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THE CORPORATE GOVERNANCE IMPACT ON BANKING PERFORMANCE INCREASE

Empirical
Study

Keywords

Corporate Governance
Banking system
Supervisory authorities
Risk management
Audit
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JEL Classification

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Abstract

The gradual collapse of financial markets in the European Union since the fall of 2008 and the economic crisis in the area of the credit portfolio level that followed, were generated by several factors, often interdependent, both on a macroeconomic and microeconomic level, and finally leading to the accumulation of excessive risk in the financial system.

This excessive risk has been partially caused by the deficiencies in Corporate Governance of the Financial Institutions and especially by banks deficiencies.

Even if we can't put down when the Corporate Governance crisis has started, non-existent or inadequacy of effective control mechanisms determined the excessive risk-taking by most credit institutions.

This article aims to evaluate the application of Corporate Governance Principles of the significant players within the Romanian banking system.

The research methodology was essentially based on using the questionnaire technique, on published Corporate Governance's documents, on analysed banks' websites and on (and on the scoring methods utilized) in evaluating the application of Corporate Governance principles.

1. Introduction

On the European level- and even on global level- the prolonged economic and financial crisis has been a challenge for financial institutions, influencing negatively the banking system and beyond. The impact of global crisis has gradually affected overwhelmingly the profit of banking industry, having effects upon all types of products and banking services offered to customers, patterns of surveillance, and assessing methods known so far.

The progressive collapse of financial markets on the level of European Union since the fall of 2008, and the registered crisis at the level of credits/ investment portfolio which followed, were generated by many factors, often interacting, on a macroeconomic level as well as on a microeconomic level, leading at the end to the accumulation of some *excessive risks* in the financial system.

“This excessive accumulation of risks has been partly caused by the corporate governance deficiencies and especially by the banks’ deficiencies”.¹

As we proposed to make a short analysis of European environment, rather than the administrative structure of the European Union, we notice that “the European Commission has achieved public consultations regarding the consolidation and the adjacency of regimes sanctions from financial sector, including those regarding relevant aspects from the banking sector”.² „These were identified based on a study conducted by the Committee of European Banking Supervisors on national sanctioning regimes in the sector”.³

The consultations were formed by a series of questionnaires about corporate governance practices that have been sent to large banks and insurance companies’ representative for the diversity of the sector.

There have also been made a series of interviews with members of the executive

management responsible for risk management, internal control, auditors, etc. Also, bank supervisors were asked about their opinions and their role in corporate governance of financial institutions, as well as major European institutional investors and shareholder associations who were part of this study.

The study was completed by the publishing of « *the Green Paper on corporate governance in financial institutions and remuneration policies*.

Reactions were quick to appear, a number of authors and important voices in the European financial world considered that strengthening corporate governance must be at the heart of financial market reform and crisis prevention. They found out that, on one hand, *the management board and the supervisory authorities have not provided the nature and the extent of the risks they faced, on the other hand, shareholders have not taken seriously the role of the owners.*

Even if we cannot blame the corporate governance for the crisis which has already started, the nonexistent or inadequacy of effective control mechanisms ultimately led to excessive risk-taking by most credit institutions.

In the area of financial services, we believe that we should not neglect the importance of the interests of other parties (holders of current accounts, term deposits, beneficiaries of loans, credit, capital market investors, brokerage firms, etc..) and especially the stability of the financial system, given the systemic nature of a large number of players (eg BCR, BRD as the main poles of the Romanian banking industry).

2. Corporate Governance on European Banking System level

Corporate governance refers to the relationship between a company’s management, its board, its shareholders and other stakeholders such as employees and their representatives. “Governance

also determines the framework for defining the *objectives* of an enterprise, and the *means* by which these objectives would be achieved and through which it can provide monitoring results".⁴

