



POLAND: PHASE 2

FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS

APPLICATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE 1997 REVISED RECOMMENDATION ON COMBATING BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 1 October 2009.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

a) Summary of findings

1. In June 2009, Poland presented its Written Follow-up Report, outlining its response to the recommendations and follow-up issues identified by the Working Group at the time of Poland's Phase 2 examination in January 2007.

2. The Working Group congratulated Poland for its progress in implementing the Convention. All the recommendations issued in Phase 2, but one, have been satisfactorily or partially implemented. Since Phase 2, Polish courts adjudicated one case of bribery of a foreign public official, although not related to international business transactions.

3. The Working Group welcomed the announcement by Poland that the Ministry of Justice is drafting a new Bill on amendments to the Law on Liability of Collective Entities. The conviction of a natural person would no longer be a prerequisite to proceeding against a legal person. Poland was not able to inform the Group of a tentative timetable for the adoption of the Bill (Recommendation 3(f)). So far, the Polish authorities have not assessed certain aspects of the implementation of the existing system of liability. In particular, they have not assessed whether in practice the existing cap on fines for legal persons (*i.e.*, 10% of the "revenue" generated in the tax year when the offence was committed) had been an obstacle to imposing effective, proportionate and dissuasive sanctions in the cases of liability of collective entities adjudicated thus far. In the context of effectiveness of sanctions Poland was also not able to inform the Group on whether additional sanctions such as debarment from public procurements have already been imposed. Once the Bill will have been passed, further awareness-raising measures might be undertaken (Recommendations 1(e) and 4(b)).

4. Other legislative developments appear to be in progress in Poland. The Working Group welcomed the legislative review underway in order to replace the impunity provision (effective regret) with a provision that would allow the judge to apply an extraordinarily mitigated sanction or to renounce imposing a sanction. However, the review has not so far been followed by a Bill and Poland cannot present a tentative date of introduction in Parliament (Recommendation 3(e)). Poland also seriously considered the dual nature of the Office of the Prosecutor General (*i.e.*, the Office is held by the Minister of Justice). A Bill in Parliament proposes to separate the two functions, and contemplates the appointment by the President of a person with substantial judicial or prosecutorial experience from among two candidates proposed by the National Council of Judiciary and the National Council of Prosecutors (Recommendation 3c). Finally, Poland made some amendments to the procedure for lifting immunities of judges and prosecutors. According to Poland, any other change would require an amendment of the Constitution. Some further thought could be given to situations in which parliamentarians may be part of a bribery scheme, and if new relevant legislative developments or cases take place the issue could be revisited in future monitoring activities (Recommendation 3(d)).

5. The Working Group noted that inter-ministerial consultations took place to evaluate whether potential whistleblowers were protected from retaliation. Yet, the Group was not able to identify whether

consideration had been given to strengthening the protection of employees who report suspicions of foreign bribery, in order to encourage whistle-blowing. Poland agreed to conduct consultations with trade unions and the private sector and pledged to consider introducing stronger protection (Recommendation 2(d)).

6. Since the Phase 2 evaluation, the Polish authorities have taken measures to enhance the institutional framework for the enforcement of the foreign bribery offence. The police, prosecutors and the judiciary received extensive training on the Convention, on Poland's foreign bribery legislation and on liability of legal persons. Poland also created positions of criminal analysts in appellate and regional prosecution offices, these including analysts in financial matters. The police and prosecutors were reminded of the importance of actively looking into the range of possible sources of detection of foreign bribery. However, they have not yet taken measures to ensure that all credible allegations are proactively and conscientiously investigated; they appear to have a reactive approach rather than a proactive one. Attention of the law enforcement authorities has been drawn to the importance of applying economic sanctions. However, no analysis has been provided on the various economic sanctions applied in practice in domestic bribery cases and how effective, proportionate and dissuasive they are. In particular, it is not clear whether forfeiture has been applied against active bribers (and not only against corrupted officials) (Recommendations 1(a), 1(e), 3(a), 3(b), 4(a)).

7. The Working Group acknowledged the serious efforts made by Poland to raise the level of awareness of the administration on the foreign bribery offence. Most administrations that could play a role in the prevention and detection of foreign bribery took initiatives to raise awareness of the offence, the related reporting obligation, and the procedures to follow. The Ministry for Foreign Affairs and the Ministry of Finance have been particularly active (Recommendations 1(b), 2(a), 2(b) and 2(c)). Notably, the Polish export credit agency (KUKE) took action to implement the OECD Council Recommendation on Bribery and Officially Supported Export Credits of 18 December 2006. It therefore strengthened measures for deterring foreign bribery in respect of international business transactions benefiting from its support, including measures related to the use of agents (Recommendation 2(e)).

8. Awareness raising activities targeting the private sector are at a much less advanced stage, especially concerning small and medium-size enterprises. Some information has been posted on various websites, but nothing has been done to specifically target SMEs. In addition, very few direct contacts seem to have been organised with the private sector. (Recommendation 1(c))

9. Poland amended its legislation to confirm that bribes are not tax-deductible: "Incurred expenses as well as the value of given things, rights or services resulting from activities which cannot be a subject matter of a legally effective contract" are not considered as "revenue earning costs". The Working Group questioned whether this language was a clear confirmation of the non-tax deductibility of bribes. Poland does consider that this provision is a clear confirmation of the non-tax deductibility of bribes. In addition, the preparatory works point to the Phase 2 Recommendation 5; the private sector has been consulted and informed; and tax inspectors are well trained. No answer was however given to the 2 specific cases raised in the phase 2 report, §49. In addition, Poland does not seem to have considered the opportunity of an express prohibition of the tax deductibility of bribes.

10. With regard to the accounting and auditing professions, Poland just amended the Law on Statutory Auditors, Audit Firms and Public Oversight. It now clearly imposes an obligation to report possible acts of bribery of domestic and foreign public officials to the law enforcement authorities (Recommendation 2(g)). More work could now be done to raise awareness of auditors and accountants on the foreign bribery offence. For example, the websites of the relevant professional associations publish the Convention but not the 1997 Revised Recommendation which contains detailed provision on accounting and auditing. Also, the Polish authorities encouraged the profession to organise training on the foreign

bribery offence and related obligations to the profession, but no feedback has been received so far. It is expected that more will be done with the entry into force of the mentioned amendments (Recommendation 1(d)).

11. Poland strengthened its anti-money laundering reporting system. The Polish financial intelligence unit (GIFI) now provides feedback on the quality of the suspicious transaction reports it receives as well as post-control recommendations. It has also prepared a number of explanations to answer inquiries of obligated institutions. The Polish authorities are also taking legislative steps to improve the flow of information and feedback to obligated institutions on the use of suspicious transaction reports, these including a Bill implementing the provisions of the European Union Directive 2005/60/EC (Recommendation 2(f)).

12. Due to the absence of cases of bribery of foreign public officials in international business transactions, Poland was not able to address the follow-up issues contained in the Phase 2 Report.

b) Conclusions

13. Based on its findings with respect to Poland's implementation of the Phase 2 recommendations, the Working Group reached the overall conclusion that Recommendations 1(a), 1(b), 1(e), 2(a), 2(b), 2(c), 2(e), 2(f), 2(g), 3(b), 3(c) and 3(d) have been satisfactorily implemented; Recommendations 1(c), 1(d), 2(d), 3(a), 3(e), 4(a), 4(b) and 5 have been partially implemented; and Recommendation 3(f) has not been implemented. Follow-up issues remain outstanding and will continue to be monitored.

