



# **POLAND: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS**

**OCTOBER 2015**

This report, submitted by Poland, provides information on the progress made by Poland in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 19 October 2015.

The Phase 3 report evaluated Poland's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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## SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

### a) Summary of findings

1. In June 2015, Poland presented its written follow-up report to the Working Group on Bribery, outlining its responses to the recommendations and follow-up issues identified by the Working Group at the time of Poland's Phase 3 evaluation in June 2013. Of 20 recommendations, the Working Group deemed 10 fully implemented, 5 partially implemented and 5 not implemented. In terms of foreign bribery enforcement, Poland has not opened any new investigations or prosecutions since the time of its Phase 3 review in June 2013, nor did Poland present any developments on the cases described in the Phase 3 report.

2. Poland presented a more cohesive investigative and prosecution strategy for addressing the growing risk of foreign bribery by Polish companies. The Working Group welcomed the creation of a "Plan of Implementing the Tasks/Measures of the Government Programme for Combatting Corruption" for 2014-2019 (an excerpt of which is attached as Annex II) delegating responsibility for a number of activities related to the Working Group's Phase 3 recommendations to various public agencies (including law enforcement and prosecution services). Additionally, beginning in November 2014, the Central Anti-Corruption Bureau (CBA) and the police have met several times to discuss inter-agency cooperation, including the nature and scope of such cooperation, as well as the legal basis for interaction. Although some of the finer details of inter-agency cooperation (such as allocation of resources) have yet to be finalised, the Working Group considered that the steps taken in this area were enough to satisfy the requirements under Recommendation 4 (on developing an investigation and prosecution plan). The Working Group expects that the new strategy will result in increased enforcement, and will follow-up the practical application of the strategy in the next phase of review.

3. Poland's written follow-up report also demonstrated progress in several other areas. The Working Group commended Poland for progress fully implementing Recommendations 9(a), (b) and (c) on the prevention and detection of foreign bribery through public procurement, ODA and export credit agencies. Poland was also congratulated for taking steps to enhance public awareness of foreign bribery (Recommendation 8(a)) through a number of outreach and training programs conducted by various agencies. Additionally, Poland has now clarified that bribe payments are not tax deductible under Polish law (Recommendation 7(a)) and has provided clarification to the auditing profession on the evidentiary standards for reporting of suspicions of foreign bribery to the law enforcement authorities (Recommendation 6(b)).

4. However, the Working Group found that progress was lacking in a number of critical areas. Regarding the offence of bribing a foreign public official, the Working Group found that Poland had not made any progress on Recommendation 1 since the adoption of the Phase 3 report. Article 229.6 of Poland's Penal Code contains an "impunity provision", which allows a perpetrator of bribery to escape punishment by divulging the essential details of a bribery scheme before law enforcement authorities independently learn of the wrongdoing (akin to the "effective regret" defence employed by some jurisdictions). By encouraging bribe-givers to come forward, the "impunity provision" is an essential source of detection of corrupt domestic Polish officials. However, the Working Group considers that the policy and practical reasons for having such a defence for the bribery of domestic public officials do not apply to foreign bribery. Thus such provisions (or defences) have been held by the Working Group as posing a potential obstacle to effective investigation and prosecution of the bribery of foreign public officials, and Poland has been recommended to eliminate the application of the provision to such bribery. Poland reported that in March 2014, the Deputy Prosecutor General issued guidance to the prosecution service on the key enforcement-related issues addressed in the Phase 3 report. However, the Working

Group was not satisfied that the guidance addressed several issues, namely the continued application of the impunity provision to foreign bribery cases, the automatic application of the impunity provision if all of conditions are met, and the availability of forfeiture in cases where the impunity provision has been applied.

5. Regarding corporate responsibility (the liability of legal persons) for foreign bribery, apart from initial analytical work, progress has stalled on modernising the law. It is therefore still necessary to prosecute, or, in some specified circumstances, otherwise complete or discontinue proceedings against the individual perpetrator in order to proceed against the legal person. Accordingly, the Working Group deemed Recommendation 2(a) to be not implemented. Poland did make progress on the training of police and prosecutors on the Act of Liability of Collective Entities, however, and recommendation 2(b) was deemed to be partially implemented.

6. Regarding sanctions for both natural and legal persons, the primary concern of the Working Group in Phase 3 was the level of sanctions that could be imposed on legal persons for the bribery of foreign public officials (which was also flagged as a problem in Poland's Phase 2 review). Since Phase 2, Poland actually decreased the maximum cap on monetary sanctions. Recommendation 3(c) thus asked Poland to eliminate the cap on or increase the maximum penalty available under the Liability of Collective Entities Act as a matter of priority. Poland had made no concrete progress on amending this law at the time of the written follow-up and the recommendation was deemed not implemented.

7. The Working Group also regretted that Poland, save for conducting consultations on the issue of whistleblowers, had not demonstrated any progress on implementing adequate whistleblower protections in its legal system (Recommendation 8(b)). Polish law does not contain any consolidated legislation protecting whistleblowers from retaliation in the workplace. The Polish Labour Code contains a number of disparate provisions prohibiting unjustified termination and discrimination. The Polish legal framework in this respect has not changed since the Phase 3 review.

8. Poland showed progress with respect to prevention and detection of foreign bribery through its anti-money laundering system. The Working Group found that Poland had fully implemented Recommendation 5(a), which asked Poland to examine whether “para-banking” poses a risk for the laundering of the proceeds of bribery. However, Poland had not exhibited any progress on Recommendation 5(b) on raising the awareness of and training the FIU on specific risk factors relating to foreign bribery.

9. Progress is ongoing in certain other areas, in which, however, the WGB's recommendations have not yet been fully met. The Working Group was still not satisfied that natural and legal persons are subject to effective, proportionate and dissuasive penalties for false accounting offences under Polish law (Recommendation 6(c)). Poland will also need to continue to encourage the accounting and auditing profession to raise awareness and provide training on the detection of foreign bribery in companies' books and records (Recommendation 6(a)).

10. With respect to awareness-raising, in the public sector, Poland has not sufficiently raised the awareness of Polish law enforcement authorities of the importance of imposing confiscation (Recommendation 3(b)). In the private sector, Poland will need to further raise the awareness of companies (including SMEs) of the importance of internal controls and compliance measures (Recommendation 6(d)).

## **b) Conclusions**

11. The Working Group concluded that Poland has now fully implemented recommendations 3(a), 4, 5(a), 6(b), 7(a), 7(b), 8(a), 9(a), 9(b) and 9(c), partially implemented recommendations 2(b), 3(b), 6(a),

6(c), and 6(d), and not implemented 1, 2(a), 3(c), 5(b) and 8(b). Poland agreed to report back in writing in one year on progress implementing key recommendations 1, 2(a), 3(c), 6(c), and 8(b).

## PHASE 3 EVALUATION OF POLAND: WRITTEN FOLLOW-UP REPORT

### *Instructions*

*This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 3 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the Phase 3 Evaluation Procedure [[DAF/INV/BR\(2008\)25/FINAL](#), paragraphs 55-67].*

*Responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.*

*Please submit completed answers to the Secretariat on or before [Enter Date].*

**Name of country: Poland**

**Date of approval of Phase 3 evaluation report: 14 June 2013**

**Date of information: 8 May 2015**

### PART I: RECOMMENDATIONS FOR ACTION

#### **Text of recommendation 1:**

1. Regarding the offence of bribing a foreign public official in Article 229.5 of the Polish Penal Code, the Working Group recommends that Poland urgently take appropriate measures feasible within the Polish legal system to ensure that the “impunity” provision cannot be applied to the bribery of foreign public officials (Convention, Articles 1 and 3; 2009 Recommendations III and V).

#### **Action taken as of the date of the follow-up report to implement this recommendation:**

The application of the so-called ‘impunity clause’ (art. 229 § 6 of Penal Code) in cases of bribery of foreign public officials in international business transactions is one of the principal topics in the **recommendations by the Deputy Prosecutor General released on 31 March 2014**, as a consequence of the Phase 3 review report on Poland (see also information under recommendation 4 and Annex 1).

Regarding the ‘impunity clause’, the above - mentioned recommendations emphasise the aspects, which are crucial in the context of the Convention offences, including:

- the absence of automatic application of the provision (each time the procedural authority’s, i.e. the prosecutor’s assessment is needed; the importance of proper assessment of grounds by the prosecutor is emphasised);
- the liability of **co-perpetrating natural persons** (co-perpetrators of active bribery other than the person who notifies that fact to the law-enforcement authorities) **and the liability of legal persons**, also in the cases when the ‘impunity clause’ is applied (in this regard the main purpose of ‘the impunity clause’ in the context of the Convention offences has been emphasized: i.e. disclosing the corruption conspiracy, which, as regards the active side of bribery, **should result in the liability of co-perpetrators and the entrepreneur – legal person**);
- the availability of **forfeiture**, also in cases when the ‘impunity clause’ is applied;

- the possibility of providing **mutual legal assistance** in cases when the ‘impunity clause’ is applied.

The complete text of the Deputy Prosecutor General recommendations can be found in **Annex 1**.

**If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 2(a):**

2. Regarding the liability of legal persons in the Act on Liability of Collective Entities for the bribery of a foreign public official, the Working Group recommends that Poland:

(a) Take urgent steps to eliminate the requirement of a conviction of a natural person or a decision to discontinue proceedings against the natural person, in order to impose liability on a legal person (Convention, Articles 2 and 3); and

**Action taken as of the date of the follow-up report to implement this recommendation:**

Recommendations 2(a) and 3(c), immediately following the completion of the Phase 3 evaluation have been subjected to an in-depth review by the Ministry of Justice’s Criminal Law Department and analysed by the Criminal Law Codification Commission [KKPK] during its previous term of office (the previous composition of the KKPK). In its opinion of 17 September 2013, KKPK did not object to the increasing of financial penalties imposed on collective entities and, due to the expiry of its term of office, it suggested that the recommendation as regards the prejudication be reconsidered by their new composition. Therefore, the Ministry of Justice’s Criminal Law Department addressed the new composition of the KKPK to carry out an analysis of the main assumptions of the liability of the collective entities in Poland and to consider the possibility of changing the model of this liability, in particular renouncing prejudication. The address also covered different possible ways of eliminating or at least minimizing the deficiencies resulting from the requirement of preliminary ruling against a natural person. The KKPK has not given its final opinion on that matter yet. It is assumed that after it will have been delivered, further works in order to improve the efficiency of the system of liability of legal persons in Poland will be undertaken. They should also cover the recommendation on the elimination of the mechanism, which links the amount of financial penalty to the collective entity’s income (recommendation 3(c)).

The relevant works in this scope have also been reflected in the ‘*Plan of implementing the Tasks / Measures of the Government Program of Combatting Corruption for the years 2014 – 2019*’ (see also information under **recommendation 4** and **Annex 2**).

**If no action has been taken to implement recommendation 2(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**



**Text of recommendation 2(b):**

2. Regarding the liability of legal persons in the Act on Liability of Collective Entities for the bribery of a foreign public official, the Working Group recommends that Poland:

(b) Take steps to ensure that police and prosecutors are adequately trained and made aware of the importance of effectively enforcing the liability of legal persons, and that such training address challenges in investigating and prosecuting legal persons caused by the requirement described in subparagraph (a) above (Convention, Article 3; 2009 Recommendation III).

**Action taken as of the date of the follow-up report to implement this recommendation:**

Recommendations concerning the awareness-raising of corruption offences, including the offences under the Convention, i.e. the bribery of foreign public officials, offences against the rules of accountancy, **liability of collective entities for acts prohibited under penalty (liability of legal persons)**, adequate procedures, sanctions and penal measures (Recommendations **2(b)**, **3(a)**, **3(b)** **3(c)**, **6(c)**) are carried out in particular in the course of operation of **the National School of Judiciary and Public Prosecution** as part of **preliminary training and continuous training**.

**Preliminary training** - i.e. training activities for the trainees of the National School of Judiciary and Public Prosecution.

Preliminary training, conducted by the Centre for Preliminary Training of the National School of Judiciary and Public Prosecution, include *inter alia* professional preparatory course for trainees of the legal professions offering them relevant knowledge and hands-on preparation for the position of a judge, public prosecutor, deputy public prosecutor, assistant judge, assistant public prosecutor, and court referendary. The above tasks are implemented *inter alia* through preparing agendas of particular training sessions and organising their course.

In line with the contents of the current **schedule of trainings for trainee public prosecutors**, the following classes are taught in the curriculum of trainee public prosecutors:

- 1) during the 13th meeting – on substantive criminal law, covering offences against the activity of state institutions and entities of local self-government, including those under Art. 228 § 6 of the Penal Code and Art. 229 § 5 of the Penal Code (so-called passive and active bribery of foreign public officials);
- 2) during the 24th meeting, *inter alia* on:
  - combating unfair competition and unfair market practices related to acts of unfair competition [...];
  - liability of collective entities for acts prohibited under penalty (liability of legal persons) covering: the notion and criteria for the liability of collective entities, course of proceedings, participation and prerogatives of the public prosecutor;
- 3) during the 25th meeting, on:
  - economic fraud, including the public tender offence (hampering the tender procedure);
  - offences of tempering with documents, including the offence against the principles of accountancy.

