

An analysis of mechanisms of corporate governance in companies with the Treasury shareholding as seen in the example of companies of the energy sector listed on the Warsaw Stock Exchange

Andrzej Kuciński

The Jacob of Paradies University
in Gorzów Wielkopolski, Poland

E-mail: akucinski@ajp.edu.pl
ORCID: 0000-0002-8988-8872

Abstract: Corporate governance covers with its scope a set of internal and external mechanisms forming the system of supervision and control in a company. In an economy based on market mechanisms private companies dominate over companies in which the State Treasury has shares. Companies with Treasury shareholding still play a significant role in the economy in Poland. Thus, the paper points to the principles of operation of mechanisms of corporate governance in companies with Treasury shareholding. The purpose of the paper is to analyze mechanisms of corporate governance applied in energy companies with Treasury shareholding, as well as to establish whether the supervision and control instruments used were convergent. The research was carried out on the basis of companies within the energy sector, which in terms of the number of companies as well as market value was dominated by companies with Treasury shareholding. On the basis of statutes of companies with Treasury shareholding the applied mechanisms of corporate governance are compiled in a table set-up. The conducted research shows that in companies with Treasury shareholding the role of external mechanisms in the company supervision and control system was significantly limited, whereas corporate governance was implemented mainly by means of internal mechanisms. Moreover, the scope of corporate control in companies with Treasury shareholding was much greater than that resulting from the ownership structure.

Keywords: corporate governance, company, companies with Treasury shareholding

Financed by:
Małopolska School of Economics
in Tarnów with support
of the Ministry of Science
and Higher Education
("Support for scientific journals")

Correspondence to:
Andrzej Kuciński
Akademia im. Jakuba z Paradyża
w Gorzowie Wielkopolskim
Wydział Ekonomiczny
Katedra Zarządzania Finansami
ul. Fryderyka Chopina 52
66-400 Gorzów Wielkopolski, Poland
Tel.: +48 95 721 60 15

1. Introduction

The subject matter of corporate governance is complex and among its many issues a special place is held by the separation of the ownership function from management. Undoubtedly, a company (corporation) is a subject of interest of corporate governance. Its contemporary image is shaped by managers who are responsible for making development-related decisions and owners providing capital necessary to carry out economic activity. The observed separation of ownership from manage-

ment in a modern company in practice means that owners do not get involved directly in managing an economic entity, thus they do not take management roles but hire managers to act in this function. At the same time, separation of the function of a company owner from management functions leads to a situation where managers do not always pursue objectives convergent with those that the owners would expect, which brings conflicts of interest between owners and managers.

The subject matter of corporate governance addressed in the literature concerns primarily private companies. This seems reasonable as in the market economy private companies are a dominant form of carrying out economic activity. Next to companies classified to the private sector, economic entities in which the State kept its shares fully or partially due to the company's belonging to a strategic sector of the economy or due to protection of state's economic interests also function in the national economy. Given that the targets and principles of operation of companies with Treasury shareholding may differ significantly from the targets and principles of operation of private companies the paper points to mechanisms of corporate governance in companies in which the State had its shares.

The purpose of the paper is to analyze mechanisms of corporate governance applied in energy companies with Treasury shareholding, as well as to establish whether the supervision and control instruments used in such companies were convergent. The research was performed on the basis of public companies listed on the Warsaw Stock Exchange representing the energy sector. In the pursuit of the adopted aim a critical analysis of the literature was employed, as well as the analysis of documents regulating corporate governance in companies with Treasury shareholding.

2. Basic theoretical aspects of corporate governance

The term *corporate governance* is interpreted in various ways. In the foreign literature, it does not have a single universal definition, whereas various proposals of explaining the meaning of this notion result primarily from the adopted purpose of the operation of a company, the developed legal system or the functioning good practices.

