

Control-enhancing mechanisms in state-owned companies - analysis of companies listed on the Warsaw Stock Exchange

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Abstract ***Purpose.** In countries with a developed economy, including Poland, the state seeks to retain control of enterprises (companies) operating in so-called strategic sectors, such as fuel and energy, chemical industry, transport, and telecommunications infrastructure. Proper control of these entities not only determines the effective implementation of economic policy, but it is also important to ensure the economic sovereignty of the state and public security.*

The purpose of this study is to identify and analyze control-enhancing mechanisms in SOEs listed on the Warsaw Stock Exchange (WSE), taking into account the division between majority and minority state ownership.

***Methodology.** Analysis of documentation.*

***Findings.** Based on the analysis of statutes and shareholder structures of the investigated entities, it is established that for companies with minority state ownership, the state uses control-enhancing mechanisms to gain effective control of the company. Similar mechanisms are also applied in companies with majority state ownership, where these mechanisms contribute to achieving full control of the company. The most commonly used mechanism is a dominant shareholder status and limitation of voting rights for shareholders other than the state.*

***Originality.** Apart from state-owned companies, this analysis also included companies indirectly controlled by the state.*

Keywords corporate governance, company, control-enhancing mechanisms, the state, Warsaw Stock Exchange

INTRODUCTION

When discussing the importance of state ownership, it is crucial to define the place of the state in the market economy. The prevailing view is that the state's presence should occur only in sectors where the overriding public interest requires it (e.g., the energy or fuel sector). With this approach, however, it is necessary to determine the extent of the necessary state presence in the economy (total or partial ownership) (Jeżak, 2010). However, this is not an easy problem to solve, given the experience of some Western European countries as described by researchers, which still have not developed a clear position on this issue. This is evidenced by the periodically changing approach to state ownership, according to the cycle of nationalization, reprivatization, and renationalization (Demb & Neubauer, 1992).

Attempts to define the relationship between a state and state-owned enterprises (companies) have also been inconclusive. Many state-owned enterprises (SOEs) are pursuing ambiguous strategies, on the one hand seeking autonomy, and on the other expecting greater protection from the state. As a result, states, as owners of these entities, need to rethink their relationships with their enterprises (Rentsch & Finger, 2015).

Maintaining state control over key companies for the economy's sake is a kind of compromise between productivity and broader social and economic interests, and is characteristic of both emerging economies and many developed countries (Pekao, 2020). From this point of view, the goals set for SOEs are different from those for commercial companies. While commercial companies are mainly focused on generating profits for their shareholders, SOEs fulfill, apart from economic goals, other specific social objectives, such as providing jobs, serving the public interest, or providing necessary goods (Razak et al., 2008). Due to the separate nature of private and state-owned companies, the corporate governance of SOEs forms a separate area of corporate governance issues, and state ownership determines the corporate governance model in this type of entity (Postuła, 2013).

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The governance of SOEs is critical to ensure their positive contribution to economic efficiency and competitiveness (OECD, 2015). Numerous empirical studies have shown the key role of corporate governance in the effective management of SOEs (Grossi et al., 2015; Papenfuss & Schmidt, 2015) and as a factor affecting business performance (Eforis, 2018; Lin et al., 2009; Muehlenkamp & Holger, 2015; Rossieta, 2017).

Mechanisms to control companies are an important element of corporate governance. Many researchers indicate control as one of the determinants of proper corporate governance (Ayuso & Argandoña, 2007; Cadbury, 1999; Gospel & Pendleton, 2003; Rudolf, 2012). Corporate governance may be exercised not only by the relevant statutory bodies of the company, but also by other groups interested in the company's business or operations (Zalega, 2000). Therefore, corporate governance is composed of a number of control mechanisms that can be either internal or external.

Internal mechanisms include mechanisms that allow shareholders to influence the management board. Among them, the activities of the supervisory board, along with its committees and of the general assembly of shareholders, play a central role. On the other hand, external elements of corporate governance operate outside the scope of the company's decisions and relate to all entities in a given market area; they are not company-specific but market-specific (Adamska, 2013). These may include entities interested in the company's business or operations (e.g., competitors, customers, suppliers, public authorities, media, and social organizations).

In most countries with a developed market economy, including Poland, the state seeks to retain control of enterprises (companies) operating in so-called strategic sectors, such as oil and gas extraction and transmission, electricity production and transmission, the chemical industry, transport, and telecommunications infrastructure. Proper corporate governance of these entities not only determines the effective implementation of economic policy, but also ensures the economic sovereignty of the state and public security (Oplustil & Pokrzycki, 2018). To ensure that these goals are achieved, the state as a shareholder applies control-enhancing mechanisms (CEMs), the governance devices responsible for increasing corporate control (Lin, 2017; Saggese et al., 2016). Such mechanisms foster the deviation from the proportionality principle (i.e., the "one share-one vote" or OSOV rule) between cash flow rights and voting rights (Adams & Ferreira 2008).

