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SURVEY REGARDING THE CORPORATE GOVERNANCE IMPLEMENTATION IN ROMANIA

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Abstract

Business world is a competitive world where only those who can adapt best to the market survive. Still, being successful from an economic stand-point does not refer to fraudulency, treacherous practice or complete exclusion of the competition. The existence of competition and need for profit does not get into conflict with accurate behaviour and respect for ethical standards. A company's value increases depending on identifying and harmonizing the conflicts of interests that occur between the social partners of the company, especially between shareholders and managers. The harmonization of these interests is ensured by the corporate governance system which aims for the global performance of the company. The present study undertakes to research the impact of the Government's emergency rule no. 109/2011 over 15 public entities/companies.

Key words**:** *competitiveness, corporate governance, evaluation, management*

INTRODUCTION

At an organization's level, the corporate governance concept refers directly to the influence of strategic decisions concerning adding value. Maximizing value relies under the managers' responsibility. The managers' behaviour regarding the wealth maximizing criterion is done by incentive levers and control mechanisms. [3]
As per classical finance theory, organization is an entity with a specific target: the maximization of the owners' wealth, which is maximizing profit due to the fact that business world is the world of profit.
For numerous economic actors, business world is a jungle where there are no rules for achieving goals. [1]

MATERIALS AND METHODS

In ancient times, profit that now seems the only goal of entities was considered back then as something impossible as it was considered a shameful occupation. For Aristotle, trade was divided into survival trade which was done for supporting a household and the trade done exclusively for profit. While the former type was considered essential for the existence of a quasi-complex society, the latter was regarded as a parasite.
Milton Friedman said that having profit as a goal is equally a moral duty as long as profit was obtained in legal circumstances. It was a moral duty both for business men, as well as managers, and this assumption was based on three reasons: Friedman alleges that not having profit as a main goal of the economic activity dis-respects the individuals' rights and it is unreasonable and undemocratic. [6]
Coase's, Jensen's and Meckling's surveys have reached the same result, meaning that it is essential for the entity to separate management and finance or, in other words, to distinguish between ownership and control on one hand and management and control on the other hand. Ownership is represented by shareholders that have the needed resources (financing, funds) but need a specialized human capital, capable of using in an efficient way the shareholders' funds to generate profit. According to Boatright, "owner" needs to be used cautiously as it needs to be carefully separated from "investor". Unlike the true

owner, the investor does not own in every possible way an asset, but only some rights, limited by decision and options. [9]

For the Japanese cultural environment, private property is understood first as a way of promoting public interests, far from selfishness, and only last as serving the owners'' selfish interests. If a company faces financial difficulties, the first measure taken by managers is to cut-down on their own salaries, followed by decreasing the shareholders' stock dividends and only then by cutting-down on the employees' revenue. If all these measures fail, the next step is to sell the company's assets, while firing employees is the last step to be taken into consideration. [4].

RESULTS AND DISCUSSIONS

Corporate governance is based on the organization's theory and its inherent costs, as well as on the attempts to clarify the relationship between the various participants in defining the corporations' management and functioning. [2]

The main theories at the chore of corporate governance are shown in Fig.1.

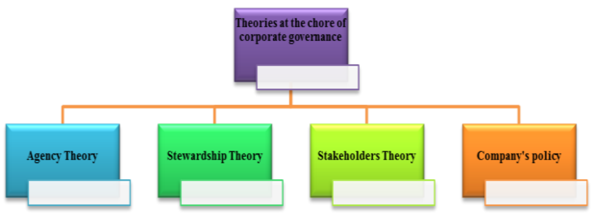

Fig. 1. Theories at the chore of corporate governance

The principles of implementing corporate governance within organizations have been based on the Agency Theory. This theory refers to the relation between investor/shareholder and manager/ administrator, extending further to the whole range of relations existing between those involved directly or indirectly in the activity of a company. The Agency theory has served as grounds for the way organisations manage themselves and top management acts as an agent of the managing board, of the shareholders and it has only one task: maximizing productivity of the investment/profit. [7]

According to Stewardship theory, people with managing positions in an organization are motivated by the desire for success and get satisfaction through their work itself. In the same time, there are variations in the manager's performance depending on the structural model for managing the company. The theory describes the manager's role in maintaining and developing the organization's value.

