

Godlewska, Małgorzata; Pilewicz, Tomasz

Article

The Impact of Interplay Between Formal and Informal Institutions on Corporate Governance Systems: a Comparative Study of CEECs

Comparative Economic Research. Central and Eastern Europe

Provided in Cooperation with:

Institute of Economics, University of Łódź

Suggested Citation: Godlewska, Małgorzata; Pilewicz, Tomasz (2018) : The Impact of Interplay Between Formal and Informal Institutions on Corporate Governance Systems: a Comparative Study of CEECs, Comparative Economic Research. Central and Eastern Europe, ISSN 2082-6737, De Gruyter, Warsaw, Vol. 21, Iss. 4, pp. 85-104, <https://doi.org/10.2478/cer-2018-0028>

This Version is available at:

<https://hdl.handle.net/10419/259182>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.



<https://creativecommons.org/licenses/by-nc-nd/4.0>

MAŁGORZATA GODLEWSKA*, TOMASZ PILEWICZ**

The Impact of Interplay Between Formal and Informal Institutions on Corporate Governance Systems: a Comparative Study of CEECs

Abstract

The central point of this paper is to present the results of comparative case study research concerning the impact of the interplay between formal and informal institutions in the corporate governance systems (CGS) of Central and Eastern European Countries (CEEC). Particular focus was put on the values of the corporate governance codes (CGC) of CEECs, as well as on transparent ownership structures, transactions with related parties, the protection of minority shareholders, independent members of supervisory boards, and separation between the CEO position and the chairman of the board of directors. The main subject of interest concerns two research areas: the character of the relationship between formal and informal institutions, as well as whether the interplay between them is relevant to the CGSs of CEECs. Moreover, the author investigates whether the CGCs of CEECs consist of regulations that are compatible with the values set up in preambles using research methods such as individual case study or deductive reasoning. The conclusion presented in the paper was drawn on the basis of a review of the literature and research on national and European corporate governance regulations, as well as the CGC of CEECs. The primary contribution this article makes is to advance the stream of research beyond any single country setting, and to link the literature on the interplay between formal and informal institutions related to CGSs in a broad range of economies in transition ('catch up' countries) like CEECs. This paper provides an understanding of how the interplay between formal and informal institutions may influence the CGCs of CEECs.

* Ph.D., Assistant Professor at the Warsaw School of Economics, Collegium of Business Administration, Department of Administrative and Corporate Law, Warsaw, Poland, e-mail: mgodlews@sgh.waw.pl

** Ph.D., MBA, Assistant Professor at the Warsaw School of Economics, Collegium of Business Administration, Department of Business Environment, Warsaw, Poland, e-mail: tpilew@sgh.waw.pl

Keywords: *corporate governance; formal institutions; informal institutions; corporate governance code; Central and Eastern European countries; CEEC; institutional asymmetry; interplay of institutions; LLSV*

JEL: *D02; G18; G34; G38*

1. Introduction

The corporate governance system (hereinafter CGS) is one of the key forces of capital markets' development and plays a significant role in the modern free-market economy (Urbanek 2009; Gad 2015, pp. 140). What is more important and should be highlighted is that institutions (formal as well as informal) matter for CGSs (Peng 2002; Estrin, Prevezer 2010). Following Helmke and Levitsky's (2004) typology, informal institutions may be complementary, substitutive, accommodating or competing to formal institutions, and may lead to reinforcing or undermining formal institutions. Moreover, informal institutions, such as cultural ones, may move the CGS down a particular path, and deviation from that path may be very difficult (Gilson 1996; Schmidt, Spindler 2000). Furthermore, if investors perceive a given country as one with a lack of a good CGS, capital will flow to other countries (Mallin 2002).

At the same time, corporate governance has become a significant issue in academic as well as business debates in the last two decades due to corporate scandals connected with Enron, Worldcom, Parmalat, Vivendi Universal, France Telecom, the New Market, HIH Insurance, and One.Tel (Hopt 2011, pp. 16–17). Corporate governance was crucial for the recovery of public trust in capital markets after these scandals (Bauwhede, Willekens 2008, p. 101). Furthermore, the recent financial crisis, which started with the collapse of Lehman Brothers in 2008, proved one more time the importance of a CGS (Słomka-Gołębiewska, Urbanek 2014).

However, despite its importance, corporate governance still lacks a universally accepted definition. One widely used in the literature is the definition according to which corporate governance may refer to the defense of shareholders' interests (Tirole 2001, p. 1). This interest may be at risk due to the occurrence of the agency problem. That is why, according to the European Commission (2014), the formal institutions of a CGS are important not only for enterprises, investors and employees, but also for economic growth, employment, and competition in European Union member states. Research by Judge, Douglas, and Kutan (2009) also supports this idea and proved that the greater the extent of formal institutions, the more the informal institutions emphasized global competitiveness and the higher the corporate governance legitimacy within a nation. Moreover, the research of Estrin and Prevezer (2010) stressed a significant relationship (positive and negative) between

informal and formal institutions related to CGSs. They identified that informal institutions may work either to undermine or substitute formal institutions of the CGS of emerging economies like Brazil, Russia, India, and China.

The purpose of this paper is to present the results of comparative case study research concerning the impact of the interplay between formal and informal institutions on the CGSs of Central and Eastern European Countries (hereinafter CEEC). Particular focus was put on the values of the corporate governance codes (hereinafter CGC) of CEECs, as well as on the transparent ownership structure, transactions with related parties, the protection of minority shareholders, independent members of supervisory boards, and the separation between the CEO position and the chairman of the board of directors. In this paper, informal and formal institutions of CEECs relevant to the CGS of CEECs are presented. The interplay between formal and informal institutions of CGS using the example of national CGCs of CEECs is compared and discussed. Moreover, whether the CGCs of CEECs consist of regulations that are compatible with the values set up in preambles is investigated by using research methods such as an individual case study or deductive reasoning.

The conclusion presented in the paper was drawn on the basis of a review of the literature and research on national and European corporate governance regulations, as well as all national CGCs of CEECs.

