

## **Governance Communication: Aspects Characterising Common Law Systems**

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*The aim of this paper is to analyze the aspects characterizing governance communication in companies operating in common law countries in order to evaluate the efficiency of the same with respect to civil law and the differences of rulings, also with regard to market globalization and information necessary. Data were collected, for analysis and further processing, with regard to: - 40 selected companies quoted on the Stock Market, equally divided between: New York – the Nasdaq and Dow Jones market segments, and London – the FTSE100 and Tech Mark market segments; collection of information by analysis of the governance reports published on the selected companies' websites; definition at cognitive level of the aspects characterizing common law systems with respect to the institutional communication required and expressed by European companies operating in the order of civil law; assessment of communication from the chosen enterprises operating on the global market; The study considers the systematic survey of the process improving relations between companies, shareholders and stakeholders and the relative economic implications within the companies.*

Field of Research: Management, corporate governance and communication

### **1. Introduction**

The need to harmonize legal dispositions that regulate the corporate governance of companies operating in different countries firstly poses attention on an accurate analysis of the structure of responsibility attributed to governance organs. The principles inspiring current rulings see, on one side, the so-called “common law” countries, and on the other the “civil law” countries. The first consist of Anglo-Saxon countries such as the United Kingdom and the United States of America (but also Australia and Canada) which have adopted the common law system founded on unwritten laws developed through the collection of jurisprudential sentences and decisions. The second, of European matrix, are founded on the civil law system based on Roman Rights, on jurisprudential codes and doctrine, with the functions of orienting and limiting company operations.

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The rules of corporate law regulating companies' institutional organization, over recent years, have given particular emphasis to joint-stock companies and the specific character of ownership, with the concentration of significant ownership quotas (*Insider System*), a phenomenon typical of European countries, or a highly divided ownership (*Outsider System*), a typical situation in Anglo-Saxon countries. In effect, regarding the structure of governance and the methods for separating administration and control, reference can be made to monistic (*One-tier*) and dualistic (*Two-tier*), systems, the latter being differently declined according to vertical dualistic and horizontal dualistic methods.

**Table 1 – Models of corporate governance**

	Dualistic system		Monistic system
	Horizontal	Vertical	
Administration	Sole administrator or Board of Directors appointed by Shareholders Meeting	Board of Managers appointed by Surveillance Committee	Board of Directors appointed by Shareholders Meeting
Control (of legality and correct administration)	Board of Auditors appointed by Shareholders Meeting	Surveillance Committee appointed by Shareholders Meeting	Management Control Committee appointed among the Board of Directors
Accounts	External auditor (or auditing company) registered in the Roll of Auditors, appointed by the Shareholders Meeting	External auditor (or auditing company) registered in the Roll of Auditors, appointed by the Surveillance Committee	External auditor (or auditing company) registered in the Roll of Auditors, appointed by the Shareholders Meeting

A comparative analysis, under the profile of corporate legislation in countries other than those of the western area, divided with regard to their national legislation between common law countries and civil law countries, highlights certain differences concerning **corporate governance, share ownership, the stock market and enterprise culture**. Joint stock companies are of substantially similar nature and have similar correlated problems although there are a few differences in relation to the above profiles. This differentiation is of fundamental importance considering that in civil law countries laws are written and formalized mostly in codes, constituting a complex set of reference rules with which each subject must comply. In common law countries, rulings are mainly ascribed to a wide range of legal cases, based on the general principle of *Stare decisis* (that is, what has been judged becomes law).

Consequently, corporate communication is profoundly influenced by the legal system to which the issuing body belongs, with ample potential differences between civil law and common law countries. The subtle line of demarcation between the limits and discretion of communication defines the minimum availability of the information to be expected from a company, but does not guarantee reliability and timeliness. The comparison between the common law and civil law systems, in the light of analysis of various governance models highlighting a precise choice of the monistic system for common law countries with respect to civil law countries presenting the co-existence of the three models, traditional/ordinary, monistic and dualistic, induced the concentration of attention on common law countries in order to assess the quality and quality of communication in enterprises quoted and

globalized relative to the communication requested and offered by companies operating in civil law countries.

