# THE ROLE AND EFFECTIVENESS OF SUPERVISORY BOARDS OF COMPANIES LISTED ON WARSAW STOCK EXCHANGE IN POLAND

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**Abstract**

*In a world full of uncertainty and constant economic changes, key issues for companies are to minimize risk of activities and to secure a long-term growth. In countries like Poland, where the two-tier board model is common with regulations in the law, supervisory boards are playing a main role in controlling management boards' operational activities regarding implementation of previously accepted strategic goals in tight relation with a risk management. In this case, supervisory boards must act in the most effective way. Taking into consideration that public listed companies are obliged to publish all important information and in consequence they are the most transparent on the market, my decision to focus on companies listed on Warsaw Stock Exchange is the solution to the problem of presenting a real and full picture. I describe factors which determine effectiveness as well as a role of supervisory boards of Polish companies.*

**Key words:** *supervisory board, effectiveness, good practice, corporate governance, diversity, independent member, board committees, risk management*

## 1. INTRODUCTION

After crisis in 2008, when investors had disappointed of companies' credibility, the main target for management and supervisory boards became activities towards building new relations between companies and their environment basing on transparency, trust and reliability. Taking into consideration that a supervisory board is the representation of stakeholders, which rely on expertise of its members in order to ensure risk minimization and business growth, the supervisory board plays a very important role in a company life acting as a corporate controller and supervisor, and also advising other bodies and stakeholders of the company.

A general aim of this paper is a presentation of Polish regulations and studies from last years, describing structure and activities of supervisory boards of companies listed on Warsaw Stock Exchange (WSE) in Poland, as well as the factors of their effectiveness. Some areas of possible improvements in that matter are also worth to be pointed out. Therefore, the paper is divided into the following parts:

- A regulatory basis related to supervisory boards including good practices of corporate governance;
- Employee representatives, independent members and committees on the supervisory board;
- The supervisory board's capital including a human capital and diversity of members;
- Factors determining effectiveness of the supervisory board and possible areas of improvements.

But what is effectiveness? According to Drucker (Brainyqoute n.d.), effectiveness is doing the right things, so in the case of supervisory board's activities it may mean that the process of fulfilling duties by its members is not just a technical activity like checking tasks completion boxes: yes or not, but should be done with a full involvement of every member, especially because of collective character of the supervisory board. With regard to effectiveness, it is not important to do anything just to achieve a goal, but only right things related to the company's strategy and long-term development plan.

The supervisory board supervises all areas of company activities, in particular functioning of information system, including the accounting system. In the accounting system the supervisory board has a double role – an objective supervision of that system and on the other hand, a responsibility for the content of final product of that system, which is the financial report. The supervisory board, in the

same scope as the management board, is responsible for conformity of financial report with provisions of Act on Accounting (International Accounting Standards and International Standards of Financial Reporting, respectively). Board members should take active part in providing stakeholders with information coming from information system, among others. A stakeholders group of utmost importance is a group of owners, which interests are represented in a boardroom, but in public companies there are not only current shareholders, but also potential ones, which can be interested in getting information from the supervisory board. That is why the supervisory board members should prepare two groups of reports (Walińska & Gad 2012):

1. Reports for current shareholders with information to be presented at general meetings;
2. Reports for stakeholders with information to be presented on a company web page and additionally once a year: an evaluation of targets and main assumptions of company development to be included in the management board commentary (in report on activities) as well as an evaluation of company resources to be presented in financial report.

The evaluation of a company standing is made by the supervisory board absolutely on its own, independently from the management board. This is an evaluation of the management board's evaluation, but it is impossible to expect that management board will criticize its own activities, so the value of the supervisory board's evaluation is growing and becomes more objective, because the supervisory board keeps the distance to management process. A financial performance shows a quality of managing the company, which depends on activities in the company's policy and targets, strategy and planning process. The supervisory board should not be only viewed by interests of shareholders represented in a boardroom, but also by its cooperation with the management board, what creates management team of the company. Decisions between these two bodies should be made in the process of consultation, exchange of opinions and negotiations (Pietrusińska 2011).

The supervisory board must conduct a supervision, which has an influence on the company's future. A marginalization of the supervisory board means, in case of Polish public companies having strategic shareholder, not only a weakness of the general supervision over the management board, but also a limitation of one of the basic protection instruments of minority rights (Opalski 2006, p. 362).

## 2. A REGULATORY BASIS RELATED TO SUPERVISORY BOARDS IN POLAND

### *2.1. The "hard" law*

A source of Polish company law is the Code of Commercial Companies (CCC) from 2000 with its predecessor from 1934 – the Commercial Code, reinstated in 1990 after a change of the political system in Poland from socialistic to democratic one.

The capital market in Poland is regulated by the following legal acts: Act on Capital Market Supervision, Act on Trading in Financial Instruments, Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading, and on Public Companies. Statutory regulations conform to the standards of the Single European Financial Market, as defined in directives of the European Parliament and Council, and regulations of the European Commission. WSE operates under the Act on Trading in Financial Instruments of 29 July 2005 and under the supervision of the Financial Supervision Commission (GPW n.d.). The public company listed on WSE can be only the joint-stock company. The role and tasks (powers and duties) of its supervisory board are described in articles 381-392 of CCC, Act on Accounting of 29 September 1994 and Act on Auditors and Their Self-Governing Body, Entities Entitled to Examine the Financial Statements and on Public Supervision of 7 May 2009 (Act on Auditors).

CCC states that the supervisory board shall exercise permanent supervision over the company's activities in all areas of its business. Special duties of the supervisory board include the evaluation of the annual reports and statements of the management board as well as motions of the management board concerning distribution of profit or coverage of losses. The supervisory board shall also submit its own writing report to the annual general meeting. The statutes may provide with a broader scope of

powers of the supervisory board, in particular a list of operations required its authorization. It that case the management board has an obligation to obtain approval of the supervisory board prior to undertaking actions precisely specified in the statutes (e.g. related to substantial contracts; large investment projects, loans, debts, surety ships, issue of securities, setting-up, acquisition, merger, disposal or closing down of a new company or other current or future assets), otherwise the management board may ask for approval of general meeting. The supervisory board of joint-stock company shall consist of at least 5 members and execute its functions collectively; however, it may delegate its members to perform solely specific supervisory tasks. It is also entitled to appoint and remove members of the management board and to delegate one of its members to temporarily exercise the functions of the management board member when a vacancy arises and during that period the supervisory board function of such person shall be suspended.

*2.2. The "soft" law*

The capital market in Poland has been getting more and more professional every year and companies still are trying to attract new investors and increase value of their shares. In consequence, stakeholders, authorities and experts of capital market prepared with a broaden market consultations a set of rules of corporate governance as a „soft" law in the form of recommendations for public companies, named a code of best practice. European Commission allows Member States to freely decide about the way of introduction its recommendations on national level: it might be done by binding legislation or in a „soft" way – in a form of a set (code) of best practice, which shall be implemented basing upon a „comply or explain" principle. When the code of best practice is chosen, companies are obliged to make a statement once a year, informing about obeyed rules from the code, as well as to prepare a detailed and comprehensive explanation of the scope and reasons of substantial non-compliances to corporate governance rules (Oplustil 2006, p. 372).