The primary contribution this article makes is to advance the stream of research beyond any single country setting, and to link the literature on the interplay between formal and informal institutions related to CGS in a broad range of economies in transition ('catch up' countries), like CEECs. This paper provides an understanding of how the interplay between formal and informal institutions may influence the CGSs of CEECs.

2. Corporate governance system of CEECs

In the literature, many researchers have emphasized the importance of CGS for the growth of national economies, investment, business prosperity, competitiveness or new entry (Hampel's Report 1998; Djankov et al. 2002; Judge, Douglas, Kutan 2009; Estrin, Prevezer 2010). CGS may be understood as a corporate power used for the good of society in order to distribute the wealth fairly within a national economy (Judge, Douglas, Kutan 2009).

The CGS of CEECs which are member states of the European Union (hereinafter EU) are defined by legislation, CGCs, and recommendations, as well as by informal institutions (see Figure 1). However, the national CGCs of CEECs are not obligatory for companies whose securities are traded on a regulated market. The CGCs of CEECs operate based on the principle "comply" or "explain" the reason for non-compliance.

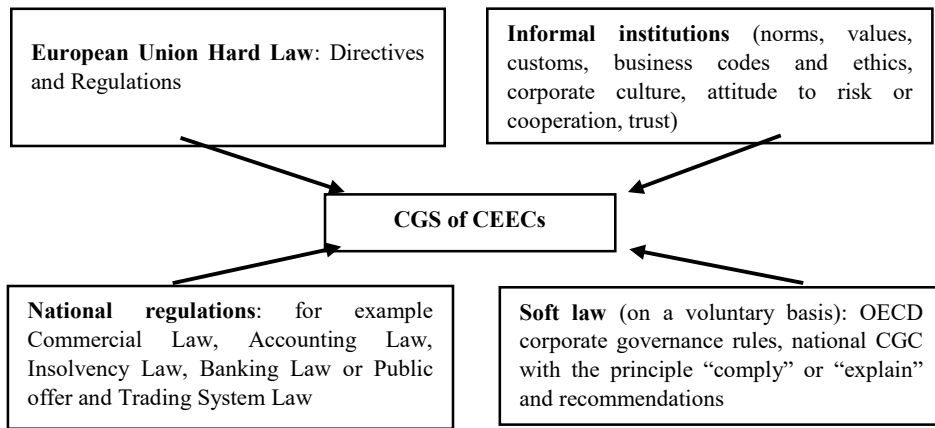


Figure 1. Corporate governance system in CEECs

Source: authors own compilation based on Czerniawski 2011, pp. 299–314;
 Studziński 2016, p. 256.

Peng and Heath (1996) demonstrated the significant role of informal institutions in CEECs where formal institutions are weak and many regulations are not well-enforced. Despite the fact that CEECs were together a member of the Eastern Block, they implement different CGSs. The differences arise from: i) different legal origins of corporate governance regulations; ii) different ways of corporate financing; or iii) different roles of corporations in the socio-economic development of the national economy (Scerbina-Dalibagiene, Levisaskaite 2009, pp. 82–83).

Improving CGSs has been the subject of heated debate within the EU since 2002. Moreover, the European Commission established initiatives such as the Green Paper: The EU corporate governance framework (2011) and the EU Action Plan (2012) for a modern legal framework of CGS, which promotes business efficiency and competitiveness, enhances shareholder protection, and restores shareholder confidence in companies. One of the most effective instruments to achieve the above-mentioned goal is the CGC. CGCs are a set of the best practices' recommendations regarding all relevant governance mechanisms lacking in national CGSs (Zattoni, Cuomo 2008, pp. 2–3).

North (1990) divided institutions by the rule component into: i) formal institutions, like formal rules (such as CGCs), laws, and constitutions, and ii) informal institutions, like constraints, customs, norms, culture or trust (however, not all scholars agree on such a division of institutions¹). Moreover, in the literature of the subject, we have a debate on whether only formal institutions are important

¹ See, for example: Hodgson G.M. (2006), *What Are Institutions?*, 'Journal of Economic Issues', Vol. XL, No. 1; Voigt S. (2013), *How (Not) to measure institutions*, 'Journal of Institutional Economics', Vol. 9, No. 1; Williamson O.E. (1985), *The Economic Institutions of Capitalism*, Free Press, New York.

for CGSs, or if informal institutions also have a significant impact (Siems 2006). Research by Stulz and Williamson (2003) proved that informal institutions such as culture, values, and ethical norms are also important for CGSs as well as formal ones.

3. Impact of informal institutions on CGCs of CEECs

Despite the convergence of CGSs with the Directives or Recommendations of the EU between CEECs, we can observe important differences in their CGCs. Moreover, differences of informal institutions such as cultures, traditions or business codes and ethics may result in the divergence of CGSs among CEECs.

According to the European Commission (2011, p. 2), CGCs are the key elements in building people's trust in the single market of the EU. Trust, in the literature, is connected with informal institutions. According to the World Values Survey 2010–2014 (Inglehart et al. 2014) or the European Social Survey (ESS 2014), CEECs, due to their history, have much lower levels of trust (an exception is Estonia) than other EU member states. Romania has the lowest level of trust among all CEECs because 91.4% do not trust other people (Inglehart et al. 2014).

Informal institutions, such as trust in formal institutions or trust of other people, may have an impact on respecting the law or complying with national CGCs. Moreover, the low level of trust in the state co-exists with a negative attitude toward government, law, justice or national CGCs (Ząbkowicz, Gruszevska 2016, pp. 284–285). However, surprisingly, the mean trust in institutions of CEECs, such as the police, the legal system or the political system does not correlate with trust of the government/ EU, corruption or alienation (see Table 1).

According to Schwartz and Bardi (1997), CEECs may be divided due to conservatism and hierarchy values which are more important for CEECs than for other EU member states because of past communism (see Table 1). The first group of countries, e.g., Croatia, Estonia, Lithuania, Poland, Slovakia, and Slovenia, which may be classified as conservative countries², focus in their national CGCs on business transparency (except for Poland, which focuses on efficiency). The second group of countries, e.g., Bulgaria and Romania, which may be classified as hierarchical countries, focus on building value in their national CGCs. The third group of countries, e.g., the Czech Republic,

² For Croatia, Latvia, Lithuania and Romania, which are not included in research by Schwartz and Bardi (1997), the author classified these countries according to the characteristics of Lewis' research (2006).

