

1. The Interest of the Company and the Legal Fabric of Polish-German Business Relations

Anne-Marie Weber and Anne-Christin Mittwoch

A. Introduction

In most jurisdictions of the EU, the concept of “the interest of the company” lies at the heart of company law. As a doctrinal construct, the interest of the company features prominently across legal systems – in statutes, case law, and corporate governance codes – typically serving as the benchmark against which the actions of board members are evaluated.¹ Despite its widespread use, the concept of the interest of the company often lacks precise definition. Does it simply equate to shareholder interests? Does it serve as shorthand for long-term value creation? Or does it invoke a broader commitment to stakeholders or the public good? These ambiguities have become increasingly salient in light of recent crises affecting both people and planet, prompting renewed scrutiny of how sustainability objectives intersect with the legal and normative understanding of the company’s interest.

While these conceptual challenges are important in themselves, they become even more intricate when examined through a transnational lens. When locally-embedded understandings of the company’s interest encounter one another across borders, tensions may arise, especially where business relations are deeply integrated. A particularly instructive case emerges from the economic entanglement between Poland and Germany.

Although the two countries share close economic ties and a degree of legal proximity, their company law traditions, corporate governance cultures, and institutional trajectories diverge substantially. Germany exemplifies a mature legal system with a well-developed doctrinal framework, established jurisprudence, and a vibrant academic discourse on the board’s role and the balancing of competing interests within the company.² Poland, by contrast, is a post-socialist legal system in which company law has evolved

1 Weber/Mittwoch RECoL 2023, 143 (152–157).

2 See chapter 3 of this volume.

swiftly over the past three decades, shaped by German, Anglo-American, and supranational (EU) influences. Yet this hybrid development has often occurred without the same level of doctrinal coherence or institutional consolidation.³

These divergences become particularly visible when foreign investors (shareholders) interact with Polish subsidiaries, their boards, and the legal professionals who advise them. Conflicting interpretations of the company's interest also surface in joint ventures, where board appointees representing different legal and governance backgrounds must collaborate. In such transnational settings, the company is not merely a legal entity or an economic unit: it also becomes a place where norms are contested. What is in the best interest of the company when strategic decisions must be taken by a Polish board under the influence of a German shareholder? How is the company's interest interpreted when local employment needs conflict with group-level financial optimisation? Who decides – and under what standard – whether a company should bear the costs of environmental or social compliance in a complex cross-border supply chain? Irrespective of private international law, which determines the applicable legal framework in cross-border situations, these issues bring to light differing conceptions of good corporate governance that must be harmonised in practical application.

This chapter does not attempt to answer these questions from a doctrinal point of view; that task will be taken up in the following chapters, which explore the interpretation of the company's interest in Polish and German company law, as well as other European jurisdictions. Instead, the present chapter offers the contextual groundwork for such analysis. It maps the economic interdependence between Poland and Germany and illustrates how the concept of the company's interest emerges as a potential point of friction in these cross-border dynamics. In doing so, it sets the stage for the legal inquiry that follows.

B. Poland and Germany as Interdependent Economic Actors

The origins of the economic interdependence between Poland and Germany can be traced back to Poland's dual transformation in the early 1990s: the shift from a centrally-planned economy to a market economy, and

3 See chapter 2 of this volume.

from an authoritarian regime to a democratic polity that is integrated into Western institutions. However, it took an entire generation to arrive at the level of cooperation and mutual reliance that characterises Polish-German economic relations today.

The stereotype of “Polish economy” (*polnische Wirtschaft*) dates back at least to the writings of Georg Forster in the eighteenth century.⁴ In the 1990s, Forster’s perception was far from extinguished: Poland was still widely associated with hyperinflation, institutional fragility, and economic disorder.⁵ Popular German discourse alternated between derision, latent guilt over wartime atrocities, and sporadic admiration for the *Solidarność*-movement.⁶ Rarely was Poland viewed as a stable or trustworthy economic partner.

