Poland

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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 of 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* (“***Directive 2014/95/EU***”), primarily by amending the Accounting Law (Act of 29 September 1994 on Accounting). However, apart from the Accounting Law, there are also other regulations concerning disclosure of information about the environment, society and corporate governance in Poland. They facilitate investment in clean energy, regulate issues such as air, land and water pollution, protect human rights, workers and consumers, protect animal welfare, prevent unfair competition, and foster equality in all aspects of life. These 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 – Energy Law;
(iv) the Polish Act of 20 July 2017 – Water Law;
(v) the Polish Act of 27 April 2001 – Environment Protection Law;
(vi) the Polish Act of 14 December 2012 – Waste Law;
(vii) the Polish Act of 26 June 1974 – 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 – Commercial Companies Code; and
(xiii) the Polish Act of 3 October 2008 on Access to Information on Environment and Its Protection, Public Participation in Environmental Protection and Environmental Impact Assessment. On 13 May 2021, amendments to this act came into force, which aim to align Polish law with EU law – 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 *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*, and the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. Poland is also bound by *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*, which came into force on 10 March 2021.

1.2 What are the main ESG disclosure regulations?

Poland has implemented the requirement of the disclosure of non-financial information by companies – like most EU countries – within the minimum requirements set out in *Directive 2014/95/EU*. The Accounting Law, which implements *Directive 2014/95/EU*, 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.

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

In Poland, non-financial reporting is becoming more and more 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 environment and social involvement. Moreover, the 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. Most reports are published by companies from the fuel, energy, banking, food industries and transport and logistics sectors. 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 development of new products or services, 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 and 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. According to the report prepared in 2021 by PwC, CFA Society Poland, FRN and the Association of Independent Supervisory Board Members, investors have a low opinion about the quality of currently prepared non-financial statements/reports of companies and 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 soon 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. Another important factor that may change the attitude of investors is the introduction of a single European reporting standard by the newly proposed Corporate Sustainability Reporting Directive ("**CSRD**") and its simplified version for smaller entities. Thanks to this regulation, ESG data will become easily accessible and comparable.

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.

While there are currently no pending bills that would significantly impact ESG reporting, the enactment of new legislation and/or amendments to existing laws seems to be inevitable. 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 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. In October 2019, the following conference was held: *Social Challenges of Business after 30 years of Free Market Economy in Poland*, organised by the Ministry of Development and Investment, during which a list of social business projects of the highest value for society in the last 30 years was announced. In the rankings, the 30 best-performing national and local projects were selected in separate categories from 90 nominations. The list was created by the THINKTANK Centre and coordinated by the Responsible Business Forum.

The list of the awarded initiatives is diverse and includes educational programmes, environmental programmes, and activities for excluded groups, aimed at increasing road safety or relating to new technologies, including, amongst others:

(1) Allegro for its *Charity platform.allegro.pl* initiative, launched in 2014.
(2) ANG Cooperative for its *Non-responsible* initiative, launched in 2013.
(3) Avon Cosmetics Poland for its *Cabinets with Pink Ribbon* initiative.
(4) Gazeta Wyborcza (Agora Group) for its *School with class (style)* initiative (original title: *Szkoła z klasą*).
(5) GlaxoSmithKline for its *I have a way for a cancer* initiative (original title: *Mam haka na raka*).
(6) Aterima Group for its initiative to publish *Counteracting human trafficking among workers posted to work abroad*, a casebook for employers.
(7) PKP Group for the *Reducing the scale of homelessness in and around railroad stations* initiative, launched in 2014.
(8) IKEA Retail Poland for its *It will be useful* programme (original title: *Przyda się*), launched in 2018.

There are also several other private sector initiatives that aim to build or strengthen the ESG idea. 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 – PAB and CTB – and the new regulatory framework for ESG-based financing.

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.

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 a concept of responsible investors to act 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 corporate social responsibility ("**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), banks and investment funds, many companies (such as Żabka, the convenience store chain) carry out such reporting even though they do not have such an obligation. Even before 2017, some companies did this voluntarily, in the form of "social" or CSR reports.

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 will become increasingly important, and that the social and environmental responsibilities of companies for investors will increase. They also believed that increasing pressure will be exerted by customers, and that the spread of CSR activities will 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, then on 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 survey conducted five 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 understanding of CSR as a sponsorship activity and lack of understanding by company managers, and 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.

