



STEFAN **BATORY  
FOUNDATION**



# How to fight corruption?

## Principles for developing and implementing an anti-corruption strategy for Poland

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## Summary

*In this publication, we present principles for developing and properly implementing an anti-corruption strategy as well as examples of solutions that can be used for preparing such a strategy for Poland. It has been prepared with the aim of launching a broad and serious discussion on the shape of Polish anti-corruption policy. We hope that we will succeed in persuading those who run this country of the merits of the vision that we have presented and that the result will be a long-term national anti-corruption strategy, which will then be implemented in the manner proposed by us.*

*In the introduction we present the general principles that should guide people developing and implementing national anti-corruption strategies. Then we move on to show how this process should take place in our country.*

*We believe that the strategy should be designed for a period of 15–20 years. We propose adopting the following strategic objectives:*

- changing citizens' attitudes in such a way that the absence of corruption is considered a normal state of affairs;*
- instilling in the public consciousness the belief that the authorities have a responsibility to continually fight against corruption;*
- carrying out activities along three tracks: prevention, law enforcement, and education;*
- putting Poland in the top ten among EU countries in terms of transparency.*

*The system for implementing the strategy should be based on a single central institution dedicated to this task, as well as units designated in every public institution to carry out specific tasks assigned to them within the strategy. Adequate financial resources should be allocated for carrying out tasks stemming from the strategy.*

*Moreover, both internal and external evaluation have to be conducted to evaluate progress in implementing the strategy. We call for the setting up of an institution independent of the government, composed of several experts, to evaluate*

*the process of implementing the government's anti-corruption strategy. The media and NGOs, as part of citizen monitoring, should also carry out an independent assessment.*

*We then define the areas most at risk of corruption, among them: politics, public administration, health care and sports. We discuss the role of institutions set up to fight corruption. With regard to the Central Anti-Corruption Bureau (CBA – in the text, Polish abbreviations are retained for the names of Polish institutions), we present two possible scenarios. We believe the better option is to merge the CBA with the Departments for Fighting Corruption in the police, and therefore to place the CBA in the structure of the Ministry of Internal Affairs and Administration (MSWiA).*

*Finally, through several examples we show how we think operational objectives of an anti-corruption strategy should be formulated and how activities aimed at achieving them should be presented.*

# 1. Introduction

## 1.1. Purpose of this publication

This publication is addressed to both the government and to a wider audience – to public opinion. We would like that, after familiarizing themselves with it, those individuals and institutions that are interested in the issue of fighting corruption, will engage in a serious discussion with us and others on the shape of a desirable anti-corruption policy. We hope that we will succeed in convincing the people running this country of our vision, and that a long-term anti-corruption strategy will emerge and be implemented in the manner proposed by us.

We feel there is a lack of serious debate on the issue of preventing corruption. We hope to launch a public discussion whose result will be growing consciousness among Poles of the price that the both state and individual citizens pay for tolerating corruption.

Despite various attempts to rectify the situation, corruption in Poland remains one of the most pressing problems and calls for systemic solutions. We believe that after many years of transformation, far-reaching changes, and implementation of various types of partial solutions aimed at fighting corruption, it is time to implement a wider systemic solution in the form of a long-term anti-corruption strategy. A document like this should outline a state anti-corruption policy whose implementation should lead to the creation of a durable system of anti-corruption safeguards.

In this publication we would like to propose both theoretical and practical material, making use of acquired theoretical knowledge as well as familiarity with strategies developed by other countries undergoing transformation. Theoretical – because it shows what should be taken into account in developing a strategy, what it should include, and how it should be implemented. Practical

– because in it we would like to present our proposals regarding the form and contents of such a document, contributing what we have learned in the past 10 years from the Stefan Batory Foundation’s Anti-Corruption Program.

The aim of this publication is not the creation of a ready-made anti-corruption strategy for Poland. In the opinion of the publication’s authors, that is the task of the government. We would like, however, to present and propose a model for an anti-corruption strategy, to show how it should be created and implemented, as well as the essential elements that it should include. In this document we mention a range of problems and only for illustration, in several areas, we propose examples of possible solutions. In other words, we are setting up a sort of scaffolding, which should be filled with concrete solutions by those currently in the government. This is because we realize that some problems, including those connected with fighting corruption, can be solved in a variety of ways. Which solutions are pursued depends on what political philosophy is professed. For example: the threat of nepotism and corruption in firms owned by the state or by local governments is widely acknowledged. Ministers or mayors influencing the composition of the management or board of directors of such firms often base their choices not on merit but on the need to reward their political backers. This problem can be tackled in several ways: privatizing firms owned by the state or local governments, putting them under greater public supervision by listing them on the stock market, as well as introducing and effectively implementing a recruitment system for the management of such firms and limiting the discretionary powers and influence of people currently in the government. But one can also find solutions that combine these options to varying degrees. What solution is chosen depends on the philosophy (liberal or statist) guiding the authorities pursuing a concrete anti-corruption strategy.

## **1.2. Usefulness of strategic documents in corruption prevention**

The concept of developing strategies as a tool for solving major problems – adopted in the second half of the 20<sup>th</sup> century by business organizations from military science – is currently applied in a large variety of fields, particularly where the attainment of set goals is essential. It is also applied by state institutions, including Polish ones.

Corruption is one of those social problems to which a strategic approach is well-suited. For over a decade the concept of developing national anti-corruption strategies has been promoted by international institutions and organizations.

A Transparency International publication<sup>1</sup> devoted to government anti-corruption strategies maintains that there is no one universal strategy. Each one should be adapted to the situation existing in a given country. Strategies can be *ex ante* (preventive) and *ex post* (punitive). In practice, it is important to have a balance between the two types of activities; one cannot limit oneself to *ex post* activities.

An example of a multi-pronged strategy is the multi-directional strategy proposed by the World Bank for fighting corruption prepared for states undergoing system and market transformation<sup>2</sup>. Its starting point is the observation that activities to fight corruption focused on fighting symptoms should be re-directed to tackling the causes of corruption. This strategy stresses the fact that the sources of corruption can be found not only in weaknesses in the state and its structures. It is essential to get inside the inner workings of political systems and the relationship between the state and the private sector as well as between the state and civil society.

### 1.3. Polish anti-corruption strategies

In the pre-accession period, the European Commission criticized countries of the former Eastern bloc for excessive sluggishness in fighting corruption. In response to this criticism, national anti-corruption strategies were formulated and more or less successfully implemented. Examples of this type of activity can be found in Latvia (1998), Slovakia (2000/3), Hungary (2001), Czech Republic (2001), Lithuania (2002), Slovenia (2004), Estonia (2004), as well as Romania (2005) and Bulgaria (2005).

Under European Commission pressure, Poland also adopted a document on September 17, 2002 called “A Program for Fighting Corruption – An Anti-Corruption Strategy”. The tasks imposed by this document on individual ministries and central government institutions had to be accomplished by the end of 2003. In October 2004, a substantially better document was adopted: “A Program for Fighting Corruption – An Anti-Corruption Strategy – Implementation Phase II for 2005–2009”. The goals and tasks of the second phase of the Strategy’s implementation were set out for specific areas of public life – within their framework a general goal and strategic goals were defined; both informational-educational and organizational changes were proposed. The entities responsible for carrying out specific tasks were designated, and deadlines set for their completion.

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<sup>1</sup> The publication “Government Anti-Corruption Strategies” was made available on the web-site <http://www.transparency.org/>.

<sup>2</sup> In the report “Anticorruption in Transition”, The World Bank, 2001.

For a number of reasons, implementation of these programs produced limited results. With regard to implementation of Phase I of the strategy, the fundamental problem was that the activities undertaken were rather superficial in nature, motivated mainly by the need to meet European Union requirements before accession to the EU. Regarding Phase II, the main obstacle to effective implementation were the many changes of government<sup>3</sup>, and the resulting changes in ideas about how to fight corruption. Another major reason for failure was the lack of formal mechanisms for evaluating entities and individuals responsible for carrying out specific tasks. In both cases, key factors were the lack of proper political leadership and the low level of engagement of the majority of public administration employees in implementation of the strategy, as well as the non-participatory process for developing the program. No funds were earmarked in the national budget for implementation of either Phase I or Phase II of the strategy. It should also be added that these documents were, in effect, more like a plan than a strategy, if only due to their short time horizons.

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<sup>3</sup> “A Program for Fighting Corruption – An Anti-Corruption Strategy – Implementation Phase II for 2005–2009” was prepared and accepted by the government of Prime Minister Marek Belka. The governments of Kazimierz Marcinkiewicz, Jarosław Kaczyński and Donald Tusk were supposed to carry out its tasks.

## 2. Design and implementation of anti-corruption strategies

### 2.1. Principles of proper design and effective implementation of anti-corruption strategies

Preparing and effectively implementing an anti-corruption strategy requires fulfillment of a range of conditions. Here we present the most important ones. Getting familiar with all these factors enables one to design suitable reform mechanisms and determine the order in which they should be introduced.

**A belief in success.** In designing a strategy it is important to have a win-win attitude, and therefore to find solutions that are in the best interests of the majority of actors and give everyone a feeling of success. The strategy should enable politicians to build a reputation for being responsible and honest. It should give businessmen the sense of jointly creating conditions for conducting business in a way that respects the principles of honest competition. Government officials should feel secure that by applying the strategy's principles they will not be exposed to situations conducive to corruption. And we – all citizens – should gain the confidence that we live in a better governed state and have equal access to various benefits and services funded by the state.

**Analyzing the situation and evaluating past and present activities.** The process of designing a national anti-corruption strategy should be preceded by analysis of the current situation. It is essential to identify the most important problems and the ways they have been addressed thus far. In Poland at the end of the 1990s a lot of research and analysis was done regarding the state of transparency and corruption risks. Therefore, at present, it is not really necessary to conduct additional wide-ranging studies in order to design an anti-corruption strategy. What is needed is solid analysis of existing studies.

It is also essential to evaluate past experiences with fighting corruption. With regard to Poland, this means analyzing the causes for the limited success of earlier activities, both those associated with implementation of the two phases of the Anti-Corruption Strategy (some of the reasons were presented in section 1.3) and with the activities of the Central Anti-Corruption Bureau.

**Process and participation.** The strategy should be developed, but also introduced and monitored, through a participatory process; it should be the result of broad and continuous consultation. Developing a good anti-corruption strategy requires political will on the part of the government, but also the involvement and support of non-political social leaders: experts, business representatives, trade unions, religious institutions and other civil society groups<sup>4</sup>. We propose that both the principles of the strategy and its final formulation be submitted to public debate. The efforts of institutions to implement the strategy should be open to evaluation by civil society institutions, the media, and non-governmental organizations.

**Political leadership.** Leadership that is credible in terms of its engagement in the fight against corruption, and genuine support and engagement in implementation of the strategy at the highest levels: these are both essential conditions for success. Employees of public institutions as well as ordinary citizens must be convinced that the problem of curbing corruption is being treated seriously by the government, and not in an opportunistic way. The central institution responsible for implementing the anti-corruption strategy should be headed by a person of unquestionable moral authority, who at the same time is not affiliated with any political party. The attitude of the prime minister and his ministers should not leave any doubts as to zero tolerance on their part for corruption, nepotism, or conflicts of interest in the institutions they oversee.

**The time factor.** The time factor is of great significance for the successful implementation of the strategy.

Its time frame should be clearly delineated at the outset. A national anti-corruption strategy is more than just a government's plan of anti-corruption activities. Goals such as steady reduction of the level of corruption and changes in people's attitudes cannot be achieved during one government's term of office. For this reason, a national anti-corruption strategy should cover a 15–20 year period of consistent action.

Both strategically and operationally, the goals that are laid down in the strategic document will be of varying importance, and their implementation will be complicated to varying degrees. The appearance of serious difficulties

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<sup>4</sup> From the Transparency International publication "Government Anti-Corruption Strategies".

in the first phase of implementing the strategy could scuttle the chances of the entire project. Therefore, the activities should be started in an area where it is the easiest to formulate strategic goals and where there are strong chances of achieving them within the set time frame. It is essential to find a suitable starting point for anti-corruption activities, a proper correlation between the time and place for starting these activities.

## **2.2. Contents and form of the strategic document**

The strategic document should:

- formulate a mission and define strategic goals
- outline how the goals, both strategic and operational, can be achieved, i.e. define tasks, set deadlines, designate persons and institutions responsible for carrying out specific tasks
- set out performance indicators for achievement of goals
- indicate sources of funding for activities resulting from the strategy. Adoption of even the best strategy without funds to carry it out will not produce the desired results.
- clearly specify the institution responsible for implementing the strategy, as well as to whom, how often and in what form reports should be submitted on the implementation process
- plan to set up a separate institution independent of the government to supervise and evaluate the entire process<sup>5</sup>.

A long-term national anti-corruption strategy, to have a chance of proper implementation, must be recognized as a binding document by those who will implement it, which means that in practice it must be backed up by legislation.

## **2.3. Risk factors**

In preparing the strategy one must take into account risk factors which could prevent its preparation or at least slow down its effective implementation. These always appear and in every country, but they are not the same everywhere nor of the same importance. For this reason, at the start of work on a strategic document they should be clearly outlined and taken them into account when planning corrective measures. The most common risk factors are:

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<sup>5</sup> Drago Kos, the head of Slovenia's independent Anti-Corruption Commission, who is also the head of GRECO (Group of States against Corruption), stresses that it is absolutely essential to have a supervisory institution. He says that in Slovenia one of the reasons for problems with the effective implementation of an anti-corruption strategy is the fact that the government hinders the work of the Commission, which has the formal authority to monitor the progress of implementation of the strategy. The government has on several occasions tried to abolish the Commission.

**Violating civil rights.** In the fight against corruption, especially with its effects, one should not employ methods that violate people's rights. The threat of corruption is different from the threat of terrorism. Employing extraordinary measures is not necessary here. However, it is essential to systematically carry out preventive actions and to not disregard threats.

**Cultural factors.** Certain cultural factors can also pose an obstacle to fighting corruption effectively. When designing anti-corruption activities in Poland, as in the majority of countries that were deprived of their state identity in their recent history, one should take into account the deeply rooted reluctance in society to report to the authorities people who commit crimes. Also one cannot overlook the fact that the period of economic stagnation led to citizens tolerating the growth of a culture of cronyism and backscratching.

**Ideologization of the fight against corruption.** This happens when the fight against corruption becomes an obsession among decision-makers and when every problem is attributed to a corrupt clique. Based on a diagnosis like this, it is easy to conclude that in the fight against this social ill extraordinary measures should be used, that the end justifies the means and the functioning of democratic instruments can be overruled from time to time. Of course, with the intensive application of strong measures and a high level of emotion, in the beginning the situation can be dramatically improved, but quite soon society can get tired of such a moral crusade and lose interest in the fight against corruption, and sometimes even turn against the leader of this campaign<sup>6</sup>. Such activities can also lead to social "devaluation" of all anti-corruption efforts.

**Stopgap measures.** The fight against social ills, including corruption, should not be stopgap in nature. It must become a daily practice of governments. Preventing corruption, embedding anti-corruption safeguards into the routine work of public institutions must become commonplace – just as commonplace as the need to protect the territory of one's country or measures to protect against epidemics.

**Lack of political consensus.** Also, the fight against corruption must not become a political football. For the reasons mentioned above, it should be the daily task of every government. Therefore, it would be desirable to reach

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<sup>6</sup> An example of such a turn of events may be the Italian "Clean Hands" campaign, which in the 1990s led to corrupt party elites being completely swept away, but after a few years brought an accusation of corruption against the main anti-corruption prosecutor Di Pietro and helped put Silvio Berlusconi, a businessman facing a range of corruption charges, in power for many years.

an agreement above party lines on the goals of the strategy and to jointly undertake long-term tasks to be carried out even after any change of government. Short-term tasks and operational goals can change along with a change in government. Such an approach guarantees that the long-term goals of the national anti-corruption strategy will be achieved.



### 3. Assessing progress in the fight against corruption in Poland

After discussing general principles that should be followed by persons designing and implementing national anti-corruption strategies, we will present some ideas on what this process should look like in our country. We will propose strategic goals for a 15–20 year period and a system for implementing the strategy, indicate areas at risk of corruption and institutions set up to fight against it, and finally, by way of illustration, we will show how in our opinion one should formulate the operational goals of an anti-corruption strategy and present activities aimed at implementing them.

#### 3.1. A definition of corruption

There is no single, universally accepted definition of corruption. The Civil Law Convention on Corruption adopted by members of the Council of Europe defines it as “requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behavior required of the recipient of the bribe, the undue advantage or the prospect thereof.” Sociology and political science papers offer many different definitions of corruption. This concept usually encompasses a broader array of phenomena than in legal definitions<sup>7</sup>.

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<sup>7</sup> Prof. Maria Jarosz believes that corruption “encompasses a wide range of criminal behavior: bribery, paid patronage, nepotism, organizing tenders in such a way that a certain contractor can win, using one’s political or economic position to provide lucrative positions for one’s own (or party) supporters, contrary to the interests of the state and society” (Maria Jarosz, “Władza, przywileje, korupcja”, PWN Scientific Publishers, Warsaw 2004, p. 200).

