



Brussels, 3.2.2014
COM(2014) 38 final

ANNEX 17

ANNEX

HUNGARY

to the

EU Anti-Corruption Report

HUNGARY

1. INTRODUCTION – MAIN FEATURES AND CONTEXT

Anti-corruption framework

Strategic approach. Hungary has an integrity and prevention-oriented approach within its public administration.¹ The Hungarian Government adopted a two-year anti-corruption programme in early 2012 comprising a range of integrity-related measures for the public administration.² It does not cover the business sector, Parliament and local governments. Nevertheless, some municipalities have adopted ethical codes, which mostly provide general guidelines on fair treatment of clients without necessarily covering practical rules on gifts or favours.³ In the latest annual integrity research of the State Audit Office, the factors raising the risk of corruption have increased by 5% as compared to the previous year, while the use of soft control measures such as codes of ethics has slightly improved.⁴

In relation to the central public administration, the anti-corruption programme focuses on prevention policies, such as the setting up of an integrity management system that started in 2013. This includes the appointment of integrity officers responsible for monitoring compliance with ethical requirements, anti-corruption training for civil servants, publication of a code of conduct for employees of state institutions, corruption impact assessment of governmental proposals and decrees, protection of whistleblowers, and further awareness-raising activities. Based on a Green Paper on ethical standards in the public service, a code of professional ethics of public servants and a code of conduct and ethical process for law enforcement bodies were adopted in mid-2013.⁵ While the focus on prevention is welcome, the national anti-corruption programme, as highlighted by the Commission assessment of the 2013 national reform programme and convergence programme for Hungary, does not tackle adequately either the issue of insufficient law enforcement efforts in this area, nor the issue of stricter checks on party financing.⁶ The programme addresses insufficiently the risks associated with clientelism, favouritism and nepotism at high levels of public administration, or those arising from the interface between businesses and political actors. The Council has also called on Hungary to take further adequate measures to tackle corruption.⁷

To increase coordination, the Minister of Public Administration, the President of the State Audit Office, the President of the Supreme Court and the Prosecutor General signed a

1 <http://korrupciomegelozes.kormany.hu/>

2 Governmental decree of 1104/2012. (IV. 6.) [A Közigazgatás Korrupció-megelőzési Programja 2012-2014.] The corruption prevention program of the public administration, 2012-2014. <http://www.kormany.hu/hu/kozigazgatasi-es-igazsagugyi-miniszterium/parlament-allamtitkarsag/hirek/atfogo-korrupcioellenes-program-indul>.

3 Among the municipalities with the largest populations, Miskolc, Győr, Pécs and Szeged have not published any ethical code. <http://www.miskolc.hu/>; <http://www.gyor.hu/>; <http://hivatal.pecs.hu/onkormanyzat/>; <http://www.szegedvaros.hu/>. For a good example, see the code of ethics of Debrecen.

http://portal.debrecen.hu/upload/File/varoshaza/onkormanyzat/egyeb/etikai_kodex2011.pdf. For an overview of the existence of such codes, see the following: "A helyi önkormányzatok működésének átláthatósága – kérdőíves felmérés tükrében", HUSK/0901/1.5.1/0246. project; <http://www.transparency.hu/uploads/docs/esettanulmany.pdf>.

4 http://integritas.asz.hu/uploads/files/Összefoglaló_tanulmány_aláírt.pdf.

5 Resolution of the National meeting of the Hungarian Government Officials' Body on the Code of professional ethics of the Hungarian Government public officials which provides, among others, detailed provisions on professional ethics, reporting of misconduct, obligation to ensure impartiality, conflict of interests, acceptance of gifts, obligation to refrain from offering any undue advantages. The code also contains detailed provisions on disciplinary procedures that can be triggered as a result of a breach of ethical obligations.

6 Commission Staff Working Document: Assessment of the 2013 national reform programme and convergence programme for Hungary, Accompanying the document Recommendation for a Council Recommendation on Hungary's 2013 national reform programme of 29 May 2013, SWD(2013) 367 final: http://ec.europa.eu/europe2020/pdf/nd/swd2013_hungary_en.pdf.

7 Council Recommendation 2013/C 217/10 of 9 July 2013.

statement of commitment for joint action against corruption at the end of 2011. Moreover, legislative amendments established the practice of publishing information on the website of all public institutions over the last decade to further enhance transparency in the use of public funds by limiting business secrets, expanding disclosure requirements and providing for the publication by budgetary authorities of financial information.⁸

Hungary has reinforced its integrity education system, introducing anti-corruption related matters in the national core curriculum since 2012. It has set up postgraduate programmes for public servants focused on integrity issues and included integrity programmes in the curriculum of the National University of Public Service since 2013. These programmes and training curricula promote innovative learning processes and were tested on targeted public administration groups (management and civil servant level) through close cooperation of government experts, civil society, private sector and academia.⁹ Since the programme began in September 2013, about 2 000 public officials and civil society representatives have been trained.

