

## **Corporations – between Governance and Social Responsibility: the European Commission Approach**

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### **Abstract**

*The financial crisis that affected not only the markets, but the entire economic and social structure, generated new debates on the role that the corporations should play into society. Corporation cannot be defined only in relation to its shareholders and board. The stakeholders are a key-element when identifying the place and the role of the economic players. The aim of the corporate actions and operations surpasses the strict commercial area, entering ethics and placing corporation in an axiological connection with society. Traditionally, relationships between a company's management, its board, its shareholders and its other stakeholders was subject to corporate governance, while corporate social responsibility covers the voluntary integration of social and environmental concerns in corporate business operations and in their interaction with stakeholders. The paper examines whether the financial crisis stimulated a wider approach of the two notions and therefore causing certain interpenetration, which could lead to a common action and to a future unification of instruments and mechanisms. The analysis of the European Commission documents reveals the evolution of both corporate governance and corporate social responsibility, under the policies and values of the European Union.*

**Key words:** *corporation, corporate governance, CSR, business ethics*

**JEL Classification:** *K22, G34, M14*

### **Introduction**

Following the collapse of financial markets in late 2007, concerns have been raised regarding the full implementation of corporate governance principles within large companies, but also regarding the respect of moral and ethical values promoted by corporate social responsibility<sup>1</sup>. Corporate governance and corporate social responsibility have separately established themselves as well-researched and independent areas and relatively less attention has been paid in setting up a connection between these two. While corporate governance defines relationships between a company's management, its board, its shareholders and its other stakeholders<sup>2</sup>, corporate social responsibility (CSR) is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their

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<sup>1</sup> Boltanski, L., Chiapello, È., *Le nouvel esprit du capitalisme*, Gallimard, 2011, pp. 40-54, Salmon, A., *Moraliser le capitalisme?*, CNRS Éditions, 2009, pp. 13-22.

<sup>2</sup> OECD, *OECD Principles of Corporate Governance*, 2004, p. 11, OECD Publishing, accessible at <http://www.oecd.org/dataoecd/32/18/31557724.pdf>.

stakeholders on a voluntary basis<sup>3</sup> or lately, CSR is the responsibility of enterprises for their impacts on society<sup>4</sup>.

Corporate governance regulates primarily inside the company structure, being focused on the separation of powers, board independence, managerial ownership, public ownership, foreign ownership, the presence of audit committee<sup>5</sup>. On the contrary, the action related to the corporate social responsibility is mainly placed outside the company, in its connection to the local community, environment, consumers.

This paper examines whether a stronger connection between CSR and corporate governance mechanisms can be envisaged, as being both promoters of a corporate model based on axiological issues as integrity, confidentiality, fairness, honesty. Previous studies<sup>6</sup> demonstrate that CSR action is influenced by the choices, motives and values of those who are involved in taking decisions in the organisations; and that corporate governance mechanisms, such as ownership structure and board composition, could be important determinants. Moreover, international corporate governance bodies, such as the International Corporate Governance Network uses an axiological language which is rather typical for corporate social responsibility area:

“Globally, we need a regulatory framework that ensures *fair* and *transparent* markets which inspire *confidence* in financial reporting [emphasis added]”<sup>7</sup>.

In the line with the abovementioned purposes, the paper analyzes the European action on corporate governance and on corporate social responsibility in the view to establish the borders of such actions and a possible interconnection between the two fields.

## **First European Reforms**

European interest in corporate governance is associated to the company law reform, based on Article 50 (2) g of the Treaty on the functioning of the European Union, former Article 44 (2) g (ex 54) of the Treaty establishing the European Community. This Article, which appears in the Chapter devoted to the right of establishment, requires the European institutions to attain freedom of establishment, “by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 54 with a view to making such

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<sup>3</sup> See European Commission, *Corporate Social Responsibility: A business contribution to Sustainable Development*, Communication, 2002,

accessible at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002DC0347:EN:NOT>.

