

CORPORATE GOVERNANCE IN ROMANIA. EVOLUTION AND PERSPECTIVES

BUȘAN GABRIELA

LECTURER PH.D., “CONSTANTIN BRÂNCUȘI” UNIVERSITY OF TÂRGU JIU, ROMANIA
FACULTY OF ECONOMICS AND BUSINESS ADMINISTRATION

e-mail: gabriela_busan@yahoo.com

Abstract:

Thanks to slow way to political, legal, social and economic reform, the corporate governance appears in Romania, from concept and filing, until the early 2000`s. This paper analyzes the evolution of corporate governance in the period 2000-2015, it is presented the OECD principles of corporate governance of companies listed on the Bucharest Stock Exchange and it analyse the situation of the public entities who had the obligation to apply the provisions of O.U.G 109/2011 on corporate governance of public entities and to publish on its Web site the Annual Report.

Keywords: corporate governance, transparency, responsibility, efficiency

JEL Clasification: M14, M41, M42

1. Introduction

The Corporate governance refers to the relationship between the leadership of an enterprise, its Administrative Council, its shareholders and other stakeholders, such as employees and their representatives. At the same time, the governance determine the framework in which to define the objectives of an enterprise, as well as the means by which these objectives can be achieved and by which it can ensure a monitoring of the results obtained [5]. A good corporate governance makes the companies to use resources more efficiently and to have better relations with employees, creditors and other interested parties, increasing confidence to the romanian and foreign investor.

The corporate governance is a concept that has entered in the literature and in practice in this area in recent decades, based on the following elements [1]:

- ✓ managers ' responsibility for the accuracy of the information in the financial reports;
- ✓ the existence of very tight deadlines for financial reports;
- ✓ communication and transparency over the total financial results;
- ✓ transparency of the internal audit, processes and external audit.

The corporate governance is a multilevel approach to the relationship between interest groups (employees, managers, shareholders, all business partners, regulatory power, the general public and the media), which includes establishing relations between the Board and internal or external stakeholders.

Practical, the corporate governance is an attempt to implement of the systems for risk analysis, verification, assessment, control, to contribute to the achievement of effective management for their operation. Therefore, the concept of corporate governance should be addressed together with the management of risk across the organization and with the development of the system of financial management and internal control, being supported by the internal audit, who has an important role in assisting the reorganization of the system of internal control and advising management general.

2. The Corporate governance of companies listed on the Bucharest Stock Exchange

One of the organizations that have focused in particular on the implementation of the principles, structures and mechanisms of corporate governance is the Organization for Economic Cooperation and Development (OECD), whose principles are recognized by the Financial Stability Forum as one of the twelve basic standards for sound financial systems. In summary, the OECD principles of corporate governance refers to the transparency and efficiency of the markets, shareholders ' rights in relation to management, fair treatment of minority shareholders, the role of stakeholders -other interested parties outside of shareholders- in the process of corporate governance, access to information and responsibilities of the board, so[5]:

- ✓ Basis for an effective corporate governance framework

The framework of corporate governance must promote transparent and efficient markets, to be consistent with the legislation in force and to articulate clear division of responsibilities among supervisory, regulations and execution authorities. The basis of this framework is made up of the rules and principles that must be respected in the implementation of corporate governance, as well as the supervisory institutions of the implementation and compliance with these rules.

✓ *The rights of shareholders and the main functions of the property*

The framework of corporate governance must protect and ease user the exercise of shareholders' rights. These rights come in support of shareholders so they do not lose the invested capital, but also to enjoy getting some extra income, thus, in practice, must be protected by special laws. Also, knowing the rights of shareholders, managers can be more careful in the activities they carried out.

✓ *Fair treatment of shareholders*

Cadrul de desfășurare al guvernanței corporative trebuie să asigure tratamentul echitabil al tuturor acționarilor, inclusiv acționarii minoritari și cei străini. Toți acționarii trebuie să aibă oportunitatea de a obține redresarea efectivă pentru violarea drepturilor lor. Tratamentul echitabil al acționarilor vine în sprijinul acționarilor minoritari, care deși nu aduc un capital important în societate sunt foarte importanți.

