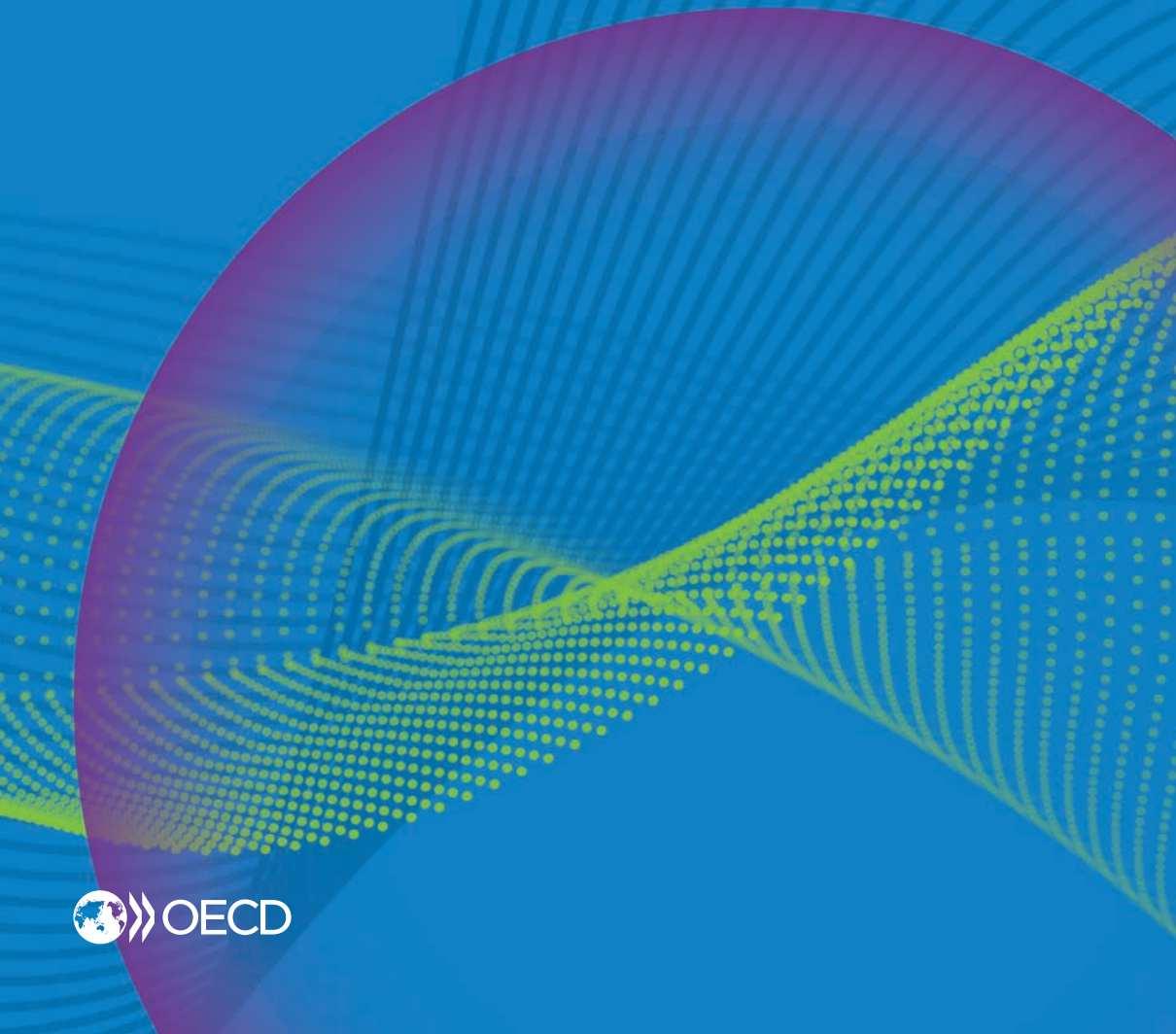
GLOBAL FORUM ON

TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

POLAND

2022 (Second Round, Phase 1)



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Global Forum on Transparency and Exchange of Information for Tax Purposes: Poland 2022 (Second Round, Phase 1)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 160 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, Annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

2016 TOR	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
CCC	Code of Commercial Companies
CDD	Customer Due Diligence
DTC	Double Taxation Convention
EOI	Exchange of Information
EOIR	Exchange of Information on Request
EU	European Union
FATF	Financial Action Task Force
GIFI	General Inspector of Financial Information
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
JSC	Joint Stock Company
LJSP	Limited Joint-Stock Partnership
LLC	Limited Liability Company
LPIT Act	Act on Legal Persons' Income Tax
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
NCR	National Court Register
NPIT Act	Act on Natural Persons' Income Tax

NRA	National Revenue Agency
PFSA	Polish Financial Supervision Authority
PLN	Polish zloty (national currency)
PSA	simplified joint-stock company
Standard	Standard of transparency and exchange of information on request for tax purposes as reflected in the 2016 TOR
TIEA	Tax Information Exchange Agreement
TIEO	Tax Information Exchange Office
TIN	Taxpayer Identification Number
TOA	Tax Ordinance Act 1997

Executive summary

1. This report analyses the implementation of the standard of transparency and exchange of information on request in Poland on the second round of reviews conducted by the Global Forum. Due to the COVID-19 pandemic, the on-site visit could not take place in time for a full review. The present review therefore assesses the legal and regulatory framework in force as of 25 April 2022 against the 2016 Terms of Reference (Phase 1 review). As the review was started with a view to conduct a combined review, some peer inputs have been received and used in this review to the extent possible. The assessment of the practical implementation of the legal framework of Poland will take place separately later (Phase 2 review).

2. This report concludes that Poland's legal and regulatory framework is in place, although certain aspects require improvement. Poland generally ensures the availability, access and exchange of all relevant information for tax purposes in accordance with the international standard, but needs improvements on the availability of some types of information and in its approach to requests by partners to establish an EOI relationship.

3. In 2015, the Global Forum evaluated Poland in a combined review against the 2010 Terms of Reference for both the legal implementation of the EOIR standard as well as its operation in practice. The report of that evaluation (the 2015 Report) concluded that Poland was rated Largely Compliant overall (see Annex 3 for details).

Comparison of ratings and determinations for First Round Report and Second Round Report

Element	First Round Report (2015)		Second Round Report (2022)
	Determinations	Ratings	Determinations
A.1 Availability of ownership and identity information	Not in place	Non Compliant	Needs improvement
A.2 Availability of accounting information	In place	Compliant	In place
A.3 Availability of banking information	In place	Compliant	Needs improvement
B.1 Access to information	In place	Compliant	In place
B.2 Rights and Safeguards	In place	Compliant	In place
C.1 EOIR Mechanisms	In place	Compliant	In place
C.2 Network of EOIR Mechanisms	In place	Compliant	Needs improvement
C.3 Confidentiality	In place	Compliant	In place
C.4 Rights and safeguards	In place	Compliant	In place
C.5 Quality and timeliness of responses	Not applicable	Compliant	Not applicable
OVERALL RATING	LARGELY COMPLIANT		Not applicable

Note: The three-scale determinations for the legal and regulatory framework are In place, In place but certain aspects of the legal implementation of the element need improvement (needs improvement), and Not in place. The four-scale ratings on compliance with the standard (capturing both the legal framework and practice) are Compliant, Largely Compliant, Partially Compliant, and Non-Compliant.

Progress made since previous review

4. Poland continues to make progress in the implementation of the standard following its 2015 Report. The 2015 Report had determined that Poland's legal and regulatory framework for all the elements except for Element A.1 was in place. The availability of ownership and identity information (Element A1) was not in place and the main issue related to the availability of identity information on owners of bearer shares. Other issues related to the lack of obligations to ensure availability of ownership information regarding foreign companies, and the non-availability of information identifying settlors, trustees and beneficiaries of foreign trusts with a Polish trustee.

5. Poland has made progress towards greater compliance with the standard of transparency. Most importantly, the Commercial Companies Code was amended in 2019 to require that bearer shares issued by joint stock companies and limited joint stock partnerships be deposited with the National Depository for Securities or be converted into the register of shareholders kept by an authorised entity.

6. Poland has also introduced substantive legislative changes to its anti-money laundering (AML) framework in order to implement the European Union's fifth AML Directive. This was done by updating the Act on Counteracting Money Laundering and Terrorism Financing in 2019 and 2020 bringing a number of beneficial ownership definitions for legal entities and legal arrangements in line with the standard. The Act also defines rules for obliged institutions to keep documents and information obtained because of applying customer due diligence measures and introduces mechanisms for verifying data contained in the Central Register of Beneficial Owners. Polish entities and Polish trustees of foreign trusts are required to submit reports to the beneficial ownership register and update details of any changes to beneficial ownership, within seven days of any change.

7. Further, Poland amended the National Court Register Act in 2018 to require the full digitisation of the business Register including the digitisation of the registration procedure.

Key recommendations

8. The key recommendations made to Poland relate to pre-existing recommendations that have not been addressed or those that have not been sufficiently addressed.

9. Existing bearer shares issued by joint stock companies and limited joint stock partnerships are required to be registered in the register of shareholders or deposited with the National Depository for Securities within a period of five years (from 1 March 2021 to 1 March 2026). During this period, holders of bearer shares that would not have registered or deposited them will not be able to exercise their rights under those shares. However, information concerning the identity of the holders of the bearer shares that remain un-deposited or un-registered will not be available in line with the standard. Poland is recommended to examine conditions under which mechanisms to encourage conversion or deposit of bearer shares can be strengthened so that information identifying their holders is available as quickly as possible (Element A.1).

10. AML-obliged institutions are required to carry out CDD in certain circumstances, including whenever changes in the beneficial ownership of their customers are reported to the Central Register of Beneficial Owners, which they have to do within seven days of change. However, there is no specified frequency of updating beneficial ownership information. The requirement to carry out CDD whenever there is a change in beneficial ownership of the customer would imply that the beneficial ownership information available with the AML-obliged institutions is kept up to date. However, the reporting entity may not be aware that there has been a change in its

beneficial ownership especially if such a change does not entail reporting to the National Court Register. Furthermore, even when a change is reported in the Central Register of Beneficial Owners by the reporting entities, the AML-obliged institution may not be aware that a change in beneficial ownership has been reported to the Central Register in respect of its customer. This could lead to such information not being updated by the AML-obliged institution. Regarding Element A.1, this gap is mitigated to an extent by the obligation on beneficial owners to provide information including changes to the reporting entities and arrangements with the exception of foreign companies with sufficient nexus. Poland is recommended to ensure that in all cases, up-to-date beneficial ownership information is available for foreign companies with sufficient nexus to the extent they engage with AML-obliged institutions in Poland (Element A.1) and for bank accounts (Element A.3) is available in line with the standard.

11. Further, up-to-date legal ownership information is not available in Poland on foreign companies with sufficient nexus in Poland (Element A.1) in all cases. Poland is recommended to ensure that ownership information for foreign companies with sufficient nexus in Poland is available at all times in line with the standard.

12. Although Poland's network of EOI mechanisms is robust (Element C.2), an interested partner approached Poland to negotiate a Tax Information Exchange Agreement, but Poland did not proceed with this request. Poland is therefore recommended to ensure that its EOI treaty network cover all relevant partners, including those jurisdictions that are interested in entering into an information exchange arrangement.

Exchange of information in practice

13. Poland has significant experience in EOI especially within the European Union and with its neighbours. In the years 2018 to 2020, Poland sent 6 891 requests and received 1 428 requests for information from its EOI partners and has provided responses in 99.6% of the cases. Peers provided input in preparation for this review on their experience exchanging information with Poland, and this input was largely positive.

14. The assessment of the exchange of information in practice is not covered by this report and will be the subject of the upcoming Phase 2 review that will take place as soon as the travel conditions allow the assessment team to visit Poland.

Next steps

15. This review assesses only the legal and regulatory framework of Poland for transparency and exchange of information on request. Poland has achieved a determination of "in place" for elements A.2, B.1, B.2, C.1, C.3 and C.4 and "in place but needs improvement" for A.1, A.3 and C.2. The rating for each element and the Overall Rating will be issued once the Phase 2 review is completed.

16. This report was approved at the Peer Review Group of the Global Forum on 6 July 2022 and was adopted by the Global Forum on 5 August 2022. Unless the Phase 2 review is organised by then, a follow up report on the steps undertaken by Poland to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2023 and thereafter in accordance with the procedure set out under the Methodology for peer reviews and non-member reviews.

Summary of determinations, ratings and recommendations

Determinations	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but needs improvement.	Legal ownership information on foreign companies with sufficient nexus in Poland is not available in all circumstances. Legal ownership information contained in the articles of association will be available at the point of registration of a branch of a foreign company only to the extent that the laws of the jurisdiction of incorporation require such information to be included in the articles. Subsequent changes in ownership would not be available. Up-to-date ownership information for companies incorporated in the European Union would nonetheless be available through the e-justice platform. The gap would remain for companies incorporated outside of the European Union.	Poland is recommended to ensure that legal ownership information on foreign companies with sufficient nexus in Poland is available and up-to-date in line with the standard in all circumstances.
	From 1 March 2021, bearer shares issued by Joint Stock Companies and Limited Joint Stock Partnerships must be deposited. Furthermore, any existing bearer shares must be registered or deposited by 1 March 2026. During the transition period from 1 March 2021 to 1 March 2026, holders of bearer shares that would not have registered them in the register of shareholders or deposited them with the National Depository for Securities will not be able to exercise their rights under those shares. However, information concerning the identity of the holders of these bearer shares that remain un-deposited or un-registered will not be available in line with the standard.	Poland is recommended to examine conditions under which mechanisms to encourage conversion or deposit of bearer shares can be strengthened so that information identifying their holders in line with the standard is available as quickly as possible.

Determinations	Factors underlying recommendations	Recommendations
	Although there is an obligation to update customer due diligence based on the risk profile of the customer and in certain other circumstances, there is no specified frequency of carrying out Customer Due Diligence to update beneficial ownership information. The mitigating factors of obligations on reporting entities and beneficial owners to update the Central Register of Beneficial Owners do not cover foreign companies with sufficient nexus in Poland. This may lead to situations where the available beneficial ownership information is not up to date for relevant foreign companies having a relationship with a Polish AML-obliged institution.	Poland is recommended to ensure that up-to-date beneficial ownership information for foreign companies with sufficient nexus in Poland, to the extent that they have relationships with AML-obliged institutions, is available in line with the standard.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place.		
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but needs improvement.	Although there is an obligation to update customer due diligence based the risk profile of the customer and in certain other circumstances, there is no specified frequency of updating beneficial ownership information. This may lead to situations where the available beneficial ownership information is not up to date	Poland is recommended to ensure that, in all cases, up-to-date beneficial ownership information for all bank accounts is available in line with the standard

Determinations	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place.	Professional privilege is extended to tax advisors under Poland's domestic law, which is not in accordance with the standard. This privilege cannot be invoked in criminal matters, under AML law, under mandatory disclosure targeting tax schemes, or when summoned by a court as witnesses. These exclusions and the availability of such information from other sources limit the materiality of the gap.	Poland is recommended to ensure that the scope of professional privilege is in line with the standard.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place.		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place but needs improvement.	Poland was approached by an interested partner to negotiate a Tax Information Exchange Agreement but Poland did not take forward this request. Therefore, there is no EOI relationship between Poland and this peer.	Poland is recommended to ensure that its EOI treaty network covers all relevant partners, including those jurisdictions that are interested in entering into an information exchange arrangement.

Determinations	Factors underlying recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place.	Professional privilege is extended to tax advisors under Poland's domestic law, which is not in accordance with the standard. This privilege cannot be invoked in criminal matters, under AML law, under mandatory disclosure targeting tax schemes, or when summoned by a court as witnesses. These exclusions and the availability of such information from other sources limit the materiality of the gap.	Poland is recommended to ensure that the scope of professional privilege is in line with the standard.
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	

Overview of Poland

17. This overview provides some basic information about Poland that serves as context for understanding the analysis in the main body of the report.

18. Poland is an Eastern Europe country bordering Germany, the Czech Republic, the Slovak Republic, Ukraine, Belarus, Lithuania and Russia's Kaliningrad enclave. Poland joined the European Union in 2004 and is a member of the Schengen area.

19. In 2021, Poland's population was around 38 million with a GDP of approximately EUR 527 billion. The estimated GDP per capita stood at EUR 13 884.[1] The currency used in Poland is the zloty.[2] Poland has experienced strong economic growth over the past two decades largely driven by integration into global trade, on the backbone of Poland's increasing role as an outsourcing destination for business services. The largest components of Poland's economy are the service sector (62.3%), followed by industry (34.2%) and agriculture (3.5%).

Legal system

20. Poland's legal system is based on civil law. Poland's Constitution guarantees a multi-party state, the freedoms of religion, speech and assembly and specifically sanctions a free market economic system. Poland is a parliamentary democracy with a bicameral Parliament. Both the lower and upper houses are involved in making legislation. The President, elected by popular vote every five years, is the head of state while the council of ministers holds executive power. A government-appointed governor (*voivode*), an elected regional assembly and an executive elected by that assembly share administrative authority at the provincial level. Provinces are further sub-divided into counties (*powiats*) and then municipalities (*gminas*). Registration of entities is carried out by provincial level registration court within the *voivodeships*. This registration consists of the entity's entry into the National Court Register.

1. https://www.worldbank.org/en/country/poland/overview#1.
2. Exchange rate – approx. EUR 1 = PLN 4.54.

21. The Constitution regulates the relations between the central and the local Administrations. Pursuant to Article 87 of the Constitution, the sources of universally binding law are the Constitution itself, ratified international agreements, statutes, regulations and enactments of local law issued by the local authority organs. Statutes are enacted by the Parliament and must be signed by the President before their promulgation. Pursuant to Article 91 of the Constitution, after promulgation in the Journal of Laws an international treaty constitutes part of the domestic legal order and is applied directly, unless its application depends on the enactment of a statute.

22. International agreements ratified upon prior consent granted by statute have precedence over domestic law if such agreements cannot be reconciled with the provisions of domestic law (Constitution, Art. 91(2)). Both double-taxation conventions and tax information exchange agreements must be ratified upon prior consent granted by statute.

Tax system

23. The imposition of taxes and other public levies in Poland derives from Article 217 of the Constitution. The main sources of taxing statutes include the Act on Legal Persons' Income Tax 1992 (LPIT Act), Act on Natural Persons' Income Tax 1991 (NPIT Act), Act on Tax on Acts in Civil Law 2000, Act on Goods and Services Tax Act 2004.

24. Poland levies both direct and indirect taxes. Direct taxes comprise corporate income tax, personal income tax, tax on civil law action, inheritance and donation tax. Indirect taxes comprise goods and services tax (VAT), excise duties, gambling tax. Poland further levies a capital tax on certain contracts, such as sales, loans, donations, mortgages, and partnership or company deeds. The National Revenue Administration (NRA) assesses and collects these taxes. Municipalities also impose and collect taxes such as real estate tax, road vehicle tax, agricultural tax and forestry tax.

25. Companies and foundations are considered legal persons for tax purposes (LPIT Act, Art. 1). Companies and foundations that have their registered office or their management board in Poland are liable to corporate income tax on their worldwide income. The income of a foundation, which is an organisation of public benefit, is tax exempt to the extent it relates to its statutory activities, but business activities carried on by a foundation are always subject to tax (LPIT Act, Art. 17§1). Partnerships (except professional partnerships as well as registered partnerships under some conditions) are also liable to corporate income tax. Furthermore, revenues derived and costs borne by partnerships formed by companies are subject to corporate income

tax based on the proportion of the corporate partners' participation. The corporate income tax basic rate is 19% and 9% for small taxpayers.[3]

26. Individuals who are resident in Poland (i.e. all persons having their centre of personal and economic interests in Poland, and all persons being present in Poland for more than 183 days in a tax year) are also liable to income tax on their worldwide income. Poland's taxation of an individual's income is progressive, from 17% to 32% depending on the amount of income. Under certain conditions, individuals can choose to pay a flat rate of 19% on business income without allowances. Partnerships not covered by the previous paragraph are tax transparent and accordingly income tax is paid by the partners (NPIT Act, Art. 5b§2).

27. Value-added tax (VAT) is imposed on the supply of goods, the provision of services and the import of goods into Poland unless the transaction is exempt. The VAT system is harmonised with European VAT legislation. The standard rate of VAT is 23%, charged on most goods and services. A reduced rate of 8% or 5% is imposed on certain foods, medicine, hotel and catering services, certain transport services and municipal services. A zero rate applies on the intra-community supply of goods, the export of goods, and certain international transportation and related services. A Polish entity is required to register for VAT once its annual turnover on transactions subject to VAT exceeds PLN 200 000 (approx. EUR 47 000). Foreign entrepreneurs must register for VAT in Poland before they start any VAT-related activity in Poland.

28. The Act on Exchange of tax Information with other countries, 2017 (EOI Act) is the legislation pursuant to which Poland provides assistance under its exchange of information agreements. This Act was introduced primarily to prepare for automatic exchange of financial account information, but also applies to exchange of information on request. Pursuant to this Act, the Head of the National Revenue Administration (NRA) is the delegated competent authority for exchange of information in tax matters.

