



SAI Independence Rapid Advocacy Mechanism (SIRAM)

Assessment report on the allegations of
systematic restrictions to the independence of the
Supreme Audit Office of Poland (NIK)

MAY 2023

What is SIRAM?

The SAI Independence Rapid Advocacy Mechanism (SIRAM) was established in 2018 to advocate and raise awareness of threats to and breaches of SAI Independence, as well as broker support for SAIs facing challenges to their independence.

These threats can manifest in a variety of ways, such as through amendments to a country's constitution or audit legislation, challenges to SAI mandates, and/or attempts to remove the Head(s) of the SAI or delay the appointment of a new Head.

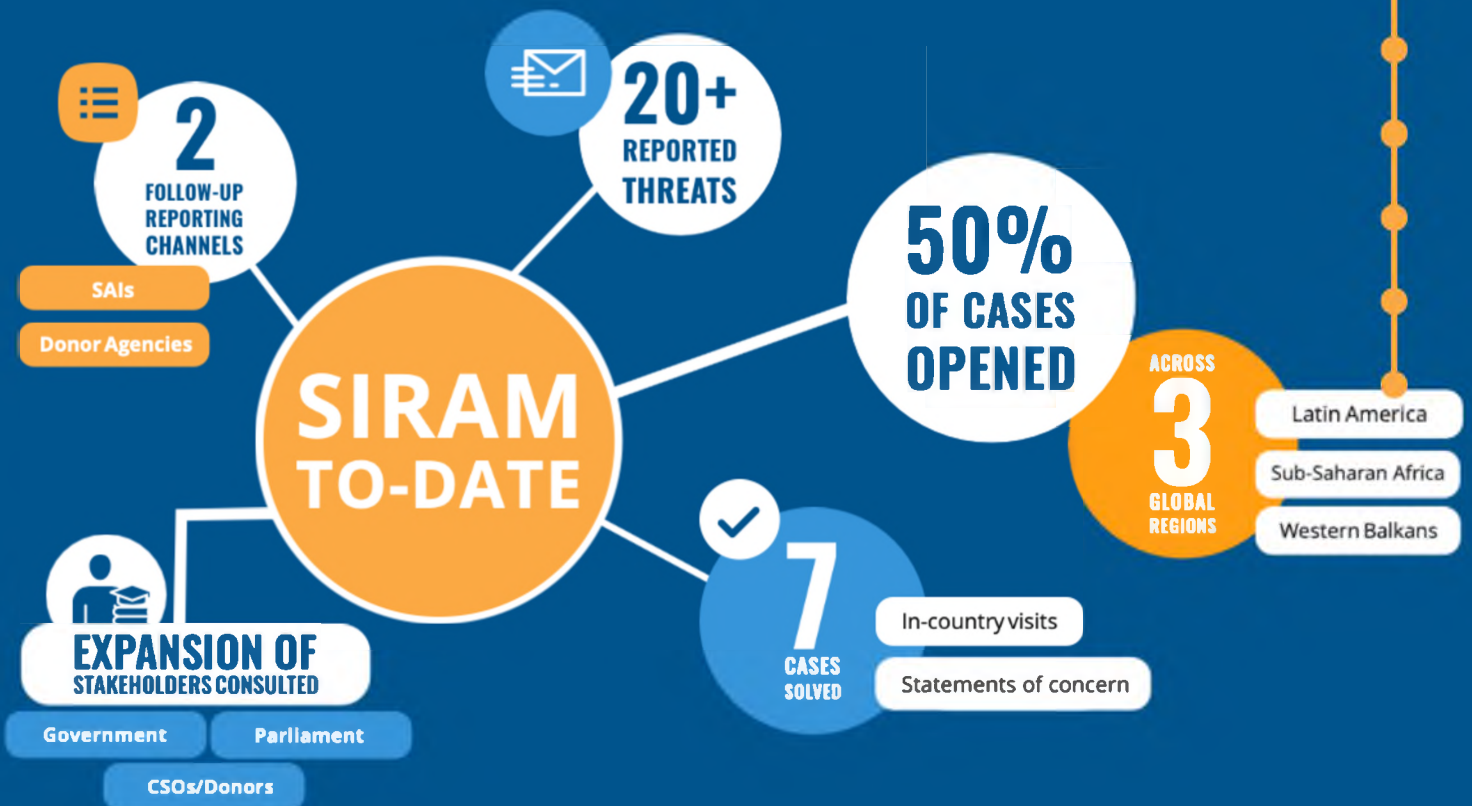
Stages of SIRAM

- 1) Report a threat through various channels and entry points
- 2) Link the threat to relevant pillars of INTOSAI P-1 and INTOSAI P-10
- 3) Provide a timely advocacy response using one or a combination of existing tools
- 4) Monitor developments during and after the response stage

