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Will the year 2015 bring the return of electoral  
gender quotas?

The history about how the lack of political will  
troubled the road to gender equality in Italy

Alessia Donà



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## **Legal Struggles and Political Mobilization around Gender Quotas**

This paper is part of a case study series stemming from a project, "Gender quotas in Europe: Towards European Parity Citizenship?" funded by the European University Institute Research Council and Jean Monnet Life Long Learning Programme under the scientific coordination of Professors Ruth Rubio-Marín and Eléonore Lépinard. Gender quotas are part of a global trend to improve women's representation in decision-making bodies. In the past decade they have often been extended in terms of the numbers to be reached (40 or 50% instead of 30%), and in terms of the social field they should apply to (from politics to the economy to the administration). The aim of the project is to assess and analyse this global trend in the European context, comparing the adoption (or resistance to) gender quotas in 13 European countries in the fields of electoral politics, corporate boards and public bodies.

The case-studies in this series consider the legal struggles and political mobilization around Gender Quotas in Austria, Belgium, Denmark, France, Germany, Italy, Norway, Poland, Portugal, Slovenia, Spain, Sweden, and the U.K. They were presented and discussed in earlier versions at a workshop held in September 2014 at the EUI. Based on the workshop method, all working papers have reflected on similar aspects raised by their country case, concerning: 1) domestic/national preconditions and processes of adoption of gender quotas; 2) transnational factors; 3) legal and constitutional challenges raised by gender quotas in both the political and economic spheres; and 4) new frontiers in the field.

The working papers will be also made available on the blog of the workshop, where additional information on the experts and country information sheets can be found, and new developments can be shared. <https://blogs.eui.eu/genderquotas>.



## **Author Contact Details**

**Alessia Donà**

Department of Sociology and Social Research  
University of Trento (Italy)

[Alessia.Dona@unitn.it](mailto:Alessia.Dona@unitn.it)

## **Abstract**

In Italy, affirmative actions or gender quotas, especially in regard to political representation, began to be matters of public and political debate in 1995, when the Constitutional Court deemed illegitimate, and therefore annulled, the provisions of the 1993 electoral law introducing corrective systems for equal representation between men and women at national and regional level. Since then, the issue of ensuring equal access to elective offices has been constantly on the political agenda. The ongoing debate about the electoral reform for the Chamber of Deputies (named Italicum,) promoted by the President Renzi, may represent the last opportunity to introduce gender quotas for national elections. The paper aims to provide an historical overview of the Italian debate on gender quotas, by investigating the last two decades events and answering the following questions: what conditions and processes have facilitated the adoption of gender quotas? Are there areas in which it is (has been) easier to adopt gender quotas? What resistances – and raised by whom – have hindered their spread through policy field and levels of government? Why gender quotas are far from been considered a legitimate instrument for gender equality?

## **Keywords**

Electoral gender quotas, economic gender quotas, European Parliament, national and regional elections, Constitutional Court



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## Introduction

In Italy, affirmative actions or gender quotas, especially in regard to political representation, began to be matters of public and political debate in 1995, when the Constitutional Court deemed illegitimate, and therefore annulled, the provisions of the 1993 electoral law introducing corrective systems for equal representation between men and women at national and regional level. Since then, with the publication in 1999 of *Donne in quota* by Bianca Beccalli (a university lecturer and feminist activist), the issue of ensuring equal access to elective offices has been constantly on the political agenda. However, it has been contested, on the one hand, by part of historical Italian feminism opposed to artificial systems of representation that, it is claimed, penalize the differences and merits of women to the advantage of a single model of male derivation; and on the other by the male political class, which has long monopolized decision-making arenas in both politics and other domains. It is of great significance that still lacking today is a law containing measures for equal gender representation in national parliamentary elections. Such measures are left to the will of the ruling class and therefore to self-regulation by individual parties (to add, that mainly left-wing parties recognized gender quotas in their statutes). It might represent a turning point the government proposal for the adoption of a new electoral system for the Chamber formation (named *Italicum*), currently under discussion in the Italian Parliament and whose approval is expected by the end of May 2015. After a protracted and divisive political debate (it started in January 2014) the bill has been reviewed by female MP to contain specific measures for promoting female political representation (party list gender quotas and gender preferences). At the time of writing, the President Renzi has urged the political parties in Parliament to approve soon the bill (there will be the second and last reading by the Chamber in April), together with the constitutional reform that aims to secure a process of rationalization of the Italian Parliament's structure and functions. After twenty years from their abolition, it seems that a clear political will has emerged for gender quotas to be reintroduced for the national parliamentary election.