Part of the program of preliminary training for trainee public prosecutors related to the question of bribery includes trainings on the following:

- case - studies and analysis of case law related to the Specific Part of the Penal Code, covering *inter alia* offences against the activity of state institutions and entities of local self-government, including the

offence of bribery;

- analysis of case law related to selected economic offences (abuse of trust, bribery).

In line with the contents of the current **schedule of trainings for trainee judges**, the following classes are included *inter alia* in the curriculum of trainee judges:

- 1) during the 4th meeting - related to the Specific Part of the Penal Code, covering *inter alia* offences against the activity of state institutions and entities of local self-government, including the offences under Art. 228 § 6 of the Penal Code and Art. 229 § 5 of the Penal Code (so-called passive and active bribery of foreign public officials);
- 2) during the 5th meeting - related to the Specific Part of the Penal Code, covering *inter alia* offences against the reliability of documents;
- 3) during the 7th meeting - related to selected issues of proceedings concerning fiscal offences and misdemeanours as well as misdemeanour proceedings;
- 4) during the 14th meeting - a meeting is scheduled with a representative of the National Chamber of Commerce or a lecture of an economist on the economy of enterprises on the subject: "How to read balance sheets and other business financial documents".

Part of the program of preliminary training for trainee judges related to the question of bribery includes moreover trainings involving case - studies and analysis of case law related to the Specific Part of the Penal Code, covering *inter alia* offences against the activity of state institutions and entities of local self-government, including the offence of bribery.

**Continuous training** includes training activities of continuous and qualification-raising instruction for the judiciary and public prosecution personnel.

The training schedule for the second half of 2015 includes *inter alia* a session dedicated to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions as well as questions connected with the principle of mutual recognition of monetary sanctions and custodial sentences in the member states.

In light of the need for implementing the OECD recommendations via raising the awareness of public prosecutors and judges of the offence of bribery of foreign and domestic public officials in relation to business activity, the '*Plan of implementing the Tasks/Measures of the Government Program of Combatting Corruption for the Years 2014–2019*' includes *inter alia* a section stipulating that the possibility of including questions related to the OECD Anti-Bribery Convention should be always considered during the preparation of **successive annual training schedules of the National School of Judiciary and Public Prosecution** (see also information on **recommendation 4** and **Annex 2**)

**If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 3(a):**

3. Concerning sanctions for the bribery of a foreign public official, the Working Group recommends that Poland:

(a) Continue to raise the awareness of the Polish law enforcement authorities of the importance of imposing effective, proportionate and dissuasive sanctions on natural persons (Convention, Article 3; 2009 Recommendation III);

**Action taken as of the date of the follow-up report to implement this recommendation:**

Recommendations concerning the awareness-raising of corruption offences, including the offences under the Convention, i.e. the bribery of foreign public officials, offences against the rules of accountancy, liability of collective entities for acts prohibited under penalty (liability of legal persons), adequate procedures, **sanctions and penal measures** are carried out in particular in the course of operation of **the National School of Judiciary and Public Prosecution** as part of **preliminary training and continuous training** (see also the information above under **recommendation 2(b)** )

Having regard to the necessity of applying effective, proportionate and dissuasive sanctions for the bribery of foreign public officials, both with regard to the natural and legal persons, the **recommendations by the Deputy Prosecutor General of 31 March 2014** relate also to the **adequacy of sanctions and penal measures demanded by prosecutors** in the course of penal proceedings (see also information under **recommendation 4** and **Annex 1**).

Apart from the above trainings and the recommendations of Deputy Prosecutor General, significant **legislative changes** have taken place related to the issues raised in the Phase 3 Evaluation Report as regards sanctions (application of the fines, application of suspended sanctions).

The Law of 20 February 2015 on the amendment of the Penal Code and selected other laws (Journal of Laws of 2015 item 396), entering into force as of 1 July 2015, limits the possibility of imposing sanctions with a conditional suspension of their enforcement. In particular, the Law narrows down the possibility of a suspended sentence of deprivation of liberty through reducing the level of penalties eligible for suspension – up to 1 year (earlier – up to 2 years), and furthermore no longer envisages the possibility of a suspended sentence of deprivation of liberty or a suspended fine ruled as the stand-alone sanction.

Art. 69 of the Penal Code in the wording in force as of 1 July 2015 sets out as follows:

*“Art. 69. § 1. The court may conditionally suspend the execution of a penalty of deprivation of liberty of up to 1 year, if the perpetrator during the commission of an offence was not sentenced to the penalty of deprivation of liberty and if it is regarded as sufficient to attain the objectives of the penalty with respect to the perpetrator, and particularly to prevent him from relapsing into crime.*

*§ 2. In suspending the execution of a penalty, the court shall primarily take into consideration the attitude of the perpetrator, his personal characteristics and conditions, his earlier conduct and his conduct after the commission of the offence.*

*§ 3. (repealed).*

*§ 4. With regard to the perpetrator of an act of a hooligan nature and the perpetrator of a crime defined in Article 178a § 4, the court may conditionally suspend the execution of the sanction of deprivation of liberty exclusively in justified cases.”*

Another major amendment is the increase in the efficacy of the fine.

First of all, as of 1 July 2015 the provision linking the possibility of imposing the sanction of a fine with the financial standing of the perpetrator, which caused practical problems, will be repealed, i.e. Art. 58 § 2 of the Penal Code: “*No fine shall be imposed when the income of the perpetrator, his financial standing or potential to earn, provide reasonable grounds for the supposition that the perpetrator would not honour the fine and that enforcing the same by execution would not be possible.*” As has been observed, the current practice indicates that identification of the fact that the perpetrator did not have sufficient financial means, preventing the imposition of a fine, was frequently resultant mostly from the declaration of the perpetrator, made at the onset of pre-trial proceedings. As the practice has shown, such declarations were rarely verified by the court or public prosecutor afterwards.

As long as, at present, Art. 33 § 3 of the Penal Code (in unchanged wording) continues to set out a general rule that “*when establishing a daily fine, the court taken into account the income of the perpetrator, his personal and family standing, financial status and the potential to earn*”, then the Art. 58 § 2 of the Penal Code, indicated above, was repealed.

Art. 58 of the Penal Code in the wording in force as of 1 July 2015 sets out as follows:

*“Art. 58. § 1. If the law provides for an option of the type of penalty and the offence carries a penalty of deprivation of liberty not exceeding 5 years, the court shall impose the penalty of deprivation of liberty exclusively when no other penalty or penal measure would serve the purpose thereof.*

*§ 2. (repealed).*

*§ 2a. A punishment of the restriction of liberty related to a duty mentioned in Article 34 § 1a subsection 1 is not imposed in the event that the health condition of the accused or his physical properties or personal conditions justify the conviction that the accused would not honour the punishment.*

*§ 3. (repealed).*

*§ 4. (repealed).”*

Second, the increase in the efficacy of the fine is to be obtained via a mandatory notification of Offices of Economic Information of a debtor of an outstanding fine. On the one hand, this will increase the severity of the sanction and thus will increase the motivation to pay off the fine. On the other hand, this will enhance the reliability of the legal procedure.

The Penal - Executive Proceedings Code in the wording in force as of 1 July 2015 shall set out as follows:

*“Art. 12a. § 1. The notice to pay the **fine**, including a fine ruled on as a substitute sanction, vindictive damages for the State Treasury, an equivalent amount of the confiscated object, judicial costs or a monetary ordering sanction pursuant to a valid and final court ruling issued in a case concerning an offence or a misdemeanour, should moreover contain an instruction that in the event the perpetrator is in arrear of the entire liability within the time specified in this Code, the court notifies of an arrear offices of economic information, operating under the Law of 9 April 2010 on accessibility of economic information and exchange of economic data (Journal of Laws of 2014 items 1015 and 1188).*

*§ 2. In the event the perpetrator is in arrear of the entire liability under § 1 within the time specified in this Code, **the court without delay notifies of an arrear offices of economic information, operating under the Law of 9 April 2010 on accessibility of economic information and exchange of economic data [...]**”*

**If no action has been taken to implement recommendation 3(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 3(b):**

3. Concerning sanctions for the bribery of a foreign public official, the Working Group recommends that Poland:

(b) Continue to raise awareness of the Polish law enforcement authorities of the importance of imposing confiscation upon conviction (Convention, Article 3; 2009 Recommendation III); and

**Action taken as of the date of the follow-up report to implement this recommendation:**

Recommendations concerning the awareness-raising of corruption offences, including the offences under the Convention, i.e. the bribery of foreign public officials, offences against the rules of accountancy, liability of collective entities for acts prohibited under penalty (liability of legal persons), adequate procedures, **sanctions and penal measures, including forfeiture** are carried out in particular in the course of operation of **the National School of Judiciary and Public Prosecution** as part of **preliminary training and continuous training** (see also the information above under **recommendation 2(b)**).

Having regard to the necessity of applying effective, proportionate and dissuasive sanctions for the bribery of foreign public officials, both with regard to the natural and legal persons, the **recommendations by the Deputy Prosecutor General of 31 March 2014** relate also to the **adequacy of sanctions and penal measures demanded by prosecutors** in the course of penal proceedings (see also information under **recommendation 4** and **Annex 1**).

Apart from the above trainings and the recommendations of Deputy Prosecutor General, significant **legislative changes** have taken place related to confiscation. The Law of 20 February 2015 on the amendment of the Penal Code and selected other laws (Journal of Laws of 2015 item 396), entering into force as of 1 July 2015, introduces an amendment which should result in extension of use and increased efficacy of confiscation. The amendment is meant to eliminate the situations encountered in practice so far, when the property is transferred to successive ‘front’ persons and its confiscation is impossible. The change aims to adopt more efficient solutions within the so-called extended confiscation via changing the current model of the presumption, which facilitates the confiscation of the property transferred to a third party. Under the new solution, presenting proof of a legal acquisition of property by a third party does not preclude confiscation if the person may have suspected that the property had been acquired as a result of an offence.

According to the new wording of Art. 45 § 3 of the Penal Code:

*“Art. 45 § 3. When the property derived from the offence under § 2 above was transferred to a natural person or legal person or other entity not having legal personality, in fact or on any legal terms, it is deemed that the property being the autonomous possession of that person or entity as well as their property rights are deemed to belong to the perpetrator unless in view of the circumstances of their acquisition it was impossible to presume that the property, at least indirectly, was acquired as a result of an offence.”*

**If no action has been taken to implement recommendation 3(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 3(c):**

3. Concerning sanctions for the bribery of a foreign public official, the Working Group recommends that Poland:

(c) Regarding legal persons, eliminate the cap on or increase the maximum penalty available under the law so that they are subject to effective, proportionate and dissuasive penalties, and as a matter of priority draw the attention of the relevant authorities to the availability of additional sanctions, including debarment, upon conviction of a legal person under the Liability of Collective Entities Act (Convention, Articles 2 and 3; 2009 Recommendation III).

**Action taken as of the date of the follow-up report to implement this recommendation:**

As regards legislative issues, see explanations under **recommendation 2(a)**.

Recommendations concerning the awareness-raising in the scope of, *inter alia*, **liability of collective entities for acts prohibited under penalty (liability of legal persons), sanctions and penal measures**, are carried out in particular in the course of operation of **the National School of Judiciary and Public Prosecution** as part of **preliminary training and continuous training** (see also the information above under **recommendation 2(b)**).

Having regard to the necessity of applying effective, proportionate and dissuasive sanctions for the bribery of foreign public officials, **also with regard to legal persons, the recommendations by the Deputy Prosecutor General of 31 March 2014** relate *inter alia* to the **adequacy of sanctions and penal measures demanded by prosecutors** in the course of penal proceedings (see also information under **recommendation 4** and **Annex 1**).

**If no action has been taken to implement recommendation 3(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 4:**

4. Concerning the investigation and prosecution of the bribery of foreign public officials, the Working Group recommends that Poland establish an investigation and prosecution strategy to address the increasing risk of foreign bribery by Polish companies that addresses issues including the following: (i) the need for adequate resources and expertise to investigate and prosecute highly complex cases, including in sensitive sectors, involving SOEs, and requiring forensic financial and accounting expertise; and (ii) a comprehensive plan on how to reduce the length of time for foreign bribery proceedings to a workable and reasonable period (2009 Recommendation V).

**Action taken as of the date of the follow-up report to implement this recommendation:**

Recommendation 4 has been jointly analysed by the competent authorities – the General Prosecutor’s Office, the Central Anti-Corruption Bureau (CBA) and the General Police Headquarters as regards the most proper form of implementing that recommendation, taking into account its purpose, the

tasks of each of the authorities, as well as the formal and legal requirements.

In particular, it has been noted that the binding legal provisions do not provide for the possibility of developing and formalising, in any legal instrument, the strategy for conducting proceedings, which would be common to the Prosecutor's Office, the Central Anti-Corruption Bureau and the Police. Moreover, **the disparate procedural roles and tasks of each of the authorities** are of crucial importance. However, it was considered that the proper way of implementing recommendation 4 would be **to develop an adequate approach or instruments by each of the authorities, which could take the form of guidelines or identification of other necessary actions to be undertaken.**

Furthermore, it was considered appropriate to integrate actions concerning the counteracting bribery of foreign public officials in international business transactions into the implementation of the **'Government Programme for Combating Corruption for the Years 2014 - 2019'** adopted by the Council of Ministers on 1 April 2014 and the subsequent, detailed **'Plan of Implementing the Tasks/Measures of the Government Programme for Combating Corruption for the Years 2014 - 2019'** – see **Annex 2**.

