

## The extent of the legislative compatibility (legal) and regulatory framework governing Algerian economic institutions with corporate governance

مدى التوافق الإطار التشريعي (القانوني) والتنظيمي الذي يحكم المؤسسات الاقتصادية الجزائرية مع حوكمة الشركات

Achouri Abdenacer<sup>1</sup>, Chaker Hamza<sup>2</sup>, Cherbal Nadjib<sup>3</sup>

<sup>1</sup> University of M'sila (Algeria), [abdenacer.achouri@univ-msila.dz](mailto:abdenacer.achouri@univ-msila.dz)

<sup>2</sup> University of Setif 1 (Algeria), [hamza.chaker@univ-setif.dz](mailto:hamza.chaker@univ-setif.dz)

<sup>3</sup> University of M'sila (Algeria), [nadjib.Cherbal@univ-msila.dz](mailto:nadjib.Cherbal@univ-msila.dz)

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### Abstract:

This study aims to discuss the compatibility between the Algerian economic corporate's legislative and Regulatory Framework, with the Corporate Governance, focusing on the various positive efforts of the Algerian government and indicators that prove its real intention to adopt the Governance Principles.

Our results show that there is some sort of compatibility between the previous two variables; however, no mechanisms guaranteed the good application of the legislative and regulatory framework.

**Keywords:** Corporate Governance; Legislative Framework; Regulatory Framework; Compatibility.

**JEL Classification Codes:** : K22; G51.

ملخص:

هذه الورقة البحثية تحت عنوان: مدى توافق الإطار التشريعي (القانوني) والتنظيمي الذي يحكم المؤسسات الاقتصادية الجزائرية مع حوكمة الشركات، تهدف من خلالها إلى استعراض واقع الأطر التشريعية والتنظيمية التي تحكم المؤسسات الاقتصادية في الجزائر من مبادئ حوكمة الشركات، مع إبراز مختلف الجهود والمؤشرات الإيجابية الموحية برغبة الجزائر في السير قدما نحو تبني هذه المبادئ.

خلصت هذه الورقة إلى وجود نوع من التوافق بين الأطر التشريعية والتنظيمية للمؤسسات الاقتصادية الجزائرية ومبادئ حوكمة الشركات، إلا أن المشكل الذي يبقى مطروح هو عدم وجود آليات تضمن التطبيق الجيد لها في الواقع العملي.

كلمات مفتاحية: حوكمة الشركات، الاطار التشريعي(القانوني)، الإطار التنظيمي، التوافق.

تصنيفات JEL : K22; G51.

**Auteur correspondant :** Achouri Abdenacer, Email : [abdenacer.achouri@univ-msila.dz](mailto:abdenacer.achouri@univ-msila.dz)

## **1. Introduction:**

Governance has gained a wide attention from different countries all around the world especially after the economic crash experienced by several universal economies affecting negatively the economic and social environments of these countries.

Since Algeria is concerned, it attempted to benefit from the previous crashes, especially after the inducement received from many international organizations; precisely the Organization for Economic Cooperation and Development, besides the International Monetary Fund and the World Bank, and the European Union project, that assigned a program of 10 million Euros to support Governance in Algeria which aimed to ameliorate the business environment in Algeria, through various structural reforms which are directed to the organizational and legislative aspects that govern the country's economic structure.

The reality of the legal and regulatory frameworks that govern Algeria economic institutions from the principles of corporate governance has been studied in depth. Thus the problem of the current study is to what extent the legal (regulatory) of The Algerian business environment is governed by the principles of corporate governance?

In order to answer this question, the study is divided into two axes (themes):

**1.** is devoted to the theoretical framework of the study by providing some basic concepts of corporate governance and principles.

**2.** is allocated to the applied framework of the study through a comparison between some legislative and regulatory frameworks that govern the Algerian business environment and principles of corporate governance.

