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to the United Nations
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**Review of implementation of the United Nations
Convention against Corruption**

Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Hungary

1. Introduction: Overview of the legal and institutional framework of Hungary in the context of implementation of the United Nations Convention against Corruption

Hungary signed the Convention on 10 December 2003 and ratified it on 19 April 2005. The Convention became part of the Hungarian domestic legislation upon promulgation of Act CXXXIV of 2005 on the promulgation of the Convention.

Hungary has a civil law system. The sources of Hungarian law are the Constitution, the Acts of Parliament, governmental and ministerial decrees once published in the Official Gazette, decrees of local governments, as well as European Union (EU) and international law.

According to the Constitution, the legal system of Hungary accepts the generally recognized principles of international law. The Constitution also provides that Hungary shall harmonize its internal laws and statutes with the obligations assumed under international law. Authorization to recognize the binding validity of international agreements is also contained in promulgating legal acts. In case of a conflict, multilateral treaties prevail over bilateral treaties.

The national legal framework against corruption includes provisions from the Constitution, Criminal Code, Criminal Procedure Code, International Law Act and Act on International Legal Assistance in Criminal Matters (Act XXXVIII).

The institutions most relevant to the fight against corruption are the Ministry of Justice, the prosecution service, the judiciary, the police, the Financial Intelligence Unit (FIU) and the Ministry of Foreign Affairs. Other relevant stakeholders include parliamentarians, civil society, the private sector and the media.

Hungary is a member of the Council of Europe's Group of States Against Corruption (GRECO) and has previously been evaluated by GRECO, the OECD Working Group on Bribery and the FATF (Financial Action Task Force).

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active bribery of national public officials is criminalized by article 293 of Act C of 2012 on the new Criminal Code (the CC). Articles 459(11) and (12) CC make a distinction between "public officials" and "persons performing public duties". Thus, the Hungarian CC does not always treat persons who perform public duties as public officials. Moreover, the category of "public officials" does not include "persons who perform a public function for a public enterprise".

The constituent elements of "promising" and "giving" an advantage to a public official are included in the description of the conduct covered. The "offering" is not explicitly mentioned but also covered in practice. Passive bribery of domestic public officials is incriminated under article 294 CC.

The indirect commission of bribery seems to be covered by the express terms of article 293 CC. By contrast, third party benefits did not seem to be addressed, although there remained some ambiguity on this point. In the case of passive bribery, the meaning of the additional elements “agrees with the party requesting or accepting the advantage given or promised to a third person on account of the public official” (article 294 CC) could indicate that indirect bribery is covered only in the case where there is a third party benefit or that the third party benefit is only addressed in cases of indirect bribery.

Active bribery of foreign public officials is incriminated under articles 293(3) and 459 CC. The list in article 459(13)(a) CC covers “any person exercising a public function for a foreign country”. The definition of a “foreign public official” also covers officials performing administrative or public duties in State-owned or State-controlled enterprises or organizations. Concerning persons acting on behalf of an international organization, article 459(13)(b) CC is meant to be even broader than the definition of article 2(c) of the Convention. Hungary criminalizes passive bribery of foreign public officials (and officials of public international organizations) in article 294(4) CC.

Hungary has implemented the provision on trading in influence in articles 298, 299 and 300 CC. The intermediary can be anyone except a public official, who would be punished by the provisions on passive bribery.

Bribery in the private sector is criminalized in articles 290 (active bribery) and 291 (passive bribery) CC.

Money-laundering, concealment (arts. 23 and 24)

Money-laundering is criminalized under articles 399 (money laundering) and 282(1) (harbouring a criminal) CC. Article 399(1) CC covers both the “conversion or transfer” of property that originates from a criminal act, as well as the purpose for which these acts are committed.

The elements of participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of the offences established in accordance with Convention article 23, are covered by articles 10-14 CC.

Article 399 CC is not limited to certain predicate offences, thus applying money-laundering to the widest range of predicate offences, as stated in article 23, subparagraphs 2 (a) and (b) of the Convention. As long as dual criminality is satisfied, it is irrelevant where the predicate crime is committed.

