

# DIVERSITY PRINCIPLES IN ITALIAN CORPORATE GOVERNANCE: RECENT DEVELOPMENTS AND FUTURE PERSPECTIVES

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## Abstract

The provision and application of diversity principles in the composition of both the board of directors and board of auditors of listed companies is currently widespread in the whole European context.

While the first legislative (or regulatory) actions have basically concerned the demographic diversity profile – i.e. were aimed at ensure that a certain percentage of the board composition would belong to the less represented gender – the recent developments aspire also to achieve a successful outcome from the cognitive diversity point of view, namely a proper and suitable diversity in terms of educational and professional path of the board members.

The current legal framework is heterogeneous and embraces the corporate sector (see, in particular Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups) as well as the banking and financial industries (see, Directive 2013/36/EU, the so-called CRD IV, and Directive 2014/65/EU, the so-called MiFID II).

With specific regard to the Italian situation, the law n. 120/2011 introduced paragraphs 1-ter and 1-bis of articles 147-ter and 148 of Italian Legislative Decree n. 58/1998 (the so-called t.u.f.) in order to

provide ad hoc standards (to be applied for three mandates) aimed at guaranteeing that the one-third of boards' members – temporarily reduced by the same law to the one-fifth for the first mandate renewal subsequent to the entry into force of Law n. 120/2011 – would belong to the less represented gender.

Nevertheless, on one hand, the above law is going to cease its effects, while, on the other hand, the Italian Committee for Corporate Governance has recently amended the Code of Conduct for listed companies in order to deal with the expiration of law n. 120/2011 – introducing gender diversity principles in the same Code – and promote, at the same time, new cognitive diversity principles to be complied (or explained why not complied) with in the appointment and composition of listed companies boards'. In the meantime, Italian legislator approved Legislative Decree n. 254/2016 in order to adopt the above mentioned Directive 2014/95/EU regarding disclosure of non-financial and diversity information by certain large undertakings and groups.

Based on these grounds, the paper would aim, in particular, at: (i) offering a general overview of the introduction and application of diversity principles in Italian listed companies; (ii) examining the concrete results in terms of performance increase in Italian listed companies due to the growth of diversity level in the composition of the boards; (iii) questioning on the possible effects arising from the expiration of law n. 120/2011 and on the effectiveness of the newly introduced soft law provisions contained in the Italian Code of Conduct for listed companies as well as meditating on the potential interrelations between the abovementioned soft law provisions and the rules prescribed by Legislative Decree n. 254/2016; (iv) considering the possible implications deriving from the compliance (or non-compliance) with the diversity principles in terms of corporate governance structures and liabilities of its subjects.