## **Literature review:**

- Melody Mohamed Karim's study, under the title: Reality and Challenges of Corporate Governance in Algeria, this study aimed to identify the reality and challenges facing Algerian institutions to implement corporate governance. The study found that the level of implementation of governance in Algerian institutions remains very weak despite the efforts made in this area by the state, and it recommended the necessity of

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making additional efforts and finding effective mechanisms and tools to achieve a good governance system at the level of Algerian institutions.

- The study of Galai Naima, Makhfei Amin, entitled: A Study of the Reality of Implementation of Corporate Governance in Algeria - A Field Study of Algerian Institutions in Tlemcen Province - The aim of this study is to determine the reality of the Algerian institutions adopting the principles of corporate governance in order to identify the deficiencies they encounter. This study has concluded that most of the institutions under study do not apply the principles of governance except in part, and at other times, their total absence.

The differences between our study and previous studies lie in the fact that we focused on studying the reality of the legislative and regulatory frameworks established by the legislative authority in Algeria in order to govern its business environment and compare it with the requirements of corporate governance, while we find that most of the previous studies in Algeria focused on studying the applications and reality of governance practices at the level of economic institutions .

## **2. Corporate Governance Principles**

### **2.1. Corporate Governance - Key Concepts (basic concepts) -**

#### **2.1.1. Corporate Governance Concept (definition):**

The corporate governance could have various definitions and be defined as follows:

- A) A set of procedures, controls and structures used to manage and direct the business and affairs of the company in order to ensure and support performance, transparency, integrity and accountability with maximizing the long-term benefit of shareholders taking into account the benefits of interested parties (Ben Aichi & Takrart, 2017, p. 25).
- B) defines corporate governance according to Organization for Economic Cooperation and Development (OECD) as: "The system used by the company in the process of supervision and control over its operations, where the description and the distribution of rights and duties of the various parties with which it has a relationship, such as: Board of Directors, directors, shareholders and other

stakeholders, and put rules needed to make their own affairs decisions and actions, thus establishing the general framework through which to determine the goals and the means used to achieve those goals and control them (The Organization of Economic Cooperation and Development. « OECD », 1999, p. 11).

C) Gérard Charreaux and Peter Writz defined corporate governance as a set of mechanisms that have the potential to influence the authority, decisions, behavior and attitudes of managers ( Charreaux & Writz, 2006, p. 07).

### **2.1.2. The importance of corporate governance:**

The importance of corporate governance can be summarized in the following points:

- Ensure greater independence of the monitors external auditors, thereby increasing the effectiveness of their performance (Abdel Moneim & Saud el kadhi, 2015, p. 413);
- Enhancing and maximizing the performance of organizations through the establishment and adoption of incentive systems that encourage managers to increase the operational efficiency of the institutions they manage and thus achieve long-term returns and profits (Oman & Arndt, 2003, p. 06);
- Control the behavior of managers and keep them away from bad practices that would affect the resources of the institutions such as theft or misappropriation of the resources of the institution by providing the means and mechanisms necessary to do so (Oman & Arndt, 2003, p. 06);
- Provide general frameworks for protecting shareholders' funds by building a transparent and fair information system (Achouri, 2016, p. 10);
- The speed of detection of financial fraud and administrative corruption through taking due action, and treatment of causes and effects before the aggravation (Achouri, 2016, p. 08), besides their impact on the life of the company and shareholders' funds (Ben Aichi & Takrart, 2017, p. 34);

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- Promote justice, transparency and fair treatment, for all parties, shareholders, investors and others with common interest;
- Avoid the existence of any deviations or mistakes, whether intentional or unintentional, and prevent their continuation (Abdel Moneim & Saud el kadhi, 2015, p. 413);
- Corporate governance helps the avoidance of financial collapses and stabilizes financial markets.

## **2.2. Basic concepts on the principles of corporate governance:**

This point is addressed to show what the principles of corporate governance are and demonstrating their objectives and nature.

