

Draft Country Review Report of

Poland

Review by *Hungary and Togo* of the implementation by *Poland* of articles 5-14 and 51-59 of the United Nations Convention against Corruption for the review cycle 2016-2021

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by [name of State under review] of the Convention is based on the completed response to the comprehensive self-assessment checklist received from [name of State under review], and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from [names of the two reviewing States and the State under review], by means of [telephone conferences, videoconferences, e-mail exchanges or any further means of direct dialogue in accordance with the terms of reference] and involving [names of experts involved].

[Optional paragraph 6:

Option 1

6. A country visit, agreed to by [*name* *of* *State* *under* *review*], was conducted from [*date*] to [*date*].

Option 2

6. A joint meeting between [*name* *of* *State* *under* *review*] and [*names* *of* *reviewing* *States*] was held at the United Nations Office at Vienna from [*date*] to [*date*].

Option 3

6. A country visit, agreed to by [*name* *of* *State* *under* *review*], was conducted from [*date*] to [*date*]; and a joint meeting between [*name* *of* *State* *under* *review*] and [*names* *of* *reviewing* *States*] was held at the United Nations Office at Vienna from [*date*] to [*date*].

]

III. Executive summary

7. [1. Introduction : Overview of the legal and institutional framework of [country under review] in the context of UNCAC implementation

2. Chapter […]

2.1 Observations on the implementation of the articles under review

2.2 Successes and good practices

2.3 Challenges in implementation [where applicable]

2.4 Technical assistance needs identified to improve implementation of the Convention

3. Chapter […]

3.1 Observations on the implementation of the articles under review

3.2 Successes and good practices

3.3 Challenges in implementation [where applicable]

3.4 Technical assistance needs identified to improve implementation of the Convention]

IV. Implementation of the Convention

A. Ratification of the Convention

Please provide information on the ratification/acceptance/approval/accession process of the United Nations Convention against Corruption in your country (date of ratification/ acceptance/approval of/accession to the Convention, date of entry into force of the Convention in your country, procedure to be followed for ratification/acceptance/approval of/accession to international conventions, etc).

Poland signed the Convention on 10 December 2003 and ratified it on 15 September 2006.

B. Legal and institutional system of Poland

Please briefly describe the legal and institutional system of your country.

Poland is a constitutional republic and the Polish legal system is based on the Constitution. Poland's current constitution was adopted by the National Assembly of Poland on 2 April 1997, approved by a national referendum on 25 May 1997, and came into effect on 17 October 1997. It guarantees a multi-party state, the freedoms of religion, speech and assembly. It requires public officials to pursue ecologically sound public policy and acknowledges the inviolability of the home, the right to form trade unions, and to strike, whilst at the same time prohibiting the practices of forced medical experimentation, torture and corporal punishment.

A president is a head of state. The government structure centers on the Council of Ministers, led by a prime minister. The president appoints the cabinet according to the proposals of the prime minister, typically from the majority coalition in the Sejm. The president is elected by popular vote every five years.

Polish voters elect a bicameral parliament consisting of a 460-member lower house (Sejm) and a 100-member upper house Senate (Senat). When sitting in joint session, members of the Sejm and Senat form the National Assembly (the Zgromadzenie Narodowe). The National Assembly is formed on three occasions: when a new president takes the oath of office; when an indictment against the President of the Republic is brought to the State Tribunal (Trybunał Stanu); and when a president's permanent incapacity to exercise his duties due to the state of his health is declared.

The judicial branch plays an important role in decision-making. Its major institutions include the Supreme Court (Sąd Najwyższy); the Supreme Administrative Court (Naczelny Sąd Administracyjny); the Constitutional Tribunal (Trybunał Konstytucyjny); and the State Tribunal (Trybunał Stanu). On the approval of the Senat, the Sejm also appoints the ombudsman or the Commissioner for Civil Rights Protection (Rzecznik Praw Obywatelskich) for a five-year term. The ombudsman has the duty of guarding the observance and implementation of the rights and liberties of Polish citizens and residents, of the law and of principles of community life and social justice.

The public prosecutor’s office consists of the Public Prosecutor General, the National Public Prosecutor, the Public Prosecutor General’s other deputies, and public prosecutors of universal prosecutorial bodies, as well as public prosecutors of the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation.

The Public Prosecutor General is the chief prosecutorial body. The office of the Public Prosecutor General is held by the Minister of Justice. Public prosecutors of universal prosecutorial bodies include public prosecutors of the National Public Prosecutor’s Office, provincial public prosecutor’s offices (prokuratury regionalne), regional public prosecutor’s offices (prokuratury okręgowe) and district public prosecutor’s offices (prokuratury rejonowe).

Public prosecutors of the Institute of National Remembrance include public prosecutors of the Chief Commission for the Prosecution of Crimes against the Polish Nation, hereafter referred to as “the Chief Commission”, public prosecutors of branch commissions for the prosecution of crimes against the Polish Nation, hereafter referred to as “branch commissions”, public prosecutors of the Vetting Office and public prosecutors of branch vetting offices.

The public prosecutor’s office executes tasks related to prosecuting crimes, and maintains law and order.The tasks specified above are executed by the Public Prosecutor General, the National Public Prosecutor and the Public Prosecutor General’s other deputies, as well as public prosecutors subordinate to them by means of:

1) handling or supervising preparatory proceedings in criminal cases and exercising the function of public prosecuting attorney before courts;

2) bringing actions in civil cases, as well as submitting motions and participating in court proceedings in civil cases relative to the labour and social security law if the protection of law and order, social interest, or citizens’ property or rights requires it;

3) taking measures provided for by the law, aiming at a correct and uniform application of the law in court and administrative proceedings, in petty crime cases and in other proceedings provided for by the law;

4) exercising surveillance over the enforcement of temporary detention decisions and other decisions concerning detention;

5) conducting research on crime, fighting crime and crime prevention, as well as cooperating with scientific institutions with regard to research on crime, fighting crime, crime prevention and crime control;

6) gathering, processing and analyzing data in IT systems, including personal data acquired from the proceedings handled or supervised pursuant to the law or from the participation in court and administrative proceedings, in petty crime cases or other proceedings provided for by the law, transmitting the data and the analyses’ results to competent authorities, including authorities of another country if the law or an international agreement ratified by the Republic of Poland stipulates it;

7) appealing to courts against unlawful administrative decisions and participating in court proceedings relative to such decisions’ conformity with the law;

8) coordinating the activity relative to prosecuting crimes or fiscal offences conducted by other state bodies;

9) cooperating with state bodies, state organizational units and social organizations with regard to preventing crime and other violations of law;

10) cooperating with the Head of the National Crime Information Centre in so far as it is necessary to the execution of his/her statutory tasks;

11) cooperating and participating with regard to measures taken by international or supranational organisations and international teams operating under international agreements, including agreements establishing international organizations, ratified by the Republic of Poland;

12) giving opinions on drafts of normative acts;

13) cooperating with organizations for public prosecutors or employees of the public prosecutor's office, including co-financing of joint research or training projects;

14) taking other actions provided for by laws.

In matters subject to the jurisdiction of military courts, the tasks referred to in the above list are performed by public prosecutors of universal prosecutorial bodies performing duties in the Department for Military Matters and in departments for military matters in regional and district public prosecutor’s offices. Public prosecutors for military matters perform duties also in matters outside the jurisdiction of military courts. A public prosecutor can participate in any proceedings conducted by authorities and public administration bodies, courts and tribunals, unless laws stipulate otherwise. A public prosecutor is obliged to administer the acts specified by laws in compliance with the principle of impartiality and equal treatment of all citizens.

The Public Prosecutor General is in charge of the Public Prosecutor’s Office in person or through the National Public Prosecutor and the Public Prosecutor General’s other deputies by issuing dispositions, guidelines and orders.

The Public Prosecutor General is the superior of public prosecutors of universal prosecutorial bodies and public prosecutors of the Institute of National Remembrance.

The Public Prosecutor General’s powers and tasks specified in laws may also be exercised and performed by the authorized National Public Prosecutor or the Public Prosecutor General’s other deputy. The Public Prosecutor General issues a relevant disposition on that matter. Should the office of the Public Prosecutor General be vacant, or should he/she be temporarily unable to perform the Public Prosecutor General’s duties, he/she is replaced by the National Public Prosecutor. The National Public Prosecutor as the Public Prosecutor General’s first deputy, as well as the Public Prosecutor General’s other deputies are appointed from among public prosecutors of the National Public Prosecutor’s Office and dismissed from their post by the President of the Council of Ministers upon a motion of the Public Prosecutor General. The National Public Prosecutor and the Public Prosecutor General’s other deputies are appointed after consulting the President of the Republic of Poland, and dismissed upon his/her approval.

One of the Public Prosecutor General’s deputies is the Public Prosecutor General’s Deputy for Organized Crime and Corruption.

One of the Public Prosecutor General’s deputies is the Public Prosecutor General’s Deputy for Military Matters. Another one of the Public Prosecutor General’s deputies is the Director of the Chief Commission, appointed from among public prosecutors of the Institute of National Remembrance. The appointment and dismissal of the Director of the Chief Commission is immediately notified to the President of the Institute of National Remembrance. The Director of the Chief Commission is in charge of the Chief Commission’s operations.

A provincial, regional and district public prosecutor is appointed, after presenting his/her candidacy to the relevant public prosecutors’ assembly and dismissed by the Public Prosecutor General upon a motion of the National Public Prosecutor.

Universal prosecutorial bodies are: the National Public Prosecutor’s Office, provincial public prosecutor’s offices (prokuratury regionalne), regional public prosecutor’s offices (prokuratury okręgowe) and district public prosecutor’s offices (prokuratury rejonowe).The National Public Prosecutor’s Office provides service to the Public Prosecutor General and to the National Public Prosecutor.

The National Public Prosecutor’s Office’s principal tasks include also ensuring the participation of a public prosecutor in proceedings before the Constitutional Tribunal, the Supreme Court and the Supreme Administrative Court, handling and supervising preparatory proceedings, exercising instance and service-related supervision over proceedings handled in provincial public prosecutor’s offices, coordination of the service-related supervision over preparatory proceedings handled by other prosecutorial bodies, carrying out inspections in provincial public prosecutor’s offices, administering acts in relation to legal transactions with other countries and maintaining a central base of legal opinions and a base of the Public Prosecutor General’s guidelines and dispositions.

The National Public Prosecutor is in charge of the National Public Prosecutor’s Office.

The National Public Prosecutor is the superior public prosecutor of public prosecutors of the National Public Prosecutor’s Offices and public prosecutors of other universal prosecutorial bodies. Exercising the powers and performing the tasks of the National Public Prosecutor may be entrusted to the National Public Prosecutor’s deputy exclusively in the matters related to heading the National Public Prosecutor’s Office. The National Public Prosecutor’s deputy is appointed and dismissed by the Public Prosecutor General upon a motion of the National Public Prosecutor.

In the National Public Prosecutor’s Office, departments and offices are established. Within departments and offices, it is possible to establish, if need be, divisions or other organizational bodies, including branches.

One of the departments in the National Public Prosecutor’s Office is the Department for Organized Crime and Corruption, which is in charge of matters relative to prosecuting organized crime, the most grievous corruption crimes and crimes of terrorist nature.

One of the departments in the National Public Prosecutor’s Office is the Department for Military Matters, which is in charge of matters subject to the jurisdiction of military courts.

The Division of Internal Affairs is an independent unit in the National Public Prosecutor’s Office, in charge of the matters relative to preparatory proceedings concerning the most grievous crimes committed by judges, court assessors, public prosecutors and public prosecutor’s assessors, as well as exercising the function of a public prosecuting attorney in those cases before the court. The Division of Internal Affairs is presided over by a chief, who is the superior public prosecutor of the public prosecutors performing their duties in that division.

Local Divisions of the Department for Organized Crime and Corruption of the National Public Prosecutor’s Office are established at provincial public prosecutor’s offices.

The principal tasks of a Local Division of the Department for Organized Crime and Corruption of the National Public Prosecutor’s Office include handling and supervising preparatory proceedings in cases relative to prosecuting organized crime, the most grievous corruption crimes and crimes of terrorist nature, as well as exercising the function of the public prosecuting attorney in those cases before the court. A Local Division of the Department for Organized Crime and Corruption of the National Public Prosecutor’s Office is presided over by a chief. The chief of a Local Division of the Department for Organized Crime and Corruption of the National Public Prosecutor’s Office is the superior public prosecutor of public prosecutors of the provincial public prosecutor’s office, public prosecutors of regional public prosecutor’s offices and public prosecutors of district public prosecutor’s offices who perform their duties in that division.

A provincial public prosecutor’s office is established for an area of competence of at least two regional public prosecutor’s offices.

The principal tasks of a provincial public prosecutor’s office include ensuring the public prosecutor’s participation in proceedings instituted pursuant to the law before courts of general jurisdiction and provincial administrative courts; handling and supervising preparatory proceedings in cases relative to prosecuting the most grievous financial and economic crimes and tax crimes, and in cases against economic transactions concerning property of great value; exercising supervision over proceedings instituted in regional public prosecutor’s offices; as well as carrying out inspections in regional and district public prosecutor’s offices.

A provincial public prosecutor’s office is headed by the provincial public prosecutor.

The regional public prosecutor’s office is established for an area of competence of at least two district public prosecutor’s offices.

The principal tasks of a regional public prosecutor’s office include ensuring a public prosecutor’s participation in proceedings instituted by virtue of the law before courts of general jurisdiction as well as, in the offices where departments for military matters have been created, before regional military courts; handling and supervising preparatory proceedings in cases relative to grievous penal, financial and tax crimes, as well as, in the offices where departments for military matters have been created, in cases subject to the jurisdiction of regional military courts; exercising supervision over proceedings instituted in district public prosecutor’s offices; as well as carrying out inspections in district public prosecutor’s offices.

A regional public prosecutor’s office is headed by the regional public prosecutor.

A district public prosecutor’s office is established for one or more communes; in justified cases, it is possible to establish more than one district public prosecutor’s office within one commune.

A district public prosecutor’s office is headed by the district public prosecutor.

In provincial and regional public prosecutor’s offices, divisions are created. It is also possible to create sectors, either independent or subordinate to divisions.

In district public prosecutor’s offices, it is possible to create sectors or sections.

Departments and offices of the National Public Prosecutor’s Office are presided over by directors (dyrektorzy), divisions of the departments and offices of the National Public Prosecutor’s Office and divisions in provincial and regional public prosecutor’s offices are presided over by chiefs (naczelnicy), and sectors and sections in regional and district public prosecutor’s offices, as well as branches of regional and district public prosecutor’s offices are presided over by heads (kierownicy).

In a separate communication addressed and e-mailed to the secretariat (uncac.cop@unodc.org), please provide a list of relevant laws, policies and/or other measures that are cited in the responses to the self-assessment checklist along with, if available online, a hyperlink to each document and, if available, summaries of such documents. For those documents not available online, please include the texts of those documents and, if available, summaries thereof in an attachment to the e-mail. If available, please also provide a link to, or the texts of, any versions of these documents in other official languages of the United Nations (Arabic, Chinese, English, French, Russian or Spanish). Please revert to this question after finishing your self-assessment to ensure that all legislation, policies and/or other measures you have cited are included in the list.

Documentation as required has been provided to the secretariat.

Please provide a hyperlink to or copy of any available assessments of measures to combat corruption and mechanisms to review the implementation of such measures taken by your country that you wish to share as good practices.

<https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/1680716516>

<http://www.oecd.org/daf/anti-bribery/Polandphase3reportEN.pdf> <http://www.oecd.org/daf/anti-bribery/Poland-Phase-3-Written-Follow-Up-Report-ENG.pdf>

Please provide the relevant information regarding the preparation of your responses to the self-assessment checklist.

Information was obtained from authorities mentioned in the item on institutions involved.

Please describe three practices that you consider to be good practices in the implementation of the chapters of the Convention that are under review.

The National Prosecutor's order of 31 March 2017 (ref. no. PK I BP 024.4.2017) on application of seizure of property introduced the obligation to examine the premises for the application of seizure of property in any case in which suspects are charged with crimes for which property- related penalties or penal measures can be imposed. It particularly concerns forfeiture of proceeds of crime, the obligation to redress the damage and compensation for harm suffered by the victims, as well as the costs of the proceedings that may be incurred by the accused.

The order emphasized the necessity to identify and search for suspects' property by law enforcement authorities.

As a result of the order, in 2017 there was a significant increase in secured property, as compared to previous years, which illustrates the following:

|  |  |  |
| --- | --- | --- |
| Year | Number of decisions on seizure of property | Value of sized property |
| 2017 | 45.340 | 1 288 409 200,33 PLN (352 024 371,67 USD) |
| 2016 | 21.109 | 251 889 855,00 PLN (68 822 364,75 USD) |
| 2015 | 30.820 | 303 509,100 PLN (82 925,98 USD) |

Two lists of property secured by the Police in a given year in the conducted cases:

2015 - 905 452 561 PLN

2016 - 730 717 322 PLN

2017 - 1 453 745 554 PLN

The property in cases completed in the Police in a given calendar year is:

2015 - 406 736 729 PLN

2016 - 256 495 821 PLN

2017 - 393 851 434 PLN

Another noteworthy good practice that positively influenced the implementation of the provisions of the Convention on the return of proceeds from crime was elaborating and dissemination among prosecutors in the field, a written methodology for tracing and seizure of property. The methodology was drawn up jointly by prosecutors as well as the law enforcement authorities including the Police, Central Anticorruption Bureau, Border Guard and Ministry of Justice and Ministry of Finance. The contents of methodology encompasses practical aspects of financial investigation, identifying and tracing of property belonging to suspects and the proper manner of seizure of specific types of assets ranging from the real estate to crypto currencies.

Please describe (cite and summarize) the measures/steps, if any, your country needs to take, together with the related time frame, to ensure full compliance with the chapters of the Convention that are under review, and specifically indicate to which articles of the Convention such measures would relate.

Please see the response above.

C. Implementation of selected articles

II. Preventive measures

Article 5. Preventive anti-corruption policies and practices

Paragraph 1 of article 5

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

On January 28, 2016, the new Law on the Prosecutor's Office was adopted, under which, at a level of the National Prosecutor’s Office (supreme prosecution body in Poland) the Department for Organized Crime and Corruption was established. The Department and its 11 Local Departments set up in main cities of Poland are specialized to investigate organized crime and the most serious cases of corruption in the parliamentary bodies, government administration, self-government bodies, law enforcement and control agencies. Hitherto, such crimes have been investigated by prosecution units at all levels, and there were no clear criteria for the assignment of the most serious corruption cases.

Currently, such investigations are conducted at the level of the National Public Prosecutor's Office. The Department is subordinated directly to the Deputy Prosecutor General for Organized Crime and Corruption. There is also a specialized prosecutor in the Department who deals with the coordination of the on-going investigations involving corruption.

Moreover, in the structure of the National Prosecutor's Office, the Internal Affairs Department was created, whose task is to conduct and supervise preparatory proceedings in cases concerning the most serious corruption among judiciary and prosecutors.

On January 6, 2018, based on Resolution No. 207 of the Council of Ministers of December 19, 2017, the Governmental Anti-Corruption Programme for 2018-2020 (GACP) was established. The adopted Programme is the result of work of the Central Anticorruption Bureau (CBA), undertaken as a result of arrangements between the Minister of Interior and Administration, which is responsible for the implementation of the previous anti-corruption programme, and the Minister - Coordinator of Special Services.

The Governmental Anti-Corruption Program for 2018-2020 implements the obligation to conduct systematic actions in the field of anti-corruption resulting from the recommendation of GRECO, recommendations of the European Union as well as the United Nations Convention against Corruption (UNCAC).

Established Programme is not a multi-annual program as defined in the Act of August 27, 2009 on Public Finance (Journal of Laws of 2016, item 1870, as amended). First of all, it should be a document creating the directions of the national anti-corruption policy in the coming years.

Formulating new assumptions, it was assumed that the GACP is to act as a tool ensuring flexible planning and management of legislative, operational, preventive and educational activities undertaken by state services and authorities in the area of counteracting corruption crime. As the main objective, the Central Anticorruption Bureau (CBA) indicated a real reduction of corruption crime in the country and raising public awareness in the field of counteracting corrupt behavior.

With the entry into force of this new legal act, resolution No 37 of the Council of Ministers of 1 April 2014 regarding the Government Anti-Corruption Programme for 2014-2019 has lost its legal force.

For the purpose of the Program, the following are defined as specific objectives:

• strengthening preventive and educational activities;

• improvement of mechanisms for monitoring corruption threats and monitoring of legal regulations in the field of counteracting corruption crime;

• intensifying cooperation and coordination of actions between law enforcement authorities.

These objectives are in line with the specific objective defined in the Strategy for Responsible Development until 2020 (with a perspective until 2030), which was adopted by the Council of Ministers on February 14, 2017 and constitutes an update of the National Development Strategy 2020, i.e. strengthen level of security and public order as a condition for the development of the country. Effective measures taken in connection with its implementation are to limit phenomena extremely harmful to the functioning of the State, including corruption as well as to respond to clear social expectations.

Compared to the previous anti-corruption programme, the number of tasks has been reduced to 8, and the activities to 33, resignation from permanent tasks was retreated due to the fact that they are implemented on the basis of other legal acts.

The work of the Inter-ministerial Working Group for Coordination and Monitoring of the Implementation of the Governmental Anti-Corruption Program for 2018-2020 is chaired by the Head of the Central Anticorruption Bureau, therefore on the Bureau new duties were imposed such as the coordination and monitoring of the Program and provide the administrative service.

The proposed changes are to result in the introduction and using of new standards for the diagnosis, monitoring and prevention of corruption threats, and should ensure the development of effective response mechanisms and improve the effectiveness of relevant services as a necessary condition for the proper functioning of the State.

As part of the implementation of the GACP for 2018-2020, a task to develop principles for the protection of the law-making system has been realizing, as well as the most important public procurement and monitoring the exercise of rights in the area of commercialization and consolidation of property by companies of significant importance for the national economy. The Head of the CBA, as the leading authority, oversees the action to develop a mechanism for assessing draft legal regulations in the government legislative process in terms of corruption threats. As a part of the implementation of another task, guidelines are developed regarding uniform organizational and legal solutions in the field of counteracting corruption in the public administration.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In connection with the adoption on 1 April 2014 by the Council of Ministers of resolutions regarding the Governmental Anti-Corruption Programme for the years 2014-2019, the CBA undertook activities related to the implementation of the program. However, after over two years of operation the effects of its implementation were considered unsatisfactory. The assessment made by the Supreme Audit Office in 2016 showed long delays in its implementation, ineffective implementation model, incorrect assignment of tasks or activities to some implementers. The years 2014-2016 have revealed the untapped role of the managing institution managed previous anti-corruption program for 2014-2019, i.e. the Inter-ministerial Workgroup for Coordination and Monitoring Implementation. An analysis of the program’s achievements for the years 2014-2019 has shown that continuing the program in its unchanged form and on the applicable rules bring a risk of failure to achieve the set goals. As a result of arrangements between the Minister of Interior and Administration and the Minister - Special Services Coordinator in August 2016, the Central Anticorruption Bureau (CBA) was obliged to start work on a new document, which resulted in place of the Government Anti-Corruption Program for 2014-2019 new Governmental Anti-Corruption Program for 2018-2020 has been established.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Have an anti-corruption strategy and an action plan basing on the strategy been adopted in Poland?

Above mentioned *Government Anti-Corruption Programme 2018-2020 (GACP)* should be seen as a national anti-corruption strategy and an action plan based on this strategy (annex to the programme).

Can the Governmental Anti-Corruption Programme for 2018-2020 be considered as an anti-corruption strategy or as an action plan?

*The Government Anti-Corruption Programme 2018-2020 (GACP)* should be considered as the national anti-corruption strategy and the annex to the programme as the strategy's action plan. It covers 33 activities included in the 8 identified tasks. The strategy adopts new standards for the diagnosis, monitoring and prevention of corruption threats, as well as the development of effective mechanisms to respond to them, including improving the effectiveness of the relevant services as a necessary condition for the proper functioning of the State. The Strategy and Action Plan have also implemented the recommendations of the GRECO, the European Union and the United Nations Convention against Corruption evaluation reports.

Which state body is responsible for the development and implementation of anti-corruption policy and coordination of anti-corruption preventive measures in Poland?

As was described in this section, the institution responsible for the development of GACP 2018-2020 and its implementation is the Central Anti-Corruption Bureau (CBA). The Government of the Republic of Poland is responsible for implementing the State's anti-corruption policy. It is implemented by the government administration entities indicated in the Program, through implementation activities coordinated by the Head of the CBA within the Inter-Ministerial Team for Coordination and Monitoring of the Implementation of GACP 2018-2020.

Were representatives of civil society and private sector involved in the development of the Governmental Anti-Corruption Programme for 2018-2020 (GACP)?

Yes. Before the adoption by the Council of Ministers, the GACP 2018-2020 project was consulted with representatives of civil society (e.g. Batory Foundation). Representatives of civil society are also invited to participate in the implementation of the anti-corruption strategy, e.g. in developing a mechanism for evaluating draft legislation in the Government's legislative process against corruption risks.

How are representatives of civil society and private sector involved in the implementation of the GASP 2018-2020 and in carrying out control over the implementation of the GASP?

The implementation of GACP 2018-2020 enables the activation of bottom-up activities in administration and civil society. Representatives of civil society have access to information on the implementation of the GACP, which is published in the annual report on CBA activities. In addition, they can comment on the government's anti-corruption policy in the press and other public and social media.

How often is the implementation of the GASP evaluated?

The Supreme Audit Office (NIK) assesses the effectiveness of the implementation of GACP 2018-2020 and the actions set out in the Action Plan, together with recommendations for the completion of the strategy. Additionally, during the implementation of the GASP, the evaluation of its individual areas was carried out by international evaluation groups within the framework of GRECO and UNCAC evaluations. Moreover, reports on the implementation of activities undertaken within the framework of the GACP are submitted by the entities responsible at annual meetings of the Inter-Ministerial Team for Coordination and Monitoring of GACP Implementation, organised by the CBA.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Has the Strategy been adopted taking into consideration other relevant policies of the State party?

Does the Strategy contain measures on all mandatory provisions of Chapter II?

Yes. The national anti-corruption strategy (*GACP 2018-2020*) was adopted in coherence with the *Strategy for Responsible Development 2020 (in perspective to 2030)* and the *Efficient State Strategy 2020*. The anti-corruption strategy contains measures concerning most of the mandatory provisions of Chapter II of the UN Convention against Corruption (UNCAC).

Please describe how you ensure coordination in the implementation of the Strategy and its action plans (in particular in relation to the Inter-ministerial Working Group for Coordination and Monitoring of the Implementation of the Governmental Anti-Corruption Program for 2018-2020)?

The coordination of the implementation of the strategy is ensured by the Inter-Ministerial Team for the Coordination and Monitoring of the Implementation of the GACP 2018-2020, whose secretariat is located in the CBA. The Head of the CBA arranges meetings with Team once a year where representatives of ministries present the status of the current implementation of the action plan. Moreover, GAP 2018-2020 implementation teams are appointed in ministries and public administration offices, which are responsible for implementation of the Programme.

Is there a system of monitoring and evaluation? Which body or bodies exercises oversight and monitoring, is it the Office of the President of the Russian Federation on fighting corruption?

The process of monitoring the implementation of the strategy takes is realised through regular meetings of the Inter-Ministerial Team for Coordination and Monitoring of the Implementation of GACP 2018-2020 arranged by the Head of the CBA. Formally, the Council of Ministers is responsible for the GACP 2018-2020 implementation process. It is accepted that after the implementation of the GACP, Supreme Chamber of Control (NIK) assesses the implementation of the strategy.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 2 of article 5

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Since 2010, officers of the Central Anti-Corruption Bureau (CBA), based on their experience in the field of combating and preventing corruption, provide training for employees of State institutions, public administration institutions and entrepreneurs with the State Treasury shareholding. Trainings are also conducted during various workshops and conferences devoted to anti-corruption issues. By the end of August 2018, over than 1 000 trainings were conducted at 679 institutions. Over 50 000 people have been trained. The training is supplemented by publications issued by the CBA to public officials and entrepreneurs.

In 2010-2017, the CBA published 45 publications, of which 36 are in Polish, 9 in English and 6 in Polish and English. Publications are also available in the form of e-books and audiobooks on the CBA's official website: www.cba.gov.pl or [www.antykorupcja.gov.pl](http://www.antykorupcja.gov.pl).

The CBA published inter alia:

- Anti-corruption guidelines for public officials; - Anti-corruption guidelines for entrepreneurs;

- Recommendations of anticorruption proceedings in public procurements;

- Political corruption. Guidelines for representatives of the authorities elected by national elections.

In May 2014, the CBA anti-corruption e-learning platform was established (https://www.szkolenia-antykorupupcyjne.edu.pl), which was set up under the project financed by the EU Commission entitled: Raising of the anti-corruption training system. It is a publicly available, free anti-corruption training platform for anyone interested in the subject of corruption in Poland, in particular public officials, entrepreneurs, academia and students. Since the time of set up, the platform has undergone several upgrades. The current version, tailored to the needs of the target groups indicated, includes the latest legislative and organizational regulations in the field of anti-corruption.

Three training modules are available in two language versions - Polish and English:

1) Corruption in public administration - contains information on legal and institutional instruments to fight against corruption, anti-corruption laws and methods of counteracting the phenomenon, contains examples of corruption and guidelines on how public administration employees should behave in case of corruption and how they can contribute to limit it;

2) Corruption in business - presents information about systemic and institutional anti-corruption solutions operating in the legal and business circulation, as well as about the economic consequences of the occurrence of corruption at the interface between the administration, private sector, society and the State.

3) Preventing corruption - presents the State's anti-corruption policy and whistleblowing issues, presents the role of non-governmental organizations in counteracting corruption and social research related to this issue, provides information on the impact of corruption on the economy, society and politics.

Each module is finished with a test. After passing it, you can generate a certificate confirming the completion of the course. The statistical data shows in August 2018 that from the beginning of the anti-corruption e-learning platform was set up, more than 126 thousand completed training people.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The previous reports on the implementation of the Program were prepared by the Minister of Internal Affairs and Administration as the chairman of the Interministerial Working Group for Coordination and Monitoring Implementation of the Governmental Anti- Corruption Programme for the years 2014-2019. The Government Anti-Corruption Program for 2018-2020, as a new program, has not yet been evaluated.

Persons entrusted with the executive functions have an obligation to report the information about the obtained benefits to the Benefits Register. The Register is kept by the National Electoral Commission which discloses the data contained therein to the general public once a year.

The corruption-generating mechanisms are revealed each year by the Supreme Chamber of Control in its annual Reports on the activity of the Supreme Chamber of Control, which are drawn up based on the results of controls carried out by the Chamber. Other analytical material published annually is the Map of Corruption - corruption in Poland. It is the report drawn up thanks to cooperation of the Central Anti-Corruption Bureau with the Ministry of Justice, the Ministry of Finance, the General Prosecutor’s Office, the Police, the Internal Security Agency, the Border Guard, the Military Police, the Customs Service and the Prison Service. The publication includes basic data on combating corruption crime in Poland.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article. Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Are there particular measures, practices or reports that have demonstrated their effectiveness (has there been any evaluation of the impact)?

One of the elements of assessing the effectiveness of implementing the anti-corruption strategy is the Supreme Chamber of Control’s (NIK) audit report, where strengths and weaknesses of the strategy implementation and recommendations indicating the direction of further effective national anti-corruption policy are published. The results of CBA’s preventive measures are published in the Annual Report on the CBA's activities, as well as on websites (www.cba.gov.pl, www.antykorupcja.gov.pl). In addition, the result of anti-corruption training activities is the number of institutions and officials trained by the CBA and the number of people who completed online training on the CBA anti-corruption e-learning training platform. The determinant of the impact of the effectiveness of anti-corruption activities are public opinion surveys conducted by independent public opinion research centers (e.g. the Public Opinion Research Center).

Is there any specific evidence that could back the claim that these practices and measures were effective?

The CBA's activities and practices in the area of corruption prevention have a direct impact on changing trends in the perception of corruption in the country. For example, opinion polls conducted by the Public Opinion Research Center (CBOS) in 2017 show that, compared to 2013, the number of people who know personally someone who takes bribes has decreased (from 16% in 2013 to 10% in 2017) and the number of people who admit to giving a bribe in the last 3-4 years has decreased (from 9% in 2013 to 6% in 2017).

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 3 of article 5

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

A specialized prosecutor from the Department for Organized Crime and Corruption of the National Prosecutor's Office coordinating the investigations of the most serious cases of corruption in the country, in 2016-2017 prepared annual reports on the coordination carried out, including statistical data on the number of conducted investigations of this type, the manner of their completion, identified areas of corruption threat, as well as description of selected proceedings.

As part of the implementation of the GACP for 2018-2020, a task to develop principles for the protection of the law-making system has been realizing, as well as the most important public procurement and monitoring the exercise of rights in the area of commercialization and consolidation of property by companies of significant importance for the national economy. The Head of the CAB, as the leading authority, oversees the action to develop a mechanism for assessing draft legal regulations in the government legislative process in terms of corruption threats. As a part of the implementation of another task, guidelines are developed regarding uniform organizational and legal solutions in the field of counteracting corruption in the public administration.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Implementation of the GACP for 2018-2020 is conducted at three levels: level I - Coordinators of the Program implementation, level II - implementing institution, level III - the Council of Ministers. Detailed information can be found in the attached resolution No. 207 of the Council of Ministers of December 19, 2017 establishing the Governmental Anti-Corruption Program for 2018-2020.

Prime Minister acting on the basis of art. 6 par. 1 of the Act of 23 December 1994 on the Supreme Chamber of Control (Journal of Laws of 2017, item 524), will apply to the Supreme Chamber of Control to carry out an audit of the implementation of the Program after its completion. On an ongoing basis, information on the status of the implementation of the Program's tasks / activities can be found in the CBA’s website service <http://ww.antykorupcja.gov.pl>

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 4 of article 5

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

On November 17, 2016, the Prosecutor of the Department for Organized Crime and Corruption responsible for the coordination of investigations in corruption cases, at the First Anti-Corruption Conference organized by the Police Headquarters at the Higher Police School in Szczytno, delivered a lecture entitled "Combating corruption in Poland, prevention or repression?". The lecture addressed the issue of corruption in business.

On November 23-24, 2017, the Second Anti-Corruption Conference, organized by the Department for Combating Corruption of the Criminal Bureau of the Police Headquarters was held. The aim of the conference was primarily to discuss issues related to effective prevention and combating broadly understood corruption in the light of applicable law in cooperation with law enforcement agencies and government administration. At the conference, the prosecutor responsible for coordinating corruption delivered a lecture entitled "Criminal law mechanisms in the fight against economic corruption and preventive impact of criminal proceedings and sentences imposed on such matters”.

The Polish Prosecutor's Office is not party to sectoral agreements in the field of combating corruption or disposing of property from crime but is a party to general cooperation agreements with the Dominican Republic (2015) Uzbekistan (2013), Russian Federation (2010), Lithuania (2006) and Ukraine prosecutors' offices (1998), Bulgaria (1985), Cuba (1987), Hungary (1988), China (1988) and Mongolia (1989).

Nonetheless the National Prosecutor’s Office is involved in the work of the International Association of Prosecutors (IAP) which is an international organization committed to setting and raising standards of professional conduct and ethics for prosecutors worldwide, promoting the rule of law, fairness, impartiality and respect for human rights and improving international co-operation to combat crime. National Prosecution Office also participates in the network of anticorruption authorities - The European

Partners against Corruption (EPAC) which offers a medium for practitioners to share experiences, identify opportunities, and cooperate across national borders in developing common strategies and high professional standards.

The National Prosecutor of Poland actively participates in the meetings of chief public prosecutors of the Visegrad Group countries (Poland, Czech Republic, Slovakia and Hungary). At the meetings the most actual problems in combating crime in the region are discussed.

The Central Anticorruption Bureau (CBA) cooperates with many international organizations and law enforcement agencies from other countries. The aim of the cooperation is to exchange best practices, knowledge on corruption phenomena, solutions and instruments functioning abroad, as well as the current exchange of information related to operational and investigative activities carried out by the services of other countries. In implementing the provisions of the Act on the CBA, making the establishment of cooperation with foreign entities dependent on obtaining the consent of the Prime Minister, CBA has so far been approved for bilateral cooperation with 51 countries and 12 international organizations (including the UN, World Bank, Interpol, Europol, Eurojust, EUBAM, OLAF, EPAC, GRECO, IACA). CBA is also a member of other international initiatives, including EPAC/EACN -European Partners Against Corruption / European Anti-Corruption Network. The Steering Committee of the Regional Anti-Corruption Initiative (RAI) associating countries in the region of Southeastern Europe has granted the CBA status observer. This allows the Bureau to participate in various types of anti-corruption initiatives, such as: international projects, trainings, seminars and educational activities, including scientific ones. The Central Anticorruption Bureau (CBA) also established cooperation with the World Bank in the field of corruption prevention.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Within the Program "Prevention of and Fight against Crime" (ISEC), the EU Commission decided to grant the CBA for the implementation of the Development of the anti-corruption training system. The co-beneficiary of the project was the Lithuanian Special Investigation Service (STT), and the partner of the project - the Latvian Office for Counteracting and Combating Corruption (KNAB). The project was implementing by 36 months in 2013-2015. The sixth international anti-corruption training conferences was held, addressed to representatives of public administration, scientific communities and institutions involved in combating corruption as well as in 2014 an e-learning platform was established as a tool for anti-corruption education and communication for civil servants, entrepreneurs and the public The platform aims to raise the level of public awareness about corruption and its counteraction. English version of the platform has also been provided.

In the years 2014-2016, the Central Anti-Corruption Bureau (CBA) carried out an international project S4ACA -Siena for Anti-corruption Authorities from ISEC funds to build and implement the EUROPOL SIENA information exchange system together with the Austrian Federal Anticorruption Bureau (BAK). The project enabled access to the Europol secure information exchange system for the anti-corruption services involved in the project. In 2013, the CBA in cooperation with the Polish Police General Headquarters organized the 13th Annual International Conference (EPAC/EACN), which was held in Krakow (Poland). The conference was attended by 93 participants - heads of services and anti-corruption institutions from the Europe. Cooperation with the World Bank has resulted in the development of a joint publication entitled: Aware of fraud and corruption. Handbook for officials dealing in public procurement.

On the occasion of the International Anti-Corruption Day celebrated on December 9, the CBA has been organizing from 2010 the Annual International Anticorruption Conferences in cooperation with other government agencies and NGOs. So far, nearly 1000 guests from Poland and abroad have participated in the meetings organized by the CBA. The CBA participates in and supports anti-corruption training courses implemented under the EU Twinning assistance in the field of preventing and combating corruption for representatives of anti-corruption authorities of other countries (e.g. Ukraine). The Bureau also participates in the CEPOL program in the field of exchange of law enforcement officers carrying out activities related to preventing and combating corruption. Until now, the CBA participated in three editions of the program, enabling its officers to exchange experiences and good practices as part of study visits to the anti-corruption bodies of other EU and partner countries.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

No assistance would be required.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

No assistance has been provided.

Article 6. Preventive anti-corruption body or bodies

Paragraph 1 of article 6

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Central Anti-Corruption Bureau (CBA) is a special service established to fight corruption in public and economic area, in particular in the State and local government institutions, as well as to combat activities that undermine the economic interests of the State. It operates on the basis of the Act of June 9, 2006 on the Central Anticorruption Bureau (consolidated text: Journal of Laws of 2017, item 1993).

The Head of the CBA is the central government administration body supervised by the Prime Minister. His activity is subject to the control of the Parliament (Sejm), in accordance with article 6 of the CBA Act, In addition, in accordance with article 2 of the CBA Act:

*2. In order to accomplish the tasks of the CBA, the Head of the Central Anti-Corruption Bureau may undertake cooperation with competent authorities and services of other States as well as with international organisations.*

*2a. The undertaking of the cooperation, referred to in section 2, may take place after the receipt of the consent of the Prime Minister.*

According to art. 12 para. 3 of the CBA Act, Head of the Central Anticorruption Bureau presents, annually until March 31 to the Prime Minister and Parliament’s Special Services Committee the CBA's activities report. Article 12 para. 4 says that the Head of the CBA announces to the Sejm and the Senate annually, by March 31, information on the results of the CBA, with the exception of classified information. Report on the results of the CBA's activity in a given year is published on the CBA's website. (Information on the results of operations of the Central Anticorruption Bureau in 2017- see attachment)

Information contains data of an open nature on the subject of intelligence and investigative, control, analytical and information activities, educational and preventive activities, international cooperation and organizational matters. The Head of the CBA also presents information on the results of the CBA's activities in a given year at meetings of the Sejm of the Republic of Poland and the Senate of the Republic of Poland.

In addition, in line with art. 12 para. 2 of the CBA Act, the Head of the CBA, at least 2 months before the end of the calendar year, shall submit to the Prime Minister for approval the annual CBA plan for the next year. In accordance with article 6 of the CBA Act, the Head of the CBA is appointed for a 4-year term and may be recalled by the Prime Minister after a consultation with the President of the Republic of Poland, the Special Services Committee and the Parliamentary (Sejm) for Special Services. Re-appointment to the post of the Head may take place only once.

In accordance with article 7 of the CBA Act:

1. The function of the Head of the CBA or of the Deputy Head of the CBA may be performed by a person who:

1) has exclusively Polish citizenship;

2) possesses full public rights;

3) displays an immaculate moral, civil and patriotic attitude;

4) has not been convicted of an intentional offence prosecuted by the public prosecutor, or for a fiscal offence;

5) satisfies the requirements set forth in the regulations on the protection of classified information within the scope of access to information constituting classified information marked with the “top secret” clause;

6) has a higher education;

7) has not served as a professional soldier, worked for or co-operated with the State security services mentioned in Art. 5 of the Act on the Institute of National Remembrance - Commission for the Prosecution of Offences against the Polish Nation of 18 December 1998 (Journal of Laws No. 155, item 1016, as amended) nor was a judge who, when ruling, offended the dignity of the post, betraying judicial independence.

2. The function of the Head of the CBA or of the Deputy Head of the CBA shall not be combined with another public function.

3. The Head of the CBA or the Deputy Head of the CBA shall not remain in an employment relationship with another employer or undertake another remunerative activity outside of the service.

4. The Head of the CBA or the Deputy Head of the CBA shall not be a member of a political party or participate in the activities of that party or on its behalf.

Competences of the Central Anti-Corruption Bureau also include educational activity in the area of preventing corruption. The tasks of the Bureau primarily include: (a) the identification, prevention and detection of corruption offences and prosecution of perpetrators as well as revealing and preventing instances of failure to adhere to regulations concerning pursuit of economic activity by individuals performing public functions; (b)to document the bases and to initiate implementation of regulations on the return of benefits obtained on false pretences at the expense of the State Treasury or other state legal persons; (c) to reveal instances of failure to adhere to legally defined procedures of making and implementing decisions concerning: privatisation and commercialisation, financial support, granting public procurement contracts, disposal of assets of: public finance sector entities, beneficiaries of public funds, enterprises with State Treasury interest or local government units, granting of concessions, permits, exemptions for entities and objects, reliefs, preferences, contingents, plafonds, bank sureties and guarantees; and (d) to control correctness and adequacy of asset declarations or declarations on pursuing economic activity filed by individuals who fulfil public functions.

Also, prevention activities form an important part of Central Anti-Corruption Bureau’s operations. In addition, it also conducts prophylactic and educational activities. In this respect, it works with other institutions and NGOs that deal with corruption. The CBA has created an anti-corruption e-learning platform, which is located on the website of the Bureau (https://www.szkolenia-antykorupcyjne.edu.pl). This website is addressed to civil servants and can also be used by PTEF.

The Central Anti-Corruption Bureau has 880 officers and employees; its 2017 budget was approximately PLN 150 million. The Central Anti-Corruption Bureau is supervised by the Prime Minister via the Minister - Member of the Council of Ministers - Coordinator of Special Services.

The corruption-generating mechanisms are revealed each year by the Supreme Chamber of Control in its annual Reports on the activity of the Supreme Chamber of Control, which are drawn up based on the results of controls carried out by the Chamber. Other analytical material published annually is the Map of Corruption - corruption in Poland. It is the report drawn up thanks to cooperation of the Central Anti-Corruption Bureau with the Ministry of Justice, the Ministry of Finance, the General Prosecutor’s Office, the Police, the Internal Security Agency, the Border Guard, the Military Police, the Customs Service and the Prison Service. The publication includes basic data on combating corruption crime in Poland.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The CBA monitors existing threats on an ongoing basis. For example, in 2013, the Bureau issued a preventive and educational publication entitled *Anticipated corruption threats in Poland*. The authors pointed out areas which from the point of view of the economic interests of the State may be particularly threatened by the occurrence of irregularities. The publication was based on the conducted analyses and based on the experience of cases carried out by the CBA. Its source was also the reports and studies of over 20 services, organs and institutions, which the Bureau turned to. The CBA also publishes a popular science magazine entitled Anticorruption Review, in which up to now the topics have been addressed, inter alia: corruption in the context of power institutions, compliance, anti-corruption institutions in Central and Eastern Europe, as well as whistleblowers. CBA publishes annually information on corruption crime in Poland as a Map of Corruption. The aim of the report is to compile data on the issue of combating corruption crime and analysis of individual factors of the phenomenon. The report is prepared on the basis of the CBA's own data and information provided by Ministry of Justice, Public Prosecutor's Office, Police, Internal Security Agency, Border Guard, Military Police, Prison Service and the National Treasury Administration.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observatios* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Are there other bodies which implement the preventive functions foreseen in Chapter II, in addition to the CBA? What is the role of the line ministries and the civil service in the prevention of corruption?

Yes. Other bodies also perform preventive role related to corruption prevention. As indicated above, the GACP 2018-2020 Action Plan imposes an anti-corruption policy on all participating bodies within their area of competence. The CBA has got a leading role in coordinating the implementation of the GACP and in preventing and combating corruption in public and economic life, in particular in public and local government institutions. Moreover, these functions are performed by other law enforcement agencies (including the Police, Border Guard, Internal Security Agency, Military Police, National Revenue Administration) and individual ministries, as well as the Chancellery of the Prime Minister in the area of civil service. These bodies have carried out the activities assigned to them by the GACP. Teams for implementing anti-corruption policy are established within ministries and other public administration institutions, whose task is to create internal procedures for preventing corruption. Within the civil service, these activities are coordinated by the Chancellery of the Prime Minister, inter alia, through the creation and implementation of principles of integrity in the civil service, including, establishing of a network of ethics advisors in public administration offices.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 2 of article 6

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to art. 48 of the Act on the Central Anticorruption Bureau, a person who meets certain requirements may become an officer of the Central Anticorruption Bureau. Article 49 of the Act stipulates that the physical and mental capacity of candidates for service and CBA officers is determined by medical authorities subordinate to the minister competent for internal affairs. The recruitment process is long, complex and multi-stage. The officer, in connection with the performance of his official duties, enjoys the protection provided for in the provisions of the Criminal Code for public officials (Article75 of the CBA Act). CBA officers, during their duty undergo a series of trainings. Training - basic and specialist - are organized as needed in connection with the implementation of the statutory tasks of the CBA.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Information of CBA’s activity in 2017 - see attachment

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The independence of the CBA is guaranteed by law. In line with Art. 6 of the Act on the CBA, the Head of the CBA is appointed for a 4-year term of office and may be recalled by the Prime Minister after consultation with the President of the Republic of Poland, the Special Services Committee and the Parliamentary (Sejm) for Special Services. The re-appointment to the position of the Head may take place only once. Moreover, in accordance with Art. 7 section 4 of the Act on the CBA, the Head of the CBA or the Deputy Head of the CBA may not be a member of a political party or participate in the activities of that party or on its behalf. Such provisions allow for full independence within the scope of decisions taken by the Head of the CBA and the activities of the Bureau, without possible political pressures and eventual changing governments. The provision of the Penal Code concerning the protection of the officers in accordance with Article 75 of the Act on the CBA, please find attached.

Do retraining institutions for staff of the CBA exist in Poland? Do the staff of the CBA have any additional guaranties or protection provided for by the legislation besides the Act on the Central Anti-Corruption Bureau?

No. There are no specialized training institutions for CBA officers. The CBA has specialized training personnel which deal with basic and specialized training for officers, preparing them to perform service in the CBA, including training in the use of firearms and intervention techniques. Officers also have specialized training provided by external entities. They within the framework of their official activities, have additional legal protection provided by the Penal Code. For example, in line with Art. 231a of the Penal Code, a public officer benefits from the legal protection provided to public officials during or in connection with the performance of public duties extends to an official also if an unlawful attack on his person is carried because of his or her profession or position

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 3 of article 6

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Has your country provided the information as prescribed above? If so, please also provide the appropriate reference.

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Could we check on the NV informing us of the designation of the AC authority?

On the official website of the CBA - www.cba.gov.pl, information on the current status, appointment and dismissal of the Head of the CBA can be found.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article. Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Has Poland informed the Secretary-General of the United Nations of the name and address of the authority that may assist other States Parties in developing and implementing specific measures for the prevention of corruption?

Yes. Poland provided the Secretary General with notification that reads as follows:

***Notification under article 6 (3):*       “The Cabinet of the Head of the  
       Central Anti-Corruption Bureau (CBA)  
       Al. Ujazdowskie 9  
       00-583 Warsaw**

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

No assistance was provided.

Article 7. Public sector

Paragraph 1 of article 7

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In the Polish civil service there are three categories of staff:

1. Civil service employees employed on the basis of employment contract.

2. Civil servants employed on the basis of nomination (classic bureaucrats with a lifelong tenure). The nominated civil servants as a prioritised group have some more obligations and additional rights compared to the civil service employees. There are two ways of obtaining this status: taking so called qualification procedure (state exam), graduating from the Lech Kaczyński National School of Public Administration (a governmental school directly subordinated to the Prime Minister).

3. Persons occupying senior positions employed on the basis of appointment.

Civil service corps is a general term for the legal relationships within civil service. It includes all three categories.

According to the Constitution the superior of the civil service corps is the Prime Minister. However in practice she/he exercises her/his competencies with the support of the Head of Civil service.

The Head of the Civil service (henceforth: HCS) is the central body competent in civil service issues. The Prime Minister appoints and dismisses the HCS. The office of the HCS is the Chancellery of the Prime Minister (especially: Civil Service Department).The HCS is responsible for inter alia coordination of the civil service personnel policy, preparing drafts of normative acts, organizing trainings, collecting data on the civil service corps as well as international cooperation. Civil Service Department is an organizational unit of the Chancellery of the Prime Minister, competent in the civil service issues, primarily personnel issues, human resources management and professional development. It provides service to the Head of the Civil Service in carrying out her/his duties and provides organizational and secretarial support to the Public Service Council and the Higher Disciplinary Commission of the Civil Service.

The top, non-political leader of governmental bodies is the Director General (DG). The DG represents the professional leadership in the civil service system, being the government employer in:

1. Chancellery of the Prime Minister,

2. ministries,

3. central offices,

4. voivodship offices.

The political leadership (supervision) of the office is the head of the office. The DG is directly responsible before the head of the office and also responsible before the HCS with regard to the tasks resulting from the Civil Service Act.

The main duties of the DGs are to perform activities envisaged under the labour law in relation to persons employed in the office and implementing the staffing policy. They ensure the continuity of the work of an office, conditions for its operation, as well as the proper work organization.

The Public Service Council is an opinion-giving and advisory body to the Prime Minister. It expresses opinions on i.a.:

o draft of the budget law in its part dealing with the civil service;

o drafts of normative acts concerning the civil service;

o the central training program within the civil service;

o annual reports of the Head of Civil Service.

The Council shall also disseminate, in cooperation with the National School of Public Administration, the best European standards, practices and experiences with regard to the civil service.

In the Polish civil service (government administration) the human resource management is decentralized, which means that a lot of competencies regarding HR management are given at the level of the individual office. However the personnel decisions must be in line with the Constitution and the Civil Service Act and other pieces of law.

The recruitment process in civil service shall be open and based on the competition principle. The open character of recruitment to the civil service means that it is common, public and transparent, and offers equal access to all candidates. These fundamental rules are expressed by (among others) the obligation to publish job offers, prepare a recruitment report and present the results of the recruitment. Openness of the recruitment also ensures that every citizen, who meets the requirements specified in the vacancy announcement, can apply.

Recruitment based on a competitive principle means the procedure resulting in choosing a candidate who gives the best guarantees to complete tasks and to reach objectives both of the position and the office. It also requires the same evaluation principles, methods, tools and criteria to every candidate applying for the post, as well as ensuring that every candidate has a chance to present himself or herself. The Director General (DG) is responsible for adopting the rules of recruitment procedure and making the final decision about who will be appointed for the vacant position.

There are some basic requirements that every applicant has to meet in order to become a civil service corps member, such as Polish citizenship (foreign citizens can be employed if the DG decides, upon consent of the Head of Civil Service, about vacant position available for foreigners and if the applicant meet additional requirements e.g. Polish language knowledge); enjoying full civil rights, no prior criminal record; holding qualifications required for the given position and enjoying an impeccable reputation.

For candidates to the senior positions in the civil service, which are filled on the basis of appointment, there are also some extra requirements: M.A./M.Sc. degree (or equivalent), no prohibition to work on the management posts in public sector or posts connected with spending public money, possession of managerial skills, fulfilment of other requirements defined in the job description and in separate pieces of legislation. In principle senior positions in the civil service include in particular: directors general of offices, directors of departments or equivalent units in the Chancellery of the Prime Minister, in ministries, central offices, voivodeship offices as well as deputies of the above mentioned. This category includes also senior positions in the National Tax Administration (i.a. heads of tax offices and their deputies).

The remuneration system shows features of the career system and position-based system as well. It provides progression based on time spent in the civil service, however it gives the opportunity for the DG to personalise the remuneration of the employee based on his/her knowledge, personal performance, qualification and experience. Some components of the remuneration (including basic salary) are calculated by using a multiplier system. It means that the level of a given component is defined by applying a multiplier (a coefficient) to a basic amount (a basic reference pay). The basic amount is defined each year in the State Budget Act. The level of the multiplier is decided by the DG.

The DG makes his/her decision by taking into consideration the results of the personal performance appraisal, and other aspects as well (see the recommendations of the Head of Civil Service set forth in the standards of human resource management).

Some components of the remuneration depend on the employment status of the official (civil servant/civil service employee/senior manager). They include i.a. bonus for being a civil servant, position allowance, tax executors special bonus, bonus for long term employment, obligatory and optional awards etc.

As it was mentioned, the civil servant status is a special relationship with some additional rights and duties as compared to other civil service corps members.

There are two ways to become a civil servant

a) One may apply for a vacant position and after a successful recruitment she/he is employed as a civil service employee. Then she/he must work - as a rule - three years in the civil service. Having this work experience the employee may take part in so called qualification procedure (state exam), provided that she/he fulfills some other entry criteria (i.a. knowledge of foreign language, M.A./M.Sc. degree).

b) Being a KSAP graduate is a much faster way to become a civil servant. After a roughly 20 month education statutory from 18 to 24 months (including trainings, domestic and foreign internships) a graduated KSAP student becomes a civil servant automatically, provided she or he meets requirements listed in the law (is a Civil Service employee and knows at least one foreign language pointed out in law), and submits an application for nomination).

Prosecution service.

The Law on the prosecutor's office regulates in detail the recruitment, appointment, promotion and retirement of prosecutors of the public prosecutor's organizational units.

Public prosecutors are appointed to prosecutorial positions by the Prosecutor General upon a motion of the National Public Prosecutor. Before the appointment, the Public Prosecutor General may seek the opinion of a competent public prosecutor's office’s board on the candidate for a prosecutorial position. The competent public prosecutor's office’s board gives the opinion to the Public Prosecutor General within 30 days since the date of receipt of the request for an opinion. Should no opinion be given within that deadline, it is assumed that the opinion is positive.

Only a person who meets the following requirements may be appointed to the position of a public prosecutor:

1) he/she is exclusively a Polish citizen and exercises full civil and citizen rights, and has not been finally sentenced for an intentional crime prosecuted by public indictment;

2) he/she is of impeccable moral character;

3) he/she has graduated in law in Poland and obtained the Master degree, or has graduated in law abroad and his/her education has been recognized in Poland;

4) his/her health allows him/her to perform the public prosecutor’s duties;

5) he/she is at least 26 years old;

6) he/she has passed the exam to be a public prosecutor or a judge;

7) he/she has held the post of a public prosecutor’s assessor or a court assessor for at least a year or has completed a term of service in military prosecutorial bodies laid down in regulations on the military service of professional soldiers;

8) he/she did not serve at, work for, nor was a collaborator of the state security bodies listed in Article 5 of the act of 18 December 1998 on the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation (Dz. U. 2016, entry 152), nor was he/she been a judge who, when passing judgments, impaired the dignity of his/her office, acting in defiance of the judiciary’s independence, which has been confirmed by a final judgment.

The requirements referred to in (6) and (7) do not apply to:

1) professors and associated professors (doktor habilitowany) of legal sciences at Polish universities, at the Polish Academy of Sciences, in scientific and research institutes and other scientific institutions;

2) judges;

3) lawyers, legal advisers and the president, vice-president and counsellor of the Office of Attorney General of the Republic of Poland who have practised that profession or held such an office for at least 3 years.

The requirements referred to in (7) do not apply to notaries.

To be appointed to the position of a public prosecutor of the National Public Prosecutor’s Office, one has to meet the requirements for assuming the position of a public prosecutor and have at least 8 years’ work experience in the position of a public prosecutor or a judge, including at least 5 years of work as a public prosecutor of an appellate, provincial or regional public prosecutor's office, or as a public prosecutor of the Institute of National Remembrance, a judge of an appellate court or a regional court, or a military regional court, or, for at least 12 years before the appointment, have been working as a lawyer, legal adviser or notary or have held the office of the president, vice-president and counsellor of the Office of Attorney General of the Republic of Poland.

To be appointed to the position of a public prosecutor of a provincial public prosecutor's office, one has to meet the requirements for assuming the position of a public prosecutor and have at least 6 years’ work experience in the position of a public prosecutor or a judge, including at least 3 years of work as a public prosecutor of a regional public prosecutor's office or a public prosecutor of the Institute of National Remembrance, a judge of a regional court or a military regional court, or, for at least 10 years before the appointment, have been working as a lawyer, legal adviser or notary or have held the office of the president, vice-president and counsellor of the Office of Attorney General of the Republic of Poland.

To be appointed to the position of a public prosecutor of a regional public prosecutor's office, one has to meet the requirements for assuming the position of a public prosecutor and have at least 3 years’ work experience in the position of a public prosecutor of a district public prosecutor's office or a public prosecutor of the Institute of National Remembrance, a judge of a district court or a military garrison court, or, for at least 6 years before the appointment, have been working as a lawyer, legal adviser or notary or have held the office of the president, vice-president and counsellor of the Office of Attorney General of the Republic of Poland.

A candidate for a prosecutorial position submits:

1) an information from the National Criminal Register concerning his/her person;

2) a certificate attesting that his/her health allows him/her to perform the public prosecutor’s duties.

A candidate for a prosecutorial position born before 1 August 1972 submits also the declaration referred to in Article 7 (1) of the act of 18 October 2006 on disclosing information about documents of the state security bodies from 1944-1990 and contents of those documents (Dz. U., 2013, entry 1388), or the information referred to in Article 7 (3a) of that act.

The National Public Prosecutor seeks information about each candidate for a prosecutorial position from a competent provincial Police commander or the Capital Police Commander. The information about a candidate for a prosecutorial position is obtained and drawn up pursuant to the rules specified for the information about a candidate for a judiciary position. The information is obtained and drawn up on the basis of data contained in computerised police systems.

When presenting the information, the competent Police commander submits to the National Public Prosecutor all collected materials that have been used to draw up the information. Before considering a candidacy, the National Public Prosecutor notifies the candidate for a prosecutorial position about the content of the information obtained from the competent Police commander.

The National Public Prosecutor, after seeking the opinion of the Public Prosecutor General, assigns new prosecutorial and assessor (junior prosecutor) positions to prosecutorial bodies, out of consideration for a rational use of the prosecutorial staff.

In case of a vacancy in a prosecutorial or assessor position, the National Public Prosecutor, after seeking the opinion of the Public Prosecutor General, may, out of consideration for a rational use of the prosecutorial staff:

1) assign the position to another prosecutorial body;

2) transform a prosecutorial position into an assessor position, or an assessor position into a prosecutorial position;

3) cancel the position.

Should a position of a public prosecutor of a district public prosecutor's office be created or vacated, the Public Prosecutor General makes a decision on selecting the candidate for the first prosecutorial position by means of a competition procedure and in particularly justified cases, he/she appoints to that position the candidate indicated in the National Public Prosecutor’s proposal without conducting the competition procedure.

If a decision is made to select the candidate for the first prosecutorial position by means of a competition procedure, the Public Prosecutor General announces the vacancy in the position of a public prosecutor of a district public prosecutor's office in the Official Journal of the Republic of Poland - Monitor Polski.

Every person who meets the requirements for assuming the position of a public prosecutor of a district public prosecutor's office may apply for one vacant prosecutorial position within one month from the announcement of vacancy.

If the application has been made by a person who does not meet the requirements for assuming the position of a public prosecutor, if the application has been made after the deadline or if it does not contain the required documents, the regional public prosecutor notifies the applicant about the decision not to further examine the application, giving the reason. The person whose application has not been further examined may submit a written objection to the National Public Prosecutor within 7 days. If the National Public Prosecutor does not take the objection into consideration, he/she submits it immediately, together with the application, to the Public Prosecutor General. The Public Prosecutor General decides whether to further examine the application.

