



THE REPUBLIC OF POLAND
MINISTRY OF FINANCE

REPORT
of the General Inspector of Financial Information
on the implementation of the Act of 16 November 2000
on counteracting money laundering and terrorism financing
in 2012

Warsaw, March 2013

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1. INTRODUCTION

General Inspector of Financial Information (hereinafter referred to as the GIFI), forming the Polish Financial Intelligence Unit together with the Department of Financial Information of the Ministry of Finance, is the central point of the national system of counteracting money laundering and the financing of terrorism, which includes both the obliged institutions and cooperating units. However, the term “central point of the system” does not mean that the exclusive responsibility of the GIFI is to initiate preparatory proceedings or operational activities relating to suspected money laundering or terrorism financing. Such proceedings and activities are undertaken by authorities with adequate powers (agencies of legal protection, law enforcement authorities) on the basis of information received from the GIFI or from own data of these authorities or from other sources. The term “central point of the system of counteracting money laundering and the financing of terrorism” means above all that the GIFI mediates the flow of information in this respect.

In accordance with the provisions of *the Act of 16 November 2000 on counteracting money laundering and terrorism financing* (i.e. OJ 2010, No. 46 item 276, as amended; hereinafter referred to as the Act) the Prosecution Office, Internal Security Agency, Central Anti-Corruption Bureau and departments of the minister responsible for internal affairs and supervised by him shall immediately inform the GIFI – within the limits of their statutory authority – about all cases of receipt of information indicating suspicion of committed crimes referred to in Article 165a or Article 299 of the Penal Code, initiation and completion of proceedings concerning those crimes or presentation of charges relating to those crimes. The GIFI from its side shall immediately notify of evidence to link this information with the information obtained pursuant to Article 8 paragraph 3, Article 16 paragraphs 1 and 1a and Article 17 of *the Act*.

Moreover, the GIFI provides – in addition to the notifications of suspected crimes of money laundering or terrorism financing committed – responses to requests from agencies of legal protection, law enforcement authorities and other authorized entities.

It should be noted that the Act gives the prosecutor and the judge the right to obtain from the GIFI information for each of the criminal proceedings, regardless of whether they are conducted in relation to money laundering or not, or whether they were initiated based on information received earlier from the GIFI, or from another source. It is understandable since the purpose of the majority of the crimes referred to in the Polish criminal law is to obtain financial benefits which may subsequently be the subject of actions identified in Article 299 of the Penal Code. Also other entities (such as, for example, ISA, CBA and the minister responsible for internal affairs or persons authorized by him, as well as the fiscal control authorities) shall be entitled to obtain information in possession of the GIFI within their statutory powers, which after all are not limited only to prosecution of money laundering or terrorism financing.

It is then no wonder that in 2012, again, a greater amount – compared to the previous year – of information exchanged by the GIFI with cooperating units, both on the basis of Article 14 and Articles 32 and 33 of the Act, was recorded. The reasons for this should be also seen in the constantly growing awareness of cooperating units as to their rights under *the Act*.

In 2012, the number of notifications made pursuant to Article 33 paragraph 3 of the *Act* also increased, by the total of 83.5% compared to 2011.

2. INFORMATION ON THE DATA SUBMITTED TO THE GIFI

2.1. Information on suspicious transactions

In 2012, 2427 descriptive notifications of suspicious activities and transactions, the so-called SARs (Suspicious Activity Reports), which were included in the conducted analytical proceedings, were recorded in the GIFI IT system. These notifications contain description of a few, several or even a few hundred of transactions (often related to each other by the transaction parties, the circumstances of the transaction, similar period of completion and/or involvement of the same material values) and accompanying circumstances which in the opinion of the notifying authority/unit may be related to money laundering or terrorism financing. Common components of these notifications are additional data and documents justifying the suspicion and aiming to facilitate the proceedings (e.g., account records, copies of documents relating to the transactions, etc.).

Table 1 – Number of descriptive notifications received from 2001 to 2012

Period	Obligated institutions	Cooperating units	Other sources	Total
2001 (from VII)	102	115	14	231
2002	358	237	19	614
2003	739	211	15	965
2004	860	521	16	1 397
2005	1 011	500	15	1 526
2006	1 351	530	17	1 898
2007	1 244	648	28	1 920
2008	1 287	460	68	1 815
2009	1 362	464	36	1 862
2010	1 462	476	59	1 997
2011	2 004	461	62	2 527
2012	1 954	436	37	2 427

The number of descriptive notifications from all sources is similar to that provided in 2011 and significantly higher than that provided annually to 2010 inclusive.

The percentage of descriptive notifications received from the above-mentioned three main sources of information is illustrated in Chart 1.

Chart 1 – Sources of descriptive reports in 2012 (SAR)

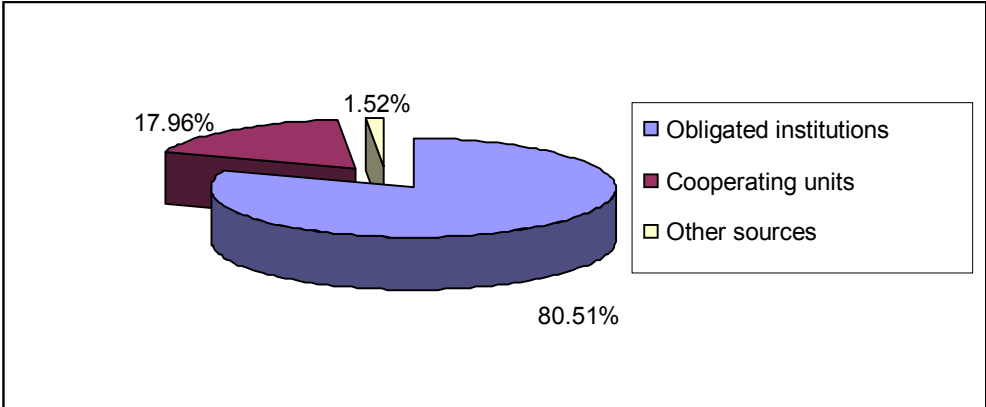


Table 2 – Division of descriptive reports from obligated institutions by type of institution

Type of institution	Number SARs	Percentage
banks (including branches of foreign banks, credit institutions)	1 805	92.37%
brokerage houses or other entities which are not banks carrying out brokerage activities	46	2.35%
cooperative savings and credit unions	22	1.13%
insurance companies, main branches of foreign insurance companies	23	1.18%
tax advisers, auditors and accountants	4	0.20%
notaries public, legal advisers and attorneys	11	0.56%
companies conducting leasing and factoring business	7	0.36%
other entrepreneurs receiving payments in cash >= EUR 15000	26	1.33%
exchange offices	9	0.46%
other financial institutions	1	0.05%
Total	1 954	100%

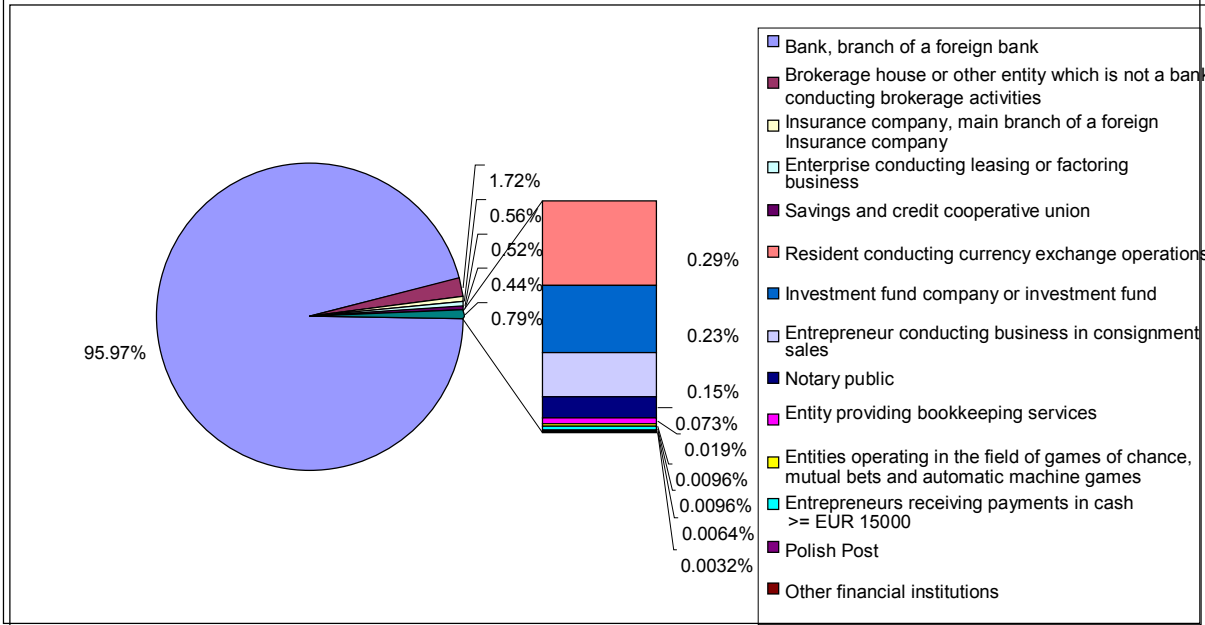
Descriptive reports – in comparison to the individual suspicious transactions – include more information, particularly with regard to the suspicion of committing a crime and circumstances of the transactions taken by the obligated institutions. Such a broad spectrum of information enables faster verification of the received data in other sources of information and shortens the duration of actions taken by the GIFI in cooperation with the prosecution office and law enforcement agencies.

In 2012, 436 descriptive notifications from the cooperating units (CU) were also registered. Most of them came from the bodies subordinated to the Ministry of Finance, i.e. fiscal authorities, customs authorities and fiscal control authorities (nearly 68% of all notifications from CU). Among individual cooperating units the largest number of notifications in 2011 was sent by the National Bank of Poland (10.6%) and the Agricultural Property Agency (6.5%).

In 2012, the GIFI received from the obligated institutions 31 395 pieces of information about individual suspicious transactions, including 31 376 transactions identified as suspected of money laundering (Suspicious Transaction Reports on Money Laundering, abbreviated STR-ML), and 19 transactions – as suspected of terrorism financing (Suspicious Transaction Reports on Terrorism Financing, abbreviated STR-TF). Distribution of these transactions by type of obligated institution is illustrated in Chart 2. Over the years 2005-2010, the GIFI noted yearly reduction in the number of transactions marked as suspicious reported by the obligated institutions electronically. Analysis of these transactions in previous years showed a large share of mistakes (detailed data – in the GIFI reports from the years 2005 to 2010) in the reported data. These were both technical and content-related, made by the obligated institutions in classification of transactions. Attempts made by the GIFI and the cooperation with the obliged institutions led to a noticeable decrease in mistakes while increasing the quality of the reported information. Analysis of the data for 2010 (additional information in the GIFI report for 2010) confirmed the elimination of most of the above-mentioned mistakes. After the elimination (after several years of intensive cooperation with the obligated institutions) of most sources of mistakes, in the years 2010 and 2011, the effect of stabilization of the quality of STRs passed to the GIFI and at the same time increase in the number of STRs provided by the obligated institutions to the GIFI was observed. This phenomenon occurred also in 2012. Significant increase in the number of STRs also stems from the execution by the supervisory authorities (the GIFI, PFSA) of registration as STR in

the registers of obligated institutions of transactions included in descriptive notifications addressed to the GIFI (SAR). As described above, the latter often concern many transactions which, after being recorded in the registers of obligated institutions as STR, increase the number of STRs received in reports by the GIFI. As a result, the amounts of STRs in subsequent years are not fully comparable with each other.

Chart 2 – Sources of STRs in 2012



Nearly 96% of the notifications on individual suspicious transactions was sent by banks, followed by – brokerage houses, insurance companies, entities engaged in the leasing and cooperative savings and credit unions.

2.2. Information on transactions above threshold

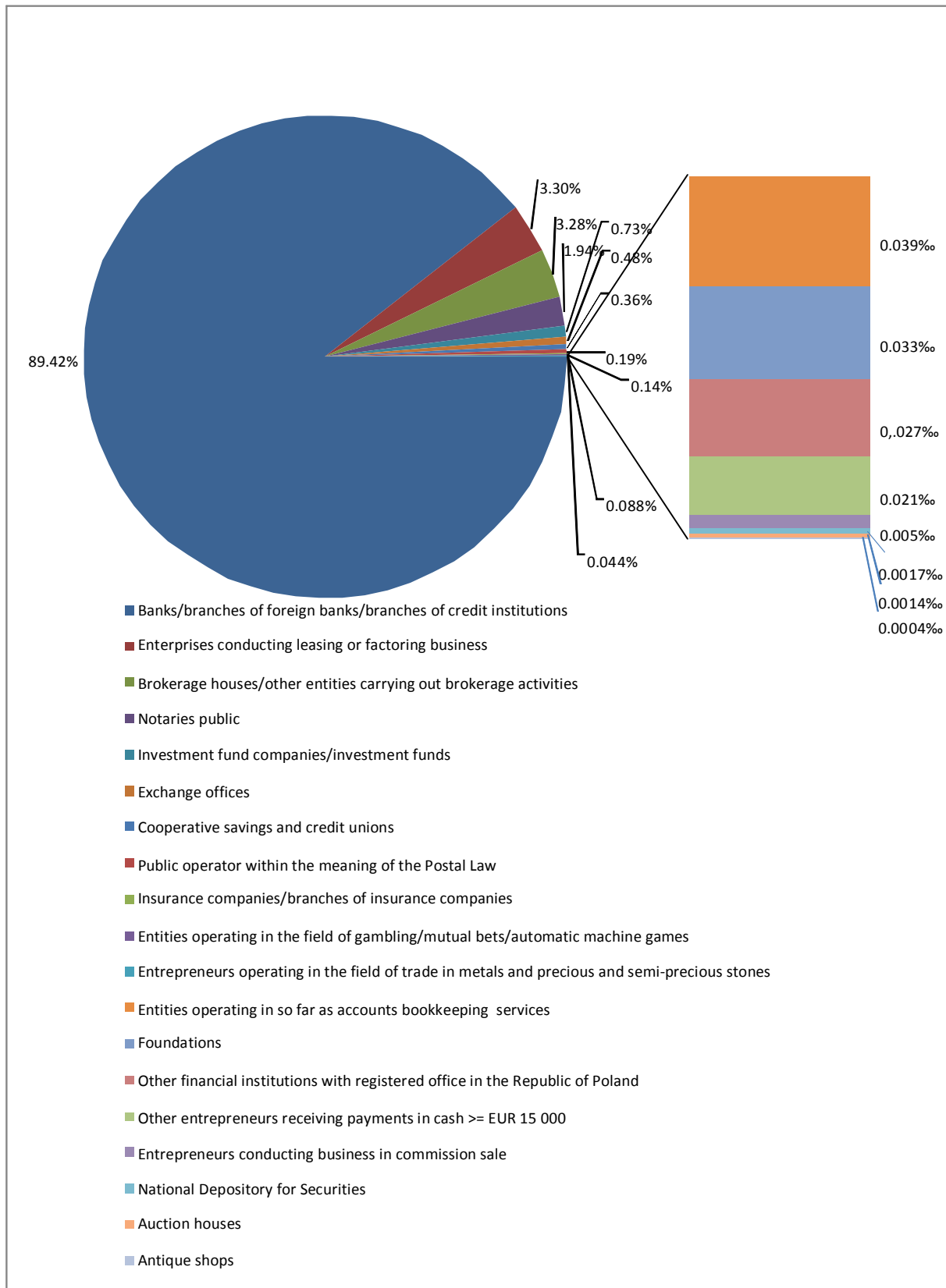
In 2012, the GIFI received information on almost 28 million transactions whose worth exceeds EUR 15 000 (EUR 1 000 in the case of certain types of obligated institutions). They are collected and processed in the Department of Financial Information of the Ministry of Finance (i.e. a separate unit in the Ministry of Finance to perform statutory tasks of the GIFI).

