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**COUNCIL OF
THE EUROPEAN UNION**

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5292/2/01

REV 2

RESTREINT

EVAL 1

ELARG 5

REPORT

From : the Collective Evaluation Working Party

To : CATS/Coreper/Council

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Subject : Revised 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 at the beginning of the 1993 resulted in the current situation. In the space of four years (1989 - 1993) Poland got 7 neighbour countries instead of the former three - the border situation had changed completely in the 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* in relation to border security has progressed in Poland, and the Polish authorities are very well aware of 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 broadly sufficient. The latest amendment to the Act on the Border Guard¹ expanded the powers of the Polish Border Guard in that they have become nationwide. Works are ongoing on its practical implementation. The setting up of a Criminal Intelligence Unit within the Border Guard is another important aspect in view of the full adoption of the *acquis*.

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

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

¹ The Act was adopted in March 2001

Co-operation is one of the most important elements of border security, but the means 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 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 is effective and includes several types of modern cross-border co-operation models. These models also serve as 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 October 12, 1990. Before that the BG 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 Border Guard, as it is today, was established on 16 May 1991.

The Border Guard is responsible for Border Management in Poland. It is subordinate to the Ministry of the Interior and Administration. The BG is considered a specialised border police-type service. The BG is responsible for all borders – different types of land borders, sea border and border crossing points. In principle the basic structure of the BG 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 at 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 organisation. The current number of conscripts is about 3000 and according to Polish sources the PBG will be fully professional in 2005. The former timetable was postponed due to lack of financial resources.

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 the Polish view, co-operation between law enforcement authorities is good

Two expert reports claim that it has been very difficult to make a realistic analysis of the real efficiency of the Polish Border Guard as regards the number of staff since there are no exact numbers of staff assigned to different border sections and border crossing points. These same sources state that there is an average 35 % staff shortage 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.

Despite Polish authorities' efforts, recruitment and career management continue to be problematic in the PBG. The local recruitment system and the in some cases extremely low rotation of staff, are not good for the organisation. These practices create bases for nepotism and corruption.

There is a lack of means within the Border Guard to deal with organised criminal networks smuggling illegal migrants. This in turn raises the question of access to criminal intelligence. In this context, the setting up, at the Border Guard HQ, of a unit responsible for intelligence is a step in the right direction. They will then have access to the databases of other authorities investigating of organised border-related crime, including illegal migration. They will have the authority to collect and process person-related data needed for such investigations. This new unit will have to be considerably strengthened in terms of manpower, special training and equipment, as a matter of priority. Appropriate co-ordination with other Polish intelligence services will be required if it is to succeed.

The situation regarding equipment available to border guards has improved remarkably during recent years. There are however still serious problems in this field, e.g. the lack of adequate accounting practices to record the use and distribution of all new equipment.

The basic *infrastructure*, such as accommodation and working conditions are far from acceptable, 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.

Tactical mobility at land borders has improved rapidly thanks to major investment. The situation is worse at the sea border since many of the 33 vessels are very old and unsuited to patrolling. Operative mobility and operative surveillance ability has improved now that 6 helicopter and 6 aeroplanes are available. These aircraft have some night vision equipment. The Polish Airforce provides 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 these equipment are 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 connection between the consulates and the national databases.

3. *Implementing performance*

The basic structure of the 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 other justice and home affairs. Given the fact that a single organisation is responsible for all border security tasks it is possible to create an effective national border security system. This solution also provides good basis for international co-operation at all levels. Own budget is important for a stable and properly prioritised development of border security. It is a cause of concern that the financial funds granted by the government and through aid funds are not sufficient to satisfy all the needs of the Border Guard, as far as personnel, infrastructure, and equipment are concerned.

There is a gap between the Strategy and the budget.

The use of professional staff of the Polish Border Guard 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 future 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 it is at this border the majority of illegal immigrants to Poland have been caught. Unfortunately circumstances at the Polish eastern borders are not at all the same. 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 numbers of caught illegal immigrants at the eastern border may - to some extent - be related to 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 corrupt border authorities (border guards, customs) in neighbouring countries facilitating illegal border crossings.

Since the territorial and functional limitations of the PBG's operative powers have now been abolished, it is possible to start creating a nation-wide system. Continuity of criminal investigation, search and surveillance will now become possible. 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 foreseeable trends in illegal immigration will require, in the long term, an increase in surveillance inside the territory, and the new definition of competencies should make it easier to respond satisfactorily to such trends.

Operational capability as well as flexibility in the use of staff are constraining factors, since units responsible for green border surveillance and units responsible for border checks are not working together closely and are not under the same command.