Having determined that the formal requirements of an application submitted within the deadline have been met, and having determined that the candidate meets the requirements to assume the position of a public prosecutor of a district public prosecutor's office, the regional public prosecutor presents the applicant’s candidacy to the regional public prosecutor's office’s board, together with an assessment of qualifications drawn up by the inspector of the regional public prosecutor's office.

The regional public prosecutor presents to the National Public Prosecutor the candidacies that have received positive opinions from the regional public prosecutor's office’s board, together with the board’s opinion and the assessment of qualifications drawn up by the inspector of the regional public prosecutor's office.

A candidate for a vacant prosecutorial position in a district public prosecutor's office who holds the position of a public prosecutor’s assessor attaches to the application a list of references of dossiers of 50 cases in which he/she has handled or supervised preparatory proceedings, drawn up a charge sheet or a remedy act, appeared at court or submitted procedural writs, or administered other acts or, should such cases be fewer, he/she attaches a list of references of dossiers of all such cases.

A candidate for a vacant prosecutorial position in a district public prosecutor's office who holds the office of a judge or a court assessor attaches to the application a list of references of dossiers of 50 court cases of various categories, to the examination of which he/she has contributed; or, should such cases be fewer, he/she attaches a list of references of dossiers of all such cases.

A candidate for a vacant prosecutorial position in a district public prosecutor's office who works as a lawyer or a legal adviser, or holds the office of a counsellor of the Office of Attorney General of the Republic of Poland, attaches to the application a list of references of dossiers of 50 court cases of various categories in which he/she has appeared as a legal representative or, if he/she has appeared in a smaller number of cases, a list of references of dossiers of all such cases, indicating the courts in which those cases were or are pending, or copies of all, but no more than 50, legal opinions and other documents drawn up in relation to the application or creation of law; a counsellor of the Office of Attorney General of the Republic of Poland attaches additionally the opinion of a superior.

A candidate for a vacant prosecutorial position in a district public prosecutor's office who works as a notary attaches to the application a list of 50 notarial deeds, concerning various categories of cases, or, if he/she has drawn up a smaller number of such deeds, a list of all of them.

A candidate for a vacant prosecutorial position in a district public prosecutor's office who holds the academic title of professor or the academic degree of assistant professor (doktor habilitowany) of legal sciences attaches to the application a list of publications with, if applicable, reviewers’ opinions, copies of legal opinions he/she has drawn up, and a description of achievements with regard to the staff education or scientific contributions.

In case of a candidate for a vacant prosecutorial position in a district public prosecutor's office who holds the office of the president of vice-president of the Office of Attorney General of the Republic of Poland, the aforementioned requirements apply accordingly, depending on the profession practised before being appointed to that office.

A candidate may also attach to the application other documents backing up his/her candidacy, and in particular opinions and recommendations.

An assessment of qualifications for a vacant prosecutorial position in a district public prosecutor's office cannot be made by an inspector who is the candidate’s spouse, relative or relative by affinity, or who is in a legal or material relationship with the candidate that may raise doubts as to the inspector’s impartiality.

If more than one candidate has applied for a vacant prosecutorial position in a district public prosecutor's office, the assessment of those candidates’ qualifications is made by one inspector, unless it is impossible due to the candidates’ number or for other valid reasons. The assessment of qualifications of any candidate cannot be made by an inspector who is any candidate’s spouse, relative or relative by affinity, or who is in a legal or material relationship with one of the candidates that may raise doubts as to the inspector’s impartiality.

The regional public prosecutor communicates the assessment of qualifications to the candidate. Within 14 days from the date of becoming acquainted with the assessment, the candidate has the right to submit written observations on the assessment of qualifications.

Observations submitted after the deadline are disregarded without being examined, and the reason for disregarding the observations without being examined is given. The candidate whose observations have been disregarded without being examined may submit a written objection to the National Public Prosecutor within 7 days. If the National Public Prosecutor does not take the objection into consideration, he/she submits it, together with the observations, to the Public Prosecutor General. The Public Prosecutor General makes a decision with regard to disregarding the objection without being examined.

Having determined that the observations have been submitted correctly, the regional public prosecutor immediately orders their examination by 3 inspectors. The inspector who made the assessment of qualifications cannot participate in the observations’ examinations. Inspectors examine the observations within a deadline of no more than 30 days.

Having examined the observations, inspectors either uphold the assessment of the candidate’s qualifications concerned by the submitted observations, or make a contrary assessment. The inspectors’ views are drawn up in writing with a statement of reasons and served to the candidate.

The assessment of qualifications of a candidate who holds the position of a public prosecutor’s assessor includes the correctness, merits and effectiveness of performing the assigned duties, taking into consideration the workload and the executed tasks’ complexity, as well as professional qualifications’ upgrading and personal culture.

The assessment of qualifications is made on the basis of an examination of at least 25 dossiers of cases of various categories, selected at random, as well as on the basis of data recorded in public prosecutor's offices, including those recorded for statistical purposes.

Copies of final judgments imposing a disciplinary penalty or final decisions imposing the disciplinary sanction of admonition contained in the public prosecutor’s personal file, as well as copies of a superior public prosecutor’s final decisions reproaching a transgression in case of a manifest infringement of the law, are attached to the assessment of the candidate’s qualifications.

The assessment of qualifications of a candidate who holds the position of a judge or a court assessor includes the analysis of efficiency and effectiveness in taking measures and handling proceedings, personal culture, ability to formulate clear and complete statements when passing judgments and giving reasons for them, as well as professional qualifications’ upgrading.

Copies of final judgments imposing a disciplinary penalty and reproaches contained in personal files are attached to the assessment of the candidate’s qualifications.

The assessment of qualifications of a candidate who practises the profession of a lawyer, legal adviser or notary, or holds the office of a counsellor of the Office of Attorney General of the Republic of Poland is made on the basis of an examination of merits, efficiency, reliability and timeliness of the administered acts, or the merits and reliability of legal opinions he/she has drawn up or of other documents drawn up in relation to the application or creation of law, as well as professional qualifications’ upgrading and the culture of performing duties, including personal culture and behaviour towards participants in legal proceedings and associates.

The assessment of qualifications of a candidate who practises the profession of a lawyer or legal adviser, or holds the office of a counsellor of the Office of Attorney General of the Republic of Poland is made on the basis of an examination of at least 25 dossiers of cases of various categories or legal opinions and other documents drawn up in relation to the application or creation of law, selected at random. The inspector who makes the assessment of qualifications may also examine ex officio the dossiers of cases in which the candidate appeared as a legal representative in court and which have not been included in the list, as well as request presidents of courts to indicate the reference numbers and present the dossiers of such cases.

The assessment of qualifications of a candidate who practises the profession of notary is made on the basis of an examination of at least 25 notarial deeds, concerning various categories of cases, selected at random. The inspector who makes the assessment of qualifications may also examine ex officio notarial deeds or dossiers of lawsuits in which appeals have been examined regarding a refusal to insert an entry or a refusal to administer an act. A list of final judgments or decisions imposing a disciplinary penalty is attached to the assessment of qualifications of a candidate who practises the profession of a lawyer, legal adviser or notary.

Additionally, a list of warnings given by the professional self-government’s competent bodies and notifications of a breach of procedural duties made by a court or a public prosecutor is also attached to the assessment of qualifications of a candidate who practises the profession of a lawyer or legal adviser.

The assessment of qualifications of a candidate who holds the academic title of professor or the academic degree of assistant professor (doktor habilitowany) of legal sciences takes into considerations academic achievements, type and quality of publications, reviewers’ opinions, as well as quality and reliability of legal opinions or other documents drawn up in relation to the application or creation of law. Copies of final judgments imposing a disciplinary penalty, unless the penalty has been cancelled, are attached to the assessment of the candidate’s qualifications.

When assessing the qualifications of a candidate for a vacant prosecutorial position in a district public prosecutor's office, one has to take into consideration a personal predisposition to the profession of a public prosecutor, including decision-making and cooperation skills, resistance to stress and observance of professional ethic rules. A public prosecutor enters into a service relationship at the moment of service of the appointment notification. Unless some other deadline has been set, a public prosecutor should report in order to assume the position within 14 days since the date of receipt of the appointment notification. In case of an unjustified failure to assume the position within the deadline of 14 days, the appointment is vacated, which is declared by the Public Prosecutor General. At the appointment, the public prosecutor takes an oath in the presence of the Public Prosecutor General.

The Public Prosecutor General may, upon a motion of the National Public Prosecutor, dismiss a public prosecutor of a universal prosecutorial body or a public prosecutor of the Institute of National Remembrance if the public prosecutor, despite being penalised twice by a disciplinary court with a disciplinary penalty other than an admonition, has committed a service-related misdeed, including a manifest infringement of the law or an impairment of the dignity of the office of public prosecutor; before the dismissal decision, the Public Prosecutor General hears out the public prosecutor’s explanations, unless it is impossible, and seeks the opinion of the meeting of public prosecutors of the National Public Prosecutor’s Office or the relevant public prosecutors’ assembly in a provincial public prosecutor's office.

The Public Prosecutor General dismisses the public prosecutor of a universal prosecutorial body who has resigned from the position of a public prosecutor or does not meet the requirements referred to in Article 75 § 1 pkt 8 LPO - he/she served at, worked for, or was a collaborator of the state security bodies listed in Article 5 of the act of 18 December 1998 on the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation (Dz. U. 2016, entry 152), or was he/she been a judge who, when passing judgments, impaired the dignity of his/her office, acting in defiance of the judiciary’s independence, which has been confirmed by a final judgment.

A public prosecutor’s service relationship expires after 3 months from the date of service of the dismissal notification, unless a shorter deadline has been set at the concerned public prosecutor’s request.

A final judgment of a disciplinary court on dismissal from prosecutorial service and a final court judgment convicting a public prosecutor for an intentional crime prosecuted by public indictment or inflicting a punitive measure on the public prosecutor consisting in a deprivation of public rights, a ban on holding a position of a public prosecutor, demotion or dismissal from professional military service results by operation of law in a loss of the position of a public prosecutor; the public prosecutor’s service relationship expires at the moment when the judgment becomes final.

Should a disciplinary court judgment on dismissal from prosecutorial service be revoked as a result of cassation, the public prosecutor is appointed to serve in the position he/she held previously, maintaining the continuity of the service relationship and granting the right to the salary for the period when the public prosecutor in reality remained out of service.

The service relationship of a public prosecutor expires on the day of losing Polish citizenship or obtaining the citizenship of another country.

The basis for determining the basic salary of a public prosecutor in a given year is the average salary in the second quarter of the previous year, published in the Official Journal of the Republic of Poland Monitor Polski by the President of the Chief Statistical Office under Article 20 (2) of the act of 17 December 1998 on retirement pension and other pensions from the Social Insurance Fund (Dz. U. 2015, entry 748, as amended).

If the average salary mentioned above is lower than the average salary published for the second quarter of the year before, the basis for determining the basic salary of a public prosecutor stays the same.

The salaries of public prosecutors in equivalent public prosecutor’s positions vary according to the length of service or the performed functions. The basic salary of public prosecutors of district and regional public prosecutor's offices is equal to the basic salary of judges in the analogous organizational units of courts with general jurisdiction. The basic salary of public prosecutors of provincial public prosecutor's offices is equal to the basic salary of judges of appellate courts. The basic salary of public prosecutors of the National Public Prosecutor’s Office is equal to the basic salary of judges of the Supreme Court. The functional supplements of the National Public Prosecutor and the Public Prosecutor General’s other deputies are equal to the functional supplements of the First President of the Supreme Court and President of the Supreme Court, respectively.

A public prosecutor’s basic salary is specified by rates which are determined with the use of multipliers of the basis for determining the basic salary of a public prosecutor.

A public prosecutor who assumes a position in:

1) a district public prosecutor's office - has the right to a basic salary at rate 1;

2) a regional public prosecutor's office - has the right to a basic salary at rate 4, or, if he/she has already been receiving a basic salary at rate 4 or 5 in a lower-ranking position - he/she has the right to a basic salary at rate 5 or 6, respectively;

3) a provincial public prosecutor's office - has the right to a basic salary at rate 7, or, if he/she has already been receiving a basic salary at rate 7 or 8 in a lower-ranking position - he/she has the right to a basic salary at rate 8 or 9, respectively.

If a public prosecutor has held another, appropriately equivalent, position of a public prosecutor or a judge before assuming the position of a public prosecutor, he/she has the right to a basic salary in the newly assumed position at a rate at least equal to the salary rate to which he/she has had the right in the position held previously.

A public prosecutor’s basic salary is fixed at an immediately higher rate after another 5 years of work in a given position of a public prosecutor

A public prosecutor has the right to a functional supplement due to the performed function.

A public prosecutor has the right to a seniority supplement in the amount of 5% of the basic salary currently received by the public prosecutor from the 6th year of work onwards, increased by 1% of that salary with each subsequent year of work, until the amount reaches 20% of the basic salary. After 20 years of work, the supplement is paid in the amount of 20% of the basic salary currently received by the public prosecutor, regardless of the length of service exceeding that period.

The curriculum of the initial prosecutor's training includes specific issues of criminal liability for corruption offenses and other crimes against the activity of public institutions, as well as principles of ethics related to the performance of the prosecutor's function.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The work ethics applicable in the civil service is made up of several types of regulations, principles and guidelines. The members of the civil service corps, in the performance of their tasks, are guided by the law and the civil service rules including inter alia: principle of legality, rule of law, protection of human and civil rights, transparency, rational management of public funds etc.

The members of the civil service corps observe the principles of ethics of the civil service corps. The focus is rather on good behaviour and the protection of values which create the basis for the Polish civil service. These principles are the dignified conduct, public service, loyalty, political neutrality, impartiality, diligence and fairness.

In order to make clear and simultaneously strengthen the values and ethics in civil service, a Code of Conduct was established. It contains the work standards (civil service rules), values (ethical principles mentioned above) and clarification of the rules enshrined in the legislation.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

In respect of the article 7 (1) the experts would like to obtain some additional information concerning rotation of civil servants holding positions especially vulnerable to corruption and additional information on risk assessment procedures.

There is data accessible about rotation of civil servants holding positions especially vulnerable to corruption. In 2019, the average rotation in the whole civil service was at the level of 8.5%.

The experts also would appreciate providing the brief information on conditions to enter to Lech Kaczyński National School of Public Administration (Do any person can enter the School? Are special requirements to persons who want to be students of the School established?) and information about graduate exams (Do the graduates take exams? Do these exams correspond in general to state exam for the other candidates for positions of civil servants?).

The experts would like to obtain information on special retraining educational institutions for civil servants or prosecutors established in Poland.

The access to Lech Kaczyński National School of Public Administration is open to any person eligible to be employed in Civil Service who fits the few formal conditions (have a Master’s degree or equivalent, is aged max. 32 or less, know at least one of the following foreign languages: English, French or German) and pass the entry exams. The entry exams process consists of multiple stages: skill and general knowledge test (similar in scope and difficulty level to state exam for positions of civil servants), motivation test, assessment centre and interview. Additional points are awarded for candidates active in social projects. There is no specific graduation exam, but rather students have to pass all the obligatory exams during their education at the school, as well as write several papers and complete their internships to get the diploma.

The National School of Judiciary and Public Prosecution has been entrusted with the task of retraining prosecutors in broad range of legal issues. They include application of new provisions of law as well as challenges in conducting investigation into new types of crime.

The National School was established on the basis of the Act of 23 January 2009 on the National School of Judiciary and Public Prosecution possesses a legal entity and serves as the only central institution responsible for the initial training of future judges and prosecutors, as well as the continuing education of court and prosecution staff in Poland.

According to the aforementioned piece of law, The National School is in charge of :

- judicial and prosecutorial training to provide trainees with the indispensable knowledge and practical skills necessary for their future work as judges, judge’s assessors, prosecutors and prosecutor’s assessors;

- training and professional development of judges, judge’s assessors, prosecutors and prosecutor’s assessors in order to improve their specialist knowledge and professional skills;

- training and professional development of court referendaries, judge’s assistants, prosecutor’s assistants and probation officers, as well as other court and prosecution clerks in order to improve their professional knowledge;

- managing analyses and research in order to determine competences and qualifications attributed to positions in courts and prosecution offices which would be used in training activities;

- managing analyses and research in order to determine the training needs of judges, judge’s assessors, prosecutors, prosecutor’s assessors, court referendaries, judge’s assistants, prosecution assistant, probation officers as well as court and prosecution clerks.

To realize its objectives the National School is also involved in interinstitutional and international cooperation. In particular the National School cooperates with Polish universities, with research and development units and academic establishments of the Polish Academy of Sciences (PAN), with professional legal organizations and association, as well with European and international judicial training institutions and training organizations.

The training offer covers various legal topics, in particular the latest or most problematic legal regulations (e.g. prevention of cross border crime, tax-fraud, cybercrime, EU law, human rights law, legal aspects of obtaining and using biological traces as evidence), as well as other issues not directly related to law (e.g. interpersonal communication, public presentations, management in the justice system, handling stress and counteracting professional burnout, professional ethics, and also issues related to medicine, economy, and sociology).

Various teaching methodologies are employed, namely seminars, workshops, case studies, conferences, e-learning, all based on original curricula designed by the Centre in cooperation with the lecturers of the National School and post-graduate studies.

All training courses are conducted by the National School’s lecturers. The National School’s lecturer can be a judge, a prosecutor, or an academic teacher, and also a person that possesses expert knowledge in the specific subject matter, as well as retired judge or prosecutor, whose knowledge and professional experience can guarantee a good performance to the exercise of this function. The Programme Board is responsible for expressing opinion on candidates for lecturers for the National School; The teaching staff currently consists of several hundred people.

In relation to 1 (c), could we ask for information on the institutional arrangements (an authority that establishes the pay scales, basic salary, allowances, performance bonuses, etc.) and the relevant legal framework (how the pay scales are determined, remunerations and their increase or adjustments).

1. **General information**

All information on remuneration provided below are applicable to the civil service exclusively. In Poland the civil service is a concept of a narrow scope of government administration existing in ministries and central offices at national (central) level and voivodship offices at regional level as well as the services (including tax administration which operates under the Ministry of Finance), guards and inspectorates strictly defined by Civil Service Act, operating at the regional and supra-local levels. Taking this into account the civil service constitutes a part of the general public service/public administration. Hence, the information does not refer to employees employed outside the civil service e.g. in so called state administration (not supervised by the government like for instance the Chancellery of the President, the Supreme Audit Office, the Office of the Human Rights Defender) or self-government administration. The groups like teachers, doctors, police officers are also excluded.

1. **Legal framework for determining remuneration in the civil service**
   1. Act of 21 November 2008 on Civil Service
   2. Budget Act
   3. Act of 12 December 1997 on additional annual remuneration for employees of budgetary entities
   4. Act of 23 December 1999 on shaping of remuneration in the state budget sphere
   5. Labour Code
   6. Regulation of the Prime Minister of 29 January 2016 on definition of the clerical posts, required professional qualifications, ranks of the civil servants, multipliers necessary to estimate remuneration and detailed rules regarding estimating and paying other benefits of the civil service corps members
   7. Regulation of the Prime Minister of 19 December 2014 on special rights for certain categories of members of the civil service corps
   8. Ordinance no. 6 of the Head of Civil Service of 12 March 2020 regarding the human resources management standards in the civil service
2. **Authorities competent in matters of remuneration in the civil service** 
   1. Parliament  
      Parliament passes the law referred to in point 2a, 2b, 2c, 2d and 2e
   2. Council of Ministers (CoM)  
      CoM approves i.a. the draft budget act prepared by the Minister of Finance (the draft budget act defines the level of financial resources for remuneration in the civil service)
   3. Prime Minister   
      PM issues the regulations referred to in point 2f and 2g
   4. Head of Civil Service:
      * + prepares drafts of the regulations referred to in point 2f and 2g,
        + issues the ordinance referred to in point 2h,
        + presents to the CoM an opinion on the draft budget act delivered by the Minister of Finance, in the part concerning funds for remuneration and training in the civil service,
        + cooperates with the Minister of Finance in the planning and implementation of funds for remuneration,
        + monitors and supervises the use of financial fundsfor remuneration,
        + watches the observance the civil service principles, e.g. the principle of rational management of public funds.
   5. Director general of the office  
      DGs are in the position to monitor remuneration system in their offices because they are key decision makers in this matter. DGs make the final decision concerning the level of remuneration for each position in their offices.
3. **Detailed information on the components of remuneration and the rules for their determination**
   1. **Basic salary**   
      Basic salary is the key component of the remuneration of the civil service corps members. It is calculated with the application of multipliers of the base amount. Base amount is determined annually in the Budget Law (in 2020 - EUR ca. 454). It is a constant value for a given year. Multipliers of the base amount depend on the group of positions and are determined in the regulation of the Prime Minister (secondary legislation – see the point 2f).

|  |  |
| --- | --- |
| **Group of positions** | **Multipliers of the base amount** |
| Senior | 2.0 – 8.0 |
| Middle-level management | 1.5 – 7.0 |
| Coordinating | 1.0 – 6.0 |
| Independent |
| Specialist | 1.0 – 3.5 |
| Supporting | 1.0 – 2.7 |

Moreover, a Director General of the office while fixing a basic salary takes into account in particular: job evaluation, performance assessment, including the level of competences and work results, job market conditions (rules/standards defined in the ordinance of the Head of Civil Service – see the point 2h)

* 1. **Bonus for long-term employment with the civil service**  
     It is an obligatory, seniority based component. For the first time it is paid after 5 years of work in the amount of 5% of the basic monthly salary. The bonus is being increased by 1% for each subsequent year in employment up to the level of 20% of the basic monthly salary.
  2. **Civil service bonus**  
     It is an obligatory component. Only civil servants receive it. It is a kind of compensation for extra duties and obligations of civil servants, reward for their competencies. The bonus is based on the service rank held. The bonus is calculated with the application of multipliers of the base amount (EUR ca. 454). The level of the multiplier for each of the nine service ranks is defined in the regulation of the Prime Minister (see the point 2f). Civil servants are entitled to the lowest service rank from the day of appointment. A successive service rank may be granted as a result of a positive periodical appraisal. Currently the civil service bonus can amount to EUR ca. 213-931 (see the table below).

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service rank** | | **I** | **II** | **III** | **IV** | **V** | **VI** | **VII** | **VIII** | **IX** |
| **Multiplier  of the base amount** | | 0.47 | 0.65 | 0.85 | 1.05 | 1.25 | 1.45 | 1.65 | 1.85 | 2.05 |
| **Civil service bonus** | **EUR (ca.)** | 213 | 295 | 386 | 477 | 568 | 658 | 749 | 840 | 931 |

* 1. **Position allowance (component for managerial tasks)**  
     It is an obligatory component. Only civil service corps members holding senior positions receive it. It is granted for carrying out managerial tasks (additional responsibility, duties at a higher level of complexity). It is calculated with the application of multipliers of the base amount (EUR ca. 454). The range of the multipliers for senior position group is defined in the regulation of the Prime Minister (see the point 2f).

|  |  |
| --- | --- |
| **Group of positions** | **Multipliers of the base amount** |
| Senior | 0.2 – 2.05 |

Currently the position allowance can amount to EUR ca. 91-931.

* 1. **Award from an award fund (performance based component)**   
     It is an optional component. It is granted to civil service corps members for particular achievements in professional work. It is granted from an award fund amounting to 3% of planned staff remunerations. The fund remains at the disposal of Directors General of Offices and may be increased within the limits of allocated remuneration funds.
  2. **Task bonus**It is an optional component. It may be granted by Directors General of Offices to civil service corps members that carry out additional tasks. It is paid temporarily (only for period of performing additional tasks) within the limits of allocated remuneration funds in the given office.
  3. **Special benefits and bonuses**   
     Obligatory components. Only some categories of civil service corps members receive them. These benefits/bonuses are granted for performing special nature of tasks and conditions in which they are performed (e.g. tax executors, inspectors employed in mining offices). The detailed rules for granting special benefits and bonuses are determined in the regulation of the Prime Minister (see the point 2g)
  4. **Additional annual remuneration**It is an obligatory component. All civil service corps members receive it. It is paid once a year (so called ‘13th salary’). It is payment dependent on the length of employment. It amounts to 8.5% of annual remuneration. Civil service corps members are entitled to the full amount of payment (8.5%) after working at the given office the entire calendar year. The detailed rules of the calculation of the additional annual remuneration are determined in separate provisions (see the point 2c).
  5. **Anniversary award.**It is an obligatory component. All civil service corps members receive it. It is granted to staff after 20, 25, 30, 35, 40, 45 years of work. It is calculated as a certain percent of the monthly remuneration (75%, 100%, 150%, 200%, 300% and 400% respectively).
  6. **Single severance pay**It is an obligatory, one-time payment. All civil service corps members receive it. It is given upon termination of employment as a result of retirement or the acquisition of the disability pension. It amounts to triple monthly remuneration. After at least 20 years of service it amounts to six months’ remuneration.

In relation to subparagraph 1 (d), could we ask for information on institutions, or systems, for the education and training of public officials, notably on how the integrity and corruption issues are incorporated in the training curricula and more broadly, in relation to their functions and necessary skills as a public official; as well as a description of the performance evaluation process if any?

The Head of Civil Service, central organ competent in the civil service issues, in his Recommendation on promotion the culture of integrity within Polish civil service (issued on December 18, 2017) directed to directors generals / head of the offices invites the leaders to *inter alia* to:

* include in the preparatory service's program training in ethics and integrity, as mandatory for all newcomers to the corps and .. The Recommendation states that participation in such ethics training should be
* include ethics and integrity training in the list of general training, that are the responsibility of the director general/ head of the office, as regular and mandatory for all corps members, organised separately for people who are holding senior and non –senior positions.

To support the leader in providing the civil service corps members with the professional training on ethics and integrity – training programs for the civil service corps members were developed. Programs were disseminated among the HR units of civil service offices in the country as the attachment to the above mentioned Recommendation. They are also published on the Civil Service Website, free of charge.

The programs are directed to the three different target groups: (1) persons holding senior positions in the civil service („Package A”), (2) civil service corps members not holding the senior positions („Package B”) and (3) newcomers („Package C”). The main focus is on exercises, case studies, solving ethical dilemmas in all three programs. At the same time each program has been adjusted to the needs of the given group when compared its content and length:

* program dedicated to the senior positions highlights the role of ethical leadership in building the culture of integrity, training has been foreseen for approx. 4 hours,
* program directed to the civil service corps members who are not holding the senior position, while including only short reminder of the rules and obligations resulted from the law, focuses on practical exercises, solving the real ethical dilemmas that civil service corps members could face on their daily work. This program has been designed as 2-day training event and
* program directed to “newcomers” includes the broadest – when compared to two others programs – theoretical part and has been designed as 1-day training event.

Following aspects have been included in all three agendas: civil service ethos, legal basis, impartiality, selflessness, conflict of interest, loyalty, political impartiality, professionalism, additional employment/ additional income-generating activities, gifts, other possible benefits, Internet, social media, image of the civil service.

Additionally each program is accompanied by the detailed guidelines for the trainers. These additional documents include directions on the way how the training could be conducted, e.g.:

* instructions to exercises, case studies, ethical dilemmas with recommended answers,
* suggestions how discussions could be conducted,
* samples of pre- and post-tests, enabling verification of knowledge gained during the course, etc.

Guidelines (available only for HR units) enable internal trainers, already employed in the office, to be involved in providing the ethical trainings for the employees without bearing additional costs by the office.

The programs were designed in close cooperation with ethical advisors in the civil service, who were involved in the content design and testing the selected elements of the first drafts. The final content, designed by the external contractor, was verified by the experts from the Civil Service Department. In 2018 the programs served as the base for central training on ethics for ethical advisors in the civil service and were broadly used by civil service offices across the country). After the first year of operation the Civil Service Department revised the programs; comments and suggestions gathered from participants of trainings and internal trainers, who have been using it, were the basis for the review and making the programs even more suited to the real dilemmas and challenges faced by civil servants. All revised programs were uploaded on the Civil Service Website in the first quarter of 2019.

The programs proved to be the useful tool to implement the regular training events on ethics in the civil service, to raise ethical awareness among the civil service corps members and, last but not least, to support leaders in building the culture of integrity in the office.

Civil Service Department monitors annually the training policy across the civil service in Poland.

In 2019, training on ethics and integrity was a mandatory element of the preparatory service in 779 offices, i.e. 42.5% of offices. This means an increase compared to 2018 by approx. 3.5 percentage points[[1]](#footnote-2).

In 2019, 452 offices provided the civil service corps members with access to ethics and integrity training. This number increased by 4.9 percentage points compared to 2018. The number of employees who participated in training in this subject increased significantly. A total of 59,417 employees were trained (compared to 2018 - an increase by over 86 percentage points), including 1,325 employees holding senior positions in the civil service.

Civil service corps members have also unlimited access to the ethics and integrity courses on a civil service e-learning platform. In 2019, Civil Service Department designed, basing on the above mentioned training programs, and published three courses for three different target groups. Until December 2020, a total of 13,576 people attended these courses.

There is a system of obligatory performance appraisals covering all members of Civil Service corps employed on the contract of unlimited duration (including civil servants and civil service employees, but excluding senior civil servants). The appraisals are performed once every 24 months and are made in writing by the direct superior of every appraised person. There are regulations standardising rules and templates for the appraisal procedure across the civil service. There is a list of obligatory criteria as well as a closed list of selective criteria, of which up to three can be chosen at the beginning of every appraisal cycle. There are three different sets of 5 or 6 obligatory criteria, depending on whether specific post involves human management or office management. While these criteria does not address integrity and anti-corruption issues directly, the “reliability” (for posts not involving human management) and the “decisiveness and responsibility” (for posts involving human management) criteria are thematically related to those topics.

The appraisal also includes proposals regarding individual professional development programme and therefore conclusions from it are supposed to be taken into account when planning further training of every individual, and those training might include training related to integrity and anti-corruption issues.

Persons taking up employment in the civil service for the first time are as to the rule employed at the basis of contract for definite period of 12 months. During this time an employee shall be subject to the first evaluation in the civil service. There are also regulations standardising rules and templates for the first appraisal procedure across the civil service. The direct superior of the evaluated person shall, in consultation with the head of the organisational unit in which the person is employed, perform the first evaluation in the civil service. This appraisal shall be the basis for the motion to the Director General of the office in order to sign a contract of employment for an indefinite period of time with the evaluated employee (if the first appraisal is positive), or

In case of a negative first appraisal – not to sign a contract of employment for an indefinite period of time or to terminate contract of employment concluded for a definite period of time.

There is no formal performance evaluation process applicable to senior civil servants in Poland

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 2 of article 7

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See the response to article 7 paragraph 1.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

See the response to article 7 paragraph 1

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Are there any criteria for candidates who participate in elections with regard to their integrity? Art. 7 (1) response seems to focus on civil servants and prosecutors/judiciary only.

According to Art. 4 of the Act of 21 November 2018 on the civil service in the civil service may be employed a person who is a Polish citizen, enjoys full civil rights; has not been convicted by a final judgment for an intentional crime or an intentional fiscal crime, has the qualifications required for the job position, has an unblemished reputation. The above catalogue of requirements is exhaustive and absolutely binding. Every person who is a civil servant is obliged to submit a property declaration annually.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 3 of article 7

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See the response to article 7 paragraph 1

Art. 7/1 response does not seem to clarify the issue of transparency of funding of political parties and candidates. Please provide more information on how this is achieved in Poland.

The Act of 27 June 1997 on political parties regulates principles related to financing of political parties. According to Art. 23a of the Act "the sources of financing of political parties are public". The principles are the following:

- transparency of financing

- openness of party assets

- defining the rules for subsidizing the party from the state budget

- the thoroughness of the financial statements submitted by the party to the competent authorities

- supervision over state finances by state authorities.

The principle of openness has been confirmed since 2001 by the principle that parties may only accumulate funds in a bank account.

Statutory sources from which the party's property arises: membership fees, donations, inheritance, bequests, income from property and statutory subsidies and subsidies. The party may also take out bank loans for statutory purposes. The Act does not allow political parties to run a business and raise funds from public collections. Art. 27 - Conduct by a political party of its own activity consisting in the sale of the text of the party's statute or program, as well as items symbolizing the party and publications popularizing the goals and activities of the political party, and providing small services for a fee to third parties with the use of office equipment owned business within the meaning of separate regulations.

Only natural persons may donate money and in-kind value to parties. The scope of people who could transfer funds to the party was limited. Parties may not be sponsored by:

• natural persons who do not reside in the territory of the Republic of Poland, with the exception of Polish citizens residing abroad,

• foreigners residing in the territory of the Republic of Poland. The total amount of contributions from a natural person to a political party, excluding membership fees in an amount not exceeding in one year the minimum remuneration for work, established on the basis of separate regulations, applicable on the day preceding the payment, and contributions to the Election Fund of the political party, may not exceed one year, 15 times the minimum remuneration for work, determined on the basis of separate regulations, in force on the day preceding the payment. A one-off payment of an amount exceeding the minimum remuneration for work, determined on the basis of separate regulations, in force on the day preceding the payment, may be made to a political party only by check, bank transfer or payment card. When a single payment does not exceed the amount according to the National Electoral Commission, the payment may also be made to the party's cash desk. KP cash receipts or transfer confirmations should be recorded and stored for the party's report on the funds raised during the calendar year.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

See the response to article 7 paragraph 1

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

In the responses to the self-assessment checklist the information on appointment of civil servants and prosecutors has been provided, but there is not enough information on transparency in the funding of candidatures for elected public office and on the funding of political parties. Taking this into account the brief information on the issues covered by the article 7 (3) would be appreciated.

Please see response to the item (a) of this paragraph.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 4 of article 7

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Referring to the issue of compliance of Polish legislation with the mentioned provision of the Convention, it should first be pointed out that in the Polish legal system a legal definition of the conflict of interests has not been adopted. The lack of such a definition does not cause a lack of response from the public administration to conflicts of interest or a lack of monitoring of activities to identify a conflict of interest. There are also a number of legal institutions that, without using the phrase "conflict of interest" explicitly, fulfill the functions of identifying such a conflict and allow for its management and elimination. The legislator noting the need to ensure impartiality of public officials and other persons implementing the most important tasks from the point of view of the interests of the State and the rule of law, assured in many applicable legal acts of verification of potential conflict of interest and exclusion of persons from certain proceedings in case of its real or probable occurrence.

Examples of this type of regulation can be found in:

1) Act of 14 June 1960 - Code of Administrative Proceedings (consolidated text: Journal of Laws of 2017, item 1257)

2) Act of June 6, 1997 - Code of Criminal Proceedings (consolidated text: Journal of Laws of 2017, item 1904),

3) Act of November 17, 1964 - the Code of Civil Proceedings (consolidated text: Journal of Laws of 2018, item 1360),

4) Act of 16 September 1982 on the employees of state offices (consolidated text: Journal of Laws of 2017, item 2142),

5) Act of 21 August 1997 on limitation of conducting business activity by persons performing public functions (i.e., Journal of Laws of 2017, item 1393),

Act of 21 November 2008 on Civil Service (consolidated text: Journal of Laws of 2020, item 265 as amended)

6) Act of 27 July 2001 on foreign service (ie: Journal of Laws of 2017, item 161),

7) Act of 6 September 2001 - Pharmaceutical Law (consolidated text: Journal of Laws of 2017, item 2211),

8) Act of 30 August 2002 - Law on proceedings before administrative courts (i.e. Journal of Laws of 2018, item 1302),

9) Act of 21 November 2008 on local government employees (ie, Journal of Laws of 2018, item 1260), 10) Act of November 6, 2008 on consultants in health care (ie, Journal of Laws of 2017, item 890),

10) Act of 27 August 2004 on health care services financed from public funds (i.e. Journal of Laws of 2018, item 1510),

11) Act of 26 June 2014 on certain contracts concluded in connection with the execution of orders of fundamental importance for national security (ie: Journal of Laws of 2017, item 2031),

12) Act of January 29, 2004 - Public Procurement Law (ie, Journal of Laws of 2017, item 1579),

13) Act of May 12, 2011 on reimbursement of medicines, foodstuffs for particular nutritional purposes and medical substances (i.e., Journal of Laws of 2017, item 1844),

14) Act of 11 July 2014 on the rules for the implementation of programs in the field of financial cohesion policy in the financial perspective 2014-2020 (i.e. Journal of Laws of 2018, item 1431),

15) Act of 18 March 2011 on the Office for Registration of Medicinal Products, Medical Substances and Biocidal Products (consolidated text: Journal of Laws of 2016, item 1718),

16) Act of 6 November 2008 on patients 'rights and the advocate for patients' rights (consolidated text: Journal of Laws of 2017, item 1318).

In the case of provisions shaping the rules of civil, criminal and administrative proceedings, the functions guaranteeing the impartiality of persons taking part in them are realized through the institution of exclusion from participation in the proceedings.

Examples of this type of regulation can be found in:

1) Article. 41 § 1 of the Act - Code of Criminal Proceedings - stating that the judge is excluded, if there is such a circumstance that it could raise reasonable doubt as to its impartiality,

2) Art. 49 of the Act - Code of Civil Proceedings - stating that the court excludes a judge at his request or at the request of a party, if there is such a circumstance that it could raise reasonable doubt as to the impartiality of the judge in the case,

3) Article. 24 § 1 of the Act - Code of Administrative Proceedings - excluding the employee of the body in administrative proceedings,

4) Art. 19 of the Act - Law on proceedings before administrative courts - stating that the court excludes a judge at his request or at the request of a party, if there is such a circumstance that it could raise reasonable doubt as to its impartiality in a given case.

In the aforementioned provisions, the concept of impartiality should be understood as the impartial impartiality of the judge, including both the judge's subjective sense of his impartiality and his impartiality in external perception based on the belief of the average observer of the trial. It also applies to the behavior of the judge in the courtroom and outside it, from which it could result that the judge is in a particular way oriented to the participants of the proceedings or to the case. This is about the behavior of the judge referring both to the assessment of the case before the sentence is issued, as well as to express opinions assessing the participants of the proceedings, which may indicate a particular attitude of the judge to the case or persons participating in it. The basis for exclusion may be emotional relations (both positive and negative), but also personal economic links, e.g. financial links.

In the provisions of some of the above sixteen legislators set the obligation to submit declarations and declarations regarding conflicts of interest, e.g. on the basis of art. 8c of the Act of 6 November 2008 on consultants in health care, declarations are submitted by consultants and candidates for consultants, while pursuant to art. 6 par. 2 of the Act of 26 June 2014 on certain contracts concluded in connection with the execution of orders of fundamental importance for the security of the State, declarations are made by persons executing on behalf of the State Treasury activities in proceedings for the conclusion of an offset agreement or related to the execution of the offset agreement. In certain cases, the veracity of statements and declarations submitted is verified by the Central Anticorruption Bureau (CBA).

The necessity of unifying and legal strengthening of institutions of conflict of interest, establishing a transparent procedure for its verification and including a wide range of people in public positions in this procedure decided on a legislative initiative taking into account, among others, these postulates. On October 24, 2017, the Minister - Coordinator of Special Services presented to the inter-ministerial consultations and public consultations a draft project of Act on transparency of public life, which introduces a definition of a conflict of interest, means for its identification and procedures for verifying obligations related to it. At present, this project has been referred to the Standing Committee of the Council of Ministers.

The Central Anticorruption Bureau reported at the stage of inter-ministerial consultations its remarks and proposals for changes in the project, inter alia proposed a definition of the conflict of interest as follows: "conflict of interest - it means a really occurring or indirect or direct contradiction between public activities of persons acting on behalf of or acting for public finance sector entities in the understanding of public finance regulations and other entities possessing public funds and their property or personal interests that threaten or would threaten to objectively and impartially perform their official duties. "

The Central Anticorruption Bureau (CBA) also considered the key to underline the need to manage a conflict of interest in public institutions and to introduce the duties of persons managing these institutions in terms of its identification and elimination, at an early stage of activities and proceedings, so that allegations of lack of impartiality can be prevented.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Central Anticorruption Bureau (CBA) verifies the veracity of declarations regarding conflicts of interest submitted by:

1) consultants and candidates for consultants based on art. 8c of the Act of November 6, 2008 on consultants in health care,

2) persons performing acts on behalf of the State Treasury in proceedings for the conclusion of an offset agreement or related to the performance of an offset agreement pursuant to art. 6 par. 2 of the Act of 26 June 2014 on certain contracts concluded in connection with the execution of procurements of fundamental importance for the security of the state,

3) members of the Economic Commission pursuant to art. 20 para. 2 of the Act on reimbursement of medicines, foodstuffs for particular nutritional purposes and medical substances,

4) candidates for members of the Transparency Council before being appointed to this Council, and members of the Transparency Council before each meeting of this Council pursuant to art. 31 sec. 9 of the Act on healthcare services financed from public funds,

5) candidates for the members of the Council for Tarification and members of the Council for Tarification on the basis of art. 31 sec. 9 of the Act on health care services financed from public funds.

In 2017, the CBA received 5 828 declarations regarding conflicts of interest.

Number of declarations regarding the conflict of interests submitted to the CBA in 2017.

Authority Number of declarations

Economic Comission (By the Minister of Health) -----------------------------------------------------------------

------------ 1012

Transparency Council (by the President of the Agency for the Assesment of Medical Technology and Tariffs) ------------------765

The Tariffs Council (by the President of the Agency for the Assesment of Medical Technology and Tariffs) ---------------------235

Offset Committee (by The Minister of Defence) ---------------------------------------------------------------------------------26

Consultants for health care ----------------------------------------------------------------------------------------------------3790

The Central Anti-Corruption Bureau (CBA) does not have statistics on the process of managing a conflict of interest in public institutions and data on the declarations gathered by these institutions regarding a conflict of interests, in a situation in which it was not legally obliged to verify them.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Though some regulations on conflict of interests exist in Poland, the current regulation is not applied to all types of activity of public servants, prosecutors and judges. For example, existing regulation covers the procedural activity of judges and prosecutors, so other types of activities of judges and prosecutors are not covered by current regulation.

Article 153 paragraph 1 of the Constitution of the Republic of Poland (1997) determines creation of impartial and politically neutral discharge of the State’s obligations by the corps of civil servants: “1. A corps of civil servants shall operate in the organs of government administration in order to ensure a professional, diligent, impartial and politically neutral discharge of the State's obligations”. These rules were also implemented by the Law on Civil Service, as well as by the Ordinance no 70 of the Prime Minister 0f 6 October 2011 on the guidance of compliance with the rules of the civil service and on the principles of the civil service code of ethics (Official Journal of the Republic of Poland (Monitor Polski) no 93, item 953).

Some additional regulations regarding prosecutor’s impartiality and resolving the conflicts of interest have been provided in the following provisions of the Law on Prosecution Office (LoP)

Article 96 § 2 (LoP)

§ 2. In and out of service, a public prosecutor should guard the authority of his/her office and avoid all things that could impair the public prosecutor’s dignity or lessen the trust in his/her impartiality.

Article 97. § 1. During the time of holding his/her position, a public prosecutor cannot belong to a political party nor participate in any political activity.

§ 2. A public prosecutor who runs for the office of the President of the Republic of Poland, a seat in the Sejm or the Senate, or the office of a councillor or a commune administrator (wójt, mayor, president of the city) is granted unpaid leave for the duration of the election campaign. The above does not apply to a retired public prosecutor.

§ 3. A public prosecutor may be active in organizations for public prosecutors or employees of the public prosecutor's office, provided that that does impair the dignity of the office of public prosecutor in other organizations performing a social activity, operating by virtue of other laws.

Article 103. § 1. A public prosecutor cannot take up additional employment, with the exception of employment in a didactic, research and didactic, or research position if total working time does not exceed full working time of employees employed in those positions, provided that that employment does not interfere with performing the public prosecutor’s duties.

§ 2. Moreover, a public prosecutor cannot take up another occupation or way of making profit which would interfere with performing the public prosecutor’s duties, could lessen the trust in his/her impartiality or impair the dignity of the office of public prosecutor.

§ 3. A public prosecutor cannot:

1) be a member of a management board, a supervisory board or a board of auditors of a commercial law company;

2) be a member of a management board, a supervisory board or a board of auditors of a cooperative;

3) be a member of a management board of a foundation running a business;

4) hold more than 10% of shares in a commercial law company or hold shares corresponding to more than 10% of the share capital;

5) run a business on his/her own account or together with other persons, or manage such business, or be a representative or agent in running such business.

§ 4. Public prosecutors of a district public prosecutor's office and public prosecutors of a regional public prosecutor's office notify the competent regional public prosecutor about their intention to take additional employment, as well as about the intention to take up another occupation or way of making profit, public prosecutors of a provincial public prosecutor's office notify the competent provincial public prosecutor, public prosecutors of the National Public Prosecutor’s Office, provincial public prosecutors and regional public prosecutors notify the National Public Prosecutor, and the National Public Prosecutor and the Public Prosecutor General’s other deputies notify the Public Prosecutor General.

§ 5. Public prosecutors of the Institute of National Remembrance submit the notification referred to in § 4:

1) to the Director of the Chief Commission – public prosecutors of branch commissions;

2) to the Director of the Vetting Office – public prosecutors of branch vetting offices;

3) to the National Public Prosecutor – the Director of the Chief Commission, public prosecutors of the Chief Commission and chiefs of branch commissions, the Director of the Vetting Office, public prosecutors of the Vetting Office and chiefs of branch vetting offices.

§ 6. If the public prosecutor to whom the notification referred to in § 4 is addressed considers that a public prosecutor’s taking up or continuation of an additional employment, another occupation or a way of making profit interferes with performing the public prosecutor’s official duties, impairs the dignity of his/her office or lessens the trust in the public prosecutor’s impartiality, he/she makes and objection against it within 14 days from the date of receipt of the notification.

§ 7. The provisions of § 1-6 apply to retired public prosecutors.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

It can be recommended to consider taking further steps in order to ensure that conflict of interest regulation covers all types of public officials and all types of their activities.

*(c)* *Successes* *and* *good* *practices*

[Identification of successes and good practices in implementing the article, where applicable.]

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

No assistance would be required.

(e) Technical assistance needs

**Others:** **please** **specify**

No assistance would be required.

**Legislative** **assistance:** **please** **describe** **the** **type** **of** **assistance**

No assistance would be required.

**Institution-building:** **please** **describe** **the** **type** **of** **assistance**

No assistance would be required.

**Policymaking:** **please** **describe** **the** **type** **of** **assistance**

No assistance would be required.

**Capacity-building:** **please** **describe** **the** **type** **of** **assistance**

No assistance would be required.

**Research/data-gathering** **and** **analysis:** **please** **describe** **the** **type** **of** **assistance**

No assistance would be required.

**Facilitation** **of** **international** **cooperation** **with** **other** **countries:** **please** **describe** **the** **type** **of** **assistance**

No assistance would be required.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 8. Codes of conduct for public officials

Paragraph 1 of article 8

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The basic legal act that regulates the conduct of public officials is the constitution that sets up the rules for public authorities which are of utmost importance to the impartiality of public administration bodies. These are the principles of: the rule of law (legalism) and equality before the law. According to Article 7 of the Constitution of the Republic of Poland, “The organs of public authority shall function on the basis of, and within the limits of, the law.” Thus, the way in which public officials execute their competencies may not be arbitrary, but must result from the powers they are entrusted with. So, to make a decision a public officials must have competence to act in a given area and act in accordance with specified decision-making procedures, while the contents of the decision must comply with the norms of the law. Thus, the rule of law is closely connected with conflict of interest: impartial discharge of duties by public administration bodies is the derivative of acting on the basis of, and within the limits of, the law. PTEFs must make decisions and perform official tasks solely on the basis of statutory premises, hence the principle excludes consideration for any personal or financial preferences. The issue of conflict of interest and public officials rules of conduct must also be analysed in the context of the constitutional principle of equality before the law. Article 32(1) of the Constitution of the Republic of Poland says that “All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.” Treatment by public authorities may not depend on personal or financial benefits of the person who makes a given decision. Another legal act that refers to the rules of public officials conduct and to preventing the conflict of interest in the Code of Administrative Procedure. The group of main principles covered by the Code of Administrative Procedure includes the principles of legalism of administration operation (Article 6), administrative rule of law (Article 7), and care for confidence of citizens who participate in proceedings in public authorities (Article 8). None of these principles could be adhered to without ensuring impartial decisions of public administration.

The Act on restriction of the right to pursue economic activity by individuals performing public functions, hereinafter referred to as the Anti-Corruption Act, restricts the ability to pursue economic activity by individuals performing public functions. The Act stipulates explicit bans on PTEFs, defined in detail in the answer to question 2.1. This provision has been introduced to prevent situations and involvements that may create temptation to abuse one’s public function. The purpose of the extensive formulation of the list of forbidden positions is to eliminate situations and involvements that may not only challenge personal impartiality or integrity of public officials, but also undermine the authority of state constitutional bodies, thus weakening the confidence of voters and the public in their adequate operation. The ban is absolute - there is no discretion and the nature of economic activity is of no matter here. In addition, pursuant to Article 7(1) of this Act, the individuals subject to the Act may not be hired by an entrepreneur or perform any other work for the entrepreneur if they partook in making any decisions concerning this individual entrepreneur. The waiting period is a year, beginning when the person ceases to fulfil a public function. Another area of public officials activity that is particularly vulnerable to threats of a conflict of interest is public procurement. The Act defines the principles of exclusions for individuals whose impartiality in awarding public procurement contracts is doubtful.

The principle of impartiality and objectivism of individuals performing tasks in public procurement procedures is enshrined in Article 7(2) of the Public Procurement Law. The category of individuals subject to exclusion is generally defined as “individuals performing tasks in public procurement procedures.”

Under pain of a penalty for false representations, the individuals who perform tasks in public procurement procedures make written declarations that there are or there are not any circumstances that result in lack of impartiality, described in the Act.

All the above-mentioned regulations serve to introduce principles of conduct, inter alia for public officials, whose purpose is to avoid a conflict of interests or any other unethical act. At present, work is underway on an act on public life transparency, whose main purpose is to improve the transparency of Polish authorities. Currently, the act is in the course of consultations within the government and with the society.

As for the prosecution service in the Article 96 of The Law on Prosecution is stated that a public prosecutor is obliged to follow the public prosecutor’s oath. In and out of service, a public prosecutor should guard the authority of his/her office and avoid all things that could impair the public prosecutor’s dignity or lessen the trust in his/her impartiality.

According to Art. 76 section 1 point 4 of the Act on Civil Service, a member of the civil service corps is obliged to perform tasks among others – honestly, conscientiously and impartially, and in point 7 an obligation is indicated to behave in a dignified manner in and outside the service. These issues were developed in Ordinance no. 70 of the Prime Minister of 6 October 2011 on the guidance on compliance with the rules of the civil service and on the principles of the civil service code of ethics. Pursuant to Art. 80 of the Act on Civil Service, a civil service corps member may not take up additional employment without the written consent of the Director General of the Office, or perform activities or activities contrary to the obligations arising from the Act or undermining trust in the civil service.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

When it comes to prevention of corruption and to conflicts of interests, the draft act stipulates the following practical solutions in this regard:

· A register of contracts - an obligation is introduced to keep a register of contracts for the delivery of goods, provision of services, and construction works. The obligation to keep a register will cover public authority bodies, state control bodies and law enforcement bodies, courts, tribunals, local government units, state and local government legal persons, and obliged companies. Thanks to this solution, all contracts for the delivery of goods, provision of services, and construction works concluded by the entities obliged to keep registers will become open and publicly available.

· Bans on individuals who fulfil public functions - the existing bans are extended to include a ban on performing paid tasks in or for a commercial law company and a ban on being a member of management bodies of associations or foundations that can pursue or pursue economic activity.

· A ban on employment - the existing ban was extended to three years. It means that individuals who perform public functions cannot be employed for three years since they cease to fulfil a position or a function, if they participated in issuing decisions that concerned directly a given entrepreneur. Also a penal provision is introduced that covers individuals who undertake employment contrary to the ban (fine, restriction of liberty, or deprivation of liberty for up to 2 years).

· Financial declaration - a completely new model form of a financial declaration, which will constitute an appendix to the draft act, has been drawn up. All individuals obliged to file a financial declaration will do so using a single form. Financial declarations will be open and published in a public information bulletin, except the declarations of service officers. The financial declarations will be kept for five years. The extent of the declarations was extended to include information inter alia on common property of the spouses, insurance policies, information on the ability to dispose of financial resources of other entities. The head of the Central Anti-Corruption Bureau will have the right to request every person in a public function (also not covered by the obligation to file financial declarations), at any time, to file such a declaration. Also, the head of the Central Anti-Corruption Bureau will have the right to request members of the management board of an obliged company, who are not covered by the obligation to file a financial declaration, to submit such a declaration.

· The draft act also stipulates that an individual in a public function, when in office and, in specified cases, while already not in office, must avoid a conflict of interests that consists in performing tasks that would trigger suspicions of partiality or acting in the interests of an entity in which he/she does not fulfil a public function.

The final shape of the solutions included in the above-mentioned act will be known alter the legislative process is finalised.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

As it is clear from the “**examples of the implementation of those measures, including related court or other cases, available statistics”** the draft of legal act is planning to be adopted in order to improve the current regulation (please provide the title of the draft).

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 2 and 3 of article 8

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with these provisions?

(Y) Yes

See also the response to the paragaraph 1 of this article.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

As a follow-up to the principle enshrined in Article 96 of The Law on Prosecution, on December 12, 2017 the National Council of Prosecutors adopted the Collection of the Principles of Professional Ethics of Prosecutors.

According to the Collection of the Principles of Professional Ethics the prosecutor has, among others, obligation: 1) to observe the law and good manners; 2) act honestly; 3) behave with dignity and honor; 4) take care of the authority of the office and the authority of the prosecutor's office; 5) be respectful of the organs of the Republic of Poland and their representatives.

The prosecutor may not: 1) use positions or functions to support the self-interest or interests of other persons or entities, in particular his/her relatives, and act to the detriment of other persons or entities; 2) behave in a manner that would discredit the prosecutor's dignity or weaken trust in his/her office.

In addition, the prosecutor is obliged to avoid conducts and situations that could undermine confidence in his/her independence, impartiality and professional integrity or give the impression of disrespect for the law, as well as avoid personal contacts and economic relations with persons and other entities that could create a conflict of interest and thus negatively affect the perception of the prosecutor's impartiality and undermine the trust in the prosecutor's office.

The practical application of the rules of professional ethics is subject to mandatory training during the prosecutor's apprenticeship.

In 2011 - Ordinance no 70 of the Prime Minister of 6 October 2011 on the guidelines for compliance with the rules of the civil service and on the principles of the civil service code of ethics[[2]](#footnote-3), adopted at the level of the Government, was issued. The Ordinance replaced the first code of ethics for the civil service – Ordinance no. 114 of the Prime Minister dated October 11, 2002 on the establishment of the Civil Service Code of Ethics that remained in force for nearly 9 years.

The Ordinance no 70 consists of two parts:

1. Guidelines on the observance of civil service rules, understood as rules of correct functioning of the service, that include:

* guidelines on civil service rules, that all civil service corps members are obliged to follow when they carry out their duties (principle of legality, rule of law, and strengthening the citizens' confidence in public administration bodies, principle of human and civil rights protection, principle of selflessness, principle of openness and transparency, principle of non-disclosure of confidential information protected by the provisions of law, principle of professionalism, principle of liability for action or omission, principle of rational management of public funds, principle of openness and competitiveness of the recruitment process)
* guideline for individual entities**,**  for proper functioning the civil service coprs in Poland (Head of the Civil Service, Public Service Council, general directors of offices, members of the civil service corps holding managerial positions (department directors, division heads, etc.), ministers and other persons holding high-ranking posts in governmental administration, National School of Public Administration)

1. Ethical principles of the civil service corps, focused on the protection of values which create the basis for the system of Polish civil service (principle of dignified conduct, principle of public service, principle of loyalty, principle of political neutrality, principle of impartiality, principle of diligence). These principles should be followed in private life also.

The development of the ordinance no. 70 (2011) proved the systematic approach towards assessing and - in consequence - improving the ethical regulations in the civil service in Poland. The currently binding act of law addresses most of the identified weaknesses of the 2002 ordinance. Therefore it:

* introduces an accountability framework as regards the compliance with the Ordinance, with the HCS acting as a guard of Ordinance observance;
* introduces the inevitability of punishment - the direct connection between violation of the civil service rules with the violation of the civil service duties that makes the civil service corps member liable to discipline (with sanctions enumerated in the Law on Civil Service);
* takes into account the rapidly changing environment, which makes it possible to respond to new challenges faced by the government, public offices and members of the civil service corps alike. The ordinance puts a greater emphasis on improving the level of confidence in the government, on the quality of the services performed and on the relationship between the officials and the government; takes into account the accountability of civil service corps members and places an emphasis on the client orientation of the government administration.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Please see also pervious paragraphs of this article.

For first three years of its functioning, the HCS has undertaken a number of measures to ensure compliance with the rules and ethical principles of the civil service corps:

* Initiated cooperation with the directors general with the aim to disseminate the principles of civil service amongst the members of the civil service;
* Organised a number of training events;
* Issued special edition of the bimonthly paper of the civil service (2011) dedicated to newly signed Ordinance of the PM as well as thematic supplements to the paper (2014), dedicated to the selected rules;
* Appointed a special team for monitoring and analysing some areas of the civil service and deal with the most complicated ethical dilemmas in the civil service;
* Explained (and if happens - still explain) doubts arising from the application of the ordinance, signalised by the offices as well as individuals;
* Monitored the recruitment processes in the civil service;
* Monitored the compliance with the principles of civil service (by analysing the annual reports, issued by the directors general)
* In 2014 – conducted the monitoring of ordinance no. 70 functioning, aiming at examining the impact thereof on the civil service corps and on the assessment of its functioning following nearly three years since its enactment.
* Following the implementation of the OECD Recommendation on public integrity (2017), the HCS initiated the number of activities aiming at building and strengthen the culture of public integrity in the civil service. The HCS with support of the Civil Service Department: issued the Recommendation on promoting the culture of integrity
* (also with support of external experts) designed and developed of the training programs on ethics and integrity for three target groups with guidelines for internal trainers
* designed and developed, based on the training programs mentioned above, three e-learning courses on ethics and integrity,
* with support of the Dutch colleagues, adjusted to the Polish circumstances and published exemplary questionnaire for self-assessment of the integrity culture of the office
* initiated the work of network of the ethics advisors in the civil service
* issued the Recommendation on work standards of the ethics advisor
* Ordinance of the Head of the Civil Service on human resources management standards in the civil service
* developed and published the platform on civil service ethics, including *inter alia*: inspiring practices on raising the ethical awareness in the civil service, FAQ/ guidelines on proper understanding and observing the principles, documents on integrity etc.,
* for the last 3 years organised the numbers of training, workshops, conferences on civil service ethics across the country,
* analyses, on annual basis, the periodic reports submitted by DGs/ heads of unit on the state of integrity culture in the office,
* analyses signals of possible rules violations by a civil servant and reacts in case of justified reasons.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

It would be appreciated providing additional in depth information about adoption of principals of ethics and codes of conduct in different state bodies or for certain categories of public officials (Have codes of conduct been adopted for civil servants of any ministries, customs office, etc.? Who (professional associations, for example) have been involved in the development of codes of conduct? How are codes of conduct implemented in everyday activity of public officials? (For example, special training can be provided, an official responsible for analysis of practice of application of code of conduct can be appointed, etc.)).

Please also provide brief information on initiatives of international organisations, EU and their activities in Poland in respect of development of codes of conduct (seminars or training for public officials, technical assistance, etc.).

The first code of ethics for the civil service – Ordinance no. 114 of the Prime Minister dated October 11, 2002 on the establishment of the Civil Service Code of Ethics – remained in force for nearly 9 years. It constituted an elaboration of the four basic civil service principles: professionalism, reliability, impartiality and political neutrality. The 2002 code of ethics governed, inter alia, the issues of conflict of interest, abuse of position, susceptibility to external influence, relationships with representatives of political and business spheres and skill development. The underlying intention was to point civil service corps members towards acceptable solutions in ethically dilemmas situations while not imposing any restrictive, obligatory rules in this regard. The primary aim of this ordinance was to educate and inform.

Six years after the enactment of this legal act, having regard, inter alia, the results of research on ethics conducted by the Institute of Public Affairs (ISP)[[3]](#footnote-4) as well as on the basis of the analysis of the efficiency of ordinance no. 114[[4]](#footnote-5), the decision was adopted to replace the aforementioned code with a new ordinance. In 2011 - Ordinance no 70 of the Prime Minister of 6 October 2011 on the guidelines for compliance with the rules of the civil service and on the principles of the civil service code of ethics[[5]](#footnote-6), adopted at the level of the Government, was issued.

In 2014 the monitoring of the functioning of ordinance no. 70 was conducted, aiming at examining the impact thereof on the civil service corps and on the assessment of its functioning following nearly three years since its enactment. One cannot underestimate the significance of the recommendations of OECD experts, the authors of the Public Government Review – Poland Implementing Strategic-State capacity, 2013. In the section dedicated to human resources management, the OECD experts have praised the initiatives aimed at promoting integrity and ethical behaviour among public servants. However, they have also pointed out the need to reinforce the mechanism aimed at popularising and promoting the provisions of ordinance no. 70 of the Prime Minister among the members of the civil service corps as well as the mechanism designed to monitor compliance with the applicable rules[[6]](#footnote-7).

The monitoring was designed and carried out by the Civil Service Department in three groups of respondents: (1) directors general of individual offices – persons responsible for ensuring, inter alia, the functioning and continuity of operation of the office as well as for human resources management, (2) members of the civil service corps and (3) independent experts – public administration theorists and practitioners.

