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Student Number: 12504356
Date: 15 September 2010
Dissertation submitted in partial fulfilment of the requirement for the MSc in European Policy and Management.
Dissertation title: **Varieties of Capitalism and corporate governance: institutional arrangements in Polish companies**
Word Count: 15,022

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Varieties of Capitalism and corporate governance: institutional arrangements in Polish companies

Introduction

Discussion on comparative capitalism should perhaps commence with an acknowledgement of same of the pioneering theorists in the subject, such as Gosta Esping-Andersen (1990) or Michel Albert (1991). Both authors recognise the fact that different countries manage capitalism in different ways and that it is possible to group them in various clusters. Esping-Andersen, for example, in “The Three worlds of Welfare Capitalism”, divided countries in accordance to the type of the welfare state they adopted: Liberal, Corporatist-Statist and Social Democratic, typically represented by the U.S., Germany and Sweden respectively. On the other hand, Albert in his book entitled “Capitalism against Capitalism” compares the “Neo-American” model, which supports individualism in wealth building and the short term achievements, with the “Rhineland” capitalism that promotes collective well-being and public consensus to pursue the long term goals. (Cooper, 1994) The author not only sees them both as contrasting types but also predicts a possible conflict between them.[1] (Hyman, 2008: 4-9)

The Varieties of Capitalism (VoC) approach by Peter Hall and David Soskice (2007), which is currently dominating the debate on comparative capitalism, presents a very plausible but simplistic model. Building upon former theories, the authors divided western economies into two main groups: the Liberal Market Economies (LMEs) and the Coordinated Market Economies (CMEs). Unlike Espin-Andersen, Hall and Soskice’s approach to capitalist economy is very much firm-centered, giving primary attention to the issue of strategic interactions. (2001: 6-7) The dynamics of those relationships greatly depend on the institutional arrangements, which significantly differ between LMEs, usually identified with the Anglo-Saxon countries, and CMEs, like for example Germany, creating various sets of comparative advantages which are considered to be complimentary (rather than competing) in global markets - unlike Albert’s predictions. (ibid)

[1] “Rhineland” type of capitalism includes Germany, Switzerland and Netherlands but as well Sweden or Japan.

Traditionally, most studies on corporate governance (CG) tend to focus on the agency problem, shareholders' protection, board representation, monitoring tools etc. CG can be described in three different dimensions: legal, social and economic and thus no general view can be applied, apart from more or less direct reference as to the body of "rules of the game". (www.cipe.org) There are two main categories of CG theories: economic and organisational, where the latter one is less developed but embraces a more complex view of the firm that takes into account a wider range of stakeholders and relationships rather than only shareholders-managers dynamics. Likewise, when determining the national variety of capitalism, the main concern is given to firms' relationships with various stakeholders' groups, which is why this paper focuses on analysing institutional arrangements in CG of nationally operating companies.

One of the principal questions of this paper is where does Poland fit within Hall and Soskice's VoC framework? On one hand, the flexible labour force market and the dominance of general Anglo-Saxon education would suggest that Poland is closer to the LMEs' variety of capitalism. On the other hand, the lack of well developed capital markets and reliance on banks in financing new investments would indicate close similarities with the CMEs. In conclusion, Poland appears to be too coordinated for the LMEs but too liberal for the CMEs. Hall and Soskice's model, despite its unquestionable contribution to the studies on comparative capitalism, does not seem to capture the dynamic nature of emerging markets and the uniqueness of economies that are going through systemic change - which is not the only accusation against the VoC approach. (Lane, 2005: 228) Furthermore, the authors themselves acknowledge certain limitations of their framework, admitting that not all countries will necessarily fit in either of the two models. (Hall and Soskice, 2001: 36)

In the past twenty years, Poland has undergone a dramatic change; from a socialist, centrally-planed economy, dominated by limited liability and state-owned companies to a competition-led free market with the principal role of the joint stock companies and foreign investments. (Dziembowska, 2006: 46).[2] After the collapse of communism, deep institutional, economic,

[2] In 1992 the Polish corporations' sector accounted for 2,600 joint stock market and 66,000 limited liability companies, compared with 8,000 and 150,000 respectively in the year 2000. The author further claims that out of top 500 Polish firms, currently 66% are joint-stock companies which account for 78% of the revenues in this group. (Dziembowska, 2006: 46)

legal and social reforms had to be introduced to prepare the country for accession to the European Union structures as well as to be able to successfully compete on the global markets, as it does currently. The shock therapy reforms introduced by the Balcerowicz Plan (adopted in 1989) and the withdrawal of state subsidies, initiated a very turbulent period of widespread and multileveled privatisation process which led to the bankruptcy of inefficient firms but also allowed Poland to reach a very fast growth and the highest GDP in the whole region. (Dzierzanowski and Tamowicz, 2004: 20-21; www.ggdc.net). This also had an impact on the radical shift in country's export structure. From an agriculturally and industrially dominant economy, Poland moved to the production of consumer goods and services, specializing in labour-intensive export industries such as: "medium-quality cars, machinery, electronics and electrical products". (Nolke and Vliegenthart, 2009: 691-695) Together with banking, telecom, utilities and high-tech manufacturing, those sectors are predominantly foreign owned, which makes the Polish economy hugely reliant on FDIs and "extremely sensitive to exchange-rate fluctuations and changes in external demand". (ibid)

It is beyond any doubt that Poland does not fit in either of the two ideal types of VoC. Some scholars who do not even attempt to classify emerging and developing markets believe that those economies are still going through the transitional process of institutional construction and therefore it is not clear into which model they will finally blend. The number of countries outside the LME-CME framework is enormous, and that is why various attempts have been made to distinguish minor sub-categories within this group, but even then scholars are struggling to agree on the ambiguous form of those national capitalisms. This paper does not aim to give a definite answer to the question of Polish VoC, but rather to contribute to the debate on whether it is appropriate to talk about the Polish national system as a variety (or rather a dysfunctional form) of the LME/CME model or perhaps it should be described as a new type of capitalism, as proposed by Nolke and Vliegenthart.

The first part of this paper will explain the theoretical approach to the VoC framework, showing various differences between the two models. At this point, the CG aspect of the VoC approach will be put in context and analysed in greater detail. Furthermore, the critique of Hall and Soskice's literature will be introduced and alternative points of view explained. In the process of narrowing down this broad subject, attention will mainly be given to the CEE region, in particular Poland, and the role that CG plays in shaping the national mode of capitalism. The first part will also include the three different approaches to Polish VoC by King, Mykhnenko and Nolke with Vliegenthart, which then will be further explained and contrasted.

The second part will be divided in two sections. The ownership structure of Polish firms will be analysed in the first one and the second section which will include the explanation of various issues regarding employees' representation and the organisation of top management of the same group. Prefaced with a brief historical background and the theoretical outline, this part will focus on assessing the dominant form of CG setup in Poland using the findings from the research conducted by the author of this paper, trying to get closer to the answer about Polish VoC.

In the conclusion, the author will summarise the main points of this paper and collate the empirical evidence with the theoretical perspective, to finally answer which one of the three approaches in describing Polish national capitalism is more accurate, King's, Mykhnenko's or Nolke and Vliegenthart's. The author acknowledges that the final judgment may not be fully representative of the whole economy, due to certain limitations in the data available. Nevertheless, by adopting the CG-centered approach, which is not common practice in studies on comparative capitalism, the author hopes to contribute with his work to an ongoing debate on CEE's VoC, which still remains hugely undeveloped.

Theoretical perspective

Hall and Soskice's (2001) VoC approach is an attempt to go beyond the three main perspectives on institutional variations that have dominated the study of comparative capitalism. Reconsidering Shonfield's modernization approach (focused on the institutional structure and the state's leverage over the private sector), the 70's concept of neocorporatism (i.e. the state's capacity to negotiate with employers and trade unions over wages, working conditions and social or economic policy) and the social system of production approach (that refers to sectoral governance, national innovation systems and flexible productions regimes). (Hall and Soskice, 2001: 1-6). The VoC framework has introduced the two ideal models of national political economies: the Liberal Market Economy (LME) and the Coordinated Market Economy (CME). The approach puts main emphasis on strategic interactions and relationships among various actors: individuals, firms, producer groups or governments. According to the authors, the firms are "the crucial actors in a capitalist economy" and therefore special attention should be given to firms' relationships and their coordination problems (ibid). Furthermore, in order to develop and exploit core competencies and dynamic capabilities, firms must maintain their relationships in five spheres: industrial relations, vocational training and education, corporate governance, inter-firm relations and employees internal structure. (ibid) The importance of institutions, organizations and culture is also recognised but only in relation to easing firms' relationships coordination.

