

Structures of Corporate Governance in Italy and Comparison at European Level

Giuseppina Gandini*, Riccardo Astori** and Raffaella Cassano***

Attention to the theme of relations in corporate governance finds a first series of indications determining the necessity to offer companies significant references for the recovery of efficient operating conditions and the activation of correct and adequate behaviours, founded on administration oriented towards the creation of value, sustainability, and diffusion of long-term relations of fidelity. In Italy and Europe particular interest has been shown recently in the application of standards and self-regulation, considered to be phenomena of globalisation and best practices in the international framework. Thus we can observe the definition of models of governance foreseeing increasingly influential rules – in particular appointment criteria, functions of company organs, responsibilities of authorities and persons above all in terms of control. The analysis of the Italian system and its comparison with some of the main European countries shows the common factors underlying the application of models and the potential space for manoeuvres in improving the same while harmonising the rules of corporate governance.

Field of Research: Corporate governance and management

1. Introduction

The structures of corporate governance present in companies operating in different national, legal and cultural contexts, active at global level, pose some problems concerning: the scarce transparency in relations between managers, owners and other categories of stakeholders, the frequent prevalence of personal interests of members of governing bodies over company interests and, often, a lack in the control system.

*Giuseppina Gandini, Full Professor of Business Administration, University of Brescia (Italy) email: gandini@eco.unibs.it

**Riccardo Astori, Phd in Business Administration, University of Brescia (Italy) email: astori@eco.unibs.it

***Raffaella Cassano, Phd in Business Administration, University of Brescia (Italy) email: rcassano@eco.unibs.it

This has induced attitudes of deep mistrust in information and company behaviour with evident (and often generalised) consequences in terms of relations between the company and its social interlocutors, and modifications in the processes for obtaining consent and resources. Studies on corporate governance go back to the middle of the past century in Europe and even before that in the United States, but only recently have they registered a renewed interest. The attitudes and behaviours gradually assumed at world level have renewed the need to redefine the principles of governance in order to safeguard company efficiency.

The need for a general recovery of efficiency in governance has also induced industrialised countries to define rules of behaviour, especially for joint stock companies, intended to regulate the mutual relations between owners, managers, and all those who have invested their interest (investors, savers, creditors, suppliers, clients, etc.). The different degree of involvement of the various stakeholders in management, attributing top powers to specific bodies (or persons) whose decisions influence the use of resources, degree of risk denoting activities, preparation and distribution of results over time, requires a search for harmonising criteria that, starting from the analysis of models present at European level, identify: the diffusion, the constitution and typology of relations between the various organs, especially in reference to the role and responsibility of the controlling body.

2. Literature Review

The debate on the corporate governance goes up again to halves the twentieth century, while in other countries - among which Italy - the same principles of the business economy found him upon the logics of government. For example, is quoted the study to Berle and Means on *The modern corporation and private property* published in the United States in 1932 and the constitution of the United Kingdom of the Cohen Committee in 1945, to understand the importance of the phenomenon that has determined runs of it of non brief analysis. The attitudes and the behaviours as assumed by the firms to world level they have, for against, made to explode only beginning from the nineties of last century, the demand of redefinition of such principles of government to be guaranteed orientations generalized of safeguard of the business effectiveness. As Italy regards, you are thought that already in 1927, Gino Zappa affirmed that the firm is one "economic coordination in action, constituted and straight line for the satisfaction of the human needs. G. Zappa, *New tendency in the studies of accounting*.

