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The regulation of governance by the executive board and supervisory board: The case of the Maghreb countries

La régulation de la gouvernance par le directoire et le conseil de surveillance : Le cas des pays du Maghreb

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Abstract :

In recent decades, the issue of corporate governance remains a topic of topicality, it is sensible, among other things, to protect the interests of investors from the excesses of management of leaders, in this framework, most countries of the world have developed codes of good governance practices to ensure a sound management of the company and thus to preserve the country's economy from malfunctions. The purpose of this article is to present a simple comparison between the laws governing companies with supervisory boards in the Maghreb countries (Morocco, Algeria and Tunisia). The characteristics of the management method and their impact on the company's performance are poorly studied. Management by the executive board and supervisory board is the most mentioned in the codes of governance because it allows dissociation between the power of management and the power of management control. In this research, we seek to highlight the laws that govern the supervisory boards and directory of companies in the Maghreb countries.

Keywords: Governance; executive board; supervisory board; reglementation; Maghreb; shareholders; stakeholders

Résumé :

Au cours des dernières décennies, la question de la gouvernance d'entreprise reste un sujet d'actualité. Il est judicieux, entre autres, de protéger les intérêts des investisseurs contre les abus des dirigeants, dans ce contexte, la plupart des pays du monde ont élaboré des codes de bonnes pratiques de gouvernance afin de garantir une gestion saine de l'entreprise et ainsi préserver l'économie du pays des dysfonctionnements. L'objet de cet article est de présenter une comparaison simple entre les lois régissant les sociétés à conseil de surveillance dans les pays du Maghreb (Maroc, Algérie et Tunisie). Les caractéristiques du mode de gestion et leur impact sur la performance de l'entreprise sont peu étudiés. La gestion par conseil d'administration et de surveillance est la plus mentionnée dans les codes de gouvernance car elle permet une dissociation entre le pouvoir de direction et le pouvoir de contrôle de la direction. Dans cette recherche, nous cherchons à mettre en évidence les lois régissant les conseils de surveillance et le directoire des entreprises dans les pays du Maghreb.

Keywords: Gouvernance ; conseil exécutif ; conseil de surveillance ; réglementation ; Maghreb ; actionnaires ; parties prenantes.

INTRODUCTION

In recent decades, businesses are being invited more to play a role in economic growth. Existing regulation can play an important role in stimulating a country's economic growth, such growth cannot be achieved in the absence of a favorable climate encouraging investors to invest. In this sense, countries have established laws and regulations whose objective, on the one hand, to protect the investor's savings, on the other, to create the right environment for healthy and sustainable development.

A person who undertakes to choose between several legal forms (LLC, SA, ...), each form has its own characteristics in terms of capital or management, for example. After the creation of the company or the company, the question of management arises even as it was mentioned, the way of management depends on the legal form.

Referring to the large companies that play a large part in economic growth and which absorb job seekers a lot, these companies are generally of anonymous types or companies of capital, the name is different from one country to another. These societies are characterized as the word "society" means: a group of people who pool their resources in order to achieve a common goal. This simple definition shows that the society is composed of several people, and the logical question that follows this reasoning is that of the person who will be responsible for the management of these common resources. The business management world of this type presents two types of governance mode, borrowing the words from the legal lexical field to evoke them: Bicephalic and bicameral.

Management by a single body (bicameral) that is both manager and controller, indeed, the board of directors of a company is composed of shareholders with certain restrictions, that is to say that the right to assist and to be a director of the board of directors is determined the articles of association of the company, on the one hand, on the other hand, the statutes of a company may also stipulate the management of the company through two instances (two-headed) , a management board that manages the company and a supervisory board that controls the management of the executive board with the prohibition that a person be both a member in both bodies.

The management by a management board and a supervisory board allows, among other things, the company to acquire skills that are not necessarily shareholders because and as we will discuss in the following, the membership of the management board does not require the quality of shareholders, also this mode of management also offers the advantage of separation of powers: the power of management and the power to control the management, it pushes the two authorities and especially the members of the executive board to ensure better management because the Supervisory Board has the power, if necessary, to dismiss the members of the Management Board through the Ordinary General Shareholders' Meeting.

The laws governing this type of management in the Maghreb countries are similar because of their history and their common culture, we are interested in the laws of capital companies (the form which gives the right to quote on the stock market) of Morocco, the Algeria and Tunisia. The most recent amendment or promulgation of a law is made by Tunisia in the 2000s, while the other two Maghreb countries, which are the subject of our analysis, made promulgations dating back to the 1990s. The result of the analysis of these laws allowed us to conclude that there is a great resemblance between the three laws, or even the use of the same sentence, that the law that governs the board of directors and supervisory board of Tunisia refers to the end of the section reserved for this type of management to articles of ethical order in the management function. The purpose of this research is to present a brief description of the said laws and then highlight their common points and points of divergence. This article will try to answer the following question: What is the role of the supervisory board in the regulation of corporate governance? And how are supervisory boards and the management board regulated in the Maghreb countries? In order to answer these questions, we will first present the main theoretical approaches that have addressed the theory. Then, we will present the role of the two governance bodies (board of directors and supervisory board) and finally we will present a comparison between the regulations concerning the governance bodies in three Maghreb countries (Morocco, Algeria, and Tunisia).