LMEs, mainly Anglo-Saxon countries, and CMEs, such as Germany and Japan, are two opposite models. LMEs are typically characterised by the coordination of activities through hierarchies and competitive market arrangements, arm's-length relations, intense competition, legal systems supporting formal and relatively complete contracting, weak trade unions, flexibility in labour market and creation of soft and general or transferable skills. (Hall and Soskice, 2001: 8-33). On the other hand, CMEs allow firms to depend more heavily on non-market relationships, collaborative and strategic interactions, powerful business or employer associations, legal or regulatory systems designed to facilitate information-sharing and cooperation, strong trade unions, coordinated labour markets and the creation of firm-specific or specialised skills. (ibid)[3]

According to Sigur Vitols, three major "sets of institutions" that influence the form of CG (the institutions of: ownership, employee representation and structure of top management) significantly differ between LMEs and CMEs. (2001: 33) Assessing the first set of institutions, LMEs are characterised by highly developed equity market and widely dispersed ownership structure, with major investors including investment funds, pension funds and insurance companies. Those "portfolio approach" investors, holding relatively small stakes in large number of companies (to diversify high-risk), are interested almost solely in high and quick returns on their shares. (Vitols: 341-343)[4] This could be argued by saying that pension funds are typically risk-averse and are more interested in long term performance than some investment funds (hedge funds in particular) that are purely profit-oriented. Based on the comparison of CG institutions in Germany and the UK, Vitols claims that "portfolio investors" account for 50% of shares in the UK market, households (mostly small shareholders) for 30% and enterprises together with the public and banking sectors account for less than 7% (but take large, strategic shareholdings). This picture contrasts with Germany's concentrated ownership equity market (90% of German listed companies have at least 10% stake in the company), where large shareholders pursue a mixture of financial and strategic goals. According to Vitols, enterprises (42,1%), banks (10,3%) and the public sector (4,3%) account for 57% of shares in Germany, investment funds (7.6%) and pension funds/ insurance companies (12.4%) for 20% and household for 14,6%. (ibid) The authors also clarify that in the case of German enterprises, banks and the public sector, ownership plays more the role of straightening various business relationships and securing loans, rather than generating income.

The second set, the institutions of employee representation are mainly existent in CMEs, where employees actively participate in corporate bargaining and enjoy "strong voice" through co-determination (between board and plant level). (Vitols, 2001: 243-245) Employee

[3] Authors do recognise the "ambiguous" position of counties like France, Spain or Greece, and therefore they have distinguished the third, less established category: the *Mediterranean* market economies. Countries within this group share common characteristics, including large agrarian sector, significant state interventions, non-market coordination in corporate finance and more liberal labour relations arrangements. (ibid)

[4] On the other hand, the rise of institutional investors activism is also perceived as the counterbalance to managerial hegemony and therefore having positive impact on the reduction of the agency cost.

representation can typically be executed through work councils and supervisory boards. According to German law, each company with five or more workers must elect a work council which is responsible for negotiating key employment issues with management (including an introduction of the new technologies). Employee representation on supervisory boards (SBs) is also legally guaranteed (for almost all companies with 2,000 or more employees) and its number depends on the size of the company (between 12 and 20). The number of seats at the supervisory board should always be divided equally between shareholders' and employees' representatives (in some cases non-employee union functionaries can be given up to two seats to represent employees). (ibid) In LMEs there is neither tradition nor legal provision for employee representation on companies' boards.[5]

The set of the institutions structuring top management also varies significantly between LMEs and CMEs and this translates into a different board system and corporate construction. In LMEs, the single-board system is dominated by a powerful Chief Executive Officer (CEO) who often plays the role of the head of the board, who has the major say in choosing other executive directors (or sometimes "hand pick" them) and who has the final voice (after various consultations with other managers) in taking corporate decisions and is "solely" responsible for them. (Vitols, 2001: 344-345). CMEs, on the contrary, are characterised by a pluralist system and dual board structure with clear separation of management from control. Where supervisory boards are responsible for taking strategic decisions, the day-to-day running of the company is performed by the management boards (which include between five and ten top managers in the case of Germany).[6] The head of the management board plays the role of the "speaker" who is the "first among equals" rather than the absolute decision maker (following the rule of consensus in reaching major decisions and proposals to the supervisory board) and who gives top managers broad autonomy in their own areas of company's operations (such as finance, production, personnel etc.). (ibid)

Hall and Soskice's VoC model received mixed responses. Their theory has been criticised for being functionalist, too static, path-dependent oriented, ignoring economic change as well various differences between the countries within LMEs and CMEs and downplaying the

[5] Inclusion of unions' representatives on the company's board happens only in exceptional cases. (ibid)

[6] Vitols further explains that strategic decisions typically include: "major investments, mergers and acquisitions, dividend policy, changes in capital structure and appointment of top managers", the same reducing dependency of individual executives on the speaker. (2001: 344)

powerful forces of convergence and globalisation. (Howell, 2003; Konzelman et al., 2010). Hancke et al. (2007) in "Beyond Varieties of Capitalism" presented a constructive approach to the critique of VoC. Claiming that "many critics caricature rather than fully explore the VoC approach", the authors enriched the theory by for example the "reconfiguration" of long-standing coalitions or elaborating on the role of the state and the nature of the Mixed-Market Economy (MME). (2007: 8-16).

According to Hancke et al., MMEs represent a unique blend of market regulation with some elements of coordinated regulation and state-compensating coordination. It is believed that this kind of "hybrid" system will underperform purer types in ceteris paribus, however this statement has already received a counterargument that MMEs may find their own way of coordination, compatible with their production system (2007: 14). MME should be perceived more as an umbrella term rather than a model. The justification is that it includes a very large group of countries that do not fit in either of the two ideal models, and that are very different from each other. For example, Scandinavian countries significantly differ from the Mediterranean or Emerging Market Economies (EMEs) in terms of skills formation, labour flexibility, welfare state arrangements, state involvement, union participation and also efficiency and efficacy. Moreover, just within EMEs it is possible to distinguish heterogeneous groups, which is perhaps one of the reasons why Hancke et al. do not even classify EMEs as a separate variety of capitalism but more like a conglomeration of countries in the transition (more or less advanced) with a strong architectonic role of the state. (2007: 25-28).

Central and Eastern European (CEE) markets received the particular attention of many scholars in the subject. The conclusion however is not clear. The CEE economies, traditionally coordinated through state-business interactions, are usually placed somewhere between LMEs and CMEs. The CEE region itself is not homogenous and at least two clusters can be distinguished. According to Hancke et al., countries including the Czech Republic, Hungary and Poland, having a high level of Foreign Direct Investment (FDI) and open economic relations, fall into a "liberal dependent". (2007: 35-36) Russia, Ukraine and Romania, where the economy is controlled by "patron-client ownership networks" between nomenclature and domestic producers and where the role of the state together with FDIs is minimal, represent the "patrimonial" system. (ibid) State provision of public goods (such as pension systems and welfare state transfers) to compensate for the limited power of trade unions in sectoral (and national) collective-bargaining, is common for the countries within the former cluster, which makes this sub-group more similar to the Mediterranean model (VoC framework). (ibid) Unstable and incoherent mixes of labour market institutions, financial intermediation and corporate governance are still characteristic of both categories.

Taking into account a different set of measures, David Lane (2005) divided former state socialist societies into the three main models.[7] The first one, including Poland together with other richest CEE countries, such as the Czech Republic, Estonia, Hungary, Slovakia and Slovenia, is believed to share similarities with the continental types of market capitalism but only with stronger state involvement - partly influenced by the socialist heritage. (Lane, 2005: 227-247) Rising levels of marketisation and privatisation (comparable to the OECD countries), increasing participation in global economy, a low level of stock market capitalisation, a more developed welfare state, the economic coordination by the State and foreign capital (rather than the stock exchange), a lower internal accumulation of capital (than advanced economies and hence the important role of the foreign investors) and relatively high exposure to global markets (and thus exogenous shocks) are among main characteristics of the above group. (ibid) The second and the third models, mainly represented by Russia and the former Soviet republics, are predominantly controlled by state bureaucracies (where only the former is identified with "state/market uncoordinated capitalism" and the latter has not made the "breakthrough" yet), are economically poor, with high levels of unemployment, low income and a lack of psychological, political and societal preconditions to introduce modern capitalism.

In an attempt to further analyse MMEs of Eastern Europe (also branded as "weak" CMEs), Vlad Mykhnenko (2007) approached the issue by comparing and contrasting Polish and Ukrainian models of capitalism, reaching the perhaps surprising conclusion that Ukraine share some similarities with LMEs, for example in terms of the "liberal-'universalist' welfare state", whereas the Polish system closer resembles the continental model. (2007: 366-371) The author describes Poland's VoC in five different areas (of which the last two are particularly relevant in the context of this paper).

[7] Measures including: the level of privatisation, private sector involvement, amount of FDIs and internal investments, export profile, unemployment and inequalities and participation in global economy.

The first area, product-market competition, is limited by heavy regulations and considerable administrative burdens that create barriers for business and foreign investments. (ibid) In terms of the second, social protection, Poland remains inspired by the continental socialist welfare-state model, but this has been reducing gradually since the late 1990's (apart from the expenditures on pensions, disability benefits and poverty alleviation). (ibid) The education system, which is the third area, generates more general skills (putting less emphasis on science and technical education), provides limited vocational and lifelong learning and training and produces a small amount of R&D.

Turning to the fourth area, according to Mykhnenko the main advantage of the wage-labour relations in Poland lies in the mildly regulated labour market, together with moderate employment protections. This can be explained by the relatively weak position of trade unions (which allows greater wage flexibility, non-adversarial employment relations, no active employment policy etc.), decentralised collective bargaining and limited state involvement in this sphere. (ibid)

Lastly, in terms of CG and the coordination of financial markets, Mykhnenko claims that the Polish equity market is small and inactive, dominated by financing through bank credit (mainly internationally owned banks) or FDIs, with high ownership concentration and low minority shareholder protection (no active market for corporate control), with no particular role for institutional investors and with little commitment to good corporate governance standards. (ibid)

Lawrence King, (2007) in his studies on CEE capitalism, takes a similar approach (and measures) to Mykhnenko's, but reaches a slightly different conclusion. Classifying the Polish system as the "liberal dependent post-communist capitalism", the author explains that the model incorporates two dominant features: "the liberal nature of the state and the dependent nature of the economy". (2007: 306-327) Referring to the theory of VoC, King analyses the five spheres of the approach in relation to Poland.

