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Poland

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

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

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

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

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

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

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

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

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

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

Relevant legal and administrative measures are evaluated as necessary and can be initiated by CBA or ministries. The anti-corruption programme for the period 2018–2020 established a task of developing a law-making system; however, it was not implemented. Poland collaborates with other States and with relevant international and regional organizations.

Poland has provided notification that CBA is the main preventive body and, pursuant to article 1 of the Act on the Central Anti-Corruption Bureau, was established as a special service to combat corruption in public and economic life. CBA has preventive functions, although its statute does not explicitly provide for such. Pursuant to article 6 of the Act, the Head of CBA is appointed for a term of four years and may be recalled by the Prime Minister following consultations with the President and the

Parliamentary Committee for Special Services. The Act establishes eligibility and "recall" (removal) criteria for the Head of CBA (arts. 7 and 8). The Head of CBA reports to the Prime Minister (art. 12). The activities of CBA are subject to the control of the Sejm (the lower house) (art. 5) and are financed from the State budget (art. 2). The human and financial resources allocated to CBA were reported to be insufficient. No specialized training is provided to CBA staff.

Other bodies with preventive functions include the National Prosecutor's Office, the Supreme Audit Office, the Police, the Border Guard, the Internal Security Agency, the Military Police and the National Revenue Administration.

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

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

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

The Civil Service Council is an opinion-giving and advisory body to the Prime Minister, who appoints its members. The Council is responsible for State budget allocations, normative acts regarding the civil service, civil service training and annual reports of the Head of the Civil Service (arts. 19–22). Training, including on ethics and integrity, is mandatory.

Chapter 3 of the Civil Service Act provides that recruitment should be open and competitive, except in relation to graduates of the Lech Kaczyński National School of Public Administration (which is directly subordinated to the Prime Minister), who are granted fast-track entry to the civil service and are appointed by the Prime Minister (arts. 37, 38, 42 and 46 of the Act). Vacancies are published. The State examination for entry to the civil service is administered by the National School of Public Administration (arts. 43 and 45 of the Act).

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

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

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

Some ethical guidelines for civil servants exist. The Civil Service Act obliges members of the Civil Service Corps to perform tasks honestly, conscientiously and impartially (art. 76). Ordinance No. 70 of the Prime Minister on the guidelines for compliance with the rules of the civil service and on the principles of the civil service code of ethics refers to mandatory principles of legality, rule of law and increased public confidence in public administration bodies, as well as principles of protection of human and civil rights, selflessness, openness and transparency, secrecy protected by law, professionalism, liability, reasonable public administration management and open and competitive recruitment procedures (art. 1). No sanctions are established for non-compliance with the Act. There is a collection of ethical principles governing the prosecutors' profession (art. 96 of the Prosecution Service Act), but it does not provide for sanctions and has not been widely disseminated. The code of ethics for judges does not provide for sanctions either. There is no code of ethics for parliamentarians. Disciplinary liabilities and procedures, including the establishment of disciplinary commissions, are provided for in chapter 9 of the Civil Service Act.

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

There is no definition of conflict of interest as such in Poland. Some institutions, without using the term "conflict of interest" explicitly, do identify and manage such conflicts. The Constitution (art. 153, para. 1) provides for the impartial and politically neutral discharge of obligations by civil servants. The Civil Service Act provides that civil servants may not take up additional employment without the written consent of their Director General or perform activities that contravene the Act (art. 80). CBA verifies the accuracy of conflict-of-interest declarations submitted by only five categories of civil servants, mostly in the area of public health (art. 8 (c) of the Act on Consultants in Health Care; art. 20, para. 2, of the Act on Reimbursement of Medicines, Foodstuffs for Particular Nutritional Purposes and Medical Substances; art. 31, sect. 9, of the Act on Health-Care Services Financed from Public Funds; art. 6, para. 2, of the Act on Certain Contracts Concluded in Connection with the Execution of Procurements of Fundamental Importance for the Security of the State). The Code of Criminal Procedure (art. 41) and the Code of Civil Procedure (art. 49) provide for the exclusion of judges in self-reported or reported instances in which their impartiality has been or might be breached. The Act on the Public Prosecutor's Office (arts. 96 and 103) regulates conflicts of interest within the prosecution service, including outside activities and employment. All public prosecutors are obliged to

submit financial interest declarations, which are published (art. 104 of the Act). The system for all categories of civil servants is honour-based.

