COMPARATIVE ANALYSIS REGARDING THE PRINCIPLES CONTAINED IN THE CORPORATE GOVERNANCE CODE IN ROMANIA AND OTHER CODES OF EMERGING MARKETS

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In Romania, the principles of corporate governance apply only to large private or public companies, due to lack of information, transparency, poor training of managers, legislative incoherence. The research has as purpose some international comparisons on common principles existing in Romania's Corporate Governance Code and in other codes of developed or developing countries (Great Britain, France, Germany, Austria, Italy, Spain, Portugal, Greece, Belgium, Sweden, Denmark, Bulgaria, USA), with additions of principles / recommendations existing only in codes of developed countries.

1. INTRODUCTION

The research carried out begins with a brief comparison between the corporate governance codes of some developed or developing countries, to observe whether the principles of corporate governance in Romania are assorted with international principles. The main features analyzed were the administration system used - single or dual, composition and structure (existence of non-executive members, independent members) control systems, general manager's duality functions (CEO) and Chairman of the Board of Directors, representation of employees, managers, shareholders in the Board. Concurrently it was analyzed the presence and role of committees / advisory boards - nomination, remuneration or audit committee. Comparative analysis was performed for 14 countries (Great Britain, France, Germany, Austria, Italy, Spain, Portugal, Greece, Belgium, Sweden, Denmark, Bulgaria, and USA) that have adopted the Continental / Anglo-Saxon model or the German corporate governance model.

2. REGULATIONS OF GOVERNANCE CODES AND STATISTICAL RESULTS

The general framework of corporate governance should promote transparency and efficiency of financial markets, to protect and respect the interests of investors, to ensure equal treatment of all shareholders, including to minority shareholders, to ensure transparency of information relating to the financial statements, profitability, the company's management and not lastly a proper monitoring of business management. Organization for Economic Cooperation and Development (OECD) argues that corporate governance principles should be respected because they have an impact on performance, on the integrity of the market and because it provides incentives for participants in the capital market, because it promotes the existence of transparent and effective markets (OECD, 2004).

2.1. The management system

There are two characteristics in any governance model which outlines the interactions and relationships between the management structures parties:

- ❖ The Board of Directors composition
- ❖ The management organization constituent.

Between the objectives of party it must be mentioned ***the composition and constituent of the management systems***, no matter whether we speak about USA or of Europa. The management system may be classified as it follows:

- *Unitary system:* the Board of Directors is the only management structure. Executive and non-executive members compose a single management forum.

Dual system: two different committees, a Supervisory Board (the strategic direction of the company) and a Directorate (they are involved in the operative company's business). The dual system shows a clear distinction and separation between the supervision functions and of the monitoring one, on the one hand, and executive functions, on the other hand (Rosentein & Watt, 1990). The unitary system combines both functions, although some models of governance, however, provide a degree of separation of these functions.