SIRAM cases over the years



Since the establishment of SIRAM in 2018, there has been a sharp increase in the number of threats reported to IDI. Notably, reported cases correlate with regions experiencing greater declines in accountability, good governance and SAI independence.



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I. Background and context

1. **Mr. Marian BANAS**, President of the Supreme Audit Institution of Poland (NIK) contacted the Director General of IDI on the 26 October 2021 (appendix 1) for what he labeled “**systemic restrictions on independence of the Supreme Audit Office of Poland**” and requested the initiation of **IDI’s SAI Independence Rapid Advocacy Mechanism (SIRAM)**.
2. To support his claim the President referred to attacks to both his family and him, from the Special Services and the Central Anticorruption Bureau (CBA) which reports to the Prime Minister’s Office, and also an auditee of the SAI.
3. The President traces these attacks back to the publication of an audit report in 2020 on the elections process in Poland, called the “envelope vote” ¹ which received significant media coverage and where NIK auditors identified numerous illegalities, including mismanagement, inefficiency and unreliability of public funds spending.
4. He mentioned that the intimidation he faced culminated with the request from a Regional Prosecutor to obtain consent from the Lower Chamber of the Polish Parliament (Sejm) to lift his immunity and bring him to Justice.
5. In his submission, the President also referred to the lack of cooperation from the Sejm, which is the body to which the NIK is accountable and report, and which has rejected most motions for appointment of the members of the NIK’s Council.
6. It is against that backdrop that the NIK’s President decided to “initiate the SIRAM mechanism...and have an in-person meeting to discuss the dangerous events and behaviors of the members of the Polish Government and the services they supervise, which pose a threat to the constitutional legal order of the Republic of Poland and the Supreme Audit Office of Poland”
7. The following report provides a summary of the assessment conducted, conclusions reached, and recommendations formulated by the IDI SAI Independence team who conducted the process.

¹ <https://notesfrompoland.com/2020/04/23/polands-postal-election-enveloped-in-confusion-as-government-pushes-ahead-before-legislation-passed/>

II. Assessment Methodology

8. Following the formal opening of the case, an assessment methodology aimed at ensuring a balanced assessment was conducted as follows:

- Broad internal stakeholders' consultation sought

Organization/Institutions	Function/Individual	Date of the letter inviting their views on the case	Date of the Response received ²
Legislative Branch	Speaker of the Lower Chamber (Sejm)	24/01/2022	15/06/2022
	Deputy Speaker of Lower Chamber (Sejm)	24/01/2022	N/A
	President of the Parliamentary Group on the Rule of law	24/01/2022	N/A
	Marshall of the Senate	24/01/2022	01/02/2022
	Senator, Former Head of SAI	24/01/2022	N/A
Executive Branch	President of the Republic	24/01/2022	N/A
	Prime Minister	24/01/2022	N/A
	Minister of Interior	24/01/2022	N/A
	Minister of Justice and Prosecutor General	24/01/2022	N/A
Judiciary Branch	Vice-President of the State Tribunal	24/01/2022	N/A

- Thorough desktop review of material submitted by the various parties

Legal Documents	Letters	Other documents
Supreme Audit Office Act (23/12/1994)	Letters between the President of the NIK and the Marshall of the Sejm	Motions of submitted by the SAI to the Speaker of Sejm for the appointment of NIK's Council
Constitution of the Republic of Poland	Letter from the Police summoning NIK's staff to appear as witness in investigations concerning	Notifications by the SAI to the Prosecutor's office for following up on audit reports (140 notifications)

² Very few responses were received. However, we received responses from the most important stakeholders in the case the Speaker of the Sejm and the Marshall of the Senate.

	excess of power by NIK employees	
	Open Letter by the NIK staff on the budget cuts faced by the SAI	Summary of Restrictions faced by the NIK in conducting their audits

These steps were supplemented by and in-person interaction in Poland (June 2022) with NIK's Management and members of the Parliament, the Deputy Chair of Foreign and European Union Affairs Committee and the Chair of State Audit Committee, in the Senate. Throughout our assessment we also interacted with the INTOSAI General Secretariat and EUROSAI Secretariat to further our understanding of the case and context. Finally, we interacted with legal practitioners and Constitutionalists³ (October - December 2022) to inform our understanding of the legal aspects of the case.

