

2. The Interest of the Company in Poland: Dismantling the Narratives for Sustainability

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A. Introduction

The concept of “the interest of the company” plays a central role in company law, shaping decision-making frameworks and governance structures. In Poland, like in many other European countries, the interest of the company is firmly and explicitly embedded in the legal framework, yet it remains undefined in statutory provisions. As a result, the application of the concept requires interpretative effort, posing challenges for decision-makers within the company, their legal advisors, and, ultimately, the adjudicating courts. The outcome of this interpretation process is crucial, as it determines the substance of board members’ duty of care.

The debate in Polish scholarship and jurisprudence concerning the company’s interest has thus far primarily centred on issues related to conflicts between minority and majority shareholders, as well as related issues within corporate groups. This focus is understandable, given that companies in Poland typically have majority shareholders, resulting in a heightened risk of horizontal conflicts between shareholders.¹ From this discourse a prevailing narrative has emerged, framing the company’s interest as “a resultant of the shareholders’ interests” (see Sec. 4 below), which situates the understanding of the company’s interest in Poland squarely within the framework of the shareholder value model.²

The recent removal of a provision on board members’ duties from the European Commission’s initial CSDDD proposal has hindered a *quasi*-definition of the company’s interest at the European level;³ accordingly, renewed attention has been directed toward the extent to which national company law can accommodate sustainability objectives. Unlike developments in other EU Member States, the sustainability challenges of our time

1 Opalski, *Przegląd Prawa Handlowego* 2008/11, 16 (19).

2 Mazur, *Państwo i Prawo* 2022/7, 114 (120).

3 Weber/Mittwoch, *RECoL* 2023/1, 143 (161–162).

have yet to generate significant interest in Polish company law, let alone inspire legislative initiatives. The potential of the company's interest as a gateway for integrating sustainability objectives into corporate governance remains underexamined in legal scholarship.⁴ This chapter seeks to address this gap in the literature.

Our aim is to critically examine and dismantle the narratives that have surrounded the company's interest in Polish legal discourse to assess whether they facilitate or impede the pursuit of corporate sustainability. Corporate sustainability envisions corporate conduct as: (1) *environmentally sustainable*, ensuring long-term stability and resilience of ecosystems; (2) *socially sustainable*, upholding human rights and promoting good governance; and (3) *economically sustainable*, meeting the economic needs essential for stable and resilient societies.⁵

To this end, we examine how the narratives on the company's interest intersect with sustainability challenges to determine whether a sustainability-oriented reconceptualization of the company's interest requires legislative intervention. Our inquiry focuses on the Polish joint-stock company (*spółka akcyjna*, S.A.), including public and private joint-stock companies whose shares are not traded on an organised market.

The chapter is arranged in six sections. Following this introduction, Section 2 provides context on the historical detachment of the narratives on the company's interest. Section 3 explores the normative function of the company's interest within Polish company law, while Section 4 reconstructs the prevailing contemporary interpretations of the concept. Section 5 investigates the extent to which these narratives are receptive to sustainability objectives. Finally, Section 6 evaluates whether legislative intervention is necessary to redefine the company's interest in alignment with the sustainability paradigm.

4 Preliminary threads of an emerging discussion related explicitly to Polish company law can be found in: Opalski, *Przegląd Prawa Handlowego* 2025/4, 4; Olszak/Stokłosa, *Prawo i Więź (Law & Social Bonds)* 2025/1, 346; Weber/Mazur/Szczęśna, *Przegląd Prawa Handlowego* 2022/6, 20; Chałaczkiwicz-Ładna/Sójka/Jerzmanowski, *European Business Law Review* 2023/4, 665; Dumkiewicz/Szczotka/Kopaczyńska-Pieczniak/Weber-Elżanowska, p. 218 (226); Weber/Mittwoch, *Review of European and Comparative Law* 2023/1, 143; Radwan/Regucki, *International and Comparative Corporate Law Journal* 2012/32, 1 – 48.

5 Liao/Sjåfjell/Argyrou/Liao/Sjåfjell/Argyrou, p. 1 (2).

B. *Disconnected origins of the company's interest*

The evolution of company law in Poland is intricate, shaped by the nation's turbulent history.⁶ A nuanced understanding of how the company's interest is interpreted today requires analysis that goes beyond contemporary legal frameworks and doctrinal views. This section examines whether historical interpretations of the company's interest can offer insights into contemporary analysis and to what extent historical developments may, in fact, constrain the applicability of the historical method.

I. *Early developments.*

The growing presence of trade companies (*kompanie handlowe*), the immediate precursors to joint-stock companies,⁷ on Polish territory can be traced back to the second half of the 18th century.⁸ A defining characteristic of these entities was their strong connection with the state – or more specifically, with the royal court. The privilege of establishing a trade company was reserved for the monarch. In practice, it was common for founding acts to be approved by parliamentary statutes (*konstytucje sejmowe*), which granted these companies public-law concessions, land endowments, and other privileges.⁹ The prevailing doctrinal view is that the founding acts of joint-stock companies – referred to at the time as “laws” (*ustawy*) – functioned as *lex specialis* to the general substantive and procedural private law.¹⁰ Simultaneously, all companies were subject to state oversight, initially by the Treasury Commissions (*Komisje Skarbowe*) and later by the Treasury Department of the Permanent Council (*Departament Skarbowy Rady Nieustającej*). In the absence of specific regulations, these bodies were also responsible for resolving company-related disputes.

6 Frąckowiak, *Acta Universitatis Wratislaviensis* 2015/101, 45 (45).

7 Dąbrowska, *Zeszyty Prawnicze* 2019/4, 7.

8 Michalski, *Monitor Prawa Handlowego* 2017/2, 6 (8). Some authors refer to these entities as joint stock companies (*spółki akcyjne*), see Kula, p. 56; Mądzik, *Rocznik Lubelski*, 1979, 77 (84).

9 Bałtruszajtys, *Czasopismo Prawno-Historyczne* 1959/2, 85–110.

10 Bałtruszajtys, *Czasopismo Prawno-Historyczne* 1959/2, 85–110; Michalski *MPH* 2017/2, 6 (10).

II. Partitions and legal fragmentation.

The end of the 18th century marked the beginning of the partitions of Poland by the neighbouring empires, resulting in an increasingly fragmented legal landscape that persisted for over a century.¹¹ Following the restoration of independence in 1918, five distinct legal regimes governed commercial matters in different parts of Polish territory:¹² (1) Napoleon's Commercial Code of 1807 (with its respective amendments),¹³ (2) the Digest of Laws of the Russian Empire of 1835,¹⁴ (3) the German *Handelsgesetzbuch* of 1897, (4) the Austrian *Allgemeines Handelsgesetzbuch* of 1863, and (5) Hungarian commercial law, which applied in the regions of Spiš and Orava.

As a result of the profoundly fragmented legal landscape, doctrinal discourse on commercial law and theories of the legal person were influenced by multiple legal systems. The fragmentation of the legal landscape had a lasting impact on the development of legal thought, making it difficult to identify a singular, coherent tradition regarding the company's interest. While key writings from that era offer insights, they remain isolated contributions rather than a unified doctrinal foundation. For example, writing in Polish and engaging with German scholarship, *Longchamps de Bérrier* developed his own theory of the legal person, explicitly distinguishing the interest of a joint-stock company from the individual interests of its shareholders.¹⁵ However, such context-specific and fragmented scholarly contributions do not constitute a cohesive intellectual heritage that could serve as a meaningful historical foundation for later interpretations of the

11 Following the first partition in 1772, Russia, Austria, and Prussia annexed large parts of Poland. The second partition in 1793 further reduced Poland's territory, with Prussia and Russia taking more land. In 1795, the third partition led to the total erasure of Poland from the map of Europe, as the remaining Polish lands were divided among the three powers, and Poland ceased to exist as an independent state.

12 See: Górnicki, *Prawo i Więź* 2022/4, 618 (618–619); Janczewski, p. 15; Michalski, *Monitor Prawa Handlowego*, 2017/2, 6 (14).

13 See in detail: Michalski/Michalski, pp. 65–81. After the first partition, the Duchy of Warsaw (*Księstwo Warszawskie*), a French client state, was created in 1807 under the influence of Napoleon Bonaparte. It was a semi-independent entity with its own constitution and legal system but still heavily influenced by France. The Duchy served as a significant symbol of Polish sovereignty. However, it lasted only until 1815, when the Congress of Vienna redrew Europe's borders, and most of the Duchy's territory was incorporated into the Russian Empire as the Congress Kingdom of Poland (*Królestwo Kongresowe*).

