

# Implementing the OECD Anti-Bribery Convention



## Phase 4 Report: Poland



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This Phase 4 Report on Poland by the OECD Working Group on Bribery evaluates and makes recommendations on Poland's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the OECD Working Group on Bribery on 8 December 2022.

The report is part of the OECD Working Group on Bribery's fourth phase of monitoring, launched in 2016. Phase 4 looks at the evaluated country's particular challenges and positive achievements. It also explores issues such as detection, enforcement, corporate liability and international co-operation, as well as covering unresolved issues from prior reports.

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## Executive Summary

This Phase 4 report by the OECD Working Group on Bribery in International Business Transactions evaluates and makes recommendations on Poland's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report details Poland's achievements and challenges, including in enforcing its foreign bribery offence, as well as progress made since its 2013 Phase 3 evaluation. By the 2015 Written Follow Up Report, Poland had fully implemented ten Phase 3 recommendations, partially implemented five and not implemented five.

However, the Working Group is seriously concerned that Poland has not implemented previous key recommendations that are fundamental to fighting foreign bribery. If applied, the "impunity provision" leaves the briber unpunished. Poland continues to require the conviction of an individual before holding a company liable for foreign bribery. Corporate fines for this crime remain insufficient. There is no comprehensive legislation to protect whistleblowers. Since 2007, the Working Group has warned that these deficiencies render Poland in non-compliance with the Convention. Some 15 years later, little has changed regarding these key issues.

Equally concerning is Poland's poor record of enforcing its foreign bribery laws. A 2012 conviction of an individual remains the only successful prosecution to date. One case is ongoing but one has been suspended and another prosecuted for other offences. Two other allegations have not been adequately investigated. Not a single company has been investigated or prosecuted for foreign bribery. False accounting related to foreign bribery is overlooked. Inadequate efforts to detect foreign bribery contributes to the low level of enforcement. Overseas diplomatic missions did not notice the allegations of foreign bribery that had been reported by foreign media. There is no national strategy for fighting foreign bribery.

Judicial and prosecutorial independence is a further enforcement-related concern. Many features of Poland's Public Prosecutor's Office are fundamentally incompatible with the principle of prosecutorial independence. Allowing the Sejm (legislature) to elect the judges on the National Council of Judiciary leaves the latter and the judiciary as a whole vulnerable to potential political and executive influence. The judiciary's exposure to potential executive influence is increased with the Minister of Justice's expanded role in appointing, disciplining and dismissing judges and court presidents. The longstanding system for seconding judges and prosecutors should be shielded from political and executive influence.

On a positive note, the Central Anti-Corruption Bureau is an active and well-known institution in fighting corruption. It can play an important role in fighting foreign bribery if its remit is specifically extended. The General Inspector of Financial Information, the financial intelligence unit, has good working relations with its stakeholders. A legislative amendment has reduced the number of jail sentences that are eligible for suspension. Non-trial resolutions are available in foreign bribery cases. The framework for public procurement debarment as a sanction for foreign bribery is largely sound. The statute of limitations against natural persons for investigating and prosecuting foreign bribery appears adequate. A Central Register of Actual Beneficiaries is well-known and is used by government authorities and the private sector alike.

The report and its recommendations reflect the conclusions of experts from Argentina and the Netherlands and was adopted by the Working Group on 8 December 2022. It is based on legislation, practice data and other materials provided by Poland, as well as research by the evaluation team. Information was also obtained during a July 2022 on-site visit to Poland, during which the evaluation team met representatives of Poland's public and private sectors, prosecutors, judiciary, media, and civil society. Poland will report in two years on the implementation of all recommendations and on its enforcement efforts.

## Introduction

1. In December 2022, the Working Group on Bribery in International Business Transactions (Working Group) concluded its fourth evaluation of Poland's implementation of the [Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#) (the Convention), the [2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions](#) (Anti-Bribery Recommendation) and related instruments.

### 1. Previous evaluations of Poland

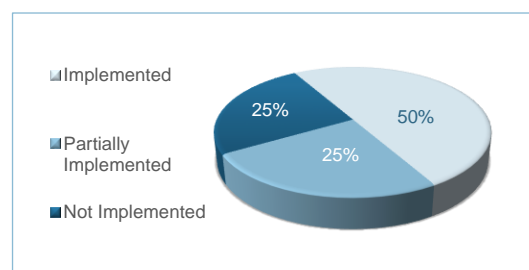
2. The Working Group conducts successive phases of peer-review evaluations to monitor all Parties' implementation and enforcement of the Convention and related instruments. Since Phase 2, evaluations have included an on-site visit to obtain governmental and non-government views in the evaluated country. The evaluated country may comment on but not veto the evaluation report and recommendations. Evaluation reports are published on the OECD website.

Table 1. Working Group evaluations of Poland

2001	<a href="#">Phase 1 Report</a>
2007	<a href="#">Phase 2 Report</a>
2009	<a href="#">Phase 2 Follow-up Report</a>
2013	<a href="#">Phase 3 Report</a>
2015	<a href="#">Phase 3 Follow-up Report</a>

3. Poland's last full Working Group evaluation in Phase 3 in 2013 yielded 20 recommendations. In 2015, the Working Group concluded that Poland had fully implemented 10 recommendations, partially implemented 5, and not implemented 5 (see Annex 2). In November 2020, the Working Group conducted a virtual High-Level Mission to Poland to urge Polish authorities to take further steps to implement the Convention. Thereafter, Poland finalised an Action Plan in 2021 to address several Working Group concerns.<sup>1</sup>

Figure 1. Poland's Implementation of Phase 3 Recommendations



### 2. Phase 4 process and on-site visit

4. The monitoring process is based on [principles](#) agreed by the Parties. Phase 4 evaluations focus on the cross-cutting issues of enforcement, detection and corporate liability. They also address outstanding recommendations from previous evaluations and changes to domestic legislation or the institutional framework. Phase 4 takes a tailored approach, considering each country's unique situation and challenges, and reflecting positive achievements. This report therefore does not revisit issues that were not deemed problematic in previous Phases and which have not been affected by later developments. The report also considers Poland's implementation of the Action Plan resulting from the High-Level Mission.

5. The team for this evaluation was composed of lead examiners from Argentina and the Netherlands, as well as members of the OECD Anti-Corruption Division.<sup>2</sup> After receiving Poland's responses to the standard Phase 4 questionnaire and country-specific supplementary questions, the evaluation team conducted an on-site visit in Warsaw on 4-8 July 2022. The evaluation team met representatives of the Polish government, law enforcement, prosecutors, judiciary, associations of judges and prosecutors, private sector (business associations and companies; lawyers; and auditors), and civil society (non-

<sup>1</sup> DAF/WGB(2020)38; DAF/WGB(2021)30; DAF/WGB(2021)54; and DAF/WGB(2021)75.

<sup>2</sup> [Argentina](#) was represented by Mr. Ricardo Morelli Rubio, Office of the Legal Advisor, Ministry of Foreign Affairs, International Trade and Worship; Mr. Luis Arocena, Legal Secretary, Secretariat of Institutional Co-ordination, Attorney General's Office; and Ms. Sedení Irigoyen, Lawyer, Anti-Corruption Office. The [Netherlands](#) was represented by Ms. Martine Dontje, National Co-ordinating Prosecutor on Corruption, National Public Prosecutor's Office for Serious Fraud, Environmental Crime and Asset Confiscation; Ms. Ingeborg Braam, Senior Policy Advisor Anti-corruption, Ministry of Justice and Security; and Ms. Nadie Paulissen, Policy Advisor Anti-corruption, Ministry of Justice and Security. The [OECD](#) Anti-Corruption Division was represented by Messrs. William Loo, Paul Whittaker and Balázs Garamvölgyi, and Ms. Martha Monterrosa.

governmental organisations, academia and media) (see Annex 3 for a list of participants). The evaluation team expresses its appreciation to all on-site visit participants for their openness and contributions.

### 3. Political system, economy and foreign bribery risks

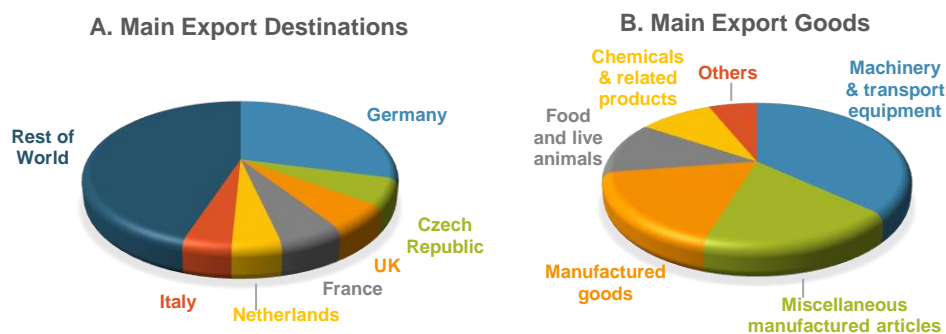
6. Poland's head of state is the President who is elected directly to a five-year term renewable once. The legislature comprises the [Sejm](#) and [Senate](#). Elections are held at least once every four years. Some elected members of the legislature are also members of the executive government (e.g. the Minister of Justice). The President appoints the leader of the majority party or coalition in the Sejm as the Chair of the Council of Ministers, who is colloquially known as the Prime Minister. The Prime Minister heads the government and proposes the other ministers in the Council of Ministers for the President's approval (Constitution Chapters IV-VI).

7. Poland has a population of 38 million and the 17<sup>th</sup> highest GDP of the 44 Working Group countries. Since transitioning from central planning, it has sustained strong economic growth over the past two decades. This rapid internationalisation has helped develop competitive export-led manufacturing and services sectors that are tightly integrated into global value chains.<sup>3</sup>

8. In terms of trade, Poland was the 16<sup>th</sup> and 13<sup>th</sup> biggest exporter and importer of goods in the Working Group in 2020. The top exported goods were machinery and transport equipment (36.8%), miscellaneous manufactured articles (18%), manufactured goods (17.8%), food and live animals (11.8%), and chemicals and related products (9.4%). The main export destination was by far Germany (29.1%), followed by Czech Republic (6.0%), UK (5.8%), France (5.6%) and Netherlands (4.3%). The major imports were machinery and transport equipment (36.3%), manufactured goods (16.6%), chemicals and related products (14.6%), miscellaneous manufactured articles (14.1%), and food and live animals (7.8%). The main import sources were Germany (22.1%), China (14.6%), Italy (5.0%), Russia (4.6%) and Netherlands (4.0%).<sup>4</sup>

Figure 2. Exports by main destinations and main goods

Share of total exports of goods, 2020



Source: OECD (2021), International Trade by Commodity Statistics database

9. In terms of foreign direct investment (FDI), Poland in 2020 ranked 33<sup>rd</sup> and 20<sup>th</sup> among 44 Working Group members in outward and inward FDI stocks. The top destinations are Luxembourg, Cyprus,<sup>5</sup> Czech Republic, Germany and Hungary. Some of these may be “pass through” countries for investment destined for other jurisdictions.<sup>6</sup>

<sup>3</sup> [OECD Data](#); [IMF World Economic Outlook Database](#); OECD (2020), [Economic Survey: Poland](#), pp. 14, 44 and 63.

<sup>4</sup> [OECD International Trade by Commodity Statistics Database](#); [IMF World Economic Outlook Databases](#); [WTO Stats](#).

<sup>5</sup> Note by Türkiye: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Türkiye shall preserve its position concerning the “Cyprus issue”.

<sup>6</sup> [OECD data](#); OECD (2020), International Direct Investment Statistics.

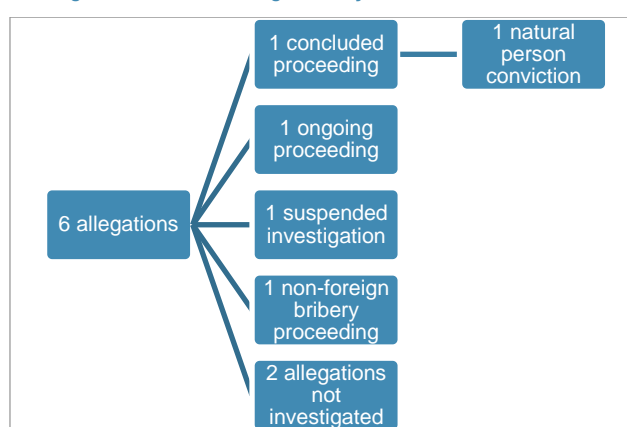
10. A not insignificant amount of Polish exports and investment are destined for countries with a notable level of corruption. The top 20 FDI destinations include Romania (3.9%), Russia (3.2%), Malta (3.1%), and Ukraine (1.4%). Russia is the 7<sup>th</sup> largest buyer of Polish exports of goods (3.0%), while Ukraine is 14<sup>th</sup> (2.2%), Romania 15<sup>th</sup> (2.1%) and Belarus 24<sup>th</sup> (0.7%).<sup>7</sup>

11. Small- and medium-sized enterprises (SMEs) and state-owned enterprises (SOEs) are internationally active and thus at risk of committing foreign bribery. Poland's SMEs account for approximately 70% of persons employed in the business economy and around 51% of value-added. A relatively large number of SMEs export directly, accounting for around 30% of direct exports.<sup>8</sup> Poland has the highest number of SOEs in Central Europe, playing a relevant role in the Polish economy, mostly concentrated in the energy, utilities and financial sectors.<sup>9</sup>

#### 4. Foreign bribery enforcement since Phase 3

12. Poland has not sufficiently enforced the foreign bribery offence. It has only one successful prosecution, the Customs Officer (Germany) Case. The conviction of a natural person in this case occurred in December 2012 and was not reflected in the Phase 3 Report which was adopted in June 2013. Since then, there have been five known foreign bribery allegations concerning Polish individuals or companies. The Road Construction (Ukraine) Case is ongoing while the Shipbuilding (Estonia) Case is suspended. A third case, Bus Company (Latvia), is prosecuted for embezzlement but not foreign bribery. Two allegations have not been adequately investigated. (See Annex 1 for case summaries.)

Figure 3. Poland's foreign bribery cases since Dec. 2012



Note: Cases may include multiple defendants.

13. These figures raise three concerns, as this report explains below. First, efforts to detect foreign bribery allegations are inadequate. Information leading to enforcement actions is not proactively acquired but passively received by Polish authorities. Second, the lack of successful enforcement actions is at least partly because some allegations are not thoroughly investigated. Third, not a single company has been investigated or prosecuted for foreign bribery. In large part, this is a direct consequence of Poland's failure to implement the Working Group's earlier recommendations on the Liability of Collective Entities Law.

14. A further enforcement-related concern that has arisen since Phase 3 is judicial and prosecutorial independence. As explained in Section B.3 at p. 34, Poland has enacted a series of reforms to the judiciary and Public Prosecutor's Office. These changes have far-reaching consequences on the independence of the institutions responsible for foreign bribery enforcement, and thus also on Poland's compliance with Art. 5 of the Convention. Poland contends that these reforms "do not concern the independence of the courts or the judges", and that its prosecutor's office "does not differ from the solutions applied in some of the EU, Council of Europe and OECD countries".

#### Commentary

**The lead examiners are seriously concerned about Poland's legal and enforcement framework for implementing the Convention. As this report explains, Poland's foreign bribery enforcement is very**

<sup>7</sup> OECD (2020), [International Direct Investment Statistics](#) and [International Trade by Commodity Statistics Database](#).

<sup>8</sup> OECD (2020), [Economic Survey: Poland](#), pp. 64-65.

<sup>9</sup> OECD (2018), [Economic Survey: Poland](#), pp. 54-56; OECD (2014), [The Size and Sectoral Distribution of SOEs in OECD and Partner Countries](#), p. 48; Böwer, U., "State-Owned Enterprises in Emerging Europe: The Good, the Bad and the Ugly".



***weak, with just one natural person sanctioned and no legal persons investigated or prosecuted. Poland has not implemented previous key recommendations on the impunity provision, corporate liability and whistleblower protection. Judicial and prosecutorial independence raises further enforcement-related concerns under Article 5 of the Convention. Poland should swiftly take a range of legislative and policy measures described in this report to address these concerns.***

## A. Detection of the foreign bribery offence

### A.1. Strategy for fighting foreign bribery

15. Poland has not adopted a comprehensive, cross-cutting, government-wide strategy to detect and fight foreign bribery. The Central Anti-Corruption Bureau (CBA) developed and chaired the “Government Programme for Counteracting Corruption for the years 2018-2020”.<sup>10</sup> The Programme was a government-wide strategy across all administrative structures and provided for regular inter-ministerial meetings. Regrettably, the Programme did not have any action items related to foreign bribery. It referred to the Convention just once, in the list of Poland’s international commitments. Since the Programme expired in 2020, no steps have been taken to implement outstanding tasks under the Programme or to develop a successor Programme. The CBA is willing to undertake these tasks, however. The 2021 post-High-Level Mission Action Plan described in para. 3 focuses mostly on discrete issues concerning individual bodies such as law enforcement and diplomatic missions. It thus does not comprehensively encompass all relevant issues such as prevention and detection of foreign bribery across public and private sectors.

16. The need for a strategy to fight foreign bribery has become more pressing. Poland has not identified activities or sectors that are at risk of committing foreign bribery or developed a government-wide strategy to address these risks. These risks may soon increase in the event of Ukraine’s reconstruction, according to numerous Polish officials and civil society representatives who participated in this evaluation. The 2018-2020 Government Programme preceded the Ukraine conflict and hence does not account for such risks.

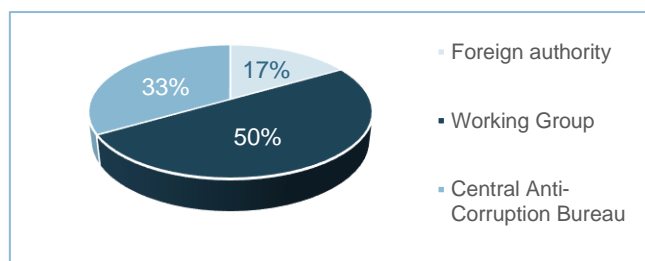
#### Commentary

***The lead examiners are concerned about the absence of a national strategy to fight corruption that includes foreign bribery. They regret that the 2018-2020 government anti-corruption programme did not cover foreign bribery and its associated risks. They therefore recommend that Poland develop a government-wide national strategy to fight foreign bribery which encompasses prevention, detection, awareness-raising and enforcement. This strategy may be standalone or part of a national anti-corruption programme.***

### A.2. Sources of foreign bribery allegations

17. The sources of information that led to Poland’s foreign bribery enforcement actions indicate a lack of proactivity. The data, though limited, indicate that a majority of the allegations were delivered to Polish authorities by their international counterparts or the Working Group. Only 17% of the allegations were detected by Polish authorities. As described below, Polish authorities could have detected the remaining allegations which had been reported in the media. Unfortunately, they did not do so.

Figure 4. Sources of foreign bribery allegations



<sup>10</sup> [Resolution No. 207 of the Council of Ministers of 19 Dec. 2017](#) and Appendix 1; [Order No. 134 of the President of the Council of Ministers of 10 Aug. 2018](#), Arts. 3-4.

18. Poland's foreign bribery enforcement actions also illustrate a lack of diversity in the sources of detection. Private sector sources such as whistleblowers and external auditors have not yielded allegations. Among Polish officials and law enforcement authorities, only the CBA has detected foreign bribery allegations. Officials in relevant authorities such as tax, embassies and the Public Prosecutor's Office (PPO) have not detected any foreign bribery cases. This is most likely a consequence of a lack of awareness of and training on foreign bribery and the Convention among these bodies, as detailed below. Poland argues that the PPO's role is to investigate rather than to detect offences. However, experience in other Working Group members shows that prosecutors can detect foreign bribery, such as when they investigate related offences or execute incoming mutual legal assistance requests. Poland also contradicts its own position by asking prosecutors in August 2021 to monitor the media for foreign bribery allegations (see next section).

### Commentary

***The lead examiners are seriously concerned that Poland has not proactively gathered information from diverse sources to increase detection of foreign bribery and enhance investigations. As explained below, much greater efforts should be made to tap sources ranging from the media, overseas diplomatic staff, and corporate self-disclosures to external auditing, tax authorities, incoming mutual legal assistance requests and whistleblowers.***

### A.3. Detecting foreign bribery through media reports

19. Poland should have detected more foreign bribery cases through media reports since Phase 3. Poland states that media reports can be the basis for launching a criminal investigation, but they have not been a source of active-side foreign bribery allegations. The Working Group's own media monitoring efforts detected half of the foreign bribery allegations during this period. Polish authorities did not discover these cases in the media independently, despite reports in several foreign media outlets. Poland states that media reports may serve as a basis for initiating operational activities or pre-trial proceedings. However, in practice Polish law enforcement authorities have not implemented an effective system to monitor Polish and foreign media for foreign bribery allegations.

20. Poland took two measures in August 2021 to address this concern as part of the post-High-Level Mission Action Plan. The Head of the Organised Crime and Corruption Department in the Public Prosecutor's Office (PPO) wrote to prosecutors at the Regional level.<sup>11</sup> He requested that the press spokespersons in PPO offices pay attention to media reports of international corruption involving Polish citizens or companies, and inform their superiors of such reports. Likewise, the Ministry of Foreign Affairs (MFA) *emailed* all diplomatic missions, asking them to "constantly monitor the local media for reports on potential bribery by Polish natural and legal persons". Such reports should be provided to the MFA and Ministry of Justice.

21. These measures are likely to have short-term effects at best. The PPO communication was by letter, not a binding order of the Prosecutor General. It was also sent to Regional Prosecutors only, even though strictly-speaking District Prosecutors have jurisdiction over foreign bribery (see Section B.2.a at p. 27). Poland explains that the communication was for all "field prosecutors", and Regional Prosecutors were expected to forward the letter to District Prosecutors as per routine practice. Also concerning was that the MFA communication was by a one-off email. There is no official policy or binding circular requiring diplomatic missions to monitor foreign bribery allegations. Furthermore, no unit or person in the overseas missions is designated as being responsible for media monitoring. Hence, neither effort institutionalises the practice of media monitoring for foreign bribery cases. The measures may be applied by existing PPO and MFA staff who have received the communications. But the communications' effect on staff will quickly wane with time. New staff hired after the email will not have received it at all. Officials who do not heed the email are not held accountable. Nor is the email integrated into the training of officials. MFA officials are

<sup>11</sup> Ref. No. PK III PZ 071.69.2021 on 30 Aug. 2021.

also asked to report to the MFA and Ministry of Justice but not law enforcement. The new procedures have not yielded any media reports with foreign bribery allegations.

22. Finally, Poland does not react promptly to media information that it receives. Media reports on the Shipbuilding (Estonia) Case surfaced in November 2015 and was circulated to all Working Group member countries in March 2016. This information arrived in Poland's Regional PPO only in 2018.

#### **Commentary**

***The lead examiners are seriously concerned that the Poland has not detected the allegations of foreign bribery committed by Polish entities that have been reported in the domestic and foreign media. Efforts taken after the High-Level Mission do not institutionalise media monitoring and hence do not address these concerns. In line with Anti-Bribery Recommendations VIII and XXI.iv as well as past Working Group practice,<sup>12</sup> the lead examiners therefore recommend that Poland (a) effectively and systematically monitor domestic and foreign media for allegations of foreign bribery committed by Polish citizens or companies, such as by designating specific officials responsible for this task through binding Prosecutor General orders and MFA circulars, (b) maintain data on the actual monitoring of the media, and (c) take steps to ensure that such media information is provided to its law enforcement authorities promptly.***

#### **A.4. Detecting and reporting foreign bribery by Polish public officials**

23. Polish public officials are obliged to report allegations of crime. CCP Art. 304(2) requires state and local government employees to immediately report a criminal offence to a public prosecutor or the police. This provision seems to be well-known among Polish public officials. Failure to comply with CCP Art. 304(2) may constitute an offence under CC Art. 231 for failing to perform an official's duty or to uphold the public interest, according to Supreme Court case law. Poland cannot provide jurisprudence on the relevant factors for deciding whether to prosecute an official for failure to report. Data on penalties that have been imposed for breach of CCP Art. 304(2) are also unavailable.

24. In practice, Polish officials have not detected or reported any foreign bribery cases, apart from one case detected by the CBA. Polish authorities, particularly the CBA and the Criminal Bureau of National Police Headquarters, have raised awareness of fighting corruption and provided online training, but not specifically for foreign bribery or the reporting of this crime. More importantly, there is no strategic training plan aimed at officials of the key agencies for the detection of foreign bribery cases.

#### **Commentary**

***The lead examiners recommend that Poland raise awareness of and train relevant public officials in fighting foreign bribery and their duty to report this crime.***

#### **A.5. Detecting and reporting foreign bribery through overseas diplomatic missions**

25. Overseas embassies and missions have an important role to play in enhancing awareness of companies that seek advice when investing or exporting abroad. Members of these bodies are also well-placed to monitor foreign media for foreign bribery allegations that involve Polish companies or individuals and report them to law enforcement authorities.

26. The Ministry of Foreign Affairs (MFA) may be insufficiently engaged in the Convention's implementation. The MFA's overseas embassies and consulates have not detected any foreign bribery allegations, as further explained in Section A.5.b at p. 12. The MFA responded to the Phase 4 questionnaire. But despite repeated invitations, it did not participate in the on-site visit to discuss the efforts of its diplomatic missions to detect, report and raise awareness of foreign bribery. (An official working at the MFA participated in a separate session focusing only on official development assistance (see

<sup>12</sup> For example: see [Italy Phase 4](#), paras. 15-16; [Bulgaria Phase 4](#), paras. 48-50; [France Phase 4](#), paras. 40-43.

Section A.12 at p. 24)). Poland states that the MFA “does not have a staff member (at this time) who can provide information on the topics to be discussed, due to the re-organisation of departments.” Additional information was provided in writing after the on-site visit.

### **Commentary**

***The lead examiners deeply regret that the MFA did not attend the on-site visit despite repeated invitations. The Ministry’s absence contravenes the Phase 4 evaluation procedure, which states that the evaluated country “must ensure that all governmental officials which the evaluation team has requested to meet with are made available”.<sup>13</sup> Poland explains that no MFA staff was available because of a “re-organisation of departments”. That not a single official was available to discuss the MFA’s implementation of the Convention raises serious questions about the priority given to this work. These concerns are consistent with the MFA’s lack of efforts to detect, report and raise awareness of foreign bribery, as discussed in the following sections. The lead examiners therefore recommend that Poland assign responsibility for foreign bribery matters in the MFA to a designated person or unit within the Ministry.***

#### **A.5.a. Awareness-raising and training**

27. Since Phase 3, the MFA – like other Polish authorities (see para. 24) – has not made any substantial efforts to raise awareness of or provide training on foreign bribery among its officials. The MFA states that the Diplomatic Academy and Bureau of Control and Audit provide online anti-corruption training which is mandatory for all staff. However, the training modules do not include foreign bribery-specific topics, and instead deal with *passive* (i.e. demand-side) *bribery* under CC Art. 228. The MFA adds that the training modules “include the issue of active bribery (CC Art. 229)”. However, this could refer to active domestic rather than foreign bribery which is also covered by the same provision. According to the MFA, officials who wish to learn more about the Convention would have to seek out a presentation on the Ministry’s intranet. The intranet website covers topics like asset declarations, accepting gifts, and conflict of interest. The focus is thus clearly on bribery and corruption of MFA officials, not foreign bribery.

28. Likewise, efforts with respect to the private sector are absent. The MFA has not raised awareness of foreign bribery in the private sector. Staff in diplomatic missions do not provide appropriate assistance to Polish companies that are confronted with bribe solicitations by foreign officials, as a private sector representative at the on-site visit attests. One company at the on-site visit would welcome such guidance from Polish authorities, including a dedicated contact point.

29. In response to these observations, the MFA points to the general anti-corruption training and pre-departure training for managers posted abroad. However, as mentioned above, MFA training focuses on passive bribery and corruption of its officials, not foreign bribery. The MFA also argues that the “awareness of staff of diplomatic missions” about the corruption risks is “so high that it is doubtful that the institution may not inform about a corruption incident involving a Polish company operating in a foreign market.” But this conclusion is questionable given the overseas missions’ failure to respond to foreign media reports that implicated Polish companies in foreign bribery (see para. 19).

### **Commentary**

***The lead examiners are concerned at the MFA’s insufficient foreign bribery training and awareness-raising efforts. As per Anti-Bribery Recommendation XII and Annex I.A.3, the lead examiners recommend that Poland (a) raise awareness of bribe solicitation risks among MFA officials, particularly those posted abroad, and among Polish companies that operate in foreign countries, and (b) train MFA officials posted abroad on information and steps to be taken to assist enterprises***

<sup>13</sup> [Phase 4 Evaluation Procedure](#), DAF/WGB(2019)71, para. 25.

**confronted with bribe solicitation, as appropriate, as well as on the procedure for reporting foreign bribery allegations to Polish law enforcement.**

#### **A.5.b. Detecting and reporting foreign bribery**

30. As mentioned in Section A.3 at p. 9, the MFA has not detected foreign bribery allegations reported in the foreign media. In August 2021, it emailed overseas missions to ask them to monitor local media for foreign bribery allegations. But this measure does not institutionalise media monitoring and is unlikely to have any effects beyond the short-term.

31. The MFA outlines a procedure for reporting foreign bribery allegations, presumably including those from media reports. Officials of embassies and consulates are subject to the same reporting obligation that applies to all Polish public officials under CCP Art. 304(2) (see Section A.4 at p. 10). Employees in diplomatic missions must notify “justified suspicions” to the chief of the diplomatic mission and/or security attaché. Employees in Warsaw must report the same to his/her superior. In both cases, the director of the Inspectorate of Foreign Service is also informed. The diplomatic mission chief or the department director in Warsaw then transfers the matter to the Plenipotentiary of the Minister of Foreign Affairs for Combating Corruption. The Plenipotentiary in turn consults the MFA legal service. If a decision is taken to report the matter to law enforcement, then the Director General of the Foreign Service transmits the information.

32. After reviewing a draft of this report, the MFA describes a slightly different reporting procedure. The procedure described above largely applies to employees in the MFA and diplomatic missions to report a “suspected corruption event”, with the Director of Bureau of Control and Audit now replacing the Director of the Inspectorate of Foreign Service. But a new procedure applies to the reporting of “corruption committed by persons or entities that are not employees of the MFA or diplomatic missions”. A designated employee at each diplomatic mission receives such reports and forwards them to the head of the mission. A designated employee at MFA headquarters can also receive such reports. In both cases, the report is then transmitted to the Plenipotentiary and the Director of the Bureau of Control and Audit. There is no mention of the MFA legal service’s involvement, nor whether or how the report is transmitted to law enforcement. An email address has been created to receive reports from outside the MFA.

33. Comprehensive data on actual reporting are not available for assessing the effectiveness of these reporting procedures. Polish authorities note that the Minister of Foreign Affairs receives an annual report from the Plenipotentiary of the MFA on the various reports of corruption incidents, in accordance with the Procedure of Reacting to Corruption or Suspected Corruption. In 2021, 20 cases of potential corruption were reported, including 17 to the dedicated email address, but the MFA was unable to provide any actual data regarding these reports or indicate if any of these incidents relate to foreign bribery.