14. The Working Group invites the Polish authorities to report orally within one year (*i.e.* by June 2010) to the Working Group on the implementation of Recommendations on the liability of legal persons (Recommendations 1(e), 3(f) and 4(b)), the protection of whistleblowers (Recommendation 2(d)) and on the non-tax deductibility of bribes (Recommendation 5).

WRITTEN FOLLOW-UP TO PHASE 2 REPORT

Name of country: Poland

Date of approval of Phase 2 Report: 18 January 2007

Date of information: 6 May 2009

Note: For ease of reference, Recommendation 1 of this report corresponds to Paragraph 1 on page 66 of the Phase 2 Report and so on.

Part I: Recommendations for Action

Text of recommendation 1(a):

1. With respect to awareness raising and training activities to promote implementation of the Convention and the Revised Recommendation, the Working Group recommends that Poland:

(a) provide training to police, prosecutors and the judiciary on the Convention and on Poland's foreign bribery legislation (Convention, Article 5; Commentary 27; Revised Recommendation, Paragraphs 1, II).

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

- Following the adoption of Poland's Phase 2 evaluation report (January 2007) the State Prosecutor's Office transferred the Working Group's recommendations through the appellate prosecutors' offices to all subordinate territorial units with instructions aiming at ensuring implementation of the recommendations and reporting on the undertaken steps. All prosecutors' currently performing duties have become acquainted with the content of the recommendations.
- In the year 2007 the Prosecution Authority undertook also activities in the scope of training on the OECD Convention on Bribery and the legal framework relating to the bribery of foreign public officials. To various extent trainings in this scope were conducted in territorial units subordinate to all prosecutors' appellate offices. These trainings took place mostly on the regional prosecutors' offices level during which issues contained in all specific recommendations were discussed in detail. The trainings concerned also liability of collective entities. In one of the prosecutors' appellate areas (Szczecin) until March 2007 all prosecutors underwent training, including also prosecutors of all the subordinate district offices.
- Various actions by the Prosecution Authority relating to the recommendation 1(a) (as well as the recommendation 1(e)) were continued in 2008, including trainings (in prosecutors' appellate areas of Szczecin, Wrocław and Gdańsk), holding internal prosecutors' councils devoted to the subject

(Kraków, Katowice and Wrocław) or conducting analysis of the practical application of the law on liability of collective entities based on the ongoing proceedings (Gdańsk, Katowice).

- Trainings were organized also at the central level – in April/May 2007 38 prosecutors from one of the regional prosecutors' offices (Bydgoszcz) participated in trainings organized by the Judicial Assistance and European Law Department of the Ministry of Justice on preventing and combating corruption under the European Community, international and Polish criminal law.
- Along with other matters also the issues of application of appropriate sanctions and the forfeiture of proceeds of bribery were dealt with by way of the aforementioned trainings and instructions.
- In 2007 - 2008 trainings on corruption matters for both judges and prosecutors were also conducted by the National Centre for Training of Judges and Prosecutors (currently: The National School of Judiciary and Prosecution Authority).
- The trainings organized by the National Centre in 2007 for judges adjudicating in penal matters involved a series of trainings 'Selected issues of penal liability for corruption offences on the grounds of courts' practice' (several editions of the training: 14-16 May, 10-12 September, 8-10 October, 12-14 November 2007). The areas covered included such topics as: 'performing a public function and the features of passive bribery, active bribery and paid patronage offences', 'the notion of pecuniary and personal advantage in courts' adjudicating practice as concerns corruption offences', 'new regulations proposed by the Ministry of Justice on depriving persons convicted of corruption offences of the benefits of crime', 'protection of financial interests of the European Union in the penal law in light of courts' adjudicating practice, the provisions of the Council of Europe penal law convention against corruption and the OECD Convention on combating bribery of foreign public officials in international business transactions'.
- Moreover in 2007 – 2008 a number of post – graduate studies were offered for prosecutors by the Centre which involved - inter alia - the issues of preventing, revealing and prosecuting corruption offences (theses including e.g. The Post-graduate Studies for Prosecutors on Organized Crime, Corruption and Terrorism, organized in cooperation with the University of Warsaw, December 2007 – December 2008, and other post – graduate studies).
- Issues covered by the Working Group's recommendations on awareness and training were also taken into consideration within further training activities undertaken by the National Centre. In 2008 the training 'Corruption offences on the grounds of Polish criminal law and European Community law' for prosecutors, including prosecutors of the Bureau for Organized Crime of the State Prosecutor's Office, was organized. The training took place in two editions: 25-27 June and 3-5 September 2008. The areas covered included such topics as: 'Protection of financial interests of the European Union', 'Provisions of the OECD Convention on combating bribery of foreign public officials', 'Law on public procurement in the context of liability of public officials. Crimes which most frequently accompany tenders', 'The liability of public officials for infringements of criminal-economic law in light of judicial decisions', 'Methodology of investigating economic crimes involving corruption. The use of investigative and evidentiary techniques'. About 120 prosecutors participated in the trainings.
- The above - mentioned issues were also covered in the course of another series of trainings organized by the National Centre: '*The methodology of conducting proceedings in the scope of selected 'crimes against economic activity'*'. These trainings (two editions: 5-7 May and 24-26 November 2008) had the formula of workshops and seminars. In the course of them *inter alia* practical aspects of application of the *Law on liability of collective entities* [...] were discussed.

Similarly, 120 prosecutors participated in the trainings.

- In 2008 the Ministry of Justice issued a publication containing texts of OECD anti-bribery instruments translated into Polish, with introduction, including in particular translated Commentaries to the Convention. The publication was distributed to inter alia around 730 judges and prosecutors who participated in the trainings organized by the National Centre.
- In 2007 Polish judges participated through the National Centre in an international conference devoted to the role of administration of justice in combating corruption. This conference which was organized by the Judicial Academy of the Republic of Croatia and European Commission's TAIEX took place on 10-11 December 2007 in Zagreb.
- During training courses on revealing and combating corruption offences organized for police officers from regional, district and city police headquarters issues concerning the OECD Convention on Bribery and the Criminal Code regulations on bribery of foreign public officials were discussed. Matters concerning the *Law on liability of collective entities* were also elaborated during the trainings.
- On the website of the Chief Police Headquarters, in its part devoted to the Criminal Bureau, information about the Convention and the foreign bribery offence was placed, including in particular information about Polish law provisions on the foreign bribery offence, texts of OECD instruments on corruption translated into Polish as well as Working Group's recommendations addressed to the Police.
- A letter by the Chief Police Headquarters including the text of the OECD Convention with *Commentaries* to the Convention and regulations of Criminal Code was sent to all regional police headquarters to familiarize with it all police officers from divisions for combating bribery and economic crime.
- The above mentioned issues will continue to be discussed during future police training courses on revealing and combating corruption offences.

Text of recommendation 1(b):

1. With respect to awareness raising and training activities to promote implementation of the Convention and the Revised Recommendation, the Working Group recommends that Poland:

(b) take additional measures, including further training, to raise the level of awareness of the Convention and the foreign bribery offence within the public administration, particularly those institutions that interact with Polish companies active in foreign markets, including foreign diplomatic representations, and trade promotion, official export credit support and Official Development Assistance (ODA) institutions, (Revised Recommendation, Paragraph I)

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

- Implementing the recommendations of the OECD Working Group on Bribery in International Business Transactions, the Ministry of Foreign Affairs has conducted, since 2007, training for

future heads of Polish missions abroad and for diplomatic and technical-administrative staff assigned to work in those missions. The subject matter of the training courses is broad and currently consists of three modules.