As per the Stakeholders theory, the corporate governance reflects the way the organization is being managed and controlled. In defining this concept, the main idea is that global performance of the company is based on the theory of the interests' holders (picture no. 2). The value of the company maximizes as managers succeed in identifying and harmonizing the conflicts of interests that occur between the social partners of the company, mainly between shareholders and managers. Harmonizing these interests is ensured through the corporate governance system. Most of the times, conflict resides in dis-respecting the minority shareholders' rights and diminishing their wealth by the majority shareholders. The conflict between majority and minority shareholders usually degenerates into other conflicts between management, managing board and minority shareholders, as well as between majority shareholders and the company's business partners.

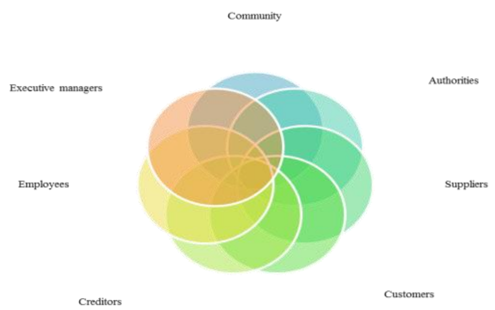

Fig. 2. The conflict of interests and the parties involved

There has always been a conflict of interests between shareholders and managers and it is based on the fact that managers are poorly motivated as far as distribution of dividends to shareholders is concerned, the former preferring to re-invest the net profit even in low profitability projects in order to preserve the control over important resources. [10]

Company's policy must oriented towards: moral integrity and ethics; transparency; accounting audit; the independence of all auditors; establishing and further on checking the benefits package of the general manager and other senior managers; defining the criteria for appointing a person on a managing position, such as the Managing Board; establishing the resources that the manager has in order to run his activity, as well as defining his tasks; risk management procedures; policy regarding the distribution of dividends; equal treatment policies, elimination of discrimination; policies regarding the social responsibility of the company. [8]

In running its activity, the management of the company will have to take into account the conflicts deriving from the wide variety of interests found under "the same roof", as these might jeopardize efficiency if they are not identified and defined accordingly.

Models of Corporate Governance used by Companies

There is no such thing as corporate governance in the under-developed countries or in countries with an economy under transition. Regardless of the governance model in discussion, corporate governance can best be observed in the developed countries (Fig 3).

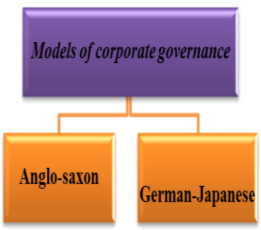

Fig. 3. Models of corporate governance

In EU member states, one can observe two general models of corporate governance with the following specific characteristics:

- The Anglo-Saxon model of corporate governance (specific for companies in UK, as well as those in SA, Hong Kong, Australia);
- The German-Japanese model of corporate governance (specific for companies in Germany and continental Europe, as well as those in Japan).

The Anglo-Saxon model is based on the domination of independent persons and individual shareholders who are not linked to the corporation by business relations (the so called outsiders).[8]

As per Mayer's classification, the Anglo-Saxon model represents a system based on the external influence (outsider – based system) practiced by active capital markets through acquisitions and joint-ventures over the rated companies.[11]

The registered capital belongs to several shareholders who are mainly interested in dividends. Shareholders prove to be aggressive and revolutionary, in terms of speeding up the implementation of efficient policies, with a predisposition to quick re-organization of the un-profitable sub-divisions and re-financing new profitable activities. This is the upside of the model.

