OBLIGATIONS UNDER THE RELATED PARTY TRANSACTION REGIME IN LIGHT OF POLISH LAW – A COMPARATIVE APPROACH

*Dr. sc. Dominik Mizerski**

UDK 347.73:657.24 (438)
https://doi.org/10.30925/zpfsr.47.2.14
Ur.: 17. studenoga 2025.
Pr.: 10. travnja 2026.
Pregledni rad

Summary

Related party transactions are a common occurrence in both domestic and international trade. They can result in a significant portion of a company's assets being transferred to a related party, which can therefore lead to the company's stakeholders being disadvantaged. In order to counteract such adverse effects, the EU legislator has adopted verification mechanisms as part of Directive 2017/828 to protect the interests of the company and other stakeholders in the event that company conclude related party transactions. This article aims to demonstrate that the regulations implementing the regime of transactions with related parties into the Polish legal system, although remaining close to the literal wording of the provisions of Directive 2017/828, do not ensure due protection of the interests of the company or shareholders who are not related parties. The main research methods used in this work are the formal-dogmatic (legal-analytical) and comparative legal research methods.

Keywords: *SRD II; conflict of interest; related party transactions; general meeting.*

1 INTRODUCTION

The regulation of related party transactions has become a key instrument in ensuring corporate transparency and protecting minority shareholders within the European Union. One of the main risks stakeholders face in the case of related party

* Dominik Mizerski, Ph.D., Research Assistant, University of Silesia in Katowice, Faculty of Law and Administration, Poland; dominik.mizerski@us.edu.pl. ORCID: https://orcid.org/0000-0002-8253-5038.
This research was fully funded by the National Science Centre, Poland, project number: 2024/53/N/HS5/00255.
©2026 The Author(s) and the Publisher. This is an open access article distributed under the terms of the CC BY-NC-ND 4.0 licence.

transactions is tunnelling.[1] As indicated in the literature, tunnelling may go unnoticed in jurisdictions that lack rules for undervalued transactions and do not monitor related party deals below market value.[2]

In response to the increasing number of abuses resulting from non-transparent dealings between companies and their related parties, Directive 2017/828[3] introduced a harmonized framework aimed at strengthening shareholder oversight in publicly listed companies. Among the significant reforms brought by this legal act is Article 9c, which imposes obligations on Member States to define and regulate material transactions with related parties in a way that safeguards the interests of the company and non-related shareholders. This approach reflects the broader trend within EU corporate governance policy to empower shareholders and promote accountability in corporate decision-making.

Due to its specific nature, the provisions of Directive 2017/828 have to be implemented into the legal systems of the Member States. When doing so, Member States could go beyond the minimum framework of Directive 2017/828 (known as gold plating) at their discretion. However, the Polish legislator decided to implement these provisions mostly using a literal repetition of the provisions of Directive 2017/828, in particular in the area of rules related to obligations for material related party transactions. The main purpose of this article is to demonstrate that the provisions regarding related party transactions regime implemented by the Polish legislator does not ensure the proper protection of the interests of the company, shareholders who are not related parties, and other stakeholders. The primary research methods used in this paper to demonstrate this thesis are the formal-dogmatic (legal-analytical) and comparative legal research methods. The study analyses the rules on related party transactions adopted in other Member States, in particular those adopted in German and Italian law. Germany exemplifies a highly developed model of continental corporate governance. In contrast, Italy's legal framework is notable for the advanced state of its capital market. Furthermore, the regulations concerning related party transaction in Italy were established before the introduction of Directive 2017/828.

1 Nikolaos Vervessos, "Related Party Transactions: Lessons from Regulation in Greece," *European Company and Financial Law Review* 19, no. 3 (2022): 392-393; Jan Stranz, "Niekorzystne dla spółki transakcje z podmiotami powiązanymi – istota zjawiska," *Międzynarodowe Prawo Handlowe,* no. 2 (2021): 19.

2 Ivan Romashchenko, "The Ukrainian Regulatory Approach for Related Party Transactions and the SRD II: A Two-Way Street of Learning," *European Company and Financial Law Review* 22, no. 1 (2025): 71.

3 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, OJ L 132, 20.5.2017, 1-25 (hereinafter: Directive 2017/828).

2 REGIME OF TRANSACTIONS WITH RELATED PARTIES UNDER THE DIRECTIVE 2017/828 - GENERAL REMARKS

The regime of related parties transactions is regulated by Article 9c of Directive 2017/828. This regime is obligatory, however the rules relating to the institutions set out therein are, in principle, minimum and framework provisions.[4]

Under Directive 2017/828 Member States were obliged to define material transactions.[5] Materiality threshold may be based on both quantitative and qualitative criteria.[6] In this regard, it is important to emphasize that the mechanisms of control of related party transactions under Directive 2017/828 do not apply to all transactions, but only to those that meet the materiality threshold (adopted by Member States taking into account the principles set forth in the Article 9c(1) of Directive 2017/828).[7] Furthermore it should be noted that in light of the provisions of Directive 2017/828, Member States are free to introduce different materiality thresholds.

The provisions of Directive 2017/828 set three mechanisms regulating material transactions with related parties. Two of them are mandatory and one is optional. These mechanisms are designed to prevent risks arising from transactions with related parties, in particular the lack of transparency of such transactions.[8]

As part of the mandatory mechanisms, Member States have to adopt regulations obliging companies to publish information on the conclusion of a material related party transaction.[9] Within the approval obligation, Member States were obliged to ensure that material transactions with related parties are approved by the general meeting or by the administrative or supervisory body of the company.[10] As part of the optional mechanism, Member States may require that published information on a conclusion of material related party transaction be accompanied by a report assessing its fairness and reasonableness and explaining the underlying assumptions and methods.[11]

---

4 Ivan Romashchenko, *Related Party Transactions and Corporate Groups. When Eastern Europe Meets the West* (Wolters Kluwer International, 2020), 230-250; Vervessos, "Related Party," 396.

5 Article 9c(1) of Directive 2017/828.

6 Vervessos, "Related Party," 403.

7 Romashchenko, "The Ukrainian Regulatory," 76; Piotr Moskała, "Zatwierdzanie transakcji wewnątrzgrupowych w zmienionej dyrektywie 2007/36/WE – perspektywy implementacji," *Przegląd Prawa Handlowego*, no. 1 (2018): 23; Dominik Mizerski, "Exceptions to the Related Party Transactions Regime – Critical Remarks," in *Právo – Obchod – Ekonomika XIII,* ed. Ján Husár and Regina Hučková (Univerzita P. J. Šafárika v Košiciach, 2024), 319.

8 Kristinn Reynisson, "Related Party Transactions: Analysis of Proposed Article 9c of Shareholders' Rights Directive," *European Company Law* 13, no. 5 (2016): 177.

9 Article 9c(2) of Directive 2017/828.

10 Article 9c(4)(1) of Directive 2017/828. In terms of the approval obligation, Directive 2017/828 requires the introduction of certain instruments in terms of limiting the influence of related party on the approval process of the conclusion of a material related party transactions.