## 2. Literature Review

Zappa, G. 1956, *Le Produzioni*, Giuffrè Editore, Milan.

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Coda, V. 1988, *L'orientamento strategico dell'impresa*, Turin, Utet libreria.

Salvioni, D. & Teodori, C. 2003, *Internet e comunicazione economico-finanziaria d'impresa*, FrancoAngeli, Milan.

Gandini, G. 2004, *Corporate governance, controllo di gestione e risorse immateriali d'impresa*, FrancoAngeli, Milan.

Salvioni, D. 2007, *Corporate Governance, controllo e trasparenza*, FrancoAngeli, Milan.

## 3. Methodology and Research Design

The research carried out in the period February-April 2007, referring to the American and English companies quoted on international markets, foresaw the analysis of the following variables:

- communication on corporate governance;
- communication on results of governance: compulsory and voluntary.

A survey was made of 40 companies, selected on the basis of:

- quotation on the New York Stock Exchange divided between Nasdaq and Dow Jones market segments, and London between FTSE100 and Tech mark;
- notoriety of the brand;
- size of the group and diffusion on international markets.

The working hypotheses concerned the distinctive features of the companies belonging to civil law countries with respect to those of common law. The basic variables assumed in developing the survey therefore compared, on one hand, the notoriety of the company brand and, on the other, the size of the group. Research methodology employed a grid to assess the data processed later, grouping information by nature, results of which are given in summarized tables. The analysis was particularly focused on the appreciation of communication efficiency on the structure and on the results of governance by studying three specific sections:

- a) general information;
- b) information on the corporate governance;
- c) information on the results of governance.

## 4. Discussion of Findings

The results obtained using the research methodology were as follows:

- a) With reference to "general information", a study was made of the diffusion of the selected companies' websites and then the presence of a section explicitly dedicated to relations with institutional shareholders and stakeholders. Then it was necessary to understand some aspects of general nature on how the above information was presented.

The degree of diffusion of the section dedicated to institutional information was measured on the basis of the presence of a dedicated link (Investor Relations). Diffusion of sites in English companies is 90% on both segments, while for American companies it is 100% on both segments. All successive analysis was structured on companies with sites. The results of this analysis are undoubtedly positive, although slightly better for the American companies. The trend is coherent between the traditional segments of both nations (FTSE100 and Dow Jones), showing, in the majority of cases, attention to the creation of a section explicitly dedicated to institutional information.

Furthermore, it emerges that in the Tech mark segment, only 78% had such a section, while the American companies show a generally positive attitude. Admitting that the quality of information through the Web increases especially in relation to the degree of accessibility, up-dates and reliability of the same, a search was made for the presence of such elements. In particular, for accessibility:

- a) appurtenance of the I.R. section to the site of origin: for English companies a total of 88% and 100% for those American;
- b) the presence of a password: 100% for American companies and an average of 88% for those English.

For punctuality, actuality and reliability:

- a) the single date of the update of the I.R. section in 6% of English companies (only in FTSE100) and in 10% of American companies (in both stock market segments);
- b) the date of update on each page inside the I.R. section in 19% of English companies and only 5% of those American;
- c) specific disclaimers in 44% of English companies and in 15% of those American.

**b)** Regarding “information on corporate governance” the analysis was focused firstly on verifying the diffusion and availability of institutional information summarized in a specific link, then the possibility was ascertained of obtaining from the site:

- documentation concerning corporate governance: code of self-discipline, code of ethics and/or internal dealing, corporate by-laws and meeting rules;
- information relative to owned assets: group structure, presence of single reports on controlled/associated companies, composition of ownership and management and indications regarding extraordinary operations.

The analysis made provided a good amount of information on corporate governance. In particular, a link independently dedicated to corporate governance was found in 95% of the American sites (100% in Dow Jones segment and 90% in that of Nasdaq). In the English companies, instead, the score was lower and on average the link was provided 69% of the cases (in all cases in the FTSE100 segment and only 29% in that of Tech mark). Research on the corporate governance documentation revealed:

- the code of self-discipline in almost all cases in both nations;
- the code of ethics and/or internal dealing in only three sites of the English companies quoted in FTSE100 and in only one site of the American companies quoted in Dow Jones. 70% of the American companies (Nasdaq) presented a code of ethics;
- the corporate by-laws in almost all cases;

- meeting rules are never present.

