

# **Shareholders' activism**

## **A comparison between the United Kingdom and France**

### ***Abstract :***

This paper provides new insights into the strategic alignment of specific minority dissident coalitions who influence or try to influence the decisionmaking process. With the corporate governance literature and a descriptive approach based on two samples : 79 French quoted companies from 1989 to 2000 and 57 British listed companies from 1992 to 2000, we try to identify the characteristics of the French and the British shareholders' activism. This activism is a contest process composed by influence activities, such as lobbying activities, proxy contests or judicial activities and initiated by non controlling shareholders, such as institutional or individual investors and shareholders' association. The study of the identity of dissident shareholders, the forms of activism and the activism's objectives depending on investment policy permit us to compare, two new models, French and British activism to the American model examined by the corporate governance theory.

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In the United States, this activism process is formed by Institutional investors (M. P. Smith, 1996), by associations (D. Strickland et *al.*, 1996) and, recently by labor unions (S. J. Schwab et R. S. Thomas, 1998) or by religious unions (S. Choi, 2000). These dissident coalitions don't try to obtain a minority or majority control, but try to influence the decisionmaking process by exerting pressure (media pressure) or by a proxy contest process. In France, the strongest presence of institutional investors, the new demands of domestic investors and the many judicial contests by minority shareholders characterize shareholder activism. Contrary to the American model, shareholder activism is composed by associational, media and judicial activities with punctual proxy contests. This activism is a complex and a long time process (the maximum is ten years for Sédri and Comptoir des Entrepreneurs affairs) organized by sequential and parallel networks combining informational and financial resources, capabilities to reduce coordination costs and competences to process and collect specific information. These residual claimants have got two strategies : an exit and a voice strategies<sup>1</sup> depending on arbitration process between coordination costs and coordination profits. There exit two different models of activism. But can we conclude that these two models characterize a Common Law model and a French Civil Law model ?

This paper provides, with the corporate governance approach, new insights into shareholder activism in France and in the United Kingdom to compare different models. To identify the characteristics of these processes, we need to understand the corporate governance system of these two countries and their corporate Law by studying the identity of a minority dissident coalition (1.), their form of activism (2.) and their objectives of contest (3.).

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<sup>1</sup> Hirschman A. O., 1970, *Exit, voice and loyalty*, Harvard University Press, traduction

## **1. Different types of dissident shareholders**

The British shareholders are generally passive and their activism is discreet. As American institutional investors, they exert a “latent control” (R. Chagani and P. Damapour, 1991, p. 480). They vote in favour of the controlling coalition<sup>2</sup> and there doesn't exist any obligation to constraint them voting in general meetings. American institutional investors have had to vote since July 29<sup>th</sup> 1994 in meetings of foreign companies. It seems that the exercise of voting rights by these investors allow British institutional investors to control “de facto” British companies in general meetings (S. L'Hélias, 1997, p. 165). But they have two strategies : one is based on informal influence activities<sup>3</sup> (media pressure or phone call to the controlling coalition) and another is founded on formal influence activities like a proxy contest<sup>4</sup>. On the contrary, the French rebel shareholders are individual, institutional or financial shareholders who delegate their latent control right to an association.

### **1. 1. Institutional activism in the United Kingdom.**

The ownership structure of British listed companies is composed by institutional investors like insurance and pension funds and by individual investors. Full majority of control is rare and the vast majority of British listed companies had no reference shareholder holding 25 per cent or more. Shareholders' activism is made by institutional investors and individual investors represented by U. K. Shareholders Association. The interests of institutional and individual will coincide or they lobby on their own behalf.

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<sup>2</sup> We oppose a controlling coalition (manager and large controlling shareholders) to a non controlling coalition with small or large minority shareholders who try to influence decisionmaking process.

<sup>3</sup> P. Milgrom and J. Roberts (1992, p. 600) define influence activities like “self-interested activities designed to influence others' decisions. Within organizations, there are often aimed at redistributing rents and quasirents and take the form of political activity or misrepresentation or distortion of information”.

<sup>4</sup> A proxy contest is a means of transferring control and is defined as a process, “in which outside dissident shareholders mount active solicitations aimed at gaining board representation or control” (L. A. Gordon and J. Pound, 1993, p. 699 and 700). “Shareholder resolution is a measure requesting or instructing the board and management to follow particular policies” (P. Milgrom and J. Roberts, 1992, p. 509).

