

Business Environment and Corporate Governance in Public Entities

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Abstract

For several years, private business has adopted corporative governance on the grounds of national and international codes to enhance investor confidence in companies and economic entities, especially those that are listed on the stock exchanges. The business environment for the public sector has not benefited from corporate governance due to certain bureaucratic, but logical reasons, such as the fact that the representatives of the State/Government/local authority apply the shareholder's decisions without considering any other principles, procedures or rules reflecting the organization and the operation of the public entity.

Economic and social reality has shown that many public entities have been confronting with different issues in making managerial decisions and obeying managerial principles of neutrality when appointing directors or establishing their remuneration, without prejudice to the objectives of those entities, many of them with losses and arrears that could generate bankruptcy to a private entity. More in-depth relations of Romania with the European Union and international financial organizations have imposed the importance of the corporate governance in public sector business environment as well, which the Government settled with the adoption of specific legal rules. A general appreciation implies that the decisions made are important, but entirely efficient, many of them being simple statements without concrete effects on the organization and the improvement of managerial work. Consequently, certain corrections are expected and a series of future developments of corporate governance aspects should be examined in private business.

The codes of corporate governance in the private sector should be taken as such and as for the public economic environment, additional provisions relating to the applicability of public patrimony administration should be considered while recognising the specific characteristics of each economic entity according to the type of ownership, features necessary to be relevant in its management. In any instance of corporate governance, it is important for its benefits to be reflected in financial results as good as possible.

Keywords: business environment, corporative governance, public entities, shareholders, director committee, board of administration, audit committee

1. Introduction

Regarding business environment, corporate governance was finally perceived as an important component without which the activity of any company/companies listed on stock exchanges or of public interest can no longer function normally due to the lack of reliability. Eventually, it has catered for both Romanian and foreign investors.

For over twenty years in the world and about five years in Romania, corporate governance has been successfully developed in terms of own concept and principles, and the international and national organizations have become very careful in adopting and introducing corporate governance codes.

Although there are still significant differences between countries, between the concerns of employers' associations and professional bodies of more and more countries, this is recorded on this line concentrates processing of corporate governance and, especially, the application of the most relevant aspects of specific codes.

Business environment itself should obviously be both the promoter and the beneficiary of corporate governance, properly overtaken and applied, in the broadest sense of leadership/administration that corporate governance gives while covering a lot of meanings, approaches, interests, concerns, and possible solutions (Nicolae, 2010).

In this context, the presence of corporate governance in the economic environment of the public sector is not only justified, but also helpful in terms of increasing the credibility of the work carried out by the autonomous companies or administrations, national or local companies generically called economic entities, acting in the name of the public property, the shareholders of which are State or local communities that own entirely or partly the owners' rights.

The intention should be appreciated, but it is important for the law to be adopted to produce the expected effect, and if failures are identified, then they must be analyzed and assessed in order to identify the most appropriate solutions.

2. Description of current situations

We could appreciate the initiative of the Government to introduce corporate governance in the economic environment for public sector, but only to the extent to which the expected effects can be achieved in accordance with the required regulations and eventually, the results of the application can generate changes in the organization and operation systems of the main public entities appointed in the public company.

Therefore, to be able to evaluate objectively, professionally and comprehensively the impact of application of corporate governance by public enterprises, we must compare the provisions of the corporate governance codes related to the private sector, particularly the one of the United Kingdom, Second Edition 2009, with the regulations related to Government

Emergency Ordinance No. 109 of 14 December 2011 on corporate governance of public companies.

From this perspective, we have big differences with both what is covered for the companies, but also with those laid down for the autonomous administrations. In this case, we wonder whether it was a provision adopted for purely bureaucratic reasons simply ignoring the impact, or it was only a way of considering the measure of Agreement with the International Monetary Fund, the European Union and the World Bank as being sufficient.