Article 399(3) CC punishes any person who, in order to conceal the true origin of a thing that originates from crimes committed by himself/herself, uses it in financial or business activities.

Articles 399 and 282 CC cover the illegal acts of “concealing” or “continued retention of property” (actions of safeguarding, handling or using a thing that originates from crimes committed by others).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Articles 372 and 376 CC penalize acts of “embezzlement” or “misappropriation of funds” committed by “any person”, not just public officials. Moreover, it is irrelevant if the “embezzlement” or “misappropriation of funds” was committed for the benefit of the perpetrator or another person or entity.

Article 305 CC punishes abuse of authority, regardless of who is the beneficiary of the undue advantage.

Illicit enrichment as such is not criminalized under the CC. However, there is an obligation under Hungarian law to declare assets for some officials (judges, parliamentarians, public officials) and failure to declare or false/incomplete declarations can lead to non-criminal sanctions, such as dismissal or debarment from holding public office.

Obstruction of justice (art. 25)

Obstruction of justice is addressed through various articles of the CC: articles 272, 276, 278, 295, 296, 303 and 310 CC. Judicial and law enforcement officers are covered by term “public official”.

Liability of legal persons (art. 26)

Act CIV of 2001 on the measures applicable to legal persons under the criminal law provides for the criminal liability of legal persons. Both natural persons (perpetrators) and legal persons (should legal persons be involved in the crime) can be held liable under the Hungarian law. However, while the criminal liability of a legal person is without prejudice to the criminal liability of the natural persons who committed the offences, there is no isolated liability of legal persons under Hungarian law. In fact, according to article 3 of Act CIV, the liability of a natural person (except where that person cannot be punished for reasons of death or insanity etc.) is a precondition for holding a legal person liable.

Participation and attempt (art. 27)

The provisions of the General Part of the Hungarian CC regarding participation and attempt apply to all offences from the Special Part and correspondingly to crimes established in accordance with the Convention.

Pursuant to article 11(1) CC, the preparation of a crime is punishable only if it is expressly prescribed in the Special Part of the CC. The new CC punishes preparation only for the offences of “Coercing of Confession” (article 303 CC) and “Assault against a Public Official” (article 310 CC), corresponding to article 25 of the Convention.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Hungary’s sanctions adequately take into account the gravity of the offence. Article 36 CC establishes a minimum term of imprisonment of three months and a maximum of twenty years.

The list of persons enjoying immunities is fairly extensive. Moreover, until immunity has been lifted, no investigative steps can be taken at all and no evidence can be collected, even if the person enjoying the immunities is caught red handed.

Pursuant to section 174(1) of the Criminal Procedure Code (the CPC), the principle of mandatory prosecution applies with no de minimis threshold and complaints can only be rejected for the reasons stated in this provision.

Pursuant to the laws regulating the legal status of certain officials, officials may be discharged, suspended and assigned to a new position during a disciplinary procedure. According to article 61 CC, persons deprived of civil rights may not hold public office. A person who has engaged in a crime intentionally, by using his profession, may be prohibited from exercising a profession (article 52(1)(b) CC). The provision on disqualification from exercising a profession also applies in the case of public companies.

According to article 113 of the Statutory Rule 11 of 1979, reintegration aims at giving assistance to discharged convicts to allow them to adapt to society and creating the necessary social conditions.

Protection of witnesses and reporting persons (arts. 32 and 33)

Witnesses are provided protection according to sections 95, 96, 97, 98, 98/A CPC, in order to protect their life, physical integrity or personal liberty, as well as to ensure that their testimony is given without any intimidation. The relocation of vulnerable witnesses to foreign countries is possible. In most cases, victims enjoy the same protection as witnesses, or even higher protection in the case of vulnerable victims such as minors.