Following numerous bankruptcies and financial scandals like the Maxwell affair, the corporate governance debate started at the end of the seventies. These debates bring up the questions of the role of institutional investors and the improvement of board's efficacy. In 1973 was created the Institutional Shareholders' Committee (ISC). These institutional investors exerted pressure to establish the Cadbury Code published on December 1st, 1992 to set up an increasing proportion of non executive directors to their boards, audit and remuneration committees. Some lobbying groups exert a targeted activity like NAPF (National Association of Pension Fund) and ABI (Association of British Insurers) for pre-emption rights and for link between employee share plans and executive share options to long-term company performance. They have, for example, drawn up guidelines and NAPF has established a proxy voting service. It tracks all the companies in the FT-SE 100 index and prepares reports on matters to be voted at each general meeting. Pensions Investments Research Consultants (PIRC), which was founded in 1986, offers also a proxy voting service covering the top 250 companies. It monitors "environmental reporting, political donations, directors' remuneration and the "insulation" of directors, whereby executive directors are not required to withdraw regularly for a re-election by shareholders" (C. E. Boros, 1995, p. 37). It gives some voting recommendations and publicizes a PIRC's shareholding voting guidelines based on corporate governance indicators such as : the ratio of executive and non executive directors; analysis of independence of non executives; separation of responsibilities on the board; existence and membership of board committees. His lobbying activity have aimed to reform annual general meetings in order to require votes to be taken on a poll at meetings, so that proxies are not only counted, but brought to bear on the meeting, and disclosed to shareholders. PIRC have also argued this in its November 1998 submission to the NAPF's enquiry into proxy voting. It is too an active shareholder who plays the role of mediator between the dissident coalition and the controlling coalition. For example, PIRC played a role

at Lonrho Africa to find a compromise between the rebels<sup>5</sup> and the board. After negotiations with the board to reach a compromise, the rebels who requisitioned an extraordinary general meeting, seeking to replace three incumbent directors with their own nominees. Prior to the meeting, PIRC met with both sides to discuss both corporate governance and corporate responsibility concerns. After meeting PIRC, the dissidents also offered several governance reforms including the election of a further independent non-executive director, but the dissidents failed.

In the United Kingdom, there are other groups such as Active Value Fund and The People's Solidarity for Participatory Democracy (PSPD), a civic group, who are leading minority shareholder activism. It is also attending the meetings to call for a better corporate governance structure. For example, Paul Myners, chairman of Gartmore, the fund management group, recently appealed for the resuscitation of the annual meeting to "restore to its rightful place as the nexus of shareholder and management contact"<sup>6</sup>. Other groups exist but they protest against managerial decisions such as animal welfare activists in Huntingdon Life Sciences, pro-hunt members in National Trust or online activists who fight against involvement by Balfour Beatty in the Iisu dam project in Turkey. Few shareholders' associations exist. For example, a shareholder association in Premier Oil Plc tried to replace the under-performing directors on Premier's board in April 1999. It is the contrary in France.

## **1. 2. Shareholders' association activism in France**

In France, active shareholders could create an association to represent collectively their interests (Law of August 8<sup>th</sup>, 1994). We can identify two types of associations, which are called selective associations and specialized associations by the press. Selective association

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<sup>5</sup> In PIRC, 1998, « The Rorke's Drift of Proxy Fights : Lonrho Africa incumbents survive". The rebels at Lonrho Africa were an investment group called Blakeney Management and African Lakes Corporation, who together owned more than ten per cent of the shares.

are founded, most of the time, by employee shareholders. They are employees in firms, which are in financial difficulties like Compagnie de Navigation Mixte (1989), NCM (1990) or Beaux Sites (1992). They also try to obtain minority or majority control by gaining one or several seats on the board like AVAS (Association Volontaire des Actionnaires Salariés in Total-Fina-Elf). This association organizes the publication of information letters called “Avascope” and it gives some publicized advice quarterly. It deposed four shareholders’ proposals on March 22nd, 2000. It contested the appointment of directors on the board and proposed the nomination of AVAS’s president. It demanded also the application of corporate governance principles edited by the second Viénot report<sup>7</sup> and the creation of a third independent committee. The last proposal concerned a guarantee about pollution risks. They failed because they had not enough votes to record these proposals at the Annual General Meeting (AGM).