11 Article 9c(3) of Directive 2017/828. See more: Marcelo Bianchi and Mateja Milič, "Article 9c: Transparency and Approval of Related Party Transactions" in *The Shareholder Rights Directive II: A Commentary*, eds. Hanne Søndergaard Birkmose and Konstantinos Sergakis (Elgar Commentaries in Corporate and Company Law, 2021): 296-310; Jan Lieder and Martin

Obligations of related party transactions regime under Directive 2017/828 do not apply to material transactions entered into in the ordinary course of business and concluded on normal market terms. For the purposes of applying this exception, both of these conditions (which are vague terms) must be met jointly. However, Member States may decide that this exception does not apply, meaning that such transactions would be subject to the requirements of the related party transaction regime.[12]

Member States may also exclude the application of obligations of related party transactions to other transaction specified in Article 9c(6) of Directive 2017/828. The implementation of particular exceptions is subject to the discretionary decision of Member States, which should take into account, in particular, the conditions of the capital market operating in a given country.

3 REGIME OF RELATED PARTY TRANSACTION UNDER THE POLISH ACT ON PUBLIC OFFERING - GENERAL REMARKS

The Polish legislator decided to implement the necessary minimum in terms of the mechanisms provided for in Directive 2017/828. It limited itself to adopting the information (Article 90i(1-2) of the Act on Public Offering[13]) and the ratification mechanism (Article 90(3) of the Act on Public Offering). The Polish legislator decided not to implement the reporting mechanism with the nature of an optional regulation[14]. Such a reporting obligation has been regulated, by way of example, under Italian law.

The related party transactions regime covers companies with their registered office in the Republic Poland, whose shares were admitted to trading on the regulated market.[15] Therefore, companies with their registered office in the Republic of Poland whose shares are listed on an alternative trading system and companies with their registered office in a country other than the Republic of Poland but whose shares are admitted to trading on a regulated market operating in Poland are exempt from obligations relating to related party transactions being subject to provisions of the Act on Public Offering.

The information and ratification obligation is based on a one-threshold rule. If a related party transaction[16] exceeds the materiality threshold, these two obligations

Bialluch, "Article 9c: Transparency and approval of related party transactions" in *European Corporate Law: Article-by-Article Commentary*, eds. Peter Kindler and Jan Lieder (Nomos, 2021): 950-954; Moskała, "Zatwierdzanie transakcji," 20.

12 Article 9c(5) of Directive 2017/828.

13 *Ustawa o ofercie publicznej i warunkach wprowadzania instrumentów finansowych do zorganizowanego systemu obrotu oraz o spółkach publicznych* [The Act on Public Offering and the Conditions Governing the Introduction of Financial Instruments to the Organised Trading System and Public Companies] of July 29, 2005, Dziennik Ustaw 2024, no. 623 (hereinafter: Act on Public Offering).

14 Article 9c(3) of Directive 2017/828.

15 Article 90h(1)(3) of the Act on Public Offering.

16 With regard to the term 'transaction with a related party', the Polish legislator, similarly to the provisions of Directive 2017/828, does not introduce a legal definition of the term 'transaction',

arising from the regime of related party transactions must be fulfilled. The materiality threshold is 5% of the total assets (within the meaning of the Accounting Act)[17] determined on the basis of the company's financial statement[18]. This threshold seems reasonable compared to the thresholds adopted in other Member States. Some countries have adopted very low materiality thresholds based on certain economic figures of the companies subject to the related party transactions regime (e.g. Germany – 1.5% of total assets,[19] Croatia – 1.5% of total assets), while others have adopted relatively high thresholds determining the qualification of a transaction as material (Czech Republic – 10% of total assets, Greece – 10% of total assets, Slovakia – 10% of total assets). At the same time, the legislation of Member States is dominated by a single-threshold model, i.e. if a transaction exceeds the materiality threshold with related parties, it triggers both information and approval obligations.

With regard to the definition of related parties, the provisions of the Polish Act on Public Offering expressly refer to the concept of a related party as understood under International Accounting Standards.[20] Consequently, the determination of entities falling within the scope of this notion is not based on an autonomously constructed legal definition, but instead requires direct recourse to the criteria laid down in International Accounting Standards.[21] This legislative choice entails that the identification of related parties is carried out by reference to accounting concepts originally designed for financial reporting purposes.

This approach reflecting definition of related parties adopted under Directive 2017/828, which likewise relies on an accounting-based definition of a related party, thereby promoting conceptual consistency across Member States. Comparable regulatory techniques can also be identified in German law (§ 111a(1) of the AktG)[22] and Italian law (Article 3(1)(a) of Regulation 17221),[23] both of which

which leads to significant doubts under Polish law as to the scope of this term. With regard to the definition of a related party, Polish law, like Directive 2017/828, refers to the definition of this term under international accounting standards. See more: Tim Florstedt, "Harmonising Shareholder Protection Laws for Related Party Transactions: Art. 9c of the Shareholder Rights Directive as the Nucleus of European Group Law," *European Company and Financial Law Review* 19, no. 5 (2022): 701-748.

17 *Ustawa o rachunkowości* [The Accounting Act] of September 29, 1994, Dziennik Ustaw 2023, no. 120.

18 Article 90h(1)(1) of the Act on Public Offering.

19 Florstedt, "Harmonising Shareholder," 712.

20 Article 90h(1)(2) of the Act on Public Offering.

21 International Accounting Standards applied on the basis of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the Application of International Accounting Standards, OJ L 243, 11.9.2002, 1-4 and Commission Regulation (EU) 2023/1803 of 13 August 2023 Adopting Certain International Accounting Standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council, OJ L 237, 26.9.2023, 1-992.

22 *Aktiengesetz* [German Stock Corporation Act] of September 6, 1965, BGBl. I S. 1089, with last amendment by Article 23 of the Act of February 4, 2026, BGBl. 2026 I No. 33. (hereinafter: AktG or German Stock Corporation Act).

23 *Regolamento recante disposizioni in materia di operazioni con parti correlate* [Regulations Containing Provisions relating to Transactions with Related Parties] adopted by Consob with

explicitly incorporate the same International Accounting Standards-based conceptual framework into their respective regimes governing related party transactions.

The adoption of definition of related party under International Accounting Standards has farreaching consequences for the scope of application of the related party transaction regime. It results in the inclusion of a broad and functionally defined category of entities that may qualify as related parties, extending well beyond formally structured corporate relationships. In particular, this category encompasses entities exercising control or joint control over the company, entities capable of exerting significant influence over its financial and operating policies, as well as members of the company's key management personnel or the key management personnel of its parent undertaking. Moreover, the regulatory reach further extends to entities controlled by such persons.[24] The scope of these entities is therefore significantly broader than that of a subsidiary within the meaning of Article 4(15) of the Act on Public Offering or an affiliated company within the meaning of Article 4(1)(5) of the Commercial Companies Code.[25]

The obligations arising from the Act on Public Offering will not be applicable to transactions concluded at arm's length as part of the ordinary course of the company's business, or transactions between the company and its subsidiaries, provided that the company is the sole shareholder of those subsidiaries.[26] The scope of exceptions to the regime governing related party transactions under Polish law is narrower than the scope of exceptions permitted under Article 9c(6) of Directive 2017/828 and narrower than the scope of exceptions adopted in certain Member States, for example in German law (Section 111a(2-3) of the AktG)[27] and Italian law (Article 13 of the Regulation 17221),[28] in particular with regard to exemptions relating to transactions within corporate groups.[29]

The provisions of the Act on Public Offering entered into force on 30

Resolution no. 17221 of March 12, 2010, later amended by Resolutions no. 17389 of June 23, 2010, No. 19925 of March 22, 2017, no. 19974 of April 27, 2017, no. 21396 of June 10, 2020, no. 21624 of December 10, 2020 and no. 22144 of December 10, 2021 (hereinafter: Regulation 17221).

