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THE DETERMINANTS OF SUPERVISORY BOARD'S EFFECTIVENESS IN ENERGY SECTOR

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Purpose: the aim of the paper is identification and presentation of determinants of supervisory board's effectiveness in modern organization.
Design/methodology/approach: own survey studies and expert opinion interviews conducted by the author.
Findings: key necessary competences of supervisory board members in energy sector were identified, results of survey studies were confirmed by expert interviews.
Research limitations/implications: formal legal and corporate limitations of access and use of internal information affect the scope of gathered materials.
Practical implications: conducted study allows one to conclude that supervisory boards in current shape often do not guard long-term success of the company and are ill-equipped for the task at hand.
Originality/value paper identifies factors which negatively influence and limit effectiveness of supervisory board, paper highlights and specifies key competences of individual board members.

Keywords: supervisory board, corporate governance, effectiveness, expertise, energy sector.

Category of the paper: research paper.

1. Introduction

The increase in size and complexity of modern enterprises as well as the tightening of competitiveness conditions and consequent elevated expectations of stakeholders in the area of companies' economic efficiency make it increasingly difficult for supervisory boards to monitor director's activities and to stimulate cooperation towards continuous improvement of economic performance indicators. At present, the supervisory board is burdened by many tasks and their diligent execution requires its professionalisation.

Aim of the discussion on supervisory board's effectiveness is to give the answer to the question of correct assortment of legal and economic mechanisms leading to establishment of a correctly composed supervisory board and its consequential effective functioning.

This study focuses on corporate governance and its role in management in the energy sector. There search allowance focused on the effectiveness of supervisory boards and intra-corporate conditions that can contribute to the better functioning of business entities and to reducing the risk of operations. The main objective of the study was to diagnose the effectiveness of supervisory boards in the energy sector.

The result of this research intention was connected on the one hand with obtaining an assessment of the corporate governance solutions used so far in companies with state-owned participation, and on the other hand, it was to enable the modification of solutions to increase their effectiveness in the functioning of corporate supervision. Achieving this goal is also of practical value, i.e. indicating the best utilitarian solutions to improve efficiency in the management of entities forming one of the pillars of the Polish economy, which is the energy sector.

2. Research methodology

Conducting scientific research aims to solve specific problems in the sphere of cognition, theoretical or resulting from practice.

The survey method belongs to the group of empirical methods in management sciences and focuses on solving the research problem from the experience side, by capturing conditions as close to reality as possible, allowing the researcher to explore the issue under consideration from the scientific side. The test procedure consisted of the following stages (Dźwigoł, 2015, p. 102):

- construction of a research model,
- analysis of documentation,
- building a survey questionnaire,
- selection of the test sample,
- tests,
- data collection and initial verification,
- analysis and processing of data,
- presentation of research results.

In this study, the survey was treated as a research method, i.e. a specific composition and arrangement of stages of the research procedure, reproducible in the study of a specific class of problems due to its effectiveness. Its general purpose is to collect empirical material useful to solve a designated research problem (Czakon, 2015, p. 11).

In the preparation and conduct of the research activity, which was the main axis of empirical work, the following research methods and techniques were used:

- diagnostic survey in the form of surveys, expert interviews and analysis of documents. The survey used an anonymous questionnaire, which consisted of a metric and the main part and contained closed questions. Respondents completed the questionnaire without contacting the interviewer (the questionnaire was distributed by name to the respondents in print and electronic versions). The expert interview was conducted by the researcher in the form of a conversation based on a previously prepared scenario.
- analysis of the literature on the subject (coming from both domestic and foreign resources), including specialized periodical literature in the field of corporate governance, corporate governance and supervisory boards.

The main research problem of this study can be formulated in the form of questions: What factors affect the effectiveness of supervisory boards in domestic companies in the energy sector? What professional competences of a member of the supervisory board have the greatest impact on the effectiveness of the supervisory board's work in the energy sector in Poland?

The research activity undertaken in this study consisted of several stages. The first stage was the analysis of the available domestic and foreign literature on the subject focused on contemporary management instruments in the energy sector.

Another analytical activity undertaken as part of the research was to study the legal acts in force in Poland regulating the functioning of the energy sector. These were not preceded by a study of EU regulations and other documents setting out the directions for the development of the energy sector.

The last stage of the diagnostic survey was to conduct a survey and expert interviews to identify factors affecting the effectiveness of corporate governance. The obtained result of the research activity was confronted with theoretical assumptions, which allowed to develop recommendations for improving corporate supervision activities in companies of the domestic energy sector.

The scope of the research covered the activities of supervisory boards in domestic companies in the energy sector, with particular emphasis on the effectiveness of the activities undertaken in the form of corporate supervision and the use of intra-corporate conditions.

The scope of the research activity covered three national capital groups, which together own about 75% of the electricity production market in Poland.

3. Role of a modern supervisory board

The supervisory board, as the second body of the dual management system, traditionally fulfils in the company two roles – a permanent supervisory role and a controlling role – despite the fact that the national legislator under the Code of Commercial Companies, art. 381 does not distinguish the two terms in the scope of the terminology used, even though they have slightly different meanings in field of management (Journal of Laws of 2000, No. 94, item 1037 as amended d.; Bieniak, 2017).

