

# ANNUAL REPORT 2014

## 2<sup>ND</sup> REPORT ON THE COMPLIANCE WITH THE ITALIAN CORPORATE GOVERNANCE CODE

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## 1. ANNUAL REPORT 2014

The 2014 has been the third year of the Corporate Governance Committee (hereinafter also the “Committee”), established in 2011 as result of an agreement between the promoters of the Corporate Governance Code (Borsa Italiana, Abi, Ania, Assogestioni, Assonime and Confindustria); the aim of the Committee is to ensure a continuous and structured process for both the production and the monitoring of the best practices adopted by Italian listed companies.

In its current composition, the Committee has neither legal nature nor economic independence. Its organisational rules ensure continuity and regularity of its activities. The Committee organisational rules (available on the Committee website) have been set upon agreement of the promoters and endorsed by the Committee during its first meeting, held on June 14<sup>th</sup>, 2011; they concern the composition of the Committee, its purpose, convening procedures, voting *quorum* as well as the procedure for the submission of the resolution proposals to the Committee.

### 1.1. Activities of the Corporate Governance Committee

During the meeting of December 9, 2013, the Committee approved its [First Report](#) on the compliance with the Italian Corporate Governance Code<sup>1</sup> and mandated the Technical Secretariat to carry out an in-depth analysis on the quality of information provided by issuers on their corporate governance and to continue the ongoing monitoring of the developments in law and national and international practice, in view of a possible future revision of the Corporate Governance Code (hereinafter, also the “Code”).

During the meeting of July 14, 2014, the Committee approved a number of relevant changes to the Code, prepared by the Technical Secretariat with the support of the Experts<sup>2</sup>, and discussed the issue of legality in the management of listed companies, demanding to the Technical Secretariat to focus on that topic.

Finally, in the recent meeting held on December 11, 2014, the Committee approved this Annual Report which includes the Second Report on the compliance with the Code, prepared by the Technical Secretariat with the scientific support of the Experts and based on data provided by multiple and reliable external sources.

The in-depth survey of this Report is focused on the comply or explain principle through the analysis of the quality of the explanations provided by the Italian listed companies in case of non-compliance with single Code’s recommendations.

During the 2014 the Committee continued with its public activities, *inter alia* through the participation of its Chairman to the seminar “Board and Shareholders in UK, Italian and European Listed Companies”, held on May 8, 2014, at the London Stock Exchange, during which he has opened the sessions with Sir David Walker, chairman of Barclays. The seminar, organized by Assonime and Emittenti Titoli, was an important opportunity for discussion and international debate on the recent interventions of the European Commission on some corporate governance issues (in

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<sup>1</sup> As preliminarily established by the Committee, the Report was composed of two sections: the first one providing a global outlook on the compliance with the Corporate Governance Code and the Italian corporate governance; the second one focusing, in 2013, on the self-assessment of the board of directors (board evaluation).

<sup>2</sup> See par. 1.2 for the changes in the Corporate Governance Code.

particular on the comply or explain principle (see below), engagement and remunerations), as well as on the future initiatives of the International Corporate Governance Network.

In addition, the Chairman of the Committee took part in the first seminar – held in Rome on June 6, 2014 – organized by Consob to celebrate the 40<sup>th</sup> year anniversary of its establishment.

The Chairman of the Committee also spoke at the “15th European Corporate Governance Conference”, promoted by the Italian Presidency of the EU Council running for the second half of 2014.

Finally, representatives of the Committee attended the meetings of the European Corporate Governance Codes Network (<http://www.ecgcn.org>).

## **1.2. Evolution of the corporate governance framework**

A great number of interventions took place during 2014 in the field of corporate governance, both at Italian and European level.

### ***Revision of the Corporate Governance Code***<sup>3</sup>

On July 14, 2014, the Corporate Governance Committee approved some revisions of the Corporate Governance Code, following the changes introduced, at European level, in the field of comply and explain<sup>4</sup> and, at national level, in the field of remunerations<sup>5</sup>, taking also into consideration the conclusions formulated by the Committee in its “Annual Report 2013 – 1<sup>st</sup> Report on the compliance with the Italian Corporate Governance Code” published on December 9, 2013 (hereinafter, the “2013 Report”)<sup>6</sup>. The European recommendations on the “comply or explain” were transposed by a significant amendment of the *main principles* III and IV, while the Consob recommendations on remunerations have been implemented by the amendment of the article 6 of the Code (in particular by the introduction of *principle* 6.P.5 and *criterion* 6.C.8). Following the recommendations made by the Committee in its previous Annual Report and certain European and international best practices, the Committee proceeded to a further fine tuning of the Code, by introducing some changes to *main principles* III, IV and IX and to articles 1, 6 and 8 of the Code.

### ***Main principles***

In order to align the provisions of the Corporate Governance Code to the recommendations of the European Commission – which is addressed, among others, also to “bodies responsible for national codes of corporate governance” – the Corporate Governance Committee has decided to introduce in the *main principles* of the Code some specific recommendations on the correct application of the “comply or explain” principle, paying particular attention to the quality of the information provided in case of non-compliance with one or more recommendations of the Code. In particular, main changes refer to the first part of the *main principle* IV, by the substantial implementation of the

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<sup>3</sup> For a first commentary on the revision of the Code see Circolare Assonime n. 26/2014.

<sup>4</sup> Commission Recommendation 2014/208/EU on the quality of corporate governance reporting (‘comply or explain’).

<sup>5</sup> Consob Communication n. DCG/DSR/0051400, July 19<sup>th</sup>, 2014.

<sup>6</sup> Corporate Governance Committee, Annual Report 2013 and 1<sup>st</sup> Report on the Compliance with the Italian Corporate Governance Code.

recommendations made by the European Commission in the Section III of the EU recommendation no. 208/2014.

*Main principle IV* requires issuers to clearly state in their corporate governance report which specific recommendations, laid down in *principles* and *criteria*, they have departed from and, for each departure: *a*) explain in what manner the company has departed from a recommendation; *b*) describe the reasons for the departure, avoiding vague and formalistic expressions<sup>7</sup>; *c*) describe how the decision to depart from the recommendation was taken within the company; *d*) where the departure is limited in time, explain when the company envisages complying with a particular recommendation; *e*) if it is the case, describe the measure taken as an alternative to the relevant non-complied recommendations and explain how such alternative measure achieves the underlying objective of the recommendation or clarify how it contributes to their good corporate governance.

After considering the recommendations made in its 2013 Report wishing for a mature and reasoned application of the Code, the Committee considered appropriate to explicate in the *main principle IV* the flexible approach of the Code, making it clear that the choice not to apply, in whole or in part, some recommendations, does not necessarily involve a negative evaluation on the issuer.

#### *Board evaluation (art. 1)*

The changes to the article 1 of the Corporate Governance Code reflect, on the one hand, some important recommendations made by the Committee in its 2013 Report<sup>8</sup>, and, on the other hand, some of the best practices set up in other corporate governance codes adopted at European level. In particular, two amendments have been made in the area of board evaluation. The first one introduces an explicit recommendation on the identification of external consultants, if any, used by the issuer in the process of the board evaluation (*criterion 1.C.1*, letter g); the second one affects the functioning of the board and its committees: in fact, the Committee has decided to explicitly implement (in the *comment* to article 1) the suggestion contained in its 2013 Report, encouraging issuers to modulate the self-evaluation process on the basis of the three-year term of the office of the board, by adopting differentiated procedures during the three years in order to adapt the evaluation to the specific phase of the board's mandate<sup>9</sup>.

#### *Pre-meeting information (art. 1)*

In the light of recommendations set forth in its 2013 Report on the pre-meeting information, the Committee wanted to clarify that “when, in specific cases, it has not been possible to provide pre-meeting information with adequate prior notice, the Chairman ensures that adequate sessions take place during the board of directors meeting” (see the ninth paragraph of the *comment* to article 1 of the Code).

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<sup>7</sup> The reference to the avoidance of vague and formalistic expressions in the explanations was recommended by the Committee in the Annual Report 2013 - 1<sup>st</sup> Report on the Compliance with the Italian Corporate Governance Code, p. 9.

<sup>8</sup> See Annual Report 2013 and 1<sup>st</sup> Report on the Compliance with the Italian Corporate Governance Code, p. 8-9.

<sup>9</sup> For example, during the first phase of the mandate the activity could relate to all areas of functioning, in order to identify those to be improved during the next years of the same mandate; in the second year of its mandate, the Board evaluation could instead focus on previously identified critical areas; at the end of the mandate, the board evaluation should be focused on report the view of the board to shareholders on the professional profiles deemed appropriate for the composition of the future Board of Directors, prior to its nomination, according to 1.C.1. let. h) of the Code.