The purpose of this study is to identify and analyze control-enhancing mechanisms in SOEs listed on the Warsaw Stock Exchange (WSE), taking into account the division between majority and minority state ownership.

The study tests control-enhancing mechanisms in the state companies in a wider perspective than before (by including companies where the state is not a shareholder but nevertheless exercises control through entities controlled by the state).

In order to achieve the purpose of the study, the following research questions were formulated:

Q1: Does the state use control-enhancing mechanisms in all WSE-listed state-owned companies?

Q2: Does the scope and type of control-enhancing mechanisms depend on the size of the state's stake in the company's share capital?

Q3: Is the scope of the control mechanisms used in companies dependent on the sector in which they operate?

This survey expands existing Polish research on control-enhancing mechanisms in state-owned companies listed on the Warsaw Stock Exchange. This study proposes a broader approach to the problem that also includes companies indirectly controlled by the state. In addition to its theoretical contribution, this study can also provide guidance to state as well as commercial investors on investment strategy regarding such entities.

BACKGROUND

In Poland, according to the data of the Ministry of State Assets (Ministerstwo Aktywów Państwowych, MAP), there are currently 349 state-owned companies, and the state holds a controlling interest of over 50% in 150 of these companies (Ministry of State Assets, 2022). In fact, however, the number of companies under effective control of the state is much higher, as the following types of companies should be included:

- 1) Companies with minority state ownership over which the state exercises effective control by including provisions in their statutes, conferring a privileged position on the state;
- 2) Companies with minority state ownership, where the majority interest is held by one or more shareholders controlled by the state;

- 3) Companies with minority state ownership, where the state has a dominant shareholder status, and the remaining shareholders are dispersed;
- 4) Subsidiaries in a capital group, where the parent company is a company controlled by the state.

In all of these scenarios, the state exercises effective control over these types of companies.

Poland's largest state-owned companies, known as "national champions," are also the largest economic entities in Poland. As many as 6 of the top 10 biggest companies in Poland, according to the "Lista 500" ranking for 2021, are state-owned (Rzeczpospolita, 2022).

Polish state-owned companies are also among the biggest economic entities in the region of Central and Eastern Europe. In the Coface TOP 500 CEE 2021 ranking, PKN ORLEN S.A. tops the list of 10 biggest companies, ahead of the Czech global company ŠKODA AUTO A.S., with Polska Grupa Energetyczna S.A. and Polskie Górnictwo Naftowe i Gazownictwo S.A. also being in the top 10 (Coface, 2022).

Shares of the 22 biggest state-owned companies are publicly traded on the WSE. The functioning of these entities on the capital market requires the state to apply a specific approach to shaping ownership policy.

Control-enhancing mechanisms used by the state

When it comes the supervision of subordinate companies, the state can be a "portfolio" investor, which is seen as a factor weakening a company's activity, or a long-term investor, which may increase incentives to engage in a company's affairs. The combination of these two perspectives encourages the application of mechanisms that enable effective control without excessive involvement in the company's affairs (Adamska, 2013). The state, compared to other shareholders, is distinctive for how it operates and for its powers. Provisions included in companies' statutes secure a privileged position of the state, e.g., in the election of the supervisory board members or in voting at general assemblies. In addition, the state as a shareholder contributes to the limitation of rights of other shareholders, even if they hold significantly larger stakes compared to the state's holding (Wieczorek, 2018). Such practices are intended to ensure that the state effectively controls companies in which it does not hold a controlling interest.

Corporate control mechanisms used by the state can be divided into code-based and non-code-based (Bałtowski, 2015; Kuciński & Byczkowska, 2017).

Code-based mechanisms

For state-owned companies (as for all commercial companies), corporate governance is based on the Polish Commercial Companies Code (PCCC). For companies in which the state holds more than 50% of shares in the share capital, it generally uses standard control mechanisms, guaranteed by the majority of votes at general assemblies. In many cases, however, using code-based mechanisms, the state also seeks to assert its control over companies in which it holds a minority stake. For this purpose, the state uses the (PCCC) provisions, allowing for certain exceptions to the so-called "proportionality principle" which forms the framework of a capital company (especially a joint-stock company). This principle indicates that the shareholder's powers should be aligned with the scope of their capital participation in the company (as much power as the capital) (Oplustil & Pokrzycki, 2018).

