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by Francesco Bripi and Cristina Giorgiantonio

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GOVERNANCE OF ITALIAN PENSION FUNDS: PROBLEMS AND SOLUTIONS

by Francesco Bripi* and Cristina Giorgiantonio*

Abstract

In this paper we investigate the governance structure of Italian pensions funds. First, we conduct a brief but critical review of the theoretical and empirical literature, in order to identify the areas where major improvements are necessary: *a)* the skills and competence of the trustees; *b)* the definition of tasks and responsibilities; *c)* the handling of conflicts of interest. Secondly, we assess the governance of closed and open pension funds in Italy by analyzing their bylaws and other fund documents. Our main findings are: *a)* the average skill level of the trustees is still inadequate, despite the remarkable improvements made following recent reforms; *b)* there is no clear definition of the responsibilities of the various governing bodies; *c)* there is no clear policy for handling conflicts of interest. Finally, we observe that in these areas the potential role of self-regulation has not yet been fully exploited.

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Index

1. Introduction	5
2. The governance of pension funds: three critical issues	6
2.1. <i>Professional skills and representation</i>	8
2.2. <i>Definition of tasks among the different fund entities</i>	12
2.3. <i>Handling conflicts of interest</i>	14
3. Italian pension funds	15
3.1. <i>Evolution and present structure of the regulation</i>	16
3.2. <i>The governance structure: main problems</i>	17
3.3. <i>The role of self-regulation</i>	20
4. Conclusions	21

* Bank of Italy – Economics, Research and International Relations

* Bank of Italy – Economics, Research and International Relations

1. Introduction*

Nowadays pension funds (PFs) are a financial vehicle used by millions of people in advanced countries to accumulate savings for retirement. Indeed, they have grown considerably during the last decades, reaching massive dimensions in some countries to the point of becoming one of the most important categories of institutional investors in the financial markets (see Table 1).¹ Moreover, unlike other investors, these are characterized by the long-term horizon of their investments, due to their welfare targets.

Because of their role in the welfare system, the long-run horizon of the investments and the remarkable dimensions they have reached, PFs have become a major actor in modern growing economies.² In fact, they contribute to financial system's efficiency, by increasing market size³ and depth,⁴ and by exerting activism on their portfolio companies to improve corporate governance.⁵

The positive impact of PFs on financial markets and economic growth depends not only on their size,⁶ but also on their internal governance structure and mechanisms,⁷ which can reduce agency problems among the various stakeholders, with positive consequences for the management of pension savings, investment policy and ultimately on their performance.

We analyze Italian PFs by focusing on several problematic aspects of their governance structure and suggesting possible solutions. The second section contains a review of the literature on the governance of PFs⁸ that examines three aspects, which we argue are of particular importance

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¹ The total value of equities held in their portfolios is about 25 per cent of the total equities listed in the financial markets of OECD countries (and about 10 per cent of bonds): see Boeri et al. (2006).

² Some recent empirical studies have showed that pension funds' development has a positive impact on economic growth: see Davis (2002); Davis (2004). The effect is greater in developing countries than in developed ones: see Hu (2005); Davis and Hu (2008). Some papers – analyzing the conditions that favor pension system reform – find that the development of PFs impacts positively the growth of total factor productivity: see Holzmann (1997); Schmidt-Hebbel (1998).

³ Various authors showed that the development of institutional investors (and predominantly pension funds) fosters financial markets' capitalization: see Catalan et al. (2000); Impavido et al. (2003); Hu (2005); Davis and Hu (2008). The effects of the growth in institutional investors' size on national savings are less clear: on the one hand, the growth of pension funds increases private savings; on the other, the impact on national savings can be limited by various factors, such as international portfolio diversification and tax cuts (which are sometimes implemented during the transition to new capitalization regimes): see Lopez-Murphy and Musalem (2004); Samwick (2000).

⁴ As described by Walker and Leffort (2002), PFs contribute to the development of financial markets through various channels: *i*) professional asset allocation, which promotes international portfolio diversification; *ii*) the longer term horizon of PFs (compared with other institutional investors), which reduces the term premium; *iii*) the professional management of pension savings, which reduces the risk premium. However, note that some authors have also found opposite results: see Davis (2004); Hu (2006).

⁵ Activism by pension funds – which initially developed in the US and the UK during the 80s and subsequently spread to other countries – takes various forms, such as voting at companies annual general meetings, engaging in informal negotiations with the management, or through formal judiciary litigation with the management: see Davis (2002); Clark and Hebb (2003).

⁶ For this purpose, it could be useful to accelerate the reforms of pension systems in those countries where PFs are still a nascent industry, so as to improve their development by devoting more financial resources to these financial vehicles: see Visco (2007).

⁷ Actually, the two facets (size and governance of pension funds) are strongly correlated. In fact, on the one hand good governance is more easily implemented among pension funds of large dimensions; on the other hand, reforms of the retirement systems are more effective if there is an appropriate and efficient governance of pension funds, which promotes the growth of dimensions and reduces the impact of conflicts of interest among the various stakeholders: see Ambachtsheer (2007).

⁸ As will be explained below (see section 2), appropriate governance systems are affected by the legal type of PFs. Indeed, there are two main types of PFs that can be taken into consideration. *i*) *Closed pension funds*, which are typically set up by collective bargaining at some level (industry, large firms or regional). They have an independent

for the governance of PFs. For each of these arguments we highlight the solutions recommended by best practices and international organizations. In the third section, using the indications derived from the review of the literature, we evaluate the current governance structure and mechanisms of Italian PFs. To do this we use three different sources in a sequential way: for each problem we first analyze the current regulation and then examine the statutes and other documents from a very wide sample of Italian PFs (equal to 78.8% and 75.6% of the total members of closed and open PFs respectively). For each aspect we highlight the problems and propose some solutions. The last section concludes.

2. The governance of pension funds: three critical issues

Various studies have shown the importance of having good governance structures and mechanisms for PFs. Indeed, this factor contributes to their growth and most importantly to providing adequate pension benefits to plan members. PF governance transmits its effects through various channels.

First, as documented by various empirical papers, it improves fund performance, because it improves investment strategies and asset management.⁹

Second, the relationships among the various stakeholders of the fund are facilitated. Indeed, the governance provisions imposing high transparency standards improve the accountability of the decision-making bodies of the fund (governing and oversight body), and in this way also increase the confidence of plan members in the funds' management.¹⁰ Additional benefits are delivered by more efficient action by the supervisory authority.¹¹

Finally, good governance may induce PFs to play a more active role in corporate governance. Indeed, institutional investors' activism may be promoted not only through favourable company laws (for example, those allowing proxy voting), but also – as recently highlighted by some empirical works¹² – through the adoption of good governance practices. Activism benefits the

legal status that usually takes the form of an association, a foundation or a company, with its own board of directors (governing body). *ii) Open pension funds*, which do not have an independent legal status from the sponsoring institutions (typically banks, insurance companies or asset management firms), but have a legal separation of assets, and in many cases also the duty to adopt autonomous auditing, administrative and operative controls. Finally, note that in Common Law countries most pension funds take the legal form of a trust, which does not exactly correspond to any of the previous two categories described above, since they have characteristics of both types. In fact, like closed pension funds the assets are managed by the directors in the exclusive interest of beneficiaries, but unlike them (and similarly to open pension funds) there is a legal separation of the assets from the trust. Since many governance features of pension funds organized as trusts overlap with those of closed ones, they will be considered under the same category for the sake of simplicity and for the purposes of this paper only.

⁹ The effects of pension funds governance on their performance have been tested empirically using data from different countries: see Coleman et al. (2006) for a cross section of Australian PFs, Ammann and Zing (2008) analyze Swiss pension funds; for the US see Mitchell and Yang (2008); Mitchell and Useem (2000); Hsin and Mitchell (1997). For some analytical evaluations see also Ambachtsheer (2007).

¹⁰ On this point, the Clapman Report (2007) states that all regulations regarding governance of each American institutional investor should be collected in a unique consultation point, easily accessible by all interested parties and the public at large (such as an internet point).

¹¹ For example, if the fund management is assigned to external managers, imposing strict disclosure requirements to the Supervision Authority can prevent the emergence of possible conflicts of interest: see Stewart and Yermo (2008); IOPS (2008).

¹² Chou, Ng and Wang (2007) find that inappropriate governance mechanisms of American mutual funds increase the probability that a fund will vote in favour of management proposals of companies in their portfolio. Ashraf and Jayaraman (2007) find that the motivation to undertake an activist role depends mostly on the long-term horizon that fund directors adopt in setting the investment policy.

economy at large; indeed, it can be considered as a public good, because it improves corporate governance¹³, investment policies¹⁴ and ultimately firm value.¹⁵

One of the first arguments analyzed by the literature on PF governance regards the attribution of control powers to the main stakeholders (the sponsor and the beneficiaries): according to Besley and Prat (2003), control rights should be assigned to the party that bears the greater risk (*residual claimants*): the *sponsor* in defined benefit plans, workers in defined contribution ones.

However, various factors – such as the tax arbitrage,¹⁶ the increasing volatility of financial markets, the imposition of stringent rules (on the financing, solvency and accounting standards of the funds) and the ever growing mobility of workers¹⁷ – have caused many funds to be underfunded; these facts have favored the conversion of pension funds from DBs to DCs.¹⁸

Consequently, in more recent years the debate has widened the spectrum of analysis of fund governance, starting from the implicit principle that since workers are the ultimate beneficiaries of PFs, they are also the stakeholders who bear the greater risks. The literature has examined, among others, the definition of each fund entity's role, the management of conflicts of interest, the role of the supervisory authorities, etc... These topics have also been dealt with in the OECD guidelines on the governance of PFs.¹⁹

In view of the most recent developments in the academic literature and research made by some international organizations²⁰ – that have examined the experience of countries where PFs are a

¹³ The most common examples are the elimination of poison pills and the improvement of compensation schemes for managers: see Huson (1997); Smith (1996); Becht et al. (2007). However, some authors argue that activism does not always significantly affect firm behaviour: see Johnson et al. (1997); Faccio and Lasfer (2000); Wahal (1996).

¹⁴ The most frequent cases are job cuts, investment decisions and restructuring productive plants: see Del Guercio and Hawkins (1999); Huson (1997); Becht et al. (2007).

¹⁵ Even though the results from the available evidence are mixed. In fact, various authors have found positive effects of improved firm performance; for the US see Smith (1996), Opler and Sokobin (1997); for the UK, see Becht et al. (2007); for Sweden, see Giannetti and Laeven (2007). However, other studies find no significant effects on performance: see Wahal (1996); Del Guercio and Hawkins (1999); Woods (1996). Some early studies even found a negative impact on performance: see Carvell and Strebels (1987); Edelman and Baker (1987).