Conversely, from the Polish perspective, the Federal Republic of Germany stood as a model of economic discipline, institutional order, and material affluence.⁷ This contrast was particularly stark in the late 1980s, when the German economy experienced a “mini economic miracle,” underpinned by a generous welfare state and a strong Deutsche Mark.⁸ The iconic Mercedes-Benz W123, discount shopping temples like Aldi, and opportunities for seasonal work, often informal, were the object of admiration in Poland. Envisioning Poland as a credible future partner to such an advanced and competitive economy required considerable strategic foresight and political resolve.

Among the figures who demonstrated such vision was Tadeusz Mazowiecki, Poland’s first democratically-elected Prime Minister.⁹ In seeking a “Polish Ludwig Erhard,” Mazowiecki entrusted Leszek Balcerowicz with implementing radical market-oriented reforms. The so-called “shock therapy” was accompanied by immense social costs, including the collapse of many state-owned enterprises and a dramatic surge in unemployment. Yet the market began to function – first and foremost in trade. Nevertheless, the foundations of a functioning market economy were laid, particularly in the domain of trade. With the opening of borders, informal Polish markets proliferated across Germany, while German consumer goods, es-

4 Kordel *Przegląd Historyczny* 202, 879 (879–902).

5 Kaluza/Traupe/*Plóciennik*, p. 9 (10).

6 Kaluza/Traupe/*Plóciennik*, p. 9 (10).

7 Kaluza/Traupe/*Plóciennik*, p. 9 (10).

8 D’Elia *JEEH* 1993, 381 (381–402).

9 Kaluza/Traupe/*Plóciennik*, p. 9 (10).

pecially from Aldi, inundated street stalls in Poland.¹⁰ Germany, with its geographic proximity, economic scale, and early trade linkages, emerged as Poland's most promising trade partner. Yet the German market also posed formidable challenges, requiring adaptation to exacting quality standards and unfamiliar capitalist principles.

Initially, German investment gravitated more readily toward the Czech Republic and Hungary. In the early 1990s, Poland's political volatility and underdeveloped legal-institutional frameworks fostered a degree of scepticism among German business actors.¹¹ This was compounded by the burden of the foreign debt Poland had accumulated.¹² Only after the 1994 agreement on partial debt relief¹³ did confidence in Poland begin to grow. Western financial institutions and multinational corporations turned their gaze east of the Oder, discovering, just an hour's drive from Berlin, a rapidly-expanding market with competitive labour costs and a well-educated workforce.

The deepening of trade and investment ties was greatly accelerated by the process of European integration. Poland's association agreement of 1991,¹⁴ followed by EU membership in 2004,¹⁵ provided a stable regulatory framework and substantial structural funds, stimulating domestic demand for investment goods. German firms were ideally positioned to benefit.

10 Kaluza/Traupe/Plóciennik, p. 9 (10).

11 Deszczyński RPEiS 2004, 79 (79–91).

12 Piech/Bodo, p. 183 (183–194).

13 Tiongson East European Quarterly 1997, 55 (55).

14 Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other (OJ L 348, 31.12.1993, p. 2–180).

15 Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union (OJ L 236, 23.9.2003, p. 17–930).

Bilateral trade rose from nearly €35 billion in 2004 to over €66.5 billion by 2008, with Germany maintaining a consistent trade surplus.¹⁶

Paradoxically, the global financial and economic crisis that erupted in 2008 further strengthened Polish-German economic ties. In response to collapsing demand, German firms rationalised their supply chains, increasingly replacing higher-cost suppliers in Southern Europe with cost-efficient, capable partners in Central and Eastern Europe. This reconfiguration of intra-European trade disproportionately benefitted Poland. Indeed, economists from Southern Europe have argued that one of the crisis's more enduring consequences was the diversion of German trade and investment flows from the South to Eastern Europe. Data supports this claim: by 2016, bilateral trade between Germany and Poland exceeded €100 billion. At the same time, Poland distinguished itself within the EU through sustained GDP growth, prudent fiscal management, and declining unemployment. The outdated stereotype of the "Polish economy" began to fade, especially among younger German business leaders.

Since the early 1990s, Polish-German economic relations have evolved into one of the densest and most strategically consequential bilateral partnerships within the EU. Germany gained access to an increasingly-skilled labour force and a nearby production base, enhancing its global competitiveness. Poland, for its part, benefited from access to German capital, technology, and logistics infrastructure, while Polish firms acquired crucial experience through integration into German-led corporate structures.