- The first module is devoted to ethics and the issue of conflict of interest in public administration. The training is conducted by ethics counsellors appointed at the Ministry of Foreign Affairs. The course participants attend lectures on ethics and conflict of interest and then take part in practical exercises, during which they resolve specific problems. The training is designed to boost the ethics awareness of persons assigned to foreign missions and to teach them how to prevent conflicts of interests and corruption.
- The second module, titled ‘Anticorruption: how to detect corruption, respond to it, notify the competent authorities and its penal aspects’ is conducted by a representative of the National Prosecutor’s Office. It covers analysis of the phenomenon of corruption, penal liability and the responsibilities of public officials. The participants are acquainted with anti-corruption conventions ratified by Poland, including the OECD Convention on combating bribery of foreign public officials in international business transactions. Information is provided on penal regulations that implement the provisions of the Convention and on obligations in the event of justified suspicion that a bribery offence has been committed.
- The third segment of the training course, titled ‘Practical elements of detecting corrupt behaviour’, is conducted by a representative of the Central Anticorruption Bureau. It includes practical aspects of response to a corruption proposal or steps which need to be taken in the event of justified suspicion of a corruption crime.
- The training is conducted on a regular basis. In the year 2008 278 MFA employees attended the course, in 2009 until present the number of participants has amounted to 171 employees.
- Additionally, in 2007 the training concerned also the role of Polish diplomatic missions in providing Official Development Assistance. 188 persons were trained on that subject.
- In 2009 the anti-corruption training is being extended to the staff of the MFA headquarters. It is planned to conduct training in the scope of the OECD Convention for employees of the foreign economic policy and development cooperation departments.
- Plans also envisage the publication of a manual about the Convention, detailing procedures for reporting bribery of foreign public officials and the course of action following such reports.
- On 29-31 October 2007 at the annual meeting of Directors of Trade and Investment Promotion Divisions of Polish diplomatic missions organized by the Minister of Economy the information: ‘Tasks of foreign posts in the scope of combating corruption’ with particular emphasis on the OECD Convention on Bribery was presented. The presentation was followed by a discussion during which the Directors had the opportunity to share their experiences and opinions. Such meetings of Directors of Trade and Investment Promotion Divisions of Polish diplomatic missions are being organized every year and each time the issues of procedures and instruments on revealing and combating corruption are on the agenda.
- On 17-21 September 2007 within the scope of preparatory trainings for new employees delegated for positions in Trade and Investment Promotion Divisions of Polish diplomatic missions as well as for business – related positions in Polish diplomatic missions, participants were acquainted with key international law instruments and domestic legal provisions on corruption. The training

was conducted by experts from the Ministry of Justice. At present every employee delegated to work abroad undergoes obligatory training on the procedures and legal regulations on revealing and combating corruption. The employees at trade and investment promotion divisions are informed also on an ongoing basis about the risks of corruption.

- The Ministry of the Treasury incorporated preventing bribery and issues pertaining to professional ethics into the employee training program. The bribery of foreign public officials is handled indirectly in the trainings, among other issues concerning corruption.
- The Ministry of Interior and Administration and the Central Anti-Corruption Bureau were involved in the implementation of the EU ‘twinning project’: ‘Improvement of the anti-corruption activities in Poland’, with the participation of German and Belgium partners. The project involved organization of trainings in the scope of combating corruption for the public administration employees, the Police and the CBA officers, as well as the exchange of experiences and elaboration of a best practices manual. The activities concerned both Polish and international anti – corruption laws, covering also the aspects of transnational bribery and international business transactions.
- In the year 2008 the issue of combating bribery of foreign public officials was also raised during trainings in the scope of officially supported export credits for employees of the Ministry of Foreign Affairs delegated to Polish diplomatic missions abroad.

Text of recommendation 1(c):

1. With respect to awareness raising and training activities to promote implementation of the Convention and the Revised Recommendation, the Working Group recommends that Poland:

(c) take necessary action to improve awareness of the Convention and of foreign bribery legislation among business associations and companies, including small and medium size enterprises, and among Non-Government Organisations and companies involved in the execution of ODA contracts funded by Poland (Revised Recommendation, Paragraph I);

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

- Government institutions continued to provide and whenever necessary update comprehensive information on the Convention and foreign bribery legislation through its websites, these including the websites of the Ministry of Justice, the Ministry of Interior and Administration, the Ministry of Economy, the Ministry of Treasury, the Polish Agency of Information and Foreign Investment (PAIIZ S.A.).
- Following the initiative of the Central Anti- Corruption Bureau a comprehensive anti-corruption educational portal (www.antykorupcja.edu.pl) was created in 2008. The portal contains texts of Polish and international anti-corruption laws, information about and links to various institutions in Poland active in the area of combating corruption, analyses, reports, examples of codes of ethics and other. Various materials concern also OECD and international bribery. It is worth noting the portal was nominated to the World Summit Award (WSA) in the e-Government

category.

- The Ministry of Economy within its regular contacts with organizations of enterprises always pays particular attention to the issues of ethics in business. Regular contacts are maintained and the Ministry of Economy co-organizes or holds under its auspices initiatives concerning combating corruption. Moreover the Ministry of Economy regularly informs non-governmental business organizations on national and international initiatives in this area. By way of example, information about the work of the OECD on the review of the OECD anti-bribery instruments and the Working Group's Consultation Paper was distributed to a number of business chambers, organizations of entrepreneurs, banks and trade unions.
- For the purpose of promotion and increasing awareness of the Convention, the Ministry of Treasury requested the management and supervisory boards of companies in which the Treasury is sole or majority owner to become acquainted with the Convention as well as with the additional information about it provided on governmental websites.
- The export credit insurance agency (KUKI S.A.) continued to take steps towards combating bribery, among them:
 - extending the insurance procedure by provisions included in the OECD Council Recommendation on Bribery and Officially Supported Export Credits,
 - including provisions informing about consequences of committing bribery into the general conditions of cover,
 - placing on the official website of KUKI S.A., and constant actualization of all the information concerning OECD Council Recommendation and tasks resulting from this act for the export credit agency, including the task of encouraging exporters to develop and apply management control systems, which would reflect transparency in their activity in relation to preventing bribery,
 - providing clients during the meetings with all the information concerning acts bound up with combating bribery of foreign public officials.

Text of recommendation 1(d):

1. With respect to awareness raising and training activities to promote implementation of the Convention and the Revised Recommendation, the Working Group recommends that Poland:

(d) encourage the accounting and auditing professions to develop further initiatives to (i) provide training and raise awareness concerning the foreign bribery offence and the relevant accounting and auditing requirements under Polish law; and (ii) publicise within both professions the obligation to report suspicions of foreign bribery to the appropriate bodies. (Revised Recommendation, Paragraphs I and V)

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

- The Accounting Department of the Ministry of Finance already in 2006 undertook actions aimed at raising awareness of the Convention and the 1997 Revised Recommendation within

professional organizations of statutory auditors and accountants, by sending information materials to the National Chamber of Statutory Auditors (NCSA) and the Accountants' Association in Poland (AAP) with a request to publicize knowledge on the topic among their members. Furthermore, representatives of both organizations participated in the training on the Convention and the Revised Recommendation organized for the employees of the Accounting Department, with the purpose of passing the knowledge to members of the organizations.