¹⁶ The 'tax arbitrage effect' states that financially secure firms have an incentive to make their pension contributions as large as possible in order to gain the maximum tax advantage. Differently, since companies in financial trouble pay no taxes, they have the opposite incentive, to reduce pension contributions and underfund their pensions: see Stewart (2007), page 10.

¹⁷ According to Schragger (2009), given the high mobility of workers in the United States, the optimal solution is to participate in defined contribution plans, in order to benefit from portability. Friedberg and Owyang (2004) argue that the adoption of a defined benefit plan is becoming less convenient for workers since recurring technology shocks have considerably shortened the average period of employment in a given firm. See Ross and Wills (2002) for a review of the factors affecting the conversion from defined benefit to defined contribution plans.

¹⁸ There is a trend in various countries – mostly in the US and the UK – of plan conversion from a defined benefit to a defined contribution scheme (see Poterba et al., 2001): in the US, contributions to defined contribution 401(k) plans have grown from 18% of the total in 1985, to about 80% at the beginning this century. In the UK, this change started in 2001 (see Ross and Wills, 2002). In Australia, between 1987 and 1996 the percentage of workers participating in a defined contribution *Superannuation Fund* rose from 42% to 91% (see Australian Bureau of Statistics, 2001). In the Netherlands, where almost all PFs have a defined benefit scheme, a process of conversion to defined contribution has begun in recent years (see Ponds and Van Riel 2007).

¹⁹ OECD Guidelines – recently updated by the *Working Party on Private Pensions* (5 June 2009) – provide a general guide on the structure and mechanisms of PF governance: see OECD (2009) and Table 2.

²⁰ See Stewart and Yermo (2008); IOPS (2008).

mature sector or where they are still a nascent industry²¹ – we highlight three critical aspects of PF governance:²²

- a) the mismatch between professional skills and the degree of representation of the governing and supervisory entities of the fund;
- b) unclear definition of tasks among the different fund entities;
- c) the lack of appropriate mechanisms for managing conflicts of interest.

2.1. *Professional skills and representation*

A growing literature in the last decade on PF governance concurs that the directors of the governing body should have adequate professional skills and be also adequately representative of the various stakeholders.²³

Professional skills can be a decisive factor for PF performance;²⁴ in fact, expert directors ensure more efficient management with regard to asset allocation, the monitoring of internal and external service providers, and the identification of conflicts of interest. Moreover, competent directors are more keen to adopt self-assessment procedures, as well as to participate in training programs to update their skills.²⁵ Finally, additional benefits derive from the easier adoption of activism policies.²⁶

Representation in the governing and supervisory bodies of the fund are essential to ensure that the interests of beneficiaries are pursued. Indeed, workers' representatives have the right incentives to act in the interest of their stakeholders because they may have personal concerns (they are beneficiaries themselves), or because they are easily monitored by the beneficiaries. This point has also been made by the OECD (2009).²⁷

²¹ Evidence for countries where pension funds have large dimensions is given by: *i*) for the US, Mitchell and Yang (2008), Ambachtsheer et al. (2007); *ii*) for the UK, Pensions Regulator (2007); for Ireland, Pensions Board (2006); for South Africa, Rusconi (2008). Data and information for those countries where PFs are still small in size are provided by IOPS (2008), Stewart and Yermo (2008) and specifically for Italy, by Messori (2007).

²² The critical features identified have also been highlighted by some prominent studies on PF governance. According to Clark and Urwin (2007) the principles of good governance are coherence (in terms of a clear definition of the mission of the fund), professional skills (of the governing and oversight body), appropriate procedures (used to take the most important decisions, such as asset allocation, conflicts of interest, fund oversight, monitoring of external service providers). According to IOPS (2008) the most important governance issues are the professional skills of directors, their accountability (through adopting appropriate mechanisms for transparent decision-making to the benefit of all stakeholders) and internal control mechanisms (to avoid conflicts of interest). Ambachtsheer et al. (2007) identify four areas: *i*) selection of competent directors; *ii*) the adoption of self evaluation methods by directors; *iii*) appropriate mechanisms of oversight of directors' management; *iv*) a clear definition of tasks of the governing body and of the fund management.

²³ For an international review see Stewart and Yermo (2008) and IOPS (2008).

²⁴ Some authors showed that the more retired workers there are in the governing body, the poorer the performance of American public pension funds (retired workers notoriously have lower skills and adopt a shorter term horizon when defining the investment policy): see Mitchell and Yang (2008); Hsin and Mitchell (1997). Ambachtsheer et al. (2006) analyze a sample of international PFs and find a positive correlation between the fund governance index (where a relevant weight is assigned to directors' professional skills) and the net present value of assets of the fund. Similar results are derived in a study developed by Mercer Human Resource Consulting (2006).

²⁵ See Holland (2006).

²⁶ With regard to the factors that foster activist policy, Black (1998) highlights the role of professional skills of decisional bodies of the investor funds.

²⁷ According to OECD Guidelines (no. 3), "Accountability to plan members and beneficiaries can be promoted via the appointment of members of the governing body by pension plan members and beneficiaries or their representative organisations".

In fact, there is a trade-off between professional skills and representation.²⁸ On the one hand directors appointed by beneficiaries often have inadequate skills to properly execute their role: this point has been highlighted by various studies on the professional skills of PF directors which have looked at the experience of both countries where the sector is mature,²⁹ and those where it is still a nascent industry.³⁰ On the other hand, directors appointed by the sponsor are on average more skilled, but they might exert pressures on decisions to their own advantage (or that of their stakeholders) and to the detriment of the interests of beneficiaries.³¹

One possible solution to this trade-off suggested by the theory is that beneficiaries appoint external directors as their representatives. Indeed, they ensure adequate professional skills, even though their compensation can be excessively costly and they may not adequately pursue the interests of the workers.³² Therefore, the effectiveness of this solution depends on two market conditions which provide them with the appropriate incentives: *i*) there must be broad opportunities so that external directors have sufficient career concerns to build a good reputation; *ii*) the performance should be directly related to their effort and skills, and not to other elements of noise (such as market volatility).³³ Since neither of these conditions are met in most countries, the recommendations of the international organizations are focused on strengthening the weak elements for each type of PF, as explained in detail below.

2.1.1. Closed pension funds

The governance of closed PFs usually ensures representation of plan members,³⁴ even though their representatives often lack adequate professional skills. A highly recommended solution is to strengthen directors' skills, imposing high professional requirements in different subjects (finance, pension, accountancy, etc...). They are usually determined generically by primary law and are specified in greater detail by secondary law.

In many OECD countries, professional skill requirements for each member of the governing (and also supervisory) board are imposed by law. This is the case of Austria, Belgium, Denmark, Finland, Germany, Israel, Iceland, Luxembourg, Portugal and Spain.

In Australia and in the Netherlands professional skills are required for the board as a whole, not for each single member. The supervisory authority verifies the existence of these requirements by monitoring the

²⁸ For example, Clark (2007) notes that there is a growing tension between the two targets in American and British PFs.

²⁹ For example, Clark and Urwin (2007) find that only a minimal share of British PF directors have adequate competence levels (especially for the management and evaluation of fund performance). Rusconi (2008) provides a critical analysis of pension fund directors' competence levels in South Africa. Similar problems have been reported in Ireland (see the Pension Board, 2006) and in most advanced countries (see Ambachtsheer et al., 2006).

³⁰ See Stewart and Yermo (2008), and IOPS (2008).

³¹ In public pension funds the representatives of the sponsor, which are appointed by political authorities, could promote inappropriate investments (not maximizing returns or taking on excessive risk), such as investment in small local businesses, motivated by electoral or lobbying pressures: see Impavido (2002). In private pension funds, by contrast, the risk is that the fund buys an excessive amount of stocks of the sponsor company or of other companies that have business ties with the sponsor. All these practices can be detrimental to the performance of the fund and in this way to the pay-off of beneficiaries.

³² In fact, external directors could pursue personal interests such as favouring other companies (for example by buying equity of these firms, even though they produce low yields).

³³ Otherwise, it is recommended that workers be nominated as their representatives in the governing body: see Besley and Prat (2003).

³⁴ In many countries, including in Italy, the law calls for an equal representation of sponsors and workers in the governing body. In Anglo-Saxon countries, however, this principle is not always guaranteed: in the US, firm level pension funds do not necessarily need to adopt an equal representation scheme for the governing body, while this is mandatory for those funds built at industry level (so-called *Taft-Hartley funds*). In the UK too, equal representation is not ensured by law; however, it is required that at least one third of directors of the governing body be nominated by beneficiaries: see Cocco and Volpin (2005).

board's skill level. For example, in Australia this monitoring activity also implies that the governing board must provide the national authority (APRA) with all the necessary documents certifying the possession of adequate skills by the board as required by law. Similarly, in the Netherlands the governing board must provide a report of the competences collectively held by the board. In Poland strict professional requirements are imposed on two-thirds of the governing board.

In some countries where the industry is mature, self-regulation – promoted by sector associations – plays a major role by specifying in greater detail the aspects that are not governed by the law.

In the United States the Governance Committee of the Stanford Institutional Investors' Forum has released a code of best practices for PF governance, which specifies suitability (fit and proper) criteria and professional requirements for trustees of the governing board.³⁵

In the United Kingdom, as a remedy for the recurring deficits of professional skills among trustees,³⁶ the Pension Act (2004) imposed stringent requirements and, with a view to helping trustees adapt to the new regime, the Pension Regulator published a code of best practices³⁷ that explains how to obtain the skills and experience required by law.³⁸

In the Netherlands the guidelines for the governance of PFs – released by the Labor Foundation (an association of employers and employees) – provides that the governing board should verify periodically that each member meets the requirements set by the De Nederlandsche Bank (the Dutch supervisory authority). The evaluation may also lead – in the event of a negative judgment – to the termination of a director from the board.

Moreover, in order to reduce the competence deficit several initiatives have been undertaken in various countries, also as a result of pressure by and/or the support of the supervisory authority. The most important are:

i) hiring independent directors in the governing and/or supervisory board.³⁹

In the United Kingdom the law has limited the number of trustees that can be appointed by the sponsor, in order to reduce its influence over PF management; as a result, there has been a growing use of independent external trustees, whose professional skills have increased the overall level of expertise of the governing board.

In the Netherlands, a recent reform has imposed that, starting from 2008, PFs can adopt a board with oversight functions for the management of PFs, which must be composed of at least three independent directors.

