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## **First Evaluation Round**

## **Evaluation Report on Poland**

Adopted by GRECO  
at its 8<sup>th</sup> Plenary Meeting  
(Strasbourg, 4-8 March 2002)

## **I. INTRODUCTION**

1. The GRECO Evaluation Team (hereafter "GET") was composed of Mr Kazimir Åberg, Director of International Affairs, Economic Crimes Bureau (Sweden, policy expert); Mr Gunars Bundzis, Head Prosecutor of International Cooperation Division, Prosecutor General's Office (Latvia, prosecution expert) and Mr Didier Duval, Head of Division, Under-Directorate of Economic and Financial affairs, Central Directorate of the Criminal Police, Ministry of Interior (France, law enforcement expert). The GET was accompanied by Mrs Natalia Voutova, Administrative Officer at the Economic Crime Division, visited Warsaw from 29 May to 1<sup>st</sup> June 2001.
2. The GET met with representatives from the following organisations: the Ministry of Justice, the General Prosecutor's Office, the Ministry of the Interior, the Office for Civil service, the Public Procurement Office, the Parliament, the Supreme Chamber of Control, the Ministry of Finance, Batory Foundation (Non Governmental Organisation).
3. It is recalled that GRECO agreed, at its 2<sup>nd</sup> Plenary meeting (December 1999) that the First Evaluation Round would run from 1<sup>st</sup> January 2000 to 31 December 2001, and that, in accordance with Art. 10.3 of the Statute, the evaluation procedure would be based on the following provisions:
  - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
  - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
  - Guiding Principle 6 (hereafter "GPC 6": immunities from investigation, prosecution or adjudication of corruption);
4. Following the meetings indicated in paragraph 2 above, the GET experts submitted to the Secretariat their individual observations regarding each sector concerned and proposals for recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the Polish authorities, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation regarding the phenomenon of corruption in Poland, the general anti-corruption policy, the institutions and authorities in charge of combating it and the system of immunities preventing the prosecution of certain persons for acts of corruption. The second part contains a critical analysis of the situation described previously, assessing in particular whether the system in place in Poland is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to Poland in order for this country to improve its level of compliance with the GPCs under consideration.

## **II. GENERAL DESCRIPTION OF THE SITUATION**

### **a1. The phenomenon of corruption and its perception in Poland**

5. The Republic of Poland is a medium-size state (312'685 km<sup>2</sup>) with a population of 38'365'000 inhabitants. Poland is bordered by Germany, the Czech Republic, Slovakia, Lithuania, Belarus, Ukraine and the Russian Federation. According to the OECD, the GDP growth slowed sharply in the first half of 2001 in Poland (4.0 in 1999 and 2000, 1.5 in 2001), reflecting investment

weakness. With demand weak and unemployment high and rising, inflation declined to below 4% in 2001. Output growth is projected to remain weak through much of 2002, before picking up somewhat in 2003, allowing the unemployment rate to stabilise at around 19%.

6. According to public opinion polls conducted by specialised institutions - made available to the GET by the Polish authorities - more than half of the Polish population think that high ranking State officials obtain illicit earnings from the exercise of public functions. Three quarters of the Polish society is of the opinion that nepotism is widespread in these circles and more than two thirds think that paying bribes constitutes a common practice in relations with administrative authorities. The said polls further show that, according to a widespread opinion, corruption often flourishes within the State administration, among the highest State authorities and in the judiciary, followed by the health care services, the police, political parties, the trade and services sector and the banks (between 23% and 14%). 8% of the citizens consulted expressed the view that self-governed regional and local authorities are corrupt.
7. On 15 May 2000 the Economic Committee of Poland's Council of Ministers appointed a working group with a view to analysing which measures could be undertaken in order to improve the prevention of corruption and the efficiency of counter-measures. In July 2000 the working group produced a report named "Tasks in combating the sources of corruption". According to the Polish authorities this report constitutes one of the most important attempts by the Government to formulate a comprehensive anti-corruption strategy, including organisational and legal aspects. The report identifies three main areas of action:
  - prevention, at central and local authorities' level and at administration level, through the adoption of appropriate legislation and administrative procedures;
  - education of citizenship, through the promotion of ethical standards;
  - law-enforcement, through an increased efficiency of the different agencies and the judicial system.
8. Besides, the report singles out certain areas, which are considered to be particularly vulnerable to corruption, such as the fiscal administration, the customs authorities, the health service, the traffic police and the judiciary.
9. In order to ensure that the State administration and the self-governing bodies perform their duties properly, a special anticorruption law was enacted in 1992. This Law named "Reducing opportunities to do business for persons performing public functions", includes a prohibition for ca 60,000 persons occupying key public positions, which are crucial for proper functioning of the State administration - Ministers, Heads of local authorities and central offices, top management in regional offices, Heads of district offices... - to act, during their term of office, as members of management boards, supervisory or control boards in companies established under commercial law.
10. According to the Transparency International Corruption Perception Index 2001, Poland is ranked 44 out of 91.
11. The information provided to the GET by the Police shows that for some time the threat of corruption has been growing in different spheres of public activity. In 2000 the Police instituted 1353 preliminary proceedings in cases involving malfeasance in office (Article 228 of the Criminal

Code), bribery (Article 229 of the Criminal Code) and abuse of power (Article 231 of the Penal Code)<sup>1</sup>. This figure is 47% higher more than the one for 1992.<sup>2</sup>

12. At the same time, during the year 2000, compared to 1992, the number of offences brought to trial increased by 81%, the number of suspected persons by 38%, the number of indicted persons by 49% and the number of arrests by 217%. The entire number of disclosed bribes increased almost tenfold, compared to 1992, and in 2000 it amounted to 2'924'059 Polish zlotys.

## **a2. Criminal Legislation on Corruption**

13. Corruption is criminalized in Poland under several provisions of the Criminal Code, namely Articles 228 through 231. The Polish Criminal Code makes a clear distinction between active and passive bribery. Article 228 of the Criminal Code deals with passive bribery in relation to the performance of public functions. The Polish Criminal Code does not define the term of a "person performing public functions". This term is interpreted by case-law and doctrine in a broader manner than defined in Article 115<sup>3</sup> which refers only to public officials<sup>4</sup>; it includes also parliamentarians.
14. Moreover, the Criminal Code makes a distinction between five different forms of passive bribery: basic, minor, bribery and aggravated types such as those committed in connection with a violation of the law (paragraph 3), and aimed at obtaining a material or personal benefit (paragraph 4) and those aimed at obtaining material or personal benefit of a substantial value (paragraph 5). All types of passive bribery apply to persons performing public functions for foreign States or International Organisations (paragraph 6).
15. Active bribery is criminalized under Article 229 of the Criminal Code, which makes the distinction among four different types of active bribery: basic type (paragraph 1), of lesser significance (paragraph 2) and aggravated types: giving a material or personal benefit to a person performing public functions in order to induce him to disregard his official duties (paragraph 3) and providing material or personal benefit of substantial value (paragraph 4). Active bribery does not cover the promising, offering or giving of a non-material personal advantage to a third party. Article 229 (paragraph 5) also covers cases of bribery of foreign public officials or public officials of International Organisations.
16. Offences involving paid patronage and malfeasance in office are also covered by the Criminal Code (Articles 230 and 231). Sanctions range from 6 months to 12 years imprisonment in the case of active bribery and from 6 months to 10 years imprisonment in the case of passive bribery. As for most offences, the judge is empowered to order the forfeiture of the proceeds resulting from corruption offences.
17. Polish law does not provide for criminal liability of legal entities. However, legal entities responsible of active bribery offences can be punished by financial sanctions. (Law on fight against unfair competition, 16 April 1993, DZ.U. 93.47.211).

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<sup>1</sup> The relevant provisions appear in Appendix II.

<sup>2</sup> Data on the paid patronage offence have only been included in the Police statistics since January 1999.

<sup>3</sup> According to article 115, para. 13, public official includes a Deputy of the Sejm and a Senator (the complete list appears in Appendix I).

<sup>4</sup> A draft amendment to the Penal Code submitted to the Sejm on 20 December 2001 includes the definition of a person discharging a public function, according to which such person can be a public official as well as any other person whose rights and obligations within the scope of public activity have been specified by statute.

