The contribution of network governance to preventing opportunistic behavior by managers and to increasing stakeholder involvement:

The contribution of network governance to preventing opportunistic behaviour by managers and to increasing stakeholder involvement: the Eroski case

Giacomo Manetti* and Simone Toccafondi

Department of Business Administration,
University of Florence,
Via dellePandette, 9,
50125 Florence – Italy
Fax: +39 055/4374977 Fax +39 055/4374910
E-mail: giacomo.manetti@unifi.it
E-mail: simone.toccafondi@unifi.it
*Corresponding author

Abstract: This present work is an exploratory analysis of network governance models that are characterised by widespread distribution of decision-making and control, auditing and supervisory functions in company structure, frequently through stakeholder engagement in the management system.

In the study, we verify the way in which NG can involve stakeholder representatives in the governance bodies and in the decision-making process, also preventing opportunistic behaviour of management, according to the stakeholder-agency theory.

A case study of network governance is presented regarding the Spanish cooperative Eroski – a self-governing organisation, with direct participation by representatives of the various stakeholder categories in the main governing bodies.

In the conclusions, we discuss the strengths and weaknesses of the network governance system and its implications for theory and practice and we describe an incremental approach, on an entirely voluntary basis, for implementing this governance model in other corporations, including non-cooperative ones.

Keywords: network governance; stakeholder engagement; corporate social responsibility; stakeholder theory; Eroski.

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Biographical notes: Giacomo Manetti is an Assistant Professor in Financial Accounting at the Department of Business Administration, Faculty of Economics, University of Florence, since 2009. His research interests focus on issues related to corporate social responsibility, sustainability reporting and assurance, social enterprises, third sector, and accounting history. He is author of many articles published on national and international journals and of three books.

Simone Toccafondi is a PhD student in 'Planning and Control' at the University of Florence. His research interests focus on issues related to social enterprises, third sector and social accountability. He is co-author of some papers accepted at national and international congress.

1 Introduction

In recent years the literature on management and organisational economics has paid a great deal of attention to the theme of corporate governance (CG), with a view to ensuring representation and powers of decision-making and control to stakeholders other than shareholders (Luoma and Goodstein, 1999; McGuire et al., 2003; Graaf and Herkströter, 2007).

In the literature on CG, some scholars have pointed out that viewing shareholders as the sole claimants of the firm reflects an inaccurate description of economic value creation and the distribution of value to stakeholders (Asher et al., 2005; Coff, 1999; Donaldson, 2012; Kim and Mahoney, 2010; Spitzeck and Hansen, 2010; Zingales, 2000).

Stakeholder theory (Freeman, 1984) sustains the idea of continuous stakeholder engagement and involvement to increase levels of participation in corporate decisions.

For example, Asher et al. (2005, p.5) affirm that "viewing shareholders as the sole residual claimants is an increasingly tenuous description of the actual relationships among a firm's various stakeholders". In this regard stakeholder theory underlines the relations existing between corporations and a broad range of stakeholders – or all people having a legitimate interest in the corporation (Evan and Freeman, 1988). In other words, "stakeholder theorists have questioned the legal duty of directors to act solely on behalf of the shareholders, and call on companies to recognise a duty to act in the interests of other stakeholders potentially affected by their actions" [Tricker, (2011), p.385; see also McWilliams and Siegal, 2001]. The problem is particularly felt with regard to the composition of the Board of Directors which, in the tradition of agency theory, ought to make decisions chiefly in the interests of shareholders, at the same time guaranteeing that management actions are in line with investor expectations (Li et al., 2008; Jensen and Meckling, 1976; Fama and Jensen, 1983). Nonetheless, following increasing consensus worldwide regarding stakeholder theory (Freeman, 1984), studies are starting to recognise a need for CG organs to meet the needs of stakeholders other than shareholders, while pursuing improvements in their social and environmental performance, once their legal and economic responsibilities have been met (Carroll, 1979).

According to Welford (2007), CG should ensure that the Board is accountable to all shareholders and respects the interests of other stakeholders. This aim is traditionally pursued by arranging for the presence on the Board of Directors of 'independent' members who should pay greater attention than the directors – closely linked to shareholders – to the long-term general interests of the corporation and its stakeholders. Hence follows the decision to nominate non-executive directors and to separate the roles of Chairman and Chief Executive Officer, in order to avoid excessive orientation towards short-term creation of economic value and concentration of power in few hands – rather

to permit transversal forms of control (Li et al., 2008). In recent years, such traditional mechanisms of 'improving' CG have been flanked by attempts to include on the Board representatives from specific categories other than shareholders, such as employees, consumer associations, NGOs and local communities. This is an attempt to block opportunistic behaviour by managers, adopting, on the other hand, proactive behaviour to safeguard stakeholders (Wang and Dewhirst, 1992). The reasoning behind this choice is that such Boards will be more sensitive towards and aware of the economic, social and environmental expectations of the community (Johnson and Greening, 1999).

The stakeholder model suggests replacing the one-tiered approach to CG – where the main body (board of directors or supervisory board) interacts with the other bodies (shareholders' meeting, executive directors, audit committee) – by a structure characterised by stakeholder participation in decision-making, long-term contractual associations, trust relationships, and business ethics. Some authors (Blair, 1995; Kelly and Parkinson, 1998) predict that stakeholder participation in corporate decision-making could generate more accurate and unbiased information and thus enhance corporate efficiency.

In the light of the above, this article's contribution to management and governance literature is to analyse the role of a particular model of CG, known as network governance (NG), which involves highly devolved powers of governance and control held by a number of organs, as well as notable levels of stakeholder engagement and involvement. NG as a distinct mode of coordinating and controlling economic activity, which is qualitatively different from either markets or hierarchies (Bradach and Eccles, 1989; Jarillo, 1988; Miles and Snow, 1992; Powell, 1990) has arisen as a topic of great interest on the research agenda of strategic management, organisation theory, economic theory and economic sociology.

Building on Turnbull (2002c), we refer to NG to indicate structures and organisations that intentionally include multiple stakeholders and distribute decision-making across several boards.

Jones et al. (1997), in particular, used the expression NG in a general sense to refer to a "coordination characterised by informal social systems rather than by bureaucratic structures within firms and formal contractual relationships between them". This definition integrates transaction cost economics and social network theories, and, in broad strokes, asserts that the network form of governance is a response to exchange conditions of asset specificity, demand uncertainty, task complexity, and frequency. These exchange conditions drive firms toward structurally embedding their transactions, which enables firms to use social mechanisms for coordinating and safeguarding exchanges.

In this study, we focus our attention on the above mentioned contributions by Turnbull on NG since his works are especially dedicated to the implementation of network in the governance system of a single organisation, rather than on a building of network among different organisations as in the economic studies on clusters.

The main purpose of the study is to verify the way in which NG can actually involve stakeholder representatives in the governance bodies and the decision-making process, also preventing opportunistic behaviour of management. We aim to indicate the chief limits of a NG model and how to introduce and implement it in a pre-existing system, so making a contribution to the theory and practice of CG.

In this sense, we believe that NG represents an alternative governance system to the one-tier management board models, one which is able to guarantee interaction and

dialogue between the corporation and its stakeholders, giving them the possibility to actively participate in the business management.