In order to understand and evaluate the current debate on gender quota we need to consider the last two decades and answering the following questions: what conditions and processes have facilitated the adoption of gender quotas? Are there areas in which it is (has been) easier to adopt gender quotas? What resistances – and raised by whom – have hindered their spread through policy field and levels of government?

To answer these questions, the paper in the first Section will recall the historical phases through which equal gender representation has moved onto the agenda; how the issue of measures for greater female representation has been addressed; what discourses and rhetorics have been predominant; and what actors or group of actors have acted in favour or against the adoption of tools for an egalitarian democracy. In the second Section the activity of the judiciary branch will be considered and emphasized how relevant has been the substantial change in doctrine for the establishment of gender quota legitimacy. In the conclusions, it will be outlined the main results.

## The history of gender quotas, between adoption and resistance

If they are lacking for the national election (Brunelli 2006), by contrast, in most recent years gender quotas have been adopted or confirmed in the following three areas: the composition of the boards of public and stock-exchange listed companies (law no. 120/2011); the composition of electoral lists for local government elections (law no. 215/2012) and the composition of electoral lists for European Parliament elections (renewed in 2014 with law no. 65/2014).

The following table provides an historical overview of the legislative and constitutional provisions favouring access to public offices by women.

Table 1: Summary of Italy's legislative and constitutional reforms on women's access to elected offices and company boards

<b>Laws</b>	<b>Election</b>	<b>Specific provision</b>
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 on the lists
Constitutional law no. 3/2001	Article 117, paragraph 7, of the Constitution	"Regional laws have to...promote equal access of men and women to elective office"
Constitutional law no. 1/2003	Article 51 of the Constitution	"The Republic adopts specific measures in order to promote equal opportunities for men and women"
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 (Sicily, Sardinia, Province of Trento and Bolzano, Val d'Aosta, Lazio, Puglia, Toscana, Campania, Marche)	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. 120/2011	Public and private board composition	No more than 2/3 members of the same sex on the board
State law no. 215/2012	Local elections	No more than 2/3 candidates of the same sex on the lists; double gender preference
State law no. 65/2014	European Parliament elections	Candidates of both sexes on the lists; triple gender preference.

Source: Palici di Suni (2012: 387), my compilation

Before entering in the details of each piece of law, we underline the fact that according to the consolidated legislative frame, gender parity in Italy means the goal of 33% of representation, as in the cases of local and European elections where the law prescribes that no more than 2/3 candidates of the same sex should be in the party lists.

### ***The Electoral Law of 1993 and quotas***

A system of gender quotas for national parliamentary elections was first introduced in Italy during discussion in 1993 on a semi-majoritarian electoral system to replace the ‘pure’ proportional system in place for more than forty years and to transform the so-called ‘consensual democracy with ideological cleavages’ (i.e., the polarization between a communist bloc and an anti-communist bloc) of the First Republic (period 1948-1993) towards a competitive logic of functioning based on political alternation (Fabbrini 2001; 2009). In a context of political and economic crisis, and a consequent loss of legitimacy by the male political ruling class, there opened space for the activity and influence of two eminent women able to build a cross-political alliance: Tina Anselmi (*Democrazia Cristiana*) then president of the Equal Opportunities Commission at the Prime Minister’s Office, and Livia Turco, a deputy and active campaigner for the rights of women (*Democratici di Sinistra*). During the parliamentary debate, a split opened between the centre-left parties, traditionally close to the feminist movement and its claims, and the centre-right parties, which viewed gender quotas as a system resembling one to protect an endangered species – for instance, the panda. The slogan of the rightist women – “We are not pandas” – received wide media coverage and obtained broad public consensus. It thus fuelled a dominant cultural stance contrary to any system promoting the greater presence of women in politics. Nonetheless, the provision on quotas was approved, also because many male parliamentarians were aware that the Constitutional Court would certainly reject the measure (which in fact happened).

