# SPECIFICITIES AND LEGISLATIVE LANDMARKS OF CORPORATE GOVERNANCE IN ROMANIAN PUBLIC INSTITUTIONS

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**Abstract:**
A corporate governance system within the specific economic landscape of Romania would need a unique approach that differentiates between the public and private sectors, taking into account the peculiar characteristics of the transition to a market-oriented economy, together with consideration for the legislative context in Romania and compatibility with international corporate governance standards, mostly the European model, in light of which the Romanian economy should adapt and transform.
It is important that the domestic legislative provisions on corporate governance, which particularly concern public enterprises, are known and corroborated, in the process of their implementation, with the European directives on the matter. The organization, functioning and governance of public enterprises must be based on principles compatible with a competitive economy. The process of aligning the corporate governance of public enterprises with European structures and principles involves, in particular, the prior auditing of these enterprises. In Romania, this auditing process is grounded in principles reflective of the transition towards a competitive market economy, emphasizing the creation and maximization of value.
This is a condition to ensure their functional compatibility with the corporate environment in the European and global integrationist context.

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**Key words: Corporate governance, Legislative framework, Management efficiency, Corporate governance codes, Stakeholders**

## 1. Introduction

Corporate governance is an essential pillar in the enhancement of transparency, accountability, and sustainable performance of companies, whether they operate in a developed economic environment or one in transition. It is conceptualized as a system by which organizations are governed, regulated, and accountable to all their stakeholders, including shareholders, creditors, employees, and other parties with which they have a relationship. The interaction between governance structures, shareholders' rights, and the influence of institutional investors varies significantly depending on the governance model in use, as can be seen from the difference between the Anglo-American model, characterized by active capital markets, and the German-Japanese model, characterized by internal control mechanisms and the involvement of financial institutions.

In transitional economies, such as Romania, the formation of a sound corporate governance structure has been influenced by the privatization and economic restructuring processes implemented during the last decades. In this context, the most pressing issues are the conflicts of interest that emerge between majority and minority shareholders, the limited involvement of minority shareholders in decision-making, and the poor application of governance principles to state-owned enterprises. Moreover, the lack of adequate legislative framework and ineffective mechanisms of management oversight have often hampered the achievement of best economic and financial performance.

The adoption of the OECD principles on corporate governance and the codes of corporate governance issued by the European Union have contributed to the convergence towards international standards.

The implementation of their approach requires a delicate balance between strict legislative control and the flexibility afforded by the "comply or explain" principle, which allows companies to explain any non-compliance with set regulations. At the same time, evidence from developed economies shows that factors such as capital markets, goods and services competitiveness, as well as the presence of institutional investors and creditors, are crucial determinants of improved long-term performance. A comparative analysis of corporate governance models and their practice in different economies underlines the need for their adaptation to the particular national and regional context. In Romania, the improvement of corporate governance in the public and private sectors remains one of the priorities, since it is a prerequisite for attracting investments and advancing economic sustainability in the European and global integration context.

## 2. State of play. Corporate governance models

The European and global integrationist context in which the Romanian economy finds itself in the current period is the fundamental benchmark for the implementation of development strategies and implementation of corporate governance both in the public and in the private corporate system.

The European economic space in its turn cannot be approached and treated in a differentiated way from the global space, since corporate governance processes, in the current context of globalization and internationalization of activities, exceed geographical borders and are found almost everywhere in the global economy.

The OECD Principles of Corporate Governance serve as foundational benchmarks for the implementation and enhancement of corporate governance practices in Romania, providing guidance applicable to both private enterprises and public institutions. These principles are designed to ensure transparency, accountability, and fairness within corporate governance systems, fostering trust among stakeholders and promoting sustainable economic growth. Corporate governance rules and standards are critical components of the institutional framework underpinning developed market economies, shaping the dynamics of decision-making, control, and organizational accountability.

Corporate governance can be viewed as a framework embracing different definitions, though it is widely perceived to be the system through which organizations are guided, governed, and held accountable to their stakeholders. Such a framework is supposed to align the interests of shareholders, management, and other stakeholders so as to secure the organization's long-term stability and performance. Furthermore, it has supervisory mechanisms, which include Board structures, the practices of auditing, and standards of disclosure; altogether, these help in protecting investors' confidence and thereby maintaining the integrity of markets.

In the Romanian context, aligning with OECD principles is particularly significant given the historical challenges posed by the transition to a market economy. The adoption of these principles aids in harmonizing Romanian corporate governance practices with international standards, addressing issues such as weak enforcement of shareholder rights, insufficient transparency, and disparities in access to information. By embedding these principles into governance structures, Romania seeks to foster an environment conducive to economic modernization, investment, and integration within the European and global economic landscape.