Latvia, and Hungary, may be classified both as conservative and as hierarchical countries which focus on building value in their national CGCs (except the Czech Republic, which focuses on business transparency).

Moreover, willingness to tolerate corruption, which is an attitude of significant importance in the operation of a CGS, is much higher in conservative-hierarchical countries than in conservative or hierarchical countries. For 60% of respondents from Latvia and Hungary, or 50% from Croatia (all are conservative-hierarchical countries), giving a gift to public administration or public service officers in order to get something from them is an accepted way of running a business or solving problems. In addition, hierarchical as well as conservative CEECs have a major problem with the independence of the justice systems. Respondents from Bulgaria (57%), Croatia (69%), Poland (45%), Slovakia (58%), and Slovenia (54%) highlighted the lack of independence of national justice systems. Surprisingly, all conservative-hierarchical CEECs have a good independent national justice system. Despite the respondents of CEECs having a much higher level of trust in the EU compared to that for national governments (except Estonia and Hungary), at the same time, they have a feeling that their voice does not count. In hierarchical countries, only 46% of respondents have a feeling that their voice does not count. The conservative CEECs were much more sophisticated, from 35% in Croatia to 70% in Estonia. In conservative-hierarchical CEECs, more than 53% have such a feeling.

Furthermore, a very low level of trust in national governments of CEECs (except Estonia and Hungary) may have a negative impact on respecting the law of CGS and the regulation of CGCs, according to the results of research by Blankenburg (1994). The legal culture, under some circumstances according to Gibson and Caldeira (1996), is sufficient to explain the behavior of companies to follow the “comply or explain” principles of CGCs. That is why it is important to investigate informal institutions of CEECs and their impact on CGCs and their attitude toward respecting the law. Despite the moderately low level of mean trust in institutions of CEECs (especially in Bulgaria, only 4.2 out of 10) according to Eurostat (2013) (see Table 1), the listed companies of CEECs tend to respond to the main CGCs recommendations, which is also proved by empirical research of the European Bank for Reconstruction and Development (hereinafter EBRD 2017).

Table 1. Differences of informal institutions of CEECs (classified by values)

Country	Values of CGC	Mean trust in institutions (on a scale from 0 to 10, with 0 no trust and 10 for full trust)	Trust in government (1)/ to European Union (2)	Legal culture ^a : Alienation (1); Independence of Justice System (2); Corruption (3)	Value Types ^b
Bulgaria	Building value	4.2	1) 28% 2) 56%	1) 46% 2) Lack of independence – 57% 3) 35%	Hierarchy
Romania	Building value	6.4	1) 19% 2) 52%	1) 46% 2) Good independence – 42% 3) 36%	Hierarchy
Latvia	Building value	6.5	1) 28% 2) 49%	1) 65% 2) Good independence – 45% 3) 60%	Conservatism, Hierarchy
Hungary	Building value	5.3	1) 46% 2) 44%	1) 53% 2) Good independence – 42% 3) 60%	Conservatism, Hierarchy
The Czech Republic	Business transparency	5.3	1) 28% 2) 37%	1) 67% 2) Good independence – 46% 3) 46%	Conservatism, Hierarchy
Croatia	Business transparency	5.1	1) 15% 2) 44%	1) 35% 2) Lack of independence – 69% 3) 50%	Conservatism
Slovenia	Business transparency	6.5	1) 19% 2) 44%	1) 50% 2) Lack of independence – 54% 3) 18%	Conservatism
Slovakia	Business transparency	5.8	1) 21% 2) 44%	1) 48% 2) Lack of independence – 58% 3) 43%	Conservatism
Lithuania	Business transparency	6.1	1) 28% 2) 66%	1) 52% 2) Good independence – 48% 3) 40%	Conservatism

Country	Values of CGC	Mean trust in institutions (on a scale from 0 to 10, with 0 no trust and 10 for full trust)	Trust in government (1)/ to European Union (2)	Legal culture ^a : Alienation (1); Independence of Justice System (2); Corruption (3)	Value Types ^b
Estonia	Business transparency	5.8	1) 49% 2) 53%	1) 70% 2) Good independence – 54% 3) 25%	Conservatism
Poland	Efficiency	6.0	1) 28% 2) 46%	1) 36% 2) Lack of independence – 45% 3) 32%	Conservatism

^a Although legal culture is a broad system of values, the authors focused only on three particular subdimensions due to availability of data of Eurobarometer: alienation (the valuation people attach to the countability of their voices in the EU); independence of the justice system (perception of independence of court and judges by general public) and corruption (acceptance of giving a gift by the general public to public administration or public service officers in order to get something from them).

^b According to Schwartz and Bardi (1997), Eastern Europe put especially high importance on conservatism (understood as *emphasis on the status quo, propriety, and restraint of actions or inclinations that might disrupt the solidary group or the traditional order*) and hierarchy (understood as *emphasis on the legitimacy of hierarchical allocation of fixed roles and of resources*) values and very low importance on egalitarianism, harmony, and intellectual and effective autonomy or mastery values. For Croatia, Latvia, Lithuania and Romania, which are not included in research of Schwartz and Bardi (1997), the authors classified these countries according to research by Lewis (2006).

Source: authors' own compilation based on the case studies of national CGCs of CEECs and mean trust (from 0 to 10) in institutions from Eurostat 2013; Legal culture from ESS (2010) and European Commission (2017, 2018a, 2018b); Conservative and hierarchical values from Schwartz and Bardi (1997) and for Croatia, Latvia, Lithuania and Romania, which are not included in research of Schwartz and Bardi (1997), the authors classified these countries according to research by Lewis (2006).

