Józef Okolski, Magdalena Szyszka

# The Principle of Equal Treatment of Shareholders in Polish Company Law

## INTRODUCTION

The principle of equal treatment is one of the fundamental principles of commercial law[1]. It has a significant impact on the nature and structure of a company. In this article the meaning of the principle of equal treatment of a company's shareholders in Polish law, EU regulations and corporate governance principles will be presented. The inevitable conflict between the principle of equal treatment and the freedom of contract, and the relationship between the principle of equal treatment and majority rule will be analyzed. In addition, the principle of equal treatment will be analyzed from the point of view of economic efficiency of the existing legal solutions. It becomes an integral part of new institutional economy which emphasizes the importance of the quality of legal environment for the functioning of an enterprise[2]. In the course of discussion the notions developed by the economic analysis of law will be adopted, including the issues of transaction costs, the Coase theorem and the efficiency of the market for corporate control.

The article does not discuss the issue of a golden share since special powers of the Polish State Treasury are a separate issue thoroughly described in legal writings[3].

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1 Cz. Żuławska, *Zasady prawa gospodarczego prywatnego*, Warsaw 1999, p. 113; P. Sołtysiński, A. Szajkowski, J. Szwaja, *Kodeks Spółek Handlowych. Komentarz Vol. I,* Wydawnictwo C.H. Beck, Warsaw 2006, p. 276.

2 More in: J. Bełdowski, K. Metelska-Szaniawska, *Law & Economics – Wprowadzenie*, in: R. Cooter, T. Ulen, Ekonomiczna analiza prawa, Wydawnictwo C.H. Beck, Warsaw 2009, p. XIV–XXI, and the references.

3 Fundamental publications: K. Dębowska, *Polska konstrukcja „złotej akcji" na tle zasady równego traktowania akcjonariuszy w spółce akcyjnej*, in: Kodeks spółek handlowych po pięciu latach, Wydawnictwo Uniwersytetu Warszawskiego, Wrocław 2006, p. 461– 478; A. Frankowska, A. Bodnar, *Nie każda „złota akcja" jest złota*, Przegląd Prawa Handlowego 2003, No. 3; pp. 40–45; Ł. Gasiński, *Dopuszczalność wprowadzenia "złotej akcji" do konstrukcji spółki*, Przegląd Prawa Handlo-

# THE PRINCIPLE OF EQUAL TREATMENT OF SHAREHOLDERS

## 2.1. The principle of equal treatment of shareholders in the Commercial Companies Code (CCC)

In the Polish legal system the principle of equal treatment of shareholders is set out in Art. 20 of the CCC stipulating that "shareholders of a company shall be treated equally in the same circumstances". The introduction of Art. 20 to the Commercial Companies Code was treated as an adjustment of Polish law to European Community's regulations. The Commercial Code[4] adopted the principle of equal treatment previously formulated in jurisprudence[5]. Each time shareholders are vested with broader rights than their share in company capital it is a departure from the principle of equal treatment[6]. A majority of a shareholder's rights, according to the principle of equal treatment, should be proportionate to their share in the share capital. These rights are, for instance, voting rights, rights to a dividend, rights to a share in the assets of a company being liquidated. Rights that are vested independently of their share in the issued capital include, in particular, the right to information[7] and the right to participate in a general assembly of shareholders.

The Commercial Companies" Code provides for a number of exceptions from the principle of equal treatment, which allow to differentiate the shareholders" status. They include, in particular, the following articles of

wego 1999, No. 3 pp. 27–35; M. Gordon-Trybus, *Złota akcja i złoty akcjonariusz*, Europejskie Centrum Edukacyjne, Toruń 2006; P. Grzesiok, *„Złote weto" Skarbu Państwa – wybrane zagadnienia na gruncie polskiej regulacji prawnej*, Prawo Spółek 2007, No. 9, pp. 13–22; W.J. Katner, *Pozakodeksowe uprzywilejowanie akcji – konstrukcja "złotej akcji" Skarbu Państwa według ustawy z 2005 roku*, Przegląd Prawa Handlowego 2005, No. 12, pp. 42–49; M. Mataczyński, *Swoboda przepływu kapitału a złota akcja Skarbu Państwa*, Wolters Kluwer Polska, Warsaw 2007; K. Osajda, *„Złota" akcja w orzecznictwie Europejskiego Trybunału Sprawiedliwości i w prawie polskim*, Przegląd Prawa Handlowego 2004, No. 8, pp. 23–31; K. Pawłowicz, *"Złota akcja" Skarbu Państwa jako instytucja prawa publicznego*, Państwo i Prawo 2007, Vol. 2, pp. 30–40; P. Sołtysiński, *"Złota akcja" Skarbu Państwa w świetle prawa unijnego i polskiego*, in: Księga pamiątkowa dla uczczenia 70 urodzin profesora Eugeniusza Piontka. Współczesne wyzwania europejskiej przestrzeni prawnej, Kantor Wydawniczy Zakamycze, Cracow 2005, pp. 309–323.

