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Practical cross-border insights into ESG law

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1 Setting the Scene – Sources and Overview

1.1 What are the main substantive ESG-related regulations?

Poland has implemented the requirement for the disclosure of non-financial information set out in *Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups* (the "**NFRD**"), primarily by amending the Act of 29 September 1994 on Accounting (the "**Accounting Law**"). However, apart from the Accounting Law, there are also other regulations concerning the disclosure of information relating to the environment, society and corporate governance in Poland, which: facilitate investment in clean energy; regulate issues such as air, land and water pollution; protect human rights, and the welfare of workers, consumers and animals; prevent unfair competition; and foster equality in all aspects of life. These regulations are:

(i) the Polish Act of 20 February 2015 on Renewable Energy Sources;
(ii) the Polish Act of 20 May 2016 on Investments in Wind Power Stations;
(iii) the Polish Act of 10 April 1997 (the "**Energy Law**");
(iv) the Polish Act of 20 July 2017 (the "**Water Law**");
(v) the Polish Act of 27 April 2001 (the "**Environment Protection Law**");
(vi) the Polish Act of 14 December 2012 (the "**Waste Law**");
(vii) the Polish Act of 26 June 1974 (the "**Labour Code**");
(viii) the Polish Act of 23 May 1991 on Trade Unions;
(ix) the Polish Act of 21 August 1997 on Animal Protection;
(x) the Polish Act of 30 May 2014 on Consumer Rights;
(xi) the Polish Act of 16 February 2007 on Protection of Competition and Consumers;
(xii) the Polish Act of 15 October 2000 (the "**Commercial Companies Code**"); and
(xiii) the Polish Act of 3 October 2008 on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment.

On 13 May 2021, amendments to the Act on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment came into force, which aim to align Polish law with EU law (see Article 11 (1) and (3) of *Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment*).

In addition, Poland is bound by the *Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088* (the "**Taxonomy**"), and the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

Poland is also bound by the *Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosure in the financial service sector* (the "**SFRD**"), which came into force on 10 March 2021 and requires financial market participants, i.e. banks, investment funds and insurers, to disclose their approach to sustainability. On 6 April 2022, the European Commission adopted regulatory technical standards ("**RTS**"), which are an implementing act of the SFRD and clarify requirements for the content, methodology and presentation of information related to sustainable development. The RTS will apply as of 1 January 2023, with financial market participants having to perform reporting obligations on their products for the first time by 30 June 2023, for the period from 1 January 2022 to 31 December 2022. This means that Polish companies should start collecting the relevant data from January 2022.

In addition, it should be mentioned that Poland has not met the deadlines for implementing either the Omnibus Directive or the EU Directive on Work-Life Balance for Parents and Caregivers. The deadline for implementing the latter expired on 1 August 2022. According to public announcements, the implementing act should enter into force in early January 2023 at the earliest. While work on the implementation of the Omnibus Directive (which was supposed to take effect on 28 May 2022) is still under way in the Polish parliament, it is unclear when it will be completed.

In the near future, Poland will also be required to implement the Corporate Sustainability Reporting Directive ("**CSRD**"), which is a new EU law (amending the NFRD) that requires all large companies and all companies listed on EU regulated markets (i.e. SMEs, with the exception of listed micro-companies with fewer than 10 employees or a turnover of less than EUR 20 million) to publish regular reports on their environmental and social impact activities.

1.2 What are the main ESG disclosure regulations?

Poland has implemented the requirement for the disclosure of non-financial information by companies – like most EU countries – within the minimum requirements set out in the NFRD. The Accounting Law, which implements the NFRD, does not impose any additional disclosure responsibilities or burdens other than the minimum required by the EU. Companies with more than 500 employees should submit non-financial information statements, including at least:

(i) a brief description of the business model;
(ii) key non-financial performance indicators related to the entity's operations;

(iii) a description of the policies applied by the company with respect to social, labour, environmental, human rights and anti-corruption issues, as well as the results of their application;
(iv) a description of due diligence procedures, if the company applies them under the policies with respect to social, labour, environmental, human rights and anti-corruption issues; and
(v) a description of significant risks related to the activity of the company that may have an adverse impact on the issues referred to in point (iii), including risks related to the entity's products or its relations with external parties, including contractors, as well as a description of managing those risks.

When preparing the statement on non-financial information, the company presents non-financial information to the extent to which it is necessary to assess: the development, results and situation of the company; and the impact of its activities on social, labour, environmental, human rights and anti-corruption issues.

As indicated in question 1.1 above, Polish financial institutions are also required to disclose their approach to sustainability in accordance with the SFRD and its implementing act RTS.