### **2.2.1. The principles of corporate governance:**

the principles of corporate governance can be defined as: "a set of principles and practices that apply in particular to companies owned by a broad base of investors, including the rights and duties of all dealers with the company, such as the Board of Directors, shareholders, creditors, banks and suppliers, and show through internal systems and regulations applied to the company ( Al-Kayed, 2002, p. 36).

It can be defined, again, as: "a set of rules and regulations and procedures, providing the best protection and balance between the interests of the enterprise managers and shareholders, and other stakeholders associated (Ghazali, 2016, p. 85).

### **2.2.2. Objectives behind the principles of corporate governance:**

Principles aimed at the governments of the Member States and the governments of non-member States, through: (Khader, 2012, p. 18)

- Assessing and developing legal, institutional and regulatory frameworks that influence the application of corporate governance;
- Limit of economic collapses and problems that it follows;
- provide guidance for stock exchanges, investors, companies listed and unlisted;
- Improving economic efficiency at the macro level, and structural policies, through corporate governance, which

includes relationships between the executive management of the company, its board of directors, and its shareholders;

- Provide appropriate incentives to the Board of Directors and the executive management of the company to pursue goals that are consistent with the interests of the company and its shareholders;
- managing effective monitoring, through which companies can be encouraged to use their resources more efficiently;
- Attracting foreign investment, which enables companies to expand global competition and raise the degree of confidence by local investors.

### **2.2.3. The nature of corporate governance principles:**

The principles of corporate governance developed by The Organization for Economic Co-operation and Development (OECD) and CIPC include: (Khader, 2012, p. 109)

- These principles are not binding, but serves as a reference point seeks to define goals, and suggest ways to help achieve them;
- Constantly evolving in nature in the light of changes in the surrounding circumstances;
- does not recommend a single model of sound government, but recommends some common methods, which can be absorbed by any model in any organization;
- Leaving governments and market shareholders free to apply these principles taking into account cost and return;
- Corporate governance principles are considered as reference points for policy makers when preparing legal and regulatory frameworks for governance.

### **2.2.4. Principles of Organization for Economic Co-operation and Development (OECD) for corporate governance:**

The OECD set six principles for corporate governance (for more details, see OECD, 1999, pp. 17-24):

- A) The availability of the necessary foundations for effective corporate governance framework

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- B) Shareholders' rights and the main functions of the property owners.
- C) The equal treatment of shareholders.
- D) The stakeholders role of corporate governance
- E) Disclosure and transparency
- F) The directors board responsibilities.

### **3. The reality of corporate governance in the Algerian business environment:**

#### **3.1. The actuality of the legislative and regulatory frameworks that govern the economic institutions in Algeria from corporate governance:**

The Algerian authorities desired to adopt the principles of corporate governance indirectly, sought to cleanse the business environment and expand the scope of economic freedoms through the development of legal, legislative and regulatory frameworks that regulate the work of these institutions in Algeria. And to adjust them on a continuous basis to enhance transparency and accountability and protect the rights of interested parties, such as obligating limited liability Algerian companies to hold an external auditor acting in accordance with a Code of Conduct and Ethics. This reform was also applied to the shareholding companies only. (Saci Fatima and others, 2012, p. 12) It reformed the legislative framework related to investment under Ordinance No. 01-03 of August 30, 2001, and made continuous amendments in order to raise the administrative and financial obstacles facing the private sector and foreign investors. (Mouane, 2003, p. 2) Providing financial and fiscal facilities was added to encourage these institutions and increase their competitiveness.

