

## ASSESSMENT OF THE IMPLEMENTATION OF CORPORATE GOVERNANCE MECHANISMS ON THE BASIS OF “BEST PRACTICE SCANNER” - SELECTED PROBLEMS

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**Purpose:** In 2021, the Warsaw Stock Exchange adopted an updated code of best practice, which is a set of rules aimed at improving the effectiveness of corporate governance, including communication with the stakeholder. Along with the new code, revised rules for reporting the implementation of recommendations were also introduced, and an analytical tool for ongoing monitoring of information from reports on the compliance with good practices submitted by companies was made available - the so-called best practice scanner. The aim of this article is to present the aforesaid changes and the level of compliance with the amended rules.

**Design/methodology/approach:** The applied research methods are based on literature studies in the analyzed area and the analysis of data from reports on the compliance with good practices submitted by WSE Listed companies. Based on the „comply” factor provided in the so-called “Best practice scanner”, the implementation of the basic rules and selected detailed rules was analysed. The article presents the level of acceptance and implementation of reporting recommendations by companies listed on the Warsaw Stock Exchange, as well as the level of their compliance with specific rules.

**Findings:** The article presents the level of acceptance and implementation of reporting recommendations by companies listed on the Warsaw Stock Exchange, as well as the level of their compliance with specific rules. The conducted analysis revealed a high level of compliance with the reporting obligation. However, it confirmed limited implementation of the rules introduced by the amended document, which among others concerned the ESG strategy and reporting. Compliance with the recommendation regarding the location of the internal audit unit in the organizational structure was also limited. It is therefore advisable to extend direct research the level of compliance with the recommendations, and to continue observation of the change in the approach to the implementation of obligations imposed on companies by the Warsaw Stock Exchange in 2021.

**Research limitations/implications:** The conducted study was based on information submitted by the companies, therefore its subjectivity should be clearly emphasized. Also, errors in the reported information or its deliberate manipulation cannot be excluded.

**Originality/value:** The conducted research has revealed that companies are aware of their obligations related to the disclosure of best practices for companies listed on the WSE, which is indicated by a high percentage of reporting companies. The results of such studies will provide valuable indications in the search for opportunities to increase the effectiveness of corporate governance mechanisms. This paper is dedicated to those who are developing codes

of good practice and to those who are researching the effectiveness of corporate governance mechanisms.

**Keywords:** Code of best practice, corporate governance, information asymmetry, reporting.

**Category of the paper:** Research paper.

## 1. Introduction

Mechanisms aiming to reduce the risk of losing capital invested in entities, where the management process is entrusted by the owner/owners to professional managers, has been debated for many years (Stępińska, 2013). Visible organizational imperfections and their severe effects have given an impulse to introduce completely new supervision mechanisms, the main goal of which is to minimize the effects of information asymmetry resulting from “pushing” the owner out of the organization. An example of promoting new and improving the existing organizational framework, including the company's communication with stakeholders, may be the set of organizational solutions presented in the code of best corporate governance practice adopted by the Warsaw Stock Exchange in the document entitled Best Practice for WSE Listed Companies 2021. The purpose of this article is to present the extent to which the management boards of public companies apply corporate governance mechanisms that are recognized by the authors of the Code of Best Practice for WSE Listed Companies amended in 2021 (hereinafter: referred to as BPLC2021) as significant solutions reducing the effects of the above-mentioned asymmetry. The author of the article has attempted to answer the fundamental question - do the companies listed on the WSE implement the rules promoted in BPLC2021 in their organizations? In the presented considerations, the trend of changes in corporate governance rules, the level of implementation of the solutions described in BPLC2021 as well as the rules applied to a limited extent have been examined. The research has been based on a review of the subject literature, a detailed analysis of reports regarding compliance with the BPLC2021 rules and an analysis of the direction of changes in the field of best practices. The study also contains a comparative analysis of the level of implementation of the BPLC2021 rules in mining companies against the background of other selected groups of enterprises.

## 2. Role of BPLC in creating effective corporate governance

Corporate governance is now considered one of the key determinants of the economic success of complex corporate structures (Olejko, 2022, p. 5; Castrillón, Alfonso, 2021). Due to the observed changes in the statutory and substatutory obligations imposed on companies as

well as dynamic socio-economic changes, the previously applied organizational solutions are rapidly becoming obsolete. Therefore, it is necessary to constantly monitor and, if needed, make appropriate modifications. One of the areas characterized by a particularly high level of variability is the process of communication with stakeholders. Both the scope of information provided by the company and the method of its reporting are changing. While economic entities classified as micro and small companies in accordance with the criteria specified in the Accounting Act have been granted the privilege of using simplifications in reporting, companies listed on the WSE are still burdened with additional information obligations.