The growing role of corporate governance in modern companies results from the existing and often difficult to reconcile conflicts of interests stemming from the separation of the function of management from ownership. One needs to mention the agency theory here which is a theoretical introduction to explaining assumptions of corporate governance. The agency theory describes the agent–principal relationship, which provides that the owner, the capital provider (principal), mandates the conduct of their affairs to a hired person—a manager (agent). The agency problem underlies the agency theory which arises on the principal–agent line, which in turn results from three fundamental reasons: information asymmetry, that is an incomplete set of information the principal and the agent have, divergence of objectives of the principal and the agent, and the principal's and the agent's different approach to risk (Dobija and Kołodkiewicz, 2011, p. 23). As rightly emphasized by Olga Bogacz-Miętka, according to the agency theory “the task of corporate governance is to discipline the company's management in such a way that they act in agreement with the shareholders' interest” (2012, p. 20). In reference to the outlined problem, attempting to specify what corporate governance

is, one can point out that it is “a set of processes, customs, policies, laws, and institutions that affect the way a corporation is directed, administered or controlled” (Baker and Powell, 2009, p. 84). Such a broad approach to the problem comprises the question of the choice of mechanisms for managing a corporation in order to ensure benefits to the shareholders and responsibility under which managers report to shareholders. The term *corporate governance* is also identified with “the process of supervision and control intended to ensure that the company’s management acts in accordance with the interests of shareholders” (Parkinson, 1993, p. 159) and also an “integrated set of internal and external controls that harmonize manager–shareholder (agency) conflicts of interest resulting from the separation of ownership and control” (Baysinger and Hoskisson, 1990, p. 72). From the point of view of the essence of the problem, it is worth quoting a definition of corporate governance by the Organisation for Economic Co-operation and Development (OECD) which points out that corporate governance is a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means for attaining those objectives and monitoring performance are determined (OECD, 2004). Analyzing the presented selected examples of the definition of corporate governance one needs to note that they emphasize different problems related to corporate governance in a company, but their points of view are not contradictory. Thus, one can see i.a. the problem of supervision and control, selection of supervision tools or relationship between the shareholders (and more broadly stakeholders) and the managing staff (managers). Assuming that corporate governance is a system of principles, practices and processes thanks to which it is possible to ensure an appropriate relationship between the company and various groups of stakeholders, the framework of corporate governance may be brought down to three main issues which include (Business Dictionary, 2019):

- 1) “explicit and implicit contracts between the company and the stakeholders for distribution of responsibilities, rights, and rewards;
- 2) procedures for reconciling the sometimes conflicting interests of stakeholders in accordance with their duties, privileges, and roles;
- 3) procedures for proper supervision, control, and information-flows to serve as a system of checks-and-balances”.

On the ground of national literature, defining this term is hindered by terminological problems associated with translating the English term *corporate governance* into the Polish language. And so, the term *corporate governance* was introduced by Bogdan Wawrzyniak according to whom it covers principles, rules and other methods of procedure which serve owners’ control over economic organizations subordinate to them (Wawrzyniak, 2000a, p. 52). According to Krzysztof Zalega, corporate governance means “a system encompassing various legal and economic institutions (including formal and informal rules of operation), the essence of which is to ensure agreement and balance between the interests of all stakeholders involved in the operation of the corporation (investors, managers, employees, suppliers) in a way that guarantees increased company value and its development” (Zalega, 2003, p. 9). The term *corporate governance* in Polish literature is also translated as a “set of legal and factual activities carried out by the capital owner towards an entity under their control and its organs” (Mesjasz, 1998, p. 11). Similarly, *corporate governance* in the meaning of *corporate power*

is used by Jan Krzysztof Solarz, who believes that this term focuses on “the relationship of actual power between the company’s bodies, its suppliers and customers, employees and shareholders and external sources of financial inflows” (1997, p. 91). Sometimes the term *corporate governance* is identified with enforcing ownership rights by formal representatives who sit on supervisory boards thus referring only to the relationship between owners and managers (Lis and Sterniczuk, 2005, p. 30). However, the literature features quite a common belief that such an understanding of corporate governance is not legitimate since such an approach leaves out other groups of stakeholders who, firstly, are interested in results of the activity, and secondly, affect the creation of the company’s value. Taking into account the quoted examples of explanations of the term *corporate governance*, one of the most capacious definitions may be presented by Maria Aluchna, according to which *corporate governance* means “a set of mechanisms specifying the interconnections and relationships defining the rights, obligations and requirements among individual participants involved in the company’s operation” (2007, p. 16). Such an approach in the definition allows one to look at corporate governance in the context of supervisory relation or structure, which makes it possible to monitor, control and supervise the company’s operation and to protect the interests of various groups of stakeholders, including the State Treasury.