As outlined above, the nature of their work and the systemic nature of some players in the banking system, the bankruptcy of a credit institution might generate a domino effect through other credit institutions bankruptcy. This process could lead to a contraction of credit and an immediate onset of the economic crisis due to the lack of funding, as demonstrated by the recent financial crisis. "This systemic risk has led some governments to rescue the financial sector with public money"⁵ (eg Royal Bank of Scotland, Lloyds Banking Group, etc.). Thus, taxpayers are basically indirectly involved in the operation of credit institutions, contributing to financial stability and economic growth or decline. We remark here the statement of Romania's Government when presenting the 2013 budget items, pointing out the contribution of every citizen regarding public debt and also supporting the Romanian public debt interest costs, state debts, budget money for 2013 and projects that will be accomplished in the next four years that, at the end, "each of us will be owed 150 euros."⁶

Also, we do not neglect the fact that the interests of clients of credit institutions (holders of current accounts, term deposits, beneficiaries of loans, credit, capital market investors, brokerage firms and, to some extent, staff) may not agree with the interests of shareholders. The latter takes advantage of increasing shareholder's value of stocks and maximizing short-term profits and are *basically less interested in taking a too low risk level*. Depositors and other creditors focus instead on credit institutions' capacity to repay the amounts deposited by them and other receivables, thereby favoring long-term viability of the institution. Therefore, "depositors tend to favor a very low level of risk".⁷

It seems that while most credit institutions are carefully regulated and supervised, corporate governance rules should take account of their specific nature.

The rules and regulations are generally used to impose the need for oversight and focus on the existence of adequate internal control structure, risk management, audit and compliance within credit institutions. Therefore, they were not able to prevent excessive risk-taking by the credit institution.

Also, the Commission considers that an effective system of corporate governance should conduct with the help of surveillance mechanisms at high accountability of key stakeholders from credit institutions (supervisory boards, shareholders, executive management, etc.).⁸ However, the Commission notes that, on the contrary, the financial crisis and its serious economic and social consequences led to the establishment of a *significant deficit of trust* in credit institutions.

We can only "concur" with a number of authors, but also to those who elaborated the Green Paper and to appreciate that the financial crisis has demonstrated *the ineffectiveness* of corporate governance's principles (its objectives have not been achieved) in the banking sector determined mainly by:

- *a too broad purpose*, leaving a great deal of interpretation for the credit institutions, implementing its principles are just in words (policies, codes etc.).
- *a lack of definition and a clear segregation* of roles and responsibilities within the credit institution;
- *failure to comply* with legal obligations / implementation, and the absence of sanctions to deter such violations (e.g. the usage of the word "may" rather than the imperative "shall").

3. Supervision and Corporate Governance in Romanian Banking System

At the time of analysis, the banking industry in Romania operated both members of credit institutions and multinational institutions holding credit on the aboriginal capital.

At first, a simple analysis of the Romanian banking market has seen different approaches regarding the affiliation or not regarding certain European banking group. Key aspects of the systems based on bank's mechanisms reveal that in essence they literally took the group mechanisms over, anchoring Romanian legislative items such as: Emergency Ordinance No.99/2006 regarding the credit institutions and capital adequacy (as amended), Law no. 58/1998 on banking activity, republished or companies' law.

The main pillars of corporate governance are:

- Articles of Incorporation - a document that defines the activity of the bank, the relationship between shareholders, management and administration having guidelines on representation, a control and a financial management;

- The management of business, regularly reviewed and revised accordingly, including the concept of the structure and organization of the bank (the central administration and network drives), governing and levels of management, and their principles and rules of operation;

- Internal control system with three components, namely the activities of internal audit, compliance and risk management with certain features on the degree of subordination for each bank;

- Regulation of organizational functioning, Codes of Ethics, Rules, etc.

- Principles of communication with stakeholders: shareholders, customers, employees, public and regulatory community, etc.

National banks are stock companies and operate as Romanian legal persons of private law, in accordance with the law, and the provisions of the Association and internal regulations.

4. Testing the importance of key elements of Corporate Governance

4.1. Objectives and research methodology

The research objectives are the main purpose of assessing the importance given to key elements of corporate governance within a significant number of 9 banks operating in the Romanian market. In essence, these objectives pointed out as follows:

- a) the analysis of the key elements of corporate governance;
- b) the identification of the banks that enter in the area of research and in the transmission of an evaluation questionnaire;
- c) the collection and processing regarding key elements of corporate governance;
- d) Checking the accuracy of responses, by comparing them with the information published on the official website of the banking company;
- e) the application of scoring method in order to assess the importance of key elements of corporate governance;
- f) Identifying the gaps / deficiencies and recommendations for improving the impact of key elements of corporate governance in order to improve banking performance.

