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THE CONVERGENCE PROCESS OF CORPORATE GOVERNANCE MODELS IN EUROPEAN LEGAL SYSTEMS TOWARDS BEST PRACTICES

Key words: corporate governance models, one-tier board model, two-tier board model, listed companies, corporate self-regulation

Summary

The article addresses the process of convergence that has taken place within the legal systems of European countries in the field of corporate governance models. This process has been marked, on the one hand, by the alignment of European frameworks with Anglo-American benchmarks and, on the other, by the increasing receptiveness of US and UK practices to principles rooted in the European tradition. In light of the foregoing, the paper identifies a euro-unitary trend in favour of the one-tier model, conceived as the corporate governance system best suited to support the implementation of the principles set out in the self-regulatory codes for listed companies.

Introduction

Referring to the generally accepted definition, a corporate governance structure consists of a company's system of boards, committees and officers, entrusted with specific powers and responsibilities regarding decision-making, management and supervision in the interest of shareholders and other stakeholders. As an eminent scholar has noted, "a corporate governance structure derives from the implementation of a one-tier or a dual-board model of corporate governance".[1]

The corporate governance models established in the internal legal frameworks of European Union member countries are mainly structured around three models:

[1] Bosetti L. Anglo-American Board Model (One-Tier) Versus European Model (Two-Tier). In: Idowu S. O. et al. (eds.). Encyclopedia of Sustainable Management. Springer Nature Switzerland AG, 2023, p. 2.

one-tier board model, two-tier board model and dual-board model with a side-by-side board.[2]

First of all, European Regulation No. 2157 of 2001 allows the choice between the one-tier and the two-tier model also for the European Company. The same choice is also extended to European Cooperative Societies (SCE) under Regulation (EC) No. 1435 of 2003.[3]

Turning to the national legal systems of the European Union Member States, only some jurisdictions operate under a single corporate governance model. More specifically, certain countries exclusively adopt the one-tier model, whereas others rely solely on the two-tier model. Meanwhile, the majority of legal systems of the European Union Member States allow a choice between the two models.[4]

The legal systems of Italy and Portugal – as well as Japan,[5] when non-European Union jurisdictions are also taken into consideration – display a distinctive feature. In addition to allowing a choice between the one-tier and the two-tier corporate governance models, these jurisdictions also permit the adoption of a third model specific to their respective legal systems.[6] This model is characterised by establishment of two separate, distinct bodies, operating alongside one another, both appointed by the shareholders' meeting. One body is entrusted with the management of the company, while the other is responsible for supervising the administration of the company.

Expanding the analysis to the forty-nine jurisdictions examined by the Organization for Economic Cooperation and Development in its Governance Factbook 2023 reveals a diversified regulatory landscape. Of these jurisdictions, 23 recognise exclusively the one-tier model, while 9 permit only the two-tier model. The remaining jurisdictions allow companies to choose between the two models,

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[2] Davies P. L., Hopt K. J. Corporate Boards in Europe – Accountability and Convergence. The American Journal of Comparative Law, Vol. 61, Issue 2Hopt, 2013, p. 301; Hopt K. J. Comparative Corporate Governance: The State of the Art and the International Regulation, The American Journal of Comparative Law, Vol. 59, Issue 1, 2011, p. 22.

[3] Caterino D. La Societa europea [The European Company]. In: Donativi V. (ed.). Trattato delle societa, IV, Societa quotate – Statuti normativi speciali – Societa cooperative. Vicenza: Wolters Kluwer, 2022, p. 1256; Miola M. Lo statuto di Societa europea nel diritto societario comunitario: dall'armonizzazione alla concorrenza tra ordinamenti [The Statute of the European Company in EU Company Law: from Harmonisation to Regulatory Competition]. Rivista delle societa, 2003, p. 322.

[4] Alvaro S., D'Erasmo D., Gasparri G. Modelli di amministrazione e controllo nelle societa quotate. Aspetti comparatistici e linee evolutive [Models of corporate governance in listed companies. Comparative aspects and evolutionary trends]. Quaderni giuridici Consob, No. 7, 2015, p. 40.

[5] Passador M. L. Modelli di amministrazione e controllo: il caso del Giappone [Corporate Governance Models: The Case of Japan]. Rivista delle societa, 2016, p. 194.

