Dilemmas and Controversies Regarding the Corporate Governance

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Abstract: - The thoughts and research on corporate governance have scored down a new sudden revival as a result of the recent economic and financial crisis and recession and the changes that have taken place within the world economy as well. The current subjects of governance must reflect the major transformations of companies. The remarkable developments within the economic, political and ideological arena require a new vision over governance as a result of the enhanced role exercised in the functioning and ensuring the well-being of companies. The pressure of the new social and economic realities and the impact of the global crisis on the shareholder model force the need to extend the analysis perspectives over the corporate governance and the arguments which support the increase of its role in ensuring sustainable development and the balancing of the interests of all the parties involved in this process.
The need of new methods and perspectives of analysis of governance, where, along with financial and legal aspects, issues of ownership and control should regain their place, should be based on the review of the theoretical sources and ideological fundaments in agreement with the new post-crisis context and the recent acquisitions in the financial and economic theories. The contemporary debates on corporate governance have highlighted the complexity character and the difficulty of analysis from the perspective of a single disciplinary area. Comparative assessments and approaches have noted the persistence of some multiple and distinct forms, as well as the vulnerabilities and dynamism of corporate governance systems.

Key-Words: - shareholder governance, sustainable value, stakeholder model, convergence versus divergence, hybridization.

1 Introduction

The emergence of the current global financial and economic crisis has generated numerous comments regarding the corporate governance. The new provocations regarding governance, the multiplication and ampleness of the crisis that took place in the last decades, as well as the assault of the new economic and social realities have intensified the concerns regarding the process of identifying of some new forms of management. The debates and comments regarding governance have developed considerably contributing to building a new field of investigation which was relatively autonomous. The reflections on governance, primarily on theoretical and conceptual framework, are useful and necessary, its problems being at the origin of an extensive and interesting literature.

The current governance theme particularly aims at the critical reassessment of the organization, functioning and control of organizations. The analysis specific to governance phenomena, taking place within the context of connections with the fields of economy, law, management, ethics, etc., indicates the priority of the methods which are specific to an efficient and transparent management.

The ascending evolution of the private sector in the economy and the increasing of the economic and financial imbalances have caused the revaluation of the connections and relationships that define governance both from the perspective of the company, as well as the national economy. Governance that can and should play an important role in the origin of corporate welfare has become a factor with a significant influence in the sustainable development and it is essential for attracting human and financial capital, as well as within the process of creating sustainable value. In other words, governance is closely linked to performance and it represents an important prerequisite of the economic success. At the same time, a new vision of governance requires new demands regarding the operation of companies, whose increased importance results from the administration of an increased volume of resources, the ability to create value for consumers and stakeholders, as well as from the direct or indirect impact on communities where such are operating. From this perspective, governance represents more than a set of rules or regulations, namely structures, processes and rules for decision making and control. It must become a culture of transparency and openness and it requires the actors involved to change their attitude and behavior.

The disappointments caused by corporate governance represent, among others, the consequence of erroneous theoretical foundations, invalidation of the theoretical premises which have contributed to the process of increasing the vulnerability of corporate governance. As a result, the establishment of a new vision requires urgent reconsideration of the theoretical framework and the identification of new foundations, to propose a healthy, balanced and transparent management.

An important area of the scientific research is dedicated to identifying a new theoretical framework in agreement with the new post-crisis realities. One of the great discoveries of the economic theory of the recent decades is represented by the acknowledgment that markets are malfunctioning in situations characterized by asymmetric information [12]. Bringing back into discussion the hypothesis that the financial markets are fundamentally stable envisages the conventional theory which postulates that finance helps stabilize the economic fluctuations contributes to the effectiveness of capital approach and responds effectively to the financing needs of the real economy [4] . The realities have enforced the reality of the fact that the financial system does not function according to the efficient market hypothesis, as well as the argument that the financial system is inherent, unstable, does not have a stable equilibrium and is prone to the emergence of the boom-bust cycles. Other critical positions aim The Chicago School and its theses on efficient markets and the theory of the rational expectations. The efficient markets hypothesis is based on a logical inconsistency [12]. The idea of rationality of the financial markets and the self-regulating mechanisms represents an invention of recent decades and constitutes an erroneous interpretation of the theory of the invisible hand that Adam Smith never intended to apply within the finance field [5]. Rational expectations represent another embodiment of the utopian economics. This theory was based on a previous approach which characterized the free market economy as a stable and self-regulating mechanism and ignored many of the problems that the capitalist system faced during its evolutions

The triggering of the current global crisis reveals the inadequacies of the market discipline in terms of governance. Concerns are heading to a new governance of the enterprise aimed, primarily, at deepening the relations between managers and shareholders. In terms of organization theory, the purpose is to create incentive instruments to determine the agent (the leader) to manage the company in accordance with the main actor’s (shareholder’s) interests.

