

Institutional Contradictions of the French state as Shareholder

Carine Girard and Stephen Gates

Abstract

Purpose – This paper aims to demonstrate that state shareholders are confronted with contradictory logics leading to institutional contradictions that activist shareholders can exploit. The competing logics of the state as shareholder and their impact on corporate governance and shareholder activism offer fertile grounds for research advances in Coordinated Market Economies (CMEs).

Design/methodology/approach – Through an extensive literature review of state ownership, institutional contradictions and shareholder activism, this paper analyzes two case studies involving the French State as shareholder.

Findings – In the French context, these two cases illustrate how institutional contradictions result in opportunities for shareholder activism. By focusing on the institutional contradictions of the state shareholder, this investigation suggests a need for experimental research to observe how shareholder activists adapt to each institutional change in CMEs. This experimentation can help policymakers to avoid creating additional conditions that shareholder activists can exploit.

Research limitations/implications – This focuses only on France and its state shareholdings. To generalize results, studies of other CMEs and state shareholders are needed.

Practical implications – Policymakers should consider all legislative proposals for their potential to deviate from corporate governance practice by experimenting with them in a laboratory setting. Shareholder activists can compare state shareholders' actions against the state's legislation to emphasize institutional contradictions that counter minority shareholders' rights.

Originality/value – This research is the first to analyze how the state as shareholder can exploit its competing logics to resist against shareholder activism and support management or to become itself a shareholder activist.

Keywords Institutional contradictions, Shareholder activism, State ownership, France

Paper type Research paper

Carine Girard is Professor in the Department of Finance, Audencia Business School, Nantes, France.

Stephen Gates is Emeritus Professor of Strategy, Audencia Business School, Nantes, France.

Introduction

Shareholder activism is increasing, intensifying and internationalizing. Lazard's annual study reveals that in 2018, shareholder activists initiated 247 actions against 226 companies, up from 188 companies in 2017 ([Lazard's shareholder advisory group, 2019](#)). Moreover, the greater their investment capacity grows in terms of billions of assets under management for hedge funds, the more that shareholder activists' activity intensifies in the USA ([Becht et al., 2010](#); [Bebchuk et al., 2015](#)) and in Europe ([Bessler et al., 2015](#)). Lazard's 2019 study also shows that shareholder activism is expanding in Europe where 58 activist campaigns were launched in 2018 compared to 52 in 2017.

Shareholder activism practices, originating in Liberal Market Economies (LMEs) such as the United Kingdom and the USA, with a common law tradition, are entering into Coordinated Market Economies (CMEs) such as France, Japan, China and Russia. CMEs typically have codified civil law and significant state regulation of financial markets, and consequently, the prospects for shareholder activism depend heavily on their legal and institutional environments ([Hall and Soskice, 2001](#)).

Received 5 August 2019
Revised 29 November 2019
11 February 2020
Accepted 13 February 2020

© Carine Girard and Stephen Gates. Published by Emerald Publishing Limited. This article is published under the Creative Commons Attribution (CC BY 4.0) licence. Anyone may reproduce, distribute, translate and create derivative works of this article (for both commercial and non-commercial purposes), subject to full attribution to the original publication and authors. The full terms of this licence may be seen at <http://creativecommons.org/licenses/by/4.0/legalcode>

In the larger context of corporate governance practices, there are fundamental differences between LMEs and CMEs. The greater levels of shareholder activism in common law LMEs is at least partly attributable to the greater legal protection offered to minority shareholders (La Porta, *et al.*, 1998). In contrast, in France, as in other CMEs, minority shareholder activism is constrained by the powers of state authorities, which are reinforced by private networks that strongly influence economic regulation. For example, during successive waves of privatization prior to 2000 in France, informal social networks of like-minded executives created formal ownership cross-shareholdings reinforced by their boards of directors in a number of large French firms (Harbula, 2007). When these cross-shareholdings eventually weakened, the French business elite used a number of other legal devices to retain control, such as pyramidal corporate structures, non-traded voting shares, double-voting rights and agreements among large shareholders (Lee and Yoo, 2008). Shares with limited voting rights can be used to restrict the power of minority shareholders. Indeed, 19 out of the 40 largest French firms in the CAC 40 index have classes of shares with unequal voting rights. In the UK, by contrast, only 5 per cent of companies in the FTSE index have shares with unequal voting rights and none have pyramidal corporate structures (Girard and Gates, 2014). In CMEs such as France, while shareholder activism has traditionally been within the purview of minority institutional investors, albeit pursued with greater impact and success by hedge fund activists (Brav *et al.*, 2015), state shareholders are now joining in this activity.

Yet, state shareholders as shareholder activists are confronted with institutional contradictions. Although they share the financial goals of any investor, they also pursue the broader political goals of the state. This paper analyzes the institutional contradictory logics of the state shareholder. It focuses on the institutional context of France, a CME that illustrates the state shareholder's contradictions in two case studies, Safran–Zodiac and Renault–Nissan. These two case studies were chosen from the reports of the *Cour des Comptes* (2017), *Institut Montaigne* (2017) and that of l'Assemblée Nationale (2018), all of which denounce the competing institutional logics of the French State shareholder.

This research investigation seeks to elucidate how the state shareholders' institutional contradictions influence the shareholder activism field. Its first contribution is to bring new elements to appreciate the role of the state in the process of shareholder activism by revealing how the state can exploit its competing institutional logics to become a shareholder activist itself. Its second contribution is to respond to calls for more contextually embedded examinations of shareholder activism. Our case studies reveal that the co-existence of financial and political logics forces companies subject to shareholder activism to respond differently. In the first case, it led to a compromise resolution. However, in the second case, the company's resistance to Say-on-Pay resulted in the French State issuing a new corporate governance law after its own shareholder activism was judged to be illegitimate by the *Cour des Comptes*. These findings enrich the institutional theoretical approach to research on shareholder activism. On the one hand, they confirm the importance of national institutional logics to explain the diversity in corporate governance practices (Aguilera *et al.*, 2018). On the other hand, they demonstrate that only one logic can dominate (Johed and Catusus, 2015) to avoid creating an institutional contradiction that encourages the financial logic of shareholder activism. Finally, it could also help policymakers elaborate new regulations in such a way as to ensure that their own contradictions do not encourage additional hedge fund activism which is expanding rapidly.