The Act on Restricting the Conduct of Economic Activity by Persons Performing Public Functions applies only to individuals in top executive positions (arts. 1 and 2) and has a limited scope and a number of exemptions (art. 7). Pursuant to articles 8 and 10, individuals covered by the Act must declare their assets and their spouses' business activity, but not those of their children. Asset declarations are legally protected secrets, except for those of the President and the First President of the Supreme Administrative Court, and the President, Vice-President, members of the management board and director-level staff of the National Bank. Article 12 of the Act provides for the establishment of a register of benefits. Sanctions for non-compliance are set out in article 5.

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

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

The Council's functions are defined in article 3 of the Act on the National Council of the Judiciary and include, inter alia: (a) issuing opinions on acts concerning the judiciary and judges; (b) adopting resolutions on matters referred to the Constitutional Tribunal for examination of their consistency with the Constitution with regard to the independence of courts and judges; (c) reviewing and assessing candidates for judicial appointments and submission to the President of motions for the appointment of judges to the Supreme Court, the Supreme Administrative Court and the common, provincial, administrative and military courts; (d) considering applications for the retirement of judges; (e) conducting disciplinary proceedings involving judges of common and military courts; and (f) issuing professional ethical rules and compliance monitoring.

Article 183 of the Constitution provides that the First President of the Supreme Court is appointed by the President of Poland for a six-year term from among candidates proposed by the General Assembly of the Judges of the Supreme Court. The National

Council of the Judiciary proposes candidates for judicial positions at the Supreme Court. Following an amendment in 2018 to the Act on the National Council of the Judiciary, it is no longer possible to file appeals regarding such decisions with the Supreme Administrative Court.

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

Judicial vacancies are published. Pursuant to article 11 of the Act on the National Council of the Judiciary, candidates are assessed and voted on by the Council and their names submitted to the President of Poland for a final decision. The selection process is defined in articles 34 to 37a of the Act. Candidates who have been rejected for judicial positions in common, provincial, administrative and military courts may appeal through ordinary courts, followed by the Supreme Court (art. 183 of the Constitution).

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

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

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

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

Poland has transposed the following directives of the European Parliament and of the Council: Directive 2014/23/EU on the award of concessions contracts, Directive 2014/24/EU on public procurement, Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors, Directive 2009/81/EC on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, Directive 89/665/EEC on the coordination of laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts and Directive 92/13/EEC coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

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

An e-procurement system has been established. Tender notices with a value above 130,000 zlotys (approximately $30,000) are published (art. 214 of the Public Procurement Act). Appeal procedures are set out in title VI of the Act and are carried out through the National Appeal Chamber in the first instance; its decisions are equally as binding as a court's decision (art. 197). Complaints against the Chamber's decisions may be filed with the courts (art. 198a). Although conflicts of interest involving procurement personnel are regulated in article 56 of the Act, the system is trust-based.

Procedures for the adoption and implementation of the national budget are defined in the Constitution (arts. 219–226), the Public Finance Act and regulations of the Ministry of Finance. Pursuant to article 222 of the Constitution, the Council of Ministers submits to the Sejm a draft budget. Article 223 of the Constitution provides that the Senate may, within the 20 days following receipt, adopt amendments. The President signs the budget (art. 224(1) of the Constitution). The draft budget is published on the website of the Ministry of Finance and is subject to consultations with the Social Dialogue Council, a national tripartite forum for dialogue on public and legal issues comprising representatives of employees, employers and the Government. The Ministry of Finance and the Supreme Audit Office publish annual reports on budget implementation.

The basic rules concerning internal audit in the public finance sector are set out in the Public Finance Act, the regulation of the Minister of Finance on internal audit and information on that audit work and results, the Internal Audit Standards in Public Finance Sector Entities and the guidelines issued by the Central Harmonization Unit in the Ministry of Finance (which is in charge of internal audit coordination). Local government entities are excluded from reporting obligations to the Central Harmonization Unit. Legislative work is under way to establish reporting obligations (concerning internal control and internal audit) for these types of entities. The Minister of Finance has issued detailed guidelines on planning and risk management for the public finance sector.

