and reclaiming any indemnity of amounts paid. At the time of Phase 2, sanctions were only applicable to transactions that were the subject of the application; there was no possibility of wider sanctions. During Phase 2, the lead

examiners recommended that the Working Group followed up with regard to the treatment by export credit agencies of companies and persons suspected of, or convicted of, foreign bribery.

114. During Phase 3, Hungary noted that MEHIB and Eximbank were aware of obligations deriving from the 2006 Recommendation and were in the process of introducing them into their in-house regulations. Both agencies now require anti-corruption declarations and disclosure of convictions by applicants. The banks check the debarment lists of international financial institutions (IFIs) during examination and assessment of every new business offer, and they have the right to carry out enhanced due diligence of applicants where there is a reasonable doubt about the integrity of the applicants.

115. MEHIB and Eximbank have the right to debar applicants convicted of prior foreign bribery offences from further benefits, and they may suspend an application or a contract if there is a suspicion of bribery. If Eximbank or MEHIB denies a business offer due to corruption concerns, it is required to take necessary steps to contact competent authorities (i.e. the police or the PPO).

116. According to the information provided by the Office of the National Judicial Council, from the Phase 2 follow-up of Hungary (2007) until 31 December 2010, no sanctions such as suspension or termination of official export credit support have been imposed. This information was confirmed by the representatives of the export credit institutions interviewed during the on-site visit.

**c) Public procurement**

*(i) Suspension from participation in public procurement contracts*

117. Under Section XI(i) of the 2009 Recommendation, Parties should permit authorities to suspend a company from competition for public procurement contracts if the company has bribed foreign public officials and the Party also applies procurement sanctions to companies that bribe domestic public officials.

118. The Public Procurement Law of 2003 provides that a company convicted of “an offence concerning their business activities or professional conduct” by a final judgement can be suspended from public procurement (article 60(1)(c)). Hungarian officials have explained that foreign bribery is an offence that falls under this law. During Phase 3, Hungary explained that a new Act CVIII on Public Procurements was adopted in 2011 and entered into force on 1 January 2012. The new Act maintains suspension provisions which were already available in the previous legislation. Article 56(1)(c) and (h) of the Act contains criteria for exclusion from public procurement procedures, one of which is conviction of bribery (either domestic or foreign). Article 182(1) detailed rules regarding the exclusion criteria are to be set forth by government decree. Governmental Decree No. 310/2011 (XII.23), on the certification of suitability and non-existence of the grounds for exclusion and the determination of the public procurement technical specifications, entered into force on 1 January 2012. According to the Decree, the contracting authorities need to examine criminal records for individuals and the company register for companies. They may also examine other registers available in Hungarian, the official list of approved tenderers (that proves they were not subject to exclusions), and similar lists established by other Member State of the European Union. In the absence of practice, it remains difficult to assess how the new exclusion rules will relate and be applied to companies found guilty of foreign bribery.

119. In Phase 2 the Working Group noted that the 2003 law was difficult to apply in practice because public officials responsible for public procurement did not receive information from the courts and there was no register where information about convictions concerning companies was recorded. As a result, the Working Group invited Hungary to take measures to improve the effectiveness of sanctions on companies convicted of bribery, such as by creating an appropriate register recording such convictions.

120. As during Phase 2, no special register of enterprises determined to have bribed foreign or domestic public officials can be used for debarment by contracting authorities. Instead, a general company register contains information regarding convictions of legal persons; however, since no legal persons have as yet been convicted for bribery, this register has not been used for debarment purposes. Furthermore, the register does not contain information about owners or managers of legal persons who may have been convicted for bribery; information about such convictions is available in a separate criminal register. This loophole could allow a company whose owner or a manager was convicted of bribery to continue participating in public procurement, or could allow an individual who has been convicted of bribery to hide behind the identity of a legal person and participate in public procurement. This is of particular concern, as the procedures for registering a new company are quite simple and beneficial owners are not generally disclosed. While the Decree on the grounds of exclusion instructs the contracting authorities to verify lists of approved tenderers established by other Member State of the European Union, there is no requirement that they should also consult the debarment lists established by IFIs during the public procurement procedures. In addition, the Public Procurement Council, the central public authority for public procurement, confirmed that no training has been provided to public officials responsible for public procurement concerning the risks of foreign bribery or the related debarment provisions.

121. In practice, according to the information provided by the Office of the National Judicial Council, from the Phase 2 follow-up of Hungary (in 2007) until 31 December 2010, no sanctions of debarment or suspension from public procurement contracts have been imposed in Hungary. Representatives of the Public Procurement Council interviewed during the on-site visit also confirmed that they were not aware of any cases of debarment of natural or legal persons from public procurement.

(ii) *Measures to Enhance Integrity in Public Procurement*

122. Section XI(iii) of the 2009 Recommendation recommends that Parties to the Convention should support efforts of the OECD Public Governance Committee to implement the principles contained in the 2008 Council Recommendation on Enhancing Integrity in Public Procurement [[C\(2008\)105](#)], as well as the of other international governmental organisations (such as the United Nations, the World Trade Organisation (WTO) or the European Union) in the area of transparency in public procurement. Parties are encouraged to adhere to relevant international standards, such as the WTO Agreement on Government Procurement.

