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| **Implementation Review Group**  **[...] session**  Vienna, [date]  Agenda item 4  State of implementation of the United Nations Convention against Corruption |  |  |
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**Executive summary**

**Note by the Secretariat**

Addendum

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**II. Executive summary**

**Poland**

1. Introduction: overview of the legal and institutional framework of Poland in the context of implementation of the United Nations Convention against Corruption

Poland signed the United Nations Convention against Corruption on 10 December 2003 and ratified it on 15 September 2006.

The implementation by Poland of chapter III and IV of the Convention was reviewed in the fourth year of the first cycle. The executive summary of that review was published on 24 September 2014 (CAC /COSP/IRG/I/4/1/Add.4).

Poland has a civil law system and the main sources of law are the Constitution, statutes, ordinances and regulations issued by the Council of Ministers and ministries, as well as ratified international treaties.

Relevant legislation includes the Constitution, the Acts on the Central Anti-Corruption Bureau, on Civil Service, on the Restriction of the Conduct of Economic Activity by Persons Performing Public Functions, Political Parties, the Public Procurement Law, the Prosecution Service, National Judiciary Council, Anti-Money Laundering and Counter-Terrorism Financing, the Code of Civil Procedure, Civil Code, Criminal Code, Code of Criminal Procedure and the Executive Penal Code.

Institutions with mandates relevant to preventing and countering corruption include the Central Anti-corruption Bureau (CBA), Asset Recovery Office (BOM), Ministry of Justice (MoJ), the National Prosecutor's Office (NPO), Supreme Audit Office (SAO), Police, Border Guards, Internal Security Agency, Military Police and National Revenue Administration, and General Inspector of Financial Information (GIFI).

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

*Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

Poland had an anti-corruption programme from 2018 to 2020. The Supreme Audit Office, in its assessment of that programme, noted that the Minister Coordinator of Special Services had been tasked with the development of the next programme. There is no current anti-corruption strategy or programme and none was under development at the time of the country visit. There is no formal review of the effectiveness of preventive measures. Poland relies primarily on international monitoring mechanisms.

Some prevention anti-corruption initiatives were implemented by CBA, including the publication of anti-corruption guidelines for elected officials and entrepreneurs and the development of an anti-corruption e-learning platform. No specialized education and outreach programmes are implemented.

Relevant legal and administrative measures are evaluated as necessary and may be initiated by CBA and/or ministries. The 2018-2020 programme contained a task to develop a law-making system, which was not implemented. Poland collaborates with other States and with relevant international and regional organizations.

CBA has been notified as the main preventive body and, pursuant to the CBA Act (art. 1) was established as a special service to combat corruption in public and economic life. CBA has preventive functions albeit its statute does not explicitly provide for such. Pursuant to the Act (art. 6), the Head of the CBA is appointed for a term of four years and may be recalled by the Prime Minister after consultations with the President and the Parliamentary Committee for Special Services. The Act defines the eligibility and provides “recall” (removal) criteria for the CBA Head (arts. 7, 8). The Head of CBA reports to the Prime Minister (art. 12). and CBA’s activities are subject to Sejm’s control (art. 5). CBA’s activities are financed from the State budget (article 2). The human and financial resources allocated to CBA were reported as insufficient. No specialized training is provided to CBA staff.

Other bodies with preventive functions include the National Prosecution Office, Supreme Audit Office, Police, Border Guards, Internal Security Agency, Military Police and National Revenue Administration.

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

The Civil Service Act (CSA) and the Labour Code regulate the employment of all public officials. The Civil Service Corps is comprised of staff recruited on the basis of employment contracts; staff granted permanent tenure, who are normally recruited through competitive examination or graduates of the Lech Kaczyński National School of Public Administration (NSPA); and persons occupying senior positions employed on the basis of political appointments (chap. 4 of CSA).

Pursuant to the Constitution (article 148), the Prime Minister is the “official superior of employees of the government administration”, with the support of the Head of the Civil Service (HCS). The HCS office is the central Government organ competent in civil service issues (art. 10) at the Chancellery of the Prime Minister, in particular its Civil Service Department (article 10). HCS reports to the Prime Minister (arts 10-15). The non-political head of governmental bodies is the Director General (DG), who reports to the HCS (art. 25). HCS, who is appointed and dismissed by the Prime Minister, is responsible for ensuring the impartial and politically neutral execution of State objectives and human resources management (art. 17).

There is a Civil Service Council, an opinion-giving and advisory body to the Prime Minister, whose members s/he appoints. The Council is responsible for state budget allocations, normative acts regarding the civil service, civil service training and annual reports of the HCS (arts 19-22). Training, including on ethics and integrity, is mandatory.