3. Methodology and Research Design

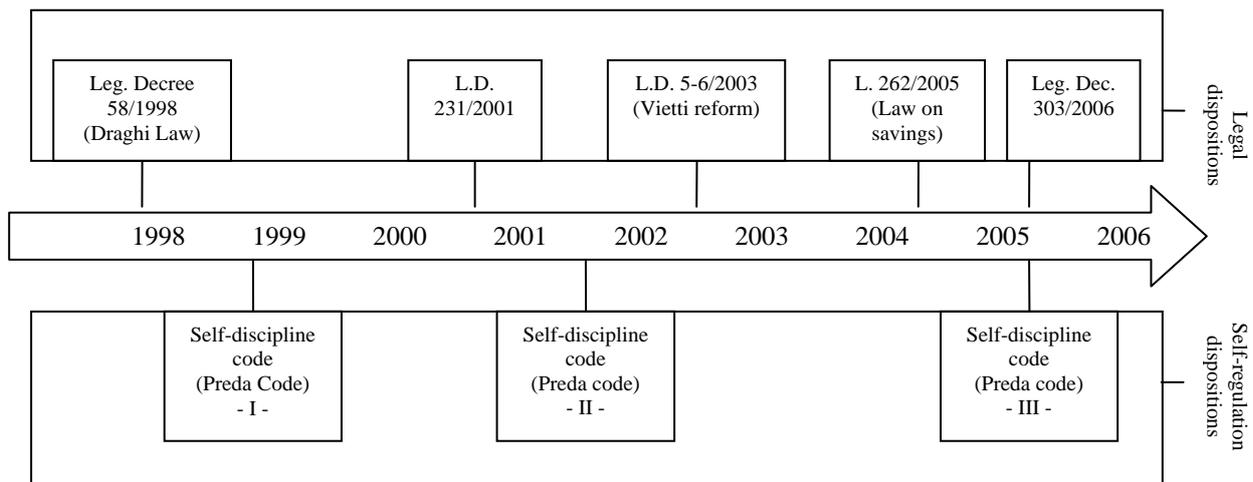
The work carried out had the main objective of studying the evolution of corporate governance in light of the phenomena of market globalisation and the diversity of standards characterising company systems. Situations of progressive reduction of diversities between the various national regions, company culture, information systems, institutions on one side, and the intensification of transnational controlling bodies on the other, are seeming to standardise the approach to corporate governance in Europe. The need to harmonise the standards regulating the

corporate governance of companies operating in different countries first of all focuses on an accurate analysis of the governance structures adopted in Italy, observing their historical-legal evolution and, then, a comparison with the main national realities of other European countries selected by size and historical-economic similarities with Italy: France, Great Britain, Germany and Spain. Illustrated for each country are the most important legislative interventions, the models of governance adopted, the mechanisms of appointment and their distinguishing features.

4. Discussion of Findings

Attention focused on safeguarding the rights and interests of subjects not directly influencing the actions of the governance body has become much more acute over the last decade, as shown by the more intense legislative activities at national and Community level and the frequent regulating actions of controlling and sectorial organisms¹. Specifically in Italy, from 1998 onwards, a number of standards and dispositions have been issued with the intent to improve corporate governance (Figure 1).

Figure 1: Main stages in the evolution of legislation and self-regulation Italy since 1998

