

## ANNEX 5

### DESCRIPTION OF THE ACTIVITIES OF SELECTED AUTHORITIES AND PUBLIC ADMINISTRATION BODIES INVOLVED IN THE FUNCTIONING OF THE NATIONAL ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING SYSTEM

#### Office of the Polish Financial Supervision Authority

1. In 2017, anti-money laundering and counter-terrorist financing (AML/CFT) controls were carried out on all the categories of obliged entities supervised by the PFSA, in accordance with the provisions of the Act on *16 November 2000 on counteracting money laundering and financing of terrorism*. Compliance checks concerning the terms of the aforementioned Act were carried out according to the comprehensive audit formula (verifying compliance with the obligations transpiring from all the provisions of the Act) and as problem-specific audit (implementation of the PFSA recommendations, clarification of uncertainties arising from the banks' replies to the annual survey assessing the risks of money laundering and financing of terrorism, or clarification of the matters raised in the written instruction by the General Inspector of Financial Information to carry out inspections at selected banks, mentioning wrong registration of bank transfers arriving from abroad).

2. On the other hand, AML/CFT control measures were implemented in 2018 at the obligated institutions in accordance with the *Act of 16 November 2000 on counteracting money laundering and financing of terrorism* and the *Act of 1 March 2018 on counteracting money laundering and financing of terrorism*. The controls were implemented at entities operating in the banking, payment services and capital sectors. The procedures were carried out with due consideration of the European Commission's 2017 report on the supra-national assessment of the risks of money laundering and financing of terrorism within the EU and the recommendations contained therein regarding relevant steps to be undertaken to minimize the identified risks. The report referred to above, with respect to the inspection activities of supervisory authorities, recommended (hereafter the Commission recommendations) that financial market supervisors carry out 'thematic inspections' within 2 years of the report publication date, covering:

- investments of legal persons (especially through brokers);
- private banking;
- activities of payment institutions.

3. In accordance with the Commission recommendations, the inspection covered the method of identifying the beneficial owner, while the inspections at payment institutions specifically included the agent training component. Moreover, safe deposit boxes at banks were identified

by the European Commission as a particularly high risk product, and as such they were also covered by the scope of the Office of the PFSA audit. For cooperative banks, compliance with all the AML/CFT obligations were verified.

4. Allocation of inspection time and type structure of the entities inspected in 2018 was in strict correlation with the Commission recommendations. The allocation of inspection time to specific market sectors is shown in Table 1.

*Table 1 - Allocation of inspection time to specific financial market sectors during 2017-2018*

Item	Percentage of resources allocated to particular sectors	2017	2018
1.	Banking sector	72%	41%
2.	Capital sector	12%	16%
3.	SKOK (Cooperative Savings and Credit Unions)	10%	0%
4.	Life insurance sector	4%	0%
5.	Payment service sector	2%	43%

5. The numbers of inspections carried out at the particular types of entities are presented in Table 2.

*Table 2 - Inspections carried out in the field of AML/CFT in the particular sectors during 2017-2018*

Item	Sector	2017	2018
1.	commercial banks	9	12
2.	cooperative banks	23 <sup>1</sup>	3
3.	security and derivative dealers	3	6
4.	investment fund companies	3	0
5.	life insurance enterprises	2	0
6.	SKOK (Cooperative Savings and Credit Unions)	5	0
7.	national payment institutions	1	16
8.	branches of credit institutions	4	0
<b>Total:</b>		<b>50</b>	<b>37</b>

6. 379 irregularities (including 93 offences) were identified in the course of the AML/CFT inspections in 2017, grouped into 12 categories of irregularities corresponding to the areas audited during the inspections; there were 215 irregularities discovered in 2018, in 12 groups corresponding to the audited areas.

*Table 3 - Irregularities identified at the obliged institutions, divided by areas where they were found, during 2017-2018*

Item	Non-conforming areas	2017		2018	
		Number	Percentage [%]	Number	Percentage [%]
1.	Risk assessment and application of customer due diligence measures	88	23.22%	77	35.81%
2.	Registration of transactions and registry	72	19.00%	8	3.72%
3.	Organization of the anti-money laundering and counter-terrorist financing process	67	17.68%	31	14.42%
4.	Internal procedures	39	10.29%	16	7.44%
5.	Transaction analysis	32	8.44%	12	5.58%
6.	Reporting information to the General Inspector of Financial Information (the GIFI)	26	6.86%	18	8.37%

<sup>1</sup> Whereas the most irregularities were discovered in 2015 and 2016 in the cooperative bank sector, compared to the overall number of inspected entities, an adequately large sample of those entities was covered by the inspections according to the *Inspection Action Plan for 2017*.

7.	Personnel training	20	5.28%	13	6.05%
8.	Internal control system	17	4.49%	17	7.91%
9.	Storage and archiving of records	6	1.58%	1	0.47%
10.	Transaction withholding, account freezing, asset freezing	5	1.32%	4	1.86%
11.	Information associated with money value transfers <sup>2</sup>	1	0.26%	14	6.51%
12.	Other	6	1.58%	4	1.86%
<b>Total:</b>		<b>379</b>	<b>100.00%</b>	<b>215</b>	<b>100.00%</b>

7. The most irregularities were discovered in 2017 in the cooperative bank sector, compared to the overall number of inspected entities: an average of 10.30 irregularities per inspection, with the average value of 7.58 for all the inspections. Irregularity count was highest in the field of risk assessment and application of customer due diligence measures, as well as registration of transactions and registry, and the organization of the anti-money laundering and counter-terrorist financing process. No system-significant irregularities were revealed in any of the inspected sectors.

8. In the SKOK (credit union) sector, most irregularities were found in the same areas as applicable to the banking sector. Yet the number of irregularities was highest in the field of organization of the AML/CFT process, followed by risk assessment and application of customer due diligence measures, and registration of transactions and registry.

9. In the capital sector, irregularities prevailed in the field of risk assessment and implementation of customer due diligence measures, as well as registration of transactions and registry, and internal procedures.

10. The most common errors identified during the 2017 inspections in all the audited financial market sectors were the following:

- inadequate assessment of the risks of money laundering and financing of terrorism, leading to an inadequate level of customer due diligence measures;
- incorrect customization of the risk assessment matrix, leading to customers being inaccurately allocated to relevant categories of risk;
- failing to identify or misidentification of beneficial owners;
- failing to update or late updates of available documents and information, verification of customer risk assessment;
- customers not verified in terms of being politically exposed persons (PEP status);
- non-registration or late registration of transactions;
- inadequate (incomplete or inaccurate) recording of data in the transaction registry;
- insufficient scope, quality and/or frequency of management reporting;
- missing substitution system for persons responsible for AML/CFT;
- breaching the rule of separation of operational functions from supervisory functions;

<sup>2</sup> Cases of failure to consider or incomplete consideration of the provisions of *Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006* (OJ L 141, 5.6.2015, p. 1) (in force as of 26 June 2017) in internal regulations. Because the irregularities were only formal, irregularity information is shown under the ‘internal procedures’ group.

- insufficient IT resources, or resources not fully utilized;
- failure to consider or incomplete consideration of the provisions of *Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006* (OJ L 141, 5.6.2015, p. 1) (in force as of 26 June 2017) in internal regulations;
- failure to adapt the list of high risk industries to the General Inspector of Financial Information (the GIFI) guidelines and market practice;
- failure to adapt the list of high risk countries to the *Financial Action Task Force* communications;
- missing ongoing analysis of all transactions;
- errors in algorithms used in the transaction analysis process;
- late completion of analyses;
- late submission of registered transaction information to the General Inspector of Financial Information (the GIFI);
- insufficient quantity of electronic certificates authorizing submission of transaction information to the General Inspector of Financial Information (the GIFI);
- offering training for newly recruited personnel with a delay, i.e. after the employee concerned has already undertaken any operational duties;
- inefficient functional and/or institutional internal controls;
- failing to cover all the relevant areas with the internal control scope;
- insufficient frequency of inspections;
- retaining data in the transaction registry for a period exceeding that specified in the AML/CFT Act;
- inadequate level of verification of customer database consistency with the sanction lists.

11. Further to the revealed irregularities, the PFSA issued post-inspection recommendations to the management bodies of the inspected entities, requiring the latter to undertake appropriate remedies to prevent future re-occurrence of such irregularities. The PFSA received notice of the method of implementation of such recommendations, and the Department of Banking Inspections of the Office of the PFSA was reviewing such information. Moreover, pursuant to Article 21(4) of the *Act of 16 November 2000 on counteracting money laundering and financing of terrorism*, written reports with inspection outcomes were sent to the General Inspector of Financial Information (the GIFI) in each particular case.

12. In 2017, in accordance with the procedure prescribed in Article 15a(1)(1) of the *Act of 16 November 2000 on counteracting money laundering and financing of terrorism*, the PFSA passed three descriptive notifications to the General Inspector of Financial Information (the GIFI) concerning identification of transactions realised through entities supervised by the PFSA which meet the criteria of transactions potentially related to the money laundering offence, as referred to in Article 299 of the Criminal Code.

13. In the banking as well as brokerage houses and offices sectors, most irregularities were identified in 2018 in the field of risk assessment and application of customer due diligence, which transpires from the problem-specific inspections focused on matters related to identification of beneficial owners.

14. As regards the national payment institutions, irregularities were most common in the field of organization of the AML/CFT process, risk assessment and application of customer due diligence measures, and reporting information to the General Inspector of Financial Information (The GIFI).

15. The most common errors identified during the 2018 inspection activities in all the audited financial market sectors were the following:

- failing to identify or misidentification of beneficial owners;
- failing to verify the beneficial owners' identification data;
- failing to complete risk assessment procedures for customers who had safe deposit boxes as the only product at a bank;
- failing to verify whether any of the customers who had safe deposit boxes as the only products at a bank were listed in the sanction lists, and to verify such customers in terms of being politically exposed persons;
- no regular updates of customer and beneficial owner data that could be relevant to the risk assessment level previously assigned;
- insufficient scope, quality and/or frequency of management reporting;
- lack of formal delegation of tasks and responsibilities;
- breaching the rule of separation of operational functions from supervisory functions;
- late submission of transaction information to the General Inspector of Financial Information (the GIFI);
- inaccurate customization of the value threshold for transactions subject to mandatory reporting to the General Inspector of Financial Information (the GIFI);
- communication of information to the GIFI concerning transactions exempted from the reporting obligation;
- inadequate quality of control, presenting as the absence of negative findings in the field of AML/CFT as compared to the numerous irregularities identified by the Office of the PFSA;
- internal control system not covering certain key elements of the AML/CFT process;
- non-compliance of internal regulations with the applicable law;
- inconsistency of internal regulations;
- missing documents to verify money value transfer payer information by the person receiving the customer's order;
- failing to register complete payer information in the IT systems for transactions with values exceeding the equivalent of €1,000;

- lack of periodical reviews of IT system rules for selection of potentially suspicious transactions;
- nonconformity of the suspicious transaction selection rules defined in the IT systems with the rules defined in the internal procedures;
- analytic system not covering all the actual transactions;
- training programmes failing to include all the relevant obligations;
- inefficient mechanisms for ascertaining proper learning of any amendments of the law and internal regulations by personnel involved in the AML/CFT process;
- transaction parties verified with the sanctions lists only after transaction completion;
- missing system for ongoing verification of customers transferring money at agencies with the sanctions lists;
- customers verified against the sanctions lists only when business relations are established.

