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**COUNCIL OF
THE EUROPEAN UNION**

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RESTREINT

**EVAL 1
ELARG 5**

REPORT

From :	the General Secretariat
To :	the Collective Evaluation Working Party
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Subject :	Preliminary draft country report on Poland

I. INTRODUCTION

In its analyses the Working Party has dealt with the progress made by each acceding country and has examined shortcomings which still have to be eliminated in order to catch up with the EU Acquis in the field of Justice and Home Affairs.

The first series of country reports pointed out the precise areas where the most serious shortcomings existed and where substantial efforts by the candidate country were still needed, while at the same time acknowledging progress already made and refraining from a final judgement, thus helping Member States in selecting programmes to finance (e.g. bilateral programmes, PHARE), as well as the Commission in adjusting the priorities and objectives of the accession partnerships and feeding the discussions on enlargement.

The point of departure for the present second series of country reports, whose structure has been refined, is to identify exactly where in the process of alignment the candidate country finds itself and what remains to be done, focussing on operational conclusions. The key elements of this new structure, reflected in each chapter, are :

- adoption of the “acquis”, including shortcomings,
- administrative capacity, including an assessment of structure, staff, resources etc. and
- implementing performance, covering issues such as quality, efficiency and independence.

The conclusions drawn at the end of the report are the result of extensive discussions within the Collective Evaluation Working Group on the basis of the information presented.

In line with this approach, all other relevant background information can be found in the thematic analyses-documents constituting the basis of these reports¹.

As the process of alignment and the collection of relevant data is a continuously evolving and ongoing process, the findings and conclusions in the present report cannot be considered final or exhaustive. Updates will therefore continue to be presented on a regular basis.

II. OVERVIEW OF DEVELOPMENT

A. Border security

The political developments and turmoil in Central and Eastern Europe in the late 1980s resulted in Poland having a frontier with an EU Member state in the west and with four successor States of the Soviet Union² in the process of transition. The division of Czechoslovakia in the beginning of the 1993 finalised the current situation. In four years time (1989 - 1993) Poland acquired 7 neighbour countries instead of the former three - the border situation had changed completely in a very short period of time.

¹ I.e. docs 14705/00 EVAL 59 ELARG 226 ; 14803/00 EVAL 61 ELARG 230 ; 5208/01 EVAL 3 ELARG 4 ; 5293/01 EVAL 2 ELARG 6

² One relic from the Soviet period is the border fence system still running along the whole ex-USSR borders.

1. *Formal acquis*

The adoption of the acquis related to border security has developed in Poland and the Polish authorities are very well aware of the remaining problems. The *Integrated Border Management Strategy* provided by the Polish authorities gives a good and very detailed view of the current situation and future plans in the field of border security. In its negotiation position, Poland has declared that border management will be fully prepared to apply EU (Schengen) requirements by the end of 2002.

The legal status, structure and tasks of the Border Guard are defined in the Act on the Border Guard (and its amendments), which came into effect on October 1990. The Immigration Act (1997) and the Act on the State Border Protection (1990) are also legal bases for the work of the Border Guard.

The powers of the border guard are relatively sufficient. However, there are still some areas where clarification is needed. One of these is the question of jurisdiction, which is now territorially limited. The Border Guard is also not allowed to check (open) TIR-lorries or -containers without customs presence.

Poland's non- harmonised visa policy has a direct impact on border security. Border crossing procedures and practices, which are also linked to the neighbour countries' citizens visa free travelling, do not yet meet the requirements set out in the acquis. These practices with Russia, Ukraine and Belarus are based on the agreement concluded with the Soviet Union in 1985.

Even when relations with neighbouring countries are practised in a normal climate, there is not yet (except with Germany) an atmosphere of genuine reciprocal trust between the border authorities. There is also evidence that illegal immigrants have been smuggled across the border by border guards of neighbouring countries. According to one MS' report based on Polish comments, co-operation with neighbours other than Germany and Lithuania is, in practice, at a very early stage. This is however quite understandable since the political, economical and practical situation in the ex-Soviet states is unstable and unpredictable and the co-operation with the Ukraine, Belarus and Russia can be described as difficult. The Poles are actively trying to improve this co-operation.

Co-operation is one of the most important elements of border security, but the modalities of co-operation are to some extent different when comparing the future internal borders with the future external borders. One of the planned future co-operation models with the Ukraine is said to be an alternate shift of duty -; this is not possible, since the EU-countries must be fully responsible for the EU's external border control.

Co-operation between the Border Police of Germany (BGS) and the Polish Border Guard (PBG) is effective and includes several types of modern cross-border co-operation models. These models also serve as a good basis for future "internal border" co-operation. One reason for the good and improving co-operation is that there are specially trained and organised border police organisations on both sides of the border. This co-operation includes joint patrols, joint operations, liaison officers, common information points etc.

2. *Administrative capacity*

The institutional development and structural reform of the Polish Border Guard began with the adoption of the Act on Border Guards on 12 October 1990. Before that the PBG used to be a Soviet-type military organisation (Border Protection Military Troops) without real professional skills or equipment for modern border management and combating transnational crime. The PBG, as it is today, was established on 16 May 1991.