It elaborated as well on the organization of working relations between directors and owners (agency relationship) through civil law. As for workers, the authorities have pursued to protect their rights and regulate their relationship with employers under the provisions of Law No. 90/11 on labor relations, the State aim to regulate the relationship between the institution and the several parties to which it has a relationship through commercial law, which works to bring transparency, independence and to

protect the rights of shareholders and all parties dealing with the latter, the following table: 01, through the review, some of the Commercial Code provisions which are compatible with the principles that are enacted by government:

**Table: 01** some of the provisions of the Commercial Code, which correspond to a set of governance principles.

<i>The identical content Code</i>	<i>Principles of Corporate Governance</i>
<ul style="list-style-type: none"> <li>▪ Article 678 of the Commercial Code has urged the Company to inform shareholders or place at their disposal all the following information contained in one or more documents:               <ul style="list-style-type: none"> <li>- Based management, general managers and their surnames and addresses, if necessary, a statement of other companies where these persons exercise management or the directorate or administration work</li> <li>- Draft resolutions text submitted by the Board of Directors or the Board of Directors;</li> <li>- the resolutions text submitted by shareholders project and the statement of reasons;</li> <li>- Report of the Board of Directors submitted to the Assembly.</li> </ul> </li> <li>▪ As amended Article 680 of the Commercial Law, the right of every shareholder to know during the fifteen days prior to the Annual General Meeting shall be as follows:               <ul style="list-style-type: none"> <li>- Table accounts, documents results, summary outcome and the list of existing management and board of directors and supervisory board;</li> <li>- The auditors' reports that are raised to the assembly</li> <li>- The total amount validated by the auditors of the accounts and the wages paid to the persons receiving the highest wage.</li> </ul> </li> </ul>	<i>transparency</i>

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<ul style="list-style-type: none"> <li>▪ Article 677 of commercial law states: Should the Board of Directors inform the shareholders or put at their disposal thirty days before the General Assembly, the necessary documents to enable them to express an opinion and make a careful decision regarding the company's business management and functioning.</li> <li>▪ Article 694 of the commercial law specifies that shareholders have the right of contracting in case of an increase in the company's capital equity.</li> <li>▪ According to article 680, altered, provides that each shareholder may, during the 15 days prior to the Ordinary General Meeting, have access to the Company's financial statements, reports of accountants, and compensation paid to persons with the highest remuneration.</li> </ul>	<p><b>shareholders' rights</b></p>
<ul style="list-style-type: none"> <li>▪ Article 715 derived 6 (adjust) of C.L it is not permissible to appoint a delegate to the accounts of the company contributed:             <ul style="list-style-type: none"> <li>- Relatives and in-laws, up to the fourth degree, including administrators, board members and the company's control board.</li> <li>- The Board of Directors, the Supervisory Board of the companies that own the Company's ten share capital.</li> <li>- Pairs of persons who received wages or remuneration through virtue of a permanent activity other than the activity of the representative of the accounts, either by members of the Board of Directors or the Board of Control.</li> <li>- Article 661 C.L affirms that no member of the Supervisory Board may belong to the Board of Directors</li> </ul> </li> </ul>	<p><b>independency</b></p>
<ul style="list-style-type: none"> <li>▪ Article 654 C.L states: The control board will exercise the permanent control of the company.</li> <li>▪ Article 655 of the same law claimed that the Board of Inspections to exercise the control it is considered necessary at any time of the year and has been given access to any documents it appears useful for its mission.</li> <li>▪ Article 656 committed the Board of Directors to submit a report on its management to the Supervisory Board at least once every three months and at the end of each</li> </ul>	<p><b>The control application on the company</b></p>

<p>financial year, as well as the documents which seem appropriate for audit and control, and to present to the General Assembly its observations on the Board of Directors' report and the financial year accounts</p> <ul style="list-style-type: none"><li>▪ Regarding the external auditors, the text of article 660 of the Commercial Code states: "The representative of the accounts under his responsibility ensures the observance provisions of the previous Article 659 and shall indicate in his report any breach."</li><li>▪ Article 715 derived 4 (rephrased) of the General Assembly of Shareholders called for the appointment of one or more accountants for a period of 3 years in order to investigate the books and securities of the Corporation in addition to the regularity and correctness of the company accounts without interfering in the management process.</li></ul>	
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**Source:** Achouri A/nacer, (2016), P 34.

