

# VU Research Portal

## Transnational Forces and Corporate Governance Regulation in Postsocialist Europe

Vliegenthart, A.

2009

### **document version**

Publisher's PDF, also known as Version of record

[Link to publication in VU Research Portal](#)

### **citation for published version (APA)**

Vliegenthart, A. (2009). *Transnational Forces and Corporate Governance Regulation in Postsocialist Europe*. [PhD-Thesis - Research and graduation internal, Vrije Universiteit Amsterdam].

### **General rights**

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

### **Take down policy**

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

### **E-mail address:**

[vuresearchportal.ub@vu.nl](mailto:vuresearchportal.ub@vu.nl)

## **5. From employee governance to corporate governance-transnational forces and the Polish corporate governance debates since the 1980s<sup>4</sup>**

### **5.1. Introduction**

This chapter discusses the corporate governance debate in postsocialist Poland in the light of processes of transnationalisation. With the collapse of state socialism at the end of the 1980s, the countries in Central Europe faced with a wide variety of ‘transition models’ from which they could choose. As Marangos (2004) points out the former state socialist countries were to choose from a broad array of economic arrangements ranging from the introduction a neoliberal market economy to a pluralistic socialist model, to mention but two totally different systems. This chapter aims to broaden our insights of why countries choose their distinct path. More concretely, the chapter focuses on corporate governance debates, i.e. policy discussions on the distribution of ownership and control. Such debates have been of vital importance in the context of Central Europe, where the collapse of state socialism and its replacement with a decentralised market economy fundamentally altered the role of the firm within the economy. It seeks to establish what kind of corporate governance concepts featured in these debates and which corporate governance in the end prevailed and was translated into actual corporate governance policies.

Poland in this respect provides an important opportunity to study this process. In general, the country’s economic transformation towards a capitalist market economy provides ‘an excellent laboratory to analyze the diffusion and innovation of corporate governance practices’ (Aguilera 2005b: 41), but with regard to corporate governance regulation there are two additional arguments. First, Poland was amongst the first postsocialist states to introduce corporate governance regulation and has amongst the forerunners in the region ever since (Kozarzewski 2007). Poland is even pointed out as an example for other postsocialist states to follow (Dzierzanowski and Tamowicz 2003). Second, the Polish case presents a concrete example of explicit policy

---

<sup>4</sup> This chapter is an adjusted version of chapter to appear in Holzacker, R. and L. Bruszt (eds). *The Transnationalization of Economies, States and Civil Societies: New Challenges for Governance in Europe*, Springer Press.

discussions over the 'right' kind of corporate governance regulation for the postsocialist restructuring process whereas in other cases these debates were less outspoken (Lewandowski 1997, Wedel 2003). This allows scrutinising more closely the underlying mechanisms of corporate governance politics.

As I will demonstrate in this chapter, three distinct corporate governance concepts featured in the Polish debates since the early 1980s: a state socialist concept that was part and parcel of the state socialist system, an employee ownership concept that was brought to the debates by the Solidarity trade union movement during the early 1980s and an external ownership model that was advocated by a group of Polish economists and subsequently backed by international institutions such as the International Monetary Fund (IMF), the World Bank (WB) and the European Commission (EC). Whereas the employee ownership concept enjoyed wide support amongst the Polish population, it never materialised into corporate governance regulation. Instead, the emerging Polish corporate governance model was highly inspired by the external ownership model. This chapter sets out to investigate this development. Why did Polish policy makers opt for a corporate governance system, which has been based on external ownership whereas there were also different models available?

The main point this chapter seeks to make is that these Polish policy discussions have been deeply influenced by various transnational forces. These forces have had considerable impact upon the Polish balance of power, strengthening those actors that pushed for a Western style of corporate governance where ownership and control do not rest in the hands of the state or the workers of a company. Transnational actors such as the IMF, the WB and the EC introduce a transformative agenda for the postsocialist economies that moves beyond the existing historical, economic and cultural heritages. The introduction of a corporate governance system that was conducive to external ownership fits into a more general translation of neoliberal thoughts and practices into the postsocialist context (see also Shields 2004, Soederberg 2003). At the same time, the neoliberal environment in which this transformation occurred is by itself not enough to explain the Polish events. The effectiveness of transnational corporate governance ideas rests upon its ability to engage into effective coalitions with internal forces. The interplay between Polish

policy makers is of key importance if we want to understand the process of economic transformation that has been taking place during since the late 1980s.

In this respect, this chapter challenges much of the existing corporate governance literature that (implicitly) departs from apolitical description of corporate governance issues. Here corporate governance issues are discussed in terms of their economic efficiency (Estrin et al 2000: 1, see also Mallin 2000 and Boycko, Shleifer and Vishny 1996). Moreover, they are treated as a national affair and at best only related to other national institutional debates. As Shields (2004: 132) has rightly argued transnational forces in most of the postsocialist literature are considered as ‘an external concern... in a secondary constraining sense rather than determining.’ This study however points out the key importance of these forces and their interaction with internal actors in the reconstructing of states, societies and economies in postsocialist Europe. In this respect, this chapter is closely linked to argument Jan Drahokoupil puts forward in his contribution to this volume. Both chapters see the process of postsocialist economic restructuring as a part of the transnationalisation of the state, i.e. a process of state restructuring that is aimed at securing transnational capital a privileged access to the national economy. Such a process is brought about by a dialectical interplay between neoliberal transnational forces and their internal allies in the Polish state and society.