The law stated that 75% of seats were to be assigned with a majoritarian electoral system and 25% with a proportional one. A clause established that, for the 155 (out of 630) proportionally elected seats in the Chamber of Deputies, the lists of candidates should be composed of both sexes in alternating order (zipping). As the political debate proceeded, the women’s movement was still fragmented. The feminist autonomous groups and cultural centres of difference feminism – though uninterested in politics – opposed the quota system on the grounds that it ratified the weakness of women and their subordination to men. By contrast, the more politically integrated part of the movement - closer to the parties on the left - was in favour of the greater representation of women, but it was divided on how to achieve it: besides quotas, there could be measures like political training for aspiring female politicians, the internal regulation of the parties, non-sexist media communication, or the creation of a database of female candidacies (Guadagnini 2005). Because of these internal divisions, female political representation did not enter the public agenda but remained largely a matter for ‘insiders’ (i.e. women in the institutions). The media contributed to the negative connotation associated with the quota system. They described it as a corporative measure, a dispute among the few women with seats in parliament, and in general an issue marginal with respect to the more important debate on the electoral reform intended to establish a new model of democracy (the so-called Second Republic). Finally to be noted is the absence of a cultural debate (in the media and in the academia) informing the public about the reasons that had led to the adoption of anti-discriminatory measures in parliament, and furnishing a more comparative and international account of equal representation (Guadagnini 2003). Consequently, the quotas came into effect without adequate knowledge about them and without substantial political and civil legitimacy.

As was expected in several quarters (the parties), the quota system for parliament (and the elections of municipal and provincial councils) was short-lived. In 1995 a ruling by the Constitutional Court (no. 422/1995 of 12 September 1995) declared that the measures introduced for female political representation were unconstitutional. Instead – according to the Court – affirmative actions were admissible in the economic and social spheres (see Section 2, for the distinction – drawn by the ruling – between formal and substantial equality with reference to article 3 of the Constitution).

### ***2001 and 2003 constitutional reforms***

In order to remedy shortcomings in constitutional legitimacy, in 2001 the Title V of the Constitution was modified to arrange the relationship and the division of competences between the state and regions towards a federal state system. The modifications made to article 117 recognized regional-level quotas as legitimate (law 3/2001 of October 18 2001: The new wording of Article 117, paragraph 7, of the Constitution stated that “[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; Carlassare 2002)”. The reform was carried forward by the centre-left government headed by Romano Prodi. A paradox was apparent at constitutional level: whilst legitimated for the regional level were possible measures for affirmative action, at the level of central government the situation was unchanged (so that such measures remained inadmissible).

The constitutional reform was extended to the central level two years later, when in 2003 modification of article 51 of the Constitution was approved (law no. 1/2003 of 12 June 2003. The provision added to Article 51 specified that “the Republic adopts specific measures in order to promote equal chances for men and women”; it explicitly allows for the insertion of gender-based affirmative action measures into electoral legislation, similar to those introduced in 1993 and declared unconstitutional in 1995). Following this change, the objective of substantial gender equality was legitimated through the possibility to introduce affirmative actions for the under-represented sex also in areas other than economic and social. The change was approved under the centre-right government headed by Silvio Berlusconi.

The political debate was strongly influenced by the example of France, where an amendment similar to article 51 had already been approved, and by the European Union (approval of the 2000 Charter of Fundamental Rights of the European Union) and international organizations (United Nations and the Council of Europe). Political support for the constitutional reform was thus built on the basis of arguments and experiences borrowed from elsewhere (Guadagnini 2005).

Also on this occasion the reform was enacted without any public debate. The women’s movement remained on the margins. It did so voluntarily since it was little interested in equal representation within a system that it deemed patriarchal and therefore to be rejected. The only women to apply pressures and to act to raise awareness were those in parliament, who set about constructing cross-party alliances. Once again, the women’s movement was fragmented: on the one side was the integrated movement (elected women, femocrats, women activists, experts, associations) which participated in the debate; on the other was the ‘difference feminism’ movement, which kept out of the discussion and indeed boycotted it. Therefore lacking were the factors most important for the adoption of gender quotas: consensus and alliance between women in the movement and women in politics (Krook 2009; Lovenduski 2008). In Italy, owing to the lack of cohesion in the feminist movement (Della Porta 2003) and the technical nature of the issue, the latter did not receive the same level of visibility and mobilization as other political initiatives (divorce, abortion, violence against women).

