

THEORETICAL, LEGAL AND EMPIRICAL ASPECTS OF CORPORATE GOVERNANCE

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Abstract: The study tackles the problem of corporate governance from three directions. First, it reveals the theoretical aspects of corporate governance, with a special focus on public enterprises and the shift towards the new legislative package. Second, corporate governance is analyzed based on the legislative and legal aspects of public enterprises, which are financed by the state budget, and their implication *vis – á – vis* of the new legislative amendments and legal developments. Third, it is analyzed from the empirical point of view, the corporate governance indicators at the OECD and the Romanian levels. The conclusions of the study highlight the importance of central and public authorities in the field of corporate governance, which are fundamental in order to apply in a fair and complete manner the legal norms and stipulations.

Keywords: Organisation for Economic Cooperation and Development; AMEPIP; public enterprises; legislative package.

1. Introduction and preliminary aspects

In Romania's accession process to the Organisation for Economic Co-operation and Development (OECD), strengthening corporate governance is one of the main areas identified in the Roadmap, which aims to align the relevant legislation on the matter with the OECD's internal policies.

Considering the fact that state-owned enterprises have a significant impact on the economy, it was necessary to strengthen corporate governance to ensure their

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resilience and increase their profitability by implementing Reform 9 – Improving the procedural framework for implementing the principles of corporate governance of public enterprises, provided for in Component 14 – Good governance [1]. Within the National Recovery and Resilience Plan, through which the Romanian Government assumed the fulfillment of several essential targets or milestones, to ensure a rally as close as possible to the OECD principles and compliance as accurately as possible with them, namely:

Target 439 – aiming to bring into force the updated legislation on state-owned companies;

Target 440 – aiming to establish a national agency with the main function of coordinating public enterprises;

Target 442 – aiming to reduce by 50% the interim, temporary, or provisional appointments to the boards of directors of state-owned enterprises at the central level, and

Target 444 – aiming to reduce by 10% the interim, temporary, or provisional appointments in the boards of directors of state-owned enterprises at the local level. Currently, Romania has the largest number of state-owned public enterprises in Europe, so, at the time of drafting the National Recovery and Resilience Plan, there were 2,471 public enterprises in Romania, of which 1,880 were majority state-owned, of which 436 enterprises were under the central tutelary authority of the government through its ministries and agencies, and a number of either 1,444 enterprises under the tutelary authority of local public administrations.

Given the need to rapidly increase the real contribution of public enterprises to the improvement of the parameters of the Romanian economy and the balancing of the state budget, in the current economic context, it was necessary to take rapid measures to create legislative and administrative premises that would lead to the increase of the efficiency of economic operators, given the fact that public enterprises - autonomous companies and commercial companies in which the state holds full or majority - represent an important segment of the national economy and, consequently, the liquidity, solvency and functionality of these companies have a decisive influence on the stability of the economy as a whole.

Our approach is not intended for a detailed analysis of all normative aspects in the field of corporate governance. Still, we propose a minimum incursion of legal-economic interpretation, on legal norms, which we consider significant or interpretable. At the same time, another aspect that we intend to briefly point out is the establishment of a new entity of the central public administration - the Agency for the Monitoring and Evaluation of the Performance of Public Enterprises (AMEPIP), an institution organized and subordinated to the General Secretariat of the Romanian Government, financed through the state budget, with a fundamental

role in the monitoring and coordination of public enterprises, together with the supervisory authorities.

The structure of the article is as follows. The first part is an introductory part that presents and analyzes the corporate governance framework, highlighting the judicial and economic framework of corporate governance. The second part presents as a *quid pro quo* the current regulatory framework in the field of corporate governance with a special focus oriented toward Romanian reforms allocated to public enterprises. The third section debates and discusses the need for redefining the concept of corporate governance in light of OECD principles. The fourth section brings forward the institution that is responsible for the deviations identified at the level of public enterprises. Section five reveals arguments for the predictability of regulatory framework for public enterprises in order to strengthen corporate governance. Section six represents an empirical framework regarding the analysis of corporate governance indicators in Romania vs. the OECD average country based on OECD data and reports. The final section brings forward the main concluding aspects and offers some interesting recommendation insights.

2. Literature review

In the context of this reform undertaken by Romania, relatively recently the new legislative package on the corporate governance of public enterprises was adopted and contains a series of key provisions aimed at strengthening the mechanism of good management of state-owned companies, by ensuring that any public enterprise aims to achieve profitability.

The importance of these categories of public enterprises is given by the fact that a large part of them are the ones that provide the critical infrastructures necessary for the development of the economy, and all internal and external reports highlight the fact that the economic and financial results of these enterprises have decreased considerably lately, and the arrears for these companies have started to increase, no requests for restructuring of activity or business plans have been made, the corporate governance rules continue to be applied only sporadically. Even more worrying is the fact that many of these companies have outstanding debts to the state budget, and consistent new or older values that affect their operational and financial results.

In recent years, in Romania, the predictability of corporate governance has been mainly linked to public policies and budgetary constraints, to the need to align national legislation with the European one, and also to the reform undertaken by our country in the process of accession to the OECD.

The reform of the corporate governance of public enterprises began in the second half of 2023 with regulatory changes, not few, and the entry into force of an incidental legislative package of an imperative sanctioning nature, which punctuated

milestone 439 of the PNRR, aiming to ensure the legal framework necessary for the implementation of the reforms instituted by:

- Law no. 187/2023 amending and supplementing the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises [2];
- Emergency Ordinance no. 117/2023 amending and supplementing the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises, as well as for amending and supplementing Law no. 187/2023 amending and supplementing Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises [3];
- Emergency Ordinance no. 108/2024 amending and supplementing the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises [4];
- Decision of the Government of Romania no. 639/2023 for the approval of the methodological norms for the application of the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises [5], which repeals the provisions of G.D. no. 722/2016 for the approval of the Methodological Norms for the application of some provisions of the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises;
- Decision of the Government of Romania no. 617/2023 on the organization and functioning of the Agency for the Monitoring and Evaluation of the Performance of Public Enterprises [6];
- Order of the President of the Agency for the Monitoring and Evaluation of the Performance of Public Enterprises no. 126/2024 on the approval of the Framework Regulation for the organization and functioning of the Commissions for the selection and nomination of candidates for the position of member of the Boards of Directors/Supervisory Boards of Public Enterprises [7];
- Order of the President of the Agency for the Monitoring and Evaluation of the Performance of Public Enterprises no. 277/2024 for establishing the monitoring tariff, the method of declaring and paying its amount, and approving the model and content of the Declaration on the contribution due to the budget of the Agency for the Monitoring and Evaluation of the Performance of Public Enterprises for 2023 [8].