### *Induction session (art. 2)*

Among the fine tunings, it should be noted that one referred to the second paragraph of *criterion* 2.C.2 which recommends that the chairman of the board of directors should use his best efforts to allow the directors and statutory auditors to participate in initiatives aimed at providing them with an adequate knowledge of the business sector where the issuer operates, of the corporate dynamics and the relevant evolutions, as well as the relevant regulatory and “self-regulatory” framework; with this amendment, the Committee made it clear that induction sessions should include not only the legislative framework but also the self-discipline.

### *Board committees (art. 4)*

The Committee made a minor change with reference to board committees, partially rewording the *comment* of article 4 of the Code. In particular, the eighth paragraph of the *comment* provides issuers the possibility to adopt alternative approaches to the recommendations of the Code (anyhow in a manner consistent with the objectives established by the Code for each committee); beside the possible alternative approaches envisaged at the beginning of the eighth paragraph of the *comment* (i.e. combining the various duties in a unique committee or reserving such duties to the *plenum* of the board of directors), the Code now expressly states that it is also possible to allocate the various duties in a different manner between committees.

### *Remuneration of directors (art. 6)*

In the light of recommendations set forth in the Consob Communication<sup>10</sup>, their time-limited effectiveness (until December 2014) and, in particular, the hope expressed by the same Authority that equivalent initiatives arise in the context of self-regulation, the Committee made some changes to article 6 of the Corporate Governance Code, introducing a new *principle* 6.P.5 which, in case of end of office and/or termination of the employment relationship with an executive director or a general manager, recommends to “all” issuers (regardless the fact that they belong to a specific index) to disclose, through a press release, detailed information following the internal process leading to the assignment or recognition of indemnities and/or other benefits.

The *criterion* 6.C.8 was reformulated too, in order to specify the content of the information provided according to *principle* 6.P.5.

Having regard to the UE recommendation no. 385/2009 on the remuneration of directors of listed companies and the subsequent national financial regulations (for the banking sector, see the Banca d’Italia Provision of May 30<sup>th</sup>, 2011<sup>11</sup>, and for the insurance sector the ISVAP regulation of June 9<sup>th</sup>, 2011<sup>12</sup>), the Committee decided to add a new letter f) , in the *criterion* 6.C.1, recommending issuers to include in their new remuneration policy the so called “claw-back clause”. More precisely, based on the wording proposed by the European Commission in the EU recommendation

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<sup>10</sup> Consob Communication n. DCG/DSR/0051400, July 19<sup>th</sup>, 2014.

<sup>11</sup> Article 5.2, n.5, of the Banca d’Italia Provision of May 30<sup>th</sup>, 2011, foresees among the different criteria for variable compensation, that it must contain ex post-malus or claw-back provisions able to reflect the level of performance net of risks effectively borne; variable compensation should reduce or disappear in case of results which are significantly below expectations or negative.

<sup>12</sup> Art. 13, par. 2, let. b) of ISVAP regulation 39/2011 states that when remuneration policy contains a variable part, contractual arrangement allow the company to ask for the total or partial refund of the compensation paid on the basis of non lasting results or of irregular behaviour.

no. 385/2009<sup>13</sup>, the new letter f) now recommends that the remuneration policy includes contractual arrangements in order to allow the issuer to reclaim, in whole or in part, the variable components of remuneration that were awarded (or to hold deferred payments<sup>14</sup>), as defined on the basis of data which subsequently proved to be manifestly misstated.

#### *Board of statutory auditors (art. 8)*

On the basis of Consob specifications, the Committee implemented the supervisory tasks of the board of statutory auditors with reference to press releases concerning severance payments, according to *principle* 6.P.5 (see the *comment* of article 6); furthermore, the Committee aligned the recommendations of the Code concerning the composition and functioning of the board of statutory auditors to those regarding the board of directors. In particular, the amendments to the *comment* of article 8 of the Code make it clear that the issuer should disclose, in the corporate governance report, information about the composition of the board of statutory auditors, providing for each member whether he/she has been qualified as independent (according to the *criteria* provided in the *criterion* 8.C.1). The *comment* specifies, as well, that issuers should disclose the number of meetings held by the board of statutory auditors during the fiscal year covered by the report, as well as their average duration.

#### *Italian Stewardship Principles*

The self-regulatory Italian framework concerning institutional investors' engagement is already aligned to European best practices, considering that on October 1<sup>st</sup>, 2013 the Governing Council of Assogestioni approved the [Italian Stewardship Principles](#)<sup>15</sup>. In line with the principles contained in the corresponding European code ("EFAMA Code"), the Italian Principles disclaim main rights and duties of the companies that provides collective investment management and/or portfolio management services, in order to promote discussion and cooperation between management companies and listed issuers in which they invest.

#### *Other interventions in the corporate governance field: banking and insurance sector*

In June 2013 the European Union approved the so called "CRD IV package", consisting of the EU Regulation no. 575/2013 (CRR), which introduces uniform rules concerning prudential requirements of banks and investment firms, and EU Directive 36/2013 (CRD IV), which regulates the access to the activity of banks and the prudential supervision of banks and investment firms. The transposition in Italy occurred with the approval of Law no. 154/2014 which established criteria and principles to be implemented by the Government with delegated acts.

In order to implement the CRD IV Directive, the Bank of Italy updated the Supervisory Provisions for the Banks, contained in the Circular no. 285. With the sixth update of May 4<sup>th</sup>, 2014, the CRD IV was implemented for the parts concerning the corporate governance structure of banks. The new regulatory framework<sup>16</sup>, consisting of general principles and requirements of specific content, aims

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<sup>13</sup> Par. 3.4 of the EU Recommendation n. 385/2009 states that: "Contractual arrangements with executive or managing directors should include provisions that permit the company to reclaim variable components of remuneration that were awarded on the basis of data which subsequently proved to be manifestly misstated".

<sup>14</sup> This specification was introduced by the Committee for coherence with the Bank of Italy and ISVAP regulations quoted above.

<sup>15</sup> The entry into effect has not been explicitly defined by Assogestioni because the Association did not want to provide a binding deadline. At the same time the Association announced its first monitoring by the end of 2014.

<sup>16</sup> Banks will have to adapt gradually by June 30th, 2016.

to strengthen the governance structure of Italian banks. The main changes introduced by the regulations are: i) the need for the board of directors to focus on issues of strategic relevance, and to have a diversified composition, even for competence and gender; ii) the presence of at least a quarter of independent directors; iii) the process of appointment of members, that has to be transparent and based on *ex ante* and *ex post* verification of the profiles required for the effective performance of duties; iv) quantitative limits to the number of directors in the board, in order to avoid an excessive size; v) the enhancement of the chairman of the board; vi) the establishment of board committees composed of non-executive directors, the majority of which to be independent (in complex matters, in particular: risks, remuneration and nomination).

With the seventh update to Circular no. 285 of November 18<sup>th</sup>, 2014, the Bank of Italy has also adopted the new supervisory provisions on “Policies and practices of remuneration and incentive” for banks and banking groups, concerning, in particular, the structure of the remuneration and conditions/means of payment of the variable component.

With reference to the insurance sector, during the 2014 the IVASS amended the ISVAP Regulation no. 20 of May 26<sup>th</sup> 2008, the ISVAP Regulation no. 35 of January 31<sup>st</sup> 2011, and the ISVAP Regulation no. 15 of February 20<sup>th</sup> 2008. It also published the Letter to the market “Solvency II – Application of EIOPA Guidelines” relating to governance system, prospective evaluation of risks (on the basis of ORSA – Own risk self assessment – principles), reporting and transmission of information to the national competent authorities.

The main changes to the Regulation no. 20/2008 concern the strengthening of the role of the board, which becomes more and more the reference point and leader of the company, as well as the strengthening of independence and objectivity of its members, also in order to enable them to assess the adequacy and effectiveness of the internal control system and of the governance as whole, through the preparation of the internal processes aimed at ensuring an effective, fast and informed sharing with the board of the results of the activities carried out by the different control functions. Regulatory changes so introduced are intended to encourage the dialogue between authorities and companies, strengthening the effectiveness of control activities.

In addition, through the integration of a risk culture on the basis of the so called “risk-based approach”, the company is encouraged to manage and measure the risk in an appropriate way, not only in order to comply with existing legislation, but also in order to measure more accurately its capital requirements and keep it aligned to the risks assumed.

### ***The interventions of the European legislator<sup>17</sup>***

On 9 April 2014 the European Commission published a package of measures aimed at improving the corporate governance of companies, strengthening their competitiveness and sustainability in the long term. In particular, the package contains a proposal for the revision of the shareholders’ rights directive (directive 2007/37/EC), the EU recommendation no. 2014/208 on the “comply or explain” principle and a proposal for a directive on single-member private limited liability companies (*Societas Unius Personae*, “SUP”).

