



Exclusion System Summary

Poland

I. Government-Wide Legal and Institutional Framework:

Government-Wide Exclusion Framework? Yes.

- Exclusion decisions are made on a contract-by-contract basis as governed by national legislation or centralized regulations. Exclusions apply only to the procurement at issue.

Governing Policy:

- Art. 108, 109, and 110 of the [Act of September 11, 2019](#) – Public Procurement Law (effective January 1, 2021), as amended, which transposes Art. 57 of Directive 2014/24/EU of the European Parliament.

Primary Legal Foundation:

- Other.

Decision-Maker: Individual Contracting Officers; Not Functionally Independent from Senior Procurement Officials.

- Individual contracting authorities make exclusion decisions within each procurement procedure (contract-by-contract exclusion).

Qualification:

- None stated in the legal framework.

Independence:

- Not functionally independent from senior procurement officials.

II. Functioning and Enforcement of the Government-Wide Exclusion System:

General Provisions:

Type of Procedures: Other.

- The initial exclusion decision is made as part of the procurement process.
- Any subsequent proceedings are governed by civil litigation.

Decision Deadline: No stated deadline for decision-maker to make a final determination.

Provisional Exclusions: None.

Initial Procurement Decision: Grounds for exclusion are reviewed by the contracting authority as part of the procurement decision on a contract-by-contract basis.

- Decision-maker can make an exclusion decision without a prior referral.
- Non-governmental parties can submit complaints and/or evidence to the decision-maker.

Notice Requirements & Opportunity to be Heard: Yes & No.

Notice:

- Suppliers receive notice when the exclusion becomes effective.
- Notice must contain the grounds for exclusion.
- Decision-maker must make reasoning available to all interested suppliers, and the reasoning is usually made public. (See Arts. 253(1)(2), 558, and 559(2) of the Act of 2019)

Opportunity to be Heard:

- Not before the exclusion becomes effective, although bidders are generally entitled to an opportunity to submit evidence in their bids demonstrating that they have taken sufficient measures to demonstrate their reliability. (See Art. 110 of the Act of 2019)
- The supplier can also challenge the decision before the National Appeal Chamber. (See Art. 515 of the Act of 2019)

Appellate Review of Exclusion Decisions: Yes.

Nature and Forum of Review: Judicial.

- Appeals are filed with the National Appeal Chamber. (See Arts. 473-492 of the Act of 2019)
- Decisions of the National Appeal Chamber can be further challenged in the District Court in Warsaw. (See Arts. 579-590 of the Act of 2019)

Means Available to the Supplier: As part of appellate review, suppliers may:

- Make a written submission to the appellate body.
- Request an in-person hearing with the appellate body.
- Call witnesses to an in-person hearing to testify on the supplier's behalf.

Duration of Appeal Process: National Appeal Chamber resolves appeals within fourteen days, on average.

Legal Representation:

- A supplier **may** be represented by counsel.

Subsequent Modification of Exclusion Decision: Yes ("Self-Cleaning").

- Except through an appeal to the National Appeal Chamber, a supplier is **not** entitled to seek a modification of any decision to exclude it from a procurement process after it goes into effect.
- A supplier **may**, however, include evidence of sufficient measures to demonstrate its reliability (i.e., "self-cleaning") with any subsequent bids submitted to a contracting authority. (See Art. 110(2) of the Act of 2019)

III. Substantive Grounds for Government-Wide Exclusion:

Automatic Exclusion: Yes.

Based on a supplier's criminal or civil judgement for the following:

- Corruption;
- Fraud;
- Collusion and/or infringing competition;
- Obstruction of an investigation;
- Money laundering;
- Tax-related offenses (arrear on taxes, fees, or social security or health insurance contributions);
- Human trafficking; and
- Terrorist offenses or offenses linked to terrorism.

Based on an administrative (*i.e.*, non-judicial) decision or finding against the supplier for the following:

- Collusion and/or infringing competition;
- Tax-related offenses (arrear on taxes, fees, or social security or health insurance contributions).

Discretionary Exclusion: Yes.

Based on a supplier's criminal or civil judgement for the following:

- Labor-related offenses; and
- Social harms (environmental).

Based on an administrative (*i.e.*, non-judicial) decision or finding against the supplier for the following:

- Tax-related offenses;
- Labor-related offenses;
- Social harms (environmental); and
- Poor performance, non-performance, and/or failure to perform on public contracts.
- Other:
 - Misleading the contracting authority, through willful misconduct or gross negligence, that the supplier satisfies the selection criteria or is not subject to any exclusion grounds, or otherwise submitting misleading information to the contracting authority;
 - Grave professional misconduct, which the contracting authority can demonstrate through appropriate evidence;
 - Prior involvement in preparing the contract award procedure, unless the conflict can be eliminated through other means; and
 - Unduly influencing or attempting to influence the contracting authority's decision-making process.