To this package of special normative acts are added the general normative provisions established by Law no. 31/1990 (republished) on companies, with subsequent amendments and completions, the provisions of the Civil Code [9] and the Administrative Code [10].

3. Redefining the concept of corporate governance

Definitions of the concept of corporate governance have also been signaled in the Romanian doctrine [11] as being, the system by which a company is managed and

controlled, establishing, mainly, on the one hand, certain special conditions for collegiate management bodies, and, on the other hand, regulations aimed at protecting the rights of shareholders [12].

Even the OECD Guide points to a pragmatic clarification of the concept of corporate governance in relation to the responsibility for the performance of public enterprises, which implies a complex chain of agents (management, board of directors, shareholder entities, ministries, government, and legislators), without being clearly and easily identifiable or with remote principals. In order to structure this complex web of responsibilities to ensure that effective decisions are made, good corporate governance is a challenge and requires particular attention to the same three principles that are of paramount importance for an attractive investment environment, transparency, evaluation, and policy coherence.

On December 15, 2023, the Emergency Ordinance no. 117/2023 for amending and supplementing the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises, as well as for amending and supplementing Law no. 187/2023 for amending and supplementing the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises, entered into force, a normative act that aimed to clarify some provisions of G.E.O. no. 109/2011 on the corporate governance of public enterprises, amended by Law 187/2023, in the sense of reformulating unclear provisions or uncorrelated with other legal provisions.

Among the amendments brought is the definition of the concept of corporate governance of public enterprises, which within the meaning of art. 2 item 1 represents the set of rules, procedures and processes for the administration and management of the public enterprise, which determine the way in which the rights and obligations of the various participants are established, respectively the governance structure of the public enterprise, as well as the board of directors and supervisory board, directors and executive boards, shareholders and other interested persons, who establish the structure and functioning of the decision-making system, with the aim of ensuring the compliance of the strategic direction of the public enterprise, as well as its management, with the standards of good corporate governance contained in the Organisation for Economic Co-operation and Development (OECD) Principles of Corporate Governance [13], as well as in the OECD Guidelines on the Corporate Governance of Public Enterprises [14].

The standards of good corporate governance applicable as a matter of principle to all OECD member states will also apply to pre-accession states [15], and stipulate the following as a matter of principle:

i. arguing for the necessity of the existence of state ownership, according to which the state exercises its right of ownership over the public enterprises owned by it in

the interest of the general public, in this regard, the state must carefully assess and make public the objectives that justify state ownership and subject them to periodic review;

- ii. the role of the state as owner, according to which the state must act as an informed and active shareholder, ensuring that the governance of the public enterprises owned by it is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness;
- iii. state-owned public undertakings to be on the competitive market, according to which the legal and regulatory framework for public undertakings must ensure a level playing field and a level playing field when these categories of undertakings carry out economic activities;
- iv. applying fair treatment of shareholders and other investors, whereby where public undertakings are listed on the stock exchange or otherwise include investors other than state investors among their shareholders, the state and undertakings must recognize the rights of all shareholders and ensure fair treatment and equal access of shareholders to company data;
- v. stakeholder relations and responsible business behavior, according to which state ownership policy must fully recognize the responsibilities of public enterprises towards stakeholders and require these categories of enterprises to report on their relations with stakeholders. It must clarify any expectations of the state regarding the responsible conduct of companies in business;
- vi. reporting and transparency, according to which state-owned enterprises should comply with high standards of transparency and be subject to the same high-quality accounting, disclosure, compliance, and auditing standards as listed companies;
- vii. ensuring the accountability of the boards of directors of public undertakings, according to which the boards of directors of public undertakings must have the authority, competencies, and objectivity necessary to carry out their functions of strategic guidance and management monitoring. They must act with integrity and be held accountable for their actions.

The implementation of these principles, which have become standards of good governance, will contribute, for example, to the reduction and even elimination of the provisional mandates of the members of the boards of directors, to prevent the revocation of the mandate contracts of the directors elected shortly after the completion of the selection procedure for various reasons by the general meetings of shareholders, the presentation of the management plans by the boards of directors or the submission of due diligence by the general meetings of shareholders for approval.

4. AMEPIP – coordinator or sanctioner for the deviations identified at the level of public enterprises?

It should be noted that the period between 2011 and March 2024, the date of AMEPIP's operationalization, was not a stage without coordination of public enterprises, the institution that ensures the monitoring of public enterprises, together with the supervisory public authority, being the Ministry of Public Finance, which through its specialized directorates also ensures the supervision and monitoring of these categories of enterprises, and the supervisory public authorities had the obligation to prepare and submit to the ministry, quarterly, half-yearly, the S1100 form [16].

Through the appearance of AMEPIP, milestone 440 of the PNRR was also reached, a specialized body with legal personality, subordinated to the Government and coordinated by the Prime Minister, through the General Secretariat of the Government, the legislator has conferred on it ample powers in the field of corporate governance, having as its main purpose to coordinate public enterprises, attributions, which we hope will not turn into an increased bureaucratized framework, a circumstance that represents, in our opinion, a major cause of the current economic, judicial, social decline and not only, being known the taking over of the model of institutions created in other states, which do not always conform to the Romanian realities.

