

## IMPLEMENTATION OF CORPORATE GOVERNANCE PRINCIPLES COMPLIANT WITH OECD STANDARDS IN PUBLIC COMPANIES IN POLAND AND HUNGARY

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**Abstract:** The main issues discussed in this paper concern application of recommendations of corporate governance compliant with OECD standards in companies listed on the Stock Exchange in Warsaw and Budapest. While undergoing political transformation, Poland and Hungary have put in place various regulations concerning the functioning of the capital market. The objective of the paper is to determine if, and to what extent, the standards of corporate governance recommended by OECD are applied in public companies operating in Poland and Hungary. The research methods applied to achieve the goal formulated in this way include analysis of the content of Polish and foreign literature, and analyses of desk research and benchmarking type. Comparative analysis applies information included in the EBOR Report entitled Corporate Governance in Transition Economies – Countries Report and OECD Corporate Governance Factbook 2019.

**Keywords:** corporate governance, OECD rules, Poland, Hungary.

### Introduction

Corporate governance is a term that is already well established in the literature on the subject and in the practice of management. The notion has many labels: corporate oversight, supervision over activities of the company, control over the company, control over management or corporate order (Zalega, 2000). However, review of the literature on the subject proves that it is hard to find one, universally accepted definition of the concept. The basis for explaining what actually corporate governance lies in many theoretical concepts, including the theories of economic foundations of corporate ownership, theory of principal–agent problem, servant leadership theory, theory of impact of external pressures, stakeholder theory, theories of convergence, criticism of the stakeholder enterprise theory, social capital theory, knowledge-based business, theory of complex adaptive systems, political economics of corporate ownership or the sustainability theory (Clarke, 2004; Mesjasz, 2007).

Many authors emphasise that the corporate governance concept has been evolving for many years and, therefore, four major approaches to its defining can be distinguished (Jerzemowska, 2002; Rudolf, et al., 2002):

- in the first approach to corporate governance, firstly the roles of owners controlling operations of an organisation are emphasised. In this case, corporate governance can be approached as ownership supervision in accordance with the Commercial Code of 1934;
- in the second approach, the concept of corporate governance, beside owners, also considers the interests of other capital providers, for example, creditors or bondholders. In this case, one can speak about corporate control, and the main problem is the possibility to control the appropriate use of the capital entrusted by creditors to managers;
- in the third approach, the idea of corporate governance is identified with the formal system of accountability of the top-level managers to stockholders. The system comprises an integrated group of external and internal mechanisms of control that mitigate the conflict on interests between managers and stockholders that result from separation of ownership from control;
- in the fourth approach, corporate governance considers the interests of all entities associated with the enterprise (stakeholders) in various ways. In this approach, general interests gain special significance.

The afore-presented transformation of corporate governance philosophy means that in successive years, the content of this notion has changed rather dramatically while moving from a functional approach, economically oriented towards the problem of agency, to a public approach aimed at protection of interests of not only the very shareholders, but also other stakeholders (Samborski, 2011).

A. Szajkowski (2014) shows that in today's world, the concept of corporate governance should be analysed in three diverse, mutually related aspects, i.e. as a set of principles and norms referring to broadly perceived organisation management (basic scope), secondly, as a catalogue of initiatives, case studies, rules and principles of good practice in organisations operating in the private and public sectors (especially in public companies), and finally in the third aspect, as a group of individualised rules of management and supervision, as well as relationships between founders (including shareholders) in relation to participation (contribution) in a given organisation (company).

The system of corporate governance comprises formal and informal institutions, laws, values and principles that constitute a set of legal and organisational forms available in a given country that determine division of power in a company. From the point of view of this paper, the set of principles recommended by OECD is an important basis for the standards controlling corporate governance.

The objective of the paper is to answer the question of how and to what extent the standards of corporate governance recommended by OECD are implemented in public companies

operating in Poland and Hungary<sup>1</sup>. The issues of implementation of corporate governance recommendations are important and topical because:

- management processes in enterprises increasingly more often are practiced internationally,
- corporate governance affects the processes of decision-making by various entities both in the enterprises and in their complex environment,
- it facilitates efficient monitoring of the performance and allows to evaluate efficiency of the use of company resources,
- it allows for efficient allocation of the power exercised by managers and members of company supervisory boards.

