Corporate Governance Committee

ANNUAL REPORT

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Corporate Governance Committee

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1. The new Corporate Governance Committee

In 2011, a new Corporate Governance Committee was established as a result of an agreement between the promoters of the Italian Corporate Governance Code (Borsa Italiana, Abi, Ania, Assogestioni, Assonime and Confindustria); the aim of this Committee was to ensure that a continuous and structured process for the production and monitoring of Italian listed companies' best practices had been put in place.

The new Committee maintained, as in the past, a flexible structure. In its current configuration the Committee does not have legal subjectivity nor economic independence. The Committee decided to regulate its functioning through a number of organizational rules that have been drawn up with the aim of guaranteeing a certain continuity and regularity of its activities.

These rules (published in full in Annex 1) are the result of an agreement between the promoters and have been approved by the Committee during its first meeting, held on June 14, 2011. The rules pertain to the composition of the Committee, its purpose, the procedures for convening its meetings, voting majorities and the procedure for the preparation of proposals to be submitted to the Committee itself.

More in detail, it has been provided, inter alia, that:

- The Committee is promoted by Abi, Ania, Assogestioni, Assonime, Confindustria (the "Association") and Borsa Italiana (hereafter the "Promoters");

- The registered office of the Committee is at Borsa Italiana's headquarters;

- The purpose of the Committee is to promote good corporate governance in the financial community through the revision of the Corporate Governance Code (hereafter the "Code"), as well as through institutional, scientific, informational or promotional initiatives aiming to enhance the credibility of the Code;

- The Committee is composed of a maximum of twenty-four members, nominated by the Promoters in accordance with the following criteria: *(i)* a top representative of each Association; *(ii)* up to three members nominated by each Association, selected among the senior management of listed companies/asset management companies belonging to each Association; *(iii)* up to two representatives of Borsa Italiana; *(iv)* up to two key executives of Italian listed companies, invited by the Chairman of the Committee, having heard the Promoters before;

- Each member holds office for three years and may be renewed; in case of early termination, the member shall be replaced by the Promoter who had appointed him in the first place;

- The Committee nominates a Chairman and a Deputy Chairman among its members; the President coordinates the Committee's activities and represents it before third parties. Also, the Committee may decide to appoint a Secretary, either internal or external, in order to assist the Committee itself and the Chairman in the performance of their activities;

- The approval of the Code and its amendments is normally done by consensus and in any case, with the majority of at least three quarters of those present, provided it represents the majority of the members in office;

- The Committee shall meet at least once a year to examine the activity report, drawn up by the President, and to approve the plan for future activities;

- The Committee makes use of a Technical Secretariat and appoints its coordinator; this Secretariat is composed of one representative of each promoter and of the Committee's Secretary;

- The Committee may avail itself of experts in the field, up to a maximum of three. The experts may give advice on the revision of the Code, in line with international best practices;

- Finally, the Committee may consult with other stakeholders, associations, professional associations and academics on the matters covered by the Code.

The Committee was originally composed of twenty-three members:

- Giovanni Sabatini, Corrado Passera, Federico Ghizzoni and Antonio Vigni, designated by Abi;

- Fabio Cerchiai, Carlo Acutis, Emanuele Erbetta and Gabriele Galateri di Genola, designated by Ania;

- Domenico Siniscalco, Michelle Edkins, Guido Giubergia and Giordano Lombardo, designated by Assogestioni;

- Luigi Abete, Franco Bernabè, Stefano Micossi and Marco Tronchetti Provera, designated by Assonime;

- Emma Marcegaglia, Luca Garavoglia, Edoardo Garrone and Paolo Scaroni, designated by Confindustria;

- Angelo Tantazzi and Raffaele Jerusalmi, designated by Borsa Italiana;

- Paolo Andrea Colombo, invited by the Chairman and the Promoters .

Afterwards, the Committee's composition changed as a result of rotations and of one new co-optation. In particular Corrado Passera and Antonio Vigni have been replaced by Enrico Tommaso Cucchiani and Alessandro Profumo on Abi's recommendation; Fabio Cerchiai and Emanuele Erbetta have been replaced by Aldo Minucci and Pierluigi Stefanini on Ania's recommendation; Michelle Edkins has been replaced by Luitgard Spögler on Assogestioni's recommendation; Angelo Tantazzi has been replaced by Massimo Tononi on the Italian Stock Exchange's recommendation; finally John Philip Elkann has been invited to sit on the Committee, thus raising to twenty-four the number of its members.

During 2011, the Committee met twice, on June 14 and November 4.

During the meeting of June 14, which was attended by fifteen members out of twenty-three, the Committee: *(i)* approved the operational rules described above; *(ii)* appointed Gabriele Galateri di Genola as Chairman and Domenico Siniscalco as Deputy Chairman; *(iii)* appointed Alessandro Chieffi as Secretary of the Committee; *(iv)* appointed Bruno Cova, Piergaetano Marchetti and Angelo Provasoli as experts; *(v)* constituted the Committee's Technical Secretariat which is composed of Alessandro Chieffi, Carmine Di Noia, Livia Gasperi, Massimo Menchini, Pietro Negri, Francesca Palisi and Marcella Panucci (subsequently replaced by Antonio Matonti). Carmine

Di Noia was given the task of acting as coordinator of the Technical Secretariat; *(vi)* evaluated a number of possible changes of the Code that will be discussed more in detail in a meeting following the preparation of a consolidated text by the Technical Secretariat.

During the meeting of November 4, which was attended by eighteen members out of twenty-three, some important amendments to the Code were approved; these modifications, together with other changes subsequently agreed informally, resulted in a new edition of the Code, published on December 5, 2011.

The Committee has lastly met on November 29, 2012 in order to review the Report of the President and the plan for future activities.

The Committee has been supported in its activities by the Technical Secretariat, which met six times in 2011 and twice in 2012.

The experts participated at the Committee's meetings, providing advice on how to update the Code, also in the light of international best practices.

This report tracks the activities carried out by the Committee during this first year of operation, briefly summarizes the evolution of national and Community legislation and provides a comparison among different committees, codes and related monitoring activities.

2. The new Corporate Governance Code

As mentioned in § 1, in December 2011 the Committee published an amended edition of the Corporate Governance Code.

The first edition of the Code is dated 1999. In 2002 and later, in 2006, two important revisions of the Code were made that took into account, on the one hand, changes introduced by the reform of corporate law[1] and, on the other hand, some other reflections that led to the adoption of the Law on Protection of Savings[2]. With the 2006 edition, the Code has undergone some important structural changes: each article is now divided in principles (which set best practices), criteria (which set how to carry out the best practices set out in the principles) and comments (which in some cases clarify, through examples, the scope of the principles and criteria, in others, introduce some new, non-binding requirements, different from those that are set out in the related principles and criteria).

In 2010, the Committee held a partial update of the Code, focusing on the remuneration of directors and managers in order to implement, on a self-regulation level, some of the EC recommendations concerning remuneration (see § 4). At the same time, the Committee published another recommendation which requests issuers complying with the Code to publish in their press releases some information on the BoD evaluation, in particular referring to the independence requirements[3].

The comprehensive review has taken place after more than a year after the establishment of the new Committee.

[1] Legislative decree No. 6/2003.
[2] Law No. 262/2005.
[3] Press release of the Italian Corporate Governance Committee of March 3, 2010, recommending the Board of Directors to disclose the results of its assessment on the appointment of directors who qualify as independent and to illustrate: *(i)* if evaluation parameters other than those specified in the Code have been adopted, and if so, on what ground; *(ii)* quantitative and/or qualitative criteria that have been used to assess the relationships being evaluated.

The Committee has deliberately left unchanged the macro structure of the Code, based on the "comply or explain" principle. In the guiding principles (section III), the Code provides guidance on how to draw up the corporate governance report, distinguishing different levels of motivation. First of all, issuers are required to provide "adequate" information in the event of non-compliance or partial application of one or more recommendations of the Code, which are included in the principles, criteria and the explanatory part of the comments. Secondly, in order to give an exhaustive representation of the adopted corporate governance rules, the Code recommends to provide precise, but at the same time brief, information, on how the single recommendations were applied.

Despite this, the revision of the Code has been significantly influenced by its previous version. The revision is based on three main guidelines. The first guideline led the Committee to a simplification of the Code. The Committee proceeded to simplify the content of principles and criteria: in this light, for example, Article 4, about handling corporate information, has been repealed and the core part has been included in Article 1, about the role of the BoD. The new version distinguishes between two different kinds of comment: explanations of the recommendations included in principles and criteria and others non-binding behaviours that do not require an explanation in case of non compliance. The Committee also adopted some more gradual and flexible recommendations, in order to facilitate their application by SME and other listed companies with a simple structure.