The survey carried out among the directors general made it possible to obtain information on the manner in which they perceive the degree of implementation/application of the provisions of the code of ethics in ministries as well as central and voivodeship (province-level) offices. Analysis of the answers provided has made it possible to assess the degree of implementation of the guidelines aimed at general directors of offices – the persons tasked with ensuring the functioning and continuity of operation of their respective offices, and responsible for the conditions of the operation thereof; work organisation; performing actions related to labour law with respect to the individuals employed at the office; as well as for the human resources policy applied in such office. The results obtained are positive and make it possible to reach the conclusion that general directors of offices are performing the obligations imposed upon them directly by the ordinance on ethics. The information obtained demonstrates that general directors of offices:

* Ensure compliance with the civil service principles at their respective offices by way, amongst others, of applying such principles in the course of enactment of internal regulations and procedures (appointment of internal ethical commissions, commissioners for ethics and corruption prevention, coordinators for corruption prevention, coordinators for equal treatment etc., in the course of implementation of anti-discriminatory, anti-mobbing and anti-corruption procedures, in the course of performance evaluation of employees, granting bonuses or imposing penalties etc.);
* 98% of all offices apply the principles when expressing their consent for their employees to undertake additional employment or to take on additional income-generating activities – the key principles in this regard being the principle of selflessness, impartiality and professionalism;
* The principles are taken into account in the course of development of human resources management programmes, primarily by way of direct inclusion of the principles in the said programmes or by way of reference to the ordinance on ethics;
* At a vast majority of offices, the principles of civil service were taken into account in the course of determination of the scope of preparatory service – these issues were included in the service programmes in the form of thematic blocks, modules, sections (in most cases of mandatory nature), in training courses or lectures conducted within the framework thereof, and were also present in the course of examinations conducted at the end of the preparatory service. These issues were mostly touched upon in the course of the theoretical part of the preparatory service, sometimes also in the form of e-learning programmes;
* 97% of all offices make available to the members of the civil service corps the information on compliance with the principles of civil service as well as on the application of guidelines with respect to compliance with the principles of civil service in the subordinate office, while at the same time providing the Head of the Civil Service with reports on the implementation of the act on civil service for the previous year;
* Information on compliance with the principles is regularly provided in annual reports submitted to the HCS in accordance with the Civil Service Act;
* The principles of civil service were disseminated among the members of the civil service corps employed at the given office in 100% of all offices – the most popular method of dissemination thereof being their publication on the Intranet (21% of all responses), publication using information boards (21% of all responses) and conducting training courses on ethical issues (9%);
* In 79% of all offices, members of the civil service corps employed at the given office were provided with training on compliance with civil service principles – all in all, approximately 55 thousand training positions were provided;
* 95% of all offices provides the texts of the ordinance to the members of the civil service corps employed at the given office, imposing upon them an obligation to confirm in writing that they became acquainted with the ordinance;
* The offices’ ombudsmen for disciplinary matters were requested by directors general – by way of a request for preliminary investigation – to determine whether a breach of the duties of a civil service corps member does not concurrently constitute a breach of specific principles of civil service.

Responses provided on voluntary basis by the civil service corps members confirm the veracity of the assessment made by the directors general. The content of the questionnaires directed to the members of the corps was different, focusing on the assessment of the ordinance itself as opposed to the compliance of the given entity with the guidelines. However, the analysis of the data provided makes it possible to perform an efficient verification of the information submitted by the general directors of offices. The survey conducted among members of the civil service corps shew that:

* Nearly 100% of all respondents have declared that they were familiar with the principles of civil service and the ethical principles of the civil service corps. It confirms the declarations made by the general directors as to the common knowledge of the principles among the employees, ensured by way of organising training courses, appropriate determination of the scope of preparatory service or designing programmes for the management of the human resources in specific offices;
* The respondents have described methods for ensuring compliance with civil service principles at the offices where they were employed that were consistent with the statements of the general directors of the said offices including, among others, training courses, internal regulations and procedures (rules, guidelines, procedures, internal ordinances), familiarisation of all employees with the principles or the application of the appropriate provisions;
* The analysis of the questionnaires completed by civil service corps members has also made it possible to perform a positive verification of the manner in which information was made available concerning ensuring compliance with the principles and the application of the guidelines on compliance therewith;
* 53.68% of all respondents confirmed that they have participated in training courses, which also confirms the level of activity in the field of training course organisation as stated by the general directors.

Furthermore, the analysis of responses submitted by the members of the corps unambiguously demonstrated that:

* The principles are commonly known and understood by the members of the civil service corps;
* The list of civil service principles, as well as ethical principles of the civil service corps, is sufficiently broad and there is no need to expand it at the present stage;
* The guidelines are clear and give rise to no interpretative difficulties;
* The principles of: (1) legality, rule of law, and increasing public confidence in public administration, (2) selflessness and (3) professionalism were considered to be the three most significant principles contained in the code of ethics;
* The vast majority of respondents were able to properly identify ethically compromising situations, which has been confirmed on the basis of the analysis of the manner in which the respondents interpreted the principle of selflessness and dignified conduct);
* Despite the fact that training courses pertaining to management regulations are common, most respondents (over 62%) agree that there is a need for more training courses concerning compliance with civil service principles and the ethical principles for the civil service corps.

The analysis of responses provided by independent experts appeared to confirm that the provisions of the current ordinance are clear and unambiguous. This view can also be supported by opinions received according to which the ordinance constitutes “an excellent, concise and transparent document which should serve as an example for other public offices to which the provisions of the act on civil service do not currently apply”. The few remarks that were received pertained mostly to the functioning of the provisions on ethics and were related to the independent actions taken by certain offices in which the civil service corps operates, including the fact that the provisions of the ordinance are not sufficiently embedded in the institutional consciousness of the offices and, consequently, in the consciousness of the officials themselves.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 4 of article 8

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See also responses to the previous paragraphs of this article.

Due to the entry into force of the Act of 16 November 2016 on the National Revenue Administration, the Internal Inspection Bureau was established within the Ministry of Finance (hereinafter: MoF), as a unit responsible for identifying, detecting and combating corruption offenses committed by persons employed in the National Revenue Administration (hereinafter: NRA). In order to accomplish these tasks, the Bureau performs operational, analytical and investigative activities. The organizational structure of the Internal Inspection Bureau includes the headquarters in the MoF in Warsaw and local units - one in each of the revenue administration regional office. Information on corruption offenses can be provided:

personally to the employees of the Internal Inspection Bureau, in a written form to the postal address and the email address (https://www.mf.gov.pl/web/bip/krajowa-administracja-skarbowa/kontakt/formularz-biw) or via phone (no. 22 694 33 44).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

See responses to the previous paragraphs of this article.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Some additional information about implementation of the article 8 (4) would be appreciated, in particular, if the duty of auditors, managers or other categories of public officials to inform about corruption (improper conduct) is provided for by legislation. If yes, do any protection for reporting persons provided for? Do any guaranties for reporting persons are stipulated (not to testify against himself/herself or against relatives, etc.)?

* Can public officials report to designated persons within the department, agency, ministry, if they can report to other designated authorities and if they could, under limited circumstances, report externally;
* Is the system the same for public officials as for private sector employees?
* Are specific measures were taken to promote reporting (awareness raising campaigns, advise centres, awards, etc.)?
* Are there provisions to protect the identify of reporting persons or other measures to build trust in the system?
* How is the effectiveness of the system reviewed (e.g. how is the system monitored in regard to the use of the different channels, trust in the system, etc.)?

Public administration offices counteract corruption by ensuring the functioning of internal control units (institutional control) and internal audit, as well as management control, i.e. mechanism that ensures the achievement of the objectives and tasks of these units in a lawful, effective and timely manner. Moreover, the management of the public office should appoint a person or set up a team responsible for carrying out tasks in the field of corruption prevention. These entities have a task, inter alia to maintain contact with the management, officials and applicants, in order to advise on the prevention of corruption, receive signals of corruption acts or other irregularities, as well as cooperate with law enforcement agencies. In case of a justified suspicion tha the corrupt act has occurred, the management of the public office is legally obliged to notify the law enforcement agencies of a corrupt offence. Failure to comply with this obligation may result in criminal liability under Article 231 of the Penal Code, i.e., such as for acting to the detriment of public or private interests as a result of failure to comply with the mentioned obligation.

Report of corruption may be forwarded to law enforcement authorities (e.g. prosecution office, police, Central Anti-Corruption Bureau). The Central Anti-Corruption Bureau (CBA) makes it possible to report corruption in person directly at the CBA's offices, via a special phone number 800 808 808, as well as electronically by e-mail address: sygnal@cba.gov.pl. Anti-corruption procedures also applies to private sector entities in order to prevent corruption acts and whistleblowers protection mechanisms. In Poland, there are an anti-discrimination and anti-mobbing provisions in labor law to help whistleblowers in court disputes with their employers. It should also be noted that the scope of legal regulations in the area of whistleblowers protection will be strengthened by transposition of the *Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law*, which is expected to be implemented in 2021.

Notifications of irregularities in functioning of public sector entities may launch the system of State control defined in the *Act of 15 July 2011 on control in government administration,* which provides uniform rules and procedures for conducting audit in government’s administration entities. The Prime Minister is competent to coordinate and supervise audit activities in government administration entities. Audits may be carried out particularly by the Prime Minister, the Head of the Chancellery of the Prime Minister and ministers(for subordinate entities). Furthermore, ministries make effective use of management control procedures to increase internal transparency and accountability. In parallel, other acts regulate the procedure for conducting sectoral audits, including in particular the *Act of 6 December 2006 on the principles of development policy* (supervision use of the EU funds) and the *Act of 27 August 2009 on public finances*. Apart of mentioned regulations, there are also internal regulations and guidelines for counteracting irregularities in public and private sector, as well as general anti-corruption guidelines issued by the CBA (see point c).

The purpose of the activity of the Internal Inspection Bureau of the MoF is to reduce and eliminate abuse of entrusted power to obtain undue advantage (corruption) by employees and officers of the NRA.

The Internal Inspection Bureau of the MoF carries out tasks connected with the prevention of crimes by officers and employees of the NRA, some crimes committed to the detriment of the NRA, their detection and the prosecution of their perpetrators.

The Internal Inspection Bureau of the MoF performs procedural activities, conducting individual preparatory proceedings and carrying out tasks in proceedings conducted by the Prosecutor's Office.

Overall, the following activities were undertaken in 2017-2020:

- 186 cases were initiated in the form of investigations and activities entrusted by the Prosecutor's Office,

- 143 bills of indictment were prepared in cases carried out in the Internal Inspection Bureau of the MoF,

- 97 people were detained,

- a total of 867 charges were brought against both civilians and officers of Customs and Tax Service such as exceedance of powers or failure to fulfil obligations, admission of material gain, granting material benefit, committing targeted crimes against officers and persons employed in the NRA. There were also allegations of participation in an organized crime group and charges of certification of untruth by a public official and money laundering.

As a result of disclosed criminal activities, property value diminished by PLN 77.5 million. Assets amounting to some PLN 9 million were seized.

In total, 1,304 operational cases were handled in the Internal Inspection Bureau of the MoF.

The activities of the Internal Inspection Bureau of the MoF are largely based on information provided by employees of the NRA and officers of the Customs and Tax Service, as well as clients of the NRA. The Internal Inspection Bureau does not keep statistics in subject matter and detailed information on the examples of the use of such notifications is in general confidential. It should be emphasized that, as a rule, all information (also anonymous) about suspected corruption received by the Bureau is examined by its officers.

As regards the civil service corps, the Law on Civil Service determines such rules in article 77:

1. Civil Service Corps members shall be obliged to execute their professional duties imposed by their superiors.
2. Should in the opinion of a given Civil Service Corps member the order be inconsistent with the law or display signs of error, he/she is obligated to notify their superior of such a situation in writing. In case of confirmation of the order in writing, a Civil Service Corps member is obliged to execute it.
3. Civil Service Corps members shall not execute orders if such actions may result in committing an offence or a minor offence, of which they immediately notify a relevant Director General of the Office.

Additionally, the ethics advisors have functioned in the civil service since 2006.

According to the Recommendation of the Head of the Civil Service (HCS) on work standards of the ethics advisor the advisor is the employee of the office who supports the head of office in building and promoting a culture of integrity in the office primarily by providing support (advice) to the employees of the office during face-to-face meetings or by using forms of communication available in the office (telephone, e-mail, dedicated portals, etc.) while maintaining confidentiality and anonymity. The adviser shall report directly to the director general / head of office for the tasks associated with his or her function.

Employees, when contacting the ethics advisor, may count on:

* an advice which is not a legal opinion,
* anonymity and confidentiality of the information provided, subject to those whose disclosure obligation results directly from the law

Other tasks of the ethics advisors are:

* raising ethical awareness of employees by promoting civil service rules and ethical principles
* conducting/ organising training on ethics
* identifying areas for improvement by conducting self-assessment of integrity culture
* facilitating co-ordination of the integrity and transparency policies within organisation, in cooperation with other integrity actors,
* co-operating with others persons responsible for counteracting undesirable phenomena.

Although the appointment of the function is not obligatory, the director general of the office / head of the office is obliged to support employees in difficult or unclear situations, that raise their ethical concerns (e.g. develop and disseminate appropriate procedures or create an ethics advisor in the office and provide him/her with appropriate working conditions). This new obligatory standard was introduced by the Ordinance no 6 of 12 March 2020 of the Head of the Civil Service on human resources management standards in the civil service.

In 2017 the Head of Civil Service appointed a network of ethics and integrity advisors in order to enforce building a culture of integrity in the civil service and ensure the forum for consultation and exchange of knowledge/information for ethics advisors from the civil service. The network has operated for more than 3 years already, fully meets its objectives.

Finally it is worth mentioning that some offices employing the civil service corps members have already ensured the protection of whistle-blowers via internal legal acts. The General Directorate for National Roads and Motorways may act as an example. On the 27th of September 2019 the director general of the office issued the Ordinance on the introduction of the Policy for the Protection of Signals in the General Directorate for National Roads and Motorways. The Policy applies to all cases conducted as a result of the notification to General Directorate for National Roads and Motorways from the moment of notification to follow up and provide feedback. It also applies to contractors and subcontractors carrying out tasks on the basis of contracts concluded with the office.

The number offices where the function of ethics advisor has been appointed, has arisen from 68 in 2017 (when the Civil service Department initiated such monitoring) to 128 in 2019 - data for the previous year is gathered till the end of January each year. The number of offices led by the director generals where the function of ethics advisor has been appointed, raise from 41 in 2017 to 51 in 2019. What more 91 offices all over the country confirmed to provide the employees with other mechanism of consultation.

The network of ethics and integrity advisors that perform their functions in the Chancellery of the Prime Minister, ministries, central offices and voivodeship offices, has operated since July 2017. The network fully meets objectives of its formation.

In 2017 - inspired by the guidelines in the OECD 2017 Recommendation on public integrity and encouraged by positive experiences from abroad, where similar teams and networks operate successfully, the Head of the Civil Service decided to set up such a network.

Main goal of the team was to form a cooperation framework for civil servants facing similar ethical dilemmas and to create a forum for the exchange of knowledge, experience and good practices in this area. Other goal was to support these officials by raising their knowledge and competences that guarantee the highest quality of their function and services within individual offices. Last but not least the network has also been perceived as the first body to consult drafts developed by the Head of Civil Service to promote and build a culture of integrity in the civil service. That has also contributed to a higher quality of the documents and information provided, increasing trust in the administration (the members of the team consulted e.g. the draft training programs on ethics and integrity, designed and popularised by the Head of Civil Service in December 2017, the range of Head of Civil Service monitoring on ethical activity and disciplinary proceedings, assumption of the guidelines on political neutrality of the civil servants etc.).

The activity of the network is supported by the Head of Civil Service and chaired by the Civil Service Department. It meets on regular basis. The network has contributed to the promotion of the ethical advisor function and highlighted the need of creating such a function in those offices that do not provide such a consultation mechanism/support for their employees. As a result the function of ethical advisor has been appointed in more and more offices of government administration, contributing to strengthening the consultation mechanism in the civil service.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

*(c)*

The Central Anti-Corruption Bureau has issued in 2020 *"The Anti-Corruption Guidelines for public administration on uniform institutional solutions and rules of conduct for public officials and the PTEFs”*.

The publication is addressed to managers and employees of public administration. The idea of the guidelines is to combine two key elements of effective corruption prevention, i.e., appropriate regulations and organizational solutions and proper human attitudes, including recommendations for a system of reporting irregularities and protection of whistleblowers. Publication highlights the importance of raising officials' awareness of the principles of ethics, organizational culture and professional ethos. It also indicates how to deal with conflicts of interest and corruption threats.

<https://cba.gov.pl/ftp/dokumenty_pdf/Wytyczne.pdf>

The CBA promotes implementation of compliance programmes, including recommendations on the whistle-blowing systems, throughout issued in 2020 *" The Guidelines for establishing and implementing effective compliance programs in the public sector entities".*

The publication presents definition and goal of compliance and its components, general framework that may be used to develop and implement compliance programs in public entities in Poland. The study is particularly addressed to public management and ensure not only compliance with legal regulations, but also with adopted codes of ethics, organizational culture and professional ethos, allowing the public institution to reduce of the potential corruption risks.

<https://cba.gov.pl/ftp/dokumenty_pdf/The_Guidlines_Establishing_and_Implementing_Effective_Compliance_Programs_in_Public_Sector_Entities.pdf>

Paragraph 5 of article 8

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

An important aspect of the anti-corruption provisions existing in Poland is the obligation on persons performing public functions subject to these regulations to submit asset declarations which also require providing information on the participation of companies management or other types of relationships with such entities, information on business activity alone or jointly with other people or managing this type of activity. For example, the Act of August 21, 1997 on the limitation of the performance of commercial activity by persons fulfilling public functions (Journal of Laws of 2017, item 1393), so-called the Anti-Corruption Act obliges to submit asset declarations, introduces prohibitions and restrictions in conducting business activity, as well as in other additional activities such as: sitting in commercial law companies, foundations conducting business activity, holding commercial law companies in companies more than 10% shares or shares representing more than 10% of the share capital - in each of these companies, being employed or performing other activities in commercial law companies that could give rise to suspicion of their bias or interest; being members of management boards, supervisory boards or revision committees of cooperatives, with the exception of supervisory boards of housing co-operatives.

In addition, the Act also introduces restrictions after employment, i.e. persons occupying public functions may not, within one year of ceasing to take up a position or perform a function, be employed or perform other activities with an entrepreneur, if they participated in issuing a decision in individual cases concerning that entrepreneur this does not apply to administrative decisions on determining the assessment of local taxes and fees on the basis of separate regulations, with the exception of decisions regarding allowances and exemptions in these taxes or fees. In justified cases, consent to employment before the end of the year may be expressed by a commission appointed by the Prime Minister.

Assets declarations are therefore a tool aimed at verifying the avoidance of a conflict of interests by persons performing public functions. On the one hand, this verification is done by disclosing the financial status of the person obliged to submit a statement, as well as by providing information on the performance of functions in business entities, business operations or holding certain share or share packages.

In order to fully harmonize the Polish legal system with mentioned provision of the Convention, it is necessary to reform the provisions regarding the submission of asset declarations. These provisions are currently dispersed in many legal acts, and to some extent they are imprecise. For these reasons, a draft law on transparency of public life was prepared, which aims to unify the provisions governing the issue of asset declarations. This project is currently at the inter-ministerial level.

When it comes to the outside activities or employment, the Law on Prosecution under Article 103 provides for in that a public prosecutor cannot take up additional employment, with the exception of employment in a didactic, research and didactic, or research position if total working time does not exceed full working time of employees employed in those positions, provided that that employment does not interfere with performing the public prosecutor’s duties.

Moreover, a public prosecutor cannot take up another occupation or way of making profit which would interfere with performing the public prosecutor’s duties, could lessen the trust in his/her impartiality or impair the dignity of the office of public prosecutor.

A public prosecutor cannot:

1) be a member of a management board, a supervisory board or a board of auditors of a commercial law company;

2) be a member of a management board, a supervisory board or a board of auditors of a cooperative;

3) be a member of a management board of a foundation running a business;

4) hold more than 10% of shares in a commercial law company or hold shares corresponding to more than 10% of the share capital;

5) run a business on his/her own account or together with other persons, or manage such business, or be a representative or agent in running such business.

Public prosecutors of a district public prosecutor's office and public prosecutors of a regional public prosecutor's office notify the competent regional public prosecutor about their intention to take additional employment, as well as about the intention to take up another occupation or way of making profit, public prosecutors of a provincial public prosecutor's office notify the competent provincial public prosecutor, public prosecutors of the National Public Prosecutor’s Office, provincial public prosecutors and regional public prosecutors notify the National Public Prosecutor, and the National Public Prosecutor and the Public Prosecutor General’s other deputies notify the Public Prosecutor General.

If the public prosecutor to whom the notification is addressed considers that a public prosecutor’s taking up or continuation of an additional employment, another occupation or a way of making profit interferes with performing the public prosecutor’s official duties, impairs the dignity of his/her office or lessens the trust in the public prosecutor’s impartiality, he/she makes and objection against it within 14 days from the date of receipt of the notification.

The rules described above also apply to retired public prosecutors.

All the public prosecutors are obliged to submit a declaration of their financial standing. The declaration of financial standing covers only individual property and joint property of husband and wife. The declaration should contain in particular the information on financial assets, real estate and shares in commercial law companies, as well as property which has been acquired by means of an auction by that person or his/her spouse from the State Treasury, a local government unit, a union of such units, or a government or local government legal person.

The declaration is submitted accordingly by public prosecutors to the competent provincial public prosecutor, regional public prosecutor, chief of a branch commission or chief of a branch vetting office, who analyzes the data contained in the declarations by 30 June every year.

The Public Prosecutor’s General’s deputies, the Director of the Chief Commission, the Director of the Vetting Office, public prosecutors of the National Public Prosecutor’s Office, public prosecutors of the Chief Commission, public prosecutors of the Vetting Office, provincial public prosecutors, public prosecutors of Branch Divisions of the Department for Organized Crime and Corruption of the National Public Prosecutor’s Office, regional public prosecutors, as well as chiefs of branch commissions and chiefs of branch vetting offices submit the declaration to the Public Prosecutor General, who analyzes the data contained in the declarations by 30 June every year.

Moreover the declaration is submitted before assuming the position, and subsequently every year before 31 March, as of 31 December of the previous year, as well as on the day of leaving the position of public prosecutor.

The declaration is submitted under criminal liability for making a false declaration.

Information contained in the declaration, including the first name and surname, are publicly accessible, except for the address, information about the location of real estate, as well as information that make it possible to identify the public prosecutor’s or public prosecutor’s assessor’s movable property. At the request of the public prosecutor who has submitted the declaration, the superior public prosecutor may decide to grant the information contained in the declaration the protection provided for information classified as “reserved”, specified by the provisions of the act of 5 August 2010 on the protection of classified information if the disclosure of that information could result in a threat to the public prosecutor or persons nearest to him/her. The declaration is kept for 6 years.

The publicly accessible information contained in declarations on financial standing is published by the Public Prosecutor General, competent provincial or regional public prosecutor, chief of a branch commission or chief of a branch vetting office in Biuletyn Informacji Publicznej referred to in the act of 6 September 2001 on the access to public information (Dz. U. 2016, entry 1764) no later than on 30 September each year.

One copy of the declaration is transmitted by the public prosecutor authorized to collect the declaration to the tax office competent for the public prosecutor’s place of residence. The competent tax office is authorized to analyze the data contained in the declaration, including a comparison of its content with the content of previously submitted declarations and annual tax returns (PIT). If the result of the analysis raises grounded doubts as to the legality of origin of the property disclosed in the declaration, the tax office refers the case for appropriate proceedings.

A retired public prosecutor does not submit a declaration on financial standing, unless he/she is an adviser of the Public Prosecutor General or the National Public Prosecutor.

According to the art. 149 of the Act on the National Revenue Administration, every employees of the National Fiscal Information, the revenue administration regional office or the National School of Treasury is obliged to make a statement about her/his financial status every year by March 31.

The statement is made to the head of the organizational unit of the NRA, in which the person is employed.

The managers of the NRA’s organizational units and an organizational unit within the MoF, performing tasks in the area of asset declarations, are authorized to analyze statements made by employees of the National Fiscal Information and revenue administration regional offices. The same unit within the MoF is also authorised to analyse statements made by employees of the National School of Treasury.

The director of the National Fiscal Information, a director of the revenue administration regional office, a head of the tax office, a head of the customs and tax office, the Headmaster of the National School of Treasury and their deputies, declare their financial status to the Head of the National Revenue Administration.

The authorised unit within the MoF analyse the statements of persons mentioned above.

For matters concerning the financial status of persons employed in organizational units of NRA which are not regulated the provisions of the Act of August 21, 1997 on restricting business activity by persons performing public functions (Journal of Laws of 2017, item 1393) shall apply accordingly.

According to the art. 200 of the Act on the National Revenue Administration, the officer of the Customs and Tax Service is obliged to submit a statement about his/her financial status:

1) in the case of making a business relationship and when leaving the service; 2) annually;

3) at the request of the head of the NRA’s organizational unit.

The statement shall be submitted by March 31, as at 31 December of the previous year. The statement is made to the head of the NRA’s organizational unit.

The director of the revenue administration regional office, the head of the reveniue office, the head of the customs and tax office and their deputies shall submit declarations of financial status to the head of the National Revenue Administration.

In the case of failure in submiting a statement on time due to absence from the service, the officer submits the statement on the first day after appearing in the service.

The statement should contain information about the sources and amount of income received, cash resources held, real estate, participation in civil companies or commercial law companies, shares or stocks in these companies, property acquired from the State Treasury, other state legal entity, commune, inter-communal connection, poviat, poviat union, district-communal union or metropolitan union, which was subject to sale by tender, movable property, other property rights and monetary liabilities.

The managers of these units and the organizational unit of the office servicing the minister performing tasks in the area of asset declarations are authorized to analyze statements made by persons employed in the National Fiscal Information and tax administration chambers. In the case of people employed in the School, the analysis of asset declarations is made by the organizational unit of the office servicing the minister performing tasks in the area of asset declarations.

The statement of financial status are kept for 6 years.

In addition to the analysis of the statements, the provisions of the Act on National Revenue Administration provide for the possibility to review the statements. The analysis of statements consists in comparing the statement submitted in a given year with statements made previously and checking information in available databases. Control of statements is a set of activities consisting in checking the status of the declared property with the status of assets in available databases, comparing the submitted declarations and performing other activities for this purpose. The basis for carrying out the asset analysis is own information, external information and routine checks. The basis for carrying out an asset control is an application informing about irregularities. If irregularities are found in the submitted declarations, the competent law enforcement authorities shall be notified of the suspicion of committing a crime or a decision shall be issued.

In addition, the Law on Civil Service implements also some rules in this regards, among others:

Art. 78 point 1. Civil Service Corps members cannot be guided in executing their duties neither by their particular nor any group interests.

Art. 80 point 1. 1. Civil Service Corps members are not allowed to undertake additional employment without a written permission from a relevant Director General of Office, or to perform activities or actions contradictory to his/her duties stipulated in the law or undermining the confidence in the Civil Service.

Art. 80 point 2. Civil Servants cannot undertake additional income-generating activities without a written permission from a relevant Director General of Office.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Examples of the implementation of mentioned provision of the Convention are regulations regarding the obligation to submit asset declarations in broadly understood anti-corruption provisions, including those as quoted in item 2.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 6 of article 8

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Most of the regulations on submission of asset declarations provide for criminal and business sanctions for submitting untruth in these declarations. Moreover these provisions also provide for administrative sanctions in the form of dismissal from the position in relation to officials who break restrictions on conducting specific activities, performing specific functions or holding too large blocks of shares or stocks in commercial law companies. In order to fully harmonize the Polish legal system with aforementioned provision of the Convention, it is necessary to reform the provisions regarding property declarations of persons performing public functions. These provisions are currently dispersed in many legal acts, moreover, the sanctions for providing untruth in these declarations or sanctions for breaking the prohibitions laid down in anti-corruption laws are to some extent shaped in a different way (in relation to certain groups of public officials no sanctions were foreseen). For these reasons, a draft law on transparency of public life was developed, which aims to unify the provisions governing the submission of asset declarations, including sanctions related to this issue. This project is currently at the inter-ministerial level of consultations.

Pursuant to the Law on Prosecution, a public prosecutor is liable to disciplinary action for service-related misconducts, including a manifest and glaring infringement of the law and impairments of the dignity of office (disciplinary misconducts). A public prosecutor’s action or omission performed exclusively in public interest is not a disciplinary misconduct.

A public prosecutor is also liable to disciplinary action for his/her conduct before assuming the position if he/she breached the duties or impaired the dignity of a public office held at the time, or proved to be unworthy of the office of public prosecutor.

In case of an abuse of the freedom of speech when performing official duties which is an insult, prosecuted by private accusation, to a party, a party’s representative or defence counsel, a guardian, a witness, an expert or an interpreter, a public prosecutor is only liable to disciplinary action.

In case of petty crimes, a public prosecutor is only liable to disciplinary action. A public prosecutor may consent to be prosecuted for petty crimes referred to chapter XI of the act of 20 May 1971 - Petty Crimes Code (Dz. U. 2015, entry 1094, as amended) following the procedure specified in that provision. If a public prosecutor commits a petty crime referred to in chapter XI of the act of 20 May 1971, the public prosecutor’s acceptance of a penalty notice or payment of a fine in case of being penalised with a fine imposed in the absence of a person referred to in Article 98 § 1 (3) of the act of 24 August 2001 - Petty Crimes Procedure Code (Dz. U. 2013, entry 395, as amended), is a declaration of consent to being prosecuted in that form.

A public prosecutor’s consent to being prosecuted in accordance with the procedure specified in § 4 excludes disciplinary liability.

Should a substantial misconduct be found with regard to the efficiency of preparatory proceedings, the superior public prosecutor may reprove the public prosecutor in writing and demand that the misconduct’s effects be remedied. The reproved public prosecutor may, within 7 days, submit a written objection to the reproving superior public prosecutor, which does not release him/her from the obligation to remedy immediately the misconduct’s effects. The reproved public prosecutor notifies the superior public prosecutor of the measures that have been taken to this end. If an objection is submitted, the reproving superior public prosecutor revokes the reproval or submits the case for examination to the disciplinary court.

The disciplinary court issues a decision which either upholds the reproval as valid or revokes the reproval and discontinues the proceedings after hearing out the disciplinary accuser and the reproved public prosecutor, unless hearing them out is not possible. The disciplinary court’s decision is not subject to appeal.

A copy of the document with the reproval that has not been revoked is attached to the public prosecutor’s personal file.

After 2 years since the reproval became final, the Public Prosecutor General or the competent provincial or regional public prosecutor orders the removal of the document’s copy from the public prosecutor’s personal file if no other misconduct has been found during that period with regard to the efficiency of preparatory proceedings resulting in a reproval, if the public prosecutor has not been reproached for an infringement, no disciplinary sanction has been imposed or no disciplinary misconduct has been found. At the public prosecutor’s request, the copies may already be removed after one year.

The Public Prosecutor General may reprove a provincial, regional and district public prosecutor in writing if he/she finds a substantial misconduct with regard to heading a public prosecutor's office or exercising supervision.

That can be exercised by the Public Prosecutor General towards the National Public Prosecutor and the Public Prosecutor General’s other deputies, by a provincial public prosecutor towards a regional and district public prosecutor operating within the province, and by a regional public prosecutor towards a subordinate district public prosecutor. When a provincial public prosecutor reproves a district public prosecutor, he/she notifies the competent regional public prosecutor and, in the case of any more grievous misconduct, the Public Prosecutor General.

Should a manifest infringement of the law with regard to handling a case be found, the superior public prosecutor, without prejudice to other rights, reproaches the public prosecutor who has committed that infringement, having first requested an explanation. Finding and reproaching an infringement does not affect the case’s settlement.

The reproached public prosecutor may, within 7 days, submit an objection in writing to the reproaching superior public prosecutor, which does not release him/her from the obligation to remedy the infringement’s effects. If an objection is submitted, the reproaching superior public prosecutor revokes the reproach or submits the case for examination to the disciplinary court.

The disciplinary court issues a decision which either upholds the reproach as valid or revokes the reproach and discontinues the proceedings after hearing out the disciplinary accuser and the reproached public prosecutor, unless hearing them out is not possible. The reproached public prosecutor may make an appeal against a decision refusing to take his/her objection into consideration. The appeal is examined by the same disciplinary court sitting in a different, equivalent formation.

A copy of the document with the reproach that has not been revoked is attached to the public prosecutor’s personal file.

If a provincial public prosecutor reproaches a public prosecutor of a district public prosecutor's office, he/she notifies the competent regional public prosecutor and, in case of any more grievous infringement, the Public Prosecutor General.

A disciplinary proceedings cannot be initiated after more than 5 years since the act was committed, and they are discontinued in case of their unlawful initiation. If disciplinary proceedings have been initiated before that deadline, disciplinary prescription takes place 8 years after the act. Despite the prescription referred to in the previous sentence, the disciplinary court either finds the public prosecutor guilty of a disciplinary misconduct, discontinuing the proceedings with regard to the infliction of a disciplinary penalty, or acquits the accused public prosecutor.

If a disciplinary misconduct shows all features of a crime, the prescription of disciplinary punishability cannot take place before the prescription specified in the relevant provisions of the act of 6 June 1997 -Penal Code (Dz. U. Nr 88, entry 553, as amended).

Disciplinary penalties include:

1) admonition;

2) reprimand;

3) dismissal from function;

4) transfer to another place of service;

5) dismissal from prosecutorial service.

In case of a disciplinary misconduct of lesser importance, the disciplinary court may refrain from inflicting a penalty.

The Public Prosecutor General is the disciplinary superior of public prosecutors of universal prosecutorial bodies, the provincial public prosecutor is the disciplinary superior of public prosecutors of the provincial public prosecutor's office, public prosecutors of regional public prosecutor's offices and district public prosecutor's offices in the area of operations of the provincial public prosecutor's office, and the regional public prosecutor is the disciplinary superior of public prosecutors of the regional public prosecutor's office and public prosecutors of district public prosecutor's offices in the area of operations of the regional public prosecutor's office. The disciplinary cases are settled by disciplinary courts operating under the Public Prosecutor General:

1) in the first instance - Disciplinary Court;

2) in the second instance - Disciplinary Court of Appeal.

Members of disciplinary courts are independent with regard to passing judgments and are only subject to the laws.

Disciplinary proceedings before a disciplinary court are open. A disciplinary court may decide to institute disciplinary proceedings in camera for reasons of morals, state security and public order, as well as in order to protect the parties’ private life, for reasons of another important private interest or an important interest of preparatory proceedings.

Should disciplinary proceedings be instituted in camera, the judgment is delivered openly.

A disciplinary judgment may be made publicly known after it has become final, pursuant to a resolution of the disciplinary court adopted ex officio or at a party’s request, in the way specified by the resolution, which is not subject to appeal.

§ 5. Dossiers of finally terminated disciplinary proceedings are made publicly accessible in accordance with the rules specified in the law of 6 September 2001 on access to public information.

For disciplinary misconducts of lesser importance which do not justify the initiation of disciplinary proceedings, the superior public prosecutor imposes on subordinate public prosecutors the disciplinary sanction of admonition.

The copy of the document by which the disciplinary sanction of admonition has been imposed is attached to the public prosecutor’s personal file.

The public prosecutor penalised with the disciplinary sanction of admonition may, within 7 days from the date of the admonition’s service to him/her, submit an objection to the public prosecutor who is the immediate superior of the public prosecutor who has imposed that sanction.

If an objection is submitted, the superior public prosecutor revokes the disciplinary sanction of admonition and discontinues the relevant proceedings or revokes the disciplinary sanction and submits the case for examination to a disciplinary court through the disciplinary accuser.

A public prosecutor may be suspended in duties for a period of 6 months if it is necessary to immediately prevent him/her from performing duties due to the nature of the disciplinary misconduct. Suspension in duties does not release the public prosecutor from the obligation to remain at the superior’s disposal and perform the duties which are defined precisely in the order on the suspension in duties, but which nevertheless cannot include administration of acts reserved by the law to a public prosecutor.

The right to suspend in duties may be exercised by disciplinary superiors. The decision on a suspension in duties is subject to appeal to a disciplinary court. The disciplinary court’s judgment on the suspension is not subject to appeal.

In the course of proceedings before a disciplinary court, the disciplinary court may at any moment revoke the suspension in duties.

In case of a final permission to prosecute a public prosecutor, as well as when a motion for legal incapacitation has been submitted to the relevant court, the disciplinary superior may suspend the public prosecutor in duties until the final termination of the proceedings. The decision on the suspension in duties is subject to appeal to a disciplinary court. The disciplinary court’s judgment on the suspension is not subject to appeal. The disciplinary superior may at any moment revoke the suspension in duties.

The suspension in duties referred to in § 1 is obligatory if the issued permission to prosecute a public prosecutor concerns an intentional crime prosecuted by public indictment liable to punishment of imprisonment of at least 5 years. In that case, the suspension cannot be revoked until the final termination of the proceedings.

If a public prosecutor has been suspended in duties, a disciplinary court may, upon a motion of the disciplinary superior, decrease the public prosecutor’s salary to 50% for the suspension period. The decision on decreasing the salary is subject to appeal. If no disciplinary proceedings have been initiated within 6 months since the day of suspension in duties, or if disciplinary proceedings have been discontinued or has ended in an acquittal, the public prosecutor receives the retained share of the salary with statutory interest.

Disciplinary accusers are: the Public Prosecutor General’s disciplinary accuser, the Public Prosecutor General’s disciplinary accuser’s first deputy, and the disciplinary accuser’s deputies, one for each provincial area. Disciplinary accusers are appointed by the Public Prosecutor General for a term of office from among public prosecutors.

Disciplinary accusers carry out discovery proceedings at the request of the Public Prosecutor General, the competent provincial or regional public prosecutor, as well as on their own initiative, after preliminary clarification of the circumstances necessary to determine the features of a misconduct, as well as after the public prosecutor has submitted a statement or explanations in writing, unless such a submission is not possible. In case of every initiation of discovery proceedings, the competent accuser immediately notifies the Public Prosecutor General’s disciplinary accuser, who may refer further proceedings to another accuser. After the discovery proceedings, if there are no grounds for initiating disciplinary proceedings, the disciplinary accuser issues a decision refusing to initiate such proceedings. The copy of the decision is served to the Public Prosecutor General and the body that requested disciplinary action.

Within 7 days from the date of service of the decision on refusal to initiate disciplinary proceedings, the Public Prosecutor General and the body that requested disciplinary action have the right of appeal to a disciplinary court.

If there are grounds for initiating disciplinary proceedings, the disciplinary accuser’s deputy requests the Public Prosecutor General to appoint a disciplinary accuser from outside the provincial area in which the public prosecutor against which disciplinary discovery proceedings have been instituted performs service. The appointed disciplinary accuser initiates disciplinary proceedings.

After written presentation of charges, the accused may submit explanations and motions for taking evidence within 14 days. The accused may also submit a statement in writing which shall be considered as explanations. After that deadline and, if needed, after taking further evidence, the disciplinary accuser submits a motion for the examination of a disciplinary case to a disciplinary court. The motion should contain a precise specification of the act which is the subject of the proceedings, statement of reasons and list of evidence requested to be taken.

If the disciplinary accuser finds no grounds to submit a motion for the examination of a disciplinary case, he/she issues a decision on the discontinuation of disciplinary proceedings. The copy of the decision is served to the Public Prosecutor General, the body that requested disciplinary action and the accused.

After the receipt of a motion for the examination of a disciplinary case, the president of the disciplinary court fixes the date of the hearing. The period between the motion’s receipt and the date of the hearing should not be longer than 30 days.

The accused may also appoint a defence counsel from among public prosecutors, lawyers and legal advisers at the stage of disciplinary proceedings handled by a disciplinary accuser. Appointment or change of the defence counsel.

If a public prosecutor’s service relationship is terminated or expires in the course of disciplinary proceedings, the proceedings continue. If the accused has taken up work in a public administration body, an office providing service to a public administration body, the Office of the Attorney General of the Republic of Poland, as a lawyer, legal adviser or notary, the court transmits the judgment to the relevant public administration body, head of the office, the President of the Office of the Attorney General of the Republic of Poland, the Supreme Bar Council, the National Council of Legal Advisers or the National Notarial Council, respectively.

The statement of reasons of the Disciplinary Court’s judgment is drawn up in writing upon the motion of the Public Prosecutor General, the disciplinary accuser or the accused within 21 days since the date of receipt of the judgment. In particularly justified cases, the president of the Disciplinary Court may extend the deadline for drawing up the statement of reasons for another 14 days.

The Public Prosecutor General, the accused and the disciplinary accuser have the right to appeal against the judgment of a disciplinary court passed in the first instance. The appeal should be examined within one month from the date of its receipt.

The statement of reasons of the Disciplinary Court of Appeal’s judgment is drawn up in writing upon a motion of the Public Prosecutor General, the disciplinary accuser or the accused within 14 days from the date of its receipt. In particularly justified cases, the president of the Disciplinary Court of Appeal may extend the deadline for drawing up the statement of reasons for another 14 days.

The judgment with the statement of reasons is served to the proposer of the motion and to the Public Prosecutor General.

The parties and the Public Prosecutor General have the right to lodge a cassation against a judgment passed by the Disciplinary Court of Appeal to the Supreme Court. The cassation may be lodged for the reason of a glaring infringement of the law or a glaring incommensurability of a disciplinary penalty.

The deadline for lodging a cassation is: for a party - 30 days, for the Public Prosecutor General - 3 months - from the date of service of the judgment with the statement of reasons to the party or to the Public Prosecutor General, respectively.

A party lodges a cassation via the disciplinary court that passed the contested judgment.

The Public Prosecutor General lodges a cassation directly to the Supreme Court.

The Supreme Court examines the cassation in a hearing, in a panel of 3 judges.

The Public Prosecutor General, the disciplinary accuser or the penalised public prosecutor may request the body that issued the decision terminating the proceedings to reopen the disciplinary proceedings.

The reopening of the disciplinary proceedings to the disadvantage of the accused is possible if the proceedings’ discontinuation or the judgment’s passing was a result of a crime or if new circumstances or evidence that could give grounds for conviction or a more severe punishment have been found within 5 years from the discontinuation or from the judgment.

The reopening of the proceedings to the advantage of the penalised person is possible even after the death of the latter if new circumstances or evidence that could give grounds for acquittal or a less severe punishment are found.

In case of the penalized person’s death, the motion for the reopening of the proceedings may be submitted by his/her spouse, lineal relatives, siblings, adopter or adoptee, and the disciplinary accuser or the Public Prosecutor General.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Examples of the implementation of this provision are regulations on sanctions for providing untruth in asset declarations and sanctions for breaking anti-corruption laws. Declarations and statements are made under penalty of perjury for making false declarations under Art. 233 § 1 and 6 of Penal Code. There are also no national statistics on, for example, persons who break the "anti-corruption" regulations, therefore dismissed from the positions of persons or statistics concerning persons accused of providing untruth in asset declarations.

Examples of the implementation of measures

24 public prosecutors was disciplinary punished in connection with violation of dignity of the office between 2016 - 2017 (in 2016 - 8 persons, in 2017 - 16 persons). The following penalties were imposed:

• admonition - 4 ( 2016 - 1, 2017 - 3),

• reprimand - 11 (2016 - 5, 2017 - 6),

• dismissal from prosecutorial service - 4 (2017 - 4),

• deprivation of the right to retirement - 4 (2016 - 2, 2017 - 2),

• suspension of salary valorization - 1 (2017 - 1).

1. The disciplinary case ref. no PK I SD 23.2016.

On February 23, 2009 the Disciplinary Court for Prosecutors at the Prosecutor General received a motion dated on 17 February 2009 of the Appellate Prosecutor's Office in Łódź to initiate disciplinary proceedings against Anna S. - prosecutor of the District Prosecutor's Office in Łódź on the ground that she had discredited dignity of the prosecutor's office, as on September 26, 2008 she had been driving a car on the public road being in a state of alcohol intoxication.

By decision taken on March 9, 2009, the Chairman of the Disciplinary Court for Prosecutors at the Prosecutor General initiated disciplinary proceedings against the above-mentioned prosecutor.

On July 14, 2009, the Disciplinary Court received the indictment of 30 June 2009 against the above-mentioned prosecutor for an act under Art. 178a § 1 of the Criminal Code (driving in the state of intoxication) submitted to the District Court for Łódź - Śródmieście. On April 29, 2010, a judgment was passed in the above-mentioned case. When the judgment became final, the files of the case were sent to the Disciplinary Court.

By judgment of 11 April 2016, the accused Anna S. was found guilty of the act she had been charged with imposing a penalty of deprivation of her right to retirement together with the right to receive a remuneration.

The indicated judgment was not appealed against by the parties to the proceedings.

II. The disciplinary case ref. no PK I SD 13.2017.

On February 16, 2017, the Disciplinary Court at the Prosecutor General was filed by a motion dated on 15.02. 2017 drafted by the Regional Prosecutor's Office in Lublin, to institute disciplinary proceedings against Tomasz D. - a prosecutor of the District Prosecutor's Office in Mrągowo for discrediting dignity of the prosecutor's office.

The motion was based on the following facts. On February 5, 2016, in Biała Podlaska, Tomasz D. wearing a reflective vest with the inscription "PROKURATOR" demanded to open the door of the apartment that belonged to Anna K.S. By showing Anna K.S. a gun- shaped pepper gas spray and shouting at her , Tomasz D. threatened her which resulted in the intervention of police officers from the Municipal Police Headquarters in Biała Podlaska.

On March 22, 2010, a judgment of the Disciplinary Court was pronounced. The accused Tomasz D. was found guilty of the act he was charged with and punished with a reprimand. The judgment was not appealed.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Do any sanctions for violations of codes of conduct (code of ethics) can be imposed upon public officials?

The adoption of codes of ethics or integrity on the official positions remains the responsibility of the authorities or is the result of promoting rules of integrity in the public (civil service) or private sector (codes of conduct, compliance). Incidents related to violations of such codes or regulations by officials or employees can only be considered in the context of possible disciplinary sanctions (with different levels of influence) applied by the authority or employer.

Since the enactment of the Ordinance no 70 director generals/ head of the office is entitled to order an investigation to be taken against the employee of the office to determine whether a breach of the duties of the civil service corps member (enumerated in the civil service law) does not constitute at the same time a breach of particular rules of the civil service. Disciplinary liability covers those violations of the code of ethics which are also violations of the duties of a civil service corps member. The system of disciplinary liability is institutionalized and related to the employment relationship. Disciplinary liability is asserted by the employer through the disciplinary committees and the disciplinary spokesman appointed by him. Proceedings in these cases are regulated in detail in legal acts of sub-statutory rank and are similar to criminal proceedings.

According to the civil service law, disciplinary penalties applicable to civil service corps members:

* a warning,
* a reprimand,
* depriving a Civil Servant of opportunities of promotion to a higher rank for a period of two years (applies only to civil servants),
* decreasing the basic salary by not more than 25% for the period not exceeding six months,
* downgrading to a lower service rank in the civil service (applies only to civil servants),
* expulsion from the civil service (for civil servant relevant only) or expulsion from employment in an office (for civil service employee relevant only).

According to the Civil service law - for minor violations of the responsibilities of a civil service corps member, the director general of office may punish a civil service corps member with a written warning. The punishment may be preceded with explanatory proceedings to clarify the circumstances of the case.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

No assistance was required.

(e) Technical assistance needs

No assistance would be required.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 9. Public procurement and management of public finances

Paragraph 1 of article 9

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Public Procurement Act of 29 January 2004, an act of law crucial in this regard. Furthermore there are several areas of Polish law that are relevant to public procurement, such as: Civil Law, Civil Procedure Law, Competition Law, Criminal and Labour Law applicable to public procurement contracts. Due to the legal framework, the principal procedures for awarding contracts are open tendering and restricted tendering. Open tendering means contract award procedures in which, following a public contract notice, all interested economic operators may submit their tenders. Restricted tendering means contract award procedures in which, following a public contract notice, economic operators submit requests to participate in a contract award procedure, and tenders may be submitted by economic operators invited to submit their tenders. Awarding entity may award contracts by the mean of other procedures (e.g. negotiated procedure with publication, competitive dialogue, negotiated procedure without publication, single-source procurement procedure, request-for-quotations procedure or by electronic bidding procedure) only under the circumstances specified.

According to the Public Finance Act every public finance sector unit (mentioned in article 9) is obliged to establish a system of internal control (articles 68-71). Such a system should allow the unit to act efficiently and in compliance with law and internal procedures. Risk management is an obligatory part of it The manager of public finance sector unit is responsible for designing, implementing and reviewing the system.

Additionally, ministers and local government authorities are also responsible for functioning internal control system in the subordinated public finance sector units.

The Minister of Finance issued The internal control standards for the public finance sector (based on an internationally recognized standards), as well as the guidelines on internal control self-assessment and the guidelines on risk management.

Internal control system in public sector units are examined by internal auditors (articles 272-296). The main objective of internal audit is to assess the adequacy, effectiveness and efficiency of the system. The IIA’s International Standards for the Professional Practice of Internal Auditing has been adopted in the public sector in Poland and internal auditors have to take them into consideration during their work.

According to the standards, internal auditors “are not expected to have the expertise of a person whose primary responsibility is detecting and investigating fraud

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Practical examples are not available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

1. Does Poland have a procurement system based on the principles of objectivity, transparency and competition?
   1. How are the tender notices publicised?
   2. Is the open tender procedure the preferred procedure, used by default?
   3. Is it possible to use direct negotiations and under what circumstances?
   4. Does Poland use information and communications technologies to promote integrity in procurement?
2. Is an effective system of domestic review and appeal established?
3. Are measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements put in place?

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 2 of article 9

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) Procedures for the adoption of the national budget;

(b) Timely reporting on revenue and expenditure;

(c) A system of accounting and auditing standards and related oversight;

(d) Effective and efficient systems of risk management and internal control; and

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Procedures for the adoption of the national budget

The procedures are specified in The Constitution:

- (http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm) and The Public Finance Act

- (http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20091571240).

The project of the budget is publicly available on the Ministry of Finance website:

https://www.mf.gov.pl/ministerstwo-finansow/dzialalnosc/finanse-publiczne/budzet-panstwa/ ustawy-budzetowe/2018/projekty-ustawy

The project of the budget is also given for consultation to the Social Dialogue Council (Rada Dialogu Społecznego) which is the main institution of the national tripartite dialogue that engages the representatives of employees, employers and government in the discussion on the public issues, projects of legal solutions and other decisions taken, concerning the interests of the employers and employees.

Additionally, during the whole process of budget adoption media and the public can have full information on the works done in the Parliament. Online streaming if available via the Sejm website (http://www.sejm.gov.pl/Sejm8.nsf/transmisje.xsp).

Each year by the end of May the Ministry of Finance must prepare a report on the execution of the budget for the previous year. It is available on the website:

https://www.mf.gov.pl/pl/ministerstwo-finansow/dzialalnosc/finanse-publiczne/budzet-panstwa/wykonanie-budzetu-panstwa/sprawozdanie-z-wykonania-budzetu-panstwa-roczne#

Independently of the Ministry of Finance, the Supreme Audit Office (Najwyższa Izba Kontroli) prepares its own report on the budget execution:

https://www.nik.gov.pl/aktualnosci/finanse-publiczne/wykonanie-budzetu-panstwa-w-2017.html Timely reporting on revenue and expenditure

The Ministry of Finance is responsible for preparing revenue and expenditures reports (https://www.mf.gov.pl/en/ministry-of-finance/state-budget/estimated-execution-of-the-state-budget). It is done on a monthly basis.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Additional reports are presented on the Public Data website: https://danepubliczne.gov.pl/group/budzet\_finanse\_publiczne

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Does the timescale between submission of draft budgets and approval of the final budget allow sufficient time for scrutiny, public, parliamentary or otherwise.

Art. 219(2) of the Constitution provides that principles of and procedure for preparation of a draft state budget, the level of its detail and the requirements for a draft state budget, as well as the principles of and procedure for implementation of the budget, are to be specified by statute (ordinary law).

Detailed provisions concerning budgetary planning are enshrined in Act of 27 August 2009 (as later amended) on public finance and Regulation of 28 January 2019 (as later amended) of the Minister of Finance on detailed method, mode and deadlines for preparing the materials for budget draft act. In the Polish budgetary system this regulation is the equivalent of a budget circular.

According to the Art. 222 of the Constitution, the Council of Ministers shall submit to the Sejm (the lower chamber of Polish Parliament) a draft budget for the next year no later than 3 months before the commencement of the fiscal year. In exceptional instances, the draft may be submitted later.

Art. 223 of the Constitution provides the principle that the Senate (the higher chamber of Polish Parliament) may, within the 20 days following receipt of the Budget, adopt amendments thereto.

Finally, according to the Art. 224(1) of the Constitution, the President of the Republic of Poland shall sign the Budget or interim Budget submitted to him by the Marshal of the Sejm within 7 days of receipt thereof, and order its promulgation in the Journal of Laws of the Republic of Poland (Dziennik Ustaw).

Moreover, each year a detailed schedule of parliamentary work on the budget is prepared so that all parliamentary committees can prepare opinions for the public finance committee on the draft budget act.

The timescale between submission of draft budgets and approval of the final budget allow sufficient time for scrutiny.

What are the accounting and auditing systems adopted and whether they are in line with international standards?

In Poland public sector entities keep accounting books and prepare financial statements in accordance with the provisions of the Act of 29 September 1994 on Accounting, the Act of 27 August 2009 on Public Finance and regulations issued to these acts. In matters not regulated by these acts, entities may apply the National Accounting Standards issued by the Accounting Standards Committee. In general all entities of the public finance sector are governed by the overriding principles of the Act on Accounting, including the accrual accounting, prudence, matching of revenue and expense, substance over form. For more detailed information on the Act on Accounting (including keeping the accounting books and preparing financial statements) please refer to the answers to the questions in section relating to Art. 12 of the Convention.

The basic rules concerning internal audit in the public finance sector are regulated in the Act of 27 August 2009 on Public Finance and regulations to the act, The Internal Audit Standards in the Public Finance Sector Entities (the International Standards for the Professional Practice of Internal Auditing issued by the Institute of Internal Auditors IIA are in force), as well as in the guidelines issued by the Central Harmonisation Unit in the Ministry of Finance (which is in charge of internal audit coordination), The Charter of Internal Audit in Public Finance Sector Entities.

Is risk management system / internal control system been put in place? Could you provide examples of how it functions?

The public internal control system was introduced in Poland in accordance with the amendment to the Act of 26 November 1998 on Public Finance passed on 27 July 2001, which came into effect on 1 January 2002, as the result of the EU pre-accession negotiation process. The act was based on the Principles for introduction of the Public Internal Financial Control system in the Polish public administration (strategy paper) approved by the Committee for European Integration in December 2001. Since 2002 the Act on Public Finance concerning public internal financial control was updated three times (in 2005, 2006 and 2009). The Act of 27 August 2009 on Public Finance introduced the management control definition, which replaced financial control and in principle is equal to internal control in the meaning assumed by the COSO model. New Polish public internal control is also based on Guidelines for Internal Control Standards for the Public Sector, issued by INTOSAI. In accordance with the provisions of the Act of 27 August 2009 on Public Finance, management control comprises a general set of activities undertaken in order to ensure the implementation of objectives and tasks in an effective, economical and timely manner compliant with the provisions of law. The key references for internal control are objectives and their achievement as the basic criterion for assessment of effectiveness of the solutions adopted in the entity. The purpose of introducing management control was rather to put in order and systematize, in accordance with international best practices, the structures and principles existing already in the entities than to reorganise them entirely.

The objective of management control is to ensure in particular: compliance with the provisions of law and internal procedures, efficiency and effectiveness of operation, credibility of reports, protection of resources, observance and promotion of rules of ethical conduct, efficiency and effectiveness of information flow, risk management. The persons responsible for ensuring an adequate, efficient and effective management control are: the minister in government administration branches he/she is in charge of, a commune foreman, a mayor, a chairman of the management board of the local government unit (so-called secondary level of management control) and the head of the entity (so-called primary level of management control).

The Minister of Finance issued also the Detailed Guidelines on Planning and Risk Management for the Public Finance Sector, aimed to help public entities coordinate, direct and control activities with regard to uncertainties that would affect the organisation’s ability to achieve its objectives and to promote risk culture. The guidelines are based on widely recognized international standards.

Are there any statistics/examples on corrective action being taken to address audit report findings?

The reporting statistics information obligation is limited only to the governmental sector. In 2019, internal auditors in 561 governmental entities performed 1362 assurance engagements, 948 follow-up audits and 2253 consulting services. Audits covered among others governance aspects, and operational, financial and risk management processes, in order to provide assurance to the audited entities that the controls in place are effective in mitigating those risks that may impair the achievement of their objectives. In case of identifying weaknesses auditors issued 7324 recommendations with the aim to mitigate related risks and to add value to the audited entity operations. 7190 (98,1 %) issued recommendations were accepted by the auditees.

Under the current state of the law, 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 type of entities.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 3 of article 9

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See the response to the preceding paragraph.

Does Poland have provisions for maintenance of books and records and whether are the entities adhering to these provisions?

Yes, the requirement to keep the accounting books (by entities from the public sector as well as the private sector) is set in the Act of 29 September 1994 on Accounting. For more detailed information on this Act, including keeping the accounting books, please refer to the answers to the questions in section relating to Art. 12 of the Convention.

Are there administrative and criminal sanctions for falsifying government financial books and records?

The question is not clear – please explain what is meant by “government financial books and records”.

Could you give a summary of cases brought under this legislation ?. (the offence or wrongdoing is normally covers all books and records and is not limited to financial books and records).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

See the response to the preceding paragraph.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Do any sanctions for falsification accounting books, records or other documents related to public expenditure and revenue or for committing infringements concerning accounting procedures are provided for by criminal, administrative or other legislation? Has any legal act on accounting (concerning accounting books, records, etc.) been adopted in Poland?

The main law which sets the requirements in the field of accounting (including the provisions on keeping the accounting books) is the Act of 29 September on Accounting. For more detailed information on this Act, including keeping the accounting books, please refer to the answers to the questions in section relating to Art. 12 of the Convention.

Falsification of accounting books and financial statements as well as non-compliance with other provisions of the Act on Accounting have been penalized under art. 77 and art. 79 of this Act. For more detailed information on these provisions please refer to the answers to the questions in section relating to Art. 12 of the Convention.

Falsification of accounting books, record and other documents have been criminalized under **Articles 270 -272 of the Criminal Code.**

Art. 270. Forgery.

§ 1. Anyone who forges, counterfeits or alters a document with the intention of using it as authentic, or who uses

such a document as authentic, is liable to a fine, the restriction of liberty or imprisonment for between three months to five years.

§ 2. Anyone who fills in a form with someone else's signature, against the signatory's will and to his or her detriment, or who uses such a document, is liable to the same penalty.

§ 2a. If the act is of less significance, the offender is liable to a fine, the restriction of liberty or imprisonment for up to two years.

§ 3. Anyone who makes preparations for the offence specified in § 1 is liable to a fine, the restriction of liberty or imprisonment for up to two years.

Art. 271. Attesting to an untruth.

§ 1. A public official, or another person authorised to issue a document, who certifies an untruth therein, in circumstances of legal significance, is liable to imprisonment for between three months and five years.

§ 2. If the act is of less significance, the offender is liable to a fine or the restriction of liberty.

§ 3. If the offender commits the act specified in § 1 in order to gain material or personal benefit, he is liable to imprisonment for between six months and eight years.

Art. 272. Certification under false pretences.

Anyone who obtains a certification of an untruth by deceitfully misleading a public official or another person authorised to issue such a document is liable to imprisonment for up to three years

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 10. Public reporting

Subparagraph (a) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Since 2010, the CBA publishes annually information on corruption crime in Poland as a Map of Corruption. The aim of the report is to compile data on the issue of combating corruption crime and analysis of individual factors of the phenomenon. The report is prepared on the basis of the CBA's own data and information provided by Ministry of Justice, Public Prosecutor's Office, Police, Internal Security Agency, Border Guard, Military Police, Prison Service and the National Treasury Administration. According to the Constitution of the Republic of Poland, a citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. The right to obtain information includes inter alia access to documents. Limitations upon the above-mentioned right may be imposed solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State defined in the acts (Article 61 of the Constitution). The right of access to public information is universal, subject to Article 5 of the Act of 6 September 2001 on access to public information (Journal of Laws of 2016, item 1764, as amended). No person exercising the right to public information shall be required to demonstrate a legal or factual interest (Article 2 of the above Act).