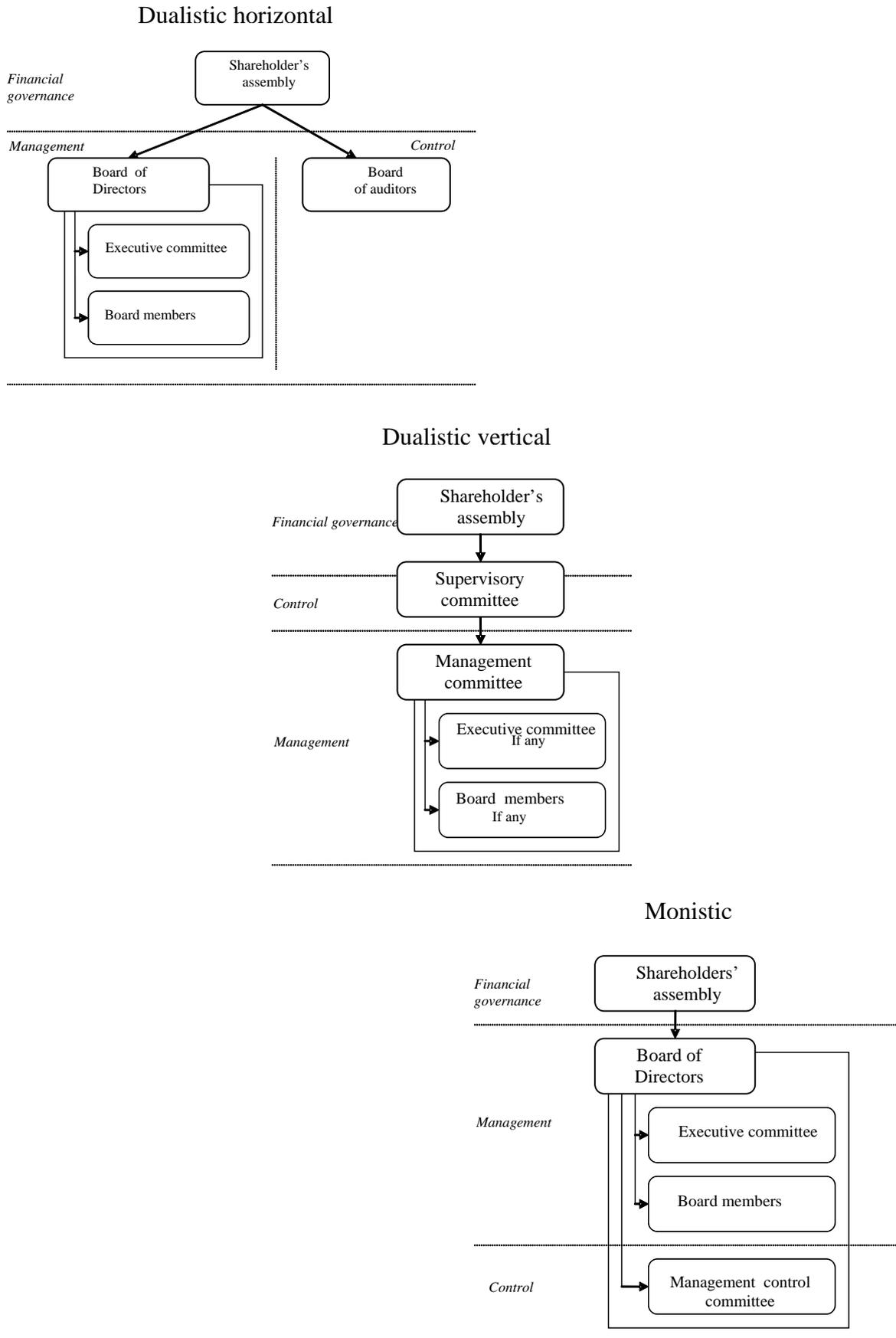


One important phase in the evolution of corporate governance in Italy coincides with the reform of company law² introducing, for joint stock companies, innovative principles for organisation, administration and control.

In particular, for joint stock companies three models of governance and control were introduced:

- dualistic horizontal;
- dualistic vertical;
- monistic.

Figure 2: Systems of corporate governance in Italy



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The dualistic horizontal system

Until 2003, the only system of corporate governance that could be adopted by Italian joint stock companies was of dualistic horizontal (or traditional) type. This system is based on the distinction between the managing body (sole administrator or, in the collective form of a board of directors) and the controlling organ (board of auditors), both organisms being appointed by the shareholders' assembly. The board of directors has the task of directing/managing the company in terms of making the strategic, industrial and financial plans necessary for development, coherently with the corporate purpose and with the objective of maximising value for all stakeholders. The board of auditors, instead, is called to ensure that laws and by-laws are observed, respecting the principles of good practice as well as the adequacy and functions of the adopted methods of organisation, administration and accounting.

The dualistic vertical system

Inspired by the Rhenish system³ which has gradually spread to other European countries⁴, the dualistic vertical model foresees the assigning of administrative duties to a board of management and the interposition between the board and the assembly of a committee of supervision. This model therefore implies greater dissociation between owners and management. With reference to the board of management, it has no distinctive features in respect to the traditionally composed board of directors; on the other hand, the committee of supervision presents some significant innovative elements since it is a mixed body of management and control with the functions attributed to the board of auditors, integrated with some specific duties assigned by the assembly and with potential functions of consultancy for the board of management. In other terms, with the dualistic vertical model, part of the prerogatives of economic governance originally in the hands of the owners are transferred to the supervising committee. Consequently, being attributed with both supervisory and managerial powers, it seems improper to consider this body exclusively as an organ of control⁵. For its nature, this model can be applied to companies of medium-big dimensions with a widely spread capital or concentrated among professional investors who are not directly interested in the prerogatives of economic governance, or when the founding partners pass managerial responsibilities to their offspring but still have the possibility of effectively influencing and supervising activities by becoming members of the committee of supervision⁶.

