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## Article

# The impact of financial crises on changes to the models of corporate governance

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## In-depth literature review

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# The impact of financial crises on changes to the models of corporate governance

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**Abstract:** This study aims to define the impact of two largest crises of 1997–1998 and 2007–2008 on changes to the models of corporate governance. In order to achieve the assumed aim, a critical analysis of specialist literature and relevant legal regulations has been applied. The analysis is focused on changes in the main models of corporate governance, namely: in the Anglo-Saxon (monistic) model and in the German (dualistic) model. Generally, they can be defined as of evolutionary nature but some deeper changes have taken place under the influence exerted by the above-mentioned crises. The latter crisis has emphasized the important role of corporate governance in banks and other financial institutions. Changes in corporate governance are largely affected by international institutions or organizations, such as the Organization for Economic Cooperation and Development (OECD) or the European Commission. Their recommendations and guidelines have contributed to the dissemination of so-called good practice codes. The considerations presented below allow the author to state that in both analyzed models of corporate governance, changes occur in the same or similar direction lines (the phenomenon of convergence). It can be also observed that the first analyzed crisis has caused larger changes in the monistic model, whereas the second crisis has affected the dualistic model in a more significant way.

**Keywords:** convergence, corporate governance, financial crisis, good practice codes, the OECD principles

**JEL Classification:** G21, G34, H12

## 1 Introduction

Major changes started to occur in the current systems of corporate governance in the 1970s. The most significant changes have taken place over the last 20–25 years. It was the time when more attention was drawn to the functioning of corporate governance. It was also realized that corporate governance could become an important factor for economic growth and for improvement of economic competitiveness. In fact, proper corporate governance allows companies to use their capital in a better way. It increases domestic and foreign investors' trust. Furthermore, it affects the location of foreign direct investments. Corporate governance can make companies follow not only their own interest but also take the interest of the state, of the region, or of the local communities into their account. Scientific research indicates that investors tend more to buy shares of companies which are characterized by high quality of their corporate governance [Jeżak, 2010, pp. 12–14].

Growing concern for the quality of corporate governance contributes to the fact that it undergoes evolutionary processes. Such processes are forced by both: growing competition and changing conditions for the operation of companies. Considered in the national and international scales, growing competition forces companies to face higher and higher requirements in terms of their efficiency, rationality of their decisions, transparency, resilience to crises, etc. Corporate governance can come as some significant assistance needed to meet such requirements, provided that it is adjusted to the current conditions and

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supports the company in the achievement of its targets. Considering changes in the above-mentioned conditions, the system of corporate governance must undergo some changes as well.

A careful analysis of changes which take place in corporate governance allows the author to draw a conclusion that they generally occur in a continuous, evolutionary way. Such changes take place in various systems of corporate governance and they refer to its various fields. At the same time, it is possible to observe some deeper and fundamental changes which come as a result of serious financial or economic crises. It is commonly believed that one of the reasons for such crises is improper corporate governance. Changes which have been implemented are aimed at the improvement of corporate governance and at the prevention of similar crises in the future. Naturally, not all the crises result in such changes because crises are characterized by varying scope, depth, and levels of significance to the economy. As J. Stiglitz suggests, in 1970–2007, 124 crises of such a type took place [Stiglitz, 2010, p. XVIII].

Reforming systems of corporate governance is based both on so called soft law and hard law. Soft law includes recommendations or guidelines of optional nature. Hence, companies can choose to implement or to ignore recommended principles, they can decide about the time when such principles can be implemented, or they can decide about the pace of such implementation processes, etc. The way in which systems of corporate governance are reformed based on the soft law provides companies with considerable flexibility. Recently, the main carriers of soft law have been good practice codes.<sup>1</sup> They include general recommendations which are formulated in a way that allows large numbers of companies to implement them. The current experience, including Polish experience as well, indicates that although soft law is not of obligatory nature, it can still be efficient, especially over a longer period of time [Nartowski, 2007, pp. 3–16].

The experience also indicates that the principles of soft law can turn out to be insufficient to prevent some major difficulties or crises. Recommendations included in good practice codes are not always implemented by companies, or they are implemented against some considerable resistance. It particularly refers to unpopular solutions which require deeper changes or more effort. Therefore, in such cases, the principles of hard law of obligatory nature should be applied. Changes based on hard law are usually forced by crises or other significant economic events (e.g., the fall of well-known corporations, such as Enron, Worldcom, and Parmalat). It sometimes happens that after their positive application, some principles of soft law become the elements of hard law.

The paper aims to determine the impact of two largest financial crises: the crisis of 1997–1998 and the crisis of 2007–2008 on changes in corporate governance. Crises can affect such changes both in direct and indirect ways. It means that changes in corporate governance which occur in the particular countries can take place directly under the influence of crisis phenomena as well as under the influence of international organizations and institutions and their recommendations formulated because of the crisis. The paper presents changes taking place in countries where the monistic model of corporate governance is applied (mainly in the Anglo-Saxon countries) and in the countries where the dualistic model is applied, with particular consideration of the German system, which is also applied in Poland.

