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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS
TRANSACTIONS****PHASE 4: REPORT ON HUNGARY**

The Working Group on Bribery adopted this report on 27 June 2019.

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INTRODUCTION

1. In June 2019, the Working Group on Bribery in International Business Transactions (WGB) completed its fourth evaluation of Hungary’s implementation of the OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions (Convention), the 2009 Recommendation of Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009 Recommendation), and related anti-bribery instruments.

Previous evaluations of Hungary by Working Group on Bribery

2. Monitoring implementation of the Convention, the 2009 Recommendation and related instruments is conducted through successive phases, according to agreed-upon principles. The monitoring process is compulsory for all Parties to the Convention, and on-sites are mandatory in Phases 2, 3 and 4. On-sites involve meetings with the relevant law enforcement and government authorities, as well as civil society and the private sector. The monitoring reports, which are systematically published on the OECD website, include recommendations to the evaluated country. These reports are adopted on a ‘consensus minus one’ basis, which means that the evaluated Party may voice its views and opinions but cannot block the adoption of the final report and recommendations.

**Box 1. Previous
Working Group on
Bribery
Evaluations of
Hungary**

2014 [Follow-up to Phase 3 Report](#)
2012 [Phase 3 Report](#)
2007 [Follow-up on Phase 2 Report](#)
2005 [Phase 2 Report](#)
2004 [Phase 1bis Report](#)
2003 [Phase 1 Report](#)

3. The Phase 3 evaluation of Hungary took place in March 2012. By the end of the Phase 3 review cycle, Hungary had fully implemented five Phase 3 recommendations, partially implemented twelve, and not implemented five.¹

Phase 4 process and on-site visit

4. Phase 4 focuses on three cross-cutting themes – detection; enforcement of the evaluated Party’s foreign bribery offence; and corporate liability for the offence (liability of legal persons). Additionally, it addresses the Party’s progress on previously unimplemented Phase 3 recommendations, issues raised by changes to the Party’s legal and institutional frameworks for combating foreign bribery, as well as any new issues that come to the WGB’s attention. Phase 4 considers each Party’s unique situation, resulting in a report and recommendations that address the specific challenges and achievements of each Party in a more targeted manner than previous phases. This result is largely achieved by focusing first and foremost on the recommendations from Phase 3 that were not fully implemented by the end of that cycle. This means that issues that were not problematic or were resolved by the end of Phase 3 may not be reflected in the Phase 4 Report, while wholly new issues that have arisen since that time may appear in this Report for the first time.

5. The Phase 4 Evaluation Team for Hungary was composed of lead examiners from New Zealand and the Slovak Republic, and members of the OECD Anti-Corruption Division.² Pursuant to the Phase 4

¹ See Annex 1 of this Report for a list of Hungary’s Phase 3 Recommendations and the WGB’s assessment of their implementation at the end of the Phase 3 review cycle.

² New Zealand was represented by: Andrew Goddard, Senior Policy Advisor, Ministry of Justice; and Rebecca Rolls, General Manager, Investigations, Serious Fraud Office. The Slovak Republic was represented by: JuDr. Bálint Horváth, National Anticorruption Unit, National Criminal Agency, Presidium of the Police Force; and Ing. Silvia Matulova, Division for Legislation and Methodology of Accounting and Bookkeeping, Tax and Customs Department,

procedures,³ after receiving Hungary's responses to the Phase 4 Questionnaire, which included country-specific questions, the Evaluation Team conducted an on-site to Hungary on 19-21 February 2019. The entire on-site was held in Budapest. Fourteen panels were conducted to obtain a range of perspectives. In addition to opening and closing sessions with the Hungarian authorities, panels were held with the main Hungarian ministries and agencies responsible for implementing the Convention, including Ministry of Interior (MOI), Ministry of Justice (MOJ), Ministry of Foreign Affairs and Trade of Hungary (MFA), General Prosecutor's Office (GPO), National Tax and Customs Administration (NTCA) and Hungarian Financial Intelligence Unit (HFIU). Panels were held with the following government agencies with frequent contact with the private sector: National Protection Service (NPS), Public Procurement Authority, Hungarian Export Promotion Agency (HEPA), Hungarian Export-Import Bank Private Limited Company (Eximbank) and Hungarian Export Credit Insurance Private Limited Company (MEHIB). Panels were also held with the following stakeholders from outside the Hungarian administration: civil society, academia, accounting and auditing profession, legal and compliance professions and a range of representatives from other areas of the private sector (two panels).

6. The lead examiners credit Hungary with a well-organised on-site. All the panels were held at MOI, which coordinated the on-site. Government representatives were open and forthcoming about challenges they face in implementing the Convention. Panels with stakeholders from outside the government were constructive and provided significant insights into Hungary's efforts to enforce its foreign bribery offence and related obligations under the Convention, as well as the private sector's level of awareness and concern about preventing foreign bribery through compliance measures and programmes. MOI made every effort to obtain the participation of all the governmental and non-governmental representatives requested by the Evaluation Team. Pursuant to a last minute request by the Evaluation Team, Hungary arranged supplementary panels on the last day with the Constitution Protection Office (CPO) and Office of the Ombudsman, and brought back a representative of GPO for additional questions. Unfortunately, the Evaluation Team was not able to meet with media representatives. The Hungarian authorities stated that they made continuous efforts up until the last day of the on-site, but media representatives did not agree to participate.

7. Leading up to and following the on-site, the Hungarian authorities coordinated closely with the Evaluation Team. The Phase 4 questionnaire was submitted on-time and provided an excellent basis to prepare the on-site. After the on-site, Hungary fully responded to 81 follow-up questions from the Evaluation Team, and provided extensive materials requested by the Team for drafting this Report. Throughout the Phase 4 process, Hungary has been collaborative and open to the views of the lead examiners. For instance, during the opening session of the on-site, GPO's representative underlined that the Hungarian system for combating foreign bribery is in transition due in large part to recent amendments to the Criminal Code of Procedure (CCP), including for the purpose of enhancing powers of investigation.⁴ The GPO representative conceded that in order to fully exploit the new opportunities presented by these changes, a major restructuring of GPO was launched on 1 February 2019, but there are "still a lot of rough edges", and the WGB's insights are very welcome.

Ministry of Finance. The Secretariat was represented by three colleagues from the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs: Christine Uriarte, Senior Legal Analyst; Claire Léger, Legal Analyst; and Solène Philippe, Legal Analyst. Kathryn Gordon, Senior Economist, provided input on Hungary's economic indicators and foreign bribery risks.

³ The Phase 4 procedures are provided in [OECD Anti-Bribery Convention: Phase 4 Monitoring Guide](#).

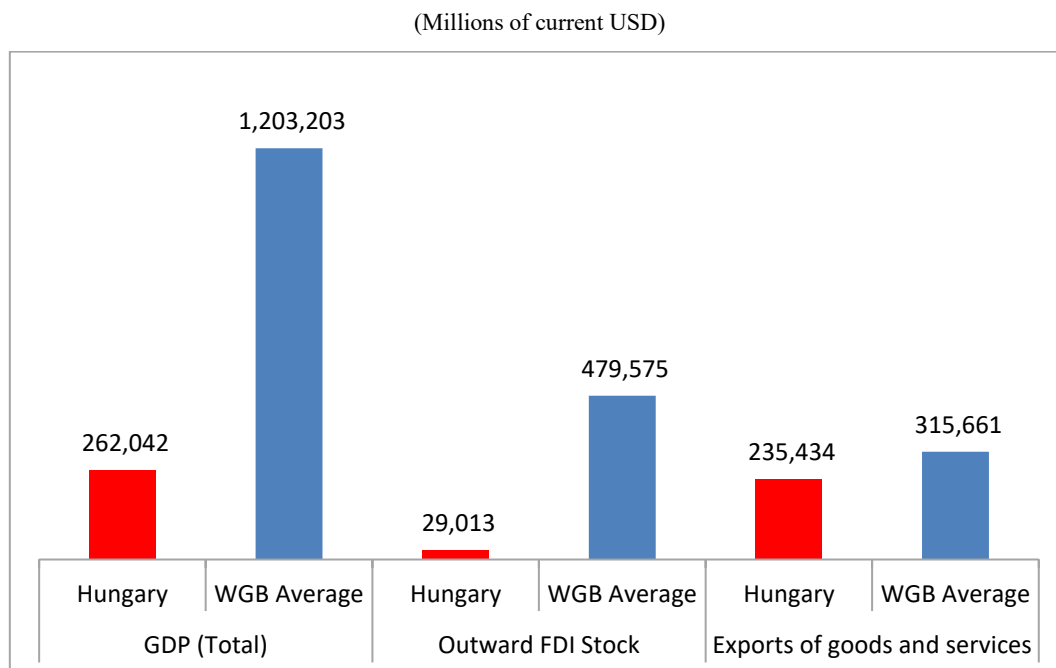
⁴ These changes are discussed throughout the Report where relevant.

Hungary's relevant economic indicators and foreign bribery risks

8. Since the early 1990s, the main growth driver of the Hungarian economy has been inward foreign direct investments that have supported Hungary's successful integration into global value chains. Following a prolonged recession due to the international financial and Eurozone crises, the economy has since 2013 been growing robustly with the initial export-led recovery broadening to private domestic demand. Incomes per capita for Hungary's nearly 10 million people remain low, but convergence towards OECD and European Union (EU) average incomes has resumed, with per capita GDP reaching two-thirds of the OECD average.⁵ Nevertheless, Hungary's total GDP remains well under the WGB average (Figure 2).

9. The Hungarian authorities report that, in recent years, there has not been a significant change in Hungary's export composition – the main goods for domestic export are machinery and transport equipment, followed by processed products and food industry products.⁶ The Hungarian authorities also indicate that the share of small and medium sized enterprises (SMEs) in exports has decreased from 32.4% in 2013 to 24.2% in 2016.⁷ Hungary states that the ten most important destinations for Hungarian exports in 2017 were the following: Germany (27.3%), Romania (5.2%), Italy (5.1%), Austria (4.8%), Slovak Republic (4.7%), France (4.4%), Czech Republic (4.3%), Poland (4.1%), United Kingdom (3.5%) and the Netherlands (3.4%). Hungary further provides that, in 2017, in trading goods, the EU's share reached 79% in exports and 77% in imports.

Figure 1. Hungary's economic data compared to WGB averages



Note: GDP and FDI stocks data are for 2017 or most recent year. GDP for Hungary and exports of goods and services are for 2016. Trade statistics are for 2016.

⁵ This paragraph is taken from the "Assessment and Evaluation" section of the 2018 OECD Economic Survey of Hungary.

⁶ Information on export composition was provided by the Hungarian Statistical Office.

⁷ Information from Hungary about exports by SMEs concerns companies that employ from 0 to 249 persons.

Sources: [OECD Statistics](#) except for a few missing data points that came from [UNCTADStat](#).

10. The following factors have contributed to Hungary's high integration into global value chains over the last two decades: geographic proximity to Western European markets, significantly lower labour costs, and improvements in transport infrastructures.⁸ Although more than 40% of all jobs are generated through participation in global value chains (the share is nearly 80% in manufacturing), many of these jobs are in less knowledge intensive activities, such as assembly in the automotive industry.⁹

11. This positioning is linked to the significant presence of foreign-based multinational enterprises (MNEs) in the electrical and transport equipment producing sectors. Figure 2 (above) shows that Hungary is a fairly significant exporter relative to the WGB average (especially relative to its 10 million population), but a small outward investor. Figure 3 below, provided by the Hungarian authorities, shows a steady and robust increase in export activities between 2010 and 2017, which reached EUR 1 billion for the first time in 2017. In contrast, domestically-owned producers have been less successful than in other countries in integrating themselves into global production chains. Moreover, services contribute less to manufacturing exports than in any other European country.¹⁰

Figure 2 Hungarian export growth from 2010-2017



Source: Hungarian Central Statistical Office, 2019

12. Thus, Hungary's bribery risks related to exports and outward investment by indigenous enterprises are relatively small. In contrast, it has significant exposure to export-related foreign bribery risks stemming from the activities of MNEs that use Hungary as a manufacturing base (including assembly) and then re-export goods to other markets. Hungary's success in positioning itself as a turntable in the global trading

⁸ The [OECD describes global value chains](#) as resulting from firms' optimisation of production processes by locating the various production stages across different sites through outsourcing and offshoring of activities. The OECD states that the emergence of global value chains challenges "conventional wisdom on how we look at economic globalisation and in particular, the policies that we develop around it."

⁹ This paragraph is taken from the "Assessment and Evaluation" section of the [2018 OECD Economic Survey of Hungary](#).

¹⁰ This paragraph is based on [the Overview of the 2016 Economic Survey of Hungary](#), page 38. OECD 2106.

system for manufactured products means that its enforcement capacity is likely to become an increasingly important component of broader international enforcement capacity for foreign bribery.

13. Moreover, MFA explains that Hungary is pursuing a pro-investment and pro-growth economic policy that places a special emphasis on promoting innovation and new technology-based industrial production. In order to create technology intensive and high value-added jobs, Hungary intends to attract more capital in research and development, and persuade investors to establish, not only their manufacturing plants, but also their research, development and innovation capacity centres, in Hungary. In order to promote research and development (R&D) investments, Hungary has introduced various incentives, beginning in 2017, with a cash subsidy to promote the establishment of R&D centres, as well as a subsidy to support the technology investments of large enterprises that employ more than 100 people in Hungary.¹¹ As a result of these new incentives, in 2018, Hungary provided funding for seven technologically intensive major investments and ten automotive projects involving R&D and engineering, including a large British automotive company. Additionally, in 2019, a major German aviation company opened a new engineering and service centre in Debrecen, and a major British retail group announced it will be opening a new business and technology service centre in Hungary, creating 800 new jobs.

14. The Hungarian authorities explain that the healthcare and pharmaceutical industries are rapidly growing in Hungary, reflecting its long tradition of health care services and pharmaceuticals.¹² Hungary is thus able to offer high quality and innovative products in this sector. Hungary states that the success of industries in the health sector is a major driver of the transformation of the Hungarian economy from production-based to R&D. Hungary currently has 81 strategic partners in this sector – of these one is a multinational medical company and six are well-known multinational pharmaceutical companies. Hungary provides statistics showing that in 2017 the main export destinations for the pharmaceutical industry were: The Russian Federation, Germany, Romania, France and The Czech Republic; while the main export countries in the medical equipment industry were: Germany, France, The United Kingdom and Italy.

15. Hungary has 371 state-owned enterprises (SOEs), of which 370 are majority-state-owned, non-listed companies. SOEs account for 4.2% of non-agricultural employment, which is twice the OECD average and the fourth highest share in the OECD (Figure 4, below). The largest sectors for SOEs by total valuation are electricity and gas, transport and finance.¹³ Hungary's large portfolio of SOEs poses challenges to implementing governance arrangements that can adequately manage the associated risks of bribery. SOE governance in Hungary is described by the OECD as following a “centralised model but with some exceptions”.¹⁴ Specifically, “the Hungarian National Asset Management Inc. is entrusted to exercise ownership rights in terms of all state assets, unless the law or ministerial order provides otherwise”.¹⁵

¹¹ The subsidy to large companies can only be provided to enterprises if they increase their R&D headcount by 25 employees and reach a minimum of EUR 3 million of eligible costs during a minimum on-year and maximum three-year period.

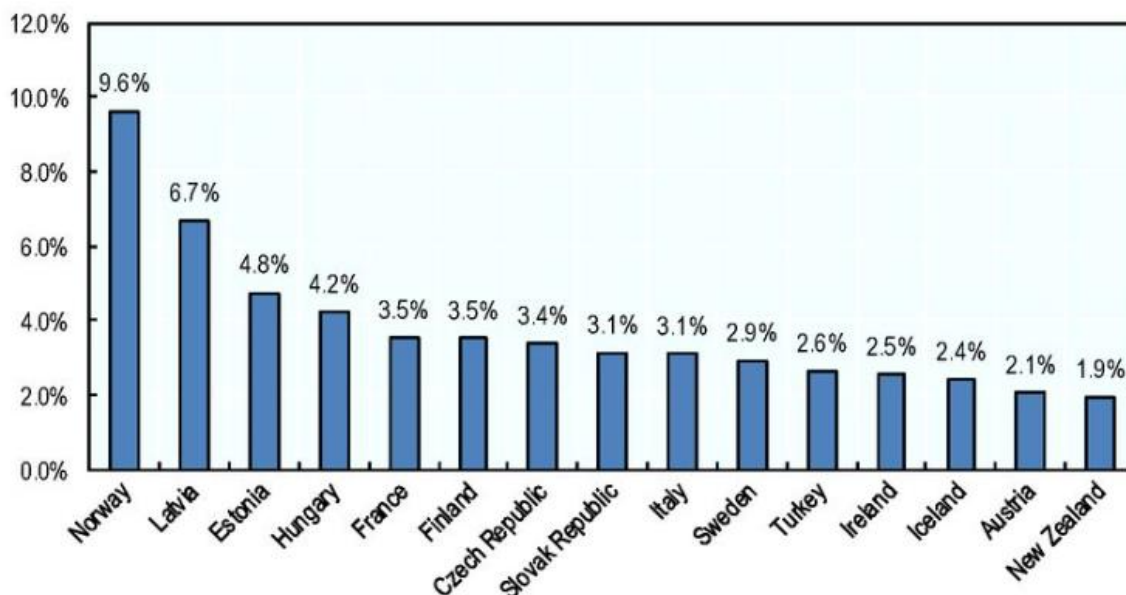
¹² Hungary's tradition of health care services dates back to the 11th century monasteries (See: Health Care Systems in Transition, 1999, European Observatory of Health Care Systems: http://www.euro.who.int/__data/assets/pdf_file/0006/80826/E68317.pdf?ua=1)

¹³ See: [Size and Sectoral Distribution of State-Owned Enterprises in the OECD and Partner Countries](#), pages 12 and 36, OECD, 2017

¹⁴ See: [Ownership and Governance of State Owned Enterprises: A Compendium of National Practices](#), page 32, OECD, 2017

¹⁵ See: [Ownership and Governance of State Owned Enterprises: A Compendium of National Practices](#), page 28, OECD, 2017

Figure 3. SOE employment as a percentage of non-agricultural employees: OECD top 15 (end-2015)



Source: [Size and Sectoral Distribution of State-Owned Enterprises in the OECD and Partner Countries](#), page 25, OECD, 2017

16. The World Bank's 2018 Ease of Doing Business Ranking places Hungary 48th out of the 190 countries ranked, making it broadly comparable to other WGB members' rankings (e.g. Italy, Mexico and Bulgaria). Nevertheless, in its 2018 Article IV Consultation on Hungary¹⁶, the International Monetary Fund's Executive Board stressed the importance of continuing efforts to implement the recommendations of Hungary's National Competitiveness Council¹⁷ to improve the business environment, in particular by making further progress in "addressing (...) perceived corruption". Similarly, the OECD identifies a relatively high risk of corruption in public procurement in Hungary involving EU structural funds based on 2016 data.¹⁸

Overview of foreign bribery enforcement

17. Since March 1999, when Hungary's foreign bribery offence came into force, it has convicted 26 individuals and acquitted two individuals of such bribery. These convictions all arose from the same case, which involved small bribes paid to customs officials in a neighbouring Party to the Convention. The convictions were obtained between 2008 and 2011. The source of detection has not been specified by Hungary. In addition, since Phase 3, no formal allegations of foreign bribery involving Hungarian

¹⁶ See: <https://www.imf.org/en/News/Articles/2018/08/03/pr18328-hungary-imf-executive-board-concludes-article-iv-consultation>

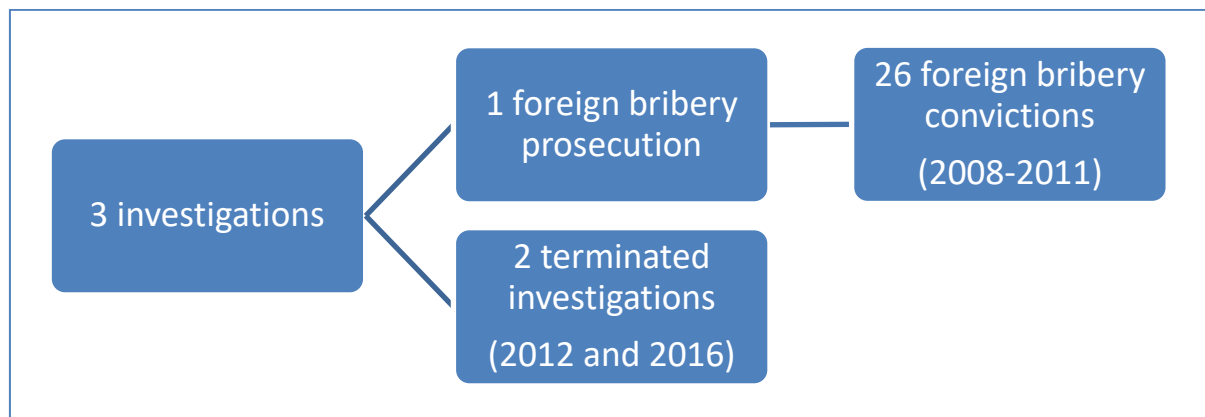
¹⁷ According to a [European Commission website](#), the National Competitiveness Council is a consultative body consisting of renowned members of scientific and economic life whose aim is to provide economic analysis and policy advice for the Government to address competitiveness-related policy challenges. The Council was created in 2016.

