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CORPORATE GOVERNANCE IN ROMANIA: THE BOARD STRUCTURE AN OVERVIEW OF BETPLUS COMPANIES

NEAGOE Aida
Lucian Blaga University, Sibiu, Romania

Abstract:
Corporate governance is a relatively new concept that emerged after the middle of the last century in response to financial scandals and bankruptcies of large companies in the 1990s and has become increasingly important, mainly in the present-day context of globalization and the growth of international competition, of the continuous changes of the market, of the economic and political environment, of the rapidity of the technological changes, which make that the maintenance of the balance and success of companies cannot be achieved without paying increasing attention to the way management and control is performed. The concept of corporate governance is based on internal and external mechanisms, designed to align the interests of all those involved in the company's activity, so as to increase the value of the company and to achieve the highest possible performance, and to increase investors' confidence through transparency, accountability and honesty. The Board of Directors is one of the most important corporate governance mechanisms, its main role is to elect and monitor the activity of managers, to ensure that they run the company in accordance with the interests of those who elected them (the shareholders), while pursuing the company's strategy and objectives. This study presents an analysis of the Board of Directors of the companies that are part of BETPlus index of BSE, in terms of compliance with the provisions of Bucharest Stock Exchange Corporate Governance Code, but also a brief review of the main corporate regulations in Romania, highlighting the requirements related to the size and composition of the boards, requirements that the listed companies must comply with.

Key words: *board structure, corporate governance, Romania*

1. Introduction

Corporate governance is the modality in which a company is controlled, organized and run, a system of rules designed to guide it to achieve its objectives, based on principles of good practice, such as transparency, accountability, independence and fairness, and with mechanisms meant to address issues that may arise between managers, directors and shareholders. Gompers, Ishii & Metrick (2003) describe companies as 'republics, in which authority is held by shareholders, who elect their representatives which, in turn, delegate most of the decisions to bureaucrats`. As in any republic, they say, the relationships between these categories and the division of power must be regulated by specific rules.

The present paper is structured in two parts. The first part, which includes the literature review, summarizes the theoretical concept of corporate governance; in the second part of the article, I will make an analysis of the structure of the board of directors of companies that are part of the BETPlus index of the Bucharest Stock Exchange. The analysis is performed on a sample of 38 companies, banking institutions, investment funds and brokerage firms being excluded.[1]

The methodology involved the use of qualitative research techniques and methods, the information being collected from the companies' reports published on the BVB website, the governance codes or their constituent documents, available on their web pages.

2. Literature review

In a narrow sense, according to the definition in the Cadbury Code, corporate governance is ‘a system by which companies are governed and controlled’ (Cadbury Report, 1992). Thus, corporate governance refers to the rules that underlie the relationships between those who run the company, the responsibilities and rights of each category, the honesty and transparency of reporting procedures and processes.

In a broader sense, the concept signifies the rules that underlie the relationships within the company, but also between the company and all stakeholders, which can influence the company's activity and performance. The definition given by OECD to corporate governance includes a broader meaning of the concept, which ‘involves all the relationships that exist at the level of corporate governance, between the board of directors, shareholders and other stakeholders. Corporate governance ensures the structure through which the company's objectives are established and the ways in which they are pursued, monitoring the performances obtained’. (OECD, 2015) OECD talks not only about regulating the relations between all categories that have interests in the company's activity, but also about the importance of all these categories to pursue the company's objectives, so as to achieve the highest possible performance.

The European Corporate Governance Institute (ECGI) offers an even broader definition of governance, saying that ‘it is at the core of capitalist systems. It is the interface between capital markets and companies, between employees and directors and between society and the corporate sector. It is the engine of what companies do, of the way they operate and affects everyone involved, but also society and economy. Corporate governance is at the core of the success or failure of economic systems.‘

The World Bank picks up on Cadbury's definition of corporate governance, but underlines that through accountability and transparency at the level of companies’ leadership and regulation authorities beneficial results can be obtained for the economy as a whole, capital markets can develop, avoid financial scandals can be avoided, and companies' vulnerability to financial crises can be reduced.

Thus, corporate governance no longer refers only to the relationships within companies or those with stakeholders, but also to the relationships between the company

[1] The companies excluded from this analysis are: Banca Transilvania, BRD, Bursa de Valori București, Fondul Proprietatea, Patria Bank, SSIF BRK International, Transilvania Broker de Asigurare

(as a whole) and society, providing an image of the company as part of the economic system.