The paper presents an attempt made at the verification of the following research hypothesis: the changes in the analyzed models of corporate governance take place in an evolutionary way under the influence of globalization processes, growing competition, and turbulent environment. They may also take place as rapid steps under the influence of financial crises. They follow the same or similar directions and this fact may indicate the convergence phenomenon.

## 2 The impact of the crisis of 1997–1998 on changes in the models of corporate governance

A contemporary crisis usually starts in one country; then it spreads onto the entire region and then onto the whole world.<sup>2</sup> Globalization processes have resulted in the fact that the world has turned into a big system

<sup>1</sup> More considerations on the essence of good practice codes can be found in the study by Furtek and Jurcewicz [2002], pp. 24–29.

<sup>2</sup> More information about the mechanism of how a crisis emerges can be found in the study by Friedman [2001], pp. 5–10.

of communicating vessels. Crises which appear every now and then are difficult to handle, considering free movement of capital. This is not coincidental that crises first occur in the field of finance and then they spread onto the entire +economy.

Considering its unprecedented scale, the discussed crisis initiated a wide-ranging discussion on its causes and on the possibilities of crisis prevention. It was determined that one of the most important causes was the weakness of corporate governance, especially at financial institutions – however, not only there. The criticism of the systems of corporate governance applied at that time resulted in some suggestions concerning the question of how for reforming them. The significant role in the reformation was performed by the Organization for Economic Cooperation and Development (OECD), which developed the principles of corporate governance and issued reports about its functioning. The guidelines and recommendations issued by the European Commission and other European Union (EU) bodies were also significant in that process.

## 2.1 The role of the OECD and the European Commission in reforming corporate governance

The OECD had already been interested in the problems related to corporate governance for a longer time, under the influence of British experience (reports by Cadbury [1992], Greenbury [1995], Hampel [1998]). It should be particularly emphasized here that the discussed crisis transpired to be a tipping point and, as a result, *The Principles of Corporate Governance* was published in 1999 [Zasady..., 1999]. The document is still treated as a set of guidelines for the OECD member countries, to be applied during the development of national legislation or any other documents related to corporate governance. The principles are of an open character because companies are allowed to modify them constantly and to adjust the solutions for corporate governance to changing conditions. Hence, the principles are of soft law nature. It means that they are recommendations for companies, which can implement them voluntarily. They should be considered as some international standards to which solutions developed by the particular countries can be referred [Jerzemowska, 2010, pp. 38–39].

The authors of the above-mentioned principles claim that there is no ideal model of corporate governance; however, they indicate some universal principles which should be applied in each of such models. These principles include, among others: treating all shareholders and partners in the same way, regardless of their ownership scale and regardless of their residence, guaranteeing fundamental rights resulting from the ownership, providing openness and transparency of information about economic performance, ownership structure, management system, supervision and control methods, etc. There are also recommendations related to the credibility of accounting systems and financial reporting [The Principles..., 1999]. The significance of the above-mentioned recommendations cannot be underestimated, especially for the development of national or organizational good practice codes. Based on these recommendations, several dozen good practice codes have been developed so far in Europe. The principles have also been an inspiration for the development of good practice codes in Poland [Dobre praktyki..., 2002; Campbell et al., 2006].

Another set of principles of corporate governance recommended by the OECD was published in 2004 as the amendment to the principles of 1999 [The OECD..., 2004]. The principles were developed not only by the representatives of the OECD member countries but also by the experts of the World Bank, International Monetary Fund, Basel Committee on Banking Supervision, and many others. Similarly to the previous set, the above-mentioned principles are formulated in a very general way because they are addressed to the countries where various systems of corporate governance are applied. The recommendations which govern the independent board members should be particularly emphasized as they appear in the context of an objective possibility of evaluating the financial condition of a company. Growing participation of independent board members improves chances for evaluating operation of the board in a proper way and for undertaking responsible and efficient actions on that basis. The document includes some general suggestions pertaining to the criteria of such independence (no close economic or family relations with senior management members or with major shareholders, etc.). Based

on these criteria, the board decides which members get the status of its independent members. The authors believe that the OECD principles efficiently support convergence processes taking place in corporate governance, which can be encouraging for others to accept common standards [Palepu et al., 2002, pp. 4–5].

The EU also became interested in changes to corporate governance. As a result of the above-mentioned crisis and numerous cases of fraud, abuse, and other corporate crime related to so-called creative accounting during the years 2000–2002, the European Commission appointed a panel of experts who evaluated the implementation of the principles of corporate governance in the EU countries. The panel provided the Winter Report published in November 2002 [Winter, 2002]. Generally, the authors evaluated the implementation of the OECD principles in a very critical way, indicating some differences observed between the particular countries. They suggested that the participation of independent directors in corporate boards should be increased. The participation of independent directors could improve the quality of work done by the board. They could play a particularly important role in auditing committees and remuneration committees, which significantly affect the efficiency of the operations undertaken by the board.