18. Active or passive bribery in the private sector are not criminalized by the Polish law <sup>5</sup>.
19. The period of limitation applicable under Polish law is determined by the length of imprisonment foreseen for the offence in question (Article 101 of the Criminal Code). For basic bribery offences, it is 10 years, and for paid patronage and malfeasance it is 5 years.
20. The provisions of the Polish Criminal Code are applicable under certain conditions to Polish citizens and aliens who have committed an offence abroad and who are not subject to extradition. Criminal proceedings against such persons may be initiated in Poland.
21. As regards money laundering, the Criminal Code enacted on 1<sup>st</sup> August 1998 remains applicable. However, Article 43 of the Act of 16<sup>th</sup> November 2000 on counteracting the introduction into financial circulation of property values derived from ill legal or undisclosed sources amends the Criminal Code and includes a new definition of the money laundering offence. Pursuant to article 43.1 of the said Act, the new Article 299§1 of the Criminal Code reads as follows: *“Whoever accepts, transfers or exports abroad, tender, securities or other foreign exchange values, property rights or movables or real property derived from benefits related to the commission of a forbidden act, assists transfer of the title thereof or holding thereof, or undertakes other actions that may prevent or materially impede the stating of their criminal origin or place of deposit, their disclosure, seizing or forfeiting thereof, shall be subject to a penalty of deprivation of liberty of from six months to 8 years”*. The new definition of the money laundering offence introduces criminal liability for self money laundering does away with the list of most serious predicate offences and introduces higher penalties. The liability hereunder continues to be based on intentional fault.
22. On 1<sup>st</sup> January 1998 a Law on key witness came into force and on December 30, 1998 a Government Resolution was issued establishing the detailed conditions, scope, and procedure for granting and cancelling immunity to key witnesses and other persons. A key witness is a suspect who is allowed to give evidence as a witness, and is subject to the rules and procedure provided by the Law. However, the following conditions have to be fulfilled jointly: a) before bringing of indictment, the suspect in his or her evidence has delivered information that could help to reveal circumstances and other perpetrators of the crime, and to reveal or prevent other crimes; b) has committed himself to give comprehensive evidence concerning individuals involved in the crime and other circumstances of the crime. The list of crimes provided in the Law does not include any act related to the crime of corruption. However, it should be stressed that evidence given by key witnesses, in particular in cases related to organised crime, can relate also to acts of corruption committed jointly with crimes listed by the Law. An amendment to the Law on key witness that supplements the list of these crimes is under consideration. According to regulations in force, the Court decides, upon request of the Appellate Prosecutor, on whether or not to grant a status of key witness. The prosecutor responsible for preparatory proceedings determines, in agreement with Chief Commander of Police, forms of protection and assistance. The most frequent forms of protection include change of residence, financial support, especially monthly allowance, physical protection during execution of official actions, and in justified cases providing the key witness with documents to change his/her identity. In justified cases, physical protection for vulnerable persons, including judges, prosecutors, and officers of prosecution system can also be ensured. The Police is responsible for such protection according to the provisions of the Law on police.

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<sup>5</sup> A draft amendment to the Penal Code, submitted on 20 December 2001 to the Sejm, includes provisions, which penalise corruption in the private sector.

### **a3. International cooperation**

23. According to the Polish Constitution, international treaties ratified by Poland and published in the Official Journal are directly applicable in national law.
24. Article 55 of the Polish Constitution prohibits the extradition of Polish nationals. When the extradition of a Polish national or resident is not granted, proceedings against them may however be initiated, in application of the relevant provisions of the Code of Criminal Procedure of Poland.
25. Poland has signed the Council of Europe Criminal and Civil Law Conventions, is a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and has signed the UN Convention on Combating Organised Crime. In addition it has entered into a number of bilateral treaties on extradition and mutual legal assistance in criminal matters, which also apply to corruption offences but has not entered into any bilateral treaty on cooperation in corruption-related criminal cases. Poland is not a party to the European Convention on Transfer of Proceedings in Criminal Matters. However, this type of co-operation is conducted on the basis of bilateral agreements, reciprocities or domestic law.
26. A special unit within the Ministry of Justice is responsible for international cooperation. The recently established Legal Cooperation Unit of the Investigation Supervision Office (Office of Prosecutor General) is also involved in international cooperation. Direct contacts are based on agreements or treaties with other States.
27. The court, the prosecutor's office and the police authorities of various levels are empowered to send requests for legal assistance. The decentralisation of this function within the police enables a speedier satisfaction of legal assistance requests. At the same time, the centralised authority still plays a significant role since it deals with requests of qualified or methodical international legal assistance, conducts an analysis of statistical data concerning the rendering and the refusal of legal assistance and provides training for the professionals dealing with international legal assistance.
28. The GET did not receive statistics as regards requests for legal assistance to/out of Poland. It was not made aware of their existence either.

### **b. Bodies and institutions in charge of the fight against corruption**

#### **b1. Ministry of the Interior and Administration**

##### *i) Police*

29. The Police Force is staffed with approximately 100,000 officers. The Head of the Police is the Main Commander who is directly responsible to the Minister of the Interior. The Head of Police is appointed by the Prime Minister upon a proposal of the Minister of the Interior.
30. The organisational structure of the police follows the administrative structure of the country.
31. The recruitment of police officers is conducted in accordance with a procedure, which consists of:
  - a) an interview with the representative of the organisational unit responsible for staff matters, in which education, professional qualification and experience as well as individual motivation are checked;
  - b) physical ability test;
  - c) psychological test;
  - d) confirmation of personal data of the

candidate and his closest persons. Candidates are required to have at least secondary education. The GET was informed that only 20% of candidates are successful in these tests. To be nominated to Commander posts, candidates must have an university degree and undergo an entry examination. They are also subject to several psychological tests.

32. There is no specialised unit, within the police structure, for combating corruption, a task which is attributed to the Department on economic and financial crime. This Department is staffed with 2,500 officers, out of which 80 deal with internal corruption, within the "Internal affairs unit", located at Central Headquarters (similar departments exist at regional level). Besides, 50 police officers are in charge of the investigation of corruption cases. The Department on economic and financial crime is sub-divided in several Regional Directorates. There are 3 or 4 officers specialised in corruption cases in each region, with the exception of the region of Katowice (where there are 17 officers), amounting to a total approximate figure of 70 police officers for all Regional Directorates. Basic remuneration at the beginning of their career amounts to 1,500 Zlotis (410 euros), middle rank 2,500 (548 euros), Head of the National Police, 10,000 Zlotis (2,740 euros).
  33. At the level of the Police Headquarters, combating corruption is dealt with by the Central Bureau of Investigation as well as by the Internal Affairs Bureau, whose competence includes disclosing offences committed by police officers and civil employees of the Police, inter alia by disclosing crime generating phenomena within the community of police officers and civil employees, whereas at the level of provincial (voievodship) Police headquarters there are Divisions for Combating Economic Crime.
  34. According to the statistics provided to the GET, 273 police officers were charged with corruption in 2000. Between 1 January 2001 and 1 May 2001 109 officers were investigated for abuse of power, false declarations and for selling information or data on police activities. On the date of the visit, 19 out of these 109 officers had been sentenced to a term of imprisonment and 19 were still under investigation.
  35. As regards the other cases dealt with by the Department on economic and financial crime (outside the police), the statistics provided to the GET show that 1389 cases were investigated in 2000, a figure which represents an increase of 41% in comparison with 1999. The number of persons involved in these cases also increased by 31% in comparison to the year 1999 and the number of persons summoned by 176%. The financial gain obtained through corruption increased 6 times between 1999 and 2000.
  36. There is no central database or intelligence unit exclusively collecting information on corruption or corruption-related cases. However, such information is collected in a general database system.
  37. Within the structure of the Ministry of the Interior there exists a service dealing with the granting of administrative authorisation and licences, a Department of Permits and Concessions. This department, staffed by 50 employees, deals annually with approximately 20.000 files/requests: stocks and shares by foreigners, licenses for private security campaigns and permits for buying real properties.
- ii) *Training of police officers*
38. The GET's attention was mainly drawn to in-house training in relation to prevention and investigation of corruption.

