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STATUTORY BODIES OF COMPANIES AND THEIR COMPETENCES – POLAND AND THE BALTIC STATES

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Key decisions for the development of companies are taken by statutory bodies. The scope and manner of their operation is affected by statutory regulations and the so-called codes of good practices. The aim of this study is to identify basic regulations relating to statutory bodies and to analyse both the similarities and differences in the legal framework of establishing statutory bodies and their operation in public companies listed on stock exchanges in Poland and selected Baltic States, that is Lithuania, Latvia and Estonia. A comparative law analysis is applied in this research. I analyse the normative material, that is, basic acts that regulate legal issues that concern the appointment and operation of statutory bodies. This investigation shows that the model of corporate governance adopted in a given country has a great impact on the operation of various bodies. Regulations on the number of members of statutory bodies, and the duration of the term of office for which a given member of a statutory body is appointed, are an essential aspect that determines the functioning of members of statutory bodies. The countries analysed differ in this context because respective legislators do not always specify the minimum or maximum number of members of statutory bodies or the time of their term of office in the law analysed. These differences in regulations, however, aren't pronounced, which leads to a conclusion that it isn't than legal issues that affect the observed changes in the rotation of statutory bodies in Poland and Baltic states.

Keywords: regulations, competences, CEO, statutory bodies

1. INTRODUCTION

Statutory bodies are the most important part of a company. Their operation is regulated by various laws and codes of good practices. The system of the law in force

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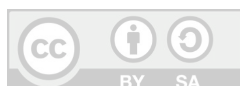


now stipulates three types of frameworks for the creation and operation of statutory bodies, i.e. a one-tier model, a two-tier model and a mixed model (that features a degree of freedom and sometimes takes a hybrid approach in appointing statutory bodies). The one-tier model means that a board of directors is appointed. It includes internal (executive) directors and external (non-executive) directors. The first group is represented by members of broadly understood company management who have strategic knowledge about it. The second group, on the other hand, is composed mostly of shareholders and financing banks, insurance companies, restructuring companies and advisory companies, or even suppliers and recipients. They play the role of independent members in relations between the company and shareholders. In such a model the president of the management board (Chief Executive Officer, CEO), who performs the executive functions of the board, is of key importance (Postuła, 2013). He takes decisions on the composition, order, procedures and agenda during sessions. He also has a significant influence over the quality, scope and frequency of information about the activity of the company that is given to the supervisory board (Zalega, 2003). When analysing the one-tier model we also need to point to another essential question, that is, the form in which the function of the CEO is exercised. This model allows a situation in which the executive director also holds the position of the president of the supervisory board. However, such a solution triggers practical doubts because it causes a conflict of interests and also highlights the weakness of the control mechanism. A combination of these two positions may in consequence threaten the objectiveness and independence of evaluations in self-assessment and may also affect other investment decisions or company development. Separation of these two functions is therefore beneficial from the point of view a balance of powers between the supervisory board and management, which limits the possible dominance of the director over the company's supervisory board (Bogacz-Miętka, 2001, p. 65). It is worth pointing out that there is a difference in how boards of directors in smaller and bigger companies exercise functions (Wawrzyniak, 2000). In larger companies, the supervisory board mainly plays the role of coordinating and supervising operations, while much less focus is given to governance (Ticker, 2009). This brings us to a conclusion that the board of directors is a flexible body that may adjust itself to the operation in a given sector or to the size of a company (Bohdanowicz, 2013). A two-tier model on the other hand, contrary to the one-tier construct, separates the function of supervision from management into two individual bodies of the company's chief management. Among them, next to shareholders and management, we have the management board and the supervisory board. Functions played by these bodies result from their names, because the company's management board plays a management role, that is, runs the company's day-to-day operations and represents it, while the supervisory board plays the role of a control body that supervises the management board and has the capacity to have a direct impact on certain decisions taken by it. As emphasized by B. Millet-Reyes and R. Zhao (Millet-Reyes, Zhao, 2010), both these bodies take part in preparing and taking strategic decisions, yet the management board plays the role of an initiator

while the supervisory board reviews and approves the management board's initiatives. The third (mixed) model assumes direct control by shareholders with the simultaneous appointment of a supervisory board, an audit committee, or both. Its characteristic feature is also the fact that a given company can change the previously selected model. For example, a given company is operated under a one-tier model for several years, but after some time it changes to a two-tier model (e.g., as a result of expanding the company). The legislator in some countries also allows for the possibility of combining the board of directors with the supervisory board.

