



Strasbourg, 18 March 2005

**Public**  
**Greco RC-I (2004) 14E**

## **First Evaluation Round**

### **Compliance Report on Hungary**

Adopted by GRECO  
at its 22<sup>nd</sup> Plenary Meeting  
(Strasbourg, 14-18 March 2005)

## I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on Hungary at its 13<sup>th</sup> Plenary Meeting (24-28 March 2003). This Report (Greco Eval I Rep (2002) 5E) was made public by GRECO, following authorisation by the authorities of Hungary, on 23 May 2003.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Hungary submitted their Situation Report (RS-Report) on the measures taken to follow the recommendations on 22 November 2004.
3. At its 13<sup>th</sup> Plenary Meeting (24-28 March 2003), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, France and the Slovak Republic to provide Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Pierre-Christian SOCCOJA on behalf of France and Ms Alexandra KAPIŠOVSKÁ on behalf of the Slovak Republic. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The RC-Report was adopted by GRECO, following examination and debate pursuant to Rule 31.7 of the Rules of Procedure, at its 22<sup>nd</sup> Plenary Meeting (14-18 March 2005).
5. Under Article 15 para. 6 of the GRECO Statute and Rule 30.2 of the Rules of Procedure, the objective of the RC-Report is to assess the measures taken by the authorities of Hungary and, wherever possible, their effectiveness in order to comply with the recommendations contained in the Evaluation Report.

## II. ANALYSIS

6. It was recalled that GRECO in its Evaluation Report addressed 11 recommendations to Hungary. Compliance with these recommendations is dealt with below.

### **Recommendation i.**

7. *GRECO recommended to ensure continued political support to the implementation of the Government Strategy against Corruption and the functioning of the Board Against Corruption, as foreseen in Resolution N° 1023/2001, and mobilizing the necessary resources.*
8. The authorities of Hungary have reported that, in February 2004, the Counselling Board for Corruption-free Public Life (hereinafter the Board) had been officially established under the chairmanship of the Political Secretary of State supervising the use of public funds.<sup>1</sup> Permanent members of the Board consist of representatives of the Ministry of Justice, the Directorate General of Customs and Finance Guard, the National Police Headquarters, OLAF Coordination Office, the State Audit Office and the Prosecutor General's Office. The majority of the representatives, however, come from civil society and include university researchers, members of the Academy of Sciences, a local chapter of Transparency International and independent public opinion polling organisations.
9. The overall objective of the Board is to reveal circumstances relating to the social phenomenon of corruption, to carry out research and analysis of existing anti-corruption data, to provide advice on anti-corruption measures and to liaise with the United Nations Office on Drugs and Crime

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<sup>1</sup> Resolution No 1011/2004. Informally, the Board commenced its work in November 2002. In 2003, two sessions were held. In 2004, following the approval of its statute, two additional sessions were held.

(UNODC). In accordance with its mandate, the Board had elaborated a new Anti-Corruption Action Plan, which is currently being discussed within public administration.

10. Since October 2004, the Ministry of Justice provides the Board's secretariat, under the supervision of the Deputy State Secretary responsible for criminal law codification and the fight against corruption. According to information submitted by the Hungarian authorities sufficient resources have been made available to the Board in order for it to exercise effectively its functions.
11. GRECO welcomed the establishment of the Board as a means of ensuring continued political support to the implementation of the Government Strategy against Corruption. GRECO also noted with satisfaction that, in addition to state officials, representatives of civil society participate in its activities.
12. GRECO concludes that recommendation i has been implemented satisfactorily.

**Recommendation ii.**

13. *GRECO recommended to elaborate a comprehensive programme, including preventive and awareness raising measures, aimed at progressively eliminating the widespread practice of gratuities, rewards or other forms of private remuneration paid to public employees in the healthcare sector and any other public service where they are found to exist.*
14. The authorities of Hungary have reported that the basis for a shift with regard to the practice of gratuities was laid at the end of 2002 when healthcare employees' salaries were increased by 50 percent. Moreover, the Ministry of Public Health, Social and Family Affairs has elaborated a package of preventive and awareness raising measures aimed at eliminating this practice. In particular:
  - the Code of Ethics of the Hungarian Medical Chamber is currently under review, following a request from the Minister of Health;
  - a new charging system was established with regard to the provision of comfort services (such as higher standard accommodation and meals);
  - a symbolic pre-calculation system was introduced, whereby, upon leaving healthcare institutions, all patients receive a symbolic bill informing them about healthcare costs incurred;
  - information regarding the availability and the quality of health services was made accessible through the internet, a telephone hotline was also established for the transmission of any complaints or suggestions with regard to the services provided; and
  - control was reinforced through more extensive co-operation of the National Public Health Office and the National Public Health Authority with a number of partner authorities, most notably, the National Health Insurance Fund and the Tax and Financial Control Administration.