The conducted comparative analysis we undertook uses information included in the EBOR Report. It concerns compliance with the principles of corporate governance according to OECD standards entitled “Corporate Governance in Transition Economies – Poland Country Report” (Cigna, et al., 2017a) and “Corporate Governance in Transition Economies – Hungary Country Report” (Cigna, et al., 2017b).

The paper applies such research methods as analysis of the content of Polish and foreign literature on the subject of corporate governance, and analyses of desk research and benchmarking type.

## **The principles of corporate governance according to OECD standards – and their dynamics**

Applying the concept of corporate governance in enterprises always takes place in some context that can be described through mechanisms of both external, as well as internal character. The elements of external mechanism include political determinants, legal regulations, general principles formulated on various levels (e.g. regional, national and local), activities of interest groups, financial markets, market of control over enterprise, mergers and acquisitions, requirements concerning clarity and transparency, labour market of managers, market of products and services, as well as impact of media. On the other hand, the internal elements include control exercised by a supervisory board (board of directors), internal control and internal audit, division of power between company bodies, remuneration of board members (salaries, bonuses, including shares, options of purchase of shares, pension systems), the structure of ownership and the debt structure (loans, bonds and other forms of debt)

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<sup>1</sup> The paper was prepared as a result of the author’s participation in putting into practice the project within development of the research potential of the Department of Enterprise Management at the University of Economics in Katowice, under supervision of A. Samborski and entitled “Enterprise financing and corporate governance – part II”. The research comprised the countries of Visegrad Group, i.e. Czech Republic, Slovak Republic, Hungary, and Poland.

(Žak, 2015). External (economic) mechanisms are based on disciplining and the motivating influence of market powers (demand and supply-related) on people managing the corporation, whereas external mechanisms (legal and organisational), constitute the element of organisational structure of corporation and are “located” in the company law. The relationships between mechanisms of internal and external control reflect cooperation of powers of internal and external institutions. Therefore, in this context one can speak about internal and external institutions of corporate supervision. These institutions are closely related to general institutional environment of specific countries (Postma, Hermes, 2003).

The standards adopted by OECD are one of the external mechanisms of corporate supervision in the European Union. In 1999, OECD Ministerial Council approved the document entitled “The principles of Corporate Governance”, developed by Social Working Group. The principles should constitute the defined framework for legislation and joint stock companies of member states in formation of management structures (OECD, 1999). Review of the Principles was performed by OECD Steering Group for Corporate Governance on the basis of the authorisation it was granted in 2002 by OECD Ministers. It was supported by comprehensive analysis aimed to determine how the member states solve problems related to the issues of corporate governance. The document of 2004 approaches the principles of corporate governance by way of the following parts: ensuring the basis for an effective corporate governance framework, the rights of shareholders and key ownership functions, the equitable treatment of shareholders, the role of stakeholders, disclosure and transparency and the responsibilities of the board (Table 1). These two main principles were further specified by detailed guidelines (OECD, 2004).

In 2014, further review of the Principles of Corporate Governance was started. The rationale for the review was to ensure the continuing high quality, relevance and usefulness of the Principles, taking into account recent developments in the corporate sector and capital markets. The outcome provides policy makers, regulators and other rule-making bodies with a sound benchmark for establishing an effective corporate governance framework. The basis for the review was the 2004 version of the Principles, which embrace the shared understanding that a high level of transparency, accountability, board oversight, and respect for the rights of shareholders and role of key stakeholders is part of the foundation of a well-functioning corporate governance system. These core values were maintained and strengthened to reflect experiences since 2004 (The G20/OECD Principles of Corporate Governance, 2019).

The principles recommended in OECD documents do not have an obligatory character. In business practice some companies do not apply indicated standards, or they boycott the most inconvenient of them. However, this does not mean that adopting the principles of corporate governance does not make sense. Global practice proves that in a long time horizon, the companies applying the developed regulations are better perceived by the market and approached as being more secure. It needs to be mentioned that reputation on capital market is extremely important. As a result, such companies are evaluated as those that protect interests

of investors better, report smaller risk and can bring bigger value to shareholders (Aluchna, 2008).