The first Polish code of corporate governance rules was prepared by the Best Practice Committee – Forum of Corporate Governance and in the course of discussions with the Institute for Market Economy Research they drafted „The Best Practices of Public Companies 2002". The rules were amended by „The Best Practice of Public Companies 2005". After a public consultation in 2006-2007, WSE adopted the „Best Practice of WSE Listed Companies" in July 2007, which is valid until now with amendments and supplements in 2010 and 2011 under changed name: „Code of Best Practice for WSE Listed Companies" (CBP). CBP consists of a preamble and 4 sections:

I. Recommendations for Best Practices for Listed Companies;

II. Best Practice for Management Boards of Listed Companies;

III. Best Practice for Supervisory Board Members;

IV. Best Practices of Shareholders.

The best practices from sections II, III and IV are subject to the „comply or explain" principle with additional company information about circumstances and reasons of non-compliances, ways of how the company intends to remove non-compliances and information about planned action, which should minimize the risk of non-compliances in the future. The rules from section I – recommendations are not subject to principle mentioned above; they show trends concerning adequate levels of internal relations within listed companies as well as their relations with the business environment. Information about all of the rules should be included in annual reports on compliance with the corporate governance rules, to be prepared by WSE listed companies in accordance with the Resolution of Minister of Finance of 19 February 2009 (GPWa n.d.).

In 2013 WSE had appointed the Advisory Committee for Corporate Governance to identify areas and directions of changes of CBP, then in 2014 the draft was prepared, including detailed assumptions and the proposal of changes. The most important changes related to the supervisory board are as follows (GPWb n.d.):

- Increasing a pressure on the supervisory board as a body, which supervises: performance of the management board duties, company financial standing, achievement of strategic goals, quality and

credibility of financial information, as well as the entity which periodically evaluates indicated aspects of company activities, including yearly assessment of company compliance with corporate governance rules;

- Creating a chapter about a conflict of interests and transactions with related entities;
- Specifying remuneration policy issues more in detail;
- Paying more attention to diversity of supervisory boards in public companies.

The draft of changes was sent to public consultations on 19 December 2014. A deadline for sending remarks and proposals was 28 February 2015. So in the near future a brand new version of amended CBP is expected to be published by WSE.

There are duties of the supervisory board mentioned in CBP – rule III.1, additional to legal provisions in "hard" law (GPWa n.d.):

- Prepare and present once a year to the ordinary general meeting a brief assessment of the company's standing including an evaluation of the internal control system and the significant risk management system;
- Review and present opinions on issues subject to resolutions of the general meeting.

As the result of criticisms of the shareholder value theory, new solutions were formed in the corporate governance practices for the supervisory board (Aluchna 2014, p. 20):

- Higher share of independent members, representing also different communities/stakeholders;
- Greater importance of ethic in activities;
- A member from the company without voting rights;
- Spending more time on board meetings.

Another interesting initiative in a "soft" law is an activity of International Corporate Governance Network (ICGN) – non-governmental organization formed by mainly international institutional investors, having a substantial influence on the global capital market (Klimczak & Pikos 2010). In 2010 ICGN published a document named ICGN Corporate Risk Oversight Guidelines – universal guidelines prepared by the technical committee consisted of 17 members with support of experts from Anglo-Saxon countries, Asia and continental Europe, including experts from Poland. ICGN guidelines refers to ensure risk management effectiveness in public companies in terms of dividing tasks in the field of risk management supervision between a management board, a supervisory board and institutional investors. Enterprise Risk Management allows companies to increase control of their future performance. The supervision over that process becomes a new challenge to supervisory boards of public companies. According to ICGN guidelines, the process of risk management – preparation of required structures, regulations and procedures – should be in hands of the management board, but the supervisory board should approve mentioned above documents and then control their implementation by the management board. The supervisory board establishes limits for management board activities and in such a way additionally protects stakeholders against excessive and uncontrolled risk taking by the management board. ICGN introduces a new quality: effectiveness of the supervisory board in the range of risk management supervision should be monitored and evaluated by institutional investors. Effective risk management supervision requires from the supervisory board:

- Expertise of its members – ICGN guidelines pay attention to a necessity of self-evaluation regarding skills and knowledge and trainings (sometimes personal change in the boardroom must be done); planning the board's composition regarding expertise demand systematic approach to the process of board members appointments;
- Current access to important information, which allow evaluating competences and resources of the management board, resulting in possibility of effective identification, analysis and risk control.

Appointing a risk manager, or identifying other member of top management to direct contact with the supervisory board, will improve effectiveness of information flow to the supervisory board;

- Opening for communication with shareholders, assuming that shareholders can pay attention to substantial threats for the company before it will be done by the management or supervisory board. Guidelines propose repetitive meetings with shareholders to express their doubts and create other communication channels taking into consideration activities in accordance with legal provisions on trading of securities;
- Regular reporting (at least once a year) – the supervisory board should provide investors with a separate report, including information required to evaluation of quality of risk management supervision. The report shall consist of description of resources, structures and processes, which are the basis for the board in fulfilling its tasks, as well as a description of company's risk management policy.

## 3. EMPLOYEE REPRESENTATIVES, INDEPENDENT MEMBERS AND COMMITTEES ON THE SUPERVISORY BOARD

The structure of supervisory boards is only partly regulated by the Polish law. The supervisory board of a public company in Poland shall consist of at least 5 members. However, an employee representation on the supervisory board is not coming from CCC, but it is included in the provisions of the Act on Commercialization and Privatization of State Enterprises, so such option is almost absent in Poland and only few companies apply it (Bohdanowicz 2014).

Independent board members and board committees were recognized as a mean of corporate governance improvement in recommendations of European Commission in 2005 (Oplustil 2006, p. 371). According to EU regulations (2005/162/EC), independent members should be represented in the boardroom in the amount ensuring the equality in representation / influence on management board members and other members who represent specific groups. There shall be formed committees in a boardroom for: remuneration, nominations and audit, with a minimum of 3 members each and majority of independent members (Aluchna 2007, p. 106).

Company interest is an objective and complex category, so when it is defined, common interests of all shareholders should be kept in mind, including interests of minority shareholders and small investors as well as interests of other groups being in business relations with a company (stakeholders), such as creditors and employees, or even local communities, which environment the company is operating in. The presence in a boardroom of members who are independent of a main shareholder shall protect against the danger of identifying the company interest with the interest of that main shareholder, which has nominated them to the board. It allows achieving a balance between different category interests and makes supervision an objective activity in the company. A need for improving the supervisory board's work and strengthening the supervision in fields of special importance, from the perspective of protection a company's and shareholders' interests, shall result in establishing board committees, in majority consist of independent members. It is essential to specify a suitable number and expertise of independent members, aiming at achieving a balance between a need to protect interests of shareholder, which in accordance with a rule of proportionality of capital involvement and influence on the company (majority rule) should have a decision-making power in appointing members to its bodies, and a need for protection of company's and minority shareholders' interests against abuses of the main shareholder, for example by unfavourable transfer prices and a domination in company bodies (Koładkiewicz 2014).