The PBG is responsible for border management in Poland. It is subordinate to the Ministry of the Interior and Administration. The PBG is considered a specialised border police-type service. The PBG is responsible for all borders – different types of land borders, sea border and border crossing points. In principle the basic structure of the PBG is functional. However, the organisational division between border checks and (green) border surveillance seems to hamper efficient implementation of border security especially at local level. This differentiation in two areas of basic border guard work is reflected throughout the whole organisation, including staff training. The differentiation was understandable in a time when there were great numbers of non-professional conscripts in the PBG, but the progressive arrival of professionals should have led to a modification of the organisation. The current number of conscripts is about 3000 but according to Polish sources the PBG will be fully professional before the planned date of accession.

According to some reports, the Polish security system is characterised by a multitude of separate departments, which are sometimes in competition with one another. In some cases there is neither co-ordination of procedures nor exchange of data between security authorities. According to Polish opinion, co-operation between law enforcement authorities is good.

According to two expert reports, it has been very difficult to make a realistic analysis of the real efficiency of the PBG as regards the *number of staff* since there are no exact numbers of staff detached for different border sections and border crossing points. These same sources state that there is an average 35 % lack of staff at local level. The PBG is still understaffed, especially in the eastern border areas. In order to solve this problem, the PBG has planned to recruit 4000 new officers by 2001. The training of 4000 officers in a very short time is a huge task. It is also clear that it takes time before these newcomers have gained sufficient experience from practical work.

The situation regarding *equipment* available to border guards has improved remarkably during recent years. There are however still serious problems in this field.

The basic *infrastructure*, like accommodation as well as working conditions, are far from an acceptable level, especially in the eastern parts of the country. Indeed, there is a clear need to improve living and working conditions and thus also improve the quality of service, morale and staff motivation. It is also important that proper infrastructure be available in order to suitably protect equipment.

The tactical mobility at land borders has improved rapidly due to big investments. The situation is worse at the sea border since many of the 33 boats are very old and impractical for patrolling. Operative mobility and operative surveillance ability is limited since only one helicopter and 2 aeroplanes are available. These aircraft have limited night vision equipment. The Airforce of Poland provide some aerial surveillance for the PBG in the sea area.

Night vision surveillance is very limited. There is some old night-vision equipment for patrols, but this equipment is far from modern. There are no integrated modern surveillance systems for green border surveillance.

The PBG lacks proper communication systems and computers. Border guard stations do not normally have any computers or connections to the network. The biggest international border crossing points are in a better position, having some computers connected to the national network. Some of these links are however very slow. There are no on-line connections between the consulates and the national databases.

3. *Implementing performance*

The *basic structure* of Polish Border Guard is functional. This organisation is an independent border police type formation with a functional commanding system. The PBG is responsible for all national borders under the command of the Ministry of the Interior and Administration, also responsible for justice and home affairs. Given the fact that one solid organisation is responsible for all border security tasks it is possible to create an effective national border security system. This solution also provides a good basis for international co-operation at all levels. Having its own budget is important for a stable and properly prioritised development of border security.

The use of professional staff of the PBG still seems to be oriented westward. There are more professional border guards at the western borders of Poland than at the eastern, future external borders. The PBG encounters several problems as it tries to improve and enhance the border security system at the external borders. It is difficult to find new recruits since the basic infrastructure of the daily work as well as accommodation possibilities for families are very poor. It is also difficult to find jobs for spouses. There is also a considerable lack of infrastructure in the east.

The most efficient part of the Polish border security system is at the German-Polish border. Actually, there are two border security organisations working closely together in order to combat transnational crime at this border. The results have been quite good and the most of illegal immigrants in Poland have been caught at this border. Unfortunately the Polish eastern borders are not at all in the same conditions. It is difficult to accept the Polish conclusion that the decreased numbers of repatriated illegal immigrants from Germany proves that their eastern borders are now efficiently guarded.

The small number of illegal immigrants caught at the eastern border may - to some extent - have some with the improved situation at the western borders but the real reason for these small numbers may be the insufficient border security system together with highly corrupted border authorities (border guards, customs) in neighbouring countries.

Territorial as well as functional limitation of operative powers hampers the efficiency of Polish border authorities to combat transborder crime. The continuity of criminal investigation, search and surveillance is endangered. The modern border police forces should be able to work without territorial limitations. It is of course clear that all additional powers must be well explained and the staff properly trained. The limitation of powers is also linked with the national authorities' internal struggle for tasks and powers. The lack of a real leading authority responsible for the fight against illegal immigration as a whole (also in the mainland) is a serious problem and gives rise to concern. The foreseeable development of the migratory phenomena will require, in the long term, an increase in surveys inside the territory, but the current distribution of the competencies could constitute a barrier to respond satisfactorily to this development.

The operational capability as well as the flexibility of staff usage is hampering since units responsible for green border surveillance and units responsible for border checks are not working together closely and they are not under the same command.

Patrols' efficiency is suffering from poor personal equipment. Very limited night-vision ability provides advantages for illegal immigrants and their guides operating at night. The absence of all-weather clothing for hard conditions decreases the motivation and operational ability of patrols.

The basic training of the border guards is relatively short. The training of border guards as well as officers is separate for border traffic control and border surveillance tasks. This distinction means that the usage of staff is limited and the overall understanding of border security is equally limited. The lack of experienced officers will be a reality during the next years since the PBG will take on board thousands of new recruits in a relatively short period of time. Germany is a twinning-partner of Poland. The consulate's staff responsible for visa issuing is not properly trained or equipped to check whether an applicant's documents are falsified or forged.

