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The Influence of Shareholder Rights on Shareholder Behavior

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Introduction

Corporate ownership structures have received considerable attention in recent history. This literature started after the publication of Berle and Means' "Modern Corporation and Private Property" but only gained interest worldwide since the nineties of the last century.

Berle and Means empirically documented the division of ownership from control in 200 large US corporations.¹ In recent work, it is shown that the widely dispersed ownership structure is not a common model. Franks and Mayer, La Porta, Lopez-de-Silanes, and Shleifer, Claessens, Djankov and Lang, Faccio and Lang, Barca and Becht, and Van der Elst have all illustrated that the Berle and Means ownership structure is only common in the United Kingdom and the United States.² In most countries the largest shareholder controls a majority or a significant voting block. In many European and Asian countries these large shareholders are often families, whilst the government holds major blocks in France, Italy, Malaysia and Taiwan. Non-financial companies control many German and Belgian companies. Large shareholders use different control enhancing mechanisms to control listed corporations: pyramids, different classes of shares and shares with different voting rights are among the most common instruments to retain control³.

The corporate governance debate also started discussions and research of the factors influencing the differences in ownership patterns. In corporate governance literature La Porta

Lopez-De-Silanes, Shleifer, and Vishny (LLSV) suggest that if a country's shareholder protection rights system is weak, shareholders will have to control large stakes to effectively exercise their control rights over managers.⁴ Large voting blocks serve as a substitute for weak shareholder protection rights. Secondly, the relative weak shareholder protection rules would lower the demand for new shares and indirectly stimulate ownership concentration.

It was soon acknowledged that the seminal work of LLSV contained a number of weaknesses. First, the number of shareholder rights was too limited to draw a meaningful picture of the position of shareholders. Next, the shareholder rights were ad hoc selected, and biased, and the list contained material mistakes in coding. Finally, many shareholder variables were too broad or vague.⁵

Lele and Siems developed the LLSV index of shareholder protection rights in a more meaningful way.⁶ First, for a large number of countries they collected the development of ten, more representative shareholder protection rights over the period of 1995 and 2005. Next, for a limited number of countries, they studied the legal developments over a period of 35 years and developed two separate indices, one relating to the protection against board and management and, one relating to the protection against other (large) shareholders. The board index contains 42 anti-director rights; the shareholder index is composed of 18 anti-blockholder rights.

This article builds on the work of Lele and Siems and my previous paper "Shareholder Mobility in Five European Countries"⁷ and addresses the relationship between shareholder rights and ownership structures. First, Lele and Siems's protection indices are expanded for Belgium and Italy for the period of 1995 to 2005. Next, the development of ownership structures between 1999 and 2007 in six European countries is discussed. This part reveals not only the recent development of concentration patterns but also the investment appetite of different classes of shareholders. It expands the former Shareholder Mobility paper in two ways. First, the development of ownership structures of German listed companies over the period of 1999 and 2008 is added. Next, ownership variables are redefined to explore the relationship with shareholder protection. In the third part of the paper the development of shareholder rights is related to ownership developments. Section four concludes.

1 Berle, A.A., Means, G.C., 1932. *The modern corporation and private property*. New York Harcourt, Brace & World.

2 Franks, J.R., Mayer, C., 2001. Ownership and control of German corporations. *Review of Financial Studies* 943-977; La Porta, R., Lopez-De-Silanes, F., Shleifer, A., 1999. Corporate Ownership Around the World. *Journal of Finance* 471-517; Claessens, S., Djankov, S., Lang, L.H.P., 2000. The separation of ownership and control in East Asian Corporations. *Journal of Financial Economics* 81-112; Faccio, M., Lang, L.H.P., 2002. The ultimate ownership of western European corporations. *Journal of Financial Economics* 365-395; Barca, F., Becht, M., 2001. *The control of corporate Europe*. Oxford University Press; Van der Elst, C. 2001. *Aandeelhouderschap van beursgenoteerde vennootschappen*. Larcier; C. Van der Elst, C. 2003. The Equity Markets, Ownership Structures and Control: Towards an International Harmonisation? *Capital Markets and Company Law*. E. Wymeersch en K. Hopt (eds.). Oxford University Press 3-46; Van der Elst, C., 2008. *Shareholder Mobility in Five European Countries*. ECGI - Law Working Paper no. 104/2008.

3 Claessens, S., Djankov, S., Lang, L.H.P., 2000. The separation of ownership and control in East Asian Corporations. *Journal of Financial Economics* 81-112; Faccio, M., Lang, L.H.P., 2002. The ultimate ownership of western European corporations. *Journal of Financial Economics* 365-395.

4 La Porta, R., Lopez-De-Silanes, F., Shleifer, A., Vishny, R. 1997. *Legal Determinants of External Finance*, *Journal of Finance* 1131-1150; La Porta, R., Lopez-De-Silanes, F., Shleifer, A., Vishny, R. 1998. *Law and Finance*. *Journal of Political Economy* 1113-1155.

5 Lele, P., Siems, M. 2007. Shareholder Protection: A Leximetric Approach. *Journal of Corporate Law Studies* 17-50.

6 Lele, P., Siems, M. 2007. Shareholder Protection: A Leximetric Approach. *Journal of Corporate Law Studies* 17-50.

7 Van der Elst, C., 2008. *Shareholder Mobility in Five European Countries*. ECGI - Law Working Paper no. 104/2008.

I. Shareholder Protection

Shareholder protection is on the top of the agenda in many European countries as well as in the United States. In the European Union, the European Commission 2003 action plan to move forward acknowledged the importance of an appropriate shareholder rights framework:

“an effective regime for the protection of shareholders and their rights, protecting the savings and pensions of millions of people and strengthening the foundations of capital markets for the long term in a context of diversified shareholding within the EU, is essential if companies are to raise capital at the lowest cost.”⁸

The work of the European Commission resulted in the Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies.⁹ The Directive fosters information rights for shareholders, facilitates easy access to general meetings and shareholder activism via proxy voting and voting by correspondence. Since August 2009, the Directive had to be transposed in all Member States but many countries failed to meet the deadline.

At the European level, concerns were raised that increase in shareholder rights and shareholder activism had an important downside: many larger shareholder used many different techniques to change strategy of many businesses. Many companies raised their voice against the interference of shareholders, and in particular hedge funds and private equity parties, in the strategic decision processes. Companies and board of directors complained that they could no longer hold the reins and (some) shareholders cripple power in the development of profitable long term projects. Their concerns were echoed in different Parliaments throughout Europe as well as in the European Parliament.¹⁰

In the United States, there is a fierce debate between the proponents of more shareholder rights, shareholder power, and shareholder activism and the opponents. The first group stresses that shareholder involvement in corporate governance is a prospective way to erode agency problems.¹¹ To others shareholder activism lacks the capacity and incentives required to engage in the decision-making activity on corporate business affairs, implying that such authority is therefore needed to be laid by the board of directors¹². The American debate takes place in an institutional setting with many small shareholders and powerful boards of directors.

On the legal side scholars study the different rights of shareholders to influence the governance of the company in the broadest sense. In Europe, there seems to be many different thresholds of voting power to influence corporate decision-making. Such voting power covers, for instance, the right to appoint board members representing shareholder interests, the right to hire (or fire) management and the right to block the ratification of unfavourable decisions.¹³ Based on the rights of minority shareholders and the discretionary powers of shareholders holding large equity positions, at least five legal thresholds can be distinguished.

