

INCREASING THE EFFECTIVENESS OF SUPERVISORY BOARDS AS ONE OF THE OBJECTIVES OF THE AMENDMENT TO THE CODE OF COMMERCIAL COMPANIES

Renata Anna Stefaniuk

University of Łódź, Poland

ABSTRACT

Aim: The purpose of this article is an assessment of the legitimacy of introducing changes to the Commercial Companies Code regarding the effectiveness of a Board of Directors, then comparing the results of the research performed by the author of the article to the current practices of the functioning of Boards. **Methodology:** The research covered the practical activities of company supervisory board members. A quantitative survey was conducted from 2018 to 2021 in the form of a questionnaire distributed via email, the website www.webankieta.pl, and delivered in person in paper form. A survey was conducted on people in managerial positions (54%) where men were the majority of those polled (71%). The surveyed population was chosen based on their professional experience as managers and members of the board in the state-owned enterprises. **Results:** On a sample of 100 respondents, it was observed that, provided the supervisory board is committed to their duties and consists of qualified personnel, the supervisory board contributes to the improvement or good functioning of the company, and often even its development. **Conclusions:** The main conclusion that has been formulated is confirmation of the legitimacy of introducing legal changes aimed at increasing the effectiveness of supervision, especially in the advisory and information areas, which are of key importance in the correct diagnosis of the company's situation and in the proper shaping of the development strategy. Due to the confidentiality that members of supervisory and management boards are subjected to, it is very difficult to obtain from them the precise answers necessary to study the functioning of supervisory boards and management boards.

Key words: supervisory board, efficiency, corporate governance, corporate governance, amendment to the Code of Commercial Companies

JEL codes: M1, M10, M12, M14

INTRODUCTION

The term “effectiveness of supervisory boards” often appears as a statement that is virtually impossible to formulate in terms of metrics. Many authors have tried to describe the effectiveness of supervision, but have only succeeded in specifying that their effectiveness in Poland is very limited to begin with due to the separa-

tion of the functions of the supervisory and executive bodies, as well as the lack of subordination of any of the mentioned bodies. Before the last amendment to the Code of Commercial Companies, the supervisory board having no possibility of constant monitoring of the company's operating activities, relied only on information provided to it voluntarily by the executive body, which often did not share information on

Renata Anna Stefaniuk <https://orcid.org/0000-0001-9197-924X>

✉ stefaniukrenataanna@gmail.com

the most important matters related to the company and thus reduced the supervisory officers to the role of executors of the management board's requests. The issue of the loyalty of the company's bodies, but also their term of office, before the last amendment to the Code of Commercial Companies aroused much controversy and required clarification in the form of regulations. In addition, the supervisory board's advisor, who was to review the actions of the management board, was selected by the executive-management body itself, so he often did not convene supervisory board meetings to protect some of the management board's mistakes.

In the foreign literature, P. Drucker talked about two types of assessments: "effectiveness" and "efficiency". On the other hand, S. Kownacki (1976), T. Pszczolowski (1978), and J. Zieleniewski (1982) discussed the same concepts in the Polish literature. Moreover, W. Gasparski and T. Pszczolowski interpreted the same two concepts in English. All the authors unanimously associated the term "effectiveness" with the category of efficiency.

Szpaderski (2006) distinguished the concept of efficiency and effectiveness in such a way that the first of these categories (efficiency) refers to the achievement of the "intended goal," and effectiveness to the achievement of "positive results."

In most publications devoted to management, the interpretation of "effectiveness" refers to the problems of achieving goals and is referred to as "management effectiveness". Within this interpretation, the assessment of effectiveness boils down directly to comparing the results with the objectives. We can find such examples in studies by C.I. Barnarda (1938), G.T. Yarnada (1972), H. Koontz and C. O'Donnell (1984), R. Simons (2000), R.J. Pearce (2000) and Kowal (2013). Previous research on the effectiveness of supervisory boards has been conducted mainly in relation to the single-tier system, where boards of directors performed both supervisory and management functions, while in the Polish two-tier model of statutory bodies, research has been conducted by L. Bohdanowicz [2018], which

however concerned the relationship between the financial performance of Polish public companies as measured by ROA and the number of supervisory board meetings which is, in this case, a measure of supervisory activity [Bohdanowicz, 2018], and not strictly speaking its effectiveness. The research described in this article indicated the supervisory board's involvement in the company's affairs, and pointed to limitations in its supervisory activity due to the relations of board members, and the supervision itself in a two-tier environment, which is characterized by a somewhat different model of operation compared to the single-tier system. Thus, this article fills a research gap. It is an attempt to answer the question of what an effective supervisory board means, and whether it was necessary to increase its powers under the draft amendments to the Commercial Companies Code (CCC).