Among the principles generally accepted in the market economy are that enterprises must operate in the interests of their owners (shareholders) on the one hand, and that their performance is also in the interests of other stakeholder groups: managers, employees, customers, suppliers, banks, the state, the local community. From a strategic management point of view, this means taking their interests into account in the process of setting strategic objectives and formulating corporate strategy in such a way as to ensure that they are as fully aligned as possible.

The concept of total organizational performance is ultimately grounded in stakeholder theory, which posits that managers can never maximize a company's value unless they consider the interests of key stakeholders—shareholders, employees, creditors, suppliers, and customers. Corporate governance structures of publicly held organizations strongly impact their performance outcomes; more specifically, it is the ability of their decision-makers to identify and balance the priorities of their organization's most important stakeholders. The mechanisms and processes in the corporate governance framework provide for the alignment of interests.

The issue of suboptimal resource allocation, normally attendant to the excessive gains and top-level benefits awarded to the management personnel, is examined using the framework of agency theory, more popularly referred to as principal-agent theory. Under this paradigm, it is held that managers, in their capacity as agents, are duty-bound to conflate their actions and decisions in manners consistent with the goals that would ultimately be in the best interests of the principals, who, in this case, are the shareholders of the organization. But the separation of ownership from control raises a very important and critical question: what drives managers to put shareholder interests ahead of their own personal welfare and benefits? Principal-agent problems arise where the goals and objectives of managers are not aligned with those of shareholders, giving rise to a conflict. In some cases, it also becomes so costly to monitor managerial behavior that it outweighs the potential benefits that shareholders may obtain from such monitoring, thus creating a complex dynamic in corporate governance.

A variety of corporate governance frameworks and mechanisms have been developed and put in place to effectively address these challenges. These frameworks are specifically designed to reduce agency expenses, which refer to the costs associated with resolving conflicts of interest between different parties involved. Furthermore, these mechanisms aim to diminish the potential disputes that may arise between shareholders and managers, who are commonly recognized within this context as principals and agents.

Much corporate governance structures are usually appraised or evaluated in terms of an ability to curb and attenuate such conflicts that might arise while fostering a sense of greater alignment and cohesion among the different stakeholders that are involved in and impacted by the organization. The alignment of interests among diverse stakeholders is important not only for better relations among them but also for the great reduction in agency costs. This is especially true in the interactions and transactions that take place between the shareholders and managers of the firm. To a great extent, it is the ability of the managers, in cooperation with other key decision-makers like shareholders, board members, and auditors, to effectively reconcile and balance the conflicting interests of these groups. It largely determines the level of risks involved and the returns that can be expected from investments made within the firm. This situation, therefore, highlights the need for effective corporate governance as well as efficiency in the operation of this governance system. These are qualities that are absolutely essential in the management of control variables. These control variables, in turn, have a very significant influence on the overall performance of the firm and, by extension, its long-term economic and financial results.

Based on a comprehensive research conducted by the Ernst & Young Center for Business and Innovation as early as 1997 that studied the use of non-financial measures, it has been established that certain specific factors are considered of utmost importance. Among these are the corporate culture prevailing at the firm, the quality of management installed, the quality of the communication system installed with investors, and the policies installed regarding the remuneration of executives. Each of these elements forms part of the crucial non-financial performance criteria used by investors when evaluating and rating quoted companies. Moreover, a study by the reputed McKinsey consulting company of attitudes of institutional investors located in emerging markets-that is, regions like Asia, South-Eastern Europe, and Latin America-has made some startling findings about these investors' attitudes toward corporate governance.

For one thing, this study shows that these institutional investors attach a degree of importance to corporate governance information at least if not more than the emphasis they give to financial information when making investment decisions. Moreover, investors are often prepared to pay a premium for companies that comply with established corporate governance standards. Notably, in regions such as South-Eastern Europe and Africa, this willingness to pay a premium was particularly pronounced, reaching as high as 30% of market capitalization as early as 2002.

In theory, stakeholders' means of control can be grouped into two categories:

1. External control, which is exercised through the market and the legal and institutional framework specific to a market economy, and which takes three main forms in which managers can be motivated and induced to act in the best interests of shareholders and other stakeholders, namely: the sale of shares in order to penalize the ineffectiveness of managers and, respectively, the insufficiency of the dividends distributed; bankruptcy imposed by creditors, who are entitled to demand the liquidation of bankrupt companies; the employment contract between shareholders that may be granted to them, and the sanctions that may be applied for the lack of performance of their activity;
2. An internal control, based on the shareholders' vote in the AGM that approves or sanctions the activity of managers and the Board of Directors, can keep or dismiss them from office; operational control of managers and control of employees.