Governance practices vary from country to country, from one economic sector to another, or from one company to another. This is how different systems of governance have emerged, determined by the history, cultural factors and different legislation of the states of the world. The most visible and dominant difference between these systems is the structure of property. While in some the property is dispersed (outsider systems - especially in the United States and Great Britain), with 'weak' shareholders and 'strong' managers, others are characterized by a concentrated ownership (insider systems - found mainly in continental Europe and Japan). It has not been proven whether one system is better or works better than another, different mechanisms being needed to improve the performance of companies. (Maher & Thomas, 2000)

Corporate governance is based on both internal and external mechanisms (Banks, 2004), which can differ from one system of governance to another. The notion of corporate governance mechanisms refers to the structures, rules, and processes that govern all relationships and responsibilities at the level of an organization. While some mechanisms are effective for resolving conflicts between shareholders and managers (mainly in the case of the shareholder model), others prove to be more useful for horizontal models, where conflicts can arise between shareholders (between majority and minority shareholders), contributing to the alignment of the interests of all those who have a role in the control and management of organizations. (Urban, 2019)

One of the most important governance mechanisms is the Board of Directors, whose role is to elect and monitor the company's managers, to ensure that they run the company in accordance with the interests of shareholders, while pursuing the company's strategy and objectives.

According to OECD principles, the Board of Directors has two key duties: the duty of care and supervision and the duty of loyalty, namely to carry out its duties as best as possible and in the interest of shareholders, of the company and of employees. (OECD, 2015) The board members may be executives, non-executives and independent members, but the composition of the board (the weight of each category and the number of members) differs from one country to another or from one system of governance to another.

The OECD Principles also state that, in order to carry out their duties to the best of their ability, the members of the Board of Directors must have access to all relevant and accurate information, on a regular and timely basis. The activity of the Board of Directors proves to be extremely important within the companies, as it is the body that must ensure the fidelity and compliance with the law in the accounting and financial reporting, monitor the governance practices of the company and regularly inform shareholders on how the company is run, but also on how the board members have performed their duties.

3. Corporate Governance in Romania

The interest for corporate governance in Romania arose mainly after the 2000s, the economic and legal reforms necessary to move from the centralized economy to the

market economy were made with difficulty and although the Bucharest Stock Exchange was established in April 1995, there was no interest on how the first listed companies were run, nor on the transparency of the information they provided. In order to increase the market transparency, starting 2001, BSE issued the first Corporate Governance Code and introduced the Plus Category, so the listed companies should assume the principles of the Code in order to be accepted in this category. (Feleagă, Feleagă, Dragomir, & Bigioi, 2011)

Regarding the corporate legislation, the way of setting up and running the companies in Romania is regulated by the Companies Law no. 31/1990 updated. According to the provisions of the law, joint stock companies whose financial statements are (legally) required to be audited must have a Board of Directors consisting of at least 3 members. The chairman of the Board is elected from among the members of the board, by the board members or by the shareholders' meeting, if the company's articles of association so provide.

The Board has the ability to set up advisory committees (audit, remuneration of directors, auditors, employees or appointments for management positions) for recommendations or expertise needed in the decisional process. (Constantin, 2021)

In addition to complying with the provisions of the Companies Law, Romanian companies listed on the Bucharest Stock Exchange must assume the provisions of the BSE's Corporate Governance Code. The first Code issued in 2001 was revised in 2008 and during 2015 it was replaced by a new Corporate Governance Code developed according to the OECD Principles.

The BSE Corporate Governance Code comprises principles and recommendations and it is divided into 4 sections (A to D), each one containing general provisions and `provisions to comply with`. The first section (section A) refers to the role and responsibilities of the Board of Directors and the Supervisory Board (if applicable), the election process of members, the size of the Board and the conditions Board members should meet. Section B regulates risk management and internal control and the provisions relate to the composition, selection and duties of the internal audit committee. This section requires listed companies to form an audit committee as a separate department of the company, consisting of at least 3 members (for the premium category) with audit and accounting qualifications and at least one of them must be an independent and non-executive member (including the chairman of the committee). The provisions of section C deal with the remuneration policy of the Board of Directors, supporting the transparency of the process, requiring companies to publish the remuneration decisions in their annual statements, detailing the remuneration components and all the assumptions underlying each component. The last section, D section, deals with the relationships with investors, the listed companies having the obligation to publish on their website the constitutive act of association, the rules and procedures regarding the conduct of shareholders' meeting, the corporate governance code, the CVs of the board and management members, information on corporate events and any sport, cultural, scientific or educational activities the company supports. Also, according to the Code's provisions, listed companies have the obligation to organize meetings/conference calls with analysts and investors twice a year, the ways of

organizing and conducting them being necessary to be made public on the company's website.