What is meant by an "effective supervisory board"

Supervisory boards operating in a dualistic system¹ face a number of adversities in performing their duties effectively within the framework of corporate governance structures. There is still a view that there is no way to do this, and, in any case, no one has so far succeeded in demonstrating empirical correlations between specific dominant characteristics of supervisory boards and the company's performance [Johnson et al. 1996]. According to E. Gutenberg, the supervisory board should perform not only supervisory, advisory, and decision-making functions, and create a climate of cooperation and exchange of information, but also coordination functions to actively participate in the process of creating the company's value [Gutenberg 1970]. This view is confirmed by the results from the Deloitte report "Supervisory Boards in Poland. What are their priorities? Where do their responsibilities end? How do they function?", based on which it was concluded that "a well-functioning supervisory board, in which the right mechanisms and tools are used, can materially support the company's development" [Deloitte

¹ "The dualistic system is a system based on which there is a division of powers between the management board and the supervisory board. The management board has the authority to manage the company's affairs and represent it externally. This includes all judicial and extrajudicial matters. The supervisory board, on the other hand, is the body that controls the company in all matters" [Lukasik 2021].

2019]. One of these is the clarification of the supervisory board's authority over the management board's actions in the company's articles of association and bylaws, i.e. in the company's internal documents, which ensures the smooth operation of supervision [Walczak 2014].

The supervisory board, lacking the ability and right to interfere in the company's operations, must rely on the quality of information provided to it by the executive-management body [Jeżak 2012]. However, based on the results of the research presented later in this article, it can be concluded that supervisory boards rely on poor-quality materials provided to them by the management boards, and/or get any information far too late. In line with the CCC, a supervisory board should exercise "continuous supervision over the company's activities in all areas of its operations" [Article 382 of the Code of Commercial Companies], which naturally involves permanent observation of activities taking place in the company and in the surrounding environment, if the supervisory body is involved in the company's affairs and cares about the sound performance of its duties. This includes not only the financial, market, economic, technical, and technological spheres, but also the social and digital spheres. More than 70% of respondents to the author's survey confirmed that supervisory boards carry out their code duties, and almost 80% of respondents replied that the supervision actively supports the operating body in the capacities to which it is entitled. In addition, the supervision often has to face the diversification of companies' activities, covering simultaneously the production, trade and service spheres, and the area of influence reaches not only the markets of European countries but also global markets [Forum Rad Nadzorczych 2017]. Therefore, delays on the part of the management board in providing the supervisory board with information on the company's current operations, development plans, and strategies reduces the supervisory board's chances of acting properly in line with its purpose, including the chances of identifying risks to the operation of companies on capital markets. It should be remembered that under Articles 219 § 2 and 375¹ of the Commercial Companies Code, the supervisory board does not have the right to issue binding instructions to the management board regarding the conduct of the company's

affairs, so it must rely on information provided by the management board. However, the management board, due to the lack of real legal consequences, often provides superficial information, or it does not reach the supervisory board members at all or far too late [Skowron 2018]. Already more than twenty years ago, Swiss expert J. Strasser [1989] stated that a supervisory board that only supervises is a relic of the past (a view shared by Lorsch and Sailer [1995], because participation in finding solutions, i.e. building strategies in times of crisis or threats to the company, requires a great deal of expertise on the part of the executive and supervisory body, as well as assigning great importance to information flowing from the management board to the supervisory board [Aluchna and Kuszewski 2020]. Based on the results of the survey, it can be concluded that the supervisory board wants and actively participates in the formulation of all plans and evaluations of the company's reports, as this can contribute to the company's good financial performance, and thus to their rating as an effective body in the eyes of the owners of the company who appoint them to this position [ed. Żukowska et al. 2016]. According to S. Douma [1997], skeptical, unemotional, objective comments from the supervisory board, as well as constructive criticism, contribute to the correct course and results of building a vision of the company's strategy. Thus, the advisory sphere of the supervisory board can protect the management board from making erroneous decisions resulting from their inability to take a broader view of an issue due to their personal, including emotional, involvement in the problem.