16. As a consequence of the identified irregularities and defaults, in addition to the standard post-inspection recommendations from the PFSA to the management bodies of the controlled entities, pursuant to Article 21(4) of the *Act of 16 November 2000 on counteracting money laundering and financing of terrorism* and, as of 13 July 2018, pursuant to Article 131(5)(3) of the *Act of 1 March 2018 on counteracting money laundering and financing of terrorism*, written reports were sent to the General Inspector of Financial Information (the GIFI) each time, containing the inspection outcomes. Furthermore, the PFSA decided in three instances to reprimand banking sector entities in respect of the identified irregularities.

17. Within the framework of its daily activities, the Office of the PFSA is also involved in a broad range of analytic activities, including those concerning AML/CFT. The activities undertaken in 2018 included quarterly reporting of suspicious transactions closed through the banking system, credit unions (SKOK) and capital market institutions to the General Inspector of Financial Information (the GIFI). The scope of statistical information reported on a quarterly basis by the obliged institutions supervised by the PFSA was also extended.

18. Within the framework of the national payment institutions' operations re-authorization process<sup>3</sup> the internal AML/CFT control procedures and mechanisms were assessed in respect of all the institutions. Within the national payment institutions sector, the Office of the PFSA conducted a survey concerning data of contracts with business owners operating as service providers in the field of trading in virtual currencies. In 2018, the PFSA sent inquiries to the financial market entities concerning the customer due diligence measures applied to mitigate the AML/CFT risks. Moreover, pursuant to the review of one of the banks' submission in reply to the above mentioned inquiry, a reprimand was issued for pursuing banking operations in breach of the provisions of the *Act of 16 November 2000 on counteracting money laundering and financing of terrorism* and the *Act - Banking Law*.

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<sup>3</sup> Said process consisted of verifying compliance by the national payment institutions with the new requirements transpiring from amendments to Section IV of the *Payment Services Act of 19 August 2011* with reference to the implementation of *Directive of the European Parliament and of the Council (EU) 2015/2366 of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC* (OJ L 337 of 23.12.2015, p. 35).



19. One of the key initiatives by the Office of the PFSA is certainly the in-depth analysis of the main directions of money value flows and the origins of non-resident users of the Polish financial system, in the context of contribution to the national assessment of the risk of money laundering and financing of terrorism, which is appended as Annex 4 to the national assessment of the risk of money laundering and terrorist financing.

20. With respect to the educational measures implemented by the Office of the PFSA within the framework of the CEDUR project - Centre of Education for Market Actors, training and publishing activities are undertaken. The training activities include the organization of training seminars, workshops and conferences, targeted mainly at the following audiences:

- entities supervised by the PFSA,
- representatives of law enforcement and justice system authorities,
- consumer rights protection institutions,
- schooling and academic circles.

21. During 2008-2018, more than 56 thousand trainees took part in 727 free workshops and seminars under the CEDUR project. The CEDUR schedule for 2019 covers more than 90 issues selected on the basis of topics identified by the financial market institutions and other collaborating institutions.

22. CEDUR training courses are also dedicated to the topics of anti-money laundering and counter-terrorist financing in the context of the national legislation, including presentation of inspection findings and market practices in the field. In 2018, 13 such training courses were held by the Office of the PFSA, attended by representatives of such sectors as: banking (including commercial banks and cooperative banks), credit unions (SKOK), payment services, capital market, insurance, law enforcement and the justice system. In light of the public interest in the training initiative offered by the Office of the PFSA in the field of anti-money laundering and counter-terrorist financing, which is increasing year-on-year, it should be noted that the cycle of seminars dedicated to the issues enumerated above is being continued in 2019.

23. The Office of the PFSA collaborates with foreign financial market supervision authorities. By the end of June 2018, the Office has signed memoranda of understanding with the supervisory authorities from 49 countries (of which 27 concerned the capital market, 9 - the banking market, 7 - the pension market, 6 - the insurance market, and 4 - the financial market, respectively). Moreover, the Office of the PFSA participated in the collaboration and information exchange with its 128 foreign counterparts, members of the International Organization of Securities Commissions, and with the European Securities and Markets Authority (ESMA).

24. In addition, the Office has signed agreements with 3 jurisdictions concerning their cooperation within the framework of *FinTech*.

## **National Bank of Poland**

25. President of the National Bank of Poland controls the fulfilment of the obligations imposed by the *Act on money laundering and financing of terrorism*, in respect of entities operating as currency exchange offices within the meaning of the *Act of 27 July 2002 – Foreign Exchange Law*.

26. Inspections are carried out by personnel of 16 Regional Branches of the NBP at business operators whose currency exchange offices are located within the respective branch's territory of operation. As at 31 December 2017, there were 126 employees responsible for inspection of currency exchange operations, including compliance with the obligations arising from the *Anti-Money Laundering and Counter-Terrorism Financing Act*.

27. The inspection employees take part in regular training courses in the field of inspecting currency exchange operators, covering the issue of compliance by such operators with the obligations arising from the *Act on money laundering and financing of terrorism*.

28. All the inspections are carried out on site of the inspected entity.

*Table 4 - Data concerning business owners and currency exchange offices covered by inspections*

<b>Data type</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Number of undertakings registered as currency exchange office operators as at 31 December	2804	2745	2651
Number of inspected undertakings	665	652	411
Number of currency exchange offices operating as at 31 December	4990	4951	4873
Number of inspected currency exchange offices	929	950	569
Number of business owners for which irregularities were found in the course of inspection	33	27	20
Number of currency exchange offices at which irregularities were found in the course of inspection	39	38	28

29. The General Inspector of Financial Information (the GIFI) was notified of the outcomes of all the completed currency exchange operations inspections, irrespective of the actual findings.

*Table 5 - Currency exchange offices at which irregularities were identified in respect of compliance with the obligations arising from the Act on money laundering and financing of terrorism*

<b>Nonconformity type</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
failing to appoint a person responsible for the fulfilment of the obligations stipulated in the Act of law	0	1	0
missing internal procedure, or existence of a procedure not conforming to the requirements prescribed by the Act of law	16	13	6
failing to give the employees an opportunity to participate in training programmes concerning the obligations defined by the Act of law	5	1	1
missing registry of transactions referred to in Article 8(1) and (3) of the Act, and/or existence of a transaction registry not conforming to the requirements prescribed by the applicable legislation	8	13	2
nonconformities concerning registration of suspicious transactions or transactions exceeding the permitted threshold	6	9	5
nonconformities in communication of information to the GIFI concerning recorded transactions	8	14	13
nonconformities in conducting and/or documenting ongoing analysis	2	0	3
nonconformities in conducting and documenting the risk assessment	1	0	3
nonconformities in the application of customer due diligence measures	3	3	1

30. Further to the identified irregularities, post-inspection recommendations were issued to the business owner in each case. The General Inspector of Financial Information (the GIFI) was notified of any irregularities that led to administrative sanctions (penalties), and the public prosecutor was notified of any irregularities leading to criminal sanctions.

*Table 6 - Notifications and feedback sent by the National Bank of Poland*

<b>Data type</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
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Notifications sent to the GIFI	39	38	28
Administrative proceedings opened by the GIFI concerning imposition of cash penalties on business owners operating a currency exchange office business	27	52	14
Decisions passed to impose a penalty	28	50	7
Decisions passed to waive a penalty	-	1	5
Total decisions passed	2	1	2
Notifications sent to public prosecutor's offices	8	9	7
Notifications from public prosecutor's offices on commencement of proceedings	4	4	2
Notifications from public prosecutor's offices on discontinuation of proceedings	5	3	6

31. In addition to its control function, the NBP operates an information site at <http://www.kantor.nbp.pl/> which is targeted at such groups as business owners operating currency exchange offices.

32. The NBP issued a communication to all the business owners operating a currency exchange business concerning the entry into force of the *Act of 1 March 2018 on counteracting money laundering and financing of terrorism*, as well as a guiding notice for the assessment of the risk of money laundering and terrorist financing, as referred to in Article 27 of the aforementioned Act of law.

## Public Prosecutor's Office

33. The public prosecution system was established pursuant to the organizational changes introduced through the *Act of 28 January 2016 - Public Prosecution Law* (Journal of Laws of 2019, item 740).

34. Through the 2016 reform of the public prosecution system, the office of the General Prosecutor was merged with the function of the Minister of Justice, with the objective of introducing actual responsibility of the General Prosecutor for the activities of public prosecutor's offices and thus the fulfilment by the Council of Ministers of the obligation to assure comprehensive internal security of the State and public order, as per Article 146(4)(7) of the *Constitution of the Republic of Poland*.

35. The structure of common prosecution organization units defined in 2016 facilitated individual prosecutors' specialization in crime prevention and counteraction, which had been postulated for years, particularly in the field of the most dangerous phenomena, currently focusing around economic crime and cybercrime, organized crime, corruption, and terrorism.

36. Within the public prosecution system structure, there are four hierarchical levels of units, specifically: local prosecutor's offices, district prosecutor's offices, regional prosecutor's offices, and the National Prosecutor's Office.

37. Economic crime departments were established within 11 regional prosecutor's offices, and 6 additional financial and tax crime departments within the largest units of organization. Moreover, departments in charge of the most severe medical errors are established at 5 regional prosecutor's offices. Where no such departments are established, prosecutors in charge were appointed, coordinating this area of proceedings. Coordinators managing and overseeing crimes involving the use of the Internet and advanced IT technologies and systems are appointed at all the 11 regional prosecutor's offices.

38. Economic departments were established within 32 out of 45 district prosecutor's offices; financial and tax crime departments were set up at the 13 remaining prosecutor's offices. Two Economic Crime Departments operate within each of the largest district prosecutor's offices, specifically in Gdańsk, Gliwice, Katowice, Kraków, Lublin, Poznań and Warsaw. In addition, Investigation Departments operate at all the district level offices. Coordinators in charge of medical errors or malpractice, resulting in severe bodily injury, and coordinators in charge of cybercrime were nominated at all the district prosecutor's offices.

39. The structure of the National Prosecutor's Office corresponds to the statutory tasks traditionally pursued at this level of the public prosecution system only (such as appearances before the Supreme Court and the Constitutional Tribunal), as well as the specialization scheme implemented at the lower level of the public prosecution system, along with certain new tasks, particularly those concerning the competences to manage and supervise investigative proceedings.

40. In light of the above, in addition to the Investigation Proceeding Department, the Court Proceeding Department, the Bureau of Constitutional Affairs and the Bureau of International Cooperation, a new Economic Crime Department was established, in charge of supervision and coordination in the field of commercial, financial and tax crime prosecution (particularly in respect of VAT fraud and cybercrime).

41. The Organized Crime and Corruption Department was also reorganized. This Department monitors the work of 11 Regional Departments at which prosecutors handle the most important investigations concerning organized crime, corruption and terrorist crimes.

42. There is an Internal Affairs Department functioning as an independent unit of organization at the National Prosecutor's Office. It is competent to resolve the most severe crimes committed by judges, prosecutors and trainees in legal professions, and to act as public prosecutor in court with respect to these cases.

43. During 2016-2017, the volume of criminal cases received at the common prosecution organization units would regularly increase (a total of 814,227 investigations were pending in 2015, and there were as many as 992,196 investigations in process in 2017). This pertains to the amendment of the provisions of the *Code of Criminal Procedure* (Journal of Laws of 2018, item 1987, as amended) through which prosecutors were given competence to oversee all cases handled by the Police, including the requirement to approve all decisions to close an investigation proceeding.