1.3 What voluntary ESG disclosures, beyond those required by law or regulation, are customary?

In Poland, non-financial reporting is becoming increasingly significant each year. More companies are ESG oriented and voluntarily choose to publish data on customer relations, ethics and anti-corruption, product liability, employees, the environment, and dialogue about the environmental and social involvement. Moreover, a transparent presentation of this information makes these companies more credible to stakeholders, potential investors, customers, employees, regulators, non-governmental organisations, the media, academics and even competitors. According to data from an Economist Impact report commissioned by Iron Mountain, following the COVID-19 pandemic period, social responsibility and ESG factors have made their way into the list of the top five business priorities. Currently, nearly 29% of Polish companies (compared to 87% globally) are focusing on these factors. However, a key motivator for implementing ESG strategies today is the current and upcoming regulatory pressure.

Most reports are published by companies from the fuel, energy, banking and food industries, as well as the transport and logistics sectors, in their annual reports. There is also growing interest in voluntary reporting in the healthcare, retail, and construction sectors. The companies usually report the following categories of information:
(i) ESG-related risks: internal risks from the main business activities of the company or external risks from the external environment and competition.
(ii) ESG-related opportunities: all internal and external opportunities; for example, new challenges and opportunities connected with the development of new products or services, or changing competencies and capabilities.
(iii) Management: resources, projects, actions, schemes, targets and initiatives aimed at preserving the company's value for the shareholders and generating income.
(iv) Governance: organisational oversight of the entire ESG strategy, the policies implemented by the company, information circulation, and the financial decision-making structure within the company.
(v) Strategy: strategic objectives for the company's business model and maximising opportunities, as well as risk management.
(vi) Targets: objectives and results the company intends to achieve, including crucial performance indicators, timelines and goals.
(vii) Performance: responsible investment strategies implemented by the company, level of returns in the time range of a few years to several-dozen years, long-term outcomes and sustainability as a tool to create company value.

However, surveys show that companies still have a long way to go in ESG reporting; in particular, little emphasis is put on reporting about human rights and anti-corruption. According to a survey conducted by the consulting firm INSPIRED and Sebastian Kulczyk's InCredibles on the sustainability of IT companies in Poland in the last quarter of 2021, most Polish IT companies are conducting unsystematic activities in this regard, which may not meet legal and social regulations. Most Polish technology companies do not study their carbon footprint, have not implemented any anti-corruption measures, and have a tendency to transfer data to third parties without users' consent.

According to the report prepared in 2021 by PwC, CFA Society Poland, the Supervisory Board Forum and the Association of Independent Supervisory Board Members, investors have a low opinion about the quality of non-financial statements and reports from companies currently prepared, and instead derive their knowledge from various other sources. This is mainly due to the fact that, in Poland, there is no uniform approach to the sources of information and criteria for evaluating portfolio companies and ESG reporting for companies. This may change as, in May 2021, the Warsaw Stock Exchange, in cooperation with the European Bank for Reconstruction and Development, published the "Guidelines for ESG Reporting", a guide for issuers on reporting ESG factors, which systematises and organises recommendations in this area. In addition, the Taxonomy provides for solutions that will help Polish companies reduce the differences between entities operating in the same industry by identifying additional opportunities for reporting higher values of eligibility and compliance indicators. Another important factor that should change the attitude of investors is the introduction of a single European reporting standard by the newly proposed CSRD. Thanks to this regulation, ESG data will become easily accessible and comparable.

In addition, there is a free-of-charge non-financial report register created in Poland, which is run by CSRinfo to improve communication between reporting organisations and stakeholders who seek information on the economic, social and environmental performance and impact of reporting companies and organisations. The register facilitates the dissemination of non-financial reports of many Polish companies, such as Enea, Energa, Lubelski Węgiel Bogdanka, Budimex, KGHM Polska Miedź, PKN Orlen, PZU, TAURON Polska Energia, and Kompania Piwowarska.

1.4 Are there significant laws or regulations currently in the proposal process?

Public policies and laws are crucial to incentivise or compel investors to comply with the rules of responsible and sustainable investing. Polish law provides for many restrictions imposed on investors in order to ensure that all undertaken investments do not affect the environment with respect to provided indicators. Public authorities have a significant role in granting appropriate permits, and public consultations are carried out beforehand.

Several bills are currently pending to implement EU ESG-related directives. Work is under way on an act implementing the EU Directive on Work-Life Balance for Parents and Caregivers. This act is expected to enter into force no earlier than early January 2023. Legislative work on the implementation of the Omnibus Directive is also under way, and it is unclear when the legislative process will be completed.

In Poland, the energy transition and the transition to a zero-carbon energy system in Poland is to be carried out using nuclear energy. For this reason, legislative work is under way to create favourable legal conditions for nuclear power development in order to streamline the investment process related to the construction of nuclear power facilities and associated investments.