The empirical evidence in this study is –apart from an analysis of the relevant corporate governance documents and an extensive literature review- largely based upon two sets of interviews with Polish and transnational corporate governance practitioners, which were conducted in 2006 and 2007. In this regard, I have spoken to specialists at the World Bank, the International Finance Corporation (IFC) and large international banks. Moreover, I have spoken to Polish corporate governance experts from different professional fields (journalists, financial experts and institutional investors working in and around the Warsaw stock exchange) on the basis of open interviews on topics of their expertise. Based upon their information, I have adopted a process tracing approach, in order to establish the mechanisms behind the spread of the Polish corporate governance concept and subsequent regulation (following George and Bennett 2005: 179).

The remainder of this chapter is organised as follows. First, I will go into the question how we can theorise these developments in the light of what I call the transnational political economy of corporate governance regulation. I will point out that corporate governance debates in a postsocialist context cannot be understood as a merely national affair; but that they are embedded a transnational discourse on what constitutes ‘good’ corporate governance, a notion that in practice results in the spread of corporate governance arrangements that safeguard the interests of transnational capital in emerging market economies (section 2). Subsequently, I will briefly discuss the three corporate governance concepts that have featured in the Polish policy debates since the 1980s (section 3). Third, I will sketch the policy discussions over these corporate governance concepts. Various transnational actors have impacted deeply upon these debates, which have led to the dominance of an external ownership model (section 4). Section five concludes.

## **5.2. Theorising the impact of transnational actors on the Polish corporate governance debate- The transnational political economy of corporate governance regulation**

This chapter’s central notion is that the postsocialist economic restructuring can only be adequately understood as a transnational process. The term transnational in this respect refers to the notion that political processes in a globalizing world are no longer fundamentally defined by national boundaries, but occur simultaneously at sub-national, national and international levels that are integrated through structures and forces that simultaneously operate at different levels (Van Apeldoorn, Nölke and Overbeek 2007: 6-7). As a result, the division between these divisions gets increasingly blurred; politics is not confined to national boundaries, but is transnationally constituted as Jan Drahekoupil also points out in his chapter and national regulation can thus no longer be understood as the result of national processes, but needs to be understood as the outcome of processes at various levels. This implies, more concretely, that we need to study the interplay between national processes and actors, including national historical legacies and transnational processes and actors that are fundamentally shaped by the neoliberalist thought and practices for the period of this study. In this section, I will lay down some of the mechanisms that underlie the kind of interaction between transnational and national forces that will be explored empirically in the remainder of this chapter.

The transnational actors that are studied in this chapter are embedded in an environment that is often characterised as 'neoliberal'. Neoliberalism in this respect refers to both ideas and policies that equate the interest of capital to the general interest (following Overbeek 2004). It is therefore not a surprise that, according to Soederberg (2003: 8-9), transnationally generated concepts of 'good' corporate governance in emerging market economies serve the following two mutually reinforcing goals. First, it seeks to ensure that these economies play by the exigencies of the neoliberal market economy. Second, by promoting the importance of 'shareholder value' rather than the interests of other stakeholders within the firm it protects the interests of (predominantly foreign) investors. In this respect it fits into a wider model of how national institutional frameworks ought to look like in the age of global neoliberalism. To be successful, states are considered to meet the criteria set by transnational capital: open markets and adequate institutional safeguardings for (foreign) investors.

These transnational concepts of what constitutes good corporate governance are the result of a process of consensus formation in international organisations such as the IMF, the World Bank and the OECD (see Soederberg 2005) are transmitted to different national contexts in various ways where they are translated into distinct national policies. It involves the transfer of policies and ideologies through transnational policy networks (Stone 2002: 7), they are brought along with transnational corporations entering the country (Meyer 2000) or they are part of the membership criteria of certain international organisations (Grabbe 2003) to name the three most important mechanisms that reflect both the structural component as well as the actor-related component of transnational involvement. It is this dual process that is captured in the concept of the transnationalisation of the state. It relates to processes of consensus formation at the international level that take place through official (interstate) bodies, but also to the implementation of an emerging consensus into different national contexts (Cox 1992). Such implementation requires –amongst others- a restructuring of the state apparatus in the sense that those state agencies that have close connections to the world economy gain importance vis-à-vis those agencies that cater primarily for internal constituencies (Cox 1987: 253). Along

similar lines we can also expect that actors with close ties to transnational forces that represent this global consensus gain strength vis-à-vis those actors who do not.

The outcomes of the Polish corporate governance debates can be seen as the result of the interaction between transnational actors that are embedded within this world economy and national alliances. This sets the Polish developments in a wider context of a global restructuring process that has been taking place since the late 1970s and which is now generally under the heading of neoliberalism. The outcomes of the Polish debates can also be considered as implementation of neoliberalism in a postsocialist context (see also Shields 2003, 2004). The introduction of marketisation principles in the Polish corporate governance system and the acceptance of the rules of market over other organising principles and the prioritisation and institutional safeguarding of capital are part and parcel of neoliberal thoughts and practices. The kind of corporate governance regulation that underpins these developments in Poland during the last two decades exemplifies the way in which neoliberalism spread throughout postsocialist Europe in the 1990s and 2000s (Vliegthart and Overbeek 2007, Drahoukoupil 2008).

