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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS
TRANSACTIONS**

PHASE 4 WRITTEN FOLLOW-UP REPORT BY HUNGARY

JT03467967

Hungary submitted its report on recommendations 4 and 9 to the Secretariat of the Working Group on Bribery on 26 May 2020. In June 2020, the discussion of the report was postponed to the October 2020 plenary meeting. Hungary submitted updates to its initial report on 21 September 2020, based on the evaluation team’s questions from clarification (see Annex).

OECD Working Group on Bribery

(Implementation of Phase 4 recommendations for Hungary)

*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)]

The National Protective Service (hereinafter: NPS) during the Phase 4 evaluation round actively participated together with other autonomous bodies, ministries and agencies having nationwide competence. According to the report, Hungary has made progress in many areas, but some Recommendations have still remained partially implemented.

Hungary's commitment to implementing the recommendations of the OECD Foreign Bribery Working Group is reflected by the effort to carry out them among the measures of the governmental strategic document on anti-corruption, titled National Anti-Corruption Strategy (hereinafter: NACS), which was adopted in June 2020 by Government Decision 1328/2020. (VI.19.). Para 16 of the Government Decision prescribes that the Minister of Interior, with the involvement of the Minister of Foreign Affairs and Trade, the Minister of Finance and the Minister of Justice, should, taking into account the Recommendations of the OECD Working Group on Bribery, disseminate knowledge of the obligation to report on bribery of foreign officials and to the liability of legal persons for international bribery among public sector institutions and businesses, in particular small and medium-sized enterprises, and to develop training programmes in this regard.

National Protective Service submitted an ISF tender titled **”Anti-corruption trainings, especially around the issue of foreign bribery”** in September this year. With this we laid down the foundations of

a large-scale training and experience sharing project in the field of bribery of foreign public officials. Not only the Ministry of the Interior, but also the Head of the General Prosecutor's Office, the President of the National Judicial Office, the Head of the National Police Headquarters, the Rector of the National University of Public Service, the Administrative State Secretary of the Ministry of Foreign Trade and Foreign Affairs also expressed their intention to cooperate.

As it is reflected in the evaluation report, from the side of prosecutors a strong need has arisen. As part of the project, we are planning a series of practical one-day trainings consisting of 7 workshops for 160 investigating prosecutors and prosecutors on the use of covert investigative tools. In addition, considering the Recommendations, we are planning a conference around the topic of the responsibility of legal persons for prosecutors, judges and police officers (totally 100 participants), keeping in mind the issue of bribery of foreign public officials. Within the frames of the project prosecutors, judges and police officers would receive additional training on their duties in connection with holding legal persons accountable, and on the knowledge that facilitates their work in cases related to bribery of foreign public officials.

In order to achieve a high standard of practical training, the Hungarian side contacted the Foreign Bribery Working Group to provide speakers, to which Hungary received positive feedback from the Canadian, Polish, Italian, American and English delegates.

We also set the goal of organizing additional trainings (a three-day training and a one-day training) around the topic of the bribery of foreign public officials and the investigation of corruption offences for police officers (totally 170 participants) taking part in the detection and investigation of corruption cases.

In the event of the implementation of the project element titled Raising awareness of business officials around the issue of the bribery of foreign public officials, a conference would be held for business actors, especially small and medium-sized enterprises, on promoting of internal control systems and of compliance systems, also encouraging them implementing measures aiming at prevention and detection of the bribery of foreign officials.

The staff (650 officials) of the Ministry of Foreign Trade and Foreign Affairs would be provided with knowledge on the topic foreign bribery within the framework of trainings held for the Heads of diplomatic missions, for the staff preparing for diplomatic missions, further training of commercial attachés and mandatory training of domestic staff. The actual implementation of the trainings in the project depends on the tender opportunities and their award, as well as on the training opportunities that can be realized due to the coronavirus.

After the coming into force of the new Criminal Procedure Code, reacting to the changes concerning the range of competence of prosecutorial investigation (all of the office-related bribery cases became exclusive investigating competence of the PPO), in February 2019 the Prosecutor General's Office of Hungary restructured the investigating PPOs. The revision of the new structure is ongoing, based on the experiences made.

To enhance the detection of corruption crimes (both international and domestic) the investigative branch of the PPO (now consisting of cc. 100 prosecutors organized in 5 regional and 1 central office, where the central office is responsible for the most serious cases, including foreign bribery) established close contacts with the authorities active in intelligence (e.g. like the Counter-terrorism Information and Criminal Analysis Centre (TIBEK) and the Constitution Protection Service (AH)). These contacts provide analytic and intelligence support for prosecutorial investigations and can be functioning as a detection

measure of foreign bribery. The complementarity of the different authorities proved to be effective in domestic bribery cases.