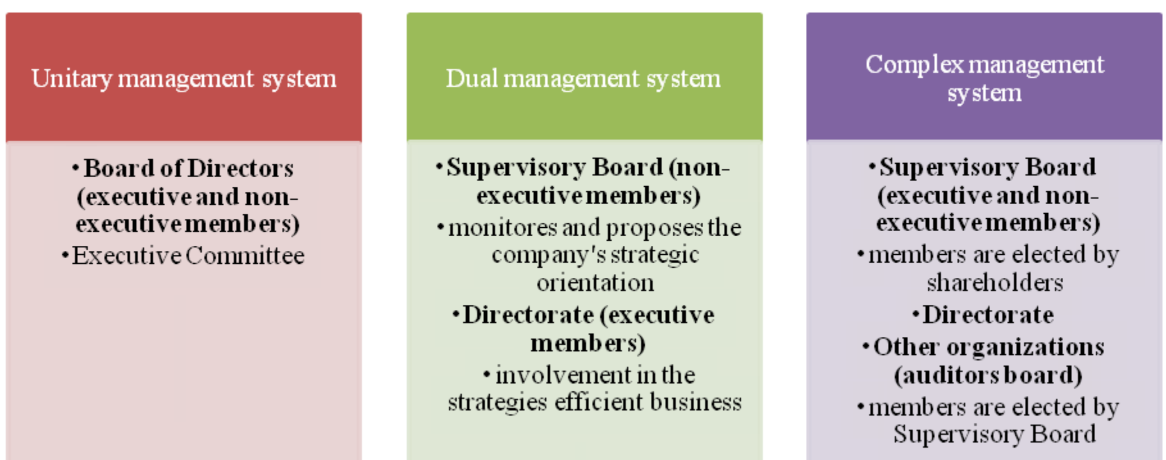

Fig. 1 Organizational management structures / systems

Therefore organizational structures may be divided in two groups:

1. Those countries where the dual system is required, it is specified in the law, and it applies to companies of a certain size (Austria, Germany, Denmark).

2. Those countries where the unitary system is the base system: UK, Belgium, Spain, Italy, Sweden, Bulgaria, Romania, France, Greece, Portugal, USA. In this group of countries mentioned, the unitary and dual system coexists, but unitary system is the most common structure.

2.2. Management structures' composition

Board composition refers on the one hand to the existence of executive members (internal) or non-executive (outside). The Board of Directors composition will ensure a balance between executive and non-executive members and a significant number of independent members so that no person or group of persons can dominate the decision-making process of the Board.

Therefore a summary of the provisions laid out for the 14 countries, by the balance between executive and non-executive members so that no person or group of persons can dominate the decision-making process of the Board of Directors, understanding:

- More than half of the Board's members are non-executive members - *Germany, Belgium, Italy, UK, Portugal, Spain, Denmark, Austria, Bulgaria, Romania, and USA.*
- More than one third of the Board members are non-executive members – *Greece.*
- *More than two thirds of non-executive members: France and Sweden.*

Non-executives should bring independent ideas, to be involved in strategic issues, performance issues, human resources, including the appointment of directors, and standards of conduct.

Concurrently the Board will provide a ***sufficient number of independent members***:

- More than half of the Board's members are independent members – *France, Germany, Great Britain, Greece, Sweden, Denmark, Portugal, Austria, Bulgaria, Romania, and USA.*
- More than a third of Board of Directors members are independent members – *Belgium, Italy, Spain.*
- *More than a fourth – Portugal, Greece.*

Board composition must create gender, age, general skills and knowledge and experience diversity (Jensen & Meckling, 1976). Hence about the structure and composition of the Board are countries like France, Belgium, Germany, Sweden, Denmark or Austria specifying in the principles of corporate governance issues within a relationship between men and women, as members of the company's management. To increase the percentage of women in management positions and implicit gender diversity in leadership positions in some countries around the world, and in Europe in particular, on the recommendation of the European institutions have introduced female managers in governance structures (MEMO / 11/124 and Europe Strategy 2020). According to the report of the European Commission - Europe Strategy 2020 on gender equality, legislation establishes that at least 30% of the management team members must be women by 2015, and 40% by 2020.

2.3. Representative in Board of Directors

This paper aims to identify various representatives on the Board of Directors, be it employees' representatives (with different test cases for the practice of the 14 analyzed governance codes) or representatives of shareholders or management.

A. Representation of employees

The existence of the employees' representatives on the Board of Directors presents notable differences for different governance models (Figure 2). Many European countries that have a dual leadership structure give employees the right to speak. In Austria, Germany, Denmark, France and Sweden, companies of a certain size (limits vary from country to country) are required in legal to have a specified number of employees' representatives on the Board (Randoy et al., 2006). In Austria, in an enterprise, the employees' representatives have the right to select one third of the members of the Supervisory Board (as opposed to half in the companies in Germany). In France and Belgium, the employees' representatives are entitled to attend meetings of the Board, but not to vote (Aste, 1999). In Southern Europe or in the UK, employees' representation on the Board of Directors does not exist, situation present also in the USA.