Patrols efficiency suffers from poor personal equipment. Very limited night-vision ability gives an advantage to illegal immigrants and their guides operating at nights. The lack 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 divided for border traffic control and border surveillance tasks. This distinction means that the use of staff is limited and the overall understanding of border security is equally limited. The lack of experienced officers will remain 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 for Poland providing the necessary information about the continuously evolving EU-acquis and best practises used in the EU. The consulate's staff responsible for visa issuing is not properly trained or equipped to check whether applicant's documents are falsified or forged.

4. Summary

Since the last country report much has improved in Poland. The main problems that the Polish Border Guard faces are understaffing, lack of equipment and a very poor infrastructure at the eastern borders. The sea border surveillance also gives rise for concern. 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 shortcomings and preparations for improvement are on their way in several areas. Unfortunately the state budget and the Border Strategy are not in balance.

Effective implementation of border police work requires sufficient legal powers. The new legislation provides a good legal basis for the work of the Polish Border Guard and it is possible to say that there is now leading and specialised authority responsible for combating illegal immigration. The next step is the implementation of these new powers and in this context, proper training and equipment for the staff responsible for these tasks.

Border security, visa policy as well as border crossing procedures are very closely linked to each other. One of the biggest remaining problems in Poland is its non-harmonised visa policy related to non-Schengen-like cross-border movement. Poland has been extremely slow to adopt this part of the *acquis*.

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 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.

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. Although currently 11.5 Million citizens from these three future visa-required countries enter Poland each year, Poland expects to have to issue a total of 3,5 Million visas (only) after accession. This requires further explanation.²

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 shortcomings³ 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.

¹ Armenia, North Korea and Vietnam were placed under visa-regime in 1997. Since then, the only achievement was to require visas from former Soviet Union Republics of Asia and from Moldavia.

² Of course the final number of travellers and border crossings will depend on the cost of future visas and whether the visas will be made multiple as a rule or not. Nevertheless, the difference between the figures is important. 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".

³ 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 of labour control prior to granting a work permit.

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.¹

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. There is very little information on the degree of preparation of consulates. Besides, training and equipping Polish consulates in the Ukraine and Russia is not very useful as they do not issue visas.

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 practice at present, and budgetary allocations thereof are still uncertain.²

¹ Invited by the EU "to inform the Conference of the content of the measures planned notably on prevention of illegal immigration and employment", Poland replied this problem belongs to the area of "free movement of persons." However, Polish position papers that field are equally silent on this issue.

² In addition, through lack of visa requirements, Poland voluntarily deprives itself of financial resources (visa fees) that could contribute towards financing immigration-related expenses.

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. 45% aliens apprehended for illegal crossing in Germany still arrive legally in Poland. The main illegal trend in the future will come from the Eastern and Northern borders, where Polish Customs and Border Guards are deemed to be more corrupt than elsewhere. A reliable evaluation of Polish real administrative capacity to deal with Migration can only be done after imposition of visas.

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.² Poland should regulate and control these practices strictly.

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

² In addition, the risk of "*smuggling of persons and goods with acquiescence or assistance of neighbouring border services*" is already well known in Poland.

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 invitations¹, expulsions and denials of residence permits for reasons related to public order. Moreover, the voivodships will have to be trained and 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. Of course 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 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.

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).

¹ Invitations, or other demonstration of means, are often requested for entry, for lack of visas.

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

The fight against illegal work is non-existent.

C. Asylum

1. *Formal aquis*

The formal aquis 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.

2. *Administrative capacity*

The knowledge of asylum issues at the central level raises little concern² 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 (4000 per year), but 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.³

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 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.

³ 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".

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 settled¹. 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. But there could also be other reasons. NGOs themselves stressed the "misuse" of asylum procedures by applicants who asked for protection in one state (Poland) in order to flee to another.² This situation has recently changed: more applicants (notably Chechens, Armenians) now consider Poland as a destination country and no longer disappear during the procedure. The recognition ratio will have to be monitored.

All in all, Poland still has to improve accelerated procedures, its preparation for Eurodac, procedures for expulsion of rejected applicants and its actual integration of refugees.

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.

¹ These activities are totally care of by NGOs willing however to diminish their help. An Ordinance on Integration of December 2000 will probably increase the State involvement in this field.

² Many asylum-seekers filed their application only when readmitted from Germany or otherwise stopped by the police. 80% of all decisions in 1997 (27% in 2000) 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.

Although one should be prudent in such comparisons, the percentage of recognition of refugees, since 1998, is the lowest in Europe. In the past, the acknowledged "misuse" of asylum procedures by many applicants (who sought the protection of Poland in order to facilitate their travel westwards) could play a role therein. As Poland is now becoming a destination country, the recognition ratio has to be monitored.

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 general the Europol Joint Supervisory Body (JSB) notes substantive problems in the present data protection legislation and practice 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.

The JSB however 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.

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. *Administrative capacity*

In total, the police have 100.754 professional policemen. The police also have 19.511 civilian employees. With a population of around 38.5 million, Poland has 262 police officers per 100.000 inhabitants. The turnover in recent years has been substantial and still is very high.