Jeremy Pope, head of Transparency International for many years, writes: “Corruption concerns behavior of public authorities, both politicians and civil servants, that results in unlawful and unjustifiable enrichment or has contributed to such enrichment of individuals who are close to one another through the misuse of power entrusted to them.” (“Rzetelność życia publicznego: metody zapobiegania korupcji”, Jeremy Pope, Maciej Pertyński (trans.), Institute of Public Affairs, Warsaw 1999, p. 34).

For the purposes of this publication, corruption is understood as taking advantage of a position of public authority or a professional position to obtain private benefits (for a person or for a group). Other phenomena accompanying corruption include nepotism, old-boy networks, clientelism and acting in conflict-of-interest situations.

In accordance with the World Bank's classification<sup>8</sup>, we can distinguish between two types of corruption: administrative corruption and state capture. Administrative corruption is defined as bribery that ordinary citizens encounter, for example in contacts with officials, policemen and the health service. State capture occurs when processes of lawmaking, state administration or judicial activities are appropriated by individuals or groups that push through solutions that are good for them but bad for the majority of society. Sometimes administrative corruption is also called "daily corruption" and state capture "political corruption".

"Corruption can appear within the public, private and non-governmental sectors, as well as between those sectors. Corrupt relations can arise between individual representatives of entities operating in those sectors and/or between groups of representatives. These representatives can work in the interests of specific entities, or in their own interest, or can connect both these interests<sup>9</sup>".

## **3.2. The nature of corruption in Poland**

### **3.2.1. Corruption in Poland in 2000**

When the first anti-corruption strategies were mapped out 10 years ago<sup>10</sup>, the customs service, health service, traffic police and public administration were seen as the main places where corruption was concentrated. According to a report prepared by members of the Anti-Corruption Working Group operating with the support of the World Bank, among the problems to be resolved were:

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However, Prof. Andrzej Kojder maintains that "corruption, in its contemporary meaning, refers to such exchanges of goods, services and other resources that violate laws currently in force or the public good (material or symbolic, such as the reputation of state officials.) Any disposal of public resources which is incompatible with their purpose can be called a corrupt activity". (Andrzej Kojder, "Strategie przeciwdziałania korupcji – doświadczenia polskie" in "Klimaty korupcji", Andrzej Kojder and Andrzej Sadowski (eds.), Semper Scientific Publishers, Warsaw 2002, p. 47).

<sup>8</sup> "Anticorruption in Transition", The World Bank, 2001.

<sup>9</sup> Quote from "Principles of an anti-corruption strategy in Poland" prepared by members of the Anti-Corruption Working Group acting with the support of the World Bank, May 2001.

<sup>10</sup> The first anti-corruption strategy in Poland was developed by the Ministry of Finance in 2000, but its implementation was never started. In 2001 a model Polish anti-corruption strategy was prepared by members of the Anti-Corruption Working Group acting with the support of the World Bank

- lack of disclosure of assets by officials (such as: tax and customs officials, public prosecutors, judges etc);
- lack of transparency in political party finances;
- lack of access to information on the technical and personnel requirements of public tenders;
- awarding of contracts in public procurement processes;
- lack of parliamentary control over the activities of agencies and funds;
- existence of temporary exemptions and suspensions in the collection of customs duties;
- the discretionary nature of decisions made by officials, e.g. regarding cancellation of tax arrears;
- lack of a code of ethics for judges;
- lack of an established practice of conducting criminal proceedings against persons in high government positions;
- a widespread belief that traffic police accept bribes;
- informal payments for public health services;
- ties between the health service and the pharmaceutical industry;
- privatization of health service property.

Some of these problems have been resolved in the past 10 years. For example, a much wider circle of people are now required to file financial disclosure statements, including those in senior positions in government departments and tax offices. Also, the rules of political financing have been changed, which has made this area of public life more resistant to corruption. Judges now have a code of ethics<sup>11</sup>. Certain problems, such as the lack of parliamentary control over the activities of government agencies and funds remain to be resolved.

### **3.2.2. Changes in the nature of corruption in Poland**

There is no data that enables one to unequivocally state that in the last 10–15 years corruption in Poland has either increased or decreased. But there are grounds to believe that the nature of corruption has changed. Surveys conducted by CBOS (Corruption Barometer)<sup>12</sup> for or in cooperation with the Anti-Corruption Program show that there has been a significant decline in the percentage of respondents who say they know people who take bribes (from 30% in 2000 to 15% in 2009), as well as respondents who say they have been offered bribes (13% in 2000, 5% in 2007, 7% in 2009), and finally respondents who have themselves offered bribes (14% in 2000, 17% in 2003 and 9% in 2006, 2007

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<sup>11</sup> There are two codes of ethics for judges: one adopted by the National Council of the Judiciary and the other by the Iustitia Judges Association. Both are available on the vortal: [http://www.etykaprawnicza.pl/index.php?option=com\\_content&task=view&id=9&Itemid=94](http://www.etykaprawnicza.pl/index.php?option=com_content&task=view&id=9&Itemid=94).

<sup>12</sup> The surveys are available at <http://www.batory.org.pl/korupcja/pub.htm> .

and 2009). Prof. Anna Kubiak, the author of reports on these surveys, interprets these figures as follows: “There is a ‘concentration of corruption’ – while it is not as extensive, it is intensively concentrated in places, institutions where there are favorable conditions for it – a shortage of goods and services, discretionary decision-making, lack of transparent procedures, constant organizational ineffectiveness, ‘corrupt cliques’ camouflaging unethical behavior”.

The World Bank report mentioned above, prepared on the basis of surveys done in 2000, placed Poland along with Estonia, Slovenia and Hungary in the group of countries having a medium level of both types of corruption: administrative and political.

There are no recent surveys comparing the two types of corruption, but analysis of letters, information from various sources, police data and press reports received by the Anti-Corruption Program would indicate that administrative corruption, although still quite significant, is no longer a major challenge for our country. In the last few years, preventive measures have been taken, such as separating officials making decisions from applicants (mainly in local government offices), introducing photo radar, and banning the acceptance of cash payments for traffic tickets. Also, expanded access to private medical services and the spread of private medical packages have to some extent helped to reduce administrative corruption. Moreover, the appropriate authorities are now better able to pursue perpetrators of this type of corruption.

Political corruption, or state capture, continues to be a problem. The Polish state is increasingly effective when it comes to bribery involving officials and policemen. However, we are still unable to solve in a satisfactory way problems connected with tenders organized as part of public procurements, with nepotism, with extralegal pressures on individuals drafting legal acts and decisions.

For the past 10 years the Supreme Audit Office has been putting emphasis on gauging the risk of corruption in the areas and institutions that it audits. A separate chapter is devoted to anti-corruption activities in its annual reports<sup>13</sup>. The 2009 report identifies the following activities of public institutions as having the highest risk levels:

- issuing of discretionary decisions;
- signing of contracts by public and private sector entities;
- carrying out by public authorities of oversight and monitoring functions;
- distribution by public authorities of scarce goods;

Areas identified as threatened by corruption for the past few years include: the public health service, state companies, the process of disposing of state property, and the organizing of public tenders.

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<sup>13</sup> These reports are available at <http://www.nik.gov.pl/o-nik/sprawozdania-z-dzialalnosci-nik>.

The “Map of Corruption” published recently by the Central Anti-Corruption Bureau states that “investigative materials in the possession of the Internal Security Agency (ABW), the CBA, agencies under the Ministry of Internal Affairs and Administration<sup>14</sup>, above all the police, show that corrupt practices are found most often in areas such as:

- state and local government administrations;
- the health service and production and sale of medicines;
- higher education;
- the customs and treasury administrations;
- institutions implementing EU programs;
- law enforcement agencies and the judicial branch;
- the economic sector”<sup>15</sup>.

The administrative activities most susceptible to corruption are the issuing of concessions and permits, awarding of public contracts and organizing of tenders, disposing of public property and conducting oversight.

To sum up, one can say that our present corruption problems, to a much larger extent than 10 years ago, are similar to those experienced by Germany or France.

This observation is confirmed by the results of the annual Corruption Perceptions Index published by Transparency International<sup>16</sup>. Bearing in mind that this is not an indicator of the level of corruption in a given country, but only of how the level of transparency in public life in that country is perceived by those surveyed, it is worth noting a certain symptomatic tendency when we compare the results over the years. Poland was included in this report for the first time in 1996. On a ten-point scale<sup>17</sup> it was rated 5.57, which was higher than, for example, the Czech Republic, Greece, Hungary or Italy. In the following years, our country’s ratings kept falling until 2005 when we scored only a 3.4 – the worst among all EU countries. But since 2006 our ratings have steadily improved. The latest Index (from 2010) gave Poland a score of 5.3. Among EU countries, 17 scored higher than us, 9 lower.

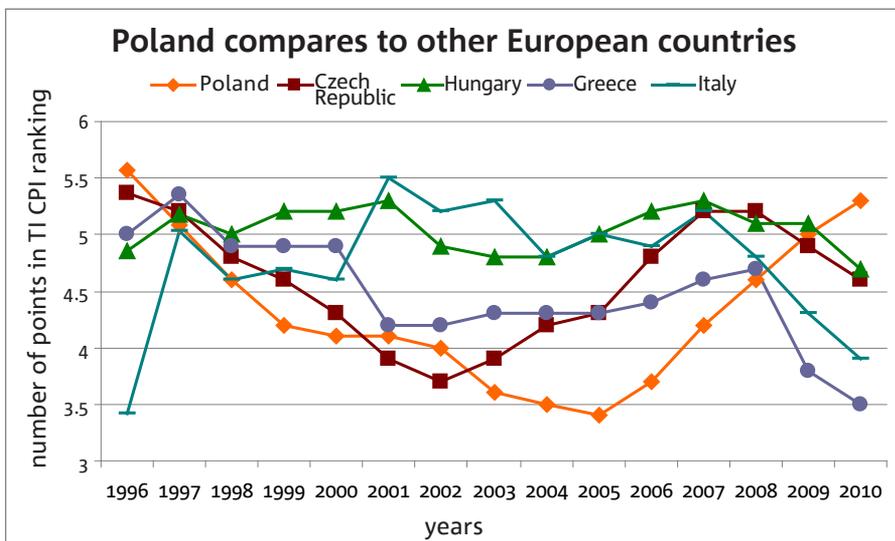
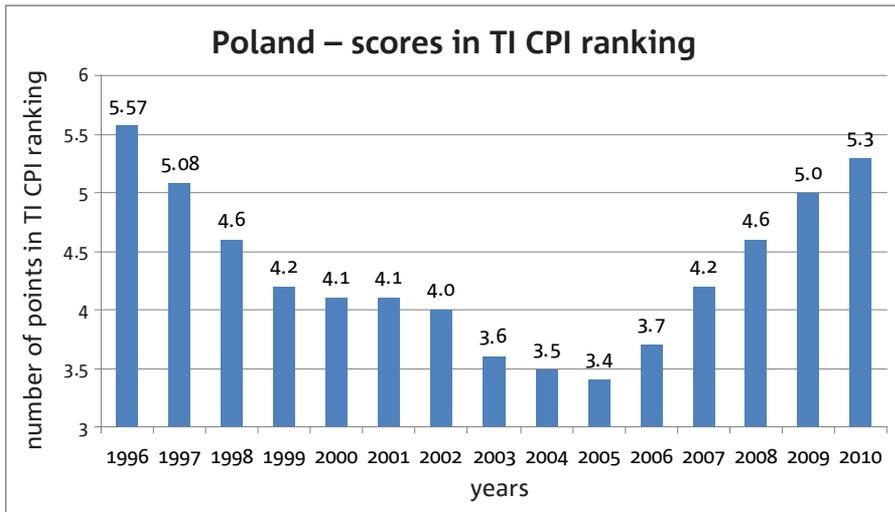
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<sup>14</sup> In addition to internal security and public order, the Polish Ministry of Internal Affairs and Administration is responsible for matters related to the organization of public administration and informatization as well as to religious denominations and national and ethnic minorities.

<sup>15</sup> “Mapa Korupcji”, Central Anticorruption Bureau, Warsaw, 2010. Also available at [http://www.cba.gov.pl/ftp/zdjecia/Mapa\\_korupcji.pdf](http://www.cba.gov.pl/ftp/zdjecia/Mapa_korupcji.pdf).

<sup>16</sup> We are aware of the controversy created by the methodology employed in preparing the CPI (it is described, for example, in Grzegorz Makowski’s book “Korupcja jako problem społeczny”, Trio Publishers, Warsaw 2008), however a comparison of the results of their surveys from specific years, using the same methodology, seems justified.

<sup>17</sup> A 0–10 scale is used, with 10 meaning a country free of corruption.



An analysis of the reports, data, publications, lists and information from various other sources received by the Anti-Corruption Program indicates that we face different corruption issues than we did 10 years ago. At present, corruption relatively more frequently threatens the following processes:

- awarding of contracts from public funds;
- issuing of decisions and permits;
- drafting of laws.

### 3.3. Tools for fighting corruption

#### 3.3.1. Punitive measures

When it comes to law enforcement measures to fight against occurrences of corruption, there are in fact a wide variety of tools available to uncover and punish corrupt individuals. In the last 10 years, the Criminal Code has been amended to include new corruption-related crimes, such as corruption in the electoral process, sports and business. At the same time, the principle has been introduced of not punishing persons giving bribes, provided that they inform law enforcement agencies. Besides the police, with its special Departments for Fighting Corruption and the Central Investigation Bureau, two other agencies are tasked with investigating corruption-related crimes: the Internal Security Agency, and above all, the Central Anti-Corruption Bureau established in 2006. The CBA has an extraordinarily wide range of powers and instruments at its disposal – perhaps even to an excessive degree in some cases. These include: planting listening devices, applying direct force, monitored purchases, and even police provocations. So it seems there are many, maybe even too many, institutions that fight corruption within the scope of their activities. Whether the fight against occurrences of corruption (*ex post*) will be effective, depends now on the capabilities of the agencies mentioned above, as well as on the political will of their superiors.

#### 3.3.2. Preventive measures

Because the nature of the corruption with which the Polish state has to grapple is different than in previous years, the goals and tasks set out in the national anti-corruption strategy should also be different. Now it is much more important to put an emphasis on preventive (*ex ante*) measures. Most of all, what is needed is the creation of a body promoting and implementing measures to prevent corruption. It does not have to be a new institution; these tasks can be assigned to an already existing institution. Let us add that this obligation arises from the United Nations Convention against Corruption (Articles 5 and 6) which Poland ratified in 2006. It is essential that the body have guaranteed independence<sup>18</sup>, and that the government provide it with adequate funding and personnel for effective operation. We believe that this body could be responsible for implementing the national anti-corruption strategy.

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<sup>18</sup> Article 6 of the UN Convention states: “Each State Party shall... ensure the existence of a body or bodies, as appropriate, that prevent corruption... grant the body or bodies... the necessary independence... to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff... should be provided.”

Preventive methods mean not only education and codes of ethics, but first and foremost, putting mechanisms in place that protect against corruption and creating a secure system for informing about irregularities in public institutions.

### **3.4. Threats to the effective implementation of an anti-corruption strategy in Poland**

#### **3.4.1. Fighting corruption as a low-priority problem**

In analyzing the situation in Poland, one has to take into account certain negative tendencies that can hinder the creation and, more importantly, the implementation of an anti-corruption strategy. The observation made in an Ernst & Young report<sup>19</sup> “The novelty of fighting fraud and corruption may have worn off, and so too, perhaps, has the sense of urgency”, concerns the global situation, but it applies very well to Poland. After years of constantly harping on the theme of corruption and using controversial methods to fight against it, it seems that for this country’s recent governments it is not a high-priority concern. Although the “Program for Fighting Corruption – An Anti-Corruption Strategy – Implementation Phase II for 2005–2009” expired at the end of 2009, a new strategy has not been prepared. Moreover, in the report “Poland 2030 – Developmental Challenges” fighting corruption as a subject – as a developmental challenge – does not exist. The problem of greater transparency of state structures appears only briefly in the chapter “An effective state”, in the context of the need for transparent interpretation and transparent drafting of legal regulations.

#### **3.4.2. An apathetic society**

The general public gives low marks for the engagement of state structures in fighting the social ill of corruption. In a CBOS poll from 2010, 46% of respondents negatively rated the activities of the government in this area, while 38% positively<sup>20</sup>. However, this same society does not show much inclination to encourage those in power to take more effective action. The number of civic groups ready to tackle this issue is not growing. The number of watchdog organizations has for years not gone beyond ten. In particular, there are few dynamic local organizations monitoring the activities of local governments.

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<sup>19</sup> “Osiągnięcie etycznego wzrostu – nowe rynki, nowe wyzwania” (Driving ethical growth – new markets, new challenges), Report on the 11<sup>th</sup> Global Fraud Survey, Ernst & Young, 2010.

<sup>20</sup> The survey “Opinia społeczna o korupcji w Polsce” is available at: [http://www.cbos.pl/SPISKOM.POL/2010/K\\_063\\_10.PDF](http://www.cbos.pl/SPISKOM.POL/2010/K_063_10.PDF).

