

## **CORPORATE GOVERNANCE –ASSESSMENTS AND OBJECTIVES REGARDING THE IMPLEMENTATION AND ASSIMILATION PROCESS IN ROMANIA**

**Maria MANOLESCU, Aureliana Geta ROMAN, Cleopatra ȘENDROIU**

*Academy of Economic Studies, Bucharest*

**Georgeta PETRE, Alexandra LAZĂR**

*Council of Accountancy and Financial Reporting*

**Sorinel DOMNIȘORU**

*Craiova University*

**Abstract.** *At international level, corporate governance has been shown great interest – from governments, stock exchange authorities, investors, companies and public in general. This interest is natural, considering the fact that it is necessary to strengthen the way companies are managed, as a guarantee of economic growth and financial stability, and to increase trust in capital markets. This need is more acute in the countries that have recently entered the economic systems based on a market economy, as is the case of Romania. Implementing efficient mechanisms of corporate governance that lead to transparency and efficiency, that clearly define the responsibilities and the rights of the ones competent in managing, supervising and applying legal provisions requires the precise understanding of the corporate governance principles and of the key elements of a proper framework for the management entities. The present paper has as objective to assess the steps made by Romania in this field, starting with the issues regulated at national level related to the rights of the shareholders and their fair treatments, the responsibilities on organizing the internal control, the internal audit and the audit committee, as well as the issues related to offering reliable information and insuring transparency. At the same time, this paper aims at pointing out some limits of the regulating process and of the practical actions of the companies in this field, as well as certain objectives related to the implementation of corporate governance principles.*

**Keywords:** audit committee, corporate governance, independent manager, internal audit, internal control, transparency.

### **1. Elements regarding the general framework of corporate governance**

An overall characterization of the events at the beginning of this third millennium would be that the process of globalization of the markets is not sufficient in order to guarantee the necessary economic and social development. This is the reason why the process of globalization of cultures, of integrating them into the evolution and development of human kind is naturally influenced by the unitary and coherent functioning of different kinds of economic equilibrium. At the same time, the

intercultural dialogue, the globalization of the economic and social language that makes the communication in the economic and financial environments possible has as purpose gaining trust in the economic and social systems of the world we live in and in its complex functioning mechanisms. The communication in economic language requires unity in expression, unity in conceptualizing the methods of organizing and managing trading companies, of administrating and controlling their resources, and also unity of the principles and methods of preparing and presenting the financial reporting of these trading companies. This is the context in which the concept of corporate governance came to being.

This new management concept, the corporate governance, was defined as being „*the sum of the principles, rules and norms needed in order for the companies to be managed in the interest of the actual and potential investors of the entities in question*”. The concept concerned the fact that the way trading companies are managed can actually be seen as a set of relationships between management of the company, board, shareholders and other interested socio-economic categories that offer the structure through which the means necessary for achieving their objectives are established and the desired performance is monitored.

The concepts, aspects and issues concerning corporate governance were discussed in the United States of America even from the beginning of last century and had been permanently developing as a consequence of the development of the capital market, but also due to certain characteristic features of the American economy. In each big American private company there is a pension fund that has as continuous growth source its own means – on one hand, the monthly contributions calculated as percent of the salary of each employee, and on the other hand, the payments of the company according to the set amounts. In this way, a healthy management of the companies protects not only the investments this company made, but also the pension funds that represent a significant part of the American economy. For this reason, from a theoretical point of view, certain models of corporate governance had been drafted, models that take into consideration the essential differences between countries – differences generated by the conditions in which the states were formed and developed, cultural differences, the development of the internal market, the trends in the economic, social and political development etc., so that two types of models were created:

- corporate governance systems based on the functioning of the markets;
- corporate governance systems based on the bank activity (typical for an economy where financing companies takes place mainly through banks);

With respect to financial information, the concept of corporate governance requires transparency in presenting the information, reality, credibility and on-time presentation. Moreover, the policies on informing and reporting must guarantee that:

- the objectives and the managerial strategy of the entity are known;
- factors concerning risks and performance are reported;

- the events that considerably influenced the profit or loss of the financial year are known;
- the financial reports are examined and the responsibility concerning these financial reports is taken by the managers.

Starting from the reality that corporate governance is one of the numerous mechanisms that stimulate economic and social development at global level, the Organization for Economic Cooperation and Development (OECD) has become one of the promoters of this concept. So, the OECD principles concerning Corporate Governance have become the reference document, based on which the own standards of corporate governance were issued or the national legal framework was properly developed in most of the countries.

These principles are characterized by the fact that they do not require standardizing the legal, economic and political frameworks of the countries that consented to promote that, but on the contrary, these have the role to *„support the governments in their efforts to evaluate and improve the legal, institutional and regulating framework concerning corporate governance in their countries. They also offer a guide for the investor, the listed or not listed companies, for the stock and commodities exchanges, as well as for other entities that have a role in the process of developing sound corporate governance”*.

The definition given by OECD to this concept of corporate governance is the following: *„Corporate governance is a set of relationships between the management of the company, the board, the shareholders and other interested socio-economic categories; at the same time, corporate governance offers the structure through which the means necessary for achieving their objectives are established and the desired performance is monitored”*.

The events that lead to increased interest in better understanding and applying the issues and measures related to corporate governance have been the failures of big corporations (Enron, Parmalat, WorldCom, Xerox, Merrill Lynch), which demonstrated that if proper control measures are lacking, fraud and corruption are possible, whereas the impact on those companies and on their employees, but also on other service companies can be devastating.