In Hong Kong the law requires the presence of at least one independent director in the governing board, with strict requirements to ensure his or her independence: to be nominated, the director must not have (including in the past) any link with the fund or with its controlling stakeholders (such as the sponsor companies).

In the United States funds have to provide for independent consultants (qualified fiduciary advisers) to give financial advice to members with respect to the financial choices that are available to them in each PF. In order to guarantee the independence of judgment of these consultants, the law specifies established conditions for their compensation scheme.⁴⁰

³⁵ See the Clapman Report (2007).

³⁶ Myners (2001); Myners (2004).

³⁷ Pensions Regulator (2006).

³⁸ For example, when a director outsources some functions to an external fund manager (as often happens in the UK), even though he is subject to lower skill requirements, the director must be able to monitor effectively (and if necessary dispute) the external manager: see the *Pension Act 2004, Chapter 35, Part 5, Section 247 and 248.*

³⁹ Independent directors are usually highly-qualified experts with proven professional skills and they do not represent the sponsor company or workers: see the OECD (2007).

⁴⁰ More specifically: *i*) the fees received for consulting activities must not vary according to the investment options proposed to the beneficiaries; *ii*) the recommendations should be limited to those deriving from an automatic

ii) training programs to board members while they are in charge.

The training initiatives have in many cases been undertaken and supported by the supervisory authorities, industry associations, and sometimes also by the sponsoring institution. Despite the fact that, these programs have not been adopted many countries yet,⁴¹ there is a growing attention to them by the supervisory authorities, which in some cases also monitor the professional skill levels reached by the directors.⁴²

2.1.2. Open pension funds

Usually the governing board of an open PF is the same as that of the sponsoring institution (a bank, an insurance company, etc...). One advantage of this structure is that board members have strong professional skills; however, since they are not representative of plan members, their interests might not be aligned with those of the beneficiaries, with the risk of inappropriate decisions on important matters such as investment policy, marketing policy, etc...⁴³

In Poland, the Slovak Republic and Mexico, some open funds have exploited the information asymmetry with workers (due to their low competence level in pension matters) to finance huge marketing campaigns (in order to increase membership). These initiatives have reduced workers benefits, since they have increased costs considerably, but not PFs' performance.⁴⁴

In order to reduce the representation deficit, one appropriate solution that has been adopted in many countries is to introduce directors appointed by well-defined groups of workers, as in the case of collective participation, in the supervisory board.

In Spain, the majority of directors in the supervisory board (Comision de control) of open PFs must be representatives of beneficiaries.

In Portugal, it is compulsory to have a supervisory committee for collective participations of at least 100 units.

In some Australian public PFs (where membership is open to all civil servants working for any government agency), it is possible to set up a "policy committee" for the collective participations of at least 50 members. The policy committee provides plan members with all the necessary information on the plan, such as investment policy, operative costs, performance, etc...

In those cases where collective participation is not feasible, workers' representatives can be appointed directly by the unions.

In the United States, public PFs at national level (where participants do not belong to a well-defined occupational category, such as teachers, firefighters, etc...) find it difficult to organize the election of

system of investment selection, developed according to established criteria set by the *Department of Labor*; iii) they should not entail any advantage for the advisor.

⁴¹ For example, in the UK training and skills update courses are organized and promoted voluntarily by pension funds (Pension Regulator, 2007); by contrast, the Irish Supervision Authority has noted that these programs are still rare in Ireland (Pensions Board, 2006).

⁴² In Australia the APRA carries out continuous monitoring to verify compliance with the professional skills' requirements for directors of the governing body (IOPS, 2008). In the UK, the Pension Regulator verifies periodically that these requirements are satisfied by directors of the governing bodies; the results of these controls are part of a risk evaluation of the pension fund (Pension Regulator, 2007). In the Netherlands, the Supervision Authority (DNB) periodically organizes training courses for fund directors (IOPS, 2008).

⁴³ For example, extensive and expensive marketing campaigns to increase fund membership could undermine cost efficiency and in this way also fund net performance.

⁴⁴ See Stewart and Yermo (2008). Coleman et al. (2006) also confirm this view, by demonstrating the better performance of Australian pension funds in which workers' representation is mandatory.

workers' representatives. Therefore, these are appointed directly by the unions that have greater membership among plan members.⁴⁵

Finally, in addition to the previous arrangements, it is possible to involve employers and unions in the oversight of the fund administration directly, by devolving them the power to report any non-compliance with the law to the supervisory authority.⁴⁶

2.2. Definition of tasks among the different fund entities

A clear definition of the tasks of fund bodies and entities avoids the duplication of roles and may ensure a better identification of responsibilities.⁴⁷ According to the OECD Guidelines, this aim can be reached by adopting the following recommendations:

- i) the law should clearly define the main duties of the governing board; specifically, the main decisions that a board should be in charge of are investment policy, the monitoring of performance, the selection of external service providers (such as the custodian bank) and of internal staff employees;
- ii) the statute should specify in greater detail the duties and responsibilities of each body and entity; whenever possible, it should also set measurable objectives so that the performance of each director and entity can be easily examined;
- iii) the governing board should be encouraged to restate annually that it is aware of its duties and responsibilities.

German PFs (Pensionskassen and Pensionsfonds) have a dual board structure – similar to that of listed companies – with a governing and a supervisory board; the main tasks of the two bodies are clearly defined by primary law: the governing board is in charge of asset allocation, the choice of external service providers (actuary, fund management, etc...) and the monitoring of performance; the supervisory board must appoint, monitor and advise the members of the governing board. According to law, the role and responsibility of each member of the two boards must be explicitly described in the official documents (such as the statutes) of the PF..

In the Netherlands a recent reform (Pension Act, 2006) enables PFs to choose a dual or a single board structure. With regard to the latter, the Guidelines for the governance of Dutch PFs – developed by the Labour Foundation – recommend that the PF adopt a clear definition of tasks, especially for directors who are in charge of the overall management, but also for the executive bodies with operative tasks. For greater effectiveness, the Guidelines also recommend that these measures be included in the statutes of PFs.

In addition to these recommendations, it may be appropriate to adopt effective methods of organization within the governing body. Indeed, some studies have highlighted the risks of inefficient decision-making for boards with an excessive number of members, since each member has a lower sense of personal responsibility and team working may become inefficient.⁴⁸

In order to improve the efficiency of the relevant bodies and to speed the decision process – which is especially important during periods of financial markets turbulence⁴⁹ – it may be useful to adopt solutions similar to those used in corporate governance. This consists of assigning the various

⁴⁵ The composition of the governing body is therefore given by three types of directors: the representatives of the central government, those of the local governments, and those of the unions with the greater membership among workers participating in the plan: see Hess and Impavido (2003).

⁴⁶ In the UK this initiative is supported by the Supervision Authority (Pension Regulator, 2007) and has also been proposed by closed pension funds, in order to remedy under-representation (in the UK the law does not impose equal representation of sponsor and employees).

⁴⁷ In Spain, for example, there are overlapping tasks between the fund management and the supervisory body; indeed, these entities must decide the asset allocation jointly, while it would be more appropriate to let this function only to the sole governing body: see Stewart and Yermo (2008).

⁴⁸ See Hess and Impavido (2003); Davis and Useem (2000).

⁴⁹ See Clark and Urwin (2009).

tasks of the board to committees having specific functions,⁵⁰ such as: *i*) the investment committee; *ii*) the audit committee; *iii*) the compensation and benefits committee;⁵¹ *iv*) the nomination and termination committee (of managers of public PFs only);⁵² *v*) the governance committee.⁵³

According to Hess and Impavido (2003), the use of committees is still at an early stage among PFs. Using a sample of international PFs, they show that only 45% of PFs used an audit committee, 64% an investment committee, and just 21% a governance committee.

A recent reform in Chile obliges PFs to establish a committee to manage conflicts of interest and to set the investment policy, with at least two independent directors.

The efficiency of the committees critically depends on the adoption of some arrangements. First, the committees should be composed by members with adequate professional skills and that are unconflicted with the fund. Moreover, it may be useful to adopt set criteria for the decision-making process, in order to reduce arbitrary decisions and abuses of power, and – whenever possible – also introduce targets of expected performance.

In their international sample of PFs, Hess and Impavido (2003) show that for those funds that use external fund managers (about half of them), only a minority (less than 40%) had well established and explicit criteria for the selection of managers.

The Canadian Pension Plan Investment Board has set up a committee for the nomination of managers of the governing board. The members of the committee are appointed by public authorities (where the President is appointed by the Federal Minister of Finance, while each Minister of Finance of the Canadian provinces appoints one member). The nomination committee proposes a list of candidates – chosen from among national experts – to all the Ministers of Finance for selection. Once appointed, the trustees serve a three-year term (renewable three times) and can be removed only for illegal or immoral conduct.

In New Zealand the Minister of Finance appoints the members of the nomination committee of the “New Zealand Superannuation Fund”. This committee proposes a list of candidates for the governing body to the Minister of Finance, who before deciding, must consult the General Governor. Once nominated, the members of the governing body can be removed by the Minister of Finance only for misconduct due to inappropriate behavior.⁵⁴

In any case, it is important that the governing body retains ultimate responsibility for the pension fund with respect to beneficiaries for the tasks delegated to the committees. To this end, an appropriate reporting mechanism should be set up such that all committees decisions are timely reported to the governing body.

Finally, it must be noted that such a complex governance structure may require additional costs, which could be excessive for smaller plans.⁵⁵ In fact, since these funds have higher unit costs of management than bigger schemes, they are not often able to provide adequate resources to adopt advanced governance structures.

⁵⁰ OECD Guidelines (OECD, 2009).

⁵¹ This committee is responsible for the determination of managers' compensation and members' benefits.

⁵² The nomination and termination committee should be composed primarily of external and independent members, in order to avoid the nomination of directors to the governing body without adequate professional skills. Moreover, it would be appropriate to have established nomination and termination criteria, in order to reduce arbitrary decisions and to let directors be more independent of political pressures: see Carmichael (2002).

⁵³ Governance committees are a recent phenomenon and still underdeveloped nowadays. While in the past funds used to set up a committee simply for the nomination and termination of directors, in most recent years there is a trend to set up committees with additional tasks, such as agenda settings for governing board meetings, the adoption of governance guidelines and practices, and the nomination of directors in charge in other committees. See Hess and Impavido (2003) for public pension funds.

⁵⁴ See Palacios (2002).

⁵⁵ See Clark and Urwin (2009).

