Italian Corporate Governance Committee

ANNUAL REPORT 2013

1ST REPORT ON THE COMPLIANCE WITH THE ITALIAN CORPORATE GOVERNANCE CODE

December 9, 2013

Corporate Governance Committee [1] *(current composition)*

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Sergio Albarelli (3)
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Aldo Minucci (2)
Marcella Panucci (5)
Carlo Pesenti (4)
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Technical Secretariat
Carmine Di Noia (coordinator)
Alessandro Chieffi
Livia Gasperi
Antonio Matonti
Massimo Menchini
Pietro Negri
Francesca Palisi

[1] Legenda: Members appointed by (1) Abi; (2) Ania; (3) Assogestioni; (4) Assonime; (5) Confindustria; (6) Borsa Italiana. Member appointed by the Chairman in accordance with the Promoters (7).

INDEX

1. ANNUAL REPORT 2013

The 2012 has been the second year of the Corporate Governance Committee, established in 2011 as a result of an agreement between the promoters of the Italian Corporate Governance Code (Borsa Italiana, Abi, Ania, Assogestioni, Assonime and Confindustria); the aim of this Committee was to ensure a continuous and structured process for both the production and the monitoring of the best practices adopted by Italian listed companies.

The new Committee maintains, as in the past, a flexible structure. In its current configuration, the Committee has neither legal nature nor economic independence. The Committee decided to regulate its functioning through some organizational rules that have been drawn up in order to assure continuity and regularity of its activities. The Committee organizational rules (available on the website of the Committee), have been agreed between the promoters and shared by the Committee during its first meeting, held in June 14, 2011.The rules concern the composition of the Committee, its purpose, convening procedures, voting majorities as well as the procedure for the submission of the resolution proposals to the Committee.

For the past two years, the composition of the Committee has been changing. For the changes occurred during the 2012, please refer to the Annual Report published on November 29, 2012. Afterwards, there have been some new entries and rotations[2]. For the current composition of the Committee, please see p. 1.

1.1. The activities of the Corporate Governance Committee

During the meeting of November 29, 2012, the Committee reviewed its first Annual Report, which reported not only the initiatives taken in order to promote the Corporate Governance Code as approved in December 2011 (hereinafter, the "Code"), but provided also the synthesis of a larger European-comparative study, concerning the structure of corporate governance committees all over Europe and the related monitoring procedures that have been put in place in the Member States. As approved by the Committee, the Report has been published on the website of the Committee.

At the same meeting, the Committee adopted the plan of its future activities and decided to publish a report on the implementation of the Corporate Governance Code as well as to launch the proposal of adopting the so-called "Stewardship Code", which should provide some best practice principles for asset managers, investors and their advisors, and focuse on transparency of their voting policies, monitoring activities of investee companies and management of the conflicts of interest.

The Committee subsequently met on March 6, 2013. At this time, also with the support of the three Experts, the Committee took the decision to publish regularly, starting end of 2013, an annual report on the compliance with the Corporate Governance Code. This Report should

[2] On January 24, 2013, Confindustria appointed Giuseppe Recchi replacing Paolo Scaroni. On October 7, 2013, Assogestioni appointed Sergio Albarelli replacing Guido Giubergia. Following the appointment of its new Chairman, Assonime appointed Maurizio Sella replacing Luigi Abete, on October 23, 2013; at the same time, Assonime appointed also Carlo Pesenti replacing Franco Bernabè. On November 26, Abi appointed Gian Maria Gros-Pietro in place of Enrico Tommaso Cucchiani.

analyse, in an aggregate form, improvement and critical areas, as well as the quality of the corporate governance information provided by Italian listed companies.

The Committee has also agreed to publish the Report as a section or appendix of the Annual Report on its activities, defining its structure: the first part should provide an overview on the application of the Code, while the second, in-depth analysis, should focus on the self-assessment of the Board of Directors (so-called board evaluation).

On this point, the Committee has commissioned the Technical Secretariat to draft the Report on the compliance with the Corporate Governance Code, referring to multiple and reliable external sources.

At the same time, the Committee faced also the question about whether to adopt also an Italian Stewardship Code. In this regard, Assogestioni adopted in October 2013 the Italian Stewardship Principles for the exercise of administrative and voting rights in listed companies, concerning companies that provide services to collective investment management or portfolio management in order to stimulate a discussion and a collaboration between management companies and listed issuers in which they invest. The principles adopted are in line with those drawn up by EFAMA, the European Fund and Asset Management Association, whose member, among others, is Assogestioni.

In order to give effect to the mandate given by the Corporate Governance Committee, the Technical Secretariat has continued its study and analysis activities, with the support of the Experts.

During 2013, the Technical Secretariat has held six meetings, analysing different forms of monitoring in the various European countries. Finally, the Technical Secretariat prepared the draft Report on the implementation of the Corporate Governance Code and carried out further analysis of the existing stewardship codes in Europe.

Additionally, during the 2013, the Committee continued with its public activities, in particular through the participation of its Chairman to some conferences, both national, as for example the meeting with Consob (the public authority responsible for regulating the Italian securities market), and international, as for example the *International Corporate Governance Network* On that occasions, Committee's members have presented the new Italian Corporate Governance Code as well as the corporate governance practices of Italian listed companies.

Representatives of the Committee attended the meetings of the European Corporate Governance Codes Network (http://www.ecgcn.org).

Finally, thanks to the support of the Italian Stock Exchange, the Committee's website has been set; it contains all past and present relevant documentation, of the Committee and the collection of the corporate governance reports, published since 2001, as well as remuneration reports, published since 2012, submitted by companies listed on the Italian Stock Exchange.

1.2. The evolution of the corporate governance framework

In the past year, proposals in the field of corporate governance has been prepared mainly at the European level rather than in Italy. In fact, the European legislator has been very productive in this area, publishing some structural plans and proposed directives, which are building up the basis for future legislative measures.