An important inspiration for changes in national systems of corporate governance came with the recommendations of the European Commission and other EU bodies. One of the first was the Recommendation of the European Commission of December 14, 2004. It is focused mainly on the transparency of remuneration policy pertaining to members of corporate management and board members. The recommendation emphasizes a significant role of independent members who should supervise the transparency of operations undertaken by the company and fairness of its management. There are also recommendations which refer to the appointment of board committees dealing with audit, promotion, or remuneration. In the recommendation, the board is obligated to disclose the principles of remuneration applied in the company and the level of remuneration earned by the management board members [Zalecenie Komisji..., 2004]. Another recommendation of February 15, 2005 refers to remuneration committees which should mainly consist of independent members. The tasks of committees involve developing principles of remuneration for management board members and presenting them to the board, monitoring remuneration of the senior management members, developing incentive schemes or their modifications, etc. [Zalecenie Komisji..., 2005].

## 2.2 Changes to corporate governance in the selected countries

While presenting changes in corporate governance in the selected countries, it should be stated that the most significant changes took place in the USA at that time. The discussed crisis and the corruption scandals mentioned previously, which took place at the beginning of the 20<sup>th</sup> century, resulted in the fact that problems related to auditing were placed right in the spotlight. Numerous reports and recommendations were addressed to these problems, among them a report issued by the Blue Ribbon Committee, published in 1999, which deserves some particular attention. It presents some new and important recommendations intended to improve the independence and efficiency of such committees [Blue Ribbon, 1999]. Those recommendations have been widely applied by the Securities and Exchange Commission and accounting associations.

It is commonly believed that one of the milestones in reforming the system of corporate governance in the USA is the Sarbanes-Oxley Act (SOX) of 2002 [Sarbanes-Oxley, 2002]. The Act is a good example to illustrate transformation of soft law elements into hard law. It contains numerous recommendations included in the report of the Blue Ribbon Committee and in good practice codes. Considering some issues, the Act goes beyond the above-mentioned recommendations. It has introduced the obligation of appointing auditing committees into the legal regulations and has equipped these committees with extensive authority. It obligates employers to provide committees with required information and to secure means for their operation (appointing consultants, conducting necessary research, etc.). It significantly increases requirements pertaining to internal auditing and makes the management staff more responsible for the operation of the company. First of all, however, it improves independence of auditing and supervising

bodies, which has always been a major issue in the monistic system. One of the provisions that should be particularly emphasized here is that it obligates committees to develop procedures for the response to any incorrectness or fraud observed in the company.

Under the influence of the OECD principles, some changes could be observed also in American good practice codes. A code of 2003 recommends that non-executive members should constitute a major part of the boards in the New York Stock Exchange (NYSE) listed companies. The code also defines independence criteria in detail. One of those criteria refers to the lack of family relations with the company management staff members, the lack of business relations inside and outside the company, and a 3-year break after the termination of working for the company [Corporate Governance, 2003]. Such codes affected changes in the structure of corporate boards in a fundamental way. In the 1980s, non-executive directors constituted 20% of the board members approximately, whereas at the end of the first decade of the 20<sup>th</sup> century their participation was increased up to about 80% [Ježak, 2010, pp. 166–168].

Also, changes in the British system of corporate governance followed the same line. They took place mainly in the subsequent editions of good practice codes. It is worth noticing that the first code of this type was developed in Great Britain in 1992 [The Cadbury..., 1992]. The subsequent editions of good practice codes, especially those which came after the publication of the OECD Principles, were focused mainly on the increase in the participation of non-executive members in corporate boards. The codes also recommended the presence of independent board members. They also provided some criteria of independence, and an example of these includes the requirement that there should be no business or family relations with the management staff of the company. However, the board was supposed to be responsible for the evaluation of the extent to which independent criteria were met.

The discussed crisis revealed some imperfection in corporate governance applied in Germany. Some phenomena, such as hostile takeovers or corruption scandals, were the reasons for appointing a government commission which was supposed to develop reforms for corporate governance. The commission took name after its chairman and it was referred to as the Baums Commission. In July 2001, the Commission presented a catalog including 150 detailed recommendations intended for the commercial code and good practice code [Baums Commission, 2001]. Based on those recommendations, a corporate governance code was developed in February 2002 [German Corporate..., 2002]. The code differs from similar codes applied in other countries in a fundamental way, mainly in terms of its structure. The first part of the code includes legal regulations encompassing corporate governance. The second part includes recommendations which can be implemented on voluntary basis (comply or explain). The third part includes suggestions for which there is no requirement of application or explanation as to why they have not been implemented.