III. NIK's Institutional Profile

9. Article 202 in chapter IX of the Constitution of Poland establishes the NIK as the i) Chief State Organ of State Audit, ii) that it is subordinate to the Sejm (Lower Chamber of Parliament), and iii) that NIK shall act in accordance with the principles of collegiality.
10. Article 203 provides a broad mandate to NIK which includes the audit of central and local government, and extends to the audit, of other organizational units and economic subjects, to the extent to which they utilize State or communal property or resources or satisfy financial obligations to the State.
11. From the Constitutional provisions, the NIK can be classified in the group of SAIs established as independent officers of Parliaments⁴ (i.e., subordination to the Sejm) with collegial decision-making processes. In the Polish context this is highlighted by *"the complementarity between the State Audit Control (carried out by the NIK) and the Sejm who is the only body authorized to control the activities of the Council of Ministers and the government administration. Therefore, the NIK's audit tasks are performed for the benefit of the Sejm"*⁵
12. The principles of oversight by the Sejm and collegiality are further elaborated by the Audit Act of 23 December 1994. In fact, the Sejm plays a key role in the appointment and removal process of the President of the NIK. The Sejm also plays a key role in the

³ They asked their identity to not be disclosed but agreed that we could share the content of their analysis

⁴ Officers of Parliament support both houses in their accountability and scrutiny functions by carrying out independent oversight responsibilities assigned to them by statute. Appointment of officers of Parliament. Hill Studies. Publication No. 2009-21-E, Library of Parliament of Canada.

⁵ Constitution of Poland. Volume II. Commentary, ed. Prof Marek Safjan, PhD, Leszek Bosek, PhD, 2016

appointment of the College of the NIK which is the way through which the constitutional principle of collegiality is implemented.

13. According to Section 22 of the Audit Act, the Council of the Supreme Audit Office shall consist of the President of the Supreme Audit Office acting as the Chairperson (1), Vice-Presidents (3), and Director-General (1) of the Supreme Audit Office, and 14 Members of the College (7 scholars in law or economics, and 7 Directors of audit or Advisors to the President of the NIK). Upon request of the President of the Supreme Audit Office, the Marshal of the Sejm shall appoint the Members of the College⁶.
14. **Given the SAI's Institutional profile one can argue that for the SAI to operate there must be a subtle interplay and balance between the constitutional principles of its independence and autonomy, its subordination⁷ to the Sejm and the collegiality of its decision-making process.** As such, safeguard should be established to ensure the respect of these three Constitutional Principles.

IV. Analysis of the Case

15. The SIRAM methodology aims at determining whether Independence principles encapsulated in the Lima and Mexico Declarations (INTOSAI P-1 & P-10) had been infringed. To that end it focuses on issues which can be directly linked to potential infringements of the Independence of the SAI and have a direct effect on its operations.
16. When deciding on the scope of the analysis related to **systematic restrictions on the independence of the Supreme Audit Institution of Poland**, it was decided not to focus on the claims around the personal and/or cyber-attacks on the President and his family as it couldn't be directly related to an infringement of a specific principle under the Mexico Declaration
17. The assessment focused on the following possible infringements:
- **Significant delays in the appointment of NIK officials (members of the Council of the NIK and NIK's Director General).**
 - **Interference faced by the NIK and its auditors in conducting specific audits**

⁶ The same provisions shall be applicable accordingly to the expiration or termination of the term of office of a Member of the College of the Supreme Audit Office

⁷ The Constitutional Tribunal in its judgement of 1 December 1998 (K 21/98), provided an interpretation of the subordination as set forth in Article 202(2) of the Constitution. The same opinion was repeated in the verdict of 28 June 2000, K 25/99. The Tribunal made it clear then that subordination understood in this way should not breach the essence of NIK's autonomy

