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Country Review Report of Poland

Review by Mauritius and Serbia of the implementation by Poland of articles 15 - 42 of Chapter III. "Criminalization and law enforcement" and articles 44 - 50 of Chapter IV. "International cooperation" of the United Nations Convention against Corruption for the review cycle 2010 - 2015

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Mauritius and Serbia of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Poland, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Mauritius and Serbia, as reviewing States, and Poland as country under review, by means of telephone conferences, e-mail exchanges or any further means of direct dialogue, in accordance with the terms of reference and involving the following experts:

Mauritius

- Mr. Kaushik Goburdhun, Chief Legal Adviser, Independent Commission against Corruption.

Serbia

- Ms. Mirjana Mihajlovic, Advisor to the Minister, Ministry of Justice and Public Administration; and
- Ms. Jelena Deretic, Adviser in the cabinet of the Minister, Ministry of Justice and Public Administration, Group for Coordination of the Implementation of the National Anti-Corruption Strategy.

6. A country visit, agreed to by Poland, was conducted in Warsaw, Poland, from 9 to 11 April 2014. During the country visit, the representatives from the reviewing States parties and the

Secretariat had meetings with officials from national institutions and agencies in Poland involved in the implementation at the domestic level of anti-corruption measures and policies, including: the Ministry of Justice; the General Prosecutor's Office; the Central Anti-Corruption Bureau (CAB); the General Inspector of Financial Information; the Ministry of Home Affairs; and police authorities. Separate meetings were held with representatives from the civil society and professional associations (the Stefan Batory Foundation; the Institute of Public Affairs; Watchdog Polska; the National Bar Association) and members of the academia.

III. Executive summary

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1. Introduction: Overview of the legal and institutional framework of Poland in the context of implementation of the United Nations Convention against Corruption

The United Nations Convention against Corruption was signed by Poland on 10 December 2003 and ratified on 12 May 2006. Following ratification and its entry into force on 14 September 2007, the Convention became an integral part of domestic law. Poland deposited its instrument of ratification with the Secretary-General of the United Nations on 15 September 2006.

A "Government Anti-corruption Programme for the years 2014-2019" was adopted by the Cabinet on 1 April 2014.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active bribery of national public officials is criminalized in article 229 PC and passive bribery in article 228 PC. Both articles contain a basic provision and provisions for less significant or aggravated cases.

The concepts of "domestic public official" and "person performing public functions" are defined in article 115, paragraphs 13 and 19 PC accordingly. The bribery offence occurs "in connection with the performance of public functions".

Article 115, paragraph 19 PC excludes the application of the bribery offence to employees of state administrations performing exclusively "service type work". The exception for "service type work" excludes persons who have no discretionary powers or powers to dispose public funds. The provision is specifically intended to apply to persons who, although employed in organizational units of public administration, perform tasks that are not linked in any way with acts of authority or power.

The reviewing experts noted that the expression "service type work" may create interpretation issues and loopholes in the application of the bribery provisions. They recommended that the Polish authorities amend the domestic legislation — or pursue its consistent interpretation — to ensure that the exception for "service type work" in the Penal Code definitions of "public official" and "a person performing public functions" does not result in an exception to the bribery offences for acts or omissions of a public official "in relation to the performance of official duties".

Article 229 PC uses the words "give" and "promise to provide" a material and personal benefit. The national authorities explained that the "promise to provide" should be interpreted to include an offer, the latter term not being used in the Polish criminal legislation. The reviewing experts recommended that the national authorities continue to develop consistent jurisprudence for purposes of legal certainty to make a clear distinction between the offer and the promise of an undue advantage in the bribery provisions of the domestic legislation.

Articles 229, paragraph 5 and 228, paragraph 6 PC extend the scope of application of the bribery provisions to persons performing public functions in another country/foreign State or an international organization. The definition of "a person performing public functions" provided by article 115, paragraph 19 PC includes, inter alia, persons

"whose rights and obligations within the scope of public activity are defined or recognized by a law or an international agreement binding on the Republic of Poland". The reviewing experts identified as a good practice the fact that the foreign bribery offences are established domestically "in connection with the public functions" of the perpetrator in a foreign State or an international organization, and that their scope of application is not restricted to the "conduct of international business".

Active and passive bribery in the private sector are criminalized through article 296a PC. This article refers to specific forms of impact of the act — or failure to act — of the bribe-taker, which may inflict material damage on an organizational unit carrying out business activity unit or may constitute an act of unfair competition or inadmissible act of preference in favour of a buyer, or a recipient of goods, services or other performance. The reviewing experts found that this wording sets additional requirements which restrict the scope of application of the domestic provision, as compared to article 21 of the Convention. Therefore they recommended the amendment of the domestic legislation to overcome such restrictive requirements.

Article 18 of the Convention is domesticated through articles 230a and 230 PC, as well as article 48 of the Act on sport (match-fixing cases). Similarly to the bribery provisions, the reviewing experts recommended that the national authorities continue to develop consistent jurisprudence for purposes of legal certainty to make a clear distinction between the offer and the promise of an undue advantage in the trading in influence provisions of the domestic legislation.

Money-laundering, concealment (arts. 23 and 24)

Money-laundering is criminalized by article 299 PC, based on an "all-crimes" approach. Self-laundering is covered by article 299 PC. The basic provision refers to the conduct of a person who, among others, undertakes actions that may obstruct or considerably hinder the assertion of the criminal origin of assets or property and their detection, seizure or adjudication of their forfeiture. The reviewing experts noted the restrictive requirement of "considerably hindering" the assertion of the criminal origin of the proceeds and recommended the deletion of the word "considerably".

Article 24 of the Convention is implemented through section 299 PC.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Embezzlement in both the public and the private sectors is criminalized through articles 284 and 296 PC. Article 296 PC criminalizes the relevant act in a broad manner, in the sense that the management of property or business by exceeding powers granted to the perpetrator or by failing to perform duties is also covered as a punishable conduct.

Article 19 of the Convention is fully implemented through section 231 PC.

Having considered the possibility to criminalize illicit enrichment, Poland has not established such an offence.

Obstruction of justice (art. 25)

Article 25(a) of the Convention is domesticated through articles 18,

232-240 and 245 PC. The reviewing experts noted that there is no stand-alone offence to punish the offering or giving of an undue advantage to induce false testimony or the production of evidence in a proceeding.

Article 25(b) of Convention is implemented through section 232 PC.

Liability of legal persons (art. 26)

The Act on Liability of Collective Entities for Offences Prohibited under Penalty (2002) provides for the liability of "collective entities", which is of a *sui generis* nature: it is not considered as criminal liability, although it is adjudicated by a criminal court pursuant to the provisions of the CPC.

The review team noted that the requirement of the conviction of a natural person in order to impose liability on a legal person (article 4 of the Act) directly contravenes paragraph 3 of article 26 of the Convention, and, thus, severely hinders the effectiveness of the Act. The reviewing experts recommended the deletion of this requirement in the domestic legislation and the establishment of effective liability of legal persons that is not limited to cases where the natural person who perpetrated the offences is prosecuted or convicted.

The Act on Liability of Collective Subjects enumerates a list of pecuniary sanctions for bribery, trading in influence and money-laundering.

The national authorities acknowledged that there is no practice in implementing the Act. Apart from the problems posed by the requirement of prior conviction of a natural person, the reviewing experts identified the following issues: extremely low level of sanctions against legal persons; lack of legislation enabling the collection of evidence against legal persons for the commission of criminal offences; and loopholes that may be utilized to avoid the liability of a legal entity (for example, through merging with another entity). The review team recommended that the national authorities take measures to address such problems and ensure effective implementation of the relevant legislation.

Participation and attempt (art. 27)

The participation in the commission of a criminal offence is regulated in articles 18 and 19 PC. The attempt to commit a criminal offence is covered in articles 13-15 PC. Preparation of a criminal offence is subject to a penalty only when the law so provides. The preparation of corruption offences is not incriminated.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The review team found the sanctions applicable to persons who have committed corruption offences to be adequate and sufficiently dissuasive.

Under the Polish legal system, there is a wide range of public officials enjoying immunity from prosecution (parliamentarians, judges, prosecutors, members of the Tribunal of State, the President of the Supreme Chamber of Control, and the Commissioner for Citizens' Rights).

The reviewing experts recommended the adoption of legislative measures to ensure that investigative action aimed at securing evidence

of committing a criminal offence, and particularly related to the lifting of bank secrecy, is allowed before the lifting of immunity takes place and that procedural immunity is narrowed to only criminal prosecution and would not be applicable to pre-trial investigation stage.

Article 37 of the Convention is implemented through articles 60; 229, paragraph 6; 230a, paragraph 3; 250a, paragraph 4; 296a, paragraph 5; and 307 PC.

Article 229, paragraph 6 PC provides for impunity ("the perpetrator shall not be liable to punishment") if the material or personal benefit or a promise thereof were accepted by the person performing public functions and the perpetrator had reported this fact to the law-enforcement agency, revealing all essential circumstances of the offence before this authority learned of the offence. Similar "immunity clauses" are found in article 230a, paragraph 3 PC (active trading in influence — "the penalty is not imposed on the perpetrator") and article 296a, paragraph 5 PC (active bribery in the private sector — "the perpetrator shall not be subject to a penalty").

The reviewing experts encouraged the national authorities to consider whether an amendment in the text of the provisions in the form of optional wording ("may not be liable to punishment"; "the penalty may not be imposed on the perpetrator"; "the perpetrator may not be subject to a penalty" accordingly), coupled with the option of mitigating punishment/circumstances, could be conducive to a more flexible application of the provision on a case-by-case basis and could allow the public prosecutor to "weigh" in each case the level of cooperation of the perpetrator of active bribery.

Protection of witnesses and reporting persons (arts. 32 and 33)

Measures for the protection of witnesses are set forth in the CPC, article 20a of the Act on the Police and article 14 of the Act on the immunity witness. The review team identified the latter Act as a good practice as it provides modern solutions for the protection of immunity witness and his/her next of kin.

Poland reported that whistle-blowers are subject to protection on the basis of general principles of labour law. Poland also referred to provisions protecting employees–whistle-blowers from retaliation, such as the anti-discrimination provisions and the provisions that prohibit mobbing in the place of employment.

However, the review team noted the lack of information in response to allegations that the national regulations on whistle-blowers protection are largely ineffective due to their disparate and vague application. In particular, the available research indicates that the effectiveness of the labour code provisions in practice is low. Moreover, the Labour Code covers only a part of working population.

One of the setbacks identified was the decision to withdraw the whistle-blowers protection from the Government Anti-corruption Programme 2014-2019. The reviewing experts encouraged the Polish authorities to amend the Programme and include the whistle-blowers protection as an indication of the high priority accorded to it and the political will to improve the efficiency of legal protection for whistle-blowers.

Another recommendation of the review team was the development of specific legislation on the protection of reporting persons. The following considerations may be taken into account:

- The introduction of the concept of "protection of whistle-blowers": specific legislation on the protection of reporting persons can be conducive to introducing this protection as a key concept in cases adjudicated by the courts, which — currently — end up as unfair dismissal cases;
- Retaliation against whistle-blowers should be *expressis verbis* forbidden and retributive actions should also be referred to as a form of discrimination in the legislative text;
- In terms of implementation, the burden of proof in whistle-blowing cases should be *expressis verbis* placed on the employer.

From an operational point of view, the review team identified as a good practice the development of an online and helpline reporting system, based on the Act on the Central Anti-Corruption Bureau, to enable Polish citizens and other persons with habitual residence in Poland to report corruption offences.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Criminal law provisions in Poland enable forfeiture in order to deprive offenders of the proceeds and instrumentalities of crime (there is no such penal measure as "confiscation of assets").

The Polish legislation also provides for civil forfeiture pursuant to article 412 of the Civil Code.

The property subject to forfeiture is transferred to the State Treasury, which is responsible for its administration. The national authorities recognized the need for introducing and implementing more streamlined provisions on the administration of forfeited proceeds of crime or property, given that the State Treasury cannot obtain benefit of the forfeited assets. Consequently, the reviewing experts recommended the adoption and implementation of such measures.

Article 40 of the Convention is implemented domestically through article 105, paragraph 1, of the Banking Act. Poland acknowledged that the procedure for applying for bank records — although made ex-parte — may be subject to legal challenges, thus entailing delay in disclosure of these records with the net effect that progress of ongoing investigation may be seriously impaired. Therefore the review team recommended that effective legislative measures be implemented for disclosure of bank records to take place within a prescribed reasonable timeframe and for the possibility of legal challenges to be curtailed, to avoid unnecessary delays.

Statute of limitations; criminal record (arts. 29 and 41)

The period of limitation is determined by the length of imprisonment which can be imposed for the offence in question. Pursuant to article 102 PC, the period of limitation is prolonged in case of criminal proceedings instituted against the offender. The review team found the statute of limitations periods adequate enough to serve the purposes of the proper administration of justice.

Article 41 of the Convention is implemented through articles 114 and 114a PC.

Jurisdiction (art. 42)

Jurisdiction based on the principle of territoriality is established in

article 5 PC. Dual criminality is generally required to establish extra-territorial jurisdiction (with some exceptions).

According to article 110, paragraph 2 PC, the national criminal laws apply to foreigners committing offences abroad other than terrorist offences and those directed against the interests of the State and a Polish citizen or legal person, if, under the Polish penal law, such an offence is subject to a penalty exceeding two years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and no decision on his extradition has been taken. The reviewing experts noted the use of this provision for the application of the axiom "aut dedere aut judicare", but also highlighted the restriction posed by the threshold of two years of imprisonment, recommending its deletion.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

According to article 58 of the Civil Code, any illegal activity, even if it takes the form of a contract or any other legal action, has no effect in the legal turnover. The same applies if the contract or other legal action was concluded due to the accepting/giving of the bribe. Article 17, paragraph 5, of the Act of Public Procurement Law stipulates that persons performing actions in connection with award procedures shall be subject to exclusion, if they have been legally sentenced for an offence committed in connection with contract award procedures, bribery, offences against economic turnover or any other offence committed with the aim of gaining financial profit.

A victim within the Polish criminal proceedings enjoys all rights of witness. The status of an injured person is regulated in articles 49-52 CPC.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The Central Anti-Corruption Bureau (CAB) is a special service operating under the Act of 9 June 2006 on the Central Anti-Corruption Bureau.

The Head of the CAB is appointed for a term of four years and recalled by the Prime Minister, following consultations with the President of the Republic of Poland, the Special Services Committee and the Parliamentary Committee for Special Services.

During the country visit, representatives from the civil society suggested that the Head of the CAB be appointed by a Parliament decision, on the proposal of the President of the Republic of Poland. This process is similar to the appointment of the Head of the National Audit Office, which, however, functions as a body with a constitutional mandate. The review team invited the national authorities to study these views and assess their applicability within the context of a future discussion on the role, mandates and effectiveness of the CAB.

Under article 2 of the Act on the Central Anti-Corruption Bureau, the Bureau deals with the identification, prevention and detection of a series of offences, prosecution of perpetrators, as well as control, analytical and preventive activities. It performs preliminary investigation tasks aimed at disclosing corruption offences and offences detrimental to the State's economy.

During the country visit, representatives from the civil society argued in favour of enhanced CAB efforts geared towards elaborating analytical criminological studies on the implementation of criminal law provisions against corruption.

The review team welcomed the existence and function of CAB as a special body against corruption and recommended the continuation of efforts towards enhancing its institutional efficiency. The reviewing experts favoured the delineation of the competences of the Bureau by making best use of existing resources (a practical problem reported during the country visit is that of ensuring the accuracy and veracity of assets and conflicts of interest declarations due to the high number of public officials under scrutiny). It is up to the Polish authorities to decide whether both law enforcement and preventive functions will remain within the mandate of the CAB or whether the Bureau will focus on law enforcement, pursuant to article 36 of the Convention, with enhanced preventive functions assigned to another body.

The General Inspector of Financial Information (GIFI) is responsible for carrying out tasks related to money-laundering and terrorist financing. Together with the Department of Financial Information, they create the Polish Financial Intelligence Unit located in the Ministry of Finance.

The responsibility for the prosecution of corruption offences rests with the prosecution service which supervises the investigations carried out by the CAB and the law enforcement authorities. Statute of 9 October 2009 amending the Prosecution Act separated the functions of the Prosecutor General from the Ministry of Justice. The aforementioned statute amending the 1985 Prosecution Act established the National Prosecution Council (NPC) as a designated self-government organ for securing and protecting prosecutorial independence. Specialized units against corruption have been created within the prosecution service.

The national authorities reported on domestic provisions facilitating cooperation between government institutions to combat crime, including corruption offences (mainly article 304 CPC). They also reported on the cooperation between government institutions and private sector entities (article 15, paragraph 3 CPC and, for money-laundering and financing of terrorism, chapter 4 of the Act on "counteracting money laundering and terrorism financing" of 16 November 2000).

The reviewing experts invited the national authorities to continue efforts aimed at enhancing interagency coordination in the fight against corruption, as well as cooperation between national authorities and the private sector for the same purpose.

2.2. Successes and good practices

- The fact that the foreign bribery offences are established domestically "in connection with the public functions" of the perpetrator in a foreign State or an international organization, and that their scope of application is not restricted to "the conduct of international business";
- The Act on the immunity witness which provides modern solutions for the protection of immunity witnesses and their next of kin;
- The development of an online and helpline reporting system, based on the Act on the Central Anti-Corruption Bureau, to enable Polish citizens and other persons with habitual residence in Poland to report corruption offences.

2.3. Challenges in implementation

- Continue to develop consistent jurisprudence for purposes of legal certainty to make a clear distinction between the offer and the promise of an undue advantage in the bribery and trading in influence provisions of the domestic legislation;
- Take measures to amend the domestic legislation — or pursue its consistent interpretation — to ensure that the exception for "service type work" in the Penal Code definitions of "public official" and "a person performing public functions" does not result in an exception to the bribery offences for acts or omissions of a public official "in relation to the performance of official duties";
- Amend the domestic legislation to overcome problems that may be posed by existing requirements which restrict the scope of application of article 296a PC on the criminalization of bribery in the private sector (act — or failure to act — of the bribe-taker, which may inflict material damage on an organizational unit carrying out business activity unit or may constitute an act of unfair competition or inadmissible act of preference in favour of a buyer, or a recipient of goods, services or other performance);
- Amend the domestic legislation along the lines of removing the word "considerably" in article 299 PC while describing the conduct of "undertaking other actions that may hinder the assertion of criminal origin" of the proceeds (money-laundering);
- Consider including a provision in the national legislation establishing a specific stand-alone offence that explicitly covers the offering or giving of an undue advantage to induce false testimony or the production of evidence in a proceeding;
- Delete the requirement of a conviction of a natural person in order to impose liability on a legal person and establish effective liability of legal persons that is not limited to cases where the natural person who perpetrated the offences is prosecuted or convicted;
- Take measures to ensure the effective implementation of the domestic legislation on the liability of legal persons, particularly through increasing sanctions, enabling the collection of evidence against legal persons for the commission of criminal offences and preventing loopholes that may be utilized to avoid the liability of a legal entity;
- Take legislative measures to ensure that investigative action aimed at securing evidence of committing a criminal offence, and particularly related to the lifting of bank secrecy, is allowed before the lifting of immunity takes place and that procedural immunity is narrowed to only criminal prosecution and would not be applicable to pre-trial investigation stage;
- Adopt and implement measures to ensure more effective and efficient administration of forfeited proceeds of crime or property;
- Explore the possibility of amending the Government Anti-corruption Programme 2014-2019 to include the whistle-blowers protection; and to develop specific legislation on the protection of reporting persons. Considerations to be taken into account when developing — and implementing — such legislation are mentioned

above;

- Enhance the efforts of the Central Anti-Corruption Bureau geared towards elaborating analytical criminological studies on the implementation of criminal law provisions against corruption;
- Study and assess the applicability of suggestions on the establishment of high standards of appointment of the Head of the CAB, involving a Parliament decision on the proposal of the President of the Republic of Poland;
- Continue efforts towards enhancing the institutional efficiency of the CAB; delineate the competences of the Bureau taking into account the need for best use of existing resources; and, on that basis, decide whether both law enforcement and preventive functions will remain within the mandate of the CAB or whether the Bureau will focus on law enforcement, pursuant to article 36 of the Convention;
- Consider whether an amendment in the form of optional wording in the text of the "immunity clauses" contained in article 229, paragraph 6, article 230a, paragraph 3 and article 296a, paragraph 5 PC ("may not be liable to punishment", "the penalty may not be imposed on the perpetrator", "the perpetrator may not be subject to a penalty" accordingly), coupled with the option of mitigating punishment/circumstances, could be conducive to a more flexible application of the provision on a case-by-case basis and could allow the public prosecutor to "weigh" in each case the level of cooperation of the perpetrator of active bribery;
- Continue efforts aimed at enhancing interagency coordination in the fight against corruption, as well as cooperation between national authorities and the private sector for the same purpose;
- Implement effective legislative measures for the disclosure of bank records within a prescribed reasonable time frame and for the possibility of legal challenges to be curtailed to avoid unnecessary delays; and
- Amend the domestic legislation (article 110, paragraph 2 PC) along the lines of removing the threshold of two years of imprisonment for the establishment of domestic criminal jurisdiction for prosecution purposes in lieu of extradition.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings
(arts. 44, 45 and 47)

In Poland, extradition is regulated in the Constitution, the CPC and in applicable bilateral and multilateral treaties or agreements. With regard to other Member States of the European Union, the surrender of fugitives is carried out in line with the requirements of the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant (EAW).

Poland may grant extradition with or without a treaty. In the absence of a treaty, extradition is possible on the basis of reciprocity. Poland considers the Convention a legal basis for extradition.

The absence of dual criminality, which is determined on the basis of the "underlying conduct" approach (good practice), is an absolute reason for refusal of extradition. The reviewing experts recommended the adoption of a more flexible approach, in line with article 44, paragraph 2, of the Convention.

The offence should carry a penalty of deprivation of liberty for not less than one year. All Convention offences constitute extraditable offences.

Article 55 of the Constitution prohibits the extradition of nationals. However, the extradition of a Polish citizen may be granted upon a request made by a foreign State or an international judicial body if such a possibility stems from an international treaty ratified by Poland.

None of the offences established pursuant to the Convention is deemed a political offence. With regard to extradition requests relating to fiscal matters, Poland does not deny extradition requests on the sole ground that they involve fiscal matters. The grounds for refusal of an extradition request, both mandatory and optional, are prescribed in article 604 CPC.

The length of extradition proceedings is dependent on the matter of the case. Simple cases and cases adjudicated according to simplified procedures are usually carried out approximately within three months from the time of submission of the extradition request. Other extradition cases could take up to two years to be completed, depending on their complexity.

Poland is bound by the European Convention on Extradition and its two Additional Protocols, as well as multilateral and bilateral treaties providing a basis for extradition.

The reviewing experts highlighted the need for a more systematic approach in compiling statistical data on extradition cases and encouraged the national authorities to continue efforts in this regard.

The transfer of sentenced persons is regulated in articles 608-611f CPC. Poland is a party to the Council of Europe Convention on the Transfer of Sentenced Persons and its Additional Protocol.

The transfer of criminal proceedings is regulated in Chapter 63 CPC (articles 590-592).

Mutual legal assistance (art. 46)

The CPC governs mutual legal assistance (MLA) in the absence of a treaty. The lack of dual criminality is a discretionary ground for refusal of an MLA request. MLA may be provided for coercive and non-coercive measures, but court authorization is required for coercive measures.

The Ministry of Justice has been designated as the central authority to receive requests for mutual legal assistance.

The grounds for refusal of MLA requests are foreseen in article 588 CPC. Bank secrecy and fiscal matters, when relating to acts of corruption, are not grounds to deny an MLA request.

With regard to the execution of MLA requests, the Polish law shall be applied. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the domestic legal order.

Poland is bound by the United Nations Convention against

Transnational Organized Crime and other regional instruments providing the legal basis for MLA. Bilateral treaties with 42 countries were reported.

Similarly to extradition, the reviewing experts reiterated their encouragement to the national authorities to put in place and render fully operational information system compiling in a systematic manner information on MLA cases, with a view to facilitating the monitoring of such cases and assessing the effectiveness of implementation of MLA arrangements.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Poland has taken measures to facilitate the exchange of information with foreign law enforcement counterparts. Bilateral and multilateral agreements are in place for the exchange of information in connection with investigations and the exchange of personnel to share information on best practices. Poland is also a member of Europol, INTERPOL, the Camden Asset Recovery Inter Agency Network and the Egmont Group. The CAB is a member of the European Partners against Corruption/European Anti-Corruption Network.

Poland considers the United Nations Convention against Corruption a legal basis for law enforcement cooperation in respect of the offences covered by the Convention.

The conduct of joint investigations is regulated in articles 589b-589f CPC. The Prosecutor General is authorized domestically to enter an agreement with the competent authority of another State for the establishment of a joint investigative team.

The law enforcement authorities, and in cases of corruption offences the CAB as well, are empowered to use special investigative techniques. Poland has concluded several agreements authorizing the use of such techniques in the investigation of organized crime and corruption. In the absence of agreements, decisions can be made on a case-by-case basis.

3.2. Successes and good practices

- The comprehensive legal framework (provisions of CPC) on international cooperation in criminal matters;
- The interpretation of the double criminality requirement focusing on the underlying conduct and not the legal denomination of the offence.

3.3. Challenges in implementation

- Explore the possibility of relaxing the strict application of the double criminality requirement in cases of Convention-based offences that go beyond those relating to the execution of European Arrest Warrants, in line with article 44, paragraph 2, of the Convention against Corruption;
- Continue efforts to put in place and render fully operational information system compiling in a systematic manner information on extradition and mutual legal assistance cases, with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements;
- Continue to explore further opportunities to actively

	engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of international cooperation in criminal matters.

IV. Implementation of the Convention

A. Ratification of the Convention

Ratification of the Convention

1. The Convention was signed by Poland on December 10, 2003 and ratified by Parliament on May 12, 2006. Poland deposited its instrument of ratification with the Secretary-General of the United Nations on September 15, 2006.

The Convention and Poland's legal system

2. Article 88 of the Constitution states that generally accepted rules of international law and international conventions when they have been ratified by an act and have come into effect shall form an integral part of the domestic law and shall override any other contrary provision of domestic law.

3. Accordingly, the United Nations Convention against Corruption has become an integral part of Poland's domestic law following ratification of the Convention by the Parliament on May 12, 2006, and entry into force on September 14, 2007 in accordance with Article 68 of the Convention.

B. Legal system of Poland

4. Republic of Poland is a democracy with a President as a Head of State. The government structure centers on the Council of Ministers led by a prime minister. The President appoints the cabinet according to the proposals of the prime minister, typically from the majority coalition in the Sejm. The President is elected by general election in every five years.

5. The Polish Parliament consists of a 460 members Lower House (Sejm) and a 100 members Upper House (Senat).

6. When sitting in joint session, members of the Sejm and Senat form the National Assembly. The National Assembly is formed on three occasions: when a new President takes the oath of office; when an indictment against the President of the Republic is brought to the State Tribunal (Trybunał Stanu); and when a President's permanent incapacity to exercise his duties due to the state of his health is declared.

7. The judicial branch plays an important role in decision-making. Its major institutions include the Supreme Court of the Republic of Poland (Sąd Najwyższy); the Supreme Administrative Court of the Republic of Poland (Naczelny Sąd Administracyjny); the Constitutional Tribunal of the Republic of Poland (Trybunał Konstytucyjny); and the State

Tribunal of the Republic of Poland (Trybunał Stanu).

8. On the approval of the Senat, the Sejm also appoints the ombudsman called the Commissioner for Civil Rights Protection (Rzecznik Praw Obywatelskich) for a five-year term.

9. The Constitution of Poland is the supreme law in Poland, and the Polish legal system is based on the principle of civil rights and was adopted by the National Assembly of Poland on 2 April 1997, approved by a national referendum on 25 May 1997, and came into effect on 17 October 1997. It guarantees a multi-party state, the freedoms of religion, speech and assembly. It also constitutes the right to form trade unions, and to strike, whilst at the same time prohibiting the practices of forced medical experimentation, torture and corporal punishment.

10. The constitutional principles of organization and functioning of the judiciary in Poland cover the legal and organizational status of court authorities, proceedings before courts and the legal status of judges.

11. Art. 173 of the Polish Constitution of 2 April 1997 provides for dualism of the judiciary authority. It is composed of courts and tribunals. Courts encompass:

- the Supreme Court
- common courts
- administrative courts, including the Supreme Administrative Court
- military courts.

12. As regards tribunals, the Constitution foresees the Constitutional Tribunal and the Tribunal of the State.

13. The legal and organizational basis for the functioning of common courts is constituted by, for instance: Art. 175 section 1 and Art. 177 of the Constitution of the Republic of Poland and the Law of 27 July 2001 - the Law on the System of Common Courts (Journal of Laws No. 98, item 1070, as amended).

14. Common courts administer justice in all matters, with an exception of matters which are reserved, by law, to the competence of other courts.

15. Common courts are established and closed by the Minister of Justice. The Minister of Justice also establishes their seats and the area of their jurisdiction, upon the obtaining of an opinion from the National Judiciary Council. Proceedings before the Polish courts take place in two instances.

16. Common courts are divided into:

- Regional courts (established for one or more communes, and, in justified cases, more than one regional court may be established for a single commune)
- District courts (established for the area of jurisdiction of at least two regional courts)
- Appeal courts (established for the area of jurisdiction of at least two district courts).

17. Judges in Poland are independent, they are governed solely by the Constitutions and Laws. They enjoy immunity and may not be dismissed from their jobs, which means that the

employment relationship is dissolved by force of law when a judge resigns.

18. The Minister of Justice exercises only administrative supervision of common courts. This supervision covers issues connected with financial and administrative activity of courts, as well as any other issues concerning efficient consideration of cases and proper execution of judgements. This means that the supervisory power of the Minister of Justice may not interfere with independence of judges, i.e. the wording of judgements and decisions, whose correctness may be examined only according to the procedure stipulated by law.

19. Poland cited the following relevant laws, policies and/or other measures that are cited in the responses to the self-assessment checklist:

Constitution of the Republic of Poland
Code of Criminal Procedure
Criminal Code
Public procurement law, Act on the Police
Act on Central Anti-corruption Agency
Act on General Inspector of Financial Information Banking Law

20. The Ministry of Interior of the Republic of Poland, together with law enforcement agencies and other stakeholders, which are responsible for combating and preventing corruption, has been working out a draft document entitled "The Government Anticorruption Programme for the years 2013-2018". The aforementioned material has been prepared with the consideration of experiences gained during an implementation of "The Anticorruption Strategy for the years 2002-2009" and conclusions pertaining to reasons and consequences of corruption in Poland.

21. The document has continued and intensified activities related to counteracting and combating corruption which have been undertaken by the Republic of Poland so far.

22. The Programme sets out one main objective, two detailed goals, nineteen tasks and the numerous actions dedicated to public administration. A mechanism of implementation and evaluation has been established as well.

23. The primary objective is to reduce the level of corruption in Poland through, among others, strengthening the preventive and educational anticorruption measures in society/public administration and the fight against corruption.

24. With regard to strengthening the preventive and educational anticorruption measures, the crucial actions will be concentrated on preventing corruption. The main emphases will be put on strengthening the internal anticorruption mechanisms in public administration, forming the anticorruption attitudes in society, increasing the public participation in preventing and combating corruption as well. It is assumed that the Programme implementation will contribute to increase belief in society that corruption is not a standard in a democratic country but a pathology.

25. As the key issues should also be considered to strengthen cooperation between civil society/NGOs and public administration and promote ethical attitudes in private sector as well.

26. With regard to combat corruption, the actions will be concentrated on improving anticorruption structures and mechanisms in the law enforcement agencies, cooperating and

coordinating between the law enforcement agencies and the judiciary authorities, improving legal solutions, in order to combat corruption in a more efficient manner, fulfilling international commitments in the field of legal or penal and prosecuting corruption.

27. The Programme will come into effect at four levels. The first level will be represented by institutional coordinators appointed in all ministries and institutions involved in the Programme, the second - nineteen working groups which will be responsible for implementing particular tasks, the third - an interdepartmental team which will be established by the Prime Minister, and the fourth level - the Cabinet which will examine and adopt a report on implementation of the Programme.

28. From July, 19th until August, 19th 2013 "The Government Anticorruption Programme for the years 2013-2018" was undergone an interdepartmental and social consultations. Currently, an analysis of comments submitted by the institutions is conducted.

C. Previous assessments of anti-corruption measures

29. Poland has been systematically evaluated by GRECO, Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the OECD in the connection with implementation and practical application provisions of international conventions as:

1. The Criminal Law Convention on Corruption (ETS 173), its Additional Protocol (ETS 191) and Guiding Principle
2. The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198)
3. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

D. Implementation of selected articles

III. Criminalization and law enforcement

Article 15. Bribery of national public officials

Subparagraph (a) of article 15

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

30. Poland has indicated that is has adopted and implemented the provision under review. In

addition, Poland indicated that the applicable law is provided for in the Criminal Code of 6 June 1997.

31. Poland cited the following relevant text:

Criminal Code

Article 229. § 1. Whoever gives a material or personal benefit or promises to provide it to a person performing public functions in connection with his official capacity ('in connection with performance of this function') shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.
§ 2. In the event that the act is of a lesser significance, the perpetrator shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years
§ 3. If the perpetrator of the act specified in § 1 strives to induce a person performing public functions to violate the law or provides such a person, or promises to provide, with a material or personal benefit for violation of the law, shall be subject to the penalty of deprivation of liberty for a term of between one year and 10 years.
§ 4. Whoever gives a material benefit of considerable value or promises to provide it to a person performing public functions in connection with his official capacity, shall be subject to the penalty of deprivation of liberty for a term of between 2 and 12 years.

32. The State party under review indicated that the Polish Penal Code provides for definitions of a public official, a person performing public functions and material benefit. They are all foreseen in the general part of the Penal Code which is applicable to all the offences specified in the Special Part of the Penal Code and also in other pieces of law in which penal provisions are set out.

Criminal Code

Artilcle 115 § 4 The material or personal benefit constitutes the benefit for the person himself or for another entity;

Artilcle 115 § 13. A public official is:
1) the President of the Republic of Poland;
2) a deputy to the Parliament, a councillor;
2a) a deputy to the European Parliament
3) judge, layman, prosecutor, official of a financial body of preparatory proceedings or of a supervisory body over the financial body of preparatory proceedings, notary, enforcement officer, probation officer, receiver, supervisor appointed by the court and administrator, person who adjudicates in disciplinary bodies acting under this law,
4) a person who is an employee in a state administration, other state authority or local government, except when he performs only service-type work, and also other persons to the extent in which they are authorised to render administrative decisions;
5) a person who is an employee of a state auditing and inspection authority or of a local government auditing and inspection authority, except when he performs only service-type work;
6) a person who occupies a managerial post in another state institution;
7) an official of an authority responsible for the protection of public security or an official of the State Prison Service;
8) a person performing active military service;
9) a staff member of an international penal court unless such member provides services exclusively.

Article 115 § 19 A person performing public functions is a public official, a member of the local government authority, a person employed in an organisational unit which has access to public funds, unless this person performs exclusively service type work, as well as another person

whose rights and obligations within the scope of public activity are defined or recognised by a law or an international agreement binding for the Republic of Poland.

33. Poland provided the following examples of cases:

34. Article 46 section 2 of the Act on sport: In December 2012 one of the prosecution offices in Poland completed with an act indictment, the investigation conducted against two persons charged with bribery under Article 46(2) of the Act on sport. One of them (Chairman of the FC "O") was accused of giving a financial benefit in the form of three packages of beer to the representative of the FC "R" in exchange for fraudulent behaviour having an impact on the course of the football match between those clubs, and resulting in losing the football match by the FC "R". Such an action was qualified as an offence under Article 46 (2) of the Act of 25 June 2010 on sports. The representative of the FC "R" was charged with bribery under art. 46 section 1 of the Act of 25 June 2010 on sports.

35. Moreover, between May 2012 and June 2012, in the course of competition of the Polish V Football League, the President of the FC "O" made a promise to award financial benefit in a form of four packages of beer and 10 footballs, to the President of the FC "D", in exchange for fraudulent behaviour affecting the course of the football match between the teams of the above mentioned clubs, which constituted an offence under art. 46 (2) of the Act of 25 June 2010 on the sport.

36. Investigations conducted by the Central Anti-corruption Bureau (CAB-the authority designated to investigate corruption cases) in 2012, mostly related to local government, followed by the business sector, local government administration and central government as well as EU programs.

37. In 2012, CAB secured 33,7 millions PLN of assets. This number has greatly increased in comparison with preceding years starting from 2006 the Bureau secured 11,5 millions zł. The main purpose of the control undertaken by CAB was to reveal corruption in public institutions, abuse of public officials, as well as in economic activity against the state's interest.

38. In 2012, approximately 589 pre-control analysis were initiated, and 542 of them were completed. Great majority of them was connected with corruption of officials of the local government at the municipal level and of employees of subordinate units in the community, and officials of the local government at the county level and those employed in units subordinate to district administrator. In 2012 CAB conducted 11% more preparatory proceedings then in 2011. The number of investigations run by CAB has been constantly increasing since 2009. A great deal of them has been concluded with indictment (38%, 41%, 45% and in 2012 - 48%). In 2012 CAB units initiated 208 cases, and completed 218. There had been 466 preparatory proceedings conducted. 251 were initiated, and 236 investigations were concluded.

(b) Observations on the implementation of the article

39. The reviewing experts noted that the active form of bribery of national public officials is criminalized in article 229 PC. This article contains a basic provision (paragraph 1) and provisions for less significant (paragraph 2) or aggravated cases (paragraphs 3 and 4).

40. The concepts of a "domestic public official" and a "person performing public functions" are defined in article 115, paragraphs 13 and 19 PC accordingly. The active bribery offence does not expressly require a concrete act or omission on the part of the public official. The offence is committed when the bribery occurs "in connection with the performance of public functions". According to the jurisprudence of the Supreme Court (Supreme Court decision No. III KK 230/05 of 9 March 2006), in order to establish the "connection with the performance of public functions", "it is sufficient that the person performing the function may have an influence on the final effect of a certain matter and the official act to be made remains – at least in part – in the scope of the perpetrator's competence".

41. Article 115, paragraph 19 PC excludes the application of the bribery offense to employees of state administrations performing exclusively "service type work." The Polish authorities explained during the country visit that the exception for "service type work" excludes persons employed in organizational entities of government administration, territorial self government, inspection agencies or entities disposing public funds who have no discretionary powers or powers to dispose public funds. As a result of the discussions during the country visit, it was further clarified that the provision is specifically intended to apply to persons who, although employed in organizational units of public administration, perform tasks that are not linked in any way with acts of authority or power. The review team posed several hypothetical situations involving public officials who, according to the definition contained in Article 115.19, would fall within the "service type work" category, including: (i) a situation in which a public official who has no discretion over the granting of permits, but who is in charge of processing the paperwork, is bribed to prioritize a company's application; and (ii) a situation in which a secretary is bribed to divulge confidential details of other bidders in a public procurement bid. The Polish authorities argued that these hypothetical examples fall within the category of "technical staff". They also stated that the term was introduced to clarify that persons doing exclusively "service type work" do not enjoy the status of "official". The Polish authorities advised that in these hypothetical examples, actions taken by the people of technical staff would be consisered as a breach of employee's duties which might result in disciplinary dissmisal (in case of prioritizing of the application) or even as a criminal offence under article 305. 2 PC (in case of disclosure of details of other bidders in a public procurement bid. Another example mentioned by the review team was that of a consultant with advisory functions, but without decision-making competences. In that case, the Polish authorities confirmed the potential application of the trading in influence provision. Furthermore, doubts about whether a person performs "service type work" would be evaluated by the courts on a case-by-case basis. This is also the case with doubts regarding persons hired by private entities using EU funds (which are considered to be public funds).

42. The reviewing experts were of the opinion that the expression "service type work" may create interpretation issues and loopholes in the scope of application of the bribery provisions and therefore recommended that the Polish authorities amend the domestic legislation– or pursue its consistent interpretation – to ensure that the exception for "service type work" in the Penal Code definitions of "public official" and "a person performing public functions" does not result in an exception to the bribery offences for acts or omissions of a public official "in relation to the performance of official duties".

43. The provisions of article 229, paragraphs 1, 3 and 4 PC use the words "give" and "promise to provide" a material and personal benefit. It was explained by the national authorities that the "promise to provide" should be interpreted to include an offer, the latter term not being used in the Polish criminal legislation. The reviewing experts recommended that the national authorities continue to develop consistent jurisprudence for purposes of legal certainty to make a clear

distinction between the offer and the promise of an undue advantage in the bribery provisions of the domestic legislation.

44. Article 229 PC uses the term "material or personal benefit". The authorities indicated that the word "benefit" equals the term "advantage" and that the words "material or personal" correspond to the terms "material and immaterial". There is no concept of "undue" advantage and the amount or value of the benefit is significant only with regard to the applicable penalties which are lower in cases of "lesser significance" and more severe in cases of a benefit "of considerable value".

45. The relevant provision on active bribery does not specify whether the offence could be committed directly or indirectly. The authorities affirmed that it does not matter whether the bribe is promised or given directly to the official or whether intermediaries are used, as there are no indications to the contrary. Actions of the intermediaries are addressed by article 18 paragraph 3 PC which provides for criminal liability for facilitating commission of a criminal offence. However, no case law could be provided to support this view.

46. The provision on active bribery does not specify whether the advantage must be for the official him/herself, but article 115, paragraph 4 PC stipulates that "the material or personal benefit constitutes the benefit for the person himself or for another entity".

47. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

48. Continue to develop consistent jurisprudence for purposes of legal certainty to make a clear distinction between the offer and the promise of an undue advantage in the active bribery provision of the domestic legislation; and

49. Take measures to amend the domestic legislation – or pursue its consistent interpretation – to ensure that the exception for "service type work" in the Penal Code definitions of "public official" and "a person performing public functions" does not result in an exception to the bribery offences for acts or omissions of a public official "in relation to the performance of official duties".

Subparagraph (b) of article 15

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

50. Poland indicated that it has adopted and implemented the provision under review.

51. Poland cited the following applicable laws:

Criminal Code

Article 228. § 1. Whoever, in connection with the performance of public functions accepts a material or personal benefit or a promise thereof, shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.
§ 2. In the event that the act is of a lesser significance, the perpetrator shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.
§ 3. Whoever, in connection with the performance of public functions accepts a material or personal benefit or a promise thereof in return for the conduct which violates the provisions of law shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.
§ 4. The penalty specified in § 3 shall be also be imposed on anyone who, in connection with performing public functions, makes the performance of his official duties conditional upon receiving a material or personal benefit or a promise thereof or who demands such a benefit.
§ 5. Whoever, in connection with the performance of public functions accepts a material or personal benefit of considerable value or a promise thereof, shall be subject to the penalty of deprivation of liberty for a term of between 2 years and 12 years.

Article 250a. § 1. Whoever authorised to vote accepts material or personal benefit or demands such benefit for his having voted in a specific manner, shall be subject to the penalty of the deprivation of liberty for a term of between 3 months to 5 years.
§ 2. The same punishment shall be imposed on a person, who grants material or personal benefit to a person authorised to vote for the purpose of striving to induce such person to vote in a specific manner.
§ 3. If the act specified in § 1 or 2 is of lesser significance the perpetrator shall be subject to the penalty of the deprivation of liberty for a term up to 2 years.
§ 4. If the perpetrator of the act specified in § 1 or § 3 in conjunction of § 1 notified the body entitled to prosecute of the fact of committing an offence and circumstances in which such offence had been committed before such body was notified of the offence, the court shall apply an extraordinary mitigation of the penalty or may even waive the imposition of the penalty.

52. Poland provided the following examples of cases:

53. Article 228 § 1 of the Criminal Code: Investigation conducted by the Appellate Prosecutor's Office in Krakow, concerning acceptance and giving a bribe to the Mayor of Starachowice in connection with the performance of public functions, which constituted the offences under Articles. 228 § 1 of the Penal Code and others. In the course of the investigation it was found that on November 12, 2006 mayor elections were held in Starachowice, which resulted in obtaining that position by Wojciech B. After the meeting, which was held with the participation of the presidents of municipal companies in May and June 2007, Wojciech B. demanded Szymon Sz. - Chairman of the Department of Thermal Engineering, to pay him 10,000, PLN which was paid in cash shortly after. Since that moment managers occupying positions in companies with the participation of municipalities Starachowice were convinced that the keeping the position required making "contributions" to the mayor. Therefore, in the consecutive years, namely 2008, 2009 and 2010, the company ZEC Ltd. and vice president of the company handed over financial benefits to Wojciech B. The suspect also accepted the bribes (allegedly in connection with the 2010 election campaign) from Marian S. - a local entrepreneur and one of the major suppliers of coal to ZEC Ltd.

54. Mayor of Starachowice individually represented the shareholders of communal

companies, including the ZEC Ltd. Therefore he decided on the appointment and removal of directors and members of supervisory boards and the determination of the terms and the amount of their salary and annual bonus awarded to board members. On February 14, 2012, an act of indictment against Wojciech B. was filed in the District Court in Starachowice. Wojciech B. was accused of committing six offences under Article 228 § 1 of the Penal Code and two offences under art. 228 § 1 and 4 of the Penal Code.

55. The indictment also covered two other people who were accused of actions under art. 18 § 3 of the Penal Code in conjunction with art. 228 § 1 of the Criminal Code and Art. 229 § 1 of the Criminal Code. Wojciech B. pleaded guilty to corruption charges against him. On 31 January 2013 the District Court in Starachowice rendered a verdict in which Wojciech B. was sentenced for three years and six months imprisonment and a ban on holding positions in public authorities for a period of eight years.

56. Article 250a of the Criminal Code: In November 2010 during the local elections in O., the receiving of financial benefits (in the form of two bottles of beer, a pack of cigarettes) and a personal benefit (a settlement of employment in the municipal company) took place in exchange for voting for a certain candidate for the District Council. On May 15, 2012, the District Court in O. rendered a judgment which encompassed five people accused of acts under Article § 250a section 1 and 2 of the Penal Code. With respect to the defendants that accepted the bribes, the Court classified their offenses as the acts of lesser significance under Article 250a § 3 of the Criminal Code and imposed a penalty of restriction of liberty, and with respect to the person providing these benefits ruled imprisonment with conditional suspension of the execution.

(b) Observations on the implementation of the article

57. The reviewing experts noted that the passive form of bribery of national public officials is criminalized in article 228 PC. This article contains a basic provision (paragraph 1) and provisions for less significant (paragraph 2) or aggravated cases (paragraphs 3-5).

58. The concepts of a "domestic public official" and a "person performing public functions" are defined in article 115, paragraphs 13 and 19 PC accordingly. The bribery offences do not expressly require a concrete act or omission on the part of the public official. The offence is committed when the bribery occurs "in connection with the performance of public functions". According to the jurisprudence of the Supreme Court (Supreme Court decision No. III KK 230/05 of 9 March 2006), in order to establish the "connection with the performance of public functions", "it is sufficient that the person performing the function may have an influence on the final effect of a certain matter and the official act to be made remains – at least in part – in the scope of the perpetrator's competence".

59. Article 115, paragraph 19 PC excludes the application of the bribery offense to employees of state administrations performing exclusively "service type work." The Polish authorities explained that the exception for "service type work" excludes persons employed in organizational entities of government administration, territorial self-government, inspection agencies or entities disposing public funds who have no discretionary powers or powers to dispose public funds. During the country visit, it was further clarified that the provision is specifically intended to apply to persons who, although employed in organizational units of public administration, perform tasks that are not linked in any way with acts of authority or power. The review team posed several hypothetical situations involving public officials who, according to the definition contained in

Article 115.19, would fall within the "service type work" category, including: (i) a situation in which a public official who has no discretion over the granting of permits, but who is in charge of processing the paperwork, is bribed to prioritize a company's application; and (ii) a situation in which a secretary is bribed to divulge confidential details of other bidders in a public procurement bid. The Polish authorities argued that these hypothetical examples fall within the category of "technical staff". They also stated that the term was introduced to clarify that persons doing exclusively "service type work" do not enjoy the status of "official". The Polish authorities advised that in these hypothetical examples, actions taken by the people of technical staff would be considered as a breach of employee's duties which might result in disciplinary dissmisal (in case of prioritizing of the application) or even as a criminal offence under article 305. 2 PC (in case of disclosure of details of other bidders in a public procurement bid. Another example mentioned by the review team was that of a consultant with advisory functions, but without decision-making competences. In that case, the Polish authorities confirmed the potential application of the trading in influence provision. Furthermore, doubts about whether a person performs "service type work" would be evaluated by the courts on a case-by-case basis. This is also the case with doubts regarding persons hired by private entities using EU funds (which are considered to be public funds).

