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# FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in  
central governments (top executive functions) and  
law enforcement agencies

## EVALUATION REPORT

# POLAND

Adopted by GRECO  
at its 81<sup>st</sup> Plenary Meeting  
(Strasbourg, 3-7 December 20108)



Group of States against Corruption  
Groupe d'États contre la corruption

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## I. EXECUTIVE SUMMARY

1. Opinion polls on the perception of, and experience of Poland's general public and business community with corruption show mixed trends over the last few years. In 2017, 58% of Poles considered that corruption is widespread, affecting also politicians and the police, 83% of businesses see excessively close links between politics and business as problematic. The media have reported at regular interval about cases of suspected bribery, influence peddling, abuse of authority and other integrity issues – sometimes of a large scale, concerning both the police and senior government officials.

2. The reforms in recent years concerning the judiciary and the status of civil servants have given important powers to the executive branch of power, sometimes in the name of restoring integrity and the prevalence of the rule of law in the functioning of core State institutions. However, GRECO recalls that the best way to guard against the misuse of power is to provide for an effective system of preventive policies and checks and balance, instead of increasing the prerogatives of a few central control bodies or decision-makers. GRECO also recalls that a preventive approach consists in addressing situations before they turn into criminal offences.

3. The Government, in cooperation with the Central Anticorruption Bureau (CAB), has recently adopted a new version of the anti-corruption programme covering the period 2018-2020. Despite that the first version dates back to 2002 and the CAB's overall coordination, as well as the leadership of the Prime Minister's Office in the definition of central management policies for the Government as a whole, there is a clear need to develop a more ambitious approach concerning integrity policies for persons exercising top executive functions (PTEFs). An overarching policy is needed, as well as comprehensive rules of conduct covering *inter alia* gifts and other benefits, conflicts of interest and accessory activities, relations with lobbyists and other third parties. This needs to be accompanied by implementation support measures, including a robust enforcement mechanism. Poland's arrangements for the declaration of assets and interest by PTEFs also need to be strengthened and streamlined, with a central register which would make the information easily available to the public. The report also concludes that the system of immunities and the jurisdiction of the Tribunal of State need reviewing for PTEFs. Other improvements recommended concern the transparency of the government's legislative process, and the rules on access to information, which should be further developed and equipped with an effective appeal mechanism to ensure their effectiveness.

4. As a top priority, Poland needs to establish a system for the appointment, promotion and dismissal of all senior managers in the Police and Border Guards, which would be based on objective criteria and transparent procedures. Inadequate salaries have also contributed to increasing difficulties for the Police and Border Guard to attract / retain qualified and committed personnel. Inadequate wages can also generate vulnerabilities to corruption and prompt officers to seek additional sources of income via side jobs which can generate further risks (incompatibilities, problematic third-party relations etc.). At the same time, proper and reliable risk assessment need to be conducted to assist in the definition of future integrity policies, including the updating of rules of conduct (some of which were adopted many years ago). As for supervision and enforcement, the recent creation of the Internal Supervisory Office (ISO) of the ministry responsible for internal affairs was meant to increase the quality of the central supervision. However, there are now several bodies entrusted with

control functions – the CAB, the ISO and the law enforcement agencies’ own control and inspection bodies: this now calls for a rapid clarification of their respective responsibilities and leadership functions. At the same time, the integrity framework still relies excessively on the heads of teams and line managers’, for instance to authorise accessory activities or to act as the disciplinary body: this can lead to double standards and additional risks of nepotism within law enforcement agencies. Among the other improvements recommended in the report, there is need for clear and effective rules regarding the disclosure of crimes and misconduct, and the protection of reporting persons.

## **II. INTRODUCTION AND METHODOLOGY**

5. Poland joined GRECO in 1999 and has been evaluated in the framework of GRECO's First (in June 2001), Second (in November 2003), Third (in June 2008) and Fourth (in April 2012) Evaluation Rounds. The resulting Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's website ([www.coe.int/greco](http://www.coe.int/greco)). This Fifth Evaluation Round was launched on 1 January 2017.<sup>1</sup>

6. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of Poland to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of Poland, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, Poland shall report back on the action taken in response to GRECO's recommendations.

7. To prepare this report, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Poland from 26 February to 2 March 2018, and reference was made to the responses by Poland to the Evaluation Questionnaire as well as other information received, including from civil society. The GET was composed of Mr Antoine DALLI, Chief Corporate Services at the Foundation for Tomorrow's Schools (Malta), Ms Nina FORTUIN, Policy Advisor, Ministry of Security and Justice, Law Enforcement Department, Fraud Unit (Netherlands), Ms Mariam MAISURADZE, Legal Adviser at the Analytical Department, Research and Analysis Unit, Secretariat of the Anti-Corruption Council, Ministry of Justice (Georgia), and Mr Raul VAHTRA, Head of Internal Control Bureau, Estonian Police and Border Guard Board, Internal Control Bureau (Estonia). The GET was supported by Mr Roman CHLAPAK and Mr Christophe SPECKBACHER from the GRECO Secretariat.

8. The GET held interviews with representatives of the Chancellery of the President, the Chancellery of the Prime Minister, the Chancellery of the Sejm, the Ministry of Justice, the Ministry of Interior and Administration as well as other ministries, the Police, the Border Guard, the Central Anticorruption Bureau, the National Prosecutor's Office, the Supreme Audit Office (NIK), the Office of the Commissioner for Human Rights, academics, journalists, trade unions, NGOs.

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<sup>1</sup> More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's [website](http://www.coe.int/greco).

### III. CONTEXT

9. Poland has been a member of GRECO since 1999. Since then, it has been subject to four evaluation rounds focusing on different topics linked to the prevention and the fight against corruption. Overall, Poland has a good track record in implementing GRECO recommendations, with almost 90% of recommendations which were fully implemented in the 1<sup>st</sup> and 2<sup>nd</sup> round, and more than 75 % in the third. In the fourth evaluation round – for which the compliance procedure in respect of Poland is still on-going, over 40% of recommendations have so far been fully implemented<sup>2</sup>.

10. Opinion polls provide a mixed picture of trends. On Transparency International's Corruption Perception Index<sup>3</sup>, Poland's score and global ranking had experienced a steady increase over the years until 2015, after which there was a decline in the years 2016 and 2017 when it dropped back to the 36th position compared to the 29th in 2016. According to opinion polls carried out for the Eurobarometer on corruption 2017 (general citizens and business specific polls)<sup>4</sup>, 58% of Poles consider that corruption is widespread (a figure which has decreased compared to previous years, although a majority of respondents see no real evolution of trends). 33% of respondents believe that the giving and taking of bribes and the abuse of power for personal gain are still widespread among politicians (EU average 53%), and 29% of respondents believe this is the case regarding law enforcement (EU average 31%). 83% of businesses see excessively close links between politics and business as a source of corruption (EU average 79). 44% of businesses agreed that corruption is widespread in public procurement managed by national authorities (EU average 50%), a figure which has significantly decreased compared to the year 2013 (when two thirds of respondents agreed to the same).

11. The media have reported in recent years about cases of suspected bribery, influence peddling, abuse of authority – sometimes of a large scale<sup>5</sup> – concerning both the police and senior government officials (including the lack of transparency of their interests and assets). Some of these are referred to in the present report.

12. Civil society organisations also expressed concerns<sup>6</sup> about a number of recent developments such as attacks and limitations on the freedom of expression and their work, pressure on private media and so on. According to these, many journalists were dismissed or forced to resign.

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<sup>2</sup> These figures provide a snapshot of the situation regarding the implementation of GRECO's recommendations at the time of formal closure of the compliance procedures. The country may therefore have implemented the remaining recommendations after the formal closure of the compliance procedure. For update please check the GRECO website: <https://www.coe.int/en/web/greco/evaluations/poland>

<sup>3</sup> [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017](https://www.transparency.org/news/feature/corruption_perceptions_index_2017)

<sup>4</sup> See <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/index#p=1&search=corruption>

<sup>5</sup> <http://www.thenews.pl/1/9/Artykul/153728,Wideranging-corruption-scandal-hits-Polish-ministries>

<sup>6</sup> See for instance <https://freedomhouse.org/report/special-reports/assault-press-freedom-poland> <http://citizensobservatory.pl/ustawa/open-letter-to-the-college-of-commissioners-regarding-the-situation-in-poland/> or <https://www.indexoncensorship.org/2016/05/polands-political-cleansing-of-journalists/>

#### **IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)**

##### **System of government and top executive functions**

###### *System of government*

13. Poland is a unitary state, governed by a system which is sometimes referred to as semi-presidential but more often as a parliamentary democracy. According to the Constitution of 2 April 1997, the executive power is vested in the President of the Republic of Poland, who is the Head of State, and the Council of Ministers – headed by the Prime Minister.

14. As agreed by GRECO, a Head of State would be covered in the 5<sup>th</sup> evaluation round under “central governments (top executive functions)” when s/he actively participates on a regular basis in the development and/or the execution of governmental functions, or advises the government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure, taking decisions on the appointment of individuals to top executive functions.

15. The President is elected directly by the people for five years and s/he can be re-elected only once. The President convenes any new parliament, and has the power to dissolve it under certain circumstances. S/he can sign bills into law, or may choose to refer them to the opinion of the Constitutional Tribunal. S/he appoints the Prime Minister (who is usually a person designated by the parliamentary majority) and other members of the Council of Ministers. The President may convene and chair the Cabinet Council in particular important matters. The President may also order referenda, introduce legislation and decrees and rulings. The President is the Commander-in-Chief of the Armed Forces, s/he appoints judges<sup>7</sup> and awards professor degrees, s/he acts as the supreme State representative in international relations, and s/he exercises the right of pardon, confers / removes orders and decorations. The President countersigns most legal acts (together with the Prime Minister), and signs alone such acts as ordering elections, forming a government, ordering a referendum etc.

16. In Poland’s contemporary constitutional practice, the President is not necessarily the leader of the Party under which s/he candidates for that position (the most recent one was Lech Walesa, President from 1990 to 1995). Nor is the leader of the current ruling party the head of Government or the President of Poland. All this points to the importance of the Parliament and of the Government in the definition of national policies. In law and in daily practice it is the Prime Minister who presides the work of the Council. Also the power to dissolve the Parliament (Sejm) has certain limits (it can only happen in certain circumstances and it requires the opinion of the speaker of the Sejm and the Senate). Since the democratic transition, the President has initiated three out of five national referenda, and these always require the subsequent approval of parliament. It was also reported that there is a steady practice for the Presidential function not to take over the executive tasks of the government but, instead, to react to its initiatives, depending on the President’s own personal values and

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<sup>7</sup> Including the First Presidents of the Supreme Court of Justice, the Constitutional Court and the Supreme Administrative Court



beliefs. This leads the President to vetoing laws<sup>8</sup>, including on two recent controversial bills but overall, this power is not used much and the President is seen in recent practice as an institution merely validating the initiatives of the ruling majority<sup>9</sup>. The GET was furthermore informed that the President is using his / her legislative powers mostly following motions for a legislative initiative sent by institutions protecting citizens' rights, such as the Ombudsman<sup>10</sup>. Based on the Constitution, official acts of the President, require the signature of the Prime Minister to be valid (apart from the exceptions indicated earlier) who thus endorses the responsibility for it before the Sejm. In the way they are used, the president's veto powers do not alter the governmental course of action and the President is not involved in the governmental decision-making process.

17. Even though the President has some government functions and powers, the GET concluded that these are not used in practice in such a way as to influence government policy on a regular basis, be it through the threat of their use or through their effective exercise. Therefore, it cannot be said that the Polish Head of State actively participates on a regular basis in the development and/or the execution of governmental functions, or advises the government on such functions. Had the presidential powers been used in a different manner, the GET would have reached another conclusion. It follows that the functions of the President of the Republic of Poland do not fall within the category of "persons entrusted with top executive functions" (PTEFs) as spelt out in paragraph 14. It would nevertheless be timely for Poland to introduce integrity standards and transparency requirements for the President and the senior staff of his/her office, which are currently lacking in certain areas.

#### *Status and remuneration of persons with top executive functions*

18. The Council of Ministers operates collegially<sup>11</sup>. It is composed of the Prime Minister, Deputy Prime ministers and ministers. In the current government there are 16 male and 6 female ministers. The GET wishes to recall [Recommendation Rec\(2003\)3 of the Committee of Ministers on balanced participation of women and men in political and public decision making](#), according to which the representation of women or men in any decision-making body in political or public life should not fall below 40%.

19. The Prime Minister represents, manages, coordinates and controls the Council of Ministers. S/he ensures implementation of policies and issues regulations. The Prime Minister defines the scope of activity of individual ministers. Ministers only remain in office for so long as they retain the confidence of the PM. The Prime Minister appoints and dismisses the Head of his/her Chancellery, as well as state secretaries and undersecretaries and government plenipotentiaries of his/her Chancellery. The Prime Minister also appoints state secretaries and under-secretaries and government plenipotentiaries of the various ministries upon request of the competent ministers (dismissals of those persons can take

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<sup>8</sup> From 4 to 27 vetoes per term

See for instance <https://www.tvn24.pl/wiadomosci-z-kraju,3/weta-prezydentow-kto-ile-zglosil,759688.html>

<sup>9</sup> <https://www.politico.eu/article/andrzej-duda-pis-poland-a-new-check-on-polish-governments-power-the-president/>

<sup>10</sup> In 2017, 15 to 20 legislative initiatives were taken on social matters, the national day on jews, free legal assistance in court, borrowers experiencing difficulties and the like.

<sup>11</sup> The Act on the Council of Ministers of 8 August 1996 and the Resolution No 190 of the Council of Ministers of 29 October 2013 – The Rules of Procedure of the Council of Ministers define internal organisation and rules of procedure of the Council of Ministers.

place without their initiative). The Prime Minister is the superior of employees of the government administration.

20. There are two types of ministers: those in charge of specific government administration branches and ministers without portfolio. A minister may issue binding guidelines and give orders to the heads of government administration authorities / structures / bodies. Guidelines and orders given orally must be confirmed in writing. Secretaries and undersecretaries of state, the political cabinet of the minister and director general of the office assist the minister in his/her tasks. The minister determines the scope of their activities (with the exception of the Director General whose tasks are defined by law). A minister is replaced by the secretary of state, or by the undersecretary of state, as necessary. There are also so called “social advisors” who are appointed ad hoc to provide expertise in certain specific areas.

21. The amended legislation on civil service<sup>12</sup> has abolished the principle of open and competitive recruitment procedures for the high level positions in the civil service (directors general) who are now appointed and dismissed by the Minister or the heads of central offices. The basic requirements have not changed, however (appropriate background knowledge, clean criminal record).

22. The table below provides an overview of the remuneration of certain PTEFs:

| Position  | Basic remuneration | Function allowance |
|---|--------------------|--------------------|
| Prime Minister  | Euro 2647          | Euro 854           |
| Deputy Prime Minister                                   | Euro 2434          | Euro 683           |
| Minister, Head of the Chancellery of the Prime Minister | Euro 2391          | Euro 641           |
| Secretary of State                                      | Euro 2092          | Euro 512           |
| Undersecretary of State                                 | Euro 1879          | Euro 512           |

23. The Prime Minister, Deputy Prime Minister, minister, Head of the Chancellery of the Prime Minister, secretary of state, undersecretary of state (deputy minister) are entitled to keep the additional remuneration generated by activities in higher education or in the field of research. In case of dismissal, the Prime Minister, Deputy Prime Minister, minister, Head of the Chancellery of the Prime Minister, secretaries and undersecretaries of state (deputy minister) retain the right to their remuneration for up to three months after leaving office. Cabinet members are entitled to receive bonuses for special professional achievements. A long-service supplement – in the maximum amount of 20% - is calculated on the basis of the basic salary.

24. The Prime Minister benefits from a dedicated State-provided residence. The ministers, the Head of the Chancellery of the Prime Minister, State secretaries or undersecretaries are also entitled to free accommodation under certain circumstances.

25. The GET was informed that members of government and other PTEFs tend to see their remuneration as not being proportionate to the volume of work implied by their functions. In this connection, the GET heard about abuses concerning the self-awarding of bonuses and other benefits (see the section hereinafter on “misuse of public resources”).

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<sup>12</sup> The Act on Amending the Civil Service Act and Certain Other Acts of 30 December 2015 came into force on 23 January 2016

## **Anticorruption and integrity policy, regulatory and institutional framework**

### *Anticorruption and integrity policy*

26. As highlighted in GRECO's previous evaluation reports on Poland, a number of anti-corruption measures have been taken over the years in respect of the public sector. In 2002, the Government adopted the first anti-corruption programme and the current Government, in cooperation with the Central Anticorruption Bureau (CAB), adopted a new version covering the period 2018-2020. The previous version, which covered the period 2014-2019 was reportedly abandoned in various respects after 2016. The CAB, which is Poland specialised agency for corruption matters, is entrusted with the overall coordination of its implementation.

