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## **CONFERENCE OF THE PARTIES**

**Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198)**

## **FOLLOW UP COUNTRY REPORT: POLAND<sup>1</sup>**

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<sup>1</sup> Adopted at the Conference of the Parties to CETS 198 at their 7<sup>th</sup> meeting, Strasbourg, 5-6 November 2015

## Specific questions

### A. Measures to be taken at national level

#### I. General provisions

##### Article 3 – Confiscation measures

###### Recommendations:

1. Consider extending the scope of mandatory confiscation to the instrumentalities used in or intended for use in the commission of a money laundering offence.
2. Consider extending the scope of the confiscation regime to the instrumentalities which have been transferred to or belong to third parties.
3. Improve the quality and scope of statistics (so as to assess the actual effectiveness of confiscation measures in ML, TF and all predicate offences) and to ensure that the provisions on confiscation and provisional measures are properly and effectively applied.
4. Review the practice on assumptions which can be applied in assessing forfeiture orders after conviction, as set out in paragraph 52 above, with a view to considering whether they can be extended to a time before the commission of the offence in particularly serious cases, and to reconsider the reservation to Article 3(4) of the Convention in that light.

###### Measures adopted and implemented:

*Please, provide a brief update on the legislation adopted to meet each of the recommendations above in relation to confiscation measures. Please provide statistics and any information which demonstrate effective implementation.*

###### Consider extending the scope of mandatory confiscation to the instrumentalities used in or intended for use in the commission of a money laundering offence.

Poland has thoroughly analyzed the feasibility of introduction of such institution into Polish law. However, the change of the mode of confiscation, from optional to mandatory, would be questionable. It seems to be inconsistent with proportionality principle and a potential obstacle to fitting severity of the penalty to the level of guilt and the social consequences of the act. Therefore Poland has not decided to follow the idea of mandatory confiscation of the instrumentalities. Bearing in mind “consider” nature of this recommendation, Polish delegation expresses the opinion that it has been fully implemented.

###### Consider extending the scope of the confiscation regime to the instrumentalities which have been transferred to or belong to third parties.

Poland has thoroughly analyzed the feasibility of introduction of such institution into Polish law. Currently, Polish system provides the confiscation as regards instrumentalities owned by 3rd parties where these instrumentalities themselves are illicit or their possession or use in given

situation constitutes a breach of law. It may concern illicit drugs, counterfeit money or documents, illegally possessed firearms etc. In any of these situations the possibility of forfeiture from a 3rd party must be specifically envisaged by particular provisions of law. Unlike the examples mentioned above, the constituting elements of money laundering in Poland are determined broadly and the legal definition of this offence is open, it being understood that it covers all possible actions that can result in money laundering, even if not expressly provided in the ML legal definition. Bearing in mind the flexible nature and broad scope of money laundering offences, there is a wide range of various objects that may be deemed its instrumentalities in such cases, for instance computers, vehicles, premises or companies. Moreover, these can be owned by different persons, formally not found guilty for any offence, and used in different stages of criminal activity. As a result, the field for possible intervention of the State's into the third person's ownership and related rights would be undetermined and not defined precisely by law, despite the standard of the principle *nullum crimen, nulla poena sine lege*. Such vague solution could not meet a constitutionality test on the basis of principle of proportionality, as enshrined in Article 31(3) of Constitution of Republic of Poland. In conclusion, Poland has decided to refrain from the extension of the confiscation to the instrumentalities which have been transferred to or belong to third parties. Bearing in mind "consider" nature of this recommendation, Polish delegation expresses the opinion, that it has been fully implemented.

Improve the quality and scope of statistics (so as to assess the actual effectiveness of confiscation measures in ML, TF and all predicate offences) and to ensure that the provisions on confiscation and provisional measures are properly and effectively applied, This recommendation has not been implemented yet

The new model of statistics in this field is still under construction, also in the framework of implementation of Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, which provides for some additional requirements concerning confiscation statistics.