¹⁸ [OECD Economic Surveys: Hungary](#) (OECD, 2019, p. 154)

companies had been made to the Hungarian law enforcement authorities, and at the time of Phase 4, there were two reports of suspicions of foreign bribery involving Hungarian companies that had been found in the media.¹⁹

18. At the time of Phase 3, the Hungarian authorities reported that a foreign bribery investigation in the extractives sector had been closed in early 2012 because “the evidence gathered did not support the suspicion”. Proceedings regarding this allegation continue at the time of preparation of this Report in the country of the foreign public official, which is not a Party to the Convention. Hungary informs that CIOPPS is providing continuous legal assistance in this case to the Court in the non-Party in the form of witness testimony through video-link. In Phase 3, a second investigation regarding alleged bribery in the communications sector of foreign public officials in another non-Party to the Convention was suspended in July 2013 pending the execution of a mutual legal assistance (MLA) request sent to the non-Party, and terminated in 2016 due to a lack of evidence in response to the request. Hungary has executed an MLA request sent by the same non-Party. A third case in the extractives sector in which proceedings were launched in another Party to the Convention regarding alleged bribery of foreign public officials from a third country by a Hungarian company and a Hungarian individual has not resulted in investigative steps in Hungary. This case was detected through self-reporting by the Hungarian company. The Hungarian authorities explain that they have provided long-running MLA support to the Party.

Figure 4 – Hungarian foreign bribery cases since 1999



19. Since Phase 3, no investigations or prosecutions of foreign bribery have been commenced in Hungary.

Commentary

The lead examiners note Hungary’s economic indicators show a steady and robust increase of export activity by Hungarian companies, reaching the one billion Euro mark for the first time in 2017. Hungary’s export growth is largely attributed to MNEs that use Hungary as a manufacturing base (including assembly) and then re-export goods to other markets. In addition, Hungary is pursuing a pro-investment and pro-growth economic policy that places a special emphasis on promoting innovation and new technology-based industrial production. As a result, Hungary’s exposure to export-related foreign bribery risks largely stems from the activities of these MNEs whose activities are quickly expanding into new technology-based industrial production, including in the transportation, healthcare and pharmaceutical industries – all sectors at high risk of corruption. Hungary’s economy is also

¹⁹ The OECD Secretariat compiles reports of suspicions of foreign bribery involving Parties to the Convention found in media reports. The Secretariat mainly checks reports in the following languages: English, French, German, Russian, and Spanish.

characterised by a large portfolio of SOEs, including in sectors at high risk of corruption, including electricity and gas, transport and finance.

In view of the absence of investigations and prosecutions of foreign bribery since Phase 3, the lead examiners recommend that Hungary undertake an assessment of the foreign bribery risk exposure of: 1) companies, including SMEs; 2) MNEs using Hungary as a manufacturing base and then re-exporting goods to other markets; 3) the expanding presence of MNEs for the purpose of developing and exporting new technology-based industrial production, including in the transportation, healthcare and pharmaceutical industries; and 4) SOEs, including in the electricity, gas, transport and finance sectors. The lead examiners further recommend that Hungary establish a strategy for increasing detection and enforcement of the foreign bribery offence informed by the foreign bribery risk assessment.

1. DETECTION OF THE FOREIGN BRIBERY OFFENCE

1.1. Overview of relevant outstanding Phase 3 Recommendations and New Issues

20. As noted in the Introduction, no detection or enforcement action of any kind in relation to the bribery of a foreign public official in international business transactions has been reported by Hungary since Phase 3. Further information about foreign bribery enforcement in Hungary is provided in paragraphs 17-18 of the Introduction.

21. In the Phase 3 Report, the Working Group on Bribery in International Business Transactions (WGB) made several recommendations aimed at enhancing Hungary's detection capabilities and efforts. First, it recommended that Hungary increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage, both to increase sources of allegations and to enhance investigations. Second, the WGB made recommendations on the reporting obligations for public officials; tax measures; auditors and accountants; companies' internal control, ethics and compliance programmes; awareness-raising in the private and public sector; and whistleblowers. The WGB also decided to follow up on the quality of suspicious transaction reports (STRs) received and disseminated by the Hungarian financial intelligence unit (HFIU). This part of the Report assesses progress by Hungary on implementation of these recommendations and the follow-up issue. It also assesses Hungary's capacity for detecting foreign bribery cases through its foreign representations, media sources and non-governmental organisations.

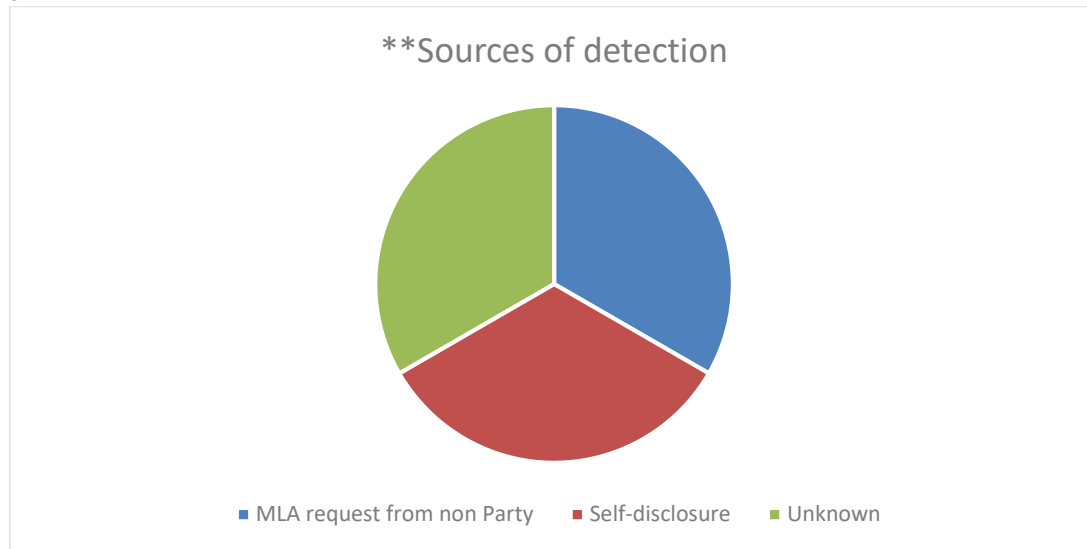
1.2. Domestic authorities

1.2.1. Proactive detection by law enforcement authorities

General overview

22. By the end of Phase 3, Hungary had only partially implemented a recommendation to increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage, both to increase sources of allegations and to enhance investigations [Recommendation 3(e)]. In Phase 3, the WGB considered that Hungary did not have sufficient capacity to detect corruption, including foreign bribery, in a proactive manner. The authorities' bribery enforcement activities were described as primarily complaints-driven, triggered by reports from (foreign) law enforcement authorities (LEAs), complainants or the media. Hungary needed a coherent, overreaching policy regarding the detection, investigation and prosecution of foreign bribery, which would include enhancing efforts to use all possible sources of detection. In the Phase 3 Two-Year Written Follow-Up report, the WGB noted that, while Hungary had taken a number of relevant steps to enhance enforcement and prosecutorial resources, more proactivity was still needed to detect foreign bribery.

Figure 5: Sources of Detection in Hungary's Three Foreign Bribery Investigations at Time of Phase 3²⁰



*** Each section of this figure represents one case.*

23. In 2011, before the start of Hungary's Phase 3 evaluation, Hungary obtained a conviction in a foreign bribery case. Since then, the Hungarian authorities have not detected new foreign bribery cases. The lead examiners assess that Hungary has not developed a comprehensive strategy for detecting foreign bribery, or taken any specific steps to use potential sources more proactively. There seems to be a lack of awareness of, or trust in, a number of potential detection sources (each potential source is discussed in more detail in this part of the Report).

24. Moreover, the authorities that participated in the on-site consider that the risk of foreign bribery by Hungarian companies is low. However, although the export and investment activities of indigenous companies may be relatively low, their international presence is steadily increasing. In addition, the Hungarian authorities need to address the risk of foreign bribery by all companies, including foreign subsidiaries. As discussed in the Introduction to this Report, Hungary is a hub for MNEs conducting business in the region through foreign subsidiaries, including in high-risk sectors for corruption such as the health sector. However, GPO, for instance, does not consider that it has a role in detecting cases of foreign bribery by such companies, as it has no means, resources or opportunities to detect crimes committed abroad. As a result, Hungary may unwittingly be creating an environment that enables foreign subsidiaries to engage in foreign bribery with impunity, including as intermediaries in complex multi-jurisdictional foreign bribery cases. By potentially acting as a weak link in the detection and prosecution of cases involving foreign subsidiaries, Hungary risks becoming a 'safe harbour' for MNEs wishing to use bribery when conducting business in the region. The lead examiners consider that the lack of awareness of, and the failure to address, the risk of foreign bribery by foreign subsidiaries represents a major weakness in Hungary's implementation of the Convention. The closely linked issue of the use of the liability of legal persons is discussed under C.2.2 of this Report.

²⁰ See discussion on these cases in paragraph 18 of this Report.

Legislative reform that could enhance foreign bribery detection and enforcement

25. A number of recent legislative changes have the potential to enhance Hungary's capacity to detect crime, including foreign bribery. The new Criminal Code of Procedure (CCP), in force since 1 July 2018, introduced a number of relevant provisions, as follows:

- Articles 407-409 and 731-738 CCP broaden the possibility to use and formalize non-trial resolution procedures that apply exclusively to natural persons. The new CCP also establishes a system of gradual measures to encourage perpetrators to confess, by offering the possibility of more lenient sanctions at different stages of the criminal process. A legal expert who met with the Evaluation Team at the on-site believes that these provisions could be powerful tools for detecting foreign bribery.
- The new CCP introduces procedural innovations and new tools aimed to enhance *inter alia* the effectiveness of pre-investigative proceedings, by facilitating data gathering at the earliest stage, as well as the use of such data at the investigative stage. A new procedure named the 'preliminary proceeding' (Articles 339-347 CCP) may be used to establish a suspicion that a crime has been committed and open a criminal investigation. For example, a media report could trigger the opening of a preliminary proceeding. Investigative authorities have a maximum of nine months to collect data, including by undertaking covert operations, to establish a suspicion. Prosecutors are in charge of supervising the preliminary proceedings. Involving prosecutors at an early stage is expected to facilitate the admissibility at trial of evidence collected during the pre-investigation. Cooperation between the investigative authorities and prosecutors at the pre-investigate stage is also expected to increase the chances of success of investigations. In addition, the new CCP provides additional intelligence tools, including financial transaction monitoring.
- The new CCP (Sixth Section) introduces the following new covert investigative tools: i) secret surveillance by a secretly cooperating person (Article 215(5) and (6)); ii) disinformation (Article 215(7)); iii) financial transaction monitoring (Articles 216-218)²¹; iv) "ghost shopping" by a secretly cooperating person or a secretly operating official of the investigative authority (Article 226); and v) secret search and recording of a residence, vehicle or object during the investigation (Article 232(2)).

26. However, prosecutors at the on-site highlighted a general lack of resources and expertise available to the Central Investigation Office of the Public Prosecution Service (CIOPPS) for using these new tools.²² At the moment, CIOPPS has to outsource the application of these new tools to the police and NTCA investigative branch. The prosecutors welcome the enhanced powers available to them at the pre-investigative stage under the new CCP, but consider that they do not have the necessary skills to use them in practice. CIOPPS does not have the capacity to monitor open sources, such as foreign media, or to engage proactively with public and private stakeholders that may be in a position to detect foreign bribery, including agencies responsible for export credit and development assistance. Regarding resources, the authorities indicated that the staff of CIOPPS has been increased by 10% and that capacity building would be provided to prosecutors regarding the open source intelligence system OSINT, forensic analysis, and

²¹ Financial transaction reporting enables the police covertly monitor bank accounts and freeze such accounts with the authorisation of a prosecutor. This tool is used in parallel with the powers of the FIU.

²² In Hungary, CIOPPS has exclusive authority for the investigation and prosecution of foreign bribery cases. More information about the structure and powers of CIOPPS is provided under Section B.3.2.

covert methods. The Hungarian authorities also indicated that one-week training courses on the use of the new covert investigative tools would be provided to CIOPPS prosecutors in the spring and fall of 2019.

Commentary

The lead examiners consider that Phase 3 Recommendation 3(e) remains partially implemented. Hungary has restructured the prosecution service in order to enhance its detection and investigative roles, and the new CCP has been adopted to enhance Hungary's capacity to detect and investigate crimes, including foreign bribery, through new covert measures and a system of measures to encourage the use of non-trial resolution procedures. However, CIOPPS does not have the resources or expertise to implement these new measures. Moreover, since Phase 3, Hungary has not detected a case of foreign bribery. The lead examiners therefore recommend that Hungary urgently take steps to:

- a. Develop and implement a strategy for proactively detecting and investigating foreign bribery cases, including through the use of all available sources of detection inside and outside of the law enforcement community;*
- b. Significantly increase the level of resources and expertise available to manage the current and forecasted foreign bribery case loads, and for utilising traditional detection and investigative techniques, including the search and seizure of bank records and witness interviews, as well as the new covert investigative tools; and*
- c. Assign responsibility for enforcing the foreign bribery offence, including against foreign subsidiaries, and diligently investigate suspicions of foreign bribery perpetrated by foreign subsidiaries, in particular due to the significant presence of such subsidiaries in Hungary for the purpose of conducting business in neighbouring countries, including in high-risk sectors.*

1.2.2. Detection through mutual legal assistance requests²³

27. In the responses to the Phase 4 Questionnaire, the Hungarian authorities state that information from foreign authorities (either spontaneous information exchange, or mutual legal assistance (MLA) connected to their investigations) can be a major source of information for the purpose of detecting and investigating foreign bribery cases. However, other than the case reported in Phase 3, for which an investigation was opened on the basis of an incoming MLA request,²⁴ Hungary does not report detecting any further foreign bribery cases in this manner. Hungary has executed seven requests from Parties to the Convention in the period following Phase 3, regarding the bribery of those Parties' officials by foreign companies or nationals; however, information is not available about whether these cases involved Hungarian companies or nationals.²⁵ And Hungary would not be able to confirm whether these requests concerned Hungarian companies, including foreign subsidiaries, without further information about the requests, such as the Parties making the requests, dates, file numbers, etc. It is therefore not known whether these cases could have potentially provided information to the Hungarian authorities for the purpose of detecting foreign bribery cases.

²³ How Hungary addresses incoming MLA requests is addressed under Section B.3.3 of this Report.

²⁴ Although the MLA request led to the opening of an investigation by the Hungarian authorities, as noted in the Introduction to this Report, it did not lead to a prosecution.

²⁵ In line with Phase 4 procedures, WGB member countries were invited to share their experiences in international cooperation with the Hungarian authorities. Information provided by the Parties about MLA requests sent to Hungary regarding the bribery of their officials by foreign companies or nationals did not identify the nationality of these companies or nationals.

Commentary

In the absence of information about the nationality of alleged bribers in MLA requests that Hungary has received since Phase 3, it is not possible to assess whether Hungary has proactively used incoming MLA requests to detect the bribery of foreign public officials by Hungarian companies and nationals. The lead examiners therefore recommend following up in practice Hungary's use of MLA requests for the purpose of detecting foreign bribery cases.

1.2.3. Detection by public officials

Awareness raising in the public administration²⁶

28. In Phase 3, the WGB noted that the Hungarian government needed to undertake more awareness raising activities on foreign bribery in the public sector. For instance, MFA (including overseas staff), and the tax administration, had not been given any training about the risks of foreign bribery or methods to prevent, detect and report suspicions. The WGB thus recommended that Hungary reinforce awareness-raising measures in the public sector by ensuring that public agencies working with Hungarian companies operating abroad develop training programmes for their own staff focusing on foreign bribery [Recommendation 7(b)(i) and (ii)]. By the end of Hungary's Phase 3 review process, the WGB expressed its continuing disappointment at the low level of Hungary's awareness-raising efforts in the public sector, and deemed this recommendation partially implemented.

29. Since Phase 3, the National Protective Service (NPS), an independent service within the Police in charge of detecting and preventing crimes committed by law enforcement officials, including bribery, has conducted a number of awareness-raising initiatives on anti-corruption, ethics and integrity, which have targeted public officials and private companies. An e-Newsletter on ethics and integrity was sent to companies and public officials. NPS also provided online and in-person courses on corruption prevention, integrity and ethics to 10 000 public officials and 50 000 law enforcement officers; and training courses on detecting and investigating corruption to 650 staff members from the police and prosecution authorities. However, none of these initiatives specifically addressed foreign bribery.

30. Since Phase 3, the Hungarian National Trading House (MNKH), which has been integrated into the Hungarian Export Promotion Agency (HEPA)²⁷ has taken various steps to raise awareness of foreign bribery risks targeting both its personnel and SMEs. For instance, MNKH staff has attended three compulsory training sessions (2015, 2016, 2017) organized by MFA, which focused on "IT security and communication technology in practice with a foreign perspective", and included detailed information on facilitating the detection and reduction of international bribery. In general, MFA also organized special integrity management training sessions, which covered corruption prevention topics, as part of the preparation for long-term foreign service for its personnel. This "Regional Table on Integrity Management", which took place twice in 2018 and is expected to become an annual training event, is also attended by staff from the Constitution Protection Office, the Information Office, NPS, the National University of Public Service and the State Audit Office. The training for commercial attachés instructs them on how to communicate with Hungarian companies active abroad about the risk of foreign bribery.

²⁶ Awareness-raising efforts targeting the private sector are analysed in Section C.3 of this Report.

²⁷ In 2014, HITA (Hungarian Investment and Trade Agency) was split into HIPA (Hungarian Investment Promotion Agency), which encourages and supports inbound FDI, and the Hungarian National Trading House (MNKH), charged with export-promotion activities and the representation of Hungarian business interests abroad. The Trading House was then restructured into a government agency under the name HEPA (Hungarian Export Promotion Agency) for enhancing export by Hungarian SMEs.

31. The Hungarian authorities explain that Hungary's official export credit support agencies, (MEHIB and Eximbank) have correctly implemented into their internal regulations and legal documentation the requirements of the OECD Recommendation of the Council on Bribery and Officially Supported Export Credits.²⁸ However, these agencies have not carried out training or awareness-raising specifically on foreign bribery risks and prevention for their staff. The lead examiners believe that this lack of proactivity could translate into an increased risk of foreign bribery by Hungarian companies. The representative of Eximbank and MEHIB that participated in the on-site explained that the 2006 Recommendation was still in force in Hungary at that time, and, unlike the 2019 Recommendation, it does not recommend training for staff. The representative further explained that generally Eximbank's and MEHIB's clients come from the health care, manufacturing and agriculture sectors, and include SMEs, as well as some large corporations. Eximbank and MEHIB focus on providing financing and insurance to countries and regions in which the risk of corruption might be considered relatively high, including post-Soviet countries, South-East Asia, Central Asia and South Sahel.

Commentary

Overall, since Phase 3, with the exception of HEPA, the lead examiners note that the Hungarian authorities have made very limited efforts to raise awareness in the public sector of the risks of foreign bribery. They therefore consider that Phase 3 Recommendation 7(b) remains partially implemented. The lead examiners reiterate the Phase 3 Recommendation that Hungary reinforce awareness-raising measures in the public sector by ensuring that public agencies working with Hungarian companies operating abroad develop training programmes for their staff focusing on foreign bribery. In addition, given that Hungary's official export credit agencies are financing transactions in high-risk sectors and countries, the lead examiners recommend that as a matter of priority these agencies provide training and awareness-raising activities to staff to help them identify and address instances of potential bribery of foreign public officials by applicants and clients.

Obligation to report foreign bribery

32. In 2011, Hungary introduced an obligation for public officials to report suspicions of foreign bribery in the Criminal Code (CC), addressing a recommendation made by the WGB in Phase 2. However, in Phase 3, the WGB considered that the obligation needed to be more proactively implemented, due to a general lack of awareness of the obligation to report foreign bribery, and recommended training and establishing policies and procedures on reporting foreign bribery to the LEAs [Recommendation 8(a)]. By the end of the Phase 3 evaluation period, this recommendation was considered only partially implemented, as the WGB considered that efforts to raise awareness of the reporting obligation still needed to be increased. Steps that had been taken included the provision of training by the Ministry of Justice (MOJ) to employees of the Hungarian Investment and Trade Agency (HITA) on foreign bribery, including the obligation to report, and the adoption of a Code of Conduct for Government Officials in June 2013, which included the obligation to report misconduct.

33. In 2015, the offences of bribery of domestic and foreign public officials were brought together under a single Article of the CC on "Active corruption of public officials" (Article 293 CC)²⁹. In parallel,

²⁸ For further information, see Hungary's responses in the [2017 Review of the Responses to the Survey on Measures to Combat Bribery in Officially Supported Export Credit](#) (OECD Working Party on Export Credits and Credit Guarantees).

²⁹ Art. 293 CC: "(1) Any person who intends to influence a public official by giving or promising undue advantage to a public official or to another person on account of such official in connection with the duties of the public official, is guilty of a felony punishable by imprisonment up to three years.

the offence of failure by a public official to report foreign bribery, previously covered by Article 258/F CC³⁰, was merged into Article 300 CC on “Failure to report crimes of corruption”, which refers to a broad range of corruption offences.

34. Article 300 CC raises several issues. By merging the failure to report foreign bribery with the offence of a failure to report all corruption offences, the reporting obligation for foreign bribery may now be less clear. Although the public officials that participated in the on-site visit were aware of their obligation to report domestic corruption under the CC, it was not clear that they were aware that the obligation extended to foreign bribery. The Hungarian authorities do not believe that this lack of awareness arises from the absence of precision in Article 300 CC about reporting foreign bribery, because it explicitly refers to the requirement to report the active bribery of a public official. Nevertheless, while mandatory training on the reporting obligation is provided for public officials by the National University for Public Service, it does not specifically address foreign bribery. No other training or awareness-raising initiative has been reported in this regard.