27. At the time of the on-site visit, the government was preparing a law on Transparency in Public Life. There was no time-table for its adoption. The last version seen by civil society representatives met by the GET referred to changes and improvements in such areas as: a) declarations of assets and interests; b) rules on lobbying; c) transparency of the law-making process; d) access to information; e) protection of reporting persons (whistleblowers). There have been some fears that the amendments could lead to setbacks in certain areas.

28. The GET obtained confirmation on site that although some ministries had implemented corruption policies for their staff, the government and Prime Minister's Office have not adopted so far an overall policy on integrity for PTEFs. The GET believes that such a policy or strategy would be timely. Persons exercising top executive functions are currently treated in different manners by the rules in place and there is not even an inventory of the officials concerned. The Government itself counts slightly over 20 members, although at the time of the on-site visit, there were nearly 130 persons serving as ministers, deputy ministers, State secretaries or undersecretaries.<sup>13</sup> The total number of PTEFs, taking into account other persons with top managerial competence in the various ministries – especially general directors, since the role of political advisors is reportedly limited in Poland – is of course higher than that.

29. The previous Anti-Corruption Programme of the Government adopted for the period until 2019, which is still actually the only one appearing on the CAB's website<sup>14</sup>, is rather general and it does not contain specific objectives and activities to be implemented in respect of categories of officials treated by the present report as PTEFs. The GET was told that 80% of the new Programme was actually identical with that of the previous version. The information provided by several ministerial interlocutors suggested that each ministry has a broad discretion in many respects, including specifying the practical consequences of transparency and preventive integrity requirements in place (including guidance specifying the scope of declaratory obligations concerning assets and interests). This is clearly not a satisfactory approach.

30. Several interlocutors confirmed that the Prime Minister's Office has a leading role in the definition of central management policies for the Government level and that more should be done to develop a coherent and unified approach and action plan. In the light of

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<sup>13</sup> See for instance <https://www.politico.eu/article/polish-pm-mateusz-morawiecki-cuts-17-ministry-jobs-amid-bonus-pay-outcry/>

<sup>14</sup> Consulted last on 1 November 2018

its own findings, the GET can only concur with this. Such a plan should be monitored and updated on an on-going basis, for example by the Prime Minister's Office, with the assistance of the Central Anti-Corruption Bureau which was responsible for the elaboration of the revised Anti-Corruption Programme for 2018-2020. This would of course suppose that risks are properly assessed with regard to the variety of tasks performed by PTEFs, something which is currently missing. Several meetings confirmed that the current data collected and analysed for the definition of integrity policies is mostly based on actual cases and that there is no risk-based approach. Awareness-raising measures would need to be an integral part of such a plan. The GET was informed that at the time of the visit, there were some plans to elaborate a more consistent approach. These proposals deserve to be supported. **GRECO recommends that a general integrity plan be elaborated in respect of all duly identified groups of persons exercising top executive functions, as an overarching structure to the integrity arrangements existing in some ministries, aiming at preventing and managing risks of corruption including through responsive advisory, monitoring and compliance measures.**

#### *Legal framework, ethical principles and rules of conduct*

31. The Constitution is the basic legal act which regulates the conduct of PTEFs, in particular through its principles of legality and equality before the law. PTEFs are thus expected to make decisions and to perform official tasks according to law and disregarding any personal or financial preferences or benefits.

32. The main legal act promoting integrity among PTEF is *the Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions* of 21 August 1997. It provides for explicit prohibitions of certain types of ancillary activities and it excludes participations in the shareholding of business entities in excess of 10% as well as membership in various boards. It also imposes to disclose financial and economic activities. Other relevant laws include: the *Act on the Civil Service* of 21 November 2008, the *Act on employees of the government offices* of 16 September 1982 and the *Act on public procurement* of 29 January 2004<sup>15</sup>. The Prime Minister's ordinance on ethical framework for the civil service n°70 of 6 October 2011 sets the ethical standards for the public administration, but it does not cover the PTEFs. As pointed out earlier, the different ministries have addressed the subject of integrity of their staff in different ways and to a variable extent.

33. The GET notes that although some principles related to the ethics of PTEFs are covered by various legal acts and bylaws, or sporadically in rules of conduct adopted in certain ministries (which would be applicable also to PTEFs operating in the Ministry) the legal framework needs consolidation. Rules on ethics should be enclosed in a single document focusing on PTEFs and covering all relevant integrity rules and principles including (*ad hoc*) conflict of interest, gifts and other benefits and so on, with specific examples and guidance on how to deal with ethical dilemmas. This would contribute to raising the PTEFs' awareness on integrity issues and it would assist them in acting proactively in difficult ethical situations whilst demonstrating their commitment to the general public. It is equally important that the public is informed of the existence and content of these rules and that

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<sup>15</sup> The *Act on public procurement* provides for the exclusion of individuals whose impartiality in awarding public procurement contracts is questioned and it requires written declarations about the presence or absence of any circumstances that may result in a lack of impartiality.

citizens thus know what conduct to expect from their leaders. **GRECO recommends that a comprehensive code of conduct be developed for persons exercising top executive functions covering *inter alia* gifts and other benefits and conflicts of interest, accompanied by appropriate guidance including explanatory comments and concrete examples.** The present recommendation addresses several concerns expressed hereinafter in paragraphs 53, 60, 62.

### *Institutional framework*

34. The “Central Anti-Corruption Bureau” (CAB), established by law in 2006, is the central anti-corruption body of Poland. It is composed of 880 officers and employees. It is regulated by the Act on the CAB, which states (Article 5 et seq.) that the CAB is an office of the Government administration whose head is himself a central authority of that administration. The Head is appointed for 4 years by the Prime Minister renewable once and supervised by him/her through the Minister specially appointed as Coordinator of the Special Services. The prevention and detection of corruption (defined as bribery and activity deemed detrimental to the economic interest of the State – article 1) are part of its core functions. The CAB is explicitly tasked by its founding Act with the verification of asset declarations of persons performing public functions, as defined in article 115 para.19 of the Criminal Code. As pointed out by GRECO in the Third Evaluation Round Report on Poland (theme I - incriminations) the definition is particularly broad and flexible. The CAB conducts also awareness raising and educational activities (through educational websites, anti-corruption publications, training courses, participation in research projects, conferences, involvement in government teams, EU funded projects). The CAB also conducts analytical activities and it publishes an annual “Map of Corruption in Poland” prepared in cooperation with other institutions.

### *Awareness*

35. One of the tasks of the CAB is to organise and implement awareness-raising activities on corruption-related issues. It has drafted a publication on “Political corruption” which contains information on the legislation and guidelines on expected conduct. This publication is available on-line<sup>16</sup>. Moreover, the CAB reveals information about cases of violation of anticorruption regulations on its website<sup>17</sup>. The Presidential Chancellery’s intranet contains the information on applicable anti-corruption rules and procedures.

36. The public is informed about governmental activities regarding the prevention of corruption, including reforms, on the occasion of events, press conferences etc. Each draft legal act is published on the website of the Government Legislation Centre. During the legislative process, public consultations are held with civil society organisations and other bodies.

37. The GET learned that there is no systematic training or other awareness raising activities in place for PTEFs regarding their integrity. They are mostly expected to keep themselves informed about the existing rules and their implications. It was sometimes pointed out that it was possible for a PTEF to serve his/her term without ever receiving / attending dedicated integrity training. Moreover, there is no system in place to provide

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<sup>16</sup> [https://cba.gov.pl/ftp/filmy/CBA\\_Korupcja\\_polityczna.pdf](https://cba.gov.pl/ftp/filmy/CBA_Korupcja_polityczna.pdf)

<sup>17</sup> <https://cba.gov.pl/en>

advice for PTEFs even though any specialised department responsible for control and supervision, as well as experienced legislation experts / advisers or the leadership can reportedly provide guidance, when needed. As pointed out earlier, in some ministries the subject of integrity is sometimes addressed in internal policies, through training activities and the designation of ethical advisers who can / should be contacted in case of ethical dilemmas. But this is reportedly far from being a general policy. Overall, ministries insufficiently use their own existing information resources (access through Internet to instructions, guides, checklists etc.)<sup>18</sup>. The introduction of specialised integrity officers for all ministries and PTEFs would clearly improve awareness on integrity issues, and the self-appropriation of standards. **GRECO recommends (i) developing mechanisms to promote and raise awareness on integrity matters (and the future rules of conduct) among persons exercising top executive functions , including through integrity training at regular intervals; (ii) establishing a dedicated confidential counselling function to provide these persons with advice on integrity, conflicts of interest and corruption prevention.**

### **Transparency and oversight of executive activities of central government**

#### *Access to information*

38. Article 61 of the *Constitution* proclaims the right of access to public information and there is thus a general duty for the government and public bodies to make such information available, including official documents, in particular through publication in the Public Information Bulletin and upon request. Access should be provided in particular to public information concerning domestic and foreign policy (incl. intended actions, draft legal acts and agendas), legal and organisational matters; registers, records, and archives; recruitment for vacancies; judicial verdicts; budgetary and financial matters. More specifically, the *Act on access to public information* of 6 September 2001, which applies to the entire public sector, provides that the person requesting information is not required to demonstrate a specific interest in obtaining information. Access can be denied to protect classified information or other secrets protected by law. The detailed manner, procedure, and deadlines for making information available are regulated by the *Act on access to public information* and the *Code of Administrative proceedings*. Information must be provided within 14 days of the request and if this is not possible, the person shall be informed thereof. Any refusal must be duly motivated. Any refusal of public authorities to provide information may be appealed with the body concerned, the higher authority and ultimately in court. It is also possible to file a petition with the Ombudsman.

39. The draft *Act on Transparency in Public Life*, referred to in paragraph 56 aims i.a. at strengthening the transparency of the management of State property and amending the rules and procedure on access to public information, the rules of transparency in the law-making process and rules and procedure of lobbying activities. It provides inter alia for revoking the *Act on access to public information* of 6 September 2001 and the *Act on lobbying activity in the law-making process* of 7 July 2005. A coalition of Polish NGOs criticised the insufficient transparency and public consultations in preparing the bill, and some of its possible negative consequences<sup>19</sup>. The Polish authorities assured the GET that

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<sup>18</sup> <http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/Conflict%20of%20Interest%20in%20the%20Polish%20government%20administration.pdf>

<sup>19</sup> <http://citizensobservatory.pl/ustawa/draft-law-on-transparency-in-public-life/> and [http://citizensobservatory.pl/wp-content/uploads/2017/11/Opinia\\_24\\_10\\_2017\\_EN.pdf](http://citizensobservatory.pl/wp-content/uploads/2017/11/Opinia_24_10_2017_EN.pdf)

even if the freedom of information act of 2001 is revoked and replaced by the *Act on Transparency in Public Life*, most of the legal and jurisprudential acquis would normally be preserved.

40. The GET was informed that in practice the requests for information are often turned down or left without reply. Moreover, the administration sometimes requires that a fee be paid even when the request should have been free of charge. Above all, dissatisfaction was expressed about the absence of a specific complaint mechanism given the limited responsiveness of the appeal bodies currently designated: the Ombudsman is overburdened with a number of other files related to human rights, and judicial appeals are usually lengthy. The establishment of a dedicated mechanism, provided with adequate means and guarantees of independence, would be a better option. The GET recalls that the transparency of the public administration and governmental action is an important element of any preventive anti-corruption policy. Consequently, **GRECO recommends ensuring that an independent oversight mechanism is in place to guarantee the effective implementation of the freedom of information legislation.**

#### *Transparency of the law-making process*

41. Draft legislation and other government documents are elaborated and made publicly available on the basis of the *Act on publishing normative acts and certain other legal acts* of 20 July 2000, the *Act on lobbying activity in the law-making process* of 7 July 2005, the *Act on petitions* of 11 July 2014, and the *Rules of Procedure of the Council of Ministers*. Draft government documents, draft laws and ordinances as well as other related documents are published on the website of the Government Legislation Centre on a dedicated website-register – the Government Legislative Process. Draft government documents are expected to be published/updated at every stage of the government legislative process (including in relation to interagency and public consultations). The Council of Ministers informs the public about the topics discussed and decisions taken through press releases, except for issues not to be disclosed at the request of the Prime Minister<sup>20</sup>. The meetings of the Council of Ministers are held in camera. No information can be publicly revealed from these meetings, except when allowed by the Prime Minister.

42. During the on-site interviews, the attention of the GET was drawn to certain recent trends such as impact assessments being neglected and the increased absence of proper public consultations or consultations taking place in a very short time span despite the technicality of a governmental draft<sup>21</sup>. It was also indicated that the rules in place normally require to properly document the contacts held by a member of the executive branch of power (for instance with lobbyists) during the formal consultation process, but that in practice these requirements can easily be circumvented if the influence is exerted at an earlier stage, even if the third parties in question go so far as to submit a draft text of their own. Other reports have also pointed to deficiencies in terms of proper dialogues / opportunity for comments / feedback on comments, public hearings being abandoned and the abuse of expedited procedures in parliament<sup>22</sup>. In recent times, various Government initiatives – including on sensitive or complex reforms – were reportedly disguised as

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<sup>20</sup> Article 22 of the Act on the Council of Ministers of 6 August 1998

<sup>21</sup> Including the draft *Act on Transparency in Public Life*, for which civil society organisations were given just a few days to provide feedback.

<sup>22</sup> [http://www.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/XI\\_Komunikat\\_OFL.pdf](http://www.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/XI_Komunikat_OFL.pdf)

parliamentary initiatives in order to take advantage of swifter procedures and lower requirements as regards accompanying documents. The Supreme Audit Office has itself well documented the problems related to missing impact assessments on government initiatives<sup>23</sup>. The GET wishes to recall that GRECO has repeatedly insisted on the importance for legislative processes to be transparent and based for instance on proper consultations and impact assessments, and to limit the use of expedited procedure which can only make it harder to prevent and detect illegitimate amendments made at the last minute (including where these are not intended by the initiators of the draft). **GRECO recommends ensuring that governmental legislative proposals effectively involve appropriate timelines for consultation and adequate impact assessments in practice, and that contacts and inputs received before the formal launching of consultations be equally documented.**

### *Third parties and lobbyists*

43. The *Act on lobbying activity in the law-making process* of 7 July 2005 defines lobbying, provides for registration of professional lobbyists<sup>24</sup> and determines obligations of public bodies in their interaction with lobbyists. They are required to publish, without delay, the information on professional lobbying activities aimed at them and to report lobbying action by unregistered entities. The minister in charge of public administration imposes fines for unregistered lobbying activities<sup>25</sup>. The Prime Minister's office and ministries have also adopted ordinances on dealings with entities performing professional lobbying activity. They provide in particular for the establishment of internal units responsible for the registration and coordination of contacts with lobbyists. The ordinance of the Chancellery of the Prime Minister describes the types of contacts that can be made with lobbyists<sup>26</sup>. The employees of the Chancellery are required to document their meetings with lobbyists in a specific form. The Legal Department of the Chancellery registers those meetings, gathers documentation, formally verifies the statements from lobbyists and checks their registration.

44. The GET welcomes the existence of measures such as those in the Prime Minister's Office. These could inspire other ministries, it being understood that PTEFs themselves, and not just the employees, are required to comply with such rules on how they engage with lobbyists. And that the mechanisms are ultimately effectively implemented. It would indeed appear that ministries do not publish the information on contacts with professional lobbyists<sup>27</sup>. It is also equally important to ensure that rules are in place for PTEFs themselves on how to deal with situations involving third parties other than lobbyists formally registered or identified as such. As it was pointed out in GRECO's Fourth Round Evaluation Report on Poland, lobbying is often performed outside the regulated area, based on (informal) links between senior officials and business circles. **GRECO recommends (i) that detailed rules be introduced on the way in which persons exercising top executive functions interact with lobbyists and other third parties seeking to influence the public decision-making process; and (ii) that sufficient information about the purpose of these contacts be disclosed, such**

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<sup>23</sup> <https://www.nik.gov.pl/plik/id,16190,vp,18712.pdf>

<sup>24</sup> In a register published in the Public Information Bulletin.

<sup>25</sup> A fine of approximately 720 to 12,000 EUR which may be imposed repeatedly if the professional lobbying activities are continued without registration

<sup>26</sup> Regarding the interest in the works on a draft normative act, motion for starting legislative initiative, presenting opinions, or proposal to have a meeting

<sup>27</sup> See <https://transparentlobbying.org/co-wiemy-o-lobbingu-w-polsce-1/>. In 2015 19 Ministries and the Chancellery of the Prime Minister were expected to publish the information on contacts with lobbyists. However, as many as six institutions did not disclose such information.



