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ANNEX 21

ANNEX

POLAND

to the

EU Anti-Corruption Report

POLAND

1. INTRODUCTION — MAIN FEATURES AND CONTEXT

Anti-corruption framework

Strategic approach. Perceptions of corruption in Poland have improved, but priorities of successive governments have lacked continuity. Some ministries have introduced their own systems to prevent corruption, with limited coordination. Poland's last anti-corruption strategy expired in 2009. Following domestic and international pressure, consultations on a draft 2014-2019 Programme for fighting corruption are now underway.¹

Legal framework. A 1997 law governs conflicts of interest and asset disclosure.² The Council of Europe's Group of States against Corruption (GRECO) found that Polish criminal law provides a sound basis for the investigation, prosecution and adjudication of corruption offences, with a legal framework largely compliant with relevant standards in the Criminal Law Convention on Corruption. Poland has adjusted the penal code provisions in line with the Convention.³ The challenge remains to fully implement relevant legal provisions, such as the ban on employing spouses or relatives (up to the second degree) in local government if there is a direct reporting relationship; the law does not specify penalties for violations of this provision.⁴

Institutional framework. The Central Anti-Corruption Bureau (CBA), a separate agency, carries the main responsibility for combating corruption. Specialised departments within appellate prosecutor's offices as well as the Supreme Audit Office (NIK) and the Ombudsman (RPO) also play a role, as detailed later in this chapter.

Opinion polling

Perception surveys. In the 2013 Special Eurobarometer on Corruption, 82 % of Polish respondents state that corruption is a widespread problem in their country (EU average 76 %) and 27 % say that corruption affects their daily lives (EU average 26 %).⁵

Experience of corruption. According to the same Eurobarometer, 15 % of Polish respondents were asked or expected to pay a bribe over the past 12 months (EU average 4 %), mostly in relation to healthcare.

Business surveys. In the 2013 Eurobarometer business survey, 32 % of entrepreneurs (EU average 43 %) report corruption as a problem when doing business in Poland. However, 92 % (highest percentage in the EU) say that bribery and the use of connections is often the easiest way to obtain certain public services, and 56 % (EU average 47 %) say the only way to succeed in business is through political connections.⁶ Business representatives also admitted

1 Ministry of Interior (2013) Projekt uchwały Rady Ministrów w sprawie 'Rządowego Programu Przeciwdziałania Korupcji na lata 2014-2019' Available from: <http://bip.msw.gov.pl/portal/bip/435/22313> Summary of comments received during the consultations: http://www.akop.pl/public/files/Zestawienie_uwag_z_konsultacji_spolecznych.pdf.

2 Ustawa z dnia 21 sierpnia 1997 r. o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne. <http://antvkorupcja.edu.pl/index.php?mnu=12&app=docs&action=get&iid=10590>.

3 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)2_Poland_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)2_Poland_One_EN.pdf);
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)19_Second%20Poland_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)19_Second%20Poland_EN.pdf).

4 Article 26 of the Law on Local Government Employees.

5 2013 Special Eurobarometer 397.

6 2013 Flash Eurobarometer 374.

to having been asked or expected to pay a bribe in specific sectors such as environmental permits (7 %, EU average 1 %).⁷

Background issues

Conflicts of interests and asset disclosure. MPs are required to file declarations on their financial situation with the Speaker of the Sejm or of the Senate annually and upon taking up and leaving office.⁸ Such declarations are available online but not easily searchable.⁹ According to GRECO, these regulations may be circumvented by transferring property to family members. GRECO therefore recommended that close family members of MPs also be required to register their assets. Such declarations would be verified by competent officials but would not necessarily be published, respecting privacy and data protection principles in the Constitution.¹⁰ Separately, the law requires benefits received by MPs or their spouses to be disclosed in a public register of interests kept by the Speakers of the Sejm and Senate. GRECO commended Poland's regulations on incompatibilities of posts and functions, which help to avoid conflicts of interest. However, according to GRECO there is still room for improvement to develop and refine the existing legal and ethical standards and to provide specific guidance on handling conflicts of interest.¹¹ According to GRECO, while the mechanisms for monitoring compliance are highly developed, they often appear too complex — involving the participation of various authorities — to be fully effective.¹² Apart from MPs, a range of elected and appointed officials at central, regional and municipal level are obliged to submit asset declarations on taking up and leaving office.¹³ CBA is responsible for verifying these declarations, some of which are public and others classified. Recently, one minister was dismissed as a result of irregularities found in his assets declaration. Plans are underway to streamline the complex system of asset declarations and remove ambiguities as to which officials are subject to this requirement, as suggested by the Ombudsman in April 2013.¹⁴