From this perspective, for Romania, as for other Eastern European countries, economic liberalization, decentralization of resource allocation, transfer of state ownership to the private sector and the creation of new private enterprises are not sufficient to ensure the functioning of enterprises according to the principles of a market economy, to restructure, revitalize and increase their competitiveness and profitability.

From an economic point of view, the privatization of state-owned enterprises, conceived as a response to the need for change within the system, aims to find owners who are motivated by the desire to ensure the rational use of enterprise resources and to increase the profitability of enterprises. But changing ownership will not change the behavior of managers unless the new owners have the power, motivation and means to monitor their actions closely and ensure that they act in the interests of the enterprise and not just in their own interests.

Therefore, the object of privatization must be not only the transfer of legal ownership of enterprises' assets, but also a transfer of decision-making, control and sanctioning power to the new owners, as well as the creation of an institutional infrastructure and appropriate mechanisms capable of ensuring effective corporate control.

The experiences seen in developed market economies give very strong evidence that the evolution and continuing refinement of corporate governance mechanisms have largely been driven by challenges inherent in the complex relationship existing between shareholders and managers. These major challenges arise due to the significant divergence in both interests and objectives existing between these two distinct groups. Additionally, differences in the time horizons that shareholders and managers focus on during their decision-making processes also play an important role in escalating these challenges. In addition to the relevant issues, when there are usually many shareholders with small shareholdings in the firm, it is usually too costly for each shareholder to undertake the necessary analysis to ensure that managers act in their best interests, each shareholder preferring to be a free rider, i.e. to receive certain benefits without paying (Phelps, Frzdman, Rapacznski and Shleifer, 1993).

For privatized or privatizable Romanian enterprises, the issue of corporate control and the appropriate mechanisms for its realization is even more important taking into account: the structure and behavior of the shareholders resulting from the mass privatization process; the lack of full clarification of ownership rights; the lack of appropriate mechanisms to protect minority shareholders; the maintenance in some of the S.C. privatized of significant state holdings and the often inadequate exercise by its authorized representatives in various management and administrative bodies of the company of the prerogatives that it is entitled to as majority shareholder; the poor performance of many enterprises; the presence in the Romanian economy of a stock exchange and over-the-counter system with an unattractive evolution, the capital market having, however, an emerging character.

### 3. RESEARCH METHOD. COMPARATIVE AND CONTEXTUAL APPROACH TO PRACTICES, STRUCTURES AND LEGISLATIVE LANDMARKS IN CORPORATE GOVERNANCE

Adaptability and reporting to the OECD principles of corporate governance can be achieved through two instruments

- Specific legislative measures/regulations
- Adapted corporate governance codes

The first one serves a regulatory and mandatory function in establishing the framework for corporate governance practices within the context of a developing economy, while also facilitating integration into European and global economic systems. These regulations support the alignment and convergence with corporate governance structures at the European and international levels by enabling continuous evaluation of management and control functions across various public and private entities.

The second instrument, also referred to as corporate governance codes, are a set of principles, standards, and the best practices which are put together by nominated bodies. These are non-binding but flexible and adaptable recommendations that can fit into different situations. Starting from the ground base of respecting and promoting private property rights, corporate governance codes set a regulatory space that influences a company's management structure—be it unitary or dualistic—thereby underpinning the importance of strategic planning and decision-making procedures. The underlying objective in all this is to effectively maximize the interests of stakeholders—shareholders, creditors, customers, employers, and employees.

Across the European Union, 35 corporate governance codes have been adopted with each member state having at least one. Most of the codes (25) were established after 1997 in response to financial scandals and corporate bankruptcies in the UK. The development of these codes gathered much steam after the years 1997–1998, which saw the Asian economic crisis. The crisis, together with the flight of investment capital from emerging markets, such as Asia, Russia, and some parts of South America, brought to the fore very serious questions about investor confidence and illustrated the need for adherence to basic principles of corporate governance, namely, transparency, accountability, and equitable treatment of shareholders. These issues were later addressed globally by formulating the OECD Principles of Corporate Governance.

A diverse range of organizations has issued corporate governance codes, including governmental bodies, national committees or commissions, stock exchanges, business and industry organizations, academic institutions, associations of directors, and groups representing investors. Interestingly, associations or groups of investors are involved in the production of around one-third of all codes adopted in EU member states. The diverse range of issuers leads to different official recognitions for such codes in different countries.

Despite their differences in purpose and levels of detail, all corporate governance codes in EU member states contain a number of common themes:

- Treating all shareholders fairly, with emphasis on the protection of their interests;

-Definite accountability of the Board and the management;

-Transparency of the company through timely and accurate financial and non-financial reporting.

