CORPORATE GOVERNANCE IN ITALY:
COMPLIANCE, REMUNERATIONS AND COMPLY-OR-EXPLAIN
YEAR 2016

Abstract Note e Studi n. 18/2016
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1. Global overview

Since the first year of application of the Italian Corporate Governance Code (hereinafter “Code”), Assonime analyses the Corporate Governance Reports issued by the board of directors of listed companies in order to provide information about their corporate governance system. According to the Code, such Reports provide an accurate disclosure on the application of individual Code recommendations.

The 2016 analysis covers 228 Italian companies, listed on the MTA Italian Stock Exchange Market on December 31st, 2015, whose Reports were available as of July 15th, 2015: the survey covers substantially the whole MTA stock list.

The Reports refer to the application of Code recommendations, as amended in July 2015 by the Corporate Governance Committee, taking in consideration its temporary regime.

The study provides also an in-depth analysis of directors’ and statutory auditors’ remuneration, based on information collected from companies’ Remuneration Reports. This part is focused on two main topics:

a) companies’ remuneration policies and the governance of the procedures for their adoption;

b) detailed information about the remuneration paid to individual directors and statutory auditors in 2015.

Finally, the study deals with the application of the comply-or-explain principle, focusing on specific Code recommendations where compliance or non-compliance cases may be assessed in an

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1 The report is the result of the analysis performed by Massimo Belcredi (Professor of Corporate Finance, Università Cattolica del S. Cuore) and Stefano Bozzi (Associate Professor of Corporate Finance, Università Cattolica del S. Cuore) together with Mateja Milič (Assonime) and Marcello Bianchi (Assonime). Giacomo Davide Colombo, Valentina Milanese and Debora Motta provided a valuable assistance in the data collection.

2 See CG Code, Guiding Principle IV.

3 The complete edition of the analysis is available, together with the previous ones, at www.assonime.it, in the Corporate Governance Area.

4 The few missing Reports are due to delisting, mergers and bankruptcy procedures. We do not cover 45 companies subject to foreign law (almost all of them are listed on the Italian Stock Exchange without the consent of the issuer) and companies listed on the AIM Italia and MAC markets, which are not required to disclose information about their compliance with the CG Code. Further information on the composition of the sample are reported in the Appendix of the complete study (see ft. 3).

5 The last edition of the Code (July 2015) is available on the Corporate Governance Committee’s website: http://www.borsaitaliana.it/comitato-corporate-governance/codice/2015engclean.en.pdf. Last amendments to the Code find application with different temporary regimes: in detail, to criterion 6.C.1, f) finds application by the beginning of the approval of the new remuneration policy, starting from January 1st, 2015. Moreover, the amendments introduced in July 2015 are not analysed by this study, inasmuch they might find application within the end of the fiscal year, started in 2016. With regard to the amendments approved with regard to Art. 8 of the Code, issuers are invited to implement such changes starting from the first renewal of the control body, taking place after the fiscal year beginning in 2015 (see CG Code, Guiding principles and Temporary Regime, IX).

6 Guiding Principle IV of the CG Code invites issuers to clearly state in their Corporate Governance Reports 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; (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-
Corporate Governance in Italy

objective way; in case of total or partial non-compliance, the study analyses the quality of explanations provided. An evaluation on the application of the comply-or-explain principle is provided together with the compliance rate with individual Code recommendations.

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The analysis shows that quantity and quality of information on the compliance with individual Code recommendations are often very good, reflecting companies’ progressive and constant improvement efforts.

Companies do provide suitable information on their corporate governance model, both in case of compliance and in that of total or partial non-compliance with Code recommendations. The application of most recommendations is substantially complete.

Non-compliance cases are usually explained in a proper manner and clearly shown to investors, whose can assess them and take their own decisions, both for trading and engagement purposes.

The increase of transparency, on one side, and the introduction of new Code recommendations, on the other side, highlighted new areas of possible improvement.

The compliance rate with certain Code recommendations is not homogeneous: for some recommendations, we observed still a high level of non-compliance and a low level of disclosure in providing information and explanations of company choices.

Areas of further improvement regarding the role of the board, eventually with the support of the nomination committee, in the definition of its ideal composition, including succession plans, and some specific aspects of the remuneration policy, having particular regard to the definition of variable remuneration and termination payments.

