Corporate Governance Systems used in European Union

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Abstract. Article points out conflicts of interest that might arise in an enterprise between different actors involved in carrying out specific activities. Is also pursuing and decisions taken on the implementation of codes of corporate governance to resolve disagreements between the majority and minority shareholders, between shareholders and managers, and not the last time the company management and employees. The basic idea of which starts is that the harmonization objectives of all persons involved in business operation is a basic criterion for achieving high economic performance. This study considers the way in which governments and business yourself are willing to accept a change to the management and control system so that all involved to obtain the satisfaction of their expectations without the intervention of specialized bodies to to resolve problems that may occur between different categories of participants in the development enterprise.

Keywords: Cadbury Code, conflict of interests, MEBO, agent theory

1. Introduction

The last decade of the century just ended marked the outline of a specific field of scientific management, most important - corporate governance. Has been achieved on numerous studies, including reports by groups of experts representing major institutions - universities, stock exchanges, banks, governments etc.

Of these, the most successful and publicized are Cadbury Report in the United Kingdom and King report, developed in South Africa. Cadbury Code was the basis for the Code of Corporate Governance of the London Stock Exchange, containing principles and basic rules for managing a company in order to achieve its efficiency and remove any discrimination between shareholders.

Since 1992, many such codes appeared for example, powerful multinational companies like Microsoft, General Electric have adopted their own codes of corporate management, becoming more transparent to investors.

Corporate governance has crystallized in response to the delimitation of its management company owners. Traditionally, the company was run by the owners or some family members. In terms of economic developments, management, science and technology in the second half of last century, it was necessary to lead firms - especially large and medium - by professional managers.

There was a new category of managerial and economic relations and processes - which did not exist in the previous period - the owners of firms and their managers. Corporate governance is

intended precisely modeling these relationships and exercise. Two are from prospects that can and should be considered corporate governance: the firm and the overall economy.

2. Quality of the corporate governance system - relevant criterion for assessing the overall performance of the company

Company performance is not confined only to the results in simplistic accounts higher respectively maximum profitability, stable financial balance, ability to generate cash necessary in future operations and expansion, but to all aspects of non-financial and financial business. Investors are not only interested in the historical past of the company, reflected in the relevant financial indicators but rather future prospects arising from resources development, financial, human, informational and organizational aspects.

Overall performance of the company's concept is based on the theory of interest holders. Company managers can not maximize value if it ignores the interests of social partners: shareholders, employees, creditors, suppliers, customers, etc. Performance of quoted firms is significantly influenced by the shape of corporate governance, namely the ability of policy makers to identify and harmonize the interests of their most significant social partners. Harmonization of these interests is ensured through the system of corporate governance.

Inappropriate allocation of resources due to excess benefit granted is subject to management theory Agent (Agent theory or principal-agent theory). This theory assumes that the manager (agent) to act for the shareholder (principal). With clear separation between ownership and control, the question inevitably arises why managers would want to act in the interests of shareholders. Principal-agent problems arise because managers and shareholders may have divergent interests, and under certain conditions, monitoring of management costs exceed the gains to shareholders.

Various corporate governance practices and structures to reduce costs reflects the agent and minimizing conflict between shareholders and managers (principal and agent). So the effectiveness of various systems of corporate governance is assessed according to their ability to resolve inevitable conflicts that arise between the various social partners of the firm, particularly between shareholders and managers (reducing staff costs).

Ability of managers and other decision makers, such as shareholders, Board of Directors, auditors, to harmonize and prioritize those interests, directly influences the risk and earnings generated by investment in shares company. So the quality and operational efficiency of corporate governance determines the shape of control variables that have an impact on financial and economic results of enterprises. Thus, according to a study conducted by Ernst & Young Center for Business and Innovation (1997) on the use of indicators of non-financial, corporate culture, quality management, quality system of communication with investors and policy effectiveness of the remuneration of executives is performance criteria of non-financial used by investors to assess companies listed.

Also, the study by the McKinsey consulting firm on the view of institutional investors in emerging countries (Asia, South-Eastern and Latin American) corporate governance, shows that these investors give at least equal importance as information on corporate governance and financial information in investment decisions, and in addition they are willing to pay a premium for companies that apply corporate governance standards. (In South-East and Africa recorded a maximum award of 30% of market capitalization in 2002).

3 Convergence and divergence between corporate governance codes - Principles of OECD (Organisation for Economic Cooperation and Development) corporate governance

Corporate governance rules and standards are important components of business environment in developed market economies. Although the concept of corporate governance can be defined in

many ways, it reflects the mechanism by which a company is managed and controlled. Corporate governance code is a set of principles, standards and best practices of governance given by a particular institution whose application is not binding, but one option.

Starting from the principle of respecting and strengthening private property rights, corporate governance code establishes a set of rules and requirements affecting the management of a company in terms of strategic planning and decisions to optimize the interests of shareholders, creditors, customers, employers and employees.