44. There was a major increase of investigations handled by prosecutors in person. It is due to the fact that the character of cases handled by public prosecution requires personal involvement in such proceedings, passing decisions which only prosecutors are competent to take, and to the significance and complexity of these cases.

45. During the recent years, there is also an observable major increase of the volume of closed cases, including those ended with an indictment. Indictment followed 179,612 cases in 2015, and 201,308 cases in 2017, respectively.

46. A separate issue which is inextricably linked to effective prosecution of crime is the set of actions undertaken in order to deprive perpetrators of the outcomes of their criminal activities. The efficiency of the implemented arrangements, both legislative (including the introduction of extended confiscation to the Polish legal framework) and educational, as well as the guidelines

issued by the National Public Prosecutor, are demonstrated in the comparable data for 2015 and 2017 and the values of seizures. The value of assets actually seized in 2017 was at PLN 1,430,643,216.50 / EUR 334,262,433.76, which represents a major increase in comparison to the equivalent data for 2015 when this value was at PLN 565,601,163.16 / EUR 132,149,804.48, respectively.

## **The Polish Border Guard**

47. According to Article 1(1) of the *Polish Border Guard Act of 12 October 1990* (Journal of laws of 2019, item 147), the Polish Border Guard (SG) is a consolidated, uniformed and armed formation designated to protect the State borders, to control border transit, to prevent and counteract illegal migration. The Polish Border Guard have the same authority as the Police, within the respective range of competence (in accordance with Article 312 of the Code of Criminal Procedure). Material competences of the Polish Border Guard are defined in the Competence Act.

48. The Polish Border Guard's tasks include in particular:

- protection of the State borders of the Republic of Poland;
- border transit organization and control;
- prevention and counteraction of illegal migration;
- issuing authorizations for crossing the State borders, including visas;
- investigation, prevention and detection of crimes, prosecuting perpetrators of such crimes;
- verifying compliance of foreigners' work and business activities with the law, verifying the lawfulness of hiring foreigners.

49. It follows that the Polish Border Guard is both a State administration authority and a law enforcement body. The Polish Border Guard is authorized to operate in the entire territory of Poland.

50. As regards the activities of the Polish Border Guard as a law enforcement body, there are three main groups of crimes which the Polish Border Guard is authorized to pursue:

- illegal migration, mainly in the form of organization of illegal border crossing (Article 264 § 3 of the Criminal Code); crossing the State border of the Republic of Poland illegally (Article 264 § 2 of the Criminal Code); facilitation of foreigners' stay in the territory of the Republic of Poland (Article 264 a § 1 of the Criminal Code);
- counterfeiting, using authorization documents for crossing the State border of the Republic of Poland (Article 270 § 1 of the Criminal Code), theft or appropriation, using another person's identification documents (Article 275 § 1 of the Criminal Code), foreigner's documents (Article 464 of the *Foreigners Act of 12 December 2013* – Journal of Laws of 2018, item 2094, as amended), concealment of documents (Article 276 of the Criminal Code);
- transiting narcotic drugs through the State border of the Republic of Poland (criminal provisions of the *Drug Addiction Prevention Act* – Journal of Laws of 2019, item

852), excise goods (provisions of the *Criminal Fiscal Code* – Journal of Laws of 2018, item 1958, as amended), firearms and ammunition (Article 263 of the Criminal Code, or the criminal provisions of the *Firearms and Ammunition Act of 21 May 1999* – Journal of Laws of 2019, item 284), items of cultural heritage, etc.

51. For matters within the range of material competence of the Polish Border Guard, so-called ‘offensive operating methods’ can be used, such as operational control, controlled purchases, or dispatch under classified surveillance.

52. As of 1 May 2014, the *Foreigners Act of 12 December 2013* entered into force, introducing a number of new regulations in the field of proceeding with foreigners, including victims of trafficking in human beings. Moreover, as at that date, the Polish Border Guard was given a direct authorization to investigate, prevent and detect the crimes of trafficking in human beings and slavery, and to prosecute perpetrators of such crimes, which corresponds to the range of tasks pursued by the Polish Border Guard for years. Crimes under Article 189a § 1 of the Criminal Code and Article 8 of the implementing regulations to the *Criminal Code* were introduced to the *Polish Border Guard Act*; therefore, the authority to prosecute perpetrators of such crimes transpires explicitly from the statutory provisions. Before that date, the Polish Border Guard were required in their operational and investigative measures concerning human trafficking to demonstrate convergence of that process with committed ‘transborder crimes’ (such as illegal migration, crimes against documents).

53. Despite the statutory amendments, in light of the previous implementation of tasks in the field of counteracting human trafficking, the organizational structure of the units responsible for prevention and counteraction of trafficking in human beings within the Polish Border Guard has remained unchanged.

54. During 2008-2017, a Permanent Monitoring and Coordination Workgroup was active at the Main Headquarters of the Polish Border Guard, coordinating the activities of the Polish Border Guard in the field of prevention and suppression of the crime of human trafficking. At the moment, these duties have been fully taken over by the Operational and Investigative Management of the Main Headquarters of the Polish Border Guard, having an Illegal Migration and Human Trafficking Unit in its structure (within the Organized Crime Department I), as well as the chief coordinator in charge of human trafficking cases (this position is not a regular employee). Coordinators and deputy coordinators in charge of dealing with human trafficking operate as non-regular employees at every branch office of the Polish Border Guard (9 organizational units) - a total of approx. 30 officers.

55. If a person who can be a victim of human trafficking is discovered, the Polish Border Guard officers proceed in accordance with the so-called *Algorithm of proceeding in case of discovery of a victim of human trafficking*.

56. This algorithm is a supporting instrument to define the actions to be undertaken by an officer in case a victim of human trafficking is revealed.

57. As a result of the implementation of certain strategic projects, the Polish Border Guard is among the many entities involved in undertakings arising from the *National Action Plan against Trafficking in Human Beings* (which is regularly approved by the Prime Minister, coordinated by the Ministry of Internal Affairs and Administration, currently under development for the perspective of 2018-2020). *The National Action Plan against Trafficking in Human Beings* is a

continuation of projects launched as early as 2003. The Plan implementation and monitoring system is mainly based on the operations of the cross-departmental Human Trafficking Combat and Prevention Task Force, of which the Commander-in-chief of the Polish Border Guard (or his authorized representative) is a member.

58. In addition, a representative of the Polish Border Guard participates in meetings of expert groups and workgroups operating under the supervision of the Ministry of Internal Affairs and Administration. At the same time, the Polish Border Guard is involved in the operations of regional (voivodeship) task forces in charge of human trafficking.

59. On the operational level, the Polish Border Guard specifically collaborate with the Police, the Ministry of Internal Affairs and Administration and non-governmental organizations pursuing the tasks entrusted to them by the Ministry of Internal Affairs and Administration (at the moment, these include the La Strada Foundation Against Human Trafficking and Slavery, and the “Po MOC” Immaculate Mary Association for Women and Children). They also cooperate with the International Organization for Migration (IOM Poland) in the field of organizing voluntary returns of foreigners (including victims of trafficking in human beings) to their country of origin or to another safe country, and in the field of training.

60. Since 29 December 2010, the Polish Border Guard have implemented a four-tier “The Polish Border Guard officer training system in the field of human trafficking”, within the framework of which officers are trained from level 1 - basic to level 4 - expert.

61. Within the framework of international cooperation on a strategic level, the Polish Border Guard participate in projects pursued by Frontex - the European Border and Coasts Guard Agency (preparation of Handbooks on Risk Profiles on Trafficking in Human Beings).

62. Also, the Polish Border Guard took part in expert workshops held by EUROPOL on preparation of Operational Action Plans (OAP) for the EMPACT Priority - Human Trafficking, developed within the EU Safety Policy Cycle concerning serious and organized transnational crime for 2014-2017.

63. Within the framework of their cooperation with the United States, the Polish Border Guard regularly report data on their activities in the field of combating human trafficking. The above is related to the annual “Trafficking in Persons Report” prepared by the U.S.

64. On a strictly working level, in the course of handling specific cases, the Polish Border Guard engage in operational cooperation with liaison officers from other countries. Moreover, on a working (operational) level, the Polish Border Guard collaborate with EUROPOL and INTERPOL.

65. There were projects implemented in 2014 under the agreement signed in 2013 with Romania to set up a Joint Investigation Team. That Team’s activities, funded by EUROJUST, were focused on gathering evidence against perpetrators of human trafficking from the area of exploitation for begging.

66. The money laundering process, comprising all the acts aimed at concealing financial advantages by detainees/suspects which they gained as a result of committed crimes, or consciously taking action aimed at determining or creating legal or factual grounds to justify the existence of such advantages, is a common occurrence in the activities of organized criminal groups that engage in illicit acts, including those within the scope of the statutory tasks of the



Polish Border Guard (in the field of illegal migration, smuggling of excise goods, smuggling of drugs and narcotics).

67. The Polish Border Guard is not explicitly competent to pursue operational/preparation or investigation activities in the field of combating the crime defined in Article 299 of the Criminal Code, i.e. ‘money laundering’; yet this crime can be covered by certain operational/preparation activities, leading to the opening of an investigation and indictment under the aforementioned Article in addition to the primary crime which is within the range of competence of the Polish Border Guard.

68. In view of effectively combating and preventing money laundering, on 11 September 2009 the Deputy Commander-in-chief of the Polish Border Guard approved of a concept entitled ‘Implementation measures in the field of determination of assets originating from illicit or undisclosed sources by the Polish Border Guard officers’. Introduction of the above specified model of procedure at the Polish Border Guard has contributed to more efficient management of the information gathering process within the framework of operational processing cases, to be thereafter transformed into evidence enabling courts to rule on such penalties as forfeiture of defendants’ assets, as well as the efforts undertaken to reveal the so-called money laundering procedure through which money from illicit or undisclosed sources are introduced to the legal trading system by perpetrators associated within such organizations as organized crime groups.

69. Moreover, on 10 December 2010, an Agreement was signed between the Commander-in-chief of the Polish Border Guard and the Polish Financial Supervision Authority, represented by Chairman of the Polish Financial Supervision Authority, on the cooperation in the field of investigation, prevention and suppression of crime and hazards present on the financial market. The above mentioned document stipulates the parties’ cooperation in the form of joint conferences, seminars and training courses for professional improvement of the Polish Border Guard officers and staff. At the moment, training courses are held with the participation of representatives of the Polish Financial Supervision Authority and the General Inspector of Financial Information, covering the issues of money laundering and financial market crimes.

70. Also, pursuant to the agreement signed on 15 September 2009 between the Minister of Internal Affairs and Administration and the Minister of Justice concerning “Cooperation in the use and identification of advantages originating from crime or other assets related to crime within the Scope of tasks of the National Asset Recovery Bureau”, the Polish Border Guard are using the “Practical Guide to Registers and Databases Containing Asset Information”, which is developed at the Asset Recovery Office of the Criminal Bureau of the National Police Headquarters.

71. On 16 June 2004, an “Agreement on cooperation between the Commander-in-chief of the Polish Border Guard and the General Inspector of Fiscal Control” entered into force, with the purpose of undertaking, organization and joint pursuit of actions aimed at prevention and combating of illegal acts, within the respective scopes of tasks and competences.

72. There are no separate organizational units distinguished within the Polish Border Guard which would be exclusively competent in the field of financial (economic) crime. Within the framework of every investigation or operational case, efforts are undertaken to identify crime perpetrators’ incomes and to deprive criminal groups of their profits.



