

# COVID-19 and Gender Gap in Italy and Japan: Can “Pink Quotas” be the Solution? Francesca Marinelli\*, Michela Riminucci\*\*

1. Premises: why talk about the topic. 2. The Italian implementation despite the absence (for many years) of the European Union. 3. The Japanese (lack of) implementation. 4. Conclusion.

## Abstract

Despite the significant improvements in terms of gender equality in recent years, numerous gaps – especially, the one related to the labour market – still persist all over the world also due to the COVID-19 pandemic. The present research intends to discuss whether the controversial gender quota systems – introduced in many countries as a form of positive action to foster a more diverse work environment – could face the crisis in order to avoid the loss of decades’ worth of achievements on equality. We chose to compare Italy – which implemented the *quote rosa* system in 2011 with mixed results – and Japan – which is reviewing its plan to promote women’s development after failing to achieve its objective of having at least 30% of women in leadership positions by 2020 – because both countries were still far from reaching their goals about gender equality and, therefore, in a vulnerable position when the pandemic hit.

**Keywords:** Gender Gap; Labour Law; Pink Quotas; COVID-19; Italy; Japan.

## 1. Premises: why talk about the topic.

With over two years into COVID-19, it is now time to come to terms with the fact that this pandemic – arguably the worst crisis since World War II – is widening inequality everywhere, as evidenced in the International Labour Organization’s most recent reports.<sup>1</sup> In particular, the reports indicate that in the labour market women suffer the costs of crises

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<sup>1</sup> See among the others: ILO, *ILO Monitor: COVID-19 and the World of Work. Eighth Edition. Updated Estimates and Analysis*, 2021, available at the following link. [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms\\_824092.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_824092.pdf).

to a greater extent than men.<sup>2</sup> To address this phenomenon, it is important to both understand the main reasons behind this situation<sup>3</sup> and tackle the inevitable consequences related to the predictable exacerbation of the gender gap in the labour market. The latter prediction is concerning since gender disparity had been high even before the COVID-19 outbreak. For example, in 2019, the global gender gap in labour force participation was approximately 27%.<sup>4</sup>

This uneven situation is not only unfair but also leads to negative socio-economic consequences that may impact the economy.<sup>5</sup> Furthermore, as seen in previous crises, the higher is the unemployment rate, the fewer employment opportunities women are provided, and women who lose their jobs during the pandemic will find more difficult to re-enter the labour market when it ends.<sup>6</sup>

Based on the abovementioned information, long-term policies will undoubtedly play an important role in counteracting this existing trend of gender inequality. Thus, the legislator should be concerned with not only investing in instruments aimed at favouring women in the labour market for the greater inclusion of this underrepresented group (e.g., the implementation of social infrastructures and tax relief), but also enhancing institutions to mitigate the common stereotypes regarding gender roles (e.g., introducing and/or implementing paternity leaves). However, since most of these tools increase state expenditure, which is incompatible with the ongoing recession, it is critical to find mechanisms that are effective as well as economical. Under these motivations, this paper will focus on pink quotas.

Pink quotas are legal mechanisms under which a percentage of job positions are reserved for women; they can be categorized as positive or affirmative actions,<sup>7</sup> namely a type of those particular measures, usually introduced by anti-discrimination law, aimed at ensuring complete practical equality between men and women with respect to their professional lives.

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<sup>2</sup> For example, in 2020, women's employment declined by 5% as a result of the pandemic compared with 3.9% for men. See ILO, *World Employment and Social Outlook. Trends 2021*, 2021, 23, [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_795453.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_795453.pdf).

<sup>3</sup> See on that subject Servais J. M., Marinelli F., *Covid-19 and the World of Work: Where We Are and Where We Should Go*, in *Lavoro Diritti Europa*, 4, 2021.

<sup>4</sup> See ILO, *ILO Monitor. COVID-19 and the World of Work. Fifth Edition, Updated Estimates and Analysis*, 2020, 8 ff.: [https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms\\_749399.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_749399.pdf).

<sup>5</sup> See Eurofound, *Labour Market Change. Women and Labour Market Equality: Has COVID-19 Rolled Back Recent Gains?*, 2020: [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef20068en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef20068en.pdf); European Institute for Gender Equality, *Economic Benefits of Gender Equality in the European Union. Report on the Empirical Application of the Model*, 2017, <https://eige.europa.eu/publications/economic-benefits-gender-equality-european-union-report-empirical-application-model>.

<sup>6</sup> See ILO, nt. (4), 10.

<sup>7</sup> As remembered in Sowell T., *Affirmative Action Around the World: An Empirical Study*, Yale University Press, New Haven, 2004, 4 and 2: the term "affirmative action" which arose in the United States from an executive order by President John F. Kennedy, exists besides in America, in a lot of other countries. The concept has been transposed into the European Union law under the name "positive action".

Assuming the legitimacy of such measures since they are enforced by law in several different contexts<sup>8</sup> – and thus ignoring the debate on their fairness by running the risk of both rewarding less qualified individuals<sup>9</sup> and creating the phenomenon of reverse discrimination – this study aimed to analyse the pink quotas implemented in the workplace – so ignoring sectors such as the electoral system<sup>10</sup> – in two very different nations: Italy and Japan.

This study relies only on data – ignoring, due to its inconclusiveness, the massive international literature on the impact of the quotas on the economy<sup>11</sup> – in order to understand whether the abovementioned mechanisms are inadequate, or even counterproductive, for women – since introducing a legal requirement helping only one gender means, *per se*, to negate its strength – or, on the contrary, whether they are convenient tools for tackling the gender gap, as they do not require, as said above, financial resources.

