

## **Gender Diversity Management and Corporate Governance: International Hard and Soft Laws Within the Italian Perspective**

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### **Abstract**

The protection of women's rights and the promotion of the principles of non-discrimination, equality and equal opportunities is one of the most sensitive issues in the public global debate. Long-standing discussions regarding women's empowerment in the public and private domains have stimulated both institutional and business actors to carry out empirical studies on the key concepts underlying the assessment and evaluation of legislative measures, public policies and business strategies aimed at fostering greater gender equality in corporate business activities.

### **I. Introduction**

This article is firstly intended to outline a comprehensive appraisal of the theoretical linkage between gender diversity management and gender corporate governance, in order to assess if, when, where and under what conditions incorporating a gender perspective really impacts on the enrichment of financial outcomes of businesses working in relevant economic sectors at the national and international level. Secondly, the article seeks to measure and evaluate the conditions under which women work, and explores the potential to develop their individual and collective capabilities to close the gender gap in the public sphere, making specific reference to the elaboration and adoption of complex but significant indices in different intergovernmental and non-institutional systems. The article introduces a preliminary overview of the international hard and soft law standards in force (the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the United Nations Guiding Principles on Business and Human Rights (UNGPs)) and the explicit references contained therein to the principles of equality and equal opportunity as well as to the level of active participation of women in high level public administration and top-ranking positions in corporate settings. Next, the article examines the case of Italy with regard to the factual reception and implementation of the above mentioned standards within the constitutional, legislative and operational

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country-framework and particularly in relation to listed public-owned and private companies. The article concludes with a quantitative assessment of gender corporate governance in Italy, reference to some relevant considerations impacting on the role and participation of women in business and in high level ranking positions of management boards, the illustration of relevant initiatives, programmes, projects and awareness raising activities to stimulate the debate and to provide interesting data and information about the improvement of gender corporate governance to the attention of the public opinion as well as for institutional legislative innovations and strategic development policies by governmental and business stakeholders.

## II. Gender Diversity Management and Gender Corporate Governance: An Introductory Theoretical Appraisal

A comprehensive appraisal of the theoretical linkage between gender diversity management and gender corporate governance requires a multidisciplinary approach, in order to assess if, when, where and under what conditions incorporating a gender perspective really impacts financial outcomes of businesses working in relevant economic sectors at the national and international level. The academic literature has advanced from plentifully defining the concepts underlining the potential gender advantage for business activities.<sup>1</sup>

It is first necessary to understand the concept of diversity outside of the very narrow legal context.<sup>2</sup> The principle of diversity has been defined as a right of the individual, to be enjoyed in close relation with the values of liberty, equality and justice. Its instrumental nature has been applied also to corporate settings, where diversity has been recognised as a tool to improve the functionality of the internal management, the quantitative and qualitative level of productivity, and therefore to provide greater revenue to stockholders.

Recent years have witnessed a complex and articulated debate from social

<sup>1</sup> M. Nussbaum et al, *Essays on Gender and Governance* (New Delhi: Human Development Resource Centre, United Nations Development Programme, 2003).

<sup>2</sup> K. Campbell and A. Minguez-Vera, 'Gender Diversity in the Boardroom and Firm Financial Performance' 83 *Journal of Business Ethics*, 435-451 (2007); D.A. Carter et al, 'Corporate Governance, Board Diversity, and Firm Value' 38 *Financial Review*, 33-53 (2003); F. Dobbin and J. Jung, 'Corporate Board Gender Diversity and Stock Performance: The Competence Gap or Institutional Investor Bias?' 89 *North Carolina Law Review*, 809-838 (2011); S. Dwyera et al, 'Gender Diversity in Management and Firm Performance: The Influence of Growth Orientation and Organizational Culture' 56 *Journal of Business Research*, 1009-1019 (2003); D. Ferreira, 'Board diversity', in H.K. Baker and R. Anderson eds, *Corporate governance: A Synthesis of Theory, Research and Practice* (Hoboken, NJ: Wiley, 2010), 225-242; R. Labelle et al, 'To Regulate Or Not To Regulate? Early Evidence on the Means Used Around the World to Promote Gender Diversity in the Boardroom' 2 *Gender, Work & Organization*, 339-363 (2015); R. Valsan, *Gender Diversity in the Boards of Directors: A Corporate Governance Perspective*, European Union Centre of Excellence University of Alberta, Working Paper n. 2 (Edmonton: Alberta, 2015).

and economic critical perspectives regarding the intrinsic value of gender diversity.

The social perspective emphasizes the importance of a gender power balance in corporate bodies: the equal representation of qualified men and women is understood as beneficial for the entire community of citizens. In general terms, diversity is understood as the moral and correct approach to overcoming historical discrimination and marginalization from the middle and higher levels of corporate leadership. In legal terms, this prerequisite is enshrined in legislation at the international, regional and national level to protect the principles of equality and equal opportunities as well as to promote social justice and democratic legitimacy: this has driven the important but unresolved discussion of the establishment of quota regimes at the regional and national level.<sup>3</sup> A gender-balanced corporate board could further prove to be truly effective for the three main functions of a board: monitoring, determining the strategic direction of the company, and decision-making procedures.<sup>4</sup>

From an economic perspective the effectiveness of gender diversity is evaluated based on the typicality of the female leadership role and on how it is perceived by the corporate stockholders to reinforce the solidity of the company and its capacity to prevent and manage expected and unexpected financial risks of the global monetary and trade markets. A number of economic benefits depend upon higher corporate efficiency with regard to governance and ethics; such benefits can be achieved by employing a gender perspective for the selection of talented workers, targeted investments in innovations and technologies, and potential expansion to new markets, and also by introducing self-regulatory policies aimed at responding to the challenges of corporate social responsibility principles and soft laws that are important for public perception. The economic viewpoint also encompasses better financial results to be pursued by gender-balanced boards: while no objective impact of gender balanced boards on corporate performance could be found, when evaluating subjective factors no impact or a negative impact were regularly observed.<sup>5</sup>

A second noteworthy concept is governance, which has been prominently

<sup>3</sup> R.B. Adams and P. Funk, 'Beyond the Glass Ceiling: Does Gender Matter?' 5 *Management Science*, 219-235 (2012); A.M. Konrad and V.W. Kramer, 'How Many Women Do Boards Need?' 84 *Harvard Business Review*, 22-24 (2006); P. Meier, 'Quotas for advisory committees, business and politics: Just more of the same?' 35 *International Political Science Review*, 106-118 (2014); C. Seierstad et al, 'Increasing the Number of Women on Boards: The Role of Actors and Processes' 141 *Journal of Business Ethics*, 289-315 (2017).

<sup>4</sup> B. Choudhury, 'New Rationales for Women on Boards' 34 *Oxford Journal of Legal Studies*, 511-542 (2014); R.B. Adams, 'Women on Boards: The Superheroes of Tomorrow?' 27 *The Leadership Quarterly*, 371-386 (2016); A. Chizema et al, 'Women on corporate boards around the world: Triggers and barriers' 26 *The Leadership Quarterly*, 1051-1065 (2015); D. Kim and L.T. Starks, 'Gender Diversity on Corporate Boards: Do Women Contribute Unique Skills?' 106 *American Economic Review*, 267-271 (2016).

