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TRANSPARENCY OBLIGATIONS OF PROXY ADVISORS UNDER POLISH LAW – A COMPARATIVE APPROACH

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ABSTRACT[1]

This article aims to analyse the role of proxy advisors in the context of EU law and the manner in which the relevant provisions have been implemented into Polish, German and Italian law. As these advisors provide advice to institutional investors on how to exercise their voting rights, they may influence shareholder and company decisions, creating a risk of conflicts of interest and justifying the need for transparency in their activities. While this institution plays a significant role in the United States, its importance in Poland appears minimal. The author argues that the provisions concerning proxy advisors generally have no practical application under Polish law and are largely irrelevant.

Key words: *shareholders' engagement, proxy advisors, Directive 2017/828 (SRD II).*

1. INTRODUCTION

Proxy advisors are entities that provide professional advice to shareholders, in particular institutional investors, on exercising their voting rights at shareholders' meetings.[2] The main activity of these entities is to prepare and provide guidelines, recommendations and opinions to assist shareholders in making decisions regarding whether to vote and the manner in which to cast their

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[2] Prager, I.: *Doradcy inwestorów do spraw głosowania (proxy advisors*), Warsaw: C. H. Beck, 2019, pp. 181-184; Zięty, J. J.: *Uprawnienia Akcjonariuszy Polskich Spółek Publicznych w świetle Dyrektywy 2007/36/WE,* Warsaw: C. H. Beck, 2015, pp. 181-182.

votes.[3] Using proxy advisors ensures that institutional investors can receive professional recommendations on how to proceed. Engaging the services offered by proxy advisors can also reduce the costs incurred by institutional investors in preparing their own analyses.

Owing to the recommendations and analyses they prepare and publish, entities classified as proxy advisors may influence the behaviour of shareholders and companies that are the subject of their recommendations.[4] Shareholders tend to make decisions based on published recommendations; on the other hand, company managers may be influenced by the expectations of proxy advisors when making decisions.[5] This situation may give rise to potential conflicts of interest and justify imposing obligations on these entities to increase their transparency.[6]

The sector of proxy advisors has gained significant importance, particularly in the United States.[7] The literature points out that such entities are also present in Germany, France, and other countries in continental Europe.[8] Owing to their potentially significant influence on the exercise of voting rights by shareholders, a number of initiatives have been undertaken to impose obligations on these entities to ensure the transparency of their activities. Initially, these regulations were mainly self-regulatory. Proxy advisors developed codes of good practice and committed themselves to complying with them. Subsequently, the transparency obligations imposed on proxy advisors took the form of generally applicable provisions of law.

The growing importance attributed to proxy advisors in contemporary corporate governance has led the EU legislator to introduce a set of transparen-

[3] Elbra, A., O'Brien, E., Boersma, M.: The political influence of proxy advisors in campaigns for ethical investment: guiding the invisible hand. *Regulation & Governance*, 19(4) 2025, p. 1063; Boot, A., et al.: The Controversy over Proxy Voting: The Role of Fund Managers and Proxy Advisors. *Financial Analysts Journal*, 79(4) 2023, p. 8.

[4] Dey, A., Starkweather, A., White, J. T.: Proxy Advisory Firms and Corporate Shareholder Engagement. *Review of Financial Studies*, 37(12) 2024, p. 3878; Malenko, N., Shen Y.: The Role of Proxy Advisory Firms: Evidence from a Regression-Discontinuity Design. *The Review of Financial Studies*, 29(12) 2016, pp. 3394-3427.

[5] See more: Tuch, A. F.: Proxy Advisor Influence in a Comparative Light. *Boston University Law Review*, 99(1459) 2019, p. 1464.

[6] See more: Zarzycka, K.: *Corporate Governance oczami Warrena Buffeta*, Warsaw: C. H. Beck, 2011, p. 46.

[7] Malenko, N., Shen Y.: The Role of Proxy Advisory Firms: Evidence from a Regression-Discontinuity Design. *The Review of Financial Studies*, 29(12) 2016, pp. 3394-3427; Balp, G.: *I consulenti di voto*, Milano: EGEA, 2017, p. 39.

[8] Sauerwald, S., et al.: Proxy Advisors and Shareholder Dissent: A Cross-Country Comparative Study. *Journal of Management*, 44(8) 2018, p. 3364.

cy obligations intended to mitigate the risks associated with their potential influence on shareholders' voting behaviour. These regulatory assumptions, reflected in Directive 2017/828,[9] are largely based on the experience derived from highly developed capital markets, in particular the United States, where proxy advisors play a significant role in shaping institutional investors' voting decisions.[10] The transposition of these solutions into the legal systems of the Member States raises fundamental questions as to whether the adopted regulatory model adequately reflects the structural characteristics and actual needs of the European capital markets.