The need identified by the literature analysis served as the study's premise. La Porta, Lopez-de-Silanes, Shleifer, and Vishny (1996, 2000) were the first to propose this concept. They showed that the legal regime and regulatory solutions are essential factors in the operation of businesses, particularly the quality of corporate monitoring. Legal investor protection, according to La Porta et al. (2008), is a powerful predictor of financial growth, and the effect of legal origins on laws and regulations is not limited to finance. Many scholars have reaffirmed in recent years the evidence that political and regulatory settings have a considerable influence on corporate governance systems (Licht et al., 2005). Countries with poor investor protection laws and weak law enforcement, in particular, have low levels of corporate governance, which manifests itself in subpar financial performance and management entrenchment. Firth et al. (2006) also pointed out the relationship between the legal environment and the various spheres of economic activity, but no studies were conducted in reference to the Baltic countries and the general principles of the establishment of statutory boards.

Table 1. Rotation of statutory bodies in Poland and the Baltic countries

	Nasdaq Baltic[2)]	**Warsaw Stock Exchange**
Sample (in the period 2010-2020)		
No of Firms	67	543
No of Observations	622	4,771
No of Board Members[1)], including	1,047	8,481
CEO	147	1,157
Mean CEO turnover rate yearly (in per cent)[3)]	**7.29**	**13.86**

Notes:
1) Management Board, Supervisory Board and Board of Directors;
2) Nasdaq OMX Riga, Nasdaq OMX Tallinn, and Nasdaq OMX Vilnius;
3) A turnover rate is a ratio of the number of companies experienced CEO turnovers to the total number of listed companies in the year.

Source: own study[1].

[1] The above studies were conducted on manually collected data concerning CEO turnovers based on a search of company announcements and reports over the period 2010 to 2020. It identified 1,304 CEO turnovers in 610 companies listed on the stock exchanges including the Warsaw Stock Exchange, and the Nasdaq Baltic Stock Exchanges (Lithuania, Latvia, Estonia).

What's more, in the research conducted so far, the author has noticed that there are differences in the frequency of CEO turnovers in public companies across stock exchanges. The highest mean CEO turnover rate is observed in Polish companies. It is twice higher than that on the Nasdaq Baltic Stock Exchanges. For this reason, I use the legal comparison method to try to answer the question whether legal issues affect the noticeable changes in the rotation of statutory bodies in Poland and in Baltic States.

The starting point for this analysis was the answer to the research question: Are the regulations on statutory bodies different in Poland, Lithuania, Latvia and Estonia?

The article consists of the following parts: introduction, literature review, methods, results and discussion.

2. LITERATURE REVIEW

The law is the main source for establishing statutory bodies. Placing rules on the formulation and operation of statutory bodies into a legal framework is especially important for setting-up companies. It facilitates the appointment of members to hold specific functions. Where a given person has a certain position in a statutory body, they must be assigned specific competences, rights and responsibilities, necessary to exercise their role in the company. This is why an analysis of fundamental legislative acts relevant to a specific country was an essential element of this research and thus I examine the following laws:

- for Poland: Act of September 15, 2000, Commercial Companies Code (Dz.U. (Journal of Laws) of 2020, item 1526),
- for Lithuania: Act of July 13, 2000, Law on Companies, No VIII-1835, (entry into force: 01.07.2015),
- for Latvia: Act of June 1, 2000, Commercial Law, (entry into force: 01.08.2021),
- for Estonia: Act of September 1, 1995 Commercial Code, (entry into force: 01.07.2017).

I would like to note here that English language versions were analysed for Lithuania, Latvia and Estonia, respectively. These countries were chosen for this investigation because there are no studies that analyse regulations on appointing and functioning of members of statutory bodies in this region in comparison with Poland. The relevant literature offers a robust body of items that analyse the legal framework of the operation of the Baltic States, though they mainly refer to regulations concerning: an analysis of constitutional law (Taube, 2001), comparative politics and government in the Baltic countries (Auers, 2015), managing the capitals of the Baltic states after regaining independence (Lõhmus, Tõnisson, 2006), direct democracies in these countries (Somer, 2012), democratic participation in post-communist countries, i.e. Lithuania, Latvia and Estonia (Ruus, 2011) or these countries' impact on integration policy (Solska, 2013). I do not know of any analysis of the legal framework of the

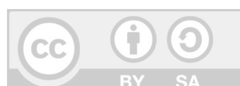
functioning of statutory bodies in the Baltic States in comparison with Poland, which is why this research was necessary.