<sup>5</sup> S.A. Haslam et al, 'Investing with Prejudice: The Relationship Between Women's Presence on Company Boards and Objective and Subjective Measures of Company Performance' 21 *British Journal of Management*, 484-497 (2010).

examined in its twofold economic and social connotation as the public management approach to the efficient and effective use of economic and social resources in a particular community. As originally explained, it is strictly linked to the role and activities of public administration authorities to facilitate access to basic opportunities and the exercise of capabilities by citizens at the individual and collective level. Moving from this narrow definition, corporate governance setting is assumed as incorporating three key elements: the governing philosophy of the company, the development and functioning of internal governance bodies and mechanisms to take decisions in a cost-effective manner and to efficiently use basic capital, and the regulatory framework in which companies are placed and are accountable for their work in front of stockholders and investors. The primary body within the corporate governance system is the board, which directs and controls company activities to respond to shareholders' interests in order to ensure a factual separation of their principal interests from those of agents.<sup>6</sup>

Through competent institutions, proper mechanisms and related processes, formal and informal participation in planning and decision-making is encouraged and could be stimulated particularly using a gender lens.<sup>7</sup> Indeed, the practical realization of the theoretical contribution of women to public governance has been hindered for a long time, due to the prevalent private side of their role which has had only an indirect impact on the participatory involvement of citizens in public management. Thus far their position vis-à-vis corporate governance has further suffered from this limitation, leading to negative attitudes regarding organizational architecture, distribution of powers, purposes and priorities and women's support in this regard.<sup>8</sup> As reported above, the literature has long debated the relationship between gender balance and corporate performance, opening the way to empirical studies measuring quantitative and qualitative positive or negative effects in such contexts.<sup>9</sup> When the composition of corporate boards has been studied, covering aspects such as the tenure of the body, its size and its gender makeup, the board's gender diversity management has been understood from the corporate perspective.<sup>10</sup> This vision has supported not

<sup>6</sup> C. Marquardt and C. Wiedman, 'Can Shareholder Activism Improve Gender Diversity on Corporate Boards?' 24 *Corporate Governance: An International Review*, 443-461 (2016).

<sup>7</sup> C. Francoeur et al, 'Gender Diversity in Corporate Governance and Top Management' 81 *Journal of Business Ethics*, 83-95 (2008); S. Janis, 'The Gender Implications of Corporate Governance Change' 1 *Seattle Journal for Social Justice*, 457 (2002).

<sup>8</sup> A. Sheridan and G. Milgate, 'Assessing Board Positions: A Comparison of Female and Male Board Members' Views' 13 *Corporate Governance: An International Review*, 847-855 (2005).

<sup>9</sup> R.B. Adams and D. Ferreira, 'Women in the Boardroom and their Impact on Governance and Performance' 94 *Journal of Financial Economics*, 291-309 (2009); H. Isidro and M. Sobral, 'The Effects of Women on Corporate Boards on Firm Value, Financial Performance, and Ethical and Social Compliance' 132 *Journal of Business Ethics*, 1-19 (2015); D.M. Wagana and J.D. Nzulwa, 'Corporate Governance, Board Gender Diversity And Corporate Performance: A Critical Review Of Literature' 12 *European Scientific Journal*, 221-233 (2016).

<sup>10</sup> A. Cook and C. Glass, 'Diversity Begets Diversity? The Effects of Board Composition on the Appointment and Success of Women CEOs' 53 *Social Science Research*, 137-147 (2015); A.

only the idea of quantifying and evaluating the presence of women in corporate boards, but also consideration of gender with relation to rankings and its relevance as a key driver in the organizational and operational strategy of the concerned company.<sup>11</sup> When the pool of qualified female director candidates is limited, firms – especially the smallest ones or the firms with poor corporate governance – may incur costs from the appointment of inexperienced or less qualified directors that can outweigh the benefits of increased gender diversity. Furthermore, if board gender diversity is mandated through legislation, it could be perceived as highly costly for shareholders.<sup>12</sup> It is uncontroversial that gender diversity is well connected with gender corporate governance and companies' performance due to the benefits of matching the diversity of companies' employees as well as potential and reliable customers, supporting creative and innovative solutions, and developing complex business alternatives by adapting and applying positive problem-solving tools.<sup>13</sup> On the other hand, literature applying the agency theory has demonstrated that gender diversity may affect the role and action of boards as monitoring & control bodies over the companies' performance both in positive and negative terms. For example, the creative component is relevant for sharing and communicating ideas internally and towards stockholders, but it may reduce performance if it promotes more opinions and questions and makes the decision-making process more time-consuming and less effective.<sup>14</sup>

### III. How to Measure the Gender Gap at the Global Level

Kirsch, 'The Gender Composition of Corporate Boards: A Review and Research Agenda' 29 *The Leadership Quarterly*, 346-365 (2017); A. Sheridan and G. Milgate, '“She says, he says”: Women's and Men's Views of the Composition of Boards' 18 *Women in Management Review*, 147-154 (2003).

<sup>11</sup> K. Ahern and A. Dittmar, 'The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation' 127 *Quarterly Journal of Economics*, 137-197 (2012); S.W. Geiger and D. Marlin, 'The Relationship Between Organizational/Board Characteristics and the Extent of Female Representation on Corporate Boards' 24 *Journal of Managerial Issues*, 157-172 (2012); J. Grosvold et al, 'Women on Corporate Boards: A Comparative Institutional Analysis' 55 *Business and Society*, 1157-1196 (2016).

<sup>12</sup> References to broad literature on the structure of corporate boards and to the growing recognition of the role of supply-side factors in gender-based quota system are provided for by S. Hwang et al, 'Mandating Women on Boards: Evidence from the United States', 1-46, available at <https://tinyurl.com/y6a5x4ks> (last visited 28 May 2019).

<sup>13</sup> I. Boulouta, 'Hidden Connections: The Link Between Board Gender Diversity and Corporate Social Performance' 113 *Journal of Business Ethics*, 185-197 (2013); K. Byron and C. Post, 'Women on Boards of Directors and Corporate Social Performance: A Meta-Analysis' 24 *Corporate Governance: An International Review*, 428-442 (2016).

<sup>14</sup> R.B. Adams and D. Ferreira, n 9 above, 291-309; J. Joecks et al, 'Gender Diversity in the Boardroom and Firm Performance: What Exactly Constitutes a “Critical Mass?”' 118 *Journal of Business Ethics*, 61-72 (2013); M. Schwartz-Ziv, 'Gender and Board Activeness: The Role of a Critical Mass' 52 *Journal of Financial and Quantitative Analysis*, 751-780 (2017); V. Sila et al, 'Women on board: Does boardroom gender diversity affect firm risk?' 36 *Journal of Corporate Finance*, 26-53 (2016).

The involvement and active participation of women in public and private activities promoted and carried out by institutional and corporate actors might be measured and assessed based on the development and use of personal capabilities.

The capability parameter is intrinsically complex and, for this reason, its appraisal is based on both objective and subjective indicators as well as on internal and familiar or external and social dynamics. On one hand the preparedness of a woman encompasses her educational path, her health conditions and a high degree of self-confidence, which is at the core of the search for good and mutually-supportive relationships. On the other hand, one must also take into account the social framework, the legislation in force, the institutional setting, all aimed at promoting equality and equal opportunities in the economic, political and social fields, which could positively promote gender capability in governance scenarios. These two areas are strongly interrelated: qualitative patterns are a primary prerequisite and should be improved through wider legislative, institutional and corporate opportunities for women to be part of governance planning and stock-taking, while the reinforcement of political, social, economic and corporate conditions could surely influence women's personal capabilities in order to be ready for and react to opportunities to hold political office or a corporate management position at the national and international level. The exercise of women's abilities within the external context is instrumental for the enhancement of their personal capabilities in relation to governance issues at large.

In several different systems the challenge of measuring and evaluating the condition of women and the potential to build their individual and collective capabilities to close the gender gap in the public sphere has led to the elaboration and adoption of complex but significant indexes.

The gender inequality index has been adopted within the UN system to measure the lack of gender equity as a primary obstacle to human development. This index assesses the discrimination faced by women and girls with regard to education, health, political representation, participation in the labour market, and other areas.<sup>15</sup> Its main indicators are focused on three areas that are most crucial for programming and taking stock of public policies to overcome gender inequality: reproductive health, measured by maternal mortality ratio and adolescent birth rates; empowerment, measured by proportion of seats occupied by women in parliaments and proportion of adult females and males aged twenty-five years and older with at least some secondary education; and economic status, measured in terms of labour market participation and labour force participation rate of female and male populations aged 15 years and older. In 2014 Italy held twenty-sixth position with regard to the number of female legislators, senior officials and managers (twenty-five per cent).

