

**Draft**

**Development of anti-corruption policy and measures  
in Hungary**

**Foundation for Market Economy**

Budapest, May 2003

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## 1. Anti-corruption measures in power arms

Since 1998 Hungarian government has introduced several changes in legislature against corruption in compliance with the international requirements. Significant measures have been taken place in the fields of legislation and law implementation, as well as in the work of prosecution and courts concerning fight against corruption. The forthcoming EU-accession had a great impact on the legal and institutional framework involved into the fight against corruption. Under the pressure of the European Commission (EC) significant changes have been initiated in legislature, especially in the areas of rules concerning criminal and civil legal proceedings, the legal position of civil servants, and public procurement, including the reform projects in courts supported by the European Union.

### 1.1. Legislation, rule making

In compliance with the obligations undertaken in the Accession Partnership signed in 1999 Hungarian government approved a decree /number 1023/2001 (III.14)/ concerning the **national strategy against corruption** in March 2001. Its main items are prevention and control, as well as changing public opinion, transparency of decision making and the freedom of press.

In May 2002 the new government in power announced a **program on transparency in public life**, one of its principal goals being to eliminate corruption. Several anti-corruption measures were taken – among them supporting the establishment of investigating boards, strengthening the role of Governmental Supervisory Office (KEHI) to reveal corruption cases on the one hand, and to narrow the possibilities for corruption through presenting new bills, enhanced controlling of civil servants or approving the so called glass-pocket bill on the other hand. According to the government decree containing regulation concepts for managing public finance and on the transparency of the usage of public property and its strict controlling launched in 2002 the level of corruption can be reduced first of all by modification of laws. The measures taken between 1998-2002 were aimed entirely to prevent even the possibility of corruption and to raise penalty level of corruption cases in the sphere of civil service. The government has made serious steps in implementing this strategy. As the main legal step Public Procurement Act was modified, the bill on property claim for civil servants was elaborated and bribery was listed as higher penalty crime.

The **European Union** accession procedure includes the objectives of **law harmonization** in some areas – not necessarily concerning anti-corruption policy:

- ? public procurement (reforming procedures, defining threshold values),
- ? reforming civil service (increasing the number of staff, professional quality and income),
- ? strict state control and auditing (directives, creating independent in-company controlling systems, increasing capacity in number of staff and information technology)
- ? reforming court activities (the independence of judges and the increasing efficiency of legal judgment system).

The elements of law harmonization program stated in the government decree already being realized are the following:

- ? modification of act on lawyers;
- ? modification of some of the laws concerning consumer protection;
- ? publishing the Criminal Law Convention on Corruption of Council of Europe (CE).

### **1.1.1 Criminal Code and corruption crimes**

In the last few years regulation and related **legal punishment of corruption crimes became harder in Hungary**. The relevant parts of criminal code concerning transparent public life were harmonized with the international agreements and EU requirements - the rules in question regarding punishment can be stated as satisfactory. The circle of those concerned in corruption cases was extended to foreign officials as well, including and regulating the crime of bribery in international relations.

**Regulations related to briberies** were significantly modified in 2001 according to the global anti-corruption program of the United Nations (UN) and the law harmonization tasks (anti-corruption government strategy). The goal of the rule concerning bribery is to break joint interest of the parties through refunding the pecuniary advantage after having revealed the bribery act where not only the briber can escape penalty but also the one being bribed. (The party reporting the crime of bribery can get discharge by refunding the advantage given to him illegally and by reporting the condition of bribery publicly.)

**Operating public administration without corruption**, bringing bribery to light is the basic requirement of a democratic society. The new regulation is serving the above mentioned purpose through the fact, that if an official observes corrupt attitude, he is obliged to report it to the authorities, if he fails, it can cause legal measures (reporting corruption cases has been made compulsory in public administration). Another novelty is, that the head, auditor or staff of the economic organizations can be legally impeached under criminal responsibility for active bribery, if during their controlling activity bribery has not been prevented.

*Annually there are about 800 revealed corruption crimes in Hungary.* Only a small part of real cases comes to the authorities' knowledge. A relatively low number of corruption cases is investigated and a part of them never reaches criminal court. Verifying corruption and presenting documentary evidence as proof can be extremely difficult and in most cases it is based on indirect evidences.

In 2002 15% of corruption crimes were committed through economic bribery and speculation with interest, while 85 % of them were constituted by office bribery. According to the Supreme Court experiences they are mainly cases based on the connection between the office and the citizen. Accusation was brought in 90 % of the known corruption cases in 2002. More than 400 defendants were found guilty. About 70 % of them were condemned to imprisonment, but 80 % of them were suspended, so only one fifth of the convicts had to go to prison.

### **1.1.2 Public procurement**

*Tendering has been the most criticized area of corruption in Hungary for years.* However, in spite of existing regulation and implementation shortages it can be stated, that owing to the existence of the Public Procurement Act and the transparency and publicity secured by it some corruption-suspected cases could be revealed.

The goal of the *1995 Public Procurement Act* was – among others – to establish transparency and the possibility of a broader control over management of public finance. The *1999 modifications of the law* introduced stricter rules in evaluating bids. A government decree since autumn 2002 ordains that the publicly financed institutions in their civil contracts with entrepreneurs concerning services, supplies and construction should accept a condition to suffer financial controlling carried out by the State Audit Office and the Governmental Supervisory Office.

