



European network of legal experts in gender equality and non-discrimination

FLASH REPORT

Country:	Italy
Title:	Women's representation in company boards of directors and auditors of listed companies and State subsidiary companies
Date:	25 February 2020
Expert:	Simonetta Renga
<u>Context</u>	
Issue at stake:	The extension of quota system
Grounds of discrimination:	Gender
Field of application:	Other field
Source:	National legislation
Applicable law:	Article 147 para 1ter, Article 148 para 1bis of Decree No 58 of 24 February 1998, providing for a framework ruling of financial mediation, as modified by Act No. 120/2011, Article 58-sexies of Decree No. 124 of 26 October 2019 and Article 1 para 302 and 303 of Act No. 160/2019

Content

About eight years ago, Act No. 120/2011 modified Article 147 para 1ter and Article 148 para 1bis of Decree No. 58 of 24 February 1998 providing for quotas in the election of directors and auditors of both listed companies and State subsidiary companies as a measure aimed at ensuring an equal gender balance.

The quota system provided by Act No. 120/2011 had to be applied only for the first three elections after its issue. As a consequence about 37 % of the companies in 2020 up to 84 % in 2024 would not have been obliged to respect this rule anymore. Recently, two slight changes have been provided by Article 58-sexies of Decree No. 124 of 26 October 2019 and Article 1 para 302 and 303 of Act No 160/2019 which ensured both an extension and a certain strengthening of this system. In fact, the amendments of Article 147 para 1ter and Article 148 para 1bis of Decree No. 58 of 24 February 1998 provide that this quota system will have to be enforced for the first six mandates, that is for the first six elections, and that the percentage of posts to be obtained by the underrepresented gender both in the board of directors and auditors will be increased from one third to two fifths.

The sanctioning procedure in case of infringement has not been changed. It is very gradual, starting with a warning by the *Consob* (the National Securities and Exchange Commission) to apply the quota system within four months. In case of noncompliance, a fine from EUR 100 000 up to EUR 1 000 000 (in case of auditors from EUR 20 000 up to EUR 200 000) is given, together with a second warning to apply the quota system within three months. Otherwise, the subsequent penalty will be the dissolution of the company board. The Statute also covers cases of substitution of members of a company board during their terms, to ensure an equal gender balance.

The *Consob* is tasked with the monitoring of compliance as well as the enforcement of the quota system, following the regulation it promptly issued by decision 8 February 2012.

With regard to State subsidiary companies not quoted in the regulated market the same principles are enforceable but the monitoring authority is the Prime Minister together with the Minister for Equal Opportunities, following the regulation issued by Decree No. 251 of 30 November 2012 (after about a one-year delay).

Key points of analysis: The amendments mentioned above are perfectly in line with the good results of the implementation of Act No. 120/2011 as regards both women's participation in company boards and its indirect effects. The *Consob* itself underlined that the average age of board members has decreased while the average level of education is higher and professional skills are more varied. Positive effects have been noted also on the performance of the companies. Moreover, the first nine companies which are not obliged to apply the quota system anymore are still maintaining a good gender diversity in company boards. This seems to show that the enforcement of the law really contributed to overpass stereotypes, in the expert's opinion.

In any case, as remarked by *Consob*, the extension of the law will be very useful to help women who are a member of company boards of listed companies to acquire enough professional skills to accede also to top management or top representation positions.

Internet link source: Act No. 160 of 27 December 2019, published on OJ No. 304 of 30 December 2019, o.s. No. 45/L, <https://www.normattiva.it/ricerca/semplice>.

Article 58-sexies of Decree No. 124 of 26 October 2019, converted and modified by Act No. 157 of 19 December 2019, published on OJ No. 301 of 24 December 2019, <https://www.normattiva.it/ricerca/semplice>.

Act No. 120 of 12 July 2011, published on Official Journal No. 174 of 28 July 2011, <https://www.normattiva.it/ricerca/semplice>.

Decision of 8 February 2012 amending the Framework Regulation of listed companies of 14 May 1999 No. 11971, published on OJ No. 30 of 17 February 2012, <https://www.gazzettaufficiale.it/eli/id/2012/02/17/12A01803/sq>;

Decree No. 251 of 30 November 2012, regulations to implement Act No. 120/2012 regarding state subsidiary companies, published on OJ No. 23 of 28 January 2013, <https://www.normattiva.it/ricerca/semplice>.

Hearing of the Consob at the High Chamber - VI Commission Finance and Treasury on 7 May 2019, on the issue of Art. 58-sexies of Decree No. 124 of 26 October 2019, http://www.consob.it/documents/46180/46181/audizione_genovese_20190507.pdf/c3fd88c8-91e8-49c2-a54e-98e65773ac7e;

Boardroom gender diversity and performance of listed companies in Italy, by Bruno, Ciavarella and Linciano, Consob Finance Writings, at <http://www.consob.it/documents/46180/46181/wp87.pdf/d733b58a-44b4-42de-98c7-3c89a82a0182>.