15. GRECO noted with satisfaction the elaboration by the Hungarian authorities of a comprehensive programme, including a set of measures, both preventive and awareness raising, to eliminate the criticised practice of gratuities in the health sector.
16. GRECO concludes that recommendation ii has been implemented satisfactorily.

**Recommendation iii.**

17. *GRECO recommended to create conditions for transparency and equality in competition, in order to minimise the risk of corruption opportunities in the field of public procurement.*
18. The authorities of Hungary have reported that, in May 2004, the new Act on Public Procurement<sup>2</sup> (hereinafter the Act) entered into force, aimed at transposing into the Hungarian system relevant provisions of the EC procurement law. According to the Act, fair competition, publicity and equal opportunity are the main principles of public procurement procedures. To ensure equality in competition, the Act obliges the procuring entity to define the conditions on the basis of which it will evaluate the bidder's eligibility, as well as the requirements for the successful tender. Depending on the subject matter, technical specifications containing discriminative definitions were banned.
19. With regard to transparency, the Act introduced an obligation to publish all procurement-related announcements in the EC public procurement publication system (ie. the Official Journal and the electronic daily of announcements, the so-called TED-databank) and in the Hungarian Public Procurement Journal ("Közbeszerzési Értesítő"). Such announcements shall be published twice: on launching the procedure and upon obtaining the results. The contract concluded on the basis of public procurement procedure is public, and its contents qualify as data of public interest.
20. The Public Procurement Resolution Committee (hereinafter the Committee) has been designated as an independent authority responsible for enforcing the procurement rules. Application to the Committee may be submitted by the procuring entity, the bidder or any interested party the rights or lawful interests of which have been violated or endangered by action or failure conflicting with the Act. The Committee's hearings are public and its decisions may be reviewed by the court. Both the Committee's decisions and judgements of the court are published in the Public Procurement Journal.
21. GRECO concludes that recommendation iii has been implemented satisfactorily.

**Recommendation iv.**

22. *GRECO recommended to ensure that the employer [within the public administration] be empowered to check declarations of interests, income and assets or have them checked by an appropriate body. Also, provide appropriate safeguards against retaliation for members of the public who lodge complaints about potential cases of suspicious enrichment, including potential cases of corruption.*
23. With respect to the first part of the recommendation, the authorities of Hungary have stated that, in order to facilitate the verification of property statements, plans have been made to amend the Act on the Legal Status of Civil Servants<sup>3</sup>. A concept related to this issue should have been

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<sup>2</sup> Act No. CXXIX of 2003

<sup>3</sup> Act No. XXIII of 1992

submitted to the Government at the end of 2004, to be followed by a bill to the Parliament in May 2005.

24. With respect to the second part of the recommendation, the Hungarian authorities recalled that persons reporting on other persons' suspicious enrichment are afforded protection under the Act on Equal Treatment and Promotion of Equal Opportunities.<sup>4</sup> The Act states in particular that all provisions, as a result of which a person receives less favourable treatment as compared to another person or group in a comparable situation due to the person's "other status, feature or characteristics" shall be qualified as direct negative discrimination and violation of the principle of equal treatment. Claims related to the violation of the principle of equal treatment may be enforced through procedures set forth in Chapter II of the aforementioned Act or in other relevant legal provisions.
25. In legal proceedings launched for violation of the principle of equal treatment, the party that has suffered prejudice or the entity entitled to enforce a claim with public interest shall be obliged to prove that: a) the person or group having suffered prejudice was unfavourably affected, and b) the person or group having suffered prejudice either in fact or according to assumption of the violator had one of the features set forth in the Act's Section 8. In such cases the other party shall be obliged to prove that it: a) actually observed or b) was not obliged to observe the principle of equal treatment with respect to the given legal relation.
26. GRECO welcomed the initiative to provide for the checking of declarations of assets and income of civil servants by amending relevant legislation. Nevertheless, it was not convinced that the outcome of this initiative could be considered as definitive (even despite indications of the full support by the Government). With regard to the second part of the recommendation, GRECO noted that the aforementioned legislation, which was not available at the time of the evaluation visit in 2001, contains safeguards to protect members of the public who report potential cases of suspicious enrichment, including corruption. No further information is required in this respect.
27. On the basis of the above, GRECO concludes that recommendation iv has been partly implemented.

