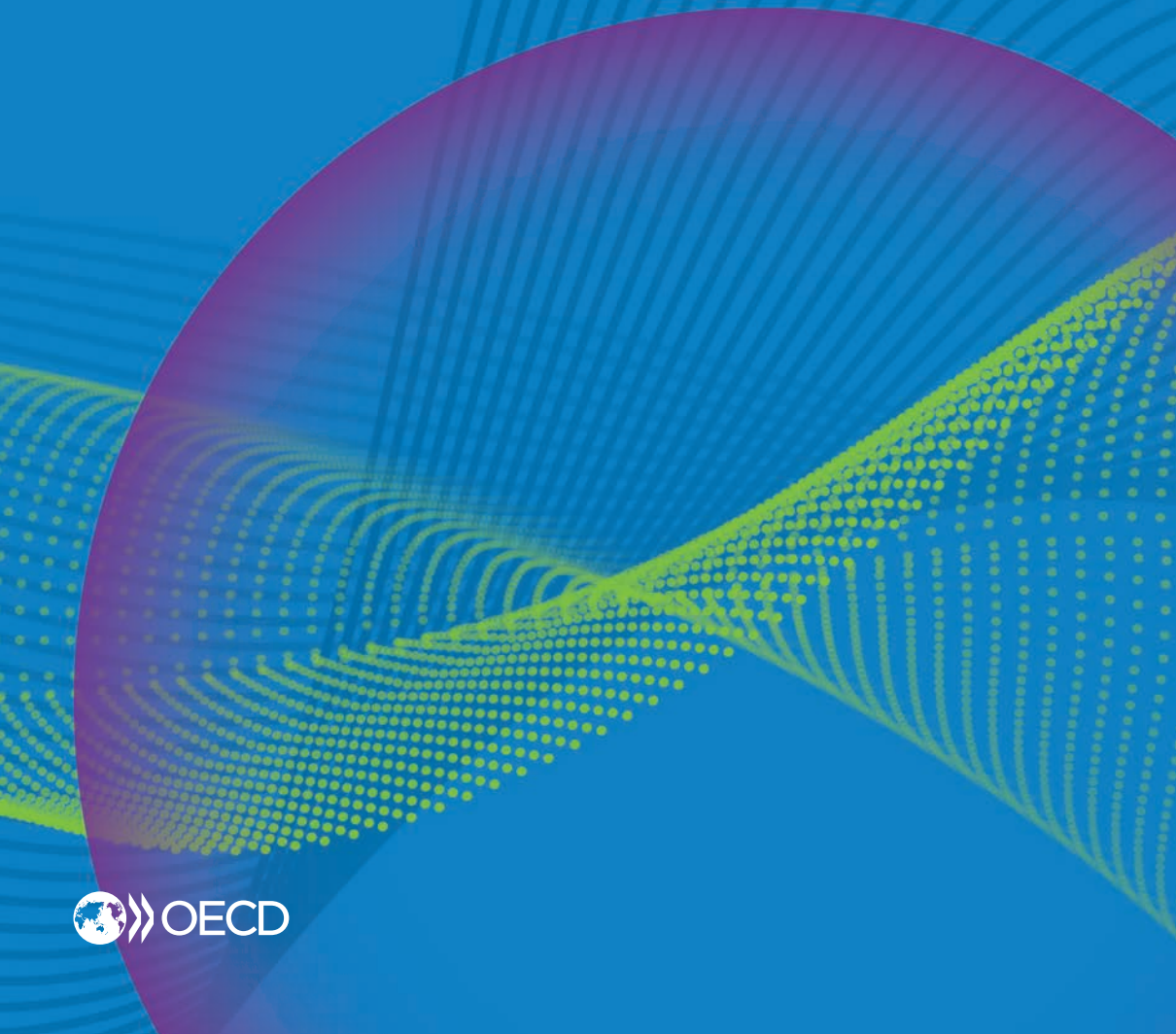
GLOBAL FORUM ON

TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

POLAND

2023 (Second Round, Combined Review)



OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Poland 2023 (Second Round, Combined Review)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

This peer review report was approved by the Peer Review Group of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) on 3 October 2023 and adopted by the Global Forum members on 3 November 2023. The report was prepared for publication by the Global Forum Secretariat.

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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

AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
CCC	Code of Commercial Companies
CDD	Customer Due Diligence
CRBO	Central Register of Beneficial Owners
DTC	Double Taxation Convention
EOI	Exchange of Information
EOIR	Exchange of Information on Request
EU	European Union
EUR	Euro
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
NIP	Polish Tax Identification Number (*Numer Identyfikacji Podatkowej*)

NPIT Act	Act on Natural Persons' Income Tax
NRA	National Revenue Administration
PFSA	Polish Financial Supervision Authority
PLN	Polish zloty (national currency)
SJSC	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
TOA	Tax Ordinance Act 1997
VAT	Value-added Tax

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 that was scheduled to take place in November 2021 could not be organised. Hence, the review of Poland was phased, starting with a desk-based review that culminated in August 2022 with the adoption of the report assessing the legal and regulatory framework (Phase 1 report). The onsite visit to Poland eventually took place in March 2023 and the present review complements the Phase 1 report with an assessment of the practical implementation of the standard, including in respect of exchange of information requests received and sent during the review period from 1 July 2019 to 30 June 2022, as well as any changes made to the legal framework since the Phase 1 review, as of 17 July 2023.

2. 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).

3. This report concludes that Poland continues to be rated overall Largely Compliant with the standard.

Comparison of ratings for First Round Report and Second Round Report

Element		First Round Report (2015) Ratings	Second Round Report (2023) Ratings
A.1	Availability of ownership and identity information	Non-Compliant	Partially Compliant
A.2	Availability of accounting information	Compliant	Largely Compliant
A.3	Availability of banking information	Compliant	Largely Compliant
B.1	Access to information	Compliant	Largely Compliant
B.2	Rights and Safeguards	Compliant	Compliant
C.1	EOIR Mechanisms	Compliant	Compliant
C.2	Network of EOIR Mechanisms	Compliant	Largely Compliant
C.3	Confidentiality	Compliant	Compliant
C.4	Rights and safeguards	Compliant	Compliant
C.5	Quality and timeliness of responses	Compliant	Compliant
	OVERALL RATING	**Largely Compliant**	**Largely Compliant**

Note: 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 previously issued by joint stock companies and limited joint stock partnerships must be registered with the National Depository for Securities or be converted into the register of shareholders kept by an authorised entity. Going forward, all shareholders, regardless of the type of share acquired, must be recorded in the register of shareholders. However, these new obligations have not been supervised.

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.

8. The Competent Authority office in Poland is well resourced and continues to answer requests largely in an effective manner and to the satisfaction of their treaty partners. Following a recommendation in the 2015 Report, Poland has introduced mechanisms to track timelines of requests and provide status updates when requests cannot be answered within 90 days. These mechanisms have already registered improvements.

Key recommendations

9. The key recommendations made to Poland relate to pre-existing recommendations that have not been addressed or those that have not been sufficiently addressed and gaps in the implementation of the legal and regulatory framework mainly regarding the lack of supervision or monitoring of obligations related to existing bearer shares.

10. 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. Additionally, Polish authorities have not monitored or supervised in any way or form the requirements set forth in the law to require and facilitate the registration of existing bearer shares. To date, the authorities are not aware of the status of implementation, including how many companies have implemented the new requirements or how many bearer shares have been registered. Poland is recommended to examine conditions under which mechanisms to encourage conversion or deposit of bearer shares can be strengthened and to ensure that the new measures for identifying the owners of bearer shares are effectively implemented and enforced so that information identifying their holders is available as quickly as possible (Element A.1).

11. AML-obliged institutions are required to carry out customer due diligence (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 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 all cases in line with the standard.

12. Regarding implementation, there is supervision of the Central Register of Beneficial Owners. The supervisory authority in charge of this central Register relies on discrepancy reports submitted by AML-obliged institutions, the obligation by beneficial owners to notify the company whenever they attain such a status and changes in the information contained in the National Court Register (NCR) to update information in the Central Register of Beneficial Owners. However, in many cases, tax audits revealed that the information contained in the National Court Register was not up to date. Moreover, there is no specified frequency to update CDD and beneficial ownership information in the AML framework, implying that obliged institutions may not detect changes in a timely manner. These gaps are likely to affect the timelines within which the data in the Central Register of Beneficial Owners is updated and hence affect the availability of up-to-date beneficial ownership information (Element A.1). Therefore, Poland is recommended to strengthen its supervision.

13. Moreover, when entities cease to exist, their records should be kept by a person or entity identified by the dissolved entity or appointed by court. For entities that are dissolved without liquidation proceedings, there has been no monitoring of the process to ensure that persons or entities are appointed in all cases, records were handed over or that authorities

were notified of the identity of these persons or entities as required by law. This risk affects the availability of accounting records, especially underlying documents (Element A.2). Poland is recommended to monitor the process of dissolving entities without liquidation proceedings.

14. 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.

15. Additionally, Poland could not provide complete responses in seven cases, where information holders did not respond to notices to produce information. In these cases, Poland did not make use of its compulsory powers and/or sanctions to compel production of information (Element B.1). Poland should apply its compulsory powers in all cases to ensure complete responses to EOI requests.

16. 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

17. Poland has significant experience in EOI especially within the European Union and with its neighbours. During the review period 2019 to 2022, Poland sent 5 951 requests and received 1 341 requests for information from its EOI partners and has provided responses in 99.5% of the cases. Peers provided input in preparation for this review on their experience exchanging information with Poland, and this input was largely positive.

18. Poland's experience and effectiveness in EOIR practice was demonstrated through its efficient work processes that enabled the Competent Authority to respond to 988 requests (74% of received requests) within 90 days and 1 230 requests (92% of received requests) within 180 days. Poland's peers are generally satisfied and consider Poland to be a very responsive partner.

Next steps

19. Poland has been assigned a rating for each of the ten essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account any recommendations made in respect of Poland's legal and regulatory framework and the effectiveness in practice. On the basis of this, Poland has been assigned the following ratings: Compliant for Elements B.2, C.1, C.3, C.4 and C.5, Largely Compliant for Elements A.2, A.3, B.1 and C.2 and Partially Compliant for Element A.1. Poland's overall rating is Largely Compliant based on the global consideration of its compliance with the individual elements.

20. This report was approved at the Peer Review Group of the Global Forum on 3 October 2023 and was adopted by the Global Forum on 3 November 2023. 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 in accordance with the procedure set out under the 2016 Methodology.

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 (Element 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.

Determinations	Factors underlying Recommendations	Recommendations
	From 1 March 2021, bearer shares issued by Joint Stock Companies and Limited Joint Stock Partnerships must be registered in the register of shareholders maintained by an entity authorised to maintain securities accounts or deposited with the national Depository for Securities before such a share can be considered issued. Furthermore, any existing bearer shares must be registered in the register of shareholders or deposited with the National Depository of Securities 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 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.

Determinations	Factors underlying Recommendations	Recommendations
EOIR Rating: Partially Compliant	Poland has put in place mechanisms to supervise obligations related to ensuring availability of accurate, complete and up-to-date legal and beneficial ownership information. However, some gaps exist on effectiveness and coverage of these activities. The system in Poland requires that some entities submit ownership information to the National Court Register. The National Court Register is a key source of reference for triggering changes to beneficial ownership information and managing discrepancy reports associated with the Central Register of Beneficial Owners. In a considerable number of audit cases, tax auditors found that information in the National Court Register was not accurate or up to date. In the absence of a specified frequency to update beneficial ownership information besides whenever there is a change (Register) or upon certain triggers (anti money laundering framework), the inaccuracies in the National Court Register will hamper efforts to update information in the Central Register of Beneficial Owners.	Poland is recommended to strengthen its system of oversight in order to ensure that up-to-date beneficial ownership information on companies and partnerships is available in line with the standard.
	Polish authorities have not carried out any monitoring activities to establish the status of implementation of the amendments to the Code of Commercial Companies regarding bearer shares.	Poland is recommended to ensure that the new measures for identifying the owners of bearer shares are effectively implemented and enforced so that accurate and up-to-date information on them is always available in line with the standard.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (Element A.2)		
The legal and regulatory framework is in place.		

Determinations	Factors underlying Recommendations	Recommendations
EOIR Rating: Largely Compliant	When companies and partnerships are dissolved without liquidation proceedings, there is no monitoring or supervision to ensure that a person or entity has been appointed to keep the records of such entities or that the authorities have been notified of the identity of the person or entity appointed to maintain the records. Consequently, the authorities are likely not to be aware of the person or entity that maintains such records. This risk is mitigated by the availability of some accounting records such as financial statements at the National Court Register and at the National Revenue Administration. However, these mitigations do not cover underlying documentation.	Poland is recommended to monitor the process of dissolving entities without liquidation proceedings to ensure that it is complied with and thus accounting records of such entities are available in all cases for at least five years.
Banking information and beneficial ownership information should be available for all account-holders (Element A.3)		
The legal and regulatory framework is in place but needs improvement.	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.
EOIR Rating: Largely Compliant		
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) (Element B.1)		
The legal and regulatory framework is in place.	Professional privilege is extended to tax advisors and notaries 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.

Determinations	Factors underlying Recommendations	Recommendations
EOIR Rating: Largely Compliant	Poland experienced failures to respond to some requests for information over the review period on account of information holders who did not co-operate. In those cases, compulsory powers were not used.	Poland is recommended to use its compulsory powers in all cases where necessary, to ensure that all information for exchange of information purposes is obtained in a timely manner.
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 (Element B.2)		
The legal and regulatory framework is in place.		
EOIR Rating: Compliant		
Exchange of information mechanisms should provide for effective exchange of information (Element C.1)		
The legal and regulatory framework is in place.		
EOIR Rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (Element 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
EOIR Rating: Largely Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (Element C.3)		
The legal and regulatory framework is in place.		
EOIR Rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (Element C.4)		
The legal and regulatory framework is in place.	Professional privilege is extended to tax advisors and notaries 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.
EOIR Rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner (Element C.5)		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	

Determinations	Factors underlying Recommendations	Recommendations
EOIR Rating: Compliant	During the review period, Poland introduced changes in its processes to track the status of collection of information and make it easy to identify cases nearing 90 days where full responses cannot be provided. The changes include requiring for updates from provincial tax offices that collect EOI information and the introduction of obligatory guidance to Competent Authority officials to provide status updates when requested information cannot be provided in full within 90 days. These measures have already registered some improvements in the number of cases where Poland has provided status updates to its peers	Poland is recommended to monitor the implementation of recent measures to ensure it systematically provides status updates to its peers when requested information cannot be provided within 90 days.

Overview of Poland

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

22. Poland is a European 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.

23. In 2022, 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 (PLN).[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

24. 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. There are 16 provinces which are further sub-divided into counties (*powiats*) and then municipalities (*gminas*). Registration of entities is carried out by provincial level registration

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

court within the *voivodeships.* This registration consists of the entity's entry into the National Court Register.

25. 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.

26. 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

27. 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 Civil Law Transactions 2000, Act on Value Added Tax 2004.

28. 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 Value Added 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.

29. 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]

30. 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).

31. 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 if they meet the thresholds on VAT-related activity in Poland.

32. 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.

33. Poland has 93 bilateral agreements and is signatory to the Multilateral Convention. Additionally, as a European Union (EU) 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

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

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.
- 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

34. 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 3 562 billion (EUR 774.3 billion) in assets as of 31 December 2021, including PLN 2 572 billion (EUR 559.1 billion) of banking sector assets. Financial sector assets represented 135.9% of GDP as of the end of 2021. Poland is not an international financial centre.