The paper is structured as follows. The first part sets out definitions for the concept of institutional contradiction logics from the institutional theory approach to shareholder activism. The second part presents the French institutional context including its experience with shareholder activism. The third part provides an analysis of how the institutional logics of the state shareholder produces those contradictions that reinforce shareholder activism

through the two case studies of Safran–Zodiac and Renault–Nissan. The final part concludes with a discussion of results.

Institutional theory approach to shareholder activism

Gantchev (2013) defines shareholder activism as an escalating process leading to more public and confrontational actions. These activities might begin with negotiating privately to withdraw managerial resolutions; pursuing the conflict through the media; filing shareholder proposals; proxy battles during the shareholders' General Assembly; taking legal action including class action suits; and, finally, exiting or contesting shareholders. After three decades of activity, the process of shareholder activism has undergone several transformations because of dynamic changes in companies' ownership structure (Denes *et al.*, 2017) as well as the greater support of institutional investors to hedge fund activism (Carrothers, 2017). These developments were conducive to the emergence of the more professional hedge fund activism (Gillan and Starks, 2007). Today, these activists know how to combine several monitoring activities by adapting them to new governance concerns, for example, executive compensation linked to performance, to be more efficient (Krishnan *et al.*, 2016) and with greater social impact (Brav *et al.*, 2015).

However, it is difficult to generalize these results to all institutional contexts because shareholder activism depends strongly on the institutional and social context in which the actors are embedded. According to Aguilera *et al.* (2018), there exist various corporate governance systems depending on national institutional logics. All countries operate with a multiplicity of logics. This multiplicity is true in countries where the state still has control as in CMEs. State control is so complex that it results in a jungle of contradictory requirements (Scott, 1983) that forces countries such as Sweden, Germany and Spain to adopt hybrid governance logics that are both financially and socially oriented (Aguilera *et al.*, 2018). To take into account this multiplicity of logics specific to CMEs, our analytical framework is based on institutional theory.

According to the institutional theory approach, the activist shareholder never acts alone because it is embedded in social networks that provide a coercive influence, and are also mimetic and normative (Sjöström, 2010). Foreign institutional shareholder activism can be successful because it is facilitated by the central position of certain actors (for example, proxy advisory firms and shareholder associations) in local networks (Gifford, 2010). Moreover, these networks furnish “relational channels through which institutional norms can be diffused; this tends to create more implicit coordination and collectivization in a given environment [and] more consensus on diffused norms” (Oliver, 1991, p. 171).

However, shareholder activists may encounter non-apparent costs (Bates and Hennessy, 2010), i.e. unanticipated reactions from target firms which may acquiesce, compromise, avoid, defy or manipulate (Oliver, 1991). These costs reduce the marginal gains from shareholder activism. These unexpected responses depend heavily on the institutional context given that the shareholder activists find themselves not only embedded in a social context, but also in an institutional context. In their comparative empirical study, Judge *et al.* (2010) demonstrate that the orientation of shareholder activism – whether financial or social – depends on the type of legal system (common law in LMEs or civil law in CMEs). In France as in other CMEs, there is a hybrid model of shareholder activism, incorporating both financial and political logics. As suggested by Girard and Gates (2014), this hybrid model introduces greater unpredictability in the nature and outcomes of shareholder activism.

According to institutional theory, actors can finely perceive contradictory institutional logics, and can exploit them to undertake changes or resist (Oliver, 1991; Seo and Creed, 2002). Seo and Creed (2002) define these contradictions as inconsistencies among concurrent institutional logics. These contradictions may reduce the possibility of certain actors to influence the field. Inversely, they may exploit them to resist. In one of the few analyses of

institutional contradictions, [Johed and Catusus \(2015\)](#) studied a Swedish Shareholders' Association (SSA) experience at and around annual general meetings (AGMs). They note that proxy battles can accentuate the tensions between the historic logic of capital preservation followed by the SSA and a new financial investor logic. This tension revealed an inappropriate targeting of the SSA toward financial-oriented companies and not capital preservation-oriented companies. Their study suggests that these institutional contradictions influence the actors in the field of shareholder activism. Our study shares their objective to take into consideration the multiplicity of institutional logics to determine how companies respond when they are subject to shareholder activism. Therefore, we chose to use [Oliver's \(1991\)](#) framework which shows how companies may respond in five different ways depending on institutional factors.

An open-system approach to consider corporate governance and shareholder activism effectiveness in various institutional environments could be more fruitful than the typical closed-system approach linking corporate governance practices to performance ([Aguilera et al., 2008](#)). In particular, the role of state ownership of companies and its impact on company strategy and shareholder activism offer fertile ground for research advances ([Tihanyi et al., 2019](#)). For example, [Kallifatides and Nachemson-Ekwall \(2016\)](#) documented a strong policy impetus to move away from liberal market assumptions of efficient financial markets toward viewing markets as institutionally embedded. Moreover, state capacity – the administrative ability to formulate and implement policy – can be an important factor in determining the ability of the state shareholder to resist various threats to its companies ([Guillen and Capron, 2016](#)). As a CME with a strong state capacity and numerous state shareholder companies, France provides an excellent institutional context to study the challenges of shareholder activism in a CME as well as the opportunities for state shareholder companies.