4. Aspects of corporate governance of BSE's Index BETPlus companies

All the companies listed on the Bucharest Stock Exchange must comply with the mandatory provisions of the Code and to include in their annual financial statements a governance statement, according to `apply or explain` mechanism, stating the provisions they met or the measures they intend to take in the case of those which they do not fulfill at all or partially fulfill, in order to comply to the Code. In this study I will present an analysis of the structure of board of directors of the BETPlus Index of the Bucharest Stock Exchange, presenting the corporate structure (one-tier or two-tier), the size of the board, the independence of the board members and the separation of CEO and chairman of the board.

Listed companies on the Bucharest Stock Exchange must also comply with the regulations issued by the Financial Supervisory Authority (ASF). Regulation 5/2018 of the ASF and Law 24/2011 on issuers of financial instruments and market operations establish the rules for public offerings (sale or purchase), conditions for admission to trading on the regulated market, the methods of reporting and sanctions for non-compliance to the provisions of this Regulation.

a) The corporate structure

The corporate structure of companies differs from one state to another, some states having adopted a unitary structure, consisting of a single board (the board of directors – one tier system), others must adopt a two-tier structure (with two boards – the Board of Directors and a Supervisory Board) or in other states, companies can opt between three models: unitary, dualistic vertical or dualistic horizontal. According to the OECD Corporate Governance Factbook (2021), in 13 European countries, companies can choose between one-tier or two-tier structure, in 5 of them (Greece, Ireland, Spain, Sweden, Great Britain) there is only the option of unitary structure, in 6 (Austria, Estonia, Germany, Iceland, Latvia, Poland) it is mandatory to hold two boards and in 2 of the analyzed states (Italy and Portugal) companies can opt between 3 models of corporate structures.[1]

There are no requirements in the Romanian corporate legislation regarding the corporate structure, the Romanian companies being able to opt for a unitary or two-tier structure. As indicated in Table 1., except for two companies (CNTEE Transelectrica SA and OMV Petrom SA) of all 36 companies in the analysis, the Romanian companies of BETPlus Index have a unitary structure, consisting of a board of directors that ensures the control of the companies.

[1]The 26 European states included in the OECD analysis are: Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Great Britain

Table 1. The corporate structure of BETPlus companies

	One-tier	Two-tier
No. of companies	36	2

THR Black Sea company gave up its dualistic structure in August 2020, and disbanded the Supervisory Board and adopted a unitary system. The two-tier structure of OMV Petrom may be considered a consequence of the majority Austrian shareholding (as the dualistic structure is mandatory in Austria).

b) Size of the board

The Board of Directors is the body that runs and controls the companies and according to the Corporate Governance Code of the Bucharest Stock Exchange, must consist of at least 5 members (unlike the provisions of Companies Law 31/1990, which require the size of the Board to be at least of 3 members). This is in line with the requirements of other European countries and the OECD analysis shows that in over 88% of the surveyed countries there are requirements for the size of the Board, only in 3 of them (Finland, Netherlands, Portugal) there are not such requirements, and in 65% (17 states out of 26) the requirements are that the board of directors be composed of at least 3 members.

Table 2. Size of the Board of BETPlus companies

No. of companies	No. of board members
4	3
21	5
10	7
1	11
2 (Supervisory Board/Directors Board)	7/5 9/3-7

The information gathered in this study (Table 2.) shows that almost 90% (34 out of 38 companies) of the Romanian surveyed companies have constituted the board of directors in accordance with the provisions of the BSE's Corporate Governance Code and 4 of them (Bittnet Systems SA, Electroarges SA, Farmaceutica Remedia SA and Romcarbon SA) own a board composed of 3 members, but in accordance with the provisions of Companies Law 31/1990.

c) The independence of Board members

In most of the European countries surveyed by the OECD (22 out of 26 countries) there is a requirement referring to the number or a percentage of independent members of the board (in most of them, half or more). According to the provisions of the BSE's Code, the majority of the board members should be non-executive and depending on the category of the company, one of them (for the standard category) or two (for the premium category) must be independent.