#### **Commentary**

***The lead examiners are concerned that the MFA’s procedure for reporting foreign bribery allegations is overly complicated and therefore likely ineffective. Under a procedure initially described by the MFA, when an MFA employee learns of a foreign bribery allegation, up to six other individuals or bodies must be informed or consulted before the matter reaches law enforcement. This is because the process used for reporting misconduct and corruption committed by MFA staff is also applied to reporting foreign bribery that was committed by Polish citizens or companies. There is no reason for applying the same procedure to both types of misconduct. The MFA also does not provide information on the definition of “justified suspicion” or jurisprudence on this reporting threshold. Comprehensive data on actual reporting are unavailable.***

***Later in the evaluation, the MFA described a different reporting procedure that still requires up to three persons to be informed or consulted. The procedure does not clearly explain how reports are forwarded to law enforcement. Furthermore, the evolving reporting procedures highlight the need***

**for a stable, clear and written reporting procedure that can be communicated to and applied by all MFA staff.**

**The lead examiners therefore recommend that Poland set out a binding and simplified procedure for MFA staff to report foreign bribery allegations to Polish law enforcement without undue delay.**

## **A.6. Reporting, whistleblowing and whistleblower protection**

### **A.6.a. Reporting channels for the public and awareness raising**

34. The general reporting obligations and channels for Polish citizens to report a crime are unchanged from Phase 3. Citizens have a civic duty but not a legal obligation to report a crime (CC Art. 304(1)). Foreign bribery allegations may be reported in person or in writing to a prosecutor, police or other services dealing with corruption, e.g. the Central Anti-Corruption Bureau (CBA). Anonymous reports can lead to an investigation and such reports can be made via the police or CBA websites, as well as by telephone and mail to the CBA. Poland states that the Regulation of the Minister of Justice of 7 April 2016 (para. 121) which regulates the PPO allows an investigation to begin “after prior verification of the circumstances set out” in an anonymous report. Poland also does not maintain data on the number of reports of foreign or domestic bribery that have been submitted through these channels. In the absence of meaningful data, it is impossible to assess whether reporting trends have changed since Phase 3.

35. Moreover, Poland has not raised awareness of reporting foreign bribery among the relevant members of the public. In contrast, the CBA has developed and delivered numerous public awareness-raising campaigns that focus on domestic corruption and other misconduct. On-site visit participants state that these activities have been highly-visible. Unfortunately, they do not specifically cover foreign bribery.

#### **Commentary**

**The lead examiners recommend that Poland (a) raise awareness of foreign bribery and the reporting of this crime among the relevant members of the public, and (b) maintain statistics on the reporting of foreign bribery by the public.**

### **A.6.b. Whistleblower protection**

36. As in Phase 3, Poland continues to rely on a patchwork of legislation that only protects whistleblowers partially. For example, the Prevention of Money Laundering and Financing of Terrorism Law (AML Law) Art. 53 only protects whistleblowers employed by entities subject to anti-money laundering regulations. It also only applies to disclosure of breaches of the AML Law, not other legislation. The Labour Code provides redress for unjustified termination and discrimination, not other types of retaliation. The onus of proof is also on the employee. The Criminal Procedure Code Art. 184 provides only physical protection, available solely to witnesses in criminal proceedings. Malicious or persistent violation of the rights of employees (Criminal Code Art. 218) is a criminal offence and hence requires onerous proof. Other provisions in data protection legislation and the Civil Code are similarly limited (Phase 3 Report para. 139).

37. For 15 years, Poland has not heeded the Working Group’s recommendations to strengthen whistleblower protection. The 2007 Phase 2 Report (paras. 30-31) and Recommendation 2(d) asked Poland to consider introducing stronger whistleblower protection. In Phase 3 in 2013, Poland was recommended to “prioritise the reform of the law on whistleblower protections to ensure that appropriate measures are in place to protect from retaliatory or disciplinary action private and public sector employees who report suspected acts of foreign bribery in good faith and on reasonable grounds” (Recommendation 8(b)). The Working Group’s 2020 High-Level Mission re-iterated this recommendation, but it remains unimplemented.

38. At the time of this report, Poland has drafted legislation to implement the [EU Whistleblowing Directive 1937/2019](#). The public and various government ministries have been consulted on a draft bill. In

August 2022, the Ministry of Family and Social Policy published a fourth version of the draft bill dated 22 July 2022. Consistent with established Working Group practice,<sup>14</sup> this report refers to some aspects of the bill but will not give them the same level of scrutiny as the present law. In assessing Poland's implementation of the Convention, the Working Group only takes into account legislation that has entered into force. The Working Group will assess any relevant new legislation only if and when it is enacted.

39. The draft whistleblowing bill is a step forward but may not be enough to address the Working Group's concerns. It has some positive features, such as giving the employer the burden of proving that an allegedly adverse action against the reporting person is not retaliatory. This would be consistent with Anti-Bribery Recommendation XXII.ix. But the draft bill has at least three major concerns. First, it does not clearly cover the reporting of all foreign bribery allegations. Under Art. 3, the law covers disclosure of a breach of law that is illegal or aimed at circumventing the law in 15 enumerated areas. Bribery and corruption are not listed explicitly. Breaches of laws on Poland's financial interests is on the list, which should cover domestic corruption. But for foreign bribery, the list includes only breaches of laws on the financial interests of the EU. This would at most cover the bribery of EU officials, or of foreign officials in the context of an EU-funded project. Second, victims of retaliation are eligible for compensation. However, other remedies such as reinstatement, transfer and injunctions are unavailable. Third, the draft bill does not contemplate a mechanism to hear claims concerning alleged retaliation by an employer against the whistleblower and award remedies to the whistleblower in this context. Requiring reporting persons to start their own legal action could be impractical.

40. Awareness of the upcoming whistleblower law is high. Numerous on-site visit participants from the public and private sectors welcome the anticipated legislation but are unclear whether and when the legislation would come into force. One participant points out that much of the Polish population is sceptical about whistleblowing because of Poland's history under the Soviet regime. But one civil society representative believes that whistleblower protection legislation will change attitudes in favour of whistleblowing and strengthen the detection of misconduct. Similarly, a member of the legal community believes that whistleblowing is not currently encouraged in Poland, but the implementation of the EU Directive could change the landscape.

### Commentary

***The lead examiners are disappointed that Poland has yet to enact comprehensive whistleblower legislation for the public and private sectors and Poland still only has draft legislation to implement the EU Whistleblowing Directive. They therefore re-iterate Phase 3 Recommendation 8(b) and recommend that Poland swiftly enact strong and effective legal and institutional frameworks to protect and/or to provide remedy against any retaliatory action to persons working in the private or public sector who report on reasonable grounds suspected acts of foreign bribery and related offences in a work-related context. This framework should take into account Anti-Bribery Recommendation XXII.***

### A.7. Self-reporting by companies

41. Poland does not have a policy to encourage companies to self-report foreign bribery to the authorities. The criminal corporate liability regime also does not provide any incentive for doing so (see Section C.1 at p. 51). Not surprisingly, Poland has not detected a foreign bribery case through self-reporting. Representatives of the private sector and legal profession at the on-site visit view a self-reporting programme favourably. They believe, however, that companies should be incentivised to report through sentence mitigation or the availability of a non-trial resolution.

<sup>14</sup> For example, see [Chile Phase 3](#), para. 29; [Argentina Phase 3](#), para. 32; [Mexico Phase 3](#), para. 7.

### Commentary

**Self-reporting is an important source of detection of foreign bribery cases. The lead examiners therefore recommend that Poland consider measures to encourage companies who participated in, or have been associated with, the commission of foreign bribery, to supply information useful to competent authorities for investigating and prosecuting foreign bribery, and ensure that appropriate mechanisms are in place for the application of such measures in foreign bribery investigations and prosecutions, as per Anti-Bribery Recommendations X.iii and XV.ii.**

### A.8. Detecting foreign bribery through anti-money laundering measures

42. Phase 4 evaluations examine anti-money laundering (AML) measures that are relevant to preventing and detecting foreign bribery, and the laundering of the proceeds of this crime. A broad assessment of Poland's anti-money laundering system is beyond the scope of this evaluation, noting that Moneyval adopted its latest report on Poland in December 2021.<sup>15</sup> The money laundering offence is discussed in Section B.5.a at p. 45.

43. In 2018, Poland adopted a new Counteracting Money Laundering and Terrorist Financing Law (AML Law). The law regulates, *inter alia*, the status and powers of the financial intelligence unit, national risk assessment, obligations of obligated entities, supervisory sanctions, criminal liability for failure to report and unlawful disclosure, Central Register of Actual Beneficiaries, and collection and transmission of financial information.

#### A.8.a. National money laundering risk assessment

44. A national money laundering risk assessment in Poland is overdue. Under the AML Law, the Polish financial intelligence unit (FIU), the General Inspector of Financial Information (GIFI), is responsible for drawing up the national risk assessment on money laundering (NRA) at least every two years (AML Law Art. 25(3)). The NRA should be developed in co-operation with law enforcement agencies and "obligated entities", i.e. entities subject to the anti-money laundering regime listed in AML Law Art. 2(1). At the time of this report, the [2019 NRA](#) is still in force. The GIFI is drafting but has not finalised an update, mainly due to COVID-19 restrictions. GIFI consulted relevant stakeholders on the draft as is usually the case, according to private sector representatives at the on-site visit.

45. The 2019 NRA does not specifically consider the risk of money laundering predicated on foreign bribery. It mentions bribery as one of the most common predicate offences faced in practice but omits specific reference to foreign bribery. Poland confirms that the NRA deals mostly with domestic corruption risks. It does not contain foreign bribery scenarios but only domestic corruption ones, e.g. corrupt bank employees, border guard officers, casino employees. Poland explains that this is because its law enforcement sees foreign bribery as only a small part of overall corruption.

46. There is at least some recognition of a future risk of foreign bribery-related money laundering. Polish authorities raise the likelihood of Polish companies participating in the future recovery and reconstruction efforts in Ukraine. They acknowledge that this involvement could pose heightened risks of foreign bribery for Polish companies.

### Commentary

**The lead examiners are concerned that Poland has not assessed the risk of money laundering predicated on foreign bribery in the 2019 NRA. Accordingly, law enforcement and the private sector do not sufficiently consider foreign bribery a risk, which means there is no adequate response to mitigate these risks. Foreign bribery's omission from the NRA and its supposed inclusion in domestic corruption is also likely a reason why foreign bribery cases have not been detected**

<sup>15</sup> Moneyval (2021), [Fifth Round Mutual Evaluation Report](#).



*through AML measures (see para. 50). Furthermore, the Working Group’s Phase 3 Recommendation 5(b) asks Poland to raise awareness of and provide training on foreign bribery-related money laundering. It is unfortunate that the NRA was not used as an opportunity to help implement this recommendation. The lead examiners are also concerned that the NRA has not been updated in accordance with the AML Law.*

*The lead examiners therefore recommend that Poland finalise the NRA as a matter of urgency. The new NRA should specifically address the risks of money laundering predicated on foreign bribery. It should also include scenarios relevant to foreign bribery, such as examples of how the proceeds of this crime can be laundered. The lead examiners commend Polish authorities for their awareness of the heightened risk of foreign bribery for Polish companies in the recovery and reconstruction of Ukraine. They recommend that this risk be included in the new NRA.*

#### **A.8.b. Suspicious activity reporting**

47. The GIFI is a governmental administrative body under the Ministry of Finance. As such it is not tasked with identifying the underlying predicate offence. However, FIUs generally can play an important role in detecting foreign bribery due to their access to and analysis of financial intelligence. Under the AML Law, obligated entities are required to file suspicious activity reports (SARs) with the GIFI. The GIFI’s human resources increased from 64 employees in 2016 to 90 in 2021. The number of analysts also rose from 31 to 48 in the same period.

48. Poland states that foreign FIUs and SARs submitted by obligated entities are the most important sources of information for detecting crimes in general. The number of SARs from obligated entities varied between 3 500 and 4 200 per year in 2014-2019 and Poland states that a SAR may contain one or hundreds of suspicious transactions. It adds that the main source of SARs is the banking sector, followed by payment services, high-value goods dealers and the capital investment sector. The financial institutions and banking associations at the on-site visit note that the GIFI provides feedback on SARs and is responsive to requests. Together with law enforcement, they state that they have very good and close co-operation with the GIFI.

49. The GIFI analyses SARs and disseminates them to the Public Prosecutor’s Office (PPO) and law enforcement agencies (LEAs). It sends SARs with “clear-cut” suspicions of money laundering directly to the PPO for instituting an investigation. The “weaker” information is sent to the LEAs for further scrutiny, e.g. operational and exploratory activities (see Section B.2.b at p. 28). The GIFI states that it forwards to the PPO or CBA information which indicates that bribery is the predicate offence of a suspicious activity.

50. Nevertheless, the GIFI has not detected any foreign bribery cases. Poland does not cite SARs as the source of any its foreign bribery investigations to date (see Section A.2 at p. 8). The GIFI refers to one case in which foreign authorities provided information concerning one of their officials. It also mentions a second case in which a Polish obligated entity reported suspicious activity by a customer who was a foreign politically exposed person. The two cases may concern non-Polish officials who allegedly engaged in corruption, but not foreign public officials who accepted bribes from Polish entities. Neither case resulted in investigations in Poland for bribing foreign officials.

51. The GIFI has not published any guidance or typologies specifically addressing foreign bribery. Phase 3 Recommendation 3(b) asked Poland to “urgently take substantial steps to raise the awareness of and provide training for the FIU and all entities subject to suspicious transactions reporting requirements of the risk of laundering the proceeds of the bribery of foreign public officials, and provide them with guidance on what constitutes such proceeds, and how to effectively detect them”. The GIFI states that its website contains information on how and what to report in a SAR. It provides free e-learning courses for obligated entities, law enforcement, students and academia. It organises training, workshops and conferences for obligated entities. Training is also provided to new and existing GIFI staff. Money laundering typologies have been provided to obligated entities. But the GIFI admits that all of these

activities are general in nature and do not specifically address foreign bribery. It organised meetings and seminars on the NRA 2019, but the document only mentions corruption and not foreign bribery (see Section A.8.a at p. 15). Private sector representatives at the on-site visit highlight their strong relationship with the GIFI. However, they would like the frequency of the GIFI's training to return to the level before the COVID-19 pandemic.

52. After reviewing a draft of this report, the GIFI states that it “will consider issuing a general communication on the main elements that obligated institutions should pay attention to in order to identify suspected money laundering from foreign corruption”. Alternatively, the GIFI may publish training materials or organise meetings with obligated institutions and co-operating entities to discuss this issue.

### **Commentary**

***The lead examiners welcome the GIFI's good and close co-operation with law enforcement and obligated entities. However, the lack of foreign bribery specific guidance to obligated entities weakens the reporting regime, and is likely a reason why SARs have never directly led to the detection of foreign bribery. The lead examiners welcome GIFI's consideration of issuing communications and publications to address these concerns. Nevertheless, they recommend that Poland provide specific guidance and typologies to obligated entities in relation to foreign bribery. They also re-iterate Phase 3 Recommendation 5(b) and recommend that Poland urgently provide awareness-raising, training, guidance and typologies to GIFI personnel and obligated entities that explicitly address the risk of laundering the proceeds of foreign bribery, and the detection of this activity.***

#### **A.8.c. Politically exposed persons and beneficial ownership**

53. Preventing money laundering by foreign politically exposed persons (PEPs) is relevant to the implementation of the Convention. Convention Art. 7 covers the laundering of the proceeds of foreign bribery “without regard to the place where the bribery occurred”. This includes foreign PEPs laundering the proceeds of foreign bribery in Poland.

54. The AML Law sets out the anti-money laundering regime for PEPs. Art. 2(2)(11) defines PEPs without distinguishing between PEPs in Poland or a foreign country. PEPs in international organisations are also covered. Arts. 46-46c set out the enhanced due diligence that obligated entities are required to undertake to identify PEPs and monitor their transactions. Measures also apply to PEPs' family members and close associates (who are defined in Arts. 2(2)(3) and (12)).

55. AML Law Chapter 6 establishes the Central Register of Actual Beneficiaries (i.e. beneficial owners) administered by the Ministry of Finance. According to Poland, the Register covers just over 500 000 entities as of July 2022. Access to the Register is free and publicly available. According to on-site visit participants, the Register is well-known and used by government authorities and the private sector alike. Private sector representatives indicate that the Register – complemented by additional public information – is routinely used to identify and to conduct enhanced monitoring of PEPs. Obligated entities must report any discrepancy they discover in the Register, which contributes to its accuracy.

### **Commentary**

***The lead examiners welcome the establishment of the Central Register of Actual Beneficiaries, including the free and public access to the Register.***

#### **A.9. Detecting foreign bribery through accounting and auditing**

56. Poland has not detected any foreign bribery cases through accounting and auditing. The [Accounting Standards Committee](#) is an independent body, supervised by the Minister of Finance and is responsible for setting accounting standards that supplement the Accounting Law. The [Polish Audit Oversight Agency \(PANA\)](#) supervises statutory auditors, audit firms and the professional self-government of statutory

auditors. The [Accountants Association in Poland \(SKWP\)](#) and the [Polish Chamber of Statutory Auditors \(PIBR\)](#) are the professional associations for accountants and auditors respectively.

#### **A.9.a. Accounting and auditing standards**

57. Poland's accounting standards were not the subject of a Working Group recommendation in Phase 3 and the standards have not changed for the purposes of this evaluation. In line with EU requirements, listed entities and financial institutions are permitted – and in some cases required – to apply the International Financial Reporting Standards (IFRS) as endorsed by the European Commission when preparing financial statements.<sup>16</sup> Companies that do not apply IFRS are required to follow the AL (Arts. 2(3)). They may also apply the National Accounting Standards for issues not regulated in the AL (Art. 10(3)). Poland's false accounting offence is considered at Section B.5.b at p. 46.

58. External auditing standards also remain unchanged since Phase 3 for the purposes of this evaluation. The International Standards on Auditing (ISAs) apply in Poland (Statutory Auditors Law (SAL) Art. 2(19)). AL Art. 64(1) sets out the entities that must be externally audited annually. These include financial institutions; listed companies; joint stock companies; and entities meeting two of three thresholds (i) annual average of at least 50 employees, (ii) total assets at financial year end of at least EUR 2.5 million, and (iii) net revenues for the financial year of at least EUR 5 million. SAL requires statutory auditors to comply with principles of independence and ethics (Art. 8). Additional provisions prohibit conflicts of interest between the auditor and the audited entity (Art. 69). Non-audit services shall be provided in accordance with the independence requirements (Art. 73). The International Standards of Quality Control and other related standards issued by the International Assurance and Auditing Standards Board apply (Art. 2(20) and (24)).

#### **A.9.b. Training and awareness-raising for accountants and auditors**

59. The Phase 3 Report (paras. 98-103) found that accountants and auditors had “quite good” knowledge of the Convention but were unfamiliar with detecting foreign bribery through audits. Recommendation 6(a) thus asked Poland to “intensify efforts to encourage the accounting and auditing profession to raise awareness and provide training on the detection of foreign bribery in companies' books and records”.

60. Since then, efforts to raise awareness of foreign bribery have been passive and dated. In November 2014, Polish authorities sent the text of the Convention by letter to the professional associations PIBR and SKWP. The letters requested “intensifying efforts to promote among the members of the relevant organisations the awareness of the Convention itself and of the attendant obligations (retaining the material on the websites of the organisations and inclusion of relevant issues in the trainings organised).” The PIBR also has a document on its [website](#) that refers to the Convention and the Anti-Bribery Recommendation of 1997 (the Recommendation has since been overhauled twice). The document mentions the Accounting Law's books and records provisions that implement the Convention, but not other matters such as external auditing.

61. There has also not been general training specifically on foreign bribery apart from internal efforts at some auditing firms. External auditors are required to undergo continuous professional training (SAL Arts. 8(2) and 9). The PIBR and SKWP organise courses which to date have covered money laundering but not domestic or foreign bribery. The major auditing firms that participated at the on-site visit have organised training on foreign bribery, but only for their own employees.

62. As a result, actual awareness of foreign bribery in the accounting and auditing profession is uneven. One auditor from a major auditing firm at the on-site visit is well-versed with the relevant issues, and explained articulately the role of ISAs 240 and 250 in detecting foreign bribery. But the auditor believes

<sup>16</sup> [Regulation \(EC\) No. 1606/2002 of the European Parliament and of the Council of 19 Jul. 2002.](#)

that members of the profession outside the big auditing firms lack such awareness and knowledge. A representative of an audit firm states that there is a risk of domestic bribery, but limited or no risk of foreign bribery in Poland.

### **Commentary**

***Poland's efforts to raise awareness of foreign bribery in the accounting and auditing profession since Phase 3 have not been sufficient. The lead examiners therefore re-iterate Phase 3 Recommendation 6(a) and recommend that Polish authorities work in conjunction with professional accounting and auditing associations to raise awareness of foreign bribery among accountants, auditors and relevant officials. These efforts should include training external auditors to detect foreign bribery during external audits.***

#### **A.9.c. External auditors reporting foreign bribery**

63. External auditors are required to report foreign bribery to company management. Polish authorities state that “There is no requirement in place for the external auditor to report discovered indications of a suspected act of foreign bribery to the management or corporate monitoring bodies.” But PANA and other auditors point out that the ISAs require such reporting.<sup>17</sup> Statutory auditors of “public interest entities” must also report to the audited entity any “irregularities, including fraud with regard to the financial statements of the audited entity” (EU Regulation 537/2014 Art. 7(1)).

64. External auditors are further required to report suspicions of foreign bribery to law enforcement, but the wording of the relevant provision is not clear. SAL Art. 77 states that a statutory auditor who “has learned of” foreign bribery while conducting an audit must immediately notify the prosecutor. In Phase 3 (para. 102), auditors stated that they did not have the ability to collect sufficient evidence that would substantiate a suspicion of bribery.

65. Steps taken by Poland to clarify this provision were not sufficient. In 2014, the Ministry of Finance issued an “interpretation” clarifying that auditors were only required to report suspicions. They did not need to gather sufficient evidence to prove bribery, as this was the responsibility of the prosecutor. The PIBR then disseminated the “interpretation” to auditors. Despite these efforts, auditors and the professional association PIBR at the on-site visit are unfamiliar with the 2014 “interpretation”. Instead, some auditors are again unclear on the threshold that would trigger the obligation to report. One auditor observes that SAL Art. 77 requires reporting if an auditor “has learned of” a bribe; the term “suspicion” is not used. In the auditor’s view, the law as an authoritative instrument “should be clearer”. Polish authorities disagree with this position. They insist that the term “has learned of” must be used “as it is consistent with the wording used in CCP Art. 304” on a citizen’s “social obligation” to report a crime and that it must be understood to require the reporting of a suspicion. Supporting information for this interpretation was not provided.

### **Commentary**

***The lead examiners acknowledge Polish authorities' efforts to clarify that auditors are only required to report suspicions of bribery under SAL Art. 77. Nevertheless, the provision has not been amended and continues to contain this ambiguity. The authorities' "interpretation" of the provision has not been re-circulated after 2014. Standing guidance on this matter that is binding on auditors has not been issued. As a result, auditors today continue to be unclear about the threshold required for reporting. Poland acknowledges this problem and suggests raising awareness of auditors about this issue. But this was already done in 2014 and has failed to resolve the issue. The lead examiners therefore recommend that Poland take targeted and periodic awareness raising measures and training to clarify that under SAL Art. 77 external auditors are only required to report***

<sup>17</sup> See ISAs 240(40) and (43); 250(19) and (28); and 260.

***suspicious of foreign bribery to law enforcement, and that they are not required to gather evidence to substantiate the suspicion.***

#### **A.10. Detecting foreign bribery through tax authorities**

66. Poland's revenue agency is the [National Revenue Administration](#) (*Krajowa Administracja Skarbowa*, KAS) in the Ministry of Finance. KAS has not detected a foreign bribery case.

##### **A.10.a. Legislative provisions denying the tax deduction of bribes and financial penalties**

67. Poland denies the tax deduction of bribes through identical provisions in the Corporate Income Tax Act Art. 16(1)(66) and Personal Income Tax Act Art. 23(1)(61). The provisions exclude from deduction expenses “resulting from activities that could not be the subject of a legally valid agreement”:

They are not considered tax deductible costs [...] expenses incurred and the value of the goods, rights or services provided, resulting from activities that could not be the subject of a legally valid agreement, in particular in connection with the commission of the offence specified in art. 229 of the Act of 6 June 1997 - Penal Code (Journal of Laws of 2020, items 1444 and 1517 and of 2021, item 1023);

68. At the Working Group's request, Poland clarified the meaning of “a legally valid agreement” in this provision. The Phase 3 Report (paras. 118-121) was concerned that the provision would not prohibit the deduction of bribes paid to win a contract for legal business. Recommendation 7(a) thus asked to “clarify that all bribes to foreign public officials in violation of Article 229.5 of the Penal Code are not tax deductible.” In response, Poland prepared an explanatory note in information brochures accompanying tax returns beginning in 2013. The note is also accessible on the Ministry of Finance's [website](#) and in tax offices. It states that a deduction was not allowed for “expenses incurred in order to provide a financial advantage to a person performing a public function (including a foreign official) in connection with performing that function (the so called ‘bribe’)”.<sup>18</sup>

69. However, this “clarification” may be of limited visibility and effectiveness. The text is not part of the form for filing income tax returns but in two separate brochures. There is no guarantee that a taxpayer filing a tax return will have downloaded a brochure and seen the “clarification”. Moreover, the brochures deal with a wide range of issues, not just the deduction of bribes. One of the brochures is thus over 50 pages, with a footnote containing the “clarification” on the deduction of bribes. In this evaluation, the brochures were not mentioned in Poland's questionnaire responses or by any Polish officials at the on-site visit. Instead, the officials insisted that the provisions on non-deductibility of bribes are “so clear and transparent that no taxpayer would be expected to misinterpret them”. It was only after seeing a draft of this report that Poland referred to the “clarification” in the brochures.

70. Polish authorities also continue to disagree with the Working Group's recommendation from Phase 3. They insist that the Working Group “misinterprets” the provisions on non-tax deductibility by referring “to acts which cannot be the subject of a legally effective agreement, while omitting the reference to the provision of CC Art. 229”. According to Poland, the Working Group's assessment also “ignores the long-standing practice” of interpreting tax laws where “acts prohibited by the criminal law do not constitute tax deductible costs”. Polish authorities “thus fully support the previously provided explanation” in Phase 3.

71. Separate provisions prohibit the tax deduction of fines and penalties imposed in criminal proceedings (Corporate Income Tax Act Art. 16(1)(18) and Personal Income Tax Act Art. 23(1)(15)).

#### **Commentary**

***The lead examiners re-iterate the Working Group's position in Phase 3 that Poland's provisions on the non-tax deductibility of bribes are unclear. The provisions' reference to a “legally valid***

<sup>18</sup> Working Group on Bribery (2015), “[Poland: Follow-up to the Phase 3 Report and Recommendations](#)”.

**agreement” could be interpreted to mean that bribes paid to win a contract for legitimate business can be deducted. Poland has helpfully issued clarifications to taxpayers since 2013 but this practice is not sufficiently visible. The lead examiners therefore recommend that Poland take further steps to remove this ambiguity.**

#### **A.10.b. Detecting bribes and enforcing non-tax deduction**

72. Poland states that tax audits are not a source for detecting bribes. Taxpayers avoid drawing unwanted attention to a bribe, for example, by claiming it as a tax deductible expense:

In practice, therefore, the entity that would incur such expenses is not interested in disclosing it in a way that could draw attention and doubts on the part of the tax authorities, as it would create a specific risk for it and the other party to the illegal transaction. Due to these circumstances, this type of cases does not become the subject of disputes with tax authorities and do not reach court proceedings. The lack of such cases, also in the form of individual inquiries of taxpayers who may fear the interest of tax authorities, does not justify issuing individual and, even more so, general interpretations.

73. This position misunderstands how foreign bribery operates. Experience in many countries shows that companies which bribe foreign officials to win business often do so by hiring a sham consultant who produces no useful or tangible work product. The consultant then passes part of the fees that it receives to a foreign official as a bribe. The company usually claims a tax deduction for the consultant fees. This is because the fees on their face are a legitimate expense for generating income from the corruption-tainted business. The fees also often amount to millions of euros and would lead to significant tax savings. Not claiming a tax deduction would therefore be contrary to normal business practice, and would invite scrutiny e.g. from auditors, shareholders, and company boards.

74. Comments by Polish authorities demonstrate a continuing reluctance of tax officials to detect foreign bribery. Poland states that the “leading institution in this respect is the Central Anti-Corruption Bureau [...] which is provided with access to KAS data”. The Bureau “has sufficient ‘tools’ to perform its functions”. Requiring KAS to detect foreign bribery would “overlook the accepted division of tasks between the Bureau and KAS. The effective operation of state institutions consists primarily in the non-duplication of their functions by different institutions. Hence, the activities of KAS should only be of a supporting nature”. Poland’s position contradicts the Working Group’s long held view that tax officials can effectively detect foreign bribery committed by taxpayers.<sup>19</sup>

75. Given Poland’s position, it is unsurprising that KAS has not trained its tax examiners to detect foreign bribery when conducting tax audits. KAS says that it “is not tasked with detecting bribery. Bribery is not a major problem for KAS and is very much a niche topic”. There is hence no policy to audit individuals or companies alleged to have committed foreign bribery. Training of new KAS officials includes a module on “ethics, anti-corruption, equal treatment and undesirable phenomena”. Four other courses for existing officials cover “international anti-corruption regulations” including the Convention and instruments of the UN and EU. However, all of these training modules refer to corruption and bribery of KAS – not foreign – officials. At least two courses mention the “methodology for analysing signs of bribery in the control documentation according to the OECD Manual for tax inspectors on increasing awareness of corruption”. But attendance in these courses is limited, with 245 attendees since 2013, and none since 2020.

76. After reviewing a draft of this report, Poland describes some additional awareness-raising measures. A letter dated 29 July 2022 asked KAS field units to familiarise employees with the OECD Handbook on Bribery and Corruption Awareness of Tax Controllers and Auditors. A working Polish translation of the Handbook was then provided on 31 August 2022. Poland states that these communications “order KAS

<sup>19</sup> See Anti-Bribery Recommendation XX and XXI.iii. See also, for example, [Chile Phase 4](#), paras. 197-199; [Iceland Phase 4](#), paras. 151-161; [Italy Phase 4](#), paras. 71-72; [Greece Phase 4](#), paras. 218-220; and [France Phase 4](#), paras. 48-52; [Japan Phase 4](#), paras. 48-49.

employees, in the course of performing their duties, to support the fight against bribery and corruption” and to “identify and report corruption phenomena of a public official from a country other than Poland”. These are positive steps, but much more will be needed, given KAS’s conviction that its role in foreign bribery detection is peripheral at best.

77. Reporting to prosecutors also focuses on domestic bribery and other crime, not the bribery of foreign officials. CCP Art. 304(2) obliges KAS officials to report criminal offences to the prosecutor. Each KAS unit may adopt its own rules for reporting corruption. These guidelines “mainly concern domestic corruption” but apply “analogously to the offence of foreign corruption”, according to Poland. The guidelines of one unit provided as an example requires reporting to the Head of the KAS Regional office. The principles set out in the Anti-Corruption Manual for Officials prepared by the CBA also apply.

