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Group of States against corruption

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Evaluation Report on Hungary

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I. INTRODUCTION

1. Hungary was the 28th GRECO member to be examined in the second Evaluation round. The GRECO evaluation team (hereafter referred to as the "GET") was composed of Mr Alparslan CALISKAN, Chief of Serious Fraud and Money Laundering Bureau, Financial Crimes Division, Anti-Smuggling and Organised Crimes Department, General Directorate of Police (TNP), Ankara (Turkey), Ms Birgit LAITENBERGER, Head of Division, Ministerial Counsellor, Ministry of the Interior, Berlin (Germany) and Mr Luis Miguel PINTO DE SOUSA E SILVA, Chief Inspector of Finances, General Inspectorate of Finance (IGF), Porto (Portugal). This GET, accompanied by one member of the Council of Europe Secretariat, visited Hungary from 24 to 27 May 2005. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaire (document Greco Eval II (2005) 2E) as well as copies of relevant legislation.

2. The GET met with officials from the following governmental organisations: the General Prosecutor's Office, the Ministry of Justice (Criminal Law Department, Board for Corruption-free Public Life, International Criminal Law Department, Department of European Law), the Ministry of Finance and the Anti Money Laundering Interministerial Committee, the National Board of the Judiciary, the Regional Appellate Court, the Metropolitan Court of Budapest, the National Headquarters of the Police (Anti Money Laundering Department, Anti-corruption Unit), Customs, Tax Authority High Security Department, the State Audit Office, the Ombudsman's Office, and the Public Servant's Office (including representatives from the Ministry of Employment, the Prime Minister's Office, the Ministry of Health, the Ministry of Defence, the Ministry of Economy and Transport and the Governmental Supervisory Agency). Moreover, the GET met with members of the following non-governmental institutions: the Hungarian Bar Association, the Chamber of Auditors, the Notaries' National Association, the Hungarian Chamber of Medics, the National Association of Local Municipalities and media representatives.

3. It is recalled that GRECO agreed, at its 10th Plenary meeting (July 2002), in accordance with Article 10.3 of its Statute, that the 2nd Evaluation Round would deal with the following themes:

   - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173[1]), by Articles 19 paragraph 3, 13 and 23 of the Convention;
   - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
   - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Hungarian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Hungary in order to improve its level of compliance with the provisions under consideration.

[1] Hungary ratified the Criminal Law Convention on Corruption on 22 November 2000. The Convention entered into force in respect of Hungary on 1 July 2002.

II. THEME I – PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

5. Confiscation of assets is considered as a mandatory measure (Article 77/B, Criminal Code).[2] It may be applied by the court either independently or in addition to a sanction or another measure; it does not affect (reduce) the main penalty. Pursuant to Article 77/C(4) of the Criminal Code, the term "*assets*" covers any profit, intangible property, claim of monetary value and any financial gain or advantage.

6. The condition for using confiscation of assets is that a crime has been committed: *"any financial gain or advantage resulting from criminal activities, obtained by the offender in the course of or in connection with a criminal act" (*Article 77/B(1), Criminal Code). *In rem* confiscation of assets is possible in certain situations, i.e., if the offender is a minor or mentally unfit, or if the criminal offence committed entails only a "negligible danger" to society and therefore, while the offender would not be punishable, confiscation of the illegally acquired assets would still be assured (Article 77/C(2), Criminal Code). Furthermore, Article 334 of the Code of Criminal Procedure explicitly refers to the possibility of ordering confiscation of assets (i) due to the death, statutory limitation or pardon of the accused; (ii) if there is no private motion, complaint or request, which has not been or cannot be subsequently submitted; and (iii) due to other grounds for the preclusion of punishability as stipulated by law. The procedure to undertake confiscation *in rem* is detailed in Article 569 of the Code of Criminal Procedure.

7. Confiscation is applicable to the proceeds of crime, whether primary (*"financial gain or advantage")* or secondary (*"assets, which replaced assets originating from a criminal offence")*, movable or immovable property, as well as to the instrumentalities of a criminal offence. The expenditures incurred in gaining the proceeds of crime are not deductible. The value of the assets may be confiscated according to Article 77/C(1) of the Criminal Code when (a) the assets are no longer identifiable; (b) the assets subject to confiscation cannot be distinguished from other assets or their identification would be disproportionately difficult; (c) the assets have already been acquired by a third party in *bona fide*. The court is to determine the value of the assets on the basis of the assessment provided by financial institutions or/and individual experts (Article 99, Code of Criminal Procedure).

8. Property (or the value thereof subject to confiscation) may be exacted from a third party if the property originated from a criminal offence or if the third party obtained it in the course or in relation to the perpetration of the offence (Article 77/B(2), Criminal Code). According to Article 77/B(5)(b) of the Criminal Code, for assets not to be confiscated from a third party acquiring *bona fide,* s/he must have obtained them "*against consideration*" (i.e., in cases where the *bona fide*

[2] The Hungarian Criminal Code establishes a conceptual distinction between two types of confiscation: confiscation of the assets of the perpetrator and confiscation of the instruments or results of a criminal act. The purpose of the confiscation of assets is to deprive a person of the ownership or possession of an asset with financial value and originating from the commission of the offence, or obtained in the course of or in relation to the commission of the offence (Articles 77/B and 77/C). The purpose of confiscation of instruments or results of a criminal act is to deprive a person of the ownership or possession of an object, which constitutes a danger to public safety (Articles 77 and 77/A). It is not possible to apply both measures simultaneously with respect to the same object; moreover, Article 77(6) determines that "*objects shall not be confiscated if they are covered by the confiscation of assets*". Since the proceeds and instrumentalities of corruption would not constitute an endangerment to public safety in the sense of Article 77 and 77/A, but rather a financial gain or advantage, the present Section II of the Evaluation Report exclusively deals with the relevant provisions in the Hungarian Criminal Code concerning confiscation of assets.

third party demonstrates that s/he has paid a full price for the property in question). In addition, confiscation is also applicable to legal persons (Article 77/B(2), Criminal Code). If the measure can no longer be imposed as a result of the death of the offender or the dissolution of the legal entity committing the crime, confiscation shall be ordered against the successor in title of the illegally acquired assets (Article 77/B(3), Criminal Code).

9. The burden of proof for the purpose of confiscation of assets lies with the prosecutor as a general rule. However, in those cases where the perpetrator is part of a criminal organisation, the burden is on the offender to demonstrate that the assets were obtained lawfully while being involved in the activities of the criminal organisation (Article 77/B (4) and (5c), Criminal Code).

10. Confiscation of assets accrues to the State as a rule. It is possible to satisfy the claims corresponding to the damage occasioned to an individual; both the Criminal Code (Article 77/C(3)) and the Civil Code (Article 120) introduce relevant provisions to this aim.

Interim measures: seizure and sequestration

11. The Code of Criminal Procedure provides for two types of interim measures, namely seizure (Article 151) and sequestration (Article 159), which may be used in relation to proceeds of corruption.

12. Seizure consists of dispossessing the owner of his/her property (e.g., movable objects, documents, computer systems and data) in order to obtain evidence of the criminal offence committed or to secure subsequent confiscation of assets. In principle, it shall be ordered by the investigating authority, the public prosecutor, or the court; however, exceptions are provided as follows: (i) seizure of documents kept in the office of a public notary, a law firm or a health institution shall only be ordered by a court; (ii) seizure of mail and any other type of communication not yet delivered to the offender shall be ordered by the public prosecutor, prior to filing the indictment, and thereafter confirmed by the court. Nevertheless, even in those cases where the investigative authorities and the public prosecutor are not vested with seizure powers, but urgent action is still required, "custody" of property may be effected and subsequently confirmed via a judicial seizure order (Article 151(6), Code of Criminal Procedure).

13. Sequestration means the suspension of the right of disposal over assets and property rights in order to secure subsequent confiscation or enforceability of a civil claim when there are reasonable grounds to fear that the satisfaction of such claim could be at risk; it shall only be ordered by a court. The most typical example of sequestration is when immovable property is the subject thereof (e.g., property titles, bank accounts).

