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THE RIGHT FOCUS

SEPTEMBER 2026

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NIS2 AND THE NATIONAL CYBERSECURITY SYSTEM ACT IN TRANSPORT / WHAT YOU NEED TO DO BEFORE OCTOBER 2026

ROBERT BRODZIK

MAGDALENA PETROW-GANEW

The amended Act on the National Cybersecurity System (UKSC) has been in force since 3 April 2026. For transport sector undertakings, this means a specific compliance timeline, including an obligation to register with the National Cybersecurity System (KSC) registry by 3 October 2026. Failure to do so may result in substantial financial penalties, coupled with the risk of personal liability for senior management. Not every undertaking, however, automatically falls within the scope of the new regime. Read on to find out whether your organisation is affected and what you need to do before the deadline for preparation.

Does your transport company need to comply with the UKSC?

Certain organisations in the transport sector fall within the scope of the new regime as essential or important entities. This applies, in particular, to:

- Air carriers
- Airport managing bodies
- Aviation and security service providers and air navigation services
- Railway infrastructure managers
- Licensed railway carriers
- Operators of service infrastructure facilities, where they are carriers
- Sea and inland water transport companies
- Managing bodies of ports and port facilities
- Port entities supporting maritime transport and VTS
- ITS service providers
- Public road administrators

Important note for road transport operators: the mere provision of road transport services does not, in itself, trigger essential or important entity status.

Not directly subject to the UKSC? The requirements may still reach your organisation indirectly

Other transport companies may feel the effects of the regulation through, for example, contractual requirements imposed by larger operators, public sector clients or corporate groups.

There are three channels through which the regulation may reach your business:

- **Supply chain.** A client that is itself subject to the UKSC may flow down requirements into its contracts with you. These may cover, among other things, system access, backups, incident reporting and subcontractor oversight
- **Criticality of the service.** Even without an explicit regulatory status, what matters is whether a failure of your service would disrupt transport operations, check-in, terminal operations, ITS or communications
- **Contracts and insurance.** Increasingly, counterparties require evidence rather than declarations. This includes procedures, recovery tests, incident logs, contingency plans and access control policies

Quick test: formal obligation or operational risk?

Four short questions to help you determine whether your company will be formally subject to the UKSC (or whether the requirements will reach you through a client, a tender or an insurer):

- Is the company one of the transport entities specified in the UKSC, e.g. an air or rail carrier, an airport, port or infrastructure manager, a road administrator or an ITS operator?
- Does it meet the applicable size threshold or a special criterion for inclusion, taking into account the group and affiliated entities?

- Could a failure of a service or system disrupt transport operations, check-in, terminal operations, ticketing, ITS, communications or telematics?
- Does a client, a tender, an insurer or the corporate group require evidence of cybersecurity measures: MFA, backups, BCP/DRP, incident response procedure or supplier audits?

If you answered 'yes' to even one of these questions – act now. You may have less time than you think.

Essential or important entity? This affects the level of supervision, not the objective

The status does not affect the objective of implementation, as cybersecurity must be managed in both cases. The difference lies in the intensity of supervision and the risk of penalties.

	Essential entity	Important entity
Who	Typically a large enterprise in a sector covered by the UKSC	Typically a medium-sized enterprise in a sector covered by the UKSC
Supervision	Mandatory audit and greater scrutiny of security management practices	Supervision generally less intensive
Audit	Mandatory from 2028	May be triggered by, for example, an incident, a breach or a decision of the competent authority

UKSC – implementation timeline

The amended UKSC has been in force since 3 April 2026, with the first compliance obligations falling due by 3 October 2026.

Date	What must be in place
3 April 2026	Entry into force of the amended UKSC; compliance deadlines begin to run; classification decision
3 October 2026	Deadline for applying for inclusion in the KSC registry; time to complete classification and gather the required data
3 April 2027	Deadline for implementing UKSC obligations: documentation, measures, procedures, training and testing
3 April 2028	First mandatory audit for essential entities

However, October 2026 is closer than the calendar might suggest. Classification, data gathering, an internal audit and the preparation of documentation all take time. Don't leave this until September.

UKSC – 6 areas of implementation

- Management. Roles, decisions, risk register and persons responsible for services and systems. The management board should be aware of the progress of work and approve key decisions
- Risk and safeguards. Technical and organisational measures proportionate to the impact of an incident, the criticality of systems and failure scenarios
- Business continuity. Contingency and recovery plans for TMS, ITS, port, rail, ticketing, check-in, telematics and communications systems
- Supply chain. Requirements for IT suppliers, hosting providers, maintenance contractors, integrators, subcontractors and operational support
- Access and people. Multi-factor authentication, access rights, privileged accounts, employee offboarding, training and rules for working with systems
- Incidents and documentation. Procedures for detection, escalation, decision-making and reporting, together with records enabling the reconstruction of who did what and when

What not to do?