Note on discretionary exclusion grounds:

- In Poland, the contracting authority must decide which discretionary exclusion grounds in Art. 109(1) of the Act of 2019 to consider before publishing the tender announcement, and those grounds must be listed in the announcement. Once published, the contracting authority is mandated to consider those grounds during bid evaluation. (See Art. 109(2) of the Act of 2019)

Proportionality:

- Decision-maker may not exclude a supplier based on Arts. 109(1) items 1-5 or 7 if exclusion would be manifestly disproportionate, such as the amount of outstanding taxes or social security contributions is small or the supplier's financial situation is sufficient to perform the contract notwithstanding bankruptcy or liquidation. (See Art. 109(3) of the Act of 2019)

Self-Cleaning:

- A supplier may avoid exclusion by demonstrating "self-cleaning" in almost every case (exceptions include if there is a judicial decision finding the supplier is in arrears in payment of taxes or social security payments that have not been repaid; or if an exclusion is imposed by a court of law). The contracting authority has discretion to decide if the supplier has regained its reliability based on the factors set forth in Art. 110(2) of the Act of 2019.

Exclusion based on Bankruptcy and Cross-Debarment: Discretionary & Automatic.

- Suppliers that have been debarred in another jurisdiction are likely to be automatically excluded from procurements in Poland. (See Art. 108(1)(4) of the Act of 2019)

IV. Scope and Effect of Government-Wide Exclusion:

Types of Excluded Suppliers:

- Individuals and Corporations.

Scope of Exclusion:

Extension to Other Agencies and Organizations:

- Exclusions do **not** prohibit the supplier from contracting with other federal agencies (exclusion decisions are contract-by-contract). However, the same facts could constitute an exclusion ground in every subsequent tender process.
- Exclusions automatically extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Poland.

Effect on Ongoing Contracts:

- Ongoing contracts are **not** automatically cancelled.
- Subsequent modifications to ongoing contracts are subject to the restrictions set forth in Arts. 455-456 of the Act of 2019 and are **not** affected by a supplier's exclusion.

Effect on Subcontracting:

- Excluded suppliers **can** technically serve as subcontractors, but contracting authorities may have chosen in contract documents to evaluate, or may sometimes be required by the law to evaluate, whether any potential exclusion grounds apply to a bidder's proposed subcontractors. If any grounds exist, the contracting authority can ask or sometimes must ask to replace the subcontractor. (See Art. 462(5) of the Act of 2019)

Effect on Excluded Individuals:

- Excluded individuals **may** be employed by a corporate supplier in any capacity. However, a supplier can be excluded if a member of its managing or supervisory body, partner, or proxy was convicted by final judgment for certain offenses. (See Art. 108(1)(2) and Art. 109(1)(3) of the Act of 2019)
- Exclusion does **not** extend to companies controlled by the excluded individual.

Tailoring Exclusion:

- No option to tailor the exclusion to certain divisions, operating units, or business lines within a corporate supplier.

Effect on Affiliates:

Corporate Affiliates:

- Exclusion does **not** apply to affiliated companies.

Extension to Affiliated Individuals:

- Exclusion of a corporate supplier does **not** extend to individuals that own or control the supplier and executive officers.

Duration of Exclusions:

Duration Specified in Legal Framework:

- Exclusions must be based only on grounds that occurred in the previous three or five years.

Duration Depends on Applicable Exclusion Ground? Yes.

- Five years maximum for automatic grounds (from the date of final conviction).
- Three years maximum for discretionary grounds (from the ground's occurrence).

Discretion to Deviate?

- No. The decision-maker does not have discretion to consider any grounds that fall outside the above time limitations as a basis for exclusion.

Exceptions/Waivers to Exclusions:

- Yes. A contract may still be awarded to an excluded supplier that has "self-cleaned" – *i.e.*, presented evidence that it has undertaken measures that are sufficient to demonstrate reliability.

Other Sanctions:

- None.

V. Government-Wide Transparency and Exclusion List:

Official List of Excluded Suppliers? No.

Procurement Checks:

- No. Procuring entities are not required to check a list of excluded suppliers before awarding a contract.

Reporting on Exclusions:

Number of Exclusions: Figures unknown.

Regular Reporting: No requirement for regular reporting on exclusions.

Other Transparency Mechanisms: None.

VI. Limited Scope Exclusion Systems:

Entity-Wide (e.g., Single-Agency) Exclusion? No.

Contract-By-Contract (e.g., Single-Tender) Exclusion? Yes. See above.

Subnational Exclusions:

- The exclusion framework set forth in the Act of 2019 applies to all contracting authorities in Poland, even at the local level.