14. In addition, Article 160 of the Code of Criminal Procedure introduces a so-called "precautionary measure", which aims at securing items which could be subject to sequestration and which are at risk of being transferred, hidden, or whose property rights could be changed. It can be ordered by both the police and the public prosecutor and may concern any movable or immovable property, securities representing property rights, funds managed by a financial institution, or due share or ownership interest in companies. Precautionary measures are primarily conducted against the person whose right of disposal would be suspended by subsequent sequestration, but they may also be implemented against other persons when reasonable grounds exist to believe that further sequestration would be at risk otherwise. If precautionary measures are taken, a court order for sequestration shall be motioned thereafter without delay.

15. Detailed rules on the management of seized/sequestrated property are contained in different legal acts, i.e., the Code of Criminal Procedure (Articles 154-157), the Act LIII of 1994 on Judicial Execution, and the Joint Decree No. 11/2003 on the Rules of Handling, Registration, Preliminary Sales and Destruction of Properties Seized. Any seized/sequestrated object shall be carefully deposited and stored to ensure that it is not altered. The property seized/sequestrated shall be listed in a detailed report; attachment of immovable property shall be recorded in the real estate register and an impoundment administrator could be appointed, as needed.

16. The use of seizure is considered within the framework of the criminal investigation of the particular crime. However, the authorities may initiate specific investigations aimed at identifying, tracing and freezing the proceeds of crime and are entitled, according to Article 178/A of the Code of Criminal Procedure, and subject to the consent of the public prosecutor, to request data on the suspect from different bodies, e.g., tax authorities, telecommunication agencies, banks, etc. The supply of data with respect to criminal proceedings may not be refused under secrecy grounds. Moreover, if the organisation contacted fails to execute the information request within the prescribed deadline, disciplinary penalties and/or other coercive measures may be imposed.

Statistics

17. Statistics were provided concerning corruption-related offences (economic crime, abuse of authority, bribery and trading in influence): in the last four years (2000-2004) an average of 90% of the criminal investigations initiated concluded with a sentence of conviction; confiscation of assets was rarely ordered until 2004. In 2004, there were 334 indictments concerning corruption-related offences, confiscation of assets was ordered in 29 cases concerning economic crime, 3 cases of abuse of authority, 23 cases of bribery and 2 of trading in influence, respectively. At the time of the GET's visit, there were no statistics available concerning the use of interim measures.

Money laundering

18. Money laundering has been criminalised as a separate offence in Articles, 303 and 303/A of the Criminal Code; it may be punished with imprisonment of up to five years. It follows an "all crime" approach ("any punishable commission of criminal activities"); therefore, any corruption offence can be a predicate offence to money laundering, whether committed in Hungary or abroad.

19. Act XV of 2003 on Preventing and Combating Money Laundering is based on the provisions established by the EU Second Money Laundering Directive[3]. It obliges the so-called "service providers" (i.e., banks, financial services, insurance companies, real estate brokers, gambling casinos and other business persons, professionals providing legal counsel and notary services) to report any transaction that may reasonably be assumed to constitute money laundering. Intentional failures to report are subject to imprisonment of up to three years; cases of negligence are punished with a fine, community service or imprisonment of up to two years (Article 303/B, Criminal Code).

20. The Anti Money Laundering Department (AMLD), within the National Police Headquarters, serves as the Financial Intelligence Unit (FIU). It is responsible for averting and revealing criminal activities, based on suspicious transaction reports (STRs), and for either conducting its own investigations or notifying the relevant investigative authority. The AMLD can also use special

[3] Directive 2001/97/EC on prevention of the use of the financial system for the purpose of money laundering. The GET was informed after the visit that transposition of Directive 2006/60/EC had started.

investigative powers (e.g., interception of communications) upon permission of the court or the public prosecutor, as provided by law.

21. For the last three years, no money laundering proceedings have been initiated in relation to the predicate offence of corruption.

Mutual legal assistance: provisional measures and confiscation

22. The legal framework for mutual legal assistance, at international level, is provided by the 1959 European Convention on Mutual Assistance in Criminal Matters (CTS 30) and its Additional Protocol (CTS 99) and, at national level, by the 1996 Act XXXVIII in International Legal Assistance in Criminal Matters. There are also bilateral agreements between Hungary and other States (e.g., Australia, Canada, United States of America). In addition, Chapter III of the Act CXXX gives effect to the EU Convention on Mutual Legal Assistance in Criminal Matters and, when it would enter into force, it would enable direct co-operation channels between judicial authorities (Criminal Courts, Public Prosecutors' Offices, the Ministry of Justice and the Chief Public Prosecutor's Office).[4] Mutual legal assistance is granted if the criminal act is punishable according to both Hungarian law and the law on the foreign State; however, pursuant to Article 62 of the Act XXXVIII in International Legal Assistance in Criminal Matters, if the dual criminality requirement is not fulfilled, mutual legal assistance may be granted if the requesting State guarantees reciprocity in this respect.

23. In cases where a foreign State requests the enforcement of a decision regarding provisional measures and confiscation, the Chief Public Prosecutor forwards the request to the designated prosecutor's office to administer the legal assistance if the request is received during the investigative stage. Alternatively, if the foreign judicial authority specifically requests performance of procedural assistance by a court or if the request arises after the indictment phase, the Ministry of Justice passes the request on to the competent local court. The procedural rules applied in such cases are those provided by national legislation; however, the competent national court executing the foreign request may decide to apply the procedural rules of the foreign State if such rules do not contravene the fundamental principles of the Hungarian legal system. The simultaneous application of both the requesting and the requested State procedural rules is expressly allowed to guarantee the widest protection of the witnesses' or defendants' procedural rights (Article 64, Act XXXVIII in International Legal Assistance in Criminal Matters).

24. When Hungary is the requesting State, requests to foreign authorities are submitted either by a prosecutor or a Hungarian court depending on whether the need for mutual legal assistance arises prior to or after the indictment.

b. Analysis

25. The legislation concerning confiscation and seizure has undergone significant changes following amendments to the Criminal Code and the Code of Criminal Procedure in 2001 and 2002, respectively. The new provisions on confiscation are comprehensive and appear to be in conformity with the Criminal Law Convention on Corruption (ETS 173). Confiscation of the proceeds of crime is mandatory, *in rem* confiscation and value confiscation are possible. Property may be confiscated from persons (including from a legal entity or its successor in title) to which it was transferred free of charge or for a sum of money which does not correspond to its actual

[4] The GET was informed after the visit that the EU Convention of 29 May 2000 on Mutual Assistance in Criminal Matters entered into force in respect of Hungary on 23rd November 2005.

value, if the persons concerned knew or could have known that this property had been gained through or owing to the commission of a criminal offence. In principle, the burden of proof for the purpose of confiscation of assets lies with the prosecutor; however, a certain apportionment of the burden of proof is possible in those cases where the perpetrator is part of a criminal organisation. In such cases, the burden is on the offender to prove that the assets were obtained lawfully despite the offender's involvement in the activities of the criminal organisation.

26. In addition, Articles 151 and 159 of Act XIX 1998 on the Code of Criminal Procedure regulate two types of interim measure, namely "seizure" and "sequestration" that may be used in relation of proceeds of corruption. Seizure involves divesting the owner of a property or his right of disposal thereof by way of dispossession in order to obtain evidence or to ensure subsequent confiscation of the property. It must be ordered by the investigating authority, the public prosecutor, or the court. Sequestration means the suspension of the right of disposal over given assets and property rights in order to secure subsequent confiscation. Sequestration is ordered by the court. However, a "precautionary measure" is provided for by the Code of Criminal Procedure, also enabling the police or prosecution authorities to secure items (e.g., movable or immovable property, securities, power of attorney in companies, etc.) which are at risk of being transferred, hidden or whose property rights could be changed prior to a court order of sequestration.

27. The GET examined the institutional framework and the tools available to the law enforcement authorities in order to perform financial investigations whenever a corruption offence was discovered. Public prosecutors are competent to conduct investigations as well as to prosecute criminal offences. To this end, a special "county prosecutorial investigation office" exists at each county-level prosecution office. A Central Investigation Office of the Public Prosecution Service (CIOPPS) has national competence to investigate and prosecute corruption-related offences committed by public officials. As of May 2005, the CIOPPS included a staff of 11 public prosecutors (Head of CIOPPS, Deputy Head, 2 Heads of the Division and 7 public prosecutors). Internal guidelines were issued in 2003 to detail best practices concerning the detection of corruption offences and further use of special investigative techniques. In 2005, two training sessions were provided in the context of bilateral assistance projects; they dealt with corruption of high-ranking officials –case studies and best practices- and corruption and money laundering.