This is not to say that the Polish processes are predetermined by what happens in international organisations. Firstly, because the general consensus on what constitutes good governance does not need to be a one-to-one prescription of what needs to be done in each individual country. Rather than providing regulatory templates, such a consensus lays out certain general goals and points reformers into a certain direction. Secondly –and of greater importance- is the fact that the kind of consensus mentioned above does not go without political contestation. The implementation of it is by no means always successful nor complete as it always runs the risks of running into internal opposition that might even be rooted in an alternative transnational network and policy discourse. Therefore the starting point of the empirical analysis rests upon the national level where we actually witness the interplay between transnational and internal forces. It is important to stress this last point. In many accounts of transnationalisation, the ‘transnational’ is discussed as operating outside the national realm. Such a conceptualisation is inadequate to capture the developments in postsocialist Europe. Rather than operating from the outside and leaving an imprint on domestic structures through conditionalities and other restrictions, transnational actors

have actually actively shaped the Polish corporate governance debate from within (following Panitch 1996).

This does not imply that transnational actors operate against national forces and national political, economic, social and cultural traditions. Rather it means that the success of transnational actors rests upon the indigenous support they are able to obtain amongst national politicians, policy makers and academics. It is their interplay with those forces that needs to be studied in order to capture the success and failure of transnational forces in the restructuring of the postsocialist landscape. Therefore the developments discussed in the chapter cannot be understood without a specific knowledge of distinct history and culture of the region that also impacts on these discussions. It is the mixture of these distinct national configurations and transnational forces that gives this case its particular 'flavour.' Despite its transnational embedding, postsocialist states remain to have their own base, rooted within their national constituency. In this respect, this chapter theoretically paraphrases what the French historian Bayart (1993: 260) has said on the state in Africa: the postsocialist states rest upon autochthonous foundations and a process of reappropriation of institutions of transnational origin which gives it its own historicity, it can no longer be taken as a purely exogenous structure.<sup>21</sup>

In the section four I will discuss the interplay between transnational and internal forces and how transnational ideas of what constitutes a proper corporate governance framework shaped the postsocialist debates. Before doing so, I first elaborate on the different corporate governance concepts that featured during the policy debates since the 1980s. These concepts help us to identify some of the alternatives faced by Polish policy makers. Each of these concepts adheres to a different political ideology and enjoyed internal support by different groups within the Polish society.

### **5.3. Three corporate governance concepts**

Corporate governance issues play an important role in any economy as they relate to the role of the firm in society (Albert 1991), a subject that often provokes policy discussions. This is even more keenly the case for countries that are in a process of redefining their essential economic mechanisms. In postsocialist Europe, the



introduction of private property in place of state ownership has altered the role of the firm dramatically. Such a transformation introduces actors and institutions such as shareholders and stock exchanges that were unknown during the state socialist period and subsequently alters the balance of power between the different stakeholders within the firm, such as workers, owners and the state.

In this section I briefly discuss the three corporate governance concepts that have dominated the Polish policy debates. I have arrived at these three concepts inductively on the basis of the empirical account but for reasons of clarity I will first clarify their main features. I use the notion of a *corporate governance concept* to identify the different corporate governance arrangements that featured during the debate in Poland since the late 1980s. The term corporate governance concept refers to an ideal set of ideas on the role of the firm within society. It –amongst others- contains ideas on who ought to be the rightful owners of a corporation and what ought to be the driving mechanisms behind corporate activities. Corporate governance concepts more or less consistently characterise the contours of a desired corporate governance model in which these issues are regulatory addressed. Arguably, a corporate governance concept does not contain a full and complete overview of the necessary corporate governance institutions but rather points in a certain direction when it comes to the question of what policies are to be desired. Corporate governance concepts function as a compass in political debates where they are translated into distinct corporate governance policies. Such translations are not always unproblematic as a compass always only points into a direction but never informs us when the destination is reached. Moreover, corporate governance concepts can contain different corporate governance principles that are theoretically combined but which contradict each other in their practical translation. This however seems to be an adequate representation of political debates that are often dominated by broader notions of the ‘good’ that initially lack accompanying practical policies that are only constructed in the run of the policy making process.

Table 5.1 introduces three corporate governance concepts that have featured in the Polish corporate governance debates. These three concepts are quite different with regard to essential aspects. They advocate different owners, argue for distinct decision making processes, which result in diverse mechanisms that determine corporate

activities. First, there is the state socialist corporate governance concept, which has been dominant in ECE during much of the post World War II period and which has directed corporate governance policies until 1989 (Marangos 2004: 10-12). The state socialist corporate governance concept argues for state ownership and control over firms, as they are to operate in the interest of the general public as it is defined by the state (Thompson and Smith 1992). Due to the superiority of state planning over market forces in this model, central bureaucratic planning is to determine the kind of production and the necessary investments. In this model, privatisation is unnecessary, as ownership ought to remain in the hands of the state.

Historically speaking, the state socialist concept has been an integral part of the state socialist policies, as they existed in those countries that belonged to the Soviet Bloc between 1945 and 1989. These policies were endorsed by the Soviet Union that acted as a regional hegemon during this period. Officially, substantial reforms were ruled out as Soviet authorities considered themselves the protectors of the systems and occasionally showed their willingness to uphold the system with coercive means as the events in Hungary in 1956 and Czechoslovakia in 1968 demonstrated. In practice however, there existed a substantial gap between the state socialist regulation and the actual practices. In this paper the state socialist corporate governance concept will feature as a background model. At the start of 1980s this concept had already the most of its appeal amongst the general public. The mismatch between the state socialist ideological rhetoric that supported this concept and the practical (non-) implementation had effectively undermined the general public's confidence that this concept would ever function in practice.

