

РАЗДЕЛ 3
КОРПОРАТИВНОЕ
УПРАВЛЕНИЕ В ИТАЛИИ

SECTION 3
CORPORATE
GOVERNANCE:
ITALY



CORPORATE GOVERNANCE, ROLE OF THE BEST PRACTICE
CODES AND PROTECTION OF MINORITY SHAREHOLDERS IN
ITALY

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Abstract

The aim of the paper is analysing the relationship between governance systems and safeguard of minority shareholders in Italy. We believe that an appropriate governance system can favour a fair distribution of value to shareholders of listed companies regardless of the size of the share held. We studied the tender offers made in Italy in the period 2000-2009 to calculate the relationship between the compliance of governance systems with best practices and size of majority premiums paid in take-over transactions, measured through offer prospectuses. The empirical research shows a negative association between the mentioned variables. So this seems to suggest that the compliance with best practice codes can influence the majority premiums in tender offers and protect minority shareholders.

Keywords: corporate governance; best practice codes; minority shareholders; majority premium; private benefits of control

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1. Introduction

The aim of the paper is analysing the relationship between governance systems and protection of minority shareholders in Italy. We believe that an appropriate governance system can favour a fair

distribution of value to shareholders of listed companies regardless of the size of the share held. We made a research on this phenomenon some years ago (Sancetta, Gennaro, 2009). The study showed that there was a negative correlation between corporate governance, weighed in terms of compliance with

best practices, and size of majority premiums paid in take-over transactions, measured through offer prospectuses. Nevertheless, we found a limited number of observations to build our sample.

So we want to study the same subject considering:

- the evolution of the literature analysing the papers meanwhile published on the same item;
- an extension of our sample and a regression model to enforce our results.

The paper starts with a brief description of the principal trends in literature and practice about the meaning attributed to the term “governance” and the characteristics of Best Practice Codes in different countries and governance systems. Since the article analyses the case of our country, it considers the aim of the corporate governance underlined in the Italian code which is to protect shareholders, in particular those minority shareholders who have no part in corporate management.

So the paper aims to verify if the compliance with corporate governance best practice codes favours the protection of minority shareholders. We believe that a good corporate governance can influence the value distribution among shareholders and safeguard minority shareholders.

Then the article – by studying the tender offers made in Italy in the period 1999-2009 – defines the relationship between governance systems, weighed in terms of compliance with best practices, and size of majority premiums paid in take-over transactions, measured through offer prospectuses. The empirical research shows a negative association between the mentioned variables. So this seems to suggest that the compliance with best practice codes can influence the majority premiums in tender offers and protect minority shareholders.

2. The Principal Definitions of Governance

There are quite different trends in the interpretation of the notion and role of governance (Hart, 1995). These different approaches to the matter are due to different theories on the nature and evolution of companies, and also to the different characteristics of the capitalist systems taken as reference in the analyses. Following a now common approach based on the agency theory and on the contractual theory, we may identify what is usually referred to in literature as a cause of governance issues:

- opportunism, as a prevailing component of human nature, that often gives rise to conflicts of interest in economic relationships;
- impossibility to draw up “perfect” contracts, and then the understandings between the various stakeholders of a company, establishing the behaviour that each

stakeholder is required to take in any possible future situation.

The focus is usually on the control that some stakeholders (usually the shareholders) must exercise on the others (usually the managers) due to a supposed attitude of the latter to behave in an opportunistic manner. Therefore, academic literature has addressed, since Berle and Means (1932), corporate governance issues by focusing on those aspects that refer mostly to agency issues (Fama, 1980), or on incomplete contract issues (Williamson, 1988). Many definitions reflect the common notion of corporate governance as a series of mechanisms developed to control the actions of decision-making stakeholders. This approach considers a company as a network of agreements tied to one another: the enterprise thus becomes an abstract place in which different parties exchange resources and implement a tight network of agreements. If these are incomplete (due to the impossibility to predict and regulate situations capable of generating *quasi-earnings*) and assuming the negative aspects of human nature (considered basically as opportunistic), the need arises to regulate appropriately ex-post the negotiations on quasi-earnings, so that both parties to the agreement that generates such earnings may benefit from them on equal terms (Zingales, 1997, p. 3).

This theory is the basis for different definitions of governance:

“While some of the question has been around since Berle and Means (1932), the term “corporate governance” did not exist in the English language until twenty years ago. In the last two decades, however, corporate governance issues have become important not only in the academic literature, but also in public policy debates. During this period, corporate governance has been identified with takeovers, financial restructuring, and institutional investor’s activism. But what exactly is corporate governance? Why is there a corporate governance problem?” (Zingales, 1997, p. 1)

One definition, consistent with a concept of the enterprise as “nexus of contract”, was formulated by Williamson (1998), following Coase’s transaction costs theory (Coase, 1937). Since a company is a hierarchical organisation alternative to the market, where transactions are managed, supervised and co-ordinated according to its own operational rules and management guidelines, governance mechanisms are sets of formal rules adopted in order to minimise transaction costs, and governance becomes instrumental, its purpose being that of “explaining, identifying and mitigating all forms of contractual opportunism” (Williamson, 1988).

Another definition in line with the one described above, was developed by Zingales, who, following

Williamson's approach, defines governance systems as the complex set of constraints that shape the ex-post bargaining over the quasi-rents generated by a firm (Zingales, 1997, pp. 3-4). In general corporate governance is a complicated sets of restrictions governing ex-post negotiations on the quasi-earnings that are generated within a contractual relationship. As contracts are very often incomplete due to high contractual costs, information gathering costs or unpredictable circumstances, there is a clear distinction between decisions ex-ante, i.e. when the parties establish a contractual relationship and make non-recoupable (i.e. specific) investments, and decisions ex-post, when it comes to distributing the benefits of such relationship. Therefore, the Author defines corporate governance as a complex set of restrictions governing ex-post negotiations with stakeholders, with respect to the quasi-earnings generated by a company throughout the course of its useful life.