CBP states that (GPWa n.d.):

- III.6: At least two members of the supervisory board should meet the criteria of being independent from the company and entities with significant connections with the company. The independence criteria should be applied under Annex II to the Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the

committees of the (supervisory) board. Irrespective of the provisions of point (b) of the annex mentioned above, a person who is an employee of the company or an associated company cannot be deemed to meet the independence criteria described in that annex. In addition, a relationship with a shareholder precluding the independence of a member of the supervisory board as understood in this rule is an actual and significant relationship with any shareholder who has the right to exercise at least 5% of all votes at the general meeting;

- III.8: Annex I to the Commission Recommendation of 15 February 2005 mentioned above should apply to the tasks and the operation of supervisory board committees.

The audit committee of the Polish supervisory board has a character of a board's standing working group, which does not limit decisional freedom of the supervisory board and does not have a right to act in the name of the company nor to represent the supervisory board towards other bodies and entities (Domański & Jagielska 2011, p. 20).

In December 2009, Act on Auditors went into force, which introduced audit committees to the supervisory boards of public companies as a mandatory element in the boards consisting of over 5 members. If the supervisory board consists of not more than 5 members, audit committee tasks are executed by the whole board (art. 86.3 of Act on Auditors). Until that time, establishing the audit committee was voluntarily, but recommended by second and third versions of Polish codes of good practices. A primary function of an audit committee is the supervision over the preparation of financial statements by the company, which are the basis for the publication of financial information (Spiechowicz 2010, p. 33).

Duties of the audit committee described in the Act on Auditors (art. 86) were concerned with monitoring of financial reporting, effectiveness of such systems as internal control, internal audit and risk management, execution of financial revision operations as well as independence of the auditor and the entity authorized to the examination of financial statements. The audit committee shall recommend to a supervisory board an entity authorized to examine financial statements in executing of financial revision of the company; decision is made by a whole board. The audit committee shall consist of at least 3 members, including at least 1 who should meet requirements of independence according the Act on Auditors and have qualifications in accounting or financial revision. An independent board member:

- Does not have shares or other ownership papers of the company, which is financially revised by her/him, or of the related company;
- In last 3 years did not take part in a preparation of accounting books or financial report of the company, which was financially examined by her/him;
- Is not a wife/husband or relative, including relation in direct line up to second level or with a person who is a member of supervisory, managing or administrative bodies of the company.

Respondents from ten WSE listed companies taking part in a survey in 2009-2010 confirmed that the key issue for audit committee activities is experience in accounting and finance of its members and their most important expected competences are: skills at reading and interpreting of financial results, a financial engineering background and a knowledge of drawing right conclusions. Most of respondents indicated a small involvement of their committees in monitoring and evaluating of internal control systems. Some companies rely on evaluation of certified auditor and some are mainly focused on monitoring of after-control tasks execution from last audit (Dobija et al. 2011, p. 70).

Representatives of Polish capital market institutions presented in a unique survey (respondents were not members of supervisory boards as usual) the following views referred to audit committees (Koładkiewicz 2014):

- Currently, audit committees are generally in large companies, mainly in banks – there is a strong audit committee in each WSE listed bank;

- Assuming that the supervisory board do not exceed 5 members and the audit committee is a whole supervisory board, so activities of such a committee are diluted – if everyone then none;
- Potential danger can appear when the obligation of establishing audit committees on the boards with over 5 members is governed by the "hard" law, so many companies, or even a majority of them, will have boards with 5 members in order to avoid extra duties and costs, including potential higher remuneration for such committee members;
- Establishing an audit committee should correspond to company needs and if companies do not establish them, it does not mean that they do not want to, but there is no sense in such reality;
- Establishing an audit committee will not automatically result in the quality of board's work, because other members should want to use advises of that committee;
- A preparation of particular issues by the audit committee substantially improves cooperation in the boardroom, the whole board does not go into details, but discuss solutions proposed by that committee;
- Working in a small group, where each member makes its best in the maximum available time, results in the board's decision-making process;
- The supervisory board is working more effective, when a draft of decision is discussed in a really small group, as the result board meetings last shorter, because everything is previously prepared;
- Establishing board committees may require additional costs to be spent by the company, and the creation of adequate structures may result in excess of such bureaucracy or control just to ensure that everything is in order; the utmost important function for the company is to fulfil requirements of such a committee, not doing business;
- Other effectiveness factor of an audit committee is its members' willingness to be involved in activities of that committee;
- Audit committee members should be constantly paid, relatively higher than other board members.

Audit committees in Poland do not have any decision-making powers. They only advise and consult some issues. In order to increase an influence of an audit committee in activities of companies, two actions are required (Piaszczyk 2014):

- Providing committees with powers in decision-making processes, at least in selecting an auditor for examination of company's financial statements;
- Increasing remuneration of audit committee members to attract experts in accounting and financial revision.

In Poland, most of audit committee members do not get any additional remuneration for the work in this body. Many public companies intentionally decreased a number of supervisory board members to 5 in order to avoid establishing an audit committee (PwC 2012). In such cases all duties of an audit committee relates to the whole supervisory board, but according to a survey in 2011 boards without audit committees do not spend enough time on regulatory tasks of that committee, do not meet often enough with auditor and manager of internal audit, and sometimes do not have even members with a proper expertise in a boardroom (PwC & Amrop 2013).

Only less than 20% of the supervisory boards of public companies established audit committee before 2009, and after that year, when establishing audit committee became mandatory in the supervisory boards consisted of over 5 members, it was still not much – ca. 40% (PwC 2012). Other survey presents ca. 54% (Gad 2012).

Main factors resulting in lack of establishing audit committees are as follows (PwC 2012):

- Supervisory board members have no free time for a greater involvement in audit committee activities (70% companies);

- Deficit of experts in accounting or financial revision (50% companies);
- Tough regulatory requirements concerning independence (25% companies).

Other committees established in a boardroom of WSE listed companies were as follows (Koładkiewicz 2013, pp. 255-256):

1. Remuneration committee to set up a remuneration policy and principles;
2. Nomination committee concerned with succession plans and revue of members according to practical resources;
3. Strategy committee involved in long-term strategy, especially focused on external conditions which can have a positive or negative influence on the company development;
4. Investment committee, which can be required in case of large expenditures;
5. Presidential committee called also a presidential commission, consisting of chairman, deputy chairman and two other members and such a 4 members group has a power to take decisions, which are confirmed by a whole board;
6. Brand management committee, particularly important in large companies.

Supervisory board committees favour higher board's activity and better division of tasks. The most popular in WSE listed companies are audit committees (45%), twice rarely are established nomination and remuneration committees (20%) and in few companies – strategy committees (3%) and risk committees (2%). Among companies from index WIG 20 (the most prestigious on WSE, companies with highest capitalization), there were only 2 companies establishing all 4 committees (PwC & Amrop 2015).