60. The reviewing experts were of the opinion that the expression "service type work" may create interpretation issues and loopholes in the scope of application of the bribery provisions and therefore recommended that the Polish authorities amend the domestic legislation– or pursue its consistent interpretation – to ensure that the exception for "service type work" in the Penal Code definitions of "public official" and "a person performing public functions" does not result in an exception to the bribery offences for acts or omissions of a public official "in relation to the performance of official duties".

61. The provisions of article 228, paragraphs 1, 3 and 5 PC use the words "accepts a … benefit or a promise". The "request" of a benefit constitutes an aggravated case of passive bribery and is subject to the specific provision of article 228, paragraph 4 PC.

62. Article 228 PC uses the term "material or personal benefit". The authorities indicated that the word "benefit" equals the term "advantage" and that the words "material or personal" correspond to the terms "material and immaterial". There is no concept of "undue" advantage and the amount or value of the benefit is significant only with regard to the applicable penalties which are lower in cases of "lesser significance" and more severe in cases of a benefit "of considerable value".

63. The relevant provisions on passive bribery do not specify whether the offence could be committed directly or indirectly. The authorities affirmed that it does not matter whether the bribe is promised or given directly to the official or whether intermediaries are used, as there are no indications to the contrary. Actions of the intermediaries are addressed by article 18 paragraph 3 PC which provides for criminal liability for facilitating commission of a criminal offence. However, no case law could be provided to support this view.

64. The provisions on passive bribery do not specify whether the advantage must be for the official him/herself, but article 115, paragraph 4 PC stipulates that "the material or personal benefit constitutes the benefit for the person himself or for another entity".

65. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

66. Take measures to amend the domestic legislation – or pursue its consistent interpretation – to ensure that the exception for "service type work" in the Penal Code definitions of "public official" and "a person performing public functions" does not result in an exception to the bribery offences for acts or omissions of a public official "in relation to the performance of official duties".

Article 16. Bribery of foreign public officials and officials of public international organizations

Paragraph 1 of article 16

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

67. Poland indicated that it has adopted and implemented the provision under review.

68. The applicable law is provided for in the Criminal Code of 6 June 1997. Officials of international organizations are covered by the bribery provisions, provided that Poland is a party to the agreement constituting the organization concerned. Sections 229 § 5 and 228 § 6 PC extend the scope of application of the bribery provisions to persons "performing public functions in an international organization". The definition of "a person performing public functions" provided by section 115 § 19 PC includes, inter alia, persons "whose rights and obligations within the scope of public activity are defined or recognized by a law or an international agreement binding on the Republic of Poland". The bribery offences involving an official of a public international or supranational organization or body are covered by sections 228 and 229 PC. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of officials of international organizations.

69. Poland cited the following article:

> **Article 229 § 5 of the Criminal Code**
> § 5. Accordingly, subject to the penalties specified in § 1-4 shall be also anyone who gives a material or personal benefit or promises to provide it to a person performing public functions in another country or an international organisation in connection with these functions.

(b) Observations on the implementation of the article

70. Foreign public officials and officials of international organizations are covered by the

bribery provisions, provided that Poland is a party to the agreement constituting the organization concerned. Such a prerequisite is not required under article 228.5 and article 229.6. Articles 229, paragraph 5 and 228, paragraph 6 PC extend the scope of application of the bribery provisions to persons performing public functions in another country/foreign State or an international organization. The definition of "a person performing public functions" provided by article 115, paragraph 19 PC includes, inter alia, persons "whose rights and obligations within the scope of public activity are defined or recognized by a law or an international agreement binding on the Republic of Poland". The bribery offences involving an official of a public international or supranational organization or body are covered by articles 228 and 229 PC. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign public officials and officials of international organizations.

71. The reviewing experts concluded that Poland has adequately implemented the provision under review.

(c) Successes and good practices

72. The reviewing experts identified as a good practice the fact that the foreign bribery offences are established domestically "in connection with the public functions" of the perpetrator in a foreign State or an international organization, and their scope of application is not restricted to the "conduct of international business".

Paragraph 2 of article 16

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

73. Poland indicated that it has adopted and implemented the provision under review.

74. The State party under review cited the following applicable laws:

> **Article 228 § 6 of the Criminal Code**
> The penalties specified in § 1-5 shall be also imposed on anyone who, in connection with performing his public functions in a foreign state or in an international organisation, accepts a material or personal benefit or a promise thereof or who demands such a benefit, or on anyone who makes the performance of his official duties conditional upon receiving such a benefit.

75. The following examples of implementation were provided:

76. The Regional Prosecutor's Office in Gorzow Wielkopolski has indicted a Polish individual for the bribery of a foreign public official under Article 229.5 of the Penal Code, in conjunction with offences under Article 229.3 (induce a person to perform public functions that violate the law), Article 229.4 (material benefit of considerable value given in relation to official's capacity),

Article 18.2 (instigation), Article 271.3 (offence committed to gain personal wealth), and Article 11.2 (concurrent offences). The proceedings in Poland are based on information gathered in the investigation in the foreign public official's country, which is a Party to the Convention. The case involves the alleged bribery of a foreign public official between April 2009 and March 2010 to falsely certify documents related to the export of items that would be transported to a third country, which is also a Party to the Convention. The foreign public official and the Polish intermediary have both been convicted in the foreign jurisdiction. The proceedings in Poland concern the Polish individual who authorised the bribe transaction. In total the bribes allegedly amounted to around EUR 64 500. According to the Regional Prosecutor's Office in Gorzow Wielkopolski, the foreign authorities asked Poland to institute proceedings against the individual in Poland. The individual charged in Poland has been subject to three month's temporary detention as a preventive measure. Information about this suspect was obtained in proceedings in Poland against a Polish individual convicted in the foreign country. An MLA request has been sent to the foreign jurisdiction.

77. Poland provided the following statistical information:

	2010	2011	2012
Number of investigations	-	-	2
Number of suspects	-	-	9
Number of prosecutions	-	-	1
Number of convictions	-	-	-
Number of acquittals	-	-	-

(b) Observations on the implementation of the article

78. Foreign public officials and officials of international organizations are covered by the bribery provisions, provided that Poland is a party to the agreement constituting the organization concerned. Such a prerequisite is not required under article 228.5 and article 229.6. Articles 229, paragraph 5 and 228, paragraph 6 PC extend the scope of application of the bribery provisions to persons performing public functions in another country/foreign State or an international organization. The definition of "a person performing public functions" provided by article 115, paragraph 19 PC includes, inter alia, persons "whose rights and obligations within the scope of public activity are defined or recognized by a law or an international agreement binding on the Republic of Poland". The bribery offences involving an official of a public international or supranational organization or body are covered by articles 228 and 229 PC. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign public officials and officials of international organizations.

79. The reviewing experts concluded that Poland has adequately implemented the provision under review.

(c) Successes and good practices

80. The reviewing experts identified as a good practice the fact that the foreign bribery offences are established domestically "in connection with the public functions" of the perpetrator in a foreign State or an international organization, and their scope of application is not restricted to the "conduct of international business".

Article 17. Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

81. Poland indicated that it has adopted and implemented the provision under review.

82. The applicable law is provided for in the Penal Code of 6 June 1997.

Article 284 of the Criminal Code

§ 1. Whoever appropriates someone else's movable property or property rights shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 2. Whoever appropriates a movable property entrusted to him shall be subject to the penalty of deprivation of liberty for a term of between 3 months to 5 years.

§ 3. In the event that the act is of a lesser significance, or appropriation of an item found, the perpetrator shall be subject to a fine, the penalty of restriction of liberty or the penalty of

deprivation of liberty for up to one year.
§ 4. If the appropriation has been committed to the detriment of a next of kin, the prosecution shall occur on a motion of the injured person.

Article 296 of the Criminal Code
§ 1. Whoever, while under an obligation resulting from provisions of law, a decision of a competent authority or a contract to manage the property or business of a natural or legal person, or an organizational unit which is not a legal person, by exceeding powers granted to him or by failing to perform his duties, causes it to suffer considerable material damage, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.
§ 2. If the perpetrator of the offence specified in § 1 acts in order to gain a material benefit he shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.
§ 3. If the perpetrator of the offence specified in § 1 or 2 causes significant material damage of great extent he shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.
§ 4. If the perpetrator of the offence specified in § 1 or 3 acts unintentionally he shall be subject to the penalty of deprivation of liberty for up to 3 years.

83. According to the data provided for, between 2010 and 2012 in criminal proceedings concerning offences foreseen in Articles 296 of the Criminal Code, charges were brought to 270 public officials, among which 240 were convicted and 7 acquitted. In 4 cases a conditional discontinuance of the proceedings was applied.

84. According to the data provided for, between 2010 and 2012 in criminal proceedings concerning offences foreseen in Articles 284 § 2 of the Criminal Code, charges were brought to 34 public officials, among which 16 were convicted and 4 acquitted. In one case a conditional discontinuance of the proceedings was applied.

(b) Observations on the implementation of the article

85. The reviewing experts noted that the embezzlement in both the public and the private sectors is criminalized through articles 284 and 296 PC. Article 296 PC criminalizes the relevant act in a broad manner, in the sense that the management of property or business by exceeding powers granted to the perpetrator or by failing to perform duties is also covered as a punishable conduct.

86. During the country visit, the Polish authorities confirmed that the domestic provisions on the criminalization of embezzlement cover not only movable property and property rights, but also immovable property. They further confirmed that the provisions also cover cases of third-party beneficiaries.
87. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 18. Trading in influence

Subparagraph (a) of article 18

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as

criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(a) Summary of information relevant to reviewing the implementation of the article

88. Poland indicated that it has adopted and implemented the provision under review.

89. The applicable law is provided for in the Criminal Code of 6 June 1997 and in the Act of 25 June 2010 on sport.

90. Poland cited the following applicable texts:

Article 230a of the Criminal Code

§ 1 Whoever gives a material or personal benefit or promises to provide it in return for mediation in the settling of a matter in a state or local institution, national or international organisation, or a foreign organisational unit governing public funds, consisting in an unlawful exertion of influence on a decision, action or abandonment of action of a person performing public functions, in connection with these functions shall be subject to the penalty of deprivation of liberty between 6 months and 8 years.

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

§ 3. The penalty is not imposed on the perpetrator of the act specified in § 1 or § 2 if the material or personal benefit or promise thereof were received and the perpetrator had reported this fact to the law-enforcement authority, revealing all essential circumstances of the offence before this authority was notified of the offence.

Article 48 of the Act on sport

1. Anyone who, pointing to his or her influence in a Polish sports association, or in an entity operating under an agreement concluded with this association, or in an entity operating on its behalf, or leading another person to believe, or strengthening that person's conviction, that such influence is real, undertakes to act as a middleman in setting up a specific result of a sports competition in return for material or personal benefits or for a promise of such benefits

shall be liable on conviction to imprisonment for a term from 6 months to 8 years.

2. Anyone who gives or promises to give a material or personal benefit in return for someone to act as a middleman in setting up a specific result of a sports competition, by means of unlawful influence on an official of a Polish sports association, or of an entity operating under an agreement with such association, or of an entity operating on its behalf, in connection with the performance of their official functions, shall be liable on conviction to the same punishment.

3. In cases of lesser significance, a perpetrator of acts described in paragraphs 1 or 2 shall be liable on conviction to a fine, restriction of liberty or imprisonment for a term not exceeding 2 years.

91. The investigation conducted by one of the prosecution offices in Poland, concerning trading in influence on the Regional Centre for Traffic in K. and embark on a successful mediation in settling the matter on passing the final exam for driving licenses by at least dozens of people. Charges of offences foreseen in Articles 230 § 1 of the Criminal Code and Art. 230a § 1 of the Criminal Code were pronounced to more than a dozen people. The case was completed in February 2012 with an act of indictment.

(b) Observations on the implementation of the article

92. The reviewing experts noted that article 18 of the UNCAC is domesticated through articles 230a and 230 PC, as well as article 48 of the Act on sport (match-fixing cases). Article 230, paragraph 1 PC furthermore requires that the influence peddler "undertakes to intercede in the settling of a matter". According to the national authorities, however, this does not mean that the influence peddler actually has to intercede, and it is not relevant whether the influence was actually exerted or if it led to the intended result; they stated that the term "undertake" means that the perpetrator declares his/her readiness to intercede in the settling of a certain matter.

93. Similarly to the bribery provisions, the reviewing experts recommended that the national authorities continue to develop consistent jurisprudence for purposes of legal certainty to make a clear distinction between the offer and the promise of an undue advantage in the trading in influence provisions of the domestic legislation.

94. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

95. Continue to develop consistent jurisprudence for purposes of legal certainty to make a clear distinction between the offer and the promise of an undue advantage in the trading in influence provision of the domestic legislation.

Subparagraph (b) of article 18

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

96. Poland indicated that it has adopted and implemented the measures described above.

97. The State party under review cited the following applicable laws:

Article 230 of the Criminal Code
§ 1 Whoever, claiming to have influence on a state or local government, a national or international organisation or a foreign organisational unit governing public funds, or making any person believe or confirming this person to believe that such influence exists, undertakes to intercede in the settling of a matter in return for a material or personal benefit or for a promise

thereof, shall be subject to the penalty of deprivation of liberty for a term of between 6 months to 8 years.
§ 2. In the event that the act is of a lesser significance, the perpetrator shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

98. Poland provided the following example of implementation:

99. Article 230 of the Criminal Code: By judgment of 16 May 2012, the District Court in W. found B.S. guilty of that in 2007, in the city of H and in other places, acting in a short period of time and with a premeditated intent and the purpose of financial gain, she made T.K. and M.P. believe in her ability to influence on the mayor of H, and accepted a financial benefits of total amount of 102 300 zł. in exchange for intermediation in settling the matter on facilitating the acquisition of land for a specified company located in H with a total area of 15,900 and estimated value of at least 3 million zł, as well as facilitated M.W. to pass to T.K. the demand for a financial benefit in return for the unlawful conduct of law involving the making of his efforts to facilitate the acquisition the land by the aforementioned company. Such actions were qualified as offences under articles 228 § 3 and 230 § 1 of the Criminal Code in conjunction with art. 11 § 2 and art. 12 of the Criminal Code. B.S. was sentenced for three years of imprisonment and a fine of 400 daily rates assuming a daily rate for an equivalent amount of 100 zł. The court also adjudicated a forfeiture of the equivalent of financial benefit achieved by the convict in the amount of 52 300 PLN and a deprivation of civil rights for a period of four years.

(b) Observations on the implementation of the article

100. The reviewing experts noted that article 18 of the UNCAC is domesticated through articles 230a and 230 PC, as well as article 48 of the Act on sport (match-fixing cases). Article 230, paragraph 1 PC furthermore requires that the influence peddler "undertakes to intercede in the settling of a matter". According to the national authorities, however, this does not mean that the influence peddler actually has to intercede, and it is not relevant whether the influence was actually exerted or if it led to the intended result; they stated that the term "undertake" means that the perpetrator declares his/her readiness to intercede in the settling of a certain matter.

101. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 19. Abuse of functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

102. Poland indicated that it has adopted and implemented the provision under review.

103. The applicable law is enshrined in the Criminal Code of 6 June 1997.

Article 231 of the Criminal Code

§ 1. A public official who, exceeding his authority, or not performing his duty, acts to the detriment of a public or individual interest shall be subject to the penalty of deprivation of liberty for up to 3 years.

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

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

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

104. Poland provided the following examples of implementation: One of the prosecution offices in Poland conducted an investigation with involvement of the immunity witness. In the course of the investigation, it was established that a police officer in return for financial benefits received (money and drugs) from the organized criminal group, entered classified police databases in order to verify a number of information including the usage of firearms owned by the group members. Moreover, the police officer delivered new police ID card designs, prints, stamps and customs documents, which served for the forgery and other criminal purposes, and also took part in the extortion muggings. The Police officer was charged with the offences of Article 231 § 1 and § 2 of the Criminal Code and subsequently indicted in February 2012. The Court ruled a total penalty of 2 years and 6 months of imprisonment.

(b) Observations on the implementation of the article

105. The reviewing experts noted that article 19 of the UNCAC on the criminalization of abuse of functions by a public official is fully implemented through section 231 PC.

106. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 20. Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

107. Poland indicated that it has not adopted and implemented the measures described above.

108. Poland further indicated that bearing in mind that the Convention sets out only an obligation to consider criminalization of illicit enrichment, measures foreseen in article 19 of the Convention have been taken into consideration by the Polish authorities at the time of ratification of the Convention.

109. Having considered a possibility to criminalize illegal enrichment, Polish authorities have not introduced such an offence into the Polish Criminal Code.

(b) Observations on the implementation of the article

110. The reviewing experts noted that Poland has considered the criminalization of illicit enrichment but has not established the relevant offence. Such consideration was deemed by the review team as sufficient to ensure compliance with article 20 of the Convention.

Article 21. Bribery in the private sector

Subparagraph (a) of article 21

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(a) Summary of information relevant to reviewing the implementation of the article

111. Poland indicated that it has adopted and implemented the provision under review.

112. The State party under review cited the following applicable laws:

Criminal Code

Art. 296a § 1. Whoever in charge of a managerial function in an organisational unit carrying out business activity or having employment relationship, or contract of mandate, or contract for a specific task demands or accepts material or personal benefits or a promise of the same in return for the abuse of granted powers or failing to fulfil a duty assigned to such person that may inflict material damage on such unit or may constitute an act of unfair competition or inadmissible act of preference in favour of a buyer, or a recipient of goods, services or other performance shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

Art. 296a § 2 of the Criminal Code
The same penalty shall be imposed on a person who in cases specified in § 1 provides or promises to provide material or personal benefits.

Other sections of Article 296a refer to both types of bribery in the private sector.

Art. 296a § 3,4,5 of the Criminal Code
§ 3. In the event of a lesser significance the perpetrator of the act specified in § 1 or 2 shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.
§ 4. In the event that the perpetrator of the act specified in § 1 causes considerable material damage, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.
§ 5. The perpetrator of the act specified in § 2 or in § 3 in conjunction with § 2 shall not be

subject to a penalty if the material or personal benefits or the promise of the same have not been accepted and the perpetrator notified on such fact a body entitled to prosecute and revealed all essential circumstances before such body was notified on this act.

113. Poland provided the following information on implementation: Investigation conducted by the Appellate Prosecution Office in Warsaw concerning granting financial benefits between August 2011 and February 2012 to persons performing managerial functions in PZU SA (insurance company) in exchange for abuse of power or negligence of duties, which might have caused material damage or constituted an act of unfair competition consisting in obstructing access to the market of assistance services.

(b) Observations on the implementation of the article

114. The reviewing experts noted that the active bribery in the private sector is criminalized through article 296a, paras. 1-2 PC. The concept of "persons who direct or work, in any capacity, for a private sector entity" is transposed into article 296a, paragraph 1 PC by use of the words "whoever in charge of a managerial function in an organizational unit carrying out business activity or having employment relationship, or contract of mandate, or contract for a specific task". The "breach of duties" of the bribe-taker, as foreseen in article 21 of the UNCAC, is not a constituent element of the offence. Instead, article 296a refers to specific forms of impact of the act – or failure to act –of the bribe-taker, which may inflict material damage on an organizational unit carrying out business activity unit or may constitute an act of unfair competition or inadmissible act of preference in favour of a buyer, or a recipient of goods, services or other performance.

115. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph (b) of article 21

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

...

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

116. Poland indicated that it has adopted and implemented the provision under review.

117. The State party under review cited the following applicable laws:

Art. 296a of the Criminal Code

§ 1. Whoever in charge of a managerial function in an organisational unit carrying out business activity or having employment relationship, or contract of mandate, or contract for a specific task demands or accepts material or personal benefits or a promise of the same in return for the abuse of granted powers or failing to fulfil a duty assigned to such person that may inflict

material damage on such unit or may constitute an act of unfair competition or inadmissible act of preference in favour of a buyer, or a recipient of goods, services or other performancehall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

Article 21 section a) of the Convention has been implemented by means of Article 230a of the Penal Code which reads as follows:

Article 230a § 1. Whoever gives a material or personal benefit or promises to provide it in return for mediation in the settling of a matter in a state or local institution, national or international organisation, or a foreign organisational unit governing public funds, consisting in an unlawful exertion of influence on a decision, action or abandonment of action of a person performing public functions, in connection with these functions
shall be subject to the penalty of deprivation of liberty between 6 months and 8 years.
§ 2. In the event that the act is of a lesser significance, the perpetrator
shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.
§ 3. The penalty is not imposed on the perpetrator of the act specified in § 1 or § 2 if the material or personal benefit or promise thereof were received and the perpetrator had reported this fact to the law-enforcement authority, revealing all essential circumstances of the offence before this authority was notified of the offence.

(b) Observations on the implementation of the article

118. The reviewing experts noted that the passive bribery in the private sector is criminalized through article 296a, para. 1 PC. The concept of "persons who direct or work, in any capacity, for a private sector entity" is transposed into article 296a, paragraph 1 PC by use of the words "whoever in charge of a managerial function in an organizational unit carrying out business activity or having employment relationship, or contract of mandate, or contract for a specific task". The "breach of duties" of the bribe-taker, as foreseen in article 21 of the UNCAC, is not a constituent element of the offence. Instead, article 296a refers to specific forms of impact of the act – or failure to act –of the bribe-taker, which may inflict material damage on an organizational unit carrying out business activity unit or may constitute an act of unfair competition or inadmissible act of preference in favour of a buyer, or a recipient of goods, services or other performance.

119. Article 296a, paragraph 1 PC also provides that a person in charge of a managerial function accepts the bribe in exchange for abuse of authority or failure to fulfil his/her duties. The reviewing experts found that this wording sets additional requirements which restrict the scope of application of the relevant domestic provision, as compared to article 21 of the UNCAC. Therefore they recommended the amendment of the domestic legislation to overcome such restrictive requirements.

120. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

121. Amend the domestic legislation to overcome problems that may be posed by existing requirements which restrict the scope of application of article 296a PC on the criminalization of bribery in the private sector (act – or failure to act –of the bribe-taker, which may inflict material damage on an organizational unit carrying out business activity unit or may constitute an act of unfair competition or inadmissible act of preference in favour of a buyer, or a recipient of goods,

services or other performance).

Article 22. Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

122. Poland indicated that it has adopted and implemented the provision under review.

123. The applicable law is enshrined in the Penal Code of 6 June 1997. Article 22 of the Convention has been implemented by means of Article 284 and article 296 of the Penal Code.

Article 284 of the Criminal Code
§ 1. Whoever appropriates someone else's movable property or property rights shall be subject to the penalty of deprivation of liberty for up to 3 years.
§ 2. Whoever appropriates a movable property entrusted to him shall be subject to the penalty of deprivation of liberty for a term of between 3 months to 5 years.
§ 3. In the event that the act is of a lesser significance, or appropriation of an item found, the perpetrator shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.
§ 4. If the appropriation has been committed to the detriment of a next of kin, the prosecution shall occur on a motion of the injured person.

Article 296 of the Criminal Code
§ 1. Whoever, while under an obligation resulting from provisions of law, a decision of a competent authority or a contract to manage the property or business of a natural or legal person, or an organizational unit which is not a legal person, by exceeding powers granted to him or by failing to perform his duties, causes it to suffer considerable material damage, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.
§ 2. If the perpetrator of the offence specified in § 1 acts in order to gain a material benefit he shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.
§ 3. If the perpetrator of the offence specified in § 1 or 2 causes significant material damage of great extent he shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.
§ 4. If the perpetrator of the offence specified in § 1 or 3 acts unintentionally he shall be subject to the penalty of deprivation of liberty for up to 3 years.
§ 5. Whoever had voluntarily compensated full damage caused, prior to instituting criminal proceedings, shall not be liable to punishment.

124. According to statistics from 2011 (recent info available) CAB's registration of the number of corruption offenses reads as follows:

(according to the criminal qualifications / Polish Penal Code):

·Article 228 - venality – 87

· Article 229 - bribery - 74

· Article 230 - offence of accepting bribes - 27

· Article 230a - bribery for paying patronage - 2

· Article 231 subpar.2 - the crime of abuse of power by public officer - 31 · Article 250a - electoral corruption - 11
· Article 296a - managerial corruption - 3 · Article 296b - sports bribery - 79
In total: 314

125. In 2011 decrease in total number of registered corruption offences can be noted. 9703 were registered, in comparison - in 2010 - 13938 had been registered.

(b) Observations on the implementation of the article

126. The reviewing experts noted that the embezzlement in both the public and the private sectors is criminalized through articles 284 and 296 PC. Article 296 PC criminalizes the relevant act in a broad manner, in the sense that the management of property or business by exceeding powers granted to the perpetrator or by failing to perform duties is also covered as a punishable conduct.

127. During the country visit, the Polish authorities confirmed that the domestic provisions on the criminalization of embezzlement cover not only movable property and property rights, but also immovable property. They further confirmed that the provisions also cover cases of third-party beneficiaries.
128. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 23. Laundering of proceeds of crime

Subparagraph 1 (a) (i) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(a) Summary of information relevant to reviewing the implementation of the article

129. Poland indicated that it has adopted and implemented the provision under review.

130. Money laundering is criminalised by Article 299 of the Criminal Code, based on an "all-crimes" approach. Corruption is one of the possible predicate offenses (the original crime) for money laundering and it is identified, among others, as being one of the most frequent sources of illegal proceeds. The General Inspector of Financial Information (GIFI) is responsible for carrying

out tasks related to money laundering and terrorist financing, regardless of the predicate offense. Determining the predicate offense is not a task of the General Inspector and combating offenses (including corruption) it is only an indirect result of the General Inspector's activities. Hence, in the result of fruitful cooperation between the representatives of Department of Financial Information of the Ministry of Finance with the representatives of the Prosecution General the guidelines and recommendations were developed and sent to all Appellate Prosecutors' Offices by the Prosecution General in December 2012, indicating inter alia that the AML/CFT Act does not obligate the General Inspector to indicate the predicate offence. Lack of rights to perform investigation and operational activities prevent the establishment of such an offence. Consequently, it is not possible for the General Inspector to collect and provide evidence relating to the predicate offence of money laundering to the prosecution office.

131. Poland cited the following text:

> **Article 299 of the Criminal Code**
>
> § 1. Whoever accepts, transfers or takes abroad, helps to transfer the ownership or possessions of the means of payment, securities, foreign currency, property rights or other movable or immovable property derived from the benefits relating to the commission of a prohibited act or undertakes other actions that may obstruct or considerably hinder the assertion of criminal origin or place of depositing or detection or seizure or adjudication of the forfeiture, shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.
>
> § 2. The penalty specified in § 1 shall be imposed on a person who being an employee or acting on behalf of or in favour of a bank or a financial or credit institution or any other subject with which under the provisions of law rests a duty of recording transactions and persons executing transactions, accepts, contrary to the regulations, means of payment, financial instruments, securities, foreign currency, makes transfer of the same or conversion or accepts hereof in other circumstances arousing justified suspicion that such items are an object of the act specified in § 1 or if such person provides other services that are to conceal criminal origin of the same or a service protecting such items from seizure.
> § 3. (repealed).
> § 4. (repealed).
> § 5. If the perpetrator commits the act specified in § 1 or 2 acting in co-operation with other persons, he
> shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.
> § 6. The punishment specified in § 5 shall be imposed on a perpetrator who, by committing the act specified in § 1 or 2, gains considerable material benefit.
> § 7. In the event of conviction for the offence specified in § 1 or 2, the court shall decide on the forfeiture of items derived either directly or indirectly from the offence, and also benefits derived from the offence or their pecuniary equivalent even though they are not the property of the perpetrator. Forfeiture shall not be applied to the benefit as a whole or its part if the item, the benefit or its pecuniary equivalent is subject to return to the injured person or another entity.
> § 8. Whoever voluntarily disclosed before a law enforcement agency, information about persons taking part in the perpetration of an offence or about the circumstances of an offence: if it prevented the perpetration of another offence, he shall not be liable to the penalty for the offence specified in § 1 and 2; if the perpetrator undertook efforts leading to the disclosure of this information and circumstances, the court may apply extraordinary mitigation of punishment.
>
> Wording used in the Article 299 § 1"…undertakes other actions" covers every possible action including "concealment, disguise, acquisition, possession and use" that "…may obstruct or considerably hinder the assertion of criminal origin or place of depositing or detection or seizure or adjudication of the forfeiture".

132. The following examples of implementation were provided:

133. The Polish authorities identified penal-fiscal crimes (carousel fraud), drug trafficking, fraud and extortion, illegal turnover of tobacco and spirits products, illegal or fictitious scrap or fuel trade, unauthorised access to bank accounts, VAT fraud in CO2 emission trading, crimes related to financial and goods transactions within the European Union and with third countries and corruption, as being the most frequent sources of illegal proceeds, with the primary source being the carousel fraud (VAT fraud).

134. The table below presents an overview of convictions for the reference period 2007-2011:
Table 3: Recorded Criminal Offences

	2007	2008	2009	2010	2011
CRIMINAL OFFENCES AGAINST PROPERTY					
Theft	241,104	214,414	211,691	220,455	230,247
Burglary	141,606	124,066	135,383	140,085	135,611
Fraud	34,775	33,028	27,945	32,084	36,179
Robbery	27,637	26,159	26,458	27,218	26,231
Theft of vehicles	21,284	17,669	17,271	16,539	16,575
Concealment					
Other CO against property	155,007	161,757	172,513	171,083	90,885
Business fraud					
Fraud	38,618	40,488	49,137	54,524	55,501
Issuing of an uncovered cheque,	2 9,551	2 10,182	2 10,061	0 9,508	0 8,239
misuse of a credit card					
Tax evasion	277	387	384	373	422
Forgery	21,988	16,681	15,921	20,218	20,870
Abuse of authority or rights	2,118	1,016	941	2,631	2,545
Embezzlement	6,035	5,154	5,413	4,801	5,425
Usury	15	10	6	57	13
Abuse of Insider Information	6	1	8	5	28
Abuse of Financial Instruments	1	0	0	0	0
Market					
Unauthorised Use of	1,214	1,713	1,719	3,256	1,807
Another's Mark or Model					
Other CO of economic nature	63,283	59,671	67,673	58,968	56,805

Approximate economic loss or	1,737	1,747	1,567	2,444	1,742

damage from c.o. of economic nature (PLN '000,000)

OTHER CRIMINAL OFFENCES					
Production and trafficking in drugs	20,565	16,436	20,123	22,448	22,075
Illegal migration	6	2	8	9	17

	2010	2011	2012
Number of prosecutions	128	131	161
Number of convictions	30	3	29
Number of acquittals	-	-	4

(b) Observations on the implementation of the article

135. The reviewing experts noted that money-laundering is criminalized by article 299 PC, based on an "all-crimes" approach. Corruption is one of the possible predicate offenses (the original crime) for money laundering and it is identified, among others, as being one of the most frequent sources of illegal proceedsThis basic provision refers to the act of a person who accepts, transfers or takes abroad, helps to transfer the ownership or possessions of the means of payment, securities, foreign currency, property rights or other movable or immovable property derived from the benefits relating to the commission of a prohibited act or undertakes other actions that may obstruct or *considerably* hinder the assertion of criminal origin or place of depositing or detection or seizure or adjudication of the forfeiture. The reviewing experts were of the opinion that the requirement of "considerably hindering" the assertion of the criminal origin of the proceeds sets limitations to the broad application of article 299 and therefore recommended the deletion of the word "considerably".

136. Furthermore, the Act on "counteracting money-laundering and terrorism financing" of 16 November 2000 lays down principles of and procedures for counteracting money laundering and terrorism financing, application of specific restrictive measures against persons, groups and entities, and obligations of entities involved in financial transactions in so far as collection and disclosure of information (article 1). Chapter 8 of the Act (articles 35-37a) contains penal provisions to criminalize the conduct of persons violating the provisions of the Act, disclosing information collected in accordance with the authorization of the Act to any unauthorized person and refusing to submit information to the General Inspector or submitting false data to him.

137. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

138. Amend the domestic legislation along the lines of removing the word "considerably" in article 299 PC while describing the conduct of "undertaking other actions that may hinder the assertion of criminal origin" of the proceeds (money-laundering).

Subparagraph 1 (a) (ii) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

139. Poland indicated that it has adopted and implemented the provision under review.

140. The State party under review indicated that Article 299 of the Criminal Code relates to every possible measure of laundering of money.

141. The following examples of cases were provided:

142. Main offences that generate proceeds Penal-fiscal crimes

143. In the years 2007 - 2011 the GIFI carried out numerous analytical proceedings concerning money laundering from penal-fiscal crimes in particular, so called carousel transactions used for obtaining undue benefits from tax settlements (including those regarding transactions related to illegal or fictitious trade in fuels and scrap metal). From the GIFI's experience carousel transactions involve entities from several, or even a dozen or so countries.

144. Laundering of money deriving from trafficking in narcotic drugs and trading in pharmaceutics

145. With regard to this field of money laundering, in 2007-2011 the GIFI initiated several analytical cases based on a suspicion of money laundering connected with the trade in drugs. It was noted that each case featured a broad base of involved entities, the use of the banking sector for purposes of money laundering and persons previously convicted of criminal offences.

146. Money laundering and CO2 emissions trading.

147. In the years 2009-2010, a number of cases of fraud linked to VAT settlement was detected in the market of the joint CO2 emissions trading system. The GIFI opened several cases relating to laundering of money from fraud in the area of CO2 emissions trading.

148. Financial and goods transactions with foreign countries including goods turnover within the EU.

149. Among the analytical proceedings initiated by the GIFI in 2010 and 2011, a large part was

suspected of money laundering from crimes related to financial or goods transactions with foreign countries. According to the Polish authorities cases related to money transfers were sent to Poland, mainly from North America and Western Europe and transfer of funds from Poland to Asian countries.

150. The GIFI receives notifications about suspicious transactions regarding turnover of scrap metal and recyclable materials. Cash obtained from such illegal activity is later introduced to financial circulation. According to the Polish authorities the scale of the phenomenon is increasing, which is testified by the number of scrap metal cases initiated by the GIFI and the total value of suspicious transactions about which the GIFI notified the public prosecutor's offices. The results of the conducted analytical proceedings, regarding scrap metal and recyclable materials' circulation, indicate that a network of entities has been established for the purpose of providing funds which is completed with disbursement of cash.

151. The GIFI receives notifications about suspicious transactions regarding transfer of funds related to actual or fictitious circulation of liquid fuels and components for their production. The scale of the phenomenon, in spite of the activities undertaken by relevant state authorities, is still significant.

152. Another identified area of money laundering were transactions performed as a result of fraud and extortion. The money was legalised with the use of the targeted account technique - transfers of funds for the purpose of their immediate disbursement in cash and by means of circulation of securities. On the other hand, the depositing stage was omitted. On account of the nature of certain predicate offences, e.g. credit extortion, resulting in the fact that the funds which are the subject matter of the crime are located in cash-free financial circulation, it is difficult to distinguish transactions performed within the framework of a predicate offence from transactions related to money laundering.

153. Additional direction of activities was transactions related to money laundering derived from extortion of funds from bank accounts (an area excluded from the previous field encompassing other frauds and extortions). The funds extorted in this manner were most often disbursed in cash or provided to third parties via transfers (e.g. Western Union). The above transactions have been performed with the use of small amounts in order to make it more difficult for the account holder to ascertain a decrease in funds, as well as for an obligated institution to register a suspicious transaction.

154. Another area of money laundering were transactions implemented as a result of illegal sale of technical grade spirit for food purposes without records, in the so-called "gray zone", and tax frauds related to it. Cash obtained from such illegal activity was later introduced to financial circulation.

(b) Observations on the implementation of the article

155. See above.

(c) Challenges in implementation and recommendations

156. See above.

Subparagraph 1 (b) (i) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

157. Poland indicated that it has adopted and implemented the provision under review.

158. The State party under review indicated that information on the implementation of this provision could be found in article 299 of the Criminal Code.

(b) Observations on the implementation of the article

159. See above.

(c) Challenges in implementation and recommendations

160. See above.

Subparagraph 1 (b) (ii) of article 23

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) Subject to the basic concepts of its legal system: ...
(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

161. Poland indicated that it has adopted and implemented the provision under review.

162. Please see information for subparagraph 1 (a) (i) of article 23.

(b) Observations on the implementation of the article

163. See above.

(c) Challenges in implementation and recommendations

164. See above.

Subparagraphs 2 (a) and 2 (b) of article 23

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

165. Poland indicated that it has adopted and implemented the provision under review.

166. Please see information for subparagraph 1 (a) (i) of article 23.

(b) Observations on the implementation of the article

167. See above.

(c) Challenges in implementation and recommendations

168. See above.

Subparagraph 2 (c) of article 23

2. For purposes of implementing or applying paragraph 1 of this article: ...
(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

169. Poland indicated that it is in compliance with this provision.

170. Please see information for subparagraph 1 (a) (i) of article 23.

(b) Observations on the implementation of the article

171. See above.

(c) Challenges in implementation and recommendations

172. See above.

Subparagraph 2 (d) of article 23

2. For purposes of implementing or applying paragraph 1 of this article: ...
(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

173. Poland has indicated that it has furnished copies of its laws to the Secretary-General of the United Nations as prescribed above.

174. Please see information for subparagraph 1 (a) (i) of article 23.

(b) Observations on the implementation of the article

175. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 2 (e) of article 23

2. For purposes of implementing or applying paragraph 1 of this article: ...
(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

176. Poland indicated that its domestic system contains fundamental principles as referred to in the provision under review.

177. Please see information for subparagraph 1 (a) (i) of article 23.

(b) Observations on the implementation of the article

178. See above. Self-laundering is covered by article 299 PC.

(c) Challenges in implementation and recommendations

179. See above.

Article 24. Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

180. Poland indicated that it has adopted and implemented the provision under review.

181. Information included in information for subparagraph 1 (a) (i) of article 23 is applicable to the offence covered by this Article.

(b) Observations on the implementation of the article

182. The reviewing experts noted that article 24 of the UNCAC is implemented through section 299 PC on the understanding that the perpetrator can be not only the wrongdoer, but also a person who did not participate in criminal offence. The words used in article 299, paragraph 1 PC "...undertakes other actions" cover every possible action including "concealment, disguise, acquisition, possession and use" that "...may obstruct or considerably hinder the assertion of criminal origin or place of depositing or detection or seizure or adjudication of the forfeiture".

183. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 25. Obstruction of justice

Subparagraph (a) of article 25

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

184. Poland indicated that it has adopted and implemented the provision under review.

185. The applicable law is provided for in the Penal Code of 6 June 1997.

Criminal Code

Article 245 of the Criminal Code
§ 1 Whoever uses violence or unlawful threat with a purpose of influencing a witness, expert witness, translator prosecutor or the accused or consequently breaches personal inviolability of

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

A bribery of a witness or an expert or another entity involved in a trial anyhow shall be qualified as a aiding and abetting to an offence of false testimony according to the Article 18 § 2 in connection with Articles 233-240 of the Criminal Code.

Article 18. § 1. Not only the person who has committed a prohibited act himself or together and under arrangement with another person, but also a person who has directed the commission of a prohibited act by another person, or taken advantage of the subordination of another person to him, orders such a person to commit such a prohibited act, shall be liable for perpetration.

§ 2. Whoever, willing that another person should commit a prohibited act, induces the person to do so, shall be liable for instigating.

§ 3. Whoever, with an intent that another person should commit a prohibited act, facilitates by his behaviour the commission of the act, particularly by providing the instrument, means of transport, or giving counsel or information, shall be liable for aiding and abetting. Furthermore, whoever, acting against a particular legal duty of preventing the prohibited act, facilitates its commission by another person through his omission, shall also be liable for aiding and abetting.

Article 233. § 1. Whoever, in giving testimony which is to serve as evidence in court proceedings or other proceedings conducted on the basis of a law, gives false testimony or conceals the truth

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

§ 2. The prerequisite to this liability is that the person obtaining the testimony, acting within his competence, shall have warned the person testifying of the penal liability for false testimony or obtained a relevant pledge from the latter.

§ 3. Whoever, being unaware of the right to refuse testimony or answer to questions, gives false testimony because of fear of penal liability threatening himself or his next of kin, shall not liable to the penalty.

§ 4. Whoever, acting as an expert, expert witness or translator, provides a false opinion or translation to be used as in proceedings specified in § 1

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

§ 5. The court may apply an extraordinary mitigation of the penalty, or even waive its imposition if:

1) the false testimony, opinion or translation concerns circumstances which cannot affect the outcome of the case,
2) the perpetrator voluntarily corrects the false testimony, opinion or translation before even a decision which is not final and valid has been rendered in the case.

§ 6. The provisions of § 1-3 and 5 shall be applied accordingly to a person providing a false statement if a provision of a law provides for the possibility of obtaining a statement under the threat of penal liability.

Article 234. Whoever before a body entitled to prosecute or adjudicate on crime cases, including fiscal crime, offence, fiscal offence or disciplinary offence, gives false evidence against another person accusing such person of the commission of such prohibited acts or disciplinary offence,

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

Article 235. Whoever by fabricating false evidence or other deceitful subterfuges directs the prosecution for a crime, including fiscal crime, offence, fiscal offence, or disciplinary offence against another person or in course of proceedings will use such subterfuges, shall be subject to the penalty of the deprivation of liberty up to 3 years.

Article 236. § 1. Whoever conceals the proofs of innocence of a person suspected of the commission of crime, including fiscal crime, offence, fiscal offence or disciplinary offence,

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

§ 2. A person who conceals the proofs of innocence for fear of criminal punishment threatening to himself or his next of kin shall not be liable to penalty.

Article 237. The provisions of Article 233 § 5 section 2 shall be applied accordingly to the offences specified in Article 234, Article 235 and in Article 236 § 1.

Article 238. Whoever reports a crime or a fiscal crime to a body entitled to prosecute being aware that such crime has not been committed,

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

Article 239. § 1. Whoever obstructs or hinders criminal proceedings, assisting the offender including fiscal crime avoiding criminal responsibility, in particular, whoever harbours an offender, covers up the crime tracks including fiscal crime or serves a sentence instead of the convicted person,

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

§ 2. Whoever harbours his next of kin shall not be liable to penalty.

§ 3. The court may apply extraordinary mitigation of punishment or waive the imposition of a punishment if the perpetrator granted assistance to his next of kin or acted in fear of criminal responsibility threatening to himself or to his next of kin.

Article 240. § 1. Whoever holding information regarding criminal preparations or attempt or commission of the prohibited act specified in Article. 118, 118a, 120-124, 127, 128, 130, 134, 140, 148, 163, 166, 189, 189a § 1, Article 252 or a crime of terrorist nature does not notify without any delay a body entitled to prosecute,

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

§ 2. Whoever, having sufficient grounds for presumption that a body mentioned in § 1 knows that a prohibited act is under preparation, under attempted commission or has been committed, omits to notify such a body, does not commit a crime.

§ 3. A person who has omitted to notify for fear of criminal punishment threatening to himself of his next of kin shall not be liable to penalty.

(b) Observations on the implementation of the article

186. The reviewing experts noted that article 25(a) of the UNCAC is domesticated through articles 18, 232-240 and 245 PC. The concept of "illegal threat" is defined in article 115, paragraph 12 PC as "both a threat mentioned in Article 190, and also a threat to cause the institution of criminal proceedings, or to disseminate derogatory information concerning the person threatened or his next of kin". The Polish authorities explained during the country visit that the notion of "intimidation" is included in the scope of the term "threat" (which cannot be only physical), as used in article 190, paragraph 1 PC.

187. The reviewing experts noted that there is no stand-alone offence to punish the offering or giving of an undue advantage to induce false testimony or the production of evidence in a proceeding.

188. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

189. Consider including a provision in the national legislation establishing a specific stand-alone offence that explicitly covers the offering or giving of an undue advantage to induce false testimony or the production of evidence in a proceeding.

Subparagraph (b) of article 25

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

...

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

190. Poland indicated that it has adopted and implemented the provision under review.

191. The State party under review cited the following applicable laws:

Article 232 of the Criminal Code

§ 1 Whoever, by using violence or an illegal threat influences the official functions of a court of justice shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

§ 2. The same punishment shall be imposed on the perpetrator of the offence specified in § 1, committed to the detriment of the international penal court or its body acting under an international treaty, to which the Republic of Poland is a party, or appointed by an international organisation established under an agreement ratified by the Republic of Poland.

Article 245. Whoever uses violence or unlawful threat with a purpose of influencing a witness, expert witness, translator prosecutor or the accused or consequently breaches personal inviolability of such a person

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

(b) Observations on the implementation of the article

192. The reviewing experts noted that article 25(b) of UNCAC is implemented through section 232 PC and concluded that Poland has adequately implemented the provision under review.

Article 26. Liability of legal persons

Paragraphs 1 and 2 of article 26

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

193. Poland has indicated that it has established one or more of the forms of liability referred to in the provisions under review.

194. The State party under review indicated that measures foreseen in Articles 26 of the Convention have been adopted and fully implemented

195. Articles 26 of the Convention has been implemented by means of the Act of 28 October 2002 on Liability of Collective Entities for Offences Prohibited under Penalty.

196. The Act on Liability of Collective Entities provides for the liability of legal persons ("collective entities") in Poland, including state-owned and state-controlled entities and organisations. According to the Act, a collective entity may be liable for the criminal conduct of a natural person if it gained or could have gained an advantage" as a result of the offence commited by the natural person. The Act also requires that the offence was a result of the "absence of due diligence" in electing the natural person or the "absence of due supervision" over the perpetrator. Finally, the Act requires the valid conviction or discontinuance against a natural person.

(b) Observations on the implementation of the article

197. The reviewing experts noted that article 26 of the Convention has been implemented through the provisions of the Act of 28 October 2002 on Liability of Collective Entities for Offences Prohibited under Penalty. The Act provides for the liability of legal persons ("collective entities") in Poland, including state-owned and state-controlled entities and organizations. This liability is of a *sui generis* nature: from the theoretical and legal point of view it is not considered a criminal liability, though it is adjudicated by a court competent for handling criminal matters in proceedings pursuant to the provisions of the CPC. According to the Act, a collective entity may be liable for the criminal conduct of a natural person if it gained or could have gained an advantage" as a result of the offence committed by the natural person. The Act also requires that the offence was a result of the "absence of due diligence" in electing the natural person or the "absence of due supervision" over the perpetrator.

198. The conduct of the following natural persons may give rise to liability for the collective entity: persons who are authorized to act in the name or on behalf of the collective entity (i.e., higher management); persons who are allowed to act due to the neglect of higher management; and lower-level employees acting on the consent or knowledge of higher management. In 2011, the Act was amended to add to this list "entrepreneur[s] who directly co-operate with the collective entity".

199. Of significant concern is the requirement in the Act that proceedings be discontinued or finalized against a natural person before liability may be imposed on a collective entity. Specifically, article 4 mandates that the natural person committing the offence must either have been convicted or pleaded guilty, or there must have been a decision to discontinue the proceedings because "circumstances exclude[ed] prosecution of the perpetrator" (article 4). Such "circumstances" include those where prosecution was prevented by the application of the "impunity" provision or by the expiration of the statute of limitations. However, and importantly, the article 4 requirements would not be satisfied where the natural person fled beyond the

jurisdictional reach of the Polish authorities (since verdicts may not be handed down *in absentia*), where the natural person cannot be identified.

200. The review team concluded that the requirement of a conviction of a natural person in order to impose liability on a legal person directly contravenes paragraph 3 of article 26 of the UNCAC, and, thus, severely hinders the effectiveness of the Act 2002 on Liability of Collective Entities for Offences Prohibited under Penalty. Therefore the reviewing experts recommended the deletion of this requirement in the domestic legislation and that the Polish authorities establish effective liability of legal persons that is not limited to cases where the natural person who perpetrated the offences are prosecuted or convicted.

201. The reviewing experts noted that the Act on Liability of Collective Subjects enumerates a list of sanctions for bribery, trading in influence and money laundering: the pecuniary penalty amounts from 1,000 to 5,000,000 PLN, but at the same time it may not exceed 3% of the annual proceeds (income before taxation) in a fiscal year in which the act was committed.

202. If the commission of the offence has brought no advantage to the collective entity, the court may decide not to impose any pecuniary penalty Other measures provided by law are prohibition of publicity, prohibition to use the public fund aid, prohibition to accept the assistance of international organisations of which Poland is a member, prohibition to attempt at obtaining public contracts, prohibition to pursue a certain type of activity and making the judgement publicly known.

203. During the country visit, the national authorities acknowledged that there is no practice in implementing the Act. Apart from the problems posed by the requirement of prior conviction of a natural person, the reviewing experts identified the following problems of practical implementation of the relevant legislation: extremely low level of sanctions against legal persons; lack of legislation enabling the collection of evidence against legal persons for the commission of criminal offences; and loopholes that may be utilized to avoid the liability of a legal entity (for example, through merging with another entity). The review team recommended that the national authorities take measures to address such problems and ensure effective implementation of the domestic legislation on the liability of legal persons.