The global gender gap index is focused on the analysis of gender parity and

<sup>15</sup> United Nations Development Program, 'Gender Inequality Index (GII)', available at <https://tinyurl.com/p9kc9pz> (last visited 28 May 2019).

its impact on the development of social and economic benchmarks.<sup>16</sup> It was introduced by the World Economic Forum in 2006 to have a first comprehensive outlook on gender-based disparities around the world in relation to the following thematic areas: economic participation and opportunity, educational attainment, health and survival, and political empowerment. The national rankings provide for a global awareness raising process about gender disparities, for regional comparison and tracking of progress, and for designing useful measures to impact economic growth, trade competitiveness and promptness in facing risks and managing problems by national economies and business actors. The global gender gap index methodology is aimed at assessing available resources and opportunities for women independently from the general level of development of concerned countries; at the same time the assessment is performed according to outcome indicators concerning basic rights of men and women such as economic participation, education, health and political empowerment. Moreover the index is not focused on gender empowerment and, so far, on the consequences of countries' outperforming results, but on the national proximity to gender parity as understood as equal outcomes achieved by men and women. As for the economic participation and opportunity sub-index, it is based on three parameters: participation, remuneration and advancement gaps. By connecting the first and the third parameters, the evaluation of the gender gap is measured in terms of utilization of female talent as a matter of fairness and equality *vis-à-vis* the gender labour force rate but also as a positive return due to gender leadership positions among legislators, senior public officials and public and private managers. Although this rate is not recorded, countries are requested to reflect attentively on the root causes of systemic gender gaps in their communities. According to this index Italy has the eighty-second and one hundred and eighteenth position for the global index and the above mentioned sub-index respectively (score: 0.692, 0.571).

<b>Economic leadership</b>	<b>female</b>	<b>male</b>	<b>value</b>
Law mandates equal pay			yes
Advancement of women to leadership roles			0.47
Boards of publicly traded companies	30.0	70.0	0.43
Firms with female (co-)owners			-
Firms with female top managers			-
Employers	4.0	1.1	3.77
R&D personnel	34.6	65.4	0.53

The gender-equality index is the methodological tool created at the European level to collect and compare disaggregated data by sex in EU Member States in order to assess the level of gender equality with regard to legislation, policies

<sup>16</sup> World Economic Forum, 'Global Gender Gap Report 2017', available at <https://tinyurl.com/ybufmzbs> (last visited 28 May 2019).

and actions carried out at the national level across eight main thematic areas: work, money, knowledge, time, power, health, violence and intersecting inequalities.<sup>17</sup> Thirty-one indicators are used to monitor progress in gender equality and to measure the outcomes in these fields on a scale from one (full inequality) to one hundred (full equality). The results of the gender cross-cutting analysis are useful to improve the implementation of legislative measures and policies and to increase awareness among public opinion and decision-makers. In the release of the last annual report for 2017, as it concerns gender equality in the participation of women to political, economic and social life, a general increase was recorded particularly for the high-ranking decision-making positions – in Italy included. This increase was mainly driven by the promulgation of new legislation and interactive public debate on the topic. As it concerned gender equality in corporate boards, a doubling of the presence of women in major EU listed companies was recorded, however women account for only seven per cent of board chairs/presidents and six per cent of CEOs in the largest EU companies.

The Equileap gender equality global ranking is another relevant tool used to monitor more than three thousand listed companies of twenty-three developed countries and to release yearly updated information about the level of corporate gender equality.<sup>18</sup> Nineteen criteria are at the core of each country scorecard to measure gender work opportunities and career in relation to corporate leadership, management and workforce of concerned listed companies. Each company is awarded points relevant to each criteria on a scale from one to three. Twelve primary criteria are assessed at the basic level: gender balance at the non-executive, executive and senior management levels and in the workforce as well as promotion and career development opportunities, along with seven kinds of workplace policies which are designed to pursue equal treatment and opportunities for men and women. Additional information is collected for assessment of seven secondary criteria: primary and secondary care-giver leave policies, flexible work schedules and equal pay; endorsement of the women's empowerment principles and independent gender audits. Finally a further assessment is carried out on companies performing at high rates regarding the criterion of the gender balance in the workforce. Out of the number of companies under monitoring, two hundred corporations have been included in the Equileap gender equality ranking.

#### **IV. The Italian Case and the Potential for the Promotion of Gender Corporate Governance**

##### **1. The Reception and Implementation of Hard and Soft International Legal Standards**

<sup>17</sup> United Nations Development Program, n 15 above.

<sup>18</sup> Equileap, 'Gender Equality Global Report and Ranking 2017', available at <https://tinyurl.com/lhff452> (last visited 28 May 2019).



Understanding the Italian case concerning gender corporate governance requires a preliminary overview of the international hard and soft law standards in force and the explicit reference contained therein to the principles of equality and equal opportunity as well as to the level of active participation of women in high level public administration and top-ranking corporate positions.<sup>19</sup> This overview will be useful to assess the factual reception and implementation of the above-mentioned standards within the legislative and operational Italian framework, particularly in relation to listed public-owned and private companies (see V).

### **a) The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

The Preamble of the CEDAW emphasizes the principle of equality as a fundamental legal precondition for the participation of women in the public life:

*‘Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity’.*

Furthermore, women’s participation in decision-making processes is prominently evoked:

*‘Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields’.*<sup>20</sup>

In line with previous UN legal standards the principle of equality is translated into the broader definition of the principle of non-discrimination under the gender lens in the first provision of the CEDAW. In Art 1 the principle is defined as

*‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’.*

<sup>19</sup> M. Szydło, ‘Gender Equality on the Boards of EU Companies: Between Economic Efficiency, Fundamental Rights and Democratic Legitimation of Economic Governance’ 21 *European Law Journal*, 97-115 (2015).

<sup>20</sup> United Nations, *Convention on the Elimination of All Forms of Discrimination against Women* (New York: Treaty Series, 1979), volume 1249, 13.

To positively implement this legal commitment CEDAW States parties are obliged to take all appropriate measures to eliminate discrimination against women in political and public life and to ensure that they enjoy equality with men in political and public life (Art 7):

‘States parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referendums and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country’.

The meaning of ‘political and public life’ has been broadly conceived to include the exercise of legislative, judicial, executive and administrative powers at the international, regional, national, and local level and, additionally, the participation and active involvement in public and private companies’ central bodies with full equality and equal opportunities with men.

In 1997, to give a more precise and updated definition of the right contained in Art 7 of the Convention, the competent treaty body has released its general recommendation no 23.<sup>21</sup>

It is a matter of fact that public and private settings have been experienced by women differently than men. This originated from the historical and cultural prominent perception of the central role of women in family and in the domestic sphere, limiting their contribution and potential experiences in public life and isolating them from being engaged in active participation in political and decision-making processes. Even if this perception has been increasingly combatted by constitutional and legislative provisions introducing the principle of equality in a large number of countries worldwide, at the practical level the democratic system has not fully provided for a concrete equal participation of women, allowing them full involvement in public and political life to overcome economic, social and cultural obstacles to enjoy their participatory rights. To assess the accomplishment of this purpose and to confirm the democratic intrinsic value of a community, decision-making should be concretely shared by women and men taking into proper account both their interests on an equal footing. This process could be encouraged, as provided for by Art 4 of the CEDAW, by adopting temporary special measures to complement the legal ones and to truly implement Art 7: this has led, for example, to the introduction of fixed quotas

<sup>21</sup> General Recommendations adopted by the Committee on the Elimination of Discrimination Against Women, Sixteenth Session (1997), ‘General Recommendation no 23: Political and Public Life’, available at <https://tinyurl.com/yxbcsj4v> (last visited 28 May 2019).

for women to be appointed to public or private positions within the institutional and business sectors, with the aim of improving their political and economic power but also to reinforce the enjoyment of human rights regardless of gender and/or beyond the gender lens.<sup>22</sup>

Following the examination of country reports of CEDAW States parties, in the compilation of its general recommendation the CEDAW Committee reported on the general global record regarding women's participation in central and local policy activities, showing the contradictory nature of this process: the collective and public intention to pursue equality and to give equal opportunities to men and women has not been fulfilled by a concrete improvement of their participation. At the quantitative level a low number of women have been appointed in senior decision-making roles or consulted to provide for their opinions and to protect their interests; this has led to a limited qualitative gender contribution in the mainstreaming of gender issues to overcome traditional cultural barriers and to boost all kind of opportunities and initiatives to change social discriminatory attitudes towards women active role in political and public life.