Review the practice on assumptions which can be applied in assessing forfeiture orders after conviction, as set out in paragraph 52 above, with a view to considering whether they can be extended to a time before the commission of the offence in particularly serious cases, and to reconsider the reservation to Article 3(4) of the Convention in that light.

In the opinion of Poland, the existing solution properly reflects the constitutional principle of proportionality, as enshrined in Article 31(3) of the Constitution. This principle is to be understood as a restriction to state interference with citizens' life. As the aim of confiscation is combatting a crime, it seems logical to have it limited to the period when the crime was committed. It should be also underlined, that the assumption provided for in Article 45 § 2 of the Penal Code (PC) is mandatory in the sense that no "criminal life –style" is required to be shown for its application. The court does not need to consider whether it is substantially more probable, that the perpetrator's property has been obtained from criminal conduct rather than from other activities. In Polish model the extended confiscation simply has to be applicable ever when proceeds of given offence exceeds 200.000 PLN (circa 50.000 euro). According to ECHR ruling of 5 July 2001, Philips vs. United Kingdom, when the nature of extended confiscation is mandatory, the system shall be complemented by relevant safeguards (see point 43). In the opinion of Poland opinion, time limitation of extended forfeiture should be considered one of such safeguards.

Determination of a requirement of a certain period of time during which the property could be regarded to have originated from criminal conduct is foreseen in numerous jurisdictions. Such a limitation normally refers to several years before conviction, which is actually similar to Polish model. It has been also reflected in the EU law, namely Directive 2014/42/EU of 3 April 2014 on

the freezing and confiscation of instrumentalities and proceeds of crime in the EU (see preamble, recital 21).

As the Polish mode of extended confiscation is a construct which is similar but not identical to that provided in Article 3(4) of Warsaw Convention, Poland intends to uphold the reservation to this Article.

## **Article 6 – Management of frozen or seized property**

### Recommendation:

1. Introduce a clear procedure for managing seized assets and in this respect to comply with requirements of Article 6 of CETS No. 198.
2. Develop and maintain statistics or general figures regarding the “chain” of identified proceeds of crime, instrumentalities and other categories of assets which may be confiscated, starting from identification during criminal investigation phase, seizures, confiscation ordered by courts and last the effective valorisation of confiscated assets.

### Measures adopted and implemented:

*Please provide a brief update on the measures taken to ensure proper management of frozen or seized property, according to article 6 of CETS No. 198. Please provide any relevant legal provisions, information and statistics which demonstrate effective implementation.*

Art. 10a of the AML/TF Law requires from obligated institutions to have established internal procedures, which have to include special rules of suspensions of transactions, blockades of a physical person, who is responsible for the obligation can be liable up to 3 years of the deprivation of liberty.

In criminal proceeding, public prosecutor or court can apply security on property. According to the art. 292 Code of Criminal Procedure Security shall be obtained as provided for in the Code of Civil Procedure(“CCP”). Art. 855 of the CCP– property can be entrusted by executor another person, also a special custodian. The person is obliged, with due diligence, to ensure that property will preserve the same value.

As regards improvement of the scope and quality of the statistics on confiscation measures the current Deputy Prosecutor General's Order of 10 June 2010 (ref. PR IV 505/3/10) provides that Department for Organized Crime and Corruption in the General Prosecutor's Office collects and elaborates comprehensive data on ongoing and completed investigations into money laundering and financing of terrorism, which includes also the information on confiscation measures and type and number of disclosed predicate offences. The data is presented in the Annual Reports of the General Prosecutor.