2. Theories of governance and the interest of the two-headed structure

To define the theoretical part of this research, three types of theories will be presented in the following, namely (1) shareholder theories, (2) partnership theories and (3) cognitive theories.

2.1 The contribution of shareholder theories of governance

To define the theoretical part of the problem of governance by the two-headed structure, Barrédy (2008) used the shareholder theory of governance. The shareholder theory of governance states that the ultimate goal of the management team is to maximize shareholder profit.

According to Barredy (2008), the shareholder theories of governance show that there are conflicts in family societies. These conflicts are due to the listing on the stock exchange, in fact, the external shareholders oppose the family shareholders, the latter carry risks on the former and increase their discretionary consumption to the detriment of non-family shareholders (agency theory). Shareholder owners have opportunistic behavior (the rooting theory) and especially when they own more than 25% of the capital (Morck et al., 1988).

These conflicts are also due to the divergence of the interests of the family shareholders, indeed, their different interests according to whether they are managers, shareholders or employees (Lank and Neubauer, 1998). In this sense, Schulze et al. (2002) showed that information asymmetry due to unequal access to information and resources, and emotional conflicts that negatively influence financial decision-making (under-optimization).

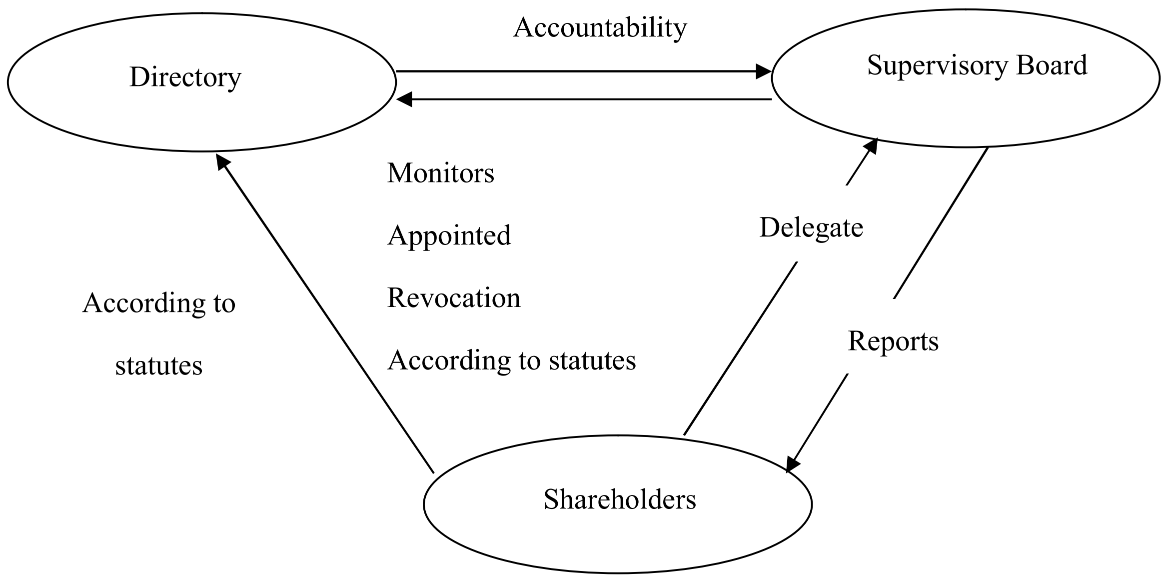
To avoid and resolve these conflicts, we must formalize the relationship between the family and the company, this formalization must prevent cases of development of the relationship between the two entities, it must also define the roles and responsibilities of each shareholder this distinction of roles will have as its final objective the progressive dissociation between the family and the enterprise (James, 1999).

2.2 The contribution of partnership theories of governance

Partnership theories of governance state that the goal of an organization is the maximization of wealth for all stakeholders. Each party participates in the creation of value through investments (Barrédy, 2009), these investments must be protected by a system of governance (Rajan and Zingales, 1997). Stakeholders delegate their rights to the board of directors (Blair and Stout, 1997). The management of these stakeholder investments is delegated to the board of directors (Blair and Stout, 1997).

The partnership theory of governance equates the specified family business with a specific asset that the system of governance must protect, in fact, it is a source of value creation (Barrédy, 2009). For the relationship between the family and the company in the partnership vision of governance, indeed, the family can be a form of governance but the presence of other stakeholders requires the establishment of another body whose mission is to integrate both parties (family and other stakeholders). The supervisory board can act as arbitrator between the management board and the stakeholders (Barrédy, 2009). This vision is criticized because the family imposes itself and influences the two bodies namely the board of directors and the supervisory board. Figure No. 1 below summarizes what was said by Barredy (2009).