The activity of specialized associations is the defence of minority shareholders in quoted or non quoted companies. They represent the interests of institutional, financial and individual shareholders. For example, the association called ADAM (Association Des Actionnaires Minoritaires<sup>8</sup>) represented, in 1994, American funds’ interests of CalPERS (*California Public Employees Retirement System*) and CREF (*College Retirement Equities Fund*) in Elf Aquitaine. They contested the adoption of a managerial proposal, limited voting rights. Some of them like ADAM have got lobbying activities. One of their objectives is to improve shareholders’ rights and the French jurisprudence. Today, French specialized associations have demanded the publication of the block shares’ list before the meetings to collect individual shareholders’ votes. In the past, some conflicts of interests provided changes in the

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<sup>6</sup> In D. Wighton, 1994, « Power of the shareholder vote », *Financial Times*, 9-10 April, p. 9.

<sup>7</sup> The reports published in the summer of 1995 and 1997 have no binding force. They discuss, for example, about the appointment of independent directors in the board.

<sup>8</sup> It means Minority Shareholders’ Association.

legislation and in the jurisprudence. After the partial takeover<sup>9</sup> of Pinault of the Printemps contested by ADAM, the judge abolished, in 1992, this kind of takeover for the benefit of total takeover on 100 per cent of the capital. L’Amy affair, for example, clarified conditions of preferred application rights issue. But the most important improvement of minority shareholders’ rights is the recognition of a squeeze-out process to guarantee an exit process for the minority dissidents.

The difficulty met by a dissident shareholder is to convince other passive shareholders to form a dissident coalition (U. Bhattacharya, 1997, p. 1069). The identity of this dissident (L. A. Gordon et J. Pound, 1993, p. 713-714) and the choice of the form of activism seem to resolve this collective action problem and explain the success of their activism. But few empirical researches (J. M. Bizjak and C. J. Marquette, 1998) rejected these hypotheses. In the United Kingdom, dissident shareholders are institutional investors who communicate with each other costless because it is unregulated. “Direct communication between institutional investors and outside directors seems firmly established in Britain, in contrast to the United States” (B. Black and J. C. Coffee, 1997, p. 2048). They don’t face collective action problems like in France and in the U.S.A. They exert pressure with different steps. At the beginning, they should first discuss with the management and seek an informal solution before using the press. If they fail, they organize a formal meeting. They need to line up 10 or 15 % of the company’s stock before having a chance of success. Most of the time, the institutions will never form a coalition because the board will get the message and make some modifications to satisfy the dissident coalition. But, in fact, “the institutions have never the time nor, as they are quick to point out, the expertise” (B. Black and J. C. Coffee, 1997, p. 2085). In France, the Law of June 23rd, 1989 (creation of investors’ association) and the Law of August 8<sup>th</sup>, 1994

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<sup>9</sup> A partial takeover allowed a raider to acquire 66 per cent of the capital at the end of a bid.

offer the opportunity to resolve the collective action problem by forming associations. Table 1 presents the different types of lobbying groups, their identity, their mission and their forms of activism. Another difference between the two processes of activism is the form of contest and their objectives.

**Table 1 : Different groups of lobbying in France and in the United Kingdom their identity, their missions and their forms of activism**

United Kingdom			France		
<i>Identity</i>	<i>Missions</i>	<i>Forms of activism</i>	<i>Identity</i>	<i>Missions</i>	<i>Forms of activism</i>
<b>PIRC</b>	- « Protect shareholders rights, minimize risk and enhance value in the investment process » <sup>10</sup> - Reform annual general meetings - Give voting advices	Pressures Proxy contests	<b>ADAM</b>	- Reform annual general meetings - Organize a dissident coalition to obtain an exit premium - Try to improve minority shareholders rights by changing judicial decisions or the jurisprudence	Judicial actions Proxy contests Media pressure
<b>NAPF</b>	- Establish a link between employee share plans and executive share option to long term company performance - Give voting advices	Pressures	<b>AEDE*</b>	- Improve minority shareholders rights (civil rights)	Judicial actions
<b>ABI</b>	- Establish a link between employee share plans and executive share option to long term company performance	Pressures	<b>ANAF**</b>	- Oppose managerial proposals like limited voting rights	Proxy contests

## 2. Different forms of activism

Minority active shareholders have got a specific strategy depending on several factors : their investment decisions (D. Del Guercio and J. Hawkins, 1999, p. 302-304), which determine their activism objectives and their influence activities (lobbying activity, negotiation activity, proxy voting process or judicial actions); the corporate governance of targeted firms; and the corporate law.