Legal framework. Anti-corruption and integrity-related policies, both on the prevention and the repression side, are largely covered by a wide range of legislation. An extensive criminal legal framework is in place, covering both public and private sector corruption. A new Criminal Code has entered into force in July 2013.¹⁰ The Code contains a number of new provisions on corruption offences, such as simplified definitions of crimes and longer prescription terms. In addition to active and passive trading in influence, the Criminal Code criminalises budget fraud and provides for new aggravating circumstances for a range of corruption-related offences. The Council of Europe Group of States against Corruption (GRECO) noted that the new legislation met an acceptable level of compliance with its recommendations.¹¹ Several additional amendments, including some to the criminal procedure code, were recently adopted to ensure speedier court proceedings.¹²

Institutional framework. Anti-corruption policies at national level are coordinated by the Ministry of Justice. Police and law enforcement were seen as one of the reliable pillars of national integrity by Transparency International's National Integrity System report in 2011, while the judiciary received a less favourable score.¹³ The National Election Office, the National Election Committee and the Ombudsman were assessed in the same report as the strongest pillars. The State Audit Office also plays an important role in the implementation of anti-corruption policies, notably through its control mechanism role. In 2011 an anti-corruption unit was established within the Chief Prosecutor's Office. Public perception reveals some concerns regarding the effectiveness of prosecution of corruption. 82% of the Hungarian respondents to the 2013 Special Eurobarometer Survey on corruption¹⁴ say that high-level corruption cases are not sufficiently pursued (EU average: 73%).

8 Act No. XXIV of 2003 [2003. évi XXIV. törvény a közpénzek felhasználásával, a köztulajdon használatának nyilvánosságával, átláthatóbbá tételével és ellenőrzésének bővítésével összefüggő egyes törvények módosításáról] - <http://www.complex.hu/kzldat/t0300024.htm/t0300024.htm>; the act was replaced by the act on the right to self-determination and freedom of information [2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról] -; http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100112.TV

9 <http://korrupciomegelozes.kormany.hu/lezarult-az-integritasmenedzsment-vezetoi-trening-első-pilot-kepzes-e> ; <http://korrupciomegelozes.kormany.hu/kozszojalati-etika-es-integritas-pilot-trening-a-magyar-allamkincstar-munkatarsainak>

10 Criminal Code of 2012 [2012. évi C. törvény a Büntető Törvénykönyvről] ; http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200100.TV

11 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)3_Hungary_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)3_Hungary_EN.pdf).

12 Act no CXII of 2013 [2013. évi CXII. törvény a büntetőeljárások időszerezésének javítása érdekében szükséges egyes törvények módosításáról] - http://njt.hu/cgi_bin/njt_doc.cgi?docid=161469.243992

13 http://www.transparency.org/whatwedo/nisarticle/hungary_2011.

14 2013 Special Eurobarometer 397.

In 2011, the prosecution service reported 249 indictments out of 465 cases of alleged bribery and trading in influence.¹⁵ According to the Hungarian authorities, in 2011 and 2012 there were over 700 detected corruption cases. However, there are few examples of high-profile cases that have reached the courts. One such example concerns a former mayor of a Budapest district who was convicted in the first instance for selling local government property at a loss to straw-man companies to re-sell them at an unfair level of profit. The conviction was confirmed on appeal and is now undergoing second appeal proceedings. Overall, criminal proceedings in corruption cases appear to be rather lengthy. Over the last decade, successive governments have implemented several anti-corruption measures within the police where a number of corruption cases involving police officers have revealed vulnerabilities. Such measures concerned: the elimination of cash payments for fines and the introduction of integrity testing within the National Protection Service in 2012.¹⁶

Opinion polling

Perception surveys. According to the 2013 Special Eurobarometer on Corruption¹⁷, 89% of Hungarian respondents consider that corruption is a widespread problem in Hungary (EU average: 76%), while 19 % of respondents feel affected by corruption in everyday life (EU average: 26%).

Experience of corruption. When it comes to petty corruption, approximately 13% of Hungarian respondents to the 2013 Special Eurobarometer on Corruption stated that they were expected or asked to pay a bribe (as compared to an EU average of 4%). The vast majority of these allegations concerned the healthcare sector.

Business surveys. According to the Flash 2013 Eurobarometer Business Survey on corruption¹⁸, 81% of the Hungarian business respondents consider that favouritism and corruption hamper business competition (EU average: 73%) and 59% of the respondents to the same survey say that corruption is a problem for their company when doing business in Hungary (EU average: 43%).

Background issues

Judiciary. In spite of an overall legislative and institutional framework that sets the main guarantees for the independence of the judiciary and of control institutions, alleged political ties of certain high-level officials within control institutions such as the State Audit Office or the National Judicial Office have raised a number of concerns over the recent years. A well-functioning judiciary system is a key element in the assessment of anti-corruption policies, given that the judiciary plays an important role in the repression of corruption and that the handling of sensitive corruption cases cannot prove its effectiveness without this prerequisite. Likewise, guarantees for constitutional checks and balances are crucial aspects that heavily influence the reliability of anti-corruption policies and limit the scope of potential abuses of power to the detriment of the public interest. In 2011 and early 2012, the Commission voiced concerns on a number of legislative and institutional measures, as well as controversial decisions concerning the premature termination of the mandate of the former president of the Supreme Court¹⁹ and the extensive powers attributed to the President of the National Judicial

15 These statistics cover only those corruption cases where the prosecutor has exclusive investigation powers; other, mostly minor cases of corruption are investigated by the police and are not included in these: [statisticshttp://www.mklu.hu/cgi-bin/index.pl?lang=hu/](http://www.mklu.hu/cgi-bin/index.pl?lang=hu/)

16 <http://nvsz.hu/en/activities/test>.

17 2013 Special Eurobarometer 397.

18 2013 Flash Eurobarometer 374.

19 http://europa.eu/rapid/press-release_IP-12-24_en.htm.