123. In Phase 3 Hungary indicated that one of the main objectives of Act CVIII on Public Procurements was to enhance transparency of public procurement procedures. The new Act establishes an obligation for contracting authorities to publish notices launching the procurement procedures, along with information about performance of the contract and the funds available for such performance. The Act limits the possibility to amend a contract concluded as a result of a public procurement procedure. In its Decree No. 92/2011 (XII.30), which entered into force 1 January 2012, the National Development Ministry established that the Public Procurement Authority would be responsible for implementing public procurement procedures by contracting authorities. The president of the Authority can initiate proceedings of the Public Procurement Arbitration Board in cases of violation of the Public Procurement Act.

*Commentary*

***The lead examiners welcome the possibility to suspend companies convicted for bribery of domestic or foreign public officials from public procurement, which was established in the Hungarian legislation in the past and was maintained in the newly updated Act on Public Procurements. However, they note that practical implementation of the debarment provisions continues to be problematic because the company register, which contains information about convictions of legal persons, does not contain information about company owners or managers who were convicted for bribery. This creates the possibility that***

*these companies will continue to participate in public procurement. The lead examiners commend measures taken by the export credit agencies of Hungary to ensure that debarment lists established by the IFIs are regularly consulted; however, they note with concern that no similar requirement has been established for contracting authorities in relation to public procurement procedures. The lead examiners further note that no special training has been provided to public officials responsible for public procurement regarding the measures to prevent and detect foreign bribery. The lead examiners also recommend that the Working Group follow up on the effectiveness of the new requirement under Governmental Decree No. 310/2011 for contracting authorities to examine criminal records for individuals and the company register for companies.*

### **C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP**

The Working Group on Bribery welcomes the steps Hungary has taken to enforce its foreign bribery offence, which has resulted in the recent conviction of 26 individuals. The Working Group remains concerned, however, that the legal framework in Hungary is not sufficient to effectively enforce the offence against legal persons, particularly when they act through intermediaries.

The Phase 2 evaluation report on Hungary adopted in May 2005 included recommendations and issues for follow-up (as set out in Annex 1 to this report). Of the recommendations considered to have been only partially implemented or not implemented, at the time of Hungary's written follow-up report, in September 2007, the Working Group concludes that recommendations 2 (a), 2(e), 3(a), 3(b) and 5(b) have been implemented; recommendations 1(d), 4(a), 4(b) and 2(d) have been partially implemented; recommendations 2 (b), 3(c), 3(d), 3(e) and 3(f) remain partially implemented; recommendations 1 (a), 1(c) and 1(e) that were deemed partially implemented are not implemented; and recommendations 2(c) and 6(b) remain not implemented.

In conclusion, based on the findings in this report, regarding implementation by Hungary of the Convention and the 2009 Recommendation, the Working Group: (1) makes the following recommendations to enhance implementation of the Convention in Part I; and (2) will follow-up the issues identified in Part II. The Working Group invites Hungary to report orally on the implementation of recommendations 1, 2(a) and 2(b) within one year of this report (i.e. in March 2013). It further invites Hungary to submit a written follow-up report on all recommendations and follow-up issues within two years (i.e. in March 2014).

#### **1. Recommendations of the Working Group**

##### ***Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery***

1. With regard to the offence of foreign bribery, the Working Group recommends that Hungary take steps to ensure that its foreign bribery offence covers bribery through intermediaries, particularly in cases involving legal persons [Convention, Article 2; 2009 Recommendation, Annex I.C];
2. With regard to the criminal liability of legal persons for foreign bribery, the Working Group recommends that Hungary:

- (a) amend its law on the criminal liability of legal persons for foreign bribery to eliminate the requirement that a natural person must usually be convicted and punished as a prerequisite to the imposition of sanctions on a legal person [Convention, Article 2; 2009 Recommendation, Annex I.B];
  - (b) remove the requirement that a bribe must have aimed at giving or have actually given a benefit to the specific legal entity subject to prosecution [Convention, Article 2; Phase 2 recommendation 4(a)(3)];
  - (c) consult with Hungarian businesses to establish minimum standards with regard to appropriate supervision by the persons whose actions can subject a legal person to liability [Convention, Article 2; 2009 Recommendation, Annex I.B; Phase 2 recommendation 4(b)]; and
  - (d) provide additional training to prosecutors, judges and law enforcement regarding the application of the foreign bribery offence to legal persons [Convention, Article 2; 2009 Recommendation III and Annex I.B].
3. With regard to investigation and prosecution of foreign bribery, the Working Group recommends that Hungary:
- (a) establish a centralised bank account database in order to ease the task of investigators to map all bank accounts held by a particular person [2009 Recommendation, Annex I.D];
  - (b) consider taking appropriate measures, within the constitutional principles of the state, to ensure that (i) immunities are lifted in the context of foreign bribery investigations and prosecutions and (ii) immunity does not prevent the effective investigation and prosecution of foreign bribery offences [Convention, Article 5; 2009 Recommendation, Annex I.D; Phase 2 recommendation 3(f)];
  - (c) consider allowing those indirectly affected by decisions not to prosecute offences of foreign bribery, such as competitors or foreign states, to challenge such decisions [Convention, Article 5; 2009 Recommendation, Annex I.D; Phase 2 recommendation 3(d)]; and
  - (d) gather statistics regarding the number of foreign bribery investigations that lead to prosecution or are discontinued, along with information about investigatory measures taken in and grounds for discontinuance of any foreign bribery investigation [Convention, Article 5; 2009 Recommendation, Annex I.D];
  - (e) increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage, both to increase sources of allegations and to enhance investigations [Convention, Article 5; 2009 Recommendation IX and Annex I.D]; and
  - (f) extend the two-year investigation time limit in cases of foreign bribery [Convention, Article 6; Phase 2 recommendation 3(e)].
4. With regard to mutual legal assistance (MLA), the Working Group recommends that Hungary put in place a mechanism to compile comprehensive annual statistics on all MLA and extradition requests, including requests relating to freezing, seizing and confiscation, that are sent or received, relating to the foreign bribery offence, including the nature of the request, whether it was granted or refused and the time required to respond [Convention, Articles 9(1) and 10(3); 2009 Recommendation XIV(vi)].