## **2. The legal Romanian framework relevant for corporate governance**

The legal provisions concerning trading companies in Romania were adapted to the OCED principles of corporate governance through certain elements that mainly refer to remodeling the structure of the board through the option for a dualist system:

Therefore, the Law of the trading companies no. 31/1990 (revised – Law 441/2006, Emergency Ordinance no. 82/2007) draws a distinction between the non-executive and executive positions, sets the legal framework of responsibility towards the company that the non-executive and executive managers have, sets the criteria that

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define their independence, the role of the supervising board and of the management, of the relationship between them, as well as the relationship between them and the general assembly of the stockholders.

The protection given to stakeholders is consolidated through the modification of the conditions for calling the ordinary and extraordinary general assembly (the increase of the calling time span from 15 days to 30 days), through the modification of the quorum requirements and majority requirements (their reduction), through regulating the stakeholders' right to require to introduce new points on the agenda of the general assembly, through regulating the rights of the stockholders having the minority of the stocks and of those holding preferential shares, through the regulating of the vote in absence in the general assembly and of the possibility to make an agreement between stockholders regarding their exerting their right to vote. The right for information is regulated, the system for setting and paying the dividends by diminishing the payment deadlines is improved, and an equitable ratio between the preferential shares with priority dividends and the ordinary shares is created. The necessary clarifications regarding the appointment of financial and internal auditors were made; the evidence a public company has to keep, as well as the minimal requirements regarding the access to information of the shareholders and other interested parties are clearly stipulated. The managers hold the responsibility for organizing the evidence and financial documents in accordance to the legal provisions. The fundamental documents through which the shareholders are informed about the evolution of the entity are the annual report of the managers and the audit report. Both reports need to be presented to the General Assembly of the Shareholders, whereas the annual report must be approved by them.

At the same time, according to Law no. 441/2006, trading companies whose annual financial situations need to undergo financial audit according to the law or to the decision of the shareholders organize internal audit according to the norms elaborated by the Romanian Chamber of Financial Auditors.

The traditional purpose of this type of audit is to evaluate the way risk is managed, inclusively the assessment of the internal control as one of its objectives.

It is worth mentioning that the legislation in Romania does not include a definition of internal control, and, moreover, there are no clear and consistent provisions with respect to the obligation of organizing and carrying out this activity either.

Article 142 of the Law no. 441/2006 of modifying the Law of trading companies no. 31/1990 mentions the obligation of the managing board to set up the system of financial control.

If we consider the fact that the notion of financial control is not identical to the one of internal control, we notice that some of the regulations with general character that mention the expression „internal control” is firstly the Emergency Ordinance no. 90/2008 regarding the statutory audit of annual financial statements and of consolidated financial statements, ordinance that, in article 47, adopts the provisions of the European Directive no. 2006/43/CE regarding the audit committee – and secondly, the Order of

the Ministry of Public Finance no. 2001/2006 that modifies the Order of the Ministry of Public Finance no. 1752/2005 for the approval of the accounting regulations in accordance to the European Directives, Order through which the provisions of the European Directive no. 2006/46/CE are assimilated into the national legislation. This order stipulates that the report of the managers regarding the entities traded on a regulated market should include a separate section on corporate governance, where „*the main characteristics of internal control and of risk management systems in relationship to the process of financial reporting are to be mentioned*”.

### **3. Requirements or options contained in the adopted models of corporate governance**

The essential difference between the OECD principles regarding corporate governance (based on which the Law no. 31/1990 regarding trading companies was revised) and the Sarbanes-Oxley Act adopted by the American Congress in July 2002 consists in the fact that the OECD documents serve as recommendations and are consultative (in the absence of a law at national level that could make those provisions as compulsory requirements).

The American legislation contains detailed and clear requirements with respect to creating a corporate governance that insures the protection of the investors and of the other interested factors and at the same time, it makes the management and the audit committees accountable, it strengthens the obligations regarding the transparency of the financial information and the requirements regarding auditor independence.

In Romania, the legal framework already mentioned assimilated in a proper manner the fundamental requirements of the European Directives (2006/43/CE and 2006/46/CE) of the European Parliament and Council, as well as the OECD recommendation in this matter, but the success in applying in practice these recommendations can be attained only by specific and coherent actions of the managing/supervising boards, the audit committees etc. that are needed to achieve the key (strategic) objectives of the entity.

Some of the actions could be:

- Identifying the weak risk spots in each entity and finding the appropriate procedures for the risk management;
- Guaranteeing the existence in every entity of some clear procedures regarding the identification and examination of the potential of significant risks, as well as the existence of a manual with procedures of internal control;
- Insuring that the financial reportings are correct;
- Making an objective evaluation of the qualified professional resources that are available to the ones responsible for financial reporting;

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- The objective evaluation of the qualification and of the independence of the persons that make the internal audit and the degree in which the activity of internal audit and of internal control are successful in the actual management of risks;
- Encouraging and insuring a permanent communication with the external auditor on the weak issues of the entity before they become severe problems and following the way in which his recommendations are taken into consideration;
- Monitoring the corporate culture of the entity and insuring that the management activity offers a model of ethical and professional behaviour;
- Other appropriate actions with the purpose to insure a correct process of financial reporting and efficient systems of internal control, internal audit and risk management.

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