The second guideline followed by the Committee was the revision of the Code in response to the new Italian rules on company law and financial markets. After the reform season that changed the Italian regulatory landscape with the 2003 reform of company law and the adoption of the 2005 Law on Protection of Savings, the Code had to be reviewed also in the light of all the rules issued by the European legislator. The Committee has therefore repealed the outdated principles and criteria and introduced some new recommendations aligned with the new legislative provisions. References to the voting slates mechanism for the appointment of corporate bodies have been removed, due to the legal discipline introduced in the Consolidated Law on Finance (Legislative Decree No. 58/1998, hereinafter CLF). The articles referring to directors' interests and related parties transactions have been removed in order to align the Code provisions with the new regulation adopted by Consob in 2010[4]. Lastly, after the implementation of the Shareholders' Rights Directive[5], the article concerning shareholders was also simplified.

Thanks to this simplification and updating process, the Code is now composed of ten articles.

The third and last, but probably most important, aim of the Committee was the introduction of innovative principles whose adoption by the issuers may, on the one hand, improve their corporate governance standards and, on the other hand, ensure an appropriate level of flexibility. To this end, the Committee introduced some new recommendations, also in light of some of the most recent international trends. Moreover, in order to follow the traditional duty of self-regulation to find solutions before the need of a legislative intervention arises, the Committee carried out some research on some critical areas of corporate law.

The most significant changes concern the role and the composition of the BoD and of the internal Committees as well as the functioning of the internal control system.

[4] Reference is made to the Regulation concerning Related parties transactions, introduced by Resolution No. 17221 of March 12, 2010 and subsequent amendments.

[5] Directive 2007/36/EC on the exercise of certain shareholder rights in listed companies and transposed into Italian law by Legislative Decree No.27 of January 27, 2010, subsequently amended by Legislative Decree No.91 of June 18, 2012.

Board of Directors

A first significant set of changes concerns the Board of Directors. This body is entrusted with the management of the company in order to pursue the creation of value for shareholders over a medium-long term period (1.P.2). The board plays a central role also in the plans of the corporate group and in the decisions concerning the main operations of the issuers and its subsidiaries (1.C.1. *a* and *f*). Changes made focused on the rules concerning the composition and the functioning of the BoD. The new edition of the Code emphasises a more various BoD composition: the board shall be composed of executive and non-executive directors, all with an adequate experience and competence (2.P.1).

This recommendation is also included in the principle concerning the self-assessment of the BoD, which recommends to the issuers to evaluate, at least once a year, its operations and that of its committees; the Code recommends to assess the BoD size and composition, particularly focusing attention on the profile and the role of each director (1.C.1, g). Following the model of the European Commission (see Green Paper, "The EU corporate governance framework"), the recommendation concerning self-assessment has been stressed, highlighting the importance of having "different" directors in terms of experience (also international experience), professional competence (including managerial experience) and gender for the good functioning of the whole Board. The presence of "different" directors can improve the overall competence of the board itself.

As mentioned before, the Code enlists, among the features that are likely to improve the composition – and so the functioning – of the board, also the so-called gender diversity; the introduction of this provision is in line with the European trend: in some countries, including our own, legal rules on this matter have recently been adopted. A few months before the new edition of the Code, the Legislator adopted a specific rule about the presence of the less represented gender in the corporate bodies of listed companies.[6]

The new edition of the Code particularly emphasises directors' independence, requiring that issuers belonging to the FTSE-Mib Index should have "at least one third" of independent directors in their boards (3.C.1.) and, in any case, at least two independent directors should sit in the BoD. Moreover, referring to committees' composition, the Code recommends that the Remuneration and the Internal Control and Risk committee should be made up only of independent directors or, alternatively, of all non-executives, with a majority of independent directors; in the latter case, however, the Chairman of the Committee should be an independent director.

The Code also sets out a circumstance in which a Lead Independent Director (hereinafter LID) should be designated (2.C.3.). In addition to the two conditions contained in the previous version of the Code (in the event that the Chairman is *(i)* the CEO of the company or *(ii)* the controlling shareholder), in companies belonging to the FTSE-Mib Index, the appointment of a LID has been set out also in the event it is requested by the majority of independent directors; however, the final choice is left to the whole BoD. The Code provides also a broadening of the function of the LID – which was traditionally understood as a point of reference and coordination upon request of non-executives, in particular, independent directors. By now, the LID should also cooperate with the Chairman of the BoD in order to ensure that all directors receive timely and complete information.[7]

The strengthening of the position of the Lead Independent Director, both in terms of designation and features, is aimed to improve the effectiveness of the BoD, also through an increasing information flow to all directors.

[6] Law No. 120 of July 12, 2011.
[7] In the previous edition of the Code, these requirement were defined only in the comment to Article 2.

Among other recommendations concerning BoD composition, one should mention the new criterion 2.C.5., which discourages the phenomenon of interlocking directorates between CEOs of listed companies not belonging to the same corporate group, and the new recommendation (comment to Article 5), which requires that independent directors undertake to maintain such a quality during all their office, and to resign, if necessary. Lastly, it has been suggested to consider the need to ensure management continuity, mainly in relation to the activity of the committees set up within the board of directors, even through a diversification of the expiry of all or part of board members (staggered board), provided that this does not jeopardize the different rights of shareholders (comment to Art. 2).

Moreover, the new Code pays particular attention to the functioning of the Board of Directors, strengthening the protection of the information rights; for this reason, the Code recommends that the Chairman of the BoD shall ensure that the documentation relating to the Agenda of the board is made available to directors and statutory auditors in a "timely manner" prior to the board meeting; the BoD shall provide information in the Corporate Governance Report on the promptness and completeness of the pre-meeting information, providing details on the prior notice usually deemed adequate for the supply of documents and specifying whether such prior notice has been usually observed (1.C.5.). In addition, the Chairman, also upon request of one director, may request to the managing director that the executives of the issuer or of the companies belonging to its group attend the meetings of the BoD, in order to provide appropriate supplemental information on the items on the agenda (1.C.6.). Lastly, the Code relies on the Chairman to ensure that directors and statutory auditors attend meetings aimed at providing them with an adequate knowledge (so-called induction programs), not only after the election but especially during their three-years long mandate (2.C.2.).

Committees

A special attention is also given to the Committees set up within the board. The new Code provides general indications concerning the Committees, in order to set out flexible rules, which take into account the features of each issuer. The provision of different solutions moves, however, within the general framework aimed at the simplification of the Code recommendations.

Concerning committees' organisation, it has been set forth that the committees shall be coordinated by a Chairman (4.C.1. a) and that the Chairman of the Remuneration Committee and the one of the Internal Control and Risk Committee should be independent directors (6.P.3. and 7.P.4.). The new Code sets out also the possibility to establish committees made up of two members, in those issuers whose board of Directors is composed of no more than eight members (formerly it was five) (4.C.1. a).

The new edition of the Code expressly recommends to establish a Nomination Committee (previously it was only requested to evaluate the opportunity to establish it) (5.P.1.); the BoD shall evaluate the opportunity of adopting a succession plan and, in the event of its adoption, to charge the Nomination (or other) Committee and to disclose this choice to the market (5.C.2.). Moreover, always referring to committees, the new Code sets out a new important recommendation providing that the establishment of one or more committees may be avoided (4.C.2.). However, this option may be adopted only under certain conditions: it is expected that, in this case, the BoD dedicates, under the coordination of a Chairman, an adequate time to perform all those actions that the Code usually ascribe to the Committees. Also, it is necessary that the issuer describes in detail in the Corporate Governance Report the reasons underlying this choice.

Internal control and risk management system

The new Code also implements some important changes regarding the internal control and risk management system. The new version of Article 7 identifies the main figures involved in the

internal control system and defines, in a brief way, their roles. The entity at the head of the internal control and risk management system is the Board of Directors. The assignment of this role to the BoD is consistent with the high management duties of this corporate body and it consists of: *(i)* the definition of guidelines of the system, so that the main risks concerning the issuer and its subsidiaries are correctly identified, adequately measured, managed and monitored and *(ii)* the determination of the level of compatibility of such risks with the management of the company in a manner that needs to be consistent with its strategic objectives. The BoD should also identify within the board some specific figures who shall support its action. One of these figures is the Director in charge of the internal control and risk management system (hereinafter, Director in charge), who has the duty to identify the main risks concerning the issuer and to submit them periodically to the review of the board (7.C.4.). The Director in charge shall implement the guidelines defined by the Board of Directors, taking care of the planning, realization and management of the internal control and risk management system, and adjust such system to the dynamics of the operating conditions and the legislative and regulatory framework. The Control and Risk Committee, which replaces the Internal Control Committee, also plays an important role in the internal control and risk management system (7.P.4. and 7.C.2). The Control and Risk Committee is entrusted with the task of supporting, on the basis of an adequate control process, the assessments and decisions to be made by the Board of Directors in relation to the internal control and risk management system.

