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Riding the Waves of Reforms in Corporate Law, an Overview of Recent Improvements in Italian Corporate Codes of Conduct

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Riding the Waves of Reforms in Corporate Law, an Overview of Recent Improvements in Italian Corporate Codes of Conduct

Summary

In the past only a few of the major Italian companies spontaneously adopted self-regulatory tools such as codes of corporate conduct or codes of ethics, claiming the set of values that should guide their conduct and their shareholders and stakeholders were called to comply with. As a reaction to national corporate scandals such as those involving Cirio and Parmalat, things started to change as the need for corporate governance reforms was felt at the institutional as well as at the corporate level. This new wave was mainly due to the enactment of Legislative Decree no. 231 of June 8 2001 by Italian Legislators that marked an important turning point for the Italian corporate regulatory framework as it made codes of ethics and codes of conduct a legal requirement for Italian companies rather than an additional public relations tool as they were generally considered by the business environment. The aim of this paper is to fill the information gap on the Italian corporate codes scenario and to foster the dissemination of knowledge about the current situation, giving an introductory sketch on Leg. Decree. 231/2001.

Keywords: Code of Corporate Conduct , Codes of Ethics, Corporate Governance, Corporate Law

JEL Classification: F23, M14

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Introduction

After major corporate scandals such as Cirio's bonds and the Parmalat collapse, that sent shockwaves through corporate Europe and polarized the attention of both foreign public opinion and international experts on Italian companies, Italy is still on the media hotspots as the governor of Italy's major banking institution (Bank of Italy) was forced to resign for having breached the ECB's (European Central Bank) code of conduct, requiring governing council members to "maintain the integrity and reputation" of the European system of central banks and the ECB. This recent scandal has seriously damaged Italy's reputation in the eyes of the international financial community, proving that no lessons were learnt from Parmalatⁱ

How a relatively small country can generate such a complex and massive series of corporate scandals has been a topic of heated debate in the academic and business spheres. The evolution that led to such a period of financial scandals and disarray was marked by the lack of legal compliance with procedures for preventing corporate misconduct. Existing laws, as set out in the Civil Code, as well as self-regulatory frameworks, such as codes of corporate conduct and ethics, (think for instance of Parmalat which has been known for years as a good corporate citizen with a well-meaning internal code of governance and policies, including a code of conduct for management culture), proved to be ineffective in preventing corporate crimes, leading to the worst period of Italian corporate history after the "Tangentopoli" scandal, which brought into the open the deep corruption of the country's administrative, political and business forces. This revealed symptomatic systemic problems in the Italian system, which made corporate governance and legal reform more and more needed, if the country wanted to remain competitive in the international scenario. It is in this context that opinions have been raised asking a prompt shift in corporate governance standards and expressing expectations over new legal measures to control and prevent corporate deviance and misconduct. The legislator's effort towards the formulation of effective reforms in corporate governance resulted in Legislative Decree No. 231 on 8 June 2001ⁱⁱ. The aim of this paper is to investigate the current situation of self-regulatory tools in Italian companies in order to ascertain the improvements made in the field with a special deal of attention paid to the consequences of the enactment of legislative decree 231 in 2001.

Law, Morals and Ethics

According to the abundant academic literature dealing with corporate codes, an authorized definition does not exist as there is a great variance in the ways these statements are drafted. The term usually refers to companies' policy statements that define standards of conduct, executives as well as employees are called to conform to, when operating in daily business both within and across national borders. As a matter of fact a code can help employees from diverse backgrounds work more effectively across geographic and cultural boundariesⁱⁱⁱ. A common feature of codes, and maybe their main limit, lies in their voluntary character and in the lack of independent monitoring systems. The main focus of academic research on codes is generally put on content issues (OECD, 2001)^{iv} and codes structures (Kolk, Von Tulder, 2004)^v, (Weaver, 1993)^{vi}, (Valentine and Fleischman, 2002)^{vii} or on their effectiveness both on a managerial and societal level (Kolk van Tulder, 2003)^{viii}. An insufficient deal of attention is usually paid to monitoring and enforcement measures, though they are to be considered as the real key challenge for the effective functioning of codes (Sethi, 1999)^{ix}.

