

Implementation of the Principle of Facilitating Exercise of Shareholders' Rights under Polish Law: Critical Remarks

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Abstract: This article analyzes the impact of implementing EU Directive 2017/828 on strengthening shareholder rights and engagement in the Polish legal framework. Despite the directive's aim of facilitating the exercise of shareholder rights, its practical impact has been limited, with only minor improvements observed, such as the obligation for companies to confirm the receipt and registration of votes. The study uses the dogmatic and comparative methods to demonstrate that the legislative changes resulting from the implementation of Directive 2017/828 into Polish law have only marginally improved the legal position of shareholders of listed companies, whose shares are admitted to trading on a regulated market.

Keywords: formal legitimacy, shareholder, public company, general meeting, intermediary, proxy, SRD II

1. Introduction

One aspect of the current discussion about the shape of corporate governance is strengthening shareholders' role in exercising oversight by increasing shareholder engagement. One way to increase this involvement is to adopt instruments that facilitate the exercise of shareholders' rights. The EU legislator adopted this approach through the provisions of Directive 2017/828,¹ the implementation of which was subsequently incorporated into Polish law.

This paper advances the hypothesis that, although the objective of facilitating the exercise of shareholders' rights with a view to enhancing shareholder engagement is clearly articulated at the EU level, the regulatory solutions adopted by the EU legislature and subsequently implemented into Polish law have contributed to this objective only to a limited extent. In particular, it is argued that the practical impact of these provisions on the effective exercise of shareholders' rights appears to be moderate rather than transformative. First, the article demonstrates that the provisions of Polish law implementing Directive 2017/828 do not depart from the literal wording of that legal act, but rather closely replicate its normative content. The analysis indicates that the Polish legislature refrained from introducing autonomous regulatory solutions that would substantially modify or expand upon the standards established at the EU level. Second, the article argues that the transposition of Directive 2017/828 into the Polish legal order largely

¹ Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (OJ L 132, 20 May 2017), 1–25 (hereinafter: Directive 2017/828).

consisted of clarifying, systematizing, and refining legal instruments already in force before the entry into force of that act. In this respect, the implementation process did not result in a fundamental restructuring of the existing regulatory framework; instead, it primarily served to align pre-existing national provisions with the requirements and terminology of EU law.

The issues covered in this article are essentially limited to considerations arising from the adoption and implementation of Directive 2017/828. The adopted limitations are intended to ensure transparency and substantive precision of the argumentation presented in the paper. The primary research method used to demonstrate the adopted thesis is the legal-dogmatic approach and comparative method. As part of the dogmatic method, the provisions of Directive 2017/828 and the provisions implementing them into the Polish legal system were subjected to a detailed interpretation. This analysis uses linguistic, systemic, and purposive interpretations to assess whether the adopted normative solutions actually achieve the EU legislator's declared objective of strengthening shareholder engagement by facilitating the exercise of shareholders' rights. A comparative method was employed to contrast the content and structure of the norms stipulated in EU legislation with the solutions adopted in the Polish legislature.

2. The Principle of Facilitating the Exercise of Shareholders' Rights in Light of EU Directive 2017/828

As part of the provisions on facilitating the exercise of shareholders' rights, Member States were required to adopt arrangements to ensure that intermediaries assist shareholders in exercising their rights, including the right to attend general meetings and to exercise voting rights at such meetings (Article 3c(1) of Directive 2017/828). The literature rightly emphasizes that the concept of "facilitating the exercise of voting rights" is not limited to the ability to attend and vote at general meetings. It also encompasses a number of other ways in which shareholders can exercise their voting rights.² The provisions of Directive 2017/828 establish only minimum requirements, which may be extended by the Member States when implementing the provisions of this legal act into their national legal systems.³

In light of the provisions of Directive 2017/828, the Member States may adopt provisions facilitating the exercise of shareholders' rights in the form of ensuring that intermediaries take the necessary steps to enable the shareholder, or a third party designated by that shareholder, to exercise the rights attached to the shares (Article 3c(1)(a) of Directive 2017/828).

The provision of Article 3c(1)(b) of Directive 2017/828 indicates that the exercise of shareholders' rights may also be facilitated through an intermediary exercising the rights attached to the shares under the authority and instructions of and on behalf of the shareholders. In such a case, the intermediary acts as the shareholder's proxy.