A more comprehensive definition of governance is the one used by Shleifer and Vishny (1997), who define governance as the system through which investors protect the venture capital contributed to an enterprise and grant themselves an adequate return on the risk undertaken. These Authors start from agency theory assumptions, in their opinion an essential component of the contractual aspect of companies, and analyse the main corporate mechanisms, from both a legal and a market viewpoint, that may protect and safeguard the owners' interests. A governance system developed on the basis of this doctrinal approach would supposedly focus on the relationships between top managers, board of directors and shareholders, taking other stakeholders into account only marginally. In other words, corporate governance is seen as a series of tools that a company must put into place so that those shareholders who are not actively involved in its strategy may control management's activities. In this view, such factors as board composition, independence of directors, stock option plans and management accountability become extremely significant. Several studies have verified that firms with greater agency conflicts implemented better governance mechanisms, particularly those related to the board, audit committee and auditor (Dey, 2008).

More recent researches on this matter have led to different interpretations from the ones given by the literature mentioned above, due mostly to two levels of reasons: in the first place, the trend towards the adoption of a broader perspective, in which also other strategic stakeholders apart from shareholders are seen as legitimate interlocutors; in the second place, the relationships between stakeholders are thought to be not necessarily inspired by opportunistic purposes, but rather by a natural inclination to co-operation (Ghoshal, 2005).

Research projects that follow other directions than the ones mentioned above, approach the issue of corporate governance according to the fundamental principles of the stakeholder theory, the stewardship theory, the systemic approach (Sundaramurthy and Lewis, 2003; Davis, Schoorman and Donaldson, 1997; Donaldson and Davis, 1991; Golinelli, 2005). In more recent researches on governance, the relational perspective based on the stakeholder theory is improved by adopting a systemic concept of enterprise; these researches focus on the managing body and describe it as committed to creating the conditions for social consensus that are required for a business entity to survive and grow (Esposito De Falco, 2003; Compagno, 2003). Governance is defined as the whole of structural characteristics of an efficacious corporate management aimed at creating value. These characteristics may refer to the arrangement of corporate managing bodies and controls performed by the reference macro-systems, as well as to the relational patterns between managing bodies and macro-systems (Golinelli and Vagnani, 2002).

At last, it should be kept in mind that the firm's top decision maker, in pursuing an effective and efficient management, is required to show a strong social responsibility to the external world, where freedom (autonomy), creativity (innovation) and business ethics are the new guiding principles to follow (Collier and Esteban, 1999). In this sense, governance represents the system of values that will direct and guide the company towards survival and development (Vergesten Ryan, Buchholtz and Kolb, 2010)

In this paper, corporate governance is intended as a system of principles and mechanisms that may describe (Coda, 1997):

- the purposes of the decision making process and the control making process;
- the structure and operation of administration (board of directors, chairman of the board, committees) and control system (board of internal auditors, independent auditors).

Therefore, corporate governance refers to the internal mechanism system that defines:

- the rights and behaviours of shareholders, holders of specific interests;
- the structure and responsibility of the corporate bodies by which shareholders are represented, especially those that exercise a considerable influence on corporate governance and management;
- the rights of those categories of shareholders who, while not being part of the managing bodies, are entitled to have their interests taken in due consideration in all value creation and value sharing options (Colombi, 1995 and 2003).

3. The Codes of Best Practices

In the codes and practices applied in developed countries we see that traditional corporate governance mechanisms are becoming obsolete, increasingly less focused on mere shareholder protection and increasingly more focused on a comprehensive vision of the various stakeholders involved in business organisations.

Best practices (or self-regulation codes) are non-binding recommendations concerning those systems and mechanisms for good corporate management that are considered the most appropriate to improve the efficiency of the company as a system and the stability of the financial macro-system it operates in. The recommendations contained in these codes, being the result of their authors' experience and of the observation of the essential characteristics of each company and of the countries it does business in, are true reference standards each company should comply with, unless it provides a reasoned explanation for choosing to use other governance systems and mechanisms than the ones recommended.

While adjusting a company's governance system to the recommendations contained in a best practice code is not mandatory, it is an evidence of fairness and management transparency, a guarantee that the stakeholders of the company are protected. Best practice codes allow to evaluate the efficiency and efficacy of the governance system of any given company based on its compliance with the recommendations.

In certain countries, especially Anglo-Saxon countries, characterised by wider and more advanced financial markets, these codes are more market oriented to the protection of owner interests: companies must create shareholder value by adopting governance principles and mechanisms appropriate for the purpose. In British and North American codes, corporate governance is defined as a system of guidance and supervision of companies aimed at creating shareholder value through their activities.

"Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place." (Cadbury Report, 1992, par. 2.1)

"Our next step was to consider the aims of those who direct and control companies. The single overriding objective shared by all listed companies, whatever their size or type of business, is the preservation and the greatest practicable enhancement over time of their shareholders'

investment." (Hampel Report, 1998, par. 1.16)

"The Business Roundtable supports the following guiding principles: [...]. – Second, it is the responsibility of management to operate the corporation in an effective and ethical manner in order to produce value for stockholders. Senior management is expected to know how the corporation earns its income and what risks the corporation is undertaking in the course of carrying out its business. Management should never put personal interests ahead of or in conflict with the interests of the corporation." (The Business Roundtable, 2002, p. 4)

Where mention is made of the interests and protection of other stakeholders, it is said explicitly that their role is always secondary and instrumental compared to that of shareholders. This approach is shared not only by Anglo-American countries, but also by Commonwealth countries and by those countries that have been significantly influenced by Great Britain or the United States during the years.

If we were to deduct the main characteristics of a valid governance system from the operating practices followed in these countries, these characteristics might be identified as: the directors' ability to remain independent at all decision-making stages, the respect of the rights of the shareholders not represented in the managing bodies, information transparency as the essential requirement for the harmonisation of the interests of all the parties involved. Therefore, a governance system must be characterised by three essential elements (Macey, 1998): ability to prevent managers from taking inappropriate advantage of their management; ability to remove inefficient managers, i.e. those who do not succeed in guiding the company to find and maximise its financial value; ability to establish a clear and transparent relationship with capital markets, for the best value diffusion and opportunity to find adequate funding sources.