*A survey on Irish PFs shows that administrative costs of the smaller plans (those with less than 50 members) are equal to 3.64% (of the assets under management), but only 0.32% in schemes with more than 500 members.*⁵⁶

*In the Netherlands, management costs in 2005 amounted to 0.59% (of the assets under management) for smaller plans (with less than 100 members) and to 0.07% in those with more than 1 million of members.*⁵⁷

A solution to this problem can be the consolidation of the PF industry, where smaller funds can merge into bigger entities, so as to exploit the economies of scale and in this way also adopt better governance structures.

In Australia, a reform took place between 2004 and 2006 that facilitated the choice to potential members and increased the minimum professional skill requirements of trustees. These measures, have not only increased the average skills of trustees, but also have brought about a consolidation of the industry: in order to face the more competitive and challenging environment induced by the reform, smaller schemes have merged into greater entities (both in the form of closed and open PFs).

2.3 Handling conflicts of interest

Various empirical papers have shown that the presence of conflicts of interest negatively affect fund performance.⁵⁸

A person (or an entity) can have a conflict of interest with the fund upon their nomination to a given office (directors, fund managers, etc...), or subsequently, with regard to a given operation/decision.

In the first case, primary and secondary regulation should identify the most frequent cases when a conflict of interest may arise and impose appropriate limits (ex ante measures).⁵⁹

The second case deals with all possible situations of conflict of interest that arise during the ordinary activity of the fund and that have not been regulated by ex ante measures (for example, when the fund invests in a company of which a director holds a large stake). In order to avoid the decisions of the governing body being affected by these conflicts of interest, following the international best practices, the fund should adopt a specific policy on their duties when handling these situations:

- i)* the person with a conflict of interest must disclose the situation to the supervisory board without delay and inform the other members of the management board;
- ii)* the person involved with a conflict of interest must abstain from discussions related to the conflict;
- iii)* the person involved with a conflict of interest must abstain from voting in these situations.

*In 2006 the Pension Regulator released a review of the governance of British PFs that highlighted the extent to which the adoption of policies for handling conflicts is still limited (35% of all the PFs), even though directors are becoming more and more aware of the need to adopt these practices.*⁶⁰

⁵⁶ See Mahon (2005).

⁵⁷ See Bikker and de Dreu (2009).

⁵⁸ Various authors have shown that the return of American public PFs is negatively influenced by the presence of various types of conflict of interests: for example, investment decisions could be affected by political interests (such as the investment in local development projects, rather than in regulated financial markets: see Munnell (1983); Hsin and Mitchell (1997); Nofsinger (1998)). Other studies find similar results by comparing the performance of public and private pension funds: see Lakonishok (1992); Coronado et al. (2003); Coleman et al. (2006).

⁵⁹ The aim of these provisions is to reduce the probability that conflicts of interest arise in the future. The most common are: *i)* rules on the eligibility (for offices with decision-making powers) of directors with business links with the fund manager; *ii)* the strong professional skill requirements for directors, which allow an easier and better identification of possible conflicts of interest arising in specific operations; *iii)* directors' responsibilities regarding the general activity of the fund (such as the *fiduciary duty* for trustees in PFs of Anglo-Saxon countries).

In New Zealand the directors of the Super Annuation Fund must respect a code of conduct that obliges them to disclose as soon as possible the presence of possible conflicts of interest to the governing body of the fund.

In addition to these duties, it could be useful to forbid any transaction between the fund and the parties that have a conflict of interest; certain exceptions (even identified by categories) to this general rule should be established explicitly and should also be approved on a case-by-case basis.

In the United States the Department of Labor can approve specific situations of conflicts of interest upon a request of the governing body of the PF containing appropriate motivations that justify the exception.

In order to spread the practice of self-disclosure described above, some additional rules are also highly recommended:

- primary law could establish the criteria for identifying, disclosing and handling the conflict of interest appropriately, and any exemptions;
- secondary law could add further details by: *i*) identifying the precise situations of conflict; *ii*) establishing the duty for directors to disclose and handle the conflicts of interest according to best practices, such as those recommended by international best practices; *iii*) specifying the procedures that the supervisory authority must use in order to ascertain cases of exemptions.

The British Supervision Authority is very active in suggesting and supporting PFs' adoption of best practices to handle conflicts of interests. In fact, it has recently edited a guide for understanding, identifying and handling conflicts of interests.⁶¹ In particular, it has suggested that PFs should submit documentation to the supervisory authority describing the roles covered for each director and the potential conflicts of interest that might arise during his/her office. The Authority also makes consultations with the PFs in order to induce them to adopt these guidelines.

In 2005 the Supervision Authority of Hong Kong (Mandatory Provident Fund Schemes Authority) has sponsored the adoption of compliance standards in order to better guide trustees to explicitly disclose their fiduciary duties towards the PF. The guide also contains a set of additional measures relative to various aspects, including the handling of conflicts of interest. Finally, in order to ascertain the existence of possible situations of conflict, the Authority monitors actively each PF through on-site periodic inspections or by requesting specific documents from the fund.

3. Italian pension funds

The Italian pension system continues to be characterized by the prevalence of first pillar pensions. In fact, it is still made up of pension schemes which operate according to the method of allocation and are administered by public bodies (INPS – Social Security Institute for the private sector; INPDAP – Social Security Institute for the public sector), and private bodies (so-called *Casse di previdenza*). Only since the mid-1990s, to help address the prospects of a sharp reduction of coverage promised by the social security system, has the second funded pillar been enhanced. This delay is the main reason for its limited development, especially in comparison with other industrialized countries (see Table 1).

⁶⁰ Pension Regulator (2007).

⁶¹ Pension Regulator (2008).

3.1. Evolution and present structure of the regulation

The current regulatory framework for retirement provision is provided by Law 252 of 5 December 2005.⁶² The purpose of the law was to reform and reorganize the material, after several reforms over the last fifteen years had led to a piecemeal regulatory framework which had proved unable to generate a significant rate of adherence to PFs.⁶³

The main objectives of the reform were to enhance the level of membership and financial resources of Italian retirement plans and to improve PF governance. In particular, to pursue these objectives the Italian legislature provided for: *i*) the conferral of the TFR (retirement allowance) to PFs, except in the case of those who decided to opt out (so-called *conferimento tacito*);⁶⁴ *ii*) the introduction of a light taxation on financial resources provided by PFs; *iii*) new governance provisions; *iv*) an increase in the number of potential institutions permitted to set up a PF⁶⁵ and, at the same time, the number of potential members of PFs.⁶⁶

However, the reform seems to have only partially achieved its objectives. In Italy the rate of adherence to PFs remains lower than expected (see Table 3), compromising the expectations of the sector's future development. It is currently undercapitalized compared to the United States, the United Kingdom and the Netherlands (see Table 1). In line with what is happening in other states of continental Europe (Germany and France), in 2007 (before the financial crisis) Italian pension funds were maintained at 3.7 percent of GDP.⁶⁷

With regard to organizational structures, despite some improvements,⁶⁸ the reform does not seem to have secured the appropriate design of PF governance. Criticalities remain with respect to each of the relevant aspects identified by the economic literature and international comparisons.

This issue is especially relevant in light of the recent transposition into Italian law of Directive 2003/41/EC (the EPAP directive), which provides – for the regulation of PF investments – the general application of qualitative rules and quantitative limits only in some specific cases,⁶⁹ – in keeping with what is referred to as the principle of the prudent man. This approach will lead to the introduction of a higher margin of flexibility in PF management and greater accountability of PFs themselves, which will be given a more active role in risk control. Therefore, in order to function properly, it should be accompanied by a strengthening of the role of the Supervisory

⁶² Enacted in January 2007.

⁶³ Messori (2007); Franco (2002).

⁶⁴ On the other hand, less onerous taxation was introduced for companies, to compensate for the loss of TFR, which was a financial resource with few costs.

⁶⁵ Regions, privatized entities, INPS: see Article 3 of Law 252/2005.

⁶⁶ The potential adherents indicated by the law are: *a*) public and private employees, including those employed on the basis of Law 276 of 10 September 2003 (so-called *legge Biagi*); *b*) the self-employed and professionals; *c*) members employed by cooperative companies; *d*) the people to whom Law 565 of 16 September 1996 applies; *e*) unemployed and retired people (see Article 3, paragraph 1, of Law 252/2005).

⁶⁷ See Covip (2008). The figure includes closed PFs, open PFs, the so-called *fondi pensione preesistenti* and *piani individuali pensionistici*. The results of 2008 do not show excessive variations for these countries. See Covip (2009) and Tables 1 and 3.

⁶⁸ Namely: *i*) an extension of the autonomy and powers of the *responsabile del fondo* in all open PFs; *ii*) the introduction of the *responsabile del fondo* in closed PFs; *iii*) the establishment of the *organismo di sorveglianza* in open PFs with collective accessions. See Messori (2006); Marè and Pellegrini (2006); Pellegrini (2008).

⁶⁹ With particular reference to investment in sponsor companies. Moreover, the Directive gives Member States the option of continuing to implement more detailed prudential rules in certain conditions in order to avoid excessive restrictions on specific instruments (such as equities, bonds denominated in non-matching currencies and venture capital). In Italy the EPAP Directive was transposed by Law 28 of 6 February 2007. Therefore, the provisions of Decree 703 of 21 November 1996, must be reviewed in order to adapt them to those of the EPAP Directive. However, it should be noted that the Ministry for the Economy and Finance has already completed the consultation with stakeholders in order to introduce the necessary amendments to the discipline in question. See the Treasury Department (2008).

Authority (Covip)⁷⁰ and – above all – an adaptation of organizational structures of the operators, aimed at providing the best way to pursue beneficiaries’ interests.

3.2. *The governance structure: main problems*

Currently, the PFs in Italy with more members are closed PFs and open PFs:⁷¹ see Table 4. Closed PFs have the legal status of association or foundation. The board of directors, which is the body responsible for closed PFs,⁷² has the task of setting – according to regulatory guidelines – the strategic asset allocation and the duty to entrust the management of that property, known as tactical asset allocation, to external financial intermediaries.⁷³ These are selected via a competitive and regulated public procedure, and are tied to the mandate. Closed PFs are also required to use an external custodian bank, which acts as treasurer and controller of compliance with the law, statutes and regulations (see Table 6).

Open PFs⁷⁴ do not have an independent legal status from financial intermediaries that set them up and have the responsibility of managing their assets directly.⁷⁵ In fact, they consist of a segregated pool of assets, governed by the financial institution that has established them: this means that the boards and audit of these funds coincide with those of the subjects who have set them up (see Table 7). Supervision is exercised by Covip in relation to the open PFs, while the supervision of financial intermediaries is exercised by sector authorities (Bank of Italy, Consob and ISVAP).