The code-based mechanisms most frequently used by the state to increase the control of companies include:

- 1) Multiple voting rights shares (shares giving more than one vote);
- 2) Limitation of voting rights of shareholders (other than the state) holding more than 10% of the voting rights in the company;
- 3) Personal rights granted by the statutes to an individual shareholder (e.g., to the state or a shareholder it controls). In particular, they may be related to the right to appoint and dismiss a certain number of members of the supervisory board or the management board.

These mechanisms may be used where appropriate provisions are included in the statutes of the relevant company. It should be noted here that the mechanisms described above apply to all joint-stock companies, not only the state-companies.

Non-code-based mechanisms

The most important non-code-based mechanisms (i.e., those not explicitly covered by the PCCC and other laws) include:

- 1) The dominant shareholder status. This is a situation in which the state is a dominant shareholder in a company's shareholder structure, while other shareholders are dispersed. Minority (small) shareholders generally do not attend general assemblies, and as a result, it is easier for the general assembly to make decisions as desired by the dominant shareholder.

In some cases, the state can also form alliances to obtain a majority of votes (or a qualified majority) with private investors, such as investment funds (Bałtowski, 2015). This tool may also include capital links in the shareholder structure. Economic operators

linked by capital generate a dominant or dependent relationship that is reflected in the scope of corporate control exercised (Kuciński & Byczkowska, 2017).

2) The requirement of a qualified majority during general assembly votes on significant decisions on the operation of the company, whereby, with a dispersed shareholder structure, key decisions cannot be taken without the dominant shareholder (usually the state);

3) The right of the state to convene a general assembly irrespective of its stake.

As a consequence of the application of the above solutions, the operation of Polish companies with minority state ownership is very similar to companies with corporate governance fully in the hands of the state: Management and supervisory boards of these companies change with parliamentary elections (or even with changes in the office of the Minister of the Treasury), and the state has a decisive influence on the form of strategy or dividend policy in these companies (Bałtowski & Kwiatkowski, 2018).

In the Polish economy, the vast majority of cases where the state has “non-ownership-based” corporate control of companies (with only minority interest) are the result of a phenomenon referred to in the literature as “reluctant privatization.” All entities in these cases were the former property of the state, and the privatization processes initiated for them were not completed. As a result, the state continues to maintain minority interests in these companies and maintains a significant degree of corporate control (Bałtowski & Kwiatkowski, 2018).

To ensure control of selected entities, the state has also used the “golden share” mechanism in the past. This term usually refers to a specific right of its holder to influence strategic decisions in the enterprise. The adjective “golden” is intended to reflect the unique, valuable right of the holder (Matczyński, 2007). The state, as a holder of the golden share, was able to influence the most important decisions in the enterprise, holding only a small number of shares, sometimes even just one. The golden share mechanism was in contradiction with the “one share-one vote” rule (Kuciński & Byczkowska, 2017), and the mechanism in this form was challenged by the European Commission. As a result, the law which gave the state powers without linking them to the number of shares in a capital company, considered as conflicting with the principle of free movement of capital (Act of 3 June 2005), was replaced with a new law that introduced an institution of objection issued through an administrative decision regarding certain activities which would constitute a genuine threat to the company’s operations, business continuity, and integrity of critical infrastructure. (Act of 18 March 2010). However, the golden share mechanism provided for in the Act of 2005 was not used in practice, as the state had not disposed of the majority interest in the companies specified in the Act, which allowed the state to control these companies (Oplustil & Pokrzycki 2018, p. 466).

An important legal regulation to protect strategic enterprises from a hostile takeover by undesirable investors is the Act of 24 July 2015 on the control of certain investments. Its purpose is to protect Polish state-owned companies from a hostile takeover, i.e., to prevent an investor that is undesirable by the state from obtaining control where the investor’s activity carries the risk of operating the company against the interests and economic policies of the state. The basic safeguard mechanism provided for in the Act is the requirement to obtain consent from the controlling authority (relevant minister)) to invest in an entity to the effect of acquiring 1) dominance (i.e., reaching or exceeding 50% of the total number of votes at the general assembly) or 2) a significant stake (reaching or exceeding 20%, 25%, 33% of the total number of votes at the general assembly).

Protected companies are those companies that operate in key sectors of the economy which require special protection because of their key market share, scale of activity, or the fundamental interests of society. The Act was adopted in the wake of an attempted hostile takeover of Zakłady Azotowe in Tarnów in 2012 by the Russian company Acron (Oplustil and Pokrzycki, 2018).