29. Poland has 92 bilateral agreements and is signatory to the Multilateral Convention. Additionally, as a European Union member state, Poland also exchanges tax information under various EU mechanisms, including:

- Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation, replacing Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States of the EU in the field of direct taxation and taxation of insurance premiums.
- Council Directive 2014/107/EU, which implemented the Common Reporting Standard.

3. For revenues, other than from capital gains, earned in a tax year that did not exceed an amount of EUR 2 000 000.

- Council Regulation (EU) 904/2010 of 7 October 2010 on administrative co-operation and combating fraud in the field of value added tax.

Financial services sector

30. The Polish financial market comprises four sectors: banking, capital market, insurance and pension savings. The Polish Financial Supervision Authority (PFSA) licenses and supervises these activities. The Polish financial sector had PLN 3 013 billion (EUR 652.9 billion) in assets as of 31 December 2020, including PLN 2 338 billion (EUR 506.6 billion) of banking sector assets. Financial sector assets represented 123.9% of GDP as of the end of 2020. Poland is not an international financial centre.

31. The Banking Act 1997 regulates banking and prescribes that all entities willing to engage in banking business must obtain a permit from the PFSA. Domestic and foreign banks can be incorporated as joint-stock companies or co-operative banks. Branches of foreign credit institutions can operate in Poland within the scope provided for in the authorisation granted by the PFSA. As of December 2020, there were 30 domestic commercial banks,[4] 36 branches of foreign credit institutions notified to the PFSA and 530 co-operative banks operating in Poland.

32. The capital market sector includes investment firms providing intermediary services and brokerage activities as well as investment fund management services. The Act on Trading in Financial Instruments 2005 (ATFI) governs the principles of trading in securities and other financial instruments, as well as the rights and duties of the persons participating in this trade. Only investment firms are entitled to offer brokerage services, e.g. acceptance and transfer of orders to acquire or dispose of financial instruments, investment advice, storage and registration of financial instruments, including the keeping of securities accounts and cash accounts. All shares traded on a regulated market must be registered with the National Depository for Securities (ATFI, Art. 5). As of 31 December 2020, there were 37 brokerage houses registered in Poland and 9 banks were authorised to offer brokerage services.

33. The Act of 28 August 1997 on the organisation and operation of pension funds governs the pension sector in Poland. Pension funds may be licensed as an open pension fund, an employee pension fund or a voluntary pension fund. At the end of December 2020, 10 open pension funds (OFE), 7 Voluntary Pension Funds and 2 Employee Pension Funds managed by

4. 14 of these banks have majority Polish ownership and 16 of them have majority foreign ownership.

pension societies were active. The ten open pension funds have over 15 million members and net assets value of PLN 148.6 billion (EUR 31.9 billion).

34. With respect to Insurance, the basic act regulating the principles of taking-up and pursuit of insurance and reinsurance activity is the Act of 11 September 2015 on insurance and reinsurance activity. On 31 December 2020, the total assets of insurance and reinsurance companies operating on the Polish market amounted to approximately PLN 204 billion (EUR 44.5 billion). There were 26 domestic life-insurance undertakings and 32 non-life insurance undertakings that received authorisation of the Polish Financial Supervisory Authority to pursue insurance activity as well as one reinsurance undertaking that received authorisation to pursue reinsurance activity.

35. Further, since 2018, Poland has required that virtual currency exchanges must obtain a payment institution licence when they provide payment services according to the provisions of the Payment Services Act. In particular, this is the case when those entities provide payment account services and when this payment account is used for making payment transactions for buying or selling cryptocurrencies[5] In this case, they are supervised by the PFSA as payment institutions or small payment institutions, but only with respect to the payment services that they provide.

Anti-money laundering Framework

36. The AML legal framework in Poland comprises primarily Act of 1 March 2018 on countering money laundering and terrorist financing (AML/CFT Act). The Act provides for the definition of beneficial owners and requires all Polish legal persons and legal arrangements and foreign legal persons operating in Poland to keep as well as register beneficial ownership information in a Central Register of Beneficial Owners. Additionally, on 30 March 2021, Poland has amended the AML/CFT Act to provide for the maintenance of registers for trust or company service providers and virtual currency service providers. The minister in charge of public finance keeps all registers.

37. Further, the AML/CFT Act defines among others, various categories of institutions and professions with special AML/CFT obligations, the different supervisory and monitoring obligations as well as the co-ordination function of the General Inspector of Financial Information (GIFI). The Act designates a wide range of financial and non-financial professionals as AML-obliged institutions. Obliged institutions include *inter alia* chartered accountants, lawyers or legal professionals, tax advisors and auditors.

5. Alternatively, they can outsource the provision of the necessary payment services to banks or payment institutions.

38. Poland's AML/CFT regulatory framework is also based on Customer Due Diligence measures of obliged institutions. It consists of customer identification, identification of beneficial owners, and assessment of business relationships and ongoing monitoring of customers' business relationships.

39. Article 130 of the AML/CFT Act requires GIFI to exercise control over all obliged institutions. The GIFI is assisted by relevant sectoral supervising agencies in overseeing Poland's AML regulatory framework. These include the National Bank of Poland, the PFSA, the National Association of Co-operative Savings and Credit Unions, president of appeal courts, competent governors of provinces (*voivodes*) or governors of districts and competent ministers (see paragraph 115).

40. The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) recently reviewed Poland's compliance with the international AML/CFT standard in May 2021. The resultant Mutual Evaluation Report (MER)[6] of Poland was adopted in December 2021. With respect to transparency and beneficial ownership, Recommendations 10 (Customer due diligence), 24 (Transparency and beneficial ownership of legal persons) and 25 (Transparency and beneficial ownership of legal arrangements) were assessed as largely compliant. The MER has identified minor shortcomings in respect of FATF Recommendation 10 that are relevant to this review. The MER notes that the law does not explicitly prohibit anonymous or fictitious accounts although CDD requirements would make it impossible to have such accounts. Further, the definition of beneficial owner in the AML law does not explicitly refer to legal arrangements other than trusts. These aspects are discussed under A.1.3.

Recent developments

41. Since 2020, Poland has implemented several significant reforms to comply with the standard and to ensure, in particular, the adequate implementation of the AML framework. In 2021, amendments contained in the Act of 30 March 2021amending the AML/CFT Act entered into force. These include creation of registers of trust and company service providers and operators of virtual currencies. The list of reporting entities was extended to cover all legal persons and arrangements operating in Poland. Other amendments clarify the supervisory aspects of the Central Register of Beneficial Owners and improve the definition of beneficial owners. These developments are part of the discussions within the report.

6. https://www.coe.int/en/web/moneyval/-/poland-publication-of-the-5th-round-mutual-evaluation-report.

Part A: Availability of information

42. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of banking information.

A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

43. The 2015 Report concluded that Poland did not have a legal framework in place to ensure the availability of legal ownership and identity information for all relevant entities and arrangements.

44. The primary reason for this determination was that Poland permitted the issuance of bearer shares by joint stock companies and limited joint stock partnerships, and that mechanisms to ensure that the owners of such shares could be identified were not systematically in place for all bearer shares. The recommendation regarding bearer shares has been substantially addressed. All holders of bearer shares are required to either change them to registered shares at the issuing company, or deposit them with the National Depository for Securities. However, a gap remains. Although issued bearer shares expired on 1 March 2021, the share documents will retain evidential value in relation to the company until 1 March 2026. This means that the holders of bearer shares who have not yet registered or deposited their bearer shares can still do so until 1 March 2026 to exercise their shareholder rights. During this interim period, ownership information on some bearer shares would still not be available for EOIR purposes.

45. Poland was recommended to address two other gaps. First, information identifying the legal owners of foreign companies with sufficient nexus in Poland was not available in all circumstances. The recommendation on foreign companies has not been addressed and the gap remains. Second, Polish law did not ensure that information was available identifying the settlors, trustees and beneficiaries of a foreign trust with a Polish trustee or trust

administrator. The recommendation concerning foreign trusts administered in Poland has been fully addressed by requiring trustees to identify and submit information on beneficial owners.

46. More generally, companies incorporated in Poland must register with the National Court Register. Ownership information on shareholders who individually or jointly hold at least 10% of the share capital of limited liability companies is available in this Register, whereas the details of shareholders holding less than 10% are included in the registry files that are publicly available. In respect of joint-stock companies, simplified joint stock companies and joint-stock limited partnerships, up-to-date information on the owners where a single shareholder is involved is included in the National Court Register and in other cases, ownership information concerning registered shares issued is available at the level of the entity.

47. The standard was strengthened in 2016 to require the availability of beneficial ownership information for all relevant legal entities and arrangements. In Poland, the AML/CFT law places obligations for the collection of beneficial ownership information on entities and legal arrangements, obliges a wide range of persons to carry out customer due diligence (CDD) and further provides for the creation of a Central register of Beneficial Owners. A gap has been identified regarding the frequency of CDD to ensure that beneficial ownership information is up to date. Although obliged institutions are required to update customer due diligence based on the risk profile of the customer and in certain other circumstances, there is no specified frequency of updating beneficial ownership information. This may affect the availability of up-to-date beneficial ownership information in certain instances specifically for foreign companies with sufficient nexus. Poland is recommended to address this issue.

48. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying factor	Recommendations
Legal ownership information on foreign companies with sufficient nexus in Poland is not available in all circumstances. Legal ownership information contained in the articles of association will be available at the point of registration of a branch of a foreign company only to the extent that the laws of the jurisdiction of incorporation require such information to be included in the articles. Subsequent changes in ownership would not be available. Up-to-date ownership information for companies incorporated in the European Union would nonetheless be available through the e-justice platform. The gap would remain for companies incorporated outside of the European Union.	Poland is recommended to ensure that legal ownership information on foreign companies with sufficient nexus in Poland is available and up-to-date in line with the standard in all circumstances.

Deficiencies identified/Underlying factor	Recommendations
From 1 March 2021, bearer shares issued by Joint Stock Companies and Limited Joint Stock Partnerships must be deposited. Furthermore, any existing bearer shares must be registered or deposited by 1 March 2026. During the transition period from 1 March 2021 to 1 March 2026, holders of bearer shares that would not have registered them in the register of shareholders or deposited them with the National Depository for Securities will not be able to exercise their rights under those shares. However, information concerning the identity of the holders of these bearer shares that remain un-deposited or un-registered will not be available in line with the standard.	Poland is recommended to examine conditions under which mechanisms to encourage conversion or deposit of bearer shares can be strengthened so that information identifying their holders in line with the standard is available as quickly as possible.
Although there is an obligation to update customer due diligence based on the risk profile of the customer and in certain other circumstances, there is nospecified frequency of carrying out Customer Due Diligence to update beneficial ownership information. The mitigating factors of obligations on reporting entities and beneficial owners to update the Central Register of Beneficial Owners do not cover foreign companies with sufficient nexus in Poland. This may lead to situations where the available beneficial ownership information is not up to date for relevant foreign companies having a relationship with a Polish AML-obliged institution.	Poland is recommended to ensure that up-to-date beneficial ownership information for foreign companies with sufficient nexus in Poland to the extent that they have relationships with AML-obliged institutions is available in line with the standard.

Practical Implementation of the Standard: The assessment team is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

A.1.1. Availability of legal and beneficial ownership information for companies

49. The Poland Code of Commercial Companies and Partnerships (CCC) provides for the creation of:

- Limited Liability Company (LLC): the LLC is the basic type of company in Poland. It has a separate legal personality. An LLC has capital created from shareholders' contributions, but shareholders are not liable for the liabilities of the company. There are no restrictions on the number, nationality, legal form or residence of shareholders except that another single shareholder limited liability company may not form an LLC. The minimum capital required to establish an LLC is PLN 5 000 (EUR 1 200). There were 446 732 limited liability companies in Poland on 31 December 2020.

- Joint Stock Company (JSC): founded by at least one individual or legal person. Solely a single shareholder limited liability company may not form a JSC. There are no residence or nationality requirements. The minimum initial capital for a JSC is PLN 100 000 (EUR 24 000), of which 25% must be paid up before registration. This form of company is sometimes required by law (for example for banks and insurance companies). Joint stock companies may issue registered as well as bearer shares. There were 9 546 joint stock companies in Poland on 31 December 2020.
- European companies or Societas Europea (SEs): These are formulated as joint-stock companies and therefore the requirements for their establishment are similar to those of joint stock companies. An SE can only be created through the transformation of a JSC or by merging two public limited liability companies from different member states. On 31 December 2020, there were only eight SEs registered in Poland.
- Limited Joint-Stock Partnership (LJSP): These are established by at least two individuals or legal persons and they have no legal personality. At least one partner (the general partner) has unlimited liability. The minimum initial capital required is PLN 50 000 (EUR 12 000). Limited joint stock partnerships may issue registered as well as bearer shares. There were 3 390 limited joint-stock partnerships in Poland on 31 December 2020.
- Simplified joint stock company: a simplified joint stock company (PSA) is generally dedicated to start-ups but can equally be set up for any lawful purpose. A PSA may issue preferred shares and the law allows for founding shares preference, so that their holders may have a higher percentage of the votes at the general meeting.

50. The simplified joint-stock company (PSA) is a new legal form and it did not exist at the time of the 2015 Report. PSA was introduced on1 July 2021.

Legal ownership and identity information requirements

51. The availability of legal ownership and identity information for domestic companies is ensured by the requirement for the company to keep an up-to-date register. LLCs are further required to lodge a copy of this register with the registration court that maintain the National Court Register (NCR) and relevant registry files[7] at the time of registration and every time

7. Registry files include mainly documents constituting the basis for entry into the National Court Register and documents which must be submitted to the registration court under the provisions of law. These include the list of shareholders

there is a change on the register. On the other hand, Joint Stock Companies, Limited Joint Stock Partnerships and Simplified Joint Stock Companies are required to keep their registers of shareholders with an entity mandated to keep securities accounts. Simplified Joint Stock Companies may also keep their registers with a notary.

52. The requirements for having legal ownership information for different types of companies in Poland are contained primarily in the CCC. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

Companies covered by legislation regulating legal ownership information[8]

Type	Company Law	Tax Law	AML Law
Limited liability company	All	Some	Some
Joint stock company	All	Some	Some
Limited joint-stock partnership	All	Some	Some
Simplified joint-stock company	All	Some	Some
European companies	All	Some	Some
Foreign companies (tax resident)	Some	Some	Some

Companies Law requirements

53. Polish companies must be established by notarial deed or through an online template company agreement in case of LLCs and simplified JSCs, and are incorporated upon approval of the company deed. The entities assume full legal personality when entered into the Registrar of Entrepreneurs that is part of the National Court Register.[9] The registration of companies is done at the competent provincial level registration court. The application for an entry

regardless of their share in the share capital. Registry files are separate from the National Court Register but both are kept by the registration court and are both publicly available.

8. The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" means that the legislation, whether or not it meets the standard, contains requirements on the availability of ownership information for every entity of this type. "Some" means that an entity will be covered by these requirements if certain conditions are met.

9. The National Court Register is a database kept in electronic form by registration court. It comprises the register of entrepreneurs, the register of associations, other voluntary and vocational organisations, foundations, and independent public health-care centres, the register of insolvent debtors. In addition, the

into the Register must be submitted within six months from the establishment of a company otherwise the company deed is considered terminated (CCC, Art 169).[10]

54. With respect to LLCs, the application for registration must contain the identity of the persons holding at least 10% of the initial capital, as well as the number of shares held by such shareholders and their total value (NCR Act, Art. 38). In addition, Article 9 of the NCR Act requires that for each person entered in the NCR separate registration files be kept, containing in particular the documents forming the basis for the entry. The details of shareholders holding less than 10% are included in the registry files that are also publicly available.

55. Further, the management board of an LLC must keep a register of shares containing the surname and forename or business name and seat of each shareholder, its address, number and nominal value of its shares as well as any change relating to the shareholder and the shares to which they are entitled (CCC, Art. 188 §1). In case of a transfer of shares, the interested parties (i.e. the transferor and transferee) must notify the company of such transfer, and the transfer is effective upon receipt by the company of the notification (CCC, Art. 187 §1). Moreover, each time that an entry is made in the register, the management board must submit to the registration court within seven days, a new list of shareholders signed by all management board members, showing the number and nominal value of shares held by each shareholder (CCC, Art. 188 §3 and NCR, Art. 22). This ensures that up-to-date information on owners of LLCs is available to the authorities as well.

56. With respect to joint stock companies, the application for registration includes the business name, seat and address of the company, the name of the members of the management board as well as of the supervisory board (NCR Act, Art. 38(9)). With the exception of JSCs owned by a single shareholder, no identity or ownership information on the shareholders needs to be disclosed to the authorities upon registration. Pursuant to the provisions of the Act of 30 August 2019 amending the CCC, shares do not have the form of a document and are registered in the electronic register of shareholders or with the National Depository of Securities.

57. An entity permitted to operate a securities account within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments must

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registration court also keeps registry files that hold supporting and complementary information to the NCR.

10. Before filing for registration, a company, which is then called "company in organisation", can acquire rights, operate and conclude valid contracts (CCC, Art. 11), though it is not (yet) considered a legal entity and in practice its activity may be limited.

maintain the register of shareholders.[11] This entity is selected by the promoters at the formation of the company and is contained in a resolution of a general meeting (CCC, Art. 328(1)§5). The register of shareholders shall be kept in electronic form and may take the form of a distributed and decentralised database.[12]

58. The register of shareholders includes the business name and seat of the company, the date of registration and issue of shares, the shareholders surname and forename or business name and their residence or seat address. No person is deemed a shareholder of the company except those entered in the register of shares, subject to the provisions on trading in financial instruments (CCC, Art. 343 §1).

59. In case of a transfer of shares, the company or a person having legal interest should notify the entity maintaining the register. The notification contains documents justifying the proposed entry or a shareholder's declaration on the obligation to transfer the shares. Any entry with respect to this notification is then made with seven days of receiving the notification (CCC, Art 328(4)§1). The transfer takes effect upon entry into the register of shareholders.

60. The articles of a LJSP are drawn up in the form of a notarial deed (CCC, Art. 131). LJSPs are also required to register with the National Court Register. Upon registration with the NCR, an LJSP must provide information on the partnership deed, the designation of general partners (surname and forenames), the amount of the initial capital and the number and nominal value of shares (NCR Act, Art. 38(7)). Any changes in this information must also be reported to the NCR (NCR Act, Art. 47 and CCC, Art. 133 §2). For commercial and civil law purposes, LJSPs are treated as entities separate from their partners and are transparent for tax purposes. The provisions of the CCC obliging joint-stock companies to keep a share register with an entity authorised to keep securities accounts also apply to LJSPs (CCC, Art. 126). Accordingly, the general partners, or the supervisory board, must maintain a register of the shares issued by the LJSP providing for up-to-date ownership information on the shareholders holding registered shares.

61. The management board of a Simplified Joint Stock Company notifies the National Court Register for the company to be entered onto the register. The obligations of a JSC to maintain an up-to-date register of members as described at paragraph 58 and 59 similarly apply to Simplified Joint Stock Companies. However, in addition to having the register of members kept

11. An investment firm, a custodian bank, the National Depository for Securities, may run a securities depository (register) in Poland. These entities are required to establish an electronic register of persons entitled to these securities.
12. Accessible from different locations.

by an entity authorised to keep securities accounts, the register may be maintained by a notary within the territory of Poland (CCC, Art. 300(31) §1).

62. Ownership information submitted to the National Court Register is kept indefinitely (NCR Act, Art. 12 §1). On the other hand, ownership records kept by an entity mandated to keep securities accounts are kept for five years (Act of Trading in Financial Instruments, Art. 110).

63. Foreign companies may conduct business in Poland through a branch. The commencement of operations by such a branch requires an entry in the National Court Register. The 2015 Report noted that Poland's legal and regulatory framework did not ensure that information on the ownership of foreign companies with sufficient nexus in Poland was available in line with the standard as there was no obligation to provide ownership information upon entry into the Register, nor was such information available by other means. No change has been made in the legal framework to address the deficiency. Branches of foreign companies must be registered with the Registrar of Entrepreneurs, disclosing the name and address of the person that obtained a licence to run the enterprise in Poland (NCR Act Art. 39) and the articles of association of the company, or the deed in case of a limited joint-stock partnership. On 31 December 2020, 184 representative offices of foreign entrepreneurs were entered in the register of representative office of foreign companies and 2 332 branches of foreign entrepreneurs were entered in the National Court Register.

64. Information on the owners of a foreign company would only be available where the laws of the jurisdiction of incorporation require disclosure of ownership information in the articles of association and in any case subsequent changes in ownership would not be captured. Further, Poland authorities have noted that since ownership information on foreign companies would be available in the registers of the jurisdictions where the companies were incorporated, such information would be accessible to Polish authorities through the e-justice platform.[13] However, the former avenue that relies on information contained in the articles of association does not ensure that up-to-date information would be available to Polish authorities and the latter does not cover entities incorporated in jurisdictions that are not part of the e-justice platform (non-EU jurisdictions). The Polish authorities have further submitted that this information would be captured in the Central Register of Beneficial Owners. However, as discussed at paragraphs 88 and 89, beneficial owners are determined after applying a 25% threshold on ownership interests and as such, this may not cover all legal owners.