Against this background, the article addresses the research problem of the normative shape and scope of the legal regime governing proxy advisors, as established under Directive 2017/828 and its national transpositions. In particular, the study examines how the transparency obligations imposed on proxy advisors are defined and applied in national legal systems with differing ownership structures and patterns of shareholder engagement. The article advances the thesis that the regulatory regime concerning proxy advisors, as implemented into Polish law, has limited personal scope of application. This is due, first, to the limited role played by proxy advisors in the Polish capital market when compared with more developed jurisdictions, and second, to the restrictive definition of proxy advisors adopted by the EU legislator and transposed into national law, which significantly narrows the circle of entities subject to the new obligations. The comparative analysis further reveals that, notwithstanding the broader personal scope provided for under German and Italian law, the regulatory approach to proxy advisors in analysed jurisdictions is based on a set of uniform transparency obligations reflecting a literal transposition of Directive 2017/828. Taken these facts into account, it can be stated that the legal framework governing proxy advisors is characterised by a limited degree of practical applicability under the Polish law.

The article is based on two complementary research approaches. First, it applies the formal-dogmatic method, which serves to identify, systematise and interpret the relevant legal norms governing proxy advisors, as well as to establish the conceptual and normative framework for the analysis. This method enables a reconstruction of the regulatory assumptions underlying Directive 2017/828 and its national transpositions. Second, the article employs a com-

[9] European Parliament and Council of the European Union: *Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement*, Official Journal of the European Communities, L 132, 20.5.2017, pp. 1-25, (hereinafter, the "Directive 2017/828").

[10] Balp, G.: *I consulenti di voto*, Milano: EGEA, 2017, p. 39; Tuch, A. F.: Proxy Advisor Influence in a Comparative Light. *Boston University Law Review*, 99(1459) 2019, pp. 1460-1513.

parative legal methodology, examining the Polish, German and Italian regulations transposing Directive 2017/828 regarding proxy advisors, with a view to assessing how the identical EU regulatory solutions operate within different legal systems and corporate governance models. These legal systems were selected deliberately, as they represent distinct approaches to corporate governance within the European Union: Poland reflects the experience of Central and Eastern European markets with relatively low demand for proxy advisory services, Germany exemplifies a mature continental corporate governance model in which proxy advisors operate as a structurally embedded market institution, while Italy is characterised by a more developed capital market. As a supplementary research approach, the empirical method was also employed to assess whether there were entities that complied with the obligations imposed on proxy advisors under Polish law. This made it possible to determine whether the relevant provisions of Polish law constitute norms without actual addressees or whether they are applied in trading practise.

2. PROXY ADVISORS IN LIGHT OF DIRECTIVE 2017/828 – GENERAL REMARKS

The EU legislator assumes that many institutional investors and asset managers use the services of proxy advisors, who provide research, advice and recommendations on how to vote at general meetings of listed companies. In view of EU legislator, while proxy advisors play an important role in corporate governance by contributing to the reduction of the costs associated with the analysis of company information, they may also have an important influence on the voting behaviour of investors. In particular, investors with highly diversified portfolios and many foreign shareholdings rely more on proxy recommendations (Recital 25 of Directive 2017/828). As a result, according to the EU legislator, it was necessary to impose transparency obligations on these entities (Recital 26 and Recital 45 of Directive 2017/828).

Under Directive 2017/828, a proxy advisor means a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies with a view to informing investors' voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights. Importantly, this definition does not establish an exhaustive or enumerative catalogue of activities that must be carried out for an entity to be classified as a proxy advisor. Rather, it adopts a functional and purpose-oriented approach, focusing on the substantive role played by an entity in the investment decision-making process. Consequently, the qualification of a given entity as a proxy advisor depends not

on the formal scope or labelling of its services, but on whether its activities – taken as a whole – are aimed at influencing or informing shareholders' voting behaviour at general meetings of listed companies.

The provisions of Directive 2017/828 require Member States to adopt regulations imposing numerous obligations on proxy advisors to ensure their transparency. These obligations can be divided into three groups.

The first group of obligations includes imposing on proxy advisors the obligation to disclose information about the code of conduct they apply and to submit reports on its application. Proxy advisors have the right to choose a specific code of conduct to apply. However, the provisions of Directive 2017/828 do not impose an obligation to apply such a code. In the absence of such a code, or where proxy advisors apply any of the principles of the applicable code, proxy advisors should be required to make a public announcement explaining their decision not to disclose this information (Article 3j(1) of Directive 2017/828). The publication obligation is therefore essentially based on the "apply or explain" principle,[11] under which an entity required to report on specific principles has a choice: it can either apply those principles or publish an explanation setting out the reasons for the non-application of all or part of those principles. The information should remain publicly available for a period of at least three years in order to, as envisaged by the EU legislator, allow institutional investors to choose the services of proxy advisors, taking into account their performance in the past (Recital 26 of Directive 2017/828).