Obligated institutions report data on the above-mentioned transactions collectively, in form of files, within 14 days after the end of each calendar month in which they are registered.

In 2012, the GIFI IT system received more than 95 thousand data files relating to the above-mentioned transactions. In accordance with the applicable rules, data files are transferred using one of the three electronic channels:

- secure website of the GIFI (in 2012, the GIFI received almost 92% of all files this way),
- secure e-mail (in 2012, the GIFI received more than 8% of all files this way) or
- CD/floppy disk (in 2012, the GIFI received 0.05% of all files this way).

Chart 3 – Sources of transactions above threshold in 2012



In the case of transfer of transaction information via a secure website it is possible to both send, with its help, a file generated in the correct format from the system of the obligated institution (that is the solution used mainly by large institutions, sending monthly information

about many transactions, in 2012, 68.8% of all files was provided this way) as well as to fill out the form containing the electronic version of the transaction card directly on the website (this is the solution used mainly by smaller institutions, sending monthly information about few transactions, in 2012, 23.1% of all files was provided this way). After more than double increase in the number of information on transactions recorded by completing an electronic form of transaction card directly on the website in 2011 compared to the previous years (in 2011, it applied to nearly 18.3 thousand transactions, while between 2008 and 2010 this number varied between 6.7 thousand and 8.7 thousand transactions per year), in 2012, there was a further increase in the number of transactions provided this way (over 22 thousand transactions). In conjunction with a systematic decline in the number of information on transactions submitted in the form of paper transaction cards (5.5 thousand in 2008, 3.6 thousand in 2009, 3.2 thousand in 2010, 2.5 thousand in 2011, 1.5 thousand in 2012), it confirms the results of actions undertaken by the Department of Financial Information in the Ministry of Finance to increase the use of electronic means for exchanging information and clearly indicates the enlargement of the circle of smaller obligated institutions systematically reporting information on transactions to the GIFI. However, it should be noted that even this small part of information transmitted by the obligated institutions to the GIFI in the form of paper copies of transaction card requires proportionally much more work in collecting and entering into databases.

Distribution of the number of transactions by type of institution providing data is illustrated in Chart 3. Most information comes from the following groups of obligated institutions: banks – 89.42% of transaction information, entities conducting brokerage – 3.28% of transaction information, companies conducting leasing or factoring business – 3.30% and notaries public – about 1.94% and investment funds – about 0.73% of the total information provided.

Of these, nearly 28 million transactions, submitted to the GIFI bases in 2012, 9.66% were transactions included in the category of cash transactions by the obliged institutions, and 11.34% – transactions involving entities for which the obliged institution indicated place of residence outside the Polish borders or nationality other than Polish (2.3% of the transactions were classified by the obligated institutions as transfers from abroad).

Information on the transactions was made available as input data for further analyses. In particular, this information was subject to automatic analytical processes. For example, all the information on transactions was reviewed for possible links with the entities suspected of financing terrorism or entities from countries of high risk/subject to sanctions. Automatically, links of information on transactions with other types of information available in the system were also searched (for example, with queries of external actors – the prosecution office, the foreign FIU, etc.), which were then used in analytical proceedings or transferred to external entities requesting the GIFI to submit financial information. The above links were searched for using the analytical models functioning in the GIFI system, which have been used both in the processes of automatic generation of reports as well as the ad hoc analyses for a specific problem.

Information on transactions above threshold was also used to extract data about the accounts of entities used in the process of detailed analytical proceedings conducted in the Department of Financial Information, as well as information on the transactions as such, which is a directly accessible source of information on transactions of entities with interest of given analytical proceedings. They are both a direct source of information on transactions, which can be found by asking a question about a particular entity or account, as well as the source for the analysis of links – through the use of option to search for connected objects (accounts, entities) in the database, i.e. staying in a relation of a defined type to each other (for example,

parties related through common occurrence in the chain of transactions or accounts linked by the transactions carried out on them by the same entity).

Information grouped in the way described above was included in the conducted analytical proceedings and notifications to the prosecution office and other cooperating units. Information on the received transactions is also transmitted to the prosecution office and other cooperating units, at their request (in 2012, it involved more than one hundred thousand transactions).

2.3. Information on other categories of data

Information from cross-border cash declarations

In accordance with Article 15a paragraph 5 of the *Act*, the Border Guard and customs authorities shall provide the GIFI with information from cross-border cash declarations through the EU border. In 2012 (similarly to 2011), this information was transmitted using electronic communications channel. The GIFI received information on more than 9 thousand cross-border cash declarations, including more than 8300 cash declarations on importing cash into the EU, and more than 440 cash declarations on the export of cash from the EU submitted in 2012 (the GIFI also received information on 308 declarations on the cash transport between the EU countries and 28 declarations on the cash transport between countries outside the EU).

Value of the declared cash imported to the EU amounted to (without counting cash indicated in the globally smaller declarations on its transportation, where the value was determined in 14 currencies other than those listed below) over:

- EUR 160 million,
- USD 22 million,
- PLN 4 million,
- CAD 0.5 million,
- GBP 0.6 million,
- RUB 298 million,
- UAH 1.2 million,

For the export of cash from the EU the declared value was (without counting the value of cash indicated in the globally smaller statements, where the value was determined in 12 currencies other than those listed below) over:

- USD 11.9 million,
- EUR 3.3 million,
- CAD 0.5 million,
- PLN 1 million,

Imports were usually declared by the citizens of Ukraine (in 49% of cases), followed by the citizens of Russia (in 40% of cases), Belarus (in 3.2% of cases) and Poland (in 3% of cases), and apart from them, the citizens of 51 other countries. Exports were mostly declared by the citizens of Poland (in 78.6% of cases), Russia (in 3.2% of cases), Canada (in 3% of cases) and the U.S. (in 2.9% of cases), moreover, the citizens of 18 other countries.

When it comes to directions from which the imports of cash into the EU came, 50% of statements were related to the import of cash from Ukraine, 41.6% – from Russia, 3.5% – from Belarus. In the case of exports of cash from the EU, the declared destinations were the

most often Russia (15.4% of cases), Thailand (10.8%), the USA (10.4%), Canada (6.1%), China (5%), Turkey (4.7%) and the Bahamas (4.1%).

Information on the basis of Article 8b paragraph 5 of the Act

According to the *Act*, the GIFI receives – in addition to information on suspicious and above-threshold transactions – also information on cases of failures to carry out transactions or not signing an agreement with a client, or termination of such agreements in connection with the inability to use the financial security measures (in accordance with Article 8b paragraph 5 of the *Act*). In 2012, the GIFI received 15 pieces of information of this kind from obligated institutions.

3. ANALYSES

3.1. Counteracting money laundering

Obtaining, collecting, processing and analysing information in the method described by the *Act* and taking steps to counteract money laundering and terrorism financing is the essential task of the GIFI. While performing this task, the GIFI examines the course of transactions for which it conceived a reasonable suspicion, provides authorized parties with information on transactions and obtains requested information from obligated entities, and cooperates with foreign institutions and international organizations involved in counteracting money laundering or terrorism financing. All the above-mentioned actions are taken in order to conduct a comprehensive analysis of the collected information for commitment of money laundering or terrorism financing crime by the suspected parties. This analysis is to make believable that the asset values which are the subject of transactions are derived from the benefits of committing a prohibited act.

3.1.1. Analytical proceedings and their effects

In performing its statutory tasks, in 2012, GIFI initiated – on the basis of the obtained information – 1523 analytical proceedings. This number includes cases of a suspicion of money laundering, cases connected with counteracting the financing of terrorism, as well as proceedings initiated on the basis of information provided by the obligated institutions which could not perform the duties concerning financial security measures and which did not carry out transaction, did not sign an agreement with a client or terminated agreements already concluded. Compared to data from 2011, the number of conducted proceedings remained basically at a comparable level, i.e. increased only slightly over 1%. It should be noted that a single analytical proceedings conducted by GIFI may cover a few - several descriptive notifications received from various obliged institutions and thousands of individual suspicious transactions and transactions above threshold.

The result of the conducted analytical proceedings was:

- 1) Providing the competent local prosecution offices with 111 notifications of suspicion involving committing money laundering. These notifications contained prerequisites justifying the initiation of criminal proceedings against nearly 0.6 thousand entities, and the total amount of the asset values which were the subject of suspected crime, amounted to PLN 4.6 billion. Notifications were submitted to prosecution offices in accordance with Article 31 of the *Act*, that they were prepared on the basis of information in possession of the General Inspector, its processing or analysis, while the GIFI provided the prosecution office with the possessed evidence supporting the suspicion of money laundering. In addition to the main 111 notifications mentioned, the GIFI also provided the prosecution offices with 82 notifications, which contained materials connected subjectively or objectively to the proceedings on money laundering conducted by the prosecution, and which showed a reasonable suspicion of having committed the crime. These materials were obtained during follow-up analytical proceedings conducted by the GIFI. They concerned almost 0.2 thousand entities, and the total amount of asset values which were the subject of suspicion of crime in these materials, amounted to over PLN 0.4 billion.

- 2) Blocking 141 accounts with collected funds with a total value of at least PLN 66.46 million, and the suspension of 3 transactions in the amount of PLN 0.31 million (based on Article 18 and 18a of the *Act*). The above amounts of funds blocked in the accounts are indicative and may be lower than actual, because during the blockage imposed by the GIFI the funds were still supplying accounts, but they were not paid out or transferred to another accounts.
- 3) Providing the competent authorities and units with 989 information in accordance with Article 33 paragraph 3 of the *Act* (i.e. on own initiative the GIFI).

2012 is another year in which the number of notifications submitted to other authorities and units by the GIFI in accordance with Article 33 paragraph 3 of the *Act* significantly increased. This visible (i.e. by 85% more than in the previous year) increase in the number of notifications, submitted on own initiative by the GIFI to the competent authorities and units, is the result of firm actions of the General Inspector aimed at improving cooperation with the law enforcement agencies, fiscal control authorities and other cooperating units. These actions result primarily from the awareness of risk of organized crime, the growing professionalism of criminals and the process of emergence of new forms of crime, adapting to changes in socio-economic life, development of technology or using existing regulations. Multi-layered and multi-subject collaboration of services and institutions responsible for the economic security of the State is the primary means to prevent development of this segment of crime. During the reporting period of 2012 in question, the GIFI sent the following number of notifications to the competent authorities and units:

- 385 to fiscal control authorities,
- 298 to the Police (including the Central Bureau of Investigation),
- 263 to the Internal Security Agency (including the Counterterrorism Centre),
- 23 to the Border Guard,
- 13 to the Central Anti-Corruption Bureau,
- 4 to the Financial Supervision Authority,
- 2 to the Head of the Customs Service,
- 1 to the Military Counterintelligence Service.

The statutory possibility to transfer information on transactions covered by the provisions of the *Act* to other authorities and units by the GIFI in accordance with Article 33 paragraph 3 of the *Act* functionally results from the fact that the analysis of the collected information conducted by GIFI for commitment of money laundering or terrorism financing by the suspected parties does not always lead to the conclusion of a reasonable suspicion of committing any of the above-mentioned crimes. However, on the basis of this analysis sometimes prerequisites can be formulated to conclude that the examined transactions include the characteristics of a prohibited act, whose prosecution falls within the authority of the above-mentioned authorities and cooperating units. In 2012, the GIFI submitted the biggest number of notifications pursuant to Article 33 paragraph 3 of the *Act* to the fiscal control authorities. Most of these notifications indicated the suspicion of tax frauds based on the structure of the goods and services tax. They were related to: understatement or non-disclosure of turnover due to forging or hiding invoices; embezzling the calculated VAT; “missing trader” frauds; the carousel fraud. A significant proportion of the notifications was also information on the suspected of hiding of object of taxation, understating income, undisclosed revenues or fraud in the import of goods. The controls conducted – using information provided by the GIFI – by the fiscal control authorities and fiscal authorities in

many cases allowed charging and recovery of diminished amounts due by the State Treasury. Moreover, in 2012, the GIFI turned to fiscal control authorities with 13 applications to inspect the legality of origin of certain asset values in order to explain their source.