The lack of civil society support together with the lack of political will may be the explanatory factors behind the Italian late in introducing gender quota system at national level. The contradictory sequence of constitutional reforms – first the amendment relative to the regions and then the general amendment – reflected a weakness of political will (Palici di Suni 2012). As we have seen, the first reform was approved by a centre-left government, and the second by a centre-right one. Both governments needed (in front of the other European partners and of the Cedaw committee) to appear committed to an improved gender balance in politics. So we may define the 2003 constitutional reform a case of symbolic reform, ‘which occurs when policy designed to address certain social problems fail to effectively solve these problems. Often, before symbolic policies are even formalized, decision makers, more interested in image making than problem solving, design policy statement with no teeth’ (Mazur 1996, p. 2). Moreover, the approval came, not after wide-ranging domestic debate, but mainly through emulation of neighbouring countries and absorption of international indications.

In fact, when the time came to implement the constitutional reform and therefore to approve an electoral law on gender quotas, the political will of the parties (or better, of the party males) failed. Some members of parliament, among them women, belonging to the rightist and leftist parties contended that women had no need of quotas and therefore opposed their adoption; other members continued to consider quotas as unconstitutional, despite the reform of article 51. For years, numerous draft bills were never tabled, and on the only two occasions (in 2005 with the electoral reform intended to introduce a proportional system with a majority premium, and in 2014 during the ongoing debate on the new electoral reform law termed 'Italicum', see below) when bills reached the parliamentary chambers, they were rejected by the votes of a cross-party political majority (Donà 2007).

### ***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 Statute and laws introducing a list party quota and/or double gender preference system; measures that in some cases have been contested by the central government (to note, always lead by a centre-right coalition) for their supposed illegitimacy, but have nevertheless passed scrutiny by the Constitutional Court and therefore been declared legitimate (see Section 2 for more details). Since the 2001 constitutional reform by which the regions gained new competence in the area of gender political equality was the result of the centre-left reformism, it might be that the right-wing government recurred the Constitutional Court against the regional laws in order to nullify – unsuccessfully- the regional competence, and then the unwanted 2001 Constitutional reform.

### ***Composition of the boards of stock-market listed and state-controlled companies (2011)***

Introduced in 2011, after a tortuous passage through parliament (Donà 2012), were provisions which established a 30% gender quota on the second renewal of a company board's mandate. This was a clear success for the mobilization and alliance among women in politics, women in the feminist movement, and women managers in industry (Saraceno 2011). It was accompanied by lively public and academic promoting the increasing presence of the so-called 'woman factor' (*Fattore D*) in the economy as a driver of economic growth (Ferrera 2006; Casarico and Profeta 2010). This argument proved effective in neutralizing resistances and obstacles against the measure's approval, in a country undergoing severe economic crisis.

The Italian law on gender quotas on the boards of listed and state-owned companies was approved by parliament on 12 July 2011. Published in the Official Gazette on 28 July 2011, it became effective one year later (August 2012). The law consists of three articles, the first of which (*Gender balance on the boards of listed companies*) specifies the amendments required to introduce the gender quotas envisaged by the consolidated text on financial intermediation (legislative decree of 24 February 1998), particularly in articles 147 (Administration bodies) and 148 (Control bodies). The second article (*Entry into force*) concerns the times (one year after enactment of the law) and phases of application of the gender quota provision (fixed for the first board mandate at 20% and from the second onwards at 30%). The third article (*State-controlled companies*) specifies that the dispositions on gender balance in corporate bodies also apply to state-controlled companies. The provision applies to three renewals of boards of directors and, given that mandates generally have a three-year duration, means that the law will be in force for nine years. The law provides that, on renewal of the board's first mandate, the gender quota shall be 20%, and 30% in the second and third mandates (therefore

from 2018). The law is addressed to a series of private and public actors, in particular the 272 listed companies which before the law had 6.9% of women on their boards of directors and the 2076 state-controlled companies with around 13,500 board members and a 4.3% female presence. These are therefore highly significant figures, and the main implication of the law is simply that for each woman who enters there will be a man who loses his post. This is consequently a zero-sum game, with an evident initial situation of male monopoly on boards which the quota system should eliminate. 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. The supervisory authority in the case of listed companies is Consob [Antitrust Agency], while in the case of state-controlled companies is the Department for Equal Opportunities. The female share in corporate boards has increased considerably to 11.0% in 2012 (from 2% in 2003) even if still remains clearly below the EU27 average of 16.0%. Moreover, the share of women in different management positions in large companies and SMEs reached 35.0% in 2010 (from 22.0% in 2003) and now lies above the EU27 average of 33.0%. Thus, the challenge remains to establish gender equality in Italy's business environment and its economic decision-making positions not only in corporate management positions, but also in board positions (EC 2013: 12).