**as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion.**

### *Control mechanisms*

45. The *Act on control in government administration*, which entered into force on 1 January 2012<sup>28</sup>, provides for unified rules and procedures for conducting controls in government administration bodies. The Prime Minister is competent to coordinate and supervise the control activities of government administration bodies. Controls can be conducted in particular by the Prime Minister, the Head of the Chancellery of the Prime Minister and ministers (for subordinated units). It appears, however, that a limited number of ministries effectively use the managerial control procedures to enhance internal transparency and accountability<sup>29</sup>. In parallel other acts regulate the procedure of conducting sectorial controls (inspections), including in particular the *Act on the principles of conducting the development policy* (which concerns the supervision over the use of EU funds) of 6 December 2006 as well as the *Act on public finance* of 27 August 2009.

46. The internal audit activities in the public finance sector (including government administration) are regulated by the *Act on public finance* of 22 August 2009. The existence of an internal audit department is mandatory for government administrations (this concerns also the Chancellery of the Prime Minister).

47. The lower House (Sejm) controls the activities of the Council of Ministers within the scope specified by the Constitution and other statutes, notably as regards the implementation of the budget, votes of no confidence, launching cases before the Tribunal of State (see the last section hereinafter), interpellations and questions of the Prime Minister and other members of the government, the possibility to set-up inquiry committees etc.

48. The Supreme Audit Office (NIK) is the highest body of state control, independent of the executive and of the judiciary. It reports to the lower House. Its powers are regulated by the Constitution and the *Act on the Supreme Audit Office* of 23 December 1994. The Office must undergo itself, at least every three years, an audit by an independent entity. The Office reportedly enjoys a high level of public trust in Poland and it has a broad control capacity as regards the public sector and entities benefiting from public subsidies. It also has the capacity to look at corruption prone areas in its annual reports and to refer a matter to criminal justice bodies. The President of the Office is appointed by a vote of the lower House for a term of six years and s/he enjoys immunity from criminal proceedings (which can be lifted by Parliament).

49. The GET took note of certain concerns expressed with regard to recent legislative proposals aimed at suppressing the immunities enjoyed by the President of the Supreme Audit Office and the Polish Ombudsman. It was pointed out that such changes could affect the protection afforded to these officials against undue pressure and thus weaken these important independent institutions. The GET recalls the importance of a system of proper checks and balance in a democracy and it hopes that the intended reforms will be

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<sup>28</sup> Act of 15 July 2011 on control in government administration<sup>28</sup> (Journal of Laws No 185, item 1092).

<sup>29</sup> <http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/Conflict%20of%20interest%20in%20the%20Polish%20government%20administration.pdf>

considered in the light of a proper assessment of their potential impact on the authority and independence of the bodies concerned.

### **Conflicts of interest**

50. There is no legal definition of conflicts of interest in commonly binding laws but several legal texts provide for the obligation to report such situations in certain specific circumstances. For instance, the Annex to the Executive Order n°3 of the Chief of the Chancellery of the President concerning the anti-corruption procedures at the Chancellery of the President, specifies that a conflict of interest arises when an employee who takes a decision has or might have a personal interest (financial or other) at stake, linked to such a decision. The Chancellery's employees, including advisers, must report in writing about all conflicts of interests (personal financial or other interests). Even though the PM's ordinance on ethical framework for the civil service n°70 of 6 October 2011 contains provisions aimed at limiting risks of conflicts of interest (incl. apparent conflicts of interest), it does not apply to the PTEFs.

51. The *Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions* prohibits officials from performing professional or other activities aimed at generating income or proceeds (see the section hereinafter on outside activities). This law also contains certain post-employment restrictions and provisions on financial disclosure. The asset declarations contain a statement on financial interests which could lead to a conflict of interest. The above mentioned rules and procedures apply to conflicts of interest that may arise out of the private interests or activities of other persons having close relationship with a PTEF, or PTEFs' subordinates.

52. In the event of occurrence of an *ad hoc* conflict of interest, Articles 24-27 of the Act of 14 June 1960 - Code of Administrative Procedure apply, concerning the exclusion of the public administration employee or body, or a collegial body from the proceedings.

53. The GET notes that the Code of administrative procedures is the most ambitious regulation covering situations involving a conflict of interest. However, the long list of disqualifications concerns primarily persons who are employees. For ministers and other senior officials, the rules of the administrative code are limited to certain situations involving a property interest of the official concerned. For the rest, the rules in place are mostly dealing with certain specific situations involving accessory activities and in relation to interests reported in the annual asset declarations. These, in any event, do not cover the spouse or other close relatives and they can't thus be used to the fullest possible extent for the prevention of conflicts between a public and a private interest (as opposed to a strictly personal interest). The absence of a general definition and of a policy on conflicts of interest, including the fact that this subject is often (mis)understood as referring to conflicts between departments was also documented in comprehensive research work conducted by civil society<sup>30</sup>. This clearly points to the need for a more robust set of general rules for all PTEFs, including on the disclosure and management ad hoc of such conflicts. The recommendation addressed earlier on the need to adopt rules of conduct for PTEFs covering *inter alia* conflicts of interest, would address these concerns (see paragraph 33).

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<sup>30</sup> See

<http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/Conflict%20of%20interest%20in%20the%20Polish%20government%20administration.pdf>

## **Prohibition or restriction of certain activities**

### *Incompatibilities, outside activities and financial interests*

54. According to the Constitution, a member of the Council of Ministers may not perform any activity inconsistent with his/her public duty. Likewise, the *Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions* of 21 August 1997 provides that the Prime Minister and ministers, and their deputies, the Head of the Chancellery of the Prime Minister, as well as secretaries and undersecretaries of state, in principle, may not be members of management boards, supervisory boards or audit committees in commercial law companies, foundations with business activities or cooperatives (except housing cooperatives). Nor can they perform other tasks in commercial law companies, if such activities may lead to a suspicion of them pursuing a personal interest, or hold more than 10% of stock or shares of the total shareholding structure of commercial entities.

55. According the *Lustration Act* the PTEFs or candidates to the positions of PTEFs, including the President of the Republic and Ministers as well as executive persons in the Chancelleries of the President and the Prime Minister who were born before 1 August 1972 are required to submit statements about their work for or collaboration with secret services under the communist regime (1944-1990). The lustration procedure aims at preventing the officials' vulnerability to undue pressure or blackmail.

56. The GET was informed that the draft *Act on transparency in public life* provides for a new framework for restrictions on carrying out economic activity or performing specific functions. It would also repeal the *Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions*. The draft law foresees that every three months the CAB should monitor compliance by PTEFs with the new restrictions. The interviews held on site confirmed that there is a clear need for additional rules and guidance on how to deal with ancillary activities in certain situations, even when there is not necessarily a visible remuneration or economic activity involved. The requirements that an ancillary activity would be prohibited even if there were only a perception of partiality or bias or personal interest need to be further supported by guidance. It is important that a more coherent policy and practice is applied for all PTEFs, and that the responsibility for deciding on incompatible ancillary activities is not left entirely to the discretion of the supervising PTEF or body. The self-perception of PTEFs that their salaries / indemnities are not commensurate with their tasks and responsibilities could lead to a greater inclination to seek additional income from outside sources, possibly even entities and businesses with which they have dealings. **GRECO recommends that common cross-government rules and guidance are introduced on ancillary activities.**

### *Contracts with state authorities*

57. There are no specific prohibitions or restrictions on PTEFs entering into contracts with State authorities. The Public Procurement Law applies in this context. Situations of conflict of interest or unethical acts should be avoided in the framework of public procurement contracts. The individuals whose impartiality in awarding public procurement contracts is doubtful are to be excluded from the process.

## Gifts

58. Receiving gifts is not strictly forbidden as regards PTEFs. However, accepting material or personal benefits, or a promise thereof, in connection with the performance of public functions is a criminal offence (Article 228 of Criminal Code).

59. Pursuant to Article 12 of the *Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions*, the benefits obtained by PTEFs, in particular by members of the Council of Ministers, the secretaries and undersecretaries of state in ministries and in the Chancellery of the Prime Ministers, as well as the benefits obtained by spouses of the above persons are disclosed in the Register of Benefits, kept by the State Election Committee. Such benefits must therefore be declared as donations received from domestic or foreign entities if their value exceeds 50% of the lowest wage applicable for employees (or approx. PLN 380/Euro 88), other benefits exceeding the above value, domestic and foreign travels not connected with official duties. The Register of Benefits is public<sup>31</sup> (see also the section hereinafter about declaratory obligations).

60. The GET notes that there are no specific and clear rules and guidelines on gifts, covering PTEFs. There is also a relatively low awareness in practice of what constitute acceptable and forbidden gifts and benefits. It has been pointed out that for 'less serious' cases, these could entail disciplinary proceedings, but normally the criminal provisions on bribery apply. In the absence of definitions and guidance, 'less serious' cases could be interpreted in different ways. At the same time, the existence of a duty to declare financial and other benefits for PTEFs subjected to the *Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions*, is particularly misleading. It actually legitimizes the receiving of additional benefits, whether financial or in kind, provided they are declared if they exceed a certain amount. The acceptance of amounts below the threshold are therefore totally unregulated. Poland needs to provide for a limited number of circumstances where gifts and other benefits can be accepted, for instance concerning protocol gifts and symbolic gifts (of a small value). A consistent policy would also imply that rules are in place on how to value certain gifts and how to deal with gifts which cannot be returned to the originator for practical reasons. The GET heard that there are plans to sanction the acceptance of gifts by criminal sanctions only<sup>32</sup>. However, the GET wishes to reiterate that gifts and bribery are two different things and that the benefits of rules on gifts are to address situations which do not involve a criminal intent and/or situations which have not yet turned into bribery. Poland clearly needs to establish a robust set of rules on gifts and other benefits for all PTEFs, accompanied by appropriate guidance. The recommendation on rules of conduct in paragraph 33 addresses this matter.

## Misuse of public resources

61. The *Act on Public Finance* of 17 August 2007, the *Act on Public Procurement* of 29 January 2004, the *Act on the Liability for the Violation of Public Finance Discipline* of 17 December 2004, the Budget Act for a given year and the Ordinance of the Minister of Finance on Detailed Classification of Income, Expenditure, Inflows and Outflows, and Funds from Foreign Sources govern the management of public funds and provide for measures

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<sup>31</sup> <http://rk.pkw.gov.pl/>

<sup>32</sup> A draft *Law on transparency of public life* apparently provides for criminal sanctions only to punish the acceptance of gifts.

aimed at preventing their misuse. All heads of units in the public sector, including ministers, are responsible for ensuring that funds are spent in a purposeful and cost-effective way. The penalties for the violation of public finance discipline include: a warning, a reprimand, a fine, the ban on performing functions involving allocations of public funds. Moreover embezzlement (Article 296), abuse of power (Article 231) and fraud (Article 286) are criminally punishable. Those managing public funds, including ministers, are controlled by relevant inspection authorities, including the Supreme Audit Office.

62. The GET was made aware of a series of recent problematic phenomena. For instance, political loyalties appear to play an important role in “rewarding” persons with positions in State owned companies, which are then used to sponsor political events or campaigns (this is reportedly quite widespread<sup>33</sup>). The use of means directly available to the Government has been a source of public controversies when it comes to the size of the executive and of self-awarded benefits, for instance. At the time of the on-site visit, there were nearly 130 persons serving as ministers, deputy ministers, State secretaries or undersecretaries, which had prompted criticism. In some cases, particularly large bonuses had been awarded to themselves or their collaborators by the Prime Minister and cabinet members. Individual commitments had been made by some beneficiaries to reimburse the bonuses and extra benefits. In March 2018, the new Prime Minister announced that he would cut down on the size of government functions by 20 to 25% and that the positions of understate secretaries would be filled with civil servants. He also stressed that he would do away with some of the self-awarded benefits and risks of misuses of credit cards allotted to the exercise of official functions, asking that the use of these cards be audited<sup>34</sup>. The GET can only support such measures, but it shows again the need for a concerted action about the identification of risks associated with the activity of PTEFs, as it was recommended earlier (see paragraphs 30 and 33).

#### *Misuse of confidential information*

63. The *Act on the Protection of Classified Information* of 5 August 2010 sets out the rules governing the protection of classified information and the Penal Code criminalises the disclosure or use of classified information (whether it is “restricted”, “confidential”, “secret” or “top secret” (Article 265 and 266). The penalties contemplated are up to 5 years’ imprisonment. These arrangements do not call for specific comments from the GET, in the light of the information collected during the visit.

#### *Post-employment restrictions*

64. The *Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions* (Article 7) provides for a cooling-off period of one year for those officials wishing to be employed or perform any duties for a company for which they had issued decisions in individual matters. In justified cases, a commission appointed by the Prime Minister may grant a derogation.

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<sup>33</sup> <https://uk.reuters.com/article/uk-poland-economy-politics/polands-ruling-party-tightens-grip-on-big-state-firms-idUKKBN1CFOAE>

<sup>34</sup> See for instance <https://www.politico.eu/article/polish-pm-mateusz-morawiecki-cuts-17-ministry-jobs-amid-bonus-pay-outcry/> and <https://www.pap.pl/en/news/news,1315124,we-will-reduce-number-of-govt-officials-by-20-25-pct---pm.html>

65. The GET recalls that the above matter had led GRECO to issuing a recommendation in the Second Evaluation Round, which was never implemented at the closure of the said Round. The GET is pleased to see that there are plans to extend the cooling-off period to three years. However, there are apparently no other plans to extend the current disqualifications to a broader range of situations beyond those described in the above paragraph. The GET considers that the legal provisions should be reviewed so as to include a broader range of situations and persons and to provide for a longer lapse of time. Consequently, **GRECO recommends broadening the scope of application of the legislation on post-employment restrictions, in order to deal effectively with conflicting activities and to prevent improper moves to the private sector after the termination of functions of persons exercising top executive functions.**

### **Declaration of assets, income, liabilities and interests**

#### *Declaration requirements*

66. As regards PTEFs other than those appointed from among the ranks of MPs, the *Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions* (art. 10) of August 1997 imposes an obligation on “persons holding public managerial positions within the meaning of the regulations on the remuneration of persons holding public administrative positions” to submit an asset declaration. The above is understood as covering ministers and vice-ministers, secretaries and under-secretaries of State as well as heads of ministerial offices and political cabinets (and the President of the Republic). This declaration is submitted when taking up and leaving duties, as well as every year by the 31<sup>st</sup> of March. PTEFs who are MPs are required to continue submitting their asset declaration (by 30 April) in accordance with the *Act on the discharge of their duties by Sejm deputies and senators* of May 1996, as amended, especially the provisions of article 35 et seq.

67. PTEFs other than those appointed from among the ranks of MPs are also required by the *Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions* (art. 8) to file further declarations, prior to their appointment, to indicate the activity pursued or intended to be conducted by the spouse.

68. The content of asset declarations concerning PTEFs who are MPs and those who are not, is regulated in a succinct and general manner in the above-mentioned acts. The more concrete content is described in sample forms, which are currently provided for in a Presidential ordinance of June 2017 for PTEFs who are not MPs, and in annex to the law of August 2016 as regards PTEFs who are MPs. The content is similar but not identical. The form adopted in June 2017 covers the real estate property owned individually or jointly with the spouse, the declarant’s own income from the above property, cash accumulated in the national or in a foreign currency, securities, acquisitions of property sold by the State or another public entity, membership of the declarant in the management / supervision / audit body of a commercial entity and membership in a foundation pursuing a business activity, the income derived from these activities, stocks and shares owned in commercial entities and the income derived thereof, shareholdings in commercial entities in excess of 10% of the total shareholding, economic activities pursued alone or in association with others and the income derived thereof, movable property in excess of PLN 10,000 (2,300 euros), financial liabilities in excess of the same amount, other additional information on financial activities and the possible income derived thereof.

69. The Prime Minister as well as the Heads of their Chancelleries submit their asset declarations to the First President of the Supreme Court. Other holders of executive positions in the Chancelleries submit their declarations to the Heads of Chancelleries. The Ministers and the head of the Prime Minister's Office submit their declarations to the Prime Minister. The secretaries and undersecretaries of state (and possibly other senior ministerial officials) submit their asset declarations to the relevant minister. In principle, PTEFs who are appointed from among MPs submit their statement to the speaker of the House concerned.

70. According to the above laws, the statements submitted to Parliament are public. Those submitted by other PTEFs are classified as "restricted" under the legislation on classified information of 2010. The declarant may however consent to the publication. This is the case for all those working in the office of the Prime Minister, and a similar practice – encouraged by the Prime Minister's office – reportedly applies to a majority of Ministers and Deputy-Ministers. The law may also provide for exceptions to the above confidential nature of declarations. These declarations are published on the Public Information Bulletin website and on the websites of ministries, as well as on the websites of the Chancellery of both Chambers of Parliament (for those PTEFs who are also MPs). The rules applicable to declarations of MPs provide that these are stored for 6 years by the bodies entitled to receive them and made publicly available, electronically, by the speaker of the House concerned.