French institutional context of shareholder activism

Shareholder activism in France evolved through several phases starting in the 1990s. In the first phase, associations of minority shareholders launched legal proceedings. Their mission was to reinforce legal protections for minority investors by denouncing judicial loopholes ([Girard, 2011](#)). In the 2000s, legal actions were concomitant with proxy battles ([Girard and Gates, 2014](#)). Numerous enhancements to improve minority shareholder rights entered into law and regulations as shown in [Table I](#).

Record date. In the second phase, on September 15, 2005, a working group chaired by Yves Mansion, a board member of the French securities regulator Autorité des Marchés Financiers (AMF), issued a report, entitled *Improving the Exercise of Shareholder Voting Rights at General Meetings in France*. In accordance with the report's recommendations, French lawmakers adopted the "record date" which allows shareholders wishing to vote at AGM to record their voting rights three business days before the AGM. Before the 2005

Table I French legal and regulatory enforcement in favor of minority shareholders

<i>Law or Decree</i>	<i>Minority shareholder rights</i>
Law no. 89-421	Recognition of investor associations' rights
Law no. 89-531	Emergence of the squeeze-out which recognizes exit right
Law no. 2001-420	Reduction of the threshold to 5% of voting rights to put forward a resolution on the proxy statement
Law no. 2003-706	Financial Security Law: requirement of investment management companies to report on the voting policy
Decree no. 2006-1566	Adoption of the "record date" which ended the blocking of shares before the AGM

Mansion Report, shareholders had to block their holdings five days prior to the AGM which was both a disincentive and expensive in terms of liquidity. Consequently, by lowering the cost of shareholder activism, institutional investors' approval rate for shareholder resolutions in SBF 250 companies started rising.

Nevertheless, this shareholder activism was driven primarily by the hedge funds ([Ben Arfa et al., 2017](#)), because of changes in the ownership structure of French companies ([Goyer and Jung, 2011](#)). Their efforts met with only mitigated success ([Bessière et al., 2010](#)), in large part because the French State came to the rescue of French companies subject to hedge fund activism ([Girard and Del Vecchio, 2013](#)). Confronted with this rise in shareholder activism, the French State decided to counter-attack by instructing the Ministry of the Economy to identify and depict the activist funds' strategies[1].

Florange Act. In the third phase, the Florange Act, adopted on March 29, 2014, reversed French corporate governance practices in favor of minority investors, particularly the “one-share one-vote” principle. It automatically grants double-voting rights to any shares held in a registered form by the same shareholder for at least two years. The article L.225-123 of the Code de commerce was modified as follows: “In companies whose shares are registered on a regulated stock exchange, the double-voting rights stated in the first paragraph have legal status, with the exception of a contradictory clause in statutes – the aim of this law being to regain control over the real economy – for all shares registered in the same name over the past two years.” [Tchotourian \(2015\)](#) observed that in this way, France inverted corporate governance logic because the only means to counter the application of this law is to put forward “one share one vote” proposal at the AGM. The associate director of Proxinvest, the French proxy adviser, says that this “double voting right provision is a protectionist tool used by dominant shareholders to keep control of the company while reducing the rights of minority shareholders”[2]. Moreover, [Crisóstomo and Brandão \(2019\)](#) noted that high ownership concentration allows controlling blockholders to shape the corporate governance system to favor their own interests. Indeed, the adoption of double voting rights by state-controlled French companies allows the cash-strapped government to raise money by selling shares while maintaining similar levels of influence.

The Florange Act encouraged the French State to enter into a shareholder logic in contrast to a state logic ([Institut Montaigne, 2017](#)). The [Cour des Comptes \(2017\)](#) denounced the contradictory logics in a public report entitled “l'Etat actionnaire” (The state shareholder).

Say-on-Pay. In the fourth phase, in reaction to shareholder activists' campaign to vote “Say-on-Pay,” the adoption of binding votes on directors' remuneration had been foreshadowed for a number of years in France. In 2013, the Association Française des Entreprises Privées–Mouvement des Entreprises en France (AFEP–MEDEF, a coalition of corporate federations) introduced “Say-on-Pay” into its French Corporate Governance Code. On August 6, 2015, legislation was passed in Act 2015-990 impacting French governance principles, particularly the rules on executive retirement pensions. In 2016, the Transparency law no. 2016-1691 related to “transparence, la lutte contre la corruption et la modernisation de la vie économique” (e.g. the Fight Against Corruption and Economic Modernisation, known as the Sapin 2 law) included a provision giving shareholders a binding vote on executive remuneration, thereby incorporating “Say-on-Pay” into law. Summarized in [Table II](#), the French State has a history of both promoting and obstructing shareholder activism.

State Participation Agency (Agence des Participations de l'Etat)

France is characterized by the strong presence of the state in a number of companies through its State Participation Agency (*Agence des Participations de l'Etat*, APE). Created in 2004, this agency is controlled by the Ministry of the Economy and Finance. On its website, the APE proclaims that it is the incarnation of “the state shareholder, investing in

Table II French shareholder activism and legal developments

<i>Period</i>	<i>Pre-record date</i>	<i>Post-record date</i>
Legal Developments	Record date (2006)	Florange Act (2014) Say-on-Pay (2013-2016)
Shareholder activism	Shareholder activism is developing	Return to French protectionism New shareholder proposal
Dissident coalition	Local proxy advisor Shareholder Association	Local proxy advisor State as activist
Activism success	Hedge fund Partial	Hedge fund Partial

equity of enterprises that it considers of strategic importance to the state, to stabilize their capital base or to accompany them in their development or transformation[3]”.

As of 30 December 2016, the French State via its APE controlled enterprises valued at €90bn as shown in [Table III](#).

Through the APE, the French State participates in nominating 765 board members of companies that generate €147bn in revenue ([Albouy, 2016](#)).

