

## POLISH LAW IMPLEMENTING THE EU CORPORATE SUSTAINABILITY REPORTING DIRECTIVE

The Act of 6 December 2024 Amending the Accounting Act, the Act on Statutory Auditors, Audit Firms and Public Oversight and Certain Other Acts<sup>1</sup> (hereinafter referred to as the "**Act**") came into force on 1 January 2025. The Act implements into Polish law new sustainability reporting obligations, in line with the European Sustainability Reporting Standards (hereinafter referred to as the "**ESRS**") introduced by Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No. 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU on corporate sustainability reporting (hereinafter referred to as the "**CSRD**"). The main objective of the CSRD is to ensure that more companies report relevant, comparable and reliable sustainability information. This is essential to achieve the goal of redirecting capital towards the financing of companies that are developing in a sustainable way or are striving for such a transition.

The Act imposes new obligations on large undertakings, enterprises which are the parent company of a large capital group, small and medium-sized undertakings admitted to trading on a regulated market (excluding listed micro-enterprises), as well as subsidiaries and branches with their registered office in Poland that meet certain conditions and size criteria, whose ultimate parent company or independent undertaking is subject to the laws of a third country. The ESRS regime will be implemented gradually, in the stages provided for in the Act, depending on the size, revenues and assets of the reporting entity. The Act aims to standardize the method of reporting sustainable development in the legal system, which will cover the impact of operations on Environmental, Social, and Governance areas (hereinafter referred to as "**ESG**"). In addition, the Act includes provisions on the certification (attestation) of this reporting by auditors.

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<sup>1</sup> Journal of Laws, item 1863

Below we set out a summary of the most important issues arising from the Act.

## **Entities obliged to report as early as 2025 (for 2024)**

In order for an entity to be required to report in 2025 for the financial year beginning after 31 December 2023 (i.e. including 2024), it must meet all three criteria: as to the type of entity, organisational and legal criteria and financial ratios. If it does not meet even one of them, the reporting obligation will not apply to it. Below is a detailed description of the criteria:

### **1**

#### **CRITERIA AS TO THE TYPE OF ENTITY**

The list of entities obliged to report for the financial year commencing after 31 December 2023 includes public interest entities, including large companies listed on the stock exchange, i.e.:

- I. entities operating based on the Banking Law, provisions on trading in securities, crowdfunding services, investment funds, insurance activity, cooperative savings and loan societies and pension funds, irrespective of the amount of their revenue;
- II. entities intending to apply or applying for a permit for the activities referred to in point a) above, or for an entry in the register of AIFM;
- III. alternative investment companies, including those using the names EuVECA or EuSEFT;
- IV. issuers of securities on regulated markets of the EEA and in an alternative trading system;
- V. Polish payment institutions;
- VI. electronic money institutions.

### **2**

#### **ORGANISATIONAL AND LEGAL CRITERIA**

Not all entities conducting the above-mentioned activities are obliged to report. The reporting obligation applies only to those entities of a specific legal and organisational form:

- I. capital companies (i.e. limited liability companies, joint-stock companies and simple joint-stock companies);
- II. mixed joint-stock and limited partnerships;
- III. general partnerships or limited partnerships in which all the partners with unlimited liability are capital companies, mixed joint-stock and limited partnerships or companies from other countries with a similar legal form.

### 3

#### FINANCIAL INDICATORS CRITERIA

The reporting obligation applies only to entities that exceed both thresholds in the current and previous financial year.

##### I.

**500 persons** – with respect to average annual level of employment calculated as FTE

##### II.

**PLN 110,000,000** – in the case of the sum of balance sheet assets as at the end of the financial year and  
**PLN 220,000,000** – in the case of net revenues from the sale of goods and products for the financial year

OR IN THE CASE OF ENTITIES SUBJECT TO SEPARATE PROVISIONS, BEFORE CONSOLIDATION EXEMPTIONS ARE APPLIED:

**PLN 132,000,000** – in the case of the sum of balance sheet assets as at the end of the financial year and  
**PLN 264,000,000** – in the case of net revenues from the sale of goods and products for the financial year

In the coming years, the reporting obligation will be extended. Commencing from the reporting for the year following after 31 December 2024, this obligation will also apply to other large entities, parent companies in large groups and Bank Gospodarstwa Krajowego.