Private sector. In the 2013 Global Competitiveness Index, Poland ranks 42nd among 148 countries.¹⁵ Amendments in 2008 to the penal code on bribery in the private sector covered the full range of persons who manage or work for private sector entities, as well as all instances of breach of duty by the bribed person, and — in the case of passive bribery — asking for advantageous treatment. These amendments satisfied GRECO's recommendation.¹⁶ Poland correctly transposed the provisions of Framework Decision 2003/568/JHA regarding the inclusion of non-profit entities and the penalties applicable to natural and legal persons. However, Poland limited the definition of active corruption in the private sector to behaviour resulting in losses, unfair competition or inadmissible preferential action.¹⁷

7 2013 Flash Eurobarometer 374.

8 Act on the Exercise of the Mandate of a Deputy or Senator, Section 35.
<http://www.sejm.gov.pl/prawo/mandat/kon6.htm>.

9 <http://www.sejm.gov.pl/Sejm7.nsf/PoslowiePE.xsp>.

10 Articles 47 and 51.

11 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)4_Poland_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)4_Poland_EN.pdf).

12 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)4_Poland_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)4_Poland_EN.pdf).

13 Act on Commune Self-Government (Article 24h), Act on Restricting Economic Activity of Persons Holding Public Positions (Article 10).

14 *Rzecznik Praw Obywatelskich, Wystąpienie do Szefa Kancelarii Prezesa Rady Ministrów w sprawie przepisów regulujących obowiązki składania oświadczeń majątkowych*, RPO/699508/12/I/116.6 RZ, 2 April 2013,
<http://www.sprawy-generalne.brpo.gov.pl/pdf/2012/03/699508/1712250.pdf>.

15 http://www3.weforum.org/docs/GCR2013-14/GCR_Rankings_2013-14.pdf.

16 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2010\)7_Poland_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2010)7_Poland_EN.pdf).

17 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/report_corruption_private_sector_en.pdf.

Financing of political parties. The National Electoral Commission (PKW) has earned recognition for independence in imposing penalties on political parties that fail to comply with financing regulations. Funds may be transferred to a political party solely by natural persons. Parties are obliged to report regularly on donors. The introduction of state subsidies for parties in 2001 is perceived to have improved the transparency of campaign funding.¹⁸ Poland also harmonised relevant rules into a single election code, including provisions for online publication of information on political funding and a more frequent declaration of donations.¹⁹ However, to follow GRECO recommendations, Poland would still need to extend control of political funding beyond financial audit of reports provided by the parties. For example, PKW does not at present check whether political events may have been financed by undeclared funds. PKW staff would benefit from greater specialisation to carry out effective checks of party finances.²⁰ In June 2013, the ruling party proposed a draft law to abolish state subsidies for political parties, without reference to the potential impact on prevention of corruption.²¹ Parliament is now considering the draft law.

Whistleblowing. There is no specific legislation concerning the protection of whistleblowers apart from general provisions in the Labour Code on unfair dismissal. Training courses and manuals prepared by the Central Anti-Corruption Bureau encourage public officials to be proactive in identifying corruption. However, whistleblowing is reportedly discouraged in Poland by fear of retaliation by the employer.²²

Transparency of lobbying. A 2005 law provides a broad definition of lobbying, but regulates only some of its aspects, excluding government functions outside law-making.²³ There is a mandatory public register of professional lobbyists, which at present includes nearly 300 entries.²⁴ The 2005 law is a step in the right direction but there has been extensive discussion on the need to amend it, notably to reduce the ways in which it may be circumvented. Public authorities (but not individual parliamentarians) have to publish in the Public Information Bulletin, without delay, information on professional lobbying activities aimed at them. It is unclear to what extent annual declarations by government agencies are verified. GRECO's fourth round evaluation recommended more transparency in interactions between parliamentarians and lobbyists, including within parliamentary subcommittee meetings.²⁵ In 2010, the Prime Minister's Chancellery published a detailed analysis recommending improvements in the process of drafting legislation.²⁶ The Council of

18 http://www.batory.org.pl/doc/Jak_walczyz_zkor_EN.pdf.