28. The main body in charge of carrying out criminal investigations in Hungary is the Police, which operate under the responsibility of the Hungarian Ministry of the Interior. A specific Anti-Corruption Unit (ACU) was created in 2002 at the National Police Headquarters; in 2004, it was placed under the umbrella of the National Investigation Office and carries out investigations in relation to corruption according to Regulation No. 15 of 1994 of the Ministry of the Interior. The ACU was staffed, at the time of the visit by the GET, with 18 officials; 9 of them were in charge of the investigation of major and difficult cases of corruption, as well as of the development of guidelines and training on corruption-related issues for local and regional police officers.

29. The GET acknowledged that some training was already provided to police and prosecutors on corruption matters; however, it was still of the opinion that there was a need for specialised training concerning the investigation of corruption offences, with a view, *inter alia*, to making more use of confiscation and provisional measures in the future. Therefore, **the GET recommends to provide specialised training for prosecutors and police officers with a view to making full use of all means available aiming at identifying, seizing and confiscating proceeds of corruption.** The GET was hopeful that such training would be adequately replicated for prosecutors and police officers entrusted with the investigation of corruption offences at regional and local levels.

30. An issue of concern to the GET during the on-site visit was cooperation and coordination of the different law enforcement bodies which investigate corruption cases. The National Hungarian Police has its own databases which are accessible to police units at local and regional level. Similarly, the fact that the Anti Money Laundering Department (AMLD) is part of the police structure allows it to access other police databases, such as criminal intelligence, criminal records, etc. Public prosecutors are also empowered, according to Article 178 of the Code of Criminal Procedure, to use the police databases. Legal provisions are in place to enable, in theory, inter-institutional co-operation during the investigative phase of a criminal offence with timelines for fulfilling the request ranging between a minimum of eight and a maximum of thirty days (Article 71 of the Code of Criminal Procedure). It was not possible for the GET to assess whether centralised, up-to-date and coordinated information in the different databases of the Public Prosecution Service and other public bodies exists and whether that information is readily available for the daily work of courts and prosecutors, within the limits of their respective competences. For example, the GET was told that a written request for information about the current accounts or tax registry data of a physical or legal person may take several months. Although the representatives of the Anti-Corruption Unit of the Police, as well as certain representatives of other law enforcement authorities indicated that appropriate inter-institutional cooperation and coordination channels were in place, *the GET observes that the sharing of information between relevant institutions in the course of corruption-related investigations should be improved in order to ensure that "sensitive" information is transmitted in real time to prevent the dissipation of corruption proceeds at early stages of the investigation.*

31. The GET took note of the "all crime" approach with regard to the predicate offence of money laundering and the wide ranging categories of entities with an obligation to report unusual or suspicious transactions. The Anti Money Laundering Department (AMLD) was staffed, at the time of the visit, with a total of 42 persons (20 police officers, 2 internal auditors and 20 other civil servants and public employees). The GET was informed that in 2004, the AMLD had received 14,120 STRs; it launched 17 money-laundering related investigations on its own and referred 727 grounded suspicions to other police authorities, out of which only 13 were subject to further criminal investigation. The AMLD underlined the poor quality of some of the reports received and was aware of the risk of over-reporting due to the severity of the existing criminal sanctions for failures to report (including imprisonment of up to two years for negligent failures to report). In this context, the GET could not disregard the high numbers of reports received from financial institutions and understood that the figures were likely to increase in the future as other categories of professionals would become more actively involved in the reporting of suspicious transactions (e.g., lawyers, auditors, tax consultants, etc.). Furthermore, there was no mechanism in place to provide subsequent feedback on the outcome of the reports filed. The GET is of the opinion that it is of crucial importance that the AMLD keeps the reporting entities aware – to the extent possible – of the action taken in response to their reports. Consequently, **the GET recommends that the Anti Money Laundering Department enhances the knowledge of the bodies/persons obliged to report suspicious transactions with a view to improving the quality of their reports, including by providing feedback on suspicious transactions reports to the extent possible.**

32. The rules governing mutual legal assistance are set forth in Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters. Requests for such assistance are performed by two central authorities: the Public Prosecutor's Office or the Ministry of Justice depending on whether the request arises prior to or after the indictment, respectively. In practice, most of the mutual legal assistance requests (about 90%) are sent and received by the Public Prosecutor's Office. Statistics on the total number of mutual legal assistance requests were provided by the Public Prosecutor's Office: in 2004, 680 international requests were received by national prosecutors

and 788 requests were submitted to international prosecutors. These statistics did not specify whether any of those requests specifically concerned confiscation or seizure orders in connection with corruption-related offences. No data were made available by the Ministry of Justice concerning mutual legal assistance requests received/sent by the courts.

33. Although in the GET's view the existing legal framework concerning confiscation and interim measures provides adequate tools for identifying, tracing and seizing corruption proceeds (also in cases when mutual legal assistance is requested), it is difficult to ascertain to what extent the system is effective in practice, due to a lack of systematic statistics. The available data concerning confiscation orders suggest that courts are gradually increasing their recourse to this type of measure, but the lack of precise figures (e.g., value of confiscated property, use of interim measures, mutual legal assistance requests concerning confiscation and interim measures in respect of corruption offences) makes it difficult to draw any further conclusion on the effectiveness of the system in practice. In this connection, *the GET observes that systematic statistics should be collected and analysed concerning the use of confiscation, interim measures and international co-operation.*

III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal framework

34. The fundamental principles aiming at providing a sound public administration in Hungary are laid down in the Constitution and in other legislation. In particular, the 1992 Act XXIII on the Legal Status of Civil Servants, as amended in 2001, forms the regulatory basis for civil servants in the public service. According to the afore-mentioned Act, only civil servants are entitled to carry out tasks directly related to exercising executive, administrative, controlling and supervisory functions. Government Decree No. 1085/2004 exhaustively lists the organisations, both at central and local levels, vested with public service responsibilities. It should be noted that at the time of the visit by the GET there were 104,319 civil servants and 567,475 public employees; the latter being governed by Act XXXIII on the Legal Status of Public Employees. In addition, there are 128,972 persons entrusted with public service functions (e.g., uniformed forces, custom officials, labour employees, etc.) who are governed by their respective statutes.

Anti-Corruption Policy

35. On 14 March 2001, the Government of Hungary adopted Resolution 1023/2001 on the Governmental Strategy against Corruption, which provides for the elaboration of anti-corruption strategies and action plans within the different governmental institutions. Governmental Decree 1011/2004 has now led to the creation of the Advisory Board for Corruption-free Public Life (hereinafter the Board), as provided by Resolution 1023/2001. The Board consisted, at the time of the GET's visit, of representatives from the Ministry of Justice, the Ministry of the Interior, the State Secretariat of Public Funds, the Governmental Supervisory Office, the General Directorate of the Customs and Finance Guard, the National Headquarters of the Police, the Chief of the National Security Service, the Chief of the Coordination Office of OLAF, the State Audit Office and the Prosecutor General's Office. Additionally, representatives from civil society (i.e., university researchers, members of the Academy of Sciences, a local chapter of Transparency

International[5] and independent public opinion polling organisations) are invited to participate in the Board meetings.

36. The overall objective of the Board is to carry out research relating to corruption, to provide advice on anti-corruption measures (including developing anticorruption action plans and evaluating their effectiveness), and to liaise with GRECO, the OECD and the United Nations Office on Drugs and Crime (UNODC). In accordance with its mandate, the Board had drafted a national Anti-Corruption Action Plan, which was under discussion within public administration at the time of the GET's visit.

Transparency

37. Article 61 of the Constitution and Articles 19 to 21 of Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest provide a legal framework for the right of access to information held by public authorities. Both central and local authorities, agencies and other bodies entrusted with public duties are required to provide the general public with accurate information upon request and in a prompt manner. Furthermore, public authorities must release information concerning their activities on a regular basis. The right to access applies as a main rule to all documents held by a public authority; this right may, however, be restricted for specific reasons, as enumerated in Article 19 (3) to (7) of Act LXIII.[6] There are rights of appeal for denials of access to information.