Several researchers have conducted studies on mechanisms used to strengthen corporate control of companies applied by the state (Adamska, 2013; Bałtowski, 2015; Kuciński & Byczkowska, 2017; Wieczorek, 2018; Zmysłowska, 2015).

The results of these studies show that, in addition to capital control, the state also applies certain control leverage mechanisms which derogate from the proportionality principle. The following mechanisms are particularly often used for this purpose: 1) Limitation of voting rights of shareholders other than the state; 2) Personal rights of the state (usually the right to appoint members of the company’s bodies); 3) Multiple voting rights shares; 4) Increased majority thresholds during votes at general assemblies in matters important for the company. As a result of these mechanisms being applied, the state retains effective control of these companies.

The most recent of the aforementioned relevant studies was published in 2017. Since then, there have been changes in the list of companies listed on the WSE under control of the state, and changes in the shareholder structure of some companies (including the stake held by the state). In some cases, provisions strengthening the control of the state have also changed. In addition, the changing economic conditions have had an impact on the development of mechanisms to supervise companies. These changes over the past few years justify the need to explore this issue further.

METHODS

This study was carried out using document analysis, focusing on economic and legal documents. It sought to analyze several state-owned companies listed on the WSE for which a dominant shareholder is either the state or entities controlled by the state.

The survey was conducted on a sample of state-owned companies listed on the Warsaw Stock Exchange. At the time of the survey, 22 state-owned companies were listed on the Warsaw Stock Exchange. This set includes the largest state-owned companies. Taking only companies listed on the WSE into the sample is justified by the availability of data necessary for the analysis, which is only disclosed for listed companies.

According to the Commercial Companies Code, provisions on the rules of control of a company are included in the articles of association. The statutes of companies listed on the WSE, and their shareholdings, are published on the websites of these companies. Using this data source, the statutes of 22 companies were analyzed for the presence of control-enhancing mechanisms. The ownership structures of the surveyed companies were also analyzed in order to examine the size of the state's stake in relation to other shareholders.

The study did not cover companies wholly owned by the state, for which, due to the absence of shareholders other than the state, control mechanisms do not need to be applied as a general rule. The companies included in the study are shown in the following table.

Table 1. State-owned companies listed on the Warsaw Stock Exchange

No.	Company	Sector	Share of state or state-controlled entity in share capital (%)
1.	Alior Bank S.A.	financial	31.91 ^a
2.	Enea S.A.	energy	51.50
3.	Giełda Papierów Wartościowych w Warszawie S.A.	financial	35.01
4.	Energia S.A.	energy	90.92 ^b
5.	Jastrzębska Spółka Węglowa S.A.	mining	54.80
6.	Kogeneracja S.A.	energy	58.07 ^c
7.	Grupa LOTOS S.A.	fuel	53.19
8.	LW Bogdanka S.A.	mining	65.99 ^d
9.	Pekao S.A.	financial	32.80 ^e
10.	PGE Polska Grupa Energetyczna S.A.	energy	57.39
11.	Polskie Górnictwo Naftowe i Gazownictwo S.A.	mining	71.88
12.	Polski Holding Nieruchomości S.A.	real estate	72.17
13.	PKP Cargo S.A.	transportation	33.01 ^f
14.	Polimex Mostostal S.A.	construction	65.14 ^g
15.	Grupa Azoty S.A.	chemical	33.79
16.	KGHM Polska Miedź S.A.	mining	31.79
17.	Polski Koncern Naftowy ORLEN S.A.	fuel	27.52
18.	Powszechna Kasa Oszczędności Bank Polski S.A.	financial	29.43
19.	Powszechny Zakład Ubezpieczeń S.A.	financial	34.19
20.	TAURON Polska Energia S.A.	energy	30.06
21.	Grupa Azoty Zakłady Chemiczne „Police” S.A.	chemical	62.85 + 7.46 ^h
22.	Grupa Azoty Zakłady Azotowe „Puławy” S.A.	chemical	95.98 + 0.000005 ⁱ

a) 31.91% of the share capital is held by the state-controlled Grupa PZU S.A.

b) 90.92% of the share capital is held by the state-controlled PKN Orlen S.A.

c) 58.07% of the share capital is held by the PGE Energia Ciepła S.A. – a company indirectly controlled by the state,

d) 65.99% of the share capital is held by the state-controlled Enea S.A.

e) 32.80% of the share capital is held by PZU S.A. and PFR S.A., which are controlled by the state.

f) 33.01% of the share capital is held by the state-controlled PKP S.A.

g) 65.14% of the share capital is held jointly by ENEA S.A., ENERGIA S.A., PGE S.A. and PGNiG S.A.- companies controlled by the state.

h) The majority shareholder (62.86%) is Grupa Azoty S.A., - a company controlled by the state. In addition, the state holds 7.47% in the shareholding of Grupa Azoty Zakłady Chemiczne „Police” S.A..

i) The majority shareholder (95.98%) is Grupa Azoty S.A., controlled by the state. In addition, the state holds 0.000005% in the shareholding of Grupa Azoty Zakłady Azotowe „Puławy” S.A..