19 Article 102 of the Election Code requires election committees to inform the National Electoral Commission of the website on which financial information subject to disclosure is posted. Article 143§1 of the Election Code requires financial reports submitted by the election committees for parliamentary and presidential elections to be published, within 30 days of their submission, in the Public Information Bulletin. The financial reports of political parties are published in the official gazette, in accordance with Articles 34.5 and 38.4 of the Law on Political Parties. They also appear in the Public Information Bulletin.

20 http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282012%2919_Second%20Poland_EN.pdf

21 [http://orka.sejm.gov.pl/Druki7ka.nsf/Projekty/7-020-704-2013/\\$file/7-020-704-2013.pdf](http://orka.sejm.gov.pl/Druki7ka.nsf/Projekty/7-020-704-2013/$file/7-020-704-2013.pdf).

22 Fundacja im. Stefana Batorego, CBOS (2012) *Bohaterowie czy donosiciele? Co Polacy myślą o osobach ujawniających nieprawidłowości w miejscu pracy?* p.4

http://www.batory.org.pl/upload/files/Programy%20operacyjne/Przeciw%20Korupcji/Raport_Sygnalisci.pdf

23 Act on Lobbying Activities During Legislative Process. <http://www.sejm.gov.pl/prawo/lobbing/kon12.htm>

24 http://mac.bip.gov.pl/prawo-i-prace-legislacyjne/dzialalnosc-lobbingowa_11_11_11_11_11_11_11_11_11_11.html.

25 GRECO (2013) Fourth Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors. p. 60

http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4%282012%294_Poland_EN.pdf.

26 Kancelaria Premiera Rady Ministrów (2010) *Proces nowelizacji ustawy o grach i zakładach wzajemnych w latach 2008-2009*. Warszawa. <http://bi.gazeta.pl/im/5/8194/m8194155.pdf>.

Ministers is now considering changes to the way legislation is drafted, to improve transparency.²⁷ The President has also published recommendations.²⁸

2. ISSUES IN FOCUS

Independence and effectiveness of anti-corruption institutions

Founded in 2006, the Central Anti-Corruption Bureau (CBA) has been at the heart of a polarised public debate in Poland, attracting both praise for its effectiveness and doubts (especially in the past) as to its impartiality. CBA combines intelligence and police functions including control of public procurement, privatisation, and all asset declarations. It can trigger both administrative and criminal proceedings. Since 2009, the CBA has also emphasised the preventive and educational aspects of fighting corruption through public awareness activities.

The Head of the CBA is appointed and supervised by the Prime Minister for a term of four years and may be removed by the Prime Minister following non-binding consultation with the President, Special Services Committee and Parliamentary Committee for Special Services.²⁹ The CBA Head reports annually to Parliament.

CBA's legal basis does not provide sufficient guarantees against potential misuse of the Bureau as a political tool.³⁰ The Prime Minister may issue a range of ordinances and guidelines, from general directions to rules for staff recruitment and templates for disciplinary proceedings. These powers, in combination with an appointment procedure that does not require any specific professional background for the CBA management, and a strict hierarchy in which the Head of the CBA has wide discretionary powers over staff, may increase risks of abuse. The previous CBA Head resigned his party membership shortly before being appointed in 2006 and resumed it after being dismissed in 2009, becoming an MP.

Before the 2007 elections, it was also argued that appointment of the CBA Head by the Prime Minister created risks of politicisation. A new appointment procedure was envisaged. Under this procedure, the CBA Head would be elected by Parliament for one term, longer than the term of Parliament itself, and could not be removed from the post during his term.³¹ However, no such reform has been introduced. The issue is now part of a broader debate about control over the secret services and their overall organisation and respective mandates. The Interior Ministry proposed the establishment of a Commission for the Control of Special Services to monitor compliance with the law, supervise the processing of wiretaps, and investigate complaints. Chaired by an experienced judge, the proposed Commission would consist of six members elected by Parliament.³² The Head of CBA pledged to address shortcomings in the process of recruiting new officials and in training, following a negative assessment by the Supreme Audit Office.³³ The CBA has made progress in the enforcement of anti-corruption

27 Rada Ministrów (2013) Projekt z dnia 20 września 2013 zmieniający Uchwałę Nr 49 Rady Ministrów z dnia 19 marca 2002 r. Regulamin pracy Rady Ministrów. Available from: <http://bip.rcl.gov.pl/rcl/legislacja/inne-projekty-w-toku/projekt-uchwaly-rady-m/4034.dok.html>.