For the aims of this paper I will distinguish corporate codes in two different categories, partly recalling the distinction made by Paine (1994)^x between compliance versus integrity-based approaches to the management of ethics within companies.

The difference between compliance and integrity is the same existing between codes of conduct and codes of ethics.

While compliance procedures with existing legal norms and standards, established by national legislators (as legislative decree 231 /2001 in Italy) and endorsed as a legal compliance by corporations lead to the implementation of codes of conduct making them compulsory legal self-defense mechanisms, codes of ethics can be viewed as attempts to institutionalize the morals and values of the company founders such that they become part of the corporate culture and help socialize new individuals into the culture (Weiss, 1994)^{xi}.

The path leading to the adoption of a code of ethics is usually that of sharing values at a corporate level, not in response to any legal requirement but as a process which companies voluntarily engage in. Thus codes may be serious attempts to articulate the moral climate that is part of the organization's culture (Stevens, 1994)^{xii}.

In this view corporate codes of conduct can be considered as a response to the law, an act of compliance, while drafting a code of ethics is not an easy task for companies as it involves engaging in an in-depth process of negotiation within a company's direct stakeholders (those who are both directly and indirectly affected by the company's operations such as employees, suppliers, shareholders, clients, local community, future generations, the environment), aimed at sharing a set of common values which should inspire the company's daily operations. The ultimate goal of this process is helping to build a firm's culture or to reinforce the existing culture through re-thinking the current issues at stake in a globalised and complicated scenario.

Here we come to the fundamental distinction between legality and morality which can be summarized using Kant's definition given in the *Groundwork for the Metaphysics of Morals* (1785)^{xiii}:

“Legality is defined in terms of whether or not an act, regardless of what motivates it, is in conformity with the law, whereas when the idea of obligation, under the law is at the same time the motivating force, then this constitutes the morality of the act”

Although fundamentally different, morality and law are strictly linked, (Nino, 1999)^{xiv}, since without morals there are no binding legal foundations for law. Law defines merely the ethical minimum (Leisinger, Schmitt, 2003)^{xv}, but legal obligations have not proven enough to ensure the respect of fundamental principles. A trip beyond law is thus to be encouraged. Although, the world beyond law is not the uncharted territory imagined by early jurists (Rouland, 1992)^{xvi}, it rather responds to the moral obligations everybody is expected to embrace. For what concerns organizations, going beyond law, means taking the inner moral obligations people constituting the company embody and bringing them to the surface as an active framework of action. In this sense, ethics, seen as the joining of moral values commonly shared in the aim of attaining mutual goals (Sapelli, 2002)^{xvii}, extends far beyond legality and becomes the final goal of corporate ethics programs.

Research goals

The main reasons which drove the writing of this paper and the comparative analysis which lies beneath, is to fill the information gap on the Italian corporate codes scenario and to foster the dissemination of knowledge about the current situation. To address this issue a

multilevel descriptive analysis was conducted across companies included in the Standard & Poor MIB (S&P/MIB)^{xviii₁}, a recently established equity index relying on Standard & Poor's approach. S&P/MIB was preferred to the MIB 30 index, released by the Italian Stock Exchange as it offers a broader market coverage than MIB 30 listing more than 40 companies. The analysis was conducted in two separate phases over a distinct period of time (May 2004, January 2006), in order to allow a comparative analysis by identifying meaningful changes occurred in the corporate and legal scenario within this time. A first recognition, aimed at assessing the existence of codes of corporate conduct available on corporate web sites of the companies listed in the S&P/MIB index, was released in May 2004. The second one followed in January 2006 and was aimed at verifying previous assumptions and significant changes occurred in the meantime.

Methodology

Firstly, S&P MIB Index companies' corporate web sites were scanned in order to make sure they had a code of conduct/ code of ethics/ code of business practice or other similar documents available on line. Once the code was found, the terminology used in referring to the code was listed together with the sector the company belongs to, the date of issue or of recent revisions of codes, and the area of the web the code was posted in. Results are shown in Figure 1.

