

CORPORATE OWNERSHIP AND SHAREHOLDER ACTIVISM: THE CASE OF ITALY

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Abstract

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Over the last few years, shareholder activism has gained relevance, with new players increasingly looking to get involved in corporate influence and control. Born in America in the 1980s, with corporate raiders, the act of giving a voice to shareholders has spread from the United States to Europe. The aim of this research is to map this trend in the Italian territory, understanding the major current regulations, the biggest players involved, the target companies, the most frequently required objectives, and the overall success rate of such requests compared to other European countries' neighbours. An analysis of the differences in terms of legal framework and minorities protection is provided as part of this paper, to give the reader the theoretical underpinnings for the subsequent analysis. Considerations on Italian activism follow, from the interpretation of data retrieved from Activistmonitor and Factiva that helped creating a database of 534 analyses of open and closed campaigning by activists throughout the European region since 2010. Italy turns out to be the fifth country in Europe per number of campaigns, with a few large international hedge funds and several smaller niche players. Campaigns tend to target mid and large capitalisation companies, mainly asking for changes in representation boards and having a success rate of over 50%. These findings suggest potential political implications for a successful Italian recovery in the post-COVID era. Further research on this topic and how activism impacts the performance of Italian firms would be invaluable.

Keywords: Corporate Control, Corporate Governance, Shareholders, Target Firm, Commercial Law, Corporate Regulation, Corporation Law, Hedge Funds

Authors' individual contribution: Conceptualization — G.G. and M.V.V.; Methodology — G.G. and M.V.V.; Formal Analysis — G.G. and M.V.V.; Investigation — G.G. and M.V.V.; Writing — G.G. and M.V.V.; Supervision — G.G. and M.V.V.; Project Administration — G.G. and M.V.V.; Funding Acquisition — G.G. and M.V.V.

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1. INTRODUCTION

Attention has been recently given in the news to requests and public letters addressed to the management of companies by so-called activist

investors on behalf of shareholders asking for changes in the representation boards or for more eco-friendly policies and best practices. An activist player is an investor with minority stakes in the equity of a company, that leverages on minorities

protection rules to lift their and other shareholders' voices and produce a change to unlock value in the company, the extent of which has been the subject of several different reports such as the most recent one by Albuquerque, Fos, and Schroth (2021) that records positive average returns following activists' interventions.

Activism is now a proven trend and the conventional and long-held view that public company shareholders are to be "rationally apathetic" has been gradually fading, as highlighted by Fairfax (2019). The relevance of this shift in corporate governance attitudes is even more evident nowadays, in a society where environmental, social, and governance factors are at the core of the debate over ownership and corporate control. Acharya, Gras, and Krause (2021), in their recent paper, examine how shareholder activists pick socially-oriented targets identifying the latter as attractive investments due to specific characteristics of compliance and care for the environment and society as a whole. Given these considerations, the interest of this study sparked to investigate how this American-born activism is deployed in the Italian corporate landscape.

As just mentioned, the phenomenon of shareholder activism was born in America in the 1980s, with corporate raiders, considered to be the ancestors of today's activists. Aggressive, ruthless, and asset-strippers, they used to buy out companies, resell them in pieces and make a profit out of the multiple transactions. Nowadays activists are different. These are investors with a value-oriented approach, that aims at defending minority shareholders' interests, directing the management so as to enhance the value of its company through several changes in the financial and corporate strategy. Gillan and Starks (1998) call shareholder activists those investors who "try to change the status quo through *voice*, without a change of control of the firm" (pp. 10-34). In this respect, activists serve as aggregators of consensus, complementing shareholders with a second way to voice their unhappiness with respect to how the corporation is being managed. Their target company is what could be defined as a *value* firm, namely with a low market value with respect to the book value; high profitability; lower payouts with respect to peers, and more takeover defences; higher institutional investors' ownership, as activists are thus given an easier way to enter and garner support from a wider audience.

Activists typically act quietly and in the early stages of a campaign bring forth private talks and unofficial requests. If such actions prove to be inefficient in achieving the expected changes, then a more aggressive approach, characterised by an increase in voting power and support from other shareholders, is pursued. The goals of activists can be different in nature, dealing with changes in the board representation or help during a takeover, ensuring to tender their share, but for a more equitable and higher valuation than the initial one offered by the bidders. The most suited financial vehicles in this field are the hedge funds, for few reasons: hedge funds indeed are value investors; they have huge resources, qualified investors, few regulations on diversification of investments, large incentives drive by the 80/20 structure; they use derivatives and other financial instruments usually restricted to other financial vehicles.