## 4. THE CAPITAL OF SUPERVISORY BOARDS

The supervisory board in Poland is a relatively young corporate body. It was introduced in a wide scale by the Act on Privatization of State Owned Companies of 13 July 1990. Polish regulations from CCC concerning the supervisory board's capital are quite general – there are no requirements related to expertise, education and experience of members, but no conflict with the law is the basic condition (art. 18 of CCC). As mentioned in chapter 2.1, the supervisory board member shall conduct a constant supervision over company activities in all areas of its business (art. 382 par. 1 of CCC) and shall use a sufficient care in fulfilling duties resulting from a professional character of her/his activities (art. 483 par. 2 of CCC). It means that a person, who intends to be a supervisory board member, should have appropriate knowledge, skills, expertise and experience allowing fulfilling duties adequate to company requirements, including supervision over company activities. CBP also does not specify characteristics of the supervisory board member stating in the rule I.6 that a member of the supervisory board should have appropriate expertise and experience and be able to devote the time necessary to perform his/her duties as well as should take relevant action to ensure that the supervisory board is informed about issues significant to the company (GPWa n.d.).

The supervisory board's capital is formed by its members-people, so that is why a human capital is the most valuable and interesting issue in this field, being studied by many researchers. The human capital is a part of intellectual capital - the intangible value of a business, covering its people (human capital), the value inherent in its relationships (relational capital), and everything that is left when the people go home (structural capital), of which intellectual property (IP) is but one component (Luthy 1998). Human capital is the value that the employees of a business provide through the application of skills, know-how and expertise (Maddocks & Beaney 2002).

The capital of the supervisory board, especially its component in the form of human capital, creates with no doubt the foundations for board's effectiveness. Their basic elements are: knowledge, skills and practical experience, mainly in the scope of management. An important challenge in the process of creation of board's capital is also to secure its diversity – demographic issues combined with elements

of human capital mentioned above, as well as diversity of visible attributes, which can be assured by the presence of male and female members in the boardroom, and their diversification in age and nationality. The main benefit, which is expected from the diversity of human resources in the boardroom, is to protect it against collegial (group) thinking. Thanks to its diversity also the scope of its activities should be increased, which should lead to growth of new challenges and creativity of its members. A positive effect of such issues should be also an increase of satisfaction from work, which has been done. If a satisfaction is present, there is also a desire to further activity and involvement, what undoubtedly should have an influence on activities of the whole board and on results from work (Koładkiewicz 2013, p. 118).

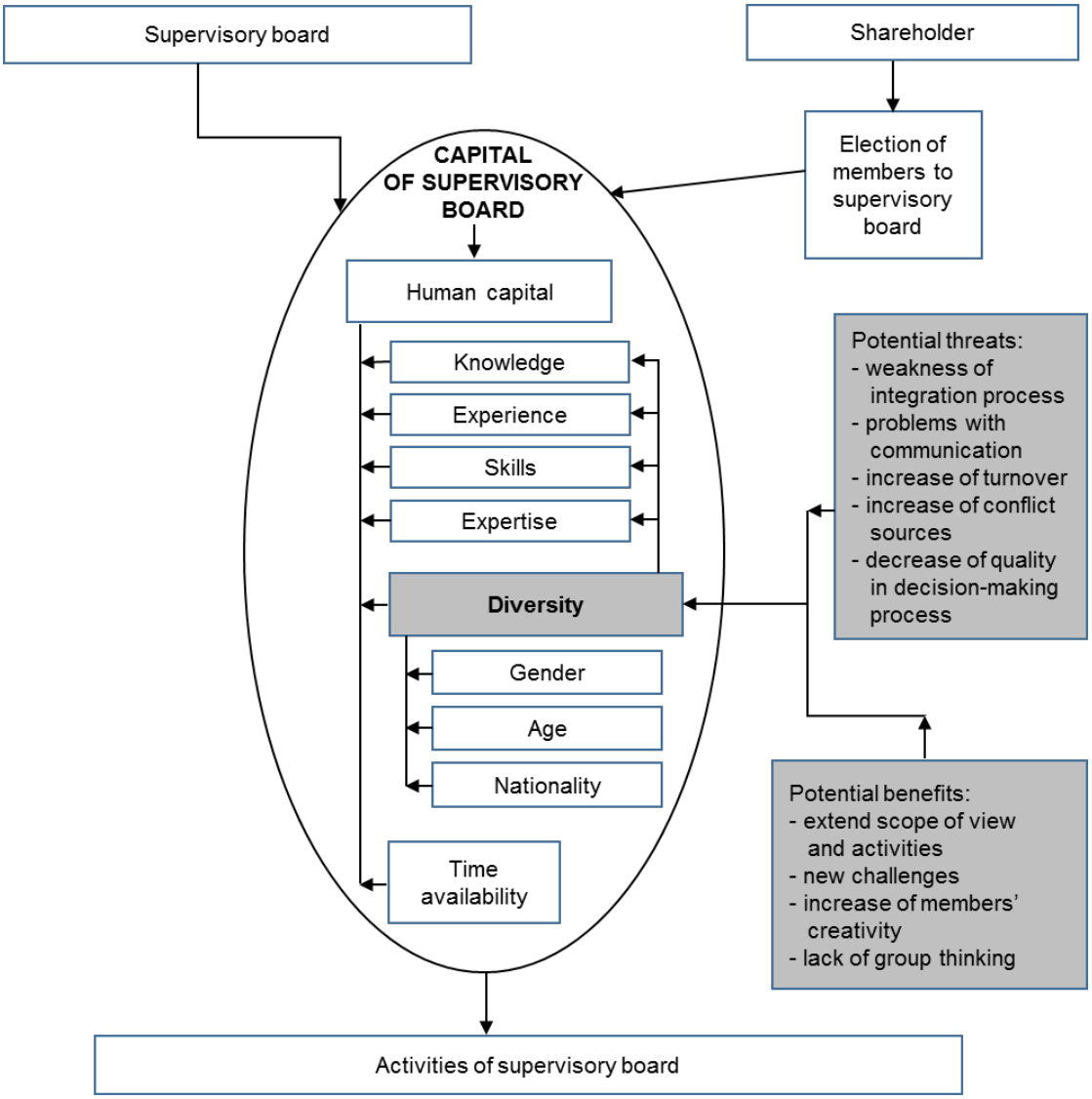



Figure 1 – The supervisory board's capital – key elements – important determinants of its activities.
Source: Koładkiewicz 2013.

Studies of good practices of corporate governance indicate that securing the capital in the boardroom, relevant to the company's requirements, should be a continuous process. As important actions in that field, the creators of good practices of corporate governance considered training courses for board members, aiming at development of their knowledge about the company and skills adequate to its needs. That kind of activity is not common within the supervisory boards – only 1 from 34

respondents during the survey (among 40 companies from WSE with the highest capitalization) mentioned about trainings and their importance for the board. It may arise from the thesis that board members recognize themselves as high level specialists and they don't have to take part in trainings. Systematic evaluation of the supervisory board's resources and results of its work (board's self-evaluation) were considered as next important factor by authors of good practices of corporate governance. It should be performed mainly on the level of the whole board, but also on the level of the each member. According to experts' opinions, it should help in identification of supervisory board's strengths and weaknesses, targeted to continuous increase of its quality. The observations, which have been completed until now in the field of board's trainings and self-evaluation, shows that practical usefulness of these processes is hard to describe, especially with no existing surveys in the mentioned area. There is only a discussion between experts, who recommend self-evaluation as an important activity in the creation of board's effectiveness, and opponents being board members. The board's self-evaluation is quite new in Poland, so there are a lot of questions regarding how and who should execute that process. General observations within the examined group of board members: only a few had a practical experience and took part in such process, but in a large scope it had informal character and was not a systematic action. A large portion of respondents had an opinion that self-evaluation was not a good idea and was not accepted by them, arguing many negative issues resulting from it, like possible manipulation in answers and in final report (Koładkiewicz 2013, pp. 146-157).