During the trainings the topic of foreign bribery is handled together with bribery in general. During 2018-20 cc. 250 prosecutors and trainees received training on the anti-corruption topic.

An overarching strategy to include non-law enforcement actors has not been developed yet.

The responsibility to investigate and prosecute foreign bribery is clear, since the coming into force of the Convention, the Central Investigating Chief Prosecutor's Office has exclusive competence over these cases.

Concerning foreign subsidiaries, if the suspicion of the crime surfaces – given the legality principle-based legal system and the obligation to act *ex officio* –, an investigation has to be conducted. The main source of information about such possible cases is MLA requests, naturally, since these conducts constitute domestic bribery in the foreign jurisdiction where the subsidiary is acting. This situation, however, raises a series of conflict of jurisdiction and parallel procedure issues which has to be solved by close cooperation between the authorities concerned, e.g. by implementing a JIT.

Also with regard to the Hungarian export credit agencies (MEHIB and Eximbank), we inform the OECD about the change compared to paragraph 31 of the country report that in January and February 2020 the export credit agencies organised personal appearance training for their employees in-connection with anti-bribery combat focusing on issues proposed by the examiners. Currently, e-learning training is being prepared on the topic. With regard to the internal staff the Ministry of Foreign Affairs prepared integrity training, including sensitization, which requires a personal presence. Unfortunately because of the COVID 19 it was not possible to keep it in the planned time in connection with emergency measures. The Ministry has given its consent to participate in the planned projects of the National Protective Service on this subject.

Also important to mention that according to 339 of 2019 Government Decree of internal control system of state-owned enterprises certain state-owned enterprises are obligated to establish and develop an internal control system. In addition, they must institute compliance management functions from 1st of October 2020.

The purpose of legislation is to strengthen the transparency of public funds, making their use more efficient, ethical and economically sustainable. The scope of the new regulation is state-owned enterprises (if they fulfill certain requirements) which are obligated to establish an internal control system within the company. In essence the legislation is very similar to the one applicable for internal and external audit of budgetary units but it was adopted to the specific conditions of state-owned enterprises. It is the manager of the company who is responsible to ensure these control systems in order to monitor and evaluate the functioning of their organisation. In addition, it serves as an efficient feedback mechanism provided by the independent internal auditors. The goal with the new legislation is to achieve a regular, ethical, economical management of public funds, along with intensifying anti-corruption provisions. Prior to this there were no regulations applicable to state-owned enterprises requiring to establish and develop an internal control system but seemed crucial considering the national and public funds that they use.

Act CXXII of 2009 on the more economical operation of publicly owned companies. Act (hereinafter: the Savings Act) 7/J. §. Paragraph 3 requires the chief executive officer of a publicly owned company to

establish and operate an internal control system that serves the purpose of ensuring that the publicly owned entity complies with legal obligations, manages risks and obtains objective assurance.

- (a) to carry out its activities economically, efficiently and effectively in the course of its operation and management,
- b) fulfill its settlement obligations,
- (c) protect its resources from loss, damage and misuse,
- (d) adequate, accurate and up-to-date information on its operation is available,
- e) ensure that it operates in accordance with legal regulations, is regulated, transparent and ethical,
- f) protect the interests of the owner(s) and customers,
- (g) manage the risks of the publicly owned company, in particular integrity risks.

Pursuant to these regulations, Decree 339/2019 on the internal control system of publicly owned companies. (XII. 23.) (hereinafter: Vhr.) Stipulates that the number one manager of a publicly owned company is responsible for the operation, design and development of the publicly owned company's

- a) control environment,
- b) integrated risk management system,
- c) control activities,
- (d) an information and communication system; and
- e) monitoring system within the framework of the internal control system.

Based on the above legal references, it can be stated that - also considering that bribery is a criminal offense according to the current Hungarian Penal Code - the company's internal regulators must deal with the company's proper operation, identify and detect risks to its assets, and prescribe all procedures that with the help of the operated controls they prevent irregularities and possible damages; or which restore normal operation.

By implication, the legislation does not specifically prescribe the regulatory obligation related to antibribery, but the expectation of the legislator is satisfied by the internal regulation, which sets out the procedures to be followed in case of abuses, irregularities and loss of property at the level of general wording.