In other market regions we see that corporate governance is given a broader meaning. Here governance systems sometimes include those rules and tools that may guarantee that the management of a company not only reports to the shareholders but also to other significant stakeholders.

In the Euro zone, an example is provided by German literature and practice, according to which the concept of corporate governance includes both formal characters, regards to the role of corporate bodies, and material characters, as it makes explicit reference to the relationships between management and shareholders and between management and other stakeholders.

"The company management must sensibly balance out the interests of the various stakeholder of the company. Among those

with an interest in the public corporation are principally the owners (stockholders) but also the employees, the customers, the loan creditors and suppliers as well as the public at large. Within the scope of this reference groups, particular significance must be attached to the stockholders as providers of risk capital. The prominent position of the stockholders certainly does not mean an ill-balanced commitment by the company's management to a strict, short-term maximization of shareholder value, as measured against the quoted price." (Berlin Initiative Group, 2000, p. 39)

Similarly, the meaning of governance commonly adopted in Japan defines it as the whole of relationships existing among all the parties that have a specific interest in a company, including its employees, creditors, vendors etc. The formal definition proposed by an OECD study group also appears oriented in this direction.

"Corporate governance is a series of rules, policies and appropriate voluntary practices of the private sector that allow a business company to attract financial and human resources, grow and continue to exist creating shareholder value, while respecting all its stakeholders and also the community as a whole" (OECD, 2004).

In Italy, best practice codes include, in an implicit form, the typical Anglo-Saxon notion stated in the British Reports (Airoldi and Forestieri, 1998; Molteni, 1997), and define governance as the series of rules according to which companies are directed and controlled in the prevailing interest of their shareholders (Italian Code of Best Practice, 2006, par. 1.3). In Italy the rule is that:

"The decisions of each director are autonomous to the extent that these are taken based on his free assessment, in the interest of the generality of shareholders. Therefore, even where management options are subject to prior evaluation – in accordance with the restrictions and provisions of applicable provisions of law – of controlling shareholders (individually or under specific agreements), each director is entitled to resolve in autonomy, making decisions that may reasonably lead to maximising shareholder value" (Italian Code of Best Practice, 2006, par. 1.3).

Therefore, the creation of shareholder value is the main goal that the directors of listed Italian companies must pursue in order to meet three different requirements:

- to follow the prevailing trend in the global financial environment;

- to reconcile entrepreneurial dynamics with Italian rules of law, according to which corporate interests are the reference measure to value the actions of those who are responsible for managing companies;
- to promote the creation of shareholder value as the indispensable requirement for profitable relationships with the financial market.

Other categories of stakeholders than shareholders are mentioned only instrumentally to claim that, in the long term, the creation of equity value will positively affect also the other players involved, whose interests are already protected by the Italian laws.

4. Corporate Governance and Value Distribution

An effective and efficient governance system can affect the process of value's creation and fair distribution. Governance effectiveness relates to the contribution it can give to maximising business value; efficiency, on the other hand, relates to its compliance with best practice codes. Prior research have examined how internal and external corporate governance affect firm value, cost of capital, and stock returns (Gillan, 2006). They have also shown that corporate governance reinforces operational transparency by improving ability of shareholder to discern the quality of management and the true value of firm (Bebchuk, Cohen and Ferrell, 2009).

Governance may represent a means of creating value because, by interacting with other elements of the company, it may theoretically give a material contribution to:

- the definition and implementation of business strategies;
- the investments in human resources;
- the clarity and consistency of accounting and non-accounting information and to management transparency vis-à-vis the stakeholders within and outside the company.

These factors may contribute to increasing the yield of the capital invested and to reducing the cost of capital due to better relationships with lenders; these relationships increase the reliability of the company and mitigate the perceived risk (Gompers, Ishii and Metrick, 2003).

In order to evaluate the effectiveness of corporate governance in real cases, it is necessary to develop an objective measure of the ability of the governance system to take part in value creation and distribution. The aspect we would like to study in deeper detail in this research is not so much that of the creation, but rather that of the fair distribution of the value obtained; in fact, we believe that this value may generate a sort of virtuous circle in which a fair participation in the value created would fuel the

company's competitive edge and strengthen its ability to create additional value.

In this framework, corporate governance may be judged effective if it contributes to preventing stronger parties from taking up value to the detriment of weaker parties. Therefore, the efficacy of a governance system is measured not only in terms of support to business strategies towards the creation of value, but – and above all – of equitable distribution of the overall value created among all the parties who have contributed to producing it. From the viewpoint of the financial aspects of management, where the governance of a company is totally efficacious, one would expect the participation in the share value created as a whole to be fair and satisfactory. In this ideal situation, the financial value of the benefits deriving from the majority interest in a company should be naught – or however minimal – regardless of who holds such majority interest.

If we adopt the definition of governance formulated by Shleifer and Vishny, one measure of the shortcomings of a governance system is the proportion of a company's value that does not accrue to all shareholders on a per share basis, but is instead captured by inside shareholders who control and sometimes manage the firm. Financial economists refer to this extra value as the "private benefits of control": the effective control of a corporation confers the opportunity not only to improve performance and to increase value, but also to divert wealth away from shareholders and other groups in favour of the controlling coalition (Dyck and Zingales, 2004).

The existence of private controlling benefits explains the control (or majority) premiums recognised in the financial market (Bebchuk, 1989 and 1994). These benefits can assume three different forms (Zanetti, 2004):

- a) psychological benefits;
- b) cash flow that controlling coalition can draw out of a company (personal benefits, dividend policy, m&a, ect.), diverting wealth away from other shareholders;
- c) additional cash flow that controlling coalition (external synergies) can develop out of the company.

The control premium is the additional value that a package of shares has with respect to the corresponding fraction of the aggregate financial value of own means due to the fact that it grants control over the company. The additional value is explained by the factor sub a), b) and c). The majority premium is, in other words, the specific value attributed to the controlling authority through which the competitive strategies and operational policies of a given companies are decided.