- Additionally, due to the Group's recommendation to encourage the accounting and auditing professional organizations to develop further initiatives aimed at broadening the knowledge of the Convention and relevant requirements under the Polish law, the Accounting Department requested the NCSA and AAP to take appropriate actions, among others to include the topic of combating bribery of foreign officials in international business transactions, including relevant requirements under the Polish law, in trainings organized by these organizations.
- In this context the Accounting Department also informed the NCSA that the draft law on statutory auditors and their self-government, audit firms and public oversight (expected to be adopted by the end of June 2009 – please see information under the recommendation 2(g) below) included a provision, imposing on statutory auditors an obligation to report indications of a possible bribery of public officials to the competent authorities. In this context the Accounting Department asked the NCSA to include this information in the obligatory continuing education program for statutory auditors.
- It is also worth mentioning that as a result of the cooperation of the Accounting Department with the NCSA and the AAP concerning awareness raising in the area of combating corruption, the information materials about the Convention were published on the websites of the mentioned institutions. Furthermore, since 2003 the NCSA has undertaken informational actions aimed at promoting this topic among statutory auditors and emphasizing their role in combating such offences. Additionally, under the obligatory continuing education program in 2008 the trainings contained the topic on International Standard on Auditing 240 'Frauds and errors' including the issue of fraud risk. This topic will be continued also in 2009.

Text of recommendation 1(e):

1. With respect to awareness raising and training activities to promote implementation of the Convention and the Revised Recommendation, the Working Group recommends that Poland:

(e) take further measures to raise awareness about the Law on Liability of Collective Entities to ensure that possible contraventions of the law by legal persons are actively investigated and prosecuted and, to that extent, consider (1) measures to assist police and prosecutors with the investigation and prosecution of legal persons pursuant to the Law; and (2) the provision of further training for police and prosecutors about the operation of the Law (Revised Recommendation, Paragraphs I).

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

Various awareness - raising initiatives undertaken since the Phase 2 review concerned at the same time the recommendations 1(a) and 1(e), therefore they were presented together - please refer to information submitted under recommendation 1(a).

Text of recommendation 2 (a):

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Poland:

(a) adopt measures to ensure that Polish public officials who could play a role in the detection and prevention of the foreign bribery offence are aware of their duty to report foreign bribery to law enforcement authorities in Poland, and the procedures and channels for such reporting (Revised Recommendation, Paragraph I).

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

- In order to effectively implement the recommendations of the OECD Working Group on Bribery in the Ministry of Finance, the Director General of the Ministry established a task force consisting of representatives of the departments and offices involved. The task force initiates and coordinates tasks performed by organisational units subject to the Minister of Finance and is responsible for the preparation of periodical reports on the implementation of the recommendations.
- The General Inspector of the Treasury Inspection and The Head of Customs Service issued on December 9, 2008 the *Guidelines on More Effective Use of the Opportunities to Reveal Hidden Costs of Bribes during Fiscal and Tax Inspections – the Amounts Allocated to or Spent on Bribery of Public Officials and Particularly of Foreign Public Officials in International Business Transactions*. The *Guidelines* are addressed to the treasury control offices, tax offices and tax chambers, customs offices and customs chambers as well as to the supervising departments of the Ministry of Finance. The *Guidelines* refer to the fundamental documents of OECD requiring that Poland fights bribery of foreign public officials and quote the content of the recommendation 2(a), which alongside with the comment following § 55 of the Report from the Phase 2, oblige the Ministry of Finance to draw up such guidelines. The *Guidelines* focus on: the legal duty of reporting crimes under article 304 § 2 of the Code of Criminal Procedure; assessment of information received on crimes being the basis of reporting; the way and form of reporting crimes; the non-deductibility of bribes (and paid patronage) from tax; the methodology of disclosing of hidden costs of bribes; as well as on the issue of protection of civil servants, who in connection with the control activity of their employer learnt about prosecuted crime or reported suspicion of crime to the law enforcement authorities. In the final normative part of the *Guidelines* their addressees were obliged to take measures, the aim of which is to maximally use any opportunity to disclose, in connection with treasury, tax or customs inspections performed, hidden costs of bribes as well as to assure the proper execution of the obligation of reporting such crimes. The *OECD Bribery Awareness Handbook for Tax Examiners* and the draft *Guidelines* were used during trainings organized in 2007 and 2008 (for the trainings please see also recommendation 2(c) below).
- The Ministry of Economy confirms that its employees are fully aware of their obligation to report instances of bribery of foreign public officials to Polish law enforcement authorities, whenever they receive information that a given international transaction was concluded in breach of the binding provisions of law (please see also information on trainings organized for Ministry's

employees under the recommendations 1(b) and 2(c)).

- The export credit insurance agency (KUKI S.A.) continued to take steps towards combating bribery, among them the implementation of internal regulations for KUKI S.A. employees required to follow step-by-step procedure in case of suspicion that bribery of foreign public official has been involved in relation to an export contract or a credit agreement, or that any other deed of similar nature against law has been committed. The regulations provide who is obliged to report it immediately to a prosecutor or the Police as well as to undertake necessary measures in order to secure evidence of bribery until a proper decision by the law enforcement authorities is issued.
- For ODA and foreign diplomatic missions please see also information for recommendations 1b) and 1c) above.

Text of recommendation 2(b):

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Poland:

(b) with respect to personnel in charge of Official Development Assistance, and those in other institutions that have privileged contacts with Polish enterprises active abroad, provide training on how to detect foreign bribery and on specific measures to be taken if credible suspicions of foreign bribery should arise, including reporting channels and arrangements for co-operation and co-ordination between the relevant government ministries (Revised Recommendation, Paragraph I);

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

- For ODA, foreign diplomatic missions, including trade and investment promotions divisions of the foreign missions, please see information for the recommendation 1(b) above.
- For export credit please see also information for the recommendations 1(b) and 2(a) above.

Text of recommendation 2(c):

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Poland:

(c) (Revised Recommendation, Paragraphs I, II; 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials)

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

- The Ministry of Finance elaborated and provided training in 2007 and 2008 at the central level for fiscal officials in the scope of the recommendation within the framework of governmental

Program for Combating Corruption – Anticorruption Strategy 2nd stage of implementation 2007-2009. The training agenda consists of three modules connected with the issue of revealing and preventing corruption: the professional ethics, corruption offenses and cooperation between fiscal organs and The Police, and - the third main module – the Convention and the Revised Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions. In view of the aim of training – to maximise the possibility of detection of the bribery of foreign public officials, the third module of training contains information about the non-tax deductibility of bribes to foreign public officials and the obligation of tax officials to report suspicions of such bribes to law enforcement authorities.

- The OECD Bribery Awareness Handbook for Tax Examiners, the PowerPoint presentation and the project of *the Guidelines on More Effective Use of the Possibilities to Reveal Hidden Costs of Bribes during Fiscal and Tax Controls – the Amounts Intended for or Spent on Bribery of Foreign Public Officials in International Business Transactions* are used during the above - mentioned training courses.
- The Ministry of Finance organized training courses for 349 personnel at the management level and personnel conducting tax audits of tax and custom chambers, tax and custom offices, fiscal audit offices, the Ministry of Finance and trainers of fiscal administration responsible then for conducting training in the field of revealing and preventing corruption under the Convention at the local level, which took place in the second half of 2007 and 2008.
- In the second half of 2008 there were training courses organized at the local level for 8062 personnel conducting tax audits of tax and custom chambers, tax and custom offices, fiscal audit offices. The training system will be pursued in 2009 – the training schedule for 2009 covering 20453 personnel of tax, fiscal and custom administration.