As part of the second set of obligations imposed on proxy advisors, Member States have been required to adopt measures requiring proxy advisors to publish annually, free of charge, information related to the preparation of their research, advice and voting recommendations (Article 3j(2) paragraph 1 of Directive 2017/828). The information shall be made available for at least three years (Article 3j(2) paragraph 2 of Directive 2017/828). The requirement to publish this information for a specified period is intended to enable institutional investors to choose proxy advisors, taking into account the proxy advisors' past performance (Recital 26 of Directive 2017/828). Member States may extend the scope of the required information and duration of the publication. Institutional investors may also, on their own initiative, provide other information (without an explicit legal requirement) and extend the period of publication.

Member States, as part of third set of obligations, shall also ensure that proxy advisors identify and disclose without delay to their clients any actual or po-

[11] Lieder, J, Bialluch, M., in: Kindler P., Lieder J. (eds.): *European Corporate Law: Article-by-Article Commentary*, Munich/Freiburg: Bloomsbury Publishing, 2021, p. 893.

tential conflicts of interests or business relationships that may influence the preparation of their research, advice or voting recommendations and the actions they have undertaken to eliminate, mitigate or manage the actual or potential conflicts of interests (Article 3j(3) of Directive 2017/828). The obligation to publish information on the existence of a conflict of interest does not imply an obligation to make a public announcement. Instead, the obligation is limited to disclosing such a conflict only to the client who may be affected by its consequences. The form of such notification should be determined in accordance with the laws of the Member States.

The information obligation arising from the Article 3j shall apply to all proxy advisors that either have their registered office or head office in the EU or carry out their activities through an establishment located in the EU (Article 3j(4) of Directive 2018/828).[12] The extension of the obligations under Directive 2017/828 to these entities stems from the need to ensure equal treatment of proxy advisors having their registered offices in the EU and third-country proxy advisors which carry out their activities through an establishment in the European Union (Recital 27 of Directive 2017/828).

While Article 3j of Directive 2017/828 imposes transparency obligations on proxy advisors and requires them to disclose conflicts of interest, this does not exhaust the issue of transparency in their activities, as additional publication obligations – which may be regarded as supplementary to the above obligation – are set out in other provisions of Directive 2017/828. Article 3g(1) of Directive 2017/828 which stipulates that reports on the implementation of engagement policies published by institutional investors and asset managers must contain information on how these entities utilise services offered by proxy advisors in relation to voting. Where such advisors are used, the report should disclose how their recommendations were taken into account.[13] In addition, the information on the use of proxy advisors by asset managers in connection with voting is to be disclosed by asset managers to institutional investors where asset managers invest on behalf of institutional investors (Article 3i(1) of Directive 2017/828).

Taken together, these provisions establish a multi-layered transparency framework, under which the activities of proxy advisors are subject not only to direct disclosure requirements but also to indirect forms of transparency through

[12] See more: Mayer, J. A., Torggler, U.: Article 3j: Transparency of Proxy Advisors, in*:* Birkmose H. S., Sergakis K. (eds.): *The Shareholder Rights Directive II: A Commentary*, Cheltenham: Elgar Commentaries in Corporate and Company Law, 2021, p. 226.

[13] See more on the information to be included in a report on the implementation of an engagement policy: Mizerski, D.: Polityka dotycząca zaangażowania firm inwestycyjnych. *Przegląd Ustawodawstwa Gospodarczego,* (1) 2025, pp. 40-47.

reporting obligations imposed on institutional investors and asset managers who make use of their services.

3. PROXY ADVISORS IN LIGHT OF POLISH, GERMAN AND ITALIAN LAW – THE PERSONAL SCOPE

The provisions regarding the obligations imposed on proxy advisors have been incorporated into the Polish Commercial Companies Code,[14] German Stock Corporation Act[15] and the Italian Consolidated Law on Finance.[16]

Pursuant to Article 4 § 1(16) of the Polish Commercial Companies Code, a proxy advisor shall mean a legal person which, on a professional and commercial basis, analyses information disclosed by public companies or originating from public companies in order to facilitate the decision-making process of the shareholders of those companies with regard to voting, by presenting research, advice or recommendations on voting related to the exercise of voting rights. The definition introduced by the Polish legislator, which essentially repeats the definition of a proxy advisor under Directive 2017/828, warrants several remarks.

First, in light of the definition of a proxy advisor under Article 4 § 1(16) of the Commercial Companies Code, only a legal person can be classified as a proxy advisor. Consequently, this category does not extend to natural persons (sole proprietorship) or partnerships (general partnerships, professional partnerships, limited partnerships and limited joint-stock partnerships), which have legal capacity, even where these entities conduct their activities 'professionally and commercially'.[17] It also excludes entities such as investor associations, which, as part of their activities, may carry out the activities specified in Article 4 § 1(16) of the Commercial Companies Code. Additionally, the provisions of the Commercial Companies Code do not impose any territorial restrictions on the registered office of entities that may obtain the status of proxy advisors. Consequently, under Article 4 § 1(16) of the Commercial Companies Code,

[14] *Ustawa z dnia 15 września 2000 r. – Kodeks spółek handlowych*, Dziennik Ustaw Rzeczypospolitej Polskiej, (94) 2000, item 1037, (hereinafter, the "Commercial Companies Code" or "CCC").