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

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

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

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

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

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

Private sector (art. 12)

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

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

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

Information about beneficial owners is collected by the Ministry of Finance in the public Central Register of Beneficial Owners established in chapter 6 of the Anti-Money-Laundering Act, which also defines beneficial ownership (art. 2(2)(1)). The Register is publicly accessible free of charge and contains information on members of the management board and direct stakeholders. Obliged institutions must identify beneficial owners and take measures to verify their identity pursuant to article 34(1)(2) of the Act, which requires the identification and verification of identity to be carried out on the basis of documents, data or information gathered from reliable and independent sources. The National Court Register contains data on beneficial owners of the entities registered in it (arts. 38,39 and 49 of the Act on the National Court Register).

Every type of licence has its own legal act supplemented by the relevant administrative regulations. There are regulations regarding European Union subsidies.

The Act on Restricting the Conduct of Economic Activity by Persons Performing Public Functions establishes post-employment restrictions for only some categories of civil servants, in particular at the top executive and management levels (art. 7).

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

Poland specifically disallows the tax deductibility of expenses that constitute bribes, in line with the Corporate Income Tax Act (art. 16(1)(66)) and the Personal Income Tax Act (art. 23(1)(61)).

Measures to prevent money-laundering (art. 14)

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

Poland has adopted a risk-based approach to supervision for the purpose of combating money-laundering, on the basis of the guidelines of the Financial Action Task Force

and the European supervisory authorities. The country carried out its national risk assessment from 2017 to 2019.

Article 35(1)(4) of the Anti-Money-Laundering Act provides that customer due diligence measures must be conducted by all obliged institutions when establishing a business relationship or performing an occasional transaction. If there is a higher risk of money-laundering, obliged institutions must apply enhanced customer due diligence measures. The relevant customer due diligence documents must be kept for five years.

Politically exposed persons and their business associates and family members are defined in article 2(2)(3), (2)(11) and (2)(12) and article 46 of the Anti-Money-Laundering Act. When dealing with both national and foreign politically exposed persons, their family members and business associates, obliged persons must apply enhanced due diligence measures (art. 46(6) of the Act).

The Anti-Money-Laundering Act establishes requirements related to record-keeping (art. 49(1)) and the reporting of suspicious transactions (arts. 74(1), 86(1), 89 (1) and 90).

Poland implements a cross-border declaration system for both the incoming and outgoing transportation of cash or monetary instruments with a threshold value of 10,000 euros (at non-European Union borders), on the basis of Regulation (EU) 2018/1672 of the European Parliament and of the Council on controls on cash entering or leaving the Union. According to the Penal Fiscal Code of 10 September 1999, the failure to report to customs or the Border Guard the incoming or outgoing transportation of cash or monetary instruments or the provision of false information is subject to a fine. The transportation of cash by post and in freight is prohibited (annex 2 to Decision No.1/2014/CZI of the Members of the Management Board of Poczta Polska S.A. of 2 January 2014; annex 2 to Resolution No. 48/2018 of the Management Board of Poczta Polska S.A. of 20 March 2018). Obliged institutions must notify the General Inspector of Financial Information of any circumstances that may indicate the suspected commission of money-laundering or the financing of terrorism (art. 74(1) of the Anti-Money-Laundering Act).

According to the Anti-Money-Laundering Act, the General Inspector of Financial Information is the coordinator of the anti-money-laundering system. The General Inspector may exchange information with competent authorities of foreign countries, foreign institutions and international organizations working to counter money-laundering, as well as with European supervisory authorities, without the need for a prior agreement to be concluded (interpretation of arts. 110–116 of the Act). Articles 111 and 116 cover the exchange of information with other (non-financial intelligence unit) parties. The General Inspector had entered into 92 bilateral and 2 multilateral agreements with foreign counterparts defining the procedure and technical terms for exchanging information.

The General Inspector is appointed and dismissed by the Prime Minister at the request of the Minister of Finance following consultation with the Minister Coordinator of Special Services. The General Inspector is supported by the Department of Financial Information of the Ministry of Finance, which acts as an administrative-style financial intelligence unit (art. 12(2) and (5) of the Anti-Money-Laundering Act).

The financial intelligence unit of Poland is a member of the Egmont Group of Financial Intelligence Units and exchanges information with its foreign counterparts through the Egmont Secure Web and FIU.net of the European Union Agency for Law Enforcement Cooperation (Europol). Information and documents can be made available to non-European Union financial intelligence units on the basis of reciprocity.