Text of recommendation 2(d):

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Poland:

(d) consider introducing stronger whistleblower protection measures for public and private sector employees who report suspicious facts that may indicate foreign bribery, in order to encourage them to report such facts without fear of reprisals (Convention, Article 5; Revised Recommendation, Paragraphs I and V.C(iv));

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

Poland carefully considered this recommendation and is of the view that the available measures which can be applicable for the purpose of whistleblower protection are sufficient. The conclusion was reached having taken into account a number of measures and safeguards present in the law, either as legal means of protection against mistreatment by the employer, rules concerning the reporting of offences by public officials or solutions aimed at guaranteeing anonymity of whistleblowers. These include:

- Labour Law. Although there are no specific provisions in the labour law which would directly

refer to the protection of persons reporting suspicions of crimes to superiors or to law enforcement authorities, such persons may, in appropriate circumstances, avail themselves of the general provisions of the labour law, including:

- provisions on the counteracting of mobbing (art. 943 of the Labour Code);
- provisions protecting employees against unlawful dismissal or unlawful dissolution of the employment contract (art. 30 – 622 of the Labour Code). According to the Code all grounds for dismissal or dissolution of a contract have to be properly communicated in writing to the employee. The employees have the right to recourse to court in connection with any infringements of their rights, including dismissal, in principle having the right to claim compensation or recognition of the dismissal as invalid. Before going to court employees may demand instituting proceeding before conciliatory commission (such commissions including representatives of employer and representation of other employees, e.g. trade unions). Agreements signed before the commissions are binding on the employer. The employers not complying with the verdicts of the court or the agreements entered into before the court or conciliatory commission are subject to a fine. The above provisions are applicable for employees both in the public and private sector.
- Law on civil service. In accordance with art. 77.3 of the Act of 21 November 2008 on the civil service (Journal of Laws No 227, item 1505, as amended) a member of the civil service corps shall not execute a decision if it would lead to committing an offence or misdemeanour and shall immediately inform of it the Director General of the institution in which he/she is employed. Members of the civil service corps, as officials employed in public institutions, are also bound by the obligation contained in art. 304.2 of the Code of Criminal Procedure to notify the Prosecution Authority or the Police of a crime prosecuted ex officio, after having obtained knowledge of the offence in the course of official duties. Therefore informing of an offence or misdemeanour is directly within the scope of duties of civil servants. It should further be noted that the Act on the civil service additionally provides for special guarantees of stability of employment (chapter 5 of the Act). Dissolution of employment contract may only take place in special circumstances specified in the law. Furthermore, disciplinary measures, including disciplinary removal from the civil service corps, as the highest penalty, are imposed by independent disciplinary commissions, consisting of members of the civil service corps (chapter 9 of the Act).
- The Act of 6 April 1990 - the Law on the Police (unified text: Journal of Laws of 2007 No 43, item 277, as amended). Provisions of the law as regards contacts of the Police with informers are designed to protect anonymity of informers. In accordance with art. 22 of the Act it is forbidden to disclose the data of a person supporting the Police in connection with the investigative activities. Disclosure of this data may take place only in exceptional circumstances regulated in the law. Furthermore, the Police ensures possibility to provide information about offences confidentially through anonymous phone lines – in the Chief Police Headquarters and regional, city and district police headquarters. It should further be noted that special phone lines and e – mail contact addresses have been established in all specialized Police units for combating corruption within the regional headquarters of the Police (<http://www.policja.pl/portal/pol/101/1654/>).
- The Act of 26 January 1984 – the Law on the press (Journal of Laws of 1984 No 5, item 24, as amended). It is the mass media which frequently play an important role in bringing corruption offences to the public attention and in this way inducing the law enforcement authorities to act. The Law on the press contains provisions concerning providing information to the press, including provisions on the protection of persons providing information and the guarantees of

anonymity. In accordance with art. 5.2 of the Act nobody can be subject to any harm or charges as a result of providing information to the press if such person acted within the boundaries of the law. The managers of all organizational units are obliged to make contacts between the press and their employees possible. This concerns also undisturbed gathering of opinions and information from such employees. The journalist have a duty to keep in secrecy the data which could lead to identifying the author of a e.g. letter or any other piece of information provided to the press, if the author has restricted disclosure of such data. The effectiveness of these provisions is additionally enhanced by the rules governing criminal proceedings. On the grounds of the Code of Criminal Procedure (art. 180 § 3) releasing a journalist in the course of criminal proceedings from his duty to keep professional secrecy always has exceptional character – it is allowed only through the decision of the court, only when it is indispensable for the sake of administration of justice, and only when a given circumstance cannot be ascertained on the grounds of any other evidence. Moreover - this decision may never concern the identifying data of the person providing information to the journalist. Such person has therefore the right to remain anonymous.

- The criminal procedure. The solutions adopted on the grounds of criminal procedure may, in appropriate circumstances, be applied to whistleblowers who subsequently act as witnesses in criminal proceedings. This concerns the cases of a ‘incognito witness’ (art. 184 of the Code of Criminal Procedure), ‘immunity witness’ (The Act of 25 June 1997 on the immunity witness, unified text: Journal of Laws of 2007 No 36, item 232) or the right to restrict information concerning the address for prosecutor’s or judge’s exclusive use when there is a justified risk of violence or illegal threats towards a witness (art. 191 of the Code of Criminal Procedure). These solutions were described in detail in the Phase 2 report.

Text of recommendation 2(e):

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Poland:

(e) consider strengthening the measures for deterring foreign bribery in respect of international business transactions benefiting from official export credit support, including through the assessment of applications for officially supported export credits and the scrutiny of agents’ commissions (Revised Recommendation, Paragraph II (v));

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

- By implementing in the second half of the year 2007 the provisions of the *OECD Council Recommendation on Bribery and Officially Supported Export Credits* of 18 December 2006, KUKA S.A. fulfilled at the same time the recommendation of the OECD Working Group on Bribery on the strengthening of measures in respect of the scrutiny of agent’s commissions. KUKA S.A. introduced into the insurance procedures the obligation to verify in each case whether third parties acted on behalf of an exporter in connection with an export contract. Furthermore, the insurance procedures provide also for the possibility to demand from an exporter or a bank financing the export transaction to reveal the identity of persons acting on their behalf as well as the amount and purpose of commission paid or agreed to be paid to them. Consequently the applicants are obliged to attach to the insurance application, a statement

(obligation) that precise information concerning the agent and the agent's commission will be submitted.