CSA (chapter 3) provides that the recruitment should be open and competitive, with the exception of graduates of NSPA (which is directly subordinated to the Prime Minister), who have a fast-track entry into civil service and are appointed by the Prime Minister (arts. 37, 38, 42, 46). Vacancies are published. The state examination for entry into civil service is administered by NSPA (arts. 43, 45 of CSA).

Basic salaries, bonuses and other emoluments are defined in annual State budget acts and CSA (arts. 85-88, 90-93). The promotion system is defined in article 89 of CSA. Resignation and removal procedures are defined in article 71. There are no procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and their rotation. Specialized training is provided,

The criteria concerning candidature for and election to public office, such as Sejm, Senate, and local governments, including on eligibility and disqualification, are regulated in the Constitution (article 99) and the Election Code (article 11). Election committees, which may be created by political parties, coalitions thereof and voters, may nominate candidates for election (chapter 11). The Code provides that persons convicted and imprisoned for intentional indictable offences or tax crimes are disqualified (art. 11 paragraph 2). No sanctions exist for presenting false or incomplete information by candidates.

The funding of candidatures for public office and political parties is regulated in the Act on Political Parties (chapter 4) and the Electoral Code (section I, chap. 14, 15; section IV, chap. 11). The transparency of political financing is enshrined in the Constitution (art. 11 paragraph 2). Donations to parties and election committees are only permitted from Polish citizens who permanently reside in Poland (art. 132 of the Code; art. 25 of the Act). According to the Act (art. 25), donations from a natural person to a political party cannot exceed the yearly minimum wage and donations to the election fund of a political party cannot exceed 15 times the yearly minimum wage. The transparency of donations is regulated in article 23a of the Act. Political parties are obliged to maintain publicly available registers for donations and contracts. Sanctions exist for non-compliance (art. 27c). Pursuant to the Act (arts. 38, 38 (a-d)), political parties are obliged to submit, no later than by 31 March each year, annual financial reports, including an auditor’s opinion and report, to the National Electoral Commission, which holds oversight of political party financing, for its consideration; sanctions exist for non-compliance. The Electoral Code defines the financial reporting requirements for election committees of political parties and sanctions for non-compliance (arts. 142-151).

There exist some ethical guidelines for civil servants. CSA obliges members of the civil service corps to perform tasks honestly, conscientiously and impartially (art. 76). Ordinance no. 70 of the Prime Minister on the guidelines for compliance with the rules of the civil service and on the principles of the civil service code of ethics refers to mandatory principles of legality, rule of law, and increasing public confidence in public administration bodies, as well as principles of protection of human and civil rights, selflessness, openness and transparency, secrecy protected by law, professionalism, liability, reasonable public administration management and open and competitive recruitment procedures (article 1). No sanctions are provided for non-compliance with the Act. There exists a “Collection of Ethical Principles governing the Prosecutors’ Profession” (art. 96 of the Law on Prosecutors), which does not provide for sanctions and is not widely disseminated. The code of ethics for judges does not provide for sanctions. There is no code of ethics for parliamentarians. Disciplinary liabilities and procedures, including establishing disciplinary commissions, are provided in chapter 9 of CSA.

With the exception of a provision in CSA, obliging civil servants to report unlawful acts (art. 77), there is no legal or administrative framework as such at the national level for the reporting by public officials of acts of corruption and for the protection of whistleblowers. The Criminal Code obliges the management of public bodies to inform law enforcement agencies of suspected offences (art. 231). Some government agencies have internal inspection units to which offences may be reported.

There is no definition of conflict of interest as such in Poland. Some institutions, without using the phrase "conflict of interest" explicitly, fulfil the functions of identifying and managing such conflicts. The Constitution (art. 153 paragraph 1) provides for impartial and politically neutral discharge of obligations by civil servants. CSA provides that civil servants may not take up additional employment without the written consent of their Director General or perform activities that contravene to the Act (art. 80). CBA verifies the accuracy of conflict of interest declarations only for five categories of civil servants, mostly in the area of public health (art. 8 (c) of the Act on consultants in health care; art. 20 para. 2 of the Act on reimbursement of medicines, foodstuffs for particular nutritional purposes and medical substances; art. 31, sect. 9 of the Act on health care services financed from public funds and art. 6 paragraph 2 of the Act on certain contracts concluded in connection with the execution of procurements of fundamental importance for the security of the state). The Code of Criminal Procedure (art. 41) and the Code of Civil Procedure (art. 49) provide for the exclusion of judges, when self-reported or reported, when his/her impartiality is or might be breached. The Law on Prosecution Office (arts. 96 and 103) regulates the conflict of interests within the prosecution service, including outside activities/ employment. All public prosecutors are obliged to submit financial interest declarations, which are published (art. 104). The system for all categories of civil servants is honour-based.