² Alessio Bartolacelli, in *The Shareholder Rights Directive II: A Commentary*, eds. Hanne S. Birkmose and Konstantinos Sergakis (Cheltenham: Edward Elgar, 2021), 111.

³ Jan Lieder and Martin Bialluch, in *European Corporate Law: Article-by-Article Commentary*, eds. Peter Kindler and Jan Lieder (Munich–Freiburg: Nomos, 2021), 880.

Furthermore, when voting rights are exercised via electronic communication, Member States are required to ensure that the person casting the vote receives confirmation that the vote was properly received (Article 3c(2), para. 1 of Directive 2017/828). After a general meeting, a shareholder, or a third party designated by the shareholder, should also be able to obtain, at least upon request, confirmation that their votes have been duly registered and counted by the company (Article 3c(2), para. 2 of Directive 2017/828). In addition, it should be noted that the provisions in this area expand those adopted by Directive 2007/36/EC.⁴ These provisions required Member States to adopt regulations, in particular, regarding the notice periods for convening general meetings, the content requirements for notices convening such meetings, and measures facilitating the exercise of voting rights (including participation in general meetings by electronic means, voting by proxy, and postal voting).⁵

Additional rules on the transmission of information, the formats to be used, and the deadlines for performing the obligations imposed on intermediaries under the provisions of Directive 2017/828 are set out in Regulation 2018/1212.⁶

3. Implementation of the Principle of Facilitating the Exercise of Shareholders' Rights into Polish Law – General Remarks

The provisions on facilitating the exercise of shareholders' rights, as set out in Article 3c of Directive 2017/828, have been transposed to Polish law in two legal acts: the Act on Trading in Financial Instruments and the Commercial Companies Code.⁷ This division not only requires navigating between the provisions of the two acts, but also has consequences, in particular, for the scope of the subjective application of the legal institutions adopted under these acts.

However, as rightly pointed out in the literature, the general principle of facilitating the exercise of shareholders' rights by intermediaries, expressed in Article 3c of Directive 2017/828, has not been implemented directly into Polish law by any statutory amendment.⁸ The amendments adopted by the Polish legislature primarily served to clarify

⁴ Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14 July 2007), 17–24 (hereinafter: Directive 2007/36/EC).

⁵ Lucia Ana Tomić, Marko Žunić, and Suzana Audić Vuletić, "Upcoming Challenges on Regulating Remuneration of the Directors and Implementing Remuneration Policies," *Journal for the International and European Law, Economics and Market Integrations* 5, no. 2 (2018): 328, <https://hrcak.srce.hr/213680>; Jakub Jan Zięty, *Uprawnienia akcjonariuszy polskich spółek publicznych w świetle Dyrektywy 2007/36/WE* (Warsaw: C.H. Beck, 2015), 65–149; Adam Opalski, "Reforma walnego zgromadzenia spółki akcyjnej – implementacja do prawa polskiego," *Przegląd Prawa Handlowego* 5 (2009): 8–17.

⁶ Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders right (OJ L 223, 4 September 2018), 1–18 (hereinafter: Regulation 2018/1212).

⁷ The Commercial Companies Code of 15 September 2000, *Journal of Laws* 2024, No. 18, as amended (hereinafter: CCC or Commercial Companies Code).

⁸ Stanisław Stefaniak, "Rola pośredników tworzących system depozytowy w relacji pomiędzy spółką giełdową a jej akcjonariuszami po implementacji dyrektywy 2017/828," *Przegląd Prawa Handlowego*, no. 2 (2023): 53.

the provisions in force before the implementation of the provisions of Directive 2017/828, or to align the provisions with the instruments adopted under that Directive.

4. Implementation of the Principle of Facilitating the Exercise of Shareholders' Rights in the Provisions of the Act on Trading in Financial Instruments

It should first be pointed out that the provisions of the Act on Trading in Financial Instruments,⁹ implementing the provisions of the Directive 2017/828 regarding the principle of facilitating the exercise of rights by shareholders,¹⁰ only apply to companies with their registered office in a Member State, at least one share of which is admitted to trading on a regulated market or on a foreign regulated market (Article 68i(1)(2) of the Act on Trading in Financial Instruments). This is therefore a narrower definition than the concept of a public company under the provisions of the Act on Public Offering,¹¹ which defines a public company as one with at least one share admitted to trading on a regulated market or introduced to trading in an alternative trading system in the Republic of Poland (Article 4(20) of the Act on Public Offering), as it does not include companies whose shares are introduced to trading in an alternative trading system. This means that the provisions of the Act on Trading in Financial Instruments apply to a relatively small number of companies.