We also would like to highlight that

- Among the International Standards on Internal Control that are required to be applied, (namely 2120.A2) requires internal control to evaluate the potential for abuse and how the organization manages the risks of abuse.
- Pursuant to Section 16 (3) (e) of the Vhr. Act, if an act, omission or deficiency is suspected in the course of the audit which gives rise to criminal, infringement, compensation and criminal liability proceedings,

the person performing the internal audit report immediately to the Chief Audit Officer and, if the Chief Audit Officer is involved, to the Supervisory Board.

Accordingly, Vhr. Section 15 (1) (e) states that it is the duty of the head of internal audit (the person performing the internal audit) shall immediately report to the head of internal audit or, if the head of internal audit is involved, to the supervisory board. if an act, omission or deficiency giving rise to suspicion of initiating proceedings for criminal, violation, compensation or liability for breach of employment obligations arises.

In the event of the involvement of the chief executive officer of a publicly owned company **the head of internal audit shall** immediately inform the supervisory board of the information revealed by the means of internal control and make a proposal to initiate appropriate procedures.

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)]

The Ministry of Justice has started the comprehensive review of Act CIV of 2001 on the criminal measures applicable against legal persons. In the initial phase, we have contacted the relevant authorities and the representatives of the legal practitioners in order to collect their experience in applying the legislation currently in force, including challenges in its application. In addition, we are also reviewing legislation in other EU Member States and collecting good practices in this respect. Based on the information gathered, the government will consider the extent to which a conceptual reform is also required and will present a bill to amend or, if needed, revoke and replace the current act, to the National Assembly in the second half of 2021. *We also would like to ephasize, that the PPO pursues the practical application of sanctions to legal persons according to Act CIV. of 2001., a curriculum of the deputy prosecutor general, published 1 June 2019 (1/2019. (V.31.) LÜ. h. körlevél) gives comprehensive guidelines to the PPOs.*

According to Act CIV of 2001 – also taking into account the previous OECD recommendations – measures against legal persons are applicable for all crimes, and the curriculum expressis verbis states that also in the cases where the Act allows for discretion, the PPO should strive to the effective application of the law. If the conditions of their application are given, the motion of the prosecutor to apply these measures can be omitted only in especially justified circumstances.

According to the curriculum, in connection with economic-financial crimes, more serious crimes against property and corruption crimes the prosecutor should pursue a firm application of the law.

There is no possibility nor need to create special rules of foreign bribery since the applicable provisions are incorporated into the provisions applicable for domestic corruption crimes in the Criminal Code.

Before the curriculum, the application of the criminal responsibility of legal persons has been sporadic, since the guidelines are in place there is a slow increase in the practice.

In addition, an internal guideline concerning the application of asset recovery and connected criminal law sanctions in prosecutorial investigations is under preparation, which will cover also foreign bribery.

Concerning the review of Act CIV of 2001, there were expert-level preparations initiated by the MoJ.

We also would like to inform the Working Group that according to Recommendation 6.a., Hungary should *„amend the definition of foreign public official to expressly clarify that it includes officials of foreign public enterprises; [Convention, Article 1]”*. Therefore, an amendment to point 13. a) of Section 459 (1) of the Act C of 2012 on the Criminal Code concerning the term of foreign public officer has been recently proposed. *„The bill containing this modification was submitted to the National Assembly on 31 March 2020 and was adopted on 19 May 2020.”*

Section 459 (1)

13. a foreign public officer means

a) a person performing legislative, judicial, administrative or law enforcement tasks in a foreign country, or a person performing services, or tasks related to the exercise of public authority in a foreign country, including a person performing such services or tasks at a statutory professional body or at an enterprise maintained by the State or a local government.

Annex – Updates submitted by Hungary on 21 September 2020, based on the evaluation team’s questions for clarification

Recommendation 4(a)

4(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;

- When will the National Anti-Corruption Strategy be adopted?

The National Anti-Corruption Strategy was adopted by the 1328/2020. (VI.19.) Government Decision which contains an Action Plan for the implementation. Both the Strategy and the Action Plan take into consideration the Phase 4 Recommendations of the WGB, that is why Para 16 of the prescribes that the Minister of Interior, with the involvement of the Minister of Foreign Affairs and Trade, the Minister of Finance and the Minister of Justice, should, taking into account the Recommendations of the OECD Working Group on Bribery, disseminate knowledge of the obligation to report on bribery of foreign officials and to the liability of legal persons for international bribery among public sector institutions and businesses, in particular small and medium-sized enterprises, and to develop training programmes in this regard.