In particular, in Section 2, the Italian legislation on pink quotas will be analysed in the context of the European Union (EU) and its effects will be evaluated using the most recent data. In Section 3, the situation in Japan will be examined, considering that the country has not yet implemented mandatory gender quotas. Finally, some conclusions will be drawn in Section 4.

## 2. The Italian implementation despite the absence (for many years) of the European Union.

Limiting as said our analysis to the workplace, Italy introduced the so-called pink quotas (a literal translation of the Italian *quote rosa*) in only one area: in order to tackle the considerable imbalance between women and men in economic decision-making at the highest level.

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<sup>8</sup> *See*, at the international level, Article 5 of the ILO Convention No. 111/1958 titled “Discrimination (Employment and Occupation) Convention”; at the European supranational level, Article 3 of the Directive 2006/54/EC on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation; at the Italian level, Article 42 and ff. of the Legislative Decree No. 198 of April 11, 2006, which is the National Code of Equal Opportunities between Women and Men; in Japan, the Basic Act for Gender Equal Society, Article 8 of the Equal Employment Opportunity Act, and the Act on the Promotion of Female Participation and Career Advancement in the Workplace. Nonetheless, *see* Section 2 for a more detailed explanation.

<sup>9</sup> On that matter *see*: Goldman A. H., *Justice and Reverse Discrimination*, Princeton University Press, Princeton, 1979 and more recently Lippert-Rasmussen K., *Making Sense of Affirmative Action*, Oxford University Press, Oxford, 2020. Of course, in order to be legitimate, the quota system must be formulated in a neutral manner, i.e., provided for in such a way as to be applied not to an *ad hoc* category (e.g., the female gender) but to the category which, in that specific context, appears to be the least represented.

<sup>10</sup> About the matter related to other potential sites for affirmative action *see* Lippert-Rasmussen K., nt. (9), 9 ff.

<sup>11</sup> For an overview of the literature that emphasizes pros and cons of the pink quota systems on the economy *see* among the most recent writings: Pastore P., *Italian Lesson about Getting Women on the Board Five Years after the Implementation of the Gender Quota Law*, in *Corporate Ownership & Control*, 16, 1-1, 2018, 185; Papangkorn S., Chatjuthamard P., Jiraporn P., Chueykamhang S., *The Effect of Female Directors on Firm Performance: Evidence From the Great Recession*, 2019, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3375702](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3375702).

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In particular, Italy enacted a specific law in 2011 for a particular area of high public interest, i.e., for the listed companies and the non-listed companies under the control of public administrations.

Thereby Italy has proved itself to be significantly ahead of other legal systems if we just consider that although gender imbalance in the highest level for economic decision-making is a widespread phenomenon<sup>12</sup> there is a lack of laws worldwide, European Union included. In fact, although it has been attempting to introduce a quota system in the “economic decision-making world” for at least the last ten years,<sup>13</sup> the proposal has remained stuck in the EU Council due to opposition from some Member States until few days ago when the Directive 2022/2381 on improving the gender balance among directors of listed companies and related measures was adopted.<sup>14</sup>

That being said, it is nevertheless interesting to stress that recently while the Italian executive is showing to be sceptical about this in-use tool,<sup>15</sup> the European Union – although, as said, does not yet have uniform legislation on this point –, nevertheless has remarked that, considering the data of the Member States, “gender quotas [...] and subsequent sanctions in

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<sup>12</sup> See World Economic Forum, *Global Gender Gap Report 2020*, 2019, 11:

[http://www3.weforum.org/docs/WEF\\_GGGR\\_2020.pdf](http://www3.weforum.org/docs/WEF_GGGR_2020.pdf), which states that only 18.2% of firms globally are led by women, and on average, 22.3% of board members in OECD countries are women with an even lower representation in emerging economies (e.g. 9.7% in China and 13.8% in India).

<sup>13</sup> After addressing the problem of women’s underrepresentation in decision-making processes and positions in the strategy for gender equality 2010-2015 (European Commission, *Strategy for Equality Between Women and Men 2010-2015*, 2011, <https://data.europa.eu/doi/10.2767/71254>), in November 2012, the European Commission submitted a proposal – without success – for a directive on promoting gender balance among non-executive directors of companies listed on stock exchanges (commonly known as the “Women on Boards” proposal). In particular, according to the aforesaid act, listed companies that do not have a presence of at least 40% of the underrepresented sex among non-executive directors have an obligation to make appointments to those positions based on a comparative analysis of the qualifications of each candidate using pre-established, clear, neutrally formulated, and unambiguous criteria and attain the said percentage at the latest by 1 January 2020 (<https://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:52012PC0614&from=EN>). Since then, the European Parliament has continued to push for progress. In particular, there are at least two acts of the Parliament that strongly support legislative action in that area: the Resolution adopted in November 2013 on the proposal for a Directive of the European Parliament and that of the Council on Improving the Gender Balance among Non-executive Directors of Companies Listed on Stock Exchanges and Related Measures ([https://www.europarl.europa.eu/doceo/document/TA-7-2013-0488\\_EN.html?redirect](https://www.europarl.europa.eu/doceo/document/TA-7-2013-0488_EN.html?redirect)), and the one adopted in January 2021 on the EU Strategy for Gender Equality ([https://www.europarl.europa.eu/doceo/document/TA-9-2021-0025\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0025_EN.html)).