What's really crucial to understand when it comes to shareholder activism is the role that a minority investment can play in a business strategic roadmap. Indeed, activists are minorities, and not controlling shareholders that can easily change corporate structures having the majority in shareholder meetings and the board on their side. Becht, Franks, Grant, and Wagner (2014) argue that on average, activists own 11% of share capital in the US, 13% in Japan, and 13% in Europe.

To conclude this introduction, the structure of the paper will be as follows. First, a review of the relevant publications will introduce the main studies on the topic of shareholder activism and will be followed by an outline of the methodology used. The results of the study will then be presented, with a clear separation between two main sections. An initial and more theoretical one, where the attempt was that of collecting all the several sources of law that activists need to have in mind when deciding to launch a campaign in Italy. A closer look was given to disclosure requirements, thresholds to call general and extraordinary meetings, as well as to shareholders acting in concert. To complete this section, further investigation of minority protection and measures typical of the Italian system, such as slate voting, is reported, with a comparison of these regulations with those of other European countries. After this stage, framing is made of legal bases, the second part of the results comes from a database created collecting data from Activistmonitor and Factiva. Reflections on these data were carried out and presented answering three main research questions:

RQ1: Who are the protagonists of activism in Europe, and in which countries do they launch more campaigns?

RQ2: Who are the objects of activism, target companies, and which are their features in terms of size, stake, and location?

RQ3: Which are the demands mostly pursued by our main players, how do such demands change across countries, and whether activists are able to implement their proposals or not?

Further discussions and conclusions to the paper are presented to complement the analysis.

2. LITERATURE REVIEW

Shareholder activism is a topic that has generated interest in scholars since the late 2000s when hedge funds came to target corporations generating value from their actions. It is worth taking a look at who these players are, how they are described across documents, and how and where they act, in the light of the objective of this paper to investigate the Italian case for shareholder activism. Some scholars refer to these value players as powerful and influential shareholders with minority holdings. Others even to "quasi-insiders", as Cohn, Towner, and Virani (2020) like to call those who they define as investors at the periphery of control in corporate governance. It is quite agreed that the most successful financial vehicles in pursuing activism are the hedge funds, as even Kahan and Rock (2007) point out, considering hedge funds as "the most dynamic and most prominent shareholder activists". More recently, DesJardine, Shi, and Sun (2021) shared the same opinion, showing evidence of how

effective hedge fund interventions are with respect to corporate shareholder activism. Indeed, matching samples and using a difference-in-difference methodology, the authors prove how hedge funds targeting decreases the complexity of strategic decision-making in firms, improving their effectiveness and hence value. Not by chance, the majority of the documents on the topic of activism have been conducted on the incidence, impact, and effects of hedge fund activists through voice in several countries and time spans.

However, for the purpose of this paper, no specific study refers to the legal and regulatory framework applied in Italy, as well as the main features and dimensions of the phenomenon of activism in the Italian landscape. In this sense, this work is an initial first step in the direction of analysing more in-depth the engagements in Italian companies, their dynamics, and most importantly, their impact on financial performance and profitability. Given the substantial absence of literature in the specific field of this study, it is worth considering what other authors have to say on the broader topic of activism, more specifically on returns and profitability of target companies.

Having in mind a worldwide perspective, Becht et al. (2014) provide evidence of the success of shareholder activism in creating value across countries and they are the first ones to document the role, performance, and outcomes achieved by activists with an international perspective, extending previous work of Brav, Jiang, Partnoy, and Thomas (2008) and Greenwood and Schor (2009), who focused on the United States only. Some regulatory frameworks seem more activist-friendly than others, as documented by Becht, Franks, Mayer, and Rossi (2009) and Becht et al. (2014), that find an average abnormal return of around 6.4% worldwide, reaching 8.8% if considering Europe only, with outcomes' achievement being crucial for the materialisation of an abnormal return. Details on the overall probability of success of activists are provided in this study too and stand around 53% (probability of achieving at least one of the objectives of the engagement).

Most of the studies tend to be concentrated in the United States, being the first and largest market for activists. In this regard, many scholars, like Kahn and Winton (1998), find that activism and active behaviour from investors increase the value of the company. Similarly, Brav et al. (2008) find significant outperformances in target companies with respect to the market in several time frames and associated these positive performances to the achievement of objectives stated by the intervening funds. A more recent study by Brav, Jiang, and Kim (2015) quantifies these abnormal returns at around 5% in the long term. Empirical research on European activism only is instead quite limited, mostly due to the scarcity of data and the difficulty in retrieving them. Becht et al. (2009) look at the UK regulatory framework as particularly attractive for investor engagement, with 30 UK cases of strong outperformance for the one fund in the period of time ranging from 1998 to 2004. This study confirms the results found by Armour and Skeel (2007), which saw lobbying and regulation on the protection of minorities being very favourable for UK active investors. One year later, still, Becht, Franks, and Grant (2010) analysed returns and profitability of European companies from 2000 to

2008, registering an abnormal and statistically significant return of 4.4% was found over a 20 days-time window for the entire sample. More details were found for some European countries: France (2,7%), Germany (6%), Italy (2,6%) and the UK (2,8%), with Germany and the UK significantly relevant only.