In the extreme stands, the shareholder who owns a block of 95 per cent has the right to acquire the shares of the remaining minority, according to the corporate laws of Germany, the Netherlands, Belgium and France. This so-called ‘squeeze-out’ right is fixed at 90 per cent in the UK.¹⁴ Conversely, if certain conditions have been met, minority shareholder can force majority shareholders to acquire the remainder of the shares, i.e. the sell-out right. The next thresholds in line are the equity ownerships at 66⅔ per cent, 75 per cent or sometimes even 80 per cent (table 1), giving the controlling shareholder complete discretion in corporate decision-making. For these thresholds, there is no specific right or requirement to buy out the minority, which might provide a basis for minority dilution opportunities.¹⁵

In essence, controlling ownership is often identified in consideration of the ability of individual shareholders or groups of affiliated shareholders to appoint directors on the board. In particular, Grant and Kirchmaier refer to investors having ‘legal control’ when holding over 50 per cent of the votes *at the annual general meeting*.¹⁶ In view of the corporate laws of European jurisdictions subject to this research, the 50 per cent threshold for the appointment and removal of directors is applied in the UK, Belgium and France, while its use in jurisdictions applying the two-tier board, i.e. Germany and the Netherlands, is subject to certain deviations. It should be noted that different rules can apply in case of nominations of board members to be elected at the meeting.

In Germany, management board directors are appointed and dismissed by the supervisory board (art. 84 AktG), while the appointment and removal of the latter takes place at the shareholder meeting, requiring a majority vote of 50 per cent and 75 per cent respectively (art. 101 and 103 AktG). The threshold of 75 per cent also applies for the appointment of supervisory board members at the general meeting in the Netherlands (art. 2:158 subd. 4 NBW).

It should be noted that in many (economic) studies, control is considered to be in the hands of a shareholder if she holds more than 50 per cent of the votes. However many corporate decisions are taken at the general meeting with more than 50 per cent of the votes *present or represented* at this general meeting. In light of this, de facto control is often defined at the

8 European Commission, 2003. *Communication from the Commission to the Council and the European Parliament: Modernizing Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward*, p 8.

9 *Official Journal L no. 184, 14 July 2007, p. 17–24.*

10 P. Rasmussen. February 26, 2009. Direct EU regulation for Private Equity and Hedge funds. The real economy comes first at the European Commission’s conference on private equity and hedge funds. http://ec.europa.eu/internal_market/investment/docs/conference/rasmussen_en.pdf.

11 Admati, A., Pfleiderer, P., Zechner, J., 1994. Large shareholder activism, risk sharing and financial market equilibrium. *Journal of Political Economy* 1097-1130; Shleifer, A., Visny, R.W., 1997. A survey of corporate governance. *Journal of Finance*, 737-783; Noe, T.H., 2002. Investor activism and financial market structure. *Review of Financial Studies* 289-318.

12 Bainbridge, S.M., 2008. *Investor activism: reshaping the playing field?* UCLA School of Law Law and Economics Research Paper Series. Paper no. 08-12.

13 Becht, M., Bolton, P., Röell, A., 2002. *Corporate governance and control*. ECGI Finance Working Paper, no. 02/2002.

14 C. Van der Elst, C., Van den Steen, L., 2009. Balancing the interests of minority and majority shareholders: A comparative analysis of the squeeze-out and sell-out rights. *European Company and Financial Law Review* 391-439.

15 Jenkinson, T.J., Ljungqvist, A., 1999. *The role of hostile stakes in German corporate governance*. OFRC Working Paper Series No. 1999fe02.

16 Grant, J., Kirchmaier, T., 2004. *Corporate ownership structure and performance in Europe*. CEP Discussion Paper no. 631.

Table 1: Overview of the Shareholder Rights given at Various Thresholds of Equity Ownership.

	France (Cod. de Comm.)	Germany (AktG)	UK (CA 2006)	Belgium (Wet Venn.)	Italy (Cod. Civile)
Participation in the general meeting	1 share (225-113)	1 share (118;134)	1 share (310)	1 share (533,536)	1 share (2370)
Voting rights	1 share (225-122)	1 share (134)	1 share (284)	1 share (541)	1 share (2370)
Information rights	1 share (225-115)	1 share (131)	1 share (310)	1 share (553)	1 share
Right to ask questions	1 share (225-108)	1 share (ex. 131)		1 share (540)	1 share (2370)
Minority petition	1 share (225-252)	1% (148)	1 share (994) and 15% of class shares (633)	1% (562)	
Right to put items on the agenda of the general meeting	5% (225-105)	5% (122 (2))	5% (292)	20% (532)	10%
Right to call a general meeting	5% (225-103)	5% (122 (1))	10% (303 (3))	20% (532)	10%
Mandatory bid	33⅓ %	30%	30%	30%	30%
Blocking minority	33⅓ %	25%	25%	25%	33⅓ %
Simple majority	50% (255-98)	50% (133)	50% (282)	50% (574)	50%
Amendment to company articles	66⅔ (225-96)	75% (179 (2))	75% (283)	75% (558)	66⅔
Amendment to company objectives	66⅔ (225-96)	75% (179 (2))	75% (283)	80% (559)	66⅔
Acquisition of company shares	50% (225-209)	50% (71 (1) nr. 8 & 133 (1))	Only if authorized by firm's articles (684)	80% (620)	50% (2357)
Company conversion	50% (225-244)	75% (240 (1) UmwG)	75% (97;109)	80% (781)	66⅔
Right of squeeze-out	95% (236 RG AMF))	95% (327a (1))	90% (979)	95% (513)	95%

level of the national mandatory bid threshold. According to article 5 §1 European Takeover Directive, the mandatory bid threshold is reached when equity ownership of a company provides the investor with a specified percentage of voting rights, that gives the investor *control of a company*. In case the mandatory bid threshold is reached, Member States are required to ensure that such shareholder has to make a bid as a means of protecting the minority shareholders of that company. In Europe, the national mandatory bid threshold is fixed at 30 per cent for the UK, Germany, Italy, Belgium and the Netherlands, while the required threshold is 33,3 per cent in France, varying in Europe between 25 per cent and going as high as 66,6 per cent in Poland.¹⁷ According to Grant and Kirchmaier, this threshold indicates the level of equity ownership at which legislators have concluded a shareholder will have significant influence on the outcome of decisions at the annual meeting.¹⁸ This presumption, however does not take

into account practical observations where certain shareholders set their equity ownership at a slightly lower threshold – e.g. French shareholder owning only 33,3 per cent of equity ownership, or a UK shareholder owning 29,99 per cent of equity ownership – in order to avoid having to make a mandatory bid.

Furthermore, Franks and Mayer elaborate on a few more thresholds that determine the control rights of shareholders in Germany, starting at the threshold of 25 per cent.¹⁹ In particular, the legal threshold of 25 per cent indicates a blocking minority that enables shareholders to block important corporate decisions, e.g. amendments to the corporation's articles of association. In addition, a common economic criterion that is used by researchers to identify a controlling shareholder is when the direct or indirect holding of such shareholder exceeds the 20 per cent threshold.²⁰ While this

17 European Commission. 2007. *Report on the implementation of the Directive on Takeover Bids*, p. 11.

18 Grant, J., Kirchmaier, T., 2004. *Corporate ownership structure and performance in Europe*. CEP Discussion Paper no. 631.

19 Franks, J.R., Mayer, C., 2001. Ownership and control of German corporations. *Review of Financial Studies* 943-977.

20 Enriques, L., Volpin, P.F., 2007. Corporate governance reforms in conti-

threshold might be of certain significance within accounting provisions, its use is less important in corporate law.

Nevertheless, the thresholds mentioned above, ranging from 95 per cent to 20 per cent, do not make any allowance for lower legal thresholds at which shareholders are facilitated to influence corporate management. In fact, the majority thresholds disregard the fact that shareholders who do not have the level of voting rights sufficient to determine the outcome of a general meeting or to submit a member to the board of directors, might still be in the position to exercise de facto control. Referring to the 20 per cent threshold used by Berle and Means in their renowned study of *'Modern Corporation and Private Property'*, Leech argues that "the 20 per cent threshold makes no allowance for the effect of variations in shareholding dispersion among companies", indicating that "a smaller proportional shareholding is sufficient for control where holdings are more widely dispersed, requiring a different criterion to be used for each company".²¹

In fact, relatively small investors holding less than 10 per cent of a company's shares have apparently been able to pressure corporate boards to change their corporate strategy.²² Leaving the legal possibilities of shareholder voice aside, shareholders are even more inclined to rely on informal interventions with company boards than the mere filing of resolutions at AGMs in order to indicate the issues they force to be changed rather than to be considered only. Indeed, shareholder activism is predominantly executed by private engagements with corporate boards in the pursuit of various objectives. Provided that these informal interventions do not lead to any agreeable outcomes, activist shareholders have proven themselves to be persistent in the sense that they will either file a proxy statement or otherwise go public by carrying their objectives to the media.