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 are significant overlaps in the work carried out by the State Security Office and the police as well as to a lesser extent the customs administration. It is yet unclear how far the move has produced concrete results.

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. The law on "Prevention of the introduction into the financial system of assets stemming from illegal or un-revealed sources", adopted in October 2000, provides for the setting up of a financial information unit and its future activities. The unit is expected to be established in June 2001.

Only little efforts have been undertaken to put in place a system of data exchange as well as criminal intelligence analysis. Adoption of the draft law on the establishment of the "National Criminal Information Centre" is pending.

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. There is a great demand for training in the fields of economic crimes and crimes connected with the Internet. Also training in how to use criminal analysis software and in the field of seizure of proceeds of criminal activities is needed.

Poland considers that the technical equipment still requires upgrading. IT equipment and computerisation as well as modernisation of equipment will require substantial budgetary allocations.

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). Traffick in women and the growing underlined traffick of children for prostitution purpose give serious reason for concern.

The National Security Strategy including a Crime Prevention Programme adopted by the Polish government sketches out the broad lines of a strategic approach meant to enhance the efficiency of the police and other related law enforcement agencies with a view on fighting organised crime. Even if embryonic, the document gives an outline of the reforms to be introduced, both structural and operational.

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

Drug-related crimes constitute a continuously serious problem in Poland. There is a national plan for fighting drug-related crimes, but no single body for handling this anti-drug policy. The "inner market" is growing: drug abuse among young Poles is a growing problem. Supposedly there are some 200.000 drug addicts in Poland. 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 amphetamines (in 1998 the number was 4) were dismantled. Early 2000, 7 clandestine laboratories producing amphetamines were dismantled. It is estimated that there are currently between 10 and 20 clandestine amphetamine laboratories operating in Poland.

Different reports, from various credible sources, underline the fact that the police does not react appropriately to these forms of trafficking in women and children. The international Helsinki Federation for Human Rights and the European Commission against Racism and Intolerance have pointed out concerns about the Polish police, for responding too slowly to incidents and performing inadequate investigations.

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 dealing 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 report produced by the police on the growing use of the banking and financial sectors for the purpose of investing illegal proceeds of criminal activities indicates a 92 % increase of this type of criminality for 1999 compared to 1998.

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.

Implementation of the Convention on the use of information technology for customs purposes requires the establishment of an integrated computer system to be compatible with the Customs Information System (CIS). Such a system does not yet exist in Poland.

2. *Administrative capacity*

The efficiency of customs co-operation suffers from the co-existence of two different customs agencies, the General Customs Inspectorate (GIC) and the Customs Administration (GUC).

The Customs Administration and the Border Guards have overlapping responsibilities of the enforcement at the various border crossings, ports and airports. Border Guards have a role in drug enforcement without having the dedicated drug intelligence structure.

This situation does not promote inter-agency co-operation.

Available information indicates that the co-operation between police and customs, in general, can be described as bad. It could rather be qualified as "competition" than in terms of co-operation.¹

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 (ZMPD, LOT, and BA) is pending. No Memorandum of Understanding on the combating of drug trafficking has yet been signed between customs authorities and business organisations.

¹ According to written information provided by the Central Board of Customs to the questionnaire sent by the Swedish Presidency agreements on co-operation and mutual assistance in preventing and combating customs offences (including drugs) have been signed with the Police, the State Security Bureau (UOP) and with the Border Guards. A Member State has informed that an agreement on co-operation in the fight against drug trafficking has not been signed between the police and customs.

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. A real strategy with regard to the gathering, analysing and dissemination of information needs to be defined by the customs authorities. A Customs Control Information Team has been created in order to prepare and analyse how information could be used for effective and efficient customs control and for preventing and combating customs offences.

3. *Implementing performance*

The results obtained by Poland in the field of customs co-operation match the weakness of its administrative capacities. Although the Customs Inspectorate is empowered to undertake controlled deliveries, to date this power has been used only in respect of excise and has not been reflected in any operations on the ground in the fight against drug smuggling.

The Custom Administration's latest published Business Strategy clearly leaves the impression that its basic function is as a revenue collecting service. To date, drug enforcement has not been a priority and the infrastructure in place within the service to combat drug smuggling is inadequate.

In general, the Polish Customs Administration does not have the necessary means to efficiently fight customs fraud. It fulfils its powers of immediate control at the border posts only while an important number of customs offences, revealed by the police, take place within the territory.

4. *Summary (Police and customs)*

The police in some respects lack experience and strategies for fighting crime. Considerable efforts are still needed to reform the internal organisation of the police and to enhance their capacity to deal with the high level of organised crime and policing in a civil society. Rivalries, bureaucratic turf and mutual lack of confidence hamper co-ordination and co-operation between different law enforcement agencies.