The draft Strategy and Policy for the Development of Nuclear Safety and Radiological Protection of the Republic of Poland was released in 2021 for public consultation, which ended in early 2022. In August 2022, the Council of Ministers adopted a draft law amending the Law on Preparation and Implementation of Investments in Nuclear Energy Facilities and Associated Investments and Some Other Laws, submitted by the Minister of Climate and Environment. Under the bill, it is planned that a number of laws will be amended, primarily the Law of 29 June 2011 on the Preparation and Execution of Investments in Nuclear Energy Facilities and Accompanying Investments and the Law of 29 November 2000 (the "**Atomic Law**").

In view of the ecological disaster on the Odra river in August 2022, the Polish government has pledged to create a law within the next two months; please see question 2.6 for more information.

Moreover, the adoption of the CSRD by the European Parliament and its subsequent entry into force, which is expected to take place on 1 January 2023, will also necessitate amendments to Polish law. Pursuant to the CSRD, all listed companies and large private companies (with more than 250 employees) will be subject to mandatory ESG reporting, if they meet certain criteria. This means that about 3,600 companies in Poland will become obliged to report on ESG, which is a huge increase compared to the current regulation, which covers only 150 companies. Moreover, the CSRD provides that ESG reports will have to be audited in the same way as financial statements.

1.5 What significant private sector initiatives relating to ESG are there?

In the private sector, there are many initiatives related to ESG. Published annually by the Responsible Business Forum, the report "Responsible Business in Poland. Good Practices" is the largest overview of corporate social responsibility ("**CSR**") initiatives in Poland. The 20th edition presents 1,677 activities undertaken by 283 companies. The analysis of the reported initiatives shows, among other things, growing public expectations of business responsibility for its impact on the environment, such as:

(i) Aviva's initiative to support athletes with disabilities;
(ii) Cemex's initiative of new environmentally friendly technologies;
(iii) Grupa Żywiec S.A.'s waste management programme;
(iv) Just Cause's initiative for social marketing to fight malnutrition; or
(v) Lafarge Cement S.A.'s programme for safety in the workplace.

In addition, at the end of 2021, the first edition of the "ESG Leaders" competition was held, for which nearly 100 companies and more than 20 individuals were nominated. ESG Leader is a title awarded by NN Group, amongst others, to companies and institutions that have implemented and/or are implementing an outstanding ESG strategy, have offered and/or are offering innovative products and services with a positive impact on the environment, and have conducted and/or are conducting effective information and promotion campaigns in the area of sustainable development. The special distinction of the Visioner of Green Transformation is awarded to persons who support responsible business with their attitude and authority.

In 2021, "ESG Leaders" awards were given to nine companies in three main categories:

(i) ESG strategy: CIECH S.A. (diamond award), Lidl Polska (gold award), Grupa Kapitałowa PKP Energetyka (silver award).
(ii) Innovation: Grupa Kapitałowa PKP Energetyka (diamond award), Contec S.A. (gold award), Żabka Polska sp. z o.o. (silver award), and Vertigo Farms (distinction).
(iii) Educational programme in the field of ESG: Velvet CARE sp. z o.o. (diamond award), Saint-Gobain Poland (gold award), and Wodociągi Miasta Krakowa S.A. (silver award).

Distinction was also awarded to Dominika Bettman – CEO of Microsoft in Poland - as a person who has taken special measures for sustainable development and has a significant impact on the area of environmental protection and natural resources, under the category of Visionary of Green Transformation.

There are also other private sector initiatives taking place to build or strengthen the idea of ESG, including a series of conferences and seminars aimed at strengthening awareness of non-financial reporting among Polish companies. NN Investment Partners TFI, CFA Society Poland, Erste Securities and the Warsaw Stock Exchange have organised a number of conferences on ESG in business. The conferences focus on the financial sector, with the main topics being stock indices to fight global warming – Paris-Aligned Benchmark ("**PAB**") and Climate Transition Benchmark ("**CTB**") – and the new regulatory framework for ESG-based financing. June 2022 marked the fourth ESG Warsaw 2022 conference, focusing on green bonds, the SFRDTaxonomy, the ESG criteria guiding debt funds, and how shareholders can get involved in the sustainability of companies.

2 Principal Sources of ESG Pressure

2.1 What are the views and perspectives of investors and asset managers toward ESG, and how do they exert influence in support of those views?

Paradoxically, the global financial crisis has created fertile ground in Poland for the development of the concept of responsible investors acting as a counterbalance to an exclusively financially oriented approach to the functional aspects of business. In recent years, there has been an increase in the number of jobs for CSR specialists and managers. This confirms that CSR – also understood as the sustainable development of companies – is no longer a market niche in Poland important only to a small group of international corporations and leading Polish companies.