35. Indeed, no cases of corruption, including foreign bribery, have been reported by a public official, nor proceedings initiated in relation to possible breaches of the obligation. It is not clear whether the absence of reports is linked to confusion about the threshold of evidence for reporting under Article 300 – “positive knowledge of an act of active or passive corruption yet undetected” – or other factors, including weaknesses in the Hungarian framework for protecting whistleblowers (See discussion under A.2.8 of this Report). Moreover, employees of Hungarian state-owned enterprises (SOEs) are not covered by the obligation and, as highlighted in the Introduction to this Report, the Hungarian SOE sector is relatively large.

Commentary

The lead examiners consider that Phase 3 Recommendation 8(a) remains partially implemented, as no further initiatives have been taken to specifically raise the awareness of public officials of their legal obligation to report foreign bribery since Phase 3. In addition, since Phase 3, the merging of the obligation to report foreign bribery into a general obligation to report corruption offences may make the obligation to specifically report foreign bribery less clear. The lead examiners therefore reiterate Phase 3 Recommendation 8(a) to raise awareness and develop policies and procedures on the legal obligation of public officials to report foreign bribery to the LEAs.

1.2.4. Detection through AML/CFT system

36. In Phase 3, while welcoming improvements to Hungary’s anti-money laundering and countering the financing of terrorism (AML/CFT) regime, due to the absence of foreign bribery enforcement, the WGB could not assess whether it effectively detected the proceeds of bribing foreign public officials. The WGB therefore decided to follow up on the measures taken by HFIU to monitor suspicious transaction reports (STRs), improve the quality of reports, and provide relevant feedback on the STRs that are disseminated to the LEAs.

(2) The person committing bribery shall be punished by imprisonment of one to five years, if he/she gives or promises undue advantage to induce the public official to breach his/her official duty, exceed his/her competence or otherwise abuse his/her official position.

(3) Any person who commits the criminal offence defined in paragraphs (1) and (2) in relation to a foreign public official shall be punishable as set forth therein.”

³⁰ Art. 258/F of previous CC: “Any public official who has learned from credible sources of an act of bribery in international relations (Sections 258/B—258/D) of the Criminal Code) yet undetected, and he fails to report it to the authorities at the earliest possible time is guilty of misdemeanour and may be punished by imprisonment not to exceed three years.”

37. In 2016, MONEYVAL adopted a mutual evaluation report on the AML/CFT system of Hungary³¹. Hungary's AML/CFT system was assessed positively regarding international cooperation and financial intelligence, but deficiencies were identified in several important areas. The money laundering (ML) offence and customer due diligence obligations for professionals were found to be incomplete. ML investigations and prosecutions were not considered effective, and sanctions were deemed insufficient. Although the legal and institutional framework for confiscation and seizures was deemed adequate, the number of such measures applied in practice appeared low. In view of the findings of the MONEYVAL report, the Evaluation Team sought to assess any improvements that would have an impact on the detection and investigation of foreign bribery cases.

Quality of STRs

38. Since Phase 3, as well as the 2016 MONEYVAL report, Hungary has taken a number of key steps to improve its AML/CFT regime, as reflected in MONEYVAL's follow-up reports.³² In 2017, Hungary adopted Act LIII on the Prevention and Combating of Money Laundering and Terrorist Financing, to transpose the Fourth AML/CFT EU Directive, as well as a new ML/TF National Risk Assessment (NRA). Act LIII addresses important gaps in customer due diligence obligations (although some deficiencies remain, including in relation to customers who are politically exposed persons). There is now more emphasis on taking a risk-based approach, and reporting entities must conduct their own risk assessments, which HFIU considers places them in a better position to detect and substantiate suspicious transactions. Act LIII also clarifies that proceeds from predicate offences are included in the reporting obligation. Furthermore, since Phase 3, HFIU has continued to engage with the private sector in various ways; including by providing AML/CFT typologies and indicators to support detection efforts.

Use of the AML/CFT system to detect foreign bribery

39. HFIU has not produced typologies or conducted training or awareness for financial institutions and designated non-financial professions and businesses (DNFPBs) that targets the laundering of the proceeds of foreign bribery. During the on-site, the Head of HFIU pointed out that the NRA does not include foreign bribery. The lead examiners note that, similar to the opinion of GPO that there is a low risk of foreign bribery by Hungarian companies (see Section A.2.8 of this Report), the NRA does not take into account Hungary's significant role as a hub for foreign subsidiaries that conduct business in neighbouring countries in high risk sectors. After the on-site, HFIU stated that awareness-raising, training and typology initiatives would be taken in relation to laundering the proceeds of foreign bribery in order to improve, more specifically, the AML/CFT regime's detection performance in this respect.

40. It is therefore not surprising that, despite the improvements noted by MONEYVAL, the AML/CFT system in Hungary has not detected any ML cases where the predicate offence is foreign bribery. Moreover, even if the AML/CFT system were to generate information about the bribery of foreign public officials, it is not clear whether this information would successfully lead to investigations, as cooperation between HFIU and CIOPPS appears limited. Although meetings regularly take place between HFIU, LEAs and prosecutors, statistics show that HFIU has disseminated a very low number of cases to CIOPPS since 2015 (0 in 2015; 3 in 2016; 3 in 2017; and 2 in 2018). In addition, HFIU reports that CIOPPS rarely requests information from HFIU to support investigations. The Public Prosecutor's Office (PPO) recognizes that it should increase its efforts to exploit the potential of HFIU to provide information on foreign bribery, in particular through training. Comparatively, cooperation with the National Protective Service, which is in

³¹ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MER-Hungary-2016.pdf>

³² First follow-up report, December 2017, <https://rm.coe.int/moneyval-2017-21-hungary-1st-enhanced-follow-up-report-technical-comp/1680792c61>; Second follow-up report, December 2018, <https://rm.coe.int/committee-of-experts-on-the-evaluation-of-anti-money-laundering-measur/1680932f59>

charge of reporting and preventing other corruption offences, seems robust (e.g. in 2018, 218 cases were disseminated by HFIU to NPS in 2018 while 212 requests were submitted by NPS to HFIU).

Commentary

The lead examiners note that Hungary has continued its efforts to improve its AML/CFT system. However, to date, no foreign bribery case has been detected through this system, which may be linked to inadequate awareness of the risk of foreign bribery, including by foreign subsidiaries using Hungary as a hub to conduct business in neighbouring countries, as well as the growing international presence of indigenous companies. The lead examiners therefore recommend that, as a matter of priority, Hungary assess the risks of money laundering associated with foreign bribery in connection to Hungarian companies, including foreign subsidiaries, and raise awareness of such risks in the AML/CFT system, and consider the use of typologies for this purpose.

1.2.5. Detection by tax authorities

41. By the end of Phase 3, Hungary had only partially implemented the WGB's recommendation to provide, on a regular basis, training for tax officials on how to detect bribes to foreign public officials concealed as deductible expenses for tax purposes, including commissions. Although some training had been given to tax officials on identifying hidden commissions, more targeted training was still needed on detecting bribes to foreign public officials that had been concealed as allowable expenses.

42. At the on-site, the National Tax and Customs Administration (NTCA) acknowledged that it did not have experience detecting bribes to foreign public officials in the course of tax audits. Following the on-site, NTCA provided additional information about its role to date in the detection of foreign bribery. NTCA's Institute for Training, Healthcare and Culture, which is responsible for training programmes, does not appear to have used the OECD Bribery Awareness Handbook for Tax Examiners³³ to provide training to the tax authorities on detecting bribe payments. NTCA describes a five-day training on detecting criminal activities during tax and customs inspections, and plans to conduct a training in 2019 on the bribery of public officials for administrators and managers, but activities specifically targeting foreign bribery detection do not appear to have been included in either of these initiatives. Moreover, NTCA states that it has not identified red flags that would trigger suspicions on the part of tax examiners that certain kinds of deductions could represent bribes, because its focus is on the supervision of tax returns to determine whether tax payers have fulfilled their tax obligations. NTCA adds that pursuant to ACT CXXII of 2010 on the National Tax and Customs Administration, its main task is to ensure revenues for the central budget; moreover a tax inspection is administrative in nature, not criminal.

43. Since Phase 3, NTCA representatives are not aware of making a report of suspicions of foreign bribery by tax payers to CIOPPS or any other Hungarian LEA. Pursuant to Act CL of 2017, the tax administration branch of NTCA should forward information about suspected budgetary fraud to the investigative branch of the NTCA, which has exclusive investigative competence in this regard. NTCA states that, therefore if a bribe payment is detected, it should be reported to the police or Prosecution Service. But they say that this would not happen very frequently because the NTCA considers that its main responsibility is identifying budgetary fraud. However, the tax authorities are required to report suspicions of foreign bribery that they detect in the course of their tax audits to the law enforcement authorities, pursuant to the general obligation for public officials to report criminal offences under section 300 CC (See also under paragraphs 32-35 of this Report on the general reporting obligation for public officials.).

³³ The OECD Bribery Awareness Handbook for Tax Examiners can be found here: <https://www.oecd.org/tax/crime/37131825.pdf>

44. In addition, NTCA is not aware of receiving a request from CIOPPS or any other Hungarian LEA for tax information that could provide evidence of the bribery of foreign public officials. The Hungarian authorities explain that NTCA does not have the authorisation to investigate or in any way handle bribery cases other than to forward them to the competent authorities. Information submitted to the investigating branch of NTCA is only eligible for further scrutiny if budget fraud is suspected.

45. NTCA explains that it publishes information booklets on its official website that address a wide variety of taxation topics, including basic rules on corporate tax, and in which taxpayers are informed about deductible expenditures. However, NTCA does not appear to have specifically raised tax payers' awareness of the non tax deductibility of bribes to foreign public officials, stating that it is widely known among tax payers that corruption is illegal, and that, as a result, taxpaying entities would try their best to conceal bribe transactions. The lead examiners consider NTCA is missing an important opportunity for raising awareness that foreign bribery is a crime in Hungary, as well as that the NTCA is alert to the potential for tax payers to conceal bribe payments as allowable expenses. Indeed, even if a tax payer were convicted of foreign bribery, it appears unlikely that NTCA would be aware of this fact and thus retroactively identify bribe payments, as channels have not been established for communicating foreign bribery convictions to NTCA. Additionally, the Hungarian authorities explain that the legal burden of proof in the course of a tax audit cannot be satisfied by using evidence obtained in criminal proceedings alone. Thus even a final conviction by a court would not enable the tax authority to deny the deductibility of a bribe.

Commentary

The lead examiners consider that Phase 3 Recommendation 6(a) remains partially implemented, and therefore repeat the recommendation that Hungary provide, on a regular basis, training for tax officials on how to detect bribes to foreign public officials concealed as deductible expenses for tax purposes, including commissions. The lead examiners further recommend that Hungary use the OECD Bribery Awareness Handbook for Tax Examiners for the purpose of providing this training. In addition, the lead examiners recommend that Hungary: i) establish an effective legal and administrative framework to facilitate the reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties to CIOPPS; ii) provide guidance to facilitate such reporting; and iii) that NTCA is informed forthwith of all foreign bribery convictions in order that it may determine whether it is appropriate to retroactively deny the tax deductibility of any expenditures representing bribery payments. Furthermore, it is recommended that Hungary raise awareness among the private sector that bribes paid to foreign public officials are non tax-deductible.

1.2.6. Detection through systems for ODA procurement

46. Parties to the Convention must now be assessed for compliance with the 2016 Recommendation of the Council for Development Actors on Managing Risks of Corruption. Issues regarding compliance with the new recommendation, including the detection and reporting of foreign bribery, are assessed under D.1 of this Report.

1.2.7. Detection by foreign representations

47. No case of foreign bribery has been detected by foreign representations, including commercial attachés and Hungarian embassy personnel. The Hungarian authorities have not assigned such a role to Hungarian officials posted abroad, including in countries in which Hungarian companies have significant economic activities. The Hungarian authorities consider that foreign representations cannot obtain relevant information for the purpose of foreign bribery detection. Thus, no specific training or awareness-raising initiatives have been organized to promote such a role, including the review of local media sources for allegations of bribery involving Hungarian nationals and companies.

Commentary

The lead examiners recommend that in countries where Hungarian companies have significant economic activities, Hungary take appropriate measures to make its foreign representations aware of the risk of foreign bribery by those companies, including by reviewing local media sources for allegations, as well as their obligation to report such information to the relevant authorities in Hungary.

1.2.8. Whistleblower protections

48. In Phase 3, the WGB welcomed the adoption of new legislation in Hungary for the purpose of protecting whistleblower reporting that damaged the ‘public interest’ in both the public and private sectors. The WGB recommended that Hungary clarify that the new legislation protects persons reporting foreign bribery, and that responsibility for its implementation is clearly allocated. The WGB noted that implementing the new legislation in practice would require an important cultural change, and therefore recommended that Hungary take steps to raise awareness about the benefits of such protections in the public and private sectors. The WGB further recommended following up implementation of the legislation. [Recommendation 8(b)] By the end of Hungary’s Phase 3 review cycle, Hungary had introduced new whistleblower legislation that expressly protected persons who report foreign bribery. However, the WGB considered that Hungary still needed to raise awareness of the new protections among the public and private sectors, and assessed Recommendation 8(b) as partially implemented.

49. Since Phase 3, no foreign bribery case has been detected on the basis of a whistleblower’s report in Hungary. The legislative framework, mainly based on Act CLXV of 2013 on Complaints and Public Interest Disclosures, does not provide for clear and effective protections for whistleblowers. The lead examiners believe that, to a large extent, an extremely negative collective memory of the practice of ‘informing’ has been a major challenge to conducting effective reform in this area. Awareness-raising on how whistleblower channels and protections help increase integrity in the public service and private sector could help to overcome this distrust, as well as the perception that whistleblowing information is not useful.³⁴

Regulatory framework

50. As noted in the Phase 3 Two-Year Written Follow-Up report, a new law on whistleblower protections (Act CLXV of 2013 on Complaints and Public Interest Disclosures) entered into force on 1 January 2014, which provides the following reporting channels:

- **Ombudsman:** “Public interest disclosures” may be made by “anybody” through a (non-mandatory) electronic system operated by the Ombudsman.
- **Employer Channel:** Employers may create an internal reporting channel for their employees – i.e., “persons having a contractual relationship” with the employer and “persons having a legitimate interest in making a whistleblower report or in remedying the conduct concerned”. Although employers’ reporting mechanisms are not mandatory, when an employer chooses to establish such a mechanism, the Act requires that the employer investigate all resulting whistleblower reports and inform whistleblowers of the outcomes. Public institutions are not considered “employers” for the purposes of Act CLXV and are subject to a separate set of rules (see next paragraph).

³⁴ In the responses to the Phase 4 Questionnaire, Hungary stated that whistleblowing “information is highly doubtful, and, in most cases, not borne out by evidence”.

51. In addition, pursuant to Government Decree 370/2011 on Internal Control System and Internal Auditing of Central Budgetary Organisations, it is compulsory for every “budgetary authority”, including SOEs, to set up a whistleblowing system, which the authorities indicate may receive reports on suspicions of foreign bribery. Hungary further reports that awareness-raising on these whistleblowing channels is required by law. Such initiatives have included e-newsletters to public officials regarding the “anonymous handling of public interest disclosures”. However, information about the operation of the reporting channel and the protections afforded to those who use it has not been provided.

52. It is also not clear what protections are afforded to whistleblowers under the Ombudsman and Employer Channel. Under Act CLXV and amendments to Act CXI of 2011 on the Commissioner for Fundamental Rights, the Ombudsman has several responsibilities regarding public interest disclosures. Although the Ombudsman’s Office does not have the power to investigate whistleblower reports, it operates an electronic reporting system and forwards the reports to the competent authority. The Ombudsman also monitors how disclosures are managed by a range of authorities, and verifies, upon request, whether certain disclosures are dealt with appropriately. In addition, a whistleblower may petition the Ombudsman for a remedy in the following situations: 1) the authority that has received the disclosure declares it unfounded; 2) the whistleblower disagrees with the outcome of the investigation; or 3) the whistleblower considers that the authority failed to fully investigate the disclosure.

53. It is not clear whether “public interest disclosures” under Act CLXV include foreign bribery, especially in view of the absence of practice in this regard.³⁵ In addition, the public interest disclosure mechanism operated by the Ombudsman was described as “semi-anonymous” by the authorities at the on-site, as there is no obligation to follow up anonymously made disclosures. Furthermore, to use the electronic system, whistleblowers must disclose their name and address, although they may request that their reports be anonymised before sending them to the relevant authorities. During the on-site, the representative of the Ombudsman’s Office confirmed that it had never provided data that identifies a whistleblower to the authorities in charge of investigations, including LEAs.

54. The framework for employers’ reporting channels also raises a number of issues. Article 11 of the Act does not require employers to adopt measures to protect whistleblowers from reprisals when using an internal reporting channel. Where an employee suffers retaliation, there is no designated public authority to which a complaint can be made, or any remedies available to redress reprisals. Additionally, there do not appear to be protections in place for employees in the public and private sectors that report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery. Non-governmental organisations (NGOs) at the on-site highlighted that whistleblowers must make unfair dismissal claims, based on general labour legislation, through the courts to seek reinstatement and compensation, which is an uncertain and potentially lengthy process. In addition, the law does not explicitly exempt whistleblowers from civil liability for defamation when they make reports that they believe to be true.

55. Moreover, although a whistleblower using an employer reporting channel can only be identified by those who investigate the report, since the person targeted by the report must be immediately informed of this fact, there might be a risk of identifying the whistleblower simply by knowing that the report was made, or by the contents of the report. Clarification is needed on what, if any, safeguards must be taken to protect the identity of whistleblowers when even anonymised information could identify them. In addition, the criterion for not opening investigations -- i.e., “the prejudice to public interest or overriding private interest is not proportionate to the limitation of the rights of the person concerned” might appear vague;

³⁵ Article 1(3) of Act CLXV defines a “public interest disclosure” as a report that “*calls attention to a circumstance the remedying or discontinuation of which is in the interest of the community or the whole society*”.

although the authorities state that this provision protects employers against unnecessary procedures in case of reports on very minor issues or breaches, and does not apply when a criminal proceeding is warranted.

56. Furthermore, it is unclear how the two whistleblower channels – the Ombudsman and Employer Channel – interact, and in particular whether whistleblowers are expected to wait for the outcome of the internal procedure before being able to resort to the Ombudsman channel.

Whistleblowing and whistleblowers' protections in practice

57. Since 2014, the Ombudsman has received around 350 disclosures annually. In practice, the vast majority of these reports has not related to possible offences, but issues such as conflicts between house tenants and owners. One to two per cent of reports concerned domestic corruption allegations (32 since 2014). Private sector representatives at the on-site believed that the low level of reporting shows that employees have limited awareness of the Ombudsman's reporting channel. This was confirmed by the Office of the Ombudsman, which reported having very little engagement with the private sector.

58. Private sector representatives at the on-site stated that employers' reporting channels have mostly been established in MNEs and listed companies. Representatives of subsidiaries of MNEs reported having sophisticated group-wide whistleblowing systems based on the legislation in the country where their headquarters are located. Instead of providing whistleblower channels within the Hungarian subsidiary, a whistleblower must use reporting channels at the company's headquarters. However, such a system would not necessarily protect whistleblowers from retaliation by the subsidiary located in Hungary.

59. Private sector representatives also noted that employees would be reluctant to report wrongdoing because of the negative perception of whistleblowing in Hungary, and for fear of retaliation. While noting that whistleblowing systems are promoted internally in MNEs and listed companies, private sector representatives stressed that awareness-raising should also be carried out by the government.

Commentary

The lead examiners consider that Recommendation 8(b) remains partially implemented. They are sensitive to the historical reasons for general distrust of whistleblowing in Hungary, and believe that further reform will be difficult to achieve without a change in perception about whistleblowing. At the same time, reforms would make the whistleblower system more sound and secure and increase trust in its use.

The lead examiners therefore recommend that Hungary take steps, including the following, to increase the effectiveness of its whistleblower system for the purpose of detecting the bribery of foreign public officials:

- a. Raise awareness in the public and private sectors, including SMEs, of how an effective whistleblower system helps to detect crimes, including foreign bribery, and increases integrity in public and private governance;*
- b. Clarify that the whistleblower system applies to the reporting of suspicions of foreign bribery;*
- c. Clarify how the three whistleblower channels – the Ombudsman, Employer Channel and the Internal Control System of public bodies – interact;*
- d. Ensure that measures for protecting the identity of whistleblowers are effective; and*
- e. Provide an appropriate mechanism for redressing acts of retaliation against public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery.*

1.3. The private sector and other non-government sources

1.3.1. Detection by the accounting and auditing profession

60. By the end of Phase 3, the WGB's recommendation to Hungary [Recommendation 5(b)] to raise awareness of the foreign bribery offence among auditors and accountants, including through regular training, in order to facilitate the detection of the offence, was only partially implemented. At the time of the Phase 3 evaluation, regular training was not provided in this regard to the accounting and auditing profession by either the regulator authorities or a professional body. At the time of the Phase 3 Written Follow-Up report, awareness-raising activities had been provided for auditors but not for accountants.