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Companies deciding to show the structure of their group are only a few. The American companies differ according to the stock market segment: in Dow Jones 100% communicate this element, while in Nasdaq it is never stated. In the English companies a better result is confirmed in the FTSE100 segment with respect to the technological segment. After an analysis of the general elements of the group structure, attention was shifted to the identification of information linked to the composition of company property and management. It is surprising that no site of the companies analysed in the two Common Law countries gives any information regarding the composition of property, although this attitude could be justified by the model of governance adopted by these systems, monistic, that is. This type of governance, in effect, tends to exclude shareholders from the life and management of the company which reflects on the types of communication chosen.

To confirm this scheme, it was seen that in all cases (except two companies in the English Tech Mark) a detailed description of company management was given, often accompanied by profiles and curriculum vitae of the individual manager. The search for information on corporate social responsibility focalised on ascertaining, through the site, the degree of divulgation of social and environmental accountability considering the growing importance these documents have assumed over recent years. The results denote scarce attention to such aspects. In particular, there emerged a great diversity according to the stock market segment: no company in the new market presented information relative to the documents of corporate social responsibility, but attributes the site a prevailing function of marketing. Better results were found in the American companies quoted in Dow Jones: half of them publish on line their social and/or environmental statement and the other half do highlight their social commitment.

After the above premises relative to the theme of corporate governance and the main institutional documents presented in company websites, analysis continued of the contents of the two main documents on corporate governance communication. Reference is made to the Combined Code For England and the Final NYSE corporate governance rules for the United States. The document synthesizing corporate governance in the United States is structured in four specific sections:

- General information
- Corporate governance committee
- Compensation committee
- Audit committee

Results show a satisfactory level of depth in the report on corporate governance for the American companies examined, independently of the market segment. In this case Nasdaq gives better results than Dow Jones. In effect, while 100% of the former give a report on corporate governance, in one of the latter, there was no affirmative answer. Excellent the results of the companies quoted in Nasdaq with 100% of the cases presenting a very complete and in-depth report, as well as further discretionary on-site information on relations between governance bodies, management and bodies of control. Comparison of results registered by this analysis with results emerging from previous research on Italian and European companies substantially shows a linear and coherent behaviour. In effect, Common Law countries and Civil Law countries do not differ greatly in terms of using the website and the information divulged by means of this tool has shown

practically the same trends. Equally, the same coherence of trend is confirmed in relation to the stock market segments: in both systems better behaviour was shown by the companies quoted in the traditional segment of the stock market than that of companies belonging to the new market.

The main differences were found in relation to information concerning company property. In effect, while in European countries (mainly in Italy), Internet sites often refer to the shareholders, also with evidence of majority/minority groups, the American and English companies mostly neglected this information. This aspect is significant and could be justified by the different model of governance adopted. Assuming the same trend, instead, is the balance between compulsory information and discretionary information of economic and financial nature: in Italy, too, companies respond well with the presence of the compulsory yearly statement, while space for ample improvement is registered for voluntary information. In Italy, however, definite improvement has been registered over recent years with regard to corporate social responsibility while in Common Law companies only scarce results have been found. This behaviour could be justified by the fact that, at European level, since the start of the century, all member countries have been showing increasing sensitivity towards social and environmental these, also with general standards or normative interventions (Green Book by the European Commission, interventions and financial contributions to support investments towards environmental and/or social respect, Guidelines of the Social Balance Group).

At the same time, American and English companies have suffered especially the economic crises occurring at the start of the century (Enron, Worldcom) also due to fraudulent behaviour which produced the effect of diminished image and underlined the system's lack of standards. Effectively, the sites of the American companies now pay greater attention to the exhaustive communication of institutional information and are no longer presented exclusively as virtual showcases or purely marketing sites. In particular, it is important to point out the depth of the information on corporate governance and the relations between the governance bodies present in the independent link dedicated to this theme. However, despite the improvement in quantity and quality of information divulged on line by the companies under examination, it has to be said that considerable efforts still have to be made before being able to define web communication reliable, exhaustive and punctual.

c) "Information on the results of governance" was to ascertain the presence of an independent section explicitly dedicated to compulsory information. This element was found 100% on both segments in both nations. This is certainly a positive result since, in this way, compulsory information is presented in orderly manner in a single folder and not dispersed through the site.