Implementation of recommendation 4 by the above authorities has taken in particular the form of the actions presented below.

Taking into account the aspect of **investigating and prosecuting** the bribery of foreign public officials, as a consequence of the OECD Phase 3 review report on Poland, **the Deputy Prosecutor General released on 31 March 2014 recommendations addressing Heads of the Appellate Prosecutors' Offices** to be applied in the course of daily practice of the Prosecution Authority subordinate organisational units. The purpose of these recommendations is to harmonise the practice of the Polish law enforcement authorities with the OECD Working Group's recommendations and the international standards for combating this kind of criminal activity.

The recommendations of the Deputy Prosecutor General covered the key issues discussed in the evaluation report, including:

- 1) **the so-called 'impunity clause' - art. 229 § 6 of Penal Code** (see information under **recommendation 1**);
- 2) **ensuring the practical effectiveness of the provisions on liability of collective entities (legal persons)**, including by the optimal concentration of evidentiary acts in such cases;
- 3) **adequate level of penalties** requested by public prosecutors for natural and legal persons as well as requesting the forfeiture;
- 4) **the tactics of preparatory proceedings**: international cooperation, resources (experience and expertise), the length of proceedings.

The text of the Deputy Prosecutor General's recommendations is contained in the **Annex 1** to this report.

The **Central Anti-corruption Bureau (CBA)** took a number of measures meant to adequately prepare CBA officers to combat the offence of bribery of foreign public officials in international business transactions, both with respect to preventive actions and measures meant to identify risks.

With a view to improving the efficiency of **detection** of the bribery of foreign public officials, in April 2014 the CBA Chief ordered the subordinate units to intensify analytical as well operational and reconnaissance measures, by issuing a **letter containing the appropriate guidelines**. The measures taken by CBA will in particular include the following:

- 1) searching for new sources of information indicating the corruption of foreign officials by the representatives of enterprises registered in Poland and operating abroad,
- 2) identifying the mechanisms of criminal activity,

- 3) intelligence activities in order to identify foreign investments and contracts for which Polish entrepreneurs compete as well as identify investments which may be threatened with irregularities;
- 4) obtaining information concerning the activity of Polish entrepreneurs abroad and the fields of business activity in which they are particularly interested.

The questions at hand were moreover included in the **trainings** for CBA officers involved in procedural, as well as operations and reconnaissance actions. The trainings addressed the Convention's provisions and the tactics of carrying out action in such cases.

With a view to taking joint action, a **working meeting of representatives of the Police and CBA took place on 18 November 2014**. It was dedicated to the discussion of possible forms of cooperation, which, as it was concluded, will be carried out pursuant to an agreement between the Commander in Chief of the Police and Chief of the Central Anti-corruption Bureau of 2 May 2007 on defining the principles of cooperation between the Police and CBA. It was concluded that the exchange of experience, e.g. during joint trainings and workshops, would be the most appropriate form of collaboration. During the meeting, the CBA representatives shared their experience on work on the CBA guidelines for the subordinate units.

Other projects envisaged by CBA include *inter alia* issuing **anti-bribery publications for public officials and entrepreneurs**. Furthermore, the question of bribery of foreign public officials will be addressed during **trainings for public officials and entrepreneurs**.

At the same time, CBA plans to include the above questions in the agenda of **specialist or qualifications enhancing trainings for its officers**.

The current and planned actions of the CBA have been included in the "Plan of Implementing the Tasks/Measures of the Government Program of Preventing Corruption for the Years 2014–2019" (see **Annex 2**).

As a result of an analysis carried out by **the General Police Headquarters**, it was established that with regard to the offences falling within the scope of the Convention, the hitherto applied forms of operational work of the Police will be continued.

The issue of bribery of foreign public officials is currently monitored by police officers from the police units dealing with combating corruption at the regional level. This issue has also been discussed in detail during the official briefing of heads of units for combating corruption of regional police headquarters and Warsaw Municipal Police Headquarters [*Komenda Stołeczna Policji*], which took place on 19-21 March 2014 and covered, among others, the presentation and discussion of the recent report on the "Phase 3" review on Poland, with a particular attention to recommendation 4.

Furthermore, the above questions are periodically discussed during in-house meetings of the heads of anti-corruption divisions of the regional headquarters of the Police and of the Warsaw Police Headquarters, as well as during workshops dedicated to combating corruption, held at the Police School in Piła for Police officers of the anti-corruption divisions. The last working meetings, during which the OECD Phase 3 report on the evaluation of Poland was introduced, took place on 19-21 March, 9-12 September and 8-12 December 2014, respectively.

On 18 November 2014 a working meeting in the headquarters of the Commander in Chief of the Police with representatives of the Central Anti-corruption Bureau took place, concerning the discussion of the OECD recommendations with respect to Poland and future joint projects (see also the information above).



On 26 November 2014, the Commander in Chief of the Police sent a circular letter to all the regional commanders, the Commander of the Police in Warsaw and the Commander of the Central Investigation Bureau of the Police, ordering operational surveillance of the phenomenon of bribery of foreign public officials in international business. The letter dispatched to commanders stipulates that possible future actions have to be reviewed to actively seek the perpetrators, disclose acts, monitor sources, and reveal financial mechanisms focused on the identification and combating such offences.

The supervision of the Bureau of Criminal Service of the General Police Headquarters over all the operations legitimises a conclusion that the Police officers of the anti-corruption divisions are well-prepared as to merit to combat the offence of bribery, including the offence of bribery of foreign public officials. This gives the assurance of conducting adequate proceedings in the event of acquiring information concerning offences under Art. 228 § 6 and Art. 229 § 5 of the Penal Code.

The current and planned actions of the Police have been moreover included in the “Plan of Implementing the Tasks/Measures of the Government Program of Preventing Corruption for the Years 2014–2019” (see **Annex 2**).

Apart from the actions by the Prosecution Authority, CBA and Police, described above, the **‘Government Programme for Combating Corruption for the Years 2014 - 2019** provides for the **organisational framework for anti-corruption actions, currently and in the future**. Within the Programme an emphasis was laid on international obligations. In particular, as regards the specific objective “Reinforcement of prevention and education activities” a task (12) has been stipulated – „*Review of the international obligations and strengthening the international cooperation in the field of combating corruption*”.

Within the framework of this task, the following activities have been stipulated:

**„12.1 Conducting a review and implementation of obligations resulting from ratified anti-corruption conventions and recommendations of the monitoring institutions with regard to prevention and education, as well as developing and carrying out the implementing programme, including:**

*12.1.1 Preparation of a report on the implementation of the UN Convention against Corruption, other ratified anti-corruption conventions as well as recommendations of institutions which monitor their implementation;*

*12.1.2 Supplementing the Government Programme for Counteracting Corruption with activities that result from the report and which has not been included in the document;*

*12.1.3 Monitoring, throughout a 2 – year cycle, the implementation of international obligations in respect of preventing corruption [...]*”

Moreover, under the specific objective “Strengthening the combating of corruption,” the following task (19) has been envisaged – „*Strengthening international cooperation in the field of combating corruption*”.

This task covers the following activities:

**„19.1 Conducting a review of the implementation of obligations resulting from ratified anti-corruption conventions and recommendations of monitoring institutions in the scope of the criminal law aspects and prosecution, including:**

*19.1.1 Preparation of a report on the implementation of the provisions, together with recommendations.*

*19.1.2 Developing and carrying out a programme, which implements the aforementioned recommendations.*

*19.2 Analysis of foreign legal solutions regarding the assessment of the possibility of applying good solutions in domestic law.*

19.3 Exchange of experiences and good practices with others states in the field of combating corruption [...].”

Specific actions and initiatives related to the implementation of the Government Program have been made part of the detailed “Plan of Implementing the Tasks/Measures of the Government Program of Combating Corruption for the Years 2014–2019”. The activities aiming in particular at implementing the OECD recommendations are provided in **Annex 2**.

As regards the issue of reducing the duration of criminal proceedings, also addressed in Recommendation 4, legislative changes are to be indicated. On 27 September 2013 the Parliament adopted an amendment of the Code of Criminal Procedure (law of 27 September 2013 on *amending the Code of Criminal Procedure and selected other laws*, Journal of Laws of 2013 item 1247), which will enter into force as of 1 July 2015.

Among the principal objectives of the amendment are the streamlining and accelerating criminal proceedings, including via a significant change of the model of judicial proceedings towards a greater degree of adversarial procedure, along with the necessary adjustment of the pre-trial proceedings for this purpose. The underlying assumption adopted is that evidentiary proceedings should take place primarily in a court of law, under the principles of adversarial procedure. This means a departure from the current model, where the evidentiary proceedings taking place during the pre-trial procedure were to a great extent repeated in court.

In particular, the amendment concerning Art. 167 of the Code of Criminal Procedure, which addresses the initiative of providing evidence, stresses now a greater degree of adversarial procedure and highlights the role of the court as arbitrator, who only in exceptional circumstances admits evidence and conducts evidentiary proceedings *ex officio*. Art. 167 of the Code of Criminal Procedure stresses the principle that the initiative of providing evidence rests with the parties. In its new wording, Art. 167 of the Code of Criminal Procedure states:

**“Art. 167. § 1. In court proceedings instituted by a party, evidence shall be taken at a request of the parties and upon its admission by the presiding judge or court. Should the party requesting the admission of evidence fail to appear in court as well as in exceptional cases justified by exceptional circumstances, evidence shall be taken by the court within the limits of the evidentiary thesis. In exceptional cases justified by exceptional circumstances, the court may admit and take evidence ex officio.**

§ 2. In court proceedings other than those under § 1 and in pre-trial proceedings, evidence is taken by the proceedings authority conducting the proceedings. This does not exclude the right of the party to request the taking of evidence.”

A corresponding change was introduced also with respect to evidentiary proceedings at the stage of pre-trial proceedings (Art. 297 § 1 subsection 5). The pre-trial evidentiary proceedings should currently, as a matter of principle, justify the indictment and only exceptionally, to the extent the taking of evidence will be impossible in court, will they be used by a court as the basis for establishing the facts of the case. As indicated above, evidentiary proceedings are to take place first of all in court, without the need to repeat them pre-trial:

‘Art. 297. § 1. The objectives of pre-trial proceedings are as follows:

- 1) to establish whether a prohibited act has been committed and whether it constitutes an offence,
- 2) to detect the perpetrator and, if necessary, to effect his capture,
- 3) to collect data, as provided in Articles 213 and 214,

4) to elucidate the circumstances of the case, including identification of the injured persons and extent of the damage,

5) to collect, secure, and record evidence **to the extent required to establish the legitimacy of filing an indictment** or another conclusion of the proceedings as well as to **request the admission of this evidence and its taking in court.**

§ 2. (repealed).'

One should note moreover the introduction of an obligatory logistical (organizational) meeting in complicated cases (amended Art. 349 of the Code of Criminal Procedure):

*“Art. 349. § 1. In the event the envisaged scope of evidentiary proceedings justifies expectation that at least five trial sessions will be necessary in a given case, the president of the court shall immediately appoint a judge or members of the adjudicating panel and assigns the date of the meeting.*

*§ 2. The actions under § 1 may be taken by the president of the court also when, due to the complexity of the case or for any other major reason, the president believes that this may enhance the proceedings, in particular the adequate planning and organisation of the main trial.*

*§ 3. The meeting shall take place within 30 days of the date of its assignment.*

*§ 4. The public prosecutor, the defence and legal representation of the parties shall be entitled to take part in the meeting. The president of the court may deem their presence during the meeting mandatory. The president of the court may also notify the other parties of the meeting if he believes that this may enhance the proceedings.*

*§ 5. Assigning the meeting, the president of the court shall call upon the public prosecutor, the defence and legal representation to submit a written statement on the planning of the course of the main trial and its organisation, including the evidence to be taken first during the trials, within 7 days of the assignment date.*

*§ 6. The statement on the planning of the course of the main trial and its organisation includes requests for evidence taking as well as information and representations, in particular of proposed trial session dates and their substance, dates of justified absence of the trial parties and a representation indicating the need to subpoena to the main trial of expert witnesses, court-appointed probation officer, checking the defendant’s criminal record, and other representations concerning circumstances which are significant for an efficient conduct of further proceedings.*

*§ 7. During the meeting, the president of the adjudicating panel, taking into consideration the positions concerning the planning and organisation of the main trial as submitted by the parties, the defence and legal representation, makes decisions concerning requests for evidence taking and their order, the course and organisation of the main trial and assigns its dates as well as makes all the other necessary arrangements. Provisions of Art. 350 § 2-4 apply, respectively.*

*§ 8. The result of the announcement of the statement of assigning the dates of the court meetings is equivalent to calling the participants to the proceedings present to take part in the proceedings or to notifying its dates.”*

Furthermore, the amended Code of Criminal Procedure introduces other changes as regards the questions currently lengthening the criminal proceedings, including the limitation of reversing and remanding appellate proceeding (wider use of reformatory decisions in the appellate stage), limitation of the possibility of the court returning the case to the public prosecutor to supplement inquiry or investigation, and the reduction of the need to read out materials during a trial.