*Recommendations for ensuring effective prevention and detection of foreign bribery*

5. Regarding accounting standards, external audit and corporate compliance programs, the Working Group recommends that Hungary:
  - (a) consider requiring external auditors to report suspected acts of foreign bribery to competent authorities independent of the company, such as law enforcement or regulatory authorities, and, where appropriate, ensuring that auditors making such reports reasonably and in good faith are protected from legal action [2009 Recommendation X.B(v)];
  - (b) take appropriate steps to raise awareness of the foreign bribery offence among auditors and accountants, including by ensuring that auditors and accountants benefit from regular training specifying the nature and accounting and auditing aspects of the offence in order to facilitate the detection of such acts [2009 Recommendation X.B(v); Phase 2 recommendation 2(c)]; and
  - (c) take measures to encourage companies, and especially the SMEs, to develop internal control, ethics and compliance programmes and measures for the prevention and detection of foreign bribery [2009 Recommendation X.C (i),( ii), Annex II].
6. With regard to tax measures, the Working Group recommends that Hungary:
  - (a) provide, on a regular basis, training for tax officials with respect to hidden commissions and detection techniques to help detect concealed bribes in practice [2009 Recommendation VIII(i)]; Phase 2 recommendation 2(b)]; and
  - (b) consider signing the Multilateral Convention on Mutual Assistance in Tax Matters and including the optional language in paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention in all future bilateral tax treaties [2009 Recommendation VIII(i); 2009 Tax Recommendation I (ii)-(iii)].
7. Regarding awareness-raising, the Working Group recommends that Hungary:
  - (a) ensure that foreign bribery is addressed in the national anti-corruption strategy as an explicit priority in order to promote a proactive and coordinated approach to combating this type of corruption, and ensure a clear allocation of responsibility to specific agencies for prevention and combating of foreign bribery [2009 Recommendation II]; and
  - (b) (i) reinforce measures to raise awareness about foreign bribery targeting the private sector (including private companies) and the public agencies and (ii) ensure that the HITA, MFA and other public agencies working with the Hungarian companies operating abroad develop training programmes focusing on foreign bribery for their own staff and provide practical guidance about risks of and measure to prevent foreign bribery to the private sector [2009 Recommendation III(i); Phase 2 recommendation 1(a)].
8. Regarding reporting foreign bribery, the Working Group recommends that Hungary:
  - (a) raise awareness of the new obligation for public officials to report foreign bribery offences and develop appropriate policies and procedures to be followed in reporting to law enforcement authorities [2009 Recommendation III(iv), IX (i)-(ii)];

- (b) clarify that the new legislation on whistleblowers provides protection to persons reporting foreign bribery, ensure that responsibility for the enforcement of this legislation is clearly allocated, and raise awareness of the new protection provided by the law, in particular, among those persons (both public and private) who could play a role in detecting and reporting acts of foreign bribery [Recommendation IX(iii)].

9. Regarding public advantages, the Working Group recommends that Hungary:

- (a) take the necessary measures to put in place systematic mechanisms allowing for the effective exclusion of companies convicted of bribery of foreign public officials in violation of national law from public procurement contracts [2009 Recommendation XI (i)]; and
- (b) establish (i) mechanisms to prevent risks of foreign bribery in contracts funded by official development assistance (ODA), including during the selection and monitoring phase of ODA funded projects, and (ii) sanctions to allow suspension from such contracts of companies convicted of bribery of foreign public officials [2009 Recommendation XI (i)-(ii)].