Members of the Council of Ministers (the Prime Minister, Deputy Prime Ministers, ministers, chairpersons of the committees who make up the Council of Ministers) and the Head of the Chancellery of the Prime Minister, as public authority bodies, must make public information available (Article 4(1)(1) of the Act on access to public information). In particular, access should be provided to public information (i.e. any information on public affairs) concerning:

1) Domestic and foreign policy, including on:

a. Intended actions of the legislative and executive power, b. Drafting normative acts,

c. Agendas in the area of implementing public tasks, the manner of their implementation, execution and effects of execution of these tasks;

2) The above-mentioned entities obliged to make public information available, including on: a. The legal status or legal form,

b. Organisation,

c. Area of activity and competence,

d. Bodies and individuals performing functions in these bodies, and their competencies,

e. The ownership structure of the entities referred to in Article 4(1)(3)-(5) of the Act on access to public information,

f. Assets at their disposal;

3) The operating rules of the above-mentioned entities obliged to make public information available, including on:

a. The procedures of public authorities and their organisational units,

b. The procedures of state legal persons and local government legal persons in the area of performing public tasks, and their operation within budget and non-budget economy,

c. The ways in which public law acts are adopted,

d. The ways in which issues are accepted and handled,

e. The status of accepting issues, the order of handling or resolving issues,

f. Registers, records, and archives kept, and the ways and principles of making available the data from these registers, records, and archives,

g. Recruitment for vacancies, to the extent defined in separate regulations; 4) Public data, including:

a. The content and form of official documents, in particular: -

The content of administrative acts and other decisions,

- Documentation on the course and effects of controls, as well as addresses, positions, requests, and opinions of the entities performing controls,

- The content of verdicts of: common courts, the Supreme Court, administrative courts, military courts, the Constitutional Tribunal, and the Tribunal of State,

b. Positions in public matters of public authority bodies and of public officials within the meaning of the Penal Code,

c. The content of other addresses and evaluations made by public authority bodies,

d. Information on the condition of the state, local governments and their organisational units;

5) Public assets, including:

a. Assets of the State Treasury and other state legal persons,

b. Other property rights due to the state and state debt,

c. Assets of local government units, professional and economic self-governments, assets of legal persons of local governments and of health insurance funds,

d. The assets of the entities referred to in Article 4(1)(5) of the Act on access to public information derived from disposal of the assets referred to in subparagraphs (a)-(c), benefits from these assets and encumbrances thereon,

e. Income and losses of commercial companies in which the entities referred to in subparagraphs (a)-(c) have a dominant position within the meaning of the Code of Commercial Companies and Partnerships, as well as disposing of this income and the manner in which losses are covered,

f. Public debt,

g. State aid,

h. Public burdens (Article 6(1) of the above-mentioned Act on access to public information). The right to public information includes the right inter alia to obtain public information (including to obtain information processed to the extent that is of particular importance to public interest) and access to official documents (Article 3 of the said Act). Public information is made available by way of publishing public information, including official documents, in the Public Information Bulletin, making available on request (or without a written request in the case of public information that can be made available immediately), by way of laying out or displaying in publicly available places, and by fixing devices that allow reading public information in publicly available places (Article 7 of the said Act), Public information of particular importance to innovation development in the country and development of the information society that, due to the way in which it is kept and made available, allows it reuse within the meaning of the Act of 25 February 2016 on reuse of public sector information (Journal of Laws item 352, as amended), in a useful and effective manner, constitutes a set and is made available at the central repository. Government administration bodies are obliged to provide their information resources and metadata that describe their structure for the purpose of making available at the central repository (Article 9a(1) and (2) of the above-mentioned Act). The detailed manner, procedure, and deadlines for making information available are regulated by the Act on access to public information (Article 8-15 of the Act). The right to public information is subject to limitations within the scope and under the rules specified in the provisions on the protection of classified information, on the protection of the secrets protected by law and on compulsory restructuring, as well as due to the privacy of a natural person or commercial secret. However, this limitation does not apply to information on persons holding public offices, or which is related to the holding of such offices, including information about conditions of appointment to an office and office performance, or to instances when a natural person or an entrepreneur waive their right. Subject to the above restrictions, it is forbidden to restrict access to information on issues resolved in proceedings before state bodies, in particular in administrative, penal, or civil proceedings, due to the protection of the interest of a party, if proceedings concern public authorities or other entities performing public tasks or individuals in public functions - to the extent of these tasks or functions (Article 5(1)-(3) of the said Act). Access to public information can be refused by way of a decision that can be appealed against (Article 16-17 of the abovementioned Act).

Meetings of the Council of Ministers The Council of Ministers, acting collegially, examines the matters and makes decisions at its meetings. Meetings of the Council of Ministers are held in camera. The Council of Ministers must inform the public on the topics of its meetings and the decisions it makes. It does not apply to issues for which the Prime Minister ordered to be proceeded in camera (Article 22 of the Act of 6 August 1998 on the Council of Ministers (Journal of Laws of 2012 item 392, as amended). Documents planned to be examined by the Council of Ministers are made available at the sites of the Public Information Bulletin of the ministers and heads of central offices responsible for drafting them and in the Public Information Bulletin of the Government Legislation Centre.

The agenda is developed and amended by the Secretary of the Council of Ministers (Article 12 of Resolution No 190 of the Council of Ministers of 29 October 2013 - The Rules of Procedure of the Council of Ministers (Journal of Laws of 2016, item 1006, as amended)). The agenda of the Council of Ministers is published in the Public Information Bulletin of the Council of Ministers. Meetings of the Council of Ministers are fully recorded (on the basis of sound recordings); the records are working documents of the Council of Ministers (and kept at the Chancellery of the Prime Minister, subject to provisions on the protection of classified information); also records of findings are drafted that include a full account of the decisions made by the Council of Ministers during particular meetings, taking into account the results of votes and recorded dissenting opinions. The records of findings are provided to the members of the Council of Ministers, voivodes, and bodies and individuals defined by the Prime Minister (Article 16 of the Rules of Procedure of the Council of Ministers). From each meeting of the Council of Ministers a press release is prepared, in particular devoted to the topics of meetings and the decisions made. Press releases are drafted and publicised by the press spokesperson of the Government (Article 17 of the Rules of Procedure of the Council of Ministers). Members of the Council of Ministers and other individuals who take part in meetings of the Council of Ministers may not, without the consent of the Prime Minister, reveal any information on the course of these meetings, individual opinions or positions expressed during meetings by the attendees (Article 18 of the Rules of Procedure of the Council of Ministers).

Transparency of the government legislative process

The detailed principles of handling draft government documents are defined in the Rules of Procedure of the Council of Ministers and partially in the Act of 7 July 2005 on lobbying activity in the law-making process. The Council of Ministers keeps a register of legislative work of the Council of Ministers that covers draft assumptions for draft acts, draft acts, draft ordinances of the Council of Ministers (Article 3(1) of the Act on lobbying activity in the law-making process), and a register of programming work of the Council of Ministers into which draft strategies, programmes and other government documents are inscribed (Article 25 of the Rules of Procedure of the Council of Ministers). The Prime Minister and the ministers keep registers of legislative work containing draft ordinances of the Prime Minister and of the ministers (Article 4(1) of the above-mentioned Act). The registers contain information on draft government documents, including inter alia brief information on the reasons and the need to introduce the solutions planned to be included in the draft; specification of the essence of the solutions planned to be included in the draft; name and position or function of the person responsible for draft development; information about the resignation from work on the draft, giving the reason for such resignation - in the case of resignation from work on the draft (Article 3(2) and Article 4(2) of the said Act). The registers are published in the Public Information Bulletin of respective bodies (Article 3(3) and Article 4(2) of the above-mentioned Act). The Council of Ministers or its auxiliary body may specify the date of the planned adoption by the Council of Ministers of the draft included in the register of legislative work. The Council of Ministers submits to the Sejm, once in 6 months, a list of draft acts with specified dates of their adoption by the Council of Ministers (Article 3a of the above-mentioned Act). A draft government document subject to entering into a relevant register of legislative work or a register of programming work of the Council of Ministers may be referred to reconciliation, public consultations, or opinioning after it is entered into a given register (Article 25 and Article 31 of the Rules of Procedure of the Council of Ministers). Draft assumptions for draft acts, draft acts and draft ordinances are published in the Public Information Bulletin upon their being forwarded for consultation to the members of the Council of Ministers (Article 5 of the above-mentioned Act). Also, all documents concerning work on a draft are published in the Public Information Bulletin (Article 6 of the above Act), including positions submitted by some entities in the framework of reconciliations, opinioning, and public consultations, answer of the initiator to comments.

Draft government documents are published in the Public Information Bulletin at the website of the initiating body - the body authorised to develop the draft, hold the reconciliation process, public consultations, or opinioning and to submit the draft for examination, i.e. inter alia members of the Council of Ministers and the Head of the Chancellery of the Prime Minister. At the same time, according to the Rules of Procedure of the Council of Ministers, draft assumptions for a draft act, draft acts or draft ordinances (together with draft substantiation, assessment of the forecasted socio-economic effects of a normative act (OSR) and any documents concerning work on the draft) are also made available by the initiating body in the Public Information Bulletin at the website of the Government Legislation Centre on a dedicated website - the Government Legislative Process. The current versions of draft government documents (along with documents concerning work on these drafts) are published in the Public Information Bulletin at every stage of the government legislative process, from the moment a draft is referred to inter-ministerial consultations, public consultations, or consultations with the judiciary and prosecution services or other relevant institutions. The Government Legislative Process website also publishes final draft ordinances referred for signature by the Prime Minister or the competent minister, and draft acts adopted by the Council of Ministers and referred to the Sejm. In addition, the Government Legislative Process website publishes act functioning assessments (ex-post OSR), if they are developed. The Public Information Bulletin publishes, as documents concerning work on drafts, notifications of interest in work on draft assumptions for a draft act, draft act, or draft ordinance, submitted under the procedure defined by the provisions on lobbying activity in the law-making process , as well as notifications made by entities engaged in professional lobbying (Article 7(3) of the Act on lobbying activity in the law-making process).

The rules and procedure for publishing normative acts and some other legal acts, international agreements, and collective labour arrangements are laid down in separate acts (such as the Act of 20 July 2000 on publishing normative acts and certain other legal acts (Journal of Laws of 2017, item 1523)). As a principle, government documents are public. Documents that constitute secret information are classified according to the principles laid down in regulations on the protection of classified information. Classified information is subject to protection in the manner defined in the above-mentioned Act until declassification or a change in classification.

Public consultations in the government legislative process Public consultations are held at the beginning of the government legislative process. The initiating body (including a member of the Council of Ministers, Head of the Chancellery of the Prime Minister), having entered a draft into a relevant register and having developed the draft, presents the draft government document for public consultations (as a rule, public consultations are conducted in parallel with the process of reconciliation with the members of the Council of Ministers, Head of the Chancellery of the Prime Minister, and the Government Legislation Centre, and with the process of consultation by government administration bodies or other state bodies and institutions whose competence is covered by the draft, and by the entities defined in separate regulations, including trade unions). In the framework of public consultations, the initiating body may refer a draft government document to social organisations or other interested entities or institutions to obtain their positions. Presenting a draft for public consultations, the initiating body takes into account the content of the draft government document, as well as other circumstances, such as significance of the draft and its expected socio-economic effects, the degree of its complexity and its urgency; the initiating body also follows guidelines on the conduct of public consultations (Article 36 of the Rules of Procedure of the Council of Ministers).

Guidelines for the conduct of public consultations in the framework of the government legislative process are available in the Public Information Bulletin at the website of the Government Legislation Centre. The guidelines define, inter alia, the rules of conducting public consultations and selected methods thereof. Public consultations can be held in writing (using a dedicated platform for on-line consultations ) and in the form of consultation meetings.

When referring a draft government document to public consultations, the initiating body specifies a deadline for issuing a position (Article 40 of the Rules of Procedure of the Council of Ministers). If the initiating body considers it conducive to adequate conduct of public consultations, it may invite representatives of entities that presented their positions in public consultations to attend a consultation conference with the representatives of the entities that submitted their comments on the draft government document in the framework of reconciliations or opinioning, or organise a separate conference with the participation of representatives of the entities that presented their opinion in public consultations (Article 47 of the Rules of Procedure of the Council of Ministers).

The initiating body prepares a report from the consultations. Discussion of the results of public consultations and consultations with states the entities that presented their positions or opinions and includes a review of these positions or opinions, as well as the initiating body’s reference (Article 51(2) of the Rules of Procedure of the Council of Ministers). Documents concerning ongoing public consultations are published in the Public Information Bulletin.

Public hearing

According to the Act on lobbying activity in the law-making process, the entity responsible for drafting an ordinance may conduct a public hearing concerning the draft. The information about the date of the public hearing concerning a draft ordinance is published in the Public Information Bulletin at least 7 days before the public hearing. Every entity that notified interest in the work on a draft ordinance at least 3 days before the date of the public hearing has the right to take part in the public hearing (Article 9 of the above-mentioned Act). After submission of a draft act to the Sejm, a public hearing concerning the draft may be conducted, in line with the rules laid down in the Standing Orders of the Sejm (Article 8 of the said Act).

The obligation to present information on lobbying The obligations of public authority bodies concerning the activity of entities that engage in lobbying towards these bodies are defined in the Act of 7 July 2005 on lobbying activity in the law-making process (Journal of Laws of 2017, item 248). Public authority bodies must, without delay, publish in the Public Information Bulletin the information on actions taken towards them by entities carrying out professional lobbying activity and on the solutions expected by those entities (Article 16(1) of the Act on lobbying activity in the law-making process). Where it has been established that professional lobbying activities are carried out by an entity not entered into the register, the competent public authority body must without delay notify the minister in charge of public administration of that fact (Article 17 of the said Act).

The detailed procedure to be followed by employees of the offices supporting public authority bodies in dealing with entities carrying out professional lobbying activity and with entities carrying out professional lobbying activity without being entered into the register, including the procedure for documenting contacts with such entities, is defined by the head of a given office (Article 16(2) of the said Act).

The heads of offices supporting public authority bodies prepare, once a year by the end of February, information on the actions undertaken towards the authorities in the preceding year by entities carrying out professional lobbying activity. The information must include: specification of issues towards which professional lobbying activity was carried out, indication of the entities that conducted professional lobbying activity, identification of the forms of professional lobbying activity, including information whether it consisted in supporting specific drafts or acting against them; definition of influence exerted by an entity carrying out professional lobbying activity in the law-making process on a given issue. This information is immediately published in the Public Information Bulletin (Article 18 of the Act on lobbying activity in the law-making process).

Handling of petitions by the bodies

The principles of filing and processing petitions as well as the handling of petitions by the bodies are regulated by the Act of 11 July 2014 on petitions (Journal of Laws of 2017, item 1123). According to the Act, information concerning petitions filed to public authority bodies is revealed. Information with a scan of a petition, date when it was filed and, if they consent, the name of the person or entity that filed the petition or the entity in the interest of which the petition was filed is immediately published on the website of the entity processing the petition or the office that supports it. The said information in immediately updated with data on the course of the proceedings, in particular on opinions solicited, the planned date and manner of handling the petition (Article 8 of the said Act).

The Sejm adopts the State budget by means of a Budget act (Article 219(1) of the Constitution of the Republic of Poland). As any other act, the budget is public. The principles of and procedure for preparation of a draft State Budget, the level of its detail and the requirements for a draft State Budget, as well as the principles of and procedure for implementation of the Budget, are specified by statute (Article 219(2) of the Constitution of the Republic of Poland). The Council of Ministers adopts a draft State Budget and supervises the implementation of the State Budget and passes a resolution on the closing of the State's accounts and reports on the implementation of the Budget (Article 146(4)(5) and (6) of the Constitution of the Republic of Poland).

Pursuant to the Act of 27 August 2009 on public finance (Journal of Laws of 2017, item 2077), management of public funds is public. The above principle does not apply to public funds whose origin or purpose was classified on the basis of separate regulations or if it results from international agreements (Article 33 of the above-mentioned Act). The rule of openness in management of public funds is envisaged inter alia by:

- Openness of the debate on the budget in the Sejm and Senate;

- Openness of the debate on the report on the implementation of the State budget in the Sejm;

- Making the following public: amounts of grants from the State budget, the amounts of grants from State targeted funds, collective data on public finance, information on the implementation of the State budget in subsequent months;

- Making public by public finance sector units information on: the scope of tasks or services performed or rendered by the unit and the amount of public funds provided for their implementation, the rules and terms of rendering services to entitled entities, the rules of paying for the services rendered;

- Making available by public finance sector units a list of entities from outside the public finance sector that received grants from public funds, co-financing of a task or a loan, or whose debt towards a public finance sector unit was remitted;

- Making available annual reports concerning the finance and operation of organisational units that belong to the public finance sector;

- Making public the content of activity plans, reports on the execution of activity plans, and declarations on the status of management control (Article 34(1) of the above-mentioned Act).

The Minister of Finance makes public a report on the implementation of the budget act, adopted by the Council of Ministers (Article 34(2) of the above-mentioned Act). The Council of Ministers, within the 5-month period following the end of the fiscal year, presents to the Sejm a report on the implementation of the budget act, together with information on the status of the State debt. Within 90 days following receipt of the report, the Sejm considers the report presented to it, and, after seeking the opinion of the Supreme Chamber of Control, passes a resolution on whether to grant or refuse to grant approval of the financial accounts submitted by the Council of Ministers (Article 226 of the Constitution of the Republic of Poland). The Minister of Finance makes public aggregate data concerning all financial operations of the public finance sector, covering in particular income and expenditure, revenue and spending, liabilities and dues, guarantees and warranties, as well as data concerning the implementation of the State budget for particular months, including the amount of deficit or surplus (Article 36(1) of the above Act). Public finance sector units keep accounts according to the regulations on accounting, following the principles laid down in the Act on public finance (Article 40(1) of the said Act).

In the light of the above information, it should be stated at the same time that at present a draft act on public life transparency is proceeded in the framework of the government legislative process (as at 15 November 2017 - the draft is in the process of intergovernmental consultation, consultations with interested state holders, and public consultations). According to the justification of the above draft (version as of 23 October 2017), “the main purpose of the planned act is to consolidate transparency of the Polish State. The changes suggested by the act’s initiator assume arrangement of the provisions currently in force, but also introduction of new solutions, unknown in the Polish law to-date. Their common goal is to strengthen the transparency of management of the State and its assets. Thanks to the provisions proposed in the draft, the control of the authorities, both institutional and social, will be strengthened.”

The above-mentioned draft act (version of 23 October 2017) assumes that the act would define inter alia: 1) The rules and procedure of access to information on public affairs;

2) The rules of transparency in the law-making process;

3) The rules and procedure of conducting activity that aims at influencing public authority bodies in the law-making process.

At the same time, the above-mentioned draft act (version of 23 October 2017) provides for revoking inter alia:

1) The Act of 6 September 2001 on access to public information;

2) The Act of 7 July 2005 on lobbying activity in the law-making process.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

No examples available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

The provisions of the Act on access to public information which contain the requirements regarding availability of information (on domestic and foreign policy, entities, registers, records, archives kept, etc.) can be considered as an example of good practices.

Subparagraph (b) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See the response to the preceding paragraph

The preceding paragraph does not seem to contain a specific answer to the question of simplifying administrative procedures. Would it be possible to receive information on how is this achieved in Poland (through information technology or otherwise?)

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

There are no practical examples available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Subparagraph (c) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please see the response to the preceding paragaphs regarding public sector.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see responses to the preceding articles.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Practical examples are not currently available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 11. Measures relating to the judiciary and prosecution services

Paragraph 1 of article 11

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Constitutional principles of organization and functioning of the judiciary in Poland cover the legal and organizational status of court authorities, proceedings before courts and the legal status of the judge. Art. 173 of the Polish Constitution of 2 April 1997 provides for dualism of the judiciary's authority. It is composed of courts and tribunals. Courts encompass:

 the Supreme Court  common courts

 administrative courts, including the Supreme Administrative Court  military courts.

As regards tribunals, the Constitution lists the Constitutional Tribunal and the Tribunal of the State. Common courts are established and closed by the Minister of Justice after the opinion from the National Judiciary Council. Proceedings before Polish courts take place in two instances. Common courts are divided into:

 Regional courts  District courts  Appeal courts

In Poland there are the following types of common courts of law:

 Regional courts [Sądy Rejonowe] - they are courts of the first instance and they handle most cases, except cases reserved for other courts; their jurisdiction usually covers an area of several Communes.

 District courts [Sądy Okręgowe] - they function as both first and second instance courts, handling serious cases and appeals; their jurisdiction covers an area of several district courts.

The decision whether a case should be handled by a district or a regional court of first instance depends on the type of the case.

 Appeal (Appellate) courts [Sądy Apelacyjne] - they are the second instance courts and their jurisdiction covers a territory of at least two regional courts. The

Currently, there are 376 common courts in Poland - 11 appeal courts, 45 district courts and 321 regional courts. Judges of common courts are appointed by the President of the Republic of Poland at the motion of the National Judiciary Council for an unspecified period of time. Judges in Poland are independent, they are governed solely by the Constitution and Laws.

The common courts are divided into divisions depending on the type of cases they handle (e.g. civil division, commercial division, commercial division of the National Court Register, land and mortgage register division, employment division, family division and bankruptcy division). Not all district courts have a commercial division. There is usually a commercial division in one district court within the region of each regional court. Each regional court has a separate commercial division. Courts of appeal do not have commercial divisions at all, and therefore commercial cases there are heard in the civil division. A major change affecting cases between entrepreneurs went into effect on 3 May 2012. The separate procedure for commercial cases was eliminated for cases filed after that date. Consequently, the district court now acts as the court of first instance in commercial cases concerning proprietary rights where the amount in litigation/dispute does not exceed PLN 75,000. An appeal against a first-instance decision issued by the commercial division of a district court is heard by the commercial division of the regional court. If a decision is issued at the first instance by a regional court (i.e. where the amount in dispute exceeded PLN 75,000), the appeal will be heard by the civil division of the court of appeal.

A commercial case is heard in the first instance by the commercial division of the court. If the plaintiff files a statement of claim in a commercial case with the civil division of the competent court, it will automatically be forwarded to the commercial division. If the specific district court does not have a commercial division, the case will be moved to the district court with a commercial division, resulting in a change of venue. The definition of commercial cases was significantly modified in connection with recent amendments to the Civil Procedure Code. A commercial case is defined as a civil case between businesses (i.e. individuals or other entities engaged in commercial or professional activity for their own account) within the scope of their business activity. The definition of a commercial case also includes several specific categories of cases:

 - Cases involving corporate relations, or claims for damages against members of the management board of a capital company (limited-liability company or joint-stock company) for alleged infringement of law or corporate regulations

 - Environmental cases against businesses (to cease environmental violations, redress injury to the environment, conduct environmental reclamation, or enjoin actions threatening the environment)

 - Cases heard by the common courts pursuant to competition law, the Energy Law, the Telecommunications Law, the Postal Law or railway law

 - Cases against businesses seeking to prohibit the use of unfair contracts.

The legal and organizational basis for the functioning of common courts is constituted by, for instance: Art. 175 section 1 and Art. 177 of the Constitution of the Republic of Poland and the Law of 27 July 2001 - the Law on the System of Common Courts (Journal of Laws No. 98, item 1070, as amended). Common courts administer justice in all matters, with an exception of matters which are reserved, by law, to the competence of other courts. Common courts and established and closed by the Minister of Justice. The Minister of Justice also establishes their seats and the area of their jurisdiction, upon the obtaining of an opinion from the National Judiciary Council. Proceedings before Polish courts take place in two instances. Common courts are divided into:

 Regional courts (established for one or more communes, and, in justified cases, more than one regional court may be established for a single commune)

 District courts (established for the area of jurisdiction of at least two regional courts)  Appeal courts (established for the area of jurisdiction of at least two district courts).

Currently, there are 376 common courts in Poland - 11 appeal courts, 45 district courts and 321 regional courts. Judges of common courts are appointed by the President of the Republic of Poland at the motion of the National Judiciary Council for an unspecified period of time. Judges in Poland are independent, they are governed solely by the Constitutions and Laws. They hold an immunity and may not be dismissed from their jobs, which means that the employment relationship is dissolved by force of law when a judge resigns. The Minister of Justice exercises only administrative supervision of common courts. This supervision covers issues connected with financial and administrative activity of courts, as well as any other issues concerning efficient consideration of cases and proper execution of judgements. This means that the supervisory power of the Minister of Justice may not interfere with independence of judges, i.e. the wording of judgements and decisions, whose correctness may be examined only according to the procedure stipulated by law. The National Judiciary Council is a constitutional collegiate body guarding the independence of courts and of judges. The present system, scope of operation and procedure of work of the Council are specified by the Constitution and the Law of 27 July 2001 on the National Judiciary Council (Journal of Laws of 2001 No. 100, item 1082, as amended).

The most important tasks of the Council include:

 providing an opinion regarding normative acts concerning the judiciary and judges, as well as adoption of resolutions concerning matters referred to the Constitutional Tribunal for an examination of their consistency with the Constitution of the Republic of Poland with regard to independence of courts and judges,

 consideration and evaluation of candidates to serve offices of judges and submission to the President of the Republic of Poland of motions for appointment of judges of the Supreme Court, the Supreme Administrative Court, common courts, provincial administrative courts and military courts,

 adoption of a catalogue of professional ethical rules of judges and monitoring of their observation.

The Council if composed of 25 members. Similarly to the majority of other European states, the composition of the Polish National Judiciary Council is mixed, but judges form a majority of its members. The Council is composed of: the First President of the Supreme Court, the President of the Supreme Administrative Court, a person appointed by the President of the Republic of Poland, the Minister of Justice, four MPs, two senators, ten judges representing common courts, two judges of the Supreme Court, two judges of administrative courts and a judge of a military court.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

See the response to general information section.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Please provide brief information on appointment of judges, code of conduct for judges and procedure of applying disciplinary sanctions.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 2 of article 11

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please see the response to informative part of article 7 on public sector.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Prosecution office has not been addressed by the provisions of the Polish Constitution. The structure, powers and tasks of the prosecution service, as well as its internal rules of governance are regulated by the latest Law on public prosecutor’s office (LPO) adopted on 15 January 2016 .

As regards prosecutorial independence Article 7 § 1 LPO provides that when administering the acts specified by laws, a public prosecutor is independent. Certain limitations to that principle have been enshrined in Article 7 § 2-6, and Article 8 LPO.

The limitations consist in obligation of the public prosecutor to enforce dispositions, guidelines and orders of a superior public prosecutor. An order concerning the content of an act in court proceedings is given by a superior public prosecutor in writing and, if requested by the public prosecutor, with a statement of reasons. Should there be an obstacle to communicating the order in writing, it is allowed to give the order orally, the superior being nevertheless obliged to confirm it in writing as soon as possible. The order is included in the public prosecutor’s own documentation of the case. Should a public prosecutor not agree with an order concerning the content of an act in court proceedings, he/she can request the order to be changed or himself/herself to be excluded from administering the act or from participating in the case. The exclusion is finally adjudicated by the public prosecutor who is the immediate superior of the public prosecutor who has given the order. If any new circumstances emerge in court proceedings, the public prosecutor makes the decisions related to the further course of the proceedings independently. If the decision may result in a need to incur expenses exceeding the amount specified by the organizational body’s head, the public prosecutor may make the decision after obtaining the approval of the organizational body’s head.

A superior public prosecutor has the right to change or revoke a decision of a subordinate public prosecutor. A change or revocation of a decision must be made in writing and is included in the dossier of the case. A change or revocation of a decision that has been served to the parties, their representatives or defence counsel and other authorized persons may only be made in accordance with the procedure and principles specified by the law.

The issues of code of conduct and disciplinary mechanism have been addressed above in the responses concerning Article 8, paragraph 6.

The issue of training requirements for members of the prosecution service have been addressed above in the response concerning Article 6 paragraph 1,

The Issues of asset declaration have been addressed above in the response concerning Article 8, paragraph 5.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Examples of breaching of a prosecutorial code of conduct which led to the application of disciplinary measures have been presented on pages 20-23

Cases in which members of the prosecution service have been subject to criminal proceedings as a result of alleged acts of corruption.

I. A case handled by the Silesian Local Department for Organized Crime and Corruption of the national Prosecutor’s Office

On April 4, 2017, the prosecutor of the Silesian Local Division of the Department for Organized Crime and Corruption in Katowice filed an indictment with the District Court in Rzeszów against Anna H. the former Appellate Prosecutor in Rzeszów. She was accused among others of two corrupt acts, qualified under art. 228 § 1 of the Criminal Code (passive corruption) and art. 230 § 1 of the Criminal Code (trading in influence). Both criminal offences were committed in 2010 - 2012 in connection with the performed function of the Appellate Prosecutor. Anna H. was charged of accepting personal benefits in exchange for handling future cases in a favorable way for identified persons, for exerting influence on the prosecutors of the subordinate District Prosecutor's Office in four preparatory proceedings and 2 court proceedings and for settling matters (tax and examination proceedings) in state and local government institutions, including the Examination Committee for the Bar Examination and the Tax Chamber.

The court trial against Anna H. is pending.

II. A case handled by the Wielkopolski Local Department for Organized Crime and Corruption of the National Prosecutor’s Office.

On July 26, 2017, the Prosecutor of the Wielkopolski Local Department for Organized Crime and Corruption of the National Prosecutor’s Office in Poznań filed the indictment against Sebastian Z. with the District Court in Poznań. Sebastian Z. holding a position of a prosecutor in one of the District’s Prosecution Offices was charged for committing criminal offences qualified under art. 231 § 2 of the Criminal Code (abuse of power), art. 286 § 1 of the Criminal Code (fraud) art. 228 § 4 of the Criminal Code (soliciting a bribe) Frauds consisted in swindling or attempting to swindle money as alleged fees related to the pre-trial proceedings conducted or supervised by the prosecutor's office. Charges of soliciting bribes concerned the demands of payments in exchange for the performance of a service activity, e.g. for the return of a driving license seized in the course of the proceedings.

Statistics regarding number of reports of corruption in prosecution service received and number of investigation

In years 2015-2017, 160 reports of alleged corruption among prosecutors were submitted. As a result of conducted investigations, four prosecutors were accused of corruption.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

* Is there a mechanism or procedure to receive and inquire into complaints of misconduct against members of the judiciary?
* Is this mechanism or procedure within the judiciary or external from it? Does it function independently of the judiciary?
* Who participates in this mechanism or procedure, and how are members selected?
* What transparency measures are in place in that mechanism or procedure to promote public confidence in the process to address such complaints?
* To what extent does the code of conduct or other professional standards for the judiciary touch on the core pillars of the Bangalore Principles of Judicial Conduct, i.e., Independence, Impartiality, Integrity, Propriety, Equality, and Competence and Diligence?

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 12. Private sector

Paragraphs 1 and 2 of article 12

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia: (a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State; (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities; (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities; (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure; (f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with these provisions?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

Referring to the issue of conformity of Polish legislation with the said provision of the Convention, it should be pointed out that this compliance is ensured by art. 7 par. 1 of the Act of 21 August 1997 on the limitation of the performance of commercial activity by persons fulfilling public functions.

This provision applies to:

1) persons holding managerial positions within the meaning of the Act on the remuneration of persons holding managerial positions, i.e. the President of Poland, the Speaker of the Sejm, the Speaker of the Senate, Prime Minister, Deputy Speakers of the Sejm and Senate, Deputy Prime Minister, President of the Supreme Audit Office, President of the Constitutional Tribunal , Minister, President of the National Bank of Poland, Ombudsman, Children's Rights Ombudsman, Inspector General for Personal Data Protection, President of the Institute of National Remembrance - Commission for the Prosecution of Crimes Against the Polish Nation, Chairman of the National Council of Radio and Television, President of the State Treasury, vice-president of the Constitutional Tribunal, Vice President of the Supreme Audit Office, Head of the Sejm Chancellery, Head of the Senate Chancellery, Deputy Chief of the Chancellery of the Sejm, Deputy Chief of the Chancellery of the Senate, Chief of the Chancellery of the Prime Minister, Chief Labor Inspector, Deputy Chief Labor Inspector, Head of the National Electoral Office, Minister of State, Chief of the Chancellery of the President, Deputy Chief of the Chancellery of the President, deputy prosecutor general, vice president of the State Treasury's General Prosecutor's Office, President of the Polish Academy of Sciences, secretary of state, member of the National Council of Radio and Television, first deputy of the President of the National Bank

Polish Undersecretary of State (Deputy Minister), Deputy President of the National Bank of Poland, Secretary of the Committee for European Integration, Deputy Ombudsman, Deputy General Inspector of Personal Data Protection, Insurance Ombudsman, head of the central office, Vice President of the Polish Academy of Sciences, voivode, deputy head of the central office, deputy chairman ;

2) judges of the Constitutional Tribunal;

3) employees of state offices, including members of the civil service corps, holding managerial positions:

a) a director general, a director of a department (an equivalent unit) and his deputy as well as a head of a department (an equivalent unit) - in supreme offices and central state organs,

b) the general director of the voivodship office, the director of the department (equivalent unit) and his deputy and the chief accountant - in the field offices of the general government administration,

c) the head of the office and his deputy - in the field offices of the governmental bodies of the special administration;

4) employees of state offices, including member of civil service, holding positions equivalent in terms of wages with the positions mentioned in point 3;

5) other than those listed in points 3 and 4 of the members of civil service employed in the office of the minister competent for public finances;

6) other than those listed in points 3 and 4 of the members of civil service employed in the organizational units of the National Fiscal Administration;

7) the director general of the Supreme Audit Office and employees of the Supreme Audit Office supervising or performing control activities;

8) mayors (mayors, city presidents), deputy mayors (mayors, city presidents), treasurers of communes, secretaries of communes, heads of commune organizational units, managers and members of governing bodies of communal legal persons and other persons issuing administrative decisions on behalf of the commune head or mayor or the city president;

9) members of county management boards, treasurers of county, county secretaries, heads of organizational units of the county, managers and members of management bodies of county legal persons and other persons issuing administrative decisions on behalf of the foreman;

10) members of voivodship management boards, treasurers of voivodships, heads of provincial self-government organizational units, managers and members of management bodies of voivodship legal persons and other persons issuing administrative decisions on behalf of the voivodship marshal;

11) members of the board of the metropolitan union, the treasurer of the metropolitan union and the secretary of the metropolitan union.

The abovementioned persons, within a year of finished of holding their position or perform a function, may not be employed or engage in other activities with an entrepreneur, if they participated in issuing a decision in individual cases concerning that entrepreneur. The scope of the prohibition under art. 7 (1) does not apply to administrative decisions regarding the determination of the tax and local fees pursuant to separate regulations. However, this rule does not apply to decisions regarding tax deductions and exemptions in these taxes or fees. Employment contrary to the prohibition is an offense under art. 15 of the Act, at risk of arrest or fine.

In justified cases, consent to employment before the end of the year may be expressed by the Commission examining applications for consent to the employment of persons who performed public functions at the Prime Minister. The Committee considers cases in three-person composition - the provisions of the Code of Administrative Proceedings shall apply to proceedings before the Commission.

Consent may not apply to:

- President of the Republic of Poland,

- Speaker of the Sejm and deputy speakers,

- Speaker of the Senate and deputy speakers,

- the Prime Minister and vice presidents,

- Head of the Chancellery of the Sejm,

- Head of the Chancellery of the Senate,

- President of the Supreme Audit Office,

- General Prosecutor,

- Ombudsman,

- President of the Supreme Administrative Court,

- First President of the Supreme Court,

- President of the Supreme Court,

- President of the National Bank of Poland, his first deputy and vice-president of the National Bank of Poland,

- President of the National Council of Radio Broadcasting and Television,

- Chief Labor Inspector,

- President of the Polish Academy of Sciences,

- Head of the National Electoral Office,

- Insurance Ombudsman.

Art. 296a. § 1. Whoever in charge of a managerial function in an organisational unit carrying out business activity or having employment relationship, or contract of mandate, or contract for a specific task demands or accepts material or personal benefits or a promise of the same in return for the abuse of granted powers or failing to fulfil a duty assigned to such person that may inflict material damage on such unit or may constitute an act of unfair competition or inadmissible act of preference in favour of a buyer, or a recipient of goods, services or other performance shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 2. The same penalty shall be imposed on a person who in cases specified in § 1 provides or promises to provide material or personal benefits.

§ 3. In the event of a lesser significance the perpetrator of the act specified in § 1 or 2 shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

§ 4. In the event that the perpetrator of the act specified in § 1 causes considerable material damage, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

§ 5. The perpetrator of the act specified in § 2 or in § 3 in conjunction with § 2 shall not be subject to a penalty if the material or personal benefits or the promise of the same have not been accepted and the perpetrator notified on such fact a body entitled to prosecute and revealed all essential circumstances before such body was notified on this act.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In years 2015-2017, the public prosecutor’s offices conducted 227 investigations into alleged corruption in a privet sector. As a result of them, 89 people were accused of corruption and 39 were convicted. 78 cases were finalized with decisions of discontinuation of investigation.

No legal entity was held liable for corruption in a private sector.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Please provide additional information on promoting cooperation between law enforcement agencies and private entities, anti-corruption standards and procedures in private sector, on legislation which contains provision on internal auditing controls to assist in preventing and detecting acts of corruption.

* What internal or external reports regarding the adoption and implementation of guidelines in the private sector, procedures or policies to prevent corruption are promulgated by the government?
* What internal or external reports or other efforts promoting the adoption and implementation of risk-based, tailored guidelines, procedures or policies aimed at preventing corruption in the private sector exist in Poland?
* Can Poland provide statistics regarding the number of complaints received on corruption in the private sector, including types of corruption reported, number of follow-up investigations and their outcomes?

Only general statistics in this regard is available. As it’s been stated above, in years 2015-2017, the public prosecutor’s offices conducted 227 investigations into alleged corruption in a privet sector. As a result of them, 89 people were accused of corruption and 39 were convicted. 78 cases were finalized with decisions of discontinuation of investigation.

As an update to the statistics presented above, the data for the years of 2018 - 2019 is already available. In that period of time, 172 investigations into private corruption were instituted, 147 people were accused and 34 people convicted.

* Does Poland have accounting and auditing standards in place to provide transparency, clarify the operations of private entities, support confidence in the annual and other statements of private entities, and help prevent as well as detect malpractices?

Yes, the national law provides for appropriate accounting and auditing standards. The main law which sets the requirements in the field of accounting is the Act of 29 September on Accounting (hereinafter referred to as the Act). It transposes the provisions of the EU Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

The Act regulates among others the following areas:

* accounting principles,
* keeping the accounting books,
* stocktaking,
* valuation of assets, liabilities and equity as well as the determination of the financial result,
* preparation of annual and consolidated financial statements,
* preparation of the management report,
* auditing financial statements,
* filing financial statements to the court register and their publication,
* periods for storing of accounting documents and financial statements,
* criminal liability for breaching the requirements of the Act.

The Act applies to:

1. commercial companies (partnerships and companies, including those in the process of setting up) and civil partnerships, subject to the provisions of point 2 below, as well as other legal persons, except for the State Treasury and the National Bank of Poland;
2. natural persons, civil partnerships established by natural persons, general partnerships established by natural persons and professional partnerships, if their net revenue from selling goods, products and financial transactions for the prior financial year amounted to at least the Polish zloty equivalent of EUR 2,000,000;
3. banks, listed companies, investment funds, insurance and reinsurance companies, credit unions and pension funds – regardless of their legal form and income;
4. local municipalities, districts, regions (i.e. units of administrative division of the country) and their associations;
5. organisational units without a legal personality;
6. branches and representative offices of foreign entrepreneurs.

Entities which are subject to the Act are required to apply the adopted accounting principles (policies), truly and fairly presenting their financial position and financial result (art. 4 par. 1 of the Act). In order to truly and fairly present their financial position and financial result the entities must provide in the notes any additional information as it may be necessary to comply with this requirement (art. 4 par. 2 of the Act). The entities are required to prepare their annual financial statements (art. 45 par. 1 of the Act) as well as the management reports (art. 49 par. 1 of the Act; small entities are exempted from the requirement to prepare the management report subject to certain conditions) within 3 months of the balance sheet date at the latest and present them for approval (art. 52 par. 1 of the Act). The deadline for the approval is 6 months of the balance sheet date at the latest (art. 53 par. 1 and art. 63c par. 4 of the Act). The annual financial statements consist of the balance sheet, the profit and loss account and the notes to the financial statements (art. 45 par. 2 of the Act). Entities whose financial statements are subject to the mandatory audit also prepare the changes in equity statement and the cash-flow statement as part of their annual financial statements (art. 45 par. 3 of the Act). The consolidated financial statements as well as the annual financial statements of the following entities must be audited by the statutory auditor (art. 64 par. 1 of the Act):

* banks and credit unions,
* insurance and reinsurance companies,
* listed companies,
* investment funds,
* pension funds,
* joint stock companies,
* other entities who met two out of three below criteria in the preceding financial year:
* at least 50 employees,
* the balance sheet amounted to at least EUR 2,500,000,
* the annual turnover amounted to at least EUR 5,000,000.

Within 15 days upon their approval the annual and consolidated financial statements (together with the management report, the audit report, the resolution on the approval of the financial statements and on the profit appropriation/loss offset) are filed to the relevant court register for publication (art. 69 par. 1 of the Act).

The approved financial statements have to be stored for 5 years (art. 74 par. 1 of the Act).

As mentioned above, the financial statements of certain entities are subject to the mandatory audit by the statutory auditor. The profession of the statutory auditor is regulated by law. The activities of statutory auditors and audit firms, as well as the provisions on the public oversight over them are stipulated in the Act of 11 May 2017 on statutory auditors, audit firm and public oversight (hereinafter referred to as the Act on statutory auditors). The Act on statutory auditors transposes the EU Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.

The profession of a statutory auditor consists of (art. 3 of the Act on statutory auditors):

* carrying out audits and reviews of financial statements as well as other assurance services defined by law which are reserved for the statutory auditor,
* providing other assurance services which are not reserved to be performed by statutory auditors, and
* providing related services

- in accordance with the national professional standards (which are the endorsed International Standards on Auditing, International Standards on Review Engagements, International Standards on Assurance Engagements and International Standards on Related Services). The statutory auditor is also required to comply with the code of ethics (which is the endorsed International Code of Ethics for Professional Accountants issued by the International Federation of Accountants).

The statutory auditor exercises its profession on behalf of the audit firm.

In order to become the statutory auditor a person must comply with certain educational and practical experience requirements and be entered into the register of statutory auditors (art. 4 of the Act on statutory auditors).

The statutory auditor auditing the financial statements must be independent of the audited entity (i.e. there is no conflict of interest between him/her and the audited entity). Art. 69 par. 4-9 of the Act on statutory auditors regulates in detail the conditions of the statutory auditor’s and audit firm’s independence.

The purpose of the statutory audit of the financial statements is to express an opinion whether the financial statements:

* give true and fair view of the assets, liabilities and equity and the financial result of the audited entity in accordance with the relevant financial reporting framework and
* comply with statutory requirements.

The statutory auditor also expresses his/her opinion whether the financial statements have been prepared based on the properly kept accounting books. The statutory auditor includes the results of the audit work, including the above mentioned opinions, in the audit report (art. 83 of the Act on statutory auditors).

According to art. 78 of the Act a statutory auditor who expresses an opinion on the financial statements and their underlying accounting book or on the financial position of the entity, which is contrary to actual facts is subject to a fine or imprisonment of up to 2 years, or to both penalties. If a perpetrator of the offence specified above acts unintentionally he/she is subject to a fine or a restriction of liberty.

Pursuant to art. 79 of the Act whoever, contrary to the provisions of the Act, inter alia:

1. fails to have annual financial statements audited by a statutory auditor;
2. fails to provide a statutory auditor with information, explanations, representations or provides him/her with information, explanations, representations which are contrary to actual facts, or prevents the statutory auditor from performing his/her duties;
3. fails to submit financial statements for publication;
4. fails to file financial statements, consolidated financial statements, a management report, a consolidated management report with a relevant court register;
5. terminates the contract to audit the financial statements without proper grounds or does not inform the Polish Agency for Audit Oversight, or in relevant cases – the Polish Financial Supervision Commission, about the termination of such contract;
6. concludes, with an audit firm, a contract on a statutory audit for a term shorter than 2 years;

- is subject to a fine or a restriction of liberty.

* Is Poland able to provide statistics and cases regarding the application of civil, administrative and/or criminal penalties against private sector entities or their managers or officers for corruption and violations of accounting and auditing standards?

So far, no legal entity has been held criminally liable for corruption in a private sector.

* Are there any statistics on the number of disciplinary cases against accountants or auditors for acts of dishonesty and/or corruption?

The profession of an accountant is not regulated in Poland. Therefore no disciplinary proceedings against accountants are carried out. However the above mentioned Act on Accounting in its art. 77 provides for the criminal liability for “false accounting” (for further details please refer to the answer to the question “Is there a specific or general legislation on books and records/ false accounting? Are the sanctions adequate?” below in the section relating to art. 12 par. 3 of the Convention). This article may also be applicable to accountants employed in the financial unit of companies.

As for the statutory auditors, disciplinary proceedings against them are carried out by the Polish Agency for Audit Oversight (the public competent authority supervising the activities of statutory auditors and audit firms) and by the Polish Chamber of Statutory Auditors (the professional organisation comprising statutory auditors).

in relation to paragraph 2:

* Are there any collective action initiatives in the country?
* Are there any cases and/or statistics regarding the cooperation between law enforcement agencies and relevant private entities, including cases referred by private entities to law enforcement of suspected acts of corruption?
* Are there statistics regarding the number of private entities adopting standards and procedures to safeguard integrity, including codes of conduct and the prevention of conflicts of interest?
* Are there statistics regarding the number of private entities registering with the State that disclose the identity of legal and natural persons involved in the establishment and management of the business?
* Does Poland have information on the availability and accessibility of beneficial ownership information of legal entities and legal arrangements in so far as they are used to conduct business or carry out transactions, or act as directors and/or shareholders of legal entities?[[7]](#footnote-8)

Chapter 6 of the AML/CFT Act establishes a public Central Register of Beneficial Ownership and the minister competent for public finance is the authority competent for matters related thereto. This applies to the beneficial ownership of registered partnerships, limited partnerships, limited joint-stock partnerships, limited liability companies, simple joint-stock companies (since 1 March 2021) and joint-stock companies (excluding public companies).

The Central Register of Beneficial Ownership contains information on beneficial owners of legal persons having a structure that allows for exercising control by other persons than those indicated in the National Court Register (other than members of the management board, direct stakeholders).

The National Court Register contains data on beneficial owners of the entities registered in the register, in line with Articles 38-39 and Article 49 of the Act on the National Court Register.

In addition to having immediate access to the public register, the Polish authorities have timely access under the AML/CFT Act to beneficial ownership information from obliged entities in respect of their customers who are legal persons, and to a number of data bases which contain some information related to beneficial ownership of certain legal persons.

The obligations for obligated institutions to identify the beneficial owner and take measures to verify its identity are set in 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. Article 36 of the AML/CFT Act defines the requirements to do so, in particular subparagraph 2 addresses the organisational units without legal personality (legal arrangements). Article 35(1)-(4) of the AML/CFT Act provides that Customer Due Diligence (CDD) measures must be conducted when establishing a business relationship or performing an occasional transaction.

The definition of beneficial ownership contained in Article 2(2)(1) of the AML/CFT Act states, that:

*1) beneficial owner, it shall mean a natural person or natural persons who exercise, directly or indirectly, control over a customer through the powers held, which result from legal or actual circumstances, enabling exerting a critical impact on activities or actions undertaken by a customer or a natural person or natural persons, on whose behalf a business relationship is established or an occasional transaction is conducted, including:*

*a) in the case of a customer being a legal person other than a company whose securities are admitted to trading on a regulated market and are subject to information disclosure requirements arising from the European Union law or corresponding regulations of a third country:*

*– a natural person being the customer’s stakeholder or shareholder holding the ownership title of more than 25% of the total number of stocks or shares of such a legal person,*

*– a natural person holding more than 25% of the total number of votes in the customer’s governing body, also as a pledgee or a user, or under agreements with other persons authorised to vote,*

*– a natural person exercising control over a legal person or legal persons holding the ownership title of more than 25% of the total number of stocks or shares of the customer or jointly holding more than 25% of the total number of votes in the customer’s governing body, also as a pledgee or a user, or under agreements with other persons authorised to vote,*

*– a natural person exercising control over customer, through holding, in relation to such legal person, powers referred to in Article 3(1)(37) of the Accounting Act of 29 September 1994 (Journal of Laws of 2019 item 351, 1495, 1571, 1655 and 1680 and of 2020 item 568), or*

*– a natural person holding a senior management position, in the case of documented lack of possibility to determine the identity, or doubts regarding the identity of natural persons defined in the first, second, third and fourth indent, and in the case of failure to confirm the suspicion of money laundering or financing of terrorism,*

*b) in the case of a customer being a trust:*

*– a founder,*

*– a trustee,*

*– a supervisor, if established,*

*– a beneficiary,*

*– other person exercising control over the trust.*

* Are there cases and/or statistics regarding sanctions or penalties imposed for the misuse of procedures for granted subsidies or licenses?
* Are there cases regarding the prohibition of former public officials from participating in professional activities or private sector employment based on a potential conflict of interest?

The CBA has not got any statistic on cases regarding the prohibition of former public officials from participating in professional activities or private sector employment based on a potential conflict of interest.

* Are there statistics regarding the number of private entities adopting internal auditing controls in compliance with standards set?

MoF does not collect statistical data on internal audit and control in private sector entities.

* Are there cases and/or statistics on criminal fraud relating to the private sector?

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 3 of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of off-the-books accounts;

(b) The making of off-the-books or inadequately identified transactions;

(c) The recording of non-existent expenditure;

(d) The entry of liabilities with incorrect identification of their objects;

(e) The use of false documents;

(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

A draft Act on transparency in public life is currently being developed. The main aim of the abovementioned draft Act is to strengthen the transparency of the Polish State, as well as to increase social control over persons performing public functions. Increasing social control over persons performing public functions, both at government and local government level, and, most importantly, in companies, bodies of state-owned enterprises. The draft Act provides for putting the existing provisions in order, but also for implementing new solutions, hitherto unknown in the Polish law. Their common objective is to strengthen the transparency in managing the State and its assets. Both institutional and social control of the authorities shall be strengthened by the provisions proposed in the following draft. The Act shall contribute to more effective State management and significantly strengthen anti-corruption mechanisms in Poland.

The draft Act on transparency in public life introduces anti-corruption institutions, hitherto unknown in the Polish legislation; it also introduces the institution of a whistleblower - a person who informs of corruption in his or her workplace.

In accordance with the Act's objectives, all medium-sized and large enterprises of the sector, irrespective of the industry, shall be obliged to implement and apply internal anti-corruption procedures. These solutions are to prevent the commission of the so-called corruption offences by persons acting on behalf of enterprises or for the benefit thereof. In the main, this concerns bribery, influence peddling, corruption of managers, and money laundering.

The Act sets forth examples of actions which may be taken by enterprises to create an anti-corruption system, such as: training employees in terms of criminal liability for corruption-related offences, developing and implementing an anti-corruption code in a company, implementing policies with regard to receiving gifts and other benefits by employees, implementing procedures for informing an employer about corruption proposals and reporting of irregularities, inserting anti-corruption clauses into contracts, preventing the creation of corruption funds in a company.

Companies which fail to implement or apply anti-corruption procedures may face heavy penalties - even up to PLN 10,000,000. An enterprise implementing seeming or ineffective solutions shall be subject to the same penalty. Imposing such a penalty shall be additionally contingent upon pressing corruption charges against a person acting on behalf of an enterprise or for the benefit thereof (whether the charges prove to be legitimate or not).

In addition to imposing a financial penalty on an enterprise, the enterprise may also be excluded from participation in a public contract for five years. Such exclusion may turn out to be more severe than a financial sanction.

The fact that the company's liability for breaching the Act may potentially result in their personal liability shall be of key importance to the members of companies’ management boards. This might be the case where the company incurs a damage as a consequence of a breach of duties relating to proper implementation of anti-corruption procedures.

\*Record of civil law agreements

Obligated companies (wherein the State Treasury or a local government unit holds at least 20% of shares in the share capital or holds the powers of a dominant enterprise) shall be obliged to keep a record of concluded civil law agreements with a value of at least PLN 2,000. Such a low quota ceiling shall make for entering the vast majority of concluded agreements into the records.

Breach of an obligation to keep a record may result in holding persons in charge of this area in a given company - usually the company's management board - criminally liable. Failure to keep the record, failure to proceed with an update or entering false information into the record is to be punishable by imprisonment for a term of up to 3 years.

\*Assets declarations

The Act significantly expands the circle of people obliged to submit assets declarations. Such declarations shall be submitted by the managers who were not previously subject to such an obligation, i.e. the members of the obligated companies’ management boards. However, these declarations shall be classified. The managers may be liable to a penalty of imprisonment of up to 5 years for non-compliance with the deadline for the submission of the declaration, including false information in it or non-disclosure of some information.

\*Impact of the Act on the functioning of companies

The draft Act on transparency in public life shall have a significant impact on the internal functioning of companies, both in the public and private sector. New obligations of the management boards’ members are to enhance the transparency of companies and eliminate (or at least reduce) corrupt practices. These changes fit into the current regulatory trends justified by the enhancement of transparency and a fair play guarantee in business trading.

It is worth mentioning that in addition to developing the Act on transparency in public life, amendments to the Act on the liability of collective entities for acts prohibited under penalty are being simultaneously developed. New solutions are to significantly strengthen companies’ responsibility and streamline criminal proceedings against them.

Regulating obligations connected with developing and applying anti-corruption mechanisms on an aggregate basis is a novelty for our legal order.

Initially, the Act was to enter into force by the end of 2017. Due to numerous comments on the draft, especially insofar as it concerns the assets declarations, the date was already postponed twice. It may be assumed that the Act will enter into force within the next few months at the latest.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

see response to preceding paragraph

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

In respect of the article 12 (3) of the UNCAC please provide additional information on criminal or any other liability for acts stipulated in the article 12 (3).

Please refer to the answer under the question below.

Is there a specific or general legislation on books and records/ false accounting? Are the sanctions are adequate?

The provisions on keeping the accounting books are regulated in the above-mentioned Act of 29 September 1994 on Accounting.

Entities which are subject to the Act are required to apply the adopted accounting principles (policies), truly and fairly presenting their financial position and financial result (art. 4 par. 1 of the Act). The overriding principles of the Act which must be applied by entities are accrual accounting, prudence, matching of revenue and expense, substance over form.

All revenues received by an entity and all related costs which refer to a given financial year must be recognised in the entity's accounting books, irrespective of the date of their payment (art. 6 par. 1 of the Act).

According to art. 20 of the Act each event which occurred in a given reporting period should be recorded in the form of an entry in the accounting books of this reporting period. Entries in the accounting books are recorded based on the proper accounting documents (hereinafter referred to as "source documents") which confirm that a given transaction actually took place. The following are the source documents:

1) third party external source documents - received from contractors;

2) own external source documents – originals of documents submitted to contractors;

3) internal source documents - relating to internal transactions of an entity.

Entries may also be based on the following types of accounting documents prepared by an entity:

1) aggregated documents - used to make summary entries in respect of a set of source documents which shall be mentioned separately in a related aggregated document;

2) documents correcting previous entries;

3) substitute documents – made out pending the receipt of an external source document from a third party;

4) settlement documents - which allocate existing entries in accordance with new classification criteria.

As stated in art. 21 of the Act an accounting document should contain at least:

1) a description of the type of document and its identification number;

2) a specification of the parties (names, addresses) conducting business transaction;

3) a description of the transaction and its value, specified also in volume units, if possible;

4) a transaction date and a date when the document was prepared if it is different from the transaction date;

5) a signature of the person who made out the document and of the person who received or delivered a given item of assets;

6) a statement that the document was verified and approved for recording in the accounting books by indicating the month and the manner of an entry of the document in the accounting books (posting), as well as a signature of the person responsible for such statement.

Pursuant to art. 22 of the Act the accounting documents should be reliable, i.e. consistent with the actual course of the business transaction which they document; complete, containing at least the data specified in art. 21, and free from arithmetical errors. Making any obliterations or alterations in accounting documents is forbidden. Errors in third party and own external source documents may only be corrected by sending to a contractor an appropriate document containing a correction, together with a suitable justification, unless other regulations provide otherwise. Errors in internal documents may be corrected by crossing out the incorrect text or amount, while retaining the legibility of the expressions or amounts crossed out, entering a correct text and the date of the correction, and signing by an authorized person, unless other regulations provide otherwise. Single letters or figures must not be corrected (art. 22 of the Act).

According to art. 23 of the Act entries in the accounting books shall be made in a permanent manner, without leaving any space allowing for later additions or modifications. In the case of computerized accounting books appropriate procedures and security measures must be adopted to protect entries against destruction, modification or concealment. An accounting entry should contain at least:

1) the date of a business transaction;

2) a specification of the type and the identification number of an accounting document constituting the basis for the entry as well as its date, if it is different from the transaction date;

3) an intelligible text, abbreviation or code describing the transaction; together with a written explanation of the contents of abbreviations or codes used;

4) the amount and date of the entry;

5) the identification of relevant accounts.

Entries related to transactions expressed in foreign currencies shall be made in a manner allowing the determination of the amount of the transaction in both Polish and foreign currency. Entries in a journal and general ledger accounts should be correlated in a manner which enables their verification. Entries in the accounting books should be made in a manner which ensures their durability, for the period not shorter than the one required for the storage of the accounting books.

As stated in art. 24 of the Act the accounting books should be kept in an reliable, error-free and verifiable manner and on an ongoing basis. Accounting books are regarded as reliable, if their entries reflect the actual situation. Accounting books are regarded as error-free, if all accounting documents approved for entry in a given month have been entered into them in a complete and correct manner, and the continuity of entries and error-free operation of the calculation procedures applied have been ensured. Accounting books are regarded as verifiable, if they enable the verification of the correctness of entries, balances (activities) and the operation of the calculation procedures applied, in particular:

1) the documentation of entries allows for the identification of documents and the manner in which they were recorded in the accounting books at all stages of data processing;

2) entries are kept in a chronological and systematic order in accordance with classification criteria which allow an entity to prepare statutory financial statements and other reports, including tax returns, as well as carry out financial settlements;

3) in the case of computerized accounting books, control over the completeness of accounting system files and data processing parameters is ensured;

4) access to data files is ensured allowing, irrespective of the method used, for the clear and intelligible information on the contents of the entries made in the accounting books to be available at any time and for any reporting period.

The accounting books are regarded as kept on an ongoing basis if:

1) information derived therefrom enables the timely preparation of statutory financial statements and other reports, including tax returns, as well as carrying out financial settlements;

2) trial balances of general ledger accounts are prepared at least for individual reporting periods, and at least as often as at the month-end, by the dates referred to in point 1, and for a financial year – not later than 85 days from the balance sheet date;

3) receipts and payments in the form of cash, cheques, bills of exchange, as well as retail and catering turnover are recognised on the same date as the transaction date.

Errors identified in entries are corrected as follows (art. 25 of the Act):

1) by crossing out the existing text and inserting a new one, while retaining the legibility of the incorrect entry and signing the correction and dating it; such corrections shall be made simultaneously in all the accounting books and they cannot be made after the closing of a given month; or

2) by entering, into the accounting books, an accounting document which includes corrections of incorrect entries, made only in positive or only in negative amounts.

If errors are identified after the closing of a given month, or in the case of computerized accounting books, only corrections made in the manner specified in point 2 above are allowed.

The accounting books and accounting documents shall be stored for 5 years (art. 74 par. 2 of the Act).

False accounting has been penalized under art. 77 of the Act. Whoever, contrary to the provisions of the Act, allows to:

1. failure to keep accounting books, keeping them contrary to the provisions of the Act or providing unreliable data in these books,
2. failure to prepare financial statements, consolidated financial statements, a management report, a consolidated management report, (…), preparing them contrary to the provisions of the Act or including unreliable data in these statements/reports

- is subject to a fine or imprisonment of up to 2 years, or to both penalties.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

It can be recommended to take further steps for adoption of the draft Act on transparency in public life.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 4 of article 12

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please see the response to the preceding paragraph.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See the response to the paragraph 1

There is no specific answer to this question in the previous paragraph.

According to the Art. 23(1)(61) of Act of 26 July 1991 on Personal Income Tax (Journal od Laws of 2020, item 1426, as amended) and Art. 16(1)(66) of Act of 15 February 1992 on Corporate Income Tax (Journal of Laws of 2020, item 1406, as amended), expenses incurred and the values of tangible property or rights transferred, services supplied, arising from acts that cannot be the subject of legally enforceable agreement, especially in connection with the committing of crime specified in Art. 229 of the Act of 6 June 1997 – Penal Code, do not constitute tax deductible expenses. These regulations have been in force since January 1, 2009, subject to amendment in 2011, which provided for direct link to the Art. 229 of the Penal Code.

In result, expenses incurred for granting financial benefits to a person holding a public office (including a foreign official) in connection with the performance of this function (i.e. the so-called "bribes") are not tax deductible.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

See the response to the paragraph 1

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Is tax deductibility applied if it is proved in court that a bribe was concealed under legal payment (for example, hospitality or commission fee, etc.), and for this legal payment an exemption from tax deductibility provided for by the tax legislation?

The assessment of a possible exclusion of a given expense from tax deductible costs should be made in a specific factual state, taking into account all circumstances of a given case.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

No example available.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 13. Participation of society

Paragraph 1 of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Implementing GACP’s provisions for the years 2014-2019, the Central Anti-Corruption Bureau (CBA) has undertaken activities aimed at developing a recommendation for dealing with the clerk-client and uniform organizational standards in public offices. Therefore a questionnaire was prepared on the subject of existing anti-corruption solutions and known corruption risks that were sent out to over 3 000. entities - all ministries and subordinate units, central offices, voivodship and marshal offices and local government units. To analyze the statistical data collected in the survey, the Academic Foundation IPSO ORDO was selected, which prepared a general statistical analysis and a preliminary qualitative analysis. On this basis, the publications was prepared on the rules of conduct for persons exposed to corruption, creation of guidelines for uniform anti-corruption organizational standards in offices and recommendations for their implementation in all offices in the country.

