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"Gender quotas" at the starting blocks

Legislative procedure

On 28 June 2011 the Chamber of Deputies gave its final approval to the bill of law on equal access to management and supervisory boards of listed companies and of publicly-held unlisted companies.

The law is pending enactment by the President of the Republic and subsequent publication in the Official Journal.

The law will take effect 12 months after its publication in the Official Journal (and therefore no earlier than July 2012 and only following the first renewal of management and supervisory bodies of listed companies following its effectiveness).

Consequently the amendments introduced by the law will not apply to company shareholders' meetings forecast for spring 2012.

Principal points of the bill of law

The bill of law provides that twelve months after the effective date of the law and at the first board renewal, **one fifth** of places on boards of directors and auditors for listed companies are reserved to the least represented gender. The law will also apply to companies that adopt the dualistic governance model and consequently to composition of both the management and supervisory boards.

At the second and third subsequent renewal the least represented gender will be entitled to obtain **one third** of places on boards of directors/auditors.

Company by-laws will therefore have to govern procedures for the formation of lists and for any replacement of members during tenure, in order to guarantee the balance of genders and compliance with criteria

The legislative measure in question is **temporary:** the quota indicated above will only apply for **three consecutive mandates.** Pre-announced criticism regarding alleged violation of constitutional principles should be overcome by the fact that the measure in question is an ***affirmative action*** measure (or rather a temporary measure which aims to eliminate a discriminatory situation and which only applies for the time necessary to achieve the goal for which it was enacted).

Key issues

Date of effectiveness 12 months after publication in the OJ

Gradual adaptation mechanism

Uncertainty regarding unconstitutionality: temporary nature of the measure

Sanctions

Experience in other European Countries

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Sanction mechanism

In case of failure to comply with gender quotas, Consob will be responsible for issuing notice to the company in breach, ordering it to comply within a maximum term of four months. In case of failure to comply with this notice, a pecuniary administrative sanction will be imposed ranging from 100 thousand to one million euro, in accordance with criteria and procedures to be established in a Consob regulation.

A further term of three months has been fixed for the company to adapt to legal prescriptions; in case of further non-compliance with the last notice, elected members will fall from office.

Brief overview of provisions adopted in other European jurisdictions

Norway

Since 2006 companies listed on the Norwegian market are under an obligation to guarantee the presence of women in the boardroom. The pre-established goal was that of achieving management boards with at least 40 per cent female members by 2008. In 2010 the Norwegian Government submitted the results of application of the law: gender quotas in the boardroom have surpassed the goals: today women hold 41 per cent of top management positions.

Spain

The Spanish law, approved in 2007, establishes that companies required to submit unabridged profit and loss accounts will try to include in the Board of Directors the necessary number of women in order to achieve the aim of 40% female presence in the boardroom by 2015. However, to date the effects of the law are somewhat disappointing since women in the boardroom of listed Spanish companies represent just 11% of the total.

Germany

At the moment no law has been adopted. The German government is exercising pressure on companies through moral persuasion, encouraging them to voluntarily increase top management gender quotas. The message is clear: if companies do not independently take steps, sooner or later they will be obliged to do so by law. The biggest industrial groups have announced that they will improve the presence of women in the boardroom.

France

In 2011 a law was enacted providing for an obligation for listed companies and publicly-held companies to introduce quotas guaranteeing equal access to management and supervisory bodes, pending achievement of a 40 per cent quota in 2017.

United Kingdom

At the moment no law has been enacted, but in February 2011 a report commissioned by the English Government has recommended that FTSE 350 companies aim to have a minimum of 25% female representation on the Board by 2015. The Government has indicated that it will legislate if board gender diversity cannot be achieved on a voluntary basis.