3. METHODS

The article examines regulations that refer to all members of statutory bodies that operate in Poland and the Baltic States, that is, management boards, supervisory boards and boards of directors. There is one more body along those listed already, that is, the meeting of shareholders, which was not analysed in detail due to the specific characteristics of this research. A comparative law analysis is applied in this research. The process of comparing legal systems involves an explanation of similarities that exist between different solutions and also a demonstration of differences between similar legal institutions (Örücü, 2004, p. 34). In this aspect appropriate reference systems must be selected. There are three phases in the legal comparison. The first one involves a general overview of the principles that operate in the compared legal systems, in particular by examining sources of law in these regimes, their content, form and functions. The second phase is about specifying the importance of components of the investigated regulations. The third phase is the proper comparison of specific elements of the investigated legal systems, demonstrating their similarities and differences between specific regulations by juxtaposing them, a critical analysis and working out specific conclusions (Tokarczyk, 2008, pp. 41-46). This method was used before by Rokicka (2014) in her analysis of decisions in land development conditions, Bitner (2013) in his analysis of fiscal rules and Rulka (2017) in his analysis of electoral law principles.

4. RESULTS

The first legal act that I analyse is the Polish act of September 15, 2000, Commercial Companies Code (CCC). It lays down that a company's bodies are the management board and the supervisory board or the board of directors. The CCC introduces different regulations on company bodies depending on the legal form in which a given enterprise runs its activity. The following issues are crucial for this research: rules on appointing, operation and competences of bodies of capital companies (that is the joint-stock company and the limited liability company). In Poland it is the management board that manages the company, runs its affairs and represents it. The legislator does not stipulate any specific number of persons who should make up the management board. It is only reserved that it must comprise one or more members.



Management board members are appointed, dismissed and suspended (for valid reasons) by a resolution of shareholders in a joint-stock company or a limited liability company. A limited liability company may also have a supervisory board, but this is not obligatory. However, if a supervisory board is established, its tasks include the appointment, removal and suspension of the members of the management board. In a limited liability company, a member of the management board is appointed by the supervisory board after a recruitment process. When dismissing a member of the management board in a capital company, he is entitled and obligated to provide explanations in the course of drafting the report of the management board on the operations of the company and the financial reports (that cover the period in which he or she held the function of a member of the management board). A member of the management board operates in the company under the mandate he receives and which expires on the date of the general meeting which approves the financial reports for the first full financial year that falls after the date of his appointment. An exception to this rule is prescribed in regulations that result from the articles of association, because where a given member of the body is appointed for the term it is calculated in financial years and a mandate of such a member expires on the date of the general meeting which approves the financial reports for the last year of the service of the member of the body. The mandate of the member of a body also expires upon his heath, resignation or dismissal (art. 202 §4 CCC; art. 300[56] §4 CCC). What is important, if following the resignation of a member of the management board no other mandate is manned in the management board, the member of the management board submits his resignation to shareholders thus convening a general meeting. Resignation becomes effective on the date that follows the date of the general meeting. It is also worth nothing here that the articles of association do not regulate the question of remuneration of members of the management board. It is the resolution of shareholders (in a limited liability company and a joint-stock company alike) where the rules on remunerating such members are laid down, in particular the maximum remuneration, granting fringe benefits and their upper limits. Remuneration of management board members employed under a contract of employment or under another contract is determined by a body or a person appointed by a resolution of the meeting of shareholders to execute such a contract with the management board member. This regulation also stipulates that a member of the management board may not engage in a competitor business. The legislator names specific circumstances in which this provision applies, emphasizing that the only exceptions may be laid down in the company's articles of association. The Code also addresses the issue of conflicting interests of the company and those of a member of the management board, his relatives or relations up to the second degree and persons with whom he has personal relations. In such a case, the member of the management board must disclose this conflict of interests and withhold from deciding such matters. What is more, the legislator emphasizes that if the management board comprises several members, each member has the right and obligation to manage the affairs of the company. This right to represent the company applies to all court proceedings and out of court dealings

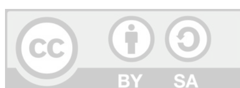
of the company and cannot be restricted with legal effect vis-à-vis third parties. It needs to be emphasized here that the CCC stipulates that any member of the management board has the right to manage matters that do not go beyond the ordinary course of business of the company. He may exercise these powers without a previous resolution of the management board. However, if at least one of the remaining members objects to it, a resolution will need to be passed so that the member may proceed to manage as referred to above. The situation is analogous if a given case goes beyond the ordinary course of business (art. 208 CCC).