- **Financial limitations faced by the NIK**

Delays in the appointment of the NIK officials (Members of the Council of the NIK and the Director General)

18. Regarding the appointment of members of the Council, Principle 2 of the Mexico Declaration (INTOSAI—P-10) postulates the independence of SAI heads and members of collegial institutions as an essential condition for allowing them to carry out their mandates. As noted earlier, collegiality is a constitutional principle through which the SAI of Poland should operate. This principle is implemented through the Council of the NIK whose members are appointed by the Marshal of the Sejm upon proposal by the President of the NIK. The Parliamentary regulations on the functioning of State Control⁸ in its Chapter 3.2 on the composition of the council and the statutes of its members, states that the President, Vice-Presidents and the Director General are members of the college by Law, the remaining 14 members are appointed by the Marshal of the Sejm, at the request of the President of the NIK, after consulting the relevant Parliamentary Committee.

19. From the period August 2019 to July 2022 the President of the NIK submitted 34 motions for appointment of members of the NIK Council (see table⁹ below) as per the provisions of the Audit Act. Out of the 34 motions for appointment submitted, seven members were appointed.

20.

Dates of motion	Number of motions submitted	Number of Members appointed	Comments ¹⁰
26/09/2019	4	0	Zero motions forwarded to the Public Audit Committee
29/01/2020	5	2	Two motions forwarded to the Public Audit Committee
21/04/2020	6	0	Zero motions forwarded to the Public Audit Committee
13/07/2020	5	2	Five motions forwarded to the Public Audit Committee
04/08/2020	3	3	Three motions forwarded to the Public Audit Committee
13/05/2021	4	0	Four motions forwarded to the Public Audit Committee

⁸ Najwyższa Izba Kontroli i prawne aspekty funkcjonowania kontroli państwowej (nik.gov.pl)

⁹ Based on the information and motion shared by the SAI with the assessment team

¹⁰ The Speaker has the possibility to request the opinion of the Parliamentarian Committee of Public Audit (KOP)

06/07/2021	6	0	Zero motions forwarded to the Public Audit Committee
09/03/2022	3	0	Zero motions forwarded to the Public Audit Committee

21. When asked about the situation, the Marshall of the Sejm¹¹ stated the following “...Under the NIK Act, the appointment of the NIK Council members is the responsibility of the Marshal of the Sejm, acting on the request of the NIK President. It results, as mentioned above, from the constitutional principle of NIK's subordination to the Sejm and the responsibility of the NIK President before the Sejm. The principle of NIK's subordination to the Sejm is also expressed in the procedure whereby the NIK President's motions appointing members of the NIK Council are subject to an opinion by the relevant Sejm committee - the Commission for State Control mentioned above. In each case, when the NIK President requests the appointment of the NIK Council member, the Marshal of the Sejm refers the request to this committee. After obtaining the -committee's opinion, the Marshal of the Sejm decides on the appointment to the NIK Council or refuses to appoint the person indicated by the NIK President. It applies in particular to those cases where the committee has expressed a negative opinion on the nomination submitted. I want to emphasize that the appointment of the NIK Council member is the responsibility of the Marshal of the Sejm, who is not bound by the nomination made by the NIK President. In the case of refusal to appoint a candidate indicated by the NIK President, the Marshal of the Sejm shall request the NIK President to present another candidate. These should be candidates who will be accepted by the Sejm bodies to which NIK is subordinate. Despite the extensive correspondence between the Marshal of the Sejm and the President of the NIK on these matters, he does not seem to recognize the importance of the regulations in force in this respect, as demonstrated, among others, by his letter of 26 October 2021 to the Director discussed in this matter. The Sejm of the Republic of Poland, whose work I have the honor to direct, has the right and-obligation to require the NIK and its President to respect the principle enshrined in the Constitution that the NIK is subordinate to the Sejm.”