Various models (types) of corporate governance may be found in the literature.¹ The basic models include a one-tier (monistic) model and a two-tier (dualistic) model (Dobija and Kołodkiewicz, 2011, p. 25). The identified models differ primarily in the way the competences and responsibilities of ownership- and management-related organs are distributed. Thus, the one-tier model characteristic to English heritage countries assumes the existence of the board of directors (along shareholders) composed of internal directors, the so-called executive directors, and external directors, the so-called non-executive directors. In this model the board of directors performs executive and control functions in parallel, which means that this body supervises managers’ activity on the one hand, and on the other takes executive decisions. In the two-tier model the control functions attributed to the supervisory board are separated from the decision-making functions lying with the management board appointed to conduct the company’s affairs and to represent it. Thus, the two-tier model refers to the classic set-up functioning in a company: shareholders, the supervisory board and the management board (Bogacz-Miętka, 2012, pp. 67–68).

Another issue of interest to corporate governance involves mechanisms of control and supervision over the company which Igor Postuła describes as instruments that “allow prevention of conflicts between different actors involved in a corporation or mitigating them” (2013, p. 222). Two categories of mechanisms of corporate governance are most often identified, that is economic (so-called market, external, on the markets on which the company may operate) and legal and organizational (so-called non-market, internal, established by the company itself) (Dobija and Kołodkiewicz, 2011, p. 25; Urban, 2019, p. 2; Asensio-López, Cabeza-García and González-Álvarez, 2018, p. 266). External mechanisms of corporate governance are based on a disciplining and motivating effect of market forces on persons managing the company (Oplustil, 2010, p. 11). Thus economic mechanisms of corporate governance are as-

¹ Different types of models of corporate governance may be found i.a. in: Urbanek, 2005, p. 67; Wawrzyniak, 2000b, pp. 21–25.

sociated with the activity of the corporation's external environment, mainly the capital market, including mergers and acquisitions, the managerial talent market and the product market (Zalega, 2003, p. 132; Aluchna, 2007, pp. 186–190). The capital market, by means of the market mechanism of determining the market price, allows subjecting the activity of managers to effective control, where the role of this mechanism increases with ownership distribution. In turn, the market of managerial talents constitutes a reference point and a verification of presented skills of the managing staff, whereas the product market means that a loss of a company's competitiveness entails decreasing the market share or even bankruptcy, which forces managers to effective work in order to protect the company against it. Internal mechanisms of corporate governance refer to the "supervisor–supervised legal relationship from which the latter's obligation to undergo an authority-involving (corrective) interference of the supervising actor results" (Dobija and Kołodkiewicz, 2011, p. 9). Among the tools included in the legal and organizational group the main place is taken by the supervisory board (Kuciński, 2013, p. 229; Mackiewicz, 2015, p. 164), whose task is to carry out direct supervision over the body responsible for managing the company. Apart from this, internal instruments of corporate governance include: company law, including the statute of a company, code of good practices, ownership structure, debt structure, internal control and internal audit (Dobija and Kołodkiewicz, 2011, p. 25). One can also encounter a different classification of mechanisms of corporate governance in the literature, which identifies supervisory mechanisms and motivational mechanisms (Aluchna, 2015, p. 24). Supervisory mechanisms include internal mechanisms (e.g. ownership structure, supervisory board, internal audit) and external mechanisms (e.g. legal regulations, capital market, managerial talent market, debt market, product market, etc.). Motivational mechanisms refer in particular to the question of remunerating managers, in particular tools linking managers' pay with performance (e.g. management options schemes) (Miązek, 2018, pp. 296–301).

3. Research methodology

The paper's research part addresses corporate governance in companies with Treasury shareholding. A company fully-owned by the State Treasury is assumed to be such a form of business activity which emerged after transforming a state-owned company into a commercial law company. Thus the research covers companies which as a result of ownership transformations of state operators (privatization processes) became public capital companies listed on the Warsaw Stock Exchange in which the State Treasury kept shareholding.

In an economy based on market mechanisms private companies dominate over companies in which the State Treasury had shareholding.² As much as the number of companies on the Warsaw Stock Exchange in which the State Treasury had direct or indirect shares in the share capital was relatively small with regard to the listed companies³, comparing the market value of companies with Treasury shareholding to the capitalization of all national companies—it

² Based on the data of Statistics Poland concerning monthly information on national economy operators in the REGON register, October 2019, the total number of national economy operators was 4,520,965, including 111,839 in the public sector.