The Law on Companies of the Republic of Lithuania also identifies two bodies: the supervisory board and the management board. However, contrary to what is the case in Poland, Lithuanian regulations stipulate that only one of these bodies may be appointed. This means that a company incorporated in Lithuania may only have the supervisory board or the management board. What is more, there are no major restrictions in this matter. The legislator only reserves that the functions of the body that is not formed are transferred onto other bodies. In such a situation, if the company has not appointed a management board, its functions are performed by the supervisory board (Plakans, 2011). We must emphasize that there are no statutory limitations on members in establishing such bodies, including limits on whether a member of the management board may be a member of the management board in another company (Mikelenas, 2005). Pursuant to the Law on Companies, management boards are created entirely through a vote of shareholders who have full freedom to decide in the appointment of their candidates and voting. However, where a given company opts for the two-tier model, that is, to appoint the supervisory board and the management board, the members of the management board are appointed by the supervisory board. In practise, inclusion of employees, creditors or clients/suppliers in the management board may take place, yet it is not widely practised. We must add here that the Lithuanian law does not feature a provision that would oblige the management board to give special focus to the interests of minority shareholders as they act in the interest of the company as a whole. Moreover, regulations do not refer to allowing one person to be appointed as a member of the management board or of the supervisory board of more than one company. Therefore, it is quite typical for Lithuanian companies to have the same person to be a member of the management board or of the supervisory board in several companies (as long as they are not interconnected in terms of ownership). Analogous to the regulations with regard to the establishment of a statutory boards in Poland, also in Lithuania, there is no restriction on the number of positions in management boards and number of directorships.

Similar regulations apply to statutory bodies in Latvia. Pursuant to the Commercial Law of June 1, 2000, there is a two-tier structure of statutory bodies which comprises the management board and the supervisory board. When it comes to the management board, the rules on establishing it and its operation are the same as in Poland and other Baltic States. Members of the management board are appointed by the supervisory board. The legislator here does not prescribe a specific number of management board members either, but only reserves (as does the Polish legislator) that

the minimum number is one member. Competences, rights and obligations of members of the management board are also the same as of those in Poland, Lithuania and Estonia. This means that the main obligation of members of the management board is to manage the company, understood as dealing with its affairs and representing it.

The last of the regulations discussed is Estonia's Commercial Code, based just like Poland on the German model (Kasekamp, 2017). The Code lays down that Estonia also has a two-tier structure of statutory bodies that accommodates the management board and the supervisory board. Much like in the other legal systems discussed, the management board is the executive body that represents the company and implements decisions of the supervisory board. The Code does not prescribe a minimum and maximum number of members of the management board. The legislator only reserves that the management board may comprise one or several members. In contrast to the regulations in other Baltic States, and in analogy to Poland, Estonia's Commercial Code introduces a proviso that a member of the management board cannot be at the same time a member of the supervisory board. Like in Poland, remuneration of Estonian members of the management board is not specified in the Code. The regulation only provides that the amount of remuneration and the procedure for payment are determined by a resolution of the management board or the supervisory board. However, importantly, the legislator introduces a limitation that the joint number of payments of fees and other benefits to the members of statutory bodies should be in reasonable proportion to the duties of these members and the economic situation of the company. The legislator does not stipulate what is meant by reasonable proportion, though it is added that if the economic situation of a company significantly deteriorates then further payment of remuneration in the amount agreed before would be extremely unfair and therefore the company may demand the decrease of benefits. Members of the management board are appointed for an indefinite period of time; an exception to this rule may be laid down in provisions in the company's articles of association. However, importantly, a decision to prolong the term of office of a member of the management board may not be taken earlier than one year before a planned date of expiration of the term and may not be longer that an ordinary term of office stipulated in the company's articles of association. Dismissal of a member of the management board may be done by a resolution of shareholders, regardless of the reason. Likewise, a member of the management board may resign regardless of the reason for such resignation. However still, he must notify the relevant body that appointed him. Naturally, a member of the management board must keep the company's business secrets. If there are more than two members in an Estonian management board, then its members appoint the Chief Executive Officer, that is the President of the Board. However, where the company also has a supervisory board, then the company's articles of association may stipulate that the supervisory board appoints the President. The legislator intended to mark a clear separation of the chief management that represents the company's interests in dealings with other legal persons at the level of the management board. This is reminiscent of the classic company model in which power is separated from control.