Today, Germany remains Poland's largest trading partner in goods, both in terms of exports and imports.¹⁷ Conversely, Poland has emerged as Germany's fourth-largest trading partner.¹⁸ Bilateral trade is dominated by medium- and high-technology products embedded in global value chains. In 2021, such goods accounted for 46 percent of Polish exports to Germany and 53 percent of Polish imports from Germany.¹⁹ Key sectors include electrical equipment (such as automotive batteries and household appliances), vehicles and automotive components, and consumer electronics. Germany is the primary indirect exporter of Polish value-added goods: more than

16 Kaluza/Traupe/Plóciennik, p. 9 (12).

17 Central Statistical Office, *Foreign Trade Statistical Yearbook 2024*, p. 18–19; see also Ebenroth/Boujong/Joost/Strohn/Poelzig/Sander/Grundmann/Denga, Vor. § 343 HGB, mn. 75.

18 Statistisches Bundesamt, *Außenhandel. Rangfolge der Handelspartner im Außenhandel der Bundesrepublik Deutschland 2024*, p. 2.

19 Ambroziak/Gniadek/Kopiński/Sierocińska/Wąsiński, p. 5.

22 percent of Polish value-added goods that are ultimately exported to other countries is channelled through German firms. As a result, Polish components and services reach markets worldwide, including the United States, through Germany-based production and distribution systems.

Germany is also Poland's largest investor when measured by location of the ultimate controlling entity, and the second-largest when measured by ultimate beneficial ownership, and second only to the Netherlands when measured by formal legal registration. According to data from the National Bank of Poland, German direct investment in Poland totalled around €60 billion by the end of 2023.²⁰

Flagship German investments in Poland include the Volkswagen factory near Września, completed in 2016 at a cost of nearly €1 billion, still the largest foreign investment in Poland to date. Beyond the automotive sector, German firms are active in virtually all areas of the Polish economy: grocery retail, banking, insurance, home appliances, construction materials, food production, telecommunications, and transport.²¹ Germany's presence in Poland is not limited to large corporations such as Volkswagen, Mercedes-Benz, Siemens, or Bosch. Thousands of small- and medium-sized German enterprises operate in Poland, often as subsidiaries embedded within larger corporate groups or as partners in production networks.

In recent years, Polish firms have also begun to engage in cross-border investment and strategic partnerships, albeit on a smaller scale. Some have entered the German market through acquisitions or joint ventures, while others have integrated into German-led European networks of production, logistics, and innovation.

Today, the economic interdependence between Poland and Germany is no longer defined solely by trade volumes or capital flows. Rather, it reflects a high degree of structural integration. The two economies are intricately connected through cross-border supply chains and transnational corporate networks that operate within and across distinct legal and institutional frameworks. The density of bilateral economic activity has been accompanied by the emergence of a professional infrastructure that facilitates translation and coordination between legal systems. Transnational law firms, notarial chambers, chambers of commerce, and bilateral legal associations all contribute to the governance of this complex interface. More

20 National Bank of Poland, Foreign direct investment in Poland and Polish direct investment abroad in 2023, Warsaw 2024, p. 17.

21 Ambroziak/Gniadek/Kopiński/Sierocińska/Wąsiński, p. 26.

recently, the intensifying regulatory focus on sustainability, human rights, and corporate due diligence has added new layers of legal and institutional complexity. In this evolving landscape, mutual legal understanding and alignment are becoming indispensable foundations of the Polish-German economic partnership.

C. The Company's Interest in Polish-German Business Relations

Understanding Polish-German business relations entails more than tracking trade flows or foreign direct investment. It requires close attention to the legal and normative infrastructures companies operate in, especially when corporate responsibilities are shared or contested across borders. Applying a transnational lens reveals that the modalities of cooperation are not static or self-contained, but are shaped by mutual observation, legal transplantation, and the selective adaptation of practices within processes of decision-making. In this context, the concept of the interest of the company assumes particular importance. Although both Polish and German corporate law formally ground directors' duties in reference to the company's interest, doctrinal interpretations and practical applications often diverge, particularly in transnational constellations.