Nie zaczynaj od zakupu narzędzia IT ani wpisu spółki do wykazu „na zapas".
First, you need to determine:

- The service
- The systems
- The obligation
- Responsibility (who is responsible for what)

Only then can you establish the procedures, contracts, suppliers and appropriate technical measures.

Management liability: this is not an IT-only project

This is the area that directly concerns senior management. And the one that is most often underestimated.

The greatest risk does not arise from the incident itself, but from the absence of a clear decision-making framework: who classifies the event, who escalates, who reports, who notifies clients and who approves remedial action.
Management should therefore be able to demonstrate that it has taken decisions regarding classification, budget, roles, timeline, oversight and periodic risk reviews.
Simply handing the project over to the IT department or the compliance team is definitely not enough.
What must be in place as a minimum standard of evidence? Management board decisions, a risk register, an implementation timeline, progress reports, test results and training confirmations.

Incidents: three clocks, three levels of information

When an incident occurs, time always works against you. Incident reporting therefore always involves three stages:

	24 hours	72 hours	One month
What	Early warning	Incident notification	Final report
Content	Whether the event may be significant, the impact on the service and the initial mitigation measures taken	Classification, scope, impact, probable cause, actions taken and communications	Lessons learnt, root causes, remedial actions, updates to risks and procedures

Penalties, corporate risk and personal risk to the management board

Penalties should be treated as a management risk.

	Essential entity	Important entity	Senior management
Maximum penalty	Up to EUR 10 million or 2% of revenue	Up to EUR 7 million or 1.4% of revenue	Up to 300% of remuneration
When	Material where there is a failure to implement, a lack of cooperation with the competent authority or an absence of evidence of oversight	Risk increases following a serious incident, an inspection or repeated breaches	Personal risk arises where duties are not discharged or oversight is merely nominal

Key takeaway for the management board: a penalty of up to 300% of remuneration is not a corporate risk but a personal one. It's worth bearing in mind that delegating a project without exercising oversight offers no protection against it.

Important note: the financial penalties discussed above will only be imposed two years after the amended UKSC entered into force, i.e. from 4 April 2028 (with the exception of the extraordinary penalty, which may be imposed before the expiry of that period).

UKSC – 6 steps to implementation

Implementation follows six steps:

- **Status assessment and registration:** review the services provided, the UKSC framework, the company's role, the size threshold and contracts, and determine whether the company falls within the scope of the regulation. Register the entity in the KSC registry
- **Service and dependency mapping:** map services to systems, suppliers, locations, data and contingency processes
- **Failure scenarios:** describe a number of situations, such as TMS/ITS system failure, a ransomware attack, a hosting failure, a supplier error or a loss of connectivity
- **Gap analysis and action plan:** separate critical gaps from less urgent ones; assign owners, deadlines and a means of confirming completion
- **Contracts and suppliers:** review provisions on incident reporting, audit rights, subcontractors, data location and inspection rights
- **Incident response: establish who communicates, who decides, who reports the incident, what is communicated to customers and what needs to be documented**

The outcome of this process should not be a description of the regulations, but a practical implementation toolkit and guide covering: a status assessment, a service map, an action plan, incident response procedures, contractual provisions and evidence of board-level decisions. It's well worth preparing this in collaboration with specialists.

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FAMILY FOUNDATIONS / THE GOVERNMENT HAS DONE THE MATHS AND PRESENTED THE BILL

MIROSLAW MALCZESKI

Three years. That's how long we've been waiting for what the Council of Ministers had seen in the data from the outset – and has now disclosed in its review of the Family Foundation Act. The document not only diagnoses the problems, but also previews substantial changes to rules that founders and their advisers treated as settled and stable.
And therein lies a problem that goes far beyond tax matters. If the rules of the game are changed while the game is being played, there can be neither planning stability nor trust in the law. It is no coincidence that one of the greatest concerns among entrepreneurs considering setting up
a foundation is not the level of taxation, but the stability of the legal framework – which today is once again being called into question.

The figures behind family foundations are too significant to ignore

The legislature anticipated that approximately 300 to 500 family foundations would be established in the first year of the Act's implementation. However, 917 registration applications were filed in 2023 alone.
Foundation income exempt from corporate income tax (CIT) amounted to PLN 5.4 billion in 2023, PLN 12.4 billion in 2024, and PLN 15.3 billion in 2025. At the standard 19% CIT rate, this would correspond to a hypothetical annual loss to the budget of PLN 1 billion, PLN 2.4 billion and PLN 2.9 billion – calculated on the assumption that the same income would have been earned directly by individuals or companies and taxed under the general rules. These figures are not merely striking, but carry real political pressure.
The scale of tax-avoidance schemes involving foundations is equally unprecedented.
82% of MDR disclosures (mandatory disclosure regime filings) involving a family foundation indicated that a tax advantage was the principal, or one of the principal, motives behind the arrangement.[1]
By way of comparison: throughout the entire period of operation of the GAAR (General Anti-Avoidance Rule) since 2016, approximately 230 such proceedings have been initiated in total. In just three years, family foundations have thus accounted for a third of that figure.
From a budgetary standpoint, intervention was therefore necessary. The proper response to abuse, however, should be to plug the loopholes with precision and not to redesign the entire model.