13. The e-justice platform interconnects the business registers of all EU countries since June 2017 and is searchable.

65. **Accordingly, Poland is recommended to ensure that legal ownership information on foreign companies with sufficient nexus in Poland is available and up to date in line with the standard in all circumstances**.

Tax law requirements

66. Tax authorities maintain some identity and ownership information because of tax registration requirements. Since December 2014, when entities apply for registration to the National Court Register, the entities are simultaneously registered for tax purposes and a Tax Identification Number is issued. The National Court Register then automatically communicates the registration information to the relevant tax offices.

67. The information provided at the time of application for registration includes identity information, such as name of the company, address, name of the management board members, but not full identity information on the owners of the applying company except for LLCs (see paragraph 54 and the National Court Register also transmits identity information to the National Register of Taxpayers (CRP KEP), with respect to LLCs).

68. Updates to registered information are provided within seven days and whilst filing the annual tax returns. Whenever there is an entry or change in the register of members kept by the registration court (NCR and registry files), the data covered by such an entry is transferred electronically to the National Register of taxpayers (NCR Act, Art. 20). With respect to filing annual tax returns, in case of distribution of dividends, companies must also submit form "CIT-6R" identifying the names of the persons to whom distributions are made, i.e. legal ownership information is directly available in tax files in some but not all cases.

Anti-money laundering law requirements

69. Obliged institutions must identify their customers when entering into a business relationship or when carrying out a transaction. In the case of a legal person or other body corporate, an AML-obliged institution must identify the customer, including defining the ownership and control structure of the entity. This requirement captures all relevant companies, since all Polish companies must engage a notary as part of their formation process and foreign companies with sufficient nexus must do so during their registration process.[14] Notaries are engaged throughout the Polish company's existence owing to their intervention in various company decisions such as notarisation

14. Foreign companies operate through a branch(s) and must submit notarised copies of their founding deeds, contract or statute or excerpts from entry into the National Court Register.

of resolutions of shareholders and share transfers. It remains that "defining the ownership and control structure" of the client does not equate knowing the full list of legal owners and could be limited to the main shareholders. The process therefore entails the determination and maintenance/updating of some legal ownership information.

70. The obliged institutions must maintain records for five years after the date on which a relationship is terminated or a transaction is concluded, as the case may be. The AML/CFT Act was amended in 2021 to extend these CDD obligations to trust and company service providers. More detail on the AML framework is provided in the context of beneficial ownership discussion of this report.

Enforcement measures and oversight

71. Inactive companies[15] are those that have confirmed they have no staff and have applied to the NCR to suspend economic activity for a period ranging from 30 days to two years. Applications can be made on a repeated basis. This application must be submitted to the NCR along with a statement indicating the entity will not hire any employees. Information on these entities is kept in the NCR.

72. Additionally, entities that have not submitted an application to suspend their business activities and where such entities do not conduct business activity are continuously identified by the authorities through failure to submit their annual financial statements or on the basis of a notification from another authority. Where it is established that an entity does not conduct business activity and does not have any assets, the entity will be deleted from the NCR, lose legal personality, and cannot be re-instated to the register (NCR Act, Art.25a).

73. Polish authorities have reported that the registration court often initiate proceedings for dissolution to remove inactive entities that have not submitted an application for the suspension of their business activities and where it is established that such entities do not conduct any business and that they do not have any assets.

74. With respect to proceedings for dissolution, these may be conducted by the registration court without liquidation proceedings.[16] Under these

15. Within the context of Polish law, inactive entities can be equated to those entities that have suspended their business activities.

16. Circumstances under which the registration court can ex officio initiate proceedings for dissolution without liquidation proceedings include: i) where in dismissing a bankruptcy petition, the court ascertains sufficient grounds for dissolution without liquidation proceedings, ii) bankruptcy petition has been dismissed because assets of the debtor are not sufficient to cover the cost of proceedings, iii) a ruling on waiving compulsory proceedings has been issued, iv) despite demand by the

circumstances, the registration court notifies the entity entered in the Register of the initiation of proceedings for dissolution without conducting liquidation proceedings, summoning it to prove that it actually conducts business and that it has assets. The affected entity must respond within 14 days from the date of delivery of the summons with information concerning its business activities in order to avoid deletion from the Register. After removal from the Register, the entity has no recourse.

75. Further, the NCR is required to collaborate with other authorities such as the tax administration and other public administration bodies to determine whether the affected entity has transferable assets or whether it actually conducts any business activity. If it is established that the entity has transferrable assets, then the registration court will proceed with proceedings to liquidate assets.

76. As explained from paragraphs 54 to 62 identity and ownership information is kept with the National Court Register (for LLCS and JSCs with a single shareholder) and with an entity permitted to keep securities accounts or with a notary (for JSCs, simplified JSCs and LJSPs). Therefore, for inactive entities ownership and identity information continues to be available with these sources.

77. After the dissolution of a company, the books and documents are deposited with the person indicated in the company articles or resolution of the shareholders. In the absence of such indication, the custodian is appointed by the court of registration (CCC, Art. 288 §3 and 476 §3). The records must be kept for a period of five years and Polish authorities have indicated that the person keeping such records should provide access to such records at a place located in the territory of the Republic of Poland.

78. Polish authorities have submitted that companies that have been dissolved or struck off from the Register lose their legal personality and cannot be restored onto the Register. Polish authorities have further submitted that there is no data to determine the actual number of inactive entities, however for the period 2017 to 2020, the courts of registration initiated 95 034 proceedings to remove entities from the Register. The availability of ownership information required to be retained in relation to inactive and dissolved companies will be assessed in the Phase 2 review (see Annex 1).

79. Ownership and identity information about the shares issued by LLCs, JSCs, PSAs and LJSPs is available in the register of shares required to be kept by the company under Articles 188 and 341 of the CCC. Any member of the management board of a company who allows the management board not to

court of registration, annual financial statements have not been submitted for two consecutive years.

submit the list of partners or shareholders to the court of registration, or not to maintain a register of shares in accordance with the law is liable to a fine of up to PLN 20 000 (EUR 4 800) (CCC, Art. 594§1). These provisions also apply to liquidators (CCC, Art. 594§3).

80. Information on owners of LLCs is also made available to the authorities in the National Court Register upon registration (NCR Act, Art. 38 and CCC, Art. 167). Updated information on the shareholders of LLCs must also be provided to the Registrar (CCC, Art. 188§3; NCR Act, Art. 47). The court of registration verifies the veracity of the information entered in the Register and may remove it, or correct it, if it is ascertained that the information does not reflect the actual state of facts (NCR, Art. 23).

81. Whenever it is established that a person compelled to make an entry in the Register fails to do so or fails to provide documents within the time limit, that person is liable to a fine, that may be imposed several times (NCR Act, Art 24). In each decision, the court may impose a fine not exceeding PLN 15 000 (EUR 3200). The total amount of fines in the same case cannot exceed PLN 1 000 000 (EUR 217 475).

82. The registration court carries out oversight mechanisms to ensure that the information held in the Register is accurate and up to date. The main mechanism is to cross check the information received from third parties with the information submitted by applicants, including the notarial deed after a share transfer. Additionally, Polish authorities have stated that the tax authorities conduct audits and verify that ownership and identity information is maintained by all entities in order to administer domestic taxes. The requirements to keep records of dissolved entities are supervised by provincial (*voivodship*) marshals.

Availability of legal ownership information in EOI practice

83. Peers have not reported any issues regarding legal ownership information.

Availability of beneficial ownership information

84. The Terms of Reference were strengthened in 2016 to require that beneficial ownership information be available on companies. Poland addresses this aspect of the standard through the Act on Countering Money Laundering and Terrorism Financing 2018 (AML/CFT Act). The AML/CFT act has also been amended by the Act of 30 March 2021 to implement the provisions of the Fifth EU Anti-Money Laundering Directive (EU) 2018/843.

85. The AML/CFT Act covers a wide range of obliged institutions that are required to perform customer due diligence measures towards their

customers. Obliged institutions include banks and financial institutions, domestic payment institutions, co-operative savings and credit unions, entrepreneurs carrying out activities in the scope of currency exchange, notaries and other independent professionals such as attorneys, tax advisors (Art. 2).

86. The Act further identifies all legal persons and arrangements operating in Poland that are required to keep as well as register beneficial ownership information with the Central Register of Beneficial Owners.

87. The following table shows a summary of the legal requirements to maintain beneficial ownership information in respect of companies.

Companies covered by legislation regulating beneficial ownership information

Type	Company Law	Tax Law	AML Law/legal entity	AML Law/CDD
Limited liability company	None	None	All	All
Joint stock company	None	None	All	All
Limited joint-stock partnership	None	None	All	All
Simplified joint-stock company	None	None	All	All
European company	None	None	All	All
Foreign companies (tax resident)[17]	None	None	All	All

Anti-money laundering law – Beneficial owner definition

88. The same definition applies to AML-obliged institutions when they perform customer due diligence and to legal persons and arrangements when they identify their own beneficial owners. According to the AML law, the Beneficial Owner is defined as follows:

> it shall mean any natural person who exercises, directly or indirectly, control over a customer through the powers held, which result from legal or actual circumstances, enabling exerting a critical impact on activities or actions undertaken by a customer or any natural person, on whose behalf a business relationship is established or an occasional transaction is conducted, including:
>
> a) in the case of a legal person other than a company whose securities are admitted to trading on a regulated market and are subject to information disclosure requirements arising from

17. Where a foreign company has a sufficient nexus, then the availability of beneficial ownership information is required to the extent the company has a relationship with an AML-obliged service provider that is relevant for the purposes of EOIR (Terms of Reference A.1.1 Footnote 9).

the European Union law or corresponding regulations of a third country:

– a natural person being a stakeholder or shareholder holding the ownership title of more than 25% of the total number of stocks or shares of such a legal person,

– a natural person holding more than 25% of the total number of votes in this legal person's governing body, also as a pledgee or a user, or under agreements with other persons authorised to vote,

– a natural person exercising control over a legal person or legal persons holding jointly the ownership title of more than 25% of the total number of stocks or shares or holding jointly more than 25% of the total number of votes in this legal person's governing body, also as a pledgee or a user, or under agreements with other persons authorised to vote,

– a natural person exercising control over a legal person, through holding the powers referred to in Article 3(1)(37)[18]of the Accounting Act of 29 September 1994, or

– a natural person holding a senior management position, in the case of documented lack of possibility to determine the identity, or doubts regarding the identity of natural persons defined in from the first to the fourth indent, and in the case there are no grounds for the suspicion of money laundering or financing of terrorism.

89. The definition of "beneficial owner" is generally in line with the standard as it captures the concept of ultimate control and ownership, whether the participation is direct or indirect. The ultimate control through ownership interest is determined according to a threshold of participation set at 25%, which is in line with the standard. The definition further covers natural persons exercising control over legal persons individually or jointly.

90. Reference to control through powers held due to "actual circumstances" in the main part of the definition could be understood to mean

18. this refers to an entity being a commercial partnership or company or a State enterprise, exercising control over a subsidiary entity and, in particular: persons or entities entitled to vote or holding majority votes in the decision making body of a company, an entity entitled to recall majority of members of the managing, supervising or administering bodies, an entity entitled to manage financial or fiscal policy of a company among others. Entities is defined to also include natural persons.

"control through other means" as the "actual circumstances" in respect of a customer may refer to circumstances arising from family or financial relationships. This and the fourth indent, taken together, would ensure that in situations where ownership/control is exercised through a chain of ownership or by means of control other than direct control are covered by the definition. Further, Poland's definition provides for the identification of persons holding senior managerial positions in the event that there is doubt that the persons identified or no natural person has been identified to be the beneficial owner. With regard to legal persons, Poland's legal framework follows a somewhat cumulative approach and has provided guidance on how the steps in the indents may be applied together with the main definition (see paragraph 91). These aspects of the beneficial owner definition are in line with the standard.

91. However, there could be situations where while identifying beneficial owners, natural persons exercising "control through other means" might not be identified due to lack of an explicit reference to such control in the definition of beneficial owner for legal persons under letter (a) and the term "actual circumstances" may not be applied suitably. This is because the steps for identifying beneficial owners of a legal person are provided by way of special clauses and the AML-obliged person might overlook the main part of the definition where "actual circumstances" is referred. Poland has mitigated this aspect by publishing guidance to AML-obliged institutions and reporting entities to the effect that the use of the first four indents of the definition and the fifth indent (in exceptional cases) does not exclude persons identified in the main part of the definition. Further, the guidance states that separate consideration ought to be given to the fourth indent to capture the forms of control conferred in the Act of Accounting. The practical implementation of this guidance will be examined in the Phase 2 review (see Annex 1).

Anti-money laundering law – public registry/legal entities

92. Poland has in place a Central Register of Beneficial Owners that is mandated with the processing of information concerning beneficial owners of legal persons and arrangements. All Polish companies (with the exception of public companies operating in Poland) are required to report and keep up-to-date beneficial ownership information to the Central Register of Beneficial Owners (Art. 57-58 of the AML/CFT Act). Existing entities were required to submit beneficial ownership information by 13 July 2020. Polish authorities have reported that over 366 000 legal persons had made submissions by the deadline date and this number has steadily increased to over 436 000 legal persons representing approximately 82% of the entities.

93. Entities are required to submit information that identifies the company such as name, organisational form, registered office, NCR and TIN numbers. Additionally, the entities must submit information on the beneficial

owner and on the member of the governing body that is authorised to represent the company and submit information. The information to be submitted on the beneficial owner comprises, name and surname, citizenship, residence address, Population Registration Number (equivalent of TIN number in case of natural persons), state of residence and date of birth for foreign beneficial owners without a Population Registration Number. This identity information must be accompanied with information on the level and character of the share or on powers conferred on the beneficial owner. This is important to assist the supervisory authority to check the adequacy of the information.

94. Information on companies must be submitted to the Central Register of Beneficial Owners electronically within seven days following the date of entry of company formation in the NCR. Further, any changes are submitted within seven days of the change.

95. The AML/CFT Act further obliges the beneficial owner to provide the entity all the information and documents that would be required for the entity to report and keep up to date the information in the Central Register.

96. The Information collected in the Central Register of Beneficial Owners will be kept for a period of ten years from the date when the entity is deleted from the National Court Register (AML/CFT Act, Art. 64). This implies that the requirement is to keep information for the life cycle of the entity and upon dissolution from the commercial Register, to keep the information for a further ten years.

Implementation measures and oversight

97. The Central Register of Beneficial Owners in Poland is public. The minister responsible for public finance is the Competent Authority for the administration of the Central Register of Beneficial Owners (Art. 56 of the AML/CFT Act). Further in accordance with Article 57, the competent authority is responsible for: i) keeping the Central Register of Beneficial Owners and defining the organisational conditions and technical methods of its keeping, ii) processing information on beneficial owners, iii) preparing statistical analyses related to information processed in the Central Register of Beneficial Owners, iv) imposing, by way of a decision, financial penalties referred to at paragraph 104 and v) taking steps to ensure that the information contained in the Register is correct and up-to-date. The AML/CFT Act further allows the minister to designate an authority to perform these functions. Accordingly, the minister has appointed the Director of Revenue Administration Regional Office in Bydgoszcz to perform these tasks.

98. The electronic reporting of information to the Central Register of Beneficial Owners must bear an electronic signature and contains a declaration of authenticity made by the reporting person, which include the phrase,

"I am aware of criminal liability for the submission of a false declaration". This is anticipated to limit the submissions of incorrect information.

99. Additional oversight is provided by the requirement on obliged institutions to detect discrepancies in the Central Register with information regarding the beneficial owners they have determined, check the available information, and upon confirmation of discrepancy to report it to the competent authority in charge of the Register (Art. 61 of the AML/CFT Act). The notification should be accompanied by substantiation and documentation regarding the recorded discrepancies.

100. The act further requires co-operating units, meaning other public authorities,[19] to notify any discrepancies between the information in their possession and information held in the Register.

101. Upon receipt of notified discrepancies, the competent authority is mandated to clarify them.

102. The competent authority may initiate proceedings to clarify whether the information contained in the Register is correct and up to date and, when necessary, to update the register with the correct information (Art. 61b).

103. Additionally, the minister has issued regulations that provide additional aspects of oversight for the Register. The regulation of 16 May 2018 provides that where an entity mandated to submit information to the Register finds a mistake in the submitted report, it should rectify such an error within three days. Similarly, if the competent authority notices a breach or an error in the data submitted, they are obliged to task the submitting entity to make corrections within three days.

104. According to Article 68 of the AML/CFT, data entered in the Register is deemed authentic. A person submitting information on beneficial owners, including its updates, is liable for any damage caused by the submission of false data to the Register as well as by the failure to report data and changes in the data covered by the entry in the Register within the statutory time limit.

105. Further, an entity which does not comply with the obligation to report information to the Register within the statutory time limits is subject to financial penalty of up to PLN 1 000 000 (EUR 217 475)(Art. 153). The beneficial owner who does not provide the necessary information to the entity to enable the entity to meet these statutory timelines is subject to a financial penalty of up to PLN 50 000 (EUR 10 693).

19. "Co-operating units" mean any government and local government authorities and other state organisational units as well as National Bank of Poland, the Polish Financial Supervision Authority (PFSA) and the Supreme Audit Office.

Anti-money laundering law – Customer due diligence

106. The AML/CFT Act defines predetermined categories of institutions and professions with special AML/CFT obligations. AML-obliged institutions are broadly defined and include banks, payment institutions, life insurance businesses, various financial service providers, attorney/legal practitioners, auditors, accountants and professional tax advisors (Art. 2). As discussed at paragraphs 53 and 69, Polish companies[20] must engage a notary during their formation processes and regularly afterwards.

107. The AML/CFT Act requires all obliged institutions to carry out Customer Due Diligence (CDD). The prescribed CDD measures comprise: i) to identify and verify the customer's identity, ii) to identify the beneficial owner(s) and carry out justifiable measures to verify the beneficial owners' identity, iii) to assess the business relationship and iv) to carry ongoing monitoring of a customer's business relationship

108. The CDD measures must be applied when establishing a new business relationship and when performing specific transactions[21] and where there is doubt regarding the authenticity or completeness of customer identification data (Art. 35 of the AML/CFT Act).

109. The verification of the identity of the customer or the beneficial owner should be done before a business relationship is established or an occasional transaction is performed. In cases where it is necessary to ensure adequate conduct of activities and where the money laundering risk is considered low, the verification of the customer and the beneficial owner can be carried out while establishing the business relationship. In such cases, Art 39(2) provides that the verification must take place as soon as possible after the commencement of the business relationship. According to Article 37 of the AML/CFT Act, an obliged institution is required to rely on identification data based on documents that confirm the identity of a natural person, documents extracted from various registers and information originating from reliable and independent sources. Obliged institutions are also required to document the CDD measures carried out and to demonstrate upon request to the relevant competent authorities that CDD is being appropriately carried out.

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20. Including European companies established in Poland as Joint Stock Companies. Foreign companies with sufficient nexus must also engage with a notary for their registration process.

21. a) occasional transaction with the value equivalent to EUR 15 000 or more (in a single operation or as several operations which seem to be linked), b) occasional transfer of funds for an amount exceeding EUR 1 000 c) using virtual currencies equivalent to EUR 1 000 or more – in the case of the obliged institutions referred to in Article 2(1)(12), d) betting a stake and collecting prizes with the value equivalent to EUR 2 000, e) in case of suspicion of money laundering or financing of terrorism.

110. Obliged institutions are mandated to monitor their customer's business relationship, including: i) the analysis of transactions carried out throughout the course of the business relationship, ii) examining the origin of assets available to the customer and iii) ensuring that any possessed documents, data or information concerning the business relationship is updated on an on-going basis. Additionally, obliged institutions are required to carry out CDD measures for customers in specific circumstances whilst taking into consideration the identified money laundering risk. These circumstances include: i) where there is a change in the previously determined nature or circumstance of business, ii) a change in previously determined data regarding the customer or beneficial owner and iii) where during the calendar year, the obliged institution was required to contact the customer to verify beneficial ownership information regarding an EOI request. Thus, AML-obliged institutions would be required to carry out CDD whenever they become aware that changes in the beneficial ownership of their customers have occurred or have been reported to the Central Register of Beneficial Owners.

111. There is no specified frequency prescribed in the AML law for carrying out CDD (as obliged institutions are expected to carry out CDD on the basis of risk-assessment of their customers). There is also no specified frequency for reporting entities to report beneficial ownership information. Nevertheless, the requirement to carry out CDD whenever there is a change in beneficial ownership of the customer (as reflected in the Central Register) would imply that the beneficial ownership information reported to the Central Register is kept up to date. This is enhanced by the obligation on the beneficial owner to provide the relevant information to enable the reporting entity comply with the obligations to update the Central Register (AML/CFT Act, Art. 60a). However, the reporting entity may not be aware that there has been a change in its beneficial ownership especially if such a change does not entail reporting to the National Court Register. Furthermore, even when a change is reported in the Central Register by the reporting entities, the AML-obliged institution may not be aware that a change in beneficial ownership has been reported to the Central Register in respect of its customer. This could lead to such information not being updated by the AML-obliged institution. The effectiveness of these requirements to update the Central Register shall be evaluated in the Phase 2 review (see Annex 1). The mitigating factors of beneficial owners providing information to companies to make updates to the Central Register of Beneficial Owners does not cover foreign companies with sufficient nexus in Poland to the extent that they have relationships with AML-obliged institutions. **Poland is recommended to ensure that up-to-date beneficial ownership information for foreign companies with sufficient nexus in Poland to the extent that they have relationships with AML-obliged institutions is available in line with the standard**

112. In the instance that an obliged institution is not able to carry out CDD measures as described at paragraph 107, it is required not to proceed with any transaction and to terminate the business relationship in question.