4. *Summary*

Since the last country report much has improved in Poland. The main problems Polish Border Guard faces are understaffing, lack of equipment and a very poor infrastructure at the eastern borders. Sea border surveillance also gives rise to concern. The historical burden weighs heavily on the Polish border security system - ten years ago there was no need to concentrate border guards at the eastern borders and therefore the basic infrastructure does not exist at these borders. The Poles have recognised most of these shortages and preparations for improvement are on their way in several areas.

Effective implementation of border police work requires sufficient legal powers. There is a danger that territorially limited powers as well as the lack of power to check TIR-lorries hamper the efficiency of border guards. It also seems to be that in practice there is no leading and specialised authority responsible for combating illegal immigration. Given its current tasks and structure, the Border Guard, provided with sufficient powers, could be a reasonable choice for fulfilling this role.

B. Migration

1. Formal acquis

Visa policy. Currently, citizens from 15 countries subject to visa in the Schengen Space, may enter Poland without a visa. The pace of alignment (if any) is very slow, compared to all neighbouring applicant countries, and compared to more promising announcements.¹ Of course Poland has announced that its adjustment in visa policy would be made only "*gradually*". But the steps have been rather symbolic until now.

¹ Armenia, North Korea and Vietnam were placed under visa-regime in 1997. Since then, the only achievement was to (take the decision to) require visas from Kazakhstan, Moldavia and Mongolia in 2001.

In addition, despite the fact that Poland stated it "*accepted*" this part of the Acquis, it is not yet clear what future treatment is intended for Belarus, Russia and Ukraine. For instance, according to Polish documents, currently 11.5 Million citizens of these Eastern countries enter its territory each year, but according to the same documents Poland expects to have to issue a total of 3,5 Million visas (only) after accession. This requires further explanation.¹

Legislation on admission. The Act on Aliens of 1997 has widely aligned Polish legislation to the EU Acquis as far as admission and expulsion are concerned. All or part of the remaining shortcomings ² are likely to be dealt with by the amendments currently under discussion in Parliament. However, this will require further evaluation, all the more important since Poland is no longer just a transit country.

Finally, there are no readmission agreements with Belarus and Russia, thus hampering expulsion of notably those non-nationals who are arrested beyond the border, and sanctions against illegal immigration inland are insufficient: illegal stay is punished by a mere fine, and employing illegals is not punishable at all.³

2. *Administrative capacity*

The consulates. Whereas Poland currently issues, under obsolete conditions, 200.000 visas yearly, it expects to have to issue fifteen times more (3.5 Million) after accession. The degree of preparation is clearly too low.⁴ Poland intends to require visas from Belarus, Russia and above all the Ukraine from an (uncertain but close to the accession) date onwards. Current training and equipping programs will permit to fire blanks only.

¹ In addition, Poland requests no derogation, but its wording leads to confusion: "The adjustment of visa politics is however to be made...not without considering the political implications for relations with the given group of countries as well as future consultations with the European Union".

² Length of visas, current possibility to obtain a work or student residence permit without prior consular visa, too vague provisions on the right to family unification, on long-term residence status ("permission to settle") and on independent work, and the level labour control prior to granting a work permit.

³ The EU Common position invited Poland "to inform the Conference of the content of the measures which are planned for aligning fully with the "acquis" on migration, notably on prevention of illegal immigration and employment..". The Polish replied "As regards employment permits, this problem belongs to the area of "free movement of persons." However, the Polish "position paper" in this field, as well as the "response to the EU common position: chapter 2: free movement of persons", are both silent on this issue.

⁴ Notably, establishment and equipping of consulates. Besides, equipping, staffing and training the Polish consulates in Kazakhstan and Mongolia, where visas are to be introduced in 2001, is clearly not a preparation to scale.

Inside the country. A number of current identified shortcomings are likely to be dealt with in the short term: i.e. the lacking of staff at the Department for Migration and Refugees, the lack of spaces in deportation centres (leading to a "waiting list" of aliens to be expelled), and the unsatisfactory living conditions in the transit zone at Warsaw Airport.

More worrying however is the degree of preparation as regards immigration management. Legislation provides for an accurate and satisfactory distribution/delimitation of tasks between the authorities (Police, Border Guards, voivodships, Ministry, Courts). What is missing, are cooperation structures (e.g. there is not a single body in charge of such a transversal matter as illegal immigration) and above all information technology supporting such co-operation. Current information systems are essentially manual. The scant computerised files, if any, are not nation-wide nor shared between authorities. Only 25% of the police stations are connected to databases. The Police registered fingerprints of only 500 foreigners, moreover manually, in 1998. All necessary computerised files are duly provided for in legislation, including data protection, but do not exist in actual practise at present.

Poland has, since several years, been planning to establish an "*Office for Repatriation and Aliens*", but this measure will be meaningless if not accompanied by shared national databases accessible by voivodships, local units of Police and Border Guards.

The fight against illegal work is nearly non-existent. Moreover, illegal work, already considerable¹, is not likely to decrease after accession, maintained notably by the (already important and still increasing) gap in wages between Poland and its eastern neighbours. In addition, seasonal work (which could be a substitute, to a certain extent) is not organised.

Risks for the future. The bulk of the problem still lies ahead. Among 90 Million aliens entering Poland each year, 11 Million are not visa-required whereas they should/will be so. According to the Polish authorities themselves, "*no less than 45% aliens apprehended for illegal crossing in Germany arrives legally to Poland*". The main illegal trend in the future will very likely be coming from the eastern neighbours. A reliable evaluation can only be done after imposition of visas.

