

POLAND

● Little or no enforcement

1.3% of global exports

Investigations and cases

In the period 2016-2019, Poland opened at least three investigations, commenced no known cases and concluded no known cases with sanctions.¹

The Polish Central Anti-Corruption Bureau (CBA) and the Latvian Bureau for Preventing and Combatting Corruption cooperated in 2018 in investigations of allegations of bribery of an official at the Riga transport authority, to secure a contract for nearly 200 buses and trolleybuses from Polish bus manufacturer **Solaris Bus & Coach**.² The CBA detained a company board member and commercial director in connection with an alleged payment of €800,000 (US\$914,000) to obtain the contract.³ The CBA stated that the money was to be laundered “in tranches under the guise of a payment for fictitious consulting services through a chain of subsidiaries based in Latvia, Cyprus, Hong Kong and China before [it] went to Riga”. There were plans to charge the two Solaris managers in Poland with acting to the detriment of the company and with money laundering, not bribery of foreign public officials.⁴ Allegations had surfaced in 2013 about

bribery in Riga involving the same bus manufacturer, previously named **Neoplan Polska**.⁵

According to a statement by the company **Ursus S.A.** in 2017, it was cooperating with the CBA in connection with the detention of two foreigners and a Polish entrepreneur. The company gave assurances that the investigation would not affect its operations on the African continent.⁶ In a subsequent statement in 2017, the company said it had won its biggest African contract, worth US\$100 million, for the delivery to Zambia of 2,694 tractors and 2,509 agricultural machines, together with equipment and spare parts, and setting up an assembly plant and 10 service centres in the country.⁷ In parallel, in an undated online statement, the CBA announced that it was investigating men claiming to have influence in government circles of an African country in connection with a Polish company's bid on a \$US100 million contract for the supply of agricultural machinery.⁸ The CBA said it had detained foreigners who wanted to ensure success for the Polish company's tender in exchange for US\$25 million. A large part of that amount was to be spent on bribes for African officials. The entire contract was financed by the Polish State Treasury within the framework of international agreements and aid programmes for Africa.

In 2015, Polish authorities questioned two managers of **Remontowa Shipbuilding**, at the request of Estonian authorities, concerning bribery suspicions filed by the Prosecutor General's Office in Estonia.⁹ In early 2019, in a pre-trial hearing, a Tallinn court was asked to consider leaving to Poland the trial of a former Polish Remontowa board member who had been charged in the case by the Estonian Prosecutor

¹ These numbers relate to the offences described in Article 228 § 6 and Article 229 § 5 of Polish Penal Code.

² <https://eng.lsm.lv/article/society/crime/mayor-suspends-head-of-rigas-municipal-transport-company.a302741/>; <https://www.eurotopics.net/en/211970/polish-bus-maker-suspected-of-corruption>

³ According to a CBA statement, https://www.baltictimes.com/eur_800_000_bribe_involved_in_rigas_satiksme_procurement_scandal_-_polish_anti_corruption_bureau/

⁴ The case has yet to go to trial, <https://cba.gov.pl/en/news/386,International-action-of-anti-corruption-services-CBA-and-KNAB-6-persons-detained.html>; <https://eng.lsm.lv/article/society/crime/knab-czech-and-polish-companies-implicated-in-rigas-satiksme-graft-case.a302919/>; https://www.baltictimes.com/eur_800_000_bribe_involved_in_rigas_satiksme_procurement_scandal_-_polish_anti_corruption_bureau/; <https://www.eurotopics.net/en/211970/polish-bus-maker-suspected-of-corruption>; <https://www.forbes.pl/wiadomosci/wiceprezes-i-dyrektor-w-solarisa-uslyszeli-zarzuty-od-prokuratora/xebtfc>

⁵ <https://fcpablog.com/2013/02/19/latvia-prosecuting-officials-in-daimler-bribery-case/>; <https://www.baltictimes.com/news/articles/33056/>. Solaris was acquired in 2019 by Spanish company CAF, https://www.caf.net/upload/accionista/CAF-2018_english-anual.pdf

⁶ <https://www.ursus.com/pl/informacja-prasowa/oswiadczenie-ursus-sa-w-odniesieniu-do-informacji-prasowych>

⁷ <https://www.ursus.com/en/news/the-biggest-african-contract-of-ursus>

⁸ <https://cba.gov.pl/en/news/160,25-million-for-influence-peddling.html?search=620556863362>; <https://www.cenyrolnicze.pl/?catid=0&id=7959>

