

GENDER REPRESENTATION IN THE BOARDS OF DIRECTORS OF ITALIAN PUBLIC UTILITIES

Simona Franzoni*

Abstract

The claim that gender equality in the composition of corporate governance bodies is a driving factor for the economic growth and competitiveness of enterprises has been the subject of discussion in the international scientific literature. The emphasis on the inclination towards social responsibility has effectively encouraged the main international institutions to promote equal opportunities for men and women. The Italian legislator intervened in 2011 by encouraging a pathway for including women within the top management bodies of companies. In this perspective, the legislation becomes not only a tool to ensure gender representation in corporate governance bodies in listed companies and companies under public control, but one to initiate a change which, if left to its own natural rhythms, would risk taking an unacceptable amount of time to implement. After a brief overview of the Italian legislative context applicable to listed companies and companies under public control, the aim of this study was to investigate whether the seventeen listed Italian companies and the seventy unlisted Public Utilities have conformed to the legislation on gender equality in the composition of their Boards of Directors or whether they have undertaken voluntary initiatives entailing the adoption of effectively shared “gender” values.

Keywords: Board of Directors, Gender, Public Utilities, Italy

*Associate Professor, Department of Economics and Management, University of Brescia, 50, C.da S. Chiara, 25122- Brescia (Italy)

1 Introduction

The lasting development of the enterprise depends mainly on the ability of its corporate governance bodies to identify and satisfy stakeholder expectations according to the principles of efficiency, effective, equity and transparency.

Many studies (Carter *et al.*, 2003; Krishnan and Park, 2005; Eagly, 2013; Deszo and Ross, 2012) support the claim that gender equality in the composition of corporate governance bodies is a critical factor for corporate success and a driving factor for economic growth and the competitiveness of the market. Specifically, greater presence of women in top positions appears to: improve the performance of the company, facilitate the understanding of clients’ needs, and strengthen corporate culture built around ethical values (Franke *et al.*, Crown and Spake, 1997; Borlowski and Ugras, 1998; Boulouta, 2012; Kahreh *et al.*, 2014).

The opportunity to make quotas or goals to be met mandatory has been the subject matter of many discussions (Alstott, 2013): the imposition of a minimum gender quota is on the one hand a structured measure to root out incorrect practices excluding women from boards, and on the other can be interpreted as placing company performance at a disadvantage, in situations where gender considerations are considered as more important than

the evaluation of the skills required to occupy a given role.

Of course, skills should be the primary factor in the choice and, if those skills are equal, discrimination against the female member cannot be permitted. It can be said that the wish to make gender equality binding in the composition of corporate governance bodies should be interpreted as a strategy with positive effects in the medium- to long-term, with the aim of opening up leadership positions to women, by gradually changing the culture.

The aim of this study was to investigate whether listed Italian Public Utilities and a significant group of unlisted Public Utilities have conformed to the legislation on gender equality in the composition of corporate governance bodies, or if they have undertaken voluntary initiatives entailing the adoption of effectively shared values.

2 The legal background in Italy

With Italian Law no. 120 of 12 July 2011, new elements were introduced with regard to gender balance in the composition of governance bodies of listed companies and those under public control. Specifically, the articles of association should require that the share of directors to be elected be decided on according to a criterion that ensures gender balance. The under-represented gender should obtain at least a

third of the directors elected, and the criterion should apply for three consecutive terms of office.

The provisions of this law shall apply starting from the first renewal of the administrative bodies of the companies listed on regulated markets one year after the date on which this law entered into force, reserving a quota of at least a fifth of the members to the under-represented gender for the first term of office for which the law is applied.

If the composition of the Board of Directors resulting from the election does not comply with the division criteria provided for in this paragraph, then the Italian Companies and Stock Exchange Commission (Consob), shall warn the company concerned to conform to that criterion by the maximum term of four months from the warning. If the company fails to comply with the warning, then Consob shall apply an administrative fine of 100,000 to 1,000,000 euros depending on the criteria and in the ways set forth in its regulations and shall set a new term of three months in which the company should comply. If the company still fails to comply with the new warning, then the members elected shall forfeit their office.

The provisions of this law also apply to companies that are not listed on regulated markets, but were incorporated in Italy and are controlled by public authorities, and the due dates and implementing methods in Regulation no. 251, which was enacted with Italian Presidential Decree of 30/11/2012, apply to these.