204. The reviewing experts concluded that Poland has partially implemented the provisions under review.

(c) Challenges in implementation and recommendations

205. Delete the requirement of a conviction of a natural person in order to impose liability on a legal person and establish effective liability of legal persons that is not limited to cases where the natural person who perpetrated the offences is prosecuted or convicted;

206. Take measures to ensure the effective implementation of the domestic legislation on the liability of legal persons, particularly through increasing sanctions, enabling the collection of evidence against legal persons for the commission of criminal offences and preventing loopholes that may be utilized to avoid the liability of a legal entity.

Paragraph 3 of article 26

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the

offences.

(a) Summary of information relevant to reviewing the implementation of the article

207. Poland has indicated that it has established one or more of the forms of liability referred to in the provision under review.

208. Poland indicated that the conduct of the following natural persons may give rise to liability for the collective entity (1) persons who are authorised to act in the name or on behalf of the collective entity (i.e., higher management); (2) persons who are allowed to act due to the neglect of higher management; and (3) lower-level employees acting on the consent or knowledge of higher management. In 2011, the Act was amended to add to this list "entrepreneur[s] who directly co-operate with the collective entity".

(b) Observations on the implementation of the article

209. See above.

Paragraph 4 of article 26

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

210. Poland indicated that it has adopted and implemented the provision under review.

211. The State party under review cited the following applicable laws:

Sanctions for legal persons are provided in articles 7-10 of the Act which read as follows:
Act on Liability of Collective Entities

Art. 7.
1.For the act specified herein, the collective entity shall be fined up to 10% of the revenue, as defined in the regulations corporate income tax regulations, generated in the tax year immediately preceding the issuance of the ruling.
2. If the revenue referred to in point 1 above is lower than PLN 1,000,000, the adjudicated fine shall be up to 10% of the expenditure borne in the year immediately preceding the issuance of the ruling.
3. No fine adjudicated consistent with points 1 or 2 above shall be lower than PLN 5,000.

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

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

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

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

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

(b) Observations on the implementation of the article

212. See above.

Article 27. Participation and attempt

Paragraph 1 of article 27

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

213. Poland indicated that it has adopted and implemented the provision under review.

214. The applicable law is provided for in the Penal Code of 6 June 1997.

Criminal Code

Article 18. § 1. Not only the person who has committed a prohibited act himself or together and under arrangement with another person, but also a person who has directed the commission of a prohibited act by another person, or taken advantage of the subordination of another person to him, orders such a person to commit such a prohibited act, shall be liable for perpetration.
§ 2. Whoever, willing that another person should commit a prohibited act, induces the person to do so, shall be liable for instigating.
§ 3. Whoever, with an intent that another person should commit a prohibited act, facilitates by

his behaviour the commission of the act, particularly by providing the instrument, means of transport, or giving counsel or information, shall be liable for aiding and abetting. Furthermore, whoever, acting against a particular legal duty of preventing the prohibited act, facilitates its commission by another person through his omission, shall also be liable for aiding and abetting.

Article 19. § 1. The court shall impose the penalty for instigating, and aiding and abetting within the limits of the sanction provided in law for perpetrating.
§ 2. In imposing the penalty for aiding and abetting, the court may apply extraordinary mitigation of punishment.

(b) Observations on the implementation of the article

215. The reviewing experts noted that the participation in the commission of a criminal offence is regulated in articles 18 and 19 PC, which establish criminal liability for a person who has directed the commission of a prohibited act by another person. Liability is also applicable for instigating, aiding, and abetting.

216. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 2 of article 27

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

217. Poland indicated that it has adopted and implemented the provision under review.

218. The State party under review cited the following applicable laws:

Criminal Code

Article 13 § 1. Whoever with the intent to commit a prohibited act, directly attempts its commission through his conduct which, subsequently however does not take place, shall be held liable for an attempt.
§ 2. An attempt also occurs when the perpetrator is not himself aware of the fact that committing it is impossible because of the lack of a suitable object on which to perpetrate the prohibited act or because of the use of means not suitable for perpetrating this prohibited act.

Article 14 § 1. The court shall impose a penalty for an attempt within the limits of the penalty provided for the given offence.
§ 2. In the case specified in Article 13 § 2 the court may apply extraordinary mitigation of punishment or even renounce its imposition.

Article 15 § 1. Whoever has voluntarily abandoned the prohibited act or prevented the consequence shall not be subject to penalty for the attempt.
§ 2. The court may apply an extraordinary mitigation of punishment to a perpetrator who has voluntarily attempted to prevent the consequence which constituted a feature of the prohibited act.

(b) Observations on the implementation of the article

219. The reviewing experts noted that the attempt to commit a criminal offence is covered in articles 13-15 PC. Preparation of a criminal offence is subject to a penalty only when the law so provides.

220. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 3 of article 27

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

221. Poland indicated that it has adopted and implemented the provision under review.

222. The State party under review cited the following applicable laws:

Criminal Code

Article 16. § 1. Preparation only occurs when the perpetrator, in order to commit a prohibited act, undertakes activities aimed at creating the conditions for effecting an act leading directly to commission of the prohibited act, particularly when, for this purpose, he enters into an arrangement with another person, acquires or makes ready the means, gathers information or concludes a plan of action.
§ 2. Preparation is subject to a penalty only when the law so provides. 267

Article 17. § 1. Whoever voluntarily abandoned preparation, and particularly, when he destroyed the prepared means or prevented them from being utilised in the future shall not be subject to penalty. In the case of entering an arrangement with another person in order to commit a prohibited act, whoever undertook an essential endeavour aimed at preventing the commission of the prohibited act, shall not be subject to penalty.

§ 2. The person to whom Article 15 § 1 applies shall not be liable to penalty for preparation.

(b) Observations on the implementation of the article

223. The reviewing experts noted that the preparation of corruption-related criminal offences is not incriminated.

Article 29. Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

224. Poland indicated that it has adopted and implemented the provision under review.

225. The applicable law is provided for in the Criminal Code of 6 June 1997. The period of limitation is determined by the length of imprisonment which can be imposed for the offence in question. On this basis, the limitation period provided for active and passive bribery offences is 15 years; in cases of lesser significance the limitation period is 5 years; in aggravated cases, 15 years and in cases involving a person performing public functions in a foreign State or in an international organization, 5 to 15 years depending on the circumstances of the offence. The limitation period provided for offences of active and passive trading in influence is 15 years or, in cases of lesser significance, 5 years. Finally, a limitation period of 10 years is provided for active and passive bribery in the private sector; in cases of lesser significance it is 5 years and in aggravated cases, 15 years. Pursuant to section 102 of the CC, the period of limitation is prolonged in case of criminal proceedings instituted against the offender.

226. Poland cited the following applicable text:

Criminal Code

Article 101. §1. The amenability to punishment for an offence ceases, if from the time of the commission thereof the following number of years have elapsed:

1) 30 - when the act constitutes a crime of homicide,
2) 20 - when the act constitutes other crime,
2a) 15 - when the act constitutes a misdemeanour subject to the penalty of deprivation of liberty exceeding 5 years,
3) 10 - when the act constitutes a misdemeanour subject to the penalty of deprivation of liberty exceeding 3 years;
4) 5 - for other misdemeanours.
5) annulled

§ 2. The amenability to punishment for an offence prosecuted by way of a private charge ceases after the expiration of one year, from the date on which the injured person learnt of the identity of the perpetrator of the offence and not later, however, than after the expiration of 3 years from the time of its commission.
§ 3. If in the cases provided for in § 1 or 2, the commission depends on the occurrence of a consequence specified in the law, the time of limitation shall run from the date when this consequence has ensued.
§ 4. The statute of limitation for the criminal liability for the offences specified in Article 199 § 2 and 3, Article 200, Article 202 § 2 and 4 and Article 204 § 3, as well as the offences specified in Article 197, Article 201, Article 202 § 3, Article 203 and Article 204 § 4, in the event that the injured is a juvenile - the statute of limitation cannot take place before the expiration of 5 years as of arriving by the juvenile at the 18 years of age.

Article 102. If in the period specified in Article 101 the proceedings against a person have been instituted, the amenability to punishment for the offence specified in § 1 subsections 1-3 and committed by this person, ceases after the expiration of 10 years, and in other cases after the expiration of 5 years from the end of that period.

Article 103. § 1. A penalty may not be executed if, from the time when the judgement has become final and valid, the following number of years have elapsed:

1) 30 - in case of a sentence to a penalty of deprivation of liberty for a period exceeding 5 years or to a more severe penalty;
2) 15 - in case of a sentence to a penalty of deprivation of liberty not exceeding 5 years;
3) 10 - in case of a sentence to another penalty.

§ 2. The provision of § 1 section 3 shall be applied accordingly to the penal measures specified in Article 39 sections 1- 4 and 6 - 7; the provision of § 1 section 2 shall be applied accordingly to the penal measure specified in Article 39 section 5.

Article 104. § 1.The period of limitation does not run, if a provision of law does not permit the criminal proceedings to be instituted or to continue; this however, does not apply to the lack of a motion or a private charge.

§ 2. The period of limitation regarding the offences specified in Article 144, Article 145 § 2 or 3, Article 338 § 1 or 2 and in Article 339 shall run from the date of performing the obligation, or from the date on which the obligation ceased to be borne.

Article 105. § 1. The provisions of Articles 101 through 103 shall not be applied to crimes against peace, crimes against humanity or war crimes.

§ 2. The provisions of Articles 101 through 103 shall not be applied either to the intentional offence of homicide, inflicting serious bodily harm, causing serious detriment to health or deprivation of liberty connected with particular torture, perpetrated by a public official in connection with the performance of official duties.

(b) Observations on the implementation of the article

227. The reviewing experts noted that the period of limitation is determined by the length of imprisonment which can be imposed for the offence in question. On this basis, the limitation period provided for active and passive bribery offences is 15 years; in cases of lesser significance the limitation period is 5 years; in aggravated cases, 15 years and in cases involving a person performing public functions in a foreign State or in an international organization, 5 to 15 years depending on the circumstances of the offence. The limitation period provided for offences of active and passive trading in influence is 15 years or, in cases of lesser significance, 5 years. Finally, a limitation period of 10 years is provided for active and passive bribery in the private sector; in cases of lesser significance it is 5 years and in aggravated cases, 15 years. Pursuant to article 102 PC, the period of limitation is prolonged in case of criminal proceedings instituted against the offender. The review team found the statute of limitations periods provided in the Polish legislation adequate enough to serve the purposes of the proper administration of justice.

228. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 30. Prosecution, adjudication and sanctions

Paragraph 1 of article 30

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

229. Poland has indicated that it is in compliance with the provision under review.

230. The applicable law is enshrined in the Criminal Code of 6 June 1997. Sanctions for the offences foreseen in Articles 15-25 of the Convention are set out in the provisions of the Polish Criminal Code that criminalize the offences. Each of those provisions provides for the minimal and maximal period of time for which the sanction can be imposed. Therefore, the gravity of the offence is reflected by the severity of the sanction adjudicated.

231. Poland cited the following relevant text:

> Article 30 section 1 of the Convention has been implemented by means of Article 53 § 1 of the **Criminal Code** which reads as follows:
>
> Article 53. § 1. The court shall impose the penalty according to its own discretion, within the limits prescribed by law bearing in mind that its harshness should not exceed the degree of guilt, considering the level of social consequences of the act committed, and taking into account the preventive and educational objectives which the penalty has to attain with regard to the sentenced person, as well as the need to develop a legal conscience among the public.
> § 2. In imposing the penalty, the court shall above all take into account the motivation and the manner of conduct of the perpetrator, committing the offence together with a minor, the type and degree of transgression against obligations imposed on the perpetrator, the type and dimension of any adverse consequences of the offence, the characteristics and personal conditions of perpetrator, his way of life prior to the commission of the offence and his conduct thereafter, and particularly his efforts to redress the damage or to compensate the public perception of justice in another form. The court shall also consider the behaviour of the injured person.
> § 3. In imposing the penalty, the court shall also take into consideration the positive results of the mediation between the injured person and the perpetrator, or the settlement reached by them in the proceedings before the state prosecutor or the court.

232. Poland provided the following statistical information:

233. Launched corruption investigations by the Police
2010 - 6.083
2011 - 5.652
2012 - 5.512

234. Number of suspected persons in corruption cases
2010 - 3.700
2011 - 3.482
2012 - 2.950

(b) Observations on the implementation of the article

235. In general, the review team found the sanctions applicable to persons who have committed

corruption-related offences to be adequate and sufficiently dissuasive.

236. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 2 of article 30

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

237. Poland indicated that it has adopted and implemented the provision under review.

238. Under the Polish legal system there are a wide range of public office holders that enjoy immunity from prosecution. The immunities, in most cases, are indicated in the Constitution of the Republic of Poland, and are further governed by statutes, procedural regulations, and rules of the parliament. The beneficiaries of the immunity of prosecution include parliamentarians, judges, members of the Tribunal of State, the President of the Supreme Chamber of Control, and the Commissioner for Citizens' Rights. Immunity is also afforded to prosecutors, pursuant to article 54 of the Act of 20 June 1985 on the Prosecution Authority.

239. If there is good reason to suspect that a crime has been committed by a person holding an office that is subject to immunity from prosecution, article 17 section 1, sub-section 10 of the Code of Criminal Procedure provides that criminal proceedings must not be instituted, or if instituted, must be discontinued, unless the requisite permission has been granted to prosecute the matter. With respect to prosecution of members of parliament, a resolution of the Sejm (for Deputies) or Senate (for Senators) must be adopted in order for criminal proceedings to be commenced or continued. Permission for prosecution with respect to judges and prosecutors must be sought from the inner disciplinary courts. The discontinuance of proceedings because of a failure to seek the required permission is not an obstacle for a resumption of proceedings if the permission is subsequently granted.

240. The aforementioned immunities are of a functional nature. A functional immunity is granted only in respect of acts carried out in the performance of the officeholder’s duties, and is sufficient to ensure their independence and to protect them from unfounded or malicious prosecutions connected with the carrying out of their duties.

241. Poland cited the following text:

> **Constitution of the Republic of Poland**
>
> Art. 145 of the Constitution of the Republic of Poland
>
> 1. The President of the Republic may be held accountable before the Tribunal of State for an infringement of the Constitution or statute, or for commission of an offence.
> 2. Bringing an indictment against the President of the Republic shall be done by resolution of the National Assembly passed by a majority of at least two-thirds of the statutory number of members of the National Assembly, on the motion of at least 140 members of the Assembly.

3. On the day on which an indictment, to be heard before the Tribunal of State, is brought against the President of the Republic, he shall be suspended from discharging all functions of his office. The provisions of Article 131 shall apply as appropriate.

Article 105 of the Constitution of the Republic of Poland

1. A Deputy shall not be held accountable for his activity performed within the scope of a Deputy's mandate during the term thereof nor after its completion. Regarding such activities, a Deputy can only be held accountable before the Sejm and, in a case where he has infringed the rights of third parties, he may only be proceeded against before a court with the consent of the Sejm.

2. From the day of announcement of the results of the elections until the day of the expiry of his mandate, a Deputy shall not be subjected to criminal accountability without the consent of the Sejm.

3. Criminal proceedings instituted against a person before the day of his election as Deputy, shall be suspended at the request of the Sejm until the time of expiry of the mandate. In such instance, the statute of limitation with respect to criminal proceedings shall be extended for the equivalent time.

4. A Deputy may consent to be brought to criminal accountability. In such instance, the provisions of paras. 2 and 3 shall not apply.

5. A Deputy shall be neither detained nor arrested without the consent of the Sejm, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. Any such detention shall be immediately communicated to the Marshal of the Sejm, who may order an immediate release of the Deputy.

6. Detailed principles of and procedures for bringing Deputies to criminal accountability shall be specified by statute.

Article 108 of the Constitution of the Republic of Poland

The provisions of Articles 103-107 shall apply, as appropriate, to Senators.

Article 180 of the Constitution of the Republic of Poland

1. Judges shall not be removable.

2. Recall of a judge from office, suspension from office, transfer to another bench or position against his will, may only occur by virtue of a court judgment and only in those instances prescribed in statute.

3. A judge may be retired as a result of illness or infirmity which prevents him discharging the duties of his office. The procedure for doing so, as well as for appealing against such decision, shall be specified by statute.

4. A statute shall establish an age limit beyond which a judge shall proceed to retirement.

5. Where there has been a reorganization of the court system or changes to the boundaries of court districts, a judge may be allocated to another court or retired with maintenance of his full remuneration.

Article 181 of the Constitution of the Republic of Poland

A judge shall not, without prior consent granted by a court specified by statute, be held criminally responsible nor deprived of liberty. A judge shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The president of the competent local court shall be forthwith notified of any such detention and may order an immediate release of the person detained.

Article 206 of the Constitution of the Republic of Poland

The President of the Supreme Chamber of Control shall not be held criminally responsible nor deprived of liberty without prior consent granted by the Sejm. The President of the Supreme Chamber of Control shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The Marshal of the Sejm shall be notified forthwith of such detention and may order an immediate release of the person detained.

Article 211 of the Constitution of the Republic of Poland

The Commissioner for Citizens' Rights shall not be held criminally responsible nor deprived of liberty without prior consent granted by the Sejm. The Commissioner for Citizens' Rights shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The Marshal of the Sejm shall be notified forthwith of any such detention and may order an immediate release of the person detained.

Article 54 section 1 of the Act of 20 June 1985 on Prosecution Office

A public prosecutor shall be neither brought to justice in a criminal case, without consent of a competent disciplinary court nor detained without consent of superior of disciplinary matters. It shall not concern detention in flagranti. Until giving a consent to bringing to justice in a criminal case, it is allowed to undertake acts of utmost urgency, immediately informing of this superior public prosecutor.

Article 105 of the Constitution of the Republic of Poland

A Deputy shall not be held accountable for his activity performed within the scope of a Deputy's mandate during the term thereof nor after its completion. Regarding such activities, a Deputy can only be held accountable before the Sejm and, in a case where he has infringed the rights of third parties, he may only be proceeded against before a court with the consent of the Sejm.

From the day of announcement of the results of the elections until the day of the expiry of his mandate, a Deputy shall not be subjected to criminal accountability without the consent of the Sejm.

Criminal proceedings instituted against a person before the day of his election as Deputy, shall be suspended at the request of the Sejm until the time of expiry of the mandate. In such instance, the statute of limitation with respect to criminal proceedings shall be extended for the equivalent time.

A Deputy may consent to be brought to criminal accountability. In such instance, the provisions of paras. 2 and 3 shall not apply.

A Deputy shall be neither detained nor arrested without the consent of the Sejm, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. Any such detention shall be immediately communicated to the Marshal of the Sejm, who may order an immediate release of the Deputy.

Article 178

Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.

Judges shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of their office and the scope of their duties.

A judge shall not belong to a political party, a trade union or perform public activities incompatible with the principles of independence of the courts and judges.

Article 179

Judges shall be appointed for an indefinite period by the President of the Republic on the motion of the National Council of the Judiciary.

Article 180

Judges shall not be removable.

Recall of a judge from office, suspension from office, transfer to another bench or position against his will, may only occur by virtue of a court judgment and only in those instances prescribed in statute.

A judge may be retired as a result of illness or infirmity which prevents him discharging the duties of his office. The procedure for doing so, as well as for appealing against such decision, shall be specified by statute.

A statute shall establish an age limit beyond which a judge shall proceed to retirement. Where there has been a reorganization of the court system or changes to the boundaries of court districts, a judge may be allocated to another court or retired with maintenance of his full remuneration.

Article 181

A judge shall not, without prior consent granted by a court specified by statute, be held criminally responsible nor deprived of liberty. A judge shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The president of the competent local court shall be forthwith notified of any such detention and may order an immediate release of the person detained.

(b) Observations on the implementation of the article

242. The reviewing experts noted that, under the Polish legal system, there is a wide range of public office holders that enjoy immunity from prosecution. The immunities, in most cases, are indicated in the Constitution of the Republic of Poland, and are further governed by statutes, procedural regulations, and rules of the parliament. The beneficiaries of the immunity of prosecution include parliamentarians, judges, members of the Tribunal of State, the President of the Supreme Chamber of Control, and the Commissioner for Citizens' Rights. Immunity is also afforded to prosecutors, pursuant to article 54 of the Act of 20 June 1985 on the Prosecution Authority.

243. The aforementioned immunities are of a functional nature. A functional immunity is granted only in respect of acts carried out in the performance of the officeholder’s duties, and is sufficient to ensure their independence and to protect them from unfounded or malicious prosecutions connected with the carrying out of their duties.

244. A member of the Parliament (“Sejm”), in particular, cannot be held accountable for activities performed within the scope of a Deputy’s mandate, during the term thereof, nor after its completion. Regarding such activities, a Deputy can only be held accountable before the Sejm and, in the case where the rights of a third party has been infringed, he or she may only be prosecuted with the consent of the Sejm. Immunity granted to deputies and Senators is lifted by a two -third majority vote. If the immunity is lifted the case is passed on to the ordinary criminal Courts.

245. The President of the Republic may be held accountable before the Court of State for an

infringement of the Constitution or statute, or for the commission of a criminal offence. An indictment against the President must be brought by means of a Resolution adopted by the National Assembly by a majority of at least two -thirds of the statutory number of members upon a motion launched by at least 140 Sejm members.

246. Judges hold immunity and may not be dismissed from their jobs, which means that the employment relationship is dissolved by force of law when a judge resigns.

247. The reviewing experts recommended the adoption of legislative measures to ensure that investigative action aimed at securing evidence of committing a criminal offence, and particularly related to the lifting of bank secrecy, is allowed before the lifting of immunity takes place and that procedural immunity is narrowed to only criminal prosecution and would not be applicable to pre-trial investigation stage.

248. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

249. Take legislative measures to ensure that investigative action aimed at securing evidence of committing a criminal offence, and particularly related to the lifting of bank secrecy, is allowed before the lifting of immunity takes place and that procedural immunity is narrowed to only criminal prosecution and would not be applicable to pre-trial investigation stage.

Paragraph 3 of article 30

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

250. The State party under review has indicated that it is in compliance with the provision under review.

251. Poland indicated that, in order to maximize the effectiveness of law enforcement measures in respect of the offences set out in the Convention, specialized units have been created within the prosecution service. The Departments for Organized Crime and Corruption in the Appellate Prosecution Offices, supervised by the Department for Organized Crime and Corruption in the Prosecutor General's Office, deal with the high-profile corruption investigations involving public officials.

(b) Observations on the implementation of the article

252. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 4 of article 30

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

253. Poland indicated that it has adopted and implemented the provision under review.

254. Poland further indicated that a right of an accused to be present during the trial remains the one of main principles of the contemporary trial (principle of directness) and is reflected in the subsequent Articles of the Code of Criminal Proceedings. The following text was cited:

Code of Criminal Proceedings

Chapter 28

Preventive measures

Article 249. Preventive measures may be applied in order to secure the proper conduct of the proceedings, and exceptionally, to prevent a new serious offence from being committed by the accused. It may be applied only if the evidence collected indicates a high probability that he has committed an offence.

§ 2. In the preparatory proceedings, preventive measures may only be applied to a person for whom an order on the presentation of charges has been issued.

§ 3. Before a preventive measure is applied, the court or the state prosecutor applying the measure shall examine the accused, unless it is not possible due to the latter being in hiding or abroad. The defence counsel retained should be admitted to be present if he has appeared; although notifying the defence counsel of the date of examination is not obligatory, unless requested by the accused provided that it does not render the action difficult. The court shall notify the state prosecutor of the date of examination.

§ 4. Preventive measures may continue until the commencement of serving the sentence. This provision shall only apply to the preventive detention in the event of sentencing to the deprivation of liberty.

§ 5. The state prosecutor and defence counsel shall have the right to participate in the court session, regarding the extension of the preventive detention and examining the interlocutory appeal against the application or extension of this preventive measure. A failure to appear by a defence counsel or state prosecutor both of whom have been properly notified of the date, shall not prevent the examination of the case.

Article 250. § 1. Preventive detention may only occur on the basis of an order from the court.

§ 2. Preventive detention shall be applied in the course of proceedings, upon a motion from the state prosecutor, by the district court for the area where proceedings are pending, and in cases not amenable to delay, by another district court. After an indictment has been filed, a preventive detention shall be applied by the court before which the proceedings are pending.

§ 3. The state prosecutor, sending the motion referred to in § 1 together with the files of the case, shall, at the same time, order the suspect to be brought to court.

§ 4. Other preventive measures shall be applied by the court and, also in the course of proceedings by the state prosecutor.

Article 251. § 1. The order on the application of a preventive measure shall contain the name of the person, the act imputed, its legal qualification, and the legal basis for the application of such a measure.

§ 2. The order of preventive detention should set forth the duration of the preventive detention and designate the time-limit for the detention to last. The obligation to set forth, each time, the time limit for applying a preventive detention shall continue till the decision concluding

the proceedings becomes valid and final. A preventive detention set to continue after the decision concluding the proceedings, shall be decided by the court which issued the decision, and in the event that the case has been referred to the second instance – the court of appeal.

§ 3. The justification for the order on the application of a preventive measure, shall present evidence demonstrating that the accused committed an offence, and refer to the facts indicating the existence of grounds necessitating the application of a preventive measure. In the case of the preventive detention it should be further explained why applying other preventive measures has been regarded as insufficient.

Article 252. § 1. The order on preventive measures shall be subject to interlocutory appeal pursuant to general provisions, except in the case referred to in § 2.

§ 2. An order of the state prosecutor for a preventive measure shall be subject to interlocutory appeal to the district court for the area where the proceedings are pending.

§ 3. An interlocutory appeal from an order on preventive measure shall be examined without delay.

Article 253. A preventive measure shall immediately be revoked or amended if its basis has therefore ceased to exist, or new circumstances arise, which justify the revoking, or its amendment.

§ 2. The preventive measure applied by the court may also be, in the course of proceedings, revoked or amended to a milder measure by the state prosecutor.

§ 3. The court or state prosecutor shall immediately inform the injured person, his statutory agent, or a person under whose permanent custody the injured person remains, about revocation, non-extension or change of the preliminary detention into another preventive measure, unless the injured person has stated that he waives such right.

Article 254. § 1. The accused may at any time, move to have a preventive measure revoked or amended; such a motion shall be resolved by the state prosecutor not later than three days after filing; or, after the indictment has already been filed, by the court before which the case is pending.

§ 2. The order of the court deciding on the motion shall be subject to the interlocutory appeal by the accused, only when the motion has been filed after at least three months of the issuance of the order on the preventive detention of the same accused.

§ 3. The interlocutory appeal against the court order shall be examined by the same court sitting in a panel of three judges.

Article 255. The fact that the proceedings have been suspended shall not restrict a decision on preventive measures.

Article 256. The court, and in the preparatory proceedings -- also the state prosecutor, shall supervise the arrest and the proper execution of preventive measures.

Article 257. § 1. Preventive detention shall not be applied if another preventive measure is sufficient.

§ 2. In applying temporary detention, the court may reserve that the measure will be amended when an agreed bail is posted with the court within the prescribed time-limit.

Article 258. § 1. Preventive detention may occur if:

1) there is good reason to fear that the accused may take flight or go into hiding, particularly if he has no permanent residence in this country or when his identity cannot be established or

2) there is good reason to fear that the accused would induce other persons to give false testimony or attempt to obstruct the criminal proceedings in some other manner.

§ 2. If the accused has been charged with a crime or with a misdemeanour carrying the statutory maximum penalty of deprivation of liberty of a minimum of 8 years, or if the court of the first instance sentenced him to a penalty of deprivation of liberty of no less than 3 years, the need to apply the preventive detention in order to secure the proper conduct of proceedings may be justified by the severe penalty threatening the accused.

§ 3. Preventive detention may also occur, in exceptional cases when there is good reason to fear that the accused charged with a crime or an intentional misdemeanour would commit an offence against life, health or public safety, particularly if he threatened to commit such an offence.

§ 4. Provisions of § 1 through 3 shall apply accordingly to the remaining preventive measures.

Article 259. If there are no special reasons to the contrary, preventive detention should be waived, particularly if depriving the accused of his liberty:

(1) might seriously jeopardise the life or health of the accused, or

(2) would entail an excessive burden on the accused or his next of kin.

§ 2. Preventive detention shall not be applied, when the facts of the case permit presumption that the court will sentence the accused to the penalty of deprivation of liberty with conditional suspension of its execution, or to a milder penalty, or that the term of preventive detention would exceed the expected sentence of deprivation of liberty without a conditional suspension.

§ 3. Preliminary detention cannot be imposed, if the offence carries the penalty of deprivation of Liberty not exceeding one year, unless the perpetrator has been caught in the act of committing an offence or directly after its committing.

§ 4. The restrictions referred to in § 2 and 3 shall not apply if the accused has remained in hiding, persistently failed to appear when summoned or obstructs the proceedings by other unlawful action or when his identity cannot not be established.

Article 260. If the state of health of the accused so requires, a preventive detention may only assume the form of committing the accused to a suitable medical establishment.

Article 261. § 1. The court shall be obligated to promptly notify the next of kin of the accused, that preventive detention has been imposed; this may be a person indicated by the accused.

§ 2. On a motion of the accused, another person may be notified, instead of, or in addition to the person indicated in § 1.

§ 3. The court shall be obligated to promptly notify the employers, the school, or higher educational establishment, or, in case of a soldier, his commanding officer, and the enterprise manager, in case whereby the accused is an entrepreneur or a member of the corporate authorities who is not an employee, upon his request, of the imposition of preliminary detention.

Article 262. § 1. A court which imposes a preventive detention shall be obligated to:

1) notify the guardianship court, if it is necessary to ensure the custody of the children of the detainee,

2) notify the social welfare authority, if care is needed for a disabled or ailing person who formerly was under the care of the detainee, and

3) take all measures necessary to protect the property and residence of the detainee.

§ 2. The detainee should be informed of the measures taken and rulings issued.

Article 263. § 1. In the course of preparatory proceedings, the court applying preventive detention shall designate a period not exceeding three months.

§ 2. If in view of the special circumstances of the case, the preparatory proceedings cannot be completed within the time-limit specified in § 1, the court of the first instance having jurisdiction to examine the case may, if necessary, extend preventive detention for a period which, combined, may not exceed twelve months.

§ 3. The combined period for applying preventive detention preceding the first sentence by the court of the first instance may not exceed two years.

§ 3a. In case of a joinder of preliminary detention and execution of the penalty of deprivation of liberty imposed in another case, periods referred to in § 2 and 3 shall include a period of the penalty of deprivation of liberty that the preliminary detained person is serving.

§ 4. The extension of applying preliminary detention over the periods specified in § 2 and 3 may be made by the appellate court in the district of which the proceedings are pending on a motion from the court before which the case is pending, and in the course of preparatory proceedings in a motion from a relevant prosecutor directly superior to the prosecutor who carries or supervises the investigation - if deemed necessary in connection with a suspension of criminal proceedings, actions aimed at establishing or confirming the identity of the accused, conducting evidentiary action in a particularly indicate case or conducting them abroad, and also intentional protraction of proceedings by the accused.

§ 4a. (abrogated).

§ 5. The order of the appellate court issued in accordance with § 4 shall be subject to interlocutory appeal filed with the appellate court sitting in a panel of three judges.

§ 6. A motion for the extension of preventive detention should be filed, at the same time as the files of the case are referred to the court of jurisdiction, and not later than 14 days prior to the expiry of the time-limit so far prescribed for the application of the measure.

§ 7. If there is need to impose preliminary detention after the first sentence has been issued by the court in the first instance, it shall be each time extender for a period not longer than 6 months.

Article 264. § 1. In the event that the accused is acquitted; or the proceedings are discontinued or conditionally discontinued; or the imposition of the penalty is conditionally suspended; or the imposition of a penalty of deprivation of liberty corresponding at most to the period of preventive detention, or a shorter term of deprivation of liberty, or if the court refrains

from imposing a penalty, the discharge of the detainee shall be ordered without delay, unless he has been detained in connection with some other criminal case.

§ 2. In the event that the accused detainee is sentenced to a penalty other than that specified in § 1, the court, after hearing the parties present, shall issue an order regarding the further application of the preventive detention.

§ 3. If the proceedings have been discontinued by reason of the insanity of the accused, preventive detention may be maintained until the commencement of the execution of a preventive measure.

Article 265. The term of preventive detention shall be computed from the day of arrest.

Article 266. § 1. Bail stated in pecuniary terms, in the form of cash, securities, a bond, or a mortgage may be deposited by the accused or another person.

§ 2. The amount, kind and conditions of the bail, and particularly the time-limit for depositing, shall be specified in the order, with due regard to the financial circumstances of the accused and the person posting bail, the gravity of the damage caused and the character of the act committed.

Article 267. A person posting bail shall be notified on each occasion that the accused is summoned to appear. Articles 138 and 139 § 1 shall be applied accordingly to a person posting bail for the accused.

Article 268. § 1. The property and obligations which constitute bail shall be subject to forfeiture or collection if the accused takes flight or goes into hiding. If the course of the criminal proceedings is otherwise hindered, such property may be subject to forfeiture or collection pursuant to an appropriate decision.

§ 2. The person posting bail should be notified of the content of § 1 hereof and of Article 629.

Article 269. § 1. The property or sum of money constituting bail which has been forfeited or collected, shall be transferred or paid in to the State Treasury; the injured person shall then have priority in satisfying his claims resulting from the offence, if damages cannot be redressed by other means.

§ 2. If bail ceases to be necessary, the property constituting the same and the sum of money pledged shall be released; if, however, the accused is sentenced to a deprivation of liberty, bail shall be withdrawn only after he has begun serving his sentence. If the accused fails to appear to serve his sentence, Article 268 § 1 shall be applied.

§ 3. The withdrawal of bail shall become effective only with the acceptance of other bail, the imposition of another preventive measure, or the waiver of the relevant preventive measure.

§ 4. The provisions of § 2 and 3 shall not apply to the withdrawal of bail and to the return of the security, if the order on forfeiture of bail or on the collection of the sum pledged, has been issued

Article 270. § 1. The forfeiture of the property constituting bail or the collection of the sum pledged shall be ordered *ex officio* by the court before which the proceedings are pending; or in the preparatory proceedings, by the court having jurisdiction to examine the case, on the motion of the state prosecutor.

§ 2. The accused, guaranty provider, and the state prosecutor shall have the right to participate in the court session or to file written statements. An accused deprived of liberty shall be brought to such a session if the president of the court or the court itself consider it necessary.

§ 3. The order described in § 1 shall be subject to interlocutory appeal.

Article 271. § 1. A guaranty may be taken from the employer of the accused, the managers of a school or higher education establishment of which the accused is a student, the collective in which the accused studies or works, or from a community organisation of which he is member, on the motion of such persons; such a guaranty shall state that the accused will appear whenever summoned and will not unlawfully obstruct the course of the proceedings; if the accused is a soldier, such a guaranty may be taken from the relevant collective of soldiers, declared through its commanding officer.

§ 2. The collective or community organisation concerned shall append to the motion requesting that guaranty be accepted, an excerpt from the minutes of such a body stating the decision or resolution on furnishing such a guaranty.

§ 3. The motion requesting that guaranty be accepted should indicate the person who will undertake the duties of the guaranty-provider. Such a person shall make a statement to the effect that he accepts such duties

Article 272. A guaranty to the effect that the accused will appear whenever summoned and that he will not obstruct the course of the proceedings, may also be accepted from any trustworthy person. The provision of Article 275 § 2 shall be applied accordingly.

Article 273. § 1. When a guaranty is accepted, the guaranty-provider should be notified of the contents of the charge against the accused, of his duties resulting from the giving of this guaranty and the possible effects in the event of his failure to discharge the same.

§ 2. The guaranty-provider shall be obligated to inform the court or state prosecutor immediately, if it should come to his knowledge that the accused is trying to avoid his duty to appear when summoned or to obstruct the course of the proceedings in some other way.

Article 274. If despite the guaranty, the accused fails to appear when summoned or obstructs the proceedings in some other unlawful manner, the agency which has imposed the preventive measure shall so notify the guaranty-provider; in addition, the agency may notify his immediate superior of the person who had given the guarantee as well as the community organisation of which he is a member, and the agency in statutory control of the community organisation which had given the guaranty, if it is subsequently ascertained that a dereliction of the duties arising from the giving of the guaranty has occurred. Before sending such a notice, the guaranty-provider should be summoned to give an explanation.

Article 275. § 1. As a preventive measure, the accused may be committed to the surveillance of the Police and, if the accused is a soldier, to the surveillance of the soldier's commanding officer.

§ 2. A person under surveillance shall be obligated to comply with the conditions set forth in the order of the court or state prosecutor. These obligations may consist in the prohibition of absenting himself from a designated place of residence, in having to report to the agency under the surveillance of which he remains in specified time intervals, and in informing such agency of any intention to leave and the time of return, a prohibition to contact the injured person or other persons, a prohibition of staying in certain places, and also other limitations on the freedom of movement of the accused, necessary to assist the surveillance.

§ 3. If there is a premise for application of preliminary detention against the accused of an offence committed with the use of violence or unlawful threat to the detriment of his next of kin or another person who resides together with the perpetrator, surveillance may be used instead of temporary detention, provided, however, that the accused will vacate the premises occupied together with the injured person within the prescribed time-limit and shall specify the place of his residence.

§ 4. A person under Police surveillance shall be obligated to report himself to a relevant Police organisational unit with the document establishing his identity, to carry out orders aimed at documenting the course of surveillance and provide information necessary for establishment whether he complies with the requirements imposed in the order of the court or state prosecutor. To obtain such information the accused may be summoned to appear at the prescribed date.

§ 5. In the event whereby a person under surveillance has failed to comply with the requirements set forth in the order, a surveillance agency shall immediately inform about that the court or state prosecutor, who has issued the order.

Article 275 a. § 1. As a preventive measure the accused of an offence with the use of violence to the detriment of a person residing together may be ordered to vacate the dwelling premises occupied together with the injured person, if there is good reason to fear that the accused shall again commit an offence with the use of violence against such person, especially when he has threatened to commit such an offence.

§ 2. A preventive measure provided in § 1 shall be applied in the preparatory proceedings on a motion by the Police or *ex officio*.

§ 3. If, against the accused, who has been detained pursuant to Articles 244 § 1a or 1b there are reasons to apply a preventive measure provided in § 1, the Police shall immediately, not later than within 24 hours as from the moment of detention, shall submit a motion to the state prosecutor for application of such a preventive measure; the motion shall be reviewed within 48 hours as from the moment of detention of the accused.

§ 4. The measure provided in § 1 shall be applied for a period not longer than 3 months. If there is still premise for its application, the court in the first instance competent for examining the case may, on a motion from the state prosecutor, extend its application for further periods, not longer than 3 months.

§ 5. By issuing a ruling on order for the accused to vacate the dwelling premises, on the motion of the accused, a place of residence may be indicated to him in establishments that provide

accommodation. Indicated establishments where the accused is to be put may not be establishments where victims of domestic violence stay.

Article 276. As a preventive measure, the accused may be suspended from his official function or performance of his profession or be ordered to refrain from a specific type of activity or from driving specific types of vehicles.

Article 277. § 1. If there is good reason to fear of his taking flight, a prohibition preventing the accused from leaving the country may be applied as a preventive measure, which may be combined with seizing his passport or other documents enabling him to cross the border, or with a prohibition to issue such a document.

§ 2. Until the order on matters referred to in § 1 is issued, the agency conducting proceedings may retain a document but for a period not exceeding 7 days. The relevant provisions of Chapter 25 shall apply to the seizing of documents.

Article 374. § 1. The presence of the accused at the first-instance hearing shall be mandatory, unless otherwise provided by law.

§ 2. The presiding judge may issue a ruling in order to render it impossible for the accused to leave the courthouse before the conclusion of the hearing.

Article 375. § 1. In the event that an accused, despite being warned by the presiding judge, conducts himself in a manner which disturbs the order of the hearing, or is incompatible with the dignity of the court, the presiding judge may temporarily remove the accused from the courtroom.

§ 2. After permitting the accused to return, the presiding judge shall promptly inform him of the progress of the hearing during his absence, and allow him to give explanations concerning evidence taken during that time.

Article 376. § 1. If the accused who has already given explanations, leaves the courtroom without the permission of the presiding judge, the court may continue the hearing despite his absence, and the judgement thus rendered shall not be regarded as issued by default. The court shall order the accused to be arrested and brought to the courtroom under duress, if it finds his presence indispensable. The order shall be subject to interlocutory appeal to another panel, of the same level, of the court.

§ 2. This provision shall apply accordingly when the accused, who has already given his explanations, and having been notified of the date of the adjourned or interrupted hearing, has not come to that hearing or justified his non-appearance.

§ 3. If a co-accused who provided justification has not appeared at the adjourned or interrupted hearing, the court may continue the hearing to the extent that it does not directly concern the absentee, and provided that this does not limit his right of defence.

Article 377. § 1. If the accused through his own fault works himself into the state where he is unfit to participate in a hearing or session where his presence is deemed mandatory, the court may continue the hearing even if he has not yet given his explanations.

§ 2. Before issuing the order referred to in § 1, the court shall acquaint itself with a certificate from the physician who has established that the accused is in a state where he is unfit to participate, or shall examine the physician as an expert. The unfit condition of the accused to participate in the hearing may also be established on the basis of an examination not involving any invasion of bodily integrity, carried out by means of suitable equipment.

§ 3. If the accused, notified of the date of hearing, states that he will not participate in the hearing or prevents himself being brought to the hearing, or having been personally notified of the hearing does not appear in person without a good cause, the court may continue the proceedings without his presence, unless it finds the presence of the accused indispensable; the provision of Article 376 § 1 second sentence shall apply.

§ 4. If the accused has not yet given his explanation before the court, Article 396 § 2 may be applied or the reading of his previous explanations may be deemed sufficient.

§ 5. If the hearing has been interrupted or adjourned with its new date set, the court shall notify the accused of the date, and if the accused does not appear, the provision of Article 375 § 2 shall apply accordingly.

§ 6. The judgement thus rendered shall not be regarded to be issued by default.

Article 378. § 1. If, in a case in which, the accused must have a defence counsel, and uses the

defence counsel of his choice, either the defence counsel or the accused shall revoke the respective defence relationship, the president or the court or the court shall appoint a defence counsel ex officio, unless the accused has retained a defence counsel of his choice. When necessary, the hearing shall be interrupted or adjourned.

§ 2. In a case in which the accused uses the defence counsel appointed ex officio, the court on a justified motion from the defence counsel or the accused, shall release the defence counsel from his duties and appoint another defence counsel ex officio to the accused.

§ 3. In the events specified in § 1 and 2, the court shall also take decisions, whether the hitherto defence counsel may, without detriment to the right of the accused to defence, perform his duties until defence by a new defence counsel has been assumed.

(b) Observations on the implementation of the article

255. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 5 of article 30

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

256. Poland has indicated that it is compliance with this provision.

257. The State party under review has indicated that the regulations governing the granting of parole are specified by the Penal Code and has cited the following text:

Criminal Code

Article 77. § 1. The court may conditionally release a person sentenced to the penalty of deprivation of liberty from serving the balance of the penalty, only when his attitude, personal characteristics and situation, his way of life prior to the commission of the offence, the circumstances thereof, as well as his conduct after the commission of the offence, and while serving the penalty, justify the assumption that the perpetrator will after release respect the legal order, and in particular that he will not re-offend.

§ 2. In particularly justified cases the court, in imposing the penalty of deprivation of liberty, may determine more rigorous restrictions to prevent the possibility of him benefiting from the conditional release other than those specified in Article 78.

Article 78. § 1. The sentenced person may be conditionally released after serving at least half of the punishment.

§ 2. The sentenced person defined in Article 64 § 1 may be conditionally released after serving two thirds of the punishment whereas the sentenced person specified in Article 64 § 2 may be conditionally released after serving three quarters of the punishment.

§ 3. The person sentenced to 25 years of deprivation of liberty may be conditionally released after serving 15 years of the sentence, and the person sentenced to deprivation of liberty for life, after serving 25 years of the sentence.

Article 79. § 1. The provisions of Article 78 § 1 and 2 shall be applied accordingly to a sum of two or more penalties not amenable to an aggregate penalty, which the sentenced person has to serve as subsequent terms; the provision of Article 78 § 2 shall be applied if even one of the offences has been committed in the conditions specified in Article 64.

§ 2. Notwithstanding the conditions specified in Article 78 § 1 or 2, the sentenced person may be conditionally released after serving 15 years deprivation of liberty.

Article 80. § 1. In case of conditional release, the portion of the penalty which remains to be served constitutes a probation period, which may not, however, be less than 2 or longer than 5 years.

§ 2. If the sentenced person is the person specified in Article 64 § 2, the probation period may not be shorter than 3 years.

§ 3. In a case of the conditional release of a person sentenced to deprivation of liberty for life, the probation period shall be 10 years.

Article 81. In case of revocation of the conditional release, the sentenced person may not again be conditionally released before the lapse of one year from the date of committing him to the penal institution, and in case of the penalty of deprivation of liberty for life, before the lapse of 5 years.

Article 82. If in the probation period and in the course of the following 6 months, the conditional release has not been revoked, the sentence shall be considered to have been served at the time of the conditional release.

Article 83. A person sentenced to a penalty of limitation of liberty who has completed at least half of the adjudged penalty, respected the legal order, performed diligently the work ordered by the court, and fulfilled the obligations imposed upon him, may be relieved by the court from the rest of the penalty, considering it as executed.

Article 84. § 1. The court may, after half of the period for which the penal measures specified in Article 39 sections 1 through 3 were imposed, consider them executed, if the sentenced person has respected the legal order and he has been subjected to the penal measure for at least one year.

§ 2. The provision of § 1 shall not be applied if the penal measures specified in Article 39 section 2 and 3 have been adjudicated under Article 41 § 1a, Article 41a § 3 or Article 42 § 2 or 3.

(b) Observations on the implementation of the article

258. The reviewing experts noted that the regulations governing the granting of parole are specified in the PC (articles 77-84). In particular, the court may conditionally release a person sentenced to the penalty of deprivation of liberty from serving the balance of the penalty, only when his attitude, personal characteristics and situation, his way of life prior to the commission of the offence, the circumstances thereof, as well as his conduct after the commission of the offence, and while serving the penalty, justify the assumption that the perpetrator will after release respect the legal order, and in particular that he will not re-offend (article 77, paragraph 1 PC). The gravity of the offence concerned is taken into account when considering the eventuality of early release or parole.

259. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 6 of article 30

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

260. Poland has indicated that it has implemented the provision under review.

261. Poland has cited the following text:

> **Criminal Code**
>
> Article 41. § 1. If the perpetrator, at the time of committing the offence, has abused his post or profession, or has shown that by his continuing in the present post or profession would threaten certain essential interests protected by law would be threatened, the court may decide on an interdiction preventing the occupation of specific posts or the exercise of specific professions.
> § 1a The court may impose interdiction of occupying any or specific posts, of exercising any or specific professions, or of carrying out activities connected with fostering, treating, educating of minor children and protecting them, forever, while sentencing to deprivation of liberty for the offence against sexual latitude or decency committed against a minor.
> § 1b Court imposes interdiction, specified in § 1a, forever, when the perpetrator has been previously convicted in the circumstances specified in that article.
>
> § 2. In the event that a perpetrator has been sentenced for an offence related to a certain economic activity, the court may decide on an interdiction to engage preventing the engaging in this activity, if further continuing thereof would threaten certain essential interests protected by law.

(b) Observations on the implementation of the article

262. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 7 (a) of article 30

> *7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*
>
> *(a) Holding public office;*

(a) Summary of information relevant to reviewing the implementation of the article

263. The State party under review indicated that it has implemented the provision under review.

264. See preceding information: Art. 41 (1) of the Criminal Code.

(b) Observations on the implementation of the article

265. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 7 (b) of article 30

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

...

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

266. Poland has indicated that it has implemented the provision under review.

267. The following text has been cited: see Article 41 (2) of Criminal Code.

(b) Observations on the implementation of the article

268. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 8 of article 30

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

269. The State party under review indicated that it is in compliance with this provision.

270. Poland cited the following text: Article 41 of the Criminal Code is applicable.

(b) Observations on the implementation of the article

271. The reviewing experts noted that article 41 PC provides for disciplinary measures of penal nature (see article 39, paragraph 2 PC) against the perpetrators of crimes (interdiction preventing the occupation of specific posts or the exercise of specific professions), as well as supplementary sanctions against convicted persons ("preventing the engagement in a certain economic activity, if its continuation would threaten certain essential interests protected by law").

272. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 10 of article 30

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

273. The State party under review indicated that it is in compliance with this provision.

274. Poland cited the following applicable reintegration programme(s) or measure(s):

275. Information on the projects carried out by the Central Board of Prison Service involved foreign funds for persons serving a prison sentence (data on June 2013).

1 " Penitentiary counsellor " - involved 15 penitentiary institutions ;

3 "Cycle training to increase of professional qualifications of persons deprived of their liberty and to prepare them to return to work after serving a prison sentence " - the project encompasses 128 prison institutions;
4 "Activation of the social and labour abilities of handicapped sentenced persons and other prisoners" - involved 15 penitentiary institutions

276. Between January and August 2013 a total number of 3 427 of inmates was provided with 334 trainings and 1 513 of inmates attended classes in prison labour clubs (220 classes in 2013) . Support for inmates is related to the transfer of knowledge in the vocational training, participation in prison labour clubs and support provided by the prison counsellors.