Statistics showing the effectiveness of confiscation measures with regard to ML/TF and underlying predicate offences for the last 3 years. accounts and assets' freezing. Each institution is obliged to set up the procedure, otherwise

## 2014

	Property frozen		Property seized		Property confiscated	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
ML – Conviction-based	81	84 470 385 EUR	n/a	n/a	12	1 793 697 EUR
ML-non-conviction-based	n/a	n/a	n/a	n/a	n/a	n/a
Underlying predicate offences where applicable	obtaining tax reimbursement under false premises; tax fraud; tax evasion; participation in or leading a criminal group; phishing; intellectual forgery; active and passive bribery; labeling goods with forged trade marks				Fraud, making out unreliable invoices or receipts obtaining tax reimbursement under false premises, tax fraud, tax evasion,	
ML Total	81	84 470 385 EUR	-	-	12	1 793 697 EUR
FT	0	0	0	0	0	0

## 2013

	Property frozen		Property seized		Property confiscated	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
ML – Conviction-based	52	79 622 118 EUR	n/a	n/a	16	1 071 230 EUR
ML-non-conviction-based	n/a	n/a	n/a	n/a	n/a	n/a
ML Total	52	79 622 118 EUR	n/a	n/a	16	1 071 230 EUR

Underlying predicate offences where applicable	Fraud, making out unreliable invoices or receipts; obtaining tax reimbursement under false premises; tax fraud; tax evasion; placing a medical product on the market without authorization; phishing; intellectual forgery; bribery				Fraud; making out unreliable invoices or receipts; obtaining tax reimbursement under false premises; tax fraud; tax evasion; placing a medical product on the market without authorisation; intellectual forgery; bribery	
FT	0	0	0	0	0	0

## 2012

	Property frozen		Property seized		Property confiscated	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
ML Conviction-based	46	56 334 068 EUR	n/a	n/a	17	11 074 895 EUR
ML-non-conviction-based	n/a	n/a	n/a	n/a	n/a	n/a
ML Total	46	56 334 068 EUR	n/a	n/a	17	11 074 895 EUR
Underlying predicate offences where applicable	Fraud, making out unreliable invoices or receipts; obtaining tax reimbursement under false pretences; tax fraud; tax evasion; placing a medical product on the market without authorization; intellectual forgery;		n/a	n/a	Fraud, making out unreliable invoices or receipts; obtaining tax reimbursement under false pretences; tax fraud; tax evasion; placing a medical product on the market without authorization; intellectual forgery;	
FT	0	0	0	0	0	0
		n/a	n/a			

## Article 7 – Investigative powers and techniques

### Recommendation:

1. Take the necessary measure to implement article 7 of the Convention CETS N°198, in particular to ensure that: a) prosecutorial or law enforcement bodies have adequate and timely access to information (especially non-bank financial information not related to a direct suspect) for the purposes of tracing, identifying, confiscating and securing criminal assets; b) monitoring of accounts is introduced as a special investigative technique; c) adequate provisions prevent financial institutions from informing their customers and third persons of any investigative step or enquiry.

### Measures adopted and implemented:

*Please provide a brief update on the relevant legislative and other measures adopted in relation to investigative powers and techniques. Please provide relevant legal provisions, information and statistics which demonstrate effective implementation.*

Some possibilities to have access to non bank financial information are covered by Act on Police: art. 20 p. 3.:*“Where necessary for effective prevention of crimes specified in Article 19 (1)( also money laundering), detection thereof, or establishment of perpetrators and collection of evidence, the Police may use information included in insurance contracts, in particular data which are processed by insurance companies and which concern the entities or individuals that signed insurance contracts, as well as privileged information processed by banks.”*

*FIU have access to all financial information on the basis art. 13a AML/TF Law: “Article 13a.*

*1. At the written request of the General Inspector, any obligated institution shall immediately disclose any information about the transactions covered by the provisions of the Act. Such a disclosure consists in particular the provision of information about the parties of transaction, the content of documents, including the balances and turnovers on the account, provision of certified copies of theirs, or a disclosure of relevant documents for insight of the authorized employees of the unit referred to in Article 3 paragraph 4 in order to produce notes or copies.*

*2. The information referred to in paragraph 1, shall be forwarded to the General Inspector free of charge.*