This process is aimed at increasing transparency and the effectiveness and efficiency of supervision over the company. Particularly spectacular bankruptcies of companies (Halicka, 2008; Mousavi, Zimon, Salehi, Stepnicka, 2022) from the turn of the 19th and 20th centuries provided an incentive to intensify the search for mechanisms aiming to minimize the investor's risk of losing the capital and eliminate numerous transaction risks affecting stakeholders without capital participation. The aforementioned events highlighted the unfavourable phenomenon of information asymmetry (Halicka, 2008, p. 7). The imbalance in access to information obviously limited the owner's possibility of monitoring internal processes in the enterprise. In addition to strengthening the information function, a particularly important issue was to create internal organizational solutions that would allow the processes to be controlled and improved from within by the organization itself.

An efficient internal control system is an essential element of corporate governance created in the company (Herdan, Stuss, Krasodomska, 2009; Elmghaamez, Akintoye, 2021). As practice shows, in the case of bankrupt companies, even supervisory boards upholding the interests of the owner's business, which are included in the group of internal corporate governance mechanisms, have not fulfilled their preventive function. Moreover, even statutory auditors did not help in detecting information irregularities and unreliability. An attempt to reduce the likelihood of similar events was undertaken by the authors of the amended corporate governance rules included in the BPLC2021 document.

### **3. Best practices of companies listed on the Warsaw Stock Exchange - fundamental issue**

The created codes of best practice (Bravo-Urquiza, Moreno-Ureba 2021) are a response to the widely noticed imperfections of statutory legal regulations in the area of supervision over the activities of companies ("hard law"). The authors of the above-mentioned codes have attempted to clarify or model organizational solutions that minimize the negative effects of a conflict of interest between the owner of the capital (principal) and its manager (agent).

Codes of best practice are referred to by corporate governance researchers as “soft law” (Mucha, 2016 ,p. 14).

The prototype of the code currently in force in Poland is the document adopted by OECD (OECD, 2004), which was developed in 1999 and, later, subjected to modifications. The rules set out therein, as in the case of Polish solutions, are not binding, and voluntariness in this regard is limited by the “comply or explain” rule imposed on companies (Herdan, Stuss, Krasodomska, 2009, p. 19).

The first to initiate the creation of the Polish code were two institutions, i.e.:

- Polish Corporate Governance Forum at the Institute for Market Economy Research,
- Corporate Governance Forum established by the Business Development Institute (Bogacz-Miętka, 2011, p. 132).

In 2002, the Warsaw Stock Exchange adopted a document prepared by the Corporate Governance Forum, thus introducing the so-called Warsaw Code (Jeżak, 2002, p. 4; Aluchna, Koładkiewicz, 2018, p. 14). In 2003, the obligation of submitting an annual declaration on compliance with best practices was imposed on companies. At that time, the issuer had to indicate the unapplied rule and explain the reasons for withdrawing from its implementation. Pursuant to the provisions of the Regulations in force at the time, companies were to fulfil the information obligation “[...] immediately after the issuer had come to the reasonable belief that a given rule would not be applied either on a permanent or a single-time basis” (WSE Regulations). The document was periodically assessed and verified (Koładkiewicz, 2014, p. 195; Aluchna, 2013, p. 119). The last change of BPLC took place in 2021. At that time, companies were obligated to submit extended reports, confirming both compliance and non-compliance with the rule.

The aim of the amendment to the regulation introduced in 2021 was “[...] to create tools supporting effective management, effective supervision, respect for shareholders' rights and transparent communication between the company and the market” (Dobre Praktyki Spółek notowanych a GPW, 2021). The solutions introduced in 2021, adapted to the current legal status, reflect the current trends in corporate governance, including communication with the stakeholder. They are an equivalent of European regulations in the area of corporate governance. The authors of the “new best practice” have taken into account the postulates of those capital market participants who are interested in improving corporate governance in companies listed on the WSE.