Vice versa, the "minority discount" represents a decrease in the theoretical market value of a minority package of shares with respect to its intrinsic value, due to the lack of controlling benefits and to the

disutility generated by not having controlling authority on a company. The lower value of minority stake is just explained by factor sub b).

Premiums or discounts are therefore not part of the evaluation process that contributes to defining the intrinsic value; they are a subsequent – albeit not independent – step in the definition of the financial value of a share or an equity interest (Guatri and Bini, 2005). Premiums are adjustments applied to increase respectively the intrinsic value of a share or equity interest, and hence translate it into a reasonable price in abstract market conditions.

The literature has recently reasserted that the pricing difference between controlling interest and non-controlling stakes cannot be entirely attributed to private benefits, as it may also be due to a difference in intrinsic values or to synergies recognised by the seller to the purchaser, or to the under-diffusion or over-diffusion of the value (Guatri and Bini, 2005). Therefore, from a mere comparison of majority stock and minority stock prices one will never obtain the actual premiums and discounts, but raw amounts that reflect all the factors mentioned above.

5. Research Hypothesis, Methodology Used and Results

In this framework, we believe that a good corporate governance system can protect minority shareholders. According to what we observed, we would like to verify the following research hypothesis:

H1

The compliance with corporate governance best practice codes favours the protection of minority shareholders.

The degree of efficiency of a corporate governance system may be determined by measuring its compliance with reference standards in the form of best practice recommendations. Best practices are a sort of self-regulation code that sets forth certain recommendations, usually prepared by expert commissions within the framework of market watchdog authorities, concerning the governance mechanisms and structures every company should abide by. These codes are not generally provisions of law, but a series of principles and guidelines that companies are free to adopt in their own governance processes. When a company tailors its own governance system to the recommendations of a best practice code, it usually gains a sort of quality trademark that distinguishes it from its competitors in the eyes of strategic stakeholders. The efficiency of the governance system of any given company may therefore be assessed on the basis of the compliance of governance mechanisms with the recommendations of best practice codes. The evaluation of a company's compliance with code recommendations must take

into account the risk that these recommendations are complied with only formally but not materially. Empirical evidence shows that this circumstance is far from being merely hypothetical.

As stated earlier in this paper, the effectiveness of a corporate governance system lies not so much in its compliance with the laws in force but rather in its ability to favour the creation and distribution of value to the players concerned. In other words, an effective governance system should contribute to increasing business value and ensure its fair distribution.

In order to evaluate the effectiveness of a corporate governance system, we tried to analyse the size of private controlling benefits which derive from the cash flow that controlling coalition can draw out of a company, diverting wealth away from other shareholders.

A measure based on majority premiums or minority discount appears particularly adequate for those companies in which ownership is not highly and entirely distributed but is characterised by packages of shares with voting rights through which one player or group of players may actually control the company. Therefore, the value of private benefits deriving from the authority that one player – or group of players – holds in a business organisation may correctly represent an indicator of the degree of ineffectiveness of its governance system.

In literature there are two methods to estimate the size of private benefits. The first one is the “voting right method” (Zingales, 1994; Nenova, 2001; Booth): looking at different prices, across firms, paid for voting stocks and non-voting stocks, it is possible to identify the size of premiums paid to have the corporate control and related benefits. The second method (Barkalay and Holderness, 1989; Dick and Zingales, 2004; Bigelli and Mengoli, 1999) focuses on differences in the prices per share paid in a privately negotiated transfer of a controlling block and the prices that can be observed in the market once investors have absorbed the fact that there will be a new controlling shareholder.

A third way to measure the private benefits of control consists in the observation of prices of majority and minority shares on the transactions stipulated under tender offer rules, *OPA* (Brescia Morra and Salleo, 2002; Penati, 2004; Massari, Monge and Zanetti, 2006). Open tender offers are an essential tool of financial markets, aimed at facilitating the acquisition of controlling interest in publicly traded companies, guaranteeing fairness in the distribution of control premiums (Banfi, 2004). Therefore, we have measured the impact of governance systems on the protection of minority shareholders by analysing the difference between the market price shares and the *OPA* price shares in the tender offers launched in Italian regulated markets in recent years.

Our survey has considered all the companies that launched a tender offer in the period 1999-2009. We chose 1999 as starting year because it is the first entire administrative period in which the rules of the Consolidated Finance Act on tender offers were enforced (the Legislative decree n. 58, February 24th, 1998, came into force on 1 July 1998). The first Best Practice Code developed by the Listed Company Corporate Governance Committee was completed and distributed in October 1999.

In order to identify, analyse and select tender offers useful for the purposes of our empirical survey we proceeded as follows.

We selected from the official website of the Italian securities exchange authority *CONSOB* (www.consob.it) all tender offer prospectuses (broken down into partial preventive tender offers, total preventive tender offers, subsequent tender offers and voluntary tender offers) presented between 1999 and 2009 for the purchase of stock in listed companies.

We reviewed the prospectuses selected in their entirety and then chose the ones relating to transactions for the purchase of quantities of shares that could allow the purchasers to take control of the target company.

Out of the tender offers selected as above, we excluded those carried out for industrial purposes. In fact, in this case the difference between the price of controlling package shares and the market price of the shares may include, apart from a “pure” majority premium⁶³ and the psychological benefits of the control⁶⁴, also certain industrial synergies granted to the purchaser by the seller. We know that the value may also depend on other factors, such as under-diffusion or over-diffusion of value, however we believe that these factors are more difficult to single out. In other words, in order to be sure that the difference between controlling package price and market price did not include the industrial added value deriving from the takeover of the target company, we only considered financial transactions in our survey. Unfortunately in some cases the data were not available.

We reviewed the corporate governance reports for the take-over year of all the target companies selected, through the official website of Borsa Italiana Spa (www.borsaitaliana.com) or through the companies’ institutional websites (**Table 1 and Table 1 bis**).

⁶³ We consider the “pure” majority premium as the cash flow that controlling coalition can draw out of a company diverting wealth away from other shareholders.