Institutional logics of Agence des Participations de l'Etat

In its report, the [Cour des Comptes \(2017, p. 57\)](#) identifies several contradictions of the state shareholder via the APE. These contradictions arise from various sources, namely, from the overlap of public law and corporate law (p. 67), summarized in [Table IV](#).

Public law imposes external governance mechanisms upon the company; corporate law requires internal governance mechanisms. The state is thus present within the board of directors where it is party to specific information that it relays to government ministries, which in turn take decisions concerning the company. There is an obvious risk of insider trading. In this way, the two logics generate a conflict for the state shareholder because as a shareholder, it is more likely to be passive during the AGM, but in principle, it is actively engaged in its role as the state. It is also influenced by its political agenda, while as a shareholder, it is heavily influenced by a company's financial results. Moreover, the dividends that the state receives enter into the state budget, which generates yet another contradiction between the two logics. Finally, the report notes that there is no legislative control over the dilution of its shareholdings during capital increases. Because of budgetary

Table III APE ownership in 2016

<i>Corporations</i>	<i>% of Capital</i>
EDF	85.63
ADP	50.63
Engie	32.76
Areva	28.83
Thalès	25.97
Eramet	25.66
Renault	19.74
Air France KLM	17.58
Safran	14.00
PSA	13.68
Orange	13.45
Airbus	10.94
Dexia	5.73
CNP	1.11

Source: [Albouy \(2016\)](#)

Table IV The institutional logics of the State as shareholder

<i>Logics</i>	<i>State</i>	<i>Shareholder</i>
Right	Public right	Private right
Objective	Citizen protection	Financial gain
Interest	Strategic	Financial
Investment scope	National	International
Investment strategy	Influenced by the electoral cycle	Influenced by financial results
Investment horizon	Long-term	Short-term

restrictions, the state is unable to participate in capital increases. Consequently, the state shareholder finds itself conflicted when it comes to protecting the nation's strategic interests against foreign takeovers. The contradictory institutional logics of the French State shareholder present opportunities to both foreign shareholder activists and to the state shareholder itself. In the two case studies about Safran Zodiac and Renault Nissan, the French State intervened as a shareholder to protect strategic interests against foreign shareholder activists. These actions were debated before l'Assemblée Nationale, and resulted in a public report (Assemblée Nationale, 2018, p. 18).

Case studies

French State contradictions in Safran's acquisition of Zodiac Aerospace

Safran's acquisition of Zodiac illustrates the French State's contradictions between its actions to preserve the state's strategic interests and its shareholder's financial interests along with its legislation to protect minority shareholders. Operating successfully in the aeronautical sector, Safran reported €16.5bn in revenue and 66,490 employees in 2016. Delivering €5.1bn in revenue, Zodiac produced aircraft seats and toilets with 33,000 employees. Since 2014, Zodiac experienced production delays, and its share price had dropped by 30 per cent.

On January 19, 2017, Safran and Zodiac announced a friendly merger^[4]. Its most important shareholder, the French State, owned 14 per cent of Safran. Offering €29.47, a control premium of 26 per cent over the previous day's price of Zodiac's share, Safran also accompanied this high valuation with a dividend of €5.50 per share to Safran's shareholders. Planned at the highest level of the French government^[5], this unusual operation was structured so that Zodiac's two controlling family shareholders (who owned 23.8 per cent of capital and 36.6 per cent of voting rights) could avoid paying wealth tax on the transaction. Safran's shareholders would not be allowed to vote on the takeover, but only to vote to accept its implementation: shareholder democracy was denied to approve or reject the takeover transaction and terms.

TCI, an activist shareholder with 4 per cent of Safran's capital, brought the French State's contradictions to light on February 14, 2017. In a letter to the President of the AMF (Financial Markets Authority), Sir Christopher Hohn, Director of TCI, wrote to require a consultation of all the shareholders *before* the takeover of Zodiac, and not *after*. TCI also argued that Zodiac shareholders would not be treated equally because those sitting on Zodiac's board of directors had been fully informed of the terms of the takeover, while minority investors were not informed.

On February 27, 2017, TCI addressed another letter to the AMF in which it accused the French State of organizing a shareholders' agreement to act in concert between the French State, the two family controlling shareholders of Zodiac, and other French institutional investors. Finally, TCI accused Zodiac's President, representing one of the two controlling family shareholders, of insider trading, thus violating stock market rules. By purchasing

Zodiac shares during the negotiating period, this controlling family shareholder then benefitted from a 50 per cent increase in share price as part of the takeover offer.

TCI provided extensive financial analyses to buttress its claim that Safran would be paying too much for Zodiac; and that Safran would be worth more if it abandoned its takeover proposal. On March 17, 2017, TCI sent a letter to Safran's board of directors demonstrating that the proposed share exchange price was based on an erroneous valuation of Zodiac. It accused the board of failing its responsibility of supervision by being complacent and protected by the double voting rights of the French State shareholder.

On March 30, 2017, TCI sent another letter to the President of the AMF warning that if the AMF were to approve Safran's proposed takeover of Zodiac, it would undermine its own principles and recommendations of good corporate governance, which would tarnish AMF's reputation as well as that of the French financial market as a whole. On April 3, 2017, TCI sent a letter to Safran's board of directors asking for a committee of independent directors as well as a new evaluation of the offer terms that it considered wrong.

In response to TCI's activist campaign, on May 24, 2017, Safran and Zodiac announced new merger terms. Safran lowered its offer by 15 per cent to €25 per share, and its management dropped the two-phase operation and required a vote on the takeover. Although TCI maintained its opposition, the takeover was approved at Safran's AGM on June 15, 2017.

In this case, the French State demonstrated that its motives were in conflict. On the one hand, the government wanted to avoid massive employment loss by saving Zodiac from bankruptcy and consolidating it with Safran. On the other hand, it would like to promote France as an important financial center. However, by violating the AMF's own stock market regulations to protect minority shareholders and by promoting an over-valuation for Zodiac, it undermined the fragile trust that is required in a major capital center.