The second corporate governance concept that will figure in this chapter is the employee ownership concept. In this concept the workers in the firm are also the owners of its assets and production process (Smith 1994). Key decisions are to be made in a meeting where all workers are represented, normally the works council. This kind of self-management determines how the production is to be organised and what kind of investments are to be made. As this corporate governance concept argues for employee ownership, its adherents advocated the privatisation of the Polish state firms through schemes that transferred ownership rights to the workers. According to the adherents of the employee ownership concept, such privatisation schemes would

be the best way to protect the rights of the employees while at the same time increasing the economic efficiency of the former state enterprises.

As we will see in the next section, this concept made its appearance in the early 1980s as part of the rise of the Solidarity trade union that protested the then existing state socialist practices. Employee ownership is a way of establishing workers' representation through ownership (Aguilera and Jackson 2003: 456). Throughout the Postwar period trade unions in Western Europe have advocated this model of corporate governance as a way of 'influencing strategic decision making and restricting management's largely "unchecked independence"' (Faleye et al 2006: 495).

The last concept that will feature in this chapter is the so-called external ownership concept.<sup>22</sup> In this concept, it is neither the state nor the workers that own the corporation but rather external shareholders that have acquired the corporation by buying its shares on the stock market. As the bearers of the residual rights, shareholders are to approve strategic decision making in annual shareholders' meeting. As shareholders benefit from the maximisation of their assets, market forces that push for such maximisation are the driving forces when it comes to providing the impetus for corporate activities. During the privatisation debates, adherents of this concept advocated rapid capital privatisation, i.e. the sale of state corporations to the highest bidders. According to the adherents of the external ownership concept, the sooner the state corporations would be in private hands, the better. Private ownership would start a process of industrial restructuring that would lead an efficient functioning of these enterprises.

The external ownership concept bears the closest resemblance to the neoliberal ideas of what constitutes a good corporate governance framework. The implementation of the privatisation policies mentioned above in combination with the liberalisation of the economy to foreign capital opens the economy for (foreign) investors that seek the highest profit rates for their investments. In this respect it serves the two goals Soederberg mentioned in the previous section. The external ownership advocates the free flow of (transnational) capital can flow in and out of firms and economies and

ensures the rights of the providers of capital, rights that lies at the heart of neoliberal thoughts and practices.

**Table 5.1. Three concepts of Corporate Governance**

|  | <b>State Socialist</b>  | <b>Employee Ownership</b> | <b>External Ownership</b> |
|--|-------------------------|---------------------------|---------------------------|
| <b>Owner of the enterprise</b>                   | State                   | Workers                   | Shareholders              |
| <b>Highest decision making platform</b>          | Government              | Works Council             | Shareholders meeting      |
| <b>Driving force behind corporate activities</b> | Central planning        | Self-management           | Market forces             |
| <b>Relation to privatisation issues</b>          | No privatisation needed | Employee privatisation    | Capital privatisation     |
| <b>Transnational embedding</b>                   | Soviet bloc             | Global labour movement    | Neoliberal consensus      |

#### **5.4. Competing corporate governance concepts and the role of transnational actors**

All three of the corporate governance concepts discussed above have featured in the Polish policy debates since the early 1980s. Whereas the state socialist concept continued to figure as a benchmark for corporate governance policies throughout the 1980s, it came under increasing pressure due to continued economic problems and political contestation. With the collapse of state socialism, the two other corporate governance concepts that had been developed during the 1980s dominated the debates. As the economic transformation gained pace during the 1990s, it was the external ownership concept that provided most intellectual input for policy reforms as it had the benefit of substantive support from transnational forces.

At the end of the 1970s, the Polish economic system stood under increasing pressure. The strategy of the state socialist government to facilitate economic growth and industrial upscaling through importing debt-financed technologies from Western Europe ran into large economic problems (Shields 2006). Between 1979 and 1983 the national GDP dropped more than 25 percent (World Bank 1987), which resulted in large-scale political unrest that was accompanied by a substantive discussion on how economic reforms were to enhance economic recovery. These discussions continued throughout the 1980s and did not wane after General Jaruzelski had seized power in 1981 and effectively suppressed political activity for most of the 1980s. In this respect the Polish trade union Solidarity played an important role. In its 1981

manifesto 'The Directions of Solidarity's Operations in the Current Situation', which expressed clear commitment to both the democratic and worker's movement, the trade union laid down clear goals with regard to the question how the Polish enterprises ought to be run. Though the term corporate governance was not explicitly mentioned, it introduced the concepts such as employee self-management (Kowalik 1994: 137) and social ownership (Garton Ash 2002: 236-237) that were to provide the building blocks of a reformed corporate governance system. It rejected privatisation to other actors than employees. Management teams were to be appointed through democratically elected works councils. 'The goal of competitive self-management was the means of creating both stable property relations *and* establishing a system in which responsibility for decision making, and knowledge of the complexities and demands made by market competition, were facilitated by access to all records and information' (Glasman 1994: 72). These ideas enjoyed broad popular support amongst the Polish population that considered these plans a realistic alternative to the state socialist concept. The concepts put forward were strongly rooted in the Polish radical union tradition since 1945 (Rainnie and Hardy 1995: 268).