The EU Action Plan on company law and corporate governance

On December 12, 2012, the European Commission published its Action Plan on company law and corporate governance, outlining the actions it intends to take to modernize companies' legal framework.

The Action Plan follows two public consultations, the Green Paper on corporate governance of listed companies, published in 2011, and the Green Paper on the future of European company law, published in February 2012 and based on the 2011 Report of the Reflection Group.

The Commission announced its intention to implement the Action Plan following three main lines of action: strengthening the transparency of listed companies and institutional investors, promoting shareholders' activism and supporting growth and competitiveness of enterprises.

As far as the first line of intervention, the Commission intends to adopt measures in order to provide, among other things: *(i)* the strengthening of information obligations on policies to ensure diversity within the Board of Directors and on the assessment of non-financial risks, *(ii)* an improvement (probably through the adoption of a Recommendation) of information contained in the corporate governance reports , with particular reference to the explanation given in the case of non-compliance with the recommendations of corporate governance codes of reference.

With regard to shareholders' activism, the Commission has disclosed its intention to: *(i)* introduce a mechanism of compulsory AGM voting on remuneration policies, *(ii)* strengthen the control of shareholders on related party transactions, (*iii*) set out rules on the transparency of proxy advisors, (*iv*) improve the legal framework on acting in concert; *(v)* promote the development of share plans for employees.

Finally, the Commission intends to pursue a number of measures in order to support growth and competitiveness of enterprises, improve the information disclosure on groups and recognize the concept of "group interest".

Proposal for a Directive on non financial information

Among the initiatives in the field of corporate governance launched in 2013, it should be mentioned the proposal for a directive amending the Fourth (78/660/EEC) and Seventh (83/349/EEC) Directive, adopted by the European Commission on April 16, 2013[3].

In particular, through this action, the Commission requires some non-financial information to be reported in the annual report (in particular, related to, *inter alia*, employees, human rights, bribery).

In an effort to increase diversity in the composition of the administrative and control bodies, the proposed directive also requires to disclose in the annual report a description of the policy adopted by the company in relation to age, gender, geographic diversity, educational and professional background or, in the case of non-adoption of the policy, to provide a clear and reasoned explanation of not doing so.

[3] After the European Commission proposal, the Fourth and Seventh Directive have been repealed and replaced by Directive n. 2013/34/EU of June 26, 2013.

The proposal for a Directive about gender diversity

With specific reference to the issue of gender diversity, it should be noted that the Commission adopted a proposal for a directive to promote gender balance on boards of listed companies in Europe. The proposal requires listed companies to adopt measures that will enable the achievement of 40% of the less represented gender among the non-executive directors in 2020; in case of listed companies subject to public control, the objective must be achieved two years earlier (by 2018). The contents of the proposal are temporary and are set to expire in 2028. The proposal is currently under consideration of the European Parliament and the Council.

National actions in the field of corporate governance: Banca d'Italia's regulation of the Internal Control System

In the past year, there have been, at the national level, few regulatory interventions in the field of corporate governance. However, in Italy should be noticed Bank of Italy's document on the "Internal Control System", published in June, which has integrated the "New regulations for the prudential supervision of banks" (Circular no. 263, December 27, 2006).

In general, the regulation aims to strengthen the ability of banks and banking groups to oversee the business risks, creating a regulatory framework which is consistent with both international best practices as well as recommendations of the major standard setters (Financial Stability Board, Basel Committee on Banking Supervision, European Banking Authority).

These new rules require banks to establish a System of Internal Controls that is comprehensive, adequate, functional and reliable. The framework is inspired by some basic principles concerning the direct involvement of top managers; the need to ensure an integrated view of risks; the focus on the efficiency and the effectiveness of controls; the enhancement of the principle of proportionality, which allows to adapt specific rules in relation to size and organisation complexity of banks.

2. REPORT ON THE COMPLIANCE WITH THE CORPORATE GOVERNANCE CODE

The first Report on the compliance with the Corporate Governance Code (hereinafter the "Report") is divided into two sections: the first provides an overview on the most significant governance issues in relation to the Corporate Governance Code recommendations, while the second analyses the procedures adopted for the self-assessment of the Board of Directors and its committees (so-called board evaluation).

Establishing the criteria of its analysis, the Committee had decided to rely upon multiple and consistent outside sources: for this reason, the Committee invited research centres, also academics ones, and corporate governance experts to submit their study results.

2.1 Current application of the Code[4]

A first overview of the corporate governance of Italian listed companies is provided by their Reports on ownership structure and corporate governance, published in accordance with Art. 123-bis of the Consolidated Law on Finance (legislative decree no. 58/1998, hereinafter "CLF")[5]. This provision requires issuers to draw up and publish a "Report", disclosing, among other things, information about the "eventual adoption of a code of conduct for corporate governance promoted by companies managing regulated markets or by professional associations, explaining any non-compliance with one or more recommendations of that code, as well as the corporate governance practices actually adopted by the company beyond the obligations required by laws or regulations"[6].

Almost all companies with shares listed on the Italian Stock Exchange declared their decision to comply with the Corporate Governance Code as such[7].

A limited number of issuers, stable over the years (16 cases), announced explicitly their decision not to comply with (or not to continue to do so) the whole Corporate Governance Code but disclosed some information on its corporate governance system in compliance with art. 123-*bis* of the CLF.

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[4] Drawing up this first section, the Committee used data and information provided by the following surveys: Consob, *2013* Report on corporate governance of Italian listed companies, November2013; Assonime-Emittenti Titoli (by Massimo Belcredi and Stefano Bozzi, Università Cattolica del S. Cuore), *Corporate Governance in Italy: Compliance with the CG Code and Directors' Remuneration*, November 2013; TEH-Ambrosetti, *2013 Report dell'Osservatorio sull'eccellenza dei sistemi di governance in Italia*, November 2013.

