Good corporate governance practices: constantly developing

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Corporate governance appeared in the 1970s and has become a core component of the functioning of the private sector. It is both a process and a conceptual and organizational framework and is based on a set of references (principles, codes, good practices, etc.) which a company decides to adopt. For example, it organizes the proper functioning of governance bodies and ensures that business ethics are taken into account.

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Corporate governance is both a concept and a set of practices. It is today part of the culture and functioning of the private sector. It is one of the few areas where the players themselves define their guiding organizational principles. While good practices are generally discussed and compiled by professional employers' organizations, they are established by entrepreneurs on a non-binding basis1 following the "comply or explain" principle.

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Corporate governance – as a conceptual and operational framework – first appeared in the 1970s, following a severe crisis of confidence between shareholders and business leaders in the USA and UK. It experienced renewed interest following various scandals: Enron (2001), Andersen (2002) and WorldCom and Parmalat (2003).

THE ORIGINS OF CORPORATE GOVERNANCE

The first publications concerning corporate governance were the result of reflection involving lawyers, companies, central banks (American and British), as well as market regulators. At the intersection of legal doctrine and positive law, the Corporate Director's Guidebook was published by the American Bar Association in 1978, then the Principles of Corporate Governance by the American Law Institute in 1993. In the United Kingdom, the report led by Sir Adrian Cadbury was released in 1992 following research conducted by the entire economic world.

In France, the Vienot report, commissioned by AFEP and MEDEF2, was published in 1995. At the same time, South Africa took the initiative in emerging countries, with the publication of the first King Code in 1994. These founding texts already comprise most of the so-called "good practices" of corporate governance.

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In the 2000s, international institutions, in particular the European Union and OECD, took up the subject. The publication by the OECD of the "Principles of Corporate Governance" in 2004 in some way formalized the global dimension of governance. At the same time, markets got organized, sometimes with support from international organizations and governments. Networks were built and the movement continually grew. The Asian Corporate Governance Network, established in 1999, today includes 112 organizations and companies; the Latin American Corporate Governance Roundtable was also set up in 1999. The African Corporate Governance Network was established in 2013, at the initiative of Mauritian and South African players – the network includes over 20,000 directors from 19 countries.

Today, employers' organizations, companies, non-profit organizations, researchers and stakeholders contribute to the dissemination of good governance practices by publishing guidelines, codes of good governance, and also by implementing training and disseminating information.

GOOD PRACTICES AND COMMITMENT

As governance is constantly developing, one of the very first "good practices" for a company is to ensure that it is operational in order to develop it. The company defines its practice and the ethics on which it bases itself via an internal code of governance. It will at the minimum officially express its commitment to the principles of governance by referring to the national code, if there is one. Furthermore, the company will appoint a focal point director on its Board of Directors, who will ensure that practices in this area are maintained or improved.

For family businesses, it is especially necessary to ensure that a charter gives priority to competences during recruitments and organizes training for family members called on to take up key positions (Board of Directors or management). It does not mean prohibiting a family member from taking on responsibilities, but ensuring that competence takes precedence, in order to ensure the quality of work, the serenity of the entire staff and the sustainability of the company. In addition, the manager will take care of organizing his succession in advance, or at least the succession process. Finally, the family can organize itself as a "council" or a "family assembly" to clearly make a difference between what concerns the operations of the company (and which the Board of Directors is responsible for) and the management of family matters. This avoids any questioning over the role of governance and tackles nepotism.

BOARD OF DIRECTORS: THE CENTRAL BODY

The Board of Directors is central to the governance system. It does not directly manage the company, but it appoints its managers. Its operational role is to discuss, compare, validate and approve the strategy and the main decisions made by the managers. It is the statutes of the company, sometimes the shareholders' agreement pact, which define the functions of the Board with regard to the general meeting and senior executives. However, the adoption of specific rules of procedure for the Board and the specialized committees where its members hold a seat is an asset in terms of corporate governance.

The competence of Board directors, freedom of speech and the interest of the company are always given priority: these principles result in "good practices" related to the composition of Boards. Furthermore, as a Board is a collegial body, it is necessary to ensure that its members are not too few in number (less than five directors) and that there are not too many (over 16 directors). It will also comprise independent directors (a minimum of three in the USA), who do not have connections with shareholders or the management and are therefore better equipped to defend the company's

interests. They must be able to question managers about their decisions. They moderate the discussions and form a neutral and mediating force in the event of a non-alignment with shareholders' interests.

A good Board of Directors comprises all the competences required by a supervisory body: technical, financial, social, market knowledge, etc. It is up to the company to define its needs. There are techniques to ensure this: the skills matrix, for example, an instrument which the Board and managers can use to analyze needs, or the regular evaluation of the Board (external or self-evaluation), which allows it to regularly question its composition and operating method.

A number of codes of good governance also partly devote their instructions to the remuneration of managers, Board directors and members of senior management. Good practices consider that the remunerations must be transparent and proportional to the work done (although they may comprise an incentive-based portion).

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DEVELOPMENTS IN CORPORATE GOVERNANCE: A SENSE OF HISTORY

In June 2018, AFEP and MEDEF published an update of their Corporate Governance Code and the UK Corporate Governance Code was published in July. The updating of these tools is particularly interesting, as it provides an understanding of the latest developments in the notion and practice of corporate governance.

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The new AFEP-MEDEF code focuses on environmental and social concerns. For example, it proposes to take into account one or several Corporate Social Responsibility criteria in the variable remuneration of managers. It advises including directors representing employees on Boards of Directors. This body will also need to ensure that it has a balanced representation of men and women and that this is also the case in the company, but also in the committees and senior management. In terms of the remuneration of managers, the code provides more guidance for the provisions relating to the retirement of managers. Furthermore, the general meeting will be informed about the selection process which leads managers to propose the appointment of such or such a director. Finally, the ethics of directors have been strengthened and, in particular, address more in detail conflicts of interest and the actual participation in the Board's work.

The British code shows similar concerns: it emphasizes the relations between stakeholders – especially with the general meeting – and in particular calls for greater account to be taken of minority motions. It recommends that the Board of Directors ensures there is a quality dialogue with employees (possibly by appointing one of their representatives to the Board) and that women are represented in the company. It also focuses on the ethics aspect f the role of directors: number of mandates, duration of mandates (maximum of nine years), etc. It formalizes "good practices" concerning the operation of the company: external evaluation of Boards of Directors, role of the Appointments and Remunerations Committee, etc.

Consequently, the recent developments in corporate governance highlight the importance that values concerning ethics and social and societal spheres take on for players. They tend to place the company at the center, or at least in tune with developments in our societies, strengthening the link between civic responsibility and the environmental, social and ethical responsibility of the company.

Footnotes:
1 In the banking sector – only addressed briefly in this article –, the normative and control frameworks are more stringent.
2 French Association of Private Companies (AFEP) and Movement of French Enterprises (MEDEF).