[6] By allowing three alternative corporate governance models, the Italian and Portugal legal systems offer their economic actors a wide range of organizational options, even surpassing, in numerical terms, the flexibility of the European legislator, which, as mentioned, contemplates only the choice between the one-tier model and the two-tier model. See: Enriques L. Concorrenza tra ordinamenti e migrazioni opportunistiche: che fare? [Competition between legal systems and opportunistic migration: what should be done?]. Rivista delle societa, 2024, p. 596; Rivaro R. La societa europea [The European Company]. Il Nuovo Diritto delle Societa, No. 2, 2017, p. 47.

whereas only three countries provide for a choice among all three governance models.[7]

From the data reported above, it is clear that the one-tier system is the most widespread corporate governance model at the international level.[8] It is therefore not surprising that in Germany it has been established the largest number of European Companies in order to gain access to the one-tier board model; in fact, in the German law, the legal system allows (more precisely, requires) only the two-tier board model (§§ 76 ff. AktG), which is characterized by the institutional separation between the management board and the supervisory board.

Moreover, in France, where the law offers all public limited companies the choice between the monistic model and the dualistic structure the preference – both in practice, in academic debate and in the Corporate Governance Code – is clearly in favour of the former.[9]

A phenomenon of convergence among the different corporate governance systems

Even if each corporate governance model has its own distinct features, they share important similarities with one another.[10] Indeed, starting from the mid-nineties, a phenomenon of convergence among the different corporate governance systems has occurred, both at the regulatory and practical levels.[11] The phenomenon occurred following corporate scandals involving publicly listed companies in several countries and the financial crisis that has spread worldwide over the past years.

Particularly interesting is the play of interactions and mutual influences that has emerged among the different corporate governance systems. Convergence has been driven by supranational legal reforms (like those initiated in the EU), corporate self-regulation, and mutual imitation among firms. However, from a regulatory perspective, the most significant progress in convergence still remains

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[7] OECD (Organisation for Economic Co-operation and Development). Corporate Governance Factbook 2023, Paris: 2023, p. 134.

[8] Gelter M., Siems M. Letting Companies Choose between Board Models: An Empirical Analysis of Country Variations. University of Pennsylvania Journal of International Law, Vol. 43, Issue 1, 2021, p. 137, state that "today many countries [...] provide two separate legal templates by giving firms a choice between a one-tier and a two-tier board model".

[9] Cozian M., Viandier A., Deboissy F. Droit des societes. 37th ed. Paris: Lefebvre Dalloz, 2024, p. 300.

[10] Fiengo C. Sistema monistico. Tra sfide competitive e successo sostenibile [One-tier model: between competitive challenges and sustainable success]. Napoli: Edizioni Scientifiche Italiane, 2025, p. 257.

[11] Ventoruzzo M., Conac P. H., Goto G., Mock S., Notari M., Reisberg A. Comparative Corporate Law, St. Paul (Minnesota): West Academic Publishing, XXXIII, (American Casebook Series), 2015, p. 257; Montalenti P., Balzola S. La societa per azioni quotata [The listed joint-stock company]. Bologna-Roma: Zanichelli, 2013, p. 4.

largely confined to the self-regulatory codes of listed companies.[12] In fact, self-regulatory codes, built on the "comply-or-explain" approach, have often focused on crucial aspects of management administration and oversight. Moreover, it should be noted that guidelines from business organizations and regulations set by stock exchanges have, in some cases, preceded the enactment of compulsory rules by policymakers. This has played a significant role in promoting the exchange of corporate governance best practices globally and in narrowing the gaps between national frameworks.

Although the process is still ongoing, it has already led to a notable reduction of the key differences between corporate governance models, making companies more comparable in international markets and enhancing the overall quality of their management and oversight globally.

This process of convergence shows, on the one hand, a tendency of European models to move closer to Anglo-American standards and, on the other hand, a gradual openness of US and UK practices to the core principles of the European tradition.