61. The Hungarian accounting and auditing profession has to date not played a role in the detection of a foreign bribery case. And since Phase 3, neither the Hungarian authorities nor the Hungarian accounting and auditing profession report having conducted specific awareness-raising or training targeted at the foreign bribery offence. During the on-site, the profession underlined that it is rare to identify fraud or corruption during a statutory audit and, even if this happens, there is no obligation to report, except internally to the management or supervisory board of the company. Representatives of accounting and auditing firms explained that the risk of foreign bribery is assessed as relatively low in Hungary, due to the fairly limited export activities of Hungarian companies. Furthermore, a group audit of international companies is generally conducted and reported to the companies' headquarters.

Commentary

The lead examiners assess that Phase 3 Recommendation 5(b) on foreign bribery awareness in the accounting and auditing profession remains partly implemented. They therefore recommend that Hungary undertake as soon as possible, appropriate initiatives to ensure that specific foreign bribery awareness training is provided either by the Hungarian administration or the accounting and auditing profession, particularly given that Hungarian companies are becoming more active in international business.

1.3.2. Detection by the Hungarian media

62. The media can be an important source of information about allegations of foreign bribery. Before the on-site, the Evaluation Team was aware of reports by watchdog organisations regarding restrictions on the media in Hungary since 2010,³⁶ and therefore questioned whether the Hungarian media could play an active role in reporting on foreign bribery cases involving Hungarian national and companies. On the other

³⁶ The relevant restrictions relate to amendments and laws including the following: 1) Changes to Article 61 of the Hungarian Constitution, passed in 2010, which removes the principle that information monopolies should be prohibited, and added the right to be provided with adequate information about public life; 2) The law setting up the National Media and Infocommunications Authority and Media Council, passed in 2010, extends the Media Council's power from audiovisual to include print and the Internet; 3) Act CIV 2010 on the Freedom of the Press and the Fundamental Rules Governing Media Content; and 4) Act CLXXV of 2010 on Media Services and Mass Media. Freedom House downgraded Hungary's media from "free" to "partly free" ([Partly Free' – Freedom House downgrades Hungary](#), February 2009, Budapest Business Journal on the web). Hungary fell from 23 to 73 on the World Press Freedom Index ([Reporters Without Borders: 2018 World Press Freedom Index](#)). The media restrictions are reportedly linked to provisions regarding the following matters in media legislation adopted in Hungary in 2010: 1) definition of illegal media content; 2) protection of journalistic sources; and 3) media independence under the Media Council. In addition, questions have been raised by the Council of Europe's Venice Commission about the distribution of public advertisement funds, and media ownership concentration. See for example: [Opinion on Media Legislation \(Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media\) of Hungary adopted by the Venice Commission at its 103rd Plenary Session](#) (Venice, 19-20 June 2015).

hand, the Evaluation Team noted that the independent media had successfully reported on alleged corruption at the highest political levels in Hungary up to at least September 2018.

63. The Evaluation Team did not have the opportunity to meet with media representatives during the on-site³⁷ However, the Evaluation Team was able to raise the issue of media independence during a robust panel discussion with representatives of civil society. A major long-established human rights organisation explained that a significant challenge for media representatives that want to report on corruption is obtaining access to relevant government information through access to information laws and procedures. The process is very long – often three years – and normally involves the courts. In addition, in order to obtain access to information, journalists are required to provide extensive information about the case they are investigating.

Commentary

Given that media representatives did not participate in the on-site, the lead examiners were not able to discuss with them reports by watchdog organisations about new media restrictions, and are therefore not able to assess whether the Hungarian media is able to report effectively on allegations of Hungarian nationals and companies engaging in the bribery of foreign public officials. The lead examiners therefore recommend following up the effectiveness of the media in practice in detecting foreign bribery cases, including the effect of recent legislative reforms and whether they are impeded by the procedures for obtaining access to information.

1.3.3. Detection by non-government organisations

64. NGOs can also be an important source of information about foreign bribery cases, given that some of them will receive whistleblower reports, and, in general, are well placed to learn about allegations. Going into the evaluation, the lead examiners were aware of the recent adoption of legislative measures in Hungary on NGOs, and wanted to assess the potential impact of these laws on the role of NGOs in detecting and reporting allegations of foreign bribery by Hungarian nationals and companies.³⁸

65. To date, it does not appear that NGOs have been an official source of detection in cases of foreign bribery. However, the reasons for this may be complicated. On the one hand, the NGOs at the on-site spoke very freely about challenges in Hungary to the effective implementation of the Convention. On the other hand, they stated that new government controls over NGOs have stifled their ability to openly criticise the government. In addition, they stated that the absence of effective whistleblower protections (also see discussion under Section A.2.8 of this Report), places limitations on their capacity for receiving reports of foreign bribery allegations.

Commentary

The lead examiners welcome the openness of civil society organisations at the on-site and their willingness to frankly discuss challenges in Hungary to the effective implementation of the Convention. However, the lead examiners recommend following up whether new laws regulating NGOs have an impact on their ability to play an effective role in detecting allegations of the bribery of foreign public officials.

³⁷ See discussion on lack of attendance of the media at the on-site in the Introduction to this Report.

³⁸ One such law is the Law on Transparency of Organisations receiving Foreign Funds (June 2017), which requires that NGOs receiving more than HUF 2 million (about EUR 6 180) from foreign sources register with the Regional Court as “organisations receiving support from abroad”, and label themselves as such on their websites. Moreover, they must report each donor that contributed at least HUF 500 000 (about EUR 1 545) per year. See: [Venice Commission’s Preliminary Opinion on Hungary’s Draft Law on the Transparency of Organisations Receiving Support From Abroad](#) (June 2017)

2. ENFORCEMENT OF THE FOREIGN BRIBERY OFFENCE

2.2. Legal issues regarding effectiveness of foreign bribery offence

2.2.1. Bribery through intermediaries

66. In Phase 3, the WGB recommended that Hungary take steps to ensure that its foreign bribery offence cover bribery through intermediaries, particularly in cases involving legal persons [Recommendation 1]. In the absence of supporting jurisprudence, the WGB was not sure that the formulation for the Hungarian offence would effectively apply to such cases – i.e., Article 258B CC covered bribes given “to another person on account of such public official”.³⁹ Moreover, with respect to the liability of legal persons, prosecutors that participated in the Phase 3 on-site stated that Act CIV of 2001 only covered payments of bribes through intermediaries where a person listed in Article 2 of the Act (i.e., the legal person’s executive officer; a member, employee, officer or chief executive entitled to represent the entity; or a member of the entity’s supervisory board and or its agents) had the intent to pay the bribe. This meant that, contrary to Paragraph B) of Annex 1 to the 2009 Recommendation,⁴⁰ the case was not covered where a person with the highest level authority failed to prevent a lower level person from bribing a foreign public official through a failure to supervise or a failure to implement adequate internal controls, ethics and compliance programmes or measures. Furthermore, Paragraph C) of Annex 1 to the Recommendation states that a legal person cannot avoid responsibility by using intermediaries.

67. By the end of Hungary’s Phase 3 review cycle, Phase 3 Recommendation 1 was assessed by the WGB as only partially implemented. An amendment had been made to the foreign bribery offence (Article 293 of Act C of 2012 CC)⁴¹, which extended liability for the offence to the case where a high level manager fails to prevent a lower level person from bribing a foreign public official, or fails to supervise him/her so that the offence occurs. However, the WGB did not consider the recommendation fully implemented in the absence of cases to confirm the effective application of the amendments.

68. Since Phase 3, there have not been any enforcement actions regarding the offence of foreign bribery. Therefore, how the aforementioned amendments apply in practice still remains an open question.

Commentary

In view of the absence of supporting practice, Recommendation 1 remains partially implemented. The lead examiners recommend following-up the application in practice of the amendments to the foreign bribery offence and the liability of legal persons for the purpose of covering the bribery of foreign public officials through intermediaries.

2.2.2. Definition of foreign public official

69. In Phase 3, the WGB decided to follow-up the application of the foreign bribery offence to cases of the bribery of persons performing a public function for foreign public enterprises. In the absence of supporting jurisprudence, the WGB was uncertain whether the definition of foreign public official under

³⁹ Article 1 of the Convention requires that each Party make it an offence to bribe “directly or through intermediaries”.

⁴⁰ Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

⁴¹ The amendment also applied to the liability of legal persons via an amendment to Article 2(1) of Act CIV of 2001.

459 (1) CC⁴² was broad enough to cover such cases – i.e., persons “empowered with legislative, judicial, public administration or law enforcement duties in a foreign state”.⁴³

70. Since Phase 3, the definition of a “foreign public official” in the Hungarian law has not been amended. Moreover, in the absence of enforcement actions in the intervening period, it is still not possible to know with certainty whether the current formulation would cover bribes to officials of foreign public enterprises. In addition, the lead examiners question whether it would be possible to attribute such a broad interpretation to Article 459 CC in view of the judicial principle of strict criminal statutory interpretation. Lack of clarity in a Party’s law in this respect is cause for significant concern, especially in light of evidence that the officials of foreign SOEs are offered, promised or given the largest proportion of bribes of all categories of foreign public officials.⁴⁴

Commentary

The lead examiners consider that it is unclear whether the definition of a foreign public official in Article 459 (1) CC is broad enough to cover officials of foreign public enterprises. In view of the lack of supporting jurisprudence, and the very high risk of bribing employees of SOEs worldwide, the lead examiners recommend that Hungary amend the definition of foreign public official to expressly clarify that it includes such officials.

2.2.3. Jurisdiction over foreign bribery offence

71. In Phase 3, the WGB recommended following up the application of jurisdiction over cases of foreign bribery that are committed in whole or in part in Hungary, and as regards legal persons. Since Phase 3, the rules on territorial jurisdiction for the foreign bribery offence have not changed. Article 3 CC establishes the jurisdiction of Hungarian courts over all crimes committed in Hungary, including foreign bribery, but does not expressly state that territorial jurisdiction is established if an offence is committed in part in Hungary. Hungary explains that, under the “theory of unity of actions”, which is a generally accepted principle in the Hungarian criminal law, a criminal offence is considered to have been committed within the territory of Hungary if any of the important, objective elements (e.g. criminal conduct or effect) takes place in the territory of Hungary. However, no case law was provided to support this interpretation.

72. Regarding legal persons, at the time of Phase 3, a natural person had to be convicted for a legal person to be sanctioned. This meant that were a foreign natural person to bribe abroad on behalf of a Hungarian legal person, it would not have been possible to apply nationality jurisdiction to the legal person. The WGB considered that Article 3(2)(ac) CC on universal jurisdiction could compensate for this weakness in nationality jurisdiction for legal persons in certain cases, but that this was not sufficient, since Article 3(2)(ac) was rarely applied in practice.⁴⁵

⁴² The exact provision is Article 459(1) point 13 CC.

⁴³ Article 1.4(a) of the Convention states that “*foreign public official* means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; and person exercising a public of a foreign country including for a public agency or public enterprise; and any official or agent of a public international organisation”.

⁴⁴ [OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials](#) (OECD, 2014). See table on page 24 of the Report, which shows that, in foreign bribery cases concluded by Parties to the Convention between 1999 and mid-2014, 80.11% of total bribes were offered, promised or given to officials of SOEs.

⁴⁵ Pursuant to Article 3(2)(ac) CC, universal jurisdiction can be applied to offences that are required to be prosecuted under an international treaty, such as the OECD Anti-Bribery Convention.

73. Since Phase 3, pursuant to Article 3(2) of Act CIV of 2001, legal persons are now responsible for foreign bribery if the natural person who committed the bribery act cannot be identified. Thus, the only issue remaining in this regard is the lack of clarity about application of this new jurisdictional provision to a scenario where foreign bribery is committed abroad by a non-Hungarian national who has been identified.

Commentary

The lead examiners recommend that the WGB continue to follow up Hungary's jurisdiction over foreign bribery, as case law and practice develop, as regards: i) cases that take place in part in Hungarian territory; and ii) cases involving legal persons abroad where the natural person that committed the bribery act is identified and is not a Hungarian national.

2.3. Law enforcement

2.3.1. Overview

74. At the end of Hungary's Phase 3 review cycle, WGB recommendations on the following foreign bribery enforcement issues remained outstanding: i) prioritisation of foreign bribery in the National Anti-Corruption Strategy; ii) the use of immunities from investigation and prosecution for specific office holders; iii) the compilation of enforcement statistics; iv) the two-year investigation time-limit; and v) the compilation of statistics on incoming and outgoing requests for MLA. This part of the Report therefore focuses on these Phase 3 outstanding issues on investigation and prosecution, as well as a follow-up issue on training for LEAs. In addition, this part of the Report addresses the following new issues: i) substitute private prosecutions; ii) application of sanctions, including confiscation; and iii) matters relevant to implementation of Article 5 of the Convention. Challenges regarding the detection of foreign bribery by the Hungarian authorities are already discussed under Section A of this Report. To the extent that detection issues are relevant to the investigation of foreign bribery, they are not repeated in this part of the Report.

2.3.2. Foreign bribery enforcement

Responsibility and resources for foreign bribery enforcement in Hungary

75. CIOPPS has exclusive competence for the investigation and prosecution of foreign bribery in Hungary. Since 2012, CIOPPS has had one central and five regional units. Restructuring, which began in 2013, placed the central unit one level above the regional units. The central unit now has two roles – it supervises the regional units as senior prosecutor, and is responsible for investigating more serious crimes, including foreign bribery.⁴⁶ The total number of prosecutors at CIOPPS has decreased from 114 in 2012, to 100 in 2019 (30 in the central unit of CIOPPS). Fifteen of the prosecutors are dedicated to investigating the more serious crimes, including foreign bribery. Presently, thirteen prosecutors are active, with 80 ongoing prosecutions, 40 of which are considered of higher priority.

Foreign bribery enforcement results since Phase 3

76. One investigation of foreign bribery by the Hungarian authorities that was ongoing at the time of the Phase 3 on-site was terminated before the end of the Phase 3 review cycle. Another investigation that had been suspended has been terminated since Phase 3. (See the Introduction for further information about these cases.) In addition, since Phase 3, Hungary has not detected or investigated a new case of foreign bribery. Media reports since Phase 3 of alleged foreign bribery involving Hungarian companies have not led to proceedings in Hungary. However, the lead examiners highlight that there are very few such reports.

⁴⁶ See Article 9 of 12/2018 Order of the Prosecutor General.

National Anti-Corruption Strategy

77. At the end of the Phase 3 review cycle, Hungary had only partially implemented the WGB recommendation to ensure that foreign bribery is addressed in the National Anti-Corruption Strategy as an explicit priority to promote a proactive and coordinated approach for combating such bribery, and to ensure a clear allocation of responsibility to specific agencies for enforcement and prevention [Recommendation 7(a)]. Hungary had listed foreign bribery as a specific priority in its Corruption Prevention Programme, and the WGB did not consider that it delivered a more proactive and coordinated approach to combating foreign bribery.

78. In 2015, Hungary adopted its National Anti-Corruption Program (NACP)⁴⁷, which expires at the end of 2018. The NACP includes a historical overview of the Convention, and explains the importance of complying with the Convention's requirements. It also discusses the need to implement the WGB's Phase 3 recommendations on awareness-raising in the public sector, education and training of tax auditors, and to provide training to the LEAs on the liability of legal persons. These training courses are addressed in the next section of this Report.

Commentary

Since the National Anti-Corruption Programme expired at the end of 2018, the lead examiners do not believe that it has any further potential role in combating foreign bribery; although they note that it provided important information about the Convention, and the need for Hungary to implement WGB recommendations on training and awareness. The lead examiners also consider that their commentaries on more effective enforcement and prevention, in various parts of this Report, directly address the overall need to increase the priority of foreign bribery enforcement and prevention in Hungary.

Training for law enforcement authorities⁴⁸

79. In Phase 3, the WGB decided to follow up on training for CIOPPS on the foreign bribery offence, particularly regarding the use of confiscation. The WGB noted that limited specialised training had been provided on enforcing the foreign bribery offence, and such training was not systematic.⁴⁹ In addition, CIOPPS acknowledged having insufficient expertise on confiscating the proceeds of foreign bribery.

80. Since Phase 3, specialised training on foreign bribery has not been provided to CIOPPS prosecutors. However, the Hungarian authorities indicate that several training sessions have been organized for prosecutors and trainees on corruption, often as part of wider sessions on economic and financial crimes (See table below.). These included a series of training sessions in 2017-2018 on organised crime, covert investigative measures and corruption for investigators and prosecutors; and more than twenty sessions on corruption for prosecutors.

⁴⁷ The NACP can be found here:

<http://corruptionprevention.gov.hu/download/c/fe/02000/National%20Anti-Corruption%20Programme%20Hungary%202015-2018.pdf>

⁴⁸ See discussion in A.2.1 of this Report on the need for resources for effectively implementing new covert investigative techniques under the CCP.

⁴⁹ Foreign bribery was usually included in training on other types of economic and financial crime, including domestic bribery. Prosecutors regularly participated in other agencies' events to help enhance their enforcement capacities, such as the Police and Secret Service, but not specifically regarding foreign bribery. Prosecutors also regularly participated in international training events.

Table 1. Training on corruption in the Prosecution service 2015-2018 (number of participants)

	2015	2016	2017	2018
Trainees	17		29	
Junior prosecutors	33	39	36	
Senior prosecutors and heads of units	31	148		
Prosecutors dealing with financial crimes and corruption cases	52	57		
Investigating prosecutors	52	50		
Prosecutors working on appeal instance	47	47		

81. The Hungarian authorities do not indicate that they have provided specialised training on the confiscation of the proceeds of foreign bribery, since Phase 3.

Commentary

Since Phase 3, prosecutors have received regular training on investigating and prosecuting corruption, but not specifically on the offence of foreign bribery. Moreover, it appears that no training on the confiscation of the proceeds of foreign bribery has been provided. The lead examiners therefore recommend that the WGB continue to follow up training provided to CIOPPS on the foreign bribery offence, including confiscation of the proceeds of such bribery.

Immunities from prosecution

82. In Phase 3, the WGB recommended that Hungary consider taking measures within its Constitutional principles to ensure that immunities: i) are lifted in foreign bribery enforcement actions; and ii) do not prevent the effective investigation and prosecution of foreign bribery offences [Recommendation 3(b)]. In Hungary, a large number of officials are immune from investigations and prosecutions – i.e., the President, Members of Parliament and members of several state bodies, such as the Constitutional Court. While recognizing that immunity is temporary and may be lifted (by Parliament or the President of the Republic), the WGB was not sure under what conditions the immunities would be lifted, and observed that, in over half of the cases in five years (2005-2010), requests by PPO to lift immunities had been rejected, although this was an improvement over previous practice. In addition, the WGB was concerned that, since persons under immunity could not be interrogated as suspects,⁵⁰ it might be difficult to enforce the foreign bribery offence against co-perpetrators that are not under immunity. At the end of the Phase 3 review cycle, Hungary had not taken any steps to implement Recommendation 3(b).

83. Since Phase 3, the legal framework on immunities has not been amended (Article 719 CCP). Hungary claims that, for legal reasons, the immunity framework does not impede foreign bribery enforcement.⁵¹ Hungary also claims that immunity is suspended in practice in all cases for Members of Parliament. Indeed, statistics show that between 2014 and 2018, PPO initiated motions for suspensions of immunity for MPs in four cases, all of which were granted.

84. At the on-site, MOJ and PPO confirmed that immunities do not apply to officials of SOEs. PPO also explained that in 70 per cent of the cases in which immunities had been applied, they involved judges and prosecutors for traffic crimes.⁵² PPO stated that immunities do not generally affect investigations, because, for instance, in tax evasion and budgetary fraud cases, CIOPPS will not go to Parliament and request the lifting of immunity until the investigation is almost complete.

⁵⁰ Immunity from interrogation does not apply to a person caught in the process of committing an offence.

⁵¹ Hungary points out that the statute of limitations is suspended while a person is under immunity. In addition, a person's immunity is lifted when s/he is no longer an official for which immunity applies.

⁵² Members of the diplomatic corps and politicians had obtained immunities to a lesser extent.

85. Following the on-site, the Hungarian authorities clarified that pursuant to CCP (Articles 719-720), an investigation may proceed when a person is under immunity; however, such a person cannot be subjected to coercive measures such as interrogation, or search and seizure of financial records. Information obtained through the investigation is then presented to Parliament to request the lifting of immunity. According to a prosecutor at the on-site, the level of evidence required for such a motion is quite high. The lead examiners consider that while the evidentiary burden might not prove to be too cumbersome for minor cases, such as traffic offences, it could present a major hurdle in cases involving complex financial investigations, such as foreign bribery. Moreover, a representative of a major human rights organisation said that the use of immunities is watched very closely, and should not apply to MPs.

86. Since the risk of bribery involving the categories of officials that are immune from investigation and prosecution would also pertain to the receiving or solicitation of bribery ('passive' bribery) the lead examiners also consider that there is a potential that the immunities might pose a challenge for responding to MLA requests when such officials are allegedly at the receiving end of foreign bribery offences involving other Parties to the Convention. Indeed, the Hungarian authorities confirm that, pursuant to Article 719 CCP, MLA requests for coercive measures can be executed as long as the requesting party is notified that immunities are involved. However, requests for coercive measures require that immunities be lifted through a motion by the prosecutor based on the evidence provided by the requesting party. (See also discussion on MLA under Section B.3.3.)