Notwithstanding the multitude of studies that argue for positive effects of shareholder activism on the performance of the target company in the short and in the long term, at the same time others argue the opposite. Critics argue that activists are short-termists and have their interests only at heart, resembling corporate raiders of the 1980s in the United States. Among the studies arguing for this line of research, there is Karpoff (2001), Croci (2007), and Gillan and Starks (2007). Other research on shareholder activism contributes to the analysis of the most frequent targets for activists and how shareholders and the firm itself responds to the engagement tactics (Carleton, Nelson, & Weisbach, 1998; Karpoff, Malatesta, & Walkling, 1996; Ong, Petrova, & Spieler, 2010; Thomas & Cotter, 2007). Linked to this sub-topic, other studies dived into the main interests that activists have and analyze them, focusing on how they changed over time (Gillan & Starks, 2000). In addition, some scholars looked at the controversial sources of hedge fund returns, with some researchers, for example, arguing that some gains come at the expenses of other investors. Klein and Zur (2011) focused on wealth transfers from bondholders to shareholders, finding an average abnormal loss of minus 3.9% to bondholders (a loss that becomes greater after one year from the engagements, reaching minus 6.4%).

This section has presented the main and most relevant studies on activism, which, as anticipated, focus on the crucial question of whether or not activists return positive performance to their targets. In the specific case of this paper, such documents are useful to construct a modus operandi and structure for the analysis, as well as to suggest further areas of study, in particular, when it comes to judgements of profitability impact in Italian companies after an activist intervention.

3. RESEARCH METHODOLOGY

European activism is a vast and varied phenomenon and European countries tend to be quite differentiated in terms of regulation and legal framework applied. Therefore, in terms of methodology, a two-folded approach has been applied. On the one side, the information and discussions reported in this first part of the paper were retrieved by looking at official legal sources, like the Italian Civil Code, the *Testo Unico della Finanza* (TUF), and Issuers' Regulation. Indeed, the overall objective of this preparatory work was to have a deep understanding of the environment of activism in such diverse and fragmented countries that are the European ones, with a focus on Italy. A careful interpretation and collection of articles and legal sources from Italian written codes and then translated into English was performed, to ensure maximum accuracy in reporting the exact rules governing activism. Additional materials mentioned in the references were used in the

commentary and critical analysis of the provisions found. Knowing all comprehensive and sometimes contradictory regulations that pertain to the domain of corporate governance and control in a specific country is crucial for any financial player or shareholder that wants to engage in shareholder activism. In this sense, in order to provide the most accurate possible picture of how activism can be deployed in Italy, with reference to other European countries, an attentive work, and analysis aimed at understanding the framework and overlaps between sources of law on the matter of activism was performed and turned out to be crucial to analyse the data of the second part of the paper.

On the other hand, an intensive research process has been mobilised to build a dataset, retrieving data from two sources, counterbalancing, and checking each other, namely Activistmonitor and Factiva. The purpose was the gathering of all information on Italian campaigns based on criteria and specific requirements established on the lines of previous studies quoted in the literature review. The effort was to group together all the activist campaigns, both open and closed, launched in Europe since 2010. The search in the Activistmonitor dataset space was made filtering for European countries and selecting a range period from 2010 onwards. Both, open and closed campaigns were analysed, making sure that each target company was matched with its capitalisation, activist of reference, stake of the activist, and objectives desired and asked by the latter. Extensive use of the news and

intelligence tabs of Activistmonitor was useful too, in order to determine which campaigns were successful or not, based on the amounts of objectives and requests reached and officially implemented by activists. When it comes to Factiva, its role was crucial in filling those information gaps and grasping more knowledge on the open and closed campaigns that were more relevant in each country. An individual search was done whenever necessary to complete the database, especially in the last part of the analysis, to check whether the demands by activists were met by the target company or rejected.

Despite the trend and obligation to publish and disclose thresholds, as well as activist requests, it is worth pointing out that some campaigns and agreements may still have been closed informally or without written documents, thus being impossible to track and input into a database. In addition, a side note should be expressed for the Factiva research, on the language of the pieces of information found. Indeed, many of the official documents accessible on Factiva was in the original language, thus introducing the potential for misunderstandings in translating from native language to English. This is to say that some bias has to be accounted for in the construction of the database and its analysis.