Since the collapse of communism, the Polish organised labour force (the first sphere) having lost ideological and structural foundations, has been gradually decreasing. A "fake corporatism" and "worker decomposition" are the two implications suggesting that the Polish model is more similar to the LME type, but only with the 'Mediterranean' level of labour force participation. (ibid) Similar to other European countries, Poland is moving towards the Anglo-Saxon system of general education (the second sphere) and basic skills (following the requirements of the European labour market), but with heavy reliance on foreign investors to provide technology-relevant training - due to the lack of internally generated technologies and outdated technological solutions. (ibid) The rising importance of FDIs in technology transfer and participation in employment, labour productivity, manufacturing and R&D expenditure levels (12%, 19%, 35% and 18% respectively; measured between 1995 and 2000) mark the dominant role of foreign investors in the Polish enterprise system. (ibid) Inter-firm relations (the third sphere) may also be exercised through the cooperation with customers in export markets (for the CEE region those would be mainly the EU markets) and through the consultations/collaboration of domestic business groups. (ibid) Although the latter mode likewise plays the role in technology transfer, those groups are not 'recombinant property' but privately owned and only a small amount of the overall Polish medium and large companies belong to such (approximately 9%, according to European Bank Reconstruction and Development - EBRD), unlike in CMEs. (ibid)

According to King, the firm-employee relations (the fourth sphere) in Poland are again more similar to those functioning in LMEs. In the great majority of cases, employees' voices are not included in a company decision making process which gives managers almost a full control over the organisation of the workplace.[8] (ibid) This should be perceived as a direct implication of the unions' weak bargaining power and the country's high unemployment.

In terms of CG arrangements (fifth sphere), King agrees with Mykhnenko that the Polish structure resembles the CME model more than that of the LME. A "thin" and small stock market, with capitalisation generated mainly by few large companies and continuous reliance on the banking system to finance new investments, are among the main characteristics of the CEE markets. (ibid) The large amount of FDIs in the CEE countries also has far-reaching implications for capital provision. The increasing number of foreign-owned banks operating in Poland, coupled with growing foreign control of assets in Polish financial institutions

[8] Greater employee participation can be noticed at the State Owned Enterprise, as it will be explained in the latter part of this paper.

(77,5% of stock owned by 2005) makes the CEE economies variety significantly different from the CMEs (only 4% of stock is held by foreign capital in Germany and 3% in Italy) but, overall, still more similar compared to radically different Anglo-Saxon LMEs. (ibid)

As an alternative to all those scholars who have been trying to classify CEE countries in either the CME or LME framework (eventually branding it the hybrid system), Andreas Nolke and Arjan Vliegenthart (2009) have proposed the concept of the completely new variety of capitalism that would describe the unique character of this region. Flexible labour forces (cheap but skilled) and the active role of FDI (in technology transfer - through transnational networks, and capital provision) enabled the CEE region to become an assembly platform in complex global commodity chains. Furthermore, the authors explain that the comparative advantage of the emerging Dependent Market Economies (DMEs) is based on “the assembly and production of relatively complex and durable consumer goods”. (2009: 672-673) Nolke and Vliegenthart, whose model is inspired by King’s “liberal dependent post-communist capitalism” framework, explain their approach by analysing interrelations between CG (in particular the hierarchical control by transnational companies’ headquarters) and the other institutions of the VoC framework. (2009: 677-679).

The first interrelation, between CG and the primary means for raising investment, is directly influenced by the dominant role and high volume of FDIs in the CEE markets. Transnational companies (TNCs) choose to control and finance their local subsidiaries from their headquarters, rather than allow involvement and control of external players (such as shareholders or creditors) or profit and power sharing with internal “concentrated shareholders” (blockholders). (Nolke and Vliegenthart, 2009: 679-691) In terms of industrial relations, for DMEs to remain competitive and to attract new FDIs, they need to keep the labour cost low and therefore collective bargaining is not commonly used. (ibid) However, as Nolke and Vliegenthart further explain, TNCs cannot afford any disruptions in the global commodity chain (and costly spillovers) and therefore they prefer to keep their subsidiaries’ workers satisfied, by allowing selective company-level agreements which would accommodate TNCs' needs and maintain a stable management-labour intra-firm relationship. (ibid) Having established that the main advantage for TNCs to invest in the CEE region is almost purely cost-driven (cheap labour and significant tax breaks), it is not unusual that foreign investors do not support the ideas of generous public education system, neither do they grandly invest in the vocational training of their subsidiaries' labour force. (ibid) Similarly, in the case of technology transfer, to avoid additional costs, TNCs prefer to transfer innovation within their hierarchies into the region from their abroad headquarters rather then to invest in local R&D or develop it through coordinated inter-firm networks and associations. (ibid) This method of innovation transfer requires only moderate flexibility of labour-market, where TNCs hold enough adjustment power to alter the employment levels to their needs (to avoid excessive fluidity for their skilled workers and to maintain the comparative advantage of the region as the assembly platform).[9] (ibid)

Nolke and Vliegenthart's general thesis on the CG arrangements in the CEE region is not radically different from Mykhnenko's or King's approach. Large amount of FDIs and a dominant position of TNCs had a significant influence on the internal corporate governance structure of DMEs. With major corporate decisions being usually negotiated between the managers of local branches and the internal supervisors in other countries (opting for coordination within the company global network rather than with shareholders or blockholders),"western" headquarters carefully control their subsidiaries by imposing tight budgets and by close monitor managerial decisions (inter alia through their appointees on the board of directors). (ibid)

The literature on comparative capitalism is expanding rapidly. Hall and Soskice's VoC framework gave the impulse to rough debate which effectively focused on pointing out various faults in their approach rather than on constructive critique. Hancke, Rhodes and Thatcher are the rare examples who decided to stand in defense of the VoC framework and expand it with the additional two models. The problem is that the group of Developing and Emerging Market Economies contains a huge number of countries with different cultural, economic, historical and political background, and that they all are going through an ever-changing period of transformation. Even within the CEE region, which one would expect to be fairly homogenous, several types of the national economies can be identified, causing a general confusion in the studies on comparative capitalism. Overall, the literature on CEE's VoC is hugely undeveloped. Despite several attempts, scholars still fail to agree on categorisation of the Polish model of capitalism. Whether the lack of sufficient information or

[9] In comparison, highly flexible labour market with general skills requirement and investments in incremental innovations are characteristic for LMEs type, whereas inflexible long term employment contracts and vocational training provided by employer is typical for CMEs.

not encompassing enough aspects in the comparative analysis should be blamed for this conjuncture, it is hard to say.

Researched companies

Presented below in table 1 is the list of 20 biggest Polish enterprises in 2009, listed in order of sales revenue. The group includes a selection of firms from a variety of sectors (mainly fuels and energy but also retailing, telecommunications, car making and mining), employing between 510 and 63,656 workers and with net profits ranging from -200,000,000 to 4,337,223,000 Polish New Zloty (PLN). Nine out of the 20 sample companies are currently listed on Warsaw Stock Exchange with combined national and foreign capital invested.

Overall, the 20 entities have the combined revenue of over one quarter of a billion PLN, employing 329,443 workers. However, it is important to acknowledge that according to official statistics published by the government in February 2007, 99.83% of the total number of registered firms consist of Small and Medium Enterprises (in 96% private entities), that produce 33% of GDP and employ almost 30% of the entire workforce in Poland. The difficulty with analysing such a group arises from limited availability of published information. The issue of incomplete or scarce data was also apparent when assessing the level of employee's representation on SBs of TNCs and measuring the trade unions' interactions with foreign owners, and therefore most findings related to those two areas had to be based on press releases and other secondary sources.

Table 1. Top 20 biggest Polish companies in 2009 by revenue from sales; financial results presented in '000 PLN.

Position in 2009	Change from 2008	Name	Industry	Revenue from sales	Sales total	Gross profit	Net profit	Employment
1	0	PKN Orlen SA	Fuels	47,481,278	49,876,074	1,907,812	1,635,885	4,482
2	+1	PGE SA	Energy	21,623,350	22,418,183	5,378,534	4,337,223	46,357
3	+4	Fiat Auto Poland SA	Car making	19,549,663	19,788,511	820,420	820,420	6,421
4	0	GK PGNiG SA	Fuels	19,290,441	19,493,756	1,442,103	1,203,606	31,685
5	+3	Jeronimo Martins Dystrybucja SA	Retail	16,801,773	17,761,936	n/a	n/a	27,032

Position in 2009	Change from 2008	Name	Industry	Revenue from sales	Sales total	Gross profit	Net profit	Employment
6	-4	Metro Group in Poland	Retail	16,800,000	16,800,000	n/a	n/a	24,077
7	-2	GK Telekomunikacja Polska TP SA	Tele-communication	16,560,000	n/a	1,597,000	1,282,000	27,667
8	-2	GK Grupy LOTOS SA	Fuels	14,320,531	15,379,754	1,091,950	894,304	4,949
9	0	Grupa Tauron (SA from 2010)	Energy	13,633,573	13,859,135	1,165,020	898,714	28,839
10	0	KGHM Polska Miedz SA	Mining	11,522,324	12,286,107	3,070,799	2,543,984	18,370
11	0	Kompania Weglowa SA	Mining	11,251,492	12,443,547	52,846	38,407	63,656
12	0	BP in Poland	Fuels	9,718,650	9,929,450	354,800	301,730	2,919
13	+2	Grupa Energa SA	Energy	8,613,141	8,976,467	417,594	287,763	12,589
14	0	Polkomtel SA	Tele communication	7,842,020	8,340,338	1,327,851	1,060,821	3,652
15	+2	Volkswagen Poznan Sp. z o.o.	Car making	7,744,183	7,833,419	311,407	250,213	6,154
16	0	Polska Telefonia Cyfrowa PTC Sp. z o.o.	Tele communication	7,602,000	n/a	n/a	n/a	5,451
17	+4	Grupa ENEA SA	Energy	7,167,337	7,420,094	653,056	513,610	10,358
18	+1	PSE-Operator Sa	Energy	6,985,603	7,136,742	421,473	338,509	510
19	-1	Poczta Polska SA	Postal services	6,900,000	n/a	n/a	-200,000	n/a
20	+2	Grupa Eurocash SA	Retail	6,698,341	6,698,341	128,772	102,522	4,275

Source: “Piecsetka POLITYKI - ranking najwiekszych polskich firm” (POLITYKA electronic source, 2009)

Ownership structure

A hybrid form of the institutional arrangements of the Polish variety of capitalism reflects the clash between the previously imposed communist set up and the newly adopted capitalist approach. This is particularly apparent when looking at the shift in the ownership structure of Polish companies.