In the literature, informal institutions may have a problem-solving role, which assists in improving the efficiency or performance of formal institutions. On the other hand, informal institutions may have a problem-creating role, which undermines the formal institutions via corruption, clientelism or clan politics (Helmeke, Levitsky 2004; Estrin, Prevezer 2010, p. 44). The question is, which role according to the CGS and CGCs of CEECs, problem-creating or problem-solving, do informal institutions of CEECs have? According to the results of case studies of national CGS and CGCs of CEECs, confirmed by the results of empirical research of the ten largest listed companies of CEECs (except for the Czech Republic) carried out by experts from the EBRD (2017), corporate governance regula-

tions in CEECs are not well implemented and enforced in practice (see also Table 2). Moreover, experts have doubts if many of the declarations of compliance with the main regulations of national CGCs made by the ten largest listed companies are not apparent. The informal institutions of CEECs do not support the formal ones in order to enforce the full compliance with national CGCs or demand honest explanations for non-compliance by the largest listed companies. The explanation for the lack of enforcement by informal institutions may be the fact that only a minority of the ten largest listed companies from Bulgaria, Romania, Croatia, Hungary and Poland appear to have such a code of ethics (EBRD 2017). In addition, none of the ten largest companies from Estonia, Latvia, Lithuania or Slovenia have such a code of ethics (EBRD 2017). That is why informal institutions do not have a problem-solving role in the case of the CGSs and CGCs of CEECs.

4. Impact of formal institutions on CGCs of CEECs

No one system of corporate governance can be totally foolproof against fraud, malpractice or incompetence (Cadbury's Report 1992; Hampel's Report 1998). However, CGCs may reduce the risk by "making the participants in the governance process as effectively accountable as possible" (Cadbury 1992, p. 53).

The CGCs of CEECs were examined according to the conclusions of the reports of Cadbury (1992), Hampel (1998) and Higgs (2003). The comparative case studies focused on the following five key areas: transparent ownership structure, transactions with related parties, the protection of minority shareholders, independent members of the supervisory board, and separation between the CEO position and the chairman of the board of directors.

La Porta et al. (hereinafter LLSV 1998) divided countries according to the legal origins of law into common law countries and civil law countries (French, German or Scandinavian origin of law). Moreover, LLSV (1998) argued that national regulations of corporate governance vary significantly among these legal origins of law. Common law countries, like the United Kingdom, have greater judicial independence, better contract enforcement and greater security of property rights than civil law countries like CEECs (La Porta et al. 2004). However, there are no significant differences in the regulation of national CGCs between the laws of French or German origin of the CEECs (see Table 2). Furthermore, the level of corporate governance disclosure³ is significantly lower in civil law countries than in common law countries (Bauwhede, Willekens 2008, p. 112). Despite the

³ According to point 10 of the preamble and Article 46a of Directive 2006/46/EC, companies have to issue annually obligatory disclosure about corporate governance practices applied in a company.

mandatory public disclosure of ownership structure of CEECs required by national CGCs or law, in practice, such disclosure is limited to the major shareholders without giving thresholds. Only Polish, Slovak, and Slovenian national CGCs mention the threshold above which it is mandatory to disclose shareholders. For Poland, it is at least 5% of the total vote in the company, for Slovenia, it is 10%, and the Slovak threshold is only mentioned without a defined amount. In addition, many research studies underlined the role of transparency and disclosure as one of the key factors in reducing information asymmetry between insiders (management or majority shareholders) and outsiders (minority shareholders or creditors) (Healy, Palepu 2001; Bauwhede, Willekens 2008).

A similar situation relates to mandatory public disclosure of transactions with related parties. All CEECs have necessary regulations, usually regulated by law, although not well implemented. The Polish CGC is one of the exceptions because each transition between a public company and shareholders that hold at least 5% of the total vote in the company has to be disclosed. Better transparency keeps corporate stakeholders informed about the action undertaken by management (Patel, Balic, Bwakira 2002) and helps to restore public trust in capital markets (Bauwhede, Willekens 2008). Moreover, greater disclosure has a positive impact on the efficient functioning of capital markets (Healy, Palepu 2001).

Research by Pajuste (2002) highlighted that the protection of minority shareholders by CEECs has a significant influence on capital market activity. All national CGCs of CEECs provide mandatory protection of minority shareholders' rights. However, Estonian law does not provide a possibility for minority shareholders' derivative suits. Moreover, all national CGCs of CEECs provide a mandatory obligation to have independent members in their supervisory board. However, CEECs differ according to the number of independent members of the supervisory board. For example, in Slovenia, all members of the supervisory board have to be independent. For Bulgaria, it is enough to have one third, and for Poland, it is enough to have at least two independent members on the supervisory board. For the Czech Republic, Hungary or Lithuania, enough is a "sufficient" number of independent members on the supervisory board without a definition of what it means. In addition, only Lithuania and Romania have a mandatory separation between the CEO position and the chairman of the board of directors. However, Poland, Latvia, and Slovakia have an obligatory two-tier system for joint stock companies. Other CEECs have both one-tier and two-tier systems for joint stock companies. Furthermore, CEECs, as civil law countries (with German or French legal origins), are associated with greater corruption, a larger unofficial economy, or higher unemployment than common law countries (La Porta, Lopez-de-Silanes, Shleifer 2008, p. 3)⁴. Moreover, according to Cuervo (2002), the type of legal system also limits

⁴ The thesis of the importance of legal origins of law on national CGS come under serious attack. See for example: Michaels R. (2009), *Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the Silence of Traditional Comparative Law*, 'The American Jour-

the efficiency of national CGCs because, in common law countries, the CGCs may be enforced directly by judges and in civil law countries not.