-Protection of the interest of minority shareholders and other stakeholders, with conformity in all respects to applicable law and regulations.

The "comply or explain" principle is the form of regulation that exerts colossal pressure on companies to more rigidly comply with the diverse principles delineated in corporate governance codes. This principle persuades companies to diminish cases of non-compliance in their reporting practices, hence guaranteeing transparency and accountability. As much as it is noted that the applicability of these corporate governance codes is not mandatory but rather voluntary and lawfully not required, they are very influential in the corporate governance practices employed by companies within the European Union.

Inherent flexibility is one of the greatest benefits the codes bring. This offers organizations an opportunity to design their own choices and acts in a manner that will best suit them, given the strategic goals and intentions.

The principal areas in which these codes reveal convergence as well as divergence include a variety of key issues connected to corporate governance. These concern the representation of employees within decision-making, interests as well as rights of varying stakeholders, the rights that are accorded to shareholders and how they might make their presence felt within Shareholders' General Meetings.

Corporate governance codes offer flexibility and are not mandatory; even under the "comply or explain" principle, companies may choose not to adhere to the codes' recommendations, provided they disclose and justify their non-compliance. However, such instances of non-compliance cast doubt on the practical effectiveness of these codes and pose a significant risk of inadequate enforcement.

The main advantages of corporate governance codes are:

- stimulates debate on corporate governance issues;
- encourages companies to adopt recognized governance standards;
- explains governance requirements and corporate governance practices to investors;
- can provide the conceptual and informational basis for improving capital market regulation and company law.

In brief, the essential differences in the governance practices between EU member states are due to legislative differences and capital regulation practices rather than the dictates of corporate governance codes that almost by definition are not uniform. Such differences are however, not thought to be necessary stumbling blocks to the embracing by countries in the world or European Economy, hence there is simply no case for the promotion of one kind of corporate code relevant for all EU member state jurisdictions.

Nonetheless, the presence of inconsistencies among these codes underscores the necessity for specific initiatives aimed at removing legal impediments in the oversight of capital and information markets. Implementing such initiatives would allow investors to assess corporate governance practices with precision and efficacy.

In order to achieve the level of compatibility and convergence that investors are actively seeking across different economies, there have been several underlying common elements characterizing effective and good corporate governance which have been well identified. These identified elements have served as a foundational base for the comprehensive design of the OECD Principles of Corporate Governance, which are systematically organized around two main chapters that guide corporate practices.

The first part elaborates on five fundamental areas of high priority: the rights of shareholders within a structured framework, the principle of equitable treatment of shareholders, stakeholder relationships dynamics, the need for transparency and disclosure, and responsibilities relegated to the board. Truly remarkable is the fact that each of these areas is singled out by one leading principle forming the basis, while being complemented by specific recommendations to help in applying these principles effectively.

The next chapter then forms an expansive, detailed series of explanatory notes coupled with incisive commentary for every principle, along with its correlative recommendations. In their comprehensive nature, such notes endow readers with deeper layers of background and give much more vivid direction for effectively instituting those principles.

➢Corporate governance models used by companies in the Union

In the Member States of the European Union there are two general models of corporate governance with distinct characteristics: the Anglo-American corporate governance model and the German corporate governance model.

The Anglo-American corporate governance system, much like the American system, is characterized by the high influence of dynamic capital markets, which are particularly expressed by mergers and acquisitions that apply to listed companies. Under this governance system, companies are controlled by dynamic capital markets characterized by an extensively dispersed ownership structure in terms of securities. Nations with the Anglo-Saxon tradition include countries such as the United Kingdom, the United States, Australia, and Canada, which generally have highly developed capital markets. This has been one of the key priorities of regulators in these markets, which is investor protection, especially in the absence of dominant shareholders, through robust corporate governance practices and policies.

Corporate governance structures in Anglo-Saxon countries bear some similarities in that there is one independent Board of Directors that supervises and improves managerial efficiency. However, the most direct means of enforcing accountability, improving performance, and reconfiguring companies remains hostile takeover, facilitated by developed capital markets common in these countries.

The German corporate governance model, closely aligned with the Japanese model, is built on a framework of internal control rather than the strong external influence of active capital markets, which characterizes the Anglo-American system. This model emphasizes the role of powerful shareholders, such as banks, as central players in corporate governance. The distinct features of the German model stem from the unique social and economic environment in which it evolved. Notably, human capital is regarded as the most critical asset in this governance model, reflecting a broader focus on social cohesion and workforce stability.