From the shareholders' perspective, the supervisory board is often considered effective when it is primarily concerned with analyzing, evaluating, and preventing the inefficient use of financial capital. At this point, it is necessary to cite the view of M. Friedman, who believed that the supervisory board should have one goal in order to be considered an effective body, namely, to maximize shareholder profit, because any other goal is economically inefficient. He stressed the fact that allocating income to purposes other than multiplying value for the company's owners can be seen as stealing from the shareholders.

According to Jeżak, an effective supervisory board also depends on the degree of professionalization of its

members [Jeżak 2012]. Therefore, it involves entrusting this function only to people with the appropriate knowledge, experience and qualities that contribute to the effective performance of supervisory functions, that is, the organization and chairmanship of meetings, the activity of supervisory board committees and the creation of systems for evaluating the effectiveness of the supervisory body [Bohdanowicz 2009]. However, in the theory, as well as in the practice of corporate governance, there are no specific indicators measuring the level of effectiveness of supervisory boards. Ł. Tyrolski, in the article “Factors influencing the quality of the supervisory board and its impact on the activities of the company on the Warsaw Stock Exchange” investigated on the basis of a built econometric model whether “the composition of the supervisory board is statistically significant in assessing the effectiveness of a given company – measured using Tobin’s Q ratio”² [Tyrolski 2015]. After conducting the research, the author of the article concluded that the results do not make it possible to confirm the positive or negative influence of the supervisory board on the efficiency of companies evaluated from the perspective of capital markets. However, the first to present this ratio was L. Bohdanowicz, who in the article entitled “Financial performance of Polish public companies and the activity of their supervisory boards” examined the relationship between the financial performance of public companies as measured by ROA and the number of supervisory board meetings. He showed that supervisory boards become more active when the financial performance of the companies they work for is deteriorating [Bohdanowicz 2018].

Ewa Walińska, on the other hand, in her article entitled “Improving Financial Statements as a Tool for Effective Corporate Governance” emphasizes the fact that only reliable and credible financial statements can ensure that the supervisory board can operate effectively within the framework of corporate governance structures. Without precisely prepared documents and

the supervisory board’s involvement in their creation, so that they do not raise doubts due to their compliance with the law and the factual circumstances, the supervisory board would not be able to actively participate in building the company’s strategy for the next years of its activity [Walińska 2014].

Taking into account the fact that supervisory boards have since the 1990s been accused of being ineffective in their official duties, and have even been judged as passive [Stiles and Taylor 2002], and often even subordinated to the will of the executive-management body [Jeżak and Bohdanowicz 2016], it is possible to formulate the hypothesis that supervisory boards have so far been ineffective in performing their duties in Polish public companies as a result of, among other things, the restrictions placed on this body by the commercial law. Nonetheless, this negative assessment of supervision necessitates conducting new research on the statutory bodies of companies, especially in Poland.

Draft amendments to the CCC on supervision in companies

The above-quoted opinions clearly suggest that changes in the direction of increasing the effectiveness of supervisory boards of companies under the commercial law are necessary and even inevitable. The executive and supervisory bodies should be partners with a common goal, namely the development of the company for which they work [Rybicki 2022]. However, an information imbalance between the two, as well as insufficient control mechanisms, prevents supervisory board members from performing their code duties. As we read in the explanatory memorandum on amendments to the Commercial Companies Code and certain other laws, “the supervisory board should work as a body that guarantees that the members of the management board, who conduct the company’s affairs, will only take actions that are in line with the company’s interests. The condition for the feasibility

² “A ratio that measures the incentives for a company to invest and/or be acquired (Q ratio, Tobin’s Q ratio, Tobin’s Q)” – the ratio of the price of capital on the stock market to the economic replacement cost of that portion of capital. The ratio was developed by American economist James Tobin (source: A General Equilibrium Approach to Monetary Theory, “Journal of Money, Credit and Banking,” February 1/15-29, 1969) and has been the subject of enough independent studies to confirm its predictive effectiveness” [Monitor FX 2021].