*As expected the new Public Procurement Act* in full harmonization with the European Union's regulations will be discussed at the Parliament in the first half of 2003. The EU *acquis communautaire* will fully be implied in the future act. A remarkable change in the structure of the bill prepared is the separate chapter on public procurements reaching European Union value limits - these passages will fully be in compliance with the EU *acquis*. The limit can vary according to purchase types. The EU chapter of the new public procurement act will come into force on the day of the EU accession on 1 May 2004. If the purchase value reaches the EU limit, it should be published at European Union level. The EU tender limits are significantly higher than the Hungarian ones.

A new legal institution could be the certifying procedure: the bidder can ask an independent attesting organization for transparency of his tendering procedures and a proof that his protocol is in full compliance with the directions of the *acquis* and its national regulations for implementing them. The institution of conciliation is also planned to be introduced for releasing Public Procurement Arbitration Committee and courts.

The importance of public procurement market is growing fast: the value of public procurements has raised from HUF 100 billion in 1996 to 800 billion in 2002 (that was about 1/5 of the budget expenditure). Nearly 80 % of all 4,242 procedures were open bids, 20 % were contracted through negotiations. What the subject of tenders concerns: 60 % of them were construction investments, 25 % were made as product purchase and 15 % included services<sup>1</sup>.

### **1.1.3 Transparency law**

Important step forward against corruption was the so called “glass pocket” legal package approved unanimously by the Parliament in April 2003 (a XXIV/2003 Act on Modification of Regulations Concerning the Management of Public Finance, the Publicity and Transparency of Managing Common Property). This is the first system of regulations, which fights against corruption through economic measures instead of by means of criminal law. The coherent legal package modifying 19 laws in full harmonization with the EU requirements – among them the one on State Audit Office, the public finances, on the Civil Code, the economic organizations, the company registry, data protection, local authorities – aims to inform citizens and to make management of public finance more transparent and extend control over them.

*3 major areas are embraced by the package:*

*? It regulates the definitions of the publicity of data of public interest and business secret and secures the possibility of their proportional effectiveness. The incomes*

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<sup>1</sup> According to the data of Supreme Court.

from public funds will no more belong to the protected circle of business secrets, if any of the data concerns using or management of government or local authority budget. Participants in competitive economy should no more hide, how much money they had been contracted with the government for by public procurement and how public monies are used and what for.

- ? *It enlarges the legal competence/authorities for State Audit Office.* In the future the Office can extend its investigation procedures on private companies being in business contact with state economic organizations or local authorities. The same competence was not given to the Governmental Supervisory Office.
- ? *It guarantees transparency of publicly financed institutions and restricts their economic activities by tightening the rules of founding companies (verifiability of state guarantees, tendering obligation when supporting public foundations).* Important part of the Act is the establishment of authentic registration of these institutions requiring the modernization of the current information system, including information technology. As a result of this step any citizen has the right to get information about the deals of publicly financed institutions without any special permission, for the high value assignments contracted in the civil sphere should be made publicly available.

#### 1.1.4 Other legislation against corruption

In 2001 Parliament approved the **Act Against Money Laundering**. Part of the changes in the act is the termination of anonymous deposits with the aim Hungary to be removed from the black list containing countries endangered by money laundering. Laws concerning money laundering have been extended among others to customs officers and entrepreneurs or private businesses as well. None of the revealed cases on money laundering has been ended with final judgment yet, although one or two of them were investigated but still faded away.

The 1989 **Act on Operation and Financing of Political Parties** promoted the transparency of financial management concerning the political institutional system during the early transition period. In line with its regulations State Audit Office would have examined the financial management of the parties receiving government budget subsidies for their operation. According to the 2001 government decree on the strategy against corruption government finds it unacceptable to connect political parties' activities with subsidies and supports of uncertain origin, as economic procedures of business companies and fund-raising foundations launched by the parties are not transparent and out of regulation.

According to the **EUMAP** (European Union Monitoring Accession Program) **country reports** of the Open Society Institute lobbying is a crucial issue either potentially or actually in most candidate countries to the EU, among them in Hungary as well. The enforcement of interests during legislation procedure operating outside the interest-protection system would be regulated by a bill called **Lobby Act**<sup>2</sup> presented in 2001, which has not come into force yet since then. The unexplained definition of lobbying and the negative value judgment attached

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<sup>2</sup> Lobbying is the activity, where a certain interest group can influence the decision making process through methods fixed by a law in passing a new bill in the Parliament, by the government and its members, and the local authorities (bills of general concern). The proposal would give the lobby organizations a possibility to influence the decisions of the law-making institutions, contributing to creating rules of law based on more solid theoretical considerations.

to it verify the need to create a detailed regulation on this issue, which should – besides giving a correct definition – clarify the tools and means of lobbying, the competences of lobbying people and target organizations. Essential part of legal regulation is to clarify conflicts of interest, define the framework, conditions and means of this activity.

## **1.1 Implementation**

Corruption seems to be a crucial issue in several areas of public service in Hungary. This is connected with health-service (giving the health staff money for a better service, different hospital purchases), permission procedures (at local authorities), or with the activities of traffic policemen. The cases revealed in public service usually covered the areas of contacts with citizens, mainly during issuing permissions or licenses.