As has already been mentioned, the Polish Commercial Companies Code also lists the supervisory board. In the case of a limited liability company, the appointment supervisory board is not necessary. The articles of association state that a limited liability company may (but does not have to) provide for a supervisory board or an audit committee (or possibly both of these organs). Nevertheless, there is an exception to this rule which introduces an obligatory establishment of the supervisory board or the audit committee in limited liability companies whose share capital is more than PLN 500,000 and who have more than 25 shareholders (art.213 §1 and §2 CCC). In addition to this, it is an obligation for a joint stock company to have a supervisory board. It is worth highlighting here that such a regulation only features in Poland. The supervisory board must comprise at least three members who are appointed and dismissed by a resolution of shareholders (be it in a limited liability or joint-stock company). However, the legislator allows for the appointment and dismissal of members of the supervisory board in a different way, regulated in the company's articles of association. Pursuant to the regulations, supervisory board members are appointed for a one-year term, though articles of association may rule otherwise in this question too. What is interesting, the legislator also introduces a catalogue of entities that cannot be members of the supervisory board at the same time. They include: members of the management board, a liquidator, a manager of a branch or factory and those employed in the company as the chief accountant, financial directors, legal advisor or advocate. Nevertheless, the supervisory board may delegate its members to perform functions of members of the management board temporarily, who were suspended or their mandates expired for reasons other than the end of term. Such delegation may go on for up to three months and rights and obligations of a delegated supervisory board member are suspended for this period. The tasks of the supervisory board include permanent supervision and inspection over all areas of the activities of the company, though it may not give the management board any binding instructions with respect to the management of the affairs of the company. The supervisory board adopts resolutions if its meeting is attended by at least half of its members, and all the members have been invited. The supervisory board's key responsibility is to assess the accuracy and reliability of reports and proposals for their concordance with books and documents and facts. The supervisory board must submit a report on the outcomes of the assessment every year to the general meeting, in writing. The supervisory board is also responsible for drawing up opinions and providing advice, appointing and dismissing members of the management board and also laying down rules for and amounts of remuneration of members of the management board. It is worth noting that to carry out its responsibilities the supervisory board is also entitled to using the company's documents, to request reports and explanations from the management board and employees and to inspect the condition of the company's assets. Each supervisory board member has the power to carry out supervision by himself and the only exclusions in this regard must be stipulated in the articles of association. What is more, the articles of association may expand the powers of the supervisory board, for example the requirement of the management

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board's consent to carry out a specific activity. Similarly, in the case of members of the management board remuneration of persons who hold positions in the supervisory board is regulated in the articles of association or in a resolution. They are also entitled to reimbursement for costs associated with participation in the works of the supervisory board. Mandates of members of the supervisory board expire on the date of the meeting of shareholders that approves the financial reports for the first full financial year of the service of this member. If, however, the supervisory board is appointed for more than one year, the term ends on the date of the meeting of shareholders that approves the financial reports for the first full financial year of the service of this member. It must be remembered that a member of the body cannot disclose company secrets even after his mandate expires.

On the other hand, the Lithuanian's Law on Companies (as well as CCC for a limited liability company) stipulates that there is no obligation to create the supervisory board. In such a situation the management board somewhat exercises the functions of this body. However, if a given company decides to create the supervisory board, then its members are appointed by the general meeting. Just like in Poland, the minimum number of members must be three. Still, the legislator introduces an additional regulation on the maximum number of members of the supervisory board laying down that it may not be more than 15 persons. It is worth signalling that the maximum number of supervisory board members, that is 15, is a provision that distinguishes Lithuania against other analysed countries. What is more, the maximum period for which the supervisory board should be appointed is only regulated in the Lithuanian law. The legislator prescribes here that the term of members of the supervisory board is provided in the articles of association, though it may not be more than four years.