**Table 2. Differences in the regulation of corporate governance codes of CEECs
(classified by legal origin of law)**

Country	Legal origin of law	Mandatory public disclosure of ownership structure	Mandatory public disclosure of transactions with related parties	Mandatory protection of minority shareholders rights	Mandatory independent members of supervisory board	Mandatory separation between CEO position and chairman of the board of directors
Bulgaria	German	Yes, but limited to major shareholders	Yes, but in practice, the rules are not well implemented	Yes	Yes, at least one-third of the board	No
Croatia	German	Yes, but limited to major shareholders	Yes, but in practice, the rules are not well implemented	Yes	Yes, the majority of the board	No
The Czech Republic	German	Yes, but limited to major shareholders	Yes, any material transactions with the other related parties	Yes	Yes, a sufficient number of board members	No
Estonia	German	Yes, but limited to major shareholders	Yes, but in practice, the rules are not well implemented	Yes	Yes, at least half of the members of the board	No
Hungary	German	Yes	Yes, but in practice, the rules are not well implemented	Yes	Yes, a sufficient number of members	No
Poland	German	Yes, shareholders that hold at least 5% of the total vote	Yes, but with shareholders that hold at least 5% of the total vote	Yes	Yes, at least two members of the board	Only two-tier system for joint stock companies

nal of Comparative Law', Vol. 57; Du J. (2010), *Institutional Quality and Economic Crises: Legal Origin Theory versus Colonial Strategy Theory*, 'Review of Economics and Statistics, Vol. 92, No. 1; Pistor K. (2009), *Rethinking "Law and Finance" Paradigm*, 'BYU Law Review', Issue 6 (8).

Country	Legal origin of law	Mandatory public disclosure of ownership structure	Mandatory public disclosure of transactions with related parties	Mandatory protection of minority shareholders rights	Mandatory independent members of supervisory board	Mandatory separation between CEO position and chairman of the board of directors
Slovakia	German	Yes, above certain thresholds	Yes, but in practice, the rules are not well implemented	Yes	Yes, at least the majority of the board	Only two-tier system for joint stock companies
Slovenia	German	Yes, shareholders that hold directly 10% or more of the total vote	Yes, but in practice, the rules are not well implemented	Yes	Yes, all board members in listed companies	No
Latvia	French	Yes, but limited to major shareholders	Yes, but in practice, the rules are not well implemented	Yes	Yes, at least half of the board	Only two-tier system for joint stock companies
Lithuania	French	Yes, but limited to major shareholders	Yes, but in practice, the rules are not well implemented	Yes	Yes, a sufficient number of members	Yes
Romania	French	Yes, but limited to major shareholders	Yes	Yes	Yes, at least one member of the board.	Yes, for state-owned companies

Source: authors' own compilation based on the case studies of national CGCs of CEECs and EBRD (2017); legal origin of law from La Porta, Lopez-de-Silanes and Shleifer (2008).

CGCs are a product of the local economic and social environments (Hampel's Report 1998). Research on emerging economies has highlighted the connection between CGCs and institutional development (Steier 2009). Institutional characteristics in a specific country have an impact on the performance effect of CGS (Filatotchev, Jackson, Nakajima 2013). Additionally, for CGS, the quality of formal institutions, as well as the enforcement mechanism which affects financial market development, is very important (LLSV 1998).

Moreover, the result of case studies of national CGCs of CEECs showed that CGCs of CEECs consist of regulations that are compatible with values set up in the preamble by national stock exchanges of CEECs, such as business transparency, building value or efficiency. However, empirical research of the ten largest listed

companies carried out by experts from the EBRD (2017) proved that many regulations, such as disclosure of transaction with related parties or disclosure of ownership structure, are not well implemented in the practice of CEECs. Surprisingly, in the case of CEECs, the legal origin of law and CGS did not matter for better shareholder protection or better transparency and disclosure.

5. Interplay between formal and informal institutions using the example of national CGCs of CEECs

North (1990, p. 6) highlighted that formal rules may change overnight but informal rules are much more stable, and, as Williamson (2000) stressed, their change may take at least 100 years. Moreover, in situations when formal rules fail, informal rules should replace them (Scott 1987, North 1990). However, it is important to understand how informal institutions of CEECs may be undermined in the case of institutional asymmetry (like the clan-based network in most Central Asian states according to Collins 2002, or informal economic activity in Bulgaria or Croatia according to Williams N., Vorley and Williams C. 2017), or support (like in South-East Asian states according to Hamilton-Hart 2002) formal ones, and how this interplay influences the principle of “comply or explain” of national CGCs of CEECs.

Corporate governance may be rule-based or relationship-based, according to the report of the OECD (Juttig et al. 2007). When relationship-based corporate governance dominates, it means that state authorities are not strong enough to effectively regulate the capital market. In such a situation, corporate governance may be dominated by the bargaining of power and interests of organized groups (Juttig et al. 2007, pp. 83–87). The authors divided CEECs based on characteristics from the OECD report (Juttig et al. 2007) into two groups: i) relationship-based CGS of CEECs, such as Bulgaria, Hungary, Latvia, and Romania; ii) rules-based CGS of CEECs such as Croatia, the Czech Republic, Estonia, Lithuania, Poland, Slovakia, and Slovenia. Relationship-based CGS of CEECs have a weaker structure and functioning of the board than the rule-based countries, the majority of whom were evaluated by the EBRD (2017) as having a fair structure. There were no significant differences between rule-based and relationship-based CEECs in terms of transparency and disclosure, nor in the rights of shareholders. Rule-based CEECs have better internal control than relationship-based CEECs (EBRD 2017). Surprisingly, hierarchy value CEECs have relationship-based CGSs while conservative value CEECs have rules-based CGSs. Conservative-hierarchical value CEECs have a mix of CGSs, because the Czech Republic has rules-based CGS but Latvia and Hungary have relationship-based CGS.

Table 3. Interplay between formal and informal institutions of national CGCs of CEECs (classified by values)

Country	Rules-based or relationship-based CGS	Value Types	Structure and Functioning of the Board	Transparency and Disclosure	Internal Control	Rights of Shareholders
Bulgaria	Relationship-based CGS	Hierarchy	Weak	Fair	Weak	Moderately Strong
Romania	Relationship-based CGS	Hierarchy	Fair	Fair	Fair	Moderately strong
The Czech Republic	Rules-based CGS	Conservatism Hierarchy	No data	No data	No data	No data
Hungary	Relationship-based CGS	Conservatism Hierarchy	Weak	Moderately strong	Fair	Fair
Latvia	Relationship-based CGS	Conservatism Hierarchy	Fair	Moderately strong	Fair	Moderately strong
Croatia	Rules-based CGS	Conservatism	Weak	Moderately Strong	Fair	Moderately strong
Lithuania	Rules-based CGS	Conservatism	Fair	Moderately strong	Fair	Moderately strong
Estonia	Rules-based CGS	Conservatism	Fair	Moderately Strong	Fair	Moderately strong
Poland	Rules-based CGS	Conservatism	Fair	Moderately strong	Moderately strong	Fair
Slovakia	Rules-based CGS	Conservatism	Fair	Fair	Fair	Moderately strong
Slovenia	Rules-based CGS	Conservatism	Fair	Moderately strong	Fair	Fair

Source: authors' own compilation based on the case studies of national CGCs of CEECs and Conservative and hierarchical values from Schwartz and Bardi (1997), and for Croatia, Latvia, Lithuania and Romania, which are not included in research of Schwartz and Bardi (1997), the authors classified these countries according to research by Lewis (2006); Rules-based or relationship-based CGS: authors' division based on characteristics from OECD (2007) report; Structure and Functioning of the Board, Transparency and Disclosure; Internal Control, Rights of Shareholders according to EBRD 2017.