### **3.4.3. A crisis in journalism and the media**

Besides this, for the past few years, there has been a decline in investigative journalism. This branch of journalism briefly flourished in the first years of our century, but we have now returned to the situation in the 1990s. Apart from one commercial TV station, no media outlet has a separate department of investigative journalism. Also noticeable is perhaps an even more significant problem – the involvement of major media outlets in political battles, in battles between parties. The fight against corruption has fallen victim to this phenomenon. It is often presented in a politically biased way, with the need for it either exaggerated or minimized, depending on the political sympathies of the journalist.

Another problem that is very apparent is the tabloidization of the media, especially television. This is particularly disturbing given that the majority of Poles get their information about the world through TV. Public television is less and less concerned about carrying out its mission, and is increasingly moving away from its informational and watchdog roles.

In our opinion, these phenomena may have led to a decline in the initial support of civil society for the creation and proper implementation of a good national anti-corruption strategy. Therefore, strengthening of this support should be one of the elements of the strategy.



## 4. Vision and strategic goals

### 4.1. Vision

When designing a strategy one should start with formulating a vision, i.e. an image of the situation we would like to achieve through its implementation.

We envision Poland as a country where marginal instances of corruption do not hinder economic and social development, where citizens are guaranteed equal access to social services and benefits, and where corruption becomes the exception not the rule.

With the aim of fighting corruption, both short- and long-term strategies are designed. However, the experience of countries trying to grapple with the problem shows that it is essential to set long-term goals. In a short time, no one has yet managed to tackle this phenomenon. The national anti-corruption strategy should have a 15–20 year time frame. It should be part of the country's development strategy.

### 4.2. The international context

In the process of designing a strategy and formulating a vision, one needs to take into account the country's participation in international institutions and agreements. In the European Union, the Communication "On a Comprehensive EU Policy against Corruption" is officially binding<sup>21</sup>. It recommends observance of international conventions and participation in mechanisms monitoring their implementation. These conventions are:

- the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;

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<sup>21</sup> Available at: [http://europa.eu/legislation\\_summaries/fightagainst\\_fraud/fight\\_against\\_corruption/l33301\\_en.htm](http://europa.eu/legislation_summaries/fightagainst_fraud/fight_against_corruption/l33301_en.htm) .

- the Criminal Law Convention on Corruption adopted by the Council of Europe;
- the Civil Law Convention on Corruption adopted by the Council of Europe;
- the United Nations Convention against Corruption.

The most effective mechanism for monitoring the observance of these conventions, namely the Group of States against Corruption (GRECO), is operated by the Council of Europe. The fulfillment of the obligations stemming from the OECD convention is monitored by the Working Group on Bribery in International Business Transactions. However, the problem is that, although reports by GRECO and the OECD are taken seriously by the government, their contents do not make their way into public opinion. As for the UN convention, the mechanism for its implementation (the Conference of the States Parties to the Convention) is not an effective monitoring mechanism.

### **4.3. Strategic goals and performance indicators**

In building a vision of anti-corruption activities, one must first formulate strategic goals. Assuming that the strategy is designed for 15–20 years, we propose the following strategic goals:

- changing citizens' attitudes in such a way that the absence of corruption is considered a normal state of affairs;
- instilling in the public consciousness the belief that the authorities have a responsibility to continually fight against corruption;
- carrying out activities along three tracks: prevention, law enforcement, and education;
- putting Poland in the top ten among EU countries in terms of transparency.

The achievement of goals must be measurable using clear indicators. Progress on the first two goals can be measured using public opinion polls – the majority of those surveyed should express the desired attitudes.

As for the third goal, the putting into place in all public institutions of a continuously monitored mechanism for preventing corruption can be regarded as the indicator that it has been achieved. To attain this goal, a body independent of the government must be set up to deal with prevention and anti-corruption education – and it must be able to clearly demonstrate the concrete results of its work.

The yardstick for achievement of the fourth goal would be the position of Poland among other European Union member states in Transparency International's ranking – specifically, getting a CPI score of 7.0.

## **5. Main areas of public life threatened by corruption and problems to be solved**

Besides strategic goals, operational goals need to be formulated, to be carried out over a period of 2–4 years. They should address areas that are especially susceptible to corruption. In the long run, their consistent implementation would contribute to fulfilling the strategic goals. Chapter 5 will outline the main problems and the main tasks to be carried out in pivotal areas of public life liable to corruption. We will not present a comprehensive analysis of all problems. Rather, we will focus only on what we consider the most important ones, and in those areas where we have adequate knowledge, we will propose solutions. We realize however that each government creating its own strategy can propose a different solution, in accordance with its political philosophy.

In Chapter 8, for the sake of illustration, we show how in our opinion operational goals should be formulated in an anti-corruption strategy and how activities aimed at their implementation should be presented. We will now focus on three areas: political financing, public administration and lawmaking.

### **5.1. Politics**

In the way political life is organized, we see three areas that are the most prone to corruption. These are: nepotism in filling positions in companies and public institutions, the occurrence of conflicts of interest, and the system of political financing.

#### **5.1.1. Nepotism**

Nepotism – favoring members of one’s family, group or party in the distribution of benefits, usually remunerative positions in institutions and state firms – is a phenomenon that occurs quite often in our public life, but despite that it is not taken seriously by part of the political class. The most glaring examples of nepotism concern the filling of positions in supervisory boards and the boards of state and municipal companies. We often observe that following a change

of government there is a change in the memberships of the governing bodies of such companies. These changes are rarely based on merit. Supervisory boards in particular are places where there are opportunities for additional hiring of people from the governing parties.

As a solution for preventing the occurrence of this phenomenon, the organizing of open competitions for selecting personnel has been proposed. However, a necessary condition is to conduct these competitions in a honest and completely transparent manner. In practice, we often see competitions arranged to favor a specific individual, which compromises this tool.

This negative phenomenon can be partly counteracted by introducing the appropriate prohibitions into laws. Because it is impossible to foresee all possible situations, and moreover as this phenomenon most acutely concerns the appointment of persons linked to the governing parties in a given place or in a given sector, a good solution would be put clear prohibitions on such behavior in party statutes. An unequivocal declaration included in a statute – a document accepted voluntarily by members of a given party – that the party leadership does not tolerate favoritism has a greater chance of being respected than general prohibitions in legal acts, which usually are not accompanied by any punishment for violating them.

### **5.1.2. Conflicts of interest**

Another negative phenomenon that occurs just as often as nepotism is conflict of interest. It is often not well-understood not only by the general public, but also by individuals performing public functions. It occurs when someone carrying out a public function takes part in making a decision whose results could have a beneficial influence on his personal situation or the situation of someone close to him.

There are basically two ways to avoid such situations: publicizing a potential conflict and enacting prohibitions for persons carrying out public functions and their relatives. Regarding individuals or members of bodies making decisions on an individual basis, there should a clear statutory definition of what kinds of additional roles they are not allowed to perform. However, with regard to individuals who sit on bodies that collectively make decisions of a general nature, a better solution is to adopt rules that require potential conflicts of interest to be made public.

Every now and then journalists write about members of parliament working on laws that could have a direct impact on their personal situations or

on the situations of people close to them<sup>22</sup>. When that happens actions are proposed to avoid similar occurrences in the future. Recently there was a proposal<sup>23</sup> to impose a total ban on public officials engaging in business activities. We believe this is a good idea with regard to persons in executive positions (ministers, mayors and high officials in the national and local government administrations). However, regarding parliamentarians and local council members, this ban goes too far. For members of bodies that take collective decisions of a general nature (i.e. not individual), a better solution would be to follow the British model<sup>24</sup> and require that any possibility of a conflict of interest be publicized.

We should keep in mind that, in tackling problems like nepotism or conflicts of interest, excessive strictness can be counterproductive.

### 5.1.3. Financing political parties

The changes introduced in 2001 in the system of financing political parties – awarding of grants and subsidies from the state budget, imposing a ban on contributions by companies, and enacting a limit on individual contributions – are good anti-corruption measures. Before these changes, the public was often outraged by cases where decisions were made that were favorable to the owners of companies that gave financial support to political parties or their election campaigns<sup>25</sup>. An analysis carried out by the Anti-Corruption Program in 2007–2008<sup>26</sup> of possible links between the worlds of politics and business did

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<sup>22</sup> Let us recall, for example, the work in 2007 of PiS MP Michał Wójcik, director (on leave) of the Craft Chamber in Katowice belonging to the Polish Craft Association, on a law on crafts which would have given the Polish Craft Association a privileged position. Waldemar Nowakowski – an MP from Samoobrona (Self-Defense Party), considered the author of the law on large-scale retail facilities, which gave smaller shops preferential treatment at the expense of larger ones – was a founder and shareholder of one of the largest Polish retail chains of small shops. Finally, the controversies surrounding the work of Senator Thomas Misiak on the special law on shipbuilding, in a situation where a company in which he is a shareholder has benefited from the provisions of this legislation.

<sup>23</sup> Such a proposal is included in the draft statement of purpose of the Anti-Corruption Law of February 26, 2010 available at: [http://bip.kprm.gov.pl/kprm/dokumenty/61\\_3571.html](http://bip.kprm.gov.pl/kprm/dokumenty/61_3571.html).

<sup>24</sup> From a resolution of the House of Commons of May 22, 1974: "In any debate or proceeding of the House or its Committees or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have."

<sup>25</sup> Let us recall, for example, the so-called gelatin scandal (where the government under pressure from an entrepreneur – a gelatin producer – introduced regulations favorable to him, making him for a certain period of time a monopolist in gelatin production in Poland. Journalists discovered that during an election campaign the entrepreneur had made large contributions to important political forces. It was suggested that this money was the reason for the favorable treatment subsequently given to him by those in power.)

<sup>26</sup> A report from the study is available at <http://www.batory.org.pl/korupcja/fundusze.htm>.

not find significant links between private donors of political parties and the results of public procurement processes or recruitment for executive positions in monitored institutions. It is increasingly difficult nowadays to find examples in Poland of businessmen funding the election campaigns of parties, which in exchange for this service put them on their electoral lists.

The changes described above bore fruit in the form of reduced political corruption, i.e. reduced state capture. But they also have their weak sides: less interest by parties in winning supporters, reduced intraparty democracy, and a closing of the political system. Parties, having guaranteed funding from the state budget sufficient for their activities, do not try to get new members and supporters, and are becoming increasingly cadre-based and uninterested in gaining wider support.

Large grants and subsidies also lead to increased costs for conducting party activities and electoral campaigns. These costs are a major barrier for new parties that do not have budget support and are not in a position to run effective campaigns – for this reason they usually fare badly in elections.

The drawbacks mentioned above in the system of political party financing lead to regular calls by politicians for an end to political financing with public money<sup>27</sup>. In our opinion this would mean a return to corrupt old practices. To avoid this, we propose certain essential modifications to the system, but leaving intact the principle of financial support for political parties from public funds. These modifications include:

- reducing grants and subsidies to a level where they constitute not more than 50% of party revenues. This would force parties to more actively seek supporters and new members ready to co-finance the activities of their party.
- a temporary lowering of the threshold of electoral support that entitles parties to get subsidies to 1%. This solution, if introduced simultaneously with lowering of the level of financial support for “older” parties, could contribute to equalizing chances and greater openness of the Polish political scene.
- introducing legal regulations requiring greater democracy within party structures (More on our proposals concerning political financing can be found in section 8.1.)

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<sup>27</sup> One example is the draft law on abolishing the financing of political parties from the state budget rejected during the Sejm session of July 25, 2008.

## **5.2. Public administration**

The existence of an efficient, non-political public administration is of key significance for the elimination of administrative corruption. For many years there has been talk about implementing various measures to help achieve this goal.

### **5.2.1. Strengthening the civil service**

One way to improve the quality of public administration is to strengthen the civil service through depoliticization and professionalization. Proper attention should also be given to activities that help create attractive career paths in the civil service and guarantee decent salaries.

Unfortunately, changes made by successive governments in the 1996 civil service law have led to reductions in the role of the civil service and to lowering of the professional requirements for employees of the state administration. Changing this situation requires political will on the part of those in power to engage in self-restraint and, in their activities, to take a long-term view of the development of the state. (More on our proposals concerning public administration can be found in section 8.2.)

### **5.2.2. Efficiency of public administration**

A range of factors affect the efficiency of public administration, including its structure, degree of modernization, system of management, and process of making and issuing decisions. The qualification levels of officials also play a considerable role and are determined by systems of training, professional advancement, and incentive-based pay.

An essential measure for increasing the efficiency of public administration is completion of its modernization, including the introduction of e-administration in all areas and at all levels. It is important that systems implemented in specific institutions be compatible. Quick and minimal direct contacts with officials reduce the chances of any corrupt activities taking place. (More on our proposals concerning public administration can be found in section 8.2.)

### **5.2.3. Transparency of public administration**

Public institutions should, in their day-to-day dealings, implement measures safeguarding themselves against corruption. Among the institutions undertaking such activities today, and they are still a small minority, one can observe two trends. Some, like the Ministry of Economy, in the course of introducing the ISO 9001 certificate, have adopted the so-called System for Counteracting the Threat of Corruption, which consists of supplementary standards related to corruption risks. Others, like the Customs Service, are developing their own solutions. With the first trend, there is a risk of standard solutions being applied

quite mechanically – solutions that are not always adapted to the specific characteristics of the certified institution.

Although the “Anti-Corruption Program of the Polish Customs Service 2010–2013+” being developed by the Ministry of Finance has certain weaknesses, e.g. its top-down style of implementation, it is a document that takes a fairly comprehensive approach to the problem, and moreover is the product of consultation with external institutions.

The weakness in both solutions is the lack of any mechanism for external evaluation of their effectiveness, as well as the fact that they are being introduced on the basis of the decisions of the managements of individual institutions. What is missing is a wide-ranging central plan for setting up anti-corruption security systems in public institutions developed for the entire administrative apparatus.

A good example of coordination of activities to prevent corruption in public administration entities is the Dutch National Office for Promoting Ethics and Integrity in the Public Sector<sup>28</sup>. It is an independent state institution which, through the designing of appropriate tools and the provision of advisory services, helps Dutch public institutions to create their own systems to prevent corruption and conflicts of interest. The Office’s assistance comprises not only legal and structural-organizational matters, but also the introduction of practical solutions and tools created and tested both in the Netherlands and abroad.

#### **5.2.4. Expenditure of public funds and public procurements**

One of the key problems is the way public funds are administered, both those originating from our budget and those from the European Union budget (so-called European funds). A law passed in 2004 – the law on public procurement – was soon recognized as being too restrictive and therefore has been often amended. However, changes made in the name of greater effectiveness of the investment process have sometimes gone too far. For example, the right to file protests has been done away with, while at the same time the registration fees for filing a court complaint against a ruling of the National Appeals Chamber have been increased to as much as five million zł. All of this results in few appeals against procurement decisions. The right to appeal a decision regarding expenditure of public funds to an independent institution is the best guarantee against waste and abuses. What is needed here is a balance between necessary oversight and effective management of public funds.

In order to reduce the risk of corruption and increase the effectiveness of public procurements, electronic tenders should be used more widely and also – where possible – a central procurement body should be set up.

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<sup>28</sup> One can read about the Office at <http://www.integriteitoverheid.nl/english>.

The process of distributing European funds, despite being subject to double oversight – by both Polish and EU institutions – is also susceptible to irregularities<sup>29</sup>. Efforts must be made to eliminate discretionary decision-making in the process of awarding grants, as well as the lack of due diligence and accuracy in accounting for grant expenditures. There should be maximum transparency and uniformity in procedures. A sensible streamlining of procedures should also have a positive effect. In view of the increasingly frequent accusations of arbitrariness regarding decisions made by institutions distributing public funds, setting up some form of social oversight should be considered.

### **5.3. The judiciary**

The judiciary is one of those areas of our public life that quite effectively resists corrupting temptations. Legitimate charges of dishonesty among judges are rare<sup>30</sup>. However, given the extremely important role that the judiciary plays in our constitutional order, everything should be done to ensure that in the future there are no grounds for leveling such charges.

An ever serious and potentially corruption-generating problem is the lengthiness of court proceedings, which especially in economic cases can open the door to corrupt behavior. This situation arises because of the inefficiency of the system, not a lack of judges<sup>31</sup>. There are many ways to increase the efficiency of the courts, such as continued modernization and informatization. Also, judges should be freed from carrying out administrative duties. Some judges are in favor of bringing back the institution of the investigative magistrate who would choose evidentiary material

### **5.4. Law enforcement agencies**

#### **5.4.1. Independence of the prosecutor's office**

In 2010 the functions of the Minister of Justice and Prosecutor-General were separated. This change, leading to greater independence of law enforcement

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<sup>29</sup> The question of irregularities in the use of EU funds was addressed by Andrzej Bukowski, Kaja Gadowska and Paulina Polak in "Bariery w dystrybucji środków unijnych a mechanizmy systemowe w (szybkowym) państwie bezpieczeństwa socjalnego. Przypadek Polski", "Studia Socjologiczne" 1(188)/2008, pp. 5–43.

<sup>30</sup> It should however be noted that this good opinion about judges is not shared by the wider public. Surveys show that the judiciary has a bad image, at present even worse than the police. From the report "Opinia publiczna o korupcji i lobbingu w Polsce", [http://www.cbos.pl/SPIS-KOM.POL/2010/K\\_063\\_10.PDF](http://www.cbos.pl/SPIS-KOM.POL/2010/K_063_10.PDF).