38. In addition, Act XXIV of 2003 on the Amendment of Individual Acts Relating to the Use of Public Funds, Publicity and Enhancement of Transparency (the so-called "Glass Pocket Act") has introduced stricter and more detailed rules concerning the use and operation of public funds and property; in particular, by requiring transparency and publicity in the operation of State bodies, public foundations, business associations with a majority of State shares, and distribution of State subsidies.[7]

39. With regard to public consultation, the Government is bound to closely co-operate with other stakeholders while further developing its public functions (Article 36 of the Constitution). Moreover, Article 20 of Act XI of 1987 (so-called "Legislation Act") establishes that law enforcement bodies, non-governmental organisations and other relevant institutions (i.e., interest groups) must be involved and consulted in the drafting of legislation when their interests may be affected.[8]

[5] A national chapter of Transparency International does not exist any longer due to missing support from civil society. In the past, it did not participate in the Board to stress its independency. The GET was informed after the visit that since 20 December 2005 representatives of the Ministry of Finance and the Prime Minister Office are also members of the Board.

[6] Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest was amended by Act XIX of 2005, which entered into force on 1 June 2005. The GET was informed after the visit that Act XIX introduced several changes concerning exceptions to the right of access to information.

[7] The GET was informed after the visit that additional transparency rules in public administration had been introduced through Act XC on Freedom of Electronic Information (EFI), which entered into force on 1 January 2006. The Hungarian authorities indicated that the afore-mentioned Act extends the number of public bodies subjected to publicity (including regional and local authorities), as well as the categories of information to be published (e.g. annual budget, report on annual budget, etc.).

[8] The GET was informed after the visit that Act XC on Freedom of Electronic Information (EFI) introduces the duty to publish legislative drafts in the corresponding public administration's website.

Control of Public Administration

40. According to Article 57(5) of the Hungarian Constitution, legal remedies must be available whenever the action/omission to act of a public official infringes individual rights or lawful interests. There are two basic types of control of public administration: the internal (hierarchical) control within the system of public administration itself and the external control (judicial or other – i.e., Ombudsmen and State Audit Office). In particular, any person whose rights are affected by an administrative decision may file a complaint with the authority that made the decision. The relevant authority has a possibility to change its own decision, in which case the complaint will not result in any further action, or it may still wish to maintain its initial decision, in which case it must pass the case on to the relevant higher body. The decision of that body may then be subject to judicial review according to the provisions contained in Article 72 of the Act IV of 1957 on the General Rules of Administrative Procedures.[9]

41. There are three Parliamentary Ombudsmen dealing with Civil Rights, the Rights of National and Ethnic Minorities, and Personal Data and the Disclosure of Information of Public Interest. They are responsible for monitoring public authorities and have legal powers to enter their premises and to obtain access to relevant documents. They issue recommendations to the public bodies; the latter are to provide feedback on the action taken within 30 days of receipt of the recommendation.

42. The State Audit Office is the supreme financial control organ. It is entrusted to carry out annual inspections of the management of the central budget, local government, Social Security and earmarked State funds. Furthermore, it also supervises the management and financing of political parties, business chambers and civil organisations subsidised by the State. It assesses whether public resources have been used efficiently: it carries out both financial audits (assessing the soundness of expenditure and public accounts) and performance audits (examining whether public activity is carried out in an effective and economic manner). Although the State Audit Office mandate does not specifically refer to the fight against corruption, it plays, in practice, a significant role in this area by conducting comprehensive studies to search and analyse causes, risk situations and trends regarding corruption. In addition, whenever reasonable suspicions of criminal offences arise in the course of a specific financial investigation, the State Audit Office has a specific duty to inform the relevant investigative authorities pursuant to Article 25(2) of Act XXXVIII of 1989 on State Audit Office, and is under the general obligation of all public officials to report on suspicions of criminal behaviour in public administration according to Article 171(2) of the Code of Criminal Procedure.

Recruitment, career and preventive measures

43. Rules on public service recruitment are contained in the Act XXIII of 1992 on the Legal Status of Civil Servants, which establishes that only Hungarian nationals with a clean criminal record, legal capacity and at least secondary school qualification may be recruited for a public function. Recruitment announcements and competitions are not mandatory, except for higher officials (heads of ministerial departments), but in practice, these methods are also applied to other officials. The recruitment system is decentralised.

44. Pursuant to Article 7(1) of Act XXIII of 1992 on the Legal Status of Civil Servants, additional security criteria are to be met for "important and confidential positions". For those positions

[9] The GET was informed after the visit that Act CXL of 2004 on the General Rules of Administrative Procedures entered into force on 1 November 2005. The conditions to request a judicial review are now listed in Article 109 of the above-mentioned Act.

vulnerable to corruption, the aforementioned law requires regular declarations of assets. In this context, the Glass Pocket Act extends the obligation to declare property on a biannual basis to the following categories of persons: senior executives of economic organisations and members of their supervisory boards managing State property of significant value when these members hold a majority of the shares of such organisation; persons responsible for awarding or monitoring the awarding of State/local government subsidies, as well as those responsible for supervising the proper use of such subsidies once they have been granted. According to Article 22/A. of Act XXIII of 1992 on the Legal Status of Civil Servants the employer of the civil servant has to periodically compare the declaration of assets in the presence of the civil servant. If the increase of the assets of the civil servant cannot be justified taking into account the legal income of the particular civil servant, or if a report is submitted by a third-party indicating that assets have not been declared, the head of the administrative institution concerned has to initiate a control procedure at the Control Office of the Civil Service. There are also special bodies entrusted with the checking of asset declarations (e.g., special committee to investigate unusual increases in MPs' assets). However, the current system of verification does not permit random checks on the reliability of asset declarations submitted by public officials.

Training

45. Civil servants are provided with initial and further training (Article 33, Act XXIII of 1992 on the Legal Status of Civil Servants). However, there is no specific, general or systematic training in matters of personal integrity or risks of corruption.[10]

Conflicts of interest

46. The Act XXIII of 1992 on the Legal Status of Civil Servants includes specific provisions to prevent any financial or other interest or undertaking that could bias the performance of public duties (Articles 21, 22 and 37). In particular, public officials may only engage in additional employment with their superior's consent. Public officials in leading positions are under an absolute prohibition to engage in additional employment, with the exception of educational/academic activities. Additional safeguards to prevent conflicts of interest consist in limitations to engage in activities involving executive or supervisory tasks for the private sector, as well as mandatory reporting in writing of any situation that may give rise to a potential conflict of interest. If the conflict of interest situation is not solved within 30 days of its disclosure, employment will be terminated *ex lege*.

47. There are no specific legal provisions concerning periodical rotation of personnel, except in the customs, where rotation is used on a routine basis. The Hungarian authorities are nevertheless considering the practice of rotation for some vulnerable positions in certain branches of the public sector (for a specific example, see paragraph 55)

48. There are no particular measures in place to prevent public officials from moving to the private sector where they could abuse their contact networks and knowledge of administrative mechanisms and decision-making processes. However, according to the Hungarian authorities, the current provisions on bribery, abuse of official position and trading in influence contribute to controlling public officials moving to the private sector.

[10] The GET was informed after the visit that a comprehensive training programme on ethics was under preparation. It would include additional elements on general training of ethical principles, as well as on the job training for managerial positions as well as functions involving particular risks of corruption; such training is aimed to provide comprehensive and detailed information on how to prevent and to act upon corrupt practices in the relevant services.

Codes of conduct/ethics

49. At the time of the GET's visit, a general Code of Conduct for Civil Servants was being prepared. The Act XXIII of 1992 on the Legal Status of Civil Servants contains *inter alia* certain provisions relating to conduct (*e.g.*, economic and political impartiality, obedience to orders and loyalty to public service, etc.).

Gifts

50. There are no specific rules applicable to the receiving of gifts that public officials must comply with in the course of their duties. According to the information provided by the Hungarian authorities, the draft Code of Conduct for Civil Servants would include detailed provisions with respect to the receiving of gifts and other advantages in the course of public duties.

Reporting corruption

51. Article 171(2) of the Code of Criminal Procedure specifically requires public officials to report on suspicions of criminal behaviour in public administration. Furthermore, pursuant to Article 255/B of the Criminal Code, any public official who has a founded suspicion of bribery must immediately report that suspicion to the law enforcement authorities; failure to do so constitutes a misdemeanour which is punished by imprisonment not exceeding two years, community service or a fine. Protection of whistle-blowers is provided under Article 257 of the Criminal Code, which establishes that "*any person who takes any detrimental action against a person who has made an announcement of public concern is guilty of a misdemeanor and may be punished by imprisonment not exceeding two years, community service or a fine*". Finally, and according to the information provided by the Hungarian authorities, the draft Code of Conduct for Civil Servants would include further obligations concerning the reporting of corruption.