In the European Union there was adopted a number of 35 codes, each country having at least one corporate governance code. Most of these codes (25) were issued after 1997 and after financial scandals and bankruptcy cases of companies quoted on the UK stock market. Work to develop codes of corporate governance has increased especially after the years 1997-1998, a period dominated by the Asian economic crisis. Investors withdrawing capital from Asia, Russia and some South American countries led the business community focusing on investor confidence and corporate governance principles of transparency, accountability and fair treatment of shareholders, which resulted in international OECD principles of corporate governance development.

Corporate governance codes were issued by different entities, such as governmental groups, committees or commissions organized by national governments or the stock exchanges, business associations, industrial and academic associations of directors, investor groups, etc. Most, about one third of all applicable codes in EU countries, but were developed by groups or associations of investors. Variety of issuers default generates different official status of these codes of corporate governance in the countries issuing and codes presented their views on what should be a good corporate governance practice.

Although different in terms of developing their purpose and degree of detail, all these codes valid in European Union countries address four key issues: fair treatment of all shareholders, whose interests should be a priority, clear responsibility of the Council administration and management, transparency and accuracy of company financial and non-financial reporting timely, responsible for the interests of minority shareholders and other social partners and respect for law.

Application of the principle "comply or explain" putting pressure on companies in order to comply with the principles largely avoid these codes and their failure reports. Thus, although applications of such codes is not mandatory, they exercise significant pressure on corporate governance practices of companies in the EU. Moreover, the flexibility of corporate governance codes is a key advantage because freedom of decision and action gives the companies to achieve their strategic objectives.

The main convergence and divergence of these codes concern different aspects of corporate governance, and representation of employees, labor rights of the company, shareholders' rights and participation mechanism at the General Meeting of Shareholders, Board structure and responsibilities, financial and non-financial reporting.

Corporate governance codes give flexibility and are not binding, even if the principle of "comply or explain", companies are free to not follow the recommendations of codes provided reporting and explain their failure. Because these are not mandatory, their observance raises a question mark on their effectiveness in practice, there is a real risk of their non-application. The main advantages of corporate governance codes are:

- stimulate the debate on corporate governance issues;
- encourages companies to adopt recognized standards of governance;
- an explanation of the requirements of government and investors corporate governance practices;
- conceptual basis and can provide information necessary to improve capital market regulation and company law.

In conclusion, the most important differences in governance practices applied in EU countries under the legal regulations and capital market regulations, and codes of corporate governance recommendations that have a high degree of similarity. These differences do not lead to insurmountable barriers to market functioning common EU capital, so do not require developing a unique corporate governance applicable to all EU countries.

However there differences between these codes, require specific measures to eliminate legal barriers to regulate capital markets (information) to enable accurate and easy assessment of corporate governance of companies by investors. Starting from the different codes and practical models of governance, have identified some common elements that define an effective corporate governance. So they brought the OECD Principles of Corporate Governance. The document contains two parts: the first aimed at five key areas, namely shareholder rights, equal treatment of shareholders, role of interest holders, reporting and transparency of information and responsibilities of the Board of Directors. In the first part, for each area addressed together principle is one of several recommendations. Part two contains the explanatory notes and comments of each principle and recommendation.

4. Types of corporate governance

4.1. Models of corporate governance used by the companies from the European Union

The Member States of the European Union stands two general models of corporate governance characteristics distinct corporate governance model Anglo-Saxon (UK specific companies, but also the U.S., Hong Kong and Australia) and German corporate governance model (specific companies in Germany and continental Europe and those from Japan).

Model of Anglo-Saxon corporate governance (similar to U.S.) is a system based on external influence exerted by active capital markets through acquisitions and mergers of listed companies. Thus, through active capital markets and trading companies achieved control of securities, under dispersed ownership. All Anglo-Saxon countries in general are characterized by highly developed capital markets and investor protection, under the absence of major shareholders, is an ongoing concern of the regulatory institutions of the market through corporate governance practices and policies.

That the Anglo-Saxon countries (UK, U.S., Australia and Canada) companies generally have similar corporate governance models, namely a single independent Board of Directors, which monitors and controls management to improve its activity, but the latter control method , performance improvement and turnaround companies is done through hostile acquisitions made in the capital markets of developed countries.

German corporate governance model (similar to Japanese) is a system based on internal control, being centered on the strong influence exerted by active capital markets, but the existence of strong shareholders such as banks. Features of this model under particular social and commercial environment that has arisen. Thus, in Germany, as in Japan, shareholders who hold large blocks of shares usually is actively involved in managing their respective companies. Their role is to punish poor management, to foster economic efficiency and social partners to achieve harmonization of the interests of the company, including its staff. Human capital is considered of utmost importance in the German model.