At the same time, there were also those who opposed the state socialist model, but favoured a different type of reforms. Instead of handing over the ownership of state enterprises to employees they advocated quick privatisation of state enterprises to external owners. Subsequently market forces would be able to ensure effective economic restructuring and –in the end- a durable economic growth. This group consisted partly of economists within the Solidarity trade union that throughout had abandoned the idea of self-ownership of employees and partly of economists outside the opposition movement.<sup>23</sup> As Bockman and Eyal (2002) have pointed out such groups of intellectuals had close contacts with leading policy makers and academics in Western Europe and the US.

These two different corporate governance concepts were set to dominate the policy debates after the collapse of the state socialism. The employee governance concept seemed to be in an advantageous position given its support -especially among the lower cadres of Solidarity that had been influential in overthrowing the state socialist regime (Orenstein 2001). However, this concept was gradually defeated by the coalition of Polish intellectuals and transnational actors who dominated the policy

debates in the early years of transformation. Stuart Shields (2006: 475) in this respect refers to passive revolution in which ‘those social forces most intimately associated with transnational capital, irrespective of their party or social position, that became the most successful in the struggle over competing reform strategies.’ At the end of the 1990s the external ownership concept would turn out to be the leading corporate governance concept that guided the corporate governance reforms that at strengthening the position of (minority) shareholders vis-à-vis other stakeholders within the firm. Table 5.2 in this respect provides an overview of the postsocialist governments in relation to the corporate governance strategies they pursued.

**Table 5.2. postsocialist governments and corporate governance issues**

| Prime Minister | Years                  | Type of Government    | Main corporate governance issue  |
|----------------|------------------------|-----------------------|--|
| Mazowiecki     | 8/1989-4/1991          | Care-taker government | -Radical privatisation plan (preferring sales to outsiders).<br>-Inspired by World Bank and IMF<br>-Fierce resistance in parliament  |
| Bielecki       | 4/1991- <b>12/1991</b> | Care-taker government | -Policies aimed at resisting of labour management and large scale privatisation with important employee ownership<br>-Continued resistance in parliament   |
| Olszewski      | <b>12/1991-6/1992</b>  | right-centre          | - Increasing attention for ‘vital national interests’<br>-Slow progress with regard to privatisation   |
| Suchocka       | 7/1992- <b>10/1993</b> | right-centre          | -Pact on public enterprises, regulating workers’ involvement in public enterprises<br>-Radical privatization plans voted down in parliament  |
| Pawlak         | <b>10/1993-3/1995</b>  | left-centre           | -Employee ownership becomes part of privatisation rhetoric. Concrete plans hardly materialise  |
| Oleksy         | 3/1995-2/1996          | left-centre           | -Poland does relatively well on corporate governance issues compared to other countries in the region  |
| Cimoszewicz    | 2/1996- <b>10/1997</b> | left-centre           |  |
| Buzek          | 10/1997-10/2001        | right-centre          | -Start of second round of privatisation; part of process of entering the EU, favouring the external ownership model.<br>-Substantial number of corporate scandals<br>-Explosion of foreign investments to Poland |
| Miller         | <b>10/2001-5/2004</b>  | left-centre           | - <i>Introduction of the first Polish corporate governance code</i><br>- <i>Further integration of the Acquis in national legislation</i><br>- Penetration of foreign capital in the Polish banking sector       |
| Belka          | 5/2004- <b>10/2005</b> | left-centre           |  |
| Marcinkiewicz  | <b>10/2005-7/2006</b>  | right-wing dominance  | - Nationalist rhetoric against foreign investment<br>- Further fine-tuning of the corporate governance system  |
| Kaczyński      | 7/2006                 | right-wing dominance  |  |

Source: De Raadt, Data institutions of politics of ECE (unpublished data set), own findings  
 Dates printed in bold refer to shifts in governmental composition as the result of national elections for the Polish parliament

### *Early privatisation plans*

At the end of the 1980s, state socialist leadership in Central Europe slowly adapted to the idea that an overhaul of state socialist policies was the only way to maintain social peace in a system that was fundamentally undermined by a lack of internal support. To facilitate such a transformation, the leaderships in the region organised round table discussions with leading members of the oppositions and intellectuals during which a peaceful transition to a postsocialist order could be discussed (Stark 1992). In the Polish case, intellectuals with contacts to Western academics and policy makers were explicitly invited to join the Round Table discussions that were to settle a peaceful transition from a state socialist planned economy to a market oriented democracy (Boughton 2001: 991). Moreover, Western economists were requested to attend the discussions. People like Jeffrey Sachs, the Harvard professor who had very tight links with international financial organisations such as the IMF and served as an informal representative of these organisations, and David Lipton, who later became policy advisor to the Clinton government, visited the meetings and provided the attendants with policy advice.

This composition of the round table clearly favoured reform ideas that were along the lines of an external ownership model. Whereas at the start of the economic transformation about 47 per cent of the population supported the idea of employee ownership of state firms (Lewandowski 1997: 36), the first postsocialist privatisation plans aimed to introduce a rapid privatisation through either a voucher programme or direct sale. According to the first postsocialist Minister of Finance and the introducer of the Polish shock therapy Leszek Balcerowicz the presence and advice of Sachs and Lipton played a 'very important role in Poland in persuading those who needed persuasion' of the necessity of rapid privatisation.<sup>24</sup> As a result of these negotiations, the notion of self-government was dropped from the policy agenda (Glasman 1994: 71). Workers were only allowed to buy 20 per cent of their company's shares, however with the possibility of buying the remaining shares if nobody would be interested in them (Lewandowski 1997: 36).