The potential contribution of this article towards the general theory of CG is a call for higher levels of stakeholder engagement and for a differentiation of powers and functions among governing bodies, proposing a possible new design of the bodies, roles and rules and re-thinking the way that power may be exercised over corporations.

In the following sections, therefore, we will go on to:

- analyse the main characteristics of the theoretical approaches to CG of large companies and the limits of unitary systems, giving a definition of NG
- present a case study that represents a possible implementation of NG
- draw research conclusions, with reference to our research question, demonstrating how a commercial enterprise might adopt a similar governance structure and how our study can contribute to the CG literature.

2 Theoretical framework

In the past decade, scientific debate on the CG of large companies has essentially focused on four theoretical approaches (Cornforth, 2004):

- agency theory
- stewardship theory
- resource dependency theory
- stakeholder theory.

These four approaches have different interpretative keys and are used to explain varying governance models for companies.

In the agency theory the managers act as agents for the principal (Wheeler and Davies, 2004) but pursue individual interests that are potentially conflicting with those of shareholders [Keasey et al., (1997), pp.3–5]. In this framework, since the risk exists that board members act in their own interests (opportunistic behaviour of management), regulations for CG must chiefly safeguard the interests of investors [Cornforth, (2004), p.14]. According to Williamson, opportunism of management refers to the suggestion (widely associated with transaction cost analysis) that a decision-maker may unconditionally seek his self-interests, and that such behaviour cannot necessarily be predicted. This proposition extends the simple self-interest seeking assumption to include 'self-interest seeking with guile' thereby making allowance for strategic behaviour [Williamson, (1975), p.26; 2002], e.g., strategic manipulation of information or misrepresentation of intentions. In practice, the great majority of national regulations and self-disciplinary codes are based on the agency theory, as they seek to protect the investor from the opportunistic behaviour of his agents.

In order to enhance company performance in line with market expectations, it is desirable to indicate the duties of board members and directors, their independence from partners who nominated them, their remuneration mechanisms (Barontini and Bozzi, 2009) and incentives [Tosi, (2008), pp.160–163]. In some cases, in addition to these

regulations established by law or voluntarily adopted, incentive or disincentive systems are introduced to avoid opportunistic and fraudulent behaviour.

A notably different outlook is taken by stewardship theory (Muth and Donaldson, 1998), according to which board members act in the shareholders' interests to pursue common aims. Consequently, their main function is not so much to ensure that directors act in accordance with the interests of the shareholders, as to improve organisational performance, working to improve strategies and decision-making processes. Board members, therefore, should chiefly be experts in business administration and management control, so they can give optimum backing to managers, in a context of collaboration and mutual support (Hung, 1998).

Opportunistic behaviour contrasts with stewardship behaviour, which involves a trust relation in which the word of a party can be taken as his bond [Williamson, (1975), p.26].

Resource dependency theory (Pfeffer and Salancik, 1978) holds that businesses should be run principally to adapt themselves as best as possible to the general and specific environment where they operate. With this in mind, board members must above all guarantee finding the resources necessary to the company's sustainable development. To achieve this aim, board members must maintain good relations with key external stakeholders, in order to guarantee a constant flow of resources to and from the external environment. It follows that board members should be co-opted, with particular consideration given to the quality of relations existing with external contacts and lenders [Cornforth, (2004), p.13].

Lastly, stakeholder theory (Freeman, 1984; Freeman and Evan, 1990) counterbalances investor-oriented theory by broadening the range of people for whom the company is run. Inspired by this principle, in recent years, some self-disciplinary codes have emphasised the role of stakeholders in the organisation structures and management processes of large corporations, with additional reference to the concept of corporate social responsibility (Wieland, 2005). In line with this concept, experts (Hill and Jones, 1992) have developed the so-called *stakeholder-agency theory*, asserting that board members act as agents of stakeholders, who in turn act as principals. As in agency theory, Hill and Jones (1992) see the firm as a nexus of contracts but unlike in agency theory, it encompasses implicit and explicit contractual relations between all stakeholders whilst recognising power differentials. Whereas in agency theory, principals hire agents to perform services on their behalf, managers are the only group of stakeholders who enter into a contractual relationship with all other stakeholders and have direct control over the decision-making apparatus of the firm. The unique role of managers suggests that they can be seen as the agents of other stakeholders. Both principal-agent and stakeholder-agency relationships are policed by governance structures.

In other terms, stakeholder-agency theory "can be viewed as a modification of agency theory to accommodate theories of power including resource dependence theories of organizations" [Hill and Jones, (1992), p.21].

According to stakeholder and stakeholder-agency theories, in order to acquire accurate information concerning stakeholders' expectations and to invest them with true decision-making power, companies should adopt:

- strategies for involving company stakeholders
- recruiting mechanisms to place representatives from the various categories in governance and control functions

- tools that put their expectations in hierarchical order, classifying them as primary and secondary according to their strategic priority (Clarkson, 1995; Andriof and Waddock, 2002).

With reference to the last point, it is important to recall that all categories of stakeholders (internal and external) are crucial and should be involved, but this does not prevent a corporation from explicitly declaring an order of priority in the engagement between the different categories. On this item, Mitchell et al. (1997) argue that the salience of stakeholders (or the degree to which their arguments were perceived to count) depended upon the stakeholder possessing three attributes: power, legitimacy and urgency. In other words, it is not compulsory or necessary to consider all the groups at the same level of relevance and importance, because of the different role and importance of each category in each organisation. In this case, however, corporations should declare the motivations of different levels of relevance and, subsequently, engagement among the categories. There are also some scholars who, despite recognising the intrinsic importance of stakeholder theory, are critical of its concrete application to CG systems because of the problem in reconciling the expectations of different stakeholders (Sternberg, 1997), not accepting different levels of relevance. In any case, recent literature (see for example Tricker, 2009, 2011) recommends that new paradigms of CG embrace the expectations, requirements, duties, responsibilities, powers, sanctions and accountabilities of each participant in the organisation.

Dealing with an agency relationship, the stakeholder-agency theory pays particular attention to possible opportunistic behaviour by board members and to the costs of this type of *governance* model (Heinfeldt and Curcio, 1997).

Studies have principally concentrated on the distinction between the management structures of big companies in continental Europe and Japan (where some categories of stakeholder are involved to a reasonable extent) and those of English-speaking countries (almost exclusively shareholder-oriented). This analysis, however, has primarily been used to explain the differences found in capitalistic models, in ownership structure, industrial relations and the role of stock markets within these contexts (Aguilera and Jackson, 2003). By contrast, less attention has been dedicated to identifying and evaluating mechanisms that can actually be applied to guarantee involvement of stakeholders in company governance through delegating decision-making power or auditing and control functions (Clarke, 1998).

In the early 90s, Michael Porter was already advising policy makers and American corporations to nominate client, supplier, staff and local community representatives onto their boards of directors [Porter, (1992), p.16].

Meanwhile, professional doctrine and practice were questioning the effectiveness of company regulations imposed by governments or international bodies while evaluating, on the other hand, the potential of new systems adopted on a voluntary basis by companies. It is quite possible that corporations might design systems of governance that are capable of preventing the risks of opportunistic behaviour, information imbalance and conflicts of interest more successfully than governments (Turnbull, 2002b).