In terms of the provisions of the Act on Trading in Financial Instruments, the Polish legislator imposed additional obligations on intermediaries in the form of providing shareholders with information on the number of shares held at the date of registering their participation at the general meeting (Article 68l(1)(1) of the Act on Trading in Financial Instruments). The intermediary is required to make this information available to the shareholder in accordance with the standardized formats set out in Regulation 2018/1212.¹²

This institution is, in fact, an addition to the legal institutions adopted in Polish law.¹³ Indeed, the number of shares is indicated on the registered certificate of the right to participate at the general meeting (Article 406³ § 1 CCC). In addition, pursuant to Article 406³ § 2 of the CCC, at the request of the shareholder, pledgee, or usufructuary, all or part of the shares registered in the securities account should be indicated on the certificate. Thus, it seems that the institution provided for in the provision of Article 68l(1)(1) of the Act on Trading in Financial Instruments has little practical use apart from the evidentiary aspect (referred to below).

⁹ Act on Trading in Financial Instruments of 29 July 2005, Journal of Laws 2024, No. 722, as amended (hereinafter: Act on Trading in Financial Instruments).

¹⁰ In addition, the definition of a listed company, as regulated in the provisions of the Act on Trading in Financial Instruments, also applies to instruments in terms of shareholder identification and communication between the company and its shareholders.

¹¹ Act on Public Offering and the Conditions Governing the Introduction of Financial Instruments to the Organised Trading System and Public Companies of 29 July 2005, Journal of Laws 2024, No. 623, as amended (hereinafter: Act on Public Offering).

¹² Jan Stranz, in *Obrót instrumentami finansowymi. Komentarz*, ed. Tomasz Sójka (Warsaw: Wolters Kluwer, 2022), 426.

¹³ Stefaniak, "Rola pośredników tworzących system depozytowy," 55.

The provisions of the Act on Trading in Financial Instruments also require intermediaries to provide listed companies with a notice of a shareholder's, or their proxy's, attendance at a general meeting (Article 68l(1)(2) of the Act on Trading in Financial Instruments). However, obtaining such a notice is not a condition for a person to have the formal legitimacy to attend a general meeting.¹⁴ It has been pointed out in the literature that this type of notice may, however, be relevant to shareholders acquiring shares in foreign companies through Polish investment firms, who will want to provide it if the law of the issuer's registered office requires them to participate in a general meeting.¹⁵

Under the applicable legislation, it should be pointed out that information from intermediaries to shareholders on the number of shares held, or intermediaries sending companies a notice that a shareholder, or their proxy, will attend a general meeting, may be of particular relevance when it is necessary to demonstrate formal legitimacy based on Article 406³ of the Commercial Companies Code. In this respect, it should be pointed out that there is a dispute in the doctrine.

One view holds that a prerequisite to participating in the meeting is obtaining a registered certificate of right to participate in the general meeting, which is issued at the shareholder's request by the entity maintaining the securities account.¹⁶ This means the shareholder must actively obtain a registered certificate as a prerequisite for the shareholder's legitimacy to participate in the general meeting.

The contrary view is that a sufficient condition for formal legitimacy is that the shares are held in a securities account on the record date.¹⁷ As a result, the shareholder's formal legitimacy can be proved by other evidence.

The author of this paper, who supports this view, points out that, in light of the applicable regulations, such evidence may be the information and documents specified in Article 68l of the Act on Trading in Financial Instruments.¹⁸ Therefore, obtaining a registered certificate of right to participate in the general meeting should not be regarded as a mandatory prerequisite for exercising those rights. Instead, it is one of several legally acceptable methods for proving shareholder legitimacy.

¹⁴ See: Dominik Mizerski, "O problematyce legitymacji akcjonariusza do udziału w walnym zgromadzeniu spółki publicznej," *Przegląd Prawa Handlowego*, no. 4 (2025): 33–38.

¹⁵ Stefaniak, "Rola pośredników tworzących system depozytowy," 54–55.

