# OPERATIONAL EVIDENCES ON THE ENGAGEMENT DUTY OF ITALIAN INSTITUTIONAL INVESTORS

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## Abstract

Directive 2017/828 is the main legislative text of reference of the European Union ("EU") in relation to the engagement duty of institutional investors (insurance companies, pension funds and asset managers) towards investee companies. This paper is intended to provide an overview of the engagement activities of Italian institutional investors and to outline possible developments with respect to local engagement practices. In general, evidence has shown a lack of activism by pension funds and domestic insurance companies, as well as the adoption of a selective/opportunistic approach by asset managers, mainly through collective engagement. Further, the Italian stock exchange showed a certain degree of proactivity in promoting the dialogue between issuer companies and investors. In this scenario, it may be worthy to investigate the opportunity for pension funds and insurance companies to exercise engagement activities in collective form as well.

**Keywords:** Institutional Investors, Engagement, Active Ownership, Shareholders, Fiduciary Duty, Voting Rights

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## 1. INTRODUCTION AND METHODOLOGY

Directive 2017/828 is the main legislative text of reference of the European Union ("EU")[1] in relation to the duty of institutional investors (i.e. insurance companies, pension funds and asset managers) to engage with investee companies.[2] Directive 2017/828 requires institutional investors to shift their focus to the medium and long-term investment practices, keep a continuing dialogue (the so-called investment stewardship or engagement duty) and monitor the investee companies, with a focus on their long-term organic growth.[3]

[1] Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (Text with EEA relevance).

[2] Coherently with the scope of the Directive 2017/828, this paper will make reference only to the holding of stocks in publicly traded companies; however, the observations made herein may also be (to a certain extent) applicable to participation in private equity/unlisted companies, as well as to investments in non-participative financial instruments (e.g. bonds) and real estate property.

[3] Article 2 (e) of the Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, as amended by the Directive 2017/828. Further, in respect to pension funds, Directive (EU) 2016/2341 of the European Parliament and of the Council of 14/12/2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) foresees that the system of governance shall include consideration of environmental, social and governance factors related to

While the deadline for national implementation of Directive 2017/828 was set for June 2019, the implementation process in Italy initiated with the adoption of Legislative Decree no. 49 of 10 May 2019 and is expected to continue with the adoption of secondary regulation. This paper is intended to provide an overview of the engagement activities enumerated by the EU legislator, from the Italian perspective.

After having outlined the characteristics of the engagement duty imposed by the EU legislator and the privately held initiatives of soft law that are more relevant in the reference framework (Section 2), each engagement activity mentioned by the EU legislator will be commented on from the Italian operational standpoint (Section 3). Further, conclusions will be drawn with respect to the current Italian engagement practices and possible developments will be discussed (Section 4).

In respect to methodology, in line with the reporting objective of this paper, a style of writing consisting of direct presentation of facts and data (mostly derived from public records and operational evidences) will be privileged, with analysis and interpretation confined to the final paragraph.

## 2. ENGAGEMENT DUTY

### 2.1. Hard law obligations

The engagement duty that the EU legislator has attributed to institutional investors and that the Italian legislator has fully implemented, rather than being a direct obligation to approach the investee companies, consists substantially of a set of disclosure and reporting obligations on the institutional investors.

Primarily, institutional investors are required to publish their own "engagement policy" (as well as the information on the engagement obligation of their asset manager towards them, in case they have outsourced the management of their assets), which should describe how institutional investors monitor investee companies, conduct dialogues with them, exercise voting rights and other rights attached to shares, cooperate with other shareholders, communicate with relevant stakeholders of the investee companies.[4]

Besides the policy disclosure obligation, the EU legislator demands that institutional investors also report, on an annual basis, on how their engagement policy has been implemented and include a general description of voting behaviour with a disclosure of the most significant votes and of the use of the proxy advisors' services (art. 3g Directive 2017/828).