This twofold role of the supervisory board constitutes pair of interlinked and co-dependent functions, which at the same time effectively eliminate shareholder's rights of individual control which can be found in polish limited liability companies (Journal of Laws of 2000, No. 94, item 1037 as amended d., art. 212), replacing them with institutional supervision, leaving shareholders only inherent right to information (Opalski, 2016). At the same time members of the supervisory board are not representatives of individual shareholders and their decisions should focus primarily around interest of the company as whole which cannot be outweighed by interest of particular group of shareholders. In reality however supervisory board members all too often identify interest of the company as interest of those shareholders by which they were elected. Notwithstanding the aforementioned unchanging controlling and supervisory role, in recent years one can observe the growing importance of the supervisory board as company's separate body, the increasing complexity of its functions and the consequent growing number of challenges facing its members (Opalski, 2016).

Modern supervisory board is subjected to and has to deal with great, often excessive, amounts of information and draws attention of many stakeholder groups as a body that is seen not only in place to respond to potential crises but also to prevent them from happening in the first place. Because of that, it became today imperative to provide supervisory board with information gathering and assessment tools as well as communication tools, to secure the independence of its members, as well as its professionalism. The supervisory board has become much like the management board in these respect (Jeżak, 2012). These elevated expectations lead to visible pressure to transform the supervisory board into more of an expert body with increased involvement in the company's current affairs (Kremer, 2014). Based on the results of a 2020 study (Deloitte study, 2020) by the advisory company Deloitte Polska on supervisory boards in the face of the COVID-19 pandemic, 81% of the respondents confirmed that the supervisory board in which they sit was engaged in crisis management. Moreover, as many as 58% of them took steps within 7 days of the lockdown announcement and 23% within two weeks. However, responses show that just a little over 40% of supervisory boards have a concrete action plan in times of crisis. The difficult situation required supervisory boards to increase their collaboration with management and shareholders, as stated by more than 80% of the respondents. It is interesting that all of the respondents confirmed using of good practices and solutions applied in different companies in other supervisory boards. The study by Deloitte Polska clearly indicates that the company's authorities have taken the new reality seriously. The pandemic affected the functioning of enterprises in strategic and operational areas, as well as required dynamic changes and strengthening relations between stakeholders from the supervisory boards (Deloitte study, 2020).

The role of the supervisory board in the functioning of the company in a crisis situation has also been accentuated in the world. It was highlighted that the supervisory board and management should work closely together in order to identify early any potential risks and opportunities that may arise as a result of the recent global financial and economic turmoil triggered by the pandemic. Coordinated collaboration between shareholders and stakeholders is of particular importance in times of crisis (Kat, and McIntosh, 2020).

Abovementioned changes in perception of the supervisory board and new expectations and needs arising from these of the board were also perceived by experts of the European Commission. According to them modern membership of the supervisory board requires ever-growing competence and far greater than before involvement, presence and accessibility of the individual members. As stated by the Commission’s report that is the only way to guarantee that the increased requirements for the supervisory function are met in the long run and to ensure that each member of the board has sufficient time to effectively fulfil their supervisory responsibilities. Additionally it is stressed that the supervisory board plays a key role in the development of more widely responsible companies. Nevertheless, as practice shows, often people who perform functions in supervisory boards today still treat them just as an additional rather than main occupation, which negatively impacts the quality and effectiveness of the supervisory system as whole. Another issue highlighted by the Commission is the assessment of the board's work (European Commission, 2011).

In its recommendation on the role of non-executive or supervisory directors of listed companies, the European Commission stated amongst other things that the board should evaluate its activities annually (preferably using the services of an external entity). According to the Commission, this assessment should include competence, value and effectiveness of individual board members. Commission also names transparency of the remuneration policy for the members of the supervisory board as another issue that affects the quality of the functioning of the supervisory board (European Commission, 2011).

In conclusion Commission recommended need for changes and innovation in four areas, namely in area of 1) corporate governance rules for the supervisory boards; 2) remuneration of boards of directors and supervisory boards; 3) shareholders position in corporate governance system and 4) in the area of implementation of codes of corporate governance.

4. Organization and remuneration of the supervisory board

The procedure of appointing the supervisory board is regulated by a given organisation's memorandum of association. Selection process for the position of supervisory board member should be conducted using transparent rules that ideally eliminate or at least lower to the minimum the possibility of wrong nominations which can affect negatively board as a whole. Selection should follow closely agreed upon official qualification procedure, one in accordance with legal provisions and corporate statue and based on best available practice in the area.

The Act on the Rules of State Property Management (Journal of Laws of 2020, item 735) – chapter 3. Requirements for candidates for members of supervisory and management bodies, which came into force on 1.01.2017 and the laws implementing it, defined the new requirements to be met by candidates for the supervisory board (article 24) of companies with the participation of the State Treasury and state-owned legal entities. The members of the supervisory board of capital-linked economic entities associated with the State Treasury are required to meet several important formal criteria, e.g. not being in any legal relationship with the company. Taking into consideration the knowledge, skills, and experience, candidates must first of all have a higher education, demonstrate at least 5 years of employment as specified in the said Act and meet at least one of the additional criteria. Persons entitled to sit on supervisory boards without a special examination are: doctors of economics, legal sciences, and in accordance with the new act also doctors of technical sciences, in addition, persons having an entry in the list of legal advisers, attorneys-at-law, statutory auditors, investment advisers, and candidates holding certificates of prestigious management or financial studies listed in point 1) c)-g). Other candidates are required to have proof of siting an examination before an examination board appointed by, inter alia the Prime Minister.

Creating such a comprehensive set of requirements clearly indicates the important role of the supervisory body in companies. However, in the current legal situation, recruitment for supervisory board members does not always take place as a result of a competition procedure. This raises speculation that the selection of a candidate to sit on the supervisory board should always be based on objective criteria equal to all applicants (Journal of Laws of 2020, item 735).