14 See in detail: Michalski/Tarkowski, pp. 105–125.

15 Longchamps de Bérrier, pp. 165–199.

company's interest. Thus, it was the absence of a shared doctrinal tradition, rather than its presence, that characterized the legal landscape prior to the unification of modern Polish company law.

III. *Independence and unification.*

The Act on Joint-Stock Companies (*Prawo o spółkach akcyjnych* – AJSC), enacted in 1928, was the first modern Polish company law to regulate joint-stock companies uniformly across the entire Polish territory.¹⁶ It introduced a registration-based system (*system meldunkowy*) under which a joint-stock company was formed and acquired legal personality upon its entry into the register, without requiring an administrative concession or prior approval.¹⁷ However, the AJSC made an exception for companies deemed to be of national importance or public utility, requiring their formation and charter to be approved by the Minister of Industry and Trade.¹⁸ This provision made clear that public utility considerations did not apply universally to all joint-stock companies: rather, they only applied to a select category of joint-stock companies. By incorporating elements of the concessionary system, these regulations sparked criticism from both the business community and legal scholars, who viewed them as a constraint on entrepreneurial freedom and legal certainty.¹⁹

Parallel to the adoption of the AJSC, the Polish Codification Commission (*Komisja Kodyfikacyjna*) was actively working on unifying the commercial law, a process that culminated in the enactment of the Commercial Code (*Kodeks handlowy*, “CC”).²⁰ Like the AJSC, the CC did not generally condition the establishment of a joint-stock company on public utility requirements.

16 Regulation of the President of the Republic of Poland of 22 March 1928 – Law on Joint Stock Companies (Journal of Laws No. 39, item 383). Dz. U. Nr 39, poz. 383. The text of the regulation with the justification of the Codification Commission of the Republic of Poland appeared in the study by Namitkiewicz: *Polish Stock Law*, Warsaw 1928.

17 Michalski, *Monitor Prawa Handlowego* 2017/3, 6 (9).

18 This exception also applied to companies engaged in banking and insurance activities, requiring their statutes to be approved by the Minister of the Treasury in consultation with the Minister of Industry and Trade.

19 Bloch, *Przegląd Prawa Handlowego* 1928/3, 116; Benis, p. 13.

20 Regulation of the President of the Republic of Poland of 27 June 1934 – Commercial Code (Journal of Laws No. 57, item 502).

The concept of the company's interest was embedded in specific provisions of the CC. It appeared as a prerequisite for depriving shareholders of their pre-emptive rights (Article 435 § 2 CC), in the plural form (*interesy spółki*, "company's interests") when addressing conflicts of interest between the company and a management board member (Article 373 CC), and as a criterion for the annulment (*uchylenie*) of a resolution of the general meeting (Article 414 CC).²¹ Despite these explicit references, the CC did not provide a legal definition of the company's interest, nor did the legislative materials elaborate on its meaning.

Given the abrupt cessation of the CC's applicability in 1939 due to the outbreak of the Second World War, its brief period of enforcement did not permit the development of a substantial body of doctrinal analysis or jurisprudence interpreting the concept of the company's interest. Consequently, only a few scattered references to the concept exist in the legal literature of that period.

Allerhand, one of the drafters of the CC, explained that a company's interests are harmed when "its revenues are diminished, or the company's survival is at risk".²² Referring to Article 435 § 2 CC, which stipulated that shareholders could be deprived of their pre-emptive rights only in the company's interest, *Allerhand* emphasized that such deprivation could occur solely "for the benefit of the company, not merely for a specific group of shareholders".²³ Consequently, *Allerhand* attributed a notion of separation and autonomy to the company's interest, explicitly distinguishing it from the interests of shareholders. However, aside from referencing economic indicators (such as revenues), *Allerhand* did not elaborate further on the substance of the company's interest.

Similarly, in discussing the annulment of general meeting resolutions that violate the company's interest, *Dziurzyński* asserted that a resolution could be contested if it infringed upon "the interest of the company as such" (*interes spółki jako takiej*).²⁴ As an example of such conduct infringing the interest of the company, *Dziurzyński* cited a situation in which shareholders act to benefit a competing company in which they also hold

21 Current literature distinguishes the singular form "company's interest" (*interes spółki*) from the plural form "company's interests" (*interesy spółki*), arguing that the latter describes the areas of the company's business activities, relationships with contractors, financial institutions, and other partners, see: Opalski/Pabis Art. 422 CCC mn. 83.

22 *Allerhand*, pp. 380, 642.

23 *Allerhand*, pp. 380, 664.

24 *Dziurzyński/Fenichel/Honzatko/Dziurzyński*, Art. 240 CCC note 6.

shares, prioritizing their personal gain over the well-being of the company. This interpretation clearly indicates that *Dziurzyński* viewed the company's interest as conceptually distinct from the interests of its shareholders.

Although *Namitkiewicz*, another prominent legal scholar of the time, did not explicitly address the concept of the company's interest, his work provides an important interpretative backdrop. *Namitkiewicz* defined commercial law as "a set of normative provisions that lead to a balancing of economic interests, resulting from activities aimed at generating profit through the exchange of goods, thereby guiding the moral and economic conduct of the individuals involved in such activities, in line with a sense of appropriate social ends".²⁵ In this view, commercial law functions as a system of rules that shape the behaviour of economic actors in accordance with broader societal objectives. *Namitkiewicz* further argued that ensuring morally sound conduct through commercial law is essential for both the safety and efficiency of commerce.²⁶ He emphasized that commercial law should incorporate "social-service norms" (*normy społeczno-służbowe*) that seek to advance broader social objectives, particularly by protecting weaker parties in legal relationships whose interests might otherwise be insufficiently safeguarded.²⁷

A similar broad contextual perspective emerges in the writings of *Dniestrzansky*, who stressed that "the focus of economic law is not the individual with their needs and aspirations, but society itself, which seeks ways to realise its interests, even if this contradicts the selfishness of individuals or the abuse of state power".²⁸ This perspective underscores the idea that economic regulation must balance private interests with broader public objectives, reflecting a fundamental tension between individual economic freedoms and societal welfare in shaping legal norms.

Taken together, these context-specific perspectives offer valuable insights but fall short of forming a cohesive doctrinal foundation for interpreting the company's interest through the historical method. While scholars such as *Dziurzyński*, *Namitkiewicz*, and *Dniestrzansky* addressed issues related

25 *Namitkiewicz*, *Przegląd Prawa Handlowego* 1992/1, 24 (26) – reprint of article from *Przegląd Prawa Handlowego* 1925/2; translation by the authors.

26 *Namitkiewicz*, *Przegląd Prawa Handlowego* 1992/1, 24 (27).

27 This may be the reason why *Namitkiewicz* critiqued the CC for minimising the provisions of public policy – *Namitkiewicz* *Przegląd Prawa Handlowego* 1992/1, 24 (28); *Górnicki*, *Acta Universitatis Wratislaviensis* 2015/101, 63 (89–90).

28 *Dniestrzański*, *Czasopismo Prawnicze i Ekonomiczne* 1932/1, 340 (361); translation by the authors.

to corporate governance, economic regulation, and the balance between private and public interests, their analyses remained limited in scope and often indirect in relation to the company's interest as a distinct legal concept. As a result, while these writings can be cited to support specific arguments, any attempt to construct a coherent historical doctrine of the company's interest from them would be misplaced, underscoring the limitations of relying on historical interpretations as an authoritative basis for defining the company's interest in Polish company law today.

IV. Dormancy in a planned economy.

Although the CC formally remained in effect after 1945, its practical application was systematically curtailed in response to the political and economic transformations that occurred as Poland fell within the Soviet sphere of influence. The new political and economic system, built on the principles of special protection of state property, nationalization of private ownership, and a centrally planned economy, left little room for the traditional commercial law framework. As a result, commercial law as outlined by the CC was effectively replaced by economic law (*prawo gospodarcze*),²⁹ or more accurately "socialised trade law" (*prawo obrotu uspołecznionego*), which was founded on the differentiation of the category of social property.