Disciplinary proceedings

52. Articles 50 to 56 of Act XXIII of 1992 on the Legal Status of Civil Servants lay down detailed procedural rules for disciplinary action. Investigation is to be initiated by the hierarchical superior, who is also empowered to impose a disciplinary punishment, without conducting disciplinary proceedings, if the facts can be clearly established and the infringement is acknowledged by the civil servant concerned. Disciplinary proceedings are normally conducted by the respective agencies: i.e., by an investigating commissioner (civil servant of a higher rank), and decided on by a disciplinary council, composed of three members. Decisions of the disciplinary councils can be appealed in court. Disciplinary and criminal proceedings may run in parallel.

b. Analysis

53. The information gathered by the GET indicates that – over recent years - Hungary has undertaken substantial steps to prevent and combat corruption within public administration; these efforts must be sustained and adequately conveyed to the population. The inter-ministerial Advisory Board for Corruption-free Public Life (hereinafter the Board) was restructured in 2005 and is currently placed under the authority of the Ministry of Justice. Following its recent reorganisation, the regular work of the Board is carried out by an inner circle which plays a key role in formulating the national anti-corruption strategy. This "nucleus" of the Board is composed by 26 high ranking civil servants from different Governmental bodies meeting once a month. An enlarged Board, which is supplemented by 28 additional members from the non governmental and scientific sectors, meets as necessary to discuss anti-corruption initiatives and to monitor

their implementation. The Board has an annual budget of 35 million HUF (circa 140,000 EUR) which can be used by the "nucleus" to finance research, the holding, and participation in, conferences and seminars.

54. Owing to the reorganisation of the Board, the further development of a comprehensive Action Plan against Corruption has been delayed. In April 2005, the Board decided to initially focus on two topics, i.e., financing of political parties and lobbying. Draft legislation on these matters was being prepared at the time of the GET's visit and was to be transmitted to Parliament following consideration by the Government in June 2005[11]; the role of the Board was to provide advice in the form of recommendations with respect to the draft legislation. The next topics included in the Board agenda for 2005 concerned rules on conflicts of interest and codes of ethics for the public service. Finally, the Board also envisages issuing recommendations in relation to public procurement. A report on the outcome of the Board's work is to be released in May 2006.

55. The GET got the impression that there was a degree of uncertainty concerning the Board's attributions and the existing mechanisms to interact with other bodies which are also entrusted with similar tasks in the fight against corruption. For example, further work on the comprehensive Action Plan against Corruption could benefit from the experience already gained by those ministries which have already developed their own programmes to fight corruption. In this context, the GET wishes to acknowledge the broad variety of measures introduced by the Ministry of Defence as part of its strategy to fight corruption, which was launched in 2002 and the effectiveness of which has been assessed by a specific monitoring body in 2005. The anti-corruption strategy of the Ministry of Defence includes detailed provisions dealing with conflicts of interest, acceptance of gifts, scientific research on rotation, rules on public procurement, etc. Similarly, the Ministry of Transport and Economy has taken concrete steps for fighting corruption, e.g., through guidelines on public procurement, targeted training for officials working in vulnerable areas, etc. Comparable regulations are missing in most other sectors. Therefore, in the GET's view, the Board would be well placed to carry out the tasks of co-ordinating and assessing the way the existing anti-corruption programmes are being implemented by the ministries concerned. In addition, the Board could make the anti-corruption measures developed to date better known to other sectors of public administration and to the wider public. Therefore, **the GET recommends that as the Advisory Board for Corruption-free Public Life develops an Action Plan against Corruption, the good practices already implemented on the basis of the existing sectoral anti-corruption programmes are taken into account. It recommends further that the Board co-ordinates the anti-corruption activities developed by other Governmental bodies and provides greater publicity of the measures taken in public administration to combat corruption.**

56. While welcoming the transparency measures introduced in 2003 by the so-called "Glass Pocket Act" (see paragraph 38), the GET found that its provisions were not fully implemented in practice. Resistance to such implementation especially arises from the obligations relating to transparency and publicity in the operation of those areas where public and private interests meet (interpretative conflicts between the obligation to disclose data of public interest and the protection of business secrets). In 2003, the number of citizens' complaints received by the Data Protection Ombudsman concerning access to information increased by 140% as compared to 2002; in 2004, the number of freedom of information cases further grew by 20% to a total of 169.

[11] The GET was informed after the visit that the Act on Lobbying had been adopted on 13 February 2006. It establishes *inter alia* the basic rules of lobbying, a national register of professional lobbyists and lobby firms and imposes the obligation on Members of Parliament to inform when their public speeches are in connection with interests included in their declaration of assets. On the other hand, the Hungarian authorities indicated that proposals on financing of political parties were likely to be dropped.

At the time of the GET's visit, a number of legislative proposals were under way to complete the general framework provided by Act LXIII of 1992 based on Article 61 of the Constitution, e.g., drafts concerning "freedom of electronic information", public consultation procedures, etc.[12], The GET welcomes this new legislative package; however, it considers that effective implementation of the legal framework on access to information would additionally benefit from appropriate training for public officials on the existing rules concerning administrative transparency. In view of the foregoing, **the GET recommends to provide appropriate training to public officials on the implementation of freedom of information legislation and to raise the general public's awareness of their right of access to information.**

57. Hungary has no general code of conduct for public officials although certain administrative bodies have begun to develop their own. At local level, some municipalities have adopted their specific codes of conduct; the GET was impressed by the quality of the Code of Conduct of Debrecen. The draft Code of Conduct of the Hungarian Medical Chamber was to be finalised in 2005; it will have a compulsory character and compliance with its provisions is intended to be ensured through a system of sanctions. In addition, in Hungary there exists a plurality of public employment relationships (civil servants, public employees, personnel whose status is regulated by the Labour Code, members of the Army, etc); each category is governed by a special statute.

58. In view of the wide spectrum of ethical/professional rules in force, the Ministry of the Interior has been given competence to develop minimum uniform ethical standards in close coordination with the Civil Service Conciliation Councils at national and local levels. A first draft of a Code of Conduct for Civil Servants (including special provisions for senior management, rules on the acceptance of gifts, management of conflicts of interests, training, etc.) has been handed over to the GET. The draft Code is intended to serve as a behaviour model, which the various public service organisations/authorities (including at regional and local level) could adapt subsequently to their specific needs and requirements. The Ministry of the Interior plans to publish the final Code of Conduct on its website. In the GET's opinion, the Code of Conduct for Civil Servants will be of great importance to provide uniform guidance to the various levels of public administration regarding their responsibilities and rights, as well as to inform the general public about what it should expect of public officials. Consequently, **the GET recommends to introduce as soon as possible the model Code of Conduct for Civil Servants for the development of consistent standards for ethical behaviour throughout public administration, to widely disseminate it among public officials and the general public, and to provide the officials concerned with appropriate training on a permanent basis.**

59. As regards the system for identifying conflicts of interest and ensuring impartiality, as noted in paragraphs 44 and 46, there are provisions focusing on outside activities and employment, financial interests and certain post-public-employment restrictions. Specific provisions on the declaration of interests, income and assets are contained in Act XXIII of 1992 on the Legal Status of Civil Servants. The GET recalls that the checking of declarations of assets and income of civil servants was recommended as a part of GRECO's First Round Evaluation and is still an open recommendation (Recommendation iv, Greco RC-I (2004) 14E). Moreover, the GET came across some shortcomings concerning giving and acceptance of gifts, in particular regarding the so-called "gratuity money" (voluntary retribution provided by a citizen upon receipt of a public service).. **The GET recommends that, as the Ministry of the Interior develops the model Code of Conduct for Civil Servants, clear guidance is provided with respect to seeking or receiving gifts.**

[12] See footnotes 7 and 8.