This kind of interaction between transnational actors and Polish policy makers seems to be characteristic for the development of early postsocialist economic policy. As

Janusz Lewandowski (1997: 36), the first Polish minister of Privatisation recalls a variety of international donors co-shaped the privatisation programme. Lewandowski in this respect refers to the UK Know-How Fund, the World Bank, the International Finance Corporation, the PHARE programme and the European Bank for Reconstruction and Development. These kinds of institutions are of crucial importance in the creation of the transnational policy consensus mentioned in section two. The privatisation plans put forward by these institutions closely resemble the external ownership concept discussed in section three. It is therefore not surprising that the initial privatisation plans put forward by the first postsocialist government aimed at Western style privatisation through mechanisms such as public offerings (Woodward 1996).

Within the Polish parliament, the Sejm, however, the plans of this coalition of transnational institutions and Polish policy makers ran into severe opposition. The initial plans put forward by the Mazowiecki government as well the revisions made by the Bielecki were supported by large parts of the Sejm. Especially those parts of the Solidarity movement that advocated worker control over the state corporations objected the proposals for external privatisation (Woodruff 2004: 93). Their resistance was so strong that the initial privatisation plans were substantially changed to allow for other kinds of privatisation as well, including employee ownership, but even these modified plans however were voted down in Parliament in March 1993 during the Suchocka government. In response to this initial defeat by the introduction of a so-called Pact on public enterprises that sought to find the support of large parts of worker movement for predominantly outside privatization in exchange for concessions with regard to wage policies –the end of an added tax of wage increases (the so-called popiwek)- and a guaranteed 1/3 of the seats in the Company Board of privatized firms. The Pact divided the labour movement that already was highly undecided on the ‘right’ privatization policies, but never saw its materialization as the Suchocka government was voted out of office in the 1993, which gave the power to coalition of reform socialists under leadership of Waldemar Pawlak (Allio 1997: 223-224).

The Pawlak government effectively politicised the transnational assistance of the World Bank and the IMF. They depicted the ideas of external ownership that would



allow foreign capital to participate in postsocialist restructuring as part of a more general plan to colonise the Polish economy. In this respect, the coalition of technocratic reformers and their transnational advisors that proposed such plans was aggressively attacked of as ‘a vehicle for foreign exploitation’ (Meaney 1995: 119). These tendencies went well beyond division between governing parties and opposition though most of these fierce attacks were primarily based upon retotics rather than concrete policies. Telling in this respect is that after his resignation in 1995 Prime minister Pawlak declared that he had done his utmost to prevent foreign investors taking over Polish companies (Sinn and Weichenrieder 1997: 207). The Pawlak rhetorically adhered to those parts of a now divided labour movement that advocated employee ownership. This rhetoric were however highly symbolic and hardly materialised.

### *Second Round of Privatisation Reforms*

As a result of the stalemate between the advocates of external privatisation and those who favoured modes of employee ownership privatisation, the Polish privatisation programme lagged behind compared to other countries in the region such as the Czech Republic and Hungary by the mid 1990s. This would however change as Poland slowly moved towards membership of the European Union. This change coincided with shift from a centre-left, socialist government to a centre-right government under leadership of Jerzy Buzek and with Balcerowicz as minister of Finance. This government launched a second round of private initiatives in order to meet EU membership criteria that were accompanied by simultaneous company law revisions that strengthened the position of external (minority) owners vis-à-vis other stakeholders. Whereas in the first privatisation round, the external ownership model has run into substantial resistance, the wide spread agreements amongst the Polish political spectrum in favour of EU membership lowered this resistance dramatically. As a result, in the early 2000s the external ownership model had nearly become the only game in town at the expense of the employee ownership model.

Although the European Commission did not officially prescribe a distinct method of privatisation or a particular corporate governance structure, ‘the EU’s accession policy documents do contain implicit policy models’ (Grabbe 2003: 259). These

implicit models are for instance found in the Accession Partnership that Poland signed in 1998. Part of this Partnership that laid out the necessary steps the Polish government had to take to become full member of the EU was the continuation of the privatisation process in important sectors such as the steel industry and the opening of the Polish market for foreign investors that had had only restricted access due to particular sectoral legislation (Mayhew 2000). In the build up towards EU membership, the European Commission actively and successfully promoted state strategies that allowed for external ownership and foreign investments (Hanley et al 2000, Vliegthart 2008a).

In an attempt to take the necessary steps for EU membership government strategies in the region responded by a U-turn vis-à-vis foreign investments as Jan Drahokoupil points out in his contribution to this volume. This was particularly the case in Poland where in 1999 alone FDI amounted up to \$3 billion whereas the revenues from privatisation from Polish investors only reached \$120 million (Uminski 2001: 90). This shift was accompanied by an increasing involvement of private transnational actors such as the American Chamber of Commerce in Poland (AmCham Poland), British Polish Chamber of Commerce and the Centre for International Private Enterprise (CIPE). These organisations found a willing ear with the Polish government. The AmCham Poland for instance actively supported the government's Committee to De-Bureaucratize the Economy and advocated the benefits of foreign investments, whereas it at the same time supported American and other foreign investors in Poland whereas simultaneously the Polish lobby for NATO membership at the US senate.<sup>25</sup>