22. In a written reaction to the Marshall of the Sejm, the President of the NIK stated the following “...The constitutional principle of collegial responsibility of NIK concerns the team model of activities in state auditing, to voice NIK's stance. In other words, the functions of NIK are exercised through joint approval of audit related positions. For this model to be fully implemented, the number of Council members should ensure objectivity. In accordance with Article 22(1) and (2) of the Act on NIK, the Council of NIK is composed of: seven scholars in law or economics (from outside NIK) and seven directors of NIK organizational units appointed by the Marshal of the Sejm -upon request by the President of NIK, following an opinion of the Committee on State Audit and, ex officio, President of NIK as the Chairperson, Vice-Presidents and Director General, who are not subject to the Committee's opinion. NIK does not question

¹¹ Letter from the Marshall of the Sejm to the Director General of IDI, 15 June 2022.

the competence of the Marshal for an appointment of members of the Council of NIK, of course following requests by the President of NIK, but I would like to emphasize that from August 30th 2019, i.e. from the beginning of my term of office, to July 11th 2022, I approached the Marshal nine times and I submitted 34 motions for appointing members of the Council of NIK. Only seven candidates have received positive opinions from the Committee on State Audit and have been consequently appointed by the Marshal of Sejm.

23. It should be emphasized that the competence of the candidates that were granted negative opinions by the Committee on State Audit were not questioned at the Committee sittings. Moreover, the Committee's opinions are not binding for the Marshal. It is also reflected in the steps taken by the Marshal of the Sejm who in one case appointed a member despite a negative opinion of the Committee, and in another - did not appoint a candidate who received an equal number of votes "for" and "against" at the Committee's sitting, which meant that the Committee's opinion was not negative. Another questionable decision by the Marshal was not to forward 14 motions by the President of NIK to the Committee. Also, the President of NIK withdrew two motions before the Committee's sitting, and the Marshal still forwarded them to the Committee that consequently gave a positive opinion, and the candidates were ultimately appointed to the Council of NIK. NIK operates in accordance with the principle of collegiality, as set forth in Article 202(3) of the Constitution and in Article 1(3) of the Act on NIK. The embodiment of this principle is the Council of NIK that takes decisions on the most important issues related to NIK's activities. These include approval of the state budget execution and monetary policy guidelines, approval of NIK's activity report, adoption of discharge for the Council of Ministers, motions to the Sejm to examine certain questions related to activities of public bodies, statements containing charges against members of the Council of Ministers or persons managing top state institutions found during audits, and approval of annual audit plans. At this point it has to be emphasized that NIK's annual plan sets audit directions, which is the basis for NIK's activity - in accordance with Article 6(2) of the Act on NIK, NIK performs its tasks on the basis of annual work plans submitted to the Sejm, and the Council of NIK decides which audits are included in plans. Another responsibility of the Council is to decide on objections voiced to audits by the most important state bodies. Considering the above, if members of the Council of NIK are not appointed, ultimately only the members from NIK management, i.e., the President of NIK, Vice-Presidents and the Director General, will remain in the Council. This may lead to questioning NIK's objectivity, and consequently it may paralyze the functioning of NIK.

24. Without commenting on the legal boundaries of the principle of subordination, one can opine on whether the delays in the appointment of members of the NIK can threaten the independence of NIK and the full implementation of the principle of collegiality. In addition to the legal challenge posed, there is also a technical dimension highlighted by the NIK's President in his response. The Council has a key role to play in

assessing the quality of the audit reports as it is a key element of the quality control system. Therefore, it should be constituted of experts with an expertise in key areas to enhance the quality of the deliberations.

25. This point of view was similar to the position adopted by the European Commission in the Country Chapter on the rule of law situation in Poland of its 2022 Rule of Law Report¹². The Report states "The Supreme Audit Office continues its operation under adverse conditions. As of 2021, the Marshal of the Sejm has been refusing to appoint Members of the SAO College, thus hampering the effective functioning of the Office".

26. Our position also relied on an independent legal opinion, which concluded "...regardless of the way art. 202 of the Polish Constitution is interpreted by domestic courts (including, eventually Polish constitutional court), the context in which this conflict takes place should be considered... there is a deterioration of the rule of law as it was acknowledged by the Commission and by the European Court of Justice. Poland must respect the rule of law, under art. 2 TEU; this principle requires that all public powers act within the constraints set out by law. The need to respect the rule of law is also a precondition for ensuring compliance with the principles of sound financial management of EU funds, as it is stated in recital 7 of the conditionality regulation n. 2020/2092. There are a number of EU positions adopted by various EU institutions that should be taken into consideration when assessing whether the INTOSAI declaration is respected.