24 Piotr Moskała, "Commentary to Article 90h," in *Prawo rynku kapitałowego. Tom II. Komentarz*, eds. Marek Wierzbowski, Ludwik Sobolewski and Paweł Wajda (C.H. Beck, 2023): 395-397.

25 *Kodeks spółek handlowych* [The Commercial Companies Code] of September 15, 2000, Dziennik Ustaw 2024, no. 18 (hereinafter: CCC or Commercial Companies Code).

26 Article 90j of the Act on Public Offering.

27 For exceptions under German law, see in particular: Mathias Habersack, "Commentary to § 111b," in *Münchener Kommentar zum Aktiengesetz, Band 2: §§ 76-117,* eds. Wulf Goette, Mathias Habersack and Sussane Kalss (C.H. Beck, 2023), § 111b.

28 For exceptions under Italian law, see in particular: Filippo Sicchiero, "La disciplina delle operazioni con parti correlate: analisi, problematiche e possibili soluzioni," *Contratto e impresa,* no. 1 *(*2021): 336-375.

29 In accordance with Article 90j(1)(2) of the Act on Public Offering, this exemption applies only to transactions entered into by a company with a subsidiary of that company, provided that the company is the sole shareholder of the subsidiary with which it is entering into the transaction. See more: Mizerski, "Exceptions", 319-328.

November 2019, i.e. after the expiry of the transposition deadline for the Directive 2017/828, which had been set for 10 June 2019. In German law, the rules governing the approval and control of related party transactions became effective on 1 January 2020. Prior to the implementation of these provisions, neither of these jurisdictions provided for a coherent mechanism aimed at controlling the conclusion of related party transactions. By contrast, Italian legislation is particularly distinctive in this respect, as a comprehensive framework for transactions with related parties had already been introduced in 2002 and was subsequently adjusted to ensure compliance with the requirements of Directive 2017/828.

3.1 Information Obligation under the Polish Act on Public Offering

Information about the conclusion of a related party transaction should be published on company's website at the latest at the time of its conclusion.[30] It should be emphasized that the Polish legislator is fully compliant with Article 9c(2) of Directive 2017/828, which specifies the latest date for making the announcement. For example, under German law, the announcement should be made without undue delay,[31] while under Italian law, such an announcement should, as a rule, be made within seven days of the approval of the transaction or conclusion of the agreement.[32] The wording of these provisions raises doubts as to their compatibility with Article 9c(2) of Directive 2017/828.

The Act on Public Offering imposes an strict obligation to publish an announcement upon the conclusion of a transaction (unless such a disclosure is made under the MAR Regulation[33] in accordance with the Article 90i(6) of the Act on Public Offering). This means that companies subject to related party transactions regime arising from the provision of the Act on Public Offering cannot delay the public disclosure of information about the conclusion of a material transaction with a related party.

The publication on the conclusion of related party transactions shall contain information that does not deviate from the scope of information required to be published in light of Article 9c(2) of Directive 2017/828 (as is the case under German law[34] and Italian law[35]), with the exception that, in addition to the minimal requirements arising from the directive, the published announcement should also

30 Article 90i(1) of the Act on Public Offering. At the same time, it should be noted that although a literal interpretation of Article 90i(1) of the Act on Public Offering clearly indicates the latest moment of publication, which should be at the latest at the time of its conclusion, it should be pointed out, based on a purposive interpretation, that the publication shortly after the conclusion of the transaction should not be sanctioned.

31 Article 111c(1) of the AktG.

32 Article 5(3) of Regulation 17221.

33 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, OJ L 173, 12.6.2014, 1-61. (hereinafter: MAR Regulation).

34 Section 111c(2) of the AktG.

35 Annex 4 to Regulation 17221.

include information necessary to assess whether the transaction was concluded on market terms.[36] While companies may include additional information in the announcement (irrespective of whether the company's articles of association expressly provide for such a possibility), market practice shows that companies generally limit themselves to the minimum information required under Article 90i(2) of the Act on Public Offering in their announcements on material related party transactions.

Information about concluding a transaction with a related party should be published on the company's website upon concluding this transaction at the latest.[37] Under Polish law, every joint-stock company and limited joint-stock company is required to have its own website.[38] In this regard, it should be pointed out that the requirement to publish on the website is in line with Article 9c(2) of Directive 2017/828, which provides for the obligation to publicly announce the conclusion of a material transaction (publishing information on the website is one form of a public announcement). The provisions adopted by the Polish legislator with regard to the timing of publication are characterised by a faithful transposition of the rules set out in Directive 2017/828. Under German law, the announcement of the conclusion of a material transaction with a related party should be made without undue delay.[39] Such an interpretation means that the disclosure may, in principle, take place after the material transaction has been concluded, which is contrary to the literal wording of Article 9c(2) of Directive 2017/828. Italian law introduces even furtherreaching inconsistencies with the provisions of that legal act. Pursuant to the Regulation 17221, the publication relating to the conclusion of a material transaction should be made within seven days of the approval of the transaction or the conclusion of the agreement, including a preliminary agreement. Where the transaction requires approval by a resolution of the shareholders' meeting, the information document must be published within seven days of the adoption of such resolution by the meeting.[40]

It should also be noted that, whereas the provisions of the Act on Public Offering are limited to indicating that the publication is to be made on the company's website, the provisions of the German Stock Corporation Act additionally require that the announcement of the conclusion of a material related party transaction be made in a manner ensuring that stakeholders have easy access to such information. To this end, the German Stock Corporation Act imposes on companies an obligation to actively inform stakeholders of the related party transaction that has been concluded. Accordingly, the disclosure of information on such a transaction should take place, in addition to publication on the company's website, also through media channels that ensure the dissemination of such information throughout the entire European Union. Such dissemination should, in particular, involve news agencies and financial portals.[41] Similar obligations concerning this broad method of disclosure are provided

36 Article 90i(2) of the Act on Public Offering. Romashchenko, "The Ukrainian Regulatory," 96.
37 Article 90i(1) of the Act on Public Offering.
38 Article 5(5) of the Commercial Companies Code.
39 Section 111c(1) of the AktG.
40 Article 5(3) of Regulation 17221.
41 Nikolaos Paschos, "Commentary to § 111b Aktiengesetz," in *Gesellschaftsrecht,* eds. Martin Henssler and Lutz Strohn (C.H. Beck, 2021): § 111c mn. 10.

for under Italian law.[42] The Act on Public Offering also fails to introduce requirements regarding the minimum period of displaying announcements of transactions concluded with related parties on the website.[43] In view of the current legislation, it may be concluded that such an announcement could, in theory, be available for only one day without breaching the requirement set out in Article 90i(1) of the Act on Public Offering. Although Directive 2017/828 does not provide for an obligation to publish announcements on transactions with related parties for a specified period, such a solution has been adopted in the legislation of certain Member States, including by the German legislator, which requires that announcements be available for a period of not less than five years.[44] The provisions of the German Stock Corporation Act go beyond the minimum framework set by Directive 2017/828, which does not provide for a minimum period during which information on concluded related party transactions must remain available. The solution adopted under German law should be assessed positively, as it ensures genuine and longterm accessibility of information on transactions with related parties, thereby enhancing market transparency and enabling effective *ex post* scrutiny by shareholders and other stakeholders.