Although, in 2017, non-financial reporting became mandatory for only the largest listed companies (those with more than 500 employees and a balance sheet total of more than PLN 85 million or net revenue of more than PLN 170 million), many other companies (such as Żabka, the convenience store chain) carry out such reporting even though they do not have the same obligation.

According to the Responsible Business Forum's "CSR Managers" survey conducted in 2020, 80% of respondents noticed increasingly strong integration of CSR values in their companies' business activities. Two-thirds of CSR managers and executives surveyed believed that the role of environmental and social topics would become increasingly important, and that the social and environmental responsibilities of companies for investors would increase. They also believed that increasing pressure would be exerted by customers, and that the spread of CSR activities would also occur through increasing demands from business partners.

Among the most useful tools for CSR managers are employee volunteering and stakeholder dialogue. The latter, in their opinion, is too rarely used, as is sustainable supply chain management.

Managers also pointed out the positive influence of business on the field of education – both general and focused on the fight against digital exclusion, the promotion of healthy lifestyles and the fight against discrimination of any kind. One-third of respondents emphasised the positive impact of business on eliminating unethical behaviour in business relations.

Compared to the surveys conducted a few years ago, the importance of support in the area of social assistance has decreased, while the fight against various types of discrimination has increased.

However, in the opinion of more than 50% of CSR managers, the main obstacles to the implementation of CSR are the perception of CSR as a sponsorship activity and a lack of understanding by company managers, as well as a lack of staff education.

Changes in the attitude of investors are also visible, especially in large companies that have foreign funds among their shareholders. Their analysts have recently begun to inquire about greenhouse gas emissions, the fight against climate change, human rights protections, gender equality and diversity in corporate governance. This practice is only just beginning to develop in Poland; however, it may change quickly, as Polish investors are also increasingly interested in the CSR activities of companies in which they want to invest.

Some of the main emerging ESG policy drivers are banks, which include non-financial initiatives in their crucial long-term goals. PKO Bank Polski S.A. – the biggest Polish bank – has adopted ESG indicators and included them in the bank group's non-financial targets for the coming years. The bank has committed to eliminate its exposure to the coal mining sector by 2030 and to increase green financing by at least 5% year on year. The indicators also include a commitment to reduce the bank's greenhouse gas emissions to 40,000 tonnes in 2025, a 60% reduction from 2019. The bank wants to maintain a high percentage of women in key management positions and has committed to no less than 35% by 2025. A similar strategy was announced by the second-largest Polish bank, Bank Pekao S.A., which set ambitious goals for the years 2021–2024. It is therefore the banks, as the primary fund providers for various projects, that will shape the trends aimed at strengthening ESG-related projects in Poland.

Moreover, Poland launched the Chapter Zero Poland programme, which is part of the international Climate Governance Initiative established by the World Economic Forum. The programme brings together members of supervisory boards and presidents of major companies to raise awareness of the consequences of climate change for business and the impact of business on climate. It provides knowledge and creates a platform for the exchange of experience between members of management and supervisory boards as well as experts.

2.2 What are the views of other stakeholders toward ESG, and how do they exert influence in support of those views?

As consumers' income increases, so does their awareness of the origin of products, the activities of producers, distributors and vendors. Consumers expect from companies and brands not only that they provide good-quality products, but that they also engage in social and environmental matters. Even though price is still the main factor influencing the purchase, more and more consumers, particularly young consumers, are starting to look at companies through the prism of their actions. Consumers pay attention to such elements as companies' treatment of employees, use of substances less harmful to the environment and use of recyclable materials, not testing their products on animals, the manner in which they package their products, and providing transparent information to consumers, in particular relating to the origins of their products.

Many young and eco-oriented consumers nowadays choose their clothing and cosmetics brands, banks or investment funds more often on the basis of their environmental, social and management credentials. There is also increasing pressure for sustainability from policymakers, regulators and politicians. Slowly, low ESG scores become a threat to the reputation not only of the businesses, but also of political stakeholders. This is mainly due to the fact that the Polish public is increasingly interested in the solutions offered in terms of climate change, social inequality and discrimination based on race, gender and sexual orientation.

2.3 What are the principal regulators with respect to ESG issues, and what issues are being pressed by those regulators?

As the ESG concept itself combines many different issues, such as human rights, equality and diversity, consumer protection, animal welfare, corporate governance issues, climate change, and the prevention of unfair competition, there are several regulatory authorities in Poland responsible for overseeing the various areas of ESG performance. The most important regulators in Poland are:

(i) the Ombudsman, who is responsible for the protection of human and civil rights and freedoms, including the principle of equal treatment;
(ii) the Children's Ombudsman, who is responsible for the protection of children's rights, especially the right to life and health protection, education and decent social conditions;
(iii) the General Director of Environmental Protection, who is responsible for the protection of nature and the environment;
(iv) the President of Polish Water Management, who is responsible for the management of water resources;
(v) the President of the Office of Competition and Consumer Protection, who is responsible for creating anti-monopoly and consumer protection policies and issuing statements on public aid projects;
(vi) the President of the Energy Regulatory Office, who is responsible for regulating fuel and energy management and promoting competition;
(vii) the Chief Labour Inspector, who is responsible for the inspection of working conditions from a hygiene and safety standpoint, and compliance by employers with labour laws; and
(viii) the Chief Sanitary Officer, who is responsible for food inspections and supervision of the import and export of food.