27. Having the legal framework in mind, we can focus on one of the complaints submitted by the President of the NIK: the difficulties in having the members of the Council of NIK appointed by the Marshall of the Sejm. It should be emphasized that the NIK is the supreme state audit institution and despite it being subject to the Sejm, it also enjoys independence which is guaranteed by the Constitution and has been recognized by the Constitutional Tribunal (in 1998 and 2000). One of the prerogatives of the President is to request the Sejm to nominate the members of the NIK Council. There is no doubt that the appointment of these members falls within the power of the Sejm, as it is clearly stated by the Marshall of the Sejm; however, if the President of the NIK's requests of appointments of these members (34 requests since 2019) are systematically disregarded, this prevents the NIK to function and to exercise its powers which are based on respect of the principle of independence. Interfering with the activities of the NIK undermines the rule of law in Poland..."

28. Regarding the appointment of the Director General. According to Art. 21 sec. 2 of the Act on the Supreme Audit Office, "The President of the Supreme Audit Office, with the consent of the Marshal of the Sejm, appoints and dismisses the Director General of the

¹² 2022 Rule of Law Report The rule of law situation in the European Union

Supreme Audit Office". The candidate for the Director General is not subject to the opinion of the parliamentary committee on State Audit. Contrary to this, the Marshal of the Sejm, forwarded to the State Audit Committee on February 8, 2022 the motion of the President of the Supreme Audit Office for consent to the appointment of a new Director General. The Committee expressed a negative opinion which led the Marshal of the Sejm to reject the appointment of the Director General on February 23, 2022.

29. The tasks of the Director General are regulated by the ordinances of the President of NIK issued pursuant to Art. 13 of the Act on the Supreme Audit Office. Pursuant to §7-10 of the applicable Ordinance No. 66/2019 of the President of the Supreme Audit Office of September 10, 2019¹³, the Director General of the Supreme Audit Office exercises direct supervision over organizational units of the Supreme Audit Office¹⁴. In addition, the Director General may present to the President of the Supreme Audit Office his position on matters relating to the protection of classified information, the protection of personal data, as well as on matters falling within the competence of the Occupational Safety and Health Department and Social Affairs; supervises the timely preparation of the draft budget in the part concerning the Supreme Audit Office and may make decisions related to the implementation of the budget of the Supreme Audit Office; may issue instructions to the directors of organizational units of the Supreme Audit Office in order to perform tasks related to the implementation of the NIK budget, and instructions regarding the keeping of records of the assets of the Supreme Audit Office; represents the State Treasury on behalf of the President of the Supreme Audit Office, and in particular is authorized to incur financial liabilities on behalf of and for the Supreme Audit Office; performs the tasks of the head of the contracting authority referred to in the provisions on public procurement.

30. In the absence of the Director General most of its task are performed by the President of the NIK. From our perspective, the prolonged vacancy adds on the daily tasks which have to be performed by the President and the issue should be resolved to allow the President to allocate his time to other matters.

Limitations faced by the NIK and its auditors in conducting specific audits.

31. Principle 3 of the INTOSAI P-10 stipulates SAIs should enjoy a sufficiently broad mandate and full discretion in the discharge of their functions. Principle 4 of the INTOSAI P-10 stipulates SAIs should have unrestricted access to information for the

¹³ (Prepared on the basis of the ordinances of the President of the Supreme Audit Office: No. 14/2021 of February 10, 2021, No. 52/2020 of August 6, 2020, No. 40/2020 of July 16, 2020, No. 37/2020 of July 14, 2020, No. 83/2019 of December 5, 2019, No. 74/2019 of 2 October 2019)

¹⁴ IT Department; Department of Facilities & Logistics; Corporate Services Department; Accounts Department

proper discharge of their statutory. Consistent with the spirit of the Mexico Declaration, the Supreme Audit Office of Poland has a very broad mandate¹⁵ which includes the ability to audit different jurisdictions (central and local), and extends to the audit, of other organizational units and economic subjects, to the extent to which they utilize State or communal property or resources or satisfy financial obligations to the State.