## Central Anti-Corruption Bureau

73. The Central Anti-Corruption Bureau (CBA) is a special service established to combat corruption in public and economic systems, particularly at State and local government authorities, and to suppress any acts that adversely affect the State's economic interest.

74. As at 31 December 2018, CBA was employing 1171 officers and 151 staff (i.e. over 33% more than in 2017).

75. Duties of the Central Anti-Corruption Bureau (CBA) (to combat corruption in public and economic systems, particularly at State and local government authorities, and to suppress any acts that adversely affect the State's economic interest) mainly include the investigation, prevention and detection of crimes (as enumerated in Article 2(1)(1) of the *Central Anti-Corruption Bureau Act of 9 June 2006* - Journal of Laws of 2018, item 2104, as amended), as well as the prosecution of perpetrators and:

- discovery and prevention of non-compliance with the regulations concerning restrictions on business activities operated by persons in public functions;
- documenting the grounds and launching implementation of the regulations concerning returning of material benefits unduly derived at the expense of the State Treasury or other State-owned legal persons;
- detection of instances of non-compliance with the procedures prescribed by law for taking and implementing decisions on privatization and commercialization, financial support, awarding public contracts, disposal of assets owned by public finance sector operators, operators receiving public funding, business owners with investment participation of the State Treasury or local government units, granting of permits, authorizations, licences, subjective and objective exemptions, reliefs, preferences, concessions, ceilings, sureties and bank guarantees;
- verifying the accuracy and correctness of statements concerning the financial status or statements concerning conduct of business activities by persons in exposed public positions;
- analytic activities concerning the occurrences within the area of competence of CBA, presentation of related information to the Prime Minister, the President of the Republic of Poland, the Sejm and the Senate.

76. Prevention measures also constitute an important part of CBA's operations.

### **Operational and process activities**

77. Operational and investigative measures are undertaken by CBA officers in order to prevent, investigate and detect crime, and to obtain and process information of significant relevance for combating corruptions in State institutions and local government, as well as any activities detrimental to the economic interests of the State.

78. In the event of a reasonable suspicion that a crime has been committed, CBA officers will undertake their investigative procedures as defined in the Code of Criminal Procedure, including the procedures instructed by a court or public prosecutor's office.

79. During 2016-2018, units of the Central Anti-Corruption Bureau organization opened 577 operational cases, while a total of 1,350 cases were pending and 492 were closed.

Table 7 - Volume of operational cases at CBA during 2016-2018

Year	Operational cases		
	opened	pending	closed
2016	200	439	185
2017	192	441	153
2018	185	470	154

80. During 2016-2018, 726 investigations were opened at CBA, while a total of 1,613 investigations were pending and 527 were closed.

Table 8 - Volume of investigation procedures at CBA during 2016-2018

Year	Investigations		
	opened	pending	closed
2016	281	491	178
2017	256	555	176
2018	189	567	173

### **Inspection and control**

81. The Bureau is the only special force entitled to use a tool consisting of control/verification of statements concerning financial status and business/economic decisions.

82. The objective of the controls undertaken by CBA officers is to reveal corruption cases at public institutions, abuse by persons in exposed public offices, and activities detrimental to the economic interests of the State.

83. Inspections are carried out on the basis of an annual plan approved by the Head of CBA, or on an ad hoc basis when necessary.

84. The inspection measures include:

- revealing cases of breach of the law and preventing their occurrence, particularly in the field of issuance of business/economic decisions (including privatization processes, financial aid, disposal of State and municipal assets, public procurement);
- verifying the accuracy and correctness of statements concerning the financial status or statements concerning conduct of business activities by persons in exposed public positions.

85. In 2014, the scope of CBA's tasks was extended, adding verification of conflict of interest statements. Those statements are verified when submitted by candidate members and full members of the Economic Committee at the Minister of Health, the Transparency Board at the President of the Medical Technology Evaluation Agency, consultants in the healthcare sectors, and actors involved in preparation, execution and delivery of offset contracts.

Table 9 - Volume of inspections and analytic checks conducted at CBA during 2016-2018

Year	Inspections and analytic checks carried out	
	inspections/audits	pre-inspection analysis
2016	194	933
2017	161	631
2018	145	727

### **Analytical activities**

86. The primary goals of the analytical and informational undertakings by CBA officers are to identify the hazards detrimental to the economic interests of the State and to notify the State authorities thereof in due advance, as far as reasonably possible, as well as to present proposals for corrective measures. Moreover, CBA officers support operational, reconnaissance, investigation and control/inspection procedures.

87. Each year, CBA prepares and publishes a paper entitled *The Map of Corruption*, presenting the status of corruption/bribery-related crime in Poland. The report is prepared in coordination with other services, the General Prosecutor's Office and the Ministry of Justice.

### **Preventive measures**

88. Within the framework of its activities, CBA undertakes certain prevention and education measures as well. In this respect, the Bureau collaborates with other institutions and with non-government organizations dealing with corruption-related issues.

89. For example, CBA officers took part in a series of conferences in 2016, they held a total of 91 training courses at 64 institutions, during which 4,018 civil servants were trained. In 2017, the Bureau officers held 126 courses at 84 institutions, covering 5922 learners being civil servants.

## **Police**

### **Structure**

The Police structure is composed of multiple units, of which some specialize in measures undertaken within specific areas of interest. In particular, the overall structure comprises the following: the National Police Headquarters (KGP), the Central Investigation Bureau of Police (CBŚP), the Police Bureau of Internal Affairs, 16 regional (voivodeship) Police headquarters, the Police Headquarters for the Capital City of Warsaw, the "BOA" Central Counter-Terrorism Sub-Unit of the Police, the Central Forensic Laboratory of the Police, and 5 Police schools.

The units operating within KGP include the Criminal Bureau of the National Police Headquarters. The latter consists of different departments, specifically:

1) Criminal Department, with the following duties and range of competence:

- monitoring, coordination and support for operational and investigation activities involved in combating crime and drug-related offences by the Police organizational units;
- undertaking operational activities targeted at supporting the investigation process in the most dangerous crime cases, in a range extending across the areas of several voivodeships;
- cooperation with the Police International Cooperation Bureau of the National Police Headquarters and with other authorities competent in the field of international crime;
- exchanging information about new criminal ways and methods, operational and investigative tactics;
- submission of data feeds for reports and statistical files;

- coordinating the Police work on combating offences against items of national cultural heritage;
- performing the tasks of the central office referred to in Article 12 of the *International Convention for the Suppression of Counterfeiting Currency*, signed at Geneva on 20 April 1929, with the protocol and optional protocol signed on the same day at Geneva (Journal of Laws of 1934, No. 102, item 919);
- organization and participation in professional development courses for police officers, within the range of competence of the department.

2) Investigative Department, with the following duties and range of competence:

- coordination and supervising the preparatory proceedings conducted by the Police sections and organizational units regarding complex cases;
- monitoring the operations of investigative units at the Police, evaluation of their performance in accomplishing the targets set for pending investigations;
- monitoring usefulness of process forms, initiating changes to such forms;
- monitoring records kept by the Police bodies and organizational units in the Electronic Investigation Procedures Registry IT system;
- drafting proposals for legal and organizational arrangements relevant to management of preparatory proceedings;
- preparation of and issuing opinions on draft legislation, within the range of competence of the Department;
- collaboration with bodies outside the Police on streamlining the criminal law system;
- preparing updates for the Police bodies and organizational units regarding new legislation and case law concerning the matters within the range of competence of the Department;
- participation in resolution of disputes concerning geographic jurisdiction on matters outside the range of prosecutor's supervision, initiated as between provincial headquarters (including the Police Headquarters for the Capital City of Warsaw) of the Police or units of the Police organization operating within the geographic range of different provincial headquarters (including the Police Headquarters for the Capital City of Warsaw) of the Police;
- organization and participation in professional development courses for police officers, within the range of competence of the department.

3) Asset Recovery Department, with the following duties and range of competence:

- performance of tasks assigned to the national Asset Recovery Office;
- monitoring the performance of tasks involving discovery and identification of assets derived from crime or other crime-related assets by the Police bodies and organizational units;
- collaborating with the national authorities entitled to reveal, identify, secure and recover assets;

- managing international cooperation in the field of search, identification, seizure and recovery of assets derived from or associated with crime, particularly within the area of operation of the Camden Asset Recovery Inter-agency Network (CARIN) and other similar international initiatives;
- drafting proposals for amendments of the legislation applicable to search, identification, seizure and recovery of assets derived from or associated with crime;
- organization and participation in professional development courses for police officers, within the range of competence of the department.

#### 4) Human Trafficking Combat Department:

- organization, monitoring, coordination and support of handling cases by the Police bodies and organizational units in the field of counteracting trafficking in human beings and related crimes;
- supervision, coordination and support of handling cases by the Police bodies and organizational units involving counteraction of paedophilia and child pornography;
- development of a crime prevention and suppression methodology within the range of the Department's competence, based on its own analysis and findings as well as on information provided by the Police bodies and organizational units;
- cooperation with legal protection authorities, public administration and State control authorities, non-government organizations, community organizations and public function institutions, within the range of the Department's competence;
- international collaboration within the range of the Department's competence;
- participation in conferences, symposiums, seminars and training courses at home and abroad, within the range of the Department's competence;
- organization and participation in professional development courses for police officers, within the range of competence of the Department;
- operational and reconnaissance activities within the range of competence of the Department.

#### 5) Anti-Economic Crime Department:

- identifying, monitoring and reviewing territories vulnerable to the risks of economic crime in Poland;
- development and implementation of directions and methods of effective recognition, prevention and discovery of economic crimes;
- inspiring, coordinating and supervising operational and reconnaissance activities as well as investigative activities, within the range of the Department's competence;
- offering support and direct assistance to the organizational units of the Police in charge of combating economic crime in their operational, reconnaissance and investigation work;

- handling domestic cooperation with law enforcement and justice system authorities, public administration authorities, community organizations and representatives of other entities in the field of prevention and suppression of economic crime;
- international collaboration with competent bodies on the performance of tasks focused on suppression of economic crime;
- acquisition and transmission of data on committed economic crimes to provincial headquarters (including the Police Headquarters for the Capital City of Warsaw) of the Police;
- participation in opining on draft legislative bills concerning economic crime;
- issuing opinions for applications for disclosure of classified resources within the framework of operational methods pursued by the units of the Police organization involved in combating economic crime;
- participation in meetings of domestic and international work groups, task forces and contact points;
- participation in conferences, training courses, seminars and workshops promoting know-how in the field of prevention and counteraction of economic crime;
- organization and participation in professional development courses for police officers, within the range of competence of the Department;
- operational and reconnaissance activities within the range of competence of the Department.

**6) Anti-Corruption Department:**

- identifying, monitoring and reviewing territories vulnerable to the risks of corruption, assessment of the corruption crime risk status in Poland;
- development and implementation of directions and methods of effective recognition, prevention and discovery of corruption crimes;
- inspiring, coordinating and supervising operational and reconnaissance activities as well as investigative activities, within the range of the Department's competence;
- offering support and direct assistance to the organizational units of the Police in charge of combating corruption crime in their operational, reconnaissance and investigation work;
- handling domestic cooperation with law enforcement and justice system authorities, public administration authorities, community organizations and representatives of other entities in the field of prevention and suppression of corruption crime;
- international collaboration with competent bodies on the performance of tasks focused on suppression of corruption crime;
- acquisition and transmission of data on committed corruption crimes to provincial headquarters (including the Police Headquarters for the Capital City of Warsaw) of the Police;
- participation in opining on draft legislative bills concerning corruption crime;



- issuing opinions for applications for disclosure of classified resources within the framework of operational methods pursued by the units of the Police organization involved in combating corruption crime;
- participation in meetings of domestic and international work groups, task forces and contact points;
- participation in conferences, training courses, seminars and workshops promoting know-how in the field of prevention and counteraction of corruption crime;
- operational and reconnaissance activities within the range of competence of the Department.