In this section we describe the main critical aspects related to the organizational structures of each of the two types of PF. The survey was conducted on the basis of the current legislation and the statutes and supplementary documentation of a representative sample of open and closed PFs: 22 closed PFs and 30 open PFs with collective and mixed participations (see Table 8, 9 and 10), selected on the basis of reports received and the numerical strength of membership, which correspond respectively to 78.8 percent and 75.6 percent of the total members of each of the two types.

a) *Competence and representation.* The current design of the governance of PFs may not ensure proper composition of the trade-off between representation and competence inherent in the composition of boards of management and control of such investors.

Despite the fact that recent reforms (in particular, Ministerial decree 79 of 15 May 2007) have introduced more stringent competence requirements and have raised the percentage of directors of closed PFs that need to share them,⁷⁶ their possession is still required for just half of the

⁷⁰ In fact, the Supervision Authority will have to play a more active role, having – among others – to assess the suitability of the organizational structures of PFs to manage the financial and operational risks properly. See Covip (2004); Mangiatordi and Pace (2003).

⁷¹ Besides these types of PFs, there are the so-called *fondi pensione preesistenti*, i.e. those that were in place on 15 November 1992, which are subject to a specific discipline. However, Law 252/2005 provides for their progressive adaptation – with some exceptions – to the general provisions applied to closed PFs (see Article 20 of Law 252/2005 and the related Ministerial Decree 62/2007 of 10 May 2007). Finally, there are the so-called *piani individuali pensionistici*, similar to social security insurance policies (see Article 13 of Law 252/2005): see Tables 4 and 5.

⁷² It should be noted that Law 252/2005 provides – in general – the criterion of equal participation of representatives of workers and employers in the composition of boards of management and control of closed PFs (see Article 5.1 of Law 252/2005).

⁷³ Banks, management and insurance companies (see Article 6.1, of Law 252/2005).

⁷⁴ Divided into: *i*) open PFs with collective accessions (which provides for holding an aggregate of workers); *ii*) PFs with individual accessions (as the worker joins individually); *iii*) mixed open PFs (both individual and collective participations).

⁷⁵ They may also delegate one or more lines of investment to other entities.

⁷⁶ See Article 2 of Ministerial Decree 79/2007, which provides that at least half of the members of the board of directors, the so-called *responsabile del fondo* and the legal representative of the PF should have played – for one or

members of the boards of directors.⁷⁷ In this respect the survey of the statutes of closed PFs has not disclosed the existence of additional measures, but a generic reference to the provisions in force (see Table 8). Furthermore, the training initiatives designed to fill any skill gaps do not yet seem to have reached full development and effective dissemination.⁷⁸ In line with the international best practices, it could be appropriate to raise the overall skill level of the board of directors, through the provision that a significant majority of directors gain adequate experience in the areas mentioned in Ministerial Decree 79/2007;⁷⁹ but – above all – by paying more attention to training and regular self-assessment, including the continued monitoring by the supervisory authority aimed at effectively verifying the adequacy of the skill level.⁸⁰

Regarding open PFs with collective and mixed accessions, the governance structure does not appear to provide suitable mechanisms for the representation of beneficiaries in the so-called *organismo di sorveglianza* (i.e., the main body with supervisory tasks). In fact, on the one hand, the minimum threshold of a collective accession of 500 members allowing the addition (the *organismo di sorveglianza* consists, as a rule, of two members nominated by the entities that have constituted the open PF) of two representatives one of whom appointed by the employer and the other by the workers⁸¹, could be excessively high in many cases;⁸² on the other hand, the possibility of integrating this body with up to a maximum of 10 components⁸³ could be too narrow, given the relative abundance of collective accessions. In this respect, introducing the possibility to reduce the minimum collective accession requirement (of at least 500 beneficiaries) before allowing representation for the open PF – at least on a voluntary basis⁸⁴ – would ensure adequate representation of the smaller communities. At the same time it could give the possibility of increasing the limit of a maximum of 10 representatives elected to each open a PF.⁸⁵

more periods totalling no less for three years – cover administration, monitoring of entities or companies in the bank, finance or insurance sectors, or of PFs; professional activities in matters related to social security, bank, finance or insurance sectors; activities of university education in legal or economic fields; management positions in public institutions or public authorities having to do with the social security, bank, finance or insurance sectors; administrative, control or management tasks in social security institutions or other bodies with social security purposes (paragraphs 1, letters from *a*) to *f*), and 2). The remaining members of the board of directors – if they do not share these requirements – they must however have experience of at least three years through the exercise of administrative, monitoring or management tasks in firms outside the bank, finance or insurance sectors, or the same tasks in union representations (both in the private and public sector), provided that the members in possession of those experiences have attended professional training courses on complementary pensions (certified according to the article 3 of the Ministerial decree 79/2007) at a time not earlier than three years by appointment (see article 2, paragraph 1, letter *g*)).

⁷⁷ See Article 2 of Ministerial Decree 79/2007.

⁷⁸ Regarding this aspect it is worth noting some initiatives of the supervisory Authority and Mefop SpA, a company owned by about 70 PFs (closed and open PFs and *fondi pensione preesistenti*) and the Ministry for the Economy and Finance, with the purpose of encouraging the growth of PFs in Italy, which organize and promote various training activities and research in the field.

⁷⁹ See Article 2.1 (*a*) to (*f*), of Ministerial Decree 79/2007.

⁸⁰ Note the English experience, where the Pension Regulator *i*) promotes training and updating (see, in particular, the program named *trustee toolkit*); *ii*) conduct periodic audits of adequacy of the competence level shared by the Board of Directors, the results of which are also included in the assessment of PFs (see Pension Regulator 2007). See Section 2.1.

⁸¹ Implemented only recently, after the adoption of provisions concerning the composition and functions of the so-called *organismo di sorveglianza* (see Article 5, Paragraph 4, of Law 252/2005 and the Covip resolution of 28 October 2009). The deadline for the integration of the composition of the supervisory body is scheduled for 30 April 2010. On this point it should be noted that the survey carried out on the statutes of the open PFs did not identify cases of voluntary integration of composition of the *organismo di sorveglianza*: see Table 10.

⁸² Mefop (2009).

⁸³ Indeed, in addition to two members appointed by the entity that has constituted the open PF, the maximum number of representatives of the parties (employers and workers) is fixed at 10 units.

⁸⁴ Assogestioni (2009).

⁸⁵ Mefop (2009).

b) *Definition of tasks and responsibilities.* The relevant legislation does not adequately explain the tasks and responsibilities of the various executive and supervision bodies.

In closed PFs the tasks of the so-called *responsabile del fondo* overlap – in some cases – with those of the person responsible for the internal audit function,⁸⁶ with powers to monitor the adequacy and fairness of the management of the fund; in other cases, they overlap with those of the board of directors, especially as regards the supervision of operations in conflict of interests (see Table 6). Moreover, since the law provides that the status of *responsabile del fondo* may be covered by the general manager or a member of the board of directors, a serious conflict of interest may arise: in fact, the controller may be delegated to control himself.⁸⁷ The analysis of the statutes of closed PFs has revealed that this situation is almost the rule: in fact, out of 22 statutes that have undergone scrutiny, 18 stated that the qualification of *responsabile del fondo* is attributed to the general manager and 1 that it is attributed to a member of the board of directors (see Table 8), resulting in the loss of specific characteristics of impartiality that should characterize this position. To overcome these problems and remove – at least in part – the duplication of functions and possible conflicts of interest, a first step would be to allocate tasks of the *responsabile del fondo* to the person responsible for the internal audit function, for whom the possibility of conducting activities that are themselves subject to supervision is explicitly excluded.⁸⁸

In addition, there is no recourse to organizational solutions (like the presence of *ad hoc* committees charged with overseeing specific functions), to clarify the duties and responsibilities among the various bodies of the fund and within them. Neither have these been used on a voluntary basis: on this point, in fact, the survey of the statutes of the closed PFs has only reported the presence – in the very small number of cases, equal to three – of bodies with purely advisory tasks to the board of directors (non-binding opinions: see Table 8).⁸⁹

Regarding open PFs, the overlap of roles is related to the supervisory bodies, with tasks of particular importance for the protection of the beneficiaries' interests. Indeed, it provides for the presence of two separate supervisory bodies (the so-called *responsabile del fondo* and *organismo di sorveglianza*) without adequately differentiating their missions.⁹⁰ Also, the analysis of the statutes of open PFs has shown that none have introduced measures to clarify roles and responsibilities between the two bodies (see Table 10).

c) *Policies to handle conflicts of interest.* Although – especially with regard to management companies – the presence of potential conflicts have been repeatedly condemned,⁹¹ shortcomings are also present in the management of conflicts of interest, because of the limited autonomy of management companies within the group.

The current framework mostly involves obligations to disclose conflicts of interest,⁹² in which members of executive and supervisory boards and the management company may fall.⁹³ In

⁸⁶ Covip Ruling of 4 December 2003. See Marè and Pellegrini (2006).

⁸⁷ Article 5.2 of Law 252/2005. See Messori (2007).

⁸⁸ Covip Ruling of 4 December 2003.

⁸⁹ However, anecdotal evidence seems to point out – in some cases – the use of so-called *commissioni* (very similar to committees), charged with overseeing specific functions within the Board of Directors.

⁹⁰ Article 5 of Law 252/2005. See Marè and Pellegrini (2006).

⁹¹ Called for the strengthening of the independence requirements of the management company and the delimitation of powers of the parent company: see, for example, *Gruppo di lavoro sui fondi comuni italiani* (2008); Banca d'Italia (2008); Stella Richter Jr. (2009). On the inadequacy of mechanisms for handling conflicts of interest for PFs: see Cafaggi (2005); Enriques and Pomelli (2005).

⁹² Understood as – beyond the situations typified by law or secondary legislation – “any subjective situation or business relationship [...] that might influence the proper management of the Fund”: see Article 8.1(d) of Ministerial Decree 703/1996.

particular, Ministerial Decree 703/1996 provides that they should inform the PF if these situations arise, while the supervisory body has the duty to inform the Supervisory Authority. The latter, if it considers relevant the specific conflict of interest, may request that the PF inform members, determining the modalities and content of the communication.⁹⁴ Given this framework, additional measures have not been provided: in fact, the survey of closed and open PF statutes has revealed a vague reference to the current regulations, except in one case (see Tables 8 and 10).

Therefore, in line with the international best practices, further mechanisms of control and management of conflicts of interest based on organizational procedures should be provided: for example, the obligation to abstain from discussing and voting for the person with a conflict of interest.