Commentary

Despite the reassurances of the Hungarian authorities that the immunities for specific Hungarian officials from investigations and prosecutions for foreign bribery would not interfere with implementation of the Convention, since there have not been any foreign bribery law enforcement actions since Phase 3, the lead examiners cannot assess that Phase 3 Recommendation 3(b) has been implemented. In addition, they consider that, in light of information about the high burden for obtaining a motion to lift immunity, that the recommendation be strengthened, and therefore recommend that Hungary take measures within its constitutional principles to ensure that allegations of foreign bribery involving persons benefitting from immunity can be appropriately investigated before submitting a motion to waive immunity. Moreover, since 'passive' bribery by officials that may benefit from immunities is also a risk, the lead examiners further recommend that Hungary take appropriate measures within its legal system to ensure that it can respond effectively to MLA requests from Parties to the Convention when such officials are allegedly at the receiving end of foreign bribery offences involving other Parties to the Convention.

Two-year investigation time-limit

87. In Phase 3, the WGB recommended that, Hungary extend the two-year investigation time limit for foreign bribery offences [Recommendation 3(f)]. At the time of Phase 3, although the statute of limitations for foreign bribery had been extended from three to five years, the investigative time limit remained at two years, which began to run when the accused was first interviewed by LEAs. As long as a suspect who was a natural person had not been identified and interviewed, the investigative time limit did not begin to run. Coercive actions, such as seizure of the suspect's bank records would also trigger the time limit. By the end of Hungary's Phase 3 review cycle, steps had not been taken to extend the two-year time limit for investigations, which the WGB considered too short in particular for large and complex foreign bribery cases. Recommendation 3(f) was therefore assessed by the WGB as not implemented.

88. Since Phase 3, a proposal to extend the investigative time limit was unanimously rejected by various stakeholders involved in the negotiation of the CCP, including high-level members of the judiciary, the PPO and Hungarian Bar Association. Instead, Hungary explains that the WGB's Phase 3 Recommendation 3(f) was taken into consideration through the CCP as follows:

- The investigation has been divided into two phases – detection and inspection. The detection phase (Articles 339-347 CCP) can be launched on the basis of any information and may last up to nine months. This new process is for the purpose of verifying the suspicions of a crime and whether it is necessary to launch an investigation.
- The inspection phase is two years from the time a person is arrested or interrogated as a suspect. It can be extended by the prosecutor once by a maximum of 6 months for any reason during the investigation stage. (Article 351) In addition, there is a possibility to suspend the investigation in limited certain circumstances, including for MLA. (Article 394).

89. The overall effect of these procedural changes provides the prosecution authorities with an extra nine months to conduct a preliminary proceeding. Once the suspect has been arrested or interrogated, an extra six months may be added without reason. In summary, although Hungary appears to have provided for more time to investigate allegations of foreign bribery, during the on-site, the Evaluation Team received mixed reviews about the overall impact of the changes. Although the nine-month preliminary proceeding may provide more time to build an investigative strategy, since the two-year inspection limitation begins to run as soon as the suspect is arrested or interrogated, according to a representative of GPO, there may be a tendency to postpone inclusion of the suspect in the process until as late as possible, with the result that crucial information is not collected. Moreover, the suspect does not have full due process guarantees until s/he is communicated with as a suspect.

90. Furthermore, it is not clear how much of an impact the extra six months would have on the capacity to investigate foreign bribery cases, especially large cases involving multiple jurisdictions and complicated corporate structures. And current resource constraints for CIOPPS are likely to diminish the potential impact of any extended time limits. (See discussion on resources for CIOPPS under B.3.2) Concerns in this regard were shared by the representative of GPO who stated that two years was definitely not adequate. Moreover, it is not clear how in practice the investigative time limits for natural persons would impact in practice on the liability of legal persons, to which they do not apply, since it would often be the case that a natural person(s) is also under investigation in relation to potential foreign bribery by a corporate entity, and evidence regarding the natural person's conduct would be integral to the investigation of the corporation.

Commentary

The lead examiners consider that, on the evidence available, the new two-phase investigative process will not materially enhance Hungary's ability to investigate and prosecute foreign bribery cases involving complex corporate structures and/or multiple jurisdictions. They therefore assess that Phase 3 Recommendation 3(f) remains unimplemented, and recommend that Hungary extend the two-year investigation time limit for foreign bribery offences in a manner that ensures that there is adequate time to apply investigative measures to natural person suspects including in highly complex multi-jurisdictional cases.

Substitute private prosecution procedure

91. Articles 787-817 CCP provide for a substitute private accusation procedure, pursuant to which, where the required legal conditions exist the victim of a crime may file a charge. Article 50 defines a "victim" as a natural or legal person "whose rights or legal interests were harmed or endangered directly by the crime". This right exists even where a crime falls under "public accusation". In view of the low level of enforcement of the foreign bribery offence in Hungary, the Evaluation Team explored the potential for enforcement actions pursuant to this mechanism.

92. The Hungarian authorities clarify that, the Hungarian Supreme Court very strictly limited the availability of the substitute private accusation procedure to cases where a crime involves a “victim” as either “a passive subject” or someone impacted by the “result(s) of the crime” (Opinion #90). The Hungarian authorities state that it is not possible to conduct a substitute private prosecution in foreign bribery cases, because, foreign bribery cannot involve a “victim” in the sense that it is defined pursuant to Opinion #90 of the Supreme Court. A representative of a major Hungarian law firm at the on-site supported this view, stating that, although Article 50 CCP provides a greater role to the victim of a criminal offence, bribery is a crime that does not involve a victim.

93. The lead examiners consider that the interpretation of “victim” afforded by the Hungarian authorities reflects a very outdated view of bribery as involving two parties that have agreed upon a corrupt deal. The lead examiners conjecture that Opinion #90 of the Supreme Court might feasibly include a competitor that has lost a contract to a company that bribed a foreign public official, or even citizens that have been harmed by a foreign bribery transaction that, for instance, results in severe environmental damage, displacement of populations, or accidents or fatalities. The lead examiners believe that such an interpretation could reverse the perception of foreign bribery as a victimless crime, providing Hungary with significant potential to address the damage caused by foreign bribery to innocent and vulnerable populations. (Also see the discussion on awareness-raising in the public sector under A.2.3t, and in the private sector under C.3 of this Report.)

Commentary

The lead examiners believe that the perception in Hungary of foreign bribery as a victimless crime does not accord with the reality, particularly for competitors and innocent civilians that potentially suffer significant harm as a result of such bribery. They therefore recommend that the Hungarian authorities consider whether the substitute prosecution procedure could feasibly apply to foreign bribery in cases where competitors and/or citizens have been harmed by such bribery, and thus might constitute ‘victims’ for the purpose of initiating the procedure.

Sanctions for foreign bribery

94. In Phase 3, the WGB considered that the sanctioning of foreign bribery could not be assessed, since no criminal penalty was applied under the new sanctions regime established in 2009. In addition, the WGB noted that the requirement to convict a natural person as a prerequisite to the liability of a legal person was an obstacle to the application of effective, proportionate and dissuasive sanctions to legal persons. The WGB thus decided to follow up on the application of sanctions by the courts in cases of foreign bribery, especially in cases against legal persons.

Available penalties

95. The sanctioning regime for natural and legal persons is fully discussed in the Phase 3 Report on Hungary (see pages 15-19). The type of sanctions available for natural persons convicted of foreign bribery has not changed since Phase 3 and includes imprisonment for up to three years under Article 293(1) CC, and 1 to 5 years under Article 293(2) CC where the purpose of the bribe is to obtain a breach of the foreign public official’s duty. However, the maximum amount of financial penalties was increased from HUF 108 million to 270 million (approximately EUR 300,000 to 800,000).⁵³

96. Under Act CIV of 2001, sanctions available for legal persons convicted of foreign bribery have also not changed since Phase 3, and in summary include fines of three times the financial advantage gained or intended to be gained, but a minimum of HUF 500 000 (approximately EUR 1545). If the benefit obtained from bribing a foreign public official is not financial, the court imposes a fine that takes into

⁵³ The estimated value of HUF in Euros in this Report is based on the conversion rate on 3 May 2019.

account the financial situation of the legal entity, but a minimum of HUF 500 000. Courts have a great degree of flexibility in determining the amount above the minimum threshold.

New developments regarding penalties

97. Since Phase 3, Hungary has introduced a new procedure called the “arranging of a settlement” (Articles 407-409 and 731-738 CCP), which is available for the offence of foreign bribery.⁵⁴ Before indictment, an agreement can be proposed by the defendant, the lawyer for the defendant, or the prosecutor. The prosecutor may also offer to initiate the settlement procedure before indictment, when the defendant is under investigation as a suspect. Although the defendant may choose to confess to committing a crime, the prosecutor only has discretionary power to engage in a settlement arrangement that is supported by the evidence. The defendant is entitled to legal counsel for this process. If an agreement is not reached, any communications relating to the process are not available as evidence at trial. If an agreement is reached, the prosecutor submits the agreement to the Court, which examines whether it meets the criteria in the CCP.⁵⁵ The Court may accept or reject the agreement, but may not amend it, and the decision of the Court may not be appealed. Moreover, there is no obligation to make public any element of such an agreement.

98. The new CCP also establishes a gradual system for encouraging confessions (available for the offence of foreign bribery), by providing the possibility to apply more lenient sanctions at different stages of the criminal procedure (during the investigation; during the preparatory hearing by the court at the beginning of the judicial trial; or after the preparatory hearing). The earlier in the process that a confession is offered, the more favourable the sanction. If the perpetrator does not confess during the investigation, the prosecutor may propose an appropriate penalty in the indictment, in the event that s/he confesses during the preparatory hearing at the beginning of the trial, in which case the Court cannot exceed the sanction proposal. Once the preparatory hearing is completed, a confession may be taken into account by the Court as a mitigating circumstance in determining the appropriate sanction.

Penalties applied in practice

99. Since Phase 3, no natural or legal person has been sanctioned for the bribery of foreign public officials in international business transactions. From 2014 to 2018,⁵⁶ 758 natural persons were convicted of the bribery of a domestic public official, with an average of approximately 152 natural persons convicted each year. It does not appear that any legal persons were convicted for domestic bribery during this period. Statistics on use of the new gradual system for encouraging confessions show that between 1 July 2018 and 15 May 2019, 127 cases were completed pursuant to the procedure, with six cases completed during the preparatory meeting. Hungary has not provided information about the sanctions imposed in these cases. It is therefore difficult to surmise whether they were “effective, proportionate and dissuasive”, and thus the data is not helpful for predicting the sanctions that would be applied in foreign bribery cases

Commentary

Since no sanctions have been applied to natural or legal persons since Phase 3 for the bribery of foreign public officials in international business transactions, it is not possible to assess whether in practice such sanctions are “effective, proportionate and dissuasive” in compliance with the Convention. In addition, in the absence of foreign bribery enforcement actions, it is not possible to assess the potential

⁵⁴ The arranging of a settlement procedure must be confirmed by a judge.

⁵⁵ The Court must be satisfied that the defendant understood the nature and consequences of the settlement and that the confession was clear and supported by the evidence.

⁵⁶ The database for 2018 is not closed. The offences under the CC for which the data has been collected are: Articles 293, 294, 295 and 296 of the new CC, and 250, 253 and 255 of the previous CC.

impact on sanctions of two new important processes that have been introduced since Phase 3 -- the settlement procedure and the gradual system for encouraging confessions. The lead examiners therefore recommend that the WGB continue to follow up on the application of i) sanctions imposed by the courts in cases of foreign bribery, ii) the impact of the new settlement procedure for foreign bribery cases, including whether such settlements are transparent and available to the public, and the resulting penalties are “effective, proportionate and dissuasive”; and iii) the gradual system for encouraging confessions.

Confiscation

Confiscation on conviction of foreign bribery

100. In Phase 3, the WGB recommended following up whether in practice both the bribe and the proceeds of bribing foreign public officials are subject to seizure and confiscation or that monetary sanctions of a comparable effect applicable, in compliance with the Convention. The WGB noted in Phase 3 that out of the 26 individuals convicted of foreign bribery in 2006, only one of them was subject to confiscation measures. (These convictions all took place in relation to the same case. Further information about this case can be found in A.3 of this Report.) In addition, regarding the conviction where confiscation was applied, the proceeds of the bribery transaction were confiscated, but not the bribe. In Phase 3, CIOPPS admitted that expertise on the use of confiscation needed to be enhanced, citing difficulties in this respect due to a low number of foreign bribery cases and difficulties interpreting the relevant legal provisions. The WGB also noted that statistics on confiscation in domestic bribery cases were not sufficiently comprehensive. Overall, the WGB was unsure how confiscation worked in practice in Hungary.

101. The legal and institutional framework on confiscation and asset recovery for natural persons has been enhanced since Phase 3. Pursuant to Article 74/A CC,⁵⁷ all assets obtained by the perpetrator in the commission of any of the listed offences (including foreign bribery) within five years preceding the start of the criminal proceedings, must be confiscated, if the size of the assets and the lifestyle of the perpetrator are considered unreasonably disproportionate according to the lawful income and personal circumstances of the perpetrator. Confiscation may not be ordered if the perpetrator provides evidence that the assets do not represent the proceeds of crime.

102. Since Phase 3, asset recovery and financial investigations with a view to victim compensation and confiscation have been given more visibility, resources and tools. In 2015, the Asset Recovery Office (ARO) was given more operational autonomy within the Police and assigned a number of exclusive functions, including assisting investigating bodies and prosecutors in tracing criminal assets; recovering assets after a court has passed a final judgment; and conducting independent investigations. ARO’s human resources doubled to 72 since 2017. In 2015, the Deputy Prosecutor General issued a circular, which is binding on prosecutors regarding the obligation under CC to trace and secure all illegal assets. Furthermore, an Internal Order of the Prosecutor General [12/2018 (VI. 28.)] provides detailed instructions on how prosecutors should carry out asset recovery in investigations. In addition, since 2016, ARO has provided training on asset recovery techniques to the staff of other investigating bodies, as well as prosecutors and magistrates. In 2018, ARO drafted a detailed manual on asset recovery, which was circulated across the LEAs in printed and electronic format. A condensed version focusing on specific offences is under preparation. The manual addresses asset recovery in a general and comprehensive way, but not specifically recovery of the proceeds of foreign bribery.

⁵⁷ The confiscation regime for natural persons was enhanced pursuant to Act CIII of 2016 amended the CC to implement Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

103. The Hungarian authorities explain that pursuant to Article 74(2) CC, forfeiture of assets obtained from the commission of a crime that enriches an economic organisation is mandatory upon the conviction of a legal person.⁵⁸ In addition, Article 6 of Act CIV of 2001 provides for fines for legal persons up to three times the financial advantage gained or intended to be gained through the criminal act. (See the discussion above on fines for natural and legal persons.) Article 74(2) CC on asset forfeiture applies to the assets of “economic organisations”.

Confiscation in practice

104. The Hungarian authorities report that, since Phase 3, the number of convictions in which confiscation of property and confiscation has been imposed has been increasing. The data provided by Hungary (See Table 4 below) does indeed show an increase in the rate of confiscation of property from 2013 to 2018, but the data on confiscation in general shows a less consistent increase over the same period. In addition, the data does not identify the amounts confiscated or the offences for which confiscation was imposed. Hungary explains that the relevant agencies⁵⁹ do not have access to national statistics with this level of information. It is therefore difficult to draw a conclusion regarding the effectiveness of confiscation in domestic bribery cases, and thus the data is not helpful for predicting how confiscation would be imposed in foreign bribery cases. Moreover, in the absence of prosecutions of foreign bribery since Phase 3, it is not possible to assess the effectiveness of the provisions on confiscation in practice in foreign bribery cases.

Table 2. Number of convictions in which confiscation and confiscation of property was imposed⁶⁰

Penalty	2013	2014	2015	2016	2017	2018
Confiscation of property	3 498	4 269	4 506	4 419	4 596	4 373
Confiscation	1 230	1 661	1 407	1 536	1 544	1 425

Commentary

The WGB notes the steps taken by Hungary since Phase 3 to enhance its capacity to effect asset recovery and confiscation. However, in the absence of foreign bribery cases, as well as statistics specifically on confiscation in domestic bribery cases, it is not possible to assess whether confiscation of the bribe and proceeds of bribing foreign public officials is effective in practice in Hungary.

The lead examiners therefore recommend that the WGB continue following up in practice whether Hungary routinely applies effective confiscation or monetary sanctions of comparable effect to legal and natural persons on conviction for foreign bribery in compliance with Article 3.3 of the Convention. In addition, the lead examiners recommend that Hungary compile data specifically on confiscation in domestic and foreign bribery cases, including i) the amounts and value of property confiscated, and ii) the percentage of such cases in which confiscation is imposed.

⁵⁸ Article 74(2) CC states: “Any assets resulting from the commission of a criminal offence obtained by the perpetrator in the course of or in connection with a criminal offence shall be forfeited even if they served to enrich another person. If the assets served to enrich an economic organisation, forfeiture of assets shall be ordered against the economic organisation”.

⁵⁹ Rapid Response and Special Police Services, National Bureau of Investigation, and Asset Recovery Office.

⁶⁰ The database for 2018 is not closed.

2.3.3. *International cooperation*

105. In Phase 3, the WGB stated that the effectiveness of Hungary's system for executing MLA requests regarding foreign bribery could not be assessed since such requests were exceptionally rare.⁶¹ The WGB therefore agreed to follow up future practice in this area, and also recommended that Hungary put in place a mechanism to compile comprehensive annual statistics on all incoming and outgoing MLA and extradition requests relating to foreign bribery [Recommendation 4]. The WGB further agreed to follow up Hungary's measures to make MLA available to all Parties to the Convention in cases involving administrative or civil proceedings against legal persons for foreign bribery.

106. Since Phase 3, a number of new measures have been introduced in order to facilitate MLA. The Hungarian authorities report that Act XXXVIII of 1996 on International Legal Assistance in Criminal Matters was amended in 2016 and 2017 to reflect practitioners' experience. Now, pursuant to Article 13 of the Act, Hungary has the authority to extradite Hungarian nationals to non-EU countries, under certain circumstances.⁶² In 2017, Hungary also transposed the EU Directive on the European Investigation Order (EIO),⁶³ which replaces existing measures for MLA between EU Member States. Pursuant thereto, the MLA process is more streamlined – it introduces mutual recognition of Member States' judicial decisions, standardised forms for requests, and time limits for responding (90 days in principle). Furthermore, Hungary has ratified the 2001 Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe (ETS 182), which provides for clearer rules on providing and requesting MLA in the absence of an international treaty or reciprocity, while taking into account data protection principles. Additionally, Hungary stresses that it has begun to more frequently use Joint Investigation Teams (JITs) in cross-border organized crime cases.

107. Despite the aforementioned enhancements to Hungary's system for MLA, Hungary has not yet established a mechanism for compiling comprehensive statistics on all MLA and extradition requests relating to foreign bribery.⁶⁴ Thus, data compiled by Hungary on incoming and outgoing MLA requests regarding foreign bribery are still not available. However, pursuant to the Phase 4 procedure, the WGB requested input from all the Parties to the Convention regarding their experience in obtaining MLA from Hungary for foreign bribery cases. Responses were received from fourteen Parties to the Convention, which showed that, since Phase 3, Hungary has executed at least thirteen MLA requests related to foreign bribery offences from three Parties to the Convention, as well as one follow-up request. Overall, Hungary

⁶¹ As noted in Phase 3, in Hungary, the competent authorities to provide MLA and extradition are MOJ and the GPO. Rules are laid down in domestic law, EU instruments and bilateral and multilateral treaties, and apply to the foreign bribery offence. Hungary can provide a broad range of types of assistance, including extradition and procedural legal assistance (e.g. searches, hearing suspects and witnesses, seizure and confiscation).

⁶² For instance, in order to be able to extradite a Hungarian national, s/he must also be a citizen of another State and have their residence in a foreign State.

⁶³ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0041>

⁶⁴ In 2016, MONEYVAL also criticized Hungary's "enduring lack of comprehensive and reliable statistics" maintained in relation to MLA and extradition as well as the "obsolete case management system operated by respective central authorities for MLA as well as the courts. See: MONEYVAL, Mutual Evaluation Report of Hungary, December 2016, available at:

<http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MER-Hungary-2016.pdf>. The December 2018 concluded that the deficiency has not been addressed. See: MONEYVAL, 2nd Follow-Up Report, December 2018, available at:

<https://rm.coe.int/committee-of-experts-on-the-evaluation-of-anti-money-laundering-measur/1680932f59>)

appears to be performing well in facilitating MLA to Parties, which mostly praised the timely, comprehensive and good quality of assistance provided by Hungary in relation to both foreign bribery and other offences.

108. However, two Parties reported difficulties obtaining MLA from Hungary for foreign bribery offences. One Party mentioned delays in the provision of assistance, for unspecified reasons. The other stated it had encountered delays and difficulties obtaining MLA in the form of testimony from a Hungarian national.

109. In addition, during the on-site, a prosecutor informed the Evaluation Team about an instance when MLA was refused to a non-Party investigating a foreign bribery case, because provision of MLA in this specific case would have potentially harmed national economic interests and was deemed to constitute a threat to national security. Pursuant to Article 2 of Act XXXVIII of 1996, Hungary may, *inter alia*, refuse to provide MLA or execute an extradition request when execution thereof would prejudice the sovereignty, security or public order of Hungary. The non-Party requested the seizure of original documentation and hearing of witnesses regarding an entity. The assessment regarding the threat to national security was made by NSO,⁶⁵ on request by GPO.