Table 3. Independent and non-executive members of the Board of BETPlus companies

No. of companies	No. of independent members	No. of companies	No. of non-executive members
4	0	**1**	1
6	1	**2**	2
4	2	**7**	3
8	3	**7**	4
5	4	**6**	5
1	5	**1**	6
2*	7 – SB; 3 – SB	**3**	7
8	Not specified*	**1**	10
		2	7 – SB; 9 – SB
		8	Not specified*

SB = Supervisory Board; *= declares that it complies with the principle, according to the statement 'apply or explain' attached to the financial statements published on the BVB website, not specifying the number of non-executive and / or independent directors separately, in the annual reports or on the company's website

According to the data in Table 3. the analysis shows that 90% (again 34 out of 38 companies) complied with the requirements of the Code, in terms of the independence of the board members, having at least 1 independent member on their boards. Rompetrol Well Services SA, Aerostar SA, Biofarm SA and Electromagnetica SA are the companies that do not have any independent members in their boards, but comply with the provision that the majority must be non-executive.

Altur SA specifies in their corporate governance statement that, within the Board of Directors, the majority of the members are non-executive without specifying their number, and that it meets the requirement to have at least one independent member, according to the provisions for the standard category. Likewise, Compa SA states both in the Constitutive Act of Association and in the company's corporate governance code, posted on the website that `it ensures a balance between executive and non-executive members` and that at least one of the board members is independent, without specifying the number. In its annual corporate governance statement published in the latest annual report the company also states that it meets the criteria for the composition of the board of directors. Conpet SA declares that it complies with the provisions regarding the independence of the board members and it mentions in the Regulation of Organization and Functioning of the Board of Directors that the chairman cannot hold the position of CEO too. Yet, in the published annual report, it mentions that the nomination and remuneration committee consists of 5 independent non-executive directors.

The company Electroarges SA met the criteria regarding the number and the composition of the board of directors at the time of the publication of their annual statements for 2020, according to the submitted corporate governance statement, but in April 2021 the structure of the company's board changed. Thus the board consists of only 3 members who do not hold a non-executive position, but the information provided by the company shows that none of them meet the conditions of independence.

In the case of Ropharma SA the number of non-executive members or independent members is not specified, nor are there any requirements related to this in their corporate governance code or the Constitutive Act of association, and there is a discrepancy regarding the term of office of the board members. The Constitutive Act association states that they are elected for a period of 2 years, with the possibility of being re-elected, while in the Corporate Governance Code of the company states that the term of office is 4 years with the possibility of renewing the term.

d) The separation of CEO and president

Although there is requirement neither in the BSE's Corporate Governance Code, nor in the Companies Law 31/1990 to separate the position of CEO from the chairman of the Board, it is considered a good governance practice and a recommendation of OECD Principles, which can increase the transparency of the whole decision-making process, as one of the main tasks of the board is to oversee the work of managers and to establish their remuneration.

Table 4. The separation of CEO and chairman of the board

	Independent	CEO & Chairman	Executive	Non-executive	Shareholder
No. of companies	4	16	1	15	2

Only in 4 companies out of the 38 surveyed the position of CEO and chairman are separated (this is the case of CNTEE Transelectrica SA, One United Properties SA, SNTGN Transgaz SA and Societatea Electrica SA), and in almost half of them these two positions are held by the same person.

5. Conclusions

There was no culture for corporate governance in Romania, a cause being the period when the country's economy was centralized, and, as I said, the interest arose after the 2000s, the delay being caused by lack of reforms (both economic, but also political, legal and social), frequent changes and inconsistences in tax and accounting legislation, and the unpredictability of the economic environment. Currently the most important corporate governance regulation in our country is the BSE`s Corporate Governance Code, published on the institution's website and it contains relevant provisions on the good corporate practices that the listed companies should adopt. The slow development of the Romanian capital market is the consequence (but also a cause) of the inclination of Romanian companies to see banks as the major capital provider. However the latest BSE's Code, designed according to OECD Principles, is similar to other codes adopted by the European states, and the study shows a growing concern of listed companies for the way they are run, strengthening the control mechanisms and ensuring transparency, clarity and accuracy of the reports, showing that Romanian companies have understood that one

of the most important means that can improve and increase their development, performance and image is to adopt good corporate governance practices.

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