

SURVEY OF ANTI-CORRUPTION MEASURES IN THE PUBLIC SECTOR IN OECD COUNTRIES: POLAND

1. What anti-corruption mechanisms exist for the public sector in your country?

a) *Legislation proscribing corrupt activities and establishing sanctions*

The Penal Code (6 June 1997, coming into force on 1 September 1998, articles 228-231)

Scope: A ban on accepting, demanding, and promising favours in connection with the performance of official duties by persons holding public office, and a proper discharge by public officials of their duties.

The Penal Code recognises two forms of passive corruption by persons holding public office (article 228):

- the acceptance by a public official of material favours offered by a client whose business the official is taking care of; and
- the receipt of material favours by a public official in return for illegal actions.

The Penal Code also recognises two types of active corruption (article 228):

- the receipt or a promise of material favours; and
- demanding or promising material favours by a public official, or making the performance of a public official's duties dependent on the receipt of such favours.

Corruption may also take the form of "paid protection", *i.e.* settling other people's affairs in state or local government institutions by applying one's influence in these institutions, in return for material favours (article 230). Another form of corruption, albeit one that does not directly involve bribery, is when a public official exceeds his authority or fails to discharge his duties in return for material or personal favours, thus causing harm to public or private interest (article 231).

State officials are also culpable if they commit the above offences abroad (article 109).

An offence is committed not only by the person who demands or receives a personal or material favour, but also by a person who offers or gives state officials any type of favour.

Purpose: To protect the proper functioning of state and local government institutions, *i.e.* to maintain their impartiality and to safeguard their proper opinion of citizens on the way in which state officials perform their official duties.

Sanctions: From 3 months to 12 years imprisonment, restriction of liberty or fine.

The Civil Code (article 58)

Scope: Actions by state officials (as defined in article 417) aimed at circumventing or violating the law, in order to receive, for instance, various favours, are void.

Purpose: To safeguard an adherence to the law and ensure the rule of law in the work of state institutions.

b) *Other anti-corruption regulations or orders*

The Law on state officials (16 September 1982)

Scope: The principles by which state officials perform their duties. The anti-corruption rules include the following:

- spouses or relatives up to the second degree cannot be employed in a state office if such employment would give rise to a supervisor-subordinate relationship (article 9);
- any action that violates the primary duties of state officials or which might arouse the suspicion of bias are forbidden (article 1);
- State officials are obliged to declare their assets (article 17).

Purpose: To guarantee honesty and impartiality in the performance by public officials of their official duties, and avoid conflict of interests.

The Law on the civil service (25 July 1996)

Scope and purpose: similar to that of the law on state officials, except that this law is addressed to employees of the newly-formed civil service in Poland, whereby these employees are referred to as “civil servants.” The law contains the following anti-corruption measures:

- spouses or relatives up to the second degree cannot be employed in a state office if such employment would give rise to a supervisor-subordinate relationship (article 50);
- any action that violates the primary duties of state officials or which might arouse the suspicion of bias is forbidden (article 51);
- civil servants must restrict their economic activity under the terms of the law on restricted economic activity by public officials (article 52).

The Law on restricted economic activity by public officials (11 September 1997)

Scope: The performance of duties by persons holding state leadership posts. The law:

- bans officials from holding stocks or shares in companies and bans them from participating in the work of legal persons engaged in such activity (article 4);

- places officials under an obligation to reveal the size of their and their spouse's financial assets, real property, and business capital, and also reveal any economic activity and holding any offices in bodies of any businesses (article 10); and
- bans officials from employment by or performing any activity for businessman affected by any settlements on individual cases decided with participation of an individual holding public offices -- ban covers period of one year commencing from cessation of holding (article 7).

The above ban does not apply to persons appointed to trade companies in which the State Treasury has a share, or to other state or local government officials who act as representatives of these bodies. Public "registry of benefits" has been established to register any and every property benefits of high rank state officials (ministers, deputy ministers, leaders of central offices, *voivodes* and deputy *voivodes*) and their spouses. Submission of an information on participation in bodies of commercial companies, foundations or co-operatives is required, even if it does not involve any financial profits.

Purpose: Avoiding conflict of interests and accumulation of remuneration originated from public funds by an individual as well as eliminating of possibility to use public office for the purpose of particular, individual or group, interests.

Sanctions: A violation of the provisions of the law is an official offence involving disciplinary measures up to and including demotion or dismissal. In addition, presenting false information in a statement of income carries legal penalties.