Analogically, just like in Lithuania's Law on Companies, Latvia's Commercial Law also allows discretion in terms of creating the supervisory board or not. The basic responsibility of the supervisory board is a classical holding of supervisory and inspection functions. In Section 292 the legislator lists a catalogue of functions that are assigned to the supervisory board and they include electing and recalling the management board, examining the annual accounts of the company and the proposal of the board for the use of the profits and drawing up a report, or representing the company in a court in all actions brought by the company (also against members of the management board) as well as in actions brought by the management board against the company. What is more, the legislator precisely names the rights of the supervisory board. It has the right to request that the management board report on the circumstances of the company and to become acquainted with all of the activities of the management board and to examine the company's registers and documents and all of the property of the company. It is worth noting here that the supervisory board does not have the right to decide the matters that are the competence of the management board, though the company's articles of association may specify that the supervisory board must give its consent to the management board to decide on issues of major importance. Such issues include acquiring participation in other companies

and increasing or decreasing such participation, opening or closing of branches and representative offices or issuing of such loans if they are not related to the usual commercial activities of the company. Moreover, members of the management board cannot vest their responsibilities in other persons. Latvia's legislative act, just like the laws Lithuania and Estonia, also emphasises that members of the supervisory board must be natural persons who have the capacity to perform acts in law. The legislator also lists a circle of entities who may not sit on the supervisory board and they include members of the management board (that applies to subsidiaries too), the auditor, procurator or a person with a commercial power of attorney of this company. Again, just like in Poland, Lithuania and Estonia, the minimum number of members who sit on the supervisory board must be three persons. Nevertheless, contrary to what is the case in Poland the legislator conditions the number of members on whether the company's shares are in turnover. If yes, then the minimum number of members must be 5 persons. It is also worth noting that that this law stipulates a maximum number of members (12), which is only regulated in Lithuania. It must be reserved though that the term of office of the supervisory board must not be longer than 5 years and its members cannot be appointed without their consent. Members may be recalled from their position by a decision of a meeting of stockholders and each member may relinquish his or her position. In the latter they must submit a notice to the company. If a supervisory board member leaves his or her position or is recalled from a position before the expiration of the term for which they were appointed, then elections for new members are held which means that the entire composition of the supervisory board is re-elected. The legislator also regulates in detail the question of positions held in the supervisory board. Supervisory board members must elect a chairperson and at least one deputy chairperson. A deputy chairperson performs the duties of the chairperson only if the chairperson is absent due to, for example, illness, a business trip or a vacation, or if the chairperson has assigned them such a task. However, members of the supervisory board are also obliged to participate in meetings that the chairperson convenes. Still though, it is worth noting that each member has the right to request that the supervisory board convene a meeting if he or she substantiates the need and purpose to convene such a meeting. Remuneration of members of the supervisory board is not specified in the legislation either, but it is decided by the meeting of shareholders.

In turn, Estonia's Commercial Code lays down that the supervisory board is the representative body of shareholders. The supervisory body specifies strategic priorities, approves the budget and major investment decisions and inspects the activity of the management board. As has already been reserved before, like in all of the countries analysed, the supervisory board in an Estonian company must also comprise at least three members who do not have to be shareholders. The presence of representatives of employees and interest groups in the supervisory board is not required and does not happen in practice. Banks often require that their representatives sit on the supervisory board, which they treat as a prerequisite for granting loans. The election of the supervisory board does not have to be made by voting, because

ownership of more than 50 percent of shares allows the appointment of a full supervisory board. In practice, though, this depends on the relations between shareholders. The supervisory board of a listed company usually comprises 5-7 members among which representatives of various interest groups may appear as well as banks. What is more, the supervisory board may not execute transactions on behalf of the company.

