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Milan, December 3, 2021

To the Chairs of the administrative bodies of listed companies

p.c. to the CEOs of listed companies

p.c. to the Chairs of the controlling bodies of listed companies

Dear Chair,

I am writing to you as Chair of the Italian Corporate Governance Committee (hereinafter the "Committee") supported by Abi, Ania, Assogestioni, Assonime, Borsa Italiana and Confindustria, with the aim of promoting good corporate governance in the financial community through self-regulation. To this end, the Committee has the task of issuing and updating a code of best practice (hereinafter the "Code") and periodically monitoring the status of its application by the companies that declare to adopt it. In order to implement this task, the Committee approves an Annual Report on the application of the Code (hereinafter the "Report"), which reached its ninth edition this year.

Awareness of the importance of adequate monitoring to ensure the effectiveness and credibility of the governance system has long developed within the Committee, since the publication of its first Report in 2013, and was subsequently strengthened in December 2015, with the decision to send a letter to all issuers, highlighting the monitoring carried out and emphasising the main critical issues encountered.

By adhering to the Code, companies make a commitment to the market to ensure the adoption of governance practices in line with the *principles* and *recommendations* of the Code and to provide adequate information on how they are applied, based on the *comply or explain* principle. This commitment is also recognised in the Consolidated Finance Act, which imposes precise obligations on companies to provide information on the matter, assigning to their controlling bodies (*organi di*

controllo) a specific duty to supervise the methods of concrete implementation of the corporate governance rules provided for by the governance codes which such companies declare to adopt.¹

The monitoring carried out this year is of particular relevance as it is part of a transition phase of self-regulation towards a new standard.

More than 20 years after the approval of the first version of the Code, many parts of which have been supplemented by numerous adjustments, the Committee deemed it appropriate to undertake a thorough review of its structure and guiding principles, in order to take into account the evolution of the markets and investors' expectations. The outcome of this activity was the adoption, on 31 January 2020, of the new Corporate Governance Code². With the new Code, the Committee intended to safeguard the role of self-regulation in guiding the governance choices of listed companies and encouraging their evolution towards a model increasingly oriented towards the creation of long-term value to the benefit of shareholders, taking into account the interests of all other relevant stakeholders.

The new edition of the Code - as is well known - is characterised:

- by a streamlined and simplified structure, also due to a review of previous *principles* and *recommendations*;
- by an increasing relevance recognized to the sustainability of the business, integrated into the strategic objectives of the company;
- the strengthening of some existing best practices and the incorporation of those under development;
- a greater proportionality of the Code's recommendations according to the size and ownership structure of companies, so that the needs and peculiarities of smaller companies and those with a strong controlling shareholder (many of which are family companies) are adequately considered.

The Committee considered it appropriate to ensure an adequate period for companies to implement the new edition of the Code, by providing that its application will start from the 2021 financial year, with information to be reported in the corporate governance reports to be published in 2022.

The purpose of this letter is to analyse the reports on corporate governance which, although they refer to the last year of application of the previous Code, provide an initial indication of the process aimed

¹ Article 149, paragraph 1, letter c-bis) of Legislative Decree no. 58/1998.

² See [New Corporate Governance Code](#) and related Committee [press release](#).

at implementing the new Code. In this context, the Committee, in addition to highlighting some of the critical issues identified in the Report, intended to formulate recommendations aimed at encouraging and supporting the implementation process, emphasising, in particular, the main innovations of the new Code that may entail a greater effort to redefine the application practices for companies.

In order to facilitate companies in the application of the new edition of the Code, the Committee intends to promote, in the first months of 2022, a public consultation on the hypothesis of updating the collection of clarifications³, in the form of Q&A, which define the interpretative criteria functional to the application of the Code.

This letter and the Report provide an overall picture of the current application of the Code in force at December 31, 2020 and represent a useful parameter for assessing the relative degree of adherence by the company whose board you chair, also in view of the transition to the new Code.

The aim is to encourage a conscious application of the Code by the companies adhering to it and, more generally, to promote the improvement of corporate governance by all listed companies according to the principles of the Code, regardless of their formal adherence to it. To this end, this letter is also being sent to Italian listed companies which, as at 31 December 2020, were not adhering to the Code and to foreign-registered companies which have their main trading venue in Italy.

I therefore invite you to submit the "**Committee's Recommendations for 2022**", enclosed to this letter, for examination by the administrative body and the competent board committees, providing for a specific board debate and a detailed consideration within the board review process, so that any shortcomings in the application of the Code or in explanations provided may be overcome and the possible changes in governance may be identified. This letter is sent for information to the Chairperson of the controlling body for appropriate assessment, in view of the duty of this body to supervise the methods of the Code's actual implementation of the corporate governance rules chosen by the company.