The marginalization of commercial law reached its peak with the introduction of the Civil Code,³⁰ the enactment of which also revoked the bulk of the CC.³¹ Although certain provisions from the CC remained in force, including those regulating joint-stock companies, the dominant political and economic system rendered commercial law largely obsolete. As a result, commercial law entered a prolonged period of dormancy, with its function markedly diminished. During this time, neither meaningful academic discourse nor jurisprudence on the concept of the company's interest emerged, further reinforcing the absence of a coherent doctrinal foundation for its historical interpretation.

29 Kułak, *Studia nad Autorytaryzmem i Totalitaryzmem* 2021/3, 73 (81).

30 Act of 23 April 1964 – Civil Code (Journal of Laws No. 16, item 93).

31 See: Article VI of the Act of 23 April 1964 Introductory provisions of the Civil Code (Journal of Laws No. 16, item 94, as amended).

V. Transition to a market economy.

The transition to a market economy in Poland, initiated in 1989, served as a catalyst for the revival of commercial law. This transformation was set in motion by the efforts of the Independent Self-Governing Trade Union “Solidarność” (*Niezależny Samorządny Związek Zawodowy “Solidarność”*),³² whose negotiations with the government led to significant legal and economic reforms.³³ However, this momentum was temporarily disrupted by the imposition of martial law in December 1981, which delayed the restructuring process. The process of transformation resumed with negotiations between the resurgent *Solidarność* and state authorities, culminating in the Round Table Talks of April 1989. Legislative reforms, including the Act of 23 December 1988 on Economic Activity,³⁴ laid the foundation for Poland’s transition to a market economy and the re-emergence of commercial law as a vital framework for regulating economic relations in Poland.

As Poland transitioned to a market economy, the dormant provisions of the CC that had remained in effect, including the provisions regulating joint-stock companies, gradually regained relevance through practical application. However, during this period of rapid economic transformation, scholarly attention was directed less toward doctrinal issues like the company’s interest and more toward the broader question of whether a new codification of commercial law was necessary and if so, what form it should take. This debate gained prominence following the establishment of the Codification Commission (*Komisja Kodyfikacyjna*) in 1997.³⁵

32 In 1980, on August 30 in Szczecin, August 31 in Gdańsk, September 3 in Jastrzębie, and September 10 at the Katowice Steelworks, representatives of the strike committees and the ruling party signed the August Agreements (*Porozumienia Sierpniowe*). As a result, on September 17, 1980, in Gdańsk, workers’ representatives from across Poland established the nationwide Independent Self-Governing Trade Union “Solidarność”.

33 A gradual transition began, moving away from a management system for state-owned enterprises dominated by administrative directives, toward a more market-oriented approach. A significant influence on the functioning of economic entities was gained by employee self-management, which ceased to be dependent on party-controlled and union-controlled bodies closely linked to state power, instead becoming a true representation of workers.

34 Act of 23 December 1988 on economic activity (Journal of Laws No. 41, item 324).

35 The members included Professor Stanisław Sołtysiński, Professor Andrzej Szajkowski and Professor Janusz Szwaja. Later Professor Janusz Szwaja was replaced by Professor Andrzej Szumański.

Legal commentary on the CC during its revival in the 1990s reinforced the general understanding of the distinction between the company's interest and the interests of its shareholders but remained limited to specific contexts. *Sołtysiński*, analysing the annulment of shareholder resolutions, underscored that the company's interest is compromised when shareholders – particularly those with significant influence over management – diminish the company's assets through improper or fictitious transactions.³⁶ He further emphasized that the misuse of corporate resources to benefit only a select group of shareholders violates both the company's interest and the rights of other shareholders. *Sołtysiński* observed that “the capital invested by all shareholders and the results of the company's activities are exploited in the interest of only some shareholders, thereby violating both the company's interest and the interests of the remaining shareholders”.³⁷ This reasoning affirmed the company's interest as an independent legal concept, separate from the aggregate interests of individual shareholders.

Similarly, *Frąckowiak* argued that a resolution of the general meeting contravenes the company's interest when it prioritizes the interests of shareholders or third parties at the expense of the company itself. This perspective further reinforces the idea that the company's interest is a distinct legal concept, separate from both shareholder interests and external considerations.³⁸ However, like *Sołtysiński's* analysis, *Frąckowiak's* interpretation remained confined to specific contexts, without advancing a broader doctrinal framework for defining the company's interest within Polish company law.

In jurisprudence, the consideration of non-shareholder interests in defining the company's interest was embodied in the Łódź Court of Appeal's judgment of 7 March 1994.³⁹ The case concerned a capital increase for a bank, and the court was tasked with assessing whether the safeguarding of the company's interest was a crucial prerequisite for depriving shareholders of their pre-emption rights under Article 435 § 2 CC. The court ultimately ruled that the exclusion of existing shareholders' pre-emption rights was justified if the exclusion facilitated the efficient supply of capital and strengthened the bank's financial condition. Notably, the judgment emphasized that strong supply of capital would also benefit the bank's account

36 Sołtysiński/Szajkowski/Szwaja/Sołtysiński, p. 77.

37 Sołtysiński/Szajkowski/Szwaja/Sołtysiński, p. 108.

38 Frąckowiak/Kidyba/Kruczalak/Pyziół/Weiss/Frąckowiak, p. 594.

39 Appeal Court 7.03.1994 – ACr 21/94 published in *Wokanda* 1994/11, p. 54.

holders (depositors), suggesting that stakeholders, not just shareholders, could be considered in the interpretation of the company's interest.⁴⁰ While this ruling indicated that the company's long-term stability and financial health might, in certain contexts, require taking non-shareholder interests into account when interpreting the company's interest, it did not establish a systematic framework for integrating non-shareholder considerations into the general understanding of the company's interest.

VI. *The new Commercial Companies Code.*

The Commercial Companies Code ("CCC"), developed by the Codification Commission (*Komisja Kodyfikacyjna*), was adopted in 2000 and remains in force today, albeit with numerous amendments.⁴¹ The Codification Commission adhered to the "continuation directive", which sought to maintain the core concepts, terminology, and structure of the earlier CC wherever possible.⁴² However, in the case of joint-stock companies, several fundamental aspects were revised. Notably, the partial concession system was entirely abandoned, allowing for joint-stock companies to be established for any economic or non-economic purpose without the need for prior administrative approval.

The primary objective of the CCC was to swiftly revive company law and establish a legal framework that would facilitate economic activity while ensuring alignment with the standards required for Poland's anticipated accession to the European Union.⁴³ As a result, legislative discussions prioritised practical considerations over abstract or theoretical debates.⁴⁴ Consequently, it is unsurprising that the legislative materials contain no substantive discussion on the concept of the company's interest. Instead, the focus remained on creating a functional and investor-friendly regulatory environment, leaving the interpretation and development of the company's interest largely to judicial decisions and scholarly discourse.

40 Okolski/Modrzejewski/Gasiński, *Przegląd Prawa Handlowego* 2000/8, p. 11; Okolski/Modrzejewski/Gasiński PPH 2002/10, p. 24; Radwan, p. 275.

41 Act of 15 September 2000. Commercial Companies Code (i.e. Journal of Laws of 2024, item 18, as amended).

42 Justification of the CCC, p. 2; Sołtysiński, *Państwo i Prawo*, 2000/11, pp. 4–6.

43 Justification of the CCC, p. 9.

44 For a description of the main features of the CCC, as well as of the sources of foreign inspiration in its drafting, see: Baums/Hopt/Horn/Sołtysiński, p. 533; Drobniog/Hopt/Kötz/Mestmäcker/Sołtysiński, pp. 70–72.

Although the CCC is clearly influenced by the German legal tradition that carried over from the CC, and German experts were consulted by the Codification Commission,⁴⁵ there is no indication of an intent to fully transplant German legal principles into the CCC. The drafting process also drew inspiration from various other legal systems, including French, Italian, Austrian, Dutch, Swiss, and American company law.⁴⁶ Given this diverse set of influences, it is not feasible to argue that German, or any other foreign academic discussions, can be directly applied to interpretation of the company's interest within contemporary Polish company law. Instead, the company's interest must be understood within the specific historical, economic, and legal context that has shaped Poland's company law.