Among the most significant figures of the new control system, the person in charge of internal audit, who shall verify the effective functioning and the adequacy of the internal control and risk management system shall be indentified (7.C.5.). The measures for the protection of the autonomy of this figure have been further strengthened (7.C.1., last sentence). The Board of Statutory Auditors is also entrusted with the task of supervising the effectiveness of the internal control and risk management system. The recommendations concerning the BoSA have been implemented through a rewriting of the Article 8 of the Code (Art. 10 in the previous version of the Code). In light of the recent legislative evolution, the Code consistently recommends the involvement of the Board of Statutory Auditors, emphasising its active supervision and the fact that its duties "have to be carried out in a preventive manner and not merely *ex post*, essentially verifying the procedures developed and reporting findings to the directors, in order for them to adopt the necessary remedies, if any" (comment to Art. 8).

Lastly, the Code recommends issuers to assess the opportunity to entrust the Board of Statutory Auditors with the duties pertaining to the supervisory body, as per the Legislative Decree 231/2001. The recommendation enforces the legislative provision contained in the so-called Stability Law for 2012, which introduces the possibility to entrust the BoSA with the duties of the supervisory body (*Organismo di Vigilanza*)[8].

Enter into force

Issuers are invited to implement the amendments introduced in the Code by the end of the fiscal year beginning in 2012, informing the market through the Corporate Governance Report to be published in the following fiscal year. A transition regime has been defined for some of the recommendations of the Code. The issuers shall apply the amendments relating to the composition of the Board of Directors or of the relevant committees commencing with the first renewal of the Board of Directors taking place after the end of the fiscal year beginning in 2011. This transitional regime is valid for the following recommendations: establishment of a Nomination Committee

[8] The Stability Law for 2012 (Law No. 183 of November 12, 2011, published in the Official Gazette No. 265 of November 14, 2011 which introduced new provisions on the preparation of the state budget) deals with the attributions of functions to the supervisory body.

(6.P.1.); presence of only independent directors in the Remuneration Committee (6.P.3.) and in the Internal Control and Risk Committee (8.P.4.); designation of a Lead Independent Director if required by the majority of independent directors (2.C.3.); prohibition of interlocking directorates (2.C.5.).

Lastly, the new recommendations inviting the issuers belonging to the FTSE-Mib Index to establish a BoD made up of at least one third of independent directors (3.C.3.) shall apply commencing with the first renewal of the Board of Directors taking place after the end of the fiscal year beginning in 2012 (that is, with the renewal taking place in 2013).

3. The activities of the Committee

The code was presented at a press conference held by the Chairman and Deputy-Chairman of the Committee, at the headquarters of the Italian Stock Exchange on December 5, 2011.

The official presentation to the Italian financial market took place on February 20, 2012, during a conference that was highly successful in terms of participation. The contents of the Code were presented by the Chairman of the Committee and by the three experts: Professor Marchetti, who clarified the role of the Board of Directors, Mr. Cova, who illustrated the news regarding the committees, and Professor Provasoli, who described the latest news for what concerns control systems. A discussion panel composed of a representative of each one of the promoters followed; Abi's director general (Sabatini) and the chairmen of Ania (Minucci), Assogestioni (Siniscalco), Assonime (Abete), Borsa Italiana (Tononi) e Confindustria (Marcegaglia). The intervention of Vegas, chairman of Consob, which aimed to emphasize the attention that the Financial Authority gives to self-regulation, closed the meeting.

Members of the Committee and the Technical Secretariat presented the novelties of the Italian Code during a number of meetings held at European institutions, associations, universities and governance experts.

Last October some meetings with the financial community were organized in the UK in order to promote awareness of the governance of Italian companies.

On October 2, 2012 the Chairman and Deputy Chairman of the Committee, together with the Chairman of the Italian Stock Exchange, have illustrated the strengths of Italian economy and Italian listed companies during a seminar entitled "Invest in Italy: Highlights on Corporate governance" held at the London Stock Exchange headquarters. The event was introduced by the Italian ambassador in London and was followed by a meeting at the Italian Embassy which has been also attended by the CEO of the London Stock Exchange, Xavier Rolet.

In the afternoon of October 2, the Chairman and the Deputy Chairman of the Committee met Baroness Sarah Hogg, Chairman of the Financial Reporting Council, which is the body responsible, inter alia, for drawing up and keeping up to date codes of conduct for both listed companies and institutional investors.

During the meeting, multiple points of convergence came to light; convergences were found for what concerns corporate governance codes, the monitoring on their application and the use of recommendations addressed to the shareholders of listed companies and, in particular, to institutional investors. On the morning of October 3, the Chairman of the Committee and the

Director General of Assonime attended a breakfast meeting at the Italy Business Club, which was attended by a number of qualified Italian professionals working in London financial sector.

The Chairman also met Sir David Walker, author of the 2009 British report on corporate governance of banks and stewardship of institutional investors; Sir David Walker, who is currently the Chairman of Barclays, expressed his appreciation for the work done by the Corporate Governance Committee.

The events in London were followed with interest both by the English and the Italian press, which interviewed the Committee on several occasions.

In 2012, the members of the Committee have interacted, even informally, with the surveillance authority and they participated both in the European Corporate Governance Codes Network and, at Consob's invitation, in the works concerning the simplification of the Italian regulation organized by the Surveillance Authority (Consob) itself.

4. The evolution of the Italian legislation on corporate governance

After the approval of the latest edition of the Corporate Governance Code, the national regulatory landscape has been enriched by a series of measures that have deeply impacted on the governance structure of Italian companies, both listed and unlisted.

Remuneration

Rules concerning remuneration of directors of listed companies have been the subject of a number of different interventions both in the legislation (art. 123-ter CLF), regulation (Consob resolution No. 18049/2011) and, as mentioned before, self-regulation (Art. 7, then renumbered 6, of Corporate Governance Code). This was done in order to implement the EU recommendations (2004/913/EC and 2009/385/EC) on remuneration.

First, for what concerns legislation, the Legislative Decree No. 259 of December 30, 2010, (hereinafter the "Decree") was adopted in the light of the delegation contained in Art. 24 of the Law No. 96 of June 4, 2010 *(legge comunitaria 2009).* The Decree was preceded by a public consultation by the Ministry of Economy and Finance and implemented some of the principles contained in the two EU recommendations; these principles were chosen not to be implemented before as self-regulation in the light of the distribution of powers among the legislator, Consob and the Committee. In particular, we are referring to the principles contained in sections II (information on the remuneration policy) and III (information on the remuneration of individual directors) of the 2004 Recommendation and Section II, paragraphs 5 (information on the directors remuneration policy) and 6 (shareholder vote) of the 2009 Recommendation. The part concerning the remuneration policy structure and the stock-based remuneration criteria (paragraphs 3 and 4 of section II of the 2009 Recommendation) have not been included in the Legislative Decree as they had already been incorporated in the self-regulation (Article 7 of the Code).

The Decree then introduced article 123-*ter* CLF; the article requires listed companies to publish a remuneration report. The Decree entered into force in 2011 while the presentation of the required remuneration report has been postponed after the entry into force of the relevant implementing regulation; this document therefore, is to be presented at the first annual budgetary meeting of the year following the entry into force of the regulation itself. Since the Consob Regulation entered into force on December 31, 2011, the remuneration report has been prepared in accordance with the new

rules and presented in the annual meetings held 2012. As a result of these legislative measures, the remuneration of directors of listed companies is covered by a specific disclosure regime; the remuneration must be included in a report, to be published prior to the General Annual Meeting, showing both the criteria used for determining the remuneration (remuneration policy) and any form of compensation. The remuneration policy also need to be subjected to a non-binding resolution at the shareholder General Meeting.

Gender quotas

As for what legislation is concerned, Law No. 120 of July 12, 2011 was probably the one that had the greatest impact on the composition of the BoD and on the BoSA; the law, as a matter of fact, has introduced new rules aiming to ensure a balanced gender representation in corporate bodies of listed companies. Law 120/2011 requires companies to introduce "gender quotas" in their by-laws, beginning from the first renewal taking place one year after the date of entry into force of the law itself. The quota is 1/5 of the board for the first mandate and 1/3 for the following two mandates.