**Table1.**

*Framework for corporate governance*

<b>Rules</b>	<b>Policy</b>
Ensuring the Basis for an Effective Corporate Governance Framework	The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.
The Rights of Shareholders and Key Ownership Functions	The corporate governance framework should protect and facilitate the exercise of shareholders' rights.
The Equitable Treatment of Shareholders	The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.
The Role of Stakeholders in Corporate Governance	The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.
Disclosure and Transparency	The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.
The Responsibilities of the Board	The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

Adapted from (OECD 2004).

## Methodology

Analysis and evaluation of implementation of the principles of corporate governance in companies operating in Poland and Hungary was performed on the basis of documents of European Bank of Reconstruction and Development (EBRD) entitled "Corporate governance in Transition Economies: Country Reports" that concern Poland and Hungary (Cigna, et al., 2017a; Cigna, et al., 2017b). Criteria included in them are based on recognised international models of best practices in the sphere of corporate governance recommended by OECD.

The evaluation of the principles of corporate governance was conducted within five major areas, i.e.: structure and functioning of the board, transparency and disclosure of company information, internal control, rights of shareholders, as well as that of stakeholders and institutions. Within each of the major areas, partial principles were analysed and evaluated on the basis of available information. The scores between 1 and 5 were applied for the evaluation (Table 2).

**Table 2.***Criteria for the evaluation of the implementation of corporate governance principles*

Score	Interpretation
[5]	The principles of corporate governance and practices applied by companies are fulfilled with no serious deficiencies.
[4]	Within corporate governance and practices applied by companies, insignificant weaknesses can be noticed, yet they do not raise doubts about the ability to complete implementation of corporate governance.
[3]	The framework of corporate governance and practices applied by the companies comprise some elements of good practices, but there are several key issues that require reforms.
[2]	Despite progress, deficiencies are so big that they raise doubts about the ability to comply with the principles of corporate governance, therefore further reforms are required.
[1]	Significant progress in compliance with the principles of corporate governance has not been achieved, thus considerable reforms must be introduced.

Adapted from (Cigna, et. al., 2017a; Cigna, et al., 2017b).

Final score of the main area of corporate governance constitute an arithmetic mean of partial assessments of a given area.

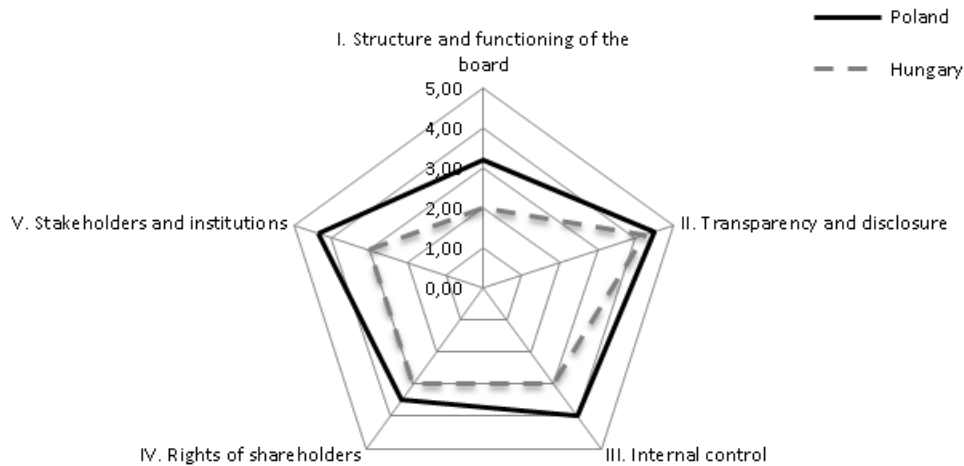
It needs to be stated here that information and opinions concerning implementation of corporate governance principles were obtained not only from companies listed on Stock Exchange but also from law firms, audit firms, national regulators and stock exchanges in Poland and Hungary. Information was gathered in 2014-2015.

## **Diagnosis of implementation of the principles of corporate governance in compliance with OECD standards in Polish and Hungarian enterprises**

Both in Poland and in Hungary, the recommendations for application of corporate governance principles have their sources in many documents, i.e. legal acts and other regulations. In Poland they are primarily: the Code of Commercial Companies, the Act On Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading and Public Companies, the Act On Trading Financial Instruments, the Accounting Act, the Act on Statutory Auditors, the Banking Act and the Code of Best Practice for WSE Listed Companies. On the other hand, in Hungary the recommendations in this sphere can be found, among others, in: Act on the Civil Code, Act on Credit Institutions and Financial Enterprises, Act on the Capital Market, Act on Accounting and the Hungarian Corporate Governance Recommendations (OECD Corporate Governance Factbook, 2019).