*The main rules of regulation for civil administration are stated in the Act on Civil Administration Procedures issued in 1957. The new reform of public service has started since 1994. in Hungary. Although there is no unified or homogenous law on institutions belonging to the executive power, neither exists one on the conflict of interests of civil servants nor on property claims, there are still separate amendments and laws on executive power, and the legal positions of the civil servants, members of parliament, ministers, auditors, judges and prosecutors.*

The roles of civil service and the legal position of civil servants were recorded in the 1992 act. The reforms in 2001 aimed – among others – at establishing measures to create the possibility of the “long-life carrier” (significant pay-rise and better training possibilities) in the sphere of civil service. However, moral requirements and legal rules were strengthened against civil servants as well. Members of Parliament and since 2001 civil servants and higher ranked public officials should make a declaration on their financial positions and property ownership as well as on their conflict of interests. The Code of Conduct containing preferable norms for employees working in civil service has not been compiled yet.

*In 1999 anti-corruption departments were set up at Police Headquarters and Border-Guard Directories. Measures taken to suppress corruption among traffic policemen are concerning elimination fine on the spot, wearing name badges and the introduction of exemption in case bribery has been announced. Revealing corruption at Customs Offices and Border-Guard is supported by the Central Investigation Office set up in 2000, which can conduct official inquiries nationwide as well. The Hungarian Customs and Finance Guard were re-organized and a decentralized risk-analyzing system was introduced.*

## **1.2 Court of Justice, Prosecution**

In Hungary important progress was made in order to establish independent judiciary. The jurisdiction and executive authorities have been separated; the level of training judges has been improved. The constitutional and legal guarantees of the independency in jurisdiction have been established. It was strengthened by institutional reforms – including organizational changes and raising the judges’ salary - carried out in 1997. Since July 2003 - after 52 years



– Courts of Appeal will start their activity again in Hungary<sup>3</sup>. At four county seats cases initiated by county courts will be ended with the judgment of the Courts of Appeal. In 2003 the bill concerning the advance in seniority and the salary of judges will be presented to the Parliament. The automatic increase of judges' income and more advantageous provision of pension would be ensured by this law.

## **International embodying**

Anti-corruption fight has been taking place at different international forums since the mid 90s, mainly in the framework of the following organizations: OECD, Council of Europe (CE), United Nations (UN), European Union (EU), World Bank (WB) and other non-governmental organizations. It has been world-wide recognized that anti-corruption fight can be made more effective through national organizations intensively joining the activities of international organizations. Hungary has actively joined this process and has ratified all international agreements concerning corruption.

**United Nations** had the greatest international impact on anti-corruption policy in Hungary. In 1999 our country voluntarily joined the UN General Anti-Corruption Program to get examined. **Agreements signed** between the Hungarian government and different institutions of the UN:

- ? *Memorandum of Understanding on Anti-corruption Policy* on research program carried out in the framework of *Global Program against Corruption* (1999, ODCCP, UNICRI),
- ? Project agreement in which CACP-UNICRI help the Hungarian government to prevent, reveal and eliminate corruption, and promote transparency and accountability in the framework of *Global Program Against Corruption* (2000).

The **European Union** has neither issued an overall anti-corruption framework regulation yet (no clear, compulsory *acquis communautaire* on the topic), nor has it created mechanisms controlling the implementation of norms. Although the European Commission has not issued clear guidelines for candidate countries, the existence of anti-corruption policies is one of the main pre-conditions of the EU-accession.

Candidate countries should fulfill the political and economic preconditions of the so-called Copenhagen criteria established in 1993, among them successful fight against corruption is essential. The EC strictly follows, whether the candidate countries have signed and ratified the **international anti-corruption documents**, namely:

- ? In the framework of OECD: *Convention on Combating Bribery of Foreign Public Officials*, which Hungary joined in 1998;
- ? Hungary – opposite several EU member states – joined the *Council of Europe Criminal Law Convention on Corruption* in 1999, and the 1990 Strasbourg Convention on Investigating Issues Resulting from Crimes and of Money Laundering.
- ? *The Ambassador of the Hungarian Permanent Representation signed the Civil Law Convention on Corruption approved by the CE in 1999* at the beginning of 2003. This

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<sup>3</sup> Up to now judgment of the appeal court was passed by Supreme Court in cases of great importance. It means that at judgment of a revisionary application against a definitive judgment Supreme Court had to reconsider his own former judicial decision.

convention regulates issues concerning settling the losses in civil law and the responsibilities for these losses.

Moreover the EC takes into consideration, if the candidate countries have harmonized their legislation procedure:

- ? with the requirements of the 1995 *Convention on the Protection of the European Community's Financial Interests*) and
- ? with the regulations of the 1998 *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* concerning officials of the EU and related member states.

An important element in the accession process to the EU was the „**Octopus**” program mutually launched by the CE and the EU in 1996, which consists of seminars of executive authorities both from the EU and the candidate countries. The main recommendations of the program are to force executive bodies to be more specialized (special anti-corruption departments were organized at the police, investigations bodies, board of judges), and to establish a more effective coordination of their activities between them and other specialized anti-corruption bodies.