<sup>10</sup> In [www.pirc.co.uk](http://www.pirc.co.uk).

\* Association Européenne Des Epargnants

\*\* Association Nationale des Actionnaires de France



The study of the differences between the French and English corporate governance permits to understand the two different forms of activism used by rebel shareholders in France and the United Kingdom and summarized in appendix (tables 5 and 6). It seems that English activism is an institutional activism taking the form of a proxy voting battle, for 59 per cent of contested cases, and French activism is composed by “associational” and media judicial activities with punctual proxy fights.

## **2. 1. Institutional activism in the United Kingdom : proxy voting**

The shareholders as residual claimants delegate their residual rights of control<sup>11</sup> to the management. Voting levels in the United Kingdom have risen from 38 per cent to just over 46 per cent between 1993 and 1998. The vast majority of shareholders (96 per cent) vote in favour of managements at the AGMs, up from 91 percent over the last two years. The survey by PIRC<sup>12</sup> found that 172 companies, or 49 percent, failed to disclose the results of their proxy votes in 1998 at annual meetings. PIRC as a lobbying group is nevertheless having some influence on the companies’ behaviour. Its survey found a 12 per cent increase in reporting proxy votes since 1996, not long the first draft of Hampel<sup>13</sup>. The proxy voting mechanism is largely lodged by institutional investors. The voting behaviour of institutional investors<sup>14</sup> is critical because British institutional investors currently account for approximately 60 % of the stock market capitalization (T. Baums, 1999, p. 563). Recent researches show that voting levels have increased over recent years<sup>15</sup>.

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<sup>11</sup> P. Milgrom and J. Roberts (1992, p. 603) define residual right of control as “the right to make any decision concerning an asset’s use that is not explicitly assigned by law or contract to another party”. Residual decisional rights are defined by “the main decisions concerning the sharing out value creation” (G. Charreaux et P. Desbrières, 1998, p. 66).

<sup>12</sup> In PIRC, 1998, “Proxy voting trends at UK Companies 1993-1998”, December. The survey examines levels of support and support on each of the major types of resolution in FTSE 350 companies over six years.

<sup>13</sup> In J. Martinson, 1998, “Half of top companies failing to comply with Hampel”, *Financial Times*, 1 December.

<sup>14</sup> Cf. the study by C. Mallin, 1995, “Voting : the Role of Institutional Investors in Corporate Governance”, 21 et seq., Research Board of the Institute of Chartered Accountants in England and Wales, London.

<sup>15</sup> Manifest (ed.) “The Committee on Corporate Governance” at 7 (“The Hampel Committee”, 1996).

Average opposed votes have increased from 0.64 per cent in 1993 to 1 per cent in 1998. Opposed and abstain votes taken together were 1.12 per cent in 1993 and 2.18 per cent in 1998. In 1998, a third of all resolutions received opposed votes of 1 per cent or more and 5 per cent received opposed votes of 5 per cent more. The highest opposed vote in its 1998 sample was 27 per cent for the re-election of an executive director. He had a contract terminable at thirty days' notice and a liquidate damage provision of three years salary plus average bonus. The highest abstain vote was 31 per cent on a resolution proposing to re-elect an executive director. Most unpopular were resolutions proposing to re-elect executive directors with three year service contracts or with entitlement to 3 years' compensation in certain circumstances such as takeover. Directors with two-year service contracts also received higher oppose and abstain votes on average than directors with service contracts of one year or less. Long Term Incentive Plans (LTIPs) and Executive Share Option Schemes (ESOS) also attracted high levels of opposition. As in 1996, resolutions to establish or amend LTIPs attracted the highest average level of opposition and abstention of all the standard types of resolution analysed with an average vote of 4.82 per cent and abstentions of 2.88 per cent. For ESOS the average oppose vote was 3.78 and abstain vote was 2.46 per cent.