*3.(79) The General Inspector may request to be provided with the information referred to in paragraph 1 in an electronic manner.”*

*The recommendation will be taken into account during the legislative procedure.*

## Article 9 – Laundering offences

### Recommendations:

1. Clearly cover all elements provided in Article 9 paragraph of the CETS N° 198, mainly:
  - Conversion or transfer of property for the purposes of concealing or disguising the proceeds' illicit origin, or,
  - Converting or transferring such property for the purpose of assisting any person who is involved in the commission of a criminal offence,
  - Concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds and, subject to its constitutional principles and the basic concepts of its legal system,
  - The acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds.
2. Consider introducing in Article 299 of the Penal Code an incrimination of some of the acts referred to in paragraph 3 of Article 9 of the CETS N° 198, in either or both of the following cases where the offender:
  - Suspected that the property was proceeds (with appropriately lower penalties),
  - ought to have assumed that the property was proceeds.
3. Consider issuing clear prosecutorial guidance on the level and types of evidence which are likely to be sufficient for the prosecutor to adduce in an autonomous ML prosecution in respect of the underlying predicate criminality.
4. Maintain comprehensive statistics including the predicate offences as an important tool for assessing the effectiveness of Polish AML legal system.

### Measures adopted and implemented:

*Please provide a brief update on the relevant legislative and other measures adopted in relation to money laundering offence. Please provide relevant legal provisions and examples, cases or statistics which demonstrate effective implementation.*

Clearly cover all elements provided in Article 9 paragraph 1 of the CETS N° 198, mainly:

- Conversion or transfer of property for the purposes of concealing or disguising the proceeds' illicit origin, or,
- Converting or transferring such property for the purpose of assisting any person who is involved in the commission of a criminal offence,
- Concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds and, subject to its constitutional principles and the basic concepts of its legal system,
- The acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds.



In Poland money laundering is criminalised by Article 299 PC, based on an “all-crimes” approach. The CoP has noticed that the scope of ML in Polish law does not comply with the Convention. Namely, the conversion, transfer, concealment, disguise, acquisition, possession and use, allegedly are not fully covered by legislation.

In order to comply with this recommendation, Poland has prepared a draft law amending inter alia Article 299 PC. It is expected to be adopted by the Parliament by the end of October 2015 (Parliament’s printed matter number 3659). If the amendment in question is adopted, Article 299 § 1 PC will read as follows: “Whoever accepts, possess, uses, transfers or takes abroad, conceals, transfer or convert, helps to transfer the ownership or possessions of the means of payment, securities, foreign currency, property rights or other movable or immovable property derived from the benefits relating to the commission of a prohibited act or undertakes other actions that may obstruct or considerably hinder the assertion of criminal origin or place of depositing or detection or seizure or adjudication of the forfeiture, ...etc. ...”. In Polish legalese a word “accept” encompasses also a notion “acquire” and “disguise” is fully covered by “concealment”.

Converting or transferring such property for the purpose of assisting other person is fully covered by existing Article 299 § 2 PC, which reads as follows: “Whoever, as an employee of a bank, financial or credit institution, or any other entity legally obliged to register transactions and the people performing them, unlawfully receives a cash amount of money or foreign currency, or who transfers or converts it, or receives it under other circumstances raising a justified suspicion as to its origin from the offences specified in § 1, or who provides services aimed at concealing its criminal origin or in securing it against forfeiture, is liable to the penalty specified in § 1.” This behavior can be also criminalized as aiding and abetting a commission of ML offence, provided for in Article 299 § 1 PC. According to Polish law, aiding and abetting anybody in committing an offence is always a separate offence. Article 18 § 3 PC reads as follows: “Whoever, intending another person to commit a prohibited act, serves to facilitate the commission of the act, particularly by providing tools, means of transport, or providing advice or information, will be liable for aiding and abetting. In addition, whoever, acting against a particular legal duty to prevent a prohibited act, facilitates its commission by another person through his or her omission, is also liable for aiding and abetting.”