In any natural meaning meant to get the expected effect, a code of corporate governance must relate to the business environment that should not be tainted by form of ownership, all public and private economic entities operating in accordance with the same norms, rules, values and principles of a functional market economy.

However, we note that there are different treatments in many ways what alternate a real competition and public entities perform activities thanks to the goodwill of inland revenue as well as to certain tax regulations, even if they do not pay the financial obligations, certainly only due to the fault of the owner which often is the State.

Subsequently, my intention is to demonstrate that the test is a failure, and an urgent correction of the normative act should be invoked.

3. Analyses, evaluations

Firstly I would point out that according to the governmental regulation, financial and banking companies, as well as the insurance-reinsurance ones, are not subject to corporate governance, which, in my opinion, ought to be the first to apply corporate governance partly because they manage public and clients' funds, and partly due to transparency, a fundamental principle of governance (Nicolaescu, 2010).

Secondly I would rely on the unprofessional use of certain terms such as commission instead of committee, the term of commission related to the process of governance having a rather controversial role, usually being something happening by chance, tempestuously, and periodically, and not a body invested with well-defined powers or entitled to make recommendations that are to be taken into account. Sometimes, it is exactly these recommendations that give decision power through professionalism and reliability.

For example, regarding the autonomous administrations, the Commission is empowered to select the members of the Board of Administration; they all are representatives appointed by the guardianship authority. The criteria will be determined by the Commission without having governance principles and values guiding future members of the selection commission, included in the code of corporate governance.

The principle of transparency is badly splintered

In comparison with the provisions stipulated by the U.K code of corporate governance for private business where it notes that a person cannot be part of more than two boards of administration, the Romanian code for autonomous administrations allows people to be part of more than two boards of administration.

Also, the members of the Board of Administration has a four year mandate that can be renewed for the same period as opposed to the code in the private sector where the confirmation for the members of the Board of Administration is annual, obviously after a complex and serious assessment, even if in the case of the public sector the annual assessment is considered either by the guardianship authority or a Committee of experts.

How to approach this situation?

When appointing the Executive Director, formulations are not entirely considered being labelled as superficial because the rule is diluted by the fact that the Board of Administration itself may select or may be assisted by an independent expert.

This context may generate confusion probably serving interests or may be abusive, and inconsistently applied. As for trading companies, there are more flexible provisions, being closer to the spirit of a code of corporate governance which may have beneficial effects for the economic entity, but even here, there are a few aspects that should be modified and improved. We shall focus on it in the future.

4. Conclusions

Corporate governance in public enterprises must not be different from that of the private sector only if consider the diffuse presence of shareholders and their rights defence through appropriate representation in the General Assembly of Shareholders.

Corporate governance applied to public enterprises is a failure!!!

Corporate governance in public firms is based on a false premise; it does not take account of the fact that State representative is an official who cannot be properly aware of ownership, which generates superficiality and lack of involvement. Sometimes, it is the official himself/herself who encourages the improper use of public property supporting private activities on behalf of the public patrimony, used strictly for the purposes of such persons or of their connections, or for the benefit of those persons whom the decisions are made for.

The experience regarding privatization, the management of autonomous administrations, companies and national enterprises have highlighted precarious performance and often even non-compliance with the legality within public enterprises.

Trials in introducing term contracts on the basis of performance management criteria have been only spectacular failures that have resulted in economic-financial disasters, business closures, or losses of domestic wealth.

Therefore, any approach must take into account the past and present realities, significant failure, major damages to public patrimony due to inefficient management while invoking difficult circumstances and State is held responsible because of its lack of proper action. There are multifarious issues that should be expected, planned to run on stages and then reviewed and adjusted in order to finally facilitate the adoption of certain efficient improvement measures.

To conclude, my strong belief is that the legislative framework, the administrative and managerial activity, as well as the proper conduct of some professional audits constitute themselves as priorities before any action or any strategic decisions. At the same time, the future itself requires well-defined rules and clear procedures, also transparent and easy to apply or to monitor.

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