Figure: 1 - Management mode by the supervisory board



<u>Source :</u> Barrédy (2008)

2.3 The contribution of resource theory and the cognitive theory of governance

According to these theories, the role of the governance structure is to facilitate access and coordination of resources in order to better utilize strategic opportunities (Charreaux, 2002). Another approach to these theories is that governance mechanisms should encourage learning that creates new strategic perspectives (Barredy, 2009).

In these theories (resource theory and cognitive theory of governance), the sustainability and continuity of family enterprises depend on the conditions of access and coordination of resources external to the family and also by the settlement of cognitive conflicts (Wirtz , 2000). The use of a two-headed structure does not envisage that, in order to ensure succession (Vancil, 1987), this structure allows the predecessor to evaluate his successor and to transmit to him the legitimacy and know-how necessary for the exercise of his functions. The successor may also be external to the family provided legal protection is provided to shareholders (Burckart et al., 2002).

To overcome the insufficiency of theories of governance to explain the reasons for the choice of the two-headed structure (directory and supervisory board) in family businesses, Barredy (2009) has an exploratory study to try to provide explanations in fact, based on two studies (a quantitative study to determine the explicit reasons for choosing the structure of the executive board and the supervisory board) and a study of seven cases to determine the implicit reasons for this choice). For the explicit reasons, the result shows three groups of explanations and which are: (1) Separation of functions and contribution of competences (resource logic), (2) Organizational catch-up and optimization of human resources, performances and mutations and new strategic step (logic strategy and performance), and (3) Departure of the CEO and collegiality of the executive, continuity and power of influence of the former CEO and transmission and sustainability (logic of executive transmission). The implicit reasons refer to the family context, indeed, the legitimacy and the role of the family presence is linked to the image conveyed, the market will be neutral vis-à-vis the family presence when the company is performance, gold if not, that is, poor or poor performance, the market considers the family responsible for the company's difficulties. Factors and events can trigger the change of the structure of the company to a board of directors and supervisory board and which are: the change of structure is contemporary with the departure of the CEO, tax exemption of the majority family shareholder in case of the directorate.

According to the study by Barredy (2009), the interests of setting up a two-headed structure for the family are to reinforce the family commitment (intragenerational commitment and Intergenerational commitment), to protect the power of the leaders (to lead the organization, family members demand protection from their power and investment) and finally, to increase access and coordination of resources external to the family.

Appendix (A) presents the main work that has dealt with the effect of the management mode on the performance of the company.

3. The role of the supervisory board in regulating corporate governance

For Godard (1998), the date of creation of the company and the performance do not explain the choice of the board of directors; the dynamism and complexity of the sector influence the choice of the board of directors, indeed, a significant volatility and a low complexity of the sector are the favorable conditions for the choice of the supervisory board, Godard recognize the difficulty of highlighting the behaviors directors and the impact of their bad because part of their decision is related to the uncertainty of the sector, he adds that in the case of uncertainty of the sector, the supervisory board is the most appropriate because it allows to better control the behavior of leaders, and in the case where the sector is complex, the most appropriate mode is that of the board of directors because it facilitates the decision-making process.

Godard also showed that the sector of activity influences the choice of the management mode of the company, for example, in the sector of large distribution, there is more the probability of choosing the board of supervision. Internal factors may explain the choice of management structure of the company, indeed, the nature of the shareholding determines the choice of the management method, indeed, in the family companies, the supervisory board is more likely in the controlled companies, and companies with majority shareholders resort to the supervisory board mode.

According to Zéghal (2006), managerial property, the size of the company and the stock market listing influence the size of the board of directors and that the combination of functions is positively affected by the concentration of capital and the size of the company. The presence of the independent directors is negatively linked to the shareholding of the directors and the indebtedness.

4. Governance by the Supervisory Board and Executive Board in Maghreb Companies

In what follows, we will briefly present the rules governing Maghreb companies managed by a board of directors and a supervisory board, indeed, for each country of the Maghreb, we go to the characteristics of the latter (composition and functions).

The table below compares the three laws governing companies managed by a management board and a supervisory board in the Maghreb countries. In general, there is not a big difference, the Moroccan and Algerian law were born at the same time (respectively 1995 and 1993), a few years later, Tunisia regulates this mode of management of companies. The number of articles reserved to regulate this type of management of companies is the same in the three Maghreb countries.

