GRECO Groupe d'Etats contre la corruption
Group of States against corruption

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DEPARTMENT OF CRIME PROBLEMS

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Second Evaluation Round

Evaluation Report on Poland

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I. INTRODUCTION

1. Poland was the sixth GRECO member to be examined in the second Evaluation round. The GRECO evaluation team (hereafter referred to as the "GET") was composed of Mrs Teresa GALVEZ, Prosecutor, Special Prosecution Office for the Repression of Economic Offences related with Corruption, Spain; Mr Philippe METTOUX, Secretary General, Central Office For Prevention of Corruption, Ministry of Justice, France and Mr Georgi RUPCHEV, Head of Department of International Legal Cooperation, Ministry of Justice, Bulgaria. This GET, accompanied by a member of the Council of Europe Secretariat, visited Warsaw from 25 to 28 November 2003. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaire (document Greco Eval II (2003) 6E) as well as copies of relevant legislation.

2. The GET met with officials from the following governmental organisations: Ministry of Justice (Legal Department, Department of Judicial Assistance and European Law, Department of Centre of the National Court Registers and Information of Justice) ; National Prosecutors' Office ; Ministry of the Interior and Administration (Department of Public Administration, Control Department, Legal Department, Anti-corruption Strategy) ; Office for Civil Service ; Supreme Administrative Court ; Supreme Chamber of Control ; Ministry of Finance (Office for Fiscal Control, Department of Treasury Organisation, Duty Department, General Inspector for Financial Information, Department of Direct Taxes, Office for Fiscal Documentation, Department of Finance Budget, National School for Public Administration). Moreover, the GET met with accountants, representatives of the Association of the Graduates of the National School of Public Administration and representatives of Transparency International, Anti-corruption Programme of Batory Foundation, Institute of Public Affairs.

3. It is recalled that GRECO agreed, at its 10th Plenary meeting (July 2002), that the 2nd Evaluation Round would run from 1st January 2003 to 30 June 2005 and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would deal with the following themes:

   - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;
   - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
   - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

   Poland ratified the Criminal Law Convention on Corruption on 11 December 2002.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the present report is to evaluate the effectiveness of measures adopted by the Polish authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains first a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Poland in order to improve its level of compliance with the provisions under consideration.

II. THEME I – PROCEEDS OF CORRUPTION

a. Description of the situation

Provisional measures

5. Article 217 (1) of the Code of Criminal Procedure (hereafter CCP) states: *"Objects which may serve as evidence in a case, or be subject to seizure in order to secure penalties regarding property, penal measures involving property or claims to redress damage, should be surrendered when so required by the court, the state prosecutor, and in cases not amenable to delay, by the Police or other authorised agency"*.[1] Pursuant to this provision, it is possible to seize objects with a view to securing the obligation to return the proceeds obtained by the offender in all offences, including corruption. It is also possible to disclose, secure or seize bank, financial or commercial records in relation with the proceeds of corruption offences.[2] Seized objects are subject to being used to secure the execution of decisions as specified in Article 291 (1) of the CCP (Appendix I). The institution of security on property aims to ensure the enforceability of the future judgement with respect to some penalties and penal measures, including the forfeiture of proceeds resulting, even indirectly, from the commission of an offence (including offences of corruption). Procedures on securing - and enforcement of judgements involving security on - property are carried out pursuant to the Code of Civil Procedure.

6. According to Article 297 (1) - in conjunction with Article 213 - of the CCP (Appendix II), since the starting of preliminary criminal proceedings, law enforcement agencies collect data on the financial status of the defendant and his sources of income. In practice, this is done by means of:

   - gathering information from available data bases (banks, treasury offices, registry courts, land and mortgage departments in District Courts, communal offices' divisions for the registration of business activity of natural persons);
   - using the powers of and information obtained by the Financial Intelligence operating pursuant to the Act on Fiscal Control, with a view to making an inventory of an offender's property subject to security on property;
   - providing Financial Intelligence with information about perpetrators of economic offences in order for it to consider starting proceedings pursuant to the Act on Fiscal Control, with respect to the control of the sources of property in case the business activity has not been registered for taxation purposes, as well as when the income does not correspond to the sources disclosed.

   Over the last three years (2000-2002), prosecutors issued decisions concerning security on property in 126 criminal cases of corruption, amounting to a total sum of 10,780,280 zlotys (approximately 2,322,000 euros).

Confiscation (known as "forfeiture" domestically)

7. The system of substantive criminal law provides for forfeiture in order to deprive offenders of the proceeds and instrumentalities of crime (there is no such penal measure as "confiscation of assets"). In accordance with Article 44 of the Penal Code, forfeiture of objects obtained directly from crime is mandatory. If material benefit obtained by the perpetrator is not subject to forfeiture of objects (e.g. on account of not being "an object" or because the "object" has not been obtained

[1] Translation provided by the Polish authorities.

[2] A detailed regulation concerning information subject to bank secrecy is provided for in the Act on the Bank Law.

"directly"), the court can decide on "the forfeiture of its equivalent" (Articles 44-45 of the Penal Code – Appendix III). Courts shall not decide on forfeiture in cases where the objects or other material benefits obtained by criminal activities are to be returned to the victim or to other persons (natural or legal) who have legal rights on these objects. As provided by Article 412 of the Civil Code (Appendix IV), the prosecutor may bring an action before the civil courts asking the forfeiture of the "performance"[3] (i.e. object or anything else received as a fulfilment of a contract, of an obligation, etc.) for the benefit of the State Treasury, if that "performance" has been made in exchange for the commission of an offence. If the object of the "performance" has been used up or lost, the forfeiture may be equivalent to its value.[4] The provisions of the Penal Code do not require that imposing a penal measure, including forfeiture, be taken into account while determining the penalty (of deprivation of liberty, limitation of liberty, or a fine).

8. Forfeiture of proceeds of crime may also concern the transformed property (proceeds derived even indirectly from an offence). If adjudication of forfeiture of objects derived from an offence or that served the purpose of commission of an offence is impossible (e.g. because they have been destroyed), the court may oblige the perpetrator to pay a sum of money equivalent to the value of these objects. Deduction of expenditures for gaining the proceeds is not recognised in Polish law.

9. If it is not possible to assess the value of the advantage obtained as result of an offence, the court may appoint an expert and if it is still impossible to assess it exactly, the court must employ the *in dubio pro reo* principle. If the financial advantage is of considerable value (ie exceeding 160,000 zlotys – approximately 34,000 euros), it is presumed that the property obtained while committing or after having committed the offence is an advantage derived from the commission of the offence: in this case, the defendant or the third party must prove that the property is not acquired from crime (in all other cases the obligation to prove the criminal derivation of property is upon the prosecutor). A conviction is not required for the forfeiture of objects (Article 100 of the Penal Code). When the social harm of the illegal act is insignificant, and "in case of the conditional discontinuation of the proceedings", or particular circumstances exclude the punishment of the perpetrator, the court may order the forfeiture of objects as a preventive measure. However, in every such case the identity of the perpetrator has to be established.

10. The property subject to forfeiture is transferred to the State Treasury and cannot be used in satisfaction of the claim for damages. Any financial advantage obtained as a result of an offence, including active bribery, is subject to forfeiture. In case another person, on behalf of whom and for whose benefit the perpetrator acted, has also obtained advantages as a consequence of the offence, the court shall oblige him/her to reimburse it. There is no possibility of non-prosecution in exchange for payment of compensation.

Third parties

11. It is possible to decide on forfeiture of financial advantages transferred to another (natural or legal) person. Such a possibility is applicable only in cases where the advantage obtained as a consequence of an offence is of considerable value (see paragraph 9 above). The person or entity concerned may prove the legality of the purchase. As stated in paragraph 7, the courts shall not decide on the forfeiture of objects or other material benefits derived from criminal activities if they are to be returned to the third party having legal rights on them (Article 45, paragraphs 1 and 5).

[3] Term used in the Polish legislative provisions.
[4] In the Appellate Prosecutor's Office in Poznan alone, in the years 2000 – 2002, there have been 10 civil cases registered in which the courts, pursuant to Article 412 of the Civil Code, decided on the forfeiture of the proceeds of bribery and paid patronage, amounting to the total sum of 124,738 zlotys (approximately 26,700 euros).

Statistics

12. In the years 2000-2002, forfeiture was decided in some 7,000 criminal cases (for an amount of approximately 200,000,000 zlotys – 42,800,000 euros), including 273 corruption cases.

Money laundering

13. The Act of 16 November 2000 on Counteracting Introduction into Financial Circulation of Property Values Derived from Illegal or Undisclosed Sources and on Counteracting Financing of Terrorism (hereafter the Act of 16 November 2000) has modified the description of the offence of money laundering contained in Article 299 of the Penal Code (hereafter Article 299).[5] It is clear from the wording of Article 299, *inter alia*, that the money-laundering offence is an "all-crimes" one, it includes own funds or "self" laundering, it is based on intentional fault. According to information provided by the Polish authorities, as Article 299 does not determine the place of the commission of predicate offences, extraterritorial offences are, without exception, predicate offences for money laundering committed in Poland.

14. The Act of 16 November 2000 establishes the function of an Inspector General of Financial Information (hereafter the IGFI), whose duty is to gather and process financial information with a view to detecting suspicious transactions and consequently to prevent the commission of financial offences, in particular of money laundering, and to co-operate with prosecution agencies in this respect. The Minister of Finance is the authority responsible for the strategy related to combating the offence of money laundering. Particular actions in connection with the implementation of the Polish authorities' policy in this respect are taken by the IGFI who is assisted by the Department of Financial Information. IGFI together with the Department constitute a financial intelligence unit – FIU[6].

15. The prosecution service, the Home Security Agency and entities subordinate to or supervised by the Minister of Home Affairs, promptly communicate to the IGIF any facts that could lead to proceedings in relation with money laundering offences. The communication should in particular refer to the circumstances relating to the commission of an offence and to the persons involved. The co-operating entities are obliged, within the limits of their statutory competence, upon the motion of the IGIF, to provide the information and certified copies of documents necessary to fulfil his duties with regard to an offence referred to in Article 299. The IGIF has a legal obligation to report to the prosecution agencies any suspicion of the commission of an offence prosecuted *ex officio*, including corruption (Article 304 (2) of the CCP), and to attach necessary documentation in support of this suspicion. In the event the Inspector General notifies an offence of money laundering to the prosecutor, the latter may, by way of decision, discontinue the transaction or

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[5]The present wording of this provision reads as follows: "Whoever receives, transfers or transports abroad, assists in its transfer of title or possession of legal tenders, securities or other foreign currency values, property rights or real or movable property obtained from the profits related to the commission of a prohibited act, or takes other action which can prevent, or make significantly more difficult -determination of their criminal origin or place of deposition, detection, seizure or adjudication of forfeiture, shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years."

[6]The following entities are compelled to report suspicious transactions: Banks, foreign banks branches, brokerage houses, banks carrying out brokerage activity, the Joint Stock Company National Depository for Securities, entities conducting activity involving games of chance, mutual betting and automatic machine games, insurance companies, main branches of foreign insurance companies, investment funds, societies of investment funds, co-operative savings and credit banks, state public utility enterprise, "Poczta Polska" (Polish Post), notaries public with regard to notaries procedures concerning dealing with property values, entities engaged in currency exchange, entrepreneurs running: auction houses, antique shops, conducting leasing and factoring activity, activity with regard to: trading in precious and semi-precious metals and stones, commission sale, giving loans on pawn (pawnshops) or real estate agents.

block an account for a specified period of time, not exceeding 3 months from the moment of notification.