The change of the document structure involved cancelling the previous division into recommendations and principles. Currently, each of the six chapters of BPLC2021 is composed of general rules (Table 1) defining the goals the company should pursue as well as detailed rules that are subject to the reporting obligation.

**Table 1.***Structure of Best Practice for WSE Listed Companies 2021*

No.	CHAPTER
1.	Information policy and communication with investors
2.	Management Board and Supervisory Board
3.	Internal systems and functions
4.	General meeting and relations with shareholders
5.	Conflict of interest and transactions with affiliated entities
6.	Remuneration

Source: Best Practice for WSE Listed Companies 2021.

The significant simplification of the document and the lack of detailed guidelines regarding compliance with the rules are compensated by answers to detailed questions from interested parties published on the WSE website by the Corporate Governance Committee in the Q&A formula.

It is particularly noteworthy that the document includes issues related to ESG, in particular the environment and climate protection, sustainable development, diversity in company bodies and equal remuneration.

#### **4. Changes in BPLC2021 reporting**

The revised code of best practice introduced in 2021, which replaced BPLC 2016, also changed the reporting method itself. The existing obligations related to the reporting of a breach of a rule or of partial compliance with a rule, and in particular the procedure for providing information were frequently considered to be rather unclear. Currently, as in the case of the previous regulations, issuers are bound by the “comply or explain” principle. It is worth noting, however, that the reporting process itself has changed. The correction in this area was aimed at solving the previously mentioned interpretation problems. Since July 2021, companies have been disclosing information on compliance with best practices through the electronic information base (EIB), in accordance with the principles set out in Resolution No. 646/2011 of the Stock Exchange Management Board of May 20, 2011 (as amended). After publishing the first report, companies make changes in the area of BPLC2021 on an ongoing basis. In the event of non-compliance with the rule, such information is published together with explanations. The disclosure obligations of issuers with regard to compliance with best practices have been defined, as previously, in the Stock Exchange Rules.

Pursuant to the regulations, the issuer publishes information on both compliance and non-compliance with the corporate governance rules. In the event of non-compliance with a rule, issuers shall also provide relevant explanations. Reporting is the responsibility of the issuer if there are any changes in the status of compliance with the rules, and not, as in the previous regulations, “after the issuer had come to the reasonable belief [...]”(Table 2).

**Table 2.**  
*Changes to the decision criteria related to reporting*

Warsaw Stock Exchange Rules – paragraph 29, subparagraph 3 of the Exchange Rules		
1	2016	If a specific corporate governance rule is not applied on a permanent basis or is breached incidentally, the issuer shall publish a report containing information about the rule which is not applied or has not been applied, indicating the circumstances of and the reasons for the breach of that rule as well as an explanation of how the issuer intends to remove effects, if any, of not having applied a given rule, or what steps it intends to take to mitigate the risk of the rule not being applied in the future. The report should be published on the official website of the issuer, in a way identical with that applied for submitting current reports. The obligation to publish a report should be fulfilled immediately after the issuer has come to the reasonable belief that a given rule will not be applied on a one-time or permanent basis, and in any case, immediately after an incident that constituted a breach of the corporate governance detailed rule.
2	2021	To ensure availability of exhaustive information about the current status of compliance with the rules of corporate governance referred to in subparagraph 1, the issuer shall publish a report indicating which rules the issuer complies with and which rules the issuer does not comply with on a permanent basis. With regard to the rules which are not applied by the issuer, such a report shall contain a detailed explanation of the circumstances of and reasons for non-compliance with the rule. In the event of a change in the status of compliance with the rules or circumstances that justify changes to the content of the explanation concerning non-compliance or the manner of compliance with a rule, the issuer shall immediately update the previously published report.

Source: Rules of the Warsaw Stock Exchange.

The very process of best practice reporting is regulated by the Exchange Management Board. According to the adopted rules, in the event of a breach of compliance with a rule, the issuer informs about the circumstances of the breach, indicates its consequences, and also reports any similar breaches that have occurred in the last years. He is also obligated to explain what steps he intends to take in order to minimize the risk of further violations.