39. Poland has set up a system of in-house training on corruption-related issues for the officers serving in the Department of economic and financial crime. Police officers in the units combating economic crime who specialise in combating corruption offences undergo at least once a year a several days' long training on practical aspects of combating this category of offences. The trainers are specialised members of the police forces or civil servants from other administrations. Sometimes specialised foreign trainers are also involved. These in-house training courses also comprise elements on the ethical aspects of the profession.

*iii) Border guards*

40. The main task of border guards is the protection of the territory of Poland and the control of border traffic.

41. The initial training of border guards lasts six weeks, after which the candidate is sent to a specific post as a trainee border guard. After a three-year trial period, the candidate is assessed and evaluated and finally recruited on the basis of psychological and physical ability tests.

42. The Law on Border Guards provides detailed provisions on the recruitment of staff. The Chief of the Border Guards issued orders some years ago instructing the different authorities of the Border Guards about how to proceed for the appointment of Border Guard Officers.

43. The Bureau for internal affairs was set up in 1998 within the Border Guard's Headquarters to detect and prevent corruption cases committed by border guards. The Bureau has 12 regional departments.

44. In 2000 foreign experts conducted an audit of the quality of some of the functions performed by the border guards, which showed that the risk of corruption was not very high. The audit also permitted to improve relations with the public.

45. The Polish authorities informed the GET that in 2000 investigations were initiated against 334 border guards, 30 of them for corruption.

**b2. Ministry of Finance**

*i) The Central Customs Office*

46. The Central Customs Office falls under the supervision of the Minister of Finance.

47. There are 14,261 customs officers employed in customs offices, including 604 in the Central Customs Office (headquarters).

48. The customs employment policy gives preferences to persons with higher legal or economic education, who undergo a three-year period of preparatory service concluded with examinations testing their professional skills and a foreign language examination. In some customs offices, additionally psychological tests are conducted.

49. The wage of a customs officer ranges from 2,000 to 3,000 Zlotys per month, which basically corresponds to national average. However, customs officers have the right to receive premiums for seized goods, which may amount up to 10% of the market price of the goods (an additional



10% may go to investments in the Service) . Customs officers also have the right to benefit from interest free loans.

50. During the years 1999-2000 the Internal Control of the Customs Office initiated 80 cases related to suspected corruption.
51. The Customs Office is highly aware of its vulnerability to corruption. Therefore, different activities have been initiated in order to reduce risks. In the framework of the initial training of customs officers courses are provided on awareness raising on this issue. A code of conduct has been elaborated. This code contains anti-corruption guiding principles based on situations or cases which have occurred in the past.
52. The Customs Office also applies the principle of staff mobility in order to avoid that customs officers establish close links with individuals or companies falling under their jurisdiction and develop channels for corruption. Therefore, the Director of the Office is empowered to transfer each postholder to another post within the same unit or in another unit <sup>6</sup>.
53. Every customs officer has to fill in a financial/asset statement at the beginning of his/her career. This statement is updated every year. The Office regularly checks the evolution of the state of property. In case of suspicious movements, a control may be required by the fiscal administration.
54. The "Customs Inspection" is a service created in 1997, to identify, prevent and detect fraud concerning international commercial exchanges; control of the origin of goods, protection of customs officers during customs clearance, inter -agency and international cooperation etc.
55. According to the law, officers from the customs inspection are prohibited from belonging to political parties, conduct business activities on their own account, owning shares in private limited companies, owning more than 2% of shares of public limited companies etc.

ii) *Fiscal Control*

56. Pursuant provisions of the Act on Fiscal Control of 28 September 1991, the purpose of fiscal control *is to protect the interests and property rights of the State Treasury ...*; and in particular: *"to examine whether the property of other state owned legal entities is managed in compliance with the law"* (article 1 paragraph 2). When adopting a specific interpretation of the above provision, it should be stated that the organs of fiscal control play an important role in combating corruption wherever this phenomenon is connected with the violation of the State Treasury interests, especially in the area of managing the state property (e.g. state treasury companies and earmarked funds). Therefore the fiscal control unit, apart from other units of the Ministry of Finance, should be mentioned as an autonomous organ dealing, inter alia, with preventing, investigating and prosecuting corruption offences. In Poland there are more than 2700 inspectors of fiscal control who have the powers of a state administration organ and are authorised to control state enterprises.
57. Since 1998 the system of fiscal control includes the fiscal intelligence unit as one of its elements. The basic task of the fiscal intelligence unit is to gather and process information on actual or potential threats to the basic financial interests of the state. The fiscal intelligence unit, in the process of gathering information and collecting evidence, when other means prove to be ineffective, has statutory powers to apply operational and investigative measures. The fiscal

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<sup>6</sup> At the time of the visit, a proposal to establish a rotation every three years was under consideration.

intelligence unit may also use the assistance of persons who are not employees of the organisational units of the fiscal control system. Such persons may be granted remuneration.

### **b3. Public Prosecutor's Office**

58. The tasks, functions, operation principles of the Prosecutor's office as well as the duties, rights and guarantee applicable to prosecutors are defined in the Law on the Prosecuting Authority of 21 June 1985. According to this law, the Public Prosecutor's Office supervises the preliminary proceedings in criminal cases, represents the State in court, supervises the enforcement of judgments in criminal cases, requests pre-trial detention, and supervises its legality and ensures co-ordination of the investigative activities of other State authorities entitled to conduct investigative tasks.
59. The requirements applicable to candidate prosecutors, as laid down in Article 14 of the Law, are the following: Polish citizenship, minimum age of 26, irreproachable moral standing, an university law degree, having completed with success a 2 1/2 years period of prosecutorial or judicial training and successfully pass the ensuing professional examination and service experience as an associated prosecutor or judge.
60. The Public Prosecution Service (hereafter, the "PPS") is a hierarchically organised structure headed by the Prosecutor General, ("hereafter, the PG") who is, at the same time, the Minister of Justice, a member of the Government. In this capacity he/she reports to the Sejm (one of the two Chambers of the Polish Parliament) on the efficiency of the judicial system, including the prosecution. The PPS comprises the National Prosecutor's Office (hereafter the "NPO"), which is part of the Ministry of Justice, 10 appellate offices, 44 regional offices and 325 district prosecutors' offices.
61. The PPS also comprises the Council of Prosecutors and the Assembly of appellate prosecution authorities, as well as the chief Military Prosecution Authority.
62. The Council of Prosecutors expresses its opinion on matters concerning particularly drafting of general guidelines and orders by the PG, staff training, improvement of prosecutors' professional qualifications and level of their work, as well as to determine the overall number of disciplinary court members.
63. The Boards of appellate and regional prosecution authorities are responsible of controlling the respective prosecution authorities and give their opinion on candidates to the offices of prosecutor and removal of prosecutors from the respective prosecution offices. They also deal with the conclusions emanating from inspection services.
64. Public Prosecutors are appointed to office by the PG, and the Public Prosecutors of military units are appointed by the PG, following consultations with the Minister of National Defence. Prosecutors enjoy security of term and can only be removed from office as a result of a legally binding verdict by a court of law or a disciplinary sanction imposed in accordance with the law (see below, paragraph 66).
65. The National Prosecutor and the other Deputy Prosecutors General are appointed from among the prosecutors of the National Prosecution Authority and they are removed from the office by the Prime Minister upon a proposal by the PG (Article 12).