Recommendations that require the presence of independent board members can be also found in the subsequent editions of Polish good practice codes. Although in the EU member countries there are weaker and stronger tendencies to extend the participation of independent members in the board, some opposite tendencies can be observed in Poland. The most ambitious good practice code in that respect is the first Good Practice Code of 2002 [Good Practice..., 2002] which recommends the participation of independent members at the level of 50%. However, this level has turned out to be far too high and this criterion of independence has been met only by 20% of listed companies approximately [Nogalski and Dadaj, 2006, p. 351]. Recommendations dealing with auditing committees have also changed in the subsequent editions of good practice codes. The first recommendation on appointing auditing committees can be found in the code published in 2005. In accordance with the recommendation, such committees should consist of independent board members. However, the criteria of independence presented in the code have been met only by 25% of companies [Campbell et al., 2006, p. 362]. Recommendations dealing with the participation of independent board members can be also found in good practice codes issued in the countries of Central and Eastern Europe [Przybyłowicz and Tamowicz, 2008, pp. 241–257].

Summing up this part of our considerations, it is possible to state that the ongoing evolution of the main models of corporate governance has been heading in the same or similar direction. It is not surprising, because the changes to conditions in which business entities operate come as the main drive



to the implemented processes. The implemented globalization processes have made these conditions become similar in all the countries, regardless of the applied corporate governance. Additionally, these models have been stimulated to undergo some changes by recommendations provided by international institutions which also act taking the same or similar direction. They all recommend expanding the scope of independent board members, appointing board committees of similar constitution and similar scope of terms of reference, etc. However, it does not mean that the changes to both models take place in the same way. The starting point for implementing changes was different, as well as the pace and scope of such changes, etc.

As the analysis provided in the paper indicates, the Anglo-Saxon model went through a longer process, in which deeper changes were implemented during the analyzed period of time. At first, the board of directors consisted almost exclusively of executive directors but at the end of the analyzed period of time, non-executive directors dominated there, both in the USA and in Great Britain. Audit committees were established as they were of key significance to the transparency of actions undertaken by business entities. Numerous changes of this kind lost their voluntary nature because they are now regulated by law. Applied in Great Britain, the principle of separation has become more and more popular also in the USA, where the criticism of excessive power held by directors, who at the same time act as board chairpersons, is still growing. Such changes may indicate that the monistic model becomes more similar to the dualistic model. The changing board of directors, with strong dominance of non-executive directors, where one of them acts as a chairperson, has started to increasingly resemble a supervisory board.<sup>3</sup>

### 3 The financial crisis of 2007–2008 and its impact on changes in corporate governance

The above-mentioned changes in corporate governance turned out to be insufficient and another crisis occurred – the deepest one over several previous decades. These changes have largely eliminated the causes of the previous crises. Auditing committees significantly contributed to that fact, along with similar activities undertaken to eliminate or to limit creative accounting. Other causes became more significant and their importance increased with changes which took place in the environment of companies and which corporate governance could not catch up with. Some authors believe that improper corporate governance was the reason for that crisis [Isaksson, 2009; Kirkpatrick, 2009],<sup>4</sup> although it is not a common opinion. Errors in corporate governance are more often considered to be one of the most important reasons for the crisis [Siems and Alvarez-Macotella, 2017]. Erroneous management, insufficient competences of executives who made strategic decisions, and excessive remuneration for company presidents and management board members even in situations when their company had incurred loss are also listed among the reasons for the analyzed crisis. Unlike previously, such activities – although reprehensible – were compliant with legal regulations [Urbanek, 2010, pp. 16–17]. Generally, the Anglo-Saxon structure of corporate governance and the regulation system related to it are blamed for the discussed crisis, along the excessive authority of boards of directors, to be more precise [Pirson and Turnbull, 2015, pp. 83–87].

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<sup>3</sup> It is possible to find much more evidence for that. It can be clearly observed in the Scandinavian countries, especially in Sweden and Norway, where the monistic model is enhanced with some elements of the dualistic model. In these countries – first in Sweden and since 1997 in Norway – employee representatives have been able to become members of boards of directors. In Sweden, decisions about appointing board employee representatives are made by local trade unions. In Norway, the principles of employee representation are more complex and they depend, among other factors, on the size of a company [Rudolf, 2018, pp. 171–187]. The research carried out in these countries has indicated that the employees' participation in boards is generally beneficial to the efficiency of business entities [Rudolf, 2017, pp. 61–76].

<sup>4</sup> This opinion is shared by some international organizations, such as the Association of Chartered Certified Accountants, which is the largest association of auditors from over 170 countries. It is stated that the reason for the crisis was the fall of corporate governance [Pirson and Turnbull, 2015].