2.4 Have there been material enforcement actions with respect to ESG issues?

In 2021, one of the largest grocery store networks in Poland was fined over PLN 60 million (EUR 13.3 million) for intentionally misleading information regarding the geographic origin of products sold. In some of its stores, the countries of origin of more than 20% of fruit and vegetables on sale were incorrectly indicated, which could have influenced the decision of the consumers when buying such products.

Another material enforcement action that year was undertaken by the Regional Inspector for Environmental Protection in Łódź, who imposed a fine of PLN 1 million (approximately EUR 220,000) on a company that stored waste in a landfill in Zgierz. Many tonnes of waste were stored there from the United Kingdom, Italy, Germany and other countries. The waste was burned, and the burning landfill had a significant negative impact on the environment and its elements. Therefore, the fine was appropriate to the size of the company and the level of environmental damage caused.

In addition, in April 2021 it was discovered that waste illegally transported from Germany to Poland had been stored in more than 30 locations in western Poland. Managers responsible for this infringement may face up to five years in prison and significant fines.

There have been many other enforcement actions conducted by the regulatory authorities. This shows how important ESG issues are for Polish regulators and how robust their actions are in counteracting all violations.

2.5 What are the principal ESG-related litigation risks, and has there been material litigation with respect to ESG issues, other than enforcement actions?

The obligation to disclose information on the company's environmental, anti-corruption and anti-bribery policies, respect for human rights, social responsibility, treatment of employees, and diversity on company boards (in terms of age, gender, education and professional experience), may give rise to civil action, provided that there is damage caused by a shareholder relying on false ESG disclosures and that there is a natural causal link between the false ESG disclosure and the damage suffered.

In addition, compliance with laws on a hygienic and safe working environment, labour laws, including equal treatment in employment and the prohibition of discrimination, in particular on grounds of sex, age, disability, race, religion, nationality, political opinion, trade union membership, ethnic origin and sexual orientation, poses a significant risk to the employer. Employee rights are further protected by a special, employee-focused procedure for dealing with labour law cases.

Furthermore, civil liability for damages caused by a violation of any environmental law is also a significant litigation risk. However, it is necessary to establish the damage relationship and the natural causal link between the violation and the damage suffered. Such claims based on an unlawful violation of environmental law can be pursued as class action lawsuits by a group of at least 10 plaintiffs.

2.6 What are current key issues of concern for the proponents of ESG?

Currently, the key issues of concern for proponents of ESG activities in Poland are the war in Ukraine and the impending energy crisis caused by this armed conflict. In March 2022, Russia halted gas export to Poland over refusal to pay for supplies in rubles (Russian currency).

Although the Polish state gas company ("**PGNiG**") can supplement gas supplies with liquefied natural gas imports from various parts of the world, and purchase in the EU (Poland is ahead of other European countries in preparing for living without Russian gas), many Polish households heat their homes with coal, which has not only become very expensive, but is starting to become scarce. In this situation, there is a risk that Polish households (especially those with the lowest incomes) will start using low-grade coal, or other high-emitting materials like wood or household waste, during the coming winter. Although the government is currently working on a coal subsidy programme, this is a serious problem, especially when Poland has some of the worst air quality in the world. Air pollution in Poland is mainly a consequence of the improper heating of buildings. Therefore, since 2018, there has been a government programme known as "Clean Air", the main goal of which is to accelerate the replacement of old heat sources in households that most pollute the environment, i.e. manual boilers powered by wood, tiled stoves and low-efficiency coal boilers. The granted subsidies may also be used to insulate buildings, to replace windows and doors and to install and modernise central heating and hot water systems, as well as to partially finance the construction of renewable energy sources and ventilation through heat recovery (recuperation). The programme will operate until 2029, and applications for funding can be submitted until 31 December 2027. The total budget of the "Clean Air" programme is currently PLN 103 billion.

However, the war in Ukraine and rising energy and gas prices may strongly discourage households from applying for grants to replace their old installations.

In addition, 14 provinces in Poland have adopted so-called anti-smog resolutions imposing an obligation – at various deadlines – to replace old boilers, stoves and fireplaces with modern ones and sometimes introduce a total or partial ban on burning coal and/or wood. Anti-smog resolutions are based on emission classes in accordance with the PN-EN 303-5 standard; according to the class of the boiler, they require its replacement within a specified time.