As mentioned the supervisory board is a body appointed to perform constant supervision over the way in which the company is managed (Journal of Laws of 2000, No. 94, item 1037 as amended d., art. 382 k.s.h). Dual management model of public company bodies present in polish companies is characterized by strict personal and functional separation between two management bodies, i.e. the board of directors – management, which competence encapsulates management of the company's affairs and representation, and the supervisory board as the controlling body. Undoubtedly, the supervisory board should be independent. The selection of candidates for supervisory boards should be based solely on objective grounds.

It should be stressed that the exercise of the mandate of a member of the supervisory board (unlike a member of the board of directors) does not have a gravity of a professional role but rather has a subsidiary role next to members main professional activity. Polish law also has no restrictions in regards to the number of companies in which one person may exercise the mandate of a member of the supervisory board at the same time. However, *Good practices in public companies* of 2007 required board members to have relevant life experience, to represent a high moral level, and be able to devote the time necessary to properly perform their functions on the supervisory board (Warsaw Stock Exchange, 2007). The Best Practices of Warsaw Stock Exchange Listed Companies, published in 2021, require (pt. 2) that in their conduct and decision-making, supervisory board members should also be guided by the independence of their own opinions and judgments, which translates positively into the company's interest (Warsaw Stock Exchange, 2007, 2021). Each supervisory board member may exercise his/her supervision right independently, unless the articles of association state otherwise (Journal of Laws of 2020, item 735).

In the monistic model of corporate governance (also known as one-tier model), present in most of the Anglo-Saxon countries (prominently UK, US) as well as many roman countries (prominently France, also Spain and Switzerland), the company has one supervisory and management body, called the board of directors (USA, UK) or the administrative board. Within this council functional division of tasks occurs between the managing directors (executive), managing the day-to-day affairs of the company as its corporate officers, and non-managing directors, limited to performing control functions and participating in making strategic decisions in area of company's management (Leżak, 2010). The chairman of the (administrative) board of directors is in this model often also the head of managers and executives, bearing the name CEO (Chief Executive Officer) or, in France, PDG (President Directeur General). In a monistic model, the board of directors (administrative) can therefore – at least theoretically – participate in the process of making the most important decisions in the company and also in ex-ante control. In this model, the board may also issue binding instructions to managing directors in the form of resolutions. In practice, however, the board limits itself to the proposals put forward by these directors, and delegates its powers to them to a large extent, while meeting only from time to time. Thus directors remain the main decision-making centre in the company and exert a significant influence on the functioning of the board.

The dualistic model (also known as two-tier model) developed in Germany in the nineteenth century with supervisory board seen as equivalent of state administrative control. This model has been adopted since by polish Commercial Code of 1934, and later by 2000 Code of Commercial Companies (Journal of Laws of 2000, No. 94, item 1037 as amended d.), while choice of the monistic model is only possible in the case of a so called european company (societas europaea, SE) based in Poland (under EU regulation on SE). Supervisory Board consists of at least three, (in public companies – at least five) members based on article 385 § 1 of the Code of Commercial Companies (Journal of Laws of 2000, No. 94, item 1037 as amended d.). Appointment of members of the board is normally role of the general meeting, however, the statute may grant the right to appoint and dismiss a specific number of board members. The comment of one of the Polish lawyers indicates that the three-person composition of the supervisory board in fact prevents the minority from exercising its basic right to fill the board by casting votes in separate groups. He justifies his viewpoint that a group representing as many as one third of votes at a general meeting would have the right to elect "their" member of the supervisory board. In 2003, a change was made in relation to the public traded company, restoring the requirement to appoint a board composed of at least five members (Nartowski, 2021).

Members of the supervisory board may be remunerated for their mandate, in which case remuneration is specified in the statute or resolution of the general meeting (Journal of Laws of 2020, item 1526) based on art. 392 § 1 of the Code of Commercial Companies. It is worth mentioning that the remuneration may involve right to participate in the company's profit for a given financial year, allocated for distribution among shareholders (so-called royalties). Such remuneration may, however, be adopted only by the general meeting’s resolution on the allocation of annual profit. Based on the art. 392 § 1 of the Code of Commercial Companies. Supervisory board members are also always entitled to reimbursement of expenses related to participation in the work of the board (Journal of Laws of 2020, item 1526).

Remuneration level should be determined based on the function performed by a given member of the supervisory board. However, differences in the levels of remuneration should not stem from circumstances of members election such as position of the appointing body. Such practice has been subject of the first decision in which the court questioned the practice of differentiating the remuneration of members of the supervisory board of a joint-stock company in business transactions (Court of appeal 609/12, 2012).

Nevertheless thus far there has been a consensus in the literature of the subject that the remuneration of individual members of the supervisory board does not have to be set at the same level, and the privilege of persons exercising certain functions is entirely allowed. It was also widely accepted that level of remuneration depends solely on the discretion of the general meeting, and the additional remuneration may even be symbolic one polish zloty (Czajkowski, and Tofel, 2012).

Also aforementioned Good Practices did not contain specific provisions regarding remuneration, however they provided other guidelines and recommendations. And thus it was a good practice to vary the remuneration of a member of the supervisory body depending on the function performed and participation in committees, taking into account the rule that the maximum salary increase due to the function performed may not exceed 10% of the maximum amount determined in accordance with the range appropriate for given size of the company (Ministry of Treasury, 2016).