<sup>31</sup> According to the World Bank, there are 25.8 judges per 100,000 inhabitants in Poland, more than in France or Germany.

agencies from political influence, had been demanded for years<sup>32</sup>. Now that it has won such a significant degree of independence and wields enormous authority, mechanisms have to be put in place to guard against abuse of power by the prosecutor's office. One of these mechanisms could be strengthened judicial oversight over the activities of the prosecutor's office and the special services.

#### 5.4.2. Police

In recent years a lot has been done to reduce corruption in the ranks of the police. Internal oversight has been strengthened. The introduction of photo radars, which eliminate any need to "negotiate" with police officers over speeding tickets, has reduced instances of corruption in the traffic police. The use of these and other methods has led to an increase in the number of people positively evaluating the work of the police<sup>33</sup>. A CBOS survey indicates that "in the last five years, there has been a visible improvement in the public perception of the police"<sup>34</sup>. If we wish to reduce corruption among police officers, such activities must be continued.

Individual officers are not the only ones susceptible to corrupt temptations. The law on the police in its current form includes legislation that hinders the transparent functioning of the police. An example of this is Article 13, paragraph 3 of the law, according to which associations, foundations, banks and insurance institutions can participate in covering the operating costs of organizational units of the police. In public discussions it has often been stressed that this regulation poses a danger of a corrupt relationship developing between the police and individuals and institutions that "sponsor" it. Given that it is not difficult to set up an association, one can imagine a scenario, however unlikely it may seem, of a criminal group setting up an association which then sponsors a county (*powiat*) police department. These regulations need to be changed urgently.

### 5.5. The legislative process

The law emerging in Poland is often criticized for the excessive frequency of amendments and for lack of consistency; also, the law is often not observed. One reason for this state of affairs lies in the very process of drafting laws –

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<sup>32</sup> For example, in the 2002 Open Society Institute report "Corruption and Anti-corruption Policy", prepared as part of the EU Accession Monitoring Program, available at: [http://www.soros.org/resources/articles\\_publications/publications/euaccesscorruption\\_20020601/1euaccesscorruptionfullreport\\_20020601.pdf](http://www.soros.org/resources/articles_publications/publications/euaccesscorruption_20020601/1euaccesscorruptionfullreport_20020601.pdf)

<sup>33</sup> According to a CBOS survey from 2010, 73% of Poles had a good opinion of the police, in 2005 – 57%. [http://www.cbos.pl/SPISKOM.POL/2010/K\\_054\\_10.PDF](http://www.cbos.pl/SPISKOM.POL/2010/K_054_10.PDF).

<sup>34</sup> From the report "Opinia publiczna o korupcji i lobbingu w Polsce", available at: [http://www.cbos.pl/SPISKOM.POL/2010/K\\_063\\_10.PDF](http://www.cbos.pl/SPISKOM.POL/2010/K_063_10.PDF).

it is neither transparent nor participatory. This opens the door to extralegal pressures on legislators, something that often involves corruption.

During the process of drafting laws, a variety of interest groups conduct lobbying activities. Knowing the positions of specific stakeholders is essential in the making of proper legislative decisions. It is important that the positions expressed be fully public and transparent so that all stakeholders can be treated equally. Restricting the consultation process – shortening it and limiting it only to selected interest groups – inevitably gives rise to anti-social practices, often of a corrupt nature.

(More on our proposals concerning necessary changes in the lawmaking process can be found in section 8.3.)

## 5.6. The economy

Mariusz Witalis, discussing an Ernst & Young report<sup>35</sup>, sums up the situation as follows: “For Polish companies, the need to fight against fraud and corruption is a growing challenge, since failure to put into place mechanisms to counteract fraud can only lead to a worsening of this problem in the future”<sup>36</sup>. However, it seems that the majority of Polish entrepreneurs have not yet taken this on board. In their reports and analyses business associations focus mainly on barriers to the growth of their member firms. Indeed, problems such as the long waiting periods for court decisions in business cases, the constant changes in regulations, especially tax-related ones, and high labor costs are all very real. A recent World Bank “Doing Business 2011”<sup>37</sup> points out that in Poland it takes on average 311 days to get a building permit, while in Hong Kong only 67. The procedures for getting such permits are very susceptible to corrupt practices.

It should be noted, however, that among certain businesspeople we also find reprehensible, extralegal behavior, which does not elicit a strong reaction from the business community as a whole. This includes: tax evasion<sup>38</sup>, falsely

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<sup>35</sup> “Osiąganie etycznego wzrostu – nowe rynki, nowe wyzwania” (Driving ethical growth – new markets, new challenges), Report on the 11<sup>th</sup> Global Fraud Survey, Ernst & Young, 2010

<sup>36</sup> Quote from: “Przedsiębiorcy kłopotliwie walczą z korupcją” [http://gospodarka.gazeta.pl/firma/1,31560,7922520,Przedsiębiorcy\\_kłopotliwie\\_walczą\\_z\\_korupcją.html](http://gospodarka.gazeta.pl/firma/1,31560,7922520,Przedsiębiorcy_kłopotliwie_walczą_z_korupcją.html)

<sup>37</sup> Report available at <http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/annual-reports/english/db11-fullreport.pdf>.

<sup>38</sup> According to estimates by the Central Statistical Office (GUS), legally operating firms do not record, and therefore do not pay taxes on, transactions totalling 200 billion zł annually – from: Wojciech Surmacz, “Walka z Cieniem”, “Newsweek”, August 15, 2010.

obtaining VAT refunds<sup>39</sup> and price-fixing, especially by companies seeking contracts awarded through tenders.

To prevent such practices, labor costs have to be reduced, the tax system simplified, and deregulation of the economy continued through reduction to an absolute minimum of the number of permits and licenses required to conduct business. But changing the mentality of entrepreneurs themselves is also very important. In bringing this about, business organizations have the most important role to play.

## **5.7. Health Care**

For years Poles have considered health care and politics to be the two most corrupt areas of public life<sup>40</sup>. Corruption in health care appears mainly during doctor-patient contacts, during purchases of equipment and medicines, and during contacts between doctors and pharmaceutical companies.

### **5.7.1. Doctor-patient contacts**

Patients say that they give bribes in order to get better care, to have an operation, to speed up procedures, to shorten queues, and to gain admission to hospitals. Doctors believe this problem is wildly exaggerated and see the most likely cause of any occurrences as being their extremely low incomes. However, data from the Ministry of Health<sup>41</sup> indicates that in recent years, salaries of doctors, especially those with longer work experience, have risen and are already at a fairly decent level.

To some extent, the situation can be improved by the spread of supplemental, voluntary private insurance plans. On the one hand, this solution would bring in additional, legally obtained money into the health system, and on the other, it would probably reduce the number of people willing to pay bribes. A citizen who pays a mandatory health contribution and also voluntarily buys

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<sup>39</sup> According to the Ministry of Finance, in 2009 4.5 billion zł in VAT refunds were embezzled on the basis of fictitious invoices.

<sup>40</sup> Such data can be found in CBOS surveys from 2010 [http://www.cbos.pl/SPISKOM.POL/2010/K\\_063\\_10.PDF](http://www.cbos.pl/SPISKOM.POL/2010/K_063_10.PDF) and earlier ones done by the Stefan Batory Foundation <http://www.batory.org.pl/doc/barometr-korupcji-2007.pdf>

<sup>41</sup> "The salaries of contract physicians working full-time (including doing on-call duty) in May 2009 came to: 13,224 zł – coordinators, 9,537 zł – doctors with second-degree specialization, 8,844 zł - doctors with first-degree specialization, 7,449 zł – non-specialist doctors. .... And in 2010 the basic pay of doctors working in public facilities increased 1.8% - 3%". This data was published in the periodical "Puls Medycyny" <http://www.pulsmedycyny.com.pl/index/archiwum/11743/1.html> and in "Gazeta Prawna", August 12, 2010 (Anna Monkos, "Lekarze zarabiają najlepiej od lat").

private health insurance will not be willing to pay a third time for a service, such as quick admission to a hospital.

Another result of such a solution would be to reduce the queues of people waiting for rationed procedures. We often hear that specialized equipment stands unused, that there are doctors willing to take on extra work, but that the National Health Fund (NFZ) has contracted too few of certain services compared to the needs of patients. These resources could be used to provide services paid for with additional insurance. All that is required is to accurately price all costs associated with the provision of such a service. Patients willing to pay for it could get a medical procedure done more quickly by purchasing an additional health insurance policy. At the same time, they would stop expecting to have such a procedure carried out as part of the services paid for by the NFZ – and so queues, one of the causes of corruption, would get shorter.

We are aware of the limitations of this approach. A package of additional services is unlikely to cover highly specialized procedures as being too expensive, as well as treatment of chronically ill and elderly persons.

### **5.7.2. Purchases of equipment and medicines**

Corruption occurring during tenders for the purchase of equipment and medicines is a major problem. One reason for this state of affairs, besides human frailty, are flawed systems. In Poland, these tenders, including for the purchase of specialized equipment, have to be organized by individual public health care facilities. Preparation of the terms and conditions of a tender requires a high level of technical expertise. Health care facilities usually do not have specialists in this area. However, a small group of technicians, usually associated with major manufacturers and distributors of equipment, do have this kind of knowledge. In this situation, hospital staff often ask them confidentially and informally to prepare a draft of the terms and conditions of the tender. This is in violation of procurement law, and moreover opens the door to corruption. Because the terms and conditions are usually prepared this way, and only one company applying for the order can meet them – the company that prepared them.

This situation can be changed through amendment of the Public Procurement Law or through new organizational solutions similar to those existing in European Union countries. In Spain, as a result of introducing centrally organized tenders for specialized medical equipment, secret corruption-generating consultations between hospitals and medical equipment manufacturers have been eliminated. The necessary knowledge and skills are provided by a central unit conducting tenders. A similar result has been obtained in the UK, where the National Health Service (NHS) has signed a ten-year contract with a company that provides comprehensive services related to the supply of medical equipment for NHS units.

It should be noted that a solution of a similar nature is already being applied in Poland – the Ministry of Health is organizing the purchase of cancer drugs for institutions under its authority.

### **5.7.3. Contacts between doctors and pharmaceutical companies**

Pharmaceutical companies – accused of resorting to unethical and sometimes corruption-generating incentives for doctors in order to get them to prescribe patients their medicines – have in the last few years been drawing up codes of ethics in an attempt to end the most controversial marketing practices. While this is a laudable effort, it is not enough. To eradicate these practices, part of the medical community proposes to introduce, along the lines of the American model<sup>42</sup>, a policy of preventing conflicts of interest among the community's opinion leaders and academics. It is based on disclosure, through special websites, of the fees paid to doctors by the pharmaceutical industry. Another way to solve this problem would be to adopt the principle of including on the list of reimbursed drugs only the names of active substances and not the trade names of drugs. As a result, doctors would only put the names of active substances, not the names of specific medical products, on their prescriptions. Patients themselves would then decide which companies' drugs to buy when they are at a pharmacy<sup>43</sup>. We also believe that an effective method of limiting corruption in this area would be to introduce electronic prescriptions and a national electronic Registry of Medical Services. The idea of setting up a registry was proposed already in 1999 in connection with reform of the health service, but despite the support expressed by successive governments, it has not been fully implemented to this day.

### **5.7.4. Other anti-social practices**

In the broader health care field there are many more practices that lend themselves to potential corruption. For example, practices such as registering medicines and placing them on reimbursement lists, widespread nepotism in the hiring of young physicians, especially in university clinics, and running private health care facilities as businesses on a very untransparent basis under the legal guise of associations and foundations.

We realize that there is no ideal model of health care anywhere in the world – efficient, cost-effective, providing a level of medical care acceptable to

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<sup>42</sup> Based on the Physician Payments Sunshine Act.

<sup>43</sup> Such a rule applies in the Netherlands. Admittedly, there is concern that this solution could shift the problem from doctors' offices to pharmacies – pharmacists would be encouraged by representatives of pharmaceutical companies to sell a preparation made by a specific company when they fill a prescription for an active substance found in this preparation – but still, in this situation the patient has a much greater ability to choose than at present.

citizens, and resistant to corruption. Nevertheless, the situation in Poland is much worse than in most European Union countries. According to a Eurobarometer study<sup>44</sup> the Polish health service is well regarded by only 30% of the population. Only Hungarians, Bulgarians, Romanians and Greeks have a worse opinion of their systems.

Poland must complete the process of reforming its health care system, while introducing several competing payers and tightening up the way money is spent, as well as increasing spending on its public health service. Among OECD countries, only Mexico spends less per capita on health care than Poland. We spend 4.3% of GDP on health care, while the OECD average is 6%<sup>45</sup>.

## 5.8. Sports

Starting in 2005 prosecutors began investigating corruption in football. Since then the Criminal Code has been amended in such a way that corruption in sports is also subject to criminal penalties. During this period, charges have been filed against more than 300 people: players, coaches, referees and team managers. They have been accused primarily of buying and selling matches, and have been associated both with major and minor league teams. The findings of the investigations paint a picture of structural corruption in Polish football.

Recently there have also been disclosures about corruption on a smaller scale, but of a similar nature, in other sports, such as speedway motorcycle racing.

Fighting corruption in sports in Poland is very difficult, because the people involved in these dealings get permission from sports officials at the international level. Newspapers openly write about the numerous corrupt practices in international sports associations, including the International Federation of Association Football (FIFA)<sup>46</sup> and the International Olympic Committee. As long as these institutions are not forced to take strong action against corruption, first of all in their own ranks and then in the national associations, large-scale structural changes for the better cannot to be expected.

Another problem plaguing Polish sports is the conflict of interest that occurs in the governing bodies of various sports associations, whose task it is to distribute funding among the various clubs. Quite often the membership of these governing bodies includes owners of companies producing sports equipment and clothing and other individuals connected with business. Delegating

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<sup>44</sup> The survey "Patient safety and quality of healthcare" published in 2010, available at: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_327\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_327_en.pdf).

<sup>45</sup> OECD data for 2008 available at <http://stats.oecd.org/index.aspx?queryid=23104>, GUS data at [http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL\\_zos\\_narodowy\\_rachunek\\_zdrowia\\_2008.pdf](http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL_zos_narodowy_rachunek_zdrowia_2008.pdf).

<sup>46</sup> Many descriptions of irregularities and corruption in FIFA can be found in Arkadiusz Stempin's article "Z piłką w kieszeni" in "Newsweek", September 26, 2010.

responsibilities related to management of public funds earmarked for promotion of sports to persons running businesses connected with sports carries a risk of biased allocation of these funds.

## **5.9. Education**

Education in Poland is far less vulnerable to corrupt practices than some of the areas of public life discussed above. However, we would like to draw attention to several problems that may lead to corruption because students are often witnesses of and participants in unethical behavior. By not reacting to seemingly minor irregularities, we set a bad example of behavior for young people. Such practices include:

- buying exams and diplomas. Occurring more often in college, especially part-time studies, it must not only be penalized, but should also meet with profound social disapproval and ostracism from the academic community;
- cheating and plagiarism. Although some educational institutions are trying to fight plagiarism, among faculty members there is often silent acquiescence in cheating, especially during written tests, which are essential not only for assessing the knowledge of students, but also for evaluating the work of educational institutions;
- acceptance by teachers of bonuses offered by private companies. The earnings of companies selling students textbooks, insurance, excursions, etc. often depend on the decisions of teachers – it is they who choose products that students buy. In order to win a contract, companies offer personal bonuses to teachers in the form of free courses, excursions and gifts. The propriety of accepting private benefits like these is questionable;
- tutoring. Providing private paid tutoring to one's own students is a serious ethical and moral problem. Discussions on this subject should be initiated among teachers.

It is also difficult not to notice a serious problem associated with a system of fee-based education, both in public and private institutions. In many institutions of higher learning there is an unwritten rule that if someone pays for tuition, then he deserves a diploma. This leads to a drastic lowering of standards with respect to the quality of the classes taught and to student performance. The result is the provision of services of low quality, but certified by state diplomas.

Regarding the role of education in shaping anti-corruption attitudes, we would like to point out that despite anti-corruption education being introduced in 2003 into the core curriculum of schools, it is offered on an optional basis and to a very limited extent. We will not change social attitudes towards

the problem of participation in corruption, if we do not insist on anti-corruption education in schools and if teachers themselves do not conduct themselves with integrity.

## **5.10. Media**

Despite the fact that in a democracy the media play a role that cannot be overestimated in the prevention of corruption (see Section 3.4.3.), it turns out that their own activity is not free of corrupt practices. These include the common practice, particularly in specialist publications, of publishing texts that are secretly sponsored. One can read entire articles, often interviews, which to the untrained reader look like solid, objective journalistic texts, but in reality have been purchased by interested parties – with no information given about the sponsor.

Another corruption-generating practice that should be mentioned is the testing of products supplied by manufacturers and retailers (e.g. of cars and electronic equipment) to journalists who then review the products in the media.

An examination of the state of the media, both in terms of its own resistance to corrupt practices and its efforts to expose corruption (i.e. investigative journalism) and shape civic-oriented attitudes, does not inspire optimism. All of the practices described above and in Chapter 3 lead to reduced public trust in the media and in journalists<sup>47</sup> – and public trust is essential for effectively campaigning for greater transparency in public life and against corruption. Because, unfortunately, this is a worldwide trend, there are no simple remedies for this problem and so it will be difficult to reverse. The situation may change as the level of consciousness grows in civil society, but this requires fundamental changes in the state's educational policy.