Another very important concern for ESG supporters is the environmental disaster on the Odra River (which runs along the border with Germany). In late July 2022, the first dead fish were observed on the Odra River. By 10 August, anglers, activists and the Fisheries Service had fished at least nine tonnes of dead fish from the river, and dead beavers, birds and mussels were also spotted. On 11 August 2022 alone, at least 10 tonnes of fish were fished out of a 200-kilometer stretch just north of Olawa in southwestern Poland. Among the dead fish from the Odra River, experts found sturgeons, which they have been trying to restore in Polish rivers for 30 years. As the disaster unfolded, there were various reports about the cause, but after nearly two weeks investigators were unable to pinpoint the source of the water contamination. The sluggishness of the Polish authorities at the local and central levels and the downplaying of the situation were met with harsh criticism from the public.

In view of the ecological disaster on the Odra, in August 2022, the Polish government pledged to create a law within the next two months covering, among other things, the streamlining of investment procedures to ensure an adequate state of treated wastewater and improve the state of water resources in the Odra, the construction of wastewater treatment plants, as well as compensation for fishermen and the revitalisation of the Odra river.

Other issues of concern are: environmentally harmful single-use plastics; air pollution, which often exceeds the permitted indicators in urban areas; equal access to medicine and the healthcare system; counteracting unfair competition and the protection of consumer rights; tolerance and acceptance with regard to sexuality and ethnicity; and gender equality. The aforementioned issues are in principle both Polish and global concerns.

3 Integration of ESG into Business Operations and Planning

3.1 Who has principal responsibility for addressing ESG issues? What is the role of the management body in setting and changing the strategy of the corporate entity with respect to these issues?

The primary responsibility for dealing with all company matters, including ESG matters, lies with the board of directors. The board of directors is the body responsible for managing the company's affairs and representing its interests. It is increasingly common for ESG matters to be addressed in public statements made by company boards. This approach emphasises the importance of ESG issues and allows companies to build good relations with their stakeholders.

Moreover, companies are introducing policies friendly to ESG performance and appointing managers responsible for policy implementation within the company structure. Large public-interest companies with more than 500 employees (that meet financial criteria) are subject to non-financial reporting on their environmental, social and management policies. This list will soon be extended to all non-public companies with more than 250 employees. This means that about 3,600 companies in Poland will be obliged to report on ESG matters, which is a significant increase compared to the present situation in which only about 150 companies are subject to this obligation. As of 2026, the obligation of non-financial ESG reporting will be imposed on public companies employing more than 10 employees.

Market expectations and the regulatory changes that follow will force company board members to take serious sustainability measures. Managers of companies not previously covered by ESG reporting will have to prepare for reporting by collecting the necessary data. They should quickly adapt to the changes brought about by growing environmental and social awareness by creating their own ESG strategies and policies, especially since ESG issues are increasingly influencing many transactions in Poland.

3.2 What governance mechanisms are in place to supervise management of ESG issues? What is the role of the board and board committees *vis-à-vis* management?

Public companies are governed by a two-tier board system, with the supervisory board overseeing the management board. Supervisory boards can also be appointed in limited liability companies and joint-stock partnerships. In limited liability partnerships where the share capital exceeds PLN 500,000 and there are more than 25 shareholders, establishing a supervisory board or an audit committee is mandatory.

A supervisory board supervises the company's activities in all areas, including environmental protection, social issues and corporate governance. Special duties of the supervisory board include the evaluation of the management board's reports on the company's operations and the financial statements for the previous financial year, in terms of their compliance with the records and documents, as well as with the actual state of affairs and the management board's motions concerning the distribution of profit or coverage of loss. The board is also required to submit an annual written report on the results of this evaluation to the shareholders' meeting.

In order to perform its duties, the supervisory board may examine all documents of the company, demand reports and explanations from the management board and employees, and review the state of the company's assets. Each member of the supervisory board may independently exercise the right of supervision, unless the articles of association provide otherwise. Studies show that ESG issues are currently among the most important topics to be discussed at supervisory board meetings.

In addition, the board is also responsible to shareholders for implementing all policies, including environmental, social and corporate governance policies. The board presents to the shareholders a report on the company's activities, which is reviewed and approved by a shareholders' resolution. The limited liability company's shareholders may review the records, documents, accounts and minutes of the shareholders' meeting, and request copies of resolutions certified by the board.

One of the mechanisms implemented to control managers as to ESG issues is to link ESG indicators to executive compensation. It provides reassurance that both the organisation and its executives are serious about achieving ESG goals, and not just those related to economic efficiency.