Unlike the Anglo-American model, which relies predominantly on the mechanisms of the capital market, the German system revolves around the banking sector. Banks play a pivotal role not only as financiers but also as active participants in corporate governance. While banks in Germany and Japan may not hold extensive equity stakes in the companies they finance, their influence is profound, often shaping strategic decisions and ensuring effective oversight of management. This deep involvement fosters a close relationship between banks and firms, enabling flexible monitoring, tailored financing solutions, and open communication channels.

The German model's strengths include its stability, long-term orientation, and focus on economic development. The strong role of banks allows for consistent oversight and support, reducing the risk of volatile short-term pressures commonly associated with capital market-driven systems. This stability is particularly advantageous in fostering innovation and investment in industries that require substantial upfront investment and long-term planning.

However, the system is not without its drawbacks. The high degree of involvement by banks and large shareholders can limit managerial independence, potentially leading to conflicts of interest or excessive conservatism in decision-making. Furthermore, the close ties between banks and firms may create barriers to competition, reduce transparency, and hinder the adaptability of companies in rapidly changing market environments. Additionally, the reliance on internal mechanisms and the absence of a strong market-driven corrective force, such as hostile takeovers, may allow inefficient firms to persist for longer periods, reducing overall economic dynamism.

The German corporate governance model prioritizes stability, workforce integration, and long-term development, offering a compelling alternative to the capital market-centric Anglo-American approach. While it excels in fostering strong relationships and economic resilience, its limitations lie in its potential to stifle managerial autonomy and adaptability.

Shleifer and Wishny (1997) observed that small investors have no stake in the capital market.

Franks and Mayer (2001) published an excellent review of the corporate ownership and control arrangement in Germany, which again exhibits several distinct features, compared with the systems extant in the United Kingdom and the United States for example. One clear difference that immediately flags as different is the considerably reduced number of quoted companies extant in Germany, compared to the UK, between fewer than 800 verses approximately 3,000. Of the largest publicly traded corporations, 85% have concentrated ownership, where individual shareholders often control more than 25% of the voting rights. Much of this ownership concentration is organized through complex pyramids of intercorporate holdings which tend to further centralize the power of the major shareholders.

Franks and Mayer also mentioned the absence of an active market for corporate control in Germany, which contrasts with the active markets in the United States and the United Kingdom. Tools such as hostile takeovers, that in the Anglo-American systems serve as a remedial device, are rare in Germany. Instead, corporate control is ensured by closely held ownership structures.

Another important finding was the presence of an active market for large share blocks. In this system, the sale of large ownership stakes unduly benefits the sellers, with little or no benefits or powers accruing to minority shareholders. This imbalance shows a lack of protection for minority shareholders and raises concerns about fairness and transparency in the German corporate governance system.

In summary, the study by Franks and Mayer highlights the concentrated and interlocked nature of corporate ownership in Germany, its reliance on internal regulatory mechanisms, and the limited role played by external market forces in shaping governance arrangements. While this system fosters stability and alignment among principal stakeholders, at the same time, it also poses challenges in the areas of minority shareholders' rights and market dynamism.

A comparative analysis of the strengths and weaknesses of the two principal corporate governance systems followed in developed economies—the Anglo-American system and the German-Japanese system—points out that the effectiveness of corporate governance systems may be improved by a number of key factors:

1. The capital market provides a valuable indicator regarding the performance of a company—and, therefore, how the management team is effective. This is evidenced by the firm's stock price, which is an objective and formal assessment of managerial successes or failures.

2. Institutional investors have a big say in the affairs of corporate governance, especially in the UK and the US. Their substantial equity ownership gives them considerable influence over firms, though it also introduces the risk of excessive control.

3. The managerial labor market plays a very important role as a check and balance system in the corporate hierarchy, acting to 'punish' the executives who are not producing the right kind of results or who might be getting rewards that they do not deserve based on those results. This happens in the process where the Board of Directors moves in to replace underperforming managers. This makes it difficult for them to be employed again in a similar position by someone else in the same industry. The result is an increase in the accountability of these persons towards the results of their actions and decisions.

4. Creditors assume important roles in corporate governance by structuring legally binding agreements with companies to safeguard their own interests. If these contractual agreements are breached by the companies, it gives creditors the right to initiate bankruptcy proceedings to recover the amount owed to them, which also adds another level of supervision and regulation.

5. The competitiveness of a company's offerings indirectly affects corporate governance. While the effect of this factor is gradual, poor management can eventually result in the deterioration of product quality, loss of customers, and market share, which may eventually cause huge losses to the shareholders.

6. In advanced economies like the UK, USA, France, Germany, and Japan, corporate governance is furthered by regulated procurement markets, which provide a structured platform for transactions and thus promote accountability and fairness in corporate dealings.