28 Kancelaria Prezydenta (2013). *Zielona Księga – Proces Stanowienia Prawa w Polsce*. Available from: http://www.prezydent.pl/kancelaria/aktywnosc-ministrow/art.739_minister-dziekonski-nt-zielonej-ksiegi-o-stanowieniu-prawa.html.

29 Law of 9 June 2006 on Central Anti-Corruption Bureau. http://cba.gov.pl/ftp/filmy/ACT_on_the_CBA_updated_13_06_2011.pdf.

30 http://www.cba.gov.pl/ftp/filmy/ACT_on_the_CBA_updated_13_06_2011.pdf.

31 http://www.akop.pl/public/files/raport_nawww-1321873027.pdf.

32 Ministry of Interior (2013) Ustawa o Komisji Kontroli Służb Specjalnych. (Act on the Commission of the Control of Special Services). 11 October 2013. <http://legislacja.rcl.gov.pl/docs//2/181401/181409/181410/dokument87492.pdf?lastUpdateDay=16.10.13&lastUpdateHour=13%3A01&userLogged=false&date=%C5%9Broda%2C+16+pa%C5%BAdziernik+2013>

33 Najwyższa Izba Kontroli, (2013) Nabór, postępowanie kwalifikacyjne i szkolenie nowo przyjętych funkcjonariuszy ABW, CBA, Policji i Straży Granicznej, <http://www.nik.gov.pl/plik/id,4786,vp,6221.pdf>.

laws, which also has a preventive effect on the conduct of officials and politicians. However, its use of some methods (such as sting operations) and choice of targets have proved contentious.

Under new management from 2009, the CBA came to be seen as less politicised. However, controversy regarding CBA investigative methods has occasionally resurfaced in relation to investigations that CBA conducted in the past. When convicting a cardiac surgeon for bribery, the judge raised questions about the methods used by CBA agents. In another case, an appellate court acquitted a former opposition Member of Parliament who had been convicted on the basis of a CBA sting operation.

The CBA also collects data on corruption investigations and prosecutions in its 'map of corruption'. The latest edition noted a total of 10 972 corruption cases registered in 2012, as compared with 9703 in 2011 and 13938 in 2010.³⁴ In 2012, the CBA closed preparatory proceedings in 95 cases, which ended in 55 indictments, whereas the police closed 2357 cases, of which 1 674 resulted in indictment.³⁵ CBA's most recent report (from 2012) did not illustrate highly complex investigations that involved substantial amounts of money or top-level officials. Statistical analysis is hampered by incompatibility between the systems of crime registration used by various institutions.

Appellate prosecutors' offices include departments specialising in organised crime and corruption. Separation in 2010 of the functions of Prosecutor-General and Minister for Justice aimed to limit the risk of political influence on prosecutors' work in particular cases. It is not yet clear how this reform impacted the effectiveness of the prosecution service and how existing guarantees against undue influence work in practice.

The Ombudsman (RPO) has built a reputation for independence despite limited resources. Maintaining transparency of internal operations and a strong position vis-à-vis other authorities, the Ombudsman has helped strengthen standards of public life, even though these are not the Ombudsman's primary focus.³⁶ The Supreme Audit Office (NIK) also enjoys a reputation for impartiality and professionalism and plays an important role in the fight against corruption.

Good practice: track record of the Supreme Audit Office

Founded in 1919, the Supreme Audit Office (NIK) is an independent body charged with safeguarding public spending. Nearly half of NIK's employees work in its 16 regional branches. The NIK audits the activity of central and local government agencies. In addition to disclosing irregularities, it proposes practical and regulatory improvements. It drew attention to problems such as the high degree of discretion exercised by officials who issue permits.³⁷ In 2010, the NIK uncovered financial irregularities costing the taxpayer an estimated PLN 14.5 billion.³⁸

However, the NIK has limited ability to ensure implementation of its decisions. This limitation was highlighted during the 2012 bankruptcy of an alleged large-scale Ponzi scheme. As a quasi-deposit institution, it was exempt from supervision because of the lack of implementing regulations for the anti-money laundering law, despite a prior NIK report

34 CBA (2013) Mapa Korupcji <http://www.antykorupcja.gov.pl/ftp/filmy/Mapa%20korupcji%202013.pdf>.

35 Ibid.

36 Transparency International, National Integrity System Assessment http://files.transparency.org/content/download/200/804/file/2011_NIS_ExecSummaryPoland_EN.pdf.