In this regard it should be noted that the EPAP directive transposition, in which the principles of Directive 2004/39/EC (known as MiFID, relative to services and investment activities) have been recalled, obligates a reform of the rules on conflicts of interest,⁹⁵ introducing – in addition to transparency obligations – organizational measures for the prevention, control and management of conflicts of interest.⁹⁶

In this sense the provisions of Article 2391 of the Civil Code could be extended to the members of the executive and supervisory boards: in particular, the duty to abstain from discussing and voting for the person with a conflict of interest, with the possibility of suing if those obligations are not met⁹⁷. Furthermore, based on achievements of the regulation of Consob and Bank of Italy October 29th, 2007⁹⁸, in the sector of services and investment activities with the joint Consob Regulation - Bank of Italy, 29 October, an obligation to express in writing and comply with an effective conflict of interest management policy, appropriate to their size and complexity of their business, could be introduced also for PFs.

3.3. *The role of self-regulation*

Unlike the experience of other countries (particularly the United Kingdom, the Netherlands and the United States), self-regulation in Italy is not widely used for the regulation of PF governance; indeed, there is no self-regulatory code dedicated to the definition of the governance of PFs and the regulation of PF conduct as institutional investors. It would help to regulate profiles that the law doesn't provide for and to organize the sector, given its need to grow and consolidate. These objectives may be more easily achieved in the presence of shared rules to define relationships within the sector.

⁹³ However, the management company of PF, which – in the case of open PFs – usually coincides with the financial intermediary that sets it up, is subject to Article 2391 of the Civil Code, which requires directors not just to communicate possible conflicts, but also to abstain from discussing and voting on issues involving them, with the possibility of suing if those obligations are not met. See Enriques and Pomelli (2003).

⁹⁴ See Articles 7 and 8 of the Ministerial Decree 703/1996.

⁹⁵ With consequent revision of the rules contained in the Ministerial Decree 703/1996: see Article 6.5-*bis(c)* of Law 252/2005.

⁹⁶ In particular, based on the forecasts of MiFID in relation to services and investment activities: *i*) the identification of situations of conflict and the adoption of effective organizational and administrative arrangements to prevent these conflicts from adversely affecting the interests of the beneficiaries of PF (paid into a written protocol); *ii*) the provision of adequate information to beneficiaries in the event that the measures taken do not guarantee with sufficient certainty the sterilization of the conflict; *iii*) the keeping of records on the type of operations for which a conflict of interest has arisen or may arise which is detrimental to the beneficiaries. See del Bene (2009).

⁹⁷ Treasury Department (2008). See also Enriques e Pomelli (2005).

⁹⁸ Issued under the new Article 6.2-*bis* of Law 58/1998 of 24 February 1998, which provided the duty of drafting a document on conflicts of interest in relation to services and investment activities for banks, investment and management companies (Articles 25 and 39 of the regulation). See del Bene (2009).

In this sense, the protocol of autonomy of Assogestioni⁹⁹ is the only Italian initiative, which – in the first place – has a purely sectoral impact, being limited to management companies only and – therefore – the PFs managed by them. Furthermore, while particular attention is paid to important issues for the management companies governance (for example, the limitation of the accumulation of functions, and the mandatory presence of independent directors), it does not adequately address the critical aspects of the three areas mentioned above. In fact, it does not include provisions relating to the representation of beneficiaries in the *organismo di sorveglianza* and the division of tasks between it and the *responsabile del fondo*. While the measures provided for managing potential conflicts of interest are confined to require independent directors to: *i*) identify such situations and to submit to scrutiny of the board of directors; *ii*) express a reasonable opinion for board deliberation on potential or current conflict with the interests of participants.

Finally, it should be noted that the analysis of the PF statutes has shown that the use of self-regulation is not widespread, even on individual initiative: in our sample only one closed PF has been equipped with a self-regulatory code, whose scope is limited to communications to beneficiaries (see Table 8).

4. Conclusions

Despite the fact that some recent reforms have improved the governance of Italian PFs, the analysis of the current regulations and the investigation conducted into the statutes of a representative sample of PFs shows that there are still some critical aspects: *a*) the present structure may not adequately guarantee the composition of the trade-off between competence and representation; *b*) a clear definition of tasks and responsibilities among the various organs of the PF is still lacking; *c*) the mechanisms currently adopted do not seem to guarantee an appropriate management of conflicts of interest.

For each of these aspects, the international literature suggests possible remedies. In particular, in the case of closed PFs, it may be appropriate to raise the overall level of competences of the board of directors, with more attention to training and regular self-assessment, and to clarify the tasks of the board of directors, the *responsabile del fondo* and the person in charge of the internal audit function, eliminating the current duplication of functions and possible conflicts of interest. In the case of open PFs with collective and mixed accessions, it may be appropriate to provide for more effective mechanisms for the representation of beneficiaries in the composition of the *organismo di sorveglianza* and to introduce a clearer distinction of supervisory tasks between the *organismo di sorveglianza* and the *responsabile del fondo*. For both types of PFs, it would be desirable to adopt effective measures to manage conflicts of interest, such as the duty to abstain from discussing and voting for the person with a conflict of interest.

Some of these measures could be effectively implemented through the adoption of a self-regulatory code dedicated to the definition of PF governance, in line with the experience of other countries.

⁹⁹ According to a census conducted by Assogestioni in 2004, the groups that have joined the protocol manage a total of 74 per cent of the assets entrusted to management companies in Italy.

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APPENDIX

Table 1 – Percentage of total investments of pension funds¹ with respect to GDP

OECD countries	2001-2007 ²	2008
Netherlands	111.9	113.7
Switzerland	109.2	101.1
Iceland	108.0	114.1
Australia	81.0	91.8
United States	73.4	58.4
United Kingdom	72.0	n.a.
Finland	60.8	58.8
Canada	51.4	50.6
Ireland	43.6	34.1
Denmark	30.1	47.5
Portugal	12.2	12.2
New Zealand	12.1	10.6
Japan	10.9	n.a.
Sweden	8.2	7.4
Mexico	7.8	10.4
Poland	7.2	11.0
Spain	6.6	7.1
Norway	6.4	6.0
Belgium	4.5	3.3
Austria	4.3	4.4
Germany	3.9	4.7
Italy	2.7	3.4
Slovak Rep.	1.3	n.a.
France	1.2	n.a.
Luxembourg	0.9	1.1
Turkey	0.8	1.5
<hr/>		
non-OECD countries	2001-2007 ²	2008
Chile	59.5	52.8
South Africa	51.8	n.d.
Israel	29.7	43.0
Hong Kong	22.4	27.9

1) The data considers pension funds with independent legal status (See OECD, Pension Markets in Focus, no. 4, Nov. 2007). The non-OECD countries shown in the table are those cited in the main text.

2) Average percentage values (with respect to GDP) over the period 2001-2007.

Table 2 – OECD Guidelines for pension fund governance: summary

1. <i>Identification of responsibilities</i>	<p>a) Clear identification and separation of operational and oversight responsibilities in the governance of a pension fund.</p> <p>b) The legal form of this entity, its internal governance structure, and its main objectives should be clearly stated in the pension entity's statutes, by-laws, contract or trust instrument, or in documents associated with any of these.</p>
2. <i>Governing body</i>	<p>a) Every pension fund should have a governing body vested with the power to administer the pension fund and who is ultimately responsible for ensuring adherence to the terms of the arrangement and the protection of the best interest of plan members and beneficiaries.</p> <p>b) The governing body should retain ultimate responsibility for the pension fund, even when delegating certain functions to external service providers.</p> <p>c) Appropriate oversight mechanisms should also be established where the governing body is a commercial institution.</p>
3. <i>Accountability</i>	<p>a) The governing body should be accountable to the pension plan members and beneficiaries, its supervisory board (where relevant) and the competent authorities.</p> <p>b) The governing body should be legally liable for any actions that fail to be consistent with the obligations imposed on it, including prudence.</p>
4. <i>Suitability</i>	<p>a) Membership in the governing body should be subject to minimum suitability (or non-suitability) standards in order to ensure a high level of integrity, competence, experience and professionalism in the governance of the pension fund.</p> <p>b) The governing body should collectively have the necessary skills and knowledge to oversee all the functions performed by a pension fund, and to monitor those delegates and advisors to whom such functions have been delegated.</p> <p>c) It should also seek to enhance its knowledge, where relevant, via appropriate training.</p>
5. <i>Delegation and expert advice</i>	<p>a) The governing body may rely on the support of sub-committees and may delegate functions to internal staff of the pension entity or external service providers (especially if it lacks sufficient expertise in some topics).</p> <p>b) The governing body should assess the advice received, including its quality and independence, and verify that all its professional staff and external service providers have adequate qualifications and experience.</p>
6. <i>Auditor</i>	<p>a) An independent auditor should be appointed by the appropriate body or authority to carry out a periodic audit consistent with the needs of the arrangement.</p> <p>b) The auditor should report promptly to the governing body and – if the governing body does not take any appropriate remedial action – to the competent authorities and other appropriate persons wherever he or she becomes aware, while carrying out his or her tasks, of certain facts which may have a significant negative effect on the financial situation or the administrative and accounting organization of a pension fund.</p>
7. <i>Actuary</i>	<p>a) An actuary should be appointed by the appropriate body or authority for all defined benefit plans financed via pension funds.</p> <p>b) in case the fund does not (or is unlikely to) comply with the appropriate statutory requirements and depending on the general supervisory framework, he or she shall inform the governing body and – if the governing body does not take any appropriate remedial action – the supervisory authority and other appropriate persons without delay.</p>
8. <i>Custodian</i>	<p>a) Custody of the pension fund assets may be carried out by the pension entity, the financial institution that manages the pension fund, or by an independent custodian.</p> <p>b) The custodian should not be able to absolve itself of its responsibility by entrusting to a third party all or some of the assets in its safekeeping.</p>
9. <i>Internal controls</i>	<p>a) There should be adequate internal controls in place to ensure that all persons and entities with operational and oversight responsibilities act in accordance with the objectives set out in the pension entity's by-laws, statutes, contract, or trust instrument, or in documents associated with any of these, and that they comply with the law.</p> <p>b) Such controls should cover all basic organizational and administrative procedures; depending upon the scale and complexity of the plan, these controls will include performance assessment, compensation mechanisms, information systems and processes, risk management procedures and compliance.</p> <p>c) The governing body should also develop a code of conduct and a conflicts of interest policy for them and the staff of the pension entity as well as for any party with operational responsibilities.</p> <p>d) There should also be appropriate controls to promote the independence and impartiality of the decisions taken by the governing body, to ensure the confidentiality of sensitive information pertaining to the fund and to prevent the improper use of privileged or confidential information.</p>
10. <i>Reporting</i>	<p>Reporting channels between all the persons and entities involved in the governance of the pension fund should be established in order to ensure the effective and timely transmission of relevant and accurate information.</p>
11. <i>Disclosure</i>	<p>The governing body should disclose relevant information to all parties involved (notably pension plan members and beneficiaries, plan sponsors, supervisory authorities, auditors etc.) in a clear, accurate, and timely fashion.</p>

Table 3 – PF members (active and passive)
(as a percentage of the work force)

Country	Members
Australia	277,80
Netherlands	215,07
Japan	164,38
United kingdom	158,91
Switzerland	100,00
Spain	51,98
Canada	50,74
Sweden	42,68
New Zealand	31,03
Germany	18,86
France	14,82
Italy	14,27
Portugal	12,32
Norway	12,21
Austria	11,25
Belgium	8,84
Turkey	4,32

Source: OECD Global pensions Statistics (2005).