of the formulated structural assumption of a company is the information balance occurring between the management board and the members of the supervisory board.” In addition, according to the legislator, complete and reliable information on all processes planned or already taking place in the company, provided that it is communicated in a timely manner, affects the partnership relationship between the executive and supervisory bodies within an organization. In situations where the company’s interests are threatened, often supervisory board members explained that their lack of reaction to prevent the situation from arising was due to a lack of knowledge caused by the management’s failure to inform them. This fact is corroborated by the respondents, where more than half (58.0%) said they had strong doubts about the quality or timing of any information provided to them by the management board regarding the company. Under Article 3801 of the draft CCC, the management board will be required to provide the supervisory board with information in writing on a regular or prompt basis, with §3 setting deadlines for the provision of data. Admittedly, this provision, like many others under the amendments to the CCC, applies only to joint-stock companies, but it may provide a model for implementing these rules in limited liability companies as well. The provision on the necessity of providing the supervisory board with the requested information in a timely manner will also apply to entities performing services for companies, as well as proxies and persons employed by the company. The information, documents, reports and explanations specified in Article 219 §4 should be provided to the supervisory board immediately or no later than two weeks from the date of the relevant request to the authority or obligated person. The supervisory board may set a longer deadline for responding to its request.

The provisions of the draft CCC stipulating legal consequences for persons who do not submit information, documents, reports or explanations to the supervisory board in a timely manner, or which are inconsistent with the facts, or conceal data materially affecting the content of all such information are noteworthy.

An important point of the draft CCC is allowing the supervisory board to take advice from experts with expertise and qualifications to carry out certain ana-

lytical or preparatory activities [CCC, Article 219²§ 2]. Until now, the supervisory board also had this option, but the advisor was selected or approved by the management board. According to the amendments to the Commercial Companies Code, the power to elect an advisor to the supervisory board will be granted to the members of the supervisory body, bypassing the management board, but at the expense of the company most often within a predetermined budget allocated strictly for this purpose. The report prepared by the supervisory advisor must be communicated to shareholders in each case. In accordance with Article 382 of the draft CCC³¹, the supervisory board is obliged to report as part of the annual report of supervisory officers on the amount of the total remuneration of experts for all studies commissioned by the supervisory board.

The legislator also included “regulation in the form of a law on the role of the chairperson of the supervisory board as the person responsible for duly organizing the work of this body. This is because many times, the effectiveness of internal supervision in a company depends on the activity and diligence in the exercise of powers by the supervisory board chairperson”. According to the author of the law, the chairperson of the supervisory board should move away from his or her frequent role as executor of management board requests and focus on the implementation of the schedule and work of the supervisory board. The management board or a member of the supervisory body may request a meeting of the supervisory board, stating the proposed agenda. The chairperson of the supervisory board shall convene a meeting with an agenda in accordance with the request so that it is held within two weeks of receiving the request [CCC, Article 221¹ §4]. If the chairperson of the supervisory board does not convene the meeting, the requesting party may convene the meeting him/herself [CCC, Art. 221¹ §4].

The pandemic, as well as the not infrequent absence of supervisory board members from meetings of this body, forced the legislature to introduce the right to “remote” participation in supervisory board deliberations via the Internet. This is also expected to affect the efficiency of the passed resolutions.

The draft amendment to the CCC also expands the catalog of persons excluded from serving as members of the management board, supervisory board, audit

committee, proxy, and liquidator. In addition to persons convicted of “crimes against” economic turnover, protection of information, credibility of documents, property, trading in money and securities, the ban on serving on the aforementioned bodies also now concerns those guilty of the offenses of receiving bribes, bribery, paid patronage and abuse of office, i.e., the crimes specified in Articles 228–231 of the Criminal Code.

The issue of the term of office and mandate of corporate bodies is another aspect addressed in the revision of the Commercial Law [Ministry of State Assets, 2020]. On this subject, two lines of interpretation were presented regarding the term of office of a particular body. The first one testified that terms of office should be counted according to full fiscal years, while the second one emphasized that the term of office begins from the date of appointment, and the last year of office would be a full fiscal year [Piniór 2019]. The draft amendment to the CCC unambiguously specifies that the term of office is calculated in full fiscal years, unless the articles of association provide otherwise.