The Act on the restriction of conducting business activity by persons performing public functions only applies to individuals in top executive functions (arts. 1 and 2) and has a limited scope and a number of exemptions (art. 7). Pursuant to articles 8 and 10, individuals covered by that Act must declare their assets and their spouses’ business activity, albeit not children. Asset declarations are legally protected secrets, except of those of President and the First President of the Supreme Administrative Court, the Presidents, Vice-Presidents, management board and director-level staff of the National Bank. Article 12 of the Act provides for the establishment of a register of benefits. Sanctions for non-compliance are defined in article 5.

Legal provisions on asset declarations are dispersed in differetn legal acts and, to some extent, are imprecise. The review of asset declarations of Supreme Court judges is provided in article 45 of the Act. Supreme Court judges are prohibited to take up employment except research or teaching or activities, including on their own account, that would hinder the performance of their duties, dignity of the office or undermine trust in judicial impartiality or independence (art. 44 of the Supreme Court Act). Judges are prohibited from serving on management and supervisory boards of private entities or for-profit foundations or hold more than 10% of shares representing more than 10% of the share capital of a company (article 44 of the Act on the Supreme Court and article 86 of the Act on the Common Courts). While all judges are must submit asset declarations pursuant to article 45 of the Act on the Supreme Court Act and article 87 of Common Courts Act (CCA). Paragraph 6 of article 87 of CCA has been used by members of the Constitutional Tribunal to exempt themselves from this requirement, despite also the requirement for the judges of the Tribunal to submit their financial statements (art. 35 of the Constitutional Tribunal Act). The system is honour-based. There is no systematized identification, verification and management system for actions covered in article 8, paragraph 5, of the Convention, with Poland observing that, it was necessary to reform its legal framework on asset declarations in order to fully harmonize it with the Convention.

The independence of the judiciary is established in articles 178 to 181 of the Constitution. Article 187 of the Constitution provides for the establishment of a National Council of the Judiciary, comprising the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court, an individual appointed by the President of Poland, 15 judges chosen from amongst the judges of the Supreme Court, common courts, administrative courts and military courts, four members chosen by the Sejm from amongst its Deputies and two members chosen by the Senate from amongst its Senators. The Act on the National Council of Judiciary (ANCJ) was amended to provide for the selection of the 15 judges, who were previously selected from among judges, by the Sejm through voting.

The Council’s functions are defined in article 3 of ANCJ and include, inter alia, (a) issuing opinions on acts concerning the judiciary and judges; (b) adopting resolutions on matters referred to the Constitutional Tribunal for an examination of their consistency with the Constitution with regard to independence of courts and judges; review and assessment of candidates for judicial appointments and submission to the President of motions for appointment of judges of the Supreme Court and Supreme Administrative Court, common, provincial, administrative and military courts; (c) retirement of judges; (d) disciplinary proceedings regarding judges of common and military courts; and (e) issuing professional ethical rules and compliance monitoring.

Article 183 of the Constitution provides that the First President of the Supreme Court is appointed by the President of Poland for a six-year term from among candidates proposed by the General Assembly of the Judges of the Supreme Court. The Council proposes candidates for judicial positions on the Supreme Court. Following a 2018 amendment to the Act on the National Council of Judiciary, it is no longer possible to file appeals regarding such decisions with the Supreme Administrative Court.

Pursuant to the Act on Constitutional Tribunal, its 15 judges, who are proposed and appointed by the Sejm for a nine-year term, are independent and subject only to the Constitution (arts. 6 and 7). According to a ruling of the Supreme Administrative Court dated 16 November 2022, the Tribunal lost its ability to adjudicate lawfully as it was composed of individuals who were not qualified as judges.

Judicial vacancies are published. Pursuant to article 11 of ANJC, candidates are assessed and voted on by the Council and submitted to the President for a final decision. The selection process is defined in articles 34 to 37a of ANJC. Rejected candidates for judicial positions in common, provincial administrative and military courts may appeal through ordinary courts, followed by the Supreme Court (article 183 of the Constitution).

According to article 183 of the Constitution, the Supreme Court exercises supervision of the common and military courts. On 8 February 2023, Sejm adopted a bill ending sanctions against dissenting judges and transferring the disciplinary competence from the Supreme Court to the Supreme Administrative Court. At the time of the country visit, the bill had been signed by the President and referred to the Constitutional Tribunal for an opinion. The First President of the Supreme Court and the NJC issued negative opinions concerning the bill in view of its impact on the independence of the judiciary.

The Act on the Supreme Court provides that its judges retire at 65 unless they retire at their own request or at the request of the Supreme Court College if a judge us found to be unfit for duty (the resolutions are adopted by the NJC, which also considers appeals of its decisions, pursuant to articles 37-38). The President of Poland decides on the voluntary or mandatory date of retirement of Supreme Court judges (article 39). Court hearings are public. Specialized training is provided.