Nevertheless, in addition to the improved terms of the merger and minority shareholder access to voting on the takeover, TCI did receive satisfaction concerning its corporate governance improvements. Safran agreed to increase to 50 per cent the number of independent directors on its board. Moreover, no shareholder pact was to exist between the French State and Zodiac's two family controlling shareholders that would have created a controlling block in Safran.

French state shareholder activism in Renault Nissan

More recently, the Renault Nissan case illustrates the decisive role played by the state in the process of shareholder activism in France. What makes Renault Nissan so special is that its corporate governance is an alliance between two groups. Nissan owns 15 percent of the French group *without* voting rights, whereas Renault owns 43.3 percent of Nissan *with* voting rights. In 2015, the French State held shares equivalent to 15 percent of Renault. Since the implementation of the Florange Act in March 2014, all long-term shareholders holding registered shares for more than two years are entitled to double their voting rights. Consequently, whenever the state is a shareholder in the capital of a company, this new Act allows it to increase significantly its control.

On April 8, 2015, the French State announced the purchase through its state shareholding agency (APE) of 4.7 percent of Renault's shares, increasing its shareholding from 15 to 19.7 percent. Its objective was to obtain temporarily a more powerful voice at the annual general meeting to implement the Florange Act and block attempts to keep the "one-share one-vote" principle. However, on April 16th, Renault's board of directors repeated its opposition to the implementation of this Florange law^[6].

On November 11th, the French State and the board of Renault Nissan announced that they reached "an agreement to stabilize the alliance". On the one hand, this required Renault's

directors to renegotiate their agreement with the French State by introducing a limit on the state's voting rights (17.9 percent if the participation rate at the general assembly is below 70 percent; 20 percent if above). On the other hand, it imposed a new equilibrium with Nissan by modifying the rules of the Japanese company to limit the powers of directors appointed by Renault to Nissan's board of directors.

Nevertheless, the Renault Nissan governance has been intensely criticized since 2011 by the asset manager Phitrust and the local proxy advisor Proxinvest. In France, they were the first to lodge a "Say-on-Pay" shareholder resolution. On Phitrust's institutional website, it is stated that a resolution would be presented during the 2011 general assembly to request that the board of directors "communicate the amount of remuneration provided to Renault's CEO, Mr Carlos Ghosn, by Nissan Motor, during the year ended December 31, 2009" [7].

These two local shareholder activist actors are institutional entrepreneurs (Bates and Hennessy, 2010) in the sense that they are the originators of an institutional change: the adoption of "Say-on-Pay." They are also actively participating in its implementation. Olivier de Guerre, the founder of Phitrust, indicated on his blog that they proposed in 2013 to the French Association of Private Enterprises (AFEP) to recommend to all French companies to allow the vote "Say-on-Pay" on the grounds that it concerns the way remuneration is approved and not simply its communication by a board of directors who are perceived to be a circle of friends[8]. By 2013, this new governance was not yet written into French law, but it was issued as a recommendation in a report from the French Enterprise Movement (AFEP-MEDEF).

With the support of the French State in 2014, Proxinvest and Phitrust re-submitted this shareholder resolution. In its 17th report entitled "Directors' remuneration of SBF 120 companies" [9], Proxinvest noted that Carlos Ghosn's remuneration had increased by 56 percent at the same time that salary restraint was part of an agreement with employees to improve competitiveness. Nevertheless, his remuneration was approved by 58 percent of the votes in the general assembly. According to Proxy Insight, large foreign institutional investors did not support the dissident coalition.

Only two years later, after the French State's tentative activism in 2015, some of these foreign investors joined the dissident coalition. On April 29, 2016 during Renault's general assembly, 54.12 percent of shareholders voted against the proposed €7.2mn remuneration for Carlos Ghosn. This was despite the fact that the level of remuneration was almost the same since 2014[10].

Furthermore, on April 18, 2016, l'Assemblée Nationale announced that shareholders' vote on the directors' remuneration would be binding in the future. Albouy (2016) remarked that, "by giving to shareholders in the general assembly the power of a binding vote on directors' remuneration – and thereby taking away the board of directors' power to decide the matter – the French President is finally preparing the arrival of shareholders' power over the management of large, listed companies".

The Renault Nissan case is the "symbol of the state shareholder's difficulties"[11]. In its report published on January 25, 2017, the Cour des Comptes (the public finances auditor) severely criticized the result of the state shareholder's actions in Renault Nissan. First, the report faults the purchase via the APE of 4.7 per cent of Renault's equity in April 2015; an operation "undertaken without information from the management nor the board of directors nor the partner Nissan". It also reprimanded the state over the substance of its action: the 1999 agreement governing the relationship between Renault and Nissan provided for a "limitation of the French State's share", in exchange for Nissan's lack of voting rights in Renault. Finally, the text questions whether any benefit resulted from this crisis. Despite its blocking minority shareholding on issues of critical importance, the French government did not succeed in preparing Carlos Ghosn's succession nor in limiting his remuneration, which was well above the government's requirements. Judging Renault's governance "subject to

discussion”, the Cour des Comptes deplored “the loss of influence that Renault had in the Alliance” because Nissan purchased Mitusbishi in 2016 without associating the French partner in its equity investment.

Discussion and conclusion

The research objectives in this paper were to show the institutional contradictions of the French State shareholder and to determine how the government’s contradictions have encouraged shareholder activism in France. To accomplish these goals, we summarize our two case studies below in Table V using Oliver’s (1991) proposed typology of corporate responses to institutional forces. The French State as shareholder embodied contradictory logics, political and financial logics, that resulted in opportunities for divergent corporate responses as predicted in Oliver’s typology (Table V).