## **5.11. Third sector**

Just like the media, non-governmental organizations are an indispensable partner for the state in the process of curtailing corruption. In Chapter 3 (point 3.4.2.) we wrote about the weakness of watchdog organizations. Unfortunately,

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<sup>47</sup> According to a CBOS survey from 2010 [http://www.cbos.pl/SPISKOM.POL/2010/K\\_029\\_10.PDF](http://www.cbos.pl/SPISKOM.POL/2010/K_029_10.PDF) over the past two years trust in television has fallen by 20%, although it remains more highly regarded than newspapers. "According to a survey in 2009 by Edelman Trust Barometer, trust in traditional sources of information is declining. In Poland, press articles are regarded as trustworthy by only 14% of respondents, which is a decrease of 25% compared to the previous year. Television and radio are also losing credibility, with 14% and 10% fewer respondents, respectively, trusting them than in the previous year" – from: <http://www.brief.pl/inbrief/aktualnosci/art941,media-spolecznego-braku-zaufania.html>

the weakness of the whole sector is also reflected in the low degree to which the organizations abide by standards of transparency and good practice in this field. “Many of them [NGOs]... do not make any efforts to make their operations as transparent as possible for all concerned: 8% of organizations admit that they do not prepare annual reports; twice as many do prepare reports, but not every year; and 14% refuse to answer this question (probably because they also do not fulfill their obligation to be transparent). Even many public benefit organizations fail to comply with the reporting requirement mandated by law”<sup>48</sup>.

It should also be noted that several organizations have been publicly accused of demanding so-called eco-tributes. They lifted protest blockades on construction projects the moment they received major grants or commissions from investors. There are also well-known instances of patients’ organizations putting pressure to get a certain medicine added to the list of reimbursed drugs – and then turning out to have been sponsored by the manufacturer of that particular drug.

To become a strong and demanding partner of the government in the implementation of an anti-corruption policy, NGOs have to not only strengthen their watchdog activities, but also increase transparency in the way the sector itself functions.

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<sup>48</sup> Quote from a 2008 Klon/Jawor survey, “Podstawowe fakty o organizacjach pozarządowych”, available at: [http://civicpedia.ngo.pl/files/civicpedia.pl/public/raporty/podstawowe\\_fakty\\_2008\\_calosc\\_popr\\_FIN.pdf](http://civicpedia.ngo.pl/files/civicpedia.pl/public/raporty/podstawowe_fakty_2008_calosc_popr_FIN.pdf).

## 6. Institutions and solutions that can play a significant role in combating corruption

### 6.1. Central Anticorruption Bureau

In 2006 a special service, the Central Anticorruption Bureau, was set up for the sole purpose of investigating corruption-related crimes. The provisions of the United Nations Convention against Corruption are invoked to justify the establishment of the CBA; however the institution has little to do with the contents of the Convention. It obliges states that have ratified it to create an independent body responsible for implementing anti-corruption policy in the form of preventive measures (Article 6) – and to create bodies to combat corruption crimes or to assign this task to units within existing law enforcement agencies (Article 36). In Poland the provisions of Article 36 have been implemented by creating Departments for Fighting Corruption in voivodship police forces. According to a 2008 report by Claus-Peter Wulff and Marcus Ehbrechta<sup>49</sup> evaluating the effectiveness of the Polish anti-corruption strategy and actions aimed at curbing corruption, these departments perform their tasks quite efficiently, although they lack the expertise on the functioning of economic mechanisms necessary for large, complex investigations.

Nevertheless, Poland has failed to comply with the obligations referred to in Article 6 of the Convention requiring that institutions strengthen preventive measures. Carrying out preventive anti-corruption measures is one of the CBA's objectives, but only in a rather perfunctory way. In practice it is a special service that performs the same tasks as the Departments for Fighting Corruption and, to some extent, the Central Bureau of Investigation, but does so at much greater expense and uses controversial tools such as so-called police provocations.

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<sup>49</sup> Report prepared as part of the Polish-German Twinning Project "Wzmocnienie działań anty-korupcyjnych w Polsce". Available at: [http://www.akop.pl/public/files/Ekspertyza\\_antykorupcyjna.pdf](http://www.akop.pl/public/files/Ekspertyza_antykorupcyjna.pdf).

Poland has not complied with its international obligations also because it has failed to create an independent body<sup>50</sup>. The direct subordination of the CBA to the prime minister has created a temptation to use this agency for political games. Although the other special services and police have the same powers – the heads of these agencies are also appointed by the prime minister – the early years of the CBA have shown that the keen public interest in the fight against corruption has turned it into a tool to be used for political advantage.

So, it is reasonable to ask: what next for the CBA? A change of leadership or even in the way it uses its powers will not resolve the problem, because as long as the legal status of this agency does not change, it will always be possible to slip back into bad practices. There are two options. The first one is safer and offers hope of improving the current situation where punitive, repressive methods of curbing corruption are clearly favored. It would involve placing the CBA in the structure of the Ministry of Internal Affairs, and perhaps merging it with the Departments for Fighting Corruption, with the goal of combining their resources. Separately, in accordance with the provisions of the United Nations Convention against Corruption, an independent office for the prevention of corruption must be set up. It would be responsible for implementing the national anti-corruption strategy.

The second option, involving the expansion of the CBA's work to include preventive and educational tasks, seems at present to be a purely theoretical solution and would require the complete restructuring of this agency. Multi-functional agencies to fight corruption<sup>51</sup> which exist in many countries have developed a model of operation that treats all three of these tasks equally. In practice it is difficult to imagine that an institution created as a special service which is very strongly identified with this type of action could easily turn into a neutral multi-functional agency. If, however, this path is followed, the depoliticization of the CBA requires that it should at least be subordinated to parliament, which means, among other things, that its director should be appointed by parliament. Also, the possibility of setting up citizen oversight<sup>52</sup> of the Bureau's

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<sup>50</sup> Article 36 of the UN Convention on Corruption states: "Each State Party... [shall grant such bodies] 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."

<sup>51</sup> The 2007 OECD report "Specialised Anti-Corruption Institutions – Review of Models" presents three types of anti-corruption agencies: multi-purpose, preventive and law enforcement <http://www.oecd.org/dataoecd/7/4/39971975.pdf>.

<sup>52</sup> The Independent Commission Against Corruption, existing in Hong Kong since 1974, is subject to supervision by four committees comprising individuals having high social standing. One of them supervises operational activities – e.g. without its approval, proceedings cannot be discontinued.

activities should be considered, along the lines of the commission operating in Hong Kong.

## **6.2. Government Plenipotentiary for Developing a Program for Prevention of Irregularities in Public Institutions**

At the end of November 2007 the prime minister appointed a Government Plenipotentiary for Developing a Program for Prevention of Irregularities in Public Institutions. The statement announcing the appointment of the Plenipotentiary indicated that one of his tasks is to “develop a program to prevent irregularities in public institutions, including institutions of local government”. Unfortunately, thus far such a program has not yet been set up, and there is no information about whether one is now in the process of being set up.

The Office of the Plenipotentiary would be the appropriate place to begin work on developing an anti-corruption strategy.

## **6.3. Human Rights Defender**

“In many countries, the mandate of the Human Rights Defender also extends to analyzing and inspecting administrative systems to ensure that they reduce corruption to a minimum. As a high-level constitutional institution, the office of the Human Rights Defender can potentially deal with improper pressure exerted by executive authorities better than other authorities.”<sup>53</sup>

We expect that the Human Rights Defender will be closely involved in anti-corruption issues and at different levels. On the one hand, corrupt practices pose a serious threat to human rights. If a person is forced to give bribes, for example, in order to get to a hospital within a time frame giving hope for successful treatment, then his right to health care guaranteed in the Constitution is violated. On the other hand, the fight against corruption may lead to violations of a person’s dignity and privacy. This threat, in particular, relates to the activities of law enforcement agencies and the use by them in a unlawful manner of operational techniques such as wiretapping, so-called provocations, and the processing of personal data, especially of a sensitive nature<sup>54</sup>.

Greater involvement of the Human Rights Defender in the protection of whistleblowers disclosing irregularities in the workplace would also be highly desirable. This involves human rights issues on two levels. First of all, employer retaliation against such a person violates his right to work. And secondly,

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<sup>53</sup> Quote from: “Rzetelność życia publicznego: metody zapobiegania korupcji”, Jeremy Pope, Institute of Public Affairs, Warsaw 1999, p. 119.

<sup>54</sup> The Constitutional Tribunal drew attention to the danger to human rights associated with the use of certain operational techniques in its ruling of June 23, 2007 (docket no. K 54/07).

disclosure of certain negative aspects of an employer's activities is essentially aimed at protecting values such as the health of other people, general safety, the natural environment, and equal access to medical services.

## **6.4. Supreme Audit Office**

The Supreme Audit Office (NIK) enjoys considerable prestige. Unlike a host of similar institutions in our region, it has managed to maintain impartiality and objectivity in its work. For many years, NIK's reports have been taking into account corruption risks in the institutions and sectors of public life that it audits<sup>55</sup>. It is important to keep these tendencies in check, and even strengthen the role of NIK as an independent, impartial and fully professional state auditing body.

In order to achieve this, the professional expertise of NIK staff must be continuously upgraded, particularly regarding the workings of a modern economy. Also, mechanisms should be put in place requiring institutions subject to auditing to carry out the recommendations of the auditors.

In building a new institution for corruption prevention, it is highly advisable to draw on the experiences, accomplishments and resources of NIK.

## **6.5. Protection of whistleblowers**

In both public institutions and private companies whistleblowers have an extremely important role to play in the prevention of various irregularities, including corruption. These are persons employed in a given company or institution who, acting in good faith and in the public interest, disclose fraud and other irregularities occurring in the workplace. In a growing number of countries, their positive role is appreciated and laws are passed and institutions set up to protect reliable whistleblowers. Unfortunately in Poland whistleblowers still do not have the necessary legal and institutional protection. (We write more about this phenomenon and our proposals concerning the protection of whistleblowers in section 8.4.)

In Chapter 3 we wrote about the role that the media and NGOs have to play in the fight against corruption and the promotion of transparency.

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<sup>55</sup> A summary of selected activities can be found at <http://www.nik.gov.pl/aktualnosci/kontrola-nik-pomagaja-w-walce-z-korupcja.html> .

## 7. Implementing the strategy and evaluating achievement of goals

An anti-corruption strategy should designate a single central institution responsible for its implementation. We propose that in the case of Poland this should be an independent institution for corruption prevention set up to fulfill the commitments stemming from the United Nations Convention against Corruption (Article 6).

Then, in each public authority a unit should be designated that will implement the tasks assigned to it within the strategy. Adequate financial resources should be allocated for carrying out these tasks.

This institution should at least once a year submit a report to parliament on the implementation of the strategy. The conclusions of the report would serve as the basis for updating the current tasks.

In order to properly evaluate implementation of the strategy, there has to be internal evaluation – an assessment of success. For this purpose, a system for monitoring the progress of implementation, using measurable evaluation criteria, should be put in place.

In addition to internal evaluation, external evaluation is also necessary. We call for the setting up of an institution independent of the government that will evaluate the process of implementing the government's anti-corruption strategy. This body, composed of several experts<sup>56</sup>, would prepare an annual assessment of the strategy's implementation detailing the main achievements, problems and risk factors, along with proposals for further action. If the need arises, it should also develop recommendations on the question of establishing accountability for non-implementation or ineffective implementation of the strategy in state bodies.

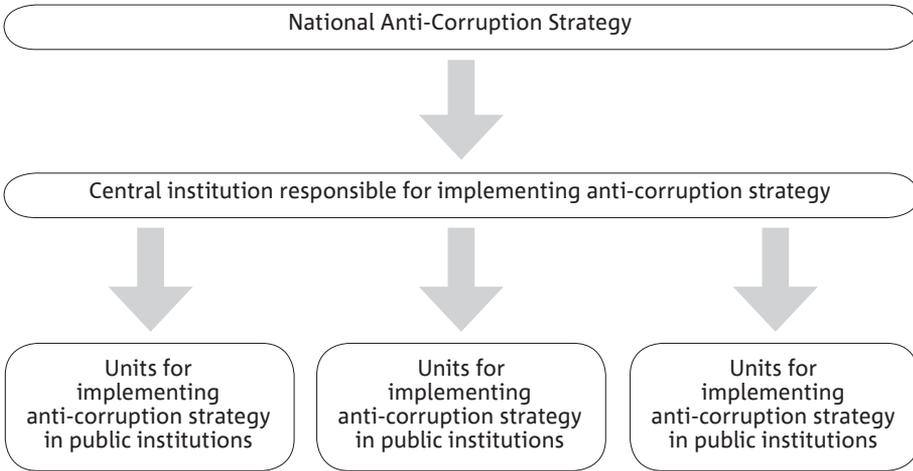
Such an institution should have its own secretariat and a small but separate budget.

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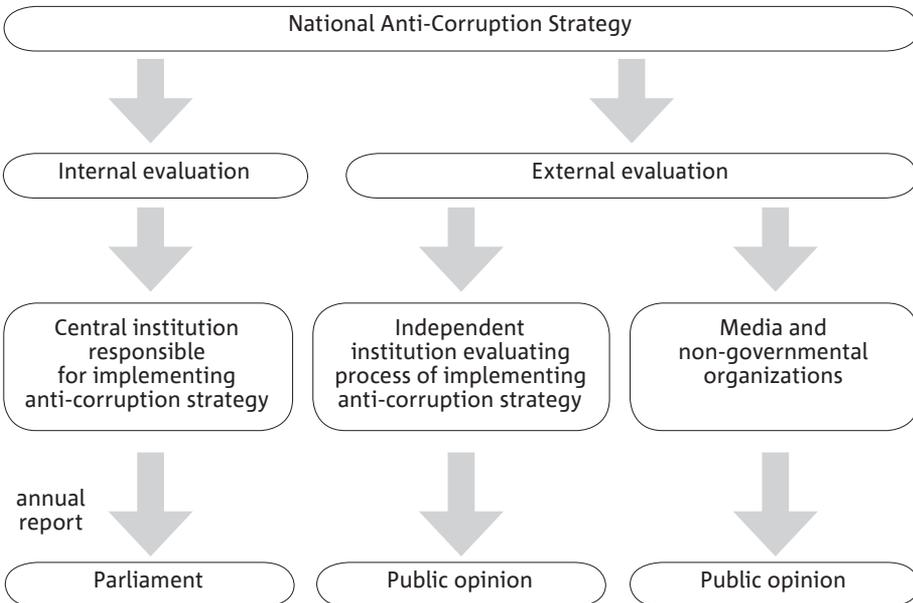
<sup>56</sup> For example, Slovenia's Anti-Corruption Commission has four members, appointed (one member each) by the president, the Judiciary Council, the parliament and the government.

The media and NGOs would also do independent external monitoring of progress in implementing the strategy as part of citizen oversight. To enable them to do this, all documents related to preparation and implementation of the strategy should be immediately published in the Public Information Bulletin.

**Preparing and implementing anti-corruption strategy**



**Monitoring and evaluating anti-corruption strategy**



## **8. A model method for formulating and implementing operational goals in selected areas of public life**

After describing the main problems and defining the operational goals, the strategy should propose ways to achieve these goals. The strategy should contain a description of methods and tools, and a timetable for achieving the goals.

To enable achievement of the operational goals, very concrete action plans should be attached to them. We propose dividing them into legislative, institutional and practical activities. These plans should be a kind of timetable indicating tasks, completion periods, and people and institutions responsible for carrying them out.

As in the case of the strategic goals, the key is to specify indicators for evaluating implementation of the operational goals. These indicators must be as specific as possible and must specify the desired result. This cannot only be, for example, the preparation of draft legislation, but also its implementation, together with a study of the effects of its implementation<sup>57</sup>.

As we wrote in the introduction, plans for specific, short-term actions can be changed depending on changes in the situation and the vision of the authorities implementing the anti-corruption strategy at a given moment.

Here, for example, we will discuss three problems: increasing the transparency of political financing, streamlining and depoliticizing public administration, and increasing transparency and the participatory nature of the legislative process. In addition, we present solutions that can play a major role in fighting corruption – the need to support and protect whistleblowers.

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<sup>57</sup> In reports on the implementation of the government's "Anti-Corruption Program", a task was very often considered fulfilled, if the outcome was preparation by the government administration of draft legislation. At the same time, it was obvious that this project had not been passed by parliament. The work did not bring any tangible results.

## 8.1. Political Financing

### 8.1.1. Current situation

A transparent system of financing political parties and electoral campaigns curbs state capture by political and economic elites, and thus contributes to effective and transparent politics<sup>58</sup>.

The regulations on funding of political parties that were in force in the 1990s were very liberal, allowing political parties to draw income from business activities, engage in public fundraising, and receive donations from businesses, all of which led to many irregularities, including corrupt practices. The 1997 law on political parties provided for some positive changes, but it was not until the amendments of 2001 that major changes were brought about, enhancing transparency in the financing of election campaigns and political parties. Financing of political parties from public funds was introduced while other sources of income were restricted. Currently, for example, donations from businesses, anonymous donations, and donations in kind are all prohibited<sup>59</sup>.