Although the role of AMEPIP, like the supervisory public authority, is express and restrictive in the scope of monitoring activity, none of the public authorities being able to intervene in the actual administration and management of public enterprises, we hope that the role of AMEPIP will not be a sporadic or transitory one, which will only amplify the scope of administrative bureaucratization and contribute to an unnecessary expenditure of public money but will have a role of catalyst and coordinator, or collaborator of the supervisory public authorities at the central and local level, more result-oriented, which advocates the same common goal, increasing the performance of public enterprises.

As for the financing method, AMEPIP financed itself in 2024 with a monitoring tariff in the amount of 0.09% of the total revenues of public enterprises, compared to the annual financial statements for the previous year, charging the monitoring tariff from public enterprises even if they do not make a profit, but only losses, which seems somewhat unfair for public enterprises in difficulty. We consider that certain exemptions for them would have been auspicious to be regulated by the special legal norms in the matter.

The rhetorical question that we cannot ignore is, how will AMEPIP cope with the more than 1500 public enterprises in Romania, in the activity of monitoring and evaluating their performances?

5. The need to ensure the predictability of the regulatory framework in order to ensure the resilience of public enterprises by strengthening corporate governance

Although the new legislative package entered into force at the national level through a succession of normative acts amending and supplementing G.E.O. no. 109/2011 on the corporate governance of public enterprises is welcome [17], these amendments and additions were based on the recommendations of the OECD and the PNRR. The new provisions brought in 2023 abound with imperative, even sanctioning norms [18], established in order to ensure the fulfillment of the following milestones – targets, which impose the need to ensure the predictability and efficiency of the regulatory framework in order to: ensure the organization, functioning and governance of public enterprises, increase transparency and improve the quality of information, by implementing the principles of corporate governance of enterprises public companies, whether they are autonomous companies or national companies, national companies and companies in which the State or an administrative-territorial unit is the sole or majority shareholder or in which it has control, or companies in which one or more public enterprises hold a majority stake or a stake that ensures their control.

The legislative changes in this area have not been fully accepted on a positive note, especially because of the uncertainty of the application of unclear or ambiguous rules, which are real challenges for lawyers, civil servants, or employees of public enterprises under the control of the supervisory public authorities. All this was doubled by the delay in the operationalization of AMEPIP [19], which has, among other things, according to the provisions of art. 41 para. (4) letters i)-j) of G.E.O. no. 109/2011, as subsequently amended and supplemented, the role of supporting, guiding, and advising on corporate governance issues, at the request of the supervisory public authorities or public enterprises and of providing recommendations to the supervisory public enterprises and supervisory public authorities, at their request.

We will give as an example some of the normative provisions that have naturally caught our attention, applicable in the field of the selection and nomination procedure of the members of the boards of directors/supervision of public enterprises, regardless of the form of incorporation – autonomous companies or commercial companies, under the authority, coordination or control of the supervisory public authorities.

According to the provisions of art. 3 para. (1) letter c) of G.E.O. no. 109/2011 on the corporate governance of public enterprises, with subsequent amendments and completions, the supervisory public authorities ensure, among other things, the organization of the procedure for the selection and nomination of candidates for the

positions of administrator within the boards of directors of public enterprises under the authority, coordination or control of the supervisory public authority.

The first remark concerns the two special procedural deadlines, imperatively established – as deadlines in order to comply with the calendar of the selection procedure, 6 months before the expiry of the mandate of the current board [20]. for the initiation of the selection procedure, respectively 150 days from the date of approval of the decision of the general meeting of shareholders to initiate the selection [21] procedure. In order to complete the selection procedure, we call into question their reasonableness, predictability and achievable.

Regarding the deadline from which the selection procedure must be initiated, we consider that it is an optimal and predictable one to achieve, a deadline established since the date of entry into force in 2011 of the framework legislation on the corporate governance of public enterprises, the current legislator continuing to keep it for procedural reasons.

Regarding the deadline for the completion of the selection procedure, the legislator regulated a maximum limit of 150 days for the completion of the procedure, delimited between the date of initiation of the procedure and the actual conclusion of the mandate contracts of the administrators chosen from the shortlist. What can be seen is that the term was regulated only for the category of public enterprises – commercial companies under the authority, control, or coordination of the supervisory public authorities, disregarding the fact that, for any decision to be taken at the general meetings of shareholders of the companies at the level of which the selection procedure is carried out, It will be approved only after granting a special mandate to the representatives of the supervisory public authorities – shareholders, a term that will imply the passage of other time intervals for the execution of the decisions taken. Therefore, the selection procedure within the autonomous companies is not conditioned by this term, although the period related to the selection within them is somewhat shorter because the management of the autonomous company is ensured only through the board of directors and director to whom the attributions have been mandated by the management contract, whereas within commercial companies the management is ensured primarily through the general meeting of shareholders, and its administration by the board of directors or supervisory board, as the case may be [22], and by the director/directorate, as the case may be.

As far as we are concerned, we believe that the problem must be approached in consideration of the actions and stages of the selection procedure. On the one hand, we must refer to the fact that the actions do not belong to a single entity, but are carried out with the participation of public bodies and entities with well-defined roles and precisely established tasks: the supervisory public authority, the board of

directors of the company, the general meeting of the company's shareholders, the shareholders/associates representing, individually or jointly, at least 5% of the share capital of the public enterprise who can make proposals during the application procedure. Selection for amending and supplementing the letter of expectations, or the draft of the initial component and the full component of the selection plan, for each of these stages having 5 days from the date of publication of the documents on the website of the supervisory public authority and the company, the independent expert - member of the selection commission and, last but not least, AMEPIP. Regardless of the actions taken during the stages of the selection procedure (initiation, initiation, elaboration, and approval of the project and final document Initial component of the Selection Plan, elaboration and approval of the project and final document The integral component of the selection plan, the implementation of the Selection Plan comprising the actual selection of the members of the Board of Directors, the elaboration of the Long List and the Short List, the contestation by the candidates dissatisfied with the result of the selection procedure, the nomination from among the members selected on the Short List of those who will be proposed and approved by the general meeting of shareholders, the completion of the Final Report and its transmission to AMEPIP and at the same time the confirmation or denial by AMEPIP of the assent of the selection procedure, and so on) must be read closely, and none of them can be ignored. Following each of the multitude of mandatory and phased specific activities within the calendar of the Selection Plan, from the date of initiation to the completion of the procedure, all these involve deadlines that cannot fall within the limit of 150 days.