## **5. Analysis of the level of compliance with the rules set out in the Best Practice for WSE Listed Companies 2021**

In 2021, when the method of reporting the compliance with the rules set out in the BPLC2021 document was changed, the Warsaw Stock Exchange made available on its website the so-called best practice scanner, i.e. a tool that enabled ongoing monitoring of the level of Company's compliance with the solutions regarded as mechanisms increasing the effectiveness of corporate governance. The data made available owing to the aforementioned analytical tool indicates a high percentage of reporting companies in the total number of companies listed on the WSE (417 companies), which on 27.10.2022 reached 95.4%. The obligation to disclose information on compliance with best practices was not fulfilled by 19 (4.56%) companies. Out of all companies, as many as 388 (93.05%) reported to have implemented more than half of the rules. Compliance with all the rules was reported by only 6 (1.44%) companies.

The reports generated by the system contain the so-called comply factor. Table 3 presents the percentage share of companies complying with all the detailed rules, companies complying with less than half of the detailed rules and companies complying with more than half of the

detailed rules in the total number of companies reporting compliance with 6 basic rules. The highest level of implementation was noted for Rule 5 (Conflict of interest and transactions with affiliated entities). As many as 85.95% of the companies confirmed the implementation of all the detailed rules. A high level of best practice implementation was demonstrated in the case of Rule 2 (Management Board and Supervisory Board), Rule 4 (general meeting and relations with shareholders) and Rule 6 (remuneration). Companies seem to have the greatest problems with implementation of Rule 1 (Information policy and communication with investors) and Rule 3 (Internal systems and functions). As many as 38.81% of companies in the case of Rule 1 and 23.10% of companies in the case of Rule 3 reported compliance with less than half of the detailed rules.

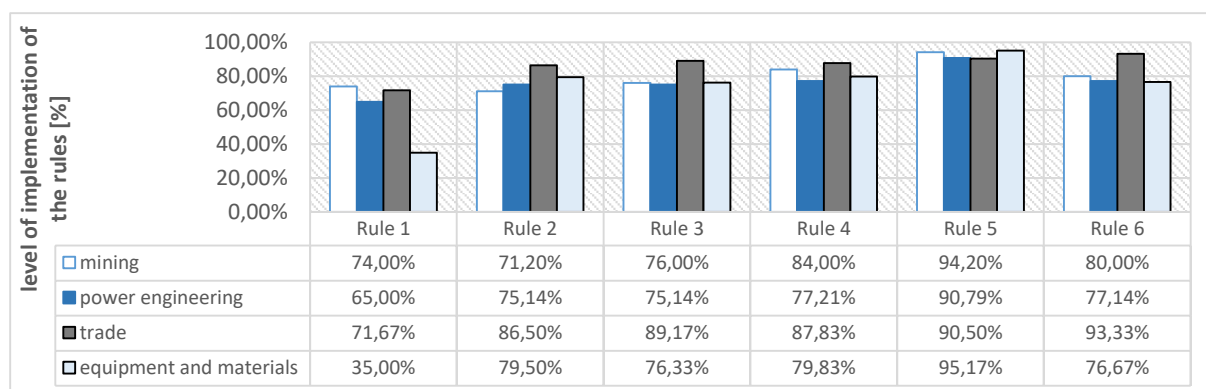
**Table 3.**

*BPLC2021 comply factor – companies listed on the WSE in total*

	Rule 1	Rule 2	Rule 3	Rule 4	Rule 5	Rule 6
Companies complying with all the rules	9.05%	3.81%	13.57%	1.43%	85.95%	1.43%
Companies complying with less than half the rules	38.81%	0.71%	23.10%	1.19%	0.71%	1.19%
Companies complying with more than half the rules	47.38%	90.71%	56.90%	92.62%	8.57%	92.62%

Source: Prepared by the author based on The best practices scanner, <https://www.gpw.pl/dpsn-skaner>, 21.11.2021.

The analysis of the level of implementation of the rules in four selected industries confirms that compliance with Rules 1 and 3 is limited, with the lowest level of compliance noted in the case of Rule 1 - communication with stakeholders (average 61.42%). In addition, companies in such branches as mining, power engineering, trade, equipment and materials reported limited compliance with Rule 2 - Management Board and Supervisory Board. The highest level of BPLC2021 comply factor was noted for Rule 5 - Conflict of interest and transactions with affiliated entities (an average of 92.66%).



**Figure 1.** BPLC2021 comply factor broke down into individual rules - companies listed on the Warsaw Stock Exchange - selected sectors.

Source: Prepared by the author based on The best practices scanner, <https://www.gpw.pl/dpsn-skaner>, 3.11.2022.