#### Obligations under the Act

The implementation of the Act into Polish law means the end of the existing freedom in reporting. Entities subject to the reporting obligation will be obliged to apply uniform ESRS. Under the Act, sustainability reports will constitute separate sections in the reports on the activities of individual entities and will have to be verified by designated and specialized statutory auditors. The report on sustainability reporting itself will have to include:

- a concise description of the entity's business model and business strategy in terms of, inter alia, the entity's plans for limiting global warming and achieving climate neutrality;
- a description of the sustainability objectives set by the entity over time, including absolute greenhouse gas emission reduction targets for at least 2030 and 2050;
- a description of the role of the entity's manager and members of the supervisory board or other body supervising the entity in relation to sustainability issues, and their expertise and skills related to the performance of this role.

#### Exemption from the sustainability reporting obligation

The legislator has provided for an exemption for subsidiaries of the parent company, including lower-level parent companies. The exemption applies if information on the subsidiary and its subsidiaries is included in the group's (consolidated) sustainability reporting. The subsidiary must disclose in its

management report information that it is taking advantage of the exemption, stating the name of its parent company and the website address where the report on the operations of the parent company's capital group will be available within 12 months of the subsidiary's balance sheet date. These documents must be made available on the website for at least 5 years.

### **Procedures related to the audit and publication of financial statements**

Sustainability reporting and capital group sustainability reporting must be certified by a statutory auditor qualified to perform this task. The National Council of Statutory Auditors will define national standards for the attestation of sustainability reporting. The audit firm is selected to audit the financial statements and attest sustainability reporting by the body approving the entity's financial statements, unless the statute, articles or other provisions of law binding on the entity provide otherwise.

Limited liability companies, mutual insurance companies, mutual reinsurance companies, joint-stock companies, simple joint-stock companies and cooperatives must make available to shareholders or members:

- the annual financial statements and the report on the entity's activities;
  - the audit report, if there is a requirement to audit the financial statements; and
  - a report on the attestation of the sustainability report, if the entity is required to prepare such a report.
- In addition, joint-stock companies and simple joint-stock companies must make available to shareholders the report of the supervisory board or the audit committee or the management body.

These documents must be made available no later than 15 days before the general shareholders' meeting or the general meeting of members, or their representatives, of a cooperative.

### **Deadline for filing financial statements, including sustainability report**

The deadline for the entity's manager to file the financial statements together with other required documents (including the report on the attestation of sustainable development activities) with the relevant court register is **15 days** from the date the annual financial statements are approved.

### **The penalties and sanctions provided for in the Act apply only to statutory auditors/audit firms.**

The penalties or sanctions provided for in the Act apply only to the liability of statutory auditors or audit firms. It should be noted, however, that the Accounting Act<sup>2</sup> independently provides for criminal liability for misconduct related to bookkeeping, which, once the Act comes into force, may also include aspects related to sustainability reporting. The Accounting Act provides, among other things, for a penalty for late filing or failure to file financial statements alone. A breach of this obligation may result in: (i) a fine or imprisonment of up to 2 years, which may be imposed simultaneously and

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<sup>2</sup> Accounting Act of 29 September 1994 (consolidated text: Journal of Laws of 2023, item 120, as amended), hereinafter referred to as the "**Accounting Act**".

apply to persons responsible for accounting duties; (ii) fines' being imposed by the competent registry court; and (iii) in the event of failure to file financial statements for two consecutive financial years despite earlier requests, the procedure for deleting the entity from the National Court Register may be initiated *ex officio*.

## Planned implementation of the Act

The provisions of the Act will be implemented in stages, however most of them came into force as of the beginning of this year<sup>3</sup>. The CSRD was to be implemented into the national law of all the Member States by 6 July 2024. Unfortunately, Polish regulations were not adapted to the requirements of the CSRD within the set time. This delay could cause a significant organizational burden for companies and a short time for them to prepare for reporting in this regard. Therefore, it is worth taking a look as soon as possible at which entities will be obliged to report, what regulations and requirements they will soon be subject to, and hence preparing, inter alia, for the implementation of new systems, tools for collecting and analysing ESG data, as well as establishing cooperation with statutory auditors or audit firms.

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<sup>3</sup> Except:

1) Article 3 of the Act, which comes into force on 1 April 2025;  
2) Article 13 of the Act, which comes into force on 22 June 2025; and  
3) Article 10 of the Act, which comes into force on 1 July 2025.