78. Poland also does not re-open the tax returns of individuals or companies convicted of bribery to determine whether the bribes were deducted during the relevant period. The Working Group has recommended that countries engage in such post-conviction tax audits since the tax authorities do not have to prove that a deducted expense was a bribe; this has already been proven in court. KAS can re-open a tax return within five years of the end of the calendar year in which a tax payment is due. Upon discovering an irregularity, KAS must commence tax proceedings within six months of the audit (Tax Ordinance Act Arts. 70(1) and 165b(1)). But there is “no relevant data” on actual tax audits conducted after bribery convictions. After reviewing a draft of this report, KAS states that it intends to ask the Central Anti-Corruption Bureau “in the near future” to be informed of foreign bribery cases.

### *Commentary*

***The lead examiners are concerned that KAS does not consider tax audits to be a source for detecting foreign bribery. They recommend that Poland (a) further train new and existing KAS officials on the Convention, as well as the detection and reporting of foreign bribery during tax examinations, and (b) take steps to ensure that KAS re-opens the tax returns of individuals or companies convicted of bribery to determine whether the bribes were deducted during the relevant period.***

#### ***A.10.c. Sharing of tax information with Polish and foreign law enforcement***

79. Polish law enforcement has direct access to information held by KAS on a taxpayer. Under CCP Art. 213(1a), the public prosecutor can obtain tax information directly from the tax authorities “if necessary”. Prior judicial authorisation is not required. The prosecutor obtains the information electronically from KAS’s “tele-information system” directly.

80. KAS states that it does not accept foreign requests to use Polish tax information for a non-tax purpose, such as a foreign bribery investigation. It states that “a law on tax information exchange does not apply to any non-tax purpose”. Since 2011, Poland has been Party to the protocol/amended [Convention on Mutual Administrative Assistance in Tax Matters](#). This Convention allows Parties to exchange tax information for tax purposes. Under Art. 22(4), however, tax information provided by Poland to another Party may be used for a non-tax purpose (e.g. a criminal foreign bribery investigation) when such use is allowed under the laws of Poland and the Polish competent authority authorises such use. Some of Poland’s bilateral tax agreements contain similar language based on Paragraph 12.3 of the Commentary to Art. 26 of the OECD Model Tax Convention. The Tax Ordinance Act Art. 297a allows Poland to seek the consent of foreign authorities to use tax information received from those authorities for a non-tax purpose. But Poland states that it cannot reciprocally consent to a non-tax use by a foreign country of tax information that it has provided to that country. It is unclear whether the denial of consent is due to a policy decision by KAS or a legislative impediment.

### Commentary

**The lead examiners recommend that Poland take steps to ensure that KAS may, where appropriate, permit a foreign country to use tax information provided by Poland for a non-tax purpose in foreign bribery cases, in line with the Convention on Mutual Administrative Assistance in Tax Matters.**

#### A.11. Preventing and detecting foreign bribery through export credits

81. Export credit agencies (ECAs) deal with companies that are active in international business; they thus have an important role in preventing, detecting and reporting potential foreign bribery allegations involving these companies. ECAs can also sanction individuals and companies that have committed foreign bribery by denying them support. Measures that ECA can take are described in Recommendations V-VIII of the 2019 [Recommendation of the Council on Bribery and Officially Supported Export Credits](#) (Export Credits Recommendation).

82. Poland explains that it has two ECAs that offer three export credit instruments. *Bank Gospodarstwa Krajowego* (BGK) provides loans and interest rate support. *Korporacja Ubezpieczeń Kredytów Eksportowych S.A.* (KUKE) provides insurance for export credit loans by both private and public banks. KUKE insures all export credit loans made by the BGK.

83. KUKE conducts due diligence before support is granted under any of the three instruments. A policyholder/exporter/applicant declares in the support contract that the export transaction has not been or will not be concluded as a result of bribery. For contracts of two years or more, the policyholder etc. additionally declares whether it (a) has been debarred by a multilateral development bank; (b) is facing court proceedings for bribery; or (c) has been convicted of bribery in the previous five years. KUKE then assesses information provided in the declarations. If it considers that a risk of bribery is elevated, then it conducts enhanced due diligence. This consists of additional inquiries such as whether the policyholder etc. has implemented an anti-corruption compliance programme as a corrective and preventive measure.

84. KUKE clarifies that enhanced due diligence may include measures concerning third party agents. It may collect information about the identity of such agents, the commissions or fees paid to them, and the location of such payments. KUKE then uses the information to assess whether the agent provides appropriate and legitimate services (Export Credits Recommendation VI.2.d).

85. Support can be denied for foreign bribery, though only to a limited degree. KUKE refuses support if it determines that bribery is committed in connection with the export contract or credit agreement. If an exporter or someone on its behalf is convicted of bribery and KUKE has already paid indemnity under an insurance contract, then the exporter must refund KUKE. However, only 10% of the indemnity is refunded; the full amount is not. KUKE explains that this is because 10% is the assumed exporter's profit margin from the transaction. This is obviously arbitrary; the margin in a given transaction could be more – or less – than this amount. More importantly, denying the profit merely puts the exporter in the same position it would have been in had bribery not been committed. There is thus no deterrent effect. If indemnity has not been paid when the exporter is convicted, then no measures are taken, e.g. the BGK does not terminate the loan agreement.

86. KUKE states that it is obliged to notify the prosecutor or police if bribery has been committed in connection with an export contract or a credit agreement. The obligation is stipulated in KUKE's internal procedure that has been approved by the Committee on Export Insurance Policy which oversees KUKE's operations. KUKE states that it has trained its employees on this reporting obligation. KUKE and the BGK have not detected or reported a foreign bribery case.

### Commentary

**The lead examiners commend KUKE for taking measures to prevent and detect foreign bribery. They note, however, that the Export Credits Recommendation VIII.2 asks countries to “take**



**appropriate action [...] such as enhanced due diligence, denial of payment, indemnification, or refund of sums provided, if, in relation to the transaction, one of the parties involved is convicted of violation of laws against bribery, subjected to equivalent measures, or found as part of a publicly-available arbitral award to have engaged in bribery". In such cases, KUKE requires an exporter to refund not all but only 10% of any indemnity paid. If indemnity has not been paid, then no measures are taken. The lead examiners therefore recommend that Poland revise its policies to implement Export Credits Recommendation VIII.2.**

#### **A.12. Preventing and detecting foreign bribery through official development assistance**

87. Government agencies responsible for official development assistance (ODA) are “the first line of defence in preventing corruption and managing corruption risks in the disbursement of aid.” The OECD 2016 [Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption](#) (ODA Recommendation) calls on countries to encourage their international development agencies to ensure effective measures to manage risks of, and respond to, actual instances of corruption in development co-operation. The Working Group is tasked with monitoring the implementation of ODA Recommendations 6-10.

88. The Department of Development Co-operation in the Ministry of Foreign Affairs (MFA) administers Poland’s ODA programme. A limited part of the programme is exposed to risks of foreign bribery. The ODA budget was USD 952 million in 2021. The top recipient countries were Ukraine, Belarus, Bangladesh, Türkiye and Vietnam. However, bilateral ODA accounted for merely 8% of the total. NGOs executed all bilateral projects; private sector contractors were not used. That said, the total ODA budget is expected to more than double as a percentage of GNI by 2030. Ukraine reconstruction could increase this figure. An expanded ODA programme may lead to greater private sector and NGO involvement, which in turn increases the risks of foreign bribery.

89. The expansion of ODA would necessitate stronger measures to prevent and detect foreign bribery. The MFA states that it “relies on Polish or local NGOs to conduct their own due diligence”, though there is no information on how NGOs perform this task. The MFA candidly admits that “our procedure is quite modest but we do the bare minimum.” The MFA does not have a procedure to routinely conduct corruption risk assessments. It “tries to do it on a case-by-case basis” by asking Poland’s diplomatic post in the relevant country to assess the feasibility of a project. But this assessment covers a range of issues such as physical safety; corruption risks are not necessarily included. There is no information on the monitoring of corruption risks during and after the implementation of a project.

90. The reporting and awareness of foreign bribery should also be strengthened. The MFA states that there are “no relevant data” on reporting and whistleblowing in the ODA context. This is surprising, since ODA officials should at least be subject to the reporting obligation that applies to all public officials in CCP Art. 304(2) (see Section A.4 at p. 10). After reviewing a draft of this report, the MFA states that the reporting procedure that applies to all MFA officials would also apply in the ODA context. However, there are questions about the effectiveness and clarity of this reporting procedure, as explained in Section A.5.b at p. 12. Furthermore, it is concerning that this procedure was not mentioned by ODA officials at the on-site visit or Poland’s questionnaire responses. The MFA admits that it does not have a whistleblowing policy and would welcome the adoption of the whistleblowing law (see Section A.6.b at p. 13). MFA staff are subject to mandatory training cycles, including on-line training. But the training relates more to domestic corruption, not foreign bribery or risks stemming from development co-operation operations. An internal anti-corruption officer discusses relevant standards with staff. Whether this occurs through formal training or *ad hoc* staff requests is unclear.

91. A foreign bribery conviction is grounds for excluding an entity from an ODA project. Applicants for funding are only required to declare that they do not have a criminal record. The MFA has no legal ground to verify this information through the National Criminal Register. Applicants must also declare that they are

not suspended from performing functions related to the administration of public funds. Otherwise, “no particular part of the standard form contract directly prohibits implementing partners from engaging in corruption”. Contracts “usually” – i.e. not always – include “a clause where termination or/and reimbursement is mentioned”. The MFA adds that no entity has been excluded due to embezzlement or corruption. It is not clear whether this is because no case of misconduct has occurred.

### **Commentary**

***The lead examiners observe that foreign bribery risks in Poland's current ODA programme are limited but could soon grow. More proactive and comprehensive management of risks is justified. The lead examiners therefore recommend that Poland strengthen the anti-foreign bribery measures in its ODA programme by (a) systematically assessing, mitigating and managing foreign bribery and corruption risks, (b) adopting policies and measures to prevent and detect foreign bribery and corruption, (c) establishing secure and accessible channels for reporting corruption, and (d) training ODA staff on these policies and measures.***

## **B. Enforcement of foreign bribery and related offences**

92. This section considers Poland's enforcement of its foreign bribery and related offences. It begins by examining the foreign bribery offence itself. This is followed by investigations, prosecutions and international co-operation in foreign bribery cases, including judicial and prosecutorial independence. Related offences of money laundering and false accounting are then covered. The section ends with the conclusion of cases, including non-trial resolutions, sanctions and confiscation. Corporate liability and sanctions are addressed in Section C at p. 51.

### **B.1. Foreign bribery offence**

93. Poland's foreign bribery offence is contained in Criminal Code (CC) Art. 229(5) which cross-references the provisions on domestic bribery in CC Art. 229(1)-(4). Art. 229(1) applies to “whoever provides or promises to provide a material or personal benefit to a person performing a public function in relation to performing this function”. Art. 229(3) covers the same act “with the purpose of inducing the person performing a public function to violate legal provisions or provides a material benefit, or promises to provide it to such person for a violation of legal provisions”. Art. 229(5) extends these two offences to a person performing a public function “in a foreign state or international organisation in relation to performing this function”. The penalties for the offences are explained in Section 0 at p. 49.

94. These provisions have not been amended since Phase 3. In Phase 3, the Working Group decided to follow up three elements of the foreign bribery offence and territorial jurisdiction to prosecute natural persons for the crime. It also made one recommendation concerning the “impunity provision”.

#### **B.1.a. Elements of the foreign bribery offence**

95. Post Phase 3 jurisprudence has clarified the issue of foreign bribery committed through intermediaries (Follow-up Issue 10(a)(ii)). Poland's foreign bribery offence does not expressly cover this situation. Nevertheless, since Phase 3 Poland has convicted a Polish national who authorised an intermediary to bribe a foreign public official in the Customs Officer (Germany) Case. The on-going Road Construction (Ukraine) Case also involves the use of intermediaries to commit foreign bribery.

96. Two other issues are outstanding. First, the foreign (and domestic) bribery offences do not apply to bribery of state administration employees who perform exclusively “service type work” (CC Art. 115(19); Phase 3 Report paras. 37-39 and Follow-up Issue 10(a)(i)). Polish authorities stated that the exception applies solely to technical persons, such as those performing cleaning and similar tasks not connected with the any acts of authority or power. Even if this is the case, assessing the nature of a foreign public official's functions could be challenging for Polish law enforcement. Second, the foreign bribery offence explicitly covers a bribe given to a third-party beneficiary in the form of a “material or personal benefit”. The

Working Group questioned whether a *non-pecuniary* bribe in such circumstances would also be covered (Phase 3 Report para. 43 and Follow-up Issue 10(a)(iii)). Poland states that a non-pecuniary bribe constitutes a personal benefit which criminal law doctrine considers not to have any economic or monetary value. Nevertheless, jurisprudence since Phase 3 does not elucidate these two issues.

### Commentary

**The lead examiners recommend that the Working Group continue to follow up (a) the interpretation of “service type” work in CC Art. 115(19), and (b) whether the foreign bribery offence covers a non-pecuniary bribe given to a third-party beneficiary.**

#### B.1.b. Impunity provision

97. The “impunity provision” in CC Art. 229(6) provides a defence to foreign and domestic bribery. Under this provision, a briber escapes liability if he/she discloses “all the substantive circumstances of the crime” to a law enforcement authority responsible for prosecuting such offences. The meaning of “substantive circumstances” is uncertain. Poland states that the term “has been thoroughly clarified in practice” and that an offender must “disclose all relevant material circumstances necessary for the evidential proof of the corruption offence”. Furthermore, the disclosure must be made before the recipient authority learns of the crime. These last two conditions, however, were not interpreted strictly in at least one passive foreign bribery case where a foreign company bribed Polish doctors. A company employee first notified the authorities of the crime. Colleagues of the notifier then “were interrogated” and informed authorities of additional bribery offences. All of these individuals benefited from the impunity provision, even though the original notifier did not reveal all offences in the case, and his colleagues did not bring the case to the authorities’ attention. In 2016-2021, the provision was used on average 460 times annually in cases of domestic bribery and other offences (and 1 044 times in 2021 alone). But it has never been applied in a case of active foreign bribery.

98. The Working Group has expressed concerns about the “impunity provision” since Phase 2 (para. 139). The provision is mandatory: a briber who reports the crime before the authorities learn of it cannot be punished. The prosecutor and court have no discretion to impose punishment once the statutory requirements are met. The Convention does not permit such a defence (also commonly referred to as the defence of effective regret). Poland states that the impunity provision allows corruption to be detected. This policy reason may be valid for domestic bribery since Poland can prosecute the Polish public official who received the bribe. But for foreign bribery, Poland is extremely unlikely to prosecute the foreign official given the official’s presence in a foreign country and jurisdictional obstacles. Poland argues that the foreign country may prosecute the bribed official such as in the Road Construction (Ukraine) Case. But this is far from certain, as it depends on foreign authorities’ willingness and ability to prosecute, and hence does not necessarily remedy the shortcomings of the impunity provision. For these reasons, exempting the briber from liability in Poland for foreign bribery serves no purpose. The Working Group therefore asked Poland to “urgently take appropriate measures” to ensure that the impunity provision does not apply to foreign bribery (Phase 3 Report paras. 32-36 and Recommendation 1). Similar recommendations have been made in the evaluations of numerous other countries.<sup>20</sup>

99. Poland has not implemented the Working Group’s recommendation. An October 2017 bill repealing the “impunity provision” for foreign bribery lapsed in the legislature. The Ministry of Justice is drafting a similar bill that takes a “holistic approach” to analyse the full Polish criminal law framework. However, the

<sup>20</sup> For example, see [Czech Republic Phase 3](#), paras. 28-32 and Recommendation 1; [Greece Phase 3bis](#), paras. 41-47 and Recommendation 2(d); [Italy Phase 4](#), paras. 152-155 and Recommendation 11; [Portugal Phase 3](#), paras. 41-42 and Recommendation 2; [Slovak Republic Phase 2](#), paras. 150-161 and 244, and [Phase 3](#), paras. 30-31 and Recommendation 1(c); [Slovenia Phase 3](#), paras. 27-30 and Recommendation 1(a) and [Phase 4](#), paras. 90-94 and Recommendation 7(b); [Spain Phase 3](#), para. 39 and Recommendation 2(d).

draft is said to be at a “very preliminary level” and was not made available to this evaluation. A timetable for the bill’s enactment was also not shared.

100. Finally, the provision can conceivably render corporate liability unfeasible. The conviction of the natural person perpetrator is necessary for corporate liability (see Section C.1.b at p. 52). The impunity provision precludes the conviction of the perpetrator, and hence in turn prevents the liability of the legal person, according to some legal practitioners at the on-site visit. The MOJ takes the opposite view (see also Phase 3 Report para. 47 and Phase 2 Report para. 161). However, it does not provide jurisprudence or data in support of this position.

### **Commentary**

***The lead examiners are seriously concerned about Poland’s ineffective efforts to repeal the impunity provision for the foreign bribery offence. The Convention does not allow such a defence. The lead examiners recall Phase 3 Recommendation 1 and recommend that Poland urgently amend its legislation to ensure that the impunity provision does not apply to foreign bribery.***

#### **B.1.c. Jurisdiction to prosecute natural persons for foreign bribery**

101. Phase 3 Follow-up Issue 10(b) remains outstanding. CC Arts. 5 and 6(2) provide territorial jurisdiction over natural persons. These provisions are unchanged since Phase 3. The CCP does not specify the degree of a physical link that is needed to establish territorial jurisdiction over foreign bribery cases (Phase 3 Report, para. 90). In Phase 2 (para. 142), Poland stated that a telephone call, fax, or email emanating from Poland which promised a bribe to a foreign official would be sufficient for Poland to take jurisdiction. A similar communication originating from Poland in furtherance of (e.g. confirming) a bribe promise would also suffice. Supporting case law was not provided, however. Poland states that no jurisprudence has arisen on this issue since Phase 3. In the on-going Road Construction (Ukraine) Case, bribes were allegedly offered on Polish territory.

102. The rules on nationality jurisdiction over natural persons have also not changed since Phase 3. CC Art. 109 provides that the Criminal Code “applies to a Polish citizen who has committed a crime abroad.” The dual criminality requirement in CC Art. 111 does not apply (Phase 2 Report para. 143). Poland states that CC Art. 109 provided the jurisdictional bases of the Customs Officer (Germany) and Shipbuilding (Estonia) Cases.

### **Commentary**

***The lead examiners re-iterate Phase 3 Follow-up Issue 10(b) and recommend that the Working Group continue to follow up the application of territorial jurisdiction over natural persons for foreign bribery.***

## **B.2. Investigation and prosecution of foreign bribery**

103. This section covers the framework for foreign bribery investigations and prosecutions. It considers the bodies involved in these cases and their respective roles, time and tools available for investigations, enforcement priority, resources, and training.

### **B.2.a. Bodies responsible for enforcement and case assignment**

104. The bodies involved in foreign bribery enforcement are the Public Prosecutor’s Office (PPO) and various law enforcement authorities (LEAs). A PPO is attached to each District, Regional and Appeal Court. In addition, the PPO has established an Organised Crime and Corruption Department (OCCD). The OCCD handles cases involving the most important bribery offences. The OCCD has a central office within the National PPO and 11 regional offices. The LEAs potentially involved in foreign bribery cases are the Police, Central Anti-Corruption Bureau (CBA), and Internal Security Agency (ABW). The headquarters of the regional police (including the Metropolitan Police) have departments specialising in financial crime,

organised crime, and corruption. The CBA is a specialised service to combat corruption in public and economic life and activities detrimental to the economic interests of the State. The ABW has competence over offences that undermine the state's internal security including corruption of public officials. The PPO and the police bodies co-operate smoothly, according to on-site visit participants.

105. In theory, foreign bribery cases are assigned to a District PPO based on territoriality. The 321 District Courts and their corresponding PPOs have jurisdiction over misdemeanours such as bribery. Under CCP Arts. 31-34, jurisdiction is assigned to the district where the offence is committed. For crimes committed abroad, jurisdiction is given to the district where the crime is discovered, or where the accused was apprehended or resided prior to the offence. In all other cases, the Warsaw Śródmieście District has jurisdiction. Upon a motion of the District Court, an appellate court may transfer a particularly significant or complex case to a Regional Court for a hearing in the first instance (CCP Art. 25(2)).

106. In practice, the OCCD's central or regional offices conduct cases of corruption, including some of the ones on foreign bribery. This has advantages. It likely results in better co-ordination: the central office co-ordinates cases across the OCCD, while there is no clear mechanism of co-ordination among District PPOs. The OCCD obviously has more experience in corruption cases. Systematically referring all corruption cases to the OCCD further increases its specialisation and expertise. As a more senior PPO, the OCCD may be better equipped to handle foreign bribery cases that are usually complex and require mutual legal assistance.

107. Applying the same logic, foreign bribery cases should also be elevated from District to Regional Courts which have more experience in complex cases. This would be consistent with other complex crimes like money laundering which are also tried in Regional Courts (CCP Art. 25(2)). Under current rules, a Regional Court already hears foreign bribery cases that include money laundering charges (CCP Art. 33).

### **Commentary**

***Poland has too few foreign bribery cases for a proper assessment of the current arrangements on co-ordination. However, if cases increase, then co-ordination may become inadequate due to the large number of District PPOs and the lack of clarity as to which PPO would deal with such cases. In evaluations of other countries where co-ordination is problematic, the Working Group has recommended provisions that assign competence for foreign bribery to a specific law enforcement and judicial body.<sup>21</sup> In view of the potential risk, the lead examiners therefore recommend that Poland establish clear and specific procedures that would allocate foreign bribery cases to the OCCD and Regional Courts.***

### **B.2.b. Conduct of an investigation and “operational and exploratory activities”**

108. Section VII of the Code of Criminal Procedure (CCP) sets out the main rules and principles on criminal investigations and prosecutions. For all corruption offences, including foreign bribery, the process can be initiated with or without a complaint (i.e. *ex officio*). Complaints must be made to the prosecutor or a LEA (Arts. 304 and 312). Within 30 days, an investigation must be opened if there is a “justified suspicion” that a crime has been committed; otherwise the matter is closed (Arts. 303 and 305(1)). If this decision is taken by a LEA, then it must be confirmed by a prosecutor (Art. 305(3)). A decision not to investigate may be appealed, e.g. by a victim or complainant (Art. 306). If the matter proceeds, then the prosecutor conducts the investigation but may entrust investigative activities to a LEA (Arts. 311 and 325a). The PPO usually assigns the investigation to the LEA that makes a referral, according to Poland. If the investigation yields evidence sufficient to justify the suspicion, then the prosecutor indicts the accused (Art. 331). Otherwise, the prosecutor discontinues or suspends the investigation (Arts. 321-322). A suspension is only

<sup>21</sup> For example, see [Israel Phase 3](#), paras. 54-57 and Recommendation 3(a); [Peru Phase 2](#), paras. 91-93 and Recommendation 9(b); and [Greece Phase 4](#), paras. 104-123 and Recommendation 8(d).

for the duration of an impediment to the proceedings, e.g. if the accused cannot be apprehended (Art. 22(1)).

109. In practice, LEAs seem to frequently conduct “operational and exploratory activities” (OEs) to investigate allegations which do not require a prosecutor’s supervision. For example, upon becoming aware of an allegation of corruption, the CBA can conduct OEs under the CBA Law (Art. 13(1)). The CBA has broad investigative powers during OEs, including search and seizure, demands of information from government and private entities, lifting bank and tax secrecy, detention of individuals, interception of communications, surveillance, eavesdropping, sting operations, and freezing accounts (CBA Law Arts. 14-17). Similar provisions apply to other LEAs. An OE was applied in at least one foreign bribery case (Road Construction (Ukraine) Case).

110. OEs raise multiple concerns. In CCP investigations, the prosecutor decides the opening and closing of investigations (which can be appealed). He/she also makes key decisions such as the choice of investigative measures. LEAs assume these roles in OEs. While there are concerns about prosecutorial independence (see Section B.3 at p. 34), LEAs that conduct OEs are even closer to the executive government. For instance, the CBA reports directly to and is supervised by the Prime Minister who sets out the directions of the CBA’s activities and issues guidelines (CBA Law Arts. 5(1) and 12). Some CBA investigative measures require the approval of the Prosecutor General who is also the Minister of Justice and hence part of the executive. OEs are therefore highly vulnerable to potential executive influence.

111. This is exacerbated by the opacity on the opening, conducting and closing of OEs. There is no clear rule on when a LEA must conclude an OE and refer the case to a prosecutor for a CCP investigation and prosecution. A LEA can also terminate an OE without prosecutorial oversight. Furthermore, what happens during an OE is unknown. In this evaluation, Poland repeatedly states that OEs are “classified” and the applicable rules on opening, closing and conduct of OEs are “confidential”. It therefore declines to explain investigative steps taken during OEs in foreign bribery cases, or to provide statistics on OEs. Poland also states that most investigative measures during OEs, including “operational control” and controlled delivery of a bribe, require prosecutorial approval. But this merely highlights that other investigative measures (e.g. surveillance) are unsupervised by a prosecutor. The secretive nature of OEs implies that LEAs likely do not co-ordinate with other LEAs or prosecutors when conducting OEs. The Polish authorities mention a database for OEs to prevent “double activities”, but it is unclear how this database operates and who has access to it.

112. Poland objects to these observations. PPO Law Art. 57(2) allows the Prosecutor General, National Prosecutor or a prosecutor authorised by them to consult material collected in an OE. But this does not allow prosecutors to supervise OEs. Poland does not have any statistics on the use of this provision. It also argues that these findings are not “substantiated by any case studies or other information” on executive influence of OEs. But the Working Group frequently considers these and other issues by analysing a country’s legislative and institutional framework, as explained in more detail in Section B.3 at para. 138. Moreover, case information about OEs is not available because it has been withheld by Poland. Apart from independence from executive influence, OEs raise issues about the opening, co-ordination and termination of foreign bribery cases, all of which are routinely addressed in Working Group evaluations. Finally, Poland refers to a recent Moneyval report that considers OEs.<sup>22</sup> Recommendations in that report are complementary rather than inconsistent with the present Working Group report.

### **Commentary**

***The lead examiners are concerned that LEAs can conduct and terminate OEs without prosecutorial supervision. The lead examiners therefore recommend that LEAs in foreign bribery cases (a) notify the OCCD when starting an OE, (b) refer cases to the OCCD as soon as possible***

<sup>22</sup> Moneyval (2021), [Fifth Round Mutual Evaluation Report](#), paras. 50 and 214-215.

**for investigation under the CCP and that OEAs are kept to a minimum, and (c) terminate OEAs only in consultation with the OCCD.**

### **B.2.c. Time limits for investigations and statute of limitations for natural persons**

113. The time limit for a CCP investigation is sufficient in practice. Under CCP Art. 310, the investigation must be concluded in three months. The prosecutor or his/her superior may extend the period by up to one year in “justified cases”. In “particularly justified cases”, a superior prosecutor can further extend the period; there is no limit to the length of this extension. The CCP does not explain the meaning of the terms “justified” or “particularly justified”. All LEAs state that the three-month period is insufficient. In practice, the limitation period is routinely extended to allow investigations to complete properly. The time limit is instead seen as an administrative step and a tool of prosecutorial supervision.

114. The statute of limitations for natural persons for foreign bribery was not the subject of earlier Working Group recommendations. As in Phase 3, the limitation period is 15 years from the commission of the offence, but only 5 years for bribery of “lesser gravity” under CC Art. 229(2) (CC Arts. 101(1)(2a) and (4)). Poland states that the term “lesser gravity” is defined by case law, commentaries and the general criminal law doctrine guiding jurisprudence. Factors that would be considered include the rank of the bribed official, and the accused's motive, gain, social status and personal circumstances, according to the Ministry of Justice. However, actual jurisprudence on the interpretation of this term in bribery cases is not provided. A prosecutor at the on-site visit asserts that foreign bribery cases would not be considered “lesser gravity”. The statute of limitations for legal persons is considered in Section C.1.c at p. 54.

115. A post-Phase 3 legislative amendment expands the suspension of the limitation period. Previously, if a suspect was charged or informed of an investigation against him/her within these time limits, then the limitation period was extended by a further ten years. Since 2016, the extension applies earlier in the process, namely when the investigation is opened (Art. 102). This is a commendable development. The amendment applies to offences committed after the provision’s entry into force (Art. 4).

116. Poland cannot provide comprehensive data on the expiry of the statute of limitations in bribery investigations. In 2016-2021, 11 272 investigations were time-barred, but this figure is for all types of crimes. Over the same period, at least one passive foreign bribery and ten domestic bribery cases were terminated because of the statute of limitations.

### **Commentary**

**Poland does not have data on corruption and bribery cases that are time-barred. The lead examiners (and Poland) therefore cannot determine whether the limitation period is sufficient in cases of “lesser gravity”. They accordingly recommend that Poland maintain comprehensive statistics on the expiry of the statute of limitations in corruption and bribery cases. The Working Group should also follow up the application of the statute of limitations to bribery cases of “lesser gravity”.**

### **B.2.d. Investigative techniques**

117. There are largely no issues concerning investigative techniques available in CCP investigations of foreign bribery. In general, government institutions as well as all natural and legal persons must assist an investigation (CCP Art. 15). Information and documents are therefore often provided voluntarily to the authorities upon request, says Poland. General investigative techniques provided by the CCP in foreign bribery cases include seizure of items when required by the prosecutor or a court (Art. 217), searches of premises (Arts. 219-220), and access to postal and telecommunications information upon the request of a court or prosecutor (Arts. 218-218a). Judicial authorisation is required for surveillance and recording of telephone conversations (Art. 237(3)(17)). Objects may be seized to secure financial penalties, forfeiture and compensation, and must be surrendered when required by the court, prosecutor, or in cases of utmost urgency, the police (Art. 217). A Central Register of Beneficial Owners is available (see para. 55).

118. One concern is that only some forensic expertise is available. Poland states that the PPO, including the OCCD, uses forensic analysis mainly in complex multi-thread investigations related to organised crime cases, economic and fiscal crimes. The CBA adds that it has a specialised IT unit, while the Police has a body dealing with cybercrime. A prosecutor points out, however, that forensic expertise in accounting or corporate crimes is not available in-house. An outside independent expert is needed.

119. Comprehensive data on the use of investigative techniques in foreign bribery or corruption cases are not available. The CBA used covert measures to investigate the Road Construction (Ukraine) Case. Poland states that it seized assets of PLN 3.9 billion (EUR 828 million) in 2019, a five-fold increase from 2015.

### **Commentary**

***The lead examiners recommend that Poland ensure that appropriate forensic expertise in accounting or corporate crimes is available in foreign bribery investigations and prosecutions.***

### **B.2.e. Training for judges, prosecutors and law enforcement**

120. The Phase 3 Report (paras. 55-58) found “a lack of awareness and knowledge on the part of Polish authorities of how to investigate and prosecute collective entities”. Recommendation 2(b) therefore asked Poland to “take steps to ensure that police and prosecutors are adequately trained and made aware of the importance of effectively enforcing the liability of legal persons, and that such training address challenges in investigating and prosecuting legal persons caused by the requirement [of a natural person conviction]”.

121. Poland has since provided little training to judges and prosecutors that specifically address foreign bribery or corporate liability. The National School of Judiciary and Public Prosecution (NSJPP) provides training mainly on domestic corruption issues. The Convention was given “particular emphasis” in a 2015 course on “Corruption in economic transactions, criminal liability of natural and legal persons” attended by 45 people. In 2017, 70 judges, assistants and prosecutors were trained on economic crime, including active and passive bribery. Two courses covering foreign bribery were planned for October 2022, though interest in the courses appeared to be low, according to the NSJPP at the July 2022 on-site visit. A Regional Court judge adds that foreign bribery cases are very rare and thus the need for training on this topic is minimal.