Looking more closely at the dataset composition, a simplified example of the visual organisation of the data collected can be found in Table 1.

Table 1. Sample database

Target	Activist	Country	Status	Duration (days)	Stake (%)	Mkt cap (m\$)	Objectives	Successful
Target 1	Fund A	France	Open	1112	5%	400	BoD	S
Target 2	Fund B	Italy	Closed	345	1%	345	BoD	U
Target 3	Fund C	Germany	Closed	24	11%	32450	Capital	U
Target 1	Fund A	UK	Closed	320	2%	7800	Strategy	N
Target 4	Fund A	UK	Open	1200	0.3%	2345	Strategy	S
Target 5	Fund D	UK	Open	2400	0.1%	345	BoD	S

Source: Authors' re-elaboration.

A few remarks might be useful for the reader to better grasp the methodology used in building this sample. First, targets often repeat: it is likely that some target companies are looked after by more than one activist, even contemporarily. As for activists, some are clearly more popular than others and thus repeated more frequently in this column; the same reasoning applies to countries. Second, in terms of categorisation of objectives, as it will be clearer in the analysis part devoted to objectives specifically, activists have different types of demands at hand, that have been here classified in five specific categories, namely Assets, BoD/Management, Capital, Strategy and Operations, and Discussions. To conclude the overview of the dataset, an indication of whether the demands and objectives listed in the next column have been effectively implemented or not is found in the very last column. "S", standing for successful, is marked when activists manage to reach more than one demand implemented, while "U", standing for unsuccessful is the opposite. The letter "N" for neutral was used too, to indicate those campaigns where activists were rather passive and where no

pushing request was made or the target ignored completely the engagement of the investors. The database created was analysed on the basis of three research questions that guided the analysis. *RQ1* addressed the topic of who activist investors are in Italy versus other European countries. *RQ2* investigated the main features of targeted firms are. *RQ3* pursued whether the engagements are successful or not. Discussion and conclusion were drawn on results from these starting queries. Results will be presented in the following section.

4. RESULTS

Since the methodology used to build the paper is twofold, such are the results. Based on the first part of the analysis, careful research of the legislation and legal framework applicable in Italy and other European countries was performed. The most relevant legal sources to be kept into account when launching a campaign in Italy turn out to be the Italian Civil Code, the Consolidated Law on Financial Integration (Legislative Decree 59/1998 or *Testo Unico della Finanza*), rulings by CONSOB as

the Issuer's Regulation, the Shareholders Right Directive and the Code of Self-Regulation. Table 2 and Table 3 further expand on the crucial normative rules that an activist must be aware of in terms of rights protection and disclosure thresholds, including provisions that regulate general or extraordinary meetings and shareholders acting in concert. A specific mention should be done highlighting the impact of COVID-19 on some of these

thresholds, that as in the case of the disclosure requirements, have been lowered to increase transparency and efficiency of markets in such unexpected times. A comparative analysis of the above-mentioned protective measures is found in Table 4, Table 5, and Table 6. Specific attention was devoted to slate voting, related-parties transactions and takeovers, and the liability of directors.

Table 2. Summary of minorities rights according to Italian legislation

<i>Right</i>	<i>Threshold (at least)</i>	<i>Legal source</i>
Right to request GM and set out the agenda	5% of overall corporate capital (10% in non-listed)	Article 2367 and 2325, Civil Code and Article 125, Consolidated Law on Finance (Testo Unico della Finanza, TUF)
Right to request for the meeting to be postponed for a maximum of five days if they are not informed sufficiently on the agenda	1/3 of overall corporate capital	Article 2374, Civil Code
Right to challenge a resolution of the general meeting	0.1% of voting shares (5% in the case of non-listed companies)	Article 2377, Civil Code
Right to veto any waiver or settlement of legal action against directors	5% of corporate capital (20% if non-listed)	Article 2393, Civil Code
Right to sue directors	2.5% of corporate capital (20% if non-listed) or less if written in the bylaws	Article 2393 bis, Civil Code
Right to file a complaint with the court to report any "grounded suspicions" about serious irregularities in the management of the company	5% of the overall corporate capital (or 10% if non-listed)	Article 2409, Civil Code
Right to file complaints with the board of statutory auditors (BSA) concerning the management of the company *	5% of the overall corporate capital (10% if non-listed)	Article 2409, Civil Code
Right to file complaints with the board of statutory auditors (BSA) concerning the management of the company *	Any shareholder	Article 2408, Civil Code and Article 2388, Civil Code
Right to request to add one or more items on the agenda, or to submit new resolution proposals on items that are already on the agenda (within ten days from call date)	2.5% of issued share capital	Article 125-ter, TUF
Duly meeting of shareholders participating to EGM first and second call	If shareholders present are more than ½ of capital (1/5 for third calls)	Article 126, TUF
Right to propose a list of candidates for board elections (slate voting)	CONSOB-decided threshold	CONSOB

Source: Authors' re-elaboration.