## **2. Follow-up by the Working Group**

10. The Working Group will follow up on the issues below as case law and practice develop:

- (a) the application of the foreign bribery provisions with regard to the definition of a foreign public official, including in cases involving employees of state enterprises [Convention, Article 1];
- (b) jurisdiction over cases of bribery of foreign public officials, notably as regards legal persons and offences committed in whole or part abroad [Convention, Article 4];
- (c) with regard to the liability of legal persons, (i) the absence of case law dealing with the liability of legal persons in foreign bribery cases and (ii) how the requirement that the bribe must have aimed at or resulted in the legal entity gaining a “benefit” is interpreted in practice in foreign bribery cases [Convention, Article 2];
- (d) the application of sanctions by the courts in cases of bribery of foreign public officials, to ensure they are effective, proportionate and dissuasive, especially in cases against legal persons [Convention, Article 3; Phase 2 follow-up issue 7(f)];
- (e) whether, in practice, (i) both the bribe and the proceeds of the bribe are subject to seizure and confiscation or (ii) monetary sanctions of comparable effect are applicable [Convention, Article 3]; and
- (f) (i) the training of CIOPPS with regard to the foreign bribery offence, particularly the confiscation of assets and (ii) the number of reports of suspected foreign bribery received by CIOPPS [Convention Article 3; 2009 Recommendation III(i)];
- (g) the measures taken by Hungary’s FIU to monitor suspicious transaction reports (STRs) and improve quality of reports, including by taking steps to make sure that it receives relevant feedback on the STRs disseminated [Convention, Article 7];

- (h) the measures taken by Hungary to make MLA available to all Parties to the Convention in cases involving administrative or civil proceedings against legal persons for foreign bribery [Convention Article 9(1); Phase 2 recommendation 3(c)];
- (i) the implementation of the new whistleblower protection provisions [2009 Recommendation X.C]; and
- (j) the effectiveness of the new requirement under Governmental Decree No. 310/2011 for contracting authorities to examine criminal records for individuals and the company register for companies.

**ANNEX 1: TABLE OF PHASE 2 RECOMMENDATIONS**

	<b>RECOMMENDATIONS</b>	<b>WRITTEN FOLLOW-UP</b>
<i>Recommendations for ensuring effective prevention and detection of the bribery of foreign public officials</i>		
1.	With respect to awareness raising and prevention-related activities, 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];	Satisfactorily implemented
	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];	Satisfactorily implemented
	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];	Partially implemented
	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];	Not implemented
	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];	Partially implemented
	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].	Satisfactorily implemented
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	Partially implemented

	for the non-reporting of foreign bribery offences [Revised Recommendation, Paragraph I];	
	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];	Partially implemented
	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];	Not implemented
	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];	Not implemented
	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].	Satisfactorily implemented
<b><i>Recommendations for ensuring effective investigation and prosecution of offences of bribery of foreign public officials and related offences</i></b>		
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];	Satisfactorily implemented
	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];	Satisfactorily implemented
	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)];	Partially implemented
	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];	Partially implemented

	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];	Partially implemented
	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].	Partially implemented
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 " <i>financial</i> " 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];	Not implemented
	b) consider (1) defining more clearly and more broadly than by the reference to a " <i>chief executive</i> " 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].	Not implemented
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];	Satisfactorily implemented
	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].	Partially implemented
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];	Satisfactorily implemented
	b) consider taking measures to improve the effectiveness of sanctions on companies convicted of bribery [Convention Article 3(1), (4)].	Not implemented

## **Follow-up by the Working Group**

**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];
- 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];
- c) whether the defence of duress is limited to threats of physical or psychological damage [Convention, Article 1];
- 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];
- e) actions taken when Hungary refuses to extradite based on the Hungarian nationality of the person whose extradition is requested [Convention, Article 10(3)];
- 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].

## ANNEX 2: LIST OF PARTICIPANTS

### Ministry of Public Administration and Justice

**Dr. Zsombor NAGY**  
Legal Advisor  
Department of Criminal Law Codification

**Dr. Viktória SOÓS**  
Legal Advisor  
Department of Criminal Law Codification

**Dr. Gábor KASZPER**  
Legal Advisor  
Department for European Union Law

**Viktor HORVÁTH**  
Head of Department  
Department of Public Administration Development and  
Strategy Planning

**Kludia KASZÁS**  
Legal Advisor  
Department of Public Administration Development and  
Strategy Planning

### Ministry of Foreign Affairs

**Dr. Jenő HÁMORY**  
Deputy Head of Department  
Department of Trade Policy and World Economy

**Dr. András KOCSIS**  
Department of International Development Cooperation  
and Humanitarian Aid

### Ministry for National Economy

**Ágnes HENTERNÉ TRINGER**  
Head of Department  
Department of Investment

**Zoltán PANKUCSI**  
Head of Department  
Department of Accounting and Human Investment

**Tamás SZABÓ**  
Legal Advisor  
Department of Accounting and Vocational Education

### Ministry of National Development

**Dr. Tímea ASZTALOS**

### Ministry of Interior

**Dr. Rita LISZKAI**

Department of Codification and Coordination

**Police**

*Special Service for National Security*

**Katalin BERZE**  
Constitution Protection Office

**Dr. Gabriella KELEMEN**  
Special Service for National Security

*International Law Enforcement Cooperation  
Centre*

**Dr. Tünde IGAZ**  
Lieutenant Colonel

*National Bureau of Investigation*

**Dr. Krisztina RÁCZ**  
Major

**National Tax and Customs Administration**

**Dr. Gábor SIMONKA**  
Head of Department  
Directorate General for Criminal Affairs  
Hungarian Financial Intelligence Unit