<sup>14</sup> The text of the Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures is available here: <https://eur-lex.europa.eu/eli/dir/2022/2381/oj>. Nevertheless, as stressed by Pastore P., nt. (11), 186, we need to remember that even though it has not succeeded for many years, “this European Strategy has been decisive in bringing gender policies into the political agenda of several Member States and in encouraging them to impose upon listed companies and the state-owned ones – either through law (as it happened, for example, in Norway in 2003, France in 2010, Belgium and Italy in 2011, and Germany in 2015) or through self-regulatory and corporate governance codes (as in the case of United Kingdom, Luxemburg, Poland, Sweden, Finland) – the balanced presence of women and men in the overall membership of their corporate and management bodies”.

<sup>15</sup> On February 17, 2021 the newly appointed Prime Minister of the Italian government, Mr. Mario Draghi – during his policy statements before the Senate of the Republic on the economic recovery of the country after the COVID-19 pandemic – said that in order to face the phenomenon of gender gap we need not to rely on an “hypocritical compliance with the so-called “pink quotas” required by law but to invest, not only financially but, above all, in cultural terms, to ensure that more and more young women opt to train in the sectors that will form the basis of Italy’s recovery”.

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cases of non-compliance or non-functioning procedures have proven to be efficient measures to secure parity and to work against unequal power relations”.<sup>16</sup>

On the basis of these premises, it comes to wonder where the truth lies. In order to do that it is important, before giving a glance to the data, to have a quick look at the Italian legislation.

As said, to solve the problem of women’s under-representation in the highest positions of companies, Italy has set up the pink quotas for companies under the control of public administrations and those whose shares are listed on regulated markets. This system was enacted under Act 12 No. 120 of July 12, 2011, also known as the Golfo-Mosca Law completed for the companies controlled by public administrations by the Decree of the President of the Republic No. 251 of November 30, 2012, and then Article 11, paragraph 4 of Legislative Decree No. 175 of August 19, 2016.

For the sake of legitimacy, the law was formulated in a neutral manner such that it could be applied to the sex that appears to be under-represented in a specific context and not just for women. Furthermore, it was structured as a temporary law (the original deadline was 2022, at least for the listed company on regulated markets) for the promotion of women’s involvement in corporate activities for a period that was deemed to be sufficient to encourage a culture change. Nevertheless, Article 1, paragraphs from 302 to 305 of Law No. 160 of December 27, 2019, extended the pink quotas for another 18 years and has considerably modified the rules.

Leaving the details of these renewed and complex rules, as well as those of the expansion of its principles to the banking sector<sup>17</sup> to commercial law experts,<sup>18</sup> the aforementioned law enforces gender balance obligations for the administration and control bodies of companies under public administrations’ jurisdiction and those whose shares are listed on regulated markets under the supervision of the *Commissione Nazionale per le Società e la Borsa* (CONSOB) – the government authority in charge of regulating the Italian securities market – and the Department for Equal Opportunities of the Presidency of the Council of Ministers, respectively.<sup>19</sup>

However, to understand if the law is effective, we must look at the related data.

The most recent and complete data have been collected by the Inter-institutional Observatory on the presence of women in the administration and control bodies of Italian companies. These data were created in 2018 by the Department for Equal Opportunities of

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<sup>16</sup> See letter u) of the European Parliament Resolution of 21 January 2021 on the EU Strategy for Gender Equality ([https://www.europarl.europa.eu/doceo/document/TA-9-2021-0025\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0025_EN.html)).

<sup>17</sup> According to Whereas No. 60 of the Directive 2013/36/EU on the Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions and Investment Firms which stresses that “institutions not meeting a threshold for representation of the underrepresented gender should take appropriate action as a matter of priority”.

<sup>18</sup> For an analysis of the legislation before the extension see Pastore P., nt. (11), 186 ff. See also CONSOB, Dipartimento per le pari opportunità della Presidenza del Consiglio dei ministri, Banca d’Italia, *La partecipazione femminile negli organi di amministrazione e controllo delle società italiane*, 2021:

[https://www.consob.it/documents/46180/46181/20210308\\_Ossevatorio.pdf/7f31b28d-b53b-4cdb-9309-d30a7ddb7bcc](https://www.consob.it/documents/46180/46181/20210308_Ossevatorio.pdf/7f31b28d-b53b-4cdb-9309-d30a7ddb7bcc).

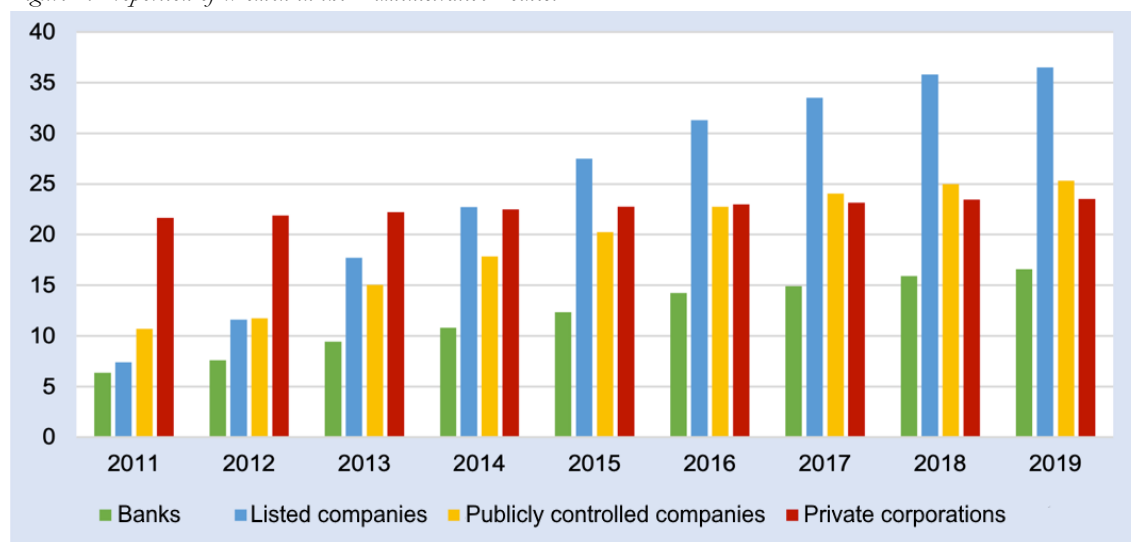
<sup>19</sup> For a detailed analysis of both previous and current legislation see Desana E. R., Massa Felsani F., *Democrazia paritaria e governo delle imprese. Nuovi equilibri e disallineamenti della disciplina*, in *federalismi.it*, 24, 2020, <https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=44012>.