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<sup>17</sup> At the international level, the OECD launched a consultation on the revision of its “Corporate Governance Principles”, published in 1999 and revised in 2004. The consultation opened on November 14, 2014 and will close in January 2015. At the same time, the Basle Committee is consulting on its “Principles for enhancing corporate governance”, published in 2010; the deadline for the consultation is January 2015.



*Proposal for the revision of the shareholders' rights directive (directive 2007/36/EC)*

With the [proposal](#) of revision of the shareholders' rights directive, the European legislator considered a number of issues. A first set of measures aims at improving the exercise of shareholders' rights and focuses in particular on: i) the identification of shareholders; ii) the transmission of information to shareholders; iii) the exercise of the rights of shareholders and iv) the cost of transparency. A second set of measures aims at strengthening the transparency of institutional investors, asset managers and proxy advisors, fostering the adoption of engagement policies and related transparency regime; it also regulates remuneration of directors and related parties transactions.

*EU Commission Recommendation no. 208/2014 on comply or explain<sup>18</sup>*

On April 9, 2014 the European Commission approved a recommendation aimed at improving the quality of the information on corporate governance. In particular, the recommendation consists of three sections. The first section recommends that, where applicable, the corporate governance codes make a clear distinction between: i) the parts of the code which cannot be derogated from; ii) the parts which apply on a "comply or explain" basis and; iii) those which apply on a purely voluntary basis.

With reference to this recommendation, given the non-binding nature of the Italian Corporate Governance Code, explicitly provided for in its *main principle I* ("The adoption of and compliance with this Corporate Governance Code is voluntary"), and considering also that the Code itself contains two of the three categories recommended by the Commission, the Code is in line with the EU recommendation no. 208/2014.

The second section of the recommendation is dedicated to the quality of corporate reporting; indeed it recommends companies to provide more information on how they have implemented the recommendations contained in the relevant corporate governance codes, with reference to the issues of greatest importance for shareholders. In particular, the European Commission recommends that the information contained in the management report and the additional information (see above) "should be sufficiently clear, accurate and comprehensive". It also states that the information should refer the company's specific characteristics and situation, such as size, company structure or ownership or any other relevant features.

As to the information to be provided in case of non-compliance with the corporate governance code, the third section recommends issuers to clearly state which specific recommendations they have departed from and, for each departure from an individual recommendation: i) explain in what manner the company has departed; ii) describe the reasons for the departure; iii) describe how the decision to depart was taken; iv) where the departure is limited in time, explain when the company envisages complying with the departed recommendation; v) where applicable, describe the measure taken instead of compliance and explain how that measure contributes to good corporate governance.

*Proposal for a directive on single-member private limited liability companies.*

The European Commission has presented a proposal for a directive aimed at unifying at European level some requirements<sup>19</sup> for establishing single-member private limited companies, encouraging

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<sup>18</sup> See Circolare Assonime 25/2014.

SMEs to carry out their activities in other Member States through the definition of certain requirements of the statute of the *Societas Unius Personae* (SUP) which should be transposed by Member States.

#### *Directive on non-financial information*

Among the initiatives in the field of corporate governance launched in 2013, it should be mentioned the EU directive no. [95/2014](#)<sup>20</sup> amending EU directive no. 34/2013<sup>21</sup> as regards the disclosure of non-financial and diversity information by certain large undertakings and groups.

The directive introduces some reporting requirements on policies, risks and results regarding environmental and social issues, as well as employment, respect of human rights, anti-corruption, bribery and diversity on board of directors.

The disclosure requirements apply only to certain large undertakings and groups.

For what concerns the issue of board diversity<sup>22</sup>, the information shall be provided by all companies required to prepare the corporate governance report according to article 20 of the EU directive no. 34/2013. The directive requires not only the description of the policy, but also a disclosure of the objectives of the policy, how it has been implemented and the results in the reporting period.

#### *The proposal of directive on gender diversity*

With reference to gender diversity<sup>23</sup>, it is worth reminding that the European Commission approved a [proposal](#) of directive aimed at promoting gender balance on the board of European listed companies. The proposal incentivises listed companies to adopt measures aimed at achieving 40% of the under-represented sex among the non-executive members of the boards, at the latest by 2020; in case of listed companies which are public undertakings the objective shall be achieved at the latest by 2018. The contents of the proposal shall expire in 2028.

## **2. REPORT ON THE COMPLIANCE WITH THE CORPORATE GOVERNANCE CODE**

The second Report on the compliance with the Corporate Governance Code (hereinafter the “Report”) is divided into two sections: the first provides an overview on the most significant governance issues of Italian listed companies and the compliance with the Corporate Governance Code; while the second section, focused on the “comply or explain” principle, analyses the concrete application of some Code’s recommendations, evaluating the quality of explanations provided by Italian listed companies in their corporate governance report.

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<sup>19</sup> In particular the common denomination of *Societas Unius Personae* (SUP), the definition of minimum capital of 1 euro, a simplified procedure for the incorporation, some measures for the protection of creditors.

<sup>20</sup> Member States will have to implement the Directive by December 6th, 2016 and apply the Directive by 2017.

<sup>21</sup> Directive 2013/34/EU, replacing the IV and VII Directives on annual and consolidated accounts, is about to be implemented in Italy.

<sup>22</sup> The Directive modifies art. 20 of Directive 34/2013, requiring in the management report a description of the diversity policy applied in relation to the undertaking's administrative, management and supervisory bodies with regard to aspects such as, for instance, age, gender, or educational and professional backgrounds, the objectives of that diversity policy, how it has been implemented and the results in the reporting period.

<sup>23</sup> The text of the proposal has been adopted by the European Parliament on November 20, 2013. On October 31<sup>st</sup>, 2014, the EU Council proposed its modifications.

Establishing the criteria of its analysis, the Corporate Governance Committee had decided to rely upon multiple and consistent outside sources; for this purpose, the Committee invited research centres, also academic ones, and corporate governance experts to submit their study results.

## 2.1 Current application of the Code<sup>24</sup>

A first overview of the corporate governance of Italian listed companies is provided by their reports on the ownership structure and corporate governance, published pursuant to Art. 123-*bis* of the Consolidated law of Finance (Legislative decree no. 58/1998, hereinafter “CLF”). This provision requires issuers to draw up and publish a “report”, disclosing, among other things, information about the “eventual adoption of a code of conduct for corporate governance promoted by companies managing regulated markets or by professional associations, explaining any non-compliance with one or more recommendations of that code, as well as the corporate governance practices actually adopted by the company beyond the obligations required by laws or regulations”.<sup>25</sup>

Almost all companies with shares listed on the Italian Stock Exchange declared their decision to adopt the Corporate Governance Code as such.<sup>26</sup>

A limited number of issuers, basically stable over time (17 cases)<sup>27</sup>, announced explicitly their decision not to adopt (or not to continue to do so) the whole Corporate Governance Code and disclosed some information on its corporate governance system pursuant to Art. 123-*bis* of the CLF. The decision not to adopt the Corporate Governance Code is generally explained making reference to company’s size and structure; in few cases, the decision not to adopt the Code is generally followed by the statement of the appropriateness of the current governance model to the specific features of the company.

### 2.1.1 Structure of the board of directors and independent directors

Defining the structure of the board of directors, the Corporate Governance Code recommends that it has to be made up of executive and non-executive directors (*Principle 2.P.1*) and that an adequate number of non-executive directors shall be independent (*Principle 3.P.1*).