Office.²⁰ Hungary took steps to address these issues, notably as regards the discriminatory retirement of judges and prosecutors.²¹ In April 2013, the Commission expressed concerns with regard to the fourth amendments to the Constitution of Hungary, including those regarding the powers conferred on the President of the National Judicial Office to transfer cases, and, subject to a more detailed analysis, restrictions on the publication of political advertising.²² In June 2013, the Council of Europe Venice Commission issued a report on the fourth constitutional amendment raising concerns regarding the 'supremacy of the basic principles contained in the Fundamental Law of Hungary'²³ Responding to these concerns, the Hungarian Government has withdrawn the measures concerning the transfer of court cases; the main line of these measures was confirmed by the Constitutional Court at the end of 2013. In September 2013 the Hungarian Parliament voted a fifth amendment to the Constitution addressing all the concerns mentioned above, including allowing advertising campaigns broadcast in commercial TVs and radio.

Private sector. The Second Implementation Report issued by the European Commission in June 2011 on the implementation of Framework Decision 2003/568/JHA on combating corruption in the private sector²⁴ concluded that Hungary has partially transposed the Framework Decision, given that some shortcomings remain as regards the definition of offences and the liability of legal persons, in particular as regards liability in case of lack of supervision and control. Through the new Criminal Code that entered into force in July 2013, the scope of the criminal liability of legal persons has been extended, including some areas where criminal liability of natural persons does not apply.²⁵ Some measures were taken to decrease the backlog of procedures. With regard to foreign bribery, the OECD noted in early 2012 that there has been progress in Hungary's enforcement actions, while stressing that the number of convictions remains low, possibly due to difficulties in applying provisions on the criminal liability of legal persons. The OECD also recommended improving awareness-raising efforts targeting the private sector, as well as public administration and public agencies that work with Hungarian companies active in foreign markets.²⁶

Whistleblowing. A new law on whistleblowing was adopted in October 2013.²⁷ Previously, provisions on employees submitting information about violations of public interest were covered by the Act on the Protection of Fair Procedures of 2009.²⁸ The Act was accompanied at the time by another piece of legislation to set up the Public Interest Protection Office, but

20 Particularly in relation to the power to designate a court in a given case and to transfer judges without consent: http://europa.eu/rapid/press-release_MEMO-12-165_en.htm.

21 In 2012, the European Commission brought a case before the European Court of Justice for violations of the EU legislation on grounds of discriminatory retirement rules in relation to the Hungarian legislation that drastically reduced the retirement age of judges, prosecutors and public notaries. This would have led to the early retirement of 236 judges in 2012 alone (i.e. 10% of all judges within just one year). The Court ruled against Hungary, acknowledging the discriminatory nature of the law. Shortly before this decision, Hungary's Constitutional Court ruled on its unconstitutionality, the law being consequently repealed. While this case was related to infringement of European employment rules, it also raised some concerns as to its effect on the overall stability and independence of the justice system.

22 http://europa.eu/rapid/press-release_IP-13-327_en.htm

23 [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)012-e).

24 COM(2011) 309 final, Second Implementation report of FD 2003/568/JHA of 6 June 2011:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0309:FIN:EN:PDF>

25 Act No. CIV of 2012 on criminal measures applicable against legal persons [2001. évi CIV. törvény a jogi személlyel szemben alkalmazható büntetőjogi intézkedésekről]

26 <http://www.oecd.org/daf/anti-bribery/Hungaryphase3reportEN.pdf>

27 A panaszokról és a közérdekű bejelentésekről szóló 2013. évi CLXV. Törvény:

<http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK13173.pdf>.

28 Act CLXIII of 2009 on the Protection of Fair Procedures [2009. évi CLXIII. törvény a tisztességes eljárás védelméről, valamint az ezzel összefüggő törvénymódosításokról] http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0900163.TV

the latter did not enter into force.²⁹ The recently adopted law on whistleblowing aims to ensure safeguards of confidentiality of reporting and protecting whistleblowers from any negative consequences of their action. It also provides for the appointment of an official from the staff of each public institution tasked with minimising the institution's exposure to corruption and forwarding information received from witnesses to the Ombudsman. The new law also establishes the legal framework for protection of whistleblowers in the private sector and includes provisions on the confidentiality of the client-lawyer relationship. However, the law does have a number of shortcomings, such as the fact that whistleblowers are not protected from procedures against them in case they reveal professional or commercial secrets.

Transparency of lobbying. Hungary adopted an Act on lobbying in 2006.³⁰ However, given that it did not contain dissuasive sanctions and had little impact in practice,³¹ this was repealed in 2010.³² Currently there is no mandatory registration of lobbyists or any obligation on public officials to disclose or report contacts with lobbyists to a control body. The Government decree on the system of integrity management within public administration issued in 2013 obliges public servants to ask prior permission from their hierarchy to meet lobbyists and to also report back on the contacts or outcome of meetings.³³ There is no mechanism in place targeting the monitoring of the implementation of these obligations.

2. ISSUES IN FOCUS

Financing of political parties

Financing of political parties is regulated by an act which has been amended since its adoption in 1989.³⁴ Party funding has been subject to political debates across various governments. Political parties in Hungary get most of their financing from direct state funding.³⁵ Contributions from entities benefiting from state support, from foreign states and from anonymous donors are banned. If such contributions are accepted, they have to be paid to the state budget and, as a sanction, the state subsidy is reduced by a corresponding amount.³⁶ Party accounts with the limited amount of details prescribed by law have to be published once a year in the Official Journal. All donations above a certain threshold must be reported and published.³⁷ Since 2003, political parties have been allowed to establish one foundation for supporting their social, educational and similar social activities; these foundations are entitled to accept donations³⁸ from a large circle of supporters and are also entitled to state funding.³⁹

29 The Office was tasked with receiving reports of wrongdoing and carrying out the corresponding investigations, assisting whistleblowers, analysing corruption trends, advising public and private bodies on adopting anti-corruption measures, designing codes of conduct and providing anti-corruption training.