Both the disclosure and reporting obligations operate on a "comply-or-explain" basis, hence creating a "market sanction" rather than a legal one: the institutional investor may face the reputational consequences *lato sensu* (towards clients/policyholders/peers and stakeholders at large) of its non-compliance with market standards. Furthermore, in case the institutional investor completely omits to provide explanations, pecuniary sanctions (defined at the national level with the transposition of the directive) will apply.[5]

### 2.2. Soft law initiatives

The comply-or-explain principle approach of the EU legislator leaves the institutional investors to freely choose their engagement policy standards and principles. At the international level, upon the efforts of cooperative networks of the institutional investors, widely recognized private codifications have been developed. Typically, these private codifications are principles-based. However, by adhering, signatories may be subject to the obligation of measuring the impact of their engagement actions and disclosing information on the extent to which they implement the codifications through procedures, such as annual reporting and assessment processes (Principles for Responsible Investment, 2019).

In Italy, the reference codification of best practices of institutional investors is the "Stewardship Principles for the exercise of administrative and voting rights in listed companies", first published by Assogestioni (the association of Italian asset managers) in 2013 and derived from the Stewardship Code published by the European Fund and Asset Management Association (EFAMA).

A survey on 19 (14 Italian and 5 foreign) main asset managers operating in Italy commissioned by Assogestioni in 2018 revealed that all but one of the participants have already adopted an investment stewardship policy and that the absolute majority has already made it publicly available.[6]

investment assets in investment decisions, and shall be subject to regular internal review.

[4] Further, investors must describe how they manage actual and potential conflicts of interests in relation to their engagement, as well as how they integrate shareholder engagement activities in their investment strategy (Article 3g Directive (EU) 2017/828). Although the topic of the relationship between active ownership practices and investment process falls outside the scope of this presentation, it is worthy of mention that inclusion of active ownership-related considerations in portfolio management decisions implies that, to a certain extent, institutional investors must be able to modulate the potential risks and opportunities of the engagement activities and to measure their impact in relation to the interest of the managed asset portfolios. The topic matches with the matter of how to integrate ESG factors in the investment strategies (see OECD, 2017).

[5] In Italy, the sanction ranges from Euro 2500 up to Euro 150000 (Art. 193-bis.1 of Legislative Decree no. 58 of 24 February 2008 Consolidated Law on Finance, as modified by Article 4.5 of Legislative Decree no. 49 of 10 May 2019.

[6] Assogestioni, Report 2017 Principi Italiani di Stewardship Monitoraggio sullo stato di applicazione dei Principi Italiani di Stewardship per l'esercizio dei diritti amministrativi e di voto nelle Società quotate (2018).

As in regard to domestic pension funds and insurance companies, to the best of our information, so far the quasi totality of them has not published policies on engagement activity.

**Table 1.** Contents of the investment stewardship policies of the asset managers operating in Italy (according to the 2018 Assogestioni survey)

| *Topic* | *Popularity among respondents* |
|---|---|
| Exercise of voting rights | 100% |
| Coherency between the exercise of voting rights and investment policy | 94% |
| Conflicts of interest | 88% |
| Monitoring of investee companies and measures in relation to financial data | 83% |
| Governance topics | 83% |
| Transactions on capital (corporate actions) | 83% |
| Management of confidential information | 77% |
| Collective engagement and shareholders' agreements | 72% |
| Securities lending management | 55% |
| Environmental and social topics | 50% |

*Source: Assogestioni, Report 2017 Principi Italiani di Stewardship Monitoraggio sullo stato di applicazione dei Principi Italiani di Stewardship per l'esercizio dei diritti amministrativi e di voto nelle Società quotate (2018)*

**Table 2.** Most popular private codifications among Italian institutional investors

| *Network Name* | *Dimension* | *Codification* |
|---|---|---|
| Principles for Responsible Investment (PRI) | International; representing Institutional investors for approximately US$70 trillion | Principles for Responsible Investment (2006) |
| International Corporate Governance Network (ICGN) | International; representing Institutional investors for approximately US$34 trillion | ICGN Global Governance Principles (2003); Global Stewardship Principles (2003), last revised, respectively, in 2017 and in 2016 |
| European Fund and Asset Management Association (EFAMA) | European; representing more than EUR 25 trillion in assets under management | EFAMA Stewardship Code Principles for asset managers' monitoring of, voting in, engagement with investee companies (2011), last revised in 2018 |
| Italian Fund and Asset Management Association (Assogestioni) | Italian; representing more than EUR 2 trillion in assets under management. About 300 members (mainly Italian asset managers, other members include banks, insurance companies, pension schemes, foreign and domestic investment funds) | Italian Stewardship Principles for the exercise of administrative and voting rights in listed companies (2013), last revised in 2016; Protocol of duties and responsibilities of the Corporate Governance Committee and the Investment Managers' Committee (2015) |

*Source: institutional websites, searched in December 2018*

## 3. ENGAGEMENT ACTIVITIES

This paragraph is intended to provide an overview of the engagement activities enumerated by the EU legislator, from the Italian perspective.