The research methodology was based mainly on using the questionnaire technique on direct observations in specific corporate governance documents published on the official website for the analysed banks, as well as on the use of scoring

methods to evaluate the importance of key elements of corporate governance.

The sample of analysed banking companies is composed of five significant banks operating on the Romanian market and which are part of multinational holdings (BCR, BRD, Volksbank, Unicredit and Raiffeisen) and 4 banks with local capital / private sector (CEC, Eximbank, Carpatica Bank and Transilvania Bank).

In order to confer a quantitative estimation of the degree of importance given to key elements of corporate governance, it has been used a scoring system based on a determinate function at each banking company in particular. A professional judgment was used to assign a weight of importance (p_i) for each key element of corporate governance, according to Figure no. 1.

Those marks were awarded considering the relevance and accuracy of the information related to responses, and the relationship with the information available on the official websites of the analysed banks according to the situation in Table 2.

Given the level of importance given to each corporate governance's p_i key and to related marks of each element i , score value has been determined by a function $F(x)$ for each of the nine banking companies subject to express the analysis. The final score value expresses the final score given to every banking society as a quantitative expression of the importance regarding the key elements of corporate governance.

The calculation for the score function $F(x)$ is the following:

$$F(x) = \left(\sum p_i \times i \right) \times 100 / 3$$

Where:

p_i = the level of importance given to each key element of corporate governance, based on a professional judgment;

i = the rating of the information collected and analysed, based on professional judgment, according to Table no. 1;

3 = maximum rating given.

4.2. Obtained results

After processing the data obtained by the technique of using assessment questionnaire responses and verifying the accuracy of information published on the websites of the analysed banks, the **strengths** of the key elements of corporate governance have been accomplished:

a) *Credit institutions members of multinational holding*

- Are administrated by a *Supervisory Board*, which is made up of 7 up to 11 members, with terms of 3-4 years length with the possibility of being elected for additional periods of the same duration;
- *Risk management function* is coordinated by a risk committee, which is designed to identify, assess and manage risks in accordance with the Regulations for the Organization. The Committee is generally reported directly to the Supervisory Board, the effective management accountability and risk management being within the jurisdiction of the executive (lines, departments, etc.).
- *Audit activity* is coordinated by an Audit Committee which is a standing and independent committee subordinated directly to the Supervisory Board, whose role is to assist the body with oversight functions in achieving the attributions on the line of intern audit. Internal and external financial audit, both have an advisory function regarding the Bank's strategy and policy system of internal control. Executive responsibility of this function is in the departments, in internal audit departments;
- *Ownership structure* consists mostly of foreign participants;
- *The supervisory authority* - BNR established and set clear rules on banking system surveillance. At this level there is an establishing directive that performs the endorsement of advised members of directors and executive functions, the specific measures of control and supervision of credit institutions in Romania.

b) Credit institutions with national capital

- They operate as legal entities organized in the legal form of a joint stock company, and its activity is as a bank, in accordance with applicable law, the articles of incorporation and bylaws of the organization and operation.

Of the four studied credit institutions, it is only the CARPATICA Bank that adopted a two-tier management system. The management is ensured by a Supervisory Board and Executive Board. The other three local banks are managed, in a unitary system, their management being provided by the Board of Directors.

Board of Directors / Supervisory Board are made up of 5 members (in the case of Carpatica Bank) and between 7 and 11 members elected by the Annual General Meeting for four years, with the possibility of re-election.

- In the Carpatica Bank risk management function is overseen by the Risk Oversight Board which is a standing committee in an advisory capacity, reporting directly to the Supervisory Board of the bank. Regarding the other banks, a Risk Management Committee is working, where regulation and components are approved by the Board of Directors of the Bank.

- The Audit Committee is a standing committee and reports directly to independent Supervisory Board / Board of Directors, it has an advisory function regarding the strategy and policy on internal control systems, internal audit and internal financial audit.