Undoubtedly, public funding is the best way to increase transparency in political financing and thus to prevent corruption. It can be regarded as a kind of social contract, where in exchange for a significant amount of funding from the state budget, political parties do not seek support from business or interest groups. As a result, politicians do not incur debts to business, which they then have to repay at the expense of the public interest. An example of this problem was the Polish “gelatin affair”<sup>60</sup> or what happened in our southern neighbors. In the 2010 parliamentary elections in the Czech Republic, the three main sponsors of the Public Affairs Party’s (VV) campaign, owners of security firms, entered parliament on the party’s list. At that time, there was a similar incident in Slovakia involving the Freedom and Solidarity Party (SaS)<sup>61</sup>. Another disturbing example of improper ties between business and politics, and this in Germany, a country with a well-established democratic system, is the phenomenon of political sponsoring where for a fee businesses can have meetings with high-level

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<sup>58</sup> According to Susan Rose-Ackerman “illegal payments to campaigns and bribes given to politicians can undermine democratic systems” (S. Rose-Ackerman, “Korupcja i rządy”, Paweł Łuków (trans.), „Sic!” Publishers, Warsaw 2001, p. 268).

<sup>59</sup> A negative example until December 2009 was the law on presidential elections, which allowed the election committees of candidates to draw funds from these sources.

<sup>60</sup> “Król żelatyny”, “Gazeta Wyborcza”, May 7, 2009. See also footnote 25.

<sup>61</sup> “Panienci i goryle”, “Newsweek” June 27, 2010.

representatives of local governments, and can also set up advertising stands during party congresses<sup>62</sup>.

The Polish system of financing political parties and electoral campaigns based on public funding, although more resistant to corruption, does however have some weak points. Among the main disadvantages are:

- Growing annual spending on political parties which puts an ever increasing burden on the state budget (in 2002 this spending amounted to 36.6 mln zł, in 2005 59.3 mln zł, in 2007 94.8 million zł, and in 2009 as much as 114.2 million zł);
- Little interest among political parties in gaining new supporters and members ready to support them and reduced internal party democracy. Currently, political parties, assured of an annual income, are becoming cadre-based institutions where loyalty to the party leadership that decides on the allocation of financial resources is more important than debate on the party program;
- Closure of the political system to new parties because of the high percentage threshold (3%) for receiving state subsidies. This hinders the emergence of new political parties. In France and Estonia, the threshold is 1% while in Germany it is only 0.5% for Bundestag elections<sup>63</sup>;
- Costly election campaigns whose budgets (originating largely from public funds) are spent mainly on billboards, TV commercials, etc. Our experience with monitoring campaign financing indicates that the excessive use of these forms of advertising leads to a much greater emphasis on image creation and other purely marketing efforts instead of a substantive presentation of views on issues important for voters. Moreover, very expensive election campaigns are another obstacle hindering the emergence of new political parties that are not in a position to raise such funds, and so they conduct their campaigns cheaply and without the support of professionals. This in turn usually means poor election results, which then translates into ineligibility for public subsidies, and so we have a vicious circle.
- An insufficient level of transparency and the inability of citizens and NGOs to monitor the financing of election campaigns. Currently access to data on donors of political parties and election committees is possible only through the State Electoral Commission (PKW) under the law on personal data protection and access to invoices attached to reports is possible only at the PKW's Warsaw headquarters. Moreover, while political parties do

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<sup>62</sup> "Niemieckiego polityka za 20 tys. euro wynajmę", "Dziennik Gazeta Prawna", February 26, 2010.

<sup>63</sup> Data from: "Podstawowe uregulowania w zakresie finansowania partii politycznych oraz obniżania kosztów kampanii wyborczych w wybranych krajach UE", analysis by the Sejm Bureau of Research, April 2, 2008, BAS-WAEM-333/08.

indeed report on all income received, with regard to expenditures they report only on those from state subsidies. Universal access to source data connected with political financing (and in particular to information about donors of political parties) should be a standard practice, just as much as the publishing of asset declarations by persons holding public office<sup>64</sup>. One should bear in mind that transparency of party funding is a basic constitutional principle<sup>65</sup>, and that “legislators, by putting it in Chapter I, titled ‘The Republic’, recognized that it is one of the fundamental, and therefore one of the important, principles for the functioning of the state”<sup>66</sup>.

- Passive auditing of the financial reports of political parties and election committees carried out by the State Electoral Commission focuses primarily on the accounting and formal side of reports without evaluating the legitimacy and level of expenditures incurred.

### 8.1.2. Operational goals

The operational goal of an anti-corruption strategy in the area of political financing should be to remove the above-described shortcomings while retaining the principle of public financing of political parties.

### 8.1.3. Proposed actions

These operational goals can be achieved through legislative, institutional and practical changes. Specific activities, completion periods, and responsible bodies are presented in the tables below.

#### 8.1.3.1. Legislative actions

Task	Period	Responsible
Making amendments to provisions of the law on political parties, as well as to provisions governing campaign financing involving <sup>67</sup> : <ul style="list-style-type: none"> <li>• reducing the funding of political parties to 50% of their budget, e.g. by making the amount of the subsidy dependent on the amount of payments made by party members and sympathizers (a 1 zł donation would result in a 1 zł subsidy, but not more than the limit on subsidies defined</li> </ul>	4 years	government / parliament

<sup>64</sup> The idea of publishing data regarding donors to election committees has unfortunately created controversy among MPs working on a draft Electoral Code, even though such a solution was introduced in 2009 by the law on presidential elections.

<sup>65</sup> Article 11 para. 2 of the Constitution of the Republic of Poland.

<sup>66</sup> Marek Chmaj, “Finansowanie partii politycznych”, in “Finansowanie polityki w Polsce na tle europejskim”, Marek Chmaj (ed.), Adam Marszałek Publishers, Torun 2008.

<sup>67</sup> Parliament is currently working on a draft Electoral Code that aims to standardize election campaign financing rules.

by law, e.g. 15 million zł per party). Such a solution would encourage parties to actively seek members and supporters, and would increase internal party democracy. It would also reduce the burden on the state budget, given that expenditures on subsidies are rising significantly every year.		
<ul style="list-style-type: none"> <li>• lowering the threshold of support received in parliamentary elections entitling political parties to get state subsidies – from the current 3% to 1%<sup>68</sup>. This solution would broaden the Polish political scene, giving a chance for new parties to emerge.</li> </ul>	4 years	government / parliament
<ul style="list-style-type: none"> <li>• introducing regulations requiring greater democracy within party structures.</li> </ul>	1 year	government / parliament
<ul style="list-style-type: none"> <li>• banning election advertising that uses large-format posters and television commercials. In the case of TV ads another option (instead of a ban) would be to substantially reduce broadcast time<sup>69</sup> or the amount spent on this form of promotion, e.g. no more than 20% of the advertising budget of a given election committee.</li> </ul>	1 year	government / parliament
<ul style="list-style-type: none"> <li>• increasing the transparency of political financing by publishing on the internet, e.g. on the PKW website, lists of donors (while respecting their privacy, i.e. without giving their addresses) of political parties and election committees and the documents accompanying financial reports, i.e. invoices, contracts, and bills<sup>70</sup>.</li> </ul>	1 year	government / parliament / State Electoral Commission (PKW)
<ul style="list-style-type: none"> <li>• expanding the scope of the financial statements of political parties. In accordance with the GRECO<sup>71</sup> recommendations, the scope of the annual reports of political parties should be expanded to include information on all party expenditures, not just those from the state subsidy<sup>72</sup>. It also seems advisable to require parties to attach source documents to their reports, like election committees do when submitting their reports<sup>73</sup>.</li> </ul>	1 year	government / parliament

<sup>68</sup> It might be enough to lower the threshold only temporarily or to set another level, e.g. 1.5% – depending on how the Polish political scene evolves.

<sup>69</sup> Such a solution can be found currently in the law on presidential elections, where candidates' committees may broadcast paid ads on radio and television totalling only 15% of the air time allotted for legally guaranteed free broadcasts. For example, in the first round of the 2010 presidential campaign, election committees were entitled to 2.5 hours of free television time and just 22.5 minutes of paid broadcasts.

<sup>70</sup> It would not be a complicated process technically – election committees should regularly scan invoices, and then when submitting financial statements should send scanned copies to the PKW, in addition to attaching the originals. The PKW would only need to put those documents on its website.

<sup>71</sup> Group of States against Corruption, an institution operating within the Council of Europe.

<sup>72</sup> The GRECO report mentioned above also points to the need for more active monitoring by the PKW of political party financing and for an increase in the PKW's budget and staff.

<sup>73</sup> "Third Evaluation Round. Evaluation Report on Poland on Transparency of Party Funding", GRECO, Strasbourg 2008.

### 8.1.3.2. Institutional actions

Task	Period	Responsible
Involvement of the State Electoral Commission in more active forms of oversight over the finances of political parties and election campaigns, such as monitoring and estimating the scale of election expenses already during campaigns.	1.5 years	PKW
Regulating cooperation between the PKW and external auditors on auditing of reports. The PKW's experiences with this cooperation have not always been positive. Two options could be considered: either creating a strong, specialized team of auditors within the PKW or establishing long-term cooperation between the PKW and a group of leading external auditors, who in addition would get supplementary training from the PKW on a regular basis.	1.5 years	PKW
Increasing the number of employees and budget of the PKW especially the Department of Financing Control of Political Parties and Electoral Campaigns of National Electoral Office <sup>74</sup> , which will enable introduction of the institutional changes mentioned above.	1 year	government /PKW

### 8.1.3.3. Practical actions

It would also seem that some changes concerning the practical aspects of monitoring political financing can be put into effect without having to wait for legislative and institutional changes.

Task	Period	Responsible
Establishing effective procedures for the public to inform the PKW about observed irregularities and abuses in the financing of election campaigns by committees (including through the use of electronic tools such as e-mail). It will enable effective information gathering, as well as responses in "real time" to any emerging problems <sup>75</sup> .	1 year	PKW
Redesigning the PKW website to make it more user-friendly, which would help disseminate information about political financing in Poland and would also enable public monitoring of the financing of political parties and election campaigns.	1 year	PKW

<sup>74</sup> "Wnioski i rekomendacje", in "Subwencje z budżetu państwa dla partii politycznych: jawność i kontrola", Jarosław Zbieranek (ed.), Institute of Public Affairs, Warsaw 2008.

<sup>75</sup> "Proponowane zmiany w systemie finansowania prezydenckiej kampanii wyborczej", Jarosław Zbieranek, Warsaw 2007.

#### **8.1.4. Monitoring and evaluation**

<b>Operational goal</b>	<b>Performance indicator</b>
Retaining the principle of public financing of political parties and eliminating the current shortcomings of the system.	1. implementation of proposed changes in the law on political parties and in the regulations governing electoral campaigns, 2. reduction of expenditures on political parties from the state budget by at least 40%, 3. entry into the Sejm of at least 2–3 new political parties over a 10-year period.

### **8.2. Public administration<sup>76</sup>**

The existence of an efficient, non-political public administration is of crucial importance for the elimination of administrative corruption.

We would like to point out two important factors that influence the level of transparency in public administration: depoliticization and strengthening of the civil service and modernization of the administration through measures such as the introduction of e-government.

#### **8.2.1. Strengthening and depoliticizing the civil service**

##### **8.2.1.1. Current situation**

The way the civil service operates – the separation of political and administrative functions, its management structure, and compliance with statutory provisions governing its activities – has a significant impact on the way this institution carries out state functions.

Following the changes of 1989, the civil service was brought into being by a 1996 law “in order to ensure the professional, conscientious, impartial and politically neutral carrying out of state functions”. For many years, its essential characteristics were laid down in a 1998 law. These included: the management structure of the civil service, the differentiation between political and non-political positions, and the system of recruitment, particularly for senior positions. The prime minister was given supreme authority over the civil service. The central organ of government administration, responsible for matters concerning the civil service, was the Head of the Civil Service, appointed by the prime minister. A Civil Service Office was set up serving the Head of the Civil Service.

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<sup>76</sup> Given the fact that there are many definitions of public administration involving various ways of dividing it up, we accept the division made by Prof. Jan Boć into government, local government and state administration presented in his paper “Legal Organization of Administration in Poland in the Administrative Law” (Wrocław, 1994). In this publication we do not refer to local government administration.

The law introduced the principle of open and competitive recruitment for vacant civil service positions (a competition in which one candidate wins) as well as filling of senior positions (directors general, department directors and deputy directors) through competitions conducted by teams appointed by the Head of the Civil Service. This was to ensure merit-based and transparent recruitment procedures in public administration. The recruitment procedures introduced at that time can be considered exemplary.

During the dozen or so years of the civil service's existence there have been many changes in the way it functions, including changes of a systemic nature. These have related primarily to the politicization of senior positions (director level) through bypassing of the regulations dealing with competitions for senior positions in the public administration and filling them with people from outside the civil service<sup>77</sup>, therefore "disconnecting" these positions from the civil service<sup>78</sup>, and pursuing a so-called flexible personnel policy vis-à-vis senior positions, leading to rapid turnover in positions not requiring any justification. With a growing number of previously non-political senior positions subject to political appointments "the potential for the personalisation of appointments, and consequent emergence of corruption risks, has, therefore, increased significantly"<sup>79</sup>. Moreover the "politicization of senior positions creates a risk of increased personnel-related manipulation at lower levels"<sup>80</sup>. The system of managing the civil service was changed, enabling greater political interference, and the Civil Service Office and the central administrative authority, i.e. the Head of the Civil Service, were abolished. Civil service responsibilities were taken over by the Head of the Chancellery of the Prime Minister<sup>81</sup>.

The way the civil service now operates is regulated by the Civil Service Act of November 21, 2008. Under its provisions:

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<sup>77</sup> Filling positions without organizing competitions and on the basis of contracts of employment (Article 144).

<sup>78</sup> This solution was introduced by the law on the civil service of August 24, 2006, and the new law on the State Personnel Pool (PZK) and high state positions of August 24, 2006. The PZK was a novelty in the Polish government administration, defined as a group of candidates for high state positions. In the beginning it consisted of civil servants, people who passed a special exam for the PZK, and winners of competitions for high state positions, announced by the Prime Minister, as well as persons appointed by the President as plenipotentiary representatives to other countries and international organizations.

<sup>79</sup> Opinion expressed by Paul Heywood and Jan-Hinrik Meyer-Sahling, "Występowanie stref korupcji a zarządzanie polską administracją rządową" (Corruption Risks and the Management of the Ministerial Bureaucracy in Poland), Ernst & Young Better Government Program, Warsaw 2008.

<sup>80</sup> Kaja Gadowska, "Działania pozorne. Problem upolitycznienia procesu obsady wyższych stanowisk w służbie cywilnej w Polsce", "Przegląd Socjologiczny", Łódź 2009, pp. 51–90.

<sup>81</sup> Changes in 2006.

- Executive positions in ministries, central government offices and voidvodship offices are part of the civil service system;
- The central authority responsible for civil service matters is the Head of the Civil Service who reports directly to the Prime Minister;
- Open and competitive recruitment for senior (executive-level) positions in the civil service has been introduced. The team conducting a recruitment nominates two candidates among whom the person who appointed the team arbitrarily selects one candidate for the given position;
- Filling deputy director and manager positions is possible through transfers without any recruitment process<sup>82</sup>;
- A statutory ban has been imposed on filling senior positions in the civil service through appointment of persons in an acting capacity, as such appointments have tended to become long-term;
- There is no penalty for violating the provisions regarding the recruitment process.

Some provisions of the 2008 law indicate a desire to return to certain elements of the system in force under the 1998 law, but do not go far enough with depoliticization and building an independent, non-political civil service. Restoration of the position of Head of the Civil Service should be seen as a step in the right direction, but the lack of a dedicated office serving him and the transfer of its services back to the Prime Minister's Chancellery shows that the government wants to maintain political control over the civil service.

Returning senior positions to the civil service would appear to be a move towards the depoliticization of the service.

A weak point is the provision proposing the introduction of open and competitive recruitment for senior positions in the civil service, which is not a return to the competitive recruitment that took place under the 1998 law. Recruitment through a competition meant that the Commission chose one person for one vacancy. This was intended to reduce the likelihood of arbitrary decisions being made. Now a recruitment team selects two candidates from among whom the person who set up the team (Head of the Prime Minister's Chancellery, a minister, director of office, etc., so it could be not only an official, but also a politician) arbitrarily selects one of the candidates for the given position.

The possibility of filling certain senior positions in the civil service through transfer also raises some questions. It is a loophole that enables the bypassing of the procedures of open and competitive recruitment for deputy director

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<sup>82</sup> Members of the civil service are eligible for transfer if they meet the requirements for these positions and have received a positive interim evaluation, at one of the two highest levels provided for in the evaluation scale, during the 24 months preceding the transfer.

positions<sup>83</sup>. The lack of penalties for violating regulations governing the recruitment process will not prevent problems from appearing in the future.

#### **8.2.1.2. Operational goals**

We believe that one of the main corruption risks in public administration is the weakness and politicization of the civil service. In order to change this, various things have to happen at different levels.