A successive search was made on the presence and the possibility of downloading the yearly statement documents, the consolidated statement, half-yearly reports and three-monthly reports.

- 81% of the English companies and 60% of those American publish their yearly statement on line.
- 100% in both cases publish their consolidated statements and half-yearly reports.
- 100% of the American companies and only 25% of the English companies publish their latest three-monthly report.

The study also examined the divulgation of data, highlights, variables, reclassified balance variables and prospects able to satisfy the many cognitive instances combined in enterprise activities.

Results show scarce attention by the companies examined towards the divulgation of information collateral to the summarized compulsory data. This attitude implies that there is still an unsatisfactory level of attention to corporate communication and the distance still to be covered towards a clear and exhaustive divulgation of company facts with the objective of spontaneous knowledge of the company. In effect, no integrative elements were ever found on the site for interpreting balance data as reclassified indices or prospects. But, on average, the majority of companies in both nations give some summarized data briefly referring to balance values.

## 5. Conclusions

The adoption of governance models shared by company groups operating on international markets facilitates communication and therefore knowledge, reducing costs and determining the sharing of values and cultural growth. Company efficiency depends on the structural requisites (equity, transparency, independence, responsibility) and functions of governance, on the choices made by governance bodies, the methods for activating adequate processes of development and, not less, the definition of suitable forms of control. The adoption of compatible and interactive governance models allows, on one hand, to obtain and increase the integration of communication, and on the other, to operate in a similar way to uniform company culture and overcome problems linked with different rules and habits.

The traditional conception contrasting the Civil Law and Common Law systems can be overcome by encouraging empathy between the cultures of globalized corporations, intending the acceptance both of the fundamental principles inspiring the Common Law system – based on the individual's ethical values and free market initiative – and the certainty of laws shared on the basis of the Civil Law system. The adoption of numerous codes of self-discipline codes in Common Law countries with particular attention to the definition of generally accepted criteria for *best practices* has allowed an outline of *corporate responsibility* in terms of:

- requisites for transparency and veracity of financial communications;
- constitution and strengthening of governance committees (Substantially compulsory internal committees such as Audit Committee, Nomination Committee and Remuneration Committee as well as voluntary committees such as the CSR Committee and Ethic Committee);
- safeguarded independence of internal and external controllers.

Associated with the above guidelines for defining the global dimension of responsibility within corporate governance is the development of strategies for the integration of stock markets at both European and World level. To safeguard a diffused share market, active and efficient, and all its consequences, the search continues for integrated systems under a monetary profile (the European monetary union is one example), under a technological profile (Internet and telecommunications) and under a legislative profile (directives concerning the functions of financial markets and governance). Quotation on various stock markets - in the USA or in Great Britain, for example – of companies subjected to the legislation of their country of origin – Civil Law, for example – imply effects according to the model of governance adopted and the existing control system. In particular, a number

of rules must be respected as foreseen by the stock market involved or the surveillance body such as, for example, the indication of an audit committee, the main differences between the governance model adopted and the one foreseen in the relative country, the possible violations of applicable law.

If the integration/alliance between world stock markets is to overcome these barriers and reduce variations at governance body level, then it is equally necessary for the same integration between the companies' various control systems. The existence of different legal systems in the various countries must in any case encourage similar control systems for global enterprises in order to avoid/safeguard generally against the phenomena of internationalised fraud which can at least be limited by:

- shared rules of governance;
- extended and shared enterprise culture;
- composition of economic and social interests of all subjects involved;
- rapidity and transparency of information and diffusion of knowledge.

Among the strategic aims of companies operating on international markets, therefore, there must be a search for goals that conjugate the company's uniqueness and specificity, sharing a common legal basis and a uniform economic management in order to create governance synergies, especially regarding the culture of control and lines of communication.

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