The second largest group of notifications was addressed to the Police (including the Central Bureau of Investigation). The provided information on transactions after operational verification in some cases contributed to the initiation of preliminary proceedings and presentation of charges or was used in ongoing preliminary proceedings.

The Internal Security Agency was the recipient of few less notification provided by the GIFI. The notifications contain information on transactions whose analysis led to the conclusion that the signs of the suspected prohibited act are within the statutory tasks imposed on the Agency, including, inter alia: identification, prevention and detection of crimes affecting the economic bases of the state and its security, identification, prevention and detection of crimes of corruption of public officials, as well as relating to the production and marketing of goods, technologies and services of strategic importance for the national security, illegal manufacturing, possession and trade in arms, ammunition and explosives, weapons of mass destruction, and intoxicants and psychotropic substances in the international trade.

Notifications submitted by the GIFI in accordance with Article 33 paragraph 3 of the *Act* became the object of analysis and comprehensive checks by performing statutory activities aimed to verify the provided information. Some part of the notifications submitted by the GIFI led to the initiation of new preliminary proceedings. Another part was added to the criminal proceedings already pending. The information on the transactions submitted by the GIFI was used, for example, in investigations relating to the activities of organized criminal groups involved in the illegal trade in diesel fuel or investigations relating to criminal groups involved in the purchase of tobacco products without Polish excise stamps and smuggling them into Western Europe. The provided information was also the basis for development of written requests to the GIFI by prosecutors for disclosure of information gathered in the manner and within the scope of the provisions of the *Act* for the purpose of criminal proceedings. The preliminary proceedings conducted in connection with the notifications of the GIFI allowed to present charges of committing a crime to many persons and the recovery of assets of a multimillion value. In many cases, coordination of actions of the GIFI and authorized law enforcement agencies led to the arrests of members of criminal groups and blocking of bank accounts with the assets derived from the benefits connected with the commission of a prohibited act.

Furthermore, the notifications submitted by the GIFI pursuant to Article 33 paragraph 3 of the *Act* to the fiscal control authorities often became the basis for the initiation of auditing procedures by these authorities for the accuracy of calculations and payment of taxes which make the State budget income from personal income tax, corporate tax and goods and services tax. Conducted auditing procedures repeatedly demonstrated that controlled entities did not carry actual declared business, but were only entities issuing “empty” VAT invoices used by the purchasers for unauthorized reduction of the tax payable on goods and services, which in turn affected the depletion of receivables of the State Treasury. Moreover, the above-mentioned auditing procedures showed that the controlled entities did not pay the VAT amounts indicated in sales invoices to the competent tax office. Based on the evidence documentation collected in the auditing procedure, the fiscal control inspectors, as a financial authority of the preliminary proceedings, initiated investigations into fiscal crimes, then converted into investigations conducted under the supervision of the prosecution offices. Many a time also bank accounts, which were used to intensive validation of commercial transactions, which were not actually performed – as a result of coordination of actions of the GIFI and other authorities combating tax frauds – were blocked by the GIFI as related to the

asset values derived from the benefits associated with the commitment of a prohibited act. Another tangible result of providing fiscal control authorities with notifications by the GIFI were tax decisions issued by these authorities. Direct effects of the auditing procedures performed by the competent authorities translated into decisions determining tax liabilities for personal income tax, corporate tax, goods and services tax and inheritance and donations tax issued by these authorities.

According to Article 4a paragraph 3 of the *Act*, the Minister of Justice shall provide the GIFI aggregated data “*on the number of criminal prosecutions, the number of persons in respect to the proceedings instituted and convicted of crimes, with and without legal validity, referred to in Article 165a and Article 299 of the Penal Code, and on asset values in respect to which freezing, blocking, and suspension of a transaction has been performed, or property seizure, confiscation or forfeiture has been adjudicated – within 2 months after the end of the year in question and subject to the report.*”

According to data from the Ministry of Justice received in a letter dated 15 March 2013, in 2012, 177 criminal prosecutions for crime under Article 299 of the Penal Code were initiated against 650 people, including 112 convicted without legal validity. In these prosecutions:

- seizure of asset values in the amount of PLN 8 277 307 was adjudicated,
- confiscation of property in the amount of PLN 40 807 971, USD 7 895, EUR 94 was made¹;
- forfeiture of property in the amount of PLN 544 218 849 was adjudicated.

At the same time, it was informed that in 2012 common courts did not conduct criminal proceedings in connection with the crimes of Article 165a of the Penal Code. Furthermore, it was indicated that the data on the number of adults convicted with legal validity for the crimes of Article 299 of the Penal Code will be available in June 2013 and can be transferred immediately after receiving it from the statistical database of the National Criminal Register.

Data obtained from the Polish Prosecution General shows that in 2012, on suspicion of money laundering:

- 208 preliminary proceedings were initiated (including 73 case in *ad personam* phase concerning 174 suspects),
- 53 indictment were drawn up against 357 persons,
- 80 investigations were discontinued²,
- in 21 cases initiation of investigations was denied,
- 30 judgements convicting 74 people were passed.

¹ Including the compulsory mortgage to six premises, confiscation of a TOSHIBA laptop and a monitor without specifying value, as well as the confiscation of cars, television sets, laptops brand PIONEER XV, built-up and undeveloped real property and living area, and confiscation of property up to the amount of PLN 200 thousand each for 2 real properties.

² Including 42 initiated after notifications in the GIFI.

As the effects of proceedings initiated on the basis of the GIFI notifications, the Prosecution General identified 19 indictment of acts referred to in Article 299 of the Penal Code concerning 168 defendants,³ 13 judgements concerning 45 convicted.

In 2012, the GIFI also analysed the received justifications of decisions to discontinue the proceedings and not to initiate proceedings in cases of money laundering. As in the previous years, the most common cause of discontinuations and refusals to initiate the proceedings was the lack of the GIFI indication of the original crime (i.e. predicate) in relation to money laundering, that is the source of funds to be laundered; no indication of the GIFI of the evidence of predicate offence, failure to recognize by the prosecutors criminal and fiscal offences as predicate offences for money laundering; the fact that the predicate offence was committed outside the Polish borders.

In addition, it was noted that discontinuations of criminal proceedings of Article 299 of the Penal Code, as in the previous years, were accompanied by cases of presentation of charges in connection with the commission of prohibited acts other than money laundering or the above-mentioned decision to discontinue the proceedings were in many cases partial and referred only to some of the suspects.

This issue noticed since a few years, has become the basis for the organization, on 30 October 2012, of a meeting of the representatives of Department of Financial Information of the Ministry of Finance with the representatives of the Prosecution General. Its theme was cooperation of the GIFI with prosecution offices, with particular emphasis on discontinuations and denials to initiate proceedings. The result of these discussions was development and sending to all Appellate Prosecutors' Offices by the Prosecution General in December 2012 guidelines and recommendations indicating, inter alia, that the *Act on counteracting money laundering and terrorism financing* does not obligate the GIFI to indicate the predicate offence. Lack of rights to perform investigation and operational activities prevent the establishment of such an offence. Consequently, it is not possible for the GIFI to collect and transfer evidence relating to the predicate offence of money laundering to the prosecution office.

3.1.2. Sample directions of analyses

Money laundering originating from criminal fiscal offences

The most common area indicated in the notifications addressed to the GIFI in 2012 by the obliged institutions and cooperating units was the so-called crime of money laundering originating from the benefits of VAT frauds. In this case, the so-called predicate offence is usually the extortion of undue refund of the excess of the calculated VAT over the owed. The entity requesting the refund of excess usually does not make the actual intra-Community supplies demonstrated in settlements with the tax office. This is the basis for requesting the refund of goods and services tax calculated for the declared purchase of goods often corresponding to an amount of (fictional) supplies. In 2012, the greatest number of

³ According to the information flowing to the GIFI, the result of proceedings conducted on the basis of the GIFI notifications there were also indictment of crimes other than those specified in Article 299 of the Penal Code.

notifications from the obliged institutions and cooperating units from the area applied to the sales of: electronics, components of biofuels, noble metals, including granulated gold and steel parts.

Typically, in the extortion of VAT in trade in precious metals we deal with business entities registered in Poland, while the owners of these entities are mostly the citizens of Estonia and Latvia.

Another area in which we have to deal with money laundering from the benefits of the VAT frauds is trade in mobile phones, PlayStations, computer games. It concerns both the domestic turnover, as well as the intra-Community one. In such practices we deal with a broad range of customers, often with the entity or entities from another country of the European Union (EU). Polish business entities involved in this practice (newly established or purchased by citizens of other countries) often play the role of the so-called simulating company, whose main role is to transfer funds abroad. In most cases, payment for the goods takes place the same day on which the invoice was issued or the purchase or sale transaction was completed. Goods are quickly resold and usually there is no evidence of transactions confirming payments for the transportation of goods or part of the transport on the accounts. The speed of transfer of funds through the accounts of many cooperating companies only seemingly aimed to complicate tax settlements, both domestic and foreign, and thus the tax extortion, both in Poland and in other countries. Often, citizens of the EU countries of Arab and Indian origin appear as the owners of companies, acting as the so-called “dummies,” and probably related to an organized criminal group with an international dimension, engaged in the establishment of new business entities used in the process of VAT fraud. Striking is the fact of a short-term existence of these entities, which are created only in order to transfer out as much funds abroad as possible, without accounting to the competent fiscal authorities. In addition, some entities involved in the process export goods to countries such as Hong Kong and the United Arab Emirates, often at prices which do not differ from the purchase prices, which, with the additional transport costs, make these trade transactions unjustified in economic terms. The described transactions and patterns appearing in the notifications of the obliged institutions and cooperating units testify to the fact that we are probably dealing with the same commodity which is traded in the circle of entities most probably related to international criminal group.

In 2012, it was also observed that in the risk areas indicated by the GIFI in the previous years, there was a change in the methods used by criminal groups or these groups began to use methods already widely known. Such is the case of the use of Polish entities as the so-called “dummies” and “fictitious companies” by nationals from Asian countries.

More and more often, in the conducted analyses appeared Polish entities whose core business was, inter alia, other activities auxiliary to financial services, except for insurance and pension funds, other financial intermediation.

The analyses indicate that such entities do not hide that they operate on behalf of third parties, and their business is to collect money (for example, after signing an agreement) from different companies, making payments to own account and foreign transfers, among others to China. These funds are of very high value, and their origin remains unknown. The time of “circulation” of funds from making cash payments to transferring abroad is very short.

Another significant fact is the lack of other transactions on the accounts of the Polish entity participating in the process, the lack of settlements with tax offices, the Social Insurance Institution (ZUS), no charges for electricity, telephone and other charges related to the economic activity.

Money laundering originating from turnover of virtual currency

In 2012, a new phenomenon, new area used in the process of money laundering was observed – trade in a virtual currency Bitcoins (BTC).

Bitcoins – are digital currency created in 2009 by Satoshi Nakamoto. BTC units can be stored on a personal computer in the form of wallet files or retained in the external service dealing with storage of such wallets, operated by third parties. Their “construction” allows anonymous ownership of property and its transfer. They are accepted both as payment for Internet services, as well as for real goods. BTC exchange rate in relation to PLN as at the reporting date was BTC 1 – PLN 98.3 (22 February 2013).

Turnover of BTC has been identified in the world as a new risk area associated with money laundering.

Organised crime groups use digital virtual currency in order to hide the actual source of origin of funds. This currency is used, inter alia, by entities engaged in activities related to gambling – it is estimated that by the end of 2012, Bitcoins worth about USD 300 million were stored in the area of online gambling on virtual accounts. This value is steadily increasing, what we can estimate based on the growth dynamics of BTC exchange rates in relation to other currencies. From the reports of the institutions connected with counteracting money laundering it follows that, for instance, criminal groups linked to drug trafficking hire people who specialize in cybercrime and use them for trading virtual currency, which in the next stage of money laundering is again converted, for example, at exchange offices into traditional currency.

The number of people using Bitcoins is also increasing, as well as the number of companies which accept payments in this currency, such as internet companies offering online shopping.

This area, due to high anonymity, requires intensive actions of institutions counteracting financial crimes.

Money laundering originating from illegal trade in goods

Analyses conducted by the GIFi for money laundering from the benefits of the illegal trade in goods relate primarily to: steroids, psychoactive substances, medications, tobacco and counterfeit cosmetics and clothing. The ability to identify this type of predicate offences refers mainly to the situations where the buyer does not collect the goods in person from the seller, but in the form of consignments, at the same time making payment by bank transfer, postal or money order, or through the payment service providers. Moreover, due to the fact that a single payment made by the ordering party amounts from a few dozen to a few thousand PLN, detecting people involved in money laundering from offences of this kind depends largely on the efficiency of obligated institutions to identify these transactions as suspicious.

Large fragmentation of individual transactions and a significant number of people involved in the process is the biggest problem in the correct identification of the actual scale of a given phenomenon, which also has an impact on the perception and counteracting the problem of illegal trading and money laundering by the relevant authorities. However, the ability of obligated institutions to correctly identify as many suspicious transactions as possible, allows linking different persons making or receiving analogous transfers, often at different times and in different places.

Another limitation affecting the effectiveness of actions is that except for the situations of selling counterfeit goods as genuine, buyers are not interested in reporting crimes. In addition, very often the persons receiving payments are recruited only to collect payments for the

delivered goods and are only indirectly related to the organizers. It also happens that collection of payments or opening of the accounts to which the transfers are made is based on false personal data and documents.

Obligated institutions usually report cases where a large group of people makes one-time payments to natural persons not engaged in business activity. Repeatedly, the person making transfer enters as a beneficiary other data than the person for whom the account is held. Titles of transfers are usually general, but it also happens that a specific product name is indicated, which already at the stage of financial analysis enables to determine to what kind of trade in goods individual transfers can be linked.

The results of the analysis are usually transferred to law enforcement authorities. Notification from the GIFI often becomes the basis for taking action by the prosecution office or the police to verify people involved in potentially illegal activities and to check what kind of trade in goods we are dealing with. Just as often it happens that the police have already identified a criminal group, and the information on financial flows confirms or extends their knowledge of the scale of operations and the people involved.