¹⁶ Robert Pabis, in *Kodeks spółek handlowych*, ed. Adam Opalski, vol. 3B, *Spółka akcyjna. Komentarz. Art. 393–490* (Warsaw: C.H. Beck, 2016), 262–63; Andrzej Herbet, in *Kodeks spółek handlowych. Komentarz*, vol. 3, eds. Stanisław Sołtyński et al. (Warsaw: C.H. Beck, 2013), 1062; Jerzy P. Naworski, in *Kodeks spółek handlowych. Komentarz. Tytuł III. Spółki kapitałowe. Dział II. Spółki kapitałowe*, eds. Radosław Potrzebszcz and Tomasz Siemiątkowski (Warsaw: LexisNexis, 2012), 777; Michał Bieniak, in *Kodeks spółek handlowych. Komentarz*, Jacek Bieniak et al. (Warsaw: C.H. Beck, 2024), 1267; Judgment of Appellate Court in Kraków of 1 July 2022, I AGa 394/21.

¹⁷ Mateusz Rodzynkiewicz, *Kodeks spółek handlowych. Komentarz* (Warsaw: Wolters Kluwer, 2018), 967; Marek Michalski, in *Kodeks spółek handlowych*, ed. Andrzej Kidyba, vol. 3, *Komentarz do art. 301–490* (Warsaw: Wolters Kluwer, 2020), 593–95; Marcin Spyra, in *System Prawa Prywatnego*, ed. Andrzej Szumański, vol. 2b, *Prawo umów handlowych* (Warsaw: C.H. Beck, 2019), 438.

¹⁸ Mizerski, "O problematyce legitymacji akcjonariusza," 33–38; in this direction also: Konrad Zacharzewski, in *Prawo rynku kapitałowego*, eds. Marek Wierzbowski, Ludwik Sobolewski, and Paweł Wajda, vol. 1, *Komentarz* (Warsaw: C.H. Beck, 2023), 673.

5. Implementation of the Principle of Facilitating the Exercise of Rights by Shareholders in the Provisions of the Commercial Companies Code

Provisions on sending confirmation to shareholders that their votes have been received and counted by the company have been incorporated into the Commercial Companies Code. In this respect, these provisions supplement and elaborate on the existing provisions of this legal act, which implemented the provisions of Directive 2007/36/EC.¹⁹ This applies, in particular, to the exercise of voting rights by electronic means of communication.

In the case of exercising voting rights through electronic means of communication, the company must immediately send the shareholder electronic confirmation that it has received details of the vote (Article 406⁵ § 5 of the Commercial Companies Code). In addition, upon request from the shareholder made within three months from the day of the general meeting, the company has to send the shareholder, or a nominated proxy, confirmation that their vote was properly registered and counted, unless confirmation was already provided to the shareholder, or proxy, earlier (Article 406⁵ § 6 CCC).

In the first case, Article 406⁵ § 5 of the Commercial Companies Code imposes an obligation on joint-stock companies to send an acknowledgment of receipt of a vote exercised by electronic means. The confirmation referred to in Article 406⁵ § 5 of the Commercial Companies Code is mandatory and unconditional, i.e., it does not depend on a request for confirmation submitted by a shareholder or their proxy. Such confirmation should also be sent, regardless of whether the shareholder acted in person or had the right to vote exercised on their behalf by a proxy.

In the second case, as stipulated in Article 406⁵ § 6 of the Commercial Companies Code, the company sending the shareholder confirmation that their vote has been correctly registered and counted requires the shareholder to submit a request, which can be sent by any means.²⁰ In particular, the request may be sent by email, even without an electronic signature or a qualified electronic signature. It appears that the confirmation requirement set forth in Article 406⁵ § 6 of the Commercial Companies Code, in accordance with the principle of *lege non distinguente*, applies to the exercise of voting rights at a general meeting and to voting before a general meeting.

The Polish legislator has decided that such a request may be made up to three months after the date of the general meeting. The time limit set out by the Polish legislator is the maximum time limit resulting from Article 3c(2), para. 2 of Directive 2017/828, which allows the introduction of a maximum time limit of three months within which such a request may be submitted. Although the three-month deadline adopted by the Polish legislator is permissible under Directive 2017/828, it appears to be too long. Introducing a shorter deadline, as the German legislator has done, for example, in Section 129(5) of the AktG,²¹ which sets a one-month deadline for a shareholder to make a request, would require shareholders to act more quickly to make a request.