[5] This article has been introduced by art. 4 of the Legislative Decree n. 229, November 19, 2007 and further replaced by art. 5 of the Legislative Decree n. 173, November 3, 2008. Moreover, also in the past listed issuers were required to disclose annually, according to terms and manners established by Consob, information on their compliance with codes of conduct promoted by management companies of regulated markets or by trade associations of operators and with the relative recommendations, giving reasons for their non-compliance (art. 124-*bis* CLF, introduced by art. 14 of Law n. 262, December 28, 2005).

[6] The Report shall disclose, among other issues: a) some specific information about the ownership structure of the issuer; b) rules for the appointment and the replacement of directors, whether different from the legislative ones; c) main features of the internal control and risk management system that has been put in place, especially regarding to the flow of financial information, if applicable; d) regulation of the AGM; e) structure and functioning of the administrative and control bodies and its committees.

[7] 223 companies, i.e. 93% of 239 companies listed at December 31, 2012, which reports were available at July 15, 2013 (see Assonime-Emittenti Titoli, p. 26).

In 9 cases, companies provided the reason of their non-compliance, generally referring to company's size and structure and, in some cases, to the appropriateness of their own governance model to the specific features of the company[8]. **The Committee, while taking note of the reasons disclosed by companies which have chosen not to comply with the whole Code, considers however useful, also in the interest of the issuers themselves, to suggest them to disclose their explanation of the non-adherence in a clear and reasoned manner to the market.**

Among the issuers adhering to the Corporate Governance Code, the Committee has generally observed a good level of quantitative and qualitative information provided in their Corporate Governance Reports.

While appreciating the degree of information transparency, the Committee encourages issuers to make an extra effort to be exhaustive and complete in order to enable a more explicit and reliable representation of their governance, especially with regard to structure and functioning of the board and, consequently, to the effective application of rules and principles.

The Committee believes it is important to emphasize that the Italian corporate governance system, composed by both Code recommendations and legal framework (law and regulations), is one of the most advanced, transparent and market-friendly ; therefore, the Committee considers it essential to maintain such level even through a good level of issuers' disclosure.

Moreover, also the Corporate Governance Code Guidelines invite issuers to provide in their reports accurate, albeit concise, information on how single recommendations set out in Code's *principles* and *criteria* have been effectively applied. Furthermore, the publication of comprehensive and complete reports shall be a useful tool for the assessment procedures carried out by investors and their advisors.

The Code framework – patterned after the principle of flexibility – allows issuers not to comply with some of its recommendations (in whole or in part), in line with its comply or explain principle, explicitly set out in art. 123-*bis* of the CLF. However, issuers must explain the reasons of each non-compliance.

The Committee believes that the decision not to comply with some Code's recommendations does not involve a negative evaluation *a priori*, being aware of the fact that this may be contingent on several factors: the company may not have reached the structure that allows the full implementation of all recommendations (e.g. in case of a recently listed company) or may evaluate that some recommendations are less useful for/incompatible with their corporate governance model or with the legal and financial features of the company (e.g. company subject to insolvency proceedings).

The Committee believes that, in all these cases, it is more advisable not to comply with single recommendations of the Code (even though providing detailed explanations for doing so) rather than achieve a mere formal adherence to the Code. On this basis, the Committee encourages issuers to pay particular attention during the drawing up of the report, underlining on one hand the inappropriateness of generic or formalistic expressions in case of non-compliance with one or more Code recommendations, and, on the other hand, emphasizing the importance of detailed and exhaustive explanations. In

[8] In case of either laws or regulations that are inconsistent with certain recommendations of the CG Code (e.g. financial regulations), no information is required on the omitted or partial implementation of such recommendations (CG Code, Guiding Principle IV).

this regard, the Committee recommends issuers to disclose any governance solution adopted by the issuer as an alternative to the non-complied recommendation, and to bare, in case of a provisional non-compliance, the approximate timing for the new alignment with Code provisions; this also takes into account possible initiatives of the European Commission, that would be probably taken in order to promote a better quality of the explanations in the corporate governance report .

2.1.1 The functioning of the Board of Directors

The latest edition of the Corporate Governance Code is particularly aimed to ensure the proper and effective functioning of the Board of Directors. As result of those recommendations, information on composition, functions, length and attendance to the management and control bodies has increased considerably.

Among the recommendations to achieve the above mentioned aim, the Corporate Governance Code pays particular attention to the flow of information before and during the meetings of the Board of Directors, on the assumption that, whether directors achieve a more appropriate knowledge of the issues that are going to be discussed in the BoD meetings, they would behave in a more active and aware manner.

In this regard, the Corporate Governance Code recommends, among other things, that the documentation relating to the agenda of the BoD is made available to directors in a timely manner prior to the Board meeting; moreover, according to the Code, the Board of Directors shall provide in the Corporate Governance Report some data on the promptness and completeness of the pre-meeting information, additionally providing details on the prior notice usually deemed adequate for the supply of documents and specifying whether such prior notice has been usually observed (*criterion* 1.C.5.).

The Committee emphasizes that information on the effective functioning of the board is greatly improved, allowing investors to carry out more reliable assessments on the corporate governance of the issuer.

Almost all listed companies[9] provided some information on the prior notice supply. Sometimes, the disclosure is limited to a general directors' statement, concerning the prior notice deemed to be adequate. More than half of the companies that provide information about the prior notice supply, disclosed precisely the timing normally considered adequate. The information is provided more frequently by larger and financial companies.

The prior notice deemed adequate varies from 2,8 to 3,4 days, even in relation to different items on the agenda[10].