✓ *Rolul acționarilor în Guvernanța Corporativă*

The framework of corporate governance must recognize the rights of shareholders, as they are established by law or by mutual understanding and encourages active cooperation between companies in creating wealth, jobs and support of the businesses viable financially.

✓ *Dissemination and transparency.*

The framework of corporate governance must ensure the correct dissemination and timely of the material relating to all aspects of the company, including its financial situation, performance, ownership and management of the company.

✓ *Obligations of the Managing Board*

The framework of corporate governance must ensure the strategic guidance of the company, effective monitoring of management by the Managing Boards and the Board's responsibility to the company and shareholders.

The corporate governance appears in Romania, from concept and filing, until the early 2000`s. The delay has made the explanation slowly steps in line with political, legal, economic and social reforms. The implementation of corporate governance in Romania is not without some fundamental inconsistencies [2]:

- the lack of a detailed analysis concerning the relationship between owners and managers;
- the poor involvement of other parties in the decision-making process;
- the lack of a conceptual framework for an efficient and its social implications;
- the questionable involvement of auditors in advancing international developments;
- the failure of reforms to implement an accounting system in line with international developments;
- the weakness of the control mechanisms for a relevant, reliable, understandable, comparable and meaningful financial information..

In 2001, OECD formulate a set of recommendations to improve the corporate governance of our country. A revised version of the Code of Corporate Governance was published by Bucharest Stock Exchange (BSE) (1), based on the recommendations of the World Bank, in 2007.

The legal framework for the implementation of corporate governance in Romania represents: Law no. 31/1990 [11], Law no. 297/2004 [12], Regulations of the National Securities Commission and the Corporate Governance Code of the BSE.

In the period 2008-2009, BSE review of the existing Governance Code to align to European regulations and thus, emits the current Governance Code that requires mandatory reporting of the Declaration *Apply or Explain it*. The Corporate Governance Code of BSE is similar to those adopted by other Member States of the European Union, and provide new recommendations for compliance, important for executives and Managing Board of the Romanian companies. In 2010, the companies listed on BSE are required to apply statement *Apply or Explain it*, that it make on a voluntary basis with information about the extent of the application or non-application of the principles and recommendations relating to the Corporate Governance Code [8].

In December 2014, BSE has started the consultations with the listed companies and the relevant organizations of investors on the new Corporate Governance Code. This is the result of the joint project BSE-the European Bank for reconstruction and development (EBRD) for improving local climate of corporate governance [13].

In the drafting of the new Code, it have been taken into account the international standards in this field, the change of the legal framework of Romania and the European Union, the experience acquired as a result of the application of the first Code, and the future of society in general, and of the parties directly concerned with the conduct and the responsibility of the companies. The new Code includes a set of principles and guidelines based on the best practices, transparency and trust [15].

As part of efforts of BSE to improve the climate of the corporate governance, since January 2015, for the companies included in the index BET (2) and BET-TR (3) shall apply to new eligibility criteria related to the transparency and quality of investor relations services. The criteria relate to reporting requirements in the English

language, reporting in accordance with International Financial Reporting Standards, Conference calls/ meetings with analysts and investors when quarterly results are published [14].

In a restricted form, by February 2015, come into effect a Code of Corporate Governance for companies listed on the AeRO (4), with the release of this market. This is a support to issuers on the AeRO as regards post-listing transparency and reporting requirements, but, mainly, it is an excellent way of raising the investments [13].