35. The Banking Law 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 banks and credit institutions can operate in Poland within the scope provided for in the authorisation granted by the PFSA. Branches are mainly those from EU jurisdictions but can also be from other jurisdictions. As of December 2021, there were 30 domestic commercial banks,[4] 36 branches of foreign credit institutions notified to the PFSA and 511 co-operative banks operating in Poland.

36. 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 2021, there were 36 brokerage houses registered in Poland and 9 banks were authorised to offer brokerage services.

4. 13 of these banks have majority Polish ownership and 17 of them have majority foreign ownership.

37. 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 2021, 10 open pension funds (OFE), 7 Voluntary Pension Funds and 2 Employee Pension Funds managed by pension societies were active. The ten open pension funds have over 15 million members and net assets value of PLN 187.9 billion (EUR 40.9 billion).

38. 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. As at 31 December 2021, the total assets of insurance and reinsurance companies operating on the Polish market amounted to approximately PLN 201 billion (EUR 43.9 billion). There were 25 domestic life-insurance undertakings and 30 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.

39. 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

40. 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, as at 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.

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

41. 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.

42. 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.

43. 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 144).

44. 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 noted that the law did 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/CFT Act did not explicitly refer to legal arrangements other than trusts. These aspects are discussed under A.1.3.

Recent developments

45. 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

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

the Act of 30 March 2021 amending 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.

Part A: Availability of information

46. 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.

47. 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.

48. 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.

49. Additionally, Poland has not carried out any monitoring or supervisory activities to establish the status of implementation of the amendments regarding bearer shares. The authorities have not reviewed the progress of registration or deposit and there is no monitoring regarding the restrictions placed on both the existing and potentially issued new bearer shares.

Consequently, there are no statistics to show how many bearer shares have been converted or deposited to date. The effectiveness of the new obligations in ensuring that the identity of all holders of bearer shares is available will depend on how effectively and proactively these are implemented, especially in relation to bearer shares issued before 1 March 2021.

50. 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. This recommendation has been fully addressed by requiring trustees to identify and submit information on beneficial owners.

51. 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 with a service provider authorised to maintain securities accounts or a notary.

52. 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.

53. Further, the system in Poland requires that some entities submit ownership information to the National Court Register. Regarding the supervision of the National Court Register, the registration courts verify the accuracy of information stored in the register. Further, they receive

information from other supervisory agencies such as the National Revenue Administration when tax auditors identify inaccuracies in the information kept in the register. The auditors have stated that in a considerable number of cases, information in the National Court Register was not accurate or up to date. Moreover the National Court Register is a key source of reference for verifying and managing discrepancy reports associated with the Central Register of Beneficial Owners. In the absence of a specified frequency to update beneficial ownership information besides whenever there is a known change (Register) or upon certain triggers (anti-money laundering framework), the inaccuracies in the National Court Register will hamper efforts to update information in the Central Register of Beneficial Owners. Poland is recommended to strengthen its supervisory processes.

54. Poland received 512 requests for ownership information and beneficial ownership was requested in 102 of these requests. Poland answered all the requests to the satisfaction of its peers.

55. 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 registered in the register of shareholders maintained by an entity authorised to maintain securities accounts or deposited with the National Depository for Securities, before such a share can be considered issued. Furthermore, any existing bearer shares must be registered in the register of shareholders or deposited with the National Depository of Securities 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 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.

Practical Implementation of the Standard: Partially Compliant

Deficiencies identified/Underlying factor	Recommendations
Poland has put in place mechanisms to supervise obligations related to ensuring availability of accurate, complete and up-to-date legal and beneficial ownership information. However, some gaps exist on effectiveness and coverage of these activities. The system in Poland requires that some entities submit ownership information to the National Court Register. The National Court Register is a key source of reference for triggering changes to beneficial ownership information and for managing discrepancy reports associated with the Central Register of Beneficial Owners. In a considerable number of audit cases, tax auditors found that information in the National Court Register was not accurate or up to date. In the absence of a specified frequency to update beneficial ownership information besides whenever there is a known change (Register) or upon certain triggers (anti money laundering framework), the inaccuracies in the National Court Register will hamper efforts to update information in the Central Register of Beneficial Owners.	Poland is recommended to strengthen its system of oversight in order to ensure that up-to-date beneficial ownership information on companies and partnerships is available in line with the standard.
Polish authorities have not carried out any monitoring activities to establish the status of implementation of the amendments to the Code of Commercial Companies regarding bearer shares.	Poland is recommended to ensure that the new measures for identifying the owners of bearer shares are effectively implemented and enforced so that accurate and up-to-date information on them is always available in line with the standard.

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

56. The Code of Commercial Companies (CCC) provides for the creation of:

- Limited Liability Company (LLC, *Spółka z ograniczoną odpowiedzialnością*): 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 otherwise 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 509 048 limited liability companies in Poland as of 30 June 2022.

- Joint Stock Company (JSC, *Spółka akcyjna*): 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 9 498 joint stock companies in Poland as of 30 June 2022.
- 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. As of 30 June 2022, there were only ten SEs registered in Poland.
- Limited Joint-Stock Partnership (LJSP, *Spółka komandytowo-akcyjna*): These are established by at least two individuals or legal persons and they have 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 4 066 limited joint-stock partnerships in Poland as of 30 June 2022.
- Simplified Joint Stock Company: a Simplified Joint Stock Company (SJSC, *Prosta spółka akcyjna*) is generally dedicated to start-ups but can equally be set up for any lawful purpose. A SJSC 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. The minimum initial capital required is 1 PLN (EUR 0.23). The shareholders may make monetary or non-monetary contributions such as through technical know-how. The shares of a SJSC do not have a face value, do not constitute share capital and cannot be put up for organised trading. There were 857 SJSCs in Poland as of 30 June 2022.

57. The Simplified Joint-Stock company (SJSC) is a new legal form that did not exist at the time of the 2015 Report. It was introduced on 1 July 2021.

Legal ownership and identity information requirements

58. 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 maintains the National Court Register (NCR) and relevant registry files[7] at the time of registration and every time there is a change on the register. On the other hand, JSCs, LJSPs and SJCs are required to keep their registers of shareholders with an entity mandated to keep securities accounts. SJSCs may also keep their registers with a notary.

59. 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

60. Polish companies must be established by notarial deed or through an online template company agreement in case of LLCs and SJSCs 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

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 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 the registration courts. It comprises the register of entrepreneurs, the register of associations, other voluntary and vocational organisations, foundations, and independent public

done at the competent provincial level registration court. The application for an entry 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]

Companies Law requirements – Information held by public authorities and companies

61. The application for registration of an LLC 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 NCR is hosted on a public website[11] (the Court Register Portal) and all the information contained in the NCR is publicly accessible through this portal. The details of shareholders holding less than 10% are included in the registry files that are also publicly available via the portal. The application must also contain the seat and address of the company (CCC, Art 166 §1).

62. Further, the management board of an LLC is required to keep a register of shares containing the surname and forename or business name and seat[12] of each shareholder, its address, number and nominal value of its shares as well as any change relating to the shareholders 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).

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health-care centres, the register of insolvent debtors. In addition, the 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.
11. https://www.gov.pl/web/justice/national-court-register.
12. The seat of a legal person is the place where it has its governing body (place of effective management). It is sufficient to specify the name of a city, village or similar unit of administrative division in Poland. The obligation to specify seat does not apply to natural persons. Regardless of the obligation to specify the seat, all shareholders must indicate addresses or addresses for service in the list of shareholders.

Thus, up-to-date information on owners of LLCs should be available to the authorities as well.

Companies Law requirements – Information held by service providers

63. Legal ownership information for joint stock companies, Simplified Joint Stock Companies and Limited Joint Stock Partnerships is mainly kept by service providers, the National Depository for Securities and in some cases information on the identity of founding members is also submitted to the NCR.

64. Regarding 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 maintained by an entity authorised to keep securities (Art. $328^{(1)}$).

65. An entity permitted to operate a securities account within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments must maintain the register of shareholders.[13] This entity is selected by the promoters at the formation of the company and is confirmed in a resolution of a general meeting (CCC, Art. $328^{(1)}$§5). The register of shareholders must be kept in electronic form and may take the form of a distributed and decentralised database.[14]

66. 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 shareholders, subject to the provisions on trading in financial instruments (CCC, Art. 343 §1).

67. 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

13. 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. They are AML-obliged persons in application of Article 2 of the AML Act.
14. accessible from different locations.

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.

68. Regarding limited joint stock partnerships, their articles 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, an entity authorised to keep securities accounts will also maintain a register of the shares issued by the LJSP providing for up-to-date ownership information on the shareholders holding registered shares.

69. 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 shareholders as described at paragraph 66 and 67 similarly apply to Simplified Joint Stock Companies. However, instead of having the register of shareholders kept by an entity authorised to keep securities accounts only, the register may also be maintained by a notary within the territory of Poland (CCC, Art. 300(31) §1).

70. Where a notarial deed is used to establish the company, the notary will upload the deed in the central repository of electronic extracts which is a dedicated electronic system for notarial deeds and where the parties concerned file for the company's registration, the deed will be transmitted to the NCR. In contrast, for the process of validating share transfers for LLCs, the notaries will review the documentation, append their signatures and hand the forms back to the parties. Therefore, with the exception of the registers of Simplified Joint Stock Companies, notaries do not maintain any other type of ownership information.

Foreign companies

71. 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. 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. As at 30 June 2022, 184 representative offices of foreign entrepreneurs were entered in the register of representative office of foreign companies and 2 447 branches of foreign entrepreneurs were entered in the National Court Register. The deficiency identified in the 2015 Report still stands.

72. Poland has submitted that the provisions of the Law on principles of participation of foreign entrepreneurs that entered into force on 30 April 2018 should address this deficiency. Specifically, the authorities point out Article 18 which obliges the foreign entrepreneur to submit copies of its articles of incorporation or association. Poland interprets this to mean that every version of the articles would be required to be filed and hence changes in ownership would be captured as well. Poland further reports that should ownership information be required, the authorities would request the registered branch representative to provide such information. Poland also 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.[15] Lastly, the Polish authorities submitted that the legal ownership information would be captured in the Central Register of Beneficial Owners.

73. However, these avenues do not mitigate the identified gap fully. Firstly, regarding availability via articles of association, 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. Secondly, regarding availability via the e-justice platform, this option does not cover entities incorporated in jurisdictions that are not part of the platform (non-EU jurisdictions). Lastly, regarding availability via the Central Register of Beneficial owners, as discussed at paragraphs 121 and 122, beneficial owners are determined after applying a 25% threshold on ownership interests and as such, this may not cover all legal owners.

74. **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**.

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

Retention period and companies that cease to exist

75. Ownership information submitted to the National Court Register is kept indefinitely (NCR Act, Art. 12 §1) whilst ownership records kept by an entity mandated to keep securities accounts are kept for five years (Act of Trading in Financial Instruments, Art. 110) from the date the records were created. When the records of a SJSC are kept by a notary, such records will be kept by the notary indefinitely and when the notary is no longer in business, the records will be transferred to the chamber of notaries (Notaries Law, Art. 90a). When a notary is no longer in business, the transfer of records to the chamber is ensured through the oversight activities of the ministry of justice through the president of the court of appeal.

76. Companies cease to exist in Poland through dissolution. The precursors for dissolution are i) a resolution of the general meeting to dissolve the company or to transfer the seat of the company abroad, ii) declaration of bankruptcy or iii) other causes provided in law (CCC, Art 459). In practice, companies that do not comply with the obligations to provide information to the registration court are struck off from the register and dissolved where it is established that other coercive measures, such as application of penal sanctions, would not yield results (see paragraph 114).

77. Dissolution may be carried out with or without liquidation proceedings. In case of liquidation proceedings, members of the management board serve as liquidators. However, if the liquidation was decided by court, then the court would appoint liquidators. The dissolution of the company takes effect on completion of liquidation and with the company being removed from the NCR.

78. Dissolution is carried out without liquidation proceedings[16] mainly in cases where a company does not fulfil the obligations to provide information to the NCR and such a company does not have transferable assets (NCR, Art. 25). Under these 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

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) where even after a fine for failure to update ownership information in the NCR, the company does not comply and a ruling on waiving compulsory proceedings has been issued, iv) despite demand by the court of registration, annual financial statements have not been submitted for two consecutive years.

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.

79. The registration courts are 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.

80. In both avenues of dissolution, 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 registration court (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 Poland.

81. However, when companies are dissolved without liquidation proceedings, there has been no monitoring or supervision of the process to ensure that a person or entity has been appointed, the records handed over and the identity of the person or entity has been reported to the authorities. Moreover, there could be cases where the court's intervention to appoint such a person when the company's articles of association are silent, may not be implemented. Between 2019 and 2022, 20 154 companies representing approximately 3% of the total companies on the company's register were dissolved without liquidation proceedings. Polish authorities could not confirm that in these cases, they would be aware of the person who maintains the company's records for the minimum retention period.

82. Regarding the availability of ownership information, the risks are mitigated since the information kept in the NCR is maintained indefinitely and the service providers will keep legal ownership records in their custody for five years. In the unlikely event that both the company and the service provider have ceased to exist, there is a possibility that ownership information may be lost if the authorities do not ensure that the requirement to hand over records to the appointed person and to inform the authorities has been carried out. This would be the case for limited joint-stock partnerships (identity of limited partners) and joint stock companies whose only source of legal ownership information is the entity authorised to keep securities accounts. The records of a Simplified Joint Stock Company maintained by a notary will be transferred to the notary's chamber, while for limited joint stock partnerships, there is information only on general partners in the NCR. Accordingly, Poland should monitor the process of dissolution of limited joint-stock partnerships and joint stock companies without liquidation proceedings to ensure that legal ownership records of such entities is available in all cases for a minimum of five years (see Annex 1).

Tax law requirements

83. 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, they 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.

84. 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[17] (and the National Court Register also transmits identity information to the National Register of Taxpayers (CRP KEP), with respect to LLCs).

85. 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 (only the data kept in the NCR), 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" indicating 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.

86. Therefore the tax authorities hold legal ownership information for LLCs but only for the shareholders that hold 10% or more of the capital of the company, for JSCs with a single shareholder and for general partners of LJSPs. The Polish authorities have explained that in other cases, including for other types of companies, the NRA will obtain such information from the service providers through the companies themselves or from the NCR registration files available online.

Anti-money laundering law requirements

87. 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

17. This contains 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.

process.[18] Notaries are engaged throughout the Polish company's existence owing to their intervention in various company decisions such as notarisation of resolutions of shareholders and share transfers. It remains that "defining the ownership and control structure" of the client does not equate to knowing the full list of legal owners and could be limited to those that qualify as beneficial owners. The process therefore entails the determination and maintenance/updating of some legal ownership information.

88. 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

89. The oversight activities in Poland that cover the various sources of ownership information differ to varying degrees. The coverage of the supervision activities on the main sources of information is discussed in the following paragraphs.

Supervision of the National Court Register

90. The registration courts verify the veracity of the information entered in the Register and may remove it, or correct it, if they doubt that the information reflects the actual state of facts (NCR, Art. 23).

91. The CCC and the NCR Act contain sanctions for non-compliance with the obligations to provide ownership information to the NCR or for providing false information.

92. Whenever it is established that a person required to make an entry in the NCR 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). Any member of the management board of a company who allows the management board not to 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

18. 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.