Poland's Commercial Companies Code identifies one more body that had not featured in the Polish legal system before, that is the board of directors. In Poland, the appointment of a board of directors is possible only if the company operates in the form of a simple joint-stock company[2]. Appointing a board of directors is also admissible in Lithuania and Latvia, though the legislator does not specify the rules on appointing or operation of this body. It only points out that the board of directors of a public company usually comprises 5 persons. The Polish legislator, however, does specify what the board of directors is and says that it combines the functions of both the supervisory board and the management board. Its responsibilities include the management of the company's affairs, representing the company and supervising the management of the affairs of the company. Unless the articles of association provide otherwise, directors that sit on the board are appointed, dismissed and suspended for valid reasons by shareholders by means of a resolution. Again, the legislator does not stipulate the number of directors that must make up the board, but only lays down that it may comprise one or more members. However, if the board has more than one member, each of the directors has the right and obligation to manage the affairs of the company jointly. The basic responsibilities of the board of directors include: taking strategic decisions, making yearly and long-term business plans, arranging the organizational structure of the company and modelling basic functions associated with its operation. Just like in the case of the management board and the supervisory board, the remuneration of directors is specified by a resolution of shareholders. What is more, the Polish legal system also allows for directors to be grouped into an executive directors group and a non-executive directors group, which resembles two bodies: the management board and the supervisory board. Executive directors focus their role on managing the affairs of the company, whereas the non-executive directors carry out on-going supervision over the management of the company's dealings. For example, they see to the correctness and reliability of reports and submit to the general meeting yearly written reports on the outcomes of the assessment. Importantly, also in this case each director has the right to represent the company in all court proceedings and out-of-court dealings. The results are summarized in the table below.

[2] A simple joint-stock company is a new type of capital company that can be established from July 1, 2021, in accordance with the Act of July 19, 2019 amending the Act – Code of Commercial Companies and certain other acts. A simple joint-stock company combines limited liability of partners for the company's obligations with a high degree of flexibility, both in terms of shaping mutual relations between partners and the company's management system.

Table 2. Comparison of legal acts relating to company statutory bodies

<table>
<tr><th colspan="2"></th><th>Poland</th><th>Lithuania</th><th>Latvia</th><th>Estonia</th></tr>
<tr><td colspan="2">Name of the legal act</td><td>Act of September 15, 2000, Code of Commercial Companies (JL of 2020, item 1526)</td><td>Act of July 13, 2000, Law on Companies, No VIII-1835, (Entry into force: 01.07.2015)</td><td>Act of June 1, 2000, Commercial law (Entry into force: 01.08.2021)</td><td>Act of September 1, 1995 Commercial Code (Entry into force: 01.07.2017)</td></tr>
<tr><td rowspan="2">Statutory bodies in a two-tier system</td><td>Name of the body responsible for managing the company</td><td>Management of the company</td><td>Management body/ board of the company</td><td>Board of the company</td><td>Management board/ board of the company</td></tr>
<tr><td>Name of the statutory body responsible for supervising the company</td><td>Supervisory board</td><td>Supervisory board</td><td>Management of a Council</td><td>Supervisory board</td></tr>
<tr><td>Statutory bodies in a one-tier</td><td>Statutory bodies in a one-tier system</td><td>Board of directors</td><td>Manager of the company – as a manager in a one-tier system</td><td>x</td><td>x</td></tr>
<tr><td colspan="2">Number of board members</td><td>Min. 1 person</td><td>No regulations</td><td>Min. 1 person</td><td>Min. 1 person</td></tr>
<tr><td colspan="2">Number of members of the supervisory board</td><td>Min. 3 people</td><td>3-15 people</td><td>3-12 people</td><td>Min. 3 people</td></tr>
<tr><td colspan="2">Number of members of the board of directors</td><td>Min. 1 person</td><td>No regulations</td><td>No regulations</td><td>x</td></tr>
<tr><td colspan="2">Length of the term of office of the management board</td><td>No information (included in the agreement / resolution of the company)</td><td>No information (included in the agreement / resolution of the company)</td><td>No information (included in the agreement / resolution of the company)</td><td>Indefinite period of time</td></tr>
<tr><td colspan="2">Length of the term of office of the supervisory board</td><td>No regulations</td><td>Max 4 years</td><td>Max 5 years</td><td>No regulations</td></tr>
<tr><td colspan="2">Length of the term of office of the board of directors</td><td>No regulations</td><td>No regulations</td><td>No regulations</td><td>No regulations</td></tr>
</table>

Source: own study based on: Act of September 15, 2000, Commercial Companies Code, (Dz.U. 2020 poz. 1526), Act of July 13, 2000, Law on Companies, No VIII-1835, (Entry into force: 01.07.2015), Act of June 1, 2000, Commercial law (Entry into force: 01.08.2021), Act of September 1, 1995 Commercial Code (Entry into force: 01.07.2017).