With the amendment of Art. 147-*ter*, paragraph l-*ter*, and Art. 148, paragraph l-*bis* of the CLF, the legislator has delegated to Consob the power to regulate the disposition concerning gender quotas. Consob has also been given the power to impose sanctions in case of violation of this legal rule.

In implementing the above delegation, on February 8, 2012, Consob issued resolution No. 18098 that introduced the following provisions to the Consob Regulation No. 11971 (Issuers Regulation), leaving to listed companies the possibility of identifying the appropriate technical procedure ensuring the respect of the principle. In particular, the articles of association shall govern:

i. appropriate methods able to coordinate the voting slates system in respect of the gender quotas;

ii. methods by which lists are formed and any additional criteria applicable to the identification of the individual members of the boards that enables respect of gender balance upon completing vote;

iii. methods by which members of the bodies who have left their offices during the mandate are replaced, taking into consideration the gender balance.

Listed companies are taking action in order to update their articles of association on the basis of the new provisions. It is interesting to notice how the principles contained in the new discipline have already been applied on a voluntary basis by various companies that renewed their corporate bodies in the first part of 2012, thus before the entry into force of Law 120, probably also in application of the new principles contained in the Corporate Governance Code, which emphasize the concept of diversity, including gender diversity, in the composition of the board.

Limit on the number of mandates in the financial sector

Another measure that strongly impacted on the composition of corporate bodies of listed companies, at least of those belonging to the financial sector, is Article 36 of the Legal Decree No. 201 of December 6, 2011, converted with amendments in Law 214 of December 22, 2011. The law sets up a new eligibility requirement for corporate bodies of companies and groups of companies operating in the financial sector.

The new rules, aiming to prevent interlocking directorates that could restrict free competition between independent enterprises, apply to members of corporate bodies of companies or group of companies operating in the credit, insurance and financial markets. These subjects may not "assume

or exercise similar positions in competitor companies or groups of companies" (Article 36, paragraph 1).

For the purposes of the rule, all those companies or group of companies among which there is no relationship of control as it is defined in Article 7 of Law No. 287 of October 10, 1990, and operating in the same product and geographic markets (paragraph 2) are to be considered competitors.

All those persons holding incompatible positions can opt for one of them within a period of ninety days from the appointment. Failure to comply with such provision in a timely manner will cause the director to be dismissed from the offices which are incompatible. The termination of the office shall be declared by the competent bodies of the organizations concerned (either the company or the group of companies) within thirty days after the expiry of ninety days or, when the competent bodies find out the violation of the prohibition. In case of failure to act of the competent bodies, the Authority of the market concerned shall declare the termination of the office (paragraph 2-*bis*).

In the first application of the rule, the choice between incompatible offices could be exercised within one hundred and twenty days after the entry into force of the Law of conversion, which occurred on December 28, 2011, and therefore before April 26, 2012 (paragraph 2-*ter*). From the analysis of listed companies' press releases, it turned out that thirty-three directors and ten statutory auditors of issuers belonging to FTSE-Mib Index have resigned, pursuant to Art. 36.

The incompatibility provided by Art. 36 is complementary to the recommendation 1.C.4 of the Corporate Governance Code that governs the best practice procedure that companies should follow in case they decide to derogate, on a preventive basis, from the rule prohibiting conflicts of interest, as per article 2390 of the Italian Civil Code. To this end, Art. 1.C.4 recommends an active involvement of the BoD that shall evaluate each issue, reporting at the following shareholders' meeting, the critical ones, if any. Also, each director should inform the board, both upon accepting his/her appointments or during his/her mandate, of any activities carried out in competition with the issuer.

However, the scope of the two provisions is different because, while the Code applies to all listed companies, including those not belonging to the financial sector, Art. 36 relates only to financial companies, whether listed or not.

Simplification of control systems

Lastly, it should be noted that Art. 14, paragraph 12 of the Law No. 183 of November 12, 2011, (*Legge di stabilità*) provides that the Board of Statutory Auditors, the Supervisory Board and the Audit Committee, can perform the functions of the supervisory body, as per paragraph 1, letter b) of Legislative Decree No. 231 of June 8, 2001. The decision represents an effort to streamline the system of controls eliminating the duplication of functions since, in some kind of companies, the activities of the supervisory body could be fully performed by the Board of Statutory Auditors alone. This element of simplification has already been taken into account in the revision of the Code, which, as we noted in the previous paragraph, expects issuers to evaluate the opportunity of assigning the function of supervisory body to the Board of Statutory Auditors (Legislative Decree 231/2001 - commentary on Article 7).

News on Corporate governance of banks

On January 11, 2012, the Bank of Italy published an Order of the Governor entitled "Application of supervisory measures on organization and corporate governance of banks". The document

underlines how several international initiatives are increasingly emphasizing the idea that the quality of corporate governance is an essential prerequisite to ensure a sound and prudent management of companies[9]. The document also states that corporate governance provisions already provide a self-evaluation to be performed by corporate bodies. These self-assessments appear to be necessary in order to ensure a good functioning of the board and to identify areas of concern, if any. It is therefore essential that the self-assessment process is carried out in a proper way, especially in the case of banks. Parent companies and banks belonging to banking groups had the responsibilities to submit to the Bank of Italy, by March 31, 2012, a document in which they synthesized: the methodologies used to conduct the self-assessment process; issues in analysis; third parties involved in the assessment procedure, if any, and the manner in which they were chosen; main findings and actions taken to minimize the weaknesses identified.

On September 4, 2012 the Bank of Italy published a consultation document entitled: "Supervisory measures of banks: the system of internal controls, information systems and business continuity".

The discipline in consultation proposes, inter alia: to strengthen the central role of the Internal Control System (ICS), which will be responsible for a greater number of issues; that the Board of Directors (or the body with strategic supervision functions) is the one responsible to determine the tolerated risk level, namely, the absolute level of risk that a bank is willing to take and the actual limits it places within the maximum level; that the BoD (or the organ with strategic supervision) establish internal alert procedures designed to give the employees the possibility of reporting any malfunctioning of the organizational structure or of the internal control system and any other irregularity in the management of the bank or violation of banking regulations. The consultation has closed on November 3, 2012 and the publication of the final regulation is expected later this year[10].

Lastly, on December 31, 2012 the rules laid down by the Bank of Italy in 2011 concerning risk assets and related parties transactions will enter into force. These rules are designed to preserve the integrity of the decision-making processes in transactions with these entities, attributing, to this end, a fundamental role to independent directors that are involved in the pre-deliberative phase and need to express their opinion when deliberating[11]. Also, the role of the body with control functions has been enhanced.

News on Corporate governance of insurance companies

On June 9, 2011 was published the ISVAP regulation No. 39. The regulation, taking into account international guidelines on remuneration policies, including the EU recommendations No. 2009/385/EC and 2009/384/EC of April 30, 2009, and the FSB, IAIS and EIOPA guidelines, lays

[9] Lastly, EBA Guidelines on the internal governance of banks define criteria to ensure the presence of efficient corporate bodies and internal control functions; in some cases they present a greater level of detail than national legislation and therefore, until now, they represents both, for banks and for the Authority, the criteria by which to interpret and assess the correct application of the current provisions .

[10] On January 12, 2012 the Bank of Italy also published a document entitled "Analysis of the banks statutory amendments to transpose supervisory measures on corporate governance: trends and best practices observed" in which are contained information about changes in the statutes of banks resulted from the transposition of "Supervisory measures on organization and corporate governance of banks " issued by the Bank of Italy on March 4, 2008.

[11] Banks should constitute a committee within the body with strategic supervision in order to carry out the tasks assigned to the independent directors. For less significant operations this committee should be composed by non-executive directors, the majority of whom should be independent. For significant transactions the committee should be made up exclusively of independent directors. This committee may coincide with the Internal Control Committee, always respecting the above-mentioned composition criteria. In case there is not a sufficient number of directors who meet the requirements, tasks should be carried out individually by the sole independent director or jointly if there are two. In banks adopting the two-tier board system, tasks entrusted to independent directors should be carried out by independent directors sitting in the supervisory board; if this organ has not been assigned strategic supervision functions (ex 2409-terdecies, co. 1, letter. f-bis of the Civil Code), these tasks should be carried out by independent members sitting in the management board.

out principles on remuneration policies of insurance companies with the aim of ensuring the adoption of a pay system consistent with the international principles drawn after the financial crisis. The aim of the regulation is to ensure that financial companies, thus also insurance ones, adopt remuneration systems consistent with a sound and prudent risk management, so avoiding incentives that may encourage excessive risks taking. According to ISVAP, in fact, the alignment of remuneration policies with the company's long-term interests contributes to strengthening the protection of stakeholders' interests, including policyholders, and the stability of the market.