The work of the prosecution service and its independence are regulated in the Act on the Public Prosecutor's Office (PPO) in articles 2-8 and its internal governance rules. Its independence is limited to the obligation to enforce dispositions, guidelines and orders of superior public prosecutors (in case of disagreement, the prosecutors may request reassignment). The Minister of Justice also serves as the Public Prosecutor-General and s/he is appointed by the President. Appointment and dismissal procedures, as well as basic salaries, are defined in PPO (section IV, chapters 1 and 2). Penalties are defined in chapter 3 of the Act.

*Public procurement and management of public finances (art. 9)*

Poland transposed the following Directives of the European Parliament and of the Council: 2014/24/EU on public procurement, 2014/25/EU on procurement of entities operating in the water, energy, transport and postal services sectors, 2009/81/EC on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defense and security, Council Directive 89/665/EEC on the coordination of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, 92/113/EEC on coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors and 2014/23/EU on the award of concessions contracts.

The system of public procurement, which is centralized, is regulated by the Public Procurement Act (PPA) and overseen by the Public Procurement Office (PPO). PPA defines the principles of contract awards (title I, chapter 2), procedures, including award criteria (title II, chap. I), open and restricted procedures (art. 10) and technical competence (section 5). The contracting authorities are obliged to place notices in the Public Procurement Bulletin and the Official Journal of the EU (art. 11a).

There exists an e-procurement system. Tender notices above 130,000 zloty (approximately USD 30,000) are published (art. 214). Appeal procedures are defined in Title VI of PPA through the National Appeal Chamber in the first instance– its decisions are equally binding as a court’s decision (article 197). Complaints against the Chamber’s decisions may be filed with to courts (art. 198a). While conflicts of interest of procurement personnel are regulated in article 56 of PPA, the system is trust-based.

Procedures for the adoption and implementation of the national budget are defined in the Constitution (art. 219a), the Public Finance Act and regulations of the Ministry of Finance. Pursuant to the Constitution (article 222), the Council of Minister submits to the Sejm a draft budget. Art. 223 of the Constitution provides that the Senate may, within the 20 days following receipt, adopt amendments. The President (art. 224(1) of the Constitution) signs the budget. The draft budget is published on the website of the Ministry of Finance and is subject to consultations with the Social Dialogue Council, a national tripartite dialogue on public and legal issues, comprising representatives of employees, employers and government. The Ministry of Finance and the Supreme Audit publish annual reports on budget implementation.

The auditing and accounting system is regulated in the Act on Public Finance, the Internal Audit Standards in the Public Finance Sector Entities, the guidelines issued by the Central Harmonisation Unit in the Ministry of Finance (which is in charge of internal audit coordination) and the Charter of Internal Audit in Public Finance Sector Entities. Local government entities are excluded from reporting obligations to the Central Harmonisation Unit in the Ministry of Finance. The legislative work is underway to include reporting obligations also to these types of entities. The Minister of Finance issued Detailed Guidelines on Planning and Risk Management for the Public Finance Sector.

The Accounting Act outlines the requirements and standards for recording, storing and preserving the integrity of accounting books, among others. The falsification of accounting books, records and other documents is criminalized under articles 77 and 79 of the Accounting Act and articles 270-272 of the Criminal Code.

*Public reporting; participation of society (arts. 10 and 13)*

The right to information is enshrined in the Constitution (art. 61). Access to information regulated through the Act on Access to Public Information, which provides, inter alia, that Members of the Council of Ministers (Prime Minister, Deputy Prime Ministers, ministers and committee chairpersons) and the Head of the Chancellery of the Prime Minister must make public information available (art. 4). The right to public information includes the right to obtain public information access to official documents (art. 3). Official documents are published in the Public Information Bulletin.

The Act provides for the right of appeal, in the second instance, to an administrative court. The Ombudsman has a supervisory function for the right of access to information and, in principle, may take action as required. The Supreme Chamber of Control has a supervisory role.

CBA publishes annual reports on corruption crimes (maps of corruption), based on inputs from public administration entities and plans to update its portal to focus on anti-corruption education. Universities do not have specialized curricula.

Legislative acts drafted by the Government are subject to public consultation through an online platform, which is accessible to NGOs.

*Private sector (art. 12)*

Poland prohibits corruption in the private sector in the Penal Code (article 296).

There are no specific measures to promote cooperation between private sector entities and the law enforcement. No legal entity has been held criminally liable for corruption in a private sector. Only very few private entities, mostly large international companies, have corporate governance codes.

Accounting and auditing requirements are regulated in the Act on Accounting, which transposes the EU Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings. The profession of accountant is not regulated in Poland.