¹ Irrespective of the informal markets or bazaars (petty traders) at the eastern borders.

3. *Implementing performance*

At the consulates, the situation cannot be seriously evaluated (e.g. as regards corruption) as long as eastern neighbours are not visa-required.

At the borders, the current very widespread issuance of visas at the border, non-compliant with the *acquis*, is likely to soar when Ukrainians, Belarussians and Russians become visa-required, thereby providing increased (new) opportunities for corruption and weakening the system.¹ Poland should regulate and control these practices strictly.

The work of the voivodships suffers under the above-mentioned lack of co-operation structures with the Police as well as the lack of information technology, e.g. as regards the management of invitations, expulsions and denials of residence permits for reasons related to public order. Moreover, the voivodships will have to be evaluated again, once the planned legal provisions restricting or re-organising their - currently wide - discretionary powers to grant visas, residence permits without prior consular visa, family unification and permission to settle, are in place.

As regards illegal immigration, the Polish authorities consider the number of readmissions at the German-Polish border as a relevant barometer. They note that these numbers have decreased, and consider it to be a consequence of their actions during the past few years. However, this barometer is an imperfect one, since many other reasons may also explain such an evolution. Anyway, many reports confirm and stress the significant progress made in combating illegal immigration during the last years.

There is however a striking contrast between the accurate and substantial data on aliens apprehended at the border or refused entry, on the one hand, and absence of figures on activities inland, on the other hand. Improvements have been noticed at the borders rather than inside the territory. Except very recent punctual police operations, illegals can hardly be traced once they are in the country. Data on expulsions, air removals, arrested traffickers or sanctioned employers, if any, are very limited compared to those of Member States².

¹ In addition, the risk of "*smuggling of persons and goods with acquiescence or assistance of neighbouring border services*" is already well known in Poland.

² Data on expulsions (irrespective of readmission at the border) are 7 to 30 times bigger in Austria, Belgium, Germany, France and Netherlands.)

4. *Summary*

Polish visa-policy is not aligned, and looks as though it will not be until the eve of accession. The consulates are not prepared, although Poland itself expects a fifteen-fold increase in visa-issuance.

Legislation, although broadly aligned, requires amendments on admission and sanctions.

The necessary co-operation structures and above all information technology for implementing the *acquis* are lacking. The number of readmission from Germany has decreased; progress has been made in combating illegal immigration, but at the borders rather than inside the territory, since illegal immigrants can hardly be traced once they are in the country. This is all the more worrisome since the bulk of the problem is still to emerge (when eastern neighbours become subject to visa). The fight against illegal work is non-existent.

C. **Asylum**

1. *Formal aquis*

The formal *acquis* is to a large extent in place following adoption of the Aliens Act of 25 June 1997. Most of the remaining shortcomings¹ are dealt with in the draft Law currently under discussion in Parliament but further monitoring is needed whether the draft Law will be tabled without further amendments.

¹ Lack of formal right to a personal interview prior to a denial of admission to the procedure, unclear definition of what is a "manifestly unfounded application", unclear consequences of the failure to meet the conditions (time, place) for submitting an application, no formal list of safe third countries, no provisions on temporary protection, on the burden of proof and the benefit of the doubt, on identification of unaccompanied minors, on sending data abroad in the context of the Dublin Convention and on subsidiary protection.

2. *Administrative capacity*

The knowledge of asylum issues at the central level raises little concern¹ but Border Guards need further training. The staff at the Ministry and the housing centres are well adapted to the currently relatively low number of applications processed (3000 per year), but staff would be insufficient in case of an increase in applications occurring after accession, due notably to the implementation of the Dublin Convention.

The length of proceedings is already worrisome (far from the theoretical three months). Besides, the lack of a list of safe third countries and safe countries of origin prevents the actual use of accelerated procedure provided for by legislation.²

The still unsolved issues are to be found among the accompanying measures. The funding of legal aid and of Integration Programs for Refugees is not yet settled³. Swift identification of minors is lacking, and the living conditions in the transit area Warsaw airport are still unsatisfactory.

The very poor level of preparation for implementation of the Dublin Convention is due to the above-mentioned (See Migration part) lack of shared on-line information systems.

3. *Implementing performance*

The whole formal asylum procedure is, by and large, organised in Poland like in the EU, but not much comes out of it. Although one should of course be prudent with comparisons, as well as in drawing conclusions therefrom, the rate of recognition of refugees in Poland, since 1998, is the lowest in Europe. Absence of rules on the burden of proof in the asylum procedure could be one reason. The actual independence of the recently created Refugee Council must also still be evaluated. But there could also be other reasons.

¹ For example, case law and administrative practice dealt with the main legal shortcoming arising from the Law of 1997 properly and speedily. This was related to the conditions (time, place) for submitting an application. The unclear consequences of the failure to meet these conditions could have led to expeditious denials of access to the procedure, but in practice, following a ruling of the Supreme Administrative Court, these deadlines are not used as a ground for refusal of proceeding the application.

² If the applicant comes from a safe third country/safe country of origin and his application is manifestly unfounded, Border Guards may detain him during 7 days and prompt, within this lapse of time, a ministerial decision to "deny the initiation of the procedure".