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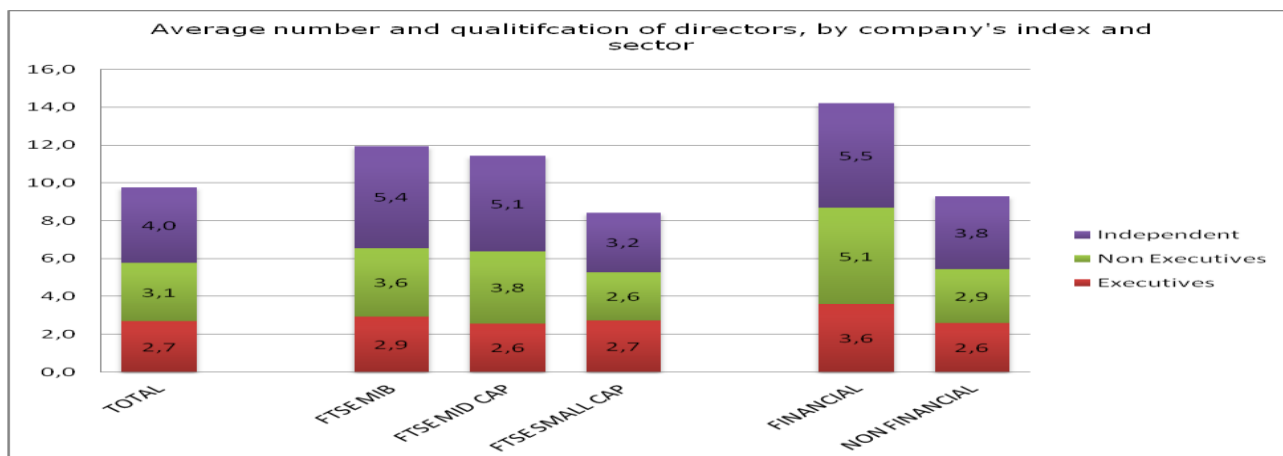
<sup>24</sup> To draw up this first section, the Committee made reference to data and information provided by the following surveys: Consob, *2014 Report on the corporate governance of Italian listed companies*, December 2014; Assonime-Emittenti Titoli (by Massimo Belcredi and Stefano Bozzi), *Corporate Governance in Italy: compliance, remunerations and quality of the comply-or-explain*, December 2014; Crisci & Partners, *2014 Report on board evaluation practices for the performance of the 2013 financial year*; Mercer, *Studio sui modelli di succession management delle società del FTSE Mib: Risultati preliminari – Anno 2014*; The European House – Ambrosetti, *L’osservatorio sull’eccellenza dei sistemi di governo in Italia – Rapporto finale (edizione 2014)*.

<sup>25</sup> The Report should moreover provide: i) some specific information about the ownership structure of the issuer; ii) rules concerning appointment and replacement of directors, whether different from the legislative ones; iii) main features of the internal control and risk management system that has been put in place, especially regarding the flow of financial information, also consolidated one, if applicable; iv) rules concerning the functioning of the AGM; v) structure and functioning of administrative and control bodies as well as board committees of the company.

<sup>26</sup> 213 companies, i.e. 93% of 230 companies listed on December 31<sup>st</sup>, 2013, which reports were available at July 15<sup>th</sup>, 2014 (see Assonime-Emittenti Titoli, p. 10, ft. 3). The analysis of Assonime-Emittenti Titoli provides information about the composition of the sample and the reasons of some exclusions, specifying that some reports which were not available at July 15<sup>th</sup>, 2014 are generally related to cases of delisting, mergers or insolvency proceedings. Details on the composition of the sample are available in the abovementioned analysis, Appendix 1.

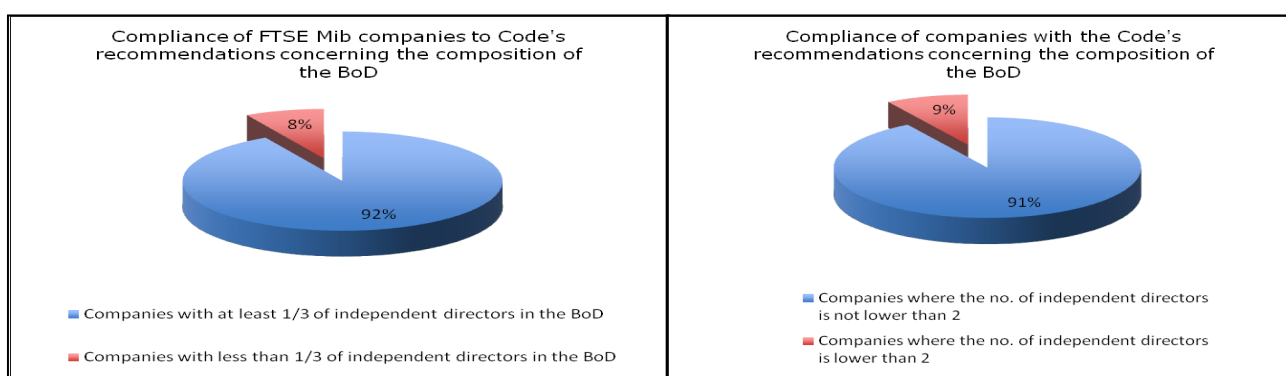
<sup>27</sup> See Assonime-Emittenti Titoli, p. 28.

Over the years, companies gradually aligned the composition of their BoD to the Corporate Governance Code's recommendations. In general, boards have a balanced composition with directors belonging to the categories recommended by Code. On average, the board of directors is made up of 9,8 directors, of which: 2,7 executive, 3,1 non-executive non-independent; 4 non-executive independent directors. The size of the BoD varies according to company's size and sector.



Source: Assonime-Emittenti Titoli, *Corporate Governance in Italy: compliance, remunerations and quality of the comply-or-explain*, December 2014

Having regard to the number of independent directors deemed adequate, *criterion 3.C.3* recommends issuers listed on the FTSE Mib Index that at least one third of their BoDs shall be made up of independent directors (rounded down), specifying that, in any company, independent directors shall be not less than two. Last corporate governance reports disclosed an almost complete alignment. At the end of 2013, in almost all companies listed on the FTSE Mib Index, the composition of the board (BoD or Supervisory Board) was already in line with the recommendation of at least one third of independent directors<sup>28</sup>; a high number of companies was already in line with Code's recommendations of having, at least, two independent directors.<sup>29</sup> This trend points out a mature approach of Italian issuers, clearly aware of the importance of having a balanced presence of independent directors within the body which is entrusted with the strategic planning of the company.



Source: Assonime-Emittenti Titoli, *Corporate Governance in Italy: compliance, remunerations and quality of the comply-or-explain*, December 2014

<sup>28</sup> 233 companies, i.e. 92% of the total (see Assonime-Emittenti Titoli, p. 48). The temporary regime set forth by main principle IX of the Corporate Governance Code set that the recommendation, which addresses companies listed on the FTSE Mib Index, applies starting from the first renewal of the Board of Directors taking place after the end of the fiscal year beginning in 2012; so that, this temporary regime still applies to issuers whose boards are subjected to renewal in 2015.

<sup>29</sup> 209 companies, i.e. 91% of the total, as in 2012 (see Assonime-Emittenti Titoli, p. 50).

In relation to the definition of independence, *principle* 3.P.1 defines as independent directors those who do not maintain, directly, indirectly or on behalf of third parties, nor have recently maintained any business relationships with the issuer or persons linked to the issuer, of such a significance as to influence their autonomous judgement. In the following *criterion* 3.C.1, the Code sets out a non exhaustive series of cases in which directors' independence may be jeopardised. The definition set forth by the Corporate Governance Code comes up beside the legislative one, defined by Art. 147-ter, paragraph 4, of the CLF.

The analysis of corporate governance reports shows that, out of a total of 1.106 independent directors, 987 are qualified as independent both by CG Code and law; 113 non executive directors are qualified as independent only "by law" (this is relatively more frequent for companies with the two-tier corporate governance model, where all members of the supervisory board should satisfy the legal independence requirement), while only 24 directors are qualified as independent only "by CG Code" (in 10 companies).<sup>30</sup>

### 2.1.2 Succession plans

The *criterion* 5.C.2 of the Corporate Governance Code, implementing the Consob recommendation published on February 2011<sup>31</sup>, recommends board of directors to evaluate whether to adopt a plan for the succession of executive directors and provide relative information in their corporate governance reports.

Looking at the corporate governance reports, 194 companies evaluated whether to adopt a succession plan for executive directors, while only in 20 cases they are also declaring the existence of such plans (were 12 in 2012 and 7 in 2011)<sup>32</sup>. In these cases, the preliminary stage of the procedure is usually carried out by the nomination committee<sup>33</sup>, pursuant to *criterion* 5.C.2.

Among companies listed on the FTSE Mib Index, most of succession plans are low structured, while in only few cases they are reflecting a mature approach to the problem of the succession, defining a clear process, bound to company's strategy and business plan, based on reliable and constantly updated set of information.<sup>34</sup>

**The Committee suggests companies to evaluate the opportunity of adopting specific procedures for the succession of executive directors. In particular, the Committee believes that these procedures shall clearly define their scope, instruments and timing, providing both for an active engagement of the board of directors and for a clear allocation of tasks and duties, also with regard to the preliminary stage of the procedure.**

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<sup>30</sup> In 2013 were 28 directors independent only "by Code" in 12 companies (see Assonime-Emittenti Titoli, p. 50).

<sup>31</sup> Consob Communication no. DEM/11012984, February 24<sup>th</sup>, 2011.

<sup>32</sup> Out of 20 companies providing information about their succession plan, 4 are financial firms, 11 are industrial ones and 5 belong to the service sector (see Consob); in 9 cases are companies belonging to the FTSE Mib Index (see Assonime-Emittenti Titoli, p. 42). Notice that among FTSE Mib companies, only 5 issuers (15% of the sample) declare the adoption of a plan for the succession of the managing director, while only the 6% of FTSE Mib companies declare that the adoption of such plans is under consideration (see TEH-Ambrosetti, p. 63).