The case studies of national CGSs and CGCs of CEECs highlight that regulations (formal institutions) are undermined by weak informal institutions, for example: i) the lack of a code of ethics held by the majority of listed companies, ii) a low level of trust in institutions by CEECs' citizens or iii) civil law legal cultures with lower CGCs enforcement than common law culture. However, CEECs

differ significantly between each other according to the level of institutional asymmetry. For example, in Bulgaria and Croatia, institutional asymmetry between formal and informal institutions, according to the research of Williams N., Vorley and Williams C. (2017), undermined entrepreneurship and economic growth. However, in the case of Poland, institutional asymmetry did not have such a negative impact on entrepreneurship (Godlewska 2018).

6. Conclusion

Institutions (formal as well as informal) matter for the CGSs of CEECs (Peng 2002, Estrin and Prevezer 2010). However, the interplay between formal and informal institutions has significant importance for the CGSs of CEECs because the informal institutions may support or undermine the formal ones. Moreover, institutional asymmetry may undermine economic growth (Williams N., Vorley, Williams C. 2017). This study examined the relationships between formal and informal institutions of the CGSs of CEECs using the example of national CGCs.

The results of case studies of CEECs CGCs, supported by empirical research of the ten largest listed companies of CEECs carried out by experts from the EBRD (2017), suggest that the majority of CEECs' informal institutions do not support or enforce the national regulations of the CGCs. The explanation for the lack of enforcement by informal institutions may be the fact that, based on empirical research of the EBRD (2017), only a minority of the ten largest publicly listed companies from Bulgaria, Romania, Croatia, Hungary, and Poland appear to have such a code of ethics. In addition, none of the ten largest companies from Estonia, Latvia, Lithuania, and Slovenia have such a code of ethics (EBRD 2017). That is why informal institutions do not have a problem-solving role in the case of the CGCs of CEECs. Moreover, the regulations of national CGCs of CEECs are undermined by weak informal institutions, for example: i) the lack of a code of ethics held by the majority of listed companies, ii) a low level of trust in institutions, or iii) civil law legal cultures with lower CGCs enforcement than common law culture. The co-existence of a low level of trust of institutions and a negative attitude to government, law, justice or national CGCs, should be recommended for further empirical research. In addition, the national CGCs of CEECs consist of regulations that are compatible with values set up in the preamble by the national stock exchanges of CEECs, such as business transparency, building value or efficiency. However, empirical research of the ten largest listed companies carried out by the EBRD (2017) proved that many regulations, such as disclosure of transactions with related parties or the disclosure of ownership structure, are not well implemented in the practice of CEECs. Surprisingly, in the case of CEECs, the legal origin

of law and CGS did not matter for better shareholder protection or better transparency and disclosure.

Furthermore, for CEECs' corporate governance regulators, it is important to remember that good CGSs with CGCs without proper enforcement do not work in practice, as the empirical research of the EBRD (2017) proved.

Finally, this article advances institutional research beyond any single country setting, and links the literature on the interplay between formal and informal institutions related to CGSs in a broad range of economies in transition ('catch up' countries) like CEECs. This paper provides an understanding of how the interplay between formal and informal institutions may influence the CGSs of CEECs.

References

- Bauwhede, H.V., Willekens, M. (2008), *Disclosure on Corporate Governance in the European Union*, 'Corporate Governance An International Review', Vol. 16, No. 2.
- Blankenburg, E. (1994), *The Infrastructure for Avoiding Civil Litigation: Comparing Cultures of Legal Behaviour in the Netherlands and West Germany*, 'Law & Society Review', No. 28.
- Bohle, D., Greskovits, B. (2007), *Neoliberalism, Embedded Neoliberalism, and Neocorporatism: Paths Towards Transnational Capitalism in Central-Eastern Europe*, 'West European Politics', No. 30(3).
- Cadbury, A. (1992), *Report The Financial Aspects of Corporate Governance*, UK: The Committee On the Financial Aspects of Corporate Governance and Gee and Co. Ltd., London.
- Collins, K. (2002), *Clans, Pacts, and Politics in Central Asia*, 'Journal of Democracy', Vol. 13, No. 3.
- Cuervo, A. (2002), *Corporate Governance Mechanisms: a plea for less code of good governance and more market control*, 'Corporate Governance', Vol. 10, No. 2.
- Czerniawski, R. (2011), *Kierunki regulacji ustawowych w zakresie ładu korporacyjnego w Polsce [Directions of statutory regulations in the field of corporate governance in Poland]*, [in:] Dobija, D., Kołodkiewicz, I. (eds.) *Ład korporacyjny*, Wolters Kluwer, Warszawa.
- Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings, (Official Journal of the EU, L224/1).
- Djankov, S., La Porta, R., Lopez-de-Silanes, F., Shleifer, A. (2002), *The regulation of entry*. 'Quarterly Journal of Economics', No. 117.
- EBRD (2017), *Corporate Governance in Transition Economies Country Report from Bulgaria, Croatia, Latvia, Lithuania, Hungary, Poland, Romania, Slovakia, Slovenia*, European Bank for Reconstruction and Development.
- Estrin, S., Prevezer, M. (2011), *The role of informal institutions in corporate governance: Brazil, Russia, India, and China compared*, 'Asia Pacific Journal of Management', Vol. 28, No. 1.