The evolution of the development of the shareholder rights is measured via the leximetric approach. Lele and Siems developed an index that traces the shareholder protection levels in different countries.²³ Not every right is covered, but in a diligent way they combine the rights in corporate law while taken into account considerations of contract law and civil procedure.

First, for a large number of countries, they collected the development of ten representative shareholder protection rights over the period of 1995 and 2005.²⁴ The shareholder index is more oriented towards corporate law and does not extensively regard securities law. Investor protection should take into account more disclosure rules and securities law to optimize investment decisions. In most countries, corporate law contains both mandatory and default rules that are part of

the index. Mandatory rules offer the best protection but many default rules offer similar results as market forces often prevent company-specific overruling procedures. Finally, also important case law is considered. Even in most civil law countries, court rulings significantly influence many corporate practices. The Belgian highest court, the Cour de Cassation, decided that the rule of the ad nutum - with immediate effect - dismissal right of board members that belongs to the general meeting of shareholders in Belgium is of public importance and cannot be contracted out.²⁵

From a methodological perspective, the index is decomposed in individual rights, which are not necessarily binary. In some countries, the identified shareholder right is not fully captured, but shareholders are partially protected. The composition of the board of directors serves as an example. While a majority of non-executive directors can be seen as an optimal shareholder protection, a minority of non-executive directors cannot be treated equally as a board that is solely composed of executive directors. The non-binary approach captures much better the legal framework in many countries, famous and criticized for the numerous "yes, but" or "no, unless" rules.

The variables are not weighted in order to limit the arbitrariness. The agenda power setting is of equal importance as the prohibition of issuing multiple voting rights. We support the thesis of Lele and Siems arguing that the large number of variables together with the functional equivalents in the different jurisdictions sufficiently captures the comparability of the national results.

Figure 1 presents the results of shareholder rights in the six European countries for which ownership structures have been analysed, including Belgium which we added. In 1995, Italy and Germany only offered a limited number of shareholder rights, whereas France and the UK already protected shareholders with twice as many rights as the former countries. Belgium and Spain were in between the two extreme values. Since 1995, all countries experienced an increase in their rights but to different degrees. German developments of corporate law and corporate governance rules resulted in twice as many rights by 2005. In France and Spain, shareholders experienced an increase of less than one additional right. However, by 2005 the difference between the "best" performing country and the "worst" performing country is less than 50 per cent.

Next, for a limited number of five countries, Lele and Siems studied the developments of shareholder rights over a period of 35 years and developed via two separate indices, one relating to the protection against board and management and one relating to the protection against other shareholders. The board index contains 42 anti-director rights, the shareholder index is composed of 18 anti-blockholder rights.²⁶ The evolution of these rights is presented in the figures 2 to 4, including the development of shareholder rights for Belgium and Italy.

mental Europe. *Journal of Economic Perspectives* 117-140; Faccio, M., Lang, L.H.P., 2002. The ultimate ownership of western European corporations. *Journal of Financial Economics* 365-395; Claessens, S., Djankov, S., Lang, L.H.P., 2000. The separation of ownership and control in East Asian Corporations. *Journal of Financial Economics* 81-112; La Porta, R., Lopez-De-Silanes, F., Shleifer, A., Vishny, R. 1998. Law and Finance. *Journal of Political Economy* 1113-1155.

21 Leech, D., 1987. Corporate ownership and control: A new look at the evidence of Berle and Means. *Oxford Economic Papers* 534-551.

22 Millo, Y., Wearing, R., 2008. *Activist Investors: Some Implications for Corporate Governance*. working paper. Available at SSRN: <http://ssrn.com/abstract=1134729>.

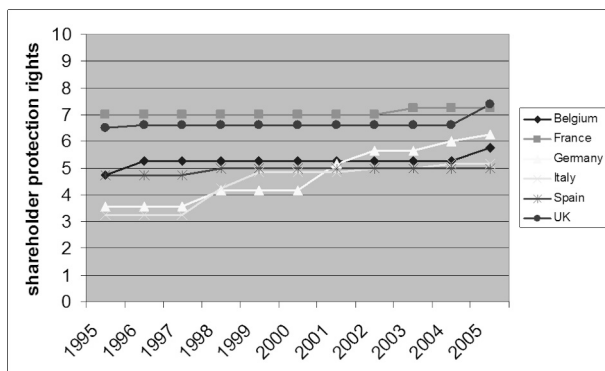
23 Lele, P., Siems, M. 2007. Shareholder Protection: A Leximetric Approach. *Journal of Corporate Law Studies* 17-50.

24 The list of these rights is on file with the author.

25 Cour de Cassation 13 April 1989, A.C. 1988-89, 920.

26 The list of these rights is on file with the author.

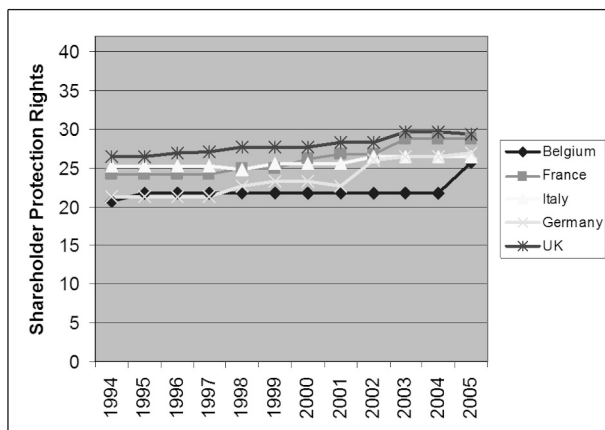
Figure 1: Development of Basic Shareholder Rights



Source: Lele and Siems (2007); own research

As for the basic shareholder rights index, the “board” index shows an increase in shareholder rights in all countries (figure 2). By the end of 2005 all countries offered all shareholders between 25 and 30 rights (on a scale of 42 rights). The variability of the rights between the five developed countries is limited and even decreased over the years. Whilst Belgium offered less than half of the total number of rights to shareholders in 1994 and the UK already offered more than 26 rights, the differences between these countries was reduced to less than 4 rights in 2005.

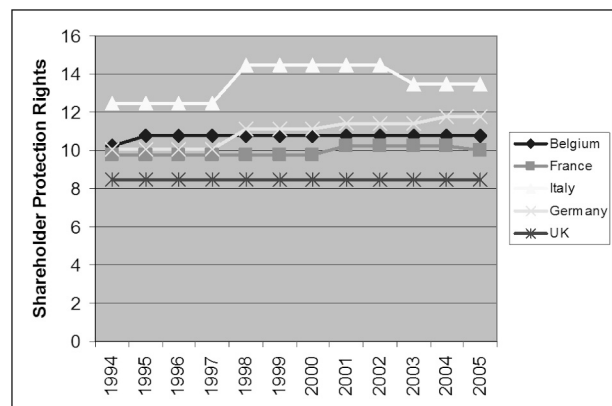
Figure 2: Development of Shareholder Protection Rights against Directors and Managers



Source: Lele and Siems (2007); own research (for Italy the data were provided by Ranieri Giunta and Mema Endrit)

The development of the minority shareholder rights index shows a different pattern. In three out of five countries, minority shareholders experienced hardly any increase in the number of shareholder rights. In France, the latest development was even negative: the quorum rules for decision making processes at general meetings of shareholders were softened. Acting against expropriation of large shareholders is only in Germany supported with new rights. Overall the different approach of continental Europe and the UK is clear. In continental Europe, blockholders are common. Therefore, the legislation should endorse the protection of minority shareholders. The endorsement started already before 1995. In the UK, major blockholders are more the exception to the rule. The UK supported the protection of shareholders against shirking of directors and management: the protection against (expropriation by) major shareholders is relatively weak developed.