Polish-German business interdependence typically manifests in three principal forms: (1) cross-border contractual relationships, (2) joint ventures, and (3) vertically integrated group structures involving subsidiaries. Across all of these, the company's interest functions as both a legal standard and a practical heuristic. It guides board-level decisions, frames strategic considerations, and provides the vocabulary through which competing financial, regulatory, or sustainability-related priorities are articulated and negotiated.

I. Contractual Cooperation: autonomous yet interdependent entities

The most foundational form of Polish-German economic engagement is constituted by cross-border contractual relationships. These are usually structured through long-term agreements between legally-independent companies. In such settings, each party retains formal autonomy, and the concept of the company's interest remains internal to each legal entity.

Nevertheless, legal and reputational interdependencies often mean that one company's operational decisions materially affect the other's risk exposure.

Sustainability-related obligations illustrate this dynamic clearly. For example, a German manufacturer subject to the German Lieferkettensorgfaltspflichtengesetz (Act on Corporate Due Diligence Obligations in Supply Chains) may require its Polish supplier to adopt stringent environmental and labour standards, even where such standards exceed those mandated by Polish law. The Polish company may view such requirements as burdensome and cost intensive. However, a broader, pluralistic conception of the company's interest could more easily justify compliance beyond mere value-enhancement arguments.

Frictions nonetheless emerge. When cost pressures incentivise Polish suppliers to compromise on compliance, and German clients insist on strict adherence to mitigate their own regulatory and ESG-related obligations and aspirations, tensions may escalate. Legal advisors play a critical role in these situations, translating expectations into locally-actionable terms. In this setting, the company's interest functions not merely as a doctrinal standard, but as a lens through which sustainability becomes aligned, or fails to align, with commercial viability.

II. Co-governance in joint ventures

Joint ventures between Polish and German partners represent a more integrated and complex form of cross-border cooperation. These entities are typically characterised by shared equity participation and co-determined governance structures. Board composition is often reflective of national origin, with members appointed by both sides, thus institutionalising cross-jurisdictional negotiation within the company's decision-making framework.

Divergences may surface in board discussions over long-term strategy, capital allocation, or responses to regulatory pressures. For instance, a dispute might arise over whether to allocate resources to a decarbonisation initiative in response to EU sustainability regulations. The German partner may regard this as essential for aligning the joint venture with evolving ESG benchmarks and safeguarding future financing opportunities. The Polish partner, by contrast, may question the economic feasibility or the urgency of such measures, especially in light of domestic regulatory laxity or political opposition to rapid green transitions.

Such disagreements highlight the ambiguity inherent in the notion of the company's interest. Is it best understood as a compromise between shareholder positions? Or does it instead require an autonomous articulation grounded in the long-term sustainability and profitability of the joint venture itself? When sustainability measures are supported by clear commercial rationales, such as securing access to green financing or safeguarding export eligibility, then their incorporation into the company's strategic agenda can be framed as fully aligned with financial interests. But where these benefits are more diffuse or speculative, internal contention becomes more likely. In this setting, the interest of the company serves not only as a normative guidepost but also as a platform for articulating divergent visions of the joint venture's role for and within society.

III. Subsidiaries in Corporate Groups: legal Autonomy under strategic command

In vertically-integrated corporate groups, the interpretive tensions surrounding the interest of the company reach their most acute form. For instance, if a Polish company functions as a wholly-owned subsidiary of a German parent, it is subject to both national legal constraints and transnational strategic imperatives. Under Polish law, the management board of the subsidiary has a duty to act in the interest of the company it serves – not of its shareholder *per se*. However, doctrinal interpretations in Polish company law and group governance practices often blur this distinction.²²

Conflicts commonly arise in areas such as profit distribution, investment strategy, and restructuring. Consider a German parent company demanding high-dividend payouts to support group-level financial consolidation, while Polish managers argue for reinvestment in local operations to maintain competitiveness or comply with emerging regulatory standards. In such cases, the company's interest becomes contested terrain and could become both a legal shield and a strategic lever: the company's interest may be invoked either to resist shareholder demands or to justify compliance with them.

