

DOTTORATO DI RICERCA IN
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Coordinatore Chiar.mo Prof. Giuseppe Melis

**LA REMUNERAZIONE DEGLI AMMINISTRATORI ESECUTIVI
NELLA DIALETTICA TRA ORGANI SOCIALI:
IL SAY ON PAY**

DOTTORANDO
Dott.
Claudio Iovieno

TUTOR
Chiar.mo Prof.
Luca Enriques

In an effort to promote better shareholder engagement in corporate governance, and in particular, to foster shareholder activism with regard to issue of executive compensation, some countries have adopted a Say-on-Pay mechanism.

Italy is one of the most recent case for new rules on executive compensation aimed at improving transparency and shareholder activism has been passed in December 2010. Under the new regulatory framework, each company shall produce a director's remuneration report laid out in two sections: *i)* a forward-looking "policy report", that outlines the planned remuneration policy and *ii)* a back-looking "implementation report" that sets out information as to how the remuneration was implemented in the previous financial year. Shareholders are requested of casting a merely advisory vote only on the first document (the remuneration policy).

This research attempts to assess this regime Say-on-Pay in the light of the traditional balance of power between the shareholder body and the board of directors; and to ascertain whether the Say on Pay rule provided for by art. 123-ter T.U.F. is appropriate in a concentrated ownership context – such as the Italian one.

Besides the introduction, this research consists of four chapters.

Chapter I summarizes the currently dominant analytical model of executive compensation in dispersed ownership systems – starting with the UK, which has been the first country to enact a Say-on-Pay regulation and, thus, is to be seen as the jurisdiction from where the say-on-pay movement, at least as a regulatory matter, has sparked. According to the traditional view, executive compensation can be regarded, on the one side, as a remedy to the agency costs generated by the misalignment of management and shareholder interests in the dispersed ownership company, on the other side, as an agency cost in

itself in that it provides a potentially powerful and opaque device for self-dealing by conflicted managers.

Chapter II discusses how Say on Pay can contribute to alleviate the problem of managerial opportunism and to assure a genuine arm's length bargaining, i.e. bargaining between executives (attempting to get the best deal for themselves) and boards (seeking – expectedly – to get the best deal for those shareholders whom they serve). A study of Say on Pay lends itself to a comparative analysis because several countries have already adopted reforms. It is useful, then, to note that each country has adopted a unique version of shareholder voting on compensation: for instance, shareholder votes could be binding instead of advisory, include several factors instead of being merely up-or-down, be on future policy rather than past practices, or be firm-optional instead of mandatory.

Chapter III focuses on Italian Say on Pay regulation. First, it is reviewed the regulatory framework in the matter of executive compensation, i.e. the rules provided for by the Italian Civil Code, by the Consolidated Law on Finance, and the Corporate Governance Code. The remaining part of the chapter concentrates on the substance of the new provision, enlightening the features that distinguish the Italian Say on Pay rule from the ones adopted by other countries.

Chapter IV purports to assess the ineffectiveness of the current Say on Pay Rule in the light of the level of ownership concentration typical of Italian public companies. In particular, this chapter questions conventional beliefs on executive pay showing that in controlling shareholder companies the problems arising from executive remuneration are much more different from the ones arising from dispersed ownership companies. In controlling shareholder companies, indeed, executive compensation may operate as a rent-extraction mechanism in the hands of the controlling shareholder.

Thus, the choice made by the Italian regulator to give to all the shareholders (including the controlling ones) a Say on Pay is questionable; rather, it is proposed a different model, based on the recent Israeli legislation, with a merely advisory majority of the minority vote.