### ***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.

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. This result confirms that the double gender preference system has achieved the legislator's objective of balancing gender representation in municipal councils. At the same time, voters have responded positively to its introduction. Moreover, an indirect effect of the law has been



a 14% increase in women appointed as members of local government. In municipalities with fewer than 15,000 inhabitants, the mayor can choose components of the executive (*assessori*) only from persons elected to the municipal council. This result can therefore be interpreted as a relative increase in the importance of women in the internal dynamics of local politics.

To be stressed is that there are numerous municipal and provincial statutes that require the more gender-balanced composition of executives. Yet, for many years, these rules – like revised article 51 of the Constitution – have remained dead letters. But the administrative judges have re-established the principle of legality by dissolving executives formed exclusively of men and ordering mayors and provincial presidents to re-form them with the requisite gender balance. Which once again demonstrates the importance of the courts in promoting gender equality.

### ***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 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.

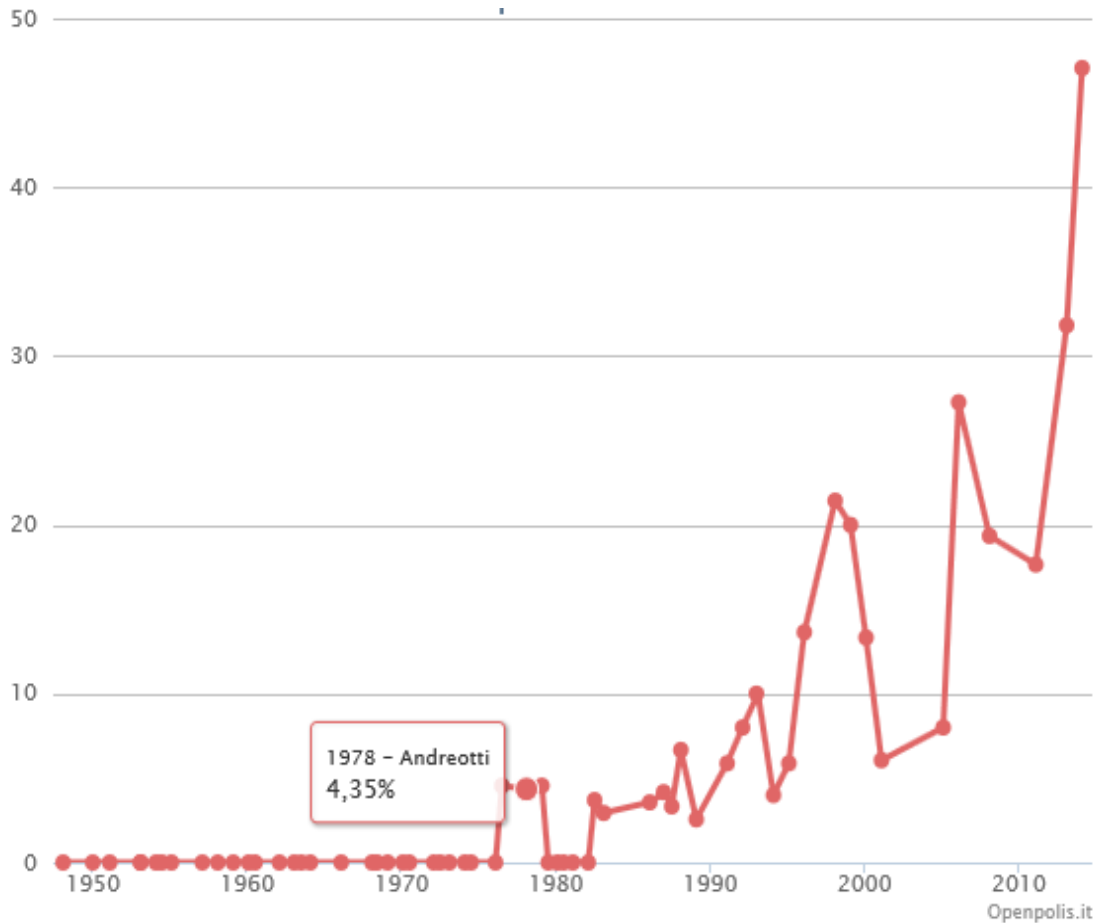
Despite the postponement of gender quotas to the 2019 elections, the results of the 2014 European elections recorded a doubling of female representation (40% of the 73 seats allocated to Italy were won by women, compared with a European average of 30%).