Some of the organized crime groups involved in the illegal trade in goods divide the tasks in such a way that a separate group is engaged in the production or purchase of goods for resale, other people deliver goods to individual consumers, and others are involved in collecting payments and money laundering. Such a scheme of action was adopted by four large organized crime groups identified by the GIFI in recent years, engaged mainly in the sale of anabolic steroids. Based on, inter alia, information provided to law enforcement authorities, it was possible to apprehend both the organizers of the process and other people recruited by them, and present them charges involving also Article 299 of the Penal Code.

3.2. Counteracting terrorism financing

The statutory tasks of the GIFI situate it as a government authority competent in matters of counteracting money laundering and terrorism financing. The GIFI is one of the institutions participating in the system of anti-terrorist protection of the country. Through the functional nature of activities performed by this authority – concerning obtaining, collecting, processing and analysing information in the manner specified in the *Act* and taking steps to counteract money laundering and terrorism financing – in the system to prevent and counteract terrorism threats adopted in Poland, the GIFI activity is an activity at the tactical level.

In performing statutory tasks related to counteracting terrorism financing in 2012, the GIFI initiated 12 analytical proceedings connected to suspicious transactions which potentially could be related to terrorism financing. These proceedings were initiated either on the basis of notifications from the obligated institutions, or on the GIFI's own initiative. In most cases, the initiated proceedings resulted from the analysis of transactions carried out by people from countries suspected of supporting terrorism or from countries in which terrorist groups are active. Transactions of both a legal business nature and transactions for which the initial verification allowed to take it as probable that the inspected activities may be of criminal nature were analysed. As a result of the conducted analysis of the above-mentioned analytical proceedings, as well as proceedings initiated earlier and information obtained pursuant to Article 8 paragraph 3 of the *Act*, in 2012, the GIFI submitted, pursuant to Article 33 paragraph 3 of the *Act*, 17 notifications to the Internal Security Agency (including the Counterterrorism Centre). Furthermore, due to the intensification of financial transactions in Poland, made by people from countries suspected of supporting terrorism or countries in which terrorist groups are active, the GIFI directed 4 notifications to organizational units of the Border Guard.

The GIFI is a member of the Interministerial Team for Terrorist Threats (ITTT), a subsidiary body of the Council of Ministers, which is to ensure the interoperability of the public administration in identifying, preventing and counteracting terrorism. In 2012, the GIFI and its representatives participated in the work of the above-mentioned team and in the work of the Task Force – Permanent Group of Experts (PGE), substantively supporting the ITTT. Interministerial Team for Terrorist Threats takes actions at the strategic level for the Polish system of anti-terrorist protection; it is composed of the heads of all departments and institutions whose functional scope is to identify, prevent and combat terrorism.

As every year, the GIFI representative also participated in the work of the Joint Polish-American Counterterrorism Working Group, operating since 2005. This group provides a platform for the exchange of information and experience in the field of preventing and counteracting terrorist threats, its members exchange information on the joint Polish-American initiatives, in particular of a training nature, related to preventing and counteracting terrorism and removing of the effects of possible attacks. At the working level, representatives of the relevant Polish services and organizational units and representatives of the American side participate in the work of the Group. Issues related to counteracting money laundering and terrorism financing are one of the key area in which the Polish and American services and institutions would like to cooperate in the short term, which was included in the conclusions of the only official meeting of the Group in 2012.

In 2012, the GIFI cooperated with the Counterterrorism Centre of the Internal Security Agency in the normal course. Particular intensification of activities took place in the period before and during the Final Tournament of the UEFA EURO 2012. With a view to the best possible anti-terrorist protection of the above-mentioned event, in addition to cooperation at the national level, the GIFI also took actions at the international level. In February 2012, the additional protocol to the Agreement on cooperation between the GIFI and FIU of Ukraine, on financial transactions related to the legalization (laundering) of funds from crimes and/or terrorism financing, and natural and legal persons connected with them, was signed. Under this protocol, the exchange of information between the Parties to the agreement intensified and its time of exchange shortened.

4. CONTROLS

4.1. Controls conducted by the GIFI

For 2012, the GIFI planned to conduct 16 controls; 19 controls⁴ were carried out in the following obliged institutions:

- Life Insurance Companies – 4,
- Banks – 3,
- Entities conducting factoring business – 3,
- Entities conducting leasing business – 3,
- Auction Houses – 2,
- Entrepreneurs within the meaning of *the Act of 2 July 2004 on freedom of economic activity* (OJ 2007 No. 155, item 1095, as amended) – 2,
- Investment companies – 1,
- Paying authorities – 1.

As a result of the conducted controls, irregularities in the performance of obligations under the *Act* by the obligated institutions were revealed. The irregularities included:

- 1) The shortcomings of a formal nature, such as inadequacy of internal procedures relative to the existing provisions of the *Act*; the internal procedures did not contain all the provisions required by law. In their regulations, obligated institutions do not distinguish the way for carrying out an ongoing analysis of transactions and analysis to assess the risk of money laundering and terrorism financing, based on which appropriate measures of financial security are applied.
- 2) Substantive irregularities:
 - no record of transactions exceeding the equivalent of EUR 15 000, referred to in Article 8 paragraph 1 of the *Act*;
 - missing the deadline for registration of these transactions, referred to in § 2.2 of the Regulation;
 - failure to apply financial security measures, in particular: lack of identification of the beneficial owner; failure to obtain information on the purpose and nature of economic relationships, intended by the customer and lack of ongoing monitoring of economic relationships with customers, including examination of transactions in order to ensure that the transactions carried out are consistent with the knowledge of the obliged institution of the client and its business profile and with the risk, and, if possible, examination of the origin of asset values and the current updating of the possessed documentation and information;

⁴ The difference between the number of conducted and the number of planned controls is mainly due to the fact that decisions to conduct some controls were taken “ad hoc,” out of the schedule, due to the risk associated with activities of the inspected institutions.

- failure to store information derived from the application of these financial security measures for the required period of time;
 - failure to store documented results of analysis of transaction for the required period of time;
- 3) Failure to ensure participation in additional training programmes concerning obligations under the amended provisions of the *Act* for the workers, and incorrect filling of transaction cards.

In accordance with Article 27 of the *Act*, information on the results of the controls conducted by the GIFI auditors were submitted to the supervising authorities for further official use.

On the basis of the controls, the GIFI submitted 7 notifications on the suspicion of committing a crime to the appropriate local prosecution offices. These notifications concerned failure to fulfil obligations referred to in Article 35 paragraph 1 points 1 and 2 of the *Act*, namely:

- registration of transactions, submitting documentation relating to these transactions to the GIFI or storage of the register of such transactions or documentation relating to these transactions for the required period of time,
- maintaining financial security measures, in accordance with the procedure referred to in Article 10a paragraph 1 of the *Act*, or storage of information obtained in connection with the implementation of financial security measures.

Moreover, one of the notifications concerned Article 299 § 2 in connection with § 1 of the *Act of 6 June 1997 of the Penal Code* (OJ 1997, No. 88, item 553, as amended).

4.2. Controls conducted by supervisory institutions

Pursuant to the provision of Article 21 paragraph 4 of the *Act*, supervisory institutions shall forward information on the results of the controls to the GIFI. Data in possession of the GIFI shows that in 2012:

- National Bank of Poland – conducted 687 controls of exchange offices,
- National Cooperative Savings and Credit Union – conducted 19 controls in the Cooperative Savings and Credit Unions,
- Polish Financial Supervision Authority conducted 46 controls,
- Presidents of appeal courts – conducted 130 inspections in notaries offices,
- Heads of customs offices – conducted 159 controls of operators of game rooms and game casinos,
- Fiscal control offices – conducted 114 controls.

The evidence gathered during controls and forwarded to the GIFI with the results of controls is the basis for the GIFI to impose penalties.

4.3. Administrative procedures for the imposition of pecuniary penalties

Procedures to impose pecuniary penalties on the obligated institutions for irregularities in the fulfilment of obligations, referred to in Article 34a of the *Act*, are carried out under the provisions of the Code of Administrative Procedure. Imposition of pecuniary penalties falls within the jurisdiction of the GIFI. In determining the amount of the pecuniary penalty, the

GIFI considers the type and extent of the violation, current activities of the institution and its financial capabilities.

In 2012, the GIFI initiated 76 administrative procedures to impose pecuniary penalties for non-compliance with the provisions of the *Act* on the obliged institutions. Based on the results of own controls, the GIFI initiated 11 procedures (i.e. 14.47% of all initiated procedures), and 65 procedures (85.53% of all initiated procedures) based on the results of controls referred to in Article 21 paragraph 3 of the *Act*.⁵

In 2012, the General Inspector of Financial Information issued 74 administrative decisions, of which:

- 9 decisions were issued as a result of proceedings initiated in 2011,
- 65 decisions were issued as a result of proceedings initiated in 2012,
- 6 decisions discontinued conducted administrative procedures,
- 68 decisions imposed pecuniary penalties in the amount from PLN 500 to 625,000 on the obliged institutions.

In 2012, the GIFI issued decisions imposing pecuniary penalties for a total amount of PLN 2 063 500. Pecuniary penalties imposed by the GIFI constituted income of the state budget.

11 appeals against the decisions issued by the GIFI were lodged to the Minister of Finance in 2012. The Minister of Finance confirmed 4 decisions of the GIFI, in 3 cases he reversed the GIFI decision in the part concerning the amount of the pecuniary penalty and ordered pecuniary penalties in lower amounts, in one case he reversed the GIFI decision in its entirety and remanded the case for re-examination of the body of first instance, and in 3 cases, as of 31 December 2012, the administrative procedures before a second instance authority were in progress.

In 2012, the Minister of Finance issued 11 administrative decisions in the second instance resulting from the parties' appeals against decisions issued by the GIFI. Three decisions were issued as a result of appeals made in 2011 and six in 2012. In his conclusions, the Minister of Finance in:

- 5 cases upheld the decisions of the GIFI,
- 4 cases reversed the GIFI decisions in the part concerning the amount of the pecuniary penalty and ordered pecuniary penalties in lower amounts,
- 2 cases reversed the GIFI decisions in their entirety and remanded the cases for re-examination of the body of first instance.

⁵ Article 21 paragraph 3. The control referred to in paragraph 1 may be also carried out within the frameworks of the surveillance and control performed on terms and procedures specified in separate provisions, by:

- 1) the President of the National Bank of Poland – in relation to currency exchange operators;
- 2) the Polish Financial Supervision Authority;
- 3) the relevant heads of customs offices in relation to operators organizing and exercising games of chance, mutual bets, and operations involving automatic machine games and automatic machine games of low prizes;
- 4) presidents of appeal courts – in relation to notaries public;
- 5) the National Savings and Credit Cooperative Union;
- 6) competent voivods and governors – in relation to associations;
- 7) tax audit authorities.

In 2012, 7 hearings were held before the Voivodship Administrative Court in Warsaw as a result of complaints lodged against the decisions of the Minister of Finance. In 6 cases, the Voivodship Administrative Court dismissed complaints, and in one case, it reversed the decision of the Minister of Finance.

5. NATIONAL COOPERATION

5.1. Exchange of information with national entities

Pursuant to Articles 32 and 33 of the *Act on counteracting money laundering and terrorism financing*, the GIFI receives requests for information submitted by the authorized bodies (or persons authorized by the latter), and entities. Every year the number of requests received by the GIFI is growing. It should be noted that the GIFI does its best to make the responses to requests complete. Preparing answers to the received requests for information is related to the processing, and in case of some requests to the preliminary analysis of information in possession of the GIFI.

5.1.1. Cooperation with organizational units of prosecution offices and courts

The GIFI received 324 applications (in 2011, there were 259 applications) concerning 2531 entities (2140 entities in 2011) from the organizational units of prosecution offices. They were submitted in connection with the ongoing preliminary procedure of cases concerning the suspected commitment of various crimes, including sometimes in connection with suspected money laundering. The most frequently identified formal shortages:

- requests for histories of accounts and any bank records, which are not present in the GIFI resources (proceedings supervised by the prosecutor under Article 299 of the Penal Code on the basis of notifications from other sources, or in criminal prosecution concerning crimes other than money laundering)
- requests for enquiry from the GIFI to turn to the obligated institutions concerning the determination of bank accounts in criminal proceedings supervised by the organizational units of prosecution offices, conducted on the basis of notifications from sources other than the GIFI,
- requests for disclosure of information on transactions, particularly banking, which did not take into account the fact that banks are required to store information on transactions for a period of five years calculating from the first day of the year following the year in which the last record associated with the transaction took place,
- requests for data from the bank monitoring,
- requests for obtaining original source documentation of transactions or original account agreements,
- submitting decisions, rather than requests for information, concerning the transfer of custody of property, which does not apply in case of authorities of financial information.

In 2012, an increase in the number of requests made by organizational units of prosecution offices, containing incomplete identification data of entities, was reported which as a result extended the date of their execution due to the need to complete the missing data. The GIFI also noted two requests for information made by the civil courts in connection with the civil proceedings conducted. However, it should be noted that pursuant to the *Act* the GIFI may provide information only at the request of courts for the purpose of criminal proceedings.

On the basis of Article 14 paragraph 2 of the *Act*, as in the years 2010-2011, organizational units of prosecution offices were obliged to provide information on:

- filing charges relating to the commitment of the crimes referred to in Article 165a or Article 299 of the Penal Code.
- initiation and completion of proceedings on the crimes referred to in Article 165a or Article 299 of the Penal Code.

Organizational units of prosecution offices provided information on that basis to a much greater extent. However, significant part of it still did not contain, inter alia, information on the persons against whom the proceedings have been initiated under Article 299 of the Penal Code or data on the circumstances indicating suspicion of these types of crimes having been committed. In such situations, each time the GIFI requested for completion of information, as lack of data of persons or entities in interest of the organizational unit of prosecution office prevented the execution of a statutory obligation set out in Article 14 paragraph 4 of the *Act*, namely to provide coordinative information on circumstances indicating the connection between these information and information on the transactions referred to in Article 8 paragraph 3, Article 16 paragraphs 1 and 1a and Article 17 of the *Act*.