The system for the protection of whistle-blowers is currently being amended. A pending legal bill, which is expected to come into force by January 2014, will create a comprehensive regime for whistle-blower protection on three levels in the civil service: integrity officers in the institutions of the public sector, in the Ministry and on the national level (a new task for the existing Commissioner for Fundamental Rights). On the first two levels, the protective guarantees apply only to civil servants. However, anybody will be able to report — also anonymously — to the Fundamental Rights Commissioner (Ombudsman) who will exercise a supervisory, but not investigative, function. The integrity officers can also give recommendations to the ethical (disciplinary) chambers for civil servants.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Freezing, seizing and confiscation is governed by articles 72 to 76 CC and sections 151 et seq. CPC. Articles 75(1)(a), (b) and (c) CC address value-based confiscation only for certain cases. Income and benefits derived from crime may be confiscated under article 76 CC, and real property pursuant to Articles 72 and 74 CC. A court order is required for confiscation. There is no central authority for the administration of seized property. Rather, the police, the prosecution or the courts are responsible for their administration. Article 74(1)(d) CC foresees that assets replacing the assets obtained by the offender in the course of or in connection with a criminal act shall be subject to confiscation. Section 76 CC addresses the issue of income or other benefits derived from proceeds of crime. According to that Section, any profits, rights of pecuniary value, debts held and all gains of financial

value shall be deemed assets. All assets obtained by the perpetrator during an involvement in organized crime are subject to confiscation until proven otherwise.

No court order is required to make bank, financial or commercial records available. The prosecutor or the investigating authority, under sections 71, 178/A(1) CPC, may request information from organizations managing data classified by bank secrecy without obtaining a court order. In practice, such a request is answered in 8-30 days and, in case of unjustified refusal, a fine could be imposed on the institution.

Statute of limitations; criminal record (arts. 29 and 41)

The period of the statute of limitations provided for in article 26(1), 28 CC is equal to the highest sentence.

In accordance with article 32 of Act XLVII of 2009 on the criminal registration system, the data of Hungarian citizens whose guilt was established in a final judgment of the court of another Member State of the European Union shall be registered.

Jurisdiction (art. 42)

Pursuant to article 3(1) CC, Hungarian law shall be applied to crimes committed in the territory of Hungary. Hungarian law shall also be applied to crimes committed on board a Hungarian ship or a Hungarian aircraft situated outside the borders of Hungary.

The Hungarian Criminal Code shall also apply to any act punishable according to the Hungarian law committed by a non-Hungarian citizen abroad against a Hungarian citizen, a legal person or other subjects of law without legal personality set up based on the Hungarian law (article 3(2)(b) CC). Hungarian law shall further be applied to any act of a Hungarian citizen committed abroad, which is considered a crime in accordance with the Hungarian law (article 3(1)(c) CC).

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

According to Act IV of 1959 on the Civil Code of Hungary, anybody may plead the invalidity of a void contract without a time limit. Those involved in corrupt practices can be excluded from public procurement contracts under the procurement law. The institution responsible for public procurement maintains a database of offenders and can blacklist them.

Pursuant to the Civil Code, in case a contract becomes invalid, the original state that existed prior to the conclusion of the contract must be restored (“*in integrum restitution*”). Under section 54 CPC, private parties can file complaints in criminal cases to receive compensation. An injured party can file a complaint against the State where damage was caused by an act of a public official (section 349(1) Civil Code). Furthermore, it is possible to sue for compensation of harm caused as a result of an act of corruption on the basis of sections 339-344 of the Civil Code.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

There is no dedicated anti-corruption agency in Hungary. However, there are specialized departments in the prosecution and law enforcement services. There are specialized prosecutors that deal with high level anti-corruption cases in the central

prosecutorial investigating bureau. The police have an anti-corruption unit in the department for economic offences, which is responsible for the national coordination of actions against corruption. Anti-corruption investigators receive special training. These training programmes are organized in cooperation with Transparency International Hungary.