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 are significant overlaps in the work carried out by the State Security Office and the police as well as to a lesser extent the customs administration. It is yet unclear how far the move has produced concrete results.

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

1. Formal acquis

With the new Criminal Code, Poland has to a large extent aligned its legislation 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. This applies to Article 335 of the new Criminal Procedure 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 the prosecutor to their implementation provides no guarantee against possible abuse. The effects of these new procedures on the handling of criminal cases should be closely monitored.

A number of Conventions have 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. However, as this instrument is part of the formal acquis, Poland will have to accede it upon accession. 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.

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.

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 for 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 judicial bodies other than courts have been dispensed with while the courts' sphere of competence has enlarged accordingly. Consequently, the courts' burden has increased enormously¹.

The court system consists of the common courts of law (288 cantonal; 44 district² and 10 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'.

Around 200 local civil and criminal divisions³ were created (aim: 400) to hear certain types of fiscal⁴, criminal and civil offences⁵. This reform is considered as an important step towards bringing the justice system closer to the citizen. It has relieved district and cantonal courts from heavy workloads and made the civil procedure more efficient. The ambitious reform of the organisation of the judiciary -meant to improve the efficiency of the justice system by streamlining court organisation and procedures- will rationalise the number of courts and reduce their number⁶ and will probably be implemented in 2001. A code governing the procedure applying to petty infractions will probably enter into force in October 2001.

¹ The number of cases submitted to the judiciary quadrupled from 2,000,006 in 1989 to 8,508,000 in 1999.

² Former Voivodships

³ Which are within the lower rungs of the civil judicature

⁴ Up to 2 years of imprisonment

⁵ Civil claims below 5000 Zloty

⁶ In particular, the number of district courts will be reduced from 44 to 37

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 new (draft) Minor Offences Code, currently being discussed in Parliament, should come into force by the end of 2001.

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 military to civilian courts¹ 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. There is a lack of transparency of procedures.

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.

There is serious concern about the insufficient budgetary allocations meant to cover running costs² of courts. The combined effects of new competencies assigned to the judiciary in the field of petty infractions and the overwhelming pressure deriving from the increase in the number of cases, render the financial situation of the judiciary particularly critical. Since these needs are not reflected in the 2001 and draft 2002 budgets, some observers believe that there might be a genuine risk of disruption of the normal management of certain courts³.

The Act amending the Code of Civil Procedure and the Law on Registered Pledges and the Pledge Registry 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' and it limits the possibilities of appeal in certain categories of cases. Changes aiming to simplify the criminal procedure are also being prepared.

¹ Provided for in the new Code of Criminal Procedure

² e.g. telephone, fax, paper

³ Krakow is mentioned as a significant example

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 law 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 success of the reforms which aim to improve the functioning of the judicial system requires a significant effort with regard to the training of court personnel (i.e. administrative staff) and an improvement of their status. At present, their professional competence is low, and the considerable turn-over makes this situation even worse.

The Public Prosecutor's Office, which since 1990 comes within the remit of the Ministry of Justice, has been reinforced in the area of the fight against organised crime. Within the 16 regional offices and the office in Jelenia Gora (because of its proximity to the western border), a specialised section dealing with organised crime has been created. These 17 sections are interconnected and connected to the Central Office of Justice in Warsaw. Over the past years, the politicization of the Office has been criticised, mainly for cases involving politically responsible persons. On this point, it would be desirable to receive information on the actual impartiality of prosecutors, in order to prevent any risk of exploitation from the side of the PPO in favour of any interest group.

In one report⁴ doubts are expressed about the handling of cases against highly placed individuals by the staff of the Public Prosecutors' Office.

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-judicial tasks.

³ Judges have expressed their hesitations on this matter.

⁴ on corruption in Poland

The Polish Constitution provides solid guarantees for the independence of judges and courts. This independence, at least in relation to the Executive, is attested in practice. Article 181 of the Polish Constitution guarantees criminal immunity for judges. In order to prosecute a judge who is suspected of criminal acts, there are two possibilities -the one not excluding the other-: the disciplinary way¹ and the judicial way. The latter implies the lifting of criminal immunity, which can only be decided by the disciplinary court of which the majority is composed by judges². It is reportedly only very seldom that immunity is effectively waived. The strong assurances of independence given to the judiciary since 1990 may have had the effect of encouraging corporatist reflexes- recruitment that could be akin to co-optation, powers of the general assemblies on areas of jurisdiction, criminal immunity- with all the risks that such situations may give rise to. Poland must make an effort to reconcile the necessary independence of judges and the sanctioning of the associated responsibility.

The respect of this guarantee of independence should not keep Poland from fulfilling another EU requirement, namely regarding the fight against corruption. Therefore Poland should ensure, by appropriate provisions, that the guarantees of independence that are offered to the judges can not be abused in any way, notably to shield judges from being prosecuted for cases of corruption.