2 Debates, Dilemmas, Controversies

An older and very fervent disputed issue is represented the possibility that within the theoretical debates and practical actions various opinions regarding the topics addressed are to be confronted. Moreover, the persistence and dominance of some ideas and theories appear to be entirely surprising as such, in the opinion of many economists, either lead to errors of economic politics or, at best, they are distracting the attention from the real causes and solutions of some economic malfunctions. At least, in the context of the current global crisis, difficulties in countering its effects are not related primarily to the designing and the development of new ideas, but rather to the attempt of giving up old ways and systems of thought and approaching the economic problems. The reasons for the necessity of a new approach to governance, which can help overcome some of the expressed controversies and differences in approach, refer to the economic and financial outcome, the increase of the power of finance over production and corporations, the predominance of the financial functions, the transformation of the financial behavior of the organizations, a new approach of such in the light of creating sustainable value, of their new responsibilities and impact on communities, etc.

• Debates on the characteristics and superiority of the dominant governance systems

Specialized studies have established diversified practices and the different typologies in terms of governance models. For most authors, there is the distinction between the liberal shareholders oriented model and the stakeholders’ model, sometimes called the “Rhenish” or “German-Japanese” which is more present in the Continental Europe and Japan. The shareholders model, which places the shareholders-managers relations in the middle of governance, is characterized by a significant dispersion of ownership and liquid stock markets, dominated by investment funds. The Continental European model, which covers all the participant parties affected by the decisions of the company, has as essential features the relatively limited financial markets and the presence of some significant control structures. The stakeholder model, in which companies are financed largely by reinvesting their profit, is characterized by an appropriate balance between the interests of staff, shareholders, customers and society, in general. Such management method is described as "managerial capitalism".

In terms of economic efficiency, the two types of models dispute their supremacy. The supporters of the superiority of the stakeholder management type quote two types of arguments: the first one refers to the fact that this model favours the investment in human capital which becomes a strategic asset within the company; the second one, which is ethical, invokes the pre-eminence of this type of model as it takes into account the interests of the group of participants and not only the shareholders'.

The "acclimatization" process of the Anglo-Saxon doctrine in terms of corporate governance to the continental Europe specificities has exceeded the mere transposition of some prescriptions that have risen in a different legal and economic environment. Thus, in terms of the objective pursued, there is no certainty that only the maximization of the shareholders' profit has directly established the principles of corporate governance in Continental Europe. In relation to this exclusive result, the value and interests system, by reference to the effectiveness of this management modality, must be assessed distinctively.

The confrontation between the two orientations, one which believes that the management of a company must be fully oriented to satisfying and maximizing the shareholders investors, and the other one which supports the need to meet the interests of all parties participant to the activity of the company, must lead to the establishment of a preference order. But no matter the preference expressed, in practice, the used governance model takes into account the characteristics of that country, its level of development, the characteristics of the institutional system and the cultural traditions.

- Debates regarding the possibility of a unique model of governance of companies in the European Union

Besides globalization, the deepening of the European integration and harmonization process does not foreshadow the possibility of establishing a unique European model. The defining processes that might outline a mitigation tendency of some national specificities refers to the adoption of the acquits communautaire, the centralization and promotion of a common monetary policy, the constraints in terms of fiscal policy, the partial harmonization of the tax policy, etc. [7]. The legislative and institutional mimicry cannot lead to the disappearance of the rational specificities of the national economic management and control, adjustment forms or capitalism varieties.

- The relations that oppose shareholders and leaders on the one hand, and the measure of dispersion of the concentration of the right of ownership of capital, on the other hand are part of the category of theoretical sensitivities which are specific to the analysis devoted to corporate governance

The standard theories favor the shareholder power in the relationship between the shareholders and managers and, therefore, the importance of profit maximization as objective function of the company. Agency theory bestows a special meaning on the ownership rights. On the contrary, other theories emphasize the managerial power over shareholders. The most famous of such theories is represented by the managerial theory which explains the power of the leading techostructure by weakening the shareholders' power as a result of the shareholders' large number and their relative dispersion. Such theory was called into discussion at the same time with the emergence of the institutional investors in the capital of the major companies. They do not aim at establishing an agency relationship with the leaders, preferring the enthronement of a relationship of influence over the strategic orientations of the companies.