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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.
2. Compliance with the CG Code and quality of governance disclosure

Adoption of the CG Code

Almost all companies decided to formally adopt the last edition of the Code: i.e. 208 companies that represent the 92% of the aggregate.

Among the 19 companies not adopting the last edition of the Code, 4 declare not to adopt the Code, while 2 of them adopted a previous edition of the Code; in the other 13 cases the information is not entirely clear. A significant number of companies that have not adopted the Code (12 out of 19) provided an explanation for their decision, although this is not required neither by law nor by the Code. The decision of not adopting the Code is usually linked to company’s features (i.e. size and structure) and/or its ownership structure.

The information provided in Corporate Governance Reports reveal companies’ mature approach to compliance with Code recommendations. Indeed, on one side, the decision to comply or not to comply with Code recommendations might be based on a cost-benefit analysis of each individual case; on the other side, such recommendations represent best practices and not minimum legal standards.

This implies that a full compliance with the Code can be hardly expected and explains why some Code recommendations do not find a full application among listed companies; this is especially true for some criteria, where a “mechanical” application might be even in contrast with the spirit of the Code.

Board meetings

The average frequency of board meetings is about 10.6, up from 10.1 in the previous year. The most significant increase has been observed among larger companies (in FTSE Mib board meetings increased from 13.1 to 13.6). The average length of board meetings is about two hours and fifteen minutes, with a remarkable variation according to company’s size and sector. 5% of companies do not follow the Code recommendation to provide such information in their Report.

Although it is not explicitly recommended by (but only suggested in the comments of) the Code, 80% of companies provide information about the average length of board of statutory auditors’ meetings: this is slightly longer (about two hours and half) than that of board of directors.

The average attendance to board meetings is about 92%. 90% of directors attended at least three quarters of the meetings held during the year of reference. Also in this case, the analysis shows a progressive improvement over time (88% in 2015 and 86% in 2011). A high level of attendance has been observed also among statutory auditors.

The study observed few cases of significant absenteeism: 54 directors (out of 2,275) attended less than half of the meetings; on the contrary, such phenomenon is almost absent for statutory auditors (4 cases).
Extreme situations in terms of frequency and length of meetings (highly below or above the average) as well as cases of significant absenteeism may deserve attention in the board evaluation process.
Pre-meeting information

The 2011 Code recommends issuers to provide information on the promptness and completeness of the pre-meeting information.

*Ex ante* information on the flow of pre-meeting information is provided by almost all companies (data are constant over time). Nevertheless, almost one third of companies have not disclosed the prior notice deemed appropriate by the board, or did not provide information on the effective compliance with such prior notice, even though the disclosure of both information is recommended by the Code. In such cases, even if less frequent than in the past, it is not possible to check compliance with such Code recommendations.

Managers’ attendance

The Code recommends (art. 1.C.6.) that the board chair may require the attendance of managers at the board meetings, in order to provide appropriate additional information on the items of the agenda in relation to the specific area of their competence. According to the Code, companies are explicitly required to provide information about the effective managers’ attendance in their Corporate Governance Report.

The information about the possible managers’ attendance is very frequent; nevertheless, in 40% of cases issuers do not disclose, even though it is recommended by the Code, that such attendance has effectively taken place.

Board evaluation

80% of companies disclosed that a board evaluation has been carried out. The self-assessment is more frequent in larger and financial companies. The evaluation covers, almost always, also the composition and the functioning of board committees. In line with the Code, the results of the evaluation are rarely disclosed to the market and are, in such cases, they are quite concise.

In most companies, the board evaluation process is well structured; specific persons are entrusted with the board evaluation process (this happens in the 82% of cases): in one third of cases, companies attribute such tasks to an external consultant, often together with a board committee (recommended by the Code) and/or company’s internal structures.

The appointment of an external consultant is more frequent in the financial sector (74% of cases) and among larger firms (62% of cases); the identity of the consultant is disclosed almost always (in 39 cases). In such cases, even though disclosure is recommended by the Code, companies do not provide information about other services performed by the external consultant (or rather, that no additional services are performed).
Out of 33 companies adopting the Code and not conducting (or not providing information about) the board evaluation, only 13 provide an explanation for (not) doing so; in the other 20 cases, it is not clear if the self-assessment has been conducted and only the information is missing, or if the evaluation has not been conducted at all (in 5 cases Report discloses that the board or the nomination committee are entrusted with this task but no other information on the effective application of such activity is provided). Cases of low transparency are more frequent among smaller companies. When provided, the explanations disclosed are linked to temporary situations or to specific company’s features, such as size and board structure.