In addition to ensuring financial funding for institutions to review and reform the banking system and establish a financial market that would enable them to offer direct financing alternatives, even though their limited activity, due to the family nature that characterizes most of these institutions in Algeria, and the weak financial culture of the stock exchange among the managers of the latter and society as a whole (Hamed Noureddine and others, 2012, p. 12).

The real and direct start to adopting the principles of governance was in 2007, when the Algerian authorities established a committee called the Governance Committee, which worked closely with the Global Corporate Governance Forum (GCGF) and the International Finance Corporation (IFC) to develop the Algerian corporate governance framework, even if the establishment of this committee aimed to satisfy external parties after the urging of some international financial institutions, especially the International Monetary Fund and the international Bank, yet, it is the beginning of a sense of the importance of adopting the concept of governance, which resulted in the issuance of the Algerian corporate governance guide on March 11, 2009. The "Governance of Algeria" is a center established to improve the country's economic environment and consolidating the values of governance, including transparency,

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accountability and responsibility. In order to ensure and strengthen the principles of governance, including transparency and accounting disclosure, the Algerian authorities issued Executive Decree No: 08-156 of 26 May 2008 concerning the adoption of the International Financial Reporting and Disclosure Standards and the International Accounting Standards as corporate in the Financial Accounting System. Algeria has been the destination of several international projects that wish to reinforce its governance, such as the EU project which has allocated a 10 million euro program to support it under the Partnership, Reform and Global Growth Program (Achouri, 2016, pp. 34-35).

### **3.2. The reality of the legislative and regulatory frameworks specifically directed to Algerian public economic institutions from corporate governance**

Since independence, the Algerian economy has undergone many transformations, which have influenced the nature of management and organization of economic institutions. Hence, economic is the spot of interest as it is a tool for achieving its development and eliminating the various obstacles facing the national economy. Thus, the public authorities have taken many measures and reforms through various stages of the Algerian economy, aiming to improve their situation and relations with the various parties, furthermore; eliminating the several manifestations of corruption that forbid their development. These will be reviewed as follows:

- **Launch the law no. 06-01: the prevention and control of corruption:**

Likewise countries around the world that suffer from corruption, this led to a number of measures which were taken into consideration, among these measures; Algeria launched Law No. 106-01 on the prevention and control of corruption, in addition to the promotion of integrity, responsibility and transparency in the public sector management (**Ministry of Justice, 2006, p. 3**) .Article 09 of the same law called for the need to involve the principles named before and credibility for public package

(Ministry of Justice, 2006, p. 7) Article 10 requires that all necessary measures must be taken into account to promote rationality in the conduct of public funds. This law imposed a set of criteria, conditions and principles to be relied upon, and consider all the recruitment or appointment, and of the principles of efficiency and objective criteria.

- **Release No. 01-04 the regulation and privatization of public economic institutions:**

Aiming from this law is the establishment of a legislative framework to confirm the good conduct of the public institutions management. It ensures privatization and strengthening the capacity of the state to exercise its role as owner and observer of these organizations furthermore, to install its management independence. (The Ministry of Industry, 2001, p. 2)

- **Order 01-08 complementing Order 01-04 on the organization, operation and privatization of public economic institutions:**

The above titled law is a complementary mechanism to deal with anything that might lead to the waste of public funds in which some managers have done, by devoting and expanding the powers of the General Inspectorate of Finance to act external monitoring of the public economic institutions after the competent authorities request within the framework of commercial law.

### **3.3. Governance by good governance institutions Algerian guide**

In July 2007, Algeria held the first international forum on good company governance. This forum provided an opportunity for all stakeholders to meet the principles of governance. The ultimate aim designed to train the shareholders and guide them towards a unified and adequate understanding of the problematic governance from the standpoint of practice and its contribution to the development of the institutions performance it adopts, as well as the awareness of the importance of good governance in enhancing the competitiveness of institutions in Algeria and the way to benefit from international experiences in this domain.