Source: Own work based on the statutes of listed companies and information on their shareholder structure published on the listed companies' websites.

RESULTS

The state or state-controlled entities exercise the rights conferred by shares in 22 companies listed on the WSE. The listed state-owned companies operate mainly in the fuel sector (37%), with a significant presence in the financial sector (31%) as well. Other sectors represented are mining (18%) and energy (8%). The stake of the state or state-controlled entities in the share capital of these companies ranges from 27.5% to 95.9%. The state or state-controlled entities hold a controlling interest (over 50% stake in the share capital) in 10 companies, and in 12 companies, their stake is below 50%.

The above analysis shows that the state uses control-enhancing mechanisms in all companies listed on the WSE with ownership of the state or state-controlled entities. The one mechanism used in all companies was having a dominant shareholder status, with the next most frequently used mechanisms including the personal right to appoint a chairman or members of the supervisory board (17 companies), and the right to convene a general assembly and limitation of voting rights of other shareholders (11 companies). On the other hand, the least frequently used control leverage mechanisms included preference registered shares and personal rights to appoint a president or a member of the management board.

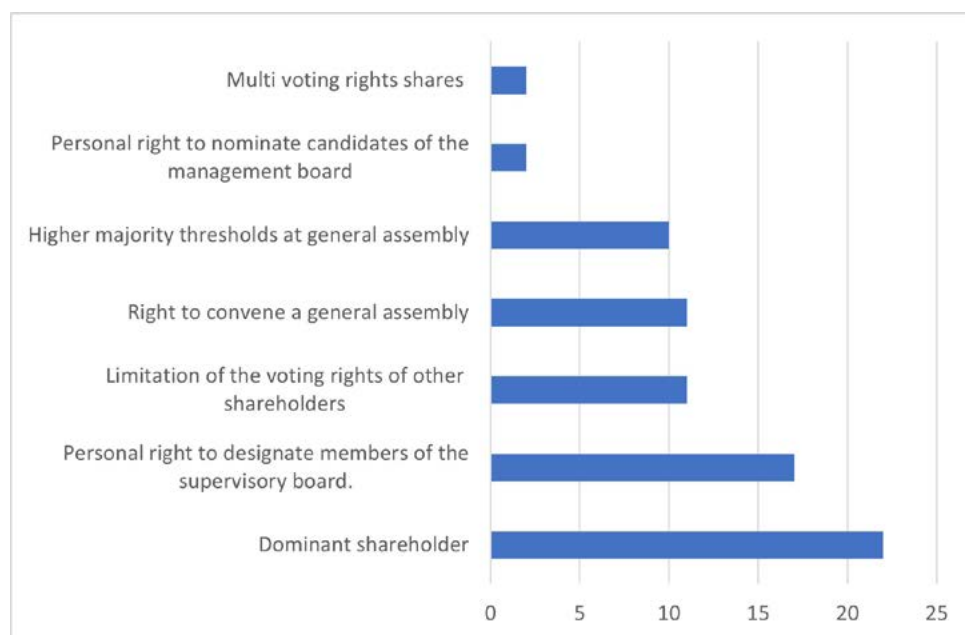


Figure 1. Control-enhancing mechanisms most frequently used in the statutes of the investigated companies.

Source: Own work.

Most provisions enhancing the state's control are included in the statutes of the following companies: PKP Cargo S.A., PKN ORLEN S.A., Grupa LOTOS S.A., and PGE S.A. These provisions are not included in the statutes of the following banking companies: Alior Bank S.A. and PKO BP S.A. However, the state still exercises effective control over these companies, given the size of the dominant shareholder's stake and the simultaneous dispersion of other shareholders.

In the group of companies with majority state ownership, compared to the group of companies with minority state ownership, a prevailing mechanism is the right of the state or state-controlled entity to convene a general assembly. On the other hand, in the group of companies with minority state ownership, the mechanism of limiting the voting rights of other shareholders was used more often. In addition to the aforementioned minor differences, the number of control-enhancing mechanisms in both groups of companies is generally comparable. This indicates that there is no fundamental difference in the number and nature of control mechanisms in companies with minority and majority state ownership.

