

ACEA SPA 5 JUNE 2014 MEETING
REPORT OF THE SHAREHOLDER ROMA CAPITALE
CONCERNING ITEM 7 ON THE AGENDA

ROMA CAPITALE

The Mayor

Report on the:

4) Determination of the board of directors' fees

Art. 2389 of the Italian Civil Code specifies:

- in paragraph one that, the remuneration of the members of the board of directors is determined on appointment of the same or by the meeting;
- in paragraph three, last clause, that the By-laws can give the Meeting the powers to determine an overall amount for the remuneration of all directors, including those with special powers in accordance with the same paragraph three.

In compliance with said provision of the law, art. 21 of the Acea By-laws specifies that the Meeting defines the overall remuneration of the board of directors; and the Meeting has the right to divide said overall remuneration between the directors; if the second option is not fulfilled, the same BoD will perform said duties.

The evident substantial logic of the by-laws, in the same way as in the legislative provisions on which it is based, is to guarantee the timely and formal determination by the Meeting of the overall cost a public joint-stock company with a majority interest must bear for the remuneration of its directors. This is also due to the considerable sensitivity of the subject concerning appointments which partly or entirely, directly or indirectly emanate from the public authority and therefore from subjects with a political mandate.

On the basis of the above, it derives that the effective and substantial observance of the statutory decisions must have been and continue to be that the Meeting must precisely define the overall cost of the company board of directors.

This is also confirmed by the fact that the same statutory rule, as well as the above, specifies that the Meeting can also determine the criteria and method of internal distribution of remuneration as a whole and univocally defined. These criteria and methods must obviously allow for the different positions held in accordance with art. 2389 of the Italian Civil Code.

In fact, the BoD can only perform the internal division of the overall cost determined in the above way, if the Meeting has failed to do so. Once again, the overall logic of the statutory provision is

evident because, as the Meeting determined the overall cost, even if the BoD divides the same, implicit internal control is guaranteed by the fact that the overall amount cannot be exceeded.

As this is the evident logic of the statutory provision, if the Meeting fails to clearly indicate the overall cost in accordance with art. 2389 of the Italian Civil Code, but leaves the board of directors to determine all or most of its remuneration, the Prudent man rule requires the same directors to inform the Meeting of said contrast between the purpose of the By-laws and the resolutions of the meeting, asking the meeting to determine the cost of the BoD in a timely and complete manner. This is even more important when managing a company listed on the stock exchange (with the substantial related interests which must be protected), and even more so when 51% of the capital is held by a public authority and therefore, even though as an intermediary, also this part has substantial interests which must be protected.

However, in the Meeting held on 15/4/13, in relation to the determination of the Board of Directors' remuneration, the Meeting resolved, in accordance with Roman Council Resolution No. 134 of 20 April 2011, that the members of the board of directors would be paid 36,000 euros as board members, leaving the Board of Directors to determine their remuneration in line with the best market practices in terms of executive powers.

It is clear that the above resolution passed by the meeting cannot be said to be salient in guaranteeing the disposition and logic of the evident illustrated statutory provision, because, as concretely occurred, in this way only a marginal part of the BoD costs were determined by the Meeting, while the remaining much larger part remained at the substantial discretion of the same board of directors.

As can be seen from the above, this situation must urgently be returned to full legitimacy through the timely resolution of the meeting which is effectively conform to the evident volition of the By-laws (as rightly requested by the Mayor), opening with a further and significant profile, a new chapter in corporate governance.

Therefore, this shareholder proposes first and foremost that the meeting guarantee full and effective observance of the By-laws by resolving to define the overall and all-inclusive cost of the remuneration to be paid to the members of the BoD, and to determine said cost guaranteeing considerable savings compared to the cost of recent years in compliance with the resolutions of the annexed town council and in full observance of the code of ethics and corporate governance code.

Prof. Ignazio R. Marino (handwritten signature)