Corruption and mutual legal assistance: provisional measures and confiscation

16. As to corruption offences, there is no special system applicable to request international legal assistance concerning provisional/confiscation measures - general provisions on international legal assistance apply. The legal framework for requests for such assistance is provided by the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime to which Poland is a party, as well as the relevant provisions of Chapters 62 and 66 of the CCP. When Poland is the requesting state, the requests of the court or of the prosecutor concerning securing abroad the proceeds of offences may be filed through the intermediary of the Minister of Justice (Article 611d – see Appendix V), unless Poland is a party to an agreement on direct legal assistance in criminal matters.[7] In case the Polish court makes a decision on forfeiture of property (proceeds of offence) in respect of a person whose property is located abroad, the court competent to enforce that measure may, through the intermediary of the Minister of Justice, request the competent authority of the requested state to execute the penalty stated in the sentence (Article 610 (4) of the CCP). In case a foreign state requests the enforcement of a decision regarding forfeiture of property in respect of a person whose property is located in Poland, the Minister of Justice addresses the competent court to issue a decision on the admissibility of taking over the judgement to be enforced in Poland (Article 609 (2) of the CCP).

b. Analysis

17. The legal framework of Poland provides for effective tools to enable the competent authorities to confiscate the instruments and proceeds of criminal offences in conformity with requirements of the provisions under evaluation. In particular, Articles 217 (1) and 297 (1) of the CCP regulate provisional measures and Article 45 of the Penal Code confiscation which allows for depriving a defendant of property (or its value) obtained as the result of criminal activities. The defendant and/or the owner of the property (third party) must prove that the property (or its value) has not been illegally acquired, in cases where the financial advantage is of considerable value. In all other cases the burden of proof is on the prosecuting authorities. In addition, banks, Customs, Fiscal Control authorities, Treasury offices, the Inspector General of Financial Information have the clearly defined legal obligation to communicate all information that would be required by the law enforcement agencies. Investigation in respect of property and other benefits obtained from crime is part of general intelligence work in the context of the criminal procedure, and consequently not considered as being a separate investigative activity.

18. Notwithstanding this generally positive consideration, the GET's opinion is that the regime can still be improved: for greater efficiency in the fight against serious forms of corruption and more specifically in order to make better use of the existing legal provisions on seizure and forfeiture, it is required to promote further specialisation of prosecutors in special methods of investigation, identification and pursuit of corruption proceeds. The Organized Crime Bureau and the Central Investigation Bureau have quite a large range of competences that cover all forms of serious and organised delinquency, especially highly sophisticated and complex crimes. Although it is planned to increase the number of police officers working at the Central Investigation Bureau, it is not foreseen to create any specialised unit dealing solely with corruption offences. Besides, during recent years, new legislation has been adopted or amendments to the existing laws have been introduced in this field. These

[7] Poland has concluded agreements stipulating the possibility of providing legal assistance at the level of relevant regional prosecutor's offices with Lithuania, Belarus, Hungary, Slovakia, Germany, Czech Republic and Ukraine.

have to be implemented in prosecution practice, which is not possible within a short period of time. Even though the GET acknowledged that some training is already provided on these matters, it is still of the opinion that it is necessary to continue - and improve - the training of prosecutors and police officers in matters related to the application of provisions concerning provisional seizure and confiscation of the proceeds from criminal offences, including corruption.

19. In the same context of making the prosecutors' investigative work successful in recovering proceeds of corruption, seizing and, subsequently, restricting the defendant's benefits, all the entities and offices that have the obligation to cooperate in the prevention of money laundering should be required to provide a swift answer to all the requests of the investigative authorities and especially of the Public Prosecutors. It was not possible for the GET to establish whether centralised, up-to-date and coordinated information among the different databases of the Public Prosecution Service and other public bodies exists or is available for the every-day work of Courts and Prosecutors, within the limits of their respective competences. There is also a clear lack of coordination between information gathered at local/regional level and nation-wide. Information provided to the GET during the visit confirms that significant delays in obtaining financial, banking and economic information may occur. For example, the GET was told that a reply to a request for information about the current accounts of a physical or legal person might take several months. The anti-money laundering legislation imposes a strict obligation on the obliged institutions to cooperate with the competent investigative authorities. In the GET's view, such an obligation should be used to ensure that "sensitive" information is transmitted almost in real time, i.e. while the suspicious transactions are being carried out.

20. For all those reasons, **the GET recommends 1) that the prosecution authorities be rapidly provided - during their investigative work - with coordinated and up-to-date financial and economical information and 2) to continue giving to prosecutors and police officers specific training and provide them with adequate means in order to make better use of legal provisions on seizure and confiscation.**

21. Since 1994, the overall number of Prosecutors working in organised crime units has increased from 3 to 242. There are specialised prosecutors in money laundering; there also exists plans to continue specialising prosecutors in all the other forms of serious delinquency. The Polish authorities have started to create teams of experts within the Prosecutor's Offices. To date, some of them have been established in the sections of the appellate Prosecutor Offices. The GET welcomes the setting up of programmes aimed at setting up specialised teams of experts to investigate some forms of serious criminality. Nevertheless, it notes that this process has just started and that only in some courts of appeal the specialised teams have been put in place. It considers that investigating economic and financial crimes, and tracing the proceeds of criminal activities requires a high degree of specialization in different fields. Therefore, **the GET recommends to intensify efforts to establish, within prosecutors' offices, multidisciplinary teams of experts in the field of combating economic and financial crime.**

22. As already indicated in the descriptive part of the present report, the CCP regulates the system applicable to requests for international legal assistance concerning provisional measures on benefits obtained from crimes (including corruption). During the evaluation visit, the GET noted that the competent Polish authorities had not been making use of those measures, especially in the field of mutual judicial assistance, the main purpose of which is to identify, seize and freeze funds and benefits obtained from corruption offences. In this regard, the Polish authorities were not able to provide much information and the GET noticed that no statistical analysis or other research in this field had been conducted so far. Therefore, **the GET recommends to promote the use in practice of the legal measures on international legal assistance concerning provisional measures in relation to corruption offences.**

III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Legal framework

23. The Polish Constitution contains general principles and provisions on the functioning of legislative, executive and judicial authorities, including the Council of Ministers and government administration on a central and territorial level as well as on a local self-government level, with a particular regard to principles establishing specific bodies of public administration, their fundamental objectives, competence, rights and mutual relations (Appendix VI). Moreover, according to Article 153 of the Constitution, "*A corps of civil servants shall operate in the organs of government administration in order to ensure a professional, diligent, impartial and politically neutral discharge of the State's obligations. The Prime Minister shall be the superior of such a corps of civil servants*." The detailed scope and principles of the functioning of the Civil Service Corps have been defined in the Act of 18 December 1998 on the Civil Service. In addition, there are a number of legal acts which regulate in detail the organisation of particular bodies of public administration: the Act of 8 March 1990 on Communal Local Government; the Act of 8 August 1996 on the Council of Ministers ; the Act of 4 September 1997 on the Division of Government Administration ; the Act of 5 June 1998 on Government Administration in Voivodeship ; Acts on Self-Government, the Act of 5 June 1998 on District Self-Government (powiat) and the Act of 5 June 1998 on Voivodeship Self-Government (województwo). There is no single, legal definition of public administration. However such a definition could be drawn from the above-mentioned Constitutional and other legal provisions regulating the system of particular administration bodies; public administration could thus be understood as the set of organisational and executive actions, activities and undertakings carried out with a view to realising the public interest by various entities, bodies and institutions, pursuant to statutory provisions and in the forms provided for by the law.

The "Anti-Corruption Strategy"

24. On 17 September 2002, in the light of GRECO's First Round Evaluation Report, the Government adopted a programme for combating corruption – the "Anti-Corruption Strategy" - which is a collection of target solutions and set of actions to be undertaken by government administrations in combating corruption. The implementation of the Anti-Corruption Strategy aims at achieving four main objectives: to efficiently detect corruption offences, to implement effective mechanisms for combating corruption in public administration, to increase social awareness and to promote ethical patterns of conduct. Activities with regard to the Strategy in respect of public administration (both at central and local level) include, *inter alia,* the duty of the Minister of Home Affairs and Administration to present the "Friendly Office" Programme, which includes draft amendments to binding regulations aimed at introducing standards for the functioning of public administration. On 25 February 2003, the Council of Ministers adopted the first Report on the implementation of the Programme, establishing that the Minister of Home Affairs and Administration should produce quarterly reports on the implementation of the Programme. Recently, the Report II has been completed and, at the time of the visit, it was expected to be submitted to the Council of Ministers for the purpose of assessment.

Access to information

25. Article 61 of the Constitution states that any citizen "shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions". The same Article covers access to information on activities of territorial and professional self-government bodies as well as of all other persons or organisational units when performing public duties and managing communal assets or property of the State Treasury. Citizens' access to information on, *inter alia*, the activities of the legislative and executive authorities, draft normative acts, programmes concerning the implementation of public objectives, means and results of their implementation, as well as on the principles of functioning of particular bodies of public administration, the content of some official documents has been regulated in detail by the Act of 6 September 2001 on Access to Public Information - in force from January 2002. That Act ensures for all citizens the right to access any information of public interest, free of charge. That right is subject to restriction only on account of the necessity to assure the protection of classified information and other kinds of statutory protected secrecy. The notions of "state secret" and "official secret" are defined in Article 2 (1) and (2) of the Act of 22 January 1999 on the Protection of Classified Information[8]. Pursuant to that act, documents that contain a state secret are marked as "top secret" and "secret," while those containing information subject to official secrecy are marked as "confidential" or "reserved." The act determines in detail the nature of classified documents to be included in each category. Citizens' access to public information is provided for by means of:

- announcing public information (including official documents) in the Public Information Bulletin (*Biuletyn Informacji Publicznej*),
- giving access to information upon a citizen's motion (or without it if the nature of information suggests that access may be given promptly in an oral or written form);
- placing the information in places of general access;
- citizens also have the right to enter the sittings of collective organs of public authority, formed by general elections, and to request the materials, including audio-visual and tele-information ones, documenting these sittings.

The Tripartite Commission for Public and Economic Matters and voivodeship commissions for public dialogue operate as a forum for public dialogue. At local self-government level, public consultation is considered not only as a form of direct democracy but also as a necessary element for the local legislator to provide a number of instruments of local law, especially those which may be assumed to be the most significant ones for the public partners.

Administrative procedures

26. The procedure and rules for the examination of individual cases dealt with by way of administrative decisions are provided for in the Code of Administrative Procedure. Appeals against administrative decisions can be brought before the hierarchically higher body, unless the

[8] Article 2
Under this law:
1) state secret is a piece of non-public information defined in the list of non-public information (appendix 1 to the law), whereby unauthorised disclosure thereof may lead to a significant threat of the basic interest of the Republic of Poland, and in particular to its independence, territorial integrity, defence, safety of the state and its citizens or expose these interest to a risk of significant damage;
2) official secret is a piece of non-public information which is not a state secret and was obtained in discharge of official duties or while exercising delegated work, whereby unauthorised disclosure thereof might expose to a risk of significant damage the interest of state, public interest or legally protected interest of citizens or institutions.

law stipulates differently. As regards final decisions, they may be verified by way of extraordinary appeal measures, which are only possible if the conditions provided for by the law are fulfilled.[9] Moreover, it is also possible to make a complaint to the High Administrative Court (*Naczelny Sad Administracyjny*), a judicial body competent only to annul judgements for error of law or procedure.[10] A binding Instruction (No 7) of the Minister of Home Affairs and Administration guarantees the appeal proceedings.