Information about beneficial owners is collected by the Ministry of Public Finance, in a public Central Register of Beneficial Ownership, established in Chapter 6 of the AML/CFT Act, which also defines beneficial ownership (article 2(2)(1)). The Register is publicly accessible free of charge. The Register contains information on members of the management board and direct stakeholders. The obligated institutions must identify the beneficial owner and take measures to verify its identity pursuant to the article 34(1)(2) of the AML/CFT Act which requires that the identification and verification of identity must be carried out based on documents, data or information gathered from reliable and independent sources. The National Court Register (NCR) contains data on beneficial owners of the entities registered in the register (articles 38-39 and 49 of the NCR Act).

Every license has its own legal act supplemented by the relevant administrative regulations. There exist regulations as regards EU subsidies.

The Act on the limitation of the performance of commercial activity by persons fulfilling public functions (article 7) only regulates post-employment restrictions for some categories of civil servants, in particular at the top executive and management levels.

There exist specific provisions regarding the maintenance of books, records, accounting and auditing standards, as defined in the Accounting Act (arts. 20-25). False accounting is penalized under article 77. Accounting books and documents must be stored for five years (art 74 (2)).

Poland specifically disallows the tax deductibility of expenses that constitute bribes, in line with the Corporate Income Tax Act (art. 16(1)(66)).

*Measures to prevent money-laundering (art. 14)*

The Polish system against money laundering is regulated by the Act of 1 March 2018 on counteracting money laundering and terrorist financing (AML/CFT) which implements Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015, on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing. The act regulates financial institutions, including money or value transfer service providers, and designated non-financial businesses and professions. The AML/CFT Act also lists the supervisory authorities (art. 130), as well as details on risk management by obliged entities (arts. 147)

Poland adopts a risk-based approach to supervision for the purpose of combating money-laundering, on the basis of the guidelines of the Financial Action Task Force and the European supervisory authorities. Poland carried out its National Risk Assessment (NRA) in 2017-2019.

Article 35(1)(4) of the AML/CFT Act provides that customer due diligence (CDD) measures must be conducted by all obligated institutions when establishing a business relationship or performing an occasional transaction. In case of a higher risk of money laundering the obligated institutions must apply enhanced customer due diligence measures. The relevant CDD documents are kept for five years.

Politically exposed persons (PEP), their business associates and family members are defined in article 2(2)(3), (2)(11), (2)(12), and in article 46 of the AML/CTF Act. In dealing with both national and foreign PEPs, their family and business associates the obligated persons must apply enhanced due diligence measures (Article 46 (6) AML/CTF Act).

The law establishes requirements for record-keeping (Art. 49 (1) and reporting suspicious transactions (74(1), Article 86(1), Article 89 (1), and Article 90 AML/CTF Act).

Poland implements a cross-border cash declaration system for incoming/outgoing transportation of cash or monetary instruments with a threshold of 10.000 EUR (on non- EU borders) based on Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering or leaving the Union. According to the Penal Fiscal Code of 10 September 1999, failure to report to customs or Border Guard incoming or outgoing transportation of cash or monetary instruments or providing false information is subject to a fine. Art. 30 para 3 of the Fiscal Penal code provides for confiscation of the cash. Cash transportation in post and freight is prohibited (Annex 2 to Decision No.1/2014/CZI of the Member of the Management Board of Poczta Polska S.A. of 2 January 2014, Annex No. 2 to Resolution No. 48/2018 of the Management Board of Poczta Polska S.A. of 20 March 2018). The obligated institution shall notify GIFI of any circumstances which may indicate the suspicion of committing the crime of money laundering or financing of terrorism (art. 74/1 of the AML/CFT Act).

According to the AML/CFT Act the General Inspector of Financial Information (GIFI) is the coordinator of the AML system. GIFI may exchange information with competent authorities of foreign countries, foreign institutions and international organizations counteracting money laundering as well as with the European supervision authorities without the need for a prior agreement to be concluded. (Interpretation from art. 110-116 of the AML/CTF Act). Art. 111 and 116 cover the exchange of information with other (non-FIU) parties. GIFI had entered into 92 bilateral and 2 multilateral agreements with foreign counterparts defining the procedure and the technical terms of exchanging information.

GIFI is appointed and dismissed by the Prime Minister at the request of the Minister for public finance after consultations with the Minister for coordination of the special services. GIFI is supported by the Department of Financial Information of the Ministry of Finance, which acts as administrative style Financial Intelligence Unit (FIU) (art. 12/2 and 5 AML/CTF Act).

FIU of Poland is a member of the Egmont Group and exchanges information with foreign FIUs through the Egmont Secure Web, EUROPOL through EU FIU.Net. Information and documents can be made available to non-EU foreign FIUs on the basis of reciprocity.

Beneficial ownership is defined in Article 2(2)(1) of the AML/CFT Act. The Central Register of Beneficial Owners has been established by Chapter 6 of the AML/CTF Act and is publicly available. Information must be submitted to the Register within 7 days following the day of entry of companies in the National Court Register (art. 58 AML/CTF Act) and in the case of change in the information submitted - within 14 days following the change (Article 60(1) of the AML/CTF Act). In addition to that register, the identity of the beneficial owners could be determined through the Central Information about Bank Accounts, the Land Register, Companies Register, and the System of Financial Information.