One of the main emerging ESG policy drivers are banks, which include non-financial initiatives as 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% in 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.

The coronavirus pandemic has encouraged not only many social endeavours, but also environmental, social and management investments. Many companies have allocated considerable amounts to support the fight against coronavirus and to provide personal protection equipment for medical services, for example: (i) ERGO Hestia purchased equipment for paramedics and donated PLN 1 million for their immediate needs; (ii) Kompania Piwowarska donated almost 260,000 cans of soft drink B-life to those most in need during the pandemic; (iii) Henkel Polska donated 6,500 packages of cleaning products to 15 hospitals to aid hygiene; (iv) PGE Polska Grupa Energetyczna provided seven hospitals with funds to support activities related to the fight against coronavirus; (v) Polpharma financed the purchase of 100 ventilators to medical services for the total amount of approximately PLN 7 million; and (vi) Polpharma, in cooperation with Herbapol Lublin and Belvedere Restaurant, delivered daily over 500 meals with juice and tea to Warsaw hospitals and emergency stations. The above list provides just some examples of companies that have supported healthcare and is not exhaustive.

During the pandemic, many companies also took social action, such as IKEA in Poland (IKEA Retail and IKEA Purchasing) and Ikano Bank, which conducted a campaign of in-kind donation of beds, bedding and many other IKEA products for community quarantine centres. The action was joined by a number of other companies, including Puro Hotels, SSAB Poland, SAM EXECUTIVE SEARCH, JULA and Medicover Foundation, as well as Castorama, Jysk and Decathlon.

In addition, one of the PZU Group companies, Armatura Kraków S.A., launched production of hand disinfectant and offered it free of charge to care homes, local government units and educational institutions.

Companies have also supported schools and students during the pandemic, such as BNP Paribas Bank Polska, which allocated PLN 1 million to purchase over 500 laptops with routers for students struggling with digital exclusion.

The current situation shows that social and environmental suitability are not mutually exclusive with corporate goals. They are becoming interdependent and hopefully this symbiosis will be even greater in the phase of economic recovery after the COVID-19 pandemic.

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

As consumer 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/or environmental matters. However, price is still the main factor influencing the purchase, yet more and more consumers are starting to look at companies by 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 factors 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.

Throughout the COVID-19 pandemic, so-called "craft food" has become increasingly popular and many start-ups have proven successful in developing this new area. This is yet another example that consumer awareness regarding non-financial factors is increasing and for many is becoming the main driver as regards their choices and preferences.

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 and 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 such as 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 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 hygienic and safe working conditions and compliance of 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.

Currently, when political and legal changes have indeed led to the undermining of the principle of triple power in Poland, the most active role is played by the Ombudsman, who has opposed many political actions that violate human and civil rights and freedoms, including the principle of equal treatment.

The Ombudsman opposed national populism and the questioning of constitutional values by the ruling party, the approach to women's rights and the rights of homosexual, bisexual and transgender persons.

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 wrongfully indicated, which could have influenced the decision of the consumers when buying such products.

The other material enforcement action 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 tons 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.

Finally, in April 2021, it was discovered that waste illegally transported from Germany to Poland has 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 and 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 environmentally harmful single-use plastics, air pollution, which often exceeds the permitted indicators in urban areas, equal access to medicine and the healthcare system during the outbreak of the COVID-19 pandemic, counteracting unfair competition and the protection of consumer rights, tolerance and acceptance for sexual and national minorities, and gender equality. The aforementioned issues are both Polish and global concerns.

Some of these issues have been recently addressed by the legislator or regulators, e.g. the introduction of a special administrative fine for the sale of single-use plastic bags in 2019, and the introduction of a high administrative fine for the illegal sale of boilers that do not meet the environmental requirements, also in 2019.

Thirteen provinces in Poland have adopted the so-called anti-smog resolutions. They impose replacement of 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, and according to the class of the boiler they require its replacement within a specified time.

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 the building, 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 with 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.

Interestingly, a relatively new issue has arisen of increased production of single-use masks covering the nose and mouth and also gloves due to the COVID-19 pandemic, accompanied by increased waste production. Used masks and gloves are often not correctly recycled or are simply thrown away. Therefore, people incidentally litter pavements, forests, and reservoirs, which constitutes a danger for animals. Moreover, the masks and gloves are light enough for the wind to move them a significant distance. This issue is urgent and must be addressed on both a national and global level.

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 are subject to non-financial reporting on their environmental, social and management policies.