In January 1946, the Polish post-war temporary government, being inspired by Soviet ideology, introduced a radical nationalisation bill which in effect reduced the share of the private sector in the country's industry to 20% of production and 10% of labour. (Wrobel, 2005: 53-54). The situation became more radical during the Stalinist period from 1948, where amidst the introduction of command economy and extensive bureaucratisation, private industry and trade were practically "liquidated". (ibid) A growing technological gap, insufficient management and financial control and a lack of long-term economic strategy during the Gomulka regime, coupled with Gierek's over-investment in large projects financed by rapidly increasing foreign debt and rising wages - but not the efficiency or quality, and with deepening recession in the West, led the country to economic disaster with inflation amounting 500% in 1990. (ibid) The previously mentioned "shock therapy" program of economic transformation by the first noncommunist government in 1989 brought a necessary but harsh reform to establish a free market economy, with the restoration of private ownership and fair competition, which in practice meant the bankruptcy of many inefficient and loss making companies and survival of only the fittest ones.

Marek Belka, ex-minister of finance, ex-prime minister and current Head of the Central Bank, believes that the privatisation process was the core of the comprehensive institutional reform in Poland and became the top priority of the new government. The new legal framework created a number of "privatisation paths" - some more successful than others, that aimed to eliminate or curtail the state monopolies and reestablish private ownership.[10] Just in five years, over 2 million private, non-farm firms were registered, with only 300 thousand partnerships and the rest owned by individuals; this accounted for over 50% of total

[10] Those "privatisation paths" introduced by 1990's Law on Privatisation of State Enterprises included: "capital privatisation, privatisation through liquidation, privatisation through employee leasing, voucher privatisation" etc. (Belka, 1999: 11-12)

employment and for about 50% of GDP - including the agriculture sector.[11] (Belka, 1999: 12-13) State ownership has been rapidly decreasing, from 8,441 State Owned Enterprises (SOEs) in 1990 to 2,860 in 1994. Among 2,862 SOEs that changed their ownership structure, 402 went bankrupt and 281 became communal property. (ibid)

Such a widespread privatisation process brought into the game various new players, however the government remained in its dominant position, at least in the short term. "Indirect" privatisation, one of the two main methods, consisted of the commercialization stage which included clarification of SOEs' legal status and reorganisation of their internal power structure (abolition of the corporatist-like arrangements and a shift of the power towards the state, executed through the SB). With the introduction of the "massive commercialisation" program, all SOEs that were not privatised yet were decided to be "transformed into joint-stock companies in the sole ownership of the treasury". (Belka, 1999: 24-25). From that point the state could decide to privatise a company by selling big chunks or all of its shares to strategic investors, or to gradually reduce its stake, for example through the stock exchange market, making it available to individual investors. According to Belka, the policy of the Ministry of Privatisation speaks clearly that the government intends in long run to dispose all the stock that it holds in companies that operate in the nonstrategic sectors. (1999: 30) As illustrated in table 2, the State is currently at various stages of the withdrawal from the majority of SOEs.

Table 2. State Treasury Shareholdings in Operating Commercial Companies as of 31/12/2004

Size of Shareholding	Number of Companies	Nominal Value ('000s PLN)
0-5%	244	317,505
5,01-15%	133	307,825
15,01-25%	86	468,562
25,01-49,9%	228	5,336,451
Total 0-49,9%	**691**	**6,430,343**
50,00%-100%	490	n/a
Total	**1,189**	**n/a**

Source: MST Report on Sate Assets in 2003 (Aluchna et al., 2005: 13)

11 By 1993, the construction and the trade amount for the highest share of private sector, with 71% and 69% accordingly. In industry, although the level is still high - 71%, it has been gradually decreasing. (ibid)

The second, so called "direct" method of privatisation, by turning the labour-force into leaseholders (which was politically motivated as well as determined by the lack of domestic institutional investors at the time), did not prove to last long in its initial form. Through shifting SOEs' liquidated assets to the new employee-owned firms, the ownership and control structure of the new companies was "made up" solely of late employees and managers. (Dziembowska, 2006: 46-48) Even though workers had the right to purchase shares at discounted price (or even be granted certain amounts for free), for many people this form of privatisation was treated as a source of a quick income, rather than a long term investment. Soon after the interlude period, the majority of employees sold their shares to the companies' outsiders and members of the boards, the same empowering "managerial cast" which then became one of the dominant shareholder groups in many cases. (ibid) As shown below in table 3, this trend was particularly apparent during the first ten years of privatisation.

Table 3. Changes in ownership structure of firms privatised by leasing state assets to company formed by employees, 1990-1992, 1997 and 1999

Shareholders	At point of privatisation (1990-1992)	In 1997	In 1999
External strategic investors	3.1%	6%	9.1%
Non strategic investors (domestic)	4.6%	8%	17.4%
Non strategic investors (foreign)	-	0.1%	-
Supervisory board members	11.4%	11.4%	5.6%
Executive board members	15.1%	18.2%	17.3%
Other managers	12.1%	10.7%	9%
Rank-and-file employees	47.4%	37.5%	24.9%

Source: Gardawski, J. "Emergence of ownership structure" in Jarosz, Maria, ed. 2000. *Dziesiec Lat Prywatyzacji Bezposedniej (*Ten Years of Direct Privatisation) Warsaw: ISP-PAN, p. 156 (Dziembowska, 2006: 49)

According to corporate governance theory and scholars such as La Porta et al, managerial opportunism, generally poor shareholder protection and a lack of effective market for corporate control, are directly responsible for this consolidation tendency which should be perceived as investors' preventive measures to protect themselves from expropriation by corporate insiders. (Dzierzanowski and Tamowicz, 2004: 28-29). Although the situation when a manager-founder is holding the controlling block of shares, is predominantly encountered at companies which were "developed from private startup", Dzierzanowski and Tamowicz in their research studies have proved that this type of interrelations has also occurred in a few privatised firms. (2004: 24-25)

The increasing number of outside investors can be explained by the growing demand to access new sources of financing, supported by the government's favorable adjustments to Polish Commercial Code, for example with the Act of August 30th 1996 on Commercialisation and Pricatisation of State-Owned Enterprices, which eased the process of acquiring shares by the outside investors in privatised SOEs. (Dziembowska, 2006: 46-47) The rise of institutional investors in Poland commenced in 1993, with the government's controlled National Investment Funds (NIF) being given a green light to acquire shares in newly privatised enterprises. As Dziembowska explains, 15 joint-stock-set-up NIFs were launched in 1995, to manage and restructure 524 state companies whose shares were divided between their employees, the Funds an the Treasury; until today NIFs continue to be the dominant shareholder in many publicly listed firms. (2006: 46-48) Later legislation has also regulated the participation of pension funds which gained permission to invest 40% of collected premiums, so around $2,4 billion in 2002, directly in private equities. (ibid) Pension funds became not only significant investors but also powerful enough to guard minority shareholder's rights, for example by preventing expropriation of profits and executing tight control over the management. The 1997 Act on Investment Funds has introduced three new categories of this sort of institution, in addition to already existing FDIs: specialised open investment funds, closed investment funds, and mixed investment funds, all with corporate entity and supervised by the Securities and Exchange Commission. (Koladkiewicz, 2001: 233-234) Local and foreign investment funds, together with mutual funds, although still relatively limited in scope and value, are gradually becoming more active and important players in the Polish equity market. (Belka, 1999: 35-36)

Banks form another category of outsider investors, but their impact as company owners is very limited. Investment banking has virtually no tradition in Poland, which could be blamed by pre-existing legal constraints which were preventing banks from excessive capital exposure. (ibid; Koladkiewicz, 2001: 232-233). During the crisis on the Polish stock market in mid-1994, some banks acquired a significant amount shares in a number of listed companies, however they still remained in the position of passive debtor rather than active investor. (Belka, 1999: 35-36). This situation has changed with the Act of February 3rd 1993 on Financial Restructuring of Banks and Enterprises, which allowed banks to become owners of other companies. In the light of rising levels of "bad debts" (as high as 30-40%) and the new legislation, government has approved the "procedure for compulsory exchange of debts into shares or capital stakes". (Dziembowska, 2006: 46-48; Koladkiewicz, 2001: 232-233). According to Koladkiewicz, although some banks have formally become partial owners of various companies, the scope of this phenomenon was not big enough to be able to talk about the noteworthy shift in the ownership structure. (2001: 232-233)