In the light of the above, pursuing the path opened by stakeholder and stakeholder-agency theories, the model of NG aims to improve the effectiveness and efficiency of decision-making systems, through a wide network of governance, auditing and advisory bodies, where stakeholders are intensively engaged and involved. In fact, according to the literature, NG provides a way for "decomposing the enterprise in efficient information

processing respects" [Williamson, (1985), p.283] to recognise the 'neurophysiological limits' of executives [Williamson, (1975), p.21].

As pointed out by Mathews (1996, p.32) the 'reduction in data transmission and data complexity' can be 'prodigious' with a form of NG based on a holonic architecture. In this way NG reduces 'communication overload' [Williamson, (1985), p.281] and 'bounded rationality' [Williamson, (1975), pp.4–7].

Although the NG model is open to various interpretations and practical applications, it is essentially the articulation of governance functions into interdependent decision-making centres defined, by scholars, as one single *compound board* [Turnbull, (2002a), p.1]. This expression is used to mean *any system of governance that has two or more control centres which are constitutionally different on a non-trivial basis* [Turnbull, (2002a), p.2]. The *compound board* can be set up in accordance with company statute or as a consequence of a request from a shareholders meeting[1].

As a general rule and special exceptions excluded, studies report numerous examples where human organisations are more likely to avoid risks of failure and to pursue their objectives effectively and efficiently, if they have:

- capillary distribution of information at all hierarchical levels through parallel channels (Shannon and Weaver, 1949)
- decentralised and delegated decision-making power, with varying degrees of intensity at different levels of company structure (Von Neumann, 1947)
- a variety of persons and bodies to whom control is delegated (Ashby, 1968).

Of course, a system based on delegation of power and self-regulation, better if steered by incentives at corporate level, needs an adequate information system that gives stakeholders and external bodies the necessary information to evaluate the actions of controllers and managers. By using a system of incentives and disincentives and allowing for individual nomination and no-confidence, stakeholders and external bodies are capable of swiftly taking over from directors that are ineffective and inefficient at corporate level (Turnbull, 2010).

In this sense, NG should reduce the risk of taking decisions in a context of bounded rationality (Williamson, 1985; Williamson, 2002) and permit redistribution of information among the various hierarchical levels, avoiding overload for executives, directors and managers (Williamson, 1985).

3 The limits of unitary systems and the opportunities of NG

Traditional systems of governance, in particular, the one-tier management board system common in English-speaking areas, have some critical areas that, over time, as the corporations grow, can reveal structural defects.

First of all, a unitary governance system risks the gradual loss of relevant information during communication between the various hierarchical levels, when the corporation grows in size (Turnbull, 2010).

A widespread distribution of decision-making power and control systems using informal social structures and *communities of practice*, associated with traditional (one-tier and hierarchical) governance systems, can in the long term improve an organisation's performance. In particular, such a method guarantees more effective and

efficient communication, as long as the company is not too reliant on short-term market movements. In the latter instance, the hierarchical and centralised system of governance still seems to be better for dealing with complex and turbulent external circumstances (Dupouët and Yıldızoğlu, 2006). In other words, hierarchy and informal communities are complementary ways for governance that is effective and efficient in situations where ownership is stable and oriented towards a long term financial return (Bowles and Gintis, 2002).

However, relevant information is lost in the communication process between executive levels and top governance bodies in a bottom-up approach (Turnbull, 2010). Some studies on the subject maintain that top governance bodies only need essential and relevant information and that, for this reason, a loss in quality and quantity along the information system chain does not seriously undermine the quality of decision-making (Thomas et al., 2009). According to this theory, the inevitable information imbalance between upper and lower levels of the hierarchy is reduced where trust and company culture is widespread. However, it is clear that a hierarchical and centralised system finds difficulty in growing trust between the various levels. A possible solution to this problem might be to increase the number of communication channels between the various hierarchical levels, perhaps by using some informal social structures, rather than concentrating all efforts on improving the existing single channel (Turnbull, 2002b).

In addition, as a company grows in size, the unitary system will have to manage a growing burden of varied information that has competing levels of priority. In such a situation, the company runs a serious risk of being ungovernable, owing to the impossibility of managing the system with a surfeit of variables, unless multiple control systems are used (Ashby, 1968). As the company grows, there is a risk of task and function overload falling on board members and managers, who will tend to come up with stereotyped solutions based on fixed ideas, general rules of behaviour and control models (Carter and Lorsch, 2004).

A unitary board system of governance, moreover, cannot always guarantee the independence of a sufficient number of directors, especially where the board is small.

Although studies have not supplied a univocal definition of independence of board directors (Brennan and McDermott, 2004), there is a general tacit expectation that independent board members can be more effective in carrying out auditing and control of managers' activities, reducing agency costs stemming from separating the ownership and control processes. Empirical evidence on the connection between board independence and improved financial performance of corporations is contradictory (Bhagat and Black, 1999, 2002; Buchholtz and Ribbens, 1994). Nonetheless, nowadays independence is a requirement of many regulations and self-disciplinary codes worldwide (Gupta and Fields, 2009).

The outline above shows that a single governance body, often restricted to a few board members, for practical reasons of representing shareholders, does not allow a qualified majority of independent board members (executive and not) in board meetings.

Furthermore, a unitary governance body tends to establish direct contacts and relations with external accounting auditors. It is well known that theory recommends full independence of auditors from the executive board, to guarantee the reliability of controls carried out of accounting and balance information [Power, (1997), p.132]. Moreover, studies on the subject have often recalled how a high level of board independence helps and supports the independence of auditors [Spira, (1999), p.263]. It has also been

observed that, if the auditor can work within the company in a climate of independence from the object of his controls, then a virtuous circle is created that generates better auditing results (Power, 1997). In accounting studies, auditor independence is traditionally distinguished in terms of substantial or professional (*in fact*) independence and formal (*in appearance*) independence (Wallman, 1996; Falk and Frucot, 1997). With reference to the latter, one must avoid situations where auditor independence might be threatened by insufficient distance between controller and controlled, to avoid undermining the quality of control activities. A unitary board tends to reinforce links between auditor and board members, since there are no bodies in between, or even above – as with the two-tier management board system – to guarantee a formal distance.

In addition to these risks, there is that of opportunistic behaviour by directors, in the absence of an adequate system of balance of power. In actual fact, according to *agency theory* and *resource dependence theory*, the elements of a unitary board are more subject to the risk of opportunistic behaviour damaging to the company, compared with those on compound boards of governance (Sundaramurthy and Lewis, 2003; Daily and Schwenk, 1996). Specifically, Daily and Dalton (1994) have demonstrated how companies that tend to fail are more frequently associated with strongly centralised and hierarchical governance systems, with few independent board members. In these situations, Chief Executive Officers (CEOs) often have conflictive behaviour and tend to prefer short-term financial return strategies in order to guarantee their personal success.

The risks in systems outlined, plus the lack of involvement of representatives of stakeholders other than shareholders, support the thesis for a system of governance that is more flexible, multi-stakeholder, decentralised and permeating company structure.