VII. *Interim conclusion.*

The evolution of Polish company law has been shaped by shifting legal regimes, economic transformations, and legislative pragmatism rather than by stable doctrinal tradition. The historical trajectory of the concept of the company's interest in Polish law is marked by fragmentation and discontinuity. The practical priorities that influenced both legislation and legal scholarship – particularly during the drafting of the currently-applicable CCC – led to the concept of the company's interest being introduced in an undefined and “naked” form, without a cohesive theoretical foundation. As a result, attempts to reconstruct the meaning of the company's interest by drawing on historical sources are inherently flawed. On the one hand, claims that the concept of shareholder primacy is “strongly rooted” in the Polish corporate governance tradition⁴⁷ are not supported by historical analysis. On the other hand, the explicit rejection of shareholder primacy or the adoption of an alternative theoretical model are not supported either. The absence of a clear and traceable doctrinal lineage means that any contemporary interpretation of the company's interest must be developed independently, rather than derived from an inconsistent and often disjointed historical record.

45 Prof. Marcus Lutter led the team of German experts that participated in the work.

46 Justification of the CCC, p. 22; Oplustil/Radwan, pp. 466–69.

47 As supported by Opalski, *Przegląd Prawa Handlowego* 2022/4, p. 9.

C. The normative function of the company's interest

I. Terminological Foundations

To begin with, it is essential to note that under the contractual basis of the joint-stock company, shareholders commit to pursuing a common objective (*wspólny cel*) through the contribution of assets and, if stipulated by the company's charter, through cooperation in other specified forms (Article 3 CCC). The legislature does not specify any ramifications as to the common objective. The prevailing view is that in a joint-stock company, the common objective may encompass any legally-permissible aim – whether economic, such as profit generation, or non-economic, including scientific, cultural, or social (including charitable) goals.⁴⁸

The idea of the shareholders' common objective, as mentioned in Article 3 CCC, should be distinguished from the objective of the contractual obligation (*cel umowy*), which corresponds to what can be called the company's objective (*cel spółki*).⁴⁹ However, while these concepts are distinct, the common objective of the shareholders is inherently reflected in, and informs, the company's objective.⁵⁰

The company's objective is further solidified through the determination of the object of the company's activity (*przedmiot działalności spółki*), which must be outlined in a joint-stock company's charter (Article 304 § 1 sec. 2 CCC).⁵¹ The object of the company's activity can be formulated in a descriptive manner in the charter.⁵² Designation of the object of the com-

48 Opalski/Wiśniewski, Art. 3 CCC mn. 16; Sołtysiński/Szajkowski/Szumański/Szwa-
ja/Szajkowski Art. 3 CCC mn. 28; Szumański/Włodyka, p. 4; Michalski, p. 19; an
opposing view was presented by Romanowski, who argues that a joint stock company
may only be founded to conduct economic activity, see: Szajkowski/Romanowski, pp.
170–173.

49 Opalski/Wiśniewski, Art. 3 CCC mn. 20. Certain authors also equate the common
objective with the company's objective, see: Kidyba/Skubisz/Okolski/Wajda, p. 257;
Szumański, *Przegląd Prawa Handlowego* 2010/5, 9 (12).

50 Romanowski, *SPP* 2015/3, 63 (63).

51 Sołtysiński/Szajkowski/Tarska, p. 144; Michalski, p. 26.

52 The prevailing interpretation that a joint-stock company's charter must strictly use
PKD (*Polska Klasyfikacja Działalności* – Polish Classification of Activities) terminol-
ogy is based on a fundamental misunderstanding of the PKD's function, which is
meant for statistical analysis. Nevertheless, this rigid approach, imposed by most
registration courts, has influenced business practice, leading to the widespread use of
PKD terminology in describing the object of a company's activities in charters – see
Opalski/Wiśniewski, Art. 304 CCC mn. 13.

pany's activity also plays an auxiliary role in interpreting the company's interest.⁵³

II. Diverse Normative Applications

The concept of the company's interest (*interes spółki*) is explicitly referenced in several provisions of the CCC. However, neither the CCC itself, the legislative materials related to its adoption, nor any other legal act provides a formal legal definition or explicit guidance on the interpretation of the company's interest. Similarly, the corporate governance code issued by the Warsaw Stock Exchange (*Dobre Praktyki Spółek Notowanych na GPW 2021* („DPSN2021”)⁵⁴ mentions the company's interest without offering a definition. Consequently, under the current legal framework, the concept remains open to interpretation, giving rise to challenges stemming from competing narratives and the uncertainties surrounding their coexistence.⁵⁵

Additional complexity arises from the conceptual and linguistic distinctions between the common objective (*wspólny cel*), the company's objective (*cel spółki*), and the object of the company's activities (*przedmiot działalności spółki*) on one hand, and the company's interest (*interes spółki*) on the other. While the former offer valuable insights into how the company's interest might be understood, drawing clear distinctions between them is often challenging. Notably, the company's interest is frequently described as functionally linked to the company's objective – meaning that any actions taken to achieve the company's objective must align with the company's interest.⁵⁶ Conversely, some have argued that the company's interest plays a defining role in shaping the company's objective.⁵⁷

The concept of the company's interest serves as a fundamental criterion in several key areas of Polish company law. The company's interest determines the duty of joint-stock company management board members to abstain from decision-making in cases where a conflict of interest arises between the member and the company (Article 377 CCC). Additionally,

53 Opalski/Wiśniewski, Art. 304 CCC mn. II.

54 Warsaw Stock Exchange, *Dobre Praktyki Spółek Notowanych na GPW 2021*, 2021, https://www.gpw.pl/pub/GPW/pdf/DPSN_2021.pdf. The code applies to issuers of shares listed on the WSE's main market.

55 Szajkowski/Romanowski, p. 141; Opalski/Pabis, Art. 422 CCC, mn. 56.

56 Kidyba/Skubisz/Okolski/Wajda, p. 264.

57 Szajkowski/Romanowski, p. 131.

the company's interest functions as a standard for judicial review of shareholder resolutions, guiding the proper exercise of voting rights at the general meeting (Article 422 §1 CCC). Furthermore, pursuant to Article 433 §2 CCC, the general meeting may only partially or entirely deprive shareholders of their pre-emptive rights to subscribe for shares if it is in the company's interest. Finally, in the context of cross-border mergers, divisions, and conversions under the provisions of from the Company Law Directive, the company's interest also provides a basis for courts to proceed with a cross-border reorganization despite a pending claim for annulment of the underlying resolution (for mergers, see Article 516¹⁸ §2 CCC).⁵⁸

III. Normative Implications for Board Members' Duties

The company's interest serves as a normative principle that shapes the responsibilities of a joint-stock company's governing bodies and their members.⁵⁹ Although neither the CCC nor the DPSN2021 explicitly mandate decision-making in accordance with the company's interest, it is widely accepted that all corporate decisions must be guided by this principle.⁶⁰ The interpretation of the company's interest, therefore, determines the fundamental standard for assessing the propriety of board members' actions.⁶¹

The appointment of a member of the management or supervisory board establishes an organizational relationship (*stosunek organizacyjny*) between the individual and the company.⁶² This relationship forms the basis of the duties vested in a board member in their capacity as a board member: the obligation to diligently (i.e. with due care)⁶³ and loyally⁶⁴ perform one's

58 Motives 10 and 12 of the Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (OJ L 321, 12.12.2019, p. 1–44).

59 Opalski Przegląd Prawa Handlowego 2008/11, 16 (17); Opalski/Opalski, Comments before Art. 368 CCC mn. 59.

60 Davies/Hopt/Nowak/Van Solinge/Sołtysiński, p. 538; Opalski Przegląd Prawa Handlowego 2008/11, 16 (17).

Opalski/Opalski, Art. 368 CCC mn. 14; Kappes, p. 3; Chałaczkiwicz-Ładna/Sójka/Jerzmanowski, European Business Law Review 2023/4, 665 (674).

61 Opalski/Opalski, Comments before Art. 368 CCC mn. 59.

62 Opalski/Opalski, Art. 368 CCC mn. 16.

63 In other legal systems: *duty of care*, *Sorgfaltspflicht*, *devoir de diligence*.

64 In other legal systems: *duty of loyalty*, *Treuepflicht*, *devoir de loyauté*.

duties in the interest of the company.⁶⁵ Importantly, Polish company law does not treat management or supervisory board members as direct or indirect representatives of their appointing parties or as representatives of the majority shareholders.⁶⁶ Board members are granted independent and sovereign authority to make decisions in the interest of the company on matters within the competencies of their respective boards.⁶⁷ While shareholders may utilise legal instruments to limit the discretion of board members – especially through the right of dismissal – they cannot undermine the decision-making autonomy of the board members.⁶⁸ Individuals appointed by minority shareholders, specific shareholders, or employees are equally obliged to fulfil their duties in the company’s interest.

