

## FACT SHEET ON ITALY

Information supplied by Donà, based on her paper for the Workshop on Legal Struggles and Political Mobilization around Gender Quotas in Europe, September 2014, Florence.

<b>CONSTITUTION</b>
<b>Constitutional gender equality clause, including constitutional parity provisions.</b>
<p>The general principle of equality between women and men is enshrined in Article 3 of the Italian Constitution providing for that “All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions”. In addition, Article 37 sets forth that “Working women are entitled to equal rights and, for comparable jobs, equal pay as men. Working conditions must allow women to fulfil their essential role in the family and ensure appropriate protection for the mother and child”. Article 51, which was amended in 2001, through its new wording envisages that “[a]ny citizen of either sex is eligible for public offices and elected positions on equal terms, according to the conditions established by law. To this end, the Republic shall adopt specific measures to promote equal opportunities between women and men”. Article 117 provision: regional laws have to remove all obstacles which prevent the full equality of men and women in social, cultural, and economic life, and promote equal access of men and women to elective offices”.</p>
<b>Constitutional reform</b>
<p>The reform was ex ante the adoption of quota legislation, both at local and central government level.</p> <p>Constitutional law no. 3/2001 Article 117, paragraph 7, of the Constitution “[r]egional laws have to remove all obstacles which prevent the full equality of men and women in social, cultural, and economic life, and promote equal access of men and women to elective offices”</p> <p>Constitutional law no. 1/2003 Article 51 of the Constitution “The Republic adopts specific measures in order to promote equal chances for men and women”.</p>
<b>Constitutional/Supreme Court case law on quotas</b>
<p>The Supreme Court interpretative role was about the notion of equality and the distinction between formal and substantial. The interpretation evolved during time from a strict definition of formal equality to an extension to include substantial equality and the legitimacy of positive measures.</p> <p>1993 cases: State laws nos. 3/1993 and 43/1993 (declared unconstitutional in 1995) Local and regional elections: No more than 2/3 candidates of the same sex on the lists; State law no. 277/1993 (declared unconstitutional in 1995) Election of the Chamber of Deputies: Alternation of men and women candidates of the same sex on the lists These laws are struck down in case No. 422/1995, 12 Sept 1995: “Any differentiation on grounds of sex cannot but be discriminatory, in that it diminishes for some citizens the concrete content of a fundamental right in favour of other citizens belonging to a group deemed disadvantaged.”</p> <p>A second decision to be recalled is judgement no. 49/2003, in which the Court pronounced as groundless the question of the legitimacy of the electoral rules of the Valle d’Aosta region, which required the presence of both sexes on every electoral list of candidates. According to the government, which applied for their abolition, such measures would jeopardize the electoral rights of citizens of both sexes. Here the interpretation differs, and one notes a change of perspective recognized by the Court itself “in light of a constitutional frame of reference that has evolved with respect to the one current at the time of the 1995 pronouncement, in particular the constitutional laws 2/2001 and 2003”. At that time, the Constitutional Court, after presentation of the new text of article 117 Cost., but prior to the amendment of article 51 Cost., specified that the constraints imposed by the</p>

law to achieve gender balance in political representation must not affect “the equality of chances among the candidates on the electoral lists”(judgement no. 49 of 2003).

Finally to be recalled is judgement no. 4/2010 pertaining to the electoral law of the Campania region and its provisions concerning the double gender preference and the 2/3 quota in electoral lists. The State had challenged the regional law on the grounds that it was unconstitutional. In this case, too, the Court confirmed the legitimacy of the measures adopted in favour of female representation. It declared that “norms such as the one subject to the present judgement can only furnish voters with further possibilities of choice; but they do not guarantee – nor could they – that the objective has been achieved, for still widespread cultural and social resistances may frustrate the intent of the regional legislator, perpetuating the existing situation, which exhibits an evident gender imbalance in representation both in the Campania regional government and, generally, in the elective assemblies of the Italian Republic. The uncertainty of the result demonstrates that the censured norm envisages, not a constrictive mechanism, but solely a promotional one, in the spirit of the above-cited constitutional and statutory provisions.”