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. Rather than being seen as the crown of the legal profession and an essential arm of the state, judges are ill-respected. Training -currently not nationally organised- is reported to be both sporadic and lacking uniformity. In addition, EC Law is not compulsory in the curriculum and rarely offered as a specific area of training. Although the creation of a national school for judges is envisaged, there are still no official plans to set it up shortly.

¹ in 2000, three judges have been removed from office this way, 8 have received a warning, 4 received a reprimand, one has been replaced

² In 2000, the disciplinary court has lifted this immunity in five cases. NB: 5 out of a total of 9000.

Although salaries of judges and public prosecutors correspond to the most senior civil service levels, in Warsaw they are relatively low compared to the private sector. However, whereas until 1995 the number of applicants was smaller than the number of existing vacancies for the post of judge, the trend has reversed since then, and Poland no longer faces any significant vacancy-problems. This does not mean that judges aren't still, even today, attracted to better-paid jobs in the private sector which appear to have better career perspectives. 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 law 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 judges¹ 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. Furthermore, although the new function has contributed to enhancing the efficiency of the judiciary as such, it is generally poorly remunerated and therefore lacks attractiveness.

Bailiffs are reportedly too few to follow up on the enforcement of rulings, are underpaid, subject to intimidation and bribery and have a mixed record of implementing court decisions.

¹ about 8 500

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

Efficiency and the working conditions of court staff is hampered by the outdatedness of some court facilities and the inadequacy of essential services¹. However, a central database has been set up (LEX) connecting all courts and including national and Community law. A specific European database (CELEX) has been installed at the Ministry of Justice with easy access for judges. 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.

3. *Implementing performance*

Overall efficiency in terms of court delays and effective treatment of judicial cases has increased but the backlog persists². Deadlines are reportedly too long in the courts of Warsaw. Greater effectiveness in criminal matters is still hampered by certain material and financial weaknesses. The entire legal system is marked by the conflicting principles of the respect of the defendant and the need for an efficient judiciary. Even though the new Criminal Code obliges the court and the PPO to close cases "within a reasonable time" (cf. Article 6 ECHR), in criminal procedure the problem is the length of proceedings: it is not unusual for several years to elapse between the reporting of an offence and the delivery of the court's verdict in the first instance³. The main reason is that the Criminal Code provides the defence with numerous opportunities to delay trials.

There is also a need to speed up civil and commercial proceedings⁴. Deadlines are reportedly excessive for disputes in company law. The reform of the Companies Code and the bankruptcy law, which took place in autumn 2000, aims to improve the situation.

Further, there is an urgent need for improvement of the enforcement of rulings in both criminal and civil cases (particularly debt claims), and of access to the courts.

¹ Electronic typewriters, furnishings, libraries, electronic access to national and international legal documentation

² In 1999, the average number of cases dealt with by every judge on a yearly basis was 500.

³ The situation is particularly worrying in the large urban centres.

⁴ The Ministry of Justice, being aware of the problems of lengthy proceedings, has plans to reorganise the Warsaw judiciary and to introduce a number of new courts. It remains however unclear how these plans will correspond to the new budgetary allocations for the justice system.

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 and the existence allegations of corruption¹ contributes to the generally negative perception of justice by the average citizen. Also, during the years of communism the judicial system was synonymous with the State. In addition, many judges and lawyers are among former collaborators of the regime². However, there has been a high degree of replacement of judicial personnel; more than 70% of the judiciary has joined since 1989.

The public's wariness towards the judicial system may explain the success of the use of settlements and other forms of compromise between individuals in the economic and commercial sphere.

Problems related to judicial co-operation are lack of specialist staff and non-translated documents. Judicial co-operation reportedly works much better in countries where direct contacts between judges are allowed³ than in countries where the treatment of international requests is 'centralised'. In the civil field, matters related to children's rights often are very difficult.

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.

¹ viz. Corruption

² 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.

³ The situation is more complicated in national systems based on 'centralised' treatment of international requests

4. *Summary*

The effects of the series of new criminal procedures should be closely monitored. A number of Conventions have not yet been signed or ratified and Poland has to further align its legislation in the area of drugs and corruption. Implementation of the reform measures of the justice system -aimed to bring the justice system closer to the citizen and make it more efficient- is at various stages of completion.

There is serious concern about the insufficient budgetary allocations meant to cover running costs of courts. Minor offences are at present still judged by citizens who are not professional magistrates, and the charge is brought by a senior police officer. The new law, which will put an end to this exceptional situation, and which was provided for in the Constitution, should be adopted and should enter into force in 2001. Its effective implementation will have to be monitored.