Table 1: Comparison of laws governing Maghreb companies with the executive board and supervisory board

Element	*Morocco*	*Algeria*	*Tunisia*
Law	Law No. 17-95 Relative to anonymous companies	Legislative Decree No. 93-08 of 25 April 1993; Ordinance No. 96-27 of 9 December 1996]	Law n° 2000–93
Last modification	1995	1993	2000
Reference of the law	Official Bulletin No. 4422 of 4 January II 1417 (October 17, 1996) Dahir No. 1-96-124 of 14 Rabii II 1417 (August 30, 1996)	Company's Code (Book 5 of the Commercial Code) Ordinance of 26 September 1975	Law n ° 2000-93 of November 3rd, 2000, promulgating the code of the commercial companies. (Jort n ° 89

	promulgating Act No. 17-95 concerning limited liability companies.		of November 7, 2000) - CODE OF COMMERCIAL COMPANIES
Number of articles reserved for the supervisory board	33 articles	20 articles	34 articles
Number of articles reserved for the executive board		12 articles	

Source: Authors.

4.1.Governance by the Supervisory Board and Board of Directors in Moroccan public limited companies

Law No. 17-95 Relating to public limited companies stipulates that a public limited company may be managed by a management board whose number of members may not exceed five and seven for companies listed on the Casablanca Stock Exchange (Article 78).

4.1.1 Composition and functions of the supervisory board

The role of the Supervisory Board is to oversee the management of the Executive Board, in the following, a presentation of articles dealing with the composition of the Supervisory Board.

- ☑ The number of members of the supervisory board of a public limited company must not be less than 3 members and it must not exceed 12 members for unlisted companies and 15 members for those who are (Article 80). In case of a merger of two listed companies, the number of supervisory board members may be the total of the members, ie 30 members, during this period, no member replacement can be made up to the reduction of members to 15 members (Art 83)
- ☑ To be a member of the Supervisory Board, one must hold at least a number of shares determined by the articles of association which entitles the holder to attend the Ordinary General Meeting (Article 84).
- ☑ A member of the Supervisory Board cannot be part of the Executive Board (Article 86)

☑ The appointment / dismissal of the members of the supervisory board must be made by the ordinary general meeting and in case of a merger or division, they may be appointed / dismissed by the extraordinary general meeting, the maximum term of a mandate is 6 years old (Article 87)

☑ The appointment of a permanent representative is mandatory for legal persons of the Supervisory Board subject to the same conditions and obligations as other members (Article 88)

☑ The management board must convene the ordinary general meeting within thirty days following the non-respect of the legal number. However, the Supervisory Board must make provisional appointments when the number of members of the Supervisory Board does not comply with the statutory provisions (Article 89).

☑ To deliberate, the legal minimum is at least half of the members of the supervisory board must be present except statutory provisions which may for example require the presence of an absolute majority (Article 91)

☑ The general meeting may grant attendance fees to members of the Supervisory Board as a reward for their activity (Article 92). Exceptional remuneration may be granted to members of the Supervisory Board (Article 93). No remuneration may be allocated to members of the Supervisory Board other than those provided for in Articles 92 and 93 (Article 94)

According to Moroccan law, the supervisory board's mission is to:

☑ Constantly monitor the management of the company by the executive board, it may also have other tasks or tasks stipulated by the articles of association of the company such as the statutory obligation of the authorization of the supervisory board to carry out specified operations by the statutes (Article 104)

☑ Conducting audits at times that he deems appropriate, and he has the right to access any information concerning the life of the company (Article 104)

- ☑ Present to the general meeting its observations on the report of the executive board and the financial statements for the financial year (Article 104)

4.1.2 Composition and functions of the Executive Board

The management board of a Moroccan company is responsible for:

- ☑ Act in all circumstances in the name of the company to the limit of the company's corporate purpose, the company is responsible for the acts of the executive board, the latter performs its duties according to the statutory provisions (Article 102)
- ☑ Submit at least once a quarter a report to the supervisory board (Art. 104) and submit within three months after the end of the financial year, the documents provided for in Article 141 so that the supervisory board controls and verifies the situation of the company (Article 104).
- ☑ The functions of the executive board of a public limited company with a turnover of less than one million five hundred thousand dirhams may be exercised by one person (Article 78).
- ☑ The Management Board performs its duties under the supervision of the Supervisory Board (Article 78).
- ☑ The term of office of the Executive Board must be between two and six years and if the statutory provisions do not respect these limits, the term of office shall be four years (Article 80). The instrument of appointment must fix the amount and method of remuneration of the members of the Executive Board (Article 82)

After a presentation of the functions of the executive board, the following paragraph will be devoted to the legal composition of the executive board of a Moroccan company.