[15] *Aktiengesetz (AktG)*, Bundesgesetzblatt, 6.9.1965, p. 1089, (hereinafter, the "AktG").

[16] Decreto Legislativo 24 febbraio 1998, n. 58, *Testo unico delle disposizioni in materia di intermediazione finanziaria*, Gazzetta Ufficiale, 71, 26.3.1998, (hereinafter, the "Consolidated Law on Finance").

[17] Opalski, A., in: Opalski, A. (ed.): *Kodeks spółek handlowych. Tom IA. Spółki osobowe, Komentarz. Art. 1-36*, Warsaw: C. H. Beck, 2024, pp. 197-198.

this status may be granted to legal persons having their registered office within the territory of Member States as well as those outside that territory.[18] In this respect, although the extension of information obligations to proxy advisors established in third countries is intended to ensure equal treatment and regulatory coherence, the practical enforceability of any resulting liability may, in such cases, remain largely theoretical. In particular, the cross-border nature of these entities and the limited territorial nexus of their activities may significantly restrict the effectiveness of supervisory measures.

Secondly, pursuant to Article 4 § 1(16) of the Commercial Companies Code, the status of a proxy advisor can only be granted to entities that carry out the activities specified in that provision in relation to public companies within the meaning of the Act on Public Offering.[19] Accordingly, it is limited to companies whose shares are admitted to trading on a regulated market or introduced to trading in an alternative trading system (Article 4(20) of the Act on Public Offering). The status of proxy advisors is therefore not applicable in cases where the subject of the analysis concerns shares of non-public companies (companies whose shares are not traded on a regulated market or in an alternative trading system).[20]

Thirdly, the status of a proxy advisor within the meaning of Article 4 § 1(16) of the Commercial Companies Code applies only to entities which, professionally and on a commercial basis, analyse information disclosed by public companies or originating from public companies. However, interpreting this provision as excluding entities solely because their services are provided free of charge is misguided. The absence of remuneration does not preclude a professional and organised activity, nor does it eliminate potential influence on shareholder decision-making; consequently, reliance on the pricing model leads to an unjustified narrowing of the regulatory scope and weakens the effectiveness of the transparency regime.

Furthermore, the definition of a proxy advisor in Article 4 § 1(16) of the Commercial Companies Code does not differentiate between the groups of recipients of its services. Therefore, in light of this provision, the status of a proxy advisor is granted to an entity that provides research, advice or recommendations on voting matters for the benefit of either a specific entity (i.e. research or recommendations tailored to the specific needs of an individual entity) or a

[18] Ibid.

[19] *Ustawa z dnia 29 lipca 2005 r. o ofercie publicznej i warunkach wprowadzania instrumentów finansowych do zorganizowanego systemu obrotu oraz o spółkach publicznych*, Dziennik Ustaw Rzeczypospolitej Polskiej, (184) 2005, item 1539.

[20] Bieniak, M.: Komentarz do art. 301-327 KSH, in: Bieniak, J., et al. (eds.): *Kodeks spółek handlowych. Komentarz*, Warsaw: C. H. Beck, 2024, p. 1261.

group of entities (i.e. without a specific addressee). Additionally, according to Article 4 § 1(16) of the Commercial Companies Code, it is irrelevant whether the research, advice or recommendations are prepared for current or potential shareholders of the company or whether the entity qualifies as an institutional or individual investor.

The definition of proxy advisors under German law has a broader personal scope than under Polish law. The relevant provisions define a proxy advisor as an entity that, on a commercial basis and for remuneration, analyses data and other information published by companies whose shares are admitted to trading on regulated markets in order to inform investors through research, advisory services or voting recommendations related to the exercise of voting rights (§ 134a(1)(3) AktG). As a result of the definition adopted by the German legislator, the status of a proxy advisor in relation to voting may, unlike under Polish law, also be conferred on partnerships and natural persons.[21] This broad approach is entirely justified, as the proxy advisory sector is much more developed than in Poland.[22]

The provisions of the Italian Consolidated Law on Finance define a proxy advisor as an entity that, on a professional and commercial basis, analyses information published by companies and, where appropriate, other information relating to companies whose shares are admitted to trading on regulated markets of an EU Member State for the purpose of informing investors with regard to voting decisions to be taken by providing research, advice or voting recommendations related to the exercise of voting rights (Article 124-quater(1)(c) of the Consolidated Law on Finance). Similar to the approach adopted under German law, the Italian definition does not expressly limit the personal scope of proxy advisors to legal persons only. Consequently, the notion of a proxy advisor may also encompass natural persons who, on a professional and commercial basis, provide voting-related research, advice or recommendations to an investor. At the same time, the obligations arising from this act apply to both entities having their registered office in Italy and entities maintaining a secondary establishment (*sede secondaria*) in Italy, even where they do not have their registered office in a Member State of the European Union (Article 124-quater(3) of the Consolidated Law on Finance).[23]

[21] Liebscher, T.: Commentary on §§ 118-149 AktG, in: Henssler, M., Strohn, L. (eds.): *Gesellschaftsrecht*, München: C. H. Beck, 2021.