71. The GET welcomes the existence of declaratory obligations on the assets and interests of PTEFs. That said, the arrangements in place call for a number of comments. First of all, there is no coherent legal framework guaranteeing the publicity of the information for all PTEFs. For the sake of legal security and to avoid unnecessary legal disputes<sup>35</sup>, this needs to be urgently addressed. Secondly, there is apparently no unified storage system in place. But the Act of 1997, as amended last in July 2017, provides for the creation of a central Register of Benefits. It is to gather the data submitted by declarants including other information concerning donations, hospitality, gifts etc. It is meant to be public and run by the State Election Committee. However, since declarations of PTEFs who are also MPs are regulated differently, it should be pointed out that a similar public register, specifically for MPs, is also provided for under the Act of May 1996 concerning MPs only. The GET is of the opinion that the multiplicity of legal and practical arrangements for the collection and storage of declarations of PTEFs is not a satisfactory solution. Thirdly, there is a clear lack of guidance documents which would spell out and explain what is to be declared, how to fill out the forms, how certain assets are to be valued, what the concept of movable property encompasses and so on. The on-site discussions showed that there is a clear need for such guidance and it is reportedly not uncommon that PTEFs seek to dissimulate the possession or real value of certain movable or immovable property items. The GET noted that if the declarations are to provide a reliable picture of a declarant's assets, they should be clear about other forms of financial products currently offered on the market (life insurance products, savings accounts etc.) and other valuable property (precious metals and stones, art etc.). It was quite striking that certain declarations of PTEFs seen by the GET did not contain a single (movable) property element above EUR 2,300, whilst other declarations only referred to the declarants' various cars. The Polish authorities have pointed out that the draft Law on the Transparency of Public Life includes a series of provisions which are aiming

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<sup>35</sup> The declarant who submitted a declaration may lodge an appeal to keep the information classified. The decision relating to the protection is taken by the person collecting the declaration but the Minister of Justice is allowed to overrule the protection (Art. 10.3a of Anti-Corruption Act).

at unifying the declaratory system and clarifying various issues. It also provides for a standardised and unique declaration form, accompanied by instructions on how to fill it. The GET supports this.

72. Last but not least, although the GET welcomes the fact that the declaratory obligations extend to the assets co-owned with the spouse, it wishes to recall that GRECO has repeatedly pointed to the need to also address the situation of the spouse as such and other dependent family members. The GET noted that in March 2018, the media pointed to the fact that the asset declarations of the Prime Minister did not give a reliable overview of his situation, partly because of recent changes in the marital property regime<sup>36</sup>. It is thus clear that the extension of declaratory duties, which was examined in the context of the Fourth Round Evaluation of Poland, deserves to be re-considered in relation to PTEFs. Consequently, **GRECO recommends that (i) the asset declaration system currently in place for different categories of persons exercising top executive functions be streamlined notably with a central register and accompanying guidance, and that the information is made easily and publicly accessible and that (ii) consideration be given to widening the scope of asset declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public).**

#### *Review mechanisms*

73. The Protection Bureau in the Chancellery of the Prime Minister collects and registers the declarations submitted by members of Government, in particular the names of declarants, the dates of submission, the reasons for submitting a declaration etc. The various Ministries collect the other declarations of senior officials (state secretaries, General Director etc.). The Parliament collects the declarations of those PTEFs who are MPs.

74. It is reported that the Central Anticorruption Bureau (CAB) is also checking to some extent some of the declarations, for instance in case of doubt on their reliability and accuracy at the level of the first recipient or when there are other suspicions.

75. The GET is of the opinion that the verification of declarations needs to be strengthened. It heard that the prime receivers of asset declarations in Government and Ministries only check whether the declaration submitted by a person matches the declaration submitted in previous years, which suggests that the supervision carried out is mostly formalistic. In any event, it would be illusory to expect more from them apart from ensuring that the PTEFs they are responsible for submit declarations in a timely manner. The CAB is reportedly the main designated oversight body, but the GET had several misgivings about this.

76. First of all, getting a reliable overview of its results and working methods appears to be difficult. The discussions held on-site did not allow to gather consistent and reliable data on the number of declarations actually verified, concerning what kind of persons (including possibly PTEFs), the results of such verifications and so on. Nor was information available on the methodology possibly used to select the declarations to be checked. It would appear that ultimately only a few verifications take place, mostly randomly, and the number of

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<sup>36</sup> See <https://www.newsweek.pl/polska/polityka/mateusz-morawiecki-ukrywa-majatek-oswiadczenia-majatkowe-morawieckiego/gftg7ye>



infringements identified is very low. The GET was provided before the visit with a list of 12 cases concerning PTEFs opened between January 2013 and March 2017: for half of these, the follow-up and outcome of the controls is unknown. For the others, there was either no irregularity found, or the Prime Minister or a prosecutor was sent a notice but no information is available on the follow-up. Charges were dropped by the prosecutor in two other cases (and the decision confirmed in appeal). Data provided by the National Prosecutor's Office for approximately the same period refers to 23 cases handled concerning PTEFs' declaratory obligations. These resulted in four indictments and two convictions with conditional punishment). The above data was always provided as examples as there is no consolidated reporting and control system in place which would allow for a reliable picture of risks and possible problems in relation to declaratory obligations, and their effectiveness.

77. The CAB publishes an annual activity report and only the most recent one, for the year 2017, published shortly after the on-site visit, refers to activities in relation to declaratory obligations. But the data published on half a page is mostly of a general nature and of limited relevance as it merely refers to the number of declarations received and from which public body (5,828 from five administrations/agencies). The GET was told that according to certain academic estimates, the CAB would actually only check about 1% of the declarations it receives and that it would act mostly upon public allegations in the media or a report from an NGO. All this points to the limited effectiveness and poor accountability of CAB when it comes to verifying the declarations of senior officials. Because of the increasing number of officials required to file a declaration, an electronic system needs to be put in place for efficiency reasons.

78. Last but not least, it should be recalled that the CAB is under the authority of the Prime Minister and of a designated "Minister-coordinator for special services". The Head of CAB is designated as a "central authority of the government administration" (art. 5 of the Act on the CAB)<sup>37</sup>. Although the management of CAB was not affected by the recent civil service reform, its current head – a former candidate MP –was appointed as part of a wave of political nominations<sup>38</sup>. Before that, according to media reports the management was recurrently involved in controversies involving criminal acts, and alleged judiciary and political bias<sup>39</sup>. It should be underlined that the European Commission had expressed similar concerns about the CAB in its 2014 anti-corruption report<sup>40</sup>. Under these circumstances, in order to ensure the existence of an effective, credible and accountable review mechanism, a radical reform would be desirable. Consequently, **GRECO recommends establishing an independent review mechanism for the declarations of financial interests of persons entrusted with top executive functions, provided with adequate legal, technical and other means to perform its tasks in an effective and accountable manner.**

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<sup>37</sup> [https://cba.gov.pl/ftp/filmy/Act\\_on\\_CBA\\_end\\_of\\_2014.pdf](https://cba.gov.pl/ftp/filmy/Act_on_CBA_end_of_2014.pdf)

<sup>38</sup> <http://inside-poland.com/t/friends-family-and-party-favourites-of-polands-government-appointed-to-200-top-jobs-while-pms-husband-heads-25-billion-zloty-school-charity/>

<sup>39</sup> <https://polandinenglish.info/38115171/former-anticorruption-bureau-chief-charged>  
<http://thenews.pl/1/9/Artykul/201962,Anticorruption-chief-abused-power-court-rules>  
<http://inside-poland.com/t/the-president-the-pardon-and-the-crooked-anti-corruption-boss-polands-government-takes-on-independence-of-the-courts-again/>

<sup>40</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014\\_acr\\_poland\\_chapter\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_poland_chapter_en.pdf)

## **Accountability and enforcement mechanisms**

### *Non-criminal enforcement mechanisms*

79. The responsibility for ensuring compliance in daily practice with the integrity standards in place lies primarily with the central bodies of the ministries and with the responsible minister when it comes to its senior officials, and on the chancellery of the Prime Minister and the Prime Minister him/herself when it comes to the members of the Prime Minister's services and the members of government. As pointed out in the developments leading to the first recommendation (see paragraph 30), an overarching integrity system and policy is needed to promote and foster a culture of integrity among all PTEFs.

80. The information provided to the GET before and during the on-site visit showed that there is heavy reliance on criminal law to deal with integrity matters. However, because of the need – under criminal law standards of evidence – to demonstrate a criminal intent and because of the weight and complexity of criminal proceedings which translates into lengthy procedures, an integrity system cannot rely solely on criminal enforcement. Disciplinary action is equally important in order to respond rapidly and in a proportionate manner, to a situation presenting a danger for the public sector, even before it becomes a criminal offence, which is what prevention is about. It is therefore equally important for Poland to put in place an effective non-criminal enforcement mechanism to ensure compliance with the future rules of conduct and integrity standards recommended earlier (see paragraphs 33, 44, 56, 60). It could be placed either under the authority of the Prime Minister (e.g. assisted by an advisory body) or – even better – be entrusted to an independent commission. **GRECO recommends that a robust mechanism of supervision and sanction be put in place for the effective implementation of the future rules of conduct and other standards for the prevention of corruption.**

81. The GET is concerned that if the draft law on transparency of public life is adopted as it stands, violations regarding assets declarations could lead too systematically to criminal sanctions (e.g. intentional provision of false information). It is of course important to have adequate punishment possibilities and the possibility, therefore, to involve bodies which have the power to access banking and other financial information and to investigate dubious dealings. However, these sanctions should be more lenient for less serious/unintentional violations which might alternatively be processed in disciplinary proceedings. The GET urges the Government to make sure that if the legislation is amended, there is a range of sanctions which are dissuasive but proportionate to deal with various violations.

### *Criminal proceedings and immunities*

82. PTEFs who are appointed from among the ranks of members of Parliament – typically: ministers, State secretaries – continue to enjoy parliamentary immunity (inviolability) in relation to their actions. This immunity must first be lifted upon a request from a prosecutor in order to initiate criminal proceedings.

83. Moreover, a privilege of jurisdiction exists for certain PTEFs. The State Tribunal is the judicial body established by the Constitution and regulated i.a. by the 1982 Act on the State Tribunal and by the Resolution of the Lower House (Sejm) of 6 July 1982 on the Rules of activities of the State Tribunal., which rules in first instance and in appeal (in a different

composition) on the constitutional liability of people holding the highest offices of State. It examines cases concerning the infringement of the Constitution or statutes (a so-called “constitutional tort”) committed by the President, members of government, heads of central administrative offices and other senior state officials (in particular the President of the Supreme Audit Office, the President of the National Bank of Poland). Moreover, it examines all cases concerning the President and criminal cases involving members of the Council of Ministers (in relation to their duties). The State Tribunal is empowered to rule on the removal of individuals from public office, to impose injunctions on individuals against their appointment to senior offices, to revoke an individual's right to vote and to stand for election, to withdraw previously awarded medals, distinctions and titles of honour, and in criminal cases to impose penalties stipulated in the criminal code. The composition of the State Tribunal is established at the first sitting of each new legislature and the 16 members are thus appointed for four years by the lower House, with the exception that the head of the office of the Tribunal is the First President of the Supreme Court (who is appointed by the President of the Republic for a six-year term). His/her two deputies and the 16 members of the State Tribunal are chosen from outside the Parliament. The lower House also elects a prosecutor and a deputy prosecutor, who are to conduct the investigation and present the charges. The procedure before the State Tribunal consists of three phases: a) upon a request of the President or at least 115 members of the lower House, and on the basis of an opinion of the Constitutional Responsibility Committee, the lower House decides on the initiation of proceedings – this requires a 3/5<sup>th</sup> majority for cases involving a member of government, b) the judicial phase before the Tribunal (the hearing is public); c) the execution phase<sup>41</sup>. The statute of limitation is 10 years from the date of commission of an act, unless the laws provide for a longer statute for the offence concerned. If the committed act does not constitute a criminal offence the Tribunal may punish the individual by depriving him/her of his/her passive and active electoral rights (for a period of 2 to 10 years), or by pronouncing a disqualification from occupying managerial positions. The Tribunal may content itself with ascertaining the guilt of the accused. If the committed act is a criminal offence then the Tribunal imposes the punishment specified by penal statutes.<sup>42</sup>

84. The GET is concerned by the way the system of immunities enjoyed by PTEFs (those appointed from among the MPs) is designed and functions in practice. The scope of immunities is broad, as it covers any act committed in the exercise of functions, even where it is unrelated to official duties. Even speed driving and acts of possible bribery are covered by the immunity as they are not considered as “detachable” acts. Also acts committed in flagrante delicto are covered by the immunity, contrary to the situation in many other GRECO member States.

85. The GET was informed that regarding the procedure for requesting the lifting of immunity, there is no standardised model for the content of requests and the parliamentary committee responsible for immunity-related matters can demand access to the whole file (which, in the GET’s view, can lead to risks for the investigation / prosecution). Decisions of the Parliament are based on an unwritten doctrine according to which a) the immunity from prosecution is not a personal privilege and b) it shall only apply to acts which affect the parliamentary activity, but prosecutors and other interlocutors pointed out that the practice deviates from that doctrine. Moreover, although in principle, parliamentary decisions should

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<sup>41</sup> The president of the Tribunal forwards the final judgement to the circuit court in Warsaw is responsible for the execution.

<sup>42</sup> <http://www.sejm.gov.pl/english/prace/okno5.htm>

be motivated, this is not always done in practice and the GET was provided with contradictory explanations as to whether the results of parliamentary discussions and the underlying reasoning are – as a minimum – publicly available or communicated to the prosecutor.

86. Various examples were given, of cases initiated against PTEFS (one minister and several under-secretaries of State) for serious allegations of malfeasance, including influence peddling, where the immunity had not been lifted. Other examples provided to the GET showed how immunities can also affect the implementation of preventive arrangements, in particular where the immunity was not lifted to allow proceedings concerning luxurious goods acquired suspiciously and not included in the declaration of assets and interests (the minister concerned was ultimately asked to resign as a result of public controversies).

87. The GET is disappointed to see that more than 15 years after the subject of immunities was dealt with in GRECO's First Evaluation Round, it remains such an issue in Poland. Poland needs to lay this down in written rules and to provide for a procedure for the lifting of immunities which is transparent and based on objective criteria, and which would not imply that the Parliament examines the content of the whole file and discusses the guilt of the PTEF (or Parliamentarian) concerned. This is the task of the court. The GET recalls that according to Resolution (97)24 of the Committee of Ministers on the Twenty Guiding Principles for the Fight against Corruption, immunities should be limited to the extent necessary in a democratic society so as not hamper the investigation, prosecution or adjudication of corruption offences. In the light of the above, **GRECO recommends, that in respect of persons exercising top executive functions, an in-depth reform of the system of immunities be carried out with a view to facilitating the prosecution of corruption-related offences by excluding these from the scope of immunities and by ensuring that the procedure for the lifting of the immunity is transparent and based on objective and fair criteria used effectively in practice.**

88. The GET also had misgivings about the privilege of jurisdiction enjoyed by several PTEFs (and other senior officials). First of all, the competence of the Tribunal of State was never clearly defined (or clarified) and legal and academic disputes are on-going as to what a "constitutional tort" entails. Moreover, the Tribunal has broad jurisdiction to also deal with common crimes, including acts of corruption. In a decision of 21 February 2001 (ref.P12/00, published OTK 2001/1/57), the Constitutional Court established that a PTEF can be prosecuted for a common crime before a regular court, unless the Parliament decides to launch the procedure before the Tribunal. The prosecutor also needs to inform the Sejm of any proceedings initiated if s/he considers that the criminal act is connected to the PTEF's official duties (art. 2 of the State tribunal Act) Prosecutors and representatives of the Sejm recognised the ambiguity of the legislation on these matters and that clear criteria would be desirable to determine which procedural path needs to be followed depending on the circumstances. Although in Poland the principle of mandatory prosecution applies, the GET considers that the above situation could have a dissuasive effect on the prosecutorial action in particularly sensitive cases. Moreover, some of those the GET spoke to, took the view that in case the tribunal launches an investigation in a case already handled by the Prosecutor's office, the latter would be withdrawn from the case. In the GET's view, this exposes politically sensitive cases handled by the prosecutorial authorities to a risk of political interference.

89. At the same time, the effectiveness of the Tribunal of State is undermined by a number of factors. For instance the procedure was often described as particularly cumbersome, resulting in delays which may exceed the duration of a legislature (and the mandate of the Tribunal members). The decision to bring charges against a PTEF is political in essence and potentially difficult to reach because of the 3/5<sup>th</sup> majority required for the vote (in 2015, attempts to send a Minister and another PTEF before the tribunal failed because of that). This can give excessive weight to considerations which have little to do with the merits of a case, not to mention the fact that the composition of the Tribunal is determined ad hoc by the lower House at the beginning of each legislature.