Institutionally, the second wave of Polish privatization was marked by the reconstitution of the Ministry of Privatization as the Ministry of the State Treasury in 1996 (Kochanowicz et al 2005: 57-79). The reconstitution was accompanied by the introduction of a new act on Privatisation that replaced the earlier Privatisation Act. In comparison to the older Act, the 1996 Act increased the options for external ownership and limited the options for other kinds of privatisation schemes (Kozarzewski 2003: 6-8). As a result, the privatization process accelerated after the mid 1990s, especially because of direct sales of large domestic companies and banks to strategic foreign investors. As a result, the government revenues from privatization

between 1997-2001 were four times higher than the ones between 1990-1996 (Biggelli and Ghini 2005: 17). Simultaneously, the Polish regulation was reformed in order to meet the criteria laid out in the *Acquis*. In 2000, the 1926 Commercial Code that was reintroduced in 1989 was substantially revised, (Oplustil 2000). The new Commercial Code is inspired by German regulation and introduced a strict separation between management and control (Herdan and Krasodomska 2005: 3). As Kozarzewski (2003: 10) concludes the 2000 Company Law ‘does not take into account concern of stakeholders in corporate governance structures.’ It for instance did not prescribe a statutory number of employee representatives in Supervisory Boards. Most of the employee rights in privatised firms were regulated in the 1996 privatisation law, but it remained rather ambiguous how long privatised corporations were to abide by the rules prescribed in this law.

The EU attention for institution building reflects what also Julia Langbein points out in her contribution to this volume, that market making under EU influence is inherently also about the re-regulation of relations between social actors in a postsocialist economy (see also Bruszt 2002). But what is more, the reshaping of postsocialist institutions as part of the enlargement process also gently pushes the postsocialist states into a more marketised socio-economic order in which the rights of transnational capital are widened whereas at the same time the region is subordinated to the discipline of the market (Vliegenthart and Horn 2007). In this respect it fits into the transnationalisation tendencies discussed in section two, where I have pointed out that transnational influence has been aimed at safeguarding the rights of transnational capitals whereas it simultaneously seeks to strengthen the regulatory framework under which transnational capital can operate.

#### *Corporate Governance fine-tuning in the early 2000s*

The clear victory of the external ownership model over other corporate governance models did however not put an end to the corporate governance discussions. The Buzek government was haunted by corruption scandals that spilled over to the corporate sector. The late 1990s and early 2000s saw an explosion of corporate scandals that led to serious political upheaval. Some of these scandals involved an alleged misuse of government influence in companies that were (partly) state-owned.

In the early 2000s, PKN Orlen, Poland's biggest oil company, became the object of various corporate scandals in which the Polish state played a crucial role. Despite the privatisation of PKN Orlen, the Polish state had retained a 'golden share' that according to other shareholders hindered an equal treatment of all shareholders. Also in other fields, such as the insurance and banking scene, state involvement got remarkable attention. The most prominent example in this respect is probably the controversy between the Polish state and the Dutch insurer Eureko over the PZU, Poland's biggest insurance company that dragged on for more than four years. But also in earlier years the Polish state got into conflict with several other foreign investors that accused the Polish government of unfair corporate governance behaviour. In other cases, foreign investors received considerable criticism for their role in undermining the establishment of an effective corporate governance system. The best-known cases in this respect are the involvement of the French company Michelin in the Polish tire manufacturer Stomil Olsztyn, where Michelin as a large block holder was accused of mistreating minority shareholders; and French Pernod Ricard that was accused of doing the same with the Polish subsidiary Agros.<sup>26</sup>

These scandals coincided with a shift from a centre-right government to a centre-left one under leadership of Leszek Miller in 2001. The new government launched a renewed debate on what kind of corporate governance mechanisms would offer adequate 'solutions' to prevent the misconduct of certain actors within the corporation, but did not give rise to attempts to increase employee involvement in the corporations. Rather, it led to policies that would strengthen the outside owner vis-à-vis the management and the employees. In this light, foreign ownership, although politically controversial, was considered rather beneficial in solving some of the pressing corporate governance problems as also the European Commission pointed out to the Polish government (EC 2002c). But apart from the EU, other transnational actors were also very active in the creation of the arrangements; their attention especially focussed on those kinds of soft regulation that would further socialise the different actors with the rules of the capitalist game.

One of these solutions constituted the introduction of a Corporate Governance Code that fine-tuned the existing regulations to the rules of the market and was aimed to increase the levels of effectiveness that had lagged behind the quality of the formal

regulation (Jordana and Levi-Faur 2005). The code points out that it is the goal of a corporation ‘to further the interest of the company, i.e. to increase the value of the assets entrusted by its shareholders’.<sup>27</sup> The word ‘employee’ is mentioned on only three occasions in the code,<sup>28</sup> without any reference to ownership issues nor to any specific rights that employees would enjoy. On the contrary, it is the position of the external owners that is strengthened through increasing control over managerial behaviour, reflecting the notion that the spread of such codes is primarily in the interest of the providers of capital to a firm (Thomsen 2006).

The introduction of the Polish Corporate Governance Code has been a transnational process. It fits in a global tendency to introduce such codes. Especially after 1999 when the OECD had launched its principles for ‘good’ corporate governance, policy makers throughout the world and especially in Central Europe actively worked on the translation of these principles into national codes of conducts (Collier and Zaman 2005). In the case of Poland, two separate groups of agents worked on such a code. In Gdansk, the Institute for Market Economics worked on a code for listed firms, whereas in Warsaw, the Institute for Business Development- Privatization Center that had close ties with the Warsaw Stock Exchange also introduced its own corporate governance code.