However, the general principle is that proxy fight isn't the useful mechanism. The Companies Act and the stock exchange prevent shareholders from intervening in general meetings. It is the role of the board to resolve situations of potential conflict. The Companies' Act and the stock exchange require an increasing number of major decisions to be submitted to the general meeting. The most useful process is media pressure or negotiation (cf. table 6). The proxy voting process is used if the first step of negotiation failed and if rebels

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The Hampel committee presided by Sir Ronald Hampel, chairman of ICI (Imperial Chemical Industries), recognizes that institutional investors should vote. But the committee offers no concrete measures for improving voting. It announces two recommendations to improve Annual General Meeting :

- "boards should adopt the best practice of some companies by mounting of full business presentation with a question and answer session. The information should so far as possible be the same as that given to institutional investors";

shareholders have a chance to succeed after evaluation of the potential gains and costs of activism (B. Black and J. C. Coffee, 1997, p. 2048).

In France, the vast majority of shareholders vote in favour of the management at the AGMs. According to the research of C. Parier (1997, p. 38), shareholders' activism have increased each year since 1992. The proposition on capital rise during takeover period is the most contested (controversial). In a sample of 408 quoted companies' AGMs, this proposal represented 18 per cent on proposals voted less than 96 per cent. The survey by Proxinvest<sup>16</sup> and published by *Les Echos* (May 19<sup>th</sup>, 2000) found that, for about three hundred French quoted companies in 1998, the global rate of protests on 7057 proposals is 8,82 per cent, 11 per cent for companies listed in CAC 40. The differences between French and British AGMs are synthesized in table 1.

**Table 2 : Comparison of proxy voting rules**

<b>France</b>	<b>United Kingdom</b>
Notices and proxy documents are sent out no later than <b>15 days</b> before an annual meeting	Notices and proxy documents are sent out no later than <b>21 days</b> before an annual meeting <sup>17</sup> .
Requirement to block shares 5 days before the meeting	No requirement to block or deposit shares before and during the meeting.
Voting by mail or in person Voting by person: mandates en blanc	Voting in person or by proxy widely practised by institutional investors.
The dissidents are not limited to a statement of just 1,000 words.	The dissidents are limited to a statement of just 1,000 words.
Remove a director with the majority at AGM. Shareholders don't need to register a resolution.	Propose a director to the board and remove a director by ordinary resolution
Call for a poll of proxy votes with the third of the capital to block managerial proposals.	Propose the removal of auditors by ordinary resolution though special notice must be given of the meeting at which this will be put forward.

- all proxies should be counted and announced following the show of hands vote without a poll being demanded.

<sup>16</sup> Proxinvest is a company which proposes voting recommendations based on corporate governance indicators.

<sup>17</sup> These rules vary with particular Company's Articles of Association.

In T. Baums, « Shareholders Representation and Proxy Voting in the European Union : a Comparative Review », p. 562-564, in *Comparative Corporate Governance – The State of Art and Emerging Research*, K. J. Hopt, H. Kanda, M. J. Roe, E. Wymeersch and S. Prigge, (ed.), 1998.

Require the directors to put forward a resolution at a general meeting if they represent either 5 per cent of the total voting shares.	Require the directors to put forward a resolution at a general meeting if they represent either 5 per cent of the total voting shares or 100 members holding a combined total of 10 000 \$ of nominal share capital. But the company is not bound to circulate the resolution unless it is deposited at least six week before the meeting.
Demand to the judge an minority appraisal or an general meeting if they represent 10 per cent of the total voting shares.	Call for a poll of proxy votes if supported by four other shareholders or members with 10 per cent of the voting rights.