90. Moreover, the functioning of the Tribunal was paralyzed for many years since the lower House had not appointed the Prosecutor or his/her deputy. Despite many requests to launch proceedings before the Tribunal, the last case was processed in 2005 and it was reopened only in 2016 after prosecutors had been elected, but practitioners met by the GET believed that it will have to be closed due to the statute of limitation. Overall, since 1982, the Tribunal has only managed to pronounce one verdict in relation to two officials and the GET could not determine whether the above had actually led to more cases being handled by the regular criminal justice bodies. Many persons met by the GET expressed serious doubts about Poland's effective capacity to deal with situations and integrity issues involving senior and elected public officials. There are no reliable statistics on cases handled by prosecutors, on cases taken subsequently to court and on cases eventually adjudicated concerning PTEFs. A few serious allegations ended with the mere resignation or dismissal of the PTEF concerned. But this is not a satisfactory response to allegations of corruption and malfeasance. It is therefore clear that the existence of a duality of procedural avenues can affect the effectiveness of the criminal justice response in cases involving PTEFs and that this calls for improvements. **GRECO recommends ensuring that proceedings before the constitutional Tribunal do not hamper the prosecution of corruption-related offences before the ordinary courts.**

91. The GET also reiterates the concerns expressed by GRECO in the context of its ad hoc procedure in respect of Poland, regarding the increased influence of the executive branch of power over the judiciary and the prosecution system. The situation is similar with regard to the Police and other law enforcement agencies whose senior management is appointed by, and thus under Government authority. See the second part of the present report, devoted to law enforcement. Currently, the entire chain of criminal proceedings – from investigation to adjudication – is now exposed to risks of political interference, which could ultimately undermine the effectiveness of anti-corruption efforts in respect of PTEFs. One of the reasons for those various changes was reportedly to eradicate certain well-established malpractices and to increase the effectiveness of the State bodies concerned. However, no government or political party is intrinsically immune to corruption and the best way to preserve integrity in the State institutions is to provide for a system of effective checks and balance.

## V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

### Organisation and accountability of law enforcement/police authorities

#### *Overview of the various law enforcement bodies*

92. The Police is the main law enforcement authority in Poland. Law enforcement functions are also vested in the Border Guard (Act on Polish Border Guard of 12 October 1990), Agency of Internal Security (Act on Agency of Internal Security and Intelligence Agency of 24 May 2002), National Revenue Administration (Act on National Revenue Administration of 16 November 2016), Central Anticorruption Bureau (Act on Central Anticorruption Bureau of 9 June 2006), Military Gendarmerie (Act on Military Police and Military Law Enforcement Bodies of 21 August 2001) and other inspection bodies such as the Trade Inspection and the State Sanitary Inspection, for instance. The present report focuses on the Police and the Border Guard, which are the main agencies. Many of the risks and anti-corruption measures discussed in relation to these two forces could be of relevance to a broader range of law enforcement agencies. Poland may wish to bear this in mind when implementing the recommendations formulated hereinafter

93. The Polish Police (*Policja*)<sup>43</sup> is a paramilitary organisation in charge of preliminary investigation, criminal investigation and administration and order-keeping activities. At the time of the visit, the Police employed over 97,000 police officers (84% men, 16% women). Its activity is governed i.a. by the *Police Act* of 6 April 1990, the *Regulation on detailed principles for the organisation and activities of Police headquarters, stations and other organisational units* of 28 September 2007 and the *Regulation on the principles of pay grades in the Police* (n°88) of 1 February 2011 (issued by the Commander-in-Chief of the Police). The police organisation is based on the principles of centralism and hierarchic subordination. It comprises 16 provinces (voivodes) and the capital city – all headed by a Commander –, counties (powiat), municipalities and city districts, Police stations and central general and specialised departments. The central command is headed by the Commander-in-Chief.

94. The Border Guard (*Straż Graniczna*)<sup>44</sup>, hereinafter the BG, is a uniformed and armed law enforcement body responsible for State border surveillance, border traffic controls as well as for preventing and counteracting illegal migration. The structure comprises the headquarters and central departments (such as the Internal Affairs Office), nine territorial branches, three training centres. The activity of the BG is governed i.a. by the *Act on the Border Guard* of 12 October 1990 and various implementing regulations. As of 31 October 2018, the Border Guard employed 14 864 persons (73,7 % men and 26,3 % female).

95. The Police and the BG, through their respective Commander-in-Chief, report to the Minister of the Interior, for instance by means of annual reports (submitted in February each year) about the general activity carried out in accordance with the priorities defined by the Minister / Government. The Commanders-in-Chief must also file an annual declaration (in March), about the management control to the person in charge of general supervision of the same Ministry. In addition, the internal control units of the Police and BG report annually (in February) about their activity to the Director of the Department of Inspection, Complaints and Petitions of the Ministry. The Police and the BG also submit annually information for the

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<sup>43</sup> <http://www.policja.pl/>

<sup>44</sup> <https://www.strazgraniczna.pl/>

drafting of a “Report on safety in Poland” to the Ministry. Specific arrangements are in place for financial reporting. Moreover, the Commander of the Internal Affairs Office reports annually by 31 January to the Minister for internal affairs on the activities of this office.

### *Access to information*

96. The Police and BG communicate about their activity and the applicable norms and policies through their general internet presence or dedicated websites (for instance the Police runs an information service at [www.isp.policja.pl](http://www.isp.policja.pl)), via social media and monthly newsletters produced by the management or communication departments. Both the Police and BG make use of press officers/press teams and spokespersons (of the Commander-in-Chief), who can also be contacted by the media. Requests for information are treated on the basis of the general legal framework, namely the *Act on access to public information* of 6 September 2001 – see also the first chapter on PTEFs. For example, the Police operates an information service at [www.policja.pl](http://www.policja.pl), and each Police unit operates its own website, as required by the Act of 6 September 2001 on *access to public information*, including the obligation to publish information on the entity’s activities (see also <http://bip.kgp.policja.gov.pl/>).

### *Public trust in law enforcement authorities*

97. According to public opinion polls conducted by EUROSTAT and CBOS and reported in the Bertelsmann Stiftung’s Transformation Index (BTI) for the last few years, for instance 2016 and 2018<sup>45</sup>, more than two thirds of respondents trust the Polish police and it is the highest rate among the 25 public institutions mentioned in those surveys. Despite a relatively high level of public trust in the police, it is sometimes reported that companies express insufficient confidence in the security apparatus to protect business activities from crime and in the preservation of the rule of law.<sup>46</sup> The on-site discussions often confirmed that the perception of so-called “street corruption” involving law enforcement officers and especially the police (for instance in relation to traffic offences) had largely declined in recent years, compared to the situation in the early 1990s.

98. Allegations concerning the integrity and corruption in more sophisticated and serious forms resurface at regular intervals, including in relation to senior management and central control bodies, also those with anti-corruption responsibilities<sup>47</sup>. In the perception of a specialised public and academia, in particular<sup>48</sup>, there is a persistent phenomenon of political

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<sup>45</sup> <https://www.bti-project.org/en/reports/country-reports/detail/itc/pol/ity/2016/itr/ecse/>

<sup>46</sup> <http://www.business-anti-corruption.com/country-profiles/poland>  
<https://www.bti-project.org/en/reports/country-reports/detail/itc/POL/>

<sup>47</sup> <http://thenews.pl/1/9/Artykul/363817,Former-police-chief-detained-by-anticorruption-police>  
<http://thenews.pl/1/9/Artykul/298127,Exintelligence-officer-detained-in-corruption-probe>  
<http://thenews.pl/1/9/Artykul/342697,Polish-police-officers-suspected-of-tipoffs-over-road-accidents>

<sup>48</sup> See Stanisław Mazur, Michał Możdżeń and Marek Oramus: [“The Instrumental and Ideological Politicisation of Senior Positions in Poland’s Civil Service and its Selected Consequences”](#)

See also Ryszard Bełdzikowski: [“Ethics and pathology in the Polish police – professional and political aspects”](#) : *“As stipulated by law a police officer must not be a member of any political party (Article 63 of the Act on the Police), which is a commonly accepted standard. In Poland, however, for each party that wins the parliamentary elections the Police is always an important prey which is immediately taken into possession. In reality this means appointment of people who will be easily moulded and manipulated by their political patrons and dismissal of all who were nominated by the descending administration. The wave of personnel exchange on executive levels after the change of power ranges down through provinces to poviats. A considerable number of*

influence over policing activities in Poland, and the negative impact this can have on the agencies concerned. The GET heard several times concerns that there was a general similar trend as regards the Polish civil service following the recent amendments to the Civil Service Act adopted in January 2016 (after a speedy process and inadequate consultations)<sup>49</sup>, as a result of which, all senior civil servants are now exempted from the scope of the Act and thus appointed and dismissed discretionarily. The GET also heard that the Police had been headed by three different Chief Commanders in just two years and it noted that changes in the top management of the police have been particularly controversial<sup>50</sup>.

### *Trade unions and professional organisations*

99. In both the Police and BG, employees enjoy a right to form unions and to participate in their activities but they are not allowed by law to strike (Act on collective bargaining of 1991). There are several unions specifically in place for the Police and BG members, including the Self-Governing Trade Union of Police Officers<sup>51</sup> (established in 1990), the Company Board of the National Union of Employees of the Government Administration of the Border Guard Headquarters, the Trade Union of Employees of the Ministry of Interior and Administration, the Independent Self-Governing Trade Union of Border Guard Officers.

### **Anticorruption and integrity policy**

#### *Policy, planning and institutionalised mechanisms for implementation*

100. As indicated earlier (see paragraphs 26, 29, 30), the anti-corruption activities and policies in Poland are normally determined by the successive Governmental Anti-Corruption Programme. At the time of the visit, the programme for the period of 2018 – 2020 had just been adopted (replacing a previous version for 2014-2019), the purpose of which is to reduce corruption in the country and to develop prevention, education and awareness-raising.

101. The Police and Border Guard contribute to the implementation in different ways. The BG reported that in December 2014, its Commander-in-Chief approved a Plan for the years 2014-2019 and coordinating its implementation is the responsibility of the Head of the Bureau of Internal Affairs. This included i.a. a review of the code of ethics in respect of its

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*dismissed functionaries aged 45-55 does not receive any job offers and is forced to retire. Such political roulette sends a very wrong moral message which is really badly received by the Police itself and by the wide public. Such practices are virtually unknown in the administration of countries of the civilized world.*

*The above mentioned methods of exercising political power (or political party power to be more specific) over the Police lead to moral decomposition and breakdown of integrity of its environment. In such a situation it is not uncommon that outstanding specialists, experts, people with passion are relegated from the service. What's even worse, some functionaries are forced to leave after brutal disregard, following prosecutor sanctions, slander and false accusations. In such a way two officers of the Central Bureau of Investigation Piotr Wróbel and Karol Prasolowski were eliminated and forgotten, also Dariusz Loranty from Metropolitan Police in Warsaw had to leave the service in similar atmosphere. These are not desirable standards that would encourage young functionaries to be loyal, professional and ethical. They see it does not pay to be reliable, to raise qualifications as this will not take one up the career ladder. Only protection of a political patron guarantees promotion and recognition."*

<sup>49</sup> See for instance [https://en.frankbold.org/sites/default/files/tema/briefing-risk\\_of\\_politicizatin\\_in\\_polish\\_civil\\_service-2016-03-24.pdf](https://en.frankbold.org/sites/default/files/tema/briefing-risk_of_politicizatin_in_polish_civil_service-2016-03-24.pdf)

<sup>50</sup> See for instance <http://thenews.pl/1/9/Artykul/248507,New-police-chief-for-Poland>

<sup>51</sup> <http://nszpz.pl/>



effectiveness; drafting of the corruption map concerning the situation in the BG; analysing irregularities in daily work, training activities etc. The Police reported that they have undertaken numerous meetings in schools and with the managers and officers and staff of the Police.

102. The GET was informed by LEOs that the programme for the period 2014-2018 had stopped *de facto* in 2016 and that it was actually difficult to draw any conclusions as to the achievements regarding law enforcement agencies. The GET also noted that some important changes have been made in recent times. In addition to the existing Department of Inspection, Complaints and Petitions of the Ministry, an Internal Supervisory Office (ISO) was created in November 2017 within the Ministry of the Interior and Administration, placed under the direct authority of the Minister (who appoints and dismisses the head of ISO). It became operational in January 2018.

#### *Risk management measures for corruption prone areas*

103. The Polish authorities indicated that in principle, it is the respective internal affairs department of the Police and of the BG which play a lead role in this area. The Internal Affairs Bureau of the Police produces an annual report on its activities which reportedly refers to risks of crime in the Police, and which recommends possible desirable further action to the management. The main risks identify so far concern the relations with citizens (bribery connected with traffic control functions), abuses in relation to proceedings (e.g. violence and abuse of powers by investigators or during tendering procedures etc.), misuse of information. These assessments lead to additional preventive measures and awareness-raising<sup>52</sup>. The Office of Internal Affairs of the Border Guard presents an annual update of the map of corruption threats (pursuant to the Government Programme for 2014-2019<sup>53</sup>) to the Commander-in-Chief and to the Ministry. In particular, the collected data indicates that the officers most exposed to corruption are those serving in the border units at the external EU border (borders with Ukraine, Belarus and Russia). Specific corruption risks are also identified in technical units dealing with immigration, operations and investigations, information, HR, financial and logistics. These risks translate into increased professional surveillance by the superiors and educational activities (including by the BG Training Centre). The effectiveness of risk management tools is evaluated internally through control and audit activities. The Polish authorities also stressed the importance of external controls and evaluations done by the Ministry and the Supreme Audit Office.

104. The GET discussed at length the subject of risk management during the on-site visit, especially since no consistent information was made available on the various integrity-related incidents encountered in daily practice by the Police and BG. What transpired from the discussions is that first of all, certain concepts are over-emphasised (typically bribery), whereas others are totally ignored. For instance, conflicts of interest were never referred to as an area of attention of policy-makers. Secondly, although the annual reports serve the purpose of getting and overall picture about the corruption threats and trends, they are mainly based on cases actually processed. Representatives of the Central Anti-Corruption Bureau confirmed that no risk-based approach had been conducted up until now and after the visit, it was pointed out that the Bureau is preparing a new model for the presentation of

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<sup>52</sup> For example in 2014 the police issued [a guide for the prevention of corruption for policemen serving on the roads](#)

<sup>53</sup> Link to an [on-line automated translation of the programme](#), see page 12 and footnote 15

data on a risk-based approach. Moreover, there appears to be a large focus on criminal cases and as the GET learned, there is not even a central data-collection system (at least within the Police) to gather data and information on disciplinary cases and lessons to be drawn from these. Poland clearly needs to adopt a more ambitious approach as regards the collection and analysis of information which could be useful for the identification of risks and threats of corruption and for the design of its policies for the Police and BG. As indicated in paragraph 152, even the information provided by means of anonymous complaints could feed into the analytical process and be used for the design of policies, training, audit and inspection plans etc. **GRECO recommends that the Police and Border Guard undertake comprehensive risk assessments of corruption-prone areas and activities, beyond what is revealed by the mere criminal cases actually processed, and that the data are used for the pro-active design of integrity and anti-corruption policies.**

### *Code of Ethics*

105. In 2003, the Police issued “The principles of professional ethics for officers”. This document sets the ethical standards for police officers and managerial staff. The oath to be taken by new recruits requires to comply with those principles and breaches can lead to disciplinary proceedings (article 132 of the Police Act). In addition, the Internal affairs office has issued a guide for the new police officers (2015) which provides for information on dealing with difficult situations and avoiding threats in the service. New police officers entering the duty are provided with this guide.

106. The *Act on Border Guard* of 12 October 1990 (Articles 67, 68, 91b, 91c, 91d), the Order n° 11 of the Commander-in-Chief of Border Guard *on principles of professional ethics of the Border Guard officers* of 20 March 2003 and the *Guidelines of the Border Guard Commander-in-Chief n° 65 on authorising officers of the Border Guard to take up paid work outside of the service* of 17 April 2015 set ethical rules for border guards. According to Article 135 subparagraph 1 of the Act on Border Guard of 12 October 1990, the border guard officers are liable to disciplinary responsibility for breaching the general professional discipline and ethics rules.