³ At the end of 2018 the State Treasury was a shareholder in 24 companies which amounted to 5.8% of all national companies listed on the WSE main market.

was disproportionately great.⁴ This determined focusing the research on companies in which the State Treasury had shareholding.

In the next year it was decided to narrow down the research to companies of the energy sector. This sector was dominated both in terms of quantity and capitalization by companies in which the State had its shares. At the end of 2018 the energy sector was represented by 12 companies—9 of national origin and 3 of foreign origin. Next, limiting the research solely to national companies, in the identified group of 9 companies the State Treasury had its shares in 5 of them. These were: Elektrociepłownia Będzin, Enea, Energa, PGE, and Tauron.

Table 1. Characteristics of companies in the energy sector with State Treasury shareholding listed on the Warsaw Stock Exchange (as at 31 December, 2018)

No.	Company name	Participation of State Treasury in the share capital	Number of shareholders at least 5% of the votes		Free float	Company capitalization (in million PLN)
1.	Elektrociepłownia Będzin	5.00%	7		22.50%	67.08
2.	Enea	51.50%	1		48.50%	4,370.28
3.	Energa	51.52%	1		48.48%	3,689.34
4.	PGE	57,39%	1		42.61%	18,697.61
5.	Tauron	30.06%	3		54.49%	3,838.08

Source: Author's own elaboration based on the issuers' websites.

The information compiled in Table 1 shows that the State Treasury had shares at the level of 50% and above in the share capital of three companies: Enea, Energa and PGE. For these companies the State Treasury was a single shareholder in a group of shareholders whose shares exceeded the threshold of 5% of votes in the general assembly. The other investigated companies fully-owned by the State Treasury showed shares at below 50%. In Tauron the State Treasury effectively controlled the company's operation thanks to combined forces. Direct shares of the State Treasury in the company together with indirect shares (through a company controlled by the State Treasury) totalled 45.45% of shares in the company's share capital. In turn, the level of State Treasury involvement in Elektrociepłownia Będzin was so low (share of 5%) that it did not allow it to control and influence the directions of managing the activity of the economic entity. At the end of 2018 Elektrociepłownia Będzin had 7 shareholders holding at least 5% of votes. Assessing the investigated companies through the lens of capitalization one can note that PGE demonstrated the greatest market value at the end of 2018 (18.7 billion PLN) while Elektrociepłownia Będzin the poorest (67 million PLN). Other companies had a similar market value hovering at 3.7–4.4 billion PLN.

⁴ The share of companies fully-owned by the State Treasury in 2018 in the total capitalization of national companies was 50.48%.

In the last stage of the research a compilation in a table form of applied mechanisms of corporate governance was made, which were then analyzed and evaluation was carried out to see whether the tools applied in companies with Treasury shareholding of the energy sector were convergent.

4. Analysis and assessment of mechanisms of corporate governance applied in energy sector companies with Treasury shareholding listed on the Warsaw Stock Exchange

Corporate governance in companies with Treasury shareholding covers a set of internal and external mechanisms allowing the supervision and control of the operation of companies in which the State has its shares. Due to certain distinctive features of companies fully-owned by the State Treasury and private companies the role of the impact of external mechanisms is limited. The managerial talent market serves as an example here, which for companies fully-owned by the State Treasury does not function at all, actually, due to adopted legal regulations introducing statutory limitations on the amount of remuneration for managers of State companies.⁵ In companies with Treasury shareholding a special role is played by internal mechanisms, which allow corporate control in a company ensuring the State's influence over the most important decisions concerning primarily the appointment and dismissal of members of the company's bodies or division of profits.

The ownership structure, and in particular the degree of its concentration, determines to what extent and by whom the supervision and control over the company's operation is performed. What is more, the degree of ownership dispersion determines the force of executing one's rights and impacting the operation of the company. Corporate control may be obtained by concentration of shares where one share is assigned one vote or by concentration of votes in the case of existence of preference shares with special voting rights. In the group of investigated companies, the State Treasury had shares allowing capital control in Enea, Energa and PGE. Its shares in each of these companies amounted to above 50% in the share capital. In the case of Energa, additionally thanks to the existence of preference shares with special voting rights, the impact of the State Treasury at the general assembly was increased. For Tauron and Elektrociepłownia Będzin, the State Treasury had shares at a level below 50% in the share capital, where for the former the State was able to control the company's operation thanks to a company subsidiary to the State Treasury, in the latter the shares held by the State Treasury combined with the developed ownership structure in the company did not allow control over it. One can generally conclude that for companies of the energy sector in which the State Treasury had shares, a concentrated ownership structure dominated, one which would ensure the State's control over the operation of the companies. This does not concern Elektrociepłownia Będzin in an obvious way where the State Treasury did not have sufficient shares to allow it to influence its activity.