**Hungary has been taking part in the activity of the Anti-Corruption Multidisciplinary Working Group of the CE since 1995.** Although *the 20 Guiding Principles for the Fight against Corruption* approved by the CE are not compulsory, they can serve as a framework to elaborate anti-corruption strategies not only by presenting bills but also creating measures for them. Hungary became the member of the *Group of States Against Corruption (GRECO)* established in 1998 to facilitate international cooperation. GRECO organizes mutual controlling in observance of the directives among member states. The organization first made an evaluation report about Hungary in 2001, but it was not published till spring 2003 yet. The evaluation process was based on surveys carried out about each other and on discussions with the governments of the member states. The process is in its initial phase, and each country has been evaluated on certain respects of directives concerning less sensitive issues. GRECO became the first organization, which systematically evaluates both candidate and member countries based on the consistent implementation of guiding principles and provides evaluations suitable for comparing at least anti-corruption policies in different countries.

Besides the above mentioned ones Hungary contracted in 1999 an agreement with the South-Eastern European Cooperation Initiative on criminal cases of frontier outrage and corruption.

## **Institutions, organizations, forums against corruption**

### **1.3 Government institutions**

Hungary has made a significant step forward in creating the full system of government financial control.

The **State Audit Office** founded under the legal power of the XXXVIII/1989. Act. is acting as the highest financial and economic state supervisory body is responsible to the Parliament. It annually supervises reports on state budget, the old-age pension fund and the management of budget at 3,200 local authorities. By approving the so-called glass-pocked legal package from May 2003 on, State Audit Office has the right to control private enterprises making

businesses with different state organizations. Although it has wide legal authority and is allowed to get access to business and bank secrets, it has no right to take correction measures as being not an authority.

On the basis of the public procurement act **Public Procurement Arbitration Committee (KEHI)** is authorized to control different expenses financed from the government central budget and state funds. The committee directly reports to the government. It examines the effectiveness of financial management at non-profit state organizations, the expediency of purchases with so-called performance effectiveness examinations, and can initiate different proposals to the government. It is not an authority, has no right to judge the facts experienced and cannot penalize. The Public Procurement Arbitration Committee fulfills 1/3 of its auditing activity on the special requirement of the prime minister. Besides them it controls the implementation of international aid programs, among them the management of the EU-support.

The **Council for Public Procurement** having 19 members, consisting of government offices, contracting authorities and the representatives of bidders is responsible to the Parliament entirely. Public interest and the interests of the bidders- and callers are in full consensus in this independent, publicly financed organization with its own budget. The council supervises to observe/follow the rules for public procurement, initiates modifications of laws and provides information and training, as well as publishes data concerning public procurement procedures. Its official journal is Public Procurement Gazette.

In Council for Public Procurement the **Public Procurement Arbitration Committee** consisting of 18 commissioners are responsible for providing legal remedy in case of lawsuit or violating the Public Procurement Act. The council cannot give directives to the committee working under its supervision. From the 7-800 appeals for legal remedy only a small fragment is about neglecting or lack of tendering (less than 10 annually). Local authorities constitute the highest rates of lawsuit procedures against decisions of organizations calling for public procurement every year. The bidders ask for legal remedy in connection with their participation in the tendering procedure or against the decision on the winner.

From July 2002 a **political secretary of public finance** subordinated to prime minister was nominated to be responsible for supervising systems of managing and using public monies. His duty – according to the requirements of transparency, controllability fair public life – is to harmonize the systems supervising public finance and elaborate initiatives and proposals for further development of these systems. The office of the secretary has a position of a kind of ombudsman for public finance in the governmental system.

**Civil Service Supervising Office** was established in line with the 2001 modification of the 1992 Law on the Legal Position of Civil Servants. The law obliges high rank/senior civil servants to handle their property declaration in. In case of unjustified differences in the property claim for successive years or complaints the office can initiate investigation to reveal causes. The Internal Auditing Departments of the Ministries operate under the supervision of the Civil Service Supervising Office.

The permanent Committee of Conflict of Interests representing the parties proportionally is to investigate inconsistency/incompatibility of the Members of Parliament. This is one of the committees that can have access to the property and income declarations and business interests of the representatives.

## 1.4 Other organizations and institutions

The **Center against Organized Crime** was launched in 2000 and is operated as an independent central body in the organizational framework of the Ministry of Interior. Its task is not to investigate but to coordinate the activities of bodies - the police and the prosecution - investigating different crimes among them bribery and money laundering .

Hungarian government supports the goals and objectives of the EU Office Against Fraud (**OLAF**). According to the 2001 government decree the contact organization in Hungary is Ministry of Finance.

In spring 2003 an anti-corruption board, the **Ethical Council of the Republic** initiated by the prime minister started its activity with its 10 members, who were suggested by the former President of the Supreme Court, Pál Solt. The independent from the government board is expected to give proposals on anti-corruption measures and modifications of laws in some reasonable cases. With its help it is expected to compile a comprehensive code of conduct collecting the desirable norms for civil servants.

The task of the 3 **ombudsmen** is to examine civil, political, national and ethnic minority rights, as well as data protection, informational technology freedom rights and investigating violations against constitutional rights. They are responsible entirely to the parliament, are elected for 6 years and can initiate measures for legal remedy. Since December 2001 ombudsmen are not authorized to supervise the activities of the parliament, the prosecutors, judges, notaries and consumer supervisory office as well.