The Law on the State Tribunal (26 March 1982)

Scope: The constitutional responsibility of persons in charge of ministries and leaders of central offices. The responsibility applies to violations of the Constitution or other laws committed by these persons during the performance of their duties (article 3), in other words situations where these officials, by means of their decisions, have given rise to conditions that encourage corruption.

Purpose: To control the legality of actions by persons holding the highest state positions.

Sanctions: A ban on holding leadership posts in state body and social organisations; a loss of awards, insignia, and honorary titles; the loss of one's active and passive voting rights. All penalties may be applied for a period of between 2 and 10 years of prison. In addition, in cases which qualify as criminal offences, the State Tribunal may impose penalties foreseen in criminal legislation.

The Law on public procurement (10 June 1994)

Scope: Controls the principles of announcing public orders and selecting tenders. The law lays down that the delivery of most goods and services paid wholly or in part out of public funds must be performed on the basis of public tenders and in a manner strictly laid down in the law. It also introduces mechanisms for handling complaints concerning tenders. In particular, the provisions of the law (articles 20 and 21) forbid any action concerning public orders if there is a close relationship or affinity between the supplier and the customer, or if these persons, prior to three years before the initiation of the public procurement, maintained a business relationship.

Purpose: To safeguard the openness and impartiality of economic activities that are wholly or in part paid for out of public funds, to preserve fair competition and equal treatment between tenderers in the awarding of public orders, and a proper management of public funds.

Sanctions: Should one of the bidders lodge a protest, the conclusion of a contract with a public institution is suspended until the circumstances behind the complaint have been clarified. Should illegal activity (such as bribery or other forms of corruption) be determined, the entire public order may be rendered void.

The Law on Deputy and Senator mandates (9 May 1996)

Scope: The principles of exercising a parliamentary mandate. The law (article 34):

- bans Parliamentarians having an active mandate from holding any function in an administrative, control, or audit body of businesses if the state or local government contains any shares;
- bans Parliamentarians from holding more than 10 per cent of the shares in any business in which state or local government contains any shares;
- places Parliamentarians under an obligation to forsake all positions or financial securities that exceed the permissible limit.

Purpose: To avoid conflicts of interests and the accumulation of wealth out of public funds, and to eliminate parochial interests -- of individual or group.

Sanctions: The legal responsibility of Deputies and Senators, a loss of their allowances, a loss of their functions three months from the date on which they took their oaths.

The Law on the police (6 April 1990), Article 19

The Law on the Office for the Protection of the State (6 April 1990), Article 10

Scope: Permits the controlled acceptance or granting of financial favours where there are suspicions of a heavy offence involving:

- the receipt or granting of material favours during the performance of one's public office;
- the exploitation of one's public office in order to commit economic offences resulting in considerable economic damage;
- collaboration or connivance with criminal groups. The receipt or granting of material favours may also occur during operative and investigative activities.

Purpose: To protect state bodies and institutions against wide-scale corruption and prevent criminal elements from infiltrating the state administration.

The following tax legislation can also be considered part of the legal measures designed to limit corruption in the state administration:

- The Law on income tax for physical persons (26 July 1991), article 2,

- The Law on income tax on legal persons (15 July 1992), article 2.

Incomes and expenditures obtained from an activity that cannot be the subject of any legal agreement, including corruption, must not be taken into consideration when calculating tax liability, therefore, in his expenses, a taxpayer cannot officially include corrupt activities.

In addition, legislative work is in progress to create clear and comprehensible procedures for situations where state administrative officials are forced to take strategic decisions on the national economy, which could also become a source of large-scale corrupt practices -- *inter alia* draft of the Public Finance Act has been created. The relevant legislation already passed includes the following:

- The Law on guarantees issued by the State Treasury and legal persons (8 May 1997),
- The Law on counteracting monopolist practices (24 February 1990),
- The Law on the commercialisation and privatisation of state enterprises (30 August 1996)

c) *Oversight by the legislature or parliament (directly or through scrutiny committees)*

The Sejm

The Sejm exercises direct control over state finances, *i.e.* it oversees the implementation of the state budget (budget law, article 52). It does this via the permanent Sejm Commission for Public Finance, and via the Supreme Chamber of Control.

The Supreme Chamber of Control

The Supreme Chamber of Control is directly answerable to the Sejm, It audits the activity of government bodies, the National Bank of Poland, state officials, and other state organisational units in the sphere of state incomes and expenditures.