- Various assessments in terms of interdependencies between the financial system, the corporate governance and the transformations within companies

For some authors, the financial system does not represent or it does represent but not in a great measure an important element of the distinction between various governance types and models. However, other authors argue that the financial system is placed at the peak of the institutional hierarchy.

- A new debate focused on the changes in capital markets, the process of corporate financing and the implications over corporate governance

On the one hand, the financial systems influence the allocation and use of capital and shape the types of corporate governance. In turn, the forms of corporate governance structure the majority of the relationships within companies and even within the society, being inherently connected with the redistribution of power and financial well-being.

• Specific reviews and analyses regarding the interference of the corporate governance with some academic areas, particularly with the science of law

The relations of governance with state ad law are complex and they are constantly changing due to some multiple factors. State cannot be removed from the reflection area of governance. Law cannot evade the practices and mechanisms of some multiple ramifications governance. The tendency to exacerbate the purely technical and managerial dimension of the governance has as opponent the concern to insert and analyze its ideological and legal dimension. Being considered an eminently political phenomenon, a title of political and managerial project, governance may appear to be, at a first glance, in an exteriority relation, even in an incompatibility one, with the science of law. Governance is perceived as a generic formula, with no direct connection to law and legal technology [11]. On the other hand, the will to imprint the action with a legal feature, the recomposing of the relations between law, management and economy represent arguments which favour the emergence of a right of governance. Moreover, corporate governance is considered to be an important component of the law of companies.

• Controversial attitudes in terms of the relations between rules versus discretionary action and self-regulation versus initiatives of juridical-statism type.

There are views that favor the private regulation, which means flexibility and adaptability in opposition to the failure of statism origin provisions.

• Some theories favor the idea of a power of finance over the real sphere, while others acknowledge the existence of two distinct spheres

The financial-real dichotomy becomes increasingly obvious in the context of financialised capitalism.

• Governance systems are not static, being subject to significant changes

Such changes are considered by some authors as being adjustments to existing models, rather than systemic changes. The evolution of corporate governance models represents a complex process, a process which is interrelated with changes that took place within the regulation of capital markets and the adjustment of some new codes of good practice for companies [9].

• The triggering of the current economic and financial crisis has generated numerous comments and controversies related to the assessment of impact over corporate governance and capitalism, the validity of the governance rules introduced after the '90s, as well as the predictions on the future of governance

The recent recessions and crisis revealed the existence of numerous malfunctions in the governance of large companies. On the one hand, failures of governance have been targeted within at least two areas of responsibility: management and supervision. On the other hand, the contagion of the crisis enabled the process of highlighting the risks related to the solitary exercise of power. The debate on corporate governance hints at three categories of problems: the articulation between different cases of leading the companies; the functioning of councils specialized in the sole interest of the company; the protection of the minority shareholders' rights [6].

The current global crisis, considered a crisis of an unregulated financialisation, has weakened the capitalism and delegitimized the Anglo-Saxon model of corporate governance. The vulnerabilities of the system dominated by the corporate governance represent the consequences of its theoretical and ideological foundation crisis, as well as the management and governance practices used. The false belief in the omnipotence of the invisible hand of the market, which supposedly is self-regulating, the illusion of efficient financial markets, the quasi-networks for rapid and extensive liberalization and privatization, etc., have imposed the bringing back into discussion of the "shareholders" model of corporate governance whose failures are affecting the economic and financial performance of companies. At the same time, greed and stinginess, investors obsessed with seeking short-term logic and high productivity, which involves sacrificing the future, may constitute a first drift to destabilize capitalism at the beginning of the XXI century [3] .

After the euphoria of the 90s, the new capitalism has entered a phase of severe turbulence. The famous market discipline did not work; leaders had avoided the shareholders' control, which enabled the process of highlighting the perverse limits and effects of the Anglo-Saxon model of corporate governance. The accounting and financial blunders have acted as an aggravating factor. The controversies around accounting rules during the crisis have demonstrated their role in shaping and functioning of the economic system.

After the 80s, in close relation to the popularization of the rational anticipations theory, new rules were introduced, rules that aimed at the distribution to the shareholders of not only the immediate gains, as it was in the previous period, but also the future gains with an immediate impact on companies' treasury [8].

The governance crisis was also caused by the introduction of some artifices of accounting type which have excessively increased the extra-balance financial assets, the use of inadequate standards for the assessment of the financial instruments, the deregulation and poor by the relevant institutions, the lack of responsibility and ethics, the managers' exaggerated compensation compared with their performances. The accused practices were also noted: the subcontracting and the relocation of some operations, the easing of the accounting rules, the financial tricks for the beautification of the balance sheets, the buyback of their own shares, the increasing of leverage, etc. [1].