Corruption within the police is investigated by the National Protective Service, which is part of the police. The police can use special investigative techniques against suspects, subject to approval by the prosecution or a court. All police investigations are overseen by the prosecution. The independence of the prosecution is ensured by the fact that the Prosecutor General reports directly to Parliament, is elected by a 2/3 majority in Parliament and is elected for a term of nine years (Act on the Prosecution Service 163 of 2011).

The Government Control Office and the National Audit Office also conduct some anti-corruption work, although the former is subordinate to the Government and not fully independent.

An obligation of inter-agency cooperation is contained in the laws governing the police, the prosecution and the judiciary. Moreover, a Memorandum of Understanding (MoU) regulates the cooperation between the prosecution and the judiciary. The National Police cooperate with the European Anti-Fraud Office (OLAF), INTERPOL and EUROPOL. Since 2010 the police have a cooperation agreement in place with Transparency International Hungary concerning the private sector. The anti-corruption unit in the Department for Economic Offences of the National Police is the contact point for Hungarian non-governmental organizations (NGOs) and foreign organizations.

The Hungarian FIU does not have investigative powers with regard to corruption (only budget fraud), but if it comes across information concerning corruption, it refers the information to the police and other investigating agencies, in particular the National Protective Service and the prosecution. The FIU is authorized to use the information obtained under the AML/CFT Act for the purposes of prevention and combating money-laundering and terrorist financing. The FIU is an Egmont group member and cooperates with other FIUs, although there are no agreements with other FIUs.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The participatory and inclusive self-assessment process and nature of the country visit were positively noted.
- According to article 293(3) CC, bribery of foreign public officials (and officials of public international organizations) is punishable regardless of whether the bribe is given “in order to obtain or retain business or other undue advantage in relation to the conduct of international business” (article 16(1) of the Convention).
- Article 17 of the Convention refers to the embezzlement, misappropriation or other diversion of property by a public official, while the new Hungarian CC refers in articles 372 and 376 to “any person”.

- Hungary's all crimes approach seems to be conducive to the prosecution and investigation of money-laundering cases (Convention article 23(2)).
- The new Hungarian CC goes beyond the provisions of subparagraph (a) of article 25 of the Convention and punishes both the active and passive forms of obstruction of justice.
- The cooperation with NGOs and the private sector seems to be an effective measure in the fight against corruption (Convention article 39(1)).

2.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Hungary is encouraged to provide criminal liability not just for "public officials" but also for "persons performing public duties", including soldiers, so that the provisions of the CC cover all categories of public officials mentioned in article 2 (a) of the Convention.
- Examine the possibility of defining the term "public official" by mentioning some general criteria that would encompass all public officials without any exhaustive enumeration, including unpaid persons.
- Ensure that concerning active and passive bribery, both the third party benefit and indirect bribery are covered by the legislation (Convention articles 15, 16 and 21).
- Consider supplementing articles 278(1) and 310 CC by including "the use of other similar means", as in article 303 CC (Convention article 25).
- Immunities should be limited to those prosecutorial measures that are directly aimed at the person concerned (i.e., that the person cannot be arrested or indicted until the immunities are lifted); investigative steps and the collection and securing of evidence should be possible even before immunity is lifted (Convention article 30(2)).
- Consider extending the reversal of the burden of proof to corruption offences (Convention article 30(8)).

3. Chapter IV: International cooperation

Hungary is party to several multilateral and bilateral treaties on international cooperation. A treaty basis is not required, and Hungary can apply its Act XXXVIII to non-treaty partners. In the case of treaty partners, Hungary applies its domestic law supplementarily to the treaty.

While the Convention can serve as a legal basis for international cooperation, observations were made as to the possibility of amending Act XXXVIII to provide for greater legal certainty, especially involving non-treaty partners and the procedures for providing assistance.

The central authority for international cooperation is either the Prosecutor General's Office or the Ministry of Public Administration and Justice, depending on the nature of the assistance sought and the phase of the criminal proceedings.