The Ombudsman

27. The Ombudsman has an office that employs lawyers specialised in different branches of law. Any citizen, as well as an organisation or self-governing body, may lodge a complaint, free of charge, with the Ombudsman. While examining a case, the Ombudsman may conduct visits and other actions on the spot, request any body to provide information needed or to provide explanations as to the way the case has been dealt with. Moreover, the Ombudsman is competent to request the opening of criminal proceedings when s/he establishes, in the course of his/her actions, that an offence may have been committed. An analysis of the complaint can make it possible for the Ombudsman to identify circumstances for a proposal to modify legal provisions or to apply them correctly. Therefore, s/he is competent to address the relevant bodies and to request them to take the legislative initiative or to issue or amend other legal instruments. In relation to the cases dealt with, the Ombudsman presents to bodies and institutions the evaluations and conclusions reached. If the Ombudsman discovers any case of corruption, he/she has the obligation to report such a case to the relevant authorities.

Employment in the state administration

28. Article 4 of the Act on Civil Service stipulates that only a person who fully enjoys public rights and has not been punished for an intentional offence may be employed.[11] The Act provides for the distinction between civil servants – nominated employees - and civil service employees employed on the basis of an employment contract. An employee holding any clerical post in a particular office may become a civil servant, and one of the essential conditions for that change of status is to achieve positive results in a special examination. Being nominated and obtaining the status of a civil servant does not involve any automatic change of the post held by the employee. However, applying for higher posts in the civil service is, in principle, limited to civil servants. The differences in the legal status of nominated civil servants and contractual employees concern, in particular, the scope of rights and responsibilities (e.g. only a civil servant receives a civil service allowance). Every candidate for employment in the civil service corps has the obligation to make a declaration in that sense. Candidates for managerial posts are obliged to file some additional documents[12]. All statements are of a declarative nature (there is no need to provide any supporting documents). However, when the contract is concluded, the employing office may request the National Criminal Register to provide information regarding possible criminal records. The existence of a criminal record or information indicating that the person concerned does not fully enjoy public rights provides grounds to terminate the contract. When the

[9] These measures include: a request to institute the proceedings *de novo* (Article 145 and subsequent of the Code of Administrative Procedure), reversal or modification of the final decision (Articles 154 and 155), a request to declare the decision null and void (Article 157).

[10] After the visit, on 1 January 2004, the structure of the administrative court system has been modified so that the territorial centres being replaced by voivodeship administrative courts and a two-instance proceedings system being set up.

[11] Chapters 3, 4 and 5of the Act on Civil Service contain detailed rules on employment in Civil Service.

[12] Statement on not being prohibited to perform managerial functions dealing with public funds – in cases of posts in respect of which there is such a need; written consent to a verification proceeding pursuant to the provisions of the Law on the protection of classified information – for posts with regard to which there is such a need; statement on not being prohibited to enter for competitions for higher posts in the civil service.

best candidate for a managerial post has been selected, the Head of the Civil Service requests the President of the Central Commission Deciding on the Breach of the Public Finances Discipline to indicate whether the candidate is in the register of persons who have infringed public finances discipline.

Training

29. Since 2000, 3,432 civil servants have participated in seminars planned, organised and supervised by the Head of the Civil Service. The theme *"Ethics in the Civil Service"* has been placed on the top of the list of those seminars. Other subjects related to the public service ("Principles of Social Dialogue," "Customer Service Techniques in Government Administration," "Access to Public Information") are also taught during specific seminars. Apart from vocational training, it is also possible to improve the knowledge of the principles of public service and the civil service ethics through regular training**.** The National School of Public Administration provides 20 months of training for persons under 32 years to make them sensitive to the problems of citizens, to become professionally prepared to hold managerial positions in the civil service, to acquire the ethical awareness of the professional career, to acquire the ability to work in an international environment, as well as to respect the requirement of political neutrality in their conduct.

Conflict of interests and incompatibilities

30. The Act on Restricting Pursuit of Business Activity of Persons Performing Public Functions provides for the main measures to prevent conflicts of interests and incompabilities in the civil service. It refers to members of the civil service who hold managerial positions - -or equivalent positions in terms of remuneration[13], but it also refers to restrictions regarding the pursuit of business activities by certain other categories of public officials: persons holding official managerial positions within institutions of control, local government, national banks, public enterprises, the State Treasury companies, state agencies, courts. Persons referred to in the Act may not:

    - be members of management boards, supervisory boards, audit committees in commercial companies;
    - be employed by or pursue in commercial companies other activities that might evoke a suspicion of being partial or profit oriented;
    - be members of management boards in foundations involved in business activity;
    - own in commercial companies more than 10% of interest or shares of stock representing more than 10% of share capital – in any of these companies;
    - pursue a business activity on their own account or jointly with others, as well as manage this activity or be representatives or attorneys in pursuance of this activity.

    Infringement of the aforementioned prohibitions constitutes professional misconduct subject to disciplinary liability or provides grounds for termination of contract without notice. Further, these persons may not be employed by or act for an entrepreneur, if they have participated in the issuing of a decision on individual matters relating to that entrepreneur, for one year since leaving the post[14]. Some categories of persons enumerated in the Act (holding official managerial

[13] This includes also the President of the Republic, MP's, the Prime Minister, Judges of Supreme Court and Administrative Courts, Ombudsman, Head of Central Office.

[14] Article 7 of The Act on Restricting Pursuit of Business Activity of Persons Performing Public Functions states: "1. Persons listed in Article 1 and in Article 2 points 1 to 3 and 6 to 6b may not, within one year from the moment of ceasing to hold a position or to perform a function, be employed by or perform other kind of activity for the entrepreneur, in case they were

positions, members of the civil service corps holding managerial positions or positions parallel in terms of income) are obliged to file declarations of their financial position prior to taking up a position, then annually and finally when leaving the civil service.[15] The Law provides for specific penalties for persons who fail to provide date, or who provide inaccurate date, in the context of the aforementioned declarations.

31. Although the Act on Restricting Pursuit of Business Activity of Persons Performing Public Functions refers only to some of the groups of posts (mostly managerial ones), the Act on Civil Service contains regulations covering all the members of the civil service corps: a member of the civil service corps may not undertake additional employment without permission from the Director-General of the office, nor perform activities or tasks contrary to his statutory duties, or activities or tasks that might undermine trust in the civil service. A civil servant may not perform a function in trade unions, set up or participate in political parties, work in the civil service and hold a mandate of councillor at the same time.

Code of ethics

32. Since 2002, Poland has a Code of Ethics for the Civil Service (hereafter the Code). It is composed of 5 Articles which refer to four principles: reliability, professionalism (competence), neutrality and political impartiality. While the Act on Civil Service contains provisions imposing a certain number of rules of conduct, and related sanctions, the Code is not a normative document. The Polish authorities underlined nevertheless that any flagrant infringement of the Code, being a violation of the provisions of the Act at the same time, may not only lead to a negative opinion regarding the civil servant, but also to the application of disciplinary penalties (see also paragraph 31). The first step that the Office of the Civil Service took with a view to making members of the civil service corps acquainted with the text of the Code was to send the Code to them all. Furthermore, information and prevention are developed through the organisation of seminars where ethics in the civil service are included as a main topic. There are also codes of ethics for Internal Auditors and Customs Service.

33. Article 4 of the Code is devoted to the issue of impartiality in the performance of one's tasks and duties. Point 5 of this Article prohibits accepting any material or personal advantages from persons involved in cases pursued by a civil service corps member. The Polish authorities state that accepting any gifts by a civil service corps member while performing his/her professional duties is contrary to this provision. Since the aim of the Code is not to impose sanctions in case of infringements of its principles, in the event of a flagrant violation of the provisions of the Code, this could be considered a violation of the provisions of the Act at the same time, and therefore may lead to the application of disciplinary penalties against a civil service corps member.

Obligation to report criminal offences

34. The Act on Civil Service does not provide for an express obligation to report instances of professional misconduct, suspected corruption, breaches of professional duties or of codes of ethics. However, Article 304 (2) of the CCP states that the Heads of "State and local government institutions" are obliged "to immediately inform the state prosecutor or the police" of any "offence prosecuted *ex officio*", including corruption offences. Acting contrary to this provision is,

involved in the issue of decisions concerning individual matters in respect of this entrepreneur; this shall not apply to administrative decisions concerning the assessment of taxes and local charges pursuant to separate provisions, except for decisions on relieves and exemptions of these taxes or charges."

[15] According to the current legislation, it is possible to disclose the declaration only when the person gives his authorization.

according to the Polish authorities, a violation of Article 231 of the Penal Code.[16] The Act does not contain any regulations aimed at protecting civil service corps members who report these instances. Such persons are protected pursuant to general rules.

Disciplinary proceedings

35. Disciplinary liability of the members of the civil service corps is regulated in Chapter 9 of the Act on Civil Service and relates to all the members of the civil service corps, both nominated civil servants and civil service employees.[17] In cases not regulated in Chapter 9, the Act refers to the provisions of the CCP, particularly to those related to procedural actions, conducting a hearing, passing a judgement. The system of disciplinary proceedings involves two instances: the disciplinary committees of the office (1st instance) and the Higher Disciplinary Committee of the Civil Service (2nd instance). Disciplinary committees of the office are appointed by the Director-General of a given office from amongst the members of the civil service corps employed in the office, for a period of three years. The members of the Higher Disciplinary Committee of the Civil Service are appointed by the Prime Minister upon the motion of the Head of the Civil Service, for a period of six years. One of the fundamental features of disciplinary proceedings is the principle of independence in adjudicating. Members of disciplinary committees are independent with regard to disciplinary decisions and are not bound by decisions of other bodies applying law, except final court judgements. [18]

36. The connection between disciplinary and criminal proceedings is expressed *inter alia* in the provision of the Act which stipulates that members of disciplinary committees are only bound by final court judgements. The law also regulates the issue of the range of disciplinary measures with respect to all members of the civil service corps in case of:

- provisional arrest : the labour relation of the member of the civil service corps is suspended by law for a maximum period of three months. On expiry of this time-limit the contract is terminated;
- pending disciplinary or criminal proceedings : the Director-General of the office may suspend the person concerned for a period of up to three months;
- final sentence for an intentional offence or a final judgement concerning the deprivation of public rights : removal from service.

b. Analysis

37. The GET can but acknowledge that the general problem of corruption in the public sector has been integrated into the ongoing discussion aimed at reforming the structure of the State and, to an extent, its functioning. The Constitution, several laws and a specific anti-corruption programme demonstrate that the issue is being tackled directly, objectively and pragmatically. All the necessary legislative and regulatory "tools" are in place and capable of being applied. However, a few comments may be made from the outset. Firstly, it would have been desirable for the notion of public service to be clearly defined legally, providing a clear indication of the

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[16] Article 231 (2) of the Penal Code: a public official who, abusing his authority, or not performing his duty, acts to the detriment of a public or individual interest shall be subject to the penalty of deprivation of liberty for up to 3 years.

[17] The Act determines: grounds for disciplinary liability, periods of prescription and methods for their calculation, a catalogue of penalties, an outline of summary proceedings (imposing the penalty of admonition), the system of adjudicating bodies, general rules on appointing committees and composing benches, appointing a disciplinary attorney and general grounds for the institution of explanatory proceedings, principles of instituting the disciplinary proceedings and carrying out the case, execution of a judgement and cancellation of the punishment.