110. The Hungarian authorities explain that prosecutors are not formally required to consult with the Constitutional Protection Office (CPO) before executing an MLA request; however, since CPO has exclusive competence to evaluate national security risks, prosecutors do not have the option to deviate from CPO's assessments. Additionally, the practice of consulting CPO seems well established. Indeed, some international MLA instruments allow countries to deny assistance based on national security considerations,⁶⁶ and most of Hungary's bilateral MLA treaties contain a national security exception. Moreover, the Convention does not address this issue in respect to MLA.

111. The lead examiners believe that the process regarding national security concerns could be more transparent, including criteria on what constitutes a threat to national security for providing MLA, so that Hungary can demonstrate that this does not hinder its capacity to provide MLA effectively. A prosecutor at the on-site indicated that harm to national economic interests could in some circumstances constitute a threat to national security for the purpose of providing MLA. Following the on-site, the Hungarian authorities clarified that this is an issue within the competence of CPO. But they also stated that CCP does not provide any rule that would enable the national economic interest to be considered in the investigation or prosecution of a criminal offence.

112. Finally, since Phase 3, Hungary has not received an MLA request from any Party to the Convention for foreign bribery involving administrative or civil proceedings against legal persons. The lead examiners are therefore not in a position to assess Hungary's practice in this respect.

Commentary

The lead examiners welcome the recent measures taken by Hungary to reinforce its legal framework on MLA and extradition, and take note of the overall positive feedback received from other Parties to the Convention on cooperation provided by Hungary in foreign bribery cases. However, Hungary has not implemented Phase 3 Recommendation 4 to compile comprehensive annual statistics on all incoming and outgoing MLA and extradition requests relating to foreign bribery, which therefore remains unimplemented. The lead examiners also note that one Party faced challenges obtaining MLA from

⁶⁵ The National Security Office is the predecessor of today's Constitutional Protection Office (CPO).

⁶⁶ See, for instance, the Council of Europe's Convention on Mutual Assistance in Criminal Matters of the Council of Europe (ETS 30) or the EIO Directive.

Hungary in the form of testimony from a Hungarian national, and Hungary denied an MLA request from a non-Party due to a threat to national security.

The lead examiners therefore reiterate Phase 3 Recommendation 4 that Hungary compile comprehensive annual statistics on all incoming and outgoing MLA and extradition requests relating to foreign bribery. The lead examiners also recommend that Hungary adopt appropriate measures to respond without undue delay to MLA requests regarding information about Hungarian nationals, and that Hungary ensure that the reasons for refusing MLA are interpreted in line with Article 9.1 of the Convention. .

2.3.4. Article 5 considerations

New administrative court system

113. In December 2018, the Hungarian Parliament adopted a legislative package for the establishment of an administrative court system, which will become operational in January 2020.⁶⁷ Going into the on-site, the Evaluation Team was aware of concerns, largely reported by the media, about the jurisdiction of the new system.⁶⁸ These concerns arose from the broad wording in the new law about the jurisdiction of the administrative courts – i.e., “(they) shall act and decide on administrative disputes and by law other matters referred to the jurisdiction of the administrative courts”, and the power of MOJ to appoint judges in both the new lower administrative courts and the Administrative High Court. MOJ will also control the court’s budget and judicial promotions. The Evaluation Team therefore sought clarity on whether jurisdiction over the foreign bribery offence or jurisdiction of the liability of legal persons might be transferred to the new administrative court system.

114. At the on-site, a representative of GPO stated that the sanctions for legal persons that commit the bribery of foreign public officials are essentially administrative in nature, and that no one can say for certain at this stage whether competence for the liability of legal persons for foreign bribery would eventually be transferred to the new system. A long established NGO in the field of human rights voiced serious concerns about the independence of the new administrative court system, and whether it would be able to adjudicate impartially on cases involving political sensitivities. The same NGO believed it was possible that jurisdiction over the liability of legal persons for criminal offences, including foreign bribery, could be transferred to the new system, but acknowledged that so far there had been no announcement to this effect. On the other hand, the representative of a major international law firm thought it was unlikely that jurisdiction over the liability of legal persons for offences, including foreign bribery, would be transferred to the new court system.

115. During the on-site, the Evaluation Team was provided with assurances from MOJ that the new administrative court system would never have competence in foreign bribery cases, including the liability of legal persons for such bribery.

⁶⁷ The package comprises two bills – T/3353 establishes a system of administrative courts, T/3354 provides for transitional measures.

⁶⁸ For instance, the New York Times stated that the new administrative court system will have jurisdiction “in politically sensitive matters such as electoral law, corruption and the right to protest” [*Hungary Creates New Court System, Cementing Leader’s Control of Judiciary* (B. Novak, P. Kingsley, New York Times, 12/12/2018)]: <https://www.nytimes.com/2018/12/12/world/europe/hungary-courts.html>

Commentary

The lead examiners have noted the concerns raised about the independence of the new administrative court system. They also note assurances that foreign bribery cases will remain under the jurisdiction of the criminal courts. However, given the importance of the issue, the lead examiners recommend that the WGB follow up on whether the new administrative court system has any impact on the investigation and prosecution of the offence of foreign bribery.

Appointment of judges to adjudicate specific cases

116. At the on-site, a major human rights NGO informed the Evaluation Team that the Chair of the Administrative Court System has the power to designate judges to specific cases, and transfer cases from one judge to another. MOJ clarifies that, pursuant to section 32 of the Case Administration Decree, the power to assign cases belongs to the president of each individual court. In addition, the president of each court is not entitled to withdraw a case from a lawful judge pursuant to the legislation that is currently in force.

117. Previously, pursuant to legislation that was repealed in August 2013, the NOJ President could transfer a case to another court with the same competence, but only in exceptional circumstances, such as a more even caseload distribution. Under the current regulatory regime, section 8 of Act CLXI of 2011 on the Organisation of the Administration of the Courts establishes the basic rule that a case assigned to a judge may not be transferred to another judge.⁶⁹ Furthermore, section 31 of the Rules of the Case Administration of Courts [Decree No. 14/2002 (VIII.I) IM]⁷⁰ provides the methods for allocating cases to judges. Most of the rules are highly technical in nature (e.g., allocation depends on case numbers, initials of the accused, and division of the geographical jurisdiction of the courts). The other Rules concern the allocation of cases based on the specialisation of judges, and the length of their experience. Pursuant to section 32 of the Case Administration Decree, a case may only be transferred from one judge to another in the following situations: 1) the judge is excluded pursuant to the allocation methods in section 31; 2) the judge's term of office has expired; 3) s/he is permanently absent; 4) s/he is absent for the duration of the case; 5) transferring the case is necessary to ensure an equal division of work; and/or 6) transferring the case is necessary to relieve case backlogs.

Commentary

The lead examiners recommend following up how in practice the presidents of the individual courts allocate cases of foreign bribery to judges pursuant to the Rules on the Case Administration of Courts, including in particular criteria for allocating and transferring cases that may provide for greater discretion, such as regarding the specialisation and experience of judges, and the need to relieve case backlogs.

⁶⁹ Section 8(1) Act CLX1 of 2011 states that “no one can be deprived of his right to a lawful judge”. Section 8(2) states that “the judge to be appointed (to) a case in due course of the law shall be selected from the panel of judges of the court vested with competence and jurisdiction according to the case allocation rules”.

⁷⁰ Section 10(1) of Act CLXI of 2011 grants authority to the President of NOJ to prepare public case allocation rules.

Power of senior prosecutors over the decisions of subordinate prosecutors

118. At the on-site, a major anti-corruption NGO stated that the Prosecutor General has the authority to reassign a foreign bribery case from one prosecutor to another.⁷¹ The same NGO drew the Evaluation Team’s attention to the 2015 GRECO Evaluation Report,⁷² which highlights the need for adequate checks and balances on the appointment of the Prosecutor General⁷³ to ensure the proper assignment of cases to subordinate prosecutors.⁷⁴ Based on the recommendations by GRECO, the Order of the Prosecutor on the structure and functioning of PPO has been amended, and now, the reassignment of a case to another prosecutor must be recorded in writing in the file, with an explanation of the reasons for the decision.

119. The Evaluation Team considered the circumstances under which a senior prosecutor could annul a decision by a subordinate prosecutor. Pursuant to an amendment made on 1 January 2019 to the Law on the Prosecution Service, decisions regarding criminal proceedings can only be based on CCP. MOJ stresses that this amendment does not introduce any changes to the power of senior prosecutors over subordinate prosecutors. It was already the case that the senior prosecutor had the duty to decide whether the decision taken by the subordinate prosecutor should be accepted. MOJ also cites Article 195 of the previous CPA, which provided “anyone” directly affected by a decision of the prosecutor or investigative authority with the right to challenge the decision within eight days of notification. Before July 2011, the right to challenge a prosecutorial or investigative decision to dismiss, discontinue or suspend a case was limited to “the victim of the crime”. In 2014, the right to challenge such a decision was expanded to include a central administrative authority, if it was a ‘denouncer’. In 2018, the right was further expanded to include the suspect, defendant, a stakeholder with pecuniary interests and other stakeholders.⁷⁵

120. Pursuant to Article 398 CCP, the grounds for terminating an investigation include inadequate evidence that any crime was committed, death of the perpetrator, or the act in question does not constitute an offence. GPO explains that essentially, the decision of a subordinate prosecutor may only be annulled when it is unlawful or unfounded. In addition, when a senior prosecutor decides that an investigation or prosecution should be terminated, etc., the decision must be made in writing along with the rationale.⁷⁶

⁷¹ Pursuant to the Law on the Prosecution Service (Article 13(1) of the Act CLXIII of 2011), the senior prosecutor has the authority to assign a given case to another prosecutor.

⁷² Group of States against Corruption (GRECO), 4th Round Evaluation, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6b9e>

⁷³ The GRECO report attributes its concerns about the need for adequate checks and balances to the following features of the Hungarian prosecution system: 1) its strict hierarchical structure; 2) the potential to re-elect the Prosecutor General; and 3) possibility to politically block the election of a new prosecutor general with a minority vote in Parliament, in which case the sitting PG will remain in office after the expiry of her/his mandate; and 4) the need for more transparency regarding disciplinary proceedings for prosecutors.

⁷⁴ On 1 March 2019, GRECO issued a press release in which it stated that Hungary still needed to implement its recommendation to “provide strict criteria on the removal of cases from public prosecutors”: https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680933b49

⁷⁵ Pursuant to Article 369 CCP, stakeholders with pecuniary interests and other stakeholders may put forward a complaint against a decision that has a “direct effect on him or her”.

⁷⁶ Article 363 regulates the structure and obligatory content of the senior prosecutor’s decisions in the regard. Furthermore, Article 363 provides that the decision by a senior prosecutor to terminate an investigation must be adopted in the form of a resolution and should include the rationale.

Commentary

The lead examiners recommend following up how in practice senior prosecutors apply Article 398 CCP when determining whether to: i) annul the decision of a subordinate prosecutor to investigate or prosecute a case of the bribery of foreign public officials; and ii) transfer a foreign bribery case from one prosecutor to another.

Statistics and Data Collection on Foreign Bribery Investigations

121. In Phase 3, the WGB recommended that Hungary gather statistics on the number of foreign bribery investigations that lead to prosecution or are discontinued, along with information about investigatory measures taken in and grounds for discontinuance of any foreign bribery investigations [Recommendation 3(d)]. This recommendation arose because of the WGB's concerns in Phase 3 that an investigation of foreign bribery had been terminated in Hungary while proceedings continued in the country of the foreign public official who allegedly received a bribe in exchange for providing an advantage to a Hungarian company in international business. The aim of Recommendation 3(d) was to assist the WGB in determining whether the discontinuance of investigations and prosecutions met the standard under Article 5 of the Convention.⁷⁷ By the end of the Phase 3 review cycle, the WGB considered this recommendation partially implemented, because it was satisfied that Hungary was maintaining the relevant statistics for domestic bribery cases, as well as on some of the coercive investigative measures used in such cases. However, in the absence of new foreign bribery enforcement actions, it was not possible to assess Recommendation 3(d) as fully implemented.

122. Hungary has provided extensive information about the case that gave rise to Recommendation 3(d), including the reasons for terminating the investigation. Hungary has also provided information about the reasons for terminating a case that was suspended at the time of Phase 3. (Further information about cases is provided in the Introduction to this Report.)

Commentary

Hungary has provided the Evaluation Team with updated relevant information about foreign bribery investigations – one that had been terminated and the other suspended – at the time of Phase 3. The lead examiners therefore consider Phase 3 Recommendation 3(d) fully implemented.

⁷⁷ Article 5 of the Convention states: "Investigation and prosecution of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved".

3. RESPONSIBILITY OF LEGAL PERSONS

3.1. Summary of outstanding and new issues

123. At the end of the Phase 3 review cycle of Hungary, WGB recommendations on the following matters related to corporate liability for foreign bribery remained outstanding: 1) the responsibility of legal persons when the bribe is not given for the benefit of a specific legal entity; 2) the responsibility of legal persons when a high level manager does not adequately supervise a lower level person; and 3) the need for additional training for prosecutors, judges and law enforcement on the application of the foreign bribery offence to legal persons. This part of the Report addresses progress on implementing these recommendations, as well as measures taken by the Hungarian Administration to encourage companies to adopt internal controls, ethics and compliance programmes and measures. Progress on implementing recommendations to increase awareness of foreign bribery in the private sector is addressed in this Report under Section C.3.

3.2. Corporate liability

3.2.1. Legal issues

Liability when bribe not given for benefit of specific legal entity

124. In Phase 3, the WGB recommended that Hungary remove the requirement that a bribe must have aimed at obtaining or have actually resulted in obtaining a benefit for the specific legal entity [Recommendation 2(b)]. This recommendation originally arose in Phase 2, and was not implemented by the time of Phase 3. It was the opinion of the WGB that the scope of the Convention is not restricted to bribery perpetrated for the benefit of the entity giving the bribe. By the time of the Phase 3 Two-Year Written Follow-Up Report, Hungary amended Act CIV of 2001 on the liability of legal persons so that it also covered the case where the foreign bribery offence was committed “with the use of the legal entity”, for the purpose of implementing Recommendation 2(b). However, the WGB assessed this recommendation as only partially implemented in the absence of supporting case law.

125. Since Hungary has not adjudicated a case of foreign bribery since Phase 3, it is not able to demonstrate that the amendment for implementing Recommendation 2(b) effectively addresses the situation where a legal entity offers, promises or gives a bribe to a foreign public official on behalf of another legal entity, such as a parent company or subsidiary. In addition, an MOJ representative at the on-site was not aware of the application of Act CIV of 2001 to a domestic bribery case. However, the same MOJ representative was certain that the case would be covered where a legal entity acts as an intermediary and bribes in order to benefit another legal person.

Commentary

The lead examiners assess that Recommendation 2(b) remains partially implemented, in the absence of case law demonstrating that the amendment to Act CIV 2001 effectively covers the case where a bribe is offered, promised or given by one legal entity on behalf of another. Given that an amendment has been made and that supporting case law is needed to show whether it is effective in practice, the lead examiners recommend following up whether in practice Act CIV 2001 covers this case.

Liability when there is failure to supervise

126. In Phase 3, the WGB also recommended that, with regard to the liability of legal persons for foreign bribery, Hungary consult with Hungarian businesses to establish minimum standards on the appropriate supervision by persons whose actions can subject a legal person to liability for foreign bribery [Recommendation 2(c)].⁷⁸ This recommendation was originally made in Phase 2, when the WGB recommended that Hungary “consider” establishing minimum standards on what constitutes “appropriate supervision” by such persons. By the time of Hungary’s Phase 3 Two-Year Written Follow-Up Report, Recommendation 2(c) had not been implemented.

127. Hungary explains that in November 2017 it organised a conference for business on Act CIV of 2001. However, it does not appear that the conference included a consultation on what is meant by “appropriate supervision”. An academic at the on-site stated that the concept of “appropriate supervision” is not clear, and raises questions about the *mens rea* needed to trigger liability under CIV of 2001. A major international company with a subsidiary in Hungary in the transportation equipment sector also felt that the law could be clearer in this respect. A representative of GPO stated that the standard of “adequate supervision” could help drive compliance, but clarity is needed on what it entails.

Commentary

Phase 3 Recommendation 2(c) to consult with the private sector to establish minimum standards on what constitutes “appropriate supervision” has still not been implemented. Moreover, there is confusion about what this standard entails, which the lead examiners believe could be an obstacle to the effective enforcement of the liability of legal persons for foreign bribery offences. The lead examiners therefore recommend that Hungary take appropriate steps to clarify the standard of “appropriate supervision” under Act CIV of 2001 to ensure the effective implementation of the foreign bribery offence to legal persons, and certainty on the part of the private sector on what compliance measures need to be adopted to prevent such bribery.

3.2.2. Use of corporate liability by law enforcement authorities

128. In Phase 3, prosecutors at the on-site stated that it was not “established practice” to indict legal persons involved in criminal wrongdoing. In addition, differences were observed in how judges and prosecutors approached the liability of legal persons in different regions. The WGB therefore recommended that Hungary provide additional training to judges, prosecutors and law enforcement authorities. on the application of the foreign bribery offence to legal persons. [Recommendation 2(d)] By the end of Phase 3, the WGB assessed Recommendation 2(d) as partially implemented due to trainings provided to prosecutors; although these did not all target foreign bribery or the liability of legal persons.

⁷⁸ Act CIV of 2001 states that a legal entity may be liable for foreign bribery if its member or employee bribes a foreign public official and the bribery “could have been prevented by the executive officer, the managing clerk or the supervisory board by fulfilling his/her/its supervisory or control obligations”.

129. At the Phase 4 on-site, the lead examiners determined that the single most serious challenge facing the Hungarian authorities regarding implementation of the Convention is the reluctance for various reasons to apply the liability of legal persons to foreign bribery cases in practice.

130. At the on-site, a major NGO in the anti-corruption field was not aware of any case in which a company had been found criminally responsible for bribery of any kind. An academic stated that criminal responsibility was not used in practice for corruption cases because sometimes there are other means for addressing the wrongdoing, such as through proceedings for tax evasion. A representative of a major law firm stated that the liability of legal persons is an “alien” concept in Hungary, and is no longer taught at law schools because it is simply not used. Another major international law firm stated that it had not been applied in practice. A major Hungarian corporate group in the energy sector was not aware of any prosecutions of companies in Hungary for corruption. MOJ was also not aware of such a case.

131. The perception held by the participants at the on-site that the liability of legal persons is not being used for corruption offences, was confirmed by GPO. One GPO representative active in corruption prosecutions stated that over the last three to four years, use of the liability of legal persons by GPO has halved, to the point that it is “practically extinct”. GPO further explained that such liability is not effective because there are ample opportunities for a company to “disappear” before criminal proceedings against it have been completed. Moreover, if such proceedings result in the company declaring bankruptcy, innocent people will be harmed.

132. The GPO representative with extensive experience prosecuting corruption cases further stated that because Hungarian companies are not extensively involved in exports and foreign investments, there are very few cases of foreign bribery to detect. He confirmed that the Hungarian law enforcement apparatus is not addressing the potential for foreign subsidiaries located in Hungary to engage in foreign bribery in relation to their substantial transborder economic activities, particularly with neighbouring countries. The representative of a major law association stated that the Hungarian authorities do not target cross-border criminality perpetrated by legal persons. Also see the discussion in the Introduction of this Report about Hungary’s role as is a hub for foreign companies conducting business in the region, and discussion under A.2.1 about the potential for Hungary to become a weak link in global foreign bribery enforcement because it is not addressing the risk of foreign bribery by foreign subsidiaries.

133. As will be seen in the discussion below regarding engagement with the private sector, the absence of risk of enforcement of the foreign bribery offence against Hungarian companies may have led to a very low level of compliance in this area, at least with regards to indigenous companies.

Commentary

The lead examiners identify the non-use of the liability of legal persons as the single most serious challenge facing the Hungarian authorities regarding implementation of the Convention. The relevant provisions of Act CIV appear to have been introduced primarily to achieve technical compliance with international obligations, but there appears to be little will to implement them in practise. Indeed, the Hungarian authorities have been reluctant to use such liability for various reasons, including how it could impact on innocent stakeholders, and the risk that a legal person would dissolve before the termination of proceedings. The lead examiners also note that Hungary has not to date addressed the risk of foreign bribery by Hungarian companies, in particular by foreign subsidiaries choosing to locate in Hungary to conduct trans-border economic activities in neighbouring countries. The lead examiners therefore assess that Phase 3 Recommendation 2(d) remains only partially implemented, and recommend that Hungary take the following measures:

- a. Consider making it mandatory to seek sanctions for legal persons found to have committed foreign bribery under Act CIV of 2001, at least in appropriate circumstances;*
- b. Establish internal guidelines on the circumstances in which it would be appropriate for prosecutors to seek sanctions against legal persons for foreign bribery, and a clear commitment to do so when the criteria are satisfied; and*
- c. Review Act CIV of 2001, in consultation with business, NGOs and the legal profession, to identify possible opportunities to improve the clarity and efficacy of the law on the liability of legal persons in relation to the foreign bribery offence.*

3.3. Engagement with the private sector

134. In Phase 3, the WGB recommended that Hungary reinforce measures to raise awareness about foreign bribery targeting the private sector and provide practical guidance about risks of an measures to prevent foreign bribery to the private sector [Recommendation 7(b)(i) and (ii)].⁷⁹ The WGB also recommended that Hungary take measures to encourage companies, especially SMEs, to develop internal controls, ethics and compliance measures for the prevention and detection of foreign bribery [Recommendation 5(c)]. At the time of Phase 3, no measures had been taken by the Hungarian government in this respect. By the end of the Phase 3 review cycle, Hungary had not conducted any awareness-raising activities for the private sector, but was developing a briefing program and brochure for Hungarian businesses. The WGB stated that these planned measures should specifically address foreign bribery risks, and assessed Recommendation 7(b) as partially implemented. Moreover, at the time of Phase 3, the Hungarian government had not taken any steps to raise awareness of the need for compliance programmes to prevent and detect foreign bribery. By the end of Phase 3, Recommendation 5(c) was also assessed by the WGB as partially implemented because of limited steps taken by Hungary, as well as plans by the Hungarian Export Promotion Agency (HEPA) in cooperation with MOJ to implement an awareness-raising programme to encourage Hungarian businesses to adopt compliance measures.