113. The obliged institution may make use of third party services to perform CDD measures if the third party service provider will immediately furnish the obliged institution with all the necessary documentation upon request. This does not absolve the obliged institution with its obligations under the AML/CFT Act (Art. 47).

114. Additionally, obliged institutions are required to keep all information including copies of the documents used during the CDD measures, information confirming conducted transactions and the results of the CDD measures applied for a period of five years commencing from the first day of the year following the conducting of the CDD measures.

Enforcement measures and oversight

115. The supervision of AML obliged institutions falls under the mandate of the General Inspector of Financial Information (GIFI). Additionally, different authorities under whose mandate the obliged institutions operate supervise AML-obliged institutions. Under this arrangement, the National Bank of Poland supervises currency exchange operators, the National Association of Co-operative Savings and Credit Union supervises co-operative savings and credit unions, and the president of the appeal court supervises notaries. The PFSA and the heads of customs and tax authorities also supervise obliged institutions under their control (Art. 130 of the AML/CFT Act).

116. Regarding oversight activities, the GIFI, which carries out supervisory activities on its own, also co-ordinates the supervisory activities carried out by the supervising entities. The activities are carried out based on annual plans that contain the list of entities subject to control, the scope of control and the justification of performing these controls. Further, GIFI and the supervisory entities can also carry out ad hoc checks on all obliged institutions.

117. In order to facilitate the smooth running of oversight activities, the obliged institution being audited is mandated to ensure that the GIFI inspectors have proper conditions and access to relevant information and documentation to facilitate the control exercise. The GIFI may use the assistance of police officers in the case where the obliged institution is not co-operative.

118. An obliged institution that fails to fulfil its obligations under the AML/CFT Act including appointing an authorised representative (see paragraph 93) carrying out CDD measures, documenting and keeping information on the CDD measures for the statutory period is liable to an administrative penalty (AML/CFT Act, Art. 147).

119. Administrative penalties can take the form of publication of the violation, an order to cease the violating activity, a revocation of the licence or permit and prohibition to hold a managerial position for a period of one year by the responsible person. An administrative penalty may also take the form of a financial penalty that is imposed up to two-fold the amount of the benefit gained or the loss avoided by the obliged institution as a result of the violation. Where determining the benefit or loss is impossible, the financial penalty will be up to EUR 1000 000 (AML/CFT Act, Art. 150).

120. Additionally, any person acting on behalf of an obliged institution who provides GIFI with false data is liable to imprisonment for a period of between three months to five years. The same penalty applies for unauthorised disclosure of information to an account holder or any person to whom the transaction relates. If it is determined that the act was unintentional, then the offending person is subject to a fine.

121. Practical implementation of the enforcement provisions and availability of beneficial ownership information for companies in practice will be examined in the Phase 2 review.

Nominees

122. The concept of nominee shareholding is not provided for under Poland's commercial laws. This means that shareholders included in the share register would be the legal owner in all cases.

123. The Polish authorities have indicated that there is a concept of pledge under which pledgees may represent a shareholder. Pledgees may exercise voting rights on behalf of a shareholder. However, a pledge must be made in writing and the signatures of both the pledgee and shareholder are notarised. In this case, both the pledgee and the shareholder are subject to CDD, and the shareholder must notify the company of the pledge and present proof of its existence and terms to the company. In addition, the company must include in the register of shareholders the fact of the establishment of a pledge and the actual exercise of voting rights by the pledgee. In any case, the identity of the actual shareholder is known to the company as well as to the pledgee (CCC, Art. 187 and 188).

Availability of beneficial ownership information in practice

124. Initial peer input indicated that whenever beneficial ownership information was requested from Poland in the last few years, peers were generally satisfied with the quality of responses. The implementation of the legal framework and the availability of beneficial ownership information in practice will be examined in detail during the Phase 2 review.

A.1.2. Bearer shares

125. Joint-stock companies and joint-stock limited partnerships are permitted to issue bearer shares. The 2015 Report determined that information on the holders of bearer shares would be available to the authorities only with regard to bearer shares traded on a regulated market.

126. Consequently, Poland has introduced amendments to the CCC requiring that holders of bearer shares should either convert them into registered shares in the register of shareholders kept by the entity authorised to keep the company's securities accounts or deposit them in a depository kept by the National Depository for Securities (Act of 19 July 2019 item 1655 and Act of 30 August 2019, amending the CCC).

127. Bearer share documents issued by a company expired by operation of law on 1 March 2021 and as of the same date, entries in the register of shareholders and entries of shares in securities accounts[22] acquired legal force. Bearer shares issued beyond 1 March 2021 will have to be deposited with the National Depository for Securities. Previously issued bearer documents will retain evidential value for five years, until 1 March 2026, only to the extent that the shareholders demonstrate to the company that they are entitled to share rights (CCC Amendment Act of 30 August 2020 CCC). Polish authorities have explained the implication of this to be that holders of bearer shares that would not have presented them to the company or deposited them with the central institution or an intermediary will not be able to exercise their rights under those shares, such as voting rights, ability to transfer such shares and rights to dividend payments. Polish authorities have further submitted that after the said 5-year period, the bearer shares will lose their evidential value and the shareholder who fails to submit the share deed in time will have deprived themselves of any membership rights in the company. The shares will be treated as lost and they cannot be redeemed (neither by the company nor by anyone).

128. In order to have these shares registered or deposited, the company was required to call shareholders five times to submit share documents to the company. Companies were required to provide information about the call on the company's website in a place designated for communication with shareholders for a period of at least three years from the date of the first call.

129. Before initiating a call to the shareholders, a company was obliged to conclude an agreement by resolution of shareholders to keep the register with an entity authorised to keep securities accounts or to reach an agreement to register its shares with the National Depository for Securities.

22. This applies in the case of a company which is not a public company, and where a general meeting of the shareholders adopted a resolution on the registration of its shares in a securities depository.

130. Members of management boards are responsible for ensuring compliance with the obligation to deposit or register bearer shares. Any person authorised to manage the affairs of a JSC or LJSP pursuant to the articles of association who fails to enter into an agreement to keep the register of shareholders or to summon the shareholders to deposit share documents is liable to a fine of up to PLN 20 000 (EUR 4 329).

131. Polish authorities have submitted that as at April 2022, 913 companies have so far registered 49 776 315 337 bearer shares with the National Depository for Securities.

132. Some doubts arise concerning the five-year transition period. Polish authorities have informed that the restrictions imposed on the bearer shares (see paragraph 127) include that shareholders who submit their bearer shares for registration after 1 March 2021 should prove that they acquired such bearer shares before this date and that this would prevent any form of circulation. The authorities have also noted that the transition period of five years during which un-registered or un-deposited bearer shares only retain probative force is to comply with the constitutional standards of Polish law that provide for rights of ownership to property and rights of succession (Art. 64(2)).

133. While the restrictions mentioned by the Polish authorities could prevent formal trading of bearer shares on the securities market, their effectiveness in preventing bearer shares from changing hands in the transition period (for instance, even without consideration) would depend on how strictly companies enforce the requirements of proving that the shares were acquired prior to 1 March 2021. It is not clear what proof of acquisition of bearer shares prior to 1 March 2021 must be produced since bearer shares have probative force on their own. In the absence of binding legal rules, there may be variations in the application of proof of purchase, especially as companies and not a public authority will implement these rules.

134. Furthermore, the constitutional protection of rights to private property and succession does not prescribe a five-year period. Hence, such protection could have been achieved even through a shorter transitional period. In any case, the standard requires that there should be appropriate mechanisms in place to ensure that the owners of bearer shares are identified and for this period of five years, the holders of bearer shares that are not yet deposited or registered will remain unavailable. This is primarily because a holder of a bearer share could in effect remain anonymous until the point where it was necessary to exercise his/her rights. For five years from 1 March 2021, the identity of owners of bearer shares may not always be available especially for holders who decide to wait until the end of the transition period.

135. **Poland is therefore recommended to examine conditions under which mechanisms to encourage conversion or deposit of bearer shares can be strengthened so that information identifying their holders in line with the standard is available as quickly as possible**.

A.1.3. Partnerships

136. The 2015 Report concluded that Poland's legal and regulatory framework was in place to ensure that up-to-date identity information on partnerships was available.

137. Polish law allows for the formation of four types of partnerships that do not have legal personality but are deemed to have legal capacity and can acquire rights, incur liabilities, sue and be sued.

- A registered partnership is established by written deed by two or more persons for the purpose of wide scale business and conducts an enterprise in its own name. Every partner is liable for obligations of the partnership, without limit, with all his assets jointly and severally with the remaining partners and the partnership (CCC, Art. 22). As of December 2020, there were 34 241 registered partnerships.
- Professional partnerships are established by written deed for the purpose of practicing a liberal profession, and they conduct business under their own business name. Partners of these partnerships must be natural persons and at least two of them must be individuals authorised to practise the given profession (CCC, Art. 88). As of December 2020, there were 2 426 professional partnerships.
- Limited partnerships are established by notarial deed for the purpose of conducting business under their own business name. They must be established by at least two persons. Limited partnerships possess legal capacity and may in their own name acquire rights, incur obligations, sue and be sued. At least one partner is liable for the debts and obligations of the partnership without limitation (general partner) and at least one partner has a limited liability. As of December 2020, there were 43 292 limited partnerships.
- Civil partnerships must be established by written deed by at least two natural or legal persons and each partner is jointly liable for the debts and obligations of the partnership without limits and with all his/her assets. As of December 2020, there were 291 923 civil partnerships.

138. With the exception of civil partnerships, a partnership comes into existence upon entry into the Register of Entrepreneurs.

Identity information

139. When applying for registration, registered partnerships, professional partnerships and limited partnerships must provide a designation of the partners, disclosing names and surnames of the natural persons, or the business name for legal persons (NCR Act, Art. 35 and 38(4)(5)(6)). Changes to such information must be reported to the NCR within seven days (CCC, Art. 22, 26(2) and 93(3)). The application to the NCR must also designate the general partner and the limited partner in the case of limited partnerships.

140. For each of the above three types of partnerships, the deed whether in notarial form (for limited partnerships) or written under pain of nullity (registered and professional partnerships) should include the business name and seat of the partnership. It also includes the object of the partnership's activity, lifetime of the partnership, if defined, and a specification of contributions made by each partner and their value (Art. 25, 91 and 105 CCC). Further, with respect to professional partnerships, the deed contains names of the partners who bear unlimited liability.

141. Upon formation, civil partnerships must register with the National Official Business Register. A contract of a civil partnership must be made in writing; however, the Civil Code does not specify what information should be included in the deed (Art. 860 Civil code). It is expected that the names of all partners would be disclosed in the deed because each partner bears joint and several liability for the partnership's obligations (Civil Code, Art. 864). The identification of the partners is also a necessary element that identifies the parties involved in this act of law. In addition, the contracts of civil partnerships must be registered with the local tax office for identification as well as taxation purposes (see section Tax law requirements below). Civil partnerships are allowed to engage in profit seeking activities and are mainly used as a form of co-operation in conducting small-scale business (e.g. a car repair garage, a hairdresser).

142. Partners of civil partnerships who are natural persons also need to register individually with the Central Register and Information Economic Activity (CEIDG) when signing the partnership deed. They must include their place of residence, the business name, the address of the principal place of pursuit of economic activity and of any branch, and the National Official Business Register number of the civil partnership (Entrepreneurs' Law Act, Art 5). Where any change to this information occurs, the partners must file such change with the CEIDG within seven days (Entrepreneurs' Law Act, Art 15). As such, the identity of partners is available. A civil partnership is also required to file a copy of the partnership deed with registration files to the registration court and to inform the court in case of changes to this information (NCR Act, Art. 38(1)(g) and 45(1)).

Tax Law requirements

143. Under the Natural Persons Income Tax Act (NPIT Act), all types of partnerships are tax transparent and are not required to file tax returns. Instead, partners have to submit separate income tax returns individually (NPIT Act, Art. 5a; LPIT Act, Art. 5).

144. Nonetheless, all partnerships must register for tax purposes and are allocated a tax identification number. The registration forms require the identification of all partners of the partnership (forms NIP 2 and NIP-D). Registration is required for both domestic partnerships and foreign partnerships carrying on business in Poland. This information needs to be updated within seven days following any change (form NIP-8) (Act on Principles of Registration and Identification of Taxpayers and Tax Remitters 1995, Art. 9).

145. Like companies, a partnership that is inactive may apply or be identified and included on the NCR as explained at paragraphs 71 and 72 for periods ranging from 30 days to two years. In this state of inactivity, up-to-date identity information remains available with the NCR or National Official Business Register. Upon dissolution of a partnership, the books and documents are deposited with a partner, or a third party to keep for a period of five years. Where the partner or third party dissents, the registration court is obliged to appoint a custodian (CCC, Art. 84 §3). Poland has submitted that the person keeping such records should provide access to such records at a place located in the territory of the Republic of Poland. The availability of identity information required to be retained in relation to inactive and dissolved partnerships will be assessed in the Phase 2 review (see Annex 1).

146. Up-to-date information on partners of registered partnerships, professional partnerships, and limited partnerships is available with the Registrar of Entrepreneurs, part of the National Court Register. In addition, the tax authorities also have ownership information on the partners of all domestic partnerships and all foreign partnerships carrying on business in Poland.

Beneficial ownership

147. The primary source of beneficial ownership in Poland with respect to partnerships is the same AML law obligations as described in respect of companies.

Anti-money laundering law

148. Partnerships are required to report beneficial ownership information to the Central Register of Beneficial Owners and to update such information within seven days of any change (see A.1.1).

149. With respect to the beneficial ownership definition, the determination of beneficial owners for partnerships must take into account the specificities of their different forms and structures.[23] In Poland, partnerships are deemed to have legal capacity, can sue and be sued or own real estate, although they are not considered to have legal personality. There is no distinctive coverage for legal arrangements in the methodology of application of the overarching definition and Polish authorities consider that the main definition is sufficient to identify all beneficial owners of legal arrangements, including partnerships. Polish authorities have explained that, in respect of partnerships, AML-obliged institutions are expected to identify all beneficial owners relying on the first part of the definition that applies for all types of legal entities and arrangements. The definition of beneficial owners in the AML law as applicable to partnerships is as follows:

> beneficial owner, it shall mean any natural person who exercises, directly or indirectly, control over a customer through the powers held, which result from legal or actual circumstances, enabling exerting a critical impact on activities or actions undertaken by a customer, or any natural person, on whose behalf a business relationship is established or an occasional transaction is conducted, including: [the rest is omitted as its not applicable to partnerships]

150. The standard requires that persons who exercise ultimate effective control over a legal arrangement should be identified, including in situations where ownership or control is exercised through a chain of ownership or by means of control other than direct control. The main definition in Poland covers aspects of direct or indirect control in reference to powers held arising from legal or actual circumstances, which could be understood as covering all general partners. Control through actual circumstances could be understood to cover instances of control arising from family or financial relationships. Finally, the use of "directly or indirectly" would require to look-though partners which are not individuals to identify the beneficial ownership behind them. However, Poland may benefit from providing explanatory guidance on the application of the definition of beneficial owners for legal arrangements especially with respect to control by other means. The practical implementation of the definition of beneficial owners in the context of partnerships will be examined during the Phase 2 review (see Annex 1). Additionally, there is no specified frequency prescribed in the AML law for partnerships to report beneficial ownership or for obliged institutions to carry out CDD although the issue is mitigated by updates made to the Central Register of Beneficial Owners (see paragraph 111). The effectiveness of these

23. See paragraphs 16 and 17 of the Financial Action Task Force Interpretative Note to Recommendation 24.

requirements to update the Central Register shall be evaluated in the Phase 2 review (see Annex 1).

Oversight and enforcement

151. The enforcement provisions of partnerships for beneficial ownership information are similar to those discussed under companies and are referred to in A.1.1.

Availability of partnership information in EOI practice

152. Peers have not reported any issues regarding identity information for partnerships. The implementation in practice will be examined in detail in the Phase 2 of the review of Poland.

A.1.4. Trusts

153. The concept of trusts does not exist under Polish law and Poland is not a party to the Hague Convention on the Law of Trusts. However, no restrictions exist in Polish law that prevent a Polish resident from acting as a trustee, protector or administrator of a trust formed under foreign law.

Requirements to maintain identity information in relation to trusts

154. The 2015 report concluded that, although under the tax law, information on the settlors, (other) trustees and beneficiaries of a foreign trust with a Polish trustee may be available in certain circumstances, these requirements were not complemented by obligations under other laws, such as the AML Law. Poland was therefore recommended to amend its legislation to ensure the availability of identity information of all foreign trusts administered in Poland or in respect of which a trustee is resident in Poland.

155. The report further concluded that the AML Law did not specifically identify trustees as service providers covered by anti-money laundering obligations. Even when a service provider covered by AML Law was administering a trust or had a trust as a client, the AML law did not specify who needed to be identified as the beneficial owner.

156. Poland amended the AML/CFT Act to address these gaps. Firstly, trusts whose trustees or persons holding equivalent positions are: i) resident in Poland or ii) establish business relationships or acquire real estate in the territory of Poland on behalf of or to the benefit of a trust, are required to submit beneficial ownership information to the Central Register of Beneficial Owners. Secondly, entrepreneurs within the meaning of the Act of 6 March 2018 – Entrepreneurs' Law other than other obliged institutions, providing

services consisting in acting or enabling other person to act as a trustee established by means of a legal act, are classified as obliged institutions (Art. 2(1)(16)(d)). Concerning the latter, Poland has introduced a register of trust or company service providers with effect from 31 October 2021.

157. This implies that all persons acting as trustees (including non-professional trustees) are subject to the CDD obligations pursuant to the AML/CFT Act and to the administrative penalties under Articles 147-149 of the AML/CFT Act for failing to fulfil these obligations.

158. With regard to the definition of beneficial owner, the overarching definition described at paragraph 88 also applies to trusts and refers to natural persons. Additionally, the AML/CFT Act provided guidance concerning trusts:

> beneficial owner, it shall mean any natural person who exercises, directly or indirectly, control over a customer through the powers held, which result from legal or actual circumstances, enabling exerting a critical impact on activities or actions undertaken by a customer […] including
>
> b) in the case of a customer being a trust:
>
> - a founder,
>
> - a trustee,
>
> - a supervisor, if established,
>
> - a beneficiary or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust has been established or operates,
>
> - other person exercising control over the trust,
>
> - any other natural person having powers or performing duties equivalent to those defined in indents from the first to the fifth,

159. Poland's definition of beneficial ownership for trusts is broad enough and it covers all natural persons who exercise ultimate control over the trust. Further, reference to "directly or indirectly" in the overarching definition suggests that a look through approach would be possible, should it be that a legal person is involved in any of the structures of control of the trust.

160. As part of the CDD measures, obliged institutions are further required to define the ownership and control structure in respect of trusts (Art. 34 of the AML/CFT Act).

161. Consequently, the combination of the pre-existing obligations under Tax Law and AML/CFT amendments enables the identification of all

persons participating in foreign trusts administered in Poland or in respect of which a trustee is resident in Poland in line with the standard and of all their beneficial ownership. The implementation in practice of these recent requirements will be assessed in Phase 2. However, there is no specified frequency prescribed in the AML law for trustees to report beneficial ownership or for obliged institutions to carry out CDD although the issue is mitigated by updates made to the Central Register of Beneficial Owners (see paragraph 111). The effectiveness of these requirements to update the Central register shall be evaluated in the Phase 2 review (see Annex 1).

Oversight and enforcement

162. The enforcement provisions of trustees for beneficial ownership information are similar to those discussed under companies and are referred to in A.1.1.

Availability of trust information in EOI practice

163. Peers have not reported having ever requested for information regarding trusts from Poland. The implementation in practice will be examined in detail in the Phase 2 of the review of Poland.

A.1.5. Foundations

164. The 2015 Report concluded that the legal and regulatory framework in Poland ensures that identity information in respect of foundations is available in line with the standard. Foundations in Poland are governed by the Law on Foundations (LOF) and may be established to pursue socially or economically useful objectives that are compatible with the basic interests of Poland (LOF Art. 1): health protection, economic development and science, education and upbringing, culture and art, social care and assistance, environmental protection and care of historical landmarks. Foundations may conduct profit-making activities within the scope of their aims to accomplish their purposes.

165. A foundation is created by a notarial deed, which indicates the purpose of the foundation and the nature of the assets earmarked for accomplishing that purpose. Where a foundation's statute specifies the purposes on which its assets are to be allocated following its dissolution, these assets should be allocated for the objectives described at paragraph 164. If the statute does not specify these details, the court decides on the allocation of its assets, taking into account the purposes for which the foundation was set up (LOF, Art. 15(4)).

166. The aforementioned provisions limit the use of Polish foundations to charity purposes, and it is therefore not permitted to establish a foundation

for the benefit of private individuals. As of December 2020, there were 11 430 foundations registered in Poland.