### 3.1. Monitoring of investee companies

The EU legislator requires the institutional investors to monitor investee companies "on relevant matters, including strategy, financial and non-financial performance and risk, capital structure, social and environmental impact and corporate governance". The checks described under the "monitoring" obligation are substantially analogous to those already performed ordinarily by buy-side analysts supporting the institutional investors. Indeed, according to the 2018 survey of Assogestioni, 83% of the respondents declared that they have already implemented a formal monitoring procedure aimed to identify potential issues and react proactively. The monitoring is performed in the majority of the cases (66%) by the Investments area, and in the remaining of the cases by non-financials (e.g. Head of Compliance, Corporate governance team) and is carried out through the gathering of direct information and research materials, or recurring to specific tools to measure industry-specific environmental, social and governance (ESG) performance and systemic risk indicators.

### 3.2. Conducting dialogues with investee companies

Generally, the dialogue with issuers may refer to every aspect of the relation between the institutional investor and the investee company. Recommendations within corporate governance and stewardship codes, as well as from practitioner guidelines, played a major role in developing a practical framework for shareholder-company dialogue that seeks to make the dialogue more effective whilst preventing the violation of insider trading and public disclosure rules (Cucari, 2018). Indeed, whereas scholars focus on reconstructing the scenario that would involve the market abuse legislation, stewardship practitioners (both from companies and investors) simply focus on avoiding finding themselves in such scenarios (Alvaro et al., 2019).

The cases in which dialogue may be conducted in cooperation with a plurality of institutional investors will be disserted (see 3.5). As for possible examples of individual dialogue, probably the most common (and informal) is the ongoing dialogue between the buy-side analysts of the institutional investor and the investee company as the consequence of the monitoring activity. In such regard, the Stewardship Code of Assogestioni invites the institutional investor to identify the cases that would trigger an active intervention dialogue as well as the procedures that should be activated, and invites to periodically monitor the results of the dialogue (Principle 3 of the Italian Stewardship Principles).

Another common form of individual dialogue is a "private" dialogue between institutional investors and key people within the investee company which aims to sensitize the latter on topics of interest of the investor, their clients or their stakeholders. An example can be found in the awareness campaigns conducted in the past three years by transnational insurance companies as part of their new climate-change strategy. Partially upon the stimulus of anti-coal campaigns conducted by coalitions of NGOs and social movements, international insurance companies (including an Italian-based insurance group) have conducted direct dialogues with investee companies in consequence of the rise of their investments in environmentally-friendly projects and divestment from the coal industry (Unfriend Coal, 2018).

Finally, a particular form of individual dialogue – which in Italy is mainly promoted by local proxy solicitors – is represented by the so-called "engagement on voting", formalized by the ICGN Global Stewardship Principles, and consisting in explaining to companies the reasons underlying their voting decisions, preferably before the shareholders' meeting takes place (see Principle 5. 2 ICGN Global Stewardship Principles).

### 3.3. Exercising of voting rights

In respect to the exercise of the votes, it is universally recognized that, by introducing the remote voting and the record date system, the Directive 2007/36[7] incentivized the shareholders voting by simplifying the voting process. With the same scope of the former, the Directive 2017/828 adds further technical and transparency rules to ensure that intermediaries (i.e. the chain of custodian banks and their service providers) facilitate the identification of the shareholders by the issuers, as well as to further simplify the exercise of the voting rights. The Commission Implementing Regulation (EU) 2018/1212 completes the EU legal framework, specifying the technical requirements foreseen by the directives.[8]

Subsequently to the adoption of the Directive 2007/36, the empirical data (on shareholders' meetings of top 100 Italian issuers) show that, over the years, the average attendance rate of foreign institutional investors has grown from 10% to 18% of the voting capital, coherently with the increase of foreign investments in Italian stock exchange market (Consob, 2018; Georgeson, 2013).