<sup>4</sup> European Commission, *A renewed EU strategy 2011-14 for Corporate Social Responsibility*, COM(2011) 681 final, accessible at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>.

<sup>5</sup> For a comparative study, see Beaufort de, V., *Gouvernance d'entreprise en Europe*, Economica, 2006, Kraakman, R. at alii. (eds.), *The Anatomy of Corporate Law: A Comparative and Functional Approach*, Oxford University Press, 2004.

<sup>6</sup> Gibbins, M., Richardson, A., Waterhouse, J., *The management of corporate financial disclosures: Opportunism, ritualism, politics and processes*, *Journal of Accounting Research*, 28(1), 1990, pp. 121–143, Johnson, R. D., Greening, D. W., *The effect of corporate governance and institutional ownership types on corporate social performance*, *Academy of Management Journal*, 42(5), 1999, 564–576, Haniffa, R. M., Cooke, T. E., *The impact of culture and governance on corporate social reporting*, *Journal of Accounting and Public Policy*, 24(5), 2005, 391–430, Harjoto, M. A., Jo, H., *Corporate governance and CSR nexus*, *Journal of Business Ethics*, 100(1), 2011, 45–67; Mintz, S. M., *Corporate governance in an international context: legal systems, financing patterns and cultural variables*, *An International Review*, 13(5), 2005, p. 583.

<sup>7</sup> International Corporate Governance Network (ICGN), *Second statement on the global financial crisis*, March, 2009.

safeguards equivalent throughout the Union”. Between 1968 (adoption of the First Company Law Directive) and 1989 (adoption of the Twelfth Company Law Directive), nine Directives and one Regulation were adopted. In parallel, the private interest for corporate governance was stimulated by the enhanced communication and transportation technologies, the reduction of regulatory barriers in the European Union and internationally, but also the issuance of an influential report by the OECD Business Sector Advisory Group on Corporate Governance entitled “Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets” (“the Millstein Report”), and the related issuance of the OECD Principles of Corporate Governance in 1999. From 1991 through 1997, ten corporate governance codes were issued in EU Member States, six of these codes being issued in the United Kingdom. Since 1998, however, interest in code development exploded across the European Union, with seven codes issued in that year alone. Another seven codes issued in 1999, and six in 2000<sup>8</sup>.

The Lisbon Summit of March 2000 established a strategic goal for the European construction of becoming, by 2010, “the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion”. The European Council in Lisbon made a special appeal to companies’ sense of social responsibility regarding best practices for lifelong learning, work organisation, equal opportunities, social inclusion and sustainable development. In this context, CSR was perceived as one of the instruments designed to maintain balance between the three pillars of the Lisbon Strategy: the economy and growth; employment and the European social model; and the environment, providing a means of strengthening social cohesion and making further progress towards the creation of a knowledge-based society. In July 2001, the European Commission presented a Green Paper “Promoting a European Framework for Corporate Social Responsibility”<sup>9</sup>, aiming to launch a debate about the concept of CSR and to identify the ways and actors for building a partnership for the development of a European framework for the promotion of CSR. Following the consultation process, the European Commission presented the Communication “Corporate Social Responsibility: A business contribution to Sustainable Development”<sup>10</sup>. Although the Communication refers to the exchange of good practices, codes of conduct, transparency, reporting, the European Commission does not establish any link between corporate governance and corporate social responsibility.

However, the European Commission Communication “Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward”<sup>11</sup> presented on May 21, 2003, states that “achieving the objectives pursued (fostering efficiency and competitiveness of business, and strengthening shareholders rights and third parties protection) requires a fully integrated approach”. One of the related initiatives, forming part of this integrated approach is the 2002 Communication on CSR, but the action plan does not establish any measure of coordination between the two areas.

Despite this dichotomy, it is relevant to point out that both corporate governance and corporate social responsibility are key points on the Commission agenda in the first years of this millennium, with a view to identifying the national input as well as the extent of the European

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<sup>8</sup> Weil, Gotshal & Manges LLP, *Comparative study of corporate governance codes relevant to the European Union and its member states*, 2002, p. 13.