- ☑ The members of the Executive Board are appointed by the members of the Supervisory Board (Article 20) and confer on one of them the role of Chairman, and the position of Chief Executive Officer in the case where one or more persons are appointed to the duties of the Supervisory Board. Directoire (Article 79)

- ☑ The members of the management board must be natural persons, they may be non-shareholders or employees of the company (Article 79)
- ☑ At the proposal of the supervisory board, the general meeting may dismiss the members of the executive board and in the absence of a just cause, the dismissal may give rise to damages (Article 80). The employment contract of the salaried members is not terminated because of the revocation (Article 80)

4.2. Governance by the Supervisory Board and Executive Board in Tunisian companies

4.2.1. Composition and functions of the supervisory board

According to Law No. 2000-93,

- ☑ The role of the supervisory board is to control the management of the company by the executive board (Article 225)
- ☑ The supervisory board appoints the members of the executive board and gives the status of chairman to one of them, they can also be chosen outside the shareholders (Article 226)
- ☑ The supervisory board may decide to move the registered office of the company subject to its ratification at the next general meeting (Article 230)
- ☑ The role of the supervisory board is to permanently control the management of the company by the executive board, it can obtain the information and documents necessary for the accomplishment of its mission, it must present at least once a quarter (Article 235)
- ☑ The Supervisory Board presents to the General Meeting its observations on the management report of the company by the Executive Board (Article 235)
- ☑ The supervisory board must be composed of at least three members and no more than twelve (Article 236)
- ☑ To be a member of the supervisory board, you must have a number determined by the articles of association (Article 237). The term of office of the members of the SC is set by the statutes and must be strictly between 2 and 6 years (Article 236). A legal person may be a member of the SC but, on appointment, it must appoint a permanent representative

and who has the same obligations and rights as the other members (Article 240)

- ☑ The SC may appoint members on a provisional basis to supplement the number fixed by the statutes, this nomination must be submitted to the next assembly, and in the case where the number of members has fallen below the legal minimum, the Executive Board must convene immediately the meeting of the general meeting (Article 243)
- ☑ The CS appoints a chairman from among its members who must be a natural person (Article 244)
- ☑ The members of the SC are responsible for the mistakes committed in the performance of their duties, they are not responsible for the consequences of the management of the company (Article 255)

4.2.2 Composition and functions of the Executive Board

The legal characteristics of the directory of a Tunisian company are the following:

- ☑ The Management Board's mission is to assume the management responsibility of the company (Article 225)
- ☑ The members of the executive board must be natural persons and their number may not exceed 5 members (Article 225)
- ☑ If the annual turnover is less than one hundred thousand dinars, only one person can exercise the functions of the directory (Article 225)
- ☑ The term of office of the members of the Executive Board cannot be greater than 6 years renewable except another stipulation by the statutes (Article 226)
- ☑ A member of the management board may be dismissed by the general meeting on the proposal of the supervisory board (Article 227). A dismissal without just cause may give rise to damages and it will not terminate the employment contract (same article)
- ☑ The remuneration of the members of the Supervisory Board is set by the Supervisory Board, this remuneration must take into consideration the duties of each member and the economic and financial situation of the company (Article 228)

- ☑ The management board has the power to act in all circumstances in the name of the company, it carries out its functions according to the articles of association of the company (Article 229)
- ☑ The members of the management board must act with diligence and loyalty, they must compensate for the damage to the company when they are approved by the supervisory board (Article 231)
- ☑ The management board must submit a report to the supervisory board at least once a quarter, and within three months of the end of each financial year, it must present its management report on the financial statements for the year (Article 235).
- ☑ The de facto directors of the company (chairman of the executive board, managing director or members of the executive board) may be tried, unless they provide evidence that they acted with diligence and loyalty, to support all or part with or without solidarity the debts of the company during a judicial settlement or bankruptcy of the company. Convicted persons may also be prohibited from engaging in commercial activity during the period of time decided by the court (Article 254). The prescription period of the judgment is three years.

4.3 Governance by the Supervisory Board and Board of Directors in Algerian companies

The last presentation of corporate bonds managed by a management board and a supervisory board is reserved for the third Maghreb country: Algeria.

4.3.1 Composition and functions of the supervisory board

- ☑ The function of the supervisory board is to exercise permanent control of the company. the statutes may stipulate the agreement of the supervisory board before the conclusion of the specific acts. The following acts (and others) must be referred to by the Supervisory Board: the transfer of immovables, the transfer of participation, the constitution of security interests as well as sureties, endorsements or guarantees (Article 654).
- ☑ The supervisory board may inspect at any time of the year and may be given all the

documents necessary for the accomplishment of its mission (Article 655)

- ☑ The supervisory board must have at least seven members and no more than twelve members (Article 657), which may not exceed twenty-four members in the case of merged companies (Article 658)
- ☑ The members of the supervisory board must hold guarantee shares set in article 619, the article in question stipulates that the members of the board of directors must hold at least 20% of the share capital and the status determines the minimum number to be held by a director (Article 659)
- ☑ The members of the supervisory board are elected by the general or ordinary general assembly, their mandates are fixed by the statutes and it cannot exceed six years in case of appointment by the general assembly and three years in case of appointment by the articles of association, the appointment may be made by the ordinary general meeting the split merger case (Article 662)
- ☑ The members of the Supervisory Board may be dismissed at any time by the ordinary general meeting (Article 662)
- ☑ A legal person may be a member of the Supervisory Board provided that, at the time of its appointment, it must appoint a permanent representative with the same rights and obligations as the other members (Article 663)
- ☑ A person may be a member in up to five supervisory boards at the same time provided that the seats of these companies must be in Algeria (Article 664)
- ☑ The Supervisory Board may, between two General Meetings, make provisional appointments following a vacancy of the positions (death or resignation) in order to complete the number required by the Articles of Association, the Board must convene the ordinary general meeting, once the number of members of the Supervisory Board has fallen below the legal minimum (Article 665)
- ☑ The Chairman of the Supervisory Board is elected by the members of the Supervisory