The legislator, in the context of effective supervision, also touches on “the catalog of the duties of members of the bodies and the determination of the principles of their liability for their actions or omissions.” So far, although the Commercial Companies Code has taken into account the prohibition of competition, conflicts of interest and exclusion of the right of representation in cases of dismissal of members of the management board, the duty of loyalty has been treated rather superficially. The problem of legal liability of supervisory members arose especially when the supervisor did not violate a legal norm in the course of his duties, but as a result caused damage to the company. The answer to this deficit of legal conditions for the functioning of the supervisory board in the company is the introduction of the **Business Judgment Rule**. It relies on the exclusion of liability for damage caused to the company as a result of erroneous decisions of the bodies, but provided that they were made within the framework of reasonable business risk, including on the basis of information, analysis and opinions that should be taken into account under the circumstances in making a careful assessment [CCC, Article 483 §3]. Indeed, risk is a necessary part of doing business, and

supervision gains protection in the event of incorrect decisions, but it will still be possible to draw legal consequences against members of bodies making reckless decisions.

The draft amendment to the CCC imposes an obligation on members of the supervisory board and the management board to maintain loyalty to the company, a prohibition on disclosing company secrets even after the expiration of their mandate, as well as selection by the supervisory board of the auditor auditing the company’s financial statements of the meeting to evaluate the reports and the latter’s obligation to participate in the meeting.

GENERAL CHARACTERISTICS OF RESPONDENTS AND RESULTS OF QUESTIONNAIRE

The survey included 100 respondents. There was a slight advantage of only 8 p.p. for those who held positions on company management boards (54.0%), were male (71.0%), had been employed in their current position for no more than 3 years (48.0%), and represented limited liability companies (61.0%). All respondents have experience in management and supervisory positions in SOEs.

More than half of the respondents (60.0%) indicated that in their company, the supervisory board is involved in areas of the company’s business that are strategic to the company’s development. One in three respondents (30.0%) said that the supervisory board sometimes indicated direction and strategies were prepared by the management. Only 10.0% issued a negative response to the question (Fig. 1).

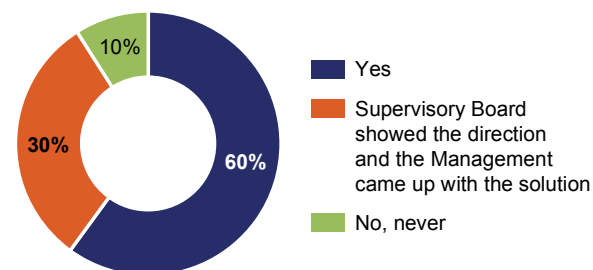


Fig. 1. Supervisory board’s involvement in areas of the company’s business that are strategic to the company’s development

Source: the author.

More than half of the respondents (67.0%) admitted that the need to hire a specialist (supervisory advisor) occurred in their career, but for fear of the management board's refusal, they did not request it. However, one in three respondents indicated that in the companies they represent, the supervisory board requested the hiring of a supervisory advisor on a matter of importance to the company, and the management board approved their request (Fig. 2).

Three-fourths of the people surveyed (76.0%) indicated that in the companies they represent, the supervisory board has shown the activity expected by the management board in the form of advisory and lobbying activities in situations of particular crisis for the company, but almost one in five respondents stressed the supervisory board's passivity (Fig. 3).

More than half of the respondents (55.0%) indicated that at the companies they represent, supervisory meetings are held once every two months, another 40% of respondents said that supervisory meetings at the companies they work for are held at least once a month, and the remaining 5% said meeting are held no more than once a quarter (Fig. 4).

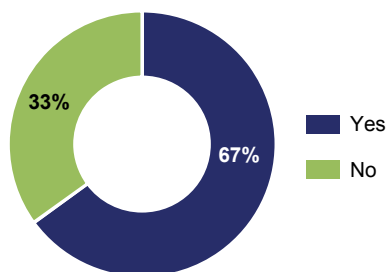


Fig. 2. The board's request to hire a supervisory advisor
Source: the author.

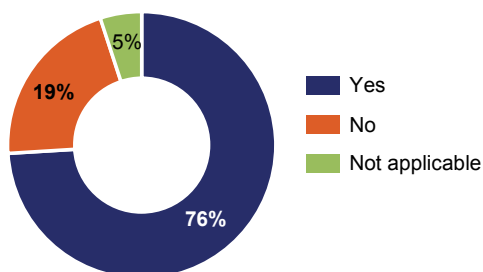


Fig. 3. Supervisory board activity in crisis situations for the company
Source: the author.

The majority of respondents (68.0%) stressed that the supervisory board's ineffectiveness is due to the limitations of their functions under commercial law, while almost 27% of respondents denied legal underpinnings as a barrier (Fig. 5).