<sup>9</sup> European Commission, *Green Paper “Promoting a European Framework for Corporate Social Responsibility”*, COM(2001) 366, final, accessible at [http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001\\_0366en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0366en01.pdf).

<sup>10</sup> European Commission, *Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development*, COM(2002) 347 final, accessible at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002DC0347:RO:NOT>.

<sup>11</sup> European Commission, *Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward*, COM(2002) 284 final, accessible at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52003DC0284:EN:NOT>.

action. With regard to CSR, the setting up of an EU Multi-Stakeholder Forum, following the Green Paper (2001) and the Communication (2002), marked an important step in this process. The Forum brought together representatives of business, but also of the trade union and civil society, with the overall aim to promote the convergence of CSR practices and instruments. In this view, the Forum has been created as a space to facilitate the exchange of experience and good practices, the inventory of the existing CSR instruments and initiatives, but also the debate on the appropriateness of establishing common guiding principles for CSR practices and instruments<sup>12</sup>. Although the Forum reached consensus on the need for further awareness-raising and competency-building activities, there was no consensus on sensitive topics as company reporting requirements or defining European standards on CSR.

With regard to corporate governance issues, the European Commission had the same interest, to review the main corporate governance codes relevant to the EU, and therefore, to structure the European approach. Weil, Gotshal & Manges LLP prepared an extensive comparative study<sup>13</sup> in the view to understand the commonalities and differences in corporate governance practices among EU Member States through an analysis of corporate governance codes and, to a limited extent, relevant elements of the underlying legal framework. The study revealed the importance of developing a voluntary European Union-wide code, but also the efforts to achieve broad agreement among Member States on detailed best practices. A second report was prepared by the Winter Group<sup>14</sup>, based on a mandate to review whether and, if so, how the EU should actively co-ordinate and strengthen the efforts undertaken by and within Member States to improve corporate governance in Europe.

Enron, Worldcom and similar cases have revealed the need of a deeper focus on companies, as important economic and social players. Several finance-ridden scandals have provided new momentum for debating about the legal and regulatory reforms. In parallel, new social and market pressures were leading to a change in the values and in the horizon of business activity. Creating value and therefore generating profit for its owners remains the main function of the company, but it is doubled by the interest to contribute to sustainable development by managing their business in such way as to enhance economic growth whilst ensuring environmental protection and promoting social responsibility. The companies are therefore subject to a complex reform: on one hand, the reform concerning the control and management of powers between shareholders, creditors and directors, through the corporate governance rules; on the other hand, the reform targeting the internal and external factors that stimulate the exercise of such powers, through the corporate social responsibility actions.

In the field of corporate governance, the early reform<sup>15</sup> was structured on four pillars:

1. *Enhancing Corporate Governance disclosure*, with the argument that despite that fact that more than forty corporate governance codes had been adopted in Europe, “information barriers” undermined shareholders’ ability to evaluate the governance of companies. The Commission proposed that listed companies should be required to include in their annual report and accounts a *coherent and descriptive* [emphasis added] statement covering the key elements of their corporate governance structure and practices. The main topics were related to shareholder meeting - operation and key powers, shareholder rights – description

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<sup>12</sup> European Multi Stakeholder Forum on Corporate Social Responsibility, Final Report 2004, accessible at [http://circa.europa.eu/irc/empl/csr\\_eu\\_multi\\_stakeholder\\_forum/info/data/en/CSR%20Forum%20final%20report.pdf](http://circa.europa.eu/irc/empl/csr_eu_multi_stakeholder_forum/info/data/en/CSR%20Forum%20final%20report.pdf).

<sup>13</sup> Weil, Gotshal & Manges LLP, *ibidem*.

<sup>14</sup> Winter Group, *Report of the high level group of company law experts on a modern regulatory framework for company law in Europe*, Brussels, 2002.