### 3.1 Recommendations to corporate governance

The analyzed crisis resulted in more recommendations and guidelines provided by the above-mentioned institutions and in some actions undertaken by the particular countries. The recommendations issued by the European Commission of April 30, 2009 should be emphasized here [Zalecenie Komisji..., 2009, no. 384]. They were published when the scale of the crisis and its partial results had been already known. The recommendations are modified as far as the question related to remuneration of management staff is concerned, emphasizing not only its transparency but also procedures of establishing remuneration levels, particularly in reference to the variable elements of remuneration. Generally, it is recommended to pay remuneration only when performance criteria are met, to reclaim remuneration if it has been paid based on unreliable data, to defer remuneration in questionable situations, etc. The recommendation for the appointment of remuneration committees by company boards was also repeated. It is not a coincidence that a lot of attention is paid to remuneration in financial institutions which have been most affected by the crisis. There are also recommendations dealing with the coordination of remuneration policy with risk management.

Another important document issued by the OECD on problems related to corporate governance is a report published in June 2009 [Corporate Governance..., 2009], in which it is stated that apart from excessive remuneration paid to management staff and irresponsible attitudes presented by managers, especially as far as risk management is concerned, the reason for the analyzed crisis was improper action undertaken by supervisory boards and boards of directors. There is also a recommendation in the report to increase the participation of independent board members who have relevant knowledge and experience indispensable to work in a board or board committees. There is also a recommendation to make thoughtful choices and to train board members [Duam, 2010].

The report resulted in another edition (the third one) of the OECD principles. They were developed in the years 2013–2014 with active participation of the G20 countries. The principles were approved in November 2015 during the G20 summit in Antalya in Turkey. Therefore, they are referred to as the G20/OECD principles. Their main aim is to promote financial stabilization, investment stabilization, and economic growth. The discussed crisis resulted in a decision being made about the amendment to these principles and to their adjustment to the changes which take place in business environment.

A closer analysis of the above-mentioned principles allows the author to state that they do not bring any revolutionary changes, comparing to their previous version of 2004, although they are supplemented with some new recommendations necessary after the global financial crisis of 2007–2008 [G20/OECD..., 2015]. It is recommended that supervisory bodies (including securities stock exchanges) should be depoliticized, and obstacles in cross-border voting should be eliminated mainly through defining who is authorized to vote in this way. Furthermore, information and communication with shareholders should be improved and they should be provided with a possibility to vote via information technology tools. Another important change is also a recommendation that aims to ensure employees' rights for information, consultation, and negotiation. It is also recommended that the participation of customers should be strengthened – in other words, they should be treated in the same way as other stakeholders of the company, such as investors, employees, suppliers, etc. The principles also postulate disclosure of donations made for political reasons, disclosure of information on remuneration of employees' representatives, etc. Another important recommendation refers to the increase in the supervision of management boards in questions related to risk management.

It is necessary to wait for a more detailed evaluation of the efficiency of the above-mentioned principles, because their implementation has only just began. In 2017, in cooperation with the World Bank, the OECD developed methodology for the implementation of the principles [Report to G20..., 2019]. The participation of the G20, the World Bank, and other important international institutions in the development and promotion of the discussed principles indicates that they are of the global character.

It is hard to overestimate the role of the OECD in reforming corporate governance. The principles have affected the systems of corporate governance in many countries since 1999, when their first version was published. Although it gathers only 35 members, the organization along with 5 partner countries constitute



80% of world trade and investment. It is estimated that the range of influence exerted by the discussed principles is much wider because the recommendations have been met with a positive response from employers based in less developed countries [Siems and Alvarez-Macotela, 2017].

In the discussion on the OECD principles, not only are their advantages emphasized but also their disadvantages as well. According to the authors mentioned previously, the popularized global model of corporate governance does not consider any social, cultural, and economic differences between the particular countries, where institutions may differ, especially those of non-formal nature, or where there are different principles of management applied, for example in family companies. These countries may differ as far as the corruption or transparency levels are concerned, etc. At present, two concepts are being discussed in order to improve the efficiency of the above-mentioned principles. The first concept refers to their transformation into treaties of international law. In such a case, companies would have to decide about adopting the OECD corporate governance model to obtain international investment more easily. The second concept assumes maintaining the current status of the principles and applying them as a framework or a model which could be used for development of national or organizational systems of corporate governance.

There are a number of arguments for adopting the latter concept. It is related to a long-standing trend to make management principles more flexible. It means that the OECD principles should be adjusted to the conditions observed in the particular parts of the world or in the particular countries. Mexico comes as a good example here. The incorporation of the discussed principles into the corporate law in Mexico has not been very successful [Siems and Alvarez-Macotela, 2017]. The principles should be treated as soft law which can be modified and the discussion on this problem should become a starting point for the reformation of corporate governance. This approach assumes a high complexity of social and economic systems of the particular countries which cannot be changed only with the principles of corporate governance. There are other ways to do it, such as integrating the particular policy instruments and understanding the way in which interested parties are involved in changing their behavior.