66. Specific regulations govern the issue of the disciplinary liability of prosecutors as well as the procedure for initiating, adjudicating, appealing and imposing of disciplinary penalties on them (Article 66-85). According to Article 66, prosecutors are held disciplinarily liable for official misconduct including obvious and flagrant contempt of the law and impairing dignity of the prosecutor's office, and for abuse of the freedom of speech in discharging official duties, which constitutes an insult to a party, its representative or attorney, guardian, witness, expert or a translator – prosecuted upon private accusation – the public prosecutor bears disciplinary responsibility only
67. Disciplinary courts hear disciplinary matters *in camera* in two-instance proceedings. The disciplinary attorney submits a motion for the institution of disciplinary proceedings upon the request of the disciplinary superiors after preliminary clarification of the circumstances necessary to establish the attributes of the misconduct and after statements have been provided by the defendant. After having received the request for the institution of disciplinary proceedings, the chairman of the disciplinary court sets the date of the hearing, which is conducted according to the provisions of the law, and notifies the date to the disciplinary attorney, the defendant and the counsel for the defence, and if necessary summons witnesses and experts. These are two - instance proceedings. The following are the disciplinary penalties: admonition, reprimand, removal from office, transfer to another official duty, exclusion from the prosecution service. A judgement rendered by the disciplinary court in second instance may be subject to cassation by the parties with the Supreme Court.
68. The PG may remove a public prosecutor if the prosecutor, despite having been punished twice by the disciplinary court with the penalty of at least reprimand, has committed misconduct in office, including if he/she has flagrantly violated the provisions of the law or infringed the dignity of the prosecutorial office. Before making a decision, the PG hears the prosecutor's statements, unless this is not possible, and accordingly seeks opinion of the meeting of prosecutors of the NPO, or opinion of the relevant meeting of prosecutors in the appellate prosecutors' office.
69. According to the procedure laid down in Article 71 of the Law, a prosecutor may, pending the result of a disciplinary procedure, be temporarily suspended from office if the nature of misconduct requires immediate removal from the performance of official duties.
70. The staff is obliged to pass qualification improvement courses. The rules and provisions of such courses are laid down by PG.
71. A special internal staff inspection unit (the Prosecutor General's Disciplinary Attorney) has been established within the NPO, which deals, *inter alia*, with corruption issues among prosecutors.
72. The Ministry of Justice established in 1994 the Organised Crime Pursuit Coordination Department to handle the most severe crimes including corruption cases. In 1996 the Department was transformed into the Organised Crime Bureau located in the NPO. It consists of the following entities: Organised Crime Investigation Supervision Unit, International Cooperation Unit and Information and Analysis Unit. It also has 17 regional level units specialised in organised crime issues, including in particular high level corruption. The specialised staff of the Bureau undergoes regular training including corruption combating methods. It has to be noted that there is no specialisation among judges adjudicating corruption cases.
73. According to Polish legislation, prosecutors do not have a monopoly for undertaking criminal proceedings. The police and other authorities (State Security Bureau, Military Police, Frontier

Guards and other Tax authorities) are also authorised to launch criminal proceedings. Should an authority other than the Prosecutor be responsible for certain preliminary proceedings the prosecutor is entitled to issue binding orders upon the officials of the authority concerned. In the event of non-compliance with the prosecutor's orders the superior of the official at fault is empowered to initiate, upon the prosecutor's request, official or disciplinary proceedings against the official concerned.

#### **b4. The court system**

74. Poland has an autonomous court system comprising the Supreme Court, Appellate Court, Regional (*voivodship*) and District courts.
75. The Supreme Court is the highest judicial authority in Poland. The Supreme Court exercises judicial supervision over decisions of all courts. It has an autonomous budget. The President of the Supreme Court is appointed to office by the President of the Republic for the term of six years from among the candidates proposed by the General Assembly of the Judiciary. Other court judges are appointed by the President of the Republic upon a proposal by the National Judicial Council.
76. District courts have the status of first instance courts. Provincial courts may act, in some cases, as a first instance jurisdiction or, in others, as a review jurisdiction over decisions rendered by district courts. Appellate Courts are competent to deal with appeals filed against the judgments of provincial courts. Military courts are special court bodies having jurisdiction over the Armed Forces. Appeals against the judgments and rulings of the first instance district military courts and against cases in cessation proceedings are considered by the Supreme Court's Military Chamber.
77. The National Council of Judiciary (hereafter, the "NCJ") was established in 1989. Among its tasks, it proposes candidates for the appointment of professional judges, elaborates the rules of professional conduct for judges, advises on training programmes for judges and reviews the requirements applicable to the prospective judges. The NCJ is entitled to request the Constitutional Court to examine compatibility with the Constitution and legal acts, insofar as they concern the autonomy of courts and the independence of judges.
78. Judges are nominated by the President of the Republic upon a motion of the NJC. They enjoy independence, which is guaranteed by judicial immunity, disciplinary liability and immovability. Judges retire at the age of 65 or 70 years.
79. The requirements applicable to candidates to the office of judge include personal integrity, completed university law degree, completed 2.5 year judicial / prosecutorial training, having successfully passed examination for judges or prosecutors, and at least one year work experience in the capacity of associated judge or prosecutor. Higher level judges are chosen on the basis of professional skills among the most experienced candidates, and the offices of appellate judges or Supreme Court judges are subject to additional requirements.
80. A judge may neither be a member of any political party nor engage in any political activity. Judges and prosecutors are liable for submitting income and asset declarations.
81. The NCJ is the institution acting as the major guarantor of judicial independence. Indeed the law provides that the NCJ's role is "to safeguard the judicial independence and autonomy of the courts".

82. No special training programs for judges and prosecutors have been developed for handling of corruption cases. However, the issue of combating corruption is examined in the framework of the training on organised crime provided to all judges and prosecutors.

#### **b5. The Constitutional Court**

83. The Constitutional Court is a body responsible for deciding on the compliance of national legislation, international treaties and acts of central authorities with the Constitution. It is composed of fifteen judges appointed individually by the Sejm for a term of nine years. The Court President and Vice-President are appointed by the President of the Republic from among the candidates presented by the General Assembly of Judges.

#### **b6. Sources of information**

84. The Polish criminal system is based on the principle of legality. The principle of opportunity is only applicable as an exception to the general rule. Both the Police and the Prosecution are authorised to initiate proceedings. If the competent prosecutor refuses to institute proceedings or decides to discontinue the proceedings, the victim is entitled to submit an appeal and, under certain circumstances, to institute proceedings himself/herself.

85. The Code of Criminal Procedure (hereafter, the "CCP") contains no specific rules concerning corruption-related cases. General principles of the Code are obviously applicable to such cases.

86. As far as the use special investigation means is concerned, it should be noted that the CCP applies after criminal proceedings are formally instituted. The CCP does not contain provisions enabling the recording of telephone conversations in corruption cases because bribery does not belong to the category of offences for the investigation of which such special means can be applied, with the exception of offences involving substantial financial gain or those involving organised groups.

87. Before the start of the criminal procedure, the Law on the Police (Article 19) empowers the Minister of the Interior, to order for a specified period of time the control of the correspondence as well as the use of technical tools to obtain information and to record evidence (telephone tapping, bugs) when the police is carrying out operational and investigative actions falling within their competence. This order is subject to consent of the PG. Upon a request by the prosecutor and the Police, the court may authorise the use of undercover agents to disclose and confirm the existence of a corruption offence, provided that there is some evidence already available.

88. In Poland, there is no legal obligation for officials or employees of public sector bodies to report to law-enforcement or judicial authorities possible cases of corruption that come to their knowledge while performing their functions endangered with sanction. However it could be interpreted from the general norms concerning performance of particular office, especially those contained in relevant laws that omission of giving such information would be in breach of professional duties and could result in disciplinary proceedings<sup>7</sup>.

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<sup>7</sup> The relevant provisions appear in Appendix III.

## **b7. Other bodies and institutions**

### *i) The Ombudsman*

89. The office of Ombudsman was set up in 1987. The Ombudsman is appointed by the Sejm for a four-year term (just one re-election is allowed). The Ombudsman examines complaints on violations of citizens' rights and freedoms by governmental authorities. Applications for examination of such matters may be filed by individual citizens, citizens' organisations or self-governmental organisations. The Ombudsman may also act on his own initiative.

### *ii) The State Court*

90. The State Court is competent for cases in which persons who occupy or occupied the highest positions in the State are charged with violating the Constitution or other legislative acts.

91. Among others, following persons may be brought before this Court:

- the President
- the Prime Minister and Ministers
- the President of the Supreme Audit and Inspection Board
- the Heads of central offices
- the Acting ministers or heads of central authorities
- the deputies of the Sejm and Senators but only for infringement of the limits imposed by law for conducting their own economic activity.