From this point of view, NG is potentially capable of resolving some of the limits of centralised and unitary governance systems previously mentioned.

Regarding the loss of relevant information, executives, directors and managers show great interest towards the diversification of information sources (McKinsey, 2007). As happens in the field of information technology and, more especially, in business engineering systems, the effectiveness of communications is strengthened by creating parallel channels for data transmission, in order to generate alternative output sources. It may therefore be envisaged that boards of directors receive information from several channels, tapping in to all hierarchical levels or through systematic and organised consultations with stakeholders (Turnbull, 2010).

As far as the risk of unreliability in company information systems, NG's transverse control by stakeholders and external bodies can help to guarantee the correctness, usefulness and completeness of information (Logue and Yates, 2006). This control may either take place through a stakeholder panel in a staff role, or by directly involving lenders, employees, suppliers, clients and local community, via their co-opted or democratically elected representatives [Driver and Thompson, (2002), pp.124–126]. An effective stakeholder engagement, one that is not simply a reconciliation of interests designed to satisfy their expectations of stakeholder management [Huse and Rindova, (2001), p.174], would result in a common effort to resolve issues emerging in relations between the corporation and its surrounding environment. The stakeholder engagement would result both in mutual benefits for the company and its stakeholders (Phillips, 1997) and in reciprocal rights and duties [Andriof and Waddock, (2002), p.19], in a network model that interprets relations as two-way, instead of one-way (Rowley, 1997).

As far as the task overload on board members and directors is concerned, NG relieves their pressure of work through delegation, decentralisation and delocalisation.

Lastly, NG introduces a system of checks and balances to manage conflicts of interest, with particular reference to those arising from the nomination and remuneration of an external auditor. A division of power among two or more boards makes for – at least in theory – more credible handling of conflicts of interest, for example, by submitting the auditor's nomination to a stakeholder committee for approval. Generally, separation of responsibility and equal distribution of power among several bodies, carefully avoiding the most evident conflicts of interest, results in significant reduction of the risk of opportunistic or fraudulent behaviour (Turnbull, 2010).

In the light of the above premises, we believe that NG may be coherent with a 'new CG paradigm' that recognises "the legitimate interests of the executive management, the investors in the voting entity, and all added-value stakeholders, including employees, those in the up and downstream added-value chains, and the suppliers of debt finance" [Tricker, (2011), p.391]. Furthermore, according to Tricker (2009) the paradigm of NG makes a relevant attempt in giving an answer to the following governance issues:

- the relationship between individual, enterprise and the community
- mapping of all the elements affected by the governance of such organisation
- the expectations, requirements, and demands of each participant
- the duties and responsibilities of each participant
- the powers, sanctions, and accountabilities of each participant.

4 Methodology

In this study we adopt a case study research approach as a method for answering the exploratory research question whether NG represents an alternative governance system to the one-tier management board models, and whether it is able to prevent opportunistic behaviour by managers and to better involve stakeholders in the decision-making process. Through the case study we verify whether NG models are able to guarantee interaction and dialogue between the corporation and its stakeholders, giving them the possibility of actively participating in the business management.

Case studies have been defined as "research situations where the number of variables of interests far outstrips the number of data points" [Yin, (1994), p.13] or as "a research strategy which focuses on understanding the dynamics present within single settings" [Eisenhardt, (1989), p.534]. While case studies may use quantitative data, a key difference from other research methods is that case studies seek to study phenomena in their contexts, rather than independent of context (e.g., Pettigrew, 1973; Gibbert et al., 2008).

According to the literature, building theory from case studies is a research strategy that involves using one or more cases to create theoretical constructs, propositions and/or midrange theory from case-based, empirical evidence (Eisenhardt, 1991). Case studies are here understood as "rich, empirical descriptions of particular instances of a phenomenon that are typically based on a variety of data sources" (Yin, 1994).

In this research we utilise a single paradigmatic case study with particular reference to archival analysis and participatory observations. Our methodological approach incorporates both quantitative and qualitative data and begins as close as possible to the

ideal of no preconceived theories to test. However we determined the research question and some variables prior to commencing the research (Siggelkow, 2007).

The literature contains few detailed case studies referring to NG as defined in the present research.

For this reason, basing ourselves on the already mentioned studies of Turnbull and Pirson (2011a, 2011b), we selected cases indicated in the literature as particularly representative of that model.

Within these cases, we analysed the Mondragón group. Finally, within that group, we chose the Eroski cooperative as the one best in concretely applying NG principles, given its special historical and statutory characteristics, as well as for the co-existence in the governing bodies of two categories of priority stakeholder (consumers and worker-owners). Eroski also breaks down its governance into various organs with different attributes and powers, so as to create a system of cross-checks.

Lastly, we noted that this case ensured high accessibility to data, both in terms of archival analysis and of participatory observation. This factor was fundamental for an in-depth study of the strengths and weaknesses of our case study's NG, as well as to understand which elements might be replicable in other contexts.

In the light of these considerations, we felt the case to be absolutely paradigmatic and particularly significant for its implications on theory and practice.

We decided upon multiple data collection methods according to the next step of Eisenhardt's (1989) process with particular reference to the above-mentioned archival analysis and participatory observation. More specifically, we analysed, using a content analysis, the annual and social reports of Eroski for the years 2010 and 2011, as well as the corporation statute and the internal code of conduct.

The method chosen for archival analysis was content analysis, which is widely adopted in corporate disclosure studies (Guthrie et al., 2004) because it allows repeatability and valid inferences from data according to their context (Krippendorf, 1980). Two researchers conducted the analysis with the assistance of a native Spanish speaker.

On the basis of the research questions mentioned above, a list of detection and classification rules was defined and discussed and classification criteria for each dimension of the research questions were subsequently identified.

The content analysis was addressed to verify the presence of stakeholder representatives in the main governing bodies and to understand the NG functioning as described in the above-mentioned documents.

Participatory observation took place by means of direct contact with organisation staff specifically involved in social reporting and also through online enquires (website access and e-mail and online forum interaction) for specific aspects of the research.

Two researchers personally participated in the 'preparatory meetings' attended by Eroski's worker and consumer members in the two-year period 2010–2011. Eroski's preparatory meetings are a particular form of participation in which worker and consumer members have the possibility of understanding in-depth the management and governance systems and can effectively contribute to the decision-making process. At these meetings they can also interact and directly communicate with managers and directors. Over 15,000 people attended the 25 sessions (2010) and the 19 sessions (2011) of the preparatory meetings. In these meetings the members received detailed, specific information on Eroski's business structure and development. For our research team they constituted a valuable opportunity to collect information on Eroski's stakeholder

engagement and participation processes. The research team monitored and kept track of the meetings using sound and video recording systems.

The contemporary use of literature review, archival analysis and participatory observation facilitated cross-checking and triangulation of the data and therefore contributed to strengthening constructs (Yin, 2009) and to answering the research questions.

Upon completion of data collection, data analysis began at organisation level so that the research team was able to gain a deep familiarity with the single case (Eisenhardt, 1989; Yin, 2009).