However, according to PwC's analysis of compensation for board members of listed companies in 2020, only 25% of companies in the WIG20, mWIG40 and sWIG80 index on the Warsaw Stock Exchange include non-financial indicators, including ESG factors, in their variable compensation criteria. For now, we are seeing this trend in the largest companies, such as PKN Orlen and the Polish Energy Group ("**PGE**"), who work with institutional investors on a daily basis.

In addition, some of the companies are including the achieving of ESG goals in the evaluation process for managers and making bonuses or promotion prospects dependent on them. Another example is encouraging employees to propose their own pro-social initiatives, which then financially and organisationally involve the company itself.

3.3 What compensation or remuneration approaches are used to align incentives with respect to ESG?

Companies often pay (or reimburse) their employees to participate in various courses and/or training. They also promote a work-life balance culture and offer benefits such as fitness vouchers, access to private medical care, language courses, and reimbursement of the cost of glasses. They create sporting events within the company, as well as appointing sports teams, and compete with other companies in the same industry.

In 2021, for the first time, the Polish Agency for Enterprise Development organised the "best employee initiative program" competition. This scheme was aimed at popularising the idea of systematic inclusion of employees in development and innovation activities in Polish businesses. At the end of 2021, 29 winners were selected.

3.4 What are some common examples of how companies have integrated ESG into their day-to-day operations?

The most common examples of how Polish companies have integrated ESG into their day-to-day operations are:

(i) Codes of conduct providing all employees with a clear benchmark of what is regarded as ethical behaviour and the policies implemented within the company's structures. This set of rules outlining proper practices, approved norms or rules and imposed obligations is usually introduced in order to protect the company's business and inform all employees about the company's expectations of them.

(ii) Dedicated training for all employees, including online training and online tests, regarding ESG concerns and policies introduced by the company.

(iii) Dedicated means of anonymous contact for all employees where they are permitted to submit all reports regarding unethical or incorrect behaviour or abuse of power within the company.

(iv) Office improvements such as separation of rubbish, adding composting units, using glass bottles in vending machines, and installing energy-efficient lighting.

(v) Encouraging employees to propose their own pro-social initiatives, which financially and organisationally then involve the company itself.

3.5 How have boards and management adapted to address the need to oversee and manage ESG issues?

In large companies, ESG goals are becoming an integral part of business strategies. Addressing and implementing ESG issues is not possible without a clear signal for change from board members. Leaders and managers play a key role in companies in shaping ESG strategy. As mentioned above, one of the examples is encouraging employees to propose their own pro-social initiatives, which then financially and organisationally involve the company itself. In recent years, achieving ESG goals has become no less important to more and more customers, investors and employees than financial performance. Therefore, more and more companies are including the realisation of these aspects in their goal-setting and evaluation processes for managers, and making bonuses or promotion prospects dependent on them.

Moreover, one of the important elements of ESG management in the organisation is an appropriate system of motivating managers (from board members to middle management). It is usually achieved by involving managers in ESG issues and assigning them specific responsibilities, where they are subject to uniform evaluation of their work. According mBank Group's strategy for 2021–2025, 10% of TOP 100 managers' OKR (Objective and Key Results) goals are related to ESG. The ESG goals include five pillars: (i) climate protection; (ii) responsibility for the financial health of banks' clients; (iii) social responsibility; (iv) adherence to ESG values within the organisation; and (v) responsibility to investors. Individual managers choose goals appropriate to their responsibilities. In effect, then, the entire organisation is working to achieve ESG goals.

4 Finance

4.1 To what extent do providers of debt and equity finance rely on internally or externally developed ESG ratings?

Relying on externally developed ESG has become more and more popular over the last two to three years. In an increasing number of financial institutions, the availability of financing and its cost depend on actions taken and goals set in the field of sustainable development, which means that the company's investments are assessed in terms of environmental, social and corporate management. The first financing project in Poland in which such a mechanism was applied took place in 2019, where a consortium of banks granted a loan of PLN 2 billion (approximately EUR 430 million) to a Polish company from the energy sector, in which an external rating agency evaluated ESG factors in relation to the borrower. The ESG rating formed the basis for an evaluation and adjustment of the margin. One of the recent financings of this kind involved the biggest Polish retail chain – Żabka – which in cooperation with the Santander Group has now finalised the first loan agreement and factoring agreement, which are subject to achieving ESG goals, including those related to decarbonisation.

4.2 Do green bonds or social bonds play a significant role in the market?

In general, green bonds are a crucial financial tool used in raising capital for eco-friendly projects that benefit the environment. In December 2016, Poland was the first country in the world to issue its inaugural green bond. The bond served to highlight the government's support for projects with clear environmental benefits, as well as finance Poland's key environmental goals, i.e. Poland's National Renewable Energy Plan and the National Programme for the Augmentation of Forest Cover. Even though the expectations were high, due to regulatory restrictions (in particular regarding wind energy plants) green bonds have not yet become well established and popular on the market. At the end of 2021 there were only 10 green corporate bonds issuers and the aggregate value of the bonds was far behind Western European or Scandinavian countries.