<sup>33</sup> See Assonime-Emittenti Titoli, p. 42.

<sup>34</sup> See Mercer, p. 3.

### 2.1.3 Board of directors: competences, professional skills and board diversity

Beside the legal obligation of directors to act with the due diligence required by the nature of the office and their specific skills, the Corporate Governance Code recommends, in its *criterion 2.C.2*, that directors shall be aware of the duties and responsibilities related to their position.

In order to enhance the level of expertise and professional competence of board members (both of administrative and control boards), *criterion 2.C.2* requires to the Chairman of the board to ensure that directors and statutory auditors shall attend, not only upon their election, but also during their mandate, to specific initiatives that provide them with an adequate knowledge of the business sector of the company, corporate dynamics and evolutions, as well as the relevant regulatory and self-regulatory framework.<sup>35</sup> **In order to comply with the Code, the Chairman of the BoD shall strive to ensure directors and statutory auditors to attend induction sessions. As to their content, the Committee considers that specific sessions, eventually extended to company's managers, concern internal control and risk management issues. Corporate governance reports shall provide information about type and organisation of sessions that have been effectively attended.**

Moreover, *criterion 1.C.1*, let. h) recommends to the board of directors to take into account the outcome of the board evaluation and consequently report to shareholders its guidance on the professional profiles deemed appropriate for the composition of the board.<sup>36</sup> **Underlining the importance of an adequate level of professional skills and competences for directors and management, the Committee calls upon board of directors, both in widely and closely held firms, to provide their guidance according to *criterion 1.C.1*, let. h), taking into consideration directors' professional and managerial skills.**

Another feature which deserves a special attention concerns the gender diversity in administrative and control bodies. Following the entry into force of law no. 120, July 12, 2011<sup>37</sup>, there has been a progressive increase in the number of women in administrative and control bodies of Italian listed companies. Considering that the law entered into force only for companies whose boards were subject to renewal after August 12, 2012 and the usual three-years long directors' mandate, the law will find a staggered application.

For the time being, the vast majority of listed companies has a female representation in their boards; the number of women on boards is constantly growing up, also in comparison to last year.<sup>38</sup>

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<sup>35</sup> In particular, induction sessions may be organised directly within the company or by third parties; on this regard, some issuers provide information about the effective attendance of its board members to the *Induction Session* held by Assonime and Assogestioni. Issuers may also decide to combine activities organised by the company itself with those held by third parties.

<sup>36</sup> Among FTSE Mib companies, the professional competence of directors is generally related to company's sector (42,9%), strategy (28,6%), finance (14,3%), marketing, legal and public relations (respectively 14,3% each; see TEH-Ambrosetti, p. 119).

<sup>37</sup> Law no. 120/2011 states that in corporate bodies of Italian listed companies the "less-represented" gender should obtain at least 1/5 (rounded up) of the board seats in the first mandate and at least 1/3 in the following two mandates.

<sup>38</sup> After the 2014 AGM season, the presence of women on boards of directors has reached a percentage of 22% of the total number of directors (in increase comparing to the 17,8% of 2013, see Consob). Among FTSE Mib firms, the percentage of women is higher than in 2012 (17, 2% on average vs. 11% of 2012; see TEH-Ambrosetti, p. 53; in particular, 4 FTSE Mib companies who were devoid of female directors in 2013, are now (after the board renewal occurred in 2014) in line with the law requirements, while one company will provide for in 2015.

## Female representation on corporate boards of Italian listed companies by market index

(end of the year; for 2014, end of June)

	female directorship <sup>1</sup>		diverse-board companies <sup>2</sup>	
	no.	weight on the total number of directorship	no.	weight on total number of companies
2008	170	5.9	126	43.8
2009	173	6.3	129	46.4
2010	182	6.8	133	49.6
2011	193	7.4	135	51.7
2012	288	11.6	169	66.8
2013	421	17.8	202	83.5
2014	520	22.2	220	90.5

Source: Consob. Data on corporate boards of Italian listed companies with ordinary shares listed on Borsa Italiana spa – Mta Stock Exchange. Companies under liquidation at the reference date are excluded. 1 Figures refer to the board seats held by women. 2 Diverse-board companies are firms where at least one female director sits on the board.

In general, women are well represented in companies with a high market capitalisation, especially in the financial sector, while their presence is lower in the industrial one.<sup>39</sup>

**The Committee appreciates the outcome of last board renewals, in particular with regard to the gender balance, also as a result of the application of law no. 122/2011; the Committee wishes that also the diversity concerning professional and managerial skills, including those related to international experiences, increases with the forthcoming board renewals.**

### 2.1.4 Board efficiency

**The Committee underlines the essential role of the BoD in the safeguard of high standards of legality in the governance of the company. The Committee wishes that, in particularly difficult circumstances, the BoD will meet promptly in order to obtain information which is necessary to ensure a fair disclosure to the market, verify the effective functioning of the system of internal controls and adopt any suitable measure.**<sup>40</sup>

In its *criterion* 1.C.5, the Corporate Governance Code recommends to the Chairman of the BoD to ensure that the documentation related to the board meeting is made available (to directors and statutory auditors) in a timely manner and to provide, in the corporate governance report, information about the promptness and completeness of the pre-meeting information. In particular, according to the Code, issuers shall provide, in their corporate governance report, detailed

<sup>39</sup> The presence of women on boards of financial companies is 2,8 on average vs. 2,2 on average in the industrial sector; average data vary also in relation to company's index: 3,1 for FTSE Mib; 2,8 for Mid Cap and 2,1 for other companies, including those belonging to the Star segment. The average weight of women on boards is higher in the financial sector (23,2%) than in the industrial one (20,6%; see Consob).

<sup>40</sup> Beside procedural guidelines and relative sanctions, companies should adopt appropriate mechanisms in order to promote virtuous behaviours and to contribute to an effective implementation of the compliance program. For this purpose, virtuous behaviours and contributions to the application of the program should be positively considered during the recurring evaluation of managers and employees for eventual promotions and/or wage increases. See The European House – Ambrosetti, *Guida ai programmi di Compliance anti-corrruzione per le imprese italiane*, pp. 13-14.

information about the prior notice usually deemed adequate, specifying whether such deadline has been usually observed.

**The Committee, considering positively the high percentage of companies that are giving disclosure about the pre-meeting information<sup>41</sup>, observes that only a part of those companies (i.e. 60% of those disclosing on this point) has exactly specified the prior notice usually deemed adequate.** The information is frequently disclosed among larger companies (i.e. 74% of FTSE Mib) and in the financial sector (81%; up to 87% in banks). The prior notice deemed adequate with regard to single items on the agenda varies from 2,8 and 3,5, but only in less than half of cases companies disclose explicitly that the deadline has been effectively met. On this point, the **Committee underlines the importance of both the disclosure that the company is required to give *ex ante* and the information that has to be given *ex post*, about the effective adequacy of the prior notice and the compliance with the deadline which was previously identified as adequate.**

**When, in specific cases, it has not been possible to provide the pre-meeting information with adequate prior notice, the Committee calls upon companies to provide adequate and punctual explanations, pointing out activities that have been put in place to make up for missing the previously established deadline.**

With regard to *criterion* 1.C.6 of the Code which envisages the possibility for the Chairman of the BoD to require managing directors, also upon request of one or more directors, the attendance of managers to board meetings, the Committee observes that 157 companies declared that this attendance is envisaged.<sup>42</sup> **As to the attendance of managers to board meetings, the Committee encourages companies to disclose not only the forecast of the attendance but also information about the attendance that has been effectively put in place.**

#### 2.1.5 Board evaluation

The Corporate Governance Code recommends to perform, at least annually, an evaluation of size, composition and performance of the board of directors as well as of board committees, eventually defining some guidance on the professional profiles deemed appropriate for their composition. The empirical evidence shows that, pursuant to *criterion* 1.C.1, let. g), the board evaluation is usually focused on performance, composition and size of the board of directors and, very frequently, also performance, composition and size of its committees.

In particular, the 79% of companies disclosed to have carried out the self-evaluation of the board. Information is provided more frequently by larger companies (92% of FTSE Mib) and in the financial sector (96%; up to 100% for insurance companies). Companies are often adopting questionnaires; individual interviews are less frequent.<sup>43</sup> The evaluation include almost always also board committees.<sup>44</sup> Among companies belonging to the FTSE Mib Index which have carried out

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<sup>41</sup> 212 companies, i.e. 92% of the total; slightly up in comparison to 2013 (90%) and 2012, when the information has been given, on a voluntary basis, by the 67% of companies (see Assonime-Emittenti Titoli, p. 38).