Taking Germany as an example, German scholars have pointed out that, in practice, there is an increasing interchange of roles between the management board (*Vorstand*) and the supervisory board (*Aufsichtsrat*). Therefore, despite the traditional two-tier governance structure is formally adopted, the actual corporate governance increasingly takes on a one-tier structure. Moreover, the German Corporate Governance Code (updated on 28 April 2022) shows clear signs of functional convergence from the two-tier model towards the one-tier model. In the German Corporate Governance Code we can observe a close and mutual cooperation between the management board and the supervisory board of listed companies, regarding in particular strategy, planning, business development, risk situation, risk management and compliance. The Principle No. 13 is very interesting because it highlights the importance of cooperation between the *Vorstand* and the *Aufsichtsrat*, based on mutual trust and aimed at the benefit of the enterprise. Principle No. 13 precisely states that "good corporate governance requires an open dialogue between the Management Board and the Supervisory Board, as well as between the members of these individual Boards". The subsequent Principle No. 16 places great importance on the mutual exchange of information that must be established between the two bodies.

A similar phenomenon, but in reverse, can be observed in the British legal system.

The legal framework of corporate governance in the United Kingdom, unlike the German and Italian ones, does not contain rules that impose a strict separation of functions between management and supervisory bodies; at the same time, however, it does not include provisions that would prevent such a separation from occurring in practice.

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[12] Montalenti P. I problemi di governance [Governance issues]. Giurisprudenza Commerciale, No. 2, 2024, p. 376.

Progressively, in the United Kingdom, where only the one-tier system has always been applied, a process has developed both at the regulatory and practical levels, which has manifested itself through the separation between management and supervisory functions within the boards of directors. This updating process of rules concerning the internal structure of the board of directors has led to a strengthening of the duties and powers of the internal committee who is responsible of control. Furthermore, the committee members must demonstrate possession of stricter subjective independence requirements. As noted by many scholars, these elements represent progressive steps aimed at defining a control function distinct from management function, where such a distinction was previously lacking.[13]

The UK Corporate Governance Code, updated in January 2024, (in Section 2, Principle G) considers it essential for listed companies to have a combination of executive and non-executive directors (particularly non-executive and independent directors) within the board of directors, so that no individual or small group of individuals dominates the board's decision-making process. It is also required a clear division of responsibilities between the leadership of the board and the executive leadership of the company business.

According to flexible criteria, the function of setting strategy and social goals is entrusted to the full board of directors, day-to-day conduct is entrusted to the executive directors and supervision is entrusted to the internal audit committee. Therefore, as it has been well summarized by leading scholarship: "the board has a dual function, both to "lead" and to "control" the company. And it is also thanks to self-regulation that the board's monitoring function is raised to the same level as the function of defining corporate strategies".[14] At least one third of the board as a whole should be made of non-executive directors, most of whom should be independent. Independent means being free from management and from any business or other relationship with the company that could materially interfere with the exercise of objective judgment.[15]

The circumstances which are likely to impair, or could appear to impair, a non-executive director's independence are listed in the UK Corporate Governance Code, Section 2, Provision 10 – it is a list that should not be considered exhaustive.[16]

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[13] Fortunato S. I "controlli" nella riforma del diritto societario [The "controls" in the reform of company law]. Rivista delle societa, 2003, p. 891.

[14] Davies P. L. Board Structure in the UK and Germany: Convergence or Continuing Divergence? International and Comparative Corporate Law Journal, No. 2, 2000, p. 6.

[15] Davies P. The System of Corporate Governance in the United Kingdom. In: Tombari U. (ed.). Corporate governance e "sistema dei controlli" nella s.p.a. [Corporate governance and the "system of controls" in the joint-stock company]. Torino: Giappichelli, 2013, p. 211, argues that "the single most important achievement of the Cadbury Committee was its successful advocacy of the introduction (or, perhaps better, re-introduction) of the monitoring function to the boards of large British companies, and its elevation to equal status with the strategy-setting function".

[16] It is a responsibility of the board, in the annual report, to identify each non-executive director who is considered independent.

In listed companies, as reflected in the UK Corporate Governance Code, Section 4, Provision 25, in addition to other functions "The main roles and responsibilities of the audit committee should also include [...] – reviewing the company's risk management and internal control framework, unless expressly addressed by a separate board risk committee composed of independent non-executive directors, or by the board itself".

Thus, the process of regulatory convergence outlined above, characterized by enhanced oversight requirements and the assignment of supervisory functions to suitably qualified individuals, has resulted in the recognition of a more distinct separation between management and the supervision, even where both functions are performed within a single board.