#### **Recommendation v.**

28. *GRECO recommended to associate the public more closely to the authorities' action against corruption, in particular, by better informing it about the measures adopted to counter corruption and by disseminating information on the results achieved. Also, make special efforts, in this respect, to promote access by the media to official documents.*
29. The authorities of Hungary have reported that a number of measures have been taken to involve the public more closely in the authorities' action against corruption. Thus, in 2003, the Prime Minister's Office launched a "Glass pocket" programme aimed at ensuring transparency in the functioning of public administration. One of the instruments adopted within the programme's framework was the Act on the Amendment of Individual Acts Relating to Public Fund Utilisation, Publicity and Enhancement of Transparency<sup>5</sup>. The Act introduced stricter and more detailed rules concerning the utilisation 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. As far as EU

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<sup>4</sup> Act No. CXXV of 2003

<sup>5</sup> Act No. XXIV of 2003

subsidies, international aid, state and local government subsidies were concerned, the Act established the obligation to pay back the subsidy in the event of improper utilisation of funds. Detailed rules for the decree and collection of misused funds and other legal consequences of improper utilisation were set forth in separate legal provisions. The information about the “Glass pocket” programme was made available on the internet and was supplemented by links to ministries’ own “glass pocket” pages.

30. A special web-site containing relevant acts and other important data related to the fight against corruption is currently run by the Ministry of Justice in its capacity as the co-ordinator and manager of the aforementioned anti-corruption programme. In cases of serious corruption offences, information to the public is distributed via courts’ spokespersons, as well as by publishing press releases, organising press conferences and giving phone interviews. From 1 July 2003 to 31 May 2004, there had been 13 occasions for dissemination of such information.
31. GRECO welcomed the steps to increase transparency in the utilisation and operation of public funds and property, in particular, by introducing new legislation in this field and facilitating access to information through internet and/or other means.
32. GRECO concludes that recommendation v has been implemented satisfactorily.

#### **Recommendation vi.**

33. *GRECO recommended to ensure that the special police unit for investigating corruption offences be appropriately staffed.*
34. The authorities of Hungary have reported that, as a result of the restructuring of the National Police Headquarters, as of July 2004, the Anti-Corruption Department was placed under the umbrella of the National Investigation Office. Founded in 2002 with 10 members, the Department had been increased to 14 professional officers and 4 civil servants (two of the latter exercise the reviewing function). Measures had also been taken to reinforce the Department’s technical capacities, including through the use of EU funds.
35. Further re-organisation of the Department, in particular by splitting it into two sub-departments of 15 persons each, is currently under discussion. It is thought that one sub-department could specialise in corruption offences in the environmental area and offences related to foreign subsidies, whereas the other would focus on revealing corruption in public administration and the private section, as well as in the distribution of state subsidies.
36. GRECO concludes that recommendation vi has been implemented satisfactorily.

#### **Recommendation vii.**

37. *GRECO recommended to provide additional guarantees to safeguard the professional impartiality of prosecutors assigned to the Central Investigation Office of the Public Prosecution Service (CIOPPS), in particular those in a leading position, and to ensure that the cases can only be reassigned on the basis of objective professional criteria.*
38. The authorities of Hungary have reported that, in response to the above recommendation, the Prosecutor General’s Office had all its investigative documents from June 2001 analysed to

examine the objectivity of the reassignment practice. As a result, the following statistical information is available:

- in 2001, 355 cases were submitted and reassignment took place in 9 cases (2.5 %);
- in 2002, 385 cases were submitted and reassignment took place in 12 cases (3.1 %);
- in 2003, 409 cases were submitted and reassignment took place in 18 cases (4.4 %); and
- in 2004, 224 cases were submitted up to 29 June 2004 and reassignment took place in 6 cases (2.6 %).

Consequently, during the period under examination, a total of 1373 investigative cases were registered, out of which reassignment took place in 3.4 percent of cases. The reasons for these reassignments were as follows:

- organisation of tasks within the Office: 21 (of these: fulfilment of negotiation tasks – in 10 cases; preparation of other cases with higher priority - in 9 cases; and reassignment to a new staff member – in 2 cases)
  - holiday: 10
  - transfer of the clerk assigned to the case to another prosecution organ: 7
  - requested by the assigned clerk due to his/her different professional convictions: 2
  - requested by the assigned clerk due to his/her prejudice: 1
  - for the sake of other investigative interest: 1
  - amalgamation: 1
  - lack of professional knowledge: 1
39. On the basis of the above, the Hungarian authorities have claimed that all reassignments were justified by objective reasons and that the 1994 Act on Public Prosecution Service Relationship and Data Handling by Public Prosecution<sup>6</sup> contained sufficient guarantees as far as cases of reassignment were concerned. Moreover, the Hungarian authorities have stated that it is necessary for the Prosecutor General to be in a position to withdraw the managerial assignments of prosecutors in whom he has no confidence without providing reasons.
40. GRECO took note of the statistical information provided by the Hungarian authorities, which suggests that the majority of reassignment cases were justified by objective reasons. Nevertheless, GRECO recalls that the main concern expressed in the recommendation was the absence of established “*objective professional criteria*” of such reassignments. Moreover, GRECO was not convinced that the current system of dismissal of prosecutors in a leading position had provided sufficient guarantees to safeguard the prosecutors’ “*professional impartiality*”, in particular when taking important prosecutorial decisions (e.g. withdrawal or changing of charges). Recognising that the professional impartiality of prosecutors, particularly those in a leading position or in a specialised anti-corruption department, is a key element of a credible anti-corruption policy, GRECO considered that the information provided did not indicate sufficient action to conclude compliance.
41. In view of the above, GRECO concludes that recommendation vii has not been implemented.