The Ministerial Decree No. 220 of November 11, 2011, G.S. No. 6, "Regulation containing professionalism, integrity and independence requirements of directors, as well as the integrity requirements of equity owners" was published on the Official Gazette on January 9, 2012, in order to implement Articles 76 and 77 of the Code of Private Insurance.

The ISVAP regulation No. 3020 was published on November 8, 2012. The regulation, taking into account the IAIS Insurance Core Principle No. 7 concerning corporate governance principles, supplements the dispositions of Chapter II - Section II "Role of corporate bodies" and Chapter VII - "Disclosure requirements to ISVAP" contained in the ISVAP regulation of March 26, 2008.

In particular the following are provided: additional and specific tasks for the administrative body, especially for what concerns proxies; training and self assessment in order to improve the efficiency of the management process and the assessment of the organizational structure adequacy, as per Art. 2381 of the Italian Civil Code; the preparation of a periodic informative regarding also corporate governance issues[12]. The governing body must also ensure that the report on the internal control system and risk management clearly defines the company's organizational structure explaining why the chosen structure is the most suitable to ensure the completeness, functionality and effectiveness of the internal control system and risk management.

5. The evolution of European corporate governance

In the last years, several interventions of the European Legislator enriched the European corporate governance landscape. In some cases, new rules have been presented through directives that require a transposition at a legislative level[13], in other cases, the legislator choose the more flexible form of recommendations[14], leaving to Member States the possibility to chose how to implement those recommendations in an effective way.

The new corporate governance principles have significantly modified the legislative framework of Member States. The revision of the Code occurred, *inter alia*, also to ensure the alignment of the

[12] More specifically, the administrative body must: ensure continuous professional training, also defining training plans in order to ensure that everyone have an adequate level of technical skills so to perform their role in respect of the nature, scale and complexity of assigned tasks and to maintain their knowledge over time; conduct, at least once a year, an assessment of the size, composition and functioning of the administrative body and its committees, giving advice on the professional figures that should sit on the board as well as proposing corrective actions.

[13] For what concerns Corporate Governance, Directive 2006/46/EC of June 14, 2006 requires the publication of an annual corporate governance statement containing a variety of information, in order to harmonize, at the European level, transparency in corporate governance. As for audit instead, Directive 2006/43/EC of May 16 , 2006 requested public-interest entities to establish an internal control and audit committee, which should be given specific supervisory functions. With Directive 2007/36/EC binding rules regarding shareholders rights in listed companies were adopted.

[14] A great number of recommendations regarding directors remuneration have been issued: recommendations on remuneration policies in the financial services sector (Recommendation 2009/384/EC) and on the remuneration of directors of listed companies (Recommendation 2009/385/EC), which has integrated the previous Recommendation 2004/913/EC; Recommendation 2005/162/EC on the role of non-executive and independent directors.

Code recommendations with the evolution of the European discipline and of the national legislation resulting from the implementation of both, European directives and recommendations.

However, the EU regulatory framework constantly changes over time[15].

After the publication, in 2010, of the Green Paper on corporate governance in financial institutions and remuneration policies, the European Commission has submitted to public consultation a second Green Paper on corporate governance of listed companies, in order to promote a reflection on the evolution of the European rules in this field[16]. The consultation has been closed in July 2011 and received 409 responses from public authorities, private and professional associations. Taking into account the comments received, the Commission is expected to publish an Action Plan that is supposed to delineate the future steps of European corporate governance.

The Green Paper is divided into three chapters, referring to the following topics: *(i)* the role of the Board of Directors and appropriate measures to ensure the effectiveness of its operations; *(ii)* the role of shareholders, in particular referring to measures aimed at encouraging shareholders' activism in a long-term perspective, and the protection of minority shareholders; *(iii)* the strengthening of the "comply or explain" mechanism in case of adoption of a corporate governance code, with particular attention to the information provided and the quality of the monitoring.

The Corporate Governance Committee has paid particular attention to the study and the analysis of the Green Paper; the document was a useful tool in the process of updating of the Code. Many of the proposals contained in the Green Paper have been adopted by the Committee and are now incorporated in the new Code.

The main contents of the Green Paper are illustrated here below.

Board of Directors

The first issue addressed in the Green Paper is the Board of Directors and in particular: *(i)* composition and functioning of the board and adequate measures to ensure its effectiveness and efficiency; *(ii)* remuneration regime; *(iii)* risk management.

With regard to the first point, the Green Paper pays special attention to the issue of diversity of non-executive board members, highlighting that a better functioning of the board shall be ensured by the presence of directors with different professional profiles, international experience (understood as experience abroad) as well as different kind of skills. Among the elements which strengthen the

[15] In this regard, on November 14, the European Commission presented a proposal for a directive to promote, at European level, gender balance on the boards of listed companies The scheme of the Directive does not impose an obligation but requires listed companies to adopt measures in order to achieve the following objectives: (i) minimum threshold of 40% of the less represented gender among non-executive directors to be achieved by 2020 (by 2018 for listed companies subjected to public control); (ii) promoting, through self-regulatory instruments, the gender balance among executives; also this target is to be achieved by 2020 (2018 for listed companies subjected to public control). If the 40% threshold is not reached, the company is asked to provide the reasons which prevented the achievement of the target and the a measures taken (or the measure that will be taken) in order to overcome the problem.

[16] At the same time the Report of the Reflection Group was also published, which is a result of the work of a group of experts appointed by the Commission with the aim of drawing some guidelines for the future development of European company law. As for corporate governance, the Reflection Group refers to the Green Paper that in particular provides incentives for long-term investments, through recommendations on long-term ownership, institutional investors, shareholder identification and exercise of the voting rights.

authority and functioning of the board, the Green Paper mentions the independence criterion, understood as a subjective characteristic of a board member. Also the Report of the Reflection Group focuses on the role of independent directors and, in particular, on the concept of independence, inviting the European Commission to delve into the effectiveness of independent directors and into the most appropriate criteria to define the concept of independence, both with reference to the company and shareholders[17].

Among the criteria helping to assess if an effective board diversity exists, and indirectly to measure the functioning of the board and its components, the Green Paper recommends that the board should regularly engage in self-evaluation.

In the light of promoting better functioning of the board, the Green Paper also proposes to adopt at the European level a separation between Chairman and CEO, highlighting that this prohibition represents one of the key rules in order to ensure the independence of the board.

Lastly, among the measures that can help to improve the participation of non-executive members of the board, the Green Paper also deals with the opportunity of introducing a limit to the number of positions that each administrator can take.

Remuneration system

The second issue addressed by the Green Paper is directors' remuneration. In response to the recent financial crisis, the European legislator has decided to address problems related to directors' remuneration in two recent recommendations, respectively, on remuneration policies in financial institutions (Recommendation 2009/384/EC) and on remuneration of directors of listed companies (Recommendation 2009/385/EC). The second one integrates the previous Recommendation 2004/913/EC and Recommendation 2005/162/EC on the remuneration and role of non executive directors in listed companies.

The 2004 Recommendation introduces three fundamental principles: *(i)* disclosure regime on the criteria used by companies to define their remuneration policies and the individual remuneration of the directors; *(ii)* introduction of the so-called "say on pay" principle and of the shareholders' vote (binding or consultative) on the remuneration statement; *(iii)* prior shareholders' approval on stock options plans.

The Recommendation of 2005, concerning the role of non-executive directors, suggested, among other things, the opportunity to create an independent remuneration committee.

On the other hand, the European Recommendation of 2009 focused on some specific criteria related to remuneration determination, such as: fixed and variable remuneration components, the deferment of the variable component and the determination of the maximum amount for the severance pay.

Some reports of the Commission highlighted how some Member States haven't adopted adequate measures in this field. With the Green Paper, the Commission indicated its belief in the necessity of adopting a mandatory disclosure of the remuneration policy, the annual remuneration report and individual directors' remuneration. Lastly, the Commission wondered about the opportunity to introduce a mandatory vote on the remuneration policy and the remuneration report; however, the Commission did not clarified whether the vote should be binding or merely advisory.

[17] Also, the Report of the Reflection Group focuses on the role of independent directors and, in particular, on the notion of independence, asking the European Commission to conduct a thorough examination of the effectiveness of the function performed by independent directors and the most appropriate criteria to define the concept of independence, both, with reference to the company and to shareholders.

Risk Management

The last issue addressed in the Green Paper within the chapter concerning the Board of Directors regards the concept of risks. Risk management plays now an important role in the company's internal organisation.