In years 2019-2021, Poland was evaluated under the fifth round of mutual evaluations by MONEYVAL, and an Evaluation Report was adopted in December 2021. The 1st follow-up report will be presented at the MONEYVAL Plenary meeting in December 2023.

Administrative and penal sanctions for non-compliance with the AML/CTF Act are provided in Chapter 13 and 14 of the Act (Art.147-157 of the AML/CFT Act). .

2.2. Challenges in implementation

It is recommended that Poland:

* Develop and implement an effective, coordinated anti-corruption policy that promotes the participation of society and reflects the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability, and establish a national monitoring and reporting mechanism on its implementation (art. 5 (1)).
* Endeavor to strengthen the practices aimed at the prevention of corruption, with a view to making them more systematic and targeted, including by developing effective education and outreach programmes (art. 5 (2)).
* Endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption, including by developing a monitoring and evaluation mechanism for this purpose (art. 5 (3)).
* Ensure that CBA has the necessary independence to enable it to perform its functions without undue influence, including by reviewing the appointment and removal procedures for its head and by adopting the necessary regulations in this regard, and provide to it the necessary material resources, as well as specialized staff and training (art. 6 (2)).
* Endeavor to identify public positions considered vulnerable to corruption and to adopt procedures for the selection, training and rotation, where appropriate, of individuals for such positions (art. 7 (1)(b)).
* Consider strengthening legislation by introducing sanctions for presenting false or incomplete information in the fulfillment of disclosure requirements or for conduct during the campaign that would disqualify a candidate from presenting a candidacy for election (art. 7 (2)).
* Endeavor to clarify and strengthen the current framework on conflicts of interest, including by adopting a comprehensive and unified legal and administrative framework to prevent, identify, verify and manage conflicts of interest for all categories of public officials, including, in particular, for parliamentarians, high-level government officials, members of the judiciary, prosecution and public procurement personnel; and provide guidance and training to public officials in this regard (articles 7 (4), 9 and 11).
* Consider adopting measures and systems to facilitate the reporting of acts of corruption by public officials to appropriate authorities by providing a comprehensive definition of protection disclosures in the legislation, establishing clear reporting channels, introducing effecting protections against discrimination for public officials who report corruption offences and raising awareness among public officials (article 8 (4)).
* Endeavor to adopt a comprehensive and unified legal and administrative framework for the declaration of outside activities, employment, investments, assets and substantial gifts or benefits, including in particular for parliamentarians, high-level government officials and all members of the judiciary and prosecutors (articles 8 (5) and 11).
* Take measures to strengthen the independence and integrity of members of the judiciary and prosecution service at all levels, including by reviewing the selection, disciplinary, removal, and retirement procedures and by establishing an effective system of appeal against appointment, transfer removal decisions and disciplinary proceedings, and, furthermore, amend the Act on the Supreme Court to remove the prerogative of the President with regard to the determination of the date of retirement of Supreme Court judges (article 11).
* Take necessary measures to ensure that any alleged misconduct by judges is investigated independently, impartially, comprehensively and fairly, that decisions are taken in the framework of fair procedures before a competent, independent and impartial body and that the right to substantively appeal the decisions of the Supreme Administrative Court in disciplinary cases, by an independent judicial body is ensured (art. 11).
* Safeguard the independence of the National Judicial Council, as enshrined in the Constitution, by abolishing amendments that are contrary to its constitutional composition and refraining from any endeavors to alter such a composition through any secondary legal instruments (article 11).
* Strengthen measures aimed to prevent involvement of the private sector in corruption and, in that regard, consider: (a) developing procedures to promote cooperation between law enforcement agencies and relevant private entities, including through the establishment of communication channels, incentives for reporting and protection mechanisms (article 12 para. (2) (a)); consider promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including the development of codes of conduct (article 12 para. (2) (b)); consider strengthening the measures to prevent conflicts of interest, including by expanding the scope of post-employment restrictions to a wider range of relevant public officials (article 12 para. (2) (e)).

3. Chapter V: asset recovery

*General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)*

Polish law contains provisions for the forfeiture of instrumentalities, objects, and proceeds of crime, whether direct or indirect, including those transferred to another person. Asset recovery, including extended confiscation, is regulated in Chapter 32 of the Criminal Code (fine), articles 39 (the criminal penalty of ‘payment’), 44 (forfeiture), 45 (extended confiscation), 45a (non-conviction-based confiscation), as well as compensatory measures (article 46: compensation for damage or injury, the award of punitive damages to the injured party or an appropriate institution). Article 299, para. 7 of the Penal Code, specifically provides for forfeiture in cases of money laundering.