Sustainability pressures add further layers of complexity. German parent companies, particularly those listed or otherwise exposed to global ESG reporting obligations, may impose uniform environmental or social standards

22 See chapter 2 of this volume.

across their group operations. A Polish subsidiary may be asked to phase out fossil-fuel-based production methods or implement costly labour protections. These measures may well serve the long-term interest of the group and even align with emerging EU legislation. Yet, for the local entity, they may generate immediate financial strain or conflict with the expectations of domestic stakeholders.

Illustratively, consider the planned closure of a Polish manufacturing site as part of a German-led, group-wide consolidation aiming to reduce the carbon footprint. While this may serve the group's sustainability goals and improve its ESG ratings, the Polish management board faces a legal and ethical dilemma: does acting in the interest of the company require resisting closure to preserve local employment and maintain operational solvency? Or does loyalty to the group take precedence?

IV. The Company's Interest as a Normative Compass

Across all three constellations of Polish-German business cooperation – contractual relationships, joint ventures, and corporate group structure – the concept of the interest of the company emerges as a central but contested standard. It provides a normative anchor for board members' duties and a vocabulary for resolving cross-border tensions. Yet its meaning is neither fixed nor self-evident. Especially in light of the growing regulatory emphasis on sustainability, human rights, and due diligence, the interpretation of the company's interest requires constant renegotiation between legal regimes, commercial priorities, and stakeholder expectations.

What unites these different scenarios is the recognition that sustainable corporate behaviour, though increasingly necessary, is not automatic. It often requires justification, contention, and translation, particularly when transnational governance structures are involved. In this regard, the company's interest remains a vital legal and practical construct, one that enables corporate actors to navigate the complex interplay between profit, purpose, and responsibility in Polish-German economic relations.

D. Outlook

The analysis undertaken in this chapter reveals that the concept of the company's interest, far from being a static or self-evident legal principle, plays

a central role within the broader legal fabric of Polish-German business relations. As economic integration deepens, transnational business constellations become increasingly complex, and challenges around sustainability objectives intensify, the need for mutual legal understanding becomes more urgent.

Against this backdrop, divergences in how Polish and German actors interpret and apply the company's interest are not merely technical differences: they are symptomatic of deeper tensions within the normative architectures of the two legal systems. These tensions surface most acutely in cross-border contractual relationships (including supply chains), joint venture companies, and vertically-integrated group structures, where board members and advisors must navigate plural legal expectations and reconcile them with strategic and operational imperatives. The company's interest functions in such cases not as a universally accepted north star, but as a site of translation – where doctrinal abstractions are rendered into actionable standards.

Yet it is precisely this interpretive friction that renders the concept of the company's interest so vital. In an era marked by rising regulatory complexity, shifting geopolitical alignments, and intensifying demands for corporate accountability, the company's interest acts as a crucial mediating device. It compels boards, shareholders, and regulators to confront fundamental questions of purpose, responsibility, and legitimacy. Within the Polish-German context, it becomes a normative interface, a zone where legal traditions, economic pragmatism, and sustainability aspirations converge and sometimes collide.

Thus, the “legal fabric” that binds Polish and German corporate actors is not a seamless weave, but rather a dense and evolving tapestry of mutual influence, adaptive learning, and normative contestation. While the following chapters will explore in greater doctrinal detail how the interest of the company is understood in Poland, Germany, and other European jurisdictions, this chapter underscores a critical point: as an open-ended legal concept, the company's interest acquires concrete meaning only through the practices of those who invoke, interpret, and operationalise it – often across borders.

Therefore, to see the interest of the company through a transnational lens is to recognize that economic actors do not simply apply a fixed rule: they engage in a process of framing, translating, and adapting the concept to concrete situations, often drawing on legal ideas, institutional templates, and discursive practices from beyond their national borders. In doing so,

they contribute to the ongoing redefinition of what the company is for, and whom it is meant to serve. Ultimately, to examine the interest of the company from a transnational perspective is to acknowledge that company law is not simply a system of neutral rules, but a site of normative struggle over the meaning of the legitimate role of private power in society.

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