- In terms of ownership structure, CEC and Eximbank are state-owned banks 100% and - 95 374% (with the participation of the Ministry of Finance). Transilvania Bank and Carpathian Bank are banks with a Romanian majority capital (natural and legal persons). In the latter, shareholders word is easier "heard". It should also be noted that they are subject to listing on the BVB and thus they meet the requirements of the capital market.

- Regarding the supervisory authority, we mention that the latter is subject to

supervision and rules imposed by the National Bank of Romania.

Also, the research activities conducted have identified **weaknesses**, corporate governance issues requiring improvement of efforts, for example:

a. Board of Directors / Supervisory Board

- Lack of diversity in the board of directors / supervisory board, the lack of diversity policies on gender balance, backgrounds, professional profile, education;
- Lack of a real evaluation of their performance or the performance of members of the Board as a whole;
- Lack of proper oversight of the risk management framework and risk exposure of their credit.

b. Risk Management Function

- Risks misunderstanding by those involved in chain risk management and a lack of training of staff responsible for the distribution of risk products⁹;
- Lack of diversification of qualifications in risk management; often limited to those risk categories and risk losing sight of the totality of the credit institution;
- Inconsistency and lack of necessary information in real time about the risks. Also, the use of computer applications outdated risk management amid continuing diversification of products and services offered by credit institutions.

c. Shareholders

The financial crisis has shaken the confidence in the model of "shareholder owner interested in long-term stability of the credit institution. The apparition of the multiplication phenomenon of funding sources, namely the provision of capital, led to the creation of new categories of shareholders. They rarely seem interested in long-term objectives of corporate governance / financial institutions in which they invest and they may even incite themselves to excessive risk, given their investment horizons relatively limited,

even very limited (quarterly or half yearly)¹⁰. In this regard, the desired alignment of the interests of directors and the new categories of shareholders *expanded this risk-taking and, in many cases contributed to excessive remuneration of the Directors, based on short-term stock of the credit institution as being the sole criterion performance*,¹¹ the role of auditors in detecting such dependencies being crucial.

d. Auditors

- The auditors have a key role in the system of corporate governance of financial institutions, as they provide a safe market about whether the financial statements prepared by these institutions present a fair picture. However, conflicts of interest may arise because the audit firms are paid and mandated by enterprises whose accounts must be checked.
- Thus, at this stage there is no information that can be guaranteed that the auditors' obligation of financial institutions provided by the Directive 2006/48/EC is to alert competent authorities to reveal some facts that will likely have a significant effect on the situation of financial institution.

e. Supervisory authorities

- In general, the financial crisis revealed the limits of current surveillance system: despite having some tools that enable them to influence the internal governance of financial institutions, either at national or at a European level, supervisory authorities have failed in their attempt to establish best practices in corporate governance in financial institutions.

Marks awarded for each bank society and key element of corporate governance have been assessed based on the responses from questionnaires sent and in conjunction with information obtained by consulting the official website of the internet for studying banking companies.

Table 2 shows the synthesis of obtaining results regarding the ninth banks operating on the Romanian market.

Values for the function score determined for each banking company analysis are presented below:

$$\text{BRD: } F_{(x)} = (20\% \times 3 + 15\% \times 3 + 10\% \times 3 + 20\% \times 3 + 15\% \times 3 + 5\% \times 3 + 5\% \times 3 + 5\% \times 2 + 5\% \times 3) \times 100 / 3 = 98,33$$

$$\text{BCR: } F_{(x)} = (20\% \times 3 + 15\% \times 3 + 10\% \times 3 + 20\% \times 3 + 15\% \times 3 + 5\% \times 3 + 5\% \times 3 + 5\% \times 3 + 5\% \times 3) \times 100 / 3 = 100$$

$$\text{Volks: } F_{(x)} = (20\% \times 3 + 15\% \times 3 + 10\% \times 3 + 20\% \times 3 + 15\% \times 3 + 5\% \times 0 + 5\% \times 1 + 5\% \times 1 + 5\% \times 2) \times 100 / 3 = 86,67$$

$$\text{Unicredit: } F_{(x)} = (20\% \times 3 + 15\% \times 3 + 10\% \times 3 + 20\% \times 3 + 15\% \times 3 + 5\% \times 0 + 5\% \times 1 + 5\% \times 1 + 5\% \times 2) \times 100 / 3 = 86,67$$