With reference to the equality criterion application methods, the Regulation does not provide for anything other than what has already been established by Law no. 120 for listed companies. Reference is also made to statutory autonomy, for those companies controlled by public authorities, to identify the rules for appointing (and replacing) administrative bodies set up as collective boards, aimed at ensuring that the under-represented gender obtains at least a third of members.

Like the regulations for listed companies, the quota system provided for companies controlled by public authorities is temporary, as it remains effective for no more than three consecutive terms of office and is gradual, as the obligation to comply with the quota starts from the first renewal of the management bodies after the date on which the Regulation came into force; moreover, for the first term of office, the gender quota is set at a lower percentage, of one fifth of the members.

With regard to the enforcement instruments, while listed companies are subject to the supervision of the independent sector Authority, Consob, Presidential Decree no. 251/2012 entrusts control of unlisted companies under public control to the Presidency of the Council of Ministers or the Delegated Minister for Equal Opportunities. The control and penalty procedure is defined on the basis of the provision for listed companies, as above. If the

quotas are not observed when composing governance bodies, then the Presidency of the Council or the delegated Minister, just like Consob, shall first warn the company to comply with the legal requirements within 60 days; if the company still fails to comply, then further notice of 60 days shall be given in which to comply. When that period has elapsed, the members of the corporate governance body shall autonomously step down from office. The President of the Council shall submit a report to the Parliament on the supervision activity performed, on a three years basis.

From a self-regulating perspective, the latest version of the Corporate Governance Code also requires gender difference to be considered in the yearly self-evaluation process carried out by the Board of Directors.

3 Research methodology

The aim of the research was to check whether in recent years, since the introduction of gender equality legislation in the composition of governance bodies, Public Utility companies, both listed and unlisted, have assumed behaviour aimed at safeguarding the gender balance in governance bodies, or if the only factor allowing those goals to be met is the enforcement of the applicable legislation. At the same time, the research intended to check the degree of application of the legislation mentioned in the above paragraph, in order to express appropriate judgements on the current situation and on the relative potential for improvement.

The listed Public Utilities were identified to begin with, after which a database was set up with items (such as year of appointment, study qualification, remuneration, etc.) analysed for each company examined.

There are seventeen listed Public Utilities in Italy. Seventy unlisted Public Utilities were analysed (taken from the report of Confservizi – Trade Association of Italian Public Utilities) and broken down into three segments according to their turnover. “Band A” includes the 32 companies with a turnover over 100 million, “Band B” contains the 11 Public Utilities with a turnover of between 70 and 100 million euros inclusive, and “Band C” includes the 27 companies with a turnover of between 40 and 70 million Euros. The services provided range from water services to road cleaning, heating, waste collection, electricity and gas provision and public transport, etc.

The study was conducted in the period from November 2014 to February 2015 and the content analysis technique (Neuman, 2003) was used. The section of the website concerning Corporate Governance was analysed for each company concerned and information was drawn from it as required to complete the prepared table of items. The data found was then processed in macro aggregate models.

4 Discussion and results

Table 1 summarises the findings for the Board of Directors (BoD).

The table shows the companies that have renewed their Board of Directors (before and after the law) and conformed (or not conformed) to the legislation.

Table 1. Legislative compliance with the gender balance in the composition of the Board of Directors

Companies	No	BoD renewed in 2011	BoD renewed in 2012			BoD renewed in 2013			BoD renewed in 2014			N/A
			No.	Yes, conforms	No, does not conform	No.	Yes, conforms	No, does not conform	No.	Yes, conforms	No, does not conform	
Listed	17	0	3	0	3	5	5	0	9	9	0	0
Band A	32	2	8	2	6	13	8	5	7	6	1	2
Band B	11	2	1	1	0	2	2	0	5	4	1	1
Band C	27	1	8	4	4	8	6	2	6	4	2	4

4.1 The state of art of “Listed Public Utilities”

It can be inferred from the table that three companies elected their Board of Directors in 2012. Five companies renewed their Board of Directors in 2013 with term expiring in 2015, nine listed Public Utilities appointed the Board of Directors in 2014, with term of office expiring with the approval of the financial statements for the year 2016. The table shows that the three companies that have not conformed to the legislation are those that renewed their Board of Directors in 2012, therefore in the year directly after the one in which the law became effective. All the other companies, on the other hand, have fully complied with the legislation. Although with differing percentages, the elected Boards of Directors are made up of at least 20% women. The most impressive figure is that of companies which appointed four women out of seven people, more than half.