Providers of foreign capital, who form the third category of outsider investors, are considered to be the most significant and dynamically developing group out of all three (according to some scholars such as King or Nolke and Vliegenthart). To multiply and diversify sources of financing, particularly in the light of banks' limited involvement and willingness to acquire "bad shares", the government has introduced a number of business-friendly reforms and adjustments to the legal framework implemented with the Act of Commercialization and Privatisation of State Owned Enterprises.[12] (Dziembowska, 2006: 47-48) The creation of an open economy, coupled with conducive legislation, tax exemptions, a flexible labour force, a stable political situation and a strategic location, has successfully attracted the attention of many foreign investors. Inward FDI stock in Poland in 2007, measured as the percentage of GDP, amounted to 24.9% compared to 12.7% in U.S. and 16.4% in Germany. (Nolke and Vliegenthart, 2009: 680-682) Using the same set of data to juxtapose the three primary sources of investment: stock market capitalisation, domestic credit to private sector and inward FDI stock, the results for Poland (30.1%, 28% and 24.9% respectively) are much more balanced than for other CEE countries, showing lesser external dependency and a better developed stock market. (ibid) Nevertheless, those sectors in which Poland (together with other countries in the region) is considered to have comparative advantage, i.e. in automobiles, manufacturing and electrics, are primarily dominated by FDIs, as Nolke and Vliegenthart claim. In the case of domestic banks the situation is similar; showing a high proportion of TNCs involvement, in 2004 the "market shares of foreign branches and subsidiaries" in the CEE region was reaching over 70%, comparing with 15.5% in the EU area. (ibid)

[12] The term "bad shares" translates into "bad debt" that companies, which were unable to repay it, were legally obliged to exchange with the bank for the stake of their ownership. As Koladkiewicz further explains, the banks were treating both receivables as equally "toxic" and undesirable. (2001: 232-233)

Acquiring capital through the stock market (which development was essential to conduct successful privatisation), often underestimated in the Polish context by the majority of scholars, is the third and the most rapidly evolving mode of financing. The Warsaw stock exchange (WSE), which was re-opened in 1991 with 9 listed companies and domestic market capitalisation amounting to 161,000,000 PLN, is a join-stock company owned by the State Treasury (98.82% of shares at the end of 2008) and 48 banks and brokerage houses, which is now trading shares of 386 companies (including 23 foreign), and with domestic market capitalisation reaching 4.8 billion PLN at the end of July 2010 (before the credit crunch, in 2007 this amount was a soaring-high 5.1 billion PLN). (www.gpw.pl) Trading on WSE, as well as the ownership structure of the majority of listed companies, whether new or old, is densely concentrated with 14% of all firms accounting for 85% of the total capitalisation and with 35% of companies having the controlling shareholding larger than 50% of votes. (Dziembowska, 2006: 48-50) The share in WSE equity trading of foreign and domestic individual and institutional investors is fairly balanced as shown below in table 4. Recent retreat of individual investors, whose involvement once reached the level of 50% (in 2000), should be translated into a seasonal rather than permanent trend, which could have been caused, for example, by the deepening global financial crisis or by investors' shift towards NewConnect Stocks. However, as Dziembowska rightly points out, although individuals (families) and other firms are theoretically the owners who could use their voting rights to exercise the control over the company, the real power lies with foreign investors who are the most significant capital providers, followed by State Treasury together with other state entities (SOEs, state-owned banks, municipalities, foundations) and individual investors (ibid).

Table 4. Warsaw Stock Exchange trading by investor and the stock type.[13]

Investors	**Instruments ('000s PLN)**	**2004**	**2005**	**2006**	**2007**	**2008**
Foreign	Main List Stocks	36,158	71,691	96,985	151,801	136,239
	NewConnect Stocks	-	-	-	5	14
	Share in equity trading	33%	41%	31%	33%	43%

[13] The NewConnect Market is "the cash market for companies operating for not longer than 3-4 years, with expected capitalisation of up to 20,000,000 PLN, and using advanced technologies in sectors of the economy such as: electronic media, telecommunication, biotechnologies, environmental protection, or financial services". (Olenski, 2010: 422)

Investors	Instruments ('000s PLN)	2004	2005	2006	2007	2008
Individual	Main List Stocks	38,760	46,188	111,270	135,357	55,010
	NewConnect Stocks	-	-	-	143	755
	Share in equity trading	35%	26%	35%	30%	18%
Institutional	Main List Stocks	35,119	57,420	109,685	167,852	122,713
	NewConnect Stocks	-	-	-	8	54
	Share in equity trading	32%	33%	34%	37%	39%

Source: WSE investors' structure 2008 survey; WSE Annual Report 2009 and 2008 (www.gpw.pl)

As shown below in table 5, the Polish economy is dominated by a growing number of small and medium private enterprises (SMEs), followed by commercial companies, including those with foreign capital involved. Co-operatives, although still prominent in real estate activities, trade and agriculture are steadily decreasing, being often perceived as an archaic form of communist nomenclature. (Olenski, 2010: 422) At the bottom of the list are SOEs, of which number has rapidly dropped in recent years, following the government's strategy to withdraw from all of non-strategic sectors. (www.msp.gov.pl)

Table 5. Entities of the national economy recorded in the REGON registry.[14]

Year	Grand total	Of which				
		State owned enterprises (SOEs)	Commercial companies		Co-operatives	Natural persons (individuals) conducting economic activity
			Total	of which with foreign capital participation		
2000	3,185,040	2,268	159,660	43,737	19,011	2,500,952
2005	3,615,621	1,029	230,588	54,336	18,303	2,776,459
2008	3,757,093	363	268,942	63,871	17,352	2,845,321
2009	**3,742,673**	**289**	**283,712**	**65,831**	**17,193**	**2,815,617**

Source: Concise Statistical Yearbook of Poland 2010 (Olenski, 2010: 496)

[14] The National Official Business Register, referred to as REGON is an administrative register held by the Central Statistical Office (GUS) to identify entities of the national economy and assign them with unique identification numbers. (ibid)

By looking at the group of 20 largest companies in 2009, it has been noted that two of are limited liability firms and 18 are joint-stock companies (of which one is a global joint stock player operating in Poland through its Representative Office). Within the sample group, two main categories of firms can be distinguished: SOEs (in which government holds substantial amount of shares) and TNCs (controlled or fully owned by foreign capital).

The State Treasury stockholding varies from the residual amount, such as the symbolic 4.2% in TPSA, to a medium stake (like 27%, 31.8% and 36.2% in ORLEN, KGHM and Tauron respectively), then to a majority shareholding (from 53.2%, 60.4%, 72.9%, 84.9% to 87.9% in LOTOS, ENEA, PGNiG, PGE, and Energa accordingly) and finally to sole ownership in Kompania Weglowa, Poczta Polska and PSE-Operator.

The second category of significant blockholders is comprised of national and foreign enterprises; however, as the case study shows, the narrow group of domestic players is made up mainly from the SOEs, so in effect just reinforcing the Treasury's already strong position. In two companies (Tauron and KHGM) other enterprises hold up to 5.2% shares in each, in Energa two firms used to hold 17% and 32% of stake before their holding was eventually made remit, and in Polkomtel three SOEs hold on average 23% each, the same turning this company into a state-controlled enterprise without even the direct involvement of the Treasury. Significant foreign stockholders were noted in only three companies - ENEA, Polkomtel and TP SA, with amount of shares varying from 18.7% to 24.4% and to 49.8% respectively.

Institutional shareholders, mainly national pension funds (predominantly ING OFE and AVIVA OFE) and international investment funds, account for the third category of blockholders but with much smaller and more widely dispersed stake. Among the sample group of state controlled enterprises, pension funds have capital invested in two companies (ORLEN and LOTOS) with shareholding not exceeding 5.2% per each fund. In the case of investment funds, 3 companies (ORLEN, TPSA and KGHM) have been the main receivers of international capital, with the stake amounting on average 4.5% for the each one of the seven funds.

At the bottom of the list are two banks (a national one - PKO and a foreign - Bank of New York) that hold between 2.2%-4.9% of stock in three different companies (ORLEN, TP SA and KGHM), and also individuals who are either sole investors (like Jan Kulczyk-the richest man in Poland, whose average holding is 4% in ORLEN and TP SA) or employees of privatised SOEs. In five companies (ORLEN, PGNiG, TP SA, LOTOS and ENEA) at least one member of the supervisory board and/or a manager hold relatively substantial amount of shares, however, not exceeding 1%. In Energa, 12.5% of stock is mostly owned by employees who acquired shares when the energy sector was going through the restructuring process.

Within the sample group, TNCs form the second main category of firms operating on the Polish market. In this case, the ownership structure is largely influenced by the national patterns and therefore varies from the widely dispersed shareholding of BP Poland (listed on UK and US stock exchanges, with approximately 79% belonging to institutional investors and 21% to individuals) at one end of the spectrum, to the densely concentrated stock of Metro Group (traded on German stock market, with over 60% owned by two shareholders' groups and less than 40% released to free float) at the other end, making it impossible to draw a straight line between them. The same rule applies to most TNCs, and so, for example Italian Fiat Auto Poland, German subsidiary - Volkswagen Poznan or Portuguese controlled Jeronimo Martins Dystrybucja (JMD), despite often being listed on different international stock markets (sometimes more than one, like in the case of Fiat Group), still follow their national business patterns, which means that they all have fairly concentrated shareholders' structure. Similar arrangements pertain at PTC ERA (one of the three biggest Polish mobile networks), which operates as a limited liability company and is currently 93% owned by German capital (having acquired by the addition of T-Mobile 22.5% from Polish conglomerate Elektrim), with the remaining 7% being distributed between three Polish firms also from telecommunication sector.