**Dr. Richárd MESSZI-SZABÓ**  
Audit Department

**Dr. Attila SISÁK**  
Deputy Head of Department  
Directorate General for Criminal Affairs

**Public Prosecutors' Office**

**Dr. Balázs GARAMVÖLGYI**  
Public Prosecutor  
Prosecutor General's Office  
Department of Preferential Cases

**Dr. Lajos KORONA**  
Public Prosecutor  
Metropolitan Chief Prosecutor's Office  
Department of Investigation Supervision

**Dr. Gábor BOROS**  
Public Prosecutor  
Central Investigation Office of the Public Prosecution  
Service

**Courts**

**Dr. Piroska VINCZE**  
Presiding Judge  
Metropolitan Court

**Export Credit Agencies**

*Hungarian Export-Import Bank (Eximbank)*

**Dr. Szilvia NÉMEDI-VARGA**  
Chief Advisor  
Refinancing and Post-shipment Financing

**Dr. Bernadett SULYOK**  
Legal Counsel  
Department of Law

***Hungarian Export Credit Insurance Ltd.  
(MEHIB)***

**Dr. László VÁRNAI**  
International Co-ordinator – Legal Advisor  
Department of International Relations

**Council for Public Procurement**

**Dr. László KOVÁCS**  
Head of Department  
Department of Law

**Dr. Tibor KUGLER**  
Deputy Head of Department  
Department of Law

**Dr. János MAROSI**  
Legal Advisor  
Department of Law

**Ágnes VARGA**  
Legal Advisor  
Department of International Affairs

**Hungarian Financial Supervisory Authority**

**Dr. Péter STEINER**  
Head of Department  
Department of European and International Affairs

**Accounting and Auditing Profession**

***Chamber of Hungarian Auditors***

**Dr. János LUKÁCS**  
Chairman  
Unikonto Accounting Research Ltd.

***Audit Network Hungary Auditing and Business  
Management Advisory Ltd.***

**Vilmos WESSELY**

***Ernst & Young***

**Ferenc BÍRÓ**

***PricewaterhouseCoopers***

**Éva Barsi**

**Business Sector**

***Óbuda Group***

**András BARÁTH**  
Financial Leader

***MetalCom Ltd.***

**Attila FÁBIÁN**  
Director for Business Development

***Arden Group, Scampio XXIII. Llc.***

**Máté VARSA**  
Executive Officer

**Industrial and Business Associations**

***Hungarian Chamber of Commerce and Industry***

**Dr. István János TÓTH**  
Managing Director  
Institute for Economic and Enterprise Research

***Confederation of Hungarian Employers and***

**Gábor KELEMEN**

<i>Industrialists</i>	Lead Economist
<i>National Association of Entrepreneurs and Employers</i>	<b>János TARDOS</b> Hungarian Managers Association
<i>Hungarian Foreign Economy Association</i>	<b>Csaba BAZSÓ</b> Secretary General
<i>Hungarian Investment and Trade Agency</i>	<b>Dr. András MIHALTZ</b> Legal Advisor
<b>Legal Profession</b>	<b>Dr. András SZECSKAY</b> Deputy Chair Hungarian Bar of Lawyers
	<b>Dr. László RÉTI</b> Chair Budapest Bar of Lawyers
	<b>Dr. Péter KÖVES</b> Deputy Chair Budapest Bar of Lawyers
<b>Civil Society</b>	
<i>Transparency International</i>	<b>Dr. Ádám FÖLDES</b> Managing Director
<i>K-Monitor Association</i>	<b>Júlia KESERŰ</b>
<i>Hungarian International Development Assistance Non-Profit Co. (HUN-IDA)</i>	<b>Ibolya BÁRÁNY</b> Managing Director
<b>Academics</b>	<b>Balázs GELLÉR</b> JD, PhD (Cantab.), LL.D (ELTE) University Docent (ELTE ÁJK) (SZE DAJK)
	<b>Dr. László KŐHALMI</b> PhD, Head of Department, Assistant Professor University of Pécs Faculty of Law Department of Criminology and Penal Law
	<b>Dr. Habil. István László GÁL</b> PhD, Associate Professor University of Pécs Faculty of Law Department of Criminal Law
	<b>Dr. Ádám BÉKÉS</b> Catholic University of Pázmány Péter Faculty of Law