the Presidency of the Council of Ministers, CONSOB, and the Bank of Italy by comparing the gender distribution of the boards of directors and supervisory bodies of companies that are subject to the provisions of the Golfo-Mosca Law – as said, listed companies and publicly controlled companies – and all joint-stock companies and banks between 2011 and 2019.<sup>20</sup>

The Inter-Institutional Observatory report showed that although the presence of women in top management roles in Italian companies was limited in both administrative and control bodies during the period under consideration (2011-2019), the improvement in gender balance was the most prominent in companies subject to the Golfo-Mosca Law, thereby attesting to this law’s effectiveness (Figures 1 and 2). Notably, in sectors outside the scope of the Golfo-Mosca law (banks and private corporations) the participation of women at the highest level remained stable or, at best, grew modestly: concerning administrative bodies, the percentage of women in banks increased by around 10% (from 6.4% in 2011 to 16.6% in 2019) and by less than 2% (from 21.7% to 23.5%) in private corporations; concerning control bodies, the percentage of women in banks increased by more than 7% (from 10.4% to 17.7%) and by 2% (from 19.7% to 21.7%) in private corporations.

In contrast, for both listed companies and publicly controlled companies, there was a significant increase: in the administrative bodies, the percentage of women in listed companies increased by more than 29% (from 7.4% to 36.5%) and by more than 14% (from 10.7% to 25.3%) in publicly controlled companies; in control bodies, the percentage of women in listed companies increased by more than 30% (from 6.5% to 38.8%) and by more than 16% (from 16.7% to 33.1%) in publicly controlled companies.

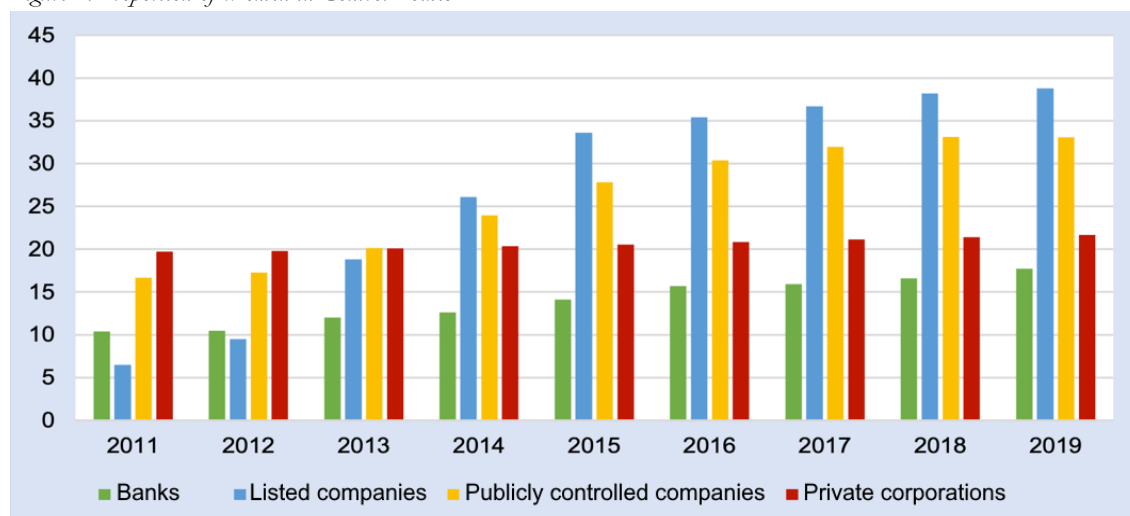
Figure 1. Proportion of Women in the Administrative Bodies.



(Source: Inter-Institutional Observatory Report)

<sup>20</sup> CONSOB, nt. (18).

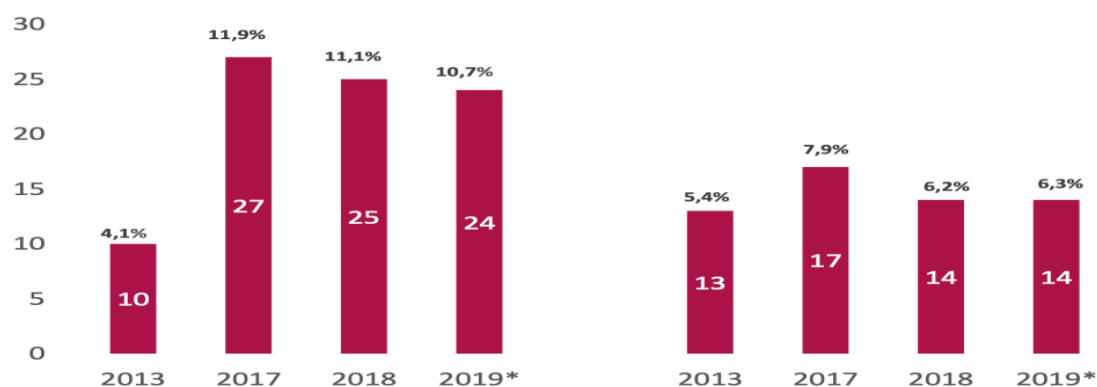
Figure 2. Proportion of Women in Control Bodies