Currently however, the most important act in the area discussed is the act on the principles of determining the remuneration of persons managing certain companies of June 9, 2016 (Journal of Laws of 2016, item 1202, hereinafter referred to as: u.z.k.w.k). These new rules on remuneration of members of both the management body and the supervisory body were to remove the imperfections of earlier guidelines. The purpose of the act was to change the remuneration system, replacing it with transparent, uniform principles for determining the remuneration of members of the management and supervisory bodies, inter alia, by linking the amount of remuneration to current situation of the company. Legislator's intention, as stated in written justification of the act, was to constitute "a significant change in philosophy in determining the amount of remuneration". This is manifested in the departure from the "rigid model of binding the company with a specified limit of remuneration in favour of obligation on behalf of stakeholders to take action to shape and apply principles of remuneration adequate to corporate arrangement in a given company." Secondary indirect effect of changes was to stimulate professionalization of managerial and supervisory bodies as well as the elimination of existing undesirable compositions (Grzegorczyk, 2017). The variable part of the remuneration of a member of the management body, constituting the supplementary remuneration for the company's financial year, is linked under art. 4 of the Act to the level of implementation of management goals. Weights assigned for management purposes, as well as objective and measurable criteria for their implementation and accounting are set for individual or all members of the management body. In the case of companies carrying out tasks in public interest, when defining management objectives, weight and criteria for their implementation takes into account the degree of public tasks implementation or the level of public tasks implementation, in the period constituting the basis for determining the supplementary remuneration.

Contained within article 4 paragraph 6 of u.z.k.w.k. catalogue of management goals is an open one and optional at the same time, which means that none of the management goals included need to be included in a particular case, and the company may freely choose other management goals – subject to article 4 paragraph 7 in case of companies that are dominant (Rzetecka-Gil, 2017).

Undeniable benefit of the new regulation is the link between remuneration and the size of the company as well as and the scale of operations, thus at least in theory with real workload and proportional responsibility, risk and scope of obligations. The division of remuneration into fixed and variable part as well as the dependence of the right to remuneration on the achievement of goals should also be evaluated positively (Gazda, and Adamus, 2017). As stated in literature proper motivational structure of remuneration system is often of fundamental importance (Merchant, and Van der Stede, 2017).

However, in authors opinion the fact that the law links some variable remuneration in some companies with the degree of implementation of a 'public mission or public task' should not be endorsed. According to the author, these public interests may not always or even often not overlap with the interests of the company. As indicated in the literature (Merchant, and Van der Stede, 2017), "public mission or public tasks are an expression of the outlined political vision and are imposed from above ", therefore the public goal may sometimes even be contrary to the interests of the company (for example takeovers by profitable companies of other companies with poor or very bad financial condition).

Regulations aimed at shaping of and limitation of remuneration of management boards and supervisory boards of companies are also present in the legal systems of other European Union countries. In some States, they take the form of applicable legal norms, and in other rigorously applied norms of codes of practice. For example in Germany, according to the Public Corporate Governance Codex, the cash remuneration of the members of the Management Board usually includes, in addition to the fixed parts, variable parts linked to annual parameters related to the company's sustainable development, long-term indicators and risk. In addition, benefits for a board member in the event of premature termination of office may not, without a valid reason, exceed the value of two annual salaries. In French legislation, the principles of remuneration for members of the management board and the supervisory board are set out in a decree of 26 July 2012, according to which the earnings of management boards and supervisory boards in entities with the participation of the state treasury may not exceed 450,000. Euro gross per year. In addition, the amount of remuneration in companies with the majority share of the state treasury is provided to the public (Grzegorczyk, 2017).

The Best Practices of Warsaw Stock Exchange Listed Companies of 2016 did not provide such detailed guidelines connected with remuneration, however, they do indicate that the level of remuneration of supervisory board members and other key figures is important. In accordance with this document, the remuneration should therefore be adequate to the entrusted tasks and responsibilities, and sufficient to attract, retain and further motivate the staff. The current Best Practices of WSE Listed Companies of 2021 indicate as well that an element of care for the stability of the management staff is, inter alia, transparent, just, consistent, and non-discriminatory principles of its remuneration, including equal remuneration for women and men. The amount of remuneration of supervisory board members – in accordance with the Best Practice guidelines – should not be dependent on the company's short-term performance. In addition, due to the fact that the supervisory board performs its tasks on an ongoing basis, the remuneration of its members cannot be made dependent on the number of meetings held (Warsaw Stock Exchange, 2016, 2021).

In summary, it is worth emphasizing that the number of States that decide to regulate the issue of remuneration of company bodies or modify existing systems in order to find the optimal effectiveness enhancing solution is constantly growing (Grzegorczyk, 2017).

5. Functions of the supervisory board

Main tasks of the board are unceasing control of companies management processes, choice of board of directors and shaping together with chosen board of companies strategy. Based on statutory requirements we can name the following basic functions of the board (Jeżak, 2010):

1. human resources function,
2. supervisory function,
3. co-decision function,
4. communication of stakeholders interest function.

At the same time the statutory scope of supervisory powers of the board is very wide. In order to perform its tasks, the supervisory board may examine all company documents and demand from the management board and employees reports and explanations and review the company's assets. The supervisory board's specific responsibilities include assessing the annual reports prepared by the management board, i.e. the financial statements and the annual report on the company's operations, in terms of their compliance with the law and standards, as include review of the management board's conclusions regarding distribution of profit or coverage of loss (Jeżak, 2010).

However, such broad scope of competence is often not visible in practice of most supervisory boards. Especially in companies with dispersed shareholding, the board is often marginalized by the management board, and in companies with a strategic shareholder – by that shareholder, who often has a direct impact on the management board. In addition, the order for permanent control is not and cannot be understood literally - the potential and nature of the council does not allow such control. Unlike the management board, which conducts the company's affairs on an ongoing basis, the board is not a permanent body, but it holds periodic meetings, at least three times a financial year. Outside the meetings, the council does not actually exist as a body. The board is thus not able to deal with specific management issues – it should rather focus on strategic management decisions (Jeżak, 2010).