The case study method, if paradigms are established for it, allows us "to develop a metaphor or establish a school for the domain that the case concerns" [Flyvbjerg, (2006), p.230]. Therefore, the present study has made a selection from those organisations that can be examined on the basis of their critical areas and paradigmatic characteristics [Flyvbjerg, (2006), p.230]. The case analysed has the properties of a 'critical case' [Patton, (2003), pp.230–242]. In fact, it is characterised by an innovative organisational structure and it does not represent an 'extreme case', which is usually difficult to verify.

In the following section we illustrate how the concepts of NG and mechanisms to reduce opportunistic behaviour by managers and to increase stakeholder participation have actually been put into action in the paradigmatic case of Eroski.

5 The Eroski case

Eroski is a consumer and labour cooperative based in the Basque Country in northern Spain, parent corporation of the group of businesses with the same name, deriving from the Mondragón system[2]. The Eroski cooperative was set up in 1969 out of the merger of nine cooperatives. Its main operating area is in Spanish large-scale distribution, running own brand hypermarkets (26) and supermarkets (159) in the autonomous community of the Basque Country and in other provinces of Spain [Eroski, (2012a), p.1]. The Eroski group is very diversified, as it also manages travel agencies, sport and leisure equipment stores, perfume stores, eyewear centres, insurance agencies, cell phone services and gas stations (Eroski, 2012b). It is one of Europe's major distribution chains.

The cooperative started out with 88 worker-owners and 1,000 consumer-owners, but in 2011 it had gathered 8,463 worker-owners (out of a total of 10,887 employees), 427,355 consumer-owners and had a turnover of about 1.9 billion Euro (Eroski, 2011; Eroski, 2012a).

Eroski is a self-governing organisation, with dual mutual aims and direct participation by representatives of the various stakeholder categories in the main governing body (*Consejo Rector*) and in the special consulting and internal audit bodies laid down by statute.

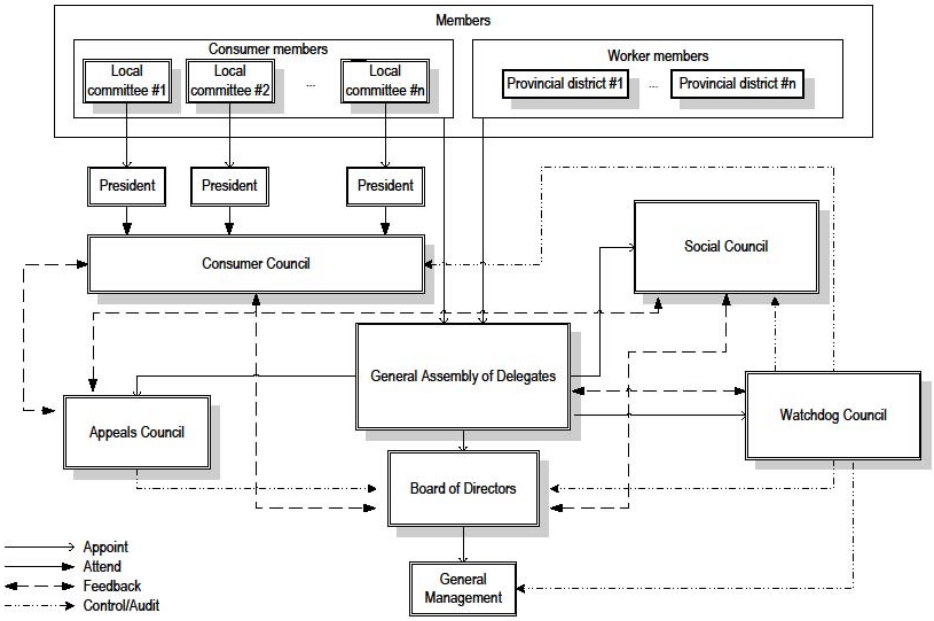
The governance model of the cooperative (Figure 1) envisages active and direct participation by the main stakeholders and has five organs:

- General Assembly of Delegates (*Asamblea General de Delegados*)
- Board of Directors (*Consejo Rector*)
- Watchdog Council (*Comisión de Vigilancia*)

- Social Council (*Consejo Social*)
- Appeals Council (*Comité de Recursos*).

plus a Consumer Council (*Consejo Consumerista*) that represents consumer-owners, as well as giving consulting support to the Board of Directors[3].

Figure 1 The Eroski governance system



Source: Elaborated by the authors

The General Assembly of Delegates is the highest organ of government. It represents the owners and is made up of 500 members, of which 50% are nominated by worker-owners and the remaining 50% by consumer-owners[4]. In addition to being the maximum expression of the organisation's wishes, the Assembly's principal duties include the election and the abrogation of the Watchdog Council, Social Council, Appeals Council and the Board of Directors (headed by the President of the Assembly). The Assembly also entrusts management powers to the Board of Directors. The electoral body of the General Assembly is made up of member delegates, together with the members of the Board of Directors, Watchdog Council and Appeals Committee.

The Board of Directors is the body that represents the cooperative, has power of decision regarding conferment and abrogation of member status and nomination of executive directors. On a more general level, the Board is responsible for organising, managing and controlling the cooperative's activities. Eroski's Board of Directors is made up of 12 members, six of whom represent the worker-owners and six, the consumer-owners. These must be elected from members belonging to the category they represent. The Board elects the General Managers who are to manage the cooperative and are responsible for organising operating activities. Members of General Management cannot sit on the Board of Directors at the same time.

The Social Council's chief function is to consult with the executive body concerning the management of labour relations. Its principal task is to enable communication between worker-owners and the Board of Directors, representing the interests and expectations of the workers in the organisation's decision-making processes. It has authority to prepare nominations of candidates representing worker-owners to the Board of Directors, to formulate proposals concerning labour in order to influence decisions by the governing bodies, to transmit information received to worker-owners and to propose initiatives on behalf of members to top levels. It also must settle more marginal labour-related disputes and pronounce its opinion on penalties applied in connection with more important labour issues. The Social Council is made up of a minimum of 12 to a maximum of 16 delegates, elected by the General Assembly of Delegates considering constituencies of workers based on the provincial districts.

The Consumer Council is the other consulting body of the Board of Directors and is charged with offering advice on relations with the consumer-owners, on client issues and in all other fields specified by the cooperative's internal regulations. In particular, the Consumer Council formulates proposals regarding use of a special fund 'for cooperative education and promotion', regarding consumer-owner candidates nominated to the Board of Directors and regarding application of penalties for consumer-owners to the executive body. The Council is made up of the presidents of local consumer councils (local assemblies of the cooperative's consumer-owners).

The Watchdog Council has the task of:

- internal auditing of accounts and year-end results[5]
- monitoring electoral processes of interest to cooperative bodies
- supervising the general conduction of management by the Board of Directors and the Social Council
- suggesting candidates as external auditors to the General Assembly of Delegates and verifying their effective independence
- supervising the legitimacy of decisions taken by the Board of Directors and, if required, decreeing their annulment (where they are void or voidable).

This body is made up of three members nominated among members[6] of the General Assembly of Delegates (to which it is accountable) and it may request on the Assembly's behalf any type of information from the bodies it controls. Two of the members elected must be consumer-owners and one, a worker-owner.