[4] Ordinance of the President of the Republic of Poland dated 27 June 1934, Commercial Code, Journal of Laws of 1934, No. 57, item 502, as amended.

[5] A. Piotrowska, A. Mikuła, *Wyłączenia i ograniczenia prawa głosu w spółce akcyjnej*, Przegląd Prawa Handlowego 2003, No. 6, p. 26.

[6] More in: J. Okolski, J. Modrzejewski, Ł. Gasiński, *Zasada równego traktowania akcjonariuszy na gruncie KSH*, Przegląd Prawa Handlowego 2002, No. 10, pp. 19–25; T. Sójka, *Zasada równego traktowania akcjonariuszy w kodeksie spółek handlowych–zagadnienia podstawowe*, Ruch Prawniczy Ekonomiczny i Społeczny 2000, No. 4, pp. 35–53; M. Romanowski, *Zasada jednakowego traktowania udziałowców spółki kapitałowej I, II*, Przegląd Prawa Handlowego 2005, No. 1, pp. 5–11, No. 2, pp. 26–32.

[7] K. Bilewska, Prawo *do informacji–fundament statusu prawnego wspólników (akcjonariuszy) spółki kapitałowej*, Huk 2008, No. 4, pp. 447–457.

the CCC: Art. 174, Art. 193, Art. 258 § 1, Art. 351, Art. 352, Art. 353, Art. 411, Art. 433 § 2. They are subject to narrow interpretation. The Code provides for privileges related to a share (e.g. Art. 351 § 1 and 2) and personal powers of shareholders (e.g. Art. 354). Such a power is created by virtue of the company's statutes which indicate privileged shareholders[8]. Exemptions from the equal treatment of shareholders may be imposed by legislative acts or company's statutes.

The principle of equal treatment of shareholders is disputed in legal writings and case law. Firstly, there are divergent opinions as to whether Art. 20 of the CCC contains normative content or is only an interpretative directive. Also, there is no agreement as to whether the right to equal treatment may be waived and if yes, then to what extent[9] and whether according to the maxim *volenti non fit iniuria*, a shareholder can renounce the rights vested in it *a priori* under the CCC. Also, the manner of appealing against resolutions incompliant with the principle of equal treatment of shareholders is being discussed[10]. Another question is: are we free, within the exceptions provided by the CCC, to determine shareholder status the way we want, or still, do we have to justify the unequal treatment?[11] It is also not clear who is the addressee of the principle of equal treatment. The prevailing opinion is that these are the authorities of a company, but, some scholars say it can also be a majority shareholder obligated in relation to the minority shareholders[12]. This issue is strictly related to the (disputable too) obligation of loyalty of shareholders[13], and liability for the undue exercise of a right[14]. In addition, there are doubts whether a district court is competent to assess the compliance of company's articles of association with the principle of equal treatment[15]. Controversial is the view that a privilege may be granted only when it is in the company's interest. It is not enough then that shareholders are in a different position. Some allow objective justification (by company's

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[8] More in: P.J. Turowicz, *Prawa przyznane osobiście poszczególnym wspólnikom lub akcjonariuszom*, Przegląd Prawa Handlowego, 1999, No. 5, pp. 41–43; Ł. Gasiński, *Dopuszczalność...*, pp. 27–35.

[9] P. Włodyka, *Prawo spółek handlowych*, Vol. 2 A, Wydawnictwo C.H. Beck, Warsaw 2007, p. 72.

[10] M. Romanowski, *Zasada jednakowego traktowania udziałowców spółki kapitałowej II*, Przegląd Prawa Handlowego, 2005, No. 2, pp. 30–31.

[11] See: M. Romanowski, *Zasada „jedna akcja–jeden głos" a natura spółki akcyjnej*, Huk 2008, No. 4, p. 467.

[12] M. Litwińska-Werner, *Kodeks spółek handlowych. Komentarz*, Wydawnictwo C.H. Beck, Warsaw 2007, p. 218.