167. Foundations gain legal personality upon registration in the National Court Register (LOF, Art. 7). Information to be included and maintained in this Register includes the statute of the foundation, its name or business name, a determination of the legal form, the seat and address (NCR Act, Art. 38 and 53a). In addition, at the time of registration, a statement of the deed includes the name of the founder(s) of the foundation must be submitted to the Register disclosing the names of members of the body entitled to represent the foundation (governing body) (NCR Act, 39(1)).

168. Further, foundations are required to submit identity and beneficial ownership information to the Central Register of Beneficial Owners. Finally, foundations are also obliged institutions under the AML Law and are consequently required to undertake CDD measures on their clients (AML/CFT Law, Art. 2). For this purpose, the general definition of beneficial ownership for legal persons is applied. Polish authorities have indicated that the clients of a foundation required to be identified under AML Law would include all persons that the foundation has concluded contracts with, all the donors, and all persons receiving assistance from the foundation. This would ensure availability of up-to-date beneficial ownership information as discussed under A.1.1.

169. With respect to oversight, the PFSA controls that foundations comply with the stated charitable purposes. Every year, foundations must submit an annual report providing information on their economic and financial situation to the Minister competent for the activities carried out by the foundation. Enforcement measures can be applied if a foundation fails to submit the annual return.

170. As earlier stated, foundations in Poland are only limited to charitable activities and may thus be largely irrelevant for EOIR purposes. In any case, identity information on the founders and members of the governing board is available with the National Court Register. Further, any person receiving assistance from the foundation as well as donors, are known because of the CDD measures that foundations are obliged to undertake in respect of all their clients. Nevertheless, there is no specified frequency prescribed in the AML law for foundations to report beneficial ownership or for obliged institutions to carry out CDD, although the issue is mitigated by updates made to the Central Register of Beneficial Owners (see paragraph 111). The effectiveness of these requirements to update the Central register shall be evaluated in the Phase 2 review (see Annex 1).

Availability of information in EOI practice

171. Peers have not reported any issues regarding identity information for foundations.

Other relevant entities and arrangements

172. The Act on Co-operatives (AOC) allows for the formation of co-operative enterprises. Co-operatives must register with the National Court Register (NCR, Art. 36). The management board of a co-operative must keep a register of members indicating, among others, their names (business name in case of non-natural persons) and addresses, the amount of participation shares which have been declared and actually contributed to, and the date on which membership was accepted and terminated (AOC, Art. 30).

173. All members of a co-operative, their spouses and the co-operative creditors have the right to inspect the register of members (AOC, Art. 30). Initial membership of a co-operative becomes effective on the date of the co-operative's registration with the National Court Registry. New members must be accepted by the body of the co-operative nominated by its statute and receive a membership certificate that is also signed by two members of the co-operative management (AOC, Art. 17).

174. Further co-operatives are required to report information concerning their beneficial owners to the Central Register of Beneficial Owners and to keep this information up to date as described under A.1.1. However, as noted in paragraph 150, while the definition of beneficial owner for legal arrangements is broadly in line with the standard, its implementation in the context of co-operatives will be further examined during the Phase 2 review to ascertain that all beneficial owners of co-operatives are suitably identified in line with the standard (see Annex 1).

175. Further, there is no specified frequency prescribed in the AML law for co-operatives to report beneficial ownership or for obliged institutions to carry out CDD although the issue is mitigated by updates made to the Central Register of Beneficial Owners (see paragraph 111). The effectiveness of these requirements to update the Central register shall be evaluated in the Phase 2 review (see Annex 1).

Availability of information in EOI practice

176. Peers have not reported any issues regarding identity information for co-operatives.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

177. The 2015 Report concluded that the legal and regulatory framework on the availability of accounting records and underlying documentation was in place in respect of all relevant legal entities and arrangements and Poland was rated compliant with the standard. The requirements under the Accounting Act, supplemented by obligations imposed by the Income Tax Act, ensure availability of accounting records with underlying documentation by all relevant entities and arrangements. No change took place since then and the legal and regulatory framework remains in place.

178. The conclusions are as follows:

Legal and Regulatory Framework: The element is in place.

No material deficiencies have been identified in the legislation of Poland in relation to the availability of accounting information.

Practical Implementation of the Standard: The assessment team is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

A.2.1. General requirements

179. The requirement to keep accounting records and their underlying documentation in Poland is met by a combination of accounting and tax law requirements.

Accounting law requirements – Companies, partnerships, foundations and cooperatives

180. Companies, partnerships, co-operatives, foundations, and foreign entities with their seat or head office in Poland are obliged to keep accounting records in accordance with the provisions set out in the Act on Accounting (Art. 2).

181. The accounting rules adopted must depict a true and fair presentation of an entity's property and financial position and their financial result at all times. The accounting obligations of these entities include:

- keeping account books consisting of the records of events regularly entered in chronological order, based on book-keeping vouchers

- periodical determination or checking of the actual balance of assets and liabilities by means of stocktaking
- valuation of assets and liabilities, and determination of the financial result
- preparation of financial statements
- gathering and keeping of book-keeping vouchers
- having the financial statements audited, filed with the competent court register, made accessible, and published in cases specified in the Act (Act on Accounting, Art. 4).

182. Account books comprise files of account records, transactions (sums of the records) and balances which constitute a journal, general ledger, subsidiary ledger, a statement of transactions and balances of the general ledger accounts and subsidiary ledger accounts, and an inventory of component assets and liabilities (Act on Accounting, Art. 13.1). All events that occur in a given reporting period must be recorded in the form of an entry into the accounting books (Art. 20).

183. Pursuant to Article 11 of the Act on Accounting, entities should keep their account books at their registered seat. Entities may entrust the keeping of their accounting records with persons approved to offer bookkeeping services and in such cases, the records should be kept in the territory of Poland. Where the account books are kept outside of the seat or head office of an entity, the manager is obliged to notify the revenue office where the records are kept within 15 days of their issuance. The manager is also mandated to ensure accessibility to the account books and bookkeeping vouchers to authorised authorities for inspection or for supervision at the entity offices or any other place consented to by the authorities.

184. The Act on Accounting further requires companies and partnerships to prepare financial statements. An independent statutory auditor audits all consolidated financial statements as well as annual financial statements of a number of entities[24] (Art. 64). Companies and partnerships must submit their financial statements to the competent registration court of the National Court Register within 15 days of their approval. Foreign entities are required to submit the financial statements of the branch together with the resolution of the relevant approving body on the approval of the profit distribution and loss coverage (Art. 69). Where the entity was audited, the manager of the entity must also submit the opinion of the statutory auditor.

24. These include: Entities whose average annual employment exceeded 50 persons, total balance sheet assets equal to or exceeding EUR 2 500 000 in the previous year, annual net revenues of EUR 5 000 000 or above, JSCs, banks, co-operatives, domestic payment institutions.

185. Article 70 further requires natural persons conducting an economic activity and civil partnerships of natural persons who meet the conditions to audit their financial statements to submit the introduction to the financial statements. The submission should also include the balance sheet, profit and loss account, statement of changes in equity, and cash flow statement for the financial year as well as the statutory auditor's opinion to the official Gazette (Court and Economic Monitor – Polish *Monitor Sądowy i Gospodarczy*) within 15 days from their approval.

186. The Act on Accounting does not apply to natural persons, civil partnerships of natural persons, registered partnerships of natural persons and professional partnerships with revenues not exceeding EUR 2 000 000 (Art. 2(1) and NPIT Act, Art. 24a(4)). These persons must nonetheless keep accounting records pursuant to the tax obligations.

Trusts

187. As earlier discussed, Poland's legal framework does not allow for the formation of trusts, however no restrictions exist in Polish law that prevent a polish resident from acting as a trustee, protector or administrator of a trust formed under foreign law. If legal or natural persons act as a trustee of a foreign trust, the income earned by the trust is subject to income tax in the hands of that person, unless they demonstrate that the income should be attributed to another person.

188. Where a legal person acts as a trustee, it will very likely do so by way of business, and this legal person will then be subject to the accounting obligations under both the Act on Accounting and the LPIT Act.

189. Where a natural person (or a civil partnership of natural persons, registered partnership of natural persons or professional partnership) acts as a trustee, he/she will be covered by the accounting obligations under the Act on Accounting where the trust has a revenue exceeding EUR 2 000 000. Where the revenues of the trust are below that threshold, the natural person will be required to keep accounting records under tax law, unless he or she chooses to pay tax in the form of a tax card.

Tax Law

190. Poland tax laws require taxpayers to keep accounting records in a manner that enables the correct assessment of income (or loss), tax base and the tax due for any given tax year. The accounts kept should also include information necessary to calculate the amount of depreciation write-offs with respect to all classes of assets (Art. 9 of the LPIT Act, Art. 24a of the NPIT Act).

191. Taxpayers who are obliged to prepare financial statements are required to submit those statements by electronic means within 10 days of their approval to the Head of the NRA. The submission should contain a copy of the resolution of the meeting approving the financial statements together with the audit report (where there is a requirement to audit the financial statements).

192. The Regulation of the Minister of Finance on the Keeping of the Revenue and Expense Ledger contains a requirement that records not subject to the Accounting Act should be kept in a reliable and correct way based on accounting evidence. This requirement is with respect to natural persons, civil partnerships of natural persons, registered partnerships of natural persons and professional partnerships with revenues not exceeding EUR 2 000 000. Taxpayers must also keep a ledger recording the fixed assets and intangible assets, equipment, details of employees' salaries, and any transfer of merchandise indicating the entry sequence number, date of transfer, name of goods and materials and their quantity and value.

193. Furthermore, taxpayers with revenues equal to EUR 250 000 or less and who pay tax on a lump-sum basis must keep accounting records in a register and must keep the evidence on which entries are made therein as well as receipts of all purchased goods (Lump-Sum Income Tax Act, Art. 15). These taxpayers can also elect to pay tax in the form of a tax card, in which case they are exempted from the obligation to keep tax books and are only obliged to keep in numerical order copies of the bills and invoices that have been issued at the request of customers (Lump-Sum Income Tax Act, Art. 24). The Polish authorities have further advised that from 2022, entrepreneurs starting a business or who have changed the form of taxation can no longer use the tax card.

194. In respect of taxpayers that opted for a tax card in the past, Polish authorities have advised that these are typically natural persons, civil partnerships of natural persons, registered partnerships of natural persons or professional partnerships that are small scale businesses. In any case, numerical records of transactions carried out and their banking records would be available. Companies with similar or lower turnover are covered by accounting obligations arising from the Act on Accounting and would be required to keep full records.

Entities that ceased to exist and retention period

195. All entities are obliged to keep approved financial statements for at least five years counting from the beginning of the year following the financial year in which they were approved (Act on Accounting, Art. 74.1). Account books, bookkeeping vouchers and other documentation must also be kept for five years from the beginning of the year following the financial year to which they refer (Act on Accounting, Art. 74.2 and 74.3).

196. Account books, bookkeeping vouchers, stocktaking documents and financial statements of entities which have been dissolved and liquidated[25] must be kept by an appointed person or entity. Further, for entities that have terminated their activities as a result of merger or change of legal form, these records are kept by the continuing entity. In all cases, the records are kept for a minimum of five years. The manager of an entity, liquidator or bankruptcy estate trustee must notify a competent court or another body keeping the register or economic activity records and the revenue office (Act on Accounting, Art. 76). Poland has submitted that the person keeping such records should provide access to such records at a place located in the territory of the Republic of Poland. The availability of accounting records required to be retained for entities that cease to exist will be assessed in the Phase 2 review (see Annex 1).

197. With respect to tax law coverage, accounting records and related documentation must be kept until the expiry of the period of limitation of the tax obligation, unless tax Acts provide otherwise (Tax Ordinance Act, Art. 86§1). This period is five years from the end of the calendar year in which the tax payment was due (Tax Ordinance Act, Art. 70§1). These obligations would apply even where a taxpayer ceases to exist or otherwise ceases taxable activity.

A.2.2. Underlying documentation

198. All events that occur in a given reporting period must be recorded in the form of an entry into the accounting books (Art. 20) based on bookkeeping vouchers evidencing execution of business. Additionally, bookkeeping vouchers must as a minimum: specify the type of transaction, its value and date, the date of a book-keeping voucher if different, the parties involved in a transaction (names, addresses), and bear a signature of an issuer of a book-keeping voucher and a person to whom component assets were issued or from whom the assets were received (Act on Accounting, Art. 21.1).

199. Documents supporting all the transactions including contracts and settlement of such contracts, settlements with employees (payroll), invoices of purchases and a cash register are also kept (Art. 17).

200. Where computerised account books are used, the law considers such books as equivalent to the source book-keeping vouchers, provided that the entries in the computerised systems are in permanently readable form corresponding with the contents of relevant book-keeping vouchers and the data source can be tracked including the person who entered the data. It should

25. An entity may be dissolved by causes in its articles, resolution to transfer its seat abroad, declaration of bankruptcy and other causes in the law.

also be possible to verify the correctness of the data and the source data should be protected (Art. 13).

201. With respect to entities that are not required to keep detailed accounting records as earlier discussed (see paragraphs 186 and 193), the entries into the ledger is based on VAT invoices. Additional evidence captured includes records that confirm that a business operation has been carried out in accordance with its actual course and containing at least the name and address of the parties involved in the business transaction. The record must also capture the date of issue and the date or period of the business operation, the object of the business transaction and its value and quantity, as well as signatures of the persons involved.

Oversight and enforcement of requirements to maintain accounting records

202. Failure to keep account books, maintaining them in contradiction to the provisions of the Act on Accounting, or showing incorrect data, is liable to a fine or a penalty of deprivation of liberty of up to two years, or both penalties. The same penalties apply if a person allows that financial statements be prepared in a way that is contrary to the provisions of the Act or they are not prepared at all, or allows that the financial statement contains incorrect data.

203. Additionally, an entity that fails to submit to the registration court or to publish its financial statements or that fails to have financial statements audited, or that provides incorrect information to an independent statutory auditor is liable to a fine or restriction of liberty (Act on Accounting, Art. 79). If an independent statutory auditor draws his/her opinion on the financial statements of an entity that is contrary to the facts, that statutory auditor is liable to a fine and/or imprisonment up to two years (Act on Accounting, Art. 78).

204. Regarding small scale business that is not subject to the Act on Accounting, failure to maintain a ledger, or maintaining the ledger in an unreliable manner, may lead to the penalty of up to PLN 4 800 000 (EUR 1 148 000) (Penal and Fiscal Code, Art. 60 and 61).

205. The oversight framework in Poland starts with the involvement of independent statutory auditors chosen by the entities themselves. Upon the requisite qualification, statutory auditors are admitted to the Polish Chamber of Statutory Auditors (PCSA). PCSA is responsible for approving statutory auditors, keeping the register of statutory auditors, developing the professional standards and principles of professional ethics and enforcing the continuing professional development by statutory auditors. The Polish Agency for Audit Oversight (PAAO) is responsible for exercising independent public oversight of the auditing

profession, including overseeing the activities of audit firms, and statutory auditors. PAAO is responsible among others for approving audit firms, keeping the list of audit firms, carrying out inspections in audit firms. The inspections are aimed at ensuring the proper quality of the audits performed.

206. The Polish authorities have submitted that if the auditor gives negative opinion, the financial statements cannot be approved and without approval of the financial statements, any distribution of the profit would be illegal.

207. Moreover, the local tax offices are responsible for monitoring and enforcing accounting records under tax law. Compliance with the obligation to keep accounting records is assessed in the course of each tax inspection and customs and fiscal control carried out against entities obliged to keep them.

Availability of accounting information in EOIR practice

208. Initial peer input indicated that whenever accounting information was requested from Poland in the last few years, peers were generally satisfied with the quality of the responses. The implementation of the legal framework and the availability of accounting information in practice will be examined during the Phase 2 review.

A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

209. The 2015 Report concluded that banks' record keeping requirements and their implementation in practice in Poland were adequate and banking information would be available with the exception of information regarding former anonymous accounts.

210. Identity information on all account-holders and transaction records continue to be made available through AML/CFT and tax law obligations.

211. Since the 2015 Report, the standard was strengthened in 2016 with an additional requirement of ensuring the availability of beneficial ownership information on all account holders. The AML/CFT Act requires banks to obtain and maintain beneficial ownership information on all account holders. However, although banks are obliged to update customer due diligence based on the risk profile of the customer and in certain other circumstances, there is no specified frequency of updating beneficial ownership information. This may, affect the availability of up-to-date information in certain instances. Poland is recommended to take measures to address this gap in its legal framework.

212. The conclusions are as follows:

Legal and Regulatory Framework: in place but certain aspects of the legal implementation of the element need improvement.

Deficiencies identified/ Underlying factor	Recommendations
Although there is an obligation to update customer due diligence based on the risk profile of the customer and in certain other circumstances, there is no specified frequency of updating beneficial ownership information. This may lead to situations where the available beneficial ownership information is not up to date.	Poland is recommended to ensure that, in all cases, up-to-date beneficial ownership information for all bank accounts is available in line with the standard.

Practical Implementation of the Standard: The assessment team is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

A.3.1. Record-keeping requirements

213. The Banking Act (BA) 1997 regulates banks in Poland, detailing the principles of conducting banking activity, establishment and organisation of banks, branches and agencies of foreign banks and branches of foreign credit institutions (Art. 1). The Polish Financial Supervision Authority (PFSA) licenses banks. The PFSA also monitors and supervises the operations of banks.

Availability of banking information

214. Banks are subject to the accounting requirements as explained under A.2 and must keep proper accounting records that show and explain their transactions. The process of account opening must include a contract in writing between the bank and the customer, specifying, among other things, the parties, the kind of account opened, the contract duration, and the conditions and procedure for amending the contract (BA, Art. 52).

215. In addition, under the AML/CFT Act, all banks are subject to AML obligations as obliged institutions. In fulfilment of these obligations, banks are required to carry out CDD measures identifying and verifying the client's identity, the beneficial owners (see below) and obtain information regarding the purpose and nature of the economic relationship and, ongoing monitoring of the business relationships of the customer (Art. 34 of the AML/CFT Act).

216. For purposes of the identification and verification of a legal person, the obliged institution must obtain: i) name, ii) organisational form, iii) address of the registered office or address of pursuing the activity, iv) TIN, and in the case of a lack of such a number, the state of registration, the commercial register as well as the number and date of registration, v) identification data of a person representing such entity.

217. Banks are also required to monitor constantly the current economic relationship with a client. This duty includes the surveying of all transactions carried out as well as, if possible, surveying the origins of assets, and constantly updating documents and information in possession of the bank (Art. 34 §1(4) of the AML/CFT Act).

218. Further, banks are obliged to register one-off transactions of the equivalent of more than EUR 15 000, regardless of whether the transaction is carried out as a single operation or as several operations if the circumstances indicate linkages (Art. 35 of the AML/CFT Act). When such one-off transactions are carried out with a client with whom the bank has not previously concluded any agreements, the bank must apply customer due diligence measures. If a bank is not able to perform its identification duties, it may not conclude any contract with the client, nor conduct transactions (Art. 41 of the AML/CFT Act).

219. Executed transactions whose value exceed EUR 15 000 are reported to GIFI within seven days of their occurrence. The information submitted includes, available identification data, transaction type, amount and currency and the numbers of accounts used to perform the transaction designated by the International Bank Account Number (IBAN).

220. Banks must keep records of all conducted transactions including records of CDD measures carried for at least five years commencing from the first day of the year in which the given relationship with a customer was terminated or from the day when an occasional transaction was carried out (Art. 49 of the AML/CFT Act).

221. The 2015 Report further determined that although Poland had abolished anonymous accounts, not all anonymous accounts had been converted by the due date of 22 October 2010. The report established that any owners of former anonymous accounts could claim their funds back indefinitely by presenting to the bank an identity card together with evidence of the ownership of the account. This would lead to the possibility of a physical transfer of the evidence of ownership of the account by the holder without getting the transfer recorded in the bank records. In such a scenario, only the owner that claims the money would be the person captured by the current CDD measures applied by banks. The Polish authorities are unable to confirm whether the amount of funds deposited in these accounts as approximated in the 2015 Report to be EUR 4 000 000 has changed. Even though the amount in

question is minimal, Poland should ensure that information on the beneficial owners of these accounts is available (See Annex 1).

Beneficial ownership information on account holders

222. The standard was strengthened in 2016 to specifically require that beneficial ownership information be available in respect of all account holders who have accounts with banks in a jurisdiction.

223. As explained under Element A.1 with regard to the availability of beneficial ownership information, the AML/CFT Act requires all AML-obliged institutions to ensure that beneficial ownership information is obtained, verified and maintained. Banks constitute AML-obliged institutions (Art. 2 of the AML/CFT Act). Accordingly, they are required to maintain, verify and update beneficial ownership information on the accounts of their clients (Art. 35 of the AML/CFT Act).

224. When a beneficial owner is determined, the banks must take additional steps to verify the identity of the beneficial owner. As explained at paragraph 107, the verification of the identity of the beneficial owner has to be carried out before the establishment of the business relationship or performing an occasional transaction, unless it is deemed necessary to ensure adequate conduct of activities and where the money laundering risk is considered low. Where the latter happens, the verification may be done during the course of the business relationship and must take place immediately after commencement of the business relationship.