**If no action has been taken to implement recommendation 4, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

*Recommendations for ensuring effective prevention and detection of foreign bribery*

**Text of recommendation 5(a):**

5. The Working Group recommends that Poland take the following steps to improve the prevention and detection of foreign bribery through its anti-money laundering system:

- (a) Examine whether “para-banking” poses a risk of laundering the proceeds from foreign bribery (Convention, Article 7; 2009 Recommendation V); and

**Action taken as of the date of the follow-up report to implement this recommendation:**

In 2014 a team of experts selected from experienced staff of the Department of Financial Information of the Ministry of Finance to evaluate whether the activity of so-called ‘para-banking institutions’ poses a risk of laundering proceeds from the bribery of foreign public officials, analysed the analytical proceedings conducted as of January 2013 until the end of January 2014 related to the activity of ‘para-banking institutions’.

Analysis of the above material, including information and documents received from obligated institutions, collaborating entities, fiscal and criminal data, notifications of suspected offences sent by GIIF did not offer reasons for suspicions that the activity of ‘para-banking institutions’ poses a significant risk of laundering proceeds from the bribery of foreign officials.

**If no action has been taken to implement recommendation 5(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 5(b):**

5. The Working Group recommends that Poland take the following steps to improve the prevention and detection of foreign bribery through its anti-money laundering system:

- (b) Urgently take substantial steps to raise the awareness of and provide training for the FIU and all entities subject to suspicious transactions reporting requirements of the risk of laundering the proceeds of the bribery of foreign public officials, and provide them with guidance on what constitutes such proceeds, and how to effectively detect them (Convention, Article 7; 2009 Recommendation III).

**Action taken as of the date of the follow-up report to implement this recommendation:**

To raise the awareness of the risk of laundering proceeds from the bribery of foreign public officials, the General Inspector of Financial Information published on his website materials related to

laundering proceeds acquired from this kind of predicate offence.

All the staff of the Department of Financial Information were obligated to familiarise themselves with the above material. Furthermore, information on its availability was disseminated among the obligated institutions.

**If no action has been taken to implement recommendation 5(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 6(a):**

6. The Working Group recommends that Poland take the following steps to enhance the prevention and detection of foreign bribery through accounting and auditing requirements, and internal controls, ethics and compliance measures:

(a) Intensify efforts to encourage the accounting and auditing profession to raise awareness and provide training on the detection of foreign bribery in companies' books and records (Convention, Article 8; 2009 Recommendation X);

**Action taken as of the date of the follow-up report to implement this recommendation:**

Having regard to the OECD recommendations, the Accounting and Auditing Department of the Ministry of Finance sent letters to the Accounts Association in Poland (6 Nov. 2014) and to the National Chamber of Statutory Auditors (10 Nov. 2014).

In the above letters, the Ministry of Finance once again forwarded the text of the Convention with *Commentaries* and reiterated a request for intensifying efforts to promote among the members of the relevant organisations the awareness of the Convention itself and of the attendant obligations (retaining the material on the websites of the organisations and inclusion of relevant issues in the trainings organised).

The National Chamber of Statutory Auditors assures access to the information on the relevant material via their websites, e.g.:

[http://www.kibr.webserwer.pl/\\_doc/koresp/OECD\\_informacje.pdf](http://www.kibr.webserwer.pl/_doc/koresp/OECD_informacje.pdf)

**If no action has been taken to implement recommendation 6(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 6(b):**

6. The Working Group recommends that Poland take the following steps to enhance the prevention and detection of foreign bribery through accounting and auditing requirements, and internal controls, ethics and compliance measures:

(b) Provide clarification and guidance to the accounting and auditing profession on the evidentiary standards that must be met to justify reporting suspicions of foreign bribery to the law enforcement authorities (Convention, Article 8; 2009 Recommendation X);

**Action taken as of the date of the follow-up report to implement this recommendation:**

In a letter to the National Chamber of Statutory Auditors, the Accounting and Auditing Department of the Ministry of Finance submitted an interpretation explaining that pursuant to the regulations in force (Art. 58 of the Law on statutory auditors), statutory auditors are obliged to notify relevant law enforcement authorities of suspected cases of bribery, i.e. offences which constitute also the violations of the Convention, with the further burden of proof resting with the said authorities.

On 3 December 2014, the Ministry of Finance received a letter of the National Council of Statutory Auditors indicating that in the opinion of the Council, the relevant legal regulations are clear and there is no need to develop detailed guidelines for statutory auditors. The letter moreover stated that the Council envisaged dispatching a circular to all statutory auditors, recalling their obligation stemming from art. 58 of the above – mentioned Law (i.e. to notify suspected cases of bribery). The circular was adopted by the Council on 18 December 2014 and posted on the Chamber’s website. The text is available at: [http://www.kibr.webserwer.pl/doc/komunikaty/komunikat\\_2014\\_46.pdf](http://www.kibr.webserwer.pl/doc/komunikaty/komunikat_2014_46.pdf) .

**If no action has been taken to implement recommendation 6(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 6(c):**

6. The Working Group recommends that Poland take the following steps to enhance the prevention and detection of foreign bribery through accounting and auditing requirements, and internal controls, ethics and compliance measures:

(c) Find a way appropriate and feasible in its legal system to ensure that natural and legal persons are subject to effective, proportionate and dissuasive penalties for fraudulent accounting for the purpose of bribing foreign public officials or hiding such bribery (Convention, Article 8; 2009 Recommendation X); and

**Action taken as of the date of the follow-up report to implement this recommendation:**

Recommendations concerning the awareness-raising of corruption offences, including the offences under the Convention, i.e. the bribery of foreign public officials, as well as **offences against the rules of accountancy**, liability of legal persons, **sanctions and penal measures**, are carried out in particular in the course of operation of **the National School of Judiciary and Public Prosecution** as part of **preliminary training and continuous training** (see also the information above under **recommendation 2(b)** )

Having regard to the necessity of applying effective, proportionate and dissuasive sanctions for the bribery of foreign public officials, both with regard to the natural and legal persons, the **recommendations by the Deputy Prosecutor General of 31 March 2014** relate *inter alia* to the **adequacy of sanctions and penal measures demanded by prosecutors** in the course of penal proceedings (see also information under **recommendation 4** and **Annex 1**).

**Legislative changes** have also been adopted, related to the issue of sanctions, i.e. fines, application of suspended penalties, as well as forfeiture, which are equally applicable with regard to offences referred to in recommendation 6(c) – see information provided under **recommendations 3(a)**

and 3(b).

**If no action has been taken to implement recommendation 6(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 6(d):**

6. The Working Group recommends that Poland take the following steps to enhance the prevention and detection of foreign bribery through accounting and auditing requirements, and internal controls, ethics and compliance measures:

(d) Urgently make significant efforts to raise the awareness of large companies, SOEs, and SMEs of the following: (i) the risks of foreign bribery in international business transactions; (ii) application of the foreign bribery offence and the Law on Liability of Collective Entities to bribes made through agents abroad; and (iii) the need to adopt effective internal controls, ethics and compliance measures for preventing foreign bribery (2009 Recommendation III).

**Action taken as of the date of the follow-up report to implement this recommendation:**

Due to the close links between the Convention's provisions and the *OECD Guidelines for Multinational Enterprises*, the OECD National Contact Point operating within the Polish Information and Foreign Investment Agency (Polish: PAIiZ) provides information during its trainings of the ban on violating the law in the scope referred to by the Convention, also with respect to employees of large corporations and staff of companies with a stake of the State Treasury, showing the methodology of use in such situations, e.g. of judicial and extra-judicial dispute and conflict resolution measures.

In 2014 the OECD National Contact Point conducted four trainings of this type, targeting representatives of trade unions, employers' and civil society organisations. The trainings were attended by a total of 55 people.

In October 2014 the OECD National Contact Point conducted a workshop for representatives of trade unions from the Visegrad Group states titled *OECD Guidelines for Multinational Enterprises vs. Trade Unions. Recommendations for Responsible Global Business and Cooperation Perspectives*. The workshop was attended by over 50 people, including representatives of trade unions from Poland, Czech Republic and Hungary as well as guests from the OECD National Contact Points from the Czech Republic, Hungary and France. Due diligence during the evaluation of companies' commercial, financial, legal and tax standing, allowing e.g. the identification of corruption risks in international trade and supply chains, was one of the topics addressed by the workshop.

Questions of implementing the provisions of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* are taken into account by the Ministry of Economy during meetings and conferences on corporate social responsibility. Questions related to the Convention were raised e.g. during the 11th Ecological Forum of the Chemical Industry in Toruń, held on 8-9 October 2014.

Poland's obligations arising from the provisions of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* were submitted for consideration to the members of the Corporate Social Responsibility (CSR) Advisory Board of the Minister of Economy (an

advisory entity of the Minister of Economy) during the third meeting of the Group on 23 February 2015. In order to implement the recommendations of the OECD Working Group on Bribery, plans are underway to set up a working group within the CSR Advisory Board of the Minister of Economy, entrusted with developing standards of ethical business conduct. The establishment of such a working group is an agenda item of the Fourth meeting of the CSR Advisory Board of the Minister of Economy, scheduled for 8 June 2015.

Examples of actions taken to raise the awareness level and increase the number of identified cases of bribery of foreign public officials, given the growing number of the presence of Polish companies on international markets, include *inter alia* the Polish-German economic salon held on 18 December 2014 by the DCIP in Cologne (Germany). The event was meant to promote corporate social responsibility, to foster the exchange of experience and best practices related to CSR, and to present issues related to the implementation of the provisions of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. The event gathered around 90 representatives of Polish business active on the German market.

On 8 April 2014, during the '2014 Industry Days' conference held in Warsaw, a representative of the Office for Anti-Corruption Procedures in the Ministry of National Defence delivered a presentation titled *Good Practices in Combating Bribery of Foreign Public Officials: OECD Recommendations for Entrepreneurs*. The conference was organised by the Secretary of State in the Ministry of National Defence and gathered deputies to Polish Parliament, representatives of government administration, the Ministry of National Defence, as well as institutions, businesses and science entities of the defence industry. In particular, last year's conference was attended also by representatives of companies with a stake of the State Treasury, whose ownership control is conducted by the Minister of National Defence, and representatives of the Polish Chamber of Producers for National Defence, gathering the defence industry entrepreneurs.

Conference proceedings, including the above presentations, were subsequently made available to the entrepreneurs by the Ministry of National Defence at:

[http://dpz.wp.mil.pl/plik/file/Dni\\_przemyslu\\_2014\\_materialy\\_po\\_konferencji.pdf](http://dpz.wp.mil.pl/plik/file/Dni_przemyslu_2014_materialy_po_konferencji.pdf)

On 14 November 2014 the Anti-corruption Procedures Bureau of the Ministry of National Defence conducted a meeting with representatives of companies with the stake of the State Treasury from the defence sector, during which the issues referred to in recommendations 6(d) and 8(a) of the Working Group were discussed, including counteracting corruption in the defence sector companies and good practices in the scope of combating bribery of foreign officials.

The Ministry of Treasury, on its principal website, in the "Ownership Control" bookmark at <http://bip.msp.gov.pl/bip/raporty-analzy/oecd> disseminated the text of the Convention with the *Commentaries* and the *Good Practice Guidance on Internal Controls, Ethics and Compliance* (Guidelines).

In a letter of 2 April 2014, the Minister of Treasury transferred to the management boards of the entities over which he executes ownership control the fundamental information about the Convention's provisions, Polish regulations implementing the Convention, and the *Guidelines* together with an indication of more detailed sources of relevant information (websites of the Ministry of Justice and the Ministry of Treasury, relevant laws). The Minister of Treasury moreover indicated that the OECD recommendations stress the need for entrepreneurs (including companies with a stake of the State Treasury) to adopt efficient measures on internal controls, ethics and compliance to prevent cases of bribery of foreign officials.

In December 2013, the Ministry of Treasury held a training titled "Preventing Bribery in



Business”, attended by around 70 Ministry staff. Although the training’s agenda was not directly related to the OECD Convention, projects of this kind are significant for the development of anti-bribery standards at the level of the Ministry and of the entities it supervises. The training was attended *inter alia* by people responsible for executing ownership control over companies with a stake of the State Treasury.

See also other activities described under **recommendation 8a)** below and the actions envisaged under ‘The plan of realisation of the tasks of the Government Programme of Combatting Corruption’ – **Annex 2.**

**If no action has been taken to implement recommendation 6(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 7(a):**

7. Regarding the prevention and detection of foreign bribery through tax measures, the Working Group recommends that Poland:

(a) As a matter of priority, take appropriate and feasible steps within its legal system to clarify that all bribes to foreign public officials in violation of Article 229.5 of the Polish Penal Code are not tax deductible (2009 Recommendations III and VIII; 2009 Recommendation on Tax Measures); and

**Action taken as of the date of the follow-up report to implement this recommendation:**

In order to comply with recommendation 7 (a), the information brochures accompanying the earned income (loss sustained) annual tax returns for 2013 and 2014 contain explanatory notes that pursuant to the provisions regulating income taxation ‘*expenses incurred and the value of objects or rights transferred or services provided, resulting from an activity that could not be an object of a legally valid agreement, particularly in connection with committing an offence stipulated in Article 229 of the Penal Code are not considered as revenue earning costs. This provision means that it is not allowed to credit, among others, expenses incurred in order to provide a financial advantage to a person performing a public function (including a foreign official) in connection with performing that function (the so called “bribe”) towards tax deductible costs*’.