[22] Koch, C., Rothacker, V., Scharfbillig, M.: Do local proxy advisors matter? – Evidence from Germany. *Accounting & Business Research*, 53(1) 2023, pp. 83-107.

[23] Ser more: Urbani, F.: Transaperenza dei consulenti in materia di voto (proxy advisors), in: Raffaele F., Ruggiero, E. (eds.): *Il recepimento in Italia della Shareholder Rights II*, Milano: Wolters Kluwer, 2021, p. 144.

The analysis of the personal scope of application demonstrates that, compared with the solutions adopted under German and Italian law, the definition of a proxy advisor under Polish law is relatively narrow, in particular due to its limitation exclusively to legal persons. This means that, under Polish law, the scope of application of these provisions does not extend to entities which, despite their actual performance of activities consisting in formulating recommendations concerning the exercise of voting rights, do not possess legal personality.

4. PROXY ADVISORS IN LIGHT OF POLISH, GERMAN AND ITALIAN LAW – THE SCOPE OF OBLIGATION

First, the obligations imposed on proxy advisors with respect to enhancing the transparency of their activities under Polish, German and Italian law largely reflect the solutions adopted in Directive 2017/828. In all three jurisdictions, national legislators essentially confined themselves to a literal or near-literal transposition of the Directive's minimum requirements, without opting to introduce additional or more far-reaching transparency obligations at the national level. As a result, the regulatory frameworks governing proxy advisors in these legal systems do not go beyond the minimum harmonisation standard established by the above legal act.

Proxy advisors are required to publish information relating to the preparation of their research, advice and voting recommendations on their websites. Under Polish law these obligations are subject to Article 402^4 § 1 of the Commercial Companies Code. As rightly pointed out in the literature above, the Article, which defines the scope of information subject to disclosure, was drafted on the basis of a direct transposition of Article 3j(2) of Directive 2017/828.[24] A similar scope of information is also required by German law (Section 134d(2) of the 3 AktG) and Italian law (Article 124-octies(1) of the Consolidated Law on Finance). The information should be available on the proxy advisor's website free of charge for at least three years from the date of its publication (Article 402^4 § 1 of the Commercial Companies Code, § 134d (3) AktG, Article 124-octies(2) Consolidated Law on Finance in conjunction with Article 143-octies(2) Issuers' Regulation[25]). Accordingly, the mere provision of infor-

[24] See more: Woźniak, R.: Doradca akcjonariusza do spraw głosowania – zagadnienia wybrane. *Międzynarodowe Prawo Handlowe*, (2) 2022, pp. 17-18; Popiołek, W., in: Pinior, P., Strzępka, J. A (eds.): *Kodeks spółek handlowych. Komentarz*, Warsaw: C. H. Beck, 2024, pp. 1016-1018.

[25] *Regolamento di attuazione del decreto legislativo 24 febbraio 1998, n. 58, concernente la disciplina degli emittenti, CONSOB Resolution No. 11971 of 14 May 1999*, Gazzetta Ufficiale

mation to clients through direct communication does not constitute proper fulfilment of the disclosure obligations provided for in the above provisions. None of the analysed legislatures decided to establish a longer publication period for this information than that provided for under Directive 2017/828.

In the analysed context, both German and Italian law require the above information to be updated on an annual basis. Polish law does not introduce an equivalent explicit obligation to update this information, even though such a requirement may be inferred from Article 3j(2) of Directive 2017/828. This omission must be assessed negatively, as the absence of an explicit requirement for periodic updates risks rendering the disclosed information obsolete and deprives market participants of a reliable and up-to-date insight into the functioning of proxy advisors. As a result, the transparency mechanism envisaged by the Directive may be reduced to a merely formal obligation fulfilled at a single point in time, rather than constituting an ongoing duty ensuring the continuous accuracy of publicly available information.

The provisions of the Member States selected for analysis also oblige entities having the status of a proxy advisor to publish information on the professional ethics rules they apply and a report outlining how these rules are applied, or a statement explaining the reasons for their non-application (Article 402[5] of the Commercial Companies Code, Section 134d(1) AktG, Article 124-octies(1) of the Consolidated Law on Finance. This information should be published on the website and updated annually. In this respect as well, the legislators in question have confined themselves to a minimal transposition of the rules arising from Directive 2017/828.