¹⁹ Zięty, *Uprawnienia akcjonariuszy polskich spółek publicznych*, 65–149.

²⁰ Karol Szymański, in *Kodeks spółek handlowych. Komentarz do zmian (tzw. prawo holdingowe)*, eds. Andrzej Szumański, Radosław L. Kwaśnicki, and Filip Ostrowski (Warsaw: C.H. Beck, 2022), 632.

²¹ The German Stock Corporation Act of 6 September 1965 (Federal Law Gazette I), 1089.

In addition, it should be noted that Article 3c(2) of Directive 2017/828 obliged Member States to impose an obligation on companies to provide shareholders with confirmation that their vote has been duly registered without a separate request from shareholders. However, it seems disproportionate to impose such an additional obligation on companies.

If such confirmations are received by intermediaries, within the meaning of the provision of Article 68i(1)(1) of the Act on Trading in Financial Instruments, the rules on intermediaries sending confirmations (if they act as intermediaries in sending such confirmations) are governed by the provisions of Regulation 2018/1212. The provisions of this legal act set out the detailed timing, formats and content of messages sent by information intermediaries. They also establish the form of the confirmation of receipt and of the correct registration and casting of votes sent by companies.

When assessing the instruments adopted pursuant to Articles 406⁵ § 5 and § 6 of the Commercial Companies Code, it is important to note that the provisions implementing the principle of facilitating shareholder rights under the code have a broader scope than those introduced under the Act on Trading in Financial Instruments. The provisions of the Commercial Companies Code, to the extent that they govern the above instruments, apply to any joint-stock or limited joint-stock partnership (shares in such companies do not have to be listed on regulated markets or alternative trading systems for the instruments to apply).²² In this respect, the subjective scope of these provisions is analogous to that of the provisions adopted in the Commercial Companies Code, which implement Directive 2007/36/EC.²³

In addition, it should be noted that the rules on intermediaries sending confirmations (if they mediate in connection with such confirmations) are governed by Regulation 2018/1212. The provisions of this legislation set out the detailed timing, formats, and content of the messages transmitted by intermediaries.

While the provision of Article 406⁵ § 5 of the Commercial Companies Code obliges companies to immediately forward the confirmation of receipt of votes (the obligation to immediately provide such confirmation also arises from Article 9c(5) first intent of Regulation 2018/1212), the provisions of the Commercial Companies Code do not specify a deadline by when companies have to perform the obligations arising from Article 406⁵ § 6 of the Commercial Companies Code. It should be assumed that this obligation takes effect immediately, as with the provision in Article 406⁵ § 5 of the Commercial Companies Code. To determine the deadlines for submitting the confirmation specified in Article 406⁵ § 6 of the Commercial Companies Code, reference should be made to Article 9c(5) second intent of Regulation 2018/1212, according to which the issuer should confirm the recording and counting of votes promptly, no later than 15 days after

²² Bieniak, *Kodeks*, 1269; Tomasz Szczurowski, "Nowelizacja kodeksu spółek handlowych w dobie COVID-19," *Przegląd Ustawodawstwa Gospodarczego*, no. 11 (2020): 51, <https://doi.org/10.33226/0137-5490.2020.11.6>.

²³ Krzysztof Oplustil, "Analiza projektu ustawy implementującej dyrektywę 2007/36/WE w sprawie niektórych praw akcjonariuszy spółek notowanych na rynku regulowanym," *Czasopismo Kwartalne Calejgo Prawa Handlowego, Upadłościowego oraz Rynku Kapitałowego*, no. 3 (2008): 369.

the request or the general meeting, whichever is later, unless this information is already available.

Notwithstanding the above deadlines for submitting relevant confirmations, it should be noted that a failure by companies to provide confirmations as required under Article 406⁵ § 5 and 406⁵ § 6 of the Commercial Companies Code is not sanctioned by any specific provision of the code. This does not exclude civil liability for companies' failure to perform these obligations, though such liability is largely theoretical.