60. Another issue of concern are situations where public officials move into the private sector where the particular information/knowledge acquired in the official's former position may be used to the disadvantage of the public interest. This matter is not regulated in a systematic manner. This area may be of growing interest as the private sector gradually moves into traditional public sector business. **The GET recommends to introduce clear rules/guidelines for situations where public officials move to the private sector, in order to avoid situations of conflicting interests.**

61. Despite the requirement for public officials included in the Code of Criminal Procedure and the Criminal Code to inform public prosecutors of any criminal offences of which they might become aware in the course of their duties, the GET understood from the interviews held during the evaluation visit that opinions varied as to the implications of these provisions and the possible administrative consequences of failures to comply. The sanctions provided for in cases of misconduct were not clear enough to the public officials interviewed. Consequently, **the GET recommends to establish clear guidelines and training for civil servants concerning the reporting of suspicions of corruption.**

IV. THEME III – LEGAL PERSONS AND CORRUPTION

a. Description of the situation

Definition of legal persons

62. The Civil Code establishes an indicative list of the different types of legal persons in Hungary (Title III, Articles 28 to 74/H), including: the State, State-owned companies, trusts, other State-owned economic organisations, budgetary agencies, cooperatives, incorporated economic associations (joint enterprises, limited liability companies, companies limited by shares), non-profit companies, societies, public corporations, national sports associations, companies of individual legal persons, subsidiaries, foundations, and associations. Further typologies are introduced by additional legislation, e.g., local governments and some specific organisations, such as private pension funds, voluntary mutual insurance funds and investment funds.

Registration and transparency measures

63. The conditions governing the establishment and termination of legal persons are defined by law for each of the typologies listed above. In general, Article 29 of the Civil Code indicates that the name, activity, headquarters and, unless otherwise stipulated, the representatives of legal persons must be described in the legal document pertaining to the foundation of the relevant legal person. In particular, a minimum starting capital is required to start a company (3 million HUF – 12,000 EUR - for limited liability companies and 20 million HUF – 80,450 EUR - for companies limited by shares, respectively); a minimum number of founding members is needed to start operation of cooperatives and non-governmental organisations (from 5 to 15 in the case of cooperatives, 10 in the case of non-governmental organisations).

64. Registration requirements may also well vary depending on the type of legal person. There are three types of registers in Hungary: (1) the register of companies, governed by Act CXLV of 1997 on the Register of Companies, Public Company Information and Court Registration Proceedings, and kept by the courts responsible for registration, i.e., county courts and the Metropolitan Court of Budapest; (2) the register of non-governmental organisations and foundations, governed by Act II of 1989 on Rights of Association, Decree No. 6/1989 (VI.8) IM on Administrative Rules of the Registration of Non-Governmental Organisations and Decree No. 12 of 1990 (VI.13.) of the

Minister of Justice on Administrative Rules of the Registration of Foundations, filed by county courts, which do not act with a court of registration capacity, and kept by the Office of the National Judicial Council; and finally (3) the register of budgetary agencies, governed by Act XXXVIII of 1992 on Fiscal Administration, kept by the Treasury. In the registration process the company must be represented by an attorney in law. Upon receipt of the application, the Court records the company's name and address, issues a registration number and at the same time obtains and enters into the register the company's tax number and statistical number. From the date of the submission of the application the company may start to operate as a pre-incorporated company. If the court approves the application, it will order the company to be registered. If the court does not make any decision by the statutory deadline provided in Articles 41 to 44 of the Act on the Register of Companies, registration will occur *ex lege*. Publication in the Company Gazette ("*Cégközlöny*") takes place after the registration is ordered by the court.

65. General transparency rules to ensure effective responsibility of the owners of legal persons are contained in Article 4 of Act CXLIV of 1997 on Business Associations, including restrictions on natural persons to participate in more than one unlimited liability company at a time, or to be the sole members or shareholders of more than one single-member business association at a time; exceptions to these rules are specifically provided by law. In addition, further restrictions concerning owner/shareholder control apply to companies, which operations are subject to official licensing procedures (e.g., natural gas suppliers, district heating service providers, etc.) as well as money and capital-based organisations (e.g., credit institutions, insurance companies, investment funds, etc). The Glass Pocket Act contains additional limitations to improve transparency of budgetary agencies, which are prevented from acquiring shares in other economic organisations. Finally, there are certain rules on the number and type of accounts a company can hold in Hungary, i.e., resident legal persons, unincorporated business associations and private individuals subject to VAT are bound to open at least one transaction account (Article 3(6) of Government Decree 232/2001 (XII.10) on Monetary Circulation, Financial Transaction Services and Electronic Payment Instruments); organisations belonging to the so-called "treasury circle" (e.g., budgetary/publicly financed institutions and agencies) are required to deposit their funds on standard treasury accounts and are specifically banned from holding transaction accounts (Article 18/B(4) of the Fiscal Administration Act).

Limitations on exercising functions in legal persons

66. Those persons, who have been sentenced to imprisonment, are subject to professional disqualification, are involved in insolvency cases, or whose prior activity was subject to *ex officio* registry cancellation cannot be vested with executive or leading positions within a legal person for a certain period of time (Article 23 of the Act on Business Associations).

Liability of legal persons

67. Criminal liability of legal persons was established through Act CIV of 2001 on Measures Applicable to Legal Entities under Criminal Law, which entered into force upon accession of Hungary to the European Union on 1 May 2004. Article 2 of Act CIV introduces the criminal liability of legal persons for any breach of the Criminal Code, and thus for corruption-related offences, when the commission of the offence was aimed at, or resulted in, the legal entity gaining a financial advantage. Criminal liability applies to both *de facto* and *de iure* legal persons[13], but specifically excludes from its scope the State of Hungary and foreign States, the

[13] Article 1(1): Legal entities shall be understood as any organisation or organizational units thereof vested with rights of individual representation, which the governing rules of law recognise as legal entities, as well as organisations that can be

institutions listed in the Constitution of the Republic of Hungary, the Office of the National Assembly, the Office of the President of the Republic, the Office of the Ombudsman, international organisations, and any other body vested with governance, public administration and local government responsibilities (Article 1(2)).

68. Criminal liability of a legal person results from acts committed by (1) one of its members or officers entitled to manage or represent it, or a supervisory board member and/or their representatives (Article 2(1)a); (2) one of its members or an employee, when there is a lack of supervision on the part of a chief executive with control or supervising obligations (Article 2(1)b); and finally, (3) a third person, on condition that a member or an officer entitled to represent the legal entity had knowledge of the facts (Article 2(2)). Furthermore, invoking a legal person's liability does not exclude individual perpetrators or accomplices from being held liable as well.

69. The conviction of a natural person is a precondition for determining criminal liability of the legal person, except in cases of death or mental illness of the natural person (Article 3). The measures concerning legal persons are applied by the same criminal court that proceeds against the physical perpetrator of the offence.

Sanctions

70. The Act CIV of 2001 on Measures Applicable to Legal Entities under Criminal Law (Articles 3 to 6) foresees three types of sanctions where a legal person is found criminally liable: (i) winding up the legal entity. Exceptions to this type of penalty are provided by law when the legal entity is recognised as acting in the public interest, or developing activities of strategic importance to the national economy, or performs national defence-related or other specific tasks; (ii) restricting the activity of the legal entity from 1 to 3 years, e.g., bans on obtaining licences, authorisations or concessions, bans to participate in public procurement procedures or to receive funding from central, local or international budgets, etc.; (iii) fines up to a maximum equalling three times the amount of the financial advantage gained or intended to be gained through the criminal act, and at least 500,000 HUF (approximately 2,000 EUR). In addition, the confiscation of the assets of legal persons is also possible according to Article 77/B of the Criminal Code and may be even applicable to its successor.

71. Article 12 of Act CXLV of 1997 on the Register of Companies, Public Company Information and Court Registration Proceedings determines that the courts of registries keep paper and electronic files concerning judicial decisions upon receiving notice from the acting court; in addition, the publication of the provisional measures imposed on a legal person is mandatory. Finally, detailed safeguards are provided to prevent companies and their officers from avoiding penalties through bankruptcy, liquidation and final settlement (Article 6/A, Act XLIX of 1991 on Bankruptcy Proceedings, Liquidation Proceedings and Voluntary Dissolution).[14]

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subject to conditions of civil law in their own right and possess assets distinct from that of their member, including companies active prior to registration pursuant to the At on Economic Associations.

[14] (1) No bankruptcy, liquidation or final settlement proceedings shall be initiated if the court or prosecutor proceeding in the criminal case has notified the court of registration that there is provision for taking measures against the legal entity in the criminal case in progress.

(2) Any bankruptcy, liquidation or final settlement proceedings initiated shall be suspended until the resolution of the court proceeding in the criminal case becomes final and/or the measures taken in the course of the criminal procedure have been executed.