Analysis also showed that control-enhancing mechanisms are used to the greatest extent in companies in the fuel and energy sectors, and to the least extent in companies in the financial sector. This allows us to conclude that the extent of control-enhancing mechanisms used depends on the sector in which the company operates.

Table 2. Control-enhancing mechanisms in state-owned companies listed on the WSE.

Companies with minority state ownership													Companies with majority state ownership												
Type of mechanism	PKN ORLEN S.A. (27.52 %)	PKO BP S.A. (29.43 %)	TAURON PE S.A. (30.06 %)	KGHM Polska Miedź S.A. (31.79 %)	Alior Bank S.A. (31.91%)	Pekao S.A. (32.80 %)	PKP Cargo S.A (33.01%)	Grupa Azoty S.A (33.79%)	PZU S.A. (34.19 %)	GWP S.A. (35.01%)	Enea S.A. (51.50%)	Grupa LOTOS S.A. (53.19 %)	JSW S.A. (54.8 %)	PGE S.A. (57.39 %)	Kogeneracja S.A. (58.07 %)	Polimex Mostostal S.A. (65.14 %)	LW Bogdanka S.A. (65.99 %)	PGNiG S.A. (71.88 %)	PHN S.A. (72.17 %)	Energia S.A. (90.92 %)	Grupa Azoty Police S.A. (62.85% %)	Grupa Azoty Puławy SA (95.98 %)			
A				■			■	■		■	■	■	■	■	■	■	■	■	■	■	■	■	■		
B										■											■				
C		■	■				■	■	■	■		■	■	■	■										
D	■	■	■				■	■	■		■	■	■	■	■	■		■	■	■	■	■	■		
E	■						■																		
F	■	■		■			■		■		■	■			■						■				
G	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■		

A - The right to convene a general assembly and place certain matters on the agenda.

B - Multiple voting right shares (1 share = 2 votes).

C - Limitation of the voting rights of other shareholders to 10% or 20% of the total number of votes of the company.

D - Personal right to designate the chairman or members of the supervisory board.

E - Personal right to nominate candidates for chairman of the board or member of the board.

F - Higher majority thresholds at general assembly required for certain categories of issues.

G - Dominant shareholder.

Source: Own work based on the statutes of listed companies published on those companies' websites.

Dominant shareholder

The dominant shareholder status of the state or state-controlled entities is evident in all of these companies. This status refers to a mechanism that involves shaping the shareholder structure in such a way that there is one shareholder holding a significant (but not always majority) interest, while the other shareholders are dispersed. Minority (small) shareholders generally do not attend general assemblies, and as a result, it is easier for the general assembly to vote as desired by the dominant shareholder. In some cases, the state may also seek allies among certain private investors, e.g., investment funds (see Bałtowski, 2015). The application of this mechanism gives the dominant shareholder effective control of the company, with the capital participation of approx. 32% stake in the company's share capital, which can be seen in certain companies, e.g., Alior Bank S.A. and Pekao S.A. In many cases, the dominant shareholder status is further leveraged by limitation of the voting rights of shareholders other than the state or controlled entities. This is the case, for example, for the following companies: PKN ORLEN S.A., PKO BP S.A., and TAURON PE S.A. The combination of these two mechanisms allows the dominant shareholder to exercise control of the company even with a 27.5% stake in the share capital (see Bałtowski, 2015).

Personal right to designate the chairman or members of the supervisory board

Personal right to designate the chairman or members of the supervisory board is the second most frequently used mechanism to control companies, occurring in 17 out of 22 investigated companies. In four of those companies, it takes the form of a personal right to appoint the chairperson of the supervisory board, and in other cases, it takes the form of the right to appoint members of the supervisory board. In the statutes of the investigated companies, this power has different variants. The broadest variant was applied in PKP Cargo S.A., where the dominant shareholder – PKP S.A. – is entitled to appoint or dismiss half of the supervisory board members (plus one, if the number is uneven). In addition, the dominant shareholder has the right to appoint the chairperson of the supervisory board and to determine the number of supervisory board members.

In the most narrow variant, which is seen in Enea S.A., for example, the state has the right to appoint one member of the supervisory board through a written statement submitted to the company's management board. These personal rights do not deprive the state of the right to vote in the general assembly on the election of other supervisory board members or the board's chairperson.

Limitation of the voting rights of other shareholders

In its most basic variant, this mechanism limits the voting rights of shareholders in such a way that at a general assembly, none of them can exercise more than 10% of the total number of votes existing in the company on the date of the general assembly. However, this limitation does not apply to the dominant shareholder. In addition, the voting rights of shareholders holding more than 10% of votes are limited to 1 share only, if the number of votes held by the shareholder is not disclosed.