European Commission (2011), *Green Paper The EU corporate governance framework*, COM (2011) 164 final.

European Commission (2012), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Action Plan: European company law and corporate governance – a modern legal framework for more engaged shareholders and sustainable companies*, COM (2012) 740 final.

European Commission (2014), *Proposal for a Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement*, COM (2014) 2013 final.

European Commission (2017), Special Eurobarometer 470, *Corruption*, https://data.europa.eu/euodp/data/dataset/S2176_88_2_470_ENG (accessed: 24.05.2018).

European Commission (2018a), Flash Eurobarometer 461, *Report Perceived independence of the national justice systems in the EU among the general public*, https://data.europa.eu/euodp/data/dataset/S2168_461_ENG (accessed: 24.05.2018).

European Commission (2018b), Standard Eurobarometer 89, <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2180> (accessed: 24.05.2018).

Eurostat (2013), *Subjective well-being and trust items, by country*, http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Subjective_well-being_and_trust_items_by_country_2013.png&oldid=235236 (accessed: 24.05.2018).

ESS (2014), European Social Survey Round 7, <http://www.europeansocialsurvey.org/download.html?file=ESS7e01&y=2014> (accessed: 24.05.2018).

Filatotchev, I., Jackson, G., Nakajima C. (2013), *Corporate governance and national institutions: An emerging research agenda*, 'Asia Pacific Journal of Management', No. 30(4).

Gad, J. (2015), *The Relationship Between Supervisory Board And Management And Their Communication Process In Publicly Listed Companies In Poland*, 'Comparative Economic Research. Central and Eastern Europe', Vol. 18, No. 2.

Gibson, J.L., Caldeira, G.A. (1996), *The legal cultures of Europe*, 'Law & Society Review', Vol. 30, No. 1.

Gilson, R.J. (1996), *Corporate Governance and Economic Efficiency: When Do Institution Matter?*, 'Washington University Law Review', Vol. 74, No. 327, Issue 2.

Godlewska, M. (2018), *Wpływ instytucji formalnych i nieformalnych na działalność innowacyjną polskich przedsiębiorstw sektora MSP [Impact of formal and informal institutions on innovative activities of Polish SMEs]*, 'Nierówności Społeczna a Wzrost Gospodarczy', No. 54(2).

Hamilton-Hart, N. (2000), *The Singapore State Revisited*, 'The Pacific Review', Vol. 13, No. 2.

Hampel, R. (1998), *Committee on Corporate Governance Final Report*, UK: The Committee on Corporate Governance and Gee Publishing Ltd., London.

Healy, P.M., Palepu, K.G. (2001), *Information asymmetry, corporate disclosure, and the capital markets: A review of the empirical disclosure literature*, 'Journal of Accounting and Economics', Vol. 31, No. 1–3.

- Helmke, G., Levitsky, S. (2004), *Informal Institutions and Comparative Politics: A Research Agenda*, 'Perspectives on Politics', Vol. 2, No. 4.
- Higgs, D. (2003), *Review of the role and effectiveness of non-executive directors*, UK: The Department of Trade and Industry, London.
- Hopt, K.J. (2011), *Comparative Corporate Governance: The State of the Art and International Regulation*, 'American Journal of Comparative Law', Vol. 59.
- Inglehart, R., Haerpfer, C., Moreno, A., Welzel, C., Kizilova, K., Diez-Medrano, J., Lagos, M., Norris, P., Ponarin, E., Puranen, B. (eds.) (2014). *World Values Survey: Round Six – Country-Pooled Datafile 2010–2014*, JD Systems Institute, Madrid.
- Judge, W., Douglas, T., Kutan, A. (2009), *Institutional antecedents of corporate governance legitimacy*, 'Journal of Management', No. 34.
- Juttig, J., Drechsler, D., Bratsch, S., de Soysa, I. (eds.), (2007), *Informal institutions, How social norms help or hinder development*, OECD.
- La Porta, R., Lopez-de-Silanes, F., Pop-Eleches, C., Shleifer, A. (2004), *Judicial checks and balances*, 'Journal of Political Economy', No. 112(2).
- La Porta, R., Lopez-de-Silanes, F., Shleifer, A. (2008), *The economic consequences of legal origins*, 'Journal of Economic Literature', No. 46(2).
- La Porta, R., Lopez-de-Silanes, F., Shleifer, A., Vishny, R. (1998), *Law and finance*, 'Journal of Political Economy', No. 106(6).
- Lewis, R.D. (2006), *When Cultures Collide: Leading Across Cultures*, Nicholas Brealey International, London.
- Mallin, C. (2002), *The Relationship between Corporate Governance, Transparency and Financial Disclosure*, 'Corporate Governance: An International Review', No. 10.
- North, D.C. (1990), *Institutions, Institutional Change, and Economic Performance*. Cambridge University Press, New York.
- Pajuste, A. (2002), *Corporate Governance and Stock Market Performance in Central and Eastern Europe. A Study of nine countries, 1994–2001*, 'UCL SSEES Economics and Business Working Paper Series 22', UCL School of Slavonic and East European Studies.
- Patel, S.A., Balic, A., Bwakira, L. (2002), *Measuring transparency and disclosure at firm-level in emerging markets*, 'Emerging Markets Review', No. 3.
- Peng, M.W., Heath, P.S. (1996), *The growth of the firm in planned economies in transition: institutions, organizations, and strategic choice*, 'Academy of Management Review', Vol. 21, No. 2.
- Peng, M.W. (2002), *Towards an institution-based view of business strategy*. 'Asia Pacific Journal of Management', No. 19(1–2).
- Scerbina-Dalibagiene, S., Levisauskaite, K. (2009), *The Conception of Corporate Governance in the European Union*, 'Taikomoji ekonomika: sisteminai tyrimai', No. 3(2).
- Schmidt, R.H., Spindler, G. (2000), *Path Dependence, Corporate Governance and Complementarity*, 'Working Paper Series: Finance & Accounting', No. 27.
- Schwartz, S.H., Bardi, A. (1997), *Influences of Adaptation to Communist Rule on Value Priorities in Eastern Europe*, 'Political Psychology', Vol. 18, No. 2.