Figure 1: Standard & Poor MIB Index web codes of conduct and conduct availability up to May, 2004

| COMPANY | SECTOR | WEB AV. | TERMINOLOGY | YEAR | LOCATION |
|----------------|-------------|-------------|-------------------|------------|-------------|
| Alleanza | Insurance | Available | Code of ethics | 05/ 2004 | CSR |
| Autogrill Spa | Food | Available | Code of ethics | N. A | C. G. |
| Autostrade | Services | Available | Code of ethics | 2003 | CSR |
| Banche | Banking | Unavailable | | | |
| Banca | Banking | Unavailable | | | |
| Banca | Banking | Available | Code of ethics | 2003 | CSR |
| Banca Intesa | Banking | Unavailable | | | |
| Banca Monte | Banking | Unavailable | | | |
| Banca | Banking | Available | Code of ethics | 2004 | |
| Banca | Banking | Unavailable | | | |
| Banca | Banking | Unavailable | | | |
| Bulgari Spa | Jewerly | Unavailable | | | |
| Benetton | Manufacture | Available | Code of ethics | 2002/03 | C:G. |
| Capitalia Spa | Banking | Available | Charter of values | 2002 | CSR |
| E. Biscom | Media | Unavailable | | | |
| Edison Spa | Energy | Available | Code of ethics | 2003 | Env. Sust. |
| Enel Spa | Energy | Available | Code of ethics | March 2004 | The company |
| Eni Spa | Oil & gas | Available | Code of practice | April 2004 | Sust. |
| FIAT Spa | Auto | Available | Code of conduct | 2002/03 | C.G: |
| Fondiaria SAI | Manufacture | Unavailable | | | |
| Finmeccanica | High Tech | Available | | | |
| Gruppo | Media | Available | Code of ethics | / | C.G. |
| Generali Spa | Insurance | Available | Code of ethics | 2004 | CSR |
| Italcementi | Manufacture | unavailable | | | |
| Luxottica Spa | Manufacture | Available | Code of et /cond | 02/2004 | C.G. |
| Mediobanca | Banking | Unavailable | | | |
| Mediaset Spa | Telecomm. | Available | Code of ethics | 2002 | C.G. |
| Mediolanum | Insurance | Unavailable | | | |
| Mondadori | Media | Available | Code of ethics | 2002 | C.G. |
| Pirelli & C. | Manufacture | Available | Code of ethics | 2003 | C.G. |
| RAS | Insurance | Available | Code of ethics | 2000 | C.G. |
| RCS Media | Media | Unavailable | | | |
| San Paolo IMI | Banking | Available | Code of ethics | 2003 | C.G. |
| Seat Pagine | Services | Unavailable | | | |
| Snam Rete | Energy | Available | Code of conduct | 04/2004 | C.G. |
| ST | Electronics | Available | Business cond/ e | | C.G. |
| Telecom Italia | Comm. | Available | Code of cond/ et | 2004 | C.G. |
| Telecom Italia | Comm. | Available | Code of cond/et | 2004 | C.G. |
| Tiscali Spa | Telecomm. | Unavailable | | | |
| UniCredito | Banking | Unavailable | | | |

Source: FEEM

The analysis first step

The first screen conducted on codes in late May 2004 allowed to draw a preliminary view on codes situation. The results, as shown in Figure 1, say that out of the forty companies listed in the S&P MIB Index, twenty four hold a corporate code of conduct that is available on the corporate web sites. At the time of the analysis, of these forty companies two were the banks tackling the issue of setting up a code of conduct providing clear directions on ethical behaviour.