122. Foreign bribery-specific training for LEAs is also unavailable. The CBA provides substantial and freely accessible training on its e-learning platform to external agencies and the public. Since 2016, 240 police officers assigned to fight corruption have been trained through a specialised course delivered by the Police School in Piła on combating all types of corruption offences. The Police also provide anti-corruption training to recruits and an e-learning model for officers, including those in the anti-corruption unit. The GIFI (financial intelligence unit) trains LEAs on money laundering, including a 2015 course on the laundering of the proceeds of corruption in the financial system. While these efforts are useful, none of them specifically covers foreign bribery or corporate liability.

### **Commentary**

***The lead examiners regret that Poland has not trained judges, prosecutors and LEAs sufficiently on foreign bribery, or corporate liability and investigations. The 2021 post-High-Level Mission Action Plan envisages some training for police officers and agencies with anti-corruption mandates, which is a step in the right direction. The lead examiners recommend that Poland see through these initiatives, and provide training to all relevant judges, prosecutors and LEAs specifically on foreign bribery, and corporate liability and investigations.***

### **B.2.f. Enforcement of actual foreign bribery cases**

123. As mentioned at para. 12, Poland has taken enforcement action in three of the six foreign bribery allegations that have surfaced. The Customs Officer (Germany) Case resulted in a foreign bribery



conviction of one individual in 2012. In the Road Construction (Ukraine) Case, 16 individuals are being tried, including 4 for foreign bribery, 2 of whom are Polish nationals. Case summaries are in Annex 1.

124. Polish authorities could have been more proactive with one of the allegations that has resulted in enforcement action. In the Shipbuilding (Estonia) Case, two Polish board members of a Polish company allegedly bribed Estonian officials to obtain a contract. In 2015, Estonia sent a mutual legal assistance (MLA) request to Poland which described the two Polish individuals' alleged misconduct. Polish authorities executed the request but did not open their own investigation until February 2018 when they received information about the case from the Working Group. Some evidence was then gathered before the investigation was suspended pending the outcome of the trial of one of the Polish individuals in Estonia. The other Polish individual's charges in Estonia have been discontinued. As explained further at Section C.1.b at p. 52, Poland cannot investigate the Polish company because no natural person has been convicted.

125. The Alcoholic Beverages (Russia) Case similarly shows a lack of proactivity and thoroughness. According to media reports, a Polish-based company found that it had violated the books and records provisions, and potentially additional provisions, of the US Foreign Corrupt Practices Act. The misconduct stemmed from payments and gifts to foreign public officials. The company reported the matter to the US Securities and Exchange and Commission (SEC). Upon learning of the information, Poland declined to open an investigation because the alleged misconduct occurred in the company's operations in Russia. But this conclusion was based on a review of the media information, the company's corporate filings, and discussions with the company itself. Polish authorities did not independently verify the potentially self-serving information from the company, or consider possible bribery through intermediaries or subsidiaries. Polish authorities also did not ask their US counterparts for information.

126. The Alcoholic Beverages (Russia) Case also demonstrates a failure to explore potential links between Poland and the alleged misconduct in Russia that could have resulted in Polish jurisdiction. The company's SEC filing stated that its "primary corporate office is located in Warsaw, Poland". Nevertheless, Polish authorities did not study the company's structure to determine whether the Polish entity was the parent of the Russian one that allegedly committed foreign bribery. They did not question whether decisions about the Russian operations could have been made in Poland. No inquiries were made whether relevant books and records of the alleged bribery were kept in Poland. Nor did they examine the financial flows to determine whether the alleged bribes and the proceeds of bribery passed through Poland.

127. The allegation in the Telecommunication (Belarus) Case is also not proactively investigated. Media reports indicate that Belarus convicted several of its officials for taking bribes when awarding telecommunications contracts. Polish authorities state that these reports do not implicate Polish natural and legal persons in the bribery. However, according to other public information, one of the companies mentioned in the media reports may be a joint venture with the same name as a Polish telecommunications company headquartered in Kraków. The joint venture's name also suggests a Polish connection. Polish authorities were not aware of this information. Furthermore, they did not seek the Belarusian court judgment or information from Belarusian authorities. In this evaluation, Poland concedes that the jurisdictional aspect of the allegation was not adequately considered and would be revisited. Unfortunately, this may be too late: prosecution of natural persons may be possible, but public information indicates that the Polish company became bankrupt in 2020.

128. Finally, the Bus Company (Latvia) Case also raises questions about proactivity in seeking evidence and alternative bases of liability. A Polish company allegedly bribed Latvian officials to obtain bus contracts. Latvian authorities have charged their officials with bribe-taking. A Polish prosecutor, however, is investigating two executives of the Polish company for embezzlement but not foreign bribery. The company is thus solely treated as the victim and not perpetrator of the crime. Ostensibly, the prosecutor cannot prove that Latvian officials received money from the executives since China and Russia have not responded to MLA requests. But the prosecutor has not considered other avenues of proving foreign

bribery. For instance, he has not sought the co-operation of any of the executives. Nor has he pursued liability based on the promise or offer of a bribe (which would not require proving that the official received the bribe).

129. The 2021 post-High-Level Mission Action Plan aims to remedy some of these problems. The Head of the OCCD central office wrote to the heads of the OCCD regional offices and Regional PPOs on 30 August 2021.<sup>23</sup> The communication asked prosecutors to consider whether incoming MLA requests describe acts falling within Polish criminal jurisdiction, and to report such cases to the OCCD. It draws the attention of prosecutors to indications and sources of foreign bribery allegations, e.g. business activity abroad, suspicious transactions, media reports, and MLA requests. PPOs are asked to monitor their casework to identify indications of foreign bribery.

130. The problem with these efforts is twofold. First, the communication focuses overwhelmingly on detecting foreign bribery allegations and is more of an awareness-raising nature. It does not address the importance of thorough assessment or proactive investigation of allegations, which are the concerns evidenced by Poland's actual foreign bribery cases. Second, as mentioned at para. 21, the communication is not a standing and binding order of the Prosecutor General. Its effect likely will subside quickly over time.

### **Commentary**

***The lead examiners are concerned about the lack of proactivity in foreign bribery investigations. They are encouraged by the successful conclusion of the Customs Officer (Germany) case. Poland is also actively investigating the Road Construction (Ukraine) Case. But other foreign bribery cases raise concerns. Some allegations were rejected without thorough investigations. One investigation was opened only after significant delay. Possible bases of jurisdiction and liability were overlooked. The post-High-Level Action Plan was a commendable but insufficient attempt to address these issues.***

***The lead examiners therefore recommend that Poland, through a binding order of the Prosecutor General and equivalent measures for law enforcement agencies, ensure that its authorities conducting foreign bribery investigations and prosecutions (a) promptly and proactively assess credible allegations of foreign bribery, including those in incoming MLA requests, (b) proactively gather information from diverse sources to increase detection of foreign bribery and enhance investigations, (c) consider alternative sources of evidence and bases of liability for foreign bribery, and (d) explore all jurisdictional bases available under their law when investigating and prosecuting legal persons for foreign bribery offences, including to establish territoriality and nationality jurisdiction.***

### **B.2.g. Resources and prioritisation**

131. The bodies involved in foreign bribery enforcement have resource levels comparable to those in Phase 3, though data are incomplete. The total number of prosecutors declined slightly from 6 000 in 2013 to just under 5 900 in 2021. This includes 29 prosecutors in the OCCD central office and 139 in the regional offices. The Police's regional anti-corruption units employ 281 officers. Poland refers to another 198 police officers in lower-level economic crime units; it is not clear whether these officers are assigned to foreign bribery cases or merely investigate domestic corruption. Data on the CBA and Internal Security Agency (ABW) are not provided. It is difficult to assess the sufficiency of resources given that the anticipated increase in foreign bribery cases since Phase 3 has not materialised, likely because of deficiencies in detecting this crime (see Section A at p. 8). If detection improves and caseload rises, then enforcement resources would need to increase correspondingly.

132. A greater concern is that, as in Phase 3 (para. 81), Poland does not give foreign bribery enforcement particular priority. Foreign bribery is merely considered under the broad rubric of fighting corruption,

<sup>23</sup> Ref. No. PK III PZ 071.69.2021.

according to lawyers and civil society representatives. Hence, responsibility for foreign bribery cases is not formally given to a specialised body. LEAs state that they do not distinguish between domestic corruption and foreign bribery in their investigative approach. Part of their attention is also diverted to non-corruption matters. Only 38.5% of the CBA's investigations concern corruption offences; the majority of its cases relate to document forgery, and financial and tax crimes. The ABW's primary focus is national security, not anti-corruption.

133. Some steps were taken recently to increase the priority of foreign bribery. As part of the 2021 post-High-Level Mission Action Plan, the OCCD Head wrote regional prosecutors on 30 August 2021 and 10 September 2021.<sup>24</sup> The communication requested prosecutors to be aware of potential foreign bribery allegations when investigating cases of transborder or financial crime, and when executing incoming MLA requests. A separate letter asked Poland's National Member at Eurojust to report multi-jurisdictional cases. The heads of specialised corruption departments in the Police apparently discussed in October 2021 the problems of combating foreign bribery. The Police has undertaken to gather and analyse data on foreign bribery enforcement.

134. These steps give foreign bribery enforcement more visibility but are not a sufficient statement of priority. As mentioned at paras. 21 and 130, the letters of the OCCD Head are mere requests to prosecutors, not a standing and binding order of the Prosecutor General. They are unlikely to be effective beyond the short-term. Moreover, efforts have been somewhat haphazard. The OCCD Head's letters focused largely on detection. Enforcement prioritisation and proactivity were not addressed. Poland has also not taken steps to increase the priority that the CBA gives to foreign bribery enforcement. This is particularly regrettable given the CBA's autonomy in "operational and exploratory activities" (see Section B.2.b at p. 28) and its substantial workload in non-corruption cases (see para. 132).

#### Commentary

***The lead examiners are concerned that Poland does not give sufficient priority to foreign bribery enforcement. Foreign bribery is subsumed under general enforcement of corruption. By not giving it specific attention, foreign bribery is frequently overlooked. The lead examiners therefore recommend that Poland (a) revise its approach to enforcement in order to effectively combat foreign bribery, as per Anti-Bribery Recommendation VI.i, and (b) issue a binding order to prosecutors and LEAs that gives an appropriate level of priority to foreign bribery enforcement.***

### B.3. Judicial and prosecutorial independence under Article 5 of the Convention

135. Foreign bribery investigations and prosecutions must conform to Art. 5 of the Convention. They must not be influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved. Commentary 27 further requires that decisions in investigations and prosecutions be based on professional motives and not be influenced by political considerations. By extension, the judiciary, as the ultimate arbiters of prosecutions, must also be independent of political influence.

136. This report considers five issues of particular relevance: (a) role of the Prosecutor General and Minister of Justice, (b) the National Council of Judiciary, (c) role of court presidents, (d) disciplining of judges, and (e) secondment of judges and prosecutors. Potential executive influence in investigations known as "operational and exploratory activities" is examined above in Section B.2.b at p. 28.

137. On the whole, the independence of Poland's judiciary and Public Prosecutor's Office (PPO) has diminished significantly since Phase 3. After taking power in late 2015, the current government substantially amended laws affecting the PPO and judiciary. Many of the reforms were reportedly "undertaken by the governing majority in haste and without proper consultation"; "their cumulative effect is

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<sup>24</sup> Ref. No. PK III PZ 071.69.2021.

to place the judiciary under the control of the executive and legislative branches”.<sup>25</sup> In this evaluation, participants generally agree that some aspects of the judiciary and PPO need improvement. However, many participants also agree that the post-2015 amendments largely failed to address the existing problems. Instead, the amendments considerably eroded judicial and prosecutorial independence, according to virtually all on-site visit participants from across the judiciary, PPO, legal profession and civil society. (Only the government and the three judges representing the National Council of Judiciary hold different views.)

138. Polish authorities raise several general objections to these observations. They state that the Working Group does not have a mandate to examine these issues. However, this ignores the fact that in evaluations of other countries, Working Group members (including Poland) have long considered numerous issues involving the judiciary and prosecutor’s office such as potential and actual political interference, appointments and vacancies, removals, discipline, surrogate and provisional (i.e. seconded) judges and prosecutors, composition of judicial councils, politicisation, and role of the attorney general.<sup>26</sup> Such issues often arise during assessments of a country’s legislative and institutional framework; they are not limited to specific foreign bribery cases as Poland contends. Polish authorities also argue that there are diverse views on these issues in Poland and that the Working Group “should have conducted extensive opinion surveys on a representative group of lawyers” before reaching its conclusions. But this evaluation follows the methodology applied to all Working Group members. The report describes multiple and opposing views when they have been provided to the Working Group by relevant stakeholders, as shown below. Polish authorities add that many of these divergent views are “motivated not by a substantive analysis of the legal status, but directly related to the political views of the people expressing them. In Poland, there is a major political conflict between two political environments.” However, the analysis of these issues in this report is of a technical-legal and not political nature.

### **B.3.a. Role of the Prosecutor General and Minister of Justice**

139. The Prosecutor General (PG) heads the Public Prosecutor’s Office (PPO) and has power over virtually every aspect of the PPO, including in the conduct of specific cases. Prosecutors are independent of influence from outside the PPO (PPO Law Art. 7(1)). Internally, the PPO is a strictly hierarchical organisation. Prosecutors must carry out the orders, guidelines and instructions of a superior prosecutor (Art. 7(2)), including those concerning a procedural act in a case (Art. 7(3)). A superior prosecutor can change or revoke a subordinate’s decision (Art. 8), or take over a subordinate’s case (Art. 9(2)). The PG does not conduct investigations personally, but he can exercise these powers of instruction in any specific case as he is the ultimate superior of all prosecutors (Art. 13(2)). A prosecutor can appeal an instruction to the superior of the issuing prosecutor (Art. 7(4)), but this recourse would seem impossible for instructions issued by the PG.

140. The PG has further extensive powers of appointment, discipline and dismissal. He appoints prosecutors on the motion of the National Prosecutor (Art. 74). (The National Prosecutor is the PG’s first deputy and is also appointed on the PG’s motion (Art. 14(1)). The PG may dispense with a public competition or certain professional qualifications when appointing new prosecutors (Arts. 76(5) and 80). The PG appoints the Chair and deputy Chair of a Disciplinary Court; the Chair in turn appoints the Court’s other judges (Arts. 145(2)-(3)). The Court hears most first instance disciplinary proceedings. The Supreme Court Chamber of Professional Responsibility (see para. 163) hears the remaining proceedings in the first instance and all in the second (Arts. 145(1)-(1b)). The PG appoints and dismisses the disciplinary ombudsmen who “prosecute” the disciplinary proceedings (Art. 153). Upon a motion by the National

<sup>25</sup> UN Special Rapporteur on the Independence of Judges and Lawyers (5 Apr. 2018), [Report on the independence of judges and lawyers on his mission to Poland](#), paras. 74-75.

<sup>26</sup> For example, see [Argentina Phase 2](#) (paras. 130-133, 136, 144 and 152-156), [Phase 3](#) (paras. 104-110 and 112) and [Phase 3bis](#) (paras. 98-127); [United Kingdom Phase 2bis](#) (paras. 116-204); [Latvia Phase 2](#) (paras. 126-137); [France Phase 4](#) (paras. 162-183); [Slovenia Phase 4](#) (paras. 110-168); [Peru Phase 2](#) (paras. 130-152); [South Africa Phase 3](#) (paras. 80-101). This list is illustrative and not exhaustive.

Prosecutor, the PG may dismiss a prosecutor who has committed at least three disciplinary infractions (Art. 93).

141. The PG's powers described above are exercised by the Minister of Justice, who is a politician and member of the executive. The PG and Minister were separate positions in 2010-2016.<sup>27</sup> In Phase 3, the Working Group decided to follow up the impact of this arrangement on Art. 5 of the Convention (Follow-up Issue 10(d)). The current government abolished this framework by combining the two roles in 2016 (Art. 1(2)). The Minister thus quickly acquired full powers to direct every prosecution, and also assumed a vital role in prosecutorial appointments, discipline and dismissal. The reform as well allowed the Minister to appoint his own Disciplinary Ombudsman and initiate or join disciplinary proceedings (Art. 153a).

142. The political branch's influence over the PPO is furthered in at least two other respects. The National Prosecutor (NP) is the PG's first deputy and has substantial powers over the PPO's administration (e.g. transferring a prosecutor to another PPO organisational unit). The NP is appointed and dismissed by the President upon a motion of the PG (Art. 14(1)). Politicians and officials from different political parties have held this position at various times, according to Poland. Second, the political and executive branches may be privy to information that ordinarily should be protected by investigative secrecy. Under PPO Law Art. 12, the PG and NP can "present to public authorities, and in particularly justified cases also to other persons, information concerning the activity of the PPO, including information concerning specific cases, if such information may be important for the security of the state or its proper functioning". A prosecutor at the on-site visit states that the PG has full discretion in invoking this provision; no guidelines on its application have been issued. Polish authorities argue that the provision applies only in cases of national security or terrorism, i.e. "only [in] the most grave of circumstances". But the provision on its face is broader and vaguer: it also applies when it is important for the "state's proper functioning". Information can also be disclosed to persons outside public authorities.

143. The purported reason for these reforms articulated by Poland is unconvincing. Poland states that the prior arrangement led to staffing delays and "was criticised not only in the media, but also in legal circles and in society". The merger of the PG and Minister of Justice was to "allow the Council of Ministers to regain the ability to ensure the protection of the state's internal security and public order". This was necessary because "the Council of Ministers [has] constitutional obligations to the state to provide security for its citizens." The law prior to the reform "significantly limited the ability of the Council of Ministers to carry out" this obligation. That "model of functioning of the prosecutor's office [...], both in the opinion of experts and in the general public perception, failed the test." But none of the participants at the on-site visit, including Polish authorities, can explain who these "experts" were, or what the evidence of public perception was. Shortly before the adoption of this report, Polish authorities referred to a few media articles critical of the PPO in certain cases. What is clear from Poland's explanation, however, is that the principal objective of the reform was to subordinate the PPO to the Council of Ministers, i.e. the executive government.

144. Poland's explanation also downplays the role of the Minister of Justice. It states that the main feature of the reform was to replace the PG's Office with the NP's Office as a centralising prosecuting authority; replace the Appellate PPO with Regional PPOs; give the PG the power to manage the PPO through orders, directives and instructions; and introduce openness in disciplinary proceedings. But none of these goals necessitates merging the roles of the PG and Minister. Poland also likens the merger to some European countries where "the minister is responsible for criminal policy, ensuring the internal security of the state and public order". But the power of the minister in Poland extends far beyond criminal policy and into specific cases, thereby undermining prosecutorial independence fundamentally. Finally, Poland states that the 2016 reform "does not integrate the PPO into the government administration". Nevertheless, it

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<sup>27</sup> Poland states that the PG and Minister of Justice were also merged in 1990-2010.

acknowledges that “the body that links the PPO to the executive [...] with significant influence on its functioning is the PG – a position held by the Minister of Justice” [emphasis added].

145. International bodies disapprove of the reforms. The European Commission reports that “the power of the Prosecutor General, or higher ranking prosecutors, to issue instructions in individual cases (including not to prosecute) was used on several occasions, including in politically relevant cases.”<sup>28</sup> The Council of Europe finds that “the amalgamation between political and prosecutorial functions generates however a number of insurmountable problems as to the separation of the prosecution system from the political sphere”. The reforms “result in the accumulation of too many powers for one person. This has direct negative consequences for the independence of the prosecutorial system from political sphere, but also for the independence of the judiciary and hence the separation of powers and the rule of law in Poland.”<sup>29</sup>

### Commentary

***The lead examiners are seriously concerned that many features of Poland’s PPO are fundamentally incompatible with the principle of prosecutorial independence. The Minister of Justice, who is a politician and member of the executive, can direct every prosecution. He plays a vital role in prosecutorial appointments, discipline and dismissal. The Minister and the National Prosecutor can divulge information about specific cases to individuals within or outside the government when it is important for the “state’s proper functioning”.***

***The lead examiners therefore recommend that Poland (a) take steps to provide for prosecutorial independence from political and executive influence, particularly in foreign bribery investigations and prosecutions, (b) ensure that the appointment, discipline and removal of prosecutors are transparent and independent of political and executive influence, and (c) amend PPO Law Art. 12 or issue guidance to limit the disclosure of case-related information to public authorities and only in cases of national security.***

### B.3.b. National Council of Judiciary

146. The National Council of Judiciary (NCJ) is vital to the judiciary’s functioning. The NCJ is responsible for safeguarding the independence of courts and judges (Constitution Art. 186). Among other tasks, it assesses and proposes candidates for judicial appointment (including to the Supreme Court) (Constitution Art. 179), considers applications to retire a judge, elects the disciplinary ombudsman of common court judges, opines on the dismissal of court presidents and vice-presidents, adopts rules on professional ethics, and expresses opinions on legislation (NCJ Law Art. 3). It also hears appeals of court presidents’ administrative decisions, e.g. on judicial transfers (Common Courts System Law (CCSL) Art. 22a(5)).

147. The Constitution Art. 187 requires a majority of the body’s members to be judges. Of the NCJ’s 25 members, 17 are judges: the First President of the Supreme Court, President of the Chief Administrative Court, and 15 judges chosen from the Supreme, common, administrative and military courts. The remaining eight members are from the political and executive branches: the Minister of Justice, an appointee of the President of the Republic, and six legislators (four from the Sejm and two the Senate).

148. Nevertheless, the political branch has assumed influence over the NCJ by giving itself the power to choose the 15 judicial NCJ members. Rules in this respect are set not by the Constitution but the NCJ Law. Previously, the judiciary elected two NCJ members from the Supreme Court, two from administrative courts, ten from common courts and one from military courts. After a January 2018 legislative amendment, judicial candidates must now seek the nomination of 25 judges or 2 000 citizens. A Sejm committee verifies the nomination. The Sejm then chooses 15 of the 17 judges by 60% majority vote to four-year terms (NCJ

<sup>28</sup> European Commission, [2020 Rule of Law Report, Country Chapter on the rule of law situation in Poland](#), p. 8. Poland argues that the European Commission “has no mandate to interfere in matters concerning the administrative supervision and organisation of the judiciary of a Member State.”

<sup>29</sup> European Commission for Democracy through Law (Venice Commission) (11 Dec. 2017), [Poland: Opinion on the Act on the Public Prosecutor’s Office as Amended](#), 892/2017, paras. 110 and 115.

Law Arts. 9a-11e). Combined with the Minister of Justice and the seven representatives of the President and legislature, 23 of 25 NCJ members are from or selected by the political and executive branches.

149. The parliament has used its new powers to select judges previously associated with the government. The Minister of Justice has publicly stated that “each [parliamentary] group could propose judges they are accountable for. We have proposed judges who we thought were willing to co-operate with the judicial reform”.<sup>30</sup> NCJ members are thus seemingly expected to answer to the politicians who choose them. Consequently, according to one report,<sup>31</sup> the Sejm chose 13 new judicial NCJ members in March 2018. Three of the members were previous secondees to the Ministry of Justice, while seven had earlier been appointed by the Minister of Justice as a court president or vice-president. Poland argues that the selection of NCJ members “was fully objective and transparent” and that there is no evidence or examples of NCJ members answering to politicians. In May 2022, 15 new members were elected under this system. Polish authorities state that concerns have not been raised about the independence of these new members.

150. The reform has called into question the independence of not just the NCJ but the judiciary as a whole. An 11-3 majority of Poland’s Supreme Court has concluded that:

[T]he [NCJ] so formed is not an independent body but a body subordinated directly to political authorities. Consequently, competitions for the office of judge carried out by the [NCJ] have been and will be defective, creating fundamental doubts as to the motivation behind motions for the appointment of specific individuals to the office of a judge.<sup>32</sup>

151. Polish authorities state that the Supreme Court does not have the power to opine on this issue and the Constitutional Court disagrees with the Supreme Court and “has eliminated [its judgment] from circulation” because the latter’s position is inconsistent with the Constitution and European Convention on Human Rights.<sup>33</sup> Nevertheless, numerous international bodies have arrived at the same conclusion as Poland’s Supreme Court. The European Court of the Human Rights found that the NCJ, and the judges that it proposes for appointment, are not independent and impartial.<sup>34</sup> The European Network of Councils of Judiciary expelled the NCJ because of its lack of independence.<sup>35</sup> In the anti-corruption field, the Council of Europe has recommended that Poland amend its legislation so that at least half of the NCJ’s members are judges elected by their peers.<sup>36</sup> Polish authorities disagree with the reasoning in these decisions.

152. In this evaluation, Poland provides an unconvincing explanation for the NCJ reform. It states that the reform stems from a desire “to move away from the corporate, intra-community model of selecting [NCJ] members.” But this so-called “intra-community model” is one of the main aspects of judicial independence. Poland adds that the reform extends “democratic legitimacy of NCJ members” by “granting citizens, in addition to judges, the right to select candidates for members of the Council.” But the reform gives the Sejm – not citizens – the final say in the choice of the judicial NCJ members. Another justification is that the previous system “favoured judges adjudicating in higher courts and so called ‘functionary’ judges (acting as presidents of courts or heads of divisions)”. But this could have been corrected by specifying statutory quotas for each court rather than handing the power of appointment to the Sejm. Poland further

<sup>30</sup> Transcript of the third session of the Senate, 10th term (15 Jan. 2020), as reproduced in [Supreme Court \(23 Jan. 2020\) \(BSA I-4110-1/20\)](#), para. 38.

<sup>31</sup> Council of Europe Commissioner for Human Rights, [Report Following Her Visit to Poland 11-15 Mar. 2019](#), para. 14.

<sup>32</sup> [Supreme Court \(23 Jan. 2020\) \(BSA I-4110-1/20\)](#), para. 42. The Ministry of Justice replied in a [statement](#). Poland also states that the Supreme Court in a later judgment purportedly held that it was inadmissible to challenge a court decision, including the Supreme Court’s, as delivered by an unlawful composition of the court, if that contradiction consisted in sitting in the court of a judge appointed by the new National Council of the Judiciary (I NZP 1/21, LEX No. 3159005). The Polish government states that there are “numerous and divergent jurisprudence in this regard.”

<sup>33</sup> BSA I-4110-1/20, OSNKW 2020, no. 2, item 7.

<sup>34</sup> European Court of Human Rights (22 Jun. 2021), [Reczkowicz v. Poland](#), 43447/19; (30 Mar. 2021), [Xero Flor w Polsce sp. z o.o. v. Poland](#), 4907/18; (8 Nov. 2021), [Dolińska-Ficek and Ozimek v. Poland](#), 49868/19 and 57511/19.

<sup>35</sup> ENCJ (28 Oct. 2021), “[ENCJ Votes to Expel Polish Council for the Judiciary \(KRS\)](#)”.

<sup>36</sup> Council of Europe GRECO (22 Jun. 2018), [Addendum to the Fourth Round Evaluation Report on Poland \(Rule 34\)](#).

argues that its model for selecting NCJ members is found in another European country, and is used to choose other Polish officials such as the Ombudsman, the President of the Supreme Audit Office, and Constitutional Court judges. Polish authorities also say that NCJ members do not rule on specific cases and hence their selection does not affect judicial independence.

153. Representatives of some judges associations, prosecutors associations, legal profession and civil society at the on-site visit largely doubt the government's stated motive and lament the reform's impact on the judicial independence. One ex-judge states that the reform was to give politicians power over the NCJ; most citizens are in fact uninterested in choosing NCJ members. Several representatives of the legal profession agree and state that the reform is politically motivated. A judge and another participant point out that a candidate would need to campaign for support from politicians and citizens. This is fundamentally incompatible with a judge's independence. The only opposing opinions are expressed by the government and three judges it invited to the on-site visit, two of whom are NCJ members elected under the new rules. All three maintain that the reform does not affect the NCJ's independence.

### *Commentary*

***The lead examiners are seriously concerned that the Sejm has the power to choose the 15 judicial members of the NCJ. As a result, 23 of the 25 NCJ members are from or selected by the political and executive branches. The NCJ is therefore vulnerable to potential political and executive influence. This in turn reduces judicial independence overall, given the NCJ's central role in the judiciary's functioning. The lead examiners therefore recommend that Poland amend its legislation so that a majority of the judicial members of the NCJ are elected without political and executive interference.***

### *B.3.c. Role of court presidents*

154. Court presidents have considerable influence over the work of the judges in a court. Each court at every level has a president who is a serving judge and is responsible for the court's administrative operations. A president has broad powers such as assigning judges, court assessors and registrars to court divisions; transferring a judge to a different division, in some cases without their consent (CCSL Art. 22a); replacing a judge on a court (Art. 45); and launching disciplinary proceedings against a judge (Art. 114(1)). Appeal and Regional Court presidents are appointed to six-year non-renewable terms; those in District Courts are for four years renewable once (Art. 26). The same rules apply to court vice-presidents.

155. In 2017, the Minister of Justice's power to appoint court presidents was extended. Prior to the reform, the Minister appointed the presidents of the Appeal and Regional Courts with the opinion of the general judges' assembly of the respective court. The Appeal Court president appointed District Court presidents. The reform dispensed with the opinion of the judges' assembly and also gave the Minister the power to appoint all District Court presidents (Arts. 24-25).

156. Grounds for dismissal were also altered. A president can be dismissed for "gross or persistent failure to perform official duties" or where a president is "incompatible with the interests of the administration of justice". Since 2017, dismissal can also be based on the rather vague ground of "identification of particularly low effectiveness of activities in the scope of administrative supervision or work organisation in a court or tribunal" (Art. 27(1)). District Court presidents can be dismissed for "gross failure to perform duties in supervising judicial enforcement officers attached to the court" (Art. 27(7)).

157. As with appointments, the 2017 reform gave the Minister of Justice a central role in dismissing court presidents. The Minister dismisses a president after seeking an opinion of the college of judges of the respective court. He may suspend the president pending the opinion. If the college opposes dismissal, the minister can appeal to the NCJ. The NCJ blocks dismissal only with a two-thirds majority. This could be unlikely, given the number of NCJ members chosen by the political and executive branches (see para. 148). But if the NCJ or a college of judges cannot deliver an opinion within 30 days (e.g. because of



a deadlock), dismissal can still proceed (Arts. 27(2)-(5)). Shortly after the reform was passed, the Minister fired 20% (150 out of approximately 750) of presidents and vice-presidents in 2017 and replaced them with other members of the judiciary, according to Polish authorities.<sup>37</sup> One ex-judge at the on-site visit knows of presidents who were summarily fired without explanation via fax message.

158. These provisions raise two concerns. First, Poland states that the Minister of Justice and a court president “can have no influence on the decision-making by judges”. But a president can replace judges where “the efficiency of the proceedings in individual cases” is lacking (Arts. 37b(1) and 45(2)). Poland states that judges are assessed periodically based on data such as the number of cases received and completed. But the language of the statutory provision goes further and allows the assessment of efficiency in specific cases. Other presidential powers such as transferring a judge can also be used as “soft harassment”, says one on-site visit participant. The Minister of Justice can pressure a president to use these powers in a specific case by threatening the president’s dismissal. Poland disagrees with these concerns, stating that dismissals “will only apply in incidental cases and there are no grounds for treating it as a means of disciplining judges and preventing them from acting in the cases in which they rule”. A judge can also appeal a transfer to the NCJ. In any event, a second concern is that political interference can also be more systematic and insidious. When the Minister exercises his wide powers to appoint presidents, he will likely prefer judges who have made government-friendly rulings.