32. Despite those provisions, the SAI's mandate to audit specific entities has been questioned and staff from the NIK have been prevented from accessing the premises of auditees. In addition, access to information has in several instances been hindered through delays or refusal to provide necessary information. Finally, in selected cases investigations and judiciary procedures have been initiated against the staff from the SAI for exceeding their authority. The table¹⁶ below gives an illustration of those investigations which are exhaustively listed and detailed in appendix 3 of the assessment report.

33.

Audit	Entity	Government ownership ¹⁷	Progress of the audit ¹⁸	Legal proceedings against SAI Staff
Audit No P/22/013 <i>Implementation of measures to increase fuel safety in the oil sector</i>	PKN ORLEN SA	50%	The company questioned NIK's audit mandate	letter from the Capital City Police Headquarters of 17 October 2022 summoning auditors
Audit No P/22/012 <i>Selected expenditure of companies with a State Treasury share and of the foundations established by these companies, and financial</i>	PGNiG SA	71.88%	Audit discontinued – during the audit the company questioned NIK's mandate	No legal proceedings against SAI Staff
	Polski Koncern Naftowy Orlen SA (Polish Oil Concern Orlen SA)	50%	The company questioned NIK's audit mandate	Notification of exceeding authority by NIK auditors – letter from the Capital City Police

¹⁵ Article 203 provides a broad mandate to NIK which includes the audit of central and local government, and extends to the audit, of other organizational units and economic subjects, to the extent to which they utilize State or communal property or resources or satisfy financial obligations to the State.

¹⁶ Table prepared on the basis of the information submitted by the SAI

¹⁷ To determine whether the entity falls within the mandate of the SAI

¹⁸ At the end of 2022

management and implementation of statutory objectives of these foundations				Headquarters of 17 October 2022
	Fundacja ORLEN (ORLEN Foundation)	100%	The entity questioned NIK's audit mandate	Notification of exceeding authority by NIK auditors – letter from the Capital City Police Headquarters of 17 October 2022
	Link 4	100%	The company questioned NIK's audit mandate	No legal proceedings against SAI Staff
	Energa SA w Gdańsku (subsidiary)	90,9%	The company questioned NIK's audit mandate	No legal proceedings against SAI Staff

34. From our perspective the limitations faced by the NIK and its auditors illustrated in the table above and retraced in appendix 3 constitute an infringement of the principle 3 and 4 of the Mexico Declaration on SAI Independence (INTOSAI P-10). Moreover, a court decision of the 30 January 2023 ruled in favor of the SAI and mentioned that the SAI had the mandate to audit public entities and their subsidiaries, including foundations. Although this decision is a positive outcome, it is worthwhile mentioning it was issued by a provincial court and doesn't not prevent future obstruction from happening. In fact, the SAI has reported additional instances where they were denied access to information, or their mandate was questioned.

Financial limitations faced by the Audit Office.

35. Principle 8 of the Mexico Declaration on SAI Independence, states that Supreme Audit Institutions should be provided with human, material, and financial resources necessary for its appropriate operations. Chapter 32 of the **European Union Acquis Communautaire** which deals with financial control, requires Supreme Audit Institutions to be Institutionally, operationally, and financially Independent.

36. The President of the SAI informed us that on 25 October 2022, the Committee on State Audit, *which is a permanent committee dealing with, among others, NIK's activities*

introduced an amendment that significantly decreased the NIK budget for staff remunerations by around **51 000 000 PLN approx. 11 000 0000 euros**.

37. He further elaborated on the amendments which are structured as follow:

- staff remuneration (current expenditure of budgetary units) – decrease by PLN 42,145,000 PLN;
- social insurance contributions (current expenditure of budgetary units) – decrease by PLN 7,125,000;
- contributions for the Labor Fund and Solidarity Fund (current expenditure of budgetary units) – decrease by PLN 817,000;
- payments for the Employee Capital Plan (PPK) made by the employer (current expenditure of budgetary units) – decrease by PLN 164,000.

38. In the meantime, according to the information provided by NIK, other Departments and Budgetary Units saw a significant increase in their budgets. For example, the National Labour Inspectorate received 15% increase and the budget to the Chancellery of the Prime Minister increased by 80%.