⁶⁴ In our research we suppose that the psychological benefits of the control are null.

Table 1. Public Tender Offers Reviewed

BIDDER COMPANY	TENDER OFFERS				
	OPA	TARGET	FINALITA'	START	END
Tamburi Investment Partners S.p.A.	voluntary complete	Management & Capitali S.p.A.	finanziaria	10/08/09	15/09/09
Modena Capitale Industry Participations S.p.A.	voluntary complete	Management & Capitali S.p.A.	finanziaria	16/09/09	26/10/09
Tamburi Investment Partners S.p.A.	voluntary complete	Management & Capitali S.p.A.	finanziaria	10/08/09	15/09/09
MIMOSE S.p.A.	voluntary complete	Management & Capitali S.p.A.	finanziaria	22/07/09	15/09/09
Mariella Burani Family Holding S.p.A.	voluntary partial	Mariella Burani Fashion Group S.p.A.	finanziaria	18/09/08	22/10/08
Wizard S.r.l.	voluntary complete	Marzotto S.p.A.	finanziaria	17/09/07	05/10/07
Wizard S.r.l.	voluntary complete	Marzotto S.p.A.	finanziaria	11/07/07	31/07/07
Wizard S.r.l.	mandatory residual	Marzotto S.p.A.	finanziaria	17/09/07	05/10/07
Wizard S.r.l.	mandatory complete	Marzotto S.p.A.	finanziaria	11/07/07	31/07/07
Blugroup Holding S.p.A.	mandatory complete	FullSix S.p.A.	finanziaria	27/02/06	30/03/06
Joker Partecipazioni S.r.l.	mandatory complete	Jolly Hotels S.p.A.	finanziaria	05/01/06	26/01/06
Zi.Fi S.r.l.	mandatory residual	Industrie Zignano Santa Margherita S.p.A.	finanziaria	28/10/05	18/11/05
Zi.Fi S.r.l.	mandatory complete	Industrie Zignano Santa Margherita S.p.A.	finanziaria	08/08/05	12/09/05
Finpaco Properties S.p.A.	mandatory complete	IPI S.p.A.	finanziaria	10/03/05	01/04/05
La Leonardo Finanziaria S.r.l.	mandatory complete	Beni Stabili S.p.A.	finanziaria	25/10/04	16/11/04
Sirefid S.p.A.	mandatory complete	DMAIL Group S.p.A.	finanziaria	11/08/04	31/08/04
Palio S.p.A.	mandatory residual	Savino del Bene s.p.a	finanziaria	16/06/03	04/07/03
Risanamento Napoli S.p.A.	mandatory complete	IPI S.p.A.	finanziaria	05/05/03	23/05/03
Palio S.p.A.	voluntary complete	Savino del Bene s.p.a	finanziaria	18/03/03	23/04/03
Newco28 S.p.A.	voluntary complete	Autostrade S.p.A.	finanziaria	20/01/03	21/02/03
OMNIAPARTECIPAZIONI S.p.A.	mandatory complete	Immsi S.p.A.	finanziaria	16/12/02	13/01/03
Impe Lux S.à r.l.; Coci S.p.A.	mandatory residual	Ferretti S.p.A.	finanziaria	09/12/02	03/01/03
Impe Lux S.à r.l.; Coci S.p.A.	voluntary complete	Ferretti S.p.A.	finanziaria	05/08/02	13/09/02
Biosdue S.p.A.	voluntary complete	SNIA S.p.A.	finanziaria	22/02/02	05/04/02
Ieffe Acquisition S.p.A.	mandatory complete	Italfondario S.p.A.	finanziaria	24/04/01	24/05/01
Dieci S.R.L.	voluntary complete	Cartiere Burgo S.p.A.	finanziaria	29/05/00	16/06/00
G.I. Holding S.r.l.	voluntary complete	Gildemeister Italiana S.p.A.	finanziaria	30/03/00	20/04/00
Compart S.p.A.	voluntary complete	Montedison S.p.A.	finanziaria	09/03/00	29/03/00

Table 1 bis Public Tender Offers Reviewed

BIDDER COMPANY	ASSET REQUIRED			OWNERSHIP of TENDERER (in %)	
	ASSET	Popa	% of N.W.	ANTE OPA	POST OPA
Tamburi Investment Partners S.p.A.	azioni ordinarie	0,12	100,00%	0,00%	n.d.
Modena Capitale Industry Participations S.p.A.	azioni ordinarie	0,15	100,00%	0,00%	0,00%
Tamburi Investment Partners S.p.A.	azioni ordinarie	0,12	100,00%	0,00%	0,04%
MIMOSE S.p.A.	azioni ordinarie	0,11	100,00%	0,00%	0,03%
Mariella Burani Family Holding S.p.A.	azioni ordinarie	17,50	15,00%	60,88%	75,88%
Wizard S.r.l.	azioni di risparmio convertibili	3,99	0,72%	83,61%	92,76%
Wizard S.r.l.	azioni di risparmio convertibili	3,99	4,41%	0,00%	83,61%
Wizard S.r.l.	azioni ordinarie	3,99	5,57%	94,18%	98,39%
Wizard S.r.l.	azioni ordinarie	3,99	44,85%	53,08%	94,18%
Blugroup Holding S.p.A.	azioni ordinarie	8,14	57,13%	43,93%	46,37%
Joker Partecipazioni S.r.l.	azioni ordinarie	7,71	49,85%	49,98%	50,00%
Zi.Fi S.r.l.	azioni ordinarie	18,60	4,31%	95,69%	99,00%
Zi.Fi S.r.l.	azioni ordinarie	18,60	51,70%	48,30%	96,08%
Finpaco Properties S.p.A.	azioni ordinarie	5,60	35,00%	65,00%	74,45%
La Leonardo Finanziaria S.r.l.	azioni ordinarie	0,63	32,97%	32,97%	34,90%
Sirefid S.p.A.	azioni ordinarie	2,93	53,88%	46,12%	47,01%
Palio S.p.A.	azioni ordinarie	2,50	5,85%	94,15%	98,53%
Risanamento Napoli S.p.A.	azioni ordinarie	4,32	32,05%	55,95%	74,88%
Palio S.p.A.	azioni ordinarie	2,50	74,60%	25,40%	94,15%
Newco28 S.p.A.	azioni ordinarie	9,50	70,01%	29,99%	83,80%
OMNIAPARTECIPAZIONI S.p.A.	azioni ordinarie	0,72	54,70%	45,30%	50,35%
Impe Lux S.à r.l.; Coci S.p.A.	azioni ordinarie	4,35	5,0839%	94,92%	98,05%
Impe Lux S.à r.l.; Coci S.p.A.	azioni ordinarie	4,35	100,00%	91,38%	98,62%
Biosdue S.p.A.	azioni ordinarie	1,80	71,68%	28,32%	50,10%
Ieffe Acquisition S.p.A.	azioni ordinarie	6,31	4,13%	94,65%	99,23%
Dieci S.R.L.	azioni ordinarie	10,20	83,44%	15,58%	92,15%
G.I. Holding S.r.l.	azioni ordinarie	4,50	100,00%	0,00%	n.d.
Compart S.p.A.	azioni ordinarie	1,85	55,69%	44,31%	93,11%

