From Government to Governance in the Public Water Resources Field Organisations - the Importance of the Legal Framework

Aurel Dincă
University of Craiova, Faculty of Economic and Business Administration
aureldinca@yahoo.com

Abstract

According to the principles of corporate governance in public organizations, set up by the Organisation for Economic Cooperation and Development based on the most advanced legislative standards and best practices of corporations, it was necessary to create legislative measures to guarantee the objectivity and transparency when the management and the members of the administration bodies are elected, to guarantee both professionalism and responsibility in the management decisions, additional mechanisms for the rights of minority shareholders and increased transparency to the public both in the activity of the state companies and in the shareholding policy of the Romanian state.

This research is aimed to highlight the importance of the legislative support in improving the corporate governance for public organizations and in stopping the perpetuation of the dysfunctionalities in the activity of the independent administrations and companies owned in majority or in full by the state, which used to impede the ability of these entities to influence the balance of the state budget.

Key words: corporate governance, public organizations, legislation, reform
J.E.L. classification: G30, G39

1. Introduction

The public enterprises – the autonomous administrations and companies where the state had the majority or full capital – as an important segment of the national economy - had a decisive influence on the stability of the economy due to their liquidation, solvency and functionality; so it become imperative to increase very fast the contribution of the public entities to increase the parameters of the Romanian economy and the balance of the state budget.

Therefore, in the economic context of the year 2011, measures were taken such as the creation of legislative and administrative conditions in order to lead to a higher efficiency of the economic operators.

The general legislation of the companies had not been adapted so that the public organizations could work effectively and be a vector of economic recovery, so, it was important to develop new mechanisms such as corporate governance, additional to those covered by the general legislation of the companies, tailored to the particularities of the public organizations, knowing the fact that their efficiency is strictly linked to the performance of their management, as to the proper implementation of the mechanisms of good governance.

2. Theoretical background

I investigated the evolution of the positive aspects as a result of corporate governance's principles in developed countries, but also the shortcomings of these principles that resulted in significant failures in private commercial societies in the capitalist system (Ghiță M., et al.,2009). I have also analyzed both the need for existence and the importance of unified respect by OECD Member States of the principles of corporate governance (Principles of Corporate Governance, 1999 and 2004).

In this study I want to point the importance of the legislative ensemble for implementing in public institutions in Romania the corporate governance and its principles. I have watched the way in which public policies of Government and Parliament of Romania have come to support this desideratum (Emergency Ordinance no. 109 from 30 November 2011, Government Decision no. 722/2016, Law no. 111/2016 from 27 May 2016).

3. Methodology

The research methodology was based on the analysis of data sources mostly represented by the specialized scientific writings, as well as on the direct observations taken on the specific legislation and regulations regarding the corporate governance.

4. Analysis and findings

Corporate governance is, basically, the system by which a company is managed and controlled – setting certain special conditions for the governing bodies but also regulations meant to protect the rights of the shareholders.

This applies mainly to the public organizations, but also to the private companies organized as entities traded on the capital markets.

The corporate governance has emerged as a response to a series of spectacular failures in the private sector in a relatively short time which, through their scale, rocked the confidence of the investors in the way in which both the large corporations and the public institutions were being managed.

In Britain, Sir Adrian Cadburi studied the usual causes of the corporate failures in the private sector, developing, in 1992, The Cadburi Report. It noted that the bankruptcy of the companies had occurred due to a series of major problems in the the internal control systems, i.e. problems which lie within the competence at senior management level. The overall management itself was the source of these failures failing to prevent the produced disasters.

Following this report, in 1992 Sir Adrian Cadburi developed the first corporate governance code which established the basic rules of the management of a company to achieve increased efficiency, while displaying a non-discriminatory behaviour towards shareholders.

At the end of 1998, the finance ministers of the G7 member countries launched an appeal on transparency, quality, coherency and comparability of the information on the capital markets.

Thus, the OECD member countries - countries with highly developed market economies – have developed and materialized the idea of corporate governance inside joint stock companies.

In 1999 the OECD published "The Principles of Corporate Governance" which included the principles related to the issues where the managers had a key role regarding the rights of the shareholders, their equitable treatment, providing information and its transparency and where the investors, employees, creditors and suppliers were considered partners in the process of increasing the welfare of the organization.

Thereafter, each State (member or non-member of the OECD) has been adopting domestic laws that introduce these principles into their legislation in order to improve management and hence the operation of businesses.

The corporate governance appeared in Romania in the early 2000s, this delay being caused by the slow measures taken on the economic, political, legal and social reforms.

According to Nicholae Feleagă, in Romania the corporate governance was accompanied by some key inconsistencies (Feleagă et al., 2011, quoted by Fulop and Pintea, 2015):

- ✓ the absence of details analysis in the relationship owners - management;
- ✓ other stakeholders doesn't involve in the process of decision;
- ✓ the absence of the conceptual framework necessary for an efficient market;
- ✓ the controversial involvement of the auditors in promoting corporate governance;
- ✓ the weakness of the accounting systems to update according to the international developments;
- ✓ an insufficient control mechanism for providing reliable financial reports in a sincere, relevant, understandable, comparable and meaningful manner.