Because of that it is often concluded that the board should limit itself and primarily examine decisions regarding (Jeżak, 2010):

1. implementation of the company's business strategy,
2. shaping of the company's internal organizational structure,
3. exercising control over the powers delegated by the management board to lower management,
4. personnel policy of the management board regarding staffing.

Another important problem which can negatively influence boards performance is supervisory board's informational dependence on the management board. Supervisory board does not have direct access to information about the company, but relies on the information that management will provide. As a result, the controlled body (management board) is the main source of knowledge for the controlling body. This may adversely affect the quality and nature of the information provided to the board since it is in the interest of the management board to provide it with positive information and block or delay access to adverse information that could put the management board in a bad light. Because supervisory board does not get involved on a regular basis in company's management, it is also difficult for her to assess the reliability of the information provided to her. In addition, management may often see board members as outsiders and fear that they will be able to disclose confidential information about the company's enterprise (especially when representatives of minority shareholders or employees are on the board) (Jeżak, 2010).

One of the solutions to these and other problems is creation of specialized smaller groups within the council, the so-called committees, which aims to guarantee its better performance and to strengthen its position in the company. As such creation of committees was recognized as good corporate practice first in the Anglo-Saxon monistic model (USA, UK). Audit and remuneration committees are required by the US Stock Exchanges NYSE and NASDAQ (Jeżak, 2010). These committees are to counterbalance the strong position of managers (managing directors), focusing on selected aspects of supervision, in particular in those areas where conflict of interest between the company and its managers may occur. They are to prevent extreme negative situations in which managing directors, dominating over dispersed shareholding, control all processes in the company.

6. Functioning of the supervisory board during the crisis

It is extremely important that the supervisory board and the management board collaborate with each other to find optimal solutions for the organisation in the event of a crisis on the market. The board is responsible for overseeing the work of the management board and monitoring its progress. One of the biggest challenges related to corporate governance, both for the management board and the supervisory board, is the appreciation and mutual respect of obligations in times of crisis. A checklist was even created for supervisory boards to make supervision more effective. The board should guard the health and safety of the company's community and the environment, because it is the organisation's priority. It is required to review the crisis management plan and informing about any changes made in the company in connection with the pandemic, and also to make sure that the right people have been chosen to deal with the crisis. In addition, the board's task is to analyse the main risks to the organisation (e.g. related to the supply chain, money flow, and technology) and to asses and monitor management's efforts to identify them, define priorities, and manage them. The board needs to ensure that management has an effective, fair, and timely plan of communicating with, inter alia, the shareholders, employees, and customers in times of crisis (MacDougall et al., 2020).

On March 31, 2020, the Sejm (the lower house of the bicameral parliament of Poland) adopted an act which introduced the so-called the Anti-Crisis Shield, which amended, inter alia, the Code of Commercial Companies (Journal of Laws of 2020, item 735). Thus, the possibility of holding a general meeting of shareholders with the use of means of electronic communication in joint-stock companies was extended. The results of Deloitte Polska's study indicate that 93% of supervisory boards held their meetings via electronic means of communication. It was the Supervisory Board that established the bylaws defining the detailed rules for taking part in the general meeting online. Attention was drawn, however, to the threats to companies in the face of the continuing pandemic. At present, remote work often practiced by supervisory boards may result in unintentional, superficial treatment of important topics of a given company. In the new economic reality, the remote mode of operation poses the risk of adopting resolutions adopted on the spur of the moment – chiefly due to the limited possibility of discussion and exchange of views. The mode of communication forced by the circumstances cannot, however, justify unfavourable decisions in the company, especially during the economic crisis (Journal of Laws of 2020, item 526; Deloitte study, 2020; Nartowski, 2020).

7. Supervisory board's involvement

Competent supervisory board is a key determinant of effectiveness. Each member of the supervisory body should possess capability to properly fulfil supervisory duties stemming from inter alia his or her (Jeżak, 2012):

1. knowledge (possessed due to acquired education, training, obtained professional titles or degrees and acquired in other different ways during the span of professional career),
2. experience (acquired in the course of fulfilling specific functions or occupying specific positions),
3. other personal skills necessary to perform the entrusted function.

Each member of the supervisory body should guarantee the proper performance of his duties and offer range of personal qualities. These personal competences of individual members of the collegiate supervisory body should complement each other to enable adequate level of supervision over all areas of the company's operations (Jeżak, 2012).

Composition of the body should when necessary include participation of members who speak not only polish but also foreign languages and who have adequate experience and knowledge of the financial market necessary to supervise the company on the financial market. Supervisory body should be able to undertake necessary supervisory activities on an ongoing basis in particular in regards to the implementation of the adopted strategic goals or significant changes in the level of risk or materialization of significant risks in the company's operations, as well as in the area of financial reporting (Jeżak, 2012).

Also the size of the supervisory body should be adequate to the nature and scale of the company's business. The supervisory body should however always have the function of chairman who manages the work of the supervisory body. The election of the chairman of the supervisory body should be based on for experience and team management skills taking into account the criterion of independence. The composition of the supervisory body should include adequate participation of independent members, and where possible of members nominated by minority shareholders. Independence is primarily understood as lack of direct and indirect links with the company, members of the management and supervisory bodies, significant shareholders and entities related to them. In particular, members of the audit committee or members of the supervisory body who have competence in the field of accounting should be fully independent (Jeżak, 2012).