The role and procedures of the Military courts are unclear. There are doubts concerning the handling of cases against highly placed individuals by the staff of the Public Prosecutors' Office. Poland should pay careful attention that the newly regained independence, since 1990, of its judges and courts, does not deviate and is not abused to cover up reprehensible practices. Public confidence in the justice system and judiciary is weak. Training of judges (including EC Law) is sporadic and lacks uniformity. Judges are overburdened in need of assisting personnel. There is a lack of (trustworthy) bailiffs. With regard to implementing performance, the problems are the huge case backlog, very lengthy proceedings, poor enforcement of judgements and access to courts. The backlog and high legal costs deter the public from using the legal system and the existence of corruption cases contributes to the generally negative perception of justice by the average citizen. The Personal Data Protection Act does not yet appear to be functioning adequately to provide safeguards ensuring citizens rights to privacy.

F. Human Rights

The analysis of the situation shows progress and reforms in the field of human rights. Besides, the Constitution guarantees the basic political, civil, economic and cultural rights.

However, some problems remain and different reports -from various sources- underline the development in Poland of phenomena of extreme gravity: trafficking in human beings and trafficking in women and children for the purpose of prostitution. Violations and abuses of human rights are seldomly reported or prosecuted and convictions in this area are extremely rare.

The chapter on the police provides information on these phenomena and the inadequate measures taken by the Polish authorities to fight them.

Inasfar as these phenomena gravely prejudice basic human rights, the Polish authorities should express in a more vigorous manner the fact that they are aware of the seriousness of the situation.

Prison conditions are reported to be still generally poor. Many facilities are old, overcrowded and in disrepair. There is poor medical treatment (additional information on this is needed). The Human Rights Ombudsman complained about the safety of prisoners: inmates are often the victims of violence from other prisoners. Several reports pointed out cases of serious mistreatment in prisons (rapes) and a number of cases of recent police brutality. Concerns exist about the lack of an independent system to monitor prison conditions. The prison system is reportedly in urgent need of additional funding (e.g. for renovation).

Another problem concerns the "sobering-up" stations where the police -allegedly with full discretionary powers- put drunken people in a semi-custody regime. Several cases of mistreatment during this 'detention' have been reported. There is almost no possibility to access a lawyer or consul for foreigners.

The UN human Rights Committee concludes, after Poland's most recent examination under the International Covenant on Civil and Political Rights, that there was still a lot of discrimination against women, and no independent supervision of the treatment of detainees by police or by prison officers.

G. Corruption

1. Legislation

Polish legislation covers several forms of corruption (active and passive) and both the relevant OECD Convention and the Money Laundering Convention have been ratified (although the Civil Law Convention and Criminal Law Convention on Corruption have not been signed resp. ratified yet, requiring first the enactment by Parliament of a number of amendments of i.a. the Criminal Code).

2. National programs and strategies

The fight against corruption is the shared responsibility of all law enforcement bodies, i.e. the police, the State Security Office and public prosecution and its Organised Crime Bureau. At regional level, 24 specialised police units and 17 within the District Prosecutor's Offices deal with this problem.

A National Security Strategy was adopted including a Crime Prevention Program, meant to enhance the efficiency of the police and other related law enforcement agencies in the fight against organised crime. Even if embryonic, the document gives an outline of the reforms to be introduced, both structural and operational.

A "Strategy of integrated border management" addresses corruption within the Border Guard and Customs. Both institutions are preparing a series of measures in this respect, ranging from improvement of their internal control systems incl. audits and disciplinary and penal proceedings, to the provision of all kinds of incentives.

The Police have started to address the (internal) problem through the establishment, in 1998, of the Department of Internal Affairs, which has a staff of just under 100 including detectives. Apparently there have been leaks of confidential information. Three main sources of corruption have been identified: small bribes for non-prosecution, falsification of documents used for claiming indemnities etc, and the selling of police information and active co-operation with criminal elements. New ways of calculating (increasing) police salaries were introduced mid-2000.

3. *Current trends*

a) Border Management

There have been recent reports of detected corruption among the authorities (customs and border guard). Concerns persist about corruption at border crossing points (smuggling) linked with infringements of the green/blue border. The authorities in any case seem determined to act firmly (viz the establishment of a special BG unit responsible for combating corruption).

b) Immigration

No figures are available, but reports about recent dismissals at the MoI's Migration Department for "selling" visas/permits, have a negative spin-off on the credibility of the entire system of document issuance.

As Poland's Eastern neighbors are still not subject to visa, the bulk of illegal immigration and thus opportunities for corruption, is expectedly still to come. As regards future visa issuance, the situation at the (high-risk) consulates in Belarus, Russia and Ukraine will have to be closely monitored.

c) Police and customs

Corruption in the Polish Police exists, and it seems quite wide-spread in some forces (e.g. traffic police); attempts to infiltrate the police by criminal groups are a source of concern. A number of cases were reported in which the State Security Office appeared to be acting for private benefit or pursuant to/under political influence.

In view of the unsatisfactory economic and social conditions existing within these services, the number of criminal acts of corruption is unlikely to decline in the near future.