Finally, it is worth noting that a process of convergence has also taken place in Italy among the different corporate governance systems.

Specifically, in most Italian companies characterized by a certain organizational complexity, the traditional "dual-board model with a side-by-side board" is formally adopted, while in practice the corporate governance tends to take on a one-tier structure, properly considering the cooperation that exists between the management body and the supervisory body.

As a result of the rules set out in the Corporate Governance Code, updated in January 2020, the traditional Italian model – characterised by the cooperative *ab externo* oversight exercised by the supervisory body – has experienced an increased degree of contamination from international best practices, which assigns to the management body the additional role of a monitoring board, consisting of continuously overseeing the efficiency and proper conduct of the company's executive directors.

In this context, the increasingly frequent participation of the members – either all or only some – of the supervisory body in board committees has emerged. The largest Italian listed companies have effectively shifted the summit of the control function from the supervisory body to the board of directors, specifically – to its non-executive members, adjusting themselves to international best practices.

Over time, the traditional model of management and control has undergone a form of institutional evolution, progressively incorporating features characteristic of the one-tier system. This phenomenon has been most pronounced among listed companies, driven by their adherence to the Corporate Governance Code, and has gradually steered the overall corporate governance framework towards coser alignment with the Anglo-Saxon model and international best practices.

Conclusions

Scholars largely agree that, under equal conditions, there is no universally superior corporate governance model in abstract terms. However, within the euro-unitary framework, there is a strong tendency to give the board a progressively

more central role, with a careful internal allocation of both management and supervisory functions. Therefore, according to the prevailing view among scholars, instead of uselessly opposing this euro-unitary trend towards the one-tier model, it is better to adjust it to the national legal systems of the Member States.[17] Moreover, at the heart of the current international legal debate on corporate governance models lies the question of whether the one-tier model is intrinsically suitable for listed companies.

This conclusion, in my opinion, is fully acceptable even in the Italian context, as the emphasis on the operational flexibility and solid structure that the one-tier model can offer appears constructive; moreover, the one-tier model is no longer perceived as entirely alien to the Italian traditional model.

This has been confirmed by the reform of the Italian financial system enacted by the Italian legislator in 2026 to strengthen the competitiveness of Italian companies.[18] This reform appears suitable to overcome the resistance towards the one-tier model that has existed in Italy until now. Thus, the one-tier model becomes a competitive factor and a pull for investments, especially for foreign institutional investors. Indeed, in larger listed companies, the composition of the shareholding structure is increasingly represented by institutional investors (both domestic and foreign), rather than by retail or other kinds of investors.

This significant change in the composition of share ownership is the factor that, more than any other, prompts a reconsideration of the goals of company law and the tools through which achieve them. In fact, institutional investors consider the quality of corporate governance systems a key element of their investment policies. In this regard, it is worth to highlight that the one-tier model is often seen, particularly abroad, as a simple and flexible solution able of ensuring transparency and high-quality corporate information, thanks to the flow of data between the board of directors and its committees.

Taking everything into consideration, once the criticisms raised in Italy against the one-tier model have been overcome, it could represent a preferable alternative to other systems, especially in the context of listed companies.

The significance of the guiding principle underlying the recent Italian reform of the financial system should not be underestimated. Accordingly, in alignment with international best practices, it is necessary to simplify corporate governance rules, while taking into account the provisions set out in the Codes of Corporate Governance. This indication represents a clear acknowledgment of the value of self-regulatory rules, to which the legislator intends to refer in defining primary legislation. In this context, a marked shift in favour of the one-tier model emerges, which is configured as the system of management and control best suited to support the implementation of the principles contained in the Italian Corporate Governance Code. To date, it is indeed undisputed that the preferred

[17] Stella Richter jr. M. Le opportunita del sistema monistico per il diritto societario [Opportunities offered by the one-tier model in corporate law]. Rivista delle societa, 2019, p. 519.

[18] D. Lgs. No. 47/2026 of 27 March 2026.

environment for the one-tier model is that of listed issuers, which, being required to preferably establish a governance system in line with the principles expressed in the CCG, can derive clear advantages from the allocation and balancing of roles and responsibilities among their corporate bodies, achieving a balance between strategic supervision, management, and supervisory functions in accordance with the Code itself.

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