107. The GET welcomes the existence of the above rules and the fact that LEOs are expected to comply with these in daily work. That said, they have never been updated to take into account new emerging issues and social phenomena which can pose a threat for the integrity of LEOs. As pointed out in this report, there is a clear lack of a risk-based approach in the identification of integrity issues in Poland, as this should not rely solely on (criminal) cases actually handled. There is also a need for detailed rules and guidance on how to deal with gifts, *ad hoc* conflicts of interest and third party relations, in particular. These various subjects have been discussed in other sections of the present report (see paragraphs 125, 133, 136). It would also be desirable that the rules be made more user-friendly through concrete examples and guidance corresponding to daily activities. The GET recalls that ideally, a code of conduct should be a living document, used in daily practice and updated so as to adapt to social changes and new risks identified. It should also be easily available to the general public so that all citizens are informed of the conduct expected from members of the law enforcement agencies. As indicated in paragraph 110, advice is mainly provided by the superiors. However, because of their central role with regard to a number of areas (e.g. approval of accessory activities, disciplinary matters) and because an officer might seek guidance with regard to issues in the line management itself, it is clearly

preferable to introduce a system of confidential counselling. **GRECO recommends that the rules of conduct for the Police and Border Guard be updated to better address gifts and other benefits, ad hoc conflicts of interest and relations with third parties, and be accompanied by appropriate comments and examples, as well as confidential counselling.**

#### *Handling undercover operations and contacts with informants and witnesses*

108. The general framework for undercover-operations is regulated in law or regulations. For instance the *Act on the Border Guard* contains provisions on the use of documents and items emanating from criminal activities, on the security of information and on a special fund for the financing of operations. The concrete modalities of operations are addressed in internal classified texts, such as the police instructions on how to carry out undercover operations and how to handle contacts with third persons (informants, etc.). The GET was therefore not provided with concrete information on mechanisms and routines possibly in place to guard against the misuse of law enforcement activities to achieve a private benefit.

#### *Advice, training and awareness*

109. The Police and BG provide initial training to new recruits and in-service training through the Police Academy in Szczytno, and the BG Training Centres. The Police is further supported in its teaching work by the Research Institute. Through an EU grant, the Central Anti-corruption Bureau (CAB) has developed an anti-corruption training scheme which includes remote-learning and training sessions and relevant materials as well as an anti-corruption e-learning platform. The GET was provided with examples of topics covered. For instance, as regards the BG, the initial training covers professional ethics and service offences committed by officials. During the training in the field, the subject of ethical and legal aspects of the prevention of corruption is also addressed. In-service training for first degree officers address such subjects as the legal and social aspects of corruption, risk analysis etc.). The specialised training sessions for senior staff also cover anti-corruption (for instance there was a course in 2016 on "*Recognizing and preventing corruption in the Border Guard*". The same year, a training course for officers and employees on combating corruption and on conflicts of interest was launched on the e-learning platform.

110. The websites of the Police and BG provide access to legal acts, both general and internal, as well as news. Within the Police and BG, superiors provide advice on ethics, when needed, but there is no specific confidential counselling mechanism (see also the above paragraphs and the recommendation concerning rules of conduct).

#### Recruitment, career and conditions of service

##### *Recruitment, appointment to a higher rank, and dismissal*

111. As indicated in the introductory paragraphs, the Police and BG are organised as uniformed, para-military corps with their dedicated staff and specific rules. A variable proportion of members of the Police and BG are not subjected to the general career and tenure system of the force. For instance in the Police, about 10% of staff are regular civil servants assigned to specific tasks (they are subjected to the general civil service rules on recruitment and employment conditions) and another 12% are employed on an ad hoc basis (contractual basis – appointed and dismissed freely by management, for instance under

article 32 of the Police Act). These categories include advisors (for instance former senior officers), staff with specific technical knowledge or staff performing support services.

112. This also concerns the senior management, who are not necessarily police officers. The table below provides an overview of the main leading functions in the Police and BG, and the authority deciding on appointments / promotions / dismissals.

|  |   |
|--|---|
| Commander-in-Chief of the Police and BG  | appointed and dismissed by the Prime Minister at the request of the Minister of Interior  |
| The deputies of the Commander-in-Chief of the Police and BG  | appointed and dismissed by the Minister of Interior at the request of the Commander-in-Chief  |
| Commander of the Offices for Internal Affairs of Police + BG<br>Deputy commanders of the above   | appointed and dismissed by the Minister of Interior<br>appointed and dismissed by the above Minister at the request of the Commander of the Office  |
| Directors and deputy Directors of boards and departments within the Police + BG  | nominated and dismissed by the Commander in Chief   |
| Police Commander of the region<br>BG Commander of a territorial unit or training centre  | appointed and dismissed by the Minister of Interior at the request of the Commander-in-Chief  |
| Police Deputy Commander (up to 3) of region<br>BG Deputy Commander of a territorial unit or training centre                                | appointed and dismissed by the Commander in Chief at the request of the regional / unit Commander (for Police: must be a senior police officer)   |
| Police district commanders, municipal Commanders, police station commander and their deputies<br>BG Commanders of a lower territorial unit | appointed and dismissed by the Commander of the higher territorial unit (must be senior police officers)<br>appointed and dismissed by the Commander-in-Chief at the request of the Commander of a territorial unit |

113. The *Police Act* sets the general requirements for candidates for the service in the Police. The open competition process requires at least secondary education diploma, physical and mental fitness, good reputation, clean criminal record. They must also pass a security clearance procedure involving extended background checks. The selection involves background and specialised knowledge tests, a physical fitness test, a psychological test and an interview. The *Border Guard Act* and the *Decree of the Minister of the Interior and Administration* of 10 February 2006 regulate the recruitment and selection of BG officers. The open competition requirements for candidates for the service in the BG take into account personal motivation, knowledge, professional qualifications, psychological and psychophysiological fitness, good reputation, clean criminal record. The second phase of the qualification procedure includes a general knowledge test, a foreign language test, a physical condition test and an interview. The successful candidates undergo a medical examination and extended background checks.

114. The regular vetting procedure involves the verification of information available regarding spying, terrorism, sabotage, political activities, handling of classified information. The extended vetting procedure (applied to the Commanders-in-Chief of the Police and BG) includes in particular the verification of the living standard / income, mental check, addictions (to alcohol or drugs). Carrying out of the vetting procedure is subject to a written consent of the vetted person and the collected data is classified information. The results of the vetting procedures can be challenged with the Prime Minister and subsequently in court. In addition, the earlier activity of any person appointed to a public office, who was born

before 1 August 1972, is vetted by the Lustration Office of the Institute of National Remembrance and the Commission for the Prosecution of Crimes against the Polish Nation.

115. Since those serving in the Police and BG are, to a large extent, civil servants who enjoy life-long tenure, promotion to a higher rank is normally regulated by the general career progression schemes and based on internal announcements for vacant posts, interviews by selection panels and so on. The nomination of officers to a higher rank takes into account the results of appraisals, the professional qualifications of the candidate and the requirements of the post to be filled, the level of seniority and so on. In particular, in certain cases the nomination to a higher rank can occur before the required period of seniority is reached, in the light of the officer's appraisals and his/her specific professional qualification or additional skills acquired through training etc.

116. The respective rules of the Police and BG determine the conditions of dismissal, such as when the conditions for appointment are not met anymore, in case of negative appraisal or as a result of a disciplinary procedure. For instance, Article 41 of the Police Act refers to the following circumstances: if the medical commission rules that the person is unfit; unsuitability during the preparatory service; disciplinary punishment consisting in the expulsion from the service; final court verdict establishes a criminal offence; professional disqualification pronounced by a court as an additional measure; expiry of a contract if it is not renewed or a permanent post is not offered after a trial period for contracted services; in case of two consecutive negative appraisals; in case the police management decides that "an important service interest requires so". Dismissals can be challenged before the administrative courts.

117. Appointments, promotions and dismissals in law enforcement agencies remain a particularly problematic subject – see also the section above on public trust in law enforcement authorities and the table provided earlier, for a quick overview. The GET is concerned by the discretionary nature of decisions in that area. There are no specific criteria provided for, to decide on appointments, other than the requirement of a clean criminal record and possessing the general background knowledge and often, there is not even a requirement that the person is currently employed as a LEO. Nor is there an obligation to apply an open competitive selection process. The GET had similar concerns about the conditions for dismissals which leave broad room for discretionary decision. A proper vetting procedure is not applied either. In the opinion of the GET, the resulting situation presents significant risks of politicisation, arbitrariness and nepotism which could aggravate the current situation with which certain law enforcement agencies are currently confronted, including demotivation and dissatisfaction, vacancies, integrity issues. Appointments, promotions and dismissals of senior managers in the Police and Border Guard should be better regulated and approximated with the status of the regular officers. For the top management, a fixed term (for instance five years) could be envisaged. **GRECO recommends establishing a career-based system for the appointment, promotion and dismissal of all senior managers in the Police and Border Guards, based on objective criteria, proper vetting and a formal, competitive and transparent process, it being understood that the function of chief commanders could be limited to a fixed term.**

### *Performance evaluation*

118. A system of periodic appraisal exists both in the Police and BG, and it is regulated by specific rules<sup>54</sup>. These appraisals are done annually at the beginning and then no less than once every two or three years (Police) or every five years (BG) depending on the number of years of service. Appraisals are done by the immediate superiors. The appraisal can be challenged with a higher superior (for instance within 14 days in the case of Police officers). Appraisals are normally taken into account in relation to decisions on promotions and negative appraisals can be a ground for dismissal. On the other side, the results of appraisals do not influence the attribution of bonuses for instance.

### *Rotation and mobility policy*

119. There is no system of regular, periodical rotation or mobility policy for police and BG officers. The relevant rules provide for transfers to be decided *ex officio* by management or upon the officers' request. Whilst the GET fully acknowledges the importance of rotation and mobility policies in the context of integrity policies (to reduce the risks of corrupt departments and of complicities with criminal activities, for instance), it considers that for the time being, there are other priorities to address in Poland.

### *Salaries and benefits*

120. Remunerations in law enforcement agencies depend on the status of the officials concerned. For instance, the Police also employ civil servants or employees who are not remunerated according to the scheme for uniformed forces which applies to the police and BG officers. Notwithstanding these variations, it can be said that newly admitted officers who are still undergoing training receive a basic monthly gross salary of approximately Euro 570, whilst for junior officers it amounts to approximately Euro 840 and for experienced officers it is slightly above Euro 1000. The actual income varies depending on specific allowances, e.g. seniority allowance, residence allowance, transportation allowance, holidays allowance. There are also annual awards (1/12<sup>th</sup> of the annual salary) and anniversary awards (after 20 years of service). For comparison purposes, the average gross wage in Poland in 2017 (3<sup>rd</sup> quarter) was approximately 1013 euros<sup>55</sup>.

121. The GET considers that although the system of pensions in law enforcement is perceived as quite favourable, the fact that the average wages for LEOs are relatively low (especially, but not only in entry level positions) compared to the national average or private sector salaries has been a source of major dissatisfaction among serving officers and new recruits. According to some of those met by the GET, both the police and BG have difficulties recruiting and retaining new officers who would meet the standards expected. This has resulted in a non-negligible number of vacancies, e.g. approximately 4 000 in the police at the time of the visit, 6 000 in October 2018 according to press material (see the footnotes to paragraphs 97-98). Up until now, the management and government have – fortunately – not contemplated lowering those professional standards. From the perspective of the preservation of integrity, it is clear that the present situation is generating increased risks if officers start seeking additional sources of income because the cost of life has indeed

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<sup>54</sup> For instance as regards the BG, they are done in accordance with the Decree of the Ministry of The Internal Affairs and Administration on the periodical assessment of the Border Guard officers, of 17 June 2002

<sup>55</sup> Source: Central Statistical Office of Poland

increased significantly in recent years or because of self-perception issues. The GET was informed that there is a phenomenon of young recruits leaving the service after receiving their first pay slips, and of experienced but demotivated officers doing the same and that many officers have indeed sought permission in recent years to exercise a secondary employment.

122. The number of women in the Police and to a lesser extent in the BG is still low, not to mention the even lower proportion of women in management position. Negative stereotypes against women in the Polish police (but also in the prosecution and judiciary) were already noted in other Council of Europe reports<sup>56</sup>. Seeking a better gender balance in the police, including at managerial and policy-making levels, is not only a requirement of equality under international law (see also paragraph 18), but this can also contribute to positive changes in attitude and performance within the profession (e.g. quality of contacts with the public and suspects, countering possible codes of silence, further developing multiple-eyes routines).

123. In October 2017, the “*Programme of modernisation of Police, Customs and Border Services, Fire Service and Government Protection Bureau*” was adopted for the years 2017 – 2020 with the overall aim to modernise these bodies and the working conditions, and to make careers in law enforcement more attractive. A review of salaries in the lower grades is on the agenda in the immediate, and possibly for a broader range of grades by 2020<sup>57</sup>. It remains to be seen how this will effectively improve the situation. The GET noted that in October last, i.e. one year after the adoption of the above Programme, 20 000 to 30 000 police officers (depending on the sources) joined the massive demonstrations held to protest in particular against the low wages in the public sector<sup>58</sup>. The authorities reported that in November 2018, an agreement was concluded for the uniformed services providing for an average increase of PLN 650 (151 Euros) per post in 2019 and of PLN 500 (117 Euros) per post in 2020. The GET is looking forward to the implementation of these agreements. The GET considers that Poland needs to improve the situation for the reasons mentioned earlier. At the same time, it is important that if the income in the lower grades is increased, the salary scale based on steps / grades / seniority keeps a margin for progression until an officer retires. **GRECO recommends improving the terms of employment in the Police and Border Guard (i) by designing additional measures to improve gender balance at all levels and in all sectors and (ii) by reviewing the scale of remuneration so as to establish more attractive wages for the lower ranks, whilst maintaining a stimulating margin for progression throughout the career.**

### **Conflicts of interest**

124. There is no general definition or policy framework on conflict of interest. But a variety of texts deal with situations which could possibly involve a conflict. In particular:

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<sup>56</sup> See <https://www.coe.int/de/web/commissioner/-/poland-slow-down-and-consult-on-legislation-to-avoid-human-rights-backsliding>

<sup>57</sup> <http://www.thenews.pl/1/9/Artykul/349445.Poland-needs-more-police> and <https://bscpostgrads.wordpress.com/2017/10/25/police-reforms-and-community-policing-in-poland-2017-2020-by-monika-baylis/>

<sup>58</sup> <https://www.bloomber.com/news/articles/2018-10-02/polish-police-join-protest-for-higher-pay-before-local-elections> and <https://www.reuters.com/article/us-poland-protests/polish-policemen-protest-demanding-pay-rises-idUSKCN1MC1RT>

- the *Code of Administrative Procedure* and the *Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions* define a list of situations that are seen as possibly leading to conflicting interests;
- the Prime Minister's Ordinance on an ethical framework for the civil service n°70 of 6 October 2011 contains various provisions aimed at limiting the occurrence of possible conflicts of interest
- the *Act on the specific forms of supervision by the Minister of internal affairs* of 21 June 1996 specifies, that the organisational units under the authority of the Minister of Interior and Administration, including the Police and the BG, cannot take part in any activities, including economic activities, if such activities could lead to the usage of official authority, service information or public sources for purposes unrelated to the service or in the way that is contrary to the purpose of the institution;
- an annex to the Decree n° 11 of the BG Commander-in-Chief on *Rules on professional ethics of Border Guard officers* of 20 March 2003 stipulates that a BG officer should not connect public and private interests while performing his/her duties; is not bound by any obligation in relation to his/her tasks; cannot undertake activities inconsistent with service tasks on duty and after it;
- the *Principles on professional ethics of Police officers* of 2003 stipulates that police officer shall refrain from corruption in all its forms, they may not use their profession in private purposes.
- the Decision n°65 of the Minister of Interior and Administration on guidelines for control stipulates that controllers should be excluded from participation in a control if the results of the control could be related to his/her rights and duties or rights and obligations of (formally) related persons (spouse, relative); matter of control linked to his/her (former) duties (since 1 year). The exclusion of the controller is decided *ex officio* at any time in case of reasonable doubts on impartiality on the written request of the control unit manager, the control team leader, the controller or the head of the controlled entity
- Article 91b of the Border Guard Act: BG officers and employees must inform their supervisor(s) of whether their spouses or persons remaining in the same household are engaged in employment or other paid activities in detective or security services, taking up shares or businesses or being a contractor in the meaning of the provisions of the *Act on Public Procurement* of 29 January 2004 for the benefit of organs and organisational units subordinated or supervised by the Minister of the Interior and Administration.

125. The GET takes note of the variety of rules in place, which have the potential to contribute to limiting problematic situations. It notes that, however, in the absence of a general approach or definition on conflicts of interest, the disclosure ad hoc of situations not contemplated specifically by the various laws (and what to do in such situations) is not addressed. Moreover, the assessment of situations and the resolution of conflicts is too often left to the discretion of the supervisor, whereas it should also be a decision / initiative of the person concerned. The recommendation addressed earlier in respect of rules of conduct would deal with this matter.



## **Prohibition or restriction of certain activities**

### *Incompatibilities, outside activities and financial interests*

126. Police and BG officers are not allowed to join a political party (Border Guard, article 68; Police Act, art.63). As regards the BG, further rules establish that membership in national associations should be reported, whilst membership in foreign organisations or associations or international associations must be approved by the chief of the Border Guard.