The Committee suggests that the considerations made regarding the recommendations and any initiatives undertaken or planned should be reported, with appropriate prominence, in the next Corporate Governance Report, to enable the market to assess the evolution of the quality of the governance systems and companies to signal their commitment in this regard. The Committee has entrusted the Technical Secretariat, which is available for any clarification or further information

³ The first set of clarifications was published in 2020 (see the Committee's [press release](#)).

(segretario@comitato-cg.org), to examine the considerations disclosed by the companies, in order to ensure a timely and complete monitoring of the evolution of the Code's application practices, with particular regard to the issues covered by specific recommendations.

Best regards,

Lucia Calvosa

THE COMMITTEE'S RECOMMENDATIONS FOR 2022

The 2021 Report on the application of the Code

The Committee's Report provides an overview of the implementation of the main recommendations of the Code, paying particular attention to those most relevant to the proper and effective functioning of the board⁴.

At the end of 2020, 95% of Italian companies with shares listed on the MTA formally declared that they adopted the latest version of the Code⁵. The choice not to adopt it is limited to a few cases and generally due to the small size of the company.

The analysis contained in the Report shows that the quality of the information provided by companies in their corporate governance reports is high and steadily increasing: companies generally describe their governance model in a clear and analytical manner, both when applying the Code's recommendations and in cases of their total or partial non-application, according to the *comply or explain* principle.

For most of the Code's recommendations, the degree of compliance is high. This year's monitoring shows signs of substantial improvement, particularly in the areas covered by the Committee's recommendations in previous years. For some of these areas, despite repeated reminders in previous years' Reports, the level of implementation is still low and the quality of information provided on any deviation is unsatisfactory. These areas are clearly identified in the Report and the Committee has made the specific recommendations highlighted below, with the aim of encouraging issuers to apply the Code more substantially and transparently.

The effects of the recommendations sent in 2020

In light of the findings of the 2020 Report, and considering that 2021 was the last year of reporting on the application of the previous edition of the Code, the Committee deemed it useful to carry out a review of the recommendations made over the last four years, proposing some specific indications to deal with the remaining weaknesses, the overcoming of which seemed functional also for a better application of the most innovative aspects of the new edition of the Code. The areas thus identified concerned both issues that have long been highlighted as crucial for the effective application of the

⁴ The Report is based on the data collection and analysis carried out in the *Assonime-Emittenti Titoli Report on Corporate Governance* in Italy (currently being published, hereinafter also referred to as "Assonime-Emittenti Titoli 2020").

⁵ This is the 2018 edition of the Code, taking into account the gradual entry into force of the recommendations on diversity in the composition of corporate bodies.

Code (pre-board information, independence of directors, self-assessment of the board and its committees, appointment and succession of directors, remuneration policies) and other relevant issues introduced in the new Code (sustainability).

The Report was sent to the chairs and CEOs of all issuers together with a letter in which the Chair of the Committee invited the corporate bodies of those issuers to examine, also in the context of the self-assessment process, the main critical areas emerging from the Report and to carry out an analysis of the compliance to the issues indicated in the Committee's Recommendations for 2021, providing adequate disclosure of the initiatives undertaken in the subsequent corporate governance report. An invitation was also made to submit the same recommendations, as far as relevant, to the companies' controlling bodies.

The corporate governance reports published in 2021 showed that almost all the companies adhering to the Code (89%, up steadily from 80% in 2020, 75% in 2019 and 50% in 2018) responded to the indications of the letter, stating that they had considered the Committee's indications when assessing their degree of compliance to the Code. Most of them (about 80%) also adequately described the outcome of this assessment, while the others merely mentioned that they had reviewed the content of the letter at the Board meeting without expressing any assessment or deferred the consideration of the letter to a Board meeting in the following financial year.

About half of the companies that published the results of the assessment consider that they are already in line with the recommendations of the Code. In the other cases, the companies identified one or more areas of possible improvement in their governance, indicating the initiatives they have launched or intend to launch to that end: the most frequently cited area of improvement concerns sustainability (integration of the board's tasks, attribution of powers to a committee, provision of sustainability objectives in remuneration policies). Frequent reference was also made to the adoption of qualitative and quantitative criteria for assessing the importance of relationships between companies and directors that may affect the assessment of their independence, and the improvement of information flows to the board. Areas for possible improvement were also identified in the appointment process of the board of directors, having particular regard to the establishment of the nomination committee, the provision of the guidelines of the outgoing board and the role of the board in the self-assessment process and in the remuneration policy, both with respect to the provision of long-term variable components and the adequacy of the remuneration of non-executive directors and members of the controlling body, and finally also for the evaluation of the adoption of a succession plan for executive directors.