277. By June 30, 2013 , 66 666 inmates were given in an advise by prison counsellors. Moreover Prison Service continues the implementation of the program "Support for the Prison Service, including other sanctions then imprisonment" financed by the Norwegian Financial Mechanism 2009-2014.

278. The program will be implement, inter alia, a project "Training to raise social and labour skills of prisoners and to create conditions to facilitate the maintenance of family ties in order to increase the effectiveness of their reintegration with society."

279. The project is aimed at eliminating social barriers and enhancing the effectiveness of interactions with convicted by preparing them to return to society, the open labour market and family reintegration and closer ties between prisoners and their children. The activities of the project include 90 professional ecology courses for 900 prisoners and 180 different courses for 900 prisoners encompassing a therapy with dogs, to control aggression and tension.

(b) Observations on the implementation of the article

280. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 31. Freezing, seizure and confiscation

Subparagraph 1 (a) of article 31

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

281. Poland indicated that it has adopted and implemented the provision under review.

282. The State party under review indicated that measures foreseen in Article 31 of the Convention have been adopted and fully implemented. The applicable law is provided for in the Criminal Code of 6 June 1997:

Criminal Code

Article 45 of the Criminal Code

§ 1. If the offender has received a material benefit as a result of the offence, even indirectly, not subject to the forfeiture mentioned in Article 44 § 1 or § 6, the court will order the forfeiture of the benefit or its equivalent. The forfeiture is not ordered, either partially or in full, if the benefit or its equivalent is repaid to the aggrieved party or another party.

§ 2. If an offender is convicted for an offence whereby the offender received a material benefit of considerable value, even indirectly, the assets that the offender took possession of, or to which any title was acquired, at the time of the offence, or after committing it up until sentence is passed, even if not final, is considered as a benefit of the offence, unless the offender or another interested party submits evidence to the contrary.

§ 3. If the circumstances of the case indicate a high probability that the offender referred to in § 2, passed assets constituting a benefit of the offence to an individual, a company or an organisational entity without legal personality, in fact or under any legal title, it is considered that the items in the sole possession of the person, company or entity and the ownership rights thereto, belong to the offender, unless the interested person, company or organisational entity can provide lawful title to them.

§ 4. The provisions of §§ 2 and 3 also apply when assets are attached under Article 292 § 2 of the Code of Criminal Procedure, when securing the threat of forfeiture of benefits and when enforcing the measure. The person, company or entity affected by the presumption established in § 3 may raise a claim against the State Treasury to challenge that presumption; enforcement proceedings are suspended until the case is finally resolved.

§ 5. In the event of co-ownership, a forfeiture order concerns the offender's share, or the monetary equivalent.

§ 6. The material benefit subject to forfeiture, or its equivalent, becomes the property of the State Treasury when the order becomes final, and in the case referred to in the second sentence of § 4 it is when the claim against the State Treasury is finally dismissed.

283. Case examples connected with corruption charges where seizure was ordered pursuant to Art. 45 of the Polish Penal Code:

1. Case No. V Ds 24/04 Radom Circuit Prosecutor's Office vs. Andrzej K., a lecturer at the Radom Technical University, suspected pursuant to Art. 228 of the Polish Penal Code of receiving material benefit from his students in the form of a fax/telephone answering machine and a coffee maker valued at 1200 PLN. The suspect's passenger car, Seat Toledo, valued at approximately 10.000 PLN, was seized;

2. Case No. Ds 18/04/S Siedlce Circuit Prosecutor vs. several doctors from Radom, among others, acting as medical experts for ZUS (Social Insurance Institution), suspected pursuant to

Art. 228 § 3 of the Polish Penal Code of counterfeiting medical documentation in return for receiving material benefit. In case of five suspected, the seizure of money was ordered amounting to 315.000 PLN;

3. Case No. VI Ds 36/05 Lublin Circuit Prosecutor vs. Mirosław Z., a lawyer from Radom, and others, suspected pursuant to Art. 18 § 3 of the Polish Penal Code in connection with Art. 228 § 3 of the Polish Penal Code, of enabling Head of the Psychiatric Ward in The Radom Regional Hospital to receive material benefit valued at approximately 7.000 PLN. The seizure of the following suspect's money was ordered: 31.900 PLN, 1.400 PLN, 3.900 USD;

4. Case No. 1 Ds 2618/05 investigated by Lublin-Południe Regional Prosecutor pursuant to Art. 228 § 1 of the Polish Penal Code vs. Head of the Orthopaedic Ward in the Chełm Public Regional Specialist Hospital accused of receiving material benefit from patients, amounting to 22.800 PLN. The following suspect's money was confiscated: 15.267 PLN, 5.000 Hungarian forints, 150 E, 1.446 USD and 555 Canadian dollars.

284. Amount of assets seizured by the CAB 2010 - 560 000 PLN

2011 - 1. 100 000000 PLN

2012 - 33.700000 mln PLN.

Amount of assets seizured by the Police
2007 - 18.320.549 PLN
2008 - 53.429.624 PLN
2009 - 14.822.972 PLN
2010 - 11.927.051PLN
2011 - 11.625.595PLN
2012 - 12.428.564PLN

(b) Observations on the implementation of the article

285. The reviewing experts noted that criminal law provisions in Poland enable forfeiture in order to deprive offenders of the proceeds and instrumentalities of crime (there is no such penal measure as "confiscation of assets"). In accordance with Article 44 of the Penal Code, forfeiture of objects obtained directly from crime is mandatory.

286. Forfeiture of proceeds of crime may also concern the transformed property (proceeds derived even indirectly from an offence). If adjudication of forfeiture of objects derived from an offence or that served the purpose of commission of an offence is impossible (e.g. because they have been destroyed), the court may oblige the perpetrator to pay a sum of money equivalent to the value of these objects.

287. When the social harm of the illegal act is insignificant, and "in case of the conditional discontinuation of the proceedings", or particular circumstances exclude the punishment of the perpetrator, the court may order the forfeiture of objects as a preventive measure. However, in every such case the identity of the perpetrator has to be established (article 100 PC).

288. The Polish legislation provides for civil forfeiture pursuant to article 412 of the Civil Code which reads "Court can decree a forfeiture of a benefit for the State Treasury if the benefit was intentionally rendered in exchange for committing an act prohibited by the law or an act with a foul aim. If the object of the benefit was used or lost, its value may be forfeited". That provision can be applied without criminal conviction.

289. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 1 (b) of article 31

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

...

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

290. Poland indicated that it has adopted and implemented the provision under review.

291. The State party under review cited the following text:

> Article 44. of the Criminal Code
>
> § 1. The court will order the forfeiture of items coming directly as a result of an offence.
>
> § 2. The court may order, and in specified cases must order, the forfeiture of the items that were used or were intended to be used to commit the offence.
>
> § 3. If the forfeiture described in § 2 is not commensurate with the severity of the offence committed, the court may order exemplary damages to be paid to the State Treasury instead.
>
> § 4. If the forfeiture of items specified in §§ 1 or 2 is not possible, the court may order the forfeiture of items with a monetary value equivalent to the items coming directly as a result of the offence, or items used or intended to be used to commit the offence.
>
> § 5. The items specified in §§ 1 or 2 are not subject to forfeit if they can be returned to the aggrieved party or any other authorised party.
>
> § 6. If the offender is convicted of violating a prohibition on producing, possessing, trading in or transporting specific items, the court may order, and in specified cases must order, the forfeiture of such items.
>
> § 7. If the items referred to in §§ 2 or 6 are not the property of the offender, the court may only order their forfeiture in the cases provided for in law; in the case of co-ownership, the order only covers the forfeiture of the share owned by the offender, or the obligation to pay a monetary equivalent.
>
> § 8. Items that are subject to forfeiture are transferred to the ownership of the State Treasury when the sentence becomes final.

(b) Observations on the implementation of the article

292. See above. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 2 of article 31

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

293. Poland indicated that it has adopted and implemented the provision under review.

294. Poland further indicated that one of the main duties of the General Inspector is carrying out of the procedure for transaction suspension or bank account blocking. On the basis of the Article 18 and 18a of the AML/CFT Act, the result of the conducted analytical proceedings in 2012 was blocking of 141 accounts with collected funds with a total value of at least PLN 66.46 million, and the suspension of 3 transactions in the amount of PLN 0.31 million.

295. Poland cited the following text:

> **AML/CFT Act**
>
> Article 16 1. Any obligated institution which received a disposition or an order of the transactions, or carried out such a transaction, or has any information about the intention to carry out such a transaction, for which there is a reasoned suspicion that it may be related to the criminal offense referred to in Article 165a and Article 299 of the Penal Code, is obliged to inform to the General Inspector in writing by passing all the data referred to in Article 12 paragraph 1 and Article 12a along with the indication of prerequisites in favour of suspension of the transaction or blockage of the account, and to indicate the expected date of the implementation. The provision of Article 11 paragraph 4 shall not be applied.
> 1a. Where the obligated institution, making the notification pursuant to paragraph 1, is not the institution which is to carry out the transaction, the notice shall also indicate the institution, which is to transact.
> 2. Upon the receipt of the notice, the General Inspector shall promptly confirm the receipt thereof in writing, stating the date and the time of collection of the notice.
> 3. Such a notification and a confirmation referred to in paragraphs 1 and 2 may be also provided on the information storage carrier.
>
> 4. Pending such a receipt of the request referred to in Article 18 paragraph 1, but no longer than for 24 hours after the confirmation of the receipt of the notification referred to in Article 16 paragraph 2, the obligated institution shall not carry out the transaction covered by the notice.
>
> Article 16a. (revoked).
>
> Article 17. If the notice, referred to in Article 16 paragraph 1, can not be made before performing - or during performing - a disposition or an order to carry out the transactions, the obligated institution shall provide the information about the transaction immediately after its completion, giving the reasons for the prior absence of such a notice.

Article 18. 1. If from the notice referred to in Article 16 paragraph 1, it follows that the transaction to be carried out may be related to any criminal offense referred to in Article 165a and Article 299 of the Penal Code, The General Inspector may - within 24 hours of the date and time indicated on the confirmation referred to in Article 16 paragraph 2 - provide the obligated institution with a written request to suspend the transaction or block the account for no more than 72 hours from the date and time indicated on the confirmation thereof. At the same time, the General Inspector shall notify the competent public prosecutor on a suspicion of having committed a crime and shall provide him with any information and documents concerning the suspended transaction or the account blocked.
2. The request to suspend the transactions or to block the account may be issued only by the General Inspector, or a total of two employees of the unit, as referred to in Article 3 paragraph 4, authorized by the General Inspector in writing.
3. The transaction is suspended or the account blocked by the obligated institution immediately upon the receipt of the request referred to in paragraph 1.
4. The suspension of the transactions or the blockage of the account by the obligated institution, in the manner specified in paragraphs 1 and 3, shall not arouse any disciplinary, civil, criminal, or otherwise specified responsibility defined by separate provisions.
5. Saturdays, Sundays and public holidays shall not be included in the time limits referred to in paragraph 1.

Article 18a. 1. The General Inspector may submit a written request to the obligated institution to suspend a transaction or block the account without having previously received the notification referred to in Article 16 paragraph 1, if the information in possession of which he is indicates the conduct of activities aimed at money laundering or terrorist financing.
2. In the case referred to in paragraph 1, the General Inspector may request the suspension of a transaction or block the account for no more than 72 hours after the receipt of the request by the obligated institution.
3. The provisions of Articles 18, 19 and 20 shall apply accordingly.

Article 19 1. In the event that the General Inspector receives the notification referred to in Article 18 paragraph 1 second sentence, the prosecutor may order, by decision, to suspend this transaction or block the account for a definite period, but no longer than 3 months from the day of the receipt of this notification.
2. In the decision referred to in paragraph 1, the General Inspector defines the scope, manner and time-limits of the suspension of the transaction or the blockage of the account. The decision may be appealed to the court competent to hear the case.
4. The suspension of transactions or the blockage of the account falls if before the expiry of 3 months from the receipt of the notification referred to in Article 18 paragraph 1 second sentence, a decision on asset values freezing will not be issued.
5. In the matters regarding suspension of transactions or account blocking not regulated by the Act, the provisions of the Code of Criminal Procedure shall apply.

Article 20 In the event that the account has been blocked or the transaction has been suspended with the breach of the law, the liability for damages resulting from it is borne by the Treasury under the terms defined in the Civil Code.

Article 20a. (revoked).

Article 20b. The provisions of Articles 19 and 20 also apply accordingly to pending criminal proceedings brought for a crime listed in Article 165a of the Criminal Code, when the notification received by the prosecutor comes from other sources.

Article 20c. Any obligated institution, at the request of the party ordering the transaction or of the account holder, can inform the party about the suspension of the transaction or the account blockage and indicate the authority which has requested for it.

Article 2.[…]

5) transaction suspension, it shall mean any temporary restrictions on administering and using asset values, preventing from the performance of a specific transaction by the obligated institution;
6) account blockage, it shall mean temporary restrictions on administering and using all the asset

values collected on the account, therein also by the obligated institution, in case of the omnibus account the blockage might apply to certain asset values collected on the account;

(b) Observations on the implementation of the article

296. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 3 of article 31

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

297. Poland indicated that it has adopted and implemented the provision under review.

298. Poland indicated that the Police attaches great importance to issues of seizure and forfeiture as well as recovery of proceeds of crime. In December 2008, in the structures of the Criminal Bureau of the National Police Headquarters the Department of Assets Recovery was established directly related to the National Bureau for Asset Recovery. Department of Assets Recovery is actively involved in the process of training police officers and representatives of the other entities involved in the cost-effective methods to combat crime, including training courses of the police officers to carry out corruption case, providing trainings to local small Police units, developing and distributing informative materials useful in the course of activities aimed at disclosure and seizure of property of offenders.

(b) Observations on the implementation of the article

299. As confirmed during the country visit, property subject to forfeiture is transferred to the State Treasury, which is responsible for the administration of such property (article 234 CPC). During the country visit, the national authorities recognized the need for the introduction and implementation of more streamlined provisions on the administration of forfeited proceeds of crime or property, given that the State Treasury cannot obtain benefit of the forfeited assets. Consequently, the reviewing experts recommended the adoption and implementation of such measures.

300. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

301. Adopt and implement measures to ensure more effective and efficient administration of forfeited proceeds of crime or property.

Paragraph 4 of article 31

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

302. Poland has indicated that it is in compliance with this provision.

303. Poland cited the following text:

Criminal Code

Article 39 of the Criminal Code

The penal measures are:
1) deprivation of public rights,

2) interdiction preventing the occupation of specific posts, the exercise of specific professions or to engage in specific economic activities,
2a) interdiction of carrying out an activity connected with fostering, treating, educating of minor children and with protecting them,
2b) interdiction of staying in specific environments or approaching specific persons or leaving specific place of stay without the consent of the court,
2c) interdiction of entering mass events,
2d) interdiction of entering amusement game centres and participating in games of chance,
2e) injunction to leave the premises occupied jointly with the injured, 3) interdiction on driving vehicles,
4) forfeiture,
5) a duty to repair the damage or compensate for the suffered injury, 6) compensatory damages to the injured or for a public purpose,
7) pecuniary consideration,
8) making the sentence publicly known.

Article 44. § 1. The court shall impose the forfeiture of items directly derived from an offence.
§ 2. The court may decide on the forfeiture, where law so provides for, of the items which served or were designed for committing the offence.

§ 3. The forfeiture described in § 2 shall not be applied if its imposition would not be commensurate with the severity of the offence committed, the court may impose a compensatory damages to the State Treasury instead.
§ 4. In the event that imposing the forfeiture of items specified in §§ 1 or 2 is not possible, the court may impose the obligation to pay a pecuniary equivalent of items directly derived from an offence or items which served or were designed for committing the offence.
§ 5 The forfeiture of items referred to in § 1 or 2 shall not be imposed if they are subject to return to the injured person or other legitimate entity.
§ 6. In the event that the conviction has pertained to an offence of violating a prohibition of production, possession or dealing in or transporting specific items, the court may decide or, if the law so provides, shall decide on the forfeiture thereof.
§ 7. If the items referred to in § 2 or 6 are not the property of the perpetrator, the forfeiture may be decided by the court only in the cases provided for in the law; in the case of co-ownership, the decision shall cover only the forfeiture of the share owned by the perpetrator, or the obligation to pay a pecuniary equivalent of its value.
§ 8. Property which is the subject of forfeiture shall be transferred to the ownership of the State Treasury at the time the sentence becomes final and valid.

Article 45. § 1 If a perpetrator received any benefit from an offence, even indirectly, which shall not be subject to forfeiture of items referred to in art. 44 § 1 or 6, a court shall impose forfeiture of such benefit or pecuniary equivalent of its value. Forfeiture shall not be applied to the benefit as a whole or its part if the benefit or its pecuniary equivalent is subject to return to the injured person or another entity.

§ 2 In the case of sentencing for the offence from which the perpetrator received, even indirectly any benefit of considerable value, the property that the perpetrator received or took possession of or to which the perpetrator received any legal title, during or after the commission of the offence, even before any final judgement, is deemed to be the benefit derived from the offence unless the perpetrator or any other interested person proves otherwise.

§ 3 When the circumstances of the case indicate that there is high probability that the perpetrator referred to in § 2- transferred, practically or under any other legal title, property derived form the offence to a natural person or legal person or other entity not having legal personality, items being in autonomous possession of that person or entity as well as their property rights are deemed to belong to the perpetrator unless any interested person or organizational unit proves that they were legally received.

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

§ 5. In the case of co-ownership, the forfeiture of the perpetrator's share in co-property or the forfeiture of share's in co-property equivalent shall be exacted.

§ 6. The material benefit or its equivalence subject to forfeiture shall be passed to the State Treasury from the moment the judgement becomes valid and final, and in the case referred to in § 4, sentence 2, from the moment the judgement dismissing the claim against the State Treasury becomes valid and final.

(b) Observations on the implementation of the article

304. The reviewing experts noted that Forfeiture of proceeds of crime may also concern the transformed property (proceeds derived even indirectly from an offence). If adjudication of forfeiture of objects derived from an offence or that served the purpose of commission of an offence is impossible (e.g. because they have been destroyed), the court may oblige the perpetrator to pay a sum of money equivalent to the value of these objects.

305. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 5 of article 31

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

306. Poland indicated that it is in compliance with this provision.

307. Poland cited the following text: see information on money laundering.

(b) Observations on the implementation of the article

308. See above. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 6 of article 31

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

309. Poland indicated that it is in compliance with this provision.

310. The State party under review cited the following text: see information on money laundering.

(b) Observations on the implementation of the article

311. See above. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 7 of article 31

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

312. Poland indicated that it has adopted and implemented the measures described above.

313. The State party under review cited the following text: see information on bank secrecy.

(b) Observations on the implementation of the article

314. The reviewing experts noted that article 105, paragraph 1, of the Banking Act stipulates that banks are required to disclose information that is subject to the obligation of banking secrecy at the request of a court or public prosecutor in connection with legal proceedings under way in cases involving criminal or fiscal offences. During the country visit, Poland acknowledged that the procedure for applying for bank records-although made ex-parte- may be subject to legal challenges, thus entailing delay in disclosure of these records with the net effect that progress of ongoing investigation may be seriously impaired. Therefore the review team recommended that effective legislative measures be implemented for disclosure of bank records to take place within a prescribed reasonable timeframe and for the possibility of legal challenges to be curtailed, to avoid unnecessary delays.

315. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

316. Implement effective legislative measures for the disclosure of bank records within a prescribed reasonable time frame and for the possibility of legal challenges to be curtailed to avoid unnecessary delays (see also under article 40 of the Convention).

Paragraph 8 of article 31

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

317. Poland indicated that it has adopted and implemented the provision under review.

318. Polish authorities consider introduce to the legal system such resolution and decided to include it to the law regulating status of the crown witness.

(b) Observations on the implementation of the article

319. As explained during the country visit, according to article 45, paragraph 2 PC, in the case of sentencing for the offence from which the perpetrator received, even indirectly any benefit of considerable value, the property that the perpetrator received or took possession of or to which the perpetrator received any legal title, during or after the commission of the offence, even before any final judgement, is deemed to be the benefit derived from the offence unless the perpetrator or any other interested person proves otherwise.

320. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 9 of article 31

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

321. The State party under review indicated that it is in compliance with this provision.

322. The following applicable policy was cited: See Articles 44 and 45 of the Criminal Code.

(b) Observations on the implementation of the article

323. The reviewing experts noted that the Polish courts shall not decide on the forfeiture of objects or other material benefits derived from criminal activities if they are to be returned to the third party having legal rights on them (article 45, paragraphs 1 and 5 PC).

324. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 32. Protection of witnesses, experts and victims

Paragraph 1 of article 32

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

325. Poland indicated that it has adopted and implemented the provision under review.

326. The State party under indicated that measures foreseen in Articles 32 of the Convention have been adopted and fully implemented. The applicable law is enshrined in the Code of Criminal Procedure of 6 June 1997 and in the Act of 25 June 1997 on the immunity witness.

The Code of Criminal Procedure

Article 173. § 1. The examined person may be shown another person, his picture or a material object to identify. The presentation shall be conducted in a way precluding suggestion.
§ 2. When necessary, the presentation of another person may be also be conducted in the manner precluding identification of the examined person by the person being identified.

Article 177 § 1a. Examination of a witness may take place with the use of technical equipment which permits the conduct of this action at a distance. In proceedings in court this action takes place with the participation of the court referred to in Article 396 § 2; provision of Article 396 § 3 shall be applied accordingly.

Article 184. § 1. If there is a justifiable concern for safety of life, health, freedom or loss of

property of considerable dimension regarding the witness or his next of kin, the court, and in the preparatory proceedings the state prosecutor, may issue an order classifying as secret the circumstances permitting the disclosure of the identity of such a witness, including his personal data, if they are of no significance for the resolution of the case. Such proceedings take place without the participation of the parties and are subject to State secret. The proceedings do not take into account the circumstances referred to in the first sentence.
§ 2. In the event that the order referred to in § 1 has been issued, the personal data of the witness shall be known exclusively to the court, the state prosecutor and, when necessary, to a Police official who conducts the proceedings. Records of testimonies of the witness may be made available to the accused or his defence counsel only in the manner preventing the disclosure of the circumstances referred to in § 1.
§ 3. The witness shall be examined by the state prosecutor and by the court which may direct a judge from its composition to do so, at a place and in a manner preventing the disclosure of the circumstances referred to in § 1. The state prosecutor, the accused and his defence counsel shall have the right to take part in the examination of a witness by the court or the appointed judge. Provision of Article 396 § 3, sentence two, shall be applied accordingly.
§ 4. In the event of examining a witness with the use of technical equipment which permits the conduct of this action at a distance, the record of the action with the participation of experts shall include their first names, surnames, area of expertise, and the kind of the action performed. Provision of Article 205 § 3 does not apply.
§ 5. The court order on the matter of keeping secret the circumstances referred to in § 1 shall be subject to interlocutory appeal of a witness and the accused, and in proceedings in court also of the state prosecutor within three days. An interlocutory appeal against the order of the state prosecutor shall be decided by the court having jurisdiction over the case. The proceedings regarding the interlocutory appeal take place without the participation of the parties and are subject to State secret.
§ 6. In the event that the interlocutory appeal has been granted, the record of the examination of the witness shall be destroyed and the note of it made in the file of the case.
§ 7. The witness may, until the conclusion of the trial before the court of first instance, file a motion for the reversal of the order referred to in § 1. The order with respect to the motion is subject to interlocutory appeal. Provision § 5 shall be applied accordingly. In the event that the motion has been accepted, the record of the examination of the witness shall be disclosed in its entirety.
§ 8. In the event it becomes known that at the time of the issuance of the order referred to in § 1, there was no justified concern for safety of life, health, freedom or loss of property of considerable dimension regarding the witness or his next of kin, or that the witness deliberately provided a false testimony or his identity has become revealed, the state prosecutor in preparatory proceedings, and the court in a trial, on a motion from the state prosecutor, may reverse this order. Provision § 5 shall be applied accordingly. The record of the examination of the witness shall be disclosed in its entirety.
§ 9. The Minister of Justice shall issue an ordinance setting forth the manner and conditions for filing a motion for the issuance of an order referred to in § 1, the examination of a witness subject to such order, and for making, storing and providing access to records of testimonies including information about such witness, as well as an admissible method of referring to such testimonies in court decisions and pleadings, having regard to the assurance of a proper protection of the secrecy of the circumstances that prevent the identity of the witness from unauthorised disclosure.

Article 191.
§ 3. If there is a justified concern for the possible use of violence or unlawful threat against a witness or his next of kin, in connection with his actions, he may restrict details regarding his place of residence to the exclusive knowledge of the state prosecutor or the court. The pleadings shall be then served at the institution where the witness is employed or at other address indicated by the witness.

Act of 25 June 1997 on the immunity witness

Article 14 section 1
In case of danger to life or health of a immunity witness or his/her next of kin under the provisions of the Criminal Code, they may be subject to personal protection, as well as to help with a change

of residence or employment, and in particularly justified cases, the issuance of a document making it possible to use other than their own personal data, including authorizing them to cross the border, and they can also get other assistance, especially a surgery to remove the characteristic elements appearance or a cosmetic surgery.

Article 32 section 5 of the Convention Has been implemented by means of the following provisions of the Penal Procedure Code.

Article 53. In cases of indictable offences, the injured person may participate in the judicial proceedings as a party thereto, by assuming the role of subsidiary prosecutor, alongside the public prosecutor of instead of him.

Article 59. § 1. The injured person may bring an indictment as a private prosecutor, or support an indictment with respect to a privately prosecuted offence.
§ 2. Any other person injured by the same act may only join the proceedings, prior to the commencement of the judicial examination at the trial.

Article 62. The injured person may, until the commencement of the judicial examination at the main trial, file a civil complaint against the accused in order to litigate, within the framework of the criminal proceedings, his property claims directly resulting from the offence.

Article 156. § 1. Parties, as well as the entity referred to in Article 416, their defence counsels, attorneys, and legal representatives may be permitted to examine the files pertaining to the case and to copy them. These records may also be made accessible to other persons with the consent of the president of the court

Article 253 § 3. The court or state prosecutor shall immediately inform the injured person, his statutory agent, or a person under whose permanent custody the injured person remains, about revocation, non-extension or change of the preliminary detention into another preventive measure, unless the injured person has stated that he waives such right.

Article 299. § 1. In the course of preparatory proceedings, the injured and the suspect are parties thereto.

Article 302. § 1. Persons who are not parties to the preparatory proceedings shall have the right to lodge an interlocutory appeal against the orders and rulings which violate their rights.
§ 2. Parties and persons who are not parties may bring an interlocutory appeal against actions other than those which violate their rights.

Article 315. § 1. The suspect and his defence counsel as well as the injured person and his attorney may submit motions to cause certain investigative actions to be performed.
§ 2. The party which submitted the motion, his counsels and attorneys may not be refused admission to participate in the action if they so demand. The provision of the second sentence of Article 318 shall apply.

Article 316. § 1. If the investigative action cannot be subsequently repeated at the trial, the suspect, the injured person and their legal representatives, as well as the defence counsel and the attorney of the injured person, if so appointed, should be admitted to participate in the action, unless there is a danger of loss or distortion of evidence in case of delay.
§ 2. The appearance of a suspect deprived of liberty shall not be procured, if a delay were to lead to a danger of loss or distortion of evidence.
§ 3. If there is a danger that the suspect cannot be heard at the hearing, a party or the state prosecutor or other agency conducting proceedings, may submit a motion demanding that the suspect be heard by the court

Article 317. § 1. The parties, and a defence counsel and an attorney if such have been appointed in the case, shall be admitted on request to participate in other investigative actions.
§ 2. In a particularly justifiable case, the state prosecutor may, by means of an order, deny

such a request if the interests of the investigation so require, or refuse to procure the appearance of a suspect deprived of liberty if it would involve serious difficulties.
Article 318. If evidence based on an opinion issued by experts, a scientific institute, or a specialized establishment is admitted, the suspect and his defence counsel, and the injured and his attorney shall be served with the order on the admission of this evidence and permitted to participate in the examination of experts and to acquaint themselves with the opinion, if one has been prepared in writing. The appearance of a suspect deprived of liberty shall not be procured, if this were to involve serious difficulties.

Article 384. § 1. After verifying the attendance of the witnesses, the presiding judge shall rule that they be withdrawn from the courtroom. The experts shall remain, unless otherwise ordered by the presiding judge.
§ 2. The injured person shall have the right to participate in the hearing, when he appeared, and remain in the courtroom, even if he is to be examined in the capacity of a witness. In such a case, the court shall examine him first.
§ 3. If the court finds it purposeful, it may obligate the injured to be present throughout the hearing or parts thereof.
§ 4. The provisions of § § 2 and 3 shall be applied accordingly to the entity referred to in Article.

Act on the Police

Article 20a. [Protection of the Police]

1. On account of carrying out the tasks referred to in Article 1 Paragraph 2, the Police shall ensure protection for the forms and methods of task performance, information, its own facilities and the particulars of police officers.

2. In the course of preliminary investigation, police officers may use documents which prevent determination of their particulars and the measures applied when performing official duties.

3. In special cases, the provision of Paragraph 2 may apply to persons referred to in Article 22 Paragraph 1.

3a. A person shall not be guilty of a crime, if they:

1) order the documents referred to in Paragraphs 2 and 3 to be drawn up, or oversee drawing up thereof;

2) draw up the documents referred to in Paragraphs 2 and 3;

3) assist in drawing up of the documents referred to in Paragraphs 2 and 3;

4) are a police officer or the person referred to in Paragraph 3, if they use the documents referred to in Paragraphs 2 and 3 for the purposes of preliminary investigation.

3b. Government administration authorities and local government authorities shall, within the scope of their competence, assist the Police in issuing and securing the documents referred to in Paragraphs 2 and 3.

4. The minister competent for internal affairs shall, by way of ordinance, lay down detailed rules and procedure for issuance, use and storage of the documents referred to in Paragraphs 2 and 3, with due regard given to the types of documents and the purpose for which they are disclosed, the authorities and persons authorised to issue, use and store the documents, the period for which they are made available, measures ensuring protection of the documents, and the rules for storing and recording these documents

(b) Observations on the implementation of the article

327. The reviewing experts noted that measures for the protection of witnesses are set forth in the CPC, article 20a of the Act on the Police and article 14 of the Act on the immunity witness. The review team identified the Act on the immunity witness as a good practice given that it provides modern solutions for the protection of immunity witness and his/her next of kin (spouse, an ascendant, descendant, brother or sister, relative by marriage in the same line or degree, a person being an adopted relation, as well as his spouse, and also a person actually living in co-habitation – see article 115, paragraph 11 PC). The national law enforcement authorities conclude international arrangements on relocation of witness on a case-by-case basis.

328. The reviewing experts concluded that Poland has adequately implemented the provision under review.

(c) Successes and good practices

329. The Act on the immunity witness which provides modern solutions for the protection of immunity witnesses and their next of kin.

Subparagraph 2 (a) of article 32

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(a) Summary of information relevant to reviewing the implementation of the article

330. Poland indicated that it has adopted and implemented the provision under review.

331. The State party under review cited the following text: see preceding answer.

(b) Observations on the implementation of the article

332. See above. The reviewing experts concluded that Poland has adequately implemented the provision under review.

(c) Successes and good practices

333. See above.

Subparagraph 2 (b) of article 32

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

...

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

334. Poland indicated that it has adopted and implemented the provision under review.

335. The State party under review cited the following text: see information by the paragraph 1.

(b) Observations on the implementation of the article

336. See above. The reviewing experts concluded that Poland has adequately implemented the provision under review.

(c) Successes and good practices

337. See above.

Paragraph 3 of article 32

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

338. Poland indicated that it has adopted and implemented the provision under review.

339. Poland noted that the Police concludes international arrangements on relocation of witness on a case by case basis. Polish Police also follows "Basic principles of European Union Police cooperation in the field of witness protection of September, 2000".

(b) Observations on the implementation of the article

340. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 4 of article 32

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

341. Poland indicated that, in its domestic legal system, the provisions of this article also apply to victims insofar as they are witnesses.

342. Poland indicated that a victim within the Polish criminal proceedings enjoys all rights of witness extended to the right of the party of the proceedings. The status of an injured person according to the Code of Criminal Procedure is regulated as the following:

> **Criminal Code**
>
> Article 49. § 1. The injured is a natural or legal person whose property or rights have been directly violated or threatened by an offence.
>
> § 2. A public, local government or social institution may also be treated as the injured person even though it has no status of legal person.
>
> § 3. The Social Security Agency shall also be regarded as an injured person to the extent of the indemnity paid by it to the injured person as a result of the injury caused by the offence, or that which it is obligated to cover.
>
> § 3a. In case of offences against the persons pursuing paid work, referred to in Articles 218-221 and in Article 225 § 2 of the Penal Code, authorities of the National Labour Inspectorate may exercise the rights of the injured person, if the scope of their actions have revealed an offence or have filed for commencement of the proceedings.
>
> § 4. In cases arising out of offences which have inflicted damage upon the property of public, local government or a social institution and in which the injured institution is not acting, the rights of the injured person may be exercised by those agencies of state control which, within the scope of their activities, have brought the offence to light or have applied for the institution of proceedings.
>
> Article 49a. If no civil action has been filed, the injured person and the state prosecutor, may until the conclusion of the first hearing of the injured person at the main trial file a motion as defined under Article 46 § 1 of the Penal Code.
>
> Article 50. In the court proceedings, the rights of the injured person referred to in Articles 53 and 62 may not be exercised by the person who is the accused in the same case, except for cases provided for in Articles 497 and 498 § 3.
>
> Article 51. § 1. All actions pertaining to the proceedings on behalf of an injured person, who is not a natural person, shall be conducted by an agency authorised to act on his behalf.
>
> § 2. If the injured person is a minor or is incapacitated either totally or partially, his rights shall be exercised by his legal representative or by a person who has custody of the injured person.
>
> § 3. If the injured person is a disadvantaged person, in particular with respect to age or health status, his rights may be exercised by a person who has custody of the injured person.
>
> Article 52. § 1. In the event of the death of the injured person, his rights may be exercised by his closest relatives or, when they either are absent or not discovered, by the state prosecutor, acting ex officio.
>
> § 2. In the event when the agency conducting the proceedings is in possession of information about the injured person's closest relatives, they should instruct at least one of such persons about the rights they are entitled to.

(b) Observations on the implementation of the article

343. The reviewing experts concluded that Poland has adequately implemented the provision

under review.

Paragraph 5 of article 32

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

344. Poland indicated that it is in compliance with this provision.

345. The following text was cited: see preceding paragraph.

(b) Observations on the implementation of the article

346. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 33. Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

347. Poland indicated that it has adopted and implemented the provision under review.

348. Poland noted that Polish regulations provide for sufficient protection of whistleblowers in corruption cases. Such protection is provided for in the provisions of art. 22 of the Act of 6 April 1990 on the Police. (Journal of Laws of 2007 No. 43, item. 277, as amended). Also provisions of Art. 184 of the Code of Criminal Procedure relating to the status of the anonymous witness are applicable to such persons.

349. Furthermore a section to fight against corruption within Police has undertaken a number of awareness-rising initiatives. A specially designated website www.policja.gov.pl has been set up to direct notification to the competent authority about a suspicion of corruption offense. The website provides for information on how to report the crime. It is available to stay annonymous, when press 'REPORT CORRUPTION' you are automatically linked to the Police e-mail box where you can report information about corruption. Information is read by the competent Police officer who decides further steps in the case. Each Provincial Police Department operates this system of whistleblowing.

350. The Central Anti-corruption Bureau is encouraging Polish citizens and other persons with habitual residence in its territory to report and inform about corruption offences. Due to that nationals and others can contact the Bureau by phone (hotline): 800-808-808 (for international call: +48 22-437-27-28), by post: Al. Ujazdowskie 9, 00-583 Warszawa; or by safe mail box: kontakt@cba.gov.pl .

351. Any person wanting to report a corruption offence is informed in advance about his/her legal situation: according to Polish law a person who gave a bribe and informed about it a competent authority providig it with all the relevant circumstances of teh offence - before the authority learned about the offence - shall not be subject to punishment.

352. On 23.10.2003 the V Investigation Department of the Provincial Prosecution Authority in Warsaw was notified about a crime by Grzegorz P., a member of the board of Hamatech spółka z o.o. with its seat in Warsaw, who disclosed that an employee of the Department of Fisheries of the Ministry of Agriculture and the Development of Rural Areas /hereinafter MRiRW/ Marcin P. had demanded from him a commission for the provision of work arising from the contract concluded by Hamatech with the Department of Fisheries, related to the establishment of a temporary register of purchasers and sellers of sea fisheries products and of organisations of producers and related branches of industry, for which he was to receive 20,000 PLN after completing the work commissioned to him.

353. On the basis of the evidential material collected in the course of an inquiry (V Ds 331/03), Marcin P. was charged as follows: in the period June - July 2003 in Warsaw, performing a public function of an inspector in the Department of Fisheries of MRiRW and being a Member of the Tender Committee, he made further cooperation of HAMATECH sp. z o.o. with MRiRW related to the awarded public procurement dependent on the following: he demanded that Grzegorz P., General Director of HAMATECH spółka z o.o., should offer him a pecuniary advantage in the amount of 20,000 PLN in the form of commissioning to him selected work in the order implemented by Hamatech sp. z o.o. to the benefit of MRiRW for the establishment of "a temporary register of purchasers and sellers of sea fisheries products and of organisations of producers and related branches of industry"; i.e. a crime under Article 228 § 4 of the Penal Code.

(b) Observations on the implementation of the article

354. In relation to the protection of reporting persons, Poland reported that even though there is no dedicated whistleblower protection law, whistleblowers are subject to protection from unjustified or illegal termination of their contract of employment on the basis of general principles determined in the Labour Code. Poland also indicated that, among the provisions that stipulate the protection of employees-whistleblowers from retaliation are the anti-discrimination provisions, including those relating to discrimination in employment. Pursuant to article 32 (2) of the Constitution of the Republic of Poland, no one can be discriminated in political, social or economic life for any reason. The provisions of the Labour Code confirm the prohibition to discriminate in the relationship of employment. If retaliation by the employer cannot be qualified as discrimination, as his actions refer not to unfavourable treatment of an employee in employment but to an employee as a person – they may be assessed in the light of the provisions that prohibit mobbing in the place of employment. Furthermore, the labour law provisions provide protection to employees who have been dismissed without justified reason or in violation of law. In addition, pursuant to article 23, paragraph 2, of the Act on the Labour Inspectorate, in case of a reasonable suspicion that information with regard to matters subject to control that is provided by an employee to the labour inspector could cause any harm to that employee or any accusation resulting from providing such

information, the inspector may issue a decision to keep in secrecy certain facts that could lead to making the identity of that employee known, including his particulars.

355. However, based also on discussions with the civil society and legal experts during the country visit, the review team noted the lack of information in response to the allegations that the national regulations on whistleblowers protection are largely ineffective due to their disparate and vague application. In particular, the available research indicates that the effectiveness of the labour code provisions in practice is low. Moreover, the Labour Code covers only a part of working population. There is a significant percentage of those who work on the basis of legal arrangements which do not provide any protection (e.g. civil-law contract).

356. One of the setbacks identified by the review team was the decision of the national authorities to withdraw the issue of whistleblowers protection from the Government Anti-corruption Programme for the years 2014-2019. Therefore the reviewing experts encouraged the Polish authorities to amend the Programme to include the issue of whistleblowers protection as an indication of the high priority accorded to it and the political will to improve the efficiency of legal protection for whistleblowers.

357. Another recommendation of the review team was the development of specific ad hoc legislation on the protection of reporting persons. The following considerations may be taken into account when developing – and implementing - such legislation:

- The introduction of the concept of "protection of whistleblowers": specific legislation on the protection of reporting persons can be conducive to introducing this protection as a key concept in cases adjudicated by the courts, which – currently – end up as unfair dismissal cases;
- Retaliation against whistleblowers should be expressis verbis forbidden and retributive actions should also be *expressis verbis* referred to as a form of discrimination in the text of the ad hoc legislation;
- In terms of implementation in practice, the burden of proof in whistleblowing cases should be *expressis verbis* placed on the employer.

358. From an operational point of view, the review team identified as a good practice the development of an on-line and helpline reporting system, based on the Act on the Central Anti-Corruption Bureau (CBA), to enable Polish citizens and other persons with habitual residence in its territory to report and inform about corruption offences.

359. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

360. Explore the possibility of amending the Government Anti-corruption Programme 2014-2019 to include the whistleblowers protection; and to develop specific legislation on the protection of reporting persons. Considerations to be taken into account when developing – and implementing - such legislation are mentioned above.

Article 34. Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

361. Poland indicated that it has adopted and implemented the provision under review.

362. The State party under review cited the following text:

> **ACT of 29 January 2004 PUBLIC PROCUREMENT** LAW
>
> Article 17.
> 1. Persons performing actions in connection with the conduct of award procedures shall be subject to exclusion, if:
> 1) they are competing for a contract;
>
> 2) they are relatives by marriage, blood or affinity in direct line or relatives by blood or affinity in indirect line up to the second degree, or relatives by adoption or guardianship or tutelage with the economic operator, his legal deputy or members of managing or supervisory bodies of economic operators competing for a contract;
> 3) during the three years prior to the date of the start of the contract award procedure they remained in a relationship of employment or service with the economic operator or were members of managing or supervisory bodies of economic operators competing for a contract;
> 4) remain in such legal or actual relationship with the economic operator, which may raise justified doubts as to their impartiality;
> 5) have been legally sentenced for an offence committed in connection with contract award procedures, bribery, offence against economic turnover or any other offence committed with the aim of gaining financial profit.
> 2. Persons performing actions in connection with a contract award procedure shall provide a written statement, under the pain of penal liability for making false statements, about the absence or existence of the circumstances referred to in paragraph 1.
> 3. Actions in connection with the contract award procedure undertaken by a person subject to exclusion after they became aware of the circumstances referred to in paragraph 1 shall be repeated, except for the opening of tenders and other factual actions having no influence on the outcome of the procedure.

(b) Observations on the implementation of the article

363. As reported during the country visit, according to article 58 of the Civil Code, any illegal activity, particularly bribery, even if it takes the form of a contract or any other legal action, has not effect in the legal turnover. The same applies if the contract or other legal action was concluded due to the accepting/giving of the bribe. In addition, article 17, paragraph 5, of the Act of Public Procurement Law stipulates that persons performing actions in connection with the conduct of award procedures shall be subject to exclusion, if they have been legally sentenced for an offence committed in connection with contract award procedures, bribery, offence against economic turnover or any other offence committed with the aim of gaining financial profit.

364. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 35. Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

365. Poland indicated that it has adopted and implemented the provision under review.

366. Measures foreseen in Articles 35 of the Convention have been adopted and fully implemented.

367. The applicable law is provided for in the Criminal Code and the Code of Criminal Procedure 6 June 1997.

The Criminal Code

Article 46. § 1. In the event of sentencing and at a motion of the injured or another authorised person, the court may award an obligation to compensate the damage in whole or in part or to award satisfaction for the suffered harm; provisions of Civil Law on the statute of limitations and the possibility of adjudicating pension are not applicable.
§ 2. Instead of obligation defined in § 1 the court may adjudicate compensatory damages to the injured.

The Code of Criminal Procedure

Article 49a. If no civil action has been filed, the injured person and the state prosecutor, may until the conclusion of the first hearing of the injured person at the main trial file a motion as defined under Article 46 § 1 of the Penal Code.

Article 62. The injured person may, until the commencement of the judicial examination at the main trial, file a civil complaint against the accused in order to litigate, within the framework of the criminal proceedings, his property claims directly resulting from the offence.

Article 67. § 1. If the court has refused to admit a civil complaint or has left in unheard, the civil plaintiff may litigate his claim in civil proceedings.
§ 2. If within the final time-limit of thirty days from the day of the refusal by the court to admit a civil complaint or to hear it, the civil plaintiff moves to refer his complaint to the appropriate court having jurisdiction over civil cases, the day on which the claim has been filed in criminal proceedings shall be deemed as the day of the filing of the civil complaint.

Article 69. § 1. If the civil complaint has been filed in the course of the preparatory proceedings, the agency conducting the proceedings shall file the civil complaint in the record of the case, and the court shall issue an order on the admission of the civil complaint after the indictment has been filed. In such cases, the day on which the claim is filed shall be considered as the date on which the civil complaint has been filed.
§ 2. If, simultaneously with the civil complaint, a motion is made requesting security for the claim, the decision in this matter shall be rendered by the state prosecutor.
§ 3. The order on giving security for the claim shall be subject to interlocutory appeal.
§ 4. In the event that the preparatory proceedings are discontinued or suspended, the injured person may, within a final time-limit of 30 days from the date on which the order is delivered, demand that the case be referred to the appropriate court having jurisdiction over civil cases. If, within the prescribed time-limit, the injured fails to do so, the security shall be annulled, and the

civil complaint previously filed shall be without legal effect.

Article 69 a. A criminal court deciding about the penal liability for offence shall have jurisdiction over the case for property damage claims directly resulting from the offence. This provision shall be applied to a prosecutor in the preparatory proceedings in a situation specified in Article 69 § 2.

(b) Observations on the implementation of the article

368. The reviewing experts noted that a victim within the Polish criminal proceedings enjoys all rights of witness extended to the right of the party of the proceedings. The status of an injured person is regulated in articles 49-52 CPC.

369. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 36. Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

370. Poland indicated that it has adopted and implemented the provision under review.

371. Poland indicated that the Central Anti-Corruption Bureau is a special service, created to combat corruption in public and economic life, particularly in public and local government institutions as well as to fight against corruptive activities detrimental to the State's economic interest. The CAB acts under the Act of 9 June 2006 on the Central Anti-Corruption Bureau (Journal of Laws of 2012, item 621). The CAB subordinates directly to the Prime Minister.The Chief of the CAB is obliged to annually report a corruption condition of the State, and other important corruption related issues as: "Anti-corruption review", "Predictable risks of corruption in Poland", "Corruption Map", "CAB's control activity".

372. One of the most important goals of the CBA activity is also to fight agains corruption in the field where public sector meets private one.

373. According to Article 2 of the Act on the Central Anti-Corruption Bureau, the Bureau enjoys prevention, detection and investigation power to combat corruption.

374. Also in the Police Departments a special units have been set up to fight against corruption and economic crimes.

375. In small municipal and district Police units there are specially trained police officers. Such officers are subject to regular trainings on disclosure and combat corruption offences. Repeat

conducted subject projects aimed at carrying out operational activities - finding in cases of corruption offenses using offensive methods of operational work and cooperation with personal sources of information.

376. Prosecution of such offences belongs to prosecution service that supervises of the CAB and the Police corruption investigations According to the article 1 subsection 1 of 20 June 1985 of Prosecution Act, Prosecution Service in Poland is composed of the Prosecutor General and prosecutors of common and military units and prosecutors of the Institute of National Remembrance and a Commission of Prosecuting Crimes against the Polish Nation.

377. In 2010, within the organizational frame of the Prosecution of the Republic of Poland, there were 11 Appellate Prosecution Offices, 45 Circle Prosecution Offices and 356 District Prosecution Offices. 4376 prosecutors remain in service.

378. Units of this Appellate Prosecution Offices, namely Department for Organized Crime and Corruption are composed of prosecutors specialized in conducting investigations in corruption cases.

379. Aforementioned Departments of the Appellate Prosecution Offices are supervised by the Department for Organized Crime and Corruption at the level of Prosecutor General's Office.

380. The General Inspector of Financial Information is the main authority for combating money laundering and terrorism financing. Together with subordinated to him Department of Financial Information they create the Polish Financial Intelligence Unit located in the Ministry of Finance which is at the centre of the Polish AML/CFT system.

Act of 16th November 2000 on counteracting money laundering and terrorism financing

Article 3 of the Act of 16th November 2000 on counteracting money laundering and terrorism financing:
1. A competent government authorities responsible for counteracting money laundering and terrorist financing, hereinafter referred to as "financial information authorities", shall be:
1) a minister competent for financial institutions as the supreme authority of financial information;
2) the General Inspector of Financial Information, hereinafter referred to as the "General Inspector".
2. The General Inspector shall be appointed and dismissed by the Prime Minister at the request of the minister competent for financial institutions.
3. The General Inspector is an Under-Secretary of State at the Ministry of Finance.

4. The General Inspector shall perform his duties with the assistance of an organizational unit established for this purpose within the structure of the Ministry of Finance.
5. The provisions of paragraph 1 do not infringe the provisions of the Act of 24 May 2002 on the Internal Security Agency and Intelligence Agency (Journal of Laws No. 74 item 676; and of 2003: No. 90 item 844, No. 113 item 1070 and No. 130 item 1188) defining duties of the Internal Security Agency and Intelligence Agency.