The European regulatory framework had already defined some fundamental principles in this field, with the aim of ensuring enough control on the risk management system. The Green Paper deals with the issue of risks, emphasizing the need for each company to develop an adequate and effective system to monitor and manage its principal risks, which are to be defined in relation to its sector. The Green Paper underlined also that the BoD should be entrusted with the duty to define the risk policy for the whole organisation and be responsible for it.

The same topics were also discussed by the Reflection Group in their Report[18], which states that the identification and management of risks should be systematically addressed by the management under the supervision of the BoD, which is then required to report to the shareholders drawing up the Corporate Governance Report. The Report therefore recommends to extend the commitment to provide information on risk management, going beyond the disclosure of the elements closely related to the financial reporting process required by Directive 2006/46/EC, and to separately address the issue of the directors' liability in a recommendation.

Shareholders

The second chapter of the Green Paper is about the role of shareholders. Considering that the lack of active monitoring by shareholders added to a substantial directors' irresponsibility and to excessive risk-taking, the Paper focuses on possible measures that should be taken in order to encourage active shareholders' participation and to realize a more efficient corporate governance system for listed companies.

Shareholder activism

The first point addressed in this chapter is shareholders' activism. Greater shareholders' engagement results in different activities: active monitoring over the company, increased dialogue with the company's BoD, exercise of shareholder rights, voting rights above all, and cooperation with other shareholders. The issue is of particular importance in the UK. In 2010, the Financial Reporting Council adopted a Stewardship Code which regulates the duties of institutional investors and of their asset managers, requiring specific disclosure obligations. The Code was updated in September 2012.

The European Commission, referring to the British experience of the Stewardship Code, highlighted the importance of the active involvement of investors (both in the long and short run) in the investee company, not only through participation at general meetings and the exercise of voting rights, but at every stage of the company's life, so establishing an efficient dialogue between shareholders and issuers. The *ex ante* transparency of voting policies and the *ex post* check of how the vote was actually exercised at the meeting is an essential element of corporate governance.

[18] See p. 39 and following

Proxy advisors

Better regulation regarding proxy advisors is also needed in order to promote shareholder activism. Proxy advisors, widely used in the United States, are now spreading also in Europe. Institutional investors, who hold extremely diversified securities portfolios and frequently find it difficult to decide how to vote on the individual points on the agenda of the companies general meetings, located in different Member States, make often use of proxy advisors.

In the Green Paper, the European Commission expressed concern over the influence of voting consultants, not only because of the concern expressed directly from investors and investees about the insufficient transparency of advisors regarding the methods used for the preparation of voting recommendations, but also because proxy advisors may be subjected to conflicts of interest. Therefore, the Commission wondered about the opportunity to require proxy advisors to use greater transparency in their voting policies.

In Europe, just three Member States adopted a discipline concerning proxy advisors: in France the AMF adopted in 2011 a specific recommendation about voting consultants, in the UK the FRC Stewardship Code also deals with the issue of voting consultants as well as in the Netherlands, where this issue is regulated by the Corporate Governance Code for listed companies.

On March 22, 2012, ESMA published a consultation document on the activity of proxy advisors in Europe in order to collect information and guidelines and consider the opportunity of regulatory intervention at the European level.

Shareholders' identification

As for shareholders' identification, the Commission is considering the possibility of an intervention at the European level. The possibility to identify shareholders, already provided in many European countries, would be able to establish a dialogue between the company and its shareholders; the latter would become direct beneficiaries of all relevant information, overcoming in this way, all those problems related to information flows arising from the intermediation chain. Shareholder identification gives shareholders the opportunity to jointly cooperate in order to exercise the rights granted to qualified minorities, strengthened by Directive 2007/36/EC.

The protection of minorities

The Green Paper pays particular attention to the possibility of strengthening the position of minority shareholders, highlighting their difficulty to represent effectively their interests. The Green Paper mentions the Italian example that allows the election of minority representatives through slate voting and wonders about the opportunity of introducing such a model in the European Community as a device to ensure minorities' representation in the BoD.

Among the measures able to ensure an adequate protection of minority shareholders, the Green Paper focuses on the need to strengthen the discipline to reduce conflicts of interest arising from related parties' transactions. The Paper entrusts an independent expert with the duty of issuing an opinion on terms and conditions of the related parties transactions and suggests to subject significant transactions to the approval of the General Meeting.

The comply or explain principle

The last chapter of the Green Paper concerns the functioning of the comply or explain mechanism in case of adherence to a corporate governance code. According to this principle, a company which adheres to a corporate governance code and chooses to depart from some code recommendations, must give detailed, specific and concrete reasons for the departure. This approach was confirmed by

the Community legislator, with the approval of Directive 2006/46/EC, which requires companies to publish a corporate governance report and to state in it, among other things, whether they adopted a corporate governance code and to report on its implementation on the basis of the comply or explain principle.

The "comply or explain" approach is strongly supported by regulating authorities, companies and investors, set out in a study published in 2009 on the monitoring and enforcement of corporate governance codes in Member States. However, the same study brought to evidence some important shortcomings in the application of the "comply or explain" principle. In particular, the research shows that in over 60% of cases where companies choose not to apply one or more recommendations, they did not provide sufficient explanation.

The Green Paper therefore analyzed the need of requiring companies that choose not to apply one or more code recommendations to provide detailed explanations for such departures and to describe the alternative solutions adopted.

Besides the completeness of the information, there is also a need to identify the entity to be entrusted with the task of monitoring the effective implementation of the codes. With regard to this aspect, the European Commission wondered about the opportunity of constituting an ad-hoc committee with monitoring functions. The European framework appears rather variegate on the point: some Member States have decided to entrust the Supervisory Authorities with the task of monitoring the application of the corporate governance code; other legislations have established private commissions or government-appointed commissions with similar monitoring functions. The theme of monitoring and the solutions adopted in different legal systems will be discussed in the next paragraph.

6. The structure of corporate governance committees and the monitoring of codes in Europe

Starting from the nineties, Europe has experienced the creation of a growing number of corporate governance committees, organized in various ways, and corporate governance codes, working on a "comply or explain" basis. These codes are the most suitable instrument to gather all those principles that, being particularly flexible, do not lend themselves to be integrated in a legislative context.

Moreover, with the implementation of Directive 2006/46, Member States have adopted at the legislative level, the obligation to inform the market about the adoption of a corporate governance code to comply with. In some jurisdictions (Spain and Portugal), the principle has been adopted more tightly, forcing companies to report, on their Corporate Governance Report, the degree of compliance with each single recommendation and legitimizing enforcement actions and sanctions by the supervisory authorities[19].

The Committee Technical Secretariat has conducted an updated survey on the existence and working methods of the subject that prepare and/or update these codes and/or monitor on their application. Annex 2 summarizes the information gathered on a limited number, but sufficiently

[19] The issue was also addressed by the European Commission that, before the issuance of the Green Paper, published a comparative study on the functioning of the "comply or explain" mechanism and on the methods of monitoring the implementation of codes of conduct.

representative, of Member States (Belgium, France, Germany, Great Britain, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden).

For each state, the following profiles were examined:

i. identification of the entity responsible for the codification of best practices in corporate governance, as well as the structure, operating rules and main activities of the entity itself;

ii. existence of forms of monitoring on the degree of adherence to the Code by listed companies.

As regards the first point, the promotion and development of the corporate governance principles is conducted, in most cases, by *ad hoc* committees.

These committees have a varied nature and this inevitably affects operational rules and composition, both on the numerical and qualitative side. In some cases the committees are private entities; this is true for Belgium, Sweden, as well as for Italy. In France, the development of corporate governance and the adoption of the Code have been promoted by the two main trade associations of the country (Afep-Medef); however, an *ad hoc* committee has never been formally established. In other jurisdictions, such as Germany and the Netherlands, members of the committees are appointed by the Ministry. In the UK, the body responsible for drawing the Code is the Financial Reporting Council, an independent regulator, whose Chairman and Deputy Chairman are appointed by the Secretary of State for Business Innovation and Skills. In other jurisdictions, the promotion and development of codes are managed by the Market Supervisory Authority (Spain and Portugal) or by the Stock Exchange (Luxembourg).

The second aspect of the investigation concerns the monitoring on the application of codes. The European landscape is quite variegated on the point and therefore is pretty difficult to draw a classification in relation to the means of implementation.

In some cases, the monitoring committee is the same body that issued the Code: this is the case of Sweden. In the UK, since 2011, the overall implementation of the Governance Code is monitored by the FRC which publishes overviews on the state of its application; the report is largely based on analysis published by private entities. Pretty much the same can be said about the Netherlands where the Corporate Governance Code Monitoring Committee proceeds to a detailed review of the corporate governance statements published by Dutch listed companies and in the end it publishes a report.