Beneficial ownership is defined in article 2(2)(1) of the Anti-Money-Laundering Act. Information must be submitted to the Central Register of Beneficial Owners within seven days of the day on which companies are entered in the National Court Register (art. 58 of the Act), and in the event of a change in the information submitted, within

14 days of the change (art. 60(1) of the Act). In addition to through the Central Register of Beneficial Owners, the identity of beneficial owners can be determined through the Central Information about Bank Accounts, the Land Register, the Companies Register or the Financial Information System.

From 2019 to 2021, Poland was evaluated by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) under the fifth round of mutual evaluations, and an evaluation report was adopted in December 2021. The first follow-up report was presented at the MONEYVAL plenary meeting in December 2023.

Administrative and penal sanctions for non-compliance with the Anti-Money-Laundering Act are provided for in chapters 13 and 14 of the Act (arts.147–157).

2.3. Challenges in implementation

It is recommended that Poland:

- Develop and implement an effective, coordinated anti-corruption policy that promotes the participation of society and reflects the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability, and establish a national monitoring and reporting mechanism on its implementation (art. 5, para. 1).
- Endeavour to strengthen the practices aimed at the prevention of corruption with a view to making them more systematic and targeted, including by developing effective education and outreach programmes (art. 5, para. 2).
- Endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption, including by developing a monitoring and evaluation mechanism for this purpose (art. 5, para. 3).
- Ensure that CBA has the necessary independence to enable it to perform its functions without undue influence, including by reviewing the appointment and removal procedures for its Head and adopting the necessary regulations in this regard, and provide to it the necessary material resources, as well as specialized staff and training (art. 6, para. 2).
- Endeavour to identify public positions considered vulnerable to corruption and to adopt procedures for the selection and training of individuals for such positions and their rotation, where appropriate (art. 7, para. 1 (b)).
- Consider strengthening legislation by introducing sanctions for the presentation of false or incomplete information in relation to the fulfilment of disclosure requirements or for conduct during the campaign that would disqualify a candidate from standing for election (art. 7, para. 2).
- Endeavour to clarify and strengthen the current framework on conflicts of interest, including by adopting a comprehensive and unified legal and administrative framework for preventing, identifying, verifying and managing conflicts of interest for all categories of public officials, in particular parliamentarians, high-level government officials, members of the judiciary and prosecution and public procurement personnel; and provide guidance and training to public officials in this regard (art. 7, para. 4, art. 9 and art. 11).
- Consider adopting measures and systems to facilitate the reporting of acts of corruption by public officials to appropriate authorities by providing a comprehensive definition of protected disclosures in the legislation, establishing clear reporting channels, introducing effective protections against discrimination for public officials who report corruption offences and raising awareness of reporting obligations among public officials (art. 8, para. 4).
- Endeavour to adopt a comprehensive and unified legal and administrative framework for the declaration of outside activities, employment, investments,

assets and substantial gifts or benefits, in particular for parliamentarians, high-level government officials, all members of the judiciary and prosecutors (art. 8, para. 5, and art. 11).

- Take measures to strengthen the independence and integrity of members of the judiciary and prosecution service at all levels, including by reviewing the selection, disciplinary, removal and retirement procedures and by establishing an effective system of appeal against appointment, transfer and removal decisions and disciplinary proceedings; furthermore, amend the Act on the Supreme Court to remove the prerogative of the President with regard to determination of the date of retirement of Supreme Court judges (art. 11).
- Take necessary measures to ensure that any alleged misconduct by judges is investigated independently, impartially, comprehensively and fairly, that decisions are taken in the framework of fair procedures before a competent, independent and impartial body and that the right to substantively appeal the decisions of the Supreme Administrative Court before an independent judicial body in disciplinary cases is ensured (art. 11).
- Safeguard the independence of the National Council of the Judiciary, as enshrined in the Constitution, by abolishing amendments that are contrary to its constitutional composition and refraining from any endeavours to alter such composition through any secondary legal instruments (art. 11).
- Strengthen measures aimed at preventing the involvement of the private sector in corruption and, in that regard, consider the following: developing procedures to promote cooperation between law enforcement agencies and relevant private entities, including through the establishment of communication channels, incentives for reporting and protection mechanisms (art. 12, para. 2 (a)); promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct (art. 12, para. 2 (b)); strengthening the measures to prevent conflicts of interest, including by expanding the scope of post-employment restrictions to a wider range of relevant public officials (art. 12, para. 2 (e)).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

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

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

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

Mutual legal assistance in criminal matters, including for the purposes of asset recovery, is provided on the basis of the provisions of European Union law, bilateral and multilateral treaties, including the Convention, and reciprocity (art. 588 of the Code of Criminal Procedure).