Notes: * If the complaint is brought up by the shareholders who represent at least 5% of the corporate capital (or 2% in the case of open companies) (these thresholds can be lower if the bylaws so provide) the BSA investigates the matters brought to its attention, and report its findings and conclusions to the GM.

Table 3. Disclosure thresholds according to Italian legislation

<i>Object of notification</i>	<i>Threshold (more than)</i>	<i>Legal source</i>
Notify CONSOB	More than 2% of capital and more than 10% of capital	Article 120, TUF
Notify CONSOB	Exceeding 3% if not SME or the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66,6% and 90% *	Article 117, RE**
Disclose financial investment to CONSOB	The thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 66,6%	Article 119, RE
Disclose specific information relative to the shareholder agreement	Within five days from the stipulation of the agreement	Article 127, TUF
Make an available list of candidates for list voting	At least twenty-one days before the meeting	Article 144-octies, Civil Code
Institutional investors should provide details of engagement policy and shareholder engagement in their investment strategy		Article 3g, The Shareholders Rights Directive II (SRD II)

Source: Authors' re-elaboration.

Notes: * With COVID-19 and the Liquidity Law Decree, the threshold for disclosure has lowered from 3% to 1% for the 39 major companies and from 5% to 3% for SMEs and the other thresholds applicable become 1% (only for major companies), 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50%, and 66.6%.

** RE stands for Regolamento Emittenti, namely Regulation on Listed Companies No. 11971 (Issuers' Regulation).

Table 4. Summary of minorities protection in France

Threshold	Right	Legal source
One share	Participate and vote in GM	Article 1844 of the French Civil Code
	Ask specific questions in advance of GM	Article L. 225-108 of the French Commercial Code
	Solicit proxies	Article L.225-106-2 of the French Commercial Code
	Make a proposal to remove a director during GM	Articles L.225-18 and L.225-105 of the French Commercial Code
	Preemptive rights in case of issuance of new shares	Article L.225-132 of the French Commercial Code
	Right to squeeze out in case of a takeover when the bidder reaches the 95% control threshold	Article L. 433-4 of the French Financial Markets Code and Article 236-1 of The General Regulation of the Autorité des Marchés Financiers (RGAMF)
	A request of appointment of a director by the court (<i>administrateur provisoire</i>) in case exceptional circumstances hinder the management of the company	Created by the courts
	Approve or block any decision concerning commitments of shareholders and increase in capital with a higher face value	Article L. 236-5 and L.225-130 of the French Commercial Code
	Bring an action for abuse of majority position	Article 1833 of the French Civil Code
	Seek remedies on behalf of the company for a break of fiduciary duties	Article L. 225-252 of the French Commercial Code
5%	A request of call of GM	Article L. 225-103 of the French Commercial Code
	Add resolutions to the agenda of GM	Articles L. 225-105 and R.225-71 of the French Commercial Code
	Block any attempt by the majority to squeeze-out	Article L. 433-4 of the French Financial Markets Code and Article 237-14 of the RGAMF
	Make inquiries about management decisions	Article L. 225-231 of the French Commercial Code
	Twice a year, make inquiries on “any matter likely to jeopardize the continued operation of the company”	Article L. 225-232 and L.223-36 of the French Commercial Code
	Seek that a court recuses one or more statutory auditors (for good cause)	Article L. 823-6 of the French Commercial Code
10%	Request the appointment of an independent expert to inquire about mismanagement	Article L. 223-37 of the French Commercial Code

Source: Authors' re-elaboration.

Table 5. Summary of minorities protection in the Germany

Threshold	Rights	Legal source
One share	Right to subscribe to new shares	Sec. 186 para. 1 AktG
	Right to appeal to resolutions or the GM	Sec. 245 no. 1 and 2 AktG
1%	Obtain judicial appointment of a special auditor	Sec. 142 para. 2, 4 AktG
5%	Call a GM and add items to the agenda	Sec. 122 AktG
	Squeeze-out if the threshold of 95% is reached by the bidder	Sec. 327a et seq. AktG
	Require court decisions to substitute auditors	Sec. 318 para. 3 HGB
10%	File for the appointment of a special representative to claim compensation from directors mismanagement	Sec. 147 para. 2 AktG
	Ask a separate vote for the discharge of executives and supervisory board members	Sec. 120 para. 1 AktG
	Demand a resolution to propose a supervisory member	Sec. 137 AktG
	Prevent the waiving of settlement claims for damages against the board	Sec. 93 para. 4 s. 3 AktG

Source: Authors' re-elaboration.