Depoliticization and professionalization of the civil service require:

1. statutory changes: the re-establishment of the Civil Service Office, strengthening of the position of the Head of the Civil Service, changes in the competitive selection process for senior positions in the civil service (a competition commission should select the winner), and the introduction of penalties for breaching the regulations governing the recruitment process;
2. a rise in public awareness of the importance of a non-political civil service for the proper functioning of the state;
3. a shift away from the principle of political and personal clientelism;
4. curtailment of the practice of ignoring the law and circumventing it by using various legal tricks. The basis should be the adoption and observance by politicians of the principle of the clear separation of political and administrative functions. The public and the media have a major role to play here, but thus far they have not been very active in this area because the civil service system is quite complicated and requires expert knowledge.

The achievement of these objectives should be planned over a period of 3–4 years.

#### **8.2.1.3. Proposed actions**

These operational goals can be achieved through legislative, institutional and practical changes. Specific activities, completion periods, and responsible bodies are presented in the tables below.

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<sup>83</sup> Jolanta Góra-Ojczyk, “Urzednicy omijaja przepisy o otwartym naborze”, “Dziennik Gazeta Prawna”, February 28, 2010.

### 8.2.1.3.1. Legislative actions

Task	Period	Responsible
Making amendments to the law on the civil service of November 21, 2008 involving:		
<ul style="list-style-type: none"> <li>restoring the Civil Service Office, and strengthening the position of the Head of the Civil Service</li> </ul>	2 years	Chancellery of the Prime Minister (KPRM)
<ul style="list-style-type: none"> <li>changing the competition procedure for senior civil service positions (introducing a provision stipulating that only one person can win the competition)</li> </ul>	2 years	KPRM
<ul style="list-style-type: none"> <li>introducing sanctions for breaching regulations on recruitment procedures</li> </ul>	2 years	KPRM

### 8.2.1.3.2. Institutional actions

Task	Period	Responsible
Establishing a Civil Service Office and organizing its work	3 years	KPRM

### 8.2.1.3.3. Practical actions

Actions to change public awareness:

Task	Period	Responsible
<ul style="list-style-type: none"> <li>Conducting a long-term information campaign regarding the civil service, organizing conferences and debates, and placing materials in the media</li> </ul>	5 years	KPRM
<ul style="list-style-type: none"> <li>Education at the post-secondary level: expanding the syllabus of civics courses to include the role and responsibilities of the civil service</li> </ul>	5 years	Ministry of National Education (MEN)

### 8.2.1.4. Monitoring and evaluation

Operational goal	Performance indicator
Depoliticizing and professionalizing the civil service: restoring the Civil Service Office and strengthening the position of Head of the Civil Service, changing the competition procedures (changing the law)	<ul style="list-style-type: none"> <li>introduction of the legislative changes mentioned above</li> <li>implementation of the changes in the law on civil service in government administration</li> <li>in the year after changes are introduced, a study done of the recruitment process for senior positions (a higher percentage of competitions for senior positions conducted in accordance with the law)</li> <li>a survey done of civil servants on the implementation of regulations regarding recruitment (increasing amount of information that recruitment is being conducted in accordance with the law)</li> </ul>

Activities to change public awareness	<ul style="list-style-type: none"> <li>• a public campaign conducted (a survey done before and after the campaign – an increase of at least 25% in the number of persons having knowledge about the civil service), information materials for the media</li> <li>• the media monitored and material published in the media on the civil service (an increase in published material of about 10–15%)</li> </ul>
Activities at the political level	<ul style="list-style-type: none"> <li>• proposed changes regarding restructuring of the civil service system made part of the long-term strategies of parties and the government. The effect can be measured by monitoring changes in laws, monitoring the statements of politicians, and researching personnel policy in the civil service.</li> </ul>

## 8.2.2. The introduction of e-government

### 8.2.2.1. Current situation

A well-functioning and transparent public administration reduces the risks of corruption. One of the ways to streamline it is to introduce e-government. It aims to provide better and faster access to administrative services based on modern technologies, and to increase productivity and flexibility.

E-government was introduced in Poland in 2005, when a law on informatization of entities performing public services came into effect, enabling the building of the Public Administration ICT Network and the e-PUAP project, i.e. the Electronic Platform of Public Administration Services. The system, which is still in the testing phase<sup>84</sup>, will allow citizens to submit documents to the institutions mentioned in the law via the internet without the need to affix a “secure electronic signature”.

The system has a number of shortcomings: access will not be possible through the platform to certain public administration institutions, such as the Office of the Sejm, the President, and the National Bank of Poland, which means that they must build their own e-offices. It seems that legislators did not think about creating a central system of identification through which a citizen, upon receiving the right to access, can take care of official business in a wide variety of public institutions, and not just selected ones.

<sup>84</sup> During the preparation of this report, news appeared in the media about work being finalized on appropriate decrees enabling the start of these services already in autumn 2010.

Apart from these reservations, the problem is delays occurring in implementing subsequent phases of the system<sup>85</sup>. At this point one can say, in the words of the authors of the report summarizing the progress in implementing e-government, that “the biggest success in implementing e-government in the past two years has been the introduction of electronic filing of income tax returns without the need for a qualified electronic signature”<sup>86</sup>.

### **8.2.2.2. Operational goals**

Full implementation of e-government while at the same time removing its current drawbacks by:

- Launching an e-PUAP platform
- Setting up a single system covering all public institutions without exception, and standardizing and simplifying the system of user identification.

### **8.2.2.3 Proposed actions**

These operational goals can be achieved through legislative, institutional and practical changes. Specific activities, completion periods, and responsible bodies are presented in the tables below.

#### **8.2.2.3.1. Legislative actions**

<b>Task</b>	<b>Period</b>	<b>Responsible</b>
Making amendments to the law on informatization of entities carrying out public tasks involving: <ul style="list-style-type: none"> <li>• inclusion of all public institutions in e-PUAP</li> <li>• introduction of a uniform, integrated, efficient system of user identification, allowing the submission of documents electronically to every public institution</li> </ul>	2 years	Ministry of Internal Affairs and Administration (MSWiA)

#### **8.2.2.3.2. Practical actions**

<b>Task</b>	<b>Period</b>	<b>Responsible</b>
Launching the e-PUAP platform and enabling citizens to make practical use of it	6 months	MSWiA
Conducting an information campaign popularizing the use of new solutions	6 months	MSWiA

<sup>85</sup> Report from a NIK audit: “Informacja o wynikach kontroli realizacji projektów dotyczących elektronicznej Platformy Usług Administracji Publicznej (e-PUAP) i Sieci Teleinformatycznej Administracji Publicznej (STAP)”, Warsaw, April 2009, [www.nik.gov.pl/aktualnosci/nik-o-platformie-uslug-administracji-publicznej-e-puap.html](http://www.nik.gov.pl/aktualnosci/nik-o-platformie-uslug-administracji-publicznej-e-puap.html), and information from “Dziennika Gazety Prawnej”, September 7, 2010.

<sup>86</sup> Smarter, faster, better e-Government, 8th Benchmark Measurement”, November 2009, available at: [http://ec.europa.eu/information\\_society/europe/i2010/docs/benchmarking/egov\\_benchmark\\_2009.pdf](http://ec.europa.eu/information_society/europe/i2010/docs/benchmarking/egov_benchmark_2009.pdf).

**8.2.2.4. Monitoring and evaluation**

Operational goal	Performance indicator
Completing reforms introducing e-government and creating a uniform and integrated system enabling the use of e-services in every public institution (including launching the e-PUAP platform)	<ul style="list-style-type: none"> <li>• The ability to take care of official matters by e-mail in as many institutions as possible</li> <li>• The smooth operation of the system – an increase in positive feedback from people making use of electronic contacts with the public administration</li> </ul>

**8.3. The lawmaking process****8.3.1. Current situation**

Lawmaking is one of the key instruments of governance in a state. Most pieces of legislation are drafted by the government, which in fact is where the most important legislative work takes place.

In the best interests of the public, the authorities should make an effort to civilize the lawmaking process by opening it up to citizens. The more discussion and consultation there is in the process of drafting legislation, the greater the chance of avoiding mistakes and also the chance that people will approve of the existing legal system and respect the law. The more people and institutions take part in an open, transparently organized process of consultation, the less the scope for extralegal pressure on people drafting legislative bills – and therefore the less the scope for corruption. Unfortunately, the process of government consultations, especially those in which citizens and NGOs that are not members of the Tripartite Commission wish to participate, despite certain improvements is still largely a facade without real substance.

Each new piece of legislation from the moment of its enactment has far-reaching consequences for smaller or larger groups of citizens. Therefore it is only natural that these citizens would want to have an impact on the shaping these laws. If the consultation process is properly organized, if every interested party can openly present its arguments and be heard, and receive a response from the institutions preparing the legislation, only a few people will attempt to exert pressure unlawfully. If the public consultations are only for show, if the criteria for selecting those who are consulted are not logical, and if the arguments they present do not get any response, then interest groups – even those wishing to act within the law – will be forced to make confidential contacts. Orderly, transparently conducted lobbying of group interests is in itself something desirable and necessary for lawmakers to pass legislation that is publicly accepted and of good quality. The secret, behind-the-scenes lobbying activities of some interest groups is corrupting and leads to the passage of bad laws.

Unfortunately, the stage of lawmaking involving the government is much less participatory and transparent than the parliamentary stage<sup>87</sup>. This creates a high risk of corruption. Scandals such as Rywingate or the gambling affair, involved illegal attempts to influence the legislative process, and thus were essentially attempts at state capture. Efforts made to remedy the situation yielded only partial results. One such attempt was the adoption in 2005 of the so-called lobbying law<sup>88</sup>, which unfortunately has failed to live up to the many expectations it raised. In accordance with its provisions, the government is obliged at least once every six months to present its program of legislative work in the Public Information Bulletin (BIP). Once they are sent for inter-ministry consultations, legislative bills are made available in the BIP, and citizens and institutions have the opportunity to express their interest in ongoing work on a specific law. They can refer to proposed provisions and suggest their own. The problem is that the bodies preparing new legislation are not obliged to refer to comments and proposals made by citizens and institutions.

On the question of conducting public consultations, there is considerable confusion because there is no law comprehensively and clearly regulating the consultation process at the government level. Consultations are mentioned – albeit in a fragmentary way – in the law on departments of government administration, the law on the Council of Ministers, the law on lobbying (albeit indirectly), the Prime Minister’s Directive on Principles of Legislative Techniques, and the Council of Ministers’ Resolution on the Regulations on the work of the Council of Ministers. These provisions are not only inconsistent, but also have a low legal standing to a large extent, which means that citizens lack effective tools for enforcing their right to participation in the process of drafting laws that affect them.

The 2009 amendments to law on the Council of Ministers<sup>89</sup> and the consequent changes in Regulations on the work of the Council of Ministers have good points, such as a shift away from ministerial lawmaking, but also unfortunately have serious drawbacks. As a result, individual ministries only draft the statements of purpose for legislative bills. Public consultations, involving submission of comments and substantive discussion on the proposed solutions, are possible only during the stage of drafting statements of purpose for government

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<sup>87</sup> Implementation of the three-year project “Public monitoring of the lawmaking process” led us to such conclusions. Report available at: [http://www.batory.org.pl/doc/Proces\\_stanowienia\\_prawa\\_raport.pdf](http://www.batory.org.pl/doc/Proces_stanowienia_prawa_raport.pdf).

<sup>88</sup> Law on lobbying activities in the lawmaking process of July 7, 2005.

<sup>89</sup> Law on amending the law on the Council of Ministers and some other laws (Dz.U. 2009, nr 42, poz. 337).

bills. However, the obligation to respond applies only to comments submitted through the Legislative Council.

If the government decides to draft a bill, the Government Legislation Centre (RCL) then translates the statement of purpose into a bill. Draft legislation prepared in this manner is not submitted again for public debate and often differs considerably from the statement of purpose presented for consultation. Following the adoption of the statement of purpose by the government, only the ministry that drafted it has the right to assess to what extent it has been reflected in the draft bill prepared by the RCL. This approach exposes RCL staff workers to extralegal pressures and gives individual ministries an opportunity to introduce changes to the final text of the bill without consultation.

Some legislative proposals are still drafted under the “old rules”, i.e. work on a piece of legislation is from start to finish done by one of the ministries or central institutions. Consultation is then carried out at a very late stage, i.e. not until the stage when the draft bill is ready.

Other defects resulting from amendments to the law on the Council of Ministers stem from the fact that the laws included in the government’s legislative work plans do not need to be drafted on the basis of previously prepared statements of purpose. Whether or not such statements of purpose are drafted depends in each case on the discretion of the Council of Ministers<sup>90</sup>. It seems illogical that important laws were drafted without the need for consultation with citizens regarding the appropriateness and premises of a given solution, especially in a situation where the government’s legislative work plans as policy documents are not subject to public consultation.

Among the new regulations there is none that encourages broader involvement of citizens in work on government legislative bills. In fact, regulations that limit public participation are kept in force. There needs to be consultation with ministries, the Government Legislation Centre, and the Legislative Council on proposed legislation. Some types of legislation are subject to mandatory evaluation by the Tripartite Commission and the Joint Commission of the Government and Local Governments. Soliciting the opinion “of social organizations and other interested stakeholders and institutions” is not mandatory<sup>91</sup>.

The current rules for public consultation are poorly regulated and do not clearly indicate who should be consulted and on what matters, and in practice give interested persons and organizations little opportunity to legitimately in-

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<sup>90</sup> This information was conveyed to us by minister Michał Boni [http://www.batory.org.pl/doc/List\\_Boni\\_20091208.pdf](http://www.batory.org.pl/doc/List_Boni_20091208.pdf).

<sup>91</sup> Regulations on the work of the Council of Ministers, Article 12 para. 5.

fluence the shape of Polish law. This opens the door to extralegal pressure on people preparing government legislative bills.

After draft legislation is accepted by the Standing Committee of the Council of Ministers, it is then submitted to the Sejm by the Council of Ministers. Here, the main venue for the presentation of the opinions of people and institutions other than members of parliament should be a public hearing. However, a significant constraint on the involvement of civil society organizations in the law-making process and presentation of their comments through participation in public hearings is the fact that the hearings are optional and that these organizations have no say in decisions about holding hearings. As is apparent from the Sejm's Regulations<sup>92</sup>, a proposal to hold a public hearing can only be submitted by an MP. In practice, hearings are held very rarely. Moreover, during hearings, MPs have a passive role and do not respond to submitted proposals.

In this situation, most of those interested in influencing the shape of legislation make use of the right to declare a desire to participate in the work of parliamentary committees as guests<sup>93</sup>. Guests are not required to submit their views in writing or to disclose whose or what interests they are representing. According to the Sejm's Regulations, a guest may take the floor only at the invitation of session chairs. However, in practice guests speak without being invited to do so and on many occasions succeed in changing the positions of MPs. This system is highly opaque. It allows undeclared lobbyists to influence the shape of legislation in a unilateral and untransparent manner.

### **8.3.2. Operational goals**

The legislative process at both the government and Sejm levels should be conducted in a much more transparent manner and be more open to the opinions of individuals and organizations interested in the proposed solutions. To this end, in the next 3–4 years it is essential to:

- create a uniform, consistent, transparent and participatory system of law-making;
- improve the lobbying process through a thorough revision of the law on lobbying activities;
- implement the guidelines of the Council of Europe's Code of Good Practice on Civil Participation. According to the principles of the Code, participation applies to all levels at which decisions are made. Civil society organizations should get involved already at the stage of setting priorities and diagnosing a problem and choosing appropriate solutions (legislative and non-legislative).

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<sup>92</sup> Article 70a para. 4.

<sup>93</sup> Based on the provisions of the Regulations of the Sejm, Article 153 para. 2.

### 8.3.3. Proposed actions

These operational goals can be achieved through legislative, institutional and practical changes. Specific activities, completion periods, and responsible bodies are presented in the tables below.