⁵ Notice of the Marshal of the Sejm of the Republic of Poland of 14 October 2019 on announcing the consolidated text of the act on remuneration of persons managing certain legal entities, Dz.U. (Journal of Laws) 2019, item 2136.

In companies with Treasury shareholding it was a fairly common practice to introduce to the statutes provisions regulating the principles of functioning of basic company bodies, that is the general assembly, the supervisory board or the management board.

In this way the State Treasury, most frequently in reference to the general assembly, limited the right to execute a vote by shareholders with shares at above 10% of the total number of votes in a company. What is more, companies' statutes included additional provisions which showed that a shareholder who did not meet the requirement of informing about the number of votes held above a certain threshold could execute their right to vote only from one share. In an obvious way these limitations did not apply to the State Treasury and other operators associated with it. Apart from that, in matters fundamental to the company, that is for instance dissolution, transformation or merger of a company, giving preference to a share or lowering the company's capital, resolutions of the general assembly could be adopted provided a specified size of the share capital was represented and/ or a qualified number of votes was cast. In this way key decisions concerning the functioning of the company could not be made without participation of the State Treasury. The essential role of the general assembly in the system of corporate governance could be evidenced by personal entitlements for the State Treasury concerning the manner and mode of convening it and placing matters on the agenda.

In the system of corporate governance the supervisory board is the main component of the organization's control system. The State Treasury, having shares that allow capital control over companies, gained statutory rights allowing free shaping of the composition of the supervisory board. Thus, the State Treasury, holding personal entitlements, was able to appoint most of the composition of the supervisory board. Among special solutions in terms of shaping the supervisory board one needs to quote the privilege of appointing and dismissing members of the Supervisory Board by a written statement from the State Treasury submitted to the management board or the possibility to appoint a person who will hold the function of the President of the Supervisory Board.

In statutes of companies controlled by the State Treasury there were in fact no provisions regulating the principles of functioning of the management board. However, in so far as formally the statute did not include specific entitlements interfering in the principles of appointing the management board, by subjugating the supervisory board the State Treasury ensured it had significant influence on the composition of the company's management board. The fact that before the appointment of members of supervisory bodies candidates are assessed by the Council for companies with Treasury shareholding and state legal persons can be considered a good practice. In turn, frequent changes in the composition of management boards, which may negatively affect companies' operation, may be considered a bad practice. Energa may be given as an example here, where changes in the post of the President of the company have been made a few times in the last four years.

The reflections concern companies in which the State Treasury had shares allowing it to control their operations. Thus, in Enea, Energa, PGE and Tauron similar mechanisms of corporate governance function, yet solutions leading to the same objective differ from one another. In the case of Elektrociepłownia Będzin there are mechanisms of supervision which in no way privilege the State Treasury. Thus, instruments of corporate governance include a group of standard solutions accompanying private companies, which are based on the provisions of the Commercial Code.

Table 2. Corporate governance mechanisms in companies with State Treasury shareholding in the energy sector listed on the WSE