[18] The independence of disciplinary committees is also guaranteed by, *inter alia,* a term-based membership and strictly defined procedure of dismissing a member of the committee from the function performed.

different state corpuses making it up, rather than being derived from an interpretation of existing texts. For example, the question of the incorporation of members of the government, the various categories of elected representatives and the judiciary in the public service in the broad sense of the term might be raised. Secondly, it appears that the prime target of the public policy aimed at preventing and combating corruption is the national level rather than the local and/or decentralised level, on which the Polish authorities have not given much detail regarding awareness-building and more specifically where regional public administration is concerned. This point seems all the more important since, as the Polish representatives themselves admit, local structures are "complex", which does not facilitate transparency and/or control functioning. And generally speaking, there is no independent assessment system with adequate funding to objectively measure the impact of anti-corruption policy at all levels of the public sector.

38. More specifically, regarding the national "Anti-Corruption Strategy" which was adopted by the Government in September 2002, the GET emphasises the quality and comprehensive nature of its proposals, which embrace most of the spheres of public administration at risk and lay down guidelines for policy aimed at preventing and combating corruption. However, given that the first report has remained confidential and the following two have not been made available to the evaluation team, the GET is not in a position to assess the relevance of the programme and its implementation. The GET, however, took note of the verbal assurance provided by the Polish authorities that 70% of the initial provisions of the anti-corruption strategy have been implemented. Moreover, the conclusions drawn from 18 months of the programme's application – given verbally – are objective (e.g. increase in the number of cases of corruption and need for stronger involvement of the police services in combating corruption). The GET noted that the secretariat set up under the Minister of the Interior and Administration to deal with the "Anti-Corruption Strategy" (hereafter "the secretariat") prepares quarterly reports on the implementation of the anti-corruption programme that are submitted to the Minister of the Interior and Administration and then to the Prime Minister by the Minister of the Interior. The GET was informed that these reports are based on data provided by the different ministries on those parts of the anti-corruption programme for which they are responsible. The GET was told by the representatives of the secretariat that they neither check nor assess the data and information they receive from the ministries. The GET was also informed that the secretariat does not solely deal with the "Anti-corruption strategy". It also has other tasks. In the GET's understanding, the secretariat is not empowered to make any kind of analysis and assessment of the information received from the different ministries on the implementation of the anti-corruption programme nor to ensure that the requirements of transparency and effectiveness needed for good functioning of, and effective decision-making by, the public administration are met. Therefore, **the GET recommends to set up a specialised body with the tasks of following up on the implementation of the anti-corruption programme, by organising the gathering and analysis of data, assessing the quality of these data and making them public, together with recommendations to the Government concerning the prevention of corruption.**

39. Supervision of public administration is exercised by two courts whose competence is recognised in this area: the High Administrative Court and the Supreme Chamber of Control. The Court supervises the activity of public authorities by rescinding administrative acts that are illegal or not in conformity with the law, whereas the Chamber is an institution that supervises accounts and internal auditing with the purpose, according to its representative, of making administration more efficient and competent. Their independence is guaranteed by the Constitution or the manner in which their members are appointed. It should be noted that, from 2004, administrative justice will be organised on a regional and local basis through the setting up of regional appeal courts and courts of first instance. This "decentralisation" will certainly be a further guarantee of efficiency.

40. Where members of the civil service are concerned, the Polish authorities underlined that the distinction between civil servants and civil service employees (see paragraph 26 above) is based on their rights and duties (e.g. only a civil servant receives an additional civil service premium; a civil servant may be transferred to another position or office, practically without their consent). In the GET's opinion, the division into these two categories remains vague with regard to their respective statutes and the associated consequences. The Office of Civil Service has the task of administering the process of staff management in the civil service, i.e. officials employed in governmental offices subordinated – directly or not – to the Council of Ministers, the Prime Minister, Ministers or voivodes. It is this department which implemented the ethics training seminars with the help of two university professors who drew up the programme. A total of 3,432 officials, chosen by the director general of each ministerial department, have already taken part, although it is not really possible to say whether they "put up" with these two-day courses or took a keen interest and were then able to put what they had learnt into practice. **The GET recommends to gear ethics training seminars for civil servants to the resolving of practical, specific cases.**

41. The GET is of the opinion that the existing provisions contained in the Act on Restricting Pursuit of Business Activity of Persons Performing Public Functions and of the Act on Civil Service (see paragraphs 28 and 29 above) aimed at prohibiting "pantouflage" (i.e. the improper movement of a public official to the private sector) do not sufficiently cover all situations which can give rise to conflicts of interest. In particular, Section 7 (1) of the Act on Restricting Pursuit of Business Activities is limited to decisions taken by the civil servant "concerning individual matters" related to the private entity to which he/she wants to move. Moreover, this prohibition is valid only for a period of one year after leaving a post in the public service (see footnote no. 14 above). The scope of Section 7 (1) should be broadened so as to include all decisions related to those sectors in respect of which the civil servant exercises control activities or with which he/she has a professional relationship; further, a longer lapse of time should be established. Therefore, **the GET recommends to extend the scope of application of the Act on Restricting Pursuit of Business Activity of Persons Performing Public Functions and of the Act on Civil Service aimed at prohibiting "pantouflage" (i.e. the improper movement of a public official to the private sector).**

IV. THEME III – LEGAL PERSONS AND CORRUPTION

a. Description of the situation

Definition of legal persons

42. Legal persons can be classified according to: *their relation with authorities* (state-owned legal persons: the State Treasury, state-owned enterprises; self-governing legal persons: a municipality, a district, a *voivodeship* self-government); *their goals and functions* (legal persons of a commercial nature: commercial companies, state-owned enterprises; of a non-commercial nature: associations, political parties, trade unions, higher education institutions, ecclesiastical legal persons); *the fact that a group of people share the same interests* (corporations: associations, companies, co-operatives, professional organisations; establishments - state-owned enterprises, higher education institutions, research institutes, foundations),
The most important types of legal persons are:

- commercial companies: mainly capital companies (limited liability companies, joint stock companies) and partnerships (limited joint-stock partnership, registered partnership, professional partnership, limited partnership),

- co-operatives (voluntary associations of an unlimited number of persons which pursue a common business),
- state-owned enterprises (self-reliant, autonomous and self-financing entrepreneurs having the status of a legal person),
- research and development agencies, associations, foundations,
- health care institutions,
- trade unions, political parties and banks.

Establishment

43. Legal persons are established through:

- a system of acts by state authorities (a normative act of the state authority, or an administrative act for state-owned enterprises and research and development units),
- a system of licenses (legal persons set up by founders – natural or legal persons – need a license from the competent state authority),
- a normative system (requirements for the establishment of a particular type of a legal person are set in a normative act). This system covers joint-stock companies, limited liability companies, trade unions.

Capital companies have to draw up a founding act, appoint company governing bodies, register the company with the National Court Register (hereafter NCR), and the shareholders are required to pay contributions which amount to a minimum of 50,000 zlotys (approximately 10,800 euros) for a limited liability company and 500,000 zlotys (approximately 108,000 euros) for a joint-stock company. Trade unions, co-operatives, associations or foundations have also a requirement as to the number of founders. As regards political parties, they are subject to entry into the political parties' register. The establishment of banks is regulated by special provisions regarding individual banks.

Registration

44. The NCR is the main register. Registration is effected upon a motion or *ex officio*. The NCR consists of the register of entrepreneurs, the register of associations and other social and professional organisations, foundations and public health care institutions, the register of insolvent debtors. It is maintained by the registry courts / commercial district courts. Information on the data from the register is provided by the Central Information Office for the NCR that transmits *ex officio* the data from NCR concerning the registration and the deletion of the entrepreneur to the bodies of communal self-government competent with regard to the entrepreneur's residence (seat). As a general rule, anyone may access certain data contained in the NCR and obtain certified copies, abstracts and certificates. Detriment caused by the registration of false information in the NCR and failure to register information on time can be subject to liability. The registry court inspects whether the form and contents of the documents attached to the motion for registration are in compliance with the law. In some cases the court only verifies compliance of the information with the factual situation. The registry court co-operates with the Head of the National Centre for Criminal Information by forwarding, upon request, data and information. Also, annual financial reports, auditors' opinions, copies of resolutions or decisions of authorities passing the approval of annual financial reports and the division of profits or making up a loss, and reports on the business activity of entities are filed with the NCR.

Accounting

45. According to the Act on Accounting, legal persons are obliged to apply certain accounting principles, to provide statements of the state of affairs and financial position and the financial result in a reliable way. Any events, including commercial operations, are entered in books of account and financial reports. Entities obliged by the law also produce reports on their business activity. Certain legal persons have to submit their financial reports to a review by impartial and independent auditors (on the basis of which an opinion and a report are drawn up). Some entities (capital companies, co-operatives) are obliged to give their partners, shareholders or members access to the annual financial report and report on the business activity of the entity, and if the financial report is subject to a review, also to the opinion and the report of the auditor.

Limitations on exercising functions in legal persons

46. The Penal Code provides for the possibility of disqualifying persons found guilty of offences to manage legal persons or to occupy a certain position or to pursue a certain profession. This is only possible if the perpetrator, when committing the offence, abused his/her position, or if it has been proved that further occupation of the position would represent a risk. These prohibitions may last for a period of one to ten years. Decisions involving such prohibitions are registered in the National Criminal Register. Access to this information is only granted to authorised entities.

Legislation on the liability of legal persons

47. The Act of 16 April 1993 on Combating Unfair Competition, as amended, provides for the administrative liability of legal persons for active bribery. The situation has changed since the Act of 28 October 2002 on Liability of Collective Subjects for the Acts Forbidden under a Penalty (see Appendix VII) entered into force on 27 November 2003. This act introduces a new legal regime of liability of legal persons and other collective subjects, which do not have the status of a legal person, for a number of offences[19]. The catalogue of offences for which collective subjects may be held liable includes active corruption, trading in influence and money laundering. The liability of a legal person for bribery is conditioned by the commission of the offence of bribery by a natural person acting for its benefit in the exercise of the authority to represent, to decide on behalf of, or to control it. The Act on Liability of Collective Subjects provides that the factual or potential benefit, even a non-material one, of a collective entity is a condition for corporate liability. As a general principle, proceedings against a legal person can only be initiated after a natural person has been convicted. In cases where criminal proceedings against a natural person have been discontinued due to causes "excluding prosecution"[20], proceedings against the legal person can, nevertheless, be initiated. Not only the prosecutor is entitled to file the request in the court, also the injured person may do it and, in cases of active bribery, also the Chairman of the Office for Competition and Consumer Protection. Article 6 of the Act on Liability of Collective Subjects stipulates that the liability of a collective subject does not exclude the administrative, civil, nor individual liability of the perpetrator of a illegal act. There have been no criminal proceedings against legal persons instituted so far.

[19] This liability is of a *sui generis* nature: from the theoretical and legal point of view it is not considered a criminal liability, though it is adjudicated by a court competent for handling criminal matters in proceedings pursuant to the provisions of the Code of Criminal Procedure.

[20] Death of the accused, limitation of punishability, absence of jurisdiction in respect of the perpetrator (e.g. diplomatic immunity), absence of authorisation to prosecute (e.g. parliamentary immunity).