225. If the obliged institution determines that the legal person presents a higher level of risk, enhanced CDD is carried out (Art. 43).

226. The AML/CFT Act also includes provisions regarding introduced business. Article 47 of the AML/CFT Act permits AML-obliged institutions to rely on the CDD conducted by third parties while the responsibility for the sufficiency of the CDD measures remains at the AML-obliged person. Additionally, reliance is only permitted if the AML-obliged person without delay receives the information, which resulted from the CDD measures of the third party, including customer identification, beneficial owners and the purpose and nature of the business relationship. The third party needs to be subject to equivalent regulation on CDD, record-keeping and supervision as stipulated under the AML/CFT Act and cannot be resident in a country which has been identified as a high-risk country by the European Commission (Art. 47 of the AML/CFT Act).

227. The bank must keep CDD records for five years starting from the date of termination of a business relationship or from the date of an occasional transaction. The bank is also required to keep the process of CDD

analysis taking into account the level of identified risk for five years counting from the date of their performance (AML/CFT Act, Art. 49). Further, before the five-year period elapses, the GIFI may require a bank or any other obliged institution to keep the documentation regarding CDD measures for an additional period of maximum five years. In the event of liquidation, merger, demerger or transformation of an obliged institution, the provisions of Act on Accounting as discussed at paragraph 196 take effect.

228. As noted at paragraphs 110 and 111, while there is an obligation to update CDD based on the risk profile of the customer and in certain other circumstances, there is no requirement in the AML law providing for a specified frequency for banks to update beneficial ownership information. This could lead to situations where the beneficial ownership information on accounts is out dated. **Poland is recommended to ensure that in all cases, up-to-date beneficial ownership information for all bank accounts is available in line with the standard**.

229. As noted in paragraph 91, Poland provided guidance to AML-obliged institutions that while identifying beneficial owners of legal persons, they should also identify natural persons who may exert control through other means on legal persons. The practical implementation of this guidance will be examined in the Phase 2 review (see Annex 1). In respect of foreign foundations that hold bank accounts in Poland, the identification of the beneficial owners of such accounts will be examined in the Phase 2 review (see Annex 1). Further, in respect of accounts held by legal arrangements other than trusts, the application of the definition of beneficial owners in practice will be examined during the Phase 2 review (see Annex 1).

Oversight and enforcement

230. The enforcement provisions described in section A.1.1 (paragraphs 115 to 120) apply to the monitoring of banks' due diligence obligations and sanctions apply in the event of non-compliance with these obligations. Banks' implementation of their AML/CFT obligations is overseen by the GIFI and PFSA.

Availability of banking information in EOI practice

231. Initial peer input indicated that whenever banking information was requested from Poland in the last few years, peers were generally satisfied with the quality of the responses. The implementation in practice and the application of the enforcement and oversight measures contained in the legal requirements relating to the availability of banking information will be assessed during the Phase 2 review.

Part B: Access to information

232. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information, and whether rights and safeguards are compatible with effective EOI.

B.1. Competent authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

233. The 2015 Report concluded that the Competent Authority in Poland has broad access powers to obtain all types of relevant information, including ownership, accounting and banking information from any person, in order to comply with obligations under Poland's EOI instruments. These access powers can be used regardless of domestic tax interest. In case of failure on the part of the information holder to provide the requested information, the Competent Authority has adequate powers to compel the production of information.

234. However, an issue was identified in 2015 and remains today regarding secrecy provisions contained in Poland's law. The ability of the Polish tax authority to obtain information held by tax advisors that are covered by professional secrecy is restricted to specific scenarios including criminal cases. This restriction is not compatible with the standard, even though in practice it has not prevented an effective exchange of information. Poland should align its legislation with the standard.

235. For the years 2018 to 2020, there was no case where Poland was unable to provide requested information due to an inability of the Competent Authority to access information or to exercise its access powers.

236. The conclusions are as follows:

Legal and Regulatory Framework: in place

Deficiencies identified/ Underlying factor	Recommendations
Professional privilege is extended to tax advisors under Poland's domestic law, which is not in accordance with the standard. This privilege cannot be invoked in criminal matters, under AML law, under mandatory disclosure targeting tax schemes, or when summoned by a court as witnesses. These exclusions and the availability of such information from other sources limit the materiality of the gap.	Poland is recommended to ensure that the scope of professional privilege is in line with the standard.

Practical Implementation of the Standard: The assessment team is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

B.1.1. Ownership, identity and banking information

237. The Head of the NRA is Poland's Competent Authority for international exchange of information in application of EOI instruments. The head has delegated the operations role of the Competent Authority to the Tax Information Exchange Office (TIEO) within the NRA.

238. The TIEO accesses and utilises information that already exists in the tax systems of the NRA. Other information requested through EOIR is collected by the TIEO either directly or with the assistance of the local tax offices of the NRA.

Accessing information generally

239. The NRA has sufficiently broad access powers to access all information necessary to respond to a valid EOI request, as discussed in the 2015 Report (see paragraphs 209-213). The NRA's statutory powers apply irrespective from whom the information is to be obtained (taxpayer or third party) or the nature of the information sought. Since the 2015 Report, Poland has introduced the EOI Act in 2017 which grants comprehensive powers to the Competent Authority to access all types of information for the purposes of EOI. This Act complements the already existing powers of the Competent Authority under Tax Ordinance Act 1997, which was discussed in the 2015 Report.

240. As noted in the 2015 Report, the TOA provides that, on request from the tax authority, legal persons, organisational units having no legal personality and natural persons carrying on economic activity must collate and furnish (to the tax authority) information on events which may have an influence upon a tax liability. This includes persons who concluded contracts that may affect the amount of tax obligation of another person (TOA, Art. 82).

241. Further, under the 2017 EOI Act, Article 3 permits the Competent Authority to receive and use tax information in accordance with the provisions of ratified international agreements (EOI, Art. 3). In addition, written orders can be sent to public institutions and financial institutions (Article 4 of the EOI Act).

242. Public administration bodies and financial institutions specified in Article 182 of the TOA, such as banks, insurance companies or investment funds at the written request of the NRA, are required to provide information called for by the Competent Authority. This obligation also applies to the obliged institutions listed in Article 2 clause 1 of the AML/CFT Act (EOI Act, Art. 4)

243. When information is not readily available in the tax systems or the requested information is not banking records and the taxpayer or information holder has not responded to a written order, the local tax offices may carry out a "tax control"[26] or take further measures if necessary (such as initiating a "tax proceeding")[27] in order to obtain the requested information. Tax proceedings, as well as control, may relate to any tax and issue pertaining to any person or entity. Such proceedings are normally concluded with a final decision of the tax authority to assess the tax liability, in which case another tax control may not normally be initiated again on the same case (Art. 282a of the TOA). Tax control and tax proceeding can be reopened if new facts are established (Art. 240 and 282a of the TOA).

244. Finally, the NRA has additional powers to make inquiries, inspect documents and carry out a search and seizure (see B.1.4).

245. The most commonly used information-gathering powers for answering EOI requests are written orders to the information holder to provide

26. The purpose of a tax control is to check whether the controlled entity complies with the obligations arising from the provisions of the tax law. As part of a tax control, the authority may verify the correctness of settlements in terms of each tax and each issue that affects the taxpayer's tax obligations. The tax office conducting the inspection has a wide range of powers, e.g. to demand explanations or documents, questioning witnesses.

27. Tax proceedings may be conducted at the taxpayer's request (e.g. in connection with an application for overpayment) or ex officio.

explanations or submit documents, demanding documents from a taxpayer's business partner and the information available to the tax authorities in the tax and other government databases (as explained at paragraphs 241 and 242).

Accessing beneficial ownership information

246. The TIEO's access powers are used for all types of information, including beneficial ownership information. Additionally, the TIEO can access information contained in the public Central Register of Beneficial Owners.

247. The AML/CFT Act places confidentiality obligations on obliged institutions with exceptions regarding sharing information with relevant Competent Authorities. The NRA is among the Competent Authorities listed in the AML/CFT Act to whom obliged institutions can supply CDD information (AML/CFT Act, Art. 54). Similarly, the EOI Act provides that "in order to perform the tasks related to the exchange of tax information, the [obliged institutions listed in AML/CFT Act], at the written request of the [Competent Authority], shall make available information collected to perform obligations related to the application of customer due diligence measures specified in that act" (Art. 4(1a)).

248. The practical implementation of the NRA's access powers with regard to beneficial ownership information will be assessed during the Phase 2 review.

Accessing banking information

249. The TIEO can access banking information by either using a written request from the authorised person in the NRA to the bank or by the local tax offices requesting the taxpayer for their banking information during tax controls and tax proceedings. Poland's access powers override any banking secrecy provisions in law and the framework is unchanged since the 2015 Report (See paragraphs 235-238).

250. When the information requested is solely banking information, the TIEO always seeks to obtain it directly from the financial institution. An authorised representative of the Minister in charge of public finance or a representative of the head of the NRA issues a notice of request to the bank in order to fulfil Poland's obligations under ratified international agreements (EOI Act, Art. 4).

251. On the other hand, if the banking information requested is part of a wider request for information from a treaty partner, banking information may be obtained by a local tax authority in the course of conducted tax

proceedings or tax audits. If the taxpayer cannot furnish this information, then a request is made to the bank.

252. If the requesting jurisdiction specifies that the taxpayer should not be informed of a request for banking information, then the information is collected by the TIEO directly from the bank without the need for a notification.

253. There were no issues raised by peers concerning Poland's ability to obtain banking information pursuant to EOI requests in practice.

B.1.2. Accounting records

254. The powers described under B.1.1 can be used to obtain accounting records. On the basis of Article 82 of the TOA, Polish authorities can require accounting and underlying documentation directly upon written notice from taxpayers and third party information holders.

255. Additionally, the tax authorities may also obtain information upon initiation of tax proceedings as earlier discussed at paragraph 243. This would also include accounting information and underlying documents.

256. There were no issues raised by peers concerning Poland's ability to obtain accounting information pursuant to EOI requests in practice.

B.1.3. Use of information gathering measures absent domestic tax interest

257. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. The NRA's access powers may be used for EOI purposes regardless of domestic tax interest as obligations under international treaties represent one of the purposes for which access powers are granted under the TOA and EOI Act. The TOA states that its provisions apply to cases of "provisions of tax law" belonging to the competence of the tax authorities. "Provisions of tax law" is defined to specifically include the provisions of any tax-related agreement ratified by Poland (TOA, Art. 2 and 3), which includes all the types of EOI instruments analysed under C.1 below. Further, the EOI Act mandates the Competent Authority to exchange information as long as it falls within the scope of an international agreement ratified by Poland.

258. Moreover, whenever tax control is necessary to obtain information to respond to an EOI request, Polish authorities have submitted that when serving the notice for its commencement, the tax authorities will designate a domestic tax procedure as the subject of acquiring additional information although this does not imply that Poland has domestic tax interest.

259. Poland has submitted that for the years 2018 to 2020, 262 of incoming EOI requests sought information (mainly banking information) in which Poland had no domestic tax interest. There has been no case where the domestic tax interest prevented accessing and providing the requested information and no peer has raised any adverse comments in respect to the matter.

B.1.4. Effective enforcement provisions to compel the production of information

260. Poland has in place effective enforcement provisions to compel the production of information (see 2015 Report paragraphs 250-255). Failure to provide information or answers can be sanctioned administratively. Article 80 of the Penal Fiscal Code establishes general penalties of a fine amounting to 120 times a daily unit for a party who fails to submit the required information within the stipulated timelines. In setting the daily unit, the court considers the offender's income, personal situation, family situation, material wealth and earning potential.

261. Further, anyone who prevents from or obstructs the execution of official duties by a person authorised to conduct inspections, tax control, treasury control or control activities within the scope of special tax supervision is subject to a penalty of up to 720 daily units (that is, PLN 16 128 000 or approximately EUR 3.4 million).

262. The NRA may also enforce a tax control by resorting to the Police, Frontier Guard or the city (*gmina*) guard in case it encounters resistance (TOA, Art. 286a). Search and seizure is upon consent by a prosecutor and with the assistance of the Police where necessary (TOA, Art. 288). Poland authorities have indicated that with respect to search and seizure, the tax authorities rely on co-operation with other authorities such as Police and the prosecutor.

263. For the years 2018 to 2020, Poland did not need to apply penalties in order to obtain the information as this was provided when requested.

B.1.5. Secrecy provisions

Bank secrecy

264. Bank secrecy requirements are set out under the Banking Law Act (BA) requiring any person who in their capacity and performance of their duties comes across banking information to preserve its secrecy (BA, Art. 104). However as discussed in the 2015 Report, the Banking law provides exclusions to bank secrecy including the Head of the NRA to the extent to fulfil their obligations under the Tax Ordinance Act (BA, Art 105 §1(1)(f)). These provisions remain the same to date.

265. The Polish authorities have stated that in some cases, banks have brought up bank secrecy as an argument for refusal to provide requested information. Nonetheless, in all such cases, the banks have been presented with satisfactory explanations of legal provisions and the requested information was eventually provided. No peer has raised a concern in regard to bank secrecy.

Professional secrecy

266. The 2015 Report concluded that most secrecy provisions in Poland's laws were in line with the standard except the provision regarding tax advisory services. It was determined that tax advisors, as well as individuals employed by a tax advisor, are required to maintain professional secrecy with respect to all facts and information of which they have become aware in connection with providing professional tax advisory services (Act on Tax Advisory Service, Art. 37§1).

267. However, this secrecy is not absolute. It cannot be invoked in respect of information disclosed pursuant to the AML Law, in respect to criminal tax matters, under mandatory disclosure targeting tax schemes,[28] or when summoned by a court as witnesses in a criminal proceeding (Act on Tax Advisory Services, Art. 37§2 and Code of Criminal Proceedings, Art. 180§2).

268. Thus, the ability of the NRA to obtain information that is covered by professional secrecy from a tax advisor is restricted to scenarios listed above. This constitutes a limitation on the powers of the Polish competent authority to obtain and exchange privileged information held by tax advisors. The Polish authorities have indicated that no issues were raised with respect to professional secrecy for the years 2018 to 2020 since information has always been available with other sources. Nevertheless, **Poland is recommended to ensure that the scope of professional privilege is in line with the standard**.

B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

269. The 2015 Report established that there were no prior and post-exchange notification requirements and that there were no issues arising from appeal rights. The legal and regulatory framework was determined to be in

28. In accordance with these legal regulations, a tax advisor is required to collect and transfer information about clients and their transactions, which are associated with an increased risk of violation of tax regulations.

place and Poland rated Compliant. There have been no relevant changes and the situation remains the same.

270. When a control[29] or tax proceeding is used to obtain information for an EOI request, taxpayers can appeal the outcomes of the audit although this has no impact on the EOI request and the taxpayers cannot access the EOI file.

271. Peer input from the current review does not indicate any cases where notification requirements or rights and safeguards that apply to a person in Poland unduly prevented or delayed effective exchange of information.

272. The conclusions are as follows:

Legal and Regulatory Framework: in place

The rights and safeguards that apply to persons in Poland are compatible with effective exchange of information.

Practical Implementation of the Standard: The assessment team is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information

273. The rights and safeguards contained in Poland's law remain compatible with effective exchange of information and their application in practice does not unduly prevent or delay exchange of information.

274. When Poland uses its powers to obtain information from its databases, the taxpayer or any other information holder as discussed under B.1, there is no obligation to notify the taxpayer neither of the request, prior nor after having sent the requested information to the requesting jurisdiction. Where a request for information is made to a third party, the TIEO must specify what information is requested from the holder, legal basis[30] for doing so, method of delivery and legal consequences for non-compliance. The TIEO is not required to provide reasoning for the request prior to or after the exchange of information, nor do they do this in practice.

29. Controls are carried out in the name of the Head of the National Revenue Administration.

30. This is the Acts (EOI Act and TOA Act) from which the Competent Authority draws legal basis for requesting information and it does not mention the specific EOI arrangement with the requesting jurisdiction.

275. As earlier discussed under B.1, the NRA in some cases carries out a control or tax proceeding in order to address an information request. In such a scenario, the NRA will notify the person subject to this control of the intention to initiate the tax control (TOA, Art. 282b).The tax control is then carried out between 7 and 30 days after the notification (TOA, Art. 282b§2). There is no requirement to inform the person subject to control that such a control is carried out concerning an EOI request.

276. Exceptions to such notification are provided for in Article 282c of the TOA, which, among others, include cases where such control:

- is to be initiated on demand of the authority conducting the preparatory proceedings in the case of an offence or fiscal offence
- is related to taxation of revenues not justified by the revealed sources or revenues from unrevealed sources; or
- is related to economic activity not declared for taxation.

277. These exceptions are extensive and can be expected to cover cases where notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction even though the NRA would not have mentioned the need to answer an EOI request as part of the notification. Further, Polish authorities have submitted that, although audited entities have a right to appeal the audit outcomes of a control, this would not cover the EOI request, as the request is not included in the audit file. Accordingly, taxpayers will have no access to the EOI file.

278. In any case, it is reiterated that notification is not required if the Polish authorities use their "regular" access powers (see B.1.1), which would need to be used before carrying out a control. The Polish authorities have further argued that a control would be carried out in relation to the information holder, and not necessarily in relation to the subject of the request.

279. No peer has indicated that notification of the subject of the EOI request has been an issue.

Part C: Exchange of information

280. Sections C.1 to C.5 evaluate the effectiveness of Poland's network of EOI mechanisms. The sections evaluate whether these EOI mechanisms provide for exchange of the right scope of information, cover all of Poland's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Poland's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Poland can provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should provide for effective exchange of information.

281. The 2015 Report concluded that Poland's network of EOI relationships was in line with the standard and provided for effective exchange of information on all valid requests, resulting in a determination of the legal framework as "in place". At the time of the report, Poland's EOI network consisted of 117 jurisdictions through DTCs, TIEAs, EU instruments and the Convention on Mutual Administrative Assistance (Multilateral Convention).

282. Poland's EOI relationships have since increased to 155, of which 146 are in force owing to the growing number of parties to the Multilateral Convention and the signature of a DTC with a new partner (Ethiopia).

283. Poland's expansion of its treaty network through the Multilateral Convention has brought almost all of its EOI relationships in line with the standard. Poland has nonetheless updated existing agreements with the signature of two new DTCs to replace existing ones (with Bosnia and Herzegovina, Sri Lanka) and two protocols to existing DTCs. Additionally, Poland ratified existing TIEAS and DTCs. The additional instruments are in force except the protocols to the DTCs with Malta and Netherlands and the DTC with Malaysia (ratified by Poland only).

284. Poland's peers consider that its interpretation of foreseeable relevance is in line with the standard. This will be analysed in Phase 2 of the review.

285. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms of Poland.

Practical Implementation of the Standard: The assessment team is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

Other forms of exchange of information

286. In addition to EOIR, Poland engages in spontaneous and automatic exchange of information with all EU Member States and with other jurisdictions. Poland has implemented the Common Reporting Standards (CRS) for automatically sharing of financial account information with other CRS participating jurisdictions. Poland also has AEOI with the United States under the Poland/United States FATCA Inter Governmental Agreement. Poland also exchanges Country-by-Country Reports in line with BEPS Action 13 and spontaneously exchanges information on rulings in accordance with the BEPS Action 5 Report.

C.1.1. Standard of foreseeable relevance

287. The 2015 Report determined that Poland's DTCs concluded or amended after 2004 mostly adopted the term "foreseeably relevant''. In other cases, the DTCs used the term "necessary" or "relevant" in lieu of "foreseeably relevant" and that Poland interpreted these alternative formulations as equivalent to the term "foreseeably relevant". This position remains the same.

288. However, the 2015 Report further determined that Poland's EOI relationships with Kuwait and Pakistan were based on DTCs whose provisions did not meet the standard of foreseeable relevance. The DTC with Kuwait limits the scope of the exchange of information to the provisions of the DTC while the DTC with Pakistan limits the exchange of information to the provisions of the DTC or to cases that concern tax fraud. These EOI relationships have been rectified since the Multilateral Convention is now in force for both Kuwait and Pakistan.

289. Additionally, since the 2015 Report Poland has signed three new DTCs[31] Further, Poland has signed two new protocols to DTCs with Malta and the Netherlands. These contain the term "foreseeably relevant". The TIEAs signed by Poland generally meet the "foreseeably relevant" standard set out above and described further in the Commentary to Article 1 of the OECD Model TIEA.

Clarifications and foreseeable relevance in practice

290. Polish authorities have stated that there is no specific guidance on how to determine the foreseeable relevance of a request and that a review of each request is carried out on a case by case basis based on the information supplied by the requesting jurisdiction. Poland has further submitted that whereas it is anticipated that a request would contain taxpayer identification data, this is not essential if other information enables the identification of the taxpayer.

291. From January 2018 to December 2020, Poland declined three requests because they did not meet the foreseeable relevance criteria. In all those cases Poland asked the requesting jurisdictions for further details such as tax background and tax purpose of the request. Information required was not provided and hence the requests were declined.

292. The peer input received when preparing the current review did not raise any specific concern on the interpretation of the criteria of foreseeable relevance by Poland although one peer indicated that Poland requested for several clarifications but was still able to provide complete responses in a timely manner.