⁹ <https://news.postimees.ee/3411361/polish-shipbuilder-doesn-t-agree-with-corruption-allegation>

General's Office.¹⁰ The allegations reportedly relate to bribery of officials at the Estonian state-owned Port of Tallinn in relation to a 2014 shipbuilding contract to supply two ferries.¹¹ The criminal trial in Estonia is ongoing, and an investigation regarding the case has been initiated in Poland.¹² Remontowa Shipbuilding stated in 2015 that it did not agree with the accusations of the Estonian authorities and had hired an Ernst & Young (EY) team of auditors specialising in fraud and corruption cases, which it said in 2015 had "found no materials that would corroborate the suspicion".¹³

Recent developments

In the last five years, substantial reforms made to the judicial and law enforcement system in Poland have compromised the independence of the judicial system and caused serious problems applying the law.¹⁴ These reforms have raised concerns within the European Union.¹⁵ The Minister of Justice, who is also the Prosecutor General, can dismiss presidents and heads of departments in the common courts. There are no clear rules for assigning cases to individual judges. In addition, the position of prosecutors has been strengthened – for example, by giving them more powers within criminal proceedings, including to block some court decisions. As such, there is likely to be a reduction in trust towards the Polish justice system and judicial decisions, and a questioning of their impartiality.

In June 2019, the Polish Parliament passed an amendment to the criminal code which provides for higher penalties for different types of offences, including bribery.¹⁶ The Polish President presented the amendment to the Constitutional Tribunal to assess its compliance with the Polish constitution. As at May 2020, the outcome was pending.¹⁷ Regulations on "extended confiscation" were introduced in 2017 to increase the efficiency of asset confiscation, especially in cases of fraud, tax evasion or money laundering. However, the Polish Supreme Audit Office recently reported that even though there is progress in the amount of confiscated assets, there is no coherent or comprehensive system in place and the recovery process has not been monitored and coordinated.¹⁸

In May 2020, the European Commission sent a letter of formal notice to Poland for having only partially transposed the 5th EU Anti-Money Laundering Directive.

Transparency of enforcement information

There are no published statistics on foreign bribery enforcement. Individual law enforcement authorities publish their own data, which is general. For example, in 2018 the CBA reported that it initiated 74 investigations and the police initiated 1,537 investigations related to corruption, but it is not known whether any of these relate to the

¹⁰ <https://news.err.ee/644229/polish-shipyard-board-member-accused-of-bribing-port-of-tallinn-executives>

¹¹ <https://biznes.trojmiasto.pl/Gdanski-watek-afery-korupcyjnej-w-Estonii-n93868.html>;
<https://www.gospodarkamorska.pl/Stocznie,Offshore/afery-korupcyjna-w-tallinie-zarzad-remontowej-shipbuilding-odpiera-zarzuty.html>;
<https://trojmiasto.wyborcza.pl/trojmiasto/1,35612,20466116,promy-z-remontowej-shipbuilding-w-aferyze-estonskiej.html>;
<https://news.err.ee/907911/port-of-tallinn-corruption-case-trial-to-begin-on-7-may>

¹² <https://news.err.ee/907911/port-of-tallinn-corruption-case-trial-to-begin-on-7-may>

¹³ <https://news.postimees.ee/3411361/polish-shipbuilder-doesn-t-agree-with-corruption-allegation>

¹⁴ See, for example the Acts on: the Supreme Court, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20180000005/U/D20180005Lj.pdf>; the National Council of the Judiciary, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19971210769/U/D19970769Lj.pdf>; the Central Anti-corruption Bureau, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20061040708/U/D20060708Lj.pdf>

¹⁵ https://ec.europa.eu/commission/presscorner/detail/hr/IP_19_1957; https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4987; case number C-192/18, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=219725&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4349149>. See also, "The Constitutional Crisis in Poland 2015-2016", Report prepared by Helsinki Foundation for Human Rights, August 2016, https://www.hfhr.pl/wp-content/uploads/2016/09/HFHR_The-constitutional-crisis-in-Poland-2015-2016.pdf; "Report on the state of rule of Law in Poland in 2018" prepared by Polish Bar Council and National Bar of Attorneys-at-law, http://obserwatoriumdemokracji.pl/wp-content/uploads/2019/03/NRA_file-reportpoland2019-26610.pdf

¹⁶ [http://orka.sejm.gov.pl/opinie8.nsf/nazwa/3451_u/\\$file/3451_u.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/3451_u/$file/3451_u.pdf)