### 3.2 Changes to banking supervision

In the discussion about the causes of the financial crisis of 2007–2008, the weakness and inefficiency of corporate governance mechanisms in banks are much more emphasized than in the case of other crises.<sup>5</sup> It is worth noticing that corporate governance in banks and other financial institutions differs significantly from corporate governance in non-financial institutions. Although banks and financial institutions have to meet the same legal obligations as non-financial companies, they can face some higher pressure imposed not only by their shareholders but also by their debtors, insurers, or creditors. At the same time, regulative bodies expect their management boards to provide a high level of safety and reliability, which does not necessarily have to follow the interests of their shareholders.<sup>6</sup> All these factors result in the fact that reforms of the corporate law are inefficient in the banking sector. Stricter requirements of the supervisory law are more efficient. The above-mentioned differences also include the complexity of operations taking place in the banking sector and this fact increases the asymmetry of information, decreasing the abilities of stakeholders to monitor decisions which are made by banks [Hopt, 2013]. The authors believe that more detailed and more complex mechanisms of corporate governance are required in the banking sector [Turlea et al., 2010].

The suggestions which appeared after the latter of the analyzed crises also include separation of management functions and supervisory functions through a two-tier company board, appointment of a separate risk committee, and appointment of a risk director in the company board. Proper requirements of

<sup>5</sup> The financial crisis affected banks as well. Numerous countries were forced to nationalize weaker private banks. State banks were also in trouble [Hallerberg and Markgraf, 2018, pp. 43–53].

<sup>6</sup> To limit the influence exerted by external entities on bank operation, several countries have implemented legislations that limit concentration of bank ownership [Kose et al., 2016, p. 306].

corporate governance are indispensable for regulation of internal procedures applied by banks and other financial institutions, especially in the fields of risk management, internal supervision, and internal and external auditing. It is also emphasized that competences and experience of management board members are of crucial significance and they can be even more important than the participation of independent directors in management boards. It is postulated that the number of boards should be decreased because of their decision-making costs. Remuneration of management staff has been also discussed. It should be maintained at the level which could efficiently minimize managers' opportunism on one hand, and which could relate it to the performance of banks on the other hand. The authors believe that it is necessary to provide new strict regulative requirements for corporate governance in banks [Lenter et al., 2019, pp. 38–48; Fernandez-Sanchez et al., 2020, pp. 60–61].

In response to such opinions about responsibility of banks and financial systems for the analyzed crisis, there have been some initiatives undertaken by numerous international and national groups of decision-making bodies. A number of initiatives presented by the EU should be mentioned in the first place. In 2010 the EU published a “green book” on the issues related to corporate governance in banks [European Commission, 2010]. In 2011 the European Banking Authority started its operation. It now supervises EU financial institutions such as banks, insurance companies, pension funds, and securities stock exchanges. There is also the European Systemic Risk Board [Marcinkowska, 2012, p. 539]. In 2009, the European Commission issued a recommendation dealing with remuneration in the financial sector [Commission Recommendation..., 2009].

The above-mentioned recommendations and other guidelines of international and national institutions along with the amendments to the current legal regulations have prompted banks to reform corporate governance. Presently it is too early to determine the scope of those reforms. Numerous authors and scientific teams are in the process of carrying out the research on that topic. The work of the broadest scope, which includes 46 largest commercial banks, has recently been published [Fernandez-Sanchez et al., 2020, pp. 52–61]. The aim of that research is to determine the impact of the global financial crisis on the mechanisms of bank management. Hence, there are two questions posed: Has the financial crisis affected the efficiency of bank management? Are changes which have occurred in banks related to the applied corporate governance model?

The above-mentioned authors try to determine the differences observed in the field of the implemented changes between the monistic model (which is referred to as the shareholder model), which is applied mainly in the Anglo-Saxon countries, and the dualistic model (which is referred to as the stakeholder model), which is applied mainly in the countries of continental Europe. The first model treats corporate governance as a mechanism for maximization of value for shareholders. It is characterized by the low concentration of ownership, liquid stock markets, one-tier boards of directors, a relatively high level of protection of minority shareholders, and a dominant role of institutional investors. In the latter model, the task of corporate governance is to maintain the balance between the interests of various stakeholders. It means that managers will be responsible for the interests of not only shareholders but also employees, customers, business partners, etc. This model is characterized by a small number of investors, and hence by the high concentration of ownership which allows shareholders to affect the decisions that are made. In the discussed model, the market of corporate governance has weaker influence on management than it does in the shareholder model [Maxfield et al., 2018].