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

Public companies are governed by a two-tier board system, with the supervisory board presiding over the management board. Supervisory boards can also be appointed in limited liability companies (in LLP companies 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) and joint-stock partnerships. It supervises the company's activities in all areas, including environmental protection, social issues and corporate governance. Special duties of the supervisory board include 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, as well as submitting 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.

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 and documents, accounts, and minutes of the shareholders' meeting and request copies of resolutions certified by the board.

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 multi-sport cards, access to private medical care, language courses, and reimbursement of the cost for glasses. They create sports challenges within the company as well as appoint sports teams and compete with other companies in the same industry.

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 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 are introduced usually 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.

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 ratings is still very rare. The first financing project in Poland in which such 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/adjustment of the margin. In December 2020, PKN Orlen S.A., the largest Polish company (operating in the oil industry), issued a sustainability-linked bond in which the level of margin depends on the rating of an ESG agency.

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. They are becoming more and more popular in Poland.

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.

It is intended and encouraged both by the EU and the Polish government that green bonds should become a means to attract capital for municipalities. However, only recently, in October 2020, the first municipality, the city of Grudziądz, decided to issue the first green bonds to finance water sewage projects. At the beginning of 2021, Łódź – the third-biggest city in Poland – issued its first green bond. The funds will be used to finance construction of retention reservoirs and to carry out investments in low-emission transport. At the same time, green bonds are also becoming popular amongst private companies. In June 2021, a Polish solar projects developer issued PLN 150 million (EUR 33.5 million) worth of green bonds as part of their newly announced programme for up to PLN 1 billion in total issuances.

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. Last year, 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 and the funds from the bond issue are to support the transformation of the group and will be used to finance the costs of construction/acquisition of projects involving renewable energy sources, to finance 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 plans 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. 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 rely therefore on good industry practices.

5 Impact of COVID-19

5.1 Has COVID-19 had a significant impact on ESG practices?

The pandemic has increased the role of CSR issues related to employee and community issues. According to a survey conducted by the Responsible Business Forum in 2020, nearly all of the managers surveyed indicated that the new way in which companies operate due to the pandemic has changed their jobs. Some received new tasks related to ensuring the safety of employees and customers, including development of procedures and organisation/change of purchasing processes. Many ESG programmes were modified, while some were suspended (such as the reduction of single-use packaging, which was stopped for safety reasons), some moved to the virtual world (which often led to increased popularity), and some were postponed. There were also new support actions for health centres, schools, uniformed services and local communities (see question 2.1 above).

The slowdown in ESG investment seems a natural reaction to the extreme degree of risk and uncertainty in all markets caused by the COVID-19 pandemic. In times of crisis, the need to find solutions to the most pressing economic and financial problems overcomes the long-term perspective.

However, ESG practices seem to be robust and recover quite quickly. Polish and foreign investors have recognised the value of sustainability and clean energy, and they have also noticed the importance of climate change and environmental risks, and therefore they see investments that account for ESG factors as stable and profitable in the long term. They are interested in investing their money in Poland, especially in photovoltaic systems and wind power stations. Thus, clean energy practices have experienced the greatest leap forward.

6 Trends

6.1 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 depends 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, investing in renewable sources of energy, such as photovoltaic systems and wind power stations, continues to be consistently on the rise in Poland. We expect responsible investment strategies incorporating ESG factors to become even more popular in the near future.

ESG investing might become a 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 place for ESG investments every year. Speaking in terms of long-term profits and returns, ESG investments seem to be the only way forward.

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

The COVID-19 crisis could become a major turning point for ESG investments in the long term. The economic crisis caused by the pandemic is regarded by many investors as a potential catalyst. The crisis itself accelerated the trend for a more sustainable approach in investing. Moreover, it accelerated the same trend for a sustainable approach amongst many legislators, decisionmakers and policymakers, too. This trend is naturally not limited only 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. It is a trend in many areas, such as investing, employment matters and governance.

Matters of sustainability, clean energy and environmental risks are very likely to become crucial factors determining business models, and there are many positive adjustments expected. The global economy has been badly affected by all shutdowns implemented in order to stop the spread of coronavirus and contain the disease. Nevertheless, in the long term, it is very likely to revolutionise the approach to ESG investments. We are probably going to witness a real revolution in this area, a good one and with long-lasting effects. We could never have imagined that the crisis would have such a positive impact on ESG law.

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