An interesting and unusual example is the Eurocash holding. The company originated as a business division of JMD, subsequently being disengaged from the core structure in 2002 and eventually bought out by the sole manager- Luis Amaral in 2003, who then introduced the firm to Warsaw Stock Exchange in 2005. By looking at the sample group, Eurocash is the only inward FDI listed on the Polish stock market, which just proves that this form of acquiring capital is not commonly used by foreign investors. In terms of ownership structure, Luis Amaral (the President of the Board) holds 51.5% of shares, and the remaining 48,5% is released to free float with the major involvement of five institutional investors (mainly pension funds), holding all together approximately 25% equally between them. At least seven manager and board members hold a significant number of shares, but again this does not exceed 1% per holding.

Overall, the 20 largest companies which operate on the Polish market have densely concentrated ownership structure with the exception of BP Poland. The average largest single stockholding within the first category of firms amounts to 67% (excluding Polkomtel). Excluding SOEs with sole ownership of the State, this figure drops to 56%, keeping in mind that the government is aiming to gradually withdraw from all non-strategic sectors anyway. Looking at the second category of firms, the average biggest blockholder owns 55% of stock (excluding BP Poland) and in terms of companies listed on WSE (including both groups) the average is 52%.

Employees' representation and the top management structure

During the Communist period the Polish economy was extensively nationalised, centrally controlled by the governing party and administered through highly bureaucratised governmental bodies. The first trace of institutionalised employees' representation can be found in the 1956-1960's Five-Year-Plan, which transferred some functions from the state's administration of industry to newly established and self-managed workers' councils. (Wrobel, 2005: 54) As the author further explains, the "so-called Polish economic model" was abandoned after a few years due to the radicalisation of Gomulka's regime, subsequently reducing to absolute minimum any managerial experiments, including workers' councils. (bid) The "first Solidarity revolution" of 1980-1981 is perceived as the second attempt to empower the workers' class, but this time sufficient pressure has been exerted and necessary adjustments to the legal framework of SOEs successfully made (the 1981 Law on State Enterprises) by turning the "management/party apparatus-controlled firms" into "self-financing, autonomous, and self-managed (labour-managed) entities". (Belka, 1999: 10-11) The general assembly of workers - represented by workers' council, together with the managing director and the trade union - all three with decision-making powers, have created a triangular, corporatist-like arrangements, often infamously branded "Bermuda triangle of Polish SOEs" for its incapability to reach any constructive decisions. (Belka, 1999: 23-25) Out of the three, the workers' council had the most power being able to appoint and dismiss management as well as approve strategic decisions; at the other end of the spectrum, the role of the owner (the State represented by the Ministry of Industry and Trade or voivods) was reduced primarily to approving changes in the legal and organisational status of the enterprise. (ibid)

This has dramatically changed with the commercialisation process after the collapse of communism and the Act of July 13th 1990 on the Privatisation of State Owned Enterprises. To be able to effectively restructure unprofitable state entities, the new government decided to simplify and clarify the legal status and organisational structure of SOEs, through the following: abolition of workers' councils, nomination of a supervisory board and a board of executive directors and turning enterprises into joint stock companies accountable to a general assembly of shareholders, mainly. (ibid) Considering that the State was initially a sole shareholder of commercialised firms, the institution of the supervisory board (SB) was first established to serve primarily the interest of the Treasury; in terms of the board of directors (BD), two to five candidates (almost always acting executive officers) are selected from a company's top management, as there is no distinction between the BD and the top management in Polish commercialised state enterprises, according to Belka. (1999: 24). Labour participation, although drastically curbed, was still exercised by employees' right to nominate two representatives to a SB, who then could raise their general concerns as well as take part in the appointment of executive directors for the board, including the president. (Dziembowska, 2006: 47-48). In addition, based on the preferential agreement reached by then functioning workers' councils and managing directors, many employees have acquired a significant amount of discounted shares during the process of privatisation, and therefore gained an "authority in management" through the shareholders' assembly. (ibid)

The new legislation - the Act of August 30th 1996 on Commercialisation and Privatisation of State Owned Enterprises, which increased employees' representation on the supervisory board of wholly SOEs to 2/5 of all seats and in mixed state-private ownerships to 2 out of 6, 3 out of 7-10 and 4 out of 11 board members, could be interpreted as an attempt to restore the traditionally strong position of workers and their active participation in companies' decision-making process. (ibid; Waclawik-Wejman, 2005: 62-65) Employee related corporate legislation was enhanced by granting workers the right to elect one member of the executive board, but only in commercialised companies which are employing over 500 people and where the government has already sold more than 50% of its stake. As Waclawik-Wejman further explains, additional legal protections had to be provided, for example in the form of higher-education and cost exemptions as well as employment security to guarantee "effectiveness" and applicability of such arrangements for "blue-collar" workers; however, in many cases employees decide to not exercise their rights to participate or to speak up. (2005: 64-65)

In Poland, the entity of the supervisory board (together with the other two statutory bodies - BD and general assembly of shareholders) is secured by the Commercial Companies' Code

2000, which applies to all joint stock and limited liability companies.[15] (Kozarzewski, 2002: 10-11) The two-tier board system divides internal control between executive board managers, who are responsible for day to day activities of the company, and the supervisory board that overlooks corporate decision making; in addition, the law urges a strict division of power between the two bodies to prevent individuals from holding membership on SB and BD simultaneously, including the chairman. (Waclawik-Wejman, 2005: 59-60) Nevertheless, a limited description of board's duties and liabilities as well as an incomplete definition of "supervision" in the context of corporate governance are not only perceived as a weakness of Polish corporate law but they also give owners discretion in narrowing down the scope of powers held by a supervisory board, according to Kozarzewski; this is particularly apparent for small and medium-sized privatised companies where SB have relatively limited ability to influence corporate decisions. (2002: 10-11) The correlation between the size of workers' representation on a company's SB and the type of firm's ownership structure is illustrated below in table 6. Ordinary employees hold the most power at insider-dominated companies and the least at those with foreign capital invested - similar to the top management.

Table 6. Interrelation between ownership structure and supervisory board's composition (unweighted average)

Shareholders and representatives		**The largest shareholder category**							
		Foreign investors		**Domestic institutional shareholders**		**Domestic outsider individuals**		**Insiders**	
		1998	**2000**	**1998**	**2000**	**1998**	**2000**	**1998**	**2000**
Top managers	Ownership	0.6%	0.3%	1.8%	0.7%	3.9%	5.2%	14.2%	27.0%
	SB	**0.0%**	**0.0%**	**0.6%**	**0.0%**	**7.8%**	**8.5%**	**6.3%**	**5.6%**
Other employees	Ownership	1.0%	1.3%	5.2%	3.8%	5.8%	5.8%	47.4%	35.4%
	SB	**4.3%**	**3.5%**	**12.5%**	**11.8%**	**15.4%**	**12.3%**	**40.7%**	**41.6%**
Former employees and managers	Ownership	0.0%	0.2%	1.1%	1.6%	2.1%	2.8%	15.0%	11.3%
	SB	**0.0%**	**0.0%**	**1.1%**	**0.6%**	**3.9%**	**5.7%**	**16.4%**	**13.0%**
The state	Ownership	6.7%	6.3%	13.0%	12.1%	3.8%	74.0%	5.5%	8.6%
	SB	**10.6%**	**7.5%**	**11.4%**	**10.1%**	**4.4%**	**40.1%**	**5.4%**	**3.2%**

Source: Selected findings from Kozarzewski's own survey and calculations. (2002: 14-15)

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[15] According to annual statistics published by the Polish government, by the end of 2009 out of 553,317 companies officially registered, 8,969 were joint-stock companies and 236,355 were limited-liability. (Olenski, 2010: 496)

In 2004 the Polish Ministry of State Treasury released a set of corporate governance's principles, subsequently revised in 2005, that applies to all enterprises in which the state holds any block of shares (including minority shareholding below 5%, nevertheless, this doesn't imply the same level of enforceability for all companies).[16] (Waclawik-Wejman, 2005: 16-18) Considering that the executive board has traditionally always had a dominant role in corporate decision taking, MST Principles incorporated a draft of all duties that should be held by the SB to reanimate and reinforce its activity. Some of the main points included: duty to appoint and remove management (for joint-stock companies only) and duty to review the company's financial statements and key decisions (but lacking of legitimacy to produce binding instructions to management). (Waclawik-Wejman, 2005: 62-65) The document does not make any direct recommendations regarding employees' representation on a SB apart from the general notion that such mechanisms should be "developed and guaranteed" if they are already in place. (ibid)

According to Waclawik-Wejman, in terms of the executive board, MST Principles suggest participation of independent members (which is in line with the WSE Code that urges firms to include at least 50% of such individuals on the board) as well a number of representatives of the Treasury which should be proportional to the size of the state's shareholding. Despite the inclusion of outsiders on a BD, the top management traditionally remains in a very strong position, with the circle of insider elites unchangeably holding to their post, often since before commercialisation. As Kozarzewski noted, in many examples those former directors are more than likely to become members of an executive board (including the CEO position), which is particularly apparent for companies dominated by foreign investors but interestingly not as much for insider controlled firms as those almost always have CEO coming from outside. (2002: 16-19) As states in the Commercial Companies' Code, a CEO usually plays the role of "the first among equals", unless constituted differently in a company's status. The independence and responsibility of individual managers are also interrelated with the ownership structure of a company. As it is presented below in table 7, the most independence is being granted to managers at firms dominated by relatively dispersed individual shareholders, and the least at foreign controlled enterprises where the ownership is more concentrated.