Each member of the supervisory board should perform his duties actively, demonstrating the necessary level of involvement in the work of the supervisory body as a whole. The necessary level of involvement manifests itself in devotion of time to the extent necessary to properly perform the tasks of the supervisory body. A member of the supervisory body should also refrain from undertaking professional or non-professional activity that could lead to a conflict of interest or otherwise adversely affect his reputation as a member of the supervisory board or from undertaking numerous activities which collectively would limit is potential involvement due to lack of time (Jeżak, 2012).

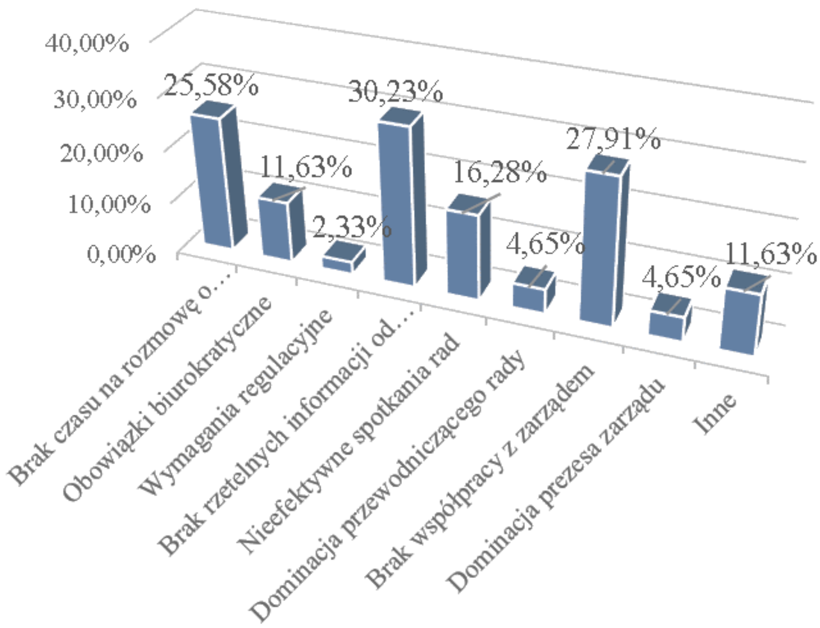
In the case of finding in the course of supervision signs of fraud, serious errors, including those having a significant impact on the content of financial reports or other serious irregularities in the functioning of the supervised institution, the supervisory body should take appropriate immediate action, in particular it should request detailed explanations from the management body and recommend effective solutions to prevent similar irregularities in the future. Supervisory board, if it is necessary for exercising proper and effective supervision, may also request from management body appointment of a selected external entity to conduct specific analyses, audit or to consult on specific matter (Jeżak, 2012).

8. An analysis of survey study results

In order to support the hypothesis that the above-mentioned factors determine the effectiveness of the supervisory board, partial results of a broader study of the effectiveness of corporate governance in the energy sector are presented in this section. Main part of the survey, directed to respondents acting as members (including the chairman) of supervisory boards of companies in the domestic energy sector, contained 15 questions (122 potential answers) referring to issues related to the functioning and assessment of the effectiveness of corporate governance and to the professional competence of individual members of supervisory boards.

Abovementioned study was confronted with expert interviews conducted in the form of a controlled conversation using the interview scenario. This method was used to obtain opinions of practitioners with established professional positions in the energy sector related to the issue of functioning of supervisory boards. In this case the so-called Delphi variant[1] was applied which involves, presenting experts representing various professional experiences with one set of questions, containing both closed and open questions. The content of the questions was closely related to the questionnaire distributed among the respondents participating in the survey. In total, the expert interview was conducted with six people employed in energy sector companies.

One of the survey questions asked respondents to indicate factors that in their opinion limit the effectiveness of supervisory board members most effectively. A detailed distribution of the answers provided is presented in the Figure 1.



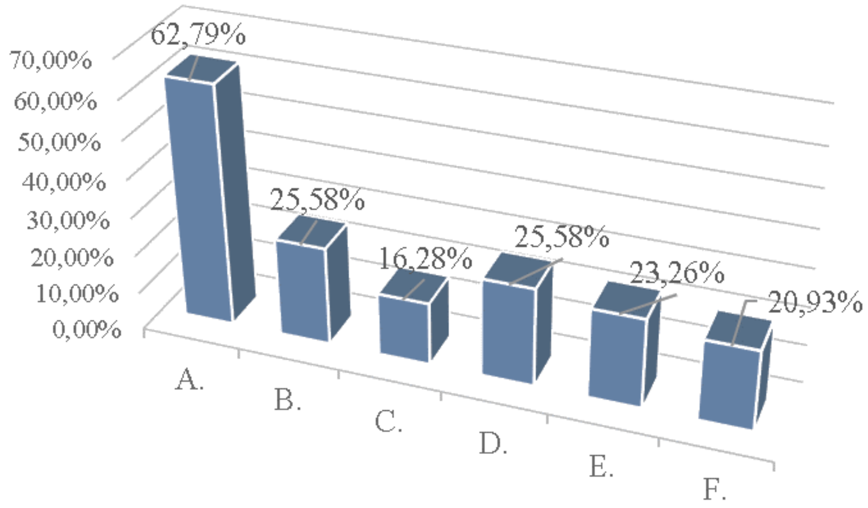
Legend of the diagram:
A. Lack of time for conversation
B. Bureaucratic responsibilities
C. Regulatory requirements
D. Lack of reliable information
E. Ineffective meetings
F. Supervisory board chairman's domination of the meetings
G. Lack of cooperation from board of directors
H. Board of directors chairman's domination of the meetings
I. Other factor

Figure 1. Percentage of answers chosen as part of the survey to the question: What factors in your opinion limit the effectiveness of supervisory board members the most? Source: own study.

