

POLAND

Criminalizing Terrorism

The Penal Code criminalizes “behavior possessing character of terrorist acts.” The President of Poland has established a special commission to increase the severity of sanctions for acts associated with terrorism and to consider broadening the context to which it applies. Such acts include assault against a unit of the Armed Forces; causing a large-scale threat or danger to the life or health of many persons or property; illegal manufacturing, possession or trade in explosive or radioactive materials; causing damages to the environment; and participating, establishing or managing an organized group or association with the view of committing a crime or treasury offence. Future amendments may also criminalize the preparation of homicide, seizure of means of land public transportation and exportation of substances harmful to the environment, and false notification or threats of terrorist acts.

The Penal Code applies to domestic and international organized groups that aim at committing crimes. One provision creates criminal liability for foreigners for crimes committed abroad against the interests of Poland, a Polish citizen, corporate person or organization, and for certain crimes that warrant a penalty of more than two years in prison if the perpetrator is in Poland and will not be extradited. Other requirements are that the crime also be recognized in the country where it was committed and that the perpetrator is subject to Polish jurisdiction. Also, “the Polish penal law shall be applied to a Polish national or an alien, with respect to whom no decision on extradition has been taken, in the case of the commission abroad of an offence, which the Republic of Poland is obliged to prosecute under international agreements.”

Control of Weapons Export and Proliferation of Weapons of Mass Destruction

Access to weapons is regulated by the Penal Code and the mechanisms and procedures of control of trade in strategic goods, technologies and services relevant to the maintenance of international peace and security. The currently binding list of strategic goods was adopted in July 2001. It features arms and military equipment, as well as dual-use goods and technologies subject to external trade control. The Polish control lists (the list of dual-use goods and technologies and the armaments list) are faithful translations of EU control lists, their contents strictly adhering to the catalogue of items controlled within the European Union. With a view to NATO and EU regulations, the law “extends control to commodities which do not figure on control lists if there is no certainty about their end use, ushers in control of trade in “elusive” technologies, i.e. which can be transmitted by way of computers, fax machines and telephones, or conveyed during training courses, makes possible involvement of a company in the exercise of control of external trade in strategic goods, and lays the groundwork for development of partnership and cooperation of business operators with government administration.”

The Law on External Trade in Goods, Technologies and Services of Strategic Importance for State Security as well as for International Peace and Security governs external trade of strategic goods. It includes procedures for the issuance and withdrawal of licenses, import and delivery verification certificates, and the end user’s statement and turnover control. Accordingly, a Polish business has to present an end-user’s international import certificate or end statement, issued by a foreign end-user in accordance with the requirements of the Polish Ministry of Economy, and confirmed by a foreign importer and the authorities of the country of destination. In this way, the foreign trading partners and their governments assume some responsibility in such transactions. The transiting of a dual-use commodity which has originated in a foreign country requires a license. Licenses for indirect transit are issued by the Ministry of Economy. Indirect transit consists in transport of armaments and dual-use goods and technologies across

the Polish customs area, as well as transshipment thereof, say, in a seaport. Export, import or transit of strategic goods must be handled solely by specially designated customs offices.

Before applying for a license, a business must verify “whether the end-user intends to use the armaments for breaking or suppressing human rights and fundamental freedoms, the arms he is about to deliver will raise a threat to peace or in some other way will contribute to upsetting the region’s stability, the country of ultimate destination supports, facilitates or encourages terrorism or international crime, the arms to be exported can be used for a purpose other than meeting the legitimate defence and security-related needs of the receiving state.” Regarding unlisted strategic goods, a business operator must apply for a license, “if he knows or has a legitimate reason to surmise that the goods or services he is about to export can be utilised – in toto or partly – for breaking or suppressing human rights and basic freedoms, his delivery of goods will pose a threat to peace or will in some other way contribute to upsetting the stability of the region, the final-destination country supports terrorism, makes it easier for terrorists to operate or encourages terrorism or international crime, or the goods he is about to export can be used in a manner other than to meet the receiving nation’s legitimate defence and security-related needs.”