37 Najwyższa Izba Kontroli (2012) *Sprawozdanie z działalności Najwyższej Izby Kontroli w 2011 roku*. pp. 383-4. <http://www.nik.gov.pl/o-nik/sprawozdania-z-dzialalnosci-nik>.

38 <http://www.nik.gov.pl/plik/id,3964.pdf>.

drawing attention to this loophole.³⁹ The authorities' failure to react sooner, even though the scheme's founder had multiple convictions for fraud, highlighted the need for Polish institutions to share information and cooperate more closely. The authorities also did not follow up on a NIK report on allegedly undue remuneration of board members at a state-owned company overseen by the Agricultural Market Agency.⁴⁰ In January 2013, two former directors of the Agency received suspended prison sentences in a separate case.⁴¹

Comprehensive strategic approach on corruption

International experience suggests that anti-corruption strategies are neither indispensable nor sufficient in themselves to achieve tangible results. However, the situation in Poland indicates a need for greater overall coordination. Secondary legislation appears to be needed to specify the exact terms of cooperation among the institutions charged with preventing and fighting corruption. Such clarification would help avoid overlaps in competencies and potential competition among agencies which currently cooperate on an *ad hoc* basis.

Poland has made progress in checking on petty bribe-seeking by front-line officials.⁴² The introduction of 'one-stop shop' desks in local governments (which separate decision-makers from applicants), rising wages, and the elimination of on-the-spot cash fines for the speeding offences have been among the measures that helped to reduce opportunities for bribery.⁴³ However, bribery persists, particularly in the healthcare sector. According to the Central Anti-Corruption Bureau, sectors at risk include road and rail infrastructure, information technology in the public administration, EU funds, defence, and healthcare.⁴⁴ Poland's fight against corruption has been perceived as politicised, with public opinion divided on certain investigative methods (such as sting operations) and their potential misuse for political purposes.

Corruption-related allegations in recent years led to resignations and dismissals, demonstrating that politicians were held politically accountable, without however further consequences.⁴⁵

The government's last anti-corruption strategy expired at the end of 2009. In July 2013, the Ministry of Interior published for consultation a draft Programme for fighting corruption in the period to 2019.⁴⁶ Comprehensive in scope, the document puts considerable focus on prevention in addition to prosecution. The draft contains plans for setting up various

39 The NIK report referred to the lack of implementing regulations for the anti-money laundering law, not to any particular case. NIK (2011) Informacja o wynikach kontroli realizacji przez Generalnego Inspektora Informacji Finansowej obowiązków w zakresie przeciwdziałania praniu pieniędzy oraz finansowaniu terroryzmu (Information on Outcome of Audit of Activities of General Inspectorate of Financial Information in the Area of Prevention of Money Laundering and Terrorism Financing). Zielona Góra: NIK, p 11. <http://www.nik.gov.pl/plik/id.3369.vp.4270.pdf>.

40 NIK (2011) Informacja o wynikach kontroli funkcjonowania ELEWARR sp. z o.o.

41 Białystok Court, 22 January 2013 subject to appeal.

42 See Czubek, G. Kopińska, G, Sawicki, A, Wojciechowska-Nowak, A and Wojciechowicz, J. (2010) How to fight corruption? Principles for developing and implementing anti-corruption strategy for Poland. Warszawa: Stefan Batory Foundation. www.batory.org.pl/doc/Jak_walczyc_zkor_EN.pdf.

43 The elimination of cash fines does not apply to foreign drivers.

44 CBA Anticipated Corruption Risks in Poland. 13 November 2013.

45 Recently, one minister resigned after the publication of a recording that claimed to show officials describing political corruption and nepotism in appointments at the ministry. In another case, wiretaps were leaked of conversations between a parliamentary group leader and a gambling entrepreneur seeking to block a proposed tax. A CBA investigation implicated other government figures, resulting in the dismissal of the parliamentary group leader, three ministers, a deputy minister and the Head of CBA. Parliament appointed a commission to investigate the case but its work was split along partisan lines. No charges were filed in these cases.