The monistic system

Inspired by the Anglo-Saxon model, the monistic system, in respect to the others, is characterised by greater simplicity and flexibility. The assembly's tasks are the same as those foreseen in the traditional system, except that the body of control – unless otherwise stated in the by-laws – is appointed by the board of directors. Company management is attributed to the board of directors (and cannot be assigned to a sole administrator) composed, for at least one third, by subjects having the same requisites of independence established for the auditors or – if contemplated by the company by-laws – those indicated by codes of behaviour drawn up by trade associations or management companies for regulated markets⁷.

Within the board of directors, and appointed by the same, a committee is formed to supervise management⁸, with the typical functions of the board of auditors and composed of directors having the requisites of honour and professionalism indicated in the by-laws and the same requisites of independence foreseen for directors. Attribution of managerial and supervisory functions to a single organism: on one hand this can facilitate the more immediate and deeper knowledge of the management policies adopted or programmed,

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making supervision faster and more efficient as well as any corrective actions or complaints; on the other hand it means that the “controlled” appoints the “controller”, with evident potential risks in terms of effective independence in supervision activities. However, apart from legitimate doubts regarding the opportuneness of a supervisory committee appointed by the board of directors, perplexity cannot be avoided with regard to the subordinate relationship arising between the board of directors and the members of the committee of supervision. After investigating the Italian scenario, research was directed to corporate governance structures at European level, with the intent to compare the Italian situation with that of the main nations belonging to the European Union: France, Great Britain, Germany and Spain⁹.

The Italian situation regarding corporate governance highlights the gradually increasing attention paid to the regulation of governance structures as well as control procedures (internal and external) as a guarantee of the efficient development of activities.

The comparative analysis regarding the structures of corporate governance in the various European countries highlights some differences concerning:

- the models of corporate governance adopted in the different countries;
- the role of share owners and workers with respect to governing bodies;
- the system of appointment among the various corporate organs.

It must be pointed out, in fact, that in all the industrialised countries (especially for the big joint stock companies quoted on the stock exchange) it has been necessary to define rules of governance that guarantee the contemporary flow of interests in the company, independently of the degree of involvement of the various players in management. In recent years, also at European level, there has been a greater search for optimal models of governance which, bearing in mind the existing diversity, allows maximum valorisation of the company’s potential development based on the logic of reliability and transparency. In this sense, the whole of Europe is witnessing:

- the normative evolution of codes regulating governance bodies;
- the need to strengthen company culture inspired by principles of equality and correct behaviour;
- the recovery of company leadership meaning also risk observation and management;
- the growing emphasis of communication processes for the maintenance and growth of consent.

Bearing in mind these considerations, an examination has been made of the corporate governance structures existing in France, Great Britain, Germany and Spain.

In *France* the main interventions on corporate governance started towards the end of the last century¹⁰ and mainly regulate companies quoted on the exchange. In particular, modifications consist in:

- the elimination, in the monistic model, of the obligation to appoint a PDG (Président Directeur Générale) in order to align French legislation with international best practice in relation to separating the chairman’s tasks from those of the general manager;
- greater powers of control to the board of directors with respect to management;
- an effort towards greater transparency of information regarding the remuneration of top management;
- the institution of new supervisory organisms to increase the safeguard of investors;

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Corporate governance structures in France are:

- monistic (the chairman of the board of directors cannot also cover the office of general director);
- monistic (the figure of PDG can continue to exist if foreseen in the by laws);
- dualistic (*Conseil de surveillance* and *Directoire*).

In the monistic model, the shareholders' assembly appoints the board of directors which, in turn, appoints the Chairman and the General Manager (or the PDG, if the two figures coincide in the same person). In the dualistic model, the shareholders' assembly appoints the control body (and the Chairman), which, in turn, appoints the board of management and designate the Chairman. In both models, an important role is attributed to the workers, in terms of representation in company organs through collaboration with shareholders in preparing the initial list of candidates for the body of control. *Great Britain*, characterised by its Common Law system, although geographically a part of Europe is more similar to the American system for its Anglo-Saxon roots and the particular nature of the corporate economy system. In effect, the peculiarity of the British system can be found in relation to the active participation of shareholders in corporate governance and the presence of investors in the shareholders' assembly.