30 Act XLIX of 2006 on lobbying [2006. évi XLIX. törvény a lobbitevékenységről]: <http://www.complex.hu/kzldat/t0600049.htm/t0600049.htm>.

31 Tóth E. (2010) 'A lobbitorvény és a láthatatlan lobb', *Új Magyar Közigazgatás*, Vol. 3, No. 4, pp. 22-39.

32 Act repealed by act No. CXXXI of 2010; the latter however incorporated certain basic rules into the act on the legislative process [2010. évi CXXXI. törvény a jogszabályok előkészítésében való társadalmi részvételről].

33 50/2013. (II. 25.) Korm. Rendelet az államigazgatási szervek integritásirányítási rendszeréről és az érdekérvényesítő fogadásának rendjéről

34 Act no. XXXIII of 1989 on the functioning and financing of parties [1989. évi XXXIII. törvény a pártok működéséről és gazdálkodásáról] - http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=98900033.TV.

35 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)8_Hungary_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)8_Hungary_Two_EN.pdf).

36 Section 4 of Act No. XXXIII of 1989 on the functioning and financing of parties.

37 See the annex to Act No. XXXIII of 1989. All private donations have to appear under one of two categories: inland or foreign donors. All donations above HUF 500 000, the equivalent of EUR 1 666 from Hungarians and above HUF 100 000 (EUR 333) from foreigners have to be separately entered in the books.

38 Albeit not anonymous.

39 See Act No XLVI of 2003 amending Act No. XXXIII of 1989.

As regards the electoral process, until 2013, individual candidates were allowed to spend very limited amounts on electoral campaigning.⁴⁰ Concerns have been raised that larger parties actually spend three times more on campaigns than the legislation allows.⁴¹ In July 2013, a new act regulating candidates' expenses for parliamentary electoral campaigns was adopted.⁴² Municipal elections and referenda fall outside the scope of this new act. The act raised the threshold for individual candidates' expenses in parliamentary elections campaigns. However, it did not address some of the existing shortcomings also pointed out by GRECO in its evaluations.

The current legislation does not require parties to keep particularly detailed accounts or to submit them for examination.⁴³ The connections between the parties and their affiliated foundations are not clearly highlighted in the accounts. In its evaluations, GRECO raised concerns regarding the lack of transparency in the financing of electoral campaigns where 'a great majority of such funding is not accounted for or reported at all'.⁴⁴ According to the new act on parliamentary elections, a minor share (i.e. approximately 20%) of campaign spending and campaign incomes will be traceable through campaign accounts, while the rest will be monitored by the State Audit Office.

There is no requirement to subject political parties to independent auditing on a regular basis. The State Audit Office is tasked with verifying the financing of political parties and electoral campaigns, carrying out a legality check every second year.⁴⁵ It regularly publishes reports and recommendations based on its findings from the examination. However, its narrow competence for sanctions and the detail of the information provided by parties limits the possible impact of the reports.⁴⁶ The State Audit Office has no direct powers at its disposal to impose administrative sanctions for infringement of certain rules, for example, when a party has not published its accounts on time. If it finds unlawful activities in the operation of any party, it is obliged to notify the prosecution services. GRECO called on the State Audit Office to considerably reinforce its monitoring of political party funding, with more frequent and thorough checks, and to be provided with the necessary capacity to do so.⁴⁷ It also recommended a review of the current sanctioning system to ensure that flexible, effective, proportionate and dissuasive sanctions can be applied for infringements of party funding rules. These matters have not been satisfactorily addressed to date.

40 Act No. C. 1997 on the political elections, 92. § (1)

41 *Party and Campaign Financing* (2012) Hungary: Transparency International: http://www.transparency.hu/PARTY-AND_CAMPAIGN_FINANCING .

42 Act No. XXXVI of 2013 [2013. évi XXXVI. törvény a választási eljárásról].

43 See the annex to the Act no. XXXIII of 1989.

44 GRECO (2011) *Evaluation Report on Hungary Transparency of Party Funding*. 7-11 June. Strasbourg. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%298_Hungary_Two_EN.pdf. p. 21

45 Sections 9-10 of Act No. XXXIII of 1989 on the functioning and financing of parties.

46 See for the parties represented in the Parliament: <http://www.asz.hu/jelentes/1207/jelentes-a-lehet-mas-a-politika-2009-2010-evi-gazdalkodasa-torvenyessenek-ellenorzeserol/1207j000.pdf>; <http://www.asz.hu/jelentes/12111/jelentes-a-rendszeres-allami-tamogatasban-nem-reszesulo-egy-es-partok-utoellenorzeserol/12111j000.pdf>; <http://www.asz.hu/jelentes/1206/jelentes-a-jobbik-magyarorszagert-mozgalom-2009-2010-evi-gazdalkodasa-torvenyessenek-ellenorzeserol/1206j000.pdf>; <http://www.asz.hu/jelentes/1205/jelentes-a-magyar-szocialista-part-2009-2010-evi-gazdalkodasa-torvenyessenek-ellenorzeserol/1205j000.pdf>; <http://www.asz.hu/jelentes/1105/jelentes-a-2010-evi-orszaggyulesi-valasztasra-forditott-penzeskozok-elszamolasanak-ellenorzeserol-a-jelolo-szervezeteknel-es-a-fuggetlen-jeloltnel/1105j000.pdf>; <http://www.asz.hu/jelentes/13018/jelentes-a-fidesz-magyar-polgari-szovetseg-2010-2011-evi-gazdalkodasa-torvenyessenek-ellenorzeserol/13018j000.pdf>.