Table 6. Summary of minorities protection in Spain

Threshold	Rights	Legal source
One share	Report any corporate offence	Spanish Criminal Code, articles 290 to 297
	Examine register books	Companies Act, article 105
	Call a GM if not called before as contemplated in the Companies Act	Companies Act, article 169
	Prevent a GM to be run if not called timely	Companies Act, article 178
	Challenge a resolution with conflict of interest involved or contrary to the public order	Companies Act, 190 and 206
	Consent of all members is needed for a capital increase and all members are entitled to preemptive rights	Companies Act, article 296, 304 and 416
1%	Challenge corporate resolutions	Companies Act, article 206
3%	Obtain information on shareholder	Companies Act, article 497
	Present proposed resolutions on matters of the agenda or not	Companies Act, article 519
	Call a general meeting	Companies Act, article 168
	Object to the general meeting settling or waiving the bringing of a corporate action for liability	Companies Act, article 238
	Bring corporate action against administrators	Companies Act, article 239
	Request the judge to revoke the general auditor appointed by the board	Companies Act, article 266

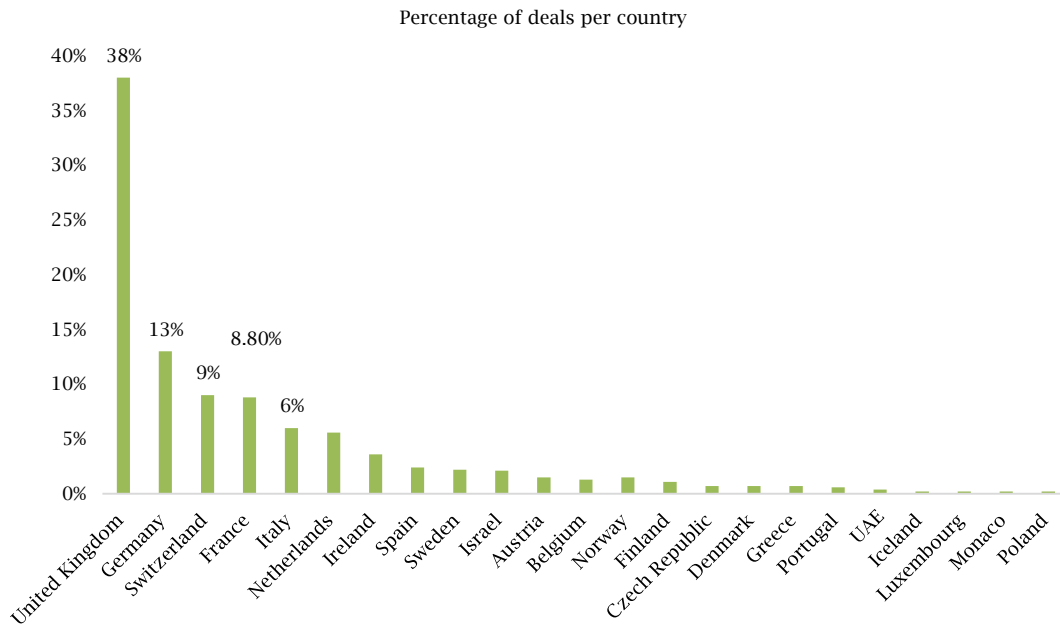
Source: Authors' re-elaboration.

The second part of the paper, which focuses on data from activist campaigns in Italy, bears the empirical results of this work. As mentioned before, three research questions have been analysed from the European database; then specific considerations on the Italian experience have been drawn. *RQ1* looked at the main players in activism in Europe versus in Italy. Three points were looked after: top fifteen activists in Europe across the period from 2010 until now and a comparison with the top ones of 2020; which financial intermediaries launched these campaigns; which activists launched more campaigns and in which countries. With no surprise, the most popular names are Elliott Management Corporation, Amber Capital LP, and Charity Investment Asset Management (CIAM). From data collected at a European level, the most represented category of investors involved in activism is hedge funds, as confirmed by the previous studies on the matter. Looking at country differences, the UK confirms its place as the best country to practice activism in, followed by Germany, Switzerland, France, and Italy (see Figure 1).