In the U. K., the shareholders' activism is an institutional activism taking the form of proxy fights. But this mechanism of control is in marked contrast to American institutional activism (S. Wahal, 1996, p. 4) where shareholder resolutions are a vital and vigorous part of the proxy process (M. P. Smith, 1996). Hundreds of shareholder resolutions are often filed as part of a shareholder strategy to press for improved company performance. In the U.K., few shareholder resolutions are filed. Three were filed at FT-SE 350 companies in 1998, and just 13 companies have been the recipient of such resolutions since 1995. The agenda is also an obstacle to involve shareholders in a proxy fight. Furthermore in France, the company Law requires to block shares 5 days before the meeting. There is no requirement in the U.K. Consequently, in France, the institutional investors are not motivated to vote in AGMs (Annual General Meetings). According to a survey by Ecom<sup>18</sup>, during the AGMs of 39 companies listed in CAC 40 between March 30th, 2000 and June 29th 2000, most of the 25 per cent had not a quorum. French rebel shareholders' action is a judicial action to gain a proxy contest or to obtain an exit premium.

## 2. 2. “Associational” activism in France : judicial actions and proxy contests

Table 5 in appendix (the methodology is explained section 3) shows that shareholders' associations and individual dissident shareholders choose judicial actions to exert an influence. Two associations like ANAF and Déminor prefer using proxy fights. Foreign

institutional investors delegate their influence activities to specialized shareholders' associations like CalPERS and CREF or prefer using informal activities in 23 per cent of cases (phone contact or special meetings) or formal activities in 38 per cent of cases (proxy contest). But French activism is characterized by judicial actions and punctual proxy fights. Why do they use these two influence activities ?

Minority shareholders act in exerting their right of recourse. It seems to be their only means (D. Schmidt, 1970, p. 136). The objectives are to : delete controlling decisions; claim compensation for the damage; ask liability or criminal responsibility of the controlling coalition; demand a minority report from experts appointed by the court (“expertise de minorité”); name a judicial agent who plays the role of a conciliator or a mediator and negotiate setting up exit of minority shareholders.

Their action right is proportional to the percentage of capital. To demand an “expertise de minorité” or to name a conciliator or a mediator, the dissident coalition needs to collect 10 per cent of the voting rights. The mission of a judicial agent is to requisition an AGM or EGM (Extraordinary General Meeting). These nomination's interest allows rebel shareholders to prolong or to renew a proxy fight and, consequently, to raise its probability of success. The “expertise de minorité » permits to minority shareholders to acquire some information about managerial operations. Their ability to collect this information is limited by the jurisprudence. This judicial action allows them to bring evidence for a responsibility action or a cancellation action. But in fact, collective action has for aim the exit of targeted firms. This exit strategy named by A. Couret (1996, p. 4) “harassing strategy” is characterised by a temporary pressure on targeted company to “valorise a potential exit with a price different from the true value of the shares”. The objectives of the dissident coalition are to bring evidence of a concert action

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<sup>18</sup> Ecocom is a communication society which has made several surveys on AGMs of French quoted companies.

intended for refer article 5-6-6 of (Conseil des Marchés Financiers, a regulatory organization) CMF's general rule in order to activate a squeeze-out process.

This notion of concert action means that several persons with direct or indirect holdings who have concluded together an agreement defined by the company Law (art. 156-1-3, Law of July 24<sup>th</sup>, 1966), have to disclose substantial holdings or to lodge a takeover or a squeeze-out. These conditions are defined by the CMF by a "CMF jurisprudence" following minority shareholders' appeals. For example, October 30<sup>th</sup>, 1997, ADAM demanded the triggering of a takeover bid by Générale des Eaux on Havas because of the holdings of Générale des Eaux and Audiopar, a concerted coalition, exceeded the third of Havas's capital. Nevertheless, the Court of Appeal from Paris in a decision dated the 20<sup>th</sup> February 1998 rejected this recourse. A second appeal against a takeover dispensation allowed in the CMF to Vivendi was rejected by the Court of Appeal in a decision dated the 20<sup>th</sup> October 1998.

A squeeze-out presents the advantage that minority shareholders have got a possibility to sell their shares with an exit premium when the share price decreases in value. The article 5-6-6 of CMF's general rule defines the conditions of this application of the process.

These judicial actions offer the possibilities for a dissident coalition to organize a publicity campaign and to extend the proxy contest period in order to collect additional information and to resolve the collective action problem by soliciting passive minority shareholders. Why, in the United Kingdom, do rebels shareholders rarely use a judicial action ?