[1] The Delphi variant involves obtaining answers from several experts, who do not have direct contact with each other, which negates hard presentation of their own counterargumentation towards the position of other people.

By providing answers, the respondent could mark more than one answer among the nine options to choose from. As the factors limiting the effectiveness of supervisory boards in domestic energy sector companies to the greatest extent, the respondents indicated: the lack of reliable information from the board and the lack of cooperation with the board, as well as the lack of time for discussion of issues relevant to the company.

One of the next questions focused on the expected qualities of supervisory boards members of energy sector companies in Poland. Most popular answer was the one highlighting expectations of general professional competence. This answer was given by over 62% of respondents (Figure 2).



Legend of the diagram:
A. Appropriate competences
B. Knowledge of the legal surrounding of the company
C. Ability to choose effective board of directors
D. Motivational qualities towards board of directors
E. Ability to stay within boundaries of supervisory duties
F. Decision making capabilities

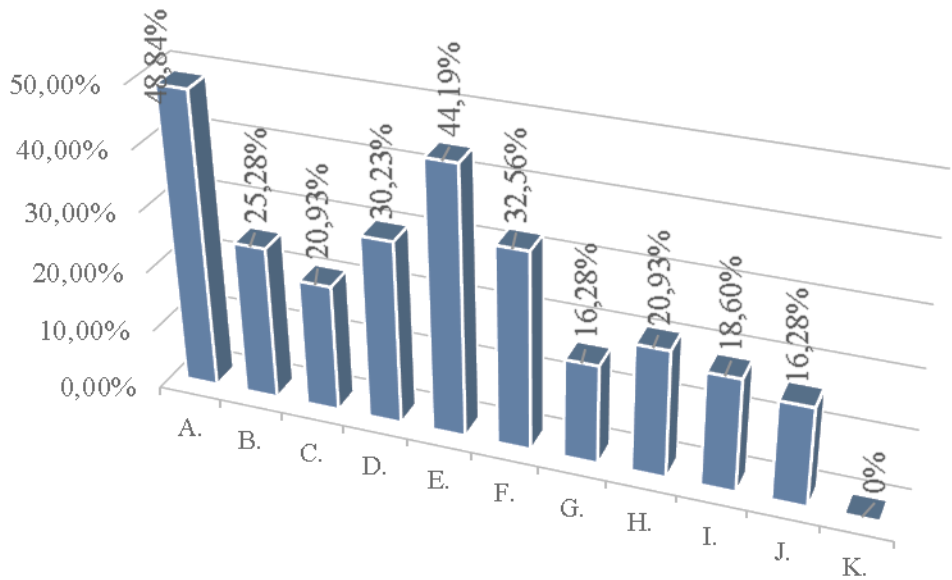
Figure 2. Percentage of answers chosen as part of the survey to the question: Choose the most expected qualities of the supervisory board and its members. Source: own study.

Decisively fewer votes were assigned by the respondent to the next two options, i.e. knowledge of the company's regulatory environment and motivational qualities (25.58% each).

It should be pointed out that the issue of knowledge of formal, legal and organizational realities as well as economic realities in which energy sector entities operate is currently an essential criterion for selecting candidates for supervisory boards. In the modern, competitive and basically global market of electricity suppliers there is no room for making wrong, ill-considered and devoid of long-term strategy decisions, because such action will be burdened with a high risk of recourse of a given company. Only every fourth respondent pointed out that the task of supervisory board members is to stimulate or activate members of the company's management board. The fact of holding a managerial position in a company with an established position on the market (often a leader in a given industry) is in itself a key inspiration to make strenuous efforts for a given entity. Lastly only every fifth respondent (20.93%) indicated a preference regarding to the decision making of the supervisory board. Undoubtedly, this is due to the fact that the respondents have an established awareness on the advisory (and not managerial) role of such a body as the supervisory board.

In the third question, the respondents were asked to mark competences and individual personality traits that make up the desired supervisory board member's profile. Respondents had the option of selecting more than one answer from eleven possible options.

Professional managerial experience in the energy sector was the competence that respondents valued the most (answer selected by 48.84% of respondents) in candidates for supervisory boards in companies from the domestic energy sector. The chart in figure 3 presents a summary of the answers given to this question.