³ These activities are totally care of by NGOs willing to diminish their help. An Ordinance on Integration of December 2000 will probably increase the State involvement in this field.

Many asylum-seekers file their application only when readmitted from Germany or otherwise stopped by the police. 80% of all decisions in 1997 were to state that application was "to be left unconsidered" because the applicant had disappeared. The beneficiaries of an integration program for refugees left Poland after some months. NGOs themselves stress the "misuse" of asylum procedures in Poland. All this may nourish among authorities, as in other applicant countries, cynical and negative attitudes towards asylum. Therefore, Member States should stress issues such as accelerated procedures, Eurodac, expulsion of rejected applicants and actual integration of refugees in order for all to be able to see asylum in a more balanced way.

4. Summary

The formal *acquis* is to a large extent in place, but further monitoring is needed whether the draft Law on Asylum will be tabled by the Parliament without further amendments. Administrative capacity is sufficient, at least for the currently low number of applications processed. However, the State's financial involvement in legal aid and integration of Refugees is weak. Preparation for implementing the Dublin Convention suffers from a lack of information technology concerning all the future involved bodies.

Although one should be prudent in such comparisons, the percentage of recognition of refugees, since 1998, is the lowest in Europe. The acknowledged "misuse" of asylum procedures by many applicants (who seek the protection of Poland in order to facilitate their travel westwards) might play a role therein. Efforts should therefore be made in the fields of accelerated procedures, preparation for Eurodac, expulsion of rejected applicants and actual integration of refugees.

D. Police and Customs

a) Police

1. *Formal acquis*

With regard to policing, Poland continues to improve its legislative and organisational framework, particularly concerning the development of enhanced co-ordination of police activities and appropriate agencies in the field of combating organised crime.

In its negotiation position, Poland has declared that the police will be fully prepared to apply EU legislation by the end of 2002.

The Europol Joint Supervisory Body (JSB) is of the opinion that on the basis of the report by Europol¹, no obstacles exist for Europol from a data protection perspective to start negotiations with Poland to prepare an agreement on the transmission of personal data.

In general however the JSB notes substantive problems in the present data protection legislation and practise and agrees with the list of problems in the report drawn up by Europol, especially two points not mentioned in the conclusions: the lack of specific provision for the processing of sensitive data and liability.

2. *Administrative capacity*

In total, the police have approximately 98.000 professional policemen, which represents 95% of the required staffing.² In addition, 1.200 are conscripts. The police also have approximately 18.000 civilian employees. With a population of around 38.5 million, Poland has 255 police officers per 100.000 inhabitants.

While the establishment of the National Criminal Information Centre and the Central Bureau of Investigation may reinforce the co-ordination and operational response to drug trafficking and organised crime, there still seems to be some overlapping in the work carried out by the State Security Office and the "Team for the co-ordination of agency actions in the supervision of the fight against organised crime".

Poland still lacks a Financial Intelligence Unit, although such an institution was planned as far back as 1996 in the structure of the Ministry of Finance.

¹ Europol's data protection report on Poland, including the opinion given by the Europol Joint Supervisory Body, document 14147/00, LIMITE, EUROPOL 43, dated 5 December 2000, was submitted to the Article 36 Committee (14 December 2000); COREPER/COUNCIL.

² Information as of September 2000

Many experienced policemen left the police at the start of the 1990s. Training new officers to a professional level to fight general crime and in particular organised crime as well as adapting remaining staff to an appropriate level to fight against new types of crime, including economic crime and money laundering, requires much effort and time.

Poland considers that the technical equipment still requires upgrading.

3. *Implementing performance*

As stated in the first preliminary report, organised crime is a major problem in Poland, and the fight against it is a priority in Poland's Accession Partnership. According to Polish authorities, the organised crime situation is not under control. Some Member States are of the opinion that organised criminal groups have a firm grip on society and that there are examples of this in practice. Among the activities of these groups are the theft and smuggling of vehicles, production of and trafficking in drugs (especially amphetamines), extortion of protection money (e.g. from the owners of hostess agencies, retail outlets, restaurants and wholesalers) and robbery (a particularly frequent recent phenomenon are attacks on heavy goods vehicles carrying valuable cargo).

The number of offences known to the police continued to increase and in 1999 there were about twice as many crimes per single inhabitant as in 1989. Crimes of a violent nature are still on the increase.

Poland does not yet have a formal national drug strategy. The setting up of a national focal point for the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) is under consideration.

In 1999, 19 large "factories" of "Polish heroin" and 8 clandestine laboratories of amphetamine (in 1998 the number was 4) were dismantled. Early 2000, 7 clandestine laboratories producing amphetamine were dismantled. It is estimated that there are currently between 10 and 20 clandestine amphetamine laboratories operating in Poland.

For a very long period, law enforcement agencies appeared to be quite powerless when it came to detecting and gathering evidence in the economic area. This was due to a number of factors, including first: short-sighted organisational changes (e.g. the abolition of vertical structures in the police charged with economic crime), second: lack of specialist training and expertise on the part of law enforcement agencies and the justice system (in particular, a widespread ignorance of commercial law) and third: outdated and highly inadequate legislation. Official data on economic crime in Poland still fail to reflect anything like the full extent of the problem. On the other hand, the last few years have seen a certain improvement in the area, both as regards the detection and the effective pursuit of these crimes.

As in other countries, there are attempts by organised crime to make inroads into legitimate business; partly to launder unlawfully gained assets, which indicates that there are fairly close ties between economic and organised crime.