PLN 20 000 (EUR 4 800) (CCC, Art. 594§1). These provisions also apply to liquidators (CCC, Art. 594§3).

93. The registration courts carry out oversight mechanisms to ensure that the information held in the NCR 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 provincial (*voivodship*) marshals have the obligation to supervise the requirements related to keeping records of entities that cease to exist (see paragraphs 75 to 82).

94. There are two levels of supervision of the NCR that occur at stages starting with the registration of a company.

95. The first level of supervision involves verifying documents relied upon to make entries into the NCR to ensure that they are accurate and complete. Registration court officials examine the accuracy of the data contained in the application, looking at its form and content. The officials check the names and identification numbers of individuals and of legal entities. Submitted address information that includes the *voivodship*, county, municipality, city and street for the seat of the company is also verified in accordance with the register of territorial divisions. Information will be entered into the NCR only if it is reflected in the attached supporting documents and has been verified to be accurate.

96. Further, when examining the applications submitted by bodies of a LLC for an amendment to the shareholders' list, such as deletion of a shareholder from the list and entry of a new shareholder to which a share transfer agreement with the signature certified by a notary is attached, the registration court officials check if the entries correspond to the contents of the documents submitted with the application.

97. The second level of supervision involves actions carried out by the registration courts to rectify information in the NCR when it has come to the notice of the courts that a company has not filed its statutory information (financial statements) or when a notification is received from the NRA indicating that information contained in the NCR is not accurate, complete or up to date.[19]

98. The jurisdiction of the registration courts and the supervisory activities of the presidents of the courts do not extend to evaluating whether all entrepreneurs carrying on business activities and required to register with the NCR are registered or not. Such cases of non-compliance are identified

19. The courts are also obliged to ensure the accuracy of data ex officio and may ex officio delete false data and enter true data (Article 24(6) of the NCR Act).

by the tax authorities and would be prosecuted by the public prosecutor's office or the police.

99. The main source of information that is relied upon by the registration courts to rectify entries in the NCR are the tax authorities who during the course of audits do examine the availability of legal ownership information. The NRA has reported that in a considerable number of cases, information contained in the NCR was found to be inaccurate.

100. As shown in the table below, the NRA has reported to have carried out checks concerning registration on average in 50% of the audit cases undertaken for the period 2019 to 2022.

Year	No of audits	Number of checks on non-submission documents pertaining to registration	Number of checks on obligations under the NIP Act[20]	Total audits where registration was checked	Percentage of total audits where registration was checked
2019	47 192	2 124	18 736	20 860	44%
2020	37 428	1 848	20 723	22 571	60%
2021	30 406	1 693	13 550	15 243	50%
January to June 2022	79 011	483	3 959	4 442	6%

101. In the instance where the tax auditors establish that the information held by taxpayers is different from what is contained in the NCR, notifications are sent to the registry court to rectify the entries. For the period under review, over 6 000 notifications were sent by auditors for correction in the NCR as indicated in the table below.

Year	Number of notifications sent to the NRC
2019	2 047
2020	1 291
2021	1 875
2022	1 563

102. The Polish authorities have confirmed that formal proceedings were opened in all the reported cases and that cases not resolved in the year of initiation are carried forward to the next period.

20. The NIP-*Numer Identyfikacji Podatkowej* is the tax identification number and all entities registered in the NCR must have an NIP.

103. Notifications are also submitted by other public authorities, entities and individuals. The number of proceedings initiated or carried out by the registration courts during the review period is elaborated in the table below.

Year	Cases brought forward	New proceedings initiated	Total for the year	Resolved	Carried forward
2019	8 839	19 553	28 392	19 269	9 123
2020	9 123	48 813	57 936	40 827	17 109
2021	17 109	26 073	43 182	31 529	11 653
January-June 2022	11 653	8 822	20 475	10 412	10 063
Total		103 261	149 985	102 037	

104. As shown in this table, the administrative checks of the registration courts made ex officio and information received from the NRA and other sources, led to a total of 149 985 proceedings being conducted by the registration courts to rectify information in the NCR. Out of the proceedings handled during the review period, 93.3% were resolved while 6.7% of the proceedings are still in the process of being resolved. The Polish authorities explained that the number of cases initiated and those resolved for each year fluctuated due to among other reasons, the impact of the pandemic restrictions in 2019.

105. The proceedings were mainly targeted at updating the records in the NCR. The available information is not descriptive enough to show which type of records were being updated, however, the Polish authorities have confirmed that it includes the updating of legal ownership information. These proceedings take the form of the registration courts serving notices to the concerned parties to update the information within seven days, failure of which a penalty would be imposed (see paragraph 92). If it is determined that even after imposition of penalties, the concerned parties will not update the information in the NCR, then the registration courts will initiate proceedings to strike off and dissolve the entity (see paragraphs 114 to 115).

106. During the review period, the district court for the city of Warsaw, which houses three registry divisions, imposed penalties in 30 488 cases totalling to PLN 63 581 347 (EUR 13 527 944).

Year	No of cases penalised	Amount collected/PLN	Amount collected/EUR
2019	11 002	19 113 560	4 066 714
2020	8 600	17 514 901	3 726 574
2021	6 627	15 741 315	3 349 216
2022	4 259	11 211 569	2 385 440
Total	30 488	63 581 347	13 527 946

107. The purpose of the imposed penalties is to ensure that entities comply with their obligations to keep the NCR information up to date.

108. The incidences where the information contained in the NCR may not be up to date are substantial, as seen from the discrepancy notifications sent by the NRA and also the number of proceedings carried out by the registration courts. This may be an indication that the information contained in the NCR is not always up to date. However, the combination of oversight of the NCR by the registration courts and the NRA, including the use of penal sanctions and striking off non-compliant companies from the register, are adequate in ensuring that there is active monitoring of the register.

Supervision on service providers

109. Legal ownership information of joint stock companies and Simplified Joint Stock Companies is only available with two categories of service providers, namely entities permitted to operate a securities accounts and notaries (for Simplified Joint Stock Companies) (see paragraphs 64 and 65). Changes in ownership take effect when reflected in the registers of shareholders as kept by these service providers.

110. In general, the Polish Financial Supervision authority (PFSA) is mandated with supervising the activities of the entities required to keep securities accounts, whilst the presidents of the courts of appeal or the provincial courts supervise the activities of notaries. Although, no specific activities towards the obligations of these service providers to maintain up-to-date legal ownership information were carried out during the review period, legal ownership rights are self-enforcing since legal title will only arise for those persons entered into the register.

Inactive companies

111. Inactive companies in Poland are either those that are economically dormant or those that have not filed or updated their requisite ownership information to the NCR (i.e. non-compliant companies that may be

economically active). Additionally, if a company has not filed its annual financial returns with the NCR for two consecutive years, it will also be categorised as inactive.

112. Regarding the category of economic dormancy, companies may apply to the NCR to suspend economic activity for a period ranging from 30 days to 2 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. These companies still retain the obligation to update their ownership in the NCR in case of any changes.

113. 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 on the basis of notifications from other public authorities. Where it is established that an entity does not conduct business activity and does not have any assets, the entity will be struck off from the NCR, lose legal personality, and cannot be re-instated to the register (NCR Act, Art. 25a).

114. Where it is established that a company has not filed ownership information by its due date, or where a company does not file its annual financial statements for two consecutive years, the registration courts will serve a notice to the company to file its information within seven days. If the seven-day deadline is not met, the registration courts will impose penalties. If despite the application of a fine, the entity does not comply with updating its information, proceedings to strike off the entity from the register will be initiated (see paragraphs 76 to 80). Poland has provided aggregated statistics on struck off entities and explained that the main reason for striking off is failure to file financial information. Poland is not thus able to indicate how frequently or rarely this process takes place with respect to legal ownership requirements. Considering that there have been instances where the information in the NCR was found not to be up to date (see paragraph 99), Poland should monitor the procedure to strike off companies that have not updated their ownership information in the National Court Register, to ensure that the procedure is effectively carried out (Annex 1).

115. Polish authorities have reported that the registration courts often initiate proceedings for dissolution to remove inactive entities from the NCR.

116. As explained from paragraphs 61 to 69, 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, SJSCs and LJSPs). Therefore, for inactive entities ownership and identity information continues to be available with these sources.

Availability of beneficial ownership information

117. 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 been amended by the Act of 30 March 2021 to implement the provisions of the Fifth EU Anti-Money Laundering Directive (EU) 2018/843.

118. 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 and tax advisors (Art. 2).

119. 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.

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

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

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)[21]	None	None	All	All

21. 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).

Anti-Money Laundering law – Beneficial owner definition

121. 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 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)[22] of the Accounting Act of 29 September 1994, or

22. 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.

> – 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,

122. 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 methodology for the identification of beneficial owners further covers natural persons exercising control through ownership over legal persons individually or jointly.

123. Reference to control through powers held due to "actual circumstances" in the main part of the definition could be understood to mean "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 124). These aspects of the beneficial owner definition are in line with the standard.

124. 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 obliged institutions interviewed during the onsite visit confirmed that the published guidance

and awareness trainings have helped to improve clarity in identification of beneficial owners.

Anti-Money laundering Law – public registry/legal entities

125. 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 548 900 legal persons by February 2023, representing approximately 75% of the entities.

126. Entities are required to submit information that identifies the company such as name, organisational form, registered office, NCR and NIP- *Numer Identyfikacji Podatkowej* numbers (equivalent of TIN). 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.

127. 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.

128. 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.

129. 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 in practice

130. The Central Register of Beneficial Owners in Poland is public. The Register is maintained in an electronic portal that supports all the functions related with submission, updating and correction of information. The register is accessible online and can be searched at no cost.

131. Reporting entities are required to submit beneficial ownership information themselves or through their representative. 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". Provision of false information may lead to criminal sanctions and can also be sanctioned administratively as discussed at paragraphs 144 and 145. Consequently, this is anticipated to limit the submissions of incorrect information.

132. To ensure accuracy of the data maintained in the Register, the supervisory authority (see paragraph 144) often publishes guidance on different topics on its website on how to submit information, report discrepancies and search information. This is in addition to answers on frequently asked questions such as on identification of beneficial owners including the methodology for identifying beneficial owners. Further, the minister has issued regulations that provide other 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 supervisory 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. The detailed oversight and enforcement action undertaken by the authorities in Poland are discussed, starting at paragraph 144. As of February 2023, 548 900 entities, representing 75% of a potential of 732 974, have already submitted information on beneficial ownership to the Central Register of Beneficial Owners (CRBO). The number of LLCs that have already submitted information to the CRBO stands at 398 182, representing 78% of all LLCs registered as of 31 December 2022. The Polish authorities reported that the supervisory authority carries out periodic checks in relevant government databases to identify entities that have not submitted information to the CRBO, and such entities are summoned to do so. Polish authorities also reported that when summoned entities do not respond, penalties are issued as discussed at paragraphs 145 and 160.

133. Between 2019 and 2023, the register received 790 700 notifications and the Polish authorities have reported that on average they handle about 620 notifications per day. The notifications include initial submission, discrepancy reporting and updating information held in the Register.

Anti-Money Laundering law – Customer due diligence

134. 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, notaries, attorney/legal practitioners, auditors, accountants and professional tax advisors (Art. 2). As discussed at paragraphs 60 and 87, Polish companies[23] must engage a notary during their formation processes and regularly afterwards.

135. 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.

136. The CDD measures must be applied when establishing a new business relationship and when performing specific transactions[24] and where there is doubt regarding the authenticity or completeness of customer identification data (Art. 35 of the AML/CFT Act).

137. 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

23. 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.

24. 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.

upon request to the relevant supervisory authorities that CDD is being appropriately carried out.

138. 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.

139. 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 (such as control through other means) and in the circumstances where beneficial owners do not report to the entity changes in their circumstances. 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. Polish authorities stated that in practice AML-obliged institutions are expected to update CDD for high-risk clients at least once annually, and for medium and low risk clients at least once in three and five years respectively. However, the representatives of the obliged institutions provided differing views. The notaries could not confirm this position

while the banking sector informed that this approach would vary from bank to bank. Besides, the authorities could not state whether they are able to enforce such expectations or sanction any obliged institution that would divert from it. To supplement the mitigation provided by the requirement for beneficial owners to provide information to companies to facilitate reporting of changes, Poland should ensure that beneficial ownership information in relation to all customers of obliged institutions is kept up to date in all cases (see Annex 1).

140. The mitigating factors of beneficial owners providing information to companies to make updates to the Central Register of Beneficial Owners do 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**.

141. In the instance that an obliged institution is not able to carry out CDD measures as described at paragraph 135, it is required not to proceed with any transaction and to terminate the business relationship in question.

142. 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).

143. 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. When the obliged institution ceases to exist, the records shall be kept by a liquidator or chamber of notaries (in case of notaries) (see paragraphs 75 and 80). The Polish authorities informed that in the case of death of a natural person, then the person in charge of the deceased's estate would keep the records (Act on Accounting, Art. 76(2)).

Enforcement measures and oversight

Central Register of Beneficial Owners

144. The minister responsible for public finance is the supervisory 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

supervisory 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 145 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.

145. Regarding obligations to identify beneficial owners and submit information to the CRBO, an entity which does not comply with the obligation to report information to the Register within the statutory time limits or provides false information, is subject to a financial penalty of up to PLN 1 000 000 (EUR 217 475) (Art. 153). Further, 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). To this end, penalties amounting to PLN 250 000 (EUR 53 533) have been issued against entities for failure to report information to the CRBO or for submitting false information.

146. According to Article 68 of the AML/CFT Act, 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.

147. The information submitted into the register is verified at three levels. The first category of checks is performed by the system and the staff of the NRA responsible for the Register. The electronic system carries out automated checks to detect irregularities such as incorrect company identification numbers. The NRA has allocated 16 full time officials who manage the Register and carry out further verification checks by comparing submitted data against information held in other government databases. For example, they verify if updates in the NCR have led to changes in the CRBO or vice versa. They also verify the identity data on the beneficial owner, the reason for identification and country of residence. Where inconsistencies are identified, the submitted entity is requested to rectify the information, failure of which attracts sanctions.

Verifications and outreach by supervisory authorities

148. Moreover, upon creation of the Register, the NRA has conducted various trainings and awareness programmes to sensitise obliged entities, remind such entities about their obligations to submit information to the CRBO and to provide individualised support to reporting entities. Under these types of interventions, the NRA team managing the CRBO has sent out and handled 23 320 notifications and communications with reporting entities as categorised in the table below.

Period	Type of Awareness campaign	Number of notifications sent out
2019-20	Informing entities on new obligations	1 660
2022-23	Notifying new entities to submit information	11 960
2021-23	Responses to Client queries	9 700
Total		23 320

149. Regarding training, the Polish authorities (NRA and GIFI) have conducted workshops and training programmes for over 2 500 persons from 2019 to 2022. The trainings conducted have covered areas such as determining beneficial owners, submitting information to the CRBO and the linkages with obliged institutions.

150. These activities have improved the function of the CRBO, including that 75% of entities required to submit beneficial ownership information to the Register have already done so (see paragraph 132).

Discrepancy reporting

151. The second category of checks results from discrepancy reporting by other supervisory government agencies termed as “co-operating units and obliged institutions”.

152. Obliged institutions are required 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 supervisory 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.

153. The act further requires co-operating units, meaning other public authorities,[25] to notify any discrepancies between the information in their possession and information held in the Register.