In case of receiving a response from the GIFI under Article 14 paragraph 4 of the *Act*, where it is established that the entities acted as the parties of the information on the transactions covered by the provisions of the *Act*, it is worth noting that organizational units of prosecution offices almost always requested for additional information in possession of the GIFI, acting on the basis of Article 32 paragraph 1 of the *Act*. Information obtained on this basis allowed, inter alia, in some cases to expand the scope of the charges presented to persons suspected of committing a crime.

In 2012, there were also cases in which the organizational units of prosecution offices within a single statement submitted information under Article 14 paragraphs 2 and 3 of the *Act*, and at the same time requested for data, on the basis of Article 32 paragraph 1 of the *Act*, which was the more justified, as it allowed rapid exchange of information between the authorities.

In total the GIFI recorded 69 pieces of information of this type from the prosecution office. In total, the data provided applied to 834 entities. The most frequently reported information included those in which the initiation of proceedings under Article 299 of the Penal Code was indicated or those in which charges were presented under Article 299 of the Penal Code. Moreover, in several cases of this kind, organizational units of prosecution offices additionally attached a request for the GIFI to consider taking statutory actions referred to in Article 18 of the *Act* and further.

5.1.2. Cooperation with fiscal control authorities, tax authorities and customs authorities.

In 2012, the GIFI received a total of 597 requests from the authorities of the Ministry of Finance, which concerned 1114 entities.

The GIFI received 7 requests from the General Inspector of Treasury Control; moreover, it received 546 requests from directors of fiscal control offices.

The number of 546 requests consisted of requests from individual directors of fiscal control offices:

- Director of the Fiscal Control Office in Białystok – 34 requests

- Director of the Fiscal Control Office in Bydgoszcz – 8 requests
- Director of the Fiscal Control Office in Białystok – 45 requests
- Director of the Fiscal Control Office in Katowice – 9 requests
- Director of the Fiscal Control Office in Kielce – 7 requests
- Director of the Fiscal Control Office in Cracow – 120 requests
- Director of the Fiscal Control Office in Lublin – 68 requests
- Director of the Fiscal Control Office in Łódź – 7 requests
- Director of the Fiscal Control Office in Olsztyn – 6 requests
- Director of the Fiscal Control Office in Opole – 3 requests
- Director of the Fiscal Control Office in Poznań – 18 requests
- Director of the Fiscal Control Office in Rzeszów – 4 requests
- Director of the Fiscal Control Office in Szczecin – 35 requests
- Director of the Fiscal Control Office in Katowice – 9 requests
- Director of the Fiscal Control Office in Warsaw – 126 requests
- Director of the Fiscal Control Office in Wrocław – 35 requests
- Director of the Fiscal Control Office in Wrocław – 21 requests

It should be emphasized that since 2006, largely on the initiative of the GIFI, the possible statutory range of cooperation with the fiscal control authorities has been steadily increased, inter alia, because of the growth of the so-called fiscal crime. In 2006, the GIFI received a total of only 14 requests from fiscal control authorities, and in 2012, there were already 546 such requests.

It should be added that the fiscal control authorities, due to the scale of cooperation, almost in 100% used the standardized template of request for information, agreed on in December 2006 with the Treasury Control Department of the MF.

In 2012, as in the previous years, several requests from directors of fiscal control offices included formal and legal shortages in the event of asking for information covered by banking secrecy, without the use of appropriate procedure specified in the *Act of 28 September 1991 on fiscal control* (OJ 2011, No. 41, item 214, as amended).

The GIFI also received 6 requests for information from directors of tax chambers.

From July 2011, it has been made possible also for the Head of the Customs Service or his authorized representatives to request for information from the GIFI, on the basis of Article 33 paragraph 2 point 1a of the *Act*. Therefore, the Head of the Customs Service made 27 requests for information to the GIFI in 2012.

The GIFI also received 2 requests from directors of customs chambers, and 2 requests from the head of customs office.

The year 2012 was marked by a significant expansion of cooperation with the fiscal control authorities, in particular on the procedures which were carried out in cooperation with the representatives of the treasury intelligence or fiscal control inspectors. This closer cooperation had also a measurable effect in the form of notifications submitted by the GIFI to the organizational units of prosecution offices, as well as notifications submitted to the fiscal control authorities.

Representatives of the Department of Financial Information conducted in June 2012 two public lectures – training of persons representing the fiscal control authorities and tax

authorities on counteracting money laundering and terrorism financing – collaboration of entities cooperating with the GIFI and the performance of the statutory control of the obligated institutions:

- for the representatives of the Treasury Intelligence Department of the Ministry of Finance and representatives of fiscal control authorities – Divisions of Treasury Intelligence,
- for the representatives of tax offices.

In addition, as a part of expanding cooperation with the representatives of customs authorities, in particular with regard to the statutory control of obligated institutions, on 23 February 2012, a training meeting was conducted for the representatives of customs authorities in the field of control of the obligated institutions on the basis of Article 21 paragraph 3 point 3 of the *Act*.

5.1.3. Cooperation with authorities subordinate to the Minister of the Interior

In 2012, the GIFI did not receive requests for information directly from the minister responsible for internal affairs. However, at the time, numerous requests from persons authorized by the minister responsible for internal affairs, representing various units subordinate to the authority, were submitted to the GIFI.

In 2012, the GIFI received 164 requests (as compared to 98 requests in 2011) from the organizational units of the police, which involved 1277 entities (compared to 706 entities in 2011), of which the most significant part of requests was received from the authorized persons representing:

- Department for Combating Organized Economic Crime of the Central Bureau of Investigation of the General Headquarters of Police,
- Department for Fighting Economic Crime of the Criminal Bureau of the General Headquarters of Police,
- Department of Asset Recovery of the Criminal Bureau of the General Headquarters of Police.

Cooperation in the execution of the requests for the needs of the representatives of the police, as in the previous years, went smoothly and efficiently. Particularly important in exchange of information with the Police units was the quality of the content of justifications for the requests, which often constituted a contribution to further correspondence with the GIFI, inter alia, as a part of notifications used in this regard prepared on the basis of Article 33 paragraph 3 of the *Act*.

Furthermore, in 2012, the GIFI provided answers to 62 requests, concerning 268 entities, submitted by the authorized representatives of the Headquarters of Border Guard.

It should be noted that the units supervised by and subordinated to the minister responsible for internal affairs rather scrupulously fulfilled the obligations defined in Article 14 paragraph 2 point 1 of the *Act*, which significantly expanded the cooperation. Moreover, based on the received information, the GIFI could more effectively fulfil its statutory obligations, including the use of the institution of account blockages referred to in Article 18a of the *Act* and further. It should be emphasised that the use of the above-mentioned provisions of the *Act* enabled cooperation on analyses conducted by the GIFI already at the operation and identification stage of work of services subordinated to and supervised by the ministry responsible for

internal affairs. This kind of exchange of information was used the most widely by the Department for Combating Organized Economics Crime of the Central Bureau of Investigation of the General Headquarters of Police. To this end, in addition to the written exchange of information, working meetings on the current, in particular with representatives of the Central Bureau of Investigation of the General Headquarters of Police, were organized.

The GIFI received 47 of such information from the Police organizational units, concerning 362 entities (in particular from the Central Bureau of Investigation of the General Headquarters of Police) and one information from the border guard authorities, concerning 7 entities.

In 2012, the representatives of the Department of Financial Information took part in the following meetings for the representatives of the police and border guards:

- participation and lecture within the fourth edition of the training workshops organized by the Police Academy in Szczytno with the participation of the Criminal Bureau of the General Headquarters of Police, entitled: “Cooperation of Police and the banking sector in terms of preventing, disclosing and counteracting crime associated with the operation of banks” (May/June 2012),
- participation and lecture within the seminar organized by the General Headquarters of Police in Lublin, entitled: “Secure Europe – exchange of knowledge and experience in the protection of the financial interests of the EU,” Kazimierz Dolny (June 2012),
- training for the representatives of border guard authorities held in the Main Border Guard Training Centre in Koszalin on the cooperation between the GIFI and border guard authorities (March 2012),
- training for the representatives of border guard authorities held in the Border Guard Training Centre in Kętrzyn on the cooperation between the GIFI and border guard authorities (December 2012).

5.1.4. Cooperation with the Head of the Internal Security Agency

In 2012, the GIFI received 109 requests (as compared to 35 requests recorded in 2011) concerning 875 entities (compared to 371 entities recorded in 2011), directed by the Head of the Internal Security Agency or persons authorized by him. Moreover, it also received from the ISA 30 pieces of information provided on the basis of Article 14 paragraph 2 of the *Act*, which concerned 326 entities.

It should be emphasized that cooperation with representatives of the ISA has been increasing from year to year and becoming more efficient, particularly in the application of the provisions referred to in Article 14 paragraph 2 of the *Act* and following such cooperation – the use of the institution of account blockage referred to in Article 18 of the *Act* and further. Just as was in the case of the representatives of the Central Bureau of Investigation of the General Headquarters of Police, numerous arrangement meetings with the representatives of the Internal Security Agency were also conducted in statutory activities carried out in parallel.

Moreover, the representatives of the Department of Financial Information participated in the following meetings organized with the participation of the representatives of the Internal Security Agency:

- lecture at the meeting of the directorate of ISA on the exchange of information between the Head of the Internal Security Agency and the GIFI (February 2012),

- December 2012 – lecture as part of a training organized by the ISA Central Training Facility, within the officers' course, on the legalization of money derived from crime from the point of view of the GIFI – principles, methods and forms, and the scope of the exchange of information between the Head of ISA and the GIFI (December 2012).

5.1.5. Cooperation with the Head of CBA

The GIFI received from the Head of the Central Anti-Corruption Bureau (CBA) 14 requests (as compared to 6 requests in 2011) concerning 54 entities (compared to 46 entities in 2011) and 2 information provided on the basis of Article 14 paragraph 2 of the *Act*, which concerned 6 entities.

In 2012, there was an increase in the exchange of information with the Head of the CBA, however, it still remains relatively small compared with the number of requests received from other authorities and bodies involved in combating crime.

5.1.6. Cooperation with the Head of the KCIK

In 2012, the GIFI cooperated with the Head of the National Criminal Information Centre (KCIK) in the exchange of information. Except for the criminal information transferred from the office (number of registrations amounted to 808), the GIFI was answering the requests of the KCIK (142 requests). In connection with them, 3 463 entities were checked in the IT system of the GIFI. Among them, 921 were identified as those occurring in the conducted analytical procedures.

In 2012, 2 596 requests for information, including 2 303 requests to the obliged entities to complete the criminal information, were submitted to the Head of the KCIK.

5.1.7. Other Information

Counteracting proliferation

In 2012, the GIFI was actively involved in efforts aimed at preventing the proliferation of weapons of mass destruction, including in particular counteracting financing of these practices.

It should be emphasised that the representatives of the Department of Financial Information actively participated in the meetings of the Interministerial Team for preventing illegal proliferation of weapons of mass destruction and implementation of the “Krakow Initiative” – Proliferation Security Initiative (PSI), organized by the Ministry of Foreign Affairs.

The Department's representatives participated in the meetings of the Team, passed on information and observations to the representatives of the Ministry of Foreign Affairs participating in international conferences and seminars on counteracting the proliferation of weapons of mass destruction.

Participation in, inter alia, the Regional PSI Workshop devoted to the critical capabilities and practices against the proliferation of weapons of mass destruction (WMD), WMD-related material and their delivery systems from 11 to 12 July 2012 in Warsaw. The workshop was

attended by experts from 39 countries in Europe, South Caucasus and Central Asia, as well as non-European members of the PSI Operational Experts Group (OEG).

Under the current legal status, the GIFI may take direct actions in this regard only in situations where the activities of entities involved in the proliferation and its financing will involve suspicion of committing the crime of money laundering or terrorism financing. In such cases, the GIFI may use its statutory powers to, inter alia, suspend transactions or block accounts.

The GIFI may also take appropriate actions in cooperation with specific bodies dealing with national security, upon their written and justified request, in the manner and on terms set out in Articles 32 and 33 of the *Act*. In 2012, however, no requests were received in this regard. The statutory actions specified in Article 33 paragraph 3 of the *Act* were taken.

Cooperation with the Asset Recovery Office

In 2012, the GIFI worked closely with the Department of Asset Recovery of the Criminal Bureau of the General Headquarters of Police, in particular as regards the exchange of information and training for police officers on topics of securing assets derived from crimes.

Moreover, in November 2012, the representatives of the Department of Financial Information participated in the meeting held at the seat of the Ministry of Finance on the draft document “The asset recovery system in Poland – the concept of functioning,” which, in addition to the employees of the Ministry of Finance, was attended by the representatives of the Ministry of the Interior and the Criminal Bureau of the General Headquarters of Police.

5.2. Training activities

Representatives of the Department of Financial Information actively participated in meetings concerning the subject of counteracting money laundering and terrorism financing by providing training and giving lectures, or being actively involved in the discussions at the meetings where they were invited as guests:

- in April 2012 – participation and lectures during the training organized at the premises of the Banker's Club of the Polish Bank Association as a part of the Programme for counteracting money laundering and terrorism financing, with participation of the representatives of the obligated institutions,
- in September 2012 – participation and lecture at National Compliance Conference organized by the Compliance Association Poland in Warsaw,
- in December 2012 – participation and lecture during the training organized at the premises of the Banker's Club of the Polish Bank Association as a part of the Programme for counteracting money laundering and terrorism financing, with participation of the representatives of the obligated institutions,
- in December 2012 – participation and lecture at the international conference “Central-Eastern Europe Fraud and Corruption Conference,” held in Warsaw, with the participation of the ACFE Poland – Association of Certified Fraud Examiners.

In 2012, the GIFI also made available a free e-learning course regarding counteracting money laundering and terrorism financing through the Internet. Its aim is to bring closer the knowledge on preventing the above-mentioned crimes, in particular in relation to the existing regulations, to employees of the obliged institutions and cooperating units. Last year, this course was successfully completed by more than 26.3 thousand people.