The information disclosure regime for related party transactions, as set out in the Act on Public Offering, does not apply to all material transactions. Where this regime overlaps with the insider information regime subject to the provisions of the MAR Regulation, only the latter applies (Article 90i(6) of the Act on Public Offering). Although this regulation remains in compliance with the provisions of Directive 2017/828,[45] it created specific content requirements for announcements of material transactions with a related party governed by the MAR Regulation, which does not set out specific requirements as to the content of such an announcement. In particular, there is no legal basis to require companies to include the information mandated by Article 90i(2) of the Act on Public Offering in announcements made under the MAR Regulation. This issue – whether announcements under the MAR Regulation should contain the detailed information required under the provisions governing the regime of material related party transactions – is addressed in other jurisdictions, such as Germany[46] and Italy[47]. These provisions also ensure that stakeholders receive full knowledge of the terms and conditions of transactions entered into by a listed company with its related parties, regardless of whether this information is disclosed under the legislation of Member States or the provisions of the MAR Regulation.

Additionally, it should be pointed out that the lack of a regulation adopted under Polish law, along the lines of German and Italian law, may constitute a way for companies to circumvent the related party transaction regime. If a listed company subject to the related party transaction regime wishes to avoid disclosing

42 Article 5(3) of Regulation 17221.

43 Dominik Mizerski, "Related Party Transactions under Polish Law: First Experience," in *Evolution of Private Law: New directions*, eds. Piotr Pinior, Wojciech Wyrzykowski and Jakub Zamojski (Instytut Prawa Gospodarczego, 2023), 151.

44 Section 111c(2) of the AktG. Florstedt, "Harmonising Shareholder," 730.

45 Article 9c(9) of Directive 2017/828.

46 Section 111c(3) of the AktG.

47 Article 6 of Regulation 17221.

the information required under Article 90i(2) of the Act on Public Offering, it may choose to classify the transaction as confidential information, which will result in a legal obligation to make an announcement under the MAR Regulation (which does not specify detailed information requirements concerning the announcement of the conclusion of a material transaction subject to announcement under the provisions of this legal act). Classifying a material related party transaction as subject to the MAR Regulation will also make it possible to delay the public announcement on concluding the transaction (which cannot be delayed under the Act on Public Offering). These remarks regarding possibility of delaying of announcement are likewise applicable under German and Italian law.

In terms of sanctions for breaches of information obligations, it should be noted that failing to make an announcement, delaying the publication of an announcement or omitting in the announcement any information required under the Act on Public Offering does not affect the validity of the related party transaction. However, in such cases, members of the management board may be held liable for damages[48] or face organisational liability. There is, in theory, the possibility of claiming compensatory liability for damage resulting from a failure to comply fully with the information obligation.[49] However, a breach of the information obligation is not subject to administrative sanctions, unlike in other Members States.[50]

3.2 Approval Obligation under the Polish Act on Public Offering

The obligation to comply with the ratification obligation arises regardless of whether the announcement of the conclusion of a material transaction with a related party was published pursuant to the provisions of the Act on Public Offering or pursuant to the provisions of the MAR Regulation.

The statutory power to approve material related party transactions has been granted to the supervisory board,[51] subject to the possibility that this power may also be granted to the general meeting on the basis of the provisions of the company's

48 Article 483(1) of the Commercial Companies Code.

49 Proving an adequate causal link between the failure to publish or comply with the information obligation and the damage may be difficult.

50 For example, under German law, a failure to publish an announcement on the conclusion of a material transaction, publishing an announcement in breach of active communication on the conclusion of a material transaction, or making an announcement that does not contain all the information or which breaches the set time limits may result in a fine of EUR 500,000 for the members of the management board (Section 405(2a)(6) AktG in conjunction with Section 405(4) AktG). Italian law provides for the possibility of imposing a penalty on both companies (Article 192-quinguies(1) of *Decreto legislativo n. 58 del 24 febbraio 1998, Testo unico delle disposizioni in materia di intermediazione finanziaria, ai sensi degli articoli 8 e 21 della legge 6 febbraio 1996 n. 52* [Legislative Decree No. 58 of February 24, 1998, Consolidated Law on Finance pursuant to Articles 8 and 21 of Law no. 52 of February 6, 1996], Gazzetta Ufficiale, no. 71 of March 26, 1998 – Suppl. Ordinario no. 52 (hereinafter: TUF)), and the board members for breaches of obligations relating to the related party transaction regime obligation (Art. 192-quinguies(2) TUF).

51 Article 90i(3) of the Act on Public Offering.

articles of association.[52] In light of the provisions of the Act on Public Offering currently in force, it should be pointed out that it is impossible to grant exclusive competence to the general meeting.

However, notwithstanding the provisions of a company's articles of association with regard to granting the general meeting the general power to approve the conclusion of related party transactions, it should be pointed out that, in certain circumstances, in addition to the supervisory board's approval of a material related party transaction, it is also necessary for the general meeting of a listed company to approve the conclusion of the transaction. This is the case where the requirement to obtain the approval of the general meeting is implied by a provision of the law or the articles of association. An example of such a transaction is the requirement to obtain the approval of the general meeting for the sale or lease of an enterprise.[53]

Granting the supervisory board statutory powers to approve related party transactions should be assessed positively. This is because, under Polish law, it is much quicker for the members of the supervisory board to meet and adopt a resolution than for the general meeting to adopt a similar resolution. However, as shown by the legislation of other Member States, granting the supervisory board the power to approve material related party transactions is not exhaustive, and in some countries this power has been granted to the general meeting (this applies in particular to the Czech Republic, Slovakia and Sweden).

Analogously to Polish law, under German law the competence to approve transactions concluded by a company with its related party is vested in the supervisory board and may not be transferred to the general meeting on the basis of provisions of the articles of association. Such consent is granted by way of a resolution of the supervisory board[54] and should be given prior to the conclusion of the transaction. Where the supervisory board refuses to grant consent to the conclusion of such a transaction, the management board may request that the general meeting adopt a resolution granting such consent.[55] This solution stands in contrast to the provisions of Polish law. Given that the obligation to obtain the consent of the supervisory board for the conclusion of a transaction between a listed company and a related party under Polish law arises directly from statutory provisions, members of the management board may not request the general meeting to grant substitute consent pursuant to Article 384(2) of the Polish Commercial Companies Code.