The analysis of the comply factor in the mining industry has revealed a low level of compliance with the rules in the case of Coalenerg and Greenx. In the case of Greenx, the main reasons for failure to apply or for partial compliance with the rules are the nature and size of the enterprise, whereas in the case of Coalenerg the major cause is the application of the corporate governance model which is binding in the Luxembourg legal system. The company has a single-level corporate governance model - the Board of Directors (executive and non-executive directors).

**Table 4.**

*BPLC2021 comply factor in mining companies*

Name of company	COMPLY factor	% of "complied" answers	% of 'not complied' answers	% of "not applicable" answers	Date of report
BOGDANKA	94%	94%	6%	0%	27.07.2021 14:19
COALENERG	69%	68%	30%	2%	17.10.2021 18:10
GREENX	72%	70%	27%	3%	14.10.2021 03:01
JSW	92%	92%	8%	0%	22.07.2022 14:13
KGHM	77%	76%	22%	2%	01.04.2022 14:21

Source: Prepared by the author based on The best practices scanner, <https://www.gpw.pl/dpsn-skaner>, 3.11.2022.

The further part of the study contains an analysis of the comply factor established for all detailed rules, defining the percentage level of compliance with a selected detailed rule w WSE listed companies. Table 5 presents detailed rules with the comply factor below 50%.

**Table 5.**

*Detailed rules - comply factor below 50%*

Comply factor below 50%					
Rule	COMPLY factor	% of "complied" answers	% of "not complied" answers	% of "not applicable" answers	
2.1.	8%	7.80%	92.20%	0.00%	
2.2.	12%	11.80%	88.20%	0.00%	
1.4.2.	21%	20.80%	79.20%	0.00%	
1.4.1.	24%	23.80%	76.20%	0.00%	
1.4.	26%	25.90%	74.10%	0.00%	
2.11.6.	30%	30.10%	69.90%	0.00%	
1.3.1.	32%	31.80%	68.20%	0.00%	
4.3.	32%	31.60%	68.40%	0.00%	
4.1.	33%	32.60%	67.40%	0.00%	
1.3.2.	41%	40.60%	59.40%	0.00%	
3.6.	47%	46.90%	53.10%	0.00%	

Source: Prepared by the author based on The best practices scanner, <https://www.gpw.pl/dpsn-skaner>, 3.11.2022.

The detailed rules from group 5 (Conflict of interest and transactions with affiliated entities) were not included in the list of detailed rules with the lowest comply factor. In the case of the rules concerning the functioning of management boards and supervisory boards, the lowest level of compliance was noted for diversity policy in company bodies (principles 2.1, 2.2 and 2.11.6). Compliance with Rules 1.3.2, 1.4, 1.4.1 and 1.4.2 regarding business strategy in the



ESG area and its reporting was on a low level. A low comply factor was also noted for practices related to the organization and broadcasting of general meeting. Problems with implementation of best practices are also reported in the case of Rule 3.6. regarding internal systems and functions. Table 6 presents basic rules in the case of which the comply factor of detailed rules was below 50%.

**Table 6.**  
*Selected basic rules*

<b>Basic rules</b>	
Rule 1.	In the interest of all market participants and its own, a listed company shall ensure proper communication with its stakeholders by pursuing a transparent and reliable information policy.
Rule 2.	In order to achieve the highest standards with regard to the effective performance of their duties by the management board and the supervisory board, only persons with appropriate competences, skills and experience shall be appointed as members of the management board and the supervisory board. Members of the management board act in the interest of the company and remain responsible for its activities. The management board is responsible, in particular, for leadership in the company, commitment to setting its strategic goals and their implementation, as well as ensuring the company's efficiency and security. When performing their functions and duties, which among others involve decision making, members of the supervisory board shall be guided by the independence of their own opinions and judgments, acting in the best interest of the company. The supervisory board works in a culture of debate, analysing the company's situation against the background of the industry and the market on the basis of materials that have been provided to it by the company's management, internal systems and functions of the company, as well as materials obtained from outside by using the results of the work of its committees. The supervisory board, in particular, gives opinions on the company's strategy, verifies the work of the management board in terms of achieving the established strategic goals and monitors the company's results.
Rule 3.	Efficiently operating systems and internal functions are an indispensable tool for exercising supervision over the company. The systems cover the company and all areas of its group's operations that have a significant impact on the company's situation.
Rule 4.	The management board and supervisory board of a listed company should encourage shareholders to become engaged in the company's affairs, primarily through active, personal or proxy participation in the general meeting. The general meeting should respect the rights of all shareholders and strive to ensure that the adopted resolutions do not infringe the legitimate interests of individual groups of shareholders. Shareholders participating in the general meeting shall exercise their rights in a manner that does not violate decency. General meeting attendees should come to the general meeting prepared.