135. Hungary reports that since Phase 3, HEPA provided trainings that included a component on foreign bribery as follows:

⁷⁹ Recommendation 7(b)(i) and (ii) also targets awareness-raising within the public sector, which is addressed under Section A.2.3 of this Report.

- From 2014 to 2018, 120 trainings, including case studies, were held, reaching 2256 individuals representing 1959 SMEs.
- An online course was launched, which covers the definition and main characteristics of foreign bribery. The course is interactive and has so far been taken by 200 representatives of SMEs.

136. In addition, NPS held a conference for the private sector in November 2017 on the liability of legal persons under Act CIV of 2001, which included a presentation on foreign bribery.⁸⁰ In addition, two indigenous Hungarian transportation companies that participated in the on-site had received advice from NPS on handling corruption risks in relation to gift giving. However, information has not been provided about awareness-raising or training activities for the private sector by other government agencies, including MFA. Furthermore, the companies that participated in the on-site had not participated in and were not aware of any awareness-raising or training activities provided by the Hungarian government regarding the offence of foreign bribery, or how to establish effective compliance measures for preventing and detecting such bribery.

137. At the on-site, indigenous companies with exporting activities generally assessed that they were at low risk of bribing foreign public officials, and had not, as a result, established comprehensive compliance measures for managing foreign bribery risks. An association that represents Hungarian companies in the forestry sector believes that the risk of foreign bribery in the importation of forestry products from neighbouring countries is adequately handled by intermediaries. A Hungarian company in the agriculture sector also did not perceive an important risk of foreign bribery in relation to its participation in international trade chains. A major Hungarian SOE in the transportation sector, which is cooperating with China on a special project, did not report having a full compliance programme for managing foreign bribery risks, but has a code of ethics that includes a policy on gifts. Despite the project with China, it did not consider that it participates in international business. Another Hungarian company in the transportation sector believes that its exposure to foreign bribery risks is very low because its clients are mostly in the EU, and its relationships are “extremely” regulated. In any case, it has adopted a three-tiered protective line, involving control, compliance and internal audit. It holds awareness raising activities several times a year, and its code of ethics is available online.

138. A Hungarian company in the energy sector that deals with foreign suppliers did not report having in place a full compliance programme for managing foreign bribery risks, but relies instead on a code of ethics. It considers that there is no discretion involved in the foreign procurements in which it participates, and that its foreign bribery risks are also diminished because it is supervised by two government agencies. A major Hungarian financial services provider with subsidiaries in several countries relies on a code of ethics, and a clear message from the Chair of the Board that corruption is not tolerated. None of these companies had any experience in detecting foreign bribery in their operations, and all of them considered the risk within EU countries as very low.

139. Subsidiaries of MNEs that participated in the on-site all had compliance programmes for preventing corruption, but the lead examiners question the effectiveness of these programmes. One MNE in the retail sector with a parent in the United Kingdom is audited internally by the UK headquarters. The company delivers products outside Hungary, mainly in the EU, and has contacts with Chinese suppliers. It does not consider the risk of foreign bribery to be high in its cross-border transactions. Employees are

⁸⁰ The presentation was given by a legal expert from MOI, and covered case studies, and the legal framework for combating foreign bribery.

required to make a declaration that they will not breach the code of conduct, and that they will report any breaches that come to their attention directly to HQ. The same company stated that it had not received any communications from the Hungarian government about preventing foreign bribery. The representative of a subsidiary of an MNE in the automotive equipment sector acknowledged that the corporate group as a whole faces significant foreign bribery risks. Compliance is managed at headquarters, and every single bribery suspicion must be reported centrally. Due diligence on suppliers is also controlled centrally. The company's representative believed that there is a risk of the bribery of foreign public officials by the Hungarian subsidiary, but believes that HQ is dealing with the situation. He also believed that the exposure to the risk of enforcement under Hungarian law is "very minimal".

140. An association in the medical sector that participated in the on-site includes members with extensive exports to EU countries, the United States, The Russian Federation and the Middle East. Many of them also have contacts with suppliers in East Asia. (Also see discussion in the Introduction to this Report on the importance of the medical and pharmaceutical industries to the Hungarian economy.) The association representative explained that the risk of corruption in this sector is high, due to various factors, including non-transparent decision-making processes, and slow and complicated procedures. However, a subsidiary of an MNE from the medical sector believed that its risk exposure to foreign bribery was only minimal, because it purchases highly validated and standardised material that is subject to a full quality control system. A representative of a subsidiary of an MNE in the energy sector did not consider the company to be at risk of foreign bribery because it does not export outside the EU. Moreover, he considered that the company's foreign procurement activities were not at risk of foreign bribery because they are highly regulated. The same company compels business partners to accept its code of discipline which explicitly prohibits the bribery of public officials when entering contracts.

Commentary

The lead examiners consider that Phase 3 Recommendation 7(b) that Hungary raise awareness in the private sector of foreign bribery risks, and 5(c) that Hungary encourage the adoption of compliance measures for preventing and detecting foreign bribery, remain only partially implemented. Although important steps have been taken by the Hungarian Export Promotion Agency and NPS to raise awareness of the private sector of foreign bribery risks, other agencies, including MFA have not taken such steps, and except for two companies that received advice from NPS on gift giving, none of the companies at the on-site had participated in or were aware of any awareness-raising or training activities provided by the Hungarian government regarding the offence of foreign bribery, or how to establish effective compliance measures for preventing and detecting such bribery. Moreover, at the on-site, indigenous companies with exporting activities generally did not assess that they were at significant risk of bribing foreign public officials, and therefore had not established comprehensive compliance measures for managing foreign bribery risks. Similarly, although they had in place comprehensive compliance programmes, subsidiaries of MNEs also assessed their foreign bribery risks as low.

The lead examiners therefore recommend that Hungary urgently take steps to increase the awareness of all companies that engage in exports, including subsidiaries of MNEs, regarding their foreign bribery risks, and further encourage them to adopt effective anti-foreign bribery measures for managing those risks.

4. OTHER ISSUES

4.1. Measures for Managing Foreign Bribery Risks in Development Cooperation

141. In Phase 3, the WGB recommended that Hungary establish: (i) mechanisms to prevent risks of foreign bribery in contracts funded by official development assistance (ODA), including during the selection and monitoring phases of ODA funded projects; and (ii) sanctions for suspending companies convicted of foreign bribery from such contracts [Recommendation 9(b)]. The WGB was mindful that Hungary's ODA budget was relatively small and often involved small scale projects that did not reach the EU procurement thresholds.⁸¹ Nevertheless, it was concerned that MFA had adopted a rather limited approach to preventing foreign bribery in ODA-funded projects. And although MFA staff was required to attend training on anti-corruption procedures, those that participated in the Phase 3 on-site were not aware of any anti-corruption risk procedures in the procurement or execution phases of such projects. There were also no procedures in place for suspending companies convicted of foreign bribery from ODA-funded contracting opportunities.

142. Additionally, although at the time of Phase 3 MFA was vetting all companies and civil society partners prior to entering into ODA-related engagements with them, it was not checking publicly available cross-debarment lists of International Financial Institutions (IFIs) such as the World Bank and the European Bank for Reconstruction and Development (EBRD), to see if applicants and clients were debarred for corruption. Instead, the Hungarian authorities were relying on a company registry, which, they stated, was comprehensive and up-to-date, and could be used to assess whether applicants and clients had been debarred for corruption. At the end of the Phase 3 review cycle, Hungary had not taken any steps to implement Recommendation 9(b).

143. Due to the adoption of the 2016 Recommendation of OECD Council for Development Cooperation Actors on Managing the Risk of Corruption (2016 Recommendation on Managing the Risk of Corruption in ODA),⁸² which includes provisions on these issues, progress on Recommendation 9(b) is addressed in this Report in the context of the 2016 Recommendation.

144. Paragraph III of the Recommendation on Managing the Risk of Corruption states that Adherents should set up and revise their system to manage risks of and respond to actual instances of corrupt practices in development cooperation, and that such a system should include the following features consistent with those recommended by the WGB in Phase 3: 1) an “active and systematic assessment and management of corruption risks in an ongoing way and at multiple levels of decision making” (subparagraph 5); 2) a whistleblower reporting mechanism (subparagraph 7)⁸³; 3) inclusion in ODA contracts of termination, suspension or reimbursement clauses or other civil and criminal actions, in the event that the implementing

⁸¹ MFA explains that Hungary's ODA projects are primarily implemented by MFA or other ministries, and embassies and foreign missions are rarely engaged directly in ODA-related public procurement. Instead, projects are usually coordinated and implemented by trained and dedicated staff located in Budapest. In addition, the legal and financial implementation of ODA projects usually occurs within the framework of the implementing ministry, with the assistance of the legal and financial departments.

⁸² The 2016 Recommendation can be found here: <https://www.oecd.org/corruption/anti-bribery/Recommendation-Development-Cooperation-Corruption.pdf>

⁸³ Information relevant to subparagraph 7 on whistleblowing is provided under A.2.8 of this Report.

partner subsequently engaged in corruption during the course of the contract (subparagraph 8.i.); and 4) verification of publicly available debarment lists of national and multilateral financial institutions during the applicant's selection process (subparagraph 6.iv).

145. Hungary reports that partners are scrutinised and vetted prior to engaging in ODA-funded operations. Furthermore, embassies and other MFA staff monitor implementation of such projects, as well as the activities of implementing agents, thus enhancing their ability to become aware of suspected acts of bribery that would warrant the suspension or voiding of a contract. Prior to entering into a contract, the public records of an applicant civil society organisation or firm are scrutinised to minimise the risk of corruption. This is done in part by examining the registry of companies, as was done at the time of Phase 3.⁸⁴ Additionally, Hungary states that ODA-funded contracts are suspended or voided when a client is convicted of foreign bribery. Hungary's grant agreement template contains a provision that reserves the right of the Donor to suspend or terminate the agreement "in judicially proven cases of fraud, corruption and bribery of officials". In such cases, the Beneficiary is required to repay the grant in full to the Donor. The Hungarian authorities explain that they have access to two channels to obtain information about companies' backgrounds. The MOJ channel and private register are available to the Hungarian authorities and members of the public.⁸⁵ According to Hungary, the privately operated registry, which has existed for decades, contains a complete and detailed history of Hungarian companies, including foreign subsidiaries and SOEs. This information covers whether they are on the World Bank's cross-debarment list.⁸⁶ The history includes information on civil and criminal litigation, fines, changes in ownership, and specific agreements. It is mandatory to consult the list in all cases of development cooperation with Hungarian private companies. Furthermore, Hungary states that it actively monitors ongoing projects (both from the capital and in the field through its foreign missions), and if foreign bribery cases were to be detected, they would be reported, providing the development authorities with the necessary information to suspend or void such contracts. The monitoring is systematic and based on criteria pre-determined by MFA. Furthermore, Hungary explains that in accordance with an MFA guideline, it routinely checks the World Bank's cross-debarment list for foreign cooperation partners.

146. At the on-site, the Department of International Development of MFA explained that Hungarian ODA-funded projects are at minimal risk of corruption. The Hungarian authorities stated that, generally speaking, 75% of Hungarian ODA goes to multilateral institutions, such as the United Nations, and the rest goes to countries in the form of bilateral aid, which, according to Hungary, is subject to EU public procurement rules and policies. Indeed, according to OECD statistics, in 2017, Hungary's core contributions to the multilateral system represented 74% of gross ODA, and 11% of bilateral ODA was channelled through the multilateral system. Moreover, 79% of multilateral ODA was channelled through the EU, 7% through the World Bank, and 6% through the UN. Scholarships and student costs represented 75% of the in-country programmable aid. Total ODA in 2017 amounted to USD 148.7 million, and multilateral and bilateral ODA amounted to USD 113.7 million. The main sectors targeted by bilateral aid in 2017 were education (64%), water and sanitation (6%), agriculture, forestry and fishing (6%), and 18%

⁸⁴ The registry of companies, which is operated by MOJ, contains up-to-date information on the legal and financial status of every Hungarian company, including public debt

⁸⁵ The private register is available by subscription only.

⁸⁶ Hungary further explains that the operator of the private register has experience cataloguing legal texts, Directives, and court decisions, and maintains and operates public available, pay-for-service databases. Further information on the private register can be found here: <https://opten.hu/rolunk>

was not allocated by sector. In 2018, Hungary provided USD 190 million in total ODA, which represented 0.14% of gross national income (GNI)⁸⁷

Commentary

The lead examiners consider that ODA-funded contracting by the Hungarian authorities is at a comparatively low risk of corruption, because almost three-quarters of the Aid goes to multilateral institutions, with just one-quarter to countries in the form of bilateral aid, and mostly for the purpose of small-scale projects. Nevertheless, Hungary's bilateral Aid involves some sectors at high risk for corruption, including infrastructure development (water supply and sanitation), and thus the risk cannot be ignored.

Hungary reports taking important steps to implement the WGB's Phase 3 Recommendation 9(b), including by scrutinising and vetting ODA partners prior to and during the implementation of projects, and by including a provision in its ODA grant agreements providing the Donor with the right to suspend or terminate an agreement with a Beneficiary in judicially proven cases of corruption. Hungary checks the MOJ registry of companies, and a private registry that contains detailed information about Hungarian companies including foreign subsidiaries and SOEs. The information covers convictions and fines, and whether a company is on the World Bank's cross-debarment list. Furthermore, foreign bribery detected through active monitoring of ongoing projects would be reported, providing development authorities with necessary information to suspend or void such contracts. In addition, Hungary routinely checks publicly available cross-debarment lists for foreign cooperation partners.

The lead examiners therefore assess that Phase 3 Recommendation 9(b) has now been fully implemented. However, given that since adoption of these provisions, no foreign bribery case has been concluded, the lead examiners recommend following up whether companies convicted of foreign bribery are suspended in practice from ODA procurement contracting.

⁸⁷ Hungary has been a member of the Development Assistance Committee (DAC) since December 2016. The country reported for the first time to the OECD on its development co-operation programme at activity level 2015: <http://www.oecd.org/hungary/hungarys-official-development-assistance.htm>

CONCLUSION: POSITIVE ACHIEVEMENTS, RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

147. Hungary prosecuted one foreign bribery case in which 26 individuals were convicted between 2008 and 2011, but since Phase 3, which took place in 2012, no foreign bribery investigations or prosecutions have been commenced. The Working Group on Bribery (WGB) considers that the risk of the bribery of foreign public officials by Hungarian companies is steadily increasing due to the robust growth of export activity, in particular by MNEs that use Hungary as a manufacturing base and then re-export goods to other markets. In addition, due to Hungary's pro-investment and pro-growth economic policy to attract innovation and new technology-based industrial production, MNEs are also increasingly exposed to export-related foreign bribery risks in new technology-based industries, including transportation, healthcare and pharmaceuticals.

148. The WGB attributes the low level of foreign bribery enforcement activity to the following two closely connected factors. First, Hungary is reluctant to implement the relevant legal provisions on corporate liability, for reasons such as the potential impact of such enforcement on innocent stakeholders. The WGB considers this the single most serious challenge that Hungary faces in implementing the Convention. Second, Hungary is not addressing the risk of foreign bribery by companies, including foreign subsidiaries choosing to locate in Hungary to conduct trans-border business activities in neighbouring countries. In particular, responsibility for detecting and investigating foreign bribery committed by such companies has not been assigned. This Report therefore focuses on identifying ways for Hungary to significantly enhance its detection, investigation and prosecution of corporate vehicles involved in foreign bribery, including foreign subsidiaries. This focus is also critical for ensuring that Hungary does not unwittingly become a safe harbour for MNEs with subsidiaries in Hungary that commit bribery in neighbouring countries.

149. Hungary coordinated closely with the WGB throughout the evaluation process, in particular through significant efforts to obtain the participation of all relevant interlocutors at the on-site, and diligently responding to a large number of requests for supplementary information afterwards. Additionally, the Hungarian authorities were highly constructive and collaborative throughout. They highlighted that their system for combating foreign bribery is in transition due largely to recent amendments to the Criminal Code of Procedure (CCP), and thus welcomed insights from the WGB on how to ensure that these reforms translate into more effective implementation of the Convention.

150. Regarding Phase 3 outstanding recommendations, Hungary has **now fully implemented** Recommendation 3(d) to compile statistics on investigatory measures and reasons for discontinuing any foreign bribery proceedings, and Recommendation 9(b) on ODA funded contracting. The following recommendations **remain partly implemented**: 1 on the foreign bribery offence, 2(b) on the liability of legal persons, 2(d) on training for law enforcement authorities and judges on the use of corporate liability, 3(e) on proactive investigations, 5(b) on awareness and training for the accounting and auditing professions, 5(c) on company controls, ethics and compliance measures, 6(a) on training for tax authorities, 7(b) on public agencies that have frequent contact with the private sector, 8(a) on reporting by public officials, and 8(b) on whistleblower protections. The following recommendations **remain not implemented**: 2(c) on the liability of legal persons, 3(b) on immunities from investigations and prosecutions of certain officials, 3(f) on the length of time for conducting investigations, and 4 on mutual legal assistance (MLA).

151. Although the majority of the Phase 3 Recommendations remain partly or not implemented, since Phase 3, Hungary has initiated important reforms that could impact on foreign bribery enforcement. These include a new settlement procedure and a gradual system for encouraging confessions. In addition, a new law on whistleblower protections has come into force, and new covert investigative techniques are now available. However, in the absence of investigations or prosecutions since Phase 3, it is not possible to

assess the impact of these reforms on combating foreign bribery, and, moreover, prosecutors at the on-site highlighted the general lack of resources and expertise to implement the new investigative tools. Furthermore, the WGB identified certain improvements to further enhance the effectiveness of the whistleblower system.

152. In conclusion, based on the findings in this Report, the WGB identifies positive achievements in Part I below and makes recommendations in Part II below. The WGB will follow-up on issues identified in Part III below. The WGB invites Hungary to submit a written report on the implementation of these recommendations and issues for follow-up in two years (June 2021). In addition, the WGB requests that Hungary provide an additional written report in one year (June 2020) on steps that it has taken to implement Recommendation 4(a)-(c) below, on the detection and investigation of foreign bribery cases, and Recommendation 9 on corporate responsibility.

I. Positive Achievements

153. Effectively engaging with SMEs is a challenge for many Parties to the Convention, because SMEs often lack the resources to attend events on the risks of foreign bribery and how to manage those risks. It is therefore notable that, from 2014 to 2018, the Hungarian Export Promotion Agency (HEPA) held 120 trainings that included a foreign bribery component and reached 2 256 individuals representing 1959 SMEs. Moreover, HEPA launched an on-line interactive course on the legal construction of the foreign bribery offence, as well as the main characteristics of foreign bribery, which has so far been taken by 200 representatives of SMEs. Given that SMEs were involved in over 24% of exports in 2016, the Working Group believes that targeting SMEs could have an important impact on foreign bribery prevention in Hungary.