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During the forum activities, the idea of preparing an "Algerian charter for the rule of the institution" has emerged. The public authorities represented by the Ministry of Small and Medium Enterprises and traditional industries have responded by accepting this file and using it for material support. With the participation of a number of international bodies and institutions such as the International Finance Corporation, the MEDA Program for the Development of Small and Medium Enterprises, in addition to the International Forum Governing the Foundation.

In this current context, a working group was assigned in November 2007 under the name «08GOAL», according to the "Working Group on Governance in Algeria in 2008 that supervised the Algerian Charter of Good Governance preparation.

The Algerian Good Governance pact contains three parts divided as follows: **(Omar, 2013, p. 41)**

- The first section, details the motives that led to the adoption of the Good Governance pact by enterprises in Algeria. It also relates the problems of the Algerian institution, especially private small and medium institutions.
- The second section deals with the basic standards on which the good governance of institutions is based. On one hand, it presents the relations between the regulatory bodies of the institution (the General Assembly, the Board of Directors, the Executive Directorate) On the other hand, the partnership relation such as banks, financial institutions, suppliers, etc., in addition to the quality of information publishing and the ownership transfer methods.
- The Charter concludes with appendices that essentially join practical tools and advice that organizations can turn to a clear and precise concerns as a list for self-evaluation of enterprise

management. Various views of Algerian institutions subject under commercial law, conflicts of interest in the institution.

### 3.3.1. Partner Institutions implementing the pact:

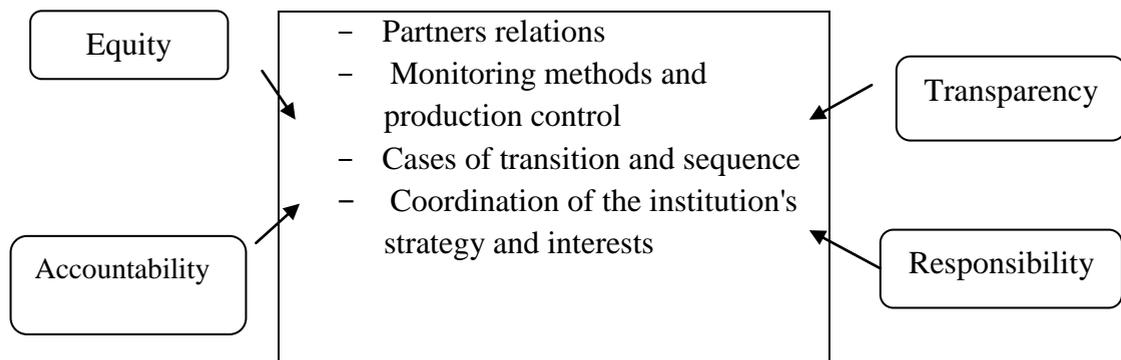
The Good Governance of Enterprises Pact in Algeria has been oriented to:

- All small and medium-sized private enterprises;
- The institutions that contribute to the stock exchange or those that intend to share in, except for institutions with public capital, which raise the problematic of good governance; as they are linked to a special approach that is up to the good usage of public funds.

### 3.3.2. Principles for the Charter of Good Governance Algerian Institutions:

The governance principles of Good Governance pact can be summarized in Figure 01.

**Figure 10:** Basic governance principles included in the Good Governance Pact.



**Source:** Ministry of Small and Medium Enterprises and Traditional Industries, Charter of Good Governance of the Foundation in Algeria, (2009), p. 67.

Good Governance charter of Enterprises in Algeria has four basic principles: (**Ministry of Smal Medium Enterprises and Traditional Industries, 2009, p. 67**)

- **Equity:** The rights and duties of partners, as well as the excellences and obligations associated with them, must be equitably distributed.