[13] D. Wajda, *Obowiązek lojalności w spółkach handlowych*, Wydawnictwo C.H. Beck, Warsaw 2009.

[14] O. Lipińska-Długosz, *Ochrona spółki akcyjnej i jej akcjonariuszy przed niewłaściwym wykonywaniem* prawa, Warsaw 2006.

[15] M. Romanowski, op. cit , p. 32.

interest) of unequal treatment even in similar circumstances[16]. The above demonstrates how many and how serious doubts arise with respect to the said principle. Its wide scope of the principle is to blame for the ambiguity of interpretation: both limited liability companies and joint stock companies are listed on regulated markets. When literal interpretation fails it is necessary to apply purposive interpretation. It seems that its results may be different for a joint stock company and for a limited liability company. As currently there are no grounds for universal application of the principle, its interpretation must depend predominantly on the type of company.

### 2.2. The principle of equal treatment of shareholders and the principle of contractual freedom

The scope of application of the principle of autonomy of will, which is one of the basic principles of private law[17], is significantly narrowed in company law. The Commercial Companies Code contains a closed list of companies. This is justified by the need to guarantee security of legal transactions. However, this does not mean that the principle of freedom of contract is entirely excluded from company law. Shareholders can shape the content of the statutes or articles of association within the limits set by CCC. However, the requirement of equal treatment of shareholders significantly limits the autonomy of will of the parties which may wish to shape their status in a different way. This limitation is important inasmuch as it concerns companies, the only entities to have legal personality, thus excluding personal liability of shareholders. It is understandable that in some cases founders of a company may wish to shape the statutes in a manner inadmissible under the principle of equal treatment. Currently it is not acceptable. There is a number of circumstances in which it is also purposeful to grant privileges to certain shareholders of a company during the company's duration. This may result from an urgent need to obtain funds, secure future investors or search for a strategic investor. Another purpose is often the stabilization of a shareholder's position in the company's structure.[18] It is worth emphasizing that in the absence of equal treatment, only the shareholders and the company are potentially disadvantaged. The effects of such actions do not go beyond the circle of entities directly engaged in a given legal relation-

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[16] P. Sołtysiński, A. Szajkowski, J. Szwaja, op. cit., p. 306.

[17] Z. Radwański, *Prawo cywilne – część ogólna*, Wydawnictwo C.H. Beck, Warsaw 2004, p. 18.

[18] M. Michalski, *Kontrola kapitałowa nad spółką akcyjną*, Kantor Wydawniczy Zakamycze, Cracow, 2004, p. 347.

ship. Thus, it does not diminish the security of legal transactions. It seems that the principle of equal treatment of shareholders should be accepted as *ius dispositivum*, applicable in cases where parties have not agreed otherwise, in particular in non-public companies. The inability to incorporate a company where some shareholders waived their right to equal treatment can be viewed as a limitation of the principle of freedom of economic activity guaranteed in Art. 20 of the Polish Constitution.

### 2.3. EU Law

EU law formulated the principle of equal treatment of shareholders in the Second Council Directive[19]. Art. 42 of the directive stipulates that "the laws of the Member States shall ensure equal treatment to all shareholders who are in the same position". Departures from the above principle are possible only if "privileges are substantiated by important circumstances"[20]. This is a ban on unjustified discrimination of a shareholder[21]. However, it should be emphasized that the directive did not apply to limited liability companies and according to the European Court of Justice its Art. 42 cannot be interpreted in a way that would expand its scope and cannot be taken into account in cases other than to reduce or increase the share capital[22]. Then Art. 20 of the CCC, by expanding the principle of equal treatment to all companies in all circumstances, significantly exceeds the scope necessary for the implementation of the Directive. Directive 2004/25/EC and Directive 2007/36/EC are also worth noting. Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids[23] relates to companies whose shares are listed on regulated markets. The aim of the Directive was to limit blocking takeovers[24]. To this end an efficient corporate control market was to be created. This was important from the point of view of our analysis since barriers against hostile takeovers are usually a serious breach of the principle of equal treatment of shareholders. Considering that most member states do not allow to deprive shareholders of privileges in the case of a hostile takeover, the

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[19] Second Council Directive no. 77/91/EEC of 13 December 1976, EU OJ L 026, 31/01/1977.

[20] K. Dębowska, op. cit., p. 466.

[21] P. Sołtysiński, A. Szajkowski, J. Szwaja, op. cit., p. 305.

