

## **Women Directors, the Italian Way and Beyond<sup>1</sup>**

By Livia Amidani Aliberti

### **The Italian Way**

Gender quotas are a controversial issue. A recent book entitled *Women Directors, The Italian Way and Beyond*, published by Palgrave Macmillan, contributes to the debate, offering insights on a piece of legislation that brought together public and private initiatives to narrow the gap between contrasting positions on gender quota legislations.

The Golfo–Mosca law recently enacted in Italy mandates the temporary increased representation of females on boards of publicly listed and state-owned companies in Italy. The law requires these boards to have at least 33% male and female genders respectively, and sets a target of 20% for the first of the three mandates during which the law will remain in force. In the event of non-compliance, a progressive warning system with monetary fines culminates in the eventual dissolution of the board. Spring 2013 was the first AGM season to fall within the new provisions.

The Italian legislation was heralded by some as a victory. However, the many people that had sponsored and supported the initiative considered it just the start of a market effort aimed at exploiting the favourable playing field that the Golfo-Mosca law had temporarily created for women.

The five authors of *Women Directors, The Italian Way and Beyond*<sup>2</sup> possess decades of accumulated experience as board members in top listed companies, professors at leading Italian Universities and Business Schools and consultants in corporate governance. They teamed up to tell the story of a unique law that in their mind represents a model for other countries. Five Italian women who, in their different professional or academic positions and from different perspectives, participated in the process of the proposal, approval and implementation of the Italian gender law.

This article summarises some of the passages in the book that are most relevant from a corporate governance perspective. The book was written in English for an international audience. It offers a comparative analysis of the initiatives and actions implemented in the different European countries

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<sup>2</sup> Paola Profeta, Livia Amidani Aliberti, Alessandra Casarico, Marilisa Damico and Anna Puccio

to increase female representation at board level, assesses the effectiveness of the different set of actions and analyses the initial evidence from one year of quota legislation in Italy, not just from a numerical perspective but from a wider perspective assessing its impact.

### Quotas and Other Initiatives to Redress the Gender Gap at Board Level

When the legislation on gender quotas came into force in Norway in 2005, the question most frequently asked was “Are you for or against quotas?”. Today the question can no longer be asked in such black and white terms. Thanks to the many regulatory initiatives put in place in the various countries, the gap between the various methods used has shortened, and the boundaries between laws, regulations and recommendations are no longer so clear-cut. Table 1 summarizes the overlapping of initiatives in European countries, and shows that 42% of countries have adopted legal and regulatory provisions governing the gender composition of corporate boards (listed and/or state-owned). In almost all cases (with the exception of Italy) ‘soft’ provisions were introduced before more binding provisions had to be implemented due to the poor results obtained through codes of conduct alone.

**Table 1** Frequency of the co-existence of regulatory initiatives in European countries (including Iceland and Norway)

Legislation (state-owned and/or listed) and Code	Code of Corporate Governance only	State-owned companies specific legislation only	Listed companies legislation only	No provisions
13 41.9%	4 12.9%	2 6.5%	0 0.0%	12 38.7%

*Source:* Authors' elaboration; Germany is included under countries with listed companies legislation although currently there is only a proposal in Parliament.

Table 2 shows the percentage point change in women’s presence on company boards between 2004 and January 2012 according to the type of initiative undertaken by different countries. The table gives a clear indication of the direction and strength of the change generated by the different initiatives. The impact of legislation, particularly if backed by a clear framework of penalties, is obviously more immediate and sharper in terms of increasing numbers. This does not mean that there is only one solution to redress women’s under-representation and that other measures are not effective. As Table 2 shows, the use of governance codes also produces rates of change which are remarkably higher than the ones we observe in the absence of any intervention.

**Table 2** Average percentage point change in female presence on corporate boards between 2003 and October 2012 (EU, Iceland and Norway), by type of initiative

Type of initiative (EU 30)	Average % Change	Max	Min
Legislative measures	16.3	32	7
Governance codes and other voluntary initiatives	7.5	17	3
No action (legislative or regulatory)	1.3	11	-9

*Source:* Authors' elaboration on European Commission's database on women and men in decision-making.

## KEY FEATURES OF THE LAW

The legislative measure is incisive and innovative . The reasons lie in its three key pillars, specifically its temporary effects, the gradual implementation of a moderate quota threshold, and its structured set of sanctions for non-compliant companies. Let us take a brief look at these three pillars in more detail.

The legal constraints apply to three consecutive terms of office, after which the law will cease to be effective. The Italian lawmakers therefore intended to use the legislative instrument to give the system impetus to change the status quo, but its temporary nature ensures that it does not become reverse discrimination.

