

**COMMENTO DI SIR ADRIAN CADBURY
ALLO STUDIO:
“I CODICI DI CORPORATE GOVERNANCE IN ITALIA, UK,
FRANCIA E GERMANIA: UN’ANALISI COMPARATIVA”**

**COMPARATIVE ANALYSIS OF CODES OF CORPORATE
GOVERNANCE**

“Prima di tutto devo congratularmi con il team che ha preparato questo studio comparativo dei codici di Corporate Governance in Italia, UK, Francia e Germania. E’ uno studio ammirevole, completo, accurato e attentamente analizzato. Oltre a rispondere agli obiettivi che Key2people Governance si propone, rappresenterà una base informativa molto utile per chi insegna e studia corporate governance comparata. Per comprendere a pieno il loro significato, i codici devono essere messi in relazione con le leggi e regolamenti in ognuno dei paesi considerati.

Il mio approccio è stato di mettere l’accento sulle raccomandazioni che ho trovato interessanti e meritevoli di considerazione all’interno dei codici studiati, lasciando a chi ha realizzato lo studio la decisione di capire se possano essere rilevanti nell’ottica di un aggiornamento del Codice italiano”.

Sir Cadbury ci ha poi mandato, come potete leggere nel testo originale in inglese che avete ricevuto, una serie di interessantissime considerazioni su:

Ruolo del Comitato Nomine e Processo di Selezione

Remunerazione

Comitati del CdA

Definizione del ruolo dei NED

Azionisti e Stakeholder

Assemblea generale

Modello duale.

First I must congratulate the team which prepared this comparative analysis of corporate governance Codes in Italy, UK, France and Germany. It is an admirable study, comprehensive, accurate and carefully analysed. In addition to meeting the needs that Key2People Governance had in mind, it will provide very useful background information for those teaching or studying comparative corporate governance. To understand their significance, codes need to be seen in relation to corporate laws and regulations in each of these countries.

My approach has been to draw attention to the recommendations in the codes studied which I found interesting and merit consideration, leaving those who initiated this study to decide whether they are relevant or not to the review of the Italian Code.

Role of Nomination Committee and Selection Process

A company's aim is to bring together the most capable and best balanced team that it can at board level to give the company the leadership it deserves. Board candidates should therefore be drawn from as wide a pool as possible, so as to look beyond those known to the chairman and other board members. In the search, boards should give particular consideration to the experience that women have gained, not only in business, but often in the public and not-for-profit sectors and in the professions. Failure to give proper and proportionate consideration to the talent of half the population is shortsighted to say the least. Boards need to widen their outlook to compete in a world of global markets. A lesson we learnt at PRONED was that if women are selected on merit from among a group that includes men, they approach their board task with confidence, knowing that their presence on the board is not as a token.

The way in which the board is involved in the selection of non-executives is important. The NEDs are choosing a colleague and their involvement through a nomination committee ensures that they are committed to the process of appointment and to whoever they select. Equally, the executive directors need to be sure that the names put forward by the committee are of people in whom they can have confidence as colleagues. New board members have to have the support of the whole team which they are joining.

Board succession is a fundamental responsibility of the board and the quotation from the French Code sums it up precisely (p.27). It is an issue which is not always addressed thoroughly and in good time, partly because of a polite reluctance to raise the point of potential replacement with chairmen and CEOs. It is however essential that well-considered plans for succession to key posts are

prepared in advance and that possible candidates are given the range of experience they need to fit them for these posts. It is here that the role of lead directors, or the Senior Independent Director in the UK context, come into their own. They need to have personal responsibility for ensuring that succession issues are properly considered by the board and plans made. They are also responsible for arranging for the performance evaluation of their chairmen. On evaluation, I regard the board's assessment, on their own or with a facilitator, of their effectiveness as a board as more important than the assessment of individual directors. It is the way the board works as a team, under the leadership of their chairman, that drives the company forward.