In Poland, yearly self-evaluation of board's activities was regulated in previous versions of WSE codes of best practices – 2007 and 2010, but disappeared in the 2011 version. But it had existed and had been examined even earlier. Analysis from survey in 2005-2006 presented that 17% (32) respondents declared introduction in their boards the self-evaluation procedure, apart from 26 ones indicated that it was evaluation of activities' efficiency and 6 ones that it was evaluation of competences of each member, but the majority of respondents – 79% (114) did not have experience in formal and periodic evaluation of the supervisory board or its members (Bohdanowicz 2009, p. 203).

Due to the fact that good practices are mainly concerned with structural areas of the supervisory board activities, they include also more detailed guidelines related to (Koładkiewicz 2013, p. 374):

- Ensuring knowledge, experience, skills, expertise and care about diversification of mentioned resources in a process of board's human capital creation;
- Independence criteria of members and a number of independent members in a boardroom;
- Size (number of members) of audit committee and its composition, including an independent member and members with expertise and experience in finance and accounting.

A research in 2011 among the supervisory boards presented the following (Gad 2012):

- In ca. 95% of companies the supervisory board had at least 1 person with expertise in finance and accounting;
- A majority of respondents (54%) informed that their boards met every quarter and 24% told that more often than once a two months;
- The most often issue at supervisory board meetings were current company activities required the supervisory board resolution (97%), second was an evaluation of financial performance (89%) and third – a control of financial plan (78%); relatively low (16%) were determining company targets as well as initializing and creating the company strategy (24%).

Supervisory boards should be more diversified to assess consequences of management board decisions better, to control them better, to advise more effectively and optionally to contact a company with its internal and external stakeholders much better. The studies in 2005-2009 confirmed a positive influence of gender diversity regarding financial performance in value of ROA and ROE, but in general a special value introduced by women in a process of taking strategic decisions, their positive influence in decision making, different management style, better use of intellectual and social capital and a company image improvement among different stakeholders. An appointment of a woman to the

supervisory board should be based on her knowledge and experience, not on gender only (Bohdanowicz 2011a).

A special role in a boardroom is reserved for the chairman, with a following number of tasks in Polish joint-stock companies (Czerniawski & Rapacka 2007, pp. 214-227):

- Ensuring an appropriate activity of a board with duties basic upon legislation (e.g. CCC), statutes, rules of procedure of the board, resolutions of general meeting;
- Convening board meetings and preparing a draft of agenda, which is specified by the board at the beginning of a meeting (art. 389 of CCC);
- Caring about a delivery in a right time for the meeting properly prepared materials to board members;
- Opening the meeting and care about its course;
- Ensuring that protocol from the board meeting will be written;
- Supervising on execution of made decisions;
- Taking an advantage of using a deciding vote (if applicable) (art. 391 of CCC);
- Opening of general meetings (art. 409 of CCC);
- Maintaining a current contact with management board members and a company's president;
- Talking to third parties in the name of the supervisory board.

## 5. FACTORS DETERMINING THE SUPERVISORY BOARD EFFECTIVENESS AND RELATED AREAS OF POTENTIAL IMPROVEMENTS

Research projects show that the most common understanding of company effectiveness is related to maximizing financial results, what reflects in measures based on book values (ROA, ROE) and market ones (Tobin's Q). A broader understanding, including effects for stakeholders, has not been popular yet (Marchewka 2013). A conclusion from a 3-years survey (2005-2008) was that a higher size (number of members) of the supervisory board had a negative influence on efficacy measured by ROE and Tobin's Q ratios (Bohdanowicz 2010).

Research materials collected through interviews with 34 respondents, being members of supervisory boards of 27 WSE listed companies among the top 40 in terms of capitalization in 2011, resulted in indication that the efficacy of supervisory board's activities should be executed by the supervision in cooperation with the management board. In respondents' opinions, main factors determining the supervisory board effectiveness are the following: its composition ensuring diversity of competences of members, their independence and curiosity, skills at getting information for the board, structuring of activity by establishing board committees, their interest in the company and involvement in its problems. Analyses from research indicate that a key importance is assigned to shareholders in the creation process of effective supervisory board and to a quality of its work (Koładkiewicz 2014a).