<sup>15</sup> European Commission, *Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward*, COM(2002) 284 final, accessible at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52003DC0284:EN:NOT>, pp 10-17.

and exercise; board and its committees - composition and operation; shareholders holding major holdings and direct and indirect relationships between these major shareholders and the company; risk management system – existence and nature; a reference to a code on corporate governance.

As regards the institutional investors, the enhancement of the disclosure should be realised by settling the obligation to disclose their policies, such as investment policy and the policy with respect to the exercise of voting rights in companies in which they invest.

2. *Strengthening shareholders' rights* in terms of both electronic access to information and procedural rights (to ask questions, table resolutions, vote in absentia, and participate in general meetings via electronic means).
3. *Modernising the board of directors*. First, as to board composition, non-executive or supervisory directors who are in the majority independent should take decisions in key areas where executive directors have conflicts of interest, such as remuneration and supervision of the audit of company accounts. Second, the directors' remuneration regime, including the share and share option schemes, should require disclosure of remuneration policy and remuneration details of individual directors in the annual accounts; but also the shareholders' control and approval of share and share option schemes in which directors participate. Third, the collective responsibility of the board members, both for financial and key non financial statements, should be recognised and accepted as a matter of EU law.
4. *Co-ordinating corporate governance efforts of Member States* with reference both to the development of national corporate governance codes and to the monitoring and enforcement of compliance and disclosure.

The proposals led to the adoption or amendment of a number of directives. In 2006 was adopted a new Article 46a of Directive 78/660/EEC on the annual accounts of certain types of companies<sup>16</sup>, which required companies with securities admitted to a regulated market to publish a corporate governance statement in their annual report. The proposals regarding the collective responsibility were translated into Articles 50b and 50c of Directive 78/660/EEC. One year later, the Shareholder Rights Directive<sup>17</sup> regulated the organisation and functioning of the shareholder meeting especially as regarded: a) information prior to the general meeting and convocation of the same; b) right to put items on the agenda of the general meeting and to table draft resolutions; c) requirements for participation and voting in the general meeting (excluding the need for a prior deposit of the shares); d) participation in the general meeting by electronic means; e) proxy voting, including the right to appoint a proxy holder and the limits which may be introduced by Member States in order to address conflicts of interest; f) voting by correspondence; g) publication of the voting results.

Besides, the Second Company Law Directive on formation of public limited liability companies and the maintenance and alteration of their capital<sup>18</sup> and the Third and Sixth Company Law Directive on mergers and divisions have been simplified<sup>19</sup>.

<sup>16</sup> Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, Official Journal of the European Union, L 222/11, 14.8.1978.

<sup>17</sup> Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, Official Journal of the European Union, L 184/17, 14.7.2007.

<sup>18</sup> Directive 2006/68/EC of the European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital, Official Journal of the European Union, L 264/32, 25.9.2006.

<sup>19</sup> Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies, Official Journal of the

Some other proposals found detailed specification in the Commission Recommendations, such as the proposals relative to board composition, detailed by the Commission Recommendations of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board<sup>20</sup> and the proposals relative to directors' remuneration which found specification in Commission Recommendation of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies<sup>21</sup>.

As regards the corporate social responsibility reform, the Commission<sup>22</sup> acknowledges that adopting CSR is clearly a matter for enterprises themselves, but stands that since as there is evidence suggesting that CSR creates value for society by contributing to a more sustainable development, there is a role for public authorities in promoting socially and environmentally responsible practices by enterprises. Moreover, the Commission stresses that CSR public policies may help shape globalisation in a positive way, by promoting good company practices which complement public efforts for promoting sustainable development. Community action in the field of CSR is placed under a double limitation: it is built on the core principles laid down in international agreements and should be implemented in full respect of subsidiarity principle. The Commission proposes to focus its strategy on seven areas:

1. *Increasing knowledge about the positive impact of CSR on business and societies. The Commission's action is oriented through Europe and abroad, in particular in developing countries.* This first area focuses on supporting activities promoted by businesses, social partners and other stakeholders; analysis and dissemination of information about CSR practices and their results for companies, for host countries, but also their contribution to the objective of enhanced competitiveness and a more sustainable development.
2. *Developing the exchange of experience and good practice on CSR between enterprises,* through better networking and co-ordination of the existing fora's activities, but also by the integration of CSR into the actions of European business support networks.
3. *Promoting the development of CSR management skills,* through the exchange of good practices in integrating CSR principles in education, from general education to the business administration training, management training and training for other employees, and the development of teaching materials and courses in educational institutions, including those active in lifelong learning, in co-operation with enterprises.
4. *Fostering CSR among SMEs,* by raising awareness about the economic benefits of the responsible entrepreneurship practices and by promoting them as a risk management tool.
5. *Facilitating convergence and transparency of CSR practices and tools,* especially in the field of Codes of Conduct, management standards, accounting, auditing and reporting, labels, social responsible investment.

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European Union, L 300, 17/11/2007 and Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions, Official Journal of the European Union, L 259/14, 2.10.2009.

<sup>20</sup> Commission Recommendation of 15 February 2005 *on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board*, Official Journal of the European Union, L52/51, 25.2.2005.

<sup>21</sup> Commission Recommendation of 14 December 2004, *fostering an appropriate regime for the remuneration of directors of listed companies*, Official Journal of the European Union, L 385/55, 29.12.2004.

<sup>22</sup> European Commission, Communication from the Commission concerning *Corporate Social Responsibility: A business contribution to Sustainable Development*, COM(2002) 347 final, accessible at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002DC0347:RO:NOT>.

6. *Launching a Multi-Stakeholder Forum on CSR at EU level* with the aim of promoting transparency and convergence of CSR practices and instruments.
7. *Integrating CSR into Community policies*, especially into enterprise-related policies such as employment and social affairs policy, enterprise policy, environmental policy, consumer policy, public procurement policy, but also into more general policies, especially external relations policy, including development policy and trade and public administration.

The reform envisaged by the Commission generated a large legislative production in various fields. For reporting on non-financial information, the EU has several mandatory instruments with implications for all Member States, such as the Modernisation Directive, the European Pollutant Release and Transfer Register (E-PRTR), the EU Emission Trading Scheme and the Integrated Pollution Prevention and Control Directive. Besides these mandatory instruments, the EU Eco-Management and Audit Scheme (EMAS) has mandatory implications for reporting on environmental issues for those companies that register with EMAS. As regards the disclosure of social and environmental information, the Fourth Directive on annual accounts 2003/51/EC<sup>23</sup> requires enterprises to disclose in their annual reports environmental and employee-related information to the extent necessary for an understanding of the company's development, performance or position.

The industrial relation were also covered by the Community action, especially the safe and safety at work, that go from establishing general provision, such as improving the health of workers – the Framework Directive<sup>24</sup>, to provisions regarding the protection of specific groups of workers or regarding workplace, about equipment, signs and loads, chemical, physical and biological agents. Other directives regulate collective redundancies procedure<sup>25</sup>, protection of employees in the event of the insolvency of the employer<sup>26</sup>, safeguarding the employees' rights in the event of transfers of undertakings<sup>27</sup>. In the field of environment protection, The European Pollutant Release and Transfer Register Regulation 166/2006/EC came into force in February 2006. The E-PRTR Regulation requires operators of facilities to report on emissions and specific substances. The E-PRTR serves as a Europe-wide register of industrial and non-industrial emissions into air, water, and land, and off-site transfers of waste water and waste, and includes information from specific and diffuse sources.

## The Impact of Financial Crisis on the European Reforms

It is uncertain whether and to what extent corporate governance or, even less, CSR contributed to the recent financial crisis. Academics<sup>28</sup> revealed the necessity of making a distinction between financial institutions and other companies, given that the former were at the epicentre

<sup>23</sup> Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings, Official Journal of the European Union, L 178, 17.7.2003, pp. 16–22.