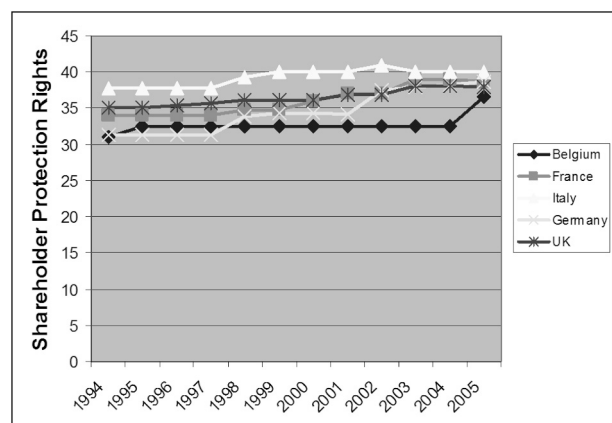
Figure 3: Development of Minority Shareholder Protection Rights against Large Shareholders



Source: Lele and Siems (2007); own research (for Italy the data were provided by Ranieri Giunta and Mema Endrit)

Figure 4 shows the development of the total number of shareholder rights in these five countries. The differences between countries are limited. All countries support shareholders with 35 to 40 shareholder rights out of 60 different rights. While France and Germany experienced a steady increase in the number of rights due to several legislative initiatives, Belgium had only two influential reforms: the amendment of the companies act in 1995 and the publication of a voluntary comply or explain code at the end of 2004.²⁷

Figure 4: Development of Shareholder Protection Rights



Source: Lele and Siems (2007); own research

II. Shareholder Structures

1. Sample and Methodology

This study intends to add evidence on the impact of law on the development of ownership structures of listed entities over a medium term by analysing the changes in ownership of a large sample of companies listed in 1999 and 2007 in six European countries. We have collected ownership information of more than 1800 listed companies in six European countries: Belgium, France, Germany, Italy, Spain and the UK. The data

²⁷ Another important development was the “corporate governance” law of 2002. However, the reform aimed at the independence of auditors, a modified two tier system, conflicts of interests in groups and several other formalities regarding the organisation of the general meeting. The law did not change any of the shareholder protection rights envisaged in the index.

are from December 1999 for Belgian, German, Italian, Spanish and French companies and from April 2001 for UK companies. We based our analysis on data as they have been published by individual companies and their shareholders according to the legislation that transposes the major shareholdings directive of 1988 and the transparency directive of 2001 and 2004 for Belgium – via Euronext NYSE Brussels and in the annual reports – and France – via the Autorité des Marchés Financiers and in the annual reports – and the information that is provided by the Italian and Spanish supervisory authority Consob and Comision Nacional del Mercado de Valores. For the UK, the ownership data were acquired from Hemscott; for Germany, the database from Hoppenstadt Aktienführer, as well as the Bafin database, was used. This procedure was repeated in 2007 and at the start of 2008. For that year, the data are of July for Belgian companies, August for French companies, March for Italian companies, June for Spanish companies and September for the British companies. The data for German companies were collected at the start of 2009, but the database of Hoppenstadt contained the data of December 2007.

As the study intends to identify the influence of law on ownership structures, the developments of the ownership structures were studied for companies that were listed both in 1999 and 2007. All companies that were delisted between 1999 (UK: 2001) and 2007 were identified and excluded. More than 900 companies were delisted, approximately 50 per cent of all companies in the 1999 database. The distribution of the final sample is as follows: 84 Belgian, 95 French, 242 German, 114 Italian, 95 Spanish and 272 British companies. The distribution is similar to the importance of the different national stock markets, with the exception of France for which the number of companies is smaller and biased towards larger companies.

Each shareholder of each company had to be classified in several different shareholder classes. The different shareholder classes that were used in all six countries are: individuals and families, non-financial companies, insurance companies, banks, the government and foreign shareholders. In all countries other types of shareholders exist. All these shareholders have been identified though not all the data are presented for all these remaining shareholder classes. The most important classes are (Dutch) “stichtingen administratiekantoren” in Belgium, “grouped holdings of employees” in France, “investment managers” in Germany, “investment managers”, “nominees”, and “trusts” in the UK, “fondaziona” in Italy and “fundacion” in Spain.

While in most cases the type of shareholder was obvious, for a significant number of shareholders different sources, including several search engines, have been used to identify the type of shareholder. Our previous “shareholder mobility” paper illustrates how the procedure was applied.²⁸

2. Shareholder Characteristics

2.1. Distribution of Large Ownership Stakes among the Different Types of Investors

Each company has on average two to three shareholders with a voting block of more than five per cent of the voting rights.

²⁸ Van der Elst, C., 2008. *Shareholder Mobility in Five European Countries*. ECGI - Law Working Paper No. 104/2008, section 3.2.

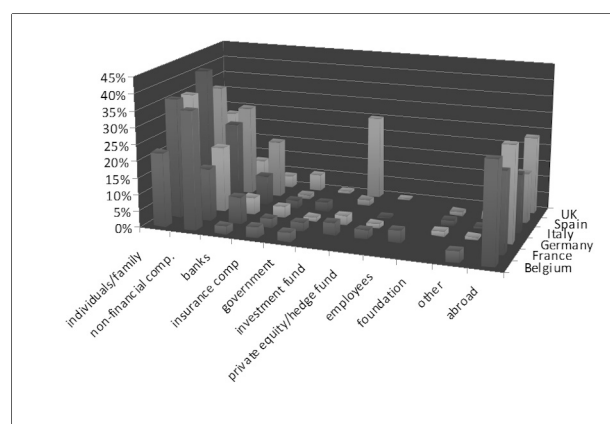
Since 1999, the average number of large shareholders increased in all countries with the exception of Germany. While the increase is limited in Italy, France and Belgium, the increase was significant in Spain and the UK, from approximately 2,7 stakes of more than 5 per cent of the voting rights per company in 1999 to 3,3 and 3,4 stakes in 2007.

Companies without large shareholders are uncommon in all countries. Between one per cent of the Spanish companies and six per cent of the German companies are not familiar with a large shareholder. It may come as a surprise, but in the UK less than five per cent of the companies had a very widely dispersed shareholder structure without any shareholder owning more than five per cent of the shares.

Three types of shareholders are overrepresented as large shareholders in the database: individuals/families, non-financial companies and foreign shareholders (figure 5). Both in 1999 and 2007, in all continental countries the total number of large voting blocks of these three classes exceeded 75 per cent of the total number of large voting blocks. Their number exceeded 50 per cent in the UK. However, the relative importance of each class changed. Individuals and families hold between 20 per cent in the UK and Belgium and 40 per cent in Italy of all large voting blocks. In the other countries the relative number is around 35 per cent. The number dropped significantly in the UK and Germany but increased in Belgium and Spain. In Germany a large number of stakes were acquired by foreigners whilst British stakes of families flew to investment funds and foreigners. The significant increase of large family stakes in Belgium and to a lesser extent in Spain is due to the disentanglement of familial pyramid structures for which the ultimate owners could not always be traced in 1999. The position of non-financial companies as large shareholders remained stable over time with the exception of the decrease in Belgium and France. Both countries are familiar with pyramids. In France, the disentanglement of pyramids did not cause an increase in family shareholdings but resulted in an increase in the number of large stakes held by foreigners, among which were a number of private equity funds.