If we look deeper into the companies considered it is worth noting that eight out of sixteen companies that did not have a code on their web site belong to an ethically sensitive sector such as banking and finance. Nevertheless, as for the other companies selected, the fact that some Italian banks do not post corporate codes of conduct on their web sites, does not necessarily mean they do not hold them. In particular for the banking sector, what is likely to happen is that banks are afraid to be adversely impacted by the posting of their corporate codes of conduct and so, even if they do hold a code, they just keep it for internal use only. Even if exclusively limited to the banking sector, another reason underpinning the unwillingness of banks to show up their self-regulatory tools seems to lie in the *Patti Chiari* project (Clear Pacts) laid down by the Italian Banking Association (ABI) and setting regulations concerning the quality of information given to the clientele on the range of products offered by Italian banks. It is not surprising that for many banks claiming commitment to corporate responsibility, the *Patti Chiari*^{xix} project provides far enough evidence of due diligence making the set-up or publication of codes of conduct superfluous.

The company commitment to the code is revealed by the area of the web where the code is posted in. The location of codes on the corporate web sites is important as it reveals the willingness of companies to communicate their self-regulatory programs and their commitment to them. The situation is quite heterogeneous as most of the companies prefer to post their code of conduct in the Corporate Governance area of the corporate web site (14 up to 24), passing on the message that codes of conduct are self-regulating tools. Six codes were posted their corporate code in the Corporate Social Responsibility or sustainability area, delivering the message that codes are not viewed by these companies as management tools but rather as communication tools similar to social and environmental

reporting. One code of conduct was posted in the “About the company” area as something strictly linked to the company history and roots which can reveal the link between the implementation of the code and the corporate culture they are expression of.

Moreover 15 codes (up to 24) were called codes of ethics, while the rest preferred a more neutral label with less philosophical implications such as: code of conduct or charter of values. According to the documents analyzed a classification based on the overall structure of the codes mainly responds to three different categories. First of all those that can be fully defined codes of ethics, dealing with ethical principles which should inspire the organization and provide additional examples of what behavior should be; a more specifically legal type of code drafted with the aim of ex 231/2001 code model specifically pursuant to the provisions of legislative decree 231/2001, and finally a third model which is a mix of the above. As Figure 1 suggests, the codes of conduct available on the web are all very recent (from 2000 up to 2004) or have undergone recent revision. This can be considered a validation of the thesis seeing an acceleration in corporate codes drafting and adoption following the enactment of legislative decree 231/2001. Before going on, a description of the main issues included in Legislative Decree No. 231/2001 is useful to our aims.

An introductory overview of Legislative Decree n. 231/2001

Legislative Decree No. 231/2001 was issued on June 8 2001 in compliance with current international standards set forth by EU legislation on judicial co-operation in criminal matters (such as the 1995 Brussels Convention on the protection of Financial Interests of the Communities and the 1996 Brussels's Protocol), the 1997 OECD “Convention against bribery of public foreign officials in international business transactions” and to pursue the enabling provisions of Article 11 of Law no.300 dated September 29, 2000. To a certain extent the legal architecture of the legislative decree is similar to that of the Federal Sentencing Guidelines promulgated in the U.S by an ad hoc governmental body in 1991, and marking the first step towards reforms in corporate governance^{xx}. Nonetheless, similarities with the Guidelines should not be overemphasized especially with regard to the categories of criminal offences governed by the decree. While the Legislative Decree covers fraud crimes against the state or public bodies, corruption and extortion and

falsification crimes, the Guidelines also govern environmental and labour offences which were initially excluded from the domain of action of the Decree.

Since direct corporate criminal liability had never been acknowledged by the Italian legislation before, the decree marks an important turning point as according to article 1 it governs the ‘administrative’ liabilities of legal entities for offences committed by their legal representative and managers. It is worth noting that using the term “*administrative*” with reference to corporate liability is a way of sidestepping the principle endorsed by Article 27 of the Italian Constitution, whereby criminal liability is personal and *societas delinquere non potest* (namely a legal entity cannot commit an offence).^{xxi}

Apart from this, the scope of the decree includes any organisation irrespective of its legal status, including a wide variety of entities. Corporations, partnerships, unincorporated associations, not-for profit organisations^{xxii} can be subjected to the new law.