159. Poland’s justification of these reforms is again questionable. It states that “the judiciary is not absolutely separate and independent from the legislative and executive powers”. Consequently, the legislator can “confer certain powers of administrative supervision over courts on the executive power”. This ensures that “the judiciary operates in the most optimal way, which should translate into the efficiency of the justice system as a whole and guaranteeing citizens’ right to courts”. But these executive powers in Poland are hardly limited to “administrative” matters like maintaining court facilities or security as in other countries. They instead extend to the appointment and dismissal of court presidents which indirectly impinge on the independence of judicial decisions.

### Commentary

***The lead examiners are concerned that the Minister of Justice’s powers to appoint and dismiss court presidents allows the Minister to unduly influence court presidents directly and other judges indirectly. Vague provisions allowing a court president to be dismissed or to replace another judge add to these concerns. The lead examiners therefore recommend that Poland ensure the representatives of the judiciary have a decisive role in appointing and dismissing court presidents and vice-presidents in accordance with clear provisions to ensure that this power is not an instrument for political interference with the independence of judges.***

### B.3.d. Disciplining of judges

160. A judge may be punished for disciplinary misconduct. Penalties range from a reminder and transfer of place of employment, to suspension, salary reduction and removal from office (CCSL Art. 109). Prior to 2017, the grounds for discipline were (1) official misconduct, including a manifest and flagrant violation of the law and offence against the dignity of the office, and (2) conduct prior to the judicial appointment that fails to fulfil the duties of the state office or is unworthy of judicial office (Art. 107(1)).

161. Since 2020, the current government has added four new grounds for discipline:

- (a) acts or omissions likely to prevent or significantly impede the functioning of the judicial body;
- (b) actions challenging the existence of a judge's official relationship, the effectiveness of a judge's appointment, or the legitimacy of a constitutional organ of the Republic of Poland;
- (c) public activities that are incompatible with the principles of independence of courts and judges;

<sup>37</sup> See also Reuters (30 June 2021), “[European rights court says Poland denied officials right to appeal](#)”.

(d) denial of justice.

162. Poland states that the revised disciplinary grounds increase judicial independence by being more precise, but this is doubtful. The reform added new grounds of discipline and thus increased the opportunities for proceedings. Grounds such as “impeding the function of the judicial body” and “denial of justice” are vague. Poland adds that the ground of “actions challenging the existence of a judge’s official relationship” etc. was to prevent judges from questioning the status of judges who have been appointed after the NCJ reforms (see Section B.3.b at p. 37). Legislative provisions that entered into force in July 2022 after the on-site visit, clarified that certain circumstances do not amount to disciplinary offences, such as when a judge seeks a preliminary ruling from the Court of Justice of the European Union, or examines whether a court meets the requirements of independence and impartiality in a particular case.

163. The current government introduced two other reforms. First, the structure of the disciplinary courts was altered. Previously, disciplinary courts attached to Appeal Courts and the Supreme Court heard disciplinary proceedings in the first and second instance respectively. A new Supreme Court Disciplinary Chamber was created in 2019 to hear some first instance proceedings, depending on the ground for discipline. The Disciplinary Chamber then hears all second instance proceedings (CCSL Art. 110). In July 2022, a Supreme Court Chamber of Professional Responsibility replaced the Disciplinary Chamber. Poland states that the new Chamber strengthens procedural rights and guarantees in judicial disciplinary proceedings, e.g. by ensuring hearings within a reasonable time and clarifying the territorial jurisdiction of disciplinary courts. It adds that the new Chamber has overturned some decisions of its predecessor.

164. Second, the Minister of Justice has been given troubling powers in the disciplinary process. Proceedings begin when authorised persons such as the Minister and court presidents request “explanatory activities”. A “disciplinary ombudsman” is then responsible for “prosecuting” the case (CCSL Art. 114). The reforms give the Minister the power to appoint the national Disciplinary Ombudsman of the Common Courts and two deputies (Art. 112(3)). This national Ombudsman in turn appoints the ombudsmen responsible for discipline in other courts (Art. 112(6)). The national Ombudsman can also take over their cases (Art. 112a(1a)). In addition, the Minister may appoint a Disciplinary Ombudsman of the Minister of Justice who can initiate disciplinary proceedings at the Minister’s request (Art. 112b). Once the ombudsman concludes the investigation, the case is heard in the disciplinary courts attached to the Appeal Courts, whose judges are also appointed by the Minister (Art. 110a).

165. The dangers of this system are obvious. The Minister of Justice can initiate judicial disciplinary proceedings, as well as to prosecute and judge them with his appointees. The executive thus has ample opportunity to use disciplinary proceedings to pressure judges in particular cases, or to punish judges for unfavourable decisions. Poland does not explain the reasons for the Minister’s extensive role in judicial discipline. It states that the creation of the specialised Supreme Court Disciplinary Chamber increases efficiency and the quality of jurisprudence. In addition, the proceedings would be more transparent and accessible to the public. None of these objectives require the Minister’s pervasive role, however.

166. In practice, some judges have been disciplined for opposing the reform. Two judges from the NCJ at the on-site visit suggest that disciplinary proceedings were only taken for misconduct such as criminal behaviour. But this position is undermined by other on-site visit participants. A judge and a private sector lawyer state that several other judges have faced or are facing disciplinary proceedings for speaking out against the government’s judicial reforms. The same has happened to judges who challenge the validity of judges appointed after the 2017 NCJ reforms. These proceedings have a “chilling effect” and have left many judges frightened of being disciplined, according to two lawyers and an ex-judge. Even a judge who was invited to the on-site visit by the government admits that judges who spoke out against judicial reforms face disciplinary proceedings, albeit “just a few, very occasionally”. In his view, these proceedings are merited.

### Commentary

***The lead examiners are seriously concerned about Poland’s system of judicial discipline. The grounds for discipline are numerous. Many are vague. The Minister of Justice plays a pervasive role, giving rise to a potential for political interference in judicial independence. The lead examiners therefore recommend that Poland amend its legislation to (a) restrict the grounds for judicial discipline to only the most serious cases of misconduct, and (b) ensure that the judicial disciplinary system is independent of executive and political influence.***

#### B.3.e. Secondment of judges and prosecutors

167. The Minister of Justice also has wide discretion to designate and revoke judges and prosecutors on secondments. He may second a judge to another court, including one at a higher level, for a fixed or indefinite period with the judge’s consent. He may terminate the secondment without cause upon notice (CCSL Arts. 77(1) and (4)). The Minister (in his capacity as the Prosecutor General) and the National Prosecutor can similarly second prosecutors to another PPO. The prosecutor’s consent is not required for secondments of up to six months, and in some cases up to 12 months. The Minister’s decision to second is fully discretionary and need not be justified, according to Poland. The Minister can also terminate the secondment, in certain circumstances without notice, e.g. if the secondment has become “pointless” (PPO Law Arts. 106(2)-(3) and 107(1)-(2)). Poland explains that this system of secondments has been in place for almost 100 years. The purpose of secondments is to resolve “periodical shortages of staff”. A seconded judge may continue to conduct cases previously assigned to him/her (CCSL Art. 47b(4)).

168. Secondments appear to be widespread. Poland states that 162 of the 168 prosecutors in the Organised Crime and Corruption Department (OCCD) are on secondments. The OCCD’s predecessor “was also staffed to a large extent with” seconded prosecutors. Secondments of judges including as court presidents have also occurred, according to on-site visit participants.

169. The system of secondments presents yet another lever for political and executive interference with judicial and prosecutorial independence. It is used “as a stick and a carrot”, according to one prosecutor representing a prosecutor’s association at the on-site visit. Prosecutors and judges that fall out of the executive’s favour can be banished on secondments. Those in favour can be rewarded with promotions to positions with greater prestige, authority, pay and benefits. Even secondments to a job at the same or lower level can be attractive: a posting outside of the secondee’s place of permanent residence comes with free accommodation, per diem allowance, and travel reimbursement for the secondment’s duration (CCSL Arts. 77(6); PPO Law Arts. 108-109 and 113). Poland argues that such benefits are necessary under labour law. Nevertheless, seconded judges and prosecutors that enjoy such advantages may well shy away from decisions unfavourable to the government, lest the Minister of Justice revokes these privileges summarily.

170. Poland disagrees with these concerns, stating that the system of secondments is compatible with judicial independence and with European Union law.<sup>38</sup> It also argues that the arrangement “has a long systemic tradition in Poland” and that the Working Group did not criticise the Prosecutor General’s power of secondment in Phase 3. However, the Prosecutor General at that time was not the Minister of Justice and was hence independent of the executive government (see Section B.3.a at p. 35). Even if this were not the case, the Working Group can consider issues that were overlooked in previous evaluations.<sup>39</sup> Poland also argues that the temporary nature of secondments “makes it difficult to accept that judges’ decision can be influenced by the fear of the Minister of Justice terminating the secondment”. But widespread and longstanding use of secondments (see para. 168) suggests that they are not necessarily temporary.

<sup>38</sup> Opinion of the Advocate General of the CJEU, Case C-748/19 to 754/19; Constitutional Court Case K 45/07; Supreme Court Case BSA I-4110-5/07.

<sup>39</sup> [Monitoring implementation of the OECD Anti-Bribery Convention: Phase 4 evaluation procedures](#), para. 5.

## Commentary

***The lead examiners recognise that Poland's system of judicial and prosecutorial secondments may be useful for addressing staff shortages. They recommend that Poland ensure that judicial and prosecutorial secondments are shielded from political and executive influence by amending its legislation or taking an equally binding measure.***

### B.4. International co-operation

#### B.4.a. Legal framework for mutual legal assistance

171. Poland's framework for mutual legal assistance (MLA) has not changed since Phase 3. Poland is party to the following multilateral treaties that provide for MLA in foreign bribery cases: United Nations Convention against Corruption (UNCAC), United Nations Convention against Transnational Organized Crime (UNTOC), 1959 European Convention on Mutual Assistance in Criminal Matters and its additional protocols, and the 2000 EU MLA Convention. The Ministry of Justice states that the OECD Anti-Bribery Convention is a treaty basis for MLA. Co-operation with EU countries are principally governed by EU instruments, mainly the European Investigation Order (EIO). Bilateral MLA treaties are largely with non-EU countries: Belarus, Cuba, Egypt, Mongolia, Morocco, Russia, Chinese Taipei, Thailand, Türkiye, and US. CCP Chapter 62 provides for MLA in the absence of an applicable treaty. LCEL Art. 41 allows MLA in proceedings against legal persons.

172. The CCP sets out additional procedures and requirements. The types of assistance available includes document service; taking testimony; inspections, searches and seizure; summons; and provision of files, documents and information about the law (Art. 585). Poland shall refuse assistance if it would be contrary to the principles of its legal order (Art. 588(2)). It may also refuse if the requesting state does not ensure reciprocity (Art. 588(3)). Polish law governs the execution of the request. However, the assistance can be provided in a specific procedure or form requested by foreign authorities that does not conflict with Polish law (Art. 588(4)). Additional measures are available with EU countries (Chapters 62a-62d).

173. Poland states that MLA is not hindered by the principle of dual criminality and the "impunity provision" (see Section B.1.b at p. 26). For non-EU co-operation, Poland may refuse assistance if the request concerns an act which is not a crime under Polish law (Art. 588(3)). Polish prosecutors state that an individual subject to the impunity provision can nevertheless be compelled to testify as a witness to foreign authorities. There is no issue of self-incrimination since the individual benefits from impunity. This position has not been tested in practice, however.

174. The CCP sets out two channels for seeking and providing MLA. Between Poland and an EU country, the competent authorities co-operate directly based on the principle of mutual trust and recognition. With a non-EU country, Polish courts and prosecutors must communicate with their foreign counterparts via the Minister of Justice as the central authority, apart from a few limited exceptions. The Minister of Justice also communicates through the Minister of Foreign Affairs if necessary (CCP Art. 613).

175. An exception to this arrangement is the transfer of criminal proceedings. If Poland and another EU country have opened simultaneous proceedings for the same act of the same person, then the Polish court or prosecutor must consult their foreign counterpart. They then decide whether to request to take over the foreign proceedings or to transfer the matter to the foreign jurisdiction (CCP Art. 592c). If the same situation arises with a non-EU country, then the Minister of Justice makes the request to transfer proceedings after consulting the competent Polish authorities (Art. 592(1)). However, if the issue of transfer arises before proceedings are commenced in Poland, then the Minister of Justice decides alone (CCP Arts. 590-591). Judges and prosecutors are not involved in this decision. This is less than ideal. A decision to transfer proceedings requires a consideration of the most suitable forum for prosecution, having regard to jurisdictional conflicts and double jeopardy (*ne bis in idem*). The input of judges and prosecutors is important to this determination.

176. After reviewing a draft of this report, Polish authorities confirm that “CCP Art. 590 does not introduce an obligation for the Minister of Justice to consult the prosecutor. [...] The situation is similar with regard to CCP Art. 591.” In practice, the Minister of Justice would consult the National Public Prosecutor’s Office before taking a decision. It would be desirable to codify this practice and make it binding. Poland also argues that a legislative amendment “would be purely theoretical” because the Minister of Justice is also the Prosecutor General. But these two roles should be separated (see Section B.3.a at p. 35).

#### *Commentary*

***The lead examiners recommend that the Working Group follow up on the application of CCP Arts. 590-591.***

#### ***B.4.b. Mutual legal assistance in practice***

177. Poland does not have statistics on the time taken to seek and provide MLA. It explains that the reason for the absence of data is likely because MLA is decentralised. Courts and prosecutors seek and provide MLA directly with their foreign counterparts. But this only makes the compilation of statistics more important and time-consuming, not impossible. Furthermore, it does not explain the absence of statistics on co-operation with non-EU countries which is conducted through a central authority (see para. 174).

178. EU countries report that requests are typically completed within a few months. But one non-EU country indicates that its requests were executed only between one to three years. Polish authorities explain that intra-EU co-operation is much faster owing to direct communication between competent authorities without the involvement of a central authority. Poland has also not attended the Working Group’s Informal Meeting of Law Enforcement Officials. The Meeting could have been a forum for facilitating and co-ordinating MLA requests between Poland and other Working Group members, including those not in the EU.

179. Joint investigative teams (JITs) may be underused in foreign bribery cases. Polish and Ukrainian law enforcement formed a JIT in the Road Construction (Ukraine) Case. Polish authorities state that the JIT facilitated close co-operation that was the key to the success and timeliness of the investigation. But this case may be the exception rather than the norm. In the Bus Company (Latvia) Case, other jurisdictions established a JIT. Poland was invited to join but declined. JITs were also possible but were not considered by Polish authorities in the Shipbuilding (Estonia) and Customs Officer (Germany) Cases.

180. Poland disagrees with this conclusion. It states that it used JITs 23 times in 2021, which is among the most frequent EU countries.<sup>40</sup> But this ignores the size of different countries. After adjusting for a country’s population size, Poland ranks just 22 out of 25 EU countries in JIT usage in 2021. Poland also refers to data from a Moneyval report.<sup>41</sup> However, the figures concern cases of money laundering, not corruption or foreign bribery.

#### *Commentary*

***The lead examiners are concerned that Poland does not have statistics on the time taken to seek and provide MLA regarding foreign bribery. The lack of data makes it impossible for the Working Group – and Poland – to assess the functioning of the MLA process. They therefore recommend that Poland maintain such statistics. They also recommend that Polish prosecutors and/or law enforcement officials attend the Working Group’s Informal Meeting of Law Enforcement Officials.***

***Joint investigative teams (JITs) may be underused in foreign bribery cases. Such cases are cross-border and multi-jurisdictional in nature. They are thus prime candidates for JITs which would lead to more complete and timely investigations without the obstacles of the traditional MLA process. The lead examiners therefore recommend that Poland issue a binding order of the Prosecutor***

<sup>40</sup> Eurojust, [Annual Report 2021](#), pp. 73-74.

<sup>41</sup> Moneyval (2021), [Fifth Round Mutual Evaluation Report](#), para. 777.

**General to ensure that the use of JITs is routinely considered as early as possible in foreign bribery cases.**

#### **B.4.c. Extradition**

181. Poland's extradition regime has not changed since Phase 3. Multilateral treaties to which Poland is party and which may provide for extradition in foreign bribery cases include UNCAC; UNTOC; and the 1957 European Convention on Extradition and its additional protocols. As mentioned at para. 171, Poland considers the Anti-Bribery Convention as a legal basis for international co-operation (see also Phase 3 Report para. 129). Bilateral extradition treaties applicable to foreign bribery cases are in force with Australia, Egypt, India, Thailand and US. CCP Chapters 65a-65b provide for extradition to EU states through the European Arrest Warrant (EAW). Chapters 64-65 govern extradition to and from other states without a treaty.

182. The CCP sets out the grounds for refusal. Art. 604(1) lists mandatory grounds of refusal, which include where the person sought is a Polish citizen or has a right of asylum in Poland; the statute of limitations has elapsed; and a criminal proceeding has been validly concluded for the same crime committed by the same person. Extradition may be denied if the person sought has permanent residence in Poland (Art. 604(2)). In Phase 3, the Working Group decided to monitor this matter (Follow-up Issue 10(e)). Poland has not provided statistics or jurisprudence on this issue, however. Other discretionary grounds of refusal include an offence committed in Poland; criminal proceedings pending in Poland for the same act committed by the same person; and absence of reciprocity. The Phase 2 Report (para. 125) found that Polish authorities are obliged to institute criminal proceedings if extradition is refused. The extradition request amounts to a reasonable suspicion that an offence has been committed, which requires the commencement of proceedings in Poland.

183. The CCP also sets out the procedure for extradition. The prosecutor transmits extradition requests to the Regional Court (Art. 602). The Court conducts a hearing to consider the grounds for denying extradition described above. If it decides to extradite, the matter is transmitted to the Minister of Justice to decide whether to surrender the person sought (Art. 603). For cases under the European Arrest Warrant, the Regional Court decides the issue of surrender without the Minister's involvement (Chapter 65b).

#### **Commentary**

**The lead examiners re-iterate Phase 3 Follow-up Issue 10(e) and recommend that the Working Group continue to follow up the extradition of Polish permanent residents for foreign bribery.**

### **B.5. Offences related to foreign bribery**

#### **B.5.a. Money laundering offence**

184. The money laundering offence is in CC Art. 299. All crimes, including foreign bribery, are eligible as predicate offences. The offence is punishable by imprisonment of six months to eight years. The penalty rises to one to ten years' imprisonment if the offence is aggravated, i.e. commission in agreement with another person, or gaining "substantial material benefit" of more than PLN 200 000 (EUR 42 000). Self-laundering is covered. Preparation for the crime is punishable by up to three years' imprisonment. Confiscation of the direct and indirect proceeds of money laundering is mandatory upon conviction. Amendments to the offence in 2016 are not relevant for the purposes of this evaluation. A legal person can be held liable for money laundering (LCEL Art. 16(2)(1)).

185. The investigation and prosecution of money laundering in foreign bribery cases may be inadequate. Poland provides statistics showing an annual average of 370 investigations, 568 prosecutions and 337 convictions for money laundering in 2016-2020. But figures on cases related to foreign bribery or corruption are unavailable. In the Customs Officer (Germany) Case, the offender bribed foreign officials to facilitate the importation of goods and to avoid paying duties. The prosecution focused on the acts of bribery in

Germany. It overlooked the benefits gained through the bribery and the laundering thereof. As mentioned in Section B.2.f at p. 31, prosecutors failed to consider money laundering predicated on foreign bribery as an alternative basis of liability in the Alcoholic Beverages (Russia) Case. Poland also provides information on three passive foreign bribery cases. Of the 25 individuals convicted of bribery, none was also convicted of money laundering. The only exception is the Road Construction (Ukraine) Case, where one individual was convicted of money laundering predicated on complicity in committing passive foreign bribery.

### Commentary

***The lead examiners consider that Poland has a largely suitable legal framework for prosecuting money laundering predicated on foreign bribery but has yet to do so. They therefore recommend that Poland take steps to ensure that prosecutors and law enforcement consider investigating and prosecuting money laundering offences in all foreign bribery cases.***

#### B.5.b. False accounting offence

186. Poland's myriad false accounting offences are unchanged from Phase 3:

- (a) Accounting Law Art. 77(1) provides a criminal offence of failure to keep accounting books, keeping books contrary to the provisions of the Law, and keeping books with unreliable information. Art. 77(2) contains a second offence of failure to prepare certain financial statements. Art. 79 further prohibits conduct such as a failure to provide financial statements or certain information for auditing and other purposes. The scope of this offence differs somewhat from the accounting misconduct described in Convention Art. 8, however. All three offences are punishable by up to two years' imprisonment or a fine of PLN 100 to 1.08 million (EUR 21.50 to 232 295).<sup>42</sup>
- (b) The Fiscal Penal Code contains similar offences of failure to keep books (Arts. 53(21) and 60) or keeping unreliable books, i.e. books that are inconsistent with the facts (Arts. 53(22) and 61). These offences are punishable by a fine of PLN 1 003 – 9.63 million (EUR 206 – 1.98 million).<sup>43</sup>
- (c) Poland also refers to general Criminal Code offences of forgery or falsification of documents (Art. 270(1)) and of invoices (Art. 270a). The former offence is punishable by a fine and imprisonment of three months to five years; the latter by a fine and imprisonment of six months to eight years.

187. In Phase 2 (para. 204), the Working Group criticised the low number of prosecutions for false accounting. Enforcement levels improved somewhat in Phase 3 but the level of sanctions applied was quite low and included a high proportion of suspended sentences. Phase 3 Recommendation 6(c) thus asked Poland "to ensure that natural and legal persons are subject to effective, proportionate and dissuasive penalties for fraudulent accounting" that is committed for the purpose of committing or hiding foreign bribery.

188. Unfortunately, Poland's deficiencies in prosecuting bribery-related false accounting offences are unchanged and enforcement remains non-existent. False accounting has not been investigated or charged in any of the active and passive foreign bribery cases. Other types of cases produced in 2017-2021 2 542 indictments and 1 008 convictions under Accounting Law Art. 77, as well as sanctions of 2 069 persons under the entire Fiscal Penal Code (not only Arts. 53(21) and (60)). Poland does not provide statistics on false accounting offences against natural persons under the Criminal Code, unlike in Phase 3.

189. The legal framework for corporate liability and its enforcement also need improvement. LCEL Art. 16 enumerates the offences for which legal persons can be held liable. The list includes the false accounting

<sup>42</sup> In Phase 3, the maximum fine was PLN 720 000. The increase in the maximum fine was due to a rise in the value of the "daily rate" used by CC Art. 33. The daily rate is a function of the minimum wage; its increase reflects economic factors such as inflation. The rise in the daily rate and maximum fine is thus an increase in nominal but not real terms economically.

<sup>43</sup> These fines were also increased because of a rise in the minimum wage used to calculate the daily rate under Fiscal Penal Code Art. 23(3). See also footnote 42.

offences under the Criminal and Fiscal Penal Codes, but not those in the Accounting Law. This is of particular concern since there are no data demonstrating the enforcement of the Criminal and Fiscal Penal Code false accounting offences (see para. 188). The maximum fines for false accounting are PLN 1 000 to 5 million (EUR 218 to 1.09 million). Fines are also capped at 3% of the legal person's revenue in the tax year when the offence was committed. These provisions are the same as those for foreign bribery, and do not result in effective, proportionate and dissuasive sanctions (see Section C.4.a at p. 55). Since Phase 3, no legal person has been convicted of false accounting. One proceeding against a legal person under Fiscal Penal Code Art. 61(1) was dismissed, according to Poland.

### Commentary

***The lead examiners are concerned that enforcement of foreign bribery-related false accounting offences for natural and legal persons is non-existent. False accounting was not investigated or charged in any of the cases of active or passive foreign bribery. Poland provides statistics on the Accounting Law offences. There is no data demonstrating the enforcement of the relevant Criminal Code and Fiscal Penal Code offences, or enforcement against legal persons.***

***The lead examiners therefore recommend that Poland (a) vigorously investigate and prosecute foreign bribery-related false accounting against natural and legal persons, where appropriate, (b) maintain comprehensive data on the enforcement of all false accounting offences against natural and legal persons.***

***The lead examiners also note that the framework for false accounting against legal persons is deficient. They therefore recommend that Poland amend the LCEL so that (c) legal persons can be liable for the false accounting offences under the Accounting Law, and (d) sanctions for foreign bribery-related false accounting are effective, proportionate and dissuasive.***

## B.6. Concluding and sanctioning foreign bribery cases

### B.6.a. Non-trial resolutions

190. Anti-Bribery Recommendation XVII recommends that member countries consider resolving foreign bribery enforcement actions through a variety of means. This includes non-trial resolutions, which are mechanisms for “resolving matters without a full court or administrative proceeding, based on a negotiated agreement between a natural or legal person and a prosecuting or other authority.”

191. Poland has two types of non-trial resolutions of foreign bribery proceedings against natural persons:

- (a) Plea agreements: CCP Art. 335 applies if (i) an accused admits guilt; (ii) his/her responsibility is beyond doubt, in light of his/her explanations and the circumstances of the offence, and (iii) the accused's attitude indicates that the objectives of the proceedings are achieved. In such cases, the prosecutor motions the court for a conviction. The motion includes an agreement with the accused on the penalties and other measures. The provision can be combined with CC Art. 60(4) on extraordinary mitigation of penalty if an accused (i) gives explanations in his/her own case, and (ii) discloses the substantive circumstances of another crime that is punishable by five years' imprisonment, and of which law enforcement is not aware. If these prerequisites are met, then a prosecutor may motion the court for penalty mitigation, including a conditional suspension of any penalty (CC Art. 60(4)). CC Art. 60(6) sets out the range of sentence reduction, and permits reduction below the statutory minimum penalty.

Additional plea agreements are available under CCP Arts. 338a and 387. An accused may apply for a conviction before notification of the trial date or until the end of the first questioning of all accused at the main hearing. A conviction is then entered if the prosecutor does not object. According to Poland, in practice the defendant consults the prosecutor before making the motion to ensure the lack of an objection.

- (b) Conditional discontinuance: CCP Art. 336 allows a prosecutor to motion the court for conditional discontinuance of the proceedings instead of an indictment. The motion proposes a probation



period, conditions to be imposed on the accused, and supervision if necessary. If accepted, the judge specifies the committed act and sets out the probation period and conditions (CCP Art. 342). A court can also grant a conditional discontinuance on its own motion if the conditions in CC Art. 66 are met (CCP Arts. 341 and 414(4)).

192. These provisions have been used to resolve corruption matters including in cases of active and passive foreign bribery. In the Road Construction (Ukraine) Case, one defendant co-operated with the investigation. He and the prosecutor then negotiated the sanction, and the latter motioned the court for an extraordinary mitigation of penalty. The court accepted the motion and convicted the defendant of complicity in passive foreign bribery, among other offences. It imposed a suspended three-year sentence and a fine of PLN 60 000 (EUR 12 594). In a second case of passive foreign bribery, extraordinary mitigation of penalty applied to two Polish officials who pleaded guilty to accepting bribes. Plea agreements were also used in two other passive foreign bribery cases. Defendants in these cases received a suspended sentence of imprisonment and a fine. In total, non-trial resolutions produced 3 413 convictions of corruption offences in 2016-2021. Plea agreements are the “most popular”, according to prosecutors at the on-site visit.

193. The two types of non-trial resolutions are subject to judicial approval. A prosecutor must motion the court for the measure or refrain from objecting to an application under CCP Arts. 338a and 387. If the court does not approve a plea agreement, then the motion can be filed again (CCP Art. 335(4)). There is no corresponding provision allowing (or prohibiting) repeated motions for conditional discontinuance or extraordinary mitigation of penalty.

194. The criteria for using these non-trial resolutions are not completely clear and transparent. Polish authorities refer to CC Art. 53, but the provision merely sets out general sentencing principles and factors that apply to all cases. For cases concluded via non-trial resolutions, the statutory provisions prescribe the preconditions for their use, as described above. In addition, CC Art. 60 sets out the range of sentence reduction for extraordinary mitigation of penalty. For example, if an act constitutes a felony, then a sentence must not be less than one-third of the statutory minimum. But there is no guidance to prosecutors on the factors to be considered in choosing the sentence within the permitted range. For plea agreements, there is no statutory provision or guidance on the appropriate sentence reduction. There are also no guidelines on when a prosecutor should exercise his/her discretion to seek a conditional discontinuance. Guidance on the types of probation conditions that should be sought, especially in foreign bribery cases, is also lacking.

195. Finally, the outcomes of non-trial resolutions are not readily accessible to the public. After approving a resolution, the judge issues a judgment imposing the sanction. But the judgment is succinct. It does not disclose all of the facts necessary for determining the appropriateness of using a non-trial resolution, or the rationale for the sanctions applied. According to Polish authorities, written reasons for judgment may be prepared only at the request of the parties, which is rare. Judgments are accessible to the public, but they are not systematically published, according to prosecutors at the on-site visit.

### **Commentary**

***The lead examiners commend Poland for making non-trial resolutions available in foreign bribery and other corruption cases. Nevertheless, they are concerned that some aspects of these resolutions are insufficient to ensure proper transparency. The statutory provisions set out some prerequisites for using non-trial resolutions, and in some cases, the range of sentence discounts. But prosecutors retain substantial discretion over whether to use a particular resolution and over the sanction to be sought. As the Working Group has noted previously,<sup>44</sup> the lack of clear criteria for exercising this discretion leaves prosecutors more vulnerable to criticisms of being arbitrary or improperly motivated. Written guidance would also help ensure a consistent approach***

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<sup>44</sup> [Chile Phase 4](#), paras. 130-134.

**regardless of the prosecutor assigned to the case. Anti-Bribery Recommendations XVIII.i-iii thus ask countries to “adopt a clear and transparent framework regarding non-trial resolutions”; “develop clear and transparent criteria regarding the use of non-trial resolutions”; and “provide clear and publicly accessible information on the advantages that an alleged offender may obtain by entering into a non-trial resolution”.**

**The lead examiners are also concerned that the public cannot readily access information about actual non-trial resolutions. As a result, the public cannot determine whether the use of non-trial resolutions is justified in a particular case, or whether the resulting penalties are effective, proportionate and dissuasive. This could in turn undermine the public’s confidence in the administration of justice.**

**For these reasons, the lead examiners recommend that Poland (a) develop and publish clear and transparent guidance to prosecutors specifying the criteria for using non-trial resolutions in foreign bribery cases, and the appropriate sanctions and conditions attached to resolutions, and (b) make public, where appropriate and consistent with data protection rules and privacy rights, as much information about its non-trial resolutions as possible, in line with the Anti-Bribery Recommendation XVIII.iv.**

#### **B.6.b. Sanctions against natural persons**

196. Sanctions against natural persons for foreign bribery have not changed since Phase 3.<sup>45</sup> Different sanctions apply depending on the nature of the offence:

- (a) Bribery to induce a foreign public official to perform a public function is punishable by imprisonment of 6 months to 8 years (CC Art. 229(1) and (5)).
- (b) An offence of “lesser gravity” is punishable by a fine or imprisonment of up to 2 years (CC Art. 229(2)). As mentioned in para. 103, Poland states that the term “lesser gravity” is defined by case law, commentaries and the general criminal law doctrine guiding jurisprudence. A prosecutor at the on-site visit asserts that foreign bribery cases would not be considered “lesser gravity”.
- (c) Bribery to induce a foreign public official to violate legal provisions is punishable by imprisonment of 1 to 10 years (CC Art. 229(3)).
- (d) If the bribe is of “substantial value” (i.e. over PLN 200 000 (EUR 43 000)), then the punishment increases to 2 to 12 years’ imprisonment (CC Arts. 115(5) and 229(4)).