For these reasons the CEDAW Committee has adopted some recommendations addressed to States parties in order to ensure the involvement of women in political settings and in high-ranking positions. These recommendations include: the inclusion of core provisions of the CEDAW in national constitutional and legislative frameworks and full compliance with its key principles against all forms of discrimination against women; gender balance of public and private positions; women's involvement in consultative processes and the enjoyment of the right to express their views, their right to vote and to be elected and appointed to hold public positions. They also include the adoption of ad hoc measures to facilitate women's representation and participation in political and public life. For example the Committee has explicitly mentioned

‘the adoption of a rule whereby, when potential appointees are equally qualified, preference will be given to a woman nominee; the adoption of a rule that neither sex should constitute less than 40 per cent of the members of a public body; a quota for women members of cabinet and for appointment to public office’.

All these targeted suggestions could also be referred to private bodies as for gender membership, role and contribution to business activities.

To assess broad compliance with its recommendations the CEDAW Committee has required States parties to regularly provide data and information about legislative innovations, to explain the reasons underlying possible restrictions of women's rights, to identify and analyse the factors bearing on the

<sup>22</sup> M. De Vos and P. Culliford eds, *Gender quotas for company boards* (Cambridge: Intersentia, 2014); F. Engelstad and M. Teigen eds, *Firms, boards and gender quotas: Comparative perspectives* (Bingley: Emerald, 2012).

underrepresentation of women in political and public life, to illustrate the contents and the potential impact of gender policies, to report the real level of involvement and participation of women in public and private bodies and the factual results of their contributions.<sup>23</sup>

As for the Italian case, which will be further examined in detail, participation in the CEDAW has been implemented through act no 132 of 14 March 1985, and the related ratification of the optional protocol entered into force in Italy on 22 December 2000.

### **b) The UN BHR Guiding Principles: Soft Law Determinants for Gender Improvement in the Business Sector**

It cannot be doubted that the role of business, its structural and operational features at the national and international level, and business strategies in compliance with ethical values and fundamental principles – as enshrined in basic laws and international binding or soft instruments – is at the core of global contemporary priorities.

This process stands on the UN Guiding Principles (UNGPs) on business and human rights, adopted by the UN Human Rights Council in 2011.<sup>24</sup> It was led by the UN Office of the High Commissioner for Human Rights and was carried out through extensive consultations from 2005 to 2009, with the main aim of operationalising the so-called ‘*Protect, Respect and Remedy*’ Framework through the establishment of a new special procedure, covering the former mandate of the Special Representative of the Secretary-General (SRSG) on transnational corporations and other business enterprises with regard to human rights.

The SRSG created by CHR Resolution 2005/69 of 20 April 2005,<sup>25</sup> whose mandate was confirmed and expanded by HRC Resolution 8/7 of 18 June 2008,<sup>26</sup> had the following tasks: draft factual recommendations to states for the protection of human rights from violations entailing direct or indirect accountability of transnational corporations; contribute to the definition of the corporate social responsibility principle and support companies in implementing and respecting it; encourage the exchange of good practices and regular consultations; draft recommendations at the national, regional and international level to facilitate the access to remedy for victims, especially for vulnerable categories (ie women and

<sup>23</sup> J.C. Suk, ‘Gender Parity and State Legitimacy: From Public Office to Corporate Boards’ 10 *International Journal of Constitutional Law*, 449 (2012).

<sup>24</sup> United Nations, ‘Guiding Principles on Business and Human Rights’, available at <https://tinyurl.com/y3hgw4mb> (last visited 28 May 2019).

<sup>25</sup> United Nations, Office of the High Commissioner for Human Rights, Human rights and transnational corporations and other business enterprises, Human Rights Resolution 2005/69 of 20 April 2005 (E/CN.4/RES/2005/69).

<sup>26</sup> United Nations, Human Rights Council, Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Resolution 8/7 of 18 June 2008, (A/HRC/RES/8/7).

children); work closely with UN and other multi-stakeholders systems, such as the Global Compact, launched in 2000 by the UN Secretary General to promote and implement 10 voluntary principles on human rights, business, labour rights, environmental protection, countering criminality and corruption.

Following the end of the SRSG's mandate, the mandate of the UN Working Group on business and human rights was defined by HRC Resolution 17/4 of 16 July 2011.<sup>27</sup> The Working Group is composed of five geographically-representative independent experts appointed for a three year-cycle, with the purpose of disseminating and promoting the implementation of the UNGPs at the national, regional and international level, drafting recommendations, carrying out visits to Members States, providing appropriate technical advice, involving all competent UN offices and bodies. The Working Group has also been charged with the establishment and the organization of an annual meeting on business and human rights to debate criticalities and challenges of the implementation of the UNGPs with relation to specific sectors, geographical areas, and potential victims' protection. This task has led to the definition of common criteria for the so-called annual forum on business and human rights, yearly open to all relevant stakeholders and put under the leadership of a President appointed by HRC members and observers, supported by the Working Group for the identification of key issues and the drafting of concluding observations to strengthen the '*Protect, Respect and Remedy*' Framework.

The UNGPs have a soft law legal nature:

'Nothing in these Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights'.

Notwithstanding their soft legal relevance, they encompass significant operational measures aimed at preventing and managing any kind of potential violation of human rights by states and businesses.

The UNGPs rest on three key pillars: the state duty to protect human rights violations; the business responsibility to respect human rights; and the right of access to judicial, legislative and administrative remedies for victims of human rights violations.

The first pillar introduces the duty of the state to prevent and address the non-compliance of corporate actors with international and national legal commitments concerning the promotion and protection of human rights. The most critical challenge to accomplish the obligations descending from the UNGPs' first pillar is represented by the divergent approach of central and local

<sup>27</sup> United Nations, Human Rights Council, Human rights and transnational corporations and other business enterprises, Resolution 17/4 of 16 July 2011, (A/HRC/RES/17/4).

bodies in charge of the promotion of economic growth and business development and those tasked with the protection of human rights. This divergence needs to be properly managed in the elaboration of political orientations as well as in the implementation of public and private partnerships impacting on human rights. The second pillar is focused on business due diligence to prevent human rights violations in accordance with soft law standards: the correctness of conduct is represented by the formulation of public commitments by business actors to protect human rights, to implement due diligence regarding the impact of their activities on human rights, as well as to define the contents of business strategies in respect of human rights and to being accountable in cases of violations of human rights. The third pillar encompasses a joint action of public and business actors to create a proper legislative, administrative, judicial or quasi-judicial, voluntary and advisory framework to ensure the protection of victims of human rights violations caused by business activities.