Furthermore, a shareholder effectively casts their vote regardless of whether or not the company has sent them confirmation. The confirmation sent by the company should be treated as a statement of fact, i.e., confirmation that the votes have been cast and received, together with possible confirmation that they have been registered and counted. This results from the fact that the provisions of the Commercial Companies Code do not confer any legal effect on such confirmation.

In addition, under the current regulations, it should be noted that a company's failure to issue such a confirmation, both under Article 406⁵ § 5 and 406⁵ § 6 of the Commercial Companies Code, does not constitute an independent basis for a shareholder to bring an action to annul the given resolution (Article 422 § 1 of the Commercial Companies Code) or an action to declare the invalidity of a resolution (Article 425 of the Commercial Companies Code) of the general meeting. The company's failure to perform the obligations arising under Article 406⁵ § 5 or Article 406⁵ § 6 does not, in itself, render the resolution inconsistent with any of the conditions specified in Article 422 § 1 and Article 425 CCC. Furthermore, the absence of confirmation does not provide the shareholder with formal grounds to bring an action against the resolution (it is not one of the conditions specified in Article 422 § 2 of the Commercial Companies Code).

Within the scope of regulations aimed at facilitating the exercise of shareholders' rights, the national legislator added the provision in Article 412 § 1¹ of the Commercial Companies Code, which, *expressis verbis*, indicates the possibility of granting an intermediary a power of attorney to exercise voting rights at a general meeting of a public company. This provision applies to public companies within the meaning of the Act on Public Offering, i.e., both to companies whose shares have been admitted to trading on a regulated market and to companies whose shares have been introduced to trading in an alternative trading system.

Article 412 § 1¹ of the Commercial Companies Code²⁴ implements Article 3c(1)(b) of Directive 2017/828, though its adoption seems to be an example of blind implementation of EU law. Granting a power of attorney to an intermediary would be possible under the provisions of the Commercial Companies Code and the Civil Code, even without an express legal provision. In the literature, it is rightly noted that the regulation's normative value is low.²⁵ In theory, it only confirms the possibility under the general rules governing the granting of powers of attorney. For this reason, this provision does not create a new rule, but primarily serves a declaratory function.

²⁴ According to Article 412 §11 of the Commercial Companies Code, the proxy of a shareholder of a public company may be, in particular, an intermediary within the meaning of the Act on Trading in Financial Instruments.

²⁵ Michalski, *Kodeks*, 652.

Regarding the power of attorney granted to intermediaries under Article 412 § 1¹ of the Commercial Companies Code, the general rules on granting powers of attorney by shareholders of public companies apply. In particular, Article 412¹ of the Commercial Companies Code provides that a power of attorney to represent a shareholder at a general meeting of a public company may be granted either in writing or electronically, with no requirement that it be in electronic form or that it be accompanied by a qualified electronic signature to be effective.

6. Conclusions

Although the EU legislator clearly indicated the need to strengthen shareholder engagement by facilitating the exercise of their rights, the paper's conclusions confirm that the solutions adopted in Directive 2017/828 and subsequently incorporated into the Polish legal system achieve this goal only to a limited extent. Furthermore, the Polish provisions implementing Directive 2017/828 adhere closely to the wording of that legal act and do not deviate from its literal content. Such transposition did not lead to a fundamental overhaul of national regulations, but rather resulted in their clarification and terminological adjustment. Consequently, the impact of the new regulations on increasing shareholder activity is moderate,²⁶ and while the adopted instruments formally strengthen the ownership position, they are not fundamentally transformative.

In my opinion, the most significant area of strengthening the shareholder's position concerns the introduction of an obligation on companies to send a confirmation of receipt of a vote (Article 406⁵ § 5 of Commercial Companies Code), and an obligation to send a confirmation that the shareholder's vote has been correctly registered and counted (Article 406⁵ § 6 of the Commercial Companies Code). The introduction of these institutions is all the more important in light of the fact that public companies have increasingly enabled their shareholders to exercise their voting rights through electronic means of communication.²⁷ This also applies to public companies, whose shares were admitted to trading on a regulated market. In 2019, in a sample of 95 companies with their registered offices in Poland whose shares were admitted to trading on the regulated market of the Warsaw Stock Exchange between January 1, 2014 and December 31, 2023, and which were included in the WIG20,²⁸ mWIG40,²⁹ and sWIG80³⁰ indices as at June 30, 2024, only

²⁶ See more on potential impact of adoption of the Directive 2017/828 on the shareholder engagement in Poland: Dominik Mizerski, "Evaluating Long-Term Shareholder Engagement Instruments under Directive 2017/828," in *Právo, Obchod, Ekonomika XIV. Zborník Vedeckých Prác. Výber z vedeckých príspevkov*, eds. Ján Husár and Regina Hučková (Kosice: Univerzita Pavla Jozefa Šafárika v Košiciach, 2025), 36–45.