293. The practical application of the foreseeable relevance standard in Poland's exchange of information practice will be evaluated in the Phase 2 review (see Annex 1).

Group requests

294. Poland's EOI agreements and domestic law do not contain language prohibiting group requests. Poland interprets them as allowing the provision of information requested pursuant to group requests in line with Article 26 of the Model Tax Convention and its commentaries.

295. Poland did not receive any group requests for the years 2018 to 2020.

296. The practical aspects of responding to group requests will be examined in the course of Poland's Phase 2 review.

31. Bosnia and Herzegovina, Ethiopia and Sri Lanka.

C.1.2. Provide for exchange of information in respect of all persons

297. The 2015 Report concluded that Poland's DTCs with 29[32] jurisdictions limited the application of the treaty to residents of contracting states. Some of the jurisdictions were already party to the Multi-lateral Convention or have become party since 2015. EOI agreements entered into since the 2015 Report allow for EOI with respect to all persons.

298. There are three[33] EOI bilateral agreements that are not supported by any multilateral mechanism and restrict exchange of information to residents of contracting states. Nevertheless, the DTCs also provide for the exchange of information as is necessary for carrying out the provisions of the domestic laws of the Contracting States and they cover all direct taxes on incomes of natural and non-natural persons. Further, the domestic laws cover incomes of non-resident persons who derive income locally. Thus, if a party requests information in relation to a taxpayer that is not a resident, the request would still be valid as it is necessary for carrying out the provisions of the domestic law.

299. No issues restricting exchange of information in respect to residence or nationality have been reported by Poland's peers.

C.1.3. Obligation to exchange all types of information

300. Exchange of information mechanisms should not permit the requested jurisdiction to decline to supply information solely because a financial institution, nominee or person acting in an agency or a fiduciary capacity holds the information or because it relates to ownership interests in a person.

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32. The DTCs with Azerbaijan, Belarus, Bosnia and Herzegovina, Cyprus, North Macedonia, France, Greece, India, Israel, Japan, Kuwait, Malaysia, Montenegro, Morocco, Pakistan, Philippines, Russia, Singapore, Spain, Sri Lanka, Thailand, Tunisia, Türkiye, Ukraine, United Arab Emirates, United States, Uzbekistan, Zambia, Zimbabwe.

    Note by the Republic of Türkiye: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue".

    Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

33. Belarus, Uzbekistan, Zimbabwe.

301. The 2015 Report determined that some of Poland's agreements did not contain a provision corresponding to Article 26(5) of the OECD Model Tax Convention. Nevertheless, this absence did not automatically create restrictions on the exchange of information held by banks, other financial institutions, nominees, agents and fiduciaries, as well as ownership information. Poland's domestic laws allow it to access and exchange information even in the absence of such provision in the DTCs.

302. The 2015 Report further identified that Poland's DTCs with Austria and Lebanon contained restrictions to accessing bank information. By that time, the Multilateral Convention was in force in both Poland and Austria and since then, the convention is in force for Lebanon. Therefore, Poland's EOI relations with Austria and Lebanon are sufficient based on the Multilateral Convention.

303. All TIEAs concluded by Poland include a provision that reflects Article 5(4) of the OECD Model TIEA, providing for the exchange of information held by banks, other financial institutions, nominees, agents, fiduciaries, as well as ownership and identity information.

304. Polish authorities have reported that, Poland has never declined a request because a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity held the information or because the information related to an ownership interest. No peer has raised negative input with respect to this matter.

C.1.4. Absence of domestic tax interest

305. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the standard.

306. No domestic tax interest restrictions exist in Poland's laws even in the absence of a provision corresponding with Article 26(4) of the OECD Model Tax Convention. The 2015 Report established that only 23[34] of Poland's DTCs contained wording akin to paragraph 4 of Article 26 obliging the contracting parties to use information-gathering measures to exchange requested information without regard to any domestic tax interest. However, the absence of this provision in other DTCs did not necessarily create any restrictions

34. Belgium, Bosnia and Herzegovina, Canada, Cyprus, Czech Republic, Denmark, Finland, Iceland, India, Luxembourg, Malta, Malaysia, New Zealand, Norway, Saudi Arabia, Slovak Republic, Singapore, Korea, Sweden, Switzerland, United Arab Emirates, the United Kingdom, and the United States.

on exchange of information. Nevertheless, Poland was recommended to continue its efforts to monitor the effectiveness of the exchange of information with its treaty partners and if necessary renegotiate older treaties. Since this report, Poland has updated and renewed a number of its treaties, and its treaty network has been substantially updated as a result of many more treaty partners becoming parties to the Multilateral Convention (see Element C.1.1). Although, nine older treaties not supplemented by a multilateral or regional mechanisms are still deficient (See EOI mechanisms table at paragraph 310), Polish authorities have reported that Poland has never declined a request because of a lack of domestic tax interest.

C.1.5. and C.1.6 Civil and criminal tax matters

307. Poland's network of agreements provide for exchange in both civil and criminal matters, with no dual criminality restriction. Poland has provided information in both civil and criminal matters.

C.1.7. Provide information in specific form requested

308. Poland's network of agreements have no restrictions that would prevent it from providing information in a specific form. Further, no peers have raised any issue with respect to this aspect.

C.1.8 and C.1.9. Signed agreements should be in force and be given effect through domestic law

309. The 2015 Report determined that out of the 99 bilateral agreements concluded by Poland, 18 were not yet in force. Four[35] of the DTCs had been signed ten years before or more and hence ratification was no longer pursued. The other 14 agreements have since been ratified by Poland. Additionally, Poland has concluded two[36] protocols to existing DTCs that are currently undergoing the process of ratification. Polish authorities have submitted that the requisite process for ratification is already underway with the relevant parliamentary committees.

310. The old agreements where ratification is no longer pursued have been removed bringing the current total of bilateral EOI mechanisms to 92. Out of these 92, 10 are with jurisdictions that are not parties to the Multilateral Convention.

35. Algeria, Nigeria, Uruguay and Zambia.
36. The Netherlands (protocol to DTC), Malta (protocol to DTC).

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	155
In force	146
In line with the standard	137
Not in line with the standard	9[37]
Signed but not in force	9
In line with the standard	7
Not in line with the standard	2
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	10
In force	10
In line with the standard	1 (Ethiopia)
Not in line with the standard	9[38]
Signed but not in force	0
In line with the standard	0
Not in line with the standard	0

C.2. Exchange of information mechanisms with all relevant partners

The jurisdiction's network of information exchange should cover all relevant partners, meaning those jurisdictions who are interested in entering into an information exchange arrangement.

311. The 2015 Report found Poland's EOI network was in place and rated as Compliant. Poland was recommended to continue to develop its EOI network with all relevant partners. Since then, Poland's treaty network has expanded from 117 to 155 jurisdictions, mainly owing to new jurisdictions joining the Multilateral Convention. This EOI network encompasses a wide range of counterparties, including all major trading partners, all G20 members and all OECD members. The standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationships. Poland has reported to have been approached by a peer to negotiate a TIEA but decided not to pursue this request. As a result, there is no EOI relationship between Poland and this other member of the Global Forum, in contradiction with Element C.2 of the standard. While it is accepted that a jurisdiction is free to accept or refuse to sign a DTC because it involves elements much broader than EOIR, this is not the case for a TIEA since there are no economical or tax consequences.

37. Bangladesh, Belarus, Iran, Kyrgyzstan, Syrian Arab Republic, Tajikistan, Uzbekistan, Viet Nam, Zimbabwe.

38. Bangladesh, Belarus, Iran, Kyrgyzstan, Syrian Arab Republic, Tajikistan, Uzbekistan, Viet Nam, Zimbabwe.

312. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/ Underlying factor	Recommendations
Poland was approached by an interested partner to negotiate a Tax Information Exchange Agreement but Poland did not take forward this request. Therefore, there is no EOI relationship between Poland and this peer.	Poland is recommended to ensure that its EOI treaty network covers all relevant partners, including those jurisdictions that are interested in entering into an information exchange arrangement.

Practical Implementation of the Standard: The assessment team is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.3. Confidentiality

The jurisdiction's information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received.

313. The 2015 Report concluded that the confidentiality provisions in Poland's EOI instruments and domestic laws taken together with the statutory rules that apply to officials with access to treaty information in Poland regarding confidentiality were in line with the standard. All the new EOI mechanisms entered into by Poland subsequent to this Report are also in line with the standard.

314. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms and legislation of Poland concerning confidentiality.

Practical Implementation of the Standard: The assessment team is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.3.1. Information received: disclosure, use and safeguards

315. All of the agreements for the exchange of information concluded by Poland contain a provision ensuring the confidentiality of information exchanged and limiting the disclosure and use of information received. Further, the confidentiality provisions of Poland's information exchange agreements can be applied directly according to Article 91 of the Constitution.

316. General confidentiality provisions in Poland's domestic legislation complement the provisions in the international agreements. The Tax Ordinance Act (TOA) provides that information received by tax authorities constitutes a fiscal secret (TOA, Art. 293). Fiscal secrecy applies indefinitely to, among others, tax officials and other persons to whom the information under fiscal secrecy was made available. Undue disclosure of information regarded as a fiscal secret constitutes criminal liability, punished with imprisonment up to five years (TOA, Art. 306).

317. Information subject to fiscal secrecy may be made accessible to limited number of persons including the General Inspector of Financial Information (GIFI), courts or public prosecutors and the commissioner of civil rights protection during proceedings in administrative court. As discussed in the 2015 Report, the TOA provides that information received from tax information exchange with other states[39] can be made available for determination of tax bases with regard to the provisions of the international agreement and that provision of access to such information for other purposes requires the consent of the supplying state (TOA, Art. 297a).

318. The Terms of Reference to the review, as amended in 2016, clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies. This is the case where the EOI agreement provides that the information may be used for such other purposes under the laws of both contracting parties (e.g. as provided for by the Multilateral Convention) and the competent authority supplying the information authorises the use of information for purposes other than tax purposes.

319. Poland reported that where there is need, it has requested and obtained the approval of its partners to use information received for non-tax purposes. Similarly, Poland has granted the same approval when requested by its partners.

320. Poland's internal policies and procedures set out comprehensive obligations to protect the confidentiality of received information. The TIEO maintains an electronic database where information on EOI requests is stored. Access to the database is only granted to authorised case officers and team

39. Interpreted to include States and Territories.

leaders. Each EOI case entered can only be modified by the assigned case officer. Additionally, the TIEO implements a clean desk policy ensuring that EOI requests received in hard copy are entered into the electronic database and physical copies locked away securely within the premises of the TIEO.

321. Further, the TOA requires that all treaty exchanged records and documents are marked with the clause, "Fiscal Secret" and managed in accordance with procedures for no-public information marked as "confidential" (TOA, Art. 297a §4). Polish authorities have submitted that transmission of EOI information to tax units is mainly done electronically and that the emails sent are annotated with wording to the effect that information was received under the provisions of international law governing the exchange of information in tax matters. It may be used and disclosed only under the terms of those laws. An analysis of whether this and any related mechanisms in practice ensure protection of treaty exchanged information from comingling with other information or any inappropriate use will be considered in the Phase 2 review (See Annex 1).

322. Duties and responsibilities of employees in the field of confidentiality and data protection are stated in the relevant Information Security Policy adopted by the Ministry of Finance. All employees must acknowledge in writing that they have studied and understood their obligations under this policy. Further, all new employees must sign a declaration that they understand their confidentiality obligations and a promise to respect fiscal secrecy. All contractors must also sign a confidentiality clause as part of their contracts.

323. Poland's departure policies also ensure that in the case of employee departure, both electronic and physical access authorisations are immediately revoked. Former employees and contractors are required to maintain fiscal secrecy indefinitely.

C.3.2. Confidentiality of other information

324. With respect to obtaining EOIR information using tax control, Poland has reported that the person subject to the control must receive information on the reason and content of the audit. Polish authorities have further submitted that when carrying out a control to collect information for EOI purposes, there is no indication that the control is carried out on the basis of a foreign request as discussed under B.2. At the end of a tax control, the tax office must issue a decision, which can be appealed, although not in a way that would prevent the exchange of the information (see B.2 above). The Polish authorities have indicated that audit files do not contain the EOI request, and the taxpayer would not be able to access the EOI request when appealing the decision following a tax control.

325. Further, in order to obtain banking information, which can be requested from banks only after the tax office has contacted the taxpayer, the tax office must indicate the prerequisites[40] justifying the necessity to obtain information covered by the request and evidence that the account-holder refused to provide the information or to provide the authorisation (TOA, Art. 184). The requests for banking information are considered as "fiscal secret" and marked with the clause, "classified". In the scenario where TIEO requests banking information directly from the bank (see paragraphs 250 and 252), then such justification is not required.

Confidentiality in practice

326. The practical implementation of confidentiality provisions will be assessed in the Phase 2 review.

C.4. Rights and safeguards of taxpayers and third parties

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

327. The standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other legitimate secret arises. The Multilateral Convention and Poland's DTCs and TIEAs provide for exceptions to the requirement to provide information that mirror those provided for under the standard.

328. The EOI Act provides that the Competent Authority is prohibited to provide tax information to the competent authority of another EU Member State where the provision of tax information would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process or information that is contrary to public policy (*ordre public*) (Art. 13).

329. Communication between an attorney or other legal representative and a client is privileged, but only to the extent that the attorney or other legal representative was acting in his or her capacity as an attorney or other legal representative. Further, this secrecy does not apply to information made available based on the AML/CFT Act or information provided under

40. The notice to the bank details the unsuccessful efforts undertaken by the provincial tax office to obtain banking information/authorisation from a taxpayer. It details specific actions demonstrating that a taxpayer refused to provide information or failed to provide information within specified deadline or did not authorise the tax office to obtain information themselves. The notice does not make reference to an EOI request.

mandatory disclosure rules during trial. This protection of the rights and safeguards of taxpayers and third parties is in accordance with the standard and does not inhibit access for EOI purposes.

330. However, as determined in the 2015 Report, and as discussed at paragraphs 266 to268, professional privilege extended to tax advisors under Poland's domestic law is not in line with the standard. **Poland is recommended to ensure that the scope of professional privilege is in line with the standard**.

331. The conclusions are as follows:

Legal and Regulatory Framework: in place

Deficiencies identified/ Underlying factor	Recommendations
Professional privilege is extended to tax advisors under Poland's domestic law, which is not in accordance with the standard. This privilege cannot be invoked in criminal matters, under AML law, under mandatory disclosure targeting tax schemes, or when summoned by a court as witnesses. These exclusions and the availability of such information from other sources limit the materiality of the gap.	Poland is recommended to ensure that the scope of professional privilege is in line with the standard.

Practical Implementation of the Standard: The assessment team is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

332. The 2015 Report determined that Poland has appropriate organisational processes and resources in place to ensure quality of requests. However, the TIEO did not require updates from provincial offices (tax chambers) in case a request could not be fulfilled within 90 days and as such, no status updates were provided to treaty partners when information could not be provided within 90 days unless they were requested for by a treaty partner.

333. The implementation of this aspect of the standard is primarily based on practice and will be assessed in the Phase 2 review of Poland with a new review period.

334. The conclusions are as follows:

Legal and Regulatory Framework

This element involves issues of practice. Accordingly, no determination has been made.

Practical Implementation of the Standard: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

The Phase 2 recommendations issued in the 2015 Report are reproduced below for the reader's information.

Deficiencies identified/ Underlying factor	Recommendations
Where a final response is not given within 90 days, the competent authority does generally not provide a status update, unless requested by the foreign partner. Status updates are not provided mainly because of an organisational issue.	Poland should establish a routine process to update requesting authorities on the status of their requests where the response takes more than 90 days.

C.5.1. Timeliness of responses to requests for information

335. From January 2018 to December 2020, Poland received 1 428 requests for information and its main partners were France, Germany, Latvia, Norway and Ukraine. Poland counts each request letter to constitute one request regardless of the number of taxpayers and if a request is not yet fully answered, any further related requests are processed within the same case. Most information requests sought accounting information, ownership and banking information. Requests largely covered companies and partnerships.

336. Cumulatively, Poland responded to 65% of the requests within 90 days. Further, in 88% of the cases, information was provided within 180 days while information was provided within one year in 97% of the cases. Information has not yet been provided in only 0.4% of the cases.

337. In comparison to the 2015 Report, there is improvement in the response time across all the parameters explained at paragraph 336. In the 2015 Report, Poland had responded to 61% of the cases in 90 days, 79% within 180 days and 92% within one year while 1% of the cases remained unanswered.

338. Polish authorities have submitted that where there was a delay in responding to requests, this was mainly due to the process of gathering and putting together information held by taxpayers in complex cases such as transfer pricing.

339. Further, Poland sought clarification in 85 cases. This was mainly due to gaps relating to the background of the requests or where insufficient information was provided in the request (see C.1.1). There was no instance where Poland has failed to provide information.

340. Poland has reported that three requests were declined. For two of the requests, the foreseeable relevance of the requested information could not be demonstrated (see C.1.1) while the other case was a VAT case that was out of scope of the cited legal basis.

Status updates and communication with partners

341. Poland sent status updates to its peers in 38% of the cases in instances where a request for information was not provided within 90 days. There is a slight improvement in comparison with the 2015 Report where Poland did not send status updates unless requested by peers. Nonetheless, status updates were sent in a small number of cases.

342. To address this issue highlighted in the 2015 Report, Poland has indicated that each month, an up-to-date list of pending requests is sent by the TIEO to the local authorities to remind them of all open cases. At the same time, local authorities are asked to send available information on cases nearing the 90-day window. In such an update, the local tax office provides information on the stage of data gathering process. Partial response is then provided to the treaty partner where applicable. The EOI electronic system is programmed to monitor the status of all cases and provide relevant statistics and the obligation to send status updates before the 90 days elapse has been included in the EOI guidelines. Status updates are provided via a standard electronic form, letter or e-mail. The practical application of these new measures of automatically monitoring requests and ensuring that partial responses or status updates are sent out within the 90 day window as required under the standard will be further explored during Phase 2 review (see Annex 1).

343. Poland has initiated a process to seek feedback on all responses to treaty partners. This is incorporated in the EOI guidelines. Poland has reported that so far, feedback has been received from peers in 79 cases where peers provided response on the usefulness of information received or where outstanding pieces of information were pointed out.

C.5.2. Organisational processes and resources

Organisation of the competent authority

344. The Minister of Finance or its authorised representative, being the Head of the NRA, is the competent authority for exchange of information. The day-to-day activities of the exchange of information office are performed by the TIEO located in the structure of the Revenue Administration Regional Office in Poznań.

345. The TIEO consists of seven teams including four of them dealing with exchange of tax information based on Council Directive 2011/16/EU, Multilateral Convention, DTCs, TIEAs and Council Regulation 904/2010 on administrative co-operation and combating fraud in the field of value added tax. Three other teams deal with mutual assistance for the recovery of claims, confirmation of EU-VAT numbers validity and VAT analysis.

346. Information on the officials competent in the scope of mutual assistance is available on the Global Forum Competent Authorities secure database and is clearly identifiable to EOI partners. Effective operating procedures are established with significant partners, including e-mail correspondence and telephone conversations if needed.

347. As explained in the 2015 Report (paragraphs 359 to 362), exchange of information in practice is organised on three levels – central, provincial and local. At the central level, the TIEO is responsible for communication between the competent authorities as well as for the administration of the gathering of the requested information. At provincial level, tax chambers form the second level of the EOI process. They are mandated with contacting the local tax offices. The local tax offices that form the last level of the process collect information from information holders in their jurisdiction.

348. The TIEO gathers information readily available to it and directly collects banking information. In other cases, the TIEO contacts the tax chambers (provincial offices) who in turn contact the local offices to collect the required information. Communication flow is via the "contact persons". In each tax chamber, there are two contact persons responsible to communicate with the TIEO and with the relevant tax office. The tax office also has two contact persons, specialised in EOI, to communicate with the tax chamber.

Resources and training

349. Poland has indicated that on average 12 staff members deal with exchange of information within the scope of this review. The staff members have university diplomas, covering law, economics, administration or foreign language studies. The EOI team is trained in domestic and international tax systems and tax procedures.

350. All TIEO staff are provided with the requisite training in EOI. Training methods put emphasis on practical exchanges of skills and knowledge. Further, TIEO staff actively participate in external trainings such as those organised for Global Forum members.

351. An assigned trainer with extensive knowledge of EOI comprehensively trains each new staff member. The trainer serves as a coach and a mentor for a new employee for a period of few months and this covers all practical aspects of the EOI process. Additionally, TIEO staff engage in periodic sessions to share knowledge, experience and best practices among all team members.

352. Regarding resource allocation, the TIEO is located within the structure of Revenue Administration Regional Office in Poznań and any financial settlements concerning its functioning such as costs of human resources or building maintenance and IT costs are within this regional office. The TIEO is housed in a separate building and each of its employees has an individual desk and computer. The office contains phones, printers, photocopiers, and paper shredders and cabinets locked with keys for storing documents.

353. The TIEO uses a customised electronic database and specialised software to manage requests for information including translation.