46 Ministry of Interior (2013) Projekt uchwały Rady Ministrów w sprawie 'Rządowego Programu Przeciwdziałania Korupcji na lata 2014-2019' Available from: <http://bip.msw.gov.pl/portal/bip/435/22313> Summary of comments received during the consultations: http://www.akop.pl/public/files/Zestawienie_uwag_z_konsultacji_spolecznych.pdf.

coordinating structures within the central administration, with the Ministry of Interior responsible for overall coordination. The document envisages a range of risk assessments and reviews of existing legislation, which could serve as the basis for future legislative and policy initiatives. The document provides for general measures and objectives that might lead to the elaboration of an actual strategy, but does not contain a detailed time-frame. The 2014 state budget allocates nearly EUR 240000 for implementation of the Programme.⁴⁷

Overall responsibility for implementing the draft Programme rests with an inter-ministerial body appointed by the Prime Minister and chaired by the Minister for the Interior, with the Head of the CBA as deputy chair. A coalition of non-governmental organisations (NGOs) welcomed the arrangements, as well as the draft Programme's focus on prevention, education and internal control. However, the NGOs also note a need for greater detail in the draft Programme on concrete measures and benchmarks for measuring performance.⁴⁸

Public procurement

Procurement of public works, goods and services accounted for about 19.9 % of GDP in Poland in 2011. The value of calls for tender published in the official gazette as a percentage of total expenditure on public works, good and services was 38.9 % in 2011.⁴⁹ The Public Procurement Office (a separate institution) plays a policy-making and coordinating role. Its president is appointed by the Prime Minister. Duties of the Office include drafting legislation, arranging appeal proceedings, checking the regularity of procedures, and organising training programmes.⁵⁰ Procurement information is published using a searchable online platform, the Bulletin of Public Procurement.⁵¹

In 2008, the Prime Minister established the 'anti-corruption shield', a cooperation platform of civilian and military secret services, including CBA, to protect the largest privatisations and public tenders.⁵² The institutions involved in the shield have not yet reported publicly on their results.⁵³

According to the 2013 Eurobarometer business survey on corruption, 16 % of businesspeople who had contact with the public administration claimed that they had been expected or asked to pay a bribe over the previous 12 months (EU average: 5 %).⁵⁴ 65 % of the Polish respondents consider that corruption is widespread in public procurement managed by national authorities (EU average 56 %) and 67 % in that managed by local authorities (EU average: 60 %). In particular, Polish respondents stated that the following practices were widespread in public procurement procedures: specifications tailor-made for particular companies (74 %); abuse of negotiated procedures (54 %); conflicts of interest in bid evaluation (48 %); collusive bidding (55 %); unclear selection or evaluation criteria (52 %); abuse of emergency grounds to avoid competitive procedures (56 %); involvement of bidders in the design of the specifications (50 %) and amendments of contractual terms after conclusion of contract (43 %). These indicators, while not necessarily directly related to

47 Sejm Rzeczypospolitej Polskiej (2013) *Rządowy projekt ustawy budżetowej na rok 2014*. Available from: <http://sejm.gov.pl/sejm7.nsf/PrzebiegProc.xsp?id=CF77EBB4C2A87C04C1257BF7004E05B1>.

48 Opinion on Draft Government Anti-Corruption Programme, 2 August 2013, http://www.akop.pl/public/files/Opinia%20nt%20Rządowego%20Programu%20Przeciwdziałania_02.08.2013.pdf.

49 http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/public-procurement-indicators-2011_en.pdf.

50 <http://www.uzp.gov.pl/cmsws/page/?F;374>.

51 <http://bzp1.portal.uzp.gov.pl/index.php?ogloszenie=browser>.

52 <http://www.akop.pl/public/files/list-kancelaria-prezesa-rady-ministrow-2009-05-12.pdf>.

53 Other than to the Sejm Special Services Committee. Stenographic record of sitting of Administration and Interior Commission, 13 September, 2012. <http://orka.sejm.gov.pl/SQL2.nsf/Main7?OpenForm&ASW>

54 2013 Flash Eurobarometer 374.

corruption, illustrate risk factors that increase vulnerabilities to corruption in public procurement procedures.

There are indications of corruption in public procurement, including with regard to EU funds. In December 2012, further to information provided to the European Commission by the Polish authorities, the Commission froze nearly EUR 950 million in reimbursements due for road infrastructure projects after Polish prosecutors charged a senior official from Poland's general directorate of national roads and motorways. As a result of an action plan implemented by the Polish authorities (including a specific audit of road projects), the Commission resumed payments in March 2013.