The provisions of the Commercial Companies Code also oblige entities having the status of a proxy advisor to inform their clients of any existing or potential conflicts of interest or business relationships that could affect the preparation of research, advice or recommendations on voting, as well as the measures taken to eliminate or reduce such conflicts, or to manage them (Article 402[6] of the Commercial Companies Code). Similar obligations are also provided for under German law (Section 134d(4) AktG) and Italian law (Article 124-octies(4) of the Italian Consolidated Law on Finance). As rightly pointed out in the literature, the obligation imposed on proxy advisors should be understood primarily as a duty of transparency and information disclosure to their clients, rather than as an obligation to refrain from certain activities or to adopt substantive restrictions, such as a prohibition on engaging in potentially competing busi-

della Repubblica Italiana, 123, 28.5.1999, (hereinafter, the "Issuers' Regulation").

ness activities.[26] Entities holding the status of proxy advisors are therefore not required to eliminate conflicts of interest as such, but rather to ensure that any actual or potential conflicts are adequately disclosed and properly managed. These observations apply uniformly to all the legal systems examined in this article.

The Commercial Companies Code does not impose any sanctions (civil, administrative or criminal) for breach of the obligations imposed on proxy advisors. The absence of such sanctions, particularly administrative ones, may, in particular, hinder the enforcement of obligations imposed on entities holding the status of investor voting advisors established outside the territory of the Republic of Poland. This raises the question of whether the Polish legislator has correctly implemented Article 14b of Directive 2017/828, which requires Member States to adopt effective, proportionate and dissuasive sanctions. For example, under German law, a breach by proxy advisors of their disclosure obligations or their obligation to disclose conflicts of interest in connection with voting may give rise to administrative liability (Section 405(2a)(10) and (11) in conjunction with Section 405(4) of the German Stock Corporation Act) and may theoretically result in their liability for damages.[27] Under Italian law, however, investment advisors may also be subject to administrative penalties for breaching their obligations in connection with voting (Article 193-bis.1(1) of the Consolidated Law on Finance) and the supervisory authority may issue a request to remedy the breach, establishing the necessary measures and the deadline for their implementation (Article 194-quater(1)(c-sexies) of the Consolidated Law on Finance), or it may impose an obligation to make a public statement regarding the breach committed (Article 194-septies(1)(e-quinquies) of the Consolidated Law on Finance). However, as the literature justifiably observes, the absence of such provisions under Polish law does not preclude the possibility that certain entities may be held liable for damages incurred by other entities for which proxy advisors have provided services.[28] This obligation is however rather theoretical.

As a side note, the provisions of the analysed legal acts implementing Directive 2017/828 do not constitute an exhaustive regulatory framework governing

[26] Rieckers O.: §§ 133-138 AktG in: Spindler G., Stilz E. (eds.): *Kommentar zum Aktiengesetz,* Munich: C. H. Beck, 2023, Commentary to § 134d nb. 36; Krebs, Ch. A.: Commentary on §§ 133-149 AktG, in: Hölters W., Weber, M. (eds.): *Aktiengesetz Kommentar*, München: C. H. Beck, 2022, Commentary to § 134b margin number 14.

[27] Liebscher, T.: Commentary on §§ 118-149 AktG, in: Henssler, M., Strohn, L. (eds.): *Gesellschaftsrecht*, München: C. H. Beck, 2021, Commentary to § 134a margin number 11.

[28] Michalski, M., in: Kidyba A. (ed.), *Kodeks spółek handlowych. Komentarz. Tom III. Komentarz do art. 301-490*, Warsaw: Wolters Kluwer, 2020, p. 557.

the activities related to the preparation of investment recommendations. The national provisions focus primarily on transparency and disclosure obligations imposed on proxy advisors, leaving aside broader substantive requirements applicable to the process of formulating investment advice. These matters are addressed separately and in greater detail in Article 20 of the Market Abuse Regulation.[29] As a result, the regulatory framework applicable to proxy advisors remains fragmented, requiring the combined application of both corporate law provisions and capital market regulations to assess fully the legal standards governing investment recommendation activities.

Moreover, the services provided by entities qualified as proxy advisors may be classified as the preparation of investment or financial analyses, or other general recommendations concerning transactions in financial instruments.[30] Under Polish law, this will entail the obligation to obtain a licence from the Polish Financial Supervision Authority to conduct brokerage activities, pursuant to Article 69 of the Act on Trading in Financial Instruments,[31] unless one of the exceptions specified in Article 70 of the Act on Trading in Financial Instruments exempts them from this obligation.

In light of the above, the regulations governing entities that may be classified as proxy advisors under the provisions of the Commercial Companies Code go beyond the provisions of that legal act. This creates a complex regulatory environment that requires proxy advisors to be fully aware of their legal obligations under multiple acts.