We consider that one of the major attributes of deadlines, regardless of their nature, is rationality, and the establishment of a deadline for completing the selection procedure should have been viewed with some flexibility for those involved in the organization and conduct of the selection procedure. In this context, we believe that the legislator should promote rational and optimal deadlines for exemplary conduct of the selection procedure, which can only be achieved if it takes into account the necessary balance between the imperative of having short deadlines but also that of having deadlines that provide sufficient guarantees that the stages of the procedure will be respected. Therefore, we consider that the term of 150 days is much too bold and impossible to achieve for the supervisory public authorities, because de plano, the maximum term by which the selection procedure is completed coincides with the date of termination of the mandate of the administrators in office.

In order to go through the stages of the selection procedure through a thorough and rigorous application of the general and special legislation on corporate governance, other legal provisions to which reference is made, as well as your recommendations. Formulated by AMEPIP Circular no. 434/22.01.2025 with the purpose of ensuring the unitary interpretation of the legal norms governing the establishment of audit

committees within the boards of directors/supervisory boards of public enterprises, following the amendments and additions brought to Law no. 162/2017 on the statutory audit of annual financial statements and consolidated annual financial statements and amending certain normative acts, by G.E.O. no. 137/2024 entered into force on December 3, 2024, another aspect that must be remembered is the one regarding the constitution of the advisory committees within the boards of directors, with special reference to the audit committee, whose composition is established according to the provisions of art. 10 [23], respectively art. 34 para. 41 of G.E.O. no. 109/2011, with subsequent amendments and completions [24], as they are constituted at the level of the boards of directors at the level of the autonomous company or of the commercial companies, as the case may be. Within the meaning of the provisions of art. 65 to which G.E.O. no. 109/2011, as subsequently amended and supplemented, public entities must set up an audit committee, either in the form of an independent committee or of the board of directors or supervisory board. The Committee shall be composed of non-executive members of the board of directors or supervisory board of the audited entity and/or members appointed by the general meeting of shareholders or associates of the audited entity or, for entities that do not have shareholders or associates, by an equivalent body.

Our approach aims at the correct analysis and interpretation of the provisions of art. 65 para. (3) and (31) of Law no. 162/2017, but without disregarding the provisions of Art. 10 and Art. 34 para. 41 of G.E.O. no. 109/2011, with subsequent amendments and completions.

On the one hand, according to the provisions of art. 65 para. (3) and (31) of Law no. 162/2017, the essential condition imposed by the law is that at least one member of the audit committee has competencies in the field of accounting and statutory auditing, and in order to certify the competencies, at least one member of the audit committee must be authorized as a financial auditor and registered in the Electronic Public Register by the competent authority in Romania, from another Member State, the European Economic Area or Switzerland or have at least 3 years experience in statutory auditing, acquired through participation in statutory audit missions, proven with supporting documents [25].

On the other hand, according to the provisions of art. 34 para. 41 of G.E.O. no. 109/2011, as subsequently amended and supplemented, "...the audit committee is made up of non-executive directors, most of the directors being independent and of which at least one is qualified as a financial auditor according to a document issued by the competent authority of Romania, another member state, a member state of the European Free Trade Association, Switzerland or the United Kingdom of Great Britain and Northern Ireland, according to the law. By way of exception to this provision, a person who has at least 3 years' experience in statutory auditing acquired

through participation in statutory audit missions in Romania, in another Member State, in an EFTA State, in Switzerland, or in the United Kingdom of Great Britain and Northern Ireland or within the audit committees formed at the level of the boards of directors, is also competent to be a member of the Audit Committee of a public undertaking. supervision of public interest companies/entities, proven by documents."

Taking into account the fact that the provisions of art. 65 para. (3) and (31) of Law no. 162/2017 constitute the general provisions on statutory auditing, and the provisions of art. 34 para. 41 of G.E.O. no. 109/2011, the special provisions on statutory audit at the level of public enterprises – companies managed in a unitary system, containing rules derogating from the common law (Law no. 162/2017), highlighted by the phrase "... by exception...", invoking the principle of specialia generalibus derogant, we cannot fail to refer to these provisions as well, in the context in which the second sentence of art. 34 para. 41, also regulates another category of persons, competent to be part of the Audit Committee of a public enterprise, namely the person who has at least 3 years of experience in statutory auditing, acquired within the audit committees formed at the level of the boards of directors/supervisory boards of companies/entities of public interest, proven with documents.

For these reasons, in order to interpret the legal provisions (general and special) governing the conditions for the establishment of audit committees and their composition, set up at the level of the boards of directors/supervisory boards of public enterprises, we consider that The person who has at least 3 years of experience in statutory auditing, acquired within the audit committees formed at the level of the boards of directors/supervisory boards of companies/entities of public interest, proven by documents, may be part of the aforementioned audit committees.

6. Empirical aspects regarding corporate governance indicators

The specific indicators represent one of the most important aspects of corporate governance. As can be seen, corporate governance has a wide range, starting with the independence of Supervisory Board members and auditors in relation to management and the connections of the Supervisory Board. Moreover, the process of decision-making can be seen in the aspects as part of the Supervisory Board, Management Board, shareholders, and other stakeholders.