<sup>24</sup> Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, Official Journal, L 183, 29.06.1989.

<sup>25</sup> Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, Official Journal, L 225, 12.8.1998, pp. 16–21.

<sup>26</sup> Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version), OJ L 283, 28.10.2008, pp. 36–42

<sup>27</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, Official Journal, L 82, 22.3.2001, pp. 16–20.

<sup>28</sup> Cheffins, B.R., *Did corporate governance "fail" during the 2008 stock market meltdown? The case of the S&P 500*, Business Lawyer no. 65/2009, pp. 1-65.

of the financial crisis, both in the US and in Europe, while non-financial companies were affected by the crisis but did not show risk management or other governance failures similar to those experimented by financial institutions. The European Commission argued that corporate governance had failed in the crisis, but followed the academics recommendation and distinguished between financial institutions and other firms. In consequence, the Commission issued two Green Papers, one in 2010 on Corporate governance in financial institutions and remuneration policies<sup>29</sup> and the other in 2011 on The EU corporate governance framework<sup>30</sup>. In 2012, the Commission Action Plan<sup>31</sup> outlines the initiatives that the Commission intends to take in order to modernise the company law and corporate governance framework and identifies three main lines of action:

1. *Enhancing transparency.* If the 2002 reform insisted on the disclosure, the new action plan recognizes the companies' right to know who their shareholders are. At the same time, institutional investors should be more transparent about their voting policies so that a more fruitful dialogue on corporate governance matters can take place.
2. *Engaging shareholders.* After having strengthened the shareholders' rights, the Commission envisages measures to ensure the shareholders' engagement in corporate governance. The shareholders should be offered more possibilities to control remuneration policy and related party transactions. One other important engagement measure regards the employee share ownership, employees' interest in the sustainability of their company being an element that ought to be considered in the design of any well-functioning governance framework. Employees' involvement in a company may take various forms, from information and consultation to participation in the board, or financial involvement, particularly to employees becoming shareholders.
3. *Improving the framework for cross-border operations of EU companies,* especially on the cross-border transfer of seat, improving the mechanism for cross-border mergers and enabling cross-border divisions. Specific measures shall be taken to improve the administrative and regulatory framework in which SMEs operate, to improve the awareness of companies and their legal advisers about the European Company (SE) and the European Cooperative (SCE) Statutes, but also the information available on groups and the recognition of the concept of the concept of "group interest".

The corporate governance measures are designed to facilitate the dialogue between investors and companies, encourage shareholder engagement and "strengthen companies' accountability to civil society"<sup>32</sup>. Under the financial crisis pressure, the Commission acknowledges that even if the corporate governance rules are focused primarily on the corporate structure and intra-connections, they have a moral load, related to the concept of responsibility or accountability. Moreover, employee share ownership is a concept which is linked rather to corporate social responsibility, than to corporate governance.

The economic crisis and its social consequences stimulated the Commission to put forward a new policy proposal on CSR<sup>33</sup>, in order to counteract the damaged confidence and levels of trust

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<sup>29</sup> European Commission, Green Paper, *Corporate governance in financial institutions and remuneration policies*, COM(2010) 284 final,

accessible at [http://ec.europa.eu/internal\\_market/company/docs/modern/com2010\\_284\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/modern/com2010_284_en.pdf).

<sup>30</sup> European Commission, Green Paper, *The EU corporate governance framework*, COM(2011) 164 final, accessible at [http://ec.europa.eu/internal\\_market/company/docs/modern/com2011-164\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf).

<sup>31</sup> European Commission, *Action Plan: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies*, COM(2012) 740 final, accessible at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012DC0740:EN:NOT>.

<sup>32</sup> *Ibidem*.