In nearly more than half of the cases, companies explicitly disclosed that the prior notice has been usually observed. **In relation to this issue, the Committee would like, in the corporate governance reports on year 2013, this information to be disclosed more frequently and, moreover, calls upon issuers to ensure a prior notice delivery in order to balance confidentiality and adequate knowledge requirements. However, when it has not been possible to provide pre-meeting information with adequate prior notice, the**

[9] 214 companies (i.e. 90% of the total). In 2012 this information has been provided, on a voluntary basis, by 67% of companies (see Assonime-Emittenti Titoli, p. 35).

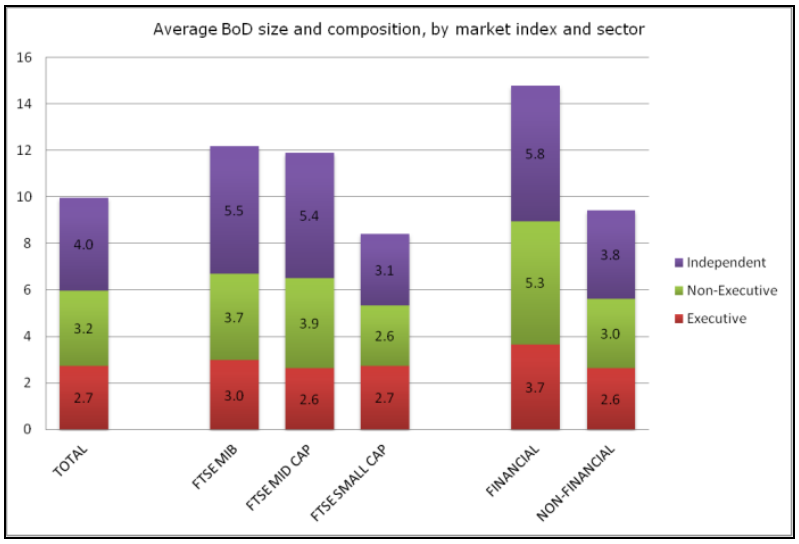
[10] In the past, the information has been provided, on a voluntary basis, by 25% of companies. At this time companies defined as adequate a prior notice of 4 days. Although there is a marginal worsening in the timing, data should be read in relation to the increase of companies providing this kind of information (see Assonime-Emittenti Titoli, p. 35).

Committee recommends issuers to provide detailed information during the BoD meetings as well as an adequate disclosure in their corporate governance reports.

2.1.2 Board of Directors' structure and the role of Independent Directors

Defining the structure of the Board of Directors, the Corporate Governance Code recommends that it has to be made up of executive and non-executive directors (*Principle* 2.P.1.) and that an adequate number of non-executive directors shall be independent (*Principle* 3.P.1.).

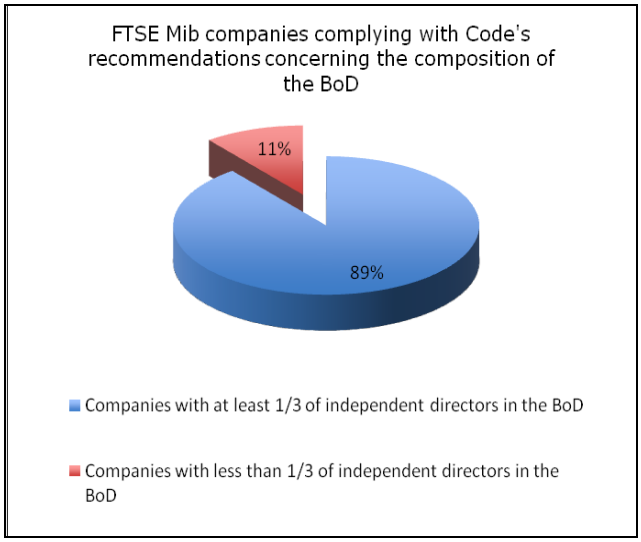
Over the years, companies gradually aligned the composition of their BoD to the Corporate Governance Code recommendations. In general, Boards have a balanced composition and are composed by directors belonging to the categories suggested by the Code. On average, the Board of Directors is made up of 10 directors, of which: 2,7 executive, 3,2 non-executive non-independent and 4 non-executive independent directors. The size of the Board varies according to company size and sector.

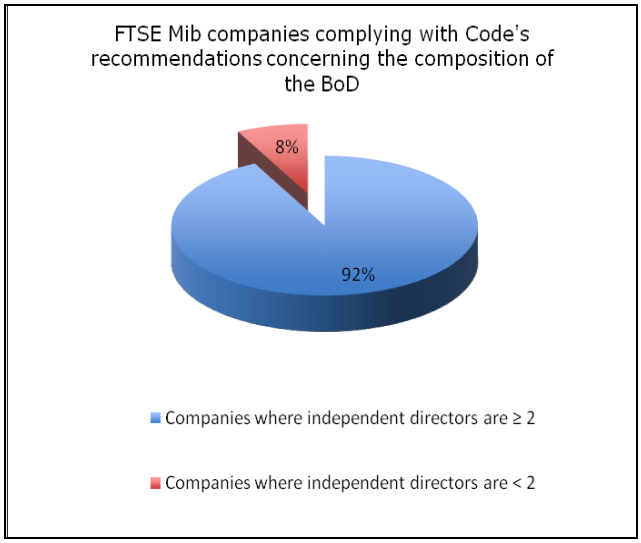


The issue of independent directors is one of the key points of corporate governance. As mentioned, since its first edition, the Corporate Governance Code recommends an adequate number of non-executive directors to be independent. In providing this recommendation, the *principle* 3.P.2. defines as independent directors those who do not maintain, directly, indirectly or on behalf of third parties, nor have recently maintained any business relationships with the issuer or persons linked to the issuer, of such a significance as to influence their autonomous judgement. In the following *criterion* 3.C.1., the Code sets out a non exhaustive series of cases in which directors independence may be jeopardised.