(3) If the provisions of Paragraphs (1) and (2) would considerably hinder or jeopardize satisfaction of creditors' claims, the prosecutor may allow the bankruptcy and liquidation proceedings to be commenced or continued before the written accusation is submitted, while afterwards the court may do so."

72. Due to the recent entry into force of criminal liability in May 2004, no statistics exist on the number of proceedings and related sanctions instituted against legal persons for corruption offences.

Tax deductibility

73. The expenditures incurred in connection or associated in any way or form with the felony offences of bribery and trading in influence established by the Criminal Code are not tax deductible (Schedule No. 3 on Regulations for Claiming Costs and Expenses to Act LXXXI of 1996 on Corporate Tax and Dividend; Article 8(2) of Act CXVII of 1995 on Personal Income Tax).

Tax authorities

74. Tax authorities are obliged to report suspicions/cases of corruption to the competent law enforcement authorities according to Article 171(2) of the Code of Criminal Procedure and Article 255/B of the Criminal Code. Moreover, the Tax and Financial Control Administration is specifically subject to the obligation to record dubious economic operations in a separate file and subsequently report such operations to the competent law enforcement body (Article 104, Act XCII of 2003 on the Rules of Taxation), which would institute criminal procedures when well-grounded suspicions of a criminal act exist. In addition, the Tax ad Financial Control Administration Instruction No. 1016/B/2005 introduces detailed rules on reporting criminal complaints and means of co-operation among competent authorities acting in criminal cases. Finally, the High Security Department, within the Tax and Financial Control Administration, ensures co-ordination of preventive and disciplinary coercive action against corruption.

75. Tax authorities are obliged to disclose confidential tax information to the investigating authority upon request of the latter (Article 54, Act XCII of 2003 on the Rules of Taxation).

Accounting Rules

76. All legal persons are obliged to keep complete accounting records and books as well as files and archives according to Article 169 of Act C of 2000 on Accounting. Different bookkeeping timeframes are established in the afore-mentioned Act depending on the type of accounting document at stake, which may vary from eight to ten years. There are no exceptions to the requirement to keep and preserve proper accounting records for legal entities.

77. The use of accounting documents or records containing false or incomplete information or double invoices is sanctioned both under criminal law (Articles 289, 310 and 318 of the Criminal Code) and taxation law (Article 172, Act XCII of 2003 on the Rules of Taxation). Breaches of the afore-mentioned legislation are liable to (i) criminal sanctions consisting on imprisonment of up to ten years; (ii) community service, and (iii) fines. In addition, Article 35(1) of Act LXXIV of 1992 on Value Added Tax determines that false or double invoices are not tax deductible.

78. Although there is no specific provision concerning sanctions for the destruction or hiding of accounting records or books, the Hungarian authorities have indicated that such an offence would be covered by Article 289 of the Criminal Code, which is applicable to *"any person who infringes his reporting, bookkeeping, and auditing obligations or the voucher discipline".*

Role of accountants, auditors, and legal professionals

79. Pursuant to Article 171(1) of the Code of Criminal Procedure *"any person may lodge a complaint concerning a criminal offence";* thus, accountants, auditors and legal professionals are only entitled, but not obliged to report corruption-related offences. Furthermore, pursuant to the Hungarian national auditing standard No. 240 on Fraud, Misinterpretation and Errors, auditors have a duty to report to their management or to report directly to the law enforcement authorities (if their management is involved in the commission of the offence) any suspicion of fraud or accounting misinterpretation (including suspicions of corruptive practices).

80. Nevertheless, auditors, accountants and legal professionals (lawyers and notaries) are included in the list of persons who are subject to specific reporting obligations when they come across any activities that could be related to money laundering. In particular, detailed obligations are contained in the 2003 Act XV on Preventing and Combating Money Laundering with respect to service providers, who must (1) identify their clients; (2) report any suspicious transaction to the Anti-Money Laundering Department; (3) keep accounting data and documents; and (4) undergo specific training with respect to the detection of money laundering offences. Guidelines and model rules, which detail procedural provisions related to the prevention and combat of money laundering, have been circulated among accountants, auditors and legal professionals.

b. Analysis

81. The Hungarian legal framework provides for a large variety of types of legal persons, established in the Civil Code and in additional specific legislation. The requirements for the establishment and termination of legal persons are defined by specific legislation for each of the different types, in addition to the general applicable provisions included in the Civil Code.

82. The registration system for legal persons comprises three main registration procedures and registers depending on the type of legal persons: register of companies; register of non-governmental organisations and foundations; and finally, register of budgetary agencies. The register of companies contains the relevant data of legal persons, in a computerised database, and all its information is available to the public. The legal framework for registration of companies is provided in Act CXLV of 1997 on the Register of Companies, Public Company Information and Court Registration Proceedings. Overall, the registration system appears to be adequate; nevertheless, in the GET's view, some of its features may well be problematic with regard to the potential use of legal persons to shield inappropriate activities, including corruption. Firstly, under the present registration system, misuses of the status of a "pre-incorporated company" may eventually occur. Pre-incorporated companies are fully operative once the registration application is submitted and filed before the competent court. In fact, legal capacity is acquired on the day of registration. This "pre-incorporated" status can be maintained for a maximum period of 30+45 days (in practice, pre-incorporated companies may be able to fully operate for a period of 80-90 days, as reported by registration officials during the on-site visit). Secondly, the control carried out by the courts consists only of a formal check as to whether the required documents have been submitted. No control of the identity of the persons behind the legal person is exercised (although tax authorities perform some subsequent controls on new companies).

83. The GET's recognises that the relevance of assuring completeness and correctness of the information provided at the time of registration must be balanced against the need for a swift and efficient registration system, which has to deal with a large number of procedures. However, it would be useful if some additional controls could be performed, concerning in

particular the legal limitations on exercising executive functions in legal persons as well as certain restrictions in place to ensure effective responsibility of the owners of legal persons. In this context, some general transparency rules are included in Act CXLIV of 1997 on Business Associations, including restrictions on natural persons to participate in more than one unlimited liability company at a time or to be the sole members or shareholders of more than one-single member business association at a time. In addition, some limitations on exercising functions in legal persons are also prescribed in the same Act, i.e., persons who have been sentenced to imprisonment, professionally banned, involved in insolvency cases, or whose prior activity was subject to *ex officio* registry cancellation cannot be vested with executive or leading positions in a business association for a certain period of time. However, the GET did not gather any evidence about the type of control performed on the above-mentioned restrictions which could ensure its application in practice. In view of the above, the **GET recommends to consider strengthening the controlling functions of the courts in charge of the registration of legal persons regarding (a) the identity of the owners of legal persons; (b) certain legal restrictions in place to ensure effective responsibility of the owners of legal persons; and (c) legal limitations on exercising executive functions.**

84. The principle of corporate criminal liability was introduced by Act CIV of 2001 on Measures Applicable to Legal Entities under Criminal Law, which entered into force upon accession of Hungary to the European Union on 1st May 2004. It covers, among others, active and passive bribery, trading in influence and money laundering committed by a natural person in a leading position for the benefit or on behalf of the legal person, as well as in those cases where lack of supervision within the legal person makes it possible to commit the respective offences. Corporate liability does not exclude individual liability of the perpetrator. The scope of application of the law with regard to the categories of legal persons which may be liable for offences appears, overall, to be in line with Article 18 of the Criminal Law Convention on Corruption. Nevertheless, it should be mentioned that, according to Article 3(1) of Act CIV of 2001 on Measures Applicable to Legal Entities under Criminal Law, the liability of legal persons may be established only if the natural person has been convicted, however not in cases where the perpetrator has been acquitted or could not be identified. The only exception is where the perpetrator cannot be punished due to his/her mental illness or death (Article 3(2) of the Act CIV of 2001 on Measures Applicable to Legal Entities under Criminal Law).[15] Moreover, the GET identified a potential shortcoming in relation to those cases where institutional changes, such as fusions or scissions, take place before criminal proceedings are started against legal persons. In fact, in those cases, it is not clear to the GET that the provisions in force could ensure the effective criminal liability of the legal persons and prevent the circumvention of the application of the sanctions. Therefore, **the GET recommends that efforts should be made to ensure that applicability of corporate criminal liability cannot be circumvented by institutional changes occurred after the commission of the criminal offence.**