However, in respect to the voting activism of Italian institutional investors, attendance of Italian asset managers has remained substantially stable over the past years, showing an average 1% of the voting capital (reaching 3% in 2018, see Consob, 2019). Italian pension funds are substantially absent from shareholders' meetings, mainly due to the complexity of their internal governance and administrative structure (ABI, 2013). With regard to the Italian insurance companies, only

[7] Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies.

[8] On 3 September 2018, the Commission adopted the Implementing Regulation (EU) 2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights (Text with EEA relevance). Regulation 2018/1212 sets certain minimum requirements on identification of shareholders, transmission of information, facilitation of the exercise of shareholder rights. The Regulation includes standardized reporting formats which issuers and intermediaries are required to use and sets forth certain minimum requirements in respect of interoperability, language, deadlines and security to prevent diverging implementation of the shareholders' directives across the EU. The Implementing Regulation will be directly applicable in all member states from 3 September 2020.

a transnational insurance group headquartered in Italy has shown a substantial level of activism, comparable to international standards.

In the survey promoted by Assogestioni in 2018, when questioned on their voting behaviour, the majority of the asset managers declared that they adopt a selective approach when it comes to voting at shareholders' meetings: Italian asset managers vote prevalently if the shares held are quantitatively significant and if the vote concerns matters that are deemed to have financial relevance in the interest of the managed assets. Not surprisingly, according to the data provided by Assogestioni, the median of the Italian meetings voted by the asset managers in 2017 is closer to the amount of shareholders' meetings in which the institutional investors submitted lists of candidates to be elected at the board of directors or supervisory boards of investee companies (see 3.6), confirming the selectiveness of the voting activity of asset managers in Italy.

**Table 3.** The selectiveness of the voting activity of asset managers in Italy

| | *2017* | *2016* |
|---|---|---|
| Italian issuers in which institutional investors are relevantly invested* | 60 | 61 |
| Meetings where institutional investors submitted slates of candidates** | 34 | 35 |
| Median of Italian meetings voted by asset managers** | 33 | 27 |

** Sources: Consob, Rapporto 2018 (and 2017) sulla corporate governance delle società quotate italiane*

*** Sources: Report 2016 (and 2017) Principi Italiani di Stewardship Monitoraggio sullo stato di applicazione dei Principi Italiani di Stewardship per l'esercizio dei diritti amministrativi e di voto nelle Società quotate (2017 and 2018)*

As a relative justification to the above, it may be worth saying that the selective approach is in line with the minimum requirements of the Directive 2017/828. Indeed, the EU legislator does not impose any particular voting effort on the institutional investor. Moreover, in relation to the reporting obligation, the EU legislator gives the possibility to exclude from the annual report the votes that are deemed insignificant due to the size of the holding in the company (quantitative criteria) and in respect to the subject matter of the vote (the latter being a qualitative criteria not necessarily related to the specific agenda to be voted, but also inherent to other factors, e.g. pertaining the investment strategy). Lastly, the EU legislator does not take a position in regard to the extension of the use of the proxy advisors: whether the institutional investor limits itself to merely follow the proxy advisors' indications with no real qualitative assessment (i.e. box-ticking exercise), or whether conversely the institutional investor avails itself of the research of the proxy advisors as an informational tool to base its own decisions, the minimum requirement to comply with the Directive 2017/828 is that the institutional investor annually publicly discloses the approach it has taken.

In completing the presentation of the proxy voting activity in Italy, it may be worthy to describe the Italian operational framework.

In respect to the possibility for the shareholders to vote remotely (by post or electronically), without having to physically attend the shareholders' meetings, it could be noted that 37% of Italian issuers still require its shareholders to incur in the relative waste of time and costs connected with the physical attendance; however, such 37% of the issuers is concentrated in the Mid and Small Cap indexes, the latter representing only 20% of the Italian market capitalization. Conversely, 63% of the Italian issuers offer to shareholders the possibility to vote remotely at no costs via postal voting, with the support of the custodian banks.[9] The 63% percentage constitutes an improvement, when confronted with the 30% result of a survey conducted in 2012 by Assonime (the Italian association of listed companies) (Allotti & Spatola, 2012).