**Civil organizations** providing mainly community services played basic role in throwing light on anti-corruption initiatives, contributed to the creation of anti-corruption policies, and kept the government under constant pressure to put these policies into force. There are about 50,000 (Central Statistics Office data) – 60,000 (Court of Registration's data) civil organizations in Hungary. The prime minister has not signed the agreement on the theoretical conditions of the cooperation with the representatives of civil society yet. The Hungarian government has already approved the bill of the National Civil Program providing more support (several billion HUF) for non-profit sector and it will soon approve the civil strategy. The concept of establishing the National Civil Representations through election partly based on territorial and professional considerations was proposed for discussion after several attempts for ten years in April 2003.

**Transparency International** (TI), as an international non-profit organization came into existence entirely for fight against corruption in 1994. Transparency International Hungarian Chapter (TIHUN) has been in operation since 1996 as a branch of the Berlin-based TI.

## 1.5 Forums, conferences, researches, publicity and media

Several international and national **conferences** and discussions have been organized in Hungary on corruption and the fight against it. Among them a discussion on corruption experienced in transitional countries was held in Budapest in 1994, and another conference was organized by the Council for Public Procurement with the title “Public procurement at the beginning of the 21<sup>st</sup> century” in 2002.

Several national **surveys** and essays have been published on corruption in Hungary in the last few years. The Hungarian Gallup Institute carried out a survey in the area of civil and business fields, TARKI questioned the citizens, GfK Polling Institute examined business sector, and the Association of Police Researchers made a study based on interviews with the policemen, all concerning corruption. The EUMAP study prepared by Open Society Institute published in the second half in 2002 overviews the Hungarian anti-corruption policy in the light of the EU accession.

The major part of mass **media** in Hungary is in private hands and in foreign ownership. Although constitutional framework and special laws provide freedom to media, getting relevant information is practically very difficult. According to several journalist the conditions of developing pragmatic journalism do not exist, as political influence has crept in the field of mass media as well.

From five nationwide **television** channels three are under state ownership in Hungary. In national state program transmission the law strives to balance the different supervisory rights for the Board of Trustees, consisting of delegated representatives both from the governmental side and the opposition. The National Radio and Television Board (ORTT) regulates radio and television transmissions, and issues TV-channel and radio frequency permissions based on tenders. Problems have been detected in providing freedom for the public television and radio transmissions: in most candidate countries the supervision is practiced through political control and influence or in the form of “financial pressuring”.

### **Problems and resolutions in combating corruption**

The European Commission country reports since 1997 have consistently blamed Hungary for existing corruption, the most characteristic area of which is public procurement, with special regards to major state infrastructure investments.

According to the national examinations on corruption it is mainly characteristic in the area of health service, followed by traffic policemen, customs offices and central governmental authorities. In the opinion of the EU, IMF, and the Office of the Secretary of Public Finance submitted to the Prime Minister, nowadays several billion HUF worth political and economic interpenetrations endanger democratic values: cases, where the middle-level or higher rank government staff gets in contact with the economic sphere through concession or public procurement. These cases remain at the level of suspicion and never reach criminal judge. In the opinion of the Supreme Court Judge particular norms of economic activities should be modified, e.g. conflict of interest rules and regulations should be strengthened.

According to the EUMAP report of 2001 the main problems of corruption in Hungary are caused by the economic clients of political parties, the lack of independency in criminal procedures, public procurement and the independence of media. However it should be noted that through media in the last 2 year, in connections with the preparations for elections and as a result of it changes in governing coalition (from right wing to the left one), corruption cases revealed had been qualified by the public opinion slightly party targeted. And it is a great harm in a young democracy to weaken the public confidence and consciousness by corruption suspicious cases revealed more or less party targeted.

According to the EC the activity of the State Audit Office is in line with the requirement concerning effective operation, although the parliamentary work needs further improvement as stated in its reports. The recommendations of the Office are often neglected. The Governmental Supervisory Office has only restricted rights to reveal and suppress malpractice (e.g. in cases of tenders won by entrepreneurs). The ex-post supervision and control is not suitable to hinder violation of law.

Although Public Procurement Act is functioning satisfactorily, and its basic pillars are stable and long-lasting providing suitable framework for public tenders, according to State Audit Office problems concerning public procurement are due to the improper preparation and training of people implementing the law, wrong attitudes, or personal interests against transparency, the lack of proper supervision and control.

According to the evaluation of the Court of Auditors the main tool to prevent corruption is the proper functioning of internal controlling. The new phenomenon in the areas of company and local authority activities is that instead of setting up inside supervision and controlling system they assign the task to external auditing companies, which later supervise and audit the financial reports and economic results of the same organizations – and it can unavoidably cause and lead to interpenetration. External controls should not replace the comprehensive internal supervision promoting decision-making process of the management.

The Office of the State Secretary of Public Finance subordinated to Prime Minister suggests that inside control and supervision would be organized on a new basis. In its opinion the right way is not to assign increasing tasks to State Audit Office by its enlargement, but to enable certain financial organizations and chapters of law to control and supervise themselves their expenses with proper background infrastructure, staff training and according to a certain methodology concept which should only be audited by State Audit Office. The development of internal (governmental) controlling is an EU-requirement. The secretary finds it necessary to launch an action plan for the success of the anti-corruption fight. The following measures would constitute part of this action plan:

- ? modification of the Public Procurement Act (also included in the law-making plan of the government);
- ? to create the inner supervisory system in local authorities (constant and transparent system);
- ? transformation of the system of addressed and other subsidies and the control of their use,
- ? modification of legal regulations, creating new laws (e.g. reform on financing parties and their money management, the lack of lobby act).