Banks are important large shareholders in Spain with one out of six large stakes in the hands of financial institutions. In France and Italy banks hold half this number of large stakes. German banks sold a significant part of their large shareholdings. Approximately five per cent of large blocks are owned by German banks, down from 8,6 per cent in 1999.

Figure 5: Distribution of Large Shareholder Stakes (2007)

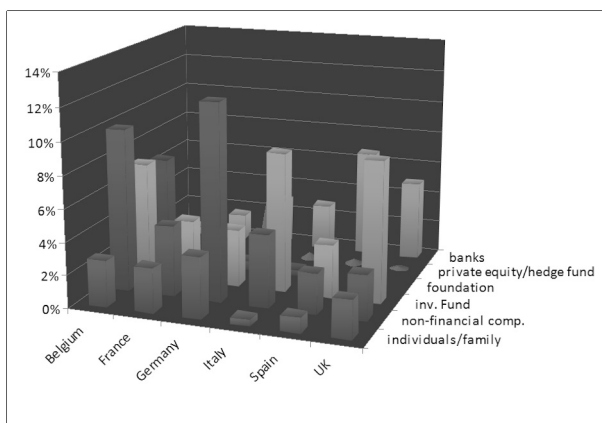


Source: own research

Considering the number of large stakes, the government is not important in any country. That is not to say that in some countries the government is the largest, even controlling shareholder. Whereas the government was not a large shareholder in any company in the UK, government agencies acquired a limited number of large stakes in listed companies by 2007.²⁹ In 1999, hedge funds and private equity funds were found as large shareholders only in the UK. In 2007, in most countries, these funds hold a limited number of large stakes. Another growing large shareholder class is investment funds. In the UK, 25 per cent of all large stakes are in hands of investment funds, in the other countries the proportion of large stakes they hold varies between no large stakes in Belgium and three per cent in Germany. Employees (investment schemes) are an important class of large shareholders in France. An overview of these main findings can be found in figure 5.

Foreign large shareholders were further classified in different subclasses (Figure 6). The pattern of foreign large shareholders is different from the national distribution of large shareholder stakes. Foreign individuals and families, although present in all countries in the study, are relatively less important. Foreign non-financial companies are important large shareholders in Belgium and Germany, where more than ten per cent of the total number of large stakes are in the hands of this type of shareholder. Foreign investment funds are far more often found as large shareholders in the UK, Italy and Belgium than in the other countries. Dutch foundations are an important control vehicle in a number of Belgium companies. Finally, foreign private equity funds and hedge funds were absent as large shareholders in 1999, but acquired a limited number of large voting blocks in all countries but Belgium by 2007.³⁰ Foreign banks are important large shareholders in Spanish listed companies with more than six per cent of all large blocks. Finally, in the UK more than ten per cent of large voting blocks are in hands of other types of shareholders, most often trusts or pension funds. Sovereign wealth funds were found in less than one per cent of the companies in the database.

Figure 6: The Relative Importance of Foreign Shareholders as Blockholders



Source: own research

29 The British government, like many other governments, became more involved in 2008 when the financial crisis hit the capital market.

30 Belgium is familiar with this type of large foreign shareholder though not in the listed entities in the sample. In 2003 Candover acquired a controlling voting block in Ontex and it took the company private.

2.2. Size of Large Ownership Stakes

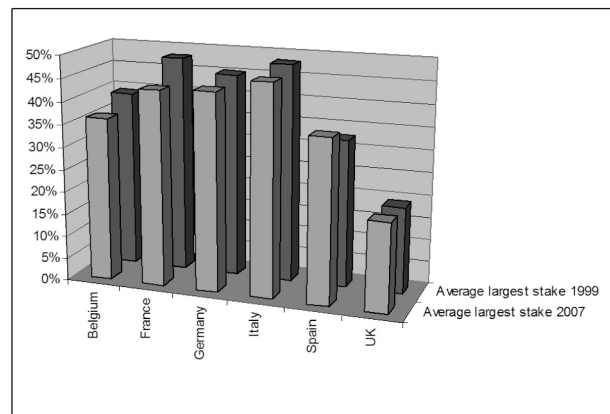
The general observation of continental Europe with major shareholders and the UK with a more dispersed ownership structure is confirmed. Overall and with the exception of Spain, the largest shareholder held between 40 per cent and 50 per cent of the votes in continental European countries in 1999. The median block is even higher. In Spain, the average is 33 per cent, the median is only 25 per cent. In the UK, the average voting block remains beneath the threshold of 20 per cent, the median value is only 15 per cent.

The average and median voting block decreased between 1999 and 2007 in the four countries with the highest concentration, whereas the voting block of the largest shareholder in the UK remained stable and the average largest voting block in Spanish companies increased.

Whilst there was a slight decrease of the largest voting block in France from 47 per cent to 43 per cent, in Italy from 46 per cent to 44 per cent, in Germany from 45 per cent to 44 per cent and in Belgium from 39 per cent to 35 per cent, this voting block increased in Spain from 33 per cent to 36 per cent. The median voting blocks fell in France from 50 per cent to 43 per cent, in Germany from 46 per cent to 40 per cent and in Belgium from 39 per cent to 34 per cent and remained unchanged in the three other countries.

This first finding sheds some doubt on the “law and finance” theory as, in all countries, shareholder protection rights increased whilst the ownership concentration only decreased in some civil law member states. If any change is due to changes in shareholders rights, the different kinds of shareholders respond differently to the new shareholder rights.

Figure 7: Development of the Size of the Largest Voting Stakes



* if no shareholder passes threshold, no result is taken into account

Source: own research

2.3. Development of Ownership Stake per Class

Figure 8 provides information of the shareholder investment behavior as well as of the policies of the different classes of large shareholders. This is an important indication of the probability that the large shareholder uses informal activism techniques to influence the (strategy of the) company. In France but also in Italy, families strive for a large, controlling voting blocks of even more than 41 per cent in the former country. In Belgium, Spain and the UK, the average size of the large voting blocks of this type of shareholder is less than 20 per cent. This pattern did not change significantly over time

with one exception: German families reduced their large voting blocks and Belgian families increased their average stake significantly. In the latter country, this is due to the disentanglement of pyramidal structures which revealed the control of families over a number of listed entities. Non-financial companies acquired, on average, large controlling blocks in Italy and Germany, whereas French non-financial companies obtained large significant blocks. That aspect of their investment policy changed in the latter country, as the average voting block passed 34 per cent back in 1999. In the three other countries, Belgium, UK and Spain, non-financial companies hold on average large stakes but most likely insufficient to control the company. As was expected, the government is a large and even a controlling shareholder in a limited number of continental European companies with voting blocks of more than 20 per cent in Belgium, France and Germany and, on average, a controlling voting block of 34 per cent in Italy. However, the position of the government as large shareholder was fading: in 1999 the government had, on average absolute control in Italian companies and controlling large stakes in Belgian and French companies. As is generally known, the situation changed in 2008 when the government of many countries had to support companies in the financial industry to prevent major bankruptcies and mitigate the systemic risks.

Insurance companies and investment funds are most often, and, from a voting block perspective almost always, pure financial investors. Their average voting block as a large shareholder is less than ten per cent. It is only in German companies and to a lesser extent in Italian entities that insurance companies hold - on average - large voting blocks of 19 per cent in the former country and 14 per cent in the latter. For banks, the situation is different. In France, Germany and Italy, the average voting block of banks in listed entities passed the threshold of 20 per cent, an increase compared to the situation in 1999. In Spain, the average voting block of banks remained high around the threshold of 20 per cent. It should be noted that it is only in Germany that banks hold large stakes outside the financial industry. These results support the hypothesis that the consolidation process in the financial industry has not yet ended, but only slowed down due to the financial crises.

A limited number of foundations in Germany, but in particular in Italy and Spain, serve as control vehicles. In Belgium and Italy, foreign foundations are sometimes used for similar purposes.