Sanctions

48. The Act on Liability of Collective Subjects enumerates a list of sanctions for bribery, trading in influence and money laundering: pecuniary penalty equivalent to 2 to 10% of income, within the meaning of the provisions on gross income on legal persons, obtained in the fiscal year that preceded the date of passing the judgement; if that income is smaller than 1,000,000 zlotys (approximately 218,000 euros), the amount of the financial penalty may be adjudicated between 2 and 10% of the expenses borne in the fiscal year that preceded the passing of the judgement. The financial penalty may not be lower than 5,000 zlotys (approximately 1,000 euros) in any case. If the commission of the offence has brought no advantage to the collective entity, the court may decide not to impose any pecuniary penalty[21].

49. The Act on Liability of Collective Subjects for the Acts Forbidden under a Penalty introduces the obligation to record the information on punished collective subjects in the National Criminal Register. Access to the information in the register may be given in cases provided for by the law, in particular to the collective entity concerned itself. In this way potential contractors may request a given enterprise to produce an information card.

Deductibility

50. The tax law does not provide for the possibility of effecting tax deductibility for "facilitation" payments, bribes and other expenses related to offences of corruption.

Tax authorities

51. Both the tax and the fiscal control authorities co-operate with the Head of the National Centre for Criminal Information to the extent necessary to implement its statutory tasks. Moreover, pursuant to Article 304 (2) of the CCP, persons working for those public institutions are obliged to report to the relevant law enforcement bodies facts related to offences prosecuted *ex officio* as any other public officials, and to take all the necessary actions to prevent the destruction of evidence. Acts on Tax Regulations and on Fiscal Control provide for cases in which tax and fiscal control authorities may give access to law enforcement authorities to tax records (including those containing information from banks, concerning *inter alia* accounts, turnovers, balance, credit contracts concluded or loans). Article 74 (2) of the Act on Accounting provides for an obligation to continuously store for a period of 5 years of i.a. books of accounts, inventory documentation, accounting documentation concerning long-term investments made, loans, credits and commercial transaction contracts. Moreover, the Act on Tax Regulations stipulates that taxpayers are obliged to run tax books, to store books and related documentation until the limitation period of the tax liability has elapsed (Article 86 (1)). Pursuant to Article 60 of the Fiscal Penal Code, failure to run the books is subject to a fine. Article 83 stipulates that whoever – in connection with a request by a person authorised to effect acts of verification, tax or fiscal control - refuses to produce the book or destroys, damages, makes useless, conceals or removes the book is subject to a fine, amounting to 720 per diems.

Auditors and accountants

52. No specific provisions establishing an obligation to report suspicions of corruption for private auditors and accountants exist. They are submitted to the general rule of Article 304 (1) of the

[21] Other measures provided by law are prohibition of publicity, prohibition to use the public fund aid, prohibition to accept the assistance of international organisations of which Poland is a member, prohibition to attempt at obtaining public contracts, prohibition to pursue a certain type of activity and making the judgement publicly known.

CCP. No initiatives have been taken to involve accountants, auditors and other advising professions in any policy aimed at detecting/reporting accounting offences and the dissimulation of crimes, in particular corruption and money laundering.

b. Analysis

53. The Polish authorities have taken appropriate steps in order to establish an adequate registration system for legal persons and access of the public to the information concerning the activity of legal persons. In spite of that, it should be mentioned that for a small category of legal persons (the various religious entities, Red Cross in Poland, etc.) *ex lege* there is no requirement for registration. The Polish authorities expressed their concern with regard to the situation where the registration regime does not cover such non-public bodies. There are no restrictions on legal persons to hold interests in another legal person, neither restrictions on the number of accounts a company can hold. The minor shareholders, i.e. the shareholders who possess less than 10 per cents of the share capital, are not registered and no information may be obtained on them. Besides this, the GET noted that at the time of the visit the information on the registered legal persons was not available on the Internet. The Polish authorities announced that from the beginning of 2004 some elements of the information on the registered legal persons would be accessible on the Internet. The GET observes that appropriate measures should be taken in order to facilitate further the access of the public to the information on legal persons.

54. Taking into account the entry into force of the Polish Law on Liability of Collective Entities for Acts Prohibited under Penalty which established new rules concerning the corporate liability for criminal and fiscal offences (the law entered into force on 27 of November 2003, i.e. during the evaluation visit), the GET has not analysed the provisions of the Act of 1993 on Combating Unfair Competition which established corporate administrative liability for active bribery (the provisions of the Act of 1993 dealing with entrepreneurs' liability for bribing public officials became obsolete after the adoption of the Law on Liability of Collective Entities of 2002). Nevertheless, the GET notes that the Polish authorities have not submitted information on the proceedings instituted against legal persons under the Act of 1993 on Combating Unfair Competition and observes that the practical application of this Act with regard to the establishment of administrative corporate liability for active bribery raises some concern.

55. The Law on Liability of Collective Entities for Acts Prohibited under Penalty regulates in detail the issues related to corporate liability for criminal and fiscal offences. The provisions of the Law deal both with substantive and procedural matters of the liability of legal persons. The Law is a repressive instrument which establishes liability *sui generis*. The law establishes liability of legal persons in a case of active bribery, passive trading in influence and money laundering committed by a natural person in a leading position for the benefit or on behalf of the legal person, as well as in a case where lack of supervision within the legal person makes it possible to commit the respective offences. The corporate liability does not exclude individual liability of the perpetrator. The sanctions provided for in the law, including fines, seem to be effective, proportionate and dissuasive. The scope of the application of the law with regard to the categories of the legal persons which may be liable for offences is also in conformity with the standards of the Criminal Law Convention on Corruption. The GET is of the view that the provisions of the Law meet to a large extend the standards of Article 18 of the Convention. Nevertheless, the GET found that the provision relating to active trading in influence (Article 230a of the Penal Code) has not been included in the list of offences under Article 16 of the Law on Liability of Collective Entities. Amendments to the Penal Code, whereby trading in influence (Articles 230-230a) and bribery in the private sector (Article 296a) were established as criminal offences, were passed in June 2003 and these amendments to the substantive criminal law have obviously not been reflected in the

Law on Liability of Collective Entities adopted in 2002. The GET is of the view that the above-mentioned omission/deficiency affects the scope of the application of the law in relation to the categories of crimes which must have been committed in order to hold the legal person liable. **Therefore, the GET recommends to amend the Law on Liability of Collective Entities for Acts Prohibited under Penalty in order to include all relevant corruption offences which may lead to the establishment of corporate liability.**

56. Besides this, it should be mentioned that, under the Law on Liability of Collective Entities for Acts Prohibited under Penalty, the liability of legal persons may be established only if the natural person has been convicted, however not in cases where the perpetrator has been acquitted or could not be identified. This situation is assessed by the GET as non-conflicting with the provisions of Article 18 of the Criminal Law Convention on Corruption. Nevertheless, the GET notes the non-compliance of such a legal restriction with the relevant standard of the Recommendation No. R (88) 18 of the Committee of Ministers concerning Liability of Enterprises having Legal Personality for Offences Committed in the Exercise of their Activities. Taking into account that the Recommendation No. R (88) 18 is out of the scope of evaluation prescribed by the Statute of GRECO; the GET only observes the above-mentioned restriction concerning the establishment of corporate liability under Polish law.

57. Having in mind the recent entry into force of the Law on Liability of Collective Entities for Acts Prohibited under Penalty and the fact that there have been no criminal proceedings against legal persons instituted so far under this law, the GET is not in a position to assess its effectiveness and practical application. That said, the GET observes that, in spite of the fact that the above law was passed in 2002, by the date of its entry into force in 2003 no special training dealing with its provisions has been provided for prosecutors and judges. During the visit, the Polish authorities indicated that they intended to organise in 2004 training courses for magistrates on the implementation of the above law at the Training Department of the Personnel of Justice System at the Ministry of Justice. The GET notes the importance of the special training, in particular where a legislation establishing new substantive standards and procedural rules has been adopted in such an area as the liability of legal persons for crimes. Therefore, **the GET recommends to establish special training programmes for prosecutors and judges in order to ensure the effective implementation of the Law on Liability of Collective Entities for Acts Prohibited under Penalty.**

58. The Polish tax legislation does not expressly prohibit deductibility for “facilitation” payments, bribes and other expenses linked to corruption offences. Nevertheless, the Polish authorities state that the relevant substantive tax laws do not provide for the possibility of effecting deductibility for corruption expenses as far as their provisions are not applicable to incomes resulting from acts that may not be the subject of a legally effective contract. Taking into account the principles of the Polish legal system and the relevant court practice, the GET is of the view that this situation is in conformity with Guiding Principle 8. The GET also notes that the legal obligation for public authorities (including tax authorities) to report to the relevant law enforcement bodies the suspected criminal offences, including corruption offences (Article 304 paragraph 2 of the CCP), enables the tax authorities to contribute to combating corruption in an effective and co-ordinated manner. At the same time, the GET observes the lack of appropriate training or guidelines provided for tax officials which might encourage the detection of corruption offences and improve interaction with the competent law enforcement authorities. Therefore, **the GET recommends to establish special training and/or guidelines for the tax authorities concerning the detection of corruption offences and the effective fulfilment of their reporting obligation under the Code of Criminal Procedure.**

59. The GET finds that infringements of the accounting obligations are satisfactorily dealt with in the Polish legislation and notes that the Criminal Code, the Fiscal Penal Code and the Act on Accounting provide for an adequate range of effective, proportionate and dissuasive sanctions, including fines and deprivation of liberty, in case of respective account offences committed. During the visit the Polish authorities provided information on the tasks and status of the public internal auditors and independent expert auditors. The GET noted that in the respective laws dealing with the functions of the public internal audit (Law on Public Finance) and the independent audit (Act on Expert Auditors) there were no provisions concerning the reporting of suspected crimes to law enforcement authorities. Public internal auditors are under the obligation established for public officials to report to the relevant law enforcement bodies suspicions of criminal offences (Article 304 paragraph 2 of the CCP). For independent auditors the obligation to report suspicions of offences arises from the general civic obligation established by the Criminal Procedure Code (Article 304 paragraph 1). On the other hand, independent auditors are obliged by the special law to keep professional secret which might be viewed as contradicting the general reporting obligation under the Criminal Procedure Code. The GET wishes to stress that records and books violations can be important sources of information leading to the detection of corruption and emphasises the importance of the increased awareness of detecting corruption offences in the course of exercising auditing duties and of the reporting obligation under the Code of Criminal Procedure. In this context, the GET observes that the lack of concrete steps taken to involve auditors in the policies aimed at detecting/reporting corruption offences may affect their role in the fight against corruption.

V. CONCLUSIONS

60. In recent years, Poland has taken appropriate steps to establish an adequate legislative framework to enable the competent authorities to cope with issues related to proceeds of corruption, corruption in public administration and corruption in corporate activities. A higher degree of specialisation and specific training is needed for prosecutors and police officers in order to enable them to fully implement provisions on seizure and confiscation of proceeds of corruption. The ongoing reflection, within the public administration, on reform of the State structure and its functioning takes account of the problem of corruption. The applicable legislation and regulations are in place. However, the success of corruption prevention policies in public administration can be strengthened, notably, by regular monitoring and updating of implementation and the regulation of conflicts of interest. The “Law on Liability of Collective Entities” entered into force in November 2003; it is therefore not possible to asses its effectiveness and practical application, however its provisions meet to a large extent the standards laid down in Article 18 of the Criminal Law Convention on Corruption.