The Parliamentary Commission for Deputies' Ethics

This Commission has developed "Principles of Deputies' Ethics" (Sejm resolution dated 17 February 1998) stating that Deputies should follow public interest and should not accept any material favours that could influence Deputies' activity (article 3). The Commission also examines Deputies' statements of their assets, and reports its findings to the Sejm Presidium.

d) *Investigation systems or bodies with powers to investigate corrupt activity*

In Poland there is no special system of agencies for counteracting corruption, but departments for combating organised crime have been created within the Ministry of Justice and 11 provincial prosecutor's offices. In their activity, criminal gangs often use corrupt public officials, and for this reason, these departments carry out investigations into major cases of corruption.

e) *Supreme financial audit authority*

The Supreme Chamber of Control (NIK), answerable directly to the Sejm, controls the incomes and expenditures of government bodies, the National Bank of Poland, state officials, and other state organisational units. It may also control other economic units if they are performing tasks commissioned by state bodies or undertaking public orders on behalf of the state or local government bodies (article 2). NIK undertakes controls purely on the Sejm's instructions or on its own initiative. The President and Prime minister can merely draw conclusions from the results of NIK's controls, but whether or not these conclusions are to be taken into consideration depends solely on the NIK leadership (article 6). In its work, NIK employs only the criteria of legality and honesty, and in some cases also the criteria of expediency and efficiency (articles 2 and 5). NIK presents its findings to the Sejm, whereas local NIK delegations present their findings to the respective *voivodes* and local parliaments (articles 7 and 9). Where there is justified suspicion of a crime or misdemeanour (including corruption), NIK informs the law-enforcement bodies and also informs the head of the body that has been audited or the head of this body's supervising authority (article 63).

Its legal basis for action comes from the Polish Constitution (Chapter 9, Bodies of State Control and Legal Protection articles 202-207), and the law on the Supreme Chamber of Control (23 December 1994).

f) *Ombudsman*

Whenever a citizen reports that he was forced to pay a bribe, the Ombudsman has the power to investigate the matter. He is also entitled to receive information on investigations into corruption cases by courts, the prosecutor's office, and other law enforcement bodies. He may also appeal against final rulings of such cases. Finally, he may insist on the commencement of investigations by a qualified attorney.

g) *Bodies to enforce sanctions and prosecute corrupt activity, e.g. specialised prosecutors, investigators, courts, tribunals, etc.*

Cases of corruption within the meaning of the penal code (see point 1.a) are dealt with by the prosecutor's office, and cases of corruption proper are dealt with by the general courts on the same principles as the main categories of crime.

h) *Human resources management procedures intended to prevent corruption*

Persons employed in the state administration are obliged to discharge their duties honestly, impartially, and objectively. Public officials are bound by the following rules, intended to stop corruption:

- they may not combine their office with private economic activity;
- they must not belong to a political party;
- they must not engage in political activity;
- they must declare the size of their financial assets, property, and stock capital, and holding of position in bodies of any businesses, and also declare any economic activity;

- spouses or relatives up to the second degree are banned to be employed in a state office if such employment would give rise to a supervisor-subordinate relationship with the other partner;
- any action that violates the primary duties of state officials or which might arouse the suspicion of bias are forbidden;
- any action concerning public orders if there is a close relationship or affinity between the supplier and the customer, or if these persons, prior to three years before the initiation of the public order, maintained a business relationship, is banned.

i) Financial management controls intended to prevent or deter corrupt practices

There is an internal control body inside every government administrative unit. Their task is to detect any irregularity, including corrupt practices, both in the activity of the relevant office or unit as a whole, and in the conduct of individual employees, and to present the results of these controls to the relevant authorities.

Internal controls are also performed by specialised state agencies that are part of the government framework, such as the State Trade Inspectorate, State Inspectorate for the Procurement and Processing of Agricultural Produce, Sanitary Inspectorate, fiscal control agencies, and also control services under the auspices of the governors. The tasks of all these agencies are laid down in legislation, which forms the basis of their functioning.

The Supreme Chamber of Control (NIK) is the highest body that is entitled to check the financial activity of state administrative bodies and enterprises and other organisational unit subordinate to the state administrative bodies. This is a form of external control, and is independent of the internal control bodies already existing within government administrative units. NIK is also entitled to check the activity of other specialised bodies of state control. NIK is situated above these bodies because the latter are obliged to implement NIK's findings and recommendations.