Short-term lettings in family foundations: winning battles does not mean the war is over

For two years, foundations letting apartments on a nightly basis, condo-hotels and commercial properties have prevailed in disputes with the tax authorities, arguing that the Act draws no distinction between long-term and short-term lettings in terms of tax exemption. This has been confirmed by court rulings, including those of the Provincial Administrative Courts (WSA) in Gdańsk[2], Wrocław[3] and Bydgoszcz.[4]
The government sought to put an end to this line of case law at the statutory level. The legislation[5] vetoed by the President would have limited the exemption to residential lettings for personal use only. The draft review confirms that the Council of Ministers intends to revisit the issue.
Such a change would not, however, put an end to the disputes. Instead of asking whether short-term lettings fall within the statutory list, the question would become whether a particular letting is exclusively residential, with the entire burden of proof falling on the foundation and leaving scope for endless interpretations. What about letting premises to a company to house an employee? Or what about a tenant occasionally working from home? The proposed regulations require the foundation itself, without intermediaries, to be a party to the lease. That condition would strip the exemption from any foundation that outsources letting management to a specialist company. scenarios.

If the amendment were to come into force, a foundation holding property for short-term letting would be liable to CIT on the income derived from it. Exiting such an investment could also be costly from a tax perspective, particularly if it coincided with the restrictions described below. Foundations with a portfolio of such properties should already be analysing their situation and assessing possible tax scenarios.

A 36-month lock-up is a good idea, but the arithmetic is wrong

The most common scheme identified by the Head of the National Revenue Administration works as follows: a founder contributes shares to a foundation, the foundation sells them under the CIT exemption, and the profit is then distributed to beneficiaries or the foundation is wound up.

The lock-up period is designed to block that scheme for 36 months from the contribution or acquisition of assets from a related party, during which any disposal would not be eligible for the exemption.

However, there is a problem with the parameters. The period runs from the end of the calendar year, not from the month of the triggering event. For an asset purchased in, say, June 2026, the exemption would not resume until 1 January 2030 – a full three years and seven months.

If the legislature wants a 36-month lock-up, it should count it from the month following the event, or express the period in years rather than months. These are not minor technicalities. The difference could prove very costly for the founder.

In addition, those who contributed assets in 2024 or 2025 want to know whether and when they will be able to dispose of them without losing their tax exemption.

The length of the lock-up period itself may also raise concerns. There are specific arguments for shortening it, such as a sudden need to restructure a portfolio, a change of strategy, the need to raise liquidity in difficult market conditions. These scenarios could affect any investor, yet the current regulation makes no allowance for them.

Foreign tax-transparent entities: a hidden trap for global portfolios

The vetoed legislation was intended to exclude from the exemption income derived from interests in foreign tax-transparent entities (i.e. entities such as partnerships that do not pay income tax in the country in which they are based).

According to the explanatory memorandum to the bill, the purpose of this exclusion was to eliminate situations in which a foundation 'relocates' its actual (active) operational activity abroad and conducts it through such an entity in an attempt to retain its tax preferences.

The provision itself, however, referred to the broad concept of 'economic activity' without providing guidance on how to distinguish between operational activity and passive asset management. As a result, the regulation could have captured not only structures that actually carry on a business, but also typical investment vehicles whose 'activity' amounts to nothing more than the deployment of capital. This discrepancy is no accident: the explanatory memorandum to the vetoed legislation suggested that entities passively managing assets were intended to retain the exemption. However, an explanatory memorandum is not a statutory provision.

What could the practical consequences be? Commonly used investment vehicles, such as the German Kommanditgesellschaft (KG) or the Luxembourg Special Limited Partnership (SCSp), operating as alternative investment funds, would find themselves in a zone of tax risk. They are tax-transparent, but their activity consists of portfolio management rather than operational activities. Yet the draft legislation drew no distinction between these cases.

Tax law should not operate as a trap set for good-faith investors. If a provision is intended to distinguish passive portfolio management from active operational activity – a distinction that is entirely legitimate – it must do so with precision. A provision based solely on the broad concept of economic activity does not meet that standard and should be refined before it re-enters the legislative process.