The Code recommends the board to express to shareholders, before the board renewal, its view on the professional and managerial skills deemed appropriate for its ideal composition, considering the outcome of the board evaluation. Only one third of companies that have renewed their board in 2016 have expressed such guidelines. Nevertheless, other 38 companies, that have conducted the board evaluation and whose board in not about to expire, report that such guidelines have been expressed, irrespective of board renewal.

The average number of other offices held is available for 90% of directors; the average number of other offices held by directors is decreasing over time (2.3 in 2015 vs. 3.3 in 2011).

Less than half of companies (106, i.e. 47% of the total, with a slight increase in the last years) expressed, as recommended by Code, board guidelines on the maximum number of offices that may be held by each director or statutory auditor in listed, financial or larger companies, and may be considered compatible with the effective performance of directors’ duties, taking into due consideration also directors’ attendance to board committees.

In general, the compliance with Code recommendations on board evaluation does not show significant improvements over time.
Succession planning

The Code recommends all issuers to “evaluate whether to adopt” a plan for the succession of executive directors and to disclose the results of such assessment. In fact, the existence of such plans is rare, even if in slight increase: only 29 companies (of which 14 are FTSE Mib) disclosed the existence of a succession plan; they were 20 in 2015. The increase is mainly due to the financial sector, where the percentage of succession plans is almost doubled within the last year, reaching the 60%.

The slight increase of companies with a succession plan does not correspond to an enhancement of the quality of information provided on such plans: in fact, only half of them discloses the existence of a specific mechanism for the prior replacement of directors, whether one third of them does not provide any information on the internal bodies that are entrusted with the application of such plans.
**Board composition**

The average number of board members varies significantly according to company size (from 8.4 in Small Caps to 12.7 in FTSE Mib companies) and sector (from 13.5 in financial to 9.3 in non-financial firms). The average size of boards in the financial sector has undergone a significant decrease (from 14.3 in 2015 and 14.7 in 2014), while it appears to be stable in the non-financial sector.

In general, at the end of the 2015, the boards of 206 companies (i.e. 91% of the total) were in line with Code recommendations on composition. The main reason of non-compliance is a shortage of independent directors. In such cases, the disclosure of the explanations is still rare (it is provided in 19% of the cases) and not always in line with Code transparency requirements. In more than 60% of the cases, non-compliance cases are clearly due to the non-adoption of the Code.

The average board is made up of 9.7 directors, of whom 2.6 are executives, 3 are non-executives non-independent and 4.1 are non-executive and independent. The average weight of such board members is equivalent between financial and non-financial firms, while smaller issuers do usually have a higher representation of executives and a lower number of independent directors. In the last years, we observed a slight but constant increase of the weight of independent directors to the detriment of non-executive non-independent directors.

Out of 600 executive directors, 259 (43% of the sample) are explicitly identified as Managing Directors (MDs). Moreover, 70 executive directors (including 56 MDs) hold also the charge of Director General (DG). The concentration of offices between MD and DG is not frequent (22% of MDs are in such position); this solution is more frequent among larger companies (16 MD-DG out of 56 belong to FTSE Mib companies and 18 to Mid Cap ones).

The appointment of a DG that is not a board member is becoming even less frequent: this solution has been observed in less than half of companies that have a DG (44 of 114, i.e. 39% of the sample, in decrease from the 45% in 2015, the 47% in 2014 and the 57% in 2013).
Average age of directors and statutory auditors

The average age of directors is about 58; there are not significant differences in relation to the directors’ role. The average age is higher in the financial sector (above 61, i.e. four years more, on average, than in the non-financial sector). The average age of statutory auditors is about 56 (57 in the financial sector). The average age of directors and statutory auditors is slightly decreasing over time.

Lead Independent Director

A Lead Independent Director has been appointed in 96 firms (i.e. 42% of the sample). The appointment of a LID is more frequent where it is recommended by the Code; this happens in three quarters of the cases (60 out of 81 companies). In the other 36 cases, such figure has been established on a voluntary basis (this solution is increasing over time). Reports do always provide the identification of the LID.