$$\text{Raiffeisen: } F_{(x)} = (20\% \times 3 + 15\% \times 3 + 10\% \times 3 + 20\% \times 3 + 15\% \times 3 + 5\% \times 0 + 5\% \times 3 + 5\% \times 3 + 5\% \times 2) \times 100 / 3 = 93,33$$

$$\text{Carpatia: } F_{(x)} = (20\% \times 3 + 15\% \times 3 + 10\% \times 3 + 20\% \times 3 + 15\% \times 3 + 5\% \times 3 + 5\% \times 3 + 5\% \times 3 + 5\% \times 3) \times 100 / 3 = 100$$

$$\text{Transilvania: } F_{(x)} = (20\% \times 3 + 15\% \times 3 + 10\% \times 3 + 20\% \times 3 + 15\% \times 3 + 5\% \times 0 + 5\% \times 1 + 5\% \times 2 + 5\% \times 2) \times 100 / 3 = 88,33$$

$$\text{CEC: } F_{(x)} = (20\% \times 3 + 15\% \times 3 + 10\% \times 3 + 20\% \times 2 + 15\% \times 3 + 5\% \times 3 + 5\% \times 1 + 5\% \times 1 + 5\% \times 2) \times 100 / 3 = 80,00$$

$$\text{Eximbank: } F_{(x)} = (20\% \times 3 + 15\% \times 3 + 10\% \times 3 + 20\% \times 2 + 15\% \times 3 + 5\% \times 3 + 5\% \times 1 + 5\% \times 3 + 5\% \times 2) \times 100 / 3 = 83,33$$

4.3. Results of analysis

As a result of undertaking research, a number of relevant considerations can be made, as follows:

- In a general approach, the final scores obtained by the banks under investigation, reflect the high priority upon the key elements of corporate governance;

- Average score is 91.85 and points out a maximum score of 100 points. Among the nine analysed banking companies, 4 were above average (BRD, BCR, Raiffeisen, Carpatica). For the other banking companies (Volksbank, Unicredit, Eximbank, CEC, Transylvania) it resulted a score below average, reflecting an important appreciation to key elements of corporate governance.
- We ascertain such an approach by the banks subject to be a favourable research on the importance of key elements of corporate governance in the evolution of banking performance. Consequently, we consider that the analysed banking companies show a significant availability in implementing key elements of corporate governance and also considerable efforts in understanding the role, necessity and their importance in sustaining and improving banking performance.

5. Recommendations and general conclusions

5.1. Recommendations for increasing the impact of the key elements of corporate governance on improving banking performance.

a. Board of Directors / Supervisory Board

Given the deficiencies manifested in the recent crisis, it seems that it is absolutely necessary to ensure an optimum balance within the board of directors / supervisory board between independence and competence.

Also, it is necessary to introduce policies to manage conflicts of interest in order to ensure the independence and objectivity of the decisions taken by the board members.

The role and responsibilities of the President should be clearly defined.

At the same time, it is necessary to diversify the composition of the board, established policies of diversity in terms of age, training, gender balance and even limiting the number of mandates of

directors in order to devote enough in achieving the objectives.

Also, it is necessary to emphasize the role of leadership on risk strategy: this must be made explicitly responsible for risk strategy and the adequacy of risk management systems.

b. Risk management function

Dysfunctions manifested during the recent crisis are mainly due to a lack of authority of the risk management function and an inappropriate communication / information of risk credit institutions.

Amid these deficits on risk management it seems to be necessary to strengthen the hierarchical status of the responsible person for Risk Management (Chief Risk Officer CRO) who must have a close relationship with the board of directors (or its risk committee), perhaps being one of its members.

Also, for a better communication and information about risk manifested which impact the work done on the credit institution's board, we should define the content of reports in terms of risk and the frequency of their presentation.

There could also be initiated measures to develop IT applications used to manage risk information, database could be long-term solutions and even a connection with public institutions in order to achieve the necessary checks to the source (e.g. Population Evidence).