A specific focus on the role and action of state-led public companies and their negative impact on the full respect for human rights has led to the compilation and presentation of a dedicated report from the above mentioned UN Working Group on 17 June 2016, containing ad hoc technical assistance to UN Member States for the implementation of UNGP 4:

‘States should take *additional steps* to protect against human rights abuses by business enterprises that are owned or controlled by the State, ... including, where appropriate, by requiring human rights due diligence’.<sup>28</sup>

Even if the UNGPs are soft law measures, mention of their relevance in several hard law instruments of the UN system have pushed for the launch of significant processes of ‘active ownership’ by states and state-led public companies, further applicable to private corporations. This has meant that all the aforementioned actors should be committed to fully adhering to obligations descending from international human rights law: in the public domain an appropriate monitoring and control system over state-led public companies is necessary to inform possible reforms and amendments; in the private setting a positive and interactive dialogue and cooperation might be pursued for reputational and virtuous operational performances.

The critical implementation of the UNGPs third pillar has recently induced the UN system to launch a targeted working programme aimed at improving the fairness and efficiency of national mechanisms for monitoring and sanctioning public and private companies and holding them accountable for the violation of human rights. After the adoption of a first report of an independent expert in 2014, the programme titled ‘Initiative on enhancing accountability and access

<sup>28</sup> United Nations, Working Group on the issue of human rights and transnational corporations and other business enterprises, Report of 4 May 2016 (A/HRC/32/45), available at <https://tinyurl.com/y4vuwgow> (last visited 28 May 2019)

to remedy in cases of business involvement in human rights abuses' started according to HRC Resolution 26/22 of 27 June 2014 and was completed by two preliminary and complementary reports – of June 2015 and May 2016 respectively – to introduce guiding proposals to strengthen the national judiciary frameworks to improve access to justice for victims of human rights violations perpetrated by public and private companies.<sup>29</sup>

In contrast to the reporting, monitoring and evaluating mechanisms provided for by the UN Treaty Bodies, the soft law nature of the UNGPs has entailed the establishment of a different procedure based on a voluntary periodic scheme to be carried out by UN Member States, known as national action plans (NAPs). At present 21 NAPs have been submitted to the attention of the UN Working Group.

The Italian case is informed by the adoption and the voluntary submission to the UN of the first NAP on business and human rights for the years 2016-2021 in December 2016.<sup>30</sup> The Italian NAP is essentially in compliance with structural and substantive criteria of the UN system. In particular the narrative of national commitments to implement the UNGPs and of expectations for businesses according to the UNGP's second and third pillars has a specific relevance. Further, the domestic setting, where the UNGPs and other legal or programmatic instruments have been already applied with positive results, is significant. The core of the NAP is represented by the general and, if appropriate, detailed description of programming and operational measures to face present and future challenges of the relationship between business and human rights at the national and international level. This approach requires the elaboration of short, medium and long term key actions for orienting, preventing, mitigating and correcting business activities that could negatively impact on human rights standards and on their effective protection. Finally the NAP properly defines a roadmap and basic criteria for evaluation as well as the establishment of mechanisms and monitoring procedures to follow up on NAP commitments and to review it.

A targeted approach has guided the elaboration of the Italian NAP, apart from the feasibility of identifying complementary key actions in the field of corporate social responsibility, which aims at equally protecting human rights standard. This approach has been determined to address global actors – states and businesses – fuelling economic, social and environmental development. The NAP commitments recall the role and the Italian contribution in the

<sup>29</sup> United Nations, Human Rights Council, Human rights and transnational corporations and other business enterprises, Resolution 26/22 of 27 June 2014, (A/HRC/RES/26/22), available at <https://tinyurl.com/y5246nej> (last visited 28 May 2019). See also United Nations, Office of High Commissioner for Human Rights, Improving accountability and access to remedy for victims of business-related human rights abuse (A/HRC/32/19), available at <https://tinyurl.com/y2csmqmp> (last visited 28 May 2019).

<sup>30</sup> Italian National Action Plan on Business and Human Rights, available at <https://tinyurl.com/y4aelagu> (last visited 28 May 2019).

drafting process of the UN 2030 Agenda for Sustainable Development and the achievement of its seventeen social development goals (SDGs).

It is a matter of fact that Italy is fully engaged to contribute at the national, regional and international level, to prevent and remedy potential and concrete negative impacts following human rights violations from states and business, with particular attention to the most vulnerable groups (women, children, persons with disabilities, LGBTI individuals, migrants and asylum seekers, ethnic and religious minorities).

First, the NAP statement of commitment states:

‘To protect human rights, Italy undertakes to: - Continue to protect, promote universal respect for, and observance of, all human rights, fundamental freedoms and non-discrimination principles, with special attention to the rights of most vulnerable groups, such as women, children, disabled, LGBTI people, migrants and asylum seekers, and persons belonging to ethnic and religious minorities; (...)’.

Moreover, to mention a factual planned measure provided for in the NAP with regard to the gender dimension, the Italian Government has committed to

‘Encourage companies in the dissemination of anti-discrimination culture by: i) promoting corporate policies and best practices on inclusivity and Diversity Management also via the institutional support to the adhesion, implementation and assessment of the *Carta per le Pari Opportunità e l’Uguaglianza sul Lavoro* (corporate voluntary initiative launched by Assolombarda in 2009, which participates in the European Diversity Charter Platform promoted by the EU Commission GD Justice, with the aim of disseminating in Member States a movement to tackle prejudices and enhance talents in diversity); ii) promoting bodies (such as the *Osservatorio Aziendale* and the Disability Manager) that will have the aim of promoting the inclusion of workers with disabilities within the workplace, as foreseen in the draft of the II Program of Action on Disability; iii) increasing the awareness within the workplace on the serious issue of sexual abuse and domestic violence; iv) providing incentives for corporate training on inclusion, diversity management, gender balance and gender mainstreaming with specific focus on women empowerment and LGBTI rights’.

## **2. The National Legal Framework**

Full compliance with international legal standards is one of the key requirements of states as parties to the core human rights treaties as elaborated, adopted, signed, ratified and entered into force within domestic legislation systems.

Regarding women’s rights, the principles of equality and equal opportunities



have been enshrined – as mentioned above – through the adoption of the CEDAW, codified in the Italian legal framework by act no 132 of 14 March 1985.<sup>31</sup>

Italy adopted the common approach of including the gender component not only in line with the constitutional provisions in force since 1948 but also with a positive vision for dealing with gender-related issues, ie to strategically provide for the establishment of a domestic environment where institutions, measures and procedures are not rigid but flexible enough to be reshaped and restructured for the advancement of women's rights and to tackle gender inequality in a constant reforming manner.<sup>32</sup>

### **a) Basic Law and Codes**

The Italian Constitution refers to the principle of equality and equal opportunities in its Art 3, which reproduces substantially and formally the non-discrimination provision included in the Universal Declaration of Human Rights:

‘All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country’.

As reported above, it was not until decreto legislativo no 198 of 11 April 2006 that a broad reform of the Italian legislation regarding the principle of equality and equal opportunities was adopted. This legislation introduced the so called Code of Equal Opportunities between men and women.<sup>33</sup> Its Art 1 sets forth:

‘The provisions of this Decree focus on those measures designed to eliminate any distinction, exclusion or restriction based on sex, which has the effect of impairing or preventing the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’.

The anti-discrimination approach, as formulated in Art 1, suggests a broad interpretation of the principles with the goal of achieving a concrete equality

<sup>31</sup> Legge 14 March 1985 no 132, *Gazzetta Ufficiale* no 89 of 15 April 1985.

<sup>32</sup> Consideration of reports submitted by States parties under Art 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth periodic report of States parties, Italy, CEDAW/C/ITA/6, 19 May 2010; Consideration of reports submitted by States parties under Art 18 of the Convention, Seventh periodic report of States parties due in 2015, Italy, CEDAW/C/ITA/7, 11 January 2016; List of issues and questions in relation to the seventh periodic report of Italy, Addendum, Replies of Italy, CEDAW/C/ITA/Q/7/Add.1, 12 May 2017.