Companies being in one of the situations in which the Code recommends the appointment of a LID (Chair-CEO or Chair-controlling shareholder) are decreasing over time: 81 firms, i.e. 36% of the total (they were 90 in 2015, 93 in 2014 and 96 in 2013), most of them belonging to the financial sector. The frequency of such situations is in reverse proportion to company’s size (48% in Small Caps; 14% in FTSE Mib). The Chair-CEO situation is more frequent than the Chair-controlling shareholder one (62 vs. 38 cases). In 19 of such cases, companies declare both situations (Chair-CEO-controlling shareholder).

Companies with no Lead Independent Director that fall under the conditions under which the Code recommends his/her appointment, provide always an explanation for their non-compliance. The only exceptions are three companies where no independent directors sit on the board (and consequently a LID cannot be identified). The explanations for such non-compliance are usually linked to company’s size, board composition, number of non-executive/independent directors or the provision of delegated powers.
Meetings of independent directors

The Code recommends independent directors to meet, at least once a year, without the presence of other board members. Such meetings shall be dedicated to issues deemed of importance for the effective functioning of the board or the governance of the company.

118 companies (i.e. 58% of the aggregate) have disclosed that such meetings have taken place at least once during the year of reference.

This happens more frequently among larger firms (75% in FTSE Mib) and where a LID has been appointed (66% vs. 50% in companies with no LID). Only in half of non-compliance cases (up to 75% for FTSE Mib) companies provided an explanation, which is usually linked to the evaluation of independent directors that such meeting is not deemed necessary.

The compliance with Code recommendations on meetings of independent directors and the quality of explanations provided in cases of non-compliance do not envisage significant improvements over time. This issue might be evaluated also during the board evaluation process.
Directors’ independence

The board assessment of independence of some board members and the disclosure of the manner through which it has been carried out are crucial elements of corporate governance; in fact, they go beyond the Corporate Governance Code as they affect also legal issues (e.g. the legal regulation of related party transactions).

In Italian companies, most of the situations considered as critical for the independence of board members have disappeared over time: the only ones that still find some application are “high remunerations” or stock-based compensations (38 cases out of 981 independent board members – most of times due to the chairmanship or the holding of multiple offices in subsidiaries and associated companies) and the “9-years tenure” (117 cases). The number of such “at risk” situations is, however, in constant decrease. Independent directors that do not fall in any of the considered situation represent the 87% of all independent board members (up from 78% in 2012).

The same is true also for statutory auditors, where only 47 of them receive “high remuneration” (out of a total of 687 members of the board of statutory auditors), usually due to the holding of multiple offices in other companies of the same group, and 103 have a 9-years tenure. Statutory auditors that do not seem to fall into any of the “at risk” situation is about the 81% of the sample. The reduction of “at risk” situations is remarkable in the financial sector, where “at risk” statutory auditors are halved if compared to 2013.

Only 6% of companies declared their decision not to apply one or more criteria set by Code for the evaluation of directors’ independence. This happens more frequently for the 9-years tenure criterion. Almost always, companies provide also an explanation of the non-compliance, calling for the opportunity to enhance the competences gained over time by individual directors; in less than half of cases companies provide a clear disclosure of how the decision has been taken within the company.
A different case is represented by issuers who adopted the Code and assessed the independence of one or more directors having regard more to the substance than to the form (general principle set in criterion 3.C.1.).

The so-called “substantial application” of one or more independence criteria is disclosed by 35 companies (i.e. 15% of the aggregate; they were 39 in 2015) and is explained by referring explicitly to individual directors.

The explanations provided for the substantial application of the 9-years tenure criterion do usually refer to the opportunity to avoid a mechanic application of the Code, in order to enhance ethical and professional skills of individual directors as well as their capacity of an independent judgement. Some companies refer to specific explanations, regarding the lack of any commercial, professional and personal relationship and/or to the low incidence of the professional compensation on directors’ attitude.

Considering the importance of the independence issue, the survey has been conducted with a specific focus on the disclosure provided by companies in relation to the 145 directors that are in one of the situations envisaged by the Code: an explicit explanation is provided in 61% of cases (i.e. for 89 directors); 22% of such cases are referred to companies who are not applying one or more independence criteria set by Code, while another 39% are referred to directors whose independence has been evaluated having regard more to the substance than to the form. Among the 56 directors (in 31 companies) where no explanation has been provided, “at risk” situations are frequently due to the overrun of the 9-years tenure (34), followed by “high remunerations” (20 directors) and stock-based compensation (8 cases).
So-called minority directors

97 companies declare that at least one board member has been taken from a slate presented by minority shareholders: this is true for 94 companies adopting the traditional (Latin) corporate governance model and 3 companies adopting the two-tier model. The number of companies with at least one minority director is increasing over time (they were 90 in 2015) for a total of 117 minority directors. Such information is very similar also with regard to minority statutory auditors, who represent about the 17% of the whole sample of board of statutory auditors’ members.