Although postal voting is available, to the opposite, voting via electronic platforms at Italian meetings is subject to high commission fees,[10] as the chain of intermediaries ultimately sends an attorney to vote physically on behalf of the shareholders (Broadridge Financial Solutions, 2009).

[9] The following data have been collected from public information published on the websites of 187 Italian companies (out of a total of 231 publicly listed issuers):

- 63% of the sample (119 companies) give the shareholder the option to vote remotely, without costs for the shareholders.
- 37% of the sample (68 companies) do not offer shareholders the possibility to vote remotely, therefore admitting only the vote by physical attendance at the shareholders' meeting.

[10] Voting platforms are widely used by institutional investors to vote remotely. Platforms are fed with meeting information provided by the custodians and their administrative agent, as well as with research information and vote recommendations provided by the proxy advisors, and allow the transmittance of voting instructions from the shareholders directly to the investee companies, via the chain of intermediaries (and their administrative servicers).

**Table 4.** Breakdown by the capitalization of Italian issuers offering physical attendance only

| *FTSE MIB* | *FTSE Italia Mid Cap* | *FTSE Italia Small Cap* |
|---|---|---|
| 2 | 26 | 39 |

*Source: institutional websites of the Italian issuers, searched in December 2018*

Consequently, in Italy, unless an institutional investor bails out the standard voting procedure offered by the voting platforms and manages to contact directly the issuer to vote by post, it may be subject to (embedded or specially applied) significant attorney fees to exercise the voting rights.

As scholars have argued that the decision whether to vote at a shareholders' meeting or not has a rational basis, directly linked to the sustainability of the "cost" of the vote (Gilson & Gordon, 2013), it may be worthy verifying to what extent the above described operational bottleneck represents a disincentive for the voting turnout of institutional investors in Italian shareholders' meetings.

### 3.4. The rights attached to shares and their exercise

The exercise of administrative rights attached to shares may refer to the management of rights pertaining to shares held in possession or possibly put to use (e.g. shares lent or borrowed under a secured lending transaction). From an operational standpoint, the matter of the exercise of rights attached to shares pertains to the framework of the so-called "corporate actions", i.e. requests of authorization made to shareholders by the board of the investee company via the custodian banks, in relation to certain corporate events (e.g. stock splits, dividends, mergers and acquisitions, rights issues, spin-offs). Normally, the decision whether to consent or not is taken by portfolio managers of the investors, with the backing of the credit analysts and of other support functions.

**Table 5.** Rights associated with shareholding in Italy

| *Category* | *Description* |
|---|---|
| Economic rights | Entitlement to participate in dividends (art. 2350 C. C.); right to capital distribution upon liquidation of the company (art. 2448 C. C. et seq.); option and allocation rights in case of capital increase transactions (art. 2441 C. C.); right of withdrawal where provided for by the law (art. 2437 C. C.). |
| Participation rights | Voting right (art. 2351 C. C.), right to attend the shareholder's meetings (2370 C. C.); right to request the calling of the shareholders' meeting (art. 2367); right to challenge shareholders' meeting resolutions (art. 2377 C. C.). |
| Rights to information and control | Right to of company books and records (art. 2422 C. C.), of the draft budget and of the report of directors and statutory auditors 15 days prior to the shareholders' meeting (art. 2429 C. C.); right to notify the statutory auditors of alleged irregularities (art. 2408 C. C.) right to notify to the judicial authority serious wrongdoings by directors and statutory auditors (art. 2409 C. C.). |
| Other | Duty not to vote in case of an interest in conflict with the company (art. 2373 C. C.). |