92. The Tribunal of State consists of a President, two Vice-Presidents and 16 members. The Tribunal is elected for a period equal to the Sejm's term. At least half of the members of the Tribunal should have the qualifications required of a judge. The members of the Tribunal are independent.

93. The provisions of the CCP are applicable to the proceedings before the State Court, unless the Law on the State Court provides otherwise.

### *iii) Office for civil service*

94. The Law on Civil Service is applicable to State officials holding positions in:

- the Chancellery of the Prime Minister
- Offices of Ministers and Chairmen of Committees which are members of the Council of Ministers and offices of central agencies of Government administration
- *voivodship* offices and other offices which constitute structures supporting local agencies of Government administration, subordinate to Ministers or central Government administration
- Government Centre for Strategic Studies
- headquarters, inspection offices and other organisational units which compose structures in support of heads of unified *voivodship* services, inspections and guards as well as heads of *poviat* services, inspections and guards, unless relevant laws state otherwise.

95. The aim of the Civil Service Law is to ensure the performance of the tasks of the State by professional, reliable, impartial and politically neutral staff.

96. The Head of Civil Service is a central position in the Government administration, competent in Civil Service issues. The Prime Minister appoints the Head of Civil Service from among Civil Servants, after hearing an opinion from the Civil Service Council. The Civil Service Council is established as an advisory entity for the Prime Minister to evaluate qualification and competition procedures in the Civil Service. The Prime Minister appoints its 8 members from among persons whose knowledge, experience and authority provide a guarantee of correct execution of the Council tasks. The other 8 members are representatives of all parliamentary caucuses.
97. The 1 600 or so senior positions in the Government administration - such as Chief Inspector of Internal Audit, Director General, Director of Department (or an equivalent unit) and his/her deputies - are open to competition. The vacancies are made public. Staffing of these vacancies occurs by way of a competition, which is run by the Head of Civil Service. The Head of Civil Service appoints a competition committee composed of about 5 persons. In the course of the competition the knowledge necessary to perform work in a given position is tested along with predisposition, general ability and managing skills. Requirements concerning to a given position are defined by the Head of Civil Service in consultation with the proper minister, head of central office or voievode.
98. According to the Law on the Civil Service, the Director General of each Office ensures the functioning of the Office, conditions for its activity as well as work organisation.
99. The Civil Service Law provides that officials of the Government administration offices are obliged to execute their professional duties as ordered by their superiors. In case of confirmation of order in writing, a Civil Service corps member is obliged to execute it. Civil Service corps members shall not execute orders if such actions will result in committing a crime or a delinquency, of which they immediately notify the Director General of Office. The Civil Service Law also provides rules for disciplinary proceedings.
100. The draft of the Civil Service Code of Ethics was prepared in 2001. The document is based on the four, related to ethics, Constitutional rules: professionalism, reliability, impartiality and political neutrality. In the beginning of the year 2002, the Code of Ethics will be presented by the Head of Civil Service to approval of the Prime Minister, in his constitutional capability as the superior of Civil Service Corps. The Head of Civil Service will address the document with a proposal of giving the Code of Ethics to the Civil Service Corps with a recommendation of adhering to its rules. The Code of Ethics will apply to over 110 000 members of civil service corps, employed in the governmental administration. It should also be noted that proposed amendments to anti-corruption law contain several rules related to ethics.

*iv) Office for Public Procurement*

101. One of the main tasks of the Office for Public Procurement is to control public procurement proceedings. The Office was created following a law adopted on 22 June 1994, in force since 1995. The main principles of this Law are: openness and transparency of procurement procedures, equal treatment of tenderers and competition in the selection of the tenderer.
102. The primary procedure for awarding public procurement contracts (provided for in the Law on Public Procurement) is unlimited tendering. Other procedures may only be applied by the procuring entity under circumstances strictly defined in the Law. If the value of a procurement is superior to 200,000 €, the Chairman of the Office shall approve the application of a procedure other than unlimited tendering.

103. Non-selected tenderers are entitled to the review measures provided for in the Law on Public Procurement. These review measures include: protest to the procuring entity, appeal to the arbitration panel and complaint to the court. The number of appeals filed has been continuously increasing: in 1997 there were 1,005 appeals, in 1998 – 1,195, in 1999 – 1,327 and in 2000 – 1,687. The Polish Government decided to reinforce the present review system by preparing a draft to amending the current Law on Public Procurement.

v) *The Supreme Chamber of Control*

104. The Supreme Chamber of Control (hereafter, the “SCC”) is the main State audit authority, subordinated to the Sejm. The authority is an old institution, founded 80 years ago. There are 16 branches outside Warsaw. The President of the SCC is appointed by the Sejm, with the consent of the Senate, for a period of six years, which may be renewed once only.

105. In the performance of the auditing, the SCC pays special attention to how the audited unit has fulfilled its tasks regarding legality, economic prudence, efficiency, efficacy and diligence<sup>8</sup>.

106. The SCC audits the organs of government administration, the National Bank of Poland, State legal persons, other State organisational units.

107. The SCC may also audit, within certain limits, the activity of the organs of local self government, legal persons owned by communities, other communal organisational units.

108. Furthermore, the SCC may audit the activity of other organisational units and economic subjects regarding legality, economic prudence, efficiency, efficacy and diligence, insofar as they make use of State or communal property or resources or satisfy financial obligations to the State. The SCC auditors have access to all information required for their audits. They have the right to:

- free access to the premises of the audited unit
- access to all documents and other material
- observe the premises
- summon witnesses and collect their testimonies
- demand oral or written explanations from employees of the audited unit
- call in experts and specialists
- summon meetings with employees of the audited unit
- organise - in connection with the conducted control - of a meeting with employees of the controlled institutions, as well as participate in meetings management and boards, and departments of government and local government.

109. Appeal against the findings of the audit is possible.

110. One of the seven priorities of the SCC for the period 2000 -2002 is the auditing of the anti-corruption activities implemented by the different bodies.

111. SCC controllers enjoy the status similar to those of civil servants, and are independent in exercising their duties. A superior cannot intervene in the work of a controller. The auditing is performed by two controllers and their report is signed by them and by their superior.

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<sup>8</sup> The relevant provision appears in Appendix IV.



112. The SCC has a system for internal auditing. The findings are reported to the President of the Chamber.
113. In performing its tasks the SCC makes proposals to the authorities under its supervision. The authorities are not legally bound to follow these proposals. The SCC can point out inadequacy in occupation of certain position, or exercising certain function by a person responsible for irregularities in controlled organisational unit. If the SCC finds that a crime has been committed in an audited authority, it is obliged to immediately transmit its findings to the Prosecution Office. The GET was informed that, when in the performance of their duties the controllers detect irregularities which could be related to corruption, they consult the legal department which will assess whether the cases need to be handed over to the prosecutor.
114. The controllers have the right to access to all relevant information in order to fulfil their task. It happens that the authority or organisation under audit refuses to hand over the relevant documents. Problems of this kind mostly occur in the audit of private institutions under contract with the State. The same phenomena occur in the audit of the municipalities.
115. The GET was informed that errors are mostly detected in the auditing of the so-called "special funds". These funds administrate some 16-17% GDP and are composed also of resources outside of state budget and consist of earmarked assets outside the State budget. The whole pension system is built on such funds. The GET was told that discussions are taking place as to whether funds of this kind should be allowed in the future.