These factors together contribute to the continuous improvement and evolution of corporate governance structures, reflecting the different economic and regulatory environments in developed nations.

A thorough and comparative analysis of the respective strengths and weaknesses of the two main models of corporate governance, mainly practiced in developed economies—the Anglo-American and the German-Japanese models—reveals a number of ways through which corporate governance systems could be significantly improved, considering the impact and influences of various factors. A more deeper analysis of this kind may then be used as a threshold for more subtle, contextualized studies on different issues of corporate governance within particular countries or economies. This is particularly timely given the broader context of European or global integration because it highlights both the correlations and distinctions in governance in different jurisdictions.

## 4. PECULIARITIES OF THE SYSTEM OF REGULATION AND IMPLEMENTATION OF CORPORATE GOVERNANCE IN THE ROMANIAN ECONOMY

Businesses in Central and Eastern European countries share a governance structure shaped by internal control, a consequence of the privatization and restructuring efforts over the past 33 years.

Economist Aoki (1994) described the insider-based model as an organizational structure emerging from the transfer of control rights to managers or employees of previously state-owned companies during privatization. This model is characterized by significant share ownership by insiders following privatization or the prioritization of insider interests in the decision-making processes of strategic enterprises, even while these companies remain under state ownership.

Internal control is a critical issue, as managers with excessive authority over companies may act against the interests of shareholders, employees, and other stakeholders, ultimately endangering the financial stability and performance of firms. While Aoki does not advocate for adopting the corporate governance models of developed nations, he examines the factors that led to the emergence of this governance structure in European transition economies. He also emphasizes the need to enhance its effectiveness by fostering the development of capital markets and banking systems, which can serve as mechanisms for external or internal oversight of corporate governance in transitional economies.

The establishment of effective corporate governance frameworks for privatized enterprises in these countries has faced significant challenges due to the absence of essential legal infrastructure, regulatory institutions, and a comprehensive legislative framework. Key deficiencies include gaps in property rights legislation, financial and accounting reporting standards, and bankruptcy regulations.

For instance, in many cases, countries that have chosen investment fund integration as one of the major components in their overall privatization programs have often found themselves grappling with grave problems of operational effectiveness and efficiency concerning the enterprises involved. This situation not only highlights but also underlines the intrinsic complexities and risks involved in such programs.

Corporate governance frameworks developed for the European transition economies have been deeply influenced and shaped by the overall aims and objectives surrounding the process of privatization. These include a number of key elements, which involve the speed and urgency of privatization, the need for political accountability, the establishment of a basic legal framework to underpin these changes, and effectiveness and efficiency in the operational dimension of privatization. Given these specific aims, and with regard to the individual country's specific political and economic situation and context, along with the disparate conditions within that country, the privatization processes have taken different forms and at varying paces across the countries of Central and Eastern Europe.

In Romania, the privatization process has resulted in the following types of enterprise governance:

State-owned firms: These include autonomous regions or fully non-privatized companies where the state remains a shareholder. These enterprises often face inevitable conflicts of interest among managers, employees, and the state, resulting in divergent objectives such as profit maximization, job preservation, increasing tax revenues, and fulfilling political or individual agendas. Economic performance is rarely the primary focus in such entities, and the interests of managers are seldom aligned with those of the shareholders.

Closed private companies: These enterprises, whether small, medium, or large, have shares that are not publicly traded on official markets. In such companies, ownership and management often coincide, thereby removing the potential for conflicts of interest between the two. Managers in these companies tend to prioritize business expansion rather than focusing solely on maximizing the firm's value.

Privatized or publicly traded companies: These encompass a variety of forms, ranging from firms with widely dispersed shareholding, where shareholders' rights are often overlooked, to those controlled by majority shareholders exerting significant influence. Conflicts in these companies may arise between management and minority shareholders or between majority shareholders and other investors.

From a legislative perspective, any contextual analysis or effort to align public institutions with European or global corporate governance principles must begin with a framework for auditing the national and local contexts of these enterprises. This process should be guided by the provisions of Government Emergency Ordinance No. 109/2011 on the corporate governance of public enterprises ("GEO No. 109/2011"). This ordinance establishes the organizational structure, operational guidelines, and governance standards for public enterprises, aiming to enhance transparency and improve the quality of information disclosed to the public by incorporating the principles of corporate governance specific to public enterprises.

The enactment of OG 109/2011 was driven by a profound contextual analysis. The major drivers that triggered its adoption include the following factors:

There is a critical and urgent necessity for the establishment of the essential legislative and administrative infrastructures that are tailored in improving and promoting the economic operatives' efficiency. -public enterprise, including autonomous regions, companies where the state owns all the capital as well as the majority-held either by the state directly or indirectly through its government entails a substantial and a strategic sector of the domestic economy. Liquidity profile as well as the insolvency status, as well as the functionality of its overall operation, have effects which are felt and impacted by the entire economy's stability and resilience.