Board committees

The establishment of a nomination committee is in constant but slight increase (55% of listed companies have such committee).

Also, the decision of establishing an autonomous nomination committee (i.e. not unified with the remuneration committee) is becoming more frequent (i.e. 39% of cases). The nomination committee is almost always made up of a majority of independent directors, as recommended by Code. The chair of the committee is almost always a non-executive (86% of cases) and independent director (84% of cases).

The remuneration committee and the control and risk committee are established in most listed firms (89% for the remuneration committee and 93% for the control and risk one).

The Code recommends that such committees are made up by all independent directors or, as an alternative, by all non-executive, in majority independent directors, but in this latter case the chair of the committee must be independent. The first option (all independent) has been followed by 48% of the companies for the remuneration committee and by 55% firms for the control and risk committee; the second option (majority of independent with independent chair) found application in the 41% of companies for the remuneration committee and in the 35% of companies for the control and risk committee. The composition of the remuneration committee is compliant with Code provisions in the 89% of cases and in 90% of cases for the control and risk committee. In both cases, data show a slight increase in the compliance rate; non-compliance cases are principally related to companies who have not adopted the Code.

Companies without one of the recommended committees, provide almost always an explanation of their non-compliance (90% for the nomination committee; 93% for the remuneration committee and 87% for the control and risk committee).

Explanations provided for the decision of non-establishing a nomination committee do usually refer to legislative and regulatory provisions, which refer to the so-called slate voting system for the nomination of directors and statutory auditors, where slates of candidates are usually submitted by shareholders. On this regard, we observe that the Code – although the historical genesis of the nomination committee, designated in dispersed ownership structures to protect directors’ independence from the management – while recommending its establishment, addresses such
committee with important advisory and proactive tasks for the definition of the ideal board composition, also in companies with a concentrated ownership structure.

Explanations provided for the decision of non-establishing a remuneration committee make usually reference to the company’s size, to the need of simplifying the governance structure or to the role of the shareholders’ meeting for the definition of directors’ remuneration; in some cases, to the structure and the amount of directors’ remunerations. In the 20% of cases it is not possible to evaluate the reasons of such non-compliance due to the lack of information.

Finally, companies do usually explain their decision not to establish a control and risk committee based on the existence of an efficient internal control system and/or – again – of the company’s size (or its scope, as holding) or of the need simplify the governance structure. In some cases, the committee has not been established inasmuch its tasks are hold by the board of statutory auditors or to the board itself; in this latter case, some companies decided to apply the option provided by the Code (see criterion 4.C.2., which envisages such possibility by stating specific conditions in relation to the board composition) but only some of them met the conditions set by the Code.
In the 90% of cases, the composition of board committees is in line with Code recommendations. In cases of non-compliance, explanations are still not very frequent (it is missing in 34 companies, i.e. 72% of the aggregate).

Where provided, explanations may differ according to the specific reason of non-compliance: the low number of committees’ members is usually linked to temporary situations; the low number of independent directors makes usually reference to the non-adoption of the Code and/or the insufficient number of independent directors in the board. The appointment of a non-independent committee chair is frequently linked to its professional skills and background or explained by the need for ensuring the continuity of the committee that has been recently renewed.

Some non-compliance cases related to committees’ composition might be evaluated within the board evaluation activity.

**Director in charge of the internal control system**

The Code recommends the board to identify one or more directors, entrusting him/them with the task of establishing and maintaining an efficient of internal control and risk management system.