Still applying, therefore, is the principle that “apparently not consistent with the purposes of the second paragraph of article 3 are measures that do not seek to remove the obstacles that prevent women from achieving particular outcomes, but directly grant those same outcomes to women” (Corte Cost. sent. no. 422 of 1995; no. 49 of 2003; no.4 of 2010). Whilst in elections, affirmative actions would conflict with fundamental principles of the Italian constitution and the inalienable rights of individuals, in the economic-social sphere “the compensation of inequalities” is not only allowed but becomes “immediately operative under art. 3, paragraph 2, Cost.” (Corte Cost. sent. no.109 of 1993) and necessary for the exercise of fundamental rights.

When affirmative actions are intended to eliminate “situations of social and economic inferiority”, they are consistent with “the provisions of the second paragraph of article 3 of the Constitution in that their purpose is to remove the obstacles that impede the effective participation of all workers in the country’s economic and social organization” (Corte Cost. sent. no. 38 of 1960; Corte Cost. sent. no. 88 of 1998), not only when they are simply intended “to raise the initial threshold among individuals” but also when they are intended directly to ensure an outcome.

It is therefore possible to draw a first conclusion. The legitimacy of ‘strong’ affirmative actions changes according to the sphere of reference, and in relation to the rights and interests involved in a particular setting. In this regard, the Constitutional Court cites affirmative actions for female entrepreneurship (law no. 215 of 25 February 1992) which, like law no. 120 of 2011, seek to remedy the evident gender imbalance in the socio-economic and business spheres.

Indeed, when the Constitutional Court has evaluated the legitimacy of measures, which like law no. 120 of 2011 have been intended to “redress or at any rate attenuate an evident imbalance to the disadvantage of women” in the economic and business system, it has evaluated its legitimacy only in relation to the principle of substantial equality. In this case, the purpose of affirmative actions is not only to resolve “a manifest imbalance against persons of female sex” but also to eliminate “discriminations accumulated in the past owing to the predominance of particular social behaviours and cultural models which have favoured persons of male sex in occupying entrepreneurial or corporate positions”, as well as to “avert the risk that natural or biological differences change into social discrimination” (Corte Cost. sent. 109 of 1993).

For the Constitutional Court, consequently, there is a difference in how affirmative actions in politics and affirmative actions in the economy are legally interpreted and judged.

## NUMBERS

### Number of female MPs in both chambers

Chamber of Deputies: 195 female deputies out of 630 (30.95%) – official data updated to 21 November 2014

Senate: 91 female senators out of 350 (28.44%) - official data updated to 25 November 2014.

After the 2013 elections, the Italian parliament recorded, with 31%, the highest percentage of women members in republican history (see the figure 2 in article), with the PD and M5S as the parties with the largest numbers of female deputies and senators.

### Number of women in boards of biggest publicly listed companies

19% female composition of company boards (n. 37 companies); source European Database on men and women on decision-making, April 2014.

### POLITICAL and PARTY QUOTAS

#### Existence of voluntary party quotas and other schemes

Mainly the centre-left wing parties (Rifondazione Comunista, Partito dei Comunisti Italiani, Democratici di Sinistra, Verdi, la Margherita e Socialisti Democratici Italiani) adopted in their statute voluntary quotas in the early Nineties. Currently only the Democratic Party has a 50 percent quota for women, placed with strict alternation on electoral lists. (Party statutes 2008, article 19).

No other measure are adopted by political parties.

#### Existence of soft measures in politics

NONE

#### Existence of hard legislated electoral quotas

Introduction of legislated quotas with sanctions, both for municipal and European elections. The quota has been implemented since early year 2000. In case of non-compliance, the party list may be rejected or financially sanctioned. Since their adoption, the quota has been respected and the number of women elected is increased both at EU and local level. To note, there is no electoral quota for the Upper and Lower House's elections.