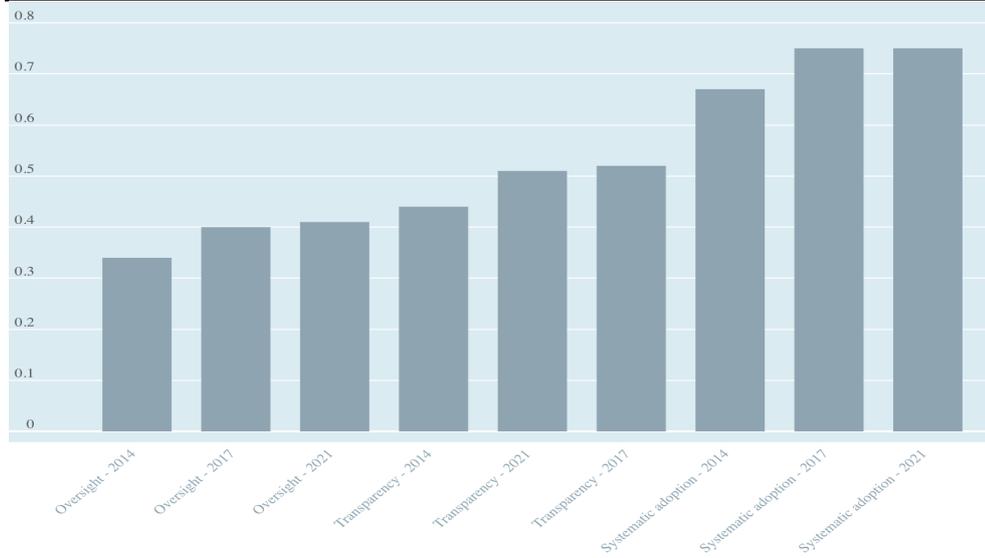


Figure 1. Regulatory Impact Assessment – Stakeholders' engagement in RIA and ex-post evaluation for OECD average country.

Source: Own processing based on OECD, Government at Glance indicators, 2023 edition.

This section will analyze the corporate governance indicators developed by the OECD (2023). The data available on the OECD database has led to the fact that it is specific for this study to analyze the following elements: (i) the time period is 2014 – 2021; (ii) the reference area is the OECD average country score and separate Romania score; (iii) the measure is subdivided into three subcategories *regulatory impact assessment, stakeholder engagement, and ex-post evaluation*; (iv) regulatory category contains three primary laws *oversight, systematic adoption, and transparency*.

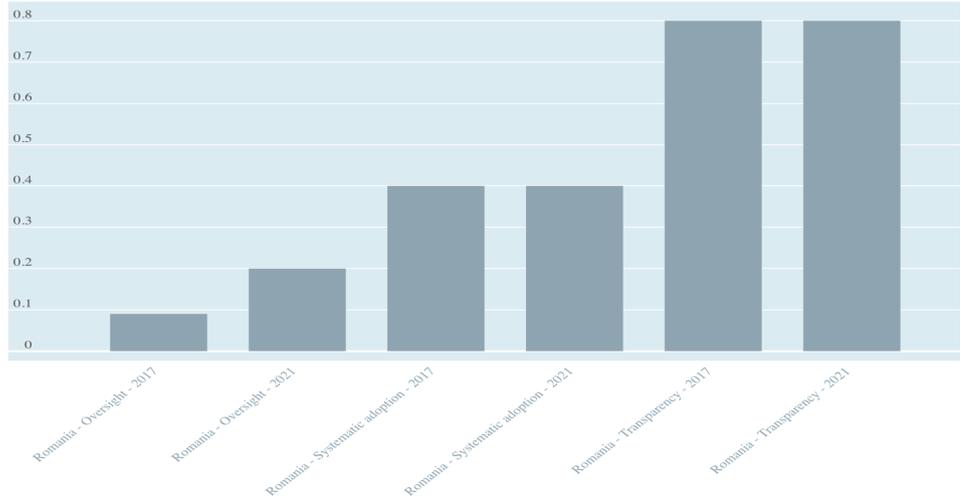


Figure 2. Regulatory Impact Assessment – Stakeholders’ engagement in RIA and ex-post evaluation for Romania.

Source: Own processing based on OECD, Government at Glance indicators, 2023 edition.

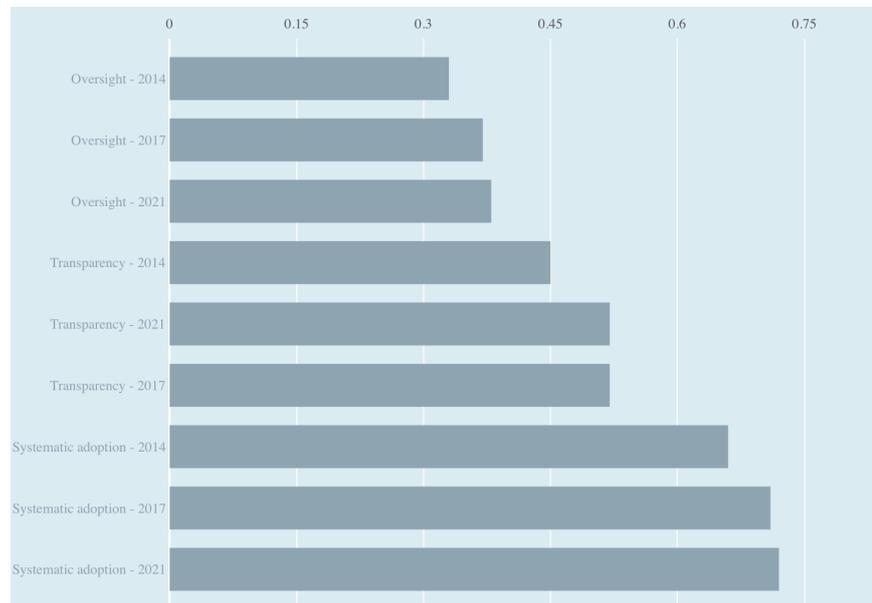


Figure 3. Stakeholder engagement – Stakeholders’ engagement in RIA and ex-post evaluation for OECD average country.