The answer to the first question turns out to be generally positive for both models which have been analyzed. As a result, some improvement has been observed in bank management, indicating better operation of their management boards (higher frequency of board meetings, a more democratic process of appointing directors), appointing committees for corporate social responsibility, committees for sustainable development, and larger participation of shareholders in decisions related to remuneration of bank management staff. In the authors' opinion, changes can be also observed in the field of protection against takeovers. In Anglo-Saxon banks, it involves improvement of their current management mechanisms, whereas in continental Europe it refers more often to protective measures, such as golden parachutes, which is contrary to shareholders' interest. The above-mentioned authors draw a general conclusion that after the crisis, Anglo-Saxon banks have maintained a high level of management efficiency, whereas banks

of continental Europe have increased their efficiency, improving mechanisms of corporate governance<sup>7</sup> [Fernandez-Sanchez et al., 2020, pp. 60–61].

In response to the second question, the authors state that both models of corporate governance have undergone some changes after the financial crisis. The authors believe that more significant changes can be observed in European banks which have improved their management mechanisms and increased their efficiency considerably. These changes involve higher frequency of management board meetings (from 9.3 meetings a year on average before the crisis up to 12.4 meetings after the crisis), in this way reaching the level observed in Anglo-Saxon banks. In both models an increase in shareholders' participation can be observed in decisions about remuneration of management staff. The increase is much higher in the stakeholder model because the discussed participation has been increased from 10.5% up to 65% (whereas in the shareholder model it has grown from 88.5% up to 100%). Some more significant changes can be also observed in the stakeholder model in the field of appointing supervising committees. The research also indicates an increase in the average evaluation of corporate governance in European banks – from 53 points before the crisis up to 66.8 points after the crisis, whereas this rate has been maintained at the stable level of 77.2% in Anglo-Saxon banks. As a result, the gap in the efficiency of management observed between the discussed models has been decreased (referred to as the phenomenon of convergence). It has resulted in the improvement in management efficiency in the entire banking system [Fernandez-Sanchez et al., 2020, pp. 55–60].

### 3.3 Changes to good practice codes

The analyzed crisis has also resulted in some changes in good practice codes both in the USA and in Great Britain. Their subsequent editions have resulted in the popularization of promotion, remuneration, and risk committees [Mongiardino and Plath, 2010, pp. 116–123]. Their growing significance is strictly related to an increase in the independence of boards and to an increase in the participation of independent board members. The scope of their responsibilities has been defined in a more specific way along with the requirements pertaining to the substantive competences of board members, etc. An important standard which has been developed in the monistic system is the transparency of committees' work. Hence, management boards are obligated to disclose committee membership, their chairpersons, the frequency of committee meetings, etc. Generally, their task is to work out suggestions or opinions before a decision is made by the board. The practice has already proved that it is necessary for board committees to operate and now it would be difficult to imagine a board of directors without such committees in any large corporation [The UK Corporate..., 2010].

Another version of the German good practice code of 2010 is developed in a similar vein [German Corporate..., 2010]. This code recommends “proper” participation of independent board members – however, without specifying what proper participation is. The number of independent board members should be adequate to the specific character of a company, the number of employees, the size of the board, etc. At the same time, it is recommended that board members should not have any personal or business relations with management board members. They also should not have any relations with the main competitors of the company, etc. Furthermore, it is recommended that the board should not include more than two former management staff members and that one person should not be a member of more than five supervisory boards.

In the countries where the dualistic model of corporate governance is applied, committees such as promotion and remuneration committees have become very popular. Remuneration committees seem to be highly popular; however, their scopes vary in the particular countries. Most frequently, they are appointed by the supervisory boards in listed companies, in countries such as the Netherlands, Ireland, or Portugal

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<sup>7</sup> A less optimistic opinion in this matter is presented by T. Lazardis and E. Pitoska, who have analyzed changes that have taken place in EU banks after the financial crisis. They believe that EU banks have not changed their financial and ownership structure. The changes in their corporate governance do not allow these authors to state that the banking sector in Europe differs significantly from its previous version [Lazardis and Pitoska, 2014, pp. 358–368]

(over 80%), whereas they are not very often appointed in Denmark (30%) and Finland (40%) [Ferrarini et al., 2010, pp. 73–118].

American experience has positively affected popularization of auditing committees in Poland, where they have gained statutory nature. However, although this regulation has not been incorporated in the code of commercial companies, it has been introduced to the Act on Auditors [The Act..., 2009]. It imposes an obligation to appoint an independent member of a supervisory board and to appoint an auditing committee in listed companies. The committee (consisting of at least three members) should include at least one independent member, who has proper competencies in finance and accounting. This comes as another example of replacing soft law with legal regulations in the field of corporate governance. However, the act does not solve the problem because it refers only to 400 companies listed at the Warsaw Stock Exchange. Hence, it cannot replace any changes to the code of commercial companies.

As presented in this part of the paper, the considerations indicate the lines and scopes of the changes caused by the crisis in corporate governance in the years 2007–2008. The fact that it has not been a long time since the above-mentioned crisis makes the considerations focus more on the field of legislation and recommendations, rather than on real changes that have taken place in the corporate governance bodies. During the analyzed period of time, changes took place in the banking sector more often than in other sectors. It is also possible to observe that such changes referred much more to the dualistic system than to the monistic one.