Seizure and freezing of assets are regulated in the Code of Criminal Procedure (CCP) articles 32, 291, 292, 292a, 292b, 293, and 294. A methodology for property seizure has been developed, addressing extended confiscation, presumptions related to the allocation of assets, forfeiture of entire enterprises, as well as cryptocurrencies.

Mutual legal assistance in criminal matters, including for the purposes of asset recovery, is provided on the basis of the provisions of EU law, bilateral and multilateral treaties, including the Convention, and based on reciprocity (art. 588 CCP).

Poland requires dual criminality to provide mutual legal assistance; however, the lack of dual criminality does not lead to automatic rejection of the MLA request (art. 588, para. 3, CCP). The court examines the request to determine if it is in accordance with the basic principles of the Polish legal system.

Poland uses the Convention as basis for international cooperation.

Asset recovery office (BOM) was established within the Police to strengthen the coordination of the national institutions engaged in asset recovery.

Exchange of asset recovery information with law enforcement authorities of the Member States of the European Union is regulated by the Act on exchanging information with EU law enforcement authorities of 16 September 2011. The Act clarifies the tasks and powers of the national asset recovery contact point (BOM). The Police, Internal Inspectorate of the Penitentiary Service, State Security Office, Internal Security Agency, Central Anti-Corruption Bureau, Border Guard, Military Police, Prosecutor's Office, National Tax Administration are authorized to exchange information via BOM.

Poland has no domestic legislation providing for spontaneous exchange of information for asset recovery, or for law enforcement cooperation. Spontaneous sharing of information is carried out in accordance with the relevant EU legislation, multilateral and bilateral treaties, and through inter-agency agreements on cooperation and information exchange with foreign financial intelligence units, EUROPOL and INTERPOL. FIU proactively exchanges information when the investigation or analysis indicates that it could be valuable for the FIU partners (art. 110 AML / CTF Act). FIU proactively shares information on a suspicious transaction, when it may be of interest for the foreign counterpart (Art. 112, para. 3 of the AML/CFT Act). Article 115 para 1 of the AML/CTF Act also requires that the FIU shares information with supervisory bodies of other countries.

Poland is a party to more than 50 bilateral and multilateral treaties and agreements on judicial and legal cooperation that can be used in the context of asset recovery.

*Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)*

According to the Anti-Money Laundering and Counter-Terrorism Financing Act of March 1, 2018, obligated institutions must assess the risk of money laundering associated with the specific business relationship or an occasional transaction, assess the level of the risk and document the identified risk, taking into account, in particular, factors related to type of client, geographical area, purpose of account, type of products, services and methods of their distribution, level of assets deposited by the customer or value of transactions performed, regularity or duration of business relationship. Based on this risk assessment, obligated institutions obtain further information about their clients and ascertain the purpose for which clients use the services and products. . The KYC regime is applied also to the originator of transactions, and checking against sanctions lists (EU regulation 2015/847). This system is extended to money remitters. A transaction without originator identification can be rejected, or considered suspicious and reported, or both. Enhanced due diligence is applied to natural or legal persons, types of accounts and transactions on the basis of Article 43, 44, 44a, 44b, and 45 of the AML/CFT Act.

Customer due diligence measures are applied based on the identified risk (article 36 AML/CTF). Customer due diligence measures include mandatory identification of the beneficial owner. Verification of identity of a customer, a person acting of its behalf and the beneficial owner is based on data from identity documents, registers, other documents, data or information originating from a reliable and independent source (article 37 AML/CTF).

In the case of a customer being a legal person or an organizational unit without legal personality – obtain information on the ownership and control structure (article 36(1) (2) AML/CTF). The obligated institutions carry out ongoing analysis of transactions.

Non-face-to-face business relationships are deemed to be high risk (article 43 (2) AML/CTF). Obligated entities have internal procedures to deal with such high-risk situations. CDD measures must be performed when the customer enters into a relation with a bank (article 35(1)(1) AML/CFT). Anonymous accounts or accounts in fictitious names are not allowed.

Banking activity in Poland may be conducted in the form of a domestic bank, a branch of a foreign bank (from a country outside the EU/EEA) and as branch of an EU credit institution. Establishment of a bank is subject to licensing by the PFSA according to Articles 30 and 31of the Banking Act (which, among other criteria, requires banks to have a seat in Poland), thus effectively prohibiting the establishment of shell banks ~~allowed .~~

Poland does not require public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. There is no centralized system for financial disclosure for public officials.

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

Poland allows States parties to initiate civil action in its courts to establish ownership of property acquired through the commission of an offence established by the Convention. While there is no specific legislation, in accordance with article 12 of the Code of Civil Procedure (Act of 17 November 1964) claims arising from crime can be asserted in civil proceedings or, in the cases provided for by law, in criminal proceedings. According to Art. 64 of the Code, legal persons have the legal capacity to act as a party to the process.