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Act XXXVIII is the applicable legal framework for extradition, unless otherwise stipulated by an international treaty. Dual criminality is a requirement under Section 5(1) of the Act and bilateral extradition treaties. Convention offences satisfy the minimum period of imprisonment of one year to be extraditable under Hungary's law and treaties.

Hungary applies the conditions and grounds for refusal specified in its domestic law and treaties. No statistics were available on the number of extradition cases (incoming or outgoing) that have been refused. Extradition of citizens is only allowed if the person sought is also a citizen of another State and has no residence in Hungary (Section 13). Special provisions exist with regard to the European Arrest Warrant. The obligation to prosecute a national or take "other measures" in lieu of extradition (e.g., possible procedural actions that are independent of a defendant's criminal liability, such as confiscation) is addressed (Section 28), although no timeframe is specified. The conditional surrender of nationals is provided under the European arrest warrant. Section 46 of the Act provides for the recognition of foreign sentences in cases involving nationals, and Hungary would allow the extradition of a non-Hungarian citizen to enforce the sentence of a foreign court. Hungary has previously extradited its citizens in accordance with Section 13, but extradition of nationals has been refused on grounds of dual criminality as per Section 5 (1) and where the person sought was already a suspect in a domestic criminal proceeding. Hungary is not precluded from extraditing a person for offences involving fiscal matters. The obligation to consult before refusing extradition is addressed (Section 76(4)).

No special evidentiary standards are applicable in extradition cases outside the general standard for criminal proceedings, although a simplified process is applicable where the person sought consents to extradition (Section 23). Extradition cases (including appeals) must be completed within a six month period, which can be extended by a court for an additional six months (Section 22).

The issue of fair treatment has been raised in one extradition case, where the person sought was to be tried *in absentia* in a foreign country and Hungary refused extradition. The prohibition of discriminatory requests is addressed in provisions in the Constitution, Criminal Procedure Code, multilateral and bilateral treaties.

Hungary is party to multilateral and bilateral treaties on the transfer of sentenced persons and has engaged in prisoner transfers from Hungary.

Act XXXVIII provides rules concerning the surrender (Section 37) of criminal proceedings, with certain preferential considerations based on nationality, as well as the acceptance of proceedings involving nationals (Section 43) and case examples were provided.

Mutual legal assistance (art. 46)

Act XXXVIII is the principal law governing MLA. Dual criminality is flexibly applied for purposes of MLA under conditions of reciprocity (Section 62).

Based on data of the number of executed requests and the limited number of requests refused, Hungary appears to be able to render a wide range of MLA in criminal matters, including for corruption-related requests. No requests for MLA have been made or received under the Convention. Only one case was reported where Hungary refused assistance in the last three years on the ground that executing the request would likely prejudice its sovereignty, security, ordre public or other essential interests (article 2(b), European Convention on Mutual Assistance in Criminal Matters).

The spontaneous provision of information absent a formal request is not addressed in the Act and no examples were given. Exculpatory evidence must be disclosed under the new Criminal Code (Section 281).

Coercive measures are recognized under the Criminal Procedure Code, and Hungary would render assistance in the absence of dual criminality, where conditions of reciprocity are satisfied (Section 62). Hungary does not decline MLA on bank secrecy grounds assuming a confidentiality undertaking is received.

Prisoner transfers for purposes of providing testimony or evidence are regulated (Sections 66, 74), but credit for time spent abroad for purposes of providing testimony or evidence is not addressed. The transfer of witnesses and other persons to give evidence or provide assistance is regulated, though the period of safe conduct is limited to eight days (Section 74). No cases were reported in the last three years.

Requests for assistance must be made in writing through diplomatic channels and can be accepted through INTERPOL and in the manner specified in Section 76. Requests are executed in accordance with Hungarian criminal procedure law and, where possible, any procedures specified in the request (Section 64(1)). Content requirements for incoming requests are addressed in the Act (Sections 76, 80) and applicable treaties.

Hearings of witnesses or experts may take place by video conference, though this is not specifically regulated.