In addition, the liability of companies extends well beyond national borders, since no geographical restrictions to corporate misconduct are provided as stated in Article 4:

“An organisation located in Italy is, under certain circumstances, subject to the decree even if the offence is committed abroad”.

The Italian legislator went beyond American sentencing guidelines setting two different levels of administrative liability as according to Article 5, legal entities can commit offences and can be consequently held responsible for corporate wrongdoings committed in the interest or to the benefit of the company by two categories of persons :

- a) *“those persons who are entrusted with the representation, administration or management of the company or of a financially and functionally autonomous subsidiary thereof as well as by persons who exert management and control on a de facto basis” (namely “soggetti apicali”)*
- b) *“those persons who are subject to the authority of or control by the persons indicated under par. a)” (employees, agents)*

In the first instance an inversion of the burden of proof (namely “inversione dell’onere di prova”) is provided. This means that there is an identity between the corporation and the persons who constitute its directing mind such as executives and managerial level

employees. As a consequence an offence committed by these upper level executives constitutes an offence by the corporation as well because the actor-employee who physically committed the offence represents the “alter ego” of the corporation.

If Paragraph 2 of Article 5 sets a limit on corporate liability stating that:

“The company is not liable when the persons indicated above have acted in their own exclusive interest or in the interest of third parties”

The section of the decree with major implications for corporate governance measures is Article 6 where the organisation is released from liabilities for violations committed by persons indicated under article 5 par. a) (management) provided that:

- a) an effective organisational program (or Compliance Program) has been reasonably designed and enforced, prior to the offence, to prevent such violations of law;*
- b) an internal but functionally independent oversight body (namely “Organismo dell’ente dotato di autonomi poteri di vigilanza”) has been entrusted to oversee the enforcement of this compliance program;*
- c) those who have committed the crime have fraudulently omitted to comply with such compliance mechanism”;*
- d there has been no proven omission in providing supervision on behalf of the oversight body (Section 6)*

As a consequence, compliance programs become a legal requirement, involving the following steps:

- a) identify the specific activities that may give cause to a criminal offence (at risk activities),*

- a) establish compliance standard procedures (namely “Protocolli”) to be followed by *the management in connection with such an offence*,
- c) *identify the safest way to manage financial resources in order to avoid the commission of crimes,*
- d) *take steps to inform the internal body which is in charge to oversee the compliance of the system,*
- e) *enforce the compliance standards through proper disciplinary mechanisms (sanctions)*

It's clear that these requirements oblige companies to identify risky activities, imposing a constant monitoring system on them. In second instance the organisation is released from liability for violations committed by persons indicated under article 5 par b) (employees and agents) if an effective organisational program (or Compliance Program) has been reasonably designed and enforced prior to the offence, to prevent such violations of law.

More specifically the disciplinary mechanisms vary according to Article 9 from:

- pecuniary administrative penalty
- debarments which include a prohibition on the company to carry on its activity on a temporary basis- a seizure²
- confiscation of the “price of profit deriving from the crime”
- the docketing of the judgement

According to Article 6 3rd subdivision of the decree, the previously described organizational Models (Compliance Models) can be guaranteed through the adoption of internal Codes of conduct by companies. Oddly Italian companies were not provided with an authorized definition of what a code of conduct should be, its format, the issues to be addressed, and the implementation methods, thus allowing in same cases great variance in the ways these statements are drafted or imposing standardized models of coding which don't reflect effective valuable interventions.

The analysis second step

The information acquired, led to the second step which consisted in the selection of eight corporate codes, out of the forty previously found in the previous phase and to the realization of a more detailed research on each code (See Figure 2). The selection of codes was mainly based on the information offered by the codes and on the international diffusion of the companies.