<sup>33</sup> Decreto legislativo 11 April 2006 no 198, *Gazzetta Ufficiale* no 125 of 31 May 2006.

between men and women and promoting equal opportunities in all spheres of life, in particular: for ethical and social relationships (decreto legislativo, book two), purely economic relations, namely in the workplace, business and access to goods and services (decreto legislativo, book three) and in civil and political relations (decreto legislativo, book four).

Through the incorporation of former pieces of legislation into decreto legislativo no 198/2006 a comprehensive and clear legislative setting has been defined to prevent and remove all forms of gender-based discrimination.<sup>34</sup> At the same time, relevant EU directives concerning the issue at hand have been properly translated into the decree as for specific fields of work and action where the principle of equality and equal opportunities between men and women should have been pursued in a constructive manner. These areas include: the concept of direct and indirect discrimination on gender grounds, the principle of equal treatment between men and women as it concerns access to goods and services and related supply, the implementation of the gender equality principle in the labour market, and the establishment of equality bodies and their re-ordering with the aim to give them new and differentiated competencies within the inter-ministerial national setting as well as at the decentralized level, to provide for proper evaluation mechanisms to measure their effectiveness and efficiency, and to focus their work on contributing to legislative and policy measures to proactively support gender equality and equal opportunities.<sup>35</sup>

In July 2018 a relevant amendment to the Italian Corporate Governance Code, approved by the competent Corporate Governance Committee in March 2006 and reviewed in the past years, was adopted in order to apply gender diversity criteria in the first renewal of the boards of directors and of statutory

<sup>34</sup> Some relevant legislation was included in the Code of Equal Opportunities: for example, legge 9 February 1963 no 66 on 'the admission of women to public offices and professions'; legge 9 December 1977 no 903 on 'Equal treatment between men and women in the employment area'; legge 10 April 1991 no 125 on 'Positive actions to achieve equality between men and women in the labour market'; legge 25 February 1992 no 215 of 1992 on 'Positive action for female entrepreneurship' (as amended by decreto legislativo no 198/06, which transfers to the Department for Equal Opportunities the relevant responsibilities on female entrepreneurship. See decreto legge 18 May 2006 no 181); legge 23 May 2000 no 196 on 'Regulation of the activities of the Equality Councillors'; decreto legislativo 31 July 2003 no 226 'the Establishment of the National Commission for Equality between men and women'; and legge 8 April 2004 no 90 on 'Rules on the election to the European Parliament'.

<sup>35</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004] OJ L 373/37; European Parliament and Council Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L 204/23; Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {SEC(2008) 2180} {SEC(2008) 2181},\* COM/2008/0426 final.

auditors after the expiration of act no 120 of 12 July 2011.<sup>36</sup> This amendment covers specifically Arts 1, 2 and 8 of the aforementioned Code as well as related principles and criteria.

As far as the role of the board of directors (Art 1) boards are annually required to carry out a self-assessment regarding their composition and functioning. Regarding their membership, professional and managerial competencies, the gender diversity component has a significant relevance in line with following Arts 2 and 8. In relation to the composition of the board a new principle has been introduced as for the gender component apart from the common competence and professionalism of all the members:

‘The issuer applies diversity *criteria*, including those related to gender, for the composition of the Board of Directors, taking into due consideration the primary goal of ensuring adequate competence and professional skills of its members’ (Principle 2.P.4).

The informing criteria to accomplish the principle is represented by the ratio of one third of directors of the less-represented gender both on appointment and during the whole mandate (Criteria 2.C.3). This means that an adequate composition of the board demands not only competence and professional skills but also gender managerial and professional skills in compliance with act no 120/2011 and through by-laws provisions and/or diversity policies and/or a guidance to shareholders and/or a slate of candidates submitted by the board itself, further promoting equal treatment and opportunities regardless of gender within the company’s structure. Similarly, concerning the board of statutory auditors (Art 8), the application of diversity criteria – including in relation to gender – is required (Principle 8.P.2), in accordance with the Criteria 8.C.3 that provides for a composition of at least one third of members of the less-represented gender, both on appointment and during the whole mandate.

As for the establishment of equality bodies, beside the reform of the institutional framework through the establishment of the Department for Equal Opportunities at the Italian Prime Minister’s Office, two other bodies have been created to direct the promotion of equality and equal opportunities at the workplace. The Councillor for Equality has a mandate to monitor gender-based discrimination and to undertake initiatives to ensure the respect of the principles of non-discrimination and equal opportunities at the workplace at the national, regional and local level. According to Art 46 of the above mentioned Code for Equal Opportunities all public and private companies with more than one-hundred employees have the obligation to submit every two years to the regional councillors and to company referees a report that describes the gender staff component,

<sup>36</sup> Corporate Governance Committee, ‘Corporate Governance Code’, July 2018, available at <https://tinyurl.com/y323bd45> (last visited 28 May 2019).

providing data on recruitment, training, career promotion, level of employment, change of category or qualification, and the adoption of ad hoc measures such as mobility, redundancy fund, layoffs, early retirements and retirements and wages paid. Whenever the report is not submitted, an invitation from the Regional Labour Directorate is sent to the employer to accomplish within a sixty-day time limit, otherwise administrative sanctions and at least the suspension of contributory benefits will be applied for one year. Moreover, in line with Art 50-b of the same Code, ad hoc preventive measures are applicable to prevent gender-based discrimination, asking companies to adopt collective labour agreements including guidelines, codes of conducts and similar documents covering sensitive issues such as harassment and sexual harassment at the workplace, or informing common principles to define equal working conditions for female employees as well as training and professional development addressed to them.

In 2011 proper guidelines were also issued by the Ministers for Public Administration and for Equal Opportunities concerning the Committee for the Protection of Gender Equality (CUGs): this new body took over the functions previously entrusted to the Equal Opportunities Committee and the Joint Committees on mobbing. The Committee's mandate consists of advising and monitoring all grounds of gender-based discrimination as well as labour access, security and safety conditions, economic treatment and reliable career advancement of women.

### **b) Additional Legislation**

In compliance with the Constitution and the Code for Equal Opportunities two relevant legislative measures have been promulgated concerning the principle of equality and equal opportunities in the field of state-led listed companies, providing for new and comprehensive legislation linking the basic principles at the core of the international and national legal standards for human rights protection to the business sector and its core target of economic growth and development.

First, act no 120 of 7 December 2011, the 'Equal access to Boards of Directors and Boards of Statutory Auditors of publicly-listed companies' has been enacted.<sup>37</sup> Act no 120/2011 is articulated in three main provisions: Art 1 concerns the 'Balance between genders in listed companies', Art 2 is focused on the 'Duration' of the act's implementation, and Art 3 accords special attention to 'state-controlled companies'.

According to the CEDAW framework and CEDAW Committee general recommendation no 23, act no 120/2011 could be considered as a temporary special measure providing for ad hoc actions aimed at preventing and repressing any form of gender-based discrimination. It requires publicly listed companies to amend their statutes by explicitly including the reservation of a quota of at

<sup>37</sup> Legge 7 December 2011 no 120, *Gazzetta Ufficiale* no 174 of 28 July 2011.

least one fifth in favour of gender representatives since the first implementation, to be progressively reinforced on the occasion of the following membership renewal up to one third of women in companies' governing bodies.

Further detailed provisions have been introduced by the Italian Stock Exchange Regulation Authority (CONSOB) in relation to the communication procedure and subsequent sanctions if the requirements are not met. State-owned companies shall provide information about the composition of their main bodies within fifteen days after the appointment of the membership or possible modifications; if this does not occur the Authority issues a warning to the attention of the company, which has four months to meet the obligation; in case of non-compliance the Authority could impose an administrative fine up to one million euros for the administrative board and up to two hundred thousand euros for control bodies; in such passage both the Authority and the Prime Minister's Office or the Minister for Equal Opportunities issue a warning procedure asking the concerned company to be compliant with the duty within three months and sixty days respectively otherwise the elected body will be removed.