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[29] European Parliament and Council of the European Union: *Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC*, Official Journal of the European Communities, L 173, 12.6.2014, pp. 1-61.

[30] Investment advice consists in preparing, on the initiative of the investment firm or at the request of the client, and providing the client with the information specified in Article 9 of European Commission: *Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive*, Official Journal of the European Communities, L 87, 31.3.2017, pp. 1-83, in writing, orally or in another form, in particular electronic form, meeting the requirement of a durable medium, prepared on the basis of the client's needs and situation, a recommendation to buy or sell one or more financial instruments, or to take any other action with equivalent effect, the subject of which are financial instruments, or a recommendation to refrain from taking such action (Article 76 of the Act on Trading in Financial Instruments).

[31] *Ustawa z dnia 29 lipca 2005 r. o obrocie instrumentami finansowymi*, Dziennik Ustaw Rzeczypospolitej Polskiej, (183) 2005, item 1538.

5. CONCLUSION

The comparative perspective indicates that although German and Italian law provide for a broader personal scope of proxy advisor regulation and more developed enforcement mechanisms, the underlying regulatory model remains largely formal in these jurisdictions. In Germany and Italy, the transparency obligations imposed on proxy advisors are more likely to have identifiable addressees owing to a higher level of capital market development and the greater practical relevance of proxy advisory services. Nevertheless, even in these legal systems, the regulatory framework focuses primarily on disclosure duties and does not substantially interfere with the substantive process of formulating voting recommendations. As a result, the effectiveness of these provisions in addressing conflicts of interest and enhancing shareholder engagement remains open to question. Empirical studies limited to the analysis of the Polish capital market indicate that, to date, no entities have been identified as having fulfilled their publication obligations with respect to the disclosure of the relevant information as required by the applicable provisions. In particular, the available data suggest that proxy advisors operating, or potentially operating, within the Polish legal framework have not published the information relating to their activities pursuant to the relevant transparency requirements. This observation may be explained by the marginal role of proxy advisory services in the Polish capital market and the limited number of entities meeting the statutory definition of a proxy advisor under Polish law. The conducted analysis confirmed also that the regulatory approach to proxy advisors in the analysed jurisdictions is based on a set of uniform transparency obligations reflecting a literal transposition of Directive 2017/828.

Taken together, the findings of the article confirm the research hypothesis that the legal framework governing proxy advisors under the Polish law is characterised by a limited degree of practical applicability. The Polish case illustrates most clearly that the transposition of EU transparency obligations without a prior assessment of the actual market presence of their potential addressees may lead to the adoption of legal norms that are formally compliant with EU law, yet, in some jurisdictions, largely ineffective in trading practice.

LITERATURE

1. *Aktiengesetz (AktG)*, Bundesgesetzblatt, 6.9.1965, p. 1089.
2. Balp, G.: *I consulenti di voto*, Milano: EGEA, 2017.
3. Bieniak, M.: Komentarz do art. 301–327 KSH, in: Bieniak, J., Bienika, M., Nita-Jagielski, G., Oplustil, K., Pabis, R., Raschwal, A., Spyra, M., Sulinski, G.,

Tofel, M. Wawer M., Zawłocki R. (eds.): *Kodeks spółek handlowych. Komentarz*, Warsaw: C. H. Beck, 2024.

4. Boot, A., Krahnen, J., Senbet, L., Spatt, C.: The Controversy over Proxy Voting: The Role of Fund Managers and Proxy Advisors. *Financial Analysts Journal*, 79(4) 2023, pp. 8-15.
   - DOI: https://doi.org/10.1080/0015198X.2023.2240081
5. Decreto Legislativo 24 febbraio 1998, n. 58, *Testo unico delle disposizioni in materia di intermediazione finanziaria*, Gazzetta Ufficiale, 71, 26.3.1998.
6. Dey, A., Starkweather, A., White, J. T.: Proxy Advisory Firms and Corporate Shareholder Engagement. *Review of Financial Studies*, 37(12) 2024, pp. 3877-3931.
   - DOI: https://doi.org/10.1093/rfs/hhae045
7. Elbra, A., O'Brien, E., Boersma, M.: The political influence of proxy advisors in campaigns for ethical investment: guiding the invisible hand. *Regulation & Governance*, 19(4) 2025, pp. 1063-1073.
   - DOI: https://doi.org/10.1111/rego.12641
8. European Commission: *Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive*, Official Journal of the European Communities, L 87, 31.3.2017, pp. 1-83.
9. European Parliament and Council of the European Union: *Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement*, Official Journal of the European Communities, L 132, 20.5.2017, pp. 1-25.
10. European Parliament and Council of the European Union: *Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC*, Official Journal of the European Communities, L 173, 12.6.2014, pp. 1-61.
11. Koch, C., Rothacker, V., Scharfbillig, M.: Do local proxy advisors matter? – Evidence from Germany. *Accounting & Business Research*, 53(1) 2023, pp. 83-107.
    - DOI: https://doi.org/10.1080/00014788.2021.1946382
12. Krebs, Ch. A.: Commentary on §§ 133-149 AktG, in: Hölters W., Weber, M. (eds.): *Aktiengesetz Kommentar*, München: C. H. Beck, 2022.
13. Liebscher, T.: Commentary on §§ 118-149 AktG, in: Henssler, M., Strohn, L. (eds.): *Gesellschaftsrecht*, München: C. H. Beck, 2021.
14. Lieder, J, Bialluch, M., in: Kindler P., Lieder J. (eds.): *European Corporate Law: Article-by-Article Commentary*, Munich/Freiburg: Bloomsbury Publishing, 2021.