25. Co-operating units mean any government and local government authorities and other state organisational units as well as National Bank of Poland, the Polish

154. Upon receipt of notified discrepancies, the supervisory authority is mandated to clarify them. The supervisory 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).

155. Since November 2020, a discrepancy reporting module was added as a functionality of the CRBO, thereby enabling online submission of discrepancy reports. A discrepancy report must be accompanied by adequate justification and supporting documentation. Upon receipt of this information, the NRA officials managing the Register will take steps to clarify the causes of possible discrepancies by verifying the information with the reporting entities and other government databases. The Polish authorities have reported that the simplified system of reporting discrepancies has led to increased reporting, including from persons that are not mandated to report.

156. The Polish authorities have reported that from 2021 to 2023, over 10 100 discrepancy reports have been submitted to the CRBO regarding information contained in the Register. Out of these, 7 700 reported discrepancies have already been resolved while the rest are in the process of being addressed.

Inspections by supervisory agencies

157. The third category of checks is carried out through the audits carried out by the NRA and CRBO (see audit statistics at paragraph 100), both of which are supervised by the General Inspector of Financial information (GIFI). The Polish authorities reported that during tax audits, the NRA inspectors will seek to understand the ownership and control structures of the entity and compare the information obtained to the entries contained in the CRBO.

Updating information and sanctioning related delays

158. Information contained in the CRBO is required to be updated within seven days of any change (see paragraph 127). The AML/CFT puts specific obligations and sanctions (see paragraph 145) on reporting entities and beneficial owners to facilitate these changes. In practice, the authorities have reported that changes to beneficial ownership information were either reported or triggered by verification checks and discrepancy reports.

159. The explanations provided by the Polish authorities suggest that information in the Register is updated regularly. Between 2022 and 2023,

Financial Supervision Authority (PFSA) and the Supreme Audit Office.

there were 75 699 revisions and updates on information contained in the Register as a result of notifications submitted by reporting entities, discoveries through verification by officials and through discrepancy reports. The NRA officials managing the CRBO reported to have handled an estimated 19 000 notifications on the CRBO register per month in 2022 and that on average 40% of these led to information being updated.

160. The supervisory authority has so far issued out penalties amounting to PLN 1 000 000 (EUR 213 925) to entities for failing to update the information contained in the Register in a timely manner.

161. The information provided by Polish authorities demonstrates that the obligations on the reporting entities and beneficial owners, supported by monitoring of the CRBO and discrepancy reports by government agencies (co-operating units) and obliged institutions, have all led to updating the Register. These measures will ensure that the information in the Register is updated.

162. However, challenges associated with two key sources of information leading to the updating of information may affect the timeliness at which such updates are made. Firstly, for the entities that do not report legal ownership information to the NCR or to the tax authorities, there is no effective source of reference to support proactive checks by CRBO officials to ensure that changes in beneficial ownership information are regularly reported in a timely manner (see discussion at paragraphs 109 et seq.). Additionally, for the entities that report legal ownership information to the NCR, the NRA officials that carry out audits have reported that in a considerable number of cases, it has been established that the information found in the NCR was not always up to date.

163. Secondly, the AML framework, through which co-operating units and obliged institutions identify beneficial owners and report discrepancies, does not provide for any periodic frequency through which CDD ought to be updated. The potential gap is reduced since all companies are required to submit information to the CRBO and the rate of submissions is relatively high. Although companies will engage an AML-obliged service provider in most of the cases, such as a notary or an entity permitted to keep securities, to at least facilitate changes in their legal ownership, this does not ensure that the company will engage an AML-obliged institution on an ongoing basis. Therefore, AML obliged institutions may not detect changes in beneficial ownership information and there may be cases where the discrepancy reports may not be submitted as often as is necessary. Consequently, out- dated beneficial ownership information will not be detected in a timely manner. Accordingly, **Poland is recommended to strengthen its system of oversight in order to ensure that up-to-date beneficial ownership information on all companies is available in line with the standard**.

Other sanctions on the operations of the register

164. Since 2021, a total of 502 administrative proceedings have been initiated, including 32 investigations. A third of these proceedings (30%) result from discrepancy reports. Out of these proceeding, penalties amounting to PLN 7 068 500 (EUR 1 519 308) were imposed in 419 cases (83%) and 34 cases have been sent to court.

165. The cases involved instances where entities were late in submitting information, no entries were made to the Register at the time of submitting information or entries made after inquiries were initiated by the NRA. The data on sanctions issued out, as presented below, shows the source of information that led to the initiation of the proceedings and eventually to the issuance of penalties.

Period	2021			2022			2023 (up to March)		
Information source	Number of cases	Penalty amount/ PLN	Penalty amount/ EUR	Number of cases	Penalty amount/ PLN	Penalty amount/ EUR	Number of cases	Penalty amount/ PLN	Penalty amount/ EUR
Central Anticorruption Bureau	-	-	-	4	106 000	22 698	-	-	-
CRBO verification	24	287 500	61 563	152	2 436 500	521 734	37	637 500	136 510
Banks/National Bank of Poland	9	94 000	20 128	9	101 000	21 627	1	50 000	10 707
GIFI	6	104 000	22 270	3	120 000	25 696	-	-	-
NRA	14	197 500	42 291	23	679 500	145 503	-	-	-
Information reported by individuals	7	108 000	23 126	26	568 000	121 627	-	-	-
Notaries	-	-		1	50 000	10 707	-	-	-
Other obliged institutions	-	-		65	1 024 000	219 272	38	505 000	108 137
Totals	60	791 000	169 379	283	5 085 000	1 088 865	76	1 192 500	255 353

166. The data further confirms the wide range of sources of verification of information contained in the CRBO.

Anti-money laundering framework

167. 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).

168. 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.

169. 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.

170. An obliged institution that fails to fulfil its obligations under the AML/CFT Act, including appointing an authorised representative (see paragraph 126), 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). 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).

171. 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.

172. The GIFI provides strategic oversight on the supervisory actions of the various supervisory agencies and consolidates statistics on monitoring activities conducted. It is also engaged in providing awareness and training of obliged institutions and supervisory agencies, and co-ordinating relations amongst government authorities, including the CRBO.

173. GIFI has carried out various sensitisation and training programmes aimed at equipping the supervisory agencies and obliged institutions to efficiently discharge their duties as elaborated in the AML/CFT Act. Regarding obliged institutions, the trainings cover how to ensure full identification of beneficial owners and how to report discrepancies. The trainings offered to supervisory agencies are designed to equip the agencies with the requisite skills to carry out supervision of their sectors. The Polish authorities have reported that over 4 900 representatives have been trained in a combination of in-person and virtual trainings. The representatives of the obliged institutions and supervisory agencies met during the onsite visit indicated that the training programmes had helped their officials in building their knowledge and understanding of the concept of beneficial ownership.

174. The supervisory agencies conducted supervision. In general, supervision and monitoring activities are risk-based and occur in different forms such as desk reviews, onsite visits, audits, and related forms of controls. The table below shows the type and number of supervisory activities carried out by the different supervisory agencies in Poland.

Supervisory Authority	Type of supervisory action	Number of supervisory activities
National Bank of Poland	Control of money exchange offices	2 270
Presidents of Courts of Appeal	Visits to Notaries offices	62
National Co-operatives Savings and Credit union	Controls of members	08
Polish Financial Supervision Authority	Controls of banks	12
Ministers, provincial offices	Audits of foundations and associations	24
National Revenue Administration	Field inspections	27
Total		2 403

175. The results above confirm that different supervisory agencies, most especially the National Bank of Poland, are actively engaged in supervision. Further, where non-compliance has been established, the supervisory agencies have applied sanctions and penalties. This is in addition to reporting identified discrepancies to the CRBO as discussed at paragraph 156.

176. Penalties were issued against obliged institutions for not complying with CDD requirements.

Period	Penalty amount PLN	Penalty amount EUR
2021	94 000	20 204
2022	101 000	21 709
2023	1 024 000	220 099
Total	1 219 000	262 012

177. The information submitted by Poland shows a systematic approach towards supervision. It starts off with communication in form of letters and emails and training geared towards promoting voluntary compliance and progresses into desk reviews, onsite inspections, and sanctioning.

178. The CRBO remains the main source of beneficial ownership information for the Competent Authority for EOIR. The CRBO is well supervised by the NRA officials who have been delegated to manage the Register. There is a good level of verification of the Register mostly triggered by discrepancy reporting and information from third party sources and this, in addition to the internal checks carried out by CRBO staff, has led to corrections and updates of information.

179. Regarding the AML framework, Poland's supervisory activities are sufficient, and this was corroborated by the representatives of the private sector met during the onsite visit, who confirmed that there is frequency of supervision by the regulators. Moreover, Poland has promoted the use of discrepancy reporting through the sensitisation programmes. Whereas the AML framework is well supervised, it does not fully compensate the risk on availability of up-to-date beneficial ownership information since it does cover all entities and lacks a specified frequency of updating CDD. Therefore, the conclusion regarding the supervision of the CRBO (paragraph 163) will still hold.

Nominees

180. 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.

181. 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). In practice, the use of pledgees is not common, however, where they have been used, Poland confirmed that such pledges are properly registered in the register of shareholders, and they reflect the identity of the shareholder and pledgee.

Availability of legal and beneficial ownership information in practice

182. During the review period, Poland received 512 requests for ownership information. Out of these,102 requests also sought beneficial ownership information. The requests were mainly on companies, and all were answered. Peers were generally satisfied with the responses provided by Poland.

A.1.2. Bearer shares

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

184. 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).

Registration of pre-existing shares

185. 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[26] 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

26. 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.

entitled to share rights (CCC Amendment Act of 30 August 2020). 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 five-year period, the bearer shares will lose their evidential value and the shareholders who fail 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).

186. Some doubts arise concerning the five-year transition period. Polish authorities have informed that the restrictions imposed on the bearer shares (see paragraph 185) 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)).

187. 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.

188. 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.

189. **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**.

Registration of the identity of the holders of new bearer shares

190. The CCC does not prohibit the issuance of new bearer shares by joint- stock companies and joint-stock limited partnerships. Article 334 states that shares may be nominative or bearer shares and that at the request of a shareholder, bearer shares may be converted to nominative shares and vice versa.

191. The key changes are that shares can no longer be issued in paper form that can be passed from person to person and there is an obligation to register all issued shares whether in nominative or bearer form in an electronic share register. The acquisition of a share or establishment of any right on such a share takes effect only after making an entry in the register of shareholders indicating the acquirer and type of shares (CCC, Art. $328^{(9)}$). Further, Article $328^{(3)}$(5) confirms that the shareholders names and their address of residence shall be included in the register of shareholders. The CCC also states that no person is deemed as a shareholder except those entered into the register of shareholders (Art. 343 §1). The Polish authorities stated that in practice both the nominative and bearer shares are registered in the electronic register of shareholders (see paragraphs 64 to 66) and that shareholder rights may be exercised only by registered holders.

192. These obligations imply that issued bearer shares will also be registered albeit under a different categorisation. In any case, the information identifying the owners of such bearer shares will be available with the entity keeping the register of shareholders.

Implementation and enforcement

193. 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).

194. Regarding bearer shares existing prior to 1 March 2021, in order to have these shares registered or converted, 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.

195. 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. Article 328(12) of the CCC states that shares of the same company cannot be registered in the register of shareholders and the depository for securities at the same time. The representatives of the National Depository for Securities met during the onsite visit clarified that the depository does not keep detailed information identifying the holders of such shares and that it would instead keep information identifying the entities mandated to keep securities accounts.

196. Polish authorities reported that no monitoring of the obligations on conversion or registration of bearer shares have taken place. There are no statistics on the number of entities that have issued bearer shares, the number of bearer shares issued, or the bearer shares previously issued that have been converted through registration or through deposit.

197. Regarding new bearer shares that could be issued, the Polish authorities have explained that such shares will only be considered issued if registered in the register of shareholders. Further, the authorities believe that there is no risk of trading of these shares without the shares having been registered in the register of shareholders since shares can no longer be issued in document form.

198. In general, the Polish authorities have not carried out any monitoring activities to establish the status of implementation of the amendments to the CCC regarding bearer shares. The authorities have not reviewed how many entities sent out calls to their shareholders regarding previously held bearer shares, or how many of the issued bearer shares still exist. Further, no monitoring regarding the restrictions placed on both the existing and potentially issued new bearer shares has been carried out. The effectiveness of these new obligations in ensuring that identities of all bearer shareholders is available will depend on how effectively and proactively these are implemented, especially in relation to bearer shares issued in the past. Therefore, **Poland is recommended to ensure that the new measures for identifying the owners of bearer shares are effectively implemented and enforced so that accurate and up-to-date information on them is always available in line with the standard**.

A.1.3. Partnerships

199. 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.

200. 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.

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

Identity Information

202. 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.

203. 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.

204. 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 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).

205. 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

206. Under the Natural Persons Income Tax Act (NPIT Act), professional and registered 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).

207. 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).

208. Like companies, a partnership that is inactive may apply or be identified and included on the NCR as explained at paragraph 114 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.

209. 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 Poland.

210. 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

211. 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

212. 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).

213. 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.[27] 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]

214. 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. Poland has published guidance materials giving examples of control and carried out trainings and sensitisations on identification of beneficial ownership information (see paragraphs 148 and 149) which have targeted various persons involved in carrying out CDD or reporting information to the CRBO. The obliged institutions interviewed during the onsite visit confirmed that the published guidance and awareness trainings have helped to improve clarity in identification of beneficial owners. 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

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

although the issue is mitigated by updates made to the Central Register of Beneficial Owners (see paragraph 139). Since discrepancy reports from obliged institutions provide a key source of information to update beneficial ownership information in the CRBO, the lack of a specified frequency to update CDD and beneficial ownership information may affect the timeliness by which inconsistencies are identified and corrected. Poland should ensure that beneficial ownership information in relation to all customers of obliged institutions is kept up to date in all cases (see Annex 1).

Oversight and enforcement

215. The supervisory activities discussed under section A.1.1 also apply to partnerships. The obligations to maintain identity information are mainly supervised through tax audits while the obligations concerning the identification and submission of beneficial ownership information on partnerships to the CRBO are supervised by the NRA officials mandated to oversee the Register. Similarly, the GIFI, PFSA and other supervisory agencies supervise the obligations related to the AML framework.

216. As of February 2023, 36 757 limited partnerships and 30 079 general partnerships have already submitted their beneficial ownership to the CRBO, representing 85% and 88% of the partnerships registered with the NCR respectively. The Polish authorities reported that the supervisory authority carries out periodic checks in relevant government databases to identify entities that have not submitted information to the CRBO, and such entities are summoned to do so. Where summoned entities, have not responded, penalties were issued as discussed at paragraphs 145 and 160

217. As discussed under section A.1.1, the monitoring activities carried out are progressive starting from awareness, sensitisation and thereafter moving to supervision and imposition of penalties. The Polish authorities do not maintain separate statistics for each entity type on the number of audits, verifications, discrepancies reported, or penalties issued. The authorities have reported that where sanctions were issued as reported under section A.1.1, 17% relate to general partnerships while 1% relates to limited partnerships.

218. Regarding the availability of up-to-date beneficial ownership information, the supervision and oversight of the CRBO as implemented by Poland may be negatively affected by inaccuracies contained in the NCR to the extent that such information is relied upon to provide a trigger for changes in beneficial ownership or as a source for verifying the beneficial ownership information contained in the CRBO. Moreover, the AML framework which is relied upon as a source of discrepancy reporting does not contain a specified frequency for updating CDD, neither would it cover all partnerships at all times. Accordingly, **Poland is recommended to**

strengthen its system of oversight in order to ensure that up-to-date beneficial ownership information on all partnerships is available in line with the standard.