Source: Own processing based on OECD, Government at Glance indicators, 2023 edition.

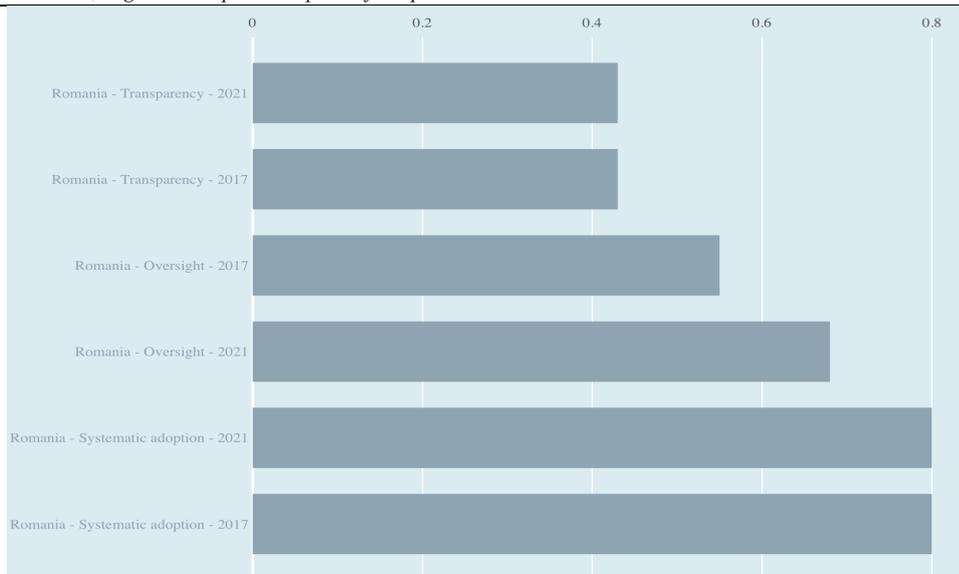


Figure 4. Stakeholder engagement – Stakeholders’ engagement in RIA and ex-post evaluation for Romania.

Source: Own processing based on OECD, Government at Glance indicators, 2023 edition.

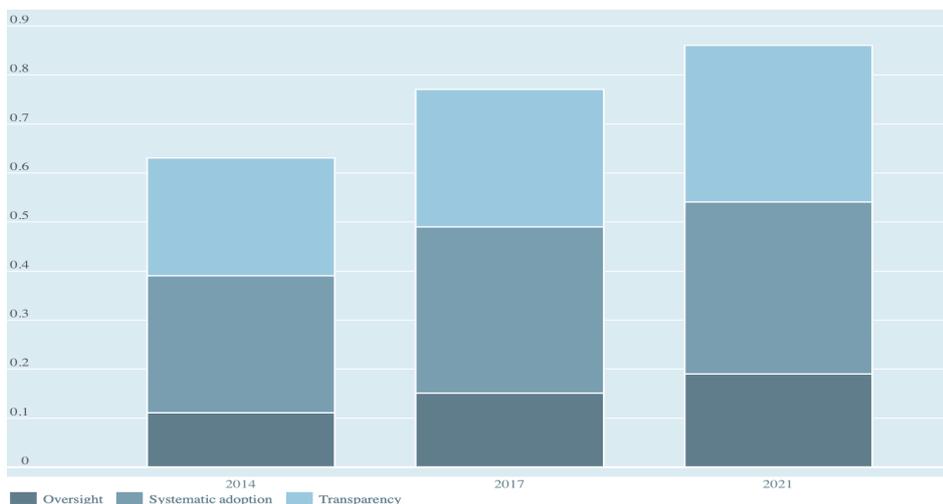


Figure 5. Ex-post evaluation – Stakeholders’ engagement in RIA and ex-post evaluation for OECD average country.

Source: Own processing based on OECD, Government at Glance indicators, 2023 edition.

The results presented in Figure 1 and Figure 2 highlight the stakeholder's engagement in regulatory impact assessment and ex-post evaluation for the OECD average country and Romania case. As can be seen in Figure 1, starting from 2014 (the starting date), the levels of oversight, degree of transparency, and systematic adoption have increased in the OECD average country group. As for Romania, Figure 2 presents also an increasing trend of oversight, degree of transparency, and systematic adoption starting from 2014 until 2021.

Figure 3 and Figure 4 present the results of stakeholders' engagement in RIA and ex-post evaluation for the OECD average country and Romanian case. Figure 3 suggests that the oversight and transparency criteria registered a slight increase from 2014 until 2021, but the systematic adoption has improved considerably. Figure 4 presents the Romanian case with similar aspects of transparency and systematic adoption from 2017 until 2021, but the oversight degree has been much improved and increased in the quality standards.