- The cover policy includes provisions that KUKE S.A.'s responsibility is excluded in case evidence exists that the credit contract was concluded as a result of the bribery of a person performing public function in a foreign state or other illegal acts of similar nature or in case evidence exists that an export contract was concluded as a result of the bribery of a person performing public function in a foreign state or other illegal acts of similar nature and the insured, on the date of concluding the insurance agreement, knew or while acting with highest care could have known about committing the offence by conclusion of the export contract.
- In 2008 KUKE S.A. continued to raise the issue of bribery of foreign public officials in international business transactions during all meetings with exporters and banks financing export which were interested in KUKE's insurance offer in the scope of officially supported export credits.
- The Ministry of Finance has introduced *Declaration of the Exporter about Lack of Offence of Bribery of Foreign Public Official while Concluding the Export Contract* to tied aid credits which are granted by the government of the Republic of Poland. The Declaration is in accordance with the OECD Convention on Bribery, the 1997 Revised Recommendation and the Recommendation on Bribery and Officially Supported Export Credits. The Declaration is to be signed by the exporter who applies for a tied aid credit financing. The Declaration includes, among others, statements on:
 - disclosing, upon demand, the identity of persons acting on their behalf in connection with the transaction and the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons and
 - verification and notice whether exporters/applicants are listed on the publicly available debarment lists of the following international financial institutions: World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development and the Inter-American Development Bank.
- Information (in Polish and English) on the Polish system of officially supported export credits, including tied aid credits, as well as links to the OECD Convention on Bribery, the 1997 Revised Recommendation and the OECD Council Recommendation on Bribery and Officially Supported Export Credits of 18 December 2006 is published on the website of the Ministry of Finance.
- In November 2005 and at the beginning of 2006 training was provided to the Ministry of Finance officials working for divisions responsible for officially supported export credits and tied aid credits. They acknowledged in writing that they received the texts and became acquainted with the OECD Convention on Bribery and other relevant legal provisions implementing the Convention into Polish law and will apply the regulations. The training was repeated in December 2008 and was provided to the officials working for the aforementioned divisions, including the newly employed.

Text of recommendation 2(f):

2. With respect to the detection and reporting of the offence of bribing a foreign public official and

related offences to the competent authorities, the Working Group recommends that Poland:

(f) encourage the General Inspector of Financial Information to consider taking appropriate and practicable steps to improve the flow of information and feedback to obligated institutions on the use of suspicious transaction reports by the authorities, with the view to further strengthening the anti-money laundering reporting system (Revised Recommendation, Paragraph I)

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

According to the recommendation, the General Inspector of Financial Information (GIFI) considered taking appropriate steps to improve the overall flow of information and feedback to the obliged institutions. In order to prepare suitable legal basis for implementation of such activities, there were some organizational steps as well as legislative initiatives taken.

Legislation:

- In 2008 works on the new version of the draft of the *Act amending the act of 16 November 2000 on Counteracting Introduction into Financial Circulation of Property Values Derived from Illegal or Undisclosed Sources and on Counteracting the Financing of Terrorism and amending the act – Penal Code* were in progress.
- The draft Act will implement the provisions of the *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and the Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis*, to the Polish legal system.
- Solutions proposed in the draft have aimed to create a legal basis for further steps planned to improve the flow of information given to the obliged institutions.
- After the consultation within the whole institutional system of entities sharing the duty of combating money laundering under the legislation, the bill was accepted by the Council of Ministers. February 18th, 2009 the first reading of the bill during the sitting of the Sejm (the Chamber of the Polish Parliament) took place . The bill was passed to Committee on Public Finance, submitted and performed in the sub-committee, accepted during the second and third reading, then , May 11th, submitted to the Senate. After completion of the legislative procedure, the law will be submitted for signature of the President of the Republic of Poland. The law is expected to come in force by the middle of the year 2009.

Other steps:

- To improve the quality of data sent to GIFI and to secure the permanence of the flow of information, the practice of feedback concerning the correctness of the electronic STRs was introduced and then further enhanced.
- In accordance with the idea of improving the flow of information, post-control recommendations were issued by GIFI and transferred to the obliged institutions to show irregularities detected

during the control process. A huge number of interpretations/comments/explanations was prepared to address the inquiries sent by the obliged institutions in the field of suspicious transactions reporting (qualification, transmission of data etc.).

Text of recommendation 2(g):

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Poland:

(g) consider requiring auditors to report indications of a possible illegal act of foreign bribery to law enforcement authorities (Revised Recommendation, Paragraphs I and V.B(iv)).

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

The Accounting Department of the Ministry of Finance has developed appropriate provisions requiring statutory auditors to report indications of a possible bribery of public officials (domestic as well as foreign) to the law enforcement authorities and included these provisions in the *draft law on statutory auditors, audit firms and public oversight*. The Council of Ministers sent the adopted draft to the Parliament, which is proceeding on it at the moment. The draft law was adopted by the upper chamber of the Parliament in April 2009 and sent to the lower chamber for approval. The final adoption is expected to take place by mid - May 2009.

Text of recommendation 3(a):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Poland:

(a) take necessary measures to ensure that all credible foreign bribery allegations are proactively and conscientiously investigated, and remind police and prosecutors of the importance of actively looking into the range of possible sources of detection of foreign bribery (Convention, Article 5; Commentary 27; Revised Recommendation, Paragraph I, II)

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

- Matters pertaining to the OECD Convention, liability of collective entities and Working Group's recommendations have been made the subject of councils of territorial prosecutors' offices at all levels.
- Various activities have been further undertaken by the territorial offices of the Prosecution Authority, such as drawing attention of prosecutors to the need of thorough analysis of the received reports with due regard to the offence in question, ordering monitoring of cases, conducting trainings and holding councils jointly with officers of the Police.
- All appellate prosecutors' offices confirm that any occurrences connected with this type of crime

are monitored on the ongoing basis in order to ensure investigation of all credible allegations.

- Despite active actions of the criminal Police, so far there have been no cases of bribery of foreign public officials related to international business transactions detected. Nevertheless, the investigation of potential irregularities in this field will be pursued. The Police confirms it will be looking into all available sources of information.
- Please see also information on the various awareness – raising and training measures described under the recommendation 1(a).

Text of recommendation 3(b):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Poland:

(b) ensure that greater use is made of specialised financial investigators within anti-corruption units of the police and State Prosecution Authority for the effective detection, investigation and prosecution of foreign bribery offences (Convention, Article 5; Commentary 27; Revised Recommendation, Paragraphs I, II);

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

- The Prosecution Authority and the Police frequently use experts in financial issues in particular when combating corruption and economic crimes. Both the authorities confirm that these resources according to the needs will also be used in cases of bribery of foreign public officials.
- In all appellate and regional prosecution authorities 84 positions of criminal analysts have been created, these including also analysts in financial matters. It is planned to create 150 such positions altogether.

Text of recommendation 3(c):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Poland:

(c) in relation to the dual nature of the Office of the Prosecutor General (i.e., the Office is held by the Minister of Justice) consider strengthening safeguards to ensure that the exercise of investigative and prosecutorial powers (in particular for the foreign bribery offence) are not to be influenced by considerations of national economic interest, the potential effect on relations with another State, or the identity of the natural or legal person (Convention, Article 5; Commentary 27; Revised Recommendation, Paragraph I);

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

- The Minister of Justice appointed a team of experts entrusted with the preparation of legislative

acts on the separation of the position of the Prosecutor General from the position of the Minister of Justice as well as introducing certain other changes in the structure and functioning of the Prosecution Authority. The result of the work of the team is a draft *Act on the amendment of the Act on Prosecution Authority and certain other Acts*. The draft concerns *inter alia* the following matters: the fundamental institutional change - the separation of the positions of the Prosecutor General and the Minister of Justice, regulating the institutional and procedural role of the Prosecutor General, rules governing the term of office of the Prosecutor General, the procedure of appointment and dismissing of the Prosecutor General as well as his/her relationship towards the Parliament, the President and the Prime Minister. The contemplated changes address concerns of the Working Group on the grounds of the dual role of the Prosecutor General and the Minister of Justice – expressed by way of recommendation 3c).