**Other issues related to public procurements:**

- ? Relationships between the main contractors and the subcontractors are rarely supervised (worse implementation and quality got due to the weaknesses of the subcontractors).
- ? Nothing can hinder main contractor to modify the conditions of the already signed contract as the implementation will not be supervised or controlled.
- ? Pre-qualification is often carried out by the same people as the organizers of the tenders.
- ? Local authorities have counter-interests for long-widened tendering procedures.

- ? There is no harmony between the conditions of public procurement regulations and that of different tendering and supporting systems (State Audit Office).
- ? EU criticizes regulation providing benefit for domestic bidders.
- ? The EU and the Council for Public Procurement finds the high number of exemptions from public procurement procedures unacceptable.

Although members of parliament and civil servants should hand in a declaration of their business interests, property and income according to the legal regulations of the conflict of interest of civil servants, the mechanism for controlling property and income is very weak, no legal steps and sanctions against incorrect declarations can be taken. Investigation can be initiated only in case of complaint, the procedures of submitting complaints is not proportional (e.g. civil servants cannot submit complaints against their superiors).

Although the rules of party financing are rather strict, their control is formal and ineffective, so hidden financial support of the political parties is a great problem in Hungary. The greatest issue for State Audit Office auditing the invoices of parties getting budget support is how to observe and control expenses and financing campaigns. Its proposal to modify the law on party financing was dismissed by the parliament. No new and comprehensive law has been passed on financing party campaigns guarantying total transparency replacing the old law on the voting process yet. There is no clear financial definition for electoral campaign, the range of campaign expenses yet. According to the State Audit Office the lack of lobby act is mainly responsible for the fact, that financing parties seems to be the most fragile part regarding corruption in the democratic institutional system.

Jurisdiction and judge independency are mainly endangered by political influence, the working conditions at courts (overburdened), the pay-rise system based on the judges' "performance", the delay in setting up High Courts of Justice as Courts of Appeal, and the financial supervision of jurisdiction by the executive power. According to the associations of prosecutors and lawyers the independency of jurisdiction is endangered through media criticisms before and after court trials and by the interactions of legislative and executive powers.

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## **Annex 1**

### **Hungary's role in the International Coalitions Fighting Against Corruption**

Today's fight against corruption – in spite of being found in other dimensions of the society – is concentrating above all on the international corruption in world economy. Economic corruption is a straightforward result of the economy becoming international and disobeying or breaking the written or unwritten rules of international economic competition.

The long-term procedures of the development of the economic competition and the protection of economy through legal measures have called upon the pretension for legal protection. These needs were met by creating special legal steps (economic, competitive, against tax fraud or failure). They were aimed mainly at the protection of differences in the home markets. The cooperation among nations has been hindered by restricted applicability of international law, different concepts in material criminal law, also the differences between legal procedures. Since corruption is a widespread phenomenon in international business transactions, multilateral cooperation is required from all countries to suppress its practice. (Since corruption has become a widespread phenomenon in the business world, there is a great demand for multilateral cooperation among countries against organized crime to suppress it.)

The international fight against corruption is basically a typical product of the second part of the 70s. As the first goal was to reduce the role corruption played in international commerce, it seemed to be logical to launch the cooperation in the framework of the OECD.

Fight against corruption has been dealt with parallel in other forums as well, among them at the Council of Europe, the European Union, the UN, the Alliance of American States, different economic organizations like International Chamber of Commerce or the World Bank, respectively non-governmental organizations, e.g. Transparency International or Gallup. In the framework of the Council of Europe in 1994 and the European Union in 1995 steps were taken to create international treaties on fight against corruption. Transparency International, as an international non-governmental organization was launched expressively for the fight against corruption in 1994.

The cooperation was not limited to the fight against economic corruption only, as corruption plays a significant role not exclusively in breaking the rules of decent economic competition. Corruption is also an accompanying phenomenon of crimes over borders (e.g. financial abuses, organized crime, handling drugs, fraud), so international cooperation is essential in these fields.

The above-mentioned forums approached the definition of corruption in different ways. While OECD for example finds its basic task in preventing corruption during international economic transactions, the European Union emphasizes the transparency of its decision making in economy and protection of its own financial interests, i.e. lays stress upon sectoral measures against corruption, then the Council of Europe gives preference to fighting against corruption occurring both in the private and governmental sectors, as well as in economy, policy and in the civil society, so it forces universal legal measurements.

Several treaties and conventions were signed with the help of international organizations mentioned above. **Hungary has joined most of the relevant treaties, accepted the recommendations and integrated those to its legal system. The most important of these, concerning corruption in international trade are as follows.**

## **1. The OECD**

In 1994 Hungary joined the **OECD Declaration on International Investments and Multinational Enterprises** according to which the multinational enterprises shall not bribe or promise any other advantage, directly or indirectly to any civil servants and holders of public office and they shall not create a situation in which such a conduct may be expected of them. This Declaration has been incorporated into our legal system as International Treaty No. 1994/112.

With Government Decree No. 2013/1995. (I. 26.) Hungary has joined the **OECD Recommendation on Bribery in International Business Transactions**, which has since been revised and updated. This document recommends that all member countries shall criminalize the bribery of foreign public officials in an effective and coordinated manner and generally should amend their criminal, civil, commercial and administrative laws and the application thereof so that these may provide effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions. The Government Decree declared it to be the task of the different ministers to transfer the content of the Recommendation to the legal regulations of their own specific areas.