Even some companies not adopting the Code (2 out of 10) declared that their administrative body considered the indications of the above-mentioned letter, thus confirming the guiding value of the Committee's monitoring activities for all listed companies, regardless of their adherence to the Code.

The in-depth review⁶ of the information provided in the corporate governance reports published in 2021 captures some signs of improvement in many of the areas highlighted over the past five years, signalling both the long-term effectiveness of the Committee's recommendations and the companies' gradual adoption of the new Code, which incorporated some of the best practices recommended in the previous Committee's Letters. However, some of the issues raised in those letters continue to represent critical aspects of listed company governance, despite this year's improvement, and will be the focus of the Committee's attention in future monitoring activities.

With regard to the recommendation concerning the integration of **sustainability** into the definition of strategies, the internal control and risk management system and the remuneration policy, about half of the companies surveyed have provided information on this issue, anticipating the application of the new Code. This mainly took place through the explicit integration of environmental and social objectives in the company's strategies and policies, in some cases by further strengthening this objective through statutory clauses and the inclusion of sustainability parameters in remuneration policies.

While the adequacy of **pre-board information** remains one of the areas in which there is room for improvement in the governance of listed companies, some aspects of its management appear to have improved considerably compared to previous years. There has been a general increase - affecting all size classes - both in the number of companies that provide *ex ante* one or more notice periods considered adequate for sending documentation to the board, and in the information provided *ex post* on the actual compliance with this period. On the other hand, the same critical points noted in previous years concerning the provision of generic exemptions from the notice period for reasons of confidentiality have not improved.

An improvement can also be observed in the **assessment of directors' independence**. While on the one hand, the number of companies that disapply one or more of the Code's non-independence conditions and provide generic explanations for this choice is limited and slightly decreasing, on the other hand, this year's analysis shows a significant improvement in the provision of quantitative and qualitative criteria for assessing the significance of the director's professional, commercial or financial relationship and the additional remuneration of the individual director. This is still a relative

⁶ See Corporate Governance Committee, *Annual Report 2021*, Part II, carried out on the basis of Assonime-Emittenti Titoli 2021.

improvement, considering that to date only a quarter of listed companies include such criteria in their corporate governance report, but it nevertheless indicates that companies are gradually adapting to the new Code, which recommends the *ex-ante* definition of criteria by the board.

In general, significant progress has been made in **remuneration policies**, which appear to be gradually more linked to long-term performance objectives and clearly defined by the provision of a cap. There has also been a slight improvement in the most critical elements of the policies, such as the provision of clear rules for the assignment of severance payments and the limited provision for the possibility of paying sums not linked to predetermined parameters (i.e., *ad hoc bonuses*): despite the improvement observed this year, however, these elements continue to represent the main weaknesses of remuneration policies.

The level of compliance to the Code's recommendations aimed at empowering the board with respect to its **optimal composition** and the **succession** of its executive members also appears to be slightly, but still insufficiently, improving. All the critical elements relevant in the past years, such as the clear assignment of functions to the nomination committee and the provision of guidelines for the outgoing board on the optimal composition, find - despite an improvement - a clear application only in about half of the companies. Even the provision of succession plans for executive directors, although steadily increasing, is present in only about a third of listed companies. All these issues continue to emerge even in the light of the greater proportionality of the new Code⁷ : in particular, the provision for an outgoing board guideline is still insufficient in smaller "non-concentrated" companies, while only half of the "large" ones provide for a succession plan.

Almost half of the companies that carried out the **self-assessment** do not seem to give the board a clear role in supervising the process, as they do not provide information on the person in charge of the assessment or entrust this role exclusively to internal company functions (e.g. 'corporate affairs') or external consultants. The empowerment of the board with respect to self-assessment, including the enhancement of the role of the chair in taking care of the adequacy and transparency of the self-assessment process⁸, is one of the objectives to improve the governance of listed companies also with respect to the compliance with the new Code.

Recommendations for 2022

Considering that 2022 will be the first year in which companies will have to communicate how they will adhere to the new Code, the Committee considered it useful this year to provide an indication of

⁷ The new Code recommends only for "concentrated" companies the expression of a guideline by the outgoing board on its optimal composition and only for "large" companies the adoption of a succession plan at least for cases of early termination of the CEO and executive directors. See Recommendations 23 and 24 of the Corporate Governance Code.

⁸ See Recommendation 12 (e) of the Corporate Governance Code.

its main innovations, while highlighting the critical issues that have emerged from previous monitoring.