<sup>33</sup> European Commission, *A renewed EU strategy 2011-14 for Corporate Social Responsibility*, COM(2011) 681 final, accessible at

in business. The Commission broadens the definition of corporate social responsibility, renouncing at the limitations stated by the “voluntary” character of the actions and by the “social and environmental” natures of the concerns. CSR is redefined as the responsibility of enterprises for their impacts on society. Respect for applicable legislation, and for collective agreements between social partners, is considered a prerequisite for meeting that responsibility. In accordance with the new approach of the CSR, to fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders.

The Commission reveals the multidimensional nature of CSR, notion which covers a wide range of topics, from the axiological area of human rights, to labour and employment practices (such as training, diversity, gender equality and employee health and well-being), environmental issues (such as biodiversity, climate change, resource efficiency, life-cycle assessment and pollution prevention), but also combating bribery and corruption.

In response to the financial crisis, the Commission is making a number of regulatory proposals to ensure a more responsible and transparent financial system, proposal which borrow corporate governance language and objectives. Thus, the Commission is supporting capacity-building for investors on how to integrate non-financial information into investment decisions. In this context, the Commission encourages enterprises to disclose information related to the implementation of good tax governance standards. Moreover, European asset managers and asset owners, especially pension funds, are invited to sign up to the UN Principles for Responsible Investment. At their turn, public authorities have a particular responsibility to promote CSR in enterprises which they own or in which they invest.

The “traditional” CSR notion evolves at the same time with the redefinition of the role that the enterprise should play into society. The more the enterprise interacts with society and with its values, the more its responsibility increases in terms of size and becomes more intricate. The ethic responsibility is henceforth doubled by the legal responsibility, deriving from an increasing hard law regulation.

## Conclusion

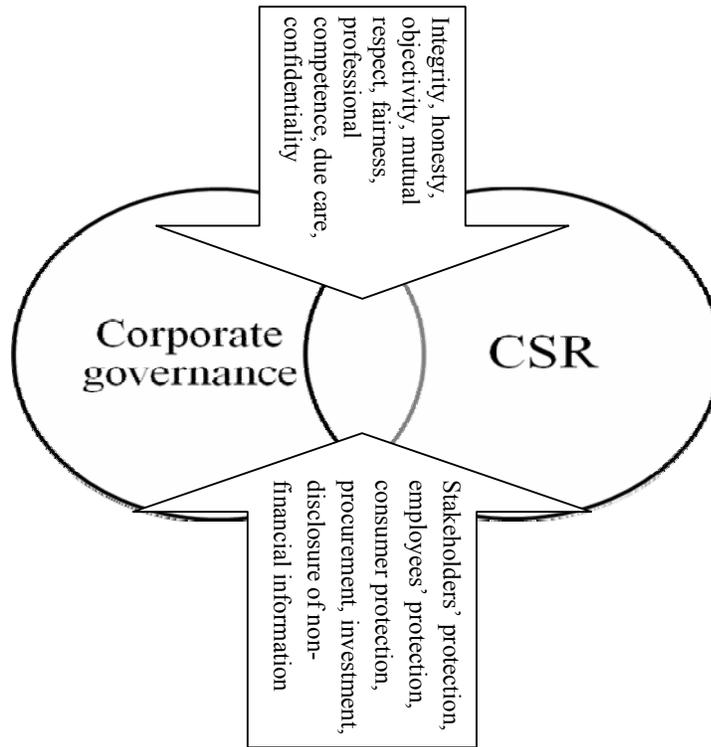
The new financial crisis generated important debates on the corporations’ role and the impact of their legitimate and illegitimate operations on markets, but also on economic, social and political relations. The reforms of corporate governance and CSR that have been promoted diminished the distance between the two fields that traditionally have been considered as independent. On the one hand, academics reveal the importance attached to core values of ethics, integrity and accountability in the European codes and regulations of corporate governance and strongly recommend the promotion of ethical code such as integrity, honesty, objectivity, mutual respect, fairness, professional competence, due care, and confidentiality<sup>34</sup>. Corporate responsibility and accountability substantiate the corporate governance mechanisms and actions.