**c. Immunities from investigation, prosecution and adjudication for corruption offences**

116. There exists a system of immunities applicable in Poland, which enables the beneficiaries to avoid criminal charges. Polish legislation distinguishes between material immunities that repeal criminal conduct and penal (procedural) immunities, which apply only to immunity from prosecution. Material immunities in respect of prosecutors only apply to offences of affront and libel in the event of abuse of the litigant party's freedom of speech at trial. Such an infringement is only subject to disciplinary sanction.
117. Formal (procedural) immunity is granted to members of Parliament, judges, prosecutors, Ombudsmen, and the Chairman of the Supreme Chamber of Control (SCC) and Inspection Board.
118. Legislative power in the Republic of Poland is exercised by the "Sejm" and the Senate. The Sejm is composed of 460 Deputies and the Senate of 100 Senators. There are 400 professional deputies in the Sejm. According to new legislation professional deputies are not allowed to receive any regular remuneration from outside the Parliament. The only exception is income from holding a post as professor. The 60 non-professional deputies may receive an income from outside activities. Their remuneration from the Sejm is much lower than that of the professional Deputies.
119. A member of the Sejm cannot be held accountable for activities performed within the scope of a Deputy's mandate, during the term thereof, nor after its completion. Regarding such activities, a Deputy can only be held accountable before the Sejm and, in the case where the rights of a third party has been infringed, he or she may only be prosecuted with the consent of the Sejm. Immunity granted to deputies and Senators is lifted by a two-third majority vote. If the immunity is lifted the case is passed on to the ordinary criminal Courts.

120. From the day of election until the day of the expiry of his or her mandate, a Deputy cannot be held criminally liable without the consent of the Sejm. Criminal proceedings instituted against a person before the day of his or her election, shall be suspended at the request of the NA until the time of expiry of the mandate.
121. A Deputy shall be neither detained nor arrested without the consent of the Sejm, except for cases in *flagrante delicto* and in which his or her detention is necessary in order to secure the proper course of proceedings. Any such detention shall be immediately communicated to the Marshall of the Sejm, who may order an immediate release of the Deputy. The rules for Deputies are also applicable to Senators. The Ombudsman has the same rights to immunity as a member of the Parliament.
122. Within the Sejm as well as within the Senate there is a Commission on Ethics. Every member of the Parliament has to make an annual declaration on his/her financial situation. The declarations are controlled by the Commission on Ethics which is entitled to examine the growth of the deputies' revenues.
123. The President of the Republic may be held accountable before the Court of State for an infringement of the Constitution or statute, or for the commission of a criminal offence. An indictment against the President must be brought by means of a Resolution adopted by the National Assembly by a majority of at least two-thirds of the statutory number of members upon a motion launched by at least 140 Sejm members.
124. The Council of Ministers is composed of the Prime Minister and the other Ministers. The members of the Council of Ministers shall be accountable before the Court of State for an infringement of the Constitution or statutes, as well as for commission of a criminal offence connected with the exercise of the duties of his or her office. On the motion of the President or of at least 115 Deputies and a Commission of Enquiry, a Resolution to bring charges against a member of the Council of Ministers before the Court of State must be passed by the Sejm by a majority of three-fifths of the statutory number of Deputies.
125. A member of the Court of State shall not be held criminally responsible nor deprived of liberty without the prior consent of the Court itself.
126. The President of the SCC shall not be held criminally liable nor deprived of liberty without the prior consent of the Sejm. The President shall be neither detained nor arrested, except for cases when he or she has been apprehended in the commission of a criminal offence and in which his detention is necessary for securing the proper course of the proceedings. The Marshall of the Sejm shall be notified forthwith of such detention and may order an immediate release. The controllers within the SCC also benefit from immunity. Their immunity is similar to that of prosecutors and may be lifted by the SCC's collegium.
127. Judges in Poland are independent. Judicial immunity and disciplinary accountability and immovability are guarantees of their independence. A judge may only be detained and brought to justice with the consent of the appropriate disciplinary court, except in the event of a judge being found *in flagrante delicto*. Only matters of great urgency are permissible without obtaining the prior consent of the disciplinary court. Proceedings of the disciplinary court take place on two levels, the lower level disciplinary court and the higher level – Supreme Disciplinary court. It was noted that such a procedure may be very complex.

128. Supreme Court judges enjoy formal immunity and guarantees similar to those of other judges. They have their own Disciplinary Court and Supreme Disciplinary Court. They are nominated to office by the President of the Republic upon the motion of the NJC <sup>9</sup>.
129. Judges sitting in the Constitutional Court also enjoy immunity.
130. The Court of State plays an important role in the adjudication of cases relating to the criminal liability of persons holding high level public offices for violating the Constitution and/or other legislative acts. The following entities may be held criminally liable by the State Court: the President of the Republic, the Prime Minister and Ministers sitting in the Council of Ministers, the President of the National Bank of Poland, the President of the Supreme Audit Board, the Commander-in-chief, Heads of Central Offices, members of the National Radio and TV Broadcasting Board, Deputies to the NA and of the Senate. The provisions of the CCP are applicable to proceedings before the State court except whenever otherwise stipulated by the Court of State's Law or by the Court itself. Apart from criminal liability, all the above-listed high level public officials may be sanctioned with a deprivation of their right to vote or to hold an elected office. The State Court has jurisdiction to adjudicate corruption-related cases involving high ranking officials.
131. According to provisions of the Prosecution Act, prosecutors are not criminally liable before administrative or judicial authorities, they may not be arrested without the consent of the appropriate disciplinary court, nor even detained without the consent of their superiors. It does not apply to cases where a prosecutor is caught *in flagrante delicto*. The GET noted that the procedure for lifting immunity of prosecutors is a complex one, just like in the case of judges.

### III. ANALYSIS

#### a. **A policy for the prevention of corruption**

132. According to recent polls and nationwide discussions, the Polish society is generally convinced that corruption is quite a widespread phenomenon. Aware of the need to combat this international scale form of criminality, the Polish Government has declared the fight against corruption as one of its highest priorities. The statistics put at the GET's disposal show that in recent years, with levels of corruption comparable to those of previous years, there has been an increase in the number of disclosed and prosecuted corruption-related cases. The GET interpreted this fact as an indication of a more efficient action on the part of law-enforcement and judicial authorities in the anti-corruption area.
133. The GET acknowledged the efforts made by the Polish authorities to combat corruption phenomena. Some particular features of the Polish society and of its institutional setting are there to explain, at least in part, recent successes achieved in the anti-corruption area, such as, a cross-party leadership, an active media sector, strong non-Governmental Groups (NGO's) and academic institutions, which provide analysis, built up pressure for reforms and support progress towards a more efficient strategy to reduce the extent of corruption in the country. A number of laws required for counteracting corruption already exist, for example the recent Law on

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<sup>9</sup> The Act of 27 July 2001 on the structure of common courts does not provide for the existence of the Disciplinary Court or Supreme Disciplinary Court in the previous form. The Appellate Courts and the Supreme Court (as the appellate instance) function as disciplinary courts. This change, in particular the decentralisation of the disciplinary judiciary of first instance, has been aimed at speeding up disciplinary proceedings and proceedings for the lifting of immunity.

Economical Activity designed to reduce corruption opportunities in interactions between the public and private sectors. The Parliament has set up the Ethics and Disciplinary Committee. The Supreme Chamber of Control has submitted critical reports on corruption issues.

134. However, Poland is still some way from having a clearly developed prospective State strategy for combating corruption. Therefore, the GET recommended that measures be undertaken for the development of an efficient and clear Government strategy for combating corruption, including the development of all the elements (legislative, executive, judicial authority) necessary for reducing opportunities for corruption, in line with the increasing number of disclosed corruption cases. The GET further recommended, in this connection, to establish a clear definition of priorities of each authority involved in the combat against corruption.
135. The exchanges between the entities involved in combating corruption appeared to the GET to be insufficient. There is no central national authority to coordinate anti-corruption activities and research providing guidelines to the different authorities involved in combating and preventing corruption in the country.
136. Therefore, the GET recommended to establish a National Advisory Council or similar body, or to designate an existing institution responsible for bringing together the top managers of higher public authorities concerned by the fight against corruption and for steering the work of all subordinated bodies involved in this area. Such a Council or institution should approve the public anti-corruption strategy, perform regular state-scale analysis of the situation in the field of corruption, evaluate the functioning of institutions and the efficiency of their mutual co-operation, as well as monitor compliance with the strategic plan.
137. The GET stressed the importance of making citizens fully aware of the high social cost of the corruption phenomenon as well as of the actions undertaken by the authorities to prevent and fight it. In order to raise public awareness on the issue and the threat it represents, public authorities should devote its efforts to strengthening their cooperation with non-governmental organisations and the media. Therefore, the GET recommended to organise regular exchanges of information with non-governmental organisations to discuss Government actions and initiatives against corruption with a view to strengthening cooperation in this field.
138. The GET underlined that public officials at all levels need being particularly aware about this problem. Therefore the GET recommended that a global training programme aimed at increasing awareness among public officials of all levels be implemented.
139. The GET was under the impression that the Polish economy still retains part of the heritage from the past regime as regards the issuing of permits, licences and certificates for many economic and social activities. This regulatory climate may feed corruption. The GET recommended that the Polish authorities undertake steps towards progressively reducing the scope of discretionary powers of administrative officers, enhancing the transparency of the procedures and abolishing, whenever possible, licensing and authorisation procedures.
140. The GET expressed the belief that ethical standards for the different categories of public officials is an important element of an efficient anti-corruption policy of the State. Therefore, the GET recommended that the Polish authorities envisage to adopt such codes for the staff serving in the different state administrations and increase their awareness about the importance of these rules. In this respect the Polish authorities might draw inspiration from the Model Code of Conduct for public officials included in the Recommendation R(2000) 10 of the Committee of Ministers of the

Council of Europe to the Member States. Civil servants should benefit from appropriate training to ensure that they are aware of the content of these codes.