Plaintiff States can recover damages through civil litigation (e.g. under tort law, following a prior conviction) and/or as a party in criminal proceedings and/or through administrative proceedings; (art.64 Code of Civil Procedure provides for no limitations on locus standi). There has been no court practice on that.

The plaintiff State can recover actual loss (Art. 415 Civil Code), seek compensation for moral damages (445 para 1 of the Civil Code) and future potential losses (art. 24 Civil Code).

The provisions on international cooperation are found in the Code of Criminal Procedure. Execution of foreign confiscation orders is possible through mutual legal assistance. The procedures are different for EU member States (Chapters 62a and 62b of the Code of the Criminal Procedure) and non-EU member states (Chapter 62, articles 582-589 Code of Criminal Procedure and the respective mutual legal assistance treaty or on the basis of reciprocity).

The court does not require evidence to confirm that the requesting State is the legitimate owner of the assets.

Non-conviction-based confiscation is possible (article 45a of the Criminal Code). Seizure of property upon order issued by an EU court or competent authority is regulated by Chapter 62a (article xxx) of the Code of Criminal Procedure.

Poland permits its competent authorities to freeze or seize property upon a request that provides a reasonable basis believe that there are sufficient grounds for taking such actions or on the basis of an issued order. The legal grounds to seize property upon request of a country which is not a member of the EU are contained in article 585 subparagraph 3 of the CCP. It is possible to enforce a decision of an EU Member States on seizure of property under the Council Framework Decision 2003/577/ JHA and Chapter 62b of the Code of Criminal Procedure.

In relation to non-EU States, seizure of property may be performed under article 585 pkt 3 CCP and article 607 CCP. The MLA request might also be executed on the basis of bilateral or multilateral international agreement or reciprocity. When executing an MLA request Poland applies the provisions of the domestic law.

Using MLA, the following actions may be taken: service of documents on persons or on agencies, witnesses or experts hearing, inspection and searches of premises and other places and persons, confiscation of material objects and their delivery abroad, summoning of persons to appear before the court or state prosecutor, bringing of persons under detention, giving information about domestic law and information from records, data bases, documents etc. as well as information from the National Criminal Record of Sentenced Persons.

Formal and material requirements for the implementation of the seizure or freezing order are formulated in art 589 M of Code of Criminal Procedure and are in line with the Convention.

Poland may refuse cooperation or lift provisional measures if the requesting State Party does not provide sufficient and timely evidence.

The Polish domestic law does not provide for enabling the requesting State party to present its reasons to prolong the effect of the provisional measures taken; however the established practice is that prior to the refusal of a MLA request Poland asks the requesting party to provide supplementary information in relation to the request. . Poland has not made arrangements (legislative and other measures) to take into account rights of bona fide third parties.

*Return and disposal of assets (art. 57)*

Poland may return confiscated property or its value to EU Member States (Article 611 FZB in conjunction with article 188 Executive Penal Code).

The return of confiscated assets to non-EU Member States is possible on the basis of bilateral multilateral treaties. Poland recognizes UNCAC as basis for rendering MLA in the absence of a bilateral MLA treaty.

According to Article FZE § 1. CC, costs associated with the requests for asset return are borne by the State Treasury of Poland. In justified cases, the court could make a request to the competent court or another authority of the requesting state for reimbursement of a part of the expenses incurred.

Polish legislation does not contain provisions on the rights of bona fide third parties in the asset return process.

Poland does not have a dedicated Asset Management agency. The confiscated movables assets are sold on public sale (art. 188 Executive Penal Code). The real estate is transferred for management to the competent public administration bodies.

Proceeds or instrumentalities of crime (Art 187 Executive Penal Code) are managed by court executors until the confiscation. Management of confiscated assets falls within the purview of the Tax administration (art 187 a and 188 Executive Penal Code). Equal value is confiscated on the basis of article 206 para 1 of the Executive Penal Code. The injured party may claim damages on the basis of the final court decision.

Poland has no legislation allowing, in the case of proceeds of any other offence covered by the Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, to return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property (para 3b, art 57 UNCAC)

Poland had not concluded agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

3.1. Observations on the implementation of the articles under review

3.2. Successes and good practices

* Poland uses UNCAC as basis for international cooperation.

3.3. Challenges in implementation

It is recommended that Poland:

* Ensure that public officials having an interest in or signature or other authority over a financial account in a foreign country report that relationship to appropriate authorities and maintain appropriate records related to such accounts (art. 52 para. 6).
* Adopt legislation and measures to take into account rights of bona fide third parties in the asset return process. (art. 57 para. 2)
* Adopt legislation allowing, in the case of proceeds of any other offence covered by the Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, to return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property (art 57 para. 3b)