15. Malenko, N., Shen Y.: The Role of Proxy Advisory Firms: Evidence from a Regression-Discontinuity Design. *The Review of Financial Studies*, 29(12) 2016, pp. 3394-3427.
    - DOI: https://doi.org/10.1093/rfs/hhw070

16. Mayer, J. A., Torggler, U.: Article 3j: Transparency of Proxy Advisors, in*:* Birkmose H. S., Sergakis K. (eds.): *The Shareholder Rights Directive II: A Commentary*, Cheltenham: Elgar Commentaries in Corporate and Company Law, 2021.

17. Michalski, M., in: Kidyba A. (ed.): *Kodeks spółek handlowych. Komentarz. Tom III. Komentarz do art. 301-490*, Warsaw: Wolters Kluwer, 2020.

18. Mizerski, D.: Polityka dotycząca zaangażowania firm inwestycyjnych. *Przegląd Ustawodawstwa Gospodarczego,* (1) 2025, pp. 40-47.
    - DOI: 10.33226/0137-5490.2025.1.6

19. Opalski, A., in: Opalski, A. (ed.): *Kodeks spółek handlowych. Tom IA. Spółki osobowe, Komentarz. Art. 1-36*, Warsaw: C. H. Beck, 2024.

20. Popiołek, W., in: Pinior, P., Strzępka, J. A. (eds.): *Kodeks spółek handlowych. Komentarz*, Warsaw: C. H. Beck, 2024.

21. Prager, I.: *Doradcy inwestorów do spraw głosowania (proxy advisors*), Warsaw: C. H. Beck, 2019.

22. *Regolamento di attuazione del decreto legislativo 24 febbraio 1998, n. 58, concernente la disciplina degli emittenti, CONSOB Resolution No. 11971 of 14 May 1999*, Gazzetta Ufficiale della Repubblica Italiana, 123, 28.5.1999.

23. Rieckers O.: §§ 133-138 AktG in: Spindler G., Stilz E. (eds.): *Kommentar zum Aktiengesetz,* Munich: C. H. Beck, 2023.

24. Sauerwald, S., van Oosterhout, J., Van Essen, M., Peng, M. W.: Proxy Advisors and Shareholder Dissent: A Cross-Country Comparative Study. *Journal of Management*, 44(8) 2018, pp. 3364-3394.
    - DOI: https://doi.org/10.1177/014920631667592

25. Tuch, A. F.: Proxy Advisor Influence in a Comparative Light. *Boston University Law Review*, 99(1459) 2019, pp. 1460-1513.

26. Urbani, F.: Transaperenza dei consulenti in materia di voto (proxy advisors), in: Raffaele F., Ruggiero, E. (eds.): *Il recepimento in Italia della Shareholder Rights II*, Milano: Wolters Kluwer, 2021.

27. *Ustawa z dnia 15 września 2000 r. – Kodeks spółek handlowych*, Dziennik Ustaw Rzeczypospolitej Polskiej, (94) 2000, item 1037.

28. *Ustawa z dnia 29 lipca 2005 r. o obrocie instrumentami finansowymi*, Dziennik Ustaw Rzeczypospolitej Polskiej, (183) 2005, item 1538.

29. *Ustawa z dnia 29 lipca 2005 r. o ofercie publicznej i warunkach wprowadzania instrumentów finansowych do zorganizowanego systemu obrotu oraz o spółkach publicznych*, Dziennik Ustaw Rzeczypospolitej Polskiej, (184) 2005, item 1539.

30. Woźniak, R.: Doradca akcjonariusza do spraw głosowania – zagadnienia wybrane. *Międzynarodowe Prawo Handlowe*, (2) 2022, pp. 16-21.
    - DOI: https://doi.org/10.32027/MPH.22.2.2
31. Zarzycka, K.: *Corporate Governance oczami Warrena Buffeta*, Warsaw: C. H. Beck, 2011.
32. Zięty, J. J.: *Uprawnienia Akcjonariuszy Polskich Spółek Publicznych w świetle Dyrektywy 2007/36/WE,* Warsaw: C. H. Beck, 2015.