Aside from the dominant shareholder status, this mechanism is one of the most effective methods to leverage corporate governance. It is included in the statutes of 11 companies.

Another variant of this mechanism is seen in Grupa Azoty S.A., which has a principle that, as long as the state or state-controlled entities hold the company's shares with at least one-fifth of the total votes existing in the company, the voting rights of the company's shareholders are limited in such a way that at the general assembly, none of them can exercise more than one-fifth of the total number of votes existing in the company on the date of the general assembly. This limitation does not apply to the state or state-controlled entities.

The right to convene a general assembly

In most cases, this takes the form of the right to convene an extraordinary general assembly and include certain matters in its agenda. In some cases (e.g., Energa S.A.), this right applies to a specifically mentioned shareholder (in this instance, the state). In other cases, the provisions indicate this to be for a shareholder holding a certain stake in the share capital (e.g., at least 30% or 50%), which in fact, due to the shape of the shareholder structure, means that this right applies only to the state or its controlled entity.

Higher majority thresholds

This mechanism introduces the principle that resolutions of the general assembly concerning certain categories of matters can be adopted if at least half of the company's share capital is represented, and they require a majority higher than that which is provided for in the Polish Commercial Companies Code for such activities. This majority is defined as, respectively: 3/4, 5/4, or 90% of votes. As a general rule, they apply to the following categories of matters: Preference shares; mergers, liquidation,

and incorporation of another company; acquisition of the company's own shares; transformation or transfer of the company's registered office abroad; and reduction of the share capital. This mechanism was used in 10 companies.

Personal right to designate candidates for members of the management board

This mechanism occurs in 2 companies. In PKP Cargo S.A., the dominant shareholder (PKP S.A.) has a personal exclusive right to designate candidates for the Chairman of the Management Board. In PKN ORLEN S.A., the state has the right to appoint one member of the Management Board, until the state disposes of the last share in the company.

Multiple voting rights shares

This mechanism is used in only 2 companies. In Giełda Papierów Wartościowych w Warszawie S.A., registered shares held by the state have a privilege attached to them that gives two votes per such a share at the General Assembly. As a result, a 35% stake of the state in the share capital results in 51.8% of votes at a general assembly. In Energa S.A., registered shares held by PKN ORLEN S.A. have a privilege attached to them that gives two votes per preference share at a general assembly. As a result, a 90.92% stake of the state in the share capital results in 93.28% of votes at a general assembly.

In 10 out of 22 companies, the stake of the state or state-controlled entities in the share capital does not exceed 50%. However, the use of the above control-enhancing mechanisms allows the state or its entities to exercise effective control of these companies.

These mechanisms allow the state to exercise effective control of the companies even if the state's stake in the share capital is between 27.5-35%.

On the other hand, in the statutes of companies in which the state or state-controlled entities hold a controlling interest (51.5-95.9% in the share capital), the state also includes provisions to strengthen corporate governance, to the extent that it is comparable with companies with minority state ownership. This is intended to strengthen the leverage effect and thus secure the appropriate majority for the state required for voting on matters of special importance to the company.

For some companies that are important for state security (e.g., Polskie Górnictwo Naftowe i Gazownictwo S.A., LW Bogdanka S.A. or PKN ORLEN S.A.), the state includes additional, non-standard provisions to strengthen control, related to the specific characteristics of the sector in which they operate. For example, in the statute of Polskie Górnictwo Naftowe i Gazownictwo S.A., a provision was included stipulating that consent of the minister responsible for energy matters would be necessary in order to amend material provisions of existing trade agreements on the import of natural gas into Poland and to conclude new such trade agreements. According to the statute, the minister should also give consent to the implementation of strategic investment projects, or to the company's participation in investment projects, which may permanently or temporarily impair the economic viability of the company's business, but which are necessary to ensure energy security. In addition, the management board of the company should submit to the minister upon every request, and in the form of the annual report, information on the tasks performed to ensure the country's energy security (Statute of Polskie Górnictwo Naftowe i Gazownictwo S.A.).

The statutes of LW Bogdanka S.A. include a provision that the purpose of the company is to carry out tasks related to the country's energy security through the execution of the company's mission and strategy, with regard to the mission and strategy of the ENEA Group, however, the execution of the mission and strategy of the ENEA Group may not prejudice legitimate interests of the Company's minority shareholders (Statute of LW Bogdanka S.A.).