Also in 2012, the analysis of the responsibilities of individual types of obliged institutions under the *Act*, in particular within the scope of the registration of transactions, taking into account the range of activities carried out by these obliged institutions was continued. As a result, a communiqué on the registration of transactions by foundations was developed and published, and the work on the communiqué concerning the duties of notaries public began.⁶

Furthermore, the GIFI continued to distribute the paper and electronic versions of the 3rd edition of handbook entitled *Counteracting Money Laundering and Terrorism Financing*, designed exclusively for the representatives of obliged institutions and cooperating units, for business use. In 2012, the GIFI made available 26 copies of the handbook in paper form and 4 copies of the handbook in electronic format to the representatives of the obliged institutions, and 16 copies of the handbook in paper form to the representatives of the cooperating units.

⁶ Communiqué on the registration of transactions by notaries public was published on the website of the Ministry of Finance at the beginning of 2013.

6. INTERNATIONAL COOPERATION

6.1. Cooperation with the European Commission

As a part of the cooperation with the European Commission in the area of anti-money laundering and combating the financing of terrorism (AML/CFT), the GIFI representatives participate in the work of the Committee for Counteracting Money Laundering and Terrorism Financing (also known as the Prevention Committee) and the meetings of the so-called EU-FIU Platform.

6.1.1. Prevention Committee

Action taken at the EU level in 2012 were related to the new recommendations of the FATF adopted this year and the analysis of the application of provisions of the *Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing* (OJ EU L 309, 25.11.2005), hereinafter referred to as the third AML/CTF Directive. In the past year, the Committee gathered four times, shaping the policy of the European Commission (EC) of balancing ambitious regulatory plans and rightful place for national policies in the Member States. The Committee discussed a range of EC proposals, contained in the report on the application of the third AML/CFT Directive even during its design. The publication of this document in the second quarter of 2012 was another step in the preparation of the new directive, planned to be forwarded to the European Parliament in the last quarter of the year. The intention of the European Commission was to prepare a draft of the fourth AML/CFT Directive before the next round of the FATF peer review.

The Committee discussed the choice of how to proceed with the design of the fourth Directive taking into account the FATF's work schedule and the scope of the changes resulting from the new standards of this group which need to be taken into account in the new Directive, allowing for the needs of the EU.

In the discussion on the report on the application of the third AML/CTF Directive in the context of the proposal to the fourth Directive, the Committee devoted most of its time to the issues of AML/CFT risk assessment, determining the elements of risk assessment in the Directive, financial thresholds in risk assessment (as in the case of electronic money) as well as the European Commission's view on performing risk assessment of AML/CFT at the EU level.

Fundamental issues of regulation were discussed, including the criminalization of money laundering and terrorism financing, a systemic approach based on risk, types of predicate offences for money laundering, the subjective reach of the application of the AML/CFT provisions (mostly on the side of the obligated institutions), as well as the order of legal acts in this area, where applies both the EU Directive, Council regulations (in particular Regulation No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, which have particular relevance to the bank) and Commission regulations.

Conversations focused on the issues of:

- principles and types of customer due diligence (CDD), including the validity of the financial thresholds of EUR 15,000 in occasional transactions, EUR 1,000 in electronic fund transfers, EUR 2,000 in casinos,
- increased diligence in transactions without the physical presence of the client (i.e. non face-to-face transactions),
- distinction between the simplified customer due diligence and the use of regular customer due diligence,
- harmonizing the evidence of identification and verification of customers,
- types of reports of suspicions on ML/FT,
- compliance assessment of the group of financial institutions,
- supervision in country of the seat and country hosting the provider of payment services,
- tighter regulation of sanctions under EU law and their specific issues in the sector of DNFBP,
- definition of politically exposed persons (PEP) – the transnational approach to PEP, treating PEP in other Member States as national PEP, lists of PEP,
- beneficial owner.

The Committee discussed the problem of unsatisfactory level of reporting by local governments the independent legal professionals, as well as the merits of this mode of reporting, which has a separate place in the European Commission report on the application of the third AML/CFT Directive.

The way to introduce stricter and clear rules for storage of personal data in the process of preventing and counteracting money laundering and terrorism financing, and at the same time to strengthen the protection of the data, was carefully discussed with the chairman of the Working Party on Data Protection,⁷ the European Data Protection Supervisor.

Particular emphasis in the report of the European Commission was placed on the aspects of cooperation between the FIU. The Committee considered it worthwhile to take the idea of strengthening the position of FIU in the AML/CFT national systems, both through their competence, as well as functional tools, such as setting up a central registers of bank accounts. Proposals for and against the establishment of the EU's financial intelligence unit appeared on the agenda of the Committee, but in this regard, the Committee recommended improvement of the existing institutional and functional solutions, in the presence of problems of cooperation between the national FIUs found in practice. The basis for the discussion was, among other things, the problem of regulating reporting by the obligated institutions in situations of cross-border payments, in the context of the availability of information on the payers of transfers of funds and beneficiaries, when special cooperation between the FIUs is required in the practice to counteract money laundering and terrorism financing.

The Committee assists the Commission in the preparation of an impact assessment of the fourth AML/CFT Directive, discussing a number of issues, such as: the criteria for assessing

⁷ The Working Party established under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy.

the effectiveness of Member States in the field of counteracting money laundering and terrorism financing, the achievements of the new standards of the Financial Action Task Force (FATF), the costs of new legislation proposed in the fourth AML/CFT Directive, sanctions imposed on members of the EU for non-compliance with the EU law, the cost of implementation in the private sector. Therefore, in this way it answered to the position of the Commission that it is particularly difficult to measure the specific benefits of the new directive, but they should be defined for the effective management of the national systems against money laundering and terrorism financing, and at the EU level. The issues of the impact assessment of the third AML/CFT Directive were associated with the overall efforts in reducing the black market, tax evasion and combating crime, positively affecting other fields of activity of state administration.

The Committee also discussed the current problems of the application of anti-money laundering and financing of terrorism, such as the exchange of information about the customer, which encountered obstacles, particularly relating to the professional and banking secrecy, and the lack of which made it impossible, contrary to Article 18 of the Directive, to rely on another financial institution, in third countries. The Committee recommended improving these problems in the fourth Directive.

Last year, the AML Committee's⁸ Working Group on Electronic Money consulted with the Committee issues concerning the report on counteracting money laundering techniques using electronic money.

In the year of announcing the new standards of the FATF, the subject matter of work of this forum took more space in the deliberations of the Committee than usual. In this regard, the Committee took up a discussion on the importance of issues such as: risk assessment as the guiding principle of the system against money laundering and terrorism financing, the peer review methodology and issues of the FATF membership.

On the occasion of the meetings of the Prevention Committee, the EU Member States continued their assessment of the third countries in terms of equivalence of their systems against money laundering and terrorism financing. It was made on the basis of the revised common understanding of the Member States on the list of third countries with equivalent requirements in the field of counteracting money laundering and terrorism financing. While establishing and extending the mandate of the Working Group on Equivalent Third Countries, the EU countries revised the so-called white (privileged) list of third countries, which allows the use of the simplified customer due diligence, and expressed their willingness to cooperate in the usual way. The Committee established the work plan on the constant updating of the list of equivalent countries, giving priority to the member states of Council of Europe MONEYVAL Committee, as well as taking into account the dependent territories of the United Kingdom of Great Britain and Ireland. At the same time, work was undertaken to identify what is the best way to implement public statements of the FATF in the EU, which means a choice between the EU and national approach. The final formal/legal shape of this cooperation can be specified by the fourth AML/CFT Directive.

⁸ The Sub Committee on Anti Money Laundering established by the Joint Committee of European Financial Supervisory Authorities.

6.1.2. The EU Platform – FIU

The GIFI was engaging in the work of the EU Platform – FIU, which met twice at the session in Brussels in 2012. Main topics of the meetings resulted from the work of the Commission on a change of the EU law in the fight against money laundering and terrorism financing. The Platform was dealing with the progress of work on the fourth AML/CFT Directive and the Council Regulation on information accompanying transfers of funds. It was also discussing the draft report on the application of the third AML/CFT Directive. The general problem it was dealing with was the development of cooperation between the EU Financial Intelligence Units. Discussions were guided by the intention of the European Commission to include the regulations of this cooperation, so far falling within the *Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information* (OJ EU L 271, 24.10.2000), in the new directive. In this context, the Platform suggested giving it official status in the fourth AML/CFT Directive. The Platform revised proposals of its working sub-group on deepening the cooperation between the FIUs, focusing on the treatment of contacts and inquiries from foreign FIUs from the EU Member States on terms of national treatment. This would apply both to the requests for information, to suspend financial transactions, as well as suspicious transactions reports (STRs). Moreover, the issues to give more powers to the FIUs in matters of sanction lists and counteracting corruption was considered. In discussing current and strategic affairs of cooperation between the FIUs, the Platform reported postulates to use the FIU.NET to remedy some of the problems, including the exchange of information between FIUs from the point of view of personal data protection. Some of the proposals received wide support of the members of the Platform, which at the same time recommended the European Commission the use of its work results in the fourth AML/CFT Directive and in the project of evaluating its impact. An integral part of the postulates were different proposals, concerning the creation of central registers of bank accounts and property registers in the Member States.

Another important topic of the meeting of the EU Platform-FIU was the future of the FIU.NET⁹ secure information exchange network, its migration to Europol. The requirements of the FIU.NET users determined the discussions of the Platform members around the place and role of the network in Europol, in the context of its existing legal and organizational framework, in relation to the structural subordination, financing and the extent of control exercised by the FIU over the flow of information and further development of this channel for the exchange of information. The Platform evaluated positively the efforts of Europol to meet the expectations of FIU.NET and FIU, at the same time stressing the need to meet the technical conditions of the exchange of information between FIUs, which were previously provided by FIU.NET, especially because of the advanced work on its unique and valuable technical features. In this subject there was also a discussion on the option for Europol, which was to take FIU.NET network, to transform the EU Platform-FIU into the body, which will be given certain powers ensuring a real impact on the decision-making in some cases of the FIU.NET functioning in Europol.

⁹ FIU.NET Network – an advanced technological tool for the exchange of information between Financial Intelligence Units, managed by the Office of FIU.NET in the Netherlands

The Platform was monitoring development of the FIU.NET network, which in 2012 numbered 25 financial intelligence units, on a regular basis.

The Platform members were also engaged in the work of other bodies. They familiarized themselves with the draft report of the AML Committee's Working Group on Electronic Money, submitting comments on the problems relating to the use of electronic money. They discussed the state of the FATF work around the revision of its standards, particularly the handbook of peer review methodology. They watched the process of change of the general principles enunciated by the Egmont Group after the change of FATF standards, paying particularly to those relating to the status of FIUs.

6.1.3. The European Commission's project – ECOLEF¹⁰

The GIFI representative continued his participation in the project implemented by the Utrecht University School of Economics, dedicated to research in the field of economic and legal effectiveness in the area of the EU policy to counteract money laundering and terrorism financing, which began in 2010. The research was carried out in the framework of the European Commission programme, under the name “Prevention of and Fight against Crime.” At the invitation of the project coordinator the GIFI representative took part in the conference summarizing the results of the research, which took place on 29-30 November 2012 in Amsterdam, and analysed the final report outlining the relevant comments and suggestions with regard to the mechanisms and national regulations.

6.2. FIU.NET

Polish Financial Intelligence Unit extended its activity in 2012 into the decision-making process on the future of the FIU.NET network of secure financial information exchange. In view of the changes planned in 2014, two meetings within the so-called Sounding Board Group, advising the FIU.NET Board, attended by the representatives of the GIFI, were held in the Hague. Their aim was to establish the legal, organizational and technical conditions for transferring FIU.NET to Europol. The subject of the arrangements was different visions of the position of the FIU.NET Office, its new technical facilities in the form of the SIENA network (including the places and ways of processing and exchanging information) and rules for the FIU control over development of networks, proposed by Europol.

The FIU.NET users positively evaluated the modification of the SIENA network and administrative development of Europol, as its manager. FIUs identified a common interest in ensuring that the advanced functionalities of FIU.NET were taken over by Europol and further developed. Additional grant of the European Commission, which was finally requested by FIUs, was proposed as a complementary tool which will enable the search for new migration options of FIU.NET, in face of the rigid legal and technical conditions of functioning of Europol. The proposal of the users to continue the process of migrating in the

¹⁰ The Economic and Legal Effectiveness of the AML/CTF Policy – „Prevention of and Fight against Crime” – JLS/2009/ISEC/AG/087

new schedule left the question of FIU.NET synergies and interoperability with other European networks open.

On 20-21 March 2012, the Office of FIU.NET organized in Levi (Finland) a meeting of the representatives of financial intelligence units from the countries belonging to the European Union as well as several other governmental, non-governmental and international organizations.

The main purpose of the meeting in Levi, which was also attended by the representatives the GIFI, was the presentation of the principles of operation and the potential opportunities which will be provided by the planned introduction of new functionality in the FIU.NET application – ma3tch.

At the meetings and during the discussions, increasingly clear efforts to strengthen international cooperation in order to counteract money laundering and terrorism financing more effectively, at least in the European Union, appeared in the group of the FIUs representatives. The answer to these efforts are new solutions, such as the ma3tch tool, as well as the ideas for joint analyses of two or more FIUs, both in the operational and strategic dimension.

The implementation of new tools (ma3tch), ideas (joint analysis) and new channels for sharing information (Europol) may require changes to the currently adopted organizational solutions.

6.3. The MONEYVAL Committee

In 2012, the representatives of the GIFI together with the representatives of the Financial Supervision Authority and the General Prosecution Office participated in the work of the MONEYVAL Committee (Council of Europe).

Similarly to 2011, the MONEYVAL Committee continued the evaluations of the national systems for counteracting money laundering and terrorism financing of its members, ending already the third round and conducting the fourth round of peer reviews, based on the “old” recommendations of FATF (40+9). During the plenary sessions 7 evaluation reports were adopted.

