

The two-tier system in Germany and Italy
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THE DIVISION OF POWERS
BETWEEN MANAGEMENT AND SUPERVISORY BOARD IN ITALY

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The two-tier system is a way to organize the administrative function based on a management board and a supervisory board. The latter appoints the members of the former, establishes their compensations, can dismiss and take legal steps against them on behalf of the company. These powers provide the supervisory board with a substantial influence over the choices of the management board; however the supervisory board can also be formally entitled to intervene over the management of the company. Companies subject to Italian law traditionally adopt a different structure, based on an administration board provided with all the power to administer the company and the faculty to delegate a large part of its functions to its members on the one hand, and a control board with no direct powers towards the administrative board on the other. The control board can only report to the general assembly (with an exception for listed companies, where it can also take legal steps towards the administration board since 2005). The reform of company law of 2001-2004 has entitled companies subject to Italian law to adopt the two-tier system. From the Italian perspective it is interesting to analyse the formal division of powers between the management and the supervisory board with respect to the administration of the company because it challenges some of the main features of the Italian traditional structure of the administrative function. Here we talk about: a) the intensity of the powers that the supervisory board can exert over the management board; b) their extension; c) the conditions under which they operate.