Risk awareness should not be neglected in the credit institutions by establishing a "risk culture", which means that before creating new products / services, there should be an analysis of the risks of selling in the market and the impact on power access from clients and others.

c. Shareholders

To encourage shareholders in order to engage in a dialogue with financial institutions and to control the process of decision taking by management, as well as to take into account the long-term viability of financial institutions, the European

Commission plans to initiate a phase of reflection addressing the following themes:

- Strengthen cooperation between shareholders, creating discussion forums;
- Disclosure by institutional investors on how to vote at shareholders' meetings;
- Accession of institutional shareholders to codes of good practice "stewardship codes";
- Identify and disclose potential conflicts of interest by institutional investors;
- Disclosure by institutional investors' remuneration policy of intermediaries;
- Adequate information to shareholders about the risks.

d. Auditors

We appreciate the need to strengthen the internal audit function at credit institutions and ensure its independence.

f. Supervisors

In order to rectify the deficiencies of the corporate governance of credit institutions, it is necessary to redefine and strengthen the role of supervisors. A clear segregation of roles and responsibilities of supervisors and the governing bodies of credit institutions would be desirable in this context.

Supervisors should inform the board of directors of credit institutions on deficiencies in order to ensure a timely remedy.

Also, supervisors should expand the eligibility criteria (adequacy test - "fit and proper test") for future managers to cover both the technical skills and training, including in risk, as well as behavioural characteristics of candidates to ensure a more independent view of future board members.

5.2. General conclusions

Undoubtedly, in the Romanian banking system there is a constant concern for understanding and implementing the key elements of corporate governance and also a particular concern during the crisis manifested in the European Union reflected of course upon the local banking market.

The credibility and transparency in the relationship with shareholders, assuming responsibilities, an optimal management of the risk management function, all these things are essential to ensure good corporate governance, able to support and promote the performance in the Romanian banking system and in the whole national economy.

¹Directive 2006/48/CE of European Parliament

Notes:

¹Directive 2006/48/CE of European Parliament

²http://ec.europa.eu/internal_market/consultations/2010/sanctions_en.htm

³CEBS: „Mapping of supervisory objectives, including early intervention measures and sanctioning powers”, march 2009/47, available on <http://www.c-ebs.org/home.aspx>

⁴OECD Principles for Corporate Governance 2004, page 11

⁵Green Paper regarding corporate governance in financial institutions and remuneration policy

⁶Financial Paper, 10 January 2013, Victor Ponta about country status

⁷Peter O. Mülbart, Guvernanta corporativ a bancilor, *European Business Organisation Law Review*, 12 august 2008, p. 427

⁸Idem 5

⁹Renate Böhm si Hilla Lindhüber, *Verkaufen, Druck und Provisionen - Probleme von Beschäftigten im Finanzdienstleistungsbereich Versicherungen Ergebnisse einer Arbeitsklima-Index-Befragung*, Salzburg 2008.

¹⁰Article written by Rakesh Khurana si Andy Zelleke, Washington Post, 8 februarie, 2009

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Table no. 1 The significance ratings given corresponding researched information

RATING	SIGNIFICANCE
0	Banking company did not give any answer related to the key element respectively / not published any document relating to the key element of Corporate Governance
1	Banking company published not updated information or are published only partially, in a lower proportion of 75%
2	Corporate Governance documents are published in a proportion greater than 75%
3	Documents relating to key elements of Corporate Governance are fully published

Table no. 2 Quantitative determination of the key elements of corporate governance

Key Element of Corporate Governance	BRD	BCR	Volks	Unicredit	Raiff	Carp	Trans	CEC	EXIM
Board of Directors / Supervisory Board	3	3	3	3	3	3	3	3	3
Risk Management	3	3	3	3	3	3	3	3	3
Shareholders	3	3	3	3	3	3	3	3	3
Audit Committee	3	3	3	3	3	3	3	2	2
Supervisory Authority	3	3	3	3	3	3	3	3	3
Memorandum	3	3	0	0	0	3	0	3	3
Policies, Principles	3	3	1	1	3	3	1	1	1
Code of Ethic	2	3	1	1	3	3	2	1	3
Transparency in Corporate Governance	3	3	2	2	2	3	2	2	2
FINAL SCORE	98,33	100	86,67	86,67	93,33	100	88,33	85	88,33

Figure no. 1 Structuring the key elements of Corporate Governance in levels of importance