**Media**

**Tamás PINDROCH**

Editor-Journalist

Magyar Hírlap

**Péter RÁKÓCZI**

Editor-Reporter

Hír TV

**Bálint ABLONCZY**

Editor-Journalist

Heti Válasz

### ANNEX 3: LIST OF ABBREVIATIONS

**ACU** Anti-Corruption Unit at the National Police Headquarters  
**Act CIV** Act CIV of 2001 on Measures Applicable to Legal Persons under Criminal Law  
**AML/CFT Act** Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (Anti-Money Laundering and Counter Financing of Terrorism Act)  
**AML Unit** Anti-Money Laundering Unit at the national Police headquarters  
**APV** Privatisation and Holding Corporation  
**CC** Act IV of 1978 on Criminal Code, as amended  
**CIFE** Act CXII of 1996 on Credit Institutions and Financial Enterprises  
**CIOPPS** Central Investigation Office of the Public Prosecution Service  
**CPA** Act XIX of 1998 on Criminal Proceedings Act, as amended  
**ERÜBS** Unified Statistical Database of the Police and Prosecutors' Service  
**Eximbank** Hungarian Export-Import Bank  
**FDI** Foreign direct investment  
**FIU** Financial intelligence unit  
**HAS** Hungarian Accounting Standards  
**HASB** Hungarian Accounting Standards Board  
**HFSA** Hungarian Financial Supervisory Authority  
**HITDA** Hungarian Investment and Trade Development Agency  
**IAS** International Accounting Standards  
**IFRS** International Financial Reporting Standards  
**ILA Law** Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters  
**ISA** International Standards on Auditing  
**MEHIB** Hungarian Export Credit Insurance Pte. Ltd.  
**MLA** Mutual legal assistance  
**MOJ** Ministry of Public Administration and Justice  
**NBI** National Bureau of Investigation  
**NEBEK** International Law Enforcement Cooperation Centre  
**NJC** National Judicial Council  
**ODA** Official development assistance  
**PPO** Public Prosecutors' Office  
**SAO** State Audit Office  
**SSNS** Special Service for National Security  
**STR** Suspicious transaction reports.

## ANNEX 4: RELEVANT LEGAL PROVISIONS

### CRIMINAL CODE

#### Article 38 – Types of Punishments

- (1) Punishments are:
  - a) imprisonment;
  - b) community service work;
  - c) financial penalties;
  - d) restraint of profession;
  - e) driving disqualification;
  - f) expulsion.
- (2) Ancillary punishments are:
  - a) deprivation of public affairs;
  - b) banishment.
- (3) If the crime committed carries a maximum sentence of three years of imprisonment, the term of imprisonment may be substituted by community service work, financial penalty, restraint of profession, driving disqualification or expulsion, or by any combination of these.
- (4) Subject to the exceptions set out in Subsections (5) and (6), the punishments may be imposed simultaneously as well.
- (5) Where, according to this Act, a crime carried financial penalty as the sole means of punishment, this penalty may not be substituted or combined with another form of punishment.
- (6) The following punishments may not be imposed simultaneously:
  - a) imprisonment with community service work;
  - b) expulsion with community service work of financial penalty.
- (7) Deprivation of civil rights and banishment may be imposed in addition to a sentence of imprisonment.

#### Article 77 – Confiscation

- (1) An object shall be confiscated:
  - a) which is actually used or intended to be used as an instrument for the commission of a criminal act;
  - b) the possession of which constitutes an endangerment to public safety or is illegal;
  - c) which is created by way of criminal act;
  - d) for which the criminal act was committed, or that was used for the transportation of this object after committing the criminal act. (...)

#### Article 77A

- (1) In cases under Points a) and d) of Subsection (1), of Article 77, confiscation may be disregarded if the object is not owned by the perpetrator, unless the owner was aware of the perpetration of the criminal act beforehand, provided that disregarding confiscation is not excluded by any international obligation. (...)

## **Article 77B – Confiscation of Property**

- (1) The following shall be subject to confiscation of property:
- a) any property resulting from committing the criminal act, obtained by the perpetrator in the course of or in connection with the criminal act;
  - b) any property obtained by the perpetrator in the course of participating in a criminal organisation;
  - c) any property that replaced the property resulting from committing the criminal act, obtained in the course of or in connection with the criminal act;
  - d) any property that was supplied or intended to be used – for the purpose to commit a criminal act – to ensure the conditions needed for the commission or facilitation of the act;
  - e) any property that was the object of the given or promised financial advantage.
- (2) Any financial gain or advantage resulting from criminal activities, obtained by the offender in the course of or in connection with, a criminal act, also if it served the enrichment of another person, shall be seized subject to confiscation of assets. If such gain or advantage was obtained by an economic operator, it shall be subject to confiscation of assets.
- (3) In the event of death of the perpetrator or the person profiteering as specified in Subsection (2), or the economic operator was transformed, the property transferred by succession shall be seized from the successor in title as specified in Subsection (1).
- (...)
- (5) The following property cannot be confiscated:
- a) that serves as a cover for any civil claim enforced in the course of the criminal proceeding;
  - b) that was obtained in good faith and in consideration;
  - c) in cases determined in Point b) of Subsection (1), if the legitimate origin of the property is proven.

## **Article 137**

(omissis)

- (3) Foreign public official shall mean:
- a) a person empowered with legislative, judicial, public administrative or law enforcement duties in a foreign state;
  - b) a person serving in an international organisation created under international convention, whose activity forms part of the proper functioning of the organisation;
  - c) a person elected to serve in the general assembly or body of an international organisation created under international convention;
  - d) a member of an international court that is empowered with jurisdiction over the territory or over the citizens of Hungary, and any person serving in such international court, whose activity forms part of the proper functioning of the court.

## **Article 257 – Persecution of a Person Making a Notice of Public Concern**

Any person who takes any detrimental action against a person who has made an announcement of public concern is guilty of a misdemeanour punishable by imprisonment for up to two years.

## **Article 258B – Bribery in International Relations**

- (1) Any person who – in connection with the duties of the foreign public official – gives or promises undue advantage to a foreign public official or to another person on account of such public official, is guilty of a felony punishable by imprisonment of up to three years.