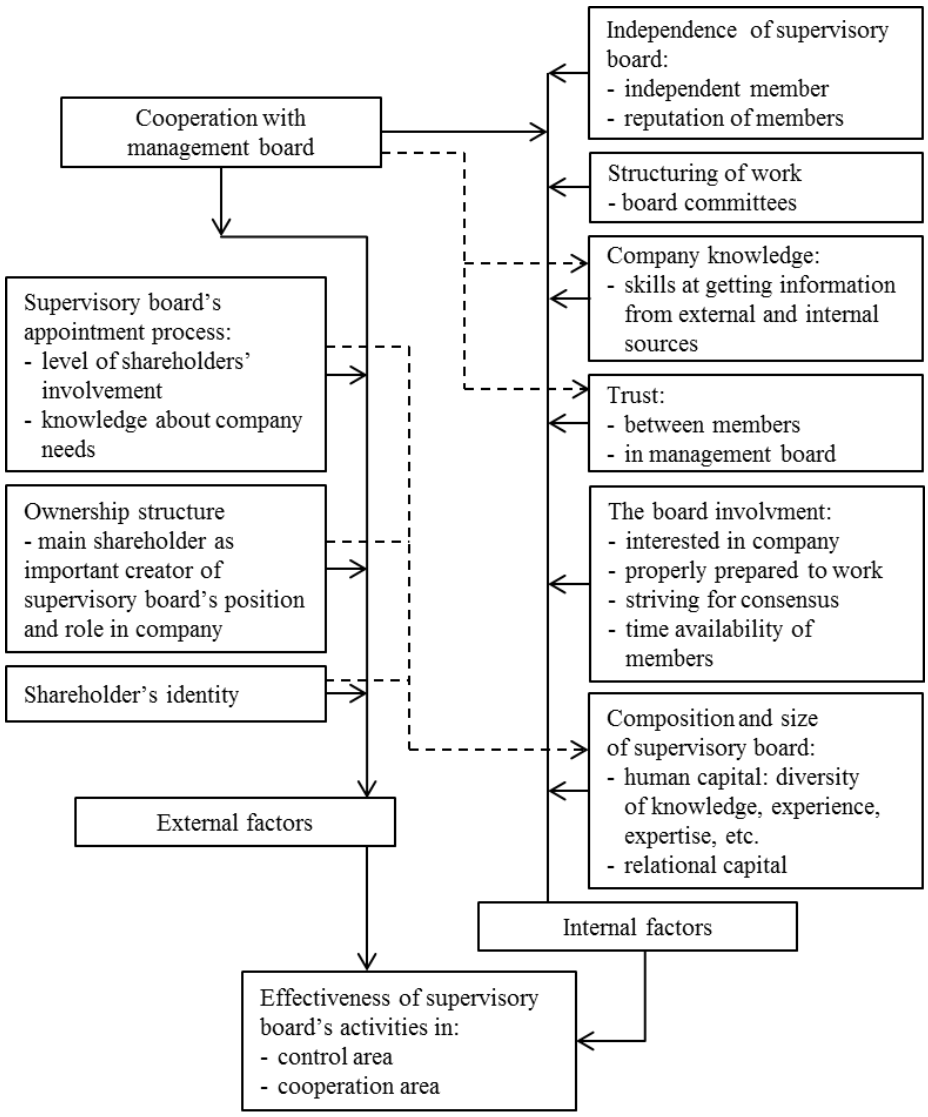



Figure 2 – Effectiveness determinants of supervisory boards' activities. Source: Koładkiewicz 2014a.

Other studies carried on in all public companies listed on WSE showed that key factors, which decided about supervisory boards effectiveness from the perspective of its members were the following: its diversity of composition, effective chairman with ability to be a good leader and coordinator, properly working board committees, good communication between the supervisory board and the management board and as a result – a mutual trust, as well as a competitive and motivating remuneration of supervisory board members (PwC & Amrop 2014).

An advisory role of the supervisory board is not regulated by the Polish law, but it is not also forbidden. In practice, researches in Poland confirm (e.g. a research among members of management and supervisory boards of Polish State Owned Companies) that supervisory boards may advise management boards collectively and as sole members, however, it is not the basic function of supervisory boards. They do not advise directly, but indirectly by their resolutions or approvals of management board opinions. The objectivity is crucial in the advisory role, which is possible when board members are independent from: relations in the company, political factors and other entities operating on the market (Postuła 2013).

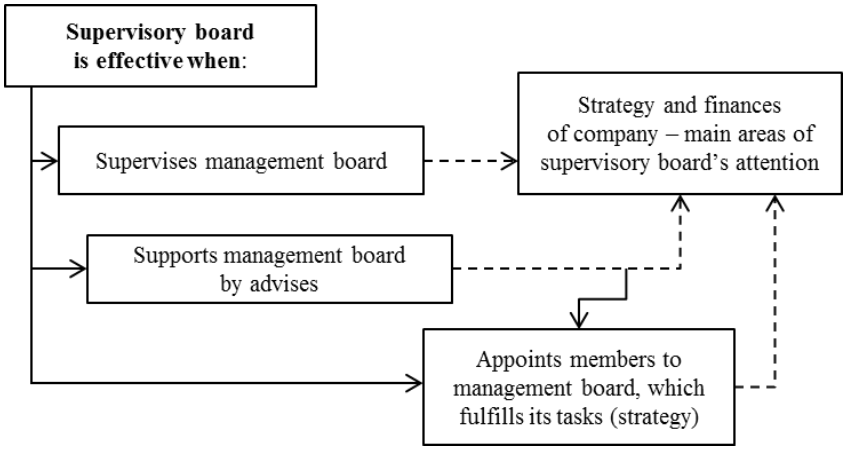



Figure 3 – Effective supervisory board – key elements of definition – main fields of activities. Source: Koładkiewicz 2014a.

Factors determining effectiveness of supervisory boards' activities are with no doubt a knowledge and experience of their members allowing them to perform supervision and advisory functions. A trend of expertise growth among members of Polish supervisory boards of WSE listed companies is observed. In examined group of 160 WSE listed companies at the end of 2005, the largest part were managers (31%) and next – employees of financial institutions (18%), consultants (9.5%), employees of public listed companies (6.7%), employees of universities (6.6%), lawyers in private practise (4.6%) and civil servants (3.9%) (Bohdanowicz 2009, p. 135). Basing upon the above mentioned types of members, a domination of managers with professional background (formal and theoretical) as well as practical one can be assumed in supervisory boards, which should result in effectiveness of their activities. Such assumption was not confirmed by researches in finding a correlation between companies' performance and education, experience and professional profile of supervisory board members. No substantial relations were found between performances of companies and mentioned above parameters (Bohdanowicz 2009, p. 148).

Analysis of Pearson's correlation concerning significance of a supervisory board to the company effectiveness indicated the following (Aluchna 2007, pp. 271-273):

- There is no statistically significant relations between size of a board and company ratios;
- There is a negative correlation significant on a tendency level between number of boards appointed in a year and ROA and ROE ratios;
- The company underperformance measured by ROA and ROE ratios coexists with higher turnover of board members;
- The significance of the company performance to a board members' remuneration was not confirmed;
- The company size is a very strong element coexisting with a level of a board members' remuneration, so the level of a board members' remuneration depends on the company size;
- There is a relationship between a level of a board members' remuneration and share of board members and banks in an ownership structure.

Studies from previous years show that composition of supervisory boards of WSE listed companies did not substantially change in past few years in education profile, age and participation of women and foreigners. There are two positive trends slowly arising: a number of professional members, with membership in more than one supervisory board, is growing as well as a number of members with experience in operational management. As far as supervision effectiveness is concern, an expertise of

members is the key issue. The Polish supervisory boards' composition remains unchanged, consisting of economists (2014-36%, 2013-36.6%, 2012-36.3%), engineers (14%, 14.3% and 15%, respectively) and lawyers (13%, 13.3% and 14.6%, respectively). Such a combination of expertise is relevant to tasks, which should be fulfilled: supervision over financial reporting, strategy and operational activities of companies (PwC & Amrop 2015).

At the beginning of research studies in Poland, such resources of the supervisory board's capital as knowledge, experience and expertise were specified, but as time passed by there was also recognized a need to get to know other elements of that capital, including its demographic diversity related to gender, age and nationality, as well as an influence of these elements on a quality of supervisory board's activities (Bohdanowicz 2009, p. 148).

Starting from the presence of women in the supervisory boards, it is not an optimistic situation however CBP includes rule I.9 stating that the WSE recommends public companies and their shareholders to ensure a balanced proportion of women and men in management and supervisory functions in companies, thus reinforcing the creativity and innovation of the companies' business (GPWa n.d.). Research showed that (Bohdanowicz 2011):

- At least 1 woman was in a supervisory board of over half of surveyed companies;
- A sector had an influence on number of women in supervisory boards – higher number of women was in supervisory boards of banks;
- A negative influence of company size on number of women in supervisory boards was observed;
- None influence of size of share package in the possession of the largest shareholder on number of women in supervisory boards of Polish public companies was found;
- A positive influence of size of corporate bodies on number of women in supervisory boards was noticed – more members in a supervisory board more female members;
- No influence of foreign investors and State Treasury ownership on number of women in a supervisory board was noticed, but an influence of financial investors and management board members was visible;
- Financial investors' ownership had a quite strong negative influence on number of women in supervisory boards, but positive influence of management ownership was confirmed.