Poland requires dual criminality to provide mutual legal assistance; however, a lack of dual criminality does not lead to automatic rejection of a mutual legal assistance

request (art. 588, para. 3, of the Code of Criminal Procedure). The court examines the request to determine whether it is in accordance with the basic principles of the Polish legal system.

Poland uses the Convention as a basis for international cooperation.

The Asset Recovery Office was established within the Police to strengthen coordination of the national institutions engaged in asset recovery.

The exchange of asset recovery information with law enforcement authorities of European Union member States is regulated by the Act on Exchanging Information with European Union Law Enforcement Authorities of 16 September 2011. The Act clarifies the tasks and powers of the national asset recovery contact point (the Asset Recovery Office). The Police, the Internal Inspectorate of the Penitentiary Service, the State Security Office, the Internal Security Agency, the Central Anti-Corruption Bureau, the Border Guard, the Military Police, the Prosecutor's Office and the National Revenue Administration are authorized to exchange information via the Asset Recovery Office.

Poland has no domestic legislation providing for the spontaneous exchange of information for asset recovery or for law enforcement cooperation. The spontaneous sharing of information is carried out in accordance with the relevant European Union legislation and multilateral and bilateral treaties, and through inter-agency agreements on cooperation and information exchange with foreign financial intelligence units, Europol and the International Criminal Police Organization (INTERPOL). The financial intelligence unit proactively exchanges information when investigation or analysis indicates that it could be valuable to its financial intelligence unit partners (art. 110 of the Anti-Money-Laundering Act). The financial intelligence unit proactively shares information on suspicious transactions when it may be of interest to a foreign counterpart (art. 112, para. 3, of the Act). Article 115, paragraph 1, of the Act also requires the financial intelligence unit to share information with supervisory bodies of other countries.

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

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

According to the Anti-Money-Laundering Act, obliged institutions must assess the risk of money-laundering associated with a specific business relationship or an occasional transaction, assess the level of the risk and document the identified risk, taking into account, in particular, factors related to the type of client, the geographical area, the purpose of the account, the type of products and services and methods used for their distribution, the level of assets deposited by the customer or the value of transactions performed and the regularity or duration of the business relationship. Based on this risk assessment, obliged institutions must obtain further information about their clients and ascertain the purpose for which clients are using services and products. The know your customer regime is also applied to the originator of transactions, and customers are checked against sanctions lists (Regulation (EU) 2015/847 of the European Parliament and of the Council). This system is extended to money remitters. A transaction without originator identification can be rejected, considered suspicious and reported, or both. Enhanced due diligence is applied to certain natural and legal persons and certain types of accounts and transactions on the basis of articles 43, 44, 44a, 44b and 45 of the Anti-Money-Laundering Act.

Customer due diligence measures are applied on the basis of the identified risk (art. 36 of the Anti-Money-Laundering Act). Such measures include mandatory identification of the beneficial owner. Verification of identity of a customer, a person acting on a customer's behalf and the beneficial owner is based on data from identity documents, registers, other documents or information originating from a reliable and independent source (art. 37 of the Act).

If a customer is a legal person or an organizational unit without legal personality, obliged institutions should obtain information on the ownership and control structure (art. 36(1) and (2) of the Anti-Money-Laundering Act). Obliged institutions must also carry out ongoing analysis of transactions.

Non-face-to-face business relationships are deemed to be high risk (art. 43(2) of the Anti-Money-Laundering Act). Obliged entities have internal procedures to deal with such high-risk situations. Customer due diligence measures must be performed when a customer enters into a relationship with a bank (art. 35(1)(1) of the Act). Anonymous accounts or accounts in fictitious names are not allowed.

Banking activity in Poland may be conducted in the form of a domestic bank, a branch of a foreign bank (from a country outside the European Union/European Economic Area) and a branch of a European Union credit institution. The establishment of a bank is subject to licensing by the Polish Financial Supervision Authority according to articles 30 and 31 of the Banking Act (which, among other criteria, requires banks to have a seat in Poland), thus effectively prohibiting the establishment of shell banks.