90. The range of tasks assigned to the Central Investigation Bureau of Police (CBŚP) specifically comprises planning, coordination and execution of measures targeted at investigating and combating domestic and international organized crime, particularly in respect of criminal offences, drug-related offences and economic crime, as well as the prevention of such crime.

91. In the field of prevention of criminal offences, the activities of CBŚP include:

- exploration of criminal groups engaged in particularly violent offences, such as murders, firearm-related crimes, extortion, debt recovery;
- combating offences involving weapons and ammunition smuggling, illicit trading in firearms and explosives;
- elimination of organized groups committing kidnapping offences for ransom and ransom extortion;
- combating organized criminal groups committing crimes involving vehicle theft, smuggling and tampering, robbery and burglary;
- combating crimes involving prostitution, prevention of trafficking in human beings.

92. In the field of prevention of drug-related crime, the tasks performed by CBŚP include:

- combating organized crime groups engaged in production and trading in narcotics at home and internationally;
- discovery and liquidation of synthetic drug production sites (laboratories);
- cooperation with international institutions and services on combating drug-related crime;
- exploration and neutralization of organized crime structures with the prevalence of members of ethnic minorities.

93. In the field of prevention of economic crime, the measures undertaken by CBŚP include:

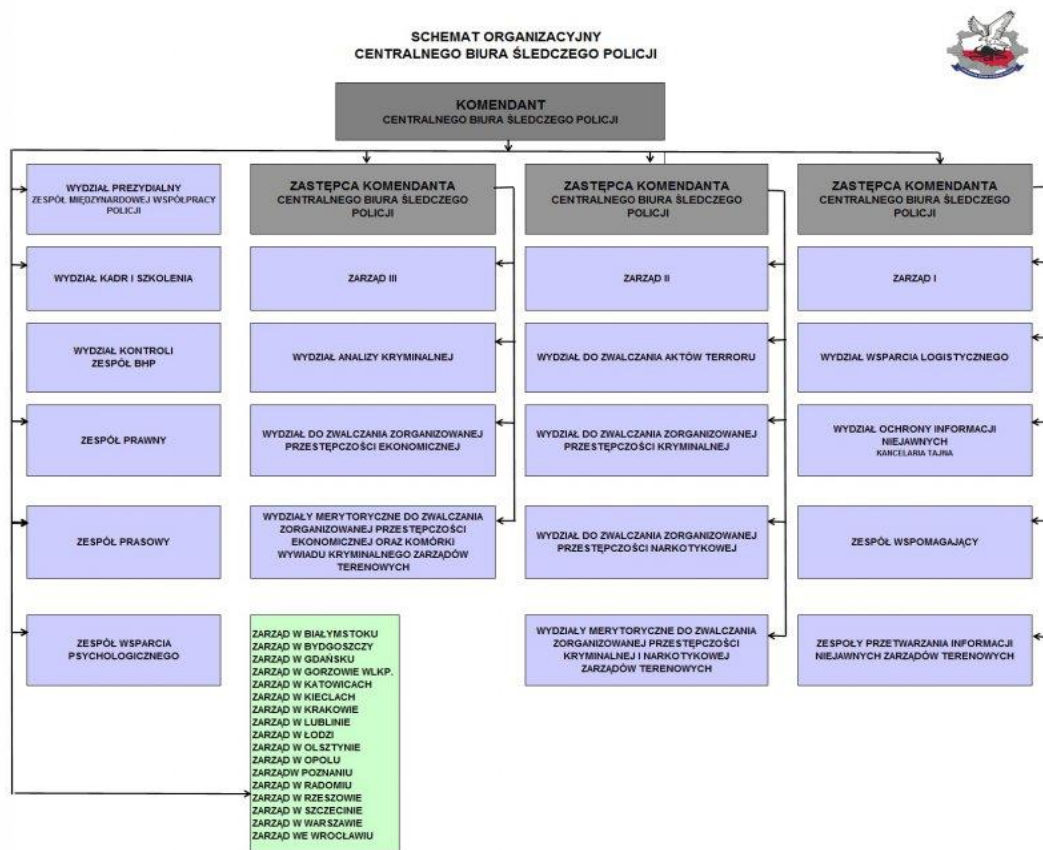
- exploration, discovery and suppression of organized economic crime, with special consideration of VAT fraud, in trading in various goods, also on an international scale;
- exploration, discovery and suppression of organized crime, including international criminal networks, involved in smuggling, illicit trading in tobacco and tobacco products, discovery and liquidation of illegal tobacco goods production sites;

- combating organized crime and serious offences to the detriment of the financial market institutions;
- combating organized fraud in the trading framework, particularly fraud detrimental to the financial interests of the EU;
- exploration, prevention and counteraction of money laundering derived from organized crime, taking actions prescribed by law to recover assets from perpetrators.

94. In addition to the above specified scope, other tasks of CBŚP include the following areas:

- undertaking measures aimed at exploration and combating of organized crime in cyberspace;
- collaboration with Police forces in other countries, with national and international public administration services and offices in such fields and to such an extent as may be necessary for successful prevention and elimination of organized crime.

Diagram 1 - Structure of the Central Investigation Bureau of Police (CBŚP)



95. The level of employment at CBŚP has been stable for several years, ranging around 2,000 officers.

96. A coordinator unit was established within CBŚP during 2007-2014, with the coordinators responsible for matters of search and seizure of assets, working as non-regular employees. This is due to the headcount status with reference to the volume of investigations and operational cases dealt with by the Bureau. A coordinator's role is to carry out necessary checks in EKW

databases<sup>4</sup>, professional assistance provided to officers in difficult and complex legal circumstances, issuing opinions on documents related to cooperation with the General Inspector of Financial Information (the GIFI), organization of training courses in the field of search and seizure of assets.

Table 10 - Central Investigation Bureau of Police (CBŚP) coordinators at local management units

2015-12-31	2016-12-31	2017-12-31	2018-07-31	2018-11-26
50	54	62	64	62

**Obtaining information**

97. Pursuant to Article 15 of the *Police Act of 6 April 1990* (Journal of Laws of 2019, item 161, as amended), the Police can request information from payment service provider institutions within the range of its pending money laundering cases.

98. In accordance with Article 20(3) of the *Police Act of 6 April 1990*, the Police if this is necessary for effective prevention of committing an offence, detection of the offence or identification of perpetrators and procurement of evidence, as well as detection and identification of items and other material benefits derived from the offence, or the financial equivalent of same. On the basis of a ruling passed by a court further to a motion that can be filed by the CBŚP Commander-in-chief, the Police can also use information recognized as tax secret or professional secret as defined in the legislation applicable to the functioning of the financial market<sup>5</sup>, and personally identifiable information as defined in the *Social Security System Act of 13 October 1998* (Journal of Laws of 2019, item 300, as amended). Moreover, with reference to Article 20(5a) of the *Police Act of 6 April 1990*, on the basis of a motion filed by a competent authority or its authorized representative, the Police can obtain information and data:

- concerning documentation involved in the assignment of tax identification numbers and updating information in identification declarations (*Act of 13 October 1995 on the Principles of Registration and Identification of Taxable Persons and Taxpayers – Journal of Laws of 2019, item 63*),
- contained in the acts that do not include such information as specified in Article 182 of the *Act of 29 August 1997 - Tax Ordinance Law* (Journal of Laws of 2018, item 800, as amended),
- concerning a contract executed with an individual, a legal person or an organizational unit without legal personality for the performance of such services as referred to in Article 5 of the *Act - Banking Law*, or such services as referred to in Article 3 of the *Credit Unions Act*, to facilitate verification of the existence and term of such contracts,

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<sup>4</sup> Electronic Land and Mortgage Register.  
<sup>5</sup> Specifically the *Act of 29 August 1997 - Banking Law* (Journal of Laws of 2018, item 2187, as amended); *the Social Security System Act of 13 October 1998*; *the Commodity Exchange Act of 26 October 2000* (Journal of Laws of 2019, item 312); *the Act of 27 May 2004 on Investment Funds and Management of Alternative Investment Funds* (Journal of Laws of 2018, item 1355, as amended); *the Trading in Financial Instruments Act of 29 July 2005* (Journal of Laws of 2018, item 2286, as amended); *the Insurance and Reinsurance Business Act of 11 September 2015* (Journal of Laws of 2019, item 381, as amended); *the Pension Funds Organization and Operation Act of 28 August 1997* (Journal of Laws of 2018, item 1906, as amended); and *the Capital Market Supervision Act of 29 July 2005* (Journal of Laws of 2018, item 1417, as amended).

- concerning coverage of a natural person with social security and adjusted amounts of pension insurance payments due from a natural person, and data of insurance payer as mentioned in Articles 40, 45 and 45 of the *Social Security System Act*,
- necessary to determine whether a natural person, a legal person or an organizational unit without legal personality was closing transactions in commodity exchange goods referred to in the *Commodity Exchanges Act*,
- necessary to determine whether a natural person, a legal person or an organizational unit without legal personality is a member of an investment fund referred to in the *Act on Investment Funds and Management of Alternative Investment Funds*,
- concerning determination whether a natural person, a legal person or an organizational unit without legal personality is a party to a contract for trading in financial instruments,
- concerning determination whether a natural person, a legal person or an organizational unit without legal personality is an insurer, insured or beneficiary of an insurance contract within the meaning of the *Insurance and Reinsurance Business Act*.

#### **Cooperation with the Polish Financial Supervision Authority**

99. In accordance with the amendments to the *Financial Market Supervision Act of 21 July 2006* (Journal of Laws of 2019, item 298, as amended), effective as of the beginning of 2019, a new regulation has been introduced to the legal framework (Article 17ca), presenting opportunities for transmission of information and documents by the Chairperson of the Polish Financial Supervision Authority to such authorities as the Police Commander-in-chief, including data protected under separate legislation, to the extent necessary for the performance of the statutory tasks of the Police.

100. Relevant agreements will be signed in order to define the terms and conditions of cooperation and transmission of such documents and information, where the exact scope of disclosed information can be defined in more detail.

#### **Cooperation with the General Inspector of Financial Information (the GIFI)**

101. Pursuant to Article 105(1) of the *Act of 1 March 2018 on counteracting money laundering and financing of terrorism*, the GIFI will disclose information available to it on the basis of a written request, which must be properly justified, presented by such authorities as the Police Commander-in-chief, the Commander-in-chief of the Central Investigation Bureau of Police (CBŚP), or their duly authorized representatives, within the framework of their statutory obligations.

102. Moreover, under Article 83 of the aforementioned Act of law, cooperating units such as the Police will notify the GIFI of their suspicions concerning money laundering or terrorist financing crimes. Pursuant to Article 106 of the aforementioned Act, the GIFI may notify a cooperating unit of a suspected offence other than that referred to in Article 299 of the Criminal Code.