Remuneration

Clearly this is a major issue at the moment and is dealt with in all codes. It makes sense to agree financial arrangements for parting at the time that a new board appointment is made, the director then has a complete pay package. Interestingly, the UK Financial Services Authority which now regulates the corporate sector has just issued a draft code of practice on remuneration policies. For the first time this means that the regulator has become involved not in the amount of remuneration, but in the policies on which pay is to be based.

Board Committees

The UK remuneration committee has the responsibility of setting individual pay packages delegated to it by the board. The German code (p.88) allows Supervisory Boards to delegate to committees and the French code (p.101) refers to the audit committee not acting in the place of the board but as an extension of it. The general principle is that board committees are committees of the board, which sets their membership and terms of reference. They do not detract from the authority of the board but assist it. The Italian Code makes this point (p.89). In the UK, it is the responsibility of the audit committee to enable members of staff to raise concerns about improprieties in confidence and to ensure appropriate follow-up action. This is referred to on page 91, whistleblowing. It is topical in the UK, because the risk manager at a major bank warned the board well before the disaster about the risks they were running and was dismissed.

Definition of role of NEDs

The Combined Code definition of the role was to make it clear that NEDs were as responsible for the success of the business as the executives, in order to ensure that their contribution was not thought to be primarily one of monitoring. The legal responsibilities of all directors are the same and they owe their duty to the company. The problem is that the affairs of large companies have become increasingly complex and so new NEDs require a proper induction process in the workings of companies they have joined. They also need to keep up to speed with new developments through some form of continuous professional development. One can imagine the difficulty for NEDs on the boards of banks of understanding the risks involved, when faced with decisions involving complex financial instruments and derivatives. The Combined Code enables NEDs to take outside professional advice if necessary in the course of their duties. (P.81)

On the definition of independence, I am personally cautious about laying down too many rules. Independence is to a great extent a state of mind. I prefer to rely on chairmen and their boards to assess which of their members can be classed as independent and then explain their reasoning to the shareholders. I agree that NEDs should not serve too long and perhaps three terms of three is about right. But this is primarily because of the need to bring new members on to the board, who bring different perspectives, the refreshment process. Italy has it right (p.64) content over form.

Shareholders and Stakeholders

The references to dialogue with investors in the Combined Code (P.77) relates to the high proportion of UK corporate shares held by institutional investors. Stakeholders were also referred to in the Hampel Report of 1998, para 1.18: “As regards stakeholders, different types of company will have different relationships, and directors can meet their legal duties to shareholders, and can pursue the objective of long-term shareholder value successfully, only by developing and sustaining these stakeholder relationships. We believe that shareholders recognise that it is in their interests for companies to do this and – increasingly – to have regard to the broader public acceptability of their conduct.” This recognition of accountability to shareholders but responsibility to stakeholders and the community enables boards to take wider interests into account in their decisions, to the long-term benefit of their shareholders.

AGMs

The provisions in the Italian Code (p.127) seem admirable and the issue of the conduct of AGMs is likely to move up the corporate agenda across the EU now that the proceedings can be recorded and are viewed by a wide audience. My view is that chairmen must have clear powers to control their meetings. They must be able to disallow repetitive and multiple questions, to limit questions to a fixed time and to have a maximum time for the meeting. There can be no right for shareholders to have every question answered at the meeting, but chairmen may offer the opportunity to send in questions to be answered afterwards. I suggest that chairmen should be given as much discretion as possible, rather than attempting to set rules for the conduct of general meetings and should announce at the start of the meeting how it is to be run.

Two-tier Boards

Having been a member of a supervisory board I understand the points raised in the analysis (p.18). The problem is that the responsibilities of a unitary board are to an extent split between the two bodies. I suggest that the divide can best be overcome by good informal links between the chairmen of the two boards, which cannot be written in to a code. The key issue is strategy, the development and implementation of which must be shared. That principle must be accepted, how it is put into practice may best be left to individual companies.

Adrian Cadbury

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