CBA notes that EU funds are exposed to corruption risks. According to CBA, corrupt officials offer bidders 'help', for financial gain, in preparing tender documents for EU funds.⁵⁵ Moreover, NIK pointed to ineffective supervision mechanisms in state-owned companies.⁵⁶ As a remedy, a Polish think tank, the Civil Development Forum (FOR), has suggested greater transparency of the ownership structure of public companies and of political party membership to facilitate exposure of nepotism.⁵⁷ Board members of state-owned companies are subject to requirements concerning professional qualifications and excluding political party employees. However, plans for a non-partisan appointments committee to select candidates for management and supervisory board positions in state-owned companies have not yet been implemented.

The situation is exacerbated by weaknesses in the internal control of public tenders, many of which are awarded at local level. Internal audit in municipalities would benefit from a broader scope and more independence. A 2013 Ministry of Finance report on internal audit in the public sector found that many auditors' recommendations were not followed, and many auditors did not monitor implementation or perform effective risk assessments.⁵⁸

The need for closer scrutiny of public procurement was illustrated by a controversy concerning EU-cofinanced tenders for information technology. The Public Procurement Office noted in 2011 that, out of 299 audited procedures, a violation of the Law on Public Procurement was detected in 125 cases (42 %), of which 54 (18 %) showed violations that may have had an impact on the outcome of the proceedings.⁵⁹ Most of the violations affected small value tenders where legal procedures were not followed. The Office of Competition and Consumer Protection proposed changes to transparency rules for early stages of the procurement procedure, to help prevent bid-rigging.⁶⁰

Additional amendments to the Law on Public Procurement (which came into force on 20 February 2013⁶¹ to transpose Directive 2009/81/EC)⁶² limit opportunities for price fixing and ensure better verification of the credibility of the bidder. The amendments also seek to unify contracting procedures for the supply of military equipment and associated construction

55 CBA (2012) Mapa Korupcji 2011 (2011 Map of Corruption) p. 57

<http://antykorupcja.edu.pl/index.php?mnu=12&app=docs&action=get&iid=17444>.

56 NIK (2009) Informacja o wynikach kontroli sprawowania nadzoru właścicielskiego w spółkach z większościovym udziałem Skarbu Państwa w 2009 r. p. 4 <http://www.nik.gov.pl/plik/id.1682.vp.1900.pdf>.

57 <http://www.forumsamorzadowe.pl/files/FOR%20nepotyzm.ppt>.

58 Ministerstwo Finansów (2013) *Sprawozdanie roczne. Audyt i kontrola zarządcza w sektorze publicznym w 2012 r.* MF. http://www.mf.gov.pl/documents/764034/5425261/20130814_SPRAWOZDANIE_ROCZNE_2012.pdf.

59 Urząd Zamówień Publicznych (2012) Wyniki przeprowadzonych w 2011 r. przez Prezesa Urzędu Zamówień Publicznych kontroli zamówień współfinansowanych ze środków Unii Europejskiej. http://www.uzp.gov.pl/cmsws/page/?D:612;zbiorcze_informacje_o_wynikach_kontroli_zamowien_wspolfinansowanyc_h_ze_srodkow_ue.html.

60 Urząd Ochrony Konkurencji i Konsumenta (2013) *System zamówień publicznym, a rozwój konkurencji w gospodarce*. http://uokik.gov.pl/aktualnosci.php?news_id=10594.

61 Ustawa z dnia 29 stycznia 2004 o zamówieniach publicznych. <http://www.uzp.gov.pl/cmsws/page/?F:356>.

62 Directive 2009/81/EC on defence and sensitive security procurement.

works services. This large market previously lacked clear and uniform public procurement procedures. Additional amendments oblige defence sector bidders to reveal potential subcontractors when applying.

Healthcare

The partial privatisation of medical services and the opening of private health insurance plans are thought to have limited corruption in healthcare, traditionally considered by Poles as one of the most corrupt sectors.⁶³ Higher salaries and publicised arrests may also have reduced the incentive for doctors to accept informal payments from patients.