- On 9 June 2008 the governmental bill was submitted to the Parliament. The first reading of the bill before the lower chamber of the Parliament (Sejm) took place on 27 June 2008. The bill was then directed to the parliamentary Commission of Justice and Human Rights, which elaborated on it on 24 October 2008 and 14 January 2009. Currently the bill is still subject of parliamentary work.

Text of recommendation 3(d):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Poland:

(d) consider, within Poland's constitutional principles, measures that may be taken in order to ensure that the immunity from prosecution available to certain designated office holders does not impede the effective investigation, prosecution and adjudication of foreign bribery cases and related offences and, in this respect, consider clearly limiting the immunity applicable to them, to acts done in performance of the office holder's duties (i.e. functional immunity) (Convention, Article 5; Commentary 27; Revised Recommendation, Paragraphs I, II)

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

Poland carefully considered this recommendation and is of the view that the immunities present in the law do not represent any kind of impediment to effective investigating and sanctioning of cases of bribery of foreign public officials.

- First of all, it has to be stressed that most of immunities from prosecution are enshrined in the Constitution and are considered as important guarantees designed to ensure proper performance of certain public functions. Any potential change in this scope would require amendment of the Constitution. These includes immunities of: deputies (art. 105 of the Constitution – i.e. functional immunity limited to activities undertaken in connection with the performance of a deputy's mandate; as regards other activities of deputies and potential offences committed by them prosecution becomes only suspended - together with the suspension of the limitation period – for the period of tenure; if the prosecution is to take place before the end of tenure it has to be approved by the Parliament), senators (art. 108 of the Constitution – rules similar as in the case of deputies), President of the Supreme Chamber of Control (art. 206 of the Constitution - during the period of tenure approval of the Parliament is required), Ombudsman (art. 211 of the Constitution - during the period of tenure approval of the Parliament is required), judges of common courts,

administrative courts, military courts, the Supreme Court, the Constitutional Tribunal and the Tribunal of State (art. 181, 196 and 200 of the Constitution – prior approval of the disciplinary court, the Constitutional Tribunal or the Tribunal of State is required). The immunity is not regulated in the Constitution in respect of prosecutors – the Act of 20 June 1985 on the Prosecution Authority regulates this matter instead (art. 54 of the Act – approval of disciplinary court is required).

- Nevertheless, important legislative changes in the scope of immunities attributable to judges and prosecutors which entered into force since the Phase 2 evaluation have to be noted. The *Act of 29 June 2007 on the amendment of the Act – law on the structure of common courts and certain other Acts* (Journal of Laws No 136, item 959) introduced provisions aimed at eliminating possibility to refuse lifting the judicial immunity by the judicial disciplinary courts when there is a grounded suspicion that a crime has been committed and fastening the procedure applied in such situations.
- In accordance with the new art. 80 § 2c of the Act the judicial disciplinary court will obligatorily adopt resolution allowing to hold a judge criminally liable before court whenever there is a reasonably justified suspicion that a crime has been committed (previous provisions provided for more discretion of the disciplinary court). Furthermore, pursuant to an amendment contained in article 80§ 2d of the Act a period of 14 days was introduced for the disciplinary courts to examine the motion for lifting the immunity. The same period applies to examination of the case by the disciplinary court of second instance.
- Similar rules were introduced in respect of allowing to hold a prosecutor criminally liable before courts (art. 54 of the *Act of 20 June 1985 on the Prosecution Authority* – unified text: Journal of Laws of 2008, No 7, item 39).

Text of recommendation 3(e):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Poland:

(e) review the “impunity” provision within article 229.6 of the Penal Code and either exclude its application to the offence of foreign bribery, or significantly limit its scope by imposing further conditions for its application, or in some other appropriate way ensure that the law does not contravene the Convention and report to the Working Group on progress in 12 months (Convention, Article 5; Commentary 27; Revised Recommendation, Paragraphs I, II);

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

- Following the Phase 2 examination the Working Group’s recommendation regarding the ‘impunity clause’ (art. 229 § 6 of the Criminal Code) was made the subject of analysis by the Criminal Law Codification Commission in the course of which the following options were taken into consideration: 1) repealing the ‘impunity clause’ only with respect to active bribery of foreign public officials while retaining it with respect to active bribery of domestic officials (option rejected as this would contradict the principle of justice and equal treatment of persons in similar circumstances); 2) amending art. 229 § 6 of the Criminal Code to replace the present obligatory ‘impunity’ for perpetrators who satisfy the requirements of this article with the

possibility of applying ‘extraordinary mitigation of penalty’ and ‘renouncement of the imposition of penalty’ – measures available at the stage of adjudicating and remaining at disposal of the court; 3) amending art. 229§6 in the way described in option 2) however accompanied by similar amendment with respect also to the passive side of the bribery act; 4) returning to the previous wording of the Criminal Code of 1997 (i.e. repealing the present ‘impunity provision’).

- Consequently the option 2) was recommended by the Commission – in which case the possibility that the perpetrator of active bribery cooperating with the law enforcement is not criminally liable loses its automatic character. The advantages of such amendment would consist in addressing recommendations of the Working Group, while at the same time retaining art. 229 § 6 as a tool for breaking the solidarity link between the party handing in the bribe and the party accepting it.
- Amendment of art. 229§6 will be considered in the course of legislative works conducted by the Ministry of Justice.

Text of recommendation 3(f):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Poland:

(f) amend the Law on Liability of Collective Entities to eliminate the requirement that a natural person be finally and validly convicted as a prerequisite to proceeding against a collective entity (Convention, Articles 2, 3.2).

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

Following the Phase 2 examination the Working Group’s recommendation and the principles governing liability of collective entities were made the subject of in-depth analysis by the Ministry of Justice, including by the Criminal Law Codification Commission. Subsequently the Ministry of Justice prepared a draft law introducing one – stage proceedings against collective entities and the elimination of the requirement of conviction of a natural person as a prerequisite to proceeding against and conviction of a collective entity. The draft law was submitted to the Council of Ministers on 7 October 2008. The Council of Ministers, before passing the draft law to the Parliament, decided to submit it for opinion to the Legislative Council at the Prime Minister’s Office. The Legislative Council formulated a number of comments to the document; suggested also that given the significant change of the model of liability a new law rather than amendment would be more appropriate. Following the Council’s opinion at present further internal legislative work is taking place within the Ministry of Justice.

Text of recommendation 4(a):

4. With respect to sanctions for foreign bribery, the Working Group recommends that Poland:

(a) take measures to draw to the attention of investigating, prosecutorial and judicial authorities, the importance of applying sanctions that are sufficiently effective, proportionate and dissuasive for foreign bribery offences, in particular emphasising the importance of economic sanctions, including fines and the forfeiture of proceeds of bribery, and offer training in tracking down the proceeds of bribery and assessing

the value of such proceeds (Convention, Article 3.1; Revised Recommendation, Paragraph I);