This process lead to the **OECD Convention (1997) convention – also ratified by the Hungarian legislation** -, which criminalizes the official bribery of foreign civil servants as well. The international convention on Fight against bribing foreign legal personalities in international business transaction, launched on 26 November 1997, signed by the Hungarian government on 17 December 1997, ratified by the legislation on 29 November 1998, including 17 chapters defines borders for legal steps or prescribes mutual provisions according to the following (without recommending any legal texts):

- ✍ Definition of bribery;
- ✍ Circle of officials (Chapter 1.);
- ✍ Responsibilities of legal entities (Chapter 2.);
- ✍ Imposing sanctions (Chapter 3.);
- ✍ On investigation of cases of corruption and charges against them the Convention gives restrictions only in one case: is shall not be effected by economic considerations in connection with the interests of the country. (Chapter 5.);
- ✍ The Convention forces to take legal steps for creating criminal law provisions on money laundering in connection with bribery money and its pursuit regardless of the spot of the crime (Chapter 7.);
- ✍ Furthermore the Convention prescribes to create precise and transparent public rules on bookkeeping, auditing, financial recordings and civil, administration and criminal law obligation forms and sanctions against them (Chapter 8.).

**Together with the ratification of the Convention Hungary modified the Criminal Law with the Act No.LXXXVIII./1998., and extended it with a new chapter No XV. regulating crimes against civil administration, justice and public transparency, under the title „Crimes against transparency of international publicity. Its 258/B. part regulates the crime „Bribery in international transactions”. It should be pointed out, that during regulation of the law some parts of already existing bribery acts were adapted, which complies with the requirements of the Convention.**

In some respect it gives additional elements when ordering to penalize the passive cases of bribery as well. (258/D.§) The Convention has also been published in the form of an Act of Parliament very recently (Act XXXVII of 2000) both in the original English version and the official Hungarian translation. Consequently in Hungary the relevant provisions of **Act CXVII of 1995 on Personal Income Tax and Act LXXXI of 1996 on Corporate Tax and Dividend Tax** attempt to ensure that bribes shall not be tax deductible, though not every company complies with the provisions contained therein.

Regarding proper accounting and auditing, the parties shall apply effective civil, administrative or penal sanctions to ensure that the reporting and bookkeeping obligations of the companies are fulfilled. The relevant Hungarian legal provisions concerning this issue can be found in **Act XVIII of 1991 on Accounting** (the new Act C of 2000 shall come into force on January 1, 2001, but in this aspect it will not contain different regulations) and **Act XCI of 1990 on the Rules of Taxation**. Both of these Acts ensure civil and criminal liability. Hungary thus fulfils the requirements of the Convention in this question as well.

## **2. The Council of Europe**

In the mid 90s the European Council decided on taking measures against corruption. In 1995 a **Multidisciplinary Group against Corruption** was launched, which – according to its own definition - regarded its main task to create the framework of the broadest international steps against corruption. When launching its activity the Group defined corruption as a sort of crime, which „provides extra illegal advantages for people or for others as civil servants, private employees at governmental offices or in private businesses by misusing their independent positions or abusing their obligations in any way.”

It saw its task not only in creating an international treaty, but also in promoting and evaluating the legal activities of different states against corruption. In accordance with it the European Council submitted in April 1998 a recommendation to set up **the Group of States Against Corruption (GRECO)**, which was approved by the Decree 98/7 in the Commission of Ministers at the Council of Europe. The essential part of the activity in the GRECO Group is to support effective prevention of corruption, to promote the dynamic process of the fight against it. With the help of e mutual analyses and pressure from several sides the GRECO Group can flexibly and effectively follow the observations of Regulating Recommendations, moreover it can control the implementation of international measures against corruption approved by the Council of Europe. The GRECO Group has 25 states recently.

As a result of the activity of the Group the Council of Europe on 27 January 1999 approved the **Criminal Law Convention on Corruption (furthermore Convention)**. It has been signed by 29 states so far, but only 5 states (up to the date of the study) – the Czech Republic, Denmark, Slovakia, Slovenia and Macedonia – have ratified it. To come into force it needs

the ratification of 14 states. The 42 Chapters of the Convention covers nearly the whole scale of existing forms of corruption. Its provisions regard both active and passive corruption as subject to criminal act by criminal law, therefore it gives preference to legal sanctions and measurements.

**In Decree No. 49/1999. (VI. 3.) the Hungarian Parliament decided that the country shall join GRECO, the Group of States against Corruption**, which is aimed at improving the capacity of its members to fight corruption

**The European Council has adapted two conventions of significant importance in 1999** in order to increase international cooperation in the fight against corruption and to achieve a greater unity concerning the relevant legal regulations of its members. These documents are the **Criminal Law Convention on Corruption** and the **Civil Law Convention on Corruption**. **Hungary has signed the former document in April 4, 1999 and the latter one in January 2003.** At the time of the adding of the aforementioned amendment to the Criminal Code of Hungary, the Criminal Law Convention has already existed in a draft form and so several of the principles and definitions of this Convention have also been included in the amendment.

### **3. The European Union**

#### **The Hungarian EU-accession and the national legal measurements against corruption**

The central element in EU law-making and implementing is "acquis communautaire", a collection of a large system of laws and obligations, which connect all member states of the European Union. The acquis communautaire covers all the aspects of EU cooperation and all member states are subject to it. They are allowed to derive from them only in exceptional cases and in restricted areas.