A particular source of concern are reports of attempts (successful, on occasion) by criminal organisations to infiltrate law enforcement agencies. Up until 1999, there had been no convictions for any money laundering offence in the time since October 1994 when money laundering was established as a separate crime. In the same period however, numerous reports had been made to the relevant authorities and money laundering cases have been investigated. No official data are available. In 11 investigated cases (out of 61) the police considered they had sufficient evidence to bring the investigation before the Prosecutor.

Juvenile delinquency is a matter of concern; it has experienced a sharp increase over the last decade. Police data indicate that the proportion of juveniles (i.e. 13 - 17 year olds) suspected of involvement in crime stands at approximately 15%. Juvenile crime is increasingly violent. There is no doubt that changes in juvenile delinquency in the 1990s have been not merely quantitative, but also qualitative. However, contrary to commonly voiced opinions, the increase in juvenile delinquency is not greater than that of crime in other age groups (the largest growth rate is observed in the 21-24-age bracket).

b) Customs

1. *Formal acquis*

With regard to Customs, a "Strategy of Activities to be Taken by the Polish Customs Administration until the year 2002" has been prepared and Poland has declared that by the end of 2001 its customs administration will have achieved full capability of functioning on the same level as EU members.

2. *Administrative capacity*

A Memorandum of Understanding programme between the customs authorities and business organisations to combat drug trafficking still needs to be developed. The preparation of agreements with the Central Customs Inspection Board and with carriers is pending: ZMPD, LOT, and BA.

Poland has yet to introduce an integrated computer system compatible with the Customs Information System (CIS). The implementation of the IT strategy for customs, adopted in April 2000 has commenced. The development of a risk analysis system is a priority in order to align with EU standards and the central board of customs has developed a handbook on risk analysis.

3. *Implementing performance*

4. *Summary (Police and customs)*

While the establishment of the National Criminal Information Centre and the Central Bureau of Investigation may reinforce the co-ordination and operational response to drug trafficking and organised crime, there still seem to be some overlapping in the work carried out by the State Security Office and the "Team for the co-ordination of agency actions in the supervision of the fight against organised crime".

There is an urgent need to create a Financial Intelligence Unit to collect reports about suspicious transactions, carry out full analyses of the money laundering situation as well as co-ordinate activities at national level and regarding international co-operation. Overlapping activities in the area of co-ordination and among operational services competent for money laundering offences should be identified and removed where possible.

Poland should continue its efforts to adequately train police officers to fight organised crime and in particular training specialist staff to deal with financial investigations and cases related to laundering of assets from crime. There is a specific need to train future staff of the Financial Intelligence Unit in the above-mentioned economic area as well as in analytical and statistical work.

A national drug strategy is needed.

With regard to customs, Poland needs to develop a Memorandum of Understanding Programme between the customs authorities and business organisations to combat drug trafficking. Also an integrated computer system, compatible with the Customs Information System (CIS), has to be introduced.

E. Justice (including human rights)

1. Formal *acquis*

With the new Criminal Code, Poland has aligned its legislation significantly to EU standards. Nevertheless, the concern to increase the effectiveness of justice in combating the most serious forms of crime has led to the creation of a series of exceptional procedures outside the normal legal framework. Information is needed on their practical effects and on the question whether they respect the rule of law¹.

¹ This applies to Article 335 of the new Criminal Code, which allows the public prosecutor to ask the court, with the consent of the accused, to hand down a sentence with extraordinary remission for an offence punishable by a maximum of 5 years' custodial sentence, without holding hearings; and the Article in the new Criminal Code which allows the accused to submit willingly to a particular sentence for an offence punishable by a maximum of 8 years' custodial sentence, without a hearing, based simply on the production of the documents annexed to the charge or produced by the parties. The consent of the parties and of the prosecutor to their implementation provides no guarantee against possible abuse.

A number of Conventions has not yet been signed or ratified¹. With regard to the Agreement on Illicit Traffic by Sea implementing Art. 17 of the Convention, Poland stated that it is not going to accede to it and that its adherence would be ungrounded since this legal Act does not apply in the EU Member States. It furthermore stated that most of the drug smuggling takes place by land, not by sea. In respect of combating drugs, the relevant legislation on the prevention and prosecution of money laundering has not yet been adopted by Parliament. The same goes for the establishment of the Council for Counteracting Drug Addiction foreseen under the Law of 1997.

The relevant provisions of the Criminal Code need to be amended in order to make the fight against corruption more efficient.

Information is needed regarding a number of Community Acts and Conventions related to civil law matters.

The continuous government support to EU membership has enhanced a renewed drive to adopt the necessary legislation to harmonise Polish law with the *acquis*. Within Parliament new Committees on European Law have been created on a cross-party basis to oversee the adoption of EU legislation and a new approach was taken on to speed up this process.

2. *Administrative capacity*

Since the start of the administrative judicial reform (1989), all adjudicative organs other than courts have been dispensed with while the courts' sphere of competence has enlarged accordingly. Consequently, the courts' burden has increased enormously².

¹ Inter alia the CoE Corruption Conventions. Poland has not yet ratified the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. Upon ratification, it will have to provide for enforcement of foreign criminal sentences which will require a decision of a Polish court. The European Convention on the International Validity of Criminal Judgements and the European Convention on the Transfer of Criminal Proceedings in Criminal Matters have not been signed: Poland stated that it is ready to accede to them in the same way as the Member States, i.e. only if these become a standard widely accepted by the MS. viz Analysis and Poland's Reply to the EU Common Position.