47 http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%298_Hungary_Two_EN.pdf. p. 21

Public procurement

Public procurement accounts for a significant proportion of the Hungarian economy. Public works, goods and services were worth about 22% of GDP in Hungary in 2011. The value of the calls for tender published in the Official Journal as a percentage of total expenditure on public works, good and services was 23.3% in 2011.⁴⁸

According to the 2013 Eurobarometer Business Survey on corruption,⁴⁹ 47% of the Hungarian respondents consider that corruption is widespread in public procurement managed by national authorities (EU average: 56%) and 48% in that managed by local authorities (EU average: 60%). In particular, Hungarian respondents stated that the following practices were widespread in public procurement procedures: specifications tailor-made for particular companies (64%); abuse of negotiated procedures (48%); conflicts of interests in the evaluation of the bids (42%); collusive bidding (58%); unclear selection or evaluation criteria (48%); abuse of emergency grounds to avoid competitive procedures (42%); involvement of bidders in the design of the specifications (48%); and amendments of contractual terms after conclusion of contract (42%). These perception indicators, while not necessarily directly related to corruption, illustrate risk factors that increase vulnerabilities to corruption in public procurement procedures.

Academic research⁵⁰ and assessments carried out by the Commission on public contracts (in particular EU-funded projects) suggest that, while practices appear generally formally compliant with the existing public procurement legal framework in Hungary, the following risks are most frequent, in particular affecting major infrastructure projects: conflicts of interest, high frequency of certain companies being successful in tenders for EU co-financed contracts, use of disproportionate selection and award criteria to favour particular bidders. In relation to EU structural funds, the Commission requested Hungary to define and undertake a set of actions in order to mitigate the above risks and in particular: market concentration analysis, ex-ante and ex-post procurement controls, training and guidance on procedures in practice, steps to stabilise staff and management. The Commission also raised reputational reservations in 2011 regarding 2007-2013 programmes and asked Hungary to take action to address the above-mentioned risks. Hungary took steps to follow these recommendations and undertook regular reporting. The reserve was therefore lifted in 2012.

In January 2012, a new Public Procurement Act entered into force, intended to increase transparency and simplify the procurement framework.⁵¹ Additional amendments to the Public Procurement Act were adopted in June 2013.⁵² Following these amendments, contracting authorities must publish on their websites information on negotiated procedures which take place without publication of contract notices, and the scope of the Public Procurement Database was broadened.⁵³ However, there is no effective sanctioning mechanism should this obligation be breached. A central procurement webpage⁵⁴ lists most

48 http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/public-procurement-indicators-2011_en.pdf.

49 2013 Flash Eurobarometer 374.

50 Papanek G. (2010) 'Corruption in public procurement and in general in Hungary', *Public Finance Quarterly*, Vol. 1, No. 2, pp. 298-320.

51 Act CVIII of 2011.

52 Act CXVI of 2013 on the amendment of Act CVIII. of 2011 on public procurements.

53 Negotiated procedures without publication of contract notice accounted for 34% of total procurement value in the national procurement regime in 2012: A Közbeszerzési Hatóság 2012. évi beszámolója. Annual Report of the Public Procurement Authority, 2012: <http://www.parlament.hu/irom39/10294/10294.pdf>, page 21

54 www.kozbeszerzes.hu.

of public procurement notifications, although it is not mandatory to disclose all types of public procurement documents.⁵⁵

In accordance with the 2012 Act on Public Procurement, persons or organisations acting on behalf of the contracting authority and persons or organisations involved by the contracting authority in any activity related to the procedure or the preparatory work thereof shall provide a declaration in writing concerning conflicts of interest. The official taking the decision on the award of the contract in the name of the contracting authority may not be a member of the evaluation committee. In the case of a collective decision-making process, the persons delegated by the decision-making body in the evaluation committee may only have a consultant capacity and not a decision-making one. Breach of conflict of interest provisions triggers the annulment of the tender. Moreover, economic operators are excluded from participating in the procedure if they give false data or make false statements which may prejudice the fairness of competition. The rules on conflict of interest are the same at local and central level. However, there appears to be no centralised view of how the provisions on conflicts of interest are applied in practice.

In spite of the legislative changes, challenges remain as to the overall effectiveness of control mechanisms throughout the procurement cycle and in the post-award phase. As confirmed by the State Audit Office, particular weaknesses can be noted at local level.⁵⁶ Capacity problems, lack of transparency and control, and strong informal relations between local businesses and political actors make local governments more vulnerable to corrupt practices.

The Commission's assessment of the 2013 national reform programme and convergence programme for Hungary⁵⁷ stressed that, in spite of the 2012 procurement legislation, there is a persistently low level of competition in public procurement. A very high proportion of public procurement procedures involved a single bidder: 54.3 % in 2010 and 49.1 % in 2011. This figure was even higher when a negotiated procedure was used (on average 61 %). Furthermore, the above-mentioned assessment pointed out that questionable direct awards continue to surface. The electronic submission of tenders is currently not possible in Hungary, so the economic benefits of e-procurement cannot be exploited fully. All these aspects further enhance corruption-related risks.

In relation to local government supervision, in terms of general legal compliance (i.e. not necessarily limited to public procurement), the ongoing public administration reforms that reduced the level of decentralisation also ensured that government offices regained the power to supervise local governments on legal compliance. There is no available data for an assessment of the impact of this reform on control mechanisms at local level. Recent research on transparency of public procurement at local level showed that 40% of the municipalities do not sufficiently fulfil their obligation to disclose public interest data.⁵⁸ As good practice, some municipalities took steps towards ensuring public access to information concerning the execution phase of public contracts or the content of the public contracts.