<sup>42</sup> I.e. 69% of the total, up to 82% in banks (see Assonime-Emittenti Titoli, cit., p. 39).

<sup>43</sup> In general, 88 companies declared to have adopted questionnaires and 18 individual interviews (eventually in addition to the questionnaire; see Assonime-Emittenti Titoli, p. 40) In particular, among FTSE Mib companies, 14 adopted questionnaires, 2 only interviews and 9 both questionnaires and interviews. 9 FTSE Mib declare to have carried out the board evaluation but do not provide any information about the instruments used (see Crisci & Partners, p. 18).

<sup>44</sup> See Assonime-Emittenti Titoli, p. 41.



the board evaluation, 82% provided information on the board evaluation procedure, while the other 18% did not provide any information.<sup>45</sup>

## 2.2 Quality of the “comply or explain”

As envisaged by the Committee in its 2013 Report, the monographic part of this year is focused on the quality of information provided by issuers in their corporate governance reports. The importance of the quality of information concerning corporate governance issues has been stressed not only by the Committee in its 2013 Report<sup>46</sup> but also by the European Commission in its Recommendation no. 208/2014, about quality and concrete application of the comply or explain principle.

European recommendations have been promptly implemented by the Corporate Governance Committee. In fact, during its meeting held in July 14, 2014, the Committee decided to redefine some Code’s recommendations, with particular regard to the comply or explain principle, introducing some changes to the *main principle IV* of the Code.<sup>47</sup>

**From a general perspective, the Committee calls upon companies to ensure the quality of information disclosed in the corporate governance report, providing accurate, concise, exhaustive and easily understandable information on the effective compliance with each single recommendation contained in Code’s *principles* and *criteria*. In particular, also considering the EU Recommendation no. 208/2014, the Committee recommends issuers, who are already adopting the Code, to ensure a high level of disclosure both in case of compliance and in case of non compliance with one or more Code’s recommendations (providing adequate information pursuant to *main principle IV*).**

### 2.2.1 Adoption of the Code

As reported in par. 2.1, almost all companies declared the adoption of the Corporate Governance Code, while only 17 issuers do not to adhere to the Code, declaring explicitly their decision and providing, in any case, information on their corporate governance model pursuant to art. 123-*bis* CLF.

The Committee observes that, in case of non adoption, issuers are frequently providing an explanation or, at least, the declaration that their corporate governance model is basically in line with Code’s provisions, with national best practices or, in case of companies belonging to supervised sectors, with recommendations issued by the surveillance authority.<sup>48</sup>

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<sup>45</sup> In particular, 18 companies have declared their reliance on an external consultant, 5 on the nomination committee, 3 on the LID and 1 on the Chairman of the BoD. 7 companies did not provide any information on that (see Crisci & Partners, pp. 10, 11 and 12, with an interesting comparison between Italy, France and United Kingdom).

<sup>46</sup> Moreover, the Committee has implemented some recommendations contained in its 2013 Report: the 2014 Code, patterned after the principle of flexibility, allows issuers explicitly (in its *main principle IV*) not to comply, in whole or in part, with some of its recommendations, as long as each non compliance is adequately explained. In addition, the Code underlines that the decision not to comply with some Code’s recommendations does not involve a negative evaluation *a priori*, being aware of the fact that this may be contingent on several factors. See Corporate Governance Committee, Annual Report – 1<sup>st</sup> Report on the compliance with the Italian Corporate Governance Code, pp. 8-9.

<sup>47</sup> For a brief comment on the last Code’s revision with particular regard to the comply or explain principle, see above, par. 1.2.

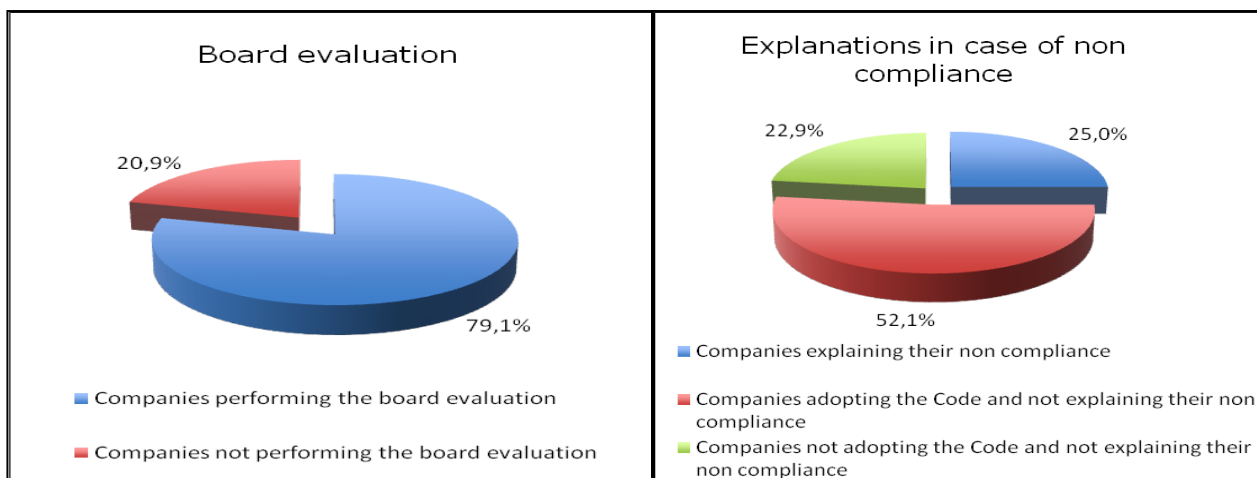
<sup>48</sup> This happens in 12 cases, i.e. 71% of the total (see Assonime-Emittenti Titoli, pp. 144-145).

The decision not to adopt the Code is generally explained making reference to some company's features (e.g. size, structure) and/or the ownership structure; sometimes companies declare that their governance model is commensurate to those characteristics.

### 2.2.2 Board evaluation

As already seen, 182 issuers (i.e. 79% of the total) declare to have carried out the self-evaluation of the board of directors. Among other 48 issuers, 11 are not adopting the Code, while others are disclosing that they did not put in place such activity or are not providing any information on this point. Among other 37 companies, 12 explain their non-compliance, while in other 25 cases it is not clear whether the self-evaluation has been carried out and there is just a lack of information in the corporate governance report or the board evaluation has not been done at all.<sup>49</sup> The two hypotheses may fall into two different types of non-compliance: on one side, if the board evaluation has been effectively carried out but the company did not provide information in the report, the case should be considered as a non compliance with *criterion 1.C.1, lett. i)*, while, on the other hand, where the self-assessment has not been carried out at all, this would constitute a case of non-compliance with *criterion 1.C.1, lett. g)*.

**The Committee reminds issuers to ensure an adequate explanation in case of non-compliance, providing information about the choices undertaken by the issuer and, where relevant, about any alternative governance solution eventually adopted by the issuer, pursuant to Code's main principles.**



Source: Assonime-Emittenti Titoli, *Corporate Governance in Italy: compliance, remunerations and quality of the comply-or-explain*, December 2014

For what concerns the decision not to carry out the board evaluation, the explanations provided by companies may fall into few categories: frequently issuers make reference to some transitional reasons, as IPOs, the recent board renewal or other specific circumstances (e.g. spin-off, changes to the governance model of the company or due other specific and urgent circumstances); in 6 (out of 12) cases, companies declare their intention to carry out the board evaluation in 2014. In 3 case companies provide an explanation making reference to company's size (small) and/or its structural features (small size of the board; no changes regarding directors' characteristics; "well-founded experience of directors"). In one case, in addition to the small size of the board, the company provides as explanation also "the practice of having a continuous flow of information (...) about

<sup>49</sup> See Assonime-Emittenti Titoli, pp. 146-147.

company's activities". In two cases (one case is concerning a company listed on the FTSE Mib), companies refer their decision not to carry out the board evaluation to its' - supposed - limited convenience.

### 2.2.3 Lead Independent Director

International best practices recommend issuers to avoid the concentration of offices in one single figure; taking into account that the existence of such situations may be due to organisational reasons, the Code recommends issuers to appoint a LID if: i) the Chairman is also the CEO of the company; ii) the Chairman is also the controlling shareholder of the company; iii) the majority of independent directors requested the appointment of such figure (this recommendations applies only to FTSE Mib companies).

A LID has been appointed in 101 Italian listed companies: in 69 cases the appointment is related to situations in which the appointment of a LID is recommended by Code<sup>50</sup>; in 32 cases this figure has been appointed on a voluntary bases. The appointment of a LID seems to be stable over time.