Article 4. 1. Duties of the General Inspector involve acquiring, collecting, processing and analyzing information in the manner prescribed by law, and undertaking actions aimed at counteracting money laundering and terrorist financing, particularly:
1) investigation of the course of transaction, which has raised reasoned suspicions of the General Inspector;
2) carrying out of the procedure for transaction suspension or bank account blocking; 3) adjudicating on the release of frozen asset values;

4) disclosure of information on transaction or requesting for it;

5) submission of documentation supporting suspicion on the commitment for criminal offense to legitimate bodies;
6) initiating and undertaking other measures to counteract money laundering and financing terrorism, including training provided to the personnel of the obligated institutions within the responsibilities imposed on these institutions;
7) monitoring of compliance with legal regulations on counteracting money laundering and terrorist financing;
8) cooperation with foreign institutions and international organizations dealing with anti-money laundering or combating terrorist financing;
9) impose penalties as referred to in the Act.

2. Responsibilities of the authority referred to in Article 15 items 2 and 3 of the Regulation No. 1781/2006, are executed by the General Inspector.

Article 4a. 1. The General Inspector submits an annual report on his activities to the Prime Minister within 3 month after the end of the year in question which is subject to the report.

2. The report referred to in paragraph 1, includes in particular: the number of transaction reported by the obligated institutions, a description of actions undertaken in response to such notifications and the number of cases for which the proceeding was carried out, the number of persons who faced the allegation on having committed the crime referred to in Article 165a or Article 299 of the Penal Code, and number of persons convicted of crimes, with and without legal validity referred to in Article 165a and Article 299 of the Penal Code, and the evaluation of asset values in respect of which either freezing, blockage, or suspension of transactions has been performed, or property seizure, confiscation or forfeiture has been adjudicated.
3. The Minister of Justice shall provide information to the General Inspector on the number of criminal prosecutions, the number of persons in respect to the proceedings instituted and convicted of crimes, with and without legal validity, referred to in Article 165a and Article 299 of the Penal Code, and on asset values in respect to which freezing, blocking, and suspension of a transaction has been performed, or property seizure, confiscation or forfeiture has been adjudicated - within 2 months after the end of the year in question and subject to the report.
4. After having submitted the report referred to in paragraph 1 to the Prime Minister, it shall be published by the minister competent for financial institutions on the website of the Public Information Bulletin of the Ministry of Finance.

Article 4b.1.The General Inspector shall be exempted from performing his responsibilities referred to in Article 18 and 18a, and Article 21 paragraph 1, if there appears a circumstance of such nature that it could raise doubts as to his impartiality.
2. Such an exclusion takes place at the written request of the General Inspector submitted to the minister competent for financial institutions.
3. In the event of such an exclusion of the General Inspector, his responsibilities are taken over by the minister competent for financial institutions.

Act on the Police

Chapter 2. Organisation of the Police

Article 4. [Composition]

1. The Police shall consist of the following services: criminal service, prevention service and the service providing support for the Police activities in the field of organisation, logistics and technology.

2. The Police shall include the court police. The detailed scope of activities and the organisational

rules of the court police shall be defined, by way of ordinance, by the minister competent for internal affairs in agreement with the minister competent for justice.

3. The Police shall also include the following:

1) Police Academy, training centres and Police schools;
2) separate prevention units and anti-terrorist subunits;

3) research and development units.

3a. The organisation and scope of activities of the Police Academy in Szczytno as a higher education facility, the procedure for appointing and dismissing the rector, as well as appointing, selecting and dismissing the vice rectors shall be regulated by the Act of 27 July 2005 - Higher education law (Journal of Laws No. 164, item 1365, as amended1)).

3b. The organisation and scope of activities of the research and development units2) referred to in Paragraph 3 (3), as well as the procedure for appointing and dismissing the directors of such units and their deputies shall be regulated by the Act of 25 July 1985 on research and development units (Journal of Laws of 2008 No. 159 item 993 and of 2009 No. 168, item 1323)3).

4. The Police Commander in Chief, with the approval of the minister competent for internal affairs, may in justified cases establish services other than those listed in Paragraph 1, setting forth their territorial competence, organisation and scope of activities.

Article 4a. [Civil employees] The employees on administrative, technical and auxiliary positions in the Police headquarters and stations, excluding the positions specified by the Police Commander in Chief, shall be employed on terms laid down in the regulations on the state agency employees.

381. Statute of 9 October 2009 amending the Prosecution Act and some other statutes (Journal of Laws nr 178, position 1375), introduced from 31 march 2010, fundamental changes in the functional model of the Public Prosecution Service in Poland. The most important change was separation of function the Prosecutor General from the Ministry of Justice.

382. The new method of appointment of the Prosecutor General has been set up, according to which PG is being nominated by the President of the Republic of Poland from among two candidates presented by the National Prosecution Council and the National Council of the Judiciary, for a 6 years term.

383. Presenting of the candidates before the first nomination, was made by the National Council of the Judiciary, since at that time the National Prosecution Council was not fully operational yet. From 5 to 7 January 2010 public hearing of sixteen candidates took place. On 7 January 2010 members of the Council, in secret ballot, choose two candidates.

384. The President of the Republic of Poland in decision given on 5 March 2010 nominated for the post of the Prosecutor General, Mr. Andrzej Seremet, who started his work on 31 March 2010. According to the article 1 subsection 1 of 20 June 1985 of Prosecution Act, Prosecution Service in Poland is composed of the Prosecutor General and prosecutors of common and military units and prosecutors of the Institute of National Remembrance and a Commission of Prosecuting Crimes against the Polish Nation.

385. In 2010, within the organisational frame of the Prosecution of the Republic of Poland, there were 11 Appellate Prosecution Offices, 45 Circle Prosecution Offices and 356 District Prosecution Offices.

386. Office structure of the Prosecution General of the Republic of Poland, beside providing the Prosecutor General for a merit and technical service, fulfils tasks of securing presence of the Prosecutors in the proceedings before the Constitutional Tribunal, the Supreme Court and the Principal Administrative Court. Beside that Prosecutors of the Prosecution General exercise "higher-instance supervision tasks" over the preliminary proceedings led by the divisions for serious and organised crimes and corruption, located within the structure of the Appellate Prosecution Offices. It is at this level, that visitations, controls, as well as co-ordination of the supervision over preliminary proceedings in lower-level Prosecution Offices take place.

387. Numerous activities of international legal assistance in criminal matters are also performed. The Appellate Prosecutions are headed by the Chief Appellate Prosecutors (and her/his deputies). Primary tasks of the Appellate Prosecution Offices are to assure the presence of the Appellate Prosecutors in the trials in the Appellate Courts and Voivodships (i.e. Regional) Administrative Courts. Units of this level lead and supervise cases of serious organised crimes and corruption, exercise the powers of higher-instance supervision over proceedings led by the Circle Prosecution Offices as well as control-visitations thereto.

388. The Prosecutors of the Circle Prosecution Offices (with a Chief Circle Prosecutor with assistance of two of more deputies) take part in the proceedings before the Circle Courts. Territorially these units encompass few Districts. They are tasked with proceeding with the cases concerning the most aggravated criminal and economical cases. The Circle Prosecution Offices exercise direct official supervision over the proceedings pending in the lowest level of the service - in the District Prosecution Offices, alongside with periodical control visitations. The lowest level of the Prosecution Service in Poland (governed by the Chief District Prosecutor and deputies) is composed of the District Prosecution Offices. They usually encompass a territory of a county or a larger city. As a first line, Prosecutors of the District Prosecutions, handle directly (inquiries and investigations) and supervise preliminary proceedings of other entitled organs (namely police). Prosecutors of the District Prosecution present suspects with charges, bring the written indictments into the courts and represent cases in the courts of first instance, mostly in the District Courts.

389. Additionally, it must be mentioned, that among the general tasks of the Prosecution in Poland is protecting law abidance, defined as participation in civil proceedings (lodging civil motions and complaints if a public interest or a protection of civic and human rights require an action). They also take actions in the labour and social security cases.

390. There is also the Prosecution in the Military Forces of the Republic of Poland, remaining under scrutiny and functional control of civil branch of the Prosecution, functioning at three levels: the Principal Military Prosecution Office located in Warsaw, two Circle Military Prosecution Offices with seats in Warsaw and Poznan and eleven Garrison Military Prosecution Offices in Bydgoszcz, Elblag, Gdynia, Krakow, Lublin, Olsztyn, Poznan, Szczecin, Warsaw, Wroclaw and Zielona Gora.

391. In the structures of the Institute of National Remembrance and a Commission of Prosecuting Crimes against the Polish Nation, Prosecutors perform their duties in the branches called: Main Commission of Prosecuting Crimes against the Polish Nation and local divisions thereof and in the Vetting Offices. The offices are located in the cities where Appellate Prosecutions and Courts have their offices, respectively.

392. From 31 March 2010 the National Prosecution was replaced by the Prosecution General, as comprehensive structure providing a service to the Prosecutor General and performing its statutory

duties in criminal proceedings. The newly introduced statutory regulations, concern the terms of holding of tenures by chiefs and their deputies at all levels of the service.

393. The National Prosecution Council (NPC): The aforementioned statute amending the 1985 Prosecution Act and some other statutes, created the National Prosecution Council (NPC) as a designated self-government organ, possessing wide range of prerogatives, primarily entrusted with responsibility of securing and protecting prosecutorial independence. The Council is composed of the Prosecutor General, the Minister of Justice, representative of the President of the Republic of Poland, four MPs, two senators, one elected Prosecutor representing the Military Prosecution, one elected Prosecutor representing the Institute of National Remembrance, three Prosecutors elected by the Prosecutors of the Prosecution General and eleven Prosecutors elected by local gatherings at appellate level. Office, administrative and financial assistance to the Council has been provided by the structures of the Prosecution General. To have these duties carried out, the Prosecution General provided the Council for office space. Employees necessary for swift and efficient service to the Council have been designated by the Prosecutor General. Right after the completion of the election procedure, the NPC's Members were invited by the Prosecutor General to take part in the inauguration meeting.

394. The NPC constituted on 21 September 2010. During first plenary meeting members of the Council elected a Chairman, two deputies and a secretary of the Council. Representative of the President of the Republic of Poland and Prosecutor of the National Prosecution (ret.) Mr. Edward Zalewski, was elected for a function of the Chairman. Mr. Mariusz Chudzik Prosecutor of the Appellate Prosecution in Rzeszów and Mr. Slawomir Posmyk Prosecutor of the Circle Prosecution in Lodz were entrusted with a post of the Deputies, while Mr. Piotr Wesołowski Prosecutor of the Appellate Prosecution in Gdansk and a Deputy Director of the Prosecutor's General Office was elected as a Secretary of the Council.

395. In 2010 the NPC gathered six times, and gave out one hundred nine resolutions concerning personal cases of the Prosecutors. During a gathering on 5 October 2010, the Council adopted a Program Resolution and a resolution concerning the rules of procedure. It was also decided that the Council will create the permanent commission for adopting a draft professional rules of ethics and a permanent commission for consultation of legal acts concerning the Prosecution, orders and guidelines of the Prosecutor General. The NPC created also a commission for co-ordination and participation in legislative works of the Parliament concerning the draft of the National Prosecution Council Act and a team assessing personal motions of the prosecutors.

(b) Observations on the implementation of the article

396. The Central Anti-Corruption Bureau (CAB) is a special service, established to combat corruption in public and economic life, particularly in public and local government institutions, as well as to fight against activities detrimental to the State's economic interests. The Bureau operates under the Act of 9 June 2006 on the Central Anti-Corruption Bureau.

397. The Head of the CAB is a central authority of the government administration, supervised by the Prime Minister. The Head is appointed for a term of four years and recalled by the Prime Minister, following consultations with the President of the Republic of Poland, the Special Services Committee and the Parliamentary Committee for Special Services. The Head of CAB may be reappointed only once.

398. During the country visit, representatives from the civil society put emphasis on the high

standards of appointment of the Head of the CAB and made a proposal that the Head be appointed by a Parliament decision, on the proposal of the President of the Republic of Poland. This process is similar to the appointment of the Head of the National Audit Office, which, however, functions as a body with a constitutional mandate. The review team took into account these views and invited the national authorities to study them and assess their applicability within the context of a future discussion on the role, mandates and effectiveness of the CAB.

399. Under article 2 of the Act on the Central Anti-Corruption Bureau, the Bureau deals with the identification, prevention and detection of a series of offences, prosecution of perpetrators, as well as control, analytical and preventive activities. Within the first pillar of CAB's activities, the Bureau performs preliminary investigation tasks aimed at disclosing corruption offences and offences detrimental to the State's economy. The Bureau also carries out investigation activities under the PC, with a special focus on offences against the activities of public institutions and local government, administration of justice, financing of political parties, fiscal obligations as well as donation and subvention settlements.

400. Control activities of the Bureau include, among others, the detection and prevention of non-compliance within the scope of issuing economic decisions and the control of accuracy and veracity of asset declarations or statements on conducting business activities by persons performing public functions.

401. Analytical and preventive and educational activities constitute the third and the fourth pillars of activities of the CAB accordingly. During the country visit, representatives from the civil society argued in favour of enhanced CAB efforts geared towards elaborating analytical criminological studies on the implementation of criminal law provisions against corruption.

402. The review team welcomed the existence and function of CAB as a special body against corruption and recommended the continuation of efforts towards enhancing the institutional efficiency of the body. In doing so, the reviewing experts favoured the delineation of the competences of the Bureau taking into account the need for the best use of existing resources (a practical problem reported during the country visit by the civil society and linked to the issue of resources is that of ensuring the accuracy and veracity of asset declarations and declarations of conflicts of interest due to the high number of public officials under scrutiny). It is up to the Polish authorities to decide, bearing in mind the factor of existing resources, whether both law enforcement and preventive functions will remain within the scope of mandate of the CAB or whether the Bureau will focus on law enforcement, pursuant to article 36 of the UNCAC, with enhanced preventive functions assigned to another body.

403. The General Inspector of Financial Information (GIFI) is responsible for carrying out tasks related to money laundering and terrorist financing. Together with subordinated to him Department of Financial Information they create the Polish Financial Intelligence Unit located in the Ministry of Finance which is at the centre of the Polish AML/CFT system.

404. The responsibility for the prosecution of corruption offences rests with the prosecution service which supervises the investigations carried out by the CAB and the law enforcement authorities. Statute of 9 October 2009 amending the Prosecution Act introduced since 31 March 2010 fundamental changes in the functional model of the Public Prosecution Service in Poland. The most important change was the separation of the functions of the Prosecutor General from the Ministry of Justice. The Prosecutor General is nominated by the President of the Republic of Poland from among two candidates presented by the National Prosecution Council and the National

Council of the Judiciary, for a 6 years term.

405. Specialized units against corruption have been created within the prosecution service. The Departments for Organized Crime and Corruption in the Appellate Prosecution Offices, supervised by the Department for Organized Crime and Corruption in the Prosecutor General's Office, deal with the high-profile corruption investigations involving public officials.

406. The aforementioned statute amending the 1985 Prosecution Act established the National Prosecution Council (NPC) as a designated self-government organ, possessing wide range of prerogatives and primarily entrusted with the responsibility for securing and protecting prosecutorial independence.

407. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

408. Enhance the efforts of the Central Anti-Corruption Bureau geared towards elaborating analytical criminological studies on the implementation of criminal law provisions against corruption.

409. Study and assess the applicability of suggestions on the establishment of high standards of appointment of the Head of the CAB, involving a Parliament decision on the proposal of the President of the Republic of Poland.

410. Continue efforts towards enhancing the institutional efficiency of the CAB; delineate the competences of the Bureau taking into account the need for best use of existing resources; and, on that basis, decide whether both law enforcement and preventive functions will remain within the mandate of the CAB or whether the Bureau will focus on law enforcement, pursuant to article 36 of the UNCAC.

Article 37. Cooperation with law enforcement authorities

Paragraph 1 of article 37

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

411. Poland indicated that it has adopted and implemented the provision under review.

412. The applicable law is enshrined in the Criminal Code of 6 June 1997, the Act of 25 June 1997 on the immunity witness and the Act of 25 June 2010 on sport.

413. CAB has provided appropriate measures to encourage persons who participate in the commission of a crime to provide information that could be used for the purpose of investigation and inquiry. Such people can contact us by email, telephone (helpline) and by post. Depending on the nature of the case help provided varies. The Bureau also works on media campaign. CAB also maintains relations with number of bodies to the extent that CAB has competences.

414. There are legal tools also provided for in the Criminal Code.

The Criminal Code

Article 60. §1. The court may apply an extraordinary mitigation of the penalty in the cases specified by law, as well as with respect to a juvenile if this is justified by objectives described in Article 54 § 1.

§ 2. The court may also apply an extraordinary mitigation of the penalty in particularly justified cases when even the lowest penalty stipulated for the offence in question would be incommensurate, and particularly:

1) if the injured person and the perpetrator have been reconciled, the damage incurred has been repaired, or the injured person and the perpetrator have agreed as to the manner of reparation for the damage,
2) taking into consideration the attitude of the perpetrator, particularly if he attempted to repair the damage or prevent the damage from occurring,
3) if a perpetrator of an unintentional offence or someone close to him has suffered a major detriment in connection with the offence committed.

§ 3. The court shall apply an extraordinary mitigation of the penalty or may even conditionally suspend the execution of the penalty, with respect to a perpetrator who, co-operating with others in the commission of an offence, reveals information pertaining to the persons involved therein or essential circumstances thereof, to the agency responsible for its prosecution.

§ 4. Upon a motion from the state prosecutor, the court may apply an extraordinary mitigation of the penalty or even conditionally suspend the execution of the penalty with respect to a perpetrator, who, irrespective of any explanation provided in his case, revealed and presented to the agency responsible for prosecution, essential circumstances, not previously known to that agency, of an offence subject to a penalty exceeding 5 years deprivation of liberty.

§ 5. In the cases referred to in § 3 and 4, the court, in imposing the penalty of deprivation of liberty for up to 5 years, may conditionally suspend the execution of the penalty for a probation period of up to 10 years, if it recognises that, in spite of not serving the penalty, the perpetrator would not commit the offence again; the provisions of Articles 71 through 76 shall be applied accordingly.

§ 6. The extraordinary mitigation of a penalty shall consist in the imposition of the penalty below the statutory limit or a more lenient kind of the penalty according to the following principles:

1) in the event that the act constitutes a crime exposed to at least 25 year punishment of the depravation of liberty, the court shall impose the punishment of the depravation of liberty not lower than 8 years,
2) in the event that the act constitutes a crime, the court shall impose the punishment of the depravation of liberty not lower than one third of the minimum statutory limit,
3) in the event that the act constitutes an offence and the legal minimum limit is a penalty of the depravation of liberty for minimum one year, the court shall impose the punishment of the restriction of liberty or the depravation of liberty,
4) in the event that the act constitutes an offence and the legal minimum limit is a penalty of the depravation of liberty below 1 year, the court shall impose a fine or a penalty of the restriction of liberty.

§ 7. If the act in question is subject, alternatively, to the penalties specified in Article 32 sections 1 through 3, the extraordinary mitigation of a penalty shall consist in renouncing the imposition of the penalty, and the imposition of a penal measure as specified in Article 39 sections 2 - 8; the provision of Article 61 § 2 shall not be applied.

Article 229 § 6. The perpetrator of the act specified in § 1-5 shall not be liable to punishment if the material or personal benefit or a promise thereof were accepted by the person performing public functions and the perpetrator had reported this fact to the law-enforcement agency, revealing all essential circumstances of the offence before this authority was notified of the offence

Article 230a § 3 The penalty is not imposed on the perpetrator of the act specified in § 1 or § 2 if the material or personal benefit or promise thereof were received and the perpetrator had reported this fact to the law-enforcement authority, revealing all essential circumstances of the offence before this authority was notified of the offence

Article 250a § 4 If the perpetrator of the act specified in § 1 or § 3 in conjunction of § 1 notified the body entitled to prosecute of the fact of committing an offence and circumstances in which such offence had been committed before such body was notified of the offence, the court shall apply an extraordinary mitigation of the penalty or may even waive the imposition of the penalty

Article 296a § 5. The perpetrator of the act specified in § 2 or in § 3 in conjunction with § 2 shall not be subject to a penalty if the material or personal benefits or the promise of the same have not been accepted and the perpetrator notified on such fact a body entitled to prosecute and revealed all essential circumstances before such body was notified on this act.

Article 307. § 1. With regard to the perpetrator of the offence specified in Article 296 or 299-305, who voluntarily compensates in full for the damage caused, the court may apply an extraordinary mitigation of the penalty or even renounce its imposition.
§ 2. With regard to the perpetrator of the offence specified in § 1, who voluntarily repaired a significant part of the damage, the court may apply an extraordinary mitigation of the penalty.

Act of 25 June 2010 on sport

Article 49
A person who has committed a crime specified in Article 46 paragraph 2, Article 46 paragraph 3 or 4, in connection with paragraph 2, or in Article 48 paragraph 2 or 3, in connection with paragraph 2, shall not be punishable, if the material or personal benefit or a promise of such benefit has been accepted, and the perpetrator immediately notifies the competent law enforcement body and reveals all the important circumstances of the crime before that law enforcement body discloses them otherwise.

Act of 25 June 1997 on the immunity witness

Article 9 section 1
The perpetrator shall not be subject to penalty for the offences referred to in Article 1, in which he participated and which, as an immunity witness revealed in the manner prescribed in this Act.
Article 9 section 2
The Prosecutor shall render an order on discontinuance of the case within 14 days from the date of coming into force of the decision closing the proceedings against the perpetrators, whose participation in the crime was revealed by the immunity witness against whom he testified.

(b) Observations on the implementation of the article

415. The reviewing experts noted that article 37 of the UNCAC is implemented through articles 60; 229, paragraph 6; 230a, paragraph 3; 250a, paragraph 4; 296a, paragraph 5; and 307 PC. Article 49 of the Act on sport and article 9 of the Act on the immunity witness are also of relevance.

416. There is one so-called "immunity clause" in article 229, paragraph 6 PC, which provides for impunity ("the perpetrator shall not be liable to punishment") if the material or personal benefit or a promise thereof were accepted by the person performing public functions and the perpetrator had reported this fact to the law-enforcement agency, revealing all essential circumstances of the offence before this authority learnt of the offence. Similar "immunity clauses" are found in article 230a, paragraph 3 PC (active trading in influence – "the penalty is not imposed on the perpetrator") and article 296a, paragraph 5 PC (active bribery in the bribery sector – "the perpetrator shall not be subject to a penalty"). Poland's rationale for maintaining Article 229 paragraph 6 is that it breaks criminal solidarity, or bond between parties of an corruption offence and it intends to encourage a perpetrator he /she cooperated with law enforcement agencies. In this respect, the impunity provision has been highly effective in fighting against domestic bribery. The impunity provision was the primary source of detection for domestic bribery cases. According to the Annual Reports of the Department for Organised Crime and Corruption of the General Prosecutor's Office for 2010 and 2011, Article 229.6 was applied in 361 cases in 2010 and in 430 cases in 2011). Confessions arising under Article 229.6 have led to numerous successful prosecutions. Indeed, Article 229.6 was applied in 361 cases of domestic bribery in 2010, and 430 cases in 2011. Between 2007 and 2012, the "impunity" provision was applied 19 times at the stage of judicial proceedings.

417. The reviewing experts encouraged the national authorities to consider whether an amendment in the text of the provisions in the form of optional wording ("*may* not be liable to punishment"; "the penalty *may* not be imposed on the perpetrator"; "the perpetrator *may* not be subject to a penalty" accordingly), coupled with the option of mitigating punishment/circumstances, could be conducive to a more flexible application of the provision on a case-by-case basis and could allow the public prosecutor to "weigh" in each case the level of cooperation of the perpetrator of active bribery.

418. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

419. Consider whether an amendment in the form of optional wording in the text of the "immunity clauses" contained in article 229, paragraph 6, article 230a, paragraph 3 and article 296a, paragraph 5 PC ("*may* not be liable to punishment", "the penalty *may* not be imposed on the perpetrator", "the perpetrator *may* not be subject to a penalty" accordingly), coupled with the option of mitigating punishment/circumstances, could be conducive to a more flexible application of the provision on a case-by-case basis and could allow the public prosecutor to "weigh" in each case the level of cooperation of the perpetrator of active bribery.

Paragraph 2 of article 37

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

420. Poland indicated that it has adopted and implemented the provision under review.

(b) Observations on the implementation of the article

421. See above. The reviewing experts concluded that Poland has partially implemented the provision under review.

Paragraph 3 of article 37

3. Each State Party shall consider providing for the possibility, in accordance with the fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

422. Poland indicated that it has adopted and implemented the provision under review.

423. Poland indicated that, essential thing in this regard is the introduction in 2003 a so-called immunity clause to the Criminal Code - Article 229 § 6. It provides for impunity for active bribery perpetrator if he/she reveals an offence and all accompaning circumstances to the competent authority (Prosecutor, CAB, Police) before the authority lerned about it. This resolution have been extremely helpful to the police to combat corruption by breaking the one of the most important elements of corruption - solidarity joining perpetrators of active and pasive bribery.

424. Case (VI Ds 42/02) conducted by the District Prosecution Authority in Olsztyn. The inquiry concerned corruption among officers of the Border Guard, who in return for pecuniary advantages received from persons crossing the border (in the form of money, cigarettes, alcohol, cosmetics, or fuel) made it possible for the latter to import into the Republic of Poland various goods, mainly cigarettes and alcohol, subject to the obligatory designation by excise tax stamps. 58 persons faced charges in court in the above case, mainly officers of the Border Guard. The disclosure of the criminal mechanism was possible thanks to the testimonials submitted before a state prosecutor by several controllers of the Border Guard, who took part in this corruptive activity. During the inquiry objects from crimes were secured, inter alia cigarettes, alcohol, and money, and furthermore moveable property of the suspects, such as cars and furniture, was seized as a collateral. In the case of one of the suspects money kept at home in the amount of 22,300 PLN, 110 Euro and 995 USD was secured. Moreover, motions were filed to banks during the inquiry asking form the provision of information on bank accounts of the suspects and on the financial resources owned by them. In addition, motions were filed to authorities of fiscal control to institute proceedings against the suspects aiming at the establishment of income from undocumented sources.

(b) Observations on the implementation of the article

425. See above. The reviewing experts concluded that Poland has partially implemented the provision under review.

Paragraph 4 of article 37

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

426. Poland indicated that it is in compliance with this provision.

427. The following text was cited: Please cite the text(s) see art.32.

(b) Observations on the implementation of the article

428. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 5 of article 37

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

429. The State party under review indicated that it is in compliance with this provision.

430. Poland cited the following relevant text:

The Code of Criminal Procedure:

Article 589 b. § 1. Judicial assistance in the preparatory proceedings between the Polish agencies eligible to carry out such proceedings and the competent agencies of a European Union Member State or another state, if so provided by an international agreement the Republic of Poland is a party to, or under reciprocity, may also consist in performance of investigative actions carried within a joint investigative team, hereinafter referred as the "team".

§ 2. The team shall be appointed, by way of agreement, by the Attorney General and a competent agency of the state referred to in § 1, hereinafter referred to as the "co-operating state", for the purposes of specific preparatory proceedings, for a prescribed period of time. § 3. The agreement on the team appointment shall specify:

1) the subject, purpose, place, and period of co-operation, 2) the team composition, with appointment of the leader, 3) assignments of individual team members.

§ 4. The agreement on the team appointment may stipulate a possibility of allowing, under certain circumstances, a representative of an international institution established to combat crime to be admitted to works performed in the team.

§ 5. A period of co-operation under team indicated in the agreement on the team appointment may be extended for a further prescribed period, necessary to achieve the goal of such co-operation; extension shall require consent of all parties to the agreement.

Article 589c. § 1. The team, co-operation within which is carried in territory of the Republic of Poland, hereinafter referred to as the "Polish team", may be established, in particular if:

1) in the course of the preparatory proceedings conducted in the territory of the Republic of Poland into the case of an offence qualified as terrorism, human trafficking, sale of intoxicants, psychotropic

substances or their precursors, or other serious crime, it has been disclosed that the perpetrator acted or consequences of his act have occurred in the territory of another state and there is a need to perform investigative actions in the territory of such state or with the participation of its agency,

2) the preparatory proceedings carried in the territory of the Republic of Poland is subject- or object-related to the preparatory proceedings into a crime mentioned in subsection 1 carried in the territory of another state and there is a need to perform the majority of investigative actions in both proceedings in the territory of the Republic of Poland.

§ 2. A polish state prosecutor shall head the work of the Polish team.

§ 3. The composition of the Polish team shall include other Polish prosecutors and representatives of other agencies authorised to conduct investigation and official from competent authorities of the co-operating state, hereinafter referred to as "delegated officials".

§ 4. Actions in the preparatory proceedings performed by the Polish team shall be governed by the provisions of domestic law, subject to § 5-8 and Article 589e.

§ 5. Delegated officials may be present in all procedural actions carried by the Polish team, unless in a specific case, justified by the need of protecting an important interest of the Republic of Poland or rights of an individual, a person heading the team orders otherwise.

§ 6. Upon consent of the parties to the agreement on the appointment of the Polish team, a person heading such team may assign a delegated official performance of a specific investigative action, with the exclusion of issuance of orders provided for in this Code. In such event, a Polish team member shall participate in such action and prepare a report from it.

§ 7. If there is a need to perform an investigative action in the territory of a co-operating state, an official delegated by such state shall submit a motion for judicial assistance to a relevant institution or agency. The provision of Article 587 shall be applied accordingly to reports prepared in the performance of such motion.

§ 8. Within the limits set by the agreement on the appointment of the Polish team, the representative of the international institution who is referred to in Article 589b § 4 shall have the rights specified in § 5.

Article 589d. § 1. The state prosecutor or a representative of another agency authorised to conduct investigation may be delegated to a team in the territory of another co-operating state in cases provided for by regulations of the state in the territory of which the team co-operation takes place. A decision on such delegation shall be taken by the Attorney General or another competent agency, respectively.

§ 2. A team member that is referred to in § 1, who is a Polish state prosecutor shall have the rights of a prosecutor of a foreign state specified in Article 588 § 1. The provision of Article 613 § 1 shall not be applied.

§ 3. Institutions and agencies of the Republic of Poland, other than the state prosecutor that is referred to in § 2, shall provide indispensable assistance to the Polish team member that is referred to in § 1, within the limits and in compliance with the regulations of domestic law.

Article 589e. § 1. Information obtained by a team member further to the participation in the team work, not available otherwise to the state that has delegated him, may used by a relevant agency of such state, also for the purpose of:

1) conducting criminal proceedings on its own - upon consent of the co-operating state whose institution or agency have provided information,

2) preventing direct, serious threat to public security,

3) other than mentioned in subsection 1 and 2, if so provides the agreement on the team appointment.

§ 2. The consent referred to in § 1 subsection 1 may revoked only when the use of information could threaten the interest of the preparatory proceedings carried in the co-operating state whose institution or agency have provided information, and in the event whereby the state could refuse mutual assistance.

Article 589f. § 1. A state that has delegated a team member shall be held liable for the damage inflicted by a team member further to the performance of actions, pursuant to the terms specified in the regulations of the stated in the territory of which the team has co-operated.

§ 2. If damage inflicted to other person is a consequence of action or omission of a team member who has been delegated by another co-operating state, the amount of money being an equivalent of damage shall be temporarily disbursed to the wronged person by a relevant agency of the state in the territory of which the team has co-operated.

§ 3. In the event specified in § 2 the amount of money that has been paid out shall be reimbursed to the agency that has temporarily paid such amount upon its request.

(b) Observations on the implementation of the article

431. The reviewing experts took into account the explanations provided by the national authorities during the country visit and noted that in the field of international cooperation to implement paragraphs 2 and 3 of article 37 of the UNCAC, the Polish authorities clarified that there are no agreements with other countries in place, but cooperation is decided on a case-by-case basis.

432. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 38. Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or
(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

433. Poland indicated that it is in compliance with this provision.

434. Poland indicated that measures foreseen in Articles 38 of the Convention have been adopted and fully implemented. The applicable law is provided for in the Criminal Code and the Criminal Procedure Code, as well as in the specific acts regulating activities of state agencies responsible for control of public administration (The Supreme Chamber of Control) and counteracting money laundering (The General Inspector for Financial Information).

435. The following text was cited:

The Criminal Procedure Code

Article 304.
§ 2. State or local government institutions which in connection with their activities have been informed of an offence prosecuted ex officio, shall be obligated to immediately inform the state prosecutor or the Police thereof. In addition, they are obligated to take steps not amenable to delay, until the arrival of the officials of an agency authorised to prosecute such offences, or until that agency issues a suitable ruling in order to prevent the effacing of traces and removal of evidence of the offence.

Failure to comply with the obligation set out in Article 304 § 2 of the Penal Procedure Code constitutes an offence under Article 231 of the Criminal Code.

The Criminal Code

Article 231. § 1. A public official who, exceeding his authority, or not performing his duty, acts to the detriment of a public or individual interest shall be subject to the penalty of deprivation of liberty for up to 3 years.
§ 2. If the perpetrator commits the act specified in § 1 with the purpose of obtaining a material or personal benefit, he shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.
§ 3. If the perpetrator of the act specified in § 1 acts unintentionally and causes an essential damage shall be subject to a fine, the penalty of restriction of liberty, or deprivation of liberty for up to 2 years.
§ 4. The provision of § 2 shall not be applied when the act has the features of the prohibited act specified in Article 228.

Act of 23 December 1994 on the Supreme Chamber of Control

Art. 63.

In case of reasonable suspicion of commission of the offence, the Supreme Chamber of Control shall notify the authority responsible for investigating offences and shall inform the head of audited entity or the competent authority of a state or local government.

Act of 16 November 2000 on Counteracting Money Laundering and the Financing of Terrorism

Article 31

Should the General Inspector conclude from the information in hand, or from the processing and analysis thereof, that there are well-founded grounds for suspecting the offence referred to in Article 299 of the Penal Code or mentioned in Article 2 Subparagraph 7, the General Inspector shall inform the public prosecutor of his suspicions and provide him with evidence supporting such suspicion.

436. Moreover cooperation between public authorities and non-goverment organizations is maintained. The CAB cooperates with NGO's and private sector by providing them with trainings and publications on corruption.

(b) Observations on the implementation of the article

437. The reviewing experts noted that the national authorities reported on domestic provisions facilitating cooperation between government institutions to combat crime, including corruption offences (mainly article 304 CPC).

438. Based on information received during the country visit, the reviewing experts invited the national authorities to continue efforts aimed at enhancing interagency coordination in the fight against corruption, as well as cooperation between national authorities and the private sector for the same purpose.

439. The reviewing experts concluded that Poland has implemented the provision, but there is a need to enhance efforts for better coordination.

(c) Challenges in implementation and recommendations

440. Continue efforts aimed at enhancing interagency coordination in the fight against

corruption.

Article 39. Cooperation between national authorities and the private sector

Paragraph 1 of article 39

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

441. Poland indicated that it has adopted and implemented the provision under review.

442. Poland also indicated that the CAB cooperates with all Polish law enforcement agencies. The cooperation is based on national regulations.

443. Moreover, the CAB has signed several cooperation agreements, inter alia, with the Police, Internal Security Agency, Intelligence Agency, Military Counterintelligence Service, Central Bureau of Investigation (under Police structure).

(b) Observations on the implementation of the article

444. The reviewing experts noted that the national authorities reported on domestic provisions facilitating cooperation between between government institutions and private sector entities (article 15, paragraph 3 CPC and, especially in the field of money-laundering and financing of terrorism, chapter 4 of the Act on "counteracting money laundering and terrorism financing" of 16 November 2000).

445. The reviewing experts concluded that Poland has implemented the provision, but there is a need to enhance efforts for more enhanced cooperation.

446. The reviewing experts invited the national authorities to continue efforts aimed at enhancing cooperation between national authorities and the private sector in the fight against corruption.

(c) Challenges in implementation and recommendations

447. Continue efforts aimed at enhancing cooperation between national authorities and the private sector in the fight against corruption.

Paragraph 2 of article 39

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established

in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

448. Poland indicated that it has adopted and implemented the provision under review.

449. The State party under review indicated that CAB is encouraging polish citizens and other persons with habitual residence in its territory to report and inform about corruption offences. Due to that nationals and others can contact the Bureau by phone (hotline):
800-808-808 or international call: +48 22-437-27-28), by post: Al. Ujazdowskie 9, 00-583 Warszawa; or by safe mail box: kontakt@cba.gov.pl .

450. Any person wanting to report a corruption offence is informed in advance about his/her legal situation: according to Polish law a person who gave a bribe and informed about it a competent authority providing it with all the relevant circumstances of the offence - before the authority learned about the offence - shall not be subject to punishment.

(b) Observations on the implementation of the article

451. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 40. Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

452. Poland indicated that it has adopted the provision under review.

453. The applicable law is enshrined in the Banking Act of 29 August 1997.

Banking Act

Article 105.

1. Banks shall be required to disclose information that is subject to the obligation of banking secrecy solely:
1) (to other banks and credit institutions to the extent to which such information is necessary in relation to performing banking operations and the purchase and sale of receivables,
1a) on a reciprocal basis - to other institutions authorized by law to extend loans - on receivables, trading and balances of bank accounts to the extent to which such information is necessary in relation to the extension of loans, cash advances, guarantees and endorsements,
1b) to other banks, credit institutions or financial institutions to the extent necessary to follow binding regulations related to consolidated supervision, including in particular preparation of consolidated financial reports also covering the bank, or to the management of large exposures,
2) at the request of:
a) the Commission for Banking Supervision, with regard to supervision exercised pursuant to the present Act and the National Bank of Poland Act of August 29, 1997 (as published and

amended in Dziennik Ustaw No. 140/1997, item 938), bank examiners, with the scope of information provided being that referred to in Art. 139, para. 1, subpara. 2, and persons duly authorised by resolution of the Commission for Banking Supervision, with the scope of information provided being that specified in the relevant authorisation,
b) a court or public prosecutor in connection with legal proceedings under way in cases involving criminal or fiscal offences:
- against a natural person where such person is party to an agreement with the bank, with the scope of information being that related to that natural person,
- committed with respect to the activity of a juridical person or organisation not possessed of personality at law, with the scope of information being that related to that juridical person or organization,
c) a court or public prosecutor in connection with the performance of a request for legal assistance from a foreign country which, on the basis of a ratified international agreement binding on the Republic of Poland, has the right to request information that is subject to the obligation of banking secrecy,
d) a court in connection with legal proceedings under way in cases involving inheritance or the division of the joint property of husband and wife, and also legal proceedings under way against a natural person in cases involving maintenance or continuous financial provisions related to maintenance, where the said person is party to an agreement with the bank,
e) the director of a customs office in connection with:
- legal proceedings under way against a natural person in cases involving criminal or fiscal offences, where the said person is party to an agreement with the bank,
- legal proceedings under way in cases involving criminal or fiscal offences committed, against a juridical person or an organization not possessed of personality at law, where such are accountholders at the bank,
f) the President of the Supreme Chamber of Inspection, with the scope of information provided being that necessary to carry out the inspection procedures specified in the Act on the Supreme Chamber of Inspection of December 23, 1994 (as published in Dziennik Ustaw No. 85/2001, item 937; No. 154/2001, item 1800, and No. 153/2002, item 1271),
g) the Chairperson of the Securities and Exchange Commission, in performance of their supervisory responsibilities, including explanatory proceedings, pursuant to the Act referred to in Art. 4, para. 1, subpara. 8,
h) the President of the Bank Guarantee Fund, with the scope of information provided being that specified in the Act on the Bank Guarantee Fund of December 14, 1994 (as published and amended in Dziennik Ustaw No. 9/2000, item 131),
i) the external auditor appointed to audit the bank's accounts by contractual agreement with the bank,
j) the Commission for the Supervision of Insurance and Pension Funds, in performance of its supervisory responsibilities with respect to the operation of banks as depository institutions pursuant to the Act on the Organisation and Operation of Pension Funds of August 28, 1997 (as published and amended in Dziennik Ustaw No. 139/1997, item 934),
k) the state security services, and officers or soldiers thereof, furnished with due written authorisation, with the scope of information provided being that necessary to conduct inquiries pursuant to the regulations on the protection of restricted information,
l) the police, where this is necessary for effective crime prevention or detection, or to establish the perpetrators of a crime and gather evidence, in accordance with the principles and procedure specified in Article 20 of the Police Act of April 6, 1990,
?) a court bailiff, in connection with enforced collection proceedings that are under way,
m) issuers of electronic payment instruments other than banks, to the extent specified in the Electronic Payment Instruments Act of September 12, 2002 (Dziennik Ustaw, No. 169/2002, item 1385),
n) the General Inspector of Personal Data Protection to the extent necessary to perform statutory tasks specified in Art. 12 and 14 of the Personal Data Protection Act of August 29, 1997 (Dziennik Ustaw No. 101/2002, item 926, No. 153/2002, item 1271, No. 25/2004, item 219 and No. 33/2004, item 285).
3) to the National Bank of Poland in relation to executing examination and gathering data needed to draw up the balance of payments and the international investment position, as well as to other banks authorised to perform payment orders to foreign countries by residents and domestic settlements with non-residents, in the scope specified in the Foreign Exchange Act of July 27, 2002 (Dziennik Ustaw No. 141/2002, item 1178).

2. The scope of information provided by banks to tax authorities, the General Inspector of Financial Information, fiscal inspection agencies, as well as the trustee and their deputy, under the provisions of the Act on Mortgage Banks and Mortgage Bonds of August 29, 1997(Dziennik Ustaw No. 140/1997, item 940, No. 107/1998, item 669, No. 6/2000, item 70, No. 60/2000, item 702, No. 15/2001, item 148, No. 39/2001, item 459, and No. 126/2002, item 1070) and the principles applicable to the provision of that information, shall be those laid down in separate legislation.

2a. Banks, at a written request of the Social Insurance Board, shall be required to draw up and forward information on the bank account numbers of the contribution payers, and forward data enabling identification of those account holders.

3. Banks, other institutions authorised by statute to extend loans, governmental agencies and other parties to whom information that is subject to the obligation of banking secrecy has been disclosed shall be bound to utilise such information solely within the limits to which they are authorised under para. 1 above.

4. Banks, together with banking chambers of commerce, may establish institutions for the collection, processing and provision:
1) to banks - information subject to the obligation of banking secrecy in the scope that is necessary in relation to performing banking operations,
2) to other institutions authorized by statute to extend loans - information on receivables, trade and balances of bank accounts in the scope needed to extend loans, cash advances, guarantees and endorsements.

4a.Institutions established under the provisions of para.4 above may offer business information agencies, operating under the Act on making available of business data of February 14, 2003 (Dziennik Ustaw No. 50/2003, item 424), access to data in the scope and on the terms specified in the above-mentioned Act.

4b. Banks may make available to the agencies referred to in para. 4a, data on liabilities due to agreements related to banking operations, where such agreements include clauses informing of the possibility of forwarding data to those agencies.

4c. The writs referred to in para. 4b, contain information on the terms applicable in forwarding the data referred to in Art. 7, para. 2 and Art. 8 para. 1 of the Act referred to in para. 4a, by the banks to the agencies.

4d. Institutions created pursuant to para. 4 may offer access to information on receivables due to agreements related to banking operations to financial institutions that are the banks' subsidiaries, where such agreements include clauses informing of the possibility of forwarding data to those financial institutions.

5. Banks shall be liable for any damages resulting from their disclosure of information that is subject to the obligation of banking secrecy and from the utilization of such information for purposes other than those intended.

6. Banks shall not be liable for any damages resulting from the disclosure of information that is subject to the obligation of banking secrecy by the persons and institutions authorised under the present Act to require banks to provide such information.

(b) Observations on the implementation of the article

454. The reviewing experts noted that article 105, paragraph 1, of the Banking Act stipulates that banks are required to disclose information that is subject to the obligation of banking secrecy at the request of a court or public prosecutor in connection with legal proceedings under way in cases involving criminal or fiscal offences. During the country visit, Poland acknowledged that the

procedure for applying for bank records-although made ex-parte- may be subject to legal challenges, thus entailing delay in disclosure of these records with the net effect that progress of ongoing investigation may be seriously impaired. Therefore the review team recommended that effective legislative measures be implemented for disclosure of bank records to take place within a prescribed reasonable timeframe and for the possibility of legal challenges to be curtailed, to avoid unnecessary delays.

455. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

456. Implement effective legislative measures for the disclosure of bank records within a prescribed reasonable time frame and for the possibility of legal challenges to be curtailed to avoid unnecessary delays (see also under article 37, paragraph 1, of the Convention).

Article 41. Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

457. Poland indicated that it has adopted and implemented the measures described above.

458. The applicable law is enshrined in the Criminal Code.

Criminal Code

Article 114. § 1. A sentencing judgement rendered abroad shall not bar criminal proceedings for the same offence from being instituted before a Polish court.

§ 2. The court shall credit to the penalty, imposed the period of deprivation of liberty actually served abroad and the penalty there executed, taking into consideration the differences between these penalties.

§ 3. The provision of § 1 shall not apply:

1) in the event that the sentencing judgement adjudicated abroad was taken over to be enforced in the territory of the Republic of Poland and in the event that the sentence passed abroad refers to an offence with respect to which either the prosecution was taken over or the perpetrator was surrendered from the territory of the Republic of Poland
2) to verdicts of international criminal courts operating under international law that is binding for the Republic of Poland,
3) to valid court sentences or decisions of other bodies of foreign states concluding penal proceedings if it results from an international treaty binding for the Republic of Poland.

§ 4. If a Polish citizen validly and finally sentenced by a court in a foreign country, has been transferred to execute the sentence within the territory of the Republic of Poland, the court shall determine, under Polish law, the legal classification of the act, and the penalty to be executed or any other penal measure provided for in this Act; the basis for determination of the penalty or other measure subject to execution shall be provided by the sentencing judgement rendered by a court of a foreign country, the penalty prescribed for such an act under Polish law, the period of actual deprivation of liberty abroad, the penalty or other measure executed there,

and the differences between these penalties considered to the favour of the sentenced person.

Art. 114a. In criminal proceedings, final judgments rendered in another Member State of the European Union shall be taken into account insofar they find a person guilty for a criminal offence different than the one that is the subject of criminal proceedings, unless:

1) conviction concerned an activity that does not constitute a criminal offence under the Polish law
2) adjudicated penalty is unknown in the Polish legislation,
3) a convicted person Gould exempted the penalty under the Polish law ,
4) taking into account a foreign judgment would result in annulment or amendment of the judgment
5) there are justified grounds to assume that taking the judgment into account would result in breaching the rights and freedom of convicted person in another Member State of the European Union,
6) according to information obtained from the foreign court or criminal record, the offence addressed by the judgment is subject to remission by means of abolition or clemency,
7) obtained information is not sufficient for taking the judgment into account

(b) Observations on the implementation of the article

459. The reviewing experts noted that article 41 of the UNCAC is implemented through articles 114 and 114a PC. The reviewing experts concluded that Poland has adopted measures to take into consideration any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

460. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 42. Jurisdiction

Subparagraph 1 (a) of article 42

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

461. Poland indicated that it is in compliance with this provision.

462. The applicable law is enshrined in the Criminal Code.

The Criminal Code

Article 5. The Polish penal law shall be applied to the perpetrator who committed a prohibited act

within the territory of the Republic of Poland, or on a Polish vessel or aircraft, unless an international agreement to which the Republic of Poland is a party to stipulates otherwise.

(b) Observations on the implementation of the article

463. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 1 (b) of article 42

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

...

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

464. Poland indicated that it is in compliance with this provision.

465. The following text was cited:

The Criminal Code

Article 5. The Polish penal law shall be applied to the perpetrator who committed a prohibited act within the territory of the Republic of Poland, or on a Polish vessel or aircraft, unless an international agreement to which the Republic of Poland is a party stipulates otherwise.

Article 6 § 1. A prohibited act shall be deemed to have been committed at the time when the perpetrator has acted or omitted to take an action which he was under obligation to perform.
§ 2. A prohibited act shall be deemed to have been committed at the place where the perpetrator has acted or has omitted an action which he was under obligation to perform, or where the criminal consequence has ensued or has been intended by the perpetrator to ensue.

(b) Observations on the implementation of the article

466. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 2 (a) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

467. Poland indicated that it has adopted measures to establish its jurisdiction in accordance with the provision under review.

468. The State party under review cited the following relevant text:

> **The Criminal Code**
>
> Article 110. § 1. The Polish penal law shall be applied to aliens who have committed abroad an offence against the interests of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish organisational unit not having legal personality and to aliens who have committed abroad a terrorist offence.
>
> § 2. The Polish penal law shall be applied to aliens in the case of the commission abroad an offence other than listed in § 1, if, under the Polish penal law, such an offence is subject to a penalty exceeding 2 years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and no decision on his extradition has been taken.
>
> Article 111. § 1. The requirement for liability for an act committed abroad is that an act is likewise recognised as an offence by a law in force in the place of its commission.
> §2. If there are differences between the Polish penal law and the law in force in the place of commission, the court may take these differences into account in favour of the perpetrator.
> § 3. The condition provided for in § 1 shall not be applied neither to the Polish public official, performing his duties abroad, has committed an offence in connection with his functions, nor to a person who committed an offence in a place beyond the jurisdiction of any state authority.