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- **Transparency:** Rights and duties, likewise the validities and responsibilities resulting from it, must be clear and honest to all.
- **Accountability:** Each partner is accountable to another party for what it is responsible for.
- **Responsibility:** Each party's responsibility is determined on its own by specific and single objectives.

### **3.4. The evaluation of the practical reality of the principles application of governance in Algeria:**

In 2001 as part of an initiative by the World Bank in cooperation with the Ministry of Economy and Foreign Trade (the Ministry of Commerce) and the Securities Exchange, besides a number of research centers, accounting and auditing firms, and interested economists and jurists trying to examine and assess Algeria's commitment with the rules and principles of governance, as the results of this study are as follows: **(Ahmed Kayed Noureddine, 2010, p. 10)**

- The rules of corporate governance in terms of international governance principles, which are applied in Algeria, are consistent within a context of 39 of the 48 principles, the laws governing companies for the securities industry on the same principles, moreover; their applications are fulfilled with the standards of good performance, one of the most important of these laws: the law of companies, the law of the business sector, the law of the stock market and investment law.
- Few of the principles are not applied, contained in the laws governing the business environment in Algeria, which may be due to a lack of awareness of shareholders or corporate departments.

The report on corporate governance in Algeria indicates that there are many positive practices, including the protection of Algerian law for the rights of shareholders, where it is found that it ensures all basic rights such as participation in the distribution of profits, voting in the General

Assemblies and access to information about the company, the same for the rights of bondholders, lenders and workers. **(Ahmed Kayed Noureddine, 2010, p. 10)**

From another perspective, it contained many negative things that required serious action which related to, among other things, revelation of ownership and management. Including disclosure of ownership structures explicit, hidden or overlapping as well as the rewards of the Board of Directors and the disclosure of certain information, such as information on potential risks. **(Ahmed Kayed Noureddine, 2010, p. 10)**

The report recommended the need to update and reinforce accounting practices and adopt an effective regulatory system governing the work of the private sector, based on the principles and standards of modern review to assure the good application of laws at all levels. **(Ahmed Kayed Noureddine, 2010, p. 10)**

From this point, it is concluded that the problem is not in the absence of a legislative and legal framework calling for the application of the principles of governance in Algeria despite the shortcomings and negative points enclosed. But the problem is how to apply the actual legislation and reflect it in practice, but the problem is how to apply the actual legislation and bring it to practice, private sector governance is not just procedures and laws enacted only, but also must progress, through the development and coordination, ensuring the effective implementation of approved reforms and laws, and developing a management framework based on evaluation of inputs and outputs through periodic assessment and adequate improvements **(Ben Abderrahman Nariman and others, 2013, p. 07).**

#### **4. Conclusion:**

To conclude, the study reached a group of results and recommendations summarized as follows:

##### **4.1. Results:**

The most important results are mentioned like follows:

- The study arrived to a result; there is compatibility between the legislative and regulatory frameworks that govern Algerian economic institutions and the principles of corporate governance.

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- The study revealed the intention of the Algerian authorities towards the governance of the business sector in Algeria, which is reflected through the series of reforms and laws that it issued and adjusted occasionally, besides to the adoption of governance institutions charter in Algeria.
- The current issue comes out that Algeria does not lack a legislative and legal framework that calls for applying the principles of governance in Algeria despite its deficiencies negative points; but the problem is the lack of mechanisms and to ensure the good and effective implementation of these legislation and laws.

## **4.2. Recommendations:**

The study recommends:

- The necessity to find mechanisms to implement effectively the reforms, laws adopted and reflects them through practice.
- The need to evaluate regularly the legal and regulatory frameworks that govern economic institutions, to progress them continuously, also to eliminate the various shortcomings and negative points, so as to be able to cope with the various developments in the Algerian business environment.

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