The so-called 3-pillar cooperation has its own acquis as well. Among them there are the different law sources – conventions, resolutions, standpoints and European Council decisions.- in a wide scale. The key issue is the consensus of the member states in creating and approving the acquis.

With the future member states approving some documents should not be subject to consideration. One of the preconditions for joining the EU is to ratify the conventions containing the approval of the 3-pillar acquis communautaire.

The EU has published the list of those documents, the approval of which is compulsory for the future member states. Some of them – especially the cooperation in the fields of organized crime, fraud, corruption and justice – impose great tasks on national law-making institutions. They are

- ? The EUROPOL Convention on 26 July 1995;
- ? The Convention of the European Union on the protection of its financial interests approved on the same day and its protocols
- ? The Convention on fight against corruption dated 26 May 1997. and its protocols
- ? The Convention on simplified extradition among member states approved on 10 March 1995
- ? The Convention on Extradition among EU member states dated 27 September 1996.

The list is naturally wider. **Joining the above-mentioned conventions is compulsory for future member states, it is one of the preconditions.** They should not be ratified, although other EU member countries tend to do so and it's only a question of time until it comes to the end.

**The Convention of the European Union on the protection of its financial interests** constitutes the first agreement under "Provisions on police and judicial cooperation in criminal matters" of the Treaty of the European Union. Austria, Finland, France, Germany, Greece, Spain, Sweden and the United Kingdom have ratified it. The Convention aims at protecting the European Communities' financial interests by calling for the criminal prosecution of fraudulent conduct injuring those interests.

#### **4. United Nations Organization**

##### *UN Program on GPAC*

Established in 1997, the **Centre for International Crime Prevention (CICP)** is the United Nations office responsible for crime prevention, criminal justice and criminal law reform. The CICP works with Member States to strengthen the rule of law, to promote stable and viable criminal justice systems and to combat the growing threats of transnational organized crime, corruption and trafficking in human beings. Since October 2002, the Centre for International Crime Prevention (CICP) has been renamed the UNODC Crime Program.

The **Global Program against Corruption (GPAC)** was launched by the United Nations Office on Drugs and Crime Prevention (UNODC), in collaboration with the United Nations **Interregional Crime and Justice Research Institute (UNICRI)**, to assist Member States in their efforts to build integrity to curb and prevent corruption by increasing the risks and costs of abusing power for private gain. The Global Program against Corruption is composed of three main components: action learning, technical cooperation, and evaluation. GPAC provide technical cooperation at the International, national and sub-national (or municipal) levels.

After participating in quite a few conferences discussed the topic of corruption, **Hungary has joined in 1999 the research program initiated by the United Nations** aimed at examining the different forms of corruption and the means to fight against them.

##### *The UN Convention Against Transnational Organized Crime*

Recognizing that organized crime is a serious and growing problem for all countries, the Convention aims at promoting international cooperation to prevent and combat transnational organized crime. As the first comprehensive international legal instrument for the fight against organized crime, the Convention, together with its Protocols, provides law enforcement and judicial authorities with unique tools to combat this problem. It is also intended to provide greater coordination of national policy, legislative, administrative and enforcement approaches to organized crime.

**The Convention standardizes terminology and concepts, creating a common basis for national crime-control frameworks.** Such concepts include "organized criminal group", a definition of which was internationally agreed upon for the first time. The Convention

establishes four specific crimes (participation in organized criminal groups, money-laundering, corruption and obstruction of justice) to combat areas of criminality, which are commonly used in support of transnational organized crime activities. Under the Convention, members shall criminalize these offences in accordance with the provisions of the Convention.

The Convention contains specific provisions for preventing, investigating and prosecuting these offences as well as serious crimes when they are transnational in nature and involve an organized criminal group.

One of the most important international cooperation components of the Convention is its extradition provision. This provision is vital to ensuring that there are “no safe havens” to which offenders can flee. Under the Convention, fiscal matters should not be a sole ground for refusing extradition. The Convention is not into force yet.

## 5. Economic Organizations

The **International Chamber of Commerce** plays an important role in promoting initiatives on fights against corruption, but it has not created a separate convention. Its basics were founded in 1977, a **Set of Rule on Blackmailing and Bribery in International Business Transactions**. Since then it has been rewritten several times. In 1994 a special committee dealing with this issue was launched. It participates in preparation of conventions in major organizations (OECD, UNO).

**World Bank has a leading role among other (multilateral) institutions in the sense that it keeps the topic of corruption** in view so that it had enforced the control financial purchases and expenses in their own projects and elaborated new approaches in fights against corruption in different countries. Enhanced control in management and regulations and deleting corruption in their own projects is not a new phenomenon at the World Bank. However, until recently the Bank had no systematic framework plan to deal with corruption, which can be crucial for development. Corruption is regarded as the main obstacle of long-term economic and social growth, so in 1997 a report was issued discussing the role of the World Bank in the fight against corruption, and a recommendation for the staff was issued together with the IMF.

The Bank separately **elaborated an action plan**, one of its main issue of which was to help the governments of countries asking for loans to fight against corruption and to promote already existing international initiatives and relationships. **Moreover, special plans were created for some countries**, including Albania, Latvia, Lithuania, Indonesia. Hungary was not among them.