Social bonds do not currently play any role in the market.

4.3 Do sustainability-linked bonds play a significant role in the market?

Sustainability-linked bonds are rather uncommon in Poland. There seem to be only two remarkable projects in Poland in which two state-controlled companies from the energy sector issued their first sustainability-linked bonds in Poland. The first, issued by Tauron S.A., was the largest bond issue in the corporate sector since the beginning of the coronavirus pandemic in Poland. The funds from the bond issue are to support the transformation of the group and will be used to finance the costs of the construction or acquisition of projects involving renewable energy sources, as well as financing distribution and general corporate activities. PKN Orlen S.A., the issuer of the other bond, was the first in Central Europe to issue an ESG-linked bond. The company planned to use the financial resources obtained from the bond issue for general corporate purposes, including achieving its ESG targets.

4.4 What are the major factors impacting the use of these types of financial instruments?

The main drivers impacting the use of these types of financial instruments are:

- pressure from society and clients of financial institutions (expecting to invest their funds in undertakings that prevent climate change);
- enormous investment needed in order to achieve the 2030 Agenda's Sustainable Development Goals;
- adoption of the EU climate neutrality target in 2050 and the European Green Deal, requiring mobilisation of EUR 1 trillion in funding between 2021–2027, of which approximately EUR 300 billion is to come from additional private funds in order to supplement public funds; and
- changing strategies adopted by financial institutions, including requirements imposed by financial regulators.

4.5 What is the assurance and verification process for green bonds? To what extent are these processes regulated?

The assurance and verification process for green bonds relies mainly on internal policies of the bond issuer, as well as external guidelines such as the International Capital Market Association's Green Bond Principles. To a certain extent, issuers rely on a second-party opinion or an external review by e.g. a rating agency. These should confirm that a green bond adheres to industry-accepted principles. They verify the issuer's transparency, disclosure and use of proceeds. These processes are, at this time, minimally regulated and therefore rely on good industry practices.

5 Trends

5.1 What are the material trends related to ESG?

An ethical approach, managing social impacts, and long-term sustainability are crucial to investors, companies and their employees. Companies operating in Poland are aware that integrity, diversity and inclusion are factors of significant importance for employees, and that these factors are used to evaluate their ability to retain talent, passion and experience. Employee loyalty and morale depend on the way a company operates, because loyalty is a so-called "two-way street". Thus, there is a great emphasis on trust and the reputation of the employer in the Polish labour market.

Forward-looking investors are also environmentally cautious because they are looking to enhance their long-term outcomes. Therefore, investment in renewable sources of energy, such as photovoltaic systems and wind power stations, is consistently on the rise in Poland.

Therefore, due only in part to the upcoming legislation changes connected with the Non-Financial Reporting Directive, over the last two years, responsible investment strategies incorporating ESG factors have become increasingly popular.

ESG investing has become the new mainstream, both in the Polish and European markets. It is more important to a greater number of people to live in a balanced, sustainable and environmentally friendly world, and there is therefore more room for ESG investments every year. Speaking in terms of long-term profits and returns, ESG investments seem to be the only way forward.

5.2 What will be the longer-term impact of COVID-19 on ESG?

First it was the COVID-19 crisis that became a major turning point for ESG investments in the long term. As this was immediately followed by the war in Ukraine, both events are regarded by many investors as the catalyst to ESG.

The impact of the pandemic, and now the energy crisis and war in Europe, have accelerated the trend towards a more sustainable approach to investing. Moreover, they have precipitated the same trend amongst many legislators, decisionmakers and policymakers. This tendency is of course not limited to Poland but seems to be a European and worldwide phenomenon. Currently, people are prioritising a sustainable and long-term approach over short-term solutions. This is the case across many areas, such as investing, employment matters and governance.

Matters of sustainability, clean energy from reliable sources and environmental risks are very likely to become crucial factors in determining business models, and there are many positive adjustments expected. Over the last two to three years the global economy has been badly affected, first by the lockdowns implemented in order to stop the spread of coronavirus, and second by the migration and energy crisis resulting directly from the Russian invasion of Ukraine. In the long term, both events are very likely to revolutionise the approach to ESG investments, with long-lasting effects. We could never have imagined that a pandemic and a war would have a positive impact on ESG law.

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Wolf Theiss is one of the leading law firms in Central, Eastern and South-Eastern Europe ("**CEE/SEE**"). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna 60 years ago. Our team now brings together over 370 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.
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