RQ2 on target companies and their features considers three points: size, stake, and country of the target companies. Inspired by the paper of Brav et al. (2008), the idea was that of investigating a greater success of small or large companies (*small*

being below \$1 billion capitalisation). In Europe, small companies are more targeted (55% vs. 45%), while in Italy the trend seems to be partially reversed, with 12 campaigns addressing small companies and 20 large ones. In terms of the average stake of investors in their targets, the majority of both European and Italian investors hold less than 5%. As for countries, the results were the same as reported in the previous question, point three. *RQ3* looked at which demands from activists are more popularly asked and successful. More specifically, the requests of activists have been classified in five different categories, namely Assets (demands related to mergers/acquisitions), Board of Directors/Management (demands related to changes in representation), Capital (decisions on capital allocation), Strategy and Operations (strategic guidance and cost optimisation), Discussion. Board of directors' changes come first in the ranking of popular demands both at the European and Italian levels, scoring best right before strategic and operational matters. In terms of the effectiveness of these requests, activism in Europe has a positive response, with more than 50% of campaigns turning out successful. As several authors have argued in previous documents, not only do the engagements take place but they are also able to deliver abnormal results. Similar results are confirmed in Italy too.

Figure 1. Countries where activism is most popular in percentage terms



Source: Authors' re-elaboration.

5. DISCUSSION

What concerns the first part of the paper, when it comes to the rules and regulations that activists must be aware of when investing in Italy, specific attention should be given to the sources of law that establish specific thresholds that trigger actions that can be performed by shareholders. First, disclosures thresholds for holdings, as mostly found in the TUF and Issuer's Regulation. Anything more than 2% triggers notification requirements to CONSOB. Crucial disclosure thresholds are above 3% (now 1% with COVID and the Liquidity Law Decree) and exceeding

thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66.6%, and 90%. Therefore, activists might want to bear in mind these thresholds and avoid to surpass them at first, not to give insights to the public on their next moves. More generally, institutional investors are also demanded to communicate to the public their intended investment strategy and its implementation, according to the Shareholders Directive Rights II. This could be a request that some players might not be very willing to accommodate, but that ensures that no speculation or short-termism is carried out. Second, a correct and punctual knowledge of thresholds useful to unlock

certain actions such as the appointment of a director or the calling of a shareholder meeting for minority shareholders is to be commented upon. In particular, the Italian case has a *unicum* in the sense that it allows minorities to elect a director, through the mechanism of slate voting. Indeed, shareholders that hold between 0.5% and 4.5% of share capital can present a list of candidates to the board: at least one member of the board of directors must be elected from this list. This specific provision is very effective but could be sometimes used by relevant yet not controlling shareholders to their advantage if there is another strong shareholder that almost monopolises share capital. Other thresholds worth knowing when it comes to actions that shareholders can perform with certain holding percentages are the following, in order. With a 0.1% of share capital shareholders have the power to challenge resolutions at a general meeting; 2.5% allows an action to be brought against directors; 5% ensures that shareholders can call a general or extraordinary meeting, add a topic to the agenda of the meeting, veto a resolution or file complaints. Every shareholder can claim damages against any director. Third, a mention should be given to takeover situations and the regulation in these cases. The threshold of 25% of owned share capital triggers a mandatory tender offer, thus activists must pay attention to situations in which they might be considered in concert and might risk having to extend the purchase of shares to all the outstanding capital. In addition, once the bidder manages to acquire at least 95% of the voting share capital, then minorities have a right to squeeze-out. This is for instance different from the United States where no such provisions are included in the codes; the regulation tends to be very similar in the United Kingdom too, where the percentage for squeeze-out is slightly lower at 90%, and for France.

Looking at the second part of the paper, Elliott is the hedge fund with the highest number of campaigns (41 in Europe from 2010), followed by Amber Capital and Cevian. Overall, the rankings are similar to those of the top players identified by Lazard (2021) in their 2020 Report, with the same names simply shuffled around. What is interesting to notice though is that in a dataset with 534 campaigns, the number of activists is 198, with an average number of campaigns equal to 2.69, suggesting that the European market for activism is very fragmented and characterised by many small players and few strong and powerful hedge funds that set the rules for the industry and make up more than 44% of all deals. These data pretty much reflect the Italian experience, with a landscape of mostly small and medium enterprises, perfectly capturable by small activists looking for small capitalisation companies. However, when looking at the size of targeted firms in Italy, the results show a preference for large capitalisation firms, with a greater percentage of small and mid-capitalisation companies, numbers probably driven by the early stage at which activism is in Italy. Focusing on which type of financial players practice activism the most, hedge funds are confirmed as a very suitable vehicle. Country-speaking, the United Kingdom is the country mostly preferred by investors, among European ones, followed closely by Germany (confirming what was found by Becht et al., 2009; Moeser, 2019). To find common traits, in both