219. Regarding partnerships that cease to exist, when partnerships are dissolved without liquidation proceedings the identity of the person referred to in paragraph 209 may not be reported to the authorities. There is no verification or monitoring mechanism to check whether the records of a partnership have been deposited with the appointed person or to check whether the authorities have been notified. Since identity and beneficial ownership information is required to be available with the NCR or with the NRA and the CRBO, the associated risks are fully mitigated.

Availability of partnership information in EOIR practice

220. Poland did not receive any requests for beneficial ownership and identity information with respect to partnerships during the review period and peers have not reported any issues regarding the same.

A.1.4. Trusts

221. 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

222. 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.

223. 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.

224. 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.

225. 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.

226. With regard to the definition of beneficial owner, the overarching definition described at paragraph 121 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

227. 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.

228. 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). The retention of beneficial ownership information collected by obliged institutions is ensured pursuant to the provisions of the AML/CFT Act (see paragraph 143). Besides, the information submitted to the CRBO is maintained indefinitely.

229. 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. 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 and update beneficial ownership information although the issue is mitigated by updates made to the Central Register of Beneficial Owners (see paragraph 139). Since discrepancy reports from obliged institutions provide a key source of information to update beneficial ownership information in the CRBO, the lack of a specified frequency to update CDD and beneficial ownership information may affect the timeliness by which inconsistencies are identified and corrected. Poland should ensure that beneficial ownership information in relation to all customers of obliged institutions is kept up to date in all cases (see Annex 1).

Oversight and enforcement

230. The enforcement provisions concerning trustees on beneficial ownership information obligations are similar to those discussed under companies and are referred to in A.1.1. Persons that carry out activities that consist of or enable others to act as trustees are subject to sanctions on obliged institutions (as described from paragraphs 170 to 171).

231. Polish authorities have reported that beneficial ownership information on seven trusts has already been reported to the CRBO.

232. Regarding the availability of up-to-date beneficial ownership information, the supervision and oversight of the CRBO does not rely on the NCR and as such should be adequate.

Availability of trust information in EOIR practice

233. During the review period, Poland has not received any request in respect of trusts. Peers have not reported having ever requested for information regarding trusts from Poland.

A.1.5. Foundations

234. 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.

235. 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 234. 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)).

236. 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 June 2022, there were 32 897 foundations registered in Poland.

237. 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)).

238. Further, foundations are required to submit identity and beneficial ownership information to the Central Register of Beneficial Owners. By February 2023, 17 013 (52%) foundations had submitted beneficial ownership information to the CRBO. 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.

239. With respect to oversight, the PFSA, and provincial offices (*voivodes*) supervise foundations to ensure that they 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. The Polish authorities reported to have conducted 24 audits on foundations and associations during the review period.

240. As earlier stated, foundations in Poland are only limited to charitable activities and are 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 139).

Availability of information in EOIR practice

241. Poland did not receive any requests for information on foundations and Peers have not reported any issues regarding identity or beneficial ownership information for foundations.

Other relevant entities and arrangements – cooperatives

242. 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). There were 10 737 co-operatives registered in Poland as of 30 June 2022.

243. 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).

244. 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. The information submitted to the CRBO shall be kept indefinitely. Polish authorities have conducted various trainings and provided guidance for all reporting entities to strengthen the process of identification of beneficial owners. By February 2023, 7 367 co-operatives (69%) had submitted beneficial ownership information to the CRBO. The Polish authorities reported that the supervisory authority carries out periodic checks in relevant government databases to identify entities that have not submitted information to the CRBO, and such entities are summoned to do so. When summoned entities have not responded, penalties have been issued as discussed at paragraphs 145 and 160.

245. The Polish authorities submitted that eight supervision activities were carried out on the activities of co-operatives.

246. 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 139). Since discrepancy reports from obliged institutions provide a key source of information to update beneficial ownership information in the CRBO, the lack of a specified frequency to update CDD and beneficial ownership information may affect the timeliness by which inconsistencies are identified and corrected. Poland should ensure that beneficial ownership information in relation to all customers of obliged institutions is kept up to date in all cases (see Annex 1).

Availability of information in EOIR practice

247. Poland did not receive any requests for information concerning co-operatives. 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.

248. 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 this element of 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.

249. Regarding the implementation of the legal framework, the National Revenue Administration audited 16% of registered entities to verify that relevant obligations are adhered to and to ensure the availability of accounting information.

250. Moreover, whenever entities have not provided their annual financial statements to the National Court Register for two years consecutively, such entities are struck off from the register and dissolved. However, when companies and partnerships are dissolved without liquidation proceedings, there is no process to verify whether a person or entity has been appointed to keep the entity's records or whether the relevant authorities have been notified about the identity of the person keeping these records as required by law. This risk is mitigated by the availability of some accounting records with authorities, such as financial statements available at the National Court Register and at the National Revenue Administration. These mitigations do not cover underlying documentation or instances where the entities were not compliant with their filing obligations before dissolution.

251. Poland received 550 requests for accounting information and answered 98.7% of these requests but was not able to provide information in seven cases (1.3%). For five of these requests, the failure was due to the unresponsiveness of entities because the entities did not collect the information Notices issued by the National Revenue Administration, while in two cases, the taxpayers refused to supply the information requested. In these cases, Poland did not apply its compulsory powers or sanctions as discussed under section B.1.

252. 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: Largely Compliant

Deficiencies identified/Underlying factor	Recommendations
When companies and partnerships are dissolved without liquidation proceedings, there is no monitoring or supervision to ensure that a person or entity has been appointed to keep the records of such entities, or that the authorities have been notified of the identity of the person or entity appointed to maintain the records. Consequently, the authorities are likely not to be aware of the person or entity that maintains such records. This risk is mitigated by the availability of some accounting records such as financial statements at the National Court Register and at the National Revenue Administration. However, these mitigations do not cover underlying documentation.	Poland is recommended to monitor the process of dissolving entities without liquidation proceedings to ensure that it is complied with and thus accounting records of such entities are available in all cases for at least five years.

A.2.1. General requirements

253. 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 co-operatives

254. 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).

255. The accounting rules adopted must depict a true and fair presentation of an entity's property and financial position and its financial result at all times. The accounting obligations 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).

256. 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).

257. 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.

258. 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[28] (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.

259. 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.

260. The Act on Accounting does not apply to natural persons, civil partnerships of natural persons, registered partnerships of natural persons

28. 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.

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

261. 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. In order to differentiate the income of the trust from the income the trustee has earned which is taxable in Poland, the trustee must maintain the full accounts of the trust.

262. 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 in respect of their own income derived from the business which is demonstrated by maintaining the accounts of the trust.

263. 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 (see paragraphs 267 and 268).

Tax Law

264. 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).

265. 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).

266. 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.

267. 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.

268. 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.

Retention period and entities that ceased to exist

269. 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).

270. Account books, bookkeeping vouchers, stocktaking documents and financial statements of entities which have been dissolved and liquidated[29] 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, their records are kept by the continuing entity. In all cases, the records are kept for a minimum of five years. The person or manager of an entity, liquidator or bankruptcy estate trustee that keeps the records of an entity that ceased to exist must inform 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 Poland.

271. As discussed from paragraphs 76 to 82 and 209, entities may be dissolved without liquidation proceedings (20 154 entities during the review period) and it is required that a person or entity be appointed to maintain the records of such entity for the retention period and the authorities should be notified of the identity of the appointed person/entity. However, there has been no monitoring or supervision of the process to ensure that such persons or entities are appointed to keep the records of entities that cease to exist and that the authorities have been notified as required by law. In the absence of monitoring, the authorities are likely not to be aware if a person or entity was appointed to maintain such records, who they are or if the records were handed over. This risk is mitigated by the availability of some accounting records such as financial statements at the NCR and at the tax administration. However, these mitigations do not cover underlying documentation or instances where in the first place, the entities were not compliant with their filing obligations. Consequently, **Poland is recommended to monitor the process of dissolving entities without liquidation proceedings to ensure that it is complied with and thus accounting records of such entities are available in all cases for at least five years**.

272. 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.

29. 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.

A.2.2. Underlying documentation

273. All events that occur in a given reporting period must be recorded in the form of an entry into the accounting books (Act on Accounting, 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 (Art. 21.1).

274. 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).

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

276. With respect to entities that are not required to keep detailed accounting records as earlier discussed (see paragraphs 260 and 267), the entries into the ledger are based on VAT invoices to the extent that such entries are registered for VAT, having attained the VAT threshold[30] (see paragraph 31). 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

277. 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

30. 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). This low threshold is attached to business activity, and any entities not captured by this would probably be small-scale businesses not material for EOIR.

penalties. The same penalties apply if a person allows for financial statements to 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.

Oversight of statutory auditors

278. 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.

279. 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. Further, a statutory auditor who draws an unreliable opinion is liable to a fine or imprisonment of up to two years (Act on Accounting, Art, 78). The Polish authorities issued fines to auditors in four cases during the review period.

Annual filing with the National Court Register

280. Companies are required to provide their annual financial statements to the NCR. An entity that fails to submit to the NCR 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). Companies that fail to submit their financial statements to the NCR for two consecutive years are struck off from the Register and dissolved immediately (see paragraph 114).

281. From 2019 to 2022, 90 639 proceedings to check entities that had flouted their obligations regarding the NCR, including the annual filing of financial statements, were opened. Out of these, 69 139 cases (76%) have been resolved with rectifications made by the entity, while 20 959 cases (23%) have led to dissolution of the entities.

282. 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) (Fiscal Penal Code, Art. 60 and 61).

Supervision by tax authorities

283. Additionally, taxpayers are required to submit their financial statements alongside their tax returns. In support of this obligation, the National Revenue Administration (NRA) carries out audits and checks to ensure that taxpayers maintain accounting records in accordance with the legislative provisions. 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.

284. The audits are carried out based on an annual risk-based programme that identifies which entities are to be audited in the course of the year. These audits are decentralised and are performed by local tax offices.

285. During the review period, 81 556 audits on entities (approximately 16% of registered entities) were carried out by the local tax officials. The Polish authorities have reported that in 7% of these audits, infringements on various tax law obligations were identified and penalised.

Year	No. of cases with penalties	Value of penalties Imposed/PLN	Value of penalties Imposed/EUR
2019	2 344	2 307 189	490 891
2020	1 295	1 281 855	272 735
2021	1 171	1 156 235	246 007
2022	1 213	1 437 061	305 757
Total	6 023	6 182 340	1 315 390

286. The tax authorities levied administrative penalties in 6 023 cases amounting to PLN 6 182 340 (EUR 1 315 391). These penalties are intended to improve compliance of the taxpayers regarding accounting record keeping obligations.

287. The Polish authorities also identified non-compliance with provisions of the Act on Accounting and these were equally penalised including 109 persons whose liberties were restricted[31] and 6 persons who received prison sentences.

31. Restrictions of liberties include the obligation to perform unpaid work for social purposes, or a 10% to 25% deduction from one's monthly income made to a social

Year	Type of offence	Number of fines	Number of persons punished with restriction of liberty	Number of people punished with imprisonment
2019	Art. 77 (Failure to keep records in accordance with Act)	72	1	1
	Art. 79 (Failure to submit records to statutory auditor/NCR)	646	22	2
2020	Art. 77	78	3	1
	Art. 79	731	33	0
2021	Art. 77	135	8	2
	Art. 79	677	20	0
2022	Art. 77	102	1	0
	Art. 78 (Statutory auditor who draws unreliable opinion)	4	0	0
	Art. 79	640	21	0
Total		3 085	109	6

288. The Polish authorities have a robust programme of supervision of accounting obligations and where necessary, they have issued relevant penalties against incidence of non-compliance. Therefore, the availability of accounting information to the Competent Authority for EOIR purposes is largely ensured with the exception of cases of entities that cease to exist. This issue impeded Poland from responding to three requests on accounting information sent by one peer as discussed in the next section.

Availability of accounting information in EOIR practice

289. Poland received 550 requests for accounting records and was able to provide information in 98.7% of the cases and peers were generally satisfied with the information provided. Poland did not provide information in seven cases from three peers. These cases related to entities that were not compliant or had been struck off and the reasons for failure to provide information are associated with the inability by the Polish authorities to use the full extent of their powers including imposition of sanctions when entities could not be contacted, refused or delayed supplying requested information as discussed as section B.1.5. In the other two cases, Poland justifiably declined the requests since the entities subject to the request could not be well identified and the Polish authorities have explained that this was due to insufficient data from the requesting jurisdiction (see paragraph 449).

cause determined by court and during this period, the convicted person may not change his/her place of permanent residence without permission of the court.

A.3. Banking information

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

290. 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. This legacy issue remains, but its magnitude diminishes over time.

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

292. 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. Banks are obliged to update customer due diligence based on the risk profile of the customer and in certain other circumstances. While banks have risk compliance programmes that provide for updating customer due diligence under these conditions, there are variations on how frequently banks update beneficial ownership information. 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.

293. The Polish Financial Supervisory Authority with the collaboration of the General Inspector of Financial Information regulates and supervises the activities of banks. The supervisory activities of the Polish authorities are adequate in scope and coverage and sanctions have been imposed where non-compliance was established.

294. Poland received 401 requests for banking information and was able to answer a majority of these requests except for cases involving "virtual accounts". These accounts are sub-accounts associated with particular financial products and the information provided by the requesting jurisdiction was not sufficient to isolate the transactions relating to the individuals subject to the EOI request.

295. 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: Largely Compliant

No issues have been identified in the implementation of the existing legal framework on the availability of banking information. However, once the recommendation on the legal framework is addressed, Poland should ensure that it is applied and enforced in practice.

A.3.1. Record-keeping requirements

296. The Banking Act (BA) 1997 regulates banks in Poland, detailing the principles of conducting banking activity, establishment and organisation of banks, branches and subsidiaries 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

297. 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).

298. 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).

299. 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.

300. 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).

301. 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). 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).

302. 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). When a bank ceases to exist, including a subsidiary or branch of a foreign bank, its records shall be kept by an appointed person as discussed at paragraph 269 and 270.

303. 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 have confirmed that the amount

of funds deposited in these accounts as approximated in the 2015 Report to be EUR 4 000 000 has reduced to EUR 3 880 110. Even though the amount in question is minimal, Poland should ensure that information on the owners of these accounts is available (see Annex 1).

Beneficial ownership information on account holders

304. 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.

305. 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).

306. When a beneficial owner is determined, the banks must take additional steps to verify the identity of the beneficial owner. As explained at paragraph 135, 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.

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

308. 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). Representatives of the banking sector stated that reliance on introduced business is rare in practice.

309. 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 the Act on Accounting as discussed at paragraph 270 take effect.

310. As noted at paragraphs 138 and 139, 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. Polish authorities stated that in practice banks are expected to update CDD for high-risk clients at least once annually, and for medium and low risk clients at least once in three and five years respectively. However, the representatives of the banking sector informed that this approach would vary from bank to bank. Besides, the authorities could not confirm whether they are able to enforce such expectations or sanction any bank that would divert from it. This could lead to situations where the beneficial ownership information on accounts is outdated. **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**.

