

Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

POLAND

(Information as of 1 September 2008)

Date of deposit of instrument of ratification / acceptance or date of accession

The ratification bill, which was approved by the two chambers of Parliament in January 2000, received presidential approval on 11 July 2000 and was published in the Journal of Laws of 2001, No 23, item 264.

The instrument of ratification was deposited with the OECD Secretary General on 8 September 2000.

Implementing legislation

Act of 9 September 2000 (Journal of Laws of 2000, No 93, item 1027) which entered into force on 4 February 2001 introduced amendments into the following legal acts:

Act of 6 June 1997 Penal Code (Journal of Laws of 1997, No 88, item 553, with further amendments);

Act of 6 June 1997 Code of Penal Procedure (Journal of Laws of 1997, No 89, item 555, with further amendments);

Act of 16 April 1993 on combating unfair competition (Journal of Laws of 1993, No 47, item 211, with further amendments);

Act of 10 June 1994 on public procurement (Journal of Laws of 2002, No 72, item 664, with further amendments);

Act of 29 August 1997 The Law on Banks (Journal of Laws of 2002, No 72, item 665, with further amendments).

The key elements of the implementing act were: the criminalisation of active and passive bribery of foreign public officials, the administrative responsibility of legal persons (subsequently replaced by the Act on Liability of Collective Entities [...], see below), the provisions facilitating better mutual legal cooperation and the exclusion of companies having been found to bribe from public procurement contracts.

Act of 28 October 2002 on Liability of Collective Entities for Acts Prohibited under Penalty (Journal of Laws of 2002, No 197, item 1661, with further amendments) entered into force on 28 November 2003 and replaced the provisions on administrative responsibility of legal persons introduced by the Act of 9 September 2000 (mentioned above). The Act regulates in a comprehensive manner the liability of collective entities, including liability for acts of active and passive bribery. It introduces a broad definition of collective entities subject to such liability, which comprises legal persons and organisational entities without legal personality. The Act provides for a number of sanctions, beginning with fines and forfeiture of benefits and other, such as ban on promoting or advertising business activities, products or services, ban on using financial support from public funds and aid provided by international organisations, ban on applying for public procurement contracts; ban on pursuing indicated business activities.

Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations

Recommendations for remedial action under Phase 1

According to the Phase 1 Evaluation, the Polish legal system should:

- cover the case where a material benefit (i.e. pecuniary benefit) goes to a third party;
- re-formulate the provisions on legal responsibility of legal persons;
- limit the discretion in deciding on the forfeiture of the bribes (e.g. by issuing guidelines);
- confirm whether taxation of the proceeds of corruption and the deduction of the bribe are possible.

The recommendation concerning responsibility of legal persons was implemented by the above mentioned Act of 28 October 2002. The problem of discretion and third party benefit was solved by relevant amendments to the Penal Code (art. 44 and 45), introduced by the Act of 13 June 2003 (Journal of Laws of 2003, No 111, item 1061). The taxation of the proceeds of corruption and the deduction of bribes are not possible under Polish law (however there is no explicit regulation). As there were no cases of criminal proceedings concerning corruption of foreign public officials reported so far, no observation about the practice of these provisions can be made.

Countries' international commitments arising from other international instruments

Poland is a state party to several international instruments listed below.

Since 20 May 1999 Poland is a Member State of the Group of States against Corruption (GRECO).

Since 1 May 2004 Poland is a Member State of the European Union, which involves – among others – the cooperation with OLAF (European Anti Fraud Office).

Other information

Relevant authorities

All allegedly committed offences should be reported to the Police (contact details are available on the website: www.kgp.gov.pl, including the Police hot line + 48 800 120 226 and contact details to all special Police units for combating corruption within regional headquarters of the Police, <http://www.policja.pl/portal/pol/101/1654/>), the public prosecution authorities (contact details available at: http://www.ms.gov.pl/organizacja/adresy_prok-010908.rtf) or <http://www.cba.gov.pl> to the Central Anticorruption Bureau (contact details available at: <http://www.cba.gov.pl>, tel.: +48 22 330 00 47).

The international cooperation in the field of combating corruption is coordinated by the:

Ministry of Justice
Department of Judicial Assistance and European Law
Al. Ujazdowskie 11
00 - 950 Warszawa
Tel/fax: (+ 48 22) 628-09-49
www.ms.gov.pl

Relevant internet links to national implementing legislation

Acts of Polish law (including laws on preventing corruption) are available on the website of Polish Parliament: www.sejm.gov.pl/prawo/prawo.html ; Journals of Law since 1995 are available also on the website: www.lex.pl .

The anti-corruption strategy of the Polish government adopted on 17 September 2002 is available on the website of the Ministry of the Interior and Administration: http://www.mswia.gov.pl/portal/pl/83/Przeciwdzialanie_korupcji.html

Signature/ratification of other relevant international instruments

Poland has signed and/or ratified the following international instruments on combating corruption:

- United Nations Convention against Corruption (signed on 10 December 2003, ratified on 15 September 2006);
- The Council of Europe Criminal Law Convention on Corruption (signed on 27 January 1999, ratified on 11 December 2002);
- The Council of Europe Civil Law Convention on Corruption (signed on 3 April 2001, ratified on 11 September 2002);
- The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (signed on 5 November 1998, ratified on 20 December 2000);
- European Union Convention on the Fight against Corruption involving Officials of the European Communities or Officials of the EU Member States (ratified on 25 January 2005).

Working Group on Bribery Monitoring Reports

Phase 1: Review of Implementation of the Convention and 1997 Recommendation

<http://www.oecd.org/dataoecd/39/45/2020928.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions

<http://www.oecd.org/dataoecd/3/54/38030514.pdf>