## 4 Conclusions

The considerations presented in the preceding sections clearly indicate a dynamic character of changes in the operation of corporate governance. Although the discussed changes take place in a gradual way, it is certain that financial crises affect the depth and the scope of these changes. It can be also observed that the more serious the crisis, the more extensive the resultant changes. Countries response to crises in different ways. Some of them appoint special commissions or panels to evaluate the situation in corporate governance and they develop recommendations for changes to be implemented. In such cases, changes can be quite radical. Other countries follow the recommendations and guidelines in the field of corporate governance provided by the above-mentioned international institutions (OECD, EU). In such cases, changes are not very extensive and they are generally treated as soft law.

The considerations presented above indicate that transformation processes are implemented in both main models of corporate governance: the monistic model and the dualistic model. It is worth noticing that the discussed changes follow the same or similar lines, which may indicate the convergence of both models. It is not surprising because the driving power of the implemented changes has been a change in the conditions in which companies operate. The current globalization processes have resulted in the fact that the discussed conditions are similar in all countries, regardless of which model of corporate governance has been adopted. International institutions also affect the convergence in a certain way, issuing the same recommendations and guidelines for both models.

The considerations presented in the paper prove the thesis put forward by numerous authors, stating that corporate governance is the significant or the main cause of financial crises. Extensive changes in the principles of corporate governance after the end of the crisis prove this to be the case. Proper corporate governance can counteract crises, it may indicate some oncoming threats and it may foster undertaking adequate actions. The latest crisis has drawn our attention to the need of developing regulations for financial systems and the necessity of improving their supervision. As a result, risk committees are appointed. At the same time, there are some postulates to increase participation of shareholders, including institutional shareholders. The significance of board members' professional competences is also emphasized. It is strongly indicated that changes which have been currently implemented will neutralize the causes of the latest crisis. However, some other causes will probably appear and they may result in another crisis.

The considerations presented in the paper may also indicate a positive verification of the hypothesis formulated at the beginning of the paper, stating that the changes to the models of corporate governance take their course in the same or similar direction. This may indicate that a process of their convergence exists. It is difficult to precisely determine which of the analyzed models becomes more similar to the other one. As it has already been stated, the consequences of the first analyzed crisis included faster changes in the Anglo-Saxon model than those observed in the German model. The analysis indicates that the Anglo-Saxon system followed the German system. Some different results of these changes were observed after the second of the analyzed crises. In this case, more significant changes took place in the German model, which followed the Anglo-Saxon model to a bigger extent. Considering the short time which has passed since the above-mentioned crisis, it is possible to discuss *de jure* convergence rather than *de facto* convergence [Palepu et al., pp. 5-6]. *De jure* convergence means accepting similar legal solutions in the field of corporate governance or accepting some specific recommendations by the particular countries. *De facto* convergence refers to real changes which have taken place in corporate governance.<sup>8</sup>

Stock exchanges also have some influence on convergence processes. It is possible to agree with J. Ježak [2010, p. 183] that German companies and German corporate governance has been gradually Americanized. This pertains particularly to large companies listed at the New York Stock Exchange, which have had to meet the criteria stated by this stock exchange. Similarly, listed on European stock exchanges, American companies have had to meet the criteria stated for them, which may indicate Europeanization of those companies.

To summarize, it should be emphasized that the author's opinions presented above are not broadly shared. At present, there is a wide-ranging discussion going on about convergence, divergence, and hybridization of corporate governance models [Samborski 2013; Gindis et al., 2020]. Some authors share the opinion about convergence but their beliefs differ in terms of the scope of the changes to the particular models. Hansmann and Kraakman [2001] believe that the Anglo-Saxon model based on the shareholders' primacy is by far the best one and that it is followed by other models. However, this opinion is criticized by other authors. Thomsen [2003] is also a supporter of convergence but he believes that the above-mentioned models mutually adjust to each other. He questions the thesis about the superiority of the Anglo-Saxon model, which is shared by numerous American authors. Simultaneously, it is possible to indicate some authors who question processes related to the global convergence of corporate governance models. They emphasize the significant role of cultural conditions in various regions of the world [Branson, 2001; West, 2009]. It is also believed that political conditions constitute a serious barrier to convergence processes [Rossouw, 2009].

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<sup>8</sup> So far, it has been possible to obtain only some very general information about the changes to corporate governance after the second of the discussed crises. Based on that information, it is possible to state that the new OECD regulations have been actively implemented in Brazil and Indonesia. Some activities have been also initiated in Russia but the process of their implementation has been mainly of a formal character. They have not resulted in any improvement as far as disclosure of information pertaining to remuneration of company management or share of independent directors is concerned [Lanshina, 2017].



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