61. In view of the above, GRECO addresses the following recommendations to Poland:

i. 1) that the prosecution authorities be rapidly provided - during their investigative work - with coordinated and up-to-date financial and economical information and 2) to continue giving to prosecutors and police officers specific training and provide them with adequate means in order to make better use of legal provisions on seizure and confiscation;

ii. to intensify efforts to establish, within prosecutors’ offices, multidisciplinary teams of experts in the field of combating economic and financial crime;

iii. to promote the use in practice of the legal measures on international legal assistance concerning provisional measures in relation to corruption offences;

iv. to set up a specialised body with the tasks of following up on the implementation of the anti-corruption programme, by organising the gathering and analysis of data, assessing the quality of these data and making them public, together with recommendations to the Government concerning the prevention of corruption;

v. to gear ethics training seminars for civil servants to the resolving of practical, specific cases;

vi. to extend the scope of application of the Act on Restricting Pursuit of Business Activity of Persons Performing Public Functions and of the Act on Civil Service aimed at prohibiting "pantouflage" (i.e. the improper movement of a public official to the private sector);

vii. to amend the Law on Liability of Collective Entities for Acts Prohibited under Penalty in order to include all relevant corruption offences which may lead to the establishment of corporate liability;

viii. to establish special training programmes for prosecutors and judges in order to ensure the effective implementation of the Law on Liability of Collective Entities for Acts Prohibited under Penalty;

ix. to establish special training and/or guidelines for the tax authorities concerning the detection of corruption offences and the effective fulfilment of their reporting obligation under the Code of Criminal Procedure.

62. Moreover, GRECO invites the Polish authorities to take account of the observations made in the analytical part of this report.

63. Finally, in conformity with Rule 30.2 of the Rules of procedure, GRECO invites the Polish authorities to present a report on the implementation of the above-mentioned recommendations by 30 November 2005.

APPENDIX I

CODE OF CRIMINAL PROCEDURE

Article 291

1. In the event of the commission of an offence subject to a fine or forfeiture of material objects, or supplementary payment to the injured or pecuniary consideration for a public purpose, or to imposition of the obligation to redress damage or compensate for the injury sustained, the execution of this decision may be secured *ex officio* on the property of the accused.

2. (...)

APPENDIX II

CODE OF CRIMINAL PROCEDURE

Article 297

1. The objectives of preparatory 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 preserve and record evidence for the court to the extent required.

Article 213

1. The following data concerning the accused should be established in the course of the proceedings: identity, age, family and financial status, educational status, profession, employment and his sources of income.

2. (…)

APPENDIX III

PENAL CODE

Article 44. § 1. The court shall impose the forfeiture of objects directly derived from an offence.

§ 2. The court may decide, and shall decide in cases provided for by the law, on the forfeiture of the objects which served or were designed for committing the offence.

§ 3. The forfeiture described in § 2 shall not be applied if its imposition would not be commensurate with the severity of the offence committed, the court may, instead of forfeiture, impose a supplementary payment to the State Treasury.

§ 4. If the imposition of forfeiture referred to in the § 1 and 2 is impossible, the court may impose the forfeiture of the amount equivalent to the value of the objects directly derived from an offence or which served or were designed for committing the offence.

§ 5. The forfeiture of the objects referred to in § 1 and 2 shall not be adjudicated if they are subject to return to the injured or the other legitimate entity.

§ 6. In the event that the conviction has pertained to an offence of violating a prohibition of production, possession or dealing in, transferring or transporting specific objects, the court may decide, and shall decide in cases provided for by the law, on the forfeiture thereof.

§ 7. If the objects referred to in § 2 or 6 are not the property of the perpetrator, their forfeiture may be decided only in the cases provided for in law; in the case of co-ownership, the decision shall cover only the forfeiture of the share owned by the perpetrator, or the forfeiture of the amount equivalent to its value.

§ 8. Objects subject to forfeiture shall be transferred to the ownership of the State Treasury at the time the sentence becomes final and valid.

Article 45. § 1. If the perpetrator gained financial advantage, even indirectly, from the offence, and it is not subject to forfeiture of the objects referred to in Article 44§ 1 or 6, the court shall decide on the forfeiture of the financial advantage or the equivalent of its value.

The forfeiture shall not be adjudicated in whole or in part if the advantage or the equivalent of its value is subject to return to the injured person or to another entity.

§ 2. In the case of sentencing the perpetrator for the offence from which he/she gained, even indirectly, material advantage of considerable value, it is considered that the property - taken in the possession or to which the perpetrator gained another right during or after the commission of the offence - till passing the judgement, even though it is not a final one, - shall constitute the advantage gained form the commission of the offence, unless the perpetrator or other interested person present the proof to the contrary (also: unless the perpetrator or other person interested proves otherwise)

§ 3. If the circumstances of the case indicate the high probability that the perpetrator, referred to in § 2, has, actually or by virtue of any legal title, transferred the property constituting the advantage derived from the offence to a natural person, legal person or other entity not possessing the status of a

legal person, it is considered that the objects that are possessed[22] by that person or entity together with the property rights belong to the perpetrator, unless that person or entity produces evidence for their lawful acquisition.

§ 4. The provisions of § 2 and 3 shall be also applied while effecting the seizure pursuant to the provision of Article 292 § 2 of the Code of Criminal Procedure, while securing the proceeds threaten by forfeiture and enforcing this measure. A person or an entity to which the allegation provided for in § 3 refers may bring an action against the State Treasury concerning the reversal of this allegation; the enforcement proceedings shall be suspended until the case is legally concluded.

§ 5. In the case of co-ownership the forfeiture of the property co-owned by the perpetrator or the forfeiture of the amount equivalent to that property shall be adjudicated.

§ 6. The financial advantage or the equivalent of its value subject to forfeiture shall be passed to the State Treasury as from the moment from which the judgement becomes valid and final, and in the case referred to in § 4, sentence 2, as from the moment from which the judgement rejecting the action against the State Treasury becomes valid and final.

[22] Possessed in the way that the owner does.

APPENDIX IV

CIVIL CODE

Article 412

"The court may decide the forfeiture of the performance for the State Treasury if that performance is consciously made in exchange for the doing of an act forbidden by the statutory law or with a vile purpose. If the object of the performance was used up or lost its value may be forfeited".

APPENDIX V

CODE OF CRIMINAL PROCEDURE

Article 611d

1. If, in the course of proceedings, circumstances have occurred justifying the issuance of a decision on security on property because of threatened forfeiture of objects or property constituting benefits obtained from committing an offence, and these objects or elements of this property are located in the territory of a foreign state, the court, and in preparatory proceedings – the state prosecutor, may request, through the Minister of Justice, an appropriate agency of the foreign state to secure the objects or property threatened with forfeiture.

2. If an agency of a foreign state requests the execution of a valid and final decision on securing property, when the property subject to the security is located in the territory of the Republic of Poland, the district court (*'sad rejonowy'*) or state prosecutor for the area where the property is located, has the jurisdiction to execute the decision.

APPENDIX VI

THE CONSTITUTION OF POLAND

d) State Administration

Article 120

(Organisation and Work of the State Administration)

The organisation of the state administration, its competence and the manner of appointment of its officers are regulated by law.

Administrative bodies perform their work independently within the framework and on the basis of the Constitution and laws.

Judicial protection of the rights and legal interests of citizens and organisations is guaranteed against decisions and actions of administrative bodies and bearers of public authority

Article 121

(Duties of Administrative Bodies)

Duties of the state administration are performed directly by ministries.

Self-governing communities, enterprises, other organisations and individuals may be vested by law with public authority to perform certain duties of the state administration.

Article 122

(Employment in the State Administration)

Employment in the state administration is possible only on the basis of open competition, except in cases provided by law.

APPENDIX VII

J.L.02.197.1661

ACT

of 28th October 2002

on Liability of Collective Entities for Acts Prohibited under Penalty.

(Journal of Laws of 27th November 2002)

Art. 1. The Act sets forth the principles defining the liability of collective entities for acts prohibited under penalty, i.e. offences or fiscal offences, and the principles to govern the procedure to be followed in matters of such liability.

Art. 2. 1. A collective entity, as understood in the Act, denotes a legal person and/or organisational entity without personality at law, except for the State Treasury, local government agencies and their associations, or state and local government bodies.

2. A collective entity, as understood in the Act, also denotes a commercial company with equity participation of the State Treasury, a local government agency or an association thereof, a company in organisation, an entity in liquidation, and an entrepreneur other than a natural person, as well as a foreign organisational entity.

Art. 3. The collective entity shall be liable for a prohibited act consisting in conduct of any natural person who:

1) acts in the name or on behalf of the collective entity under the authority or duty to represent it, make decisions in its name, or exercise internal control, or whenever such person abuses the authority or neglects the duty,
2) is allowed to act as the result of abuse of the authority or neglect of the duty by the person referred to in point 1 above,
3) acts in the name or on behalf of the collective entity on consent or at the knowledge of the person referred to in point 1,
4) is an entrepreneur

- if such conduct did or could have given the collective entity an advantage, even of non-financial nature.

Art. 4. The collective entity shall be held liable, if perpetration of an offence or fiscal offence by the person referred to in Art. 3 is ascertained in a valid convicting judgement, *penal order*(1), valid decision to leave voluntary submission to liability, or a valid decision to conditionally discontinue the proceedings, or a valid decision to discontinue the proceedings for circumstances excluding prosecution of the perpetrator.

propositions in the literature

Art. 5. The collective entity shall be held liable even if found to have failed to exercise due diligence in electing the natural person referred to in Art. 3.2 or 3.3, or to have had no due supervision over the person, or whenever the organisation of the entity's activities does not guarantee prevention of the prohibited act its perpetration could have been prevented by due caution required in the circumstances and exercised by the person referred to in Art. 3.1 or 3.4.

Art. 6. Neither the existence nor non-existence of liability of the collective entity under the principles set forth in this Act shall exclude civil liability for the inflicted damage, administrative liability, or personal legal responsibility of the perpetrator of the prohibited act.

Art. 7. 1. For the act specified herein, the collective entity shall be fined up to 10% of the revenue, as defined in the regulations corporate income tax regulations, generated in the tax year immediately preceding the issuance of the ruling.

2. If the revenue referred to in point 1 above is lower than PLN 1,000,000, the adjudicated fine shall be up to 10% of the expenditure borne in the year immediately preceding the issuance of the ruling.

3. No fine adjudicated consistent with points 1 or 2 above shall be lower than PLN 5,000.

Art. 8. 1. The collective entity is further decreed the forfeiture of:
1) the objects coming, even indirectly, from the prohibited act, or objects used or designated for use as the tools of perpetrating the prohibited act;
2) the financial gains originating, even indirectly, from the prohibited act;
3) the amount equivalent to the objects or financial benefit coming, even indirectly, from the prohibited act.

2. The forfeiture specified in paragraph 1 above shall not be decreed, if the object, financial benefit, or amount equivalent thereto are due for restitution to another entitled entity.

Art. 9. 1. The collective entity can be penalised with:
1) the ban on promoting or advertising the business activities it conducts, the products it manufactures or sells, the services it renders, or the benefits it grants;
2) the ban on using grants, subsidies, or other forms of financial support originating from public funds;
3) the ban on using the aid provided by the international organisations the Republic of Poland holds membership in;
4) the ban on applying for public procurement contracts;
5) the ban on pursuing the indicated prime or incidental business activities;
6) public pronouncement of the ruling.

2. The bans listed in paragraph 1.1-5 are imposed for any period between 1 and 5 years, and are adjudicated in years.

3. The ban referred to in paragraph 1.5 shall not be imposed, if the ruling could lead to bankruptcy or liquidation of the collective entity, or layoffs discussed in Art. 1 of the Act of 28th December 1989 on special principles of terminating employment for reasons relating to the employer (Journal of Laws from 2002 No. 112, it. 980, and No. 135, it. 1146).