Figure 2: Companies' codes selected for further in-depth analysis

| | |
|----------|-----------|
| 1 | Edison |
| 2 | Eni |
| 3 | Enel |
| 4 | Fiat |
| 5 | Luxottica |
| 6 | UniCredit |
| 7 | San Paolo |
| 8 | Pirelli |

The findings allowed to identify different types of codes existing in the Italian scenario, and analyzing them through a check list realized by FEEM, focusing on the following categories and variables, considered particularly meaningful in shaping the essence of codes such as the following:

- The **motivations underpinning the adoption of codes** of conduct and the targeted audience whom the codes are addressed to.
- The **prevalent tone** of the code. We consider the tone according to the definition given by Gaumnitz and Lere, 2004^{xxiii³} as: “*an important attribute that can suggest the actual motivations behind a code of business ethics.*” Two different tones were previously identified: a *Preventive tone* for those *Punitive* codes in which terms such as: “shall”, “don’t”, “not permitted” were frequently used ; and a *normative*

Propositive tone usually identified with a “you should do” “it would be better to do this” language.

- The **suggestions implicit to the code** with regards to *Self-control* approach or *Seek Advice* approaches.
- A **content matter of the codes** and the extent of their coverage was settled to determine the range and frequency of the subjects covered by the code and to identify both the prominent or new issues throughout the codes.
- Last but not least, special attention was reserved to analyzing the codes with respect to the provisions set forth by **Legislative Decree 231/2001**, considering that the hallmarks of an effective due diligence program are: mapping, evaluation of risky activities, establishment of compliance standard procedures to be followed by the management in case of offence, setting of a penalty system, implementation of a training program to ensure the correct understanding of the code of conduct.

Results

Reasons favourable to the adoption of the codes of conduct

The adoption of codes aims, in the majority of the cases analysed, at identifying a nucleus of core values and principles that are already embedded in companies corporate cultures and that emerge thanks to codes.

Edison and Luxottica for example, recognize a core set of ethical principles and translate them into guidelines for the management of issues considered important to guide the companies behaviour at work.

Unicredit directly refers to the code as a living document aimed at guiding the company behaviour through the complexities of ever-changing daily tasks.

Addressers of the codes are in all cases analysed, management bodies, employees and any individual who is empowered to represent the company directly or indirectly and who temporarily and permanently engage in relations dealing with the Group.

In other companies the corporate code of conduct is established as a secure reference point for a correct and equitable conduct, such as:

Pirelli Code of ethics: “*The group identity has traditionally been based on a set of values. From these values, the Company has extracted a set of principles and rules that are enshrined in the Code of Ethics*”

San Paolo Imi Ethical Code: " *The principles of this ethical code inspire the strategic activities carried out by the Board of Directors, the directors as well as the activities for the co-ordination and implementation of the policies and the planned objectives of the San Paolo Imi management* ".

Globalization together with the growing complexity of the international situation seems to provide the reasons for drafting codes as in the case of Eni and Luxottica.

Luxottica Code of ethics 2004: " *Owing to the complexity of the situations in which the group finds itself operating, it is important to clearly define the set of values that the group recognises, accepts and shares and the system of responsibilities that the group assumes for its internal and external relations* ".

Eni Code of practice has been produced " *Due to the complexity of the situations in which Eni operates, it is important to define clearly the values that Eni accepts, acknowledges and shares as well as the responsibilities assumed by Eni inside and outside Eni itself* ".

Only Fiat in the revised version of its code sees it as constituting a fundamental part of the group's internal control organizational system that the group is committed to establish and develop. Fiat Group Code of Conduct 2003: " *The code constitutes a fundamental element of the Fiat group internal control organizational model that the Fiat group is committed to establish and develop* ".

The codes are addressed to all those working with the groups, notably directors and management, all the employees and all who directly or indirectly permanently or temporarily engage with the group such as suppliers, consultants and agents. No geographical restrictions are put to the application and implementation of the code of conduct in six out of ten companies while the remaining ones do not specify any geographical limit.

Fiat Group Code of conduct 2003: " *The code is applied in Italy and in all the other countries where the group operates* "

Edison Code of ethics 2003: “*The Code of Ethics applies to all Italian and foreign companies of the Edison Group (Edison S.p.A and its subsidiaries) and is binding on the conduct of all Associates*”.