The problem of a low representation of women in supervisory boards has been most often discussed in the field of corporate governance recent years. It is also recognized as one of the most important. The amount of women in supervisory boards is relatively low – mean 0.74. Comparing to 5.79 being the as a mean number of supervisory board members, it shows a full picture of symbolic share of women in supervisory boards of Polish public companies. Women are often appointed to supervisory boards because of gender, not their skills, being often family members of managers who are company owners. In this case supervisory bodies are not able to carry on their general function which is the control.

Negative correlation between company size and number of women in supervisory boards can inform about insufficient preparation of women to perform supervisory function, especially about insufficient experience, but in large companies the most desired supervisory board member is a person with an experience as a company president and the number of women on a presidential position is very low. Undoubted factor, which can surely have a substantial positive influence on increase of number of female members in Polish boardroom, is a confirmed result in better company performance. Few researches in that scope indicate a lack of statistically important correlation between gender diversity and a value of TSR ratio (a market measure of performance), but a positive influence of gender diversity on the value of ratios ROA and ROE was confirmed (Bohdanowicz 2011b). This matter requires further studies, which means that it is not sure if higher number of women in Polish supervisory boards results in an increase of their effectiveness.

Regarding a demographic diversity of members in the scope of age, the rule I.6 of CBP states that a member of the supervisory board should have appropriate expertise and experience, so the older

member the more expertise and experience she/he should represent. Polish boards are relatively young – most often age range of the supervisory board member is 40-50 years old (Bohdanowicz 2009, p. 129), comparing to European mean of 58.4 years old (Heidrick & Struggles 2011). The same like in case of women members, a factor deciding about starting actions towards diversification in age is its influence on a company performance, but research studies show negative correlation between age diversity of boards and company results. A weak positive influence of medium age of board members on value of ROA ratio was observed (Bohdanowicz, Jeżak & Matyjas 2008).

Relations with a main shareholder, appropriate professional background (formal and theoretic) and a good knowledge of a sector as well as relations which can be useful for company's development needs decide about an election of foreign members to Polish supervisory boards. Results of these studies indicate that foreign board members may have a role in the creation of board's quality and in consequence resulting in effects of board's activities (Koładkiewicz 2008a, p. 59). Moreover, a globalisation and no borders in EU allow companies to cross borders quite easy, so an important trend in the process of board's capital creation should be an increase of foreign members in Polish boards. But evidence from research among Polish supervisory boards show that such a trend passes them by. The level of foreign supervisory board members in Polish companies with strategic investor is quite high (29%), but in other companies it is only 2% (PwC & Amrop 2015).

In the context of looking for new members, whose membership could result in effectiveness of board's activities, a new group of professionals in Poland should be taken into consideration, which are professional board members. Summarizing some answers of respondents, it can be assumed that according to opinions and experience of respondents, effects achieved by the supervisory board are obtained under condition that such spectrum of skills is represented by board members, which allow to meet essential company's needs in key areas of its activities, but also ensure the knowledge about processes in its external environment. A need for a presence of the relative capital in a boardroom was not practically recognized by respondents. Analysing the supervisory board's composition (its capital) as a factor with substantial influence on effectiveness of its activities, surveyed board members recognized also the importance of board's demographic diversity of its members. Most often a gender, age and nationality were mentioned, but they were treated as less important than diversity in experience and business practice. Polish supervisory boards are definitely the men's world (there were only 2 women out of 34 respondents). A general observation from analysis of answers is that introduction of parities does not arouse applause, rather objection – an expertise should decide about the membership in a boardroom, not a gender, however women members enrich the board. On the other hand, foreign members in respondents' opinions provide wider perspective and good knowledge of specific sector or industry. About their presence in a boardroom should decide a scale of company business (larger companies are usually acts on foreign markets) or lack of specialists from specific sector in Poland. Unfortunately, in Polish reality it is still not practised challenge. A need for age diversification in a boardroom appears quite rare in research, what in respondents' opinions can be ensured by diversification of experience in management practice and life. As a weakness of Polish supervisory boards respondents assumed all of the above factors and as a reason of low valuation of management and sector expertise as well as low level of diversification they recognised that it comes from a history of Polish economy. In one respondent's view, a supervisory board member should have 20-30 years' business practice achieved in free market reality. However, an economic transformation in Poland was over 20 years ago, there was still relatively small group of people with such experience last time. In a survey, members with academic background were criticised a lot, because of their knowledge being more scientific than practical resulting in too much theory in business discussions, high tendency to postpone and low decision making, because they require 100% confirmation of their hypothesis, what in business does not exist. A discussion is often too much detailed about details, which are not important from the decision's perspective and it results in conflicts with managers, who solve such problems on day-to-day basis. A lack of agreement platform between supervisory board academic members and the management board is an important issue for the effectiveness of supervisory board activities – scientific approach versus practical one. Too many scientists in a boardroom can cause its homogeneity, however a part of respondents wanted to see scientists in a boardroom because of their important source of diversity and increase of expertise, but the success key

should be a reasonable balance. So an effective board composition should not be consist of only professors without contact with business life, because there will be only theoreticians, but there should not be only businessmen, because their view is too narrow (Koładkiewicz 2013, pp. 101-109.

A desired activity of board members is to obtain knowledge about the company by using information sources other than data received from management. The board prepared for the meeting in such a comprehensive way can play a role of a creator of a constructive conflict without any problem. A second important factor allowing the board to work properly is accumulated diversity of knowledge, experience and skills resources in a boardroom and a combination of these resources with knowledge about the company. A constructive conflict in relation between the board and top management team improves board's decision-making process and in consequence allow increasing effectiveness of board's activities (Koładkiewicz 2013, p. 343).

There are 2 groups of supervisory boards in Poland – active and passive ones. Passive ones reduce activities to minimal level, meet rare, and do not ask management boards, auditors or other advisors many questions, do not establish committees. Active ones, named also effective ones, are proactive and interested in trends, challenges and threats, which can have an influence on activities of supervised company as well as a company image and a company picture received by shareholders. They want to have a greater supervision over a communication with the market. They meet regular, discuss and try to understand supervised business as much as possible. They want to know how the company position towards its competitors looks like, using benchmarks. They are in permanent contact with a management board conducting active dialogue to build up a mutual trust. They have a clear division of tasks and duties resulting in establishing specialised committees. Effective boards care about having an efficient function of internal audit and risk management. They understand how internal audit system is working in the company. They also are up-to-date with latest technologies, because the significance of cyber-security and changes in new technologies is undoubtedly growing up. They both can be sources of opportunities and threats for the company. A role of the supervisory board is to supervise and monitor over the management board in the field of risk knowledge related to cyber-security and corresponding actions / initiatives taken up in order to its minimisation. The supervisory board can perform effective control by:

- Monitoring of expenditures level on security to be relevant percentage of tele-information budget (assumption is 4%), verification of activities oriented to assurance of security monitoring function and reaction on incidents in the company, verification of activities oriented to increase a knowledge about security among company employees;
- Motivating a management board to implement integrated approach to security management in the company – currently actions are divided between separate organisational units;
- Motivating a management board to include threats related to new technologies (mobile devices, cloud computing, social media, industrial automation systems) in expenditures and actions oriented towards ensuring security.