Company name	Corporate governance mechanisms
Elektrociepłownia Będzin	<ul style="list-style-type: none"> – the State Treasury holds minority shares (5% share), which together with BGK's shares do not allow it to control the company, while the number of shareholders whose shares in the share capital were above the 5% threshold was 7 – the composition of the Supervisory Board consists of 5 people, the company statute provides for a composition of 5–6 people
Enea	<ul style="list-style-type: none"> – the State Treasury's majority shareholding in the share capital (51.50% share), at the same time the State Treasury was the only shareholder whose shares in the share capital were above the 5% threshold – the composition of the Supervisory Board consists of 9 persons, the company's statute provides for a composition of 6–15 members – the individual right of the State Treasury to appoint and recall one Supervisory Board member by a written statement submitted to the Company's Management Board, this right of the State Treasury does not prevent it from participating in electing other Supervisory Board members and nominating Supervisory Board candidates – State Treasury's right to elect the Chairman of the Supervisory Board – the Supervisory Board should be as a minimum composed of one person meeting the independence criteria – the individual right of the State Treasury to request that an Extraordinary Shareholders' Meeting be convened, or that certain matters be included in the agenda of the next General Shareholders' Meeting on the basis of a request submitted to the Management Board in writing – resolutions of the General Meeting of Shareholders concerning among others: dissolution of the company, relocating the company's registered office overseas, the company's shares obtaining preferred status. Resolutions may be adopted if at least half of the company's share capital is represented and they require a four-fifths majority of votes if the State Treasury is no longer holding more than 50% of the share capital
Energia	<ul style="list-style-type: none"> – the State Treasury's majority shareholding in the share capital (51.52% share), at the same time the State Treasury was the only shareholder whose shares in the share capital were above the 5% threshold – the existence of preference shares with voting rights, which increase the number of State Treasury votes at the General Shareholders' Meeting to 64,09% – the composition of the Supervisory Board consists of 6 people, the company's statute provides for a composition of 5–12 members – individual right of the State Treasury (shareholder representing the highest share in the company's share capital) to appoint and dismiss members of the Supervisory Board in the case of an even number of members of the Supervisory Board in the number of half of its members plus one member of the Supervisory Board – appointment and dismissal of the Supervisory Board members by way of a written statement of the State Treasury – individual right of the State Treasury to appoint a person from among the members of the Supervisory Board who will act as the Chairman of the Supervisory Board – the Supervisory Board should be as a minimum composed of two persons meeting the independence criteria – the right to convene a General Meeting of Shareholders on the basis of a written request from the State Treasury – the voting right of shareholders shall be limited in such manner that at the General Meeting, none of them may exercise more than 10% of the total number of votes existing in the Company as at the date of holding the General Meeting

PGE	<ul style="list-style-type: none"> – the State Treasury’s majority shareholding in the share capital (57.39% share), at the same time the State Treasury was the only shareholder whose shares in the share capital were above the 5% threshold – the composition of the Supervisory Board consists of 8 people, the company statute provides for a composition of 5–9 members – the individual right of the State Treasury to electing at least half of the members of the Supervisory Board, appointed by the General Meeting – the State Treasury’s right to appoint and dismiss one member of the Supervisory Board by way of a written declaration submitted to the Management Board – the individual right of the State Treasury to designate persons from among whom the Chairman of the Supervisory Board will be elected – the Supervisory Board should be as a minimum composed of one person meeting the independence criteria – the right to convene a General Meeting of Shareholders on the basis of a written request from the State Treasury – the voting right of shareholders shall be limited in such manner that at the General Meeting none of them may exercise more than 10% of the total number of votes existing in the Company as at the date of holding the General Meeting – the resolutions of the General Meeting of Shareholders concerning, among others, preferential status of shares or a merger of the Company by way of a transfer of all its assets to another company or a merger by way of an establishment or another company, a dissolution of the Company, its liquidation, require a majority of 90% of all votes cast
Tauron	<ul style="list-style-type: none"> – direct shares of the Treasury in the share capital amounted to 30.06%, together with the subsidiary 40.45%, i.e. below the level of 50%, at the same time the number of shareholders whose shares in the share capital were above the 5% threshold was 3 – the composition of the Supervisory Board consists of 8 people, the company statute provides for a composition of 5–9 members – the Supervisory Board should be as a minimum composed of two persons meeting the independence criteria – in the period in which the State Treasury, together with subsidiaries of the State Treasury, possesses a number of company’s shares entitling to perform at least 25% of the total votes in the Company, the State Treasury is entitled to appoint and dismiss members of the Supervisory Board, in the amount equalling half of the maximum number of the composition of the Supervisory Board defined in the Articles of Association increased by 1 – appointment and dismissal of members of the Supervisory Board by the State Treasury takes place by way of a statement submitted to the company – the right of vote of shareholders having over 10% of the total votes in the company is limited in the way that none of them shall perform at the General Meeting more than 10% of the total of votes in the company – the resolutions with respect to significant changes in the scope of the company’s activity shall be adopted by the General Meeting with the majority of two-thirds of the votes in the presence of persons representing at least half of the share capital

Source: Author’s own elaboration based on uniform texts of the statutes of the surveyed companies.

5. Conclusion

At the moment, supervision of companies with Treasury shareholding is carried out by the newly established Ministry of State Assets. One needs to hope that together with its creation a new model of corporate governance will be developed, whose fundamentals will be built on the basis of best market practices and company law.