(2) The person committing bribery shall be punishable for a felony with imprisonment from one to five years, if he/she gives or promises the undue advantage to a foreign public official to induce him/her to breach his/her official duty, exceed his/her competence or otherwise abuse his/her official position.

(3) The director of an economic undertaking, or a member or employee thereof with authority to exercise control or supervision shall be punished in accordance with Subsection (1), if a member or employee of the economic undertaking commits the criminal act defined in Subsections (1) and (2) for the benefit of the economic undertaking, and the criminal act could have been prevented if he/she had properly fulfilled his/her control or supervisory obligations.

(4) The director of an economic undertaking, or a member or employee thereof with authority to exercise control or supervision shall be punished for amisdemeanour by imprisonment for up to two years, if the criminal act defined in Subsection (3) is committed due to negligence.

#### **Article 258C**

(1) Any person who gives or promises undue advantage to an employee or a member of a foreign economic undertaking, or to another person on account of such employee or member, in order to induce him/her to breach his/her duties, is guilty of a misdemeanor punishable by imprisonment of up to two years.

(2) The punishment shall be up to three years, if the undue advantage is given or promised to an employee or a member authorised to act independently of a foreign economic undertaking.

(omissis)

#### **Article 258F – Failure to Report Bribery in International Relations**

(1) Any public official who has learned from credible sources of an act of bribery in international relations (Sections 258/B—258/D) of the Criminal Code) yet undetected, and he fails to report it to the authorities at the earliest possible time is guilty of misdemeanour and may be punished by imprisonment not to exceed three years.

#### **Article 258G – Interpretative provision**

For the purposes of this Title, “foreign economic undertaking” shall mean an organisation possessing legal personality according to the laws of its home country, which is entitled to perform economic activities in its given organisational form.

### **ACT CIV OF 2001 – MEASURES APPLICATION TO LEGAL PERSONS UNDER CRIMINAL LAW**

#### **Article 1 – Interpretative Provisions**

(1) For the purposes of this Act

1. Legal entities shall be understood as any organization or organizational units thereof vested with rights of individual representation, which the governing rules of law recognize as legal entities, as well as organizations 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.

2. Benefit shall be understood 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 an obligation arising from a law or contract or from expenditure required according to the rules of reasonable business management.

### **Article 2 – Conditions for Applying the Measures**

(1) The measures defined in the present act are applicable to legal entities in the event of committing any intentional criminal act defined in Act IV of 1978 on the Criminal Code (HCC) if the perpetration of such an act was aimed at or has resulted in the legal entity gaining benefit, and the criminal act was committed by

a) the legal entity's executive officer, its member, employee, officer, managing clerk entitled to 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 it could have been prevented by the executive officer, the managing clerk or the supervisory board by fulfilling his/her/its supervisory or control obligations.

(2) Other than the cases defined in paragraph (1) the measures defined in this act shall be applicable even if committing the criminal act resulted in the legal entity gaining benefit, and the legal entity's executive officer, its member, employee, officer, managing clerk entitled to represent it, its supervisory board member, had a knowledge of the commission of the criminal act.

### **Article 3 – Measures to be Taken against Legal Entities**

(1) If the court has imposed punishment on the person committing the criminal act defined in Section 2 or apply reprimand or probation against this person, it may take the following measures against the legal entity:

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

(2) The measures defined in paragraph (1) can be taken even if the criminal act has caused the legal entity to gain benefit, but the perpetrator is not punishable due to his mental illness or death or if the criminal proceeding has been suspended due to the perpetrator's mental illness occurred after the commission of the act.

(3) The measures defined in paragraph (1) point a) are only applicable individually, while those defined in points b) and c) are applicable both individually and jointly.

## **Act CLXIII OF 2009 – PROTECTION OF FAIR PROCEDURES**

### **Protection of the Notifier**

#### **Article 20**

(1) If an employee knows or presumes with due reason that because of the behaviour of the employer or for any reason within the scope of activity of the employer, public interests have been or may be injured at the employer, the employee may file a report (hereinafter referred to as public interest protection report) to the employer itself, and furthermore, to the employer organisation supervising the activity of the employer concerned or, if there is a policy at the employer regarding such reports, then to the organ set forth in this policy.

## **Article 22**

(1) Direct or indirect disadvantages cannot be experienced by the employee because of the public interest protection report filed to an organ under 20. § (1), to the Authority or to another authority, especially in the following fields:

- a) in the course of implementation of the legal relationship of employment, in the context of exercising rights and performing duties arising from the legal relationship of employment;
- b) in the context of trainings related to the legal relationship of employment;
- c) concerning the setting and ensuring of working conditions and performance requirements;
- d) when setting and providing the salary due for the legal relationship of employment, as well as any other benefits;
- e) regarding the classification and ensuring the system of promotion;
- f) in the context of the actions of the employer entailing sanctions in connection with the legal relationship of employment, with respect to validation the disciplinary and compensation responsibilities;
- g) regarding the proposal of the employer for modification of the legal relationship of employment;
- h) concerning the termination of the legal relationship of employment or any statements of the employer related to termination.