#### 8.3.3.1. Legislative actions

Task	Period	Responsible
Preparing a single law that would comprehensively and clearly regulate the legislative process, and introduce the requirement that “specifications” be attached to draft legislation indicating the authorship (full name of the author) of individual provisions and any later changes. Or alternatively, regulating citizen participation in the legislative process through a single law that would guarantee citizens a certain minimum level of participation in legislative work, regardless of changes in the work rules of the Council of Ministers, the Sejm and the Senate.	in 4 years	Government Legislation Centre (RCL) / KPRM
Amending the law on lobbying in the legislative process – the provisions of the law should apply to everyone who engages in lobbying activities and seeks to influence decision-makers. However, they should have different obligations, depending on the type of activity (professional or non-professional) and the interest represented (group or public).	in 2 years	KPRM
Strengthening the institution of the public hearing – either by changing it from being optional to being mandatory or by giving civil society organizations and coalitions of organizations the right to formally propose hearings. Public hearings on government bills should be organized at the governmental stage of legislative work. These changes can be made by putting appropriate provisions in a law comprehensively regulating the legislative process or in amendments to the law on lobbying.	Depending on the concept in 4 or 2 years	

#### 8.3.3.2. Institutional actions

Task	Period	Responsible
Making changes in the Regulations on the work of the Council of Ministers regarding public consultations involving the use of open invitations to consultations and the obligation to respond to submitted comments.	1 year	RCL
Introducing a guideline into the Regulations on the work of the Council of Ministers that there should be consultation on a normative act both at the stage when the statement of purpose is drafted and the stage when the bill is drafted by the RCL.	1 year	RCL

Creating a single electronic platform common to all public institutions for consultations on legislation being drafted, where all documents relating to the draft bill will be placed, such as written opinions and comments made during the consultation by interested parties as well as the results of inter-ministry consultations or records of divergences, and also records of decisions from meetings of the Council of Ministers. In practice, this will also lead to an increase in the number of entities taking part in consultations.	1 year	KPRM
Instituting the practice of publishing regularly updated “specifications” of a legislative bill, giving information on the current status of the bill, the progress of work on it, and the names of the people proposing and accepting successive versions.	1 year	KPRM
Limiting exceptions with regard to the requirement to write statements of purpose, especially in relation to bills included in The Government’s Legislative Work Plans	6 months	KPRM
Implementation of Regulatory Impact Assessment by the Chancellery of the Prime Minister.	6 months	KPRM
Adopting the practice of organizing consultation meetings in ministries with at least one week’s notice. Inviting all those who submitted comments on the draft law to attend the meetings. Amending Article 14 point 1 of the Regulations on the work of the Council of Ministers to eliminate discretionary decisions regarding who can participate in a consultation meeting. Meetings should be recorded in their entirety and transcripts of their proceedings made available on the BIP webpage of the institution responsible for drafting the act.	6 months	KPRM/ RCL
Establishing common standards for all ministries on implementing the provisions of the law on lobbying with regard to reporting on lobbying activities undertaken towards them (issuing a directive).	6 months	KPRM
Introducing the requirement that all persons receiving the status of guest of a parliamentary committee must declare what or whose interests they represent and what changes in a draft bill they are advocating. In practice, this means the obligation to submit a declaration using the form “Declaration of interest in the work on the draft law...”	3 months	Chancellery of the Sejm
Introducing the requirement that, before starting work on a bill, MPs in the relevant committee must submit a declaration to the committee chair affirming that they will not be placed in a conflict of interest situation, either private or public.	3 months	Chancellery of the Sejm

Amending the Regulations of the Sejm to require members during or after a public hearing to respond to demands made during the hearing.	3 months	Chancellery of the Sejm
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### 8.3.3.3. Practical actions

Task	Period	Responsible
Fulfilling the Council of Ministers' obligation under Paragraph 9.2 of the Regulations to define the criteria for evaluating the expected impacts (costs and benefits) of government drafts of normative laws. Appropriate guidelines were prepared in the past by the Ministry of Economy.	3 months	RCL / KPRM
Establishing a requirement to provide information regarding the kind of procedure (old or new) under which a given bill is being drafted	3 months	RCL / KPRM
Establishing a requirement to provide information regarding the kind of procedure (old or new) under which a given bill is being drafted	3 months	RCL / KPRM
Compliance with the minimum 14-day period given to interested parties to submit comments on draft legislation.	1 month	RCL / KPRM
Preparing a guide – with information for citizens, NGOs and all interested parties – on how to get involved in the legislative process, how individual consultative rights relate to each other (what happens with comments submitted to legislators during the various consultation procedures).	1 year	RCL
Educating all legislators on the question of what is lobbying, what is its purpose, and how one can benefit from open, professional lobbying conducted in accordance with the rules..		KPRM / Chancellery of the Sejm
Introducing the principle that special, accelerated legislative procedures should be used sparingly because they limit the right to express opinions on draft legislation being prepared.		KPRM / Chancellery of the Sejm
Introducing the principle that responses to any requests for a meeting addressed to staff members at ministries, including by professional lobbyists, are given writing and entered into the relevant register.		KPRM
Clearly indicating, for example in the Regulations on the work of the Council of Ministers, that “Principles of Consultation Conducted during the Preparation of Government Documents” and “Guidelines for Regulatory Impact Assessment” are documents that are binding on ministries.	3 months	RCL / KPRM

Expanding the information available on the staff and social partners of parliamentarians and parliamentary clubs and circles by at least adding details about their education. Such information should also be provided by persons employed under a fee-for-task contract. Also, the requirements should be raised regarding the professional qualifications of office staff.	6 months	Chancellery of the Sejm
Clearly specifying who may be an expert and who a guest, and what is their role in the work of Sejm committees and subcommittees. Committee chairmen should make sure that there is no mixing of these roles. The list of experts should be periodically reviewed.		Chancellery of the Sejm
Instituting the rule that not only should the proceedings of Sejm subcommittees be recorded, but also minutes should be taken of them.	6 months	Chancellery of the Sejm
In the work of subcommittees instituting the practice of having proposed amendments signed by their authors using their full names.	6 months	Chancellery of the Sejm

### **8.3.4. Monitoring and evaluation**

Implementation of the operational goals has to be measured using performance indicators. These indicators must be as specific as possible and must define the desired result.

<b>Operational goal</b>	<b>Performance indicator</b>
Creating a uniform, consistent, transparent and participatory system of lawmaking.	Preparation, adoption and implementation of a law on the drafting of legislation (or at least a law on citizen participation in the lawmaking process, and a study conducted on the effects of its application).
Improving the way lobbying functions by thoroughly revising the law on lobbying activities in the lawmaking process.	Preparation, adoption and implementation of an amendment to the law on lobbying, and a study conducted on the effects of its application.
Complying with the rules contained in the Council of Europe's "Code of Good Practice for Civil Participation". According to its principles, participation applies to all levels at which decisions are made. Civil society organizations should already be involved at the stage of setting priorities and diagnosing a problem and choosing appropriate solutions (legislative and non-legislative).	Preparation and implementation of instructions on how to implement the Code, and then a study conducted on the effects of its application.

## **8.4. Strengthening the legal protection of whistleblowers**

Disclosing irregularities that occur in a given institution (e.g. a company, school, office, court or prosecutor's office) by a person who is working within it prevents threats to important values protected by the law. A rapid response to a "leak" of alarming reports about what is going on inside a given institution may prevent a disaster, saving human lives and protecting health, mismanagement, embezzlement of public funds, and abuse of power and trust. Those who disclose irregularities play a similar role in the exposing of corrupt practices<sup>94</sup>.

### **8.4.1. Current situation**

In Poland, the willingness to disclose irregularities is weakened both by ambivalent public attitudes and inadequate legal protection of whistleblowers. Informing about irregularities and cooperation with law enforcement authorities are perceived negatively. Historical and cultural factors have led to distortion of the concepts of loyalty and honesty – the disclosure of abuses is sometimes perceived not as proper civic behavior, but as a denunciation, betrayal or fouling of one's own nest. Social ostracism often affects not the one who has committed abuses, but the one who has revealed them. An expression of these ambivalent social attitudes is the fact that in the Polish language it is extremely difficult to find a term for people disclosing abuse that is without negative overtones. While the English term "whistleblower" has positive connotations, in Polish we have "donosiciel" and "denuncjator" which mean "informer" or the slightly less pejorative "demaskator" (someone who exposes or unmasks) and "informer" (informant).

Doubts about whether whistleblowers in the workplace have sufficient legal protection have been expressed both by civil society organizations monitoring the situation of people reporting abuses<sup>95</sup> and the Human Rights Defender who deals with complaints filed by these people. The OECD Working Group on Bri-

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<sup>94</sup> For example, according to a report prepared by the consulting firm Deloitte ("Fraud – the invisible enemy of business", 2008) 49.5% of companies surveyed indicate information from an employee as the source thanks to which fraud was detected, and 21.1% – anonymous information. This is one reason why the UN Convention against Corruption and the Civil Law Convention on Corruption adopted by the Council of Europe oblige Member States, including Poland, to establish effective legal protection "for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities" (Article 9 of the Civil Law Convention on Corruption). Article 33 of the UN Convention against Corruption contains a similar provision.

<sup>95</sup> See <http://www.batory.org.pl/korupcja/sygnalisci.htm>, <http://www.hfhrpol.waw.pl/precedens/aktualnosci/wyrok-w-sprawie-piotra-sulka-ochrona-sygnalistow-w-polsce.html> .

ery also seems to have doubts and has invited Poland to conduct consultations with trade unions and the private sector<sup>96</sup>.

Employees hired under regular employment contracts can count on a certain degree of legal protection. In the event of termination, an employee can appeal to a labor court. However, judicial practice shows that whistleblowing employees quite often lose their cases in labor courts. A wide range of people performing paid work under other legal conditions, including in particular civil law contracts (fee-for-task contracts, specific task contracts, managerial contracts and innominate civil contracts) are without legal protection. Also deprived of legal protection are employees who work on the basis of appointment, volunteers, and persons performing work for other entities as part of their own business activities.

In addition, the disclosure of irregularities in the professional environment is effectively blocked by codes of professional ethics that restrict criticism of other members of a given profession. With regard to the Code of Medical Ethics (Article 52), the Constitutional Court has in fact ruled unconstitutional those prohibitions in the Code against public statements about the professional activities of another doctor that are truthful and justified on the grounds of protecting the public interest. However, the mere presence of such restrictions in the internal regulations of various professional associations stifles individuals wishing to engage in constructive criticism.

Also problematic from the standpoint of legal protection for whistleblowers is the fact that their actions can be treated as slander. The European Court of Human Rights has on several occasions recommended that investigations of claims regarding defamation of character be left in the domain of civil law, arguing that criminal sanctions (particularly imprisonment) may violate the right to freedom of expression. The question of liability for disclosure of confidential information protected by law also needs to be sorted out.

Provisions of the law on personal data protection remain a major barrier. An employer who has put in place internal procedures for disclosure of abuses is obliged to inform any employee who is the subject of allegations that this kind of information is being gathered about him, and also about the source of the allegations, which is disclosing the identity of the whistleblower.

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<sup>96</sup> See the report: "Poland: Phase 2. Follow-Up Report on the Implementation of the Phase 2 Recommendations", available at the portal <http://www.oecd.org/dataoecd/36/58/44693761.pdf>.

Polish lawmakers can be accused of creating an inconsistency between what they expect from citizens and the ability of citizens to fulfill these expectations. An example of such an inconsistency is the criminal law regulation concerning notification about a suspected crime. On the one hand, Article 304 para. 1 of the Criminal Code establishes a civic duty to notify law enforcement authorities of a suspected crime. On the other hand, a person who makes such a notification deprives himself of the right to file a complaint in the event the prosecutor closes the proceedings if the direct aggrieved party is not the notifier himself. This leads to a situation where lawmakers encourage citizens to respond to acts that could constitute a crime, but at the same time provide very few tools to enable them to do this.

#### **8.4.2. Operational goals**

It is essential to create conditions that encourage the disclosure of irregularities in the workplace so that potential whistleblowers would be willing to share their knowledge and could do so without worrying about losing their jobs or facing social ostracism. Therefore, conditions conducive to the disclosure of irregularities must be created in both the social and legal spheres.

**Changing social attitudes towards whistleblowers.** Individuals who react to irregularities, abuses or other threats to the public interest need to gain social approval.

Social approval is needed in the immediate environment of the potential whistleblower, i.e. among colleagues, superiors and family members – in other words, in the circle of people whose reaction influences the whistleblower's decision on whether to disclose his knowledge of irregularities or to keep it to himself. It is particularly important to get employers interested in the idea of an internal, i.e. at the workplace level, disclosure of abuse. Ideally we would like employers to view the readiness of an employee to disclose threats and irregularities not as a source of potential danger (e.g. to the company's image), but as an activity that at an early stage can prevent accidents, fraud leading to financial loss, or damage to the firm's reputation.

At the societal level it is a question of creating a friendly climate in which a potential whistleblower will not face a dilemma: to expose himself to social ostracism or to take moral responsibility for staying silent about threats and their consequences. To this end it is necessary to change the public's mentality in such a way that responding to troubling situations – instead of negative associations – evokes positive connotations, such as courage, an uncompromising attitude, merit, duty, a sense of responsibility, respect, a sense of empowerment, etc. Social attitudes need to change – the target of social ostracism

should slowly move from persons disclosing irregularities to those responsible for them.

The reference point should be the United States, where the disclosure of abuses is seen as natural and correct behavior and even as an obligation. Whistleblowers are viewed as heroes and in some cases as celebrities<sup>97</sup>.

**Strengthening the legal protection of whistleblowers.** The legal environment should be reshaped in such a way that whistleblowers will not face the dilemma that if they disclose irregularities they may lose their professional standing and reputation or be subject to criminal responsibility for disclosing secrets protected by law or due to allegations of slander.

### 8.4.3. Proposed actions

These operational goals can be achieved through legislative, institutional and practical changes. Specific activities, completion periods, and responsible bodies are presented in the tables below.

#### 8.4.3.1. Legislative actions

Task	Period	Responsible
Strengthening the legal protection of whistleblowers in the workplace by implementing the following measures: <ul style="list-style-type: none"> <li>• prohibiting retaliatory action against a person who in good faith and in the public interest discloses irregularities.</li> <li>• recognizing retaliatory action against whistleblowers as a form of discrimination.</li> <li>• providing legal protection not only for disclosures of corruption cases, but also those concerning other threats to the public interest (e.g. the natural environment, occupational safety, financial abuses).</li> <li>• providing legal protection to a broad spectrum of persons performing work or services regardless of the legal basis of their employment.</li> </ul>	3 years	Ministry of Justice, in cooperation with Ministry of Labour and Social Policy

<sup>97</sup> A good example may be the three female whistleblowers honored in 2002 by Time magazine as "Persons of the Year": Cynthia Cooper, former head of the auditing department at WorldCom, who revealed fraud amounting to \$3.8 billion; Coleen Rowley, an FBI agent, who brought to light the fact that FBI employees ignored indications that a terrorist attack was being planned against the World Trade Center; and Sherron Watkins, who contributed to the disclosure of the financial scandal at Enron. The great significance of widespread social approval for whistleblowers in the United States is also shown by the fact that regulations concerning their protection are usually passed unanimously. As Tom Devine, an American activist for the protection of whistleblowers, has stated, declaring one's opposition to such a law would be political suicide for a congressman or senator.

<ul style="list-style-type: none"> <li>• providing legal protection to whistleblowers both in the public sector (including the special services, police, and prison system) and the private sectors.</li> <li>• giving whistleblowers the right to withhold personal data.</li> <li>• making it possible for whistleblowers to be temporarily reinstated to work for the duration of court proceedings.</li> <li>• leaving it to the sole discretion of the whistleblower as to whether he would like to return to work or would be satisfied only with compensation.</li> <li>• making it possible for larger employers to transfer a whistleblower to another equivalent position in the event he wins the court case. The obligation to consider such a request can be made dependent on the size of the company.</li> <li>• making it possible for a whistleblower to obtain full compensation for damages resulting from retaliatory action taken in connection with the disclosure of irregularities.</li> <li>• separating legal protection from the question of whether the whistleblower's allegations were eventually confirmed. Making legal protection dependent on acting in good faith. Providing a definition of "good faith" in accordance with Article 33 of the UN Convention against Corruption.</li> <li>• requiring employers to enable whistleblowers to safely and effectively disclose irregularities to the management of a company or institution by setting up internal whistleblowing channels.</li> <li>• instituting disciplinary measures against individuals undertaking repressive action vis-à-vis whistleblowers.</li> </ul>		
Widening the circle of actors having the right to appeal against a decision to discontinue an investigation or to refuse to launch an investigation to include whistleblowers.	1 year	Ministry of Justice

#### 8.4.3.2. Institutional actions

Task	Period	Responsible
Planning and implementing a pilot project aimed at introducing internal procedures in selected public institutions for disclosure of irregularities. Monitoring the effects.	1 year	MSWiA

**8.4.3.3. Practical actions**

<b>Task</b>	<b>Period</b>	<b>Responsible</b>
Planning and carrying out public campaigns designed to change social attitudes. It is important to show that the actions of whistleblowers have a positive effect on the interests of each citizen (employers, patients, students, drivers, entrepreneurs trying to win a public contract, local residents benefiting from technical infrastructure, etc.).	3 years	MSWiA
Adding the protection of persons working in a professional capacity to the responsibilities of the Human Rights Defender, providing training for employees of the Office of the Human Rights Defender belonging to its Team for Labour Rights and Social Security.	6 months	Human Rights Defender
Adding the protection of persons working in a professional capacity to the responsibilities of the National Labour Inspectorate (PIP), carrying out training for employees of district inspectorates.	6 months	Chief Labour Inspector
Conducting training for trade unionists.	6 months	MSWiA
Adding the protection of persons working in a professional capacity who disclose irregularities in the workplace to the training program of the National School of Judiciary and Public Prosecution.	1 year	National School of Judiciary and Public Prosecution

**8.4.4. Monitoring and evaluation**

<b>Operational goal</b>	<b>Performance indicator</b>
Changing social attitudes	<ul style="list-style-type: none"> <li>• an increase of at least 5% in the number of people having a positive opinion about whistleblowers in the workplace;</li> <li>• an increase in the frequency of media coverage concerning the issue of protection of whistleblowers, a change in the language used in publications to describe whistleblowers.</li> </ul>
Strengthening legal protection	<ul style="list-style-type: none"> <li>• implementation of regulations strengthening the legal protection of individuals disclosing irregularities in the workplace or professional environment;</li> <li>• a positive evaluation regarding the functioning of the regulations on the basis of information from the Office of the Human Rights Defender, the National Labour Inspectorate, labor courts, NGOs, and trade unions.</li> </ul>