Employees have representatives with elective franchise within management structures	Employees have representatives without elective franchise within management structures	Employees have not representatives within management structures
• Germany • Austria • Denmark • Sweden	• France • Belgium	• Romania • Greece • Italy • Spain • USA • UK • Portugal • Bulgaria

Fig. 2 Employees' role within the management structures

B. The shareholders representation

A second significant difference in the composition of the Board is related to the representation of shareholders. In Continental Europe because there is a majority shareholder, so a concentration of ownership demand and / or of voting power, and we can say that there is a legal framework advantageous to the representation of significant shareholders in the Board.

In the USA and Great Britain the representing of shareholders in Board is limited or nonexistent (Rezae, 2009; Holdeness & Sheehan, 1988). Dispersed shareholder that characterizes most companies gives a very poor representation, symbolic and even non-existent on the Board.

In the non-executive members there may be representatives of minority shareholders, major banks, state, institutional investors and other representatives who are not shareholders.

C. Management representation

Management is another group of interest holders, whose presence in the Council vary greatly in European corporate governance models.

The dual management system restricts the role and the influence of management within management structures. In dual system (there are separate committees for management and supervision with different members) management team is not represented on the Supervisory Board (Donaldson & Davis, 1991). The combined system prevailing in most of Northern Europe, the presence of management in the Board is very limited, often to the Chief Executive. In Sweden the governance code stipulates that the Chief Executive should be the only executive to join the Board.

2.4. Separation of functions of the Board' chairman and of general manager

Influence of management on the Board reaches its peak when the CEO is also chairman of the board. Conversely, when the Chairman of the Board is a non-executive member, the Council management influence is reduced. This is the governance models that describe an Executive Committee (Directorate).

USA and Great Britain, although they have similar structures of ownership, they have a different representation profile on the Board (Felton, 2005). In the UK, Chairman of the Board must be independent of the executive team (he is non-executive) or by any shareholder. In the USA it is desirable that the Executive Manager to fulfill the functions of chairman of the board. In the United States the Chairman of the Board a member also of the management team, is prone to favor executives "friendly". In the UK, Chairman of the Board is an independent member, not related with the management team and as such has the inclination to favor other independent members who can assist and help the careful supervision of company's management.

Companies that have separated the two functions have concluded that it was not profitable, as the new CEO had to organize changes encountering non-collaboration from the Chairman. Similar problems have occurred even though it was renounced to the chairman position in favor of the CEO one, as the current board of managers will continue to see the CEO, as the right leader of the company or CEO does not accept orders from the new chairman. So the problem of separating the roles of CEO and Chairman of the Board of Directors still seems one unresolved, and the existence of duality or conversely separation of roles can have both rather positive effects on the performance of listed companies (Finkelstein & D'Aveni, 1994; Lipton &Lorcsh, 1992). Both theoretical and empirical studies are not conclusive about the best solution: the positions of CEO and Chairman of the Board of Directors to be held by one person or two different people. In our country, regulators and investors recommended separation of CEO and Chairman have become stronger and furthermore. The study's conclusions do not provide a clear answer to the question of the early research.

Fig. 3 Duality vs separation of functions CEO – Chairman of the Board

2.5. Nomination, remuneration and audit committee

A good practice of corporate governance is the existence of advisory committees: Nomination Committee, to carry out the selection process and make recommendations to the Board on the appointment of executive and non-executive members, the remuneration committee, which reviews, reports, advise, makes recommendations and assists the Board of Directors in fulfilling its duties and responsibilities relating to remuneration policy and, in particular, advises and monitors remuneration, bonuses and benefits of members of the Executive Committee, the Audit Committee, which reviews, reports, advise and assists the Board in fulfilling its duties on internal control, compliance and auditing, as well as on the quality and performance of accountants and internal auditors of the company, the veracity of financial information.