Hungary applies its treaties regarding the applicable limitations on use of information received pursuant to an MLA request. No issues of confidentiality have arisen concerning incoming or outgoing requests during the last three years.

Grounds for refusal (Sections 2, 5, 70(3)) and conditions for providing MLA (62-64) are recognized in the Act. Assistance is not refused for offences involving fiscal matters, and requests for financial and tax records have been granted. Reasons for refusing assistance are communicated (Section 71), but the duty to consult before refusing or postponing assistance is not addressed. Postponing assistance on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding is not addressed, though a case example was reported.

The timeframe for executing requests depends on factors such as the number and type of procedures requested, whether the request is submitted to the central authority or the legal body responsible for carrying it out (EU States), and current workloads. On average, requests are completed in less than five months. Costs for MLA are addressed (Section 83(1) and (2)).

In principle Hungary could under its law provide copies of Government records that are not available to the general public if it is not precluded from doing so under its treaties and there is no significant contrary interest. Publicly available Government records could be provided in line with treaty provisions.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The Hungarian police (Division to Combat Corruption and Economic Crime) are responsible for cooperation channels between the competent authorities. The police cooperate through INTERPOL, EUROPOL and the European Commission's Anti-Fraud Office (OLAF). Bilateral agreements on international cooperation in crime-related matters cover law enforcement cooperation related to corruption, among others. The European Union's rules of cooperation in criminal matters are included in Act CLXXX of 2012. Hungary has liaison officers in several countries on international crime cooperation, covering also anti-corruption, and has also received liaison officers from abroad. The Hungarian police's central division for international cooperation has provided assistance in criminal cases involving inter alia asset tracing and public procurement fraud.

Hungary can conduct joint investigations on the basis of the European Union Council Framework Decision 2002/465/JHA. There has been limited experience with joint investigative teams in corruption cases at the international level.

The use of special investigative techniques is regulated by the Act on Police and the Criminal Procedure Code. Evidence derived therefrom is admissible in relation to a specific authorized case if the technique was lawfully conducted in compliance with a court or prosecutorial order under the Criminal Procedure Code (Section 78). Special investigative techniques have been conducted in corruption cases at the international level.

3.2. Successes and good practices

The following successes and good practices in respect of the implementation of Chapter IV of the Convention are highlighted:

- Hungary appears to be able to render a wide range of MLA in criminal matters, including for corruption-related requests, based on the data provided.

3.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- The central authority could have a greater role to play in the collection and monitoring of data and requests related to international cooperation, especially for outgoing requests for extradition and MLA; a more centralized coordination function could be useful.
- Consider amending the law to clarify that corruption-related offences are not considered political offences.
- Consider notifying the United Nations that it considers the Convention as a legal basis for international cooperation.

- Consider simplifying evidentiary requirements relating to extradition proceedings, as appropriate.
- Continue to ensure application of simplified extradition procedures in practice to expedite extradition proceedings.
- Delete the reference to “other measures” in cases involving nationals (Section 28) and include an appropriate timeframe to ensure such cases are expeditiously submitted for prosecution.
- Continue to ensure that fair treatment is provided in extradition cases and that the non-discrimination provisions in the law and treaties are applied.
- Monitor the application of measures to ensure the full provision of assistance in accordance with domestic law and treaties for MLA requests involving offences by legal persons.
- Clarify the legislation regarding credit for time spent by prisoners transferred to provide testimony or evidence.
- Develop administrative guidelines or legislative measures to specify appropriate timeframes within which MLA should be executed and ensure that status updates are provided in a timely manner upon request.
- Notify details of the central authority and acceptable language for MLA to the United Nations.
- Amend the law to more specifically address the content and format requirements for incoming requests.
- Consider amending the law to address limitations on the use of information received pursuant to MLA requests.
- Ensure that MLA is refused on the basis of grounds recognized under the Convention.
- Consider amending the legislation to establish a duty to consult before refusing or postponing assistance.
- Amend the legislation to establish a period of safe conduct in line with the Convention for witnesses and other persons transferred to give evidence or provide assistance.