[16] MST Principles were introduced mainly to improve transparency of SOEs and revise strict caps on executive and supervisory board members' pay. (Waclawik-Wejman, 2005: 16-18)

Table 7. The subjective level of independence which the management team has in decision making process (average from 1=decided by the owners to 7=decided by the executive team)

Decisions (only selected categories)	The largest shareholder category			
	Foreign investors	**Domestic institutional shareholders**	**Domestic outsider individuals**	**Insiders**
Investment	3.9	4.6	5.3	5.2
R&D	3.6	5.4	6.0	6.3
Finances	4.8	4.9	6.0	6.3
Wages	5.6	5.7	6.0	6.7
Average independence level (all 11 categories)	**4.9**	**5.6**	**6.3**	**6.4**

Source: Selected findings from Kozarzewski's own survey and calculations. (2002: 18)

In Poland managers can use their privileged position also to leverage control over the cash flow stakes using various legal tools, such as: dual class shares (preferred shares), voting caps, statutory preferences to particular shareholders (golden shares), non-voting shares (since 2001), hierarchical structures (pyramids), cross shareholdings, acquisition through subsidiaries and also purchasing caps (to protect from hostile takeovers). (Dzierzanowski, 2004: 25-26). "Preferred shares with multiple voting rights" are the most commonly employed device (found in 37.6% of corporations according to the author's analysis), used mainly at small, privately founded companies and SOEs which were privatized through management and employee buy-outs (so all the entities where managers position remains strong). (ibid)

According to the theory of corporate governance, in particular by taking as an example the LME-type of capitalism, employee representation in a company can also be expressed by an external institution, such as a trade union. Solidarnosc - a labour movement which has played a pivot role in the collapse of communism in Poland - has naturally reduced its activity after the reestablishment of democratic order and focused mainly on the restructuring of the economy and trade unions' freedom, rather than employee participation. (Sewerynski, 2004: 17-18) The system of industrial relations in Poland is fairly decentralised and individualised, which translates into a dominance of company level agreements over national or sectoral collective bargaining. In October 2007, 135 multi-employer collective agreements were enforced, the same embracing 500,000 workers and 3,000 companies (solely from the industry sector). (Towalski, 2009) As author further explains, even though the level of single collective agreements is slightly higher, overall the coverage of corporate bargaining reaches on average only 14% (of which approximately 5.5% in services). (ibid) Trade unions, whether they are a local branch of the national organisation or single-employer body, are usually consulted in various domains ranging from general management matters to collective dismissals and other strategic decisions determining employment. (Sewerynski, 2004: 8-9) In case of SOEs, trade unions can negotiate social terms related to the privatisation process of the enterprise where the union operates, as well as the general terms of restructuring of particular branch of industry. (ibid) Non-union bodies are recognised only if unions are not present and even then their competencies are limited to areas of collective redundancies, pension schemes and social benefits. (Skupien, 2006) According to the survey conducted by Polish Centre for Research on Public Opinion (Centrum Badan Opinii Spolecznej) in November 2004, trade unions were operating in mere 9% of privately-owned firms, whereas union density for 2001 amounted to 14.7% of the entire working population (comparing with 12.8% in U.S. and 23.5% in Germany). (ibid; Nolke, 2009: 685).

Another category of employee representation which is common for CMEs is the institution of work councils. As already explained, this body was first introduced during the communist regime with the 1982 Act on workers' self-management. Comprised of 15 members, work councils first being elected by the general meeting of employees, have extensive powers ranging from the authority to appoint and dismiss the management of the company to the adoption of financial statements and business plans. (Stelina, 2005: 28-29) Throughout the process of commercialisation of SOEs, work councils were abolished and employees compensated with additional representation on supervisory and executive board. Those SOEs that have not been restructured yet still have actively functioning work councils, however, the number of institutions organised in such a way is drastically dropping, being either transformed into joint-stock companies or liquidated. (Skupien, 2006) Recent legislation which implements the Directive 2002/14/EC of the European Parliament and the Council of 11 March 2002 on "establishing a general framework for informing and consulting employees in the European Community", may be seen as a green light for the revival of work councils as the form of workers' participation in the corporate decision making process which relates to employees' interest. (ibid) According to the new law, from 2008 all commercial companies employing at least 50 people are obliged to establish a work council comprised from three to seven people, depending on the size of the firm, elected by the union committee or other employees (which effectively will be controlled by trade unions in already unionised enterprises) and consulted on various issues such as economic situation of the company, foreseen changes in employment and other amendments to contractual relations.[17] (ibid; Voss, 2006: 18-19) Nevertheless, the introduction of work councils may not be as smooth as desired by some European bureaucrats. This is because under the Polish constitution of 1997, trade unions have a monopoly to negotiate with the employer (only collective agreements reached that way have normative character). (Sewerynski, 2004: 21-22) In addition, many Polish employers still actively oppose to the new legislation, lobbying in favour of the "British way" which grants employers more independence and treats agreements with unions on a non-mandatory basis. (Voss, 2006: 18-19)

As explained in the earlier part of this paper, a company's ownership structure is one of the main determinants of employees' representation and the top management's organisation of the firm. By juxtaposing findings from the previous section together with the above outlined legal framework, a number of key observations can be made. First of all, out the group of 20 biggest enterprises the Treasury holds a stake (of various sizes) in 13 of them, which also means that at the majority of sampled companies employees have the legally provisioned right to delegate their representatives to the firms' supervisory board. The exact headcount of such representation depends on the total number of board members, which may vary from election to election, like in the case of PGNiG. Overall, the most generous prerogatives can be enjoyed by workers at SOEs with a sole ownership of the Treasury (applicable in three cases, plus Energa - as being insider dominated) and the least at firms dominated by foreign capital (like for example at TP SA or PTC ERA-which used to be partially state-owned). Due to lack of available data, it was not possible to asses the extent of employee's representation on executive boards, since their inclusion is not obligatory (no legal sanctions apply).

[17] Recently adopted legal initiatives reinforcing the employees' involvement at the company level are including: the Law on European Works Council on 5 April 2002, the Law on the European Economic Interests Grouping and European Company of 4 March 2005, the Law on European Cooperative Society of 22 July 2006. (Skupien, 2006)

All SOEs within the top 20 companies have undergone the restructuring process already, and therefore, until recently the institution of work councils was not existent any more. The latest law which was introduced to comply with the EU Directive 2002/14/EC should be perceived as a milestone in creation of the new reality, where most firms are now in the process of reestablishing reconditioned work councils that in most cases will fall under the supervision of trade unions (following the Czech model). Industrial relations in Poland are currently decentralised with widely dispersed unions (over 6,300!) having merely 2,500,000 members, which is in the country of almost 40,000,000 people a very low score considering the heritage of Solidarnosc. (Miskiewicz and Zwolinski, 2009) In SOEs with the sole ownership of the Treasury, every fourth employee is a member of a union; this proportion looks less favorable for enterprises with mixed state-private ownership. (ibid) According to the survey conducted in 2002 by the Public Opinion Research Center CBOS, out of all unionised workers 76.7% were employed at SOEs, local authorities or co-operatives and 16.2% were working at companies with joint state-private capital. (Gardawski, 2003: 8-10) Referring to the same set of data, the most unionised sectors include education, culture and healthcare with 31.4% of all unionised employees, followed by industry with 24.6% and transport and telecommunication with 10.4%; all other groups scored below 10%. (ibid) By reflecting those findings on the top 20 biggest Polish companies, most SEOs fall into three sectors: industry, telecommunications or mining, predominantly with mixed ownership structure, and therefore employees' representation at this group is believed to be relatively strong.

At the other end of the spectrum is the second main category of firms operating on the Polish market - the TNCs, whose workers have generally limited ability to express their voice at corporate level. In contrast to SOEs, no legal framework is in place that would secure employees' representation on supervisory boards of privately owned companies. As outlined in table 6, out of all types of ownership structure, firms dominated by foreign capital have the lowest, and steadily reducing, percentage of employees involved on company's supervisory boards (3,5% in 2000 comparing with 4,3 in 1998).

The implementation of EU Directive 2002/14/EC will have more far reaching consequences for private firms than it has for SOEs, however, the change is still in a very early stage and therefore difficult to assess. For this group, the introduction of work councils may re-enforce the position of trade unions which currently is very weak, same as for the first category of companies. Only 7.1% of overall unionised workers are employed by private firms, accounting for approximately 1% of all actively working adults in Poland. (Gardawski, 2003: 8-10; PAP, 2010) According to Miskiewicz and Zwolinski, the size of a company is positively correlated with the unionisation of the workforce. (2009) This may explain the presence of trade unions at the majority of TNCs grouped within the second category of the top 20 biggest enterprises. At some firms, like Fiat Auto Poland or JMD, the activity of more than one union has been recorded, however, this is not necessarily the case for all companies. At Metro Group employees are represented mainly by UNI METRO, which is a firm-specific union but with a global reach. On the other hand, no trace of any type of industrial relations was noted only at BP Poland and Eurocash (with the latter having made it clear in chapter VII of the company's prospectus).