There is a strong need to enhance and elevate the real contribution of public enterprises in their role of improving various economic indicators and in the stabilization of the state budget, which is vital for the overall health of the economy. The effectiveness and efficiency of these public enterprises are contingent upon several key factors, including the implementation of effective management strategies, the appropriate application of governance mechanisms, and a strong adherence to established principles of good corporate governance, all of which are crucial for achieving optimal outcomes.

Identified and emphasized key deficiencies in the existing legislative framework, which proves to be insufficient and inappropriate to offer the required backing for effective governance of autonomous regions. These key deficiencies have negative effects on their economic performance, resulting in a loss of their overall competitiveness, and they also cause dysfunctions in the way these regions relate to other economic actors in the general economic environment.

Inadequacy of the general company law to meet the specific and particular needs of state-owned enterprises is increasingly evident. In fact, the lack of specially tailored legislative provisions that precisely fit these entities has seriously affected their ability to function effectively and, therefore, to play a part that would be instrumental in leading economic recovery.

It is imperative that governance mechanisms be put in place and implemented which, in addition to those provided for by the general company law, specifically take into account the unique and distinctive features of state-owned enterprises.

Alignment with OECD principles for corporate governance of state-owned enterprises has been put in place, informed by advanced legislative frameworks and best practices on an international basis. These principles emphasize the paramount importance of having selection processes for management and governing body members that are not only objective but also very transparent, thus engendering a culture of professionalism and ensuring accountability in the decision-making processes affecting these enterprises. Moreover, there is an urgent necessity for instituting strong mechanisms that will substantially enhance the governance structures and strengthen the supervisory capabilities of state-owned enterprises and sharpen the state's policies on its shareholding interests.

The commitments that were spelled out and established by the Romanian Government in the detailed Letter of Intent addressed to the International Monetary Fund, which was approved by a memorandum on June 7, 2011. The non-urgent and late passage of this essential legislation would have meant the continuation and perpetuation of the current inefficiencies that characterize the way autonomous regions and state-owned companies function today. This would have had very serious negative implications for their overall ability to make a meaningful contribution to the processes of economic stabilization and recovery, so essential for the financial well-being and development of the country.

The occurrence of delays in the implementation of necessary reforms for public enterprises impacts negatively on several critical aspects, including their liquidity, solvency, and overall operational efficiency. These negative effects do not stay put; rather, they tend to cascade into the balance of the consolidated state budget, creating further complications in financial management.

The strategic significance of public enterprises is profound, as these institutions play a vital role in the economy, and the critical nature of the various sectors in which they operate underscores this importance. Therefore, it is essential to recognize that any dysfunctionality or inefficiency within these enterprises could potentially result in serious macroeconomic instability, affecting the overall economic landscape.

The prolonged and difficult economic crisis affecting several fields and its wide-ranging consequences made it imperative to act promptly and firmly with measures aimed at improving the functioning and efficiency of economic agents. If the necessary legislation were not adopted, there would be a serious risk of non-compliance with Romania's obligations under the numerous agreements it has concluded with international financial institutions, with serious and harmful consequences for the stability of the national budget. OG 109/2011 has a scope that comprises autonomous regions, national companies, and other enterprises in which the state, administrative-territorial units, or other public enterprises hold full or majority ownership or controlling interests. The law also applies to companies in which these public enterprises maintain a majority stake or controlling influence.

In support of the idea that the process of convergence with corporate governance practices in the European and global space must always start from the conclusions of a permanent audit of the local national context, by Law no.187/2023, Article 47 of GEO no.109/2011 was amended and supplemented, in the sense that paragraph. (1^1), with the following content:

" Top statutory auditors will be appointed based on clearly defined and transparent selection criteria, and the appointment should take place before the end of the financial year. The appointment is made by resolution of the general meeting of shareholders or associates who come together to deliberate and decide on this very important matter. For autonomous regions, this process is performed by the supervising public authority and is designated for a period of three years, which gives stability in oversight for that period. In all cases, the maximum period of audit of a public undertaking by the same financial auditor, natural or legal person, shall be 6 consecutive years and shall be carried out in accordance with international auditing standards."

It was also introduced in Article 47 GEO no.109/2011 and paragraph (1^2), with the following content:

"After a period of 6 consecutive years during which the public undertaking has been audited by the same financial auditor, a new audit contract may be concluded with the same public undertaking only after a period of at least 3 years has elapsed since the last statutory audit."