In the two-tier board structure of the joint-stock company,⁶⁹ the company’s interest informs both the duties of the management board members, which include administering the company’s affairs and representing it vis-à-vis third parties, and the oversight and control responsibilities of the supervisory board members. Therefore, understanding the company’s interest helps clarify the duty of care (*wzorzec należytej staranności* – Article 483 CCC) and the content of the duty of loyalty required of board members, which provides guidelines for the decision-making processes.⁷⁰ Thus, the interpretation of the company’s interests is decisive for shaping board members’ conduct and, as a result, the conduct of the company itself.

The decision-making processes of board members that contravene the interest of the company may constitute grounds for their dismissal. Responsibility for dismissal of a management board member lies with the supervisory board unless stipulated otherwise by the statute (Article 368 § 4 CCC). However, the general meeting can always conduct a dismissal (Article 368 § 4 CCC). A specific “important cause” (*ważny powód*) for dismissal must only be provided if the company’s charter contains such a requirement (Article 370 § 2 CCC). In such cases, depending on the severity of the violation, misalignment of the decision-making process with the company’s interests may meet the criteria for an important cause.⁷¹

65 Opalski/Opalski, Comments before Art. 368 CCC mn. 42, 44–47.

66 Opalski, *Przegląd Prawa Handlowego* 2008/11, 16 (22).

67 Opalski/Opalski, Comments before Art. 368 CCC mn. 57.

68 Opalski, *Przegląd Prawa Handlowego* 2008/11, 16 (22).

69 Davis/Hopt/Nowak/Van Solinge/Sołtysiński, pp. 524–531; Vicari/Schall/Oplustil, pp. 706–738; Fleckner/Hopt/Sołtysiński, pp. 764–776.

70 See Stefanicki, pp. 172–230.

71 Szumański, *Przegląd Prawa Handlowego* 2006/5, 4 (5).

Similarly, supervisory board members may be dismissed by the general meeting at any time (Article 370 §1 CCC and Article 386 §2 CCC). If the company's charter stipulates that dismissal requires an important cause, violating the company's interest may be adequate grounds for such action. In 2007, the Supreme Court issued a contentious resolution, holding that a dismissed board member lacks standing to challenge the resolution of the general meeting regarding their dismissal, even when the board member claims that the resolution was adopted in violation of the law – for example, without the necessary quorum or majority of votes.⁷²

Article 483 §1 CCC stipulates that a board member is accountable to the company for damages caused by actions or omissions that violate legal requirements or the company's charter unless the board member can prove that they were not at fault. This provision governs civil liability arising from the failure to fulfil, or the improper fulfilment of, duties stemming from the organisational relationship between the company and the board member. To hold a board member liable, a claimant must establish: (i) the unlawfulness of the board member's actions or omissions, demonstrated by a breach of duties arising from their organisational relationship with the company; (ii) the existence and extent of the damage suffered by the company; and (iii) a causal link between the board member's actions or omissions and the damage incurred by the company. Notably, Article 483 §1 CCC provides for a presumption of fault, requiring the board member to prove that the harm faced by the company resulted from factors outside their control.

Under Article 483 §1 CCC, unlawfulness includes violations of any generally applicable legal provisions that govern the operations of the company, as well as breaches of the company's charter or the board's internal regulations.⁷³ Crucially, unlawful conduct that triggers liability under Article 483 §1 CCC includes a board member's negligent performance of their duties.⁷⁴ The nature of a board members' duties vis-à-vis the company is addressed by Article 377¹ §1 CCC (management board) and Article 387¹ §1 CCC (supervisory board). According to these provisions, board members, in fulfilling their responsibilities, must exercise the diligence that corresponds to the professional nature of their activities and uphold loyalty to the company. This broadly-defined standard must be specified

72 Supreme Court 1.03.2007 – III CZP 94/06, OSNC 2007, No. 7–8, item 95.

73 Opalski/Opalski, Art. 483 CCC mn. 15.

74 Opalski/Opalski Art. 483 CCC mn. 17.

and “filled with substance” in each specific case. The boundaries of “loyalty” are determined by the company’s interest.⁷⁵ In other words, when assessing the duties of board members in the context of their relationship with the company, a key factor is determining the company’s interest as “a creditor”.⁷⁶ Therefore, interpreting the notion of the company’s interest is of paramount significance in evaluating board members’ performance of duties and potential civil liability for actions infringing upon the company’s interest.⁷⁷

As detailed above, a board member’s failure to act in accordance with the company’s interest may serve as the basis for civil liability under Article 483 CCC.⁷⁸ If the company fails to file a lawsuit for damages within one year of when the board member’s violation of the company’s interest was disclosed, Article 486 §1 CCC provides that any shareholder may file such a lawsuit (the so-called *actio pro socio*). Standing to sue is granted to shareholders regardless of the size of their shareholding.

It must be noted that, as in many other jurisdictions, the actual enforceability of a specific understanding of the board members’ duty of care through civil liability is significantly limited by the protective function of the business judgment rule. In Poland, the business judgment rule was introduced as an explicit statutory provision in 2019.⁷⁹ According to Art. 483 § 2 CCC, a board member does not breach the duty of care if, in acting loyally towards the company, they operate within the bounds of justified business risk. Actions that are within the bounds of justified business risk include those that are based on information, analyses, and opinions that should be taken into account when making a diligent assessment.

75 Opalski, p. 145; Opalski, *Przegląd Prawa Handlowego* 2008/11, 16 (22); Supreme Court 24.7.2014. – II CSK 627/13, Lex/el, in which the Supreme Court stated that when making decisions concerning the management of the company’s affairs, a member of the management board should be guided exclusively by the company’s interest, and culpable actions carried out in excess of the limits of economic risk are contrary to the company’s interests and constitute unlawful action.

76 Opalski/Opalski, Art. 483 CCC mn. 17.

77 Szajkowski/Romanowski, p. 142.

78 Opalski, *Przegląd Prawa Handlowego* 2008/11, 16 (16); Szajkowski/Romanowski, p. 142.

79 Act of 9 November 2018 amending certain acts to simplify tax and economic law for entrepreneurs (Journal of Laws of 2018, item 2244) (*Ustawa z dnia 9 listopada 2018 r. o zmianie niektórych ustaw w celu wprowadzenia uproszczeń dla przedsiębiorców w prawie podatkowym i gospodarczym* (Dz.U. z 2018 r. poz. 2244)).

This, however, should not be understood as rendering the concept of the company's interest irrelevant to board members' conduct. On the contrary, the way the company's interest is defined fundamentally shapes the content of the duty of care, irrespective of the availability or effectiveness of sanctions. Moreover, civil liability is not the sole mechanism through which compliance or breach of the duty of care may be addressed. Other relevant consequences include reputational damage and internal disciplinary measures, such as dismissal.

Finally, even if the imposition of civil liability based on a particular understanding of the company's interest remains limited, the explicit anchoring of the definition of the company's interest in law may function as an enabling mechanism: it may reduce legal uncertainty, which could facilitate the practical adoption of that interpretation by board members. For example, a definition of the company's interest that incorporates sustainability considerations may decisively affirm the legitimacy of taking environmental and social factors into account in corporate decision-making.

D. Dominant narratives on the company's interest

Given the role of the company's interest in shaping board members' duties, it is unsurprising that efforts to concretely define the company's interest have sparked controversy. In the following discussion, we categorize the emerging interpretative efforts into dominant narrative streams.

At a broad conceptual level, the company's interest can be understood as its "sphere of aspirations" (*sfera dążeń*).⁸⁰ Disagreements surrounding the definition of the company's interest arise from attempts to delimit this sphere – essentially, there are differing opinions as to what the substantive content of "the company's interest" is, though all are aimed at providing a clear guiding principle for board members in the execution of their duties.⁸¹

A more granular distinction can be drawn between the *abstract* company's interest and the *concrete* company's interest.⁸² The latter refers to a specific company and is associated with a particular decision or course

80 Opalski, p. 145.

81 Opalski, p. 145.

82 Kappes, p. 5; Bilewska, pp. 63–65, who similarly distinguishes between a company's material and formal interest.

of action the company is about to undertake.⁸³ In this sense, the concrete company's interest is not a static concept; instead, it evolves throughout the course of the company's existence.⁸⁴ The concrete understanding of the company's interest naturally builds upon the foundational assumptions derived from the common objective, the company's objective, and the object of the company's activity (see Sec. 3 above).⁸⁵

This chapter explores the emerging narratives surrounding the interpretation of the abstract company's interest, which applies universally to all joint-stock companies and reflects a shared understanding of their nature.⁸⁶ The abstract company's interest functions as an "instruction manual", providing guidelines for the companies and context for the company's decisions that clarify their concrete interest. Thus, the framework for understanding the abstract company's interest is indispensable in determining a company's concrete interest.

