

11th International Anti-Corruption Conference: Workshop 7.1
Presentation Abstract

1. Panelist Name: Jacek Garstka	2. Workshop Title: OECD Convention: Do governments want it to work?
3. Title of case-study or paper: National Governments: What steps so far? Lessons learned from peer review process	

I. To understand the impact of the OECD Convention on Polish law and functions of the state structure, it is necessary to recall briefly the Polish "point of departure". When the negotiations commenced, Poland was a newcomer to the OECD, a member for 2 years, a candidate to the EU at the beginning of negotiations and above all – a fresh, 7 years old free-market economy, trying to grow its export volume or rather - after the Moscow crisis - not to lose too much. These facts meant that Poland was willing to adopt standards developed within the community of free-market democratic states, to show its ability to be a credible partner. Obviously the state's laws and structures at the beginning of transition were not prepared to cope properly with all the "black sides" of market economy. A lot of reforms had been carried out not as genuine innovative responses to problems, but as the implementation of the existing model. As the threat of corruption was concerned, it was viewed almost entirely as a domestic bribery problem.

II. In the negotiations of the Convention, Poland tried to play an active role while respecting the experience of other states and the need to establish really high standards. It was clear that the legislative work to be done would be major. The most important problems were the responsibility of legal persons for corruption and the definition of the foreign public official. In fact this first issue was the cause of later ratification of the Convention. Legal solutions we have applied were an attempt to settle the need of full implementation and traditional concepts of our legal system. It is worth stating that from the Polish perspective, the OECD Convention was seen as a part of a set of international legal instruments aimed at combating corruption adopted at the end of the 1990s. It is a fact that the UE assuming the Convention as a part of its *acquis* contributed to speeding up the work. The results of the first evaluations of the implementation of the Convention (Phase 1) and discussions conducted within the WGB influenced the final draft law submitted to Parliament.

III. The process of peer review as carried by the OECD WGB was a really tough exercise but also an important lesson. No doubt, questions from experts coming from different legal traditions were the source of reflection on own legal system. Poland found its own evaluation very satisfying: only one incompatibility with the Convention was found (which resulted in the submission of the relevant proposal to Parliament) and a few other issues were marked as requiring further examination in phase II. However it is not only the recommendations that influenced and inspired us, but also the exchange of views during the debate on the report. The best example is that although no recommendation concerning the definition of the foreign public official was addressed to Poland, we found that it is proper to define this term better. The relevant draft is under examination of the Parliamentary Commission.

IV. Poland has not yet undergone a Phase 2 evaluation, but has had the opportunity to act as a "lead examiner" in such an evaluation. It was obvious from the very beginning, and is reassured by the actual content of the Phase II, that it is not enough to enact the law. Common understanding of the Parties is that a minimum requirement of the Convention is the capable enforcement and judicial authorities, preventive measures including state initiated actions directed to private sector and citizen's organizations; these are necessary to fulfil the requirements of the Convention. Having this Phase 2 experience, it is obvious, that we will reconsider steps we have made to implement the Convention, looking for possible additional actions, which are not directly stipulated by the provisions of the Convention, but which seem to be indispensable for the effectiveness of the Convention.

V. The whole picture of the impact, which the Convention has not only on Poland, but on almost all Parties would not be complete without mentioning the influence it has on legislation concerning domestic bribery. In the case of Poland the example is the responsibility of legal persons. Before the Convention, there was no such a responsibility at all. When we introduced it, we did not, of course, limit it to foreign bribery, but it covered domestic bribery as well.

VI. Concluding I would like to refer to the provocative question which is the title of the workshop, but not attempt to answer it. It is difficult to find a non-disputable answer for that question. Of course one could say that if the governments are ratifying conventions, they are showing the will for it to work. But history knows of too many treaties which were not applied. I don't feel qualified to refer to the motives of concluding the Convention, but I would like to point to the mutual evaluation mechanism as a guarantee that the Convention is applied effectively. I would like also to point to the role of businesses in enforcing the Convention: sometimes they are the first to have suspicions concerning particular officials, particular transaction or company. In their interest - and in the interest of all - they should make use of the Convention and legal provisions introduced in its implementation by the Parties.