On the other hand, the statutes of Polski Koncern Naftowy ORLEN S.A. stipulate that, as long as the state has the right to appoint a member of the Supervisory Board, resolutions granting permission to dispose of shares in the following companies: Naftoport Sp. z o.o., Inowrocławskie Kopalnie Soli S.A., and in a company to be established to carry out activities in the pipeline transport of fluid fuels, require a vote in favor of their adoption by a member appointed by the state (Statutes of the above companies).

In this context, the provision in the statute of Polski Holding Nieruchomości S.A. stipulating that the shares in the company held by the state cannot be disposed of seems to not be a standard one. The state's share of 72.17% in the company's shareholder structure means, in fact, that the state has guaranteed control of the company and that it will not be possible for another company to take it over (Statute of of Polski Holding Nieruchomości S.A.).

All of the analyzed companies are also required to comply with the following acts: Act of 16 December 2016 on the rules governing the management of public property and Act of 9 June 2016 on the rules for establishing the remuneration of persons managing certain companies, i.e., the application of appropriate requirements to candidates for members of management and supervisory bodies, the procedures for their appointment, and the application of appropriate rules for establishing their remuneration.

CONCLUSIONS

For all of the state-owned companies listed on the WSE, the state applies control-enhancing mechanisms to strengthen corporate governance by using both code-based and non-code-based mechanisms. The most important mechanisms for strengthening control include the dominant shareholder status and the limitation of voting rights of shareholders other than those related to the state. Other important mechanisms include the personal right of the state or state-controlled entities to appoint members of the supervisory boards and the right to convene general assemblies of the company. The least frequently used mechanisms were multiple voting rights shares and the personal right to designate candidates for members of the management boards.

In companies with minority state ownership, the control leverage mechanisms used are designed to secure control of those entities even if the state does not have a controlling interest. The application of these mechanisms allows the state to exercise effective control of a company with a 27.5-35% stake in the company's share capital. The state also uses similar control leverage mechanisms in companies in which it holds majority interests (51.5-95.9%). The mechanisms used there strengthen corporate governance, approaching full control of the entity.

There are no fundamental differences in the number and nature of control-enhancing mechanisms in companies with minority and majority state ownership. This indicates that the scope and type of control mechanisms do not depend on the size of the state's stake in the company's share capital.

Analysis also showed that control-enhancing mechanisms are used to the greatest extent in companies in the fuel and energy sectors, and to the least extent in companies in the financial sector. This allows us to conclude that the extent of control-enhancing mechanisms used depends on the sector in which the company operates.

For some companies that are important for state security, additional non-standard provisions are put in place to strengthen control, related to the specific characteristics of the sector in which they operate.

This study continues and expands on previous research on control-enhancing mechanisms in state-owned companies listed on the Warsaw Stock Exchange. The study has shown that the state as a shareholder is not only interested in realizing a profit on invested capital (Adamska, 2013), but also maintains the status of a privileged investor, exercising control rights at a higher level than is implied by its share in the company's capital. Such action may result from the role of SOEs as entities operating in strategic sectors for the state, which justifies the need for their special protection, for example, from hostile takeovers by foreign capital (Oplustil & Pokrzycki, 2018). On the other hand, however, an excessive number of instruments providing a privileged position to the state shareholder and limiting the entitlement of other shareholders may discourage investors from investing in such companies (Wieczorek, 2018), which may cause problems in raising external capital.

In companies with a minority state shareholding, the use of control-enhancing mechanisms is beneficial to the state, as it allows it to retain control over the company without having to over-commit capital. On the other hand, the examples of companies in the banking sector show that a smaller capital commitment does not always allow the state to use a wider range of control-enhancing mechanisms.

The Warsaw Stock Exchange is characterized by a relatively low degree of shareholder dispersion and a large role for institutional shareholders. This means that the minimum level of participation in the company's capital potentially providing a minority shareholder with control over the company is about 25% (Bałtowski, 2015). However, mere capital participation at that level (without using control-enhancing mechanisms) may not be sufficient to exercise effective control over the company's operations.

The results of this research, in practice, show that the use of CEMs in Polish state-owned companies listed on the WSE allows the state to maintain effective control over the company even without holding a controlling stake. This may provide important guidance for the state's investment strategy in such entities.

In the theoretical field, the study extends the existing knowledge on the CEMs used in Polish state-owned companies. It continues and develops previous Polish research on this topic, proposing a broader approach to the problem that also includes companies indirectly controlled by the state. The study can also provide a basis for further analysis of this issue, e.g., analysis of the effectiveness of CEMs in state-owned companies, or for comparisons of mechanisms used in state-owned companies vs. those used in private companies.

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