Latest studies showed that a declared average budget for security of tele-information systems comparing to IT budget was at the level of 5.5%, what – because of many years' underinvestment process – was a minimal value of expenditures.

The effective boards care about the company image. Active boards want to have a higher control and supervision over the company communication with a market. Brand new changes in regulations, introduced by new EU directive coming in force in 2016, support supervisory boards in that matter insisting on the presentation of a full information about the company thanks to wider reporting of non-financial information. The major motive of integrated reporting is a summary describing how the company is creating the value in time as well as a clear presentation of strategy and business model in relation to key performance indicators, so in aspects of company activities which are under influence of supervisory board – the board has an important role in the process of integrated report preparation and its acceptance. Integrated reporting is a future for the reporting process of public listed companies. Supervisory boards received a new tool to strengthen the importance and quality of supervision. The

involvement of the supervisory board and audit committee is crucial for effectiveness of integrated reporting. One of the most important elements of integrated report is a presentation of business model, which is concerned with long-term strategy of company development by the measurable, adequately set up, monitored and reliable key performance indicators, in a way showing how the company utilises its capitals to generate value. A risk management and presentation of opportunities and threats in the report are also important in the field of value creation in time.

Public listed companies substantially face a reputation (image) risk, which in case of being uncontrolled results in a collapse in the value of shares. The majority of respondents (54%) are at the opinion that the supervisory board should control if the management board reacts on crisis and if it is able to deal with such situation. Besides, supervisory boards should also support management boards, advise them, indicate and suggest ideas and possible solutions. The 38% of respondents answered that a board duty was a current cooperation with the management as well as taking part in internal and external communication. None of respondents indicated on board's coordinating role in solving crisis situation, but 8% of them mentioned that the board should ensure the lessons from crisis situation were learned for the future (PwC & Amrop 2015).

Another factor, which can have a positive influence on board's effectiveness, is a model of company's bodies. Law regulations in Poland allow only for two-tier model, but in many countries companies can choose between one-tier model and two-tier one. However, suggestions of some Polish economists for the introduction of one-tier model was not successful, it could create guidelines for Poland in the future. The optional board model can make company boards more flexible and adjust inside and outside members to specific challenges of the company and its ownership structure, e.g. the one-tier model with only inside members in smaller private and family companies as well as in subsidiaries of holding companies, however the two-tier model may fulfil needs of others. An adoption of the optional board model in Poland would improve the utilization of the social and intellectual capital of Polish supervisory boards, as well as allow their members to go beyond oversight functions and get more involved in the development of strategies and policies for the companies. Generally, the one-tier model excludes employee representation in supervisory boards and in consequence allows owners to appoint only desired members to supervisory boards, what in owners' view may increase the effectiveness of supervisory boards (Bohdanowicz 2014). Nevertheless, companies in Poland could have an opportunity to make the best choice of appropriate model, basing upon some evaluations and internal discussions.

Summarizing, current key challenges for supervisory boards of WSE listed companies are as follows (PwC & Amrop 2014):

1. Forming a professional staff of supervisory board members – in 2013 87% of members of mentioned above boards were only in 1 board;
2. Ensuring a proper fulfilment of regulatory duties by the audit committee – such committee was present in 48% of companies;
3. Providing the supervisory board with appropriate issues to fulfil its duties – access to information about the company, real influence on working plan of internal audit or forming of such structure if not present, a possibility to increase expertise by taking part in trainings financed by the company;
4. Efficacy of the supervisory board – periodic self-evaluation, currently not popular in companies, there are mainly internal discussions, but it is expected to become a common mechanism in the forthcoming years, which favours the increase of boards' effectiveness.

But the above mentioned challenges are only technical ones and the most important worry for shareholders is how the company is dealing with market problems today being prepared for the future and in the case of this paper – how the supervisory board is involved in supervising, supporting and advising in order to increase shareholder value and fulfil other strategic goals. As business landscape is changing and technological advances are creating significant advances, but also risks, there are new challenges and opportunities to be considered by supervisory boards, acting as a team in tight cooperation with companies' management, shareholders and legal-business environment (PwC 2015):

- Shareholder activism: preparing for potential interaction (crisis response plan);
- Emerging technologies: considering their strategic impact (Big Data, mobile devices, cloud computing, social media);
- Risk oversight: focusing on risk appetite (it may be adjusted as strategic goals and objective change) and third-party risks (especially if third parties have an access to the company's sensitive data and systems as well as comply with the company's data privacy and security policies);
- Cyber-security: overseeing the risk (prepare the company's cyber-security program protecting the most valuable data and getting an appropriate level of attention, resources and leadership, including trainings for employees and a special IT security budget);
- Crisis management: understanding the response plan (scenario testing to reduce the likelihood of mistakes and inefficiencies, engage an independent legal counsel relying on its credibility and objectivity for all parties as well as how to use social media);
- Financial reporting: keeping up with standard-setting and regulators (best practices compliance reports, integrated reporting);
- Investor perspectives: considering their views (to establish a communication protocol and to determine the supervisory board member and a person from the company to participate).

## 6. CONCLUSION

Free market economy does not have a long history in Poland, so Polish supervisory boards are also quite young comparing to Western European countries and other old economies. In consequence, Polish companies, including WSE listed ones, sometimes suffer from lack of high experienced supervisory board members with international background, especially in companies without strategic foreign investor.

Studies in Poland focused in initial stage on experience and education of members, but as time passed by researchers started trying to find some relationship between the supervisory board effectiveness and the company performance looking for some correlations and influences related to boards' composition and its diversity in gender, age and nationality. It is a very positive trend that board members of WSE listed companies are getting more professional complying with best practices, so in that way they are giving a good example to other companies in Poland, increasing standards on the whole Polish market.

The supervisory board has a double role – its primary function is to supervise company activities, but additional advisory one is also desirable. In order to carry on such role in a proper way, its members must constantly increase their knowledge about the company and the sector, improve expertise and skills and must be active. The effective supervisory boards are active in all areas of their supervisory and advisory activities, often and regular meet, cooperate with other company bodies and stakeholders, self-evaluate, take part in training courses, care about company image, engage in company strategy and business model, look for information about the company from different sources, prepare crisis response plans, take part in company's risk management and communication with the market, but also have a highly qualified chairman, professional and independent members with international background and sector expertise, specialised committees and motivating remuneration.

The effectiveness of supervisory boards of WSE listed companies can be determined by internal factors like its independent members, reputation of members, structuring of works, establishing committees, involvement in company life, composition (human and relational capitals) and size, as well as external ones like cooperation with management boards, appointment process, ownership structure and shareholder's identity. Nevertheless, the crucial issue for the company stakeholders, having an influence on board members, is to provide the company with such a supervisory board, which is suitable for company characteristics and requirements as well as expectations of shareholders.

Supervisory boards should have a constant assessment, crisis response and regular self-evaluation plans, basing upon they can increase their knowledge and expertise as well as readiness to benefit from new techniques and technologies as opportunities for the company, and on the other hand to prepare for new threats like economic crisis or cyber-attack.

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