- Does the National Anti-Corruption Strategy contain provisions on assessing corruption risks?

The new Strategy places greater emphasis on identifying and significantly reducing the risk factors inherent in the functioning of organisations, in particular public administration.

The new strategy, incorporates a number of measures related to risk management, building on previous measures and building on their experience. Examples are:

- IT support for the internal risk management activities of each body (Para 3).
- Assess the risks of corruption in public sector jobs periodically (Para 7b).

The NPS carries out the continuous assessment of the integrity and corruption risks of public administrative organizations and the corruption situation on the basis of the relevant Government Decree. During the implementation of the NAP, the jobs and types of jobs of public administration bodies exposed to increased corruption risks were mapped.

Together with the repetition of the previous risk mapping of jobs - ensuring timeliness - it is expedient to review, re-measure and, if necessary, expand the risk factors used in the corruption risk (so-called weighted) analysis of the entire public administration job system. As the integrity of the organization is strengthened if the head of the organization is aware of the risks inherent in the official activities of his employees, it is worth publishing the results online, as the organization can take various risk management measures to reduce risks.

By the virtue of Para 9 the possibility of creating a single legislative framework for the preparation and management of significant publicly funded investments and for addressing its integrity risks shall be explored. Para 10 contains measures on reducing the risks of border police posts.

- Did the training sessions on corruption organised by the authorities discuss corruption risks? What about the training sessions that are being planned?

The planned training sessions for public officials intended to cover also the topic of risk assessment in the form of workshops, while the conference for SMEs intended to be held around the topic of usefulness of internal control systems, compliance systems and integrity and corruption risks concerning foreign bribery. Also by the EXIM Bank both the organised and planned training sessions discussed and will discuss corruption risks.

- Do the authorities have any intention to conduct an assessment of foreign bribery risks? Why?

Integrated risk management system compulsory for budgetary authorities, covers assessing all processes of budgetary authorities concerning integrity and corruption risks. If the integrated risk management system is operated properly it should cover foreign bribery risks as well.

Recommendation 4(b)

4(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.

- Could you elaborate on the content of the (past and planned) training sessions for law enforcement, and clarify how they could contribute to enhancing detection of foreign bribery? Does the described training specifically target foreign bribery?

Some of the described trainings specifically focus on foreign bribery, other trainings planned to cover the topic of the liability of legal persons, or experience sharing of effective using of investigative tools. The CIOPS had in 2018-2019 an extensive series (3-day long courses, 12 times for different groups) of anti-corruption trainings together with NPS and police personnel, which covered detection, investigation, intelligence, international cooperation and forensic aspects of the topic. The case study on which the course was built is a cross-border bribery scheme.

- Is there a plan to develop training focused on proactive detection investigation?

Since the anti-corruption efforts are built on the complementarity of tasks of the relevant services, the CIOPS does not need to build up extensive detection capacities, detection can be done mainly by the NPS, it has the proper knowledge and capacity for that. The CIOPS will have some OSINT and forensic capacity on its own in the future, the required tools and trainings are planned but not implemented yet. There are also plans to implement a modular training model for investigating prosecutors, which is under development in cooperation with the National University of Public Service.

- How is planning for the training events progressing in the COVID-19 situation?

The PGO arranged training rooms suitable for online trainings at every county-level PPO (20). The previously planned trainings are held in a hybrid or online form, with a smaller audience but in more groups (i.e. instead of 2 large groups 4 smaller). At the moment we aim to be able to organise every crucial training (anti-corruption being one) and some of the necessary due to changes in the legal environment.

- When does the training for business commence and what does it cover?

The conference for SMEs intended to be held around the topic of usefulness of internal control systems, compliance systems and integrity and corruption risks concerning foreign bribery.

- Is there intent to repeat trainings or are these one-off events? Is there an intent to create a subject matter expertise in each agency?

The Action Plan covers the years of 2020-2022. During this period the most of the planned events intended to be held repeatedly (annually or within the frames of a series of workshops, trainings or conferences). The frequency of the events depends on the available financial resources. For the PPO the plan is, on the one hand, to repeat these trainings so every prosecutor working at CIOPS participates, on the other, to build up a progressive curriculum which after the basics have been laid down, in the next rounds goes into details. E.g. the in-depth knowledge of covert investigative measures and their proper use is crucial in this field.

- Have new cases of foreign bribery been detected?

No new cases as of now.