A fine may be imposed in addition to imprisonment if the perpetrator gains or intends to gain a “material benefit” for him/herself or another person (CC Arts. 33(2) and 115(4)). CC Art. 53 lists factors that aggravate or mitigate sentence. Sentences can be reduced below the statutory minimum via certain forms of extraordinary mitigation of penalty (see Section B.6.a at p. 47). All of these provisions, including the range of sanctions, apply equally to foreign and domestic bribery.

197. The only concluded case of active foreign bribery resulted in sanctions that appear low. In the Customs Officer (Germany) Case, the offender paid EUR 65 000 in bribes to a foreign official to falsify a series of customs documents that facilitated the importation of goods and avoidance of duties. He was sentenced to two years’ imprisonment which was suspended for five years. The court also imposed a fine of approximately EUR 8 500, which was only a fraction of the value of the bribes paid. Confiscation was not ordered (see para. 201). These sanctions are substantially less severe than those for the intermediary and bribed official who were convicted in Germany and received four-year prison sentences each.

198. Suspended sentences may contribute to inadequate sanctions, though a recent legislative amendment may temper this concern. Poland provided information on three concluded passive foreign

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<sup>45</sup> An amendment to CC 229 entering into force March 2023 increases the maximum sanction for paying a bribe of “substantial value” from 12 to 15 years and introduces a new category of bribery of a “great value” (over PLN 1 million or EUR 215 000) punishable by imprisonment of 3 to 30 years.

bribery cases. Of the 23 jail sentences that were handed down, 18 were suspended. However, CC Art. 69 was amended in 2015 to reduce suspensions by lowering the threshold of eligible sentences from two years' imprisonment to one. The amendment does not apply to the three passive foreign bribery cases and the Customs Officer (Germany) Case mentioned above: it entered into force after the bribery in these cases occurred. Poland cannot provide comprehensive statistics on the type and level of sanctions imposed for domestic bribery, including for offences committed after 2015. In addition, extraordinary mitigation of penalty can also result in suspended sanctions (see para. 191(a)). This occurred in the Road Construction (Ukraine) Case.

199. Poland states that sanctions in future foreign bribery cases will be higher than those described above. The Phase 3 Report (p. 23) stated that “the level of sanctions imposed on natural persons for active domestic bribery, both in terms of the low fines as well as the high proportion of suspended imprisonment sentences, is concerning.” Since then, the 2015 amendment to reduce sentence suspensions has entered into force. The PPO also issued guidelines in 2014 asking prosecutors to “fulfil the criteria of proportionality, effectiveness and dissuasive nature of penalty”.<sup>46</sup> The guidelines, however, do not address the use of suspended sentences.

### **Commentary**

***Since Phase 3, Poland has only successfully concluded one case of active foreign bribery. The sanctions imposed in the case appear low. In passive foreign bribery cases, the vast majority of imprisonment sentences are suspended. Since then, a legislative amendment has reduced the number of cases that are eligible for suspension. The PPO also issued guidance asking prosecutors to ensure that penalties are sufficient. But the effectiveness of these measures is unknown, since Poland cannot provide comprehensive statistics on sanctions applied in corruption cases.***

***For these reasons, the lead examiners recommend that Poland (a) collect comprehensive statistics on sanctions imposed on natural persons in foreign bribery cases, (b) take appropriate steps to help ensure that the sanctions imposed in practice for foreign bribery against natural persons are effective, proportionate and dissuasive. The lead examiners also recommend that the Working Group follow up the use of suspended sentences in foreign bribery cases.***

### **B.6.c. Confiscation against natural persons**

200. The Criminal Code provides for confiscation against natural persons in cases of foreign bribery and related offences. Courts must confiscate objects derived directly from an offence (Art. 44(1)). It must also confiscate a financial benefit gained directly or indirectly from a crime (Art. 45(1)). Confiscation of the instrument of an offence is discretionary (Art. 44(2)). Confiscation may also be ordered after the conditional discontinuance or suspension of proceedings under certain circumstances (Art. 45a). Confiscation of property of equivalent value is available (Arts. 44(4) and 45(1)). Confiscation is not ordered if the property is subject to return to an injured party or another entity (Arts. 44(5) and 45(1)). Provisions introduced since Phase 3 allow the confiscation of an enterprise used to commit an offence or to conceal gains from the offence (Art. 44a). Confiscation in the absence of a conviction is available in some circumstances, e.g. after a conditional discontinuance (Art. 45a). Confiscation against legal persons is described in Section C.4.a at p. 55.

201. Confiscation was not ordered in the only concluded foreign bribery case (Customs Officer (Germany)). In 2012, the defendant was convicted of paying EUR 65 000 in bribes to an official to falsify customs documents and facilitate the importation of goods and avoidance of duties. Nevertheless, the financial benefit obtained by the briber from the crime was not confiscated. Poland states that the prosecutor and court agreed with the defence's proposal for sentence, which did not include confiscation.

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<sup>46</sup> Ref. no. PG III PZ 073/140/13.

It is unclear why this agreement would override CC Arts. 44 and 45 which mandate confiscation in these circumstances. Poland adds that confiscation should have been applied by the German court who convicted the bribed official and intermediary. But Germany would have only confiscated the bribe. It would not be a substitute for Poland to confiscate the proceeds of the bribery.

202. Poland has not fully implemented the Working Group's recommendation to raise awareness of confiscation. Drawing on data from domestic bribery cases, the Phase 3 Report (paras. 71-75) found that the use of confiscation post-conviction was "disappointing". Recommendation 3(b) thus asked Poland to "draw the attention of law enforcement authorities to the importance of the forfeiture of the proceeds of bribery." On 31 March 2014, the Deputy Prosecutor General issued "Recommendations" to all prosecutors concerning foreign bribery proceedings.<sup>47</sup> The communication stated that prosecutors "may not also disregard motions for adjudicating the confiscation of objects used for committing the offence of bribery, [and] material advantages resulting from the offence". In 2015, the Working Group concluded that this effort only partially implemented Recommendation 3(b) (Phase 3 Follow-up Report, para. 10). Unlike in Phase 3, in this evaluation Poland states that there is "no relevant data" on confiscation imposed in cases of domestic bribery or other financial crimes.

### Commentary

***The lead examiners note that the Deputy Prosecutor General issued "recommendations" in 2014 asking prosecutors to seek confiscation in foreign bribery cases. But the Working Group considered in 2015 that this initiative only partially implemented Phase 3 Recommendation 3(b). Poland has not taken further action since. Moreover, these recommendations were not in the form of a binding order of the Prosecutor General. Much like other communications on the detection of foreign bribery allegations (see paras. 21 and 130), the effect of the recommendations is unlikely to persist. Statistics are not available to demonstrate that confiscation is now routinely applied in cases of bribery and financial crime.***

***For these reasons, the lead examiners re-iterate Phase 3 Recommendation 3(b), and recommend that Poland issue a binding order of the Prosecutor General reminding prosecutors of their obligation under CC Arts. 44-45 to seek confiscation in foreign bribery cases when appropriate.***

## C. Responsibility of legal persons

### C.1. Scope of corporate liability

203. Poland's corporate liability legislation, the Liability of Collective Entities Law (LCEL), is unchanged since Phase 3. As part of the post-High Level Mission Action Plan, the Head of the OCCD wrote the Heads of regional OCCD Divisions and Regional Prosecutors on 3 November 2021 about the importance of corporate enforcement in foreign bribery cases.<sup>48</sup> No legal person has ever been convicted for domestic or foreign bribery. This is largely because liability requires the conviction or discontinuance of proceedings against a natural person.

#### C.1.a. Standard of liability

204. The LCEL provides for the liability of legal persons ("collective entities"), including state-owned and controlled entities and organisations (Art. 2). A collective entity may be liable for the conduct of a person who is (a) authorised to act in the name or on behalf of the collective entity (i.e. higher management); (b) allowed to act due to the neglect of higher management; (c) a lower-level employee acting on the consent or knowledge of higher management; or (d) an entrepreneur directly collaborating with the entity to achieve a legal purpose (Art. 3).

<sup>47</sup> Ref. no. PG III PZ 073/140/13.

<sup>48</sup> PK III PZ 071.69.2021.

205. The natural person must commit a crime that benefits or could benefit the legal person, even non-financially (Art. 3). In Phase 3 (para. 54), the Working Group questioned whether this last requirement would exclude liability where a company is unable to fulfil a contract won through bribery. A company may also avoid liability if a foreign official receiving the bribe does not have the authority to provide the advantage to the company (Phase 3 Follow-up Issue 10(c)(i)). There has not been practice since Phase 3 to clarify this issue.

206. Complicated language in LCEL Art. 5 appears to provide a form of corporate compliance defence. For an offence committed by higher management or a collaborating entrepreneur, liability arises only if the organisation of the company's activities did not ensure the application of due diligence that could have prevented the crime. Such due diligence must also have been required by the authority or representative of the company. For an offence committed by a lower-level employee or due to higher management neglect, liability occurs when there is a lack of due supervision of the natural person perpetrator. A company is also liable if there is a lack of due diligence in the selection of this natural person.

207. The LCEL does not provide for successor liability. If a crime is committed for which a company is liable, and then the company undergoes corporate transformation (e.g. a merger or a split), then the successor company is not liable for the crime. The Ministry of Justice states that a draft amendment to the LCEL would address this issue but has not provided a schedule for the amendment's enactment.

### Commentary

***The Anti-Bribery Recommendation Annex I.B.5 states that countries should have appropriate rules or other measures to ensure that legal persons cannot avoid liability or sanctions for foreign bribery and related offences by restructuring, merging, being acquired, or otherwise altering their corporate identity. The lead examiners recommend that Poland amend the LCEL to implement this provision. They also re-iterate Phase 3 Follow-up Issue 10(c)(i) and recommend that the Working Group follow up the requirement in the LCEL that a natural person must commit a crime which benefits or could benefit the legal person.***

#### C.1.b. Conviction of the natural person perpetrator

208. Establishing the liability of the natural person perpetrator is a prerequisite to corporate liability in almost all cases. Under LCEL Art. 4, corporate liability requires (a) a final and non-appealable judgment convicting the natural person perpetrator, (b) a judgment conditionally terminating the criminal proceedings or criminal fiscal proceedings against the natural person, (c) a ruling to grant that person the right to voluntarily submit to liability, or (d) a court ruling to terminate the proceedings against the natural person.

209. LCEL Art. 4 effectively precludes corporate enforcement of Poland's bribery laws in practice. No company has ever been convicted of foreign or domestic bribery. Many years are required to secure final convictions against natural persons for bribery. By then, cases against companies will be extremely dated and challenging to prosecute, as one civil society participant in the on-site visit rightly observes. The provision also inhibits not just the conviction but also the investigation and prosecution of companies for bribery. For this reason, corporate investigations have been on hold since 2018 in the Shipbuilding (Estonia) and Road Construction (Ukraine) Cases. Poland argues that the evidence gathered in investigations against natural persons in these cases can later be used against legal persons. But some additional evidence is likely needed since corporate liability requires proof of additional matters such as the benefit to the company and the corporate compliance defence (see Section C.1.a at p. 51). For these reasons, companies in Poland face little risk of prosecution, according to legal practitioners and academics at the on-site visit.

210. The requirement of a natural person conviction also precludes corporate liability for foreign bribery committed wholly outside Poland by a non-Polish national (Phase 3 Report para. 59 and Follow-up Issue 10(c)(ii)). A prosecutor at the on-site visits states that a Polish company is liable for foreign bribery

regardless of the nationality of the natural person perpetrator. What is necessary is jurisdiction to prosecute – and eventually convict – the natural person. But Poland only has jurisdiction to prosecute *extraterritorial* foreign bribery when the crime is committed by a Polish national (see Section B.1.c at p. 27). Poland argues that a conviction of the natural person in the foreign country would suffice. But it is far from certain that the foreign jurisdiction would even investigate or prosecute the natural person, given that foreign bribery frequently occurs in countries with weak governance and enforcement capacity.

211. For these reasons, the Working Group has found the LCEL non-compliant with the Convention since Phase 2 in 2007. The provision directly contravenes Anti-Bribery Recommendation Annex I.B.2, which stipulates that corporate liability should not be restricted to cases where a natural person perpetrator is prosecuted or convicted. The 2013 Phase 3 Recommendation 2(a) reiterated the Working Group's concerns and asked Poland to “take urgent steps” to rectify this issue.

212. Regrettably, Poland has not made a serious attempt to address this issue. It had only conducted “initial analytical work” by the time of its 2015 Phase 3 Follow-Up Report (para. 5), some eight years after the Working Group's initial recommendation. Pressure from seven additional follow-up reports to the Working Group yielded a draft law that was approved by the Council of Ministers in January 2019. But the bill then lapsed in parliament in 2020. A draft law was produced for the 2021 Working Group High-Level Mission. That draft has been abandoned. A third draft law was in the works at the time of the on-site visit for this evaluation, but it was apparently not even in a condition that was fit for discussion with the evaluation team. The Ministry of Justice at that time did not expect any developments before the 2023 general elections. In the meantime, the Ministry of Climate and Environment has drafted an alternate legislative amendment for environmental cases. But there is no expectation that this draft will progress. After the on-site visit, Poland states that the Council of Ministers would adopt a fifth draft law in “the third quarter of 2022, after which the draft should be submitted to parliament”. But as noted above, another parliamentary election looms in 2023. Poland also has not shared the latest draft with the evaluation team since “the text of the draft law is subject to constant changes over a short period of time”. It has not provided a timetable for the draft law's enactment. In any event, the Working Group only considers enacted legislation when assessing a Party's implementation of the Convention.

213. Poland's explanation for its inaction is unconvincing. The Ministry of Justice states that the corporate sector and some political parties oppose the reform. But not a single private sector representative at the on-site visit objected to removing the natural person conviction requirement. To the contrary, one company supports its repeal, recognising that this provision does not meet international standards. Two other companies and one business association state that the requirement makes the LCEL ineffective. Most interestingly, several participants explain that private sector opposed amendments to other provisions to the LCEL, not the natural person conviction requirement.

### **Commentary**

***The lead examiners are seriously concerned that Poland continues to require a natural person conviction to impose corporate liability for foreign bribery. The requirement leaves Poland in non-compliance with a central provision of the Convention. It has effectively precluded Poland from convicting or even investigating companies for bribery. Efforts at reform have been half-hearted. The provision remains in the LCEL some 15 years after the Working Group's initial recommendation. During this time, just one bill was submitted to and lapsed in parliament. After the on-site visit, Poland states that the Council of Ministers would adopt another draft LCEL amendment in 2022 Q3 and thereafter submit it to parliament. It should be noted, however, that parliamentary elections are due in 2023.***

***These circumstances lead to an inescapable conclusion that Poland does not have the necessary commitment to hold companies accountable for foreign bribery. The lead examiners therefore reiterate the Working Group's Phase 2 and 3 recommendations, and recommend that Poland, as a***

***matter of utmost priority, repeal the natural person conviction requirement for corporate liability and investigations.***

### **C.1.c. Liability of a parent company for foreign bribery committed by a subsidiary**

214. Convention Art. 2 addresses the liability of a parent company for foreign bribery committed by a subsidiary. In particular, “a legal person cannot avoid responsibility by using intermediaries, including related legal persons and other third parties, irrespective of their nationality, to offer, promise, or give a bribe to a foreign public official on its behalf” (Anti-Bribery Recommendation Annex I.C.1).

215. It is not clear that Poland meets this requirement. The LCEL does not explicitly address the liability of parent companies for the acts of its subsidiaries. In this evaluation, Poland is asked whether and how a parent company may be held liable for foreign bribery committed by a subsidiary, including a foreign subsidiary. In each case, Poland either does not respond to the questions or states that there is “no relevant data”. Also, a natural person conviction is a prerequisite for corporate liability (see previous Section). But there is no information on whether the conviction of an employee of the subsidiary is sufficient for liability of the parent. The Alcoholic Beverages (Russia) Case concerns a Polish-based company that allegedly committed foreign bribery in Russia. Poland states that a non-Polish national in a Russian subsidiary committed the crime. As such, the crime was committed “without the involvement of natural or legal persons subject to Polish criminal jurisdiction”. But Poland did not investigate the relationship between the Russian subsidiary and the Polish company in the same corporate group, e.g. whether the Polish entity is the parent of the Russian company (see para. 125).

216. Poland adds that the latest draft amendment to the LCEL (see para. 212) addresses this issue but has not provided a timetable for the amendment’s enactment. In any event, the Working Group only considers enacted legislation when assessing a Party’s implementation to the Convention.

#### **Commentary**

***The lead examiners recommend that Poland take steps to ensure that a legal person cannot avoid responsibility by using intermediaries, including related legal persons and other third parties, irrespective of their nationality, to commit foreign bribery on its behalf.***

### **C.2. Statute of limitations for legal persons**

217. The statute of limitations for legal persons has not changed since Phase 3 and remains inextricably linked to the conviction of the natural person perpetrator. A court has 10 years after this conviction to impose a penalty, confiscation, prohibition or publication against a legal person (LCEL Art. 14). As described in Section B.2.c at p. 30, the statute of limitations for natural persons for foreign bribery is 15 years from the commission of the offence but 5 years for bribery of “lesser gravity”. In either case, the limitation period is extended by 10 years when an investigation is opened. Polish authorities state that the latest draft amendment to the LCEL (see para. 212) would alter this arrangement, but do not provide a timetable for the amendment’s enactment. In any event, the Working Group only considers enacted legislation when assessing a Party’s implementation of the Convention. Poland is unable to provide statistics on proceedings against legal persons that have been time-barred.

#### **Commentary**

***The lead examiners note that the statute of limitation for legal persons begins to run upon the conviction of the natural person. They therefore recommend that Poland take steps, if necessary, to ensure that the statute of limitation applicable to legal persons for foreign bribery is adequate despite any reforms to the requirement of a conviction of the natural person for corporate liability.. They also recommend that Poland maintain statistics on proceedings against legal persons that have been time-barred.***

### C.3. Jurisdiction over legal persons

218. Annex I.B.4 of the Anti-Bribery Recommendation requires countries to explore all jurisdictional bases available under their law when investigating and prosecuting legal persons for foreign bribery. In asserting nationality jurisdiction over legal persons, countries should consider criteria such as the laws under which the legal person was formed or is organised, or the legal person's headquarters or effective management and control.

219. Poland's rules on jurisdiction over legal persons have not changed since Phase 3. The LCEL applies primarily to legal persons (LCEL Art. 2(1)). Poland states that a legal person is an entity that "is registered in Poland". The Polish Civil Code (PCC) governs the definition of legal persons and requirements for legal personality. PCC Art. 33 defines legal persons to include the State Treasury and "organisational units" to which specific regulations grant legal personality. An "organisational unit" will acquire legal personality when it is entered into the relevant register managed by the competent authority (PCC Art. 37). In addition, the LCEL also applies to (a) organisational units without legal personality to which separate legal provisions grant capacity; (b) commercial companies with the State Treasury as its shareholder; (c) local government units or associations of such units; (d) a company in the process of being incorporated; (e) an entity under liquidation; (f) an entrepreneur other than a natural person; and (g) a foreign organisational unit (LCEL Art. 2).

220. There continues to be a lack of jurisprudence on the jurisdiction to proceed against a legal person for foreign bribery. In Phase 3, the Working Group decided to follow up Poland's nationality jurisdiction over legal persons (Follow-up Issue 10(c)(ii)). Poland does not refer to any post-Phase 3 case law on this issue. In response to questions on jurisdiction over legal entities operating abroad, it states that there are "no relevant data". The Alcoholic Beverages (Russia) Case concerns a Polish-based company that allegedly committed foreign bribery in Russia. Poland states that a non-Polish national in a Russian subsidiary committed the crime. As such, the crime was committed "without the involvement of natural or legal persons subject to Polish criminal jurisdiction". But as mentioned at paras. 125 and 215, Polish authorities failed to fully explore all jurisdictional bases for investigating the case.

#### Commentary

***The lead examiners re-iterate Phase 3 Follow-up Issue 10(c)(ii) and recommend that the Working Group continue to follow up Poland's nationality jurisdiction over legal persons for foreign bribery.***

### C.4. Sanctions and confiscation against legal persons

221. Poland has not addressed the Working Group's long-standing concern about the level of sanctions available against legal persons. LCEL Arts. 7 and 9 govern the fines and other sanctions available against legal persons for foreign bribery. LCEL Art. 8 provides for confiscation against legal persons. Additional sanctions, including debarment, are in LCEL Art. 9 and the Public Procurement Law.

#### C.4.a. Fines and confiscation against legal persons

222. Corporate fines under the LCEL are not effective, proportionate and dissuasive. LCEL Art. 7 provides that a legal person may be fined between PLN 1 000 (EUR 218) and PLN 5 million (EUR 1.09 million). The Working Group has long held that comparable maximum fines in other countries of EUR 780 000 to 1.1 million are insufficient.<sup>49</sup> But the amount imposed in an actual case in Poland may be even lower: the fine is capped at 3% of the legal person's revenue in the tax year when the offence was committed. The 2007 Phase 2 Report (paras. 172-176) criticised the cap, then at 10% of revenues, as too low. Poland responded by *lowering* the cap to 3% (Phase 3 Report para. 65-70). Phase 3 Recommendation 3(c) thus asked Poland to "eliminate the cap on or increase the maximum penalty

<sup>49</sup> [Netherlands Phase 3](#), para. 46 and Commentary after para. 55; [Germany Phase 3](#), para. 101 and Commentary after para. 112; [Sweden Phase 3](#), para. 56 and Commentary after para. 59.



available under the law so that they are subject to effective, proportionate and dissuasive penalties.” But the provisions remain unchanged since Phase 3.

223. The low maximum sanctions predictably lead to exceedingly inadequate fines in practice. Fines have not been imposed for foreign bribery since Poland is largely unable to prosecute companies for this crime (see Section C.1.b at p. 52). For other offences, data are available on the fines imposed but not the underlying offence. In 2016-2021, 54 legal persons were declared liable and 33 were sanctioned. Fines ranged from PLN 1 000 (EUR 218) to PLN 5 000 (EUR 1 089). Additional data from the PPO indicate that nine legal persons were sanctioned in 2021. Six received the minimum fine of PLN 1 000 (EUR 218) and two PLN 7 000 (EUR 1 525). The highest fine was a mere PLN 50 000 (EUR 10 893).

224. Polish authorities state that the business community strongly opposes increasing corporate fines but on-site visit participants have rather more moderate and balanced views. A business association and the Human Rights Commission opposed earlier amendments to the LCEL for being “too severe”. On the other hand, some private sector participants and legal professionals consider that the current corporate enforcement framework does not work because of insufficient sanctions, among other things. One company representative believes that the sanctions under the LCEL do not deter big corporations. Several private sector participants would welcome amendments to the LCEL that took into account internal controls, ethics and compliance programmes in the calculation of sanctions.

225. Furthermore, Poland does not provide jurisprudence on how courts have determined the level of fines against legal entities. LCEL Arts. 10-11 set out the factors that must be considered: the gravity of the offence; the benefit that was or could have been obtained; the penalty’s social consequences, and its impact on the legal person’s future functioning; the legal person’s financial standing; and any fine or confiscation against the natural person perpetrator. If a legal person does not benefit from an offence, then the court may waive the fine and impose only confiscation and other sanctions (LCEL Art. 12). There is no guidance or training for judges on these provisions, especially on the factors to be considered in bribery cases.

226. Provisions on confiscation against legal persons are also unchanged since Phase 3. LCEL Art. 8 require mandatory confiscation of objects and financial advantages derived directly or indirectly from an offence. Objects used or intended to be used to commit an offence must also be confiscated. Objects or proceeds that are subject to return to another entity are exempted. Value confiscation is available. Poland points to only one case of confiscation against a legal person since Phase 3 for PLN 10 071 (EUR 2 195). Comprehensive statistics on confiscation imposed are unavailable. Efforts to raise awareness of confiscation have been inadequate (see para. 202). As mentioned at para. 212, Poland intends to submit a draft amendment of the LCEL to parliament. Poland has not provided the draft; it is therefore not clear whether the draft will address the inadequacy of sanctions. In any event, the Working Group only considers enacted legislation when assessing a Party’s implementation of the Convention.

### **Commentary**

***The lead examiners regret that Poland has not increased the maximum fine against legal persons and not repealed the cap on fines. The LCEL continues not to provide for effective, proportionate and dissuasive penalties for legal persons. The lead examiners therefore re-iterate Phase 3 Recommendation 3(c) and strongly recommend that Poland, as a matter of priority, amend the LCEL to ensure that the fines against legal persons for foreign bribery are effective, proportionate and dissuasive in practice. They also recommend that Poland (a) maintain comprehensive statistics on the sanctions, including confiscation, that are imposed against legal persons, and (b) amend the LCEL so that internal controls, ethics and compliance programmes or measures are considered in the calculation of sanctions, in accordance with Anti-Bribery Recommendation XXIII.D.***

#### **C.4.b. Additional sanctions against legal persons, including debarment from public procurement**

227. The [Public Procurement Office](#) (*Urząd Zamówień Publicznych*, UZP) oversees Poland's public procurement system. Its [duties](#) include drafting legislation; controlling procurement processes; analysing the functioning of the procurement system; disseminating knowledge and information; developing training programmes; and publishing the Public Procurement Bulletin.

228. Two legislative provisions allow a natural or legal person that have committed foreign bribery to be debarred from competition for public procurement contracts. First, the Public Procurement Law (PPL) Art. 108(1) excludes a natural person who has a final judgment of conviction for foreign bribery under CC Art. 229(5). The same applies to a conviction for "an appropriate prohibited act as defined in foreign law". A legal person is debarred if the foreign bribery conviction is of a member of its management or supervisory body, a shareholder in a general partnership or partnership or general partner in a limited partnership or limited joint-stock partnership. Debarment is for five years unless a judgment states otherwise. Second, legal persons may also be debarred for one to five years if found liable for foreign bribery under the Liability of Collective Entities Law (LCEL Arts. 9.1(4) and 9.2). The UZP states that debarment applies to a successor legal person "if there is some legal basis to debar for this reason".

229. Legislation sets out the process for verifying whether a company seeking a procurement contract has been debarred. A prospective contractor must declare in the application that it is not subject to an exclusion, such as due to a foreign bribery conviction (PPL Art. 125(1)). A procuring authority may also demand that the applicant provide a document from the National Criminal Register certifying the lack of a conviction.<sup>50</sup> In practice, procuring authorities always require this document, according to the UZP.

230. Procuring authorities consider whether a prospective contractor has been debarred by a multilateral development bank (MDB), but not the contractor's anti-corruption compliance programme. MDB debarment does not automatically lead to debarment in Poland. Nevertheless, the UZP advises procuring authorities to verify whether an MDB has debarred a prospective contractor. Presence on an MDB debarment list may indicate issues about the contractor's ability to perform the contract, and should therefore be considered by the procuring authority. The UZP website provides procuring authorities with information on MDB debarment lists. Procuring authorities, however, do not consider a prospective contractor's anti-bribery compliance programme when deciding whether to grant a procurement contract. The UZP states that such verification can only occur after but not before the award of the contract. Polish authorities state that they are rectifying this shortcoming.

231. The UZP provides guidance and training to procuring authorities. It states that training covers both domestic and foreign bribery, and includes questions that procuring authorities should ask of prospective contractors. The CBA participates in some of the training.

232. LCEL Art. 9 provides for additional sanctions against legal persons. These include publication of the judgment as well as prohibition from (a) promoting or advertising the entity's business; (b) receiving grants, donations or other types of financial state aid; and (c) benefitting from the assistance of international organisations to which Poland belongs. The prohibitions are for one to five years.

233. In Phase 3, the Working Group decided to follow up additional sanctions against legal persons, including debarment from public procurement (Follow-up Issue 10(c)(iii)). In this evaluation, Poland has "no relevant data" on the imposition of debarment or additional sanctions in practice. Poland states that the publication of a judgment as well as a prohibition from promoting and advertising a business were each imposed once since Phase 3. The underlying offence in these cases is unclear. There is no information at all on debarment from public procurement in practice. The procuring authority records the grounds for exclusion that are applied in a particular procurement in the minutes of the procurement procedure. This information is not used to produce statistical data, however.

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<sup>50</sup> Regulation of the Minister of Development, Work and Technology of 30 Dec. 2020, §2(1).

### Commentary

**Poland has a largely sound framework for public procurement debarment as a sanction for foreign bribery. However, the absence of data on actual debarment precludes an assessment of this framework's operation in practice. The lead examiners therefore recommend that Poland maintain statistical data on debarment in practice. They also recommend that Poland encourage its procuring authorities to consider, where international business transactions are concerned and as appropriate, internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery in their decisions to grant public procurement contracts, as per Anti-Bribery Recommendation XXIII.D.i.**

## C.5. Engaging the private sector

### C.5.a. Awareness-raising, including among SMEs

234. Poland has not raised the private sector's awareness of the risks of foreign bribery since Phase 3. Business associations and civil society at the on-site visit cannot point to a single initiative by Polish authorities in this respect. One civil society representative believes that this is not a priority for Polish authorities. The lack of appropriate action is across all government bodies that interact with the private sector, such as the Polish Investment and Trade Agency, and the Ministries of Economic Development and Technology, Justice, and Finance. As mentioned in Section A.5.a at p. 11, the Ministry of Foreign Affairs (MFA) has also not engaged in awareness-raising, and does not have a policy or procedure for assisting Polish companies solicited to pay bribes by foreign public officials. The Central Anti-corruption Bureau (CBA) actively raises awareness in the private sector, including through an e-learning platform. But it focuses solely on domestic corruption. None of its initiatives or guidelines address foreign bribery. Polish authorities state that there is "no relevant data" on raising awareness of foreign bribery among state-owned enterprises (SOEs).

235. There is also a lack of initiatives to raise the awareness of small- and medium-sized enterprises (SMEs). Poland does not describe any activities in this respect apart from "client meetings" and the website of KUKI, its export credit agency. Notably absent is the Polish Agency for Enterprise Development (PARP), whose mandate include supporting Polish SMEs. Such a lack of awareness-raising among SMEs is particularly concerning due to the large number of internationally-active SMEs operating in Poland (see para. 11). Poland argues that PARP "has no direct assignment to support SMEs in the area of foreign corruption". Nevertheless, extending PARP's responsibilities to raising awareness of foreign bribery would be desirable, given PARP's close and regular contact with SMEs. After reviewing a draft of this report, the CBA states that it has published an anti-corruption handbook and guidelines for companies that also applies to SMEs.<sup>51</sup> This 2015 publication mentions the foreign bribery offence. However, it is "largely addressed to state-owned entities" and describes only rudimentary elements of an anti-corruption corporate compliance programme.

236. As a result, the private sector's awareness of foreign bribery is poor. The risk of Polish companies committing foreign bribery is "low" or "non-existent", according to several on-site visit participants from companies, business associations and civil society. This does not accord with the increased presence of Polish companies operating abroad, including in some high-risk jurisdictions (see paras. 7-11).