A license can be refused if the trade in question would be contrary to Poland’s international obligations, would compromise the foreign policy interests of the country, national defense, security or economic interests require a denial of a license, or the applicant does not make any warranty as to the lawful conduct of his operations. If the Ministry suspects that the goods in questions may be used illegally or in a way that could harm the country’s interests “for implementation, production, exploitation, operation, maintenance, storage, detection, identification or proliferation of mass destruction weapons, notably of chemical, biological or nuclear weapons, as well as for the implementation, production, maintenance and storage of delivery systems for such weapons,” it can decide not to grant a license. The same is true when there is a risk that the end use or destination may be changed, or that the business has violated any regulations for the trade in strategic goods. The Ministry of Economy is offering training programs related to in-house control.

Punishment for any intentional or unintentional export, import or transit of goods or services without a license is up to ten years in prison. A person who unintentionally violated any regulations and then re-organized his business conforming to the law is still liable and will have to pay a fine, be restricted in his freedom or imprisoned for up to two years. Any such sentence may also entail the confiscation of strategic goods or other items involved, including financial assets, even if not owned by the perpetrator, if they were obtained for or through the offense. A fine is the penalty for obstructing control of a company. A business operator who trades without a license or violates the law will be fined by a trade control institution.

Also important are the laws implementing the Chemical Weapons Convention and on external trade in goods, technologies and services of strategic importance both for state security and for the keeping of international peace and security and amending certain laws also apply. Other foreign trade regulations include the Decision of the Council of Ministers No 30/94 On Limitations in Special International Trade, based on the earlier Regulation of the Council of Ministers on instituting a prohibition on and limitation of special foreign trade.

“The Law of 21 May 1999 on Arms and Munitions provides detailed principles of issuance and withdrawal of permits for arms, acquisition, storage, disposal and deposition of arms and munitions, transport through the national territory as well as importation from and exportation abroad of arms and munitions, as well as principles governing the possession of arms and munitions by aliens.” The Law specifies cases where permits cannot be issued to or must be withdrawn from persons who do not meet specific requirements or have infringed conditions and obligations set forth in the Law.

The Law of 21 June 2002 on Explosives for Civilian Use provides principles of issuance and withdrawal of permits for acquisition and storage of explosives, basic requirements in relation

with explosives introduced to trade, principles governing the transport of explosives and marking of explosives. Acquisition and storage of explosives for civilian use requires a permit issued by chief of provincial administration. The Law specifies the information required for the issuance of permit, conditions to be met by these persons to obtain the permit as well as the cases when the permit should be denied or withdrawn. Transport and transit of explosives requires consent of the Minister for Economy, Labour and Social Protection.”

The Chief of the State Protection Service is responsible for “prevention and detection of terrorist acts and other crimes against national security as well as ... crimes with international dimension,” such as illicit production, possession and trade in arms, munitions and explosive materials, drugs and psychotropic substances or nuclear and radioactive materials as well as prosecution of those who commit such crimes under the Law on the State Protection Service. A special commission in charge of amending existing laws to make terrorist acts subject to more severe punishment has proposed to criminalize the “exportation abroad of waste or substances in such conditions or manner that it could pose threat to life or health of many persons, destruction in flora and fauna in considerable amount.” The United States government has presented the Ministry of Economy with the TRACKER system with computer equipment and a program to proceed automatically with licensing procedures for the trade in goods, technologies and services of strategic importance for state security. The program permits the storage and processing of large volumes of data, running automatic archives of consultations and opinions, analysis of the decision-making process and any information related to a particular deal, and it can prepare licenses and certificates. The system thereby makes the import and export controls more efficient.

“Poland is a member of all non-proliferation organisations and groupings and has ratified all relevant international conventions and treaties.” Such cooperation takes the shape of countering the growth of military capabilities of states that may pose a threat to international security, blocking the proliferation of conventional weapons and weapons of mass destruction and any technologies for their development, imposing restrictions on trade that may go against institutions and organizations based in countries covered by total or partial embargoes of the United Nations and the European Union, stopping trade with states that fight wars and support international terrorism, and pursuing joint operations to target recognized or suspected terrorist organizations.