Board, its function is to convene the Board and direct the discussions, the term of office of the Chairman is that of the Supervisory Board (Article 666)

- ☑ The deliberation can be made only if half of the members are present, the statutes can require other conditions like the obligation of an absolute majority (Article 667)
- ☑ The remuneration of the members of the Supervisory Board may be fixed by the ordinary general meeting (Article 668), in turn the Supervisory Board may allocate exceptional remuneration for the tasks entrusted to members of the Supervisory Board (Art. 669)
- ☑ The company agreements with the members of the executive board and the supervisory board must be submitted in advance to the authorization of the supervisory board (Article 670), otherwise (a violation of Article 670), Article 672 provides the necessary measures to be taken into consideration.
- ☑ The members of the Executive Board and the Supervisory Board are not entitled, with the exception of legal persons, to borrow from the company, to endorse or endorse their personal commitments (Article 671), in case of bankruptcy, the members in question may be held responsible for the social liabilities (Article 673)

4.3.2 Composition and functions of the Executive Board

- ☑ The Executive Board is composed of three to five members (Article 643)
- ☑ The members of the Executive Board are appointed by the Supervisory Board, which confers on one of them the Presidency (Article 644)
- ☑ At the proposal of the Supervisory Board, the members of the Management Board may revoke by the General Meeting, the dismissal does not entail the termination of the employment contract of the salaried members (Article 645)
- ☑ The term of office of the Executive Board is stipulated by the Articles of Incorporation whose duration must be between two and six years, a term of four years in the event of default of the statutory provisions (Article 646).
- ☑ The method and amount of the remuneration of the members must be determined in the

instrument of appointment (Article 647)

- ☑ The management board acts in the name of the company and is invested with the extended (Article 648)
- ☑ Plagiarism art 649 (the powers of the cs)
- ☑ The removal of the seat within the same city may be decided by the executive board while outside the city, the ordinary general meeting has the sole power to take such a decision (Article 651)
- ☑ The chairman of the management board is the legal representative of the company towards third parties. However, the power of representation may be conferred on other members of the Executive Board by statutory provisions (Article 652).
- ☑ The quality of the president of a member of the executive board does not confer on him a power superior to the other members (Article 653)
- ☑ The management board must submit a report on its management at least every quarter and at the end of each financial year, and submit the documents referred to in Article 716 to the supervisory board for verification and control purposes (Article 656).)

5. Note of differences between the Maghreb countries in governance by the supervisory board and executive board

After a presentation of the legal obligations concerning the functioning of the two management bodies of a company, this axis is devoted to analyzing the differences between the said laws.

- ☑ The maximum duration of the term of office of the members of the supervisory board (directory) is the same in the two countries (Morocco and Tunisia), the difference is that in the Tunisian law the mandate of the members can be renewed (Morocco- Art 87 and Tunisia - Article 225).
- ☑ The dismissal of the members of the executive board is done in the same way in the Maghreb countries, with the use of the same sentences.

- ☑ As regards the remuneration of the members of the Executive Board, article 228 of the Tunisian law stipulates that the remuneration of the members of the Executive Board must take into consideration the economic and financial situation of the company, and the Moroccan law gives no indication in this regard.
- ☑ Article 230 of the Tunisian law gives the right to move the head office of the company without limitation as in the Moroccan case, in fact, the council can move the seat within the same prefecture or province.
- ☑ Regarding the mission of the directory, the two laws present the same rules with the same words (T - Art.
- ☑ For the composition of the supervisory board, Tunisian law does not give the number of members if the company is listed on the stock exchange (Article 236)
- ☑ To be a member of the SC, in the Moroccan law, the member must hold a number specified by the statutes and which gives the right to attend the general meeting of shareholders, or in Tunisian law, to be a member of the board, it is sufficient to have a number of shares fixed by the statutes.
- ☑ When the number of members of the CS becomes for any reason less than the legal minimum, the Moroccan law gives a deadline of one month so that the directory convenes the general meeting of the shareholders, but in the Tunisian law, it limits itself to specify that the convocan is made immediately.
- ☑ Plagiarism between article 244 of the Tunisian law and article 90 of Moroccan law
- ☑ Plagiarism between article 245 of Tunisian law and article 91 of Moroccan law
- ☑ Plagiarism between article 246 of the Tunisian law and article 92 and article 93 of Moroccan law
- ☑ Plagiarism between article 247 of the Tunisian law and article 93 of Moroccan law
- ☑ Plagiarism between article 249 of the Tunisian law and first paragraph of article 97 of Moroccan law