The director “in charge” is identified in 192 companies’ Reports (i.e. 85% of the aggregate). Some companies (6) have exercised the option, provided by Code, of entrusting due directors “in charge” with complementary tasks. In 132 cases (i.e. 65% of the aggregate), the director “in charge” is the Managing Director (or one of the MDs). In 22 cases the “charge” has been attributed to the board chair, in 13 cases to the deputy-chair (almost always executive directors). In 24 companies, the director “in charge” is a “simple” executive member of the board. In 11 cases (in smaller issuers) this role is covered by non-executive and non-independent directors; while in two other cases, this office is held by an independent board member, who reasonably plays a control rather than a managerial role.
3. Directors’ and statutory auditors’ remuneration: policy and praxis

The remunerations policy

The first section of the Remuneration Reports provides information about the remunerations policy and the processes governing its definition.

The quality of information disclosed within a remuneration policy varies according to companies’ size and sector, being more complete among FTSE Mib and financial companies. Although the average quality of information provided on remuneration policies has improved over time, there are still some areas where information is not clear and a considerable number of cases in which companies do explicitly disclose their decision not to provide specific provisions or that the board “may” decide on a case by case basis.

Fixed and variable remuneration

The Code recommends that a significant part of MDs’ and executive directors’ remuneration shall be linked to specific performance goals, which should be defined in advance and consistent with company’s policy.

The existence of a variable component is stated by the 83% of companies. Frequency increases with company’s size (97% among FTSE Mib companies).

| Companies where one or more directors receive a variable remuneration, by market index and sector |
|--------------------------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| total                                           | FTSE Mib        | FTSE MID CAP    | FTSE SMALL CAP   | FINANCIAL       | NON FINANCIAL   |
| 83%                                              | 97%             | 88%             | 78%             | 85%             | 83%             |
80% of companies declaring (in compliance with the Code) the existence of a variable remuneration, provide also information about the weight of the fixed and the variable component.

In the remaining 20% of cases it is not possible to verify if, as recommended by the Code, the MDs and executive directors’ variable component represents a significant part of their total remuneration.

Among the 38 companies that are not providing a variable remuneration, 18% (7 firms) does not adopt the Code; less than half of the other companies provide an explanation for their non-compliance. The explanations are generally referred to: the decision of maintaining a high degree of discretion for the definition of such components, without setting up pre-defined criteria; evaluations related to the requirements of sound and prudent management; specific situations, where executive directors are also main company’s shareholders and, therefore, they do not need an individual incentive plan; finally, companies refer to contingent factors reasons, such as issuer’s economic and financial distress.

84% of the companies provides for a cap to the variable remuneration. Such information is frequently completed by the disclosure of the pre-determined parameters for the definition of the variable compensation.

Almost always (98% of the aggregate), companies make recourse to accounting indicators. Less frequently policies refer to “business” targets (55%) or to the stock-price (48%). Stock-based remuneration plans are more frequent in larger companies (77 of the FTSE Mib firms). As to the type of the policies, we observed that a variable remuneration in almost always linked to short-term goals (95% of the aggregate), while the reference to long-term ones has been stated by the 77% of them; nevertheless, long-term oriented policies increased significantly in financial firms (95%) and FTSE Mib companies (94%).
In another 16% of cases where no cap to the variable part has been defined (even though it is explicitly required by Code), the information provided in Remuneration Reports are not sufficient in order to allow the identification of the reasons of such non-compliance.

**Malus and/or claw-back clauses**

The Code recommends (criterion 6.C.1., f) that contractual arrangements shall be provided to permit the company to reclaim, in whole or in part, the variable components of remuneration that were awarded (claw-back) or to hold deferred payments (“malus”) on data which subsequently proved to be manifestly misstated.

The compliance rate with such Code recommendation (introduced in 2014) is still partial, even though increasing significantly. *Malus* and/or claw-back clauses have been identified in the remuneration policies of the 46% of the companies.

The compliance rate varies according to company’s size and sector. In fact, *malus* and/or claw-back clauses are provided by the 86% of the FTSE Mib vs. 29% of the Small Cap; considering companies’ sector, such clauses are disclosed by the 92% of financial vs. the 40% of non-financial firms.

More than the 90% of the remuneration policies provide information about trigger events of such clauses, that give relevance to the conduct of the beneficiary (typically requiring fraud or gross negligence) and/or to the time horizon in which the clause operates (it is often a three-year horizon from the date of variable component distribution). However, we observed that in some cases
company’s remuneration policy does simply repeat the Code recommendation, without providing further information.

Although compliance is increasing with respect to 2015 data, more than half of the companies still do not envisage a *malus* and/or claw-back clause; some of them do not disclose the trigger event of such clauses, when provided.