**b. Domestic legislation against corruption**

141. Although the GRECO's first evaluation round does not deal directly with the application of GPC 2 – the co-ordinated criminalisation of national and international corruption - the GET recalled that a sound legislative basis is crucial for the effectiveness of anti -corruption policies and measures. With this in mind the GET paid some attention to Polish domestic legislation against corruption.
142. The GET noted, in this respect, that the Criminal Code does not define bribery in the private sector as a criminal offence. Moreover, as mentioned above, legal entities which are responsible for active bribery can be punished by financial sanctions
143. In view of the above, the GET observed that the criminalisation of active and passive bribery in the private sector and the introduction of liability of legal entities for corruption related offences would be useful legislative measures which would make it possible to prosecute managers and employees of private companies as well as the companies themselves whenever use is made of corrupt practices in the course of business activities between private companies.

**c. Law enforcement bodies**

144. The GET took note that Poland was deprived of a central intelligence database capable to process information related to corruption cases. Therefore, the GET recommended the creation of such a central intelligence database, which should be able to provide law enforcement and prosecution bodies with an extremely useful tool for a comprehensive approach in the fight against corruption. The GET observed that it would be useful if this database could be administrated by the central anti-corruption body.
145. The GET welcomed the efforts made since 1997 by the Ministry of Interior to reform the structure and activities of the different services. Indeed, according to available statistics, some significant improvement seem to have resulted in the results obtained in the fight against corruption. However, the GET expressed serious concern as regards the functioning of the Department of Permits and Concessions. In the view of the GET, the Department's understaffing jeopardises its ability to make a serious analysis of the requests, makes the procedure of granting licences and authorisations too lengthy and, as a consequence, increases the risks of corruption. Therefore, the GET recommended that the Polish authorities seriously envisage increasing the number of staff and equipment of the Department of Permits and Concessions.
146. The Polish authorities were well aware of the threats of corruption existing in the customs administration. The GET noted with satisfaction the action undertaken in order to reduce the risk of corruption in this administration – the existence of a code of ethics, mobility every 3 years for customs officers, material advantages to motivate the staff. The GET observed that it would be worth considering whether these measures should be extended to other categories of public officials.

**d. Prosecution and Court system**

147. As mentioned above, there are no special training programmes for judges and prosecutors involved in the handling of corruption cases. The GET stressed once again that training and

awareness were key to the success of anti-corruption policies and measures. Thus, the GET recommended the Polish authorities to draw up and implement a comprehensive specialised training programme for judges and prosecutors dealing with corruption cases.

**e. Sources of information**

148. The GET expressed some concern as regards the use of special investigative techniques, especially telephone-tapping in corruption cases. Article 237, paragraph 1-15 of the CCP allows to make use of this investigative measure, only after criminal proceedings are formally instituted. The Polish authorities informed the GET, however, that telephone-tapping could be used in cases of offences perpetrated by criminal organisations or involving assets of a significant value. Therefore, the GET strongly recommended to authorise, with the necessary safeguards, the use of telephone tapping and undercover agents in different stages of investigation and in relation to all serious cases of corruption.
149. Moreover, the GET felt that the current procedure for requesting an authorisation to tap a telephone was much too centralised. In order to speed up the procedure and reduce the risk of disclosure of the identity of the individual being investigated, the GET therefore recommended that the legislation be amended to provide that requests to make use of telephone tapping should be made directly by the investigative body to the competent judicial authority. The GET further recommended a similar approach to be adopted to simplify procedures attached to the authorisation of other special investigative means.

**f. Public Procurement Office**

150. The GET welcomed the activities of the Public Procurement Office. The control exercised by the Office is extremely important, especially as regards the prevention of corruption. However, at this stage according to the information provided to GET by the representatives of the public procurement office, the Office was able to exercise control over only 670 procurement proceedings out of 35,794 procurement proceedings announced in the Bulletin of Public Procurement during the year 2000. The GET therefore strongly recommended increasing both the human and material resources allocated to the Public Procurement Office in order for it to be able to exercise a strict control over public procurement procedures.

**g. Supreme Chamber of Control**

151. The GET welcomed the action of the Supreme Chamber of Control ("SCC") and the high professionalism of its staff. Therefore, the GET observed that the authorities on which the SCC exercise its controlling functions should follow its recommendations, at least when the authority has breached regulations related to the performance of its task.
152. The GET took note of the fact that refusal to grant a SCC controller access to the premises or to the files of an unit submitted to an audit procedure is considered to be a simple misdemeanour, whereas a refusal to grant such access opposed to an official from an Agency invested with powers comparable to those of the SCC, is established as a criminal offence under Polish criminal law. The GET therefore recommended that the hindering of the work of a SCC controller be treated, in the same way as the hindering of the work of officials from Agencies with comparable powers.

153. In the GET's view the current system of administering "earmarked funds" offered ample opportunities for corruption. In particular the structure of the administration of these funds makes it very difficult to exercise proper control over these activities. Therefore the GET recommended to analyse the functioning of existing earmarked funds in the context of creating opportunities for corruption and to liquidate those funds whose tasks could be achieved in the framework of the general State budget and ensure, especially by way of monitoring, that the functioning funds do not create opportunities for corruption.
154. In order to contribute to the prevention of corruption in the functioning of the public sector and strengthening the confidence of citizens in this respect the GET recommended to enhance and develop the work of financial controllers controlling public administrations and public enterprises increasing, whenever necessary, their number. Their findings should be made public as far as possible. The GET recommended to organise permanent in-house training for these controllers, focusing on the issue of corruption.

#### **h. International cooperation**

155. The GET was aware that the issue of international co-operation falls beyond the scope of GRECO's First Evaluation Round. It expressed the view, however, that improvements in this area would increase the ability of the Polish enforcement and judicial system to deal more effectively with corruption cases.
156. Accordingly, the GET observed that the Polish authorities should consider signing and ratifying the European Convention on Transfer of Criminal Proceedings in order to make international cooperation on criminal cases more efficient. It further observed that the central authorities should co-ordinate the training of staff at all levels dealing with requests for international co-operation. The Central authority should be further in charge of compiling and analysing statistical data and of elaborate guidelines on how to deal with international requests related to criminal cases. In this respect the GET also observed the importance of elaborating a database of statistics concerning international requests from Polish and from foreign authorities.

#### **i. Immunities**

157. The GET noted that in Poland a large number of holders of political, judicial and other offices benefit from procedural immunities preventing them from being charged or accused of a criminal offence. In addition the procedure for lifting these immunities appeared rather complex. The GET recommended therefore to reduce the categories of the holders of public offices benefiting from immunities and to reduce the scope of these immunities and to simplify the procedure for lifting the immunity of State officials.

### **IV. CONCLUSIONS**

158. In Poland the corruption phenomenon is endangering the functioning of many public spheres. The Polish authorities are fully aware of the danger that corruption represents for the further development of the country and have adopted different kind of measures to reduce opportunities for corruption and to increase the efficiency of the public response against this form of criminality. While acknowledging the lucidity and the efforts made by the Polish authorities in this area the GET considered that there were still a large number of measures which could be taken and implemented to put in place a comprehensive approach to this problem and an efficient

prevention, detection, investigation, prosecution and punishment of corrupt practices in the country.