The three-tier model is an experiment that calls into question the very purpose of family foundations

The most far-reaching, and at the same time the most controversial, proposal in the review is a complete overhaul of the family foundations' tax model. Under the current regime, a foundation accumulates assets free of current income tax, with tax (15% CIT) arising only when benefits are paid out to beneficiaries.

The effective tax rate for a beneficiary in the zero tax group is approximately 15%, whereas an individual investor pays 19%, rising to 23% on capital gains subject to the solidarity levy.

The government proposes replacing the existing mechanism with three separate stages of taxation:

- The first stage occurs before the foundation has earned a single zloty: a tax on the market value of contributed assets at the point of contribution (with the exception of cash and assets transferred to the founding fund)
- The second stage involves ending the entity-based exemption and introducing ongoing CIT taxation of income from lettings, interest and portfolio disposals of shares. The draft envisages replacing the entity-based exemption with selected income-category exemptions for strictly defined categories of income linked to long-term asset accumulation. This does not, however, alter the substance: the foundation will lose its status as an exempt entity and become liable for CIT on its day-to-day investment activities
- The third stage completes – and at the same time exposes – the scheme: the foundation becomes a withholding agent for personal income tax (PIT) on benefits paid out. These are treated as a share in the profits of a legal person, and the beneficiary is taxed as a shareholder of a company rather than as a family member benefiting from a multi-generational wealth structure

The model would be mandatory for foundations established after the new rules come into force, and voluntary for existing ones.

Under such an arrangement, foundations would cease to be vehicles for wealth accumulation and would become taxable entities like any other.

This is not an adjustment. This is a dismantling.

Taxing contributed assets at market value at the point of contribution negates the very essence of the foundation, which is the long-term accumulation of wealth under conditions of deferred taxation. A founder contributing shares worth PLN 10 million would have to pay tax before the foundation had made a single move.

The proposal has been described as open to broad discussion, so its final shape is not predetermined. But the direction is clear. Anyone considering establishing a foundation now has a compelling reason not to delay.

What is to be done?

The review is not a statute, so nothing will change today.

But the direction is sufficiently clear that acting after the amendment has been enacted will be too late. Every family foundation should address at least four questions:

- Do I hold properties used for short-term or commercial lettings, and what will happen to them if the rules change?
- Am I planning to contribute assets, and what is a realistic timeframe for their disposal?
- Do I hold interests in foreign tax-transparent entities?
- Is the current taxation model more favourable to me than the three-tier model, and is it worth considering a voluntary opt-in?

It is worth answering those questions honestly today.

[1] According to data up to 16 January 2025, the National Revenue Administration (KAS) issued 77 opinions regarding reasonable suspicions of tax avoidance by foundations
[2] Judgment of 2 September 2025, Case I SA/Gd 425/25
[3] Judgment of 26 March 2025, Case I SA/Wr 807/24
[4] Judgment of 5 August 2025, Case I SA/Bd 315/25
[5] Act of 17 October 2025

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FAMILY FOUNDATIONS AND THE TAX AUTHORITIES / WHAT DRAFT BILL UD447 PROPOSES AND WHY THIS IS NOT THE END OF THE TROUBLES

MIROSLAW MALCZESKI

Family foundations were intended to provide entrepreneurs with a stable framework for intergenerational wealth management. Yet not even four years have passed since the first such foundations were established, and the rules governing their taxation are set to be changed once again. This is because the scale of interest and the practical problems uncovered have overwhelmed the drafters of the legislation, as best illustrated by the figures – 927 applications for individual tax rulings and 77 opinions issued from the Head of the National Revenue Administration. This does not, however, mean that family foundations are being used on a massive scale for aggressive tax optimisation. A significant proportion of the queries concerned simply how to correctly apply the complex regulations. Draft UD447 largely draws on solutions already proposed in 2025, which were vetoed by the President. The main new features are the increase in the corporation tax (CIT) rate from 15 % to 19 % and the extension of the personal income tax (PIT) exemption to the descendants of siblings who are founders.

An overview of the bill has already been published, but not all of its recommendations have yet been incorporated into the final legislation. The government is working on draft bill UD447, which is due to be adopted in the third quarter of 2026; however, as the full text has not yet been published, at present it is possible to assess primarily the direction of the planned changes rather than their final wording. We are therefore examining what's in the pipeline and worth preparing for.

How will taxation change for family foundations?

No more quick sales of assets – a 36-month holding period

Until now, a foundation could contribute shares, equity interests or property to its structure and sell them the very next day, whilst benefiting from a corporation tax exemption. There was no requirement for a minimum holding period. In practice, this led to a simple pattern: contribute the shares, wait a few days, then sell them and take advantage of the tax relief.

This is being changed by draft bill UD447, which makes preferential tax treatment conditional upon retaining ownership of the assets for 36 months. The CIT exemption will not apply to those who dispose of them before the end of this period.

For founders planning to contribute assets, this means they must plan at least three years in advance.

The holding period makes sense as a targeted instrument, as it allows for a distinction to be made between those institutions that genuinely accumulate assets over the long term and those merely seeking quick tax benefits. And this was the aim declared by the authors of the review: the structure of the regulations was intended to remain neutral or favourable towards foundations pursuing a genuine succession objective. However, when viewed alongside the increase in the CIT rate, this rationale is far less convincing.

Increase in CIT from 15% to 19%

Until now, a foundation paid 15% CIT on the full value of benefits paid to beneficiaries. Persons covered by the exemption[1] (i.e. immediate family) did not pay personal income tax (PIT) on the payments received. In their case, the total tax burden on the payment was therefore only 15% (the CIT payable by the foundation alone).

The new regulations provide for an increase in the CIT rate from 15% to 19%. This applies to benefits paid to beneficiaries, hidden profits and assets distributed upon the foundation's dissolution.

The mechanism is intended to be straightforward. The foundation pays funds to the beneficiary – for living expenses, medical treatment or education – and pays 19% CIT on this amount. The tax is borne by the foundation, not the beneficiary.

A beneficiary who is an immediate family member will still not pay tax. However, if they fall within the scope of personal income tax (PIT), the increase in CIT from 15% to 19% will also increase their total nominal tax burden. At a 15% PIT rate, this will amount to 34%, and in the case of descendants of siblings (currently subject to a 10% PIT rate), 29%.

This is neither a rational nor a coherent legislative structure, and its effects will also affect foundations that actually serve a succession purpose. The change undermines the very rationale behind the differentiation introduced by the holding period itself. The draft therefore contains an internal contradiction: on the one hand, it rewards the long-term retention of assets; on the other, it increases the cost of their subsequent distribution.

An end to impunity associated with operating through transparent entities

Family foundations are generally exempt from income tax[2]. However, this does not apply, amongst other things, to the activities of a family foundation that go beyond the scope specified in Article 5 of the Family Foundations Act. In practice, some structures have circumvented this restriction by using foreign partnerships which do not pay tax in their country of incorporation, and whose income flows directly to the partners. As a result, the foundation did not formally carry out any activities, but merely controlled the partnership which did so. The draft legislation aims to close this loophole.

However, the question arises as to whether this change is necessary at all. The Head of the National Revenue Administration already has a wide range of tools at their disposal to tackle abuse – in particular the GAAR clause, which allows for action to be taken against such practices.

The draft bill retains the exemption for foundations that participate in transparent entities performing an exclusively passive role, i.e. managing assets without carrying out any operational activities. The problem is that the provisions do not define the boundary between 'passive management' and 'active operations'. Article 5 merely sets out a list of permitted activities. This leaves scope for numerous disputes over interpretation.

CFC and exit tax – a foundation treated like any other taxpayer

The draft legislation provides for the inclusion of family foundations within the regime governing Controlled Foreign Corporations (CFCs). These provisions allow the income of foreign companies controlled by Polish taxpayers to be taxed in Poland, provided certain conditions are met.

Until now, family foundations, by virtue of their exemption from corporation tax (CIT)[3], have been excluded from this regime. According to the drafters, this placed them in a more favourable position compared to other Polish holding companies. The draft aims to eliminate this disparity.

Short-term lettings excluded from the exemption leave condo-hotels and daily-let apartments without preferential treatment

The Family Foundations Act permits the letting of property as one of the permitted forms of activity; however, the issue of short-term lettings has been contentious from the outset. In many cases, the tax authorities refused to grant exemptions to foundations, deeming such activity to fall outside the scope of permitted activities; however, administrative courts more often ruled in favour of the taxpayers.

The draft clarifies the rules for taxing such income. The exemption for traditional long-term residential lettings will be retained, whilst short-term lettings involving apartments and condo-hotels on a per-night basis will be subject to corporation tax.
Some foundations will therefore have to re-examine the profitability of their operations and consider possible restructuring, such as transferring assets to a subsidiary outside the foundation's structure.

The expansion of the list of hidden profits puts loans to beneficiaries under the microscope

The list of hidden profits for family foundations[4] has, from the outset, included, amongst other things, certain benefits related to loans. Draft Bill UD447 extends this list to include new cases, such as loan receivables granted by the foundation to its beneficiaries, founders or related parties that have been written off, have become time-barred or have been written down as uncollectible.

If a foundation writes off a loan of PLN 500,000 owed by a beneficiary, this amount will be classified as a hidden profit and taxed at the proposed CIT rate of 19 %.

A broader PIT exemption for family foundations is good news for companies set up by siblings

Until now, the children of a founder's brother or sister were not included among those exempt from PIT[5] and, as a result, paid 10% PIT on the benefits they received.
Following the changes, they will be treated in the same way as the founder's own descendants and will be fully exempt from PIT.

Protection under individual tax rulings – what about foundations that have operated in accordance with the law?

Those foundations that have obtained individual tax rulings and built their structures on that basis may face a dilemma. Is the protection they have obtained still valid?
The protection arising from an individual tax ruling may also cover the tax consequences of events that occurred after it was served. However, if the ruling is amended or revoked, the scope of this protection is limited.
Section 14m(2) of the Tax Ordinance provides for a so-called 'protection period'. In the case of taxes settled annually, such as corporation tax (CIT), the exemption applies until the end of the tax year in which the amended individual ruling was served. In the case of taxes settled quarterly, the protection also covers the following quarter, and in the case of monthly taxation, it also covers the following month. Foundations operating on the basis of current rulings will have to review their structures and assess which elements of their operating models require change following the entry into force of the new regulations.

Audit of a family foundation – an overlooked problem just around the corner

Draft UD447 focuses on taxes. Meanwhile, the issue of auditing family foundations remains in the background. This is because a foundation is obliged to carry out an audit of its activities at least once every four years. Such an audit may be carried out by an audit firm or by a team comprising a statutory auditor, a tax adviser and a barrister/solicitor or legal adviser (radca prawny).

For the oldest family foundations, the first audit obligation will fall as early as 2027.
However, the Act does not specify either the content elements of the audit report, the detailed methodology for conducting the audit, or a catalogue of audit procedures. The absence of such criteria may lead to inconsistencies – as each auditor or audit team may define the scope of the audit and the method of documenting the results differently.

Do we need amendments to the Family Foundations Act?

Amendments to the Family Foundations Act are necessary, as practice has revealed many areas requiring clarification. However, these should be evolutionary rather than revolutionary in nature. Abuses should be tackled on a targeted basis, strengthening legal certainty and improving the functioning of family foundations – but without dismantling the model that serves succession planning, long-term asset management and the retention of Polish family capital within the country.
Draft UD447 only partially fulfils this objective. Where it addresses actual tax optimisation schemes – the 36-month holding period, closing the loophole for transparent entities, CFC rules, and exit tax – its logic is convincing.
However, where it resorts to non-selective measures, such as raising the corporation tax rate from 15% to 19%, it also affects foundations operating exactly as the legislator had intended when it enacted the legislation in 2023. And this, in light of the principle of legitimate expectations and the stability of tax law, is difficult to defend.

[1] From Article 21(1)(157) of the PIT Act
[2] Pursuant to Article 6(1)(25) of the CIT Act
[3] Pursuant to Article 6(1)(25) of the CIT Act
[4] Contained in Article 24q(1a) of the CIT Act
[5] Pursuant to Article 21(1)(157) of the PIT Act, which covers the founder and persons related to him within the meaning of Article 4a(1) of the Inheritance and Donation Tax Act

ESG ROADMAP / HOW TO IDENTIFY WHICH REGULATIONS APPLY TO YOUR BUSINESS AND BUILD A STRATEGY

AGNIESZKA CHILMON

As we know, ESG in business is a roadmap made up of numerous obligations arising from different regulatory frameworks. That is why the right question is not "how do I meet all the requirements?" but rather "which of them apply to my business?". This is a crucial distinction. We explain how to correctly diagnose your regulatory profile and build an effective ESG strategy – one that actually works and gives you a competitive edge.

ESG does not apply equally to everyone

The scope of ESG obligations is not universal, and their proper identification depends on the profile and regulatory status of the organisation or institution in question.
By way of example, an international fund managing a global investment portfolio will face different obligations from a cooperative bank with just a few branches.
This means that before producing any report or policy, it is worth knowing which regulatory category you fall into. Identifying the applicable obligations requires precisely determining the institution's regulatory profile.

Three questions that determine your regulatory profile

Question 1: Are you a small and non-complex institution (SNCI)?

SNCI (Small and Non-Complex Institution) status – i.e. denoting institutions whose total assets do not exceed EUR 5 billion – determines the scope and timeline of many ESG obligations.

Why does this matter?

- SNCIs are subject to different implementation deadlines and simplified requirements;
- For SNCIs, the applicable requirements include, among others, the EBA/GL/2025/01 guidelines (from 11 January 2027), simplified Sustainability Reporting (from 2028) and a biennial ESG materiality assessment;
- Loss of SNCI status has a knock-on effect: accelerated Pillar III disclosures, earlier application of the EBA GL guidelines and a transition to full Sustainability Reporting under the ESRS.

Why losing SNCI status is more than just a change in the calendar

Losing SNCI status does not simply mean a single deadline shift. It triggers a knock-on effect that activates several independent regulatory regimes simultaneously, yet this is the risk most commonly overlooked when planning an institution's growth.
An institution loses its SNCI status when it ceases to meet any of the nine cumulative conditions set out in Article 4(1)(145) of the CRR. In practice, this most commonly occurs when total assets exceed the EUR 5 billion threshold, calculated as an average over a four-year reporting period. Loss of status may also result from a discretionary decision of the KNF (Polish Financial Supervision Authority), based on an assessment of the institution's size, interconnectedness, complexity or risk profile.
What happens upon loss of status:

- Pillar III disclosures (Article 449a CRR) shift from annual to quarterly reporting, and the GAR materiality threshold ceases to apply: the institution loses the 10% threshold that previously allowed certain exposures to be excluded from the taxonomy eligibility assessment
- The EBA/GL/2025/01 guidelines become applicable one year earlier than under the SNCI timeline – from 11 January 2026 instead of 11 January 2027, with no transitional period
- The ESG risk materiality assessment changes from biennial to annual
- Sustainability reporting transitions from simplified (ESRS LSME) to full reporting under ESRS standards, provided the institution also meets the 'large undertaking' thresholds under Article 3 of the Polish Accounting Act

- The transition plan, which for SNCIs could form part of the existing risk management strategy, must be separated out and expanded in line with the full regulatory framework

None of these consequences comes with a separate transition period – they are triggered from the date of loss of status. For this reason, the recommended practice is to verify and document compliance with all nine SNCI criteria on a quarterly basis, rather than carrying out a one-off assessment at the outset of implementation.

Question 2: Do you manage portfolios or provide investment advice?

Banks are not automatically subject to the SFDR (Sustainable Finance Disclosure Regulation). These regulations apply only in specific circumstances, which must be determined on the basis of an audit of the services actually provided.

What are the implications?

- Portfolio management within the meaning of MiFID II confers the status of a financial market participant under the SFDR and triggers the full scope of obligations under Articles 3, 4 and 5, as well as product-level obligations under Articles 6, 8 and 9
- Providing investment advice confers the status of a financial adviser, limiting obligations to the entity level only, with no product-level requirements
- Where neither of these services is provided, no SFDR status arises; however, the outcome of the audit must be documented

Question 3: How large is your organisation?

A 'large undertaking' is an entity meeting at least one of the following thresholds: total assets exceeding PLN 110 million, revenue exceeding PLN 220 million, or 250 or more employees.

- Large undertakings: full reporting from 2027
- SNCIs not classified as large undertakings: simplified reporting from 2028 pursuant to Article 63s of the Polish Accounting Act.

Double materiality assessment: the starting point for any ESG strategy

Once you have identified your regulatory profile, the next step is a double materiality assessment of ESG risks. This is the starting point for any ESG strategy, since without it the requirements cannot be implemented in a proportionate and compliant manner.

The entire process can be broken down into five steps:

- Identification of the ESG factors material to your business model – analyse climate, social factors and governance through the lens of your operations
- Financial materiality assessment – identify the ESG risks and opportunities that affect your revenue, costs, assets or liabilities. Identify the most specific factors capable of improving or worsening your financial position
- Impact materiality assessment – analyse the impact your organisation has on the environment and on people, both actual and potential, positive and negative
- Assessment of the likelihood and scale of impacts across three time horizons – short-term is less than 1 year, medium-term – less than 5 years, and long-term – at least 10 years. The starting point is always climate
- Materiality determination – material risks require management policies, concentration limits, stress scenarios and a transition plan. Non-material risks require documented justification and ongoing monitoring. Remember that the scope of tools is determined by actual materiality, not by minimum formal requirements

What should an ESG strategy contain?

The ESG strategy is developed by the management board once the materiality assessment results have been adopted, and is integrated into the organisation's overall business and risk strategies. A sound ESG strategy should include:

- A vision and long-term objectives – specific, measurable and time-bound
- Alignment with the business strategy – ESG cannot operate in isolation from the business model
- ESG risk appetite – clearly defined and approved by the management board
- Reference to global standards – UN SDGs, OECD guidelines and UNGPs
- A transition plan with measurable targets and interim milestones

How often should it be updated?

- Large institutions (other than SNCIs): annually
- SNCIs: biennially (from 11 January 2027)
- In both cases: an earlier update is always required in the event of any significant change to the business model or the regulatory environment

Bear in mind: the ESG strategy does not constitute a standalone document. It must be aligned with the overall business strategy and risk strategy. For SNCIs, the transition plan may be incorporated into the existing risk management strategy.

WORKPLACE HARASSMENT AND DISCRIMINATION / NEW REGULATIONS FOR EMPLOYERS

KAROLINA KLUNDER

The Sejm has passed an amendment to the Labour Code concerning workplace harassment and discrimination.
The changes introduce a broader definition of the concept itself, new forms of harassment, clearer definitions of what constitutes, for example, sexual harassment, and new rules governing the handling of such cases, including the reversal of the burden of proof, higher compensation awards, and the jurisdiction of district courts.

The provisions will enter into force on 5 November 2026. We examine what will change and how much time remains to adapt company documents, policies, and the organisation as a whole.

A broader definition of workplace harassment will be introduced

The Act[1] fundamentally overhauls the existing definition of workplace harassment (mobbing). It still refers to persistent — that is, repetitive, recurring, or continuous — harassment of an employee, which may include, amongst other things, humiliation, disparagement, intimidation, undervaluing of professional competence, unjustified criticism, belittling or ridiculing, isolation within a team, or hindering the employee's ability to perform their duties.
A significant change is that certain conduct may be classified as mobbing even where its purpose was not to persistently harass an employee, as what matters is the effect itself. Harassment may be perpetrated not only by a line manager, but also by a co-worker, a subordinate, or a person working on a basis other than an employment contract, whether acting alone or as part of a group.

New forms of discrimination

The Labour Code will introduce two new concepts:

- Discrimination by assumption — where an employer wrongly attributes a particular characteristic to an employee
- Discrimination by association — where a person is treated less favourably because of their connection to another person

Employers will also be required to systematically prevent breaches of the principle of equal treatment, just as they are already required to do in the case of workplace harassment.

A more precise definition of harassment will be introduced

The amendment also refines the definition of harassment (molestowanie).
It will be defined as any unwanted conduct whose purpose or effect is to violate the dignity of an employee and to create an intimidating, hostile, degrading, humiliating, or offensive environment for that person. Such conduct may consist of physical, verbal, or non-verbal elements.

Reversal of the burden of proof in discrimination cases

An employee will only be required to establish a prima facie case of a breach. It will then fall to the employer to prove before the court that no discrimination actually took place.
Importantly, this change does not apply to claims of workplace harassment. The evidentiary rules in such cases remain unchanged.

Protection against retaliation

The amendment also introduces protection against retaliation.
The fact that an employee exercises rights arising from a breach of employment law must not constitute grounds for any unfavourable treatment or result in negative consequences, including termination of their contract.
This protection also extends to anyone who has provided support to a person asserting their rights. In the event of a breach of these rules, the employee concerned is entitled to compensation of an amount no less than the national minimum wage, or to damages.

Mandatory anti-harassment policy

Companies employing at least 10 persons will be required to introduce rules and procedures to prevent:

- Violations of an employee's dignity and other personal rights
- Violations of the principle of equal treatment in employment, as well as discrimination and workplace harassment

These rules may be incorporated into a collective labour agreement, workplace regulations (regulamin pracy), or a separate set of regulations issued pursuant to Article 94[3a] of the Labour Code.
The regulations must be agreed with the trade unions or employee representatives. If no agreement is reached within 30 days, the employer shall determine the content of the regulations independently, taking into account any prior arrangements reached with the in-house trade union organisations or employee representatives in the course of the consultation process.

Higher compensation and right of recourse

The minimum compensation award for workplace harassment will increase to six times the national minimum wage.

Such compensation will also be introduced in discrimination cases and will be no less than the national minimum wage; in cases of repeated infringements, it will be no less than three times that amount.

An employer who pays compensation on this basis will be entitled to claim reimbursement from the perpetrator for the loss suffered, in an amount corresponding to the respective degrees of fault of the perpetrator and the employer in bringing about that loss.

Cases will be heard by district courts

Civil procedure will also change.
Cases concerning workplace harassment, discrimination, and infringement of an employee's personal rights will be assigned to district courts (sądy rejonowe), regardless of the value of the claim. Furthermore, the court will not be able to dismiss a claim on the grounds that the facts of the case would suggest a legal basis for the claim other than that invoked by the employee.

How much time does your company have?

The Act enters into force on 5 November 2026. From that date, employers will have six months (i.e. until 5 May 2027) to amend their workplace regulations.
Please note: the new provisions will also apply to situations that commenced before the entry into force of the Act but continue beyond that date.

What you should do now

- Review existing anti-harassment and anti-discrimination policies
- Draft or update the internal regulations pursuant to Article 94(3a) of the Labour Code
- Schedule consultations with trade unions or employee representatives
- Train management and HR teams to recognise workplace harassment
- Implement procedures for reporting and investigating employee complaints, so as to minimise the risk of litigation

The amendment significantly increases the financial and litigation exposure of employers, and the six-month implementation window may prove insufficient if companies delay taking action until after the Act enters into force.
It is therefore advisable to review current procedures today and prepare a set of regulations that comply with the new requirements.

[1] Act of 19 June 2026 amending the Labour Code and the Code of Civil Procedure (Journal of Laws 2026, item 1046)

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