In the first case, Safran–Zodiac, along with the French State as shareholder, attempted to pursue a political logic to preserve an ailing company, Zodiac, by merging it with Safran, thereby saving jobs while hoping to create a national champion in the aeronautical sector. However, they were forced to *compromise* with TCI, an activist shareholder that mounted an aggressive defense of minority shareholder rights. In this highly uncertain context of tight connections between the state and the two companies, the state lacked legitimacy to violate minority investors’ rights. Safran–Zodiac and the French State were forced to *compromise* with TCI to maintain the attractiveness of France to foreign minority investors.

In the second case, the French State as shareholder pursued a financial logic by acquiring additional shares in Renault–Nissan (RN) with the objective of blocking a management proposal to reverse its legislation granting double voting rights to longer term shareholders. In the highly uncertain and fragile context of the RN merger, the French State as shareholder attempted to create a majority voting block to control the actions of its agent,

Table V Strategic responses to institutional contradictions

<i>Institutional Factors</i>	<i>Safran–Zodiac</i> Political logic		<i>Renault</i> Financial logic
Context	HIGH Environmental uncertainty and interconnectedness because of the social and institutional embeddedness of actors in the field of shareholder activism		
Multiplicity Constituents	MODERATE Activist professional foreign investor TCI and allied minority shareholders	HIGH State as shareholder	HIGH Coalition of institutional investors including state as shareholder
Cause	HIGH for TCI minority investors’ rights LOW for the state because of lack of legitimacy	HIGH for state as shareholder in its efficiency objective LOW for state because of lack of legitimacy	MODERATE Say-on-Pay
Content	HIGH TCI pressured the French state to conform to corporate governance protections for minority investors	HIGH Renault management mobilized board to oppose legislation	MODERATE Renault ignored AFEP–MEDEF recommendation
Control	MODERATE TCI broadcasts violations to all responsible parties and threatens legal actions	State as future controlling shareholder forced to reduce its financial participation	MODERATE Proxy battle on an emerging and non-binding resolution led by Phitrust and Proxinvest – two French professional activists
Corporate responses	Compromise		Avoid

the CEO Ghosn, despite its scant legitimacy with respect to the corporate governance rule “one share, one vote”. In response, RN’s management and board *avoided* successfully the French State’s proactive efforts to gain control by negotiating an alternative. Similarly, when the French State as shareholder along with other minority shareholders pursued a financial logic to limit his level of remuneration, initially, CEO Ghosn *avoided* their sanction by mobilizing other shareholders to vote for the management resolution. However, minority shareholder activists including the French State succeeded in obtaining a majority vote against Ghosn’s remuneration the next year. Subsequently, the French State sanctioned Ghosn’s avoidance tactic by legislating in favor of Say-on-Pay.

The contradictory logics of the French State as shareholder gave rise to shareholder activism which restricted its action in the first case. However, in the second case, the French State adopted the role of shareholder activist, and joined the efforts of other minority shareholder activists.

The first contribution of this investigation is to enrich the shareholder activism literature by taking into consideration the French institutional context. As [Goranova and Ryan \(2014\)](#) noted, both theoretical and empirical literature have paid little attention to the distinct contexts in which firms and activists operate. Nevertheless, by its being embedded in a particular institutional context, the field of shareholder activism develops according to current fad and fashion resolutions ([Graves et al., 2001](#)) related to various institutional pressures. This analysis reveals that the state shareholder is an actor in this field. As a primary or secondary stakeholder, it can become either a shareholder activist or give its support to a management that is confronted with shareholder activists.

The second contribution is to fill the gap in the shareholder activism literature by taking into consideration the role of the state as a shareholder ([Tihanyi et al., 2019](#)). This analysis shows how a state tries to resist against shareholder activism through innovative normative changes and, in parallel, it becomes a shareholder activist itself to initiate changes.

The third contribution is theoretical. This analysis is based on an institutional perspective, which reveals that the institutional contradictions of the actors in the shareholder activism field generate potentially unanticipated consequences ([David et al., 2007](#)). While [Johed and Catusus \(2015\)](#) analyzed the behavior of the Swedish Shareholder Association, our investigation focused on the French State as shareholder, a much more complex context. Not only can the state act as a minority shareholder activist, but it can also legislate or even take voting control over a company in which it invests to pursue its interests.

The first implication of this paper for practice is to aid policymakers when they introduce new legislation. They should understand that in doing so, there is a risk that they will create new institutional contradictions. Not only could these contradictions increase the risk of deviance from corporate governance practice, but also, they could increase the risk that they may be integrated into shareholder activists’ strategies. It then becomes necessary for policymakers to take a normative approach based on an experimental method to test the impact of any legislative innovation on corporate governance.

The second implication of this study for practice concerns shareholder activists. To strengthen minority shareholders’ rights, shareholder activists should analyze state shareholder’s actions in light of existing state legislation to demonstrate possible institutional contradictions. They should then emphasize how these contradictions limit the state’s ability to attract minority investors in their economy. In addition, they could highlight how the state’s institutional contradictions are contrary to the more favorable minority investor protection that other states guarantee.

The main limit to this research investigation is that it is exploratory, and therefore requires further validation in additional institutional contexts.

However, this work suggests new research perspectives. First, the results put into question shareholder activists’ capacity to integrate into their activist strategies the logics and

institutional contradictions within a given context. Second, the study calls for more research on the institutional responses that the state can devise. Although France underwent a phase of closing judicial loopholes followed by the shareholder empowerment movement, since the Florange Act, the French State has been trying to resist against hedge fund shareholder activism in line with its political logic. One of the French State's recent responses is through its PACTE law (article 61) which encourages companies to include their purpose – their *raison d'être* – in their statutes. Through its political logic, the French State is helping its companies orient their corporate governance toward a stakeholder logic (Aguilera *et al.*, 2018). Before its adoption after second reading by l'Assemblée Nationale in February 2019, Larry Fink, CEO of BlackRock, made an announcement encouraging companies in which it invests to define their purpose[12]. Consequently, this new institutional pressure in favor of a stakeholder orientation forces shareholder activists to modify their process toward a more political logic with unknown effects. There could also be a period of experimentation before adoption of a new norm. Finally, as for research methodology, this study opens the way for experimentation to test the impact of new norms on the actors in the shareholder activism field.