The provisions of Regulation 17721 governing the reporting and ratification obligations applicable to transactions subject to the relatedparty transaction regime under Italian Law are characterised by a high degree of formalisation and comprehensiveness. The scope of the approval-related obligations depends on the corporate governance system in place within the company, namely whether it operates under a monistic or dualistic structure, as well as on the classification of the transaction as a material transaction or a less material transaction. The scope of

52 Article 90i(5) of the Act on Public Offering.
53 Article 393(3) of the Commercial Companies Code.
54 Section 108(1) of the AktG.
55 Section 111b(4) of the AktG.

obligations related to their approval depends on the corporate governance system in place within the company, i.e. the monistic or dualistic system. Furthermore, depending on the materiality and type of the transaction (i.e. whether it concerns material transactions, less material transactions, or strategic transactions), as well as the type of company (smaller companies or recently listed companies), the approval process may involve either only a limited number of directors or the entire board of directors.[56] When carrying out a detailed assessment of the rules governing the approval of material transactions with related parties, it should be emphasised that the power to approve related party transactions under Polish Law has been granted to the supervisory board *in corpore*. A decision of the supervisory board requires a resolution of this body, unless otherwise provided for in the articles of association, it is adopted by an absolute majority of votes.[57] The supervisory board's resolution on consent may be adopted in one of the procedures set out in Article 388 of the Commercial Companies Code.[58] It is not possible to entrust the supervisory board committee with the power to approve the conclusion of a material related party transaction. This stands in contrast to the provisions of German law, which allow such competence to be conferred on a committee of the supervisory board.[59] Under the provisions of Polish law, the committee is limited to an advisory role.

The provisions of the Act on Public Offering do not set a time limit for the supervisory board's approval of the transaction. Consequently, it should be indicated that the general rules resulting from the provisions of the Commercial Companies Code apply in this respect. The supervisory board's consent may be expressed before the company concludes a transaction with related party and also after it is concluded, but within two months of its conclusion.[60]

It should also be pointed out that the provisions of the Act on Public Offering do not establish separate regulations concerning the principles of cooperation between the management board and the supervisory board with regard to the provision of information on intended transactions to the supervisory board. In this respect, the provisions of the Commercial Companies Code, which are applicable to all joint-stock companies (regardless of whether shares of such companies are subject to trading on the regulated market) should be applied in a supplementary manner. These rules stem in particular from the application of Article 380^1(1)(4) of the Commercial Companies Code, which imposes on the management board the obligation to provide the supervisory board with information on material transactions and events which

56 See more: Matteo De Poli, "Le recenti modifiche al Regolamento Operazioni con parti correlate," *Società*, no. 1 (2022): 75-81; Sicchiero, "La disciplina," 336-375.

57 Article 391(1) of the Commercial Companies Code.

58 Unless the articles of association provide otherwise, then: The supervisory board meeting may also be attended by means of direct communication over distance (Article 388(1)(1) CCC); supervisory board members may participate in the adoption of supervisory board resolutions by casting their vote in writing through another supervisory board member (Article 388 § 2 CCC); and the supervisory board may adopt resolutions in writing or by means of direct communication over distance (Article 388(3) CCC).

59 Section 111b(1) in conjunction with Section 107(3) of the AktG.

60 Article 17(2) of the Commercial Companies Code.

have, or may have, a significant impact on the company's financial position and Article 382(4) of the Commercial Companies Code, which authorizes the supervisory board to request any documents and information concerning the company.

The Act on Public Offering, following the provisions of Directive 2017/828, also sets out certain procedures for excluding from voting a supervisory board member who may be affected by a conflict of interest. Where a material transaction concerns the interests of a member of the supervisory board, they must not participate in the decision to approve the transaction.[61] This is an exclusion due to direct influence. In the literature, it has been pointed out that it is a case of a fairly obvious conflict of interest when a member of the body competent to ratify is a party to the material transaction affected by the decision-making process.[62] An analogous solution is provided for under German law[63] as well as Italian law[64]. When approving a material transaction, the supervisory board must prevent the related party from exploiting its position and protect the company's and non-related party shareholders' interests.[65] This is one of the forms of exclusion of indirect influence.

These provisions should additionally be supplemented by the provisions of the Commercial Companies Code, which complement the provisions of the Act on Public Offering in this area. These duties include, in particular, the duty to act with due diligence[66] and the duty to disclose conflicts of interest.[67]

It is problematic to determine the consequences of the supervisory board adopting a resolution with the participation of a supervisory board member with a conflict of interest (i.e. acting in breach of Article 90i(3) of the Act on Public Offering, Article 90i(4) of the Act on Public Offering, or Article 388(5) in connection with Article 377 of the Commercial Companies Code).[68] As regards such a resolution, a vote cast by such a member of the supervisory board may be deemed to be disregarded as contrary to the principles of social co-existence[69].[70] In a situation where the vote of a supervisory board member who should have abstained was decisive for a certain resolution, this would be a violation of Article 388(5) in connection with Article 377 of the Commercial Companies Code and so may constitute grounds for challenging

61 Article 90i(4) of the Act on Public Offering.
62 Moskała, "Commentary to Article 90i," 399-401.
63 Section 111b(2) of the AktG.
64 Article 2391 of the Italian Civil Code. *Regio Decreto del 16 marzo 1942, n. 262* [Italian Civil Code], Gazzetta Ufficiale no. 79 of April 4, 1942 (hereinafter: Italian Civil Code). Article 7(1) (dbis) of Regulation 17221 and point 1.1(dbis) of Annex 2 to Regulation 17221.
65 Article 90i(3) of the Act on Public Offering.
66 Article 387(1) of the Commercial Companies Code.
67 Article 388(5) in connection with Article 377 of the Commercial Companies Code.
68 Piotr Moskała, "Wyrażanie zgody na zawieranie transakcji wewnątrzgrupowych przez radę nadzorczą spółki giełdowej – uwagi do transpozycji nowelizacji dyrektywy 2007/36/WE," *Przegląd Prawa Handlowego*, no. 11 (2020): 18.
69 Article 58(2) of the Civil Code.
70 See the perspective regarding a management board resolution adopted in violation of Article 377 of the Commercial Companies Code: Adam Opalski, "Commentary to Article 377," in *Kodeks spółek handlowych, t. IIIB. Spółka akcyjna. Komentarz. Art. 393–490*, ed. Adam Opalski (C.H. Beck, 2016): 1378.

validity of the resolution.[71] The legal basis for challenging such a resolution is Article 189 of the Code of Civil Procedure.[72] In this respect, Italian law explicitly provides that resolutions adopted with the participation of directors who should have abstained from taking part in the decisionmaking process may be challenged by directors and by the board of statutory auditors within ninety days of the date on which such resolutions were adopted.[73]

A supervisory board member who participates in approving a material transaction while under a conflict of interests may face potential organisational and indemnity liability.[74] An analogous solution exists under Italian law[75] and German law.[76]

The requirement to obtain the supervisory board's consent for the conclusion of a material transaction with a related party stems from the provisions of the Act on Public Offering. If the management board conclude the transaction without the supervisory board's consent, then, pursuant to Article 17(1) of the Commercial Companies Code, it will be invalid (in the absence of a subsequent consent pursuant to Article 17(2) of the Commercial Companies Code).[77] The fact that the third party acted in good faith is irrelevant, i.e. the transaction will be invalid. The transaction will also be invalid if the resolution adopted by the supervisory board is subsequently invalidated as a result of court proceedings initiated pursuant to Article 189 of the Code of Civil Procedure in conjunction with Article 58(1) or (2) of the Civil Code.[78]

This sanction appears to be disproportionate to the effects of entering into a

71 In terms of such an implication with regard to a resolution of the management board adopted in violation of the provision of Article 377 of the Commercial Companies Code, see: Michał Bieniak, "Commentary to Article 377," in *Kodeks spółek handlowych. Komentarz*, eds. Jacek Bieniak et al. (C.H. Beck, 2024): 1212; Katarzyna Kopaczyńska-Pieczniak, "Commentary to Article 377," in *Kodeks spółek handlowych. Tom III. Komentarz do art. 301–490*, ed. Andrzej Kidyba (Wolters Kluwer, 2020): 410.