In 2012, the State Audit Office (SAO) published a report on the deficiencies of internal audits

55 E. g. detailed evaluation forms etc.

56 "Tiszta társadalom, tiszta gazdaság", Conference at the Széchenyi István University in 2012. The short summary of the speech is available at the website of the SAO: <http://www.aszhirportal.hu/hirek/tiszta-tarsadalom-tiszta-gazdasag-konferencia-a-gyori-szechenyi-istvan-egyetemen/>

57 Commission Staff Working Document: Assessment of the 2013 national reform programme and convergence programme for Hungary, Accompanying the document Recommendation for a Council Recommendation on Hungary's 2013 national reform programme of 29 May 2013, SWD(2013) 367 final: http://ec.europa.eu/europe2020/pdf/nd/swd2013_hungary_en.pdf.

58 http://www.transparency.hu/Municipalities_and_public_procurement?bind_info=index&bind_id=0.

at local government level in small entities, based on a pilot involving 12 municipalities.⁵⁹ The most frequent deficiencies found concerned: lack of internal regulations, lack of definitions regarding powers and responsibilities, insufficient financial risk management, lack of staff expertise, insufficient reporting, lack of separation of responsibilities, unregulated communication with external partners, and lack of a hierarchical management information system.

The State Audit Office has recently implemented an EU-funded project aiming at mapping, classifying and analysing corruption risks and evaluating the effectiveness of controls as regards the mitigation of corruption risks in the public sector. The first two surveys were implemented in 2011 and 2012, when over 1 000 budgetary authorities voluntarily filled in electronic data sheets each year, measuring the corruption risk profile. In 2013, the number of respondent authorities exceeded 1 400. The database with these electronic forms is publicly accessible on the web portal of the State Audit Office.⁶⁰ As part of this integrity project, detailed analyses of corruption risks in authorities involved in public procurement, administrative licensing and recipients of EU subsidies were prepared annually, and a new audit guide, covering also anti-corruption aspects, was developed by the State Audit Office.

Cooperation between audit and public procurement authorities on the one hand, and law enforcement bodies and prosecution on the other, could be improved. The notification rate of the former with regard to suspicions of corruption within public procurement is rather low.⁶¹

Asset disclosure and conflicts of interests

A wide range of civil servants (essentially everyone who proposes or makes decisions or carries out controls) as well as judges and prosecutors are obliged to submit a detailed asset and interest declaration of their household every one, two or five years.⁶² In 2013, the regulations on asset declarations for high-level officials were further standardised. The Act covers officials of the State Audit Office, the General Attorney's Office, National Bank of Hungary, Media Council, State Competition Office, Procurement Council and Fiscal Council. MPs are subject to detailed rules on conflicts of interest, and there is a temporary ban on taking up activities in the private sector under certain conditions.⁶³ Asset and interest declarations of government members, as well as senior civil servants and parliamentarians are available on the internet.⁶⁴ Data related to family members of civil servants and high-level officials are not published. While it is commendable that asset declarations are accessible on the internet, hence generating ample public debates, there is no comprehensive electronic system for their submission. Most of the published asset declarations are handwritten, thus making cross-checking more difficult. The declarations do not always include information enabling the identification of the assets.

The Parliamentary Committee of Immunity and Credentials is tasked with checks on asset declarations. This procedure can only be initiated if a person who requested a verification

59 Tóth, K. (2013): <http://www.asz.hu/jelentes/1282/osszegzes-a-helyi-onkormanyzatok-penzugyi-helyzetenek-es-gazdalkodasi-rendszerenek-2011-evi-ellenorzeseirol/1282j000.pdf>.

60 <http://integritas.asz.hu/>.

61 Burai P. and Hack P.(eds) (2012) Corruption Risks in Hungary 2011. Budapest: Transparency International Hungary, p. 124.

62 Act on the obligation of asset declarations [2007. évi CLII. törvény egyes vagyonynyilatkozat-tételi kötelezettségekről]

63 Chapter VIII of act No. XXXVI of 2012 on the Parliament [2012. évi XXXVI. törvény az Országgyűlésről] http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A1200036.TV

64 Act No. XLIII of 2010 on the standing of the members of government and state secretaries [A központi államigazgatási szervekről, valamint a Kormány tagjai és az államtitkárok jogállásáról szóló 2010. évi XLIII. törvény] 12. § http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1000043.TV. Declarations of members of the government are linked to their profile on the website of the government, see <http://www.kormany.hu/hu/a-kormany-tagjai>. For members of Parliament, see http://parlament.hu/internet/plsql/ogy_kpv.kepv_lis?p_ckl=39.

submits proof of factual indication that certain items of the asset declarations are suspicious. There is no independent oversight with verification powers over asset declarations or conflicts of interest concerning high-level elected and appointed officials. More broadly, favouritism and too close links between certain businesses and politicians in power are perceived as matters of concern which raise the risk of corrupt practices.⁶⁵

Lower-ranking public officials have to submit more detailed asset declarations, which also contain asset identification data.⁶⁶ In case of suspicious of unjustified increase in wealth, tax proceedings may also be initiated. The declarations also include data on the relatives' assets.