The 2011 Code, in order to strengthen the best governance practices, provides the minimum number of independent directors in the BoD. In fact, *criterion* 3.C.3. recommends that, in companies listed on the FTSE Mib Index, at least one third of their BoD shall be made up of independent directors (rounded down); the guiding principle VIII point out that companies should apply this *criterion* from the first renewal of the Board taking place after the end of the fiscal year beginning in 2012. Anyway, according to the Code, independent directors in any company shall be not less than two.

Although the recommendation is not yet fully into force, last corporate governance reports disclosed an almost complete alignment. At the end of 2012, in almost all companies listed on the FTSE Mib Index, the composition of the Boards (BoD or Supervisory Board) was already in line with this recommendation[11] and a large number of companies had at least two independent directors[12]. This trend points out the mature approach of Italian issuers, that are clearly aware of the importance to ensure a balanced presence of independent directors within the body entrusted with the strategic planning of the company.





In addition, the Committee emphasizes that a significant number of independent directors on slates submitted for the appointment of new Board members may be crucial to get the vote of institutional investors. **It is therefore essential, in the opinion of the Committee, to keep this trend stable over time in order to enhance continuously our corporate governance system.**

[11] 34 companies, i.e. 89% of the total (see Assonime-Emittenti Titoli, p. 43).

[12] 221 companies, i.e. 92% of the total (see Assonime-Emittenti Titoli, p. 44).

However, the analysis of the qualification of independence requires a bigger interpretation effort, while, in our system, the definition set out by the Corporate Governance Code comes up beside the legislative one, set out in art. 147-*ter*, paragraph 4, of the CLF[13] that requires indeed the mandatory presence of independent directors in the BoD of listed companies. Moreover, the law qualifies as independent directors those who have the same independence qualification required for statutory auditors; in addition, in the event of loss of the independence requirement, the director will fall from his/her office.

The analysis of corporate governance reports shows that, out of a total of 1,139 independent directors, 998 are qualified as independent both by Code and law; 113 non-executive directors are qualified as independent only "by law" (this is relatively more frequent for companies with a the two-tier corporate governance model, where all members of the Supervisory Board should satisfy the legal independence requirement), while 28 are qualified as independent only "by Code" (12 companies) [14].

If the aim of Law no. 252/2005 were to ensure a stable presence in the Board of Directors of members in order to reduce potential conflicts of interest, the empirical evidence shows that it has been fully achieved.

Looking at the empirical results, the Committee wonders if it is the time to try to have a single definition of independence. This approach would overcome the dichotomy between "independent directors by law" and "independent directors by Code", as well as endorse a more substantial definition of independence, which should be identified having regard more to the substance than to the form.

As well known, the Corporate Governance Code entrust the Board of Directors with the duty of a periodic assessment of the independence of directors "having regard more to the substance than to the form", as mentioned above. The Corporate Governance Code also recommends to the Board of Directors to publish the results of its evaluations, after the appointment, through a press release to the market and, subsequently, within the Corporate Governance Report; moreover they shall disclose whether they, in assessing the independence of each director, adopted criteria other than those recommended by the Corporate Governance Code, and in this case, specifying the reason of doing so; at the same time the Code requires to the BoD to describe quantitative and qualitative criteria eventually adopted for the assessment of the relevant relationships under evaluation.

The empirical results for the financial year 2012 show that the intention not to comply with one or more independence *criteria* defined by the Code has been disclosed by 41 companies. In most of cases, companies did not comply with the so-called "nine years" *criterion*; this kind of non-compliance is generally explained due to the opportunity to focus on the knowledge gained by the director or the necessity not to apply literally this *criterion*. In some other cases, companies did not comply with the *criteria* of positions held in subsidiaries, cross-directorships, significant professional relationships, additional remunerations as well as the affinity to the same network as the company appointed for the auditing of the issuer. The description of quantitative or qualitative criteria used for the assessment of some relationships in order to verify the independence of one or more directors is still rarely disclosed; this happens only in 16 cases.

There are some differences, when issuers evaluate positively the independence of one or more directors, even in presence of one of the negative conditions provided by the *criterion* 3.C.1. of the Corporate Governance Code, and at the same time comply with Code provisions; in

13 Inserted by the Law n. 262, December 28, 2005.

14 They were 169 (in 42 companies) in 2012 (Assonime-Emittenti Titoli, p. 45).

these cases, the independence assessment has been carried out according to the Code rule, i.e. having regard more to the substance than to the form.

The Committee points out that the proper application of this principle implies not only the possibility to qualify as "independent" those who are not perfectly in line with the *criteria* provided by the CG Code – when the Board of Directors has evaluated the independence requirements having regard more to the content than to the form – but it should also encourage issuers to consider as "non-independent" that director who, although formally in line with the *criteria* of the Code, is actually in a situation that substantially jeopardize its independence.

2.1.3 Gender diversity

One aspect that deserves special attention relates to gender diversity on the Board of Directors.

Following the introduction of the Law n. 120, July 12, 2011 – which requires that in the corporate bodies of listed companies the less-represented gender must obtain at least 1/5 (rounded up) of the board seats in the first mandate and at least 1/3 in the following two mandates – there has been a progressive increase in the number of women sitting in the corporate boards of administration and control.
The new Law entered into force only for listed companies whose Boards of Directors and Statutory Auditors were subject to renewal after August 12, 2012. Indeed, the law is likely to be phased in line with the natural expiry of the corporate bodies.

By now the vast majority of listed companies has some female representative in their boards. In general, women are well represented in companies with the highest market capitalization, especially among financial firms, while their presence is lower in the industrial sector[15].

