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CORPORATE GOVERNANCE: HOW CAN THE IMPLEMENTATION OF THE CODE OF CONDUCT BE ENSURED IN THE COMPANY?

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ABSTRACT

Corporate governance encompasses the processes by which corporate goals, actions, policies, practices and decisions are set and followed in the context of the social, regulatory and market environment. Interest in corporate governance practices increased following high-profile collapses of a number of large companies and corporate scandals of various kinds. In the US, these included scandals involving Enron and MCI Inc. led to the passage of the Sarbanes-Oxley Act in 2002, a US federal law designed to improve corporate governance in the US. The German Corporate Governance Code contains internationally and nationally recognised standards of good and responsible corporate governance in the form of recommendations and suggestions. The Corporate Code of Conduct is a voluntary commitment by all employees to ensure that guidelines, responsibilities and duties are properly observed. The Code of Conduct guarantees compliance with ethical standards and thus contributes to experiencing fulfilment and satisfaction in and through daily work. The aim of the study is to show how the Corporate Governance Code can be implemented in companies. Literature analysis is chosen as the method in the theoretical part. In order to gain more insight or detailed information about the problem, guideline-based interviews are conducted. The interviews focus mainly on the importance of the realisation of corporate governance measures for companies. The interviews are analysed on the basis of grounded theory.

CHANGE OF PERSPECTIVE

Neoinstitutional economics differs substantially from neoclassical theory: while there are no transaction costs and no non-economic behavioural incentives in the simple economic man model of neoclassical economics, new institutional economics interprets this hypothesis as unrealistic. Principal-agent theory is therefore about "*how the asymmetric distribution of information, risks and interests that prevails between principal and agent can be influenced in favour of the principal and shaped in an efficient way by means of appropriate incentives.*" (Otremba, 2016, p. 14).

The principal-agent problem typically occurs when the two parties have different interests and asymmetric information, and the agency problem can be exacerbated when an agent acts on behalf of multiple principals (cf. Voorn et al. 2019, pp. 671-685). The multiple headmasters problem is particularly severe in the public sector, where multiple headmasters exist and both efficiency and democratic accountability are often undermined in the absence of prominent governance (cf. Bernheim/Whinston 1986, pp. 923-941).

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In recent years, a variety of measures have been taken to reduce information asymmetry, such as reporting obligations and control mechanisms, increased liability for board members, but also long-term remuneration models.

In recent years, new theoretical models have been developed, such as the stewardship theory. According to this theory, managers who are left to their own devices act as responsible stewards of the assets they control. Managers who are employed are seen as fiduciaries (stewards) who represent the interests of the company and the shareholders (cf. Otremba 2016, p. 18). The steward theory states that a steward protects and maximises shareholder wealth through corporate performance. When choosing between self-interested behaviour and organisation-friendly behaviour, a steward gives higher priority to cooperation than defection. Stewards are seen as collectivists, organisation-friendly and trustworthy (see Davis et al. 1997, pp. 20-47). The theory emphasises the position of employees or managers to act more autonomously in order to maximise shareholder returns (cf. Tyari 2021).

Stewardship theory, like principal-agent theory, is used to shed light on governance problems. The aim is to abandon the unrealistic assumptions of both theories (principal agency theory and stewardship theory) in favour of a middle ground. Theories of corporate governance are rooted in agency theory with moral hazard implications. They evolve within stewardship theory and stakeholder theory and led to resource dependence theory, transaction cost theory and political theory (cf. Borlea/Achim 2013, pp. 117-128).

In addition, other theories of human work motivation and management were discussed, such as Douglas McGregor's Theory X and Theory Y, transaction cost theory, resource dependence theory, shareholder theory of corporate governance and stakeholder theory of corporate governance.

There are other areas and theories that could explain corporate governance, such as law, based on the idea that many of the corporate governance practices are based on laws.

Principles

Since their first publication in 1999, the OECD Principles of Corporate Governance have gained worldwide recognition as an international benchmark for sound corporate governance. Important principles of corporate governance are transparency, accountability, sustainability, efficiency, avoidance of conflicts of interest and control. These principles will be looked at and discussed in more detail in the further course.

The German Public Corporate Governance Code emphasises that trust is created through transparency (cf. bbh 2021o.J.). Transparency should strengthen the public's trust in public companies and administrations.

Good corporate governance represents responsible corporate management (cf. Schweickert and Jantz 2012, p. 5). Specific tasks are set for operational management, whereby stakeholder management also means taking interests into account and assuming responsibility. This is not only about the organisation and its members acting lawfully. Responsibility for society and the environment is also assumed through corporate decisions and actions. Acting responsibly means that a company must bear the consequences for its past and future actions, respect ethical values, communities, people and the environment (cf. The Business Finance Guide 2020). The rise of corporate social responsibility is more than a fad, it is a consumer-driven trend.