In some other cases, the body that publishes the code and the one that monitors on its application do not coincide. This is the case of Germany where the monitoring activity is carried out by the Berlin Centre of Corporate Governance that annually publishes an anonymous report on the level of compliance with the Code. Since 2001, in Italy an analysis on the level of compliance with the Code is conducted annually by Assonime and Emittenti Titoli.

Some Member States have dual monitoring; that is, the surveillance carried out by public authorities is coupled with the analysis carried out by private entities. This is the case in France where Afep and Medef annually publish a report on the governance of listed companies belonging to the index SBF 120, while the Markets Financial Authority (AMF) produces an annual report based on a sample of 60 companies belonging to the CAC 40 and SBF 120. The same mechanism applies in Belgium where the monitoring activity is carried out by two private entities (Feb and Guberna) which publish a report on the degree of application of the code and by the securities regulator (FSMA) that publishes analytical reports on the compliance with the code, covering all companies listed on the exchange.

Some Member States have decided to entrust public authorities with the task of monitoring the application of codes. This is the case of the so-called Iberian Countries. Both in Portugal[20] and in Spain, the supervisory authorities not only are the ones in charge of drawing up the corporate governance code but they also carry out an analysis on the actual compliance with the recommendations of the code and the quality of the explanations provided by companies in case of non-compliance.

In Luxembourg, the Luxemburg Stock Exchange annually publishes a report that summarizes the main results of the monitoring carried out on the basis of the corporate governance reports published by the issuers.

As for what concerns the reports published by the entities that carried out the monitoring, we can make the following considerations. The reports are usually published annually, data are provided in an anonymous and often aggregate form. Their aim is the one of providing a brief overview of the way in which recommendations are adopted by listed companies. In the event that the monitoring activity is carried out by the supervisory authority, the report, often provided with names, refers to single recommendations adopted or non-adopted by the issuer.

The conducted analysis was also the occasion to investigate the issue of institutional investors and their involvement in the various phases of a company's life. As we mentioned before, shareholder activism is one of the profiles discussed in the Green Paper; it also examines measures to be taken in order to facilitate this engagement. At the European level there are still few codes providing recommendations to institutional investors on their active engagement with listed companies; however, in the corporate governance codes sometimes recommendations in this sense can be found. The table attached in Annex 2 briefly summarizes the contents of some of the main codes that can be found in Europe. In the United Kingdom, following the 2009 Walker Review of governance in financial institutions, the FRC published a code (Stewardship Code) directed in the first instance to institutional investors, by which is meant asset owners and asset managers with equity holdings in UK listed companies. The Code also applies, by extension, to service providers, such as proxy advisors and investment consultants. The Stewardship Code aims to promote the long term success of companies and to allow effective management by institutional investors. It is composed of a set of principles through which institutional investors are invited, inter alia, to: *(i)* publicly disclose their policy on how they will discharge their stewardship responsibilities; *(ii)* have a robust policy on managing conflicts of interest in relation to stewardship which should be publicly disclosed; *(iii)* have a clear policy on voting and disclosure of voting activity; *(iv)* report periodically on their stewardship and voting activities and most of all, *(v)* monitor their investee companies.

In 2011, the European Fund and Asset Management Association (Efama) published a set of principles aiming to improve participation of investment funds in the investee companies. The principles are meant to enhance the interaction between funds and companies and are very similar to those contained in the UK Stewardship Code.

Codes addressed to institutional investors are available also in other European countries. In Luxembourg, the Association of the Luxembourg Fund Industry has drafted a Code of conduct for investment funds, made up of eight principles, mainly addressed to the Board of Directors, with the aim of drawing best practices relating to the management of the investment fund. In Germany applies the "Corporate Governance Code for Asset Management Companies", drawn up by a working group composed of experts and academics. The Code establishes best practices on the exercise of shareholders' rights and participation in meetings.

[20] In Portugal, the issuers association AEM (*Associação de empresas emitentes de valores cotados em mercado*) has also commissioned a study on the degree of compliance with the Code to *Universidade Católica Portuguesa*.

In Italy, Assogestioni published a Code for the management of conflicts of interest. The Protocol sets out a series of recommendations regarding the identification of conflicts of interest and the procedures for their efficient management and is addressed to management companies (SGR) and investment companies with variable capital (SICAV) belonging to Assogestioni. Assogestioni also publishes an analysis of the Protocol's state of implementation.

Annex 1. Corporate Governance Committee operating rules

1. The Corporate Governance Committee (the "Committee") is promoted by Abi, Ania, Assogestioni, Assonime, Confindustria (the "Associations") and Borsa Italiana (collectively the "Promoters").

2. The Committee has its registered office at Borsa Italiana's headquarters.

3. The purpose of the Committee is to promote good corporate governance in the financial community through the revision of the Corporate Governance Code (the "Code"), as well as through institutional, scientific, informational or promotional initiatives aiming to enhance the credibility of the Code itself.

4. The Committee is composed of:

- a top representative of each Association;
- up to three members nominated by each Association, selected among the senior management of listed companies/asset management companies belonging to each Association;
- up to two representatives of Borsa Italiana;

Each member holds office for three years and may be renewed; in case of early termination, the member shall be replaced by the Promoter who had appointed him in the first place.

5. The Committee nominates a Chairman and a Deputy Chairman among its members; the Chairman coordinates the Committee's activities and represents it before third parties. Also, the Committee may decide to appoint a Secretary, either internal or external, in order to assist the Committee itself and the Chairman in the performance of their activities. The Chairman, having heard the Promoters, may invite up to two other key executives of listed companies that hold office for three years.

6. Committee's meetings shall be convened by the Chairman by notice in writing, sent by e-mail, containing the location, date and time of the meeting and the list of items to be discussed. Attendance at meetings can take place by video or teleconference. Representatives of each association may be replaced by the Director General of the organization they belong to. Members who cannot attend the meetings can give their consent to the proposals previously made by the Chairman by notice to be sent by e-mail. The approval of the Code and its amendments are normally done by consensus and in any case, with the majority of at least three quarters of those present, provided it represents the majority of the members in office.

7. The Committee shall meet at least once a year to examine the activity report, drawn up by the President, and to approve the plan for future activities.

8. The Committee makes use of a Technical Secretariat and appoints its coordinator; this Secretariat is composed of one representative of each promoter and of the Committee's Secretary. The members of the Technical Secretariat shall attend meetings of the Committee.

9. The Committee may avail itself of experts in the field, up to a maximum of three. The experts may give advice on the revision of the Code, in line with international best practices; the Committee may also consult other stakeholders, associations, professional associations, academics, on the matters covered by the Code.

10. Committee members are bound by confidentiality. Any communication on the work done shall be approved by the Committee and published by Borsa Italiana.

Appendix 2. Summary tables on major corporate governance codes (committees structure and monitoring) and codes for institutional investors in Europe

Summary of the main Corporate Governance Codes			
Country	**Code**	**Issuing body**	**Monitoring on the compliance to the Corporate Governance Code**
BELGIUM	***Le Code Belge de gouvernance d'entreprise 2009***	***Commission corporate governance*** **Legal status:** Private Foundation **Components:** 23	***Fédération des Entreprises de Belgique (FEB) - Institut Des Administrateurs (Guberna)*** FEB and Guberna conduct a monitoring on the application of the Code by the companies that belong to the BEL 20; they publish an annual report where information are provided in an anonymous and aggregated form. ***Financial Service and Market Authority (FSMA)*** FSMA publishes an annual report on the level of adherence to the Code, which applies to all listed companies. Information are provided in an anonymous and aggregated form. Taking into account the results of the analysis, the Authority makes general recommendations to the issuers.
FRANCE	***Code de Gouvernement d'Entreprise des Sociétés Cotées***	***Association Française des Entreprises Privées (AFEP) – Mouvement des Entreprises de France(MEDEF)*** **Legal status:** Association of entrepreneurs	***AFEP – MEDEF*** They publish a report on the governance of listed companies belonging SBF 120 index. The report contains statistical data (provided in an anonymous form) on the level of adherence to the code. ***Autorité des Marchés Financières (AMF)*** AMF publishes a report that analyzes corporate governance reports published by a sample of 60 companies belonging to the CAC 40 and SBF 120. Based on the results of this analysis (which are not anonymous), the AMF makes general recommendations regarding the issuers.
GERMANY	***Deutscher Corporate Governance Kodex***	***Regierungskommission*** **Legal status:** Committee appointed by the government **Components:** 14	***Berlin Centre of Corporate Governance (BCCG)*** BCCG publishes an annual report on the level of adherence to the Code by the companies listed in Frankfurt (Kodex Report). Data provided are anonymous and concise.