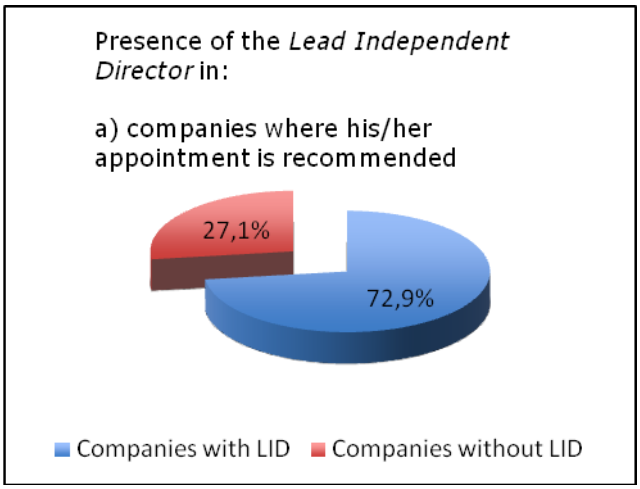
The Committee welcomes new board compositions, even after the law on gender quotas, and hopes that, in line with the Corporate Governance Code, diversity would increase also in relation to professional and management skills, including international ones.

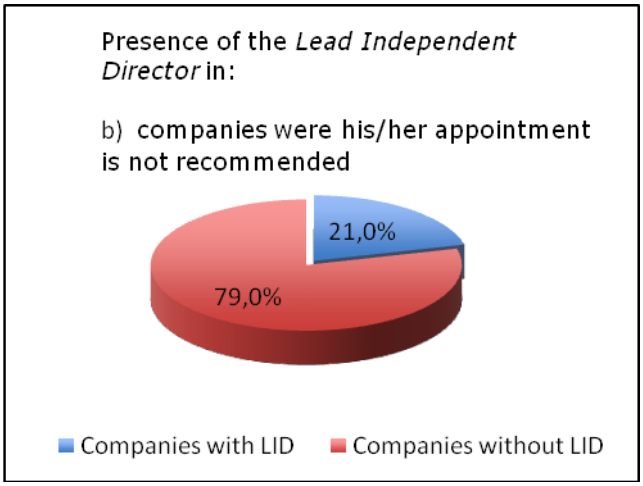
2.1.4 Multiple offices and appointment of a *Lead Independent Director*

International best practices recommend to avoid the situation of one board member holding multiple positions without appropriate checks and balances; in particular, the separation of the roles of Chairman and CEO can strengthen the characteristics of neutrality and balance that are required to the Chairman of the BoD. Taking into account that some situations of overlapping of the two roles may be due to company's organisational needs, the Corporate Governance Code recommends the appointment of a Lead Independent Director (LID) in some circumstances: *(i*) in the event that the Chairman of the BoD is the CEO of the company; *(ii)* in the event that the Chairman is also the person controlling the issuer. Furthermore, among companies listed on the FTSE Mib Index, the LID is appointed also upon request of the majority of independent directors.

[15] After the 2013 AGM season, the percentage of women on boards of directors has reached a percentage of 17% of the total number of directors. The presence of women on the boards of companies in the financial sector is on average equal to 2,4 and an average of 2 in the industrial sector; on the other hand, the relative weight of women in the board is slightly higher in the industrial sector: 21,4 % compared to 20% in the financial sector (see Consob, p. 16).

In general, 100 companies designed a Lead Independent Director[16]. **The Committee appreciates the implementation of high corporate governance standards, also without an explicit recommendation of the Corporate Governance Code.**





The Committee reiterates the importance of this guarantee figure, not only for balance reasons within the board, but also in view of the attention paid to this balance by institutional investors; on this point, the Committee underlines that the prior commitment of the issuer to appoint a LID whenever it is recommended (*criterion* 2.C.3 *i)* and *ii)*) may have a positive influence on institutional investors.

Moreover, the Committee noted that the appointment of the LID has frequently an indirect influence on the organization of meetings of independent directors. As it is well known, the Corporate Governance Code recommends that independent directors meet at least once a year without the presence of other directors (*criterion* 3.C.6.). The holding of these meetings occurs in 126 companies (53% of the total), but the recommendation is followed more

[16] The appointment is more frequent when required by the Code: this is true in 70 cases, while in the other 30 cases, the LID is appointed on a voluntary basis. 26 companies – that would fall in the Code's requirements regarding the appointment of a LID – are not compliant with the recommendation of the Code: 9 of those did not adhere to the Code and other 2 disclosed an only "partially" adherence to it; 7 companies have no independent directors (according to Code's definition) and the other 2 have only one independent director (see Assonime-Emittenti Titoli, p. 51, ft. 61).

frequently in companies where also a LID has been appointed (independent meetings were held only in 67% of cases; the percentage drops to 42% in cases where it has not been appointed a LID).

2.1.5 Board committees

The Corporate Governance Code recommends also to set out within the Board of Directors some preparatory and advisory committees.

On this point, the Code of Corporate Governance recommends at least the establishment of the Remuneration Committee and the Control and Risk Committee.

Both the Remuneration Committee and the Control and Risk Committee have been established by almost all companies[17].

With reference to both committees, the latest edition of the CG Code has recommended a composition of only independent directors or, alternatively, of non-executive directors, the majority of which to be independent; in this case, the Chairman of the committee shall be an independent director.

With regard to the committee composition, 162 companies are aligned with Code recommendations with regard to the Remuneration Committee[18] and 196 companies with regard to the Control and Risk Committee[19]. **The Committee welcomes issuers' alignment with the new requirement in terms of composition of both the Remuneration and the Control and Risk Committee.**

The 2011 Corporate Governance Code recommended also the establishment of a Nomination Committee, while the previous edition of the Code only recommends to the Board of Directors to assess whether to establish it. 106 companies established the Nomination Committee, i.e. 44% of the total. When established, the Nomination Committee is often unified with the Remuneration one: this happens in 73% of cases.