Notes

- 1 *Les Echos*, February 19, 2019. See www.lesechos.fr/finance-marches/banque-assurances/les-fonds-activistes-dans-le-viseur-de-bercy-991590
- 2 *Financial Times*, April 16, 2015.
- 3 www.economie.gouv.fr/agence-participations-etat
- 4 www.safran-group.com/media/safran-and-zodiac-aerospace-new-global-leader-aerospace-20170119
- 5 The following chronology is summarized from the article written by Marie-Jeanne Pasquette, on the website, *minoritaires.com*, January 8, 2018.
- 6 *La Tribune*, April 20, 2015.
- 7 phitrustactiveinvestors.com
- 8 <http://www.engagementactionnarial.blogspot.fr>
- 9 <http://www.proxinvest.fr/?p=3097>
- 10 *Liberation*, May 1, 2016.
- 11 *Les Echos*, January 25, 2017.
- 12 *Les Echos*, January 18, 2019.

References

- Aguilera, R.V., Judge, W.Q. and Terjesen, S.A. (2018), "Corporate governance deviance", *Academy of Management Review*, Vol. 43 No. 1, pp. 87-109.
- Aguilera, R.V., Filatotchev, I., Gospel, H. and Jackson, G. (2008), "An organizational approach to comparative corporate governance: costs, contingencies, and complementarities", *Organization Science*, Vol. 19 No. 3, pp. 475-492.
- Albouy, M. (2016), "Quelle gouvernance pour Renault avec l'Etat actionnaire? [online] *The Conversation*, available at: <http://theconversation.com/quelle-gouvernance-pour-renault-avec-letat-actionnaire-53777> (accessed 25 November 2019).
- Assemblée Nationale (2018), "Rapport fait au nom de la commission d'enquête chargée d'examiner les décisions de l'État en matière de politique industrielle, au regard des fusions d'entreprises intervenues récemment, notamment dans les cas d'Alstom, d'Alcatel et de STX, ainsi que les moyens susceptibles de protéger nos fleurons industriels nationaux dans un contexte commercial mondialisé", Paris, Assemblée Nationale, available at: www.assemblee-nationale.fr/15/rap-enq/r0897-tl.asp (accessed 25 November 2019).
- Girard, C. and Gates, S. (2014), "Global drivers of and local resistance to French shareholder activism", *Journal of Applied Corporate Finance*, Vol. 26 No. 1, pp. 94-100.

- Bates, K. and Hennessy, D. (2010), "Tilting at windmills or contested norms? Dissident proxy initiative in Canada", *Corporate Governance: An International Review*, Vol. 18 No. 4, pp. 360-375.
- Bebchuk, L., Brav, A. and Jiang, W. (2015), "The long-term effects of hedge fund activism", *Columbia Law Review*, Vol. 115 No. 5, pp. 1085-1156.
- Becht, M., Franks, J., Mayer, C. and Rossi, S. (2010), "Returns to shareholder activism: evidence from a clinical study of Hermes U.K. focus fund", *Review of Financial Studies*, Vol. 23 No. 3, pp. 3093-3129.
- Ben Arfa, N., Karmani, M. and Labaronne, D. (2017), "Antecedents of hedge fund activism in French listed target firms", *Research in International Business and Finance*, Vol. 42, pp. 1315-1326.
- Bessière, V., Kaestner, M. and Lafont, A.-L. (2010), "Hedge fund activism: insights from a French clinical study", *Applied Financial Economics*, Vol. 21 No. 16, pp. 1225-1234.
- Bessler, W., Drobetz, W. and Holler, J. (2015), "The returns to hedge fund activism in Germany", *European Financial Management*, Vol. 21 No. 1, pp. 106-147.
- Brav, A., Jiang, W. and Kim, H. (2015), "The real effect of hedge fund activism: productivity, asset allocation, and labor outcomes", *Review of Financial Studies*, Vol. 28 No. 10, pp. 2723-2769.
- Carrothers, A. (2017), "Friends or foes? Activist hedge funds and other institutional investors", *Economics and Business Review*, Vol. 3 No. 17, pp. 38-72.
- Cour des Comptes (2017), "L'Etat actionnaire. Rapport public thématique", Paris, Cour des Comptes, available at: www.ccomptes.fr/sites/default/files/EzPublish/20170125-rapport-etat-actionnaire.pdf. (accessed 25 November 2019)
- Crisóstomo, V. and Brandão, I. (2019), "The ultimate controlling owner and corporate governance in Brazil", *Corporate Governance: The International Journal of Business in Society*, Vol. 19 No. 1, pp. 120-140.
- David, P., Bloom, M. and Hillman, A. (2007), "Investor activism, managerial responsiveness and corporate social performance", *Strategic Management Journal*, Vol. 28 No. 1, pp. 91-100.
- Denes, M.R., Karpoff, J.M. and McWilliams, V.B. (2017), "Thirty years of shareholder activism: a survey of empirical research", *Journal of Corporate Finance*, Vol. 44, pp. 405-424.
- Gantchev, N. (2013), "The costs of shareholder activism: evidence from a sequential decision model", *Journal of Financial Economics*, Vol. 107 No. 3, pp. 610-631.
- Gifford, E. (2010), "Effective shareholder engagement: the factors that contribute to shareholder salience", *Journal of Business Ethics*, Vol. 92 No. S1, pp. 79-97.
- Gillan, S. and Starks, L. (2007), "The evolution of shareholder activism in the United States", *Journal of Applied Corporate Finance*, Vol. 19 No. 1, pp. 55-73.
- Girard, C. (2011), "Success of shareholder activism: the French case", *Bankers, Markets & Investors*, Vol. 115 No. 1, pp. 26-36.
- Girard, C. and Del Vecchio, N. (2013), "Strategic responses to new institutional pressures: the French case of institutional investor Activism", in Young, S. and Gates, S. (Eds), *Institutional Investors and Corporate Responses: Actors, Power and Responses. Critical Studies on Corporate Responsibility, Governance and Sustainability*, Emerald Group Publishing, Bingley, pp. 179-199.
- Goranova, M. and Ryan, L.V. (2014), "Shareholder activism: a multidisciplinary review", *Journal of Management*, Vol. 40 No. 5, pp. 1230-1268.
- Goyer, M. and Jung, D.K. (2011), "Diversity of institutional investors and foreign blockholdings in France: the evolution of an institutionally hybrid economy", *Corporate Governance: An International Review*, Vol. 19 No. 6, pp. 562-584.
- Graves, S.B., Rehbein, K. and Waddock, S.A. (2001), "Fad and fashion in shareholder activism: the landscape of shareholder resolutions, 1988-1998", *Business and Society Review*, Vol. 106 No. 4, pp. 293-314.
- Guillen, M. and Capron, L. (2016), "State capacity, minority shareholder protections and stock market development", *Administrative Science Quarterly*, Vol. 16 No. 1, pp. 125-160.
- Hall, P.A. and Soskice, D.A. (2001), *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, Oxford University Press, Oxford.
- Harbula, P. (2007), "The ownership structure, governance and performance of French companies", *Journal of Applied Corporate Finance*, Vol. 19 No. 1, pp. 88-101.