² The number of cases heard tripled from 2,000,006 in 1989 to 6,614,000 in 1999.

The court system consists of the common courts of law (288 cantonal; 44 district¹ and the appeal courts), the Supreme Court, specialised courts and specific judicial arrangements to deal with juvenile delinquency. In order to reduce the chronic delays and backlog of cases, a new layer of jurisdiction was introduced in 2000 to deal with 'petty cases' using a simplified procedure. Around 200 local civil and criminal divisions² were created to hear certain types of fiscal³, criminal and civil offences⁴.

Under current criminal procedural law, minor offences are judged by citizens who are not professional magistrates, and the charge is brought by a senior police officer. While such a jury cannot impose custodial sentences of more than 3 months, the composition hardly seems to provide satisfactory guarantees for the accused. The 1997 Constitution does stipulate that within 4 years all minor offences will come within the jurisdiction of the courts.

The Military courts, which still play a part in the criminal justice system, currently judge not only offences committed by military personnel on active service, but also ordinary criminal law offences committed by such personnel. The judges of these courts are military personnel who are not magistrates. The transfer of jurisdiction over members of the armed forces in general criminal matters from the military to the civilian courts⁵ has been suspended for 5 years. Moreover, in certain cases military courts also apparently have jurisdiction over civilians. Information is needed on their role and the transparency of their activities.

A number of reform measures have been undertaken in the last few years. Their implementation is at various stages of completion; some are currently being implemented, others are still to be put into the appropriate legal framework, or supplied with appropriate financial resources.

¹ Former Voivodships

² Which are within the lower rungs of the civil judicature

³ Up to 2 years of imprisonment

⁴ Civil claims below 5000 Zloty

⁵ Provided for in the new Code of Criminal Procedure

The Act amending the Code of Civil Procedure, the Act on Pledges by Registration and the Act on the Register of Pledges introduces significant changes in civil procedure in terms of organisation and procedure. It foresees the creation of a separate and new *simplified procedure*, which is applied in the so-called 'petty cases', it limits the possibilities of filing a cassation in certain categories of cases and sets up a court notice delivery service. Changes aiming to simplify the criminal procedure are also being prepared.

The *changes within the organisational structure* of the common law courts should make its operation more efficient, easier to manage, transparent and accessible to citizens¹. A draft bill on the statute of civil courts should contribute to their better performance by changing the judicial structure as a whole and the courts' organisational model. It provides for the creation in district and appeal courts of a separate administrative division -headed by the Court Director- competent to deal with all financial and economic matters². It will strengthen the supervisory activity and enhance its effectiveness by broadening the powers of the court presidents and of the Minister of Justice in this area. However, any such changes must be drafted and implemented in a way that fully respects the principle of independence of judges and courts³.

The Public Prosecution services have been re-modelled and placed under the control of the Ministry of Justice. With the territorial reforms, 17 regional prosecutors offices were established. In order to reduce the delays and backlog, the Public Prosecutor's Office (PPO) has been strengthened through training and increase in staff. Although in general independence of the judiciary continues to be respected, concerns were expressed in several reports about the placing of the PPO under the Ministry of Justice given the importance of guaranteeing independence of the judicial process from political pressures. One report states that the PPO is headed by an active politician and that this creates at least the appearance of an improper link with the decisions that have been taken to remove prosecutors believed to be honest from particular cases. Doubts are also expressed about the Office staff⁴.

¹ They provide for the division of the biggest organisational units and the transfer of part of the cases which now fall within their competence to other units. The smallest units will be liquidated. Thus, a structure will be created including, at each of its organisational levels, medium-sized units of comparable dimensions and the same scope of competence.

² This should relieve presidents of the court, division chairpersons, and judges from having to attend numerous non-adjudicative tasks.

³ Judges have expressed their hesitations on this matter

⁴ There are perceptions that papers get lost, and that some genuine cases against highly placed individuals are not prosecuted, or when prosecuted, are not concluded.

Although some progress has been recorded in the (EU Law) training of judges, significant further efforts are expected to improve the status of judges, prosecutors and officials. Training -currently not nationally organised- is reported to be both sporadic and lacking uniformity. A school for judges is planned to open taking over at least the in-service training.

As the income of judges is relatively low, many judges leave their profession for better paid jobs elsewhere in the legal profession. The low salaries pose a risk to the efficiency of Polish justice, even of corruption of officials working within it¹. Rather than being seen as the crown of the legal profession and an essential arm of the state, judges are low-paid and ill-respected. Poland recognises the need to strengthen the judges' status by increasing the remuneration but budgetary limitations make it impossible to do so at once. The draft bill on the statute of civil courts introduces a new system for hiring judges and provides for a greater differentiation of their salaries.

The question of the number of judges is less crucial than their excessive workload, mainly since tasks which could be delegated to registrars and secretaries are carried out by the judges themselves due to insufficient manpower². The salaries of their assistants/secretaries remain most inadequate to attract high quality staff for any length of time. The management of the courts' budget, carried out by each court president, is an extremely difficult exercise on a day-to-day basis. Some first steps have been taken to *improve the professional and financial status of the administrative court staff*³. The post of Court Registrar was established to lighten the judges' workload⁴. As the new post is gradually being introduced, today the work is still done by both judges and court registrars.