The subject of discussion of the MONEYVAL Committee were the revised recommendations of FATF and the new system for assessing the effectiveness of functioning of the national anti-money laundering and terrorism financing systems. Among other things, due to this, in September 2012, in cooperation with the Eurasian Group (EAG), workshops for the members of these two bodies were organized, during which the representatives of FATF discussed all the introduced changes and significant differences between the “old” and “new” recommendations, and a special session on the elements of the system assessment was prepared.

Moreover, last year, the MONEYVAL admitted new members – the dependent territories of the United Kingdom – Guernsey, Jersey and the Isle of Man, thus increasing the number of countries and jurisdictions subject to its assessment to 33.

At subsequent meetings the MONEYVAL member states shared their experience in the area of national risk assessment of AML/CFT. Also the Polish delegation, headed by the representative of the GIFI, joined in this discussion by presenting activities carried out in 2012 as part of a project implemented in cooperation with the International Monetary Fund, relating to the initial assessment of risk of money laundering and terrorism financing in Poland.

The Polish delegation took an active part in debates on all the reports discussed during the plenary sessions, with particular consideration for the report of the third rounds of evaluation of the Holy See, in relation to which it was appointed to submit questions in the field of law enforcement authorities. Owing to the nature and subject of evaluation, this report met with great interest of international institutions and the media.

In the past year, MONEYVAL started the fourth round of evaluation of the Polish anti-money laundering and terrorism financing system. The so-called basic and key recommendation of the FATF was subject to it, as well as others which received low scores in the third round of the evaluation. The GIFI, in cooperation with other authorities, prepared answers to the questions included in the evaluative questionnaire, and in late May and early June 2012, it hosted the delegation of evaluators and MONEYVAL Secretariat. Within five days the evaluators met with the representatives of public authorities, relevant in the fight against money laundering and terrorism financing, as well as representatives of the obligated institutions, analysing thoroughly both the legal issues, as well as the effectiveness of the system. Presentation of the final report on the fourth Round of evaluation of Poland is planned during the 41st plenary meeting of MONEYVAL in April 2013.

On 29-30 October 2012, on the initiative of the General Inspector of Financial Information, a typological working meeting of MONEYVAL was held in Warsaw. Its goal was to continue the work on the projects initiated in 2011, concerning procedures for suspending suspicious transactions and the risk of AML/CFT in trade in cash-based economies. The GIFI representatives actively participated in the preparation of both typological reports whose final presentation is planned for 2013.

In connection with the evaluation plan for 2012, the Polish delegation proposed its representative to participate in the MONEYVAL assessment mission in Croatia, carried out in November last year.

6.4. COOPERATION AT THE FORUM OF INTERNATIONAL ORGANISATIONS

6.4.1. The Egmont Group

Polish Financial Intelligence Unit (PFIU) participated in the work of the EGMONT Group by taking part in, inter alia, meetings of working groups – the operational, legal and information technology, as well as in the plenary session of the heads of FIUs. Furthermore, it continued participating in typological projects implemented by the operational group, whose purpose was to analyse the possibilities for cooperation between financial intelligence unit (FIU) and asset recovery unit, and the FIU contribution to the fight against corruption. Thanks to this work, draft reports were developed and they will be disseminated among the members of the Egmont Group after the approval. Moreover, as a part of the work at the forum of operational and legal group, as well as during the plenary session of the heads of financial intelligence units, the GIFI representatives participated in the discussion on organizational changes of the Group, as well as the new recommendations of the FATF, which, inter alia, define the role and tasks of FIUs, as well as address the issue of international cooperation of units and the exchange of financial information.

Thanks to the participation in the work of the EGMONT Group, the GIFI has the opportunity to exchange experiences and strengthen cooperation with units from all over the world, working in the field of preventing and counteracting financial crime.

6.4.2. Financial Action Task Force (FATF)

In February 2012, the FATF adopted the revised recommendations and began intensive work on the evaluation methodology of implementation of the new recommendations. Thanks to the MONEYVAL's associated membership in the FATF and work in the Prevention Committee, last year – as in the previous years – the GIFI received a number of documents and materials for information or to express opinion for the meetings of the FATF or in connection with the work of its working groups.

Each time the GIFI disseminated the statements issued by the FATF regarding the jurisdictions which have strategic deficiencies in their AML/CFT systems, informing public administration authorities, the relevant supervisory authorities and associations and industrial unions about them.

6.4.3. The Eurasian Group on Combating Money Laundering (EAG)

The EAG Group is a regional organization with the status of an associate member of the FATF and operating on principles similar to FATF (the so-called FATF-style Regional Body – FSRB). It associates 9 countries with the rights of members (Belarus, China, India, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan and Uzbekistan).

Since 2007, Polish financial intelligence unit has the observer status in it, confirming it additionally in 2011, in connection with the transformation of the EAG into a formal international organization.

In 2012, a representative of the GIFI participated in the 16th plenary meeting of the Eurasian Group, which was held in Moscow, taking part in the proceedings of three working groups (Typology Working Group, Working Group on Technical Assistance and the newly created Working Group on Counteracting Narcotics Business, Crime and Terrorism) and in the open plenary session.

Moreover, the Polish financial intelligence unit joined the technical assistance activities for the twin unit from the member state of the Eurasian Group (Turkmenistan), arranging a study visit for its representants and representatives of law enforcement authorities of that country (see section 6.6.2).

In September 2012, the EAG, in cooperation with the MONEYVAL, organized in Strasbourg workshop to discuss the new recommendations of the FATF, which was attended by the representatives of the Member States of both of these bodies, including Poland.

6.5. Bilateral cooperation

6.5.1. Memoranda of Understanding

In 2012, the GIFI continued the process of analysing the needs to conclude new international agreements on the exchange of financial information, in order to create basis for broader international cooperation in the fight against money laundering and terrorism financing.

The main instrument of the GIFI's cooperation with the foreign financial intelligence units are bilateral cooperative agreements (the so-called memoranda of understanding). An alternative

in relations with the EU countries is the EU Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information. Agreements, as well as the cooperation based on them, correspond to the provisions of the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005 (CETS 198).

The main premises of the above-mentioned cooperation resulting from these bases are:

- the principle of reciprocity,
- the use of information for purposes of analysis at the level of a financial intelligence unit,
- justification of the question referring to suspicion of money laundering or terrorism financing,
- transmission of the possessed information or documents to a third party or their use for purposes other than those indicated above only with the written consent of the FIU from which they were obtained,
- financial intelligence unit is not obligated to provide information if the judicial proceedings have been initiated in the case.

The scope of information received and disclosed, in particular additional information, in each case depends on the scope of the inquiry and compliance with the fundamental principles of national law.

The result of the above-mentioned process of determining the needs of international cooperation in 2012 was signing another two cooperative agreements in the exchange of information concerning counteracting money laundering and terrorism financing with the Hong Kong Special Administrative Region of the People's Republic of China and Turkey. Thus, the number of financial intelligence units with which the GIFI exchanges information related to money laundering or terrorism financing on the basis of bilateral agreements, increased to 65.

In connection with the UEFA European Football Championship Euro 2012 held in June 2012, organized jointly by Poland and Ukraine, the General Inspector of Financial Information, with a view to intensify cooperation with the Ukrainian financial intelligence unit, signed with its counterpart the Protocol supplementary to the cooperative agreement on the exchange of financial information related to money laundering and terrorism financing, in force since 2004. It allowed the parties to use a specific procedure for the exchange of information on money laundering and terrorism financing, which required increased attention in the period proceeding Euro 2012, as well as during the event itself.

Furthermore, the process of negotiating agreements with other entities was also continued.

6.5.2. The exchange of information with foreign FIUs

In 2012, the GIFI sent 190 requests asking for information on 387 entities to the foreign financial intelligence units. It was another year in which the number of requests sent increased – from 118 in 2010 and 171 in 2011. Similarly to the years 2009-2010, the largest number of inquiries was sent to the German unit. Among the units to whom the GIFI sent the largest number of requests are the financial intelligence units from the following countries:

- Germany – 22 requests,
- Latvia – 16 requests,
- Czech Republic – 14 requests,
- United Kingdom – 14 requests,
- Slovakia – 11 requests,
- Ukraine – 11 requests,
- Cyprus – 10 requests.

In 2012, the GIFI sent the majority of the requests for information to financial intelligence units of the countries of the European Union, that is more than 77% of all inquiries. Nevertheless, on the basis of the bilateral agreements signed, the GIFI gained information not only from its counterparts in European countries, but also, as it happened in 2012, from the units representing, among others, such countries and territories as: the Bahamas, Brazil, British Virgin Islands, Hong Kong, Thailand and Turkey.

Information derived from abroad are primarily to help to verify whether the entities involved in transactions, considered by the obliged institutions and cooperating units to be suspicious, are known to the foreign entity in connection with suspected money laundering, terrorism financing or participating in other criminal activity. Many a time, the obtained information is also a key prerequisite which enables to substantiate or confirm that the analysed transactions are related to illegal activities.

Several times the GIFI was informed in response to a request that the document or identity, which was used by the people opening the account or executing transactions is false. In another case, it received information from two units on further flow of funds which were transferred abroad from the Polish bank. The data obtained showed that the funds were then returning to Poland, which was one of the main reason for the notification submitted to the prosecution office of the suspected crime of money laundering originating from the benefits connected with the extortion of goods and services tax in the so-called carousel transactions. Another example of effective cooperation of the GIFI with three foreign counterparts was obtaining detailed information about the entities to which the funds spent by the public authority to a foreign company as payment for the delivered goods were transferred. The findings showed that a significant portion of the profits went to entities controlled by a relative of the person who on behalf of the institution had the public funds at his/her disposal.

In 2012, the GIFI received 203 requests asking for information on 924 entities from foreign financial intelligence units. Only two years ago, the number of foreign requests oscillated around 100. In 2011, there was a significant increase in the number of foreign inquiries – the General Inspector of Financial Information received them then by nearly 90% more, and they were related to over twice as many entities as in the previous years. In 2012, the number of foreign inquiries and the number of entities, which were concerned, remained at this high level.

The GIFI received the majority of requests from units from the following countries:

- Luxembourg – 26 requests;
- Latvia – 22 requests,
- Belgium – 17 requests;
- Great Britain – 17 requests;
- Estonia – 15 requests;

- Slovakia – 14 requests;

A large number of inquiries and entities from Luxembourg is associated with the activity of the FIU of this country in the field of providing information and requests concerning probably Polish citizens (the data are often fictitious) using payment systems alternative to the bank ones (companies providing such services are registered in Luxembourg).

Over 80% of all inquiries received by the GIFI in 2012 came from the FIUs of the EU countries with which the cooperation is regulated – apart from bilateral agreements – at the EU level (the tendencies to strengthen this cooperation are becoming clearer). This, combined with the emphasis on the development of cooperation between FIUs from different countries, recognized by international organizations, especially the Egmont Group, explains the observed high number of inquiries from abroad

The remaining large number of foreign inquiries in connection with a wide range of information exchanged with FIUs within the European Union, forces the provision of adequate resources for the realization of foreign FIU requests (for example – the number of entities from foreign FIU requests in 2012 was slightly smaller than the number of requests for entities directed to the GIFI by all fiscal control authorities).

6.6. Other issues

6.6.1. Participation in the negotiation process between Poland and the USA

The GIFI continued to work as a body assisting the Minister of Finance in the regulation of the legal situation of the antimissile base facilities of the U.S. Armed Forces in the event the U.S. authorities established financial institutions: Community Bank and Credit Union, planned for the base, soldiers, their families, civilian employees as well as those employees contact contractors of the United States and contractual contractors of the United States who are natural persons and citizens of the United States or permanent residents of the United States.

Agreement of 11 December 2009 between the Government of the Republic of Poland and the Government of the United States of America on the status of the armed forces of the United States of America on the Polish territory provides that the above-mentioned financial institutions of the base, which are subject to supervision by the relevant U.S. authorities, will have procedures for customer identification and verification, transaction monitoring and reporting, designed to prevent money laundering and terrorism financing in accordance with international standards detailed in the Performance Agreement. The GIFI conducted preliminary consultations with the representatives of competent authorities of the United States on the legal and technical options of the operation of financial base of the American armed forces base in Poland. This allowed specifying initial proposals of the expected agreement. Project of the agreement and the accompanying documents (negotiating directive and justification) were presented to internal and interdepartmental consultation, which resulted in development of a set of documents, ultimately addressed, at the beginning of 2013, to the Prime Minister with the request to agree for initiation of formal negotiations by the Minister of Finance.

6.6.2. Technical assistance for third countries

The GIFI continues its support and actions within the process of building a well-functioning international system for counteracting money laundering and terrorism financing, therefore it engages in activities aimed at the exchange of experiences in this field with other financial intelligence units, as well as other bodies.

As a part of the joint initiative of the GIFI and the Ministry of Foreign Affairs, in late January and early February 2012, a study visit for the representatives of the Republic of Armenia and Ukraine was organized. The visit was a part of the Eastern Partnership Programme and was co-financed by the Ministry of Foreign Affairs.

Then, in September 2012, within the Turkmen and Polish resources, the GIFI hosted representation of the Turkmenistan administration. The aim of this study visit was to present the Turkmen administration representatives the Polish system of counteracting money laundering and terrorism financing. This action was associated with the Polish relief contribution for the Eurasian Group member states.

Furthermore, in 2012, the GIFI was involved in projects under the TAIEX instrument (Technical Assistance and Information Exchange), whose purpose is to conduct short-term expert activities in the field of adapting national legislation to the EU legislation (*acquis communautaire*). In its framework, in May, a study visit in the area of IT issues for the representatives of the administration of Ukraine took place. In September, another study visit for the representatives of the Republic of Macedonia was realized and it was combined with the visit of the Turkmen representation.