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<sup>6</sup> Act No. LXXX

### **Recommendation viii.**

42. *GRECO recommended to ensure that the system of retirement of prosecutors be harmonised with the criteria applied to judges.*
43. The authorities of Hungary have reported that, in order to eliminate the risks that discretionary decisions relating to the determination of the retirement age of a particular prosecutor interfere with the independent and impartial exercise of prosecutorial functions, the following amendments have been made to paragraph d) of sub-section 1 of Section 28 of the 1994 Act on Public Prosecution Service Relationship and Data Handling<sup>7</sup>:

“The Chief Prosecutor can only terminate the prosecutor’s service relation with resignation if...  
(d) a disability (accident-related) pension is granted to the prosecutor, or the prosecutor has not reached the age of 70, but reached the general pension age limit and on this ground asks for his/her resignation from service.”

44. GRECO concludes that recommendation viii has been implemented satisfactorily.

### **Recommendation ix.**

45. *GRECO recommended to introduce regular training and awareness-raising programmes among the judiciary on the risks of corruption, in particular on the typologies of corruption, including its international dimension.*
46. The authorities of Hungary have reported that the National Justice Committee has approved its training programme for the years 2004 and 2005 to the effect that judges working with criminal and civil law cases nominated for definite periods, as well as those nominated for an indefinite period following three years of practice, are now entitled to attend special courses on the risks of corruption and its typology. The training programme is also open to other more experienced judges.
47. GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

### **Recommendation x.**

48. *GRECO recommended to guarantee immunity only for the period of the mandate [of members of Parliament] and to bar the lapse of time set for statutory limitation until the end of immunity, as proposed by the Government.*
49. The authorities of Hungary have reported that sub-section (1) of Section 5 of the 1990 Act on the Legal Status of the Members of Parliament<sup>8</sup> clearly states that the right of immunity shall be secured only to members of parliament and MP candidates and that in the case of expiration of electoral mandate or non-election of the candidate, there is no bar to criminal proceedings. Consequently, immunity in Hungary has always been granted only for the duration of a mandate.

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<sup>7</sup> Act No. LXXX of 1994

<sup>8</sup> Act No. LV of 1990



50. As far as the second part of the recommendation is concerned, the Hungarian authorities have reported that, in accordance with the Government's proposal, Section 35 of the Penal Code was amended recently by sub-section (3)<sup>9</sup>, which reads as follows:

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

51. GRECO took note of the information provided by the Hungarian authorities and concludes that recommendation x has been implemented satisfactorily.

#### **Recommendation xi.**

52. *GRECO recommended to adopt guidelines containing objective criteria for deciding on the lifting of immunity, avoiding, to the largest extent possible, political or other undue considerations.*
53. The authorities of Hungary have reported that Parliament's Immunity, Incompatibility and Mandate Examining Committee (hereinafter the Committee), which prepares the requests for lifting the immunity, had examined the above recommendation. The Committee concluded that it was not possible to adopt guidelines containing objective criteria, as every decision on lifting immunity is examined on its own merit. Nevertheless, the Committee expressed its determination to act in the spirit of the recommendation by lifting immunity in the cases of corruption offences in as high a percentage of cases as possible. To this end, the Committee resorted to the only instrument available to it, i.e. publishing a stand point, with the support of all political parties represented in Parliament, stating that the parliamentarians wish and are ready to suspend or lift immunity in every potential case of corruption, without being subject to political considerations.
54. GRECO took note of the information provided by the Hungarian authorities and concludes that recommendation xi has been dealt with in a satisfactory manner.

### **III. CONCLUSIONS**

55. **In view of the above, GRECO concludes that Hungary has implemented satisfactorily or dealt with in a satisfactory manner the vast majority of the recommendations contained in the First Round Evaluation Report.** Recommendations i, ii, iii, v, vi, viii and x have been implemented satisfactorily and recommendations ix and xi have been dealt with in a satisfactory manner. Recommendation iv has been partly implemented, and recommendation vii has not been implemented.
56. GRECO invites the Head of the delegation of Hungary to submit additional information regarding the implementation of recommendations iv and vii by 30 September 2006.

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<sup>9</sup> by Act No. CXXI of 2001