The information brochures are accessible on the Ministry of Finance’s website, in the tab concerning income tax annual returns. Moreover, information brochures in the paper form are available in revenue offices throughout the country (in 2013 their circulation was 1 714 150 items, in 2014 – 1 375 250 ).

Explanations concerning the prohibition of deducting bribes from taxes have also been included in *Biuletyn Skarbowy* (Revenue Bulletin). It is a bimonthly issued by the Ministry of Finance and contains articles and information regarding taxation matters, addressing fiscal administration officers and taxpayers. Explanations concerning the provisions of the Acts on income taxes, which exclude the possibility of crediting bribes, including bribes to foreign public officials in violation of Article 229 § 5 of Polish Penal Code, towards tax deductible expenses, have been provided in *Biuletyn Skarbowy no. 6 of 2013*.

This bimonthly is accessible on the Ministry of Finance’s website, as well as in the paper form on subscription – for all interested persons (the circulation of *Biuletyn Skarbowy no. 6 of 2013* was 1 516

items).

**If no action has been taken to implement recommendation 7(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 7(b):**

7. Regarding the prevention and detection of foreign bribery through tax measures, the Working Group recommends that Poland:

(b) Re-examine the processes in place for identifying bribe payments, to ensure that Poland has in place proper tools, including technology and expertise, to track bribe payments for which tax deductions have been sought under categories of allowable expenses (2009 Recommendations III and VIII; 2009 Recommendation on Tax Measures).

**Action taken as of the date of the follow-up report to implement this recommendation:**

As regards fiscal inspection authorities, the legal and factual standing with regard to the inspection activity have not changed. The provisions and procedures in force allow for the efficient identification of bribe payments, which are subject to tax deduction attempts within the category of admissible expenses. In the course of inspection, these authorities review the correctness of attributing the expenses incurred by taxpayers to the cost of revenue. Due to this, it is possible to identify payments which are bribes which is then the basis to pass the relevant information on to the law enforcement authorities.

As long as analysis of the available tools and procedures indicates that they are adequate for the identification of payments which constitute bribes, important steps were undertaken in the area of professional expertise.

In 2013 and 2014 in the majority of fiscal inspection offices (12) training courses on combating and preventing corruption were held. Their subject matter covered both, combating corruption within the government administration, as well as detecting and preventing corruption in the light of the OECD Convention. Depending on an office, these training courses had universal character, that is they covered all the employees of particular fiscal inspection entities or covered particular groups within these entities. The staff who were trained included i.a. the managerial staff, employees who undergo the civil service preparatory training, as well as the newly employed ones.

A total of a few hundred employees were trained, including tax auditors. Because of the reorganisation of offices at the end of last year, the other staff members will receive training this year. The trainings recalled the *OECD bribery awareness handbook for tax examiners*, which was additionally forwarded in electronic format to the participants' e-mail accounts.

Furthermore, trainings were held in offices on broadly construed ethical questions in the Civil Service corps, including the Code of Ethics of the Civil Service. Trainings on anti-bribery issues and observance of the principles of professional ethics were attended by around 1,650 staff members of fiscal inspection offices. Most offices included relevant trainings in their annual schedules of on-the-job trainings for their staff, implemented in 2014.

In some fiscal inspection offices, the staff in collaboration with the Central Anti-corruption Bureau completed (submitting relevant certificates) a training on a e-learning platform on the subject:

“Corruption in public administration”. E-learning trainings were dedicated *inter alia* to the following topics:

- 1) OECD anti-bribery regulations,
- 2) OECD bribery awareness handbook for tax examiners,

Some fiscal inspection offices got involved in 2014 in the implementation of the project of the Central Anti-corruption Bureau called “The development of a system of anti-corruption trainings”. The above project included an e-learning training divided into the following three thematic modules:

- 1) Corruption in public administration,
- 2) Corruption in business,
- 3) Social consequences of corruption.

The trainings were obligatory for the Civil Service personnel.

**If no action has been taken to implement recommendation 7(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 8(a):**

8. The Working Group recommends that Poland take the following steps to enhance public awareness and the reporting of foreign bribery:

- (a) Significantly increase public awareness-raising efforts, with an emphasis on the growing presence of Polish companies in international business (2009 Recommendation III); and

**Action taken as of the date of the follow-up report to implement this recommendation:**

In order to implement the OECD recommendations, 53 Polish entities: Departments of Commerce and Investment Promotion (hereinafter: DCIP) and departments/teams in permanent representations of the Republic of Poland to international organisations abroad, in July 2014 received a letter of the Ministry of Economy recalling the obligations of Poland as a state-party to the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Attached to the letter was a detailed questionnaire regarding the practice of Convention implementation.

Departments of Commerce and Investment Promotion are entities of the Ministry of Economy operating in embassies and consulates of the Republic of Poland. They provide all the necessary assistance to companies in the area of cooperation with international partners, acquisition of co-operators and investors. The tasks of DCIP include, e.g. supporting Polish companies, in particular small and medium-sized, in their internationalisation process and assisting foreign companies interested in importing Polish goods and services. These entities, then, play a special role in raising the awareness of the Convention’s provisions.

The above letter was addressed to the Polish entities operating both in the territory of the states-parties to the Convention (Argentina, Austria, Belgium, Brazil, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Netherlands, Norway, Portugal, Republic of South Africa, Russia, South Korea, Spain, Switzerland, Sweden, United Kingdom, USA) and in other countries where Polish entities supporting commerce and investment are located (Algeria, Belarus, China, Croatia, Egypt, India, Indonesia, Kazakhstan, Lithuania, Malaysia, Morocco, Romania, Ukraine, United Arab Emirates, and Uzbekistan).

The results of the above questionnaire indicated among others that a marked majority of the above

entities are aware of the ethical issues and of Poland being a state-party to the Convention. The vast majority of entities identify threats or risks potentially violating the Convention's provisions. For examples, the DCIP in Astana (Kazakhstan) entered into the *Identified Risk Sheet* the risks which may potentially violate the Convention's provisions. The DCIP in Athens (Greece) entered the above risks to the Ethics Code, while the DCIP in Prague (Czech Republic) identifies also the risk of non-compliance of the staff with the principles and procedures as a threat to the provisions of the Convention. Furthermore, in most entities there are specific procedures in place in situations of bribery risks.

Furthermore, heads of the above entities informed that no corruption was identified in their subordinate units in 2014.

Importantly, as of 2015, annual meetings of DCIP heads will contain an agenda item dedicated to preventing corruption and to the conflict of interest.

To raise the awareness of the Convention's provisions on the part of the DCIP staff and employees of Permanent Representations of the Republic of Poland, the Ministry of Economy introduced additional trainings on the knowledge of the Convention for people leaving for work in DCIPs or Permanent Representations of the Republic of Poland. The trainings are conducted by an expert on corporate social responsibility from the Department of Innovation and Industry of the Ministry of Economy.

Between April 2014 and 31 March 2015 this training was offered to seven people leaving for the following entities: DCIP Beijing (China), DCIP Montreal (Canada), Permanent Representation to OECD (Paris, France), DCIP Berlin (Germany), DCIP Prague (Czech Republic), DCIP Johannesburg (RSA), DCIP Casablanca (Morocco).

Furthermore, the Ministry of Foreign Affairs conducts anti-corruption trainings for staff leaving for work abroad. The trainings are mandatory and a person who has not participated in and received a credit for them cannot be employed abroad. The trainings introduce the contents of the Convention and demonstrate the obligations of the Foreign Service arising from its implementation.

In 2013, 328 people received trainings prior to their departure to foreign service; 298 people attended trainings in 2014.

The Ministry of Foreign Affairs embarked on developing a specialist e-learning training dedicated to preventing corruption in the Ministry. One of the training sections will be dedicated to the Convention and the obligations imposed by it on the Foreign Service.

The intranet of the Ministry of Foreign Affairs has since January 2013 contained a bookmark in the section "Preventing corruption risks", which provides information about the contents of the Convention and the relevant obligations of staff of the Foreign Service. The bookmark moreover contains the text of the Convention itself.

The Ministry of Justice on its website provides comprehensive information on the Convention, the national implementing legislation, OECD work in the area of the monitoring of implementation of the Convention, in particular regarding Poland, as well as the texts of the OECD anticorruption legal instruments translated into Polish.

<http://bip.ms.gov.pl/pl/ministerstwo/wspolpraca-miedzynarodowa/wspolpraca-z-oecd/>

Awareness – raising activities aimed particularly at the entrepreneurs' community, which are described **under Recommendation 6d)** above, are relevant also for the implementation of Recommendation 8a).

See also actions envisaged under 'The plan of realisation of the tasks of the Government

**If no action has been taken to implement recommendation 8(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 8(b):**

8. The Working Group recommends that Poland take the following steps to enhance public awareness and the reporting of foreign bribery:

(b) Prioritise the reform of the law on whistleblower protections to ensure that appropriate measures are in place to protect from retaliatory or disciplinary action private and public sector employees who report suspected acts of foreign bribery in good faith and on reasonable grounds (2009 Recommendation IX).

**Action taken as of the date of the follow-up report to implement this recommendation:**

It is to be highlighted first and foremost that the current legal and institutional solutions already provide a number of safeguards for the protection of whistleblowers.

A number of the Labour Code provisions safeguard the rights of the employee in the event of his or her being unlawfully held accountable for the disclosure of information concerning illegal activities. These provisions include first and foremost those prohibiting discrimination, including discrimination in employment. Article 11<sup>2</sup> of the Labour Code sets out that employers have equal rights on account of performing identical duties. Furthermore, Art. 11<sup>3</sup> of the Labour Code stipulates that any discrimination in employment, direct or indirect, in particular on account of e.g. sex, age, disability, race, religion, nationality, political views, membership in trade unions, ethnicity, and views is inadmissible. Furthermore, under Art. 18<sup>3a</sup> § 1-2 of the Labour Code, employees should be treated equally, in particular in respect of establishing or terminating the relationship of employment, the conditions of employment, promotion and access to training in order to improve professional qualifications. Equal treatment in employment means non-discrimination in any way for the aforementioned reasons. Pursuant to Art. 18<sup>3a</sup> § 5 of the Labour Code, one of the manifestations of discrimination is *inter alia* non-desirable conduct aiming at or resulting in infringing the dignity of an employee and creating an intimidating, hostile, humiliating, degrading or affronting atmosphere (harassment). Therefore, an employee who feels discriminated against by the employer, within the meaning of the above legal provisions, may exercise the relevant rights to protect him- or herself against discrimination for any reason, including *inter alia* discrimination caused by disclosure of irregularities occurring on the part of the employer, i.e. also on grounds of being regarded as a whistleblower.

A person against whom the principle of equal treatment in employment has been violated by the employer has a right to compensation in the amount not lower than the minimum wage computed under separate provisions (Art. 18<sup>3d</sup> of the Labour Code). Furthermore, the law ensures that if such an employee makes use of his or her rights due to the violation of the principle of equal treatment in employment, this must neither give rise to unfavourable treatment of the employee, nor may it cause any negative consequences against the employee, in particular it must not give rise to terminating the relationship of employment with or without notice by the employer (Art. 18<sup>3e</sup> § 1 of the Labour Code). At the same time, under Art. 18<sup>3e</sup> § 2 of the Labour Code, the aforementioned protection also covers an employee who, in any form, gave support to the employee making use of his or her rights due to the violation of the

principle of equal treatment in employment.

However, if the action taken by the employer, arising from the whistleblower's notification of the irregularities in the workplace, cannot be qualified as discrimination, as this action refers not to unfavourable treatment of an employee in employment but to an employee as a person, such action may be assessed in the light of the provisions preventing mobbing in the place of employment. Pursuant to Art. 94<sup>3</sup> § 2 of the Labour Code, mobbing involves acts or behaviour in relation to an employee or directed against an employee, with the effect of persistent and long-term harassment or intimidation of an employee, resulting in a decreased evaluation of his professional abilities, or which is aimed at or results in the humiliation or ridicule of the employee, or the isolation or elimination of the employee from the group of co-workers. The employer is obliged to act against mobbing, which obligation is imposed under Art. 94<sup>3</sup> § 1 of the Labour Code. Pursuant to § 3 of the above article, an employee for whom mobbing has caused health problems may claim compensation from the employer as a money equivalent for the damage sustained, while an employee who terminates his employment contract as a result of mobbing has the right to claim compensation from the employer in the amount not lower than the minimum wage computed under separate provisions (Art. 94<sup>3</sup> § 4).

The labour law provisions provide protection to employees who have been dismissed without a justified reason or in violation of the law. If it has been established that the termination of the contract of employment for an indefinite period of time is unjustified or violates the provisions on terminating contracts of employment, the labour court - at the request of an employee - will declare the notice of termination ineffective, and if the contract has already been terminated - will decide on reinstating the employee in his or her job on the previous terms and conditions, or on compensation (Art. 45 § 1 of the Labour Code). Furthermore, an employee with whom an employer terminated an employment contract without notice in violation of the provisions of law on the termination of the employment contracts in that manner, can also claim reinstatement on the former terms and conditions, or claim compensation (Art. 56 § 1 of the Labour Code).