II. Recommendations of the Working Group

1. Regarding the **detection of foreign bribery in the government and private sectors**, the Working Group recommends that Hungary take the following steps to increase the effectiveness of its whistleblower system for the purpose of detecting the bribery of foreign public officials:
 - a. Raise awareness in the public and private sectors, including SMEs, of how an effective whistleblower system helps to detect crimes, including foreign bribery, and increases integrity in public and private governance;
 - b. Clarify that the whistleblower system applies to the reporting of suspicions of foreign bribery;
 - c. Clarify how the three reporting channels – the Ombudsman, Employer Channel, and System of Integrity Management of Public Administration Bodies – interact;
 - d. Ensure that measures for protecting the identity of whistleblowers are effective; and
 - e. Provide an appropriate mechanism for redressing acts of retaliation against public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery. [2009 Recommendation IX, iii)]
2. Regarding the **detection of foreign bribery in the government sector**, the Working Group recommends that Hungary:
 - a. Fully implement the Phase 3 recommendation to raise awareness and develop policies and procedures on the legal obligation of public officials to report foreign bribery to the law enforcement authorities; [2009 Recommendation III. i); and IX. ii)]

- b. Fully implement the Phase 3 recommendation to ensure that public agencies working with Hungarian companies operating abroad develop training programmes for their staff focusing on foreign bribery; [2009 Recommendation III. i)]
 - c. As a matter of priority provide staff of its official export credit agencies with training and awareness-raising activities to help them identify and address instances of potential bribery of foreign public officials by applicants and clients; [2009 Recommendation III. i); 2006 Export Credit Recommendation] and
 - d. Take appropriate measures to make foreign representations in countries where Hungarian companies have significant economic activities aware of the risk of foreign bribery by those companies, including by reviewing local media sources for allegations, as well as their obligation to report such information to the relevant authorities in Hungary. [Recommendation III. i)]
3. Regarding the **detection of foreign bribery by the private sector and civil society**, the Working Group recommends that Hungary fully implement the Phase 3 recommendation to ensure that specific foreign bribery awareness training is provided to the accounting and auditing profession. [2009 Recommendation X. B. v)]
 4. Regarding the **detection and investigation of foreign bribery by the competent authorities**, the Working Group recommends that Hungary:
 - a. Undertake an assessment of the foreign bribery risk exposure of: i) Hungarian companies, including SMEs, ii) MNEs using Hungary as a manufacturing base and then re-exporting goods to other markets, 3) the expanding presence of MNEs for the purpose of developing and exporting new technology-based industrial production, including in the transportation, healthcare and pharmaceutical industries, and 4) SOEs, including in the electricity, gas, transport and finance sectors;
 - b. Develop and implement a strategy for proactively detecting and investigating foreign bribery cases, including through the use of all available sources of detection inside and outside of the law enforcement community, and training specifically targeted at foreign bribery; [Convention, Article 5; 2009 Recommendation, I, paragraph D)]
 - c. Assign responsibility for enforcing the foreign bribery offence, including against foreign subsidiaries, and diligently investigate suspicions of foreign bribery perpetrated by them; [Convention, Article 5; 2009 Recommendation, I, paragraph D)]
 - d. Significantly increase the level of resources and expertise available to manage the current and forecasted foreign bribery case loads, including for utilising traditional detection and investigative techniques, and new covert investigative tools; [Convention, Article 5; 2009 Recommendation, Annex I, paragraph D)]
 - e. Assess the risk of money laundering associated with foreign bribery in connection to Hungarian companies, including foreign subsidiaries, raise awareness of such risks in the AML/CFT system, and consider the use of typologies for this purpose; [Convention, Article 7]
 5. Regarding the **detection, investigation and prosecution of foreign bribery cases using tax information**, the Working Group recommends that Hungary:
 - a. Establish an effective legal and administrative framework to facilitate the reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties to CIOPPS;

- b. Provide guidance to the tax authorities to facilitate such reporting;
 - c. Fully implement the Phase 3 recommendation that Hungary provide, on a regular basis, training for tax officials on how to detect bribes to foreign public officials concealed as deductible expenses for tax purposes, including commissions, and use the OECD Bribery Awareness Handbook for Tax Examiners for this purpose; [2009 Recommendation VIII. i); 2009 Tax Recommendation I. i) and
 - d. Ensure that NTCA is informed forthwith of all foreign bribery convictions in order that it may determine whether it is appropriate to retroactively deny the tax deductibility of any expenditures representing bribery payments. [2009 Recommendation VIII. i); 2009 Tax Recommendation I. i)
6. Regarding the **investigation and prosecution of foreign bribery**, the Working Group recommends that Hungary:
- a. Amend the definition of foreign public official to expressly clarify that it includes officials of foreign public enterprises; [Convention, Article 1]
 - b. Urgently implement the Phase 3 recommendation to extend the two-year investigation time limit for foreign bribery offences in a manner that ensures that there is adequate time to apply investigative measures to natural person suspects including in highly complex multi-jurisdictional cases; [Convention, Article 6]
 - c. Consider whether the substitute prosecution procedure could feasibly apply to foreign bribery in cases where competitors and/or citizens have been harmed by such bribery, and thus might constitute ‘victims’ for the purpose of initiating the procedure; and [Convention, Article 5; 2009 Recommendation, Annex I, paragraph D]
 - d. Compile data specifically on confiscation in domestic and foreign bribery cases, including i) the amounts and value of property confiscated, and ii) the percentage of such cases in which confiscation is imposed; [Convention, Article 3.3]
7. Regarding the **investigation and prosecution of foreign bribery cases allegedly involving Hungarian officials benefitting from immunities**, The Working Group recommends that Hungary:
- a. Take measures within its constitutional principles to ensure that allegations of foreign bribery involving such persons can be appropriately investigated before submitting a motion to waive immunity; and
 - b. Take appropriate measures within its legal system to ensure that it can respond effectively to MLA requests from Parties to the Convention when officials benefitting from immunities are allegedly at the receiving end of foreign bribery offences involving other Parties to the Convention; [Convention, Article 5; 2009 Recommendation, Annex I, paragraph D]
8. Regarding the **provision of MLA pursuant to requests from other Parties to the Convention**, the Working Group recommends that Hungary:
- a. Fully implement the Phase 3 recommendation to compile comprehensive annual statistics on all incoming and outgoing MLA and extradition requests relating to foreign bribery;
 - b. Adopt appropriate measures to respond without undue delay to MLA requests regarding information about Hungarian nationals; and
 - c. Ensure that the reasons for refusing MLA are interpreted in line with Article 9.1 of the Convention, [Convention, Article 9; 2009 Recommendation XIII.]

9. Regarding **corporate responsibility for foreign bribery**, the Working Group recommends that Hungary:
- a. Consider making it mandatory to seek sanctions for legal persons found to have committed foreign bribery under Act CIV of 2001, in appropriate circumstances, establish internal guidelines on the circumstances in which it would be appropriate for prosecutors to seek sanctions against legal persons for foreign bribery, and a clear commitment to do so when the criteria are satisfied; [Convention Articles 2 and 3.2; 2009 Recommendation, Annex I, paragraph D]
 - b. Review Act CIV of 2001 on the liability of legal persons, in consultation with business, NGOs and the legal profession, to identify possible opportunities to improve the clarity and efficacy of the law on the liability of legal persons in relation to the foreign bribery offence. [Convention, Articles 1 and 2; 2009 Recommendation, Annex I, paragraph B)]
10. Regarding **engagement with the private sector on managing foreign bribery risks**, the Working Group recommends that Hungary:
- a. Urgently take steps to increase the awareness of all companies that engage in exports, including subsidiaries of MNEs, regarding their foreign bribery risks, and further encourage them to adopt effective anti-foreign bribery measures for managing those risks; and [2009 Recommendation, Annex II]
 - b. Raise awareness that bribes paid to foreign public officials are not tax-deductible.

III. Follow-up Issues

11. The Working Group will follow-up:
- a. Hungary's use of MLA requests for the purpose of detecting foreign bribery cases;
 - b. The impact of recent legislative reforms on the ability of the media and NGOs to play an effective role in detecting allegations of foreign bribery;
 - c. Application in practice of the amendments to the foreign bribery offence and the liability of legal persons for the purpose of covering the bribery of foreign public officials through intermediaries;
 - d. Jurisdiction over foreign bribery, as case law and practice develop, as regards: i) cases that take place in part in Hungarian territory; and ii) cases involving legal persons abroad where the natural person that committed the bribery act is identified and is not a Hungarian national;
 - e. Training provided to CIOPPS on the foreign bribery offence, including confiscation of the proceeds of such bribery;
 - f. Application of sanctions by the courts in cases of foreign bribery, the impact of the new settlement procedure, including whether settlements are transparent and available to the public and the resulting penalties are "effective, proportionate and dissuasive", and the gradual system for encouraging confessions;
 - g. Whether Hungary routinely applies effective confiscation or monetary sanctions of comparable effect to legal and natural persons on conviction for foreign bribery in compliance with Article 3.3 of the Convention;
 - h. Whether the new administrative court system has any impact on the investigation and prosecution of the offence of foreign bribery;

- i. How in practice the presidents of the individual courts allocate cases of foreign bribery to judges pursuant to the Rules on the Case Administration of Courts, including in particular criteria for allocating and transferring cases that may provide for greater discretion, such as regarding the specialisation and experience of judges, and the need to relieve case backlogs;
- j. How in practice senior prosecutors apply Article 398 CCP when determining whether to: i) annul the decision of a subordinate prosecutor to investigate or prosecute a case of the bribery of foreign public officials; and ii) transfer a foreign bribery case from one prosecutor to another;
- k. Whether in practice Act CIV 2001 effectively covers the case where a bribe is offered, promised or given by one legal entity on behalf of another; and
- l. Whether companies convicted of foreign bribery are suspended in practice from ODA procurement contracting.

ANNEX 1: PHASE 3 WGB RECOMMENDATIONS TO HUNGARY AND ASSESSMENT OF IMPLEMENTATION BY THE WORKING GROUP ON BRIBERY IN JULY 2014

Recommendations of the Working Group in Phase 3		<i>Progress at time of two year written follow-up in July 2014*</i>
<i>Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery</i>		
1.	With regard to the <u>offence of foreign bribery</u> , the Working Group recommends that Hungary take steps to ensure that its foreign bribery offence covers bribery through intermediaries, particularly in cases involving legal persons [Convention, Article 2; 2009 Recommendation, Annex I.C]	<i>Partially implemented</i>
2.	With regard to the <u>criminal liability of legal persons</u> for foreign bribery, the Working Group recommends that Hungary:	
	a. amend its law on the criminal liability of legal persons for foreign bribery to eliminate the requirement that a natural person must usually be convicted and punished as a prerequisite to the imposition of sanctions on a legal person [Convention, Article 2; 2009 Recommendation, Annex I.B];	<i>Fully implemented</i>
	b. remove the requirement that a bribe must have aimed at giving or have actually given a benefit to the specific legal entity subject to prosecution [Convention, Article 2; Phase 2 recommendation 4(a)(3)];	<i>Partially implemented</i>
	c. consult with Hungarian businesses to establish minimum standards with regard to appropriate supervision by the persons whose actions can subject a legal person to liability [Convention, Article 2; 2009 Recommendation, Annex I.B; Phase 2 recommendation 4(b)]; and	<i>Not implemented</i>
	d. provide additional training to prosecutors, judges and law enforcement regarding the application of the foreign bribery offence to legal persons [Convention, Article 2; 2009 Recommendation III and Annex I.B].	<i>Partially implemented</i>
3.	With regard to <u>investigation and prosecution of foreign bribery</u> , the Working Group recommends that Hungary:	
	a. establish a centralised bank account database in order to ease the task of investigators to map all bank accounts held by a particular person [2009 Recommendation, Annex I.D];	<i>For follow-up</i>
	b. consider taking appropriate measures, within the constitutional principles of the state, to ensure that (i) immunities are lifted in the context of foreign bribery investigations and prosecutions and (ii) immunity does not prevent the effective investigation and prosecution of foreign bribery offences [Convention, Article 5; 2009 Recommendation, Annex I.D; Phase 2 recommendation 3(f)];	<i>Not implemented</i>
	c. consider allowing those indirectly affected by decisions not to prosecute offences of foreign bribery, such as competitors or foreign states, to challenge such decisions [Convention, Article 5; 2009 Recommendation, Annex I.D; Phase 2 recommendation 3(d)];	<i>Fully implemented</i>
	d. gather statistics regarding the number of foreign bribery investigations that lead to prosecution or are discontinued, along with information about	<i>Partially implemented</i>

* The right-hand column sets out the findings of the Working Group on Bribery on Hungary's Two-Year Written Follow-Up Report to Phase 3, considered by the Working Group in July 2014.

	investigatory measures taken in and grounds for discontinuance of any foreign bribery investigation [Convention, Article 5; 2009 Recommendation, Annex I.D];	
	e increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage, both to increase sources of allegations and to enhance investigations [Convention, Article 5; 2009 Recommendation IX and Annex I.D]; and	<i>Partially implemented</i>
	f extend the two-year investigation time limit in cases of foreign bribery [Convention, Article 6; Phase 2 recommendation 3(e)].	<i>Not implemented</i>
4.	With regard to <u>mutual legal assistance</u> (MLA), the Working Group recommends that Hungary put in place a mechanism to compile comprehensive annual statistics on all MLA and extradition requests, including requests relating to freezing, seizing and confiscation, that are sent or received, relating to the foreign bribery offence, including the nature of the request, whether it was granted or refused and the time required to respond [Convention, Articles 9(1) and 10(3); 2009 Recommendation XIV(vi)].	<i>Not implemented</i>
Recommendations for ensuring effective prevention and detection of foreign bribery		
5.	Regarding <u>accounting standards, external audit and corporate compliance programs</u> , the Working Group recommends that Hungary:	
	a. consider requiring external auditors to report suspected acts of foreign bribery to competent authorities independent of the company, such as law enforcement or regulatory authorities, and, where appropriate, ensuring that auditors making such reports reasonably and in good faith are protected from legal action [2009 Recommendation X.B(v)];	<i>Fully implemented</i>
	b. take appropriate steps to raise awareness of the foreign bribery offence among auditors and accountants, including by ensuring that auditors and accountants benefit from regular training specifying the nature and accounting and auditing aspects of the offence in order to facilitate the detection of such acts [2009 Recommendation X.B(v); Phase 2 recommendation 2(c)]; and	<i>Partially implemented</i>
	c. take measures to encourage companies, and especially the SMEs, to develop internal control, ethics and compliance programmes and measures for the prevention and detection of foreign bribery [2009 Recommendation X.C (i),(ii), Annex II].	<i>Partially implemented</i>
6.	With regard to <u>tax measures</u> , the Working Group recommends that Hungary:	
	a provide, on a regular basis, training for tax officials with respect to hidden commissions and detection techniques to help detect concealed bribes in practice [2009 Recommendation VIII(i)]; Phase 2 recommendation 2(b)]; and	<i>Partially implemented</i>
	b consider signing the Multilateral Convention on Mutual Assistance in Tax Matters and including the optional language in paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention in all future bilateral tax treaties [2009 Recommendation VIII(i); 2009 Tax Recommendation I (ii)-(iii)].	<i>Fully implemented</i>
7.	Regarding <u>awareness-raising</u> , the Working Group recommends that Hungary:	
	a ensure that foreign bribery is addressed in the national anti-corruption strategy as an explicit priority in order to promote a proactive and coordinated approach to combating this type of corruption, and ensure a	<i>Partially implemented</i>

	clear allocation of responsibility to specific agencies for prevention and combating of foreign bribery [2009 Recommendation II]; and	
	b (i) reinforce measures to raise awareness about foreign bribery targeting the private sector (including private companies) and the public agencies and (ii) ensure that the HITA, MFA and other public agencies working with the Hungarian companies operating abroad develop training programmes focusing on foreign bribery for their own staff and provide practical guidance about risks of and measure to prevent foreign bribery to the private sector [2009 Recommendation III(i); Phase 2 recommendation 1(a)].	<i>Partially implemented</i>
8.	Regarding <u>reporting foreign bribery</u> , the Working Group recommends that Hungary:	
	a raise awareness of the new obligation for public officials to report foreign bribery offences and develop appropriate policies and procedures to be followed in reporting to law enforcement authorities [2009 Recommendation III(iv), IX (i)-(ii)];	<i>Partially implemented</i>
	b clarify that the new legislation on whistleblowers provides protection to persons reporting foreign bribery, ensure that responsibility for the enforcement of this legislation is clearly allocated, and raise awareness of the new protection provided by the law, in particular, among those persons (both public and private) who could play a role in detecting and reporting acts of foreign bribery [Recommendation IX(iii)].	<i>Partially implemented</i>
9.	Regarding <u>public advantages</u> , the Working Group recommends that Hungary:	
	a take the necessary measures to put in place systematic mechanisms allowing for the effective exclusion of companies convicted of bribery of foreign public officials in violation of national law from public procurement contracts [2009 Recommendation XI (i)]; and	<i>Fully implemented</i>
	b establish (i) mechanisms to prevent risks of foreign bribery in contracts funded by official development assistance (ODA), including during the selection and monitoring phase of ODA funded projects, and (ii) sanctions to allow suspension from such contracts of companies convicted of bribery of foreign public officials [2009 Recommendation XI (i)-(ii)].	<i>Not implemented</i>

ANNEX 2: LIST OF PARTICIPANTS AT THE PHASE 4 ON-SITE VISIT

From the Hungarian government, ministries, and other public bodies:

- Ministry of Interior
- Ministry of Justice
- Ministry of Foreign Affairs and Trade of Hungary
- National Tax and Customs Administration
- General Prosecutor's Office
- National Protective Service
- Constitution Protection Office
- Hungarian Financial Intelligence Unit
- Asset Recovery Office
- Ombudsman
- Public Procurement Authority
- Hungarian Export-Import Bank Private Limited Company (Eximbank)
- Hungarian Export Promotion Agency (HEPA)
- Hungarian Export Credit Insurance Private Limited Company (MEHIB)
- National Bank of Hungary

From the private sector:

- 1 representative from the financial sector
- 5 representatives from the auditing and accounting profession
- 6 representatives from the legal and compliance profession
- 4 representatives from business, industry, or sectoral associations
- 1 representative from the medical sector
- 3 representatives from the transportation sector
- 3 representatives from the energy sector
- 1 representative from the defence sector
- 2 representatives from the agriculture and forestry sector
- 1 representative from the retail sector

From the civil society:

- 4 representatives from Hungarian non-governmental organisations
- 3 representatives from academia

ANNEX 3: LIST OF ABBREVIATIONS, TERMS, AND ACRONYMS

AML	Anti-Money Laundering
ARO	Asset Recovery Office
CC	Criminal Code
CIOPPS	Central Investigation Office of the Public Prosecution Service
CCP	Criminal Code of Procedure
CPO	Constitution Protection Office
EAW	European Arrest Warrant
EU	European Union
EUR	Euro (currency)
Eximbank	Hungarian Export-Import Bank Private Limited Company
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
GNI	Gross National Income
GRECO	Group of States against Corruption
HEPA	Hungarian Export Promotion Agency
HFIU	Hungarian Financial Intelligence Unit
IFI	International Financial Institution
LEA	Law enforcement authority
MEHIB	Hungarian Export Credit Insurance Private Limited Company
MFA	Ministry of Foreign Affairs and Trade of Hungary
ML	Money laundering
MLA	Mutual legal assistance
MNE	Multi-national enterprise
MNKH	Hungarian National Trading House
MOI	Ministry of Interior
MOJ	Ministry of Justice
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
NACP	National Anti-Corruption Programme
NGO	Non-government organisation
NPS	National Protective Service
NRA	National Risk Assessment
NTCA	National Tax and Customs Administration
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
PPO	Public Prosecutors' Office
SME	Small- and medium-sized enterprise
SOE	State-owned enterprise
STR	Suspicious transaction report
WGB	Working Group on Bribery in International Business Transactions

ANNEX 4: CRIMINAL PROCEDURE UNDER THE NEW CCP⁸⁸

Phase	Preliminary proceeding	Investigation	
		Detection	Inquiry or inspection
Time limit	– 6 months or – 9 months in cases of more severe crimes (listed in Article 234 CCP – i.e. criminal acts which can be investigated by covert measures permitted by the judge) [Article 344 (1)]	no time limit (the upper limit regarding conducting a criminal proceeding is what the statute of limitations allows regarding the criminal act in question)	– two years, which can be extended by the prosecutor once by a maximum of 6 months (the CCP does not determine any condition for this decision to be made) [Article 351 (3) and (4)]
Responsibilities of prosecutors	the prosecution service is entitled to have some controlling and informative rights	the prosecution service supervises detection (the detailed list of supervisory powers are listed in Article 26 (2) CCP)	the prosecution service controls the inquiry or inspection (the detailed list of controlling powers are listed in Article 26 (3) CCP)
Investigative tools available	only two groups of tools are allowed : 1. a limited list of covert measures: – using a secretly cooperating person for the purpose of collecting information [Article 215 (1)]; – using a secretly operating official of the investigative authority for the purpose of collecting information (not the same as an undercover agent) [Article 215 (2)]; – secret observation, which means the physical surveillance of a person, residence, vehicle or an object without penetrating a private property, and	Every investigative tools regulated by CCP and other laws.	Every investigative tools regulated by CCP and other laws

⁸⁸ This table has been provided by the Hungarian authorities.

	<p>also recording the events happening during the surveillance [Article 215 (5), (6)];</p> <ul style="list-style-type: none"> – financial transaction monitoring (Articles 216-218); – ghost shopping/test purchase [Article 221 point a)]; – using an undercover agent (Articles 222-225) – covert measures permitted by the judge (Articles 231-242) <p>Covert measures are to be used during the preliminary procedure against a strictly narrowed personal scope in comparison to the investigation.</p> <p>2. Requesting of data with two exceptions :</p> <ul style="list-style-type: none"> – arrest warrant cannot be ordered during the preliminary proceeding, – authorities are allowed to request data from organizations or registers enlisted by Article 342 (3) which means a restricted scope of possible data sources in comparison to the investigation 		
<p>Conditions to close or proceed to next stage</p>	<p>a) conditions to close:</p> <ol style="list-style-type: none"> 1. the suspicion of a crime may not be verified according to the data collected during the preliminary proceeding, 2. it may not be expected that the preliminary proceeding would result the verification of the suspicion, 	<p>a) conditions to close:</p> <p>the criminal procedure has to be terminated (there are various cases, e.g., the act does not constitute a criminal offence; based on the data of the investigation, the commission of a criminal offence cannot be established</p>	<p>a) conditions to close:</p> <p>the criminal procedure has to be terminated (there are various cases, e.g., the act does not constitute a criminal offence ; based on the data of the investigation, the commission of a criminal offence cannot be established and continued</p>

	<p>3. the time limit of the preliminary proceeding has expired [Article 346 (1)]</p> <p>b) condition proceed to next stage: the suspicion that a crime has been committed is verified.</p>	<p>and continued procedure is not expected to yield any result ; due to the death of the suspect, to statutory limitation or pardon ; if there is no private motion, request or complaint and they cannot be subsequently submitted etc.)</p> <p>b) condition proceed to next stage: the perpetrator is interrogated due to the fact that a certain person may be reasonably suspected of having committed a criminal offence.</p>	<p>procedure is not expected to yield any result; due to the death of the suspect, to statutory limitation or pardon ; if there is no private motion, request or complaint and they cannot be subsequently submitted etc.)</p> <p>b) condition proceed to next stage: the prosecutor submits an indictment.</p>
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