As regards customs, corruption is a problem on both western (smuggled goods) and eastern borders. Efforts to fight the phenomenon are being undertaken by the Customs management.

d) Justice

Several reports mention corruption among the judiciary and in 2000, the media revealed several serious cases of bribes and corruption involving both judges and prosecutors. Causes can be found in the very long waiting time for routine court decisions in commercial matters, judges' very low degree of mobility, their judicial immunity, court administrative practices, inadequate facilities and -equipment. Another problem area is the registration of companies and land transactions.

Corruption within the judiciary has however not reached such a level that it could be considered the general rule and the issue of corruption in general has jumped up the political agenda and in public consciousness. The relevant provisions of the Criminal Code need to be amended in order to render the fight against corruption more efficient.

4. *International organisations*

According to the *World Bank*, high level corruption and corruption in public services is serious and getting worse. Organised crime is on the rise, and "influence over representatives of the administration is an integral component of this process", including attempts (successful, on occasion) by criminal organisations to infiltrate law enforcement agencies. The World Bank Report states that Poles perceive many domains of life to be permeated by dishonesty, bribery and corruption.

III. CONCLUSIONS

Taking its point of departure in the key elements of the report structure - adoption of the Acquis, administrative capacity, and implementing performance - the conclusions analyse the most serious shortcomings in the respective fields.

A. Border management

The Polish Border Guard as well as the border security system has improved but many problems still exist. Despite continuous improvements in its legislative and organisational framework, particularly concerning the fight against illegal immigration, the implementing capacity of these new powers still remains limited. The new legislation giving nation-wide powers to the Border Guard is a very good step towards an effective border security system. Effective implementation requires reorganising, equipping and training of staff responsible for migration-related crime investigation and intelligence.

One of the main problems is the fact that Poland has kept its old visa-regime and special crossing procedures in force with all its neighbour countries; it has been extremely slow in changing its approach and practices. An important part of the border security system is thus missing as visa policy and visa practices are not in line with EU-requirements.

There is an urgent need to start implementing EU-requirements since it takes time for passengers as well as border authorities to familiarise themselves with these new procedures. The slow process may cause big and unexpected border-related problems in the future. There are also problems related to administrative capacity, due mainly to organisational deficiencies and lack of professional staff, equipment and infrastructure, especially at the future external borders. There is a need to introduce adequate accounting practices for equipment. Under these circumstances, effective implementation cannot be achieved. Moreover, some co-operation models with third countries are questionable. The management of these borders is still distant from the requested EU-level, resulting in continuous pressure on the EU's current external borders. Co-operation between the national authorities leaves room for improvement.

Poland has introduced a very detailed and relatively comprehensive "Strategy of Integrated Border Management in Poland". This document gives good guidelines for future improvement in the field of border management. The implementation of this strategy seems, to some extent, to be very difficult due to financial problems - the strategy and the state budget are not in balance. There is a need to clarify priorities and to guarantee a substantial budget for these priorities, i.e. staffing, training and equipping. This up-dated strategy should clearly indicate what will be ready before accession and what will be ready only when Poland starts to fully apply the Schengen conventions.

B. Migration

The fight against illegal immigration and illegal work is already insufficient, whereas the bulk of the problem is still to emerge (when Poland's eastern neighbours become subject to visa).

The main problem in this field is that visa-policy is not aligned, and looks as though it will not be until the eve of accession, in contrast to current developments in all neighbouring candidate countries. If Poland does not accelerate its pace of alignment, it will not be possible for Member States to evaluate, before accession, its real ability to implement this part of the acquis. Poland expects to issue 3.5 Million visas after accession (against 200.000 today). The administrative capacity also seems to be insufficient. The level of preparation of all the bodies involved in migration management (from consulates to 'voivodships' and police inland) is low when it comes to co-operation structures and above all information technology (shared national databases).

Funding thereof is still uncertain, while in the meantime Poland deprives itself of visa fees. The balance required to screen visitors without creating unacceptable conditions, cannot be learnt and achieved overnight.

Poland should at the earliest possible date align its visa-policy i.e. start making preparations; lack of funding and of co-operation seem to be only one aspect of its passive behaviour.

C. Asylum

For geographical reasons, Poland will be a main "first responsible state" for examining applications for asylum.

Bearing this in mind, as well as progress already made, efforts should be made in the following areas: preparation for the Dublin Convention, notably the technical requirements, concepts of accelerated procedures and manifestly unfounded applications, the use of which is assuredly necessary in Poland. However, due to a flawed legislation still to be properly amended, these concepts have not been actually implemented. Training, notably of border guards, will be necessary, as well as a further evaluation thereof. Asylum-problems are mainly organisational/procedural, partly due to unclear legislation and actual implementation of the required concepts and procedures, partly for lack of technical requirements.

