

Action not words: reflections on the Golfo-Mosca Law on gender parity in bodies of corporate governance

The recent approval (28 June 2011) of a law on gender parity in the boardrooms and other corporate governance bodies of listed companies and State controlled companies (the “Golfo-Mosca Law”) means the testing question “Are you for or against female quotas?” need no longer be asked, for now.

Little matter whether you are for or against, for the next ten years, the question will be regulated by the Golfo-Mosca Law on equal access to bodies of corporate governance. We are all in the same boat now, so let’s row together. How the market reacts – in terms of who is asked to select people to put the legal provisions into practice – will be very important in determining the ultimate impact of the legislation. This is not a mere numerical exercise, as we will see later in this article, which analyses some of the key issues on putting the legislation into practice, in a European context. The law is the result of cross party efforts in Parliament by MPs Lella Golfo of the government party the PDL and Alessia Mosca of the main opposition party the PD. Essentially, it requests a minimum representation of 1/3 for the under-represented gender over the period of three mandates, with an interim level of 1/5 to be reached during the first mandate. *Table 1* summarises the key provisions of the law.

Table 1 – Key Provisions of the Golfo-Mosca Law

Scope of application	Italian companies with shares listed on regulated markets in Italy or in other EU countries and companies incorporated in Italy and controlled by public administrative bodies but not listed on regulated markets
Corporate governance bodies affected	Board of Directors; management board (if it has at least three members) Control bodies: Board of Statutory Auditors and Supervisory Board. The management control committee is excluded (government amendment)
Mechanism	The Articles of Association must state how the requested percentage representation will be achieved. They shall also regulate how lists are to be drawn up and how replacements will be chosen should someone leave office during their period of appointment in order to ensure that the gender balance is maintained.
Entry into force and duration	The provisions of the new law will apply from the first time bodies of corporate governance are renewed a year after the law comes into force (companies renewing such bodies on approval of the financial statements as at 30.6.2012). The law will be valid for three terms of appointment i.e. until 2022.

Rounding	The rounding of the decimals arising from application of one-fifth and one-third quotas is left up to the Articles of Association.
Penalties	Initial warning by Italian Stock Exchange Commission CONSOB with four months to comply. Subsequent administrative penalty of up to Euro 1 million for the Board of Directors and up to Euro 200 thousand for control bodies, with three months to comply. If there is still a failure to comply, the elected bodies will be removed from office. CONSOB regulation is required (in progress).

What is brewing in the European Commission melting pot?

First of all, some bad news: the Italian-style application of the law would still leave us below the target level of 30% set by Commissioner Reding. Why? Italy has approved a balanced law that sets the target minimum representation ceiling at 33%. This target is to be achieved upon the second renewal of corporate governance bodies after the date when the law starts being applied i.e. in the period 2016-2018. On 6 July 2011, the European Parliament approved “*a resolution on women and business leadership*” which asked the Commission to propose legislation to increase the female presence [on corporate governance bodies] to 30% by 2015 and 40% by 2020 if the measures taken in individual companies and by companies seemed inadequate. The Commission has been asked to depict the precise situation regarding the presence of women in corporate governance and to outline current initiatives in European countries. The efforts of Commissioner Reding must be placed in this context – she has entered into a dialogue with listed companies with the objective that they will autonomously reach a 40% quota and has asked them for a formal commitment (few companies have signed up to such a commitment so far).

So, with these figures in mind – 30% by 2015 and 40% by 2020 – will the Commission consider the Golfo-Mosca Law an “adequate measure” ? The answer can be found in *Table 2* which estimates the female presence in relation to the rounding by companies of the decimals arising on application of the planned quotas. This process is especially important for Boards of Directors for the following reason: the vast majority of Boards of Statutory Auditors have three members. Applying the initial quota of 1/5, a figure of 0.6 is obtained. Rounding the figure of 0.6 to the nearest whole number would give us one member but rounding down to the next whole number would produce zero members. This means that we would have to wait for the second level quota of 1/3 to have at least one female member of all Boards of Statutory Auditors.

The Law does not guarantee achievement of a 30% female presence – currently only “desired” by the European Parliament - by 2015. Rather, the rounding mechanism described above could leave control bodies well short of that level. We might be a lot closer by the time of the 2020 check if companies opt not to use rounding as described above or other “tricks” to avoid compliance (not described here for the sake of brevity).

It would be a genuine pity if, having approved a gender parity law, the chance to appear in the list of the “good guys” was wasted, only for Italy to appear among the “bad guys” once more.

Table 2 – Impact of the law depending on rounding method applicable by companies

Corporate governance bodies	2011	Rounding applied	2013-2015 (1/5 quota)	2016-2018 (1/3 quota)
Management bodies	7.3%	Rounding up after 0.5	20%	34%
		Rounding down to nearest whole number	17%	30%
Control bodies	6.7%	Rounding up after 0.5	31%	34%
		Rounding down to nearest whole number	10%	32%

Is it just about statistics?

The effectiveness of the female presence on Boards of Directors will also depend on the role that women are asked to play. Theoretically, all women could be asked to act as non-independent, non-executive directors. There would be room for them: today, non-independent NEDs account for 34% of all directorships (Source: Assonime). What impact will they be able to have? I prefer to think that we will see women in a multitude of independent, executive roles with both majority and minority shareholders – proposing them.

That is not the final word. Let's return to the beginning of the debate. The proposal to use positive discrimination was partly born out of the need to make Boards of Directors more diverse, moving away from *group thinking*. What is needed is genuine diversity. Appointing female directors who represent an identical network as their male colleagues, come from a similar background and have similar values will not increase diversity nor will it bring about change in the way intended by the new law. Courage and a little creativity will be needed when recruiting new directors and this applies irrespective of gender.

Is there a lack of capable women?

Table 3 contains an estimate of the women needed to reach the quotas required by the law. The table shows the total number and the annual average needed over two mandates to reach the 1/3 quota level (in fact, as shown in Table 2, rounding means that the annual figures vary from one mandate to the next). We are below 100 women a year on Boards of Directors and at around thirty a year for Boards of Statutory Auditors. Should we be concerned about these figures? Is it possible that Italy cannot find the women needed? A recent article published by Panorama Economy (No.31 - 27 July 2011) compared CEO turnover on an international level. The international average was a turnover rate of 11% but Italy recorded 5-6%. Are we sure that the issue is a lack of suitable candidates or, rather, is there a certain resistance to change (in Board of Directors, this could be defined as “a refusal to budge from a position of comfort”)?

Table3 – Estimate of the number of women to place on corporate governance bodies

Women to be placed	Total law (2 mandates)	Annual average over two mandates
Management bodies	550	92
Control bodies	200	33

We have no alternative but to wait and see In the meantime, we can monitor the behaviour of listed companies, starting from their articles of association that will have to be updated to reflect the provisions of the Law. However, the final date for our diaries is in 2021. My daughter will have left University by then – when we began to talk about gender quotas, she had barely started nursery

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http://www.nedcommunity.it/giornale/11_10_01_05.asp#inizio



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