Source: Prepared by the author based on The best practices scanner, <https://www.gpw.pl/dpsn-skaner>, 3.11.2022.

In the summary of this part of considerations, it can therefore be concluded that companies find it difficult to comply with practices regarding diversity, ESG strategy and reporting, general meeting broadcasting and ensuring the organizational independence of internal audit.

ESG (environmental, social and governance) issues, such as climate protection, sustainable development, as well as diversity in the composition of company bodies or equal remuneration, were introduced to BPLC in 2021. The authors of the changes took into account the key issues that had been discussed in the literature and put on the agenda of numerous debates regarding the environment management process, social factors, and corporate governance. It was noticed that there had been a growing interest in the company's activity with respect to implementation of ESG goals (Wytyczne do raportowania ESG, 2021).

The non-financial reporting obligations introduced into the reporting system in the Accounting Act (ACT of December 15, 2016 amending the Accounting Act, Journal Of Laws Of The Republic Of Poland, Warsaw, January 11, 2017, item 61) implemented into the Polish legal system the Directive of the European Parliament and of the Council 2014/95/EU on the disclosure of non-financial information and information on diversity<sup>1</sup>. However, it should be clearly emphasized that currently, due to imperfections related to non-financial reporting, in particular:

- an increased scope of information needs,
- inconsistency between stakeholder expectations and actually reported information,
- ambiguity of information expectations (lack of uniform standards),

a new Directive is being prepared to amend the previous solutions.

The implementation of best practices included in BPLC 2021 is aimed at adjusting the disclosed information regarding sustainable development to the ESG reporting postulates described above.

Given the need for strengthening internal corporate governance mechanisms, the limited scope of compliance with Rule 3, indicated in Table 3, is extremely interesting, in particular in its part regarding the detailed Rule 3.6, according to which “The internal audit head reports organisationally to the president of the management board, and functionally - to the chairman of the audit committee or the chairman of the supervisory board, if the board performs the function of the audit committee. “Such a location of the internal audit unit is to enable it to carry out its mission in accordance with the assumptions of objectivity and independence, which are the basic attributes of internal audit activity (Herdan, Stuss, Krasodomska, 2009, p. 104). The lack of organizational independence is a significant barrier limiting the effectiveness of internal audit as a corporate governance mechanism. It also limits the audit unit’s possibility of operating in accordance with the International Standards for the Professional Practice of Internal Auditing.

## Summary

The revised code of best practice, adopted by the WSE in 2021, is a document which takes into account the latest trends in the performance of activities and reporting in line with the concept of sustainable development. The conducted research has revealed that companies are aware of their obligations related to the disclosure of best practices for companies listed on the

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<sup>1</sup> On April 21, 2021, the European Commission announced a draft of a new directive - the Corporate Sustainability Reporting Directive (CSRD) to replace the current Non-Financial Reporting Directive (NFRD) 2014/95/EU. The aforesaid project is part of a package of legislative changes for sustainable financing of economic growth, adopted in order to achieve climate neutrality by the EU by 2050 (<https://www.gov.pl/web/fundusze-regiony/raportowanie-spoleczne>, 9.10.2022).

WSE, which is indicated by a high percentage of reporting companies. However, the analysis of the reports demonstrates that the applied solutions related to the ESG concept are implemented to a limited extent. Companies provide information on their partial compliance with the ESG rules and the ongoing work they undertake in order to fully implement the new solutions and recommendations in this regard. It can therefore be concluded that they are slowly adapting to the recommendations aiming to incorporate the ESG issues in the business strategy and reporting, including the implementation of the diversity policy.

In the case of new solutions, the limited compliance may be justified by the need for adapting to new market expectations. However, the research revealed a certain limitation in the compliance with the rule aimed at ensuring organizational independence of the internal audit unit. It should be emphasized that this practice was also promoted in the previous version of the document and is in line with the International Standards for the Professional Practice of Internal Auditing.

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