We tried to measure the compliance of the governance systems of the target companies selected with the rules provided in the Best Practice Codes with reference to the indicators reported in Table 2.

Table 2 Governance Indicators and Values

Elements investigated	Indicator	Scoring system
Composition of Board of Directors	Presence of independent directors and non-executive	0,00 – if absent, not stated, absent report 0,33 – if independent directors are less than 25% of the components 0,66 – if independent directors are between 25% and 50% of the components 1 – if independent directors are the majority
Interlocking directorship	Cumulation of charges of directors	0,00 – if more than of directors has more charges; absent report 0,33 – if directors with more charges are between 25% and 50% of components 0,66 – if directors with more charges are less than 25% of components 1 – if no director has more charges
Separation of roles (President/CEO)	Coincidence of charges between President and CEO	0,00 – if there is coincidence; not stated; absent report 1 – if there is coincidence; not stated; absent report
Confidential information	Presence of a procedure for the treatment of price sensitive information	0,00 – if there is not a procedure; not stated; absent report 0,33 – if there is a procedure 0,66 – if there are explanation about procedure 1 – if the procedure is reported entirely in corporate governance relation
Appointment directors	Presence of a committee on the proposed appointment and the mechanism of voting lists	0,00 – if there is not a committee and there is not voting list 0,50 – if there is a committee but not voting list 1 – if there is the mechanism of voting lists
Remuneration directors	Presence of a committee on the remuneration and determination of the related criteria	0,00 – if there is not a committee 0,50 – if there is a committee but not criteria are not mentioned 1 – if there is a committee but criteria are listed
Internal controls	Presence of a committee on internal control	0,00 – if there is not a committee 1 – if there is a committee
Relations with institutional investors and other shareholders	Presence of structures appointed to manage relations with the financial super system	0,00 – if there is not investor relator 1 – if there is a investor relator
Assemblies	Presence of a regulation assembly	0,00 – if there is not a regulation 1 – if there is a regulation

It is worth noting that our methodology matches in part that of other previous contributions (Brogi, 2003).

After selecting the indicators, we defined the level of compliance of target company governance with the standards established in the Best Practices Code. We would like to point out that the calculation

of the final score for each company was based on the attribution of comparable weights to different indicators; in fact, we considered the use of different weighting factors as an excessively arbitrary option. For brevity, the indicators calculated are not stated in their entire denomination but by reference numbers (**Table 3**)