- ☑ Plagiarism between article 250 of Tunisian law and article 98 of Moroccan law
- ☑ Plagiarism between article 251 of the Tunisian law and article 99 of Moroccan law - (the decision of the ordinary general assembly does not prevent the action in damages tending to repair the injury suffered by the society) .
- ☑ Plagiarism between article 253 of the Tunisian law and article 101 of Moroccan law
- ☑ Plagiat entre l'article 253 de la loi tunisienne et l'article 101 de loi marocaine

Here is a comparison of the directories (table N °: 2) and the supervisory boards (table N °: 3) of the Maghreb countries according to criteria (appointment, composition, mission, ...)

Table 2 - Comparison of the laws governing the directories in the Maghreb countries

Table 2: Comparison of the lows governing the directories in the Maghreb countries

Element		Morocco	Algeria	Tunisia
Nomination		Supervisory Board	Supervisory Board	Supervisory Board
Composition of the directory	**Not listed**	5 maximum members	[3, 5]	5 maximum members
	Listed	7 maximum members		
	Merger	--		
Legal mandate		[2, 6] et 4 years(1)	[2, 6] et 4 years(2)	Cannot be more than 6 years
Remuneration		Fix by the act of appointment	Fix by the act of appointment	The Supervisory Board sets the mode and amount of the remuneration
Revocation		Revoke by the general meeting on the proposal of the supervisory board	Revoke by the general meeting on the proposal of the supervisory board	The general meeting on the proposal of the supervisory board
Member quality		Natural persons, non-shareholders or employees	Physical persons	Physical persons
Directory with one person		1.500.000 MAD (162 808.78 $ US)	--	100.000 dinars (41 164,52 $ US)
Mission		The power to act in all circumstances in the name of the company at the limit of the corporate purpose of the company	Invested in the most extensive powers to act in all circumstances on behalf of the company	Take responsibility for managing the company
Special conditions		--	• The members of the Supervisory Board must hold at least 20% of the share capital • A person can be a member in up to five supervisory boards at the same time provided that the seats of these companies must be in Algeria. • The quality of the president of a member of the executive board does not confer on him a power superior to the other members	Management Board members must act with diligence and loyalty, they must compensate for the harm to the company when approved by the Supervisory Board (Article 231).

Source: The table is made by us from the laws of the countries concerned.

Table 3 - Comparing Company Laws Supervisory Boards in Maghreb Countries

Element		Morocco	Algeria	Tunisia
Nomination		The ordinary general meeting	the constitutive or ordinary general assembly	Constitutive General Meeting or by the ordinary general meeting
Composition of the Supervisory Board	**Not listed**	[3, 12]	[7, 12]	[3, 12]
	Listed	[3, 15]	--	
	Merger	[3, 30]	[3, 24]	
Mandate		Cannot exceed six years	Cannot exceed six years in case of appointment by the general meeting and three years in case of appointment by the articles of association	[2, 6]
Remuneration		Set by the Supervisory Board (directors' fees)	Set by the ordinary general meeting	Set by the supervisory board
Revocation		The ordinary and extraordinary general meeting the merger case	The ordinary general meeting	--
Member quality		Minimum number of shares entitled to attend the ordinary general meeting	--	A number of actions determined by the statutes
Deliberation		Minimum half of the members of the supervisory board + the statutory provisions	The presence of half of the members	--
Mission		Constantly control the management of the company by the executive board	Exercise permanent control of society	Controlling the management of the company by the executive board
Role of the president of the BS		Responsible for convening the council and leading the debates	Convene the Council and lead the debates	Convene the Council and lead the debates.

Source: Authors

Conclusion:

The study of the effect of the choice between the board of directors and the executive board / supervisory board requires the development of a complete model and the use of analysis software in order to find precise answers to specific problems. The purpose of this article was to present a simple comparison between the laws governing companies with supervisory boards in the Maghreb countries, indeed, we have based on the laws in force in the three Maghreb countries namely Morocco, Algeria and Tunisia.

First, we presented theories that have contributed to the knowledge of these two modes of business management. In a second step, we reviewed the laws of the three Maghreb countries and then presented the main differences between the said laws. The comparison between the three laws makes it possible to conclude that they are very close, articles are identical, and we qualified it as "plagiarism". Tunisia's law on joint stock companies stipulates in the latest articles on companies with a board of directors and supervisory board that members of both bodies must act with diligence and loyalty.

The limits of our article can be summed up in the fact that it remains descriptive and it is not based on an in-depth analysis, it is limited to present a few points of difference and which remains minimal. A detailed study on the effect of choice between the two bodies in the context of the Maghreb countries will provide justified answers.