In line with jurisprudence, the reason provided to an employee for the termination should be true and precise (resolution of a complete composition of the Labour and Social Insurance Chamber of the Supreme Court of 27 June 1985, III PZP 10/85 OSNCP 1985, no. 11, item 164). Neither can the notice be an element of harassment against an employee. Moreover, the Supreme Court has expressed its opinion that "presenting in the notice of termination of a contract of employment of an apparent (untrue, unreal, non-existent) reason is tantamount to the absence of a reason justifying the termination, which means that the notice of termination is unjustified within the meaning of Art. 45 § 1 of the Labour Code. The same effect results from an assessment that there was some reason for termination, however it was insufficient for the termination to be effective due to its importance or nature" (a judgement of the Supreme Court of 7 October 2009, III PK 34/09, LEX no. 560866).

The National Labour Inspectorate is an institution set up in a relevant statute to monitor and control the observance of labour law (Art. 1 of the Law of 13 April 2007 on the National Labour Inspectorate, Journal of Laws of 2012, item 404). Should employees have doubts as to the legal nature of the employer's conduct, they have a possibility of requesting the assistance of, including a request for intervention, the locally competent labour inspectorate. The National Labour Inspectorate has all the necessary rights and means facilitating the execution of action related to monitoring, control and enforcement of the binding law by employers. Pursuant to Art. 23 section 2 of the Law on the National Labour Inspectorate, in case of a reasonable suspicion that information with regard to matters subject to control that is provided by an employee to the labour inspector could cause any harm to that employee or any accusation resulting from providing such information, the inspector may issue a decision to retain the confidentiality of certain facts that could lead to disclosing the identity of that employee, including his or her particulars.

Irrespective of the above, the Ministry of Labour and Social Policy, in collaboration with social partners, has undertaken a review of labour law provisions concerning employees' protection against unlawful actions of employers in the competence of the Minister of Labour and Social Policy, which might be used with respect to whistleblowers.

In light of the above, on 13 November 2014 the Minister of Labour and Social Policy applied to social partners for their opinions concerning the legal situation of whistleblowers, in particular related to concerns whether provisions of the labour law in force assure sufficient protection to whistleblowers. Subsequently, a meeting was held on 9 December 2014 of the Task Group for Labour Law and Collective Bargaining of the Tri-partite Commission for Socio-Economic issues; the meeting, attended also by representatives of the Ministry of Justice, was dedicated to the legal protection of whistleblowers.

The meeting of the Task Group for Labour Law was used for a preliminary exchange of opinions.

In light of the above, the Ministry of Labour and Social Policy announces its readiness for a further review, in tandem with the social partners, of the legal provisions within the scope of competence of the Minister of Labour and Social Policy in the part offering protection to whistleblowers. The review should pay attention to the necessity of a more precise wording or amendment of the provisions within the scope of competence of other ministries in order to determine the scope of systemic changes offering coherent and effective legal regulations for the protection of whistleblowers. It seems that the potential specific legal regulations on the protection of whistleblowers should be regulated horizontally, comprehensively – what goes beyond the competence of the Ministry of Labour and Social Policy, since a fragmentary regulation of this question in the Labour Code may leave out crucial issues, whose regulation surpasses the scope of this normative act.

**If no action has been taken to implement recommendation 8(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 9(a):**

9. Regarding the prevention and detection of foreign bribery through agencies responsible for providing public advantages to Polish businesses, the Working Group recommends that Poland:

(a) Raise awareness about the foreign bribery offence among institutions involved in public procurement contracting, including ODA-funded procurement contracting (2009 Recommendation III);

**Action taken as of the date of the follow-up report to implement this recommendation:**

The website of the Public Procurement Office has been supplemented with a new sub-page dedicated to the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

Individual bookmarks within the sub-page dedicated to the Convention provide comprehensive information on the States-Parties to the Convention, its objectives, the scope of the *OECD Council Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions of 26 November 2009*, and in particular those elements of the above documents which concern public procurement, as well as links offering the content of the relevant documents and to the OECD website dedicated to the implementation of the Convention.

The newly created sub-page moreover contains the principles of periodic evaluations of the implementation of the Convention by the OECD Working Group for Bribery in International Business

Transactions, the progress of the evaluation of Poland under Phase 3, along with the content of the evaluation report and the recommendations on Poland's system of public procurement, adopted by the OECD Working Group:

<http://www.uzp.gov.pl/cmsws/page/?D:3103>.

Information on the question of bribery of foreign public officials and the most important relevant documents were also published in the Public Procurement Office Bulletin no. 6/2014: <http://www.uzp.gov.pl/cmsws/page/?D:3120>. Public Procurement Office Bulletin is a quarterly published by the Office in electronic format, on the Office website. It provides information on current events, legal regulations, jurisprudence, and statistics on public procurement for all entities and institutions connected with the Polish public procurement system.

**See also information related to Recommendation 9 b)**

**If no action has been taken to implement recommendation 9(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 9(b):**

9. Regarding the prevention and detection of foreign bribery through agencies responsible for providing public advantages to Polish businesses, the Working Group recommends that Poland:

(b) Consider systematically checking the publicly available debarment lists of international financial institutions in relation to: (i) the award of public procurement contracts, including ODA-funded procurement contracts; and (ii) the provision of official export credit support (Convention, Article 3; 2009 Recommendation XI); and

**Action taken as of the date of the follow-up report to implement this recommendation:**

The Public Procurement Office analysed the possibility of using lists of debarred entities held by International Financial Institutions (IFI) in the process of excluding contractors from the public procurement procedure. Pursuant to Polish and EU public procurement regulations, a valid and final court judgement confirming the commission of the bribery offence is an obligatory reason for exclusion from the public procurement procedure. At the same time, Poland acknowledges and recognises the reasons invoked by OECD Working Group on Bribery of treating the lists of debarred entities held by International Financial Institutions as a useful source of information on the contractors debarred from projects financed by IFI as a result of prior corruption. Poland agrees that the lists of debarred entities held by International Financial Institutions may be used by Polish procuring institutions as an additional source of information on the standing of the contractors, verified during the public procurement procedure, as to convictions for the bribery offence committed with respect to foreign public officials and in order to assure due diligence in analysing the reasons for excluding contractors.

In light of the above, the Public Procurement Office has published on its website detailed information concerning the underlying assumptions of the lists of debarred entities held by International Financial Institutions (IFI), and the procedure conducted by IFI, as a result of which an entity charged with the bribery offence might be entered on the lists in question. The information on the lists of debarred entities on the Office website includes moreover guidelines for Polish procuring institutions as to the possibility to check the relevant lists as an additional element of due diligence in analysing the reasons for excluding contractors from the public procurement procedure.

Relevant information was appended with links referring to websites containing debarment lists of



five International Financial Institutions (World Bank, European Bank for Reconstruction and Development, Asian Development Bank, Inter-American Development Bank Group, African Development Bank Group).

Through publications of the relevant guidelines, the Public Procurement Office encourages Polish procuring institutions to visit the IFI websites to verify whether or not the contractors applying for public procurement have been entered on the lists in question. Furthermore, the Office brings to the attention of Polish procuring institutions a procedure to be used when they identify on lists of debarred entities a contractor seeking public procurement. The guidelines itemise the actions to be taken by procuring institutions in order to verify if a given contractor entered on an IFI list has been convicted by a valid and final court sentence for the bribery offence. The actions recommended by the Public Procurement Office to Polish agencies responsible for providing public advantages include e.g. applying directly to the International Financial Institution which has entered a given contractor on a list of debarred entities or to the Information Office of the Polish National Criminal Register. The Information Office, which is in charge of tasks related to running the National Criminal Register, can via contacts with relevant central authorities in charge of running criminal registers in other states, attempt to establish if a given contractor has been convicted by a valid and final court sentence for the bribery offence in the country where they have their principal business office or where they reside or in the country indicated on the lists of debarred entities held by International Financial Institutions.

<http://www.uzp.gov.pl/cmsws/page/?D:3098>.

Guidelines concerning the use by Polish procuring entities of the lists of debarred entities held by International Financial Institutions, apart from being disseminated on the Office website in the bookmark dedicated to the OECD Convention were also published in the Public Procurement Office Bulletin no. 6/2014, issued by the Office in electronic format: <http://www.uzp.gov.pl/cmsws/page/?D:3120>.

Moreover, the Public Procurement Office, one of the co-organisers of the 4th International Anti-Bribery Conference, included in the conference agenda the question of the lists of debarred entities held by International Financial Institutions and their possible uses in public procurement procedures, in line with the recommendations of the OECD Working Group on Bribery Phase 3 report. The Public Procurement Office invited to the above conference Ms. Pascale Helene Dubois, Chief Suspension and Debarment Officer from the World Bank headquarters in Washington, who introduced to the conference participants the principles of operations of the list of debarred entities of the World Bank. She moreover discussed the procedure which may result in entering the entity committing bribery on the list of the World Bank as well as the conditions of recognition of the lists held by other International Financial Institutions (cross-debarment) and the consequences of the entities being entered on such lists.

Given that the lead theme of the conference was the “Role of public administration offices in identifying irregularities in public procurement”, the issue of bribery in public procurement was discussed moreover after the keynote address of the 4th International Anti-Bribery Conference, delivered by the President of the Public Procurement Office, and within the presentation “Identifying irregularities in public procurement”, delivered by the director of the Department of Audit of Public Procurement Part-Financed by EU in the Public Procurement Office.

The 4th International Anti-Bribery conference took place on 9 December 2013 in Warsaw. Its main organiser was the Chief of the Central Anti-Corruption Office (CBA); the co-organisers included the Public Procurement Office and the Office of Competition and Consumer Protection. The event gathered close to 300 people representing *inter alia* domestic and international institutions of public administration as well as organisations and services involved in combating and preventing corruption. The conference was held to commemorate the 10th International Anti-Corruption Day.

**If no action has been taken to implement recommendation 9(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

**Text of recommendation 9(c):**

9. Regarding the prevention and detection of foreign bribery through agencies responsible for providing public advantages to Polish businesses, the Working Group recommends that Poland:

(c) Refuse to approve official export credit cover or other support to applicants if due diligence concludes that bribery was involved in the transaction, and take appropriate action if bribery is proven after credit, cover or other support has been approved (Convention, Article 3; 2009 Recommendation XII; 2006 Recommendation on Export Credits).

**Action taken as of the date of the follow-up report to implement this recommendation:**

As regards export credits guaranteed by the State Treasury referred to in the *Law of 7 July 1994 on export credits guaranteed by the State Treasury*, KUKA S.A. adheres to the provisions of the *OECD Council Recommendation of 14 December 2006 on Bribery and Officially Supported Export Credits*. KUKA S.A. likewise observes the provisions of the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and the *OECD Council Recommendation of 26 November 2009 on Further Combating Bribery of Foreign Public Officials in International Business Transactions*.

In particular, KUKA S.A. takes the following action with respect to providing official support for export credits:

1. As regards export credits guaranteed by the State Treasury, each insurance agreement for an export credit or an export contract with repayment terms of two and more years and each application for an insurance guarantee is appended by a representation of the legal awareness of criminal liability for the offences under Art. 229 § 5 and 230a of the Penal Code, which meet the criteria of an offence of bribery of a public official in a foreign state and a representation that such an offence has not been committed during an export transaction. In the case of insurance for an export credit with repayment terms less than two years, such representation is part of the export insurance agreement.
2. As regards insurance agreements for an export credit or an export contract with repayment terms of two and more years, KUKA S.A. checks if upon the receipt of an insurance application an exporter or a bank financing an export contract have been entered on relevant, publicly available "debarment lists" (black lists) held by international financial institutions. When reviewing the application, KUKA S.A. may additionally demand that an exporter or a bank financing an export contract reveal the identity of the persons acting on their behalf in connection with an export contract or a credit agreement as well as the amount and purpose of the commission that has been paid or will be paid to them.
3. In the event when:

- according to the statement of an exporter or a bank financing an export contract, within five years prior to the submission of an insurance application, an exporter or a bank financing an export contract or any other person acting on their behalf in connection with an export contract or a credit agreement have

been involved in proceedings taking place before a national court and related to a suspected offence of bribery of a public official in a foreign state or to another offence of a similar nature or if they have been sentenced within this period for such an offence by a national court or administrative measures have been applied to them by the national administration authorities or their representation has been found untrue;

- an exporter or a bank financing an export contract have been entered on relevant, publicly available "debarment lists" (black lists) held by international financial institutions,
- there is a reasonable suspicion that in connection with an export contract or a credit agreement, an offence of bribery of a public official in a foreign country was committed or another action was taken in violation of the law of a similar nature,

then KUKA S.A. is obliged, under the resolutions of the Committee of the Policy of Export Insurance and in-house procedures, to take measures to acquire additional information assisting in the ascertaining whether an offence of bribery of a public official in a foreign country was committed or another action was taken in violation of the law of a similar nature (enhanced due diligence) in connection with an export contract or a credit agreement, in particular KUKA S.A. is obliged to demand from an exporter or a bank financing an export contract:

- the identity of the persons acting on their behalf in connection with an export contract or a credit agreement as well as the amount and purpose of the commission that has been paid or will be paid to them has been revealed,
- information if an exporter or a bank financing an export contract have taken adequate measures to prevent bribery or another offence of a similar nature (e.g. laying off employees sentenced for bribery, installing control procedures preventing bribery, an external audit and periodic publication of its results).