Among companies having a situation in which the appointment of a LID is recommended, 24 of them do not have a LID. In 7 cases companies do not have independent directors (referring to Code's definition of independence), so that the appointment of a LID would be objectively impossible. In other 7 cases, only 11 companies (i.e. 65%) provide an explanation for such decision.<sup>51</sup>

**Confirming its appreciation for the implementation of high corporate governance standards, even without a specific Code's provision, the Committee, as well as in 2013, underlines the importance of the LID who plays a guarantee role in the governance of the company, not only for balance reasons within the board, but also due to the attention paid to this balance by institutional investors.**

### 2.2.4 Meetings of independent directors

The Code recommends that meetings of only independent directors shall be convened at least once a year. Out of a total of 207 companies having at least two independent directors, 126 declare explicitly that independent directors have met during the year of reference, while in other 81 firms, 65 declare that those meeting have not been held and 16 do not provide any information on that. These meetings are more frequent in companies that have appointed a LID. **The Committee ascertains the positive link between the appointment of a LID and meetings of independent directors, recommended by *criterion 3.C.6* of the CG Code.**

For what concerns the explanation provided by companies in case of non compliance with the former Code's recommendation, an explanation has been given in only 32 cases. The explanation is

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<sup>50</sup> In most of cases (83%), the LID has been appointed where conditions i) or ii) are met (see text above; see Assonime-Emittenti Titoli, p. 59).

<sup>51</sup> Among information provided in corporate governance reports, the appointment of a LID has been frequently deemed not necessary, making reference to company's size, BoD's composition or number, either low or high ("sufficient"), of non-executive and/or independent directors. In some cases companies make reference to the expiry of the mandate of the board and the consequent opportunity to address the issue at the appointment of the new board; in some other cases the explanation is related to the functioning of the board. Other companies make reference to the structure of proxies or to the fact that all the operational decisions, even if included in the chairman's powers, are taken collectively (by the BoD) and therefore also with the contribution of independent directors.

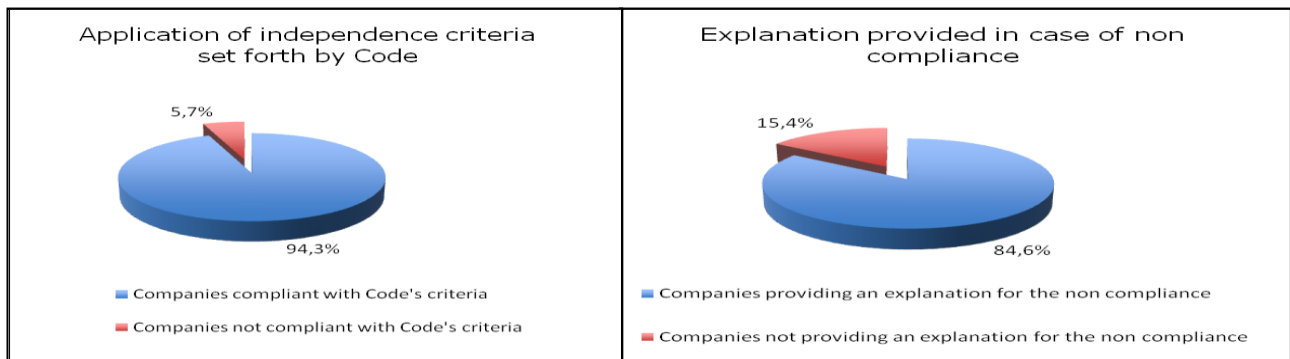
more frequent among larger companies and in the financial sector.<sup>52</sup> Looking at the information provided in companies' corporate governance reports, the decision of the company is frequently linked to a supposed overabundance or superfluity of such meetings. In particular, where meetings of independent directors have been evaluated as useless, in half of cases the motivation provided by the company is related to the circumstance that all independent directors are also members of the internal control and risk committee (or eventually of the remuneration committee), so that the attendance to such committees shall be sufficient.<sup>53</sup>

**The Committee reminds issuers that independent directors shall meet, at least annually, without other directors; such meetings are to be considered as additional to those carried out by single board committees.**

### 2.2.5 The application of the independence criteria

Another issue that might be of interest in relation to the comply or explain principle are independence criteria set forth by Code: the set of parameters provided by the Code should be considered as merely illustrative and not exhaustive. As specified in its comment, the company may introduce some other independence criteria, however providing adequate information to the market.

On this point, the Committee observes that the non-application of one or more criteria set forth by Code for the evaluation of independence is very rare.<sup>54</sup> In most of cases (11), the disapplication concerned the *criterion* concerning the so-called “nine years tenure” (3.C.1, let. e). The disapplication of an independence criterion is almost always explained (11 out of 13 cases, i.e. 85% of the total); the explanations are generally related to the opportunity to endorse competences acquired over time or to the opportunity not to apply the criterion in a mechanic way.



Source: Assonime-Emittenti Titoli, *Corporate Governance in Italy: compliance, remunerations and quality of the comply-or-explain*, December 2014

Besides cases of non compliance, the Committee observes a well-structured application of some independence criteria set forth by Code. In such cases there is no disapplication of the criterion, inasmuch companies evaluated, in each specific case, the independence of each director, pursuant to

<sup>52</sup> 67% of FTSE Mib vs. 42% of Small Cap companies. In the financial sector, information has been given in the 80% of cases vs. 47% among non financial firms (see Assonime-Emittenti Titoli, pp. 150-151).

<sup>53</sup> See Assonime-Emittenti Titoli, pp. 150-151, which provides some other companies' explanations, as for example, the dialogue within the BoD and the allocation of powers and competences; the lack of significant operations, the completeness of information received by executive directors, the significant role played by independent directors in board's and committees' decisions.

<sup>54</sup> 13 companies declared their intention not to apply one or more independence criteria set forth by Code (i.e. 5% of the total; see Assonime-Emittenti Titoli, Tab. 49).

the so-called principle of “having regard more to the substance than to the form” (set forth by *criterion 3.C.1* of the Code).<sup>55</sup>

**The Committee evaluates positively that only in few cases companies did not comply with one or more independence criteria set forth by the Code and wishes that in an increasing number of cases the evaluation of directors’ independence will be carried out “having regard more to the substance than to the form” (as set forth by the Code), providing adequate information to the market.**

#### 2.2.6 Board committees

The Corporate Governance Code recommends issuers to establish, inside the board of directors, committees with preliminary and consultative functions, especially in some critical areas (i.e. remunerations, related party transactions, internal control, board renewals etc.). In particular, the Code recommends issuers to establish a nomination committee (*principle 5.P.1*), a remuneration committee (*principle 6.P.3*) and an internal control and risk management committee (*principle 7.P.3*)

Having regard to the composition of board committees, the Code recommends that the nomination committee shall be composed by a majority of independent directors, while the remuneration and the control and risk committee shall be composed by all independent or, alternatively, by all non executive, in majority independent directors, with an independent chairman.

For what concerns in general the information provided about board committees, *criterion 4.C.1*, let. g) recommends issuers, that are already adopting the Code, to provide in their corporate governance report an adequate information in relation to the establishment and the composition of board committees, on their specific functions, effective activity during the year of reference, specifying number and length of their meetings as well as the attendance of each member.

#### *Nomination committee*

The nomination committee has been established by 113 companies and it is frequently unified with the remuneration committee. Out of 117 companies that did not establish a nomination committee, the explanation is very frequent: i.e. in 102 companies (87%). Moreover, out of the remaining 15 companies that did not provide any explanation for the non compliance, 4 are not adopting the Code.

For what concerns explanations provided by companies that did not establish a nomination committee, corporate governance report make generally reference to law provisions and, in particular, to the “slate voting system”. Sometimes, companies make also reference to the active

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<sup>55</sup> In particular, 33 companies declare explicitly that the application of one or more independence criteria has been put in place “having regard more to the substance than to the form”, eventually in relation to each director. Companies are frequently providing also some other additional information (beside the reference to the above mentioned principle; this happens in 85% of cases; always in the financial sector). The non compliance is frequently referred to criterion 3.C.1, let. e) and generally explained in relation to the opportunity to avoid the mechanic application of the Code or making reference to ethical qualities of the single director, to the constant commitment, professionalism and proved independence of the director, to the constant encouragement and support to the dialogue within the board or to specific experiences (in academic, political or governance fields) which demonstrate the independent judgment of each director. Sometimes reports make reference to the circumstance that the compliance with all other independence criteria set by Code may be understood as a prove of the effective independence of the director concerned (see Assonime-Emittenti Titoli, pp. 152-153).

role performed usually by a controlling shareholder, to the concentrated ownership structure or to the fact that in the past there were no problems concerning board renewals. Some companies refer also to the possibility not to establish the committee, under specific reasons and pursuant to *criterion* 4.C.2 of the Code, or declare that the BoD is entrusted with the same functions of the committee.

The Committee observes that, in 35 companies which established an autonomous nomination committee (i.e. not unified with other committees), its composition is always compliant with Code's recommendations (majority of independent directors).