Finally, more than half of the respondents (58.0%) confirmed that they had strong doubts about the quality or timing of information provided to them by the management board regarding the company (Fig. 6).

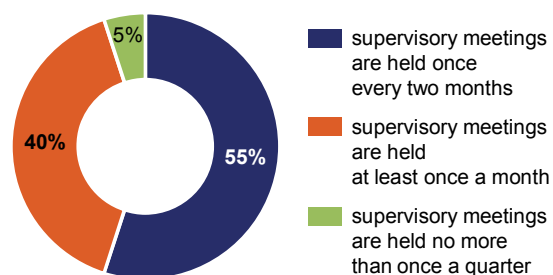


Fig. 4. Frequency of supervisory board meetings held
Source: the author.

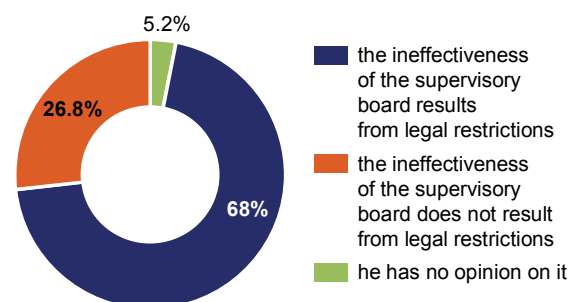


Fig. 5. Impact of legal restrictions on the effectiveness of supervisory boards
Source: the author.

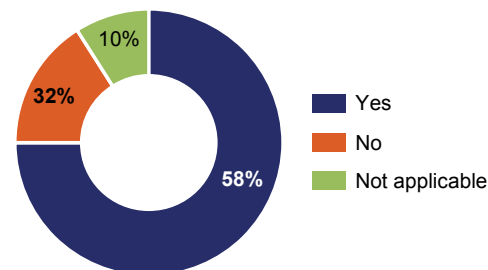


Fig. 6. Quality and timing of communication of all company-related information by the management board to supervisory board members
Source: the author.

CONCLUSIONS

The purpose of the study presented in this article was to determine the degree of effectiveness of the supervisory board within the structure of Polish SOEs. It is an attempt to answer the question of what an effective supervisory board means, and whether it was necessary to increase its powers under the draft amendments to the Commercial Companies Code.

The changes proposed by the legislator to increase the effectiveness of supervisory boards have their justification not only in theory but also in practice and research, such as the research conducted by the author of the article. Based on this, it can be concluded that the hypothesis that supervisory boards have not been effective in carrying out their duties in Polish SOEs is inaccurate. The research presented within this article shows that the supervisory boards worked effectively and showed initiative, provided that the selection of personnel was not dictated only by party affiliation. This does not change the fact, however, that the respondents confirmed the existence of legal barriers in the area of the functioning of supervisory boards, which limit the effectiveness of their activities in fulfilling their code and statutory duties.

However, the potential of supervisory boards is often not fully utilized by either the shareholders themselves or the management board. This is largely due to legal restrictions on the scope of the supervisory body's authority within corporate governance structures. The survey respondents overwhelmingly confirmed the supervisory board's active involvement in an area of the company's business of strategic importance to the company's development. However, the management board not being legally obligated to provide the supervisory board with necessary information on the corporation also prevented the supervisory board from responding appropriately to emerging or potential risks inside or outside the organization. All the other issues included in the amendments to the CCC that strengthen the supervisory board's position are also of great importance, since from now on the supervisory board becomes, thanks to these regulations, an equal partner to the management board with real instruments to carry out its supervisory duties in a manner consistent with the law and the companies' corporate documents.