Lastly, the Appeals Council has the function of ombudsman and must give its opinion on appeals made by members against decisions and measures taken by the Board of Directors. In the case of disputes over labour relations, or relations with consumer-owners, the committee's decisions must be taken following mandatory consultation of the Social Council, that is, the council of consumers. The body is made up of five members nominated under secret ballot by the General Assembly of Delegates, three of whom represent worker-owners and two, consumer-owners. Their office is incompatible with other offices within the cooperative. The Council's decisions are effective immediately and are final, since they have the same weight as resolutions of the General Assembly of Delegates.

Relations between the General Assembly, the Board of Directors, the Watchdog Council and the consultative and ombudsman councils are two-way, based on constant interchange of communication and permanent negotiation of decisions. In this way, the hierarchical relationship is in effect corrected by principles of democracy and participation.

In short, given that operating decisions and ultimate authority are to all effects in the hands of worker- and consumer-owners of the cooperative, it might be said that Eroski's management structure is an 'inverted conglomerate', compared with a normal hierarchical system [Freundlich et al., (2009), p.11].

The general principle is to guarantee an institutionally protected process of self-governance, by means of which the stakeholders – upon whom the cooperative's existence depends – have adequate information and effective power of control.

Adoption of a model of participatory governance answers the need of various stakeholder categories to be involved in corporate management, both inside and outside the business, as had been requested of Eroski when it entered the Mondragòn system.

This cooperative group, from its foundation, has had a corporate culture based on inclusion and participation in company activity by the community of Mondragòn (town in the Basque Country), in order to achieve both operating legitimacy and the necessary support to facilitate the company's territorial growth.

These values were sustained by the cooperative group at its founding and imposed by statute on its member cooperatives.

6 Discussion

The description we have given is instrumental in evaluating the presence of NG requisites in the case study and in showing how a commercial enterprise may adopt a similar governance structure. First of all it is necessary to verify if a model of NG is applied by Eroski. Then, we shall see how this governance model contributes to preventing opportunistic behaviour by managers and to better involving stakeholders in decision-making process. In our Conclusion, we might make some suggestions on possible adaptations of and changes to this model of governance for other corporations, especially to commercial enterprises without mutualistic or idealistic goals.

As we underlined above, the principal characteristic of NG is the articulation of governance functions into interdependent decision-making centres. In Eroski the basis of a network of stakeholder intelligence is represented by:

- the provision for Social Councils and Consumer Council, which represents governance bodies elected by workers and consumers with the power to influence the management in business decision-making processes
- the independence, plus direct, periodical and two-way relations between the different governance bodies
- the presence of stakeholder representatives in Board of Directors.

The model represents a system of governance with two or more control centres, constitutionally different on a non-trivial basis: a single *compound board*, expression of NG.

With reference to the prevention of opportunistic behaviour by managers, the expectations of the main stakeholders (workers, consumers and local community), which act as principle, have to be considered by management (agents), considering the direct power of control held by Social Council and Consumer Council in the decision-making processes.

The involvement of stakeholders is guaranteed by the engagement of:

- the workers nominated in the Social Council
- the consumers nominated in the Consumer Council.

Moreover, we emphasised other aspects, indirectly related to the aims of the present study, which may contribute in resolving some of the limitations that typically affect a unitary governance system. In particular, the availability of information from non-management sources and parallel information channels that allow crosschecks, guarantees for Eroski's supervisory bodies the quality and quantity of information flow, reducing the risk of losing important data. Furthermore, direct information channels between Social Council and Consumer Council, on the one hand, and Board of Directors and management, on the other, allow the latter to:

- receive information that would be otherwise unavailable (e.g., from stakeholders who are in direct contact with operating activities)
- increase their capacity of verifying and monitoring activities, thus guaranteeing timely and flexible corrective measures
- reduce audit risk [Turnbull and Pirson, (2011a), pp.101–114].

In brief, in Eroski there are systems and operative mechanisms of decentralising power and control and extensive forms of stakeholder involvement and dialogue in the decisional processes. Furthermore, powers of governance, management and auditing are rigorously separated in Eroski among the six bodies analysed above.

The risk associated with overload of tasks and information on a unitary governance body is reduced, thanks to the division of decision-making processes and power among the various boards and committees, which guarantee the involvement of workers, consumers and selected key stakeholders. An effective and efficient system is guaranteed by attributing strategic control and planning functions to the Board of Directors, management to the General Management, internal auditing and monitoring of other bodies to the Watchdog Council (completely independent) and ombudsman functions to the Appeals Council.

The independence and distance of the 'judge' (Watchdog Council) from the 'judged' (management) ensure reduced risks of conflicts of interest at all levels of the network [Turnbull and Pirson, (2011a), p.112].

Nevertheless, a limit of this case study is connected with the need to verify, within the NG model, the effective operation of the various bodies. Eroski's complex structure of committees and boards does not necessarily guarantee that worker- and

consumer-members or financial backers can actually exercise their democratic rights, typical of the cooperative ethos. In fact, it has been demonstrated that, in similar organisations [Bakaikoa et al., (2004), pp.82–84]:

- about 60% of the workforce does not take on member status
- although member participation in the congress – the biggest representative organ – is guaranteed under statute, this right is actually not exercised by a broad majority.

Similar 'capitalistic' developments are common in cooperatives that undergo strong growth (Cornforth, 2002). They have significant consequences for the executive bodies, because they undermine true representation and increase the concentration of decision-making powers into the hands of a few individuals, thus violating one of NG's basic principles. A similar situation can also occur in company groups that are not cooperatives, where the network model is merely a matter of form. In this case, executive and decision-making bodies represent almost exclusively the dominant economic element, which co-opts – not elects – any stakeholders.

In this context, the contrast between agency and stewardship theories again comes to the fore, where the former notes that the possibility of opportunistic behaviour by board members renders ineffective any governance structure designed to guarantee participation, democracy and distribution of decision-making and control powers.

In general terms, case study results show that, without encouragement from shareholders and management and/or specific requests from sector authorities, it is rarely possible to introduce NG systems into an organisation, whether for capitalistic, mutualistic or idealistic ends.