Although the exercise of administrative rights is not commonly perceived as a stewardship practice by institutional investors (Italian investors make no exception in this regard), some investors mention, among their active ownership practices, their set of principles and procedures covering their decision-making processes to file/adhere to claims against the issuers and their management (i.e. investments recovery policies).[11] The reference is made to legal claims initiated by pools of investors, typically for the recovery of monetary losses suffered by the shareholders in consequence of securities frauds and other malfeasances occurred within the timeframe in which the investor was a shareholder of the company. To give a scope of the phenomenon, according to the data from primary international providers, in the past three years, worldwide there have been over 400 paid-out claims, 70% of which took place in the United States in the form of class actions for a recovery amount of more than US$12

[11] Examples of institutional investors including the investments recovery activity within their Investments Stewardship practices include:

- Pension Funds: Swedish National Pension Fund, British Airways Pension Investment Management Ltd, California State Teachers' Pension Fund;
- Asset Managers: BNP Paribas Asset Management, State Street Global Advisors, Nomura Asset Managements.

billion.[12] Litigations involving a multitude of investors as plaintiffs in Italy represented 1% of the worldwide total and relate to some financial dislocations occurred in the oil industry and in the banking sector.[13]

### 3.5. Cooperating with other shareholders

Collective engagement actions gather together all investors interested in sharing the costs and the results of a particular engagement activity *vis a vis* an investee company.

The basic form of cooperation between shareholders includes forms of collaboration aimed at safeguarding their common interests as minorities and at influencing specific aspects of the investee company's life: challenge of shareholders' meeting resolutions, requests to hold meetings to ratify specific decisions by the board of directors, submission of a shareholders' resolution in the agenda of a meeting, requests of liability actions against the management, collective dialogue on specific topics (e.g. initiatives on sustainability topics promoted by institutional investors' networks, collective dialogues between investors and investee companies held within Assogestioni).

Italian pension funds and insurance companies have shown some examples of dynamism in supporting collective initiatives.[14] However, the most structured and robust example of cooperation among institutional investors in Italy is the collaboration between asset managers within Assogestioni for the selection and submission of slates of candidates for the election (or co-optation) of independent members of the board of directors or supervisory board of listed companies. The so-called "*voto di lista*" mechanism is mandatory for listed companies and eligible for non-listed companies and allows electing a quota of board members from the slates which did not accumulate the most votes. The share capital required for the submission of the slates of candidates ranges between 0.5% and 4.5% of the total share capital depending on the company's level of market capitalization (art. 144 quarter Consob Regulation no. 11971). The Investment Managers' Committee within Assogestioni, composed of the representatives of the asset managers that time after time hold shares in the target company, selects the potential candidates according to predetermined criteria. Given that the scope of the lists of candidates proposed by Assogestioni is to protect the interests of "minority" shareholders, as a standard practice, the lists are preordained not to take the control of the company. In point of fact, even when the lists of Assogestioni are the most voted in a meeting, they will systematically place second, as the amount of candidates proposed by Assogestioni is always inferred to half of the board members to be elected.

The arrangements within Assogestioni for the submission of slates of candidates are non-binding and temporary and thus they are not subject to public disclosure rules. On the contrary, pursuant to Italian law, when shareholders enter in stable long-term agreements among themselves to regulate their voting behaviour (i.e. "shareholders' agreements"), they are subject to public transparency and information duties to Consob (i.e. the public authority responsible for regulating the Italian financial markets). In the past, shareholders' agreements were used by shareholders to ensure control over the company and guarantee reciprocal stability, equally through cross participations and predetermined share-transfers obligations. Nowadays, the changes on companies' shareholders composition (with a larger role played by international institutional investors), as well as the evolution of the set of governance rules (for example, the introduction in 2014 of the possibility for companies to issue shares with increased voting rights and multiple-voting rights) have in part superseded the use of shareholders' agreements to control the company. Existing shareholders' agreements (in relation to 82 investee companies, according to Consob's public data as of December 2018) are often aimed at specific company transactions and may include agreements on the development of the governance of the investee company.

[12] Data privately provided by Financial Recovery Technologies LLC, as of December 2018.

[13] In the next future, the amount of litigations in Italy will most likely increase, in consequence of the recent adoption of Law no. 31 of 12 April 2019 that, with effect from April 2020, has fully established the "azione di classe" (Italian class action) in the Italian juridical system. Prior to the entry in force of the new regime in 2020, the Italian class action could only be initiated by consumers and consumer associations (see art. 140-bis of the Consumer Code legislative decree no. 206 of 6 September 2005, lastly modified by art. 49 of law no. 99 of 23 July 2009.