### ***The Debate on 'Italicum' and Gender Quotas***

With the formation in February 2014 of the new grand coalition government (based on an agreement between the *Partito Democratico* and the *Nuovo Centro Destra*) headed by Matteo Renzi, the issue of electoral reforms moved onto the political agenda. The proposal – called '*Italicum*' – that fuelled parliamentary and political debate stemmed from the agreement between the *Partito Democratico* and *Forza Italia* (known to the media as the 'Nazareno Pact' after the meeting between Renzi and Berlusconi held at the PD headquarters in via Nazareno, Rome, on 18 January 2014). The parliamentary debate on the *Italicum* is still in progress, having so far been passed through the first reading stage of the so called Italian '*navetta* system' (at the end of the floor voting in one chamber, the text is sent to the other legislative branch for approval, and in case of revisions it turns back to the previous chamber and has to be voted again). When first reading and voting was held in the Chamber (on 10 March 2014), various proposals for the introduction of a quota system for electoral lists were rejected. The original text of the *Italicum* states that 50% of the candidates on an electoral list should be women; the problem is that it does not require the genders to be alternate. In practice, this may mean that the names at the top of the list – those of the candidates most likely to be elected, depending on the percentage of the vote – could all be male. Whence, according to many, derives the necessity of specifying how the party lists should be compiled in order to ensure parity between men and women. Although the gender quota measures were supported by an alliance of women MPs of the centre right and centre left, upon their first reading in the Chamber, on 10 March, they were rejected by secret ballot. The amendments in favour of gender parity had been put forward by members of the PD and had received cross-party support: in total, 90 female deputies belonging to *Forza Italia*, *Partito Democratico*, *Sinistra e Libertà*, *Scelta Civica*, and *Nuovo Centro Destra*. The secret ballot requested by *Forza Italia* thus enabled rejection of the amendments by members of *Forza Italia* and a minority of the PD (100 deputies), to which were added the votes of the M5S against the quotas. When the bill was then discussed in the Senate, female senators presented the amendments in favour of quotas and on 27 January of 2015 voting floor approved the bill. Now the revised text is waiting for the second reading by the Chamber. The text approved by the Senate introduced amendments concerning party list composition (no more than 50% of candidates of the same sex), order (the same sex should not be present in the list for more than two consecutive times) and party leaders (no more than 60% of party leaders of the same sex), together with double gender preferences as introduced at regional level.

To be stressed, however, is the marked discontinuity of the Renzi Government with respect to past ones in Italy's republican history (Sarlo and Zajczyk 2012; see the figure 1 below). For the first time, a government executive is balanced from the gender point of view (8 women and 8 men) with women heading crucial ministries (foreign policy, defence, economic development, health, universities and research, administrative simplification, institutional reforms, and regional affairs). Given this apparent commitment to the presence of women in decision-making bodies, prime-minister Renzi has not deemed it necessary to appoint a special Minister for Equal Opportunities between man and women. And in confirming his commitment to participation of women, Renzi – as secretary of the PD – has decided to nominate only women as the top candidates on the lists for the 2014 European elections, thus already applying the rules that will enter into force in 2019.

Fig. 1: Gender representation in the governments (prime minister + ministers) of republican Italy (1948-2014)



### Legal Doctrine and constitutional jurisprudence evolution on gender quotas

What are the normative and legal issues raised by the adoption of gender quotas? How were they solved? With what consequences for the implementation of gender quotas? When reviewing the case-law of the Constitutional Court concerning article 51 on formal equality<sup>1</sup>, we saw that the Constitutional Court did declare all the measures introduced to ensure more gender balance during the 1990s to be unconstitutional: in judgement no. 422/1995 of 12 September 1995, confirming the important role of the courts in the implementation of gender quotas. In the Court's view, Article 51 of the Constitution, which provides for equal access by women and men to public and elective offices, had an absolute value, meaning that equality does not permit any gender consideration or differentiation in politics. In this judgement, the Court emphasised that the political rights of every citizen are absolute rights that cannot be limited in favour of citizens belonging to a disadvantaged group (Palici di Suni 2012). In a previous judgment (no. 109/1993 of 26 March 1993), the Constitutional Court ruled that affirmative action in the economic and social fields was constitutional;

<sup>1</sup> This part is based on the information collected by the Senate Service Study in the Dossier 'Rappresentanza di genere e cariche elettive' available at [http://www.senato.it/japp/bgt/showdoc/17/DOSSIER/751732/index.html?part=dossier\\_dossier1-sezione\\_sezione11-h1\\_h13](http://www.senato.it/japp/bgt/showdoc/17/DOSSIER/751732/index.html?part=dossier_dossier1-sezione_sezione11-h1_h13); last access: 1 April 2015).

and in judgement 422/1995 the Court specified that affirmative actions and special measures are admissible only in the economic realm, not in the political one.