The National Atomic Energy Agency is in charge of preventing terrorists from resorting to nuclear materials. The basic legal document in this regard is the Regulation of the Council of Ministers on Physical Protection of Nuclear Materials, which implements Poland’s obligations under the Convention of Physical Protection of Nuclear Materials and the State System for Physical Protection of Nuclear Materials defined in recommendations of the International Atomic Energy Agency. Since September 11th 2001, the facilities of the Institute of Atomic Energy have been taking more stringent measures of physical protection. Poland has to comply with its obligations under various agreements: The Treaty on the Non-Proliferation of Nuclear Weapons, the Agreement between Poland and the International Atomic Energy Agency for the application of Safeguards in Connection with the Treaty on the Non-proliferation of Nuclear Weapons, which establishes rules for nuclear safety, the Atomic Law as amended that lays out license requirements and physical protection requirements, the Regulation of the Council of Ministers on Nuclear Materials Accountancy that sets out the country’s obligations and requires strict accounting and inspections. Lastly, the Additional Protocol to the Agreement on Safeguards between Poland and the IAEA institutes a system of declarations and inspections for entities connected to nuclear activities, such as export of equipment and non-nuclear materials.

The Gene Law creates a legal basis to regulate contained use and deliberate release of genetically modified organisms, as well as the export and transit of GMOs with a view to the protection of the environment and human health.

Suppressing the Financing of Terrorism and Money-Laundering, and Freezing Assets

Poland has legislation in place to address the financing of terrorist acts, including the Penal Treasury Code addressing money laundering. At this time there is no legislation in place in Poland to criminalize collection of funds by Polish nationals that could end up in use to perpetuate terrorist activity or the wilful provision of such funds to terrorists. However, under the Penal Code and the Banking Law, such an act may be treated as accessory, and charges under such circumstances would vary based upon the nature of the particular terrorist act. Poland is in the process of ratifying the International Convention for the Suppression of the Financing of Terrorism.

The competent state bodies country “to detect and prosecute cases of criminal flow of financial means” that are potentially connected with terrorist activity are the Office for Organised Crime of the National Prosecutor’s Office, the State Protection Service and the General Inspector for Financial Information. Because it is not possible to immediately freeze funds or assets in Poland, the Minister for Finance is initiating action to amend existing laws that currently allow for the General Inspector for Financial Information to block suspect transactions to also permit immediate freezing. Recent amendments cover definitions of terrorism and terrorist organization, and the question of who may request and effectuate the freezing of assets.

International Cooperation

Poland has entered into 30 multilateral and bilateral treaties for the exchange of information, early warning, and extradition with other countries in order to combat organized crime. Poland is currently a party to 9 anti-terrorism conventions and is considering or in the process of ratification of 4 additional anti-terrorism conventions. Also, Poland is party to two multilateral conventions on extradition, the Convention on the Transfer of Sentenced Persons and the European Convention on Extradition. The Constitution of Poland states that international agreements that are ratified and officially published become part of the law of the land and have to be implemented directly, unless any further legislation has to be enacted for that purpose. International laws take precedence over national laws in case of a conflict of law.

Legal assistance to foreign states is based on the Penal Proceedings Code, which sets out the details concerning immunity of persons belonging to diplomatic missions and consular offices, legal assistance and delivery of documents in criminal matters, taking over and transferring criminal prosecutions or sentenced persons to serve their sentence, application for extradition or transport of prosecuted or sentenced persons that reside abroad. Cooperation between the Polish police and its foreign counterparts and organizations like Interpol is especially important. Poland has also signed an agreement with the European Police Bureau EUROPOL with a view to combating crime, but it is not yet ratified. Poland also relies on exchange of information within NATO for intelligence assessments and any measures to defend against terrorist threats.

Poland was at the forefront in proposing the drafting of a UN convention for the combat against transnational organized crime that would deal with the close connections between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and the illegal movement of nuclear, chemical, biological and other potentially deadly materials. Poland also actively promoted the Warsaw Conference on Combating Terrorism, which adopted an Action Plan outlining “forms and methods of struggle against international terrorism in the region, including the preparation of regular reports on national measures taken in this regard.”

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3. Law on Associations of 7 April 1989
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Weapons Control and Weapons of Mass Destruction

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Suppressing the Financing of Terrorism and Money-Laundering

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2. Penal Treasury Code
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International Cooperation

1. Constitution of Poland, Article 91
2. Law of 14 March 2002 to ratify the Agreement between the Government of Poland the and the European Police Bureau “EUROPOL” on the cooperation in combating crime
3. Penal Proceedings Code, Articles 578-611, 615