The Corporate Governance Code recommends that the Nomination Committee should be composed of a majority of independent directors. In fact, where established, the committee is composed of non-executive directors, a majority of which are independent. Only 8 companies – as in 2012 – have a committee with some executive directors.

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[17] 214 companies have a Remuneration Committee (i.e. 90% of the total), while 218 companies have the Control and Risk Committee (i.e. 91%) (Source: Assomine-Emittenti Titoli, pp. 64 and 71).

[18] More precisely, 91 companies (43% of those who have the RC), have a RC made up of only independent directors; 71 companies (33% of the total) have a RC made up of non-executive directors, the majority of which are independent, including an independent Chairman (Source: Assonime-Emittenti Titoli, p. 66). Among companies listed on the FTSE Mib Index (at Dec. 31, 2012), the average number of independent directors is about 86% (Source: TEH-Ambrosetti, slide 96).

[19] 115 companies (i.e. 53% of those who have the CRC) have a Control and Risk Committee made up of only independent directors; 81 companies (37% of the total) have a CRC made up of non-executive directors, the majority of which are independent, including an independent Chairman (Source: Assonime-Emittenti Titoli, p. 73). Among companies listed on the FTSE Mib Index (at Dec. 31, 2012), the average number of independent directors is about 89% (Source: TEH-Ambrosetti, slide 98).

2.2 Board evaluation[20]

The focus of this Report concerns the board evaluation. The choice to focus on this topic is due to its growing importance in the recent best practice developments, in line with the general aim to strengthen the functioning of the Board of Directors.

The Green Paper, published in April 2011, referring to the 2005 Commission Recommendation on the role of non-executive directors[21], underlined that the Board of Directors should annually evaluate its work, using as benchmarks, its composition, organization and functioning.

The CG Code, already in the 2006, suggested companies to carry out such board evaluations.

The 2011 edition has strengthened this provision, recommending to the Board of Directors to carry out, at least once a year, an assessment on the following issues: *(i)* functioning, *(ii)* size and *(iii)* composition, taking into account features such as professional experience, including the managerial one, and gender of its members, as well as their length of service (*criterion* 1.C.1. g). Moreover, the Code recommends also to carry out such activities with regard to internal board committees, where established.

Furthermore, the Corporate Governance Code requires issuers to provide in their report on corporate governance some information on how the self-assessment procedure has been developed (*criterion* 1.C.1. i).

183 out of 239 companies (i.e. 77% of listed companies) disclosed that they have carried out the self-evaluation of the Board of Directors. The Committee noticed that the self-assessment process on the functioning of board and its committees is a growing phenomenon, in particular among larger companies and in the financial and insurance sector[22].

Therefore, the Committee believes that our financial market is keeping up with other European countries having regard to the use of that tool that allows to identify areas of excellence in the Board of Directors (and their committees), to be consolidated, and areas of concern, to be improved; at the same time, the Committee recommends that any decision not to carry out the board evaluation should be adequately explained.

2.2.1 The purpose of board evaluation: aim and methodologies

The *criterion* 1.C.1.g) focuses on the purpose of the board evaluation. The empirical evidence shows that, in line with the guidelines of the CG Code, the board evaluation concerns, almost always, functioning, composition and size of the Board of Directors and, in 90% of cases, functioning , composition and size of board committees.

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[20] Also with regard to this issue, the Committee make reference to studies and insights presented by leading consulting firm specializing in this field. In addition to the documents already mentioned in footnote 4, the Committee is here referring also to: Crisci & Partners 2013 Report on Board Evaluation practices for the performance of the 2012 Financial Year, Egon Zehnder, Egon Zehnder's perspective on board evaluation, October 2013; Sodali, Comparative Study on Board Evaluation, November 2013.

[21] Recommendation 2005/162/EC (see art. 9, par. 9.1.).

[22] The percentage is very high among banks (82%) and insurance companies (100%): the latter is the result of the legal framework that requires insurance companies to carry out, at least once a year, the board evaluation process (see art. 5, Regulation no. 20, March 26 2008, as amended by the ISVAP Provision no. 3028 of November 8, 2012). Source: Assonime-Emittenti Titoli, p. 36 and Tab. 5. Information about the board evaluation are often disclosed by larger companies (93% among the FTSE Mib). Source: Crisci & Partners, p. 8.

Only 61% of companies (of those who disclose to perform the board evaluation) provides information on the process that has been developed. On this point, larger and financial companies are achieving almost the 100% compliance, while SMEs have still some transparency problems: **the Committee confirms its call to all companies, that are disclosing information about their board evaluation, to provide information about how the procedure has been developed, as required by *criterion* 1.C.1.i).**

The Corporate Governance Code does not provide any recommendation regarding the board evaluation procedure. Companies carried it out adopting: frequently, questionnaires submitted to each director[23]; while individual interviews are less frequent (possibly in addition to the questionnaire)[24].

2.2.2 Who is in charge of the procedure

The Corporate Governance Code does not provide an explicit advice about the entity in charge of the procedure, nor explicitly recommends to outsource this function to an external consultant. However, in case of outsourcing, the Code recommends issuers to provide in their corporate governance report information on other services, if any, performed by such consultants to the issuer or to companies having a control relationship with the issuer (*criterion* 1.C.1. g).

The Committee recommends that board evaluation is carried out in a conscious and effective way. Furthermore the Committee invite companies to pay particular attention to the quality of the board evaluation process and to the independence and professionalism of the entities in charge of the procedure.