3. The corporate governance of public enterprises

Considering that, in order to optimise of State-owned companies is necessary to develop new mechanisms for corporate governance, in relation to those covered by the general law of commercial companies and adapted to the State-owned companies, it was necessary to adopt the Emergency Ordinance no. 109/2011 [10]. The corporate governance of public enterprises is all the rules that govern administration and control system within the public entity, the relationship between the public authority and the organs of public enterprise, between the Managing Board/ supervisors, managers, shareholders and other interested persons. The public tutelary authority is the institution which:

- coordinates, in the subordinated or under the authority one or more autonomous administration set up by the State or an administrative-territorial unit;
- exercise, on behalf of the State/ the territorial-administrative unit, the shareholder of companies and corporations, the companies in which the State or an administrative-territorial unit is the sole shareholder, or in which it holds majority control;
- coordinate the exercise by one or more public enterprises in the quality of a shareholder or member at a company controlled;

The principles of governance of public enterprises are [4]:

✓ *The principle of non-intervention in the ordinary work of public enterprises*

According to this principle it is recommended that the public authority to possess the smaller competent so far determination of the main directions of activity and of development thr public enterprise, the powers to be limited to setting strategic directions for action. The same recommendation also points out that it requires absolute transparency in terms of the types of decisions and the areas in which the public authority is competent to act.

✓ *The principle of effective control of the public authority on public enterprise administration*

This principle emerges through the interpretation of the provisions of art. 7 of the Emergency Ordinance no. 109/2011. Thus, the public authority is competent to appoint and to revoke the members of the Managing Board, approve the management plan prepared by the Managing Board, to evaluate the work of the Managing Board on a regular basis, in order to ensure, on behalf of the State or administrative territorial unit founding, that are respected the principles of economic efficiency and profitability in the overhead of the autonomous administration.

In the case of companies and corporations, as well as companies in which the State or an administrative-territorial unit is the sole shareholder, or in which it holds majority control, the public authority shall periodically assess, through its representatives in the general meeting of shareholders, the Managing Board, in order to ensure, on behalf of the State/ the territorial-administrative unit shareholder, that comply with the principles of economic efficiency and profitability in the company's operation.

In other companies-public enterprises, the principle of effective control of the public authority that the Managing Board approves the Authority's responsibility to ensure the compliance by controlled society to the principles of economic efficiency and profitability.

✓ *The principle of the separation of the management function by the function of enterprise management*

This principle is presented differently by the provisions of the Emergency Ordinance no. 109/2011, depending on the legal form in which it is organised the public company, namely autonomous administration or company.

- as regards the autonomous administrations, the delegation of their leadership competencies from the Managing Board by one or more directors shall not be mandatory. The ordinance states that under the Act of incorporation or establishment, subsequently, by decision of the public authority that can establish that the powers of the executive leadership of the autonomous administration are delegated by the Managing Board of one or more directors (art. 18 the provisions of the Emergency Ordinance no. 109/2011).

- in case of the societies, is mandatory to the delegation of the management function by the managers; art. 35 by the provisions of the Emergency Ordinance no. 109/2011, which provides that, in the case of administered according to the unitary system, the Managing Board delegated the management of the company to one or more managers, calling one of them general manager. If the two-tier system, the separation of executive leadership function of the Administration's surveillance is intrinsic. The interdiction for combination of the function of Chairman of the Board of Directors with the general manager is required for societăție stock.

On the basis of art. 58 by the provisions of the Emergency Ordinance no. 109/2011, the Ministry of Public Finance should publish on its Web site, Annual Report on activity of public enterprises, to provide an insight into the evolution of their activities.

In 2013, the Ministry of Public Finance, for drawing up the Annual Report on activity of public enterprises [16], were monitored 247 entities by central subordination (Figure 1).