311. As noted in paragraph 124, 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 guidance and training as discussed under Element A.1 has provided clarity to AML-obliged persons. The obliged institutions interviewed during the onsite visit confirmed that the published guidance and awareness trainings have helped to improve clarity in identification of beneficial owners of legal persons and arrangements.

Oversight and enforcement

312. The PFSA is responsible for supervision of banks, and it collaborates with the GIFI for the supervision of banks' implementation of their AML/CFT obligations. The enforcement provisions described in section A.1.1 (paragraphs 144 to 179) apply to the monitoring of banks' due diligence obligations and sanctions apply in the event of non-compliance with these obligations.

313. Supervision is planned and carried out using a risk-based approach which relies on information sourced from various internal and external databases. Particularly, for AML/CFT associated supervision, the PFSA will rely on information from GIFI, other co-operating units, and sectoral risks as enumerated in Poland's national risk assessment. The results of the supervision are treated using a wide range of actions that include training, provision of guidance papers or sanctioning of non-compliance. The representatives of the banking sector met during the onsite visit explained that the training and guidance notes have been instrumental in improving the understanding beneficial ownership concepts.

314. Supervision involves desk-based reviews and onsite inspections. Desk based or offsite inspections are conducted on the basis of documentation received or available to the PFSA. Onsite Inspections may be comprehensive, thematic or targeted to a particular banking institution. A specific type of inspection termed as "investigation procedure" is carried out where there is need to conduct a careful examination of a bank following identification of irregularities. The numbers of on-site inspections are presented below.

	Commercial bank	Co-operative bank	Brokerage house	Domestic payment institution	Small payment institution	Credit union (SKOK)	Branch of credit institution	Investment fund company
2018	12	3	6	16	0	0	0	0
2019	9	7	1	6	3	3	4	1
2020	9	8	1	0	1	1	0	3
2021	5	4	2	2	1	1	2	0
Total	35	22	10	24	5	5	6	4

315. The Polish authorities have explained that systematic increase in awareness has led to improved implementation of the obligations by banks and a reduction in the number of irregularities identified, including those related to CDD requirements. Consequently the need for on-site inspections has reduced as seen in the table above.

316. Where non-compliance was established, the Polish authorities have imposed penalties. The identified violations included failure to identify beneficial owners and to take reasonable measures to verify their identities. Others were improper monitoring of clients ongoing business, or improper application of measures in high-risk cases. Penalties amounting to PLN 25 859 000 (EUR 5 571 505) were issued in these cases.

Type of violation	Number of cases	Penalty amount PLN	Penalty amount EUR
Failure to identify beneficial owners	31	1 200 000	258 548
Improper monitoring of ongoing business	3	3 000 000	646 371
Failure to provide information to GIFI	77	21 659 000	4 666 586
Total	111	25 859 000	5 571 505

317. The supervisory and enforcement activities reported by the Polish authorities are wide in scope and the coverage spreads across the various categories of banking institutions operating in Poland. Moreover, the representatives of the banking sector met during the onsite visit confirmed that the authorities have supervised the sector comprehensively. They also demonstrated a clear understanding of their obligations.

Availability of banking information in EOIR practice

318. Poland received 401 requests for banking information and was able to answer most of them. The information requested was mainly bank statement transactions.

319. One peer reported that in 128 cases, Poland was not able to provide information concerning a particular type of account known as virtual accounts.[32] The Polish authorities have explained that these accounts are sub-accounts associated with particular financial services and the persons subject to the EOI requests were not the account holders but merely involved in transactions that had passed through the main accounts. The authorities further explained that numerous virtual accounts may be created to enable the main account to process bulk payments for services such as utilities or receipt funds by online market sellers, allowing the funds to be processed in the names of the underlying customers in Polish Zloty (PLN). The virtual accounts merely identify the person from whom funds have been received or to whom the payment should be made. The peer who sent these requests has confirmed that at the time of sending these requests, they were not aware that these were sub-accounts and upon receiving the additional information from Poland, they did not conduct further investigations. Poland stated that in some cases, where the requesting peer was interested in the transactions of a particular virtual account, they have been able to share such information.

32. Virtual accounts are digital payment methods created to receive money, collect information about the sender and pass the money to the primary account of the holder. Virtual accounts cannot hold funds or balances.

Part B: Access to information

320. 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).

321. 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. However, during the review period, Poland could not answer seven requests on account of information holders who did not respond to notices or did not provide all the requested information. In these instances, Poland did not impose sanctions or fully apply its compulsory powers to compel information holders to provide information requested for EOI purposes.

322. Additionally, 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 and notaries 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 since there are other sources of information that are used by the Competent Authority and both tax advisors and notaries are not material sources for EOIR. Poland should align its legislation with the standard.

323. The conclusions are as follows:

Legal and Regulatory Framework: in place

Deficiencies identified/Underlying factor	Recommendations
Professional privilege is extended to tax advisors, and notaries 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: Largely Compliant

Deficiencies identified/Underlying factor	Recommendations
Poland experienced failures to respond to some requests for information over the review period on account of information holders who did not co-operate. In those cases, compulsory powers were not used.	Poland is recommended to use its compulsory powers in all cases where necessary, to ensure that all information for exchange of information purposes is obtained in a timely manner.

B.1.1. Ownership, identity and banking information

324. 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.

325. The TIEO accesses and utilises information that already exists in the NCR (legal ownership), the CRBO (beneficial ownership) and tax systems of the NRA (legal ownership and accounting). Other information requested through EOIR is collected by the TIEO either directly or with the assistance of the local tax offices of the NRA, including from taxpayers directly.

Accessing information generally

326. 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 the Tax Ordinance Act 1997 (TOA), which was discussed in the 2015 Report.

327. 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 the tax obligation of another person (TOA, Art. 82).

328. Further, Article 4 of the EOI Act permits the Competent Authority to send written requests for information to public institutions and financial institutions. Public administration bodies and financial institutions, such as banks, insurance companies or investment funds at the written request of the NRA, must 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.

329. When information is not readily available in the tax or other government databases 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"[33] or take further measures if necessary (such as initiating a "tax proceeding")[34] 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

33. 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.

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

the tax liability, in which case another tax control may not normally be initiated again on the same case (Art. 282a of the TOA). Although information requested may be exchanged before the formal end of these proceedings or controls, Poland has explained that the information is usually exchanged upon their conclusion, since it is usually within the required timelines for answering requests. Tax control and tax proceeding can be reopened if new facts are established, such as receiving an EOI request on significant pieces of information that are not known or available to auditors (Art. 240 and 282a of the TOA).

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

331. The most commonly used information-gathering powers for answering EOI requests are written orders to the information holder to provide 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 327 and 328).

Accessing beneficial ownership information

332. 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.

333. The AML/CFT Act places confidentiality obligations on obliged institutions with exceptions regarding sharing information with relevant supervisory authorities. The NRA is among the supervisory 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 the information collected to perform obligations related to the application of customer due diligence measures specified in that act" (Art. 4(1a)).

334. The Central Register of Beneficial Owners and the AML framework were evenly used as information sources for the Competent Authority when responding to the 102 EOI requests where beneficial ownership information was requested.

Accessing banking information

335. 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). A bank account number or other information sufficient to identify an account holder are sufficient for Poland to process a request for banking information.

336. 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).

337. 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. The local tax office must first request the information from the taxpayer and if the taxpayer cannot furnish this information, then a request is made to the bank.

338. 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. The potential risk of unintended notification regarding banking information is mitigated by the fact that banks are used to strong anti-tipping off practice arising out of AML practice. Although this provision is not applicable in the context of EOI for tax purposes, representatives from the banks engaged during the onsite visit confirmed that any notice calling for information from the tax authorities would be treated with confidentiality.

339. Poland received and answered 401 requests for banking information during review period. In 95% of the cases, the information was sourced directly from banks. All requests for banking information were answered within 90 days regardless of whether the information was obtained from banks or from taxpayers themselves. 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

340. 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.

341. Additionally, the tax authorities may also obtain information upon initiation of tax proceedings as earlier discussed at paragraph 329. This would also include accounting information and underlying documents.

342. In seven cases (1.3%), peers reported that Poland was unable to answer requests associated with accounting information. These cases partly result from a lack of availability of information as discussed at section A.2, and in some other cases, the information holders did not respond to summons by the Competent Authority to provide information. In the latter category of cases, Poland did not fully enforce its powers to compel production of information (see section B.1.4).

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

343. 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.

344. 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.

345. During the review period, Poland has submitted that 241 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

346. 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 Fiscal Penal Code establishes general penalties of a fine amounting from 120 to 720 daily units for a party who fails to submit the required information within the stipulated timelines. In setting the daily unit, the authorities consider the offender's income, personal situation, family situation, material wealth and earning potential.

347. Further, anyone who prevents 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 the penalty of 720 daily units (that is, PLN 16 128 000 or approximately EUR 3.4 million).

348. 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 would rely on co-operation with other authorities such as Police and the prosecutor, although the option has never been exercised either for EOI or domestic purposes.

349. While enforcement provisions are available, Poland did not impose them in seven cases where taxpayers and information holders were unresponsive, refused or failed to provide accounting information requested for EOI purposes.

350. In one case, the Polish authorities reported that a taxpayer who was summoned twice to provide information, initially asked for an extension and later did not provide the requested information. Poland has explained that they did not compel the entity to produce information on the basis that there was a possibility that the requested information was in the requesting jurisdiction since the shareholders were resident there, although this was not the position provided by the entity.

351. In another case, the Polish authorities reported that they were unable to obtain some detailed information from the entities concerned. The information not provided required a high level of detail. It is not clear why Poland did not compel the entities to produce this information.

352. In the other five cases, the entities involved did not collect the information notices issued by the NRA or respond to the notices to produce information. In one of these cases, the Polish authorities then provided only

the information on tax returns from their database and struck the taxpayer off the VAT register. The other entity had already been struck off the VAT register. The entities still retained their legal personality and there was no further attempt by Poland to compel them to produce information.

353. The incidences of non-compliance to information requests during the review period were limited to only these seven cases but in all these cases, Poland did not effectively apply its compulsory powers. The only attempt made was to strike off one entity from the VAT register, although this did not compel the entity to eventually provide the requested information. Consequently, **Poland is recommended to use its compulsory powers in all cases where necessary, to ensure that all information for exchange of information purposes is obtained in a timely manner**.

B.1.5. Secrecy provisions

Bank secrecy

354. 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.

355. 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. The representatives of the banking sector met during the onsite confirmed that the industry now understands that bank secrecy cannot be invoked to the tax authorities at all in Poland. No peer has raised a concern in regard to bank secrecy.

Professional secrecy

356. 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. The 2015 Report had analysed the rules pertaining to attorneys and advisors. The law on Barristers and the Act on Legal Advisors both stipulate that barristers and legal advisers are obliged to maintain secret indefinitely everything they have learned in the course of providing legal assistance and further provide exceptions to this secrecy for AML reporting, in tax schemes and tax reporting. The report stated

that there might be a minor issue regarding the scope of professional privilege for barristers, which may have been too wide since barristers may be involved in drawing up company documents such as articles of association. However, the practice in Poland is that companies are established with the use of online templates for company deeds and articles of association or by notarial deed and hence the risk regarding barristers is minimised.

357. Nevertheless, 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 (The Tax Advisors Act, Art. 37§1).

358. The Tax Advisors Act, Article 37 states that:

> (1) A tax adviser is obliged to keep confidential the facts and information he has become aware of in connection with the practice of his profession.
>
> 1a. The obligation of professional secrecy may not be limited in time.

359. Similar secrecy provisions apply to notaries.

360. Article 18 of the Notaries Law states that:

> § 1. The notary is obliged to maintain secret the circumstances of the case, of which he/she was aware during the course of the performance of his or her notarial duties.
>
> § 2. The obligation to maintain secrecy perpetuates even after the revocation of the notary.

361. In both instances, the 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,[35] or when summoned by a court as witnesses in a criminal proceeding (Tax Advisors Act, Art. 37§2, Code of Criminal Proceedings, Art. 180§2 and Notaries Law, Art. 18(4)).

362. As discussed at paragraph 69 and 70, notaries may maintain the register of shareholders of a Simplified Joint Stock Company. Article 18 of the Notaries Law further states that the secrecy provisions do not prevent the shareholders of a SJSC from accessing the register of shareholders maintained by a notary. However, the representatives of the notaries met

35. 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.

during the onsite visit claimed that, to their understanding, this professional secrecy would be extended to all information, including the register of shareholders of these companies. The representatives further noted that since the possibility to maintain the registers of members of SJSCs were recent, the notaries were engaging the authorities to determine whether this information would be covered by the existing secrecy provisions.

363. On their part, the Polish authorities explained that registers of shareholders would not be covered under the secrecy provisions, just like the deeds used in company formation that notaries upload in the electronic system for immediate transmission to the NCR upon company formation by way of a notarial deed. The Polish authorities point out that each shareholder of the SJSC or the company itself would have access to the register of shareholders as covered in Article 18 and that the Competent Authority may then approach the company to obtain the information from the notary. However, this would not fully compensate the lack of access by the Competent Authority, especially in situations where the company has ceased to exist, and the register of shareholders is maintained by the notary as discussed at paragraph 75. With regard to the understanding of the notaries of their obligations, Poland should clarify the scope of professional secrecy of notaries regarding the registers of shareholders of Simplified Joint Stock Companies to ensure that information is accessible to the Competent Authority in all cases (see Annex 1).

364. During the onsite visit, tax advisors and lawyers did not turn up for the pre-arranged meetings. Therefore, this report is not able to make a determination on what the potential consequence of the professional secrecy extended to lawyers and tax advisors may have on EOI in practice. However, both tax advisors and lawyers are not a source of reference for the Competent Authority to collect information in practice, as there would be ordinarily other sources of information.

365. Thus, the ability of the NRA to obtain information that is covered by professional secrecy from notaries and tax advisors 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 these parties. The Polish authorities have indicated that no issues were raised with respect to professional secrecy during the review period 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.

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

367. When a control[36] 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.

368. 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.

369. 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: Compliant

No issues have been identified that would affect EOIR in practice.

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

370. 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.

371. When Poland uses its powers to obtain information from its data-bases, 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.

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

Where a request for information is made to a third party, the TIEO must specify what information is requested from the holder, legal basis[37] 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.

372. In practice, the Competent Authority obtains information mainly from the tax database, the Central Register of Beneficial Owners or the national court register. Where information cannot be obtained from these government databases, the local tax offices will issue notices on the basis of the EOI Act or the TOA Act. If the requesting jurisdiction has indicated that the person subject to the request should not be made aware of the request, the Competent Authority will issue the information collection notice using the TOA Act (see paragraph 327). This ensures that there is no risk of unintended notification since the TOA has general access powers that extend beyond EOI.

373. 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.

374. 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.

375. 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

37. 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.

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.

376. 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.

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

Part C: Exchange of information

378. 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.

379. 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 in tax matters (Multilateral Convention).

380. Poland's EOI relationships have since increased to 157, of which 150 are in force owing to the growing number of parties to the Multilateral Convention and the signature of new DTCs.

381. 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 four new DTCs to replace existing ones (with Bosnia and Herzegovina, Georgia, Malaysia and Sri Lanka), two protocols to existing DTCs (with Malta and Netherlands) and two new DTCs (with Ethiopia and Brazil). Additionally, Poland ratified existing TIEAS and DTCs as well as the Multilateral Convention. All EOI instruments are in force with the exception of one DTC, signed to replace the existing DTCs with the United States, that have been ratified only by Poland.