5. DISCUSSION

The two-tier model of statutory bodies prevails in Poland. It separates the supervisory and audit functions (held by the supervisory board) from decision-giving functions (that rest with the management board). These functions of the supervisory board lead to a conclusion that it has marginal decision-making competences that concern the company's operation, which determines their passive character in the process of managing the company. The management board, on the other hand, has a much broader catalogue of powers for strategic and operations management, which means that it is a body that enjoys great power and autonomy. Thus, it is a fundamental difference between members of the management board and executive members in the board of directors, who usually complement the general manager (Zalega, 2003, p. 56). However, note-worthily, the legislator also allows the possibility of choosing a one-tier model in the form of a board of directors. This is possible if the enterprise is run as a simple joint-stock company. The introduction of the new statutory body and giving it that particular name refers to the English-language naming convention and to the institution present in common law systems. Such a manoeuvre brings the Polish regulations closer to the Baltic States, which may mean that investors from these countries may choose the body that they are familiar with as they have seen it in their native legal orders. However, we will not be able to assess the consequences of introducing such a new form for some time still. What is more, the legislator, by introducing the board of directors for a simple joint-stock company, extends the perception of statutory bodies in Poland from a two-tier model to a mixed model. This brings the company law in Poland closer to the regulations of Lithuania, which allow for the choice of all three models (Torgans, Bushaw, 2001).

An unarguable conclusion comes from the point of view of a comparative analysis of only legislative acts, that is, that the Polish Commercial Companies Code has the longest list of provisions that apply to statutory bodies (163 articles out of the total of 633 in the entire act). What is more, it was divided in such a way as to accommodate an entire chapter that addresses the bodies of a company, which only also occurs in its Lithuanian counterpart. In Latvia's act it is addressed only in a separate section, while Estonia's commercial code merely devotes certain articles to it. The multiplicity and diversity of the provisions presented results in difficulties in interpretation, which may be an indicator of the decision to invest by institutional investors.

What is crucial here, the analysis of these legal acts leads to a conclusion that there are many similarities in how the appointing and functioning of members of statutory bodies is regulated. Slight differences refer to the composition, vesting certain functions or convening meetings. The greatest difference seems to be the obligation to create the supervisory board in Poland (in a limited liability company) where the share capital of a given company exceeds PLN 500,000 and where there are more than 25 shareholders. No other legislative act analysed stipulates such an obligation. What is more, Lithuanian laws emphasise that the supervisory board, or

the management board, need not be appointed at all as it is sufficient when one of them is created. This allows us to answer the research question that regulations concerning statutory bodies do not differ significantly in Poland, Lithuania, Latvia and Estonia.

The fact that the differences in regulations concerning companies are not pronounced leads to a conclusion that it is something else than legal issues that affect the observed differences in the rotation of statutory bodies in Poland and Baltic States.

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ORGANY STATUTOWE SPÓŁEK I ICH KOMPETENCJE – POLSKA A PAŃSTWA NADBAŁTYCKIE

Streszczenie

Kluczowe decyzje dla rozwoju firm podejmują organy statutowe. Na zakres oraz sposób ich funkcjonowania wpływają przyjęte w danym kraju regulacje ustawowe, zwyczaje oraz tzw. kodeksy dobrych praktyk. Celem badania jest identyfikacja podstawowych regulacji dotyczących organów statutowych oraz analiza zarówno podobieństw, jak i różnic w zakresie prawnych ram ustanawiania i funkcjonowania organów statutowych w spółkach publicznych notowanych na giełdach w Polsce oraz w wybranych krajach nadbałtyckich, tj. Litwie, Łotwie oraz Estonii. W badaniu zastosowano analizę prawno-porównawczą. Analizie poddano materiał normatywny w postaci podstawowych aktów regulujących zagadnienia prawne dotyczące ustanawiania oraz funkcjonowania organów statutowych. Z przeprowadzonego badania wynika, że duży wpływ na sposób funkcjonowania organów ma przyjęty w danym państwie model ładu korporacyjnego. Istotnym aspektem determinującym funkcjonowanie członków organów statutowych są również regulacje ich liczby oraz czasu trwania kadencji, na którą dany członek organu statutowego został powołany. W tym kontekście również występują rozbieżności w analizowanych państwach, gdyż ustawodawca nie zawsze określa minimalną bądź maksymalną liczbę członków organów statutowych czy długość trwania kadencji. Wskazane różnice w uregulowaniach nie są znaczące, co prowadzi do wniosku, że to nie kwestie prawne wpływają na obserwowane zmiany w rotacji organów statutowych w Polsce i krajach nadbałtyckich.

Słowa kluczowe: kompetencje, regulacje, organy statutowe, prezes zarządu