Regarding state-owned companies, this process has been further regulated by Decreto del Presidente della Repubblica 30 November 2012 no 251 and put under monitoring of the Prime Minister or delegated to the Minister for Equal Opportunities.<sup>38</sup> Following its entry into force, the presidential decree was fully implemented as recorded by the Department for Equal Opportunities, which has received six hundred and forty communications from 2012 to 2016 concerning total or partial renewal of boards' membership from four hundred and thirty companies. Following the reception of the communication, thirty-seven and twenty-two warnings were issued at the first and second stage respectively: fifteen and eighteen companies have amended their statutory governing bodies and five non-compliant companies have seen their bodies removed.<sup>39</sup>

## **V. The Italian Case: Gender Corporate Governance in Listed Public-Owned and Private Companies**

### **1. A Comprehensive Quantitative Assessment of Gender Corporate Governance in Italy**

Recent data and related analysis show how gender corporate governance is relevant in Italian companies' business strategies and, for this reason, several measures have been promoted to improve the female employment rate as well as women's careers in the business sector.<sup>40</sup>

<sup>38</sup> Decreto del Presidente della Repubblica 30 November 2012 no 251, *Gazzetta Ufficiale* no 23 of 28 January 2013.

<sup>39</sup> S. Cuomo and A. Mapelli, 'Gender diversity e corporate governance dopo la legge Golfo-Mosca' 6 *Economia & Management*, 41-48 (2011).

<sup>40</sup> M. Bianco et al, 'Women on boards in Italy' *Consob Quaderni di finanza no 70* (2011).

According to recent quantitative research results from Unioncamere the following data provide a comprehensive outlook to assess the active role and contribution of women in stories of successful businesses. Between 2014 and 2016 over one million three hundred and thirty-one thousand businesses were run by women, an increase of thirty thousand and ten thousand if compared with the previous years (more than twenty-one point eighty-six per cent). This improvement concerns particularly structured businesses and limited companies: about two hundred and eighty-four thousand corporations were managed by women in 2017 (twenty-one per cent). Most of these companies are located in four Italian Regions: Sicily, Lazio, Campania and Lombardy. The most represented sector is tourism and related activities and services, but since 2016 there has also been an increase in the number of women running professional, scientific and technical businesses (more than three point eight per cent). Women in the business sector are aged under thirty-five, suggesting that a high level of education and professional training is the key to improving women-led business opportunities.

Another significant survey has been carried out under the coordination of the Department for Equal Opportunities, through EU financial resources and in collaboration with Dondena Research Centre for Social Dynamics and Public Policies and Bocconi University, titled 'Women Mean Business and Economic Growth – Promoting Gender Balance in Company Boards'. The project was aimed to promote gender-balanced representation in economic decision-making by providing quantitative data and best practices to promote female leadership and introducing an impact-assessment analysis of the new legislation and aggregated measures concerning women in economic decision-making settings. It has covered two hundred and forty companies listed on the Italian stock exchange as of 30 June 2013 and has been focused on the membership of the boards of directors and the boards of statutory auditors. The aforementioned companies were collected into three main categories: those ones whose last board renewal occurred after August 2012 (following the entry into force of act no 120/2011 and the Decreto del Presidente della Repubblica no 251/2012), those whose last board renewal occurred between July 2011 and July 2012 (before the new legislation entered into force), and those ones whose last board renewal occurred before July 2011 (without any ad hoc legislation in force). In the examination of the sequential reforms, as of 30 June 2013, thirty-four point six per cent of companies listed on the Italian stock exchange had renewed their boards, moving from a percentage of twelve point six (third category) to twenty-four point nine (first category). As recorded by the former analysis, women in companies' boards are younger and more educated (for detailed information, see 3).

## **2. Factors Affecting the Role and Participation of Women in Business Companies and in High Level Positions of Management Boards**

In general terms all research activities on gender membership and active roles in companies' boards at the highest level have been developed starting from the concept of gender diversity management as a key factor which should be properly enhanced in decision-making processes in favour of female components of core corporate bodies. The agency theory is indeed important to board composition and mandate in addressing and solving corporate problems and in composing in a balanced way the interests of stockholders and company managers. If board diversity is preserved, different but complementary knowledge, skills, experiences, ideas and conduct could positively impact the overall viewpoint and factual interventions of the entire board, resulting in improving capability and performance of the company.<sup>41</sup>

To pursue the enrichment of the boards' membership by adding more women, a second – but not less relevant – factor has been represented by the national domestic commitment to increasing the percentage of women in governing bodies through the adoption of ad hoc pieces of legislation, in compliance with international and regional legal standards. Despite the provision for a regulatory framework for positioning women in corporate boards, after the entry into force of hard laws and soft legal tools – such as codes of conducts and targeted guidelines – for both state-led and private companies, not all settings have recorded virtuous results in terms of mandates, competencies and remuneration for female members when compared to their male colleagues.

Thus far the introduction of compulsory or voluntary quotas by domestic legislative measures is a secondary factor that has led to a long-lasting debate in the international literature on the potential of gender corporate governance.<sup>42</sup> From one side such quotas have been considered as a last resort for companies that have ignored gender diversity management and the opportunity to include

<sup>41</sup> But if the board diversity is imposed in terms of gender-based quota system, it could be detrimental. This is the case of the recent bill SB 826, at present awaiting the California Governor's signature, that imposes financial penalties on publicly held corporations headquartered and chartered in California if they should not include at least one self-identified woman director by the end of 2019 as well as, by December 31, 2021, within corporations with five (six directors at least two/three women directors respectively). If the goal is appreciable, conversely there are different counterpoints to be stressed: the Federal State's localisation and implementation of the bill, practical difficulties in requiring any change in favour of the quota system for public and private corporations at the same time, the fact that board's gender diversity is mainly a matter of internal corporate governance for which shareholders are methodically responsible for, the legislative process itself could be put at risk due to negative jurisprudence and could also be perceived as politically divisive (J. Grundfest, 'Mandating Gender Diversity in the Corporate Boardroom: The Inevitable Failure of California's SB 826' available at <https://tinyurl.com/y3hfsm2z> (last visited 28 May 2019)).

<sup>42</sup> M.M. Hughes et al, 'Gender Quotas for Legislatures and Corporate Boards' 43 *Annual Review of Sociology*, 331-352 (2017); M. Teigen, 'Gender Quotas on Corporate Boards: On the Diffusion of a Distinct National Policy Reform', in F. Engelstad and M. Teigen eds, *Firms, Boards and Gender Quotas: Comparative perspectives* (Bingley: Emerald, 2012), 115-146; S. Terjesen et al, 'Legislating a Woman's Seat on the Board: Institutional Factors Driving Gender Quotas for Boards of Directors' 128 *Journal of Business Ethics*, 233-251 (2015).

and increase gender representation in governing bodies; on the other side efforts to adopt such a regulatory framework as a one-step solution have been observed to be counterproductive: a step-by-step approach has been favoured to avoid imposing any constraint on board membership that could negatively affect corporate performance due to the non-appointment of the best – male or female – candidate. If the economic advantage and financial revenues stemming from the adoption of a quota regime have not all been proven, the reorganization of a board's composition is still perceived as an optimal means to increase the company's value and reputation if the governing body's quality is guaranteed.<sup>43</sup>

A last factor that could strongly influence women's participation in key corporate governing bodies is the promotion of relationships with outside stakeholders and institutional actors: dialogue and related advise and counsel from companies' boards including female representatives might have positive effects in terms of governance and financial performance outcomes.<sup>44</sup> Gender diversity management indeed could be reinforced in order to strengthen monitoring activities and consequent advise and orientation for the adoption of governmental economic development policies at the national and international level. The complementary impact of this factor is represented by the assessment of corporate performance: according to some diverging surveys it may be positively assumed in large and complex companies but it could have negative results in small and medium size enterprises. In the former there is weaker control by shareholders while in the latter governance is put under strict shareholders' monitoring and board members act namely for their predominant interests.