The main legislative interventions on corporate governance are to be seen in the early 1990s¹¹. In Great Britain, as in the United States, there is a single corporate organ responsible for the conduction of company business and supervision of activities. Therefore in Great Britain there is a single monistic model of governance, in which the shareholders' assembly appoints the Board of Directors which appoints the CEO (chief executive officer) among its members. Also in *Germany* most legislation on the subject started in the middle of the last century and intensified in the late 1990s¹². The greatest change was in co-definition at organisational and institutional level and the valorisation of the role of personnel at management level. Workers and investment brokers play a key role in the model of corporate governance adopted and known throughout the world as the Rhenish model.

In effect, in Germany the only governance model foreseen is the dualistic vertical system where the shareholders' assembly and the workers (who, here, have a very important active role in corporate governance) appoint the supervision committee which, in turn, appoints the management committee and is represented by a spokesman. The Rhenish dualistic model differs from the Italian dualistic model because, in German companies, a decisive role is played by the workers and the banks (usually the main shareholders in the companies) in terms of the power to define the composition of the controlling body which, in turn, appoints the board of management¹³. Finally, *Spain* is certainly the country that, more than others, has shown greater resistance to aperture and integration of the various European agreements. This country's political and economic history explains the causes of such phenomena and also legislative interventions on corporate governance arrived later than in other countries. It was only at the end of the last century that the first regulations were recorded. Even in 2001 the Spanish stock markets were not organised or efficient. It was not until 2003 that the Aldama code of self-discipline arrived to broaden and revise the contents of the Olivencia code, but it was necessary to wait until 2006 for a reform of corporate governance in Spain and the process is by no means complete or defined.

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However, the sequence of interventions over this period has not modified or extended the alternative models of corporate governance adoptable in Spain. Only the monistic model remains applicable to joint stock companies in which the shareholders' assembly appoint:

- the board of directors which has managerial and supervisory powers and appoints from within a control committee;
- external auditors.

The Spanish monistic model certainly resembles the Italian monistic model more than the British or American ones where, as it has been seen, a particular role is played by the Board and the single persons invested with specific roles and responsibilities.

After presenting the single specific descriptions of the four chosen countries, the following table gives a summarised comparison of the models of corporate governance adopted in these countries, company organs and the mechanisms of appointment with respect to the Italian reality.

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Table 1 – Comparison of corporate governance structures in Italy, France, Great Britain, Germany and Spain

	Models of corporate governance	Company organs	Appointment mechanisms
Italy	<p>Traditional (or dualistic horizontal)</p> <p>Dualistic vertical</p> <p>Monistic</p>	<p>Partners' meeting Board of Directors (<i>Cda</i>) Board of Auditors</p> <p>Partners' meeting Supervisory committee (control) Management committee (governance)</p> <p>Partners' meeting Board of Directors – Internal committees (governance)</p>	<p>The assembly appoints the Board of Directors and the Board of Auditors</p> <p>The assembly appoints the supervisory committee which appoints the management committee</p> <p>The assembly appoints the board of directors which appoints the committees among its members</p>
France	<p>Monistic</p> <p>Dualistic vertical</p>	<p>Shareholders' assembly Board of Directors (Conseil d'administration - President-Directeur general-PDG)</p> <p>Shareholders' assembly Conseil de surveillance (control) Directoire (governance)</p>	<p>The assembly appoints the conseil d'administration (which appoints the Chairman, Director or PDG among its members)</p> <p>The assembly appoints the conseil de surveillance which appoints the Directoire (which designates the Chairman)</p>
Great Britain	Monistic	Shareholders' assembly Board of Directors – CEO (governance)	The assembly appoints the Board of Directors
Germany	Dualistic vertical or Rhenish	Shareholders' and Workers' assembly Aufsichtsrat (control) Vorstand (governance)	The assembly and the workers appoint the Aufsichtsrat which appoints the Vorstand
Spain	Monistic	Shareholders' assembly Board of Directors (governance)	The assembly appoints the board of directors

5. Conclusions

The research carried out has emphasised the need to find a shared and common model to harmonise the many national realities and structural differences existing between the companies (especially with regard to global capitals quoted on the stock exchange) and the internal balance between ownership and management. In particular, the observation of company realities causes some reflection on the fact that the choice between the various models of governance is closely connected with the owners to directly control the prerogatives of financial governance, and to derogate responsibility and activities to the management.