Table 4 – Total members of pension schemes

		Sep. 2009 ¹		Dec. 2006 units	Var. from Dec. 06 to Sep.09 %
		units	% ²		
Closed Pension Funds	Total	2,045,238	40.9%	1,219,372	67.7%
	Only private ³	1,907,558	51.5%	1,095,546	74.1%
Open Pension Funds	Total	810,864	16.2%	440,486	84.1%
	Only private ³	392,253	10.6%	83,585	369.3%
Individual New Pension Schemes ("new PIP")	Total	818,498	16.4%	-	-
	Only private ³	502,222	13.6%	-	-
Individual New Pension Schemes ("old PIP") ⁴	Total	674,000	13.5%		
	Only private ³	251,000	6.8%		
Old Pension Funds ⁴	Total	677,000	13.5%		
	Only private ³	648,000	17.5%		
Total participants ^{5,6}	Total	4,997,539		3,184,224	56.9%
	Only private ^{5,6}	3,702,647		2,157,017	71.7%

Source: COVIP (2009): *La Previdenza Complementare, principali dati statistici* – October 2009.

1: Provisional end-of-period data.

2: Percentages with respect to total members.

3: It is assumed that all members are private sector employees.

4: Since data for the "old PIP" and Old Pension Funds are not available, the reported values are based on end-of-period data.

5: The total excludes those members that are simultaneously participants of PIP "vecchi" and "PIP nuovi".

6: The data contains also FONDINPS

Table 5 – Assets¹

	Sep. 2009 ²		Dec. 2006 Millions of Euros	Var. from Dec. 06 to Sep.09 %
	Millions of Euros	% ³		
Closed Pension Funds	17,790	26.4%	9,257	92.2%
Open Pension Funds	5,823	8.6%	3,527	65.1%
Individual New Pension Schemes ("new PIP") ⁴	3,160	4.7%		
Individual New Pension Schemes ("old PIP")	4,600	6.8%	4,546	
Old Pension Funds ³	36,000	53.4%	34,246	
Total Assets ⁵	67,397		51,576	30.7%

Source: COVIP (2009): *La Previdenza Complementare, principali dati statistici* – October 2009; September end-of-period and provisional data.

1: For the definition of the assets included, see COVIP (2009).

2: With regard to "old PIP" and Old Pension Funds for which 2009 data are not available, the data reported are based on end-of-period values of the previous year.

3: Percentages are computed with respect to total number of members.

4: Data for separate plan of 2009 are estimated values.

5: The value includes FONDINPS.

Table 6 – Closed pension funds in Italy

Sponsors	<ul style="list-style-type: none"> - unions - employers associations - industry associations - professional bodies
Level	<ul style="list-style-type: none"> - firm level - multi-firm level - territorial - industry level
Governance	<p><i>General meeting of representatives (Assemblea dei Partecipanti)</i>: this the entity that represents the interests of beneficiaries. In general, all plan members can attend the meeting; however, due to the large number of members in some plans, it is necessary to elect delegates nominated by workers of each firm.</p> <p><i>Governing Board (Consiglio di amministrazione)</i>: composed of an equal number of representatives of workers and employers. Endowed with strong executive powers in order to pursue the aims of the plan. Specifically:</p> <ul style="list-style-type: none"> - it may convene the <i>general meeting of representatives</i>; - at the general meeting it submits the budget proposal, the balance sheet and the report about the general business trend of the fund; - it can propose statutory changes to the general meeting and the adoption of other internal regulatory changes; - it decides about the internal organization of the fund; - it may outsource some functions to external service providers, such as the custodian bank, and the fund management; it nominates the auditor; - the reporting of decisions to the plan members must be based on the principle of transparency; - it has the power to oversee possible conflicts of interest (in compliance with the secondary laws of the Ministry of Finance and the COVIP) and it is in charge of the general management of the fund. <p><i>President (and vice president)</i>: nominated by the governing board (the vice president takes the place of the president if he/she is absent). The president is the legal representative of the fund; he/she may convene, set the agenda and chair the meetings of the governing board. He/she also: <i>i)</i> takes care of the execution of the board decisions; <i>ii)</i> speaks to the sponsors and workers; <i>iii)</i> must inform the COVIP about controls on investment and conflicts of interest (according to Ministerial Decree 703/1996).</p> <p><i>Control Commission (Collegio Sindacale)</i> : in charge of controlling general administration and book keeping of the plan. Its powers are determined by Articles 2403 – 2049 of the Civil Code. It must report any breach of rules to COVIP. All members of the commission must be registered in the “albo dei revisori contabili”.</p> <p><i>General Director (Direttore Generale)</i>: nominated by the governing board and in charge of overseeing and executing the operative functions of the board, and if it is laid down by the statute, can coordinate general administration and prepare the documents for the meetings of the governing board, including the nomination of new members. He/she must also possess the same suitability and fit and proper criteria of the members of the governing body, as specified by Ministerial Decree 79/2007.</p> <p><i>Responsabile del Fondo</i>: nominated by the governing board and must:</p> <ul style="list-style-type: none"> - verify that management decisions pursue the exclusive interest of the plan members, are compliant with the laws and the regulatory arrangements of the fund; - report data and information about the activity of the fund to COVIP; - oversee the respect of the limits of investment, the conflicts of interest and good practices in favour of members interests; <p><i>Person responsible for the internal audit function (Soggetto preposto alla funzione di controllo interno)</i>: nominated by the governing board and must:</p> <ul style="list-style-type: none"> - verify the compliance of the fund activity with the law and the additional internal rules, and adopt operative practices in accordance with the ultimate aim of the fund to provide adequate pension benefits to its members; - provide the various fund entities – at least annually – a report about its activity and the results achieved, including possible suggestions for the management of the board; - report any breach of rules to the President of the governing body and to the President of the Control Commission.

Table 7 – Open pension funds in Italy

Sponsors	<ul style="list-style-type: none"> - banks - insurance companies - trading companies (SIM and SGR)
types	<ul style="list-style-type: none"> - territorial - categories of workers
Type of membership	<ul style="list-style-type: none"> - individual membership of the pension fund - collective membership of the pension fund - mixed (individual and collective) membership of the pension fund
Governance	<p><i>Governing and oversight boards:</i> unlike closed PFs, these boards are the same of the sponsor company (bank, insurance company, etc...).</p>
	<p><i>Responsabile del Fondo:</i> This person has a similar role to the <i>responsabile del fondo</i> in closed PFs, but unlike the latter cannot be elected among directors or employees of the fund itself; moreover, the fund manager cannot be an employee or have other labour relationships with the sponsor company/ies and the controlled or controlling companies (Article 5 of Legislative Decree 252/2005).</p>
	<p><i>Organismo di sorveglianza:</i> this board can be found only in funds of collective or mixed membership types. It has the power of oversight over the governing body and it checks that the management pursues the exclusive interests of beneficiaries. It is composed of at least two members, nominated for the first time by the sponsor. Subsequently, the sponsor company will have to choose its representatives from among a list of independent directors prepared by the national authority of oversight in financial markets (Consob). Members have the same suitability and fit and proper criteria as the manager of the fund. For collective memberships, the law allows collective participants (groups of at least 500 people) to nominate an additional member to represent workers' interests.</p>

Table 8 – Closed pension funds: analysis of statutes and informative notes

Pension Fund	Members¹	Responsabile del fondo	Composition of the governing board	Directors professional skills requirements	Committees	Conflicts of interest	Self-regulation
Cometa	470,228 (47.0%)	The role is played by the general director (Art. 23, S).	12 members.	No further specification other than legal requirements.	No evidence of committees.	No further specification other than legal requirements (Arts. 21, comma 7, and 29, S).	It has adopted a self- regulation code of reporting practices to plan members.
Fonchim	161,216 (81.9%)	The role is played by the general director (Art. 23, S).	14 members.	No further specification other than legal requirements.	No evidence of committees. There is a body with an advisory role to the governing body (<i>Consulta delle organizzazioni fondatrici: Art. 14-bis, S</i>).	No further specification other than legal requirements (Arts. 21.6, and 29, S).	No evidence of self-regulation code adopted.
Fonte	168,510 (8.4%)	The role is played by the general director (Art. 23, S).	18 members.	No further specification other than legal requirements.	No evidence of committees.	No further specification other than legal requirements (Art. 29, S). Directors of the governing body are subject to liability rules specified by Art. 2391 c.c. (Art. 21. 5, S)	No evidence of self-regulation code adopted.
Laborfonds	112,188 (45.8%)	The role is played by the general director (Art. 23, S).	12 members.	No further specification other than legal requirements.	In the S there is no evidence of committees, even though the web site and the governance model (following Law 231/2001) mention the existence of a presidency committee, an investment committee and a sanctions committee.	No further specification other than legal requirements (Arts. 21. 6, and 29, S).	It has adopted an internal code governing various aspects of fund life, including communication to plan members.