### Commentary

**There continues to be a lack of appropriate government-led initiatives to raise-awareness within the private sector of the unique risks related to foreign bribery. The lead examiners re-iterate Phase 3 Recommendation 6(d)(i) and (ii), and recommend that Poland make significant efforts to raise the awareness of large companies, SOEs and SMEs of the (a) threats of foreign bribery in**

<sup>51</sup> CBA (2015), [Anti-corruption Guidelines for Enterprise](#), pp. 7 and 27-30.

**international business transactions, especially for those operating in high-risk jurisdictions or industries, and (b) application of the foreign bribery offence and the Law on Liability of Collective Entities to the bribery of foreign public officials.**

**Further, the lead examiners recommend that Poland (c) raise awareness in a more proactive and co-ordinated manner by involving all relevant government bodies that interact with Polish companies which are active in foreign markets, and (d) engage business organisations and professional associations in its awareness-raising efforts.**

#### **C.5.b. Promoting corporate anti-corruption compliance**

237. The Phase 3 Report (paras. 109-114) found “room for extensive improvement” in promoting anti-corruption compliance programmes in Polish companies. Recommendation 6(d)(iii) thus asked Poland to “urgently make significant efforts to raise the awareness of large companies, SOEs, and SMEs of [...] the need to adopt effective internal controls, ethics and compliance measures for preventing foreign bribery”.

238. Since Phase 3, Poland has not undertaken any specific activities directed to the private sector to promote compliance programmes for preventing foreign bribery. Polish authorities do not offer any formal guidance to Polish companies operating abroad on adopting compliance programmes or other foreign bribery preventative measures. A few large companies at the on-site visit received guidance from the CBA on aspects of their anti-corruption compliance programmes. Companies also expressed appreciation of CBA brochures on anti-corruption issues. Such ad-hoc engagement and guidance are welcome. But these efforts are still insufficient for promoting anti-corruption compliance programmes in the private sector, reflecting the need to strengthen and widely disseminate guidance taking into account risks for different sectors.

239. Despite Polish authorities’ inaction, many large companies and SOEs at the on-site visit nevertheless have anti-corruption compliance programmes. Awareness of the importance of such programmes have increased, according to legal professionals and civil society representatives. This is especially the case among larger, internationally-active companies that are driven by international business standards.

#### **Commentary**

**Polish authorities have not made concerted efforts to raise awareness or provide guidance to the private sector on developing anti-corruption compliance programmes. The lead examiners are encouraged that some large companies and SOEs nonetheless appear to have adopted such measures. But there is no evidence that this practice is uniform. Adoption among SMEs is particularly unlikely.**

**The lead examiners therefore re-iterate Phase 3 Recommendation 6(d)(iii) and recommend that Poland make significant efforts to (a) encourage large companies, SOEs, and SMEs to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance in Annex II of the Anti-Bribery Recommendation, and (b) encourage business organisations and professional associations, where appropriate, in their efforts to encourage and assist companies, in particular SMEs, in developing similar programmes or measures.**

#### **Conclusions: Positive achievements, recommendations and follow-up issues**

240. The Working Group welcomes Poland’s efforts since Phase 3 to implement the Convention and related instruments. Based on the findings in this report, the Working Group concludes by commending Poland on good practices and positive achievements, makes recommendations to Poland for further improvement, and identifies issues for follow-up. Poland will report to the Working Group in writing in

December 2023 on its implementation of recommendations 1(a), 5(c), 11, 12(b), 15(a), 15(d) and 21(d), and in writing in December 2024 on its implementation of all recommendations, on its foreign bribery enforcement actions, and on developments related to the follow-up issues.

## Good practices and positive achievements

241. This report has identified several good practices and positive achievements by Poland for combating foreign bribery.

242. The Central Anti-Corruption Bureau (CBA) is an active and well-known institution in fighting corruption. It develops and delivers numerous public awareness-raising campaigns that focus on domestic corruption and other misconduct. It prepares many publications on anti-corruption that are freely accessible by the public. A few large companies at the on-site visit received guidance from the CBA on aspects of their anti-corruption compliance programmes. On-site visit participants report that the CBA is highly visible. If the CBA specifically expands its remit and engage actively with foreign bribery issues, then it will be ideally-placed to lead awareness-raising and education efforts for combating this crime.

243. The General Inspector of Financial Information (GIFI), the financial intelligence unit, has good working relations with its stakeholders. It has provided timely responses to requests from obligated entities that are subject to Poland's anti-money laundering regime. It has also given feedback to obligated entities on suspicious activity reports (SARs) that they have submitted. The GIFI analyses these SARs and disseminates them to prosecutors and law enforcement agencies who report very good and close co-operation with the GIFI. The GIFI is commended for recognising the heightened risk of foreign bribery for Polish companies in the recovery and reconstruction of Ukraine. The GIFI is also active in providing information and training to obligated entities, law enforcement, students, academia, and GIFI staff. Like the CBA, when the GIFI extends its work to specifically cover foreign bribery, it will play a vital role in detecting foreign bribery and fighting the laundering of the proceeds of this crime.

244. Two aspects of Poland's legislative framework for fighting foreign bribery are welcomed. A legislative amendment has reduced the number of jail sentences that are eligible for suspension. Likewise, it has a largely sound framework for public procurement debarment as a sanction for foreign bribery. In both areas, the next step is for Poland to begin applying these frameworks to foreign bribery cases in practice.

245. In the area of enforcement, Poland's statute of limitations against natural persons for investigating and prosecuting foreign bribery appears adequate. The limitation period is 15 years from the commission of the offence, and 5 years for bribery of "lesser gravity". Previously, if a suspect is charged or informed of an investigation against him/her within these time limits, then the limitation period is extended by a further 10 years. Since 2016, the extension applies earlier in the process, namely when the investigation is opened, which is a commendable development.

246. Finally, Poland has established a Central Register of Actual Beneficiaries (i.e. beneficial owners). As of July 2022, there were just over 500 000 entities in the Register. Access to the Register is free and publicly available. The initiative is well-known and is used by government authorities and the private sector alike. Widespread availability and usage should make the Register a vital tool in identifying financial flows relating to foreign bribery and other illicit activity.

## Recommendations of the Working Group

### *Recommendations for preventing and detecting foreign bribery*

1. Regarding prevention and awareness-raising, the Working Group recommends that Poland:
  - (a) develop a government-wide national strategy to fight foreign bribery which encompasses prevention, detection, awareness-raising and enforcement (Anti-Bribery Recommendation III and IV.i); and

- (b) raise awareness of and train relevant public officials in fighting foreign bribery and their duty to report this crime (Anti-Bribery Recommendations IV.i and XXI.vi).
2. Regarding the engagement with the private sector, the Working Group recommends that Poland:
- (a) ensure that all relevant government bodies that interact with Polish companies which are active in foreign markets make significant efforts to raise the awareness among large companies, state-owned enterprises (SOEs), and small- and medium-sized enterprises (SMEs), of (i) threats of foreign bribery in international business transactions, especially for those operating in high-risk jurisdictions or industries; (ii) application of the foreign bribery offence and the Law on Liability of Collective Entities to the bribery of foreign public officials (Anti-Bribery Recommendations IV.ii, XXI.vi and Annex I.A.2);
  - (b) engage business organisations and professional associations in awareness-raising efforts (Anti-Bribery Recommendation XXIII.C.ii and Annex II.B); and
  - (c) make significant efforts to encourage large companies, SOEs, and SMEs to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, and encourage business organisations and professional associations, where appropriate, in their efforts to encourage and assist companies, in particular SMEs, in developing similar programmes or measures (Anti-Bribery Recommendation XIII.C.i-ii and Annex II.B).
3. Regarding the Ministry of Foreign Affairs (MFA), the Working Group recommends that Poland:
- (a) assign responsibility for foreign bribery matters in the MFA to a designated person or unit within the Ministry (Anti-Bribery Recommendation XII);
  - (b) raise awareness among MFA officials, particularly those posted abroad, and among Polish companies that operate in foreign countries, of bribe solicitation risks (Anti-Bribery Recommendation XII and XXI.vi);
  - (c) train MFA officials posted abroad on information and steps to be taken to assist enterprises confronted with bribe solicitation, as appropriate, as well as on the procedure for reporting foreign bribery allegations to Polish law enforcement (Anti-Bribery Recommendation XII.ii and Annex I.A.3); and
  - (d) set out a binding and simplified procedure for MFA staff to report foreign bribery allegations to Polish law enforcement without undue delay (Anti-Bribery Recommendation XXI.i-iii).
4. Regarding the detection of foreign bribery allegations in the media, the Working Group recommends that Poland:
- (a) effectively and systematically monitor domestic and foreign media for allegations of foreign bribery committed by Polish citizens or companies, such as by designating specific officials responsible for this task through binding Prosecutor General orders and MFA circulars (Anti-Bribery Recommendation VIII and XXI.iv);
  - (b) maintain data on the actual monitoring of the media (Anti-Bribery Recommendation VIII and XXI.iv); and
  - (c) take steps to ensure that such media information is provided to its law enforcement authorities promptly (Anti-Bribery Recommendation VIII and XXI.iv).
5. Regarding reporting, whistleblowing and whistleblower protection, the Working Group recommends that Poland:
- (a) raise awareness of foreign bribery and the reporting of this crime among the relevant members of the public (Anti-Bribery Recommendation XXI.i-ii);

- (b) maintain statistics on the reporting of foreign bribery by the public (Anti-Bribery Recommendation XXI.i-ii);
  - (c) swiftly enact strong and effective legal and institutional frameworks to protect and/or to provide remedy against any retaliatory action to persons working in the private or public sector who report on reasonable grounds suspected acts of foreign bribery and related offences in a work-related context (Anti-Bribery Recommendation XXII); and
  - (d) consider measures to encourage companies who participated in, or have been associated with, the commission of foreign bribery, to supply information useful to competent authorities for investigating and prosecuting foreign bribery, and ensure that appropriate mechanisms are in place for the application of such measures in foreign bribery investigations and prosecutions (Anti-Bribery Recommendation X.iii and XV.ii).
6. Regarding money laundering, the Working Group recommends that Poland:
- (a) finalise urgently a National Risk Assessment (NRA) that specifically addresses the risks of money laundering predicated on foreign bribery and includes scenarios relevant to foreign bribery, as well as the risk of foreign bribery for Polish companies in the recovery and reconstruction of Ukraine (Convention Art. 7 and Anti-Bribery Recommendation VIII);
  - (b) provide specific guidance and typologies to obligated entities in relation to foreign bribery (Anti-Bribery Recommendation IV.ii and Anti-Bribery Recommendation VIII); and
  - (c) urgently provide awareness-raising, training, guidance and typologies to GIFI personnel and obligated entities that explicitly address the risk of laundering the proceeds of foreign bribery, and the detection of this activity (Convention Art. 7 and Anti-Bribery Recommendation VIII).
7. With respect to accounting requirements, external audit and internal company controls, the Working Group recommends that Poland:
- (a) work in conjunction with professional accounting and auditing associations to raise awareness of foreign bribery among accountants, auditors and relevant officials, including by training external auditors to detect foreign bribery during external audits (Anti-Bribery Recommendation IV.ii and XXIII); and
  - (b) take targeted and periodic awareness raising measures and training to clarify that under Statutory Auditors Law Art. 77 external auditors are only required to report suspicions of foreign bribery to law enforcement, and that they are not required to gather evidence to substantiate the suspicion (Anti-Bribery Recommendation IV.ii and XXIII.B.v).
8. Regarding tax, the Working Group recommends that Poland:
- (a) take further steps to remove the ambiguity in Corporate Income Tax Act Art. 16(1)(66) and Personal Income Tax Act Art. 23(1)(61) to ensure that the term “legally valid agreement” in these provisions is not interpreted to mean that bribes paid to win a contract for legitimate business can be deducted (Anti-Bribery Recommendation XX);
  - (b) further train new and existing officials of the National Revenue Administration (KAS) on the Convention, as well as the detection and reporting of foreign bribery during tax examinations (Anti-Bribery Recommendation IV.i and XXI.iv and vi);
  - (c) take steps to ensure that KAS re-opens the tax returns of individuals or companies convicted of bribery to determine whether the bribes were deducted during the relevant period (Anti-Bribery Recommendation XX.i); and
  - (d) take steps to ensure that KAS may, where appropriate, permit a foreign country to use tax information provided by Poland for a non-tax purpose in foreign bribery cases, in line with the

Convention on Mutual Administrative Assistance in Tax Matters (Anti-Bribery Recommendation XIX.B.iii).

9. Regarding export credits, the Working Group recommends that KUKI revise its policies to take appropriate action such as enhanced due diligence, denial of payment, indemnification, or refund of sums provided, if, in relation to the transaction, one of the parties involved is convicted of violation of laws against bribery, subjected to equivalent measures, or found as part of a publicly-available arbitral award to have engaged in bribery (Anti-Bribery Recommendation XXV.i and Export Credits Recommendation VIII.2).
10. Regarding official development assistance (ODA), the Working Group recommends that Poland:
  - (a) systematically assess, mitigate and manage foreign bribery and corruption risks (Anti-Bribery Recommendation III and IV.i; ODA Recommendation 10);
  - (b) adopt policies and measures to prevent and detect foreign bribery and corruption (Anti-Bribery Recommendation III; ODA Recommendation 6);
  - (c) establish secure and accessible channels for reporting corruption (Anti-Bribery Recommendation XXI; ODA Recommendation 7); and
  - (d) train ODA staff on these policies and measures (Anti-Bribery Recommendation XXI.vi).

***Recommendations for investigating, prosecuting, and sanctioning foreign bribery and related offences***

11. Regarding defences to the foreign bribery offence, the Working Group recommends that Poland urgently amend its legislation to ensure that the impunity provision does not apply to foreign bribery (Convention Art. 1).
12. Regarding the liability of legal persons, the Working Group recommends that Poland:
  - (a) Amend the Liability of Collective Entities Law (LCEL) so that legal persons cannot avoid liability or sanctions for foreign bribery and related offences by restructuring, merging, being acquired, or otherwise altering their corporate identity (Convention Art. 2; Anti-Bribery Recommendation Annex I.B.5);
  - (b) repeal the natural person conviction requirement for corporate liability and investigations as a matter of utmost priority (Convention Art. 2; Anti-Bribery Recommendation Annex I.B.2); and
  - (c) take steps to ensure that a legal person cannot avoid responsibility by using intermediaries, including related legal persons and other third parties, irrespective of their nationality, to commit foreign bribery on its behalf (Convention Art. 2; Anti-Bribery Recommendation Annex I.C.1).
13. Regarding the enforcement of foreign bribery, the Working Group recommends that Poland:
  - (a) revise its approach to enforcement in order to effectively combat foreign bribery (Convention Art. 5 and Commentary 27; Anti-Bribery Recommendation VI.i);
  - (b) issue a binding order to prosecutors and LEAs that would give an appropriate level of priority to foreign bribery enforcement (Convention Art. 5 and Commentary 27; Anti-Bribery Recommendation VI.i);
  - (c) establish clear and specific procedures that allocate foreign bribery cases to the Organised Crime and Corruption Department (OCCD) and Regional Courts (Convention Art. 5 and Commentary 27);
  - (d) ensure that law enforcement agencies in foreign bribery cases (i) notify the OCCD when starting an operational and exploratory activity (OEA), (ii) refer cases to the OCCD as soon as possible



- for investigation under the CCP and that OEAs are kept to a minimum, and (iii) terminate OEAs only in consultation with the OCCD (Convention Art. 5 and Commentary 27);
- (e) ensure that appropriate forensic expertise in accounting or corporate crimes is available in foreign bribery investigations and prosecutions (Convention Art. 5 and Commentary 27; Anti-Bribery Recommendation VII and X.i); and
  - (f) provide training to all relevant judges, prosecutors and LEAs specifically on foreign bribery, and corporate liability and investigations (Convention Art. 5; Anti-Bribery Recommendation VI.iii).
14. Regarding enforcement proactivity, the Working Group recommends that Poland, through a binding order of the Prosecutor General and equivalent measures for law enforcement agencies, ensure that its authorities while conducting foreign bribery investigations and prosecutions:
- (a) promptly and proactively assess credible allegations of foreign bribery, including those in incoming MLA requests (Convention Art. 5 and Commentary 27; Anti-Bribery Recommendation VI.iii);
  - (b) proactively gather information from diverse sources to increase detection of foreign bribery and enhance investigations (Convention Art. 5; Anti-Bribery Recommendation VIII);
  - (c) consider alternative sources of evidence and bases of liability for foreign bribery (Convention Art. 5 and Commentary 27; Anti-Bribery Recommendation VIII); and
  - (d) explore all jurisdictional bases available under their law when investigating and prosecuting legal persons for foreign bribery offences, including to establish territoriality and nationality jurisdiction (Anti-Bribery Recommendation Annex I.B.4.a).
15. Regarding Art. 5 of the Convention, the Working Group recommends that Poland:
- (a) take steps to provide for prosecutorial independence from political and executive influence, particularly in specific investigations and prosecutions related to foreign bribery (Convention Art. 5 and Commentary 27);
  - (b) ensure that the appointment, discipline and removal of prosecutors are transparent and independent of political and executive influence (Convention Art. 5 and Commentary 27);
  - (c) amend Public Prosecutors Office Law Art. 12 or issue guidance to limit the disclosure of case-related information to public authorities and only in cases of national security (Convention Art. 5 and Commentary 27);
  - (d) amend its legislation so that a majority of the judicial members of the National Council of the Judiciary are elected without political and executive interference (Convention Art. 5 and Commentary 27);
  - (e) ensure the representatives of the judiciary have a decisive role in appointing and dismissing court presidents and vice-presidents in accordance with clear provisions (Convention Art. 5 and Commentary 27);
  - (f) restrict the grounds for judicial discipline to only the most serious cases of misconduct (Convention Art. 5 and Commentary 27);
  - (g) ensure that the judicial disciplinary system is independent of executive and political influence (Convention Art. 5 and Commentary 27); and
  - (h) ensure that judicial and prosecutorial secondments are shielded from political and executive influence by amending its legislation or taking an equally binding measure. (Convention Art. 5 and Commentary 27).

16. Regarding international co-operation, the Working Group recommends that Poland:
- (a) maintain statistics on the time taken to seek and provide MLA (Convention Art. 9);
  - (b) ensure that prosecutors and/or law enforcement officials attend the Working Group's Informal Meeting of Law Enforcement Officials (Convention Arts. 5 and 9; Anti-Bribery Recommendation XIX.C.iv); and
  - (c) ensure that the use of JITs is routinely considered as early as possible in foreign bribery cases, through a binding order of the Prosecutor General (Convention Art. 9; Anti-Bribery Recommendation XIX.A.i and C.v).
17. Regarding the statute of limitations for foreign bribery, the Working Group recommends that Poland:
- (a) maintain comprehensive statistics on the expiry of the statute of limitations for natural and legal persons in corruption and bribery cases (Convention Art. 6; Anti-Bribery Recommendation IX.ii); and
  - (b) rectify concerns that the statute of limitations for legal persons begins to run upon the conviction of the natural person, if necessary (Convention Art. 6; Anti-Bribery Recommendation IX.ii).
18. Regarding the money laundering offence, the Working Group recommends that Poland take steps to ensure that prosecutors and law enforcement consider investigating and prosecuting money laundering offences in all foreign bribery cases (Convention Art. 7).
19. Regarding the false accounting offence, the Working Group recommends that Poland:
- (a) amend the Liability of Collective Entities Law (LCEL) so that legal persons can be liable for the false accounting offences under the Accounting Law (Convention Art. 8(1); Anti-Bribery Recommendation XXII.A.i);
  - (b) amend the LCEL so that sanctions against legal persons for foreign bribery-related false accounting are effective, proportionate and dissuasive (Convention Art. 8; Anti-Bribery Recommendation XXIII.A.ii);
  - (c) vigorously investigate and prosecute foreign bribery-related false accounting against natural and legal persons, where appropriate (Convention Art. 8; Anti-Bribery Recommendation XXIII.A.iv); and
  - (d) maintain comprehensive data on the enforcement of all false accounting offences against natural and legal persons (Convention Art. 8; Anti-Bribery Recommendation XXIII.A.iv).
20. Regarding non-trial resolutions, the Working Group recommends that Poland:
- (a) develop and publish clear and transparent guidance to prosecutors specifying the criteria for using non-trial resolutions in foreign bribery cases, and the appropriate sanctions and conditions attached to resolutions (Convention Art. 5; Anti-Bribery Recommendation XVIII.i-iii), and
  - (b) make public, where appropriate and consistent with data protection rules and privacy rights, as much information about its non-trial resolutions as possible, in line with Anti-Bribery Recommendation XVIII.iv (Anti-Bribery Recommendation XVIII.iv).
21. Regarding sanctions and confiscation for foreign bribery, the Working Group recommends that Poland:
- (a) collect comprehensive statistics on sanctions, including confiscation and debarment, imposed on natural and legal persons in foreign bribery cases (Convention Art. 3);
  - (b) take appropriate steps to help ensure that the sanctions imposed in practice for foreign bribery against natural persons are effective, proportionate and dissuasive (Convention Art. 3);

- (c) issue a binding order of the Prosecutor General reminding prosecutors of their obligation under CC Arts. 44-45 to seek confiscation in foreign bribery cases when appropriate (Convention Art. 3(3); Anti-Bribery Recommendation XVI);
- (d) as a matter of priority, amend the LCEL to ensure that the fines against legal persons for foreign bribery are effective, proportionate and dissuasive in practice (Convention Art. 3(2));
- (e) amend the LCEL so that internal controls, ethics and compliance programmes or measures are considered in the calculation of sanctions (Anti-Bribery Recommendation XXIII.D); and
- (f) encourage its procuring authorities to consider, where international business transactions are concerned and as appropriate, internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery in their decisions to grant public procurement contracts (Anti-Bribery Recommendation XXIII.D.i).

### Follow-up by the Working Group

22. The Working Group will follow up the issues below as case law, practice and legislation develops:

- (a) interpretation of “service type” work in CC Art. 115(19) (Convention Art. 1);
- (b) whether the foreign bribery offence covers a non-pecuniary bribe given to a third-party beneficiary (Convention Art. 1);
- (c) requirement in the LCEL that a natural person must commit a crime which benefits or could benefit the legal person (Convention Art. 2; Anti-Bribery Recommendation Annex II);
- (d) use of suspended sentences in foreign bribery cases (Convention Art. 3);
- (e) application of territorial jurisdiction over natural persons for foreign bribery (Convention Art. 4(1));
- (f) nationality jurisdiction over legal persons for foreign bribery (Convention Art. 4(2));
- (g) application of the statute of limitations to bribery cases of “lesser gravity” (Convention Art. 6; Anti-Bribery Recommendation IX.ii);
- (h) the application of CCP Arts. 590-591 (Convention Art. 9); and
- (i) extradition of Polish permanent residents for foreign bribery (Convention Art. 10).

## Annex 1. Summaries of foreign bribery cases concluded since Phase 3

### Alcoholic Beverages (Russia)

In October 2012, one of the leading importers and distributors of alcoholic beverages based in Warsaw disclosed to the US Securities Exchange Commission that it had violated the books and records as well as other provisions of the US Foreign Corrupt Practices Act.

Poland detected this case after receiving information from the Working Group. The Warsaw Regional PPO considered the media information, the company's corporate filings, and discussions with the company itself. In November 2013, the PPO decided not to open an investigation due to a lack of jurisdiction. It concluded that the allegations did not concern the Polish branch of the company and the alleged conduct did not take place in Poland.

### Bus Company (Latvia)

Between 2013 to 2016, a Polish (and two Czech) companies allegedly bribed Riga City Councillors and managers of a Latvian municipal public transportation and infrastructure company. Approximately EUR 800 000 was paid to secure three contracts totalling EUR 270 million. The bribes were allegedly disguised as consulting fees to private companies registered outside Poland. Ultimately, the Polish company received a EUR 21.5 million contract for the sale of buses.

Latvia charged several Latvian nationals, including public officials, with corruption and money laundering. Proceedings are ongoing.

Poland, however, is only investigating Polish nationals from the Polish company for embezzling company funds and money laundering. According to the Polish PPO, whether the investigation is expanded to include foreign bribery depends on pending MLA requests to China and Russia. The Polish company has not been investigated.

Poland's PPO learned of this case after receiving evidence from the local CBA office. Poland does not explain how the CBA detected the case.

### Customs Officer (Germany)

Between April 2009 and March 2010, a Polish national authorised a Polish intermediary to pay bribes totalling EUR 65 000 to a German customs officer to falsify export documents. Germany sentenced the official and intermediary each to four years' imprisonment. Polish prosecutors relied on the evidence collected by the German authorities and indicted the Polish national. In December 2012, the Polish national was convicted of foreign bribery (CC Arts. 229(5), 229(3) and 229(4)), sentenced to two years' imprisonment and fined approximately EUR 8 500. The custodial sentence was conditionally suspended for a probation period of five years. Poland detected the case when Germany requested prosecution of the Polish national.

### Road Construction (Ukraine)

Between October 2016 and October 2019, Ukrainian, Turkish and Polish companies allegedly bribed the head of the Ukrainian state agency Ukravtodor, who is a Polish national. Bribes totalling approximately EUR 1 million were exchanged for road reconstruction contracts. Polish authorities also investigated the laundering of the proceeds of bribery, which took place from 1 November 2016 to 30 September 2019 in Poland and Ukraine.

In 2018, the Warsaw PPO detected this case via special investigative techniques applied by the CBA. The investigation was launched in January 2019.

Polish authorities received extensive co-operation from Ukraine, including through a Joint Investigation Team, European investigation Orders, and MLA. In July 2020, 16 individuals were charged with various crimes, including four with active foreign bribery under CC Arts. 229(1) and (5). One individual was convicted of money laundering and complicity in passive foreign bribery. The prosecutor and individual negotiated the sanction, and the prosecutor motioned the court for an extraordinary mitigation of penalty. He was sentenced to three years' imprisonment, which was suspended for five years, and fined approximately EUR 12 564. The remaining proceedings for foreign bribery and other charges are ongoing. No legal persons have been investigated.

### **Shipbuilding (Estonia)**

In 2014, a Polish shipbuilding company allegedly paid bribes totalling EUR 756 000 to some members of the management board of the Port of Tallinn, an Estonian state-owned enterprise. The board members in turn facilitated the award of a EUR 63 million contract in October 2014 to construct two ferries. The bribe was allegedly provided via a EUR 1 260 000 agency agreement signed in December 2014 by the shipbuilding company and a Hong Kong (China) company represented by an Estonian national. The shipbuilding company made three payments totalling EUR 378 000 before terminating the agency agreement in November 2015. The Hong Kong (China) company did not assist with the execution of the ferry contract as required by the agency agreement.

Estonia indicted several Estonian nationals, including Port of Tallinn management board members, and a Polish member of the shipbuilding company's management board. Poland suspended its investigation pending the conclusion of the Estonian proceedings. Proceedings in Poland against the shipbuilding company are contingent on the conviction of the Polish national in Estonia.

Poland detected this case after receiving copies of media reports provided by the Working Group.

### **Telecommunication (Belarus)**

According to media reports, the deputy director of a Polish company's Belarusian subsidiary allegedly paid bribes of USD 50 000 to 2 million. The purpose was to obtain telecommunications contracts from a Belarusian state-owned enterprise.

In July 2020, Belarus sentenced various Belarusian public officials to imprisonment for between 7.5 and 12 years. Poland learned of this case from the Working Group in May 2020 but did not open an investigation. According to Polish authorities, there is no information that Polish nationals or legal persons engaged in corrupt practices.