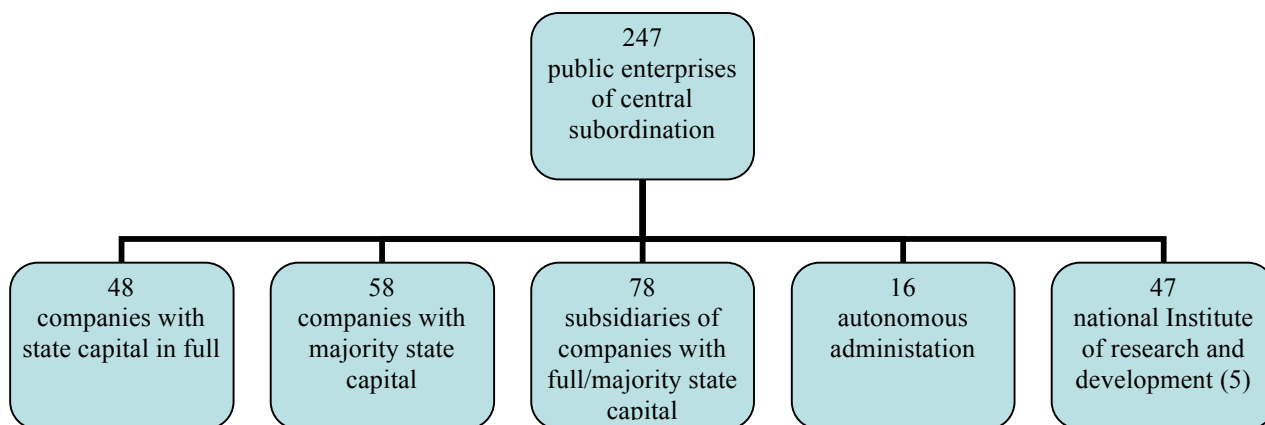


Figure 1 The classification of the public enterprises of central subordination monitored to the Ministry of Public Finance in 2013, for drawing up the Annual Report on activity of public enterprises

A number of 180 public enterprises have the obligation to apply the provisions of The Emergency Ordinance No. 109/2011 and to publish on its Web site the annual report. Of these, only 64% have complied with their obligations regarding transparency (Figure 2).

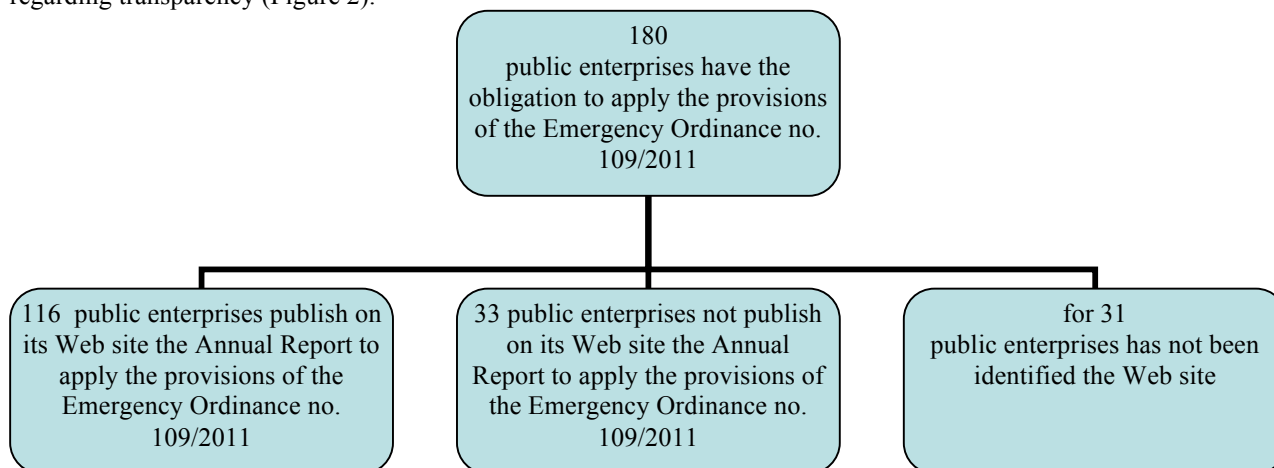


Figure 2 The situation of public enterprises that had the obligation to apply the provisions of the Emergency Ordinance no. 109/2011 and to publish on its Web site the Annual Report

Analysing the share of economic and financial indicators, made by the 116 public enterprises between the 228 active public enterprises (19 public enterprises being inactive), it follows that they held the majority share in all indicators (Figure 3).