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Pension Fund	Members¹	Responsabile del fondo	Composition of the governing board	Directors professional skills requirements	Committees	Conflicts of interest	Self-regulation
Fondoposte	88,457 (59.0%)	It is not clear if the office is held by the general director or by another person (Art. 23, S).	14 members.	Only legal requirements.	There is no evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Espero ²	84,091 (7.0%)	No evidence that the role is held by the general director or by a director of the governing body (Art. 23, S).	18 members.	Only legal requirements.	There is no evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Previmoda	70,133 (17.5%)	It is not clear if the office is played by the director or another person (Art. 23, S).	12 members.	Only legal requirements.	There is no evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Telemaco	66,800 (55.7%)	The role is played by the general director (Art. 23, S).	12 members.	Only legal requirements.	There is no evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Cooperlavoro	73,029 (24.3%)	The role is played by the general director (Art. 23, S).	12 members.	Only legal requirements.	No evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Priamo	61,504 (47.31%)	The role is played by the general director (Art. 23, S).	12 members.	Only legal requirements.	No evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Gommaplastica	57,897 (57.9%)	The role is played by the general director (Art. 23, S).	12 members.	Only legal requirements.	No evidence of committees. There is a body with an advisory role to the governing body (<i>the so-called Consulta delle organizzazioni fondatrici: Art. 14-bis, S).</i>	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.

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Pension Fund	Members¹	Responsabile del fondo	Composition of the governing board	Directors professional skills requirements	Committees	Conflicts of interest	Self-regulation
Prevedi	55,539 (7.4%)	The role is played by the general director (Art. 23, S).	18 members.	Only legal requirements.	No evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Alifond	54,121 (18.0%)	The role is played by the general director (Art. 23, S).	12 members.	Only legal requirements.	No evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Fopen	45,093 (90.2%)	The role is played by the general director (Art. 23, S).	12 members.	Only legal requirements.	No evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Solidarietà Veneto	45,216 (12.9%)	The role is played by the general director (Art. 23, S).	18 members.	Only legal requirements.	No evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Fondapi	44,458 (8.9%)	The role is played by the general director (Art. 23, S).	14 members.	Only legal requirements.	No evidence of committees.	Disclosure requirements in line with those established under the current legislation (Art. 23, S).	No evidence of self-regulation code adopted.
Eurofer	43,086 (42.2%)	The role is played by the general director (Art. 23, S).	12 members.	Only legal requirements.	No evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Fondenergia	42,020 (84.4%)	The role is played by the general director (Art. 23, S).	12 members.	Only legal requirements.	No evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.

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Pension Fund	Members ¹	<i>Responsabile del fondo</i>	Composition of the governing board	Directors professional skills requirements	Committees	Conflicts of interests	Self-regulation
Previambiente	43,620 (18.3%)	The role is played by the general director (Art. 23, S).	From a minimum of 8 up to a maximum of 18 members (currently 17).	Only legal requirements.	No evidence of committees. There is a body with an advisory role to the governing body (<i>the so-called Consulta delle organizzazioni fondatrici: art. 26-bis, S</i>).	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Arco	41,112 (17.9%)	The role is played by the general director (Art. 23, S).	From a minimum of 12 up to max 16 members (currently 14).	Only legal requirements.	No evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Capi e quadri Fiat	12,023 (83.2%)	The role is played by the general director (Art. 23, S).	6 members.	Only legal requirements.	No evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.
Fondosanita	3,491 (0.4%)	The manager of the PF can be chosen from among the members of the governing body.	6 members (but this number can be increased by the general meeting of representatives up to 18).	Only legal requirements.	No evidence of committees.	No further specification other than legal requirements (Art. 29, S).	No evidence of self-regulation code adopted.

Source: Statutes and informative notes of PFs (S = statute; IN = informative note) and Covip (2008).

1) The number of members is outside the brackets. The ratio of the number of members to the total potential members is reported in brackets (estimates of the total potential have been provided by each PF, excluding those sectors that participated at the end of 2007).

2) Public PFs.

Table 9 – Open pension funds

Group Sponsor company	Members	Collective members*	Individual members	Pension plans
Gruppo Intesa San Paolo	169,367	27,969 (16.5%)	141,398	
Intesa Previdenza SIM	113,181	17,914 (15.84%)	95,267	Intesa PrevidLavoro Intesa MiaPrevidenza Intesa PrevidSystem Giustiniano PreviMaster
Eurizon vita - assicurazione	56,186	10,055 (17.9%)	46,131	San Paolo Previdenza
Arca – SGR	122,313	49,819 (40.7%)	72,494	Arca – Sgr
AXA MPS	73,498	11,187 (15.2%)	62,311	Paschিপrevidenza Kaleido
Gruppo Generali	71,557	36,311 (50.7%)	35,246	
Assicurazioni generali	40,111	29,187 (72.80%)	10,924	Previgenvalore Previgenglobal (solo adesioni collettive)
INA Assitalia	17,481	6,165 (35.0%)	11,316	INA Assitalia – FP aperto
Alleanza assicurazioni	11,615	370 (3.2%)	11,245	AlMeglio FP aperto
Toro assicurazioni	2,350	589 (25.1%)	1,761	Toro Previdenza FP aperto
Allianz	63,073	25,399 (40.3%)	37,674	
Allianz	59,568	25,349 (42.6%)	34,219	Allianz Lloyd Adriatico – L.A. Previdenza FP aperto Allianz Ras e Allianz Subalpina – Previras FP aperto
Creditras Vita	3,505	50 (1.4%)	3,455	Unicredit FP aperto
Cassa di risparmio di Firenze	40,476	5,090 (12.6%)	35,386	CRF previdenza
Pioneer Investments – SGR	39,438	10,751 (27.3%)	26,687	Unicredit Previdenza Pioneer Investifuturo (solo adesioni collettive) PensionePiù
Banca Carige – Carige asset management SGR	34,330	5,797 (16.9%)	28,533	FP aperto Carige
Itas assicurazioni	31,507	4,436 (14.1%)	27,071	Itas Vita – Pensplan Plurifonds
Gruppo Fondiaria – Sai	20,274	5,327 (26.3%)	14,947	
Fondiaria – Sai	17,167	4,370(25.5%)	12,797	Fondiaria Previdente FP aperto SAI Conto Previdenza
Milano assicurazioni	3,107	957 (30.8%)	2,150	FP aperto Milano assicurazioni

Source: Rapporto di Sintesi – Assogestioni (2009) – 2nd quarter 2009.

* percentages in brackets are given by the ratio of the number of collective members over total members.

Table 10 – Open pension funds: analysis of statutes and of informative notes.

Pension Fund	Tasks of control bodies (RF and OS) ¹	Composition of OS	Conflicts of interest	Self-regulation
Intesa PrevidLavoro	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 19 R).	No evidence of self- regulation code adopted.
Intesa MiaPrevidenza	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 19 R).	No evidence of self- regulation code adopted.
Intesa PrevidSystem	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 19 R).	No evidence of self- regulation code adopted.
Giustiniano	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 19 R).	No evidence of self- regulation code adopted.
PreviMaster	Partially confirms roles overlap between RF (art. 17 S and Annex 1) and OS (art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (art. 2, Annex 2).	No further specification other than legal requirements (Art. 19 R).	No evidence of self- regulation code adopted.
San Paolo Previdenza	Partially confirms roles overlap between RF (art. 17 S and Annex 1) and OS (art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (art. 2, Annex 2).	No further specification other than legal requirements (Art. 19 R).	No evidence of self- regulation code adopted.
Arca - Sgr	Partially confirms roles overlap between RF (art. 17 S and Annex 1) and OS (art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (art. 2, Annex 2).	No further specification other than legal requirements (Art. 19 R).	It has adopted the protocol of autonomy of Assogestioni.
Paschiprevidenza	Partially confirms roles overlap between RF (art. 17 S and Annex 1) and OS (art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (art. 2, Annex 2).	No further specification other than legal requirements (Art. 20 R).	No evidence of self- regulation code adopted.
Kaleido	Partially confirms roles overlap between RF (art. 17 S and Allegato 1) and OS (art. 18 R and Allegato 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (art. 2, Allegato 2).	No further specification other than legal requirements (Art. 20 R).	No evidence of self regulation code adopted.
Previgen valore	Partially confirms roles overlap between RF (art. 17 S and Allegato 1) and OS (art. 18 R and Allegato 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (art. 2, Allegato 2).	No further specification other than legal requirements (Art. 20 R).	No evidence of self- regulation code adopted.

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Pension Fund	Tasks of control bodies (RF and OS) ¹	Composition of OS	Conflicts of interest	Self-regulation
Previgenglobal (solo adesioni collettive//da tradurre??//)	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 20 R).	No evidence of self- regulation code adopted.
INA Assitalia – FP aperto	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 20 R).	No evidence of self- regulation code adopted.
AlMeglio FP aperto	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 20 R).	No evidence of self- regulation code adopted.
Toro Previdenza FP aperto	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 19 R).	No evidence of self- regulation code adopted.
Allianz Lloyd Adriatico – L.A. Previdenza FP aperto	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 19 R).	No evidence of self regulation code adopted.
Allianz Ras e Allianz Subalpina – Previras FP aperto	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 19 R).	No evidence of self- regulation code adopted.
Unicredit FP aperto	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (art. 19 R).	No evidence of self- regulation code adopted.
Unicredit Previdenza	Partially confirms roles overlap between RF (art. 17 S and Annex 1) and OS (Srt. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (art. 20 R).	It has adopted the protocol of autonomy of Assogestioni.
Pioneer Investifuturo (only collective memberships)	S not found R.	S not found R.	S not found R.	It has adopted the protocol of autonomy of Assogestioni.
PensionePiù	S not found R.	S not found R.	S not found R.	It has adopted the protocol of autonomy of Assogestioni.

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Pension Fund	Tasks of control bodies (RF and OS) ¹	Composition of OS	Conflicts of interests	Self-regulation
CRF previdenza	Partially confirms roles overlap between RF (art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 20 R).	No evidence of self- regulation code adopted.
FP aperto Carige	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 19 R).	No evidence of self- regulation code adopted.
Itas Vita – Pensplan Plurifonds	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 20 R).	No evidence of self- regulation code adopted.
Fondiaria Previdente	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 20 R).	No evidence of self- regulation code adopted.
FP aperto SAI	Partially confirms roles overlap between RF (art. 17 S and Allegato 1) and OS (art. 18 R and Allegato 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 20 R).	No evidence of self- regulation code adopted.
Conto Previdenza	Partially confirms roles overlap between RF (Art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 20 R).	No evidence of self- regulation code adopted.
FP aperto Milano assicurazioni	Partially confirms roles overlap between RF (art. 17 S and Annex 1) and OS (Art. 18 R and Annex 2).	2 members in charge plus 1 deputy member. There are no representatives of plan beneficiaries (Art. 2, Annex 2).	No further specification other than legal requirements (Art. 20 R).	No evidence of self- regulation code adopted.

Source: Statutes and informative notes of the PF (S = Statute; IN = Informative Note).

1) RF = “Responsabile del Fondo”; OS = “Organismo di Sorveglianza”.