An important initiative to facilitate citizens' contact with the CBA’s officers to report corruption was established of a free CBA line in December 2010 (800 808 808), sygnal@cba.gov.pl

Currently applications to the CBA are sent by correspondence via a free hotline and e-mail. You can also inform about irregularities personally in one of the eleven CBA’s district departments.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

CBA and the Center for Education Development (ORE), as part of the agreement signed in March 2014, carried out a pilot project of the educational project called Ethics not only for a tyke. The cooperation mainly involved conducting trainings for coordinators and regional leaders in the field of anti-corruption issues, developing a guide for teachers and launching an e-learning platform. The project was aimed at teachers and pupils of primary school, as well as parents and local communities. Almost 220 schools took part in it, over 27 500 pupils were trained. 90% of teachers using the program have observed at least partial changes in pupils' attitudes and behavior. On June 12, 2015, a conference summarizing the pilot project took place, and the project itself ended in August 2015. With a view to counteracting corruption, the Central Anti-Corruption Bureau (CBA) also carried out a social campaign "Corruption, how much you pay for it" from November 22, 2012 to January 17, 2013. The CBA's partners were: Anti-Corruption Coalition of Non-Governmental Organizations (AKOP), Customs Service, Ministry of the Interior and Ministry of Sport and Tourism. Nearly a two-month campaign was to inform citizens why it is not worth giving bribes.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

• Does the legislative framework positively supports freedom to collect, publish and distribute information?

• Did the State take the necessary measures to enhance transparency and allow individuals and others groups to access to the relevant information? The State Party may wish to refer to any relevant information provided on article 10 of the Convention.

• Is the society informed about government’s anti-corruption work and bodies, agenda and actions?

• Are the CSOs consulted during and actively participating in the policy-making process? Is there any civic engagement?

• Do CSOs often raise awareness against corruption? Are they monitoring actions and decisions of governments in corruption prone (risk) areas? Are they also exposing corruption cases?

• What’s the role, if any, of professional associations (e.g. lawyers, accountants) in the prevention and fight against corruption? are there examples of past/recent activities on it?

In Poland, the profession of an accountant is not regulated; therefore, there is no professional association (samorząd zawodowy) for accountants.

• How does the State promote the participation of, for instance, trade unions in the prevention and combat of corruption? how are awareness raising campaigns developed and implemented?

• Do CSOs have enough resources to undertake programmes of education and training to educational institutions, civil groups and other civil society bodies?

• What is the level of specialization of CSOs on different corruption prone areas? (budget, procurement, justice sector monitoring, etc.)?

• How does the State ensure access to information ? (in other terms, what are the basis to allow CSOs participation? , secondly, how does it take part?, thirdly, how participation is being promoted by the State authorities ? (requested by UNCAC). In case of lack or weak participation, enquire what are the reasons for that?

• How do CSOs have access to information on governmental / public sector tax, expenditure and projects?

Please refer to the information in section relating to Art. 10 of the Convention.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 2 of article 13

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Implementing GACP’s provisions for the years 2014-2019, the Central Anti-Corruption Bureau (CBA) has undertaken activities aimed at developing a recommendation for dealing with the clerk-client and uniform organizational standards in public offices. Therefore a questionnaire was prepared on the subject of existing anti-corruption solutions and known corruption risks that were sent out to over 3 000. entities - all ministries and subordinate units, central offices, voivodship and marshal offices and local government units. To analyze the statistical data collected in the survey, the Academic Foundation IPSO ORDO was selected, which prepared a general statistical analysis and a preliminary qualitative analysis. On this basis, the publications was prepared on the rules of conduct for persons exposed to corruption, creation of guidelines for uniform anti-corruption organizational standards in offices and recommendations for their implementation in all offices in the country.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

CBA and the Center for Education Development (ORE), as part of the agreement signed in March 2014, carried out a pilot project of the educational project called Ethics not only for a tyke. The cooperation mainly involved conducting trainings for coordinators and regional leaders in the field of anti-corruption issues, developing a guide for teachers and launching an e-learning platform. The project was aimed at teachers and pupils of primary school, as well as parents and local communities. Almost 220 schools took part in it, over 27 500 pupils were trained. 90% of teachers using the program have observed at least partial changes in pupils' attitudes and behavior. On June 12, 2015, a conference summarizing the pilot project took place, and the project itself ended in August 2015. With a view to counteracting corruption, the Central Anti-Corruption Bureau (CBA) also carried out a social campaign "Corruption, how much you pay for it" from November 22, 2012 to January 17, 2013. The CBA's partners were: Anti-Corruption Coalition of Non-Governmental Organizations (AKOP), Customs Service, Ministry of the Interior and Ministry of Sport and Tourism. Nearly a two-month campaign was to inform citizens why it is not worth giving bribes.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Are there any specific activities to inform the public of the existence of the AC bodies and could you give examples of such measures/activities?

Society awareness of functioning of corruption prevention institutions is widespread. The CBA is the most recognizable, among society but the citizens has got information that corruption can also be reported to the police and the prosecution offices. Nevertheless, a social (media) campaigns are conducted by the CBA to raise public awareness (as described above) of corruption risks, promoting the Bureau as an authority to which a citizen can report when corruption is revealed. These activities promote proper attitudes towards the phenomenon of corruption but also CBA as an authority for preventing and combating corruption. Among these activities, a number of educational undertakings (for adults and children), conducted with external training centers or representatives of civil society can be distinguished, including the development of an electronic tool - online anti-corruption training platform for officials, entrepreneurs, citizens and academia. Development of the CBA's anti-corruption hotline and an electronic mailbox for anonymous reporting of corruption threats should also be underlined.

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 14. Measures to prevent money-laundering

Subparagraph 1 (a) of article 14

1. Each State Party shall: (a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Polish system of counteracting money laundering is regulated by the Act of 1 March 2018 on counteracting money laundering and terrorist financing (hereinafter the Act). The Act entered into force on 13 July 2018. Information provided below reflect the current, new legal framework however the statistics quoted refer to and stem from the previous regulations.

According to the Act the coordinating role in the system plays the General Inspector of Financial Information (GIFI).

The GIFI is appointed and dismissed by the Prime Minister at the request of the minister competent for public finance after seeking the opinion of the minister - member of the Council of Ministers competent for coordination of the activity of special forces. The GIFI is ranked as Secretary or Undersecretary of State in the Ministry of Finance.

In the performance of its tasks the GIFI is supported by the Department of Financial Information of the Ministry of Finance, which acts as the Polish Financial Intelligence Unit (PFIU).

The system of combating money laundering and the financing of terrorism in Poland except from GIFI covers also:

- obligated institutions (inter alia: banks, financial institutions, cooperative savings and credit unions, payment institutions, electronic money institutions, offices of payment services and clearing agents, investment firms, custodian banks, foreign legal entities pursuing brokerage activities, investment funds, insurance companies, insurance intermediaries, currency exchangers, platforms of virtual currencies, exchangers between virtual currencies and means of payment, exchangers between virtual currencies, intermediators in those exchanges, notaries, attorneys, legal advisers, foreign lawyers, tax advisers, accountants, intermediaries in real estate trading, postal operators, entities pursuing activities in the scope of games of chance, betting, card games and gaming on low-value-prize machines, foundations, associations, entrepreneurs who accept or make cash payments for goods of the total value equal to or exceeding the equivalent of 10,000 EUR).

The complete list of the obligated institutions is prescribed in Article 2 (1) of the Act.

Under Article 2 of the Act of 1 March 2018 on counteracting money laundering and financing of terrorism, obligated institutions shall mean:

1) national banks, branches of foreign banks, branches of credit institutions, financial institutions established in the territory of the Republic of Poland and branches of financial institutions other than established in the territory of the Republic of Poland, within the meaning of the Act of 29 August 1997 – Banking Law (Journal of Laws of 2018 items 2187, 2243 and 2354 and of 2019 items 326, 730 and 875);

2) cooperative savings and credit unions and the National Cooperative Savings and Credit Union, within the meaning of the Act of 5 November 2009 on Cooperative Savings and Credit Unions (Journal of Laws of 2018 items 2386 and 2243 and of 2019 items 326, 730 and 875);

3) domestic payment institutions, domestic electronic money institutions, branches of European Union payment institutions, branches of European Union and foreign electronic money institutions, small payment institutions, offices of payment services and clearing agents within the meaning of the Act of 19 August 2011 on Payment Services (Journal of Laws of 2019 items 659 and 730).

4) investment firms, custodian banks, within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments (Journal of Laws of 2018, items 2286, 2243 and 2244 and of 2019 items 730 and 875) and branches of foreign investment firms within the meaning of this Act, established in the territory of the Republic of Poland;

5) foreign legal entities pursuing brokerage activities in the territory of the Republic of Poland, including those conducting such activity in the form of a branch and commodity brokerage houses within the meaning of the Act of 26 October 2000 on Commodity Exchanges (Journal of Laws of 2019 items 312) as well as commercial companies referred to in Article 50a thereof;

6) companies operating a regulated market - to the extent they operate an auction platform referred to in Article 3(10a) of the Act of 29 July 2005 on Trading in Financial Instruments;

7) investment funds, alternative investment companies (AIC), investment fund management companies, AIC managers, branches of management companies and branches of management companies from the European Union located in the territory of the Republic of Poland within the meaning of the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds (Journal of Laws of 2018 items 1355, 2215, 2243 and 2244 and of 2019 items 730 and 875);

8) insurance companies performing activity referred to in Section I of the Annex to the Act of 11 September 2015 on Insurance and Reinsurance Activity (Journal of Laws of 2019 items 381 and 730), including domestic insurance companies, main branches of foreign insurance companies established in a country other than a European Union member state and branches of foreign insurance companies established in a European Union member state other than the Republic of Poland;

9) insurance intermediaries performing activities of insurance intermediation in the scope of insurance specified in Group I of the Annex to the Act of 11 September 2015 on Insurance and Reinsurance Activity and branches of foreign intermediaries performing such activities, established in the territory of the Republic of Poland, excluding an insurance agent who is an insurance agent performing activities of insurance intermediation for a single insurance company in the scope of the same group, in accordance with the Annex to the Act of 11 September 2015 on Insurance and Reinsurance Activity and does not collect an insurance premium from the customer nor amounts due to the customer from an insurance company;

10) Krajowy Depozyt Papierów Wartościowych S.A. (National Depository of Securities) and the company to which Krajowy Depozyt Papierów Wartościowych S.A. delegated the performance of activities in the scope referred to in Article 48(1)(1) of the Act of 29 July 2005 on Trading in Financial Instruments, in the scope they operate securities accounts or omnibus accounts;

11) entrepreneurs carrying out activities in the scope of currency exchange within the meaning of the Act of 27 July 2002 - Foreign Exchange Law (Journal of Laws of 2019 item 160), other entrepreneurs providing the service of currency exchange or the service of intermediation in currency exchange, other than other obligated institutions and branches of foreign entrepreneurs carrying out such activity in the territory of the Republic of Poland;

12) entities pursuing economic activity involving providing services in the scope of:

a) exchange between virtual currencies and means of payment,

b) exchange between virtual currencies,

c) intermediation in the exchange referred to in letter a or b,

d) operating accounts referred to in paragraph 2(17)(e);

13) notaries in the scope of activities performed in the form of a notarial deed, comprising:

a) transfer of the ownership of an asset, including sale, exchange or donation of movable property or real estate,

b) concluding an agreement on inheritance division, dissolution of co-ownership, life annuity, pension in exchange for the transfer of the ownership of real estate and on distribution of jointly-held assets,

c) assignment of the cooperative member’s ownership right to premises, perpetual usufruct right and alleged promise of a separate ownership of premises,

d) in-kind contribution following a company establishment,

e) concluding the agreement documenting the contribution or increase of the contributions to the company or contribution or increase of the share capital,

f) transformation or merger of companies,

g) disposal of an enterprise,

h) disposal of shares in the company;

14) attorneys, legal advisers, foreign lawyers, tax advisers to the extent they provide legal assistance or tax advisory activities to customers, in relation to:

a) purchase or sale of real estate, an enterprise or an organised part of an enterprise,

b) management of cash, financial instruments or other customer’s assets,

c) concluding an agreement for operating a bank account, a securities account or performing activities related to operating those accounts,

d) in-kind contribution to a capital company or increasing the share capital of a capital company,

e) establishing, operating or managing capital companies or trusts

- excluding legal advisers and foreign lawyers practising their profession under the employment relationship or service in offices providing services to public administration authorities, other government and local government units and entities other than companies referred to in Article 8(1) of the Act of 6 July 1982 on Legal Advisers (Journal of Laws of 2018 items 2115 and 2193 and of 2019 item 730), and tax advisers performing their profession under the employment relationship in entities other than referred to in Article 4(1)(1) and (3) of the Act of 5 July 1996 on Tax Advisory Services (Journal of Laws of 2019, items 283 and 730);

15) tax advisers in the scope of tax advisory services other than specified in subparagraph 14 and statutory auditors;

16) entrepreneurs within the meaning of the Act of 6 March 2018 - Entrepreneurs’ Law (Journal of Laws items 646, 1479, 1629, 1633 and 2212), other than other obligated institutions, providing services consisting in:

a) establishing a legal person or an organisational unit without legal personality,

b) fulfilling a function of a member of the management board or enabling other person to fulfil this function or a similar function in a legal person or an organisational unit without legal personality,

c) providing a registered office, address of establishment or address for correspondence and other related services to a legal person or an organisational unit without legal personality,

d) acting or enabling other person to act as a trustee established by means of a legal act,

e) acting or enabling other person to act as a person exercising its rights arising from stocks or shares to the benefit of an entity other than a company listed on the regulated market subject to the requirements related to

information disclosure in compliance with the European Union law or subject to equivalent international standards;

17) entities pursuing activities in the scope of providing bookkeeping services;

18) intermediaries in real estate trading;

19) postal operators within the meaning of the Act of 23 November 2012 - Postal Law (Journal of 2018 item 2188);

20) entities pursuing activities in the scope of games of chance, betting, card games and games on gaming machines, within the meaning of the Gambling Act of 19 November 2009 (Journal of Laws of 2019 item 847);

21) foundations established pursuant to the Act of 6 April 1984 on Foundations (Journal of Laws of 2018 item 1491) to the extent they accept or make cash payments of the total value equal to or exceeding the equivalent of 10,000 EUR, regardless of whether the payment is performed as a single operation or as several operations which seem linked to each other;

22) associations with legal personality established pursuant to Act of 7 April 1989 – Associations Law (Journal of Laws of 2019 item 713) to the extent they accept or make cash payments of the total value equal to or exceeding the equivalent of 10,000 EUR, regardless of whether the payment is performed as a single operation or as several operations which seem linked to each other;

23) entrepreneurs, within the meaning of the Act of 6 March 2018 - Entrepreneurs’ Law, to the extent they accept or make cash payments for goods of the total value equal to or exceeding the equivalent of 10,000 EUR, regardless of whether the payment is performed as a single operation or as several operations which seem linked to each other;

24)entrepreneurs, within the meaning of the Act of 6 March 2018 - Entrepreneurs’ Law, to the extent they carry out activity consisting in making safe deposit boxes available and foreign entrepreneurs carrying out such activity in the territory of the Republic of Poland;

25) credit granting institutions within the meaning of the Act of 12 May 2011 on Consumer Credit (Journal of Laws of 2018, item 993 and 1075 and of 2019 item 730).

Duties imposed on the obligated institutions cover inter alia: recognising and documenting the recognised risk of money laundering, submitting a form identifying the institution as obligated institution to the GIFI, applying customer due diligence measures (including enhanced CDD), providing the GIFI with the information on transaction exceeding 15000 EUR, notifying the GIFI of circumstances which may indicate the suspicion of money laundering, suspending transaction and blocking the account for the request of the GIFI in case the specific transaction or the specific assets may be associated with money laundering, submitting on the request of GIFI any information or documents for AML purposes, keeping the relevant documents for a period of five years, introducing internal AML procedures, including internal procedures of anonymous reporting of real or potential infringements of the AML provisions, ensuring confidentiality of the fact of submitting reports on transactions which might be related to money laundering to the GIFI or other competent authorities, ensuring the participation of employees in AML training programmes.

Some categories of obligated institutions are required to notify the competent prosecutor of reasonable suspicion that the specific assets originate from a crime other than money laundering (or terrorist financing or a fiscal crime).

- cooperating units (government and local government authorities and other state organisational units as well as the National Bank of Poland, the Polish Financial Supervision Authority and the Supreme Audit Office).

The cooperating units are obliged to elaborate the instructions concerning the procedure in case of suspected committing of money laundering. They are also obliged to immediately inform the GIFI of the suspicion and provide any information or documents held on request of the GIFI.

The PFIU verifies the reported suspected cases of money laundering on the grounds of information gathered from obligated institutions, cooperating units, as well as foreign partners. In case of justified suspicion of money laundering it forwards it to the Prosecutor's Office which in cooperation with the law enforcement authorities undertakes actions aiming at completing the indictment against the suspects.

The Prosecutors' Offices advise the GIFI on all cases of issuing a decision concerning the account blockage or suspension of transaction, institution of proceedings, presentation of charges and bringing an indictment in cases related to money laundering (also when the proceedings were initiated on information from other resources than the GIFI).

In the event of acquiring a justified suspicion of committing an offence other than money laundering (or terrorist financing), the GIFI shall provide information justifying such suspicion to the competent bodies for the purpose of undertaking activities resulting from their statutory duties.

The effectiveness of the AML system is reinforced by the control of the performance of tasks resulting from the Act. The control is exercised by the PFIU and other authorities supervising the obligated institutions.

By reason of the transnational dimension of money laundering and the financing of terrorism crimes the Polish FIU exchanges information with foreign financial intelligence units. The exchange so far was effected either on the basis of bilateral agreements concluded between the GIFI and its foreign counterparts or on the basis of the Council Decision 2000/642/JHA concerning arrangements for cooperation between financial intelligence units in respect of exchanging information.

Additionally, in order to improve the quality of the system and aiming to deliver new solutions, the Polish Financial Intelligence Unit actively participates in the works of international institutions and organizations, focused on combating money laundering and financing of terrorism.

SAR (Suspicious Activity Reports) are the descriptive notifications of suspicious activities and transactions, which are included in analytical proceedings conducted by the GIFI. The notifications contain a description of a few, several or even several hundred transactions (related to each other through parties to transactions, circumstances of conducting a transaction, similar execution period and/or involvement of the same asset values) and accompanying circumstances which in the opinion of the notifying authority/unit may be related to money laundering or terrorist financing. Common components of these notifications often include additional data and documents justifying the suspicion and aiming at facilitating the proceedings (e.g., account records, copies of documents related to the transactions, etc.).

STR (Suspicious Transaction Reports) are pieces of information from the obligated institutions, concerning single transactions where circumstances may indicate association with money laundering.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Table no. 1 - Number of SARs received in the period of 2014-2017.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Period | Obligated institutions | Cooperating units | Other sources | Total |
| 2014 | 2,739 | 823 | 75 | 3,637 |
| 2015 | 2,863 | 604 | 53 | 3,520 |
| 2016 | 3,290 | 853 | 55 | 4,198 |
| 2017 | 3,272 | 796 | 47 | 4,115 |

SAR (Suspicious Activity Reports) are the descriptive notifications of suspicious activities and transactions, which are included in analytical proceedings conducted by the GIFI. The notifications contain a description of a few, several or even several hundred transactions (related to each other through parties to transactions, circumstances of conducting a transaction, similar execution period and/or involvement of the same asset values) and accompanying circumstances which in the opinion of the notifying authority/unit may be related to money laundering or terrorist financing. Common components of these notifications often include additional data and documents justifying the suspicion and aiming at facilitating the proceedings (e.g., account records, copies of documents related to the transactions, etc.).

Table no. 2 - Number of STRs received in the period of 2014-2017.

|  |  |  |
| --- | --- | --- |
| Period | | Number of transactions |
| 2014 | | 24868 |
| 2015 | 40331 | |
| 2016 | 36,756 | |
| 2017 | 62,103 | |

STR (Suspicious Transaction Reports) are pieces of information from the obligated institutions, concerning single transactions where circumstances may indicate association with money laundering.

Table no. 3 - Number of reports on transactions above threshold received in the period of 2014-2017.

|  |  |
| --- | --- |
| Period | Number of transactions |
|  | in millions |
| 2014 | 28,0 |
| 2015 | 29,0 |
| 2016 | 31,9 |
| 2017 | 34,6 |

The reports on above threshold transactions cover all transactions with the value exceeding EUR 15,000 (or EUR 1,000 in the case of certain types of obligated institutions), regardless if it is conducted by more than one operation.

Table no. 4 - Number of controls of obligated institutions conducted by the supervisory authorities in the period of 2014-2017.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Period | The GIFI | National Bank | National cooperative Financial | Presidents | Heads | Treasury | Customs |  |
|  |  | of | savings | Supervisio n | of Appellate | of Customs | Control | and tax control |
|  |  | Poland | and Credit Union | Authority | Courts | Offices | Offices | Offices |
| 2014 | 12 | 1285 | 13 | 47 | 96 | 58 | 53 |  |
| 2015 | 10 | 1232 | 20 | 43 | 142 | 34 | 66 |  |
| 2016 | 15 | 895 | 13 | 44 | 165 | 36 | 78 |  |
| 2017 | 25 | 656 | 9 | 39 | 171 | 2 | 4 | 47 |

The procedures for the imposition of fines on the obligated institutions for irregularities in performing the obligations are conducted based on the provisions of the Code of Administrative Procedure. The imposition of fines lies within the competence of the GIFI. While determining the amount of a fine, the GIFI takes into consideration the type and extent of the violation, the previous activity of the institution, and the financial capability thereof.

Some offences provided for in the AML legislation are sanctioned by criminal penalties of fines or imprisonment. In 2016 the GIFI submitted 8 notifications to the prosecutor’s office concerning committing offences referred to in the AML legislation. In 2017 there were 18 such notifications.

In the Table no. 4 number of controls of obliged institutions, conducted by the supervisory authorities in the period of2014-2017 does not include information on number of controls of obliged institutions conducted by the Polish Financial Supervision Authority (the PFSA). In the years 2014 -2017, the PFSA conducted - respectively - 47 (2014),47 (2015),47(2016).50 (2017) controls.

The Polish AML/CFT Law provides for the following criminal offences:

Chapter 14

Penal provisions

Article 156. 1. Any person who acts on behalf of or in the interest of the obligated institution who:

1) fails to fulfil the obligation to notify the General Inspector of circumstances which can indicate the suspicion of committing a crime of money laundering or financing of terrorism, or the obligation to notify the General Inspector of acquiring a justified suspicion that the specific transaction or assets subject to such transaction may be associated with money laundering or financing of terrorism,

2) provides the General Inspector with false data or hides true data concerning a transaction, accounts or persons,

shall be subject to the penalty of imprisonment from 3 months to 5 years.

2. The same penalty shall apply to any who, contrary to the provisions of the Act, discloses the information collected in accordance with the Act to any unauthorised persons, any account holder or any person to whom the transaction relates or uses this information in any other manner inconsistent with the provisions of the Act.

3. If the perpetrator of an act referred to in paragraph 1(1) or 2 acts unintentionally, he/she shall be subject to a fine.

Article 157.

Whoever hinders or prevents exercising the control activities referred to in Chapter 12 shall be subject to a fine.

The below tables present the results of the analytical proceedings conducted by the GIFI based on the information acquired:

Table no. 5 - Number of notifications submitted by the GIFI to prosecutor’s offices in the period of 2015-2017.

|  |  |  |
| --- | --- | --- |
| Period | Number of main | Number of |
|  | notifications | supplementary |
|  |  | notifications |
| 2015 | 184 | 214 |
| 2016 | 202 | 200 |
| 2017 | 171 | 169 |

Table no. 6 - Number of accounts blocked by the GIFI in the period of 2015-2017.

|  |  |
| --- | --- |
| Period | Number of main notifications |
| 2015 | 339 |
| 2016 | 325 |
| 2017 | 351 |

Table no. 7 - Number of suspended transactions in the period of 2015-2017.

|  |  |
| --- | --- |
| Period | Number of main notifications |
| 2015 | 40 |
| 2016 | 22 |
| 2017 | 21 |

Classification of asset values deposited on blocked accounts or being subject to suspended transactions shows that in 2017 it was PLN 4.1 million out of total PLN 143,6 million related to the predicate offence of corruption.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Please provide information on whether risk assessments on money laundering has been conducted (eg country risk, customer risk and service risk).

Poland performed its first National Risk Assessment (NRA) in 2017-2019. The works were based on earlier activities undertaken already in 2012 under the project on Preliminary National Risk Assessment (PNRA) in cooperation with the International Monetary Fund (IMF). The methodology utilised in the NRA was developed by the Polish authorities based on the previous experience.

The NRA provides the assessment of “basic risks” for ML and TF, based on the evaluation of threats, the assessment of “residual risk” related to the list of modi operandi (also separately for ML and TF), and the assessment of general ML and TF risks as a result of the two assessments described above.

According to Article 30(1) and (2) of the AML/CFT Act, after being approved by the Financial Security Committee, the NRA is submitted to the minister competent for public finance for approval. After the approval, the GIFI shall publish the NRA in the Public Information Bulletin on the website of the Ministry of Finance (excluding the part containing classified information).

The results of the NRA were published on the Ministry of Finance’s website on 17 July 2019:

- https://www.gov.pl/web/finanse/krajowa-ocena-ryzyka-prania-pieniedzy-oraz-finansowania-terroryzmu (Polish)

- https://www.gov.pl/web/finance/publications-aml-ctf (English)

According to Article 25(3) of the AML/CFT Act, the GIFI shall verify the validity of the national risk assessment and update it as applicable, in any case at least on a biannual basis.

According to Article 27(1) of the AML/CFT Act the obligated institutions shall identify and assess risks associated with ML and TF referring to their activity, taking into account risk factors related to customers, states or geographical areas, products, services, transactions or their supply channels. Such measures shall be proportionate to the nature and size of the obligated institution. Additionally, they may also take into account the applicable national risk assessment as well as the report of the European Commission referred to in article 6(1)-(3) of 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 (Supranational Risk Assessment Report - SNRA). Article 27(3) of the AML/CFT requires the obligated institutions to update their ML/TF risk assessments as necessary, and at least on a biannual basis.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

The statistics provided present information on the state of the implementation of this article.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Cases have been brought before the courts, but no decisions have yet been rendered.

Subparagraph 1 (b) of article 14

1. Each State Party shall: ...

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The possibility for the authorities dedicated to combating money laundering to cooperate and exchange information at the national and international level is provided for in the Act.

According to its provisions on request of the GIFI, cooperating units within the scope of their statutory competence provide any information or documents held. The cooperating units are also obliged to immediately inform the GIFI of any suspected committing of money laundering. The GIFI may conclude agreements with cooperating units, defining technical conditions of providing information or documents.

On the other hand the GIFI is obliged to make available the possessed information on written and justified request of agencies enumerated in the Act. In the event of acquiring a justified suspicion of committing an offence other than money laundering (or terrorist financing), the GIFI provides information justifying such suspicion to the competent bodies.

The system of counteracting money laundering and financing of terrorism in Poland is created by: GIIF - the Polish FIU;

* obligated institutions (ie entities from both the financial and non-financial sectors that offer services or products that may be used against their purpose for money laundering or terrorist financing: banks, insurance and life insurance companies, investment funds, factoring and leasing companies, payment institutions; Legal professions - notaries, lawyers, auditors and tax advisers, real estate agents, etc.).
* cooperating units (government administration bodies, local government bodies and other state organizational units, as well as The National Bank of Poland, the Polish Financial Supervision Authority and The Supreme Audit Office.
* Polish Law Enforcement Authorities (Prosecutor, National Fiscal Administration (previous Customs Service, Tax Administration and Fiscal Control), Central Anticorruption Bureau, National Internal Agency, Polish Border Guards, Police (included Police Central Bureau of Investigation - PCBI).
* FIUs in other countries.

The PFIU is the member of the Egmont Group and exchanges information with foreign FIUs through the Egmont Secure Web. Another channel used for the exchange of information with EU FIUs is the FIU.Net. Information and documents in the possession of the PFIU are made available to foreign FIUs on reciprocity basis. The PFIU may also exchange information related to money laundering with the Europol. The GIFI may also acquire and make information available to other competent authorities of foreign countries, foreign institutions and international organisations dealing with counteracting money laundering (and terrorist financing) as well as with the European supervision authorities.

In order to implement the cooperation, the GIFI can enter into agreements with foreign counterparts defining the procedure and the technical terms of acquiring and making information available.

The GIFI has signed following bilateral agreements on the exchange of information with other FIUs:

|  |  |
| --- | --- |
| Albania | 15.11.2007 |
| Algeria | 26.09.2011 |
| Andorra | 20.01.2004 |
| Antigua and Barbuda | 11.06.2015 |
| Argentina | 29.09.2008 |
| Armenia | 22.09.2009 |
| Aruba | 12.07.2011 |
| Australia | 22.07.2003 |
| Bahamas | 30.09.2009 |
| Bahrain | 02.02.2016 |
| Bangladesh | 22.03.2017 |
| Belarus | 31.05.2017 |
| Belgium | 21.03.2002 |
| Belize | 29.01.2015 |
| Brazil | 11.03.2008 |
| British Virgin Islands | 12.07.2011 |
| Bulgaria | 01.04.2002 |
| Canada | 08.11.2006 |
| Cayman Islands | 29.01.2015 |
| Chile | 29.06.2005 |
| China | 25.06.2015 |
| Columbia | 09.03.2015 |
| Croatia | 29.06.2005 |
| Curaçao | 19.12.2014 |
| Cyprus | 02.04.2004 |
| Czech Republic | 13.11.2001 |
| Egypt | 30.06.2010 |
| Estonia | 10.12.2001 |
| Finland | 06.11.2002 |
| Georgia | 29.09.2008 |
| Germany | 20.04.2004 |
| Gibraltar | 04.06.2014 |
| Great Britain | 18.02.2014 |
| Guernsey | 12.04.2005 |
| Hong Kong | 10.07.2012 |
| Iceland | 18.06.2017 |
| India | 12.07.2011 |
| Indonesia | 29.06.2005 |
| Ireland | 21.11.2003 |
| Israel | 21.01.2003 |
| Italy | 29.10.2003 |
| Japan | 15.11.2013 |
| Jersey | 28.04.2011 |
| Jordan | 01.11.2011 |
| Kazakhstan | 02.02.2016 |
| Kosovo | 01.09.2014 |
| Kyrgyzstan | 25.02.2010 |
| Latvia | 30.06.2003 |
| Lebanon | 02.02.2016 |
| Liechtenstein | 01.07.2003 |
| Lithuania | 07.02.2002 |
| Macedonia | 21.07.2005 |
| Man Island | 29.09.2009 |
| Mauritius | 10.06.2015 |
| Mexico | 01.12.2008 |
| Moldova | 18.06.2009 |
| Monaco | 16.04.2004 |
| Montenegro | 15.11.2007 |
| New Zealand | 06.07.2017 |
| Norway | 15.09.2009 |
| Panama | 29.01.2015 |
| Paraguay | 05.06.2014 |
| Peru | 03.03.2008 |
| Philippines | 11.03.2008 |
| Portugal | 19.01.2004 |
| Qatar | 30.06.2010 |
| Romania | 05.07.2002 |
| RSA | 22.02.2010 |
| Russia | 24.06.2003 |
| Saint Vincent and Grenadines | 22.07.2011 |
| San Marino | 21.09.2009 |
| Saudi Arabia | 12.07.2011 |
| Serbia | 10.11.2006 |
| Seychelles | 29.01.2015 |
| Singapore | 07.03.2018 |
| Sint Maarten | 18.02.2014 |
| Slovakia | 10.12.2001 |
| Slovenia | 03.06.2003 |
| South Korea | 14.10.2002 |
| Spain | 08.08.2002 |
| Switzerland | 13.09.2005 |
| Taiwan | 08.11.2006 |
| Tajikistan | 22.05.2015 |
| Tanzania | 13.03.2018 |
| Thailand | 26.10.2004 |
| Tunisia | 04.02.2014 |
| Turkey | 05.06.2012 |
| Ukraine | 14.04.2004 |
| United Arab Emirates | 22.11.2011 |
| USA | 07.11.2003 |
| Uzbekistan | 21.06.2016 |
| Vatican | 06.06.2014 |

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Representative of Police Central Bureau of Investigation (PCBI) is an appropriate expert of the EMPACT Criminal Finances project, established as part of the EU Security Policy Cycle for 2018-2021.

For more information on the PFIU, please refer to information delivered under Article 14 subparagraph 1a and under Article 58.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

In the opinion of the experts, the country under review has implemented the provisions of article 14, paragraph (b).

Do the regulatory institutions have the power to inspect financial institutions and enforce regulatory requirements through the imposition of sanctions?

* Article 130 paragraph 2 point 1 b of the AML/CTF Act stipulates as follows:

In the framework of the performed surveillance or control, they shall be also exercised by: 1 ) in accordance with the terms laid down in separate provisions, without prejudice to Article 131 ( 1 ). (2) and

(5):

1. The President of NBP (National Bank of Poland) - in accordance with the Act of 27 July 2002 - Foreign Exchange Law, in relation to currency exchange office operators within the meaning of this Act,
2. PFSA - in relation to the obliged institutions subject to its supervision."

According to Article 151 paragraph 1 point 3 of the AML/CTF Act in the scope of infringements found as a result of control referred to in Articlel 3()(2)(1 )(b), PFSA shall impose administrative penalties referred to in Article 150(1). The PFSA was not authorised to impose sanctions before 1st July 2018.

Please provide statistics on cooperation with other entities.

The PFSA supervising: credit and financial institutions (including banks and branches of foreign banks), credit unions, investment fund management companies, investment firms, life insurance companies, payment institutions, e-money institutions.. Inspection activities in the area of AML CFT were carried out at the entities

of each sector, supervised by the PFSA. Tasks of the PFSA related to AML/CTF are performed by the Anti-

Money Laundering Unit at the Compliance Department. The AML/CFT inspection covers the following types of inspection activities:

comprehensive on-site inspection.

targeted inspection.

thematic inspection,

investigation procedure,

off-site inspection.

An inspection conducted by the PFSA in the area of compliance by obliged institutions with AML/CFT requirements mainly consists of: ( 1 ) checking whether the obliged institution complies with the requirements laid down in the statutory law and regulations; (2) whether the institution's operations are based on appropriate risk assessment performed by the institution: (3) whether the internal procedures and other mechanisms introduced at the institution effectively mitigate the risks identified. The objective of an inspection is also to establish whether the AML/CFT procedures applied at the obliged institution are effective and whether the obliged institution applies the related best practices existing in each sector. The inspection in question examines how the the obliged institution organises its AML/CFT system, which should be based primarily on proper understanding and assessment of its own risk, on the obliged institution's knowledge about its clients (the 'Know Your Client' rule), identification and understanding of the nature of their transactions, analysis of those transactions and recording any such analysis.

In 2014-2017, the PFSA conducted 191 inspections in total regarding the fulfilment by obliged institutions of the AML/CFT laws. The detailed statistics on the inspections carried out by the PFSA are provided in tl table below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Financial sector | 2014 | 2015 | 2016 | 2017 |
| Commercial banks an Cooperative banks | 23 | 29 | 28 | 32 |
| Securities | 1 | 5 | 5 | 3 |
| Branches of credit institutions | 5 | 0 | 1 | 4 |
| Investment funds | 1 | 3 | -> | \*> j |
| Insurance | 2 | 2 | 2 | 2 |
| Credit unions | 8 | 7 | 7 | 5 |
| Payment institutions | 1 | 1 | 1 | 1 |
| Total | 47 | 47 | 47 | 50 |

G

After inspection at the obliged institution, as a result of identifying irregularities in the AML / CFT process, the PFSA issues recommendations.

The PFSA was authorised to impose sanctions after 1st July 2018. As a result of the inspections and the identified breaches of laws on the prevention of money laundering and terrorist financing, the PFSA initiated administrative proceedings against 16 obliged institutions. In March 2020 the PFSA imposed financial penalties on three financial institutions:

1. 1 200 000 PLN,
2. 450 000 PLN.
3. 100 000 PLN.

Also, following the inspection, the PFSA withdrew the authorisation of obliged institution to provide payment services as a domestic payment institution. The main reason of that decision was the suspicion that the company's operations might be used for the purposes of money laundering.

Under Article 130(1) of the AML/CFT Act the GIFI exercises control over all obligated institutions for the purposes of compliance with AML/CFT obligations. Under Article 130(2), control may also be exercised by President of NBP over currency exchange office operators within the meaning of the Act of 27 July 2002 - Foreign Exchange Law, by the KNF over entities supervised by it for prudential purposes, and by the National Association of Cooperative Savings and Credit Unions (NACSCU) over cooperative savings and credit unions. The discharge of these overlapping supervisory responsibilities is coordinated by the GIFI under Article 132 of the AML/CFT Act.

Under Articles 147-151 of the AML/CFT Act, supervisors (the GIFI, President of NBP and KNF) may impose administrative penalties on obligated institutions for breach of AML/CFT obligations. These penalties include public statements, orders to cease taking specific actions, revocation of a licence, permit or registration, prohibition on holding a managerial position for up to a year, and financial penalties. Financial penalties may be up to the level of two-fold amount of the benefit gained or the loss avoided by the obligated institution as a result of the violation, or up to EUR 1 million where this cannot be determined. Financial penalties for the certain entities may even amount up to EUR 5,000,000 or up to the level of 10% of the turnover. The amounts in the AML/CFT Act depend on the type of obligated institution.

Pursuant to Article 151(1)(3) of the AML/CFT Act, KNF may impose all possible penalties, i.e.:

1) publication of information on the obligated institution and the scope of violation of the provisions of the Act by this institution in the Public Information Bulletin on the website of the office providing services to the minister competent for public finance;

2) the order to cease undertaking specific activities by the obligated institution;

3) revocation of a license or a permit, or deleting from the register of regulated activity;

4) prohibition to hold a managerial position by a person responsible for the violation of the provisions of the Act by the obligated institution over a period of maximum one year;

5) financial penalty.

Regarding the penalty of revocation of a license or a permit, or deleting from the register of regulated activity, the President of NBP has a power to impose it pursuant to Article 151(1)(2) of the AML/CFT Act.

Furthermore, NBP may impose the following penalties on entrepreneurs conducting currency exchange office activities:

- publication of information on the obligated institution and the scope of violation of the provisions of the Act by this institution in the Public Information Bulletin on the website of the office providing services to the minister competent for public finance;

- the order to cease undertaking specific activities by the obligated institution;

- deleting from the register of regulated activity;

- financial penalty.

Removal from the register shall mean a ban on performing currency exchange activity.

Regarding the Credit Union sector, the NACSCU is not entitled to impose penalties under Article 147-151 of the AML/CFT Act. The NACSCU is entitled only to give recommendations to cooperative savings and credit unions.

*Summary data on the cooperation with selected domestic units under Articles 104-105 of the AML/CFT Act in the years 2016-2019[[8]](#footnote-9).*

|  |  |  |  |
| --- | --- | --- | --- |
| Institution | Year | Number of requests under[[9]](#footnote-10) Articles 104-105 of the AML/CFT Act | Number of information in the mode[[10]](#footnote-11) of Article 81 of the AML/CFT Act |
| Organisational units of the prosecutor’s office | 2016 | 597 | 51 |
| 2017 | 747 | 77 |
| 2018 | 737 | 90 |
|  | 2019 | 732 | 191 |
| courts[[11]](#footnote-12) | 2016 | 1 | *Not applicable* |
| 2017 | 6 | *Not applicable* |
| 2018 | 8 | *Not applicable* |
| 2019 | 9 | *Not applicable* |
| bodies of the NRA[[12]](#footnote-13) | 2016 | 1,405 | *Not applicable* |
| 2017 | 834 | *Not applicable* |
| 2018 | 575 | *Not applicable* |
| 2019 | 428 | *Not applicable* |
| ABW[[13]](#footnote-14) | 2016 | 54 | 4 |
| 2017 | 40 | 1 |
| 2018 | 72 | 7 |
| 2019 | 81 | 2 |
| CBA[[14]](#footnote-15) | 2016 | 26 | 0 |
| 2017 | 31 | 2 |
| 2018 | 27 | 2 |
| 2019 | 104 | 3 |
| Police | 2016 | 145 | 55 |
| 2017 | 109 | 40 |
| 2018 | 108 | 54 |
| 2019 | 126 | 94 |
| Border Guard | 2016 | 27 | 2 |
| 2017 | 29 | 2 |
| 2018 | 16 | 1 |
| 2019 | 21 | 0 |
| SKW[[15]](#footnote-16) | 2016 | 0 | 0 |
| 2017 | 4 | 0 |
| 2018 | 49 | 0 |
| 2019 | 53 | 0 |
| Military Police | 2019 | 5 | 0 |
| Total | 2016 | 2,255 | 112 |
| 2017 | 1,796 | 122 |
| 2018 | 1,543 | 154 |
|  | 2019 | 1,559 | 290 |

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

While cooperation between the different bodies at national and sub-regional level seems to be effective (which is a good thing), it is too early to infer good practices.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 2 of article 14

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Polish cross-border cash declaration system bases on the Regulation (EC) No 1889/2005 of the European Parliament and the Council of 26 October 2005 on controls of cash entering or leaving the Community. According to the Act the Border Guard bodies and the heads of customs and tax control offices provide the GIFI with the information arising from declarations of cross-border cash transportation across the EU border.

The Polish Act of 10 September 1999 Penal Fiscal Code states that failing to report to customs or Border Guard authorities incoming or outgoing cross-border transportation of foreign exchange values or national means of payment or providing false information in the report, is subject to a fine for fiscal offenses (up to 20 times of the minimum wage).

In the case of incoming and outgoing cross-border transportation of currency in the amount equal to or exceeding 10,000 euro in cash, this fact must be reported when crossing the border to customs or Border Guard authorities. For this purpose, a cash claim form should be completed in duplicate, which should be stamped and signed by a customs and tax officer or Border Guard. The declaration should include: Polish and foreign means of payment, i.e. currency (banknotes and coins) that are legal payment means in a country (also those withdrawn from circulation but subject to exchange); payment and transferable instruments, such as: checks, travellers' checks, bills of exchange and money orders; foreign exchange gold and platinum, coins minted after 1850, and also semi-finished products, except those used in dental technology and gold and platinum items usually not produced from these metals. In Poland, the obligation to report funds also applies to travellers with the status of residents and non-residents crossing the border between the Poland and other EU Member States (internal borders - within the Community), with the exception of travellers crossing internal borders with other EU Member States, which also belong to the Schengen area. Failure to notify the import of payment means to Poland or provide false data in the declaration, and also if it is not presented to the customs authorities or Border Guard authorities for inspection, shall be subject to a fine for fiscal offense.

As to the cash transportation in post and freight there is a general prohibition (Annex 2 to Decision No.1/2014/CZI of the Member of the Management Board of Polska S.A. (Polish Post) of 2 January 2014, Annex No. 2 to Resolution No. 48/2018 of the Management Board of Poczta Polska S.A. (Polish Post) of 20 March 2018) to use postal services (mail, parcel, shipments) for valuable items without declared value. Regarding postal services in foreign trade it is forbidden to include in mail valuable items (coins, banknotes, currency or any bearer's payable assets, travellers’ checks, platinum, gold or silver, processed or not, precious stones, jewellery) without declaration of the value.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

In 2017 the GIFI received information on 11.8 thousand cash transportation declarations (in 2016 - 8.7 thousand, in 2015 - 6,6 thousand cash transportation declarations), contained in 7.1 thousand of cash declaration forms (in 2016 - 6 thousand cash declaration forms, in 2015 - 6,2 thousand cash declaration forms).

According to the data submitted in 2017 - 10,221 (in 2016 - 7,572, in 2015 - 5,587) notifications referred to cash import declarations to the territory of the EU and 801 (in 2016 - 698, in 2015 - 630) notifications were related to cash export declarations from the territory of the EU. The GIFI also received information concerning 476 (in 2016 - 414, in 2015 - 374) notifications arising from declarations of cash transfer between the EU Member States and 281 (in 2016 - 65, in 2015 - 54) declarations of cash transfer between non-EU countries. The total value of amounts declared are presented below:

1) The total amount in PLN calculated based on the annual average exchange rate of a given currency for the funds declared as entering the EU:

- PLN 545,8 million in 2015, - PLN 830,9 million in 2016, - PLN 1,154 million in 2017,

2) The total amount in PLN calculated based on the annual average exchange rate of a given currency for the funds declared as leaving the EU:

- PLN 96,4 million in 2015, - PLN 120,2 million in 2016, - PLN 155,3 million in 2017.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The information provided by the country under review is satisfactory.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Effective implementation of the measures taken (the regulations and mechanisms put in place), pursuant to the provision concerned.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Statistics illustrating the implementation of article 14, paragraph 2, were provided.

Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In Poland the rules defined in Regulation (EU) 2015/847 of 20 May 2015 on information accompanying transfers of funds apply. They lay down the rules on the information accompanying transfers of funds with relation to the payer and the payee (thereby implementing FATF Recommendation 16 on wire transfers and ensuring the traceability of payment transactions).

The general rules provide that the payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information: (a) the name of the payer and payee; (b) the payer's and payee’s payment account number; and (c) the payer's address, official personal document number, customer identification number or date and place of birth.

The payment service provider of the payee (as well as the intermediary payment service provider) is obliged to detect whether information on the payer and the payee is missing and whether they have been filled in using admissible characters or inputs. The payment service provider of the payee is also obliged to implement effective risk-based procedures for determining whether to execute, reject or suspend a transfer of funds lacking the required complete payer and payee information and for taking the appropriate follow-up action. The telephone banking is one of banking services offered by banks and it is governed by the terms and conditions of typical account agreement between client and bank. Transactions by the telephone banking services are subject to the AML / CFT requirements on the same terms as other banking transactions.

Additional response provided by Poland:

The verification of the internal control system at an obligated institution with regard to identification of customer and verification of the customer’s identity at banks and branches of credit institutions based on the video verification method was discussed in the Office of the KNF (UKNF) statement of 5 June 2019, published on the KNF website: https://www.knf.gov.pl/o\_nas/komunikaty?articleId=66067&p\_id=18.

This document sets out good practices in ensuring compliance with the requirements under the AML/CFT Act concerning customer identification and customer identity verification at banks and branches of credit institutions through video ID verification, which requirements should be applied in the day-to-day operations of banks and branches of credit institutions that offer the video ID verification service. The implementation and functioning of the customer identification and ID verification model based on technologies (i.e. video ID verification using biometric methods) should be in line with the standards prescribed in the KNF’s Recommendation D on the management of information technology and ICT environment security at banks.

It also takes into account the Guidelines of the GIFI on the identification of customers of an obliged institution and verification of their identity where they are not physically present, published on 22 August 2018, and Communication No 4 on the correction to the Statement of the GIFI of 22 August 2018 on the identification of customers of an obliged institution and verification of their identity.

“Nevertheless, according to Article 33(4) of the Act, obliged institutions must apply financial security measures to the extent and with intensity that take into account the recognised risks of money laundering and terrorist financing arising from business relations and/or occasional transactions and the assessment of those risks. According to the above-mentioned rule, obliged institutions are required to identify the customer’s level of risk and risk profile, and those factors - as identified and assessed by the obliged institution - determine the extent and specificity of financial security measures, including customer verification and customer identity verification, the obliged institution (in this case a bank or branch of a credit institution) will apply towards its customer where the customer is not physically present in the bank for the purpose of establishing a business relationship or executing an occasional transaction. Customer identification consists of a customer giving their personal data to the bank (Article 36(1) of the AML/CFT Act). The bank should also verify the customer’s identity, obligatorily based on an identity document of a natural person and other documents, data or information derived from a reliable independent source (under Article 37 of the AML/CFT Act).

As regards verification of the customer’s identity where the customer is not physically present, the most reliable instruments are the electronic identification means referred to in Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257 of 28 August 2014, p. 84), including qualified electronic signature.

Where using the above-mentioned electronic identification means is not possible, the bank should consider application, under Article 43(2)(7) of the AML/CFT Act, of enhanced financial security measures. Consideration should also be given to the instruction in Article 43(2)(9) of the Act, which pertains to entering into business relationships and/or transactions to offer new products and services and to offering products or services through new distribution channels. Such generally defined standards transfer on the bank the obligation to determine what documents, data and information (i.e. verification material) it will use to verify the customer’s identity and what methods of obtaining the verification material it will apply.

In order to verify the identity of a customer that is not physically present, a bank should consider using various pieces of the verification material derived from credible independent sources.

For the purpose of verification of identity of a natural person, at least one piece of the verification material should be an identity document as defined in the generally laws (ID card, passport, residence permit). Another example of verification material is a photo ID, e.g. a driving licence. Supplementary documents that confirm the customer’s identity and address may include e.g. utility bills. Another security measure the KNF expects is to execute the first transaction via bank transfer from the customer’s account (kept at another obliged institution) for the bank that verifies the identity. Please note that given the minimum scope of personal data contained in information about the transfer, such data will only be used as supporting data for identity verification purposes.”

The records of information on the payer and the payee may be kept by the payment service providers for a period of 5 years and may be extended for a further period of 5 years where the necessity and proportionality of such further retention has been established for the prevention, detection, investigation or prosecution of suspected money laundering (or terrorist financing).

The provisions of Regulation 2015/847 are not applicable to transfers of funds for the supply of goods or services, if the payee’s provider of payment services can monitor, by means of a unique transaction identifier, the transfer of funds or the amount of the transfer of funds due to payment of the supply of goods or services does not exceed the equivalent of EUR 1000.

Any obligated institution which fails to fulfil the obligation to ensure that the transfer of funds is accompanied by information on the payer or the payee or implement the procedures to detect the absence of information on the payer or the payee referred to in the Regulation 2015/847 shall be subject to administrative penalty.

Regulation 2015/847 requires that payment service providers - i.e. natural or legal persons whose business involves provision of transfer of funds services - should provide complete and verified information on the identity of payers and payees. Regulation 2015/847 imposes various obligations on each participant in a payment chain, i.e. the payment service provider of the payer, the intermediary payment service provider, and the payment sendee provider of the payee. The implementation of the obligations laid down in the Regulation 2015/847 is verified by the PFSA during both, on-site and off-site inspections. The scope of the above-mentioned inspections includes the following areas: establishing what services are provided by the entity under inspection and what the roles of that entity are, depending on the services being provided, examining the internal rules concerning compliance with the requirements under Regulation 2015/847, verifying activities and assessing the ML/TF risks of obligated institution, taking into account the scope and size of the business related to the transfer of funds, verifying if the obliged institution is compliant with the requirements imposed on the payment service providers of the payers (if such services are provided by the institution being subject to inspection), in case of the correspondent relationships (also including establishing and keeping accounts owned by another financial institution), verifying the fulfilment of obligations imposed on intermediary payment service providers, establishing whether within the period under inspection there were cases of rejection of transfers due to incomplete information on the payer or payee, and whether in the case of repeated failure to provide the required information the entity under inspection notified the GIFI (Article 12(2) of Regulation 2015/ 847).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

No example available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Act adapts Polish legal framework to revised FATF recommendations (as well as to the provisions of EU Directive 2015/849 - 4th AMLD). The Act also takes into account recommendations addressed to the national system of counteracting money laundering and terrorism financing by MONEYVAL, included in the 2013 report from the evaluation of the Polish system of counteracting money laundering and the financing of terrorism. The current guidelines provided by the FATF as well as guidance issued by European supervisory authorities (ESAs) (the European Banking Authority - EBA, the European Securities and Markets Authority - ESMA, the European Insurance and Occupational Pensions Authority - EIOPA) are constantly applied and were considered when drafting the new AML legislation.

Poland was evaluated in the 4th Round of Evaluations of MONEYVAL in May 2012. The 4th Round Evaluation Report was adopted at the 41st MONEYVAL plenary meeting (in April 2013), which placed Poland into regular follow-up. Due to the delays in adopting new AML legislation the first step of Compliance Enhancing Procedure was applied against Poland in 2017. Progress made on most of the core and key FATF recommendations allowed Poland in 2018 to step out the Compliance Enhancing Procedure. Since July 2018 Poland is obliged to report to MONEYVAL on progress in implementing the FATF recommendations according to regular follow up rules.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Case examples available in other reports in this regard.

In Poland’s second compliance report of 3 July 2018, it has been concluded that Poland has brought all outstanding core and key recommendations to a level of “largely complaint”. The report can be found at the following link:

https://www.coe.int/en/web/moneyval/jurisdictions/poland

The 5th round mutual evaluation of Poland is underway and the current measures have not yet been assessed.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

The measures have been taken by the State under review to meet these obligations under Article 14 paragraph 4. However, it would be useful to produce the various evaluation reports mentioned or to specify the links between them.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None

Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The GIFI actively participates in the works of numerous international fora devoted to combating money laundering.

The GIFI actively participated in the meetings of the EU bodies - Expert Group on Money Laundering and Terrorism Financing, EU-FIU Platform meetings (including FIU.NET Advisory Group and newly established Working Group for the Development of the FIU.NET network) getting involved in the matters discussed by that groups. A GIF representative is the chairman of the project group for the promotion and development of the technology for anonymous data matching, by financial intelligence units (so-called ma3tch) consisting of representatives of European FIUs, Europol and the European Commission.

Poland actively participates in the works on the MONEYVAL Committee. The permanent Polish delegation consisting of representatives of the GIFI, the Financial Supervision Authority and the National Prosecutor's Office. Between 2015 and 2019, The representative of the GIFI is one of the Vice-Chairpersons of the MONEYVAL Committee and Committee and in 2019 was elected Chairperson. Three representatives of Poland took part as evaluators in the evaluation missions conducted by MONEYVAL Committee under the 5th round of mutual evaluations. Poland also actively participates in the works of another FATF-style regional body, which is the Eurasian Group on combating money laundering and financing of terrorism (EAG).

Over the recent years, the Polish FIU has been actively involved in the works of the EGMONT Group. A representative of the GIFI participated in the project team which prepared a new version of the Egmont Group questionnaire (Egmont Biennial Census). The PFIU cooperated under other projects related to, inter alia, virtual currencies or problems related to identification of a beneficial owner.

The GIFI also cooperates with the FATF by involvement in the actions promoted and arranged by the FATF in cooperation with the MONEYVAL Committee and the European Commission including its subordinated bodies. GIFI representatives, as members of the MONEYVAL delegation, participated in meetings of working groups and plenary FATF meetings held three times last year. This enabled the participation in the works concerning evaluation reports of FATF member states, created a possibility to issue opinions on the amendments to individual Recommendation and the FATF Methodology and allowed the GIFI to engage in projects and initiatives implemented by this organisation. GIFI representatives also participate in a number of thematic events organised by the FATF ,among others, in the meeting of experts and a workshop concerning the national risk assessment, the consultative forum with the private sector and the forum of FinTech and RegTech industries.

The GIFI continuously works within the other international fora, including the Conference of the States Parties to the Warsaw Convention (COP) created to monitor implementation of the provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005 (CETS 198). The Polish AML system was evaluated as far as its compliance with the provisions of the Convention is concerned and Poland reports on adjustments of its AML system to the provisions of the Convention, including the COP recommendations.

Representative of Police Central Bureau of Investigation (PCBI) is an appropriate expert of the EMPACT Criminal Finances project, established as part of the EU Security Policy Cycle for 2018-2021.

In addition, representative of Police Central Bureau of Investigation (PCBI) are an appropriate coordinator of AWF-SOC SUSTRANS at the national level.

Due to the fact that both money laundering and terrorism financing have a transnational character the GIFI regularly seeks information abroad from its partners. The legal basis for providing cooperation on ML/TF are Articles 110-116 of the AML/CFT Act. These cover the whole spectrum of international cooperation of the FIUs (FIU-to-FIU cooperation, FIU-Europol cooperation, direct diagonal cooperation – FIU-other foreign authority). It is important to highlight, that the new AML/CFT Act enables the GIFI to exchange information with foreign partners without having to sign a bilateral agreement. Nevertheless the GIFI can still engage in bilateral and multilateral agreements should it be needed.

The GIFI is currently a party to the following arrangements:

- 92 Memoranda of Understanding - bilateral agreements - allowing for the acquisition of financial information from abroad;

- Council Decision (EU) of 17 October 2000 concerning Arrangements for Cooperation between Financial Intelligence Units of the Member States in respect of Exchanging Information;

- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005 - CETS 198.

The aforementioned mechanisms allow the GIFI to cooperate without delay with any partner necessary. This is not limited to foreign counterparts, but can also concern other partners like Europol and competent authorities of other countries, foreign institutions and international organisations dealing with counteracting money laundering and financing of terrorism and the European supervision authorities. Although FIU-to-FIU communication remains the key cooperation mechanism, the GIFI has reached out with request for information to Europol in occasional cases. The GIFI received and responded to 2 requests from Europol in 2019. The FIU has made 3 requests for information to Europol. This includes use of Europol as a channel to file request to the US via the Terrorist Finance Tracking Program (TFTP). The GIFI also sends out request on behalf of other domestic competent authorities – the Prosecutor offices.

The GIFI may exchange information (both in the previous legal status and at present) with the FIUs whose countries have ratified the Warsaw Convention. The above-mentioned document, ratified by Poland, provides that the FIU “shall exchange among themselves, on their own initiative or upon request, in accordance with this Convention or with existing or future Memoranda of Understanding consistent with this Convention, all available information which may be relevant for the processing or analysis of information or, where appropriate, for the conduct of investigations by the FIU relating to financial transactions associated with money laundering and related legal or natural persons”.

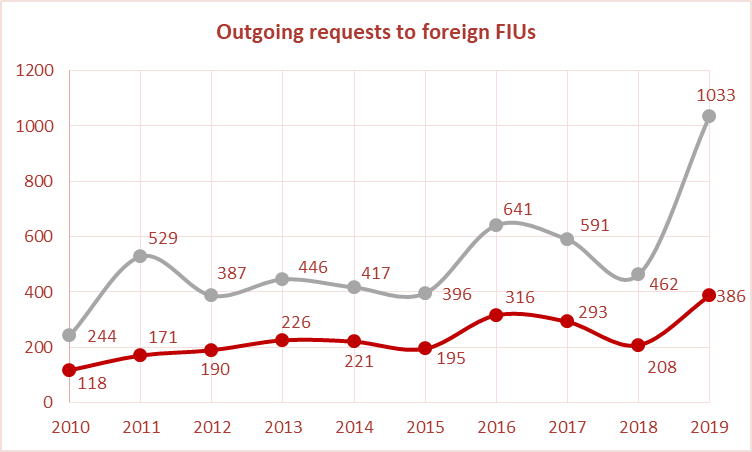
There also exists Multilateral Agreement on the Practical Modalities for Exchange of Information pursuant to Article 57a(2) of Directive (EU) 2015/849 (the AML Agreement) concluded between the European Central Bank (ECB) and the GIFI. The purpose of this Agreement is to define practical modalities for the exchange of information between the GIFI and the ECB pursuant to requirements of the Regulation (EU) 1024/2013 (SSM Regulation), including prudential supervision on a consolidated basis or pursuant to requirements of the AMLD or under other laws in the area of AML/CFT. In accordance with Article 3(2) and (3) of the AML Agreement – the ECB requested from the information on credit institutions/branches that the GIFI supervises in its capacity as AML/CFT supervisor. This information was required by the ECB in order to feed its prudential annual Supervisory Review and Evaluation Process (BION).

Pursuant to Article 62 (1) of the IV AMLD, Member States shall ensure that their competent authorities inform the European Supervision Authorities of all administrative sanctions and measures imposed in accordance with Articles 58 and 59 on credit institutions and financial institutions, including of any appeal in relation thereto and the outcome thereof. Pursuant to Article 152 (7) of the AML/CFT Act, the information on administrative penalty imposed on the obligated institutions shall be submitted to the European Supervision Authorities.

Number of information on administrative penalties sent by the GIFI to the ECB: 2019 – 2, 2020 – 7 (January - March).

In addition, activities implemented by the GIFI as part of its duties provided for in Article 12(1)(9) of the AML/CFT Act (“cooperation with competent authorities of other countries, as well as foreign institutions and international organisations dealing with anti-money laundering or financing of terrorism”) facilitate cooperation in the field of exchange of financial intelligence, supervision, law enforcement or other information to counter money laundering and terrorist financing with countries with different legal systems.

Number of outgoing requests to foreign FIUs:



(bottom line – requests, upper line – subjects)

The GIFI uses two primary channels to transfer information – FIU.net and the Egmont Secure Web. FIU.net is used more intensively, as the majority (70-80%) of information exchange is conducted with EU FIUs.

Information on the breakdown of outgoing requests on country basis for each year can be found in the annual reports of the GIFI. The GIFI does not monitor the response time of foreign counterparts. Feedback is provided to foreign FIUs upon request.

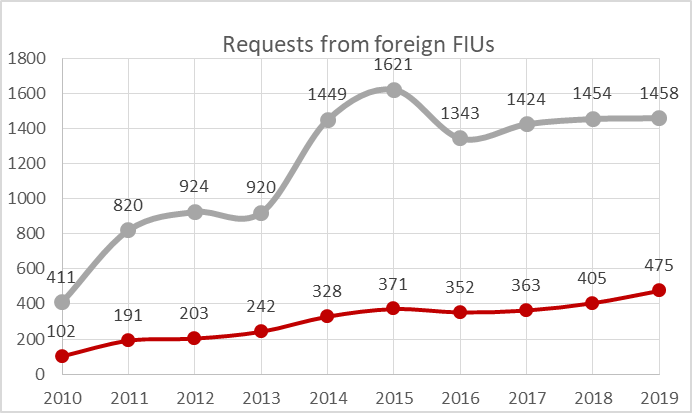
The GIFI routinely provides information both spontaneously and upon request to its foreign counterparts, in line with domestic legislation, bilateral and multilateral agreements and Egmont Group principles and best practices.