During the study visits guests represented financial intelligence units, law enforcement authorities, security services and other bodies responsible for the issues of counteracting money laundering and terrorism financing in these countries. Activities of the Polish authorities in the area of anti-money laundering and counteracting terrorism and its financing were presented by the representatives the GIFI, General Headquarters of Police, the Central Anti-Corruption Bureau, the Internal Security Agency, the Polish Financial Supervision Authority Office, the Ministry of the Interior, the Ministry of Foreign Affairs, the General Prosecution Office and departments of the Ministry of Finance.

Moreover, within the EU TAIEX instrument, the GIFI representatives were involved as national experts in projects for Bosnia and Herzegovina, the Republic of Serbia and the Republic of Turkey, as well as in the workshops organized for the Balkan countries “Multi country – Workshop on anti-money laundering” in Brussels.

6.6.3. The “MONEYPENNY” Project

Polish Financial Intelligence Unit was invited by the Swedish police and the Institute for Security and Development Policy of the country to participate in the project “Money Penny,” aimed at strengthening cooperation between asset recovery offices (ARO) and financial intelligence units (FIU) in the countries of the Baltic Sea basin.

Three meetings were held as a part of the project – in Stockholm (inaugural), Tallinn and Warsaw (summarizing) which were attended by the representatives of FIUs and AROs from Estonia, Finland, Lithuania, Latvia, Sweden and Poland.

The main goal of the “Money Penny” project was to examine the possibility of enhancing cooperation between asset recovery offices and financial intelligence units at the national level and between them and their foreign counterparts at the international level in the field of information exchange and conducting joint proceedings.

6.6.4. Conference “Counteracting money laundering and terrorism financing – new challenges for institutions”

On 27 September 2012, the Department of Financial Information in cooperation with the World-Check – provider of business information for financial institutions – organized a conference entitled “Counteracting money laundering and terrorism financing – new challenges for institutions.” Conference participants representing governmental administration, banks, insurance companies and brokerage houses were introduced to the new duties imposed on obliged institutions after the adoption of the latest changes in the FATF Recommendations on counteracting money laundering, financing of terrorism and proliferation, as well as in a view to the fourth AML/CFT Directive, by the representatives of the GIFI and the Polish Financial Supervision Authority Office. During the meeting, the activities undertaken by the Department of Financial Information and the Department of Asset Recovery of the Criminal Bureau of the General Headquarters of Police with reference to the Polish system of counteracting money laundering and terrorism financing were also presented. Moreover, the representatives of the World-Check presented the assembled guests the current highest risk areas and future threats in the fight against money laundering and terrorism financing.

6.6.5. Draft of the Preliminary National Money Laundering Risk Assessment

In the past year, the GIFI established cooperation with the International Monetary Fund (IMF) as a part of the project “Preliminary National Money Laundering Risk Assessment (PNRA).” The present PNRA project was a continuation of the IMF project on the typology of money laundering, implemented in 2009.

Last year's edition, besides Poland, included also administrations of other countries of the region, allowing to explore the national level of risk of money laundering and confront it with the levels of the same risk, characteristic of other assessed jurisdictions.

Activities under this project were to investigate and determine the level of risk in Poland for the occurrence of money laundering by identifying potential hazards and their consequences, as well as by determining sensitive elements of the system, conducive to the occurrence of the described process. For this purpose, methods developed by the IMF were used, allowing objective assessment of the risk level of money laundering in Poland as well as the use of international standards in the examined risk management.

Within the project running in several stages, documents and statistical data were collected and analysed allowing to determine the nature and scale of income-generating crime, as well as money laundering in Poland, followed by a survey conducted on a selected sample of entities representing cooperating units and obliged institutions.

As a part of the next stage connected with the preliminary national risk assessment of money laundering and terrorism financing, the Polish delegation together with the representatives of the GIFI and the General Prosecution Office participated in workshop organized by the

Organization for Security and Cooperation in Europe (OSCE), the International Monetary Fund (IMF) and the International Institute for the Study of Criminological Sciences, held on 17-21 September 2012 in Syracuse, Italy. The representatives from 7 countries were invited to participate in it: Albania, Bulgaria, Croatia, Macedonia, Poland, Romania and Serbia, participating in the project launched in early 2012 by the IMF.

In December 2012, the IMF gave the Polish side final report, which will be used to take appropriate preventive measures in the area of fight against money laundering.

It should be emphasised that the design activities taken by the GIFI in cooperation with the IMF and the developed report meet the latest global standards in the fight against money laundering and terrorism financing, which recommended to carry out a risk assessment at the national level and take measures to limit such risk.

7. APPLICATION OF SPECIFIC RESTRICTIVE MEASURES

7.1. Participation in the legislative work of the European Union

The GIFI actively participates in the legislative work which took place within the European Union in 2012. Due to developments in the international arena this work is aimed at the adoption of legal acts, namely Council decision in accordance with Article 29 of the Treaty on European Union (TEU) and Council regulations pursuant to Article 215 of the Treaty on the Functioning of the European Union (TFEU), which imposes specific restrictive measures on certain countries in connection with the escalation of internal conflicts, failure to comply with human rights standards, or the intensification of activities related to the production of weapons of mass destruction. In this respect, the GIFI also participated in the assessment of legislative proposals made by individual Member States in the course of work within the European Union, as well as prepared positions for the purposes of national institutions.

The subject of analysis and positions of the GIFI were the draft legal acts providing for the introduction of new or modification of the existing restrictive measures in respect of persons, groups and entities in view of the situation in the Republic of Belarus, Egypt, Tunisia, Libya, the Republic of Guinea, the Islamic Republic of Iran, Syria, within the scope in which the proposed solutions related to the mechanism of freezing funds of entities listed in the Annexes to these legal acts, the prohibition on making funds available to such entities, as well as other restrictions of a financial nature.

7.2. Participation in meetings concerning restrictive measures

Representative of the GIFI, at the invitation of the Ministry of Foreign Affairs, took part in the meetings of the Working Party of Foreign Relations Counsellors (RELEX/Sanctions). The subject of the meetings was the review and modification of the document “Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy.” The aim of the initiative of the Kingdom of Denmark, which took over the Presidency of the Council of the European Union in the first half of 2012, was to analyse guidelines and modification of individual provisions, according to the wording developed by the Member States. The work during various meetings related to the rules on specific restrictive measures and the development of the standard wording of the provisions covering definitions, restrictions of a financial nature, as well as derogation clauses which would allow the exclusion of the use of restrictive measures against certain categories of entities. The standard wording of the provisions developed and agreed on by the Member States shall apply to all draft legislation providing for restrictive measures.

At the same time, in view of the international situation and introduced restrictive measures against Iran, meetings were held with the representatives of the U.S. Embassy and the Embassy of the Kingdom of Belgium, whose aim was to analyse the use of restrictive measures under the provisions of the European Union.

7.3. Other issues

In 2012, the GIFI received from the obligated institutions 4 requests for authorization of transactions pursuant to Article 21 of the *Council Regulation (EU) No. 961/2010 of 25*

October 2010 on restrictive measures against Iran and repealing Regulation (EC) No. 423/2007 (OJ EU L, No. 281, p. 1) and Article 30 of the Council Regulation (EU) No. 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No. 961/2010 (OJ EU L, No. 88, p. 1).

The financial penalties imposed on the Islamic Republic of Iran with the Regulation include – apart from the freezing of funds of certain entities or non-sharing – other restrictions of a financial nature. Such restrictions include the obligation of prior authorization for each transaction for and from the persons, entities and bodies in Iran, above or equivalent to EUR 40 000. These activities serve the implementation of the main objective of the present regulation, which is to prevent the proliferation of weapons of mass destruction and conduct related activities by the Islamic Republic of Iran. Due to the lack of a central authority in the national law, whose statutory powers would apply only to countering the proliferation of weapons of mass destruction and which could play a leading role in the implementation of obligations under the Regulation, the communication placed on the website of the Ministry of Finance in November 2010 indicated that requests for authorization should be directed to the GIFI. Due to the fact that countering proliferation goes beyond the statutory powers of the GIFI, this solution can be considered as a temporary mechanism which will be used until a comprehensive settlement of this issue in the national law.

In 2012, the GIFI took part in the consultation launched by the European Commission, which focused on development of impact assessment in relation to the Regulation of the Parliament and the Council regulating issues related to the freezing of funds of entities suspected of having ties to terrorism, operating within the EU (the EU internals). The basis for issuing the Regulation is Article 75 of the Treaty on the Functioning of the European Union, included in Chapter V of the Treaty concerning the area of freedom, security and justice. Under this provision, the Parliament and the Council, with a view to counteract terrorism, define a framework for administrative measures such as the freezing of funds belonging to the natural or legal persons and entities other than countries. The purpose of the Regulation is to adopt unified regulations which will minimize the allegations of non-compliance of national legislation systems with the sixth Recommendation of the FATF, concerning the freezing of assets. It was also indicated that despite the existing national mechanisms, the adoption of appropriate legal arrangements will allow for agreeing and the use of a common, unified mechanism enabling more effective prevention of the phenomenon of terrorism and terrorism financing.

8. LEGAL ACTIVITY

8.1. Legislative work

The GIFI conducted legislative work on the drafts of two regulations, namely the draft regulation which should be issued on the basis of Article 13 of the *Act of 16 November 2000 on counteracting money laundering and financing of terrorism*. The purpose of this regulation is, inter alia:

- ensuring transparency in determining the manner and form of storage and transmission of information under the provisions of the *Act*,
- adjusting model of the transaction register, referred to in Article 8 paragraph 4 of the *Act*, by adding new information on a given financial operation as well as the removal of the obligation to provide data which is not necessary for effective analysis of conducted transactions,
- determining the way for keeping the register by indicating the paper and electronic form,
- introducing mode for the transfer of information from the register using data carriers or via wireless transmission to the General Inspector of Financial Information,
- determining way for proceeding with corrections of transaction cards,
- determining a standard form and means of transmission of information, where a given institution cannot perform some of its obligations specified by law as “financial security measures.”

The works were not completed in 2012 due to the fact that in the course of consultation with the relevant government departments and the social partners a number of comments were reported, which were the basis for the changes to the draft.

Moreover, work on the revision of the *Regulation of the Minister of Finance of 20 October 2009 on the list of equivalent countries* (OJ No. 176, item 1364), issued pursuant to Article 9d paragraph 6 of the *Act of 16 November 2000 on counteracting money laundering and terrorism financing* (OJ of 2010 No. 46, item 276, as amended), defining the countries outside the European Union which meet the standards in the area of counteracting money laundering and terrorism financing, equivalent to the standards adopted in the regulations in force in the European Union and by the above-mentioned *Act*, was also conducted. The list of such countries is necessary in view of the statutory provisions allowing the obligated institutions to apply simplified financial security measures.

The aim of the regulation amendment is to update the already existing list of equivalent countries, following the changes made within the European Union. In accordance with the Memorandum of Understanding on the equivalence of third countries, adopted by EU Member States in June 2012, due to the shortcomings in the system against money laundering and terrorism financing, the Russian Federation and New Zealand were removed from the list of equivalent countries. The positive results of evaluation of the Republic of India and the Republic of Korea led to the recognition of these countries as having anti-money laundering and terrorism financing systems equivalent to the standards adopted in the European Union.

Furthermore, the Department of Financial Information participated in the evaluation of other drafts of legal acts, including *Act to amend the Act on payment services and amend certain other acts*, as well as the *Act on Credit Unions*.

8.2. Participation in the Conference of the Parties to the Warsaw Convention

The GIFI representative participated in the Conference of the Parties to the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism*, signed on 16 May 2005 and ratified by Poland. The meeting took place in Strasbourg on 12-14 June 2012. In Article 48 the Convention created a monitoring mechanism to assess the proper implementation of this legal act. The report assessing Albania was adopted at the meeting.

8.3. Issuing positions on the application of law

In 2012, the Department of Financial Information issued written interpretations in individual cases. On the whole, it issued 250 interpretations, including for:

- banks: 57,
- cooperative savings and credit unions: 1,
- factoring companies: 2,
- entities providing currency exchange operations: 22,
- entrepreneurs engaged in trading of precious stones and metals: 13,
- entities carrying out brokerage activities: 3,
- entities engaged in leasing: 6,
- entities operating in so far as accounts bookkeeping services: 26,
- payment institutions: 7,
- foundations: 9,
- investment fund management companies: 7,
- entities conducting insurance activity: 3,
- entities operating in the field of gambling, mutual betting and games of low prizes: 5,
- notaries public: 29,
- attorneys, legal advisers: 2,
- entrepreneurs receiving payments for commodities in cash of the value equal to or exceeding the equivalent of EUR 15,000: 18
- other: 26.

Moreover, interpretations of rules of law were submitted to cooperating units and foreign financial intelligence units.

In addition, interpretation and assistance in carrying out these obligations under the *Act on money laundering and terrorism financing* has been provided by telephone.

8.4. Other issues

In 2012, the GIFI prepared a position on the question referred C-212/11 Jyske Bank Gibraltar, asked by the Spanish court (Tribunal Supremo) to the Court of Justice of the European Union. In this case, the Spanish court asked the question on the interpretation of Article 22 paragraph 2 of the *Directive 2005/60/EC of the European Parliament and of the Council of 26 October*

2005 on the prevention of the use of the financial system for money laundering and terrorism financing (OJ EU L 309, 24.11.2005, p.15). The Spanish court had doubts as to whether a Member State may require from credit institutions which operate within its area without a permanent establishment to provide information to the financial intelligence unit of the country in whose territory it is operating or to the unit of the Member State in whose territory a given institution is located. In the case discussed, the credit institution was located in the territory of Gibraltar, which is not a member of the European Union, however, it is dependent territory of Great Britain and the provisions of the *Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information* (OJ EU L 271, 24.10.2000, p. 4) are applicable to it. In its position the GIFI pointed out both to the decision regulations aimed at effective exchange of information between financial intelligence units, bilateral cooperation, as well as the content of Article 5 of the Directive, which provides that the Member States in order to counteract money laundering and terrorism financing may adopt or maintain more stringent provisions. This allows individual Member States to establish mechanisms under national law, which in their opinion will allow to meet the objectives set out in the Directive to the fullest possible extent.

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General Inspector of Financial Information