(Source: Inter-Institutional Observatory Report)

That being said, upon closer analysis, the data indicate that although the introduction of gender quotas has produced a timely effect, the system has not been able to promote a deeper culture change yet. In particular, according to a recent report,<sup>21</sup> only 6.3% of the total number of Italian companies have a woman as the managing director, while 10.7% have a woman as the Chairman of the Board of Directors (Figure 3). Furthermore, within the Boards of Statutory Auditors, the role of Chairman is held by a woman in 22% of all listed companies.<sup>22</sup> In light of these data, it seems clear that – as another very recent study has shown<sup>23</sup> – the Golfo-Mosca Law was not able to create a virtuous circle between boards and organizations, which could have promoted gender equality more effectively at all organizational levels.

Figure 3. Women who are Chairman of the Board of Directors (left) or CEO (right) \* Partial Data.



(Source: Romano G., Angelino A., Maida A., *Le donne ai vertici delle imprese 2020*, 2020)

<sup>21</sup> Romano G., Angelino A., Maida A., *Le donne ai vertici delle imprese 2020*, 2020, [https://know.cerved.com/wp-content/uploads/2020/02/PPT-Cerved\\_Bellisario\\_FEB\\_2020.pdf](https://know.cerved.com/wp-content/uploads/2020/02/PPT-Cerved_Bellisario_FEB_2020.pdf).

<sup>22</sup> *Ibidem*, 20.

<sup>23</sup> Cuomo S., Simonella Z., *Governance and Gender: The Effects of the Golfo-Mosca Law*, 2021, <https://www.knowledge.unibocconi.eu/notizia.php?idArt=23050>.

### 3. The Japanese (lack of) implementation.

In Section 2, Italy's implementation of the pink quotas system was analysed, and, from the most recent data, it is clear that although this system produced significant positive effects in terms of improving gender equality, it has not promoted a deep culture change yet. In this context, Japan can serve as a good agent of comparison because, to this day, it remains one of the few member countries of the OECD to not have introduced any mandatory measures against women's and other minorities' underrepresentation in the workplace and society, although similar tools have been discussed as possible solutions to these long-running issues. In fact, the debate on positive action in Japan started around the end of the 1980s and gradually caught the interest of many scholars in the field of law, ultimately making its way into national legislation in the 1990s, along with other improvements and fundamental changes for the promotion of equal opportunities.<sup>24</sup> Currently, the terms *sekkyokuteki kaizen sochi*<sup>25</sup> and positive action can be considered well-known. However, their legal implementation is still weak,<sup>26</sup> and as mentioned above, a mandatory quota system – in Japanese, *kuootasei* or *wariatesei* – is yet to be introduced.

Law No. 78 of June 23, 1999, also known as the Basic Act for a Gender Equal Society (BAGES), defined positive action as “[p]ositive provision of the opportunities [to freely participate in activities in any fields of society and thereby equally enjoy political, economic, social and cultural benefits] to either men or women to the extent necessary to redress gender disparities in terms of such opportunities”. The law, then, provided the legal basis for positive action in Articles 13 and 14 by entrusting the central Government and Prefectures,<sup>27</sup> respectively, with the responsibility of establishing implementation plans for policies aimed at creating a gender-equal society. However, for example, the Basic Plan for Gender Equality – the policy document drafted in 2000 by the Cabinet of Japan pursuant to Article 13 of the BAGES – initially contained only broad aims, apart from the non-mandatory objective of increasing women's participation mainly in the Japanese Parliament (also known as the National Diet). Further updates detailed a much more extensive catalogue of targets, also including private companies; for instance, the fifth Basic Plan of 2020 sets the objective of increasing women's participation in executive positions in listed companies to 12% by 2022, but compliance remained voluntary.

Act No. 113 of July 1, 1972, also known as Equal Employment Opportunity Act, as amended in 1999, added to the above-mentioned system the possibility for employers to adopt positive actions for promoting the inclusion of women workers without violating anti-discrimination provisions (Article 9 in the 1999 amendment, now Article 8), if necessary,

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<sup>24</sup> Araki T., *Labor and Employment Law in Japan*, Nihon Rodo Kenkyu Kiko, Tokyo, 2002; Sugeno K., *Japanese Employment and Labor Law*, University of Tokyo Press, Tokyo, 2002; Hanami T. A., Fumito K., Yamakawa R., *Labour Law in Japan. Second Edition*, Kluwer Law International, Alphen aan den Rijn, 2015.

<sup>25</sup> Literally, “proactive improvement measures”.

<sup>26</sup> Kuroiwa Y., *Shokuba no daibashiti suishin to pojitibu akusbon – kaizen no tame no sekkyokuteki sochi o meguru hōteki kadai (Diversity Promotion in the Workplace and Positive Action: Legal Issues Regarding Proactive Measures for Improvement)*, in *The Japanese Journal of Labour Studies*, 10, 753, 2021, 15.

<sup>27</sup> Administratively, Japan is divided into 47 prefectures, which retain a certain degree of autonomy *vis-à-vis* the central government.



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with the support of the central government (currently, Article 14). Act 64 of September 4, 2015, also known as the Act on the Promotion of Female Participation and Career Advancement in the Workplace, completed the current legislative framework by making it mandatory for companies with more than 300 regular employees to formulate an action plan for boosting female employment (Article 8) and disclose information that may benefit women's career opportunities (Articles 16 and 17); however, its scope is still deemed to be too limited.<sup>28</sup> It is worth noting in this context that in other areas – such as for persons with disabilities and the elderly – stricter mechanisms of positive action supported by sanctions in the case of non-compliance are already in place.