159. In particular the GET called for the development of clear and comprehensive Government programme against corruption, with a clear definition of the attributions of each of the governmental authorities involved in its implementation. Some amendments to the legislation should be envisaged in order to provide the law enforcement and judicial authorities with the full range of legal tools for combating corruption. To provide for additional training in anti-corruption issues for several categories of public officials seemed also particularly necessary. Finally, the role and the functions of the Supreme Chamber of Control should be strengthened.
160. In view of the above, the GRECO addressed the following recommendations to Poland:
- i. that measures be undertaken to develop an efficient and clear Government strategy for combating corruption, including the development of all the elements (legislative, executive, judicial authority) necessary for reducing opportunities for corruption, in line with the increasing number of corruption cases which are disclosed and to establish a clear definition of the priorities of each authority involved in the combat against corruption;
  - ii. to establish a National Advisory Council or some other similar body, or to designate an existing institution responsible for bringing together the top managers of higher public authorities concerned by the fight against corruption and steering the work of all bodies directly involved in this area;
  - iii. to organise regular exchanges of information with non-governmental organisations to discuss Government actions and initiatives against corruption, with a view to strengthening cooperation in this field;
  - iv. to implement a global training programme aimed at increasing awareness among public officials of all levels;
  - v. to undertake steps towards progressively reducing the scope of discretionary powers of administrative officers, enhancing transparent procedures and abolishing, whenever possible, licensing and authorisation procedures;
  - vi. to adopt codes of conduct for the staff serving in the different state administrations and increase their awareness of the importance of the rules, drawing inspiration from the Model Code of Conduct for public officials included in the Recommendation R(2000) 10 of the Committee of Ministers of the Council of Europe to Member States;
  - vii. to create a central intelligence database with a view to providing law enforcement and prosecution authorities with an extremely useful tool for a comprehensive approach to the fight against corruption;
  - viii. to seriously envisage increasing the number of staff and equipment of the Department of Permits and Accessions of the Ministry of the Interior;
  - ix. to draw up and implement a comprehensive specialised training programme for judges and prosecutors dealing with corruption cases;



- x. to authorise, with the necessary safeguards, the use of telephone tapping and undercover agents in the different stages of investigation and in relation to all serious cases of corruption;
  - xi. to amend the legislation in order to provide that requests to make use of telephone tapping should be made directly by the investigative body to the competent judicial authority and that a similar approach be adopted to simplify procedures attached to the authorisation of other special investigative means;
  - xii. to increase both the human and material resources allocated to the Public Procurement Office in order for it to exercise a strict control over public procurement procedures;
  - xiii. to treat in the same manner the hindering of the work of a Supreme Chamber of Control controller and the hindering of the work of officials from Agencies with comparable powers;
  - xiv. to analyse the functioning of existing earmarked funds in the context of creating opportunities for corruption and to liquidate those funds whose tasks could be achieved in the framework of the general State budget and ensure, especially by way of monitoring, that the functioning funds do not create opportunities for corruption;
  - xv. to enhance and develop the work of financial controllers controlling public administrations and public enterprises increasing, whenever necessary, their number and ensure that their findings are made public as far as possible;
  - xvi. to organise permanent in-house training for these controllers, focusing on the issue of corruption;
  - xvii. to reduce categories of the holders of public office benefiting from immunities and the scope of these immunities and to simplify the procedure for lifting the immunity of State officials.
161. Moreover, GRECO invited the authorities of Poland to take account of the observations made by the experts in the analytical part of this report.
162. Finally, in conformity with Article 30.2 of the Rules of Procedure, GRECO invited the authorities of Poland to present a report on the implementation of the above-mentioned recommendations before 31 December 2003.

## APPENDIX I

### Article 115, paragraph 13 – Criminal Code Definition of « a public official »

13. A public official is:
1. the President of the Republic of Poland;
  2. a deputy to the Sejm, a senator, a councillor;
  3. a judge, a lay-judge, a state prosecutor, a notary public, a court executive officer (*komornik*), a professional court probation officer, a person adjudicating in cases of contraventions or in disciplinary authorities operating in pursuance of a law;
  4. a person who is an employee in a state administration, other state authority or local government, except when he performs only service -type work, and also other persons to the extent in which they are authorised to render administrative decisions;
  5. a person who is an employee of a state auditing and inspection authority or of a local government auditing and inspection authority, except when he performs only service-type work;
  6. a person who occupies a managerial post in another state institution;
  7. an official of an authority responsible for the protection of public security or an official of the State Prison Service;
  8. a person performing active military service.

## APPENDIX II

### Articles 228-231 – Criminal Code

**Article 228.** §1. Whoever, in connection with the performance of a public function accepts a material or personal benefit or a promise thereof, or demands such a benefit

shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.

§2. In the event that the act is of a lesser significance, the perpetrator shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

§3. If the act specified in §1 has been committed in connection with a violation of law, the perpetrator

shall be subject to the penalty of deprivation of liberty for a term of between 1 to 10 years.

§4. The penalty specified in §3 shall be imposed on anyone who, in connection with his official capacity, makes the performance of his official duties conditional upon receiving a material benefit.

§5. Whoever, in connection with the performance of a public function accepts a material benefit of considerable value or a promise thereof,

shall be subject to the penalty of deprivation of liberty for a term of between 2 years and 12 years.

**Article 229.** §1. Whoever gives a material or personal benefit or promises to provide it to a person performing public functions

shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

§2. In the event that the act is of a lesser significance, the perpetrator shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.

§3. Whoever gives a material or personal benefit to a person performing public functions in order to induce him to disregard his official duties or provides such a benefit for disregarding such a duty

shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.

§4. The penalty specified in §3 shall be imposed on anyone who gives a material benefit of considerable value or promises to provide it to a person performing public functions.

**Article 230.** Whoever, claiming to have influence on a state or local government, undertakes to intercede in the settling of a matter in exchange for a material or personal benefit or for a promise thereof,

shall be subject to the penalty of deprivation of liberty for up to 3 years.

**Article 231.** §1. A public official who, exceeding 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.

§2. If the perpetrator commits the act specified in §1 with the purpose of obtaining a material or personal benefit, he

shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.

§3. If the perpetrator of the act specified in §1 acts unintentionally and causes an essential damage

shall be subject to a fine, the penalty of restriction of liberty, or deprivation of liberty for up to 2 years.

§4. The provision of §2 shall not be applied when the act has the features of the prohibited act specified in Article 228.

## APPENDIX III

### Criminal Procedure Code

**Article 304.** §1. Whoever learns that an offence prosecuted *ex officio* has been committed, shall be under civic duty to inform the state prosecutor or the Police.

§2. State or local government institutions which in connection with their activities have been informed of an offence prosecuted *ex officio*, shall be obligated to immediately inform the state prosecutor or the Police thereof. In addition they are obligated to take steps not amenable to delay, until the arrival of the officials of an agency authorised to prosecute such offences, or until that agency issues a suitable ruling in order to prevent the effacing of traces and evidence of the offence.

§3. The Police shall immediately refer a notice of an offence for which conducting an investigation is compulsory, or their own information indicating that such an offence has been committed, to the state prosecutor, together with any materials collected.

### Criminal Code

**Article 231.** §1. A public official who, exceeding 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.

§2. If the perpetrator commits the act specified in § 1 with the purpose of obtaining a material or personal benefit, he shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.

§3. If the perpetrator of the act specified in § 1 acts unintentionally and causes an essential damage shall be subject to a fine, the penalty of restriction of liberty, or deprivation of liberty for up to 2 years.

§4. The provision of § 2 shall not be applied when the act has the features of the prohibited act specified in Article 228.

## APPENDIX IV

### Act of 23 December 1994 on Supreme Chamber of Control

**Article 5.1.** Supreme Chamber of Control, with reservations provided for in § 2 and 3, performs control concerning legality, economic efficiency, efficacy and integrity.