![Diagram: Companies disclosing the existence of a claw-back clause, by market index and sector](image)

### Severance payments’ policy

Companies do not always disclose explicit information on termination payments. In 15% of the cases, remuneration policies seem to exclude any payment in case of executive directors’ resignation or dismissal (by stating that such payments “are not provided”). In the other 85% of cases the policy seems to allow future indemnities: 30% of such policies disclose the existence of explicit agreements for one or more directors, while in the other cases policies do not provide specific information but they do not exclude explicitly the possibility of future payments.

In 94 cases (i.e. 49% of policies disclosing explicit agreements or, at least, not excluding such payments; 41% in 2015), policies provided explicitly for a cap on severance payments, as recommended by the Code. The provision of a cap is more frequent in the financial sector (81% of the cases vs. 45% in non-financial firms) and among FTSE Mib companies (82%).

Caps are defined according to several parameters. In most cases, the maximum amount of such payments is defined in relation to directors’ two years remuneration. Generally, companies refer to global remuneration (i.e. including variable compensation). In some cases, severance payments are defined in relation to directors’ tenure or to their residual time in office before the natural end of the mandate.

In 98 cases, either a cap is not present or the policy does not allow its identification (i.e. no sufficient information is provided).
The explanation provided for non-compliance usually reports that, at that time, there were no agreements on severance payments in place (with directors and/or managers with strategic responsibilities). This explanation, however, does not appear completely in line with Code recommendations, inasmuch the identification of a cap would be particularly useful exactly in cases where no agreement on termination payments has been reached; indeed, the provision of a cap would be less useful in companies where specific agreements already regulate the payment of such indemnities.

Remuneration policies of most companies still do not provide full information on severance payments, with regard to the measures limiting ex ante board discretionary powers.

![Definition of a cap on termination payments, over time](image)

The remuneration effectively paid

The second section of Remuneration Reports discloses information about the total amount of the remunerations paid to individual directors (and statutory auditors) by the reporting listed firm as well as by its subsidiaries or affiliated companies.

The average remuneration (non-equity-based) of directors is about 244,000 €, slightly higher than in 2015. The average remuneration varies significantly according to company’s size and structure.
Remunerations Reports provide, on a synthetic and comparable basis, information about the number of beneficiaries of stock-based plans and the corresponding value, measured, according to the international accounting standards, by conventional criteria based on the “cost” for the issuer during the fiscal year of reference. Only some of the directors are beneficiaries of the “expensed” plans during the fiscal year of reference; nevertheless, the amount of such equity-based compensation is significant (516,000 € on average).
Remuneration and directors' role

The amount of the remuneration varies significantly in relation to the director's role.

Managing directors earn about 980,000 € (equity compensation excluded). Executive chairmen receive about 36% less than MDs (623,000 €). Deputy chairmen and other executive directors earn about 400,000 €. The remuneration is lower for non-executive chairmen receive (259,000 €), other non-executive directors (67,000 €) and independent directors (55,000 €), who receive the lowest compensation overall.

According to Code recommendations, independent directors shall never receive equity compensations. They often do receive, in addition to their fixed remuneration, a specific additional remuneration due to their participation to one or more board committees.

Executive and non-executive directors' remuneration followed a different dynamics in 2015; executives' total remuneration increased considerably, especially due to bonuses and a higher fixed remuneration (on average, data show that MDs' fixed compensation increased for 78,000 € and bonuses for 91,000 €; executive chairmen registered an increase of 11,000 € in their fixed remuneration and of 74,000 € in bonuses), while they receive, if compared to the previous years, lower fees from subsidiaries and associated companies. On the contrary, non-executive directors' remuneration is substantially stable over time. In relation to independent directors, our analysis registered a slight increase of their global remuneration (from 52,000 € to 55,000 €, namely the same of three years ago); this increase is primarily due to the increase of their fixed remuneration.
Directors’ role affects also the structure of the cash remuneration: on average, MDs’ cash remuneration is made up of a 56% of fixed compensation, a 31% of monetary bonuses, a 7% of remuneration from subsidiaries and some other components that are less significant. If compared, executive chairmen have a remuneration composed by a higher fixed component (66%), more limited bonuses (16%) and a slightly higher remuneration from subsidiaries (13%). For non-executive chairmen, fixed remuneration plays a significant role in their remuneration package (about 90% of the total). Non-executive (and non-independent) directors receive a considerable amount from subsidiaries (24,000 €). Independent directors receive additional compensations for their participation at board committees (i.e. 16,000 €, a small amount in absolute value).