• The convergence debate versus the divergence of the capitalism and corporate governance models

This issue has been the subject of several research directions in literature. Thus, the approach of institutional analysis is filled with the theory of varieties of capitalism (VoC). In essence, the thesis elaborated refer to the fact that: institutions are the expression of political compromise, institutional hierarchy and complimentarily explains the diversity of models of capitalism, there is a close link between the institutional structure and specialization of the economy, there is more than one way to achieve superior economic performance, the differentiation between the variety of models do not target only one dimension, etc.

The debate on the possible convergence between the economic systems of the late 90s concentrated on aspects of economic performance [2]. Even the empirical researches have highlighted the support of a European model different from the Anglo-Saxon model, characterized by its focus on the dynamism of the manufacturing industry and the process of emphasizing the role of social cohesion. The quasi-general conclusion refers to the persistence of the European model of capitalism and its features. As a result, not even in this case, the TINA rhetoric worked. The theme of unity versus diversity in the capitalist world achieves significant roles in the context of new processes unfolding within the global economy and crisis. The diversity of capitalisms can be illustrated by the analysis of the concrete variety of European capitalisms, especially the statism capitalism in France, the consensus-federal capitalism in Germany, in opposition to the peculiarities of the Anglo-Saxon model [7].

The researches undertaken have revealed the factors and conditions that imposed the supremacy of the Anglo-Saxon model and have also precipitated or, on the contrary, have slowed down the convergence process.

In Europe, the economic integration process has ensured the homogenization of the economic legislation. The privatizations of the 80s and the establishing of the single market in the 90s have contributed to the standardization of the economic environment of companies located in the European Union. Furthermore, the acceleration of globalization has led to the process of institutional convergence. At the same time, pressures to extend liberalization, particularly within the financial services area, have helped to reduce disparities between the European Union and the rest of the world.

Analysis and studies conducted revealed important considerations regarding the current trends of the convergence process: the speech regarding the implacable convergence towards a supposedly superior economic model contains significant errors [2]; there is no economy to generally possess the completeness features of a model; the area where convergence towards a neoliberal model seems more obvious is the one of the financial systems; the changes made by different models cannot be reduced to a simple alternative between convergence towards a unique model or the process of maintaining immutable specificities. As human, countries closed to the continental or the social democratic model failed to demonstrate an obvious congruence to the liberal model, but also, one cannot state that they have remained “immune” to the neoliberal inspiration reforms. In this respect, the evolutions of the German corporate governance model from the 90s are eloquent. It is concluded that the concept of convergence more aptly characterizes the emergent tendencies of change out we that may expect acceleration of the transformation process in the coming decades. In addition, analyses have set out to prove whether the process is reversible and which actor has the motivation and power to initiate a reversal or containment of financial liberalization. By the mid-90s, the financial system and the German model of corporate governance were diametrically opposed to the outsider control system, prevalent in the USA and England. Codetermination has represented the distinct feature of the German corporate governance. This system has begun to change during the second half of the 1990s. The main sources of change have been the liberalization of international capital markets, the increasing of competition and the new cultural and ideological orientations. Main economic actors begin to identify their interests with the interests of the capital markets actors and they opt for internal changes.

The assessments on the sources and promoters of change and, particularly, its consequences, are highlighting different conclusions: some authors characterize the amendments of the German model of governance as a process of adaptation, others define the essence of the transformations as hybridization, incorporating elements of both the “coordinated market capitalism” and “liberal market” economy models, or as imminent convergence to the Anglo-American corporate governance [9].
The rigorous analysis of the new realities highlights the persistence of some features of the previous system of corporate governance and convergences to and divergences from the Anglo-American model that exist side by side in a complex mixture.

3 Conclusions

Making corporate governance adequate to new post-crisis realities and demands necessitate, primarily the escape from a doctrinaire blockage represented by the old theoretical and ideological fundaments, the demystification of legends, the reformulation of the constitutive precepts of the doctrine and the reconsideration of the theoretical sources according to the economic and financial mutations and the new theoretical acquisitions.
The instability, vulnerability and, ultimately, the failures of the shareholders governance model require the revaluation of the opportunities offered by the current global crisis to create effective and creative forms of governance, to participate in improving the performance of companies and the creation of sustainable value. The delegitimization of this model and the invalidation of its premises and fundaments increase the efforts for achieving a theoretical-ideological and institutional-legal double reform, based on the critical reassessment of the organization and functioning of companies, reconsidering the type of values that represent their basis and the promotion of alternative models of governance to ensure a healthy and transparent management, as well as the prospects for reforming the capitalism.

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