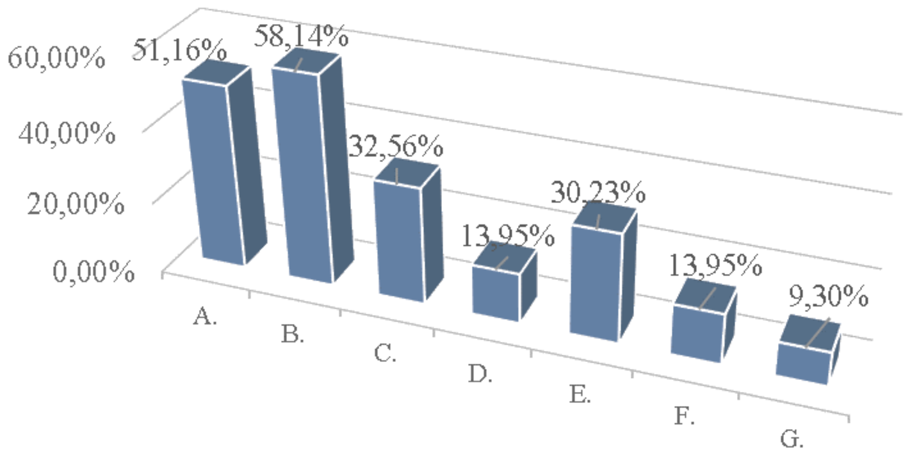


Legend of the diagram:
A. Professional managerial experience in the field
B. Knowledge of various business structures and financial models
C. Ability to voice independent opinion
D. Resistance to pressure of other board members when making important decisions
E. Knowledge of the sector
F. Ability to critically analyse information provided by the board of directors
G. Qualifications and experience helpful in process of monitoring of risk management
H. Understanding of owns role and duty to work in companies best interest
I. Willingness to engage in boards work
J. Adequate time allocation to ensure appropriate fulfilment of duties
K. High level of professional fulfilment and the desire for further self-development

Figure 3. Percentage of answers chosen as part of the survey to the question: What are the characteristics of desired supervisory board member? Source: own study.

The second most chosen answer was knowledge of the sector in which the company operates (44.19%). This similarity with the lead response is not surprising given that it is the market (sector, industry) and its realities that set the direction for the functioning in it entities. So knowledge of the market and its processes and conditions, in which they occur, according to the respondents is the most valuable ingredient of qualifications of persons applying for the function of a member of supervisory boards. The third most selected answer focused on the ability to assess the quality of information package received from the management board (32.56%). The ability to constructively and rapidly evaluate the information provided by management is one of the most important components of forming the desired profile of a member of the supervisory board. Undoubtedly also ability not to be influenced is an important feature of managers advising on supervisory board since also roughly three out of ten respondents (30.23%) picked this answer.

Fourth question, presented in figure 4, focused on the identification of the most important determinants of effectiveness of supervisory board. Respondents had the opportunity to select more than one option from seven possible answer options. Most votes were cast for the answer, which in essence stresses the diversity of the competences possessed by the individuals forming the board. According to the respondents, thanks to this universality of board members, it has real opportunities to supervise the company and monitor its results. In this question, the respondents also highlighted the very important skill of supervisory board members, namely the ability to ask the right questions.



Legend of the diagram:
A. Knowledge of company’s business model and of the processes taking place within it.
B. Presence of diversified and adequate to company’s need competences of members, allowing supervision and monitoring of companies’ results (very important skill: asking the right questions).
C. Absence of conflicts of interest – determines level of boards objectiveness.
D. Diligence secure receive reliable and sufficient information from the board, enabling the implementation of the tasks imposed on the board.
E. Ability to present board of directors with new challenges and goals.
F. Board not exceeding its competence.
G. Adequate to the workload remuneration of the supervisory board members.

Figure 4. Percentage of answers chosen as part of the survey to the question: What are the most important determinants of supervisory board’s effectiveness? Source: own study.

Over half of the respondents (51.16%) represent the view that understanding of the company's business model and of the processes taking place within it constitutes an fundamental element of effective operation of the supervisory board. This answer expressed by the respondents seems to be an obvious one, as today it is difficult to imagine effective functioning of any commercial institution, producing and selling goods, whose managers do not understand the rules of functioning of the modern market. Every third respondent (32.56%) indicated the need for the members of the supervisory board to provide guarantees of no broadly understood conflict of interest, so that they will make their decisions in an objective manner, not burdened with external obligations. Also, more than ⅓ of respondents (30.23%) is of the opinion that the ability to create organizational and business challenges for board of directors members is a very desirable feature that should characterize the supervisory board of companies of the domestic energy sector.

9. Summary

Survey results presented in the paper have been confronted and compared with the results of conducted expert interviews and indicate that in case of almost all areas experts asked were in agreement with the surveyed members supervisory boards.

Both in terms of factors limiting the effectiveness of supervisory boards and in terms of cooperation between the Management Board and the Supervisory Board, it should be concluded that the unlimited information flow, clearly identified and communicated by the supervisory board needs as to what information on the company's current operations they require and relevant competencies of board's members are the key elements that will result in desired development of the company and are indispensable components of modern management of energy sector companies.

In addition, appropriate professional competences were among the expected characteristics of supervisory board members of the energy sector companies in Poland. The key members are mainly required to have experience in professional management and knowledge of the industry. The research results coincide with the information sources that clearly indicate that a supervisory body's member should have appropriate competences to properly perform the supervisory duties arising from the possessed knowledge (education, training, professional titles, or academic degrees, etc.), professional experience and other necessary skills necessary to perform the entrusted function. The worldwide crisis triggered by the pandemic and its consequences, which to this day determines the shape of the market, has impacted the supervisory boards' functioning.

In summary leading determinants in the process of effective management of supervisory board are the professional experience and diverse and adequate competencies of the board members, adequate to the company's needs. In times of crisis, the supervisory board should collaborate with the management board. The supervisory board and management board should work out solutions together that should be implemented in the best interest of employees and the company.

The results of the research indicate that the effectiveness of the supervisory board is determined by the competences of its members, the article shows that the most important expectation set for supervisory boards is competence, where almost 63% of respondents responded so. In turn, among the indicated key competences, the highest score, almost 49% achieved "professional experience in the field of management in the sector".

In the context of subsequent questions, on the basis of this study, the question can be asked whether it is also possible to relate the effectiveness of the supervisory board to the effectiveness of the company.

The authors trust that the obtained research results will be the basis for further research on the functioning of corporate governance in the energy sector, the convergence of corporate governance systems taking into account corporate, industry and political and legal conditions, and ways to improve the mechanisms and tools of corporate governance.

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