### **Asset seizure methodology**

103. The work of the *Task Force in charge of development of a methodology of proceeding with asset seizure*<sup>6</sup>, sponsored by the National Prosecutor, is carried out by representatives of public prosecutor's office organization units with the participation of representatives of the Minister of Finance, the Minister of Justice, the Police Commander-in-chief, including the Central Investigation Bureau of Police (CBŚP), the Polish Border Guard Commander-in-chief, and special invitees, such as judges ruling on criminal, civil and enforcement cases, representatives of the Central Anti-Corruption Bureau (CBA), the Internal Security Agency (ABW), the Military Gendarmerie and the National Bailiffs' Council .

104. As a deliverable, the Team developed an *Asset Seizure Methodology* in 2018, containing references to the institutions newly introduced in 2017, i.e. extended confiscation, new model of legal presumptions concerning asset allocation, obliged entities and forfeiture of a business, also covering the matters of cryptocurrency seizure. The purpose of the asset seizure methodology is to facilitate the performance of these tasks.

105. The contents of the methodology emphasize the practical aspects of asset profiling, which are particularly useful at the initial stage of criminal proceedings and can be helpful for officers of particular services as well as prosecutors handling criminal procedures. In the process of development of the contents concerning the aspects of asset seizure, a systematic approach was adopted, covering the scope, objects and manner of exercising this institution. There is also a presentation of characteristics of the particular types of seized assets, including cryptocurrencies, and a discussion of available seizure methods. Special attention was drawn to such new arrangements as: extended confiscation, forfeiture of a business, and options to pursue financial claims from an obliged entity, as well as cryptocurrencies which are gaining popularity as a tool for allocation of gains from illicit activities.

106. The paper comprises a presentation and discussion of the following:

- measures preceding the issuance of an asset seizure decision;
- asset seizure;
- extent of asset seizure;
- seized objects;
- methods of asset seizure, procedures and authorities competent to enforce asset seizure decisions;
- cryptocurrencies;
- obliged entity - Article 91a of the Code of Criminal Procedure;
- entity held for alternative liability;
- seizure of assets abroad;
- monitoring the seizure proceedings.

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<sup>6</sup> Appointed through Decision 5 of 21 February 2017 by the Chairman of the Cross-Department Team for Coordination, Implementation, Monitoring and Evaluation of the 'Economic Crime Prevention and Suppression Programme for 2015-2010'.

107. There is also a presentation of example sentences of asset seizure rulings, complete with their respective legal basis.

108. The paper further emphasizes the need to monitor an asset seizure ruled upon, from its application to decisions taken in the course of enforcement proceedings.

109. Efficient cooperation in prosecution of perpetrators of economic crime and implementation of a common operating strategy for authorities responsible for prosecuting and combating such types of offences will be more successful if uniform rules of proceeding apply to the discovery and seizure of assets constituting gains from committed offences or from fraud.

### **Database access**

110. The scope of accessing databases by CBŚP comprises the use of data sets operated by various public administration authorities (KSIP, REGON, KRS, POBYT, OSADZONY, PESEL, CEPIK, EKW, KCIK). Moreover, the Bureau uses SWIZE, an international information exchange system with Europol.

### **Criminal groups statistics**<sup>7</sup>

111. The range of operational cases dealt with by CBŚP in 2018 covered 8,030 persons of interest (7,113), acting within 880 (858) organized crime groups, of which

- 742 (735) groups were Polish;
- 128 (113) groups were international;
- 5 (5) groups were Russian language speaking;
- 5 (5) groups were groups of foreigners.

112. The Polish criminal groups had 684 (684) identified leaders, whereas there were 122 (125) leaders of international groups, 6 (6) leaders of the Russian language speaking groups, and 5 (5) leaders of foreigners' groups. As at 31 December 2018, there were a total of 831 (820) leaders within the area of interest of CBŚP.

113. In 2018, in the field of criminal offences, 122 (136) criminal groups were within the area of interest, while 374 (336) criminal groups were under investigation in respect of drug-related offences. Economic activities were pursued by 292 (305) groups, while many diverse types of offences were committed by 92 (81) organized groups.

114. As a result of domestic and international measures undertaken to combat organized crime, CBŚP eliminated a total of 187 (176) criminal groups, 168 (154) of them Polish and 19 (22) international..

### **Results accomplished by CBŚP within the range of pending investigations**<sup>8</sup>

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<sup>7</sup> Based on the data from the Report on the activities of the Central Investigation Bureau of Police (CBŚP) for 2018 (from the statistical perspective), CBŚP, Warsaw 2018, on: <http://www.cbsp.policja.pl/cbs/do-pobrania/raporty-z-dzialalnosci/9890.Raporty-z-dzialalnosci.html>. Bracketed figures relate to 2017.

<sup>8</sup> As above



115. During the period from 1 January to 31 December 2018, CBŚP opened 733 (800) investigations and closed 934 (1,086) cases. In the same period, 2,993 (2,761) individuals were detained and 3,833 (3,761) suspects were accused of a total of 11,900 (11,748) offences.

116. The following precautionary measures were applied to the above mentioned group of persons:

- provisional detention – 1,304 (1,245);
- Police surveillance – 1,584 (1,431);
- surety – 1,116 (980);
- arrest warrants – 75 (72).

117. In 2018, 1,763 (1,639) suspects were accused of 1,776 (1,653) acts under Article 258 § 1 and 2 of the Criminal Code (membership of an organized crime group), specifically:

- 1,548 (1,414) members of Polish groups,
- 215 (207) members of international groups,
- 0 (11) members of foreigners' groups,
- 0 (7) members of Russian language speaking groups.

118. In the same year, 151 (167) suspects were accused of 152 (169) offences under Article 258 § 3 of the Criminal Code (leading a group or association whose purpose is to commit criminal offences), specifically:

- 141 (140) leaders of Polish groups,
- 10 (27) international leaders of criminal organizations.

### **JIT – Joint Investigation Team**

119. The Joint Investigation Team is a tool of international collaboration, based upon an agreement between the competent authorities, representing the judiciary (judges, prosecutors, investigative judges, etc.) and the law enforcement systems of two or more countries, established for a specified time, for a clearly defined purpose, in order to deal with investigations of criminal offences in one or more of the countries involved. The EU legal framework for appointment of JITs within the framework of cooperation among several Member States is set forth in Article 13 of the *2000 Convention on mutual legal assistance*<sup>9</sup> and the *Framework decision of 2002 concerning JITs*<sup>10</sup>.

120. Compared to the traditional models of Police and justice system cooperation, JITs demonstrate certain measurable advantages:

- they facilitate immediate collection and exchange of information and evidence, without having to involve the conventional mutual legal assistance channels. Information and evidence gathered in compliance with the law of the State in which

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<sup>9</sup> *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union* (OJ C 197, 12.7.2002, pp. 1–23).

<sup>10</sup> *Council Framework Decision of 13 June 2002 on joint investigation teams* (OJ L 162, 20.6.2002, pp. 1–13).

a JIT operates can be exchanged on the basis of the respective JIT agreement as such; and

- delegated team members (originating from a different State than that being the JIT's territory of operation) are entitled to attend and participate in investigative measures undertaken outside their respective countries of origin, within the limits prescribed by national legislation or defined by the team leader.

121. For the above reasons, JITs are recognized as a highly effective and successful collaborative arrangement which streamlines the coordination of investigation and prosecution procedures pending in more than one State simultaneously.

122. The EU instruments present two specific circumstances in which a JIT can be set up:

- **difficult cross border investigations:** a JIT can be appointed when 'a Member State's investigations into criminal offences require difficult and demanding investigations having links with other Member States';
- **mutually related investigations that require coordination:** a JIT can be established when 'a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved.'

123. Notwithstanding the legal requirements, certain practical aspects are also taken into consideration in determining whether or not a JIT should be set up. Here are some examples:

- complexity and sophistication of the criminal network/operation under investigation,
- number and complexity of the measures to be undertaken within the framework of investigation in the involved States, and
- degree of mutual links between the proceedings pending in the particular States involved.

On the basis of the above specified legal framework, the Republic of Poland is or was a party to the following JIT agreements:

*Table 11 - JIT agreements signed*

<b>Parties to JIT agreement</b>	<b>Brief description of the case.</b>
Republic of Poland - Germany	Activities of an international criminal organization involved in stealing and subsequent tampering with luxury cars.
Republic of Poland - Republic of Lithuania	Activities of an international criminal organization involved in VAT fraud of great value in intra-Community trading of goods, to the detriment of Poland and Lithuania.
Republic of Poland - United Kingdom	Activities of an international criminal organization involved in trafficking in human beings in the territory of the United Kingdom and Poland.
Republic of Poland - Germany	Activities of an international criminal organization involved in car robbery and burglary in the territory of Germany, followed by tampering with stolen vehicles in Poland.

Republic of Poland - Sweden	Activities of an international criminal organization involved in fraud and money laundering derived from offences committed through the Internet with the use of such techniques as phishing, pharming, spoofing.
Republic of Poland - Slovak Republic, Germany, the Netherlands	Activities of an international criminal organization involved in production, storage, smuggling and trading in firearms and in production and marketing of significant quantities of drugs and narcotics.
Republic of Poland - Germany	Concerning motor vehicle-related offences and theft of tractors in the territory of Germany (often with cargo) by Polish citizens, followed by their transport to Poland and tampering.
Republic of Poland - Estonia, Finland	Concerning a model of fraud consisting of withdrawing money from bank accounts of Polish limited liability companies on the basis of fake judgments of arbitration courts.
Republic of Poland - Slovak Republic	Activities of a criminal organization aimed at deriving financial gains from crimes and tax offences involving fake trading in various products in a carousel model, including steel products, rapeseed oil, etc., consisting of execution of fake intra-Community acquisitions and supplies of these products for the purpose of illegally obtaining VAT refunds.
Republic of Poland - Slovak Republic, Czech Republic	Activities of an international criminal organization involved in illegal trading in pseudoephedrine in the territory of Poland, Ukraine, Slovakia and the Czech Republic, and production of methamphetamine hydrochloride.
Republic of Poland - United Kingdom	Activities of a criminal organization involved in smuggling significant volumes of narcotics from Spain, specifically marijuana, hashish, cocaine, and placing them on the market in the territory of Małopolskie voivodeship.

### **Underlying offences for money laundering - brief characteristics**

124. The practice of cases concerning the offence under Article 299 of the Criminal Code typically points to two directions of operational and process activities:

- based on the gathered proceeding/operational case files concerning the predicate offence (VAT fraud, credit fraud, illicit trading in drugs or narcotics), certain items are revealed that involve the occurrence of the predicate offence;
- the authority dealing with the procedure/operational case receives information on suspicious transactions, e.g. realised in bank accounts, and its important role in the course of its proceeding is to prove the predicate offence.

125. In light of this model, officers working for divisions responsible for combating organized crime in the area of drugs, criminal offences or economic offences can engage in operational and process activities aimed at proving such an underlying offence.

126. Of the overall volume of cases dealt with by CBŚP:

- in 2018, 518 persons were accused of a total of 786 cases of committing the illicit act under Article 299 of the Criminal Code.
- in 2017, 588 persons were accused of a total of 831 cases of committing the illicit act under Article 299 of the Criminal Code.
- in 2016, 528 persons were accused of a total of 685 cases of committing the illicit act under Article 299 of the Criminal Code.

## Internal Security Agency

127. According to Article 3 of the *Internal Security Agency and Intelligence Agency Act of 24 May 2002*, the Head of the Internal Security Agency (ABW) is a central government administration authority operating with the assistance of ABW.