countries not only does the legal system encourage activism and create a sound ground for minorities to get heard, but also the public perception of activism shifted from “asset-strippers”, as referred to in the introduction, to investors able to unlock of potential value for all shareholders, thus increasing the popularity and welcoming attitude of firms towards activists. Shifting attention to popular objectives, changing or appointing new members in the managing boards scores best. Indeed, it could be considered as the most effective and less costly action that an investor might aim at achieving to deliver serious change and implement a new strategic view for the target going forward. These objectives are overall achieved, with more than half of the campaigns being successful both in Europe and in Italy more specifically.

6. CONCLUSION

This paper aimed at shedding light on the phenomenon of activism in Italy and highlighting the main features of its legal system, of the main actors involved, of the typical target company, and of the objectives reached by activists in the Italian territory. All of the results, both theoretical and analytic, found for the Italian case are benchmarked in the most comprehensive way as possible with the European neighbouring countries. To summarize the results obtained, on the one hand, the main legal sources to be taken into consideration are the Italian Civil Code, the TUF, and CONSOB rulings. These documents contain most of the provisions of interest for activists, listing the thresholds subject to disclosure, the amounts of holdings a minoritarian shareholder must have to call a meeting or claim damages or elect its representation. On the other hand, looking more concretely at how activism is deployed on the Italian soil, Italy is the fifth country in the EMEA region for a number of campaigns, after the UK, Germany, Switzerland, and France, countries known for better investment opportunities, as well as a greater and more extensive regulation in the protection of minorities. Still, the main and most important players in the industry, mostly hedge funds, are active in Italy too, with some small actors entering the scene. The size of the most targeted companies tends to be that of a large capitalisation one, and most of the demands, successful, gravitate around changes in representation in the board of directives and management bodies.

Italy is clearly at an early phase in the development of activism, with most of the large companies being targeted. A further increase of the phenomenon should take place and could also strongly contribute to Italy recovering from this post-COVID-19 situation. Indeed, activists could become advocates and push for more external growth in Italian champions, as well as unlock value for all shareholders. For activism to flourish in Italy too, the findings of this work could be interesting to bear in mind. From the example of top countries in activism, like the UK or Germany, a system of legal facilitation and financial incentives should be designed, in order to find and retain investments and funds in Italian projects and excellences. This could help to attract those big hedge funds that make most of the European deals but that are not fully represented in Italy, as emerged from

the dataset analysis. Additionally, an effort should be made in making our small and medium capitalisation companies attractive too, given the Italian landscape is mostly formed by this type of corporations and family-like businesses. In planning campaigns in Italy, activists should pay further attention to the role of the State and families in the ownership structure of most Italian realities. Lastly, a change in the perception of activists from being “enemies” to “white knights” could encourage this transition and improve the effectiveness of the interventions, which still, seem to be quite prolific and thus should be increased, with more and more value being unlocked for the sake of all stakeholders.

After summarizing the results and potential implications thereof, the methodological limitations of the paper can be outlined as follows. First, an issue in data collection and reporting. Indeed, the various differences in disclosure thresholds across countries make it difficult to create a precise and complete database of all campaigns carried out in a time frame. Additionally, the possible dealing and resolution of asks and demands by activists in a private manner makes it impossible to catch them in the study. Second, a lack of a particularly large sample on Italian campaigns made it risky to draw statistically relevant conclusions on these data, a reason why a more descriptive approach has been selected to address the issue. To supply to this

difficulty in finding an Italian-only data pool, a wider sample could have been obtained from previous studies and documents, however, this proved not to be possible. The lack of literature on the specificities of the Italian market does not help in this sense and is a void that should be filled. Still, further and more statistical research on the matter is highly suggested as the future development of this work. Lastly, the categorisation of some variables within the database, more specifically of the success of activist campaigns could be assessed in a more scientific way, rather than leaving such an assessment to human judgement.

As mentioned, further research should be definitely carried out. Indeed, this paper, besides the theoretical review of legal sources, analyses a database with campaigns in the region of Europe from 2010 onwards. The sample, as well as the analysis, might be biased, especially in the establishment of whether campaigns were successful or not. Indeed, a personal interpretation of news and events on the campaign, retrieved either from Activistmonitor or from Factiva was used as criteria to assign one category or the other. A more objective method could be envisioned, as well as further research could revolve around the exploration of whether activism in Italy is profitable or not, on the lines of previous studies listed in the literature review and carried out in other European countries.

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