The downside of the model consists of the excessive focus over profitability to the detriment of development and implementation of development strategies. [8]

The German-Japanese model is a system based on internal control (by intervention), without being centred on the strong influence generated by the active capital markets, but rather on the existence of strong shareholders, such as the banks. Shareholders play the part of correcting low quality management, of stimulating economic efficiency and harmonizing the interests of the company's social partners, including their personnel. Labour plays the most important part. The main goal resides in defending the interests of the parties involved in the company. The upside of this model consists of the fact that shareholders are interested in long term strategy and business stability. [12]

Implementation of Corporate Governance. Practical study-Public entities in Romania

There are an extremely large number of public entities in Romania. The data released by the Ministry of Public Finances at the end of June 2014 were showing that the central and local

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authorities own majority shares in 1,525 companies, out of which 235 are inactive. There are 247 public active entities subordinated to various central administration institutions and 1,051 active entities in the portfolio of the local administration. The number is significantly higher than the one in the OECD countries (Table 1).

Table 1. Number of public entities

Country (year 2009)	Total number, of which	Rated on the Stock Market		Not rated	
		Majority shares	Minority shares	Entities, majority shares	Legal public entity
Austria	11	2	2	6	1
Belgium	8	1	0	7	0
Czech	124	1	0	82	41
Denmark	15	0	2	11	2
Estonia	54	0	0	32	22
Finland	45	3	9	28	5
France	60	2	9	30	19
Germany	62	0	3	57	2
Greece	82	7	3	72	
Hungary	359	0	1	346	12
Italy	28	0	3	25	0
Holland	28	0	0	28	0
Norway	51	3	5	33	10
Poland	590	13	4	573	
Portugal	93	0	0	42	51
Slovenia	37	3	1	33	
Spain	152	0	1	115	36
Sweden	50	0	3	43	4
Switzerland	4	1	0	1	2
U.K.	22	1	1	12	8
Romania (2014)	1,528	8	3	1,408	109
Romania, central authority	307	8	3	281	15

Source: Evaluation of the implementation of the Emergency Rule no. 109/2011, authors Dr. Aurelian Dochia, coordinator and main author, Dan Paulopol Necula, legal expert, Georgiana Nichita, legal assistant, 2014, page 5.

In Romania, the Emergency Governmental Rule no. 109/2011 was released in order to implement the principles and theories of the corporate governance in public entities in order to increase added value. The implementation of EGR 109/2011 started with the selection and appointment of the new administration boards and managers of 33 big entities. However, the majority of the managing boards appointed that way were soon cancelled from various reasons. The members of the managing boards that had been removed from these positions have soon been replaced by interim members and in more than 200 of the entities from the central administration portfolio the selection and appointment process hasn't even been re-started. [5]

As presented in Table 2, the 15 entities participating to the study belong to: (i)Transports Department: 6 entities, (ii)Energy Department: 6 entities, (iii)General Secretariat of the Government: 1 entity, (iv)Department of Communications and Informational Society: 1 entity and (v)Economy Department: 1 entity.

Table 2. The entities participating to the study

	Name of the public entity	**Owning/ surveillance state institution**
1	„CFR" SA National Railway Company (CFR Infrastructure)	Transports Department
2	„CFR Calatori " SA National Railway Passenger Transport company	Transports Department
3	„CFR Marfă " SA National Railway Commodity Transport	Transports Department
4	„METROREX" - S.A Bucharest Underground Transport Company	Transports Department
5	TAROM" SA the Romanian national air transport company	Transports Department
6	Bucharest National Company of Airports	Transports Department
7	SC Complexly Energetic Hunedoara SA	Energy Department
8	SC ROMGAZ SA Mediaș	Energy Department
9	SC OIL-TERMINAL SA Constanța	Energy Department
10	SC Complexul Energetic Oltenia SA	Energy Department
11	SC CONPET SA Ploiești	Energy Department
12	SC Nuclearelectrica SA București	Energy Department
13	SN Transgaz SA	General Secretariat of the Government
14	Compania Națională Poșta Româna SA	Department of Communications and Informational Society
15	„Electrica" — S.A. București	Economy Department

Source: Evaluation of the implementation of the Emergency Rule no. 109/2011, authors Dr. Aurelian Dochia, coordinator and main author, Dan Paulopol Necula, legal expert, Georgiana Nichita, legal assistant, 2014, page 34.