An efficient and well-functioning system of internal and external control serves to eliminate corruption and fraud, and is an important and powerful weapon in the fight against these phenomena within the public administration.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

A Department of Control and Supervision has been established within the Ministry of Internal Affairs and Administration, and inspectorates have been established within certain services governed by the Ministry. The purpose of these agencies is to detect dangers and irregularities (including corruption) in the functioning of services, offices, and other units governed by the Ministry of Internal Affairs and Administration all over the country, and to combat all detected irregularities. Inside the police and Frontier Guard, special cells and units have been formed to combat economic crime. The scope of the tasks being performed, encompassing the protection of the state's economic interests, are also aimed at intelligence and disclosure of the phenomena that encourage corruption.

There are also internal control departments within the Chancellery of the Chairman of the Council of Ministers, within ministries and central offices, and in *voivodship* offices. All of these control the activity

of institution and cells, as well as individual employees who are subordinate to the leaders of the state administration.

k) Transparency mechanisms e.g. independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity

Transparent systems for employees' selection in the administration involve:

- an open system for recruiting employees: job vacancy notices in the press, contests, and interviews;
- the employee of public service is required to submit the statement of assets when signing a job contract and whenever asked to do so by the employer -- in such a statement, the employee is obliged to declare his cash resources, real property, shares, and the acquisition from the state treasury, another state body or local government body any property that was obtained by tender. The employee must also declare any economic activity and any position that he holds in commercial businesses. Statement must cover any property held jointly with employee's spouse. The information in the statement is an official secret.

l) Guidance and training for public officials or politicians (e.g. codes of conduct, ethics awareness training)

As part of the training process for new employees in state service, lectures are provided on the pragmatics of being a state official. There is no systematic training on professional ethics.

m) Other measures intended to control, detect or deter corruption

- Publishing of the results of controls of the activity of state bodies and the conclusions streaming from these controls serves a preventive purpose because it reveals to the public distortions in the work of the executive, including corruption. The disclosure of the results of controls frequently serves to prevent corrupt practices.
- Permanent analysis of the results of various controls and investigation in administrative bodies and analysis of the information obtained from the public, *i.e.* complaints from individuals, trade unions, and social organisations. This helps pinpoint those bodies where symptoms of illegal activity occurs.
- Introduction to individual state institutions of internal rules that regulate or restrict acceptance of gifts in cash or in kind on benefit of the unit within individual governmental institutions/offices that restricts the specific corruption mechanism in state institutions (*e.g.* Decision no. 46 by the Minister of Internal Affairs, 19 April 1994)

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

It is difficult to assess the effectiveness of individual anti-corruption instruments and measures because of the nature of corruption. In this type of crime, it makes no sense to talk of a success rate in solving crimes because parties to corrupt activities only seldom make themselves known, and external controls are only limited in scope. On the other hand, it is very difficult to gauge the exact number of cases of corruption in state offices, so one cannot compare and assess the effectiveness of individual anti-corruption measures. However, there is a fairly broad consensus that the Criminal Code and the work of the judiciary are the most effective such measures.

In 1995, a draft law on appointing an extraordinary Sejm commission on corruption was tabled in the Sejm. Following discussions, it was rejected because the deputies believed that the courts are the proper bodies to deal with corruption, and are most effective in doing so. The possibility of making controlled acquisitions of assets is no doubt a positive feature, but its effectiveness cannot be gauged because of the brief amount of time in which this solution has existed in Poland. The effectiveness of preventive measures is also viewed highly.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

Efforts are being made to assess the effectiveness of the existing mechanisms (*e.g.* by the Ministry of Finance), but, as has been said above, the possibilities of doing so are severely restricted and there is no unified assessment system or a single co-ordinating centre for anti-corruption activities in all state institutions.

4. What if any new actions against corruption in the public sector is your country currently considering?

There is currently under consideration in Parliament a governmental draft of Public Finance Act and draft of the Law on local government revenues. The Public Finance Act introduces the management system of these finances based on publicness, transparency, expediency, thriftiness and full control of democratically elected bodies over disposal of public resources. The law introduces full uniformity of income and expenditure classification and accounting rules of all units belonging to public sector including requirement of publishing the statements on disposal of funds and of auditing of the statements by independent entities.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

Activity on line of contact between public finances and private business is considered the most susceptible to corruption. The government now believes that the functioning of banks, the process of privatisation, and international trade are particularly threatened by corruption.