Another significant aspect of the Italian law is that companies have been given the time to comply gradually with the principle of equal opportunity. In the first term of office, the under-represented gender must be guaranteed t one-fifth of the seats, while in the second and third terms this quota rises to one-third. The ultimate quota for women directors when the law is fully implemented (33%) is the lowest in Europe, similar to that set in Belgium. However, in Italy this threshold has to be reached more gradually, while the Belgian legislation will be implemented at once, depending on ownership and size (2012 state-owned, 2017 large companies, 2019 SMEs). The French law also takes a gradual approach to the introduction of the quota; the final threshold however, is higher, at 40%. The combined effect of these two elements in the Italian law certainly dilutes women's entry onto boards over time and reduces the total number of women who will have access to company boards as a result of the law. However, it is precisely the interaction of these two elements that will protect the 'DNA' of boards, which could have been damaged by more invasive action.

Finally, the sanction framework consists of three steps, each tougher than the previous one. The rule that applies the sanction of annulment of the board election in the event of non-compliance only comes into play when a company has failed to comply with two previous warnings. This places the Italian law midway between laws with immediate sanctions and laws without sanctions.

The aim of the Italian law is to stimulate change without replacing the mechanisms of the market, which will soon come back into play without any strings. Quotas make numerical change happen. The law needs the market and the market needs a ‘nudge’ from the law. The final aim is the quality of boards, the contribution boards add to the management of a company and their ability to create sustainable value for the stakeholders. Only a sincere and mature engagement of the market can ensure that the numerical change develops into value for stakeholders. The process of interaction between public and private spheres is distinctive: while the law has been promoted and approved by the Italian parliament as a severe form of state regulation for the targeted companies, it has also been supported by the market, through a large set of initiatives undertaken in parallel by an extensive group of stakeholders, which includes companies, associations, and also individual citizens; the promotion of an ex-ante intense debate to make female representation in boards a shared objective of the business community and the society at large; the promotion of meritocracy consistent with the emergence of female talents and the emergence of board-ready women, their visibility and their quality. All this has helped to build consent around the idea of a law on gender representation in the world of business. Moreover, the law applies to both the private and the public sector. This public–private interaction represents a relevant and, to some extent, unexpected ingredient in the process of implementation of gender quotas, which challenges traditional views on the role of the state in the economy. The nature of the process of the Italian law, from the initial design to the broader consensus and final approval, as well as the features introduced in the law, guarantee the maximum beneficial impact of regulation, in terms of both its economic and policy impact.

This is why we now we expect the effects of the law to be long lasting, beyond its time limitation: the aim is to maintain a significant and highly qualified female presence beyond 2018.

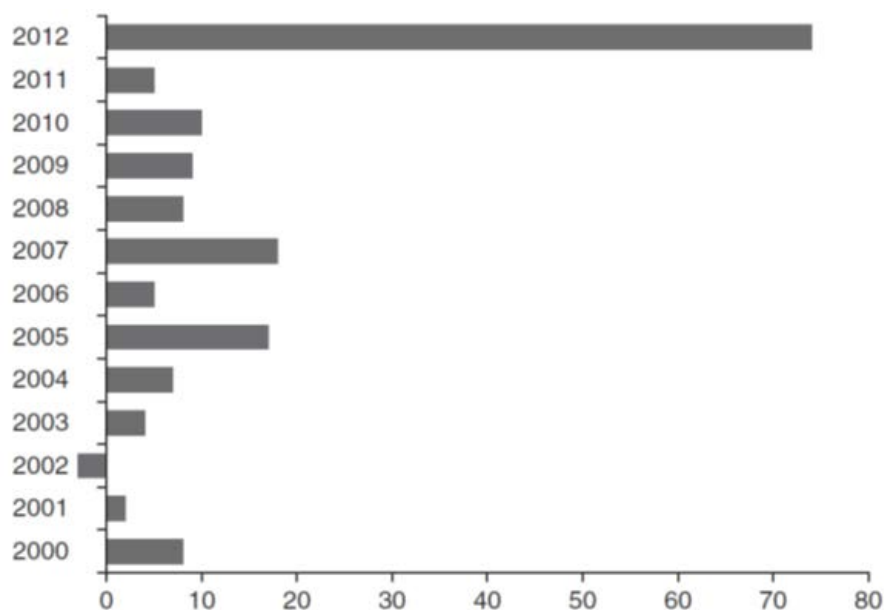
We emphasize that beyond the way in which consensus among different parties was built, the nature of the law itself is a crucial element of interest.

For all the above reasons, the legislation currently being enacted in Italy can provide an interesting model for countries intending to use legislation to try and rebalance the presence of men and women in corporate leadership roles.