As mentioned in Section 1, we will not examine the fairness of positive action in-depth, although, in Japan, discussions on its compatibility with the Constitution by analysing previous decisions of the Supreme Court of Japan and foreign constitutionality judgments – mainly France and Italy – are still going on.<sup>29</sup> Regardless, looking at the developments thus far, the introduction of mandatory quotas can be expected if the aforementioned targets are not met voluntarily. In the Japanese debate, we can distinguish among at least three approaches,<sup>30</sup> namely, American-style affirmative action – now disparaged due to allegations of reverse discrimination;<sup>31</sup> European-style positive action, which is now studied as a reference; and Japanese-style positive action pursuant to the national legislation. Regarding the latter, we can say that Japan has adopted a cautious approach of “soft” nudging to test the waters and possibly build a national consensus before eventually introducing stricter rules and sanctions. In the field of gender equality, however, this approach has made the process of boosting women's participation in the labour market in Japan painstakingly slow when compared to the relatively quicker processes of some EU member states, such as Italy.

Similar to Italy in the previous section, in the following paragraphs, we will analyse the historical data pertaining to Japan<sup>32</sup> on the proportion of women workers, especially women in administrative and managerial positions.<sup>33</sup> In Japan, from 1953 to at least 1985, this proportion kept fluctuating without showing any substantial positive change (Figure 4).

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<sup>28</sup> Kuroiwa Y., nt. (27), 15.

<sup>29</sup> However, scholars who studied the matter concluded that it would be compatible with the Japanese Constitution (Tsujimura M., *Pojitivu akushon: “hō ni yoru byōdō” no gihō (Positive Action: Techniques for “Equality by Law”)*, Iwanami Shoten, Tokyo, 2011, 97-134).

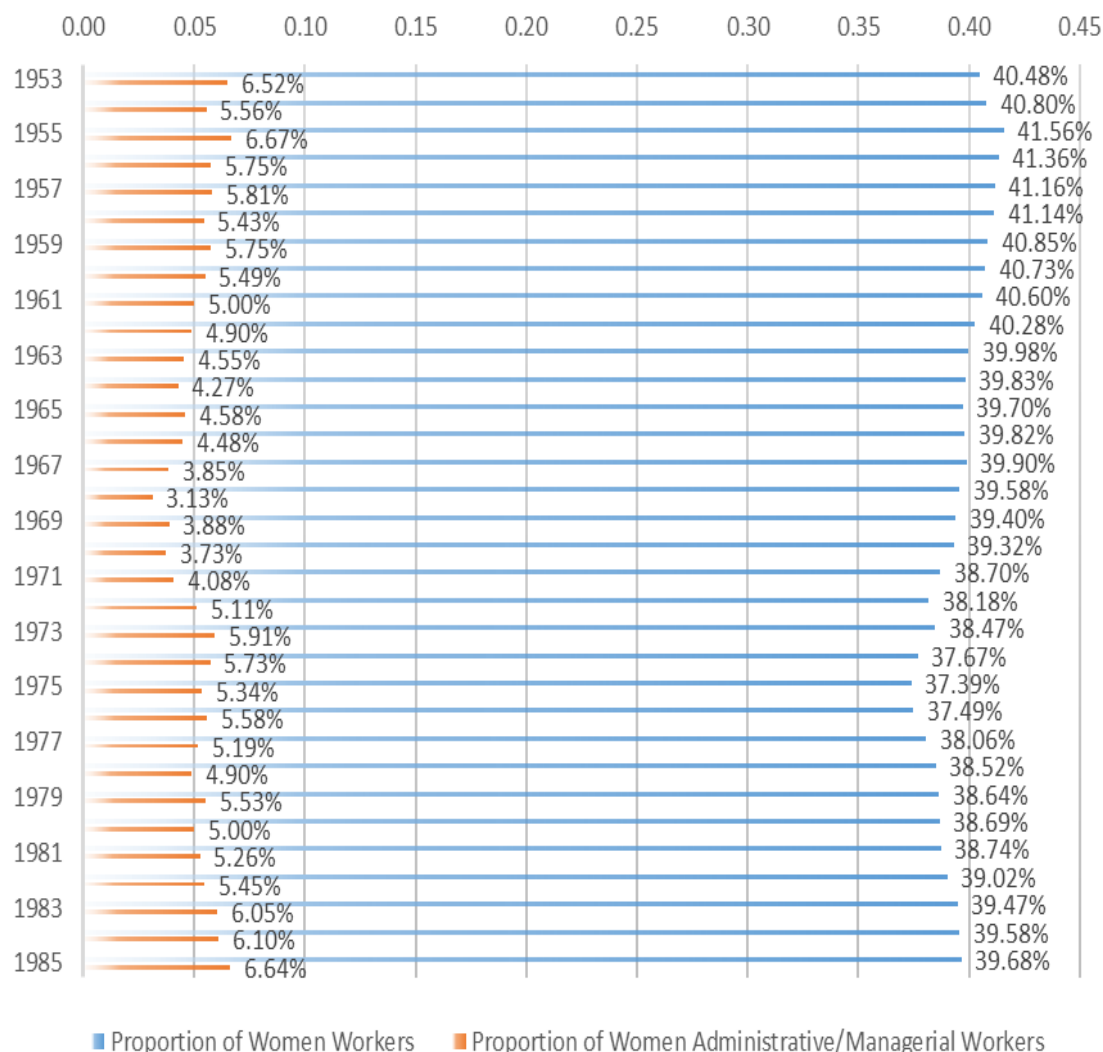
<sup>30</sup> Tsujimura M., *Sekai no pojitivu akushon to danjo kyōdo sankaku (Positive Action and Gender Equality around the World)*, Tohoku Daigaku Shuppankai, Sendai, 2004.