With regard to compliance with the legislation, it can be inferred that 82% (14 out of 17) of the companies taken into consideration comply with the percentage specified in the law, while 18% (3 out of 17) of the companies do not. 82% is a good percentage, as it accounts for the fact that certain companies renewed their Board of Directors in the year immediately after the one in which the law came into force, with little time, therefore, to comply.

Comparing against the Boards of Directors before the new legislation, it can be highlighted that the change did happen. Specifically, a comparison was made between the current Board of Directors in office and the one immediately before. It was found that only two companies had respected the minimum limit of 20% of women in the Boards of Directors back in 2011. Before the law became effective, eight companies had not appointed a single woman in their Board of Directors.

Moreover, certain companies had appointed one or more women before the law entered into force, but those percentages did not comply with those established by the regulation, as they were clearly

below the 20% provided for in the law for the first election.

With reference to the role of women in the Boards of Directors, the Chair of the Board of Directors is a woman in only two of the seventeen companies (around 5%). None of the women in the companies considered is the managing director. Only one woman of a total of thirty-nine (around 3%) elected in the seventeen listed companies are executive members, and therefore with managerial roles within the company. Eight women (around 20%) are non-executive members, as they do not have managerial roles within the company. Most of the women elected in the Boards of Directors are independent members (28 women), around 72% of the women in the Board of Directors.

With regard to the women who were elected in the Boards of Directors in the seventeen listed companies, it should be noted that a good part of them are graduates. 95% of women in the Boards of Directors of the seventeen listed Public Utilities are graduates. Only 5% of the women are not graduates.

Examining the remuneration of the companies taken into consideration, it is found that women are paid the same as men occupying the same roles as them.

4.2 The state of art of “Non-listed Public Utilities”

The table 1 highlights the percentages of Public Utilities based on their positioning in the band, according to their turnover. It is found that: 46% (32 out of 70) of the unlisted Public Utilities considered fall within “Band A” and have a turnover greater than 100 million Euros; 39% (27 out of 70) are positioned in “Band C”, as they have a turnover of between 70 and 40 million Euros; the lower percentage (16%) is for companies in “Band B”, which have a turnover of between 100 and 70 million euros (11 out of 70).

a) Non-listed Public Utilities - Band A

With reference to the term of office of the Board of Directors of the 32 Public Utilities falling within Band A, it is observed that 41% (13 out of 32) have office starting in 2013 and running until 2015. 25% (8 out of 32) appointed their Board of Directors in 2012 and will renew the term of office of the same with the approval of the 2014 financial statements. 22% (7 out of 32) appointed their management body in 2014. 6% (2 out of 32) appointed their Board of Directors in 2011 and will renew it with the Shareholders' Meeting to approve the 2013 financial statements. 6% (2 out of 32) of the companies considered do not disclose information related to their governance body on their website, and it was not even possible to obtain that information from newspaper articles or by cross-searching with a search engine.

The table shows that 6 unlisted Public Utilities have a gender quota of 0%. These companies are Public Utilities that appointed their governance body in 2012, therefore the year after the entry into force of the law. In 2013, 5 companies did not elect the quotas provided for by the legislation in their Board of Directors. One company re-elected its Board of Directors in 2014 and did not appoint any women.

Of the companies that renewed their boards, 57% (16 out of 28) of the unlisted companies that are Public Utilities with a turnover of over 100 million euros, have conformed to the gender quota legislation as their Board of Directors contains more than 20% women. Only one company, equal to 4% (1 in 28), has a gender quota of between 41% and 60%.

43% (12 out of 28) of the companies in band A, on the other hand, have not adjusted to the law, as they have fewer than 20% of women, and in some cases 0%.

With regard to women, no Public Utilities belonging to group A have elected a woman as the managing director. Just one company, with a turnover of more than 100 million euros, has a female Chair in its current Board of Directors.

An attempt was also made to analyse who the women elected in the Boards of Directors are, by examining their study qualifications. This analysis showed that 21% (6 out of 28) of the unlisted Public Utilities in band A do not disclose data on the CVs of their board members, and it was therefore impossible to find out their study qualifications. 75% (21 out of 28) of the women who were appointed as members of the Boards of Directors were graduates.