[22] Judgement dated 15 October 2009 in case C-101/08, Audiolux SA vs. Groupe Bruxelles Lambert SA, as yet not published in the Collection, http://curia.europa.eu, item 37.

[23] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, OJ L 142, 30/04/2004 P. 0012–0023.

[24] M. Mataczyński, *Swoboda przepływu...*, pp. 256–304.

actual impact of the Directive is insignificant[25]. However, it shows a direction which the European Union tried to take with respect to takeovers and the equalization of shareholders" rights. Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights by shareholders in listed companies[26] aims at strengthening the position of shareholders. Member states could expand the application of the Directive to non-listed companies, which Poland did not do. The Directive introduced a number of benefits for shareholders in listed companies: casting votes by mail, voting by proxy, suspending freezing of shares during a general assembly of shareholders, online meetings, obligation to maintain a website containing certain information[27]. The aim of the Directive was to strengthen shareholders" rights, increase effectiveness and competitiveness of companies from the European Union, expand and strengthen financial markets and increase liquidity. Article 4 of the Directive repeats the said principle in connection with participation in a general assembly: "The Company shall ensure equal treatment for all shareholders who are in the same position with regard to participation and the exercise of voting rights in the general assembly". The directive was implemented into Polish law by the Act dated 5 December 2008[28], and came into force on 3 August 2009. It should be stressed that it puts an increased emphasis not only on the formal equality of shareholders in listed companies but also the actual ability to influence the company policy. Thus, additional obligations are imposed on companies, which are to counteract discrimination against individual shareholders. They become the instrument of affimative action for they enable weaker shareholders to fully participate in the decision-making with respect to the company's affairs.

The legal status of shareholders is also determined by judgments of the European Court of Justice. The *status quo* was presented in the ECJ's judgment of 15 October 2009[29], in which the Court analyzed EU regulations and the case law concerning the principle of equality of shareholders. It

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[25] Ibidem, p. 301.

[26] Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights by shareholders in listed companies, OJ L 184 of 14.7.2007, p. 17.

[27] K. Opustil, *Analiza projektu ustawy implementującej dyrektywę 2007/36/WE w sprawie niektórych praw akcjonariuszy spółek notowanych na rynku regulowanym,* HUK 2008, No. 3, p. 365–398.

[28] Journal of Laws of 2009, No. 13, item 69.

[29] Judgement dated 15 October 2009, in case C-101/08, *Audiolux SA v. Groupe Bruxelles Lambert SA*, not published, http://curia.europa.eu.

raised the question of whether a majority shareholder may treat minority shareholders unequally in a situation where it is not prohibited under specific domestic or EU regulations[30]. The Court adopted the view that "the Community law does not include any general principle of law under which minority shareholders are protected by an obligation of the dominant shareholder, when acquiring or exercising control of a company, to offer to buy their shares under the same conditions as those agreed when a shareholding conferring or strengthening the control of the dominant shareholder was acquired"[31]. As a result the majority shareholder is not obliged to treat minority shareholders in a non-discriminatory way unless mandated by law. The Court also analyzed the very existence of the principle of equality. It decided it was not possible to derive it from secondary law. Relevant directives concern specific issues, which do not provide grounds for making the principle of non-discrimination of shareholders a general principle for the entire body of company law. It invoked a different understanding of the principle of equal treatment of shareholders across the EU. Therefore the principle of equal treatment of shareholders is in force only in those states which, like Poland, adopted it in their domestic legal systems.

In a debate on the position of shareholders in the EU the principle "one share – one vote" must also be mentioned, though it has not effected any changes in the EU legislation. This principle represents one of the aspects of the principle of equal treatment of shareholders[32]. The scopes of these two principles overlap. According to the principle of equal treatment, it is admissible to treat shareholders differently due to various circumstances. The "one share – one vote" principle entails absolute ban on shares deprived of voting rights and multiple-vote shares. On the other hand, the principle of equal treatment covers, e.g. the right to information and other shareholder's rights not related directly to a voting right. The one share – one vote principle was pronounced in the Communication from the Commission to the Council and the European Parliament, of 21 May 2003 – Modernizing Company Law and Enhancing Corporate Governance in the

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[30] Detailed presentation of the situation in fact and a discussion of the judgement: L. Siwik, *Ochrona akcjonariuszy mniejszościowych w prawie UE*, Prawo Europejskie w Praktyce 2009, No. 12, pp. 67–74.

[31] Judgment dated 15 October 2009, in case C-101/08, *Audiolux SA v. Groupe Bruxelles Lambert SA*, not published in the Collection yet, http://curia.europa.eu

[32] More in: M. Romanowski, op.cit, p. 472.