As regards public officials and law enforcement bodies, based on the Green Book of ethical standards detailed codes of conduct were put in place in mid-2013 containing provisions on conflicts of interest. The Green Paper also gives some general guidance to elected officials as far as their work in public service is concerned. There are, however, no codes of conduct for elected officials at central or local level and no particular statutory provisions that could trigger dissuasive sanctions in case of unjustified wealth or conflicts of interest. The Government's anti-corruption programme for public administration requires the development of codes of conduct, but does not cover high-level elected and appointed officials.

Research conducted by Transparency International in the framework of the 'EU Funds Watch' project commissioned by OLAF that assessed the issues of fraud and corruption related to the distribution of EU funds concluded that, while the legal and institutional framework for the management of EU funds in Hungary is relatively well designed, serious corruption risks persist. They include: restriction of open competition and overwhelming presence of 'priority' projects, insufficient professional checks at the selection phase of project proposals, formalistic approach to audit and controls in the implementation phase, and inefficient regulation of conflict of interests, especially in relation to revolving door practices.⁶⁷

The law on transparency of spending of public funds⁶⁸ contains a definition of conflict of interest which is interpreted very narrowly in some cases. For example, a decision maker cannot be a beneficiary of its own decision unless his decision was 'discretionary', a notion which in practice is interpreted narrowly. Moreover, it is problematic that only the conflict of interest between a public official and the beneficiary or contractor is considered, but not between these actors and their consultants.

Transparency and access to information

Laws on freedom of information were enacted in 2003 and 2005. They included provisions on the mandatory publication of public data (information on procurement, expenditure and contracts included)⁶⁹ and handling of freedom of information requests.⁷⁰ Though a new law on freedom of information entered into force in 2012,⁷¹ key features remained the same. The

65 http://www.transparency.org/whatwedo/nisarticle/hungary_2011.

66 Act CLII of 2007. [2007. évi CLII. törvény egyes vagyonyilatkozat-tételi kötelezettségekről]: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700152.TV.

67 EU Funds Watch Project, Hungary, June 2013, Transparency International Hungary, OLAF/Hercule 2012/2013, Grant Agreement OLAF/2012/D5/024.

68 Law CLXXXI of 2007.

69 Act XXIV of 2003. [2003. évi XXIV. törvény a közpénzek felhasználásával, a köztulajdon használatának nyilvánosságával, átláthatóbbá tételével és ellenőrzésének bővítésével összefüggő egyes törvények módosításáról] <http://www.complex.hu/kzldat/t0300024.htm/t0300024.htm>.

70 Act XC of 2005. [2005. évi XC. törvény az elektronikus információszabadságról] t <http://www.complex.hu/kzldat/t0500090.htm/t0500090.htm>.

71 Act CXII of 2011. [2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról] http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100112.TV×hift=1.

new Constitution sets the ‘transparency of public ownership and public spending’ as a principle.⁷²

Good practices – online platforms for facilitating access to information

<http://www.k-monitor.hu/>: *K-Monitor Watchdog for Public Funds was founded in 2007 with the aim of creating an independent non-governmental forum that monitors Hungarian and international corruption-related cases. K-Monitor's website was created to gather, store and make available online articles concerning corruption, public financing, and the transparency of public life in Hungary. The articles stored in the database either deal with various kinds of corruption in public finances or contain specific cases. A record of both incriminating and exonerating material is kept. K-Monitor also recently launched a new website: <http://ahalo.hu/> which links data on public contracts, farm subsidies and EU funds with information on company registries.*

<http://kimittud.atlatszo.hu/>: *After the user chooses the public authority to which the request for information is directed, a user-friendly interface loads a model request to be filled in. The system sends a message to the public authority. All answers received are stored and published on the webpage.*

<http://tasz.hu/informacioszabadsag/egyszeregy>: *contains detailed information and guidelines for those interested in obtaining public data.*

In spite of the above-mentioned legislative framework on freedom of information which allows in principle for swift access to public interest information, several new legal provisions created some confusion as to the interpretation of the law.⁷³ Public institutions can refrain from fulfilling public interest information requests on grounds of business confidentiality. This appears to generate inconsistent interpretations in practice. Several other new laws have also led to problems in the interpretation of the overall framework. The new law on the re-use of public sector information⁷⁴ brought uncertainties with regard to free access to information of public interest. There are similar interpretation issues regarding the new law on budget, which no longer regards the contracts of companies with majority state-ownership as being information of public interest.

Recent amendments to the law on freedom of information⁷⁵ were passed in June 2013. These raised some additional concerns as regards the risks of too wide interpretation of provisions on abusive requests for information. Concerns related to the amendments of the freedom of information law were also linked to debates generated by the implementation of a new tobacco retail licensing system.⁷⁶

As regards state-owned companies, the Act on Freedom of Information (in case of companies fulfilling public functions),⁷⁷ the Act on State Property,⁷⁸ and the Act on the economic

72 Art. 38-39 of Fundamental Law of Hungary

<http://www.kormany.hu/download/4/c3/30000/THE%20FUNDAMENTAL%20LAW%20OF%20HUNGARY.pdf>.

73 Péterfalvi Attila (2012) *A nemzeti vagyonnal gazdálkodó vagy azzal rendelkező, piaci szereplő gazdasági társaságok üzleti adatainak nyilvánosságáról* [Online]. Hungary: Nemzeti Adatvédelmi és Információszabadság Hatóság. Retrieved from: <http://naih.hu/files/-zleti-titok-kontra-nyilvanossag-AJ-NL-S.pdf>

74 Act LXIII of 2012. [2012. évi LXIII. törvény A közadatok újrahazsnosításáról].

75 2013. évi XCVI. Törvény – 11 June 2013

76 New legislation passed in April 2013 monopolising the retail of tobacco products. Only retailers with concession contracts would be licenced to the retail trade with tobacco products. The transparency of the concession process, including evaluations and awards, was heavily criticised by the civil society.