Speaking of the introductive legal framework of the corporate governance in Romania, of relevance are the following: the Law no. 31 from 1990 on Companies – with all subsequent amendments and additions, Law no. 29 from 2004 on the Capital Market – with all subsequent amendments and additions and the Corporate Governance Code (BSE).

This first Corporate Governance Code established the guidelines on the integrity and transparency of the financial statements. This code proved to be a failure, which led to the development, by the BSE, of a new Corporate Governance Code in 2008. This time, the starting point of the code consisted in the basic principles established by the OECD and voluntary applied by the companies listed on the stock exchange.

In Romania, the focus was on establishing a legal framework for corporate governance, legal framework which, even if it materialized only in 2011, was an absolutely necessary step for the public companies.

The importance of the reform in 2011 consist in the elimination of political decision in the appointment of the managers of such state-owned companies, implementing some specific means and procedures regarding a private, independent and competent management.

The government has made great steps in implementing corporate governance in state-owned companies: it supplemented the legislation, it brought new managers in companies, it adopted rules regarding the management of the state companies, it introduced the obligation to comply with the corporate governance.

Thus, in compliance with the Romanian legislation inforce, the administration system of the public organizations in the field of water resources has the following structure:

- The Ordinary General Assembly of the Shareholders which role is to appoint the Administration Board
- The Administration Board consisting in seven members for a term of four years and is led by a president elected by the whole Board from among its members.

This board operates under the Constitutive Act and his own Rules of organization and functioning. Those documents provide the Board the limitation of his responsibility in the administration of the company.

The Administration Board basic competencies are:

• to point the direction and the development of the activities in the company;

• to establish the financial control and accounting system including the approval of the financial planning;

• to appoint the directors (the director general, the executive director and the economic manager) recommended by the Nominating Committee, after the first selection was made by an independent expert, necessarily specialized in the recruitment of human resources;

• to approve the director's management plan;

• to establish their remuneration, in general limits, decided by the General Assembly;

• to revoke the directors after the prior assessment of their work, to evaluate both the performance of their mandate contract and their accomplishments from the management plan;

• to evaluate the directors activities as set in the contract of mandate or the management plan;

• to summon the Ordinary and Extraordinary General Assemblies of the shareholders, according to the law and to the Constitutive Act;

•to prepare the annual report, to organise the General Assembly of the Shareholders and to implement its decisions;

• To submit the request for opening the insolvency proceedings.

The Council has a mixed and balanced componence in terms of professional experience, thus ensuring a diversity of expertise and experience. Each board member must be adequately qualified to properly evaluate the policies and operations of the company.

The Council also must be composed in such a way that, as a whole, it has a proper economic education, a good understanding of the main economic terminology and of the specific terminology related not only to management but to corporate governance, too.

The Council is formed in such a way that, in relation to the executive management, its members can operate independently and critically, and, within the Board, they are able to form a homogenous team.

All Council members must have an academic education seconded by an experience to enable them to understand the business environment and also the technical and economical terminology specific to the administration of a company.

Given the organizational context, mission, organizational expectations and strategy elements, in accordance with Art. 1 paragraph 18 of Annex 1 of the GD. no. 722/2016, the board's profile reflect a image of all capabilities, features and requirements that the board must collectively have.

The candidates must meet some mandatory and some optional criteria.

The mandatory criteria are the skills and features all the members must fulfil and the optional criteria are the skills and features which must be met not necessarily by all, but for some of the board members.

Also, the candidates must specify, in their statement of intent, their considerations on the corporate governance, proving their corporate governance knowledge and showing their vision on this field with application in the public enterprise.

5. Conclusions

The law on corporate governance was the necessary regulatory act for the improvement of the performance in public enterprises management, given that the general legislation on companies was not adapted to the particularities of the state companies.

This law's declared purpose was to improve the efficiency of the state enterprises by developing new mechanisms of corporate governance to equally guarantee the objectivity and transparency in the process of selecting the management and the members of the administration boards, exclusively based on the professionalism and responsibility in taking management decisions. Also, it provided an increased transparency to the public.

Given the increasing complexity of the area in which they operate, in order to demonstrate a good organization, flexibility, ability, a good risk management and prove to be reliable to their economic and social partners, implementing the rules of corporate governance in the public organizations acting in the field of water resources was an important step to make in the transition from government to governance.

Lately, in Romania, the corporate governance legislation went through a series of changes which have resulted in the regulation of the responsibility and transparency among a broader range of key actors, not only for shareholders, but also for other categories of stakeholders (investors, suppliers, creditors etc.).

The legislative framework on the corporate environment is very wide and should be considered as a whole, which implies a different issue the organizations face: the work organization, the rules on the trade activity, consumer protection, the manner in which the employees and partners are treated etc.

Corporate governance is clearly beneficial both for companies and for countries and the rapid pace of development imposed by globalization has urged the need to implement its rules. In this context, action is required both at micro-economical level (organization level) and macro-economic level (state level). Therefore, the companies must change the way they operate, while the national governments must establish and maintain an appropriate institutional framework.

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