Core issues of corporate social responsibility (CSR) are "*organisational governance, human rights, labour practices, the environment, fair operating and business practices, consumer concerns, and community involvement and development*" (Schweickert and Jantz 2012, p. 8).

Social responsibility is the ethical / moral obligation / duty of the company towards society. Social responsiveness, on the other hand, is how a company responds to a social need.

The concept of Corporate Social Responsiveness is one of many concepts that have emerged from the umbrella term Corporate Social Responsibility (CSR). The concept of CSR refers to the social and ethical responsibility that companies should assume towards societies.

The principle of sustainability has become a credo of politics, economics and lifestyle. A sustainable approach is a systems-based approach that seeks to understand the interactions between environmental, social and economic pillars (cf. EPA n.d.). Better governance in turn leads to more efficient production (cf. Gilson 1996).

Conflicts of interest are a significant problem at board level, as they affect ethics, distort decision-making and have consequences that can undermine the credibility of boards, organisations or even entire economic systems (cf. Cossin/Lu 2021). Conflict of interest guidelines set out how directors should avoid conflicts of interest. The real danger here is that boards and directors are unaware of the many conflicts of interest they face (cf. Cossin/Lu 2021). Boards consist of different members, such as representatives of employees, shareholders and other stakeholders. When members with multiple roles have to rebalance different interests, the potential for conflict becomes apparent (cf. Cossin/Lu 2021).

Every organisation should create a culture of ethics and trust. Clear messages on how to deal with conflicts of interest are needed to make everyone in the organisation aware of any kind of corruption. A safe environment must be created where employees are not afraid to raise and disclose conflicts of interest. Appropriate policies ensure the successful management of conflicts of interest (cf. Sayer 2019).

Internal control is designed to ensure that the organisation achieves the objectives set out in the strategy, uses resources economically and that the information supporting management decisions is reliable (cf. op.fi n.d.). It should also ensure that risk management, custody of client assets and protection of property are adequately regulated and that regulations and recognised ethical principles are observed.

The need for binding rules

Corporate governance is concerned with solving problems of collective action between isolated investors and balancing conflicts of interest between different stakeholders of companies (cf. Becht et al. 2002, abstract). There are at least two reasons for regulatory intervention (cf. Becht et al. 2002, p. 10 f.): The main argument for mandatory rules is that company founders or the

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shareholders will tend to draft inefficient rules. Another argument in favour of mandatory rules is that companies might initially design certain rules but then later break or want to change them. Responding to this and to financial scandals in the early 2000s, for example, the US Congress passed the Sarbanes-Oxley Act (SOX) in 2002 to protect shareholders and the public from corporate accounting errors and fraud and to improve the accuracy of corporate disclosures.

Codes and guidelines

The OECD Principles of Corporate Governance were adopted as early as 1999. They have become an international guide for use by policy makers, investors, companies and other interested groups around the world. The Principles of Corporate Governance include

- securing the foundations of an effective corporate governance framework
- Shareholder rights and key functions of the capital owners
- Equal treatment of shareholders
- Role of the various stakeholders in corporate governance
- Disclosure and transparency
- Duties of the Supervisory Body (Board)

The OECD Principles of Corporate Governance were intended to help develop a culture of values for professional and ethical behaviour on which well-functioning markets depended.

The New York Stock Exchange sets listing requirements. The various criteria and minimum standards must be met in order to be eligible for membership of the exchange. Only when a stock exchange's listing requirements are met can a company list shares for trading. Listing requirements vary by exchange and include a minimum shareholder capital, a minimum share price and a minimum number of shareholders. The listing requirements are designed to ensure that only high quality securities are traded on the exchanges. They are also intended to preserve the reputation of the stock exchange among investors (cf. Hayes 2020).

The German Corporate Governance Code of 2002 examines the general acceptance of the Code's recommendations and identifies its critical standards, which find comparatively less approval among German listed companies. Company law obliges listed German corporations to declare their compliance with the German Corporate Governance Code (DCGK), which contains essential legal regulations for the management and supervision (governance) of German listed companies and internationally and nationally recognised standards for good management and responsibility (cf. dcgk.de 2012). The aim of the Code is to shape the German corporate governance system in a transparent and comprehensible manner. It is intended to promote the trust of international and national investors, customers, employees and the public in the management and supervision of listed German stock corporations. *Compliance with the recommendations is not mandatory by law, but their justification in the event of deviation is. The Code relies on acceptance without coercion.*

Corporate governance in public companies

Corporate governance of public bodies is gaining more and more importance both in the professional literature and in the literature. As a management and control method, it includes clear rules and principles (integrity, honesty / sincerity, transparency and responsibility), clear risk management and control mechanisms, necessary elements to achieve the purpose of public bodies (cf. Matei/Drumasu 2015, p. 495).