128. ABW has the following specific tasks:

- 1) Recognition, prevention and elimination of threats affecting internal security of the State and the constitutional order thereof, particularly the State's sovereignty, its international position, independence and integrity of its territory, as well as the State defence.
- 2) Recognition, prevention and detection of such crimes as:
  - espionage;
  - terrorism;
  - illegal disclosure or unauthorized use of classified information;
  - corruption of public officials;
  - offences involving production and trading in goods, technologies and services of strategic importance for State security;
  - illegal production, possession and trading in firearms, ammunition, explosives, weapons of mass destruction, illicit drugs and narcotics, in the international trading system.
- 3) Recognition, prevention and detection of threats affecting the security of public administration authorities' IT systems significant for the continuity of the functioning of the State.
- 4) Performance of the functions of the national security governance in respect of protection of classified information in international relations.
- 5) Obtaining, analysing, processing and transmission of information to competent authorities which can be of major relevance for protection of the State's internal security and constitutional order.

129. In view thereof ABW is both a State administration authority and a law enforcement body. The Agency is authorized to operate across the entire territory of Poland and abroad (to a limited extent).

130. Operational and recognition procedures as well as investigative, analytical and information measures can be implemented in regard of cases within the range of competence of ABW. ABW

is allowed to exercise operational control, controlled purchases, classified monitoring of dispatches, and to use the services of individuals not employed by the Agency as its officers.

131. Furthermore, the Head of ABW coordinates special operational and investigative proceedings undertaken by the services that could affect the State security by way of keeping a central registry of interest of operational special forces.

132. In accordance with Article 5 and 8 of the Anti-Terrorist Actions Act of 10 June 2016, the Head of ABW also coordinates operational, exploratory, analytical and information measures undertaken with regard to terrorist incidents by special forces, and the exchange of pertinent information communicated by the Police, the Polish Border Guard, the Polish Parliament Guard, the State Fire Service, the National Revenue Administration, the Military Gendarmerie and the Government Centre for Security.

133. Certain organizational units are distinguished within the structure of ABW which are competent to recognize, prevent and counteract financing of terrorism (Anti-Terrorist Centre of ABW) and predicate offences which may be linked to money laundering (Strategic Hazards Department of ABW).

134. Within the framework of its operations, ABW acts in close cooperation with domestic partners (special services, the Police, the Border Guard, the National Revenue Administration, etc.) and with international partners (bilaterally and in multilateral forums). ABW collaborates with the following institutions responsible for supervision of the financial market:

- the Polish Financial Supervision Authority (PFSA - according to Article 17ca of the *Financial Market Supervision Act of 21 July 2006*, the Chairperson of the PFSA provides documents and information to the Head of ABW in the scope required for the performance of the statutory duties of the Agency under his management;
- the General Inspector of Financial Information (the GIFI) - pursuant to Article 105(1) of the *Act of 1 March 2018 on counteracting money laundering and financing of terrorism*, the GIFI will disclose information available to it on the basis of a written request, which must be properly justified, presented by such authorities as the Head of ABW or his authorized representatives, within the range of his statutory tasks.

Table 12 - Data of criminal proceedings handled by ABW

year	under Article 299 of the Criminal Code	under Article 165a of the Criminal Code	under the Act of 16 November 2000 on counteracting money laundering and financing of terrorism and the Act of 1 March 2018 on counteracting money laundering and financing of terrorism
2016	102	2	0
2017	117	3	0
2018	111	3	0

## National Revenue Administration

The National Revenue Administration (KAS) was established on the basis of the provisions of the *National Revenue Administration Act of 16 November 2016* (Journal of Laws of 2018, item 508, as amended) and its implementing regulations in 2017. It operates in the field of collection,

control and enforcement of taxes, customs duties and other revenues of the State budget from public levies, as well as combating tax and customs crime.

135. The main tasks of the National Revenue Administration (KAS) include:

- 1) realization of revenues from taxes, charges and non-tax budgetary receivables;
- 2) realization of revenues from customs duties and other charges related to the import and export of goods;
- 3) implementation of the customs policy imposed on Poland as a member of the EU customs union;
- 4) application of customs procedures to specific goods and defining the status of goods in terms of their export from Poland and import to Poland;
- 5) providing service and support to taxable persons, taxpayers and business operators in proper performance of their tax- and customs-related obligations;
- 6) conducting audits, audit procedures, official checks;
- 7) pursuing information and education activities concerning tax and customs laws and regulations;
- 8) administrative enforcement and seizure of cash liabilities;
- 9) education and professional training for KAS staff in the field of the KAS tasks;
- 10) analytic, predictive and research activities concerning the occurrences within the range of competence of KAS, risk analysis;
- 11) verifying compliance with the restrictions and obligations defined in foreign exchange laws and regulations as well as the conditions of foreign exchange authorizations and criteria for operating currency exchange offices;
- 12) investigation, detection and combating tax crimes and offences as well as criminal offences in the field specified in Article 2 of the National Revenue Administration Act;
- 13) performing tasks transpiring from the Road Transport of Goods Monitoring System Act;
- 14) performance of tasks arising from EU legislation covering the statistics of commodity trading between the EU Member States (INTRASTAT) and commodity trading between Member States and non-Member States (EXTRASTAT); handling INTRASTAT-related proceedings;
- 15) performance of tasks arising from the existing bans and restrictions in foreign trade in commodities, particularly established for the purposes of protecting the life and health of people and animals, plants, the environment, public health and safety, consumer protection, international security, national heritage, intellectual property rights and commercial policy measures;
- 16) contribution to the implementation of the Common Agricultural Policy;
- 17) cooperation with competent authorities in other countries, with international organizations and institutions;
- 18) other tasks as defined in the applicable Acts of law.

136. The following authorities operate within the framework of KAS:

- directors of revenue administration regional offices (16) - overseeing the performance of tasks by heads of tax offices and the head of a customs and tax control office;
- heads of tax offices (400) - performing tasks involved in collection of taxes, customs duties, charges and non-tax budgetary receivables (as well as other amounts due under separate legislation, or administrative enforcement of monetary claims), service and support for taxable persons;
- heads of customs and tax control offices (16)<sup>11</sup> - performing tasks involved in customs and tax investigation, determination and calculation of taxes, customs duties, charges and non-tax budgetary receivables (as well as other amounts due under separate legislation), application of specific customs procedures to particular goods;

137. In addition, the KAS organization comprises the National Revenue Information (KIS) and the National School of Treasury (KSS).

138. The functions of the Director of the National Revenue Information (KIS) include:

- provision of consolidated, commonly available tax and customs information, including processing and publication of such information;
- handling cases concerning tax rulings;
- pursuing information and education activities concerning tax and customs laws and regulations;
- implementation of the staff and training policies at the National Revenue Information;
- identifying hazard areas potentially relevant to proper fulfilment of tax- and customs-related obligations;
- performance of other tasks as defined by separate legislation.

139. The National School of Treasury (KSS) is responsible for:

- coordination of training activities at KAS;
- building and development of an integrated training system;
- development of teaching programmes and resources;
- research and analysis of KAS staff development needs;
- planning and organization of educational project;
- collaboration with universities on organizing post-graduate studies in the field of organization and administration;
- training quality and efficiency surveying and evaluation;
- managing trainer staff at KAS;
- development and publishing scientific papers and information/educational resources within the scope of the respective activities;

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<sup>11</sup> There are 45 delegate offices and 144 customs branches operating within this framework.



- preparation and implementation of projects funded with foreign sources;
- promoting the KSS activities;
- performance of other tasks as specified by the Minister of Finance and the Head of KAS.

140. KAS reports to the Head of KAS, who supervises the activities of directors of revenue administration regional offices, the National Revenue Information, the National School of Treasury, and directors competent for matters relating to KAS at the organizational units of the Ministry of Finance, as well as the heads of tax offices and heads of customs and tax control offices. His other responsibilities include:

- determination of the staff and training policies at the National Revenue Administration units;
- realization of the State budget within the scope defined for KAS;
- supervision, coordination, operational and investigative activities, investigation and detection of tax crimes and offences, prevention of such crimes and offences;
- EU budget funding management audits and operating as an audit institution, certifying body and a special unit in charge of financing the common agricultural policy.

141. As at 31 December 2018, KAS was employing 48.3k civil servants, 10.3k Customs and tax control officers, and 1.2k administration personnel.

142. Among the top priorities of KAS, there is the prevention and combating of tax crime (including VAT-related offences), particularly through systematic identification of hazards, control measures, identification of specific individuals and entities suspected of engaging in criminal activities. Operational and investigative activities are pursued for that purpose. These are implemented within a broad range of cases involving tax evasion or understatement, including irregularities in trading in excise goods (such as tobacco products, spirits, fuels), VAT carousels, identification of so-called empty invoices covering fake transactions in various goods or services, irregularities occurring in intra-Community exchange of goods and smuggling, illegal gambling, non-registration of incomes in business activities, undervaluation of taxable base, VAT fraud against the State Treasury.

143. The range of goods used in committing the above specified crimes is highly diverse, affecting all the areas of the national economy, from trading in food products, FMCG, excise goods, through precious metals, natural resources, to electronic products and advanced technologies. The purpose of the actions ultimately arising from the operational and investigative procedures is to stop criminals and to secure assets derived from criminal activities for the benefit of the State Treasury's claims.

144. There were 78,717 criminal fiscal cases, criminal cases and offence cases pending at KAS in 2018. Approximately 39 cases were allocated to each employee of the investigative and criminal revenue units within the KAS organization.

Table 13 - Statistics of investigations pending at KAS on criminal revenue cases during 2017-2018.

Measure	2018	2017
<b>Initiated proceedings</b>		
Investigations in fiscal criminal cases:	66,920	97,305

	of which tax crime cases:	17,059	22,882
	of which tax offence cases:	49,861	74,423
<b>Closed proceedings</b>			
Investigations closed with fines imposed as a penalty for tax offences:		4,212	4,905
Investigations closed with an indictment presented to court:		37,248	64,953
	of which tax offences:	30,669	56,471
	of which tax crimes:	6,579	8,482
Investigations closed with a motion presented to court for authorization of voluntary submission to liability:		7,594	8,550
	of which for tax offences:	3,637	4,182
	of which for tax crimes:	3,957	4,368
Investigations discontinued:			
- pursuant to Article 17 § 1 (1) and (2) of the Code of Criminal Procedure:		1,147	1,610
	of which tax offences:	372	624
	of which tax crimes:	775	986
- on the grounds of failure to identify the perpetrators of crimes:		1,254	3,281
	of which tax offences:	1,223	2,659
	of which tax crimes:	31	622
- for other reasons:		288	2,059
	of which tax offences:	108	1,391
	of which tax crimes:	180	668
Investigations suspended:		1,559	1,760
	of which tax offences:	223	279
	of which tax crimes:	1,336	1,481
<b>Investigations in which motions were lodged to court for conditional withdrawal of proceeding</b>		78	55
	of which for tax offences:	12	1
	of which for tax crimes:	66	54
<b>Court procedure activities involving a Prosecutor</b>			
Indictments approved by Prosecutor:		852	1,723
	of which for tax offences:	28	59
	of which for tax crimes:	824	1,664
Discontinuation decisions approved by Prosecutor:		282	608
	of which tax offences:	25	54
	of which tax crimes:	257	554
Motions to Prosecutor for filing an appeal, or appeals filed to court:		141	1,111
	of which tax offences:	5	250
	of which tax crimes:	136	861

Table 14 - Statistics of investigations pending at KAS on criminal cases during 2017-2018.