- Could you clarify what concrete steps have been taken since the adoption of the Phase 4 report to improve cooperation with intelligence agencies, with possible detection benefits?

The NPS provides assistance (mainly human resources) to the CIOPS based on the Criminal Procedure Act (CPA) and the governmental decree 100/2018 on the detailed rules on investigation and preliminary procedure (Nyer). The PPO will sign a cooperation agreement in the near future with the Counter-terrorism Information and Criminal Analysis Centre (TIBEK), which enables secure information exchange. The information analysis and intelligence TIBEK can offer supposed to enhance and support prosecutorial investigations but normal cases as well. The National Security Service (NBSZ) is a central agency possessing the technical resources for intelligence and covert measures, and is supporting the law enforcement agencies and prosecutorial investigation based on the CPA and Nyer. On the detailed rules on how the CIOPS can require this support the PPO and the NBSZ has a (classified) joint internal regulation on cooperation.

- Does CIOPPS have sufficient resources to play a proactive detection role?

No, but in the light of the above, it is not necessary. Due to the complementarity of tasks detection can be and will be done by the NPS and potentially by other intelligence agencies, which then channel the information to the CIOPS. Building up extensive detection capacities next to these would be counter-intuitive and result in parallel procedures while diminishing the investigative and prosecutorial capacities of CIOPS.

- Which state-owned enterprises fall within the obligations under the new law? Is there a plan to audit SOEs for compliance?

The scope of the Act 122 of 2009 on the more economical operation of publicly owned companies covers all the publicly owned companies, which are companies in which the Hungarian State, local government, local government association with legal personality, multi-purpose micro-regional association, development council, national self-government, national self-government legal entity, budgetary body or public foundation separately or together has a majority influence.

As we mentioned in our previous answer, according to Government Decree 339/2019. (XII. 23.) on the internal control system of publicly owned companies, the publicly owned companies has to set up a compliance support unit consisting of compliance advisors. This regulation comes into force as of 1st July 2020. Based on this regulation the State Audit Office (SAO) already announced that the SAO will make audit in this respect at the publicly owned companies. Beside the SAO's audit, the exercisers of shareholder's rights also carry out yearly audits at the companies, and the set-up of a compliance unit should be part of this audit.

Recommendation 4(c)

4(c) Assign responsibility for enforcing the foreign bribery offence, including against foreign subsidiaries, and diligently investigate suspicions of foreign bribery perpetrated by them.

- Has CIOPPS (or other authorities) detected/investigated any case (beyond foreign bribery) involving foreign subsidiaries, or foreign economic crimes?

CIOPS is currently investigating allegations concerning the purchase of Microsoft-licenses by governmental agencies.

- Are foreign subsidiaries and/or crossborder crime prioritised in any strategic/policy document of CIOPPS (or other authorities)?

The main priority of CIOPS is office-related corruption, be it domestic or cross-border. Bribery in economic relations falls into its competence only if it connected to a foreign public official. (Bribery in economic relations is investigated by the police.).

Recommendation 9(a)

9(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.

- Please provide an English translation of the curriculum (or the relevant sections).
- Please provide data on the application of criminal liability of legal persons (number, date and type of offences in particular)

The PPO has no statistical data on the application of criminal liability of legal persons.

- Please provide information on the timing and content of the internal guideline concerning the application of asset recovery and connected criminal law sanctions in prosecutorial investigations.

Since the Ministry of Justice is still working on the extensive overhaul of the management system of seized criminal assets and the execution of connected sanctions, the internal guidelines of the PPO for asset recovery in prosecutorial investigations couldn't be finalised yet.

Recommendation 9(b)

9(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.

- Have NGOs and business been included in the consultations?
- Are businesses, NGOs and the legal profession able to input to the review in a meaningful way?
- Does the review contain any specific focus on the liability of legal persons in foreign bribery cases?
- Can you share any preliminary findings/changes under consideration?

The Ministry of Justice has started the comprehensive review of Act CIV of 2001 on the criminal measures applicable against legal persons. In the initial phase, we are contacting the relevant authorities and the representatives of the legal practitioners in order to collect their experience in applying the

legislation currently in force, including challenges in its application. At a later stage in the review process, when a close-to-final version is drafted, a broader consultation may be envisaged.

At this stage it is too early to say anything about the specific scope of the review, including the relevance of certain type of offences. As explained earlier, based on the information gathered, the government will consider the extent to which a conceptual reform is required and will present a bill to amend or, if needed, revoke and replace the current act, to the National Assembly in the second half of 2021.