72 *Kodeks postępowania cywilnego* [The Code of Civil Procedure] of November 17, 1964, Dziennik Ustaw 2024, no. 1568; See more: Dominik Mizerski, "Problematyka zaskarżania uchwał rad nadzorczych spółek kapitałowych," *Zeszyt Studencki Kół Naukowych Wydziału Prawa i Administracji UAM*, no. 10 (2020): 221-235; Katarzyna Bilewska, "Przesłanki powzięcia uchwały rady nadzorczej spółki kapitałowej a jej zaskarżanie," *Monitor Prawniczy*, no. 6, 2010: 303-311; Józef Frąckowiak, "Charakter prawny uchwał organów spółek kapitałowych a ich zaskarżalność," *Przegląd Prawa Handlowego*, no. 9 (2014): 26-33.

73 Article 2391(3) of the Italian Civil Code.

74 Article 483 of the Commercial Companies Code.

75 Claude Humbel, "La restituzione di prestazioni secondo il nuovo art. 678 CO e il suo ruolo nel sistema delle operazioni con parti correlate," *Sui generis* (2022): 6-14.

76 Jens Koch, "Commentary to § 111b Aktiengesetz," in *Aktiengesetz*, eds. Uwe Hüffer and Jens Koch (C.H. Beck, 2021): § 111b mn. 10.

77 Moskała, "Wyrażanie zgody," 22.

78 In this direction also: Mateusz Rodzynkiewicz, *Kodeks spółek handlowych. Komentarz* (Wolters Kluwer, 2018), 90-91; Adversely: Adam Opalski, "Commentary to Article 17," in *Kodeks spółek handlowych Tom IA. Spółki osobowe, Komentarz. Art. 1–36*, ed. Adam Opalski (C.H. Beck, 2025), 564-565; Andrzej Szumański, "Commentary to Article 17," in *Kodeks spółek handlowych. Komentarz. T. 1,* eds. Stanisław Sołtysiński, Andrzej Szajkowski and Andrzej Szymański (C.H. Beck, 2012): 337-338.

material transaction with a related party and creates too much uncertainty in terms of trading certainty. It also fails to protect the interests of *bona fide* third parties in the event that the supervisory board's resolution to authorise the conclusion of a material transaction is found to be invalid in an action brought under the provision of Article 189 of the Code of Civil Procedure.[79] It would appear that basing the consequences of concluding such a transaction on the principles set out in the provision of Article 17(3) of the Commercial Companies Code[80] would be a much more proportionate solution. This approach is provided for in German law, for example. Under this legislation, the conclusion of a material transaction with a related party without the required consent does not render the transaction invalid. Such a transaction is valid in external relations.[81] This is the case even if a member of the supervisory board or a shareholder involved in the decision to approve the transaction had a conflict of interest.[82] However, this does not preclude the liability for damages of those members of the management board who act in circumstances involving a conflict of interest.

Management board members who enter into a material transaction without the approval of the supervisory board may also incur liability for damages and organisational liability. Their criminal liability cannot be excluded, in particular in light of Article 296 of the Criminal Code.[83] The Polish legislator has not introduced the possibility for companies to be held administratively liable for non-compliance with the approval obligation, as is the case of non-compliance with the information obligation. Under Italian law, for example, a company may be subject to a pecuniary sanction ranging from EUR 10,000 to EUR 10,000,000 in the event of a breach of the provisions of Regulation 17221.[84] Moreover, Article 192quinquies(2) TUF provides for the possibility of imposing a fine ranging from EUR 5,000 to EUR 1,500,000 on each person performing administrative or managerial functions for a breach of the provisions governing the relatedparty transaction regime, provided that the act constituting such a breach does not amount to a criminal offence.

4 RELATED PARTY TRANSACTIONS REGIME UNDER COMMERCIAL COMPANIES CODE

As a side note, it should be noted that the provisions of the Commercial Companies Code establish a regime governing the control of transactions with related parties, which applies to joint-stock companies other than public companies whose

79 Mizerski, "Problematyka zaskarżania," 221-235.

80 Pursuant to Article 17(3) of the Commercial Companies Code, a legal act performed without the consent of the company's competent authority, required solely by the articles of association or the company's memorandum and articles of association, is valid; however, this does not exclude management board members' liability towards the company for breach of the articles of association.

81 Paschos, "Commentary," § 111b mn. 25 AktG.

82 Andreas Seidel, "Commentary to § 111b," in *Kommentar zum Aktiengesetz*, eds. Gerald Sprider and Eberhard Stilz (C.H. Beck, 2023): § 111b mn. 31.

83 *Kodeks karny* [The Criminal Code] of June 6, 1997, Dziennik Ustaw 2025, no. 393.

84 Article 192quinquies(1) TUF.

shares are admitted to trading on a regulated market, as well as to companies that belong to a group of companies within the meaning of that statute (Article 384[1] of the Commercial Companies Code). These provisions, however, differ significantly from those applicable under the Act on Public Offering[85] and include also non-public joint-stock companies.

First, these rules are of a semi-mandatory nature and may be excluded by an amendment to the articles of association. The resolution on this matter is adopted by a threequarters majority of votes,[86] and, unless the company's articles of association provide otherwise, the adoption of such a resolution does not require compliance with any specific quorum requirements.[87] By contrast, the regime established under the Act on Public Offering is of a mandatory nature and does not allow for any optout by the company.

Second, they have a considerably narrower personal scope of application than the provisions of the Act on Public Offering. They apply exclusively to transactions concluded between a joint-stock company and its parent company, subsidiary, or an affiliated company.[88] The scope of related parties under the provisions of the Commercial Companies Code is therefore significantly narrower than under the Act on Public Offering, which refers to the definition of a related party within the meaning of International Accounting Standards. In particular, it does not cover transactions carried out between a jointstock company and companies controlled by persons performing the functions of management board members in that jointstock company.