The GIFI receives large amounts of spontaneous disseminations from other FIUs, in particular from EU Member States. These are utilized by the GIFI by seeking connections with existing analytical proceedings and identifying material for new cases. Throughout the last 5 years, the GIFI has seen a significant increase in received spontaneous disclosures, from 204 in 2014 to 4107 in 2019. The GIFI provided in 2020 (as of June) one information on suspected irregularities to Netherland FIU via EGMONT.

The timeliness of responses to foreign FIUs is guaranteed by Article 111 (6) of the AML/CFT Act which sets a maximum response time of 30 days. In practice, foreign FIUs receive replies earlier – the average for the first quarter of 2020 was just under 10 days. If the request is branded urgent, the response (depending on the requested information) can be provided on the same day or within 1-3 days. In the previous years, around 20-25% of all requests are replied within 1 day. The GIFI has the power to request information from reporting entities with a specific response timeframe or ASAP indication, guaranteeing quick provision of information for foreign counterparts in urgent cases.

Apart from responding to requests, the analysts from the FIU also prepare spontaneous disseminations to foreign FIUs on the basis of the results of analysis in the cases they are handling. The number of such disseminations currently varies around 5 -20 per year.

Since 2019, the GIFI has also started sending out cross border disseminations – SARs received by the GIFI concerning other Member States – in line with Article 53 (1) of the IV AMLD and 112 (3) of the AML/CFT Act. In 2019 the GIFI sent out 475 reports concerning 1390 subjects. The most reports have been sent to neighbouring countries, such as Germany, the Czech Republic, Lithuania and Hungary.



Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

On 04-08 June 2018 a training "Money laundering" No. 35/2018 was organized by Police Central Bureau of Investigation at the Mercure Warszawa Centrum Hotel in Warsaw (Poland). The training was organised in a cooperation and support of Judiciary Police (PT),Guardia di Finanza (IT), EUROPOL, EMPACT Financial Crimes Driver, Ministry of Finance (PL), National Public Prosecutor’s Office (PL), Internal Security Agency (PL), Central Anticorruption Bureau (PL), National Police Headquarter (PL), Border Guard Headquarter (PL),private financial sector representatives, academic experts.

Target group were 30 representatives of law enforcement agencies and other authority involved in economic and financial crime investigation as well as criminal investigation team leaders from 19 EU countries (Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Poland, Portugal, Romania, Sweden, Slovakia, Spain), from Georgia and from Europol.

The aim of the activity was to enhance knowledge and competences in preventing money laundering and conducting transnational financial investigation techniques and cooperation by presenting following issues:

1. Money Laundering - legal and criminal aspects.

2. International Money Laundering investigation - presentation and exercise led by Europol, Eurojust.

3. EU Policy Cycle 2018-2021 and EMPACT conclusions.

4. Present Financial Investigation Units dealing with economic and financial crimes in Poland and other countries.

5. System of counteracting ML - responsibilities and good practice from perspective of different countries and authorities.

6. Identify and name new trends of money laundering and possibilities to counteract.

7. Informal Value Transfer System (Hawala, underground banking).

8. Bitcoin - presentation and exercise.

9. Methods of money laundering risk assessment. Modelling an offender's profile.

10. ML from finance private sector and facilitators’ perspective (Ernst & Young, MoneyGram International, Compliance Polska Association, Coinfirm Ltd, Bank PEKAO SA) 11. The role and tasks of ARO in Poland, international cooperation, use of CARIN network, methods of determining and valuing property subject to confiscation practical experience, exercises. 12. Diminishing Criminal Assets and extended seizure.

13. Anti-money laundering and terrorist financing strategies from Internal Security Agency perspective.

14. Money Laundering in aspect of corruption offences presented by Anti-Corruption Bureau.

Diversified learning methods were used to make the training and certain topics more comprehensive, understandable and easier to assimilate. Content of the course activities and methods delivered as well as experts knowledge and personal participants engagement allowed to obtain aim of improving professional skills in the fight against ML phenomena.

“Money laundering” activity allowed to improve the understanding of money laundering schemes, enhance competencies in transnational financial investigation techniques, to assess the phenomenon, to appraise its complexity, promote knowledge of the powers and legal basis of the law enforcement authority fight against financial offences. The course also summarised information on investigative tools, possible solution for effective international cooperation, best practice as well as showed the picture of the new scientific findings, discoveries like profiling perpetrator of money laundering and the risk assessment methods of money laundering. The training took place in connection with obtaining a financial grant for the implementation of a training project from the CEPOL training catalogue for 2018.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Examples of the application of article 14, paragraph 5, were provided by Poland.

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

None

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

The State under review did not provide any information regarding the technical assistance received; however, it appears from the information provided that it has benefited from financial and technical support from the EU, in particular for capacity building.

V. Asset recovery

Article 51. General provision

Article 51

1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention, including identifying both any legal authorities/procedures for accepting requests for asset recovery and assessing that these requests are reasonably substantiated and supplemented as well as any time frame established under domestic laws and procedures for their execution, taking into account requests received from countries with similar or different legal systems and any challenges faced in this context.

Poland perceives the recovery of assets and depriving the perpetrators of benefits of crime as well as forfeiture of crime-related tools and objects as a one of the most important elements of the fight against corruption.

Poland applies the following provisions of EU law:

• Joint Action 98/699/JHA, adopted by the Council on the basis of Article K.3 of the Treaty on European Union on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime;

• Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001, p. 1.);

• Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45);

• Council Framework Decision 2005/212/JH )of 24 February 2005 on confiscation of crime related proceeds, instrumentalities and property (OJ L 68, 15.3.2005, p.49);

• Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p.59);

• DIRECTIVE 2014/42/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union; and

• Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

These provisions have been properly implemented into Polish criminal law by the addition of sections 62a and 62b to the Code of Criminal Procedure as regards the mutual execution of orders, including orders on the freezing of assets at the request of EU Member States. The Code of Criminal Procedure contains legal mechanisms for the freezing of assets for the purpose of enforcing criminal provisions on the recovery of property. Furthermore, the Polish Criminal Code offers several legal mechanisms for the application of criminal penalties of an economic nature, compensatory measures to recover lost assets, as well as the forfeiture of instrumentalities, items and proceeds of crime. As regards the identification of funds held in bank accounts where it is suspected that the funds are the proceeds of crime or come from undisclosed sources, Poland has a national Financial Intelligence Unit (FIU) that is part of the Supreme Government Administration, namely the General Inspector of Financial Information. The FIU was established under the Act of 1 March 2018 on the Prevention of Money Laundering and Terrorist Financing (Journal of Laws of 2018, item 723).

The specialized unit for asset recovery was established on 5 December 2008 within the Police Headquarters as the national Asset Recovery Office (BOM).

The purpose of establishing BOM was not only to fulfill the obligations imposed by Council Decision 2007/845 / JHA, but also to deepen and improve the cooperation of all national institutions whose activities were associated with depriving perpetrators of the benefits derived from committed crimes

On December 18, 2008, a declaration of cooperation was signed between the Minister of Finance, the Minister of Justice - the Prosecutor General and the Minister of the Interior and Administration regarding cooperation in the application of EU Council Decision 2007/845 / JHA of December 6, 2007 regarding cooperation between asset recovery offices in Member States in the field of detecting and identifying the benefits of a crime or other crime-related property. The parties to the declaration undertook to cooperate in order to effectively fulfill the tasks related to detecting and identifying illegally obtained benefits and other property derived from criminal activities and to appoint Proxies to effectively implement the provisions of the declaration.

Implementing the provisions of the Declaration of Cooperation on September 15, 2009, the Minister of Finance, the Minister of Justice - the Prosecutor General and the Minister of the Interior and Administration concluded an agreement on cooperation in detecting and identifying the benefits of a crime or other crime-related property as regards the tasks of the national BOM. The parties again undertook to cooperate in order to ensure that subordinate or supervised bodies and organizational units successfully complete the tasks of detecting and identifying the proceeds of crime. Each of the parties also undertook to indicate Cooperation Points, whose tasks include coordinating the exchange of information related to the implementation of the tasks of the National Property Recovery Office.

The final shape of the Polish property recovery system was provided by the Act of 16 September 2011 on the exchange of information with law enforcement authorities of the Member States of the European Union, which sets out the terms and conditions for the exchange of information with law enforcement authorities of the EU Member States in order to detect and prosecute perpetrators of fiscal offenses, crime prevention and combating and information processing, as well as entities authorized in these matters. It also clarifies the tasks and powers of national contact points, including BOM.

Pursuant to the Act, the entities authorized to exchange information via the Asset Recovery Office are: Police, Internal Security Agency, Central Anti-Corruption Bureau, Border Guard, Military Police, Prosecutor's Office, National Tax Administration (from 1.03.2017).

According to the Act of 1 March 2018 on Counteracting Money Laundering and Financing of Terrorism (Journal of Laws of 2020, item 971)

General Inspector of Financial Information

It is a governmental authority competent in matters of anti-money laundering and anti-terrorist financing, also known as the General Inspector or GIIF in short GIIF:

- is the secretary or undersecretary of state in the office serving the minister responsible for public finance.

- their tasks are performed by means of an organizational unit separated for this purpose in the office serving the minister in charge of public finance.

Selected tasks of GIIF are activities undertaken in order to prevent money laundering and financing of terrorism, in particular:

1) analysing information concerning property values, which are suspected by the Inspector General to be connected with the crime of money laundering or terrorist financing;

2) carrying out the procedure of stopping transactions or blocking the account;

3) requesting information on transactions and making it available;

4) providing the authorized authorities with information and documents justifying the suspicion

of a crime;

5) exchanging information with cooperating entities;

It should be emphasized that the cooperating units are law enforcement agencies, including the Police.

The GIIF is not the focal point for asset recovery, it is the proper national authority for AML/CFT cases.

On the basis of the provisions of the Act of 16 September 2011 on the exchange of information with law enforcement agencies of the European Union Member States, third countries, European Union agencies and international organizations (Journal of Laws of 2020, item 158), within the structure of the Police Headquarters an organizational unit is designated to act as a contact point for the exchange of information between the authorized entities and the entities mentioned in this Act (law enforcement agencies and special services). It should be highlighted that the provisions of this Act apply to the exchange of information by the national Asset Recovery Office mentioned in Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of financial benefits, or other property related to crime (Journal of Laws UE L 332, 18.12.2007, p. 103),

The law allows the exchange of information via liaison officers. This means that liaison officers can also be used to exchange information in respect of its disclosure and preservation of property.

In Poland there are several registers supporting the identification of property:

- Central Information About Bank Accounts

- Land Register

- Companies Register

As far as financial information is concerned, the registers of real beneficiaries and the register of VAT taxpayers, including a white list of taxpayers, are particularly useful. Both these registers are publicly available and indicate personal and capital ties, as well as bank accounts indicated by taxpayers, used for VAT transactions.

It should be emphasized that companies in Poland are obliged to submit financial reports to court registers. This data is publicly available, even via the websites of the Ministry of Justice.

The provisions of Polish law on the recovery and forfeiture of property are contained in the Polish Criminal Code, i.e. Article 32 (the criminal penalty of fine) to Article 39 (the criminal penalty of ‘payment’ [świadczenie pieniężne]), 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). Furthermore, Polish criminal law contains provisions for the forfeiture of instrumentalities, items and proceeds of crime, whether direct or indirect, including those transferred to another person through any legally ostensible act. As regards the seizure of the proceeds of crime, Polish law contains provisions under which certain assets can be presumed to have been obtained through criminal activities and, as such, are subject to forfeiture, although these provisions can only be enforced if several conditions are met. Article 291 of the Polish Criminal Code provides for the freezing of the offender’s property during the criminal proceedings in case the criminal court orders the penalty of fine, forfeiture, compensation or a criminal penalty of an economic nature. Additionally, Article 295 of the Polish Criminal Code contains provisions under which the movable assets of a person suspected of a criminal offence can be frozen temporarily on the basis of an order issued by a criminal court or a public prosecutor in the course of criminal proceedings, if the statutory condition for such an order is satisfied, i.e. if there is a reason to believe that the assets in respect of which a subsequent court order may be issued could be removed.

*Art. 32. Catalogue. The penalties are:*

*1) fines,*

*2) the restriction of liberty,*

*3) imprisonment,*

*4) imprisonment for 25 years,*

*5) life imprisonment.*

*Art. 39. Catalogue. Penal measures are:*

*1) deprivation of public rights,*

*2) disqualification from specific posts, the exercise of specific professions or engagement in specific economic activities,*

*2a) disqualification from activities involving raising, treating and educating minors, and taking care of them,*

*2b) a prohibition on being in certain communities and locations, a prohibition on contacting certain individuals or on leaving a specific place of residence without the court's consent,*

*2c) disqualification from operating machinery,*

*2d) a ban on entering gaming centres or participating in games of chance,*

*2e) an order to leave premises jointly occupied with the aggrieved party,*

*3) disqualification from driving,*

*4) forfeiture,*

*5) an obligation to remedy damage caused or compensate for harm done,*

*6) exemplary damages,*

*7) monetary performance,*

*8) announcement of the sentence publicly.*

*Provisions of Article 32 of the Criminal Code determine the penalties that may be imposed*

*in connection with the commitment of a crime. Among the mentioned catalogue there is a fine, which can be the basis for securing the property.*

*However, other legal regulations with the Criminal Code, which provide effective possibilities to secure property and deprive offenders of financial benefits, should be particularly noted. These are tools from Chapter Va.*

*Forfeiture and compensatory measures, art. 44-47. They give the possibility of - for example- extended confiscation or reversed burden of proof related to verification of the legality of property.*

*AML/CFT provisions – provide the possibility of freezing or blocking funds derived from or related to the crime of money laundering or terrorist financing. These actions can be taken by the GIIF (for a period of 96 hours) and then extended by the prosecutor (up to 6 months). The procedure itself related to the procedural freezing of assets is defined in the Code of Criminal Procedure in Chapter 32. Asset freezing.*

*In 2018. as a result of the activity of the Inter-ministerial Team for the Coordination of the Implementation, Monitoring and Evaluation of the "Programme for Counteracting and Combating Economic Crime for the years 2015-2020", as part of the work of the Task Force under the supervision of the National Prosecutor, whose work, in addition to representatives of the common organizational units of the prosecutor's office, was attended by representatives of the Minister of Finance, the Minister of Justice, the Chief Commander of the Police, The Commander-in-Chief of the Border Guard, as well as invited guests - judges adjudicating in criminal, civil and executive cases, representatives of the Central Police Investigation Office, the Central Anti-Corruption Bureau, the Internal Security Agency, the Military Police and the National Council of Bailiffs, have developed a 400-page Methodology of Asset Security, which description of the main areas related to property. It indicates the legal basis, practical examples of decisions and is a kind of compendium of knowledge on property disclosure and security.*

The Polish legal system provides for specific regulation regarding the forfeiture of property under

**Chapter Va of the Criminal Code.**

Article 44.

*§ 1. The court shall impose the forfeiture of items directly derived from an offence.*

*§ 2. The court may decide on the forfeiture, where law so provides for, of the items which served or were designed for committing the offence.*

*§ 3. The forfeiture described in § 2 shall not be applied if its imposition would not be commensurate with the severity of the offence committed, the court may impose a compensatory damages to the State Treasury instead.*

*§ 4. In the event that imposing the forfeiture of items specified in §§ 1 or 2 is not possible, the court may impose the obligation to pay a pecuniary equivalent of items directly derived from an offence or items which served or were designed for committing the offence.*

*§ 5 The forfeiture of items referred to in § 1 or 2 shall not be imposed if they are subject to return to the injured person or other legitimate entity.*

*§ 6. In the event that the conviction has pertained to an offence of violating a prohibition of production, possession or dealing in or transporting specific items, the court may decide or, if the law so provides, shall decide on the forfeiture thereof.*

*§ 7. If the items referred to in § 2 or 6 are not the property of the perpetrator, the forfeiture may be decided by the court only in the cases provided for in the law; in the case of co-ownership, the decision shall cover only the forfeiture of the share owned by the perpetrator, or the obligation to pay a pecuniary equivalent of its value.*

*§ 8. repealed*

*Art. 44a. § 1. In the event of a conviction for an offence from which the perpetrator has obtained, even indirectly, a material benefit of considerable value, the court may order the forfeiture of the enterprise owned by the perpetrator or its equivalent, if the enterprise was used to commit that crime or to hide the benefit derived from it.*

*§ 2. In the event of conviction for an offence from which the perpetrator has obtained, even indirectly, a material benefit of considerable value, the court may order the forfeiture of the enterprise owned by a natural person other than the perpetrator, or its equivalent, if the enterprise was used to commit the crime or to hide the benefit derived from it, and its owner wanted the company to be used to commit this crime or to conceal benefits from it or, anticipating such a possibility, agreed for that.*

*§ 3. In the event of co-ownership, the forfeiture referred to in § 1 and 2, shall be imposed taking into account the will and awareness of each of the co-owners and within their limits.*

*§ 4. Forfeiture referred to in § 1 and 2, shall not be imposed if it would be disproportionate to the seriousness of the crime committed, the degree of the perpetrator's fault or motivation and behavior of the owner of the enterprise.*

*§ 5. Forfeiture referred to in § 1 and 2 shall not be imposed if the damage caused by the crime or the value of the hidden benefit is not significant in relation to the size of the enterprise's activity.*

*§ 6. The court may waive the forfeiture order referred to in § 2, also in other, particularly justified cases, where it would be disproportionate to the owner of the enterprise.*

*Article 45. § 1 If a perpetrator received any benefit from an offence, even indirectly, which shall not be subject to forfeiture of items referred to in art. 44 § 1 or 6, a court shall impose forfeiture of such benefit or pecuniary equivalent of its value. Forfeiture shall not be applied to the benefit as a whole or its part if the benefit or its pecuniary equivalent is subject to return to the injured person or another entity.*

*§ 2 In the case of sentencing for the offence from which the perpetrator received, even indirectly any benefit of considerable value, the property that the perpetrator received or took possession of or to which the perpetrator received any legal title, during or after the commission of the offence, even before any final judgement, is deemed to be the benefit derived from the offence unless the perpetrator or any other interested person proves otherwise.*

*§ 3 When the circumstances of the case indicate that there is high probability that the perpetrator referred to in § 2- transferred, practically or under any other legal title, property derived form the offence to a natural person or legal person or other entity not having legal personality, items being in autonomous possession of that person or entity as well as their property rights are deemed to belong to the perpetrator unless any interested person or organizational unit proves that they were legally received.*

*§ 4. repealed*

*§ 5. In the case of co-ownership, the forfeiture of the perpetrator’s share in co-property or the forfeiture of share’s in co-property equivalent shall be exacted.*

*§ 6. repealed*

Art. 45a.

*§ 1. The court may order forfeiture, if the social harmfulness of the act is negligible, as well as in the event of conditional discontinuation of proceedings or finding that the perpetrator committed an offense in the state of insanity referred to in art. 31 § 1, or if there is a circumstance excluding the punishment of the perpetrator of the offense.*

*§ 2. If the evidence collected indicates that in the event of a conviction, the forfeiture would be pronounced, the court may order it also in the event of the perpetrator's death, discontinuation of the proceedings due to his/her non-detection, as well as in the event of suspension of the proceedings in a case in which the accused cannot be apprehended or the accused cannot participate in proceedings due to a mental illness or other serious illness.*

*Article 46.*

*§ 1. In the event of sentencing and at a motion of the injured or another authorised person, the court may award an obligation to compensate the damage in whole or in part or to award satisfaction for the suffered harm; provisions of Civil Law on the statute of limitations and the possibility of adjudicating pension are not applicable.*

*§ 2. If the ruling of the obligation specified in § 1 is significantly impeded, the court may instead order compensatory damages up to PLN 200,000 for the injured and in the event of his death as a result of a crime committed by the convicted person, an interest for the benefit of the closest person whose life situation as a result of the victim's death has deteriorated significantly. If more than one such person has been established, the compensatory damages is adjudicated in favor of each of them.*

In addition, in case of the money laundering offence, Article 299 § 7 of the Penal Code, provides for a supplementary provision that can be applied in the event of a conviction.

*Article 299 § 7. In the event of conviction for the offence specified in § 1 or 2, the court shall decide on the forfeiture of items derived either directly or indirectly from the offence, and also benefits derived from the offence or their pecuniary equivalent even though they are not the property of the perpetrator. Forfeiture shall not be applied to the benefit as a whole or its part if the item, the benefit or its pecuniary equivalent is subject to return to the injured person or another entity.*

Property subject to further confiscation (forfeiture) can be seized under the provisions of the Code of Criminal Procedure.

Seizure of property is a provisional measure provided for in the Code of Criminal Procedure with a view to prevent from any dealing, transfer or disposal of property subject to confiscation.

It’s been addressed in Chapter 32 CCP, which reads as follows.

*Article 291. § 1. In the event of charging the accused with an offense for which or in relation to which it can be imposed:*

*1) a fine,*

*2) pecuniary consideration,*

*3) forfeiture,*

*4) compensatory measure,*

*5) reimbursement to the victim or other authorized entity of financial benefit that the perpetrator obtained from the committed crime or its equivalent*

*execution of this judgment may be ex officio secured on the property of the accused or on the property referred to in Article 45 § 2 of the Penal Code, if there is a justified concern that without such securing the execution of the ruling will be impossible or significantly impeded.*

*§ 2. Securing of enforcement of the ruling referred to in § 1 point 3 or 5 may also be performed on the property of a natural person referred to in Article 44a of the Penal Code, or a natural or legal person or organizational unit without legal personality referred to in Article 45 § 3 of the Penal Code, or on property that would be subject to forfeiture pursuant to Article 45a § 1 or 2 of the Penal Code and Article 33 § 3, Article 43 § 1 or 2 or Article 43a of the Fiscal Penal Code.*

*§ 2a. Securing of enforcement of the ruling regarding the return of a financial advantage or its equivalent or the ruling of forfeiture of a benefit or its equivalent to an obligated entity specified in Article 91a may be performed ex officio on the property of this entity.*

*§ 3. Enforcement of court’s ruling on costs may also be ex officio secured on the property of the accused, if there is a justified concern that without such securing the enforcement of the ruling in this respect will be impossible or significantly impeded.*

*§ 4. Seizure of property should be immediately or completely revoked if the reasons for its application in a given size cease to exist or reasons justifying its revocation even in part occur.*

*(…)*

*Article 292. § 1. Seizure shall be obtained as provided for in the Code of Civil Procedure.*

*§ 2. The securing of the impending penalty of the forfeiture of material objects shall consist in the seizure of movables, liabilities and other property rights, and in the prohibition of selling and encumbering the real estate. This prohibition shall be disclosed in the land and mortgage register or, in its absence, in the set of documents filed. If necessary, the court may provide for the administration of the real estate and/or of the firm owned by the accused.*

*(…)*

*Article 292a. § 1. Securing enforcement of the ruling referred to in Article 291 § 1, may also take form of establishing a compulsory management of the enterprise and appointing a manager. The decision specifies the enterprise or its organized part and indicates the administrator from among the persons having a restructuring advisor license, referred to in the Act of 15 June 2007 on the restructuring advisor license (Journal of Laws of 2016, item 883 and 2018 item 398).*

*§ 2. In the course of investigation, the order to seizure of property by establishing a compulsory management is issued by the prosecutor. The decision is subject to court approval.*

*§ 3. After issuing the decision referred to in § 2, the prosecutor shall, within 7 days at the latest, apply to the court for its approval. The court shall decide on the approval within 7 days from the day of delivering the order*

*§ 4. The seizure shall be waived as soon as the court decision on the refusal to approve the order referred to in § 2 becomes final.*

*§ 5. Approval of the prosecutor’s order on seizure shall be decided on at the request of the prosecutor by the district court in whose judicial circuit the investigation is conducted, and after the indictment by the court in which the case is pending*

*§ 6. After the indictment has been filed, the ruling on seizure by establishing a compulsory management is issued by the court before which the case is pending.*

*§ 7. The court’s ruling on seizure of property or on approval of the order of prosecutor on seizure of property may be appealed by the parties, the victims and the owner or person managing the enterprise on his behalf.*

*§ 8. The manager ensures the work of the seized enterprise to be carried on and provides the court or the prosecutor with information that is relevant to the pending proceedings, in particular on the manner and circumstances of using this enterprise to commit a crime or to hide the benefit derived from it, and about things and documents that may constitute evidence in the case.*

*§ 9. The manager draws up a list of the company's assets and property rights and hands it over to the prosecutor or court that issued the order on seizure. The owner or other person managing the enterprise on his behalf may request the prosecutor or court to exclude certain assets or property rights from the seizure.*

*§ 10. The decision on the exclusion of certain assets or property rights from seizure may be appealed by the parties, the victims and the owner or other person managing the enterprise on his behalf.*

*Article 292b. The seizure referred to in Article 292a § 1, may also be applied in regard to a collective entity within the meaning of the Act of 28 October 2002 on the liability of collective entities for acts prohibited under penalty, if the evidence collected indicates a high probability that this entity may be subject to liability under this Act.*

*Article 293. § 1. The order on seizure of property shall be issued by the court or, in the course of investigation, by the state prosecutor.*

*§ 2. The order specifies the extent and manner of seizure, taking into account the size of the fine, penalty, forfeiture or compensatory measures that can be imposed in the circumstances of the case. The size of the seizure should correspond to the needs of what it is to secure. The requirement to determine the amount of seizure does not apply to seizure of the object derived directly from the crime or serving or intended to its commission.*

*§ 3. The order on seizure shall be subject to interlocutory appeal. Article 254 § 2 applies accordingly.*

*(…)*

*§ 7. A natural or legal person or an organizational unit without legal personality referred to in Article 45 § 3 of the Penal Code, may bring an civil action against the State Treasury to determine that the property or part thereof is not subject to forfeiture. Until the final resolution of the case, the enforcement proceedings are suspended.*

*Article 294. § 1. The seizure shall be cancelled if no valid and final judgment is issued imposing: a fine, forfeiture, supplementary payment, pecuniary consideration or obligation to redress damage or to compensate for wrongdoing, and no civil suit for those claims has been filed within three months from the day on which the judgment has become valid and final.*

*§ 2. If such a suit is brought within the time-limit indicated in § 1 the seizure remains valid, unless the civil court decides otherwise in civil proceedings*

*As regards recovery manual or guidelines to facilitate asset recovery, it should be noted that the subject of seizure and subsequent forfeiture of property was reflected in the "Program for the Preventing and Combating of Economic Crime for 2015-2020" adopted by the Polish authorities.*

*As part of it, the Task Force was established to develop the Methodology for property seizure for prosecutors, which would include reference to the new provisions of the Penal Code regarding extended confiscation, rephrased presumptions related to the allocation of assets, forfeiture of the enterprise, as well as the issue of cryptocurrency.*

*The Task Force, working under the auspices of the National Prosecutor, was attended by the representatives of common organizational units of the prosecutor's office, representatives of the Minister of Finance, the Minister of Justice, Chief Police Commander, Chief Commander of the Border Guard, as well as invited guests - judges sitting in criminal, civil and executive cases, representatives of the Central Investigation Bureau of the Police, Central Anti-Corruption Bureau, Internal Security Agency, Military Police and National Council of Bailiffs*

*The Methodology for property seizure was drafted and adopted in 2018 and subsequently disseminated among prosecutors in Poland.*

*Apart from the instruments described above, in the need for the widest possible use of provisions aimed at depriving perpetrators of crimes of their benefits at all stages of criminal proceedings, in the letter of 30 October 2019, reference number PK VII PG 024.3.2019, addressed to Regional Prosecutors and Heads of Local Divisions of the Department for Organized Crime and Corruption, the National Prosecutor od Poland encouraged prosecutors to apply seizure of property to the widest available extent.*

***Practical examples of cooperation and mutual assistance regarding assets recovery as required under article 51 of the Convention.***

Case of the Department for Combating Organised Economic Crime of the Central Bureau of Investigation of the Police Unit in Gdańsk crypt. "Icebreaker", concerning the activity of an international criminal group, whose activity consisted in smuggling drugs, hashish from Morocco and cocaine from Colombia to Spain and then to the Netherlands, Great Britain and Poland, as well as illegal production and smuggling of tobacco products into the UK.

An important role in the verification of the information obtained was played by the international operational cooperation of the Police within the framework of the Europol AP Smoke Analysis File. In addition, the European Cybercrime Centre received telephones secured from members of the group, where their contents were read. In 2019, the Polish side joined the International Investigation Team (JIT) formed by Lithuania and Estonia, in addition, it joined the JIT formed by the UK and Spain.

In May 2019, the case was conducted in several EU countries (Poland, Lithuania, the United Kingdom, Spain), coordinated by Europol and Eurojust and involving more than 450 officials. A total of 22 persons were detained - citizens of Poland, Lithuania and Estonia, 13 of them in Poland. The main leader - a Lithuanian citizen - was detained in Spain. Temporary seizure of property (cash, vehicles, jewellery) of a total value of PLN 34 million was carried out, including securing the equivalent of PLN 10 million in various currencies, which was disclosed at a courier in one of the hotels in Gdańsk.

In the case the total of 28 cases were carried out, 34 suspects were charged, including 4 under Article 258 § 3 of the Criminal Code, 30 under Article 258 § 1 of the Criminal Code, 19 under Article 299 of the Criminal Code. A preventive measure in the form of temporary arrest was applied against 25 suspects.

Property worth PLN 22.6 million was secured.

The members of the organized criminal group entity established and registered the company known as The Management Board of Warsaw. The company was involved in forex frauds. The value of losses to the detriment of individuals in this case amounted to PLN 18 million. The perpetrators used forged identity documents when establishing companies. As part of international cooperation, similar activities were identified in other EU countries with which operational cooperation was established.

Members of the group also took action to thwart or make it significantly more difficult to establish the criminal origin of the funds thus obtained. These funds, paid as an investment, were immediately transferred to a bank in the Czech Republic from where they were then transferred, via Hong Kong registered entities, to the accounts of companies operating in Poland.

In the case, international cooperation was established in order to detain suspects and to charge them under Article 258 § 3 of the Criminal Code and to seized property in cooperation with the Italian police.

In the case there are 83 suspects in total, who were presented with 164 charges, including 3 under Article 258 § 3 of the Criminal Code, 79 under Article 258 § 1 of the Criminal Code and Article 179 of the Act on Trading in Financial Instruments. Property worth PLN 12.5 million was seized.

FIU has not been assigned with tasks particularly associated with assets recovery. Nonetheless the Polish MLA/CFT legislation provides that the FIU keeps the Central Register of Beneficial Owners which might be of use in asset tracing and recovery thereof.

The respective provisions of the Polish AML/CFT Law regarding the register of beneficial owners, provide as follows:

*Article 55. The Central Register of Beneficial Owners hereinafter referred to as the “Register” is an ICT system to be used for processing of information concerning beneficial owners of companies listed in Article 58.*

*Article 56. The minister competent for public finance is the authority competent for matters related to the Register.*

*Article 57. 1. The authority competent for the Register is the administrator of the data collected in the Register.*

*2. The tasks of the authority competent for the Register comprise:*

*1) keeping the Register and defining the organisational conditions and technical methods of its keeping;*

*2) processing information on beneficial owners;*

*3) preparing statistical analyses related to information processed in the Register.*

*3. The minister competent for public finance may designate an authority of the National Revenue Administration to perform the tasks referred to in paragraph 2.*

*Article 58. Entities bound to report information concerning beneficial owners and keeping it up to date include:*

*1) registered partnerships;*

*2) limited partnerships;*

*3) limited joint-stock partnerships;*

*4) limited liability companies;*

*4a) simple joint-stock company*

*5) joint-stock companies, excluding public companies within the meaning of the Act of 29 July 2005 on Public Offering and Conditions Governing the Introduction of Financial Instruments to the Organised Trading, and on Public Companies (Journal of Laws of 2019 item623).*

*Article 59. Information subject to submission to the Register comprise:*

*1) identification data of companies specified in Article 58:*

*a) name (enterprise),*

*b) organisational form,*

*c) registered office,*

*d) number in the National Court Register,*

*e) NIP:*

*2) identification data of the beneficial owner and member of a governing body or partner authorised to represent companies specified in Article 58:*

*a) name and surname,*

*b) citizenship.*

*c) state of residence,*

*d) PESEL number or the date of birth - in the case of persons not holding the PESEL number,*

*e) information on the level and character of the share or on powers conferred on the beneficial owner.*

*Article 60. 1. The information referred to in Article 59 shall be submitted to the Register, at the latest, within 7 days following the day of entry of companies specified in Article 58 in the National Court Register and in the case of change in the information submitted - within 7 days following the change.*

*2. The term referred to in paragraph 1 shall not comprise Saturdays, Sundays and public holidays.*

*3. In the event of a failure or disruptions in the ICT system operation, the authority competent for the Register shall inform of their occurrence and elimination in the Public Information Bulletin on the website of the office servicing the minister competent for public finance. In such a case, a period from the moment of occurrence of the failure or disruption indicated in the information published in the Bulletin until the moment of publishing information on their elimination, shall not be included in the calculation of time limits referred to in paragraph 1.*

*Article 61. 1. A report to the Register shall be submitted by a person authorised to represent the company specified in Article 58.*

*2. The report shall be made with the use of electronic communication means free of charge.*

*3. The report shall be submitted in the form of an electronic document, in accordance with the template defined by the minister competent for public finance.*

*4. The report shall bear a qualified electronic signature or a signature confirmed by ePUAP trusted profile and it shall contain the declaration of a reporting person on the authenticity of information reported to the Register.*

*5. The declaration referred to in paragraph 4 shall be submitted subject to criminal liability for making false declarations. A person submitting the declaration shall be bound to include the following clause therein:*

*“I am aware of criminal liability for the submission of a false declaration.”. This clause shall replace the instruction concerning criminal liability for making a false declaration.*

*(…)*

*Article 63. Information referred to in Article 59 shall be entered in the Register immediately after its submission or updating.*

*Article 64. Information collected in the Register, referred to in Article 59, shall be kept over a period necessary to perform the tasks with the aim of counteracting money laundering or financing of terrorism.*

*Article 65. Processing of information concerning beneficial owners collected in the Register shall take place without the awareness of persons such information refers to.*

*(…)*

*Article 67. The Register is public.*

*Article 68. Data entered in the Register are deemed authentic. A person submitting information on beneficial owners, including its updates, shall be liable for any damage caused by the submission of false data to the Register as well as by the failure to report data and changes in the data covered by the entry in the Register within the statutory time limit, unless the damage occurred as a result of force majeure or exclusively due to the default of the affected party or a third party for which a person submitting information on beneficial owners and its updates is not liable.*

*Article 69. Information concerning beneficial owners collected in the Register is made available free of charge.*

*Article 70. Information concerning beneficial owners collected in the Register is made available via electronic communication means.*

*Article 71. The minister competent for public finance shall determine, by way of a regulation:*

*1) the method for preparation and submission of requests for making information referred to in Article 59 available and the method for making such information available,*

*2) the procedure for submission of requests for making information referred to in Article 59 available and the procedure for making such information available,*

*3) time limits for making information referred to in item 59 available*

*− taking into consideration the need to ensure a fast, reliable and secure access to information from the Register.*

The Polish FIU is also capable to share information submitted by the obliged institutions concerning the suspicious transactions or suspicious activities of their clients. If the analysis of the information collected justifies the suspicion of crime, the FIU is legally obliged to report that to the competent prosecution office and provide further information on request.

The respective provisions of the Polish AML/CFT Law regarding reporting of crime and subsequent provision of information, provide as follows:

*Article 103. 1. If the justified suspicion of committing a crime of money laundering or financing of terrorism arises from the information in possession of the General Inspector, its processing or analysis, the General Inspector shallsubmit to the competent prosecutor a notification about a suspicion of crime commitment, including information or documents supporting this suspicion.*

*(..)*

*Article 104. 1. The General Inspector shall make available, on a written request, any information or documents covered by legally protected secrecy, collected pursuant to the provisions of the Act, to the courts and prosecutors for the purposes of criminal proceedings.*

*2. In order to verify the data contained in the notification concerning the suspicion of committing a crime of money laundering or financing of terrorism submitted by the General Inspector, the prosecutor may request the General Inspector to make available information or documents, including information or documents covered by legally protected secrecy.*

*3. If the General Inspector is not in possession of the requested information referred to in paragraph 2, he/she shall apply to the obligated institutions, cooperating units or foreign Financial Intelligence Units.*

*Article 105. 1. The General Inspector shall make available the information in his/her possession on a written and justified request of:*

*1) Chief Commander of the Police,*

*2) Commander of the Central Bureau of Investigation of the Police,*

*3) Chief Commander of the Military Police,*

*4) Chief Commander of the Border Guard,*

*5) Head of the Internal Security Agency,*

*6) Head of Intelligence Agency,*

*7) Head of the Military Counterintelligence Service,*

*8) Head of the Military Intelligence Service,*

*9) Head of the Central Anti-Corruption Bureau,*

*10) Internal Supervision Inspector,*

*11) Commander of the Office for Internal Affairs of the Police,*

*12) Commander of the Office for Internal Affairs of the Border Guard,*

*− or persons authorised by them, in the scope of their statutory duties.*

*2. The General Inspector shall make available information referred to in Article 72 to:*

*1) the Central Anti-Corruption Bureau, pursuant to the procedure and under the rules defined in Article 22a(5) of the Act of 9 June 2006 on the Central Anti-Corruption Bureau (Journal of Laws of 2018 items 2104 and 2399 and of 2019 items 53 and 125);*

*2) the Head of the Internal Security Agency, under the conditions laid down in Article 34(2a) of the Act of 24 May 2002 on the Internal Security Agency and the Intelligence Agency (Journal of Laws of 2018 items 2387, 2245 and 2399 and of 2019 items 53 and 125).*

*3. The General Inspector shall also make available the information in his/her possession on a written and justified request of:*

*1) the Chair of the PFSA – in the scope of supervision exercised by the PFSA pursuant to the Act of 21 July 2006 on Financial Market Supervision (Journal of Laws of 2019 items 298, 326, 730 and 875);*

*2) President of the NIK – to the extent necessary to perform audit proceedings defined in the Act of 23 December 1994 on the Supreme Audit Office (Journal of Laws of 2019 item 489);*

*3) the national administrator referred to in Article 3 subparagraph 22 of Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (OJ L 122, 03.5.2013, p. 1, as amended )within the scope of its competence;*

*4) the minister competent for foreign affairs – in the scope of its statutory competence in connection with the application of specific restrictive measures;*

*5) minister competent for public finance – in connection with the request referred to in Article 11(2) of the Gambling Act of 19 November 2009.*

*4. The General Inspector shall make available the information in his/her possession on a written and justified request of the Head of the National Revenue Administration, director of the Revenue Administration Regional Office or Head of the Customs and Tax Control Office - in the scope of their statutory duties.*

*5. The provision of Article 99(7) shall not apply to information provided pursuant to paragraph 1, 2, 3(5) and 4, excluding the provisions of the Act of 5 August 2010 on the protection of classified information (Journal of Laws of 2019 item 742).*

*6. In particularly justified cases, the General Inspector may refuse making information in his/her possession available to entities referred to in paragraph 1-4, if its disclosure could:*

*1) negatively affect the process of analysing by the General Inspector of information related to assets in relation to which a suspicion has been acquired that they may be associated with the crime of money laundering or financing of terrorism;*

*2) expose a natural or legal person to a disproportionate damage.*

*Article 106. 1. In the event of acquiring a justified suspicion of committing a fiscal crime or an offence other than the crime of money laundering or financing of terrorism, the General Inspector shall provide information justifying such suspicion to the competent bodies indicated in Article 105 (1) and (4) for the purpose of undertaking activities resulting from their statutory duties.*

*2. In the event of acquiring a justified suspicion of violating the provisions related to the financial market operation, the General Inspector shall provide information justifying this suspicion to the PFSA.*

*3. The provision of Article 99(7) shall not apply to information made available pursuant to paragraph 1, excluding the provisions of the Act of 5 August 2010 on the protection of classified information.*

It should be also mentioned that Poland authorities conduct co-ordination with other countries by means of formal and informal channels of cooperation in order to trace and recover the assets of criminal origin. In particular, they are able to use Eurojust and other networks as Camden Asset Recovery Interagency Network (CARIN) and liaison police officers.

Investigative actions leading to effective identification, tracing and subsequent seizure of property are carried out by a prosecutor and also law enforcement officers conducting preparatory proceedings under supervision of the prosecutor.

It should be emphasized that pursuant to Article 2 § 1 point 3 of the Code of Criminal Procedure, one of the principal aims of the criminal proceedings is to satisfy legally protected interests of the victims and one of the principal goals of the investigation, indicated in art. 297 § 1 item 3 and 4 of the Code of Criminal Procedure, is collecting data on issues listed under art. 213 and 214 of the Code of Criminal Procedure i.e. suspect’s property standing and sources of income and the extent of damage.

The same goals are to be achieved under Article 213 § 2 Code of Criminal Procedure which reads as follows.

*Art. 213. § 2. If necessary, the prosecutor, another body conducting investigation or a court obtains information from the ICT system of the minister competent for public finance regarding property relations and sources of income of the accused, including ongoing and completed tax proceedings, based on current data contained in this system. Information is obtained by electronic means.*

*In the course of the investigation, apart from the prosecutor who supervises it, the obligation to determine the property subject to seizure remains on law enforcement authorities, entrusted with conducting proceedings in whole or in part. LEAs undertake operational activities (gathering of intelligence) aimed at identifying such property. Operational activities are being performed by the Police, but also the Internal Security Agency and Intelligence Agency, Central Anti-Corruption Bureau, Border Guard, Military Police and Customs and Tax Service.*

*In order to identify property that is subject to forfeiture, the following sources of information are used and the following actions are taken:*

*-personal sources of information (questioning witnesses and informants; interrogation of suspect cooperating with justice*

*-observation, operational control, review of available open source databases, criminal analysis,*

* *obtaining information from registers, files and records about the ownership of: real estate, motor vehicles, vessels, aircraft, participation in commercial and civil law companies, enterprises, movable property, financial instruments in the form of securities and other, documents regarding rights that may be the subject of a pledge, as well as owned debts, objects of cultural value, other property components and sources of income.*
* *obtaining information, in the manner specified in specific pieces of law, collected by tax, financial and insurance institutions, including: revenue offices, customs and tax offices, banks, insurance companies, brokerage houses, leasing companies, the Polish Financial Supervision Authority, the General Inspector of Financial Information,*

*-analysis of the documents obtained, e.g bank account details, financial statements (including balance sheet, profit and loss account), reports on the company's activities, loan agreements, etc.,*

*- international cooperation, in particular information obtained from the Asset Recovery Office of the Police Headquarters*

*On entering into force (April 27,2017) the provisions of the Act of March 23, 2017 amending the Criminal Code Act and some other acts, some other pieces of legislation were rephrased as a result of which operational activities of LEAs could be conducted with a view to disclose property subject to forfeiture.*

*Such powers were granted to :the Police (Article 19 (1) of the Police Act), Military Police (in Article 31 (1) of the Act on Military Police ), the Internal Security Agency (Article 5 (1) and Article 27 section 1 of the Act on the Internal Security Agency and the Intelligence Agency), Border Guard (Article 9e (1) of the Border Guard Act), the Central Anti-Corruption Bureau (Article 2 (1) and Article 17 (1) of the Central Anti-Corruption Bureau) and the National Tax Administration (Article 2 (1) and Article 118 (1) of the Act on the National Tax Administration)*

*The Act of 23 March 2017 streamlined the procedures to obtain legally protected information, provided that, if it is necessary in order to effectively prevent or detect the crimes specified in those acts or determining their perpetrators, obtaining and securing evidence, or detect and identify the objects and property or benefits arising from the crimes or their equivalent*

*The introduced changes significantly expanded the catalogue of information constituting legally protected secrets, which might be obtained by LEAs as part of their operational activities. Currently, these services may use information constituting:*

*- tax secrecy,*

*-professional secrecy referred to in art. 9e of the Act of November 5, 2009 on cooperative savings and credit unions*

*-banking secrecy referred to in the Act of August 29, 1997 - Banking Law,*

*-individual data referred to in art. 79 paragraph 1 of the Act of 13 October 1998 on the social security system,*

*-professional secrecy within the meaning of the Act of 26 October 2000 on commodity exchanges;*

*- professional secrecy within the meaning of the Act of 27 May 2004 on investment funds and management of alternative investment funds;*

*- secrecy within the meaning of the Act of 29 July 2005 on trading in financial instruments,*

*- secrecy within the meaning of the Act of 11 September 2015 on insurance and reinsurance activity,*

*-secrecy within the meaning of the Act of 28 August 1997 on the organization and operation of pension funds,*

*-professional secrecy within the meaning of the Act of 29 July 2005 on supervision of the capital market.*

*In the course of investigations, the Law Enforcement Authorities as well as the Prosecutor’s Office may use the following databases (directly and indirectly/upon request), in order to of identify and trace assets:*

*• Central Register of Vehicles and Drivers*

*• National Court Register*

*• Central and Information of Business Registration Tax Office*

*• Central register of beneficial owners*

*• National Police Information System*

*• Central Population Database*

*• Central Vehicle Registry*

*• National Official Business Register*

*• New Mortgage Register*

*• Central Registration and Information on Business*

*• Register of Tagged Farm Animals*

*• Register of Horses*

*• Register of Farm Animals*

*• Polish Register of Sea Shipping*

*• Register of Inland Navigation Vessels*

*• Register of Fishing Boats*

*• Register of Civil Aircrafts*

*• Register of Property, Stocks and Shares acquired or Subscribed by  
 Foreigners*

*• National Register of Forestry Productive Material*

*• Register of Monuments*

*• Register of Persons possessing weapon or applying for a weapon permit*

*• Register of Foreign Entrepreneurs Representation*

*• Register of Pledges*

*• Central Register of Treasury Pledges*

*• Register of securities approved to public trading*

*• Register of Debtors*

*• Credit Information Office*

*• Identified Bank Accounts Register*

*• Records of Taxes and Fees*

*• Tax Register*

*• Custom Register*

*• Register of Insurance Contracts and Vehicles Owners*

*• Register of Pharmaceuticals*

*• Register of Airports and Civilian Airstrips*

*• Repatriation Records*

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

During the first six months of 2018, the value of criminal offenders’ assets frozen as a result of police activities in case of future forfeiture orders was PLN 452,149,249. A total of PLN 367,003,214 was frozen through compensatory measures in case of future court orders awarding compensation for property damage or personal injuries.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Polish legislation contains provisions allowing the country to undertake asset recovery through a legal and institutional system that promotes mutual cooperation and assistance. Thus, the country under review complies with the requirements of article 51 of the Convention.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

While the measures enacted recognise the principle of cooperation and mutual assistance, in the light of the information provided by the country under review, the practical aspects of this cooperation are less tangible. Moreover, there is no indication that the above-mentioned seizures were made in the context of bilateral or multilateral cooperation.

Moreover, the reviewers need further clarification on how the legislative and regulatory measures enacted are being implemented under article 51 of the Convention.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

The reviewers will comment at a later date in the light of the expected clarifications.

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Certainly, the challenge in terms of determining the assets is cryptovalutes. This element is an issue in both technical and legal matters. Digital capital is difficult to determine. Its cross-border nature and mobility connected with transfer by the use of the Internet is a difficult subject for law enforcement authorities. The emergence of new cryptovalutes and methods of securing them, the anonymity

of owners and cryptocurrencies stock exchanges in distant jurisdictions make it possible to assume that it is one of the main means of settlement in the criminal world, as well asa means of payment in Darknet.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 52. Prevention and detection of transfers of proceeds of crime

Paragraph 1 of article 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to Anti-Money Laundering and Counter-Terrorism Financing Act of March 1, 2018, obligated institutions recognize and assess the risk of money laundering and terrorist financing related to economic relations with clients or occasional transactions carried out by them. On the basis of this risk and its assessment, they apply financial security measures whose main task is to obtain information about their clients and the purpose for which they use the services and products offered by obligated institutions.

The Act requires all obligated institutions to identify the risk of money laundering associated with the specific business relationship or an occasional transaction, assess the level of the risk identified 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, objective, regularity or duration of business relationship.

The obligated institutions are required to apply customer due diligence measures to the extent and with an intensity taking into account the identified risk related to business relationships or an occasional transaction as well as its assessment. In case of a higher risk of money laundering the obligated institutions shall apply enhanced customer due diligence measures. The obligated institutions are also obliged to carry out ongoing analysis of transactions performed.

Article 36 of the AML/CTF Act stipulates the set of data that obliged entity is required to determine in order to correctly apply CDD measures that include identification of the customer and beneficial owner.

According to the Article 37 of the AML/CTF Act, the verification of identity of a customer, a person acting of its behalf and the beneficial owner shall be based on confirmation of determined identification data based on a document confirming the identity of a natural person, a document containing valid data from the extract of the relevant register or other documents, data or information originating from a reliable and independent source

This wording of the Article 37 is derived directly from AML Directive and FATF Standard.

The same requirements need to be applied in case of non-face-to-face business relationships, which in principle are deemed to be high risk (Article 43 (2) of the AML/CTF Act defines the circumstances that may, in particular, substantiate an increased money laundering and financing of terrorism risk). Detailed rule of conduct in cases of non-face-to-face business relationships are specified in the internal procedures of the obliged entities.

According to Article 41(1) of the AML/CFT Act: “*should the obligated institution be unable to apply one of the customer due diligence measures referred to in Article 34(1): 1) it shall not establish any business relationships; 2) it shall not perform an occasional transaction; 3) it shall not conduct a transaction through a bank account; 4) it shall terminate business relationships.*

*Customer due diligence measures include the identification of customer, which is described in Article 36, (1)(1)-(2).*

*Pursuant to above-mentioned Article, the identification of a customer involves determining in the case of*

*1) natural person:*

*a) name and surname,*

*b) citizenship,*

*c) number of the Universal Electronic System for Registration of the Population (PESEL) or date of birth in the case if the PESEL number has not been assigned, and the state of birth,*

*d) series and number of the document confirming the identity of a person,*

*e) residence address in case of availability of such information to the obligated institution,*

*f) name (company), tax identification number and address of the principal place of business in the case of a natural person pursuing economic activity;*

*2) a legal person or an organizational unit without legal personality:*

*a) name (enterprise),*

*b) organizational form,*

*c) address of the registered office or address of pursuing the activity,*

*d) NIP (Tax Identification Number), and in the case of unavailability of such a number – the state of registration, the commercial register as well as the number and date of registration,*

*e) identification data referred to in subparagraph 1(a) and (c) of a person representing such legal person or organizational unit without legal personality.*

*2. The identification of the beneficial owner shall comprise determining of the data referred to in section 1(1)(a) and (b) in the case such information is held by the obligated institution, including the data referred to in paragraph 1(1)(c)-(e).*

*3. The identification of a person authorized to act on behalf of the customer shall comprise determining of the data referred to in paragraph 1(1)(a)-(d).”*

Article 36 of the AML/CTF Act stipulates the set of data that obliged entity is required to determine in order to correctly apply CDD measures that include identification of the customer and beneficial owner.

According to the Article 37 of the AML/CTF Act, the verification of identity of a customer, a person acting of its behalf and the beneficial owner shall be based on confirmation of determined identification data based on a document confirming the identity of a natural person, a document containing valid data from the extract of the relevant register or other documents, data or information originating from a reliable and independent source

This wording of the Article 37 is derived directly from AML Directive and FATF Standard.

The same requirements need to be applied in case of non-face-to-face business relationships, which in principle are deemed to be high risk (Article 43 (2) of the AML/CTF Act defines the circumstances that may, in particular, substantiate an increased money laundering and financing of terrorism risk). Detailed rule of conduct in cases of non-face-to-face business relationships are specified in the internal procedures of the obliged entities.

According to Article 41(1) of the AML/CFT Act: “*should the obligated institution be unable to apply one of the customer due diligence measures referred to in Article 34(1): 1) it shall not establish any business relationships; 2) it shall not perform an occasional transaction; 3) it shall not conduct a transaction through a bank account; 4) it shall terminate business relationships.*

*Customer due diligence measures include the identification of customer, which is described in Article 36, (1)(1)-(2).*

*Pursuant to above-mentioned Article, the identification of a customer involves determining in the case of*

*1) natural person:*

*a) name and surname,*

*b) citizenship,*

*c) number of the Universal Electronic System for Registration of the Population (PESEL) or date of birth in the case if the PESEL number has not been assigned, and the state of birth,*

*d) series and number of the document confirming the identity of a person,*

*e) residence address in case of availability of such information to the obligated institution,*

*f) name (company), tax identification number and address of the principal place of business in the case of a natural person pursuing economic activity;*

*2) a legal person or an organizational unit without legal personality:*

*a) name (enterprise),*

*b) organizational form,*

*c) address of the registered office or address of pursuing the activity,*

*d) NIP (Tax Identification Number), and in the case of unavailability of such a number – the state of registration, the commercial register as well as the number and date of registration,*

*e) identification data referred to in subparagraph 1(a) and (c) of a person representing such legal person or organizational unit without legal personality.*

*2. The identification of the beneficial owner shall comprise determining of the data referred to in section 1(1)(a) and (b) in the case such information is held by the obligated institution, including the data referred to in paragraph 1(1)(c)-(e).*

*3. The identification of a person authorized to act on behalf of the customer shall comprise determining of the data referred to in paragraph 1(1)(a)-(d).”*

Under defined conditions the obligated institutions may use services of other entity while applying the customer due diligence measures or entrust the application of the customer due diligence measures to an entity. Using of third party services as well as entrusting of the application of the customer due diligence measures shall not exempt the obligated institution from its liability for the application of the customer due diligence measures.

Customer due diligence measures comprise also identification of a beneficial owner and undertaking justified measures in order to verify its identity and - in the case of a customer being a legal person or an organisational unit without legal personality - define the ownership and control structure.

Polish AML/CTF Act does not define “high-value account”, but according to the Article 72 of this Act, obliged entities are required to provide the FIU with information on every accepted payment or executed disbursement of funds or every transfer of funds that exceeding the equivalent of EUR 15,000. The identification of a beneficial owner and undertaking justified measures in order to verify its identity is a CDD measure stipulated in Article 34(1)(2) and is required to be applied in every case of establishing business relationship. The compliance of this obligation is exercised by the authorities responsible of the control in the scope of counteracting money laundering and financing of terrorism (Article 130(1) and (2) AML/CTF Act).

Furthermore, obligations set out in the AML/CFT Act, in particular in Article 35(1)(1) indicate that CDD measures must be performed at all times when the customer enters into a relation with a bank. Therefore it is legally impossible for the bank to open anonymous accounts or accounts in fictitious names, as the first CDD measure is the identification and verification of customers’ identity.

In the case of disclosure of unusual or excessively complex transactions for high amounts which seem legally or economically unjustified, the obligated institutions undertake measures in order to clarify circumstances under which such transactions were carried out and intensify the application of ongoing monitoring of customer’s business relationship.

In order to determine whether a customer or a beneficial owner is a politically exposed person the obligated institutions are required to implement procedures based on risk assessment, including a possibility to accept a declaration from the customer in written form or a document form confirming that the customer is or is not a person holding such position. The declaration is submitted subject to criminal liability for the submission of false declaration.

The definition of a Politically Exposed Person, which is included in the AML/CFT Act, does not distinguish foreign PEPs from domestic PEPs – both PEP categories are treated the same way.

The PEP definition is stipulated in article 2(2)(11) AML/CTF Act and covers both domestic and foreign PEPs. Provisions regarding the PEPs, persons known as their close co-workers and their family members are stipulated in Article 2(2)(3), (11) and (12)(definitions) and in the Article 46 of the AML/CTF Act.

*Article 46. 1. In order to determine whether a customer or a beneficial owner is a politically exposed person, the obligated institutions shall implement procedures based on risk assessment, including a possibility to accept a declaration from the customer in written form or a document form confirming that the customer is or is not a person holding such position, submitted subject to criminal liability for the submission of false declaration. A person submitting the declaration shall be bound to include the following clause therein: “I am aware of criminal liability for the submission of a false declaration.” This clause shall replace the instruction concerning criminal liability for making a false declaration.*

*2. In the case of business relationships with a politically exposed person, the obligated institutions shall apply the following customer due diligence measures and undertake the following activities in relation to such persons:*

*1) they shall obtain the permission of the senior management for establishing or continuation of business relationships with a politically exposed person;*

*2) they shall apply adequate measures in order to establish the source of the customer’s assets and sources of assets available to the client under the business relationship or the occasional transaction;*

*3) they shall intensify the application of the customer due diligence measure referred to in Article 34(1)(4).*

*3. The obligated institutions referred to in Article 2(1)(8), being parties to insurance agreements, undertake adequate measures, upon the transfer of rights arising from such agreement or payment of the benefit at the latest, in order to determine whether the beneficiaries of the agreement or their beneficial owners are politically exposed persons.*

*4. Should a higher level of money laundering and financing of terrorism risk be identified, prior to the payment of the benefit arising from the insurance agreement or transfer of rights arising from such agreement, the obligated institutions shall apply customer due diligence measures and undertake the following activities:*

*1) perform in-depth analysis of business relationships with the customer;*

*2) inform the senior management of their intention to pay this benefit.*

*5. In the period from the day of termination of being a politically exposed person to the day of determining that no higher risk is associated with a given person, in any case, not shorter than for 12 months, the obligated institution shall apply measures taking into account such risk towards such a person.*

*6. The provisions of paragraphs 1-5 shall apply, respectively, to family members of a politically exposed person and other persons known as close co-workers of the politically exposed person.*

In the case of business relationships with a politically exposed person, the obligated institutions is obliged to apply the following customer due diligence measures and undertake the following activities in relation to such persons:

1) obtain the permission of the senior management for establishing or continuation of business relationship with a politically exposed person,

2) apply adequate measures in order to establish the source of the customer’s assets and sources of assets available to the client under the business relationship or the occasional transaction,

3) intensify the ongoing monitoring of customer’s business relationship.

According to the Act politically exposed persons are natural persons holding significant positions or fulfilling significant public functions, regardless if he or she is a national or foreigner.

Advisories to obligated institutions are issued by the PFIU inter alia within a free e-learning course on counteracting money laundering and terrorist financing. The aim of the course is to provide better knowledge on counteracting the said offences, in particular as regards the domestic law in force. The course was successfully completed by 21,918 persons in 2015; 16,800 interested parties in 2016 and 4,331 persons from 1 January to 18 April 2017. As the new AML legislation has recently entered into force the new version of the course is currently under preparation.

The guidance of the PFIU on the proper application of legal provisions are also posted on the website of GIFI.

The PFIU also regularly meets the obligated institutions with the aim to present the most important and current problems in the area of combating money laundering. In the past years GIFI carried out a series of meetings with the obligated institutions, cooperating units, scientific and academic communities as well as social partners. In 2016 19 such meetings were held, jointly attended by 845 persons. In 2017 there were 5 meetings held, jointly attended by approx. 200 persons representing private sector and public administration bodies.

Moreover representatives of the PFIU regularly take active part as speakers or participants in numerous training events/workshops and conferences devoted to the issues covered under the Act.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Anti-Money Laundering and Counter-Terrorism Financing Act of March 1, 2018

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Subject to the provision of the Anti-Money Laundering and Financing of Terrorism Act of 1 March 2018, the above information provided takes into account the letter and spirit of article 52, paragraph 1, of the Convention.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

PFIU's regular awareness-raising and training of obligated persons and other entities involved in the fight against money laundering are practical examples of the implementation of these measures.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The obligated institutions shall apply enhanced customer due diligence measures in cases of a higher risk of money laundering or terrorist financing (the obligated institutions are responsible for assessing risk). The Act provides for certain conditions which may substantiate an increased money laundering and terrorist financing risk (including certain circumstances related to customers).

The PFIU has no additional system in place to notify financial institutions of the identity of high-risk persons.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No case example available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Contrary to the response given by the country under review, the reviewers believe that this is a partial application in view of the information provided.

Indeed, there is no clear indication of the steps taken to enact and publish guidelines on enhanced customer due diligence.

Does Poland directly follow/apply these international/regional/multilateral standards and are the financial institutions (or other entities subject to AML measures) directly bound by them

The AML/CTF standards by their nature do not have direct binding effect, but provisions of these standards in the majority have been transposed into Polish law.

Has Poland issued advisories to financial institutions (and other entities subject to CDD) on how to apply enhanced customer due diligence, record keeping and on-going monitoring?

The guidance on various topics related to the AML/CTF Act (including those mentioned above) are published on the GIFI and KNF websites.

Has Poland adopted a Risk Based Approach?

The RBA on the national and obliged entity, and supervisors authorities is envisaged in provisions of the AML/CTF Act

Does Poland issue advisories on how to classify the different levels of risk and how to detect high-risk accounts/clients?

The guidance on various topics related to the AML/CTF Act (including those mentioned above) are published on the GIFI and KNF websites.

Is there a financial oversight body established in Poland?

The KNF is an authority responsible for financial oversight according to Act of 17 January 2019 on financial market supervision

If yes, does it issue advisories?

The KNF issues advisories.

Has Poland established a bank register?

There is a bank register administered by the KIR S.A. (joint-stock company), which is a key entity of the Polish payment system infrastructure. The register is under some conditions, available to the public authorities. Furthermore, due to the obligation derived from the AMLD the project of the Financial Information System Act has been drafted. The legislation process of this act is currently in progress.

If yes, to what extent (account owners/ beneficial ownership?)

The separate register - the Central Register of Beneficial Owners has been created. The provisions regarding this register are stipulated in the Chapter 6 of the AML/CTF Act.

Who can access this register?

The Central Register of Beneficial Owners is publicly available.

How often is the Register updated?

The information needs to be submitted to the Register, at the latest, within 7 days following the day of entry of companies in the National Court Register and in the case of change in the information submitted - within 7 days following the change. (Article 60(1) of the AML/CTF Act).

Can financial institutions benefit from other guidance/training on how to exercise enhanced scrutiny?