CONCLUSIONS

A close evaluation of the activity of public entities that have tried to re-invent themselves as a result of implementing the principles of corporate governance over the past 3 years (2014-2011) shows evidence of a total failure. There are multiple reasons as presented in Fig.4.

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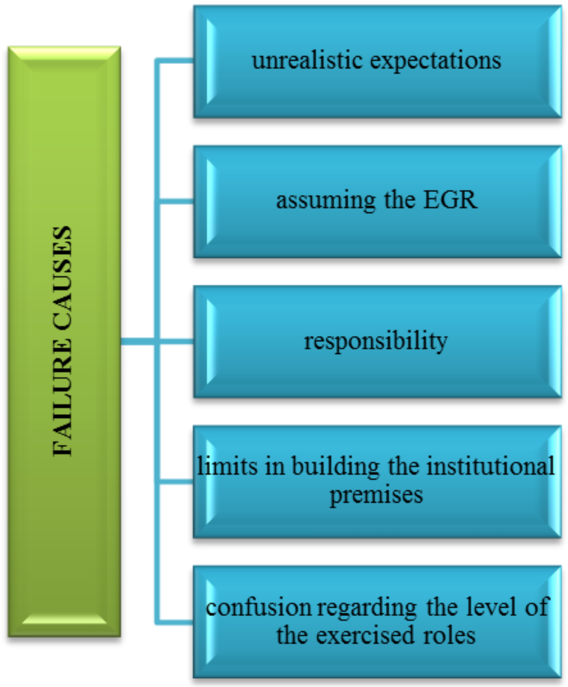

Fig. 4. Causes of the failure in implementing EGR 109

-Unrealistic expectations: the Rule has been promoted by mass-media as offering a steady and quick remedy for solving problems in the public sector. The expectations were high, therefore the disappointment was inevitable. Obviously, it is wrong to assume that the simple change of the managing boards and managers will help the problems accumulated all along a number of years disappear. Instead of presenting OUG 109/2011 as a quick solution for solving problems, authorities should have described it as part of a more complex and long-term process of strengthening public administration.

-Problems related to assuming the Rule: This is, without a doubt, the most important and the most neglected aspect regarding the implementation of OUG 109/2011. There is no institution to be clearly held responsible for the general supervision of implementing the Rule.

There are no deadlines or penalties to be enforced in case of breach. The implementation agents are central government entities who do not have the corresponding incentives to stimulate implementation. On the contrary, it is likely that loop departments might be interested rather by preserving the current situation.

-Responsibility: The lack of assumption generates lack of responsibility. Who is it to be held responsible if OUG 109/2011 is not adequately implemented? Given the fact that tasks have been distributed to several agents, responsibility is diluted. Since the prevailing perception is that ministers are excluded in most of the cases from the decisions regarding the governance of public entities, they cannot be held responsible. [5]

-Limits in building the institutional premises. The governance frame of public entities is not limited to the selection, appointment and remuneration of the councils which are aspects considered by OUG 109/2011. In order for the managing boards to function appropriately, there has to be counter-party, the owner/the state, and capable to establish adequate performance criteria, to supervise achieving goals, to analyse and put into practice the appropriate incentive mechanisms to empower in an accurate way the managing boards of state companies. OUG109/2011 does not attempt to define such a global system outside the company.

-Confusion with regard to the level of the exercised roles. Entities exercising ownership on state companies (loop departments or equivalent institutions) have in fact several simultaneous roles, from establishing sector strategies and macro industrial policies to privatization of a company. As a result, these can have conflicting interests with regard to various aspects and might sacrifice the goals of good corporate governance for other priorities.

In the same time, it must be admitted that OUG 109/2011 has had a significant impact over the political, corporate and social environment in Romania in so many and most often unexpected ways.

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