**Reaffirming the opportunity to set up a nomination committee, the Corporate Governance Committee highlights the importance of the engagement of the nomination committee in the event that it is the board itself, as far as it is consistent with law provisions, to submit a slate for the renewal of the BoD.**

**Having regard to the procedure for the appointment of the board of directors, the Committee observes that, even if rarely used in Italian listed companies and not expressly recommended by the Corporate Governance Code, the staggered board may find application also in Italian listed companies, provided that its application is properly fine-tuned with the slate voting system.**

#### *Remuneration committee*

202 companies established a remuneration committee. Out of 28 companies that did not establish it, 20 (i.e. 71%) provided explanations on that choice, while the other 8 (whereof five are not adopting the Code), did not provide any explanation. Among 20 cases of disclosure, the Committee observes a general reference to firm's size and the opportunity to simplify the structure of the company;<sup>56</sup> few companies explained their non compliance due to the sufficiency of the AGM competences, pursuant to art. 2389 of the Italian civil code; at a group level, the non compliance is explained in relation to the attribution of its (of the remuneration committee) powers to the remuneration committee of the controlling firm. Some companies have entrusted the BoD with all the specific functions of the remuneration committee (pursuant to *criterion* 4.C.2 of the Code); some other explained their non compliance making reference to role, number and/or standing of independent directors.

For what concerns its composition, the remuneration committee, where established, is generally compliant with Code recommendations.<sup>57</sup>

The disclosure of 39 companies that are not compliant with the Code is rare: explanations are available only in 8 cases, i.e. 21% of the total.<sup>58</sup>

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<sup>56</sup> In two cases of motivated non compliance, companies declare expressly their decision to abolish the already existent remuneration committee (see Assonime-Emittenti Titoli, p. 155).

<sup>57</sup> This happens in 163 cases, i.e. 81% of the total. In 39 cases the composition of the remuneration committee is not in line with the Code's recommendations. However, 3 cases should not be considered as "non compliance cases", inasmuch these companies are still under the temporary regime set forth by Code (i.e. the first renewal of the BoD, after the entry into force of the 2011 Code, has not yet occurred; see Assonime-Emittenti Titoli, p. 156).

<sup>58</sup> Out of these 8 cases, for one company it is still applicable the temporary regime set forth by Code. In other 7 cases, explanations are different: in two companies the presence of an executive director is justified by the opportunity to "provide the necessary information concerning the proposals to the BoD" or the opportunity to ensure the compatibility

### *Control and risk committee*

The majority of Italian listed companies established a control and risk committee: 210 companies, i.e. 91% of the total. Among 20 companies that did not establish such committee, the explanation of doing so is frequent: in particular, 16 companies, i.e. 80% of the total, provided a clear explanation of their decision not to comply with the Code's recommendation; out of the 4 companies that are providing any information on that, 2 are not adopting the Code.

Also in this case the decision not to comply with the Code is frequently explained making reference to company's size, the opportunity to simplify the governance structure of the company and/or the decision to entrust the board of statutory auditors with the functions of the committee; in few cases companies make reference to a positive general situation of the company or to the supposed efficiency of the system of internal control.<sup>59</sup>

For what concerns its composition, the majority of companies with a control and risk committee (182) are also compliant with the recommendation set forth by *principle* 7.P.4, regarding its composition (i.e. all independent or, alternatively, all non executive, in majority independent directors, with an independent chairman). In other 28 cases, the composition of the control and risk committee is not compliant with the Code<sup>60</sup> and explanations are rarely disclosed.<sup>61</sup>

**Looking at the empirical results, the Committee reiterates the importance of the disclosure also with regard to the compliance/non compliance with Code's recommendations concerning the composition of board committees (with particular regard to the qualification of independence and the identification of the Chairman of the committee), calling upon issuers to disclose clear, exhaustive and at the same time concise information, explaining adequately the choice not to comply with one or more Code's recommendations.**

#### 2.2.7 Remuneration policy

Art. 6 of the Code deals with the remuneration issue, providing some recommendations, as for example, the definition of a variable component of the remuneration of executive directors (*principle* 6.P.2), the provision of a cap to the variable component of remuneration packages (*criterion* 6.C.1, let. b) as well as the recommendation concerning indemnities eventually set out by the issuer in case of early termination or non renewal of directors (*criterion* 6.C.1, let. f)<sup>62</sup>.

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of the committee with some organisational changes occurred within the company (and the related development plans; see Assonime-Emittenti Titoli, p. 157).

<sup>59</sup> See Assonime-Emittenti Titoli, p. 158.

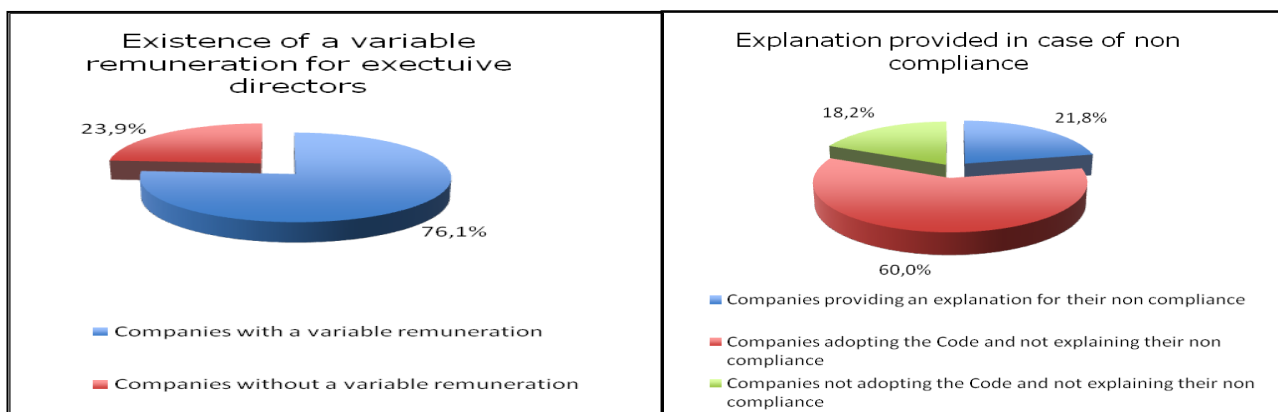
<sup>60</sup> Either there are no complete information about the composition (for example, no information about the election of the committee's chairman) or the chairman of the committee is not qualified as independent (see Assonime-Emittenti Titoli, p. 158).

<sup>61</sup> An explanation is available only in one case, where the internal control and risk committee is made up of non executive and half of them are independent (and the chairman is independent): in such case, the choice of the company is related to its intention to endorse the current composition of the board and, consequently, the efficiency and the effectiveness of controls.

<sup>62</sup> The text above makes reference to the previous edition of the Code (2011), considering that the analysis of Assonime-Emittenti Titoli covers corporate governance reports on 2013. It should be noticed that, due to the recent changes to the Code (July 2014), the let. f) of *criterion* 6.C.1 has been transposed to let. g), as a consequence of the introduction of a new let. f) which recommends the introduction of contractual arrangements that shall permit issuers to reclaim, under certain conditions, the variable components of the remuneration awarded or to hold deferred payments.

In particular, the current let. f) is slightly different if compared to the previous wording of the 2011, inasmuch it does no longer refer to "indemnities (...) in case of early termination" but rather to "indemnities (...) in case of termination".

Looking at data provided by companies, 175 companies (i.e. 75% of the total) declare the existence of a variable component, linked to business performances. Among issuers that are not providing such information, 10 are not adopting the Code, while in 12 cases (i.e. 22% of the total) an explanation is available.



Source: Assonime-Emittenti Titoli, *Corporate Governance in Italy: compliance, remunerations and quality of the comply-or-explain*, December 2014

Looking at the explanations provided by companies, there are some frequent cases, such as: i) the decision to maintain a discretionary power for the assignment of a variable component; ii) the reference to the need of moderation in this field as well as the need to preserve the creation of economic and social value in the long term; iii) in some cases there is the opinion that the absence of a variable component is more in line with the principle of the sound and prudent management of the company; iv) the circumstance that executive directors are also major shareholders of the company and for this reason do not need a specific incentive plan; v) other contingent reasons, generally related to difficult economical and financial situations.

For what concerns the recommendation set forth in *criterion* 6.C.1, let. b), companies disclosed almost always the existence of a cap to the variable component. Only in 17 cases (i.e. 10% of the total) it is not possible to identify a cap to the variable component (including companies whose policy grants with the “possibility” to identify a cap (in the future)). **The Committee observes a good quality of disclosure about the existence of a variable component in the remuneration structure of executive directors as well as regarding the prior definition of a ceiling to the variable component itself.**



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