## 5. CONCLUSIONS

This shows that corporate governance systems in CEE countries are inefficient, due to the concentration of power either in the hands of employees or management, and the lack of external or internal control exercised by other major stakeholders such as banks, institutional investors, or through active capital markets. Although there are signs that the economic and financial performance of privatized firms is on average better than that of former state-owned enterprises,

restructuring is still proceeding at a slow pace and investment is very low, which will affect the long-term performance of these firms. Dominant forces, such as employees and managers form coalitions in order to predominantly satisfy their interests, slow down the process of restructuring production and personnel or even drive firms into bankruptcy.

As in the case of closed private firms, the decision-making and operational autonomy of the management team is high, organizational structures and information systems are flexible, dynamic and efficient, and economic-financial levers are predominantly used as managerial tools.

The most common problem of Romanian corporate governance is the inherent conflict of interest between majority and minority shareholders. Often, this conflict will escalate into disputes between management, the Board of Directors and minority shareholders, and also between majority shareholders and the firm's business partners. These problems are quite widespread in transition economies and may seriously affect the long-term viability of companies, occasionally leading to bankruptcy.

According to studies by international institutions on the Romanian capital market, the most important forms of violation of shareholders' rights are:

Dilution of shareholders' wealth

Transferring profits outside the Empty shell tactics

Misallocation of Late payments

Limited access to information for minority shareholders.

Where ownership is concentrated—that is, when a small group of shareholders or owners control the larger share of the company—corporate governance bodies, such as the Board of Directors and all its related committees, along with the management team, tend to act under the overwhelming influence of the majority shareholder; consequently, their agenda tends to override those of other shareholders and constituencies.

When one considers the overall quality of the governance structure that is presently in place, as well as the nature of the relationships that take place between companies and their many stakeholders, it is clear that these two factors are direct determinants of sustainable performance. Based on this review, it would be relatively easy to state that the corporate governance practices found within Romania should be graded as unsatisfactory at best.

This study pinpoints several key shortcomings in the corporate governance practices found in Romania, including unequal access to information for shareholders, widespread transactions favoring internal or majority shareholders, limited effectiveness of Boards of Directors, and limited access to alternative investor information channels. None of these challenges are exclusive to Romania, but among all, the most critical relates to the protection of shareholders' rights. Shareholders are highly discouraged from exercising their rights by the very unfavorable judicial framework reflected in a score of – 1, which conveys substantive misconduct in this regard.

Publicly traded companies in Romania that have resulted from the privatization programs such as MEBO, mass privatization, or the selling of shares have produced two major results. On the other side, these privatization processes have given way to a rather fragmented shareholder structure characterized by low involvement in corporate governance. Alternatively, such processes led to the emergence of a dominant or significant group of majority shareholders. Therefore, the governance of these listed companies is generally dominated by the control of management and majority shareholders at the expense of minority shareholders and other stakeholders.

It follows that inefficient governance of enterprises in the public system adversely affects their economic-financial performance and their future development possibilities through the following levers:

Priority pursuit of the short-term interests of employees and managers, i.e. increase in salaries and other allowances, stability and protection of jobs, etc.; slowing down the pace of restructuring and reorganization or postponing the bankruptcy of institutions in financial difficulties; abusive sale of assets of companies managed or owned by them; failure to enterprises; abusive takeover of increasing shares of capital by majority shareholders;

satisfying the interests of majority shareholders through destructive methods of diminishing and transferring the wealth of minority shareholders;

the impossibility of using programs to remunerate managers according to the real value created;

Excessive staff mobility due to internal conflicts and lack of value-based promotion and incentive programs;

late distribution or non-distribution of dividends to other shareholders in order to provide incentives to employees and managers at the end of the year;

restricting the trading of securities on the capital market, which increases the volatility and risk of investing in these securities;

maintaining a tense atmosphere due to conflict between management and/or employees and minority shareholders, or conflict between majority shareholders and minority shareholders;

the impossibility of active involvement of other social partners, e.g. banks, in the process of company management;

Reduced access to bank credit due to poor provision and quality of information and insufficient collateral;

the impossibility of making acquisitions or takeovers by other firms in the field in order to streamline the work of those firms;

the decline in the market prestige of listed firms, etc.

It was the corporate governance framework in public enterprises that was quite decisive in determining not just current economic and financial outcomes but also investors' expectation of the future development chances in the Romanian economic space.

In brief, the quality of management and governance is one of the most important non-financial criteria for the evaluation of the general performance of publicly traded companies in the Romanian economic environment. Moreover, harmonization of national legislation with the provisions of European and international integration systems represents a vital element in the successful implementation of corporate governance systems in Romania.

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