Art. 10. When decreeing the fine, imposing the bans or pronouncing the ruling in public the court shall consider in particular the size of the gains obtained by the collective entity and the social consequences of the penalty.

Art. 11. 1. When adjudicating the fine or forfeiture the court shall recognise any valid judgement pronouncing the collective entity secondarily liable to bear the fine or forfeiture ruled against the natural person referred to in Art. 3 for the fiscal offence identified in the Fiscal Penal Code.

2. When ruling the forfeiture of the financial gains or an equivalent thereof the court shall recognise any valid judgement issued on the basis of Art. 52 of the Penal Code or Art. 24 § 5 of the Fiscal Penal Code that obliges the collective entity to refund the financial gains obtained through the offence of the natural person referred to in Art. 3.

Art. 12. In particularly justified cases, when the prohibited act that made the collective entity liable has not brought any benefit to the entity, the court may wave a fine and limit itself to ruling the forfeiture,

ban, or public pronouncement of the judgement, though subject to the regulations of Art. 8.2 and Art. 11.

Art. 13. If prior to the expiration of a 5-year period following the adjudication of the fine the prohibited act that gave rise to the liability of the collective entity reoccurs, the entity may be fined in any amount up to the upper law-defined penalty limit increased by half; the regulation of Art. 9.3 shall not apply.

Art. 14. No fine, forfeiture, ban, or public pronouncement of the ruling shall be adjudicated against the collective entity 10 years after the issuance of the decision referred to in Art. 4.

Art. 15. No fine, forfeiture, ban, or public pronouncement of the ruling shall be carried out 10 years after the judgement pronouncing the collective entity liable for the prohibited act threatened with penalty became final.

Art. 16. 1. The collective entity shall be held liable under this Act, if the person referred to in Art. 3 committed an offence:

1) against economic relations provided for in:
   a) Arts. 296-306 and Art. 308 of the Penal Code,
   b) Art. 90f-90k of the Act of 28th July 1990 on insurance activities (Journal of Laws from 1996 No. 11, it. 62; from 1997 No. 43, it. 272; No. 88, it. 554; No. 107, it. 685; No. 121, its. 769 and 770; and No. 139, it. 934; from 1998 No. 155, it. 1015; from 1999 No. 49, it. 483; No. 101, it. 1178, and No. 110, it. 1255; from 2000 No. 43, it. 483; No. 48, it. 552; No. 70, it. 819; No. 114, it. 1193, and No. 116, it. 1216; from 2001 No. 37, it. 424; No. 88, it. 961; No. 100, it. 1084, and No. 110, it. 1189; and from 2002 No. 25, it. 253; No. 41, it. 365, and No. 153, it. 1271),
   c) Arts. 38-43a of the Act of 29th June 1995 on bonds (Journal of Laws from 2001 No. 120, it. 1300),
   d) Art. 171 of the Act of 29th August 1997 - the Banking Law (Journal of Laws from 2002 No. 72, it. 665; No. 126, it. 1070; No. 141, it. 1178; No. 144, it. 1208; No. 153, it. 1271, and No. 169, its. 1385 and 1387),
   e) Arts. 303-305 of the Act of 30th June 2000 - the Industrial Property Law (Journal of Laws from 2001 No. 49, it. 508; and from 2002 No. 74, it. 676; No. 108, it. 945; No. 113, it. 983; and No. 153, it. 1271),
   f) Arts. 585-592 of the Act of 15th September 2000 - the Code of Commercial Companies (Journal of Laws No. 94, it. 1037, and from 2001 No. 102, it. 1117),
   g) Art. 33 of the Act of 29th November 2000 on foreign trade in goods, technologies, and services of strategic significance for the security of the state and for keeping international peace and security, and on amendments to selected laws (Journal of Laws No. 119, it. 1250; from 2001 No. 154, it. 1789; and from 2002 No. 41, it. 365; No. 74, it. 676; and No. 89, it. 804),
   h) Arts. 36 and 37 of the Act of 22nd June 2001 on pursuing business activities in the area of manufacturing and trading in explosives, arms, ammunition, and products and technologies designated for military or police purposes (Journal of Laws No. 67, it. 679; and from 2002 No. 74, it. 676; and No. 117, it. 1007);
2) against money and securities trading, as provided for in:
   a) Arts. 310-314 of the Penal Code,
   b) Arts. 165-177 of the Act of 21st August 1997 - the Law of Public Trading in Securities (Journal of Laws from 2002 No. 49, it. 447),
   c) Art. 37 of the Act of 29th August 1997 on mortgage bonds and mortgage banks (Journal of Laws No. 140, it. 940; from 1998 No. 107, it. 669; from 2000 No. 6, it. 70; and No. 60, it. 702; from 2001 No. 15, it. 148; and No. 39, it. 459; and from 2002 No. 126, it. 1070; and No. 153, it. 1271);
3) of bribery and paid patronage, as provided for in Arts. 228-230 of the Penal Code;

4) against data protection, as provided for in Arts. 267-269 of the Penal Code;
5) against reliability of documents, as provided for in Arts. 270-273 of the Penal Code;
6) against property, as specified in Arts. 286 and 287, and in Arts. 291-293 of the Penal Code;
7) against sexual freedom and good morals, as specified in Art. 200 § 2, Art. 202, and in Art. 204 of the Penal Code;
8) against the environment, as specified in:
   a) Arts. 181-184 and Arts. 186-188 of the Penal Code,
   b) Art. 34 of the Act of 11th January 2001 on chemical substances and preparations (Journal of Laws No. 11, it. 84; No. 100, it. 1085; No. 123, it. 1350; and No. 125, it. 1367; and from 2002 No. 135, it. 1145; and No. 142, it. 1187),
   c) Art. 69 of the Act of 27th April 2001 on wastes (Journal of Laws No. 62, it. 628; and from 2002 No. 41, it. 365; and No. 113, it. 984),
   d) Arts. 58-64 of the Act of 22nd June 2001 on genetically modified organisms (Journal of Laws No. 76, it. 811; and from 2002 No. 25, it. 253; and No. 41, it. 365);
9) against public law and order, as specified in Arts. 252 and 253, Arts. 256-258, Art. 263 and Art. 264 of the Penal Code;
10) consisting in an act of unfair competition, as defined in Arts. 23 and 24 of the Act of 16th April 1993 on combating unfair competition (Journal of Laws No. 47, it. 211; from 1996 No. 106, it. 496; from 1997 No. 88, it. 554; from 1998 No. 106, it. 668; from 2000 No. 29, it. 356; and No. 93, it. 1027; and from 2002 No. 126, its. 1068 and 1071; and No. 129, it. 1102);
11) against intellectual property, as specified in Arts. 115-118[1] of the Act of 4th February 1994 on copyright and related titles (Journal of Laws from 2000 No. 80, it. 904; from 2001 No. 128, it. 1402; and from 2002 No. 126, it. 1068).

2. The collective entity shall also be held liable under this Act if the person referred to in Art. 3 committed a fiscal offence:

1) against tax duties and the obligation to account for grants or subsidies, as defined in Arts. 54-56, Art. 63, Art. 65, Art. 67, Art. 76, Art. 77, and Art. 82 of the Fiscal Penal Code;
2) against customs duties and the principles of foreign trade in goods and services, as provided for in Art. 85, Art. 88, Art. 89 and Art. 92 of the Fiscal Penal Code.

Art. 17. For any of the offences listed in Art. 16.1.1-3, perpetrated by the natural person the collective entity

shall be liable to a fine ranging from 2% to 10% of the revenue or expenditure defined in Art. 7.1 or 2 hereof.

Art. 18. For any of the offences listed in Art. 16.1.4-7, perpetrated by the natural person the collective entity

shall be liable to a fine ranging from 1% to 8% of the revenue or expenditure defined in Art. 7.1 or 2 hereof.

Art. 19. For any of the offences listed in Art. 16.1.8-11, perpetrated by the natural person the collective entity

shall be liable to a fine of up to 5% of the revenue or expenditure defined in Art. 7.1 or 2 hereof.

Art. 20. For any of the fiscal offences listed in Art. 16.2, perpetrated by the natural person the collective entity

shall be liable to a fine ranging from 1% to 8% of the revenue or expenditure defined in Art. 7.1 or 2 hereof.

Art. 21. The collective entity that does not observe the bans listed in Art. 9.1.1-5,

shall be liable to a fine ranging from 2% to 10% of the revenue or expenditure defined in Art. 7.1 or 2 hereof.

Art. 22. The proceedings concerning the liability of collective entities for the acts prohibited under penalty shall be governed as appropriate by the regulations of the Code of Penal Procedure, unless otherwise provided herein. The regulations of the Code of Penal Procedure on the private prosecutor, claimant in criminal proceedings, social representative, preparatory procedure, special proceedings, and on criminal procedure shall not apply to matters falling within the jurisdiction of the military court.

Art. 23. The burden of proof rests with the party that files the evidence.

Art. 24. 1. The matters of liability of collective entities for acts prohibited under penalty shall, in the first instance, fall under the jurisdiction of the local court in whose territory the prohibited act was committed, and if such act was perpetrated in the territories falling under the jurisdiction of several courts, or on board of a Polish vessel or air-craft, or abroad, the matter shall be tried by the local court competent for the registered address of the collective entity and in the case of a foreign organisational entity for the registered address of its agency in the Republic of Poland.

2. Appeals from rulings and judgements, and from orders that prevent the issuance of the ruling shall be tried by the competent district court under the regulations of the Code of Penal Procedure; appeals from other decisions, orders or acts shall be considered by the local court of a different though equivalent composition.

Art. 25. The court of appeal, on request of the local court, may refer any matter to be tried by the district court in the first instance in recognition of its particular gravity or complexity. The provision of Art. 24.2 shall apply to the court of appeal or district court, respectively.

Art. 26. In order to safeguard the proper course of the proceedings even before they are initiated, a motion can be filed with the competent court requesting the decision to secure the potential penalty or forfeiture on the assets of the collective entity.

Art. 27. 1. The proceedings are instituted on the motion of the prosecutor or petition of the injured party, though subject to the provisions of paragraph 2 below.

2. In cases where the cause of the liability of the collective entity is a prohibited act the law considers an act of unfair competition, the proceedings can also be initiated on the motion from the President of the Competition and Consumer Protection Office.

Art. 28. The motion filed by the injured party shall be produced and signed by the person qualified to advocate the cause under the regulations on the Bar system or the person qualified to render legal assistance under the regulations on legal advisors.

Art. 29. The motion shall state:

1) the identity of the mover, and its address for service of process;
2) the identity of the collective entity and its address for the service of process;
3) the precise definition of the prohibited act that gives rise to the liability of the collective entity including the circumstances provided for in Arts. 3 and 5;
4) the indication of the valid ruling or another decision referred to in Art. 4, with the identity of the court or body that issued the ruling or decision;
5) the indication of the court competent to try the case;
6) the grounds;
7) the list of evidence the mover requests to be heard at the main trial.

Art. 30. The motion shall be appended with the decision referred to in Art. 4 together with the grounds thereof, if given in writing.

Art. 31. The motion is subject to preliminary verification by the court; the regulations of the Code of Penal Procedure on preliminary verification of the accusation apply as appropriate, except for the fact that the parties' participation in the session is not mandatory.