With reference to remuneration, only 39% (11 out of 28) of the unlisted Public Utilities in band A have disclosed information concerning the remuneration of their board members. The analysis carried out showed that there are no differences between men and women, as women's pay is in line with that of men occupying the same job.

b) Non-listed Public Utilities - Band B

The eleven unlisted Public Utilities falling within band B have a turnover of between 70 and 100 million euros. With reference to the year in which the Board of Directors of the eleven unlisted Public Utilities falling within band B was appointed, it can be inferred from the analysis that 45% (5 out of 11) of the companies appointed their Board of Directors in 2014, with the term of office due to expire with the approval of the financial statements in 2016.

18% (2 out of 11) appointed their governance body in 2011 before the legislation became effective. Furthermore, 9% (1 out of 11) of the Public Utilities taken into consideration elected their governance body in 2012 and 2 companies did in 2013. 9% (1 out of 11) of the companies have not disclosed data concerning the year in which they appointed their governance body.

8 companies were taken into consideration for the purposes of the analysis. They are Public Utilities which renewed their board after the legislation and for which the information of interest were found. Based on the year in which the term of office of the Board of Directors was granted, the Table shows whether or not the gender quota provided for in the provision was attained. Specifically, it appears that since most of the Public Utilities considered renewed their Board of Directors in 2014, most of the companies have conformed to the legislation, as they have appointed women for at least 20% of the total.

In particular, 88% (7 out of 8) of the unlisted Public Utilities falling within band B have fully adjusted to the legislation, as they have a gender quota of between 20% and 40%. 12% (1 out of 8) have not adjusted, as they have a gender quota of less than 20%.

25% (2 out of 8) of the companies taken into consideration elected a woman as the managing director.

With regard to study qualifications, 88% (7 out of 8) of appointed women are graduates. Most of the women elected in reference band B are law graduates and just one holds an economics degree.

With reference to remuneration, it is found that 75% (6 out of 8) of women elected in the unlisted Public Utilities falling within band B, are paid the same as men in the same role and job. The rest have not disclosed pay-related data.

c) Non-listed Public Utilities - Band C

There are twenty-seven unlisted Public Utilities in band C. It is observed that 59% of the unlisted Public Utilities belonging to that band appointed their Board of Directors in 2012 (8 out of 27) and 2013 (8 out of 27).

22% (6 out of 27) appointed it in 2014 and 15% (4 out of 27) have not disclosed this information and it was not even possible to find it out by performing cross-searches.

4% (1 out of 27) of the companies considered appointed their governance body in 2011 and will renew it with the approval of the 2013 financial statements, which will take place in the autumn.

Of the 22 companies that it was possible to continue analysing, it was found that 64% (14 out of 22) fully conform to the provision, as women represent more than 20%. 36% (8 out of 22) of the companies considered do not comply with the legislation, as they have appointed less than 20% women. 5% (1 out of 22) of the companies have elected a considerably higher number of women than provided for by the provision.

None of the Public Utilities considered has elected a woman as the managing director. 18% (4 out of 22) of the companies considered appointed a woman as the Chair of the Board of Directors.

With reference to the study qualification of the women appointed in the Boards of Directors, it was found that 45% (10 out of 22) are graduates and 9% (2 out of 22) are not graduates, and there is no data for the rest, as the companies have not disclosed the CVs of the women appointed in their Boards of Directors.

With regard to the remuneration paid to the women elected in the Board of Directors of the companies taken into consideration, only 32% (7 out of 22) of the companies disclosed such data. All the companies that made this information available paid women the same as men performing the same role.

5 Conclusions

The analyses carried out show that a significant number of Public Utilities do not guarantee gender balance in their Boards of Directors, despite the legislation.

Despite this, the legislator hopes that, once the “legal quotas” have increased female participation in the governance bodies, companies will converge towards cultural growth in terms of gender balances and will therefore voluntarily renew their Boards of Directors.

In this perspective, quotas for women do not ultimately become a tool to ensure gender balance, but rather one to initiate a change which, if left to its

natural rhythms, would risk taking an unacceptable amount of time to implement.

In conclusion, it can be stated that the wish of certain Countries to make gender equality binding in the composition of corporate governance bodies should be interpreted as a strategy with positive effects in the medium to long term, with the aim of opening up leadership positions to women with suitable competencies, by gradually changing the culture (Franzoni, 2013).

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