127. A police officer cannot take up paid employment outside the service without the consent of the relevant superior or undertake activities or occupations, which are contrary to obligations resulting from the Police Act or undermining the trust in the Police (art. 62 of the *Police Act*). Similarly, BG officers may not engage in parallel remunerated activities without the consent of the superior (art. 67 Border Guard Act). Guidelines of the BG Commander-in-Chief (n°65) provide that such activities are incompatible with official duties if they are considered contrary to the interests of the service or are inconsistent with the performed duties and ethical rules; or if they pose a threat for the prestige and good reputation of the service; or if they undermine confidence in the impartiality etc.

128. At the same time, as indicated in the first part of the present report, the *Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions* of 21 August 1997 provides that persons performing such functions may not be members of management boards, supervisory boards or audit committees in commercial law companies, foundations with business activities or cooperatives (except housing cooperatives). Nor can they perform other tasks in commercial law companies, if such activities may lead to a suspicion of them pursuing a personal interest, or hold more than 10% of stock or shares of the total shareholding structure of commercial entities.

129. Articles 24-27 of the Act of 14 June 1960 - Code of Administrative Procedure apply, concerning the exclusion of the public administration employee or body, or a collegial body from the proceedings. Art. 7 par. 1 of Act of 21st June 1996 on Rights of employees of offices of Minister of Internal and officers and employees of offices supervised by the Minister regulates that office organizational units that serves to appropriate Minister of Internal, Police, National Fire Brigades, Border Guard and Civil Defence, including unions, officers and personnel of above units, shall not participate in any activity, including business activity, if it will require *using of official authority*, information concerning service or public funds in out-of-state goals or in a way contrary to their purpose.

130. The GET considers that the parallel activities are another problematic subject-matter. The on-site discussions showed that different views were expressed, with certain interlocutors considering that the rules are applied / interpreted in a restrictive manner (outside activities are prohibited in principle) whereas others confirmed that the number of requests for outside jobs had tremendously increased as a result of insufficient salaries. Both in the police and the BG, it is usually up to the superior or unit manager to approve or not the exercise of an activity. The system is thus strongly decentralised and the GET could not obtain an overview of practices followed since no central management or administrative body keeps such information. It is also unclear what the practice is when a refusal is challenged and how the superiors perform any follow-up vigilance over the side activities already approved. Moreover, the decentralised approach can lead to decisional incoherence

in the organisation. **GRECO recommends developing a streamlined system for authorising secondary activities (remunerated or not) in the Police and Border Guard, which would involve effective follow-up after a permission was granted.**

### *Gifts*

131. The replies to the questionnaire and several Polish interlocutors involved in law enforcement activities referred to the provisions of article 228 of the Penal Code which incriminates both the mere receiving (or accepting the promise) of a material benefit in the exercise of one's public functions (it entails 6 months to 8 years imprisonment), and the same conduct where it constitutes a reward for the action or inaction, with or without a breach of duty (the penalty is higher than the above one), of the official concerned. It was stated that the above provisions establish a zero-tolerance policy in respect of any gifts and some took the view that there is therefore no need for additional regulations or internal guidance in this regard.

132. During the on-site discussions, the GET eventually got contradictory information according to which administrative rules would actually provide for a system of prior permission by the senior management in relation to certain benefits such as hospitality-related, but apparently this was a different subject-matter relating to the sponsoring of events by the agency. Other provisions – contained for instance in the Police Act and the Rules of professional ethics of the police – would reportedly deal with common benefits such as a meal or a favour etc. However, the GET could not confirm the existence of such rules and some interlocutors finally admitted that gifts remain an unregulated subject matter and that this issue had been discussed with the Anti-Corruption Bureau to no avail up until now. After the visit, reference was made to the *1997 Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions*, which requires certain senior officials (for instance Directors General and Commander in Chief of the BG and their spouse) to notify benefits received to the central Registry managed by the National Electoral Committee, but leaving aside the limited scope of these arrangements, they fall short of any enforcement mechanism / sanction in case of non-compliance.

133. The GET recalls that GRECO has regularly expressed misgivings about the over-reliance on criminal law provisions to regulate the offer and receiving of gifts and other benefits. Especially because of the fundamental difference between bribes and gifts, because of the need – under criminal law standards of evidence – to demonstrate a criminal intent, because of the disproportionate burden of criminal proceedings in relation to acts involving minor benefits, and because criminal law provisions usually cannot provide the guidance needed to deal with the variety of situations likely to arise in daily practice. It is therefore important that Poland fills this gap in the context of its preventive mechanisms and introduces coherent rules on gifts, accompanied by appropriate guidelines explaining how to apply and interpret these rules, for example with regard to gifts related to international cooperation or to common courtesy, how to deal with gifts which cannot be accepted etc. In the absence of explanatory documents, employees would need to interpret the rules for themselves or ask their supervisor for advice. All this may lead to inconsistent practices across a given organisation. The recommendation addressed earlier in respect of rules of conduct would deal with this matter.

### *Misuse of public resources*

134. The rules regulating the misuse of public funds are defined in the *Act on the Liability for the Violation of Public Finance Discipline* of 17 December 2004 – see paragraph 61 on PTEFs. This subject matter does not call for particular comments from the GET.

### *Third party contacts, confidential information*

135. The (mis)use of confidential information is governed primarily by the *Act on the protection of classified information* of 5 August 2010. Information considered as “classified” may only be made available to persons with the appropriate level of clearance and only to the extent necessary for the performance of his/her own duties. Moreover, the illegal disclosure of confidential information constitute a criminal offence, punishable by a fine or imprisonment up to 2 years (Article 266 of the *Penal Code*) or even imprisonment up to 5 years or 8 years (in case of information classified as “secret” or of disclosure to a foreign entity. Unintentional disclosure also constitutes a crime, punishable by lower sanctions. Rules which are specific to the Police or BG sometimes contain additional safeguards, for instance article 91d of the *Border Guard Act* stipulates that a BG officer on leave (sabbatical etc.) is not allowed to use professionally acquired information in order to obtain material or personal benefits, even in connection with another employment opportunity.

136. The GET noted that the leaking of information / unauthorised access to data remains a serious risk in the context of Polish law enforcement as there have been such cases. In this context, and since third party contacts are apparently not regulated, Poland needs to ensure that additional measures are taken to better deal with the protection of information including where requests or solicitations emanate from trusted sources such as colleagues and supervisors, or possibly also from former colleagues who have moved to the private sector. The recommendation addressed earlier in respect of rules of conduct would deal with this matter.

### *Post-employment restrictions*

137. According to Article 91c of the *Border Guard Act*, former BG officers whose description of professional duties involved procurement activities, or who remain married or in close relationship with the contractor cannot get involved in tenders for the BG for a period of three years following the termination of service. A derogation can be awarded, however, by the Commander-in-Chief of the Border Guard. The Polish police did not report similar arrangements of any sort. Overall, it would appear that post-employment activities are not generally monitored by the Police and BG, for instance by means of systematic so-called “exit interviews” to determine the intentions of the departing officer or the reasons for leaving, which could give additional feedback to the management and policy-makers of law enforcement agencies about the functioning of a territorial unit or specialised department, the level of motivation and dissatisfaction of staff etc.

## **Declaration of assets, income, liabilities and interests**

138. This matter is regulated by a number of different texts both for the police and the BG<sup>59</sup>. The Officers of the Police, and officers and employees of the BG, have an obligation to submit an annual asset declaration by 31<sup>st</sup> of March for the preceding year, and whenever requested to do so by the management. The information is submitted in writing on standardised paper forms and the content is similar for the Police and BG as it concerns the sources and level of income, financial assets, real estate property, any economic activity as well as functions performed in a commercial company or cooperative. Assets held in joint ownership with the spouse are also to be declared. Liabilities (loans, debts) are to be declared only in the BG. The content of the declarations must be published in the Public Information Bulletin (the official journal) without the mention of such information as the date and place of birth, address, location of the property. It would appear that in practice, only the declarations of the most senior central and regional officers are published. A special decision (n°66) from April 2016 was issued by the BG Commander-in-Chief *on the analysis of data included in declarations of financial status*. As regards the Police, the scope of controls is reportedly determined by an *Ordinance of the Minister of the Interior and Administration of 17 July 2007 on the procedure related to the declarations of assets of police officers and the procedure for publishing declarations of those performing police functions*. This text reportedly lays down the procedure for the designation of officers competent to deal with the protection of information, who are those authorised to review the information contained in the declarations, the procedure for the review of declarations (which is currently done by the 10 staff of the Information Security Office).

139. According to the explanations provided on-site, the Police and BG are subjected to different consequences in case of breaches of the declaratory obligations. Members of the Police face disciplinary liability, including dismissal (since many employees are not police officers, special rules had to be passed for them in 2013). Members of the BG would normally face criminal liability for false data, with sanctions ranging from a fine, restriction of freedom, and imprisonment of 1 year to imprisonment up to 5 years. Declarants holding managerial positions in the Police and BG, who are covered by the 1997 *Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions* may be held criminally or disciplinary liable in case of false statements or other infringements.

140. Despite the many provisions adopted over the years, the practitioners met on site were unable to provide the GET with accurate and reliable information as to how the verification of declarations is organised for LEOs, who bears the main responsibility in this area and what the verifications entail in practice. Nor was any information available about the outcome of such verifications. The onsite discussions also gave an inconsistent picture. Some interlocutors mentioned that the persons / bodies in charge are the heads of units of the Police and the BG's Bureau of Information Protection. On other occasions it was stated that the immediate supervisor (Police) is him/herself meant to verify the declarations and to make a formal assessment confirming or not the correctness of the information declared; where s/he can't find convincing explanations, s/he would refer the matter to the Commander-in-Chief. It was also confirmed that since in practice the supervisor has no time to conduct such assessments, s/he can refer the case to another team to look into it (or s/he can also refer the matter to the central department responsible for internal affairs). At the

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<sup>59</sup> The basic requirements are established in the *Act on the Police* (art. 62) and the *Act on Border Guard* (Article 91a).

time of adoption of the present report, the authorities also referred to article 62(4) of the Police Act, according to which it is for the Internal Supervisory Inspector to analyse the declarations. Some also referred to the existence of some sort of central review within the Police and within the BG, based on the declarations received, but they could not be more specific. Other interlocutors finally pointed out that the Central Anti-Corruption Bureau also performs subsequent random checks in addition to those done within the Police and BG.

141. In the opinion of the GET, the system of supervision in this specific area needs to be reviewed since the respective responsibilities and modalities of checks and verifications are not clearly determined and are not understood by many practitioners with control and management functions. Moreover, as regards the Police, leaving the main responsibility completely decentralised in the hands of the heads of units or of the immediate supervisors of declarants (whatever is the reality), who are ill-prepared to deal with such a task in addition to their daily managerial functions, is not a satisfactory solution. There is also a risk that double standards are applied in practice whereas an increasing number of Police and BG officers and employees are seeking additional sources of income and the number of requests to exercise an accessory activity has reportedly increased. **GRECO recommends that a robust and effective system for the verification of declarations of assets and interests be introduced.**

### **Oversight mechanisms**

#### *General oversight mechanisms*

142. The Police and BG are under the general supervision of the Ministry / Minister of the Interior and Administration. The Minister can therefore control the organs or units under his/her authority. Several other authorities or agencies also have a control function (by means of audits, inspections and assessments) in respect of the general headquarters and other units of the Police and BG, including the Supreme Audit Office, the Commissioner for Human Rights, judicial authorities, the State Labour Inspectorate, the Office for Foreigners, the Chief Sanitary Inspectorate, the Inspector General for the Protection of Personal Data etc.

143. As the on-site discussions confirmed, the Central Anti-Corruption Bureau (CAB), which is a central police authority of the government administration, supervised by the Prime Minister, can also carry out controls and inspections in respect of the Police and BG. The CAB was responsible for the elaboration of the new Anti-Corruption Programme adopted in the beginning of 2018.

144. There are no specific arrangements in place for civil society involvement in the general oversight of law enforcement agencies in Poland. Civil society organisations met by the GET indicated that they had participated in the elaboration of previous editions of the national anti-corruption programme, and that they had been associated in the monitoring of its implementation. This was not the case anymore with the new Programme adopted in 2018.

*Specific oversight bodies of the Police and Border Guard, and of the Ministry of the Interior and Administration*

145. As regards the **Police**, the main departments responsible for general oversight and implementing integrity-related activities are the following: a) the **Inspection Office** of the General Police Headquarters employs 42 officers (including 7 women), and 27 civil servants and contractual staff (19 women); b) the **Office for Internal Affairs of the Police (OIA)** undertakes and coordinates operational and investigation activities as well as corruption prevention activities in relation to officers and employees of the Police force. It also collects, processes and analyses information on criminal activities within the Police. Organisational units are present in the regional structures of the Police. The OIA employed at the time of the visit 296 officers (51 women) and 92 civil servants or contractual employees (41 women). The OIA is managed by a director and two deputy directors. The OIA issues annual reports about its activities, which contain statistical and other information about offences and criminal trends in the Police, and information about its prevention activities. The reports also contain proposals for legal and regulatory amendments and improvements in respect working procedures. New rules on the functioning of the OIA were adopted after the visit, by a ministerial Order n°49 dated 27 July 2018.

146. As regards the **BG**, these are: a) the **Control Office of the BG Headquarters**, which carries out inspections and audits of the BG's organisational units. It is headed by a director and deputy director and it comprises four units; b) the **Office of Internal Affairs of the BG**, which was created in November 2017<sup>60</sup>, dealing with identification, prevention and combating crime, including corruption, perpetrated by officers and Border Guard, and prosecuting its perpetrators. It is regulated by the Decree 33 of the Commander-in-Chief of the Border Guard on regulations of the Internal Affairs Office of the Border Guard of 2 June 2009. The Office is managed by a director who reports directly to the Commander-in-Chief of the Border Guard. Local branches are present in every territorial unit of the BG, report directly to the Director of the Internal Affairs Office. To the extent decided by the Inspector of Internal Auditors, it covers also officers and employees of the Police. At the time of the visit, it employed 117 officers, including 86 men and 31 women, 9 civil workers (9 women) and 2 support – service posts (1 man + 1 woman). New rules on the functioning of the BG's OIA were adopted after the visit, by a ministerial Order n°50 dated 27 July 2018.

147. On 9 November 2017 the Minister responsible for internal affairs amended the *Act of 21 June 1996 on certain staff, and the officers and servants of offices supervised by the Minister*. The new amended Act, entitled *Act on Special forms of supervision by the Minister for the Interior* provides for the creation of a new **Internal Supervisory Office (ISO)** under the direct command of the Minister for Interior and Administration, for exercising supervision of the police, the Border Guard Service, the Office of the Government and the State Fire Rescue Service. The ISO became operational in January 2018 and it is expected to have a total staff of 50 (22 had already been appointed at the time of the visit). The ISO is tasked to carry out investigations and disciplinary proceedings; to identify, prevent and detect crimes involving the Police, BG and Government Security Bureau (GSB) officers; to verify the candidates for specific posts; to implement security investigations and control security investigations carried out by the Police, BG and GSB; to ensure the implementation

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<sup>60</sup> By the Act amending the Act on Certain Entitlements of Employees of the Office Serving the Minister in charge of Internal Affairs and officers and employees of offices supervised by that minister and some other acts of 9 November 2017, which entered into force on 27 January 2018

of obligations pertaining to asset declarations by officers of Police, BG and GSB as well as their analysis by the competent hierarchical superiors (in so far it does not conflict with the competence of the Central Anti-Corruption Bureau); to check the action in line with the law and the ethical principles of law enforcement officers in view of the need to ensure compliance with human rights and freedom of citizens; to check the compliance with the rules of professional conduct by the officers and the collection and processing of personal data.

148. It is clear to the GET that determined action is needed to improve the general oversight system of the Police and BG. First of all, there is a frequent duplication of functions between the departments responsible for internal affairs of the Police and BGs, with the newly created ISO and ultimately with the CAB. The GET was also informed that part of the staff from the internal affairs departments of the Police and BG would be transferred to the newly created ISO, which suggests that their competence will be reduced. At the same time, the structures of the Police and BG responsible for internal affairs are not anymore answerable to the respective Commander-in-Chiefs, but directly to the Minister and it would appear that they report to him through the above-mentioned ISO (this was not entirely clear at the time of the visit, given the temporary nature of the implementing rules adopted in January). In this constellation, the respective roles and leadership for the definition of proper risk-based approaches and policies concerning the integrity of law enforcement officers were not redefined.