The analysis of the main areas of corporate governance in Poland and Hungary allows stating that there are significant differences in their evaluation (Figure 1). In Poland, two of them, i.e. transparency and disclosure, as well as stakeholders and institutions were scored the highest. In these areas, the enterprises actually implement the guidelines of the corporate governance, yet small weaknesses can be noticed. However, they do not raise doubts about the ability to completely take on the principles of corporate governance. On the other hand,

the smallest values were obtained in the areas of structure and functioning of the board and rights of shareholders. This means that recommendations of corporate governance in these spheres are applied in a limited extent, and several key issues that require reforms can be indicated.



**Figure 1.** Evaluation of the principles of corporate governance in Poland and Hungary in five main areas 2014-2015. Adapted from (Cigna, et al., 2017a; Cigna, et al., 2017b).

In Hungary, the sphere that was evaluated best was transparency and disclosure – they reached the value similar to Poland, which means that the crucial recommendations of corporate governance are implemented within the area, even though there are small deficiencies that need corrections. Within the sphere of structure and functioning of the board, significant failures raise doubts regarding the ability to comply with the principles of corporate governance. Therefore, further reforms are required. This is the area that is evaluated the worst. Other areas concerning implementation of the principles of corporate governance were evaluated as those in which companies only selectively apply good practices. Thus significant reforms are necessary. The least significant difference between Poland and Hungary occurs in the areas of: transparency and disclosure, as well as rights of shareholders. The greatest differences can be noticed in the areas of stakeholders and institutions, plus structure and functioning of the board. Attention should also be paid to the fact that Polish listed companies are required by law and the Listing Rules to report on their compliance with the Code (so-called “comply or explain” approach). Herein, the listed companies report how they observe the Code and provide explanations concerning inconsistencies. In the case of companies in Hungary, their reporting on compliance with recommendations of corporate government is evaluated as formalist and often little reliable.

Detailed summary of the criteria comprised in five main areas of corporate governance allows indicating weaknesses and strengths of Poland and Hungary in terms of application of the principles of corporate governance (Figure 2). Since the beginning of the 1990s, both Poland

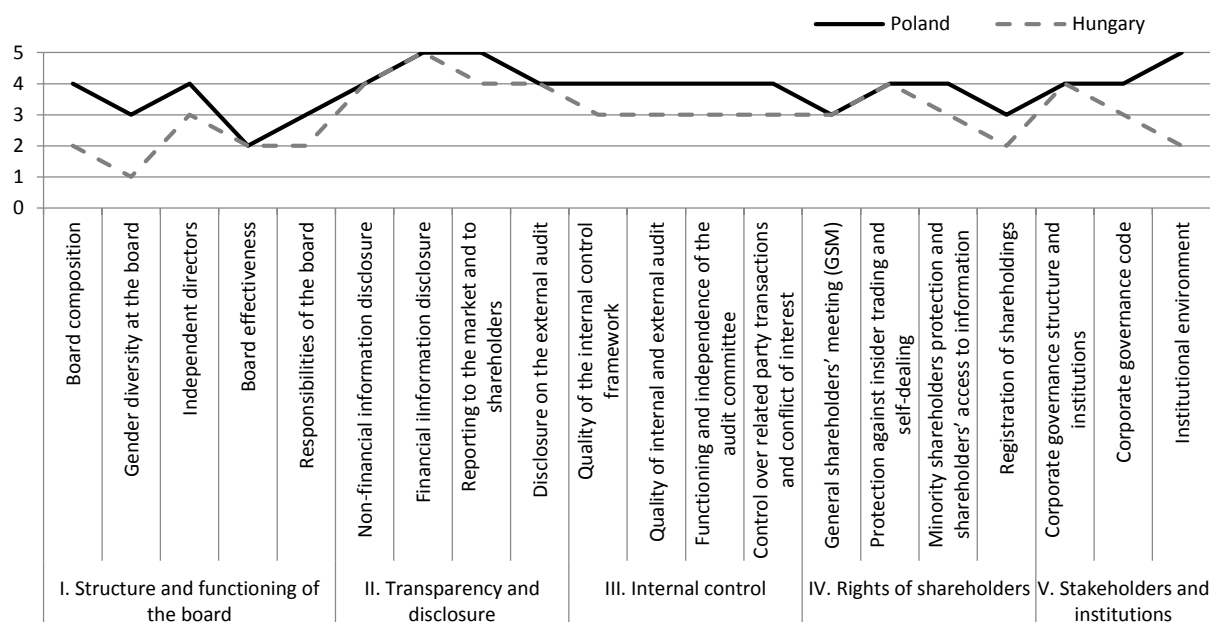
and Hungary have been undergoing profound socio-economic transformations. This is reflected in the many adopted legal acts and the implementation of standards and practices applied in developed countries. Multi-year reforms have ensured a situation that in Poland, in 2015, in many areas, the standards of company corporate governance were assessed as being at good and very good levels. The partial principles that were evaluated the highest [5] include:

- Financial information disclosure – drawing and disclosing financial statements in compliance with MSSF, formulating clear messages about conducted transactions and the role of auditing committees to ensure timely and reliable financial reporting for investors as well as and ensuring integrity of Polish capital market – deserves to be distinguished.
- Reporting to the market and to shareholders – meaning publishing annual statements on websites of companies and violation to this obligation is subject to sanctions. Furthermore, minutes of the general meetings of shareholders are disclosed and also published on websites. The law also demands disclosure of information that affects the evaluation of company functioning.

No inconsistencies between rules and regulations in matters related to corporate governance were reported in this respect. Moreover, a large number of listed companies actively provide information about their corporate governance practices, including that resulting from enquiries formulated by the stakeholders. From the point of view of this recommendation, the achieved results rank Poland among the best EBRD members (Alary, Lafaye de Micheaux, 2015; Boyer, 2015a, 2015b; Boyer, Uemura, Isogai, 2015).

The worst score [2] was given to board effectiveness due to inappropriate implementation of the principle, i.e. performance of the key function concerning the strategy of operation and policy of risk management, as well as budget policy by the company bodies. The code of good practices recommends the company boards to regularly evaluate their work and present it on general meetings of shareholders. The practice shows that this evaluation is limited only to description of activities of boards and does not refer to the evaluation of its efficiency. The lack of documents from such an evaluation on the company websites is also noticed. In the studied companies, the so-called corporation secretary was appointed inappropriately. The secretary should not be a board member, yet such a solution was most often applied. Furthermore, activities of the corporation secretary should constitute support and advisory structure for the board, whereas in practice they were limited to drawing minutes from meetings of company bodies.





**Figure 2.** Detailed evaluation of implementation of corporate governance principles in Poland and Hungary broken down into five main spheres. 2014-2015. Adapted from (Cigna, et al. 2017a; Cigna, et al. 2017b).

Doubts also arise in relation to respecting the principle of gender diversity at the board, which means ensuring balanced participation of females and males in management and supervision functions in companies. In the ten largest listed companies there were 16 women among 85 board members, which constituted only 18.6% of all the board members.

As regards the Hungarian economy, the highest score [5] was obtained only by one recommendation, i.e. financial information disclosure. According to the rules of the Act on accounting, listed companies are obliged to give access to annual financial statements and provide information concerning their operational and income activity. Listed companies must also prepare their financial statements in line with IFRS and disclose their audited annual reports. There are also few deficiencies in the sphere of acting upon such principles as non-financial information disclosure, reporting to the market and to shareholders and disclosure of the external audit/score [4]. As regards divergences in enacting these recommendations, the companies should present more detailed and convincing explanations. The principle of protection against insider trading and self-dealing was also evaluated relatively high. According to Hungarian law, insider trading of information is punishable by up to 3 years' imprisonment. Moreover, full disclosure is mandatory in cases of conflict of interest. However, the lack of specific legal solutions in situations when transactions with related parties are conducted in unfair ways is a significant shortcoming.