382. Regarding implementation, the interpretation of the concept of foreseeable relevance, including in the case of group requests, is in line with the standard. Although Poland did not receive any group request during the review period, the Competent Authority demonstrated that they would be able to apply an approach to determine foreseeable relevance that is in line with the standard.

383. 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: Compliant

No issues have been identified that would affect EOIR in practice.

Other forms of exchange of information

384. 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

385. 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.

386. 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.

387. Additionally, since the 2015 Report Poland has signed five new DTCs.[38] 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

388. There is guidance in the EOI manual for the determination of foreseeable relevance. Polish authorities have stated that the determination of the foreseeable relevance of a 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.

389. Regarding practical application, Poland applies the concept of foreseeable relevance in line with the standard. Competent authority officials carry out an in-depth analysis of received requests based on the criteria derived from Article 26 of the OECD Model Tax Convention and its commentaries. The officials demonstrated a good understanding of the concept. Specific templates are used within the EU framework although no specific template is provided to the requesting jurisdictions outside of this framework for the formulation of a specific request. In all cases, Poland expects jurisdictions to provide sufficient information to demonstrate the foreseeable relevance of the request and seeks clarification where necessary. In the request for clarification, Poland informs the requesting jurisdictions to provide additional information within three months or else the request shall be considered declined. During the review period, Poland declined one request because it did not meet the foreseeable relevance criteria. In this case Poland asked the requesting jurisdiction for further details on the tax background and tax purpose of the request. Information required was not provided and hence the request was declined.

390. 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. Further, Poland requested clarification in 64 cases (4.8%) and peers have confirmed that Poland had requested for clarifications where the peers had not provided sufficient information. In these few cases, Poland was able to provide complete responses when additional information was supplied, in a timely manner.

38. Bosnia and Herzegovina, Brazil, Ethiopia, Georgia and Sri Lanka.

Group requests

391. 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. Further, the guidance in the EOI manual referred to by Competent Authority officials on determination of foreseeable relevance includes group requests and the officials confirmed that were they to receive group requests, they would ably answer them.

392. Poland did not receive any group requests during the review period.

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

393. The 2015 Report concluded that Poland's DTCs with 29[39] jurisdictions limited the application of the treaty to residents of contracting states. Some of the jurisdictions were already party to the Multilateral Convention or have become party since 2015. EOI agreements entered into since the 2015 Report allow for EOI with respect to all persons.

394. There are three[40] 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

39. 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.

40. Belarus, Uzbekistan, Zimbabwe.

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. In practice, Poland has received and answered requests from one of the peers including in scenarios where the person subject to the request did not reside in either Poland or the other jurisdiction.

395. Poland confirmed that in practice these restrictions would not impede exchange of information and 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

396. 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.

397. 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.

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

399. 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.

400. Poland regularly receives requests for banking information. 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. Further, Poland reported to have received and answered requests for banking information from one peer based on a DTC that did not contain a provision corresponding to Article 26(5) of the OECD Model Tax Convention. No peer has raised negative input with respect to this matter.

C.1.4. Absence of domestic tax interest

401. 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.

402. 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 of Poland's DTCs contained wording akin to Article 26(4) 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 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[41] not supplemented by a multilateral or regional mechanism are still deficient, Polish authorities have reported that Poland has never declined a request because of a lack of domestic tax interest. Poland has confirmed that it has received and answered requests from two of the mentioned jurisdictions and that the lack of domestic interest was not an issue.

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

403. Poland's network of agreements provides 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

404. Poland's network of agreements has no restrictions that would prevent it from providing information in a specific form. Poland was able to share information requested in digital and paper forms and to the structure requested for by peers where applicable. Further, no peers have raised any issue with respect to this aspect.

41. Bangladesh, Belarus, Egypt, Iran, Kyrgyzstan, Syrian Arab Republic, Tajikistan, Uzbekistan and Zimbabwe.

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

405. The 2015 Report determined that out of the 99 bilateral agreements concluded by Poland, 18 were not yet in force. Four[42] of the DTCs had been signed ten years before or more and hence ratification was no longer pursued. Additionally, ratification for four TIEAs[43] was no longer pursued since the Multilateral Convention now covers these jurisdictions. The other 10 agreements have since been ratified by Poland. Additionally, Poland has concluded two[44] protocols to existing DTCs and five new DTCs that are all ratified with the exception of the DTC with Brazil that was signed in September 2022 and is currently undergoing the process of ratification.

406. The old agreements where ratification is no longer pursued have been removed, bringing the current total of bilateral EOI relationships to 93. Out of these 93, 11 are with jurisdictions that are not parties to the Multilateral Convention.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	157
In force	150
In line with the standard	140
Not in line with the standard	10 [a]
Signed but not in force	7
In line with the standard	7 [b]
Not in line with the standard	0
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	11
In force	11
In line with the standard	2 (Ethiopia, Sri Lanka)
Not in line with the standard	9 [c]
Signed but not in force	0

Notes: a. Bangladesh, Belarus, Egypt, Iran, Kyrgyzstan, Syrian Arab Republic, Tajikistan, Uzbekistan, Viet Nam (the bilateral instrument in force is not in line with the standard, and the Multilateral Convention in line with the standard is not in force in Viet Nam), Zimbabwe.

b. The Multilateral Convention is not in force with Gabon, Honduras, Madagascar, Papua New Guinea, Philippines, Togo (and Viet Nam).

c. Bangladesh, Belarus, Egypt, Iran, Kyrgyzstan, Syrian Arab Republic, Tajikistan, Uzbekistan, Zimbabwe.

42. Algeria, Nigeria, Uruguay and Zambia.
43. Grenada, Belize, Dominica and Liberia.
44. The Netherlands (protocol to DTC), Malta (protocol to DTC).

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.

407. 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 157 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.

408. 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. **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**.

409. 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: Largely Compliant

No material deficiencies have been identified in respect of the rights and safeguards of taxpayers and third parties. However, once the recommendation on the legal framework is addressed, Poland should ensure that it is applied and enforced in practice.

C.3. Confidentiality

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

410. 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.

411. In practice, Poland has extensive measures in place to ensure confidentiality of all exchanged information. All EOI staff are well-trained, experienced and aware about the aspects of confidentiality in their daily work. EOI requests are clearly marked as treaty protected and confidential. Physical and IT security aspects are in place. There are policies governing various aspects of confidentiality. All exchanged information, including background documents like correspondence with other Competent Authorities, is treated as confidential.

412. During the review period, no instances of a breach of confidentiality were detected in respect of exchanged information. Further, peers have not raised any concerns in respect of confidentiality of exchanged information.

413. 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: Compliant

No material deficiencies have been identified and the confidentiality of information exchanged is effective.

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

414. 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.

415. 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) for intentional disclosures and up to two years for unintentional disclosures. Additionally, the Act on National Revenue Administration has provisions on disciplinary sanctions for employees that range from verbal and written warnings, salary deductions, to probation and suspension.

416. Information subject to fiscal secrecy may be made accessible to a 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[45] 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).

417. 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. 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.

418. 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

419. In addition to the EOI request, all the information accompanying the request is considered as a "fiscal secret". Regarding the process to obtain

45. Interpreted to include States and Territories.

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.

420. Further, when banking information is part of a wider request and the local tax offices have contacted the taxpayer to furnish information (see paragraph 337) but the taxpayer is unable to provide such information, then the tax office will contact the bank. In such a scenario, the tax office must indicate the prerequisites[46] justifying the necessity to obtain information covered by the request and evidence that the account holder was unable 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 336 and 338), then such justification is not required.

Confidentiality in practice

421. Poland has put in place measures and policies in respect of human resources, physical and IT security for ensuring confidentiality of all information. 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.

Human resources

422. The NRA carries out background checks and vetting on its staff as part of the recruitment process. The background checks for staff recruitment

46. 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.

include checking the national criminal record database to ensure that persons recruited in the tax administration do not have a criminal record.

423. Induction training is provided for new hires and when employees return to work after long absences. As a part of the induction training new employees are expected to familiarise themselves with the principles of information security. After the training, each staff member signs a statement that he/she has been acquainted with the provisions on the protection of information and undertakes to comply even after the termination of employment. There is also periodic security training and awareness to staff, including through E-learning courses. Managers are responsible for ensuring that staff attend and finish mandatory training and awareness sessions.

424. External contractors are required to sign a confidentiality clause undertaking to keep confidential all information accessed during the execution of their contract. Contracting firms are also expected to train their employees, subcontractors and any other persons used when performing the contract.

Physical and digital security measures

425. Poland's Competent Authority office is housed in a separate building dedicated to EOI matters. Access to the building is controlled by electronic access cards and only TIEO employees have access to the premises. The building is monitored via closed circuit television and alarm systems and guards.

426. EOIR information is mainly managed in electronic form. Where hard copy EOI requests are received by post, they are scanned and entered into the EOIR electronic system. Access to the database is only granted to authorised case officers and team leaders. Each EOI case entered can only be modified by the assigned case officer. The hard copies are then stamped with the confidentiality stamp and locked away in secure filing cabinets. The stamp bears the markings, "CONFIDENTIAL:-This information is provided under the provisions of international tax agreement and its use and disclosure are governed by the provisions of such tax agreement". The same markings are included on all the information that is processed electronically.

427. Information that is sent from the TIEO to the audit teams of the NRA is transmitted by secure email. All such emails contain a warning that the email contains confidential, treaty exchanged information as described above. Furthermore, all pages of any attachment that contains treaty exchanged information carry the same warning.

428. 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.

429. Regarding archiving and disposal of information, the retention period for treaty exchanged information is ten years. The TIEO has a special archive room designated for exchanged information. Access to this room is restricted, logged and monitored. After the retention period the information is destroyed by using industrial shredders or by destroying electronic devices containing information.

Breach monitoring and breach response

430. The NRA has in place procedures for management of security breaches. Poland has reported that they have put in place a process to monitor information-related security risks and vulnerabilities. As part of the monitoring policy, sensitisation and raising awareness of management and staff on their role to ensure information security has been carried out.

431. Staff are obliged to report suspected or actual breaches to the relevant persons responsible for taking corrective action. There is a dedicated reporting template accessible online for reporting purposes. Further, designated teams manage and counteract confidentiality breaches.

432. Additionally, there are processes in place to notify relevant exchange partners of possible and actual confidentiality breaches. The process includes a notification to the Co-ordinating Body of the Multilateral Convention, if exchanged information is compromised. The processes are available to all employees on the intranet and staff is subjected to regular training and awareness on breach reporting.

433. Polish authorities reported that there have been no cases where treaty exchanged or domestic information was improperly shared, used or disclosed during the review period.

434. The Competent Authority officials met during the onsite visit were well informed of their obligations regarding keeping information confidential.

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.

435. 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.

436. 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).

437. As determined in the 2015 Report, and as discussed at paragraphs 356 to 365, professional privilege extended to tax advisors and notaries 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**.

438. However in practice, Poland has not experienced any practical difficulties in responding to EOI requests because of professional privilege or any other professional secret since there were no cases during the review period where Poland sought to obtain information pursuant to an EOI request from an attorney, tax advisor, notary or similar professional and peers did not raise any concerns pertaining to this aspect.

439. The conclusions are as follows:

Legal and Regulatory Framework: in place

Deficiencies identified/Underlying factor	Recommendations
Professional privilege is extended to tax advisors and notaries 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: Compliant

No material deficiencies have been identified in respect of the rights and safeguards of taxpayers and third parties.

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.

440. 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.

441. Poland introduced changes in its processes to track the status of collection of information and make it easy to identify cases nearing 90 days where full responses cannot be provided. By using the electronic system used to process EOI requests, the Competent Authority identifies open cases on a monthly basis and requests the provincial tax offices to provide status of collecting information. Further, there is now obligatory guidance for all Competent Authority officials to ensure that status updates have been provided to peers when full information cannot be provided within 90 days. These measures have already registered some improvements in the number of cases where Poland has provided status updates to its peers and Poland should continue to monitor their implementation.

442. Poland has a well-resourced Competent Authority's office and ensures that the officials receive regular trainings.

443. 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: Compliant

Deficiencies identified/Underlying factor	Recommendations
During the review period, Poland introduced changes in its processes to track the status of collection of information and make it easy to identify cases nearing 90 days where full responses cannot be provided. The changes include requiring for updates from provincial tax offices that collect EOI information and the introduction of obligatory guidance to Competent Authority officials to provide status updates when requested information cannot be provided in full within 90 days. These measures have already registered some improvements in the number of cases where Poland has provided status updates to its peers.	Poland is recommended to monitor the implementation of recent measures to ensure it systematically provides status updates to its peers when requested information cannot be provided within 90 days.

C.5.1. Timeliness of responses to requests for information

444. During the period under review (1 July 2019 to 30 June 2022), Poland received 1 341 requests for information and its main partners were France, Germany, Latvia and Ukraine. Most information requests sought

accounting information, ownership and banking information. Requests largely covered companies and partnerships.

445. The following table relates to the requests received during the period under review and gives an overview of response times by Poland in providing a final response to these requests, together with a summary of other relevant factors affecting the effectiveness of Poland's practice during the period reviewed.

		07/2019-06/2020		07/2020-06/2021		07/2021-06/2022		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	487	100	446	100	408	100	1 341	100
Full response: ≤ 90 days		343	70	312	70	333	82	988	74
≤ 180 days (cumulative)		434	89	406	91	390	96	1 230	92
≤ 1 year (cumulative)	[A]	470	97	436	98	407	100	1 313	98
> 1 year	[B]	12	2	7	1.5	1	0	20	1.5
Declined for valid reasons		1	0	2	< 1	2	0	5	< 1
Requests withdrawn by requesting jurisdiction	[C]	0		1		0		1	< 1
Failure to obtain and provide information requested	[D]	5	1	2	< 1	0	0	7	0.5
Requests still pending at date of review	[E]	0	0	0	0	0	0	0	0
Outstanding cases after 90 days		144		134		75		353	
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)		50	35	74	55	44	59	168	48

Notes: Poland counts each request with multiple taxpayers as one request, i.e. if a partner jurisdiction is requesting information about 4 persons in one request, Poland counts that as 1 request. If Poland received a further request for information that relates to a previous request, with the original request still active, Poland will append the additional request to the original and continue to count it as the same request.

The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

446. Cumulatively, Poland responded to 74% of the requests within 90 days. Further, in 92% of the cases, information was provided within 180 days while information was provided within one year in 98% of the cases. Poland did not have any pending requests having been received during the period of review.

447. In comparison to the 2015 Report, there is improvement in the response time across all the parameters explained at paragraph 446. 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.

448. Polish authorities have submitted that where they took a long time to respond to requests, this was mainly due to the process of gathering and putting together information held by taxpayers in complex cases such as requests concerning transfer pricing.

449. Further, Poland sought clarification in 64 cases (4.8%). This was mainly due to gaps relating to the background of the requests or where insufficient information was provided in the request. Poland provided responses upon receipt of additional information from its treaty partners, where possible. Poland was not able to answer three requests because the requesting jurisdictions could not provide additional information to properly identify the persons subject to the requests. Of the three requests, one request was withdrawn by the peer and Poland declined the other two requests. Poland appears to have been justified to decline the two requests.

450. Poland has reported that one other request was declined because the foreseeable relevance of the requested information could not be demonstrated (see C.1.1), while two other cases requested for VAT information that was out of scope of the cited legal basis.