In contrast to Anglo-Saxon model is based primarily on the capital market, the German model is centered on the banking system. Although Germany and Japan banks have large holdings of shares in the companies it funds, they nevertheless exert a strong influence and control over their system of government. The main advantage of this model is monitoring and flexible financing companies and banks and effective communication between them. Strong involvement of banks in leading

companies of this system gives great stability and a priority direction for economic development. However, there are disadvantages to this system of corporate governance.

Shleifer and Wishny (1997) found that small investors have no interest in any capital market. Franks and Mayer (2001) talk about a detailed analysis of ownership and control of German corporations. Germany has more than 800 companies cited in contrast to 3000 in Britain. In Germany, 85% of the largest quoted companies have concentrated ownership, a shareholder holding more than 25% of the vote. Often owned property in the form of intercorporate pyramid. Frank Mayer and they found virtually no market for corporate control in Germany, as in U.S. or UK. They observed an active market in shares of major attributes: large blocks of shares vendors are part of all benefits, minority owners having no merit.

- Comparative study of benefits and disadvantages two models of corporate governance in developed countries, the Anglo-American model and the German-Japanese model suggests that a company's governance system can be improved as a result of action following factors:
  acquisitions of companies in developed countries like UK, USA, France, Germany, Japan there is a regulated market purchases;
- competitiveness of products and services also influence the corporate governance of the company, but this factor is slow action, shareholders can lose huge amounts of product quality due to degradation, loss of customers and market segments due to low efficiency of company management;
- capital market, which actually provides official recognition of a firm's performance and management of default by the company's share price;
- creditors who contract with the company to protect their rights and for infringement may request initiation of insolvency proceedings for their recovery;
- institutional investors represent a potential force to influence the governance of companies, particularly in the UK and U.S. At the same time, they constitute a danger in terms of power control you can exert on companies under a large percentage of holdings in their capital. Thus, in U. S. restrictions on holdings of shares in the hands of the concentration of institutional investors and banks, and also restrictions on the exercise control over public companies, while institutional investors in Japan and Germany have a decisive role in the rights of shareholders;
- labor market for managers, who punished on managers who receive benefits without undue performance as by their replacement by the Board, which entails the impossibility of finding a similar job.

4.2. Corporate governance systems used by companies in Central and Eastern Europe

Unlike the German model based on internal influence (insider - based model), enterprises in Central and Eastern European countries have a common model of governance based on internal control as a result of privatization and restructuring process undertaken during the past 13 years. Economist Aoki (1994) defined the model based on internal control as a form of organization of firms resulting in seizure control rights by managers or employees of former state-owned enterprises in the privatization process, ownership of substantial blocks of shares by persons insider (insider - i) in case of privatization, or pursue their interests in decision-making process at the strategic business when companies are still state property.

Internal control is considered a key issue because managers have excessive control of enterprises can act against shareholders, employees and other social partners, thereby jeopardizing the financial health and performance of firms. Although not like taking corporate governance models of developed countries, Aoki analyzes cause of the pattern of European countries in transition and need it more efficient by developing capital markets and banking systems as a means of external influence or internal corporate governance systems firms in transition economies.

Inevitably, the establishment of appropriate mechanisms for corporate governance of privatized enterprises in these countries was difficult in terms of non-legal infrastructure, the appropriate regulatory institutions and the lack of legislative framework on property rights, financial and accounting reporting requirements , bankruptcy, etc. companies. For example, countries have relied on funds investing in the privatization process had problems with the functioning and efficiency of doing business.

Governance structures of enterprises in European countries in transition were significantly influenced by the objectives of privatization, namely speed, political responsibility, and effective legal regulation of privatization. Considering the priority of these objectives and specific political and economic conditions, the privatization process saw relatively different forms in countries of Central and Eastern Europe.

That corporate governance systems in Central and Eastern European countries are ineffective, either because the concentration of power in the hands of employees or management, and lack of control exercised outside or inside of other major shareholders such as banks, institutional investors, or through active capital markets. Although there are signs that financial and economic results of the privatized firms are on average higher than those of former state enterprises, however, restructuring is carried out slowly and the process of investment is very low, which will affect long-term performance of their respective owners. Dominant forces, such as employees and managers to meet the prevailing form coalitions of interests, slow restructuring of production and staff or even lead to bankruptcy firms.

5. Conclusions

As seen from the experience of countries with developed market economy, development and improvement of corporate governance mechanisms was determined mainly by the difficulties that arise in relations between shareholders and managers due to different interests and objectives pursued by the shells, and different time horizons had to each of the two categories of "actors". Relevant issues, adds that are usually when there are many small shareholders holding equity shares in the company is too expensive for each of them to do the analysis necessary to ensure that managers act in their interest each shareholder prefers to be "free rider" (free rider), or to receive certain benefits without paying.

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