On the other hand, corporate social responsibility surpasses its initial role of voluntary integration of social and environmental concerns in business operations and in companies’ interaction with their stakeholders. Under the international and European guidance, the CSR actions cover sensitive issues such as socially responsible investment or procurement.

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<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>.

<sup>34</sup> Soltani, B., Maupetit, Ch., *Importance of core values of ethics, integrity and accountability in the European corporate governance codes*, Journal of Management and Governance, DOI 10.1007/s10997-013-9259-4, published online: 10 May 2013.



**Fig.1.** Interconnection between corporate governance and CSR

Source: Adapted from European Commission; B. Soltani, Chr. Maupetit, *Importance of core values of ethics, integrity and accountability in the European corporate governance codes*, Journal of Management and Governance.

Moreover, the main CSR axes are covered by hard law: labour and employment relations are regulated by labour law, environmental protection is governed by the environmental law, business good practices are subject to business law regulation, social engagement rules are established by sponsorship law<sup>35</sup>.

There are several factors which favour the interconnection between the two fields of corporate action. Both corporate governance and corporate social responsibility found their origins in Adolf Berle's view, arguing that corporations should "set forth a program comprising fair wages, security to employees, reasonable service to their public, and stabilization of business"<sup>36</sup>.

The two notions were equally promoted by international organisations, in their recommendations and guidelines. OECD, for example, addresses both fields, mainly by OECD Principles of corporate governance<sup>37</sup> and OECD Guidelines for multinational enterprises<sup>38</sup>.

Under the international organisation guidance, the economic actors created an alternative regulation system<sup>39</sup>. "Rather than imposing legal compliance, the use of policies that endorse,

<sup>35</sup> Trébulle, F.G, *Quel droit pour la RSE*, in Trébulle, F.G., Uzan, O., *Responsabilité sociale des entreprises. Regards croisés, droit et gestion*, Economica, 2011, p. 20.

<sup>36</sup> Berle, A. A., Gardiner, J., Means, C., *The modern corporation and private property*, Transaction Publishers 2005 (1932), p. 312.

<sup>37</sup> OECD, *OECD Principles of corporate governance*, 2004, OECD Publishing, accessible at <http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf>.

<sup>38</sup> OECD, *OECD Guidelines for multinational enterprises 2011*, OECD Publishing, accessible at <http://dx.doi.org/10.1787/9789264115415-en>.

facilitate, and partner with firms is further characteristic of new governance paradigm which emphasizes norms, networks, incentives, and voluntarism<sup>40</sup>. It is true that some of the alternative norms both in corporate governance and CSR field have been incorporated in the traditional hard law, ensuring their opposability and legal enforcement. Moreover, instruments specific to one field have been transferred to another. “Comply or explain” approach, which has been initially used in corporate governance area, became an instrument for CSR as well<sup>41</sup>.

On a more moral side, both corporate governance and corporate social responsibility aim to project the company on axiological parameters. Ethical practices inside the corporate structure are likely to generate ethical practices in its operations, as a result of incorporating ethics in the concept itself of corporation.

Our work implies several suggestions for future studies. The theoretical hypotheses may be tested on a sample of representative codes, both of corporate governance and corporate social responsibility. This would shed more light on the level of interconnection between the two fields, but also on the role that ethics plays in corporate structure and operations.

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<sup>39</sup> Nowland, J., *The effect of national governance codes on firm disclosure practices: evidence from analyst earnings forecasts*, *Corporate Governance*, *An International Review*, 16(6), 2008 pp. 475–491, Wirtz, P., *Les meilleures pratiques de gouvernance d'entreprise*, La Découverte, 2008, pp. 77-97..

<sup>40</sup> Moon, J., Vogel, D., *Corporate Social Responsibility, Government, and Civil Society*, in *The Oxford Handbook of Corporate Social Responsibility*, Crane, A., et alii (dir.), Oxford University Press, 2008, p. 303.

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