Incoming requests

354. The head of the TIEO allocates an incoming request to an officer based on his/her workload and language skills. The case officer enters the request to the database maintained by the TIEO and then translates and sends acknowledgment of receipt to the requesting partner within seven days. Basic checks are performed to confirm the foreseeable relevance of the request and identify the information holder.

355. The TIEO follows a set criteria to assess the validity of the request including: i) existence of a legal basis to perform EOI, ii) scope of the request including time periods covered by the request (whether or not they are covered by international tax treaty), iii) competent authority (whether or not the request was signed by the authorised person) and iv) completeness and comprehensiveness of the request (whether the request is clear, specific, and relevant).

356. The TIEO uses the electronic database to log and track all incoming requests. The system tracks progress of each request and provides relevant statistics to facilitate the management of EOI requests.

357. The key functions of the system are:

- recording incoming and outgoing correspondence
- setting up documents into case files
- storing documents
- circulation of correspondence including assignment of tasks and approvals – according to pre-defined paths
- monitoring the status of the cases
- monitoring work process
- preparing statistics – within the structured reports or by filtering input data.

Verification of the information gathered

358. When information is sourced through the local tax office, the verification of the gathered information is carried out at all stages by the local tax office, the provincial offices (tax chambers) and the competent authority office (TIEO). Checks for completeness are also carried out for information sourced directly by the TIEO. In order to facilitate the information gathering process, the local tax office is provided with the scope of requested information, identification details of the information holder and the necessary background information.

359. In all cases, the gathered information is checked for completeness based on the questions contained in the EOI request letter. If the response is incomplete, a request for completion is immediately sent to the relevant tax chamber.

Practical difficulties experienced in obtaining the requested information

360. Polish authorities reported that they did not face any difficulties while obtaining requested information and peers did not report any concerns that would point to difficulties faced by Poland in collecting and providing requested information.

Outgoing requests

361. From January 2018 to December 2020, Poland sent out 6 891 requests for information to its treaty partners. Outgoing requests are initiated by local tax offices under the supervision of Revenue Administration Regional offices. The regional offices transmit the requests to TIEO for further processing. Peers have reported to have sought clarification from Poland in 42 of the requests (i.e. in less than 1% of the cases) with the most occurring challenge being the need to provide additional information to confirm the foreseeable relevance of 29 requests raised by two peers.

362. The EOI contact persons in the local tax offices are responsible for supporting tax auditors and in drafting requests in compliance with EOI standards and procedures. They are also responsible for transmitting the drafted requests to the provincial offices. At this stage, the regional EOI contact persons carry out further verification checks. Finalised requests are sent to the competent authority (TIEO) using encrypted email.

363. Upon final verification, the competent authority sends out requests to the relevant treaty partner using different methods of transmission. Those addressed to EU Member States are sent via the secured CCN/CSI network. The requests to non-EU jurisdictions are transmitted mostly electronically using encrypted communication. In a smaller number of correspondences, Poland still uses postal mail.

C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI

364. There are no factors or issues identified under this element that could unreasonably, disproportionately or unduly restrict effective EOI in Poland.

Annex 1: List of in-text recommendations

The Global Forum may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, it should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be stated in the text of the report. A list of such recommendations is reproduced below for convenience.

- **Element A.3**: Poland should ensure that all information on the beneficial owners of abolished anonymous accounts that have not been claimed is available (Paragraph 221).

Moreover, the Global Forum may identify some aspects of the legal and regulatory framework to follow-up in the Phase 2 review. A non-exhaustive list of such aspects is reproduced below for convenience:

- **Element A.1**: The availability of ownership and identity information required to be retained in relation to inactive and dissolved companies and partnerships will be assessed in the Phase 2 review (Paragraphs 78 and 145).
- **Elements A.1 and A3**: The practical implementation of the guidance provided by Poland on whether aspects of control elaborated in Poland's legal and regulatory framework sufficiently cover control by other means shall be evaluated in the Phase 2 review (Paragraphs 91 and 229).
- **Element A.1**: The practical implementation of the definition of beneficial owners in the context of partnerships (see paragraph 150) and co-operatives (see paragraph 174) will be examined during the Phase 2 review.
- **Element A.1**: The effectiveness of the requirements to update the Central Register of Beneficial Owners by all reporting entities shall be evaluated in the Phase 2 review (see paragraphs 111, 150, 161, 170 and 175).

- **Element A**.2: The availability of accounting records required to be retained for entities that cease to exist will be assessed in the Phase 2 review (see paragraph 196).
- **Element**. **A.3:** In respect of foreign foundations that hold bank accounts in Poland, the identification of the beneficial owners of such accounts will be examined in the Phase 2 review (Paragraph 229)
- **Element A.3:** In respect of accounts held by legal arrangements other than trusts, the application of the definition of beneficial owners in practice will be examined during the Phase 2 review (see paragraph 229).
- **Element C.1:** The Practical application of the foreseeable relevance standard in Poland's exchange of information practice will be evaluated in the Phase 2 review (see paragraph 293).
- **Element C.3.1**: An analysis of mechanisms in practice to ensure protection of treaty exchanged information from comingling with other information or any inappropriate use will be considered in the Phase 2 review (paragraph 321).
- **Element C.5:** The practical applications of new measures instituted to monitor timelines and send status updates within 90 days as required under the standard will be further explored during the Phase 2 review (paragraph 342).

Annex 2: List of Poland's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Albania	DTC	05-03-1993	01-01-1995
2	Andorra	TIEA	15-06-2012	01-01-2014
3	Armenia	DTC	14-07-1999	01-01-2006
4	Australia	DTC	07-05-1991	01-01-1993
5	Austria	DTC	13-01-2004	01-01-2006
		Protocol	04-02-2008	01-01-2009
6	Azerbaijan	DTC	26-08-1997	01-01-2006
7	Bahamas	TIEA	28-06-2013	29-09-2014
8	Bangladesh	DTC	08-07-1997	01-01-2000
9	Belarus	DTC	18-11-1992	01-01-1994
10	Belgium	DTC	20-08-2001	01-01-2005
		Protocol	14-04-2014	02-05-2018
11	Bermuda	TIEA	25-11-2013	15-03-2015
12	Bosnia and Herzegovina	DTC	10-01-1985	01-01-1986
		DTC	04-06-2014	07-03-2016
13	British Virgin Islands	TIEA	29-11-2013	01-01-2015
14	Bulgaria	DTC	11-04-1994	01-01-1996
15	Canada	DTC	04-05-1987	01-01-1989
		DTC	15-05-2012	01-01-2014
16	Cayman Islands	TIEA	29-11-2013	11-12-2014
17	Chile	DTC	10-03-2000	01-01-2004
18	China (People's Republic of)	DTC	07-06-1988	01-01-1990

	EOI partner	Type of agreement	Signature	Entry into force
19	Croatia	DTC	19-10-1994	01-01-1997
20	Cyprus	DTC	04-06-1992	01-01-1992
		Protocol	22-03-2012	01-01-2014
21	Czech Republic	DTC	24-06-1993	20-12-1993
		DTC	30-09-2011	11-06-2012
22	Denmark	DTC	06-12-2001	01-01-2003
23	Egypt	DTC	24-06-1996	01-01-2002
24	Estonia	DTC	09-05-1994	01-01-1995
25	Ethiopia	DTC	13-07-2015	14-02-2018
26	Finland	DTC	08-06-2009	01-01-2011
27	Former Yugoslav Republic of Macedonia	DTC	28-11-1996	01-01-2000
28	France	DTC	20-06-1975	01-01-1974
29	Georgia	DTC	05-11-1999	16-06-2006
30	Germany	DTC	14-05-2003	01-01-2005
31	Gibraltar	TIEA	31-01-2013	05-12-2013
32	Greece	DTC	20-11-1987	01-01-1992
33	Guernsey	TIEA	06-12-2011	01-11-2012
34	Hungary	DTC	23-09-1992	01-01-1996
35	Iceland	DTC	19-06-1998	01-01-2000
36	India	DTC	21-06-1989	01-01-1990
37	Indonesia	DTC	06-10-1992	01-01-1994
38	Iran	DTC	02-10-1998	01-01-2007
39	Ireland	DTC	13-11-1995	01-01-1996
40	Isle of Man	TIEA	07-03-2011	27-11-2011
41	Israel	DTC	22-05-1991	01-01-1992
42	Italy	DTC	21-06-1985	26-09-1989
43	Japan	DTC	20-02-1980	01-01-1983
44	Jersey	TIEA	02-12-2011	01-11-2012
45	Jordan	DTC	04-10-1997	01-01-2000
46	Kazakhstan	DTC	21-09-1994	01-06-1995
47	Korea	DTC	21-06-1991	01-01-1991
		Protocol	22-10-2013	15-10-2016

	EOI partner	Type of agreement	Signature	Entry into force
48	Kyrgyzstan	DTC	19-11-1998	01-09-2004
49	Kuwait	DTC	16-11-1996	01-01-1996
50	Latvia	DTC	17-11-1993	01-01-1995
51	Lebanon	DTC	26-07-1999	01-01-2004
52	Lithuania	DTC	20-01-1994	01-01-1995
53	Luxembourg	DTC	14-06-1995	01-01-1997
		Protocol	07-06-2012	01-01-2014
54	Malaysia	DTC	16-09-1977	01-01-1977
		DTC	08-07-2013	ratified by Poland
55	Malta	DTC	07-01-1994	01-01-1995
		Protocol	06-04-2011	01/01/2012
		Protocol	30-11-2020	
56	Mexico	DTC	30-11-1998	01-01-2003
57	Moldova	DTC	16-11-1994	01-01-1996
58	Mongolia	DTC	18-04-1997	01-01-2002
59	Montenegro	DTC	12-06-1997	01-01-1999
60	Morocco	DTC	24-10-1994	01-01-1997
61	Netherlands	DTC	13-02-2002	01-01-2004
		Protocol	29-10-2020	
62	New Zealand	DTC	21-04-2005	01-01-2007
63	Norway	DTC	09-09-2009	01-01-2011
		Protocol	05-07-2012	01-06-2013
64	Qatar	DTC	18-11-2008	01-01-2010
65	Pakistan	DTC	25-10-1974	01-01-1973
66	Philippines	DTC	09-09-1992	01-01-1998
67	Portugal	DTC	09-05-1995	01-01-1999
68	Romania	DTC	23-06-1994	01-01-1996
69	Russia	DTC	22-05-1992	01-01-1994
70	San Marino	TIEA	31-03-2012	28-02-2013
71	Saudi Arabia	DTC	22-02-2011	01-01-2013
72	Serbia	DTC	12-06-1997	01-01-1999
		DTC	23-04-1993	01-01-1993
73	Singapore	DTC	04-11-2012	01-01-2015

	EOI partner	Type of agreement	Signature	Entry into force
74	Slovak Republic	DTC	18-08-1994	01-01-1996
		Protocol	01-08-2013	01-01-2015
75	Slovenia	DTC	28-06-1996	01-01-1999
76	South Africa	DTC	10-11-1993	01-01-1996
77	Spain	DTC	15-11-1979	01-01-1983
78	Sri Lanka	DTC	25-04-1980	01-01-1983
		DTC	06-10-2015	14-06-2019
79	Sweden	DTC	19-11-2004	01-01-2006
80	Switzerland	DTC	02-09-1991	01-01-1993
		Protocol	20-04-2010	17-10-2011
81	Syrian Arab Republic	DTC	15-08-2001	01-01-2004
82	Tajikistan	DTC	27-05-2003	01-09-2004
83	Thailand	DTC	08-12-1978	01-01-1983
84	Tunisia	DTC	29-03-1993	01-01-1994
85	Türkiye	DTC	03-11-1993	01-01-1998
86	Ukraine	DTC	12-01-1993	01-01-1995
87	United Arab Emirates	DTC	31-01-1993	01-01-1995
		Protocol	11-12-2013	01-05-2015
88	United Kingdom	DTC	20-07-2006	01-01-2007
89	United States	DTC	08-10-1974	01-01-1974
		DTC	13-02-2013	
90	Uzbekistan	DTC	11-01-1995	01-01-1996
91	Viet Nam	DTC	31-08-1994	01-01-1996
92	Zimbabwe	DTC	09-07-1993	01-01-1995

Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[41] The Multilateral Convention

41. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention (the Multilateral Convention) which integrates the amendments into a consolidated

is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The Multilateral Convention was opened for signature on 1 June 2011.

The Multilateral Convention (Original Convention) was signed by Poland on 19 March 1996 and entered into force on 1 October 1997 in Poland. Additionally, Poland signed the Protocol on the amended Convention on 9 July 2010, which entered into force on 1 October 2011. Accordingly, Poland can exchange information with all other Parties to the Multilateral Convention.

The Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cabo Verde, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Eswatini, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), North Macedonia, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines,

text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Türkiye, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Benin, Burkina Faso, Gabon, Mauritania (entry into force 1 August 2022), Papua New Guinea, Philippines, Rwanda, Togo, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

EU Directive on Mutual Administrative Assistance in Tax Matters

Poland can exchange information relevant for direct taxes upon request with EU member states under the EU Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation (as amended). The Directive came into force on 1 January 2013. All EU members were required to transpose it into their domestic legislation by 1 January 2013, i.e. Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain and Sweden. The United Kingdom left the EU on 31 January 2020 and hence this directive is no longer binding on the United Kingdom.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and amended in 2020 and 2021, and the Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as of 25 April 2022, Poland's responses to the questionnaire and inputs from partner jurisdictions covering the three year period from 1 January 2018 to 31 December 2020. Although implementation in practice is not assessed in this report, the assessment team has considered these contributions to confirm the compliance of the legal and regulatory framework.

List of laws, regulations and other materials received

Constitution1997

Act on Legal Persons' Income 1992 (LPIT Act),

Act on Natural Persons' Income 1991 (NPIT Act),

Act on Tax on Acts in Civil Law 2000,

Act on Counteracting Money Laundering and Terrorism Financing 2018

Act on the National Revenue Administration

Tax Ordinance Act (TOA)

EOI Act

Act on Goods and Services Tax Act 2004

Code of Commercial Companies

Act on Trading in Financial Instruments 2005

Law on Foundations

Act on Accounting

National Court Register Act

Banking Law Act

Current and previous reviews

This report analyses Poland's legal and regulatory framework in relation to the international standard of transparency and EOIR, in the second round of reviews conducted by the Global Forum. Poland previously underwent the first round of reviews across two reports. The assessment of the legal and regulatory framework (Phase 1) was completed in 2013 and the implementation of the framework in practice ((Phase 2) in 2015. The Round 1 Review was conducted according to the terms of reference approved by the Global Forum in February 2010 and the Methodology used in the first round of reviews.

Information on each of Poland's reviews is listed in the table below:

Summary of reviews

Review	Assessment team	Period under review	Legal Framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Mr Deepak Garg, Ministry of Finance of India, Ms Ana Yesenia Rodriguez Calderon, Ministry of Finance of Costa Rica; Mr Mikkel Thunnissen and Mr Francesco Positano from the Global Forum Secretariat	Not applicable	January 2013	
Round 1 Phase 2	Mr Deepak Garg, Ministry of Finance of India; Mr Alexander Zelzer, Fiscal Authority of the Principality of Liechtenstein; and Mr Francesco Positano from the Global Forum Secretariat	1 January 2011 to 31 December 2013	March 2015	
Round 2 Phase 1	Mr John Ashilere, Nigeria; Ms Antoinette Musilek, Spain; Mr Alex Nuwagira and Mr Puneet Gulati from the Global Forum Secretariat	Not Applicable	25 April 2022	5 August 2022

Annex 4: Poland's response to the review report[42]

Poland would like to acknowledge its commitment to the principles of international cooperation and exchange of information in tax matters.

We want to thank the members of the assessment team for their work, constructive discussions and professionalism.

We would also like to express our gratitude to the Peer Review members for their input and comments to the report.

Poland will continue its work on constant improvement and will support Global Forum in its activities taken to achieve more transparent environment in the global perspective.

Nevertheless, in terms of recommendation *to examine conditions under which mechanisms to encourage conversion or deposit of bearer shares can be strengthened so that information identifying their holders in line with the standard is available as quickly as possible*, Poland would like to highlight that the transitional period provided for by the law is a consequence of the recognition that the implementation of the standard should take into account the need to provide bearer shareholders with an appropriate period of time (i.e. meeting constitutional and international standards for the protection of property) to register the shares. The sanction provided for not registering shares is the complete deprivation of the participation rights, often of considerable value.

In order to apply such a legal solution, it was necessary to define in the national legislation an appropriate period, proportional to other similar legal institutions, for the registration of shares.

The reservation of the 5-year period during which the share documents remain in force as evidence results only from the will to maintain the constitutional standards of the Polish law. Pursuant to Art. 64 sec. 1 of the Polish Constitution, *Everyone shall have the right to ownership, other property rights*

42. This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

and the right of succession. Art. 64 sec. 2 of the Constitution of the Republic of Poland stipulates that *Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession*, while pursuant to Art. 64 sec. 3 of the Constitution of the Republic of Poland, *The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right*. Art. 31 sec. 3 of the Constitution of the Republic of Poland stipulates that *Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights (the principle of proportionality).*

The introduced solution takes into account the principle of proportionality. The binding force of the bearer shares expired on March 1st, 2021. During the five-year transitional period, the bearer shares only have a limited evidential value in relation to the company to enable their dematerialisation. Considering that the rights from bearer shares may relate to assets of significant value, it seems that the 5-year period is appropriate, especially as of March 1st, 2021, the possibility of trading in unregistered bearer shares was completely excluded. Thus, shareholders are deprived of their rights in compliance with constitutional standards. Accordingly, Poland has done everything in its power to comply with the standard in this regard.

With regard to the recommendation – ***Poland is recommended to ensure that, in all cases, up-to-date beneficial ownership information for all bank accounts is available in line with the standard***, Poland would like to indicate that neither the FATF Recommendations nor the AML Directive 2015/849 require the specified frequency of updating beneficial ownership by obligated institutions. Therefore, Article 35(2)(2) of the Polish AML/CFT Act, which transposes the provisions of Article 11 of Directive 2015/849 requires obliged institutions to apply measures also to existing customers and stipulates that the obligated institutions shall also apply customer due diligence measures in relation to customers with whom they maintain business relationships, taking into consideration the identified risk of money laundering or financing of terrorism, in particular where a change in the previously determined data regarding the customer or beneficial owner has occurred.

This obligation should be implemented on a periodic basis taking into account the degree of identified risk of money laundering and financing of terrorism. The rationale for applying CDD to customers with whom a financial security relationship has already been established should be, in particular, information on a change of previously obtained customer data.

Therefore, indicating a specified frequency, if the situation changes just after this indicated verification deadline, then the obligated institution could wait until the next statutory deadline to reapply CDD, and this may lead to situations where the beneficial ownership information is not up to date.

As there is no requirement in the FATF Recommendations to check the customer's beneficial ownership information periodically and to set the frequency of such checking by legal regulations, a risk-based approach is recommended instead, which is also applied in Poland.

From the point of view of the Polish Authorities, the existing solution is better – because it is risk-based, i.e. "you check when you assess that a risk arises" and not when there is a statutory deadline.

In addition, the obligated institutions cannot consider Central Register of Beneficial Owners as the only source of information about a customer's beneficial owner. In particular, the obligated institutions include clauses in their contracts with customers requiring the customer to report information about changes concerning the customer (including the customer's beneficial owner).

On the one hand, when the bank receives information from a customer (or other non-Central Register of Beneficial Owners source) about a change in the customer's beneficial owner, it can immediately check the integrity of the data in the Central Register of Beneficial Owners, while when the bank, verifying in the Central Register of Beneficial Owners the information about the customer's beneficial owner, discovers a change in relation to what it has in the documentation from the customer – the regulations also force the bank to react accordingly.

Furthermore, regarding the paragraph 310 (EOI Mechanism; C.1.8 and C.1.9) and a footnote no. 39, the Polish Authorities would like to point out that those 9 DTAs are with the following countries: Bangladesh, Belarus, Iran, Kyrgyzstan, Syrian Arab Republic, Tajikistan, Uzbekistan, Viet Nam, Zimbabwe. Those 9 treaty partners are not parties to the MAC (Strasbourg Convention). Hence, taking into consideration the above, the requirement to renegotiate those 9 DTAs in order to align them more closely to the standard is important. During negotiations of those 9 DTAs, the Polish intention will be to include the current version of the provision concerning exchange of information, stipulated in the OECD Model Tax Convention. Poland would like to stress the importance of amending the 9 old DTAs concluded with Bangladesh, Belarus, Iran, Kyrgyzstan, Syrian Arab Republic, Tajikistan, Uzbekistan, Viet Nam and Zimbabwe with a view to adjust an article concerning exchange of information to the current international standards. In this regard, we would like to kindly notice that our willingness to amend the above DTAs is juxtaposed with obligations to amend DTAs in order

to implement standards resulting from the BEPS project, concerning i.e. eliminating risks of double non-taxation and limiting use of tax treaties in aggressive tax planning. The amendment DTAs for both reasons (exchange of information as well BEPS standards) prolongs the whole process.

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request POLAND 2022 (Second Round, Phase 1)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 160 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This publication contains the 2022 Second Round Peer Review Report on the Exchange of Information on Request for Poland. It refers to Phase 1 only (Legal and Regulatory Framework).

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