(...)

## **Article 23**

(1) Upon the request of the employee, the Authority shall provide protection to the employee, if he/she has experienced any disadvantage related to the public interest protection report, either on the part of the employer or someone else, or if the circumstances of the case entail the danger of such disadvantage. This protection includes legal advice provided by the Authority to the employee, as well as legal representation and financial support, if necessary.

At the request of the employee, the personal data of the employee shall be managed confidentially by the Authority.

(2) At the request of the employee, the Authority shall provide legal representation to the employee, through hiring of an attorney, in the case of a legal dispute based on a disadvantage caused by employer because of the public interest protection report. Furthermore, in the case of an action of the employer entailing financial disadvantages, the Authority shall provide financial support. The costs of the legal representation shall be advanced by the Authority. If the court obliged the employer to bear the costs of the attorney, the fee paid in advance shall be paid up to the state by the employer, in accordance with relevant provisions of the judgment.

**ANNEX 5: CONCLUDED ENFORCEMENT ACTION**

<b>Defendant</b>	<b>Date of Final Decision(s)</b>	<b>Alleged Facts</b>	<b>Amount of Bribe</b>	<b>Offence Alleged</b>	<b>Outcome</b>	<b>Sanction(s)</b>
Individual 1	19/9/08	Hungarian entrepreneurs running a transportation company paid bribes to Slovakian customs officials in order to enable the border crossing without valid TIR permissions. Bribes were paid through the truck drivers.	Not applicable (abettor)	258B CC	Conviction (of 2 counts and other crimes)	<ul style="list-style-type: none"> <li>• 3 years imprisonment</li> <li>• 3 years deprivation of public affairs</li> <li>• 3 000 000 HUF financial penalty (approximately 9 972 EUR)</li> <li>• 7 893 600 HUF confiscation (approximately 26 267 EUR)</li> </ul>
Individual 2	19/9/08		SKK 15 000 (approximately EUR 498)	258B CC	Conviction	<ul style="list-style-type: none"> <li>• 1 year 6 months imprisonment</li> <li>• 2 years deprivation of public affairs</li> <li>• 100 000 HUF financial penalty (approximately 333 EUR)</li> </ul>
Individual 3	19/9/08		Not applicable (accomplice)	258B CC	Conviction (on 2 counts)	<ul style="list-style-type: none"> <li>• 1 year 4 months imprisonment (suspended for 4 years)</li> <li>• 80 000 HUF financial penalty (approximately 266 EUR)</li> </ul>
Individual 4	7/10/11		Not applicable (accomplice)	258B CC	Conviction (on 2 counts)	<ul style="list-style-type: none"> <li>• 1 year imprisonment (suspended for 2 years)</li> <li>• 500 000 HUF financial penalty (approximately 1 663 EUR)</li> </ul>
Individual 5	7/10/11		Not applicable (abettor)	258B CC	Conviction (on 2 counts)	<ul style="list-style-type: none"> <li>• 1 year imprisonment (suspended for 2 years)</li> </ul>
Individual 6	19/9/08		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	<ul style="list-style-type: none"> <li>• 8 months imprisonment</li> <li>• 2 years probation</li> </ul>

Defendant	Date of Final Decision(s)	Alleged Facts	Amount of Bribe	Offence Alleged	Outcome	Sanction(s)
Individual 7	7/10/11		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	• 100 000 HUF financial penalty
Individual 8	19/9/08		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	• 1 year probation • 75 000 HUF financial penalty (approximately 249 EUR)
Individual 9	19/9/08		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	• 1 year probation • 75 000 HUF financial penalty
Individual 10	19/9/08		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	• 1 year probation • 75 000 HUF financial penalty
Individual 11	19/9/08		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	• 1 year probation • 75 000 HUF financial penalty
Individual 12	19/9/08		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	• 1 year probation • 75 000 HUF financial penalty
Individual 13	7/10/11		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	75 000 HUF financial penalty
Individual 14	7/10/11		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	75 000 HUF financial penalty
Individual 15	7/10/11		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	75 000 HUF financial penalty
Individual 16	7/10/11		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	75 000 HUF financial penalty

Defendant	Date of Final Decision(s)	Alleged Facts	Amount of Bribe	Offence Alleged	Outcome	Sanction(s)
Individual 17	7/10/11		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	30 000 HUF financial penalty (approximately 100 EUR)
Individual 18	7/10/11		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	30 000 HUF financial penalty
Individual 19	7/10/11		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	30 000 HUF financial penalty
Individual 20	7/10/11		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	30 000 HUF financial penalty
Individual 21	7/10/11		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	Reprimand of the court
Individual 22	7/10/11		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	Reprimand of the court
Individual 23	7/10/11		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	Reprimand of the court
Individual 24	7/10/11		Between approximately EUR 25 and 50 per border crossing (at least 2 occurred)	258B CC	Conviction	Reprimand of the court
Individual 25	19/9/08		Between approximately EUR 25 and 50 for 1 border crossing	258B CC	Conviction	Reprimand/warning of the court
Individual 26	19/9/08		Between approximately EUR 25 and 50 for 1 border crossing	258B CC	Conviction	Reprimand/warning of the court