¹⁷ <https://trybunal.gov.pl/sprawy-w-trybunale/art/10715-nowelizacja-kodeksu-karnego-postepowanie-legislacyjne-dopuszczalny-zakres-poprawek-senackich>

¹⁸ <https://www.nik.gov.pl/aktualnosci/odzyskiwanie-mienia-pochodzacego-z-przestepstw.html>; <https://www.nik.gov.pl/plik/id,21745,vp,24397.pdf>

corruption of foreign public officials.¹⁹ The Ministry of Justice annually publishes complex statistics on final convictions with information about the legal classification of charges and penalties imposed.²⁰ Some cases may relate to foreign bribery, but the law used means they will not be separately indicated in the statistics. No information is provided on mutual legal assistance requests.

Almost all Supreme Court judgements are published on the Supreme Court's website²¹ Judgements of the common courts – regional, district and appeal courts – are partially published on the Ministry of Justice website.²² There are no clear criteria to determine which decisions are published and which are not.²³

Beneficial ownership transparency

There is a central public register of beneficial ownership information. The law that introduced the Central Register of Beneficial Owners came into force in October 2019.²⁴ Companies which were entered into the National Court Register before 13 October 2019 were obliged to report to the Minister of Finance information on beneficial owners by 13 July 2020. The register is publicly available online.²⁵ There is no comparable register for trusts.

Inadequacies in legal framework

Companies do not face criminal liability for foreign bribery. A legal entity can be held liable only after a prior, binding conviction of a natural person, and any resulting sanctions imposed are not effective, proportionate or dissuasive. In a March 2018 statement, the OECD WGB said that Poland “still needs to take urgent steps to ensure companies can be held responsible for foreign bribery, even if the

persons who perpetrated the offence are not convicted”.²⁶ In 2019, the government submitted to Parliament draft legislation on criminal corporate liability. However, the draft legislation lapsed with the completion of the parliamentary term, and the government has not re-submitted it.

The OECD WGB has called for removal of the Polish Penal Code's “impunity” provision (akin to an “effective regret” provision), which allows perpetrators of bribery to escape punishment by notifying law enforcement authorities of the offence before the authorities learn about it.²⁷ Polish companies are also not subject to appropriate penalties for false accounting. A proposed Act on Transparency of Public Life, which would have required companies to introduce internal anti-corruption procedures and provide legal protection for whistleblowers, was discontinued. However, Poland has until December 2021 to implement whistleblower protection laws pursuant to the EU Whistleblower Protection Directive.

Inadequacies in enforcement system

Law enforcement agencies are not well informed about the activities of Polish businesses abroad. Lack of proper cooperation between Polish law enforcement authorities and other countries is one of the biggest enforcement inadequacies. There are insufficient safeguards in place to protect the CBA from politicisation, given the fact that its head is directly subordinate to the Prime Minister.

Recommendations

- Introduce criminal liability for legal persons and remove the requirement that companies can only be held liable after a prior binding conviction of a

¹⁹ https://cba.gov.pl/ftp/pdf/Zwalczanie_przestepczosci_korupcyjnej_w_Polsce_w_2018_r_.pdf, p.13.

²⁰ <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,40.html>

²¹ http://www.sn.pl/orzecznictwo/SitePages/Baza_orzeczen.aspx

²² <http://orzeczenia.ms.gov.pl/>

²³ The publishing policy is not coherent and is set by individual courts or the appellate division. If court decisions are published, they are published in redacted version (without full names of the individual and corporate entities involved).

²⁴ The Act on Counteracting Money Laundering and Terrorist Financing, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20180000723/O/D20180723.pdf>. The Act implements EU Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and other EU regulations.

²⁵ <https://crbr.podatki.gov.pl/adcrbr/#/>

²⁶ <https://www.oecd.org/newsroom/poland-must-make-urgent-legislative-reforms-to-combat-foreign-bribery.htm>

²⁷ <https://www.oecd.org/daf/anti-bribery/Poland-Phase-3-Written-Follow-Up-Report-ENG.pdf>, p.4

natural person • Impose an obligation on corporate entities to put in place compliance programmes covering anti-corruption and whistleblowing • Separate the roles of General Prosecutor and Minister of Justice to ensure independence of prosecutors • Strengthen safeguards against potential politicisation of the CBA • Ensure independence of the judiciary • Provide more resources for law enforcement authorities handling bribery and corruption matters • Raise companies' awareness of the importance of internal controls and compliance measures.