- Institut Montaigne (2017), "L'impossible etat actionnaire?", Institut Montaigne. available at: www.institutmontaigne.org/ressources/pdfs/publications/impossible-etat-actionnaire-note.pdf. (accessed 25 November 2019).
- Johed, G. and Catasus, B. (2015), "Institutional contradictions at and around the annual general meeting. How institutional logics influence shareholder activism", *Accounting, Auditing & Accountability Journal*, Vol. 28 No. 1, pp. 102-127.
- Judge, W.Q., Gaur, A. and Muller-Kahle, M.I. (2010), "Antecedents of shareholder activism in target firms: evidence from a multi-country study", *Corporate Governance: An International Review*, Vol. 18 No. 4, pp. 258-273.
- Kallifatides, M. and NACHEMSON-EKwall, S. (2016), "Awakening giants? The politically contested modification of institutional investors", *Corporate Governance: The International Journal of Business in Society*, Vol. 16 No. 2, pp. 278-294.
- Krishnan, C.N.V., Partnoy, F. and Thomas, R.S. (2016), "The second wave of hedge fund activism: the importance of reputation, clout, and expertise", *Journal of Corporate Finance*, Vol. 40, pp. 296-314.
- La Porta, R., Lopez-de-Silanes, F., Shleifer, A. and Vishny, R.W. (1998), "Law and finance", *Journal of Political Economy*, Vol. 106 No. 6, pp. 1113-1155.
- Lazard's Shareholder Advisory Group (2019), "2018 Review of shareholder activism", Lazard Publisher, available at: www.lazard.com/media/450805/lazards-2018-review-of-shareholder-activism.pdf (accessed 25 November 2019).
- Lee, S.H. and Yoo, T. (2008), "Competing rationales for corporate governance in France: institutional complementarities between financial markets and innovation systems", *Corporate Governance: An International Review*, Vol. 16 No. 2, pp. 63-76.
- Oliver, C. (1991), "Strategic responses to institutional processes", *The Academy of Management Review*, Vol. 16 No. 1, pp. 145-179.
- Scott, W.R. (1983), "Health care organizations in the 1980s: the convergence of public and professional control Systems", in Meyer, J.W. and Scott W. R. (Eds), *Organizational Environments: Ritual and Rationality*, Sage, Beverly Hills, CA, pp. 99-113.
- Seo, M.G. and Creed, W.E.D. (2002), "Institutional contradictions, praxis, and institutional change: a dialectical perspective", *The Academy of Management Review*, Vol. 27 No. 2, pp. 222-247.
- Sjöström, E. (2010), "Shareholders as norm entrepreneurs for corporate social responsibility", *Journal of Business Ethics*, Vol. 94 No. 2, pp. 177-191.
- Tchotourian, I. (2015), "La loi Florange et l'activisme des actionnaires", available at: www.contact.ulaval.ca/article_blogue/la-loi-florange-et-lactivisme-des-actionnaires/ (accessed 25 November 2019).
- Tihanyi, L., Aguilera, R.V., Heugens, P., Van Essen, M., Sauerwald, S., Duran, P. and Turturea, R. (2019), "State ownership and political connections", *Journal of Management*, Vol. 45 No. 6, pp. 2293-2321.

Further reading

- Becht, M., Franks, J., Grant, J. and Wagner, H.F. (2017), "Returns to hedge fund activism: an international study", *The Review of Financial Studies*, Vol. 30 No. 9, pp. 2933-2971.
- Trabelsi, D., Aziz, S. and Lilti, J.-J. (2019), "A behavioral perspective on corporate dividend policy: evidence from France", *Corporate Governance: The International Journal of Business in Society*, Vol. 19 No. 1, pp. 102-119.

Corresponding author

Stephen Gates can be contacted at: sgates@audencia.com

For instructions on how to order reprints of this article, please visit our website:
www.emeraldgroupublishing.com/licensing/reprints.htm
 Or contact us for further details: permissions@emeraldinsight.com