(b) Observations on the implementation of the article

469. The reviewing experts noted that, pursuant to article 111, paragraph 1 PC, dual criminality is generally required to establish extra-territorial jurisdiction, but this requirement is lifted by virtue of articles 111, paragraph 3, and 112 PC in certain cases, including in cases of Polish public officials performing their duties abroad, or where the offence in question is committed against Polish public officials, or where the offence is committed against the internal or external security and essential economic interests of Poland, or in the case of offences from which any material benefit has been obtained, even indirectly, within the national territory. Furthermore, article 110, paragraph 1 PC establishes jurisdiction over offences committed against the interests of the Republic of Poland and against a Polish citizen (passive personality principle).

470. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 2 (b) of article 42

> *2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*
>
> *...*
>
> *(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

(a) Summary of information relevant to reviewing the implementation of the article

471. Poland indicated that it has adopted measures to establish its jurisdiction in accordance with the provision under review.

The Criminal Code

Liability for offences committed abroad

Article 109. The Polish penal law shall be applied to Polish citizens who have committed an offence abroad.

(b) Observations on the implementation of the article

472. The reviewing experts noted that, pursuant to article 111, paragraph 1 PC, dual criminality is generally required to establish extra-territorial jurisdiction, but this requirement is lifted by virtue of articles 111, paragraph 3, and 112 PC in certain cases, including in cases of Polish public officials performing their duties abroad, or where the offence in question is committed against Polish public officials, or where the offence is committed against the internal or external security and essential economic interests of Poland, or in the case of offences from which any material benefit has been obtained, even indirectly, within the national territory. Furthermore, article 109 PC stipulates that the Polish penal law is to be applied to Polish citizens who have committed an offence abroad (active personality principle).

473. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 2 (c) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

474. Poland indicated that it has adopted measures to establish its jurisdiction in accordance with the provision under review.

475. The following applicable measure(s) was cited:

The Criminal Code

Liability for offences committed abroad

Article 109. The Polish penal law shall be applied to Polish citizens who have committed an offence abroad.

Article 110. § 1. The Polish penal law shall be applied to aliens who have committed abroad an offence against the interests of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish organisational unit not having legal personality and to aliens who have committed abroad a terrorist offence.

§ 2. The Polish penal law shall be applied to aliens in the case of the commission abroad an offence other than listed in § 1, if, under the Polish penal law, such an offence is subject to a penalty exceeding 2 years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and no decision on his extradition has been taken.

Article 111. § 1. The requirement for liability for an act committed abroad is that an act is likewise recognised as an offence by a law in force in the place of its commission.

§2. If there are differences between the Polish penal law and the law in force in the place of commission, the court may take these differences into account in favour of the perpetrator.

§ 3. The condition provided for in § 1 shall not be applied neither to the Polish public official, performing his duties abroad, has committed an offence in connection with his functions, nor to a person who committed an offence in a place beyond the jurisdiction of any state authority.

Article 112. Notwithstanding the provisions in force in the place of the commission of the offence the Polish penal law shall be applied to a Polish citizen or an alien in case of the commission of:

1) an offence against the internal or external security of the Republic of Poland; 2) an offence against Polish offices or public officials;

3) an offence against essential economic interests of Poland 4) an offence of false deposition made before a Polish office.

5) an offence from which any material benefit has been obtained, even indirectly, within the territory of the Republic of Poland.

Article 113. Notwithstanding the provisions binding in the place of committing an offence, the Polish Penal law shall be applied to a Polish national and an alien, whose surrender has not been decided if such an alien has committed an offence abroad and the Republic of Poland is obliged to prosecute such crime under an international treaty or if an offence committed by such an alien is specified in the Rome Statute of the International Criminal Court, drawn up in Rome on 17 July 1998 (Journal of Laws of 2003, No. 78, pos. 708).

(b) Observations on the implementation of the article

476. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 2 (d) of article 42

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

477. Poland indicated that it has adopted measures to establish its jurisdiction in accordance with the provision under review.

478. Poland cited the following relevant text:

The Criminal Code

Article 110. § 1. The Polish penal law shall be applied to aliens who have committed abroad an offence against the interests of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish organisational unit not having legal personality and to aliens who have committed abroad a terrorist offence.

§ 2. The Polish penal law shall be applied to aliens in the case of the commission abroad an offence other than listed in § 1, if, under the Polish penal law, such an offence is subject to a penalty exceeding 2 years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and no decision on his extradition has been taken.

Article 111. § 1. The requirement for liability for an act committed abroad is that an act is likewise recognised as an offence by a law in force in the place of its commission.
§2. If there are differences between the Polish penal law and the law in force in the place of commission, the court may take these differences into account in favour of the perpetrator.
§ 3. The condition provided for in § 1 shall not be applied neither to the Polish public official, performing his duties abroad, has committed an offence in connection with his functions, nor to a person who committed an offence in a place beyond the jurisdiction of any state authority.

(b) Observations on the implementation of the article

479. The reviewing experts noted that, pursuant to article 111, paragraph 1 PC, dual criminality is generally required to establish extra-territorial jurisdiction, but this requirement is lifted by virtue of articles 111, paragraph 3, and 112 PC in certain cases, including in cases of Polish public officials performing their duties abroad, or where the offence in question is committed against Polish public officials, or where the offence is committed against the internal or external security and essential economic interests of Poland, or in the case of offences from which any material benefit has been obtained, even indirectly, within the national territory. Furthermore, article 110, paragraph 1 PC establishes jurisdiction over offences committed against the interests of the Republic of Poland and against a Polish citizen (passive personality principle).

480. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 3 of article 42

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

481. Poland indicated that it is in compliance with this provision.

The Criminal Code

Article 110. § 1. The Polish penal law shall be applied to aliens who have committed abroad an offence against the interests of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish organisational unit not having legal personality and to aliens who have committed

abroad a terrorist offence.
§ 2. The Polish penal law shall be applied to aliens in the case of the commission abroad an offence other than listed in § 1, if, under the Polish penal law, such an offence is subject to a penalty exceeding 2 years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and no decision on his extradition has been taken.

(b) Observations on the implementation of the article

482. According to article 110, paragraph 2 PC, the national criminal laws apply to aliens in the case of the commission abroad an offence other than terrorist offences and those committed abroad against the interests of the State and a Polish citizen or legal person, if, under the Polish penal law, such an offence is subject to a penalty exceeding two years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and no decision on his extradition has been taken. The reviewing experts noted the use of this provision for the application of the axiom *"aut dedere aut judicare"* (see article 44, paragraph 11 of UNCAC), but also highlighted the restriction posed by the threshold of two years of imprisonment, recommending its deletion.

483. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

484. Amend the domestic legislation (article 110, paragraph 2 PC) along the lines of removing the threshold of two years of imprisonment for the establishment of domestic criminal jurisdiction for prosecution purposes in lieu of extradition.

Paragraph 4 of article 42

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

485. Poland indicated that it is in compliance with this provision.

The Criminal Code

Article 110. § 1. The Polish penal law shall be applied to aliens who have committed abroad an offence against the interests of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish organisational unit not having legal personality and to aliens who have committed abroad a terrorist offence.
§ 2. The Polish penal law shall be applied to aliens in the case of the commission abroad an offence other than listed in § 1, if, under the Polish penal law, such an offence is subject to a penalty exceeding 2 years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and no decision on his extradition has been taken.

(b) Observations on the implementation of the article

486. According to article 110, paragraph 2 PC, the national criminal laws apply to aliens in the case of the commission abroad an offence other than terrorist offences and those committed abroad

against the interests of the State and a Polish citizen or legal person, if, under the Polish penal law, such an offence is subject to a penalty exceeding two years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and no decision on his extradition has been taken. The reviewing experts noted the use of this provision for the application of the axiom *"aut dedere aut judicare"* (see article 44, paragraph 11 of UNCAC), but also highlighted the restriction posed by the threshold of two years of imprisonment, recommending its deletion.

487. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

488. Amend the domestic legislation (article 110, paragraph 2 PC) along the lines of removing the threshold of two years of imprisonment for the establishment of domestic criminal jurisdiction for prosecution purposes in lieu of extradition.

Paragraph 5 of article 42

> *5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

(a) Summary of information relevant to reviewing the implementation of the article

489. Poland indicated that it is in compliance with this provision.

490. The following applicable measure was cited:

The Code of Criminal Procedure

Article 592. § 1. If the criminal proceedings regarding the same act of the same person have been instituted in the Republic of Poland and in a foreign state, the Minister of Justice shall conduct consultations with an appropriate agency of a foreign state and, when the interest of the administration of justice so require, shall request the taking over (the person) or transferring of the criminal prosecution, then Article 590 §§ 2 through 5 and Article 591 § 2 through 6 shall be applied accordingly.

§ 2. If, pursuant to an international agreement to which the Republic of Poland is a party, criminal proceedings for an offence committed abroad have been instituted in the Republic of Poland, the Minister of Justice may request of an appropriate agency of a foreign state that the prosecution be taken over by agencies of that state, irrespective of whether the prosecution has been instituted in the foreign state for the same act. The provisions of Article 591 § § 2, 5 and 6 shall be applied accordingly.

§ 3. In the case for an offence committed abroad by a Polish national, when the interest of the administration of justice so require, the Minister of Justice may request of an appropriate agency of a foreign state that the prosecution be taken over by agencies of that state. The provisions of Article 591 § § 2, 5 and 6 shall be applied accordingly.

(b) Observations on the implementation of the article

491. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 6 of article 42

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

492. Poland indicated that it has adopted grounds of criminal jurisdiction other than those described above.

493. The following applicable measure was cited:

The Criminal Code

Article 114. § 1. A sentencing judgement rendered abroad shall not bar criminal proceedings for the same offence from being instituted before a Polish court.

§ 2. The court shall credit to the penalty, imposed the period of deprivation of liberty actually served abroad and the penalty there executed, taking into consideration the differences between these penalties.

§ 3. The provision of § 1 shall not apply:

1) in the event that the sentencing judgement adjudicated abroad was taken over to be enforced in the territory of the Republic of Poland and in the event that the sentence passed abroad refers to an offence with respect to which either the prosecution was taken over or the perpetrator was surrendered from the territory of the Republic of Poland
2) to verdicts of international criminal courts operating under international law that is binding for the Republic of Poland,
3) to valid court sentences or decisions of other bodies of foreign states concluding penal proceedings if it results from an international treaty binding for the Republic of Poland.

§ 4. If a Polish citizen validly and finally sentenced by a court in a foreign country, has been transferred to execute the sentence within the territory of the Republic of Poland, the court shall determine, under Polish law, the legal classification of the act, and the penalty to be executed or any other penal measure provided for in this Act; the basis for determination of the penalty or other measure subject to execution shall be provided by the sentencing judgement rendered by a court of a foreign country, the penalty prescribed for such an act under Polish law, the period of actual deprivation of liberty abroad, the penalty or other measure executed there, and the differences between these penalties considered to the favour of the sentenced person.

(b) Observations on the implementation of the article

494. The reviewing experts concluded that Poland has adequately implemented the provision under review.

IV. International cooperation

495. On the cross-cutting issue of statistical data on different modalities of international cooperation in criminal matters, the reviewing experts were provided with some statistical data on extradition for the years 2012-2013. However, they highlighted the need for a more systematic approach in compiling statistical data on extradition cases and encouraged the national authorities to continue efforts in this regard. Similarly to extradition, the reviewing experts reiterated the same observation regarding MLA cases.

496. The general observation made was to continue efforts to put in place and render fully operational information system compiling in a systematic manner information on extradition and mutual legal assistance cases, with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements.

Article 44. Extradition

Paragraph 1 of article 44

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

497. Poland has indicated that it has adopted and implemented the provision under review.

498. Poland has cited the following text:

> **THE CONSTITUTION OF THE REPUBLIC OF POLAND** OF 2nd APRIL, 1997 As published in Dziennik Ustaw No. 78, item 483

Article 55

The extradition of a Polish citizen shall be prohibited, except in cases specified in paras 2 and 3.

Extradition of a Polish citizen may be granted upon a request made by a foreign state or an international judicial body if such a possibility stems from an international treaty ratified by Poland or a statute implementing a legal instrument enacted by an international organisation of which the Republic of Poland is a member, provided that the act covered by a request for extradition:

1) was committed outside the territory of the Republic of Poland, and
2) constituted an offence under the law in force in the Republic of Poland or would have constituted an offence under the law in force in the Republic of Poland if it had been committed within the territory of the Republic of Poland, both at the time of its commitment and at the time of the making of the request.

Compliance with the conditions specified in para. 2 subparas 1 and 2 shall not be required if an extradition request is made by an international judicial body established under an international treaty ratified by Poland, in connection with a crime of genocide, crime against humanity, war crime or a crime of aggression, covered by the jurisdiction of that body.

The extradition of a person suspected of the commission of a crime for political reasons butwithout the use of force shall be forbidden, so as an extradition which would violate rights and freedoms of persons and citizens.

The courts shall adjudicate on the admissibility of extradition.

According to Article 604§ 1 of the Code of Criminal Procedure, extradition is inadmissible if:
(1) the person to whom such a motion refers, is a Polish national or has been granted the right of asylum in the Republic of Poland,
(2) the act does not have the features of a prohibited act, or if the law stipulates that the act does not constitute an offence, or that a perpetrator of the act does not commit an offence or is not subject to penalty,
(3) the period of limitation has elapsed,

(4) the criminal proceedings have been validly concluded concerning the same act committed by the same person,
(5) the extradition would contravene Polish law,

(6) there are grounds for fearing that in the state moving for extradition, a death sentence may be issued for the extradited person or later executed,
(7) there is a justified concern that freedom and rights of the extradited person may be violated in the state requesting extradition,
(8) applies to a person prosecuted for commitment of an offence without the use of violence due to political reasons
§ 2. In particular, extradition may be refused, if:

(1) the person to whom such a motion refers has permanent residence in Poland,

(2) the criminal offence was committed on the territory of the Republic of Poland, or on board of a Polish vessel or aircraft,
(3) criminal proceedings are pending concerning the same act committed by the same person,
(4) the offence is subject to prosecution on a private charge,

(5) pursuant to the law of the State which has moved for extradition, the offence committed is subject to the penalty of deprivation of liberty for a term not exceeding one year, or to a lesser penalty or such a penalty has been actually imposed,
(6) an offence further to which extradition is requested is a military or fiscal offence, or a political offence other than specified in § 1 subsection 8,
(7) the State which has moved for extradition, does not guarantee reciprocity in this matter. § 3. In the event indicated in § 1 subsection (4) and § 2 subsection (3), the resolution of the

motion for extradition may be adjourned, until the criminal proceedings pending against the same person in the Republic of Poland are concluded, or until he has served the sentence imposed or has been granted remission of the penalty.

499. Pursuant to Article 604 (1)(2) of the Criminal Procedure Code, Poland cannot extradite a person for conduct that does not constitute an offence in Poland.

500. Consistent with principles of its own domestic law, Poland has procedures in place that allow extradition requests and proceedings relating to corruption to be handled without undue delay. The execution of all extradition requests is supervised by the Ministry of Justice.

501. Whereas the lack of reciprocity and dual criminality are merely discretionary grounds for the denial of mutual legal assistance under Article 588 of the Criminal Procedure Code, they are mandatory grounds for the denial of extradition under Article 604.

502. There are at least two discretionary grounds for the denial of extradition under Article 604 of the Criminal Procedure Code: Article 604, para. 2 Subsection 4, which applies if the offence is subject to prosecution on a private charge; and Subsection 5, which applies if the offence in the requesting state is punishable by a term of imprisonment of less than one year. However, these distinctions are discretionary, not mandatory.

(b) Observations on the implementation of the article

503. The reviewing experts noted that in Poland, extradition is regulated in the Constitution, the Criminal Procedure Code and in applicable bilateral and multilateral treaties or agreements. With regard to other Member States of the European Union, the surrender of fugitives is carried out in line with the requirements of the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant (EAW). The Framework Decision has been implemented in Poland through the pertinent provisions of the CPC (Chapters 65a and 65b, articles 607a-607zc).

504. The reviewing experts concluded that Poland has adequately implemented the provision under review.

(c) Successes and good practices

505. The reviewing experts noted as a success the comprehensive legal framework (provisions of the Criminal Procedure Code) on international cooperation in criminal matters.

Paragraph 2 of article 44

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

506. Poland has indicated that it has adopted and implemented the provision under review.

507. Poland has indicated that, according to Polish domestic law an absence of dual criminality is an absolute reason for refusal of extradition. However, on the other hand each offence covered by this Convention is punishable under Polish domestic law. Furthermore, an conduct which an extradition request concerns is examined in terms of circumstances to figure out its legal qualification under Polish domestic law.

Code of Criminal Procedure

Article 604. § 1. Extradition is inadmissible if:

(1) the person to whom such a motion refers, is a Polish national or has been granted the right of asylum in the Republic of Poland,
(2) the act does not have the features of a prohibited act, or if the law stipulates that the act does not constitute an offence, or that a perpetrator of the act does not commit an offence or is not subject to penalty,
(3) the period of limitation has elapsed,
(4) the criminal proceedings have been validly concluded concerning the same act committed by the same person,
(5) the extradition would contravene Polish law,
(6) there are grounds for fearing that in the state moving for extradition, a death sentence may be issued for the extradited person or later executed,
(7) there is a justified concern that freedom and rights of the extradited person may be violated in the state requesting extradition,
(8) applies to a person prosecuted for commitment of an offence without the use of violence due to political reasons
§ 2. In particular, extradition may be refused, if:

(1) the person to whom such a motion refers has permanent residence in Poland,
(2) the criminal offence was committed on the territory of the Republic of Poland, or on board of a Polish vessel or aircraft,
(3) criminal proceedings are pending concerning the same act committed by the same person,
(4) the offence is subject to prosecution on a private charge,
(5) pursuant to the law of the State which has moved for extradition, the offence committed is subject to the penalty of deprivation of liberty for a term not exceeding one year, or to a lesser penalty or such a penalty has been actually imposed,
(6) an offence further to which extradition is requested is a military or fiscal offence, or a political offence other than specified in § 1 subsection 8,
(7) the State which has moved for extradition, does not guarantee reciprocity in this matter. § 3.
In the event indicated in § 1 subsection (4) and § 2 subsection (3), the resolution of the motion for extradition may be adjourned, until the criminal proceedings pending against the same person in the Republic of Poland are concluded, or until he has served the sentence imposed or has been granted remission of the penalty.

(b) Observations on the implementation of the article

508. Pursuant to article 604, paragraph 1(2) CPC, Poland cannot extradite a person for a conduct that does not constitute an offence in Poland. The absence of dual criminality according to Polish domestic law is therefore an absolute reason for refusal of extradition. However, during the country visit, Poland explained that those are the factual circumstances themselves, not the legal qualification or denomination of the offence in question, which determine whether or not the requirement of double criminality is met.

509. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

510. The reviewing experts recommended that the Polish authorities adopt a more flexible approach on the application of the double criminality requirement, in line with article 44, paragraph 2, of the UNCAC.

(d) Successes and good practises

The reviewing experts note that the interpretation of the double criminality requirement focusing on the underlying conduct and not the legal denomination of the offence could be seen as a good practice in Poland.

Paragraph 3 of article 44

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

511. Poland has indicated that it has adopted and implemented the provision under review.

512. See Article 604 of the Code of Criminal Procedure. Extradition request may be refused if pursuant to the law of the requesting State an offence is subject to the penalty of deprivation of liberty for a term not exceeding one year, or to a lesser penalty or such a penalty has been actually imposed. This provision constitutes an conditional requirement for refusal of the extradition request. This means that in the absence of absolute grounds for rejection of the request it might be accepted anyway.

(b) Observations on the implementation of the article

513. The reviewing experts noted that, pursuant to article 604, paragraph 1(2) CPC, the offence must carry a penalty of deprivation of liberty for not less than one year for extradition to be granted. Under the Polish law, all UNCAC offences that have also been domestically criminalized carry a penalty of imprisonment for at least one year, and, hence, they constitute extraditable offences.

514. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 4 of article 44

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

515. Poland has indicated that it is in compliance with this provision.

516. Each offence covered by this Convention remains extraditable. The penalty according to Polish domestic law exceeds one year for each of them. Please see response to criminalization section.

517. Poland is a party to number of bilateral treaties on MLA and extradition. Treaties cover many regulations related to extradition issues including conditions for extradition and competent authorities. However, they do not specify non-extraditable offences. They usually contain a general clause on refusal of requests for the purposes of prosecution of misdemeanours. According to the domestic law (see criminalization section), each corruption act constitutes an offence, hence it is extraditable offence in bilateral and multilateral treaties which Poland is party to.

518. Poland has provided a sample of relevant extradition treaties.

Multilateral treaties:

1. European Convention on Extradition, signed in Paris on 13 December 1957 , together with the Additional Protocol , done at Strasbourg on 15 October 1975 and the second additional protocol, signed at Strasbourg on 17 March 1978

2. The United Nations Convention against Corruption, adopted by the General Assembly of the United Nations on 31 October 2003

3. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna on 20 December 1988

4. The United Nations Convention against Transnational Organized Crime , adopted by the United Nations General Assembly on 15 November 2000

5. Convention against Torture and Other Cruel , Inhuman or Degrading Treatment or Punishment , adopted by the United Nations General Assembly on 10 December 1984

6. Conventions for the Protection of Victims of War, signed at Geneva on 12 August 1949

7. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970

8. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation , done at Montreal on 23 September 1971

9. European Convention on the Suppression of Terrorism, signed in Strasbourg on 27 January 1977

10. International Convention against the Taking of Hostages, adopted in New York on 18 December 1979

11.The Convention on the Physical Protection of Nuclear Material and its Annexes I and II , opened for signature in Vienna and New York on 3 March 1980

12. The Convention on the Prevention and Punishment of Crimes against persons enjoying international protection, including Diplomatic Agents, adopted in New York on 14 December 1973

13.Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988

14. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988

15.The Convention , signed in New York on 9 December 1994 on the Safety of United Nations and Associated Personnel

16.International Convention for the Suppression of Terrorist Bombings , adopted by the United Nations General Assembly on 15 December 1997

17. International Convention for the Suppression of the Financing of Terrorism , adopted by the UN General Assembly on 9 December 1999

18. Protocol to Prevent, Suppress and Punish Trafficking in Persons , especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime , adopted by the United Nations General Assembly on 15 November 2000

19. Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly on 15 November 2000

20.The Convention on the fight against human trafficking and exploitation of prostitution , open for signature at Lake Success , New York , 21 March 1950

21.Single Convention on Narcotic Drugs of 1961, signed in New York on 30 March 1961

22. Convention on Psychotropic Substances, signed at Vienna on 21 February 1971

23. The International Convention for the Suppression of Counterfeiting Currency, signed at Geneva on 20 April 1929 with the protocol and the Optional Protocol, signed on the same day in Geneva.

24. Criminal Law Convention on Corruption, signed in Strasbourg on 27 January 1999

25. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions , signed in Paris on 17 December 1997

Bilateral agreement on extradition and MLA in criminal and civil matters.

Algeria - Poland. Agreement on the legal assistance in civil and criminal matters. Algier. 1976.11.09.

Saudi Arabia - Poland . Agreement on cooperation in the fight against crime. Warszawa. 2007.06.25.

Armenia - Poland . Agreement on cooperation in the fight against crime. Warszawa.2004.09.06.

Australia - Poland. Agreement on Extradition. Canberra.1998.06.03.

Austria - Poland. Agreement on mutual assistance in criminal matters. Vienna.1978.02.27.

Austria – Poland. Agreement on cooperation in preventing and combating crime. Vienna.2002.06.10.

Belgium - Poland. Convention on Extradition and Mutual Assistance in Criminal Matters. Brussels. 1931.05.13.

Belgium - Poland. Agreement on cooperation in the fight against organized crime. Brussels.2000.11.13.

Belarus - Poland . Agreement on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Matters . Minsk.1994.10.26.

Belarus - Poland. Agreement on cooperation in the fight against crime . Minsk.2003.12.08.

Bulgaria – Poland. The agreement on legal assistance and legal relations in civil, family and criminal matters. Warszawa.1961.12.04.

Bulgaria - Poland. Agreement on cooperation in the fight against crime. Warszawa.2002.06.19.

Chile- Poland. Agreement on cooperation in the fight against organized crime. Santiago de Chile.2006.10.13.

China - Poland . The agreement on legal assistance in civil and criminal matters. Warszawa.1987.06.05.

Cyprus - Poland. Agreement on judicial cooperation in civil and criminal matters. Nikozja.1996.11.14.

Cyprus - Poland. Agreement on cooperation in combating organized crime and other forms of crime. Nicosia.2005.02.18.

Montenegro, Poland . Agreement on the settlement of bilateral treaties . Podgorica.2009.04.23.

Egypt - Poland. Agreement on mutual assistance in criminal matters, transfer of sentenced persons and extradition. Cairo.1992.05.17.

Estonia- Poland. The agreement on legal assistance and legal relations in civil , labor and criminal matters. Tallin.1998.11.27.

Estonia- Poland. Agreement on cooperation in the fight against organized crime and other crime . Warszawa.2003.06.23.

Finland - Poland. The agreement on the legal protection and legal assistance in civil, family and criminal matters. Helsinki.1980.05.27.

Finland - Poland. Agreement on cooperation in preventing and combating organized crime and other crimes. Helsinki.1999.11.04.

Greece- Poland. The agreement on legal assistance in civil and criminal matters. Athens. 1979.10.24.

Georgia- Poland. Agreement on cooperation in combating organized crime and other crime. Tbilisi. 2007.05.31.

Spain - Poland. Agreement on cooperation in combating organized crime and other serious crime. Madrid. 2000.11.27.

The Hong Kong and Poland. The agreement on mutual legal assistance in criminal matters. Hong Kong. 2005.04.26.

India - Poland. Agreement on Extradition . New Delhi.2003.02.17.

India - Poland . Agreement on cooperation in combating organized crime and international terrorism. New Delhi. 2003.02.17.

Iraq - Poland . The agreement on legal assistance and judicial cooperation in civil and criminal matters . Baghdad. 1988.10.29.

Ireland - Poland . Agreement on cooperation in combating organized crime and other serious crime . Warszawa. 2001.05.12.

Canada - Poland. The agreement on mutual legal assistance in criminal matters. Ottawa.1994.09.12.

Kazakhstan - Poland. Agreement on cooperation in combating organized crime and other types of crime . Warszawa. 2002.05.24.

Korea - Poland. The agreement on legal assistance in civil, family and criminal matters. Phenian.1986.09.28 .

Cuba - Poland. The agreement on legal assistance in civil, family and criminal matters. Havana. 1982.11.18 .

Libya - Poland. The agreement on legal assistance in civil , commercial, family and criminal matters . TrIpoli. 1985.12.02 .

Luxembourg - Poland. Convention on Extradition and Mutual Assistance in Criminal Matters. Luxemburg. 1934.01.22 .

FYR Macedonia - Poland . Agreement on cooperation in combating organized crime and other crime . Warszawa.2008.06.16.

Morocco - Poland. The agreement on legal assistance in civil and criminal matters. Warszawa.1979.05.21 .

Morocco - Poland. Agreement on the Transfer of Sentenced Persons . Rabat.2008.06.30 . Mexico - Poland. Agreement on cooperation in combating organized crime and other crime . Meksyk. 2002.11.25.

Moldova - Poland. Agreement on cooperation in combating organized crime and other crime . Kishinev.2003.10.22.

Mongolia - Poland. The agreement on legal assistance and legal relations in civil, family and criminal matters. Warszawa.1971.09.14.

Russia - Poland . The agreement on legal assistance and legal relations in civil and criminal matters. Warszawa.1996.09.16.

Syria - Poland. The agreement on legal assistance in civil and criminal matters. Damascus.1985.02.16.

Tajikistan - Poland. Agreement on cooperation in the fight against crime. Warszawa.2003.05.27.

Thailand - Poland. Agreement on the transfer of criminals and cooperation in the enforcement of judgments in criminal matters. Bangkok.1997.04.19.

Thailand - Poland. The agreement on mutual assistance in criminal matters . Bangkok.2004.02.26 .

Tunisia - Poland. The agreement on legal assistance in civil and criminal matters. Warszawa.1985.03.22 .

Turkey - Poland. Agreement on mutual assistance in criminal matters, extradition and transfer of sentenced persons . Ankara.1989.01.09 .

Turkey - Poland. Agreement on cooperation in combating terrorism , organized crime and other crime . Ankara.2003.04.07 .

Ukraine- Poland. The agreement on legal assistance and legal relations in civil and criminal matters. Kiev. 1993.05.24 .

US- Poland. Agreement on Extradition. Washington. 1996.07.10.

US- Poland. Agreement on the application of the Agreement between the Polish Republic and the United States of America on extradition, signed on 10 July 1996 , in accordance with Article 3, paragraph 2 of the Agreement on extradition between the European Union and the United States of

America, signed in Washington on June 25, 2003 , Warsaw . 2006.06.09.

US- Poland. The agreement on mutual legal assistance in criminal matters. Washington. 1996.07.10 .

US- Poland. Agreement on the application of the Agreement between the Polish Republic and the United States of America on Mutual Legal Assistance in Criminal Matters, signed on 10 July 1996 , in accordance with Article 3, paragraph 2 of the Agreement on Mutual Legal Assistance in Criminal Matters between the European Union and the United States of America , signed in Washington on 25 June 2003 Warszawa.2006.06.09.
Uzbekistan - Poland. Agreement on cooperation in combating organized crime. Tashkent. 2002.10.21.

Vietnam - Poland. The agreement on legal assistance and legal relations in civil, family and criminal matters. Warszawa. 1993.03.22.

Vietnam - Poland . Agreement on cooperation in combating organized crime. Warszawa.2003.07.28.

The Kingdom of Great Britain and Northern Ireland - Poland. Treaty on extradition of fugitive criminals. Warszawa.1932.01.11.

(b) Observations on the implementation of the article

519. The reviewing experts noted that all UNCAC offenses are extraditable in Poland under its laws and treaties to which Poland is party as every UNCAC offence is penalised by a imprisonment sanction of more than one year. None of the offences established pursuant to the UNCAC is deemed as a political offence in Poland and hence all are extraditable offences.

520. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 5 of article 44

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

521. Poland has indicated that it makes extradition conditional on the existence of a treaty.

522. Poland has indicated that it considers this Convention as the legal basis for extradition in respect to any offence to which the article under review applies.

523. The Republic of Poland declared to recognize UNCAC as a legal basis for extradition purposes in the absence of a bilateral treaty.

Chapter 65

Requests by foreign states for the extradition or transportation of prosecuted or sentenced persons staying abroad, and for the delivery of material objects

Article 602. § 1. (abrogated).

§ 2. In the event an agency of the foreign state has submitted a motion to extradite a prosecuted person to institute criminal proceedings against her or execute a penalty that such person has been sentenced to or apply a preventive measure, the state prosecutor shall interrogate such person and, if need be, shall secure evidence located in the country, after which he shall submit the case to the circuit court of competent jurisdiction.

Article 603. § 1. The circuit court shall issue in session an opinion on the motion of the foreign state. Before such an opinion is issued, the prosecuted person should be given the opportunity to submit explanations, orally or in writing. If extradition is sought in order to institute criminal proceedings, upon the well-founded request of such a person, evidence-taking proceedings should be conducted with respect to the evidence accessible in Poland.

§ 2. The defence counsel shall have the right to participate in the session.

§ 3. If the court has issued an order on the inadmissibility of extradition, the extradition may not take place.

§ 4. The order of the court regarding the extradition shall be subject to interlocutory appeal.

§ 5. The court shall refer the valid and final order together with the files of the case to the Minister of Justice who, having decided on the motion, shall notify the appropriate authority of the foreign state.

Article 603a. § 1. If an international agreement to which the Republic of Poland is a party so stipulates, the request by a foreign state for the application of a preventive detention replaces a request for extradition.

§ 2. In the case referred to in § 1, the state prosecutor shall, during the examination, inform the prosecuted person of the possibility of his consent to extradition combined with waiving the use of restrictions specified in Articles 596 and 597. If the prosecuted person agrees to submit such a statement, the state prosecutor shall refer the case to a circuit court for the area where the proceedings are pending.

§ 3. The court decides, in a session, on preventive detention of the prosecuted person, receives the statement of consent to extradition or to extradition combined with waiving the use of restrictions specified in Articles 596 and 597, and issues an order on the admissibility of extradition.

§ 4. The consent of the prosecuted person and the waiver, referred to in § 2 may be withdrawn, of which the prosecuted person shall be instructed.

§ 5. The court shall transfer, without delay, the valid and final order together with the files of the case, to the Minister of Justice, who decides on the extradition of the person.

§ 6. If the statement referred to in § 3 has not been submitted, or the court has found that a circumstance specified in Article 604 § 1 has occurred, or when the session has been adjourned for a period in excess of 7 days, the provisions of Articles 602 § 2, 603 and 605 shall be applied.

Article 604. § 1. Extradition is inadmissible if:

(1) the person to whom such a motion refers, is a Polish national or has been granted the right of asylum in the Republic of Poland,

(2) the act does not have the features of a prohibited act, or if the law stipulates that the act does not constitute an offence, or that a perpetrator of the act does not commit an offence or is not subject to penalty,

(3) the period of limitation has elapsed,

(4) the criminal proceedings have been validly concluded concerning the same act committed by the same person,

(5) the extradition would contravene Polish law,

(6) there are grounds for fearing that in the state moving for extradition, a death sentence may be issued for the extradited person or later executed,

(7) there is a justified concern that freedom and rights of the extradited person may be violated in the state requesting extradition,

(8) applies to a person prosecuted for commitment of an offence without the use of violence due to political reasons

§ 2. In particular, extradition may be refused, if:

(1) the person to whom such a motion refers has permanent residence in Poland,

(2) the criminal offence was committed on the territory of the Republic of Poland, or on board of a Polish vessel or aircraft,

(3) criminal proceedings are pending concerning the same act committed by the same person,

(4) the offence is subject to prosecution on a private charge,

(5) pursuant to the law of the State which has moved for extradition, the offence committed is

subject to the penalty of deprivation of liberty for a term not exceeding one year, or to a lesser penalty or such a penalty has been actually imposed,

(6) an offence further to which extradition is requested is a military or fiscal offence, or a political offence other than specified in § 1 subsection 8,

(7) the State which has moved for extradition, does not guarantee reciprocity in this matter.

§ 3. In the event indicated in § 1 subsection (4) and § 2 subsection (3), the resolution of the motion for extradition may be adjourned, until the criminal proceedings pending against the same person in the Republic of Poland are concluded, or until he has served the sentence imposed or has been granted remission of the penalty.

Article 605. § 1. If the motion for extradition concerns an offence the perpetrator of which is subject to extradition, then the circuit court acting ex officio or upon a motion from the state prosecutor, may issue an order concerning the preventive detention to be imposed upon the prosecuted person; Article 263 shall be applied accordingly.

§ 2. The court, before a motion for extradition has been filed, may also order the preventive detention of the prosecuted person for a period not exceeding forty days, if so requested by the agency of a foreign State, which at the same time shall declare that the person concerned has been validly sentenced by a judgement, or a decision for preventive detention has been issued.

§ 3. The order of the court regarding the preventive detention shall be subject to interlocutory appeal.

§ 4. The Minister of Justice and a diplomatic mission or a consular office or prosecuting agency of the foreign State shall be notified promptly, of the day on which the preventive detention commences.

§ 5. If the information contained in a motion for extradition is insufficient, and the court or the state prosecutor has required its completion, and the foreign State fails to send the necessary documents or information to the requesting agency, within one month from the day on which the request for the completion of the motion for extradition is served on it, the decision on preventive detention shall be quashed.

§ 6. In the event that extradition is refused, or the motion for extradition or preventive detention is withdrawn, or if the agency of a foreign State, though duly notified of when and where the requested person is to be surrendered, fails to take custody of him within seven days from the day established for extradition, then the person who was placed under preventive detention should be promptly released unless he is deprived of his liberty in another case.

Article 606. § 1. Permission for the transportation of a prosecuted person through the territory of the Republic of Poland shall be granted by the Minister of Justice. Articles 594, 604 and 605 shall be applied accordingly.

§ 2. If the transportation is by air and no landing is expected, it shall be sufficient to notify the Minister of Justice of the transportation of the prosecuted person over the territory of the Republic of Poland.

Article 607. § 1. Jurisdiction to resolve motions filed by a foreign State, seeking delivery of objects constituting material evidence or obtained by the offence, shall be vested in the state prosecutor or the court, depending on at whose disposal these objects have been deposited.

§ 2. The order on the delivery of objects should list the material objects subject to surrender to the foreign State, and indicate what objects shall be returned after the criminal proceedings conducted by the agencies of that foreign State have been concluded.

(b) Observations on the implementation of the article

524. Despite the initial information provided that Poland makes extradition conditional on the existence of an applicable treaty, it was confirmed during the country visit that the national authorities Poland may grant extradition with or without a treaty. In the absence of a treaty, extradition is possible on the basis of the principle of reciprocity. Poland considers the UNCAC as a legal basis for extradition and has informed accordingly the Secretary-General of the United Nations (date of notification: 13 October 2006).

525. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 6 of article 44

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

526. Poland has indicated that it makes extradition conditional on the existence of a treaty.

527. Poland has indicated that it considers this Convention as the legal basis for extradition in respect to any offence to which this article applies.

528. Poland has indicated that is has informed the Secretary-General of the United Nations as prescribed above.

(b) Observations on the implementation of the article

529. See above. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 7 of article 44

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

530. Poland has indicated that it is in compliance with this provision.

531. Poland has cited the following text: please see preceding responses related to extradition issues.

(b) Observations on the implementation of the article

532. The reviewing experts noted that, pursuant to article 604, paragraph 1(2) CPC, the offence must carry a penalty of deprivation of liberty for not less than one year for extradition to be granted. Under the Polish law, all UNCAC offences that have also been domestically criminalized carry a penalty of imprisonment for at least one year, and, hence, they constitute extraditable offences.

533. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 8 of article 44

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

534. Poland has indicated that it is in compliance with this provision.

535. Poland has cited the following measures, including relevant domestic law(s) and conditions: please see preceding responses.

(b) Observations on the implementation of the article

536. See above. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 9 of article 44

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

537. Poland has indicated that it is partly in compliance with this provision.

538. Poland has cited the following applicable measure(s).

Code of Criminal Procedure

Article 602. § 1. (abrogated).

§ 2. In the event an agency of the foreign state has submitted a motion to extradite a prosecuted person to institute criminal proceedings against her or execute a penalty that such person has been sentenced to or apply a preventive measure, the state prosecutor shall interrogate such person and, if need be, shall secure evidence located in the country, after which he shall submit the case to the circuit court of competent jurisdiction.

Article 603. § 1. The circuit court shall issue in session an opinion on the motion of the foreign state. Before such an opinion is issued, the prosecuted person should be given the opportunity to submit explanations, orally or in writing. If extradition is sought in order to institute criminal proceedings, upon the well-founded request of such a person, evidence-taking proceedings should be conducted with respect to the evidence accessible in Poland.

§ 2. The defence counsel shall have the right to participate in the session.

§ 3. If the court has issued an order on the inadmissibility of extradition, the extradition may not take place.

§ 4. The order of the court regarding the extradition shall be subject to interlocutory appeal.

§ 5. The court shall refer the valid and final order together with the files of the case to the Minister of Justice who, having decided on the motion, shall notify the appropriate authority of the foreign state.

Article 603a. § 1. If an international agreement to which the Republic of Poland is a party so stipulates, the request by a foreign state for the application of a preventive detention replaces a request for extradition.

§ 2. In the case referred to in § 1, the state prosecutor shall, during the examination, inform the prosecuted person of the possibility of his consent to extradition combined with waiving the use of restrictions specified in Articles 596 and 597. If the prosecuted person agrees to submit such a statement, the state prosecutor shall refer the case to a circuit court for the area where the proceedings are pending.

§ 3. The court decides, in a session, on preventive detention of the prosecuted person, receives the statement of consent to extradition or to extradition combined with waiving the use of restrictions specified in Articles 596 and 597, and issues an order on the admissibility of extradition.

§ 4. The consent of the prosecuted person and the waiver, referred to in § 2 may be withdrawn, of which the prosecuted person shall be instructed.

§ 5. The court shall transfer, without delay, the valid and final order together with the files of the case, to the Minister of Justice, who decides on the extradition of the person.

§ 6. If the statement referred to in § 3 has not been submitted, or the court has found that a circumstance specified in Article 604 § 1 has occurred, or when the session has been adjourned for a period in excess of 7 days, the provisions of Articles 602 § 2, 603 and 605 shall be applied.

Article 604. § 1. Extradition is inadmissible if:

(1) the person to whom such a motion refers, is a Polish national or has been granted the right of asylum in the Republic of Poland,

(2) the act does not have the features of a prohibited act, or if the law stipulates that the act does not constitute an offence, or that a perpetrator of the act does not commit an offence or is not subject to penalty,

(3) the period of limitation has elapsed,

(4) the criminal proceedings have been validly concluded concerning the same act committed by the same person,

(5) the extradition would contravene Polish law,

(6) there are grounds for fearing that in the state moving for extradition, a death sentence may be issued for the extradited person or later executed,

(7) there is a justified concern that freedom and rights of the extradited person may be violated in the state requesting extradition,

(8) applies to a person prosecuted for commitment of an offence without the use of violence due to political reasons

§ 2. In particular, extradition may be refused, if:

(1) the person to whom such a motion refers has permanent residence in Poland,

(2) the criminal offence was committed on the territory of the Republic of Poland, or on board of a Polish vessel or aircraft,

(3) criminal proceedings are pending concerning the same act committed by the same person,

(4) the offence is subject to prosecution on a private charge,

(5) pursuant to the law of the State which has moved for extradition, the offence committed is subject to the penalty of deprivation of liberty for a term not exceeding one year, or to a lesser penalty or such a penalty has been actually imposed,

(6) an offence further to which extradition is requested is a military or fiscal offence, or a political offence other than specified in § 1 subsection 8,

(7) the State which has moved for extradition, does not guarantee reciprocity in this matter. § 3.

In the event indicated in § 1 subsection (4) and § 2 subsection (3), the resolution of the motion for extradition may be adjourned, until the criminal proceedings pending against the same person in the Republic of Poland are concluded, or until he has served the sentence imposed or has been granted remission of the penalty.

Article 605. § 1. If the motion for extradition concerns an offence the perpetrator of which is subject to extradition, then the circuit court acting ex officio or upon a motion from the state prosecutor, may issue an order concerning the preventive detention to be imposed upon the prosecuted person; Article 263 shall be applied accordingly.

§ 2. The court, before a motion for extradition has been filed, may also order the preventive detention of the prosecuted person for a period not exceeding forty days, if so requested by the agency of a foreign State, which at the same time shall declare that the person concerned has been validly sentenced by a judgement, or a decision for preventive detention has been issued.

§ 3. The order of the court regarding the preventive detention shall be subject to interlocutory appeal.

§ 4. The Minister of Justice and a diplomatic mission or a consular office or prosecuting agency of the foreign State shall be notified promptly, of the day on which the preventive detention commences.

§ 5. If the information contained in a motion for extradition is insufficient, and the court or the state prosecutor has required its completion, and the foreign State fails to send the necessary documents or information to the requesting agency, within one month from the day on which the request for the completion of the motion for extradition is served on it, the decision on preventive detention shall be quashed.

§ 6. In the event that extradition is refused, or the motion for extradition or preventive detention is withdrawn, or if the agency of a foreign State, though duly notified of when and where the requested person is to be surrendered, fails to take custody of him within seven days from the day established for extradition, then the person who was placed under preventive detention should be promptly released unless he is deprived of his liberty in another case.

Article 606. § 1. Permission for the transportation of a prosecuted person through the territory of the Republic of Poland shall be granted by the Minister of Justice. Articles 594, 604 and 605 shall be applied accordingly.

§ 2. If the transportation is by air and no landing is expected, it shall be sufficient to notify the Minister of Justice of the transportation of the prosecuted person over the territory of the Republic of Poland.

Article 607. § 1. Jurisdiction to resolve motions filed by a foreign State, seeking delivery of objects constituting material evidence or obtained by the offence, shall be vested in the state prosecutor or the court, depending on at whose disposal these objects have been deposited.

§ 2. The order on the delivery of objects should list the material objects subject to surrender to the foreign State, and indicate what objects shall be returned after the criminal proceedings conducted by the agencies of that foreign State have been concluded.

(b) Observations on the implementation of the article

539. As reported during the country visit, the length of extradition proceedings is dependent on the matter of the case at hand. Simple cases and cases adjudicated according to simplified procedures are usually carried out approximately within three months from the time of submission of the extradition request. Other extradition cases could take up to two years to be completed, depending on their complexity. Cases of European Arrest Warrants are generally dealt with within

the time limits foreseen in the relevant Framework Decision.

540. It was further explained by the national authorities during the country visit that regarding the applicable evidentiary requirements in extradition proceedings, the practice followed is to authorize extradition on the condition that the formal (see, for example, article 12, paragraph 2, of the European Convention on Extradition) and substantive requirements provided for by the applicable treaty or domestic legislation are present.

541. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 10 of article 44

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

542. Poland has indicated that it is in compliance with this provision.

543. Poland has cited the following applicable measure(s): please see preceding response.

(b) Observations on the implementation of the article

544. During the country visit, Poland indicated that article 263 of the Code of Criminal Procedure provides for "preventive detention" (see nder article 30, paragraph 4, of the UNCAC).

545. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 11 of article 44

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

546. Poland has indicated that it is in compliance with this provision.

547. Polish law enforcement agencies operate on the basis of the principle of legality. That means

they are obliged to launch an investigation and to prosecute each act of an offence and misdemeanour. The following texts were cited:

The Code of Criminal Procedure

Article 4. Agencies in charge of criminal proceedings shall be obligated to inquire into, and duly consider the circumstances both in favour and to the prejudice of the accused.

Constitution

Article 55
1.The extradition of a Polish citizen shall be prohibited, except in cases specified in paras 2 and 3.

2. Extradition of a Polish citizen may be granted upon a request made by a foreign state or an international judicial body if such a possibility stems from an international treaty ratified by Poland or a statute implementing a legal instrument enacted by an international organization of which the Republic of Poland is a member, provided that the act covered by a request for extradition:
1) was committed outside the territory of the Republic of Poland, and
2) constituted an offence under the law in force in the Republic of Poland or would have constituted an offence under the law in force in the Republic of Poland if it had been committed within the territory of the Republic of Poland, both at the time of its commitment and at the time of the making of the request.

3. Compliance with the conditions specified in para. 2 subparagraphs 1 and 2 shall not be required if an extradition request is made by an international judicial body established under an international treaty ratified by Poland, in connection with a crime of genocide, crime against humanity, war crime or a crime of aggression, covered by the jurisdiction of that body.

4. The extradition of a person suspected of the commission of a crime for political reasons but without the use of force shall be forbidden, so as an extradition which would violate rights and freedoms of persons and citizens.

5. The courts shall adjudicate on the admissibility of extradition

As for the principle of legitimism - reflected in article 109 of the Criminal Code – it is applicable to each Polish national who committed an offence abroad.

The Criminal Code

Article 109*. The Polish penal law shall be applied to Polish citizens who have committed an offence abroad.*

However, the principle covered by the art. 109 has been limited by the requirements of the art. 111 of the CC.

Article 111*. § 1. The requirement for liability for an act committed abroad is that an act is likewise recognised as an offence by a law in force in the place of its commission.*

§2. If there are differences between the Polish penal law and the law in force in the place of commission, the court may take these differences into account in favour of the perpetrator.

§ 3. The condition provided for in § 1 shall not be applied neither to the Polish public official, performing his duties abroad, has committed an offence in connection with his functions, nor to a person who committed an offence in a place beyond the jurisdiction of any state authority.

Nonetheless a nationality of the perpetrator nor dual criminality does not matter when the offence is connected with commission a crime described in the art. 112 of the CC.

Article 112. *Notwithstanding the provisions in force in the place of the commission of the offence the Polish penal law shall be applied to a Polish citizen or an alien in case of the commission of:*

1) an offence against the internal or external security of the Republic of Poland;
2) an offence against Polish offices or public officials;
3) an offence against essential economic interests of Poland
4) an offence of false deposition made before a Polish office.
5) an offence from which any material benefit has been obtained, even indirectly, within the territory of the Republic of Poland.

Article 110 of Criminal Code relates to an alien who committed abroad an offence against the interests of the Republic of Poland and a terrorist offence. A Polish national who committed an offence abroad remains responsible according Polish law anyway pursuant to art. 109.