451. All the requests received by Poland during the review period have been concluded. Poland failed to provide information in seven cases (0.5% of the total received requests). The reasons for these failures were practical issues related to lack of responsiveness of entities and Poland's failure to apply its compulsory powers as discussed under section B.1.4 (seven cases). Poland provided some information that was available in its databases although the requests were not fully answered. Poland should continue its efforts to ensure that complete responses in all cases are provided to its EOI partners (see Annex 1).

Status updates and communication with partners

452. Poland sent status updates to its peers in 48% of the cases in instances where a response was not provided within 90 days. There is some improvement in comparison with the 2015 Report where Poland did not send status updates unless requested by peers. Nonetheless, less than half of the due status updates were sent.

453. To address the issues 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 and timeliness of all cases, send alerts to Competent Authority officials for cases that require status updates to be sent and provide relevant statistics on all cases. Further, 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.

454. The review of Poland was initially launched as a combined review in 2021 and peer input was solicited from Poland's peers covering the period 1 January 2018 to 31 December 2020. For that period, Poland had provided status updates in 38% of the cases. In comparison with the current review period (1 July 2019 to 30 June 2022), there has been improvement in the number of cases where status updates are provided with a 10% increment and also in comparison to the 2015 Report. This improvement is more nuanced after the end of this review period with Poland reporting to have provided status updates in all cases in 2023 with the exception of one case. The Competent Authority further confirmed that the new measures have made it easier for Poland to monitor timelines and identify cases where status updates are required. Consequently, **Poland is recommended to monitor the implementation of recent measures to ensure it systematically provides status updates to its peers when requested information cannot be provided within 90 days**.

455. Additionally, 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 252 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

456. 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.

457. The TIEO consists of seven teams including three teams that manage EOI, while the other four deal with mutual assistance for the recovery of claims, confirmation of EU-VAT numbers validity and VAT analysis.

458. Information that identifies the Competent Authority officials for EOIR purposes is available on the Global Forum Competent Authorities secure database. Poland has also agreed on modes of communication with some significant EOI partners, including through e-mail correspondence and telephone conversations if needed.

459. 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 form the last level of the process and collect information from information holders in their jurisdiction.

460. Regarding the application of this structure to the process of managing requests, the TIEO gathers information readily available to it and directly collects banking information. In other cases, the TIEO contacts the tax chambers (provincial offices) which in turn contact the local offices to collect the required information. Communication flow is via the "contact persons" using an electronic system. 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

461. Poland has a well-resourced and trained team to manage the EOI process which is documented in an EOI manual. 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.

462. 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. In order to address the challenges associated with effectively applying the Competent Authority access powers when information holders could not be reached or failed to respond to notices to produce information as discussed at section B.1.4, Poland has informed that a training programme has been designed and will form part of future training sessions for EOI officials and tax auditors involved in collecting information pursuant to answering EOI requests.

463. 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.

464. Further, the Competent Authority officials deliver EOI-related trainings to the regional contact persons that facilitate the EOI process. These trainings cover practical aspects of the EOI process, and to raise awareness on EOI. In turn, the regional contact persons train their contact persons in the local tax offices.

465. 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.

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

Incoming requests

467. 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 into 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.

468. 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 foreseeably relevant).

469. 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.

470. 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

471. 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.

472. 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. A confidentiality statement is added to the information before it is sent to the requesting jurisdiction (see paragraph 426).

Practical difficulties experienced in obtaining the requested information

473. Polish authorities reported that they did not face any difficulties while obtaining requested information, except for the cases described in paragraph 451, and peers did not report other concerns that would point to difficulties faced by Poland in collecting and providing requested information.

Outgoing requests

474. During the review period, Poland sent out 5 951 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 149 of the requests (i.e. in 3% of the cases) with the most occurring challenge being the need to provide additional information to enable proper identification of the persons subject to the request. Poland reported that they have conducted a series of workshops and trainings for tax auditors to ensure that all available information is included in the request letter.

475. 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.

476. 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 and due to the preferences of these jurisdictions, Poland still uses registered postal mail.

477. Upon receiving the requested information, the TIEO forwards the received information securely and indicating the treaty nature of the received information to the tax inspectors concerned (see paragraph 426). Copies of such information are also kept securely within the EOI electronic system or the storage EOIR unit (for hard copy records).

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

478. 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.1:** Poland should monitor the process of dissolution of limited joint-stock partnerships and joint stock companies without liquidation proceedings to ensure that legal ownership records of such entities is available in all cases for a minimum of five years (paragraph 82).
- **Element A.1**: Poland should monitor the procedure to strike off companies that have not updated their ownership information in the National Court Register, to ensure that the procedure is effectively carried out (paragraph 114).
- **Element A.1**: Poland should ensure that beneficial ownership information in relation to all customers of obliged institutions is kept up to date in all cases (paragraphs 139, 214, 229, 246).
- **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 303).
- **Element B.1**: Poland should clarify the scope of professional secrecy of notaries regarding the registers of shareholders of Simplified Joint Stock Companies to ensure that information is accessible to the Competent Authority in all cases (paragraph 363).
- **Element C.5**: Poland should continue its efforts to ensure that complete responses in all cases are provided to its EOI partners (paragraph 451).

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	27-06-1994
2	Andorra	TIEA	15-06-2012	18-12-2013
3	Armenia	DTC	14-07-1999	28-02-2005
4	Australia	DTC	07-05-1991	4-03-1992
5	Austria	DTC	13-01-2004	1-04-2005
		Protocol	04-02-2008	10-10-2008
6	Azerbaijan	DTC	26-08-1997	20-01-2005
7	Bahamas	TIEA	28-06-2013	29-09-2014
8	Bangladesh	DTC	08-07-1997	28-01-1999
9	Belarus	DTC	18-11-1992	31-07-1993
10	Belgium	DTC	20-08-2001	29-04-2004
		Protocol	14-04-2014	2-05-2018
11	Bermuda	TIEA	25-11-2013	15-03-2015
12	Bosnia and Herzegovina	DTC	04-06-2014	07-03-2016
13	Brazil	DTC	20-09-2022	Not in force
14	British Virgin Islands	TIEA	28-11-2013	01-01-2015
15	Bulgaria	DTC	11-04-1994	10-05-1995
16	Canada	DTC	14-05-2012	30-10-2013
17	Cayman Islands	TIEA	29-11-2013	11-12-2014
18	Chile	DTC	10-03-2000	30-12-2003
19	China (People's Republic of)	DTC	07-06-1988	7-01-1989
20	Croatia	DTC	19-10-1994	11-02-1996

	EOI partner	Type of agreement	Signature	Entry into force
21	Cyprus	DTC	04-06-1992	7-07-1993
		Protocol	22-03-2012	09-11-2012
22	Czech Republic	DTC	30-09-2011	11-06-2012
23	Denmark	DTC	06-12-2001	1-12-2002
		Protocol	07-12-2009	25-11-2010
24	Egypt	DTC	24-06-1996	16-07-2001
25	Estonia	DTC	09-05-1994	09-12-1994
26	Ethiopia	DTC	13-07-2015	14-02-2018
27	Finland	DTC	08-06-2009	11-03-2010
28	France	DTC	20-06-1975	12-09-1976
29	Georgia	DTC	05-11-1999	16-06-2006 to 1-01-2024
		DTC	07-07-2021	01-04-2023
30	Germany	DTC	14-05-2003	19-12-2004
31	Gibraltar	TIEA	31-01-2013	05-12-2013
32	Greece	DTC	20-11-1987	28-09-1991
33	Guernsey	TIEA	06-12-2011	01-11-2012
34	Hungary	DTC	23-09-1992	10-09-1995
35	Iceland	DTC	19-06-1998	20-06-1999
		Protocol	16-05-2012	23-08-2013
36	India	DTC	21-06-1989	26-10-1989
		Protocol	29-01-2013	1-06-2014
37	Indonesia	DTC	06-10-1992	25-08-1993
38	Iran	DTC	02-10-1998	1-12-2006
39	Ireland	DTC	13-11-1995	22-12-1995
40	Isle of Man	TIEA	07-03-2011	27-11-2011
41	Israel	DTC	22-05-1991	30-12-1991
42	Italy	DTC	21-06-1985	26-09-1989
43	Japan	DTC	20-02-1980	23-12-1982
44	Jersey	TIEA	02-12-2011	01-11-2012
45	Jordan	DTC	04-10-1997	22-04-1999
46	Kazakhstan	DTC	21-09-1994	01-06-1995
47	Korea	DTC	21-06-1991	21-02-1992
		Protocol	22-10-2013	15-10-2016

	EOI partner	Type of agreement	Signature	Entry into force
48	Kuwait	DTC	16-11-1996	25-04-2000
49	Kyrgyzstan	DTC	19-11-1998	01-09-2004
50	Latvia	DTC	17-11-1993	30-11-1994
51	Lebanon	DTC	26-07-1999	7-11-2003
52	Lithuania	DTC	20-01-1994	19-07-1994
53	Luxembourg	DTC	14-06-1995	31-07-1996
		Protocol	07-06-2012	25-07-2013
54	North Macedonia	DTC	28-11-1996	17-12-1999
55	Malaysia	DTC	16-09-1977	15-12-1978
		DTC	08-07-2013	12-01-2023
56	Malta	DTC	07-01-1994	24-11-1994
		Protocol	06-04-2011	22-11-2011
		Protocol	30-11-2020	11-03-2022
57	Mexico	DTC	30-11-1998	28-08-2002
58	Moldova	DTC	16-11-1994	27-10-1995
59	Mongolia	DTC	18-04-1997	21-07-2001
60	Montenegro	DTC	12-06-1997	17-06-1998
61	Morocco	DTC	24-10-1994	23-08-1996
62	Netherlands	DTC	13-02-2002	18-03-2003
		Protocol	29-10-2020	30-04-2022
63	New Zealand	DTC	21-04-2005	16-08-2006
64	Norway	DTC	09-09-2009	25-05-2010
		Protocol	05-07-2012	2-04-2013
65	Pakistan	DTC	25-10-1974	24-11-1975
66	Philippines	DTC	09-09-1992	07-04-1997
67	Portugal	DTC	09-05-1995	04-02-1998
68	Qatar	DTC	18-11-2008	30-12-2009
69	Romania	DTC	23-06-1994	15-09-1995
70	Russia	DTC	22-05-1992	22-02-1993
71	San Marino	TIEA	31-03-2012	28-02-2013
72	Saudi Arabia	DTC	22-02-2011	01-06-2012
73	Serbia	DTC	12-06-1997	17-06-1998
74	Singapore	DTC	04-11-2012	06-02-2014

	EOI partner	Type of agreement	Signature	Entry into force
75	Slovak Republic	DTC	18-08-1994	21-12-1995
		Protocol	01-08-2013	1-08-2014
76	Slovenia	DTC	28-06-1996	10-03-1998
77	South Africa	DTC	10-11-1993	5-12-1995
78	Spain	DTC	15-11-1979	06-05-1982
79	Sri Lanka	DTC	06-10-2015	14-06-2019
80	Sweden	DTC	19-11-2004	15-10-2005
81	Switzerland	DTC	02-09-1991	25-09-1992
		Protocol	20-04-2010	17-10-2011
82	Syrian Arab Republic	DTC	15-08-2001	23-12-2003
83	Tajikistan	DTC	27-05-2003	01-09-2004
84	Thailand	DTC	08-12-1978	3-05-1983
85	Tunisia	DTC	29-03-1993	15-11-1993
86	Türkiye	DTC	03-11-1993	1-04-1997
87	Ukraine	DTC	12-01-1993	11-03-1994
88	United Arab Emirates	DTC	31-01-1993	3-02-2014
		Protocol	11-12-2013	1-05-2015
89	United Kingdom	DTC	20-07-2006	27-12-2006
90	United States	DTC	08-10-1974	22-07-1976
		DTC	13-02-2013	Ratified by Poland
91	Uzbekistan	DTC	11-01-1995	29-04-1995
92	Viet Nam	DTC	31-08-1994	20-01-1995
93	Zimbabwe	DTC	09-07-1993	28-11-1994

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).[47] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of

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

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, Benin, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Burkina Faso, 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, Mauritania, 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, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, 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: Gabon, Honduras, Madagascar, Papua New Guinea (entry into force on 1 December 2023), Philippines, Togo, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010) and Viet Nam (entry into force on 1 December 2023).

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 co-operation 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 at 17 July 2023, Poland's responses to the questionnaire and inputs from partner jurisdictions covering the three year period from 1 July 2019 to 30 June 2022, Poland's responses to the EOIR questionnaire, inputs from partner jurisdictions, as well as information provided by Polish authorities during the on-site visit that took place from 13 to 17 March 2023 in Warsaw.

List of laws, regulations and other materials received

Constitution1997

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

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

Act on Civil Law Transactions 2000

Act on Counteracting Money Laundering and Terrorism Financing 2018 (AML/CFT Act)

Act on the National Revenue Administration

Tax Ordinance Act (TOA)

Exchange of Information (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 (NCR Act)

Banking Law Act

Tax Advisors Act

Law on Barristers

Act on Legal Advisors

Notaries Law

Value Added Tax Act 2004

Law on principles of participation of foreign entrepreneurs

Tax Identification Number (NIP) Act

Entrepreneurs Law Act

Act on Principles of Registration and Identification of Taxpayers and Tax Remitters 1995

Act on Cooperatives

Regulation of the Minister of Finance on the Keeping of the Revenue and Expense Ledger

Lump-Sum Income Tax Act

Fiscal Penal Code

Code of Criminal Proceedings

Authorities interviewed during the on-site visit

Ministry of Finance

Ministry of Justice

National Revenue Administration (NRA)

Polish Financial Supervision Authority (PFSA)

General Inspector of Financial Information (GIFI)

National Depository for Securities

National Bank of Poland

Private sector representatives

- Representatives of the Banking sector
- Representatives of notaries

Current and previous reviews

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.

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 against the 2016 Terms of Reference. The 2022 Phase 1 report reviewed the legal and regulatory framework of Poland and concluded by assigning a determination of "in place" for six elements (A.2, B.1, B.2, C.1, C.3 and C.4) and "in place but needs improvement" for three elements (A.1, A.3 and C.2). The current Report presents the first comprehensive review of Poland against the 2016 Terms of reference and concludes that Poland is overall Largely Compliant with the standard.

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	Deepak Garg, Ministry of Finance of India, Ana Yesenia Rodriguez Calderon, Ministry of Finance of Costa Rica; Mikkel Thunnissen and Francesco Positano from the Global Forum Secretariat	Not applicable.	January 2013	March 2013
Round 1 Phase 2	Deepak Garg, Ministry of Finance of India; Alexander Zelzer, Fiscal Authority of the Principality of Liechtenstein; and Francesco Positano from the Global Forum Secretariat	1 January 2011 to 31 December 2013	March 2015	August 2015
Round 2 Phase 1	John Ashilere, Nigeria; Antoinette Musilek, Spain; Alex Nuwagira and Puneet Gulati from the Global Forum Secretariat	Not Applicable	25 April 2022	5 August 2022
Round 2 Phase 2	John Ashilere, Nigeria; Antoinette Musilek, Spain; Alex Nuwagira from the Global Forum Secretariat	1 July 2019 to 30 June 2022	17 July 2023	3 November 2023

Annex 4. Poland's response to the review report[48]

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 Group members for their input and comments to the report.

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

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

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request POLAND 2023 (Second Round, Combined Review)

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 peer review report analyses the practical implementation of the standard of transparency and exchange of information on request in Poland, as part of the second round of reviews conducted by the Global Forum on Transparency and Exchange of Information for Tax Purposes since 2016.

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