The debate surrounding the abstract company's interest in Polish law centres on two key questions. First, does the company, as an entity, possess an independent interest, or is its interest merely a derivative of the interests of shareholders or other stakeholders? Second, if the concept of an autonomous company interest is rejected, should determination of the abstract company's interest be confined to shareholder interests alone, or should it also account for the interests of other stakeholders⁸⁷ – more specifically, do the interests of stakeholders directly compete with those of shareholders? Or, alternatively, are governing bodies required to consider stakeholder interests only to the extent mandated by legal provisions? In such case, does this imply that stakeholder interests can only be considered if they serve to advance shareholder interests?

83 Opalski, *Przegląd Prawa Handlowego* 2008/11, 16 (17); Romanowski, *Przegląd Prawa Handlowego* 2015/7, 8 (14).

84 Oplustil, p. 147 et seqq.; Gębusia, pp. 38–41.

85 Kappes, p. 6; Supreme Court 5.II.2009 – I CSK 158/09, OSNC 2010, No. 4, item 63, in which the court indicated that the interest of the company is a resultant of the interests of all groups of its partners, defined in the light of the common goal, the realisation of which the partners undertook to achieve in the light of Article 3 of the CCC.

86 While several scholars in the literature have denied the existence of an abstract company's interest, they simultaneously offer abstract definitions of the company's interest that align with the understanding of the term in this chapter. See: Szajkowski/Romanowski, p. 145; Opalski, p. 151; Olszak, p. 222.

87 Weber-Elżanowska, p. 127 and the literature referenced therein.

The answers to these foundational questions, as developed in Polish legal doctrine and jurisprudence, give rise to three principal narratives regarding the interpretation of the company's interest.

I. *The autonomous company's interest*

Polish pre-war scholarship viewed the company as a genuine social phenomenon – an entity legally distinct from its shareholders and capable of possessing its own interests that may diverge from those of both shareholders.⁸⁸ Several modern scholars advocate for a similar stance. They argue that the company's legal personality, combined with the inherently normative character of the company's interest, underscores the autonomous nature of that interest.⁸⁹

According to these perspectives, the legal personality granted to a company implies the existence of its own distinct interest, which may, in certain instances, conflict with the interests of its shareholders, particularly the specific interests of individual shareholders.⁹⁰ In line with this narrative, a proposal has been made to introduce an explicit reference to the legal person's interest in the provisions of the Polish Civil Code, emphasizing that the statutory grant of legal personality to a company establishes an interest that is legally distinct from the economic interests of its shareholders.⁹¹ It was argued that such an amendment would strengthen the company's interest as a general standard for assessing the legality of actions undertaken by its governing bodies, even in cases where the CCC does not explicitly reference this criterion.⁹²

However, the autonomy of the company's interest as a legal concept does not predetermine whether, or to what extent, the substantive content of such an autonomous interest diverges from the shareholders' interests.⁹³ An autonomous company's interest still requires substantive definition, which must be drawn from an external source. Guidance certainly flows from

88 Longshamps de B erier, pp. 161–165; for contemporary approval of this view – Safjan/Fra ckowiak, pp. 1012–1013.

89 Szumański, *Prze gląd Prawa Handlowego* 2010/5, 9 (12); Gronau, *Kancelaria* 2011, 34 (34); Modrzejewska/Olechowski, p. 673; Okolski/Wajda, p. 755; Bryłowski/Kidyba, *Prze gląd Prawa Handlowego* 2005/10, 4 (10); Dąbrowska, p. 68.

90 Szumański, *Prze gląd Prawa Handlowego* 2010/5, 9 (12).

91 Domański/Pietrusińska, p. 506.

92 Domański/Pietrusińska, p. 506.

93 Domański/Pietrusińska, p. 506.

the company's overall objective and the object of a company's any given activity, which indirectly connects to the shareholders' interests that consequently "transpire" into the autonomous company's interest. Typically, an autonomous view of the company's interest tends to simplify the focus on the "economic survival" of the company and the protection of its assets.

II. As a resultant of shareholders' interests

An opposing narrative, which is currently the prevailing narrative in Polish company law, was introduced by *Opalski* in his seminal 2008 article, which conceptualises the company's interest as a resultant (*wypadkowa*) of the interests of the persons involved in the functioning of the company, specifically rejecting the notion of an autonomous company's interest.⁹⁴ *Opalski's* perspective rests on the premise that a legal person is an artificial construct of the legal system⁹⁵ that lacks its own internal will⁹⁶ and that the mere attribution of legal personality does not establish its autonomous interest.⁹⁷ From this standpoint, the company is considered to have an interest only in relation to external parties, rather than an internally distinct interest of its own.⁹⁸

A key argument advanced by proponents of this view is that recognizing an autonomous company interest in absolute terms would lead to problematic conclusions. For instance, resolutions concerning dividend payouts, company dissolution, or reductions in share capital could consistently be deemed detrimental to the company's interest, potentially rendering them subject to annulment under Article 422 § 1 CCC.⁹⁹ Similarly, it is argued

94 *Opalski*, *Przegląd Prawa Handlowego* 2008/11, 16 (16); later expanded in: *Opalski*, p. 145; *Romanowski*, *Przegląd Prawa Handlowego* 2015/7, 8 (14); *Radwan/Regucki*, *International and Comparative Corporate Law Journal* 2012/32, 15.

95 *Romanowski*, *Przegląd Prawa Handlowego* 2009/3, 10 (13); *Szajkowski/Romanowski*, p. 134.

96 *Opalski*, *Przegląd Prawa Handlowego* 2008/11, 16 (17).

97 *Romanowski*, *Przegląd Prawa Handlowego* 2015/7, 8 (14).

98 *Opalski*, *Przegląd Prawa Handlowego* 2008/11, 16 (17).

99 *Opalski/Pabis*, Art. 422 CCC mn. 83.

that the company's very existence is contingent on its shareholders, as demonstrated by their ability to pass a resolution dissolving the company.¹⁰⁰

Further, this narrative maintains that the company's interest cannot be understood as an objective or abstract concept independent of its shareholders, who seek to advance their own subjective interests.¹⁰¹ Some contend that in reality, "the determinant of the company's interest is essentially the interest of its shareholders".¹⁰² This perspective underscores the contention that those who wield decision-making and appointment powers within the company effectively define the company's interest by determining which interests it will pursue.¹⁰³

Moreover, the CCC does not include any provisions supporting the recognition of the interests of groups other than shareholders as an independent component in defining the company's interest.¹⁰⁴ Excluding stakeholders from shaping the company's objectives is justified by concerns that including them in a CCC provision would afford governing bodies excessive discretion in evaluating the interests of the company, which could lead to negative consequences.¹⁰⁵ If governing bodies were granted unrestricted authority to consider stakeholder interests, virtually any action could be justified as serving the company's interest – except in cases of clear mismanagement.¹⁰⁶

As a result, within the examined narrative, it is argued that the company must consider stakeholders' interests only when (1) legally required to do so, or (2) when consideration of stakeholder interests is necessary to further shareholders' interests.¹⁰⁷ Stakeholder interests should thus be accounted for solely incidentally – that is, to the extent that they align with, and further, the interests of shareholders. At the same time, it is argued that defining the company's interest requires acknowledging the interests

100 Oplustil, p. 171 et seqq.

101 Szajkowski/Romanowski, pp. 139–140.

102 Opalski, *Przegląd Prawa Handlowego* 2008, 16 (22); Romanowski, *Przegląd Prawa Handlowego* 2009/3, 10 (13); translation by the authors.

103 Chałackiewicz-Ładna/Sójka/Jerzmanowski, *European Business Law Review* 2023/4, 665 (676); Opalski, *PPH* 2008, 16 (18).