Legislation must be properly implemented and monitored and authorities involved properly trained. The level of co-operation among authorities involved in the asylum procedures should be improved.

D. Police and customs

There is deep concern about the crime situation, which the citizens see as one of the most serious problems in the country. Despite continuous improvements in 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, as well as recent increased budgetary allocations, the capacity of the Polish police to deal with the high level of organised crime and policing in a civil society and the complex EU accession requirements remain limited.

The administrative capacities of police and customs are weakened and characterised by overlapping structures and competencies. Rivalries and mutual lack of confidence seriously hamper co-ordination and co-operation between the different law enforcement agencies. Poland still lacks key institutions, *inter alia* a Financial Intelligence Unit and a system of data exchange as well as criminal intelligence analysis. The police has high staff turnover and in some respects lack experience.

The existing organisational problems, i.e. overlaps in structures and competencies, must be cleared up if proper co-ordination and co-operation between the different law enforcement agencies is to be realised. Therefore, although the police are active and well motivated, their implementing performance remains weak and also suffers from the absence of a clear strategy for fighting crime. Poland makes efforts to reach present demands of appropriate training to fight general crime and in particular organised crime. However, there is a great demand for training in fields of economic crime, in the field of money laundering and also in the use of criminal analysis software. Substantial budgetary allocations will be needed to bring equipment and information technology up to present requirements.

As regards customs, the weakness of their administrative capacities is reflected in the results obtained. Enhanced efforts are needed to enforce drug trafficking and efficiently fight customs fraud.

E. Justice

The problems with regard to the huge case backlog, the very lengthy proceedings, the poor enforcement of judgements and access to courts need to be dealt with effectively *inter alia* in order to increase public confidence in the justice system.

The problems of implementation are due above all to administrative and organisational inadequacies. Training of judges (including EC Law) is sporadic and lacks uniformity. Judges are overburdened and there is a lack of qualified assisting personnel as well as a lack of (trustworthy) bailiffs. There is serious concern about the insufficient budgetary allocations meant to cover running costs of courts. The overburdened courts (especially in Warsaw), the lengthy proceedings and numerous opportunities for the defence to delay trials, the poor enforcement of judgements by bailiffs and the high legal costs deter the public from using the legal system.

The existence of corruption cases -which is a serious concern- contributes to the generally negative perception of justice by the average citizen. The Personal Data Protection Act does not yet function adequately to provide safeguards ensuring citizens rights to privacy.

With regard to the adoption of the *acquis*, Poland must still sign/ratify a number of Conventions and further align its legislation *inter alia* in the area of drugs and corruption. Concerning administrative capacity, the situation with regard to the training of judges (including EC Law) and the status of the judiciary needs to be improved. There is a need for more and highly qualified personnel to assist judges and relieve them from their heavy workloads. The situation with regard to bailiffs needs to be improved. The implementation of the reform measures of the justice system should be continued and provided with the necessary budget. With regard to the independence of judges, Poland must make an effort to reconcile the necessary independence of judges and the sanctioning of the associated responsibility. Regarding data protection, the legal situation concerning the protection of citizens rights to privacy should be closely monitored.

F. Human rights

Problems remain with regard to the development of extremely serious phenomena such as trafficking in human beings, and trafficking in women and children for the purpose of prostitution. Other problems concern the rarity of reports on abuse and of convictions. The problems with regard to prisons (poor conditions, overcrowdedness, unsafety of prisoners, mistreatment, poor medical treatment etc) as well as the lack of an independent system to address abuse of human rights by police and prison officers and the reported cases of police brutality -including inside the "sobering-up stations" are serious points of concern.

The level of awareness on human rights issues among the responsible authorities is low, as are the measures taken by them. The necessary means and resources must be made available to ensure the respect of human rights.

The Polish authorities should express more vigorously their awareness of the seriousness of the above-mentioned phenomena. An improvement of the situation with regard to prisons (e.g. their conditions, the lack of an independent system of supervision), abuse of human rights and discrimination against women is necessary.

G. Corruption

Poland is faced with corruption in public services and in the area of justice, especially at a senior level, which has widespread serious negative effects on the relations between the population and these institutions and services. In some areas it not only hampers co-operation with Member States in the field of Justice and Home Affairs; it also presents difficulties for applying the *acquis*.

Most of the required legal instruments for efficient actions are in place. However, the organisational framework and resources to counter corruption remain weak and inadequate.

The Polish authorities are aware of the problem. Nevertheless, their capacity to deal with the phenomenon should be given much higher priority. Poland still needs to strengthen its legal framework and to make changes which are necessary for ratification and implementation of some of the relevant conventions. Appropriate measures to efficiently implement the already adopted legislation should be taken. Incentives to avoid unnecessary temptation, such as bribery and corruption should be established, the organisational framework should be adapted and reinforced, and significant human resources should be allocated to the fight against corruption.