Additionally, the draft law mentioned above will introduce criminalisation of association and conspiracy with respect to ML offence. An association with or conspiracy to commit a prohibited act is covered in Poland by the concept of preparation of such act. According to Article 16 § 1 PC preparation occurs when the perpetrator, in order to commit a prohibited act, undertakes activities aimed at creating the conditions for effecting an act leading directly to commission of the prohibited act, in particular when, for this purpose, he enters into an arrangement with another person, acquires or makes ready the means, gathers information or sets out a plan of action. Consequently, the amended law will actually go beyond the recommendation as it will introduce penalisation of other feasible forms of preparation, not only association and conspiracy.

Polish delegation underlines that Polish ML definition is of open nature, due to use of formulation “[whoever] undertakes other actions” in Article 299 § 1 PC. Therefore it covers all verbs used by Convention in the specific provision, as well as others, not used in it. Such open construction does not require a mirror image of the Convention’s language, as its scope is actually broader and more flexible than the latter.

Consider introducing in Article 299 of the Penal Code, an incrimination of some of the acts referred to in paragraph 3 of Article 9 of the CETS N° 198, in either or both of the following cases where the offender:

- suspected that the property was proceeds (with appropriately lower penalties).
- ought to have assumed that the property was proceed.

This question was a subject of analysis and studies, conducted by the Ministry of Justice. It was concluded that prevailing majority of possible behaviors, that could be considered unintentional money laundering, is presently covered by Article 299 § 2 PC (see: “[whoever] receives it under other circumstances raising a justified suspicion as to its origin from the offences specified in § 1...”). Therefore Poland has not decided to follow the idea of incrimination of unintentional ML in the mode recommended, as it would not contribute much to achieving the purposes of the Convention. Bearing in mind its “consider” nature, the Polish delegation expresses the opinion, that the recommendation has been fully implemented.

Maintain comprehensive statistics including the predicate offences as an important tool for assessing the effectiveness of Polish AML legal system

This recommendation has not been implemented yet. The new model of statistics in this field is still under construction, also in the framework of implementation of Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, which provides for some additional requirements concerning confiscation statistics.

In order to implement the recommendations, the Deputy Prosecutor General issued the binding guidelines to be applied in all ML investigations carried out in Poland. The guidelines were disseminated to prosecutors by the letter of 25 June 2014. Regarding the issue of level and types of evidence which are likely to be sufficient for the prosecutor to adduce in an autonomous ML prosecution in respect of the underlying predicate criminality it was stated in the guidelines of the Deputy Prosecutor General that: "attention of prosecutors should be drawn to evaluation of the evidence in the investigations in which charges of money laundering brought to suspects are autonomous, i.e. they are not accompanied by charges of predicate offences. The evidence must then illustrate the illegal origin of funds obtained through committing of predicate offences which have not been confirmed by judgment or any other ruling. Evidentiary standard as to the fact that the predicate offence has been committed, was explained in the Supreme Court decision of 4 October 2011 (Ref. III KK 28/11). The decision reads that it is not required to establish by the court that an act which is the source of the assets having the nature of "dirty money", meets all the criteria of a crime, but only those of an objective nature. In the investigation concerning autonomous ML it is no longer necessary to determine the specific perpetrator of the underlying predicate offence, his/her guilt and other additional conditions determining criminal liability. (...) It is not necessary that the offence, which is the source of the illegal assets was confirmed by ruling of any other body, in particular by the final judgment of the court. Also the statute of limitation for predicate offence does not matter in this case. When it comes to investigations into autonomous money laundering, the collected evidence (...) should lead to an explicit identification of these objective elements of the underlying predicate offence, which allow for its legal classification. Such a standard of evidence collection should be regarded as having the nature of the minimum, but sufficient for prosecution for money laundering, without bringing simultaneous charges of underlying predicate offences or waiting for a court judgment declaring the committing thereof."