REFERENCES

- Aluchna, M., Kuszewski, T. (2020). Does corporate governance compliance increase company value? Evidence from the best practice of the board. *Journal of Risk and Financial Management*, 13, 242, 1–25. <https://www.doi.org/10.3390/jrfm13100242>
- Bohdanowicz, L. (2009). *Profesjonalizm w funkcjonowaniu rad nadzorczych spółek akcyjnych (Professionalism in extended supervisory boards of joint-stock companies)*. Wydawnictwo Uniwersytetu Łódzkiego, Łódź.
- Bohdanowicz, L. (2018). Wyniki finansowe polskich spółek publicznych a aktywność ich rad nadzorczych (Financial results of Polish public companies and the activity of their supervisory boards). *Zeszyty Naukowe Politechniki Poznańskiej, Organizacja i Zarządzanie*, 76, 21–35.
- Deloitte (2019). Aktywna rada nadzorcza kluczem do sukcesu spółki (An active supervisory board is the key to the company's success). Retrieved from: <https://www2.deloitte.com/pl/pl/pages/press-releases/articles/aktywna-rada-nadzorcza-kluczem-do-sukcesu-spolki.html> [accessed: 18.08.2022].
- Douma, S. (1997). The Two-tier System of Corporate Governance. *Long Range Planning*, 4, 613.
- Gutenberg, E. (1970). Funktionswandel des Aufsichtsrats. *Zeitschrift für Betriebswirtschaft*, Dezember.
- Jeżak, J. (2012). Rada Nadzorcza w procesie kreowania wartości spółki – potrzeba zmian modelowych i organizacyjnych (The Supervisory Board in the process of creating the company's value – the need for model and organizational changes). *Zarządzanie i Finanse*, 4 (1), 237–250.
- Jeżak, J., Bohdanowicz, L. (2016). Zmiany polskiego modelu organów statutowych spółek w kontekście tendencji występujących w krajach Unii Europejskiej (Changes in the Polish model of statutory bodies of companies in the context of tendencies occurring in the European Union countries). *Zarządzanie i Finanse*, 14 (2/2), 7–20.
- Johnson, L., Daily, C., Ellstrand, A. (1996). Boards of Directors: A Review and Research Agenda. *Journal of Management*, 22, 409–438.
- Kodeks spółek handlowych (Commercial Companies Code).
- Kowal, W. (2013). Skuteczność i efektywność – zróżnicowane aspekty interpretacji (Efficiency and efficiency – various aspects of interpretation). *Organization and Management*, 4 (157), 11–23.
- Lorsch, J.W., Sailer, J.S., (1995). Rada a ocena działalności spółki (Advice and assessment of the company's activi-

- ty. [In:] M. Hensel (ed.), *W poszukiwaniu skutecznej rady, czyli o kontroli spółek akcyjnych w gospodarce rynkowej* (In search of effective advice, i.e. on the control of joint-stock companies in a market economy). Wydawnictwo Profesjonalnej Szkoły Biznesu, Kraków, 101–112.
- Łukasik, P. (2021). Jakie są organy spółki europejskiej (What are the bodies of a European company). Retrieved from: <https://mojafirma.infor.pl/spolki/spolki/abc-spolek/256640,Jakie-sa-organy-spolki-europejskiej.html> [accessed: 17.07.2022].
- Ministry of State Assets (2020). Kadencja a mandate (Tenure and mandate). Retrieved from: <https://www.gov.pl/web/aktywa-panstwowe/kadencja-a-mandat> [accessed: 01.08.2022].
- Ministry of State Assets (2021). Draft Law on Amendments to the Commercial Companies Code law and certain other laws.
- Ministry of State Assets (2021). Justification of the draft law on amendments to the Commercial Companies Code law and certain other laws.
- Monitor FX (2021). Wskaźnik q Tobina (Tobin's q index). Retrieved from: <https://monitorfx.pl/wskaznik-q-tobina/> [accessed: 30.07.2022].
- Forum Rad Nadzorczych (2017). Rady nadzorcze 2017, trendy i kierunki zmian (Supervisory boards 2017, trends and directions of change). Retrieved from <https://www.pwc.pl/pl/pdf/pwc-raport-rady-nadzorcze-2017.pdf> [accessed: 30.07.2022].
- Piniór, P. (2019). Ocena rządowego projektu ustawy o zmianie ustawy – Kodeks spółek handlowych oraz niektórych innych ustaw (Evaluation of the government's bill amending the Commercial Companies Code and some other acts). *Zeszyty Prawnicze BAS*, 3 (63), 106–123.
- Rybicki, P. (2022). Zarząd i rada nadzorcza, wyjaśnienia Najwyższej Izby Kontroli (Management Board and Supervisory Board, explanations of the Supreme Audit Office). Retrieved from <https://nadzorkorporacyjny.pl/zarząd-i-rada-nadzorcza-wyjaśnienia-nik/> [accessed: 20.08.2022].
- Skowron, K. (2018). Odpowiedzialność członków zarządu i rady nadzorczej w spółkach publicznych (Responsibility of members of the management board and supervisory board in public companies). Kancelaria CSW Więckowska i Partnerzy Radcy Prawni. Retrieved from <https://www.kancelaria-csw.pl/odpowiedzialnosc-czlonkow-zarządu-i-rady-nadzorczej-w-spolkach-publicznych/> [accessed: 20.08.2022].
- Stiles, P., Taylor, B. (2002). *Boards at Work: How directors view their roles and responsibilities*. Oxford University Press, Oxford.
- Strasser, J. (1989). Dieses Know-How muss ein Verwaltungsrat mitbringen (A board of directors must have this know-how). *Management Zeitschrift – IO*, 5, 27–30.
- Tyrolski, Ł. (2015). Czynniki wpływające na jakość rady nadzorczej i jej wpływ na działalność spółki na Warszawskiej Giełdzie Papierów Wartościowych (Factors affecting the quality of the supervisory board and its impact on the company's operations on the Warsaw Stock Exchange). *Zeszyty Naukowe Uniwersytetu Szczecińskiego. Finanse, Rynki Finansowe, Ubezpieczenia, Rynek kapitałowy, wycena przedsiębiorstw, inwestycje*, 74, 1, 675–683.
- Walczak, W. (2014). Wybrane problemy funkcjonowania spółek rad nadzorczych – kolegiálny charakter podejmowanych decyzji i zasady wynagradzania członków (Selected problems of the functioning of supervisory board companies – the collegial nature of decisions made and the principles of remunerating members). *Wiedza Prawnicza*, 5, 3–26.
- Walińska, E. (2014). Doskonalenie sprawozdania finansowego jako narzędzia efektywnego nadzoru korporacyjnego (Improving the financial statements as an effective corporate governance tool). *Studia Prawno-Ekonomiczne*, 93, 351–365.
- Żukowska, H., Spoz, A., Zasuwa, G. (2016). *Sprawozdawczość w procesie zarządzania i oceny działalności przedsiębiorstwa* (Reporting in the process of managing and evaluating the company's activities.). Wydawnictwo KUL, Lublin.