Table 3 Values of Governance Indicators for Target Companies

BIDDER	TARGET	BOARD COMPOSITION	INTERLOCKING DIRECTORSHIP	SEPARATION OF RULES	RESERVED INFORMATIONS	APPOINTMENTS COMMITTEE	REMUNERATION COMMITTEE	INTERNAL CONTROL COMMITTEE	INVESTOR RELATION	SHAREHOLDER'S MEETING REGULATION	SCORING
Tamburi Investment Partners S.p.A.	Management & Capitali S.p.A.	0,667	-	1,000	0,667	-	1,000	1,000	1,000	-	59,26%
Modena Capitale Industry Partecip.S.p.A.	Management & Capitali S.p.A.	0,667	-	1,000	0,667	-	1,000	1,000	1,000	-	59,26%
Tamburi Investment Partners S.p.A.	Management & Capitali S.p.A.	0,667	-	1,000	0,667	-	1,000	1,000	1,000	-	59,26%
MIMOSE S.p.A.	Management & Capitali S.p.A.	0,667	-	1,000	0,667	-	1,000	1,000	1,000	-	59,26%
Mariella Burani Family Holding S.p.A.	Mariella Burani Fashion Group S.p.A.	0,667	-	-	0,333	-	1,000	1,000	1,000	1,000	55,56%
Wizard S.r.l.	Marzotto S.p.A.	1,000	-	1,000	1,000	0,500	1,000	1,000	1,000	1,000	83,33%
Wizard S.r.l.	Marzotto S.p.A.	1,000	-	1,000	1,000	0,500	1,000	1,000	1,000	1,000	83,33%
Wizard S.r.l.	Marzotto S.p.A.	1,000	-	1,000	1,000	0,500	1,000	1,000	1,000	1,000	83,33%
Wizard S.r.l.	Marzotto S.p.A.	1,000	-	1,000	1,000	0,500	1,000	1,000	1,000	1,000	83,33%
Blugroup Holding S.p.A.	FullSix S.p.A.	0,667	0,333	-	0,333	1,000	0,500	1,000	-	-	42,59%
Joker Partecipazioni S.r.l.	Jolly Hotels S.p.A.	0,667	0,333	-	0,667	0,500	0,500	1,000	1,000	-	51,85%
Zi.Fi S.r.l.	Industrie Zignago Santa Margherita S.p.A.	1,000	-	1,000	0,333	-	1,000	1,000	1,000	1,000	70,37%
Zi.Fi S.r.l.	Industrie Zignago Santa Margherita S.p.A.	1,000	-	1,000	0,333	-	1,000	1,000	1,000	1,000	70,37%
Finpaco Properties S.p.A.	IPI S.p.A.	1,000	-	-	0,667	1,000	1,000	1,000	1,000	-	62,96%
La Leonardo Finanziaria S.r.l.	Beni Stabili S.p.A.	1,000	-	1,000	1,000	0,500	0,500	1,000	1,000	1,000	77,78%
Sirefid S.p.A.	DMAL Group S.p.A.	0,667	1,000	-	0,667	-	0,500	1,000	1,000	-	53,70%
Pallio S.p.A.	Savino del Bene s.p.a	-	1,000	1,000	1,000	-	-	-	1,000	1,000	55,56%
Risanamento Napoli S.p.A.	IPI S.p.A.	1,000	-	-	0,667	1,000	1,000	1,000	1,000	-	62,96%
Pallio S.p.A.	Savino del Bene s.p.a	-	1,000	1,000	1,000	-	-	-	1,000	1,000	55,56%
Newco28 S.p.A.	Autostrade S.p.A.	-	-	1,000	-	1,000	0,500	1,000	-	1,000	50,00%
OMNIAPARTECIPAZIONI S.p.A.	Immsi S.p.A.	0,667	-	1,000	0,333	-	-	-	1,000	-	33,33%
Impe Lux S.à r.l.; Coci S.p.A.	Ferretti S.p.A.	-	-	-	-	-	-	-	-	-	0,00%
Impe Lux S.à r.l.; Coci S.p.A.	Ferretti S.p.A.	-	-	-	-	-	-	-	-	-	0,00%
Biosdue S.p.A.	SNIA S.p.A.	-	-	-	-	-	0,500	1,000	1,000	-	27,78%
Ieffe Acquisition S.p.A.	Italfondario S.p.A.	-	-	-	-	-	-	-	-	-	0,00%
Dieci S.R.L.	Cartiere Burgo S.p.A.	-	-	1,000	-	-	-	-	-	-	11,11%
G.I. Holding S.r.l.	Gildemeister Italiana S.p.A.	-	-	-	-	-	-	-	-	-	0,00%
Compart S.p.A.	Montedison S.p.A.	-	-	1,000	-	-	-	-	-	-	11,11%

After giving a value to each governance indicator, we would have liked to quantify the “pure” majority premium. As it is extremely difficult to estimate it, we considered, with the due caution, the entire amount of the difference between the price of controlling package shares and the market price of the shares as a proxy variable of the “pure” majority premium. We determined it by calculating the percentage price surcharge proposed to the shareholders in the tender offer compared to: the average price 12th month before the tender offer; the average price 11th month before the tender offer; the

average price 10th month before the tender offer; the average price 9th month before the tender offer; the average price 8th month before the tender offer; the average price 7th month before the tender offer; the average price 6th month before the tender offer; the average price 5th month before the tender offer; the average price 4th month before the tender offer; the average price 3th months before the tender offer; the average price 2th month before the tender offer; the average price 1th month before the tender offer (Table 4).