<sup>31</sup> Tsujimura M., nt. (30).

<sup>32</sup> Source: Labor Force Survey of the Ministry of Internal Affairs and Communications of Japan (Historical Data 6). Available at <https://www.stat.go.jp/english/data/roudou/Ingindex.html>, accessed 10 October 2022.

<sup>33</sup> Please note that, in Japan, this group includes executive positions in private companies, public workers in managerial positions, etc. See <https://www.stat.go.jp/data/roudou/pdf/shoku.pdf>, accessed 10 October 2022.

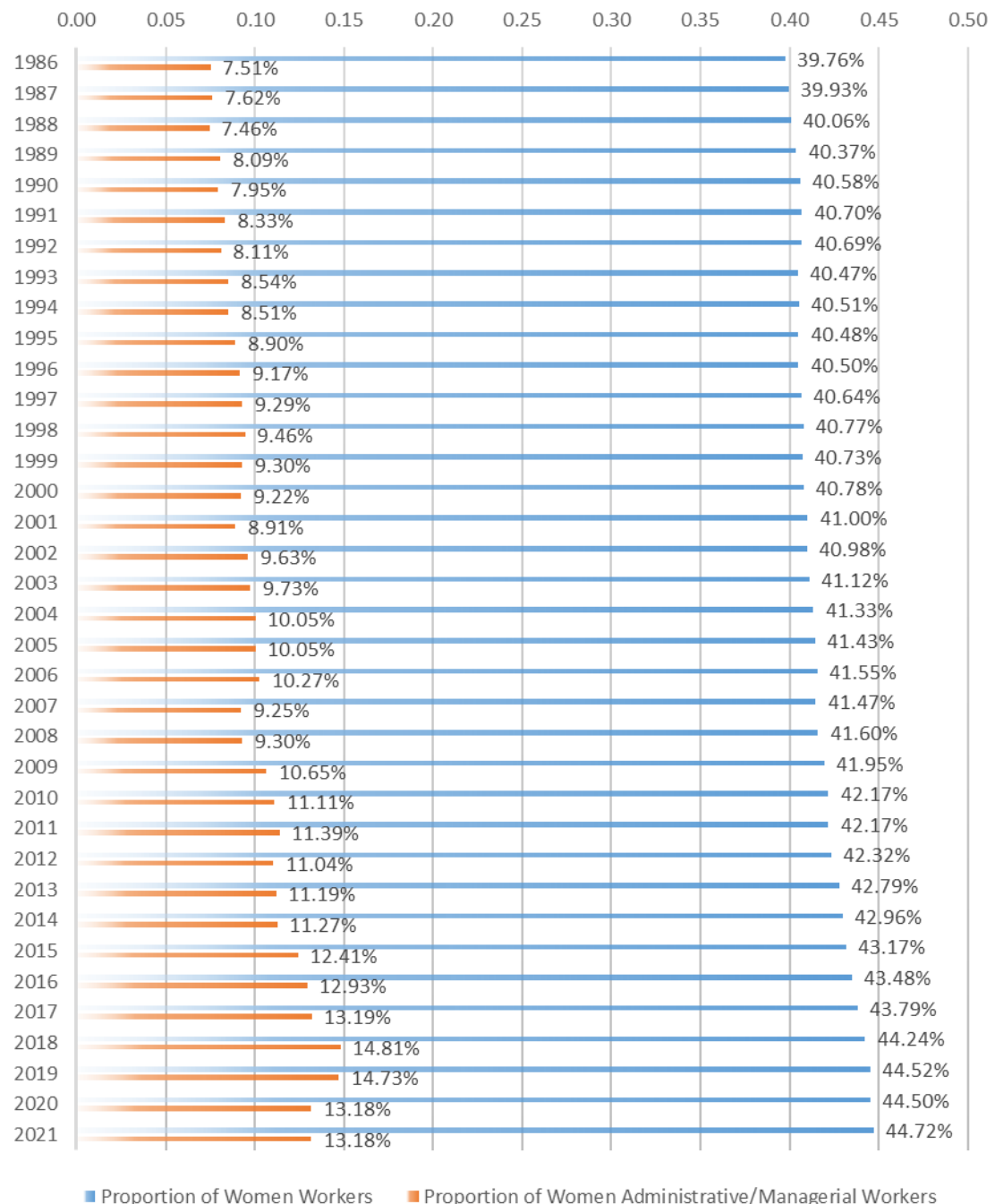
Figure 4. Proportion of Women Overall Workers and Women Administrative/Managerial Workers (1953-1985).



Source: Labor Force Survey of the Ministry of Internal Affairs and Communications of Japan (Historical Data 6). Available at <https://www.stat.go.jp/english/data/roudou/ingindex.html>, accessed 10 October 2022.

Since 1986, the situation has started to steadily improve – albeit slowly – although the number of women in administrative positions continues to experience declines depending on the year (Figure 5). If we look at the variation from the previous year, apart from a few exceptions (1954, 1971, 2008, 2014, and 2017), it has always been well under 1%, if not negative. The regular increase might as well be connected to the simple fact that more and more women are staying single and investing in their careers, and no significant acceleration can be seen after the implementation of the main legislative reforms.

Figure 5. Proportion of Women Workers and Women Administrative/ Managerial Workers (1986-2021).



Source: Labor Force Survey of the Ministry of Internal Affairs and Communications of Japan (Historical Data 6). Available at <https://www.stat.go.jp/english/data/roudou/Ingindex.html>, accessed 10 October 2022.