Moreover, if the organisation culture is not prepared, the system risks working on paper only, i.e.:

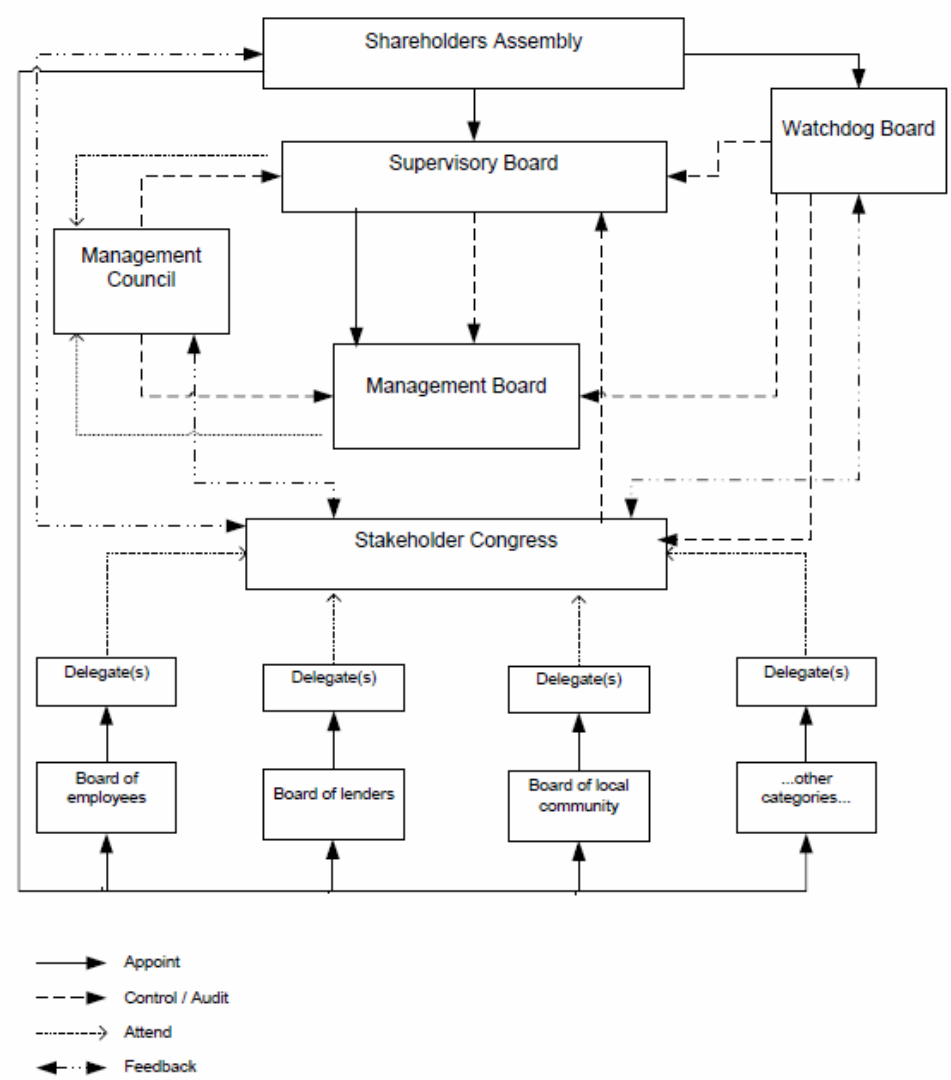
- the boards do not meet regularly or there are few participants
- board decisions are actually taken with management in mind
- stakeholder representatives are co-opted by the organisation for their alignment to management views, rather than for their critical contribution to company management.

It is also clear that an NG model has more likelihood of working successfully if designed and implemented during the start-up phase of a new business venture, rather than following radical modification of an already-existing model of governance.

Cooperative enterprises, by law and by statute, already include some stakeholder categories in governance. In this sense, they have a 'head start' over capitalistic businesses in applying even the most basic NG instruments, particularly as far as regards stakeholder engagement (workers, suppliers or customers, depending on the type of cooperative).

Nevertheless, an indicative description of how a NG system might be introduced into a corporation is presented by Turnbull and Pirson (2011b). The division of power and labour is a core requirement that could be introduced by amending the corporate constitution. Shareholders would be required to appoint at least four boards: a Supervisory Board, a Management Board, a Watchdog Board and one or more Stakeholder Boards (Figure 2).

Figure 2 Example of NG for corporation/company



Source: Elaborated by the authors from Turnbull and Pirson (2011b, p.9)

The Supervisory Board would appoint and monitor the Management Board, set the corporate direction, and formulate and review strategy. The Management Board would be in charge of daily operations and strategy implementation.

The Watchdog Board should have no powers to manage the business but would select, remunerate, and control the auditors and advisors. The Watchdog Board has power to at least veto, if not decide how to manage any conflicts of interest such as the nomination, remuneration, and retirement of directors or any related transaction (Turnbull and Pirson, 2011b).

The corporate constitution should also make provisions for corporate stakeholders to appoint their own specialised advisory boards to protect and further their interests as

employees, clients, lenders, suppliers and local community. In this perspective, the delegate(s) of one or more Stakeholder Boards would coordinate shared concerns at a Stakeholder Congress held before the shareholders' meeting. Turnbull and Pirson (2011b) suggest that the Stakeholder Congress might be chaired by the industrial sector's regulator (if present) as a means of obtaining formal and informal private feedback about the integrity of business operations. Stakeholders and the regulator would report their concerns to shareholders at the shareholders' annual meeting.

The Stakeholder Congress provides the Supervisory, Management, and Watchdog Boards, as well as the shareholders, with feedback. The other boards provide one another with further feedback. The entire process ensures that the board members' information processing needs are met. By dividing labour, information processing capabilities are also enhanced, while checks and balances, for example, between the Watchdog and the Management Board improve risk management.

7 Conclusions

The main aim of the study was to verify the way in which NG can actually involve stakeholder representatives in the governance bodies and in the decision-making process, also preventing opportunistic behaviour of management, according to the stakeholder-agency theory.

This was verified by analysing a case study with particularly critical and paradigmatic issues, focusing on identifying the main characteristics of NG in Eroski's governance model.

Having found a governance system based on a compound board and a widespread distribution of decision-making processes among the various governing organs, we can affirm that Eroski's NG allows careful stakeholder engagement (especially of members and workers) and prevents opportunistic behaviour by managers.

Moreover, according to stakeholder theory (Clarkson, 1995; Andriof and Waddock, 2002), the decisional power of stakeholders is guaranteed by statutory regulations that decree their involvement in governing organs.

The stakeholders, therefore, 'control' the company in a broad sense and oversee mechanisms for nominating directors and managers.

And a strong presence of consumer members and workers in governing organs makes it possible to bring the expectations of these categories of stakeholder to the attention of the company.

Although analysis of a single case does not allow automatic generalisation of results, the case studied enables us to observe the reality of a NG model at work.

In the light of the above, we can affirm that NG can – but not *necessarily* must – effectively contribute to stakeholder engagement and to preventing opportunist behaviour of management, albeit with some limits that are intrinsic and endogenous to the theoretical framework and to the approach chosen.

In particular, it should be clear that NG is a generic term, embracing multiple practical implementations of the theory behind it. In reality, even the simple application of the two-tier management board model is a first step to creating a governance structure oriented towards decentralisation, balance of power and stakeholder involvement, although an actual network structure does not exist.

A limit of NG is the contradiction of its main aim of reducing complexity of the governance system. The continuous involvement of stakeholders, the participation of their representatives in decision-making processes, the delegation of auditing and supervisory functions to external elements, the growth in number of boards and committees are all factors that, at least in appearance, increase the complexity of the governance system. Under a systemic approach, the complexity only grows if the amount of information to be handled grows at an individual level. If, on the contrary, the information load is evenly distributed, then even a growing flow can be better tolerated and handled (Simon, 1962).

Moreover, it is worth pointing out the risk connected with the real capacity of involving some stakeholder representatives in decision-making processes. In effect, stakeholders who participate in social bodies are taking on responsibility that is not always adequately compensated by the mere direct control of the company. Therefore, in the absence of adequate incentive mechanisms, the cost-benefit ratio of participation in company governance might discourage adhesion to involvement.