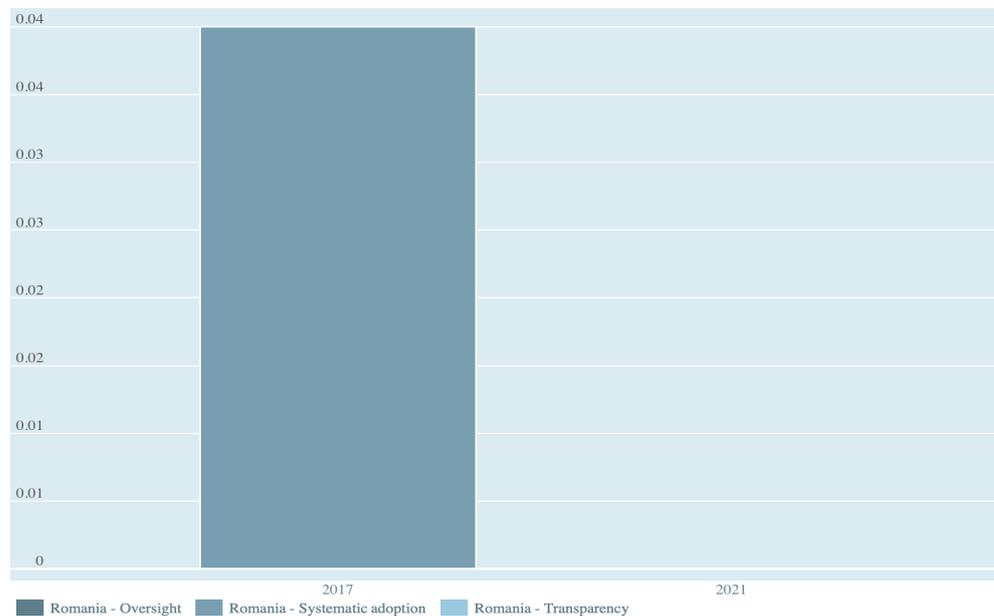


Figure 6. Ex-post evaluation – Stakeholders' engagement in RIA and ex-post evaluation for Romania.

Source: OECD, Government at Glance indicators, 2023 edition.

Figure 5 and Figure 6 analyze the ex-post evaluation for the OECD average country group and Romanian case. As can be noticed from Figure 5, the OECD average country-level registered stable and increasing trends from 2014 until 2021 for all

three categories: oversight, transparency, and systematic adoption. As for the Romanian study case, it can be seen from Figure 6 that there is a lack of data regarding the evolution trends. However, the increasing trends of the oversight levels registered in 2017 have led to the conclusion that Romania is on a good track for increasing the overall score of the corporate governance indicators.

Conclusions and recommendations

The present incursion aimed at an overview of the legal norms established by the legislation in the field of corporate governance, with a focus on brief normative landmarks in the field.

The legislation on corporate governance is not a new creation, the revision of the regulations for improving the corporate governance of public enterprises was a condition provided for in the National Recovery and Resilience Plan, being amended and completed over time, establishing new entities, with the role of monitoring the efficiency and performance of public enterprises, whose activity we hope will not lead to an increase in the bureaucratization of the public system, by burdening the tutelary public authorities.

We would like to emphasize that, from a legal-economic perspective, the regulation that is the subject of the analysis of the legislative benchmarks cannot be of interest, especially among those who are forced to apply them, either as a supervisory public authority or as a representative of the public enterprise, and the realignment of corporate governance in accordance with the OECD principles and guidelines on governance, constitutes a positive obligation of the Romanian state, according to the commitments assumed through the PNRR and the OECD Roadmap.

The OECD corporate governance indicators and the OECD database are complex tools for evaluating and assessing the quality of corporate governance and the correct and complex mechanisms of implementing it. The OECD guidelines and OECD indicators are advanced tools for implementing governance indicators both at OECD and non-OECD levels in terms of corporate governance. In this way, by having a complex framework and clear guidelines, especially the OECD members can create a sound environment for applying appropriately the agenda of the corporate governance indicators.

The empirical results presented and analyzed in this study reveal the important need to further develop the three subcategories of corporate governance indicators, namely regulatory impact assessment, stakeholder engagement, and ex-post evaluation, as well as the three primary laws that regulate them. This fact will also be useful for non-OECD countries such as Romania, which are on a good track to adapt and align to the OECD corporate governance indicators.

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The correct application of the legal norms established in the field of corporate governance, by the central and local public authorities – Government through AMEPIP and ministries, county councils, or local councils, we are convinced that they will contribute in a significant manner to a better protection of public enterprises, in general, and of the public policy of the private property of the state and administrative-territorial units and public money, in particular.

Admitting that the main purpose in terms of the functionality of public enterprises, regardless of their structure, is related to ensuring good governance, the correct application of the legal norms established in the field of corporate governance, by the central and local public authorities – Government through AMEPIP and ministries, county councils or local councils, we are convinced that they will contribute in a significant manner to better protection of public enterprises, in general, and of the public policy of the private property of the state and administrative-territorial units and public money, in particular.

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Author Contributions

GVS and FCD are responsible for the study elaboration and development. GVS is responsible for the project coordination and methodology assessment. FCD is responsible for the empirical and practical data and indicators collection, analysis, and interpretation. FCD and GVS are responsible for writing, editing, reviewing, and submission of the article.

Disclosure Statement

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- 5.Law no. 187/2023 amending and supplementing the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises, published in the Official Gazette no. 594 of 29 June 2023.
- 6.Law no. 287/2009 on the Civil Code, published in M. Of. No. 505 of 2011, (republished), with subsequent amendments and completions.
- 7.Law no. 31/1990 (republished) on companies, with subsequent amendments and completions.
- 8.Emergency Ordinance no. 57/2019 on the Administrative Code, with subsequent amendments and completions.
- 9.Emergency Ordinance no. 117/2023 amending and supplementing the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises, as well as amending and supplementing Law no. 187/2023 amending and supplementing the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises, published in the Official Gazette no. 1139 of 15 December 2023.
- 10.Emergency Ordinance no. 108/2024 amending and supplementing the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises, published in the Official Gazette no. 910 of 9 September 2024.
- 11.Decision of the Government of Romania no. 639/2023 for the approval of the methodological norms for the application of the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises, published in the Official Gazette no. 697 of 28 July 2023, which repeals the provisions of G.D. no. 722/2016 for the approval of the Methodological Norms for the application of some provisions of the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises.
- 12.Decision of the Government of Romania no. 617/2023 on the organization and functioning of the Agency for the Monitoring and Evaluation of the Performance of Public Enterprises, published in the Official Gazette. No. 691 of July 27, 2023.
- 13.Order of the President of the Agency for Monitoring and Evaluation of the Performance of Public Enterprises no. 126/2024 on the approval of the Framework Regulation for the organization and functioning of the Commissions for the selection and nomination of candidates for the position of member of the Boards of Directors/Supervisory Boards of Public Enterprises, published in the Official Gazette. No. 304 of April 5, 2024.
- 14.Order of the President of the Agency for Monitoring and Evaluation of the Performance of Public Enterprises no. 277/2024 for establishing the monitoring tariff, the method of declaring and paying its amount and approving the model and content of the Declaration on the contribution due to the budget of the Agency for the Monitoring and Evaluation of the

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Performance of Public Enterprises for 2023, published in the Official Gazette. No. 621 of July 1, 2024.