In Japan, the discourse on equality has traditionally been framed as an employment policy – a way to counter the labour shortage caused by the declining birth-rate and aging population – instead of something that needs to be guaranteed in the framework of human

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rights.<sup>34</sup> However, diversity in general has started becoming more and more important in recent years, following a slow shift towards sustainability in a broader sense under international pressure.<sup>35</sup> It is really a waste of potential – for the country’s economy as well – as long as unjustified contractual discrimination against women and other minorities continues in the form of employment in lower-ranking positions, lower salaries, and so on. Therefore, as mentioned above for Italy, pink quotas and related instruments, despite being temporary and certainly not perfect, can be essential in pushing for a culture change, similar to what happened in Japan in the 1980s with the removal of retirement and promotion mechanisms that negatively affected women,<sup>36</sup> and in fostering a fairer labour market for all, considering that the recent introduction of provisions against indirect discrimination did not produce the expected results.<sup>37</sup>

In Japan as well, women are one of the categories that were impacted the most by COVID-19 because of their weaker position in the labour market.<sup>38</sup> Moreover, considering that the economy, in general, has experienced a serious setback, pink quotas and similar instruments can be seen as inexpensive ways to stimulate economic growth. Nonetheless, it is critical to adequately coordinate them with the existing framework – focusing on the issues of work-life balance and *ryōritsu*, i.e., the difficulty of juggling full-time work and family life, which affects both men and women – so that the new principles do not end up being substantially ineffective. The successful implementation of positive action policies seems to eventually boil down to the value system promoted by the national consensus, and economic arguments will only be used to convince the more reluctant players of the “rationality” of the choice. Therefore, a bolder approach by the government and the legislator in involving the stakeholders will definitely be beneficial for the formulation and implementation of more effective reforms.

#### 4. Conclusion.

After examining and discussing how the gender quota system has been implemented in Italy and Japan and analysing the data, we strongly believe that the system’s advantages outweigh its disadvantages. In fact, if diversity quotas are a stretch – we can all agree that they are a means, not an end – they can arguably be considered one of the most immediate and inexpensive solutions to tackle the phenomenon of discrimination in the workplace, which became even more relevant during the COVID-19 pandemic. Therefore, gender

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<sup>34</sup> Kuroiwa Y., nt. (27), 15; Sakuraba R., *Employment Discrimination Law in Japan: Human Rights or Employment Policy?*, in Blanpain R. (ed.), *New Developments in Employment Discrimination Law*, Kluwer Law International, Alphen aan den Rijn, 2008.

<sup>35</sup> See, for example, the Ministry of Foreign Affairs of Japan’s page on Business and Human Rights: [https://www.mofa.go.jp/fp/hr\\_ha/page23e\\_000551.html](https://www.mofa.go.jp/fp/hr_ha/page23e_000551.html), accessed 10 October 2022.

<sup>36</sup> Upham F. K., *Law and Social Change in Postwar Japan*, Harvard University Press, Cambridge, 1987.

<sup>37</sup> Riminucci M., *Indirect Discrimination in Japanese Law: A European Perspective*, in *The Italian Law Journal*, Special Issue, 55-68, 2018.

<sup>38</sup> Riminucci M., *Rising Inequalities in Japan in the Wake of the Corona Shock*, in *Pandemia, post pandemia e diritto del lavoro. Quali conseguenze durature?*, Editoriale Scientifica, Napoli, 2022.

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quotas especially might represent a legislative technique under the bigger umbrella of positive action – created to “correct deficient system, not deficient people”<sup>39</sup> – that really have the potential to change the rules of the game.

Indeed, the data have shown that the gender quota system has not been sufficient to break the glass ceiling for women (and of course it cannot do that, especially in this extraordinary period of economic crisis), however, from our perspective, this does not mean that the system is not working. On the contrary, its partial failure is showing us that to change cultural attitudes, we need more time and stronger legal measures. Therefore, we hope that the mandatory gender quota system is not only promoted in the future as recently done by the EU (the best course of action for Japan would be to follow the EU’s example introducing mandatory gender quotas) but also extended to other fragile and underutilized categories by expanding the scope of the quota system from sex discrimination to other forms of discrimination, such as those based on gender in a broader sense,<sup>40</sup> disability, age, etc. As mentioned earlier, even if the already extensive research on the benefits of a diverse and inclusive economy remains inconclusive, gender quotas continue to provide a space for women at no additional cost, as demonstrated by the data discussed in our paper. That is why we believe that they are the right tools to develop a more inclusive labour market, notwithstanding their limitations.

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<sup>39</sup> Crosby F. J., *Affirmative Action is Dead Long Live Affirmative Action*, Yale University Press, London, 2004, 4.

<sup>40</sup> “Traditionally, the terms ‘sex’ and ‘gender’ have been used interchangeably, but their uses are becoming increasingly distinct. In general, the term ‘sex’ often refers to biological differences between males and females. It is something that remains fixed, natural, unchanging, and consists of a male/female dichotomy. On the other hand, gender is a social construction relating to behaviors and attributes based on labels of masculinity and femininity. Sometimes, a person’s genetically assigned sex does not align with their gender identity. These individuals might refer to themselves as transgender, non-binary, gender fluid, or gender non-conforming. Thus, gender may not identify as exclusively male or female” (Papangkorn S., Chatjuthamard P., Jiraporn P., *Gender Diversity and Corporate Governance: Recent Advances and Perspectives*, in Emeagwali O. L., Bhatti F. (eds.), *Corporate Governance. Recent Advances and Perspectives*, IntechOpen, London, 2021).

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