## Article 10 – Corporate liability

### Recommendations:

Conduct a review as to what are the potential obstacles to the use of corporate liability mechanisms in respect of legal entities by judicial authorities in money laundering and terrorist financing cases, (including the possible elimination of the pre-condition of establishing the liability of a natural person before holding a legal person liable) and to take appropriate steps to remove them.

### Measures adopted and implemented:

*Please provide a brief update on the relevant legislative and other measures adopted for the corporate liability of legal persons. Please provide relevant legal provisions and statistics or other relevant information which demonstrate effective implementation together with examples of criminal, administrative or civil sanctions imposed.*

The Ministry of Justice in cooperation with the Criminal Law Codification Commission, who is an advisory body of the Minister of Justice, has taken up analysis in the area of corporate liability in Poland, to the end of eliminating its shortcomings. Due to systemic nature of conducted studies, they continue to be in progress.

## Article 11 – Previous decisions

### Recommendation:

1. Introduce within the national legal framework the principle of international recidivism and to ensure that the courts and prosecution services are in a position to take into account final decisions rendered in another Party in relation to offences established in accordance with CETS N° 198.

### Measures adopted and implemented:

*Please, provide a brief update on the relevant legislative and other measures adopted.*

Poland exercises an international recidivism principle in relation to EU member states, accordingly with the Council Framework Decision 2008/675/JHA of 24 July 2008, on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings. Thus, Article 114a PC, states that as a general rule, in criminal proceedings, a final judgment rendered by the court having jurisdiction in criminal matters in another Member State of the European Union, according to which a person has been found guilty for a criminal offense on a different action than that which is the subject of criminal proceedings, needs to be taken into account.

As regards non-EU countries, equally firm obligation would not be justified, because of the different level of mutual trust and diversity of legal traditions, within the Council of Europe Member States.

It does not, however, mean that international recidivism cannot be applied at all in relations to non-EU countries. According to Article 53 § 2 PC, when imposing a penalty the court shall, inter alia, take into account of “the characteristics and personal conditions of perpetrator, the way of life of the perpetrator prior to the commission of the offence”. It means that prior offence, especially similar one, committed by the perpetrator abroad, must be reflected in ongoing criminal proceedings as an aggravating circumstance. This solution was noticed by the evaluation team, but underestimated in the assessment report. This provision constitute a basis for taking into account former final decision rendered in another Party as an aggravating fact, determining penalty in relation to offences established in accordance with the Convention. This general rule is also applied with respect to the conventional offences. In the opinion of Poland this model is fully consistent with the Convention.

## II. Financial Intelligence Unit (FIU)

### Article 14 – Postponement of domestic suspicious transactions

#### Recommendation:

1. Keep extensive statistics regarding the orders for suspension and also, in order to have a complete overview, how many were prolonged by the prosecutor and also how many reports on suspension of transactions sent to the prosecutor resulted in indictments.

#### Measures adopted and implemented:

*Please, provide a brief update on the relevant legislative and other measures adopted.*

In order to extend statistics regarding the orders for suspension and to have more complete overview, Polish FIU started to collect data on the number of suspension of transactions/blocking account requests sent to the prosecutor for which prosecution/indictments were started (what is equivalent to prolongation of suspension/blocking by the prosecutor). This additional data are available starting form 2014 (see table below).

Year	Number of postponement orders issued by FIU to suspend transactions/block account	Number of cases where a prosecution /indictment was initiated
2012	144	N/A
2013	347	N/A
2014	288	285

## **B. International co-operation**

### **I. Investigative assistance**

**Article 17 – Requests for information on bank accounts; Article 18 – Requests for information on banking transactions; Article 19 – Requests for the monitoring of banking transactions**

Recommendation:

1. Take legislative measures to determine the ability to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request.

Measures adopted and implemented:

*Please, provide a brief update on the legislation, regulations or other measures adopted to meet the recommendations in relation to requests for information on bank accounts, for the information on banking transactions and for the monitoring of banking transactions. Please provide relevant legislative provisions or describe the process/procedure together with statistics which demonstrates effective implementation.*

The recommendation will be taken into account during the legislative procedure.