The tone

With regard to the tone of the codes considered, there are typically codes containing normative preventive statements having prescriptive and punitive ways of addressing employees of the provisions of the code. The prevalent tone used falls under the rubric of preventive as terms such as : “*shall*”, “*do not*”, “*not permitted*” are used. two codes have a mixed tone between preventive and punitive. Only one code seems to contain propositive statements which are not accompanied by restrictive terms.

The approach

Moreover no room seems to be left in any of the codes to individual judgement as the approach of the codes results in a “*seek advice*” formula encouraging employees to refer to their line managers if they need any explanation or advice.

Content focus

Workplace issues such as harassment, conflict of interests, gift giving and receiving, use of company assets such as time and technological assets are the most prominent issues appearing in codes. Relations with external stakeholders such as the media, local and national government, labor unions are also valued as important in the code. Not to mention that recent scandals brought control authorities into prominence among external stakeholders. Moreover no smoking provisions are a new issue emerging in codes probably following the sentence convicting two Italian executives of criminal manslaughter for causing the death of a female bank worker who suffered a fatal asthmatic attack from exposure to secondhand tobacco smoke on the job.

Compliance with Leg. Decree 231/2001 provisions

All codes have set forth the provision of legislative decree 231/2001 and laid down related protocols that usually consist of a General Part describing the content of legislative decree 231 and the objectives of the program and the related sanctions and a separate part (Special part) mapping the most risky areas and related procedures. In order to help Italian companies to adopt an organizational model consistent with legislative decree 231

Confindustria (Italian Manufacturers' Association), drafted "The guidelines for building organizational and auditing models ex legislative decree 231" which are probably helping the companies which are currently working at their organizational model while only two companies don't mention any effort in this direction. Evidence suggests that the enactment of legislative decree 231/2001 enhanced the creation of codes of conduct among Italian companies. It is proper to note that the "internal but functionally independent oversight body (namely *Organismo dell'ente dotato di autonomi poteri di vigilanza*) mentioned in article 6 and entrusted to oversee the enforcement of the compliance program, is not clearly described^{xxiv}. No information or suggestion concerning its running, membership and direction is provided.

The lack of details regarding the oversight body leads to misunderstandings concerning the role of the oversight body and possible manipulation. It seems clear that the administration of a code is nearly as important as its design and since most of the independent oversight bodies studied are strictly linked to the managerial level of companies, little or no space is left to independence.

Updated overview

Finally the overall code analyzed in the first phase of the research was monitored after a considerable period of time (January 2006) in order to asses tangible changes occurred in the meantime and allow a comparison.

The results are shown in Figure 3 .

Figure 3: Standard & Poor MIB Index web codes of conduct availability updated up to January 2006