Article 110. *§ 1. The Polish penal law shall be applied to aliens who have committed abroad an offence against the interests of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish organisational unit not having legal personality and to aliens who have committed abroad a terrorist offence.*

§ 2. The Polish penal law shall be applied to aliens in the case of the commission abroad an offence other than listed in § 1, if, under the Polish penal law, such an offence is subject to a penalty exceeding 2 years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and no decision on his extradition has been taken.

(b) Observations on the implementation of the article

548. The reviewing experts noted that article 55 of the Constitution prohibits the extradition of nationals, but also provides for exceptions to this rule under certain conditions: the extradition of a Polish citizen may be granted upon a request made by a foreign State or an international judicial body if such a possibility stems from an international treaty ratified by Poland or by an international judicial body established under an international treaty ratified by Poland, in connection with a crime of genocide, crime against humanity, war crime or a crime of aggression, covered by the jurisdiction of that body. The conditions that need to be met include the following: that the act covered by a request for extradition was committed outside the territory of the Republic of Poland; and that it constitutes an offence in Poland or would have constituted an offence if it had been committed within the national territory, both at the time of its commission and at the time of the making of the request.

549. According to article 110, paragraph 2 PC, the national criminal laws apply to aliens in the case of the commission abroad an offence other than terrorist offences and those committed abroad against the interests of the State and a Polish citizen or legal person, if, under the Polish penal law, such an offence is subject to a penalty exceeding two years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and no decision on his extradition has been taken. The reviewing experts noted the use of this provision for the application of the axiom *"aut dedere aut judicare"* (see article 44, paragraph 11 of UNCAC), but also highlighted the restriction posed by the threshold of two years of imprisonment, recommending its deletion.

550. The reviewing experts concluded that Poland has partially implemented the provision under review.

(c) Challenges in implementation and recommendations

551. Amend the domestic legislation (article 110, paragraph 2 PC) along the lines of removing the threshold of two years of imprisonment for the establishment of domestic criminal jurisdiction for prosecution purposes in lieu of extradition.

Paragraph 12 of article 44

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

552. Poland had indicated that it is in compliance with this provision.

553. Poland has cited the following applicable measures:

Code of Criminal Procedure

Article 603a. § 1. If an international agreement to which the Republic of Poland is a party so stipulates, the request by a foreign state for the application of a preventive detention replaces a request for extradition.

§ 2. In the case referred to in § 1, the state prosecutor shall, during the examination, inform the prosecuted person of the possibility of his consent to extradition combined with waiving the use of restrictions specified in Articles 596 and 597. If the prosecuted person agrees to submit such a statement, the state prosecutor shall refer the case to a circuit court for the area where the proceedings are pending.

§ 3. The court decides, in a session, on preventive detention of the prosecuted person, receives the statement of consent to extradition or to extradition combined with waiving the use of restrictions specified in Articles 596 and 597, and issues an order on the admissibility of extradition.

§ 4. The consent of the prosecuted person and the waiver, referred to in § 2 may be withdrawn, of which the prosecuted person shall be instructed.

§ 5. The court shall transfer, without delay, the valid and final order together with the files of the case, to the Minister of Justice, who decides on the extradition of the person.

§ 6. If the statement referred to in § 3 has not been submitted, or the court has found that a circumstance specified in Article 604 § 1 has occurred, or when the session has been adjourned for a period in excess of 7 days, the provisions of Articles 602 § 2, 603 and 605 shall be applied.

(b) Observations on the implementation of the article

554. The reviewing experts noted that rhe conditional surrender of nationals – or persons under an asylum status - to the requesting State for prosecution purposes is feasible within the context of the European Arrest Warrant process (article 607t CPC). Similarly, the enforcement – in lieu of extradition - of a European Warrant issued to execute the penalty of deprivation of liberty against a national or a person enjoying asylum status can be authorized through articles 607t, paragraph 2, and 607s, paragraphs 3-5 CPC. It is also possible to the United States of America under article 4 of

the Agreement between Republic of Poland and United States of America on extradition signed 10th July 1996 in Washington.

555. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 13 of article 44

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

556. Poland has indicated that it is in compliance with this provision.

557. Poland is a state party of the European Convention on transfer of sentenced persons of 1983 and on a basis of this Convention enforces sentences of imprisonment adjudicated against Polish nationals by authorities of other states - parties to the Convention

(b) Observations on the implementation of the article

558. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 14 of article 44

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

559. Poland has indicated that it is in compliance with this provision.

560. Poland has cited the following text.

The Code of Criminal Procedure

Article 1.Criminal proceedings in cases subject to the jurisdiction of the Courts shall be conducted pursuant to the provisions of this Code.

Article 2. § 1. The purpose of this Code is to establish rules which will secure that:

(1) the perpetrator of a criminal offence shall be detected and called to penal responsibility, and that no innocent person shall be so called,

(2) by a correct application of measures provided for by criminal law, and by the disclosure of the circumstances which favoured the commission of the offence, the tasks of criminal procedure shall be fulfilled not only in combating the offences, but also in preventing them as well as in consolidating the rule of law and the principles of community life.

(3) legally protected interests of the injured party shall be secured, and (4) determination of the case shall be achieved within a reasonable time.

§ 2. The basis for any kind of determination shall be the established true fact situation.

Article 3. Within the scope laid down in the legislation, criminal proceedings shall be conducted with the participation of a representative of the community.

Article 4. Agencies in charge of criminal proceedings shall be obligated to inquire into, and duly consider the circumstances both in favour and to the prejudice of the accused.

Article 5. § 1. The accused shall be presumed innocent until his guilt has been proven and validly decided.

§ 2. Irresolvable doubts shall be resolved to the benefit of the accused.

Article 6. The accused shall have the right to conduct his own defence or to avail himself of the aid of defence counsel; the accused should be advised of this right.

Article 7. The agencies responsible for the proceedings shall make a decision on the basis of their own conviction, which shall be founded upon evidence taken and appraised at their own discretion, with due consideration to the principles of sound reasoning and personal experience.

Article 8. § 1. The criminal court shall, at its own discretion, determine the factual and legal matters and shall not be bound by determinations of another court or agency.

§ 2. However, the valid determinations of a court, establishing new rights or relationships, shall be binding.

Article 9. § 1. The agencies conducting the trial shall conduct proceedings and undertake actions ex officio unless the law makes them provisional, upon a motion from a specified person, institution, or agency, or upon permission of an authority.

§ 2. The parties and other directly interested persons may file motions for also performing these actions which the agency may or be obligated to undertake ex officio.

Article 10. § 1. The agency responsible for prosecuting offences shall have the duty to institute and conduct the preparatory proceedings, and the public prosecutor shall have also the obligation to bring and support charges, with respect to an offence prosecuted ex officio.

§ 2. Except for cases described in domestic law or international law, no-one may be discharged from liability for a committed offence.

Article 11. § 1. The proceedings in a case of misdemeanour, carrying a penalty of deprivation of liberty for up to 5 years, may be discontinued if imposing the penalty on the perpetrator would be obviously inexpedient in light of the kind and scope of a penalty validly decided for another offence, and as long as the interest of the injured is not prejudiced.

§ 2. If the penalty for another offence has not been validly decided, the proceedings may be suspended. The suspended proceedings should be discontinued or re-opened no later than 3 months from the date at which the decision for the other offence referred to in § 1 became valid and final.

§ 3. The proceedings discontinued under § 1 may be re-opened in the event of a reversal or a substantial change of the content of the valid and final decision because of which it was discontinued.

Article 12. § 1. In cases arising out of offence prosecuted on complaint, proceedings shall be instituted in the event that such a complaint has been filed; such proceedings shall be thenceforth conducted ex officio. The prosecuting agency shall advise the person entitled to file a complaint of this right.

§ 2. In the event that a complaint has been only filed against certain perpetrators of an offence, the public prosecutor shall be obligated to prosecute the co-perpetrators, instigators, accomplices, and other persons whose offence is closely linked with that of the perpetrator indicated in the complaint. The person filling such complaint shall be notified thereof. These provisions shall not apply to the

next of kin of the complainant.

§ 3. The complaint may be withdrawn in the preparatory proceedings with the consent of the state prosecutor, and in the court proceedings, with the consent of the court, before the commencement of the first-instance hearing, unless the offence involved is that described in Article 197 of the Penal Code. The filing of the motion for the second time shall not be admitted.

Article 13. The prosecutor shall obtain the permission of an authority to prosecute, if such permission is required by law to institute proceedings.

Article 14. § 1. The court proceedings shall be instituted upon the motion of the duly authorized prosecutor or other authorized entity.

§ 2. The court shall not be bound by the public prosecutor's withdrawal of the accusation.

Article 15. § 1. The Police and other agencies involved in criminal proceedings shall implement the instructions of the court and the state prosecutor and, within the scope prescribed by law, shall conduct the inquiry or investigation under the supervision of the state prosecutor.

§ 2. All state, local government and community institutions shall aid and assist, within the scope of their activities, the agencies conducting criminal proceedings within the time prescribed by such agencies.

§ 3. Legal persons or organisational units not having legal personality other than those specified in § 2, and also natural persons shall be required to provide assistance when requested to do so by the agencies conducting criminal proceedings to the extent and by the date set by them, if carrying a procedural action without such assistance is impossible or rendered significantly difficult.

Article 16. § 1. If the agency conducting the proceedings is under obligation to advise the parties to the proceedings of their rights and duties, and fails to do so or misinstructs them, this shall not result in any adverse consequences during the course of the trial to the participant of the proceedings or other persons concerned.

§ 2. In addition, the agency conducting the proceedings shall, if necessary, inform the parties to the proceedings of their rights and duties, even in cases when this not explicitly stipulated by law. If the agency fails to provide such advice, and in light of the circumstances this was deemed indispensable, or if the agency misinstructs the parties, the provisions of § 1 shall be applied accordingly.

Article 17. Criminal proceedings shall not be instituted, or, if previously instituted, shall be discontinued, when:

(1) the act has not been committed, or there have not been sufficient grounds to suspect that it has been committed,

(2) the act does not possess the qualities of a prohibited act, or when it is acknowledged by law that the perpetrator has not committed an offence,

(3) the act constitutes an insignificant social danger,

(4) it has been established by law that the perpetrator is not subject to penalty, (5) the accused is deceased,

(6) the prescribed statute of limitations has lapsed, or

(7) criminal proceedings concerning the same act committed by the same person has been validly concluded or, if previously instituted, is still pending,

(8) the perpetrator is not subject to the jurisdiction of the Polish criminal courts, (9) there is no complaint from an entitled prosecutor,

(10) there is no permission required for prosecuting the act, or no motion to prosecute from a person so entitled, unless otherwise provided by law,

(11) other circumstances precluding such proceedings occur.

§ 2. Until a motion is filed or permission from an authority is obtained which has been prescribed by law as a prerequisite to prosecution, the agencies conducting the trial shall conduct only actions not amenable to delay, in order to secure traces or material evidence, and actions aimed at clarifying whether the motion is to be filed or permission obtained.

§ 3. The impossibility of blaming a perpetrator of an act shall not preclude the proceedings regarding the application of precautionary measures.

Article 18. § 1. If the act only constitutes a contravention, the state prosecutor shall, upon refusal to institute proceedings or the discontinuance thereof, refer the case to the Police in order to file a motion to impose a penalty by an appropriate court; the state prosecutor may file such a motion at his own discretion.

§ 2. If the court or the state prosecutor find that the act under examination has been a disciplinary delinquency or has transgressed against professional duties or the principles of community life, they may, upon refusal to institute proceedings or the discontinuance thereof, considering in particular the negligible social consequences of the act, refer the case to another agency having jurisdiction to hear cases of this type.

Article 19. § 1. If, in the course of criminal proceedings, a serious transgression in the activities of a state or local government agency or a community institution comes to light, and particularly when this transgression promotes the commission of offences, the court, or the state prosecutor in the preparatory proceedings, shall inform of this transgression the supervisory agency of such an organisational unit and, if necessary, also the relevant controlling agency. The Police shall notify the state prosecutor about the transgression they have discovered.

§ 2. Upon transmitting the information on the transgression, the court or the state prosecutor may, within a certain time-limit, request explanations and advice on measures undertaken in order to prevent such future transgressions.

§ 3. If explanations are not provided within the time prescribed, a fine of up to PLN 10,000 may be imposed on the head of the agency obligated to provide these explanations.

§ 4. The order to impose a fine shall be subject interlocutory appeal. The interlocutory appeal against an order from the state prosecutor is examined by the district court where the proceedings are pending.

Article 20. § 1. In the event of an flagrant dereliction of procedural duty by the defence counsel or attorney, the court, or in the preparatory proceedings, the state prosecutor shall so notify the relevant district bar council or the council of the district chamber of legal counsels, requesting the dean of the relevant council within the prescribe time, not shorter than 30 days, to provide information on undertaken actions following such notification. A copy of the notice shall be sent to the Minister of Justice.

§ 1a. In the event of failure to provide the information referred to in § 1 within the prescribed time, a fine of up to PLN 10,000 may be imposed on the dean of the relevant council.

§ 1b. The order on penalty shall be subject to interlocutory appeal. The interlocutory appeal against an order from the state prosecutor issued in the preparatory proceedings to impose penalty shall be filed with the district court where the proceedings are pending.

§ 2. In the event of a flagrant dereliction of procedural duty by public prosecutor or a person conducting the preparatory proceedings, the court shall so notify an immediate superior of the person who transgressed, requesting, within the prescribed time, not shorter than 14 days, provision of information about undertaken actions following such notification; such right shall also be vested with the state prosecutor with regard to the Police and other agencies of the preparatory proceedings.

§ 2a. The court shall send the copy of the notice referred to in § 2 to the Attorney General, if a dereliction has been committed by state prosecutor, and in the event whereby a dereliction has been committed by public prosecutor who is not a state prosecutor, to a relevant body superior to such prosecutor.

Article 21. § 1. When official proceedings have been concluded against persons employed in state, local government and community institutions, school pupils, students of schools and colleges, as well as against soldiers, their respective superiors will be notified immediately.

§ 2. The state prosecutor shall also inform about the proceedings instituted against public officials, and on instituting proceedings against other persons referred to in § 1, if important public interest so requires.

Article 22. § 1. If an impediment arises which prevents the conduct of proceedings for a lengthy period and, in particular, if the accused cannot be arrested or cannot participate in the proceedings because of mental disease or other serious illness, the proceedings shall be suspended until such impediment is removed.

§ 2. The order suspending the proceedings shall be subject to interlocutory appeal.

§ 3. While the proceedings are suspended, necessary measures shall be taken to secure material

evidence against loss or distortion.

Article 23. In the case of an offence committed to the detriment of a juvenile, or in co-operation with a juvenile, or in circumstances which may be indicative of demoralisation of a juvenile or of a demoralising influence over a juvenile, the court, and in the preparatory proceedings the state prosecutor, shall inform the family court with the purpose of considering measures prescribed in the provisions on the proceedings in juvenile cases and in the Family and Custodianship Code.

Article 23a. § 1. The court, or in the preparatory proceedings the state prosecutor, may on the initiative or with the consent of the injured person and the accused, refer the case to an institution or a trustworthy person in order to conduct mediation proceedings between the injured person and the accused.

§ 2. Mediation proceedings should not last longer than one month, and its duration shall not be included in the duration of the preparatory proceedings.

§ 3. Mediation proceedings cannot be conducted by a person with respect to whom in a particular case circumstances defined under Article 40-42 occur, an active judge, state prosecutor, defence counsel, legal counsel, as well as a person applying for these professions or any other person employed in a court, a prosecutors' office or another institution authorised to prosecute offences.

§ 4. Upon conducting mediation proceedings, the institution or a trustworthy person prepares a report on its course and results.

§ 5. The Minister of Justice shall determine, by means of an ordinance, the conditions to be met by institutions and persons authorised to conduct mediation, the manner of their appointment and recall, the scope and conditions of making files available to institutions and persons authorised to conduct mediation as well as the manner and course of mediation proceedings, having regard to an efficient conduct of such proceedings

(b) Observations on the implementation of the article

561. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 15 of article 44

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

562. Poland has indicated that it is in compliance with this provision.

563. Poland has cited the following text: please see article 604 of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

564. The reviewing experts noted that the grounds for refusal of an extradition request, both mandatory and optional, are prescribed in article 604 CCP. One of these grounds for refusal is the anticipated prosecution or punishment of the person sought in the requesting State on account of discriminatory grounds such as the race, sex, religion, nationality and ethnic origin of the person sought.

565. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 16 of article 44

16. *States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

(a) Summary of information relevant to reviewing the implementation of the article

566. Poland has indicated that it is in compliance with this provision.

567. Poland has cited the following text: please see Article 604 of the Code of Criminal Procedure.

(b) Observations on the implementation of the article

568. Poland explained that with regard to extradition requests relating to fiscal matters, it does not deny extradition requests on the sole ground that they involve fiscal matters.

569. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 17 of article 44

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

570. Poland has indicated that is in compliance with this provision.

571. Poland has cited the following text:

> **The Code of Criminal Procedure**
>
> Article 602. § 1. (abrogated).
>
> § 2. In the event an agency of the foreign state has submitted a motion to extradite a prosecuted person to institute criminal proceedings against her or execute a penalty that such person has been sentenced to or apply a preventive measure, the state prosecutor shall interrogate such person and, if need be, shall secure evidence located in the country, after which he shall submit the case to the circuit court of competent jurisdiction.
>
> Article 603. § 1. The circuit court shall issue in session an opinion on the motion of the foreign state. Before such an opinion is issued, the prosecuted person should be given the opportunity to submit explanations, orally or in writing. If extradition is sought in order to institute criminal

proceedings, upon the well-founded request of such a person, evidence-taking proceedings should be conducted with respect to the evidence accessible in Poland.

§ 2. The defence counsel shall have the right to participate in the session.

§ 3. If the court has issued an order on the inadmissibility of extradition, the extradition may not take place.

§ 4. The order of the court regarding the extradition shall be subject to interlocutory appeal. § 5. The court shall refer the valid and final order together with the files of the case to the Minister of Justice who, having decided on the motion, shall notify the appropriate authority of the foreign state.

Article 605. § 1. If the motion for extradition concerns an offence the perpetrator of which is subject to extradition, then the circuit court acting ex officio or upon a motion from the state prosecutor, may issue an order concerning the preventive detention to be imposed upon the prosecuted person; Article 263 shall be applied accordingly.

§ 2. The court, before a motion for extradition has been filed, may also order the preventive detention of the prosecuted person for a period not exceeding forty days, if so requested by the agency of a foreign State, which at the same time shall declare that the person concerned has been validly sentenced by a judgement, or a decision for preventive detention has been issued.

§ 3. The order of the court regarding the preventive detention shall be subject to interlocutory appeal.

§ 4. The Minister of Justice and a diplomatic mission or a consular office or prosecuting agency of the foreign State shall be notified promptly, of the day on which the preventive detention commences.

§ 5. If the information contained in a motion for extradition is insufficient, and the court or the state prosecutor has required its completion, and the foreign State fails to send the necessary documents or information to the requesting agency, within one month from the day on which the request for the completion of the motion for extradition is served on it, the decision on preventive detention shall be quashed.

§ 6. In the event that extradition is refused, or the motion for extradition or preventive detention is withdrawn, or if the agency of a foreign State, though duly notified of when and where the requested person is to be surrendered, fails to take custody of him within seven days from the day established for extradition, then the person who was placed under preventive detention should be promptly released unless he is deprived of his liberty in another case.

(b) Observations on the implementation of the article

572. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 18 of article 44

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

573. Poland has indicated that it is in compliance with this provision.

574. Poland has cited the following bilateral or multilateral agreement(s) or arrangement(s) related to extradition: please see response to paragraph 4.

(b) Observations on the implementation of the article

575. The reviewing experts noted that Poland is bound by regional instruments on extradition such as the European Convention on Extradition and its two Additional Protocols and the (sui generis) European Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States; and multilateral instruments providing a basis for extradition such as the OECD Convention on combating bribery of foreign public officials in international business transactions, the Council of Europe Criminal Law Convention on Corruption, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the United Nations Convention against Transnational Organized Crime (UNTOC). More than 50 bilateral treaties on extradition and assistance in criminal matters, as well as against organized crime including through extradition measures, were reported.

576. The reviewing experts concluded that Poland has adequately implemented the provision under review. To encourage better implementation, they recommended that the national authorities continue to explore further opportunities to actively engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of extradition mechanisms.

Article 45. Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

577. Poland has indicated that it is in compliance with this provision.

578. Poland has cited the following laws regarding applicable bilateral or multilateral agreement(s) or arrangement(s) related to the provision under review:

The Code of Criminal Procedure

Taking over the sentenced persons or transferring decisions in order to execute

Article 608. § 1. In the event that a Polish national, has been finally validly sentenced by a court of a foreign state to a penalty of deprivation of liberty subject to execution, or a measure involving deprivation of liberty has been validly and finally decided with respect to a Polish national, the Minister of Justice may direct a request to an appropriate authority of that foreign State, to take over custody of the sentenced person or the person on whom the imposition of the measure was decided, in order that the penalty of deprivation of liberty or the measure be executed in the Republic of Poland.

§ 2. In the event that a Polish national, a person permanently residing, having property or pursuing a professional activity within the territory of the Republic of Poland, has been validly and finally sentenced for a fine, or in the event that a prohibition against occupying a specified post, pursuing a specified professional activity or conducting a specified economic activity, a prohibition on driving vehicles, or forfeiture or a preventive measure not involving deprivation of liberty has been validly and finally decided with respect to such person, the Minister of Justice may direct a request to an appropriate authority of that foreign state for taking over the decision to be executed in the Republic of Poland.

§ 3. The Minister of Justice before making the request referred to in § § 1 or 2 shall motion the court having jurisdiction, to issue an order regarding the admissibility of taking over the decision to be executed in the Republic of Poland.

Article 609. § 1. In the event that a motion has been received, for execution of a validly and finally decided penalty of deprivation of liberty or a measure involving deprivation of liberty, with respect to a Polish national or a person permanently residing within the territory of the Republic of Poland, the Minister of Justice shall motion the court having jurisdiction, to issue an order regarding the admissibility of taking over the decision to be executed in the Republic of Poland.

§ 2. In the event that a request from a foreign state has been received for execution, with respect to a Polish national, a person permanently residing, having property or pursuing a professional activity within the territory of the Republic of Poland, of a validly and finally decided fine, prohibition from occupying a specified post, pursuing a specified professional activity or conducting a specified economic activity, prohibition on driving vehicles, or forfeiture or a preventive measure not involving deprivation of liberty, the Minister of Justice shall motion the court having jurisdiction, to issue an order regarding the admissibility of taking over the decision to be executed in the Republic of Poland.

§ 3. If the decision to which the request pertains is not valid and final or the person covered by the request specified in § 1 is not a Polish national or has no permanent residence within the territory of the Republic of Poland, the Minister of Justice shall return the request.

Article 610. § 1. In the event that a foreign national has been validly and finally sentenced by a Polish court, for a penalty of deprivation of liberty subject to execution or a measure involving deprivation of liberty has been validly and finally decided with respect to such person, the Minister of Justice may direct a request to an appropriate agency of the foreign state whose national is the sentenced person or a person with respect to whom the measure was decided for taking over the penalty or measure to be executed.

§ 2. The Minister of Justice before making the request referred to in § 1 shall motion the court having jurisdiction, to issue an order regarding the admissibility of transferring the decision to be executed abroad.

§ 3. In the event that a motion has been received for taking over a foreign national validly and finally sentenced by a Polish court, for a penalty of deprivation of liberty subject to execution or for whom a measure involving deprivation of liberty has been validly and finally decided, the Minister of Justice shall motion the court having jurisdiction, to issue an order regarding the admissibility of transferring the decision to be executed abroad.

§ 4. In the event that a foreign national or a person permanently residing or having property or pursuing a professional activity abroad, has been validly and finally sentenced by a Polish court for a fine, or in the event that a prohibition from occupying a specified post, pursuing a specified professional activity or conducting a specified economic activity, prohibition on driving of vehicles, or forfeiture or a preventive measure not involving deprivation of liberty has been validly and finally decided with respect to such person, the court having jurisdiction to execute the penalty may request, through the Minister of Justice, that an appropriate authority of that foreign state where the convicted person or a person for whom the measure has been decided resides permanently or pursues the activity, execute the decision.

§ 5. In the event that a request from a foreign state has been received for transfer, for execution of a valid and final sentence of a Polish court with respect to a person permanently residing, having property or pursuing a professional activity within the territory of that state for a fine, or for transfer for execution of a valid and final decision on a prohibition from occupying a specified post, pursuing a specified professional activity or conducting a specified economic activity, as well as prohibition on driving vehicles, forfeiture or a preventive measure not
involving deprivation of liberty, the Minister of Justice shall motion the court having jurisdiction, to issue an order regarding the admissibility of transferring the decision to be executed abroad.

Article 611. § 1. The circuit court in whose area the sentenced person has recently resided permanently or stayed temporarily, shall have the jurisdiction to examine cases specified in Article 608 § 3 in connection with § 1 and Article 609 § 1.

§ 2. The district court in whose area the sentenced person has resided permanently or stayed temporarily, or if this has not been established, where the property suitable for execution is located or where the sentenced person pursues the prohibited activity, shall have the jurisdiction to examine cases specified in Article 608 § 3 in connection with § 2, Article 609 § 2 and Article 610 § 5.

§ 3. The circuit court in whose circuit the decision pertained to in the request has been issued, shall have the jurisdiction to examine the cases specified in Article 610 § § 2 and 3.

§ 4. If the jurisdiction cannot be established according to the principles specified in § 1, the case shall be examined by the Circuit Court in Warsaw.

§ 5. If the jurisdiction cannot be established according to the principles specified in § 2, the case shall be examined by the court having jurisdiction over the Śródmieście ("City Centre") quarter of the municipality Warszawa-Centrum.

Article 611a. § 1. The court shall examine the admissibility of taking over or transferring the decision to be executed, in session where the state prosecutor and the sentenced person, if he stays within the territory of the Republic of Poland, as well as the defence counsel for the sentenced person if he appears, shall have the right to participate. When the sentenced person who is not staying within the territory of the Republic of Poland has no defence counsel, the president of the court having jurisdiction to examine the case may designate a defence counsel ex officio.

§ 2. When the data contained in the request are not sufficient, the court may order their supplementation. The court may adjourn examination of the case for this purpose.

§ 3. If the court has issued an order regarding the inadmissibility of taking over or transferring the decision to be executed, the taking over or transfer shall not occur.

§ 4. In the event specified in Article 610 § 4, the court shall issue an order on making a request to an agency of a foreign state to take over the decision to be executed.

§ 5. The order of the court regarding taking over or transferring the decision to be executed shall be subject to interlocutory appeal.

§ 6. If the proceedings concern taking over the decision to be executed, the court may decide on a preventive measure.

Article 611b. § 1. Taking over the decision to be executed in the Republic of Poland shall be inadmissible if:

1) the decision is not valid and final or is not subject to execution,

2) the execution of the decision would constitute an infringement of the sovereignty, security or legal order of the Republic of Poland.

3) the person sentenced to deprivation of liberty, or the person with regard to whom a measure involving deprivation of liberty has been decided, does not consent to the taking over,

4) the person sentenced to fine or a person not residing permanently in Poland with regard to whom forfeiture has been decided, has no property on its territory,

5) the act indicated in the request does not constitute a prohibited act under Polish law, 6) circumstances referred to in Article 604 § 1 subsections 2, 3 and 5 have occurred.

§ 2. Transferring the decision to be executed in a foreign state shall be inadmissible if: 1) the decision is not valid and final or is not subject to execution,

2) the person sentenced to deprivation of liberty, or the person with regard to whom a measure involving deprivation of liberty has been decided, does not consent to the transfer,

3) the person sentenced to deprivation of liberty, or the person with regard to whom a measure involving deprivation of liberty has been decided, is a person specified in Article 604 § 1 subsection 1,

4) the circumstances referred to in Article 604 § 1 subsections 3 and 5 have occurred.

Article 611c § 1. After the decision is taken over to be executed, the court shall determine the legal qualification of the act under Polish law and the penalty or the measure subject to execution.

§ 2. In the determination of a penalty or measure, the court shall apply accordingly the provision of Article 114 § 4 of the Penal Code.

§ 3. In the determination of the amount of a fine, the court shall convert the fine so decided, as an amount or the level of the daily rate, specified in a foreign currency, according to the average exchange rates of currencies announced by the National Bank of Poland for the date of the issuance of the decision in a foreign state. If the fine was imposed as an amount, this amount cannot exceed the product of the daily rate and a number of daily rates.

§ 4. The court examines the case in session. The provisions of Article 352 and 611a § § 1 and 5 shall be applied accordingly.

Article 611d. § 1. If, in the course of proceedings, circumstances have occurred justifying the issuance of a decision on security on property because of threatened forfeiture of objects or property constituting benefits obtained from committing an offence, and these objects or elements of this property are located in the territory of a foreign state, the court, and in preparatory proceedings - the state prosecutor, may request, through the Minister of Justice, an appropriate agency of the foreign state to secure the objects or property threatened with forfeiture.

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

Article 611e. If the validly sentenced person leaves the territory of the state where he has been sentenced and arrives in the territory of the State of which he is a national, before serving the penalty of deprivation of liberty decided with respect to him, or before the execution of the measure decided with respect to him, the provisions of this Chapter shall be applied accordingly. The provisions of Article 611b § 1 subsection 3 and § 2 subsection 2 shall not be applied.

Article 611f. The provisions of this Chapter shall be applied accordingly to taking over or transferring for execution the decisions on pecuniary penalties.

(b) Observations on the implementation of the article

579. The transfer of sentenced persons is regulated in articles 608-611f CPC. Poland is a party to the Council of Europe Convention on the Transfer of Sentenced Persons of 1983 and its Additional Protocol of 1997.

580. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 46. Mutual legal assistance

Paragraph 1 of article 46

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

581. Poland has indicated that is in compliance with this provision.

582. Poland has summarized the following applicable mutual legal assistance laws and arrangements, including existing bilateral or multilateral agreement(s):

The Criminal Procedure Code governs MLA to foreign authorities in the absence of a treaty (CPC, Art. 588.1). The lack of dual criminality is a discretionary ground for denial (CPC Art. 588.3(3)). MLA may be provided for coercive and non-coercive measures, but court authorisation is required for coercive measures (Art. 585). MLA may be provided for persons who availed themselves of the impunity provision. MLA may also be provided for proceedings against legal persons (Law of Liability of Collective Entities, Art. 41). MLA requests to Poland may be sent either through the Ministry of Justice or directly to regional prosecution or court authorities.

The Code of Criminal Procedure

Article 585. The actions necessary in criminal proceedings may be conducted by way of judicial assistance, particularly the following:

(1) service of documents on persons staying abroad or on agencies having their principal offices abroad,

(2) taking depositions of persons in their capacities as accused persons, witnesses, or experts,

(3) inspection and searches of dwellings and other places and persons, confiscation of material objects and their delivery abroad,

(4) summoning of persons staying abroad to make a personal voluntary appearance before the court or state prosecutor, in order to be examined as a witness or to be submitted to confrontation, and the bringing of persons under detention, for the same purposes, and

(5) giving access to records and documents, and information on the record of convictions of the accused.

(6) advising on the law.

Article 588. § 1. Courts and state prosecutors offices shall give judicial assistance when requested by letters rogatory, issued by the courts and the state prosecutors' offices of foreign states.

§ 2. The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.

§ 3. The court and the state prosecutor may refuse to give judicial assistance if:

(1) the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,

(2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or

(3) the request is concerned with an act which is not an offence under Polish law.

§ 4. Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Republic of Poland.

§ 5. The fees for the judicial assistance shall be established pursuant to Articles 616 through 619.

ACT of 28 October 2002 on the Liability of Collective Entities for Prohibited Acts Under Penalty.

Article 41. 1. In cases concerning liability of collective entities for prohibited acts under penalty, the court and state prosecutor shall provide judicial assistance upon a request of the competent agency of a foreign state.

2. In cases in which a prohibited act is an act recognised by the act of law as an unfair competition act, assistance shall also be provided by the President of the Office for Competition and Consumer Protection.

(b) Observations on the implementation of the article

583. The reviewing experts noted that there is no stand-alone law on mutual legal assistance (MLA). As in the case on extradition, Poland relies on its Code of Criminal Procedure (article 588, paragraph 1 of the CPC) and its bilateral/multilateral treaties.

584. The reviewing experts concluded that Poland has adequately implemented the provision under review.

(c) Good practices and successes

585. The reviewing experts note as a good practice the comprehensive legal framework (provisions of Code of Criminal Procedure) on international cooperation in criminal matters.

Paragraph 2 of article 46

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

586. Poland has indicated that it is in compliance with this provision.

587. Poland has cited the following applicable measures: please see response to the preceding paragraph.

> ACT of 28 October 2002 on the Liability of Collective Entities for Prohibited Acts Under Penalty.
>
> Article 41. 1. In cases concerning liability of collective entities for prohibited acts under penalty, the court and state prosecutor shall provide judicial assistance upon a request of the competent agency of a foreign state.
> 2. In cases in which a prohibited act is an act recognised by the act of law as an unfair competition act, assistance shall also be provided by the President of the Office for Competition and Consumer Protection.

(b) Observations on the implementation of the article

588. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraphs 3 (a) to 3 (i) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons; (b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

(a) Summary of information relevant to reviewing the implementation of the article

589. Poland has indicated that it can afford the forms of mutual legal assistance listed in the

provision above.

590. Poland has cited the following applicable measure(s): See Article 585 of the Criminal Procedure Code in the first paragraph.

(b) Observations on the implementation of the article

591. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraphs 3 (j) and 3 (k) of article 46

> *3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*
>
> *...*
>
> *(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*
>
> *(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

592. Poland has indicated that it can afford the forms of mutual legal assistance listed in the provision under review.

593. Poland has cited the following applicable measure(s): See response related to money laundering questions as well as confiscation and freezing of proceeds of crime.

(b) Observations on the implementation of the article

594. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 4 of article 46

> *4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party to this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

595. Poland has indicated that it is possible for it to transmit information as described in the provision under review.

596. Poland has indicated that this sort of information could be disseminated between competent authorities of state parties under provisions covered by international bilateral or multilateral agreements they are party to e.a. under Aricle 21 of the European Convention on mutual assistance in criminal matters of 1959.

(b) Observations on the implementation of the article

597. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 5 of article 46

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restriction on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

598. Poland has indicated that it is in compliance with this provision.

599. Poland has cited the following applicable policy(ies) or measure(s):

> Information in this regard remains confidential and each person involved in criminal investigation is obliged to follow the rule of confidentiality otherwise shall be liable for violation of Article 241 of the **Criminal Code**
>
> Article 241. § 1. Whoever publicly disseminates, without permission, information from preparatory proceedings before they have been disclosed in court proceedings
>
> shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.
> § 2. The same punishment shall be imposed on anyone, who publicly disseminates information from a court trial conducted in camera.

(b) Observations on the implementation of the article

600. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 8 of article 46

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

601. Poland has indicated that it is in compliance with this provision.

602. Poland has cited the following measures:

THE BANKING ACT of 29 August 1997 Article 105

1. A bank shall be required to disclose information that is subject to the obligation of banking secrecy solely:

1) to other banks and credit institutions to the extent to which such information is necessary to perform banking operations and the acquisition and disposal of claims,

1a) on a reciprocal basis - to other institutions authorised by law to grant loans - on claims, trading and balances of bank accounts to the extent to which such information is necessary to extend loans, cash advances, bank guarantees and other guarantees,

1b) to other banks, credit institutions or financial institutions to the extent necessary to:

a) follow binding regulations concerning the supervision on consolidated basis, including in particular preparation of consolidated financial accounts also covering the bank, b) manage the risk of large exposures,

c) apply statistical methods referred to in Art. 128d, paras. 1 and 6,

1c) to the institutions referred to in para. 4 to the extent necessary to apply the statistical methods, as referred to in Art. 128d, paras. 1 and 6;

2) at the request of:

a) the Polish Financial Supervision Authority, in the scope of supervision exercised pursuant to the present Act and the Act of 21 July 2006 on the Supervision of Financial Markets (as published and amended in Journal of Laws of 2006, No. 157, item 1119), employees of the Office of the Financial Supervision Authority, in the scope as referred to in Art. 139, para. 1, subpara. 2, and persons authorised by resolution of the Polish Financial Supervision Authority to the extent specified in the relevant authorisation,

b) a court or public prosecutor in connection with legal proceedings under way in cases involving criminal or fiscal offences:

- against a natural person where such person is a party to an agreement with the bank, in the scope of information related to that natural person,
- committed in connection with the activity of a legal person or organisational unit without legal personality, in the scope of information related to that legal person or organization,

c) a court or public prosecutor in connection with the performance of a request for legal assistance from a foreign state which, on the basis of a ratified international agreement binding on the Republic of Poland, has the right to request information that is subject to the obligation of banking secrecy,

d) a court in connection with inheritance proceedings under way or the division of the joint property of husband and wife, and also legal proceedings under way against a natural person in cases involving alimony or alimony pension, where the said person is party to an agreement with the bank,

e) the General Inspector of Fiscal Control in connection with:

- legal proceedings under way against a natural person in cases involving criminal or fiscal offences, where the said person is party to an agreement with the bank,
- legal proceedings under way in cases involving criminal or fiscal offences committed, in respect of the activity carried out by a legal person or an organisational unit without legal personality, where such is account holder at the bank,

f) the President of the Supreme Chamber of Control to the extent necessary to carry out the inspection procedures specified in the Act of 23 December 1994on the Supreme Chamber of Control (as published in Journal of Laws of 2001, No. 85, item 937; No. 154, item 1800, and of 2002, No. 153, item 1271),

g) (repealed),

h) the President of the Bank Guarantee Fund, in the scope of information specified in the Act of 14 December 1944 on the Bank Guarantee Fund (as published and amended in Journal of Laws of 2000, No. 9, item 131),
i) the certified auditor appointed to audit the bank's accounts by not satisfy the liabilities or was guilty of delay of 60 days in providing performance resulting from the agreements concluded with the bank or other institution authorised by statute to grant loans, and, following the occurrence of these circumstances, at least 30 days passed since that person was notified by the bank or other institution authorised by statute to grant loans about the intention of processing the related information that is subject to the obligation of banking secrecy without his/her consent. [...]

(b) Observations on the implementation of the article

603. The reviewing experts took note of the application of subparagraph 2 c) of the banking act of 29 August 1997 Article 105. Bank secrecy is not a ground to deny an MLA.

604. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 9 (a) of article 46

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(a) Summary of information relevant to reviewing the implementation of the article

605. Poland has indicated that it is in compliance with this provision.

606. Poland has cited the following applicable policy(ies), practice(s), or other measure(s): See response to paragraph 1.

The Code of Criminal Procedure

Article 588. § 1. Courts and state prosecutors offices shall give judicial assistance when requested by letters rogatory, issued by the courts and the state prosecutors' offices of foreign states.
§ 2. The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.
§ 3. The court and the state prosecutor may refuse to give judicial assistance if:

(1) the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,
(2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or
(3) the request is concerned with an act which is not an offence under Polish law.

§ 4. Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Republic of Poland.
§ 5. The fees for the judicial assistance shall be established pursuant to Articles 616 through 619.

(b) Observations on the implementation of the article

607. The reviewing experts noted that the lack of dual criminality is a discretionary ground for refusal of an MLA request (article 588, paragraph 3(3) CPC). MLA may be provided for coercive and non-coercive measures, but court authorization is required for coercive measures (article 585 CPC). Furthermore, mutual legal assistance can be rendered in the absence of dual criminality when the acts requested do not violate the domestic law.

608. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 9 (b) of article 46

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

609. Poland has indicated that it is in compliance with this provision.

610. Poland has cited the following applicable policy(ies), practice(s), or other measure(s): See response to paragraph 1.

The Code of Criminal Procedure

Article 588. § 1. Courts and state prosecutors offices shall give judicial assistance when requested by letters rogatory, issued by the courts and the state prosecutors' offices of foreign states.
§ 2. The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.
§ 3. The court and the state prosecutor may refuse to give judicial assistance if:

(1) the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,
(2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or
(3) the request is concerned with an act which is not an offence under Polish law.

§ 4. Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Republic of Poland.
§ 5. The fees for the judicial assistance shall be established pursuant to Articles 616 through 619.

(b) Observations on the implementation of the article

611. The reviewing experts noted that the lack of dual criminality is a discretionary ground for refusal of an MLA request (article 588, paragraph 3(3) CPC). MLA may be provided for coercive and non-coercive measures, but court authorization is required for coercive measures (article 585 CPC). Furthermore, mutual legal assistance can be rendered in the absence of dual criminality when the acts requested do not violate the domestic law.

612. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 9 (c) of article 46

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

613. Poland has indicated that it is in compliance with this provision.

614. Poland has cited the following applicable policy(ies), practice(s), or other measure(s): See response to paragraph 1.

The Code of Criminal Procedure

Article 588. § 1. Courts and state prosecutors offices shall give judicial assistance when requested by letters rogatory, issued by the courts and the state prosecutors' offices of foreign states.
§ 2. The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.
§ 3. The court and the state prosecutor may refuse to give judicial assistance if:

(1) the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,
(2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or
(3) the request is concerned with an act which is not an offence under Polish law.

§ 4. Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Republic of Poland.
§ 5. The fees for the judicial assistance shall be established pursuant to Articles 616 through 619.

(b) Observations on the implementation of the article

615. The reviewing experts noted that the lack of dual criminality is a discretionary ground for refusal of an MLA request (article 588, paragraph 3(3) CPC). MLA may be provided for coercive and non-coercive measures, but court authorization is required for coercive measures (article 585 CPC). Furthermore, mutual legal assistance can be rendered in the absence of dual criminality when the acts requested do not violate the domestic law.

616. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 10 of article 46

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in

obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

617. Poland has indicated that it is in compliance with this provision.

618. Poland has cited the following applicable measure(s): see response to paragraph 1.

The Code of Criminal Procedure

Article 589. § 1. A witness or expert who is not a Polish national and who, when summoned from abroad, appears voluntarily before the court, cannot be prosecuted or arrested, or put under preventive detention either by reason of an offence relevant to the criminal proceedings, or of any other offence committed before he crossed the Polish border. The penalty imposed for such offence may not be executed with respect to him.

§ 2. Such a witness or expert shall forfeit the protection provided by § 1, if he fails to leave the territory of the Republic of Poland, although being able to do so within seven days from the day on which the court announces to him that his presence is no longer necessary.

§ 3. Witnesses or experts summoned from abroad shall be entitled to have the costs of their fare and stay reimbursed to them, and shall be compensated for lost wages; in addition, an expert shall be entitled to a fee for the opinion he has issued.

§ 4. The summons served on a witness or expert permanently residing abroad shall include a notice of the contents of § 1 through 3, and it shall not contain a warning on measures of coercion in the event of a failure to appear.

Article 589a. § 1. With respect to a person deprived of liberty within the territory of a foreign state, extradited temporarily in order to testify as witness or to conduct other procedural action with his participation before a Polish court or state prosecutor, the circuit court for the place of the performance of the action shall order placing the extradited person in a Polish penal establishment or detention facility for the period of his stay within the territory of the Republic of Poland, but not exceeding the term of deprivation of liberty specified in the state which extradited the person.

§ 2. The order of the court shall not be subject to interlocutory appeal.

(b) Observations on the implementation of the article

619. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 11 of article 46

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the

person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

620. Poland has indicated that it is in compliance with this provision.

621. Poland has cited the following applicable measure(s): see response to paragraph 1.

The Code of Criminal Procedure

Article 589. § 1. A witness or expert who is not a Polish national and who, when summoned from abroad, appears voluntarily before the court, cannot be prosecuted or arrested, or put under preventive detention either by reason of an offence relevant to the criminal proceedings, or of any other offence committed before he crossed the Polish border. The penalty imposed for such offence may not be executed with respect to him.

§ 2. Such a witness or expert shall forfeit the protection provided by § 1, if he fails to leave the territory of the Republic of Poland, although being able to do so within seven days from the day on which the court announces to him that his presence is no longer necessary.

§ 3. Witnesses or experts summoned from abroad shall be entitled to have the costs of their fare and stay reimbursed to them, and shall be compensated for lost wages; in addition, an expert shall be entitled to a fee for the opinion he has issued.

§ 4. The summons served on a witness or expert permanently residing abroad shall include a notice of the contents of § 1 through 3, and it shall not contain a warning on measures of coercion in the event of a failure to appear.

Article 589a. § 1. With respect to a person deprived of liberty within the territory of a foreign state, extradited temporarily in order to testify as witness or to conduct other procedural action with his participation before a Polish court or state prosecutor, the circuit court for the place of the performance of the action shall order placing the extradited person in a Polish penal establishment or detention facility for the period of his stay within the territory of the Republic of Poland, but not exceeding the term of deprivation of liberty specified in the state which extradited the person.

§ 2. The order of the court shall not be subject to interlocutory appeal.

(b) Observations on the implementation of the article

622. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 12 of article 46

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

623. Poland has indicated that is in compliance with this provision.

> **The Code of Criminal Procedure**
>
> Article 589a. § 1. With respect to a person deprived of liberty within the territory of a foreign state, extradited temporarily in order to testify as witness or to conduct other procedural action with his participation before a Polish court or state prosecutor, the circuit court for the place of the performance of the action shall order placing the extradited person in a Polish penal establishment or detention facility for the period of his stay within the territory of the Republic of Poland, but not exceeding the term of deprivation of liberty specified in the state which extradited the person.
>
> § 2. The order of the court shall not be subject to interlocutory appeal.
>
> Article 596. A person extradited cannot, without the consent of the state that extradited him, be sentenced or deprived of liberty in order to serve a penalty for any other offence committed before the date of extradition.

(b) Observations on the implementation of the article

624. During the country visit, it was explained by the national authorties that the reported provisions on the application of the rule of speciality in the extradition context apply in an analogous manner in the MLA proceedings and wuthin the framework of the provision under review.

625. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 13 of article 46

> *13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

(a) Summary of information relevant to reviewing the implementation of the article

626. Poland has indicated that it has established a central authority(ies) as described above.

627. As it was indicated in Polish declaration while ratification the Ministry of Justice has been appointed as central authority for the purposes of MLA and extradition issues requested under UNCAC(date of notification: 13 October 2006).

(b) Observations on the implementation of the article

628. The reviewing experts noted that, pursuant to article 46, paragraph 13, of the UNCAC, Poland has informed the Secretary-General of the United Nations that the Ministry of Justice has been designated as the central authority competent to receive requests for mutual legal assistance (date of notification: 13 October 2006). According to the European Convention on Mutual Assistance in Criminal Matters of 1959 (article 15), a formal MLA request may be sent either through the Ministries of Justice of the States parties or directly by competent authorities. Poland specified that the use of diplomatic channels to transfer an MLA request may be used in the absence of treaty or if it is required by a treaty It is also possible to transmit such a request through Interpol channels in cases of urgency.

629. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 14 of article 46

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

630. Poland has indicated that it is in compliance with this provision with regard to the communication of requests for mutual legal assistance.

631. Poland has cited the following applicable measure(s):

The Code of Criminal Procedure

Article 588. § 1. Courts and state prosecutors offices shall give judicial assistance when requested by letters rogatory, issued by the courts and the state prosecutors' offices of foreign states.

§ 2. The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.

§ 3. The court and the state prosecutor may refuse to give judicial assistance if:

(1) the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,

(2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or

(3) the request is concerned with an act which is not an offence under Polish law.

§ 4. Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Republic of Poland.

§ 5. The fees for the judicial assistance shall be established pursuant to Articles 616 through 619.

(b) Observations on the implementation of the article

632. The reviewing experts concluded that Poland has adequately implemented the provision under review. Poland has informed the Secretary-General of the United Nations that the acceptable languages for submission of MLA requests are Polish and English assistance (date of notification: 13 October 2006).

Paragraphs 15 and 16 of article 46

15. A request for mutual legal assistance shall contain:
(a) The identity of the authority making the request;
(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and (f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

633. Poland has indicated that it is in compliance with this provision.

634. Poland has cited the following applicable measure(s) and types of additional information it may need a request for mutual legal assistance to contain: see preceding responses.

(b) Observations on the implementation of the article

635. The reviewing experts concluded that Poland has adequately implemented the provision under review. During the country visit, Poland further indicated that UNCAC directly applies in this case.

Paragraph 17 of article 46

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

636. Poland has indicated that it is in compliance with this provision.

637. Poland has cited the following applicable policy(ies) or other measure(s): see Article 588 (4)

of the Code.

Article 588. § 1. Courts and state prosecutors offices shall give judicial assistance when requested by letters rogatory, issued by the courts and the state prosecutors' offices of foreign states.

§ 2. The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.

§ 3. The court and the state prosecutor may refuse to give judicial assistance if:

(1) the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,

(2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or

(3) the request is concerned with an act which is not an offence under Polish law.

§ 4. Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Republic of Poland.