The Court's opinion reflected the doctrine of the twofold meaning of the equality principle, with Article 3.1 prescribing formal equality and Article 3.2 prescribing substantive equality. In accordance with that doctrine, substantive equality should be an exception to formal equality, from which, as a general rule, the legislation may not derogate with regard to political representation. In its decision of 1995, the Constitutional Court states: "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."

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 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.

## **Conclusions**

The paper aimed to provide an historical overview of the Italian debate on gender quotas, which are far from been considered a legitimate instrument for gender equality. The Italian women suffered for a long time of citizenship exclusion (Mancini 2012), and despite the recognition of universal suffrage and formal equality still they experienced formal condition of discrimination in the workplace and in politics (Rossi-Doria 1996; Alasso 2012).

Since the 1990s, mobilizations for gender quotas in politics have been sporadic, and mostly led by women in the institutions, rather than by women in society. After the Seventies, the Italian feminist movement is fragmented and with conflicting internal positions on the issue of gender quotas. The male dominated- political parties have thus been able to neutralize attempts to introduce such quota: as Saraceno (2012) writes, men in the political parties act as a ‘cartel’ whose purpose is to maintain a situation of monopoly. The only case when the mobilization has jointly involved both women in the institutions and the feminist movement it has been possible to overcome the obstacles raised by the parties and approve in 2011 gender quotas (in a more soft two-phase: 20% in 2012 and 30% in 2015, and not 30 % immediately) in the economic sector.

We may try to identify the enabling factors that make the adoption of quotas more likely. One of them is the area of application: all the various areas of government different from the central institutions (and therefore the regional government, the European parliament, the composition of public and private boards) are very likely to be subject to some affirmative action measure. Another enabling factor is the affirmation in the academic debate and the spread in civil society of scientific discourses in support of quotas (as in the case of economic decision-making bodies). Another enabling factor appears to be the alliance between women within and outside the institutions. Other possible institutional factors, like the presence or absence of a minister for equal opportunities, or contingent ones like the political and/or economic crisis, do not appear significant enough – taken individually – to foster the onset of a political discourse in favour of quotas in politics.

The influence of other European countries, deeper and deeper within the European Union (EU), can support change at the cultural, political, and legal levels; such change could also ensure a less convoluted and more linear path to gender parity in Italy (Palici di Suni 2012). Since the 1990s, the influence of the EU institutions (Guadagnini and Donà 2007) and the examples set by other European countries (especially France and Spain) have given rise to domestic constitutional and legislative reforms aimed at ensuring greater gender balance in politics, but their enactment exhibits many legal contradictions. These contradictions reflect – again – a lack of will on the part of political parties. High-sounding principles have been established, but the political consensus is not enough to turn those principles into more specific measures. Moreover, also the United Nations, and in particular the

CEDAW Committee, have periodically informed Italy of the inadequacy of the measures adopted for greater participation by women in the country's political life. To date, such international recommendations have not given the women's movement impetus to continue the battle for fair representation. In fact, Italy lacks a women's movement attentive to multi-level dynamics and present in international arenas, or able to channel external pressures to induce the national government to undertake domestic reforms.

The current political situation may represent a favourable condition for the return of electoral gender quota. After the 2013 elections, the Italian parliament recorded, with 31%, the highest percentage of women members in republican history. Moreover, the Renzi Government commitment for the modernization of Italy together with the absence of a real opposition may guarantee the necessary political support for promoting gender balance in politics. So, surely the next two months will be crucial for understanding if and how the Chamber will approve the *Italicum* (with or without the amendments proposed by the Senate), and if the 'pink quota' (as named by the media in a derogatory way) will be finally intended as positive action for egalitarian democracy to all citizens (Beccalli e Falcinelli 2011), and so removing the false rhetoric that this is only a 'woman's question'.

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