Efficiency and the working conditions of the courts' staff is hampered by the outdatedness of some courts and the inadequacy of essential services⁵. The Ministry of Justice has prepared the "Plan for Computerisation of the Justice Sector" to be carried out within the justice administrative system, particularly in the courts. The public prosecutor's offices responsible for the fight against organised crime are increasingly computerised with the aim to create a country-wide computer system to assist their work.

¹ However, the Criminal Code does contain harsh penalties for corrupting officials: 12 years for passive corruption and for active corruption 8 years in custody, whereas no provision existed in that area in the former Code.

² Especially in the registries

³ The 1998 Law on the employees of the courts and public prosecutor's offices brought about an increase in clerical remuneration, linking it directly to the remuneration of the judges. It introduced detailed requirements concerning access and education to the profession of a court clerk, as well as periodical performance evaluation

⁴ Especially in the land and mortgage register/other register divisions

⁵ Electronic typewriters, furnishings, libraries, electronic access to national and international legal documentation

3. *Implementing performance*

Overall efficiency in terms of court delays and effective treatment of judicial cases has increased but the backlog persists¹. Greater effectiveness in criminal matters is still hampered by certain material and financial weaknesses. Eventhough the new Criminal Code obliges the court and the PPO to close cases "within a reasonable time", in criminal procedure the problem is the length of proceedings: it is not unusual that several years elapse between the reporting of an offence and the delivery of the court's verdict in the first instance². There is also a need to speed up the length of civil and commercial proceedings³. Further, there is an urgent need for improvement of the implementation of judgements in both criminal and civil cases and of the provisions of access to the courts. Poland considers that legal defense is provided for and that the problem yet to be solved is the lack of a free legal advice system outside the court proceedings. The fundamental problem here is the lack of funding. However, in practice the costs of legal action still deter many citizens from using the justice system.

As to judicial co-operation, the Secret Police is said to deal with the requests for Mutual Legal Assistance in Criminal Matters. According to one report, these requests do not fulfil the conditions set by the relevant Convention. As a result, few of them are acceptable under EU Member States law, both formally or in terms of evidence before the court. A great majority of requests are simply denied because they are held to be secret by the authorities⁴.

Other problems are lack of specialist staff, poor language skills and non-translated documents. More practical information is needed.

As to bilateral agreements in civil law matters, problems such as delays in returning certificates of service and omissions from files when forwarding maintenance requests⁵ are reported.

¹ In 1999, the average number of cases dealt with by every judge on a yearly basis was 500.

² The situation is particularly worrying in the large urban centres.

³ The Ministry of Justice, being aware of the problems of lengthy proceedings, has plans to reorganise the Warsaw judiciary and to introduce of a number of new courts. It remains however unclear how these plans will correspond to the new budgetary allocations for the justice system.

⁴ The threshold beyond which a matter becomes secret in Poland is much lower than in EU Member States and these 'procedural' impediments are stated to characterise and inhibit much of the international dialogue.

⁵ The usual omission is the proof of summons on the defendant

The Personal Data Protection Convention is in course of ratification. The Personal Data Protection Act came into force in April 1998, and the independent General Inspector for Personal Data Protection has been active for over 2 years. However, the Act does not yet appear to be functioning adequately to provide safeguards ensuring citizens rights to privacy: concerns remain in the light of an increasing number of legal instruments providing for surveillance by the state of private individuals and state control over access to information relating to citizens. Concerns also exist about a number of legislative aspects of the Classified Information Law which regulates the procedures, notably the need for security clearance, which citizens must go through in order to have access to classified information.

As to human rights, prison conditions are reported to be still generally poor. Many facilities are old, overcrowded and in disrepair. The Human Rights Ombudsman complained about the safety of prisoners: inmates are often the victims of violence from other prisoners. One report pointed out cases of serious mistreatment in prisons and a number of cases of recent police brutality. Concerns exist about the lack of an independent system of supervision to address abuses of human rights by police and prison officers and to monitor prison conditions.

There have been concerns recently that the Criminal Code provisions regarding the liability of journalists to prosecution due to "slander and abuse" of the public authorities in practice have caused problems for journalists' rights to freedom of speech.

The population's relationship with its judicial system remains in general terms distant, if not to some extent mistrustful: the huge case backlog and high legal costs deter the public from using it. Also, during the years of communism the judicial system was synonymous with the State. In addition, many judges and lawyers are among former collaborators with the regime¹. This wariness may explain the success of the use of settlements and other forms of compromise between individuals in the economic and commercial sphere.

¹ However, the Vetting or "Lustracja" process provides for the vetting of inter alia members of the judicial system regarding the nature of their involvement with the former communist regime and has resulted in the resignations of a number of ministers and high ranking members of the judiciary.

4. *Summary*

Alignment with the JHA *acquis* needs to be continued. Implementation of the reform measures of the justice system needs to be continued. The problems regarding co-operation in criminal matters need further monitoring. Confidence of the public in the justice system and judiciary is low. Both the remuneration, training and status of the judiciary need improvement. The complicity in corruption of some members of the legal profession is a serious problem. Independence of the judiciary should be closely monitored. There is an urgent need to improve the situation with regard to the length of judicial proceedings, the huge backlogs, enforcement of judgements, (free) legal defence and access to the courts.

F. **Corruption**

III. CONCLUSIONS