4. In the event when:

- exercising enhanced due diligence, KUKA S.A. identified that in connection with an export credit or a credit agreement a possible offence of bribery of a public official in a foreign country or another action was committed in violation of the law of a similar nature (there is credible proof, i.e. one deemed sufficient for a court of law to deliver a relevant sentence, unless evidence to the contrary is presented),
- having become aware that in connection with an export credit or a credit agreement a possible offence of bribery of a public official in a foreign country or another action was committed in violation of the law of a similar nature (there is credible proof, i.e. one deemed sufficient for a court of law to deliver a relevant sentence, unless evidence to the contrary is presented), then KUKA S.A. refuses insurance protection and notifies a suspected offence to Public Prosecution or the Police.

5. When it is revealed that an export contract was concluded via the bribery of a public official in a foreign country or another action in violation of the law of a similar nature (already after official support for export credits and the payment of compensation to the insurer), KUKA S.A. demands compensation from the exporter, i.e. a monetary benefit in the amount of 10% of the compensation amount paid to the insured.

6. KUKA S.A. on its website: ([http://www.kuka.com.pl/walka\\_z\\_korupcja.php](http://www.kuka.com.pl/walka_z_korupcja.php)) provides information on its anti-corruption policy and encourages exporters and entities financing export contracts to introduce and apply systems of management control which will reflect the pursuit of transparent action in the context of preventing bribery.

All the above actions undertaken by KUKA S.A. have become part of the regular procedures during the conclusion of insurance agreements and granting guarantees at the level of resolutions of the Committee of the Policy of Export Insurance and in-house procedures. Verification actions are documented for each case and are subject to audit and control as envisaged by the in-house procedures in operation in KUKA S.A.

In light of the above, OECD **Recommendations 9b) and 9c)** adopted in connection with the OECD evaluation of Poland's implementation of the provisions of *the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, in the part for which KUKI S.A. is responsible, should be seen as implemented.

**If no action has been taken to implement recommendation 9(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

## **PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP**

### **Text of issue for follow-up:**

10. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Poland:

- (a) Application of the foreign bribery offence to: 1) the bribery of employees of state administrations performing exclusively "service type work"; 2) bribes made through intermediaries; and 3) bribes in the form of non-pecuniary benefits (Convention, Article 1; 2009 Recommendation (Annex I on Good Practice Guidance on Implementing Specific Articles of the Convention, Article C);

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

There have been no substantial new developments, including case examples of bribery of foreign public officials, in the indicated area.

### **Text of issue for follow-up:**

10. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Poland:

- (b) Application of territorial jurisdiction to natural persons;

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

There have been no substantial new developments, including case examples of bribery of foreign public officials, in the indicated area.

**Text of issue for follow-up:**

10. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Poland:

(c) Regarding legal persons, application of the following: (i) the requirement in the Act on Liability of Collective Entities that the conduct of a natural person “did or could have” given an advantage to the legal person, (ii) nationality jurisdiction, and (iii) other sanctions, including debarment (Convention, Article 3; 2009 Recommendations III and XI);

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

There have been no substantial new developments, including case examples of bribery of foreign public officials, in the indicated area.

**Text of issue for follow-up:**

10. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Poland:

(d) The recent separation of the role of the Office of the Prosecutor General (OPG) and the Minister of Justice in Poland, to ensure that it effectively safeguards investigative and prosecutorial decision-making in foreign bribery cases from considerations of factors prohibited in Article 5 of the Anti-bribery Convention (Convention, Article 5; 2009 Recommendation V); and

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

There have been no substantial new developments in the indicated area. In particular, no cases have been identified where the current position of the Public Prosecution in the system would infringe on the guarantees of autonomy of public prosecutors taking decisions as to merit in investigations related to the bribery of foreign public officials.

It should moreover be stressed that the systemic safeguards of the autonomy of public prosecutors under Art. 8 of the Law of 20 June 1985 on Public Prosecution (consolidated text: Journal of Laws no. 279 of 2011, item 1599) are fully applicable to investigations related to the offences under the Convention and prevent the inclusion of the circumstances under Art. 5 of the Convention into the decisions taken in proceedings related to the bribery of foreign public officials.

**Text of issue for follow-up:**

10. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Poland:

- (e) The extradition of permanent residents of Poland for the bribery of foreign public officials (Convention, Article 10; 2009 Recommendation XIII).

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

There have been no substantial new developments, including cases of extraditions concerning the bribery of foreign public officials.

**ANNEX 1: RECOMMENDATIONS BY THE DEPUTY PROSECUTOR GENERAL OF 31  
MARCH 2014 R. CONCERNING PROCEEDINGS INVOLVING BRIBERY OF FOREIGN  
PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS**

Translation:

PG III PZ 073/140/13

Warsaw, 31 March 2014

To:  
Heads of the Appellate Prosecutors  
Offices  
/all/

Please, be informed that on 14 June 2013, the OECD Working Group on Bribery in International Business Transactions adopted a report on respecting by Polish authorities the provisions of the OECD Convention of 17 December 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions.

The report contains a number of recommendations, also addressing Polish law enforcement and judicial authorities and emphasizing their special role in combating corruption of foreign public officials in the context of the increasing activity of Polish entrepreneurs of the private sector, as well as state-owned enterprises, in international business transactions. The activity of Polish entrepreneurs consisting not only in trading or service provision, but also in their involvement in the process of privatisation and competing for foreign public procurement contracts, frequently takes place in countries with increased risk of corruption, where there are no effective mechanisms for combating this kind of criminal activity, which makes the probability of perpetrating active bribery of foreign public officials, as categorised in Article 229 § 5 of Polish Penal Code, higher.

Taking into account the recommendations addressing Polish authorities in the OECD Working Group's report, I present the following comments, using which in investigations concerning the indicated offence conducted by prosecutor's office entities subordinate to you, will allow the harmonisation of the practice of Polish law enforcement authorities with the recommendations of the OECD Working Group, and consequently with the international standards for combating this kind of criminal activity.

**I.** The first important issue that requires particular attention from prosecutors is applying to perpetrators of active bribery of a foreign public official the so-called impunity clause, as referred to in Article 229 § 6 of Penal Code. When applying this clause, public prosecutors should each time make a detailed review of the prerequisites that allow to assume that such persons are not liable to penalty, in particular whether the perpetrators have revealed all the important facts of the case and if they had done this before the law enforcement authorities have been informed of the fact of offering a material advantage to a foreign public official. Such a review may not result in discontinuation of investigation in whole in a situation when a person making use of impunity clause could have acted together with other persons who have not resolved to cooperate with the judicial authorities.

The application of the clause with regard to individual offenders does not exempt public prosecutors from possible formulating of a motion under Article 27 (1) of the Act of 28 October 2002 on the liability of collective entities for acts prohibited under penalty (Journal of Laws of 2012, item 768), if the facts of the case explicitly show that perpetrators of bribery acted in the conditions as stipulated in Article 3 of the cited Act and the collective entity, as a result of these actions, gained or could gain advantage, even non-material one. It is due to the fact that the existence of circumstances excluding the punishment of a perpetrator of a prohibited act does not deny the fact that the action was illegal and discontinuation of preparatory proceedings in this case, as stipulated in the provision of Article 4 of the aforementioned Act, does not constitute an obstacle to holding a legal person liable.

The application of impunity clause and discontinuing the investigation on that basis should not lead to a kind of legalisation of proceeds of offence committed by the perpetrator of bribery. As long as possibilities of adjudicating the forfeiture of objects in case of discontinuation of proceedings are limited, in each case when Article 229 § 6 of Penal Code is applied it should be examined if it is possible to apply for a decision on forfeiture as provided for in Article 39 item 4 of Penal Code to be passed by a court as a preventive measure pursuant to Article 100 of Penal Code.

In the context of application of the impunity clause, it should be reminded that bribery of a foreign official is an offence which has a cross-border character. Actions taken by Polish public prosecutor's office aiming to hold the perpetrator of active bribery liable will be accompanied by analogous actions of law enforcement authorities of other states where a public official accepted or demanded property or personal advantages. Therefore it should be emphasized that the application of the impunity clause with regard to a Polish national does not represent an obstacle to the processing of requests for international legal assistance addressing the Polish authorities regarding the revealed bribery of foreign public officials.

**II.** The issue that is crucial in the context of active bribery of foreign public officials, also referred to in the OECD Working Group's recommendations addressing Poland, is the liability of Polish collective entities in connection with perpetrating this kind of offence by persons acting on their behalf, to their benefit or in other circumstances, which have been listed exhaustively in Article 3 of the Act of 28 October 2002 on the liability of collective entities for acts prohibited under penalty.

It is because the cross-border economic activity is effected almost exclusively by entrepreneurs who are legal persons and they are also the actual beneficiaries of public procurement contracts obtained in other states, purchasers of privatised property or large-scale suppliers of goods and services. In the context of activity of these entities, the most serious corruption occurs, especially that they frequently operate in the sectors that are sensitive to state safety, like defence or power industry sectors.

In the case of revealing the corruption of a foreign public official by a person acting on behalf or to the benefit of such Polish legal entity, the preparatory proceedings should also lead to establishing if there are grounds to hold a collective entity liable, as provided for in Articles 3 and 5 of the Act of 28 October 2002 on the liability of collective entities for acts prohibited under penalty. Collecting evidence with due diligence is crucial, since the proceedings against collective entities is mainly conducted on the basis of evidence gathered in the course of investigation against a perpetrator of an offence committed to their advantage. After its conclusion, the legislator has not provided for the possibility of implementing separate proceedings only for the purpose of establishing the grounds for the liability of collective entities, and only provided the public prosecutor with the authority to file motions for evidence before the *meriti* court.



In this respect, also the proper dynamics of proceedings and optimal concentration of evidentiary acts is crucial, especially that in the case of liability of collective entities, persons who are members of the entities' bodies may try to avoid the responsibility by means of transformation or liquidation of these entities before a motion under Article 27 of the aforementioned act is filed.

**III.** Another issue that has an impact on the efficiency of actions by Polish law enforcement authorities in the field of combating corruption of foreign public officials is the types and severity of penalties requested before a court and adjudicated for an act under Article 229 § 5 of Penal Code.

In the light of the international standards (Article 3 paragraph 1 of the OECD Convention of 17 December 1997), the demands of public prosecutor in this respect should fulfil the criteria of proportionality, effectiveness and dissuasive nature of penalty, especially that in the case of the kind of bribery in question, the degree of penalty is influenced by, apart from circumstances which are typical to corruption, also specific factors like: negative impact on the conditions of conducting business in the international dimension, distortion of the principles of fair competition, deteriorated reputation and competitiveness of Polish enterprises, material losses resulting from the loss of public procurement contracts or the annulment of privatisation decisions that are severe to the national economy, as well as acting to the detriment of economic and commercial cooperation with the state whose officials have been bribed.

The demands of public prosecutors regarding the punishment, taking into account the aforementioned circumstances, may not also disregard motions for adjudicating the forfeiture of objects used for committing the offence of bribery (art. 44 § 2 and 4 of Penal Code), material advantages resulting from offence (Article 45 of Penal Code) or, possibly, they should contain a motion for returning the advantage in whole or in part, pursuant to Article 52 of Penal Code. In the case of the offence of bribery of a foreign public official, offering a material advantage is usually effected abroad, therefore penal measures involving the forfeiture of objects, adjudicated in Poland, may only refer to their equivalence, as well as they may lead to depriving the offenders of the advantages resulting from offering a bribe, which accumulate in the country.

For the same reasons it is also justified to request analogous measures in the case of proceedings against collective entities, especially that the Act of 28 October 2002, in its Article 8 paragraph 1, provides for such measures in the catalogue of available penal measures.

**IV.** The effective combating of corruption offences in international business transactions will not be possible without an adequate tactics for preparatory proceedings. The cross-border nature of such offences, where persons who receive and persons who offer material advantages usually are subject to jurisdictions of different states, compels the wide-scale use in investigations of the instruments of international cooperation, from requests for legal assistance, joint investigation teams, to cooperation with such organisations as Eurojust and OLAF that coordinate preparatory proceedings conducted at the same time in different states. Taking into account the indicated aspects of preparatory proceedings, it is advisable to entrust the investigations with regard to the bribery of foreign public officials with public prosecutors who have experience in prosecuting corruption and in international transactions.

The hitherto experience gained in respect of preparatory proceedings in Poland regarding offences under Article 229 § 5 of Penal Code has led to conclusions that material advantages are frequently offered in connection with complex commercial operations, such as public tenders and privatisation of enterprises, which are conducted on territories of states whose legal traditions are radically distinct from the European

ones. Also the material advantages themselves are offered in a way intended to make it difficult to discover their true nature, for instance as fees for fictitious consulting services or by way of selling certain financial instruments, securities or shares in legal persons at understated prices. These circumstances cause that in investigations regarding the bribery of foreign public officials expert knowledge may prove necessary, and consequently, it may be necessary to consult experts on economy, finance and accounting if needed, in order to assess if the commercial operations disclosed, especially if their course was untypical, if companies owned by the State Treasury were involved or if carried out in the so-called sensitive sectors, like defence, power industry or mining industry, were advisable.

To conclude, it should be emphasised that the hitherto proceedings regarding the described corruption offences, the extended duration of investigation not always was justified by the number of evidentiary acts undertaken, the complex subjective and objective nature of proceedings or objective factors, like waiting for the processing of requests for legal assistance.

Therefore, we call upon efforts to be made in order to make such proceedings not prolonged but carried out dynamically, with optimally concentrated evidentiary acts.

By providing you with the aforementioned recommendations, we call upon having them applied in practice in public prosecutor's offices subordinate to you.