It seems that the probability to win a judicial action is low in the United Kingdom. The rule prevents the company being subject to a long and expensive litigation. The conflicts of interests are resolved by the board of directors who are "accountable to their shareholders"<sup>19</sup> before being resolved at the general meeting by an ordinary resolution. At the general

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<sup>19</sup> In the Cadbury Report.

meeting, the members may by ordinary resolution decide whether to sue or not. But their derivative actions<sup>20</sup> or their individual rights representative actions or their alternative remedies have a low probability of success. In the prudential case, the minority shareholders used an individual rights representative action in addition to a derivative action. They can also demand with 15 per cent of the issued shares the cancellation by the court of alteration of objects and ask the Department of Trade and Industry for an investigation of the company's affairs or of the ownership of the Company, with 10 per cent of the issued shares or with a coalition formed by 200 shareholders.

The principles in the United Kingdom are that securities regulation largely remained self-regulatory, as imposed by the London Stock Exchange and the board of directors is able to resolve conflicts of interests. The United Kingdom Law would allow directors "to take into account the interests of the group as long as it does not run against the interests of their own company"<sup>21</sup>. "In particular an individual shareholder cannot bring an action alleging that the loss suffered by the company has consequently diminished the value of his or her shares" (G. Morse, 1999, p. 306). This is why the first objective of English activism studied in the next section is the separation of the role of chairman and director. The Law or lobbying groups exert an influence to improve the efficiency of the board of directors.

### **3. Shareholders' objectives : Types, dissidents, and outcomes.**

Empirical literature on proxy contests in the U.S.A identifies three objectives followed by dissident shareholders. For J. Pound (1988), dissident shareholders try to obtain minority with

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<sup>20</sup> A derivative action is brought instead of an action in the name of the company. An individual rights representative action is brought by individual shareholder who sue to protect their individual rights as members. Alternative remedies like conducting unfairly prejudicial are remedies in the last resort. The particularity of this action is that under section 459 of the Companies Act a member can petition the court for other relief where the company's affairs are being conducted in an unfair prejudicial manner to some or all of the members, including

a seat on the board or majority control with a majority of seats on the board or try to enact protections called managerial-sponsored proposals against proxy contests or takeover bids. E. J. Boros (1995, p. 8) presents the common complaints of minority shareholders in the United Kingdom which are the following : disregard of rights granted by statute or by the articles; alteration of articles; dilution of equity stake or voting rights; self-interested transactions by controllers; negligent or inefficient management; little or no participation in profits; limited access to information about companies' affairs; illiquidity; exclusion from management or compulsory acquisition. In France, E. Cohen (1997, p. 69) identifies four categories of contests : closing measures of the capital; remuneration policy inducing a transfer of control to the controlling coalition; lack of information and limited participation to the decision process.

Our data of minority shareholders' activism in France includes 121 French companies with 79 quoted companies from 1989 to 2000. We provide little data on the frequency of shareholders' activism in the United Kingdom. Our sample includes 57 English listed companies from 1992 to 2000. Our source for these proposals is the *Financial Times* and *La Tribune* which list companies targeted by rebel shareholders. Table 3 provides a descriptive summary of the objectives of shareholders' activism in the two countries.

**Table 3 : Objectives of shareholders' activism in France and in United Kingdom for quoted and non quoted companies**

The percentage represent the fraction of each objective for each country.

<b>United Kingdom</b>		<b>%</b>	<b>France</b>		<b>%</b>
Removal of chairman or director	18	17.3	Financial performance	20	14.6
Shareholders proposals	17	16.3	Managerial proposals	19	13.9
Financial performance	12	11.5	Takeover bid	17	12.4
Boardroom control	10	9.6	Information	14	10.2
Managerial proposals	9	8.7	Merger	13	9.5
Merger	7	6.7	Capital rise	12	8.8
Control bid	5	4.8	Shareholders proposals	9	6.6

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himself. For their conditions of application, see G. Morse, 1999, *Company Law*, Sweet & Maxwell Ed., p. 308-315.

<sup>21</sup> In the Cadbury Report.