If, on the one hand, some structural weaknesses in the governance of Italian listed companies persist, as shown also by the latest Committee Report and the assessment of the effects of the 2020 Letter summarised in the previous paragraph, on the other hand, the Committee is aware of the concrete innovative scope of the new Corporate Governance Code, which is not limited to the strengthening of some best practices. Indeed, the Code contains highly innovative principles and institutes - such as, for example, the strategic objective of 'sustainable success' and its reflection on the control and remuneration system, and the promotion of dialogue with the generality of shareholders and stakeholders - whose concrete implementation requires a gradual adoption process. The new Code also introduces an articulated principle of proportionality that offers listed companies greater differentiation and choice in the application of certain principles of good governance based on the size and ownership structure of each company.

The recommendations for 2022 are therefore intended to support companies in the process aimed to the implementation of the new Code and at the same time highlight the need for an appropriate implementation process.

Reiterating the previous recommendations on the integration of sustainability into strategies, the control system and remuneration policies, which are crucial in the of the new Code's objective of '*sustainable success*', it is recommended that companies provide **adequate and concise information in the corporate governance report on the methods adopted to pursue it and the approach adopted in promoting dialogue with relevant stakeholders. In this regard, it is recommended that they provide brief information on the content of the policy of dialogue with the generality of shareholders, on the understanding that it seems appropriate to publish it in full, or at least in its essential elements, on the company's website.**

Among the Code's structural innovations to be considered in the implementation process, there is the new approach to **proportionality**, aimed at favouring the needs and peculiarities of companies with a strong controlling shareholder (among which, many are family companies) and smaller companies. The new Code identifies new categories of companies on the basis of their size and control model: 'large companies', i.e. companies whose market capitalisation exceeded EUR 1 billion on the last trading day of the preceding three calendar years, and 'concentrated companies', i.e. companies in which one or more shareholders participating in a shareholders' agreement hold, directly or indirectly, a majority of the votes exercisable at the ordinary shareholders' meeting. Based on these categories, the Code has developed a greater differentiation of recommendations. In this respect, **it is**

recommended that the classification of the company with respect to the categories of the Code and the simplification options available for "non-large" and/or "concentrated" companies⁹ be assessed and that the choices made be adequately disclosed.

With respect to the composition of the board of directors, the Code has made some choices aimed at strengthening the quality of the *assessment of independence* and allowing for the possibility of also qualifying the *Chair of the board of directors as an independent director*. In this respect, it is **recommended to provide in the corporate governance report the criteria used to assess the significance of professional, commercial or financial relationships and additional remuneration, also with reference to the Chair of the board of directors, if the latter has been assessed as independent pursuant to the Code.**

While noting the improvement of some aspects of the management of *pre-board* information, the Committee **invites boards of directors to draw up the internal rules defining the functioning of the board and its committees, paying particular attention to the explicit determination of the deadlines deemed appropriate for the submission of documents and the exclusion of generic confidentiality requirements as possible exemptions from compliance with these deadlines. When drafting the corporate governance report, companies should also adequately illustrate whether the deadlines defined above has been respected and, where in exceptional cases it has not been possible to comply with the deadline, explain the reasons for this and illustrate how the board has been provided with adequate information.**

In reiterating the advisability of improving the adoption of the Code's principles and recommendations regarding the *appointment* and *succession of directors*, which remain among the main areas for improvement in the governance of listed companies, **companies with non-concentrated ownership are invited to adequately examine the recommendations addressed to them with respect to the renewal of the board of directors. In this regard, it should be noted that for these companies, the Code not only recommends that the outgoing board of directors, in view of its renewal, expresses its guidelines on its optimal composition, considering the results of the self-assessment, but also confirms this responsibility in the subsequent phase of the submission of lists by the outgoing board and/or shareholders. In particular, the boards of directors of "non-concentrated" companies are invited to request those who submit a list containing a number of candidates exceeding half of the members to be elected to provide adequate information (in the documentation submitted for the filing of the list) on the**

⁹ A summary of the options can be found in the Committee's Annual Report, Part I.

compliance of the list with the guidelines expressed by the outgoing board and to indicate their candidate for the office of Chair.

As far as *gender equality* is concerned, it should be noted that the new Code expressly recommends that all listed companies adhering to it adopt measures to promote equal treatment and opportunities between genders within the entire corporate organisation, monitoring their concrete implementation. In this respect, **the Committee, while observing an increasing attention on these issues, invites companies to provide adequate information in the corporate governance report on the concrete identification and implementation of such measures.**

With regard to *remuneration policies*, **the Committee, in addition to reiterating the advisability of an improvement in the policies in defining clear and measurable rules for the payment of the variable component and any severance payment, recommends to adequately consider the consistency of the parameters identified for the variable remuneration with the strategic objectives of the company and the pursuit of sustainable success, evaluating, where appropriate, the provision of non-financial parameters. With reference to remuneration parameters linked to the achievement of environmental and social objectives, the Committee recommends that companies should ensure that such parameters are determined *ex ante* and measurable.**