77 Act CXII of 2011. [2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról] http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100112.TV×hift=1.

78 Act CVI. of 2007. [2007. évi CVI. törvény az állami vagyonról] http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700106.TV.

operation of state-owned companies set out the basic rules on the information that should be published on the website of these entities. However, interpretation and practical application of these legal provisions varies widely. In 2012, a new act was adopted extending the powers of the Government Control Office (KEHI) to control the management of state-owned companies.⁷⁹ This may help to ensure more consistent application of the transparency provisions and of control mechanisms. In late 2013, the National Development Agency reinforced transparency obligations for subsidised companies which have to fill in a questionnaire about their beneficial owners.

Healthcare (informal payments)

Successive Eurobarometer surveys showed that petty corruption is particularly prevalent in Hungary's healthcare sector. While approximately 13% of the respondents in the 2013 Special Eurobarometer Survey on corruption stated that they were expected or asked to pay a bribe, an overwhelming majority of these cases were linked to healthcare (8%, meaning 2/3 of all cases as compared to an EU average of 2%). Similarly, among Hungarian respondents who had come into contact with the medical institutions, 10% (fourth highest percentage in the EU) admitted to having made an extra payment or giving a valuable gift to a nurse or doctor or having made a donation to a hospital. 32% mentioned that they did so before the care was given, while 47% made the payments or provided the gifts after the care was given.

'Gratitude' payments made after the delivery of standard medical services are a tolerated practice in Hungary and, unlike payments that precede the medical intervention or those concerning 'non-standard' services such as prioritising on waiting lists, are not considered to be corruption. As early as 2003, GRECO pointed to the 'gratitude' payments for public services especially in the healthcare sector as a form of 'accepted' corruption.⁸⁰ Not much has changed in practice in this regard ever since.

Under the Labour Code, the director of a healthcare institution can make gratitude payments legal by allowing the acceptance of the facilitation payment offered by the patients in a written agreement.⁸¹ If the manager does not allow such payments, they are considered to be an 'undue advantage', and personnel accepting a gratitude payment commits a crime.⁸² While the criminalisation of accepting a promise of a gratitude payment or the payment itself is a commendable step, only broader reforms are likely to improve the situation in practice. The current legislative solution carries a risk of creating legal uncertainty as well as unequal treatment among personnel in the healthcare sector. This is an interpretation that enables the legalisation of an outright form of corruption.

Despite efforts to reduce incentives to pay gratitude payments, including raising the salaries of healthcare employees by 50 % in late 2002, and despite that fact that GRECO declared the efforts satisfactory,⁸³ the statistics show limited progress. The rather low level of salaries of doctors and medical staff in the public sector create additional challenges.

79 2012. évi CLXXXIX. törvény egyes törvényeknek a kormányzati ellenőrzéssel összefüggő módosításáról.

<http://www.complex.hu/kzldat/t1200189.htm/t1200189.htm>

80 GRECO Eval I Rep (2002) 5E Final, Evaluation Report on Hungary, First Evaluation Round, adopted by GRECO at its 13th Plenary Meeting (Strasbourg, 24-28 March 2003) – para 8.

81 See the labour code, section 52 [2012. évi I. törvény a munka törvénykönyvéről]
http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200001.TV

82 See the Criminal Code, section 291 (1), criminalising the acceptance of a promise of a payment.

83 Compliance Report on Hungary GRECO Eval RC- I (2004) 14E Final, adopted by GRECO at its 22nd Plenary Meeting (Strasbourg, 14-18 March 2005).

3. FUTURE STEPS

Steps have been taken to implement ample integrity strategies and to promote better transparency standards within the public administration, supported by civil society. However, clientelism, favouritism and nepotism in public administration remain matters of concern. Concerns related to strong informal relations between businesses and political actors at local level, making local governments more vulnerable to corrupt practices, persist. Some shortcomings remain, notably as regards financing of political parties and effectiveness of control mechanisms, especially for public procurement. Petty corruption appears to be a problem in the healthcare sector where incentives to pay informal fees for preferential treatment are fairly common.

The following points require further attention:

- Further clarifying the rules on accounting and bookkeeping of political parties and ensuring that all other entities affiliated to the parties are recorded and accounted for. Strengthening transparency and the internal and independent auditing of political parties, and the checks on **party funding** carried out by the State Audit Office, as well as the dissuasiveness of the sanctioning system.
- Strengthening independent ex- ante and ex-post checks throughout the entire **public procurement** cycle at both central and local levels. Ensuring adequate verification mechanisms to detect conflicts of interest and widening the scope of conflict of interest provisions on public spending. Further developing consistent and effective prevention tools within contracting authorities, with a particular focus on the local level. Improving cooperation between auditing and public procurement authorities on the one hand and law enforcement on the other.
- Further enhancing transparency and independent verification mechanisms for asset declarations and conflicts of interest of **elected and appointed officials**, both at national and local levels. Developing comprehensive codes of conduct for elected officials at central, regional and local levels, also covering conflict of interest aspects and ensuring adequate accountability tools and dissuasive sanctions for potential violations of such codes. Taking firmer steps to address the corruption risks associated with clientelism and favouritism within **public administration**. Ensuring a consistent and adequately broad interpretation of the legislation on **access to information**.
- Elaborating a comprehensive programme to progressively eliminate the practice of gratitude payments, rewards or other forms of informal payments to public employees in the **healthcare** sector.