39. According to President of the SAI, the above reductions in NIK's budgetary resources significantly hamper the performance of NIK's tasks set forth directly in the Constitution. During the current increasing economic crisis and the growing inflation (in October 2022 was estimated at 17.9%, according to the Polish Statistics (GUS)), appropriate financing is especially important for NIK to operate properly.

40. The financial restrictions make it impossible for NIK to recruit new qualified staff members. In the current economic situation, employers have to compete for recruits with attractive salaries, and NIK – due to the decrease of the remuneration budget – cannot compete with the private sector or other entities from the public finance sector.

41. We must remember that the budget requested to parliament was intended to make the remuneration at NIK closer to the amounts offered for similar positions in other state institutions, and thus become more attractive to employees.

Workgroup	Average salary adjusted for inflation (16.6%) - other units	Average salary in NIK - as of February 24, 2023	% difference
Management	23 242 zł	17 440 zł	-25%
Junior management	14 112 zł	11 947 zł	-15%

Advisor to the President	18 307 zł	14 052 zł	-23%
Special	14 371 zł	8 347 zł	-42%

42. The President adds: "In fact, as of February 24, 2023, we have 1,581 employees (...) The budget increase would have been used to (1) Hire new people - who could potentially carry out new audits after learning the scope of the auditor's work and (2) Increase salaries - to stop the trend of leaving work due to higher salaries outside NIK. Based on NIK's personnel statistics for 2022, approximately 35.40% (40 employees) of employee leaving from the NIK were related to unattractive remuneration.

43. Increasing salaries at NIK would translate into more effective recruitment. In 2022, 21 recruitments (out of 28 people) were not resolved, which accounted for approximately 35% of all recruitments, where the reason was, among others, the rejection of the offer by the candidates were too low salary. With the requested budget allocation, we could potentially 109 people¹⁹ with competitive salaries and fill the vacant staff position.

BREAKDOWN OF THE BUDGET INCREASE TO PARLIAMENT FOR RECRUITING ADDITIONAL STAFF AND INCREASE THE SALARIES OF EXISTING STAFF ²⁰		
Job position	Budget by % share of the group	Number of people to be hired
Advisor to the President of NIK	275 912,79 zł	1
Economic, legal and technical advisors	5 104 386,63 zł	28
Auditors/senior auditors,	8 599 281,98 zł	63
Inspectors/junior inspectors.	1 839 418,60 zł	17
		109
Number of employees after hiring 109 employees:		1690
Total number of auditors at NIK - after employment:		1141
Remaining amount for pay raises of the existing workforce to:		25 000 000 zł

¹⁹. 1 Advisor to the President of NIK, 28 advisors (technical, economic or legal), 63 auditors/senior auditors, 17 inspectors/junior inspectors.

²⁰ Table prepared by the SAI

44. Looking at the explanation provided by the SAI one can conclude the budget cuts significantly hinders the SAI's ability to retain its workforce and recruit the staff complement necessary to carry out its mandate. It is also worthwhile noting that other institutions received significant budget increase in the meantime. However, it is important to note that the procedure through which NIK's budget was reduced followed the normal procedure and didn't involve executive interference. In that sense, as much as we can agree on the negative impact of the budget cuts on the SAI's ability to fully perform its mandate and contribute to accountability, we cannot conclude that they constitute an infringement of the principle 8 of the Mexico Declaration and the Chapter 32 of the Acquis Communautaire.

V. Conclusion and recommendation

45. At the end of the assessment and based on the evidence collected, stakeholders consulted, and analysis conducted we conclude that the case presented by the SAI of Poland poses a threat to the **principle 2 - *independence of SAI heads and members of collegial institutions*** -, **principle 3 *sufficiently broad mandate and full discretion in the discharge of their functions***, **principle 4 *unrestricted access to information for the proper discharge of their statutory responsibilities***. Regarding **principle 8 related to financial autonomy** as much as we can agree on the negative impact of the budget cuts on the SAI's ability to fully perform its mandate and contribute to accountability, we cannot conclude that the principle was infringed.

46. We would therefore encourage the relevant stakeholders to take necessary action to uphold the independence of the NIK and optimize its contribution to accountability, including appointing members of the council, providing timely access to information, and finding ways to provide the appropriate level of financial means to the SAI. We stand ready to support any initiative or process aiming at strengthening these aspects of the legal framework.