Almost all of the top 20 biggest companies in Poland have a two tier board system (legally provisioned), with only exception of Metro Group that operates on Polish market as a Representative Office of the German head office. As illustrated in table 6, the independence of individual top managers is positively correlated with the number of shares held by insiders which means that the management of Energa should be in theory the most powerful, followed by the three SOEs with the sole ownership of the Treasury and then the rest with a mixed state-private ownership. The liability for decisions taken is divided between all members of executive board as according to Polish law, the CEO usually plays the role of the chairman with the capacity of being the-first-among-equals, unless constituted differently in company's status.

The situation looks slightly different for the second category of sampled enterprises. Individual executives have fairly limited scope of freedom in key areas such as investments, R&D and finance (please see table 7), as foreign investors usually prefer keep control over redistribution of profits to secure their investment. Another tool to ensure sufficient security for overseas investments is the introduction of foreign executives and independent members on supervisory boards. For example, at TP SA which is a SOE with a majority of French capital, the executive board is comprised of two foreign and two Polish directors, and out of 13 members on the SB nine are foreign, six are independent and four are Polish. Similar balances of power dominate at other companies within this category. For example, three out of four directors on the JMD board are of foreign origin and only one Polish representative is included on the supervisory board composed of 6 members. Another example is Eurocash with four executives out of seven being foreigners and two out of five SB participants having Polish nationality. The only exception is BP with four out of five executives being Polish but then all three seats on the supervisory board being occupied by foreign owners. The position of CEO is believed to be stronger at TNCs than it is at SOEs, in particular at firms where chief executive is of foreign nationality (usually indirectly delegated by the owners of the company) which is the case at the most of sampled TNCs, apart from BP Poland but including Eurocash (which is an FDI) and PTC (currently being majority German owned).

Concluding points

This paper aims to contribute to the ongoing debate on comparative capitalism and its CEE dimension. By reference to the theory of Varieties of Capitalism by Hall & Soskice, with particular focus on the institutional set-up that influences the choice of the national mode of CG, the author of this text considered how the theory confronts the reality in the area of ownership structure, employee representation and top management organisation of the 20 largest Polish companies. The findings of this paper are hoped to bring us closer to the still unanswered question of the type of capitalism that would best describe emerging and growing economies in the CEE region.

Having explained the VoC framework and the main differences between two ideal models (LME and CME), the author shifted attention towards the CG perspective presented by Sigur Vitols, believing that firms' relationships with various stakeholders are of prime importance in determining the form of national capitalism. Throughout further literature review, the main inaccuracies of the framework were outlined with regards to some of the most plausible antitheses. For the purpose of this paper, the issue related to the VoC approach not being unable to classify the CEE region became the starting point for further analysis. Being consistent with Hanke's et al. rhetoric of constructive critical approach towards Hall & Soskice's CME-LME model, the author of this text tried to build upon the VoC framework rather than to deny it. This was achieved by confronting empirical findings against the three possible scenarios drafted by King, Mykhnenko, and Nolke and Vliegenthart.

The second part of this paper was dedicated to the placement of main theories into the specific context of Poland. The first section talked about the issue of ownership structure of Polish enterprises, which is believed to be the main factor determining the form of the other two institutions of CG. Starting with an outline of the historical background, interpreting the turbulent events of the late 80's and early 90's - both politically and economically - the author clarified how the State Treasury and foreign investors became the dominant players on the Polish market. Nonetheless, "dominant" does not necessarily translate into "one and only", and so other groups such as average workers, top managers, institutional investors, banks and private persons also had an opportunity to enter “the game”, mainly through numerous privatisation paths as well as through the expansion of the equity market, with various success. At the closing stage of this section, empirical findings from the research conducted by the author of this paper were presented.

The questions of employees’ representation and the top management structure, addressed in the second section, have also received a historical briefing which the author deems essential to fully understand the present circumstances of the two institutions. Further analysed by extensive referencing to the legal framework and various data, the focus in this section has been given to the theoretical assessment of workers’ participation at corporate level (primarily through supervisory boards but also via trade unions and work councils) and of top management’s independence (including the CEO). Due to limitations in relation to the information available, only trade unions’ activity and executive boards’ composition could be measured by empirical evidence; the rest of observations were implied from the Polish and EU legal frameworks and the VoC theory.

Now, having a big picture that incorporates the theoretical perspective, the historical background and the empirical evidence, is it possible to answer which one of the cited scholars, King, Mykhnenko or Nolke and Vliegenthart, was closest to the truth on Polish variety of capitalism?

Looking at the ownership structure of the top 20 biggest Polish companies, there is a clear dominance of SOEs in which the Treasury still holds a controlling block of shares and this constitutes a distinctive characteristic of CEE economies - one which is not shared with either of the two ideal models of VoC. TNCs and other foreign investors form the second largest category of owners, with the level of FDIs exceeding those in CMEs and LMEs, but lower than in other CEE countries. Next are significantly smaller but rapidly growing institutional investors, followed by the enterprises (usually from the same sector), which would indicate a certain resemblance to the CME-type of capitalism, but with reduced involvement of enterprises. Banks, whether foreign or national, account for the smallest division of owners, as they do in LMEs. Almost at the same level as banks are individual persons, including households, managers and workers, which in turn is more similar to the CMEs structure.

Polish companies, regardless of the origin of dominant capital, have a relatively densely concentrated shareholding structure, similar to German firms. However, considering the government's ongoing privatisation process, the ownership concentration rate is expected to drop further with the increase in activity of institutional "portfolio" investors (as is the case in LMEs) and other companies operating within the same sector (similar to CMEs). In terms of TNCs, all three scenarios are possible as firms may wish to gain full control over companies they acquire (like in case of PTC ERA); they may also decide to go through a local stock exchange to seek further financing for their investment (as did Eurocash) or simply perceive Polish subsidiaries only as an assembly platform in the global business chain, without having any impact on the overall ownership structure of a corporation. Even if TNCs decide to widely trade their shares on local stock exchanges, it is highly unlikely that they would release more than 50% of stock. Nevertheless, the equity market should not be underestimated considering its rapid growth, increasing capitalisation and generally lower reliance on domestic credit than it is in other CEE countries. It is believed that the ultimate choice of business structure mainly depends on national preferences where the company originates, as exemplified by BP.

In terms of employees' representation and top management organisation, the division is similar to that of ownership structure. The majority of top 20 biggest Polish companies, by virtue of being SOEs, are regulated by a legal framework which guarantees workers' participation on SBs and to a lesser extent on executive boards. In this sense, Poland shows strong resemblance to the CME model, although the size of representation is smaller (between two to four seats). Within the second category, no trace of employees' inclusion at corporate level of TNC was found and no legal framework regulating this matter exists, which indicates close similarity to LMEs. The lack of actively operating work councils in both categories, again, is a typical feature for the Anglo-Saxon model. Trade unions in Poland are highly decentralised and their bargaining power is usually limited to wage and collective redundancies issues. SOEs are the most unionised, with the private sector being at the other end of the spectrum. At the majority of researched TNCs, activity of at least one union has been noted which can be explained by the interrelation between the size of a company and the unionisation of the workforce. Comparing those findings with the VoC classification, Poland should be located somewhere half-way through between the LME and the CME model. In terms of top management structure, the Polish system remains similar to the German model, for example by having a dual board system, a clear division between management and control, and a first-among-equals CEO. It is expected that at TNCs' chief executives, in the majority of cases being foreigners, have relatively wider scope of powers to be able to have a final say in key areas, such as finances, investments or R&D.

With further privatisation of SOEs, employees' representation on SBs is expected to be ceased in the long term, unless the government secures it legally. Additional support to maintain minimal participation of workers at corporate level may also come from supranational legislature, of which the introduction of the EU Directive 2002/14/EC is an example. With this new legal obligation to re-establish work councils, the Polish structure will more closely resemble the CME model. Considering that trade unions will gain authority to supervise the new institution, they may also benefit from greater public awareness of industrial relations' activity. Often wrongly perceived as a vestige of the communist period that does not fit the purpose, and as an obstacle for the development of private and restructuring of public enterprises, Polish unions cannot rely on strong public support - ironically. Some extreme examples have been noted where employees were being unfairly dismissed for their membership in the union. (Bernat, 2009) A recent government report assessing the cost of trade unions in 254 SOEs only increased widespread criticism. The document revealed that the overall expense exceeds 50,800,000,000 PLN with Tauron, KGHM and Energa being the most onerous (PAP, 2010).

Looking at above summary, it is clear that the Polish variety of capitalism does not exactly fit in either the LME or the CME model, balancing somewhere between the two. Although both King and Mykhnenko were largely correct in their appraisal of Polish reality, they tried to "squeeze" their conclusions into the narrow VoC framework, giving the misleading impression of reaching different inferences and therefore causing disagreement. Nolke and Vliegenthart, by extending the existing framework to the new DME model, have avoided such confrontation. Their assessment of the CEE region measured against the findings outlined above proves to be the closest to reality. In response to the presented literature, and based on the evidence included in this paper, the author believes that the strong position of the State, as the shareholder of many enterprises, should not be underestimated, as well as the rapidly developing equity market and the growing importance of institutional investors. The re-establishment of work councils may strengthen the position of trade unions but those in return need be very careful so that Poland does not loose its competitive advantage which is a cheap but skilled and flexible labour force. Perhaps the fact Poland had the best real growth performance in 2009 out of the all EU countries, and avoided the collapse of its economy during the recent global financial crisis (unlike most of the new EU members in the CEE region), indicates a need to reappraise the Polish variety of capitalism, but it is still too early to assess the long term implications of recent events.

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