§ 5. The fees for the judicial assistance shall be established pursuant to Articles 616 through 619.

(b) Observations on the implementation of the article

638. The reviewing experts noted that, with regard to the execution of MLA requests, the Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Republic of Poland (article 588, paragraph 4 CPC).

639. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 18 of article 46

18. Whenever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

640. Poland has indicated that it permits hearings of individuals mentioned above to take place by video conference as described above.

641. Poland has cited the following applicable measure(s).

The Code of Criminal Procedure

Article 177. § 1. Any person summoned as a witness is obligated to appear and testify.

§ 1a. Examination of a witness may take place with the use of technical equipment which

permits the conduct of this action at a distance. In proceedings in court this action takes place with the participation of the court referred to in Article 396 § 2; provision of Article 396 § 3 shall be applied accordingly.

§ 2. A witness who cannot comply with a summons by reason of illness, serious disability or any other insurmountable obstacle, may be heard at his place of stay.

(b) Observations on the implementation of the article

642. Poland reiterated during the country visit that their legislation foresees that the conduct of an hearing can take place by video conference as provided for in article 46, paragraph 18.

643. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 19 of article 46

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

644. Poland has indicated that it is in compliance with this provision.

645. Polish law protects the secrecy of investigation. The Criminal Code constitutes revealing information from investigation as a criminal offence:

Article 241. § 1. Whoever publicly disseminates, without permission, information from preparatory proceedings before they have been disclosed in court proceedings

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

§ 2. The same punishment shall be imposed on anyone, who publicly disseminates information from a court trial conducted in camera.

(b) Observations on the implementation of the article

646. Under the Polish law, any information received by the State to which the request is addressed is not to be used for any purpose outside the context of the legal assistance request unless both parties decide otherwise.

647. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 20 of article 46

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance

of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

648. Poland has indicated that it is in compliance with this provision.

649. Poland has cited the following applicable measure(s): please see preceding response.

(b) Observations on the implementation of the article

650. Under the Polish law, any information received by the State to which the request is addressed is not to be used for any purpose outside the context of the legal assistance request unless both parties decide otherwise.

651. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 21 of article 46

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

652. Poland has indicated that its legal system recognizes grounds for refusal.

653. Poland has cited the following applicable measure(s):

The Code of Criminal Procedure

Article 588. § 1. Courts and state prosecutors offices shall give judicial assistance when requested by letters rogatory, issued by the courts and the state prosecutors' offices of foreign states.

§ 2. The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.

§ 3. The court and the state prosecutor may refuse to give judicial assistance if:

(1) the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,

(2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or

(3) the request is concerned with an act which is not an offence under Polish law.

§ 4. Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Republic of Poland.

§ 5. The fees for the judicial assistance shall be established pursuant to Articles 616 through 619.

(b) Observations on the implementation of the article

654. The reviewing experts noted that the grounds for refusal of MLA requests are foreseen in article 588 of the Code of Criminal Procedure. A mandatory ground for refusal is foreseen in cases where the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty. Other optional grounds for refusal than the lack of double criminality include cases where the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under the Polish law, as well as cases where the foreign State in which the letters rogatory have originated does not guarantee reciprocity.

655. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 22 of article 46

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

656. Poland has indicated that is in compliance with this provision.

657. Poland has cited the following applicable measure(s): please see preceding response.

(b) Observations on the implementation of the article

658. The reviewing experts noted that the fiscal nature of he offence(s) in question is not included among the grounds to deny an MLA request, as foreseen in article 588 CCP.

659. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 23 of article 46

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

660. Poland has indicated that it is in compliance with this provision.

661. Poland has cited the following applicable measure(s): please see response to paragraph 21.

(b) Observations on the implementation of the article

662. During the country visit, Poland explained that the refusal of MLA requests is explained to the requesting State. Poland further referred to article 588 of the Code of Criminal Procedure.

663. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 24 of article 46

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

664. Poland has indicated that it has adopted and implemented the measures described above.

665. Poland has cited the following applicable measure(s):

The Code of Criminal Procedure

Article 588. § 1. Courts and state prosecutors offices shall give judicial assistance when requested by letters rogatory, issued by the courts and the state prosecutors' offices of foreign states.

§ 2. The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.

§ 3. The court and the state prosecutor may refuse to give judicial assistance if:

(1) the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,
(2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or
(3) the request is concerned with an act which is not an offence under Polish law.

§ 4. Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Republic of Poland.
§ 5. The fees for the judicial assistance shall be established pursuant to Articles 616 through 619.

666. Since 2007, Poland has received 9 MLA requests in bribery cases and has effectively

responded to all the requests. Two of the requests were completed within 4 months, 5 requests were completed within 6 months, and the 2 remaining requests were completed within one year.

(b) Observations on the implementation of the article

667. During the country visit, Poland stressed that it monitors MLA requests in order to execute them as soon as possible.

668. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 25 of article 46

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

669. Poland has indicated that it is in compliance with this provision.

670. According to the Article 6 of the European Convention on Mutual Assistance in Criminal Matters of 1959 MLA may be postponed if it interferes within an ongoing investigation, prosecution or trial.

(b) Observations on the implementation of the article

671. Poland cited the application of Article 6 of the European Convention on Mutual Assistance in Criminal Matters of 1959 which is in compliance with article 46, paragraph 25 of UNCAC.

672. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 26 of article 46

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

673. Poland has indicated that it is in compliance with this provision.

674. Poland has cited the following applicable measure: Article 4 of the European Convention on Mutual Assistance in Criminal Matters of 1959 shall be applicable.

(b) Observations on the implementation of the article

675. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 27 of article 46

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

676. Poland has indicated that it is in compliance with this provision.

677. Poland has cited the following applicable measure(s):

The Code of Criminal Procedure

Article 589. § 1. A witness or expert who is not a Polish national and who, when summoned from abroad, appears voluntarily before the court, cannot be prosecuted or arrested, or put under preventive detention either by reason of an offence relevant to the criminal proceedings, or of any other offence committed before he crossed the Polish border. The penalty imposed for such offence may not be executed with respect to him.

§ 2. Such a witness or expert shall forfeit the protection provided by § 1, if he fails to leave the territory of the Republic of Poland, although being able to do so within seven days from the day on which the court announces to him that his presence is no longer necessary.

§ 3. Witnesses or experts summoned from abroad shall be entitled to have the costs of their fare and stay reimbursed to them, and shall be compensated for lost wages; in addition, an expert shall be entitled to a fee for the opinion he has issued.

§ 4. The summons served on a witness or expert permanently residing abroad shall include a notice of the contents of § 1 through 3, and it shall not contain a warning on measures of coercion in the event of a failure to appear.

(b) Observations on the implementation of the article

678. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 28 of article 46

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

679. Poland has indicated that it is in compliance with this provision.

680. Poland has cited the following applicable policy(ies) or other measure(s):

The Code of Criminal Procedure

Article 588. § 1. Courts and state prosecutors offices shall give judicial assistance when requested by letters rogatory, issued by the courts and the state prosecutors' offices of foreign states.

§ 2. The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.

§ 3. The court and the state prosecutor may refuse to give judicial assistance if:

(1) the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,

(2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or

(3) the request is concerned with an act which is not an offence under Polish law.

§ 4. Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Republic of Poland.

§ 5. The fees for the judicial assistance shall be established pursuant to Articles 616 through 619.

Article 616. § 1. The costs of court proceedings shall include: 1) court costs,

2) justifiable expenses of the parties, including the costs of retaining one defence counsel or attorney for the case.

§ 2. The court costs shall include: (1) fees.

(2) the expenses incurred by the State Treasury from the moment the proceedings were instituted.

Article 617. The Minister of Justice shall issue an ordinance designating the amount of the costs and the principles and method of calculating the same.

Article 618. The expenses incurred by the State Treasury shall include, in particular, the cost of:

(1) service of the summons and other documents,

(2) the transportation of judges and other persons necessitated by the procedural action,

(3) the conveyance and transportation of the accused, witnesses and experts,

(4) inspections and examinations undertaken in the course of the proceedings, and the transmission, storage, and sale of the confiscated material objects,

(5) announcements in periodicals, radio and television,

(6) the execution of the decision, including the decision to secure impending penalties affecting property where such penalties have been decided, save for the costs of maintaining the sentenced persons in penal establishments, and the cost of staying in medical institutions during psychiatric observation,

(7) the fees of the witnesses and interpreters, (8) the costs of mediation proceedings,

(9) independence of experts or institutions appointed to issue an opinion or certificate, including issuance costs of a certificate by court physician,

(9a) the costs of psychiatric observation of the accused in a health care unit, save for the cost of fees of expert psychiatrists.

(10) the fees prescribed for obtaining information from the register of convicted persons;

(11) the cost of legal advice provided by lawyers designated ex officio and not paid for by the parties.

(12) the lump sum paid to the court probation officer for conducting the inquiry within the community referred to in Article 214 § 1.

(13) the implementation of international agreements to which the Republic of Poland is a party, and of proceedings conducted pursuant to Part XIII, and also when the order referred to in Article 303 has not been issued.

§ 2. Unless the amounts and method of calculating the costs described in § 1 are regulated by separate provisions, the Minister of Justice in consultation with the minister responsible for public finances shall set forth, by ordinance, the amount of the costs and the method of calculating the same, with a view to the actual cost of conducting a given action.

§ 3. In absence of the provisions referred to in § 2, any particular cost is determined by the amounts authorised by the court, the state prosecutor or other agency conducting the proceedings.

Article 619. § 1. Unless otherwise provided by law, any costs incurred in the course of criminal proceedings shall provisionally be paid by the State Treasury.

§ 2. The costs of the mediation proceedings shall be paid by the State Treasury.

§ 3 The State Treasury shall also bear the costs involved in participation of an interpreter in the proceedings, to an extent necessary for the exercise of the right to defence by the accused.

(b) Observations on the implementation of the article

681. Poland explained that the costs of executing MLA requests are generally borne by the requested State unless both parties decide otherwise.

682. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 29 (a) of article 46

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) Summary of information relevant to reviewing the implementation of the article

683. Poland has indicated that it is in compliance with this provision.

684. Poland has cited the following applicable measure(s): see Articles 585 and 588 of the Code of Criminal Procedure.

The Code of Criminal Procedure

Article 585. The actions necessary in criminal proceedings may be conducted by way of judicial assistance, particularly the following:

(1) service of documents on persons staying abroad or on agencies having their principal offices abroad,

(2) taking depositions of persons in their capacities as accused persons, witnesses, or experts,

(3) inspection and searches of dwellings and other places and persons, confiscation of material objects and their delivery abroad,

(4) summoning of persons staying abroad to make a personal voluntary appearance before the court or state prosecutor, in order to be examined as a witness or to be submitted to confrontation, and the bringing of persons under detention, for the same purposes, and

(5) giving access to records and documents, and information on the record of convictions of the accused.

(6) advising on the law.

Article 588. § 1. Courts and state prosecutors offices shall give judicial assistance when requested by letters rogatory, issued by the courts and the state prosecutors' offices of foreign states.

§ 2. The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.

§ 3. The court and the state prosecutor may refuse to give judicial assistance if:

(1) the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,

(2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or

(3) the request is concerned with an act which is not an offence under Polish law.

§ 4. Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Republic of Poland.

§ 5. The fees for the judicial assistance shall be established pursuant to Articles 616 through 619.

(b) Observations on the implementation of the article

685. During the country visit, Poland cited article 585 paragraph 5 of the Code of Criminal Procedure.

686. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 29 (b) of article 46

29. The requested State Party: ...
(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

687. Poland has indicated that it is in compliance with this provision.

688. Poland has cited the following applicable measure(s): see Articles 585 and 588 of the Code of Criminal Procedure.

The Code of Criminal Procedure

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(1) service of documents on persons staying abroad or on agencies having their principal offices abroad,

(2) taking depositions of persons in their capacities as accused persons, witnesses, or experts,

(3) inspection and searches of dwellings and other places and persons, confiscation of material objects and their delivery abroad,

(4) summoning of persons staying abroad to make a personal voluntary appearance before the

court or state prosecutor, in order to be examined as a witness or to be submitted to confrontation, and the bringing of persons under detention, for the same purposes, and

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(2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or

(3) the request is concerned with an act which is not an offence under Polish law.

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§ 5. The fees for the judicial assistance shall be established pursuant to Articles 616 through 619.

(b) Observations on the implementation of the article

689. During the country visit, Poland cited article 585 paragraph 5 of the Code of Criminal Procedure.

690. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 30 of article 46

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

691. Poland has indicated that it has adopted and implemented the provision under review.

692. Poland has cited the following laws regarding the applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s): Poland concluded numerous bilateral agreements on MLA and Extradition. Is also a state- party to the Convention on MLA of 1957.

693. Poland has cited the following laws regarding the applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s): Poland concluded numerous bilateral agreements on MLA and Extradition. Is also a state- party to the Convention on MLA of 1957.

(b) Observations on the implementation of the article

694. The reviewing experts noted that Poland is bound by regional instruments on MLA such as the European Convention on Mutual Assistance in Criminal Matters and its two Additional Protocols; and multilateral instruments providing a basis for extradition such as the OECD Convention on combating bribery of foreign public officials in international business transactions, the Council of Europe Criminal Law Convention on Corruption, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the United Nations Convention against Transnational Organized Crime (UNTOC). More than 50 bilateral treaties on assistance in criminal matters, as well as against organized crime including through MLA measures, were reported.

695. The reviewing experts concluded that Poland has adequately implemented the provision under review. To encourage better implementation, they recommended that the national authorities continue to explore further opportunities to actively engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of MLA mechanisms.

Article 47. Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

696. Poland has indicated that it has adopted and implemented the provision under review.

697. Poland has cited the following applicable measure(s).

The Code of Criminal Procedure

Taking over or transferring the criminal prosecution

Article 590. § 1. In the case of an offence committed abroad by: (1) a Polish national,
(2) a person having his permanent residence within the territory of the Republic of Poland, (3) a person who is serving or will serve a penalty of deprivation of liberty in the Republic of Poland,

(4) person against whom criminal proceedings have been instituted in Poland,

- the Minister of Justice shall, in the interest of the administration of justice, direct a request to a relevant agency of a foreign state for taking over the criminal prosecution or may accept such a request from an appropriate agency of a foreign state.

§ 2. Taking over the criminal prosecution shall be regarded as instituting criminal proceedings under Polish law.

§ 3. If taking over the criminal prosecution involves taking custody of a person under a preventive detention, Article 598 shall be applied.

§ 4. Article 587 shall be applied accordingly to the evidentiary material obtained abroad, even if the actions have not been undertaken upon a request from a Polish court or state prosecutor.

§ 5. The Minister of Justice shall notify the appropriate agency of the foreign state on the manner of the valid conclusion of the criminal proceedings.

Article 591. § 1. In the case of an offence committed by an alien within the territory of the Republic of Poland, the Minister of Justice, ex officio, or on the initiative of the court or state prosecutor shall, if the interest of the administration of justice so requires, direct to a relevant agency of a foreign state:

(1) of whom the prosecuted person is a national,

(2) in which the prosecuted person has his permanent residence,

(3) in which the prosecuted person is serving or will serve a penalty of deprivation of liberty, or

(4) in which criminal proceedings have been instituted against the prosecuted person,

- a request to take over the criminal prosecution, or may accept such a request from an appropriate agency of a foreign state.

§ 2. If the injured person is a Polish national, submitting the request for taking over the prosecution may be only be done with his consent, unless obtaining such consent is not possible. § 3. Before directing the request referred to in § 1 or before deciding on such a request directed by an agency of a foreign state, the appropriate agency shall give the prosecuted person staying in the territory of the Republic of Poland the opportunity to state his position, orally or in writing, on the subject of the transfer of prosecution.

§ 4. When the request for taking over the prosecution, regarding a person under preventive detention within the territory of the Republic of Poland is granted, the Minister of Justice shall request that the appropriate agency undertake actions leading to the extradition and transfer of such person to the agencies of a foreign state. The files of the case shall be transferred with the person unless they have been transferred earlier.

§ 5. The Minister of Justice shall request the appropriate agency of a foreign state, for information on the manner of a valid and final conclusion of the criminal proceedings.

§ 6. The transfer of the criminal proceedings shall be regarded as the discontinuation of the criminal proceedings under Polish law; it shall not prevent new criminal proceedings in the event that prosecution abroad has been abandoned without proper grounds.

Article 592. § 1. If the criminal proceedings regarding the same act of the same person have been instituted in the Republic of Poland and in a foreign state, the Minister of Justice shall conduct consultations with an appropriate agency of a foreign state and, when the interest of the administration of justice so require, shall request the taking over (the person) or transferring of the criminal prosecution, then Article 590 §§ 2 through 5 and Article 591 § 2 through 6 shall be applied accordingly.

§ 2. If, pursuant to an international agreement to which the Republic of Poland is a party, criminal proceedings for an offence committed abroad have been instituted in the Republic of Poland, the Minister of Justice may request of an appropriate agency of a foreign state that the prosecution be taken over by agencies of that state, irrespective of whether the prosecution has been instituted in the foreign state for the same act. The provisions of Article 591 § § 2, 5 and 6 shall be applied accordingly.

§ 3. In the case for an offence committed abroad by a Polish national, when the interest of the administration of justice so require, the Minister of Justice may request of an appropriate agency of a foreign state that the prosecution be taken over by agencies of that state. The provisions of Article 591 § § 2, 5 and 6 shall be applied accordingly.

(b) Observations on the implementation of the article

698. The transfer of criminal proceedings is regulated in Chapter 63 of the Code of Criminal Procedure on “Taking over or transferring the criminal prosecution” (articles 590-592).

699. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 48. Law enforcement cooperation

Subparagraph 1 (a) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(a) Summary of information relevant to reviewing the implementation of the article

700. Poland has indicated that it has adopted and implemented the measures described above.

701. The CAB uses the existing international channels of information exchange. The CAB is also a member of the European Partners Against Corruption / European Anti-Corruption Network (EPAC / EACN). Bureau also uses provisions from the EU Council Framework Decision 2006/960/JHA implemented to Polish law by the Act of 16.09.2011 on the exchange of information with law enforcement authorities of the Member States of the EU in order to promptly and directly exchange information on corruption.

702. The Police in Poland may exchange information with police forces of other countries through four channels:

- International Criminal Police Organization INTERPOL, - European Police Office, Europol,
- SIRENE Bureau - in the area of the Schengen Group
- upon international agreements through liaison officers and foreign police officers accredited in Poland.

703. In the Police Headquarters a focal point of European Partners Against Corruption was set up (EPAC). EPAC is an informal network consisted of 61 members from the European Union, the Council of Europe, the countries associated to the EU as well as European countries which are not members of the community European Anti-Fraud Office (OLAF) and the Republic of Kosovo as an observer. The main purpose of the EPAC network of contact points is to foster cooperation between the relevant institutions in order to exchange experiences and enable training to develop common standards and procedures, and enhanced international co-operation.

(b) Observations on the implementation of the article

704. In order to strengthen law enforcement cooperation, Poland has taken legislative measures to facilitate the exchange of information with foreign counterparts. The national authorities have also concluded bilateral and multilateral agreements that provide for the exchange of information in connection with investigations, as well as the exchange of personnel to share information on best practices.

705. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 1 (b) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(a) Summary of information relevant to reviewing the implementation of the article

706. Poland has indicated that it has adopted and implemented the provision under review.

707. Poland indicated that the Asset Recovery Division conducts international cooperation in the field of exchanging information concerning the determination of assets derived from crime between the EU countries through the CARIN channels (The Camden Asset Recovery Inter- agency Network) -a network of informal contacts, created for the experts to identified and locate the proceeds of crime.

708. Polish Police improves also efficiency of information exchange and develops new opportunities to identify property deriving from crime based on the experience of other countries. An example of such an initiative is the project MONEYPENNY realized by the Office for Asset Recovery and the Financial Intelligence Unit of the Kingdom of Sweden. The project aims to develop methods for joint intelligence teams and joint investigation teams in the cases when the matter relates to two or more countries from the Baltic Sea Region (project partners: Poland, Sweden, Lithuania, Latvia, Estonia).

709. Another project realized by Department of Assets Recovery of Polish Police - a partner in the project: EUDEFI - (EU to Deliver Excellence in Financial Investigation, the EU - New opportunities for investigative activities in financial crime). The project, completed in 2011, was to promote and harmonize methods of conducting financial investigations in the EU countries. EUDEFI project was led by representatives of the British police, "National Policing Improvement Agency " and the Spanish Guardia Civil. Furthermore, the Polish Department for Asset Recovery has taken active part in the EU meetings ARO (BOM) - platform for setting up and operation of a central registry of bank accounts. Department of Criminal Assets Recovery Office Police Headquarters has prepared Fri "A Practical Guide to records and the records containing information about the ingredients of the property.

710. Moreover, instruments of the General Inspector of Financial Information, tailored for the purposes of tracking of money deriving from the offence could be used in the field of cooperation with the foreign financial intelligence units which are bilateral agreements on cooperation (the so-called memoranda of understanding). An alternative in relations with the EU

countries is the EU Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information. Agreements, as well as the cooperation based on them, correspond to the provisions of the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005 (CETS 198). The main premises of the above-mentioned cooperation resulting from these bases are:

− the principle of reciprocity,
− the use of information for purposes of analysis at the level of a financial intelligence − unit,
− justification of the question referring to suspicion of money laundering or terrorism − financing,
− transmission of the possessed information or documents to a third party or their use for − purposes other than those indicated above only with the written consent of the FIU
− from which they were obtained,
− financial intelligence unit is not obligated to provide information if the judicial proceedings have been initiated in the case.

711. The General Inspector exchanges information related to money laundering or terrorism financing on the basis of bilateral agreements with 65 financial intelligence units. The scope of information received and disclosed, in particular additional information, in each case depends on the scope of the inquiry and compliance with the fundamental principles of national law. In 2012, the GIFI sent 190 requests asking for information on 387 entities to the foreign financial intelligence units. Information derived from abroad primarily help to verify whether the entities involved in transactions, considered by the obliged institutions and cooperating units to be suspicious, are known to the foreign entity in connection with suspected money laundering, terrorism financing or participating in other criminal activity. Many a time, the obtained information is also a key prerequisite which enables to substantiate or confirm that the analysed transactions are related to illegal activities.

(b) Observations on the implementation of the article

712. In order to strengthen law enforcement cooperation, Poland has concluded bilateral and multilateral agreements that provide for the exchange of information in connection with investigations, as well as the exchange of personnel to share information on best practices. Poland is also a member of Europol, Interpol, the Camden Asset Recovery Inter Agency Network and the Egmont Group and has signed 60 Memoranda of Understanding with non-EU Financial Intelligence Units.

713. The Anti-Corruption Bureau (CAB) is a member of the European Partners against Corruption / European Anti-Corruption Network (EPAC/EACN). The Bureau makes use of the EU Council Framework Decision 2006/960/JHA (implemented domestically through the Act of 16.09.2011 on the exchange of information with law enforcement authorities of the Member States of the EU) in order to promptly and directly exchange information on corruption.

714. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 1 (c) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and

administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(a) Summary of information relevant to reviewing the implementation of the article

715. Poland has indicated that it has adopted and implemented the provision under review.

716. Poland has cited the following applicable measure(s): see preceding answer.

(b) Observations on the implementation of the article

717. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 1 (d) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(a) Summary of information relevant to reviewing the implementation of the article

718. Poland has indicated that it has adopted and implemented the measures described above.

719. Poland has cited the following applicable measure(s): see response to subparagraph 1.

(b) Observations on the implementation of the article

720. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 1 (e) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between

the States Parties concerned, the posting of liaison officers;

(a) Summary of information relevant to reviewing the implementation of the article

721. Poland has indicated that it has adopted and implemented the provision under review.

722. Police Headquarters attaches the utmost importance to exchange of experiences with other countries in the fight against corruption. In July, 2013, the Police Headquarters organized training "The prosecution and prevention of corruption" under the auspices of CEPOL (European Police College). It was organized in the International Centre for Specialist Training in Legionów (CSP) for 30 participants from the EU countries, countries aspiring to membership of the EU and associated countries. The course was conducted by experienced national and foreign experts on the EU legislation, police procedures, international cooperation in the fight against corruption. During the training, participants also had an opportunity to share their knowledge, experience and best practices about new trends and threats of corruption and crime, legal regulations and measures to improve international co-operation in the field of combating corruption.

(b) Observations on the implementation of the article

723. During the country visit, Poland recalled the fact that police liaison officers are stationed in several European countries.

724. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Subparagraph 1 (f) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

725. Poland has indicated that it has adopted and implemented the provision under review.

726. Poland has cited the following applicable measure(s).

The Code of Criminal Procedure

Article 15. § 1. The Police and other agencies involved in criminal proceedings shall implement the instructions of the court and the state prosecutor and, within the scope prescribed by law, shall conduct the inquiry or investigation under the supervision of the state prosecutor.

§ 2. All state, local government and community institutions shall aid and assist, within the scope of their activities, the agencies conducting criminal proceedings within the time prescribed by such agencies.

§ 3. Legal persons or organisational units not having legal personality other than those specified

in § 2, and also natural persons shall be required to provide assistance when requested to do so by the agencies conducting criminal proceedings to the extent and by the date set by them, if carrying a procedural action without such assistance is impossible or rendered significantly difficult.

(b) Observations on the implementation of the article

727. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 2 of article 48

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

728. Poland has indicated that it has entered into bilateral or multilateral agreements or arrangements on direct cooperation with law enforcement agencies of other States parties.

729. Poland has cited the following applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s): see response to MLA questions.

730. Poland has indicated that it considers this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention.

731. If applicable and available, please provide information on law enforcement cooperation provided or received using this Convention as the legal basis: see response to MLA questions.

(b) Observations on the implementation of the article

732. During the country visit, Poland indicated that it considers the UNCAC as a legal basis for law enforcement cooperation in respect of the offences covered by the Convention.

733. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 3 of article 48

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

734. Poland has indicated that it is in compliance with this provision.

735. The Polish Criminal Code criminalizes each act of corruption regardless of the form of it was committed, including through the use of modern technology.

(b) Observations on the implementation of the article

736. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 49. Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

737. Poland has indicated that it has adopted and implemented the provision under review.

738. Poland has cited the following applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s):

The Code of Criminal Procedure

Article 589 b. § 1. Judicial assistance in the preparatory proceedings between the Polish agencies eligible to carry out such proceedings and the competent agencies of a European Union Member State or another state, if so provided by an international agreement the Republic of Poland is a party to, or under reciprocity, may also consist in performance of investigative actions carried within a joint investigative team, hereinafter referred as the "team".

§ 2. The team shall be appointed, by way of agreement, by the Attorney General and a competent agency of the state referred to in § 1, hereinafter referred to as the "co-operating state", for the purposes of specific preparatory proceedings, for a prescribed period of time.

§ 3. The agreement on the team appointment shall specify: 1) the subject, purpose, place, and period of co-operation, 2) the team composition, with appointment of the leader, 3) assignments of individual team members.

§ 4. The agreement on the team appointment may stipulate a possibility of allowing, under certain circumstances, a representative of an international institution established to combat crime to be admitted to works performed in the team.

§ 5. A period of co-operation under team indicated in the agreement on the team appointment may be extended for a further prescribed period, necessary to achieve the goal of such co-operation; extension shall require consent of all parties to the agreement.

Article 589c. § 1. The team, co-operation within which is carried in territory of the Republic of Poland, hereinafter referred to as the "Polish team", may be established, in particular if:

1) in the course of the preparatory proceedings conducted in the territory of the Republic of Poland into the case of an offence qualified as terrorism, human trafficking, sale of intoxicants, psychotropic substances or their precursors, or other serious crime, it has been disclosed that the perpetrator acted or consequences of his act have occurred in the territory of

another state and there is a need to perform investigative actions in the territory of such state or with the participation of its agency,

2) the preparatory proceedings carried in the territory of the Republic of Poland is subject- or object-related to the preparatory proceedings into a crime mentioned in subsection 1 carried in the territory of another state and there is a need to perform the majority of investigative actions in both proceedings in the territory of the Republic of Poland.

§ 2. A polish state prosecutor shall head the work of the Polish team.

§ 3. The composition of the Polish team shall include other Polish prosecutors and representatives of other agencies authorised to conduct investigation and official from competent authorities of the co-operating state, hereinafter referred to as "delegated officials".

§ 4. Actions in the preparatory proceedings performed by the Polish team shall be governed by the provisions of domestic law, subject to § 5-8 and Article 589e.

§ 5. Delegated officials may be present in all procedural actions carried by the Polish team, unless in a specific case, justified by the need of protecting an important interest of the Republic of Poland or rights of an individual, a person heading the team orders otherwise.

§ 6. Upon consent of the parties to the agreement on the appointment of the Polish team, a person heading such team may assign a delegated official performance of a specific investigative action, with the exclusion of issuance of orders provided for in this Code. In such event, a Polish team member shall participate in such action and prepare a report from it.

§ 7. If there is a need to perform an investigative action in the territory of a co-operating state, an official delegated by such state shall submit a motion for judicial assistance to a relevant institution or agency. The provision of Article 587 shall be applied accordingly to reports prepared in the performance of such motion.

§ 8. Within the limits set by the agreement on the appointment of the Polish team, the representative of the international institution who is referred to in Article 589b § 4 shall have the rights specified in § 5.

Article 589d. § 1. The state prosecutor or a representative of another agency authorised to conduct investigation may be delegated to a team in the territory of another co-operating state in cases provided for by regulations of the state in the territory of which the team co-operation takes place. A decision on such delegation shall be taken by the Attorney General or another competent agency, respectively.

§ 2. A team member that is referred to in § 1, who is a Polish state prosecutor shall have the rights of a prosecutor of a foreign state specified in Article 588 § 1. The provision of Article 613 § 1 shall not be applied.

§ 3. Institutions and agencies of the Republic of Poland, other than the state prosecutor that is referred to in § 2, shall provide indispensable assistance to the Polish team member that is referred to in § 1, within the limits and in compliance with the regulations of domestic law.

Article 589e. § 1. Information obtained by a team member further to the participation in the team work, not available otherwise to the state that has delegated him, may used by a relevant agency of such state, also for the purpose of:

1) conducting criminal proceedings on its own - upon consent of the co-operating state whose institution or agency have provided information,

2) preventing direct, serious threat to public security,

3) other than mentioned in subsection 1 and 2, if so provides the agreement on the team appointment.

§ 2. The consent referred to in § 1 subsection 1 may revoked only when the use of information could threaten the interest of the preparatory proceedings carried in the co-operating state whose institution or agency have provided information, and in the event whereby the state could refuse mutual assistance.

Article 589f. § 1. A state that has delegated a team member shall be held liable for the damage inflicted by a team member further to the performance of actions, pursuant to the terms specified in the regulations of the stated in the territory of which the team has co-operated.

§ 2. If damage inflicted to other person is a consequence of action or omission of a team member who has been delegated by another co-operating state, the amount of money being an equivalent of damage shall be temporarily disbursed to the wronged person by a relevant agency of the state in the territory of which the team has co-operated.

§ 3. In the event specified in § 2 the amount of money that has been paid out shall be reimbursed

to the agency that has temporarily paid such amount upon its request.

739. Legal assistance in the preparatory proceedings between the Polish authorities and competent authorities of a Member State of the European Union or another state may also be performed within a joint investigation team (JIT). Such a team may be created if an international agreement so provides, or on the principle of reciprocity. From the Polish side Prosecutor General is authorised to enter an agreement with the competent authority of another State to appoint a JIT.

740. Articles 589b - 589f of the Code of Criminal Procedure regulate issues connected with JIT. The JIT may work in the Polish territory or in the territory of another state. Cooperation of officers from at least two countries within the JIT facilitates the exchange of information and shortens the procedure for obtaining evidence from the foreign jurisdiction. Function of the national expert for a JIT usually performs a prosecutor from the International Cooperation Department of the Office of Prosecutor General.

741. In 2012, there were two JITs operating in the Polish territory. The first one was functioning between 2009 and 2012 as a joint Polish - Swiss team. It was created for the purpose of pre-trial investigation launched by Appellate Prosecutor's Office in Wroclaw and the Federal Prosecutor's Office in Bern. The JIT collected evidence in cases of corruption, money laundering and accepting bribes by persons performing public functions - for activities violating the law. Due to the achievement of all purposes of the investigations the JIT ceased its activity on 10 November 2012.

742. Another JIT operating in 2012 consisted of Polish and Czech and officers. An agreement to create Polish, and Czech JIT was signed on April 26, 2012 by the Prosecutor General of the Republic of Poland and Prosecutor General of the Czech Republic. The JIT involved prosecutors from District Prosecutor's Office in Rzeszów and the Prosecutor's Office in Ostrava. The matter of the investigation was obtaining under false pretences a refund of VAT (a tax) and money laundering through different entities operating in countries of the European Union.

(b) Observations on the implementation of the article

743. The reviewing experts noted that the conduct of joint investigations is regulated in articles 589b-589f of the Code of Criminal Procedure. The Prosecutor General is authorized domestically to enter an agreement with the competent authority of another State for the establishment of a joint investigative team (JIT). In 2012, there were two JITs operating in the Polish territory.

744. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Article 50. Special investigative techniques

Paragraph 1 of article 50

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

(a) Summary of information relevant to reviewing the implementation of the article

745. Poland has indicated that it has adopted and implemented the provision under review.

746. Poland indicated that the Police is empowered to use special investigative technique to combat i.a. corruption offences. the CAB enjoys the Police power while investigating corruption offences.

747. Poland has cited the following law:

The Police Law

Article 19. [Control in specific situations]

1. In case of preliminary investigation carried out by the Police to prevent, detect, establish perpetrators, as well as obtain and record evidence of the perpetrators prosecuted by the public prosecutor, or of intentional crime: when other means appeared ineffective or there is significant probability of the means being ineffective or useless, the district court, at a written request of the Police Commander in Chief, submitted after a prior written consent of the general Public Prosecutor or a written request of the Voivodship Police Commander, submitted after prior written consent of the district prosecutor with territorial competence, may order operational control, by way of resolution.

1) against life, as defined in Articles 148-150 of the Penal Code,

2) defined in Article 134, Article 135 Paragraph 1, Article 136 Paragraph 1, Article 156 Paragraph 1 and 3, Article 163 Paragraph 1 and 3, Article 164 Paragraph 1, Article 165 Paragraph 1 and 3, Article 166, Article 167, Article 173 Paragraph 1 and 3, Article 189, Article 189a, Article 200, Article 200a, Article 211a, Article 223, Article 228 Paragraph 1 and 3-5, Article 229 Paragraph 1 and 3-5, Article 230 Paragraph 1, Article 230a Paragraph 1, Article 231 Paragraph 2, Article 232, Article 245, Article 246, Article 252 Paragraph 1-3, Article 258, Article 269, Articles 280-282, Article 285 Paragraph 1, Article 286 Paragraph 1, Article 296 Paragraph 1-3, Article 296a Paragraph 1, 2 and 4, Article 299 Paragraphs 1-6, as well as Article 310 Paragraph 1, 2 and 4 of the Penal Code,

2a) defined in Article 46 Paragraph 1, 2 and 4, Article 47, as well as Article 48 Paragraph 1 and 2 of the Act of 25 June 2010 on sport (Journal of Laws No. 127, item 857, as amended8)),

3) against business trading defined in Articles 297-306 of the Penal Code, resulting in property loss or directed against property, if the damage is in excess of the multiple of fifty minimum wages, defined on the basis of separate provisions,

4) fiscal offences, if the value of the subject of offence or reduction of public private amount due is in excess of the multiple of fifty minimum wages, defined on the basis of separate provisions,

4a) fiscal offences referred to in Article 107 Paragraph 1 of the Penal Fiscal Code,

5) illegal manufacture, possession or trade in arms, ammunition, explosives, intoxicants, psychotropic

substances and their precursors, as well as nuclear and radioactive materials,

6) defined in Article 8 of the Act of 6 June 1997 - provisions implementing the Penal Code (Journal of Laws No. 88, item 554, as amended)9)),

7) defined in Articles 43-46 of the Act of 1 July 2005 on collection, storage and transplantation of cells, tissues and organs (Journal of Laws No 169, item 1411, of 2009 No. 141, item 1149, of 2010 No. 182, item 1228, as well as of 2011 No. 112, item 654),

8) prosecuted under international contracts and agreements,

1a. The request referred to in Paragraph 1 shall be presented with the materials justifying the need for operational control.

2. The provision referred to in Paragraph 1 shall be issued by the district court with territorial competence on account of the seat of the Police authority submitting the request.

3. In cases of utmost urgency, where any delay could result in the loss of information, obliteration or destruction of the evidence of a crime, the Police Commander in Chief or the Voivodship Police Commander may, at a written consent of the competent prosecutor referred to in Paragraph 1, order operational control, submitting also a request for resolution in that matter to the district court with territorial competence. Should the consent not be granted within 5 days from the day of ordering operational control, the managing authority shall withhold the operational control and destroy all materials collected during the control in the presence of a committee to be evidenced by a report.

4.(repealed)

5. Should the need arise to order operational control in relation to a suspect or person charged, the request of the Police authority, referred to in Paragraph 1, to order operational control should be accompanied by information about the proceedings against that person.

6. Operational control is performed discreetly and consists in:

1) control of the content of correspondence;

2) control of the content of parcels;

3) use of technical resources which facilitate obtaining information and evidence discreetly, as well as recording thereof, especially the content of telephone conversations and other information submitted via the telecommunications networks.

7. The request of the Police authority, referred to in Paragraph 1, to order operational control by the district court, should include in particular:

1) case number and cryptonym, if applicable,

2) description of the crime, stating, if possible, its legal qualification;

3) circumstances justifying the need to perform operational control, including stated or possible ineffectiveness or uselessness of other means;

4) personal data or other data facilitating unambiguous determination of the entity or object subject to operational control, stating the place or procedure for undertaking the control;

5) objective, time and type of the operational control referred to in Paragraph 6.

8. Operational control shall be ordered for a period not exceeding 3 months. The district court may, at a written request of the Police Commander in Chief or the Voivodship Police Commander, following a

written consent of the competent prosecutor, issue a resolution on single extension of operational control for a period not exceeding 3 subsequent months, if the reasons for ordering the control have not been established.

9. In justified cases, when there appear new circumstances important to prevent or detect crime or establish perpetrators and obtain evidence of crime, the district court may, at a written request of the Police Commander in Chief, following a written consent of the General Public Prosecutor, issue a resolution on operational control for the period determined also after the periods referred to in Paragraph 8.

10. The provisions of Paragraph 1a and 7 shall apply to the requests referred to in Paragraphs 3, 8 and 9, respectively. The court, prior to issuing the resolution referred to in Paragraphs 1, 3, 4, 8 and 9, may wish to see the materials justifying the request, in particular those collected during operational control ordered for that case.

11. The requests referred to in Paragraphs 1, 3-5, 8 and 9 shall be examined by the district court individually. At the same time, court proceedings relating to examination of the requests should be performed under conditions foreseen for submission, storage and provision of classified information and adequate application of the regulations issued pursuant to Article 181 Paragraph 2 of the Code of Criminal Procedure. The court sitting may be attended only by a prosecutor and a representative of the Police authority requesting the order of operational control.

12. Entities carrying out telecommunication operations and entities providing postal services shall ensure, at their own expense, technical and organisational conditions facilitating the operational control carried out by the Police.

13. Operational control shall be completed immediately when the causes of its institution no longer exist, at the latest, however, upon the expiry date.

14. The Police authority referred to in Paragraph 1 shall notify the competent prosecutor about the results of operational control upon its completion, and at his/her request, also about the course of the control.

15. Where evidence is obtained that justifies the institution of criminal proceedings or significant to the criminal proceedings in progress, the Police Commander in Chief or the Voivodship Police Commander shall provide the competent prosecutor with any and all materials collected during operational control. The provisions of Article 393 Paragraph 1 first sentence of the Code of Criminal Proceedings shall apply accordingly to proceedings before a court in respect to the materials.

15a. The use of evidence obtained during the operational control shall be permitted only in criminal proceedings relating to an offence or fiscal offence in respect of which it is allowed to use such control by the authorized entity.

15b. The prosecutor referred to in Paragraph 1 shall decide on the scope and manner of use of the received materials. Article 238 Paragraphs 3-5 and Article 239 of the Code of Criminal Procedure shall apply accordingly.

15c. In the event that, in result of operational control, an evidence of offence or fiscal offence, for which operational control may be ordered, is obtained as committed by the person to whom operational control was applied, other than the offences covered by the operational control ordinance, or committed by another person, the court which ordered operational control or consented to it in the manner specified in Paragraph 3 shall decide on its use in criminal proceedings, at the request of the prosecutor referred to in Paragraph 1.

15d. The prosecutor shall direct the request referred to in Paragraph 15c to the court no later than one month from receipt of materials collected during the operational control, provided to him by the Police authority immediately, but no later than within 2 months from the date of completion of the control.

15e. The court shall issue the order referred to in Paragraph 15c within 14 days from the date of filing

the request by the prosecutor.

16. The person subject to operational control shall not be provided with materials collected during the control. The provision is not in violation of the rights under Article 321 of the Code of Criminal Proceedings.

17. Any materials collected during operational control, which do not include evidence that justifies the institution of criminal proceedings, shall be stored after the conclusion of control for the period of 2 months. They shall then be destroyed in the presence of a committee and the process evidenced in a report. The destruction of materials shall be ordered by the Police authority which requested the operational control.

17a. The Police authority shall be obliged to immediately inform the prosecutor referred to in Paragraph 1 on the issuance and execution of orders for the destruction of the materials referred to in Paragraph 17.

18.(repealed)

19. (repealed)

20. The ruling of the court concerning operational control referred to in Paragraphs 1, 3, 8 and 9 may be appealed against by the Police authority which requested such ruling. Provisions of the Code of Criminal Proceedings shall apply accordingly to the appeal.

21. The minister competent for internal matters, upon consultation with the Minister of Justice and the minister competent for communications, shall determine, by way of ordinance, the mode of recording the operational control, as well storage and submission of requests and orders, as well as storage, submission, processing and destruction of materials obtained during control, taking account of the necessity to ensure secret character of measures taken and materials obtained, and models of forms and registers used.

22. The minister competent for the infernal affairs shall provide the lower (Sejm) and upper (Senat) chamber of the Parliament with information about the activity defined in Paragraphs 1-21, including the information and data referred to in Article 20 Paragraph 3. The information shall be presented to the Sejm and Senate by 30 June of the year following the year covered by the information.

Article 19a. [Preliminary investigation]

1. In cases on the crimes defined in Article 19 Paragraph 1, preliminary investigation aimed to check previously obtained reliable information about the crime and to establish perpetrators and obtain evidence of crime may consist in discreet purchase, sale or takeover of objects relating to crime, subject to forfeiture, or the manufacture, possession, transportation or trade of which is prohibited, as well as to takeover or awarding financial benefits.

2. The preliminary investigation referred to in Paragraph 1 may also involve a proposal to purchase, sell or trade objects resulting from crime, that are subject to forfeiture or objects, manufacture, possession, transport or sale of which is illegal, as well as the acceptance or giving of financial benefit.

3. The Police Commander in Chief or the Voivodship Police Commander may institute, for a definite period of time, the activities determined in Paragraph 1 and 2, following a written consent of the appropriate district prosecutor who shall be kept to date about the results of the activities. The prosecutor may order to discontinue the activities at any time.

3a. Prior to issuing written consent, the prosecutor shall acquaint him/herself with the materials justifying the conduct of the activities referred to in Paragraph 1 and 2.

4. The activities referred to in Paragraph 1 and 2 shall be instituted for no longer than 3 months. The

Police Commander in Chief or the Voivodship Police Commander may order, following a written consent of the prosecutor referred to in Paragraph 3, a one-time extension of the activities for a period no longer than 3 months, if the reasons have not ceased to exist. The provision set out in Paragraph 3a shall be applied accordingly.

5. In justified cases, where in the course of activities referred to in Paragraph 1 and 2 there appear new circumstances that are critical for the examination of credible information about a crime and the detection of perpetrators and securing evidence, the Police Commander in Chief or the Voivodship Police Commander may order, following a written consent of the prosecutor referred to in Paragraph 3, a continuation of activities for a definite period of time, even when the periods referred to in Paragraph 4 have elapsed. The provision set out in Paragraph 3a shall be applied accordingly.

6. The activities referred to in Paragraph 1 and 2 may be discreetly recorded using image or sound recording devices.

7. Where evidence is obtained that justifies the institution of criminal proceedings, or which is significant for the criminal proceedings in progress, the Police Commander in Chief or the Voivodship Police Commander shall pass on to the district prosecutor referred to in Paragraph 3 all materials collected in the course of the activities referred to in Paragraph 1 and 2. The provisions of Article 393 Paragraph 1 first sentence of the Code of Criminal Proceedings shall apply accordingly to proceedings before a court in respect to the materials.

8. Any materials collected in the course of the activities referred to in Paragraph 1 and 2 that do not contain evidence justifying the institution of criminal proceedings or evidence significant for the pending criminal proceedings shall be destroyed immediately in the presence of a committee and the process evidenced in a report. The destruction of materials shall be ordered by the Police authority which requested the activities.

8a. The Police authority shall be obliged to immediately inform the prosecutor referred to in Paragraph 3 on the issuance and execution of orders for the destruction of the materials referred to in Paragraph 8.

9. The minister competent for internal affairs, upon consultation with the Minister of Justice, shall determine, by way of ordinance, the mode of recording the activities referred to in Paragraph 1 and, as well as submission, processing and destruction of materials obtained in the course of the activities, giving due regard to the secrecy of these activities and materials, as well as models of forms and records to be used.

Article 19b. [Discreet surveillance]

1. To document crimes referred to in Article 19 Paragraph 1, or to establish the identity of those involved in these crimes, or to take over the objects of crime, the Police Commander in Chief or the Voivodship Police Commander may order a discreet surveillance of the manufacture, transport, storage and trade in crime objects, provided this does not involve a threat to human life or health.

2. The district prosecutor competent for the seat of the Police authority in charge of the activities shall be immediately notified of the order referred to in Paragraph 1. The prosecutor may order to discontinue the activities at any time.

3. The Police authority referred in Paragraph 1 shall keep the district prosecutor informed about the results of the activities.

4. In accordance with the order referred to in Paragraph 1, public authorities, institutions and entrepreneurs shall allow further transport of a parcel containing crime objects in the original condition or, if removed or replaced, in whole or in part.

5. Where evidence is obtained that justifies the institution of criminal proceedings or which is significant for the criminal proceedings in progress, the Police Commander in Chief or the Voivodship Police Commander shall pass on all materials collected in the course of the activities referred to in

Paragraph 1 to the prosecutor referred to in Paragraph 2. The provisions of Article 393 Paragraph 1 first sentence of the Code of Criminal Proceedings shall apply accordingly to proceedings before a court in respect to the materials.

6. The minister competent for internal affairs, upon consultation with the Minister of Justice, shall determine, by way of ordinance, the procedure for undertaking and recording activities referred to in Paragraph 1, giving due regard to the secrecy of these activities and materials, as well as models of forms and records to be used.

(b) Observations on the implementation of the article

748. The reviewing experts took into account the applicable legal framework on special investigative techniques and noted that the law enforcement authorities, and in cases of corruption offences the CAB as well, are empowered to use such techniques.

749. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 2 of article 50

2. For the purpose of investigating the offences covered by this Convention, States parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

(a) Summary of information relevant to reviewing the implementation of the article

750. Poland has indicated that it is in compliance with this provision.

751. Poland has cited the following applicable bilateral or multilateral agreement(s) or arrangement(s) or other measure(s): see response to MLA questions.

(b) Observations on the implementation of the article

752. The reviewing experts noted that Poland has signed several agreements (for example, with Lithuania, Ukraine and United States of America) which authorize the use of special investigative techniques in the investigation of organized crime and corruption. In the absence of such agreements, decisions to use special investigative techniques can be made on a case-by-case basis. As reported during the country visit, practical cases of using special investigative techniques include the cooperation with Germany and Austria on match-fixing cases and with Lithuania and Ukraine on corruption cases in customs services.

753. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 3 of article 50

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such

special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

(a) Summary of information relevant to reviewing the implementation of the article

754. Poland has indicated that it has adopted and implemented the provision under review.

755. Poland has cited the following applicable measure(s) or policy(ies): see response to the paragraph 1.

(b) Observations on the implementation of the article

756. The reviewing experts noted that, in the absence of agreements, decisions to use special investigative techniques can be made on a case-by-case basis. As reported during the country visit, practical cases of using special investigative techniques include the cooperation with Germany and Austria on match-fixing cases and with Lithuania and Ukraine on corruption cases in customs services.

757. The reviewing experts concluded that Poland has adequately implemented the provision under review.

Paragraph 4 of article 50

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

758. Poland has indicated that is has adopted and implemented the provision under review.

759. Poland has cited the following applicable measure(s): see response to the paragraph 1.

(b) Observations on the implementation of the article

760. The reviewing experts concluded that Poland has adequately implemented the provision under review.