There is often a dilemma in regulatory oversight (cf. Duro et al. 2019, pp. 780-823). The question arises whether it makes sense to disclose monitoring and control measures; how much should be made public. Openness can increase the effectiveness of the measures, but counterproductive side effects can also be considered.

Impact of a governance practice

Every company, public and private, small and large, established or start-up, competes in a society where good governance is critical for businesses. Governance practices at the right scale have a positive impact on the long-term viability and performance of any organisation. Medium-sized companies face stiff global competition. Under the unrelenting gaze of the world market on their corporate governance, control, financial and transparency systems, they will have to face future international standards. As suppliers to global conglomerates, they will have to submit to ever stricter criteria in order to prove themselves as reliable and high-quality business partners (cf. Kohler/Deimel 2016). It makes sense to introduce company-specific corporate governance, with which the individual companies could document the importance they attach to this factor in their company.

Empirical survey

Five guided interviews were conducted with experts from different companies.
From the entrepreneur's point of view, the introduction of corporate governance means a lot of work on the structure of the company. In order to act legally and ethically correct, compliance is of great importance. All experts interviewed emphasised the necessity of corporate governance. the social and ecological responsibility of companies for the future.

According to the respondents, corporate governance as a modern management system increases the attractiveness of companies for employees, partners and customers. All experts have a positive attitude towards proactively shaping corporate responsibility. However, they also mention that there is always transgressive behaviour, which testifies to the fact that some managers are not ready to embrace the new conditions.

The supervisory board plays a major role in monitoring the implementation of corporate governance, although weaknesses can also occur here. Uniform governance standards are required within the Eurozone.

Since it is hardly possible to assess companies in their entirety due to the large number of companies, the supervisory board should have the task of adapting the general standard to the respective sector of the economy.

Opinion was divided on the disclosure of the income of individual board members. The confidentiality of the data was pointed out. In addition, disclosure could cause discord within the company. Following the example of the USA, it is proposed here to publish executive board remuneration in its entirety and not for each individual board member.

To some extent, it is considered possible to enforce corporate governance on a voluntary basis. In the long term, however, mandatory rules are necessary. Implementation on a voluntary basis is unsuccessful in companies that do not care and leads to imbalance and distortion of competition in the market.

In order to implement compliance, the motivation of employees must be emphasised. They should be sensitised to the topic of compliance through training. The supervisory board must monitor compliance with the guidelines.

A clear social and environmental stance has a positive impact on demand and on employees. Integral behaviour, new tasks and responsibilities increase loyalty, motivation and staff retention. Waste of material and time can be reduced as well as employee absenteeism, for example.

Whether corporate governance actually leads to more transparency and thus more trust, however, is doubted in some quarters. Compliance does not fit traditional models of corporate governance, it aims instead at an internal governance structure imposed on the company from the outside.

Governance, risk management and compliance are three aspects that are designed to ensure that an organisation reliably achieves objectives, addresses uncertainties and acts with integrity. They are established and executed by the directors (or board) and must be reflected in the structure of the organisation as well as in its management and achievement of objectives.

CONCLUSION

To answer the research question, a literature review was conducted first. From this, an interview guideline was developed and an expert survey was conducted.

The complexity of specific corporate governance issues leads to an increasing need for a systematic and quantitative assessment approach to corporate governance. For this reason, a Corporate Governance Code was developed in Germany, which contains defined core objectives. This code enables both the self-assessment of companies and sector-specific comparisons.

Good corporate governance helps companies build trust with investors and society. Corporate governance serves to promote financial viability by creating a long-term investment opportunity for market participants. In doing so, corporate responsibility encompasses economic, legal and ethical responsibility.

It could be shown that corporate governance is essential for a functioning economy and can create trust and integrity in business life. However, compliance does not fit traditional models of corporate governance. Compliance instead aims at an internal governance structure that is imposed on the firm from the outside. This realisation has practical and theoretical implications, both for corporate governance and for corporate law. Above a certain company size, however, there is a risk that departments pursue their own interests or that errors arise due to misunderstandings in communication.

There is still a need for further research on the macroeconomic effects. It should also be investigated whether or to what extent corporate governance can be "misused" to conceal dishonest or even illegal actions and how this can be prevented.

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