²⁷ Nevertheless, it seems that this change is more a result of measures introduced in response to the COVID-19 pandemic than of the companies' own decisions – see more on changes in law adopted after spread of COVID-19 pandemic: Piotr Pinior, "Impact of the COVID-19 Pandemic on Company Law. Shareholders' Meetings and Resolutions," *European Company and Financial Law Review* 19, no. 1 (2022): 100–27, <http://dx.doi.org/10.1515/ecfr-2022-0004>.

²⁸ Stock market index of the 20 largest companies listed on the Warsaw Stock Exchange.

²⁹ Stock market index of the 40 largest companies not including the 20 companies included in the WIG20 index.

³⁰ Stock market index of the 80 largest companies, after the companies included in the WIG20 and mWIG40 indices.

two companies enabled participation in the annual general meetings held that year by means of electronic communication and the exercise of voting rights in this way. In 2020, 21 companies enabled shareholders to do so; in 2021, 27; in 2022 and 2023, 26.

Other amendments, enacted as a result of implementing the provisions of Directive 2017/828, in respect of facilitating the exercise of shareholders' rights in the Polish legal order, are of marginal significance for shareholders under Polish law. This applies, in particular, to the introduction of Article 412 § 1¹ of the Commercial Companies Code, which *expressis verbis* permits the granting of powers of attorney to intermediaries. The introduction of this express authorization was unnecessary because, as indicated in this paper, granting powers of attorney to such entities was permissible under general rules even before the provisions of Directive 2017/828 came into effect.

On the other hand, as regards the provisions of the Act on Trading in Financial Instruments, the adoption of the institutions provided for in Article 68l of the Act on Trading in Financial Instruments, i.e., providing shareholders with information on the number of shares they hold at the time of registering to attend the general meeting and providing a notice to the stock exchange company that the shareholder or their proxy are participating at the general meeting, may be seen as a supplement to the regulations in force, in particular with regard to the principles of determining the list of entities entitled to participate at general meetings. The key determinant of legitimacy to participate in a general meeting remains the holding of shares on the record date. At the same time, the documentation transmitted pursuant to Article 68l of the Act on Trading in Financial Instruments merely facilitates the demonstration of this fact in cases of procedural doubt. Thus, the new solutions refine and complement the existing system without modifying its conceptual foundations.

Moreover, the scope of application of these instruments remains significantly limited due to the narrow subjective reach of the Act on Trading in Financial Instruments. Since its provisions apply exclusively to companies with at least one share admitted to trading on a regulated market, they affect only a fraction of entities commonly understood as public companies under Polish law. In this regard, it would be advisable to extend the application of these provisions also to companies whose shares are admitted to trading on an alternative trading system.

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References

- Bartolacelli, Alessio. "Article 3c–3f: Facilitation of the Exercise of Shareholder Rights." In *The Shareholder Rights Directive II: A Commentary*, edited by Hanne S. Birkmose and Konstantinos Sergakis, 104–42. Cheltenham: Edward Elgar, 2021.
- Bieniak, Michał. In *Kodeks spółek handlowych. Komentarz*, edited by Jacek Bieniak et al., 1267, 1269. Warsaw: C.H. Beck, 2024.