ZWIĘKSZENIE SKUTECZNOŚCI RAD NADZORCZYCH JAKO JEDEN Z CELÓW NOWELIZACJI KODEKSU SPÓŁEK HANDLOWYCH

STRESZCZENIE

Cel: Celem artykułu jest ocena zasadności wprowadzenia zmian do Kodeksu spółek handlowych w zakresie efektywności zarządu. Następnie porównano wyniki badań przeprowadzonych przez autorkę artykułu z dotychczasowymi praktykami funkcjonowania Izb. **Metodologia:** Badaniem objęto praktyczną działalność członków rad nadzorczych spółek. Badanie ilościowe przeprowadzono w latach 2018–2021 w formie ankiety dystrybuowanej drogą mailową, na portalu www.webankieta.pl oraz dostarczanej osobiście w formie papierowej. Badanie przeprowadzono wśród osób na stanowiskach kierowniczych (54%), wśród których większość ankietowanych stanowili mężczyźni (71%). Badana populacja została dobrana na podstawie doświadczenia zawodowego na stanowiskach kierowniczych i członków zarządów w przedsiębiorstwach państwowych. **Wyniki:** Na próbie 100 respondentów zauważono, że jeśli rada nadzorcza jest zaangażowana w swoje obowiązki i składa się z wykwalifikowanej kadry, to rada nadzorcza przyczynia się do poprawy lub dobrego funkcjonowania firmy, a często nawet do jej rozwoju. **Wnioski:** Główny wniosek, jaki został sformułowany to potwierdzenie zasadności wprowadzenia zmian prawnych w kierunku zwiększenia efektywności nadzoru, szczególnie w obszarze doradczym oraz informacyjnym, które mają kluczowe znaczenie w prawidłowym diagnozowaniu sytuacji spółki oraz we właściwym ukształtowaniu strategii rozwoju. Ze względu na poufność, jakiej podlegają członkowie rad nadzorczych i zarządów, uzyskanie od nich precyzyjnych odpowiedzi niezbędnych do zbadania funkcjonowania rad nadzorczych i zarządów jest bardzo trudne.

Słowa kluczowe: rada nadzorcza, efektywny, nadzór korporacyjny, ład korporacyjny, nowelizacja Kodeksu spółek handlowych

JEL codes: M1, M10, M12, M14