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Appendix A

Synthesis of work on the relationship between management mode and performance

Authors	Hypothesis	Sample	Variables	Methodology	Results
Godard L ; « Les déterminants du choix entre un conseil d'administration et un conseil de surveillance », Finance Contrôle Stratégie – Volume 1, N° 4, décembre 1998, p. 39 – 61. https://ideas.repec.org/p/dij/wpfarg/0981201.html	H1: The worst performing companies are more likely to choose the supervisory board form than the most successful companies. H2: Close control of shareholders has a positive influence on the choice of supervisory board form. H3: Companies created after 1967 are more likely to choose the supervisory board form than firms created before 1967 H4: The munificence of the sector has a positive influence on the choice of the form "supervisory board". H5: The dynamism of the sector has a negative influence on the choice of the "supervisory board" form. H6: The complexity of the sector has a negative influence on the choice of the "supervisory board" form. H5: The business sector influences the choice of board structure.	The study covers the year 1990. 46 companies with a supervisory board and 154 companies with a board of directors Data source: Affi	• Board structure • The performance measure selected is the average market return over the period 1987-1989 • Measures of the company's ownership structure • The sector (uncertainty and the nature of the activity)	Qualitative regression, logistic regression	The sector of activity, the uncertainty and the type of business (family, managerial and controlled) influence the probability of the choice of the supervisory board....
Zéghal et al. « Impact de la structure de propriété et de l'endettement sur les caractéristiques du conseil d'administration: étude empirique dans le contexte d'un pays émergent », 27ème Congrès de l'Association Francophone de	H1a: The size of the board of directors is negatively related to the concentration of capital H1b: The percentage of external directors is negatively related to the concentration of capital H1c: The percentage of capital held by external directors is negatively related to the concentration of capital H1d: The combination of the roles of CEO and Chairman of the Board is positively related to the concentration of capital H2a: The size of the board is negatively related to the percentage of capital held by institutional investors H2b: The percentage of external directors is negatively related to the percentage of capital held by institutional investors H2c: The percentage of capital held by external directors is negatively related	47 companies of which 22 are listed on the Stock Exchange of Tunisian Securities (BVMT) during the year 2002 source of data: published documents	Indebtedness, Share Ownership, Institutional Investor Presence, Concentration of Capital, Financial Motivations of External Directors, The Combination of Chief Executive Officer and Chairman of the Board, Director Independence, The size of the board Control Variables: ownership structure, indebtedness, company size	Multiple linear regressions and logistic regression	Ownership structure, indebtedness, company size and stock market listing are the factors that influence the characteristics of the board of directors

Comptabilité Tunis, mai 2006	to the percentage of capital held by institutional investors H2d: The combination of the roles of CEO and Chairman of the Board is positively related to the percentage of capital held by institutional investors H3a: The size of the board of directors is negatively related to the percentage of capital H4a: The size of the board is negatively related to H4b indebtedness: The percentage of external directors is negatively related to indebtedness H4c: The percentage of capital held by external directors is negatively related to indebtedness H4d: The combination of the roles of CEO and Chairman of the Board is positively correlated with the indebtedness held by the CEO H3b: The percentage of external directors is negatively related to the percentage of capital held by the executive H3c: The percentage of capital held by outside directors is negatively related to the percentage of capital held by the executive H3d: The combination of the roles of CEO and Chairman of the Board is positively related to the percentage of capital held by the executive		and stock exchange listing		
Barrédy C., « Gouvernance de la société familiale cotée. Les raisons de l'adoption d'une SA en directoire et conseil de surveillance », *Revue française de gestion* 2008/5 (n° 185), p. 1-19.	Proposal 1. The structure in D / CS provides an organizational response to the objectives of family continuity and sustainability of the company in a context of crisis related to the weakening of the family-business link and dependence on non-family resources. P2. Performance is seen as a condition of the external legitimacy of the family in the company. P3. The family is committed to family continuity in the company P4. Economic and financial difficulties favor the decision to transfer the management of the company. P5. The change is driven by two "catalytic" factors: the payment of the ISF and	44 French companies, listed on the stock market, family and organized in D / CS listed over the period 2000-2003.	--	•Thematic study of justifications • Case studies (seven case studies)	Through seven proposals, the research shows the complexity of the phenomenon that links the three key dynamics of the family business: - the family dynamic of

http://dx.doi.org/10.3166/rfg.185.1-19	the decision to transfer management without the capital. P6. The goal of family continuity is at the center of the decision. P7. By separating the management and control functions and the collegiality of the organs, this structure responds to the challenges of: - strengthening the family commitment, - maintaining the individual power of the influential actors (last CEO and his successor), - access and coordination of external expertise.	strengthening the commitment of family members, - the individual dynamic of rooting of actors influential family, - the managerial dynamic of access to non-family resources.

Source: Authors