The workshops on AML/CTF topics, including applying CDD measures are regularly organised by the GIFI, but also by the self-governed bodies of the obliged entities.

In February 2019, the GIFI launched a new edition of the e-learning course entitled "Counteracting money laundering and financing of terrorism" (referring in particular to the provisions of the AML/CFT Act), addressed, inter alia, to employees of obligated institutions. The course was made available on the website of the Ministry of Finance.

Moreover, UKNF is constantly monitoring the current trends regarding the ML/TF risk factors and communicates any information about the newly identified threats to KNF-supervised obliged entities by publishing communiques, issuance of CEO letters or through the content of the CEDUR (Education Centre for Market Participants) training courses.

Has Poland taken measures to permit or require the appointment of Money Laundering Reporting Officers (MLRO) in each financial institution? Have MLROs received training from the FIU or other relevant regulatory institutions?

It is mandatory under the provisions of the AML/CTF Act.

The GIFI and other supervisors often jointly organise trainings, conferences or workshops for obligated institutions, supporting each other in raising awareness of obligated institutions in the area of AML/CFT and identification of risks related to ML/TF.

In this regard, KNF carries out CEDUR project which is aimed at promoting and disseminating financial literacy and understanding of how the financial market operates by using for this purpose various methods of education: direct (training seminars, workshops, etc.) and indirect (publications, competitions). The main part of CEDUR are training seminars and workshops addressed to carefully selected groups of participants and the educational publications as well.

MLROs can also have an access to the GIFI’s e-learning course "Counteracting money laundering and financing of terrorism".

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Subparagraph 2 (b) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See preceding article.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See the response to preceding paragraph.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Subject to further information, the examiners consider that the country under examination does not comply with article 52, paragraph 2 (b).

The country under review does not indicate whether it has an adequate system, based on regional, interregional and multilateral anti-money-laundering standards, for notifying financial institutions and other entities of the identity of high-risk persons.

If such a system exists, please specify:

* Whether it includes names of natural and legal persons received from other States parties;
* Which criteria are being used to determine to whose accounts such enhanced scrutiny should be applied;
* Whether financial institutions notified accordingly need to report on enhanced scrutiny to such accounts.

According to the AML/CFT Act, GIFI (acting as the FIU Poland) is authorized to request information or documents from the obligated institutions (Article 76). Furthermore, in relation to the international exchange of information and documents, the Act stipulates as follows:

*Article 110. 1. On request or on an ex officio basis, the General Inspector shall make available to foreign Financial Intelligence Units and acquire from them information related to money laundering or financing of terrorism, including information on prohibited acts from which assets may originate.*

*2. The disclosure of information referred to in paragraph 1 shall take place for the purpose of its use for the performance of tasks by Financial Intelligence Units defined in Directive 2015/849, in the national regulations implementing this Directive or in the provisions of international law regulating the principles of operation of Financial Intelligence Units.*

*Article 111. 1. The General Inspector shall make information and documents in his/her possession available to Financial Intelligence Units of European Union Member States.*

*2. The General Inspector shall make information in his/her possession available to Financial Intelligence Units of countries other than European Union Member States on a reciprocity basis.*

*3. The General Inspector shall make information in his/her possession available to Financial Intelligence Units of countries - parties to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, done in Warsaw on 16 May 2005, under the rules laid down therein.*

*4. In the scope of his/her powers defined in the Act, the General Inspector may acquire information for the purpose of its disclosure to a foreign Financial Intelligence Unit.*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Paragraph 3 of article 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The obligated institutions are required by the Act to keep the following documents for a period of five years:

- copies of documents and information obtained as a result of the application of the customer due diligence measures,

- evidence confirming conducted transactions and transaction records comprising original documents or copies of documents required to identify the transaction,

- results of the ongoing monitoring of customer’s business relationship. Apart from the records-keeping requirements stipulated above, there are no other, specific requirements for high-risk customers/accounts.

The PFIU may require keeping the above documentation over an additional period of maximum 5 years, if this is required for the purpose of counteracting money laundering or terrorist financing. Detailed rules related to keeping documents should be defined in an internal procedure on counteracting money laundering and terrorist financing of the obligated institution. In the event of liquidation, merger, demerger or transformation of an obligated institution, the provisions of the Accounting Act of 29 September 1994 shall be applied in relation to documentation keeping (documents of companies which discontinued their operations due to a merger with another company or due to transformation are kept by a company which remains in operations, and documents of companies which were wound up are kept by a specially appointed person or entity, who is obliged to report on the storage location to a relevant court or another body which maintains the register or business activities records, as well as to the relevant tax office).

According to Article 49 (1) of the AML/CFT Act:

“The obligated institutions shall keep the following documents for a period of five years, calculating from the first day of the year in which the business relationship with a given customer were terminated or from the day of conducting occasional transactions:

1) copies of documents and information obtained as a result of the application of the customer due diligence measures;

2) evidence confirming conducted transactions and transaction records comprising original documents or copies of documents required to identify the transaction.”

This provision does not distinguish between domestic and international transactions, which means that all records must be kept notwithstanding the character of the said transaction. Given the description of the period of data retention used in this Article, the data are actually held over 5 years, as the 5 year period here is calculated from the beginning of the next year, following the year in which the transaction has been conducted.

As for the documents related to the CDD or to the evidence confirming conducted transactions and transaction records, this requirement is set out in article 49 (1)(1)-(2) of the AML/CFT Act. There is however no legal obligation to hold business correspondence as such, if it is not related to CDD. Banks do keep all record including business correspondence for the period designated by FATF due to the provisions of civil law governing the relations between banks and customers, mostly due to the statute of limitations (Article 118 of the Civil Code).

Furthermore as for the results of the analysis conducted, according to Article 49(2) of the AML/CFT Act:

The obligated institutions shall keep results of the analyses referred to in Article 34(3) over a period of 5 years, as of the first day of the year following their conducting.

Please also be advised that sectoral laws governing each financial sector may provide longer terms of data retention and a broader scope of data to be held by financial institutions. The data held under the sectoral laws may also be used for AML/CFT purposes should such a need arise.

The possibility of applying CDD measures by using services of a third party is regulated in particular by Art. 47 (1), (2) and (4) and Art. 48 of the AML/CTF Act:

Article 47. 1. The obligated institutions may use services of other entity while applying the customer due diligence measures referred to in Article 34(1)(1)-(3), subject to such entity immediately providing, on request of the obligated institution, the required information and documents related to applied customer due diligence measures, including copies of documents acquired while applying the customer due diligence measures consisting in identification of a client and a beneficial owner and verification of their identity.

2. The use of third party services shall not discharge the obligated institution from its liability for the application of the customer due diligence measures.

(…)

4. The obligated institutions shall not use services referred to in paragraph 1, if a third party entity is established in a high-risk third country. This prohibition shall not apply to cases involving the use of services provided by:

1) branches of obligated institutions or subsidiaries with the majority share of obligated institutions,

2) branches or subsidiaries with the majority share of entities established on the territory of a European Union Member State and subject to the obligations arising from the provisions on counteracting money laundering and financing of terrorism issued pursuant to Directive 2015/849

- if they apply group procedures referred to in Article 51(1).

(…)

Article 48. 1. The obligated institutions may entrust the application of the customer due diligence measures as well as maintaining and documenting the results of the current analysis of conducted transactions referred to in Article 43(3) to a natural person, a legal person or an organisational unit without legal personality acting for and on behalf of the obligated institution if the entity to which the application of the customer due diligence measures has been entrusted under a written agreement should be regarded as a part of the obligated institution.

2. Entrusting of the application of the customer due diligence measures under the rules defined in paragraph 1 shall not exempt the obligated institution from its liability for the application of the customer due diligence measures.

The issue of the format and location of this type of data has not been regulated.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No such example available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

While there is no precise information on how such records should be maintained (by a national and/or foreign institution), or even in what formats they should be kept, the reviewers believe that, in general, the country under review has taken the necessary steps to comply with the requirements of article 52, paragraph 3.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

The texts have been taken, but specific examples of their implementation have not been given.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The financial obligated institutions are prohibited by provisions of the Act to establish and maintain correspondent relationships with a credit, financial institution and an entity, which is not a part of the group, which does not have a registered office and is not actually managed and governed on the territory of the state under the law of which it was established - shell banks.

The Act prohibits also establishing or maintaining correspondent relationships with credit and financial institutions which are known as institutions concluding contracts for operating accounts with a shell bank.

According to the Article 45 of the AML/CFT Act:

In the case of cross-border correspondent relationships with an institution - third country respondent, the obligated institutions referred to in Article 2(1)(1)-(5), (7)-(11), (24) and (25), operating as institutions - correspondents, shall apply the customer due diligence measures and undertake the following activities:

1) acquire information concerning the institution - respondent, in order to understand the nature of operations carried out by such institution;

2) determine, based on the commonly available information, the reliability of the institution - respondent and the quality of supervision pursued over it;

3) evaluate the procedures in the scope of counteracting money laundering and financing of terrorism used by the institution - respondent;

4) prior to establishing the correspondent relations, acquire the approval of the senior management;

5) determine and document the scope of responsibility of the obligated institution and the institution - respondent for the fulfilment of the obligations associated with counteracting money laundering and financing of terrorism;

6) ascertain with respect to accounts - that the institution - respondent has applied the customer due diligence measures, including the customer due diligence measures referred to in Article 34(1)(1) towards customers having direct access to such accounts held with the obligated institution, as well as ensure that the institution - respondent makes information concerning the applied customer due diligence measures available on their request.

2. The obligated institutions referred to in Article 2(1)(1)-(5), (7)-(11), (24) and (25) shall not establish and nor maintain correspondent relationships with:

1) a credit institution, a financial institution and an entity pursuing equivalent activity, which are not a part of the group, which do not have a registered office and are not actually managed and governed on the territory of the state under the law of which they were established (a shell bank);

2) credit and financial institutions which are known to conclude contracts for operating accounts with a shell bank.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No such example available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

The reviewing experts are not in a position, at this time, to assess whether or not the country under review complies with the provision concerned. There is no specific reference to the law in question.

It would be appropriate for the country under examination to provide the reviewers with such a reference.

Does Poland also have regulations in place to prevent its financial institutions from entering into business relations with other foreign financial institutions, which permit their accounts to be used by shell banks?

Does Poland require its financial institutions to conduct risk assessments or due diligence over the correspondent bank’s management, finances, business activities, reputation, regulatory environment and operating procedures?

Does Poland require its financial institutions to obtain and keep a copy of anti-money-laundering regulations, policies and procedures of respondents’ banks?

Does Poland require its financial institutions to report all correspondent relationships to licensing authorities?

Has Poland established “open channels” for information exchange with foreign supervisors and FIUs to help the financial institutions check on specific institutions or cases?

Please see the answers to questions concerning Subparagraph 2 (a) of article 52 and Paragraph 4 of article 52 above.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None

Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to the adopted model, obligated institutions notify the Polish FIU about circumstances that may indicate a suspicion of money laundering or terrorist financing, as well as cases where there is a reasonable suspicion that a specific transaction or certain property values may be related to one or other of the money laundering or terrorist financing crimes.

Obligated institutions also provide the Polish FIU information on the transactions, those whose equivalent exceeds 15,000 EUR As well as obligated institutions, cooperating units immediately notify the Polish FIU about suspected money laundering or terrorist financing. In addition, at the request of the Polish FIU, they provide or make available, within the limits of their statutory competences, information or documents held. The Border Guard and customs authorities provide the Polish FIU with information on the declaration of carriage of cash via the EU border.

The Polish FIU verifies the suspicion of money laundering or terrorist financing included in notifications on the basis of information obtained from obligated institutions, cooperating units as well as foreign financial intelligence units (foreign FIUs). In the case of justified suspicion of money laundering or terrorist financing, the Polish FIU informs the competent prosecutor who, in cooperation with law enforcement agencies, takes action to start an investigation/proceeding. After receiving of such notification, the prosecutor is obliged to inform the Polish FIU of:

* issuing a decision regarding the blocking of an account or the suspension of a transaction; Þ suspension of proceedings;
* taking suspended proceedings;
* issuing a decision on presenting a charge of committing a crime. In addition, prosecutors are obliged to submit to the Polish FIU information on the issuance of a decision on:
* blocking an account or suspending a transaction, Þ initiation of proceedings,
* presenting a charge,
* bringing an indictment to the court,
* in other cases for money laundering or terrorist financing.

On the other hand, the Polish FIU provides courts and prosecutors, upon written request, with collected information or documents for the purposes of criminal proceedings. In addition, the Polish FIU makes information available at a written and reasoned request of other cooperating entities indicated in the Anti-Money Laundering and Counter-Terrorism Financing Act of March 1, 2018 (in particular law enforcement agencies) in the scope of their statutory tasks.

In the case of a suspicion of committing a crime or fiscal offense, other than a money laundering or terrorist financing offense, the Polish FIU provides information justifying this suspicion to the competent authorities (ie law enforcement agencies, special services or customs), in order to take actions compatible with their statutory tasks. Additionally, if there is a justified suspicion of a violation of the regulations related to the functioning of the financial market, the Polish FIU provides information justifying this suspicion to The Polish Financial Supervision Authority.

According to the Anti-Money Laundering and Counter-Terrorism Financing Act of March 1, 2018: who, acting on behalf of or for the benefit of an obligated institution:

1) fails to report to the Polish FIU about circumstances that may indicate a suspicion of money laundering or terrorist financing 2) does not fulfill the obligation to convey to the Polish FIU a notification of reasonable suspicion that a specific transaction or property values may be related to money laundering or terrorist financing, 3) provides the Polish FIU with untrue or concealment of real data on transactions, accounts or persons, is subject to imprisonment from 3 months to 5 years. The same penalty is imposed on anyone who, aginst to the provisions of the Anti-Money Laundering and Counter-Terrorism Financing Act of March 1, 2018, discloses to unauthorized persons, account holders or persons affected by the transaction, information gathered in accordance with the Act or uses such information in a manner inconsistent with the provisions of the Act.

The rules of financial disclosure system for public officials are set in the Act of August 21, 1997 on the restriction of business activity by persons performing public functions.

According to the Article 2 of the Act:

“*The Act also lays down restrictions on business activities by:*

*1) employees of state offices, including members of the civil service corps, holding managerial positions:*

*a) the director general, the director of the department (equivalent unit) and his deputy and the head of the department (equivalent unit) - in the offices of the supreme and central state bodies,*

*b) the director general of the voivodeship office, the director of the department (an equivalent unit) and his deputy as well as the chief accountant, the head of the district office and his deputy 1 and the chief accountant - in local offices of general government administration bodies*

*c) the head of office and his deputy - in local offices of governmental special administration bodies;*

*2) employees of state offices, including members of the civil service corps, holding positions equivalent in terms of pay to the positions listed in point 1;*

*2a) members of the civil service corps other than those listed in items 1 and 2 employed in the office supporting the minister competent for public finance;*

*2b) members of the civil service corps other than those mentioned in items 1 and 2 employed in organizational units of the National Revenue Administration;*

*3) the director general of the Supreme Chamber of Control and employees of the Supreme Chamber of Control supervising or performing control activities;*

*3a) counselors of the General Prosecutor's Office of the Republic of Poland and referendaries employed in the Public Prosecutor's Office of the Republic of Poland;*

*3b) the Chairman and Deputy Chairman of the Polish Financial Supervision Authority;*

*3 c) employees employed in the Public Prosecutor's Office of the Republic of Poland to perform the tasks referred to in article 1(2) of the Act of 15 December 2016 on the General Prosecutor's Office of the Republic of Poland (Journal of Laws of 2019, items 1265, 1309 and 2020);*

*4) employees of regional accounting chambers holding the positions of: president, member of a college, head of department and control inspector;*

*5) employees of local government appeal boards holding the positions of: chairman, his deputy and a full-time board member;*

*6) commune heads (mayors, city presidents), deputy commune heads (mayors, city presidents), commune treasurers, secretaries of communes, heads of commune organizational units, managing persons and members of management bodies of communal legal persons and other persons issuing administrative decisions on behalf of the commune head (mayor) , city president);*

*6a) members of poviat management boards, poviat treasurers, poviat secretaries, heads of poviat organizational units, managing persons and members of poviat legal entities and other persons issuing administrative decisions on behalf of the starost;*

*6b) members of provincial boards, provincial treasurers, secretaries of provinces, heads of provincial self-government organizational units, managing persons and members of governing bodies of provincial legal entities and other persons issuing administrative decisions on behalf of the province marshal;*

*6 c) members of the board of the metropolitan association, treasurer of the metropolitan union and secretary of the metropolitan union;*

*6d) members of the management board of the National Bank of Poland and employees of the National Bank of Poland holding the positions of a district branch director, department director (equivalent unit) and their deputies, and persons holding positions equivalent in remuneration to the position of department director and his deputy;*

*7) employees of state banks holding the positions of: president, vice president, member of the management board and treasurer;*

*8) employees of state-owned enterprises holding the positions of: enterprise director, deputy director and chief accountant;*

*9) persons acting in sole proprietorships of the State Treasury and companies in which the share of the State Treasury exceeds 50% of the share capital or 50% of the number of shares, functions of: president, vice president and member of the management board;*

*10) employees of state agencies holding the following positions: president, vice-president, team director, director of a local branch and his deputy - or equivalent positions;*

*11) other persons performing public functions, if a special law provides so.*

According to its provisions public officials are obliged to submit a statement about their financial status.

According to the Article 10(1) and Article 10(2) of the 1997 Act:

“Article 10.1.

Persons specified in Article 1 and in article 2 points 1-2a, 3-5, 6d and 7-11 are required to submit a declaration of their financial standing. The asset declaration concerns separate property and property covered by the matrimonial common property. This declaration should contain, in particular, information about the possessed financial resources, real estate, shares and stocks in commercial law companies, and also about the person or his spouse acquired from the State Treasury, other state legal person, local government units, their unions or the metropolitan association property that was subject to sale by tender. This declaration should also contain data on running a business and performing functions in companies or cooperatives […]

Civil servants holding positions other than those specified in Article 2 are required to submit the declaration referred to in para. 1”.

The term “information about the possessed financial resources” used in the Article 10 refers to the information on all kinds of assets, including foreign accounts.

In reference to the issue of confidentiality, the Article 10(3) of the Act, states that

“The information contained in the asset declaration, with the exception of the declaration submitted by the President of the Supreme Administrative Court, the First President of the Supreme Court, the President of the National Bank of Poland, the Vice Presidents of the National Bank of Poland and the persons referred to in Article 2(6d), constitute a legally protected secret and are subject to the protection provided for classified information classified as "restricted", as defined in the provisions on the protection of classified information, unless the person who made the declaration has consented to their disclosure in writing. In particularly justified cases, an authorized person, pursuant to sec. 4, 5 or 6, to collect the declaration, may disclose it despite the lack of consent of the person submitting the declaration. The declaration is kept for 6 years.”

The provisions set in the Act provide for control of property declarations by the CBA. This control is carried out on the basis of the criterion of reliability and truthfulness. The manner and legitimacy of conducting control is determined by the provisions contained in chapter 4 of the Act on the Central Anti-Corruption Bureau.

The statement contains in particular information about their cash resources, real estates, shares in commercial law companies, as well as about acquiring by this person or his/her spouse from the Treasury, another state legal entity etc., of property, which was subject to sale by way of a tender.

The statement should also contain data on business activity and functions performed in commercial law companies.

The statement is submitted to the head of the agency before taking a position, then annually and also on the day of leaving the position. The head of the agency analyzes the data contained in the statement, being entitled to compare the content of the analyzed statement with the content of previously submitted statements. The statements are also verified by the Central Anticorruption Bureau in line with the rules set out in Chapter 4 of the Act of 9 June 2006 on The Central Anticorruption Bureau.

The Act of August 21, 1997 on the restriction of business activity by persons performing public functions provides also for establishing the Registry of Benefits. The Registry is public and discloses the benefits obtained by public officials or their spouses, including inter alia information about:

1) all positions and activities carried out both in public administration authorities, as well as private institutions, for which remuneration is received, as well as professional activities conducted on his/her own account;

2) cases of providing material support for public activities;

3) donations received from domestic or foreign entities if its value exceeds determined threshold;

4) domestic or foreign trips not related to the performed public function if their cost has not been covered by the person submitting the information to the registry or his/her spouse or institutions employing them or political party, association or foundation of which they are members;

5) other obtained benefits, which value exceeds the determined threshold and which are not related to the professional activity.

6) information about participation in the bodies of foundations, commercial law companies or cooperatives, even if financial benefits from this are not obtained.

According to the provisions of the Act of August 21, 1997 on the restriction of business activity by persons performing public functions failure to submit the above statements or providing false information in the statements is subject to imprisonment of up to 5 years. In the case of lesser importance, the perpetrator is subject to a fine, restriction of freedom or imprisonment up to 1 year.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No such example available

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The country under review is in compliance with article 52, paragraph 5, of the Convention.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

The existence of registers accessible to the public and the competent authorities. These registers set out the profits made by public officials or their spouses, and contain detailed information on the financial situation of staff members, their career development and the various positions held.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate 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. Such measures shall also provide for appropriate sanctions for non-compliance.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Information about the authority of a public official over a financial account in a foreign country should be disclosed in line with the rules mentioned under Article 52, paragraph 5.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Information about the authority of a public official over a financial account in a foreign country should be disclosed in line with the rules mentioned under Article 52, paragraph 5.

Please see the answer to the questions regarding Subparagraph 2 (a) of article 52 (as regards Central Register of Beneficial Ownership) and Subparagraph 2 (b) of article 52 above

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The information provided under Article 52, paragraph 5, to which reference is made, does not allow confirmation of the declaration of conformity made by the country under review. The examiners therefore consider that the country under review has not implemented Article 52, paragraph 6.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

None

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 53. Measures for direct recovery of property

Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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:

*§ 1. Every natural or legal person has the ability to act as a party to the process (legal capacity).*

*§ 11. The ability of the courts also have organizational units which are not legal persons, where the law recognizes the legal capacity.*

*§ 2. (repealed)*

*Article. 65. [the ability to process] § 1. Natural persons enjoying a full legal capacity, legal persons and organizational units referred to in article 1. 64 § 11 have a capacity to process (the ability to process)*

*§ 2. Person limited in legal capacity has the capacity to process cases arising from legal transactions, which may make yourself.*

*Article. 66. [legal representative] a natural person non-procedural capacity may carry out procedural acts only by his legal representative.*

*Article. 67. [the activity of legal persons] § 1. Legal persons and organizational units referred to in article 1. 64 § 11, carry out procedural acts by their bodies or by the person authorized to act on their behalf.*

The relevant provisions concerning the international dimension of the criminal proceeding have been confined in Chapter XII of the Code of Criminal Procedure.

Before listing the specific provisions regarding freezing of assets, as required in the commentary, it should be clarified that under the Polish legislation , corruption is a criminal offence committed to the detriment of proper activity of the state or municipal authorities. Therefore it is considered as the offence which does not harm individual citizens . This results in lack of obligation to inform any person or state authority about instituting a criminal investigation regarding corruption.

In respect of requests made by the non-EU foreign countries to identify, freeze, seize, or confiscate property, the general provisions on mutual legal assistance are applied.

According to Chapter XII of the Code of Criminal Procedure:

*Article 585*

*Necessary procedures of criminal proceedings may be performed by way of judicial assistance, and in particular:*

*1) the service of documents on persons residing abroad or institutions*

*having their registered office abroad,*

*2) the examination of persons in the capacity of the accused, witnesses*

*or experts,*

*3) conducting inspections and searches of premises, other places or persons,*

*seizure of objects and surrender of such objects abroad,*

*4) summoning persons staying abroad to a voluntary personal appearance*

*before the court or public prosecutor to an examination as a witness or a confrontation, as well as bringing for that purpose persons deprived of liberty,*

*5) the granting of access to case files and documents and information from criminal records,*

*6) providing information on the binding law.*

*Judicial assistance*

*Article 588*

*§ 1. Courts and public prosecutors provide judicial assistance on the request of courts and public prosecutors of foreign States.*

*§ 2. The court and public prosecutor refuse judicial assistance and communicate their refusal to the appropriate authorities of the foreign State, if the requested procedure is contrary to the legal order of the Republic of Poland or would infringe its sovereignty.*

*§ 3. The court and public prosecutor may refuse judicial assistance, if:*

*1) under Polish law a requested procedure falls outside the jurisdiction of the court or public prosecutor,*

*2) the State that submits a request for judicial assistance does not guarantee reciprocity in this respect,*

*3) the request concerns an act which does not constitute an offence under Polish law.”*

As regards EU Member States, Chapter 62b CCP is applied to render MLA concerning identification, freezing and seizure of property:

*Chapter 62b.*

*Request of a Member State of the European Union for the Execution of Orders Freezing Evidence or Securing Property*

*Order execution*

*Article 589l*

*§ 1. A district court of the proper venue or the public prosecutor immediately executes an order, issued by a competent judicial authority of another Member State of the European Union, to freeze objects, correspondence, messages, lists of telephone calls or other transfers of information, data stored in the information system or on a storage device, including correspondence sent by e-mail, which can be produced as evidence in a criminal case, or to freeze property to secure the enforcement of a confiscation order, if such objects, correspondence, messages, lists, data or property are located or stored in the territory of the Republic of Poland.*

*§ 2. If the court or public prosecutor to which the order was addressed is not competent to action the order, it is referred to a competent authority and a proper judicial authority of the Member State of the European Union, which submitted the order is notified thereof.*

*§ 3. If the provisions of this Chapter do not provide otherwise, the execution of orders referred to in § 1 is governed by the provisions of Polish law.*

*Refusal to execute an order*

*Article 589m*

*§ 1. The authority may refuse to execute a freezing order, referred to in Article 589l § 1, if:*

*1) the act in connection with which the order was issued does not constitute an offence under Polish law, unless in accordance with the law of the issuing State the act constitutes an offence mentioned in Article 607w point 1–33, punishable by a prison sentence, the upper limit of which*

*is of least three years, or by another custodial measure of at least the same period,*

*2) it is impossible to freeze evidence concerned with the order for practical reasons, in particular because it was lost, destroyed or cannot be found,*

*3) a certificate containing all important information enabling the execution of a freezing order has not been attached to the order, or it is incomplete or manifestly does not correspond to the freezing order,*

*4) from the contents of the certificate mentioned in point 3 it is instantly clear that the order transmitted for execution concerns the same act*

*5) the execution of the order is not possible because of the refusal to produce*

*correspondence and documents pursuant to Article 582 § 2.*

*§ 2. The authority may refuse to execute the order aimed at securing property, referred to in Article 589 l § 1, if:*

*1) under Polish law in the case for an offence, in connection with which the order was issued, it is not permissible to secure the confiscation of property, unless in accordance with the law of the issuing State, the act constitutes an offence mentioned in Article 607w point 1–33, punishable by the prison sentence, the upper limit of which is of least*

*three years, or by another custodial measure of at least the same period,*

*2) in the cases mentioned in § 1 point 2–4.*

*§ 3. The provisions of § 1 point 1 and § 2 point 1 do not apply, if the act does not constitute an offence because Polish law does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange*

*regulation of the same kind as the law of the issuing State.*

*§ 4. In the case referred to in § 1 point 2, the competent court or public prosecutor, before issuing the decision to execute an order to freeze evidence or secure property, consults the issuing authority in an effort to obtain all important information allowing the location of such evidence or property.*

*If the information obtained does not allow the location of the evidence or property, the court or public prosecutor immediately notifies the competent judicial authority of the issuing State of the impossibility of executing the order.*

*§ 5. In the case mentioned in § 1 point 3, the competent court or public prosecutor may set, a deadline for the presentation of the certificate referred to in § 1 point 3 to the authority that issued the order, or the completion or correction thereof.*

*§ 6. If the deadline referred to in § 5 is not observed, the decision to execute the order is issued on the basis of information obtained previously.*

*Procedure*

*Article 589n*

*§ 1. The decision on the execution of the freezing order or on securing the property referred to in Article 589 l § 1 is issued by the competent court or public prosecutor immediately and, whenever practicable, within 24 hours*

*of receipt of the order.*

*§ 2. The decision referred to in § 1 is served with the instruction of rights arising from the laws of the issuing State, referred to in Article 589l § 1.*

*§ 3. The decision referred to in § 1 may be appealed by the persons whose rights were infringed. These persons may also appeal against the procedures connected with the freezing of evidence or securing of property, without prejudice to the appellant’s rights arising from the laws of the issuing State.*

*In an appeal against the procedures, the appellant may demand exclusively that the correctness of their performance be examined.*

*§ 4. A competent judicial authority of the issuing State is immediately notified of the appeal and of the contents of the decision rendered after its being heard.*

*§ 5. Article 589g § 6 applies accordingly.*

*Stay of execution*

*Article 589o*

*§ 1. Issuing the decision on the execution of the freezing order or on securing the property, a competent court or public prosecutor may simultaneously stay its execution, where:*

*1) its execution might damage an ongoing criminal proceedings – for the time necessary to secure a correct course of such proceedings,*

*2) the evidence or property concerned with the order have already been frozen or seized for the purposes of other criminal proceedings, until that freezing order or seizure is lifted.*

*Notification*

*Article 589p*

*§ 1. A competent judicial authority of the issuing State is notified immediately, if practicable within 24 hours of the receipt of the order, of the decision on the execution of the order to freeze evidence or secure property. The notification may also be given by any means of electronic data transmission in the manner allowing the establishment of the authenticity of transmitted documents.*

*§ 2. In the cases referred to in Article 589o, the reasons for the postponement of the execution of the order and, if possible, its expected duration should be indicated.*

*§ 3. The provision of § 1 applies accordingly if the reasons for the postponement of the decision referred to in Article 589o have ceased. In such a case, the competent judicial authority of the issuing State is notified of the evidence being frozen or property secured for the purposes of other proceedings, or about the actions undertaken in an effort to execute the decision.*

*Particular mode, handing over the record*

*Article 589r*

*§ 1. When executing an order to freeze evidence or secure property, the request of the issuing authority that a particular mode or form be applied to this procedure should be fulfilled, unless it is contrary to the legal order of the Republic of Poland.*

*§ 2. The record of the procedure of freezing evidence or seizing property is immediately transmitted to the competent judicial authority of the issuing State. Article 589p § 1 second sentence applies accordingly.*

*Time limits, lifting of order before the expiry of the deadline Article 589s*

*§ 1. The evidence remains frozen or property seized in order to secure the execution of confiscation order until a decision is taken with respect to a request of the competent judicial authority of the issuing State to transfer evidence or execute a final and binding confiscation order, respectively.*

*§ 2. However, in the light of the circumstances of the case, the competent court or public prosecutor may, after consulting the competent judicial authority of the issuing State, indicate to this authority a deadline, within which the request referred to in § 1 should be submitted, after the expiry of which the freezing or seizure order may be lifted.*

*§ 3. Before the expiry of the deadline referred to in § 2, the competent court or public prosecutor notifies the competent judicial authority of the executing State of its intention to lift the freezing or seizure order and gives this authority the opportunity to present its position in writing. If this authority fails to present arguments sufficiently substantiating a further freezing or seizure, the competent court or public prosecutor issues a decision that freezing or seizure be lifted. A copy of the decision is served on the*

*interested parties.*

*§ 4. The decision to lift the freezing or seizure order is issued also when the competent judicial authority of the issuing State notifies of the lifting of the order. The provision of § 3 third sentence applies.*

*Compensation*

*Article 589u*

*§ 1. Where the State Treasury is responsible for injury caused by the execution of an order freezing evidence or securing property issued by a judicial authority of the Member State of the European Union, the State Treasury submits a request to a competent authority of this State, to reimburse any*

*sums paid in damages by virtue of that responsibility.*

*§ 2. The provision of § 1 does not apply, if the injury is exclusively due to the action or omission of a Polish authority.”*

*Application of the provisions of this Chapter:*

*“Article 589v*

*The provisions of this Chapter concerning the freezing of evidence apply to the decisions of the authorities of Member States of the European Union, to which European Investigation Order does not apply.”*

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There are no case examples available currently. More information in this regard will be provided during country visit.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The Polish Code of Civil Procedure allows any person, natural or legal, to appear before the Polish courts to claim property derived from the commission of an offence covered by the Convention.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

The country under review is in compliance with paragraph (a) of Article 53.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Subparagraph (b) of article 53

Each State Party shall, in accordance with its domestic law: ...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to Art. 415. of Polish Civil Code :

Anyone who by a fault on his part causes damage to another person is obliged to remedy it.

Art. 416. A legal person is obliged to remedy any damage caused through a fault on the part of its authority.

In accordance with Art. 46. of the Criminal Code § 1:

In the event of a conviction, the court may order, at the request of the aggrieved party or another party authorised in the order, the offender to partially or fully remedy any damage caused by the offence, or compensate for any injury; the civil law provisions on the statute of limitations on claims and the possibility of awarding a pension do not apply.

§ 2. Instead of the obligations set out in § 1, the court may order exemplary damages to be paid to the aggrieved party.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See the response to the preceding article.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The legislation of the country under consideration allows for compensation or the awarding of damages for injury caused by one of the offences provided for in the Convention.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Texts exist but no application examples.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Subparagraph (c) of article 53

Each State Party shall, in accordance with its domestic law: ...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party’s claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Art. 363 of The Civil Code provides for in remedy of damage.

§ 1. Damage should be remedied, at the aggrieved party’s choice, either by the previous condition being restored or a relevant sum of money being paid. If, however, restoration of the previous condition is not possible or it results in excessive difficulties or costs for the obliged person, the aggrieved party’s claim is limited to monetary performance.

§ 2. If the damage is to be remedied by payment of money, the amount of the compensation should be set according to prices as at the compensation determination date unless extraordinary circumstances require that prices existing at another time be taken as the basis.

Under articles 44 § 5 and 45 § 1 of the Criminal Code, forfeiture of items directly derived from the crime or items which served or were designed for committing the crime, as well as benefits from the crime cannot be forfeited if they are subject to return to the victims or other legitimate entity e.g. a State Party to the Convention. In this context, it is sufficient to merely inform law enforcement authorities, prosecution office or the court in charge of the case, that given assets are legitimate property of the State Party to avoid confiscation thereof.

As regards the application of the freezing of assets (known as confiscation in EU law and the criminal laws of many EU countries) located in EU countries, the provisions specified in the first part of the questionnaire, i.e. Article 51, Article 54(a)-(c) and Article 54(2)(a)-9c) apply. In this regard, Poland has the following provisions in place: Part XIII of the Code of Criminal Procedure, headed “Procedure in Criminal Cases in International Relations”, Article 578 and subsequent articles, which lay down principles and recommendations implemented into Polish law on the basis of the EU framework decisions on the mutual execution of orders regarding assets obtained through criminal activities or assets subject to forfeiture.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There is no such example available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The above-mentioned texts enable the State under review to implement article 53, paragraph (c), of the Convention.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

None for the moment

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required.

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under the Polish legislation, confiscation of property (forfeiture of property) may be imposed only as a result of a binding, final judgment. Until then, the property may be only seized with a view of future confiscation.

a) In relations with other EU countries:

It is possible to enforce decision on confiscation rendered in other Member States (except Ireland and Luxembourg) on the basis of Council Framework Decision 2006/783 / JHA. Chapter 66d of the Polish Code of Criminal Procedure applies accordingly. The decisions on forfeiture are enforced by the competent district court.

It is also possible to enforce a decision aimed at securing property under Council Framework Decision 2003/577 / JHA (excluding Luxembourg) chapter 62b of the Code of Criminal Procedure.

a) In relations with other countries

Under the Polish legislation (articles 608 § 2 and 609 § 2 of the Code of Criminal Procedure) it is possible to take over the enforcement of a valid decision on forfeiture rendered in other non-EU countries. The decision in this respect is made by the Minister of Justice, after the court approves the admissibility of taking over the decision to be executed. This course of action also applies in relation to international cooperation for the purpose of confiscation as defined in art. 13 of the United Nations Convention against Transnational Organized Crime.

Assistance in the matter of forfeiture is also provided under article 17 of the Agreement between the Government of the Republic of Poland and the Government of the Hong Kong Special Administrative Region of the People's Republic of China

In respect of seizure of property, the requests of non-EU countries to apply the seizure may be enforced on the basis of bilateral or multilateral treaties as well as on the basis of a reciprocity rule. When enforcing the requests the Polish law is applied.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Chapter 62b

Request of a European Union Member State to execute a decision on retention of evidence or to secure the property

Article 589l. § 1. A regional court having competent jurisdiction or state prosecutor shall immediately carry an order issued by a competent judicial authority of another European Union Member State on retention of items, correspondence, parcels, lists of telephone calls or other transmissions of information or data stored in an information technology system or on a data carrier, including correspondence sent by electronic mail, or an order on seizure of property to secure execution of an order on forfeiture that might be evidence in the case, if such items, correspondence, parcels, lists, data, or property are located or stored in the territory of the Republic of Poland.

§ 2. If the court or the state prosecutor to whom the decision has been directed is not competent for initiating the proceedings, it shall transmit it to the competent agency and notify about it the competent judicial authority of a European Union Member State that has issued an order.

§ 3. Regulations of Polish law shall be applied while executing decisions referred to in § 1, unless the provisions hereof provide otherwise.

Article 589m. § 1. Execution of a decision on retention of evidence may be refused referred to in Article 589l § 1, if:

1) an act further to which the decision has been issued is not an offence under Polish law, unless, under law of the decision issuing state, it is an offence enumerated in Article 607w subsections 1-33 subject to the penalty of deprivation of liberty of a minimum 3 years at least, or another measure involving deprivation of liberty of the similar sentence at least,

2) evidence the decision concerns may not be seize due to factual reasons, in particular, due to their loss, destruction, or impossibility to recover,

3) the decision on retention of evidence has not been appended with the certificate containing all the material information allowing its proper execution, or the certificate is incomplete or evidently contrary to the contents of the decision,

4) from the contents of the certificate referred to in sub-section 3 it is obviously seen that the decision transmitted for execution concerns the same act of the same person in case of which the criminal proceedings have been legally completed,

5) execution of the decision is not possible due to refusal to surrender correspondence and documents in accordance with Article 582 § 2.

§ 2. Execution of the decision to secure the property referred to in Article 589l § 1 may be refused:

1) if, under Polish law, in the case of an offence, further to which such decision has been issued, securing of the execution of forfeiture would be inadmissible, unless, under law of the decision issuing state, it is an offence enumerated in Article 607w subsection 1-33 subject to the penalty of deprivation of liberty of a minimum 3 years at least, or another measure involving deprivation of liberty of the similar sentence at least,

2) in cases stipulated in § 1 subsections 2 through 4.

§ 3. The provisions of § 1 subsection 1 and § 2 subsection 1 shall not be applied, if the act is not an offence due to lack of or different regulations under Polish law governing fees, taxes, customs duties, or rules applicable to foreign exchange.

§ 4. In case specified in § 1 subsection 2, before issuing an order on execution of the decision on retention of evidence or to secure the property, the competent court or state prosecutor shall consult with the agency that has issued it to obtain all the material information allowing recovery of such evidence or property. If the obtained information has not contributed to the recovery of such evidence or property, the court or state prosecutor shall immediately inform a relevant judicial authority of the decision issuing state about impossibility of executing the decision.

§ 5. In case referred to in § 1 subsection 3, the competent court or state prosecutor may designate a time-limit for the agency that has issued the decision for transmitting the certificate specified in § 1 subsection 3, for its supplement or correction.

§ 6. In the event of failure to comply with the time-limit referred to in § 5, the decision on execution of the decision shall be issued on the basis of information that has been transmitted before.

Article 589n. § 1. The competent court or state prosecutor shall issue an order on execution of the decision on retention of evidence or to secure the property referred to in Article 589l § 1 without delay, if possible, within 24 hours as from receiving the decision.

§ 2. The order referred to in § 1 shall be delivered together with the instructions on rights under regulations of the decision issuing state referred to in Article 589l § 1.

§ 3. Persons whose rights have been violated shall be entitled to an interlocutory appeal against the order referred to in § 1. Such persons shall also be entitled to an interlocutory appeal against action relating to retention of evidence or securing the property, which does not violate rights of the plaintiff arising under regulations of the decision issuing state. In the interlocutory appeal against the action the plaintiff may demand examination of its correctness only.

§ 4. A relevant judicial authority of the decision issuing state shall be immediately informed about submission of the interlocutory appeal, as well as the determination made as result of its hearing.

§ 5. The provision of Article 589g § 6 shall be applied accordingly.

Article 589o. By issuing an order on execution of the decision to retain evidence or to secure the property, the competent court or state prosecutor may, at the same time, suspend its execution, if:

1) execution of the decision would obstruct other pending criminal proceedings - for the period necessary to secure the proper course of such proceedings,

2) evidence or property that the decision concerns have been retained or seized before for the purposes of another pending criminal proceedings - until their release from retention or seizure.

Article 589p. § 1. The competent judicial authority of the decision issuing state shall be immediately notify about the contents of the order on execution of the decision on retention of evidence or securing the property, if possible within 24 hours from receiving the decision. Such notification may also be transmitted with the use of equipment used for automatic data transmission, in a manner that allows authentication of such documents.

§ 2. In cases referred to in Article 589o, reasons for suspension of the execution of the decision shall also be given, and, if possible, its envisaged period.

§ 3. The provision of § 1 shall be accordingly applied in the event of removal of reasons for suspension of execution of the order referred to in Article 589o. In such event, the relevant judicial authority of the decision issuing state shall be informed about retention or securing evidence or property for the purposes of other proceedings, or undertaken actions aimed at execution of the decision.

Article 589r. § 1. By executing the decision on retention of evidence or securing the property, wishes of the agency that has issued such decision should be honoured by applying a special way of conduct or special form while executing such action, if that is not contrary to the rules of legal order of the Republic of Poland.

§ 2. A report on the retention of evidence or seizing the property shall be immediately transmitted to the relevant judicial authority of the decision issuing state. The provision of Article 589p § 1 second sentence shall be applied accordingly.

Article 589s. § 1. Retention of evidence and seizure of property to secure execution of the decision on forfeiture shall continue until determination on the request of the relevant judicial authority of the decision issuing state for release of evidence or execution of the request to execute the valid and final decision on forfeiture, respectively.

§ 2. Having regard to the circumstances of the case, the competent court or state prosecutor, after consultations with the competent judicial authority of the decision issuing state, may, however determine for such body a strict time-limit for delivering the demand specified in § 1, after the expiry of which release from retention or seizure may be effected.

§ 3. Before expiry of the time limit referred to in § 2, the competent court or state prosecutor shall inform the competent judicial authority of the decision issuing state about an intent to release from retention or seizure thus allowing it to present an opinion in writing. If such body does not present arguments sufficiently justifying further retention or seizure, the competent court or state prosecutor shall issue an order on release from retention or seizure. A copy of the order shall be delivered to interested persons.

§ 4. An order on release of retention or seizure shall also be issued when the competent judicial authority of the decision issuing state has notified about its reversal. The provision of § 3 third sentence shall be applied.

Article 589t. § 1. The request to release the evidence or execution of the motion for execution of forfeiture by the Polish court shall be carried pursuant to the regulations in Chapters 62 and 66 and international agreements relating to judicial assistance in criminal cases that the Republic of Poland is bound by.

§ 2. Execution of the motion referred to in § 1 cannot be refused, however, by referring to circumstances that the act such motion concerns is not an offence under Polish law, if, under law of the decision issuing state, it is an offence enumerated in Article 607w subsection 1-33, subject to the penalty of deprivation of liberty of a minimum 3 years at least, or another measure involving deprivation of liberty of the similar sentence at least.

Article 589u. § 1. If the State Treasury is held liable for damage inflicted in connection with the execution of the decision on retention of evidence or securing the property issued by a judicial authority of the European Union Member State, the State Treasury shall request the competent agency of such state to reimburse the amount of money being an equivalent of the compensation that has been paid.

§ 2. The provision of § 1 shall not be applied, if the damage is a consequence of action or omission only by a Polish agency.

Chapter 66d

Request of a European Union Member State to execute a decision on forfeiture

Article 611fu. § 1. In the event a European Union Member State, hereinafter referred to as a “decision issuing state” requests execution of a final decision on forfeiture, such decision shall be carried by a regional court in the district of which the perpetrator has property or derives income, or has permanent or temporary residence.

§ 2. The order referred to in § 1, or its copy certified as true to the original shall be appended with a certificate containing all the material information allowing its proper execution.

§ 3. The court shall proceed to execute a decision of the decision issuing state without delay.

§ 4. If the court, to which the decision has been directed, is not competent for initiating the proceedings, it shall transmit it to the competent court and notify about it the competent court or other agency of the decision issuing state.

§ 5. Unless the provisions hereof provide otherwise, regulations of Polish law shall be applied while executing decisions referred to in § 1. The provision of Article 611c § 3 shall be applied accordingly.

Article 611fw. § 1. Execution of a decision on forfeiture of the material benefit or its equivalent shall be refused in part in which it has been issued on the basis of a presumption that such benefit has been derived from an offence, other than the presumption that:

1) the material benefit has been derived from an offence other than the one for which the perpetrator has been sentenced, committed before issuance of a non-final judgement,

2) the material benefit has been derived from another offence similar to the offence, for which the perpetrator has been sentenced, committed before issuance of a non-final judgement,

3) the property not covered in the disclosed sources of the perpetrator’s income has been derived from an offence.

§ 2. Execution of a decision on forfeiture of the material benefit or its equivalent that has been issued on presumptions referred to in § 1 may be refused in part in which the decision on forfeiture would be excluded under Polish law.

§ 3. Execution of the decision referred to in Article 611fu § 1 may be refused, if:

1) an act further to which the decision has been issued is not an offence under Polish law or forfeiture cannot be decided under Polish law for the offence used as the basis for issuance of the decision, unless, under law of the decision issuing state, it is an offence enumerated in Article 607w; the provision of Article 607r § 2 shall be applied accordingly,

2) the decision has not been appended with the certificate referred to in Article 611fu § 2, or the certificate is incomplete or evidently contrary to the contents of the decision,

3) the decision transmitted for execution concerns the same act of the same person in whose case the criminal proceedings have been validly completed in a Member State, and a decision relating to forfeiture has been executed,

4) there has been limitation in execution of the penalty under Polish law, and offences it concerns have been subject to jurisdiction of Polish courts,

5) the decision concerns offences that under Polish law have been committed, in whole or in part, in the territory of the Republic of Poland, and also on board of a Polish vessel or aircraft,

6) the decision concerns offences committed outside the territory of the decision issuing state, and Polish

law does not admit prosecuting such types of offences, if they have been committed outside the territory of the Republic of Poland,

7) the perpetrator is not subject to jurisdiction of Polish criminal courts or there is no required permission to prosecute him,

8) from the contents of the certificate referred to in Article 611fu § 2 it is seen that the decision has been issued by default, unless the person the decision concerns, has been summoned to participate in the proceedings or has been otherwise notified about the date and place of the trial or session, or that she has made a statement on not challenging the decision,

9) the offence the decision relates to, in case of jurisdiction of Polish criminal courts, shall be subject to remission under amnesty,

10) there is a justified concern that execution of the decision may violate rights of third person.

§ 4. If information transmitted by the decision issuing state is not sufficient to take a decision on the execution of the forfeiture decision, the court shall call on the competent court or other agency of the decision issuing state to supplement it at the prescribed time.

§ 5. In the event of failure to comply with the prescribed time referred to in § 4, an order on the execution of the decision shall be issued on the basis of the information that has been transmitted before.

§ 6. If execution of the decision is not possible due to factual or legal reasons, the court shall inform the competent court or other agency of the decision issuing state without delay.

Article 611fx. § 1. The court shall hear the case of execution of the forfeiture decision in a session which the state prosecutor, the perpetrator, if he is staying in the territory of Poland and his defence counsel, if he appears there, and a third person whose rights might be violated by execution of the decision have the right to attend. If the perpetrator, who is not staying in the territory of the Republic of Poland, does not retain a defence counsel, the president of the court competent to hear the case may appoint for him a defence counsel ex officio.

§ 2. An order of the court on the execution of the decision on forfeiture shall be subject to an interlocutory appeal by the parties and a third person referred to § 1. The court that has issued the order shall notify the competent court or other agency of the decision issuing state about making the interlocutory order.

§ 3. A valid and final decision on forfeiture together with an appended certificate shall be an execution clause and be subject to execution in the Republic of Poland following issuance of an order of its execution.

Article 611fy. § 1. The court may suspend the proceedings in the execution of the decision referred to in Article 611fu § 1, if:

1) a request concerning an amount of money has been made to more than one Member State, and there is a probability that as a result of execution of the decision in several Member States a forfeited amount will be higher than the one specified in the decision,

2) execution of the decision could obstacle the pending criminal proceedings,

3) the property may be subject to forfeiture under the proceedings pending in Poland,

4) it has recognised to translate the decision into Polish as necessary.

§ 2. An order on suspension of the proceedings shall be subject to an interlocutory appeal by the parties and a third person referred to in Article 611fx § 1. The court that has issued the order shall notify the competent court or other agency of the decision issuing state about suspension of the proceedings and reasons therefor.

§ 3. In the event of suspension of the proceedings, the court may, ex officio, secure execution of the decision. Regulations of security on property of the accused shall be applied accordingly.

Article 611fz. If the property that is subject to execution is not sufficient for carrying two or more decisions referred to in Article 611fu § 1, issued against the same person and concerning an amount of money, or if two or more decisions concern a specified item of the property, the court shall decide jointly on the execution of the decisions in whole or in part.

Article 611fza. § 1. If the perpetrator or another person has presented evidence of execution of the decision referred to in Article 611fu § 1, in whole or in part, before issuing an order on the execution of such decision, the court shall call on the competent court or another agency of the decision issuing state to confirm payment.

§ 2. Amounts that have been previously obtained from forfeiture in the decision issuing state or the decision executing state shall be counted towards the amount that is subject to execution.

Article 611fzb. § 1. The amount received form execution of the decision referred to in Article 611fu § 1 that does not exceed the equivalent of EUR 10,000 shall constitute income of the state budget. In other cases, the decision issuing state shall receive half of the received amount into a bank account indicated by the competent court or another agency of such state.

§ 2. Property other than money obtained under execution of the decision referred to in § 1 shall be turned into cash in accordance with regulations governing execution of financial benefits in the execution proceedings in administration. The provision of § 1 shall be accordingly applied to the amount obtained from execution.

§ 3. In justified cases the court may waive turning into cash the property referred to in § 2 and transfer it to the competent court or another agency of the decision issuing state. If the waiver includes forfeiture of an amount of money, the transfer may be effected only upon consent of such court or agency.

§ 4. The court shall refuse to release to the decision issuing state cultural heritage items that constitute part of the national cultural heritage.

§ 5. The Minister of Justice may conclude an agreement with a relevant agency of the decision issuing state on the manner of execution of the forfeiture decision, in particular providing therein a different division of the amounts obtained from execution of the decision than the one specified in § 1.

§ 6. In the event of conclusion of the agreement referred to in § 5, the court, being called upon by the competent court or another agency of the decision issuing state, shall transfer the executed amount of money or property other than money obtained under execution of the decision, in whole or in part, in accordance with the agreement.

Article 611fzc. In the event of receiving information from the competent court or another agency of the decision issuing state that the decision transmitted for execution is not subject to further execution, the court shall issue an order on discontinuance of the execution proceedings without delay.

Article 611fzd. The competent court or another agency of the decision issuing state shall be immediately notified about the contents of the order on execution of forfeiture, and also about completion of the execution proceedings. Such notification may also be transmitted with the use of equipment used for automatic data transmission, in a manner that allows authentication of such documents.

Article 611fze. § 1. The State Treasury shall bear the costs related to the execution of the decision referred to in Article 611fu§ 1. In justified cases, the court may request the competent court or another agency of the decision issuing state to reimburse part of the expenses incurred. The request shall be appended with a detailed list of the expenses incurred together with a proposal of their division.

§ 2. If the State Treasury is held liable for damage inflicted in connection with the execution of the forfeiture decision issued by a judicial authority of the decision issuing state, the State Treasury shall request the competent agency of such state to reimburse the amount of money being an equivalent of the compensation that has been paid.

§ 3. The provision of § 2 shall not be applied, if the damage is the only consequence of action or omission by a Polish agency.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The country under review has adequate legislation to meet the requirements of article 54, paragraph 1 (a), of the Convention.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

No examples of implementation of the measures enacted were provided by the country under review.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Money laundering offence has been addressed by the provision of article 299 of the Criminal Code which reads as follows:

Art. 299. § 1. Anyone who accepts, possesses, uses, remits or takes abroad, conceals, transfers, converts or helps to transfer the ownership or possessions of the means of payment, securities, foreign currency, property rights or other movable or immovable property derived from the benefits relating to the commission of a prohibited act or undertakes other actions that may obstruct or considerably hinder the assertion of criminal origin or place of depositing or detection or seizure or adjudication of the forfeiture shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

§ 2. The penalty specified in § 1 applies to anyone who, being an employee or acting on behalf of or for the benefit of a bank, financial or credit institution or other entity which under the law is required to register transactions and persons making transactions, accepts, contrary to provisions, means of payment, financial instruments, securities, foreign exchange values, transfers or converts them, or accepts them in other circumstances which give rise to reasonable suspicion that they constitute the subject of the act specified in § 1, or who provides services aimed at concealing its criminal origin or in securing it against forfeiture, is liable to the penalty specified in § 1.

§ 3. (repealed).

§ 4. (repealed).

§ 5. If the offender commits the act specified in §§ 1 or 2 acting in complicity with other people, he or she is subject to the penalty of the deprivation of liberty of between one and 10 years.

§ 6. If, by committing the act specified in § § 1 or 2, an offender gains significant material benefit, he or she is subject to the penalty specified in § 5.

§ 6a. Anyone who makes preparations to commit ofences specified in § 1 or 2, is subject to the penalty of the deprivation of liberty of up to 3 years

§ 7. When imposing a sentence for the offence specified in §§ 1 or 2, the court will order the forfeiture of items derived either directly or indirectly from the offence, or the gains of the offence, or an equivalent value, even if they are not the property of the offender. Forfeiture is not ordered if all or part of the gains, or their equivalent, are returned to the aggrieved party or another entity.

Paragraph 7 of Article 299 CC explicitly provides for the possibility to adjudicate confiscation (forfeiture) of property and benefits (or the equivalent thereof) that originate directly or indirectly from crime, even though they do not belong to perpetrators.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The statistics as to the number of judgments including orders on confiscation and value of confiscated assets in money laundering cases.

2017

Number of judgments- 68

Value of confiscated property - 104 006 635,95 PLN (approximately 28 417 113,64 USD)

2016

Number of judgments- 48

Value of confiscated property - 72 248 078,80 PLN (approximately 19 739 912,24 USD)

2015

Number of judgments- 33

Value of confiscated property -41 973 798,67 PLN (approximately 11 468 251 USD)

So far, the Polish prosecutor’s office has not investigated foreign corruption based money laundering.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The experts note that article 299, paragraph 7, of the PC, on which the country under examination relies to assert compliance with the provision of article 54, paragraph 1 (b), does not seem to meet the precise purpose of that subparagraph.

The question arises whether property and benefits (or equivalent) "derived directly or indirectly from the crime", even if "not belonging" to the perpetrators, are synonymous with "property of foreign origin".

The examiners believe that a clarification is needed to enable them to better assess the response of the State under review.

Property and benefits (or their equivalent) subject to forfeiture under Article 299 § 7 of the Criminal Code are in practice understood as all types of property regardless of its domestic or foreign origin. Therefore, if the Polish court passes the judgment regarding laundering of property that originates from the underlying predicate offence committed abroad, a forfeiture of such property may be adjudicated under art. 299 § 7 of the Criminal Code.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and challenges* *in* *implementation*.]

Examples have been provided, but do not indicate whether they relate to the confiscation of property of foreign origin.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment

Subparagraph 1 (c) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The relevant provision (article 45a of the Criminal Code) concerning non-conviction based confiscation was introduced into Polish legal system in 2015.

It reads as follows:

Art. 45a. § 1. The court may order forfeiture if the social harmfulness of the act is negligible, as well as in the event of conditional discontinuance of the proceedings or finding that the perpetrator has committed a criminal act in the state of insanity, referred to in art. 31 § 1, or if there is a circumstance excluding the punishment of the perpetrator of a prohibited act.

“§ 2. If the evidence gathered on a case indicates that forfeiture would be adjudicated in the event of conviction, the court can rule on forfeiture also in the event the proceedings are discontinued for reason of the perpetrator not having been identified or having died, as well as in the event of suspension of proceeding on a case in which the accused cannot be apprehended, or cannot partake in the proceeding for reason of mental illness or any other serious illness.”;

In years 2015 - 2017 Polish prosecutors applied for the forfeiture of property under article 45a CC in 38 cases.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Examples of cases

1. The investigation ref. no. PR 4 Ds. 291.2017 conducted Nysa, concerning forgery of documents was terminated due to expiration of the status of limitation. Consequently, the prosecutor in charge of the case filed the court with the motion to forfeit forged documents indicating that a circumstance excluding the punishment of the perpetrator occurred. The court approved the motion of the prosecutor and decided to forfeit forged documents.

2. The investigation ref. no. PR 2 Ds. 111.2016 conducted by the District Prosecution Office in Bolesławiec concerning illegal ownership of a few pieces of ammunition was terminated due to negligible social harmfulness of the offence. The prosecutor in charge of the case filed the court with the motion to forfeit ammunition indicating article 45a CC as a legal grounds for forfeiture. The court approved the motion of the prosecutor and decided on forfeiture of the ammunition.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The experts consider that the country under examination has legislation in conformity with article 54, paragraph 1 (c).

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Statistics and examples of applications in terms of case law were provided.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Subparagraph 2 (a) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Seizure of property upon a seizure order issued by a court or competent authority of a requesting State Party with a view to further confiscation is regulated by the provisions of Chapter 62a of the Code of Criminal Procedure which is applicable to the relations with EU countries.

It reads as follows:

Chapter 62a CPC

Article 589g. § 1. In the event of establishing that items, correspondence, parcels, lists of telephone calls or other transmissions of information or data stored in an information technology system or on a data carrier, including correspondence sent by electronic mail, or property that is subject to seizure to secure execution of an order on forfeiture that might be evidence in the case are located in the territory of another European Union member state, the court competent to hear the case or the state prosecutor may request execution of an order on their retention or securing directly to a competent judicial authority of such state.

§ 2. By transmitting an order on the retention of evidence for execution, the competent court or state prosecutor shall at the same time request the competent judicial authority of the order executing state with a motion to release such evidence.

§ 3. Immediately after an order on forfeiture of the secured property referred to in § 1 has become valid and final, the competent court shall request the competent judicial authority of the order executing state with a motion to execute such forfeiture.

§ 4. The request to release the evidence and execution of forfeiture that are referred to in § 2 and 3, respectively, shall be carried pursuant to the regulations in Chapters 62 and 66 and international agreements relating to judicial assistance in criminal cases that the Republic of Poland is bound by.

§ 5. The order referred to in § 1 shall be appended with a certificate confirming all material information that shall facilitate its proper execution.

§ 6. Transmitted documents shall be translated into an official language of the order executing state or into any other language that has been indicated by such state.

§ 7. Transmission of the order or certificate referred to in § 5 may also be effected with the use of tools used for automatic data transmission, in a manner that allows authentication of such documents.

§ 8. In the event of difficulties in determining the competent agency of the order executing state, the competent court or the state prosecutor may also direct a request to competent organisational units of the European Judicial Network.

(…)

As for matters regarding cooperation with other than EU countries a property may be seized upon the MLA request of the competent authority of the foreign country. The legal grounds to size a property upon request of a foreign country is indicated in the Article 585 subparagraph 3 of the CCP.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No such example is available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The legislation of the country under review (Chapter 62a of the CPP, Article 589g § 1) above enables it to comply with the provisions of Article 54, paragraph 2 (a).

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

However, these legislative measures have not been followed by practical implementation.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment

Subparagraph 2 (b) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See response to the preceding provision.

Art. 585 of the CCP provides for in scope of international legal assistance: Necessary procedures of criminal proceedings may be performed by way of judicial assistance, and in particular:

1) the service of documents on persons residing abroad or institutions having their registered office abroad,

2) the examination of persons in the capacity of the accused, witnesses or experts,

3) conducting inspections and searches of premises, other places or persons, seizure of objects and surrender of such objects abroad,

4) summoning persons staying abroad to a voluntary personal appearance before the court or public prosecutor to an examination as a witness or a confrontation, as well as bringing for that purpose persons deprived of liberty,

5) the granting of access to case files and documents and information from criminal records,

6) providing information on the binding law.

Art. 607 CCP regulates surrender of objects.

§ 1. Request of a foreign State, concerning the surrender of objects constituting material evidence or acquired as the result of an offence is resolved by the public prosecutor or the court, depending on who has had these objects placed at their disposal. Article 588 § 2 and 4 applies accordingly. § 2. The decision on the surrender of objects should specify the items to be surrendered to the foreign State and indicate those items, which are subject to return at the conclusion of criminal proceedings conducted by the authorities of the foreign State.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No such examples available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Even if there was a general framework for mutual legal assistance, it was not clear from the reply provided by the country under review whether freezes and seizures could be carried out simply at the request of a foreign State party.

However, article 607wa of the CPC, seems to be the adequate answer to the question.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

No examples of implementation were provided by the country under review.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Subparagraph 2 (c) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Taking additional measures to permit the competent domestic authorities to preserve property for confiscation on the basis of a foreign arrest or criminal charge related to the acquisition of such property has been to some extent considered under article 607wa § 1 CCP concerning the execution of the European Arrest Warrant.

Article 607wa.