European Union – A Plan to Move Forward[33]. Departures from the "one share – one vote principle were to be fought against in order to "increase the shareholder democracy" and strengthen shareholders" rights in listed companies. In company law democracy is, in reference to listed companies, defined as equality in the scope of rights, before law and before company's articles of association, the ability of each shareholder to participate in the management process, transparency of the decision-making process, legitimization of the actions of decision-makers through their representativeness (in strict relation to the rule of majority) and strengthening the independence of managers combined with increasing their liability[34].

### 2.4. The principle of equal treatment of shareholders in codes of good practices

The OECD's principles of corporate governance[35] are guidelines for authors of Corporate Governance Codes of listed companies all around the world. According to Article III, "the corporate governance framework should ensure equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights". Point B of Article VI stipulates that "where board decisions may affect different shareholder groups differently, the board shall treat all shareholders fairly. It should take into account the interest of the company and the shareholders." According to point E of Article II, the "market for corporate control should be allowed to function in an efficient and transparent manner"; and, in particular, "anti-take-over devices should not be used". The OECD's Code does not take a stance on the one share – one vote principle. Therefore, the OECD's corporate governance rules express the necessity of equal treatment of domestic and foreign shareholders, ban discrimination of individual groups of shareholders and ban on discrimination in favor of shareholders in a manner that would make the take-over of a company difficult.

The Code of Best Practice for WSE listed companies currently effective on the Warsaw Stock Exchange came into force on 1 January 2008[36]. Accord-

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[33] Communication from the Commission to the Council and the European Parliament, *Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward*, p. 13.

[34] Catana, *Demokracja akcjonariuszy i deficyt demokracji w prawie spółek*, Huk 2008, No. 1.

[35] OECD's principles of corporate governance, adopted by OECD member states on 22 April 2004, http://www.msp.gov.pl/dokumenty/zalaczniki/2-86.pdf

[36] The Code of Best Practice for WSE listed companies, Appendix to Resolution No. 12/1170/2007 of the WSE Supervisory Board, dated 4 July 2007, http://www.corp-gov.gpw.pl/assets/library/polish/dobrepraktyki2007.pdf.

ing to Art. I point 8, "no shareholder may be given undue preference over other shareholders with regard to transactions and agreements made by the company with shareholders and their related entities".

## 3

## EFFICIENCY OF POLISH STATUTORY SOLUTIONS

The issue of economic efficiency of the principle of equal treatment of shareholders may be viewed from a different angle. In the case of listed companies the financial market efficiency will be of supreme importance. The efficiency of the market in supervising companies is also important. In addition, one should examine what level of security of legal transactions these regulations ensure since it may affect the amount of transaction costs notably[37].

In the economic analysis of law, a company is treated as a tool for earning money[38]. A company's purpose is to maximize its value for shareholders. The articles of association of a company may be analyzed from the economic point of view just as any other private law agreements. Therefore, transaction costs related to a given agreement should be taken into account. Transaction costs are the costs of soliciting a contractor, bargaining and enforcing performance of the agreement[39]. Thus, these are the costs connected with the transfer of ownership rights from one participant to another through a stock exchange[40]. According to the Coase theorem, the high transaction costs result in inefficient allocation of goods. Uncertain, complicated laws increase transaction costs[41]. Therefore, another Coase's theorem may be introduced: "law should be free of obstacles for private agreements"[42].

In order to find out how exceptions from the principle of equal treatment of shareholders in companies are assessed by the stock exchange

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[37] J. Okolski, M. Szyszka, *Zasada bezpieczeństwa obrotu gospodarczego w prawie spółek handlowych*, in: W. Sokolewicz (ed.), Krytyka Prawa, Vol. II, *Bezpieczeństwo*, Warsaw 2010, p. 360.

[38] R. Cooter, T. Ulen, op. cit., p. 171.

[39] Ibidem, p. 107.

[40] J. Godłów-Legiędź, *Znaczenie teorematu Coase'a i idei kosztów transakcyjnych w rozwoju ekonomii*, in: B. Polaszkiewicz, J. Boehlke (eds.), Ład instytucjonalny w gospodarce, Vol. II, Nicolaus Copernicus University, Toruń 2006, p. 31.

[41] R. Cooter, T. Ulen, op. cit., p. 111.