104 Opalski, *Przegląd Prawa Handlowego* 2025/4, pp. 10, 14, 16; Opalski, *Przegląd Prawa Handlowego* 2008/11, 16 (18); Wajda, p. 39; Opalski, p. 167; Radwan/Regucki, *International and Comparative Corporate Law Journal* 2012/32, 18.

105 Opalski, *Przegląd Prawa Handlowego* 2008/11, 16 (18); Cejmer/Napierała/Sójka/Stroiński, p. 363.

106 Opalski, *Przegląd Prawa Handlowego* 2008/11, 16 (18).

107 Opalski, *Przegląd Prawa Handlowego* 2008/11, 16 (18).

of shareholders alongside those of other groups, such as creditors, employees, and local communities. However, these non-shareholder interests are “non-autonomous” and may only be considered insofar as they serve shareholders’ interests.¹⁰⁸

This approach to the company’s interest, as a resultant of shareholder interests, was partially reaffirmed in the Supreme Court’s resolution of 22 October 2009. Echoing *Opalski’s* reasoning, and using his explicit wording, the Court stated that the company’s interest constitutes “a compromise, a resultant between the often-conflicting interests of minority and majority shareholders”.¹⁰⁹ Similarly, in its judgment of 5 November 2009, the Supreme Court stated that the company’s interest is “resultant of the interests of all the groups of shareholders”,¹¹⁰ further asserting that these shareholders should be regarded as the economic owners of the company.¹¹¹ This interpretation was upheld in subsequent jurisprudence.¹¹² However, neither of these judgments offers a specific account of how shareholder interests should be balanced against other stakeholder interests. Their focus lies primarily in establishing a functional connection between shareholder interests and the company’s interest, leaving broader conceptual questions unresolved.¹¹³

If the company’s interest is viewed as a resultant of the interests of all shareholder groups’ interests, the principle of majority rule suggests that, in practice, the interests of the majority shareholder (or shareholder group) will typically prevail.¹¹⁴ This raises a critical question: what guidelines should members of the company’s governing bodies follow when weighing the interests of minority shareholders in shaping this resultant? This issue remains unresolved in legal scholarship. As the Constitutional Tribunal

108 Jara/Bilewska, Art. 422 CCC.

109 Supreme Court 22.10.2009 – III CZP 63/09, OSNC 2010, No. 4, item 55; translation by the authors.

110 Supreme Court 5.11.2009 – I CSK 158/09, OSNC 2010, No. 4, item 63; translation by the authors.

111 See a broader discussion in Stefanicki, pp. 31–35.

112 Supreme Court 3.6.2015 – V CSK 592/14, OSNC 2016, no. 5, item 65; Supreme Court of 22.10.2015 – IV CSK 738/14, OSNC 2016, no. 10, item 120; Appeal Court in Poznań 2.10.2019 – I AGa 364/18, Legalis no 2285532; Appeal Court in Białystok 20.09.2019 – I AGa 5/19, Legalis no 2264366; Appeal Court in Warsaw 4.12.2013 – VI ACa 290/13, Legalis no 776042.

113 Weber, *Przegląd Prawa Handlowego* 2025/7, p. 41–42.

114 Chałackiewicz-Ładna/Sójka/Jerzmanowski, *European Business Law Review* 2023/4, 665 (676); Olszak, p. 237.

stated in its judgment of 21 June 2005, the company's interest should not be equated solely with the majority shareholder's interest.¹¹⁵ The Tribunal also stressed that the principle of majority rule must be balanced with the principles of equal treatment of shareholders and the protection of the legitimate interests of minority shareholders. Similarly, in its judgment of 5 November 2009, the Supreme Court stated that the principle of majority rule does not imply that the company's interest is identical to that of the majority shareholder.¹¹⁶

III. *The resultant of shareholders' and stakeholders' interests*

Another narrative, primarily attributed to *Sołtysiński*, builds upon the concept of the company's interest as a resultant of various interests, broadening the scope of the company's interest to include not only shareholders but also stakeholders. According to this perspective, the company's interest should be understood as the outcome of both shareholder and stakeholder interests.¹¹⁷ In this view, the primary duty of board members is to act in alignment with the company's interest rather than exclusively in the interests of the shareholders.¹¹⁸

While acknowledging that shareholders' interests remain predominant, *Sołtysiński* argues that board members must consider stakeholder interests as required "in light of the concept of the company's interest".¹¹⁹ He contends that board members "may not avoid their social responsibilities"¹²⁰ and rejects the notion that stakeholder interests exist merely as a subset of shareholder interests, to be considered only when they align with shareholders' objectives. In his view, such an interpretation effectively nullifies any meaningful obligation to respect stakeholder interests.¹²¹

This notion of the company's interest was reflected in a previous version of the corporate governance code of the Warsaw Stock Exchange, which came into force in 2005 (*Dobre praktyki w spółkach publicznych 2005* –

115 Constitutional Tribunal 21.06.2005 – P 25/02, OTK-A 2005, No. 6, item 65.

116 Supreme Court 5.11.2009 – I CSK 158/09, OSNC 2010, Nr 4 poz. 63.

117 *Sołtysiński/Sołtysiński/Moskwa*, p. 41; Szmida, p. 19.

118 *Sołtysiński/Sołtysiński/Moskwa*, p. 38.

119 *Davies/Hopt/Nowak/Van Solinge/Sołtysiński*, p. 538.

120 *Davies/Hopt/Nowak/Van Solinge/Sołtysiński*, p. 538.

121 *Sołtysiński/Sołtysiński/Moskwa*, p. 38–39.

“DPSP2005”)¹²² but was repealed in 2007.¹²³ The first general principle of DPSP2005 stated that the primary objective of a company’s governing bodies is to pursue the company’s interest. It defined the company’s interest as increasing the value of the assets entrusted to it by shareholders, while also taking into account the rights and interests of other stakeholders involved in the company’s operations, particularly its creditors and employees. In addition, rule no. 33, which addressed the duties of management board members, specified that in determining the company’s interest and making corporate decisions, due consideration should be given to the legitimate long-term interests of shareholders, creditors, employees, and other entities engaged in the company’s business activities, as well as the interests of local communities.

E. Sustainability objectives and the dominant narratives

In Polish company law, sustainability objectives have thus far played a marginal role at best in shaping the understanding of the company’s interest.¹²⁴ This limited attention highlights the need for a thorough analysis of the three dominant narratives on the company’s interest, examining their implications through the lens of sustainability.

I. Sparse prospects

Under the prevailing view, which defines the company’s interest as a resultant of shareholders’ interests (see Sec. 4.2. above), the integration of sustainability objectives is significantly constrained. From this perspective, sustainability considerations can only be integrated into the company’s

122 Warsaw Stock Exchange, *Dobre Praktyki Spółek Notowanych na GPW 2005*, 2005, https://www.gpw.pl/pub/GPW/files/PDF/dobre_praktyki/dp2005.pdf.

123 Warsaw Stock Exchange, *Dobre Praktyki Spółek Notowanych na GPW 2007*, 2007, https://www.gpw.pl/pub/GPW/files/PDF/dobre_praktyki/dobrepraktyki2007.pdf.

124 Weber/Mazur/Szczęsna, *PPH* 2022/6, 20 (22); Dumkiewicz/Szczotka/Kopaczyńska-Pieczniak/Weber-Elżanowska, p. 226; Weber/Mittwoch, *RECoL* 2023/1, 143 (156–157); Radwan/Regucki, *International and Comparative Corporate Law Journal* 2012/32, 1 – 48.

interests if they align with shareholders' interests.¹²⁵ While such alignment may occur in cases where unsustainable practices pose financial risks that directly impact shareholder value, these “win-win” scenarios do not capture all instances where sustainability should be prioritized. Indeed, there are many situations in which sustainability goals might conflict with shareholder interests, raising critical questions about how such competing considerations should be balanced within the framework of board members' duties.

Even within the prevailing narrative that equates the company's interest with that of its shareholders, it is widely acknowledged that the freedom to define this interest is subject to certain limitations. Beyond explicit legal constraints – such as the principle of equal treatment of shareholders – a key restriction arises from the obligation to adhere to the principle of fairness (*dobrze obyczaje*).¹²⁶ Accordingly, when aligning the company's interest with shareholders' interests, the resulting decisions must not violate the moral norms contained in the principle of fairness. This perspective suggests that any company action affecting stakeholders must consider their interests to the extent necessary to uphold the principle of fairness.¹²⁷ However, while this reasoning may restrict decisions that clearly and egregiously breach the moral norms that constitute the principle of fairness, it clearly does not provide a reliable framework for guiding board members toward sustainability-oriented practices. The principle of fairness remains underdeveloped in the context of sustainability, leaving decision-makers without a clear interpretative foundation. From a judicial standpoint, it is unlikely that a sustainability-inclusive interpretation of the principle of fairness will be applied in a meaningful or consistent manner.