85. The criminal sanctions provided for appear to be in conformity with the requirements established by Article 19(2) of the Criminal Law Convention on Corruption. That said, the GET was aware of the fact that the new legislation had only entered into force in 2004 and that no prosecutions of legal persons had taken place up to the time of the GET's visit. Consequently, the GET could not assess whether the sanctions provided for were effective, proportionate and

[15] Act CIV of 2001 on Measures Applicable to Legal Entities under Criminal Law, Article 3(1) If the court has imposed punishment on the person committing the criminal act defined in Article 2, 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 financial advantage, but the perpetrator is not punishable due to his mental illness or death.

dissuasive also in practice. The GET considers that the situation needs to be followed up in order to properly implement the new legislation in practice. In view of the above, the level of awareness of corporate liability of the Police, the Prosecution authorities and the Judiciary is to be increased. This calls for extensive information and training to be provided to the aforementioned authorities. Consequently, the GET recommends **to ensure that investigating, prosecuting and adjudicating authorities are given the necessary training in order to fully apply the existing provisions on corporate criminal liability.**

86. Tax authorities are subject to the general obligations included in the Criminal Code and the Code of Criminal Procedure, which require all public officials to report on suspicions of criminal offences detected within their scope of competence. In addition, the Tax and Financial Control Administration must record suspicious operations in a separate file and subsequently report those facts to the competent law enforcement body. Tax authorities are also obliged to disclose confidential tax information to investigating bodies upon request. The Customs and Finance Guard have a particular corruption management action plan in order to deal with corruption cases within that body. According to the action plan, all customs and finance guards should receive training on facts associated with corruption offences and the obligations and procedure of reporting such cases. In the GET's view, the tax authorities (notably, tax officials from the Tax and Financial Control Administration) could play a more significant role in the detection and subsequent reporting of suspicions of such offences in the course of their normal activity, if appropriate training could be provided. *Consequently, the GET observes that training for the tax authorities concerning the detection of corruption offences and their reporting to the competent law enforcement agencies should be provided.*

87. Accounting offences, such as the use of invoices or other accounting documents or records containing false or incomplete information and the destruction or hiding of accounting records or books, are punishable under both criminal and taxation law. In the GET's view, the system in place overall appears to meet the standards laid down in Article 14 of the Criminal Law Convention on Corruption.

88. According to Act XV of 2003 on Preventing and Combating Money Laundering, accountants, auditors and lawyers are under a specific obligation to report to the Anti Money Laundering Department (AMLD) any suspicious operation. The level of sanction for failures to report (i.e., fines, community service or imprisonment of up to three years) could be considered as adequate. However, the few cases reported by auditors, lawyers and tax consultants in 2004 (a total of two reports out of the 14,120 received by the AMLD) suggest that these professionals may not be sufficiently aware of their obligations and of the important role they could play in the detection and reporting of money laundering suspicions.

89. Act XV of 2003 on Preventing and Combating Money Laundering requires service providers to develop internal rules to fulfil their obligations under the law; it also requires that their corresponding supervisory bodies approve the rules.[16] In addition, the legislation also establishes that the AMLD has to verify whether the service providers without State or professional supervision (e.g., accountants) have developed their own internal rules to comply with their anti-money laundering obligations. In order to perform these controls (on-site inspections) the AMLD has been using a random selection basis of the service providers. The

[16] Pursuant to Article 2 of the Act XV on Preventing and Combating Money Laundering, the supervisory bodies established are the Hungarian Financial Supervisory Authority (banking and credit institutions, insurance companies and other financial and investment agencies), the National Bank of Hungary (auxiliary financial services of cash processing), the Hungarian Gambling Board (casinos), the Hungarian Chamber of Auditors (auditors), the Hungarian Bar Association (lawyers), and the Hungarian Chamber of Notaries Public (notaries).

GET considers that the effectiveness of the control could certainly be improved if that selection could be based on a previous risk analysis in order to define a set of specific criteria to direct those inspections. Therefore, **the GET recommends: 1) the introduction of appropriate measures, such as specific training, in order to make auditors, accountants and legal professionals increasingly aware of their role concerning the detection and reporting of suspicious transactions; 2) the development of an adequate risk analysis in order to improve the effectiveness of the control performed by the Anti Money Laundering Department concerning implementation of the anti-money laundering framework by service providers without State or professional supervision.**

V. CONCLUSIONS

90. In Hungary, detailed legal provisions dealing with confiscation, seizure and management of seized and confiscated assets are in place. That said, the provision of specific training to prosecutors and police officers could contribute to improving the effectiveness of the existing legal framework with respect to seizure and confiscation of proceeds of corruption. As far anti-corruption/integrity policies in public administration are concerned, Hungary has undertaken in the last years substantial steps to prevent and combat corruption within public administration, and the system appears to be generally transparent. The planned adoption of the model Code of Conduct for Civil Servants will be a further important step in this direction. It is to be hoped that this process will be completed as soon as possible. Further improvements are recommended with respect, for example, to access to official documents, development of a comprehensive Action Plan against Corruption, guidance for public officials with respect to the acceptance of gifts and situations of conflicts of interest (including moving to the private sector) and procedures for reporting suspicions of corruption. As regards legal persons, the control of the registers of companies and existing professional restrictions could be strengthened. The introduction of corporate criminal liability in Hungary is commendable. However, further implementation of this legislation appears to require extensive awareness and the provision of appropriate information to the relevant authorities. Moreover, professionals such as lawyers, accountants and auditors should become more actively involved in detecting and revealing suspicions of corruption, in particular by complying with their reporting obligation on money laundering.

91. In view of the above, GRECO addresses the following recommendations to Hungary:

i. **to provide specialised training for prosecutors and police officers with a view to making full use of all means available aiming at identifying, seizing and confiscating proceeds of corruption** (paragraph 29);

ii. **that the Anti Money Laundering Department enhances the knowledge of the bodies/persons obliged to report suspicious transactions with a view to improving the quality of their reports, including by providing feedback on suspicious transactions reports to the extent possible** (paragraph 31);

iii. **that as the Advisory Board for Corruption-free Public Life develops an Action Plan against Corruption, the good practices already implemented on the basis of the existing sectoral anti-corruption programmes are taken into account. It recommends further that the Board co-ordinates the anti-corruption activities developed by other Governmental bodies and provides greater publicity of the measures taken in public administration to combat corruption** (paragraph 55);

iv. **to provide appropriate training to public officials on the implementation of freedom of information legislation and to raise the general public's awareness of their right of access to information** (paragraph 56);

v. **to introduce as soon as possible the model Code of Conduct for Civil Servants for the development of consistent standards for ethical behaviour throughout public administration, to widely disseminate it among public officials and the general public, and to provide the officials concerned with appropriate training on a permanent basis** (paragraph 58);

vi. **that, as the Ministry of the Interior develops the model Code of Conduct for Civil Servants, clear guidance is provided with respect to seeking or receiving gifts** (paragraph 59);

vii. **to introduce clear rules/guidelines for situations where public officials move to the private sector, in order to avoid situations of conflicting interests** (paragraph 60)**;**

viii. **to establish clear guidelines and training for civil servants concerning the reporting of suspicions of corruption** (paragraph 61);

ix. **to consider strengthening the controlling functions of the courts in charge of the registration of legal persons regarding (a) the identity of the owners of legal persons; (b) certain legal restrictions in place to ensure effective responsibility of the owners of legal persons; and (c) legal limitations on exercising executive functions** (paragraph 83);

x. **that efforts should be made to ensure that applicability of corporate criminal liability cannot be circumvented by institutional changes occurred after the commission of the criminal offence** (paragraph 84);

xi. **to ensure that investigating, prosecuting and adjudicating authorities are given the necessary training in order to fully apply the existing provisions on corporate criminal liability** (paragraph 85);

xii. **1) the introduction of appropriate measures, such as specific training, in order to make auditors, accountants and legal professionals increasingly aware of their role concerning the detection and reporting of suspicious transactions; 2) the development of an adequate risk analysis in order to improve the effectiveness of the control performed by the Anti Money Laundering Department concerning implementation of the anti-money laundering framework by service providers without State or professional supervision** (paragraph 89)**.**

92. Moreover, GRECO invites the Hungarian authorities to take account of the observations (paragraphs 30, 33 and 86) made in the analytical part of this report.

93. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Hungarian authorities to present a report on the implementation of the above-mentioned recommendations by 30 September 2007.