In half of the cases is not possible to clearly identify the subject entrusted with the board evaluation process[25]; in 20% of cases the board evaluation is carried out by board committees (Remuneration, Nomination, Control and Risk Committee – formerly Internal Control Committee – Governance); in many cases (7,7%) by independent directors; in 3.8% of cases such activity is carried out by the Chairman of the Board of Directors[26].

The appointment of an external advisor (17,5%) is more frequent in the financial sector and among larger companies, especially the government-owned ones[27]. 32 companies in total appointed an external advisor32[28].

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[23] 86 companies (i.e. 47% of the sample) disclose to perform the board evaluation. Source: Assonime-Emittenti Titoli, p. 37.

[24] Such procedure is carried out in 21 companies, i.e. 11% of those disclosing to perform the board evaluation (Assonime-Emittenti Titoli, p. 37). The process seems to be more developed among FTSE Mib companies: the 57% of companies disclose the use of questionnaires, while the 32% of interviews (Crisci & Partners, p. 15).

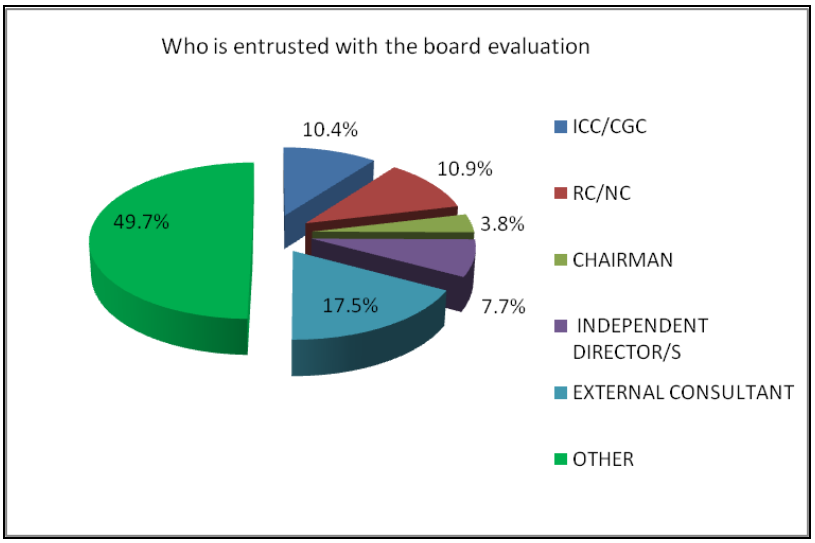
[25] In facts, the information is always clearly given in the financial sector.

[26] The role of the Chairman varies according to the Index of reference: no Chairman has such a role among FTSE Mib companies, while in 4,5% of FTSE Small cap and 7,3% of FTSE Mid cap companies, the Chairman plays a role in the self-evaluation procedures of the BoD (see Assonime-Emittenti Titoli, Tab. 5).

[27] In particular, this is true in the 52% of cases in the financial sector (vs. 12,5% of non-financial companies); in 17 FTSE Mib companies, i.e. 47% of the total, and in 11 FTSE Mid cap; only 4 FTSE Small cap companies appointed an external advisor (see Assonime-Emittenti Titoli, p. 37 and Tab. 5).

[28] The number of external advisors grew up comparing to 2012 data (20 cases; were 16 in 2011); this increase is, in particular, regarding the financial sector, where the number of external advisors grew up in the last year from 14 to 52% of cases (see Assonime-Emittenti Titoli, p. 37).

The disclosure of the advisor identity is very rare[29]. This is true also in relation to the disclosure of eventual other services supplied by the advisor (or the disclosure that no other services have been supplied)[30].



2.2.3 Information to the market

The Corporate Governance Code recommends (*criterion* 1.C.3.) that the Board of Directors shall issue some guidelines[31] regarding the maximum number of directors' or statutory auditors' positions held in listed, financial and larger companies, which is considered compatible with an effective performance of their duties, also taking into account directors' attendance to the board committees. 100 companies have disclosed those guidelines, with significant variations according to company's size[32] and sector[33]. The lack of definition of explicit limits is sometimes explained by the no-need, especially due to the proper functioning of the board and committees.

The Corporate Governance Code also recommends (*criterion* 1.C.1. h) to the Board of Directors to provide shareholders, before the renewal of the board and taking into account the outcome of the self-evaluation, its view on the professional skills deemed appropriate for the composition of the board. Information on this point are available in 48 reports, i.e. 27% of those companies that provide information on the board evaluation process.

The Committee encourages issuers to consider the opportunity to define such recommendations taking into account that slates, which are sufficiently balanced in terms of diversity (in the broadest sense), may play a considerable role, also in order to receive a positive vote by institutional investors.

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29 In 11 cases among the FTSE Mib companies (i.e. 28% of the total) (Crisci & Partners, p. 12).

30 In 14 cases, i.e. 43% (see Assonime-Emittenti Titoli, p. 37).

31 Moreover, the Corporate Governance Code suggests to controlling shareholders, who are eventually going to submit at the AGM a proposal in relation to topics on which directors did not formulate any specific proposal, to disclose it in a prior and timely manner.

32 66% in the FTSE Mib companies, 57% in the *Mid cap* companies and 30% in the *Small cap* (see Assonime-Emittenti Titoli, p. 38).

33 Up to 76% in the financial sector (see Assonime-Emittenti Titoli, p. 38).

2.2.4 Possible improvements

The Committees believes that the board evaluation enforcement process could be related to the three-year long mandate of the Board of Directors; during the three years of mandate, it may be regulated differently. During the establishment of a the new Board of Directors, the activity could relate to all areas of functioning, in order to identify those to be improved in future years. In the second year of its mandate, the Board evaluation could instead focus on previously identified critical areas and the main activities held by the BoD during the year. At the end of the mandate, the board evaluation should be focused on the possible requirements of the Board of Directors[34].

[34] *Egon Zehnder*.