Political proposals	5	4.8	Transfer of block	8	5.8
Separation of the roles of chairman and director	4	3.8	Squeeze out	8	5.8
Information	4	3.8	Remuneration	7	5.1
Remuneration	3	2.9	Control bid	3	2.2
Lack of confidence	3	2.9	Takeover bid for shares	3	2.2
Restructuring operations	3	2.9	Concert action	2	1.5
Takeover	2	1.9	Break-up of a company	1	0.7
Transfer of block	1	1	Buy out	1	0.7
Buy out	1	1%			

Table 3 provides a descriptive summary of objectives of the U. K. shareholders' activism and of French shareholders' activism. The first objectives of activism in France are financial performance (problem of illiquidity or bad financial performance) and managerial proposals like limited voting rights. British articles concerning a cumulative voting system are not incorporated in the Law. But cases of activism concerning managerial proposals are rare. Only fifteen companies have differential voting rights and British institutional investors discourage dual-class voting structures. But in fact, they exert pressure for separation of the posts of chairman and chief executive. With the study of the role played by the board of directors, the annual general meeting and the corporate Law in the U. K., we understand why the first objective of activism is the removal of the board and why board control is the fourth objective. The pension funds exert influential activities to impose on the listed companies the criteria formulated by the Cadbury code and the Hampel report. The board has the duty to resolve conflicts of interests between the stakeholders. The articles give power to the directors to appoint additional directors, and the general meeting will not intervene. There is no requirement that directors be appointed by the general meeting of shareholders. It is, however, the normal practice for directors to be appointed by an ordinary resolution. The nomination committee controls the board. 60 % of the following 250 largest U. K. companies had introduced a nomination committee<sup>22</sup>. This committee is also active in the appointment of

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<sup>22</sup> In "The Financial Aspect of Corporate Governance, Compliance with the Code of Best Practice", 24 May 1995.

board members in 45 per cent of the cases. Institutional investors account for only 8 per cent (E. Wymeersch, 1998, p. 1090).

“For France and Belgium, although the same factors presented the highest weight in the internal procedure for inside directors, institutional investors were identified as influential in the appointment of members of the board” (E. Wymeersch, 1998, p. 1091). In the U. K., the shareholders have limited impact on decision making. The appointment of independent directors will be seen as a means on the overwhelming influence of the management. The institutional investors exert pressure to impose the removal of board members. It is a means to exert an influence on decision making without assuming responsibility for the actual management decision. Their objective is to improve the process of shareholder value creation in reducing managerial risks (entrenchment behaviour and control costs).

Table 4 breaks down the objectives of activism, category of sponsor in United Kingdom and the success or the failure of shareholders’ activism. Institutional investors demand the removal of the management or directors. Do they succeed ?

“Fidelity Investments International has been an activist generally unsuccessfully on continental Europe” (*Financial Times*, August 5<sup>th</sup>, 1992). In March 1991, for example, it joined a group of dissident shareholders in NedLloyd, the Dutch transport group, who unsuccessfully sought to force a radical restructuring of the board. The most recent empirical researches show that the forms of activism depending on investment decisions and activism objectives explain the probability of success.

**Table 4 : The objectives of shareholders’ activism and success or failure of their activism in United Kingdom**

Partial victory means the removal of management or negotiations between the two coalitions. The initial objective of contest isn’t reached.

Quoted firms	Dissidents (type) Votes (%)	Objectives	Succeed or failure
Cityvision Ltd	Fidelity Investments International	Removal of the management	Failure
MEPC Ltc	Shareholders’ poll	Financial performance	Partial victory
Attwoods Ltc	Institutional investors	Removal of the finance director	Success

Ashley Group Ltd	Institutional investors	Shareholder proposal : strategy changes	Success
Cannon Street Investments Ltd	Institutional investors	Appointment of an independent non executive chairman	Success
TI group Plc	Financial investors	Accounting information	Partial victory
WPP Group P	Institutional investors (ABI)	Remuneration package	Success
	Institutional investors (Fidelity Investments International) - (30% to 40%)	Restructuring operations	
Brown & Jackson Plc	Institutional investors (Fidelity Investments International)	Financial performance	Success
Pacific Horizon Investment Trust Plc	Individual shareholder - 0.004 %	Managerial proposals	Failure
Barclays Bank Plc	Institutional investors	Separation of the roles of chairman and executives	
Arjo Wiggins Appleton Plc	Institutional investors	Shareholder proposal : dividend distribution	
Andrews Sykes Group Plc	Individual shