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FORMAL, CORPORATE GOVERNANCE INSTITUTIONS IN SELECTED NON-FINANCIAL COMPANIES LISTED ON THE WARSAW STOCK EXCHANGE

Abstract

Background: An adequate number of formal, corporate governance institutions is a necessary condition for prompting managerial staff to take such decisions that will be beneficial to owners. In most cases, their establishment is required by legal acts and this is why companies have the same types of formal institutions. Therefore, the observed differences between the companies in terms corporate governance do not stem from the very existence of certain formal institutions, but depend on the extent to which those entities take care of corporate governance quality and on whether formal institutions are consistent with the standards developed in order to improve the efficiency of corporate governance.
Research purpose: The research compares formal, corporate governance institutions in 20 non-financial companies listed on the Warsaw Stock Exchange, including 10 with the highest and 10 with the lowest market capitalisation.
Methods: The theoretical section analyses the literature regarding the essence of corporate governance and the formal and informal institutions which comprise it. The scope of the empirical research covered an analysis of formal, corporate governance institutions such as: ownership structure, general shareholder meetings, management boards, supervisory boards and their committees, corporate bylaws, and codes of good practice. In order to compare these institutions in the sample, an analysis of numerical data, as well as a simple statistical methods were used. The study spans the years 2016–2018.
Conclusions: The article provides an initial description of formal, corporate governance institutions in analysed companies. The entities with the highest market capitalisation were found to have been characterised by, e.g. higher concentration of ownership in the hands of the main stakeholder, greater frequency of extraordinary general meetings, higher numbers of supervisory board members and their greater independence, as well as lower changeability in the composition of those bodies. The activity of supervisory boards were more effectively streamlined by specialised committees working in advisory capacities. What is more, formal institutions in those entities were created in line with the standards of corporate governance, as confirmed by stricter compliance to the *Best Practice* for WSE Listed Companies.

Keywords: ownership structure, supervisory board, management board, code of good practice.

JEL classification: D22, K22, G30

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1. Introduction

The deepening separation of ownership and control, which began to be observed in the 1930s[1], encouraged many scholars to initiate research into the question of corporate governance. The term describes a situation when suppliers of capital do not themselves manage the entities they own, but engage another person who possesses the necessary knowledge, experience and skills to do it on their behalf. As a consequence, the owners delegate some decision-making authority to professional managers.

A danger, therefore, arises that the managers might be more concerned with their private benefits than with the interest of the company's owners for whom they work[2]. They might pursue their personal goals and strive to satisfy their private needs, such as maintaining a steady job and a high compensation. On the other hand, by providing the necessary capital, the owners expect that the managers will run the company in a way that ensures shareholders benefit, such as getting the highest possible return on their investment.

Corporate governance makes it possible to limit the negative consequences of separating ownership and control. However, the condition for ensuring its efficiency is to establish institutions which will contribute to narrowing the divergences of managers' and shareholders' interests, as well as reducing the information asymmetry that exists between them. Inefficient institutions prevent corporate governance from properly fulfilling its function of protecting the interests of the owners. For this reason, it is vital that the awareness of both the suppliers of capital and the managers is raised regarding the role that corporate governance institutions play in the smooth operating of companies.

The research compares formal, corporate governance institutions in 20 non-financial companies listed on the Warsaw Stock Exchange, including 10 with the highest and 10 with the lowest market capitalisation. The theoretical

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[1] A. A. Berle and G. C. Means were the first to identify the problem of separating ownership and control. Their research confirmed that although the individual shareholders of large American corporations had legal control over those entities, they did not actually exert it.. This was due to widely diffused ownership, which made it impossible for the owners to efficiently supervise the managers (for details see: **A.A. Berle**, **G.C. Means**, *The Modern Corporation and Private Property*, Macmillan, New York 1932, pp. 3–8).

[2] The diverging interests of managers and owners is further amplified by the information asymmetry between them, manifesting itself, among other things, in the fact that the former have an advantage over the latter in that they possess information of which suppliers of capital have no access.

section contains an analysis of the literature regarding the essence of corporate governance and the formal and informal institutions which comprise it. The empirical section examines information published on the internet websites of the studied non-financial companies, primarily in their annual reports. The study spans the years 2016–2018.

2. The essence of corporate governance

Corporate governance is defined as a system consisting of various legal and economic institutions[3] (both formal and informal[4])[5] that determine a way in which companies are managed and controlled to align and protect the interests of all the parties involved in the business activity of these entities[6]. It encompasses a set of relationships among a company's management, its board, its shareholders, and

3 According to the D.C. North, institutions are a set of humanly devised constraints in the form of rules and regulations imposed on individuals, shaping their mutual relations, as well as a set of procedures to detect deviations from the rules and regulations, and also a set of moral, ethical and behavioral norms that determine the contours constraining the way in which the rules and regulations are specified and enforcement is carried out (**D.C. North**, *Transformation Costs, Institutions and Economics History*, Journal of Institutional and Theoretical Economics 1984/140, p. 240).

4 The division of institutions into formal and informal ones was proposed by D.C. North. The former are written down, are consciously created and enforced by individuals, groups of individuals, or groups of interest, and have to be respected according to laws and regulations. Informal institutions exist in an unwritten form and are embedded in the culture of a given society. They are created, communicated, and enforced outside of officially sanctioned channels. Informal constraints arise as a result of the accumulation of knowledge and experience transmitted from one generation to the next and from the mutual interactions among people. The sanctions for non-compliance with these rules have a social nature, such as social disapproval (Compare: **G. Helmke**, **S. Levitsky**, *Informal Institutions and Comparative Politics: A Research Agenda*, Perspectives on Politics 2004/2/4, pp. 725–727; **C.R. Williamson**, **C.B. Kerekes**, *Securing Private Property: Formal versus Informal Institutions*, Journal of Law and Economics 2011/54/3, p. 544).

5 Compare: **A. Shleifer**, **R.W. Vishny**, *A survey of corporate governance*, The Journal of Finance 1997/LII/2, p. 738; **Ch.P. Oman**, **S. Fries**, **W. Buiter**, *Corporate governance in Developing, Transition and Emerging – Market Economies*, OECD Policy Brief 2003/23, p. 13.

6 Compare: **A. Cadbury**, *Foreword*, in: **M.R. Iskander**, **N. Chamlou** (eds.), *Corporate Governance: A Framework for Implementation*, The World Bank Group, Washington 2000, p. vi; **Z. Rezaee**, **R. Riley**, *Financial Statement Fraud*, John Wiley & Sons Inc., New Jersey 2010, p. 122; **T. Dănescu**, **M. Prozan**, **R.D. Prozan**, *Perspectives regarding accounting – corporate governance – internal control*, Procedia Economics and Finance 2015/32, p. 589.

other stakeholders[7]. Corporate governance provides conditions for co-operation among them and impacts decision-making processes resulting from the (often conflicting) interests of the involved parties[8].

Corporate governance, being a component of an institutional arrangement, defines the framework within which enterprises operate, by indicating the constraints of their activities. It comprises a structure through which the objectives of these entities are established, the means of attaining those objectives, and the methods of monitoring their performance[9]. The corporate governance structure includes institutions that would support efficient management of companies and allow for effective supervision, ensuring respect for the rights of the shareholders and transparent communication between corporations and their market environment[10]. Moreover, it encourages the efficient use of financial, human, material and informational resources and pays equal respect to the rights and obligations of all the parties who invest these resources in companies[11]. As a result, corporate governance stimulates the performance of companies and has an impact on their market capitalisation by creating and maintaining a business environment that induce the self-interested managers to realise the goals of corporations[12].

Corporate governance is created by the market participants themselves, in accordance with the existing legal, regulatory, and institutional foundation. It requires the establishment of an appropriate framework to which all the parties can rely in concluding their private contractual relations[13]. These mainly include[14]:

– mandatory legal and regulatory requirements (laws, regulations, EU legal acts) concerning primarily corporate law, securities law, accounting and auditing standards;
– voluntary codes and standards developed by national or international organisations and supervisory institutions;

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7 *OECD Principles of Corporate Governance*, OECD, Paris 2004, p. 11.

8 **M.J. Roe**, *The Institutions of Corporate Governance*, in: **C. Ménard**, **M.M. Shirley** (eds.), *Handbook of New Institutional Economics*, Springer, Berlin 2008, p. 371.

9 *OECD Principles*..., p. 11.

10 https://www.gpw.pl/pub/GPW/o-nas/DPSN2016_EN.pdf; accessed 25.06.2019.

11 **A. Matei**, **C. Drumasu**, *Corporate Governance and Public Sector Entities*, Procedia Economics and Finance 2015/26, p. 497.

12 Compare: **Ch.P. Oman**, *Corporate Governance and National Development*, OECD Working Paper 2001/180, p. 13; https://www.frc.org.uk/getattachment/ca7e94c4-b9a9-49e2-a824-ad76a322873c/UK-Corporate-Governance-Code-April-2016.pdf; accessed 30.11.2019.

13 *OECD Principles*..., p. 29.

14 Compare: *OECD Principles*..., pp. 29–32; **B. Tricker**, *Corporate Governance: Principles, Policies, and Practices*, Oxford University Press, Oxford 2015, pp. 107–108.

- self-regulatory arrangements, including, e. g. articles of association and rules of procedure (corporate bylaws);
- business practices resulting, among other things, from a country's specific circumstances, history and tradition.

The combinations of the regulations that comprise the framework of corporate governance vary from one company to another. This is the reason why the corporate governance structure may be dissimilar across different entities.

3. Formal and informal, corporate governance institutions

The corporate governance structure at company level are determined by both formal and informal institutions. The former are established on the basis of company law and other relevant legal acts, codes or self-regulation that govern the behaviour of all the parties involved in the company's business activity. It means that formal, corporate governance institutions are codified rules that are created and communicated through official channels and have legal consequences[15].

Informal institutions, meanwhile, are based on customs, experience, unwritten norms of thinking and behaviour, social conventions, beliefs, and traditions. Although not officially codified in written documents, they are widely recognised and present in the consciousness of the stakeholders (managers, shareholders, employees, suppliers, business partners, local authorities, members of society, *etc.*)[16]. Selected formal and informal, corporate governance institutions are presented in Table 1.

The operation of enterprises are determined by a wide spectrum of constraints that are officially codified. The laws and regulations indicate the formal institutions companies are obliged to establish (e. g. statutory bodies or articles of association), depending on their organisational and legal form and range of activities[17] or which these entities can create should they choose to do so. For this reason, many companies' corporate governance structures include the same, formal institutions, and the differences among them arise from facts other than from their establishment. Moreover, it is worth noticing that the typology of formal institutions embodies differentiable types.

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15 **G. Helmke**, **S. Levitsky**, *Informal Institutions...*, p. 727.

16 **H.J. Lauth**, *Formal and informal institutions: on structuring their mutual co-existence*, Romanian Journal of Political Science 2004/1/4, pp. 68–81.

17 The Act of 15 September 2000, *The Commercial Companies Code* [Ustawa z dnia 15 września 2000 r. Kodeks spółek handlowych] is one of the basic legal acts regulating the formal institutions of corporate governance in companies in Poland.

TABLE 1: *Examples of formal and informal, corporate governance institutions*

Formal institutions	Informal institutions
Statutory bodies: general meeting of shareholders, supervisory board and management board	Customs
	Routines
Structure of ownership	Tradition and cultural patterns
Codes of good practice	Social relationships
Corporate bylaws, such as articles of association or rules of procedure of statutory bodies	Moral values
	Ethical rules
Dividend policy	Religious beliefs
Remuneration policy	Established modes of thinking
Company staff and their representatives on boards	Job involvement
Contracts between stakeholders	Propensity to take risks
Trade unions and employee councils	Propensity for opportunistic behaviour
Company's organisational structure	Trust
Legal and regulatory requirements, including corporate law, securities law, accounting standards	Entrepreneurship
	Social networks

Source: author's own work based on **T. Postma, N. Hermes**, *Institutions, corporate governance and corporate governance institutions: the case of Estonia*, Journal for East European Management Studies 2003/8/3, p. 268; **S. Rudolf**, *Nadzór korporacyjny w świetle analizy instytucjonalnej*, in: **S. Rudolf** (ed.), *Nowa Ekonomia Instytucjonalna wobec współczesnych problemów gospodarczych*, Publisher of The Professor Edward Lipinski School of Economics, Law and Medical Sciences, Kielce 2014, pp. 156–159.

Informal constraints, in contrast to formal ones, overlap with one another and are of a more general nature. They are not established and changed by companies, but rather reflect the beliefs and attitudes of the stakeholders, which are part of society. They shape behaviour of all the parties involved in the business activity of companies when they follow the patterns of social conduct prescribed by informal constraints[18].

The corporate governance structure created by formal and informal institutions affects the efficiency of companies. This influence can be beneficial, but it can also hamper business activity. The institutions of corporate governance interact in a variety of ways and they can complement and substitute one another or maintain a neutral relationship[19]. They can adapt to and mutually reinforce and support each other, or, contrarily, compete with one another,

[18] **H.J. Lauth**, *Formal and informal institutions*, in: **J. Gandhi**, **R. Ruiz-Rufino** (eds.), *Routledge Handbook of Comparative Political Institutions*, Routledge, London, New York 2015, p. 58.

[19] Compare: **G. Helmke**, **S. Levitsky**, *Informal Institutions...*, pp. 728–730; **H.J. Lauth**, *Formal and informal...*, pp. 60–61.

when the significance of some institutions increases at the expense of others[20]. A mutual complementarity of formal and informal institutions is conducive to the growth of companies, whereas all types of conflict among the institutions might (but do not have to) be an impediment. Of particular importance is the complementarity of informal rules toward formal ones, since the latter do not regulate all the aspects of companies' operations or their impact is marginalised if deprived of efficient, informal institutions. It means that informal institutions play a significant role in shaping companies' behaviour when formal constraints are weak[21].

Consequently, it is necessary to create such a structure of informal and formal, corporate governance institutions that makes it possible to divide decision-making powers between the managers and the owners (or other stakeholders) in such a way that will reduce the probability of opportunistic behaviour[22] by the former[23]. It is the tendency of the managerial staff to pursue their own goals that forces the owners to establish the means to monitor their activity and limit the management's potential to abuse their power.

It is nevertheless difficult to enforce appropriate manager behaviour. On the one hand, the suppliers of capital may not be interested in supervision as they assume that persons employed as managers have adequate knowledge and experience to hold their positions and that they always act in the interests of their employers. On the other hand, the owners (especially minority shareholders) may not be able to personally control the managerial staff because it would require them to invest substantial resources. For this reason, the existing laws and

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20 **H.J. Lauth**, *Informal Institutions and Democracy*, Democratization 2000/7/4, pp. 25–26.

21 Compare: **J.W. Webb**, **L. Tihanyi**, **R.D. Ireland**, **D.G. Sirmon**, *You say illegal, I say legitimate: Entrepreneurship in the informal economy*, Academy of Management Review 2009/34/3, pp. 492–510; **M. Holmes**, **T. Miller**, **M.A. Hitt**, **P. Salmador**, *The interrelationships among informal institutions, formal institutions, and inward foreign direct investment*, Journal of Management 2013/39/2, pp. 531–566.

22 Opportunistic behaviour occurs when managers deliberately and consciously attempt to mislead owners, give them incomplete, distorted or untrue information, withhold information altogether, or hide their real intentions, using various forms of deception (e.g. lying, fraud, theft) for personal gain (for details see: **O.E. Williamson**, *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting*, The Free Press, New York 1985, pp. 47–48).

23 Compare: **D.K. Denis**, **J.J. McConnel**, *International Corporate Governance*, Journal of Financial and Quantitative Analysis, 2003/38/1, pp. 1–2; **Z. Rezaee**, *Corporate Governance Post--Sarbanes-Oxley: Regulations, Requirements, and Integrated Processes*, John Wiley & Sons, Inc., New Jersey 2007, p. 22; **S. Asthana**, *Corporate governance and managerial opportunism: the case of US pension plans*, Corporate Ownership & Control 2009/6/3, p. 523.

regulations oblige companies to set up formal institutions the purpose of which is to effectively protect all the owners' interests. Their suitable quality helps solve the problems that emerge in the field of corporate governance.

4. Formal, corporate governance institutions in selected non-financial companies listed on the Warsaw Stock Exchange

The research was conducted on a sample of 20 non-financial companies listed on the Warsaw Stock Exchange (WSE), including 10 with the highest market capitalisation[24] (group one) and 10 with the lowest market capitalisation[25] (group two), as of Dec. 31st, 2018. The research material was mainly taken from stock exchange data, published by WSE and the internet websites of the studied entities, particularly from the annual reports that these companies are obliged to publish. The study spans the years 2016–2018.

The scope of the research covered formal, corporate governance institutions such as: ownership structure, general meetings of shareholders (GM), management boards, supervisory boards and their committees, corporate bylaws, and codes of good practice. In order to compare these institutions in the sample, an analysis of numerical data, as well as a simple statistical methods (e.g. arithmetic mean, standard deviation and median) were used.

Shareholders represent suppliers of capital. The decisions taken by the managers have an impact on the shareholders because the latter bear the costs of failed investments and have the right to reap the benefits of a success in business activity[26]. Therefore, it should be in the interest of shareholders to conduct effective

[24] As of Dec. 31st 2018, 10 non-financial companies with the highest capitalisation included: PKN Orlen S.A. (PKN), Polskie Górnictwo Naftowe i Gazownictwo S.A. (PGN), PGE Polska Grupa Energetyczna S.A. (PGE), KGHM Polska Miedź S.A. (KGH), Grupa LOTOS S.A. (LTS), LPP S.A. (LPP), Cyfrowy Polsat S.A. (CPS), CD Projekt S.A. (CDR), DINO Polska S.A. (DNP) i CCC S.A. (CCC) [https://www.gpw.pl/statystyki -gpw#5; accessed 18.06.2019].

[25] As of Dec. 31st 2018, 10 non-financial companies with the lowest capitalisation included (because the main source of information for the study were annual reports published on the internet websites of the companies, those entities that did not publish any reports for the years 2016–2018 were excluded from the analysis): SCO-PAK S.A. w restrukturyzacji (SCO), REGNON S.A. (REG), CUBE.ITG S.A. (CTG), Unima 2000 Systemy Teleinformatyczne S.A. (U2K), Interbud-Lublin S.A. (ITB), AMB SOLID S.A. (ABM), Zakłady Budowy Maszyn ZREMB-Chojnice S.A. (ZRE), KB DOM S.A. (KBD), IBSM S.A. (IBS), Qumak S.A. (QMK), [https://www.gpw.pl/statystyki-gpw#5; accessed 18.06.2019].

[26] **M. Aluchna**, *Mechanizmy corporate governance w spółkach giełdowych*, Publisher of SGH Warsaw School of Economic, Warsaw 2007, pp. 70–72.

supervision of the executive directors. The allocation of ownership rights across shareholders is reflected by the ownership structure, which represents the share of each shareholder in the capital of the company and the degree of control they have over it. It is a significant formal institution of corporate governance (and its concentration in particular) that determines the strength and type of influence shareholders have on the operation of the companies as a whole, as well as on the behaviour of their managers[27]. Table 2 presents the results of the author's research.

TABLE 2: *Ownership concentration in studied companies during the years 2016–2018*

		Companies with the highest market capitalisation			Companies with the lowest market capitalisation		
		2016	2017	2018	2016	2017	2018
		1	2	3	4	5	6
Number of shareholders with at least 5% of votes	*arithmetic mean*	2.4	2.5	2.3	3.2	3.4	3.4
	median	2.5	2.5	2	3.5	4	4
	standard deviation	1.0	1.4	1.3	1.4	1.4	1.4
Share of main shareholder in share capital [overall number of votes] (in %)	*min*	9.5 [12.6]	9.5 [12.6]	12.6 [12.6]	10.0 [10.0]	10.0 [10.0]	10.0 [10.0]
	max	71.9 [71.9]	71.9 [71.9]	71.9 [71.9]	54.3 [64.1]	54.3 [54.3]	54.3 [54.3]
	arithmetic mean	36.7 [40.7]	36.6 [40.5]	39.6 [42.9]	30.1 [33.8]	27.8 [30.9]	27.0 [30.1]
	standard deviation	20.5 [18.5]	20.6 [18.5]	19.2 [18.8]	15.6 [18.4]	13.3 [15.0]	13.5 [15.2]
Dispersion of share capital [overall number of votes] (in %)	*min*	0.0 [0.0]	28.1 [26.2]	28.1 [28.1]	25.8 [14.2]	25.8 [20.3]	25.8 [20.0]
	max	69.0 [64.9]	69.5 [63.2]	69.5 [64.9]	65.3 [65.3]	68.2 [68.2]	68.2 [68.2]
	arithmetic mean	45.2 [40.7]	49.5 [45.0]	50.3 [45.5]	47.9 [42.5]	46.5 [41.7]	47.0 [42.3]
	standard deviation	21.4 [19.6]	13.9 [13.0]	12.3 [11.5]	14.1 [17.9]	15.2 [17.4]	15.1 [17.5]

27 **B.L. Connelly**, **R.E. Hoskisson**, **L. Tihanyi**, **S.T. Certo**, *Ownership as a Form of Corporate Governance*, Journal of Management Studies 2010/47/8, pp. 1561–1589.

TABLE 2 (cont.)

		1	2	3	4	5	6
Number of companies in which 1 share entitled to:	*1 vote*	7	7	7	6	6	6
	2 votes	2	2	2	4	4	4
	5 votes	1	1	1	0	0	0
Number of companies majority-owned by:	*State Treasury*	5	5	5	0	0	0
	Open Pension Funds	0	0	0	1	1	1
	Institutional investor	2	2	3	4	5	5
	Individual investor	3	3	2	5	4	4

S o u r c e: author's own work on the basis of annual reports published by analysed companies.

The companies with the lowest market capitalisation had more concentrated ownership. It was confirmed by a lower dispersion of share capital (votes) throughout the years 2017–2018[28] in these entities as compared with group one. At the same time, the average shares of main shareholders in share capital decreased from 30.1% [33.8%] in 2016 to 27.0% [30.1%] in 2018. Moreover, only in two of the companies this share exceeded 50%. In the companies with the highest market value, the main shareholders' shares in both the share capital and the overall number of votes were higher and increased over the period under consideration: from 36.7% [40.7%] to 39.6% [42.9%]. What is more, in 4 members of this group, the main shareholder had more than 50% of the shares (votes).

Among the companies with the highest market value, the largest group was comprised of entities with a majority share by the State Treasury, i.e. PKN, PGN, PGE, LTS, KGH; the other companies were majority-owned by their founders, either directly (LPP, CDR, DNP) or indirectly through subsidiaries of their founders (CPS, CCC). The main shareholders of the companies with the lowest market value were: individual investors in 2016 and institutional investors between the years, 2017–2018 (in 50% of the studied companies). The

[28] With the exception of 2016, when the shares of DNP belonged to two shareholders, following which the shares of the minority shareholder (49%) began to be listed on the WSE (on Apr. 19th, 2017).

founders of these entities were majority shareholders in four of them (U2K, ABM, ITB[29] and SCO).

In the first group of companies, only in 30% of the entities under scrutiny, were shareholders' own preferred shares (registered shares) privileged regarding voting rights[30]. The shareholders of the companies that were majority-owned by the State Treasury did not have preferred shares, but the main shareholder had special powers (excluding KGHM) for example, concerning the appointment and dismissal of supervisory board members[31] or restricting the voting rights of the other shareholders[32]. In the second group of companies, preferred shares in terms of voting rights at the GM[33], were found to have existed in 40% of the studied entities (SCO, U2K, ITB, ABM).

Shareholders oversee the behaviour of the managers through exercising their corporate rights at the general meeting. Their involvement in this institutionalised form of supervision enables them to assess the decisions made by the managerial staff in order to ensure the compatibility of the managers' interests with the interest of the company's owners for whom they work and to hold them to account in case of wilful misconduct or negligence.

The results of the author's research into general meetings of shareholders, summarised in Table 3, are similar for both groups of companies, particularly in regards to the number of ordinary general meetings (OGM). They were held once a year in the majority of studied companies due to Art. 395 § 1 of *The Commercial Companies Code*[34]. The main reason of convening the OGM twice a year (in four companies: ITB in 2016, SCO in 2017, PGE and LTS in 2018) was the resumption of the meeting after the break in the proceeding one. As far as extraordinary general meetings (EGM) are concerned, the results are more diversified. On the whole, EGMs were held more frequently in the companies with highest market capitalisation. It means that in these entities more decisions required a resolution of the EGM.

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29 ITB was majority-owned by its founder between the years, 2016–2017.

30 Each preference share gives a right to two (CPS, CCC) or five (LPP) votes at the general meeting.

31 The State Treasury is entitled to appoint and recall one member of the supervisory board of each entity.

32 The articles of association of these entities restricted the voting right of the shareholders in such a way that in general meetings none of them can exercise more than 10% of the total votes existing in these companies as of the day when the GM takes place (excluding the State Treasury), with the reservations included by this corporate bylaw.

33 Each preference share gives a right to two votes at the general meeting.

34 According to Art. 395 § 1 of *The Commercial Companies Code*, the OGM shall be held within six months of the end of each financial year.

TABLE 3: *Ordinary and extraordinary general meetings during the years 2016–2018*

Number of meetings	Companies with the highest market capitalisation						Companies with the lowest market capitalisation					
	2016		2017		2018		2016		2017		2018	
	OGM	EGM	OGM	EGM	OGM	EGM	OGM	EGM	OGM	EGM	OGM	EGM
No meetings	0	2	0	3	0	4	0	5	0	6	0	6
One meeting	9	2	9	5	8	3	9	4	9	2	9	2
Two meetings	0	3	0	1	2	3	1	0	1	0	1	1
More than two meetings	0	2	0	0	0	0	0	1	0	2	0	1
No data	1[a]	1[a]	1[a]	1[a]	0	0	0	0	0	0	0	0

[a] DNP started to publish date about OGM and EGM after its shares began to be listed on the WSE.
Source: author's own work on the basis of information available on the websites of analysed companies.

The role of a supervisory board includes representing the interests of shareholders and monitoring the activity of managers on their behalf[35]. Supervisory boards are among the main formal, corporate governance institutions. Data on the composition of these statutory bodies within the analysed companies are presented in Table 4.

The supervisory boards of the companies with the highest market capitalisation consisted of more members than those of the companies with the lowest market value. The higher number of board members translated, among other things, into greater diversity of knowledge and experience among those persons, and also made it more difficult for managers or majority shareholders to subjugate the boards[36]. At the end of the 2016–2018 period, the supervisory boards of the companies from group one numbered 6.5 to 7.1 members, whereas those of the companies with the lowest market capitalisation contained an average of 5 members. Moreover, at the end of 2016, in two companies (REG, IBS) and, at the end of 2018, in one company (KBD), the numbers of supervisory board members fell short of the statutory requirements, effectively preventing their

[35] **P.M. Madhani**, *Diverse Roles of Corporate Board: A Review of Various Corporate Governance Theories*, The IUP Journal of Corporate Governance 2017/16/2, p. 8.

[36] **S.A. Zahra**, **J.A. Pearce**, *Boards of Directors and Corporate Financial Performance: A Review and Integrative Model*, Journal of Management 1989/15/2, p. 311.

functioning. The supervisory boards of the analysed entities consisted mainly of men. The share of men in the overall number of supervisory board members was lower in the case of the companies with the lowest market value.

TABLE 4: *Composition of supervisory boards of studied companies during the years 2016–2018: arithmetic mean (median), [standard deviation]*

Characteristics of supervisory boards[a]	Companies with the highest market capitalisation			Companies with the lowest market capitalisation		
	2016	2017	2018	2016	2017	2018
Overall number of supervisory board members	7.1 (7) [1.7]	6.5 (6) [1.6]	7.1 (7.5) [1.8]	4.9 (5) [0.9]	5.1 (5) [0.3]	5.1 (5) [0.7]
Number of independent supervisory board members[b]	3.4 (3) [2]	3.4 (3) [1.6]	3.6 (3) [1.6]	2 (2) [0.8]	2 (2) [0.7]	3 (3) [1.1]
Share of independent supervisory board members (in %)[b]	49.5 (42.9) [26.1]	52.7 (46.4) [19.8]	51.2 (52.8) [18.5]	43.3 (40.0) [11.5]	40.0 (40.0) [14.1]	59.5 (48.6) [25.3]
Share of men in supervisory board (in %)	86.7 (84.0) [14.2]	85.6 (86.7) [15.3]	83.5 (86.5) [18.8]	77.0 (80.0) [22.3]	75.0 (80.0) [18.7]	74.0 (80.0) [15.9]
Number of shareholders supervisory board	1 (1) [0.7]	1.4 (1.5) [1.2]	1.2 (1) [1.2]	0.8 (1) [0.8]	0.9 (0.5) [1]	0.6 (0) [0.8]
Share of supervisory board members in share capital (in %)	6.1 (0.00034) [16.1]	6.1 (0.00023) [16.1]	6.3 (0.00005) [16.2]	6.8 (1.81) [10.8]	7.0 (0.50) [11.3]	6.3 (0.00) [11.1]
Share of supervisory board members in overall votes (in %)	7.8 (0.000337) [17.4]	7.8 (0.000234) [17.4]	8.9 (0.0001) [17.6]	8.9 (3.66) [13.8]	8.3 (0.50) [13.6]	7.5 (0.00) [13.6]
Number of changes in supervisory board's composition over one year	2.8 (3) [2.1]	1.9 (1.5) [1.4]	1.4 (1) [1.9]	2.4 (2) [1.7]	2.8 (2) [2.7]	1.8 (1.5) [1.9]

[a] The first seven characteristics of supervisory boards describe the situation as at the end of a given year.
[b] In the group of companies with the lowest market capitalisation, the statistical measures were calculated for 4, 5 and 6 companies, respectively, due to lack of data on the independence of board members in the other subjects.
S o u r c e: author's own work on the basis of annual reports published by analysed companies.

Also, the number and percentage of independent members of supervisory boards was higher in companies from group one. The degree of supervisory body's independence is of crucial importance in assessing the efficiency of its functioning, as evidenced by the fact that the independence criterion is included among the standards aimed at improving corporate governance. However, the opinions of scholars vary widely in this regard[37]. On the one hand, independent members of a supervisory board are more objective and unbiased; they have a stronger motivation for controlling the actions of managers and keeping their tendency for opportunistic behaviour in check[38]. On the other hand, board members who come from inside a company have superior knowledge regarding its functioning since they have gained it through direct experience of its realities[39].

At the end of the 2016–2018 period, the supervisory boards of the companies with the highest market capitalisation comprised on average between 3.4 and 3.6 independent members, and their average share in the overall number of supervisory board members stood at around 50% throughout the entire period in question. In this regard, a significant standard deviation can be observed, indicating a considerable dispersion of the examined characteristic around the average as the supervisory boards of some companies from this group, contained between 1 and 2 independent members (e.g. PGN, CPS, DNP), while others (e.g. PGE, KGH) had as many of 7 to 9 of such members.

In group two, both the number and percentage of independent members were lower. The lesser independence of the supervisory body in the companies with the lowest market capitalisation is further confirmed by the higher share in the capital of those shareholders who belonged to supervisory boards and the higher proportion in the total number of votes at the general meeting of shareholders. What also attracts attention is that these companies did not provide information as to the board members who fulfilled the independence criterion. During the years 2016–2018, respectively 6, 5 and 4 entities failed to publish such information.

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37 For details see: **M. Aluchna**, *Mechanizmy...*, pp. 104–105; **R.W. Rutledge**, **K.E. Karim**, **S. Lu**, *The Effects of Board Independence and CEO Duality on Firm Performance: Evidence from the NASDAQ-100 Index with Controls for Endogeneity*, Journal of Applied Business & Economics 2016/18/2, p. 50.

38 **E.F. Fama**, **M.C. Jensen**, *Separation of Ownership and Control*, Journal of Law and Economics 1983/26/2, pp. 301–325.

39 **K. Oplustil**, *Instrumenty nadzoru korporacyjnego (corporate governance) w spółce akcyjnej*, C.H. Beck, Warsaw 2010, p. 435.

In 2016, the composition of the supervisory boards changed more often (on average 2.8 times a year) in the companies with the highest market value, which was caused by the fact that supervisory bodies in companies that were majority-owned by the State Treasury changed several times during this year. In the following two years, the fluctuations in the boards in the companies from group one decreased, whereas the supervisory boards of the companies with the lowest market capitalisation became more changeable. The lower stability in the composition of this statutory body made efficient oversight of the managerial staff in these entities more difficult.

The structures of the supervisory boards of the companies under consideration included specialised committees whose main task was to improve the working of the boards and guarantee that the decisions taken by them were consistent with the interests of the companies and conducive to corporate governance[40].

TABLE 5: *Supervisory board committees in studied companies during the years 2016–2018*

Type of committee	Number of companies with the highest market value			Number of companies with the lowest market value		
	2016	2017	2018	2016	2017	2018
Nomination and remuneration committee /Remuneration committee	4	4	4	1	1	0
Corporate governance committee	2	2	2	0	0	0
Audit committee	8	10	10	4	7	8
Corporate Social Responsibility committee	1	1	1	0	0	0
Strategy and development Committee/ Strategy committee	4	4	4	0	0	0
Organisation and management committee	1	1	1	0	0	0

S o u r c e: author's own work on the basis of annual reports published by analysed companies.

40 Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board, Official Journal of the European Union 2005/162/EC.

The results of research into the functioning of supervisory boards committees of the entities from the two groups (presented in Table 5) demonstrate that the companies with the highest market capitalisation had an advantage over the companies from group two, both in terms of the overall number of committees and the number of companies declaring the establishment of particular committee types. In this group, the most frequently established ones included: audit committees (80% of the companies in 2016 and 100% in 2017–2018) as well as remuneration committees and strategy and development committees (40% of the companies throughout the entire period under scrutiny). PKN (5 committees) and PGE (4 committees) were the companies with the highest number of supervisory board committees.

In the companies with the lowest market capitalisation, only two types of committees were created: audit committees and remuneration committees. In this group, the number of companies deciding to establish an audit committee in their supervisory boards grew every year: from 40% in 2016 to 80% in 2018. However, only one entity from this group (QMK) had a remuneration committee.

Supervisory boards oversee the work of management board members, hired to run companies. The threat of managerial staff opportunism forces shareholders to set up institutions allowing them to supervise the behaviour of the members of management boards and assure that the powers given to the managers will not be abused at cost of the suppliers of capital[41]. The results of the author's research into basic, selected characteristics associated with the functioning of this statutory body are presented in Table 6.

The management boards of the companies with the highest market capitalisation contained more members than those of the companies with the lowest market value, which corresponds to the larger size of the supervisory boards in the companies from group one. On average, they numbered 5 persons, whereas in group two, the management boards consisted of 2 members on average. Men comprised a vast majority of all the analysed boards, and their proportion in the total number of management board members was slightly higher in group one.

[41] **M. Aluchna**, *Corporate governance – Responsibilities of the Board*, in: **G. Aras**, **D. Crowthe** (eds.), *A Handbook of Corporate Governance and Social Responsibility*, Gower Publishing, Farnham 2010, pp. 156–157.

TABLE 6: *Composition of management boards in studied companies during the years 2016–2018: arithmetic mean (median), [standard deviation]*

Characteristics of management board[a]	Companies with the highest market capitalisation			Companies with the lowest market capitalisation		
	2016	2017	2018	2016	2017	2018
Overall number of management board members	5 (5) [1.7]	5.1 (5.5) [1.7]	5.3 (5.5) [1.6]	2.1 (2) [0.9]	1.9 (2) [1.4]	1.6 (1) [0.8]
Share of men in management board (in %)	94.6 (100) [13.6]	92.9 (100) [13.9]	90.6 (100) [14.3]	93.4 (100) [13.9]	86.7 (100) [32.2]	86.7 (100) [32.2]
Number of shareholders in management board	1.4 (0) [2.1]	1.5 (0) [2.4]	1.7 (0) [2.5]	1.1 (1) [1.2]	1.1 (1) [1.4]	0.8 (1.0) [0.9]
Share of management board members in share capital (in %)	6.1 (0.0) [10.9]	6.0 (0.0) [10.5]	6.7 (0.0) [11.1]	10.3 (0.1) [13.6]	9.9 (4.6) [11.8]	9.9 (4.2) [12.0]
Share of management board members in overall votes (in %)	8.7 (0) [14.4]	8.5 (0.0) [14.1]	9.0 (0) [14.7]	11.8 (0.1) [15.8]	11.6 (4.6) [14.4]	11.6 (4.2) [14.5]
Number of changes in composition of management board over one year	2.5 (2) [2.2]	1.5 (1.5) [1.3]	1.3 (0) [1.9]	1.4 (0) [1.9]	2.2 (1.5) [2.6]	1.0 (0.5) [1.3]

[a] The first five characteristics describe the situation as at the end of a given year.
S o u r c e: author's own work on the basis of annual reports published by analysed companies.

The number of shareholders on management boards was also higher in the first group of companies. In spite of this, their shares in the share capital and in the overall number of votes at GM were lower. In the companies that were majority-owned by the State Treasury and in CPS, the shareholders did not belong to the management boards, while the members in the other entities from this group were also shareholders of their respective companies[42]. In the companies with the lowest market value, the share of management board members both in the share capital and in the overall number of votes at GM stood at around 10%.

The figures regarding the fluctuations in the management boards in both groups are comparable. In the companies with the highest market value, the com-

[42] With the exception of CCC from 2016–2017 – 50% and 40% of management board members, respectively, were shareholders.

position of management boards on average changed between 1.3 and 2.5 times a year. The companies majority-owned by the State Treasury had a markedly higher manager turnover[43]. In the companies with the lowest market capitalisation, the composition of management boards changed between 1 and 2.2 times a year; the highest turnover was found was in 2017.

The activity of the analysed companies' statutory bodies and other aspects of their operation are regulated by formal, corporate governance institutions in the shape of corporate bylaws. The figures regarding their accessibility on the internet websites of the companies under consideration are similar (Table 7).

TABLE 7: *Corporate bylaws in studied companies*

Type of document	Number of companies with the highest market value	Number of companies with the lowest market value
Articles of association	10	10
Rules of procedure for general meetings	10	9
Rules of procedure for supervisory board	9	9
Rules of procedure for management board	9	8
Rules of procedure for audit committee	2	1
Rules of procedure for remunerations committee	0	1

S o u r c e: author's own work on the basis of information available on the websites of analysed companies.

Articles of association in the form of notary deeds are the most important and mandatory documents, without which a joint-stock company cannot be incorporated. Therefore, all the studied companies made the contents of their articles of association available on their websites. This kind of document contains, among other things, the name of a given company, the scope of its business, the value of its share capital, the number of issued shares along with the rights attached to them, or the competences of its statutory bodies[44]. The regulations binding the par-

[43] In five of the companies majority-owned by the State Treasury, the total number of alterations in the composition of the management boards in the analysed period amounted to, respectively, 19, 11 and 12 (i.e. on average, 3.8, 2.2 and 2.4 times a year), while in the other companies in this group, the management boards changed, on average, 1.2; 0.8 and 0.2 times a year.

[44] The mandatory components of articles of association are prescribed by Art. 304 § 1 of *The Commercial Companies Code.*

ticular statutory bodies are additionally specified in rules of procedure developed by most of the entities studied here. Among the companies with the highest market capitalisation, only one (DNP) did not publish the bylaws of the supervisory board and the management board. In group two, one of the entities (REG) published only its articles of association and no other corporate documents, while another one (ZRE) did not publish the management board's rules of procedure.

Far fewer of the analysed companies developed documents regulating the activity of the supervisory board committees. Only 15% of the entities had created rules of procedure for audit committees, even though such committees existed in the majority of the companies. What is more, only one company (QMK) published the bylaws of their remuneration committee among its corporate documents.

Another type of formal corporate governance institution is the code of best practice, one of them being *Best Practice for WSE Listed Companies* [*Dobre Praktyki Spółek Notowanych na GPW*]. The compliance with the recommendations and principles included in *Best Practice*[45] should be aimed at enhancing their transparency, improving the quality of their communication with investors, and strengthening the protection of the rights of shareholders, also in the areas which are not provided for by the law. Adherence to these rules is not supposed to burden the listed companies in a way that would not be counterbalanced by the benefits resulting from the needs of the market[46]. The levels of compliance with provisions included in *Best Practice* by the studied companies are presented in Table 8.

The companies with the highest market capitalisation implemented more recommendations and procedures from *Best Practice* than those with the lowest market value. One of them, (PKN) declared full compliance with the Code throughout the entire analysed period. Apart from that, 50% of the companies in group one indicated that between the years, 2016–2018 they had failed to abide by 1 to 10 of the provisions contained in *Best Practice*. The conducted research also revealed that the adherence to the Code among these entities steadily improved. In 2016, 20% of the firms sampled did not comply with 20 individual regulations or more, with CPS not following 22 provisions and CDR 26 provisions. During the years 2017–2018 none of the companies from this group indicated more than 20 violations of the Code's provisions.

45 When implementing the rules of the Best Practice, listed companies follow the "comply or explain" approach. It means that they are not obliged to abide by the principles included in the Code, but consistent non-compliance with a principle or an incidental breach has to be explained exhaustively (for details see: https://www.gpw.pl/pub/GPW/o-nas/DPSN2016_EN.pdf; accessed 25.06.2019).