Furthermore, as we classified NG in the *stakeholder-agency theory*, if the NG model involves only some categories of stakeholders (as happens in Eroski for workers and consumers), the expectations of the non-involved stakeholders may not be considered by board members.

To this might be added a general consideration – that it is unrealistic to suppose that an NG system could be imposed by government through compulsory legislation (Turnbull, 2010), while it is desirable for such models to be adopted via a process based on principles of self-determination and self-governance (Hock, 1995). This would allow every cooperative to adapt the system to its own internal and group structures, to the key stakeholders present, to the needs of the actual operating sector, to the nature of the main economic body and to the capitalistic model of their country.

Finally, it must be remembered that the case study presented in this work is a critical case, which has unique characteristics compared with other governance models at international level [Flyvbjerg, (2006), p.232]. This study, in fact, describes a cooperative enterprise whose democratic structure, statutory 'open door' principle and pursuit of mutual ends would be hard to find in a purely business context. Nonetheless, we believe that the model described here could be also adopted by commercial enterprises, without these characteristics. It is quite conceivable that a company, whatever its legal or ownership structure, might decide to voluntarily broaden representation of its governing organs to independent directors, emanating from such categories of stakeholders. This might be prompted by specific legislation inspired by principles of co-determination (*Mitbestimmung*) – as, for example, in Germany where all corporations with over 2,000 employees are required by law to appoint shareholder and employee representatives in equal numbers on the supervisory board. Or, it might be a purely voluntary decision taken by the shareholders' assembly.

Board of Directors and the Audit Committee apart, if legislation permits, the shareholders' assembly or the Board can set up staff or line functions to carry out tasks of supervision, audit and control or simply as advisors. They can also decide whether or not to give these organs certain powers of decision. One might therefore foresee for-profit organisations borrowing and adapting models and tools of governance and auditing directly from cases of NG found, for example, in cooperatives or non-profit organisations, as in the case of Eroski.

According to Turnbull and Pirson (2011b), "enlightened shareholders and/or managers could stimulate the changes required by amending the constitution of their company. Alternatively, regulators could require corporations – especially those with large dimensions – to introduce changes in their constitutions to introduce a division of power with stakeholder engagement" along the lines indicated at the end of Section 3.

In any case, a combination of specific economic conditions is required for NG to emerge and to thrive as an organisational form offering comparative advantages over markets and hierarchies (Jones et al., 1997). These conditions involve high adaptation needs owing to changing product demand; high coordination needs owing to integrating diverse specialists in complex tasks; and high safeguarding needs owing to overseeing and integrating parties' interests in customised exchanges. The authors sustain that NG balances the competing demands of these exchange conditions (Jones et al., 1997) that drive firms toward structurally embedding their transactions through frequent and continuous relations, using social mechanisms for coordinating and safeguarding exchanges.

However, we believe that an incremental approach, on an entirely voluntary basis, would be advisable when implementing NG models in a pre-existing system. This incremental route might foresee gradually flanking the Board of Directors or Supervisory Board (or both, depending on legislation) with other organs such as social, management and watchdog councils. In particular, one might envisage:

- As an initial, experimental step, setting up a Stakeholder Board with consulting functions, made up of representatives elected or, if that is not possible, co-opted from stakeholder categories held to be priority. Stakeholder salience might, for example, be decided on the already-mentioned basis of power, legitimacy and urgency suggested by Mitchell et al. (1997).
- Once this first phase is consolidated, a Management Council might be formed, to include external experts approved by the Stakeholder Board, with consulting functions to the central governance organ (Board of Directors or Supervisory Board).
- Next, a Watchdog Council with the functions of internal auditing, supervision of management and other governing bodies (Stakeholder Board included) and of ombudsman.
- The possible presence of priority stakeholder representatives in the main governing body (Board of Directors or Supervisory Board).

The model obviously could evolve differently from our suggestion. New and alternative ways of dividing and sharing functions of governance and control could be created and tested, while adhering to the principle of inclusion and participation for priority stakeholders.

In this direction, one future development of our research, therefore, is to identify a series of case studies, especially non-cooperative ones, that can be monitored over time, in order to understand NG mechanisms actually put into action, the degree of the model's participation and democracy, the link – if it exists – with long-term performance and, more generally, the sustainability of the governance structure.

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Although the article is the result of a team effort, Giacomo Manetti can be considered the author of Sections 1, 2, 3, 4, and 7 and Simone Toccafondi the author of Section 5. Section 6 has been written by both authors.

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Notes

1 Elementary examples of compound boards can be found in continental Europe, based on the two-tier management board model, particularly in Germany and Holland and, in the last decade, in many other countries including Italy, following reforms of business law. It means establishing, along with the Board of Management, a Supervisory Board with powers that vary from country to country but which might include the power to nominate and dismiss board members and to take responsible action against the latter. How the Supervisory Board is elected varies greatly from one set of regulations to another. It can contain representatives from company stakeholders (staff and financial backers in particular) with varying levels of qualification. In some special situations, such as that described in our case study, the actual Supervisory Board is backed by other bodies including a Watchdog Council and a Social Council, which are illustrated in the following section.

2 At the current time, the Mondragón system represents one of the most significant examples of NG at international level. Its cooperatives have as their objective the pursuit of efficiency and occupational growth both in favourable and unfavourable economic circumstances [Thomas and Logan, (1982), pp.126–127]. The group's almost constant growth in terms of employment levels and annual turnover, right from the founding of the first cooperative, is the most tangible evidence of their reaching this objective. Mondragón is presently considered one of the most important worker cooperative groups at international level (Clamp, 2003; Garcia, 1970; Mathews, 1999; Whyte and Whyte, 1991). Currently, its system is made up of 256 organisations, about half of which are cooperatives, involving over 100,000 people [Freundlich et al., (2009), p.4], 85,066 of whom are workers. Its 2009 turnover came to 14,780 million Euro over four business areas (industrial, financial, retail and knowledge), with a massive international presence in 17 countries.

3 While the General Assembly, Board of Directors, *Watchdog Council* and Appeals Committee are required under the Spanish law on cooperatives (Law 27/1999), the Social Council is an innovation of Eroski and other cooperatives connected with the Mondragón system.

4 The right to vote follows the 'one person, one vote' ruling.

5 Under Spanish law, cooperatives are also subject to external auditing of accounts and year-end results if the company exceeds at least two of the size limits laid down for abbreviated balance sheets [Reglamento de Desarrollo de la Ley 19/1988 de 12 de Julio de Auditoría de Cuentas, DisposicionesadicionalesSexta; Molina Llopis, (2007), p.113]. External auditors (or the auditing firm) are nominated by the General Assembly (Law 27/1999). Therefore, external auditing is obligatory for Eroski and the auditors are nominated by the General Assembly of Delegates, at the suggestion of the Watchdog Council.

6 Considered the Watchdog Council's functions, its components are often nominated from members with proven professional competence, as in similar organisations [Gorroñogoitia, (1994), p.10]. Nonetheless, independent experts can also be nominated to this body (Art. 38, para. 3, Law 27/1999).