Both initiatives were actively supported by a diverse set of transnational actors. The Gdansk initiative received support from American think tank CIPE (Centre for International Private Enterprise) and the German Adenauer Stiftung that is closely connected to the German Christian-democratic party. The World Bank, the International Finance Corporation (IFC) and representatives from transnational banks supported both initiatives as they saw only marginal differences between the two approaches.<sup>29</sup> Both competing Polish attempts aimed at strengthening the position of the shareholder vis-à-vis other stakeholders. The Boards and managers are encouraged to fulfil the highest levels of transparency about their decisions, calculations and behaviour in order to give shareholders sufficient information to decide upon their investments. Based upon their stronger support amongst influential actors in and around the Warsaw Stock Exchange, the Stock Exchange adopted the Warsaw Code (Vliegthart 2008b).

The introduction of the Polish corporate governance code in 2002 and its update in 2005 in some ways constitute a final step in process in the economic transformation from state socialism to a market economy. Despite the still existing gap between corporate governance regulation and corporate governance practices it seems that the fundamentals of the Polish corporate governance system are well established. The shift towards a right wing government that uses nationalist rethorics when it comes to foreign ownership in crucial sectors of the economy, such as the banking section, does not seem to reverse the existing policies with regard to corporate governance issues and the dominance of an model characterised by external ownership. As the World Bank (2005: 30-31) reported, most Polish corporations abide with almost all demands of the Polish corporate governance code. It moreover concluded that 'it is expected that over time, as they become more familiar with corporate governance issues, Polish judges will look to the corporate governance code as a standard for the professional conduct of directors.' Simultaneously, EU membership still seems to polish the Polish corporate governance framework.<sup>30</sup> In this respect it seems that external ownership is now well locked into the postsocialist institutional framework. Whereas it faced severe resistance during the early 1990s, external ownership concept seems to ubiquitous in the current corporate governance debates that are all about strengthening the rights of shareholders vis-à-vis the management. Substantial alternatives to this model seem to have disappeared behind the political horizon.

## **5.5. Conclusion**

In this chapter, we can identify three different, though interrelated phases of corporate governance discussions in postsocialist Poland. During the first years we witness a clash between the external ownership model and the employee ownership model. These models have been put forward by different parts of the Polish opposition during the state socialist era. After the first years and a failed attempt to launch a large privatisation, the two models were more or less in a stalemate. During the second half of the 1990s, new privatisation initiatives that were part of the Polish attempts to acquire EU membership were launched that clearly fitted the external ownership model. As a result, the external ownership model had in neogramscian terms become hegemonic corporate governance concept at the end of the 1990s (following Cox 1983). Policy discussion in the early 2000s then focussed on the fine-tuning of the

emerged corporate governance system, paying particular attention to the right of minority shareholders.

How then do these findings relate to the general topic of this volume, the transnationalisation of the state, society and economy? The evidence presented in this paper points out that in a globalising world, a strict separation between the 'national' and 'international' does not longer hold. Actors and forces that are not constituted within distinct national boundaries, but rather emerge and operate beyond them fundamentally shape many of the developments that occur within a given national context. The process of postsocialist state restructuring is a deeply determined by the developments of the neoliberal global economy and the forces that operate in it. The transnationalisation of the state in this respect reflects the ongoing nature of this restructuring process. This is worth stressing in times where many in the public and academia still consider the national realm to be of unique importance.

With regard to the empirics presented in this chapter this implies that if we want to understand the emergence of the Polish corporate governance system we need a focus that moves beyond studying the developments in the domestic arena because such an analysis misses out on the impact of transnational actors that can tip the balance of power. As this chapter demonstrates, there were at least two quite different postsocialist corporate governance concepts that had an indigenous basis within Polish society during the socialist era. The employee ownership concept however never made it into practice as it was defeated by the external ownership concept that opted for the creation of a distinct class of owners outside the workforce. This model of privatisation later paved the way for the inflow of large amounts of FDI.

The fact that the Polish postsocialist governments opted for the a model that did not enhance employee ownership in former state corporations cannot be explained by arguing that all other ideas were domestically discredited after the collapse of state socialism. Rather, these decisions must be seen in the light of substantial transnational influence on the postsocialist decision making process. The transnational policy circle around Sachs together with its Polish counterparts of which Balcerowicz is probably the most prominent example paved the way for non-employee privatisation. Subsequently, the European Union through its negotiations with the Polish state

further enhanced this market-oriented strategy pushing Poland to open its economy for foreign investments that were to contribute to restructuring process. Finally, private think tanks and international organisations such as the World Bank contributed to the fine-tuning of the Polish corporate governance system that had emerged in the 1990s.

Conversely, what this paper also points out is that powerful transnational forces do not only externally shape processes of transnationalisation. History is not determined by external forces that operate in an international vacuum, nor are national historical legacies and national actors irrelevant for the outcome of the transnationalisation processes. What this chapter demonstrates empirically is that the emergence of the Polish postsocialist corporate governance framework can only be understood in the interplay between transnational forces and actors within the Polish policy debates. Only an analysis of such interplay between these various forces can help us to understand the developments on the ground. It is not the conclusion of this chapter that a completely different corporate governance concept based on the notion of self-management would have been put into practice if transnational forces would not have integrated in the policy making process. Yet what stands out is that transnational actors have played an important role in the process of postsocialist restructuring, both on the ideational and practical level.