Foreign non-financial companies hold controlling voting blocks in France, Belgium and Germany. It can be expected that a number of listed entities will be fully taken over in the near future. In all those countries, the average voting block increased significantly in comparison with the average voting block of this shareholder type in 1999. The policy of foreign non-financial shareholders in Italian companies illustrates the opposite. While in 1999 this type of foreign shareholder held on average a controlling voting block of more than 33 per cent, by 2007 this average decreased to less than 19 per cent.

For foreign families and individuals as large shareholders the situation is different. This type of shareholder has relatively small stakes in Italy and Spain but is holding controlling blocks in Belgium and Germany. In France and the UK, they can be considered as large important shareholders but not necessarily controlling shareholders. The average voting block of 25 per cent in the latter countries hides differences in

Figure 8a: Evolution of the Average Size of the Voting Block of Different Shareholder Types in 1999

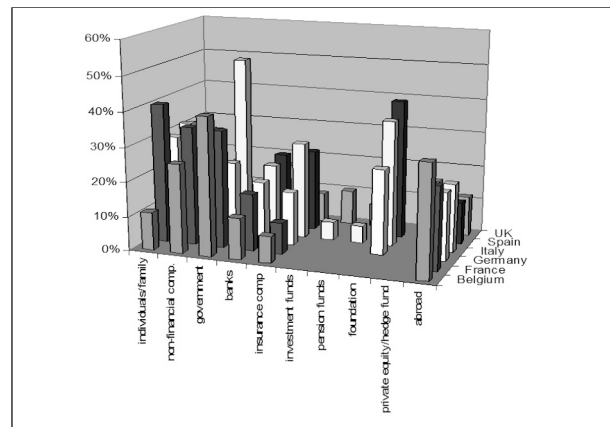
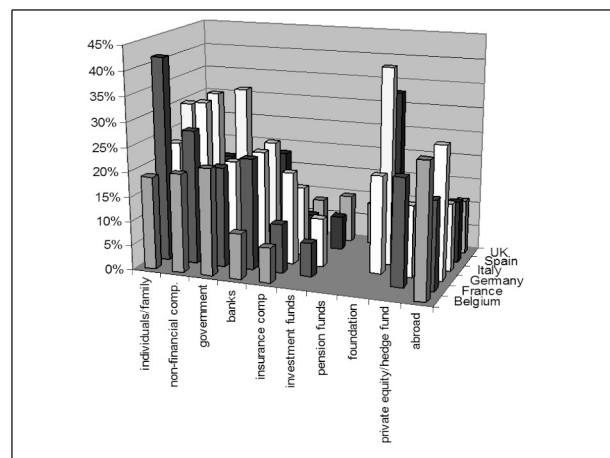


Figure 8b: Evolution of the Average Size of the Voting Block of Different Shareholder Types in 2007



Source: own research

policy. At the end of the last century, these shareholders held on average an absolute majority block in French companies whereas in UK companies these shareholders have increased their average voting block since the turn of the millennium.

Foreign investment funds, foreign banks as well as foreign pension funds can be considered as “financial” investors. With the exception of foreign banks in Germany, the average voting block of these types of shareholders is less than ten per cent of the voting rights.

The limited number of hedge funds and private equity funds held relatively large stakes in German and UK companies. In these countries, the private equity market is the most developed.

III. Shareholder Protection versus Shareholder Behavior

1. Development of Shareholder Protection Rights

Law and finance theory argues that shareholders' investment policies are influenced by the (number of) shareholder rights the legal system offers. If the legal system provides appropriate protection against management shirking via legal instru-

ments, shareholders will not have to substitute the rights with larger blocks. Dispersed shareholdership will be more common in countries with more “anti-director” rights or in countries that adapt their rulebook to include better protection. It can be hypothesized that an increase of the shareholder rights will result over time in more widely dispersed ownership structures.

Conversely, there is a risk that major shareholders expropriate minority shareholders. Appropriate (minority) shareholder protection rights can limit the expropriation behavior or, at least, the probability of expropriation behavior. It raises the question what the behavior of minority shareholders will be, in case the minority is offered better shareholder protection. It can depend on how the minority protection rights are structured. If the right requires minimum thresholds to start up the protection, minority shareholders will build minority blocks to pass this threshold. If however, the rights are granted without minimum requirements, shareholders would be willing to reduce their stakes and mitigate the risks via smaller stakes in more companies and support, next to the majority shareholder, a widely dispersed ownership structure.

In this part, a number of these hypotheses will be tested. First, the aforementioned development of the evolution of shareholder rights is empirically assessed. If it is assumed that the protection of shareholders influences the shareholder behavior, shareholder structures will change in the period after the change of the regulatory framework. It can be expected that a time lag exists between the modifications of the regulatory framework and the (new) shareholder behavior. To address this issue, we first assess the differences in shareholder rights two years before the shareholder data with the use of the paired-sample T-test. The paired-sample T-test is performed for the year 1997 versus the year 2005.

The result for the general shareholder index (table 2) shows that only in Germany the shareholder protection framework significantly improved. The correlations between the shareholder indices in the two different periods is in Germany only around 0,5. In Italy, the shareholder index increased but the increase remained under the lowest significance threshold of ten per cent.

The more detailed board protection index shows more significant differences. Not only in Germany shareholder protection legislation improved significantly, also in Belgium and in France shareholders experienced a significant increase in the protection of their rights. Only the UK, the country which already had the most protective mechanisms against board and management, did not significantly increase the number of rights. However, the index does not take into account the significant changes in the Companies Act 2006.

Whilst all countries developed more “anti-director and management” rights, protection of minority shareholders against expropriation behavior of major blockholders remained moderate. None of the countries significantly increased the protection level, as the paired-sample T-test indicates. As continental European countries are confronted with many more blockholders, it could have been expected that these countries would have focused on this type of protective measures. The total shareholder protection index increased significantly in all continental European countries, due to the improvements of the Board protection index.

Table 2: Development of Shareholder Protection Indices

General shareholder protection index (10 rights)				
	1997	2005	Corr. 97 vs 05	t-value 97 vs 05
Belgium	5,25	5,75	0,934	1.000
France	7	7,25	0,985	1.000
Germany	3,583	6,25	0,424	2.403**
Italy	3,25	5	0,727	1.760
Spain	4,75	5,5	0,902	1.406
UK ⁺	6,625	7,375	0,778	1.000
Board protection index (42 rights)				
	1997	2005	Corr. 97 vs 05	t-value 97 vs 05
Belgium	21,75	25,75	0,842	2,442**
France	24,25	28,75	0,839	3,232*
Germany	21,25	27	0,654	2,600**
Italy	25,25	26,5	0,836	0,741
UK ⁺	27,625	29,375	0,903	1,638
Shareholder protection index (18 rights)				
	1997	2005	Corr. 97 vs 05	t-value 97 vs 05
Belgium	10,75	10,75	1.000	-
France	9,75	10	0,952	0,437
Germany	10,08	11,75	0,524	0,894
Italy	12,5	13,5	0,561	0,566
UK ⁺	8,5	8,5	1.000	-
Total investor protection index (60 rights)				
	1997	2005	Corr. 97 vs 05	t-value 97 vs 05
Belgium	32,5	36,5	0,881	2,399**
France	34	38,75	0,874	3,098*
Germany	31,33	38,75	0,607	2,586**
Italy	37,75	40	0,76	0,932
UK ⁺	36,125	37,875	0,943	1,628

+ : 99 vs 05³¹; *: significant at 1%, **: significant at 5%

In the law and finance theory, these results predict an increase in the number of companies with a dispersed ownership structure and a decrease in the concentration of ownership in continental Europe. However as there were no significant differences in the protection of minority shareholders against expropriation behavior of large shareholders, we do not expect major differences in smaller shareholder stakes. The next sections will address a number of shareholder structure developments of the sample of listed companies. First, the concentration of shareholders is addressed with an emphasis on the national developments as well as an analysis of the developments of the behavior of different classes of shareholders. Next, the development of the other shareholder stakes is studied.