From the sample consisted of 14 countries which were selected to observe that the most majority have established regulations regarding the establishment of three committees, with slight differences in the composition (Figure 4):

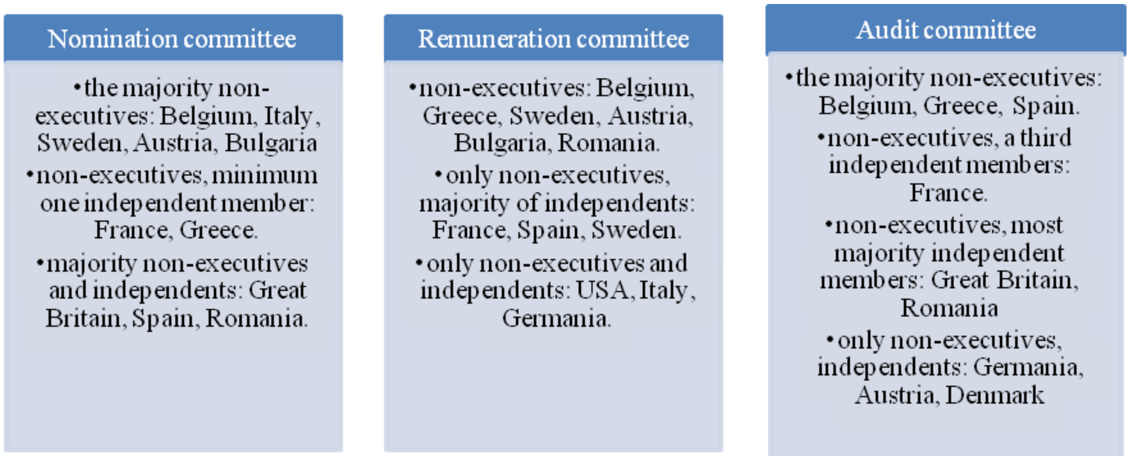

Fig. 4 Nomination, remuneration and audit committee

Corporate governance models suggest other mechanisms and authorities in the areas of audit / control. Thus:

- Portugal and Italy require a Board of Auditors, whose power exceeds that of the audit committee. Board of auditors monitors the management company's members; company's management, internal control, accounting system practiced and if it complies with the law, and serves to protect the interests of shareholders.
- Furthermore it is proposed the implementation of a High Committee – for the supervisory of code governance application in France and of a Compliance Committee as part of the audit committee, in Spain, which are designed to check whether companies comply with corporate governance codes.
- For other countries such as Great Britain, France, Greece, Austria, Bulgaria it is recommended the introduction of a code of ethics for members of management structures, by which they are obliged to respect the rights of shareholders and to ensure their fair treatment, before accepting the position, so that the manager must ensure that he is familiar with general or specific obligations in relation to this position. In particular, they should familiarize themselves with the laws and regulations of the company.

3. CONCLUSIONS

The importance of corporate governance is given by implementing clear management structures for ensuring fair treatment of all shareholders, including the minority, through transparency of communications to them, an active and effective communication. It is necessary for the corporate governance to bring principles and recommendations regarding the rights of other involved parties - stakeholders. It is necessary for any company that wants to respect the principles of corporate governance to oversee through the Board or Supervisory Board, the executive management, rigorous and transparent to elect board members of Supervision Board / Board and Audit, Nomination and Remuneration Committees and to resolve conflicts of interest, related-party transactions. All these recommendations, principles needed to protect shareholders, to maximize the value of shareholders' wealth, to create a positive image on the capital market in order to bring stability in attracting financing through capital markets.

Romania, in order to accelerate the implementation of corporate governance, has been involved in round-table discussions that led to the Stability Pact for South - East Europa and White Paper on Corporate Governance in South Eastern Europe, as the foundation of corporate governance model.

I believe that the principles of corporate governance set out in the OECD (Organization for Economic Cooperation and Development) are provided as standard, but each country should define its own code of corporate governance, according to the specific culture of economic, organizational, property system, state intervention in the economy, financial and capital market etc.

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