149. Secondly, when it comes to internal investigations, especially in the context of disciplinary matters, the situation is even more problematic since every line manager has the prime responsibility for deciding on proceedings. In the absence of clear disciplinary guidelines, there is a risk of double standards being applied, similarly to what was observed previously in this report in respect of the verification of asset declarations, the approval of gifts and ancillary activities etc. The interviews showed that different approaches were followed and some interlocutors even pointed out that the prosecutor is almost systematically involved. In the GET's view, this is highly unsatisfactory. All this also clearly shows how the approach is fragmented when it comes to monitoring compliance with daily requirements. There should be a clearer demarcation line between the administrative (internal) and the criminal response to disciplinary cases. There should also be a clearer delimitation with regard to the measures which can be imposed by the line manager (e.g. a warning) and what warrants an inquiry and the systematic involvement of a central body, ideally the one responsible for internal affairs. **GRECO recommends (i) clarifying the respective responsibilities of bodies dealing with the integrity and oversight of Police and Border Guard, and (ii) implementing coherent disciplinary approaches, on the basis of common guidelines.**

150. Last but not least, the newly created ISO is empowered to receive all necessary information from the Police and BG in order to undertake its functions and it is duty-bound to inform the minister of its findings and proceedings. The GET got confirmation that the minister can now request a broad range of information through the ISO, including information on investigations planned or in progress. Interlocutors explained that the purpose of this change was to enhance the capacity and quality of supervision by the Minister in case senior police officers are involved because of the reputation of the police

headquarters<sup>61</sup>. In the GET's view, however, this also opens the door to sensitive information on on-going investigations being possibly funnelled out / leaked and subsequently misused to interfere with certain cases. The GET encourages the Polish authorities to keep this matter under review in order to ensure that proper legal safeguards prevent the collection and misuse of case-specific sensitive information through the Internal supervisory Office.

### **Reporting obligations and whistleblower protection**

151. The GET could not get a reliable view of the existing reporting obligations in place within the Police and the BG. For instance, the BG indicated that when a staff member has knowledge about a corruption-related act, s/he shall inform his/her immediate superior and then the appropriate procedural steps are taken. The report can also be made with the Internal Affairs Department without going through the hierarchical channel. A report can also be made to other law enforcement authorities, such as the Prosecutor's office, the Police, the Central Anti-Corruption Bureau and the Criminal Procedure Code regulates the matter. In particular, the prosecutor can apply certain protective measures. It was also pointed out that not reporting a corruption-related offense by a BG officer is considered as a failure to perform official duties. Therefore, disciplinary actions might be instituted against him/her, in accordance with article 135 subparagraph 2 of the Border Guard Act and the officer might be charged, pursuant to article 231 of the Penal Code. As regards the Police, the GET noted that the Rules of professional ethics of 2003 (rule 24) provides that "a policeman should not accept, tolerate nor ignore police behaviour which would infringe professional ethics".

152. During the on-site discussions, the GET got confirmation that there are no specific and sufficiently clear regulations concerning the reporting of misbehaviour within the Police and BG, and the protection of those who would make such disclosures in good faith – other than through criminal law. Such arrangements are important in any law enforcement institution, especially when there are risks of complicities within the institution and a culture of silence which would prevent such disclosure and which can lead to retaliatory measures against the whistleblower (by colleagues or the management). Some of those the GET spoke to confirmed the existence of such codes of silence. At the same time, the absence of clear rules leads to a multiplicity of bodies being reportedly responsible for receiving denunciations and tips: the newly established ISO under the Ministry of Interior and Administration, the offices responsible for internal affairs in the Police and BG, the CAB, a prosecutor, the immediate superior and the senior management. This confusion can have a dissuasive effect among law enforcement employees interested in reporting a matter. When Poland introduces a proper system for the reporting of suspicions, the reporting channels should be clearly designed and protective measures against retaliatory measures – also disguised ones – need to be provided for. It is equally important that proper monitoring be put in place to ensure that staff of all categories / ranks comply with the rules. **GRECO recommends that a clear process for the disclosure of crimes, misconducts and disciplinary violations within the Police and border Guard be established, with appropriate protection measures against retaliation.**

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<sup>61</sup> [http://wsfip.edu.pl/docs/biezacynumer/ZN2\\_2016/ZN\\_WSFIP\\_2\\_2016\\_4\\_Ryszard\\_Beldzikowski.pdf](http://wsfip.edu.pl/docs/biezacynumer/ZN2_2016/ZN_WSFIP_2_2016_4_Ryszard_Beldzikowski.pdf)



## **Remedy procedures for the general public**

153. The right of the citizens to file complaints is guaranteed in the Constitution (Article 63)<sup>62</sup>. The Code of Administrative Procedure Act regulates the complaint and request proceedings<sup>63</sup> as well as the competence of the authorities to handle complaints<sup>64</sup>. The Ordinance of the Council of Ministers *on organization of the receipt of, examination of and dealing with complaints and requests* of 8 January 2002 further details the proceedings on complaints and requests: these may be submitted in writing by any means (including e-mail), as well as orally – in which case a formal verbatim record is established with all the details of the person. Anonymous complaints (lacking first name, surname (name) and address of the plaintiff) may not be accepted in accordance with paragraph 8 item 1 of the *Regulation of the Council of Ministers concerning the organisation of the reception and processing of complaints and applications* (January 2002).

154. As indicated earlier, there is a variety of bodies under the Ministry of Interior and Administration, and within the Police and BG, which can receive complaints. Outside the law enforcement system, the Commissioner for Human Rights (Ombudsman) is the independent body competent for receiving reports on human rights violations committed by law enforcement and other bodies. The GET was informed that in the Police, complaints regarding specific officers are processed by the police commander of the competent territorial / local unit, who would then decide whether or not the case requires the initiation of disciplinary proceeding at his/her level or whether the case needs to be referred to the department for internal affairs for further investigation. The Polish authorities indicated after the visit that complaints containing allegations of a crime committed by a police officer are to be sent immediately to the Office of Internal Affairs, or to the competent prosecutor's office.

155. After the visit, the Polish authorities advised that although anonymous complaints are not admissible, at the level of the BG their content is nonetheless used in various manners. The complaint can be forwarded to the competent territorial unit for further preliminary verification, the information can be used for analytical or policy-design purposes, or even in the context of training. The GET regrets that anonymous complaints cannot be processed, and that at the level of the Police, these are not even taken into account for analytical purposes (risk analysis, targeted audit and inspections, policy design, awareness-raising and training etc.). Important information which could point to systemic issues or problems in specific activities and units may thus be completely lost. In the GET's view, anonymously provided information should still be accepted and analysed somehow. Especially as regards the Police activities, Poland may wish to give further consideration to this matter, as part of the risk-analyses recommended earlier and the (re)design of its integrity policies for the Police and BG.

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<sup>62</sup> "Everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person - with his consent - to organs of public authority, as well as to organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration".

<sup>63</sup> Article 227 of the Act stipulates that "*the subject of a complaint may be, in particular, negligence of failure of the competent bodies or their employees to complete their tasks properly, violation of the rule of law or interests of the complainants, as well as protracted or bureaucratic handling of cases*".

<sup>64</sup> Article 229

## **Enforcement and sanctions**

### *Disciplinary procedure*

156. The Police Act and the Border Guard Act define the applicable disciplinary framework, which is regulated in greater details in ministerial regulations dated 13 February 2014 and 28 June 2002 concerning the police officers and the BG officers respectively. Disciplinary proceedings can be launched regardless of criminal liability for the same act. Disciplinary sanctions include: reprimand; prohibition to leave the place of residence; warning of inadequate fitness for the service in the post presently occupied; transfer to a lower post; downgrading; dismissal from service. According to Article 135 of the Border Guard Act, the border guard officers are liable to disciplinary responsibility for breaching the professional discipline, not obeying the ethics rules and especially honour, dignity and good name of the duty and in other cases indicated in the legal act. The sanctions and the logic of disciplinary mechanisms are similar to those of the Police.

157. In the Police, the disciplinary proceedings may be initiated within 90 days by the superior acting *ex officio*, upon request of the immediate superior or a higher line manager, upon request from a court or prosecutor or a citizen who claims to be a victim (s/he shall be informed of the decision taken and s/he may appeal the decision). Disciplinary offences are time-barred after one year. The responsible superior shall designate an officer to conduct the disciplinary proceedings, which shall be completed within 30 days (the deadline is renewable once by the Commander in Chief). The investigator shall prepare a report on the basis of which the disciplinary superior shall issue a decision on acquittal or punishment. In case of dismissal from the service, the disciplinary superior shall summon the accused person for a hearing. The accused person shall have the right to lodge an appeal against the decision. Where the decision or resolution is issued by the Police Commander in Chief, there is no appeal or complaint possibilities apart from asking the Commander in Chief to reconsider the case.

158. The GET noted that the production of consolidated and reliable statistics on disciplinary and criminal cases involving Police and BG officials remains a challenge for Polish law enforcement agencies. The GET could not obtain such data for several years in order to examine possible trends and to assess the effectiveness of disciplinary mechanisms. Possibly because the data is not collected centrally by a department responsible for human resources and the management of personal / disciplinary files, and because of the number of bodies competent to deal with disciplinary cases (hierarchical superior, internal affairs, other body – especially in the Police<sup>65</sup>). Moreover, during the on-site interviews, several interlocutors declined to provide data because of its confidential nature. At the time of adoption of this report, the Polish authorities advised that the BG were in the process of setting-up a central register with data on disciplinary matters.

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<sup>65</sup> The GET was provided after the visit with the following figures, for the year 2016: there was a total of 7,096 disciplinary offences identified, which corresponds to over 7% of Police officers. 5,568 concerned an infringement of professional discipline and 1,064 an infringement of professional discipline combined with a penal or other offence. 464 cases were related to the non-compliance with professional ethics. However, only 1811 disciplinary proceedings were initiated (of which 152 regarding managers) and the penalties were issued in 557 cases (195 acquitted and in 509 cases exempted from punishment). The main penalties issued were reprimand (449) and warning (65). In 2017 the number of disciplinary offences was 8483, of which 2269 disciplinary proceedings were initiated and the number of disciplinary penalties imposed was 788.

159. Leaving aside the need for clarifying the respective roles and for streamlining the disciplinary mechanisms which was addressed earlier and led to a recommendation (see paragraph 149), the GET observed that the number of disciplinary offences remains high, especially in the Police. At the same time, the proportion of cases in which no proceedings are launched or terminated seems abnormally high. So is the number of acquittals, which may be indicative of certain problems in the quality of disciplinary proceedings and their results. It would be timely for Poland to undertake a proper analysis of the reasons for this high proportion of cases closed and acquittals.

*Criminal proceedings against police officers*

160. Border Guard and police officers do not enjoy immunities or other privileges. The following table provides an overview of corruption related charges brought against BG officers in 2012-2016:

| <b>Charges brought against BG officers</b> |                                     |   |  |   |
|--|-------------------------------------|---|--|---|
|  | Article 228 PC<br>(passive bribery) | Article 231 PC<br>(exceeding authority) | Article 231 PC, §2<br>(qualified form – in view of personal benefit) | Article 258 PC<br>(participation in an organised group) |
| <b>2012</b>                                | 16                                  | 3                                       |  | 1   |
| <b>2013</b>                                | 4                                   |   | 1  |   |
| <b>2014</b>                                |                                     | 5                                       | 4  | 2   |
| <b>2015</b>                                |                                     | 1                                       | 1  | 3   |
| <b>2016</b>                                |                                     |   | 4  |   |
| In total                                   | 20                                  | 9                                       | 10   | 6   |

161. According to the Annual report of Internal Affairs of the Police for the year 2016, a total of 420 police officers were suspected of crimes (402 in 2015), involving a total of 1,111 alleged crimes (1,098 in 2015). As a result, 307 persons were indicted. Corruption-related offences (bribery, trading in influence, offence to the detriment of the public or private interest) constituted 32% of the total number of offences, the remainder were offences related to official documents, property, protected information, life or health, drugs, violence. The largest category of cases were related to road traffic operations. At the time of adoption of this report, the Polish authorities provided updated data for the year 2017 showing that 241 police officers have been prosecuted. They underlined that corruption-related offences (bribery, influence peddling, abuse of function for material gain) accounted for 47% of the total number of crimes.

## VI. RECOMMENDATIONS AND FOLLOW-UP

162. In view of the findings of the present report, GRECO addresses the following recommendations to Poland:

*Regarding central governments (top executive functions)*

- i. **that a general integrity plan be elaborated in respect of all duly identified groups of persons exercising top executive functions, as an overarching structure to the integrity arrangements existing in some ministries, aiming at preventing and managing risks of corruption including through responsive advisory, monitoring and compliance measures (paragraph 30);**
- ii. **that a comprehensive code of conduct be developed for persons exercising top executive functions covering *inter alia* gifts and other benefits and conflicts of interest, accompanied by appropriate guidance including explanatory comments and concrete examples (paragraph 33);**
- iii. **(i) developing mechanisms to promote and raise awareness on integrity matters (and the future rules of conduct) among persons exercising top executive functions , including through integrity training at regular intervals; (ii) establishing a dedicated confidential counselling function to provide these persons with advice on integrity, conflicts of interest and corruption prevention (paragraph 37);**
- iv. **ensuring that an independent oversight mechanism is in place to guarantee the effective implementation of the freedom of information legislation (paragraph 40);**
- v. **ensuring that governmental legislative proposals effectively involve appropriate timelines for consultation and adequate impact assessments in practice, and that contacts and inputs received before the formal launching of consultations be equally documented (paragraph 42);**
- vi. **(i) that detailed rules be introduced on the way in which persons exercising top executive functions interact with lobbyists and other third parties seeking to influence the public decision-making process; and (ii) that sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion (paragraph 44);**
- vii. **that common cross-government rules and guidance are introduced on ancillary activities (paragraph 56);**
- viii. **broadening the scope of application of the legislation on post-employment restrictions, in order to deal effectively with conflicting activities and to prevent improper moves to the private sector after the termination of functions of persons exercising top executive functions (paragraph 65);**

- ix. that (i) the asset declaration system currently in place for different categories of persons exercising top executive functions be streamlined notably with a central register and accompanying guidance, and that the information is made easily and publicly accessible and that (ii) consideration be given to widening the scope of asset declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public) (paragraph 72);
- x. establishing an independent review mechanism for the declarations of financial interests of persons entrusted with top executive functions, provided with adequate legal, technical and other means to perform its tasks in an effective and accountable manner (paragraph 78);
- xi. that a robust mechanism of supervision and sanction be put in place for the effective implementation of the future rules of conduct and other standards for the prevention of corruption (paragraph 80);
- xii. that in respect of persons exercising top executive functions, an in-depth reform of the system of immunities be carried out with a view to facilitating the prosecution of corruption-related offences by excluding these from the scope of immunities and by ensuring that the procedure for the lifting of the immunity is transparent and based on objective and fair criteria used effectively in practice (paragraph 87);
- xiii. ensuring that proceedings before the constitutional Tribunal do not hamper the prosecution of corruption-related offences before the ordinary courts (paragraph 90);

*Regarding law enforcement agencies*

- xiv. that the Police and Border Guard undertake comprehensive risk assessments of corruption-prone areas and activities, beyond what is revealed by the mere criminal cases actually processed, and that the data are used for the pro-active design of integrity and anti-corruption policies (paragraph 104);
- xv. that the rules of conduct for the Police and Border Guard be updated to better address gifts and other benefits, ad hoc conflicts of interest and relations with third parties, and be accompanied by appropriate comments and examples, as well as confidential counselling (paragraph 107);
- xvi. establishing a career-based system for the appointment, promotion and dismissal of all senior managers in the Police and Border Guards, based on objective criteria, proper vetting and a formal, competitive and transparent process, it being understood that the function of chief commanders could be limited to a fixed term (paragraph 117);
- xvii. improving the terms of employment in the Police and Border Guard i) by designing additional measures to improve gender balance at all levels and in all sectors and ii) by reviewing the scale of remuneration so as to establish more

**attractive wages for the lower ranks, whilst maintaining a stimulating margin for progression throughout the career (paragraph 123);**

- xviii. developing a streamlined system for authorising secondary activities (remunerated or not) in the Police and Border Guard, which would involve effective follow-up after a permission was granted (paragraph 130);**
- xix. that a robust and effective system for the verification of declarations of assets and interests be introduced (paragraph 141);**
- xx. (i) clarifying the respective responsibilities of bodies dealing with the integrity and oversight of Police and Border Guard, and (ii) implementing coherent disciplinary approaches, on the basis of common guidelines (paragraph 149);**
- xxi. that a clear process for the disclosure of crimes, misconducts and disciplinary violations within the Police and border Guard be established, with appropriate protection measures against retaliation (paragraph 152).**

163. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Poland to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2020. The measures will be assessed by GRECO through its specific compliance procedure.

164. GRECO also invites the Polish authorities to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.



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## About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: [www.coe.int/greco](http://www.coe.int/greco).