



Listen to your heart

The choice of the medical information to be monitored as a corporate governance issue

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The key issue: who does what

A basic assumption: the wearable's manufacturer is a firm

This means that we can assume that the firm creates and sells the wearable in order to produce a profit

The criteria the firms use in order to think, design, produce and sell the goods are market-driven... and that's all!



Well, not exactly!

A lot of issues to consider:

- Which kind of firm?
 - Which kind of purpose?
 - Which kind of wearable?
 - Which kind of information to monitor?

 - Who decides all of that?
 - And is this the same all over Europe/the world?
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When we talk about companies...

...we have a series of issues to face

In particular we need to introduce a few key features on how a company works, from a legal perspective

Key elements:

- Corporate governance
 - Company Law
 - Company's purpose
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Corporate governance

The different pieces of regulation aiming at regulate a company

Sources:

- Hard law
- Soft law
- Voluntary regulations (e.g.: articles, company's internal rules)

But also the system that governs a company, i.e. the role of

- Members/shareholders
 - Directors
 - Auditors and other bodies
-



Company Law

Is just a part of corporate governance...

...but perhaps the most relevant one, as it is (at least partly) mandatory

Aren't soft law and voluntary internal rules mandatory?

Soft Law: basically no. Application is voluntary

Internal rules: yes, they are... but they're coming from the members/shareholders, that are free to decide whether to include such rules, or not

And in any case, not against mandatory legal rules

Is there a limit in this system?

Yes: company law is country-based. When you are in Rome, do like Romans do...



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Company's purpose

The hottest debate in this moment!

The Economist, August 24th, 2019

“What are companies for?”

Not properly a common question for a
so widely-read magazine...





Why this question?

Earlier in August 2019 a new Business Roundtable Statement (181 CEOs of primary US corporations) is issued

The main change in the statement deals with a commitment to serve the interests of a wider range of constituencies

- Customers
 - Suppliers
 - Creditors
 - Employees
 - Shareholders themselves
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Is this so strange?

It is, actually!

The common answer to the question “what are companies for?” is: “they exist to maximise the shareholders’ profits”

Yes, but... isn't there the Corporate Social Responsibility?

See Milton Friedman, 1970

“The Social Responsibility of Business Is to Increase Its Profits”



And, in any case...

...Corporate Social Responsibility, not in Friedman's view, is in any case voluntary

Is there no hope, thus?

No other theories are possible, even if the shareholders' profits maximisation is the prevailing one



Examples?

Enlightened Shareholder Value

- UK
- France
- Some EU documents

Stakeholder Value

- In a certain sense in Germany (Institutional theory of the firm) and co-determination (employees participation to the governance)
 - See W. Rathenau: "A company exists not to create profits for its shareholders but to allow its boats to navigate the Rhine"
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Ok, but...

...why am I describing the general theories of the firm?

Because our governance problem is properly if and how a specific issue related to the product should or could be taken in consideration by the company, in its own governance

But, again, to provide an answer we need another basic remark: the company has no head, nor hands. Directors are a company's head and hands

And the shareholders? It depends on the company form, and on the legal system

- They have always the power to set up the basic rules (articles) and usually to appoint and replace the directors... but not to run directly the company
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This is the general framework

And now we can discuss about smart wearables... but which wearables?

It seems that we must distinguish the intended function; this leads to two different paths

- Leisure wearables
 - E.g.: Smart watches
- Medical (even lifesaving) wearables
 - E.g.: monitoring functions for elderly people or fragile patients, wearable baby or antidrowning monitors, temperature-sensing pacifiers...
 - And as a subcategory, implantable Internet of Bodies techs (cochlear devices, artificial pancreas, pacemakers, ingestible digital pills...)

It looks like they need to be dealt with in two different ways



Both of them are included in the idea...

... of the so-called “Internet of Bodies”

As such, they have access to a quantity of personal information, whose management is a problem...

...but not a company law problem!

There is Data Protection Law that deals with this: interventions by Chiara Bergonzini and Simone Calzolaio in the next seminars

DPL operates within the boundaries and guarantees set by Constitutional Law
Which is, once again, a Country-based system...



The company's interest...

...is naturally to sell the higher possible amount of wearables
Market-driven approach

In order to do so, the manufacturer tries to intercept preferences of the potential users

However, this is a general marketing and management attitude: it has (generally) little to do with a company's governance

Corporate governance is a more "in-depth" issue: it deals with the very structure, and therefore the identity of the company

While marketing is a management issue: it could change rather



Why “generally”?

Because it depends on the company, and on how much the company intends to appear ready to satisfy the request of its potential customers

There are, here too, issues deserving a “strong approach” (e.g.: preventing discrimination, promoting equity and healthier behaviours...)

But a strong commitment is needed to make these constituencies enter the inner circle of the management

This is true for both the categories, but in particular for the “generic wearables”

For paramedical devices, we must go more in depth, and here we are likely to reach more easily the corporate governance stage



Why?

Because CG is:

- Expensive
 - Not easy to handle
 - Implies the need to balance different interests
 - Shareholders
 - But not all of them have the same interests
 - Directors
 - What are they interested into? Conflict of interests with shareholders
 - A classic agency problem in company law
 - Employees
 - Not in all the legal systems (Germany, for instance)
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What if you include a new one?

From a theoretical point of view, you are complicating the system

If you include the customers in the governance system, you are:

- Signalling to the market that “you really care”
- But at the same time, you are now required to handle their interest along with those of all the remaining “normal” constituencies
 - And the system has not always and not everywhere (do you remember the Country-based approach?) the tools to solve the problem
 - It is possible to solve it via contractual methods, but it might be very expensive (consultants, possible legal suits uncertain in their solution...)



Is this worth the price?

As always, the answer is: “it depends”

There are a series of issues to solve...

- Who should we include?
 - Are they a compact group, with the same interests?
 - Include “how?”
 - Which kind of service could we offer?
 - Risk management, in the case of the most complex devices
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How, and for what?

If we are able to find an homogeneous group of stakeholders, that we think representative of valuable aspects to consider in the manufacturing, what can we ask them, and how?

What:

- Help identifying the areas of action of the company
 - Needs to be satisfied
 - Help defining what the device should monitor
 - Technical profiles of the product
 - Help defining critical issues in existing devices
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How, and for what?

How:

- Different levels of internal impact
 - Independent director
 - Ad-hoc committee
 - Specific securities issued to that specific constituency

All this is very much dependant on the Country-based approach: not all the legal systems allow the same possibilities



The best result?

Some kind of a “product governance”

Possible only with highly committed companies, that want to grant the highest power in the decision in the hands of the ultimate users

Rather risky from a theoretical point of view: the adopted solutions are likely to be...

...the best ones for the ultimate users (in particular if somehow validated by medical doctors)...

...but not necessarily the most profitable...

...and this leads again to the starting question: what are companies for?



Enforcement?

Ex post or ex ante

Ex ante: only if the consumers are involved in the designing or in the project

That's the case of a corporate governance inclusion

Ex post: liability suits against directors (shareholders and creditors); market solutions (customers); class actions

Again, very much affected by the country-based approach



A couple of final remarks

Ultimate users' intervention in the corporate governance system?

Yes, but...

...perhaps not always!

Public interests could be served also with specific purpose organisations (e.g.: social enterprises)

It can be a further step forward in the sense of corporations aiming at creating a societal prosperity



Thank you for your attention!

Questions?

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