## Annex 2. Phase 3 Recommendations to Poland

<i>Phase 3 Recommendation</i>	<i>Status at Written Follow-up</i>
<b>Recommendations Concerning Investigation, Prosecution and Sanctioning of Foreign Bribery</b>	
1. Regarding the offence of bribing a foreign public official in Article 229.5 of the Polish Penal Code, the Working Group recommends that Poland urgently take appropriate measures feasible within the Polish legal system to ensure that the “impunity” provision cannot be applied to the bribery of foreign public officials (Convention, Articles 1 and 3; 2009 Recommendations III and V).	Not Implemented
2. Regarding the <u>liability of legal persons</u> in the Act on Liability of Collective Entities for the bribery of a foreign public official, the Working Group recommends that Poland:	
(a) Take urgent steps to eliminate the requirement of a conviction of a natural person or a decision to discontinue proceedings against the natural person, in order to impose liability on a legal person (Convention, Articles 2 and 3); and	Not Implemented
(b) Take steps to ensure that police and prosecutors are adequately trained and made aware of the importance of effectively enforcing the liability of legal persons, and that such training address challenges in investigating and prosecuting legal persons caused by the requirement described in subparagraph (a) above (Convention, Article 3; 2009 Recommendation III).	Partially Implemented
3. Concerning <u>sanctions</u> for the bribery of a foreign public official, the Working Group recommends that Poland:	
(a) Continue to raise the awareness of the Polish law enforcement authorities of the importance of imposing effective, proportionate and dissuasive sanctions on natural persons (Convention, Article 3; 2009 Recommendation III);	Fully Implemented
(b) Continue to raise awareness of the Polish law enforcement authorities of the importance of imposing confiscation upon conviction (Convention, Article 3; 2009 Recommendation III); and	Partially Implemented
(c) Regarding legal persons, eliminate the cap on or increase the maximum penalty available under the law so that they are subject to effective, proportionate and dissuasive penalties, and as a matter of priority draw the attention of the relevant authorities to the availability of additional sanctions, including debarment, upon conviction of a legal person under the Liability of Collective Entities Act (Convention, Articles 2 and 3; 2009 Recommendation III).	Not Implemented
4. Concerning the <u>investigation and prosecution</u> of the bribery of foreign public officials, the Working Group recommends that Poland establish an investigation and prosecution strategy to address the increasing risk of foreign bribery by Polish companies that addresses issues including the following: (i) the need for adequate resources and expertise to investigate and prosecute highly complex cases, including in sensitive sectors, involving SOEs, and requiring forensic financial and accounting expertise; and (ii) a comprehensive plan on how to reduce the length of time for foreign bribery proceedings to a workable and reasonable period (2009 Recommendation V).	Fully Implemented
<b>Recommendations Concerning Prevention and Detection of Foreign Bribery</b>	
5. The Working Group recommends that Poland take the following steps to improve the prevention and detection of foreign bribery through its <u>anti-money laundering</u> system:	
(a) Examine whether “para-banking” poses a risk of laundering the proceeds from foreign bribery (Convention, Article 7; 2009 Recommendation V); and	Fully Implemented
(b) Urgently take substantial steps to raise the awareness of and provide training for the FIU and all entities subject to suspicious transactions reporting requirements of the risk of laundering the proceeds of the bribery of foreign public officials, and provide them with guidance on what constitutes such proceeds, and how to effectively detect them (Convention, Article 7; 2009 Recommendation III).	Not Implemented
6. The Working Group recommends that Poland take the following steps to enhance the prevention and detection of foreign bribery through <u>accounting and auditing requirements, and internal controls, ethics and compliance measures</u> :	
(a) Intensify efforts to encourage the accounting and auditing profession to raise awareness and provide training on the detection of foreign bribery in companies’ books and records (Convention, Article 8; 2009 Recommendation X);	Partially Implemented

<i>Phase 3 Recommendation</i>	<i>Status at Written Follow-up</i>
(b) Provide clarification and guidance to the accounting and auditing profession on the evidentiary standards that must be met to justify reporting suspicions of foreign bribery to the law enforcement authorities (Convention, Article 8; 2009 Recommendation X);	Fully Implemented
(c) Find a way appropriate and feasible in its legal system to ensure that natural and legal persons are subject to effective, proportionate and dissuasive penalties for fraudulent accounting for the purpose of bribing foreign public officials or hiding such bribery (Convention, Article 8; 2009 Recommendation X); and	Partially Implemented
(d) Urgently make significant efforts to raise the awareness of large companies, SOEs, and SMEs of the following: (i) the risks of foreign bribery in international business transactions; (ii) application of the foreign bribery offence and the Law on Liability of Collective Entities to bribes made through agents abroad; and (iii) the need to adopt effective internal controls, ethics and compliance measures for preventing foreign bribery (2009 Recommendation III).	Partially Implemented
7. Regarding the prevention and detection of foreign bribery through <u>tax measures</u> , the Working Group recommends that Poland:	
(a) As a matter of priority, take appropriate and feasible steps within its legal system to clarify that all bribes to foreign public officials in violation of Article 229.5 of the Polish Penal Code are not tax deductible (2009 Recommendations III and VIII; 2009 Recommendation on Tax Measures); and	Fully Implemented
(b) Re-examine the processes in place for identifying bribe payments, to ensure that Poland has in place proper tools, including technology and expertise, to track bribe payments for which tax deductions have been sought under categories of allowable expenses (2009 Recommendations III and VIII; 2009 Recommendation on Tax Measures).	Fully Implemented
8. The Working Group recommends that Poland take the following steps to enhance <u>public awareness and the reporting</u> of foreign bribery:	
(a) Significantly increase public awareness-raising efforts, with an emphasis on the growing presence of Polish companies in international business (2009 Recommendation III); and	Fully Implemented
(b) Prioritise the reform of the law on whistleblower protections to ensure that appropriate measures are in place to protect from retaliatory or disciplinary action private and public sector employees who report suspected acts of foreign bribery in good faith and on reasonable grounds (2009 Recommendation IX).	Not Implemented
9. Regarding the prevention and detection of foreign bribery through agencies responsible for providing <u>public advantages</u> to Polish businesses, the Working Group recommends that Poland:	
(a) Raise awareness about the foreign bribery offence among institutions involved in public procurement contracting, including ODA-funded procurement contracting (2009 Recommendation III);	Fully Implemented
(b) Consider systematically checking the publicly available debarment lists of international financial institutions in relation to: (i) the award of public procurement contracts, including ODA-funded procurement contracts; and (ii) the provision of official export credit support (Convention, Article 3; 2009 Recommendation XI); and	Fully Implemented
(c) Refuse to approve official export credit cover or other support to applicants if due diligence concludes that bribery was involved in the transaction, and take appropriate action if bribery is proven after credit, cover or other support has been approved (Convention, Article 3; 2009 Recommendation XII; 2006 Recommendation on Export Credits).	Fully Implemented

<i>Phase 3 Follow-up by Working Group</i>	<i>Status at Written Follow-up</i>
10. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Poland:	
(a) Application of the foreign bribery offence to: 1) the bribery of employees of state administrations performing exclusively “service type work”; 2) bribes made through intermediaries; and 3) bribes in the form of non-pecuniary benefits (Convention, Article 1; 2009 Recommendation (Annex I on Good Practice Guidance on Implementing Specific Articles of the Convention, Article C);	Continue to follow up
(b) Application of territorial jurisdiction to natural persons;	Continue to follow up
(c) Regarding legal persons, application of the following: (i) the requirement in the Act on Liability of Collective Entities that the conduct of a natural person “did or could have” given an advantage to the legal person, (ii) nationality jurisdiction, and (iii) other sanctions, including debarment (Convention, Article 3; 2009 Recommendations III and XI);	Continue to follow up
(d) The recent separation of the role of the Office of the Prosecutor General (OPG) and the Minister of Justice in Poland, to ensure that it effectively safeguards investigative and prosecutorial decision-making in foreign bribery cases from considerations of factors prohibited in Article 5 of the Anti-bribery Convention (Convention, Article 5; 2009 Recommendation V); and	Continue to follow up
(e) The extradition of permanent residents of Poland for the bribery of foreign public officials (Convention, Article 10; 2009 Recommendation XIII).	Continue to follow up



## Annex 3. On-site visit participants

### Public Sector

- Ministry of Justice
- Ministry for Economic Development and Technology
- Ministry of Finance
- Ministry of State Assets
- National Revenue Administration, Ministry of Finance
- General Inspector of Financial Information
- Department of Development Co-operation, Ministry of Foreign Affairs
- Polish Agency for Enterprise Development
- Public Procurement Office
- Export Credit Insurance Corporation (KUKE)

### Law enforcement agencies

- Internal Security Agency
- Central Anti-Corruption Bureau
- National Police Headquarters
- Warsaw Police Headquarters

### Judiciary

- Pruszków District Court
- Warsaw District Court
- Supreme Court
- National Council of the Judiciary
- National School of Judiciary and Public Prosecution

### Public Prosecutor's Office

- National Public Prosecutor's Office
- Poznań Regional Public Prosecutor's Office
- Gdańsk Regional Public Prosecutor's Office

### Private Sector

#### Private Enterprises

- Bank PKO BP
- IBBC Group
- ING Bank
- KGHM Polska Miedz
- PGNiG
- Polska Grupa Energetyczna S.A.
- Tauron Polska Energia S.A.

#### Business Associations

- Business Centre Club
- Polish Bank Association
- Polish Chamber of National Defence Manufacturers

### Lawyers and legal academics

- High School of Justice in Warsaw
- National Chamber of Legal Advisers
- Polish Bar Council

### Accounting and auditing profession

- EY
- KPMG
- Polish Accounting Standards Committee
- Polish Agency for Audit Oversight
- Polish Chamber of Statutory Auditors

### Civil Society and media

- Commissioner for Human Rights
- IUSTITIA Judges Association
- LEX SUPER OMNIA Prosecutors Association
- Sobieski Institute
- Stefan Batory Foundation
- THEMIS Judges Association

## Annex 4. List of abbreviations and acronyms

ABW	Internal Security Agency ( <a href="#">Agencja Bezpieczeństwa Wewnętrznego</a> )	NCJ	National Council of Judiciary ( <a href="#">Krajowa Rada Sądownictwa</a> )
AML	anti-money laundering	NP	National Prosecutor
Art.	Article	NRA	national risk assessment (money laundering)
BGK	<a href="#">Bank Gospodarstwa Krajowego</a> (export credit agency)	NSJPP	National School of Judiciary and Public Prosecution ( <a href="#">Krajowa Szkoła Sądownictwa i Prokuratury</a> )
CBA	Central Anti-Corruption Bureau ( <a href="#">Centralne Biuro Antykorupcyjne</a> )	OCCD	Organised Crime and Corruption Department, Public Prosecutor's Office
CC	Criminal Code	ODA	official development assistance
CCP	Code of Criminal Procedure	OEA	operational and exploratory activity
CCSL	Common Courts System Law	PANA	Polish Audit Oversight Agency ( <a href="#">Polska Agencja Nadzoru Audytowego</a> )
EAW	European Arrest Warrant	PARP	Polish Agency for Enterprise Development
ECA	export credit agency	PEP	politically exposed person
EIO	European Investigation Order	PG	Prosecutor General
EUR	euro	PIBR	Polish Chamber of Statutory Auditors ( <a href="#">Polska Izba Biegłych Rewidentów</a> )
FATF	Financial Action Task Force	PLN	Polish zloty
FIU	financial intelligence unit	PPL	Public Procurement Law
GIFI	General Inspector of Financial Information	PPO	Public Prosecutor's Office
IFRS	International Financial Reporting Standards	SAL	Statutory Auditors Law
ISA	International Standards on Auditing	SAR	suspicious activity report (money laundering)
KAS	National Revenue Administration ( <a href="#">Krajowa Administracja Skarbowa</a> )	SKWP	Accountants Association in Poland ( <a href="#">Stowarzyszenie Księgowych w Polsce</a> )
KUKE	<a href="#">Korporacja Ubezpieczeń Kredytów Eksportowych S.A.</a> (export credit agency)	SME	small or medium-sized enterprise
LCEL	Liability of Collective Entities Law	SOE	state-owned or controlled enterprise
LEA	Law enforcement authority	UNCAC	United Nations Convention against Corruption
MDB	multilateral development bank	UNTOC	United Nations Convention on Transnational Organized Crime
MFA	Ministry of Foreign Affairs	USD	United States dollar
MLA	mutual legal assistance	UZP	Public Procurement Office ( <a href="#">Urząd Zamówień Publicznych</a> )
MOJ	Ministry of Justice		
Moneyval	<a href="#">Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism</a> , Council of Europe		

## Annex 5. Excerpts of relevant legislation

### Criminal Code

#### Foreign bribery offence

Art. 229(1). Whoever provides or promises to provide a material or personal benefit to a person performing a public function in relation to performing this function, is subject to the penalty of deprivation of liberty for between 6 months and 8 years.

Art. 229(2). In a case of lesser gravity, the perpetrator is subject to a fine, the penalty of limitation of liberty or the penalty of deprivation of liberty for up to 2 years.

Art. 229(3). If the perpetrator of the act referred to in § 1 acts with the purpose of inducing the person performing a public function to violate legal provisions or provides a material benefit or promises to provide it to such person for a violation of legal provisions, he is subject to the penalty of deprivation of liberty for between one year and 10 years.

Art. 229(4). Whoever provides a material benefit of substantial value to a person performing a public function or promises to provide it in relation to performing this function, is subject to the penalty of deprivation of liberty for between 2 years and 12 years.

Art. 229(5). Whoever provides a material or personal benefit to a person performing a public function in a foreign state or international organisation in relation to performing this function, is subject to the penalties provided for in § 1-4 accordingly.

#### Article 229(6) – Impunity Provision

Art. 229(6). The perpetrator of the act specified in § 1-5 shall not be liable to punishment if the material or personal benefit or a promise thereof were accepted by the person performing public functions and the perpetrator had reported this fact to the law-enforcement agency, revealing all essential circumstances of the offence before this authority was notified of the offence.

#### Article 115(4) – Definition of a material and personal benefit

Art. 115(4). A material and personal benefit includes both the benefit for oneself, as well as for another person.

#### Article 115(19) – Definition of public official

Art. 115(19). A person performing a public function is a public officer, a member of a self-government authority, a person employed in an organisational entity utilising public funds, unless this person performs exclusively servicing duties, as well as any other person whose public activity powers and duties are established or recognised by a statute or an international agreement binding for the Republic of Poland.

#### Fines

Art. 33(1). A fine is imposed in daily rates by indicating a number of daily rates and the value of one daily rate; unless a statute provides otherwise, the number of daily rates shall not amount to less than 10 and more than 540 rates.

Art. 33(2). The court may impose a fine collateral to the penalty of deprivation of liberty provided for in art. 32 section 3 when the perpetrator has acted with the purpose of gaining a material benefit or has gained such benefit.

Art. 33(3). While determining the value of the daily rate, the court takes into consideration the perpetrator's income, personal and family conditions, financial situation and income perspectives; the value of one daily rate may not amount to less than PLN 10 and more than PLN 2,000.

#### Suspended sentences

Art. 69(1). The court may conditionally suspend the enforcement of the imposed penalty of deprivation of liberty not exceeding one year if the perpetrator has not been sentenced to the penalty of deprivation of liberty while committing a crime and it is sufficient to meet the aims of the punishment with regard to the perpetrator, especially to prevent his relapse to crime.

Art. 69(2). While suspending the enforcement of a penalty, the court primarily takes into consideration the perpetrator's demeanour, his characteristics, personal conditions, previous way of life and behaviour after committing the crime.

Art. 69(3). (repealed).

Art. 69(4). The court may conditionally suspend the enforcement of the penalty of deprivation of liberty imposed on the perpetrator of a misdemeanour of a hooligan character, or on the perpetrator of a crime provided for in art. 178 § 4, only in exceptional situations.

### **Jurisdiction**

Art. 5. The Polish criminal statute applies to a perpetrator who has committed a prohibited act in the territory of the Republic of Poland, as well as on a Polish water-borne or airborne vessel, unless an international agreement to which the Republic of Poland is a party provides otherwise

#### Liability for crimes committed abroad: Polish citizens

Art. 109. A Polish criminal statute applies to a Polish citizen who has committed a crime abroad

#### Liability for crimes committed abroad: Non-Polish citizens

Art. 110(1). A Polish criminal statute applies to an alien who has committed abroad a prohibited act against the interests of the Republic of Poland, a Polish citizen, a Polish juridical person or a Polish organisational entity without a legal personality, and also to an alien who has committed abroad a crime of a terrorist character.

Art. 110(2). A Polish criminal statute applies to an alien who has committed abroad a prohibited act other than provided for in § 1 if the prohibited act is subject to the penalty of deprivation of liberty exceeding 2 years in a Polish criminal statute, and the perpetrator is present in the territory of the Republic of Poland and no extradition order has been issued.

#### Exceptions to dual criminality

Art. 111(3). The reservation provided for in § 1 applies neither to a Polish public officer who has committed a crime abroad in relation to performing his duties, nor to a person who has committed a crime in a place that is not subject to any state authority.

Art. 112(5). Notwithstanding the provisions being in force in the place of the commission of a prohibited act, a Polish criminal statute applies to a Polish citizen or an alien who has committed: (5) a crime from which even an indirect material benefit has been derived in the territory of the Republic of Poland.

Art. 113. Notwithstanding the provisions being in force in the place of the commission of a crime, a Polish criminal statute applies to a Polish citizen or an alien who has committed a crime abroad, which the Republic of Poland is obliged to prosecute under an international agreement, or a crime provided for in the Rome Statute of the International Criminal Court, adopted in Rome on 17 July 1998 (2003 Journal of Laws of the Republic of Poland, No. 78, item 708 and of 2018, item 1753), and no extradition order has been issued

### **Non-trial resolutions - Extraordinary mitigation of penalty**

Art. 60(1). The court may apply extraordinary mitigation of the penalty in the situations provided for in a statute and with regard to a young adult, if it is expedient due to the reasons provided for in art. 54 § 1.

Art. 60(2). The court may also apply extraordinary mitigation of the penalty in exceptional situations, when even the lowest penalty provided for a crime would be incommensurately severe, especially:

- 1) if the harmed party and the perpetrator have reconciled, the damage has been redressed or if the harmed party and the perpetrator have agreed on the manner of redressing the damage,
- 2) due to the perpetrator's demeanour, especially if he has taken efforts to redress the damage or to prevent it,
- 3) if the perpetrator of an unintentional crime or his immediate family member has suffered a grievous harm in relation to the committed crime.

Art. 60(3). The court applies extraordinary mitigation of the penalty, and may even conditionally suspend its enforcement with regard to a perpetrator who has committed a crime in complicity with other persons, if he has disclosed information concerning the individuals participating in the crime and the substantive circumstances of its commission to a law enforcement authority responsible for prosecuting crimes.

Art. 60(4). Upon the public prosecutor's motion, the court may apply extraordinary mitigation of the penalty, and may even conditionally suspend its enforcement with regard to a perpetrator who has, apart from giving explanations in his own case, disclosed a crime subject to the penalty of deprivation of liberty for 5 years and presented its substantive circumstances to a law enforcement authority that had no prior knowledge of these facts.

Art. 60(5). While imposing the penalty of deprivation of liberty for up to 5 years in the situations referred to in § 3 and 4, the court may conditionally suspend its enforcement for a test period of up to 10 years if it has been determined that the perpetrator will not commit a crime again, despite the penalty being not enforced; the provision of art. 69 § 1 does not apply and the provisions of arts. 71-76 apply accordingly.

Art. 60(6). Extraordinary mitigation of a penalty consists in the imposition of a penalty in the extent that amounts to less than the lowest statutory penalty, or in the imposition of a penalty of a more lenient type, in accordance with the following principles:

- 1) if the act constitutes a felony subject to a penalty of no less than 25 years of deprivation of liberty, the court imposes the penalty of deprivation of liberty for a period of no less than 8 years,
- 2) if the act constitutes another felony, the court imposes the penalty of deprivation of liberty for a period amounting to no less than one-third of the lowest statutory penalty,
- 3) if the act constitutes a misdemeanour, and the lowest statutory penalty is the penalty of deprivation of liberty for a period of no less than a year, the court imposes a fine, the penalty of limitation of liberty or the penalty of deprivation of liberty,
- 4) if the act constitutes a misdemeanour, and the lowest statutory penalty is the penalty of deprivation of liberty for a period of less than a year, the court imposes a fine or the penalty of limitation of liberty.

Art. 60(7). If the act is subject to alternatively provided penalties, provided for in art. 32 sections 1- 3, the extraordinary mitigation of the penalty consists in waiving its imposition and imposing a penal measure provided for in art. 39 sections 2-3, 7 and 8, a compensatory measure or the forfeiture; the provision of art. 61 § 2 does not apply.

Art. 60(8). Extraordinary mitigation of a penalty does not apply to crimes subject to a statutory penalty exceeding 5 years of deprivation of liberty, to which art. 37a applies.

Art. 37a(1). If a statute provides for a crime the penalty of deprivation of liberty not exceeding 8 years as the upper limit of a statutory penalty and the imposed penalty of deprivation of liberty would not exceed one year, the court may impose instead the penalty of limitation of liberty no less than 3 months or a fine no less than 100 daily rates, while at the same time imposes a penal or compensatory measure or forfeiture.

Art. 37a (2). The provision of § 1 does not apply to the perpetrators who act in an organised criminal group or organised criminal association aiming at perpetrating crime or a fiscal crime, and to the perpetrators of crimes of terrorist character.

### **Money laundering**

Art. 299(1). Whoever receives, possesses, uses, conveys or transports abroad, conceals, transfers or converts legal tenders, financial instruments, securities, foreign exchange, property rights or other movable or immovable property, that have been obtained from the benefits derived from a committed prohibited act, or assists in transferring their ownership or possession, or undertakes other actions that may frustrate or substantially obstruct the determination of their criminal origin or location, or their detection, seizure or forfeiture, is subject to the penalty of deprivation of liberty for between 6 months and 8 years.

Art. 299(2). Whoever, being an employee of or acting in the name of or for the benefit of a bank, financial or credit institution, or another entity legally obliged to register transactions and people making transactions, receives against the provisions of law legal tenders, financial instruments, securities, foreign exchange, transfers or converts them, or receives them in other circumstances raising a reasonable suspicion that they have been an object of the act referred

to in § 1, or provides other services aimed at concealing their criminal origin or at securing them against seizure, is subject to the penalty provided for in § 1.

Art. 299(3). (repealed).

Art. 299(4). (repealed).

Art. 299(5). If the perpetrator commits the act referred to in § 1 or 2 by acting in agreement with other persons, he is subject to the penalty of deprivation of liberty for between one year and 10 years.

Art. 299(6) The perpetrator who has gained substantial material benefit from committing the act referred to in § 1 or 2, is subject to the penalty provided for in § 5.

Art. 299(6a). Whoever makes preparations for the crime provided for in § 1 or 2, is subject to the penalty of deprivation of liberty for up to 3 years.

Art. 299(7). While sentencing for the crime provided for in § 1 or 2, the court imposes the forfeiture of items that have been derived directly or indirectly from a crime, as well as the benefits that have been derived from the crime or their equivalent-in-value, even if they are not the property of the perpetrator. Forfeiture is not imposed in full or in part if the item, benefit or its equivalent-in-value is to be returned to the harmed party or another entitled entity.

Art. 299(8). Whoever has voluntarily disclosed information concerning the individuals participating in the crime and the circumstances of its perpetration to a law enforcement authority responsible for prosecuting crimes, is not subject to a penalty for the crime provided for in § 1 or 2 if the provided information has prevented the commission of another crime; if the perpetrator has taken efforts aimed at disclosing such information and circumstances, the court applies extraordinary mitigation of the penalty.

### **False Accounting**

Art. 270 (1) Whoever forges, counterfeits or alters a document with the purpose of using it as an authentic one, or uses such document as an authentic one, is subject to the penalty of deprivation of liberty for between 3 months and 5 years.

Art. 270(a)(1). Whoever forges, counterfeits or alters an invoice, with the purpose of using it as an authentic one, with respect to factual circumstances that may have significance with regard to establishing the amount of due public receivable or its refund, or refund of other receivable of a fiscal character, or uses such invoice as an authentic one, is subject to the penalty of deprivation of liberty for between 6 months and 8 years.

## **Code of Criminal Procedure**

### **Reporting of crimes**

Art. 304(1). Everyone, having learned about the commission of an offense prosecuted ex officio, has a social obligation to notify the prosecutor or the police. The provisions of Art. 148a and art. 156a shall apply mutatis mutandis.

Art. 304(2). State and local government institutions which, in connection with their activities, learn about the commission of an offense prosecuted ex officio, are obliged to immediately notify the prosecutor or the police of this and take the necessary steps until the arrival of the body appointed to prosecute crimes or until the authority of the appropriate order to prevent the obliteration of traces and evidence of a crime.

### **Non-trial resolutions**

Art. 335(1). If the accused admits guilt, and in the light of his explanations, the circumstances of the crime and guilt do not raise any doubts, and the attitude of the accused indicates that the objectives of the proceedings will be achieved, further steps may be omitted. If there is a need to assess the credibility of the submitted explanations, evidentiary activities are performed only in the necessary scope. In any case, however, if it is necessary to protect the traces and evidence of a crime against their loss, distortion or destruction, procedural steps should be carried out to the extent necessary, in particular a visual inspection, if necessary with the participation of an expert, a search or activities listed in Art. 74 § 2 paragraph 1 in relation to the suspect, as well as take other necessary steps against him, including blood, hair and body secretions. The prosecutor, instead of the indictment, requests the court to issue a conviction at the meeting and to adjudicate penalties or other measures agreed with the accused for the alleged offense, also taking

into account the legally protected interests of the victim. The reconciliation may also include the issuance of a specific decision on the costs of the process.

Art. 335(1a). The provisions on the indictment contained in Chapter 40, with the exception of Art. 344a.

Art. 335(2). The prosecutor may attach to the indictment a request for a conviction at the meeting and a decision agreed with the accused of penalties or other measures provided for the alleged misdemeanour, also taking into account the legally protected interests of the victim, if the circumstances of the crime and the defendant's guilt do not raise doubts, statements evidence submitted by the accused do not contradict the findings, and the attitude of the accused indicates that the objectives of the proceedings will be achieved. The provisions of § 1, fifth sentence and § 3, second sentence, shall apply accordingly to the application. The provisions of Art. 333 § 1 and 2.

Art. 335(2a). The public prosecutor, agreeing with the accused on the content of the application referred to in § 1 or 2, instructs the accused about the content of art. 447 § 5. The instruction shall be annotated in the case file.

Art. 335(3). The application referred to in § 1 should contain the data indicated in Art. 332 § 1. The justification for the application is limited to indicating evidence that the circumstances of the act and guilt of the accused raise no doubts and that the objectives of the proceedings will be achieved without conducting a hearing. The provisions of Art. 333 § 3 and article. 334 shall apply mutatis mutandis. Parties, defenders and attorneys have the right to review the case files, about which they should be instructed.

Art. 335(4). In the event that the court, failing to consider the request referred to in § 1, returned the case to the public prosecutor, another submission of such a request is possible, provided that the return was made for the reasons specified in Art. 343 § 1, 2 or 3. The return of the case does not prevent the subsequent application referred to in § 2.

Art. 336(1). If the conditions justifying the conditional discontinuation of proceedings are met, the prosecutor may, instead of an indictment, draw up and submit to the court a motion for such discontinuation.

Art. 336(2). The provisions of Art. 332 § 1 points 1, 2, 4 and 5. The justification of the application may be limited to the indication of evidence that the defendant's guilt does not raise doubts, and also the circumstances for conditional remission.

Art. 336(3). The prosecutor may indicate the proposed probation period, obligations to be imposed on the accused and, depending on the circumstances, conclusions as to supervision.

Art. 336(4). For the information of the court, the application shall be accompanied by a list of disclosed aggrieved parties with their addresses. The provision of art. 334 shall apply mutatis mutandis.

Art. 336(5). The provisions on the indictment contained in Chapter 40 shall apply accordingly to the motion for conditional discontinuance of the proceedings.

## Law on Criminal Liability of Collective Entities for Punishable Offences

**Art. 1.** The Act lays down the rules of liability of collective entities for acts prohibited under penalty as fiscal offenses or crimes, and the rules of conduct in relation to such liability.

**Art. 2(1).** A collective entity within the meaning of the Act is a legal person and an organizational unit without legal personality, which has legal capacity under separate provisions, with the exception of the State Treasury, local government units and their associations.

(2). A collective entity within the meaning of the Act is also a commercial company with the share of the State Treasury, a local government unit or an association of such entities, a capital company in organization, an entity under liquidation and an entrepreneur who is not a natural person, as well as a foreign organizational unit.

**Art. 3.** A collective entity is liable for a prohibited act, which is the behavior of a natural person:

(1). acting on behalf or in the interest of a collective entity as part of the right or obligation to represent it, make decisions on its behalf or perform internal control, or if this authority is exceeded or if this obligation is not fulfilled,

(2). admitted to operate as a result of exceeding the powers or failure to fulfill obligations by the person referred to in point 1,

(3). acting on behalf or in the interest of a collective entity, with the consent or knowledge of the person referred to in item 1,

(3a). being an entrepreneur who directly interacts with a collective entity in the implementation of a legally permissible goal

- if this behaviour brought or could have brought a collective entity benefit, even if it was non-pecuniary.

**Art. 4.** A collective entity is liable if the fact of committing a prohibited act referred to in Art. 16, by the person referred to in art. 3, has been confirmed by a final judgment convicting that person, a judgment conditionally discontinuing criminal proceedings against him or proceedings in a case for a tax offense, a decision granting that person a permit to voluntarily submit to liability or a court decision discontinuing the proceedings against her due to circumstances excluding the punishment of the perpetrator .

**Art. 5** A collective entity shall be liable where the offence has been committed as a result of:

(1). at least a lack of due diligence in the selection of a natural person referred to in point (2) or (3) of Article 3, or at least a lack of due supervision of that person, on the part of an authority or a representative of the collective entity;

(2). the organisation of the activities of the collective entity which did not ensure that the commission of the criminal act by a person referred to in point (1) or (3a) of Article 3 could have been avoided, when it could have been ensured by the due diligence required in the circumstances by the authority or the representative of the collective entity.

**Art. 16.** (1). A collective entity shall be held liable pursuant to this Act if the person referred to in Article 3 commits:

(3) corruption and influence peddling, as defined in: (a) Articles 228-230a, Article 250a and Article 296a of the Criminal Code,

(5) an offence against the credibility of documents, as defined in Articles 270-273 of the Criminal Code;

(2). A collective entity shall also be held liable pursuant to this Act if the person referred to in Article 3 commits a fiscal offence:

(1) against tax obligations and grant or subsidy settlements, as defined in Article 54 § 1 and 2, Article 55 § 1 and 2, Article 56 § 1 and 2, Article 58 § 2 and 3, Article 59 § 1-3, Article 60 § 1-3, Article 61 § 1, Article 62 § 1-4, Article 63 § 1-4, Article 64 § 1, Article 65 § 1-3, Article 66 § 1, Article 67 § 1 and 2, Article 68 § 1, Article 69 § 1-3, Article 70 § 1-4, Article 71-72, Article 73 § 1, Article 73a § 1 and 2, Article 74 § 1-3, Article 75 § 1 and 2, Article 76 § 1 and 2, Article 77 § 1 and 2, Article 78 § 1 and 2, Article 80 § 1-3, Article 80a § 1, Article 82 § 1 and Article 83 § 1 of the Criminal Fiscal Code;

## Fiscal Penal Code

### Article 53. Explanation of statutory terms

(21). Books shall include:

1) accounting books;

2) book of revenue and expenses;

3) record;

4) register;

5) other similar recording instruments as required by the Act, and, in particular, cash register records.

(22). An unreliable book shall be one that is kept inconsistently with the facts.

### Art. 60. Failure to keep books

(1). Whoever, contrary to the obligation, fails to keep the book, shall be subject to a fine of up to 240 daily rates.

(2). Whoever, contrary to the obligation, fails to keep the book in the location where business activity is conducted or in the place indicated by the taxable person as its headquarters, representative office or branch, and where book keeping has been commissioned to an accounting office or other authorised entity – in the location specified in the contract with the accounting office or the location indicated by the head of the unit, shall be subject to a fine of up to 240 daily rates.



(3). The punishment specified in paragraph 2 shall be imposed also on a taxable person or payer that fails to notify the competent authority of keeping books by a tax adviser or other entity authorised to keep books on their behalf.

(4). In the event of an act of lesser gravity, the perpetrator of the prohibited act specified in paragraphs 1-3 shall be subject to a fine for a fiscal offence.

**Art. 61. Unreliable or defective books**

(1). Whoever keeps books unreliably shall be subject to a fine of up to 240 daily rates.

(2). In the event of an act of lesser gravity, the perpetrator of the prohibited act specified in paragraphs 1 shall be subject to a fine for a fiscal offence.

(3). The punishment specified in paragraph 2 shall be imposed also on a person that keeps books defectively.

**Art. 23. Fine**

(1). Imposing a fine, the court shall determine the number of rates and the amount of one daily rate; unless the Code provides otherwise, the lowest number of rates is 10, the highest – 720.

(2). By way of a payment order a fine of up to 200 daily rates may be imposed, unless the Code provides for a less severe penalty.

(3). In determining the daily rate, the court shall take into account the perpetrator's income, personal and family situation, financial situation and earning capacity; the daily rate may not be lower than one thirtieth of the minimum wage or exceed it four hundred times.

## Accounting Law

**Art. 77.** Whoever, contrary to the provisions of the Act:

(1) allows that books of account are not kept at all, are kept contrary to the provisions of the Act, or present unreliable information,

(2) fails to draw up financial statements, consolidates financial statements, management reports, management reports of a capital group, statements on payments to the public administration, consolidated statements on payments to the public administration, draws them up contrary to the provisions of the statute or includes unreliable data in these statements

- is liable to a fine, or imprisonment up to 2 years, or both.

**Art. 79.** Whoever, contrary to the provisions of the Act:

(1). does not have its financial statements audited by a statutory auditor,

(2). does not provide such information, explanations, or representations as may be required by the statutory auditor, or provides information, explanations or representations that are contrary to the findings of fact, or does not allow the statutory auditor to perform its duties,

(3). does not submit the financial statements for publication,

(4). does not submit financial statements, consolidates financial statements, management reports, management reports of a capital group, statements on payments to the public administration, consolidated statements on payments to the public administration in the competent register court,

(4a). does not publish the documents referred to in Articles 49b.9, 55.2c, and 69.5 on the website of a given entity,

(5). does not make available the financial statements and other documents referred to in Article 68,

(6). pursues economic activities consisting in provision of bookkeeping services without fulfilling the requirements referred to in Article 76a.3;

(7). pursues economic activities consisting in provision of bookkeeping services without the mandatory third party liability insurance referred to in Article 76h.1,

(8). terminates a financial statement audit contract without a valid reason or does not notify Polska Agencja Nadzoru Audytowego [the Polish Audit Supervision Agency], and where appropriate - the Polish Financial Supervision Authority, of the termination of that contract,

(9). concludes with an audit firm a contract for statutory audits within the meaning of Article 2(1) of the Act on Statutory Auditors for a period shorter than two years,

(10). applies the contractual clauses referred to in Article 66.5a

- is liable to a fine or restriction of liberty.

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