According to the level of ownership interest in the governance and management of the company, often connected to the level of fragmentation of risk capital, justification can be found for adopting a specific model of governance. In effect, if:

- ownership is particularly diffused and fragmented among a large number of shareholders, the monistic model will find greater application and the shareholders' assembly will attribute the management and control of the company to a single body of governance;
- ownership is concentrated in the hands of only a few shareholders, interested in corporate governance, the dualistic horizontal (or traditional model) will be applied, by which ownership directly appoints both the governance body and the control committee, mutually independent, and covers an active and direct role in making managerial choices that influence the company's success;
- ownership is mixed (one part of the capital is concentrated and the other is highly fragmented), justifying the adoption of the dualistic vertical model where ownership appoints the controllers (which in turn appoint the controlled) and although governance is delegated to management, control is effectively maintained on activities (but more indirectly) in virtue of the mechanisms of appointment linking the controlled to the controllers and the latter to ownership.

These considerations would affirm that, in the monistic model, governance and company management occur with greater autonomy with respect to models of dualistic type, but since the appointment of the controlling committee depends on the board of directors (the controlled appointing the controller) total independence is not guaranteed for members in carrying out their supervisory activities. As said previously, this phenomenon is linked with the appointment mechanisms (above all, revocations) linking the various organs also in the two dualistic models, but pointing out, however, that:

- in the traditional model (or dualistic horizontal), the controlling body is autonomous in its actions with respect to the governance body since it is appointed exclusively by the shareholders' assembly;
- in the dualistic vertical model, the controlling body and the governance body are mutually subordinated since the (controlled) governance body is appointed by the controlling body (controller) which, in turn, is appointed by the shareholders' assembly.

The scenario described therefore requires particular attention to the conditions that guarantee, especially to the controlling body, its performance in respect of the principles of autonomy and independence, guaranteeing the safeguard of all interests flowing into the company and not only some parts with majority holdings.

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Therefore it is necessary to find a model that harmonises the various situations attributing adequate attention to the representation of ownership and that management is clearly distinguished from control, the latter being attributed autonomous functions, independently and offering an effective guarantee.

END-NOTES

¹ Consob, Borsa Italiana s.p.a., ISVAP, Bank of Italy.

² Legislative Decree 6/2003 and later modifications and integrations.

³ In this respect it is necessary to point out the existence of some significant elements differing from the German model, especially concerning the absence, in the Italian dualistic vertical system of:

- an active role of workers and the banks in the committee of supervision;
- powers of authority of the committee of supervision towards the board of management;
- the possibility for the assembly to directly revoke the board of management without having to preventively revoke on the same occasion the whole committee of supervision.

⁴ This is the case, for example, in France. Elements of evident communion may also be found with the by-laws of the European corporation disciplined by regulation 2157/2001/CE and directive 2001/86/CE. For a description of governance models in European and foreign countries, see chapter 2.

⁵ In effect, they also imply the attribution of powers: supervision and consultancy on the activities of the board of management; effective ex ante supervision; effective ex post supervision.

⁶ In effect, this model has been appreciated following the aggregation of companies of equal importance, for which it can be considered opportune to attribute two important institutional positions at the head of the two companies involved.

⁷ Art. 2409-septiesdecies, paragraph 1, Civil Code.

⁸ The management supervisory committee has the powers to vigil on the adequacy of:

- the company's organisation;
- the internal control system;
- the management and accounting system, also in relation to the suitability of the same to correctly represent the real company situation.

⁹ It must be said that the study is still under way to extend the comparison to all the countries belonging to the European Community but, for logical reasons (size and historical and economic similarities between Italy and the countries chosen) here it is only possible to present a summary of the research performed.

¹⁰ For more information on the French self-regulation code, see: Rapport Vienot dated 1995, Rapport Vienot dated 1999 and Rapport Bouton dated 2002. The main legislation concerning corporate governance can be found in Law 420 dated 2001, Law 706 dated 2003 and Law 842 dated 2005.

¹¹ Reference is made to the Cadbury Report dated 1992 and later and current Combined Code.

¹² In 1951 a series of laws define company co-determination and co-management. In 1998, the KonTraG entered into force to strengthen the control system and to regulate relations between organs and external information.

¹³ For such reasons the German governance system is therefore defined at European level as an example of company enterprise tending towards the contemporary equality of the many institutional interests coming from the various social players.

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