2. Large Shareholder Behavior

Table 3 provides the results of paired-sample T-test of the largest shareholder block of each company in 1999 and 2007. In Belgium and France, the largest shareholder decreased

31 As the ownership data for the UK are of april 2001 and 2007 instead of 1999 and 2007, the shareholder rights indices have been tested with the same time interval as for the other countries.

significantly its position. In Spain, the concentration significantly increased. Based on the development of the shareholder rights, it could have been expected that large German shareholders would sell part of their holdings. However, the decrease was not significant. Notwithstanding the significant

changes in three countries, it must be mentioned that the statistically significant changes did not alter their shareholders rights position. The decrease in Belgium and France and the increase in Spain did not result in a new “legal” threshold of shareholder rights.

Table 3: Development of the Position of the Largest Shareholder and the Summed Blocks of the Large Shareholders

	1999	2007	Paired T		1999	2007	Paired T
Largest all	35,7%	34,7%	-1,408	Σ All identified	48,2%	48,7%	-0,617
Largest B	38,8%	35,0%	-1,944***	Σ All identified in B	51,6%	48,6%	-1,401
Largest FR	46,4%	42,3%	-2,066**	Σ All identified in FR	57,2%	50,2%	-3,260*
Largest G	43,2%	41,3%	-0,934	Σ All identified in G	57,2%	52,4%	-2,457**
Largest IT	46,1%	44,8%	-0,878	Σ All identified in IT	55,8%	56,6%	0,611
Largest SP	32,4%	36,2%	2,367**	Σ All identified in SP	47,4%	55,4%	4,539*
Largest UK	17,9%	18,7%	1,128	Σ All identified in UK	33,2%	39,2%	4,937*

*: 1% sign.; **: 5% sign.; ***: 10% sign.

Source: own research

The changes at the level of the largest shareholder cannot be found in a similar way at the level of the summed block of all large shareholders. The summed blocks of all shareholders changed significantly in France, Germany, the UK and Spain. Whereas the largest shareholder significantly decreased its position in Belgium, the summed blocks of all large shareholders of Belgian companies decreased, though not significant. Conversely, the largest shareholder of German companies did not significantly decrease its shareholdings whereas the summed block of all large shareholders of German companies did significantly decrease. In France, both the largest shareholder as well as the summed blocks of all large shareholders diminished significantly. Finally, while none of the shareholder rights indices significantly changed in the UK (or in Spain), the summed block of all large shareholders increased significantly. In Italy, no significant difference in the position of large shareholders could be found, whilst there was a - non significant - increase in shareholder rights.

Overall, large shareholders may consider shareholder rights in their investment policies, but many other and more influential considerations are taken into account

3. Development of Large and Controlling Shareholder Blocks of Different Shareholder Classes

In this section, we study the development of large shareholder interests of families, companies, and foreign shareholders. Two types of voting blocks are studied. First, the position of the specified shareholder class as *largest* shareholder is investigated. Next, the position of the different shareholder classes as *controlling* shareholder – holding a block of more than 33,3 per cent of the voting rights in France and 30 per cent of the voting blocks in other countries – is analysed.

Families are and remain one of the most important classes of shareholders in most countries. Their relative position did not change in most countries (table 4). As largest shareholder, this shareholder class holds on average an absolute controlling voting block in French companies and controlling voting blocks in all other countries with the exception of the UK.

Most families did not change their investment policies between 1999 and 2007.

Only in Belgium and Germany an opposite significant development was found. Belgian families significantly increased their position as largest shareholders to a level which can be considered as a controlling block. It was already suggested that the disentanglement of a number of pyramidal structures in Belgium resulted in the more prominent role of families. The position of the largest shareholder in German companies significantly declined. This is in line with the law and finance theory. Only in Germany, the general shareholder protection index increased significantly.

Non-financial companies have not changed their behavior as shareholders due to the changes in the protection of shareholder rights. In all continental European countries in the research, non-financial companies hold controlling shareholder blocks of 35 per cent to more than 50 per cent in Germany. In the majority of the cases, non-financial companies increased their large shareholdings. This suggests that this type of shareholders is hardly influenced by the new shareholder rights and that other variables have a bigger impact than the regulatory framework.

The results also illustrate that the inverse relationship between shareholder rights and ownership concentration cannot be generalised. Whilst German families significantly decreased their voting position as largest shareholder (due to better protection rights?), German non-financial companies stabilised their largest shareholder position at the absolute majority level.

The development of the position of large foreign shareholders in listed entities is not straightforward. In Belgium, France and Italy, foreign shareholders reduced their average voting block as largest shareholder but remained above the mandatory takeover threshold. In Germany and Spain, the opposite development was found. In three countries, France, Germany and Italy, the position of the foreign shareholders as a controlling shareholder was further strengthened. In France and Germany, the average controlling block exceeds the

supermajority threshold to change the articles of association. In other countries like Spain and Belgium, the controlling

foreign shareholder reduced its position. These findings cannot be explained by referring to the law and finance theory.

Table 4: Evolution of the Position of Foreign Shareholders as Large Shareholders

Families as:						
Largest shareholder				Controlling shareholder		
	1999	2007	t-value	1999	2007	t-value
Belgium	17,00%	36,50%	3,118*		50,80%	
France	55,80%	55,60%	0,049	62,30%	60,90%	-0,375
Germany	47,40%	38,10%	-2,987*	55,30%	52,10%	-1,081
Italy	47,50%	49,10%	0,498	52,90%	55,70%	1,172
Spain	36,10%	31,90%	-0,745	53,70%	56,70%	0,455
UK	23,70%	26,10%	0,947	49,80%	46,40%	-0,727
Non-financial companies as:						
Largest shareholder				Controlling shareholder		
	1999	2007	t-value	1999	2007	t-value
Belgium	41,50%	35,70%	-1,281	49,50%	51,40%	0,409
France	47,80%	42,60%	-0,685	56,80%	66,70%	1,573
Germany	50,30%	50,70%	0,094	62,20%	65,10%	0,676
Italy	45,80%	47,00%	0,239	58,00%	56,40%	-0,478
Spain	30,60%	37,30%	0,961	49,50%	61,10%	1,407
UK	25,40%	27,40%	0,482	44,50%	51,30%	1,356
Foreign shareholders as						
Largest shareholder				Controlling shareholder		
	1999	2007	t-value	1999	2007	t-value
Belgium	45,40%	40,80%	-0,925	52,70%	48,00%	-1,141
France	47,70%	34,60%	-1,08	63,70%	80,80%	+3,350**
Germany	40,10%	49,40%	1,066	59,70%	75,70%	+2,324**
Italy	48,80%	38,30%	-1,014	53,00%	67,60%	+2,394**
Spain	20,00%	30,90%	1,418	51,80%	51,40%	-0,057
UK	16,80%	18,70%	0,73	46,80%	49,10%	0,412

*: 1% significance; **: 5% significance

Source: own research

4. Development of Smaller and Non-Controlling Shareholder Blocks of Different Shareholder Classes

The different types of shareholders are also present in many companies with a significant but non controlling voting block. To further study the relationship between shareholder rights developments and shareholder investment behavior, for the different classes of shareholders, we assessed the development of these significant shareholder stakes in controlled companies and non-controlled companies.

In general, the average stake of large shareholders in companies having another controlling shareholder with more than 30 per cent of the voting rights is smaller than the average voting block of shareholders in companies without a controlling shareholder. It suggests that in the latter type of companies, shareholders have built a position that can help them influencing the business processes. However, this assumption cannot be tested via the available data. In fact, it should also be taken into account that the free float of non-controlled companies is higher than of controlled companies. Hence,

minority blockholders can more easily acquire a larger stake in a non-controlled company.³²

Overall, the results show that minority blockholders did not significantly change their shareholdings over the period of 1999 and 2007 (table 5). Most individuals and families hold a position of less than ten per cent in controlled companies, somewhat less than in 1999 and between 10 per cent and 15 per cent in non-controlled companies. Individuals and families seem to behave similar in the different countries. Only in France, the participation of families in controlled companies decreased, though not statistically significant.