However, healthcare remains prone to corruption.⁶⁴ 8 % of Poles who came into contact with the healthcare sector said they had been requested or expected to pay a bribe over the previous 12 months.⁶⁵ Patients report that they bribe doctors to receive better or faster treatment. While the problem of informal payments is decreasing, corruption remains a challenge with regard to the purchase of equipment and medicine, and in contacts between doctors and pharmaceutical companies.⁶⁶ Tender specifications are sometimes tailored to favour a particular bidder in ways that are difficult for auditors to spot. In one case, one deputy minister was convicted of having accepted, in a previous job in hospital management, a bribe from an international pharmaceutical producer in a case of tender-rigging.⁶⁷

The NIK has noted anti-corruption gaps in healthcare. Audits in selected hospitals revealed tender irregularities and improper links between doctors and pharmaceutical companies.⁶⁸ For example, doctors conducting clinical studies financed by a pharmaceutical company routinely served on a tender committee where the same company was a bidder. Multiple corruption cases involve doctors and pharmaceutical companies which pay them to participate in conferences abroad. These problems persist despite longstanding awareness and recognition by the authorities, as noted in a 2007 booklet by the health ministry's team for the prevention of fraud and corruption in healthcare.⁶⁹ The NIK report has not resulted in improvements in the regulation of contacts between doctors and pharmaceutical companies.⁷⁰ No specific system is in place to help healthcare institutions prevent and detect corruption.

Procedures for introducing a drug on the reimbursement list were improved in January 2012 to allow more direct competition.⁷¹ In addition, the CBA was tasked with supervising contacts between relevant health officials and the pharmaceutical industry.

63 CBOS surveys from 2010: http://www.cbos.pl/SPISKOM.POL/2010/K_063_10.PDF and earlier ones by the Stefan Batory Foundation: <http://www.batory.org.pl/doc/barometr-korupcji-2007.pdf>.

64 CBA (2010) *Mapa Korupcji (Corruption Map)*. http://www.cba.gov.pl/ftp/zdjecia/Mapa_korupcji.pdf.

65 2013 Special Eurobarometer 397.

66 http://www.batory.org.pl/doc/Jak_walczyc_zkor_EN.pdf.

67 In the USA, global pharmaceutical companies agreed to pay fines to settle claims that subsidiaries had violated the Foreign Corrupt Practices Act by paying bribes to doctors in Poland in exchange for contracts and agreements to prescribe the companies' drugs.

68 NIK. (2010) *Informacja o wynikach kontroli realizacji zakupów sprzętu medycznego i leków przez szpitale kliniczne oraz finansowania przez dostawców różnych sfer działalności tych szpitali, w tym dotyczących badań klinicznych*. Available from: <http://www.nik.gov.pl/plik/id,1862,vp,2203.pdf>.

69 http://www.mz.gov.pl/wwwfiles/ma_struktura/docs/zal_5_poszustwoz_19102007.pdf.

70 Majewski P. (2007) Raport na temat korupcji w Polskim systemie ochrony zdrowia. http://www.mz.gov.pl/wwwfiles/ma_struktura/docs/mkpsoz_21062007.pdf.

71 A 2012 report by PricewaterhouseCoopers identified problems with the transparency of negotiations on the prices of reimbursed drugs. http://www.pwc.pl/pl_PL/pl/publikacje/raport_ustawa_refundacyjna_po_publicacji_trzech_pierwszych_wykazow.pdf.

3. FUTURE STEPS

The authorities are implementing measures and fine-tuning policies which have contributed to progress, especially against petty corruption. However, a more strategic approach and closer coordination are called for to transform *ad hoc* amendments and activities into comprehensive solutions. Further reforms are needed to safeguard the independence and effectiveness of anti-corruption institutions, and the transparency of public procurement and healthcare.

The following points require further attention:

- Implementing a coherent long-term **strategy** against corruption, streamlining the activities of relevant institutions (including follow-up of findings by the Supreme Audit Office and internal auditors) as well as listing specific actions, the timeframe and resources for their implementation and those responsible.
- Strengthening safeguards against potential politicisation of the **Central Anti-Corruption Bureau (CBA)** by introducing: a more transparent and impartial procedure for the appointment of its Head, training and monitoring to ensure that investigative methods comply with human rights standards. Analysing CBA effectiveness focusing on the number of indictments and seriousness of cases, to identify potential areas for improvement such as coordination and cooperation with police, other special services and prosecution.
- Strengthening anti-corruption measures in a number of areas such as: **public procurement**, notably through effective and uniform *ex ante* and *ex post* checks at central and local level (including on EU programmes); supervision of **state-owned companies**, in particular through enhanced transparency, professionalism and integrity standards; and the **healthcare** sector, notably by implementing comprehensive measures to address corruption risks in the interaction between the pharmaceutical industry and public healthcare staff.