### FIRST EVIDENCE AND FUTURE DEVELOPMENTS

The feedback from the market is satisfactory. Figure 3 gives a snapshot of the last decade in terms of additional seats available to women directors in each year. The graph does not show a constant increase in the number of women reaching the top. The sudden increase in 2012 is very clear on the graph. Before the law even came into force with the board renewals in spring 2013, the picture had changed. When assessing this increase we need to take into account that only around one-third of listed company boards were due for renewal in 2012, which makes the increase even more remarkable. In a single year the same number of women was appointed as in the previous eight years. Quite an achievement for a gender law that had not yet come into force! The data from 2012 offers precious evidence to support the fact that corporate business intuition is moving towards implementation, as it positively exploits professional skills and benefits boards. Early implementation suggests that the market was already willing to embrace the law, and that private initiatives and public-private sector teamwork had helped to mitigate any differences of opinion among the actors, preparing listed companies for the major change that would take place the following year.

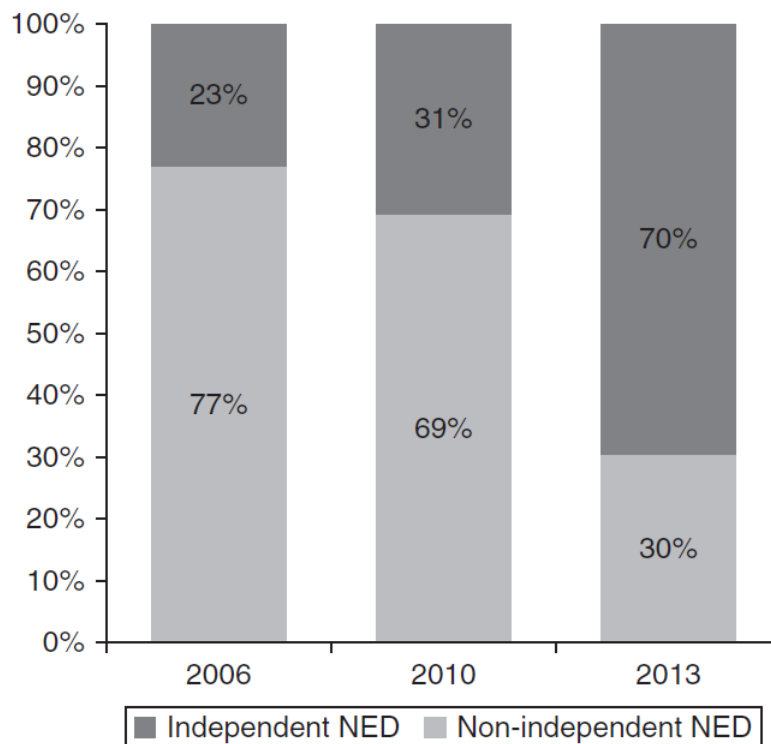
**Fig. 3** - Incremental net total female seats 2000-2012 (before the first renewals under the new system)



Source: Authors' calculations on Consob data.

The first evidence reinforces this view. Companies have built on the public-private synergies by effectively implementing what was imposed on them. In the first year since the law became effective shareholders have trusted independent women directors, and their percentage has risen sharply, overturning the proportions within the NED category. Women not affiliated to the ownership or management by personal or professional connections that could compromise their independence have risen from 31% of total female NEDs in 2010 to 70% at the end of 2013, as shown in Figure 4 .

**Fig. 4** - Composition of female Ned directorships, proportion of independent vs non Independent NED, 2006-2013



*Source: Authors' calculations on Consob data.*

Further research confirms that<sup>3</sup> the law is working beyond the numbers. Women directors now represent 22% of the whole listed market. Qualitative indicators show that the overall composition of boards is also benefiting from the imposed changes. The percentage of board members with degrees or postgraduate qualifications is higher in boards which have already been renewed under

<sup>3</sup> Paola Profeta and Giulia Ferrari, Board Women Database, European Conference PROMOTING GENDER BALANCE IN DECISION MAKING, 9 July 2014, Rome.

the quota legislation. Also, directors sitting on newly renewed boards tend to have fewer multi-directorships. The much feared ‘multiskirt’ phenomenon has not taken place so far and probably never will. Two of the reasons behind this assertion are that when the law became effective the market had already trained and given visibility to the many ready-for-board women, and that the gradual nature of the legislation and the 30% final threshold – the lowest in the quota arena – assure the intake of women to boards match the available pool of ready-for-board women.

The Italian experience delivers important lessons which according to us, contribute to the success of the Italian law, and will be useful for other countries aiming to increase the presence of women on boards and that are discussing the introduction of a temporary gender quota system. These elements have the potential of spreading the Italian model ‘beyond’ the Italy itself. Although a successful result, we consider the Italian law not only the conclusion of a complex process, but also a starting point.

We expect the effects of the law to be long lasting, that is to say, to go ‘beyond’ the period of implementation of the law. This perspective applies not only to the law’s direct effects, that is a larger number of women on boards, but also to its indirect effects, such as improvement of the quality of boards, and an increase of the presence of women in management positions.