Non-financial shareholders do not show identical investment behavior in the different countries. First, there are significant differences between the different countries. While in Spain the average voting block of a non-financial company in a controlled entity is less than ten per cent, French non-financial companies hold on average the double amount of

³² For an analysis of the relationship between liquidity and control, see Becht, M. 1999. Trading off liquidity against control. *European Economic Review* 1049-1056.

voting shares, i.e. 18 per cent. Next, Belgium experienced a significant decrease in the average voting block of non-financial companies in controlled companies, whilst in the UK this type of shareholder increased its shareholder position. In non-controlled companies, non-financial companies behave

similar in different countries: they acquired a voting block of 10 to 15 per cent. This policy did not change over the years. The influence of shareholder rights on shareholder investment behavior cannot be found in the data.

Table 5: Evolution of the Position of Shareholder Classes as Minority Shareholders

Position of families as small blockholders:						
in controlled companies				in non-controlled companies		
	1999	2007	t-value	1999	2007	t-value
Belgium	8,7%	7,3%	-1,127	12,1%	9,5%	-1,539
France	14,2%	5,1%	-1,293	15,2%	15,8%	-0,245
Germany	9,8%	9,9%	0,036	13,3%	12,5%	-0,797
Italy	7,5%	9,7%	-	15,0%	12,1%	-1,142
Spain	10,8%	9,8%	-0,2	11,6%	11,6%	-0,035
UK	11,4%	9,1%	-0,571	11,8%	12,1%	0,462
Position of non-financial companies as small blockholders:						
in controlled companies				in non-controlled companies		
	1999	2007	t-value	1999	2007	t-value
Belgium	15,2%	10,3%	-1,841 ***	13,6%	13,3%	-0,213
France	18,1%	18,0%	-0,011	13,7%	13,6%	-0,022
Germany	14,5%	14,0%	-0,198	14,1%	13,5%	-0,323
Italy	11,8%	12,4%	0,161	15,0%	12,0%	-1,142
Spain	8,4%	8,7%	0,147	10,7%	10,3%	-0,306
UK	8,0%	15,4%	1,826	13,7%	14,9%	0,645
Position of banks as small blockholders:						
in controlled companies				in non-controlled companies		
	1999	2007	t-value	1999	2007	t-value
Belgium				8,4%	10,1%	0,813
France				7,7%	6,6%	-0,842
Germany	11,4%	11,5%	0,014	12,7%	13,8%	0,481
Italy	8,3%	10,9%	0,63	9,6%	9,3%	-0,222
Spain	5,0%	5,9%	0,774	8,6%	8,3%	-0,242
UK				10,9%	8,6%	-0,547
Position of insurance companies as small blockholders:						
in non-controlled companies						
	1999	2007	t-value			
Belgium	8,0%	10,3%	-0,726			
France	8,1%	11,3%	-0,81			
Germany	13,0%	12,4%	0,231			
Italy	8,7%	8,5%	0,057			
Spain	7,9%	7,4%	0,171			
UK	8,4%	8,4%	-0,009			
Position of foreign shareholders as small blockholders:						
in controlled companies				in non-controlled companies		
	1999	2007	t-value	1999	2007	t-value
Belgium	9,6%	11,1%	0,327	12,9%	11,8%	-0,426
France	9,5%	7,9%	-0,817	11,6%	11,3%	-0,124
Germany	10,3%	12,1%	0,676	11,7%	10,3%	-1,065
Italy	8,3%	8,4%	0,089	9,1%	12,5%	-1,421
Spain	11,1%	6,9%	-1,376	8,8%	8,3%	-0,683
UK	11,1%	8,9%	-0,876	9,5%	11,3%	2,165**

:.5% significance; *: 10% significance

Source: own research

The results for the financial institutions as large shareholders are similar to those for families. Shareholder rights do not seem to have any impact on their position as shareholder. While some shareholder right indices significantly changed, none of the minority voting blocks of the financial industry altered. In the non-controlled companies a number of German banks and insurance companies still hold relatively large voting blocks of more than ten per cent, whilst financial companies have on average blocks of less than ten per cent in the other countries.

Finally, a similar analysis was performed for minority blocks of foreign shareholders. Especially the development of the minority blocks of foreign shareholders are of interest, as they can show independently how foreign investors experience the protection of their shareholdings abroad.

With the exception of Germany, foreign shareholders hold larger positions in non-controlled companies than in controlled companies. Next, in the UK this position grew significantly stronger over the years, while the average foreign minority block diminished in controlled companies in the UK. All in all, clear indications of similar developments are not visible. It created serious doubts whether the argument of better shareholder protection is necessary for markets to develop a widely dispersed ownership structure.

Conclusions

The development of shareholder rights grew steadily in many countries over the last fifteen years. In particular, the protection of shareholders against shirking of the board members and the officers increased significantly in Belgium, France and Germany. The protection of minority shareholders against the expropriation of major shareholders hardly increased or even remained unchanged. In light of this and in accordance with the Law and Finance theory, it can be expected that after a time lag ownership concentration would decrease in continental Europe. However, the evidence is mixed and the number of significant changes in the ownership structure of a large sample of listed entities in six countries, supporting this Law and Finance theory, is limited. The position of the largest shareholder of Belgian and French companies weakened but remained unchanged in Germany. The summed blocks of all large shareholders decreased significantly in Germany and France but increased significantly in the UK, whereas the shareholder protection rights in the latter country increased (though not significantly). There is a similar finding for the average voting block of all blockholders in the UK. Even a detailed analysis of the evolution of shareholder blocks of different types of shareholders revealed only limited support for the law and finance arguments. There are even a number of arguments against the theory. Foreign shareholders that control companies increased significantly their position.

That is not to say, shareholder rights have no added value and should be abolished. The analysis makes use of data of well-developed countries which already developed basic corporate frameworks decades or even centuries ago. The mixed evidence suggests that other variables might be much more influential than the development of shareholder rights. These variables might be of macro-economic nature, like the investment environment of the country and the foreign direct investment schemes, or be company specific like the interest of specific activist shareholders.

Many recent cases illustrate that activist shareholders take it further than plain company monitoring at general meetings. They engage in private negotiations with boards in order to influence the company's strategy. So doing, these investors seem to circumvent the existing legal devices regulating shareholder voice, which gives rise to substantial concerns in the corporate governance arena. A disturbing observation is that where shareholder involvement in corporate decision-making is subject to equity thresholds defined by law, informal enforcement enables any shareholder who sees '*a significant probability of intervention being successful and resulting in substantial gains*' to intervene in corporate affairs, regardless of the performances of corporate management being good or bad.³³ This development is exemplified by Millo and Wearing (2008), indicating that even investors with 'relatively small stakes' in companies have been able to successfully pressure corporate boards in the pursuit of strategic changes.³⁴ In particular, reference is made by the authors to the Cadbury/Trian case, where Trian (a US hedge fund), owning a mere three per cent stake in Cadbury, accomplished to influence the company's policy by forcing it to split its operations.

Moreover, the informal character of shareholder activism provides that activist shareholders can operate outside the limits of shareholder power defined by regulation. It gives rise to a change in the existing roles and responsibilities of a company's organs towards the stewardship and resource dependence theory, which might not be entirely in line with present corporate governance systems, a question not yet fully addressed in literature. ■

33 Becht, M., Franks, J.R., Mayer, C., Rossi, S. 2006. *Returns to shareholder activism: evidence from a clinical study of the Hermes UK Focus Fund*. ECGI Finance Working Paper no. 138/2006.

34 Millo, Y., Wearing, R., 2008. *Activist Investors: Some Implications for Corporate Governance*, working paper, available at SSRN: <http://ssrn.com/abstract=1134729>.