State law no. 90/2004 European Parliament elections: No more than 2/3 candidates of the same sex on the lists

State law no. 165/2004 Principles on regional elections: No rule on women's representation

State law no. 270/2005 National Parliament Elections No rule on women's representation

Regional law no. 1/2005 Calabria Region: Candidates of both sexes on the lists

Some regional Laws (2004-05) Other Regions: No more than 2/3 candidates of the same sex on the lists

Regional law no. 226/2007 Friuli Venezia Giulia Region: No more than 60 per cent of candidates of the same sex on the lists

State law no. 215/2012 Local elections: No more than 2/3 candidates of the same sex on the lists; gender preferences

State law no. 65/2014 European Parliament elections: Candidates of both sexes on the lists; gender preferences.

Legislation for European Parliament elections (2004). Approved in the meantime was legislation for the European Parliament elections (law no. 90/2004 of 8 April 2004 which established a 2/3 quota in the party candidate lists) valid for the elections of 2006 and the 2010. As an effect of the quotas, female representation doubled in the two electoral rounds from 11% in 2006 to 22% in 2010. The legislation was renewed and strengthened as regards gender equality measures in 2014 (see below for details).

At regional level, recent years have seen the haphazard adoption of a variety of laws introducing a quota and/or double preference system; measures that in some cases have been contested by the central government but have nevertheless passed scrutiny by the Constitutional Court and therefore been declared legitimate.

Legislation for municipal elections (2012). Approved during 2012 were quota systems for the election of local councils and executives (law no. 215/2012 on municipal elections). Law no. 215 of 23 November 2012 introduced provisions intended to establish gender balances in local administrations.

First modified was the legislation on municipal council elections. For municipalities with more than 5,000 inhabitants, the law, resuming a model already experienced with the regional electoral law of Campania, established two measures:

- the so-called 'list quota': neither of the two sexes may represent more than two thirds of the candidates on electoral lists; moreover, only in municipalities with more than 15,000 inhabitants can failure to respect the quota entail annulment of the list;
- introduction of the so-called 'double gender preference' allowing the voter to express two preferences (rather than one as foreseen by the previous legislation) provided that the preferences concern candidates of different sex; if not, the second preference is annulled.

For all municipalities with up to 15,000 inhabitants, however, the lists of the candidates must ensure the representation of both sexes.

Secondly, the mayor and the president of the province must appoint an executive in compliance with the principle of equal opportunities between women and men, ensuring the presence of both sexes. Moreover, municipal and provincial statutes must establish rules that 'guarantee', and no longer simply 'promote', the presence of both sexes in the executive and in the non-elected collegial bodies of the municipality and province, as well as of the agencies and institutions dependent on them.

Some regional laws provide sanctions for non compliance with the respective quota regulations set out in their laws. The electoral laws of Calabria, Friuli V.G., Marche, Trento, and Tuscany include sanctions such as rejection of lists by electoral bodies, while the laws of Lazio, Umbria and Puglia provide financial sanctions. The compliance is high.

Since the introduction of the rules, there has been a significant growth of female representation in municipal bodies at the level of both councils and executives. In particular, the law has led to an 18.9% increase in women elected to the councils of municipalities that have applied the new law compared with those elected when the law was not in force. This effect has been stronger in the regions of the South, where the initial percentage of elected women was lower, so that the law may have had a greater effect. Moreover, an indirect effect of the law has been a 14% increase in women appointed as members of local government.

European Parliament elections (2014). Last in order of time has been the introduction of affirmative actions for European Parliament elections (law no. 65/2014 of 22 April 2014). The current legislation stipulate (from 2019 onwards) the following:

- the paritarian composition of electoral lists, requiring that no more than half of the candidates should be of the same sex, otherwise the list shall be declared inadmissible; moreover, the first two candidates must be of different sexes;
- triple gender preference, with a discipline more incisive than the transitional rules for 2014: the preferences, in fact, should concern candidates of different sex not only in the case of three preferences, but also in the case of two. If two preferences are expressed for candidates of the same sex, the second preference is annulled; if three 10 preferences are expressed, both the second and the third preference are annulled (and not just the third preference, as in the rules for 2014).