Scott, R.W. (1987), *The Adolescence of Institutional Theory*, 'Administrative Science Quarterly', Vol. 32, No. 4.

Siems, M.M. (2006), *Legal Origins: Reconciling Law & Finance and Comparative Law*, 'Working Paper No. 321', Centre for Business Research, University of Cambridge.

Słomka-Gołębiewska, A., Urbanek, P. (2014), *Executive Remuneration Policy At Banks In Poland After The Financial Crisis – Evolution Or Revolution?*, 'Comparative Economic Research. Central and Eastern Europe', Vol. 17, No. 2.

Steier, L. (2009), *Familial capitalism in global institutional contexts: Implications for corporate governance and entrepreneurship in East Asia*, 'Asia Pacific Journal of Management', No. 26(3).

Studziński, J. (2016), *Lad korporacyjny w Polsce [Corporate governance in Poland]*, Warszawa.

Stulz, R.M., Williamson, R. (2003), *Culture, openness, and finance*, 'Journal of Financial Economics', Vol. 70, Issue 3.

Tirole, J. (2001), *Corporate Governance*, 'Econometrica', Vol. 69, No. 1.

Urbanek, P. (2009), *CEOs Remuneration in Corporate Governance Codes in EU Member Countries*, 'Comparative Economic Research. Central and Eastern Europe', Vol. 12, No. 1–2.

Williams, N., Vorley, T., Williams, C. (2017), *The Causes and Consequences of Institutional Asymmetry*, Rowman & Littlefield International Ltd., London, New York.

Williamson, O.E. (2000). *The new institutional economics: taking stock, looking ahead*, 'Journal of economic literature', Vol. XXXVIII.

Ząbkowicz, A., Gruszeńska, E. (2016), *Instytucje w działaniu – skutki motywacyjne w dziedzinie polityki gospodarczej [Institutions in action – motivational effects in the field of economic policy]*, [in:] Rudolf S. (ed.) *Nowa Ekonomia Instytucjonalna a Nauki o Zarządzaniu*, Prace Naukowe Wyższej Szkoły Bankowej w Gdańsku, Tom 48, Wyższa Szkoła Bankowa w Gdańsku, Gdańsk.

Zattoni, A., Cuomo, F. (2008), *Why Adopt Codes of Good Governance? A Comparison of Institutional and Efficiency Perspectives*, 'Corporate Governance', Vol. 16, No. 1.

Corporate Governance Codes

Bulgaria (2012), *Bulgarian Code For Corporate Governance*, Bulgarian National Code For Corporate Governance.

Croatia (2010), *Corporate Governance Code*, The Zagreb Stock Exchange, Croatian Financial Services Supervisory Agency.

The Czech Republic (2004), *Corporate Governance Code based on the OECD Principles*, Czech Securities Commission.

Estonia (2006), *Corporate Governance Recommendations*, The Tallinn Stock Exchange.

Hungary (2012), *Corporate Governance Recommendations*, Budapest Stock Exchange.

Latvia (2010), *Principles of Corporate Governance and Recommendations on Their Implementation*, NASDAQ OMX Riga.

Lithuania (2009), *The Corporate Governance Code for the Companies Listed on NASDAQ OMX Vilnius*.

Poland (2016), *Best Practice for GPW Listed Companies*, GPW.

Romania (2015), *Code of Corporate Governance*, Bucharest Stock Exchange.

Slovakia (2008), *Corporate Governance Code for Slovakia*, Central European Corporate Governance Association.

Slovenia (2016), *Slovenian Corporate Governance Code for Listed Companies*, Ljubljana Stock Exchange.

Streszczenie

WPLYW ODDZIAŁYWANIA INSTYTUCJI FORMALNYCH I NIEFORMALNYCH NA SYSTEM ŁADU KORPORACYJNEGO: STUDIUM PORÓWNAWCZE PAŃSTW EŚIW

Głównym celem niniejszego artykułu jest zaprezentowanie wyników badań porównawczych nad wpływem wzajemnego oddziaływania pomiędzy instytucjami formalnymi i nieformalnymi na system ładu korporacyjnego (SLK) w państwach Europy Środkowej i Wschodniej (EŚIW). Szczególny nacisk położono na wartości leżące u podstaw kodeksów ładu korporacyjnego (KŁK) w państwach EŚIW, a także na przejrzystość struktur własności, transparentność transakcji z podmiotami powiązanymi, ochronę akcjonariuszy mniejszościowych, niezależność członków rad nadzorczych czy rozdzielenie uprawnień zarządczych od nadzorczych w systemach monistycznych. Głównym przedmiotem zainteresowania były dwa obszary badawcze: charakter relacji pomiędzy instytucjami formalnymi i nieformalnymi, a także ustalenie czy ich wzajemne oddziaływanie miało znaczenie dla SLK państw EŚIW. Ponadto zbadano KŁK państw EŚIW pod kątem spójności i zgodności regulacji zawartych w tych kodeksach z wartościami leżącymi u ich podstaw. Badanie porównawcze przeprowadzono przy użyciu takich metod badawczych jak studia przypadku czy rozumowanie dedukcyjne. Przedstawione wnioski zostały sformułowane na podstawie przeglądu literatury oraz badań krajowych i europejskich regulacji ładu korporacyjnego, a także KŁK państw EŚIW. Najważniejszym aspektem tego artykułu jest przeprowadzenie badań wykraczających poza ramy danego kraju, a także powiązanie literatury dotyczącej wzajemnych oddziaływań między instytucjami formalnymi i nieformalnymi SLK z problemami gospodarek w okresie przejściowym, w jakim znajduje się większość państwa EŚIW. Niniejszy artykuł pokazuje jak wzajemne oddziaływanie pomiędzy instytucjami formalnymi i nieformalnymi wpływa na KŁK państw EŚIW.

Słowa kluczowe: corporate governance; ład korporacyjny; dobre praktyki; instytucje formalne; instytucje nieformalne; kodeks ładu korporacyjnego; państwa Europy Środkowej i Wschodniej; CEEC; asymetria informacji; wzajemne oddziaływanie instytucji; LLSV