ZASTĘPCA PROKURATORA  
GENERALNEGO  
*Margżena Kowalska*

**ANNEX 2 – EXCERPT FROM THE DRAFT ‘PLAN OF IMPLEMENTING THE TASKS/MEASURES OF THE GOVERNMENT PROGRAM OF COMBATING CORRUPTION FOR THE YEARS 2014–2019’ - LIST OF ITEMS RELATED TO THE OECD WORKING GROUP ON BRIBERY RECOMMENDATIONS.**

**Plan of Implementing the Tasks / Measures of the Government Program of Combating Corruption for the Years 2014–2019 – DRAFT**

No.	Task / Measure of the Program	Result indicator / measure	The planned method of implementation (itemised)	Schedule		Form of Implementation/ end result	Authorities responsible for implementation		Estimation of risk to implementation (0-3)	Estimated costs (in K PLN)	
				Begin date	End date		Leading	Cooperating		Budgetary reserve	Other Means
<i>The specific objective: Reinforcement of prevention and education activities</i>											
2.	[...]  <b>(task 12)</b>  Review of the international obligations and strengthening the international cooperation in	Impleme nted/ non-impleme nted	[...]  Preliminary analysis of legislative recommendations concerning criminal law of the OECD Working Group on Bribery in International Business Transactions, issued following the ‘Phase 3’ evaluation of Poland of 13 June	2014	2014	Analysis	MoJ		0		

<p>the field of combating corruption</p> <p><b>(measure 12.1)</b></p> <p>Conducting a review and implementation of obligations resulting from ratified anti-corruption conventions and recommendations of the monitoring institutions with regard to prevention and education, as well as developing and carrying out the implementing program, including:</p> <ul style="list-style-type: none"> <li>- preparation of a report on the</li> </ul>		<p>2013, concerning the following:</p> <ul style="list-style-type: none"> <li>- ensuring that the “impunity clause” under Art. 229 § 6 of the Penal Code will not be applied with respect to the bribery of foreign public officials,</li> <li>- removal of the requirement of a prior judgement as the precondition for the liability of a legal person,</li> <li>- removing a cap on the amount of monetary sanctions for legal persons or raising the maximum penalties under the law for them to be effective, proportionate and dissuasive.</li> </ul>									
	<p>Implemented/ non-implemented</p>	<p>An in-depth analysis of the recommendations by the Criminal Law Codification Commission operating within the Ministry of Justice.</p>	<p>I 2015</p>	<p>X 2015</p>	<p>Analysis</p>	<p>MoJ</p>		<p>1 (realization of other legislative work considered as priority by the Commission)</p>			
	<p>Implemented/ non-implemented</p>	<p>Preparation and implementation of a legislative process concerning a draft law meant to improve the efficacy of the system of liability of legal persons in Poland.</p>	<p>XI 2015</p>	<p>XI 2016</p>	<p>Legislative act</p>	<p>MoJ</p>		<p>0</p>			

<p>implementation of the UN Convention against Corruption, other ratified anti-corruption conventions as well as recommendations of institutions which monitor their implementation (12.1.1); -supplementing the Government Program for Counteracting Corruption with activities that result from the report and which has not been included in the document (12.1.2); - monitoring, throughout a 2 – year</p>	<p>Implemented/ non-implemented</p>	<p>Analysis of the other recommendations of the OECD Working Group on Bribery in International Business Transactions and adoption of solutions for their implementation, including:</p> <p>1) Preparation of information materials and manuals – anti-corruption guidelines for entrepreneurs (implementation: CBA).</p>	<p>2015</p>	<p>2015</p>	<p>Publication</p>	<p>MoJ</p>	<p>CBA</p>	<p>1 (lack of contribution from the competent bodies)</p>		
	<p>Implemented/ non-implemented</p>	<p>2) Inclusion of the topic of preventing bribery of foreign public officials in international business transactions in the agenda of trainings for public officials and entrepreneurs (implementation: CBA).</p>	<p>2015</p>	<p>2019</p>	<p>Organization and participation in the trainings</p>	<p>MoJ</p>	<p>CBA</p>	<p>1 (limited capacity to conduct trainings for entrepreneurs, e.g. organizational ones, lack of interest on the side of participants)</p>		
	<p>Implemented/ non-implemented</p>	<p>3) Introduction into the agenda of trainings, which prepare employees leaving for work in the Departments of Promotion of Commerce and Investment (DPCI, Polish: WPHI) abroad or departments / teams in</p>	<p>2014</p>	<p>2019</p>	<p>Trainings</p>	<p>MoJ</p>	<p>MoE</p>	<p>0</p>		

cycle, the implementation of international obligations in respect of preventing corruption (12.1.3)	Implemented/ non-implemented	permanent representations of the Republic of Poland, of an additional training on the awareness of the OECD Anti-Bribery Convention [...] (implementation: Ministry of Economy).  4) Introduction into the agenda of the annual meetings of heads of DPCI of a module on preventing corruption and on the conflict of interest, including information on the OECD Anti-Bribery Convention [...] (implementation: Ministry of Economy).	2015	2019	Agenda of the meetings of heads of DPCI.	MoJ	MoE	0		
	Implemented/ non-implemented	5) Embarking on initiatives raising awareness of the OECD Anti-Bribery Convention [...] targeting entrepreneurs, e.g. conferences, meetings, seminars (implementation: Ministry of Economy).	2014	2019	Conferences, seminars.	MoJ	MoE	1 (availability of means)		
	Implemented/ non-implemented	6) Setting up a Working Group on developing standards of ethical business conduct within the CSR Advisory Board of the Minister of Economy – an advisory body of the Minister of Economy and work within the Group to develop recommendations on developing	2015	2016	Recommendations concerning ethics and corruption prevention	MoJ	MoE	1 (any difficulties to reach agreement as to the content of the recommenda		

			standards of ethical business conduct, including Poland's relevant international obligations (implementation: Ministry of Economy).					tions)		
		Implemented/ non-imple mented	7) Consideration of the possible inclusion of questions related to the OECD Anti-Bribery Convention during the planning of subsequent annual trainings schedules of the National School of the Judiciary and the Public Prosecution and attempts to include it into the training schedules (implementation: the National School [...]).	2015	2019	Trainings	MoJ	National School [...]	1 (realization of other trainings considered by the National School as priority)	
		Implemented/ non-imple mented	8) Introduction of bribery issues in the agenda of initial trainings of the National School [...] - annual trainings (implementation: the National School [...]).	2014	2019	Training (as part of the initial training of the National School)	MoJ	National School [...]	0	
		Implemented/ non-imple mented	9) Collaboration with the professional organisations of statutory auditors and accountants (Polish: KIBR and SKwP) promoting the standards of the OECD Anti-Bribery Convention, as pertaining to the above professional groups (implementation: Ministry of Finance).	XI 2014	XI 2014	Encouraging activities (such as trainings, publications, information on the websites) on the part of the professional organizations of certified auditors	MoJ	MoF	0	

		Implemented/ non-impleme nted	10) Adoption and transfer to the KIBR of the Ministry of Finance position concerning Art. 58 of the Law of 7 May 2009 on statutory auditors and their professional self- government, entities authorised to audit financial statements and on public oversight, with explanations concerning the obligation of statutory auditors to notify law enforcement agencies of a suspicion of bribery (implementation: Ministry of Finance).	XI 2014	XI 2014	and accountants to promote OECD standards  Ministry of Finance position	MoJ	MoF	0		
		Implemented/ non-impleme nted	11) Taking action disseminating information on the questions addressed by the OECD Anti-Bribery Convention related to public procurement, including the following: – conclusions related to public procurement, arising from the Recommendation of the OECD Council on further combating bribery in international business transactions of 26.11.2009, - conclusions arising from Poland’s evaluation (“Phase 3”) of the implementation of the OECD Anti-Bribery Convention	2014	2019	Dissemination of information	MoJ	PPO	0		



			<p>at the forum of the OECD Working Group on Bribery, including the contents of the report and recommendations related to public procurement;</p> <p>- debarment lists held by international financial institutions along with information of their possible use in public procurement (implementation: Public Procurement Office).</p> <p>12) Inclusion of the questions addressed by the OECD Anti-Bribery Convention in the trainings for foreign service staff (implementation: Ministry of Foreign Affairs).</p> <p>13) Analysis of analytical procedures in the period from January 2013 until January 2014, connected with the operations of so-called 'para-banking institutions' to evaluate if the operation of the above institutions poses a risk of laundering proceeds from the offence of bribery of foreign public officials in international</p>	2015	2019	Trainings / program of trainings	MoJ	MoFA	1 (only a limited risk of non-implementation – the trainings are continuation / already ongoing)		
		Implemented/ non-impleme nted		2014	2014	Analysis, opinion	MoJ	MoF	0		
		Impleme nted/ non-imple nted									

			business transactions (implementation: Ministry of Finance).								
		Implemented/ non-impleme nted	14) Making available on the GIIF website of materials related to the laundering of the proceeds of the bribery of foreign public officials in international business transactions. Dissemination of information on the availability of the above materials among obligated institutions (implementation: Ministry of Finance).	2014	2014	Distribution of materials for obligated institutions	MoJ	MoF	0		
		Implemented/ non-impleme nted	15) Publication of explanations in information brochures for annual tax returns on the amount of income (loss) in 2013 and in 2014 – on the Ministry of Justice website and in hard-copy, available in tax offices across Poland, and moreover in Biuletyn Skarbowy (a bimonthly issued by MF, no. 6/2013) on the impossibility of tax deductibility of the expenses on monetary advantages to a public official (implementation: Ministry of Finance).	2013	2014	Publications	MoJ	MoF	0		
		Impleme	16) Anti-bribery trainings in fiscal control offices								

		nted/ non- impleme nted	(concerning both bribery in government administration and that of foreign officials in light of the OECD Convention) and broadly construed ethical issues in the civil service corps, including the Code of Ethics of the Civil Service (implementation: Ministry of Finance).  [...]	2013	2014	Trainings	MoJ	MoF	0		
			[...]								
<b><i>The specific objective: Strengthening the combating of corruption</i></b>											
	<b>(task 19)</b>  Strengthening international cooperation in the field of combating corruption.  <b>(measure 19.1)</b>  Conducting a review of the		[...]  Analysis of the recommendations of the OECD Working Group on Bribery in International Business Transactions following the evaluation of Poland “Phase 3” of 13 June 2013 and delivering solutions for their implementation, including inter alia:  1) Adoption and dissemination among Appellate Prosecution	2014	31. III 2014	Guidelines of the Deputy	MoJ	OPG	0		

<p>implementation of obligations resulting from ratified anti-corruption conventions and recommendations of monitoring institutions in the scope of the criminal law aspects and prosecution, including:</p> <ul style="list-style-type: none"> <li>- preparation of a report on the implementation of the provisions, together with recommendations (19.1.1).</li> <li>- developing and carrying out a program, which implements the aforementioned</li> </ul>	<p>non-implemented</p> <p>Implemented/non-</p>	<p>Offices across Poland of binding guidelines concerning the problems indicated by the OECD Working Group in prosecuting active bribery of foreign public officials, inter alia in the following areas:</p> <ul style="list-style-type: none"> <li>- use with respect to perpetrators of active bribery of foreign public officials, of the so-called impunity clause, under Art. 229 § 6 of the Penal Code;</li> <li>- liability of Polish collective entities for the commission of the offence of bribery;</li> <li>- the types and severity of sanctions demanded by prosecutors in judicial proceedings to be imposed for the offence under Art. 229 § 5 of the Penal Code;</li> <li>- efficient combating of the corruption crime in international business transactions, especially in areas sensitive to corruption, with the use of: instruments of international cooperation, specialist knowledge of experts in the areas of economics, finances and accountancy (implementation: Office of the Prosecution General).</li> </ul> <p>2) Delivering guidelines by the Chief of CBA for subordinate</p>	<p>II 2014</p>	<p>IV</p>	<p>Prosecutor General</p> <p>Guidelines</p>	<p>MoJ</p>	<p>CBA</p>	<p>0</p>		
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ed recommendati ons (19.1.2).	impleme nted	units to intensify efforts to disclose and combat the bribery of foreign public officials (implementation: CBA).		2014						
	Impleme nted/ non- impleme nted	3) Inclusion of questions related to the OECD Anti-Bribery Convention in the agenda of trainings for CBA officers (implementation: CBA).	2015	2015	Trainings Program trainings	/ of	MoJ	CBA	1 (any organization al constrains)	
	Impleme nted/ non- impleme nted	4) Organisation of trainings for CBA officers with a module on the provisions of anti-bribery conventions (implementation: CBA).	2015	2019	Trainings		MoJ	CBA	1 (any organization al constrains)	
	Impleme nted/ non- impleme nted	5) Ongoing monitoring of the question of the bribery of foreign public officials in international business transactions by Police officers of anti-corruption departments of Police units at the regional level and its detailed discussion during in-house meetings with the Police executives (implementation: General Police Headquarters).	2015	2019	Monitoring corruption phenomenon	of / ongoing operational work	MoJ	GPH	0	
	Impleme nted/ non- impleme nted	6) Operational supervision of questions of bribery of foreign public officials in international business transactions by the anti-corruption division of the	2015	2019	Monitoring corruption phenomenon	of /	MoJ	GPH	0	

			Police (implementation: General Police Headquarters).  [...]			ongoing operational work					