Nevertheless, the law modifying the electoral law for the 2014 European elections has changed nothing. In fact, introduced for the elections of May 2014 was the possibility to express a third preference, with the stipulation that this must pertain to a gender different from the other two; otherwise the third preference is annulled. This means that that there is nothing to prevent voting for two men. The affirmative actions will only come into effect in 2019, when 50% of the candidates will be women, and the preferences expressed must be for candidates of different genders.-Gender quotas have been postponed to the 2019 elections in order not to undermine the extra-parliamentary agreement between Renzi and Berlusconi on the 'Italicum' electoral law. The female PD senators who promoted the bill in parliament had to surrender to internal resistance and settle for a compromise text. The law was passed in the Senate with 155 votes in favour, 58 against, and 15 abstentions, with the favourable votes cast by the PD, NCD and FI and the votes against by M5S, Scelta Civica and SEL (which did not participate in the vote). The argument put forward by the political parties was that the next elections of May 25 were too close to include such disruptive mechanisms in the formation of the electoral lists. Indeed, mediation ensure maintenance of the PD-NCD-FI agreement on electoral matters. Once again, the feminist movement remained on the margins, while indifference prevailed in public opinion.

Despite the postponement of gender quotas to the 2019 elections, the results of the 2014 European elections recorded a doubling of female representation (40% of the 73 seats allocated to Italy were won by women, compared with a European average of 30%).

Italicum and gender quotas. In development, to be discussed in Senate.

#### Existence of Public board quotas

Today the public board composition register a female component beyond 20%; by the end of 2015 all public company board must respect the 30% gender quota. The implementation is strong and the surveillance is among the duties of the Department for Equal Opportunities, the government structure in charge for the promotion of gender equality.

State law no. 120/2011 Public and private board composition: No more than 2/3 members of the same sex on the board/ Composition of the boards of stock-market listed and state-controlled companies, introduced in 2011: 30% gender quota on the second renewal of a company board's mandate.

### CORPORATE BOARD QUOTAS

#### Existence of soft Corporate Board quotas/measures

No soft measures.

#### Existence of hard Corporate Board quotas

See also 'existence of public board quotas':

"state law no. 120/2011 Public and private board composition: No more than 2/3 members of the same sex on the board/ Composition of the boards of stock-market listed and state-controlled companies, introduced in 2011: 30% gender quota on the second renewal of a company board's mandate".

In the event that a company disregards the gender quota requirement, for the first mandate a letter of caution is issued, which may be followed in the case of further non-compliance by a fine ranging from 10 thousand to 1 million euros. If the non-compliance continues in subsequent mandates, the board of directors will be dissolved. Confindustria, the ABI banking association, and the ANIA insurance company organization were opposed to the rapid application of the quota system and called for sanctions less severe than the dissolution of boards. The implementation system is based on the monitoring role played by the Consob on the listed company and by the Department for Equal Opportunities for the public company.

### QUOTAS IN OTHER DOMAINS

#### Legislated or voluntary measures in other domains as executive, judiciary, universities, sports federations, trade union, professions, political party structure, etc.

In the case of civil service system, since the Nineties the composition of the selection committee requires the respect of a 30% gender quota.

Recently, the debate has focused on the scarce presence and secondary role of women in the university structure (Beccalli 2011). In recent years, 'Gender and Science' has very often been the topic of conferences and specific research projects, also in response to the guidelines on application for European funding. Moreover in the reformed statutes of some university (Trento and Trieste, for example), has been recognized the commitment to promote a more gender balance in the decision processes and structure.

## CONTAGION and CONNECTIONS

### Contagion between different domains within the country

NONE

### Connections with other countries/ international dynamics

Reform of Article 51 influenced by France, EU (Charter of Fundamental Rights) and international organizations (UN and Council of Europe).

## COUNTRY SPECIFICS

### Best practice

In municipal election: double gender preference system (a second choice can be given, provided that this choice is of the opposite gender): positive response by voters and increase of 18.9% of women in councils of municipalities.

There is a government executive of parity under Renzi 2014, with women having important ministries (but please note that the lack of a specific Ministry for Equal Opportunities has weakened the role of the Department for Equal Opportunities).

### Failures

Little interest and/or mobilization by feminist movement  
Constitutional reform remains dead letter, no broad societal support  
Media is male-oriented

“What today is lacking is the commitment and mobilization of women in the political institutions, universities, and society – a commitment aimed at extending a concern for egalitarian democracy to all citizens, and removing the false rhetoric that this is only a ‘woman’s question’.”