[14] For example, on November 2014, 14 Italian pension funds coordinated by their industry association (Assofondipensione), jointly sent a letter to a selection of international banks, with the aim to gather more information, through their engagement, in regard to their sensitivity in respect to the climate risks generated by their financing policies. In 2016, the pension fund of the engineers and architects (Inarcassa) submitted their own slates of candidates for the election of two members of the board of directors of the issuer company Snam S.p.a.

### 3.6. Communicating with relevant stakeholders of the investee companies

The aim of this unprecedented form of engagement is to take into account the aspirations of, for example, banks, creditors, customers, suppliers, works councils and non-governmental organizations, in the dialogue between the institutional investor and the investee companies; nonetheless, the framework of this engagement activity is still unclear by the practitioners, as there are no best practices on how investors should identify which stakeholders are materially relevant and how such dialogue with stakeholders should be conducted.[15]

It may be recalled as an example of the awareness campaigns conducted in the past three years by primary insurance companies as part of their new climate-change strategy. Indeed, as previously pointed out (see 3.2), such campaigns have been conducted upon the stimulus of anti-coal campaigns conducted by coalitions of NGOs and social movements (Unfriend Coal, 2018).

Hypothetically, another possible exploitation of this form of engagement may be found in the field of transactions with related parties, as it may back up the right of information of the shareholders on this sensitive matter. Under current Italian legislation, the right of information to the investors is foreseen only by the provision of the periodic information on transactions with related parties, contained in the dedicated notes to the financial statements. Further, in Italy the role of the minority shareholders on decisional processes in respect to related parties is residual and refers only to the case (if foreseen by the company bylaws of the issuer) of the vote by the non-related shareholders (i.e. whitewash vote) to approve or not a related parties transaction whose approval has been vetoed by the independent directors of the investee companies (however, as of today, no veto cases have been reported in practice).

## 4. CONCLUSIONS

The Italian investment stewardship scenario is largely dominated by the collective engagements of the asset managers within Assogestioni, for the election of minority directors in listed companies. As for the rest, apart from isolated initiatives, pension funds and domestic insurance companies are still a step behind in terms of activism.

As scholars maintain that investors are willing to sustain engagement costs to the extent to which they bring profit opportunities and reputational incentives in return (Hunter, 2018), in respect to pension funds and insurance companies, it may be further researched to what extent their engagement level is aligned with the financial and non-financial interests of their policyholders (Cucari et al., 2019).

Finally, the picture of the engagement activism in Italy would not be completed without mentioning the commitment placed by the Italian Stock Exchange in bringing together issuers and investors in collective dialogues,[16] as evidence that ultimately the engagement activities ultimately aim at the co-creation of value (Esposito De Falco et al., 2018).

[15] The topic has been publicly addressed by the ICGN on a symposium held on February 2019 in Amsterdam. The following questions have been posed and are still under debate: how should such dialogue with stakeholders be conducted? How do investors identify which stakeholders are materially relevant? How should such stakeholder engagement be disclosed and to whom? Are investors obliged to accept requests for dialogue with other stakeholders? What do listed companies think of this new requirement?

[16] Whereas Italian as well as EU legislative frameworks lack a set of rules that, symmetrically to institutional investors, pushes investee companies to draft and publish their engagement policy, nonetheless the Italian Code of Conduct for listed companies states the general principle that the board of directors should keep an open dialogue with shareholders. For example, Borsa Italiana S. p. A. (i.e. the Italian Stock Exchange) in 2017 and 2018 has launched initiatives to support the dialogue among issuers and investors:

- First Italian Sustainability Day in 2017. First edition ever organized by a Stock Exchange worldwide, with 350 attendees, 20 issuers meeting investors in more than 100 one-to-one/group meetings, 5 thematic workshops.
- Italian Equity Week 2017. 50 listed companies meeting with 180 investors (from 4 continents) in more than 1000 meetings.
- Milan STAR Conference 2017. More than 2400 meetings, 285 investors from 180 investment houses, 63% from abroad.

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