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

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

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

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

Plaintiff States can recover actual losses (art. 415 of the Civil Code) or seek compensation for moral damages (art. 445, para. 1, of the Civil Code) or future potential losses (art. 24 of the Civil Code).

Provisions on international cooperation can be found in the Code of Criminal Procedure. The execution of foreign confiscation orders is possible through mutual legal assistance. The procedures are different for European Union member States (chaps. 62a and 62b of the Code of Criminal Procedure) and non-member States (chap. 62, arts. 582–589, of the Code of Criminal Procedure and the respective mutual legal assistance treaty or on the basis of reciprocity).

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

Non-conviction-based confiscation is possible (art. 45a of the Criminal Code). The seizure of property upon an order issued by a European Union court or competent authority is regulated by chapter 62a of the Code of Criminal Procedure.

Poland permits its competent authorities to freeze or seize property upon a request that provides a reasonable basis to believe that there are sufficient grounds for taking such action or on the basis of an issued order. The legal grounds for seizing property upon request of a country that is not a member of the European Union are set out in article 585, paragraph 3, of the Code of Criminal Procedure. It is possible to enforce

a decision of a European Union member State on the seizure of property under Council Framework Decision 2003/577/JHA and chapter 62b of the Code.

In relation to non-European Union member States, property may be seized under articles 585, paragraph 3, and 607 of the Code of Criminal Procedure. A mutual legal assistance request might also be executed on the basis of a bilateral or multilateral international agreement or reciprocity. When executing such a request, Poland applies the provisions of its domestic law.

The following actions may be taken as part of mutual legal assistance: the service of documents on persons or agencies; the hearing of witnesses or experts; the inspection and search of premises and other places and persons; the confiscation of material objects and their delivery abroad; the summoning of persons to appear before the court or a State prosecutor; the detention of persons; and the provision of information about domestic law, information from records, databases, and other documents and information from the national criminal records of sentenced persons.

Formal and material requirements for the implementation of seizure and freezing orders are set out in article 589m of the Code of Criminal Procedure and are in line with the Convention.

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

Polish domestic law does not provide for the requesting State party to present its reasons in favour of continuing provisional measures taken; however, the established practice is that prior to refusing a mutual legal assistance request, Poland asks the requesting party to provide supplementary information. Poland has not made arrangements (legislative or other measures) to take into account the rights of bona fide third parties.

Return and disposal of assets (art. 57)

Poland may return confiscated property or its value to European Union member States (art. 611fzb of the Code of Criminal Procedure, read in conjunction with art. 188 of the Executive Penal Code).

The return of confiscated assets to non-European Union member States is possible on the basis of bilateral and multilateral treaties. Poland recognizes the Convention as a basis for rendering mutual legal assistance in the absence of a bilateral treaty.

According to article 611fze, sect. 1., of the Code of Criminal Procedure, costs associated with requests for asset return are borne by the State Treasury of Poland. In justified cases, the court could make a request to the competent court or another authority of the requesting State for the reimbursement of part of the expenses incurred.

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

The country does not have a dedicated asset management agency. Confiscated movable assets are sold by public sale (art. 188 of the Executive Penal Code). Real estate is transferred for management to the competent public administration bodies.

Proceeds or instrumentalities of crime (art. 187 of the Executive Penal Code) are managed by court executors until confiscation. The management of confiscated assets falls within the purview of the tax administration (arts. 187a and 188 of the Code). Assets of an equal value are confiscated on the basis of article 206, paragraph 1, of the Code. The injured party may claim damages on the basis of the final court decision.

Poland has no legislation allowing, in the case of proceeds of any other offence covered by the Convention, when the confiscation was executed in accordance with article 55 of the Convention and on the basis of a final judgment in the requesting State party, the return of the confiscated property to the requesting State party, when

the requesting State Party reasonably establishes its prior ownership of such confiscated property or when the requested State party recognizes damage to the requesting State party as a basis for returning the confiscated property (see art. 57, para. 3, of the Convention).

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

3.2. Successes and good practices

- Poland uses the Convention as a basis for international cooperation.

3.3. Challenges in implementation

It is recommended that Poland:

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