Third, they provide for a higher materiality threshold, the exceeding of which results in the transaction being subject to this regime. Under the Commercial Companies Code, a material transaction is understood as a transaction whose value exceeds 10% of the total assets of the company, as determined on the basis of the company's most recently approved annual financial statements, concluded with the same entity within a single financial year. Materiality threshold adopted under the Commercial Companies Code is initially set at a level twice as high as that provided for in the Act on Public Offering, which amounts to 5% of the company's assets. Nevertheless, this higher threshold should be regarded as justified, given that the value of assets held by companies subject to the Commercial Companies Code is, as a rule, lower than that of entities falling within the scope of the Act on Public Offering, primarily due to differences in the scale of their business activities. Moreover, it should be noted that, due to the semimandatory nature of Article 384[1] of the Commercial Companies Code, the articles of association of a joint stock company may either increase or lower the materiality threshold. By contrast, under the provisions of the Act on Public Offering, the articles of association may only provide for a lowering of that threshold. Accordingly, with respect to companies

85 See more: Dominik Mizerski, "The New Regime of Related Party Transactions in Joint Stock Companies under Polish Law," in *Právo – Obchod – Ekonomika XII*, eds. Jozef Suchoža, Ján Husár and Regina Hučková (Univerzita P. J. Šafárika v Košiciach, 2023): 228-237.

86 Article 415(1) of the Commercial Companies Code.

87 Article 408(1) of the Commercial Companies Code.

88 Article 384[1](1) of the Commercial Companies Code.

falling within the scope of application of the Act on Public Offering, any statutory provision providing for an increase of the materiality threshold would be null and void.

5 CONCLUSION

The Polish legislator limited the implementation of obligatory mechanisms for regulating material transactions with related parties largely to a literal repetition of the provisions of Directive 2017/828. The conducted research proved that the regulations implementing the regime of transactions with related parties into the Polish legal system, although remaining close to the literal wording of the provisions of Directive 2017/828, do not ensure due protection of the interests of the company or shareholders who are not related parties.

With regard to the disclosure obligation, though the regulations adopted by the Polish legislator remain close to the literal meaning of the provisions of Directive 2017/828, although the regulations adopted by the Polish legislator remain close to the literal meaning of the provisions of Directive 2017/828, they can be criticised for their insufficient normative depth and systemic incoherence. This applies, in particular, to the failure to introduce a minimum period for publishing announcements on material transactions with related parties and the failure to introduce an obligation to publish information on material transactions required under Article 90i(2) of the Act on Public Offering in an announcement of a material transaction with a related party made pursuant to the provisions of the MAR Regulation. As a result, issuers may selectively disclose or delay publication of the information about conclusion of the material related party transactions, undermining the intended transparency and potentially misinforming investors or minority shareholders arising from the goals of Directive 2017/828.

With regard to the approval obligation, the sanction in the event of a material transaction with a related party being concluded without the consent of the supervisory board – the invalidation of the transaction – is disproportionate to the scale of the violation and unjustifiably leads to a breach of trading security. It also does not ensure the protection of the interests of third parties acting in good faith. For this reason, it would be advisable to change the accepted sanction model and exclude the application of Article 17(1) of the Commercial Companies Code in relation to material related party transactions, and introduce the sanction provided for in Article 17(3) of the Commercial Companies Code instead.

BIBLIOGRAPHY

Books and Articles:

1. Bianchi, Marcelo, and Mateja Milič. "Article 9c: Transparency and Approval of Related Party Transactions." In *The Shareholder Rights Directive II: A Commentary*, eds. Hanne Søndergaard Birkmose and Konstantinos Sergakis. Elgar Commentaries in Corporate and Company Law, 2021.

2. Bieniak, Michał. "Commentary to Article 377." In *Kodeks spółek handlowych. Komentarz*, eds. Jacek Bieniak et al. C.H. Beck, 2024.
3. Bilewska, Katarzyna. "Przesłanki powzięcia uchwały rady nadzorczej spółki kapitałowej a jej zaskarżanie." *Monitor Prawniczy*, no. 6 (2010): 303-311.
4. De Poli, Matteo. "Le recenti modifiche al Regolamento Operazioni con parti correlate." *Società*, no. 1 (2022): 75-81. https://hdl.handle.net/11577/3455447.
5. Florstedt, Tim. "Harmonising Shareholder Protection Laws for Related Party Transactions: Art. 9c of the Shareholder Rights Directive as the Nucleus of European Group Law." *European Company and Financial Law Review* 19, no. 5 (2022): 701-748.
6. Frąckowiak, Józef. "Charakter prawny uchwał organów spółek kapitałowych a ich zaskarżalność." *Przegląd Prawa Handlowego*, no. 9 (2014): 26-33.
7. Habersack, Mathias. "Commentary to § 111b." In *Münchener Kommentar zum Aktiengesetz, Band 2: §§ 76-117,* eds. Wulf Goette, Mathias Habersack and Susanne Kalss. C.H. Beck, 2023.
8. Humbel, Claude. "La restituzione di prestazioni secondo il nuovo art. 678 CO e il suo ruolo nel sistema delle operazioni con parti correlate." *Sui generis* (2022): 6-14.
9. Koch, Jens. "Commentary to § 111b Aktiengesetz." In *Aktiengesetz*, eds. Uwe Hüffer and Jens Koch. C.H. Beck, 2021.
10. Kopaczyńska-Pieczniak, Katarzyna. "Commentary to Article 377." In *Kodeks spółek handlowych. Tom III. Komentarz do art. 301–490*, ed. Andrzej Kidyba. Wolters Kluwer, 2020.
11. Lieder, Jan and Martin Bialluch. "Article 9c: Transparency and Approval of Related Party Transactions." In *European Corporate Law: Article-by-Article Commentary*, eds. Peter Kindler and Jan Lieder. Nomos, 2021.
12. Mizerski, Dominik. "Exceptions to the Related Party Transactions Regime – Critical Remarks." In *Právo – Obchod – Ekonomika XIII,* eds. Jan Husár and Regina Hučková. Univerzita P. J. Šafárika v Košiciach, 2024.
13. Mizerski, Dominik. "Problematyka zaskarżania uchwał rad nadzorczych spółek kapitałowych." *Zeszyt Studencki Kół Naukowych Wydziału Prawa i Administracji UAM*, no. 10 (2020): 221-235.
14. Mizerski, Dominik. "Related Party Transactions under Polish Law: First Experience." In *Evolution of Private Law: New Directions*, eds. Piotr Pinior, Wojciech Wyrzykowski and Jakub Zamojski Instytut Prawa Gospodarczego, 2023.
15. Mizerski, Dominik. "The New Regime of Related Party Transactions in Joint Stock Companies under Polish Law." In *Právo – Obchod – Ekonomika XII*, eds. Jozef Suchoža, Ján Husár and Regina Hučková. Univerzita P. J. Šafárika v Košiciach, 2023.
16. Moskała, Piotr. "Commentary to Article 90i." In *Prawo rynku kapitałowego. Tom II. Komentarz*, eds. Marek Wierzbowski, Ludwik Sobolewski and Paweł Wajda. C.H. Beck, 2023.
17. Moskała, Piotr. "Wyrażanie zgody na zawieranie transakcji wewnątrzgrupowych przez radę nadzorczą spółki giełdowej – uwagi do transpozycji nowelizacji dyrektywy 2007/36/WE." *Przegląd Prawa Handlowego*, no. 11 (2020): 11-24.
18. Moskała, Piotr. "Zatwierdzanie transakcji wewnątrzgrupowych w zmienionej dyrektywie 2007/36/WE – perspektywy implementacji." *Przegląd Prawa Handlowego*, no. 1 (2018): 19-30.
19. Opalski, Adam. "Commentary to Article 17." In *Kodeks spółek handlowych Tom IA. Spółki osobowe, Komentarz. Art. 1–36*, ed. Adam Opalski, C.H. Beck, 2025.
20. Opalski, Adam. "Commentary to Article 377." In *Kodeks spółek handlowych, t. IIIB. Spółka akcyjna. Komentarz. Art. 393–490*, ed. Adam Opalski. C.H. Beck, 2016.
21. Paschos, Nikolaos. "Commentary to § 111b Aktiengesetz." In *Gesellschaftsrecht,* eds. Martin Henssler and Lutz Strohn. C.H. Beck, 2021.