[42] Ibidem, p. 114.

investors, a wide-scale study commissioned by the European Commission was carried out in 2007[43]. For the first time an attempt was made to measure the impact of individual mechanisms enhancing some shareholders" control on investors" decisions within a statistically significant sample. The most negative opinions were expressed in relation to privileged shares and "golden shares". It should be noted that the largest investors assessed them even more negatively than the entire sample examined. From the Polish perspective, it should be emphasized that mute shares and qualified shares, large majority of votes necessary to take certain decisions received neutral assessment. However, it should be pointed out that the voting rights ceiling exceeding certain threshold, which is permitted and lowered from 20% to 10%, by the last amendment of Art. 411 of the CCC, was negatively assessed, since it makes takeovers more difficult to effect.

From the point of view of the economic analysis of law, we can also look at a company as an "organization having an owner", where companies, like other goods, may change hands to those who make the best use of them be it an owner who can gain most profit from the company. It leads to the maximization of prosperity because companies end up owned by persons who manage them most profitably[44]. Any obstacle to a takeover should be viewed negatively. Takeover blocking may be harmful to the minority shareholders who, consequently, cannot realize their profit. At the same time, it is noted that a group which is most interested in preventing takeovers is managerial staff, in particular, management board.

Transaction cost is also affected by the level of security of transactions provided by law. A shareholder, deciding on joining a company, estimates the risk incurred by investing money in a given undertaking. The legal risk is estimated as well. If regulations are ambiguous, carry a large measure of uncertainty, the risk must be taken into account while calculating the expected return on investment. This results in the undervaluation of a company, which does not translate into competitiveness of the economy. Questions like this are provoked by the principle of equal treatment of shareholders provided for in the Polish law. A shareholder in a company cannot be certain what degree of differentiation in rights will be allowed by courts.

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[43] Institutional Shareholder Services, Sherman & Sterling LLP, European Corporate Governance Institute *Report on the proportionality principle in the European Union*, 18 May 2007, Report for the European Commission, p. 130.

[44] R. Cooter, T. Ulen, op. cit., p. 171.

It is worth noting that when the articles of association are accepted by a registration court, discriminatory provisions may be challenged, for instance, an appeal against a resolution of the general assembly of shareholders[45]. It is also difficult to determine what is the relevant factor of differentiation[46]. If such analyses are conducted, it also means that courts must apply business criteria. It is obvious that it may be difficult both for the courts and shareholders. A more clear division is needed as to when shareholders can freely shape the rights and when it is absolutely prohibited to discriminate between shareholders.

Finally, it is worth noting that access to information significantly contributes to the decrease of transaction cost. In practice, the emphasis is put on the communication between a company and investors through websites.

## 4

The foregoing analysis allows to put forward a few recommendations. In regulated markets joint stock companies should operate, as far as possible, according to the principle of equal treatment of shareholders. It seems justified by the results of the studies and also by the developments in codes of good practice, where the principle of equal treatment of shareholders is interpreted in increasingly broad terms. At the same time, it seems inadvisable to limit the principle of contractual freedom as much as in the non-listed limited liability companies and a joint stock companies. The Polish legislators should reconsider whether it makes sense to expand the rules contained in the EU directives to limited liability companies and non-listed companies, particularly that in a limited liability company the majority rule and the autonomy of will is incomparably more important than in listed companies. The above suggestions coincide to some extent with a proposal to distinguish a listed company as a separate type of a joint stock company as opposed to a simplified joint stock company which would be more like a limited liability company[47]. It should be stressed that these proposals could be part of a systemic change. These amendments should be logically connected to the entire body of the Polish law. It is still an open question if,

[45] See: Judgement of the Supreme Court – Civil Chamber, dated 30 September 2004, IV CK 713/2003, LexPolonica No. 369232, Bulletin of the Supreme Court 2005, No. 2.

[46] M. Romanowski, *Zasada jednakowego traktowania udziałowców spółki kapitałowej I*, Przegląd Prawa Handlowego, 2005, No. 1, p. 6.

[47] M. Romanowski, *W sprawie pojęcia i natury spółki publicznej*, Przegląd Prawa Handlowego, 2009, No. 3, p.16.

assuming that the principle of equal treatment of shareholders, interpreted restrictively, is justified in reference to public companies, the mechanisms foreseen in the CCC should be reformed, or whether the Code of Best Practice for the WSE listed companies would suffice. The "comply or explain" principle falls short of mandatory enforcement of such provisions but at least it allows shareholders to see if the company has declared observance of a given rule. This guarantees transparency, one of the greatest values in the relations between a company and its shareholders.