In the Italian case special attention has been devoted by research studies on the role, composition and performance of governing bodies of listed state-led companies under the gender lens.<sup>45</sup>

The results could be summarized in the formulation of two different models. In small companies the female component in boards has a direct or affiliated family connection with the controlling shareholder, the company has a concentrated ownership and the main domain is the consumer sector.<sup>46</sup> In widely held companies or in corporations that are owned by a foreign shareholder, whose primary field of work is the IT/telecommunications sector, a higher percentage of female independent representatives on boards and in executive and non-executive

<sup>43</sup> S. Terjesen and R. Sealy, 'Board Gender Quotas: Exploring Ethical Tensions From A Multi-Theoretical Perspective' 26 *Business Ethics Quarterly*, 23-65 (2016).

<sup>44</sup> L. Chapple and J.E. Humphrey, 'Does Board Gender Diversity Have a Financial Impact? Evidence Using Stock Portfolio Performance' 122 *Journal of Business Ethics*, 709-723 (2014); B. Elstad and G. Ladegard, 'Women on Corporate Boards: Key Influencers or Tokens?' 16 *Journal of Management and Governance*, 595-615 (2012).

<sup>45</sup> S. Solimene et al, 'Gender diversity on corporate boards: an empirical investigation of Italian listed companies' 3 *Palgrave Communications*, 1-7 (2017).

<sup>46</sup> M.D. Amore et al, 'Gender Interactions Within the Family Firm' 60 *Management Science*, 1083-1097 (2014); M. Bianco et al, 'Women on Corporate Boards in Italy: The Role of Family Connections' 23 *Corporate Governance: An International Review*, 129-144 (2015).



positions is recorded, according to their strong educational and professional background.

Regarding the quota regime, introduced through the abovementioned legislative measures, in Italy there has been a robust recomposition of boards' membership through the inclusion of women, who are also taking roles as directors. This has occurred in particular in larger companies, following an accurate elaboration of selection criteria to shortlist the best – male and female – candidates,<sup>47</sup> to ensure an equal and balanced gender diversity, to create interesting incentives for female participation, and to assess the efficiency and effectiveness of companies' performance at large.

In relation to companies' performance assessment, ad hoc surveys have considered the direct linkage between women's presence on boards and good corporate governance, measured by the number of board meetings and the average director attendance at board meetings. The companies whose boards have at least one woman have recorded a lower number of board meetings and a lower board attendance of the director. The first number is higher, however, for companies whose boards are composed only by non-family female directors.<sup>48</sup>

### **3. Awareness Raising, Initiatives and Projects to Improve Gender Corporate Governance**

Several initiatives, programmes, projects and awareness raising activities have been promoted within the Italian system to stimulate the debate and to provide for interesting data and information about the improvement of gender corporate governance, in order to bring this issue to the attention of the public as well as to encourage institutional legislative innovations and strategic development policies by governmental and business stakeholders.<sup>49</sup>

In 2013 the Ministry of Labour and Social Policies launched a programme to

‘increase women's employment and qualification, through the integration and reintegration into the labour market, development and consolidation

<sup>47</sup> M. Hutchinson et al, 'Who Selects the 'Right' Directors? An Examination of the Association between Board Selection, Gender Diversity and Outcomes' 55 *Accounting and Finance*, 1071-1103 (2015).

<sup>48</sup> C. Bart and G. McQueen, 'Why Women Make Better Directors' 8 *International Journal of Business Governance and Ethics*, 93-99 (2013); R.J. Burke and M.C. Mattis, 'Women on Corporate Boards of Directors: Where Do We Go from Here?', in Id, *Women on Corporate Boards: International Challenges and Opportunities* (Dordrecht: Kluwer, 2000), 3-10; S. Terjesen et al, 'Women Directors on Corporate Boards: A Review and Research Agenda' 17 *Corporate Governance: An International Review*, 320-337 (2009); S. Vinnicombe et al eds, *Women on Corporate Boards of Directors: International Research and Practice* (Cheltenham: Edward Elgar, 2008).

<sup>49</sup> F. Galia and E. Zenou, 'Board Composition and Forms of Innovation: Does Diversity Make a Difference?' 6 *European Journal of International Management*, 630-650 (2012).

of women-owned businesses'.<sup>50</sup>

The ultimate goal has been to provide financial incentives addressed to women working in the business sector to enhance individual capabilities and to create collective opportunities to support women's business networks.<sup>51</sup> Similar goals were served by the renewal of a memorandum of understanding previously signed by the Ministry of Economic Development, the Department for Equal Opportunities at the Prime Ministers' Office and the Italian Union of Chambers of Commerce in 2013, which has redefined the role and mandate of the one hundred and five Female Entrepreneurship Committees (CIF) established at every chamber at the local level, with the intent to support the internationalisation of women-owned and led companies.

The aforementioned project titled 'Women Mean Business and Economic Growth – Promoting Gender Balance in Company Boards' has been implemented since 2015 to collect data and best practices concerning female business leadership, to promote female leadership in Italy and to carry out an impact-assessment analysis of the new legislation and aggregated measures in force within the Italian legislative framework.<sup>52</sup> The two-hundred forty-one Italian companies listed on the Italian stock exchange put under monitoring have been examined in relation to the composition of the boards of directors and of statutory auditors. As a general note the results of the project have shown empirically that the quota regime, as introduced by the new legislative measures in force, has had an impact in terms of decrease of companies' debt on average, and thus of increase of companies' performance. By assessing the project outcomes in detail the following issues emerged: the number of women in both types of board increased from twelve point six per cent to twenty-four point nine per cent by comparing the pre and post-legislative reform periods; the female board representatives are younger, more educated, family-owned or affiliated members and hold primarily presidential positions and fewer CEOs roles.

Different awareness-raising campaigns have been launched in recent years by the Department for Equal Opportunities and the Ministry of Labour and Social Policies, devoted to the promotion of gender balance in decision-making processes and business initiatives at the micro-credit level; these include the 'Gender Quotas: A More Balanced Country has a Better Future' campaign and the 'Restart from you! Beautiful business to be a woman'.<sup>53</sup>

On the part of private business initiatives, as incentivized through the credit

<sup>50</sup> Ministero del Lavoro e delle Politiche Sociali, 'Donne e Lavoro: le misure a favore dell'occupazione femminile' available at <https://tinyurl.com/y64dtlo8> (last visited 28 May 2019).

<sup>51</sup> C. Drago et al, 'The Role of Women in the Italian Network of Boards of Directors, 2003–2010', available at <https://tinyurl.com/y4pcj4va> (last visited 28 May 2019).

<sup>52</sup> Dondena Centre for Research on Social Dynamics and Public Policy, 'Women Mean Business' available at <https://tinyurl.com/y4nr9quz> (last visited 28 May 2019).

<sup>53</sup> Ministero del Lavoro e delle Politiche Sociali, n 50 above.

system, the support of gender equality and equal opportunities has been put at the core of interventions of the Intesa Sanpaolo Group for its own female employees, but also for business women.<sup>54</sup> Following the positive global assessment of the Group according to the gender equality index score and the gender equality global ranking, several best practices and tools may be here reported to enhance gender diversity management and corporate governance within Italy. For example women who work in or manage a company may ask the bank for access to tailored loans, the so-called business gemma, that is financially covered by the guarantee fund for SMEs and which provides for up to a one-year suspension on principal payments, might be used to support specific business management training programmes as well as digitalisation and internationalisation. Furthermore the Group has established a digital platform named *Tech-Marketplace* to facilitate the connection between demand and supply for technology in the form of the *WorkHer* platform to offer a range of mentorship, networking and training projects.

<sup>54</sup> Gruppo Intesa SanPaolo, 'Diversity' available at <https://tinyurl.com/y2fesv4b> (last visited 28 May 2019).