| COMPANY | SECTOR | WEB | YEAR | TERMINOLOGY | LOC | COMPLIANCE |
|--------------------|-------------|-------------|---------|---------------------------|-------|-------------|
| Alleanza | Insurance | Available | 05/ | Code of ethics | CSR | Available |
| Autogrill Spa | Food | Available | N. A. | Code of ethics | C. G | Available |
| Autostrade Spa | Services | Available | 2003 | Code of ethics | CSR | Available |
| Banche Popolari | Banking | Available | N.A. | Charter of values | | N.A. |
| Banca | Banking | Available | 03/2004 | Code of ethics | C. G | Unavailable |
| Banca Fideuram | Banking | Available | 2003 | Code of ethics | CSR | Available |
| Banca Intesa Spa | Banking | Unavailable | | | | |
| Banca Monte | Banking | Available | 2004 | Carta dei valori, mission | CSR | Unavailable |
| Banca Popolare Vr | Banking | Available | 2004 | Code of ethics | | na |
| Banca Popolare di | Banking | Unavailable | | Code of ethics | C. G | Available |
| Banca Nazionale | Banking | Available | 2004 | Code of ethics and | IR / | N:A: |
| Bulgari Spa | Jewerly | Unavailable | | | | |
| Benetton Group | Manufacture | Available | 2002/03 | Code of ethics | C.G. | Available |
| Capitalia Spa | Banking | Available | 2002 | Carta valori | CSR | Available |
| E. Biscom | Media | Available | 08/2004 | Code of ethics | C. G. | Available |
| Edison Spa | Energy | Available | 2003 | Code of ethics | Env | |
| Enel Spa | Energy | Available | March | Code of ethics | Gene | Available |
| Eni Spa | Oil & gas | Available | April | Code of practice | Sus. | Available |
| FIAT Spa | Auto | Available | 2002/03 | Code of conduct | C. G. | Available |
| Fondiaria SAI | Manufacture | Available | 02/ | Code of ethics | C. G. | Available |
| Finmeccanica Spa | High Tech | Unavailable | | | | |
| Gruppo Editoriale | Media | Available | N.A. | Code of ethics | C. G. | Unavailable |
| Generali Spa | Insurance | Available | 2004 | Code of ethics | CSR | Available |
| Italcementi Spa | Manufacture | Available | 02/ | Code of ethics | C G | Available |
| Luxottica Spa | Manufacture | Available | 02/2004 | Code of ethics | C G | Available |
| Mediobanca Spa | Banking | Unavailable | | | | |
| Mediaset Spa | Telecomm. | Available | 2002 | Code of ethics | C G | Unavailable |
| Mediolanum Spa | Insurance | Available | 2002 | Code of ethics | C G | Unavailable |
| Mondadori Editore | Media | Available | 2002 | Code of ethics | C G. | Available |
| Pirelli & C. Spa | Manufacture | Available | 2003 | Code of ethics | C G | Available |
| RAS | Insurance | Available | 2000 | Code of ethics | C G. | Available |
| RCS MediaGroup | Media | Unavailable | | | | |
| San Paolo IMI Spa | Banking | Available | 2003 | Code of ethics | C.G. | Unavailable |
| Seat Pagine Gialle | Services | Available | N.A. | Code of ethics | C. G. | Available |
| Snam Rete Gas | Energy | Available | 04/2004 | Code of conduct | C. G. | Available |
| ST | Electronics | Available | 07/2005 | Bus. conduct /ethics | C. G. | Unavailable |
| Telecom Italia Spa | Comm. | Available | 2004 | Code of conduct ethics | C. G. | Available |
| Telecom Italia M. | Comm. | Available | 2004 | Code conduct /et | C. G. | Available |
| Tiscali Spa | Telecomm. | Unavailable | N.A. | N.A. | | Available |
| UniCredito | Banking | Unavailable | 2005 | Integrity charter | C. G. | Available |

Source: FEEM

Compared to the results in Figure 1, we see that in the meantime, the number of companies drafting a code of conduct or of ethics have grown to thirty two on the sample of forty analyzed previously. The reason why there have been a stable increased in the company

implementation of codes can be easily explained due to the legal provisions of leg. Decree 231/2001 which made corporate codes legal requirement rather than a free choice of companies. In the mean time some important changes have occurred such as the fact that many companies, in addition to the adoption of codes, started communicating publicly about their self- regulatory systems, discussing about them and making corporate ethics at the edge of their agenda.

Conclusions

In conclusion, evidence suggests that following the enactment of legislative decree 231/2001, the number of Italian companies choosing to institutionalize ethics in their corporate activities through the adoption of codes of conducts has risen dramatically.

In sum compliance programs are preventive measures introducing a radical change in combating corporate misconduct, as they set up an invasive presence of preventive law inside the companies control systems in order to prevent corporate misconduct and to ensure the observance of law. Moreover it seems clear that legislative decree 231/2001 shifted from a repressive approach to a more realistic and functional preventive approach towards white collar crimes. In this, Italian legislators went well beyond the guidelines approach. Nevertheless the decree presents some evident limits in the lack of definition surrounding the so-called independent oversight body which should ensure the good functioning of compliance programs. This seems to be a major limit preventing the fulfilment of an affective preventing role for the Decree and allowing companies to sidestep the provisions set by the decree.

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