Moreover, given the dominant understanding of the company's interest, there is significant legal uncertainty regarding the permissibility of voluntary commitments to integrate sustainability goals into corporate governance.¹²⁸

Based on the foregoing, attempts to incorporate sustainability considerations into the company's interest – when that interest is viewed solely as a derivative of shareholders' interests – are unlikely to result in a meaningful

125 Opalski, *Przegląd Prawa Handlowego* 2025/4, p. 10, 14, 16; Olszak/Stokłosa *Prawo i Więź (Law & Social Bonds)* 2025/1, 346.

126 Opalski, *Przegląd Prawa Handlowego* 2008/11, 16 (21); Weber-Elżanowska, p. 137; Weber/Mazur/Szczęсна, *PPH* 2022/6, 20 (24); Dumkiewicz/Szczotka/Kopaczyńska-Pieczniak/Weber-Elżanowska, p. 227; Kappes, p. 6.

127 Weber-Elżanowska, pp. 137–138.

128 See Weber, *Przegląd Prawa Handlowego* 2025/7, pp. 43–45.

shift capable of genuinely advancing the objective of corporate sustainability.

II. *Glimmers of potential and their challenges*

The remaining two narratives, the autonomous company's interest (see Sec. 4.1 above) and the company's interest as a resultant of both shareholders' and stakeholders' interests (see Sec. 4.3 above) provide more potential for integrating sustainability considerations. In theory, the narrative that describes the company's interest as autonomous could serve as a potential gateway for corporate sustainability. Since an autonomous company's interest asserts that the company's interest is not merely derived from shareholders or any other external interests, the question arises as to whether the substance of this autonomous interest could encompass sustainability objectives. This opens the door for broader interpretations of the company's interest, where sustainability considerations could be integrated as a core component.

Similarly, the view of the company's interest as a resultant of both shareholders' and stakeholders' interests could, in theory, accommodate sustainability objectives. In this framework, stakeholder interests, which could include environmental concerns alongside traditional interests such as those of employees and the local community, may provide a basis for integrating sustainability into the company's decision-making. However, it is important to note that this perspective, which is grounded in the dichotomous debate between shareholders and stakeholders, may face criticism.¹²⁹ Specifically, the challenge lies in balancing often competing or divergent interests, which could limit the extent to which sustainability objectives are pursued. The company's interest as a resultant of both shareholders' and stakeholders' interests may not offer sufficient guidance on prioritising or weighing these interests, particularly when conflicts arise between financial goals and sustainability objectives.

Both of these narratives, while they provide "hope", share a fundamental challenge: they require moving away from the dominant perspective that defines the company's interest as a mere function of shareholders' interests. To integrate sustainability into these frameworks, significant interpretative effort is required to fundamentally reimagine the company's role in soci-

129 Sjäffell/Mähönen, *Bond Law Review* 2022, 69 (69–113).

ety and develop new concepts that reflect this broader role – concepts that are not yet widely accepted in legal discourse, doctrine, or judicial practice. As mentioned earlier, the often-significant aspect of the historical examination of legislative materials fails to provide substantial insight for Poland. While pre-war legal literature may offer some theoretical support for an autonomous conception of the company's interest, incorporating sustainability considerations into this model – or within a framework that balances shareholders' and stakeholders' interests – remains a difficult interpretative leap. Robust methodological justification is needed to establish a sustainability-conscious understanding of the company's interest within these theoretical models that would allow companies to meaningfully embrace sustainability objectives.

Certain valid interpretative directives can, however, be drawn from EU law. In particular, the adoption of several legal acts in the field of sustainable finance¹³⁰ helps to shape a certain vision of the desired role of a company within European society.¹³¹ This holds true even for companies that are not directly within the scope of these regulations, since EU provisions still carry significant interpretative value.¹³²

Additionally, the DPSN2021 could be consulted as an interpretative source in both the autonomous company's interest approach and the company's interest as a resultant of the shareholders' and stakeholders' interest approach. According to rule 1.3 of the DPSN2021, a company incorporates "ESG considerations" into its business strategy, focusing on environmental issues, including metrics and risks associated with climate change and sustainable development. It also addresses social and labour matters, such as ensuring gender equality, providing adequate working conditions, respecting employees' rights, maintaining dialogue with local communities, and building customer relationships. Furthermore, according to rule 6.2. of the DPSN2021, incentive programs should be designed to

130 Such as the Regulation 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector ("SFDR"), the Directive 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting ("CSRD"), as well as the Directive 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 ("CSDDD") which addresses due diligence in value chains.

131 Weber/Mazur/Szczęśna, *Przegląd Prawa Handlowego* 2022/6, 20 (24–30).

132 Weber/Mazur/Szczęśna, *Przegląd Prawa Handlowego* 2022/6, 20 (25).

link the remuneration levels of the company's management board members and key managers to the company's actual long-term performance, both financial and non-financial. These programs should also reflect long-term value creation for the company's shareholders, sustainable development, and operational stability.

Despite these important interpretative guidelines, any progress ultimately depends on key actors' willingness to pursue these avenues of reasoning and undertake the necessary shifts in thinking – most notably, decision-makers at the company level. However, because the company's interest plays a crucial normative role in determining board members' responsibilities and potential liability, adopting a progressive reinterpretation within corporate decision-making presents significant risks. If shareholders do not recognize or support the necessity for such a reinterpretation, board members could face consequences ranging from civil liability to dismissal. This creates a substantial barrier to integrating sustainability into corporate governance, as board members must navigate both legal risks and shareholder expectations, which may not align with sustainability-oriented approaches.

Furthermore, a revision of the understanding of the company's interest would also need to be embraced by other actors involved in a company's decision-making processes in a broad sense. This includes lawyers, other advisers, and judges adjudicating disputes involving the application of the concept of the company's interest. For this transformation to take place, awareness and openness to integrating sustainability considerations must become an integral part of legal education and professional training.¹³³ Incorporating sustainability concepts into academic curriculum and ongoing professional development would help establish a foundation for rethinking corporate governance and the responsibilities of those shaping it.

Consequently, achieving a meaningful shift in the interpretation of the company's interest in Poland would require a long and demanding process involving multiple actors, including academia, the judiciary, and – most importantly – board members and shareholders. Frankly, at this point, such an interpretative shift is unlikely to materialize in a timeframe that aligns with the urgency of the matter at hand.

133 See more on the role of education in relation to corporate sustainability Melon/Weber, pp. 239, 243.

F. Reframing the company's interest for sustainability – the way forward

As demonstrated in this chapter, black-letter Polish company law does not provide a clear definition or explicit guidance on the concept of the company's interest. Instead, its meaning is shaped through interpretation, influenced by competing narratives within legal doctrine and jurisprudence.

The prevailing view equates the company's interest with that of its shareholders, effectively restricting the integration of sustainability considerations to "win-win" scenarios where sustainability aligns with shareholder interests. This narrow interpretation limits the broader potential for embedding sustainability into corporate governance as it confines sustainability initiatives to those that provide direct financial benefits to shareholders, reducing sustainability goals to economic calculations rather than recognizing their wider social and environmental significance. Consequently, this view offers little room for meaningful integration of sustainability goals in cases where they conflict with shareholder interests.

While the other two alternative narratives on the company's interest hold theoretical potential for integrating sustainability, the practical, interpretative shift they necessitate would represent a paradigmatic transformation. Achieving this shift would require corporate decision-makers and the broader legal community – including scholars, advisors, and judges – adopting an entirely new framework of understanding akin to a Kuhnian scientific revolution¹³⁴. Given the pressing nature of the sustainability challenge, waiting for such a shift to unfold naturally is neither realistic nor sufficient.

Therefore, we conclude that in the context of the joint-stock company, legislative intervention is necessary to explicitly align the concept of the company's interest with corporate sustainability. Such an intervention would provide clearer guidance and a stronger legal foundation for integrating sustainability objectives into corporate governance, effectively addressing the gaps and legal uncertainties that currently hinder meaningful progress in this area.

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134 Kuhn.

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