Notes:

[1] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, taking into account the Council Implementing Decision of 3 November 2021 approving the assessment of Romania's recovery and resilience plan (NRRP) – accessible in consolidated TEXT: 32021R0241 — EN — 01.03.2024.

<https://mfe.gov.ro/pnrr/>

NATIONAL RECOVERY AND RESILIENCE PLAN (PNRR) – Ministry of European Investments and Projects.

[2] Published in M.Of. No. 594 of June 29, 2023.

[3] Published in M.Of. No. 1139 of 15 December 2023.

[4] Published in M.Of. No. 910 of 9 September 2024.

[5] Published in M.Of. No. 697 of July 28, 2023.

[6] Published in M.Of. No. 691 of July 27, 2023.

[7] Published in M.Of. No. 304 of April 5, 2024.

[8] Published in M.Of. No. 621 of July 1, 2024.

[9] Law no. 287 of 2009 (republished) on the Civil Code.

[10] GEO no. 57 of 2019 on the Administrative Code.

[11] V. Firescu, D. Brânză, Corporate Governance in Romanian Firms: Characteristics, Dimensions, Limits, in *Intercultural Management* no. 3/2013, p. 130 et seq., apud Gabriel Tița-Nicolescu, Corporate Governance of Public Enterprises (1), article published in *Universul Juridic Magazine*, June 1, 2017, accessible at Corporate Governance of Public Enterprises (I) - *Universul Juridic Magazine*.

[12] Gabriel Tița-Nicolescu, Corporate Governance of Public Enterprises (1), article published in *Universul Juridic Magazine*, June 1, 2017, accessible at Corporate Governance of Public Enterprises (I) - *Universul Juridic Magazine*.

[13] The Principles were renamed the OECD/G20 Principles on Corporate Governance following their revision in 2015 and endorsed by the G20 Finance Ministers and Central Bank Governors at their meeting on 4-5 September 2015. For more details, see the OECD Guide on the Corporate Governance of State-Owned Enterprises, 2015 Edition.

[14] G20/OECD Principles of Corporate Governance 2023 | OECD.

[15] The guide includes recommendations on how governments can ensure that state-owned enterprises are at least as accountable to the general public as a listed company should be to its shareholders.

[16] MFP Order no. 2874/2016 on the regulation of the procedure for monitoring the implementation of the provisions of the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises.

[17] The first form of the emergency ordinance was published in the Official Gazette. No. 883 of 14 December 2011, so that it subsequently underwent significant amendments and completions.

[18] According to Article 59 of G.E.O. no. 109/2011, as subsequently amended and supplemented, the failure to fulfill the obligations provided by this normative act entails, under the conditions of the law, the disciplinary, civil, contravention or criminal liability, as the case may be, of the persons with attributions in its application.

[19] Although the incidental legislative package on corporate governance entered into force in July 2023, AMEPIP was only operationalized on March 6, 2024, which created a state of instability and confusion.

[20] According to art. 3 para. (1) letter a)-c) of Annex no. 1 entitled – Methodological norms for establishing the criteria for the selection of the members of the boards of directors/supervisory boards of public enterprises, for drawing up the shortlist for each position, for their ranking, for the procedure regarding final appointments, as well as for establishing other measures necessary for the implementation of the provisions of the Government Emergency Ordinance no. 109/2011 on the corporate governance of public enterprises, approved by G.D. no. 639/2024, the 6-month term begins to run differently depending on the category of the public enterprise for whose board of directors the selection is carried out.

[21] According to Art. 29 para. (1) the final sentence, of GEO. No. 109/2011, with subsequent amendments and completion.

[22] Depending on the type of management of the company, unitary or dualistic system.

[23] At the level of the board of directors of the autonomous company, the audit committee is constituted, consisting of non-executive directors, of which at least 2 are independent directors, and the chairman of the audit committee is an independent director. The provisions of Article 65 of Law no. 162/2017 on statutory auditing of annual financial statements and consolidated annual financial statements and amending certain normative acts, as subsequently amended, shall be applied accordingly.

[24] At the level of public enterprises – companies that are managed in a unitary system, the audit committee is made up of non-executive directors, most of the directors being independent and of which at least one is qualified as a financial auditor according to a document issued by the competent authority of Romania, of another member state, of a member state of the European Free Trade Association, Switzerland or the United Kingdom of Great Britain and Northern Ireland, as required by law. By way of exception to this provision, a person who has at least 3 years' experience in statutory auditing, acquired through participation in statutory audit missions in Romania, in another Member State, in an EFTA State, in Switzerland, or the United Kingdom of Great Britain and Northern Ireland or within the audit committees formed at the level of the boards of directors, is competent to be a member of the Audit Committee of a public undertaking. Supervision of public interest companies/entities, proven with documents. The audit committee shall perform the duties provided for in Article 65 of Law no. 162/2017, as subsequently amended.

[25] According to art. II of G.E.O. no. 137/2024, public-interest entities must meet the requirement provided for in art. 65 para. (3¹) of Law no. 162/2017 on the statutory audit of the annual financial statements and the consolidated annual financial statements and amending certain normative acts, with subsequent amendments, including with the amendments and additions brought by this Emergency Ordinance, no later than September

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30, 2025, or, as the case may be, until the termination or extension by any means allowed by law of any mandate in the Audit Committee. The audit committee must have the qualifications required by law in the field in which the audited entity operates. The majority of the members of the audit committee must be independent of the audited entity. The chair of the audit committee is appointed by its members or by the supervisory board of the audited entity and is independent of the audited entity.