Managing directors’ remuneration

The MDs’ remuneration (non-equity) varies significantly according to company’s size. Among FTSE Mib companies, the average MD’s remuneration registered a notable increase, recovering almost entirely the decrease (about 30%) endured in the previous three years (11% per year). The average compensation among Mid Cap companies continues to grow up (9%; in line with the 6% increase in 2015 and the 9% in 2014), while among Small Caps firms the average remuneration drops by 5% (however, in this latter case, it must be considered that these remunerations registered a significant 50% increase in 2014).

One of the main reasons of such trends are bonuses. During the last year, bonuses have increased by 86% in FTSE Mib companies and by 41% in Mid Cap companies, while they have decreased by 22% in Small Cap companies. In the banking sector, bonuses are more than doubled (and their weight, after years of limited growth, has gone up from 10% to 19% of the total cash remuneration).
1.712
1.246
1.238
1.592
1.653
771
731
811
780
914

2012-2016 evolution of MDs' total remuneration (non equity-based), by sector

771
731
811
780
914

2012-2016 evolution of MDs' total remuneration (non equity-based), by market index

979
2,224
1,382
444
1,653
914

MD's total remuneration (non equity-based)
(Average by market index and sector, in €.000)
The variable remuneration (cash and equity) paid

The Consob scheme requires the disclosure of detailed information about directors’ incentive plans. Referring to cash plans, the average value of bonuses is about 592,000 € (with a notable increase if compared to 2015). Such amounts may vary a lot due to company’s size. As in the past years, the total value of the stock-based plans is lower than the total value of the “other financial instruments” (1,086,000 € compared to 567,000 € of stock option plans). Also in this case, the size of the company may influence significantly the amount of such remunerations.

Severance payments effectively paid

Among the 66 executive directors, who resigned or have been dismissed in 2015, only 14 of them have received severance payments; the average amounts is about 650,000 €. Severance payments are sometimes paid also to directors who are still in office, in relation to significant changes of their role or to so-called “end of term” treatments, “paid” (or rather deferred) during their mandate. In the 31 cases where the beneficiary is still in office at the end of the year, the average amount of such payments is about 407,000 €. The number of beneficiaries and the amounts effectively paid registered a significant decrease, if compared to 2015. Moreover, it must be considered that individual severance payments are extremely variable, ranging between a minimum of 6,500 € and a maximum of 6,400,000 €.
Remuneration and independence assessment

Independent directors with a long tenure (more than 9-years) receive a significantly higher compensation in larger companies (FTSE Mib) and banks, where the remuneration is almost doubled if compared to other companies (e.g. increase of 100,000 € in comparison to previous years). On the contrary, such long tenures (more than 9-years) have not influenced remuneration in the non-financial sector.

Such information provides a clear picture to investors, who can evaluate the independence assessment conducted by companies’ boards, bearing in mind that the “9-years rule” is just one of the criteria set out by the Code, which finds application “with regard to the substance over form”.

Statutory auditors’ remuneration

Statutory auditors’ remuneration amounts to 47,000 €, slightly lower than independent directors’ one. Although the Code called for a more reasonable compensation of statutory auditors and despite the increase of the required commitment for their role, their remuneration registered a gradual decrease from the 54,000 € in 2013. As already observed for directors, the remuneration of the statutory auditors varies considerably according by company’s size (78,000 € in FTSE Mib, which is about 2.7 times the remuneration in Small Caps) and sector (93,000 € in financial companies vs. 41,000 € in non-financial ones). The fixed component represents more than 80% of the total remuneration; remuneration received from subsidiaries accounts for another 13%. The
other components have a very low weight. The statutory auditor chairmen receive about 25% more than other board members: this difference is due to fixed compensation.

Unlike independent directors, statutory auditors with a longer tenure (i.e. more than 9 years) always receive higher compensation (14,000 €, 33% more than their colleagues with a shorter tenure); this difference rises to 63,000 € (76% more) in the banking sector.

Referring to the Code recommendations about the adequacy of the remuneration of independent directors (based on commitment, including committees) and statutory auditors (based on commitment, importance of the role, size and sector of the company), such data about the compensation effectively paid deserve additional reflection about the compliance with the best practices recommended by the Code.