Art. 32. If the prosecutor and injured party file their motions in one and the same matter, the court shall try the motion from the public prosecution; the court shall decide on admitting the injured party to join the proceedings alongside the prosecution, provided however, the interest of the administration of justice does not prevent it; Art. 53 of the Code of Penal Procedure shall apply as appropriate.

Art. 33. 1. The collective entity is represented in the proceedings by a member of its body authorised to represent it.

2. The collective entity may appoint its legal defence from among the persons eligible under the regulations on the Bar system or persons authorised to render legal assistance under the regulations on legal advisors.

Art. 34. 1. Participation in the proceedings is open to: the mover, the injured party admitted to join in the proceedings alongside the prosecutor, the representative of the collective entity, and its defence counsel.

2. No unexcused failure to appear by any party shall defer the trial.

Art. 35. Evidence is admitted on request from the parties, and *ex officio*, though in justified cases; no evidence obviously aiming at extending the proceedings shall be admissible.

Art. 36. 1. The court determines the facts and legal issues lying within the scope of the motion independently and on the sole discretion basis; the judgements referred to in Art. 4, though, are binding.

2. The judgement possessing validity in law or the pending case are determined on the exclusive basis of the prohibited act the collective entity has been or is to be held liable for.

Art. 37. 1. During the main trial the court may read the minutes of the interviews of the witnesses, interrogations of the accused and alleged offenders, and notifications of crime produced in the course of the proceedings conducted based on separate regulations.

2. During the trial the court may also read reports of inspections, search, and retention of objects, opinions issued by experts, institutes, plants, or institutions, as well as any official documents submitted in the course of the proceedings conducted based on separate regulations.

3. If an act in court proceedings was taken record of in the form of a shorthand report, or an audio or video recording made using technical equipment, such recordings can also be presented at the trial.

Art. 38. 1. Any minutes and/or documents eligible for reading at the trial can be deemed disclosed in their entirety or in part without the actual need to read them; they must, however, be read on request from any of the parties.

2. No request placed by the party such minutes or document do not concern shall prevent considering the minutes or document disclosed even without their reading.

Art. 39. Both the mover and the collective entity enjoy the right to appeal from the judgement given by the court of the first instance.

Art. 40. The last resort appeal can be filed only by the Attorney General or Commissioner for Civil Rights Protection.

Art. 41. 1. In matters concerning the liability of collective entities for acts prohibited under penalty the court and prosecution render legal assistance on request from the relevant agency of the foreign country.

2. In cases where the prohibited action is an action classified by the law as an act of unfair competition, assistance is also rendered by the President of the Competition and Consumer Protection Office.

Art. 42. The execution of the adjudicated fine, forfeiture, bans, and/or public pronouncement of the ruling shall be governed by the relevant regulations of the Penal Code relating to the carrying out of fines, forfeitures, bans, and public ruling pronouncements, provided that the fine shall be paid out of the proceeds of the collective entity.

Art. 43. The judgement establishing the liability of the collective entity for an act prohibited under penalty is cancelled under the operation of the law 10 years after the execution, or remittance, or limitation of the fine, forfeiture, bans, and public pronouncement of the ruling.

Art. 44. In the Act of 16th April 1993 on combating unfair competition (Journal of Laws No. 47, it. 211; from 1996 No. 106, it. 496; from 1997 No. 88, it. 554; from 1998 No. 106, it. 668; from 2000 No. 29, it. 356, and No. 93, it. 1027; and from 2002 No. 126, its. 1068 and 1071, and No. 129, it. 1102) Chapter 3a "Entrepreneurs' liability for bribing public officials" is hereby deleted.

Art. 45. In the Act of 10th June 1994 on public procurement (Journal of Laws from 2002 No. 72, it. 664, and No. 113, it. 984), Art. 19.1.6 is hereby given the following reading:

"6) the collective entities the court has penalised with the ban on applying for public procurement contracts based on the Act of 28th October 2002 on liability of collective entities for acts prohibited under penalty (Journal of Laws No. 197, it. 1661),".

Art. 46. In the Act of 24th May 2000 on the National Penal Register (Journal of Laws No. 50, it. 580; from 2001 No. 56, it. 579; and from 2002 No. 74, it. 676) the following amendments are hereby introduced:

1) Art. 1 is supplemented with paragraph 3 to read as follows:
   "3. The Register also holds records of the collective entities validly sentenced to fine, forfeiture, ban, or public pronouncement of the ruling based on the Act of 28th October 2002 on liability of collective entities for acts prohibited under penalty (Journal of Laws No. 197, it. 1661),";
2) Art. 4.1.1, 4.1.2, and 4.1.3 are supplemented with the phrase: "and data of collective entities" after each phrase: "personal data";
3) Art. 5 is supplemented with the phrase "and data of collective entities" after the phrase: "personal data";
4) The heretofore text of Art. 6 becomes paragraph 1, and a new paragraph 2 is added to read as follows:
   "2. The provisions of paragraphs 1.1, 1.4-9, and 1.11 apply respectively to obtaining the information on the collective entities recorded in the Register.";
5) The heretofore text of Art. 7 becomes paragraph 1, and a new paragraph 2 is added to read as follows:
   "2. Every collective entity enjoys the right to enquire and obtain information on whether it has a record in the Register. The entity whose record is kept in the Register database can, on its request, be disclosed the information on the content of all records concerning the entity.";
6) Art. 10.1 is supplemented with the phrase: "and data of the collective entities referred to in Art. 1.3," after the phrase: "referred to in Art. 1.2,";
7) Art. 11:
   a) paragraph 1:
      – the phrase: "or data of collective entities" is inserted following the phrase: "personal data",
      – the full stop in point 2 is replaced with a comma, and a new point 3 is added to read:
        "3) notification concerning a collective entity.",

b) paragraph 2 is supplemented with the phrase: ", or with respect to the collective entity referred to in Art. 1.3" following the phrase: "Art. 1.2.1-7";

c) a new paragraph 4 is added to read:

"4. The notification concerning the collective entity is produced by the body executing the rulings in penal proceedings dealing with cases of offences and fiscal offences.";

8) Art. 12:

a) paragraph 1 is supplemented with the phrase: "relating to the person" after the word: "registration",

b) a new paragraph 1a is inserted following paragraph 1, to read as follows:

"1a. The Register record of the collective entity shall contain the following data of the collective entity:

1) the identity of the collective entity and its registered address,
2) the identity of the court, which gave the ruling, and the case file number,
3) the dates the ruling was issued and became finally valid,
4) the imposed fine, forfeiture, ban, and public pronouncement of the ruling,
5) the legal qualification of the prohibited act perpetrated by the natural person, which gave rise to the liability of the collective entity,
6) the first and last names, position, and signature of the person producing the record.",

c) a new paragraph 2a is added following paragraph 2, to read as follows:

"2a. The notification concerning the collective entity shall contain the data listed in paragraph 1a.1, 2, and 6, and the information on:

1) execution of the fine, forfeiture, bans, and publication of the ruling referred to in Arts. 7, 8, and 9 of the Act of 28th October 2002 on liability of collective entities for acts prohibited under penalty,
2) cancellation of the ruling establishing the liability of the collective entity for the act prohibited under penalty,
3) liquidation of the collective entity with a record in the Register.";

9) The full stop in Art. 13.3 is replaced with a comma, and point 4 is added to read as follows:

"4) Register record cards and notifications containing information on the collective entities held liable under the regulations of the Act of 28th October 2002 on liability of collective entities for acts prohibited under penalty.";

10) Art. 14.1 is supplemented with the phrase: "and the data of the collective entities referred to in Art. 1.3," after the words: "Art. 1.2.1-4, and 7,";

11) Art. 17 is given the following reading:

"Art. 17. The Minister of Justice shall, in an ordinance, define the terms, including technical and organisational conditions, and the manner of recording personal data and data of collective entities in the Register, and of deleting such data from the Register, considering the need to ensure efficient operation of the Register and securing the personal data and the data of collective entities stored there from unauthorised access, unauthorised use, damage, or destruction.";

12) Art. 18.1 is supplemented with the phrase: "or data of the collective entities" following the words: "personal data";

13) Art. 19:

a) paragraph 1 is supplemented with the words: "paragraph 1" after the phrases: "Art. 6" and "Art. 7",

b) a new paragraph 1a is inserted after paragraph 1, to read as follows:

"1a. Information on the collective entity based on the data of the entity stored in the Register record is given in reply to the enquiries from the entities listed in Arts. 6.1.1, 6.1.4-9, and 6.1.11, or on request from the entity referred to in Art. 7.2.",

c) a new paragraph 2a is inserted after paragraph 2, to read as follows:

"2a. The enquiry about the collective entity should contain:
1) the identity of the collective entity and its registered address,
2) the type and scope of the collective entity data to be given in the information,
3) the indication of the proceedings that give rise to the need to obtain the data on the collective entity,
4) the name of the entity filing the enquiry,
5) the issuance date,
6) the signature of the judge, prosecutor, or authorised person, or body of the entity filing the enquiry.",

d) paragraph 3 is given the following reading:

"3. The enquiry from the person referred to in Art.7.1 for information from the Register should state: the last name, including any adopted name, the first and middle names, maiden name, date and place of birth, parents' names, mother's maiden name, residence, nationality, and PESEL number and signature of the enquirer. The enquiry from a collective entity referred to in Art. 7.2 should contain the identity of the entity and its address. If the enquiry form does not specify the type or scope of the data to be included in the information, the reply should contain a copy of all the records concerning the enquirer stored on the record cards and notifications.";

14) The heretofore text of Art. 20 becomes paragraph 1, and a new paragraph 2 is added to read as follows:

"2. The information on the collective entity produced based on the records in the Register shall contain:
1) the identity of the collective entity and its registered address,
2) the data concerning the collective entity within the scope indicated in the enquiry or application, or the statement informing the collective entity has no record in the Register,
3) the issuance date,
4) the first and last names of the person authorised to issue the information,
5) the official seal.";

15) Art. 21 shall read as follows:

"Art. 21. The Minister of Justice shall, in an ordinance, define the terms, method, and manner of issuing information on the persons and on collective entities based on the data stored in the Register considering the need of providing such information, in specific cases, also by means of equipment designed for automatic data transmission, and shall also determine the sample form of the enquiry about a person, as referred to in Art. 19.2, the sample form of the enquiry about a collective entity, as referred to in Art. 19.2a, the sample form of the information on the person referred to in Art. 20.1, and the sample form of the information on the collective entity referred to in Art. 20.2.";

16) Art. 23 shall read as follows:

"Art. 23. The information on the person referred to in Art. 20.1, and the information on the collective entity referred to in Art. 20.2 constitute a certificate as understood in the regulations of Section VII of the Code of Administrative Procedure.";

17) Art. 24 shall read as follows:

"Art. 24. 1. The issuance of a Register information on a person is charged a fee included in the state budget income. Fee exemption is granted to the entities listed in Art. 6.1.1-9 and 6.1.11.

2. The issuance of a Register information on a collective entity is charged a fee included in the state budget income. Fee exemption is granted to the entities listed in Art. 6.1.1, 6.1.4-9, and 6.1.11.

3. The Minister of Justice shall, in an ordinance, determine the amount of the fees referred to in paragraphs 1 and 2 considering the actual cost of issuing such information.";

18) Art. 25 is supplemented with the phrase: "or information on the collective entity" after the words: "information on the person".

Art. 47. Until implementation regulations are issued based on the authority amended herein, the heretofore regulations shall remain in force, provided however, they are not in contradiction with this Act.

executory provisions

Art. 48. This Act shall come into effect 12 months following its publication date.