The score [4] was also obtained by the principle of corporate governance structure and institutions. Reforms introduced in Hungary have brought about a situation wherein the Budapest Stock Exchange [BSE] operates properly and above board, while the BSE website

presents comprehensive information about companies, including reports concerning management and composition of the management board. Furthermore, there are several institutions that undertake training for company managers / supervisory board members. In addition, decisions of regulatory agencies are documented, public and easily accessible. What is more, listed companies are recommended to apply the “comply or explain” principle, together with providing reports on their success in incorporating the principles of corporate governance. Recommendations in the sphere of improvement herein, have brought about an increase in the activity of international rating agencies and more efficient application of judicial practice in enforcement of the corporate governance principles.

According to the interpretation of the worst score [1] – in Hungary, the principle of gender diversity at the board was actually not implemented. On the basis of available data it is estimated that participation of women in supervisory boards of listed companies reaches around 7%, and in the boards of directors it reaches around 8%. Such principles as board composition, board effectiveness and responsibilities of the board were met with ratings of bad [2]. Issues concerning clearly defined position of supervisory board and board of managers also found to need profound reforms.

The Corporate Governance Recommendations suggest that nomination and remuneration committees should be composed respectively of a majority and consist exclusively of independent members from the management body. Lack of appointment of the corporation secretary is another weakness. In addition, the issue of accountability (authorisation and possibility to exercise control) of the supervisory board and the board of directors must be addressed. The supervisory board plays a minor role within companies. Furthermore, it does not have the authority to appoint and dismiss the management board members or define their remuneration – these powers are assigned to the shareholders. Moreover, in listed companies, the law expressly prohibits supervisory boards from having any decision-making powers. It seems that the supervisory board’s main function is to report issues to the shareholders. Among other regulations of corporate governance that demand implementation of profound reforms, those that are related to institutional environment should be mentioned. Even though all legal regulations are updated, many divergences in regulatory and implementing measures concerning corporate governance can be indicated.

## **Conclusions**

Nowadays it is difficult to overestimate the importance of the principles of corporate governance. The benefits resulting from implementation of high standards of corporate governance can firstly include expanding the investor base (which increases investment possibilities of an enterprise and improves its development perspectives), reducing the capital

cost, improving management effectiveness and thus increasing the company value, reducing the risk related to fraud and engagement in inappropriate investment projects, as well as building durable and harmonious relationships with stakeholders (Claessens, 2003). The significance of good corporate governance goes far beyond shareholders' interests within a single company. The benefits also concern the national economy as a whole. This is because the quality of corporate governance directly affects the capability of a given economy to mobilise capital, its efficient allocation and more or less effective monitoring of its use.

Currently prevailing general economic trends such as the growing significance of the private sector, increasing internationalisation of economic processes, as well as the rapidly changing competitive environment of companies, also perform significant roles in creating and implementing corporate governance. In response to these determinants, as well as the repeated situations of unexpected bankruptcies of many renowned companies, government and business environments of OECD countries have taken actions aimed at improving the quality of corporate governance. These efforts brought emergence of a set of OECD principles of corporate governance that are subject to regular revision and updating.

The presented synthetic analysis and evaluation of respect of the corporate governance framework in Poland and Hungary in 2014-2015 brings the reflection that a lot has been achieved in this area, especially if we consider the fact of continuing political transformation in these countries. Each of the presented countries has its strengths and weaknesses. In Poland  $\frac{3}{4}$  of all recommended principles of corporate governance obtained high scores and only 5% are characterised by significant deficiencies and require reforms. In Hungary, unfortunately the situation is slightly different – only 30% of corporate governance recommendations are implemented to a satisfactory level, the same number need profound reforms, and in 40%, their improvement is required at least in several important areas.

The activation of standard corporate governance principles in many countries, including Poland and Hungary is often criticised (Aluchna, 2008). According to the assumptions underlying OECD principles of corporate governance, improvement of standards should be beneficial to all market participants, however for many of them, the initiative is incomprehensible and approached instrumentally. The reasons for such an approach can be noticed, among others, in poor awareness of corporate governance principles. Paramount, however is the conviction that adopting corporate governance principles is associated, especially in initial periods with considerable costs and organisational and structural changes in order to bring about effective reporting of observance or lack of observance of good practices. Unfortunately, there is no guarantee that efforts made by companies in observance of the principles recommended by OECD will be noticed by investors.

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