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GREAT BRITAIN	***The UK corporate governance code***	***Financial Reporting Council (FRC)*** **Legal status:** Independent regulator **Components:** 16	***FRC e soggetti privati*** Since December 2011, the FRC publishes a report on the level of adherence to the Code by UK listed companies (in a brief and anonymous form). The report refers - among other things – to the data analysis carried out by Grant Thornton, which produces an annual survey on the state of compliance with the code by British listed companies belonging to the FTSE 350.
IRELAND	***The UK corporate governance code*** ***+*** ***The Irish Corporate Governance Annex***	***Irish Stock Exchange (ISE)*** **Legal status:** Stock exchange	***ISE – Irish Association of Investment Managers (AIM)*** In early 2010, ISE and AIM commissioned a report with the aim of analyzing the degree of adherence to the principles of the UK Combined Code on the part of Irish issuers. The report was compiled by a panel of experts and provides the data in an aggregate and anonymous form.
ITALY	***Codice di Autodisciplina delle società quotate***	***Comitato per la corporate governance*** **Legal status**: Private body **Components:** 24	***Assonime – Emittenti Titoli*** Since 2001, Assonime (since 2004, together with Emittenti Titoli) publishes a report on the level of adherence to the Code and on the governance of Italian listed companies.
LUXEMBOURG	***Les dix Principes de gouvernance d'entreprise de la Bourse de Luxembourg***	***Bourse de Luxembourg*** **Legal status:** Stock exchange **Components:** 8	***Bourse de Luxembourg*** Since 2006, it publishes an annual report that summarizes (in anonymous and aggregate form) the main results of the monitoring carried out on the basis of the corporate governance reports published by the issuers.
NETHERLANDS	***De Nederlandse corporate governance code***	***Monitoring Commissie Corporate Governance Code*** **Legal status:** Committee appointed by the government **Components:** 7	***Monitoring Commissie Corporate Governance Code*** The Committee annually monitors the level of adherence to the Code and publishes a report that provides data in a concise and anonymous form.
PORTUGAL	***Código de Governo das Sociedades***	***Comissão do Mercado de Valores Mobiliários (CMVM)*** **Legal status:** Market Supervisory Authority	***CMVM*** The CMVM verifies the compliance with the recommendations of the code and the quality of the explanations provided by the issuers; it can also directly talk with the company's management in order to clarify aspects which are not clear. In case of deficiencies in the communication on compliance (or in the explanation provided in case of non-compliance), it can also apply administrative sanctions. The CMVM reports the results of the analysis in a public conference and publishes an annual report containing brief statistical

Summary of the main Corporate Governance Codes			
Country	**Code**	**Issuing body**	**Monitoring on the compliance to the Corporate Governance Code**
			information on the compliance with the Code and the assessment of the quality of the explanations provided in the case of non-compliance. More detailed information, relating to individual companies that have been surveyed, are provided in the tables annexed to the report.
SPAIN	***Código unificado de buen Gobierno de las sociedades cotizadas***	***Comisión Nacional del Mercado de Valores (CNMV)*** **Legal status:** Market Supervisory Authority	***CNMV*** The CNVM publishes two annual reports (the first report covers all listed companies, the second relates to companies belonging to the Ibex 35 Index) summarizing the main results of the monitoring carried out on the basis of the corporate government reports published by the issuers. Data on compliance referred to each single listed company are provided in the annex. In monitoring the status of implementation of the code, the CNMV may require issuers more detailed information if reports are found to be too general or lacking details; it can also punish any omission or false detected.
SWEDEN	***Svensk kod för bolagsstyrning***	***Kollegiet verkar för god bolagsstyrning*** **Legal status**: Private body **Components:** 11	***Kollegiet verkar för god bolagsstyrning*** It monitors the status of implementation of the Code by Swedish listed companies and publishes the results in an annual report, in which the data are provided in a concise and anonymous form.

Codes for Institutional Investors						
	Code	**Issuing Body**	**Scope of application**	**Application methods**	**Monitoring**	**Contents**
EUROPE	***EFAMA Code for External Governance***	***European Fund and Asset Management Association***	***a)****Investment management companies*	Mere recommendations (Investment Management Companies should, where applicable, publicly confirm adherence to the Code, e.g. on their website or in their annual financial statements)	*N/A*	The Code consists of six principles, each one with its related recommendation for support. Investment Management Companies should: 1) have a documented policy available to the public on whether, and if so how, they exercise their ownership responsibilities; 2) monitor their investee companies; 3) establish clear guidelines on when and how they will intervene with investee companies to protect and enhance value; 4) consider cooperating with other investors, where appropriate, having due regard to applicable rules on acting in concert; 5) exercise their voting rights in a considered way; 6) report on their exercise of ownership rights and voting activities and have a policy on external governance disclosure.
GREAT BRITAIN	***The UK Stewardship Code***	***Financial Reporting Council***	***a)*** *Asset managers* ***b)*** *Asset owners* ***c)*** *Service providers* (*proxy advisors and investment consultants*)	*Comply or explain* for signatories	Il *Financial Reporting Council* monitors on the adoption and application of the Code.	The UK *Stewardship Code* consists of seven principles and guidance. Institutional investors should: 1) publicly disclose their policy on how they will discharge their stewardship responsibilities; 2) have a robust policy on managing conflicts of interest in relation to stewardship which should be publicly disclosed; 3) monitor their investee companies; 4) establish clear guidelines on when and how they will escalate their stewardship activities; 5) be willing to act collectively with other investors where appropriate; 6) have a clear policy on voting and disclosure of voting activity; 7) report periodically on their stewardship and voting activities;
GERMANY	***Corporate Governance-Kodex für Asset Management-Gesellschaften***	***German Working group for Asset Managers***	***a)*** *Asset managers* ***b)*** Other companies providing collective asset management	*Comply or explain*	*N/A*	The Code makes a distinction between internal corporate governance (Chapter II) and external corporate governance (Chapter III). In the first part it governs duties and responsibilities of the Management Board and the Supervisory Board, in particular referring to conflicts of interest; in the second part it outlines best practices on the exercise of shareholders' rights and general meeting attendance. In Chapter IV it provides general disclosure recommendations on the topics analyzed in Chapters II and III.

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	Code	**Issuing Body**	**Scope of application**	**Application methods**	**Monitoring**	**Contents**
ITALY	***Protocollo di autonomia per la gestione dei conflitti d'interessi***	***Assogestioni***	***a)*** Asset Management Companies (SGR) ***b)*** Investment companies with variable capital (SICAV)	*Comply or explain* for associate companies	A self - regulation committee inside the Assogestioni Executive Committee has the task of monitoring the fulfillment of obligations of the Associates arising from the adoption of the Protocol and, in case of failure, may impose a penalty of censure and give public notice.	The Protocol provides a number of recommendations regarding the identification of conflicts of interests and measures and procedures for their efficient management. In particular, the Protocol encourages companies to distinguish three main categories of conflicts of interest: (i) the selection of investments; (ii) the selection of contractual counterparties; (iii) the exercise of voting rights. The Protocol also sets out both, organizational and procedural measures that should be observed by companies for the management of conflicts of interest. Organizational measures concern the identification of competent corporate bodies and their functions, the definition of powers of independent directors and rules about commutation of functions. As for procedures for the management of conflicts of interests, the Protocol sets out a series of recommendations relating to individual cases that may lead to conflicts of interests.
LUXEMBOURG	***ALFI Code of Conduct for Luxembourg Investment Funds***	***Association of the Luxemburg Fund Industry***	Investment funds (listed or unlisted)	Mere recommendations (Luxembourg funds should confirm adherence to the Code in their annual financial statements)	*N/A*	The Code is composed of eight principles, mainly related to the Board of Directors, that outline best practices concerning the management of the investment fund. In particular, the Board of Directors of an investment fund should: (i) ensure that high standards of corporate governance are applied at all times; (ii) have good professional standing and appropriate experience and use best efforts to ensure that it is collectively competent to fulfill its responsibilities; (iii) act fairly and independently in the best interests of the investors; (iv) act with due care and diligence in the performance of their duties; (v) ensure compliance with all applicable laws, regulations and with the fund's constitutional documents; (vi) ensure that investors are properly informed, are fairly and equitably treated, and receive the benefits and services to which they are entitled; (vii) ensure that an effective risk management process and appropriate internal controls are in place; (viii) identify and manage fairly and effectively, to the best of its ability, any actual, potential or apparent conflict of interest and ensure appropriate disclosure.