- Herbet, Andrzej. In *Kodeks spółek handlowych. Komentarz*, vol. 3, edited by Stanisław Sołtysiński, Andrzej Szajkowski, Andrzej Szumański, and Janusz Szwaja, 1062. Warsaw: C.H. Beck, 2013.
- Lieder, Jan and Martin Bialluch. In *European Corporate Law: Article-by-Article Commentary*, edited by Peter Kindler and Jan Lieder, 880. Munich–Freiburg: Nomos, 2021.
- Michalski, Marek. In *Kodeks spółek handlowych. Vol. 3, Komentarz do art. 301–490*, edited by Andrzej Kidyba, 593–95, 652. Warsaw: Wolters Kluwer, 2020.
- Mizerski, Dominik. “Evaluating Long-Term Shareholder Engagement Instruments under Directive 2017/828.” In *Právo, Obchod, Ekonomika XIV. Zborník Vedeckých Prác. Výber z vedeckých príspevkov*, edited by Ján Husár and Regina Hučková, 36–45. Kosice: Univerzita Pavla Jozefa Šafárika v Košiciach, 2025.
- Mizerski, Dominik. “O problematyce legitymacji akcjonariusza do udziału w walnym zgromadzeniu spółki publicznej.” *Przegląd Prawa Handlowego*, no. 4 (2025): 33–38.
- Naworski, Jerzy P. In *Kodeks spółek handlowych. Komentarz. Tytuł III. Spółki kapitałowe. Dział II. Spółki Kapitałowe*, edited by Radosław Potrzyszcz and Tomasz Siemiątkowski, 777. Warsaw: Lexis-Nexis, 2012.
- Opalski, Adam. “Reforma walnego zgromadzenia spółki akcyjnej – implementacja do prawa polskiego doktryny 2007/36/WE.” *Przegląd Prawa Handlowego* 5 (2009): 8–17.
- Oplustil, Krzysztof. “Analiza projektu ustawy implementującej dyrektywę 2007/36/WE w sprawie niektórych praw akcjonariuszy spółek notowanych na rynku regulowanym.” *Czasopismo Kwartalne Całego Prawa Handlowego, Upadłościowego oraz Rynku Kapitałowego*, no. 3 (2008): 365–98.
- Pabis, Robert. In *Kodeks spółek handlowych. Vol. 3B, Spółka akcyjna. Komentarz. Art. 393–490*, edited by Adam Opalski, 262–63. Warsaw: C.H. Beck, 2016.
- Piniór, Piotr. “Impact of the COVID-19 Pandemic on Company Law. Shareholders’ Meetings and Resolutions.” *European Company and Financial Law Review* 19, no. 1 (2022): 100–27. <http://dx.doi.org/10.1515/ecfr-2022-0004>.
- Rodzinkiewicz, Mateusz. *Kodeks spółek handlowych. Komentarz*. Warsaw: Wolters Kluwer, 2018.
- Spyra, Marcin. In *System Prawa Prywatnego. Vol. 2b, Prawo umów handlowych*, edited by Andrzej Szumański, 438. Warsaw: C.H. Beck, 2019.
- Stefaniak, Stanisław. “Rola pośredników tworzących system depozytowy w relacji pomiędzy spółką giełdową a jej akcjonariuszami po implementacji dyrektywy 2017/828.” *Przegląd Prawa Handlowego*, no. 2 (2023): 43–58.
- Stranz, Jan. In *Obrót instrumentami finansowymi. Komentarz*, edited by Tomasz Sójka, 426. Warsaw: Wolters Kluwer, 2022.
- Szczurowski, Tomasz. “Nowelizacja kodeksu spółek handlowych w dobie COVID-19.” *Przegląd Ustawodawstwa Gospodarczego*, no. 11 (2020): 46–52. <https://doi.org/10.33226/0137-5490.2020.11.6>.
- Szymański, Karol. In *Kodeks spółek handlowych. Komentarz do zmian (tzw. prawo holdingowe)*, edited by Andrzej Szumański, Radosław L. Kwaśnicki, and Filip Ostrowski, 632. Warsaw: C.H. Beck, 2022.
- Tomić, Lucia Ana, Marko Žunić, and Suzana Audić Vuletić. “Upcoming Challenges on Regulating Remuneration of the Directors and Implementing Remuneration Policies.” *Journal for the International and European Law, Economics and Market Integrations* 5, no. 2 (2018): 323–44. <https://hrcak.srce.hr/213680>.
- Zacharzewski, Konrad. In *Prawo rynku kapitałowego. Vol. 1, Komentarz*, edited by Marek Wierzbowski, Ludwik Sobolewski, and Paweł Wajda, 673. Warsaw: C.H. Beck, 2023.
- Zięty, Jakub Jan. *Uprawnienia akcjonariuszy polskich spółek publicznych w świetle Dyrektywy 2007/36/WE*. Warsaw: C.H. Beck, 2015.