The analysis of mechanisms of corporate governance in selected companies with Treasury shareholding shows that concentration of shares in the hands of one shareholder limits the significance of external mechanisms in supervision and control of a company. In turn the status of a dominant investor allowed in the majority of analyzed cases (except for Elektrociepłownia Będzin) full supervision and control of companies by means of internal mechanisms.

Assessing the role and meaning of individual internal mechanisms in the system of corporate governance in companies fully-owned by the State Treasury, one needs to emphasize the special role of statutory provisions which equipped the State with special entitlements or privileges. The question of unequal treatment of all shareholders is mostly noticeable, which results primarily from adopted solutions in terms of the voting rules and adopted procedures at general assemblies. One can present as an example here the restriction of the right to execute voting rights by shareholders with shares at above 10% of the total number of votes in the company. What is more, the State Treasury had special rights which allowed it to shape the composition of the supervisory board to a great extent. In practice it means limitation of representativeness of the supervisory board to representatives of the State Treasury. It needs to be noted here that the right to execute ownership rights of the State Treasury according to the rule of proportionality of capital and the majority rule is not contested here, but only whether treatment of the State in a special way is necessary. The presented analysis of mechanisms encourages a search for optimal solutions which are a basis for building an effective system of corporate governance in companies with Treasury shareholding.

References

- Aluchna, M. (2007). *Mechanizmy corporate governance w spółkach giełdowych*. Warszawa: Oficyna Wydawnicza Szkoły Głównej Handlowej w Warszawie. ISBN 9788373782730.
- Aluchna, M. (2015). *Własność a corporate governance. Systemy, rynki, przedsiębiorstwa*. Warszawa: Poltext. ISBN 9788375615067.
- Asensio-López, D., Cabeza-García, L., González-Álvarez, N. (2019). Corporate governance and innovation: A theoretical review. *European Journal of Management and Business Economics*, 28(3), 266–284. DOI: 10.1108/EJMBE-05-2018-0056.
- Baker, H. K., Powell, G. E. (2009). Management views on corporate governance and firm performance. In: M. Hirschey, K. John and A. K. Makhija (eds.). *Corporate governance and firm performance* (pp. 83–118). Bingley: Emerald Group Publishing Limited. ISBN 9781848555365.
- Baysinger, B., Hoskisson, R. E. (1990). The composition of boards of directors and strategic control: Effects on corporate strategy. *Academy of Management Review*, 15(1), 72–87. DOI 10.5465/amr.1990.4308231.
- Bogacz-Miętka, O. (2012). *Kompendium wiedzy o nadzorze i kontroli nad przedsiębiorstwem*. Warszawa: CeDeWu. ISBN 97883-75563658.