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

- The issues of appropriate level of sanctions, together with economic sanctions and forfeiture have been made the subject of councils of prosecutors of territorial units of the Prosecution Authority. These involved also the issue of drawing attention of prosecutors to the importance of demanding penalties at an appropriate level.
- The Prosecution Authority and the Police pay particular attention to the issues of tracking down and securing proceeds of crimes, fines and forfeiture. It is *inter alia* reflected in trainings for police officers concerning financial investigation. The Police confirms that in cases of bribery of foreign public officials, particular emphasis will be laid on the issue of forfeiture of proceeds of crime.
- In 2008, following the initiative of the Central Anti-Corruption Bureau and as a result of co-operation with other law enforcement authorities and foreign partners participating in the EU ‘twinning project’: ‘Improvement of the anti-corruption activities in Poland’, the Electronic System of Asset Recovery (ESOM) was created, serving as an important tool to support the activities of law enforcement authorities in the scope of disclosing and securing assets subject to forfeiture.
- In 2008 in the structure of the Criminal Bureau of the General Police Headquarters the special Asset Recovery Department was created. Its task include in particular: ensuring cooperation and exchange of information between organizational units of the Police and other institutions subordinate to the Minister of Interior and Administration, the Minister of Finance and the Minister of Justice, as well as with the appropriate bodies of the European Union in the scope of identification, disclosure, securing and recovery of property derived from crimes; collecting and implementing of best practices relating to the asset recovery; international cooperation within The Camden Asset Recovery Inter – Agency Network (CARIN); implementation and development of the Electronic System of Asset Recovery (ESOM).
- The National Centre for Training of Judges and Prosecutors (currently: The National School of the Judiciary and the Prosecution Authority) in cooperation with the Department of Justice of the United States organized in Cracow an international conference ‘Securing property and forfeiture of benefits derived from crime’ (14-18 April 2008) and an international conference on depriving the perpetrator of the benefits from crime, international cooperation in this scope, fulfillment of mutual requests concerning disclosing of property, as well as decisions on forfeiture and the seizure of evidence and property (6-8 October 2008).
- For various other awareness - raising initiatives involving the Prosecution Authority and the Police in the areas of sanctions, forfeiture and asset recovery, please see also information under recommendation 1(a) above.

Text of recommendation 4(b):

4. With respect to sanctions for foreign bribery, the Working Group recommends that Poland:

(b) consider whether the cap on fines for legal persons under the Law on Liability of Collective Entities (*i.e.*, 10% of the “revenue” generated in the tax year when the offence was committed) is an obstacle to imposing effective, proportionate and dissuasive sanctions, and if so, amend the Law accordingly (Convention, Article 3.2).

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

The recommendation was considered in the course of the current legislative work on the amendment of the *Act – Law on liability of collective entities* [...] described under Recommendation 3(f) above. The method of calculating fines under art. 7 of the Act was subject of interministerial consultations along with other issues, however changes in this scope were not finally introduced in the draft law. It should be noted in this context that the *Law on liability of collective entities* [...] apart from fines provides for a number of other sanctions, all of which have significant dissuasive character. Such sanctions include: the ban on pursuing the indicated prime or incidental business activities; the ban on promoting or advertising business activities, products or services, the ban on using grants, subsidies, or other forms of financial support originating from public funds, the ban on using the aid provided by the international organizations the Republic of Poland holds membership in; the ban on applying for public procurement contracts and the public pronouncement of the court’s verdict. The bans listed above are imposed for a period of between 1 and 5 years.

The interrelationship between the level of a fine and the revenue of an enterprise under the present art. 7 of the Act, is a mechanism which serves the purpose of adjusting the level of penalty to the size of an enterprise and its economic performance. Even though in some limited circumstances (e.g. temporarily low revenues of an enterprise) a question may be posed as to the level of available fines, the range and severity of other sanctions mentioned above – all of which can have serious economic impact on an entrepreneur - ensures for the court the possibility to impose, in any circumstances, sanctions which can be effective, proportionate and dissuasive.

Text of recommendation 5:

5. With respect to the non-tax deductibility of bribes, the Working Group recommends that Poland amend its legislation to clearly confirm that bribes are not tax-deductible and in that regard, consider an express prohibition on the tax deductibility of bribes. (Revised Recommendation, Paragraph IV; 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials).

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

On the 1st of January 2009 regulations of the Act of 6 November 2008 on the amendment of the Act on personal income tax, the Act on corporate income tax and certain other Acts (Journal of Laws No 209, item 1316) came into force introducing in both the Acts on income tax a new provision which states that incurred expenses as well as the value of given things, rights or services resulting from activities which cannot be a subject matter of a legally effective contract are not regarded as allowable expenses. These regulations clearly confirm that expenses incurred in connection with a ‘bribe’ do not constitute allowable expenses and are not tax-deductible.

Part II: Issues for Follow-up by the Working Group

Text of issue for follow-up 6(a):

6. The Working Group will follow up on the issues below, as practice develops, in order to assess:

(a) the application of the foreign bribery offence in the Penal Code, including its coverage of bribes made to third parties and to all aspects of the term “foreign public official”;

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:

To date there have been only one case of bribery of a foreign public official, however not related to the Convention and international business (a minor case of attempt to hand in a bribe to a road policeman in a foreign country by a driver so that the policeman refrains from imposing a fine). Given the overall circumstances the perpetrator was found guilty of an aggravated type of bribery under art. 229 §3 and §5 of the Penal Code (i.e. the aggravated circumstances being the ‘giving a bribe in order to induce a foreign public official to breach the provisions of law or in return for the breach of the provisions of law’ – as provided for in §3 of art. 229; as such corresponding also to the phrase in the Convention’s definition: ‘in order that the official act or refrain from acting in relation to the performance of official duties’).

Text of issue for follow-up 6(b):

6. The Working Group will follow up on the issues below, as practice develops, in order to assess:

(b) the application, in article 3 of the Law on Liability of Collective Entities, of the requirement that the conduct of the natural person did or could have given the collective entity an advantage, to ascertain how this provision is applied in practice to foreign bribery cases;

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 not been relevant developments and case examples to date.

Text of issue for follow-up 6(c):

6. The Working Group will follow up on the issues below, as practice develops, in order to assess:

(c) the level of sanctions for the foreign bribery offence and related offences (including false

accounting offences) imposed against natural and legal persons (including the application of confiscation measures, additional sanctions and the use of suspended imprisonment terms by courts) and to ascertain whether the sanctions handed down by the courts are effective, proportionate and dissuasive;

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:

In the single case of bribery of a foreign public official mentioned under 6 (a) above the sanction amounted to 1 year imprisonment suspended for the probation period of 2 years and a fine in the amount of 100 daily rates of 10PLN (approx. 300 EUR).

Text of issue for follow-up 6(d):

6. The Working Group will follow up on the issues below, as practice develops, in order to assess:

(d) Poland's application of territorial and nationality jurisdiction, in particular, in cases of proceedings against legal persons or concerning offences committed in whole or in part abroad;

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 not been relevant developments and case examples to date.

Text of issue for follow-up 6(e):

6. The Working Group will follow up on the issues below, as practice develops, in order to assess:

(e) whether the Central Anti-Corruption Bureau (CBA) established in 2006 has developed a role and capacity for combating foreign bribery in international business transactions and, if so, the effectiveness of any arrangements established to co-ordinate its work with the police and the State Prosecution Authority in investigating foreign bribery cases;

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:

The role and the scope of competence of the Central Anti – Corruption Bureau (CBA) as regards combating bribery of foreign public officials have not changed since the time of the Phase 2 review.

Text of issue for follow-up 6(f):

6. The Working Group will follow up on the issues below, as practice develops, in order to assess:

(f) whether the exception for “service type work” in the Penal Code definitions of “public official” and “a person performing public functions” does not, contrary to Article 1 of the Convention, result in an exception to the foreign bribery offence for acts or omissions of a foreign public official “in relation to the performance of official duties” (Convention, Articles 1, 5; Commentary 9).

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 not been relevant developments and case examples to date.