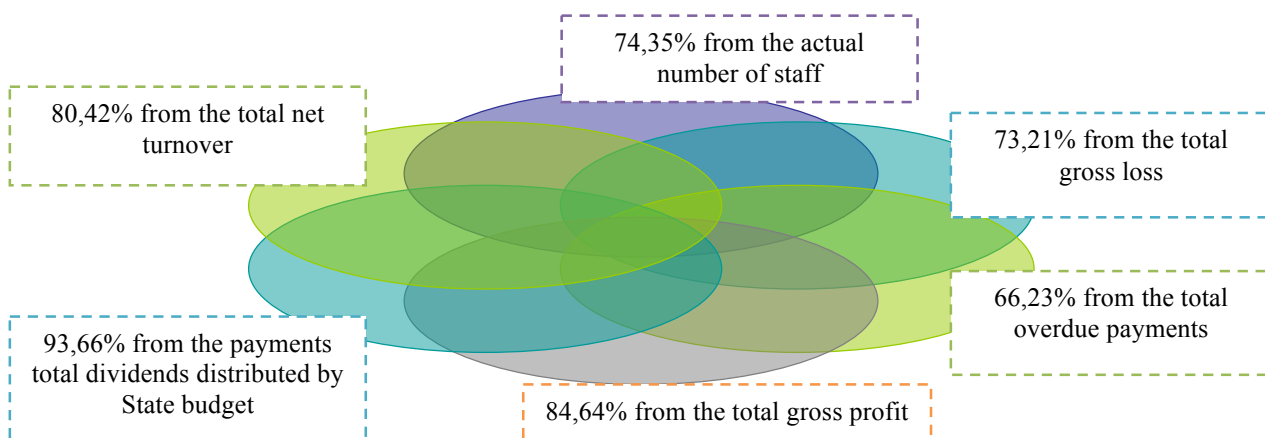


Figure 3 The share of the economic and financial indicators made by the 116 public entities between the 228 public enterprises active in 2013

4. Conclusions

In conclusion, the undertakings must join to all the concepts, principles, standards and regulations of the corporate governance, to be evaluated and to achieve the policies and the relevant performance expected, and corporate governance policies and codes have got to be a balance between conformance and performance.

In the process of transforming the Romanian stock market, in order to build in Romania an attractive capital markets for South-East Europe region, BSE must adjust to the new stage of development of the domestic market for corporate governance principles applied to listed companies.

A good corporate governance ensures the improvement of economic efficiency and the establishment of a interactive climate investment. Among the most important benefits of the implementation of the high standards of the management enterprises include: the efficient use of resources, the decrease of the capital cost, increasing investor confidence due to a reduction in discretionary attitude sensing of managers and reduce the level of corruption. In the opposite sense, a weak corporate governance distorts the efficient allocation of capital in the economy, hinder foreign investment, reduced confidence of the holders of capital and encourages corruption [1].

Transparency, reliability and credibility in relation to the shareholders, efficient communication, compliance with laws, assuming the responsibilities, is essential to ensure a good corporate governance. Although an adequate corporate governance insists on ethical principles and social responsibility, the rules, the policies and the procedures that it promotes have a defined final goal, namely the sustainable growth of the company.

5. Endnotes

(1) Bucharest Stock Exchange (BSE) administered markets of shares, bonds and other financial instruments, through the regulated platforms or alternative systems, and provide a wide range of services to participants in the financial markets. BSE is a listed company on its own market in 2010

(2) BET is the first index developed by BSE and constitutes the reference index of the local capital market. BET most developments reflect the ten companies traded on the regulated market of the BSE, excluding financial investments societies

(3) BET-TR is the first index total return type released by BSE, on the basis of the structure of the market reference index, BET

(4) AeRO is a market segment of BSE developed for small and medium enterprises

(5) Organized according to the Government Ordinance no. 57/2002 on the scientific research and technological development, with subsequent amendments and additions, other than those operated as public institutions.

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