22. Reynisson, Kristinn. "Related Party Transactions: Analysis of Proposed Article 9c of Shareholders' Rights Directive." *European Company Law* 13, no.5 (2016): 175-182.
23. Rodzynkiewicz, Mateusz. *Kodeks spółek handlowych. Komentarz*. Wolters Kluwer, 2018.
24. Romashchenko, Ivan. *Related Party Transactions and Corporate Groups. When Eastern Europe Meets the West.* Wolters Kluwer International, 2020.
25. Romashchenko, Ivan. "The Ukrainian Regulatory Approach for Related Party Transactions and the SRD II: A Two-Way Street of Learning." *European Company and Financial Law Review* 22, no. 1 (2025): 70-107.
26. Seidel, Andreas. "Commentary to § 111b." In *Kommentar zum Aktiengesetz*, eds. Gerald Sprider and Eberhard Stilz. C.H. Beck, 2023.
27. Sicchiero, Filippo. "La disciplina delle operazioni con parti correlate: analisi, problematiche e possibili soluzioni." *Contratto e impresa,* no. 1 (2021): 336-375.
28. Stranz, Jan. "Niekorzystne dla spółki transakcje z podmiotami powiązanymi – istota zjawiska." *Międzynarodowe Prawo Handlowe,* no. 2 (2021): 16-23.
29. Szumański, Andrzej. "Commentary to Article 17." In *Kodeks spółek handlowych. Komentarz. T. 1,* eds. Stanisław Sołtysiński, Andrzej Szajkowski and Andrzej Szymański. C.H. Beck, 2012.
30. Vervessos, Nikolaos. "Related Party Transactions: Lessons from Regulation in Greece." *European Company and Financial Law Review* 19, no. 3 (2022): 390-421.

Legal Sources:

1. *Aktiengesetz* [German Stock Corporation Act] of September 6, 1965, BGBl. I S. 1089, with last amendment by Article 23 of the Act of February 4, 2026, BGBl. 2026 I No. 33.
2. Commission Regulation (EU) 2023/1803 of 13 August 2023 Adopting Certain International Accounting Standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council, OJ L 237, 26.9.2023, 1-992.
3. *Decreto legislativo n. 58 del 24 febbraio 1998, Testo unico delle disposizioni in materia di intermediazione finanziaria, ai sensi degli articoli 8 e 21 della legge 6 febbraio 1996 n. 52* [Legislative Decree No. 58 of 24 February 1998 Consolidated Law on Finance pursuant to Articles 8 and 21 of Law no. 52 of February 6, 1996], Gazzetta Ufficiale, no. 71 of March 26, 1998 – Suppl. Ordinario n. 52.
4. 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, OJ L 132, 20.5.2017, 1-25.
5. *Kodeks karny* [The Criminal Code] of June 6, 1997, Dziennik Ustaw 2025, no. 393.
6. *Kodeks postępowania cywilnego* [The Code of Civil Procedure] of November 17, 1964, Dziennik Ustaw 2024, no. 1568.
7. *Kodeks spółek handlowych* [The Commercial Companies Code] of September 15, 2000, Dziennik Ustaw 2024, no. 18.
8. *Regio Decreto del 16 marzo 1942, n. 262* [Italian Civil Code], Gazzetta Ufficiale, no. 79 of April 4, 1942.
9. *Regolamento recante disposizioni in materia di operazioni con parti correlate* [Regulations Containing Provisions relating to Transactions with Related Parties] adopted by Consob with Resolution no. 17221 of March 12, 2010, later amended by Resolutions no. 17389 of June 23, 2010, no. 19925 of March 22, 2017, no. 19974 of April 27, 2017, no. 21396 of June 10, 2020, no. 21624 of December 10, 2020 and no. 22144 of December 22, 2021.
10. Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the Application of International Accounting Standards, OJ L 243, 11.9.2002, 1-4.

11. 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, OJ L 173, 12.6.2014, 1-61.
12. *Ustawa o ofercie publicznej i warunkach wprowadzania instrumentów finansowych do zorganizowanego systemu obrotu oraz o spółkach publicznych* [The Act on Public Offering and the Conditions Governing the Introduction of Financial Instruments to the Organised Trading System and Public Companies] of July 29, 2005, Dziennik Ustaw 2024, no. 623.
13. *Ustawa o rachunkowości* [The Accounting Act] of September 29, 1994, Dziennik Ustaw 2023, no. 120.

Dominik Mizerski*

Sažetak

OBVEZE KOJE PROIZLAZE IZ REŽIMA TRANSAKCIJA S POVEZANIM OSOBAMA U SVJETLU POLJSKOG PRAVA - KOMPARATIVNI PRISTUP

Transakcije s povezanim osobama česta su pojava u domaćoj i međunarodnoj trgovini. One mogu podrazumijevati prijenos značajnog dijela imovine društva na povezanu osobu, što može dovesti do nepovoljnijeg položaja dionika društva. Kako bi se suzbili takvi štetni učinci, zakonodavac Europske unije je u okviru Direktive 2017/828 predvidio mehanizme provjere radi zaštite interesa društva i drugih dionika u slučajevima sklapanja transakcija s povezanim stranama. Cilj je ovoga rada ukazati na nedostatnu zaštitu interesa društva i dioničara koji nisu povezane osobe u okviru propisa kojima je režim transakcija s povezanim osobama implementiran u poljski pravni sustav, premda oni u velikoj mjeri slijede doslovni tekst odredaba Direktive 2017/828. Glavne istraživačke metode korištene u radu jesu formalnodogmatska (pravno-analitička) metoda i komparativnopravna metoda.

Ključne riječi: *Direktiva 2017/828; sukob interesa; transakcije s povezanim osobama; glavna skupština.*

* Dr. sc. Dominik Mizerski, asistent, Sveučilište Šleske u Katowicama, Fakultet prava i uprave, Poljska; dominik.mizerski@us.edu.pl. ORCID: https://orcid.org/ 0000-0002-8253-5038.
Ovo istraživanje je u cijelosti financirano od strane poljskog Nacionalnog znanstvenog centra (br. projekta: 2024/53/N/HS5/00255).
©2026 Autor(i) i nakladnik. Ovaj je rad dostupan u otvorenom pristupu pod uvjetima licencije CC BY-NC-ND 4.0.