Measure	2018	2017
<b>Investigations opened in criminal cases:</b>	11,316	8,874
The largest group within the overall number of investigations opened in criminal cases consisted of illicit acts categorized in:		
Article 79 of the Accounting Act of 29 September 1994:	9,031	6,644
Article 55 of the Drug Addiction Prevention Act of 29 July 2005 (Journal of Laws of 2018, item 1030, as amended) - smuggling of illegal drugs:	1,161	868

Article 305 of the Act of 30 June 2000 - <i>Industrial Property Law</i> (Journal of Laws of 2017, item 776, as amended) - illegal use of trademark:	759	618
<b>Offence/misdemeanour cases:</b>	481	518
The largest group within the overall volume of minor offence cases consisted of the offences categorized in Article 92 of the <i>Road Transport Act of 6 September 2001</i> (Journal of Laws of 2019, item 58, as amended).	339	361

145. Compared to the data for 2017, the volume of opened investigations of criminal tax cases decreased in 2018 by approx. 31.2% (of which there were approx. 25.4% fewer investigations concerning tax crimes and 33% fewer tax offence cases).

146. The decrease of the volume of criminal tax cases opened in 2018 was due to the systematic measures implemented by the Ministry of Finance with the objective of closing the loopholes in the tax system, which contributed to the reduction of the scale of irregularities in this area. Firstly, the reduction of the scale of tax crimes was due to the efficient and successful actions undertaken by KAS in the field of combating and preventing tax and customs fraud.

147. The number of investigations opened in 2018 on the criminal cases handled by KAS increased by approx. 27.5%, compared to the 2017 data. The vast majority of these cases involved a suspicion of illicit acts such as referred to in Article 79 of the *Accounting Act of 29 September 1994*.

148. Of the overall volume of offence cases, the proceedings most commonly involved the illicit acts referred to in Article 92 of the *Road Transport Act of 6 September 2001*, i.e. misconduct or breach of the terms applicable to road transport by the driver.

149. Prosecution of crimes detected by KAS bodies under Article 299 of the *Criminal Code*, which led to an undue reduction or risk of undue reduction of public revenue, is a task imposed on KAS under the *Act of 24 November 2017 on Amending Certain Acts of Law in Order to Prevent the Misuse of the Financial Sector for Tax Fraud Purposes* (Journal of Laws of 2017, item 2491), which entered into force on 13 January 2018 as an amendment of the *National Revenue Administration Act of 16 November 2016* (Journal of Laws of 2019, item 769, as amended). In the course of performing their tasks in this area, KAS bodies opened 12 investigations in 2018 on cases enumerated under Article 299 of the *Criminal Code*. Before the abovementioned amendment, suspected occurrences of the crimes specified above were reported to a public prosecutor's office. 56 such reports were sent to a public prosecutor's office in 2017, compared to 61 and 40 in 2016 and 2015, respectively.

150. Many new organizational and legislative arrangements were implemented during 2016-2018 to support the combat of economic crime. A number of new legal arrangements were introduced under the so-called fuel package, transport package, tobacco package, spirits package, with such objectives as closing the loopholes in the tax collection system, prevention and combating of economic crime. The rules of VAT registration and settlement were modified (including elimination of quarterly returns/payments for specific groups of taxable persons, modification of the rules of tax refunds, extending the applicability of the reverse charge mechanism, restoration of sanctions for unreliable VAT settlement), cash payments were restricted, and new supply and purchase registration controls were introduced (SAF). In addition, the joint and several liability mechanism was extended, the fiscal criminal penalties for invoicing were toughened, and so-called extended confiscation was introduced. The completed projects include the implementation of a split payment system for VAT, the clearing chamber IT system (STIR) for analysis of the risk of using banks for tax fraud purposes.

151. Within the framework of the analytic undertakings, 137 chains of high risk transaction relations were identified, along with 64 entities affected by elevated risk of application of aggressive tax optimization mechanisms.

152. Amended regulations of Section IIIB ‘Counteracting the misuse of the financial sector for tax fraud’ of the *Act of 29 August 1997 - Tax Ordinance Law* entered into force on 13 January 2018. The STIR system (Clearing Chamber IT System) was launched on the basis of these amendments.

153. The provisions of the above referenced Act authorize the Head of KAS to receive daily updates via STIR concerning the accounts operated for qualified entities by banks and credit unions and the transactions in these accounts, for the purpose of analysing the risk of tax fraud occurrence. The system further facilitates retrieval of aggregated data of natural persons’ transactions with qualified entities. As a result of the analysis procedures, it is possible to quickly determine fake business operators participating in VAT carousel schemes.

154. In 2018, STIR received data feeds from 619 banks and credit unions. The data concerned approx. 3.44 million qualified entities<sup>12</sup> as well as approx. 4.61 million persons related to qualified entities and approx. 11.56 million current accounts.

155. In 2018, approx. 7,181.2 million transaction reports were received in STIR. Based on the analysis of these reports. approx. 5.5k entities were recognized as high risk operators and approx. 28.6k as above average risk operators.

156. Within the analysis procedures comprising such data as those retrieved from STIR, the risk factor information was used as determined by National Clearing House Co. (Krajowa Izba Rozliczeniowa S.A. (KIR S.A.)) in the risk analysis concerning 3,435,082 entities. With the use of the risk factor information of which the Head of KAS is updated by KIR S.A. on a daily basis, as well as the information concerning the qualified entities’ accounts and daily lists of transactions involved in the chains of above average risk of VAT abuse, 137 such chains were identified, comprising approx. 670 leading entities. Moreover, 5,474 findings of preliminary risk analysis were presented for entities recognized in the high risk group to local KAS units, with the objective of undertaking further monitoring, analytic or verification efforts.

157. As a result of the actions undertaken in respect of blocking of property values the accounts of qualified entities, 41 accounts operated for 23 entities were blocked, and the total amount concerned was approx. 10.3 million PLN.

158. In 2018, KAS was also engaged in certain measures aimed at optimizing the performance of its tasks, such as:

- implementation of the *Integrated Risk Management System II (ZISAR II)*, with the particular objective of adapting the system to the needs of handling the tax investigation process and audit/check procedures;

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<sup>12</sup> Under Article 119zg point 4 of the *Act of 29 August 1997 - Tax Ordinance Law*, a qualified entity means:

- a natural person being a business operator within the meaning of Article 4(1) of the *Act of 6 March 2018 - Entrepreneurs Law*,
- a self-employed natural person who is not a business operator within the meaning of the *Act of 6 March 2018 - Entrepreneurs Law*,
- a legal person,
- an organizational unit without legal personality under the applicable legislation.

- implementation of the ZISAR PLUS - PUESC.P7.1 in the field of handling risk management and registration of investigation findings, aimed at accomplishing such goals as the development of the risk analysis service for border clearance procedures, adaptation of the processes involved in management of the risk analysis service and controls for KAS purposes;
- implementation of the common financial criteria and standards of risk in accordance with *Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code* (OJ L 269, 10.10.2013, p. 1);
- execution of the ARIADNA2 PLUS - PUESC.P7.2 project in the area of integration of data from the SISC Tax and Customs Information System, with the purpose of integrating the data necessary for handling analysis at KAS;
- generating regular reports on the central level and passing them for review to KAS units in all the voivodeships, identifying VAT settlement nonconformities (within the framework of analytic activities, based on data from JPK\_VAT [SAF-T]<sup>13</sup>, STIR and other databases), specifically: non-submission of JPK\_VAT (SAF-T) despite being obliged to do so; divergence between a tax return of a specific taxable person and their contract parties in domestic and foreign transactions and in a reverse charge scheme; a list of potential claims for enforcement purposes.

159. Based on the above mentioned specifications, tax offices covered 111.6 thousand tax returns submitted by entities occurring in the above mentioned reports with their investigation procedures during the period from January to December 2018. As a result, corrections were submitted for approx. 71.3% of the total volume of tax returns.

160. The tasks implemented within the KAS structure include those involved in EU budget funding management audits and operating as an audit institution, certifying body and a special unit in charge of financing the common agricultural policy.

161. KAS is also responsible for the performance of the tasks arising from Article 3(4) of *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999* (OJ UE L 248, 18.09.2013, p. 1), i.e. the coordinating body, in collaboration with the European Anti-Fraud Office (OLAF), Anti-Fraud Coordination Service (AFCOS). With respect to the above, 24 new investigations and pending investigations carried over from previous years were coordinated, monitored and clarified on an ongoing basis as against the OLAF data feeds. Ongoing support was also offered upon OLAF's request in respect of 11 on-the-spot checks and inspections carried out by OLAF in the territory of Poland<sup>14</sup>.

162. An Undersecretary of State at the Ministry of Finance, acting as Deputy Head of the National Revenue Administration (KAS), holds the position of Government Representative in charge of Combating Fraud Against the Republic of Poland or the European Union, who is

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<sup>13</sup> A Standard Audit File for Tax (SAF-T, Polish abbreviation: JPK) contains data of purchases and sales shown in the respective business owner's VAT records for a specific period.

<sup>14</sup> Based on the provisions of *Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities* (OJ L 292, 15.11.1996, p. 2).

particularly responsible for the organization of the process of Poland's reporting any irregularities in the allocation of EU funding resources, in accordance with the requirements set out by the European Commission. Within the range of these tasks, 1,280 irregularities were reported to the Commission in 2018 and 138 reports were submitted to the competent recipients concerning irregularities in the process of utilization of non-refundable aids offered by the European Free Trade Association (EFTA) member states.

163. Moreover, the annual contribution to the annual report on *Protection of the Union's financial interests – Fight against fraud* was presented to the Commission. Within the KAS organization, comprehensive data is collected and sent to the Commission concerning Poland's implementation of measures designed as a contribution to the fight against fraud and other illicit activities relevant to the European Union's financial interests.

164. KAS bodies are further entrusted with such tasks as customs and tax controls concerning compliance with the *Gambling Act of 19 November 2009* by entities operating in the field covered by that regulation, including the conformity of such operations with the relevant application, the issued licence or authorization, the approved gamble regulations, as well as the fulfilment of the obligations relating to tax on gambling and additional payments, ownership of gaming machines, manufacture and trading in gambling machines.

165. During 2018, KAS bodies carried out 811 audits of compliance with the Gambling Act, conformity of such operations with the relevant application, the granted licence or authorization, and the approved gamble regulations. Based on the findings of 100 audits conducted in the field of organization of gambling, various types of irregularities were discovered.

166. In addition, with regard to the determination of infringement of the provisions of the above specified Act of law, the KAS bodies arrested 10,956 illegal gaming machines in 2018, in the course of their audit/inspection procedures. Furthermore, they undertook more than 20,000 measures aimed at verifying the locations where illegal organization of machine gambling was previously identified or probable of occurring.

167. Also, KAS systematically monitors the Internet for publication of prohibited advertisements and promotion of gambling and sponsor information, particularly on servers hosted by domestic hosting service providers<sup>15</sup>. 92 domain names that were publishing prohibited advertising and promotion of gambling were identified in 2018 on servers hosted by domestic hosting service providers. The hosting service providers concerned removed or blocked access to the illicit contents published in 76 domain names.

In 2018, KAS authorities launched an information and educational campaign in the field of illegal organization of gambling, particularly on the Internet. The scope of the campaign comprises certain information and educational measures for communications to schoolchildren, parents, teachers, university students and teachers regarding the legal regulations, consequences of infringement of the *Gambling Act of 19 November 2009*, and the hazards involved in addiction to gambling.

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<sup>15</sup> I.e. entities offering space for publication of data by customers on their servers.