46 **K. Oplustil**, *Instrumenty*…, pp. 334–335.

TABLE 8: *Number of exceptions from the application of Best Practice for WSE Listed Companies by studied companies during the years 2016–2018*

Number of exceptions	Number of companies with the highest market capitalisation			Number of companies with the lowest market capitalisation		
	2016	2017	2018	2016	2017	2018
No exceptions were indicated[a]	1	1	1	0	0	0
1 to 10 exceptions were indicated	5	5	5	1	2	2
11 do 20 exceptions were indicated	2	4	4	4	4	5
Over 20 exceptions were indicated	2	0	0	5	4	3

[a] Situations when a company disregarded a rule altogether, implemented it only partially, or when a rule did not apply are considered to be exceptions from the compliance of the Best Practice.
S o u r c e: author's own work on the basis of statements published by analysed companies.

The cases of exception from applying the recommendations and principles *Best Practice* were far more frequent among the companies with the lowest market value. In this group, there is a far higher concentration of companies in two categories: "11 do 20 exceptions were indicated" and "over 20 exceptions were indicated" than in the case of the companies with the highest market capitalisation. In the years 2016, 2017, and 2018, 90%, 80%, and 80% of the firms respectively did not comply with 11 or more provisions. This was particularly true for companies with lower market capitalization. In comparison with the companies with the highest market value, the figure was more than twice as high in 2016 and exactly twice as high during the years 2017–2018. The entities REG, ZRE, and IBS were among those that most frequently did not apply the principles and recommendations of *Best Practice* over the years 2016–2018, with 32, 34 and 22 exceptions, respectively for REG, 23 exceptions each year for ZRE, and 22 exceptions each year for IBS.

5. Conclusion

An adequate number of formal, corporate governance institutions is a necessary condition for prompting managerial staff to make decisions that will benefit the owners. In most cases, their establishment is required by the legal acts and this is why the companies under consideration had the same types of formal institutions. Therefore, the observed differences between the studied companies in terms corporate governance do not stem from the very existence of certain formal institutions, but depend on the extent to which the companies cared for the quality of corporate governance and whether the institutions were consistent with the standards developed in order to improve the efficiency of corporate governance.

The article provides an initial description of formal, corporate governance institutions in non-financial companies with the highest and the lowest market capitalisation listed on the WSE. The formal institutions in the entities with the highest market value were characterised, among other things, by: higher concentration of ownership in the hands of the main shareholders, greater frequency of extraordinary general meetings, higher number of supervisory board members and their greater independence, as well as lower changeability of statutory bodies' composition. The activity of supervisory boards was more often aided by special committees which played advisory roles. What is more, in those entities, the formal institutions were created in accordance with the standards of corporate governance, as reflected in the greater compliance with the provisions of the *Best Practice for WSE Listed Companies*.

All these characteristics could have translated into higher efficiency of corporate governance in the studied companies. For this reason, the results shown in the article are understood as a starting point for further research to better answer the question of how formal, corporate governance institutions in the analysed companies influences their performance and market value.

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INSTYTUCJE FORMALNE CORPORATE GOVERNANCE W WYBRANYCH PRZEDSIĘBIORSTWACH NIEFINANSOWYCH NOTOWANYCH NA GIEŁDZIE PAPIERÓW WARTOŚCIOWYCH W WARSZAWIE

Abstrakt

Przedmiot badań: Odpowiednia jakość instytucji formalnych corporate governance jest warunkiem dyscyplinowania kadry zarządzającej do podejmowania takich decyzji, które będą korzystne dla właścicieli. Ich powoływanie w większości przypadków determinowane jest obowiązującymi uregulowaniami prawnymi, stąd też w spółkach giełdowych występują te same instytucje formalne. Zróżnicowanie tych podmiotów w obszarze corporate governance nie wynika zatem z samego faktu powoływania określonych instytucji formalnych, lecz od tego, w jakim stopniu spółki dbają o jakość corporate governance i czy instytucje go tworzące są zgodne ze standardami opracowanymi w celu poprawy jego skuteczności.
Cel badawczy: Celem badań jest porównanie instytucji formalnych corporate governance w 20 przedsiębiorstwach niefinansowych notowanych na Giełdzie Papierów Wartościowych w Warszawie, w tym 10 o najwyższej kapitalizacji i 10 o najniższej kapitalizacji.

Metoda badawcza: W części teoretycznej posłużono się metodą analizy literatury dotyczącej istoty corporate governance oraz instytucji formalnych i nieformalnych go tworzących. Część empiryczna zawiera analizę instytucji formalnych corporate governance, takich jak: struktura własności, walne zgromadzenie akcjonariuszy, zarząd, rada nadzorcza i komitety funkcjonujące przy tym organie, dokumenty korporacyjne oraz kodeks dobrych praktyk. W celu porównania tych instytucji, przeanalizowano dane liczbowe oraz wykorzystano proste metody statystyczne. Zakresem czasowym objęto lata 2016–2018.
Wyniki: W artykule przedstawiono wstępny opis instytucji formalnych corporate governance w analizowanych spółkach. W podmiotach o najwyższej kapitalizacji zidentyfikowano takie cechy instytucji, jak m.in. wyższy poziom koncentracji własności w rękach dominującego akcjonariusza, większa częstotliwość spotkań w ramach nadzwyczajnego walnego zgromadzenia akcjonariuszy, większa liczebność rady nadzorczej i niezależność jej członków, a także mniejsza zmienność w składzie tego organu. Działalność rady nadzorczej w większym stopniu usprawniały wyspecjalizowane komitety, które pełniły funkcję doradczą wobec tego organu. Co więcej, instytucje formalne w tych podmiotach tworzone były zgodnie ze standardami corporate governance, o czym świadczył wyższy poziom przestrzegania kodeksu *Dobrych Praktyk Spółek Notowanych na GPW*.

Słowa kluczowe: struktura własności, rada nadzorcza, zarząd, kodeks dobrych praktyk.