*§ 1. The competent court or state prosecutor, on a request from the judicial authority of the European Warrant issuing state, shall seize and transfer items directly from the offence, that have been used or have been intended for committing the offence, or those that might serve as evidence in the case of items, correspondence, parcels, lists of telecommunication connections or other transmissions of information or data stored in an information technology system or on a carrier, including correspondence sent by electronic mail.*

*§ 2. Seizure and extradition of evidence and items referred to in § 1 shall be carried also when execution of the European Warrant is not possible because of death or escape of the prosecuted person.*

*§ 3. At extradition of items referred to in § 1 their return may be warranted, in particular when they are subject to return to the injured person or another eligible entity staying in the territory of the Republic of Poland.*

§ 4. The provisions of Chapter 62b shall be applied accordingly.

Article 54 Subparagraph 2 (c) of the UNCAC has been implemented by means of Article 607wa of the Criminal Procedure Code. A request submitted under Article 607wa § 1 of the Criminal Procedure Code follows the European Arrest Warrant regarding person who perpetrated a criminal offence whose commission required using certain items and left material traces. Threfore previous issuing of the EAW constitutes sufficient grounds for seizure of the items listed in that provision.

**Question 3**

Please, see above

**Question 4**

Seizure measures applied in response to the requests made under Article 607wa of the Criminal Procedure Code are in substance the same as the ones used in domestic criminal investigation. The range of available measures has been indicated in Articles 292 and 292a of the Code of Criminal Procedure

*Article 292. § 1. Seizure shall be obtained as provided for in the Code of Civil Procedure.*

*§ 2. The securing of the impending penalty of the forfeiture of material objects shall consist in the seizure of movables, liabilities and other property rights, and in the prohibition of selling and encumbering the real estate. This prohibition shall be disclosed in the land and mortgage register or, in its absence, in the set of documents filed. If necessary, the court may provide for the administration of the real estate and/or of the firm owned by the accused.*

*Article 292a. § 1. Securing enforcement of the ruling referred to in Article 291 § 1, may also take form of establishing a compulsory management of the enterprise and appointing a manager. The decision specifies the enterprise or its organized part and indicates the administrator from among the persons having a restructuring advisor license, referred to in the Act of 15 June 2007 on the restructuring advisor license (Journal of Laws of 2016, item 883 and 2018 item 398).*

*§ 2. In the course of investigation, the order to seizure of property by establishing a compulsory management is issued by the prosecutor. The decision is subject to court approval.”*

The mechanism for managing, and when necessary disposing of property seized has been provided for in the Code of Criminal Procedure in the following provisions:

*Article 228. § 1. Material objects surrendered or discovered during a search, after being viewed and recorded, shall be seized or deposited with a trustworthy person who shall be notified of his duty to present them whenever so required, by the agency conducting the proceedings.*

*§ 2. Similar action should be taken concerning objects discovered during a search which may constitute evidence of some other offence, or are subject to forfeiture, or the possession of which is prohibited by law.*

*§ 3. Persons concerned shall be given without delay a receipt specifying the objects seized, and the identity of the persons performing the seizure.*

*Article 232. § 1. Material objects which are perishable or the storage of which would entail unreasonable expense or excessive hardship or would significantly impair the value of the object, may be sold without an auction, by means of an appropriate trading unit. The provisions applicable to sales resulting from the execution against chattels should be applied.*

*§ 2. The proceeds of such a sale shall be deposited with the court.*

*§ 3. All persons concerned including the accused should be notified, if possible, of the time and circumstances of such a sale.*

*Article 232a. § 1. Material objects and substances posing a hazard to life or health, in particular weapons, ammunition, explosives or highly flammable substances, radioactive materials, poisonous, asphyxiating or scalding substances, intoxicants, psychotropic substances or precursors, shall be stored in a place and in a manner assuring their proper protection.*

*§ 2. If the storage of material objects or substances referred to in § 1 were to entail unreasonable expense or were a source of threat to the security of the general public, the court having jurisdiction upon a motion of the state prosecutor may decide on their escheat in their entirety or in part.*

*§ 3. If necessary, an expert appraisal is sought prior to the issuance of the decision.*

*§ 4. The Minister of Justice, in consultation with the Minister of National Defence, and the Minister of the Interior, shall issue an ordinance setting forth the detailed principles for and the place of storage of the material objects and substances referred to in § 1, and the conditions and manner of their escheat, having regard to the assurance of a proper course of the proceedings and their cost.*

*Article 233. When depositing Polish or foreign currency, the depositing agency shall indicate the nature of the deposit and the manner in which it should be disposed*

National Prosecutor’s Office has no specific experience regarding non-conviction based forfeiture.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

no such example available

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

With regard to Article 607wa § 1 of the above-mentioned CPP, the country under examination has taken into account the provisions of Article 54(2)(c).

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

The State under review did not provide any examples of implementation.

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

None for the moment.

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 55. International cooperation for purposes of confiscation

Paragraph 1 of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Polish legal system provides for a number of instruments to seize the property with a view of possible subsequent forfeiture.

a) In relation to EU Member States:

It is possible to enforce a foreign decision on seizure of property under the Council Framework Decision 2003/577/ JHA which was implemented into the Polish legal order in Chapter 62b of the Code of Criminal Procedure.

a) In relation to non-UE states:

Seizure of property may be performed under article 585 pkt 3 CPC and article 607 CPC in execution of a foreign MLA request. The request might also be executed on the basis of bilateral or multilateral international agreement or the reciprocity principle. Polish authorities when executing an MLA request apply provisions of the Polish domestic law.

As indicated in preceding articles as a result of MLA request 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.

*Article 588 of the CCP*

*§ 1. Courts and state prosecutors offices shall give judicial assistance when requested by letters rogatory, issued by the courts and the state prosecutors’ offices of foreign states.*

*§ 2. The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.*

*§ 3. The court and the state prosecutor may refuse to give judicial assistance if:*

*(1) the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,*

*(2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or*

*(3) the request is concerned with an act which is not an offence under Polish law.*

*§ 4. Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Republic of Poland.*

*Article 607 of the CCP*

*§ 1. Jurisdiction to enforce a request of a foreign State, seeking for objects constituting material evidence or obtained by the offence, shall be vested in the state prosecutor or the court, depending on at whose disposal these objects have been deposited.*

*§ 2. The order on the delivery of objects should list the material objects subject to surrender to the foreign State, and indicate what objects shall be returned after the criminal proceedings conducted by the agencies of that foreign State have been concluded.*

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Examples of cases:

1. In years 2015-2017 units of the Polish prosecution office executed 10 MLA request for seizure of property.

2. In 2015, the Regional Prosecutor's Office in Białystok executed a MLA request made by the Voivodship Prosecutor's Office in Prague to seize mobile phones originating from the theft committed in the period of between 15 and 16 June 2014 in the Prague-East District. 800 pieces of iPhone S5 mobile phones of a total value of 500 000 EUR were stolen from a Fiat Ducato vehicle to the detriment of the RICO company based in Poland. Unfortunately only one mobile phone was seized and handed over to Voivodship Prosecutor's Office in Prague.

3.The Regional Prosecutor's Office in Jelenia Góra on the basis of art. 588 § 1 CPC executed the MLA request of the Public Prosecutor's Office in Frauenfeld (Switzerland) of August, 23, 2017, concerning blocking up to CHF 2,000 on the Łukasz Jurecki’s banking account opened in Bank Zachodni WBK. Łukasz Jurecki was charged of stealing at least 30 smartphones worth PLN 38,000 between 14 and 15 August 2017 in Switzerland.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Unless further clarifications are provided, the response provided by the State under review partially satisfies the requirements of article 55, paragraph 1, of the Convention. This provision refers to the possibility of confiscation following a request from a requesting foreign State or a confiscation order issued by that State. Clearly, the responses and examples provided by the State under review deal rather with freezes or seizures.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Examples of enforcement concern the freezing and seizure of assets at the request of a foreign State.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

*Art. 607h. Seizure of objects.*

*§ 1. A competent court or public prosecutor may submit a motion to a competent judicial authority of the executing State to seize and surrender objects acquired as a result of the offence or used or intended to be used to commit an offence, as well as property which may be produced as evidence in the case, such as objects, correspondence, messages, lists of telephone calls or other transfers of information, data stored in an information system or on a storage device, including correspondence sent by e-mail.*

*§ 2. The seizure and surrender of evidence and objects referred to in § 1 may also be requested if the execution of the warrant is not possible because the requested person has died or gone into hiding.*

*§ 3. The items referred to in § 1 is returned to the executing State, if they are surrendered on condition of being returned or if they should be returned to the aggrieved party or to another entitled entity in the territory of the executing State.*

*§ 4. Provisions of Chapter 62a apply accordingly.*

*Art. 611d. Securing property.*

*§ 1. If during the proceedings such circumstances occur which justify the issue of an order to secure property due to the risk of confiscation of objects or property constituting material benefit obtained as a result of an offence, and these objects or property are located in the territory of a foreign State, the court and in preparatory proceedings the public prosecutor may, through the intervention of the Minister of Justice, submit a motion to a competent authority of this State to secure objects or property subject to confiscation.*

*§ 2. If the authority of a foreign State files a motion for the enforcement of a final and binding order to secure property, and this property is located in the territory of the Republic of Poland, the order is executed by the district court or public prosecutor, in whose circuit the property is located.*

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See the response to preceding paragraph.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The response given by the State under review is consistent with the provisions of article 55, paragraph 2.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

The examples of application provided are consistent with article 55, paragraph 2.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment

Paragraph 3 of article 55

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See the response to preceding paragraph.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See the response to preceding paragraph.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

The examples of application provided are consistent with article 55, paragraph 3.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Paragraph 4 of article 55

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See the response to preceding paragraph.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See the response to preceding paragraph.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The decisions and measures provided for in paragraphs 1 and 2 of Article 55 shall be executed in accordance with Polish domestic law (in particular the Code of Criminal Procedure), and on the basis of bilateral and multilateral conventions and other arrangements, in this case EU Council Framework Decision 2003/577/JHA.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Examples of implementation were provided by the State under review.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Paragraph 5 of article 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please provide a reference to the date these documents were transmitted, as well as a description of any documents not yet transmitted.

The relevant documentation has been attached to the self assesment.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The country under review indicated that it had attached relevant laws and texts to its responses to the self-assessment checklist.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

The implementation of the provision is effective.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Poland requires MLA request for any action to be taken regarding asset recovery, confiscation etc. from a foreign country. However Poland does not require a treaty to reneder MLA. Poland renders MLA on the basis of reciprocity unless it violates Polish legal order or Polish domestic law.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

As it has been indicated before Poland does not require a treaty to render MLA, however in cooperation with countries that so require Poland uses UNCAC as basis for international cooperation e.g. with Canada.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

While not requiring a treaty for mutual legal assistance requests, Poland indicated that it could use UNCAC as a legal basis for cooperation.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

The country under review provided an example of cooperation with Canada on the basis of UNCAC.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

The example of cooperation with Canada on the basis of UNCAC is a good practice to be highlighted.

Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Assistance may be refused if the requested action is in conflict with the legal order of the Republic of Poland or would constitute an infringement of its sovereignty.

It may also be refused if:

-requested action lies beyond the scope of activity of the court or the public prosecutor under the Polish law,

-the foreign State in which the request for legal assistance has originated does not guarantee reciprocity in such matters,

-the request concerns an act which is not a criminal offence under the Polish law. If the assistance requires special proceedings or a special form it may be rendered, unless this is in conflict with the principles of the legal order of the Republic of Poland.

There are no specific rulesregarding deadlinefor the requesting state to provide information on property to be seized on the territory of Poland. In case of requests from non-EU countries, the Polish public prosecutor would use all available channels of communication to contact the requesting state and obtain additional information that would help to identify and trace property at stake. If no more information were provided, the request would be executed on the basis of information gathered.

In case of the EU Member States, the Polish authorities would use a certificate provided by the requesting country, containing all important information enabling the execution of a seizure order.

If the certificate was incomplete or manifestly did not correspond to the seizure order, the competent Polish court or public prosecutor, would consults the requesting country in an effort to obtain all important information allowing for identification of property to be seized.

If the information obtained does not allow to establish the location of the property, the public prosecutor immediately notifies the competent judicial authority of the requesting state of the impossibility of executing the order.

Polish Criminal Procedure Code does not specify any *de minimis* threshold for international cooperation on seizure of property.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Examples will be provided orally during country visit.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Unless further information is provided, the elements of the responses provided by the country under review do not meet the requirements of article 55, paragraph 7, of the Convention.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Examples of applications are expected, as stated by the country under review.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Paragraph 8 of article 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Polish domestic law does not provide for in a such provision however international agreements Poland is a party to as well as common practice indicates that prior to the refusal of a MLA request Poland asks the requesting country to provide supplementary information in relation to the request.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

This is a common practice applicable in cooperation with many countries. Case examples could be presented orally during a country visit.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Even if there is no text, the practice of the country under review is consistent with article 55, paragraph 8.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Application examples are awaited for consideration.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

Paragraph 9 of article 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to Article 607.

§ 1. The jurisdiction to resolve requests filed by a foreign state, seeking delivery of objects constituting physical evidence or having been obtained by a crime, shall be vested in the public prosecutor or the court, depending on at whose disposal these objects have been deposited. Article 588 § 2 and § 4 shall apply accordingly.

§ 2. The decision on the delivery of objects shall list the objects subject to surrender to the foreign state and indicate the objects which shall be returned after the criminal proceedings conducted by the bodies of that foreign state are concluded.

Article 611fw.

*§ 1. The execution of a ruling on forfeiture of financial benefit or its equivalent shall be refused in the part in which the ruling has been based on the allegation as to the criminal origin of that benefit, other than allegation that:*

*[...] there is a justified concern that the execution of the ruling would infringe rights of third persons.*

Article 607h.

*§ 1. the competent court or prosecutor may request the judicial authority of the warrant executing state to seize and transfer objects directly from the criminal offence, objects that have been used or have been intended for committing the criminal offence, or those that might serve as evidence in the case of objects, correspondence, parcels, lists of telecommunication connections or other transmissions of information or data stored in an information technology system or on a carrier, including correspondence sent by electronic mail.*

*§ 2. A seizure and conveyance of evidence and objects referred to in § 1 may be requested, also when the execution of the warrant is not possible because of the death or escape of the wanted person.*

*§ 3. Conveyed objects referred to in § 1 shall be returned to the warrant executing state if at their extradition their return has been guaranteed or when they are subject to return to the injured or another eligible entity staying in the territory of the warrant executing state.*

*§ 4. Provisions of Chapter 62a shall apply accordingly.*

Legal provisions ensuring the protection of the rights of third parties acting in good faith are included in the Penal Code and in the Act of 10 September, 1999 - the Penal Fiscal Code.

Provisions of the above mentioned acts guarantee the possibility of challenging incidental procedural decisions on seizure of property.

The general rule laid down in the Penal Code provides the exclusion of forfeiture if certain assets are to be returned to victims or authorized third parties.

This solution concerns the forfeiture of items and benefits derived from crime and the instrumentalities used to commit it. The said principles have been provided for by the following provisions:

*Article 44 § 5. Forfeiture of the items specified § 1 or 2 shall not be applied, if they are subject to return to the victim or another entity.*

*Article 45. § 1 (…) Forfeiture shall not be applied as a whole or in part if the benefit or its pecuniary equivalent is subject to return to the victim or another entity.*

*Article 45a §1 (…)Forfeiture shall not be applied as a whole or its part if the benefit or its pecuniary equivalent is subject to return to the victim or another entity.*

*Article 299 § 7 (…)Forfeiture shall not be applied as a whole or in part if the item, the benefit or its pecuniary equivalent is subject to return to the victim or another entity.*

*In case of seizure of property, decisions in this regard are taken by the court at the stage of the trial, and in the event of property seizure applied in the course of the investigation, the court recognizes the appeal against the relevant decision of the prosecutor.*

*This has been stated in Article 293 of the Code of Criminal Procedure.*

*Article 293. § 1. The order on seizure of property shall be issued by the court or, in the course of investigation, by the state prosecutor. (…)*

*§ 3. The order on seizure shall be subject to interlocutory appeal. Article 254 § 2 applies accordingly.*

Moreover, in the event of seizure of property to which the presumption of origin from a prohibited act applies (Article 45 § 3 CC) and the property has been transfered to third parties, a natural or legal person or an organizational unit without legal personality, may bring an civil action against the State Treasury to determine that the property or part thereof is not subject to forfeiture. Until the final resolution of the case, the enforcement proceedings are suspended. (Article 293 § 7 CCP)

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Examples might be provided orally during a country visit.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Article 611fw enables the State under review to implement the provisions of article 55, paragraph 9.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Application examples are awaited for consideration.

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

None for the moment.

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 56. Special cooperation

Article 56

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Transferring information regarding committed crimes to other states without prior request for mutual legal assistance, is possible on the basis of:

- art. 7 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 (transmission of information on country’s own initiative)

- art. 21 of the European Convention on Legal Aid in Criminal Matters of 20 April 1959

- art. 11 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of November 8, 2001 (transmission of information on country’s own initiative)

- art. 46 section 4 and 5 of the United Nations Convention against Corruption of 31 October 2003

- art. 18 sec. 4.5 of the United Nations Convention against Transnational Organized Crime of November 15, 2000

The provisions of the Conventions, listed in the response to questions regarding summary of information relevant to reviewing the implementation of the article 56 of UNCAC, form a complete and sufficient legal basis for law enforcement cooperation.

Apart from that, international cooperation for law enforcement purposes have been addressed in a number of other legal instruments which include bilateral and multilateral MOUs, treaties and co-operation based on reciprocity.

In particular, Poland is a party to the following international conventions on mutual legal assistance and extradition which contain provisions that might be to some extent applied for asset recovery purposes:

- The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988;

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984;

- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;

- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971;

- European Convention on the Suppression of Terrorism, signed in Strasbourg on 27 January 1977;

- International Convention against the Taking of Hostages, adopted in New York on 18 December 1979;

- Convention on the Physical Protection of Nuclear Material and its Annexes I and II, opened for signature in Vienna and New York on 3 March 1980;

- Convention on the Prevention and Punishment of Crimes against persons enjoying international protection, including Diplomatic Agents, adopted in New York on 14 December 1973;

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988;

- Convention on the Safety of United Nations and Associated Personnel, signed in New York on 9 December 1994;

- International Convention for the Suppression of Terrorist Bombings, adopted by the United Nations General Assembly on 15 December 1997;

- International Convention for the Suppression of the Financing of Terrorism, adopted by the UN General Assembly on 9 December 1999;

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly on 15 November 2000;

- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly on 15 November 2000;

- Convention on the fight against human trafficking and exploitation of prostitution, open for signature at Lake Success, New York, 21 March 1950;

- Single Convention on Narcotic Drugs of 1961, signed in New York on 30 March 1961;

- Convention on Psychotropic Substances, signed at Vienna on 21 February 1971;

- The International Convention for the Suppression of Counterfeiting Currency, signed at Geneva on 20 April 1929 with the protocol and the Optional Protocol, signed on the same day in Geneva;

- Criminal Law Convention on Corruption, signed in Strasbourg on 27 January 1999;

- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December 1997;

In addition, Poland is also a party to the following bilateral agreements on mutual legal assistance in criminal matters:

- Algeria - Poland. Agreement on the legal assistance in civil and criminal matters. Algier, 9 November 1976;

- Saudi Arabia - Poland. Agreement on cooperation in the fight against crime. Warszawa, 25 June 2007;

- Armenia - Poland. Agreement on cooperation in the fight against crime. Warszawa, 6 September 2004;

- Australia - Poland. Agreement on Extradition. Canberra, 3 June 1998;

- Austria - Poland. Agreement on mutual assistance in criminal matters. Vienna, 27 February 1978;

- Austria – Poland. Agreement on cooperation in preventing and combating crime. Vienna, 10 June 2002;

- Belgium - Poland. Convention on Extradition and Mutual Assistance in Criminal Matters. Brussels, 13 May 1931;

- Belgium - Poland. Agreement on cooperation in the fight against organized crime. Brussels, 13 November 2000;

- Belarus - Poland. Agreement on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Matters. Minsk, 26 October 1994;

- Belarus - Poland. Agreement on cooperation in the fight against crime. Minsk, 8 December 2003;

- Bulgaria – Poland. Agreement on legal assistance and legal relations in civil, family and criminal matters. Warszawa, 4 December 1961;

- Bulgaria - Poland. Agreement on cooperation in the fight against crime. Warszawa, 19 June 2002;

- Chile - Poland. Agreement on cooperation in the fight against organized crime. Santiago de Chile, 13 October 2006;

- China - Poland. Agreement on legal assistance in civil and criminal matters. Warszawa, 5 June 1987;

- Cyprus - Poland. Agreement on judicial cooperation in civil and criminal matters. Nicosia, 14 November 1996;

- Cyprus - Poland. Agreement on cooperation in combating organized crime and other forms of crime. Nicosia, 18 February 2005;

- Montenegro - Poland. Agreement on the settlement of bilateral treaties. Podgorica, 23 April 2009;

- Egypt - Poland. Agreement on mutual assistance in criminal matters, transfer of sentenced persons and extradition. Cairo, 17 May 1992;

- Estonia - Poland. Agreement on legal assistance and legal relations in civil , labor and criminal matters. Tallin, 27 November 1998;

- Estonia - Poland. Agreement on cooperation in the fight against organized crime and other crime. Warszawa, 23 June 2003;

- Finland - Poland. Agreement on the legal protection and legal assistance in civil, family and criminal matters. Helsinki, 27 May 1980;

- Finland - Poland. Agreement on cooperation in preventing and combating organized crime and other crimes. Helsinki, 4 November 1999;

- Greece - Poland. Agreement on legal assistance in civil and criminal matters. Athens, 24 October 1979;

- Georgia - Poland. Agreement on cooperation in combating organized crime and other crime. Tbilisi, 31 May 2007;

- Spain - Poland. Agreement on cooperation in combating organized crime and other serious crime. Madrid, 27 November 2000;

- The Hong Kong - Poland. Agreement on mutual legal assistance in criminal matters. Hong Kong, 26 April 2005;

- India - Poland. Agreement on Extradition. New Delhi, 17 February 2003;

- India - Poland. Agreement on cooperation in combating organized crime and international terrorism. New Delhi, 17 February 2003;

- Iraq - Poland. Agreement on legal assistance and judicial cooperation in civil and criminal matters. Baghdad, 29 October 1988;

- Ireland - Poland. Agreement on cooperation in combating organized crime and other serious crime. Warszawa, 12 May 2001;

- Canada - Poland. Agreement on mutual legal assistance in criminal matters. Ottawa, 12 September 1994;

- Kazakhstan - Poland. Agreement on cooperation in combating organized crime and other types of crime. Warszawa, 24 May 2002;

- Korea - Poland. Agreement on legal assistance in civil, family and criminal matters. Phenian, 28 September 1986;

- Cuba - Poland. Agreement on legal assistance in civil, family and criminal matters. Havana, 18 November 1982;

- Libya - Poland. Agreement on legal assistance in civil, commercial, family and criminal matters. Tripoli, 2 December 1985;

- Luxembourg - Poland. Convention on Extradition and Mutual Assistance in Criminal Matters. Luxemburg, 22 January 1934;

- FYR Macedonia - Poland. Agreement on cooperation in combating organized crime and other crime. Warszawa, 16 June 2008;

- Morocco - Poland. Agreement on legal assistance in civil and criminal matters. Warszawa, 21 May 1979;

- Morocco - Poland. Agreement on the Transfer of Sentenced Persons. Rabat, 30 June 2008;

- Mexico - Poland. Agreement on cooperation in combating organized crime and other crime. Mexico, 25 November 2002;

- Moldova - Poland. Agreement on cooperation in combating organized crime and other crime. Kishinev, 22 October 2003;

- Mongolia - Poland. Agreement on legal assistance and legal relations in civil, family and criminal matters. Warszawa, 14 September 1971;

- Russia - Poland. Agreement on legal assistance and legal relations in civil and criminal matters. Warszawa, 16 September 1996;

- Syria - Poland. Agreement on legal assistance in civil and criminal matters. Damascus, 16 February 1985;

- Tajikistan - Poland. Agreement on cooperation in the fight against crime. Warszawa, 27 May 2003;

- Thailand - Poland. Agreement on the transfer of criminals and cooperation in the enforcement of judgments in criminal matters. Bangkok, 19 April 1997;

- Thailand - Poland. Agreement on mutual assistance in criminal matters. Bangkok, 26 February 2004;

- Tunisia - Poland. Agreement on legal assistance in civil and criminal matters. Warszawa, 22 March 1985;

- Turkey - Poland. Agreement on mutual assistance in criminal matters, extradition and transfer of sentenced persons. Ankara, 9 January 1989;

- Turkey - Poland. Agreement on cooperation in combating terrorism, organized crime and other crime. Ankara, 7 April 2003;

- Ukraine - Poland. Agreement on legal assistance and legal relations in civil and criminal matters. Kiev, 24 May 1993;

- US - Poland. Agreement on Extradition. Washington, 10 July 1996;

- US - Poland. Agreement on the application of the Agreement between the Republic of Poland and the United States of America on extradition, signed on 10 July 1996, in accordance with Article 3, paragraph 2 of the Agreement on extradition between the European Union and the United States of America, signed in Washington on June 25, 2003. Warsaw. 2006.06.09;

- US - Poland. Agreement on mutual legal assistance in criminal matters. Washington. 1996.07.10;

- US - Poland. Agreement on the application of the Agreement between the Republic of Poland and the United States of America on Mutual Legal Assistance in Criminal Matters, signed on 10 July 1996, in accordance with Article 3, paragraph 2 of the Agreement on Mutual Legal Assistance in Criminal Matters between the European Union and the United States of America , signed in Washington on 25 June 2003. Warszawa. 2006.06.09;

- Uzbekistan - Poland. Agreement on cooperation in combating organized crime. Tashkent, 21 October 2002;

- Vietnam - Poland. Agreement on legal assistance and legal relations in civil, family and criminal matters. Warszawa, 22 March 1993;

- Vietnam - Poland. Agreement on cooperation in combating organized crime. Warszawa, 28 July 2003.

- The Kingdom of Great Britain and Northern Ireland - Poland. Treaty on extradition of fugitive criminals. Warszawa, 11 January 1932.

A proactive cooperation for asset recovery purposes is also conducted by The Police Headquarters which performs the tasks of the National Asset Recovery Office.

On 5 December 2008, the Chief Commander of the Police established, within the structure of the Criminal Bureau of Police Headquarter, the Asset Recovery Office, which performs the function of the National Asset Recovery Office (Polish ARO) - the only and central contact point for international exchange of information on assets derived from crime. The exchange of information on the ARO platform between its individual national offices takes place through a secure Europol information exchange channel - Siena.

Apart from the Member States of the EU, the exchange of information on establishing and recovering criminal assets is carried out using the Camden Asset Recovery Interagency Network (CARIN), where the Polish contact point is an officer of the Asset Recovery Office of the Criminal Bureau of the Police Headquarters.

As part of functionality enhancement, ARO was involved in projects developed by EU organisations, such as the international network of experts on asset recovery CARIN (in which ARO held the presidency of the steering group in 2018 on behalf of the Polish Police). In addition, it has been involved in developing the cooperation of the EU Asset Recovery Offices (AROs) network in integration with the ARIN South America, ARINSA North Africa and development cooperation with candidate countries.

Additionally, the Polish FIU may exchange information with the FIUs whose countries have ratified the Council of Europe Convention on the Laundering, Disclosure, Seizure and Confiscation of Proceeds of Crime adopted in 2005 (Warsaw Convention II). The above-mentioned document, ratified by Poland, provides that the FIU “shall exchange among themselves, on their own initiative or upon request, in accordance with this Convention or with existing or future Memoranda of Understanding (MOU) consistent with this Convention, all available information which may be relevant for the processing or analysis of information or, where appropriate, for the conduct of investigations by the FIU relating to financial transactions associated with money laundering and related legal or natural persons”.

Moreover, a wide range of bilateral cooperation agreements were signed between the Central Anti-Corruption Bureau (CBA) and:

- Austria – agreement concluded on 14 and 24 November 2014 with the Federal Bureau of Anti-Corruption (BAK) in the field of mutual support of the „SIENA for Anti-Corruption Authorities (S4ACA)” co-financed from the EU Programme „Prevention of Fight against Crime 2007-2013 (ISEC)”. The purpose of the SIENA (Secure Information Exchange Network Aplication) was primarly to promote and develop cooperation between law enforcement agencies, other anti-corruption authorities and EUROPOL. Connecting CBA in 2016 to this application enables direct exchange of information – via EUROPOL – with foreign partners. The project was succesfully completed in October 2016;

- Belgium – an agreement signed on 16 January 2018 with the Directorate of Economic and Financial Crime of the Federal Judicial Police in the area of exchange of information and experience, organization and participation in training and study visits, support in operational and investigative activities;

- Bulgaria – an agreement signed on 16 January 2019 with the Commission for Anti-Corruption and Illegal Assets Forfeiture (CAIAF) in the field of investigative, operational, control and analytical activities, traning officers, exchanging experts, organizing study visits, exchanging information and experience and mutual promotion of educational activities;

- EUBAM – agreement with European Union Border Assistance Mission for Moldova and Ukraine signed on 8 December 2011 in the field of training, organization of study visits, mutual promotion of anticorruption and educational activities;

- Lebanon – on 13 February 2018 a letter of intent was signed, regarding willingness to sign a cooperation agreement with the State Ministry for Combating Corruption of Lebanon;

- Lithuania – an agreement signed on 25 March 2015 with the Special Investigation Service of the Republic of Lithuania (STT) in the scope of exchange of information and experience, support of joint projects and initiatives;

- Moldova – an agreement signed on 30 September 2015 with the National Anticorruption Center (NAC) in the field of preventing corruption, and strengthening existing cooperation.Subsequent agreement with NAC was concluded on 20 April 2017 and concerned licensing NAC to use anti-corruption e-leatning platform created by CBA;

- The Netherlands – an agreement signed on 21 September 2006 with the National Police Internal Investigation Department (Rijksrecherche) and the Ministry of Justice in the field of exchange of experience and analytical information;

- Palestine – an agreement signed on 22 October 2019 with the Anti-Corruption Commision of the State of Palestine, in the field of cooperation in organization of specialized trainings, exchange of experts, information and best practices;

- Ukraine – agreement signed on 12 May 2016 with the National Anti-Corruption Bureau of Ukraine (NABU) in the field of investigative, operational, control and analytical activities, traning officers, exchanging experts, organizing study visits, exchanging information and experience and mutual promotion of educational activities. Subsequent agreements signed on 22 September and 4 October 2017 in the field of support during operational and analytical activities, particularly in the field of preventing corruption threats, in accordance with the Agreement between the Government of Ukraine and the Government of the Republic of Poland on mutual support.

If the other State is regarded as an injured party in a criminal proceedings and the proceedings is finalized with an indictment, the act of indictment is required by Article 333 § 3 of the Criminal Procedure Code to contain a list of the injured persons for the court's information.

Moreover, pursuant to Article 334 § 2 of the Criminal Procedure Code, the public prosecutor is obliged to notify the injured person that the indictment has been transmitted to the court.

On receipt or transmitting information, Poland is not required to disclose it to concerned persons.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Due to the decentralized turnover of the MLA requests, the relevant statistical data on application of the legal tools listed above, is not available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The State under review has taken legislative and other measures to implement the relevant provision of the Convention.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

No examples of concrete applications are given.

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

None for the moment.

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 57. Return and disposal of assets

Paragraph 1 of article 57

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In response to the basic principles of criminal procedure, including the principle that criminal proceedings should use appropriate measures provided for in law in order to respect the legally protected interests of the injured party in the proceedings, Poland has implemented several legal institutions and solutions to ensure that this principle is actually respected.

The most recent amendments to criminal law and some other statutes, adopted in the Act of 23 March 2017 amending the Criminal Code and some other statutes (Journal of Laws of 2017, item 768) introduced some new provisions on the forfeiture of enterprises used in the perpetration of a criminal offence or to conceal proceeds of crime; provisions that extended the application of confiscation by modifying the provisions on the forfeiture of proceeds of crime, by extending the period of “presumed possession of assets obtained through criminal activities” and by adding a new measure to Article 291 of the Code of Criminal Procedure.

Art. 44a. of the Criminal Code

*§ 1. In the event of a conviction for an offence from which the perpetrator has obtained, even indirectly, a material benefit of considerable value, the court may order the forfeiture of the enterprise owned by the perpetrator or its equivalent, if the enterprise was used to commit that crime or to hide the benefit derived from it.*

*§ 2. In the event of conviction for an offence from which the perpetrator has obtained, even indirectly, a material benefit of considerable value, the court may order the forfeiture of the enterprise owned by a natural person other than the perpetrator, or its equivalent, if the enterprise was used to commit the crime or to hide the benefit derived from it, and its owner wanted the company to be used to commit this crime or to conceal benefits from it or, anticipating such a possibility, agreed for that.*

*§ 3. In the event of co-ownership, the forfeiture referred to in § 1 and 2, shall be imposed taking into account the will and awareness of each of the co-owners and within their limits.*

*§ 4. Forfeiture referred to in § 1 and 2, shall not be imposed if it would be disproportionate to the seriousness of the crime committed, the degree of the perpetrator's fault or motivation and behaviour of the owner of the enterprise.*

*§ 5. Forfeiture referred to in § 1 and 2 shall not be imposed if the damage caused by the crime or the value of the hidden benefit is not significant in relation to the size of the enterprise's activity.*

*§ 6. The court may waive the forfeiture order referred to in § 2, also in other, particularly justified cases, where it would be disproportionate to the owner of the enterprise.*

*Seizure of property is a provisional measure provided for in the Code of Criminal Procedure with a view to prevent from any dealing, transfer or disposal of property subject to confiscation is.*

*It’s been addressed in Chapter 32 CPC, which reads as follows.*

*Art. 291. § 1. In the event of charging the accused with an offense for which or in relation to which it can be imposed:*

*1) a fine,*

*2) pecuniary consideration,*

*3) forfeiture,*

*4) compensatory measure,*

*5) reimbursement to the victim or other authorized entity of financial benefit that the perpetrator obtained from the committed crime or its equivalent*

*execution of this judgment may be ex officio secured on the property of the accused or on the property referred to in art. 45 § 2 of the Criminal Code, if there is a justified concern that without such securing the execution of the ruling will be impossible or significantly impeded.*

*§ 2. Securing of enforcement of the ruling referred to in § 1 point 3 or 5 may also performed on the property of a natural person referred to in art. 44a of the Criminal Code, or a natural or legal person or organizational unit without legal personality referred to in art. 45 § 3 of the Criminal Code, or on property that would be subject to forfeiture pursuant to Art. 45a § 1 or 2 of the Criminal Code and art. 33 § 3, art. 43 § 1 or 2 or art. 43a of the Fiscal Criminal Code.*

*§ 2a. Securing of enforcement of the ruling regarding the return of a financial advantage or its equivalent or the ruling of forfeiture of a benefit or its equivalent to an obligated entity specified in art. 91a may be performed ex officio on the property of this entity.*

*§ 3. Enforcement of court’s ruling on costs may also be ex officio secured on the property of the accused, if there is a justified concern that without such securing the enforcement of the ruling in this respect will be impossible or significantly impeded.*

*§ 4. Seizure of property should be immediately or completely revoked if the reasons for its appliction in a given size cease to exist or reasons justifying its revocation even in part occur.*

*(…)*

*Article 292. § 1. Seizure shall be obtained as provided for in the Code of Civil Procedure.*

*§ 2. The securing of the impending penalty of the forfeiture of material objects shall consist in the seizure of movables, liabilities and other property rights, and in the prohibition of selling and encumbering the real estate. This prohibition shall be disclosed in the land and mortgage register or, in its absence, in the set of documents filed. If necessary, the court may provide for the administration of the real estate and/or of the firm owned by the accused.*

*(…)*

*Art. 292a. § 1. Securing enforcement of the ruling referred to in art. 291 § 1, may also take form of establishing a compulsory management of the enterprise and appointing a manager. The decision specifies the enterprise or its organized part and indicates the administrator from among the persons having a restructuring advisor license, referred to in the Act of 15 June 2007 on the restructuring advisor license (Journal of Laws of 2016, item 883 and 2018 item 398).*

*§ 2. In the course of investigation, the order to seizure of property by establishing a compulsory management is issued by the prosecutor. The decision is subject to court approval.*

*§ 3. After issuing the decision referred to in § 2, the prosecutor shall, within 7 days at the latest, apply to the court for its approval. The court shall decide on the approval within 7 days from the day of delivering the order*

*§ 4. The seizure shall be waived as soon as the court decision on the refusal to approve the order referred to in § 2 becomes final.*

*§ 5. Approval of the prosecutor’s order on seizure shall be decided on at the request of the prosecutor by the district court in whose judicial circuit the investigation is conducted, and after the indictment by the court in which the case is pending*

*§ 6. After the indictment has been filed, the ruling on seizure by establishing a compulsory management is issued by the court before which the case is pending.*

*§ 7. The court’s ruling on seizure of property or on approval of the order of prosecutor on seizure of property may be appealed by the parties, the victims and the owner or person managing the enterprise on his behalf.*

*§ 8. The manager ensures the work of the seized enterprise to be carried on and provides the court or the prosecutor with information that is relevant to the pending proceedings, in particular on the manner and circumstances of using this enterprise to commit a crime or to hide the benefit derived from it, and about things and documents that may constitute evidence in the case.*

*§ 9. The manager draws up a list of the company's assets and property rights and hands it over to the prosecutor or court that issued the order on seizure. The owner or other person managing the enterprise on his behalf may request the prosecutor or court to exclude certain assets or property rights from the seizure.*

*§ 10. The decision on the exclusion of certain assets or property rights from sezure may be appealed by the parties, the victims and the owner or other person managing the enterprise on his behalf.*

*Art. 292b. The seizure referred to in art. 292a § 1, may also be applied in regard to a collective entity within the meaning of the Act of 28 October 2002 on the liability of collective entities for offenses under penalty of punishment (Journal of Laws of 2018, items 703 and 1277), if the evidence collected indicates a high probability that this entity may be subject to liability under this Act.*

*Article 293. § 1. The order on seizure of property shall be issued by the court or, in the course of investigation, by the state prosecutor.*

*§ 2 The order specifies the extent and manner of seizure, taking into account the size of the fine, penalty, forfeiture or compensatory measures that can be imposed in the circumstances of the case. The size of the seizure should correspond to the needs of what it is to secure. The requirement to determine the amount of seizure does not apply to seizure of the object derived directly from the crime or serving or intended to its commission.*

*§ 3. The order on seizure shall be subject to interlocutory appeal. Article 254 § 2 applies accordingly.*

*(…)*

*§ 7. A natural or legal person or an organizational unit without legal personality referred to in art. 45 § 3 of the Criminal Code, may bring an civil action against the State Treasury to determine that the property or part thereof is not subject to forfeiture. Until the final resolution of the case, the enforcement proceedings are suspended.*

*Article 294. § 1. The seizure shall be cancelled if no valid and final judgment is issued imposing: a fine, forfeiture, supplementary payment, pecuniary consideration or obligation to redress damage or to compensate for wrongdoing, and no civil suit for those claims has been filed within three months from the day on which the judgment has become valid and final.*

*§ 2. If such a suit is brought within the time-limit indicated in § 1 the seizure remains valid, unless the civil court decides otherwise in civil proceedings.*

The new measure is the return, to the injured party or any other authorised person or entity, the proceeds that the offender may have earned as a result of a criminal offence, or an amount equivalent to such proceeds (the forfeiture of proceeds of crime or an amount equivalent to such proceeds). Furthermore, Article 47(2a) was added to the Criminal Code, i.e. the measure of returning, to the injured party, the proceeds from an enterprise used in the perpetration of a criminal offence, if the measure of forfeiture is not applied. The Criminal Code provides that a court may award punitive damages of up to PLN 1,000,000 to the injured party or the Polish Crime Victims and Post-Penitentiary Aid Fund.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Under the provisions that allow for the forfeiture of an enterprise or the proceeds of crime, one order was issued on the forfeiture of an enterprise that was used in the perpetration of a criminal offence. Under the new provisions of Articles 45(2) and 45(3) of the Code of Criminal Procedure, 41 orders were issued to freeze the assets of criminal offenders where it was presumed that the assets had been obtained through criminal activities. The total value of the assets so frozen was PLN 66.850.970.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

In the light of the replies provided by the country under review, it was difficult to get a clear picture of how Poland disposed of confiscated property. However, sufficient emphasis has been placed on restitution to the previous rightful owners.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Examples of freezing and confiscation of proceeds of crime were provided by the country under review, however, it is not clear how the disposal of such confiscated property is carried out.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Paragraph 2 of article 57

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please see responses to preceding paragraphs.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see the response to the preceding paragraph.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Necessary examples may be provided during a country visit.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Polish legislation allows for the restitution of the proceeds of crime (or equivalent value) to the injured party or any other authorized person or entity (including to another State party to the Convention).

However, nowhere is it mentioned that the rights of bona fide third parties could be taken into account in the restitution process.

Rather, when referring to third party rights, Article 611fu of the PPC refers to cases of refusal of restitution.

The experts therefore consider that the State under consideration is partly in conformity with Article 57, paragraph 2 of the Convention.

For information regarding the rights of bona fide third parties, please refer to clarification given to commentary in the section concerning Article 55 paragraph 9 of the UNCAC.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

Application examples are awaited for consideration.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Subparagraph 3 (a) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see the responses to the preceding paragraphs.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Please see responses to the preceding paragraphs.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

While within the general framework of restitution of the proceeds of crime it is possible to return confiscated property to the requesting State, there is no specific provision in Polish legislation indicating that the country under review could waive the requirement of a final judgement.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

The examples of implementation provided by the country under review in the responses to the preceding paragraphs do not correspond exactly to what is required under article 57, paragraph 3 (a). The issue here is restitution on the basis of a final judgement and the possibility of waiving the requirement of such a judgement for the desired purpose.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Subparagraph 3 (b) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(b) In the case of proceeds of any other offence covered by this 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, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Chapter 66d of the Code of Criminal Procedure

Request of a Member State of the European Union for Execution of Ruling on Forfeiture

(excerpt)

*Article 611fu. § 1. If a Member State of the European Union, hereinafter referred to in this Chapter as "ruling issuing state", makes a request for execution of a final ruling on forfeiture, the ruling shall be subject to execution by the district court in whose region the perpetrator possesses assets or achieves income, or has a permanent or temporary place of stay.*

*§ 2. The ruling referred to in § 1, or its copy authenticated as a true copy of the original document, shall be accompanied by a certificate containing all important information making it possible to correctly execute the ruling.*

*§ 3. The court shall immediately proceed to the execution of the ruling of the ruling issuing state. § 4. If the court to which the ruling has been directed does not have relevant jurisdiction to institute*

*further action, it shall forward the ruling to the competent court and notify thereof a competent court or another authority of the ruling issuing state.*

*§ 5. Provisions of the Polish law shall be applied while executing rulings referred to in § 1, unless the provisions of this Chapter provide otherwise. The provision of Article 611c § 3 shall apply accordingly.*

*Article 611fw.*

*§ 1. The execution of a ruling on forfeiture of financial benefit or its equivalent shall be refused in the part in which the ruling has been based on the allegation as to the criminal origin of that benefit, other than allegation that:*

*1) the financial benefit comes from a criminal offence other than one for which the perpetrator has been sentenced, committed after the issuance of a the sentence, even if not final,*

*2) the financial benefit comes from another criminal offence similar to one for which the perpetrator has been sentenced, committed after the issuance of a the sentence, even if not final,*

*3) assets originating from a criminal offence, not covered with the disclosed sources of income of the perpetrator. § 2. The execution of a ruling on forfeiture of a financial benefit or its equivalent, issued on the basis*

*of the allegation referred to in § 1, may be refused in the part in which the adjudication of forfeiture would be inadmissible pursuant to the Polish law.*

*§ 3. The execution of the ruling referred to in Article 611fu § 1 may be refused if:*

*1) the act in relation to which the ruling has been issued does not constitute a criminal offence pursuant to the Polish law, or forfeiture may not be adjudicated for the criminal offence constituting the basis of the ruling, unless under the law of the ruling issuing state it is a criminal offence listed in Article 607w; the provision of Article 607r § 2 shall be applied accordingly,*

*2) the ruling was not accompanied by the certificate referred to in 611fu § 2, or the certificate is incomplete or manifestly incompliant with the content of the ruling,*

*3) the ruling handed over for execution relates to the same act of the same person as to whom criminal proceedings have been finally concluded in a Member State, and the ruling in the scope of forfeiture has been executed,*

*4) under the Polish law, the execution of the penalty became barred by the statute of limitations, and the criminal offences concerned were subject to jurisdiction of Polish courts,*

*5) the ruling relates to criminal offences which, pursuant to the Polish law, were committed in whole or in part in the Republic of Poland, as well as on board of a Polish vessel or aircraft,*

*6) the ruling relates to criminal offences committed outside the territory of the ruling issuing state, and the Polish law does not allow for the prosecution of the criminal offences of that type if committed outside the Republic of Poland,*

*7) the perpetrator is not subject to jurisdiction of Polish criminal courts or the required permission for their prosecution is not present,*

*8) from the content of the certificate referred to in Article 611fu § 2, it results that the ruling was issued in absence of the perpetrator, unless:*

*a) the perpetrator had been summoned to participate in or had been notified in another manner of the date and place of the trial or session, and advised that failure to appear would not prevent issuance of the ruling, or the perpetrator had a defence counsel who had been present at the trial or session,*

*b) after a copy of the ruling had been served on the perpetrator along with advice of their right, time frame and manner of submission in the issuing state of injunction of a motion for new court proceedings to be conducted with participation of the perpetrator in relation to the same case, the perpetrator failed to file such a motion within the statutory time frame or declared that they did not object to the ruling,*

*9) the criminal offence covered with the ruling, in the case of jurisdiction of Polish criminal courts, is subject to pardon on the basis of amnesty,*

*10) there is a justified concern that the execution of the ruling would infringe rights of third persons. § 4. If the information provided by the ruling issuing state is not sufficient to decide as to the*

*execution of the ruling on forfeiture, the court shall request the competent court or another authority of the ruling issuing state to supplement the information within a specified time limit.*

*§ 5. If the time limit referred to in § 4 is not observed, the decision as to the execution of the ruling shall be issued on the basis of the information provided earlier.*

*§ 6. If the execution of the ruling is not possible due to factual or legal reasons, the court shall immediately notify the competent court or another authority of the ruling issuing state.*

*Article 611fx.*

*§ 1. The court shall examine the case of execution of the ruling imposing forfeiture in a session in which the public prosecutor, the perpetrator - if the latter stays in the Republic of Poland, and their defence counsel - if the latter appears in the session, as well as a third person whose rights may be infringed by the execution of the ruling, may participate. If the perpetrator does not stay in the Republic of Poland and does not have a defence counsel, the president of the court competent to examine the case may appoint for them an ex officio defence counsel.*

*§ 2. The decision of the court as to the execution of the ruling on forfeiture may be contested by the parties and by the third person referred to in § 1. The court which has issued the decision shall notify the competent court or another authority of the ruling issuing state of the complaint.*

*§ 3. A final ruling on forfeiture along with the enclosed certificate constitutes an enforcement order and is subject to execution in the Republic of Poland after a decision is issued on its execution.*

*Article 611fy. § 1. The proceedings related to the execution of the ruling referred to in Article 611fu § 1 may be suspended by the court if:*

*1) request relating to the cash amount has been submitted to more than one Member State, and it is probable that, as a result of the execution of the ruling in a number of Member States, a higher amount shall be subject to forfeiture than the one defined in the ruling,*

*2) execution of the ruling could impede pending criminal proceedings, 3) assets may be subject to forfeiture in proceedings pending in Poland, 4) the court deems it necessary to translate the ruling into Polish.*

*§ 2. The decision as to the suspension of proceedings may be contested by the parties and by the third person referred to in Article 611fx § 1. The court which has issued the decision shall notify the competent court or another authority of the ruling issuing state of the suspension of proceedings and reasons thereof.*

*§ 3. If proceedings are suspended, the court may secure execution of the ruling ex officio. The provisions on property security on assets of the accused shall apply accordingly.*

*Article 611fz. If assets subject to enforcement are not sufficient to execute two or more rulings referred to in Article 611fu § 1, issued against the same person and pertaining to a cash amount, or two or more rulings pertain to a specific asset, the court shall adjudicate in aggregate as to the execution of the rulings in part or in whole.*

*Article 611fza. § 1. If the perpetrator or other person presents a proof of execution, in whole or in part, of the ruling referred to in Article 611fu § 1, the court, before it issues a decision as to the execution of that ruling, shall request the competent court or another authority of the ruling issuing state to confirm the payment made.*

*§ 2. The amounts obtained earlier under forfeiture in the ruling issuing state or in the ruling executing state shall be included on account of the amount subject to enforcement.*

*Article 611fzb. § 1. The amount obtained under the execution of the ruling referred to in Article 611fu § 1, not exceeding an equivalent of EUR 10,000, constitutes income of the state budget. In other cases, the ruling issuing state shall transfer half of the amount obtained to the bank account indicated by the competent court or another authority of that state.*

*§ 2. Assets other than cash, obtained under the execution of the ruling referred to in § 1, shall be liquidated pursuant to the provisions on collection of financial payments in enforcement proceedings in administration. The provision of § 1 applies accordingly to the amount obtained from enforcement.*

*§ 3. In justified cases, the court may refrain from liquidation of the assets referred to in § 2 and transfer them to the competent court or another authority of the ruling issuing state. If the request covers forfeiture of a cash amount, the transfer may take place only upon consent of that court or authority.*

*§ 4. The court shall refuse to surrender to the ruling issuing state the collected objects which are cultural goods constituting part of the national cultural heritage.*

*§ 5. The Minister of Justice may enter into an agreement with the competent authority of the ruling issuing state as to the manner of execution of a ruling on forfeiture, in particular providing for a different distribution of the amounts obtained under the execution of the ruling than referred to in § 1.*

*§ 6. If the agreement referred to in § 5 is concluded, the court, upon request of the competent court or another authority of the ruling issuing state, shall transfer, in whole or in part, the amount or assets other than cash, enforced under the execution of the ruling, in accordance with the agreement.*

*Article 611fzc. Upon receiving the information from the competent court or another authority of the ruling issuing state that the ruling handed over for execution is not subject to further execution, the court shall immediately issue a decision on the discontinuance of the enforcement proceedings.*

*Article 611fzd. The competent court or another authority of the ruling issuing state shall be immediately notified of the content of the decision related to the execution of the ruling on forfeiture as well as of the termination of the enforcement proceedings. Such a notification may be transmitted also with the use of equipment used for automatic data transmission, in a manner that allows to verify the authenticity of such documents.*

*Article 611fze. § 1. The costs connected with the execution of the ruling referred to in Article 611fu § 1 shall be borne by the State Treasury. In justified cases, the court may make a request to the competent court or another authority of the ruling issuing state for reimbursement of a part of the expenses incurred. The request shall be accompanied by a detailed list of expenses along with a proposal of their distribution.*

*§ 2. If the State Treasury is liable for the loss inflicted as a result of execution of a ruling on forfeiture issued by a judicial authority of the ruling issuing state, the State Treasury shall make a request to the competent authority of that state for reimbursement of the cash amount constituting the equivalent of the damages paid.*

*§ 3. The provision of § 2 shall not apply if the loss is the only result of the action or omission of the Polish authority.*

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No such examples available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The above legislative measures indicated by the country under review do not meet the requirements of article 57, paragraph 3 (b), of the Convention.

This concerns the restitution of confiscated property (other than in cases of embezzlement) to the requesting State, -on the basis of a final judgment or otherwise, of a prior property right, or where the requested State recognises damage to it.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

No statistics or specific implementation mechanisms exist.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Subparagraph 3 (c) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please see the response to the preceding paragraph.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Case examples are not available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The Criminal Code, as amended by the Act of 23 March 2017 and article 607 of the CPC, allows the State under review to take into account the provisions of article 57, paragraph 3 (b), of the Convention.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

No application examples were provided.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Paragraph 4 of article 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to the Article 618. § 1. of the CCP

The expenses incurred by the State Treasury shall include, in particular, the payments made under:

1) service of summons and other documents,

2) transportation of judges, public prosecutors, and other persons, necessitated by the procedural actions,

3) bringing and transportation of the accused, witnesses and expert witnesses,

4) inspections and examinations undertaken in the course of the proceedings, and the transmission, storage, and sale of seized objects,

5) announcements in periodicals, radio and television,

6) execution of a ruling, including a ruling to secure impending penalties affecting property, if such penalties have been adjudicated, save for the costs of maintaining the sentenced persons in penal establishments, and the cost of staying in medical institutions during psychiatric observation,

7) fees and amounts due to the witnesses and interpreters,

8) costs of mediation proceedings,

9) fees of expert witnesses or institutions designated to provide opinions or issue a certificate, including costs of issuing a certificate by a court physician,

9a) costs of psychiatric observation of the accused, save for the fees of expert psychiatrists,

10) fees prescribed for obtaining information from the register of sentenced persons,

11) cost of legal assistance provided ex officio by solicitors or legal assistance and not paid by the parties,

12) lump sum fee of a probation officer for conducting the community inquiry referred to in Article 214 § 1,

13) implementation of international agreements to which the Republic of Poland is a party, and proceedings carried out on the basis of Section XIII, also when the decision referred to in Article 303 has not been issued.

§ 2. Unless the amounts and method of calculating the costs described in § 1 are regulated by separate provisions, the Minister of Justice, in consultation with the minister responsible for public finance, shall define, by way of a regulation, the amount of costs and the method of calculating the same, having regard to the actual costs of a given action.

§ 3. In absence of the provisions referred in § 2, any particular cost is determined by the amounts authorised by the court, the public prosecutor, or other body conducting the proceedings.

Article 619. § 1. Unless otherwise provided in the Act, any costs incurred shall be provisionally paid by the State Treasury.

§ 2. The costs of mediation proceedings shall be borne by the State Treasury.

§ 3. The State Treasury shall also bear costs connected with participation of an interpreter in proceedings, in the scope necessary to ensure the right of defence to the accused.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No such example available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

Under article 611fze, the State under review could deduct the costs of proceedings and other expenses incurred in connection with the proceedings leading to the restitution or disposal of confiscated property.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

It is therefore in conformity with article 57, paragraph 4, of the Convention.

*(c)* *Successes* *and* *good* *practices*

[*Identification* *of* *successes* *and* *good* *practices* *in* *implementing* *the* *article,* *where* *applicable.*]

None for the moment.

Paragraph 5 of article 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(N) No

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Poland has not entered into such an international agreement so far.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No such a case example available.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The country under review indicated that it was not in compliance with the relevant provision of the Convention.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

No application examples exist.

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

None

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 58. Financial intelligence unit

Article 58

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The PFIU acts as the central, national agency is responsible for receiving analysing and disseminating to the competent authorities, disclosures of financial information.

According to the Act the duties of the PFIU cover:

1) analysing information related to assets, in relation to which the PFIU has become reasonably suspicious that it is associated with the crime of money laundering or terrorist financing;

2) carrying out of the procedure of transaction suspension or bank account blocking;

3) requesting submission of information on transactions and disclosure thereof;

4) submission of information and documentation justifying the suspicion concerning the commitment for criminal offence to authorised bodies;

5) exchange of information with cooperating units;

6) preparing the national money laundering and terrorist financing risk assessment and strategies on counteracting such criminal offence, in cooperation with cooperating units and obligated institutions;

7) exercising control over the compliance with the regulations on counteracting money laundering and terrorist financing;

8) issuing decisions concerning entering into the list of persons and entities towards which special restrictive measures referred to in Article 117 are applied, or their deleting from the list as well as keeping this list;

9) cooperation with competent authorities of other countries as well as foreign institutions and international organisations dealing with combating money laundering or terrorist financing;

10) imposing administrative penalties referred to in the Act;

11) making knowledge and information in the scope of money laundering and terrorist financing available in the Public Information Bulletin on the website of the office providing services to the minister competent for public finance;

12) information processing according to the procedure defined in the Act;

13) initiating other measures to counteract money laundering and terrorist financing.

As mentioned above the PFIU can cooperate with foreign counterparts exchanging information for the purpose of its use for the performance of tasks by the FIU. The PFIU on request or on an ex officio basis, makes available to foreign FIUs and acquire from them information related to money laundering or terrorist financing, including information on prohibited acts from which assets may originate.

The PFIU actively participates in international and regional institutions and organizations, focused on combating money laundering, including the Egmont Group of Financial Intelligence Units (The Egmont Group), Expert Group on Combating Money Laundering and Financing of Terrorism, the EU-FIU Platform (both European Union bodies), the Council of Europe's Committee of experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL and Eurasian Group on combating money laundering and financing of terrorism (Poland has observer status). The PFIU with a support from the Ministry of Foreign Affairs, continues the endeavours for the membership in the FATF.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See also information provided under Article 14 paragraph 5.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The relevant information provided by the country under review leads to the conclusion that it is in compliance with article 58 of the Convention.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

The examples given relate to the various training and awareness-raising workshops held for FIU members and other associated partner entities.

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

Article 59. Bilateral and multilateral agreements and arrangements

Article 59

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Polish prosecutor's office is not a party to agreements secificly in the field of combating corruption or disposing of property from forfeiture, however is a party to general cooperation agreements with the Dominican Republic (2015) Uzbekistan (2013), Russia (2010), Lithuania (2006) and Ukraine (1998) prosecutor's offices , Bulgaria (1985), Cuba (1987), Hungary (1988), China (1988) and Mongolia (1989).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See the preceding response.

*(b)* *Observations* *on* *the* *implementation* *of* *the* *article*

[*Observations* *of* *the* *governmental* *experts* *with* *regard* *to* *the* *implementation* *of* *the* *article.* *Depending* *on* *the* *scope* *of* *the* *review* *cycle,* *findings* *with* *respect* *to* *the* *way* *in* *which* *national* *law* *has* *been* *brought* *into* *line* *with* *the* *article,* *as* *well* *as* *to* *the* *implementation* *of* *the* *article* *in* *practice.]*

The State under review has concluded bilateral or multilateral arrangements or agreements with several other States.

[*Observations* *on* *the* *status* *of* *implementation* *of* *the* *article,* *including* *successes,* *good* *practices* *and* *challenges* *in* *implementation*.]

There are agreements in place, but the concrete implementation of these agreements is not illustrated either by reports or statistics.

*(c)* *Successes* *and* *good* *practices*

*[Identification of successes and good practices in implementing the article, where applicable.]*

None for the moment.

(d) Challenges, where applicable

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

(e) Technical assistance needs

No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

1. In 2018, ethics and integrity training within the preparatory service was provided by 714 offices (39%). There are approx. 119 thousand civil service corps members working in over 1,800 offices. Source: 2019 Report of the Head of Civil Service. [↑](#footnote-ref-2)
2. <https://www.gov.pl/web/civilservice/legal-framework> [↑](#footnote-ref-3)
3. The report entitled “The position of civil service corps members on ethical issues”, conducted in 2004 by Jacek Kucharczyk, PhD, and Cezary Trutkowski, PhD from the Institute of Public Affairs, a Polish non-governmental organisation, shows that the members of the civil service corps (76% of all respondents) believed, at the time of the survey, in the existence of a civil service ethos, although they were unable to translate this notion of belonging to a group abiding by such professional ethos into specific rules governing their conduct. At that time, the members of the civil service corps were characterised by a low ability to define unethical situations, with the exception of uniformly condemned corrupt practices. One of the most significant factors resulting in the applicable rules being breached was considered to be the absence of effective sanctions for unethical behaviour. [↑](#footnote-ref-4)
4. In August 2008, the Chancellery of the Prime Minister filed a request to selected experts – administrative theorists and practitioners – to express their opinion on the Civil Service Code of Ethics. According to the results of the analysis conducted, the main arguments for the replacement of the 2002 Civil Service Code of Ethics with a new legal act included the ambiguity of regulations contained therein, the absence of guidelines pertaining to the implementation of ethical principles and ensuring compliance therewith, the lack of effectiveness of the ordinance resulting, inter alia, by the absence of any sanctions for non-compliance, the absence of a specialised agency tasked with enforcing compliance (the lack of a specific entity that would be responsible for enforcing compliance with the applicable principles). [↑](#footnote-ref-5)
5. <https://www.gov.pl/web/civilservice/legal-framework> [↑](#footnote-ref-6)
6. OECD Public Governance Review – Poland. Implementing Strategic-State Capacity, 2013, p. 284. [↑](#footnote-ref-7)
7. In that regard cross-checking the information submitted with regard to the implementation of articles 14.1(a), 52.1 and 52.2 of the Convention on the existing regime of beneficial ownership identification in the SPUR may be useful. [↑](#footnote-ref-8)
8. Source: Report of the General Inspector of Financial Information on the implementation of the Act of 1 March 2018 on counteracting money laundering and financing of terrorism in 2019 [↑](#footnote-ref-9)
9. For the years 2016-2017 and for the period until 13 July 2018, the number of requests under Articles 32-33 of *the Act of 16 November 2000 on counteracting money laundering and financing of terrorism* [↑](#footnote-ref-10)
10. For the years 2016-2017 and for the period until 13 July 2018, the number of requests under Article 14 of *the Act of 16 November 2000 on counteracting money laundering and financing of terrorism* [↑](#footnote-ref-11)
11. Courts submitting information requests in relation to the conducted criminal proceedings. [↑](#footnote-ref-12)
12. National Revenue Administration [↑](#footnote-ref-13)
13. Internal Security Agency [↑](#footnote-ref-14)
14. Central Anti-Corruption Bureau [↑](#footnote-ref-15)
15. Military Counter-intelligence Service [↑](#footnote-ref-16)