Table 4 Control Premiums in Target Companies

BIDDER COMPANY	CONTROL PREMIUM (in %)											
	P _{opp/P_{m-12}}	P _{opp/P_{m-11}}	P _{opp/P_{m-10}}	P _{opp/P_{m-9}}	P _{opp/P_{m-8}}	P _{opp/P_{m-7}}	P _{opp/P_{m-6}}	P _{opp/P_{m-5}}	P _{opp/P_{m-4}}	P _{opp/P_{m-3}}	P _{opp/P_{m-2}}	P _{opp/P_{m-1}}
Tamburi Investment Partners S.p.A.	-83,919%	-82,754%	-76,200%	-76,667%	-74,130%	-72,326%	-70,976%	-72,955%	-80,492%	-81,970%	-83,000%	-83,000%
Modena Capitale Industry Participations S.p.A.	36,364%	87,500%	87,500%	87,500%	114,286%	114,286%	114,286%	50,000%	36,364%	36,364%	25,000%	-11,765%
Tamburi Investment Partners S.p.A.	-83,919%	-82,754%	-76,200%	-76,667%	-74,130%	-72,326%	-70,976%	-72,955%	-80,492%	-81,970%	-83,000%	-83,000%
MIMOSE S.p.A.	-81,967%	-83,824%	-85,135%	-84,058%	-78,000%	-78,000%	-76,087%	-74,419%	-73,171%	-75,000%	-81,967%	-83,333%
Mariella Burani Family Holding S.p.A.	-23,681%	-24,373%	-14,132%	-8,281%	6,189%	3,428%	3,123%	5,105%	1,215%	7,958%	10,759%	10,410%
Wizard S.r.l.	11,765%	12,712%	17,009%	14,655%	14,000%	15,318%	16,327%	0,758%	-1,481%	1,269%	0,504%	3,636%
Wizard S.r.l.	14,655%	28,296%	23,913%	10,526%	11,765%	12,712%	17,009%	14,655%	14,000%	15,318%	16,327%	0,758%
Wizard S.r.l.	9,016%	13,675%	14,655%	17,699%	15,988%	14,000%	13,031%	1,013%	-0,250%	0,758%	0,504%	1,786%
Wizard S.r.l.	18,750%	40,989%	15,988%	10,221%	9,016%	13,675%	14,655%	17,699%	15,988%	14,000%	13,031%	1,013%
Blugroup Holding S.p.A.	120,000%	115,915%	109,254%	83,333%	53,008%	22,406%	13,687%	9,115%	27,387%	24,655%	8,245%	-15,031%
Joker Partecipazioni S.r.l.	30,593%	36,856%	25,489%	20,016%	17,813%	18,538%	-7,169%	-12,043%	-7,280%	-3,325%	-4,994%	-9,672%
Zi.Fi S.r.l.	26,359%	21,410%	12,319%	8,014%	5,025%	-0,853%	-1,950%	-2,720%	0,216%	0,162%	-0,161%	-1,169%
Zi.Fi S.r.l.	36,664%	33,813%	35,569%	30,435%	26,359%	21,410%	12,319%	8,014%	5,025%	-0,853%	-1,950%	-5,966%
Finpaco Properties S.p.A.	43,959%	46,214%	36,919%	33,971%	41,414%	45,078%	53,005%	50,134%	48,936%	53,005%	25,843%	28,440%
La Leonardo Finanziaria S.r.l.	41,518%	39,035%	27,309%	22,394%	17,844%	15,273%	6,376%	0,795%	6,198%	2,589%	0,635%	-6,902%
Sirefid S.p.A.	-0,034%	7,800%	10,943%	7,091%	-5,514%	-9,763%	-17,115%	-12,354%	-5,147%	-6,718%	17,813%	27,281%
Palio S.p.A.	-10,969%	-8,054%	2,543%	10,914%	18,821%	24,813%	13,895%	20,250%	22,971%	3,605%	0,442%	-0,040%
Risanamento Napoli S.p.A.	16,370%	9,379%	9,268%	6,150%	8,910%	13,255%	19,662%	23,250%	22,864%	19,562%	16,559%	2,494%
Palio S.p.A.	-10,905%	-11,536%	-11,567%	-10,969%	-8,054%	2,543%	10,914%	18,821%	24,813%	13,895%	20,250%	22,971%
Newco28 S.p.A.	34,181%	27,688%	20,558%	15,152%	13,230%	8,696%	7,955%	12,293%	15,431%	12,161%	13,095%	18,306%
OMNIAPARTECIPAZIONI S.p.A.	-2,977%	1,403%	4,783%	-1,230%	-6,950%	-18,120%	-10,961%	-0,959%	1,403%	5,857%	23,169%	4,329%
Impe Lux Sà r.l.; Coci S.p.A.	48,060%	30,591%	20,666%	15,661%	20,901%	15,385%	10,043%	15,753%	19,211%	1,897%	0,718%	0,207%
Impe Lux Sà r.l.; Coci S.p.A.	93,678%	114,391%	123,996%	91,968%	90,455%	92,478%	98,903%	98,903%	94,631%	57,438%	53,277%	53,277%
Biosdue S.p.A.	11,111%	16,129%	34,328%	46,341%	46,341%	-3,226%	-10,891%	-20,354%	-20,705%	-18,552%	-21,397%	-17,051%
Ieffe Acquisition S.p.A.	17,458%	13,548%	18,139%	22,520%	8,623%	3,054%	8,923%	11,246%	15,565%	13,753%	14,433%	2,468%
Deci S.R.L.	57,895%	62,939%	57,895%	57,165%	46,974%	40,496%	45,299%	48,905%	53,614%	62,939%	74,658%	58,829%
G.I. Holding S.r.l.	52,801%	42,721%	46,628%	41,598%	18,671%	25,035%	29,385%	38,846%	31,464%	23,052%	19,617%	5,634%
Compart S.p.A.	6,285%	0,391%	3,670%	10,659%	13,095%	13,490%	31,001%	6,585%	3,508%	16,235%	16,602%	21,871%
AVERAGE (avg)	15,350%	18,218%	17,718%	14,504%	13,284%	10,027%	9,774%	6,549%	6,849%	4,217%	3,393%	-1,901%
STANDARD DEVIATION (sd)	45,230%	47,784%	45,908%	41,584%	40,578%	39,509%	40,346%	36,339%	36,763%	34,449%	34,624%	33,186%
sd/avg	2,947	2,623	2,591	2,867	3,055	3,940	4,128	5,549	5,367	8,168	10,204	17,460

Lastly, we developed a regression model to measure the relationship between the compliance of the governance system with the Best Practice Code (see Table 3) and the amount of the majority premium (Table 4) in the 12 months before the tender offers in

order to obtain indications on the impact of the best practices recommended by that Code on the protection of minority shareholders (Table 5 and Table 5 bis).

Table 5

	P-12	P-11	P-10	P-9	P-8	P-7
Constant	0,4076***	0,3854*	0,4266**	0,3807**	0,3105*	0,2346*
	(0,1729)	(0,1869)	(0,1762)	(0,1588)	(0,1584)	(0,1562)
Governance	-0,5220**	-0,4176*	-0,5123**	-0,4841**	-0,3651*	-0,2760*
	(0,3103)	(0,3353)	(0,3160)	(0,2850)	(0,2843)	(0,2802)
R ²	0,0982	0,0563	0,0918	0,0999	0,0596	0,0360
F	2,8302	1,5508	2,6280	2,8849	1,6493	0,9702
DF	26	26	26	26	26	26
N	28	28	28	28	28	28

*p<0,20; **p<0,10; ***p<0,05

Table 5 - bis

	P-6	P-5	P-4	P-3	P-2	P-1
Constant	0,2667* (0,1580)	0,2762*** (0,1385)	0,2859*** (0,1397)	0,2148** (0,1332)	0,2248** (0,1326)	0,1630** (0,1272)
Governance	-0,3471* (0,2834)	-0,4329*** (0,2484)	-0,4467*** (0,2507)	-0,3547** (0,2389)	-0,3922** (0,2380)	-0,3739** (0,2282)
R ²	0,0545	0,1046	0,1088	0,0781	0,0946	0,0935
F	1,4999	3,0366	3,1740	2,2037	2,7157	2,6830
DF	26	26	26	26	26	26
N	28	28	28	28	28	28

*p<0,20; **p<0,10; ***p<0,05

6. Conclusions

Our survey leads to interesting results because it shows the relevance of best practice codes in Italy. In fact, we find that the association between the compliance of governance systems with the law and with Best Practice Codes and the control premiums is systematically negative. This is an important result because it shows the relevance of best practice codes in safeguarding minority shareholders.

We believe that it would be very interesting to analyse the same subject in future years in Italy and in other countries to test the relevance of the rules in protecting shareholders; in fact, it is one of the most important goal in a corporate governance system.

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