### **II. Confiscation**

**Article 23 – Obligation to confiscate; Article 25 – Confiscated property**

Recommendations:

1. Establish a mechanism for execution of measures equivalent to confiscation of property, which are not criminal sanctions, in relation to a criminal offence as part of international cooperation.
2. Consider concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, confiscated property, in accordance with its domestic law or administrative procedures.

Measures adopted and implemented:

*Please, provide a brief update on the legislation or other measures adopted: (a) for the co-operation or assistance on the execution of measures equivalent to confiscation; (b) to meet the recommendations in relation to confiscated property. Please provide relevant legislative provisions or statistics which demonstrates effective implementation.*

The recommendation will be taken into account during the legislative procedure.

### III. Refusal and postponement of co-operation

#### Article 28 – Grounds for refusal

Comment: This provision appears to be implemented effectively.

### IV. Procedural and other general rules

#### Article 34 – Direct communication

##### Recommendation:

1. The Polish authorities should ensure that they are in position to provide comprehensive statistical information on the practice of international information and direct communication between judicial authorities of the parties.

##### Measures adopted and implemented:

*Please provide a brief update on the legislation or other measures adopted to meet the recommendations in relation to direct communication between authorities. Please provide relevant legislative provisions or statistics which demonstrates effective implementation.*

As regards exchange of information and direct communication between judicial authorities both of them can be carried out by means of the mutual legal assistance.

In 2014, the Polish judicial authorities received 6 550 MLA requests. 4234 of them were delivered directly to competent courts and prosecutors and the other 2 316 through the central authority. Polish prosecutors received MLA requests from Germany (2 865), Austria (1039), Switzerland (616), Czech Republic (485), Slovakia (250), Belarus (191), France (95), Hungary (93), the UK ( 93), Lithuania (90) and the Netherlands (88).

The average time of execution of the MLA request was one and a half month.

In 2014 , the units of the Polish prosecution service sent 6 212 MLA requests, out of which 5 416 were sent directly to their foreign counterparts and 796 via foreign central authority. The MLA requests were dispatched to Germany (2 205), the UK (564), Ukraine (361), the Netherlands (257), Czech Republic (241), France (221), Italy (201), Spain (182),the USA (159), Belgium (143) and Slovakia (141).

The average time of execution of the Polish MLA requests was 5 months.

In 2013, the Polish judicial authorities received 4520 MLA requests. 2990 of them were delivered directly to competent courts and prosecutors and the other 1530 through the central authority. Polish prosecutors received MLA requests from Germany (1 653), Austria (479), Czech Republic (435), Switzerland (426), Slovakia (220), Belarus (124), Lithuania (154), the Netherlands (128) Hungary (102), the UK (97), and), Romania (86) Belgium (75) and France (69).

The average time of execution of the MLA request was two months.

In 2013, the units of the Polish prosecution service sent 5 945 MLA requests, out of which 5 167 were sent directly to their foreign counterparts and 778 via foreign central authority. The MLA requests were dispatched to Germany (1 920), the UK (617), Ukraine (379), the Netherlands (253), Czech Republic (241), Italy (223), France (208), Spain (202), the USA (156), Belgium (145), Slovakia (129), Lithuania (121) and Austria (106).

The average time of execution of the Polish MLA requests was 5 months.

In 2012, the Polish judicial authorities received 3533 MLA requests. 2 410 of them were delivered directly to competent courts and prosecutors and the other 1 123 through the central authority. Polish prosecutors received MLA requests from Germany (1 353), Switzerland (428), Czech Republic (377), Slovakia (174), Lithuania (136), 479), Belarus (124), the Netherlands (108), Hungary (97), Austria ((86), the UK (68), and), Romania (65) Belgium (58) and Ukraine (56).