- Business Dictionary. (2019). Corporate governance. In: *Business Dictionary* [online, accessed: 2019-10-31]. Retrieved from: <http://www.businessdictionary.com/definition/corporate-governance.html>.
- Dobija, D., Kołodkiewicz, I. (2011). *Ład korporacyjny*, Warszawa: Wydawnictwo Wolters Kluwer. ISBN 9788326411670.
- Kuciński, A. (2013). Rada nadzorcza w systemie nadzoru korporacyjnego. *Zeszyty Naukowe Uniwersytetu Przyrodniczo-Humanistycznego w Siedlcach. Seria Administracja i Zarządzanie*, 98, 223–234.
- Lis, K., Sterniczuk, H. (2005). *Nadzór korporacyjny*. Kraków: Oficyna Ekonomiczna. ISBN 8389355833.
- Mackiewicz, P. J. (2015). Corporate governance w polskich spółkach publicznych. *Współczesne Problemy Ekonomiczne*, 11, 161–169. DOI: 10.18276/wpe.2015.11-15.
- Mesjasz, C. (1998). Corporate governance. Nadzór nad przedsiębiorstwem czy „władanie korporacyjne?”. *Przegląd Organizacji*, 11, 10–13.
- Miążek, A. (2018). Kształtowanie skutecznej polityki motywacyjnej w nadzorze korporacyjnym spółek publicznych. In: B. Bogusiak (ed.). *Gospodarka, technologia, społeczeństwo* (pp. 295–306). Poznań: Bogucki Wydawnictwo Naukowe. ISBN 9788379862191.
- Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 14 października 2019 r. w sprawie ogłoszenia jednolitego tekstu ustawy o wynagradzaniu osób kierujących niektórymi podmiotami prawnymi. Dz.U. 2019, poz. 2136.
- OECD. (2004). *The OECD Principles of Corporate Governance* [online, accessed: 2019-10-31]. Paris: Organisation for Economic Co-operation and Development. ISBN 9264015973. Retrieved from: <http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf>.
- Oplustil, K. (2010). *Instrumenty nadzoru korporacyjnego (corporate governance) w spółce akcyjnej*. Warszawa: C. H. Beck. ISBN 9788325518028.
- Parkinson, J. E. (1993). *Corporate Power and Responsibility. Issues in the Theory of Company Law*. Oxford: Clarendon Press. ISBN 1198252889.
- Postuła, I. (2013). *Nadzór korporacyjny w spółkach Skarbu Państwa*. Warszawa: Wydawnictwo ABC a Wolters Kluwer business. ISBN 9788326442087.
- Solarz, J. K. (1997). *Zarządzanie strategiczne w bankach*. Warszawa: Poltext. ISBN 8386890339.
- Urban, J. (2019). Corporate governance mechanisms: Their strengths, weaknesses and complementarity, *SHS Web of Conferences*, 61, 1–9. DOI: 10.1051/shsconf/20196101028.
- Urbanek, P. (2005). *Nadzór korporacyjny a wynagrodzenia menedżerów*. Łódź: Wydawnictwo Uniwersytetu Łódzkiego. ISBN 8371718691.
- Wawrzyniak, B. (2000a). Koncentracja w gospodarce jako światowa tendencja w zarządzaniu globalnym. In: M. Romanowska, M. Trocki, B. Wawrzyniak (eds.). *Grupy kapitałowe w Polsce* (pp. 27–61). Warszawa: Difin. ISBN 8372510261.
- Wawrzyniak, B. (2000b). Nadzór korporacyjny: perspektywy badań. *Organizacja i Kierowanie*, 2, 17–38.
- Zalega, K. (2003). *Systemy corporate governance a efektywność zarządzania spółką kapitałową*. Warszawa: Oficyna Wydawnicza Szkoły Głównej Handlowej. ISBN 8373780319.
-

Analiza mechanizmów nadzoru korporacyjnego w spółkach z udziałem Skarbu Państwa na przykładzie spółek z sektora energia notowanych na GPW w Warszawie

Abstrakt: Nadzór korporacyjny obejmuje swym zakresem zbiór zewnętrznych i wewnętrznych mechanizmów składających się na system nadzoru i kontroli w przedsiębiorstwie. W gospodarce opartej na mechanizmach rynkowych przedsiębiorstwa prywatne dominują nad przedsiębiorstwami, w których udziały posiada Skarb Państwa. W Polsce przedsiębiorstwa z udziałem Skarbu Państwa nadal odgrywają istotną rolę w gospodarce. Tym samym w artykule zwrócono uwagę na zasady funkcjonowania mechanizmów nadzoru korporacyjnego w spółkach z udziałem Skarbu Państwa. Celem artykułu była analiza mechanizmów nadzoru korporacyjnego stosowanych w spółkach energetycznych z udziałem Skarbu Państwa, a także ustalenie tego, czy wykorzystywane instrumenty nadzoru i kontroli były ze sobą

zbieżne. Badania przeprowadzono na podstawie spółek należących do sektora energia, który pod względem ilości spółek, jak i wartości rynkowej był zdominowany przez przedsiębiorstwa z udziałem Skarbu Państwa. Na podstawie statutów spółek z udziałem Skarbu Państwa zestawiono w układzie tabelarycznym stosowane mechanizmy nadzoru korporacyjnego. Z przeprowadzonych badań wynika, iż w spółkach z udziałem Skarbu Państwa rola mechanizmów zewnętrznych w systemie nadzoru i kontroli przedsiębiorstwa była znacząco ograniczona, zaś nadzór korporacyjny był realizowany głównie za pomocą mechanizmów wewnętrznych. Ponadto zakres kontroli korporacyjnej w spółkach z udziałem Skarbu Państwa był znacznie większy, niż wynikało to ze struktury własności.

Słowa kluczowe: nadzór korporacyjny, przedsiębiorstwo, spółka z udziałem Skarbu Państwa