The average time of execution of the MLA request was two months.

In 2012, the units of the Polish prosecution service sent 5 532 MLA requests, out of which 4747 were sent directly to their foreign counterparts and 785 via foreign central authority. The MLA requests were dispatched to Germany (1 895), the UK (526) Ukraine (357), Czech Republic (251), the Netherlands (214), Belgium (182), France (169), Italy (160), the USA (148), Lithuania (139), Spain (137) and Slovakia (119).

The average time of execution of the Polish MLA requests was 5 months

## V. Co-operation between Financial Intelligence Units

### Article 46 – Co-operation between FIUs

#### Recommendations:

1. Take the necessary steps so as to ensure that the requirements of paragraphs 6, 7, 8, 9 and 12 are fully reflected in the domestic law so they are clearly applicable to the FIU.
2. Maintain appropriate statistics so as to be able to evaluate the effectiveness of the system.

#### Measures adopted and implemented:

*Please provide a brief update on the legislation or other measures adopted to meet the recommendations of co-operation between FIUs. Please provide examples or statistical data which demonstrates effective implementation.*

On the basis of art. 87 p. 1 of the Constitution of the Republic of Poland:  
Article 87 - *The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations.*

That is why provisions art. 46 p. 6-9 and 12 of the Convention are self-executing on the territory of Poland and there is no need to implement its rules into the domestic legal system.

Art. 33 p. 5 AML/TF Law defines that: . *“Information relating to the introduction of asset values originating from money laundering and terrorist financing to the financial system may be disclosed by the General Inspector for foreign institutions referred to in Article 4 paragraph 1 point 8, on a reciprocal basis, in the manner specified in bilateral agreements concluded by the General Inspector, and also by a computerized data storage carriers.”* (see enclosed draft of the applicable MOU to the questionnaire)

*Polish FIU received requests asking for information from foreign FIUs:*

*in 2012: 203 requests (924 entities involved)*

*in 2013: 242 requests (920 entities involved)*

*in 2014: 328 requests (1,8 thousands entities involved)*

*Polish FIU exchange information with other FIUs basing on bilateral cooperative agreements.*

*(An alternative in relations with the EU countries is the EU Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information.)*

*Agreements, as well as the cooperation based on them, correspond to the provisions of the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005 (CETS 198). Polish FIU refuse to divulge information only if there is no bilateral agreement with a given FIU (not appropriate for FIUs from EU countries).*

*Polish FIU refused to answer*

*in 2012: 5 requests*

*in 2014: 6 requests*

*in 2014: 17 requests.*

*In all cases, where the request for information was followed with the request for permission to disseminate information to a third party – Polish FIU granted permission to disseminate information for intelligence purposes only. Polish FIU has no detailed statistics of a number of cases where the request for permission to disseminate information to a third party followed the request, however Poland is able to estimate that it was present in more than 50% of cases.*

## **Article 47 – Co-operation for postponement of transactions on behalf of foreign FIUs**

### Recommendation:

1. Maintain extensive statistics regarding the orders for suspension, and also, in order to have a complete view, how many were prolonged by the prosecutor and also how many reports on suspension of transactions sent to the prosecutor resulted in indictments.



Measures adopted and implemented:

*Please provide a brief update on the legislation or other measures adopted to meet the recommendations of co-operation for postponement of suspicious transactions. Please provide information which demonstrates effective implementation.*

Polish FIU receives roughly several dozen of requests for suspension from foreign FIUs per year. Polish FIU has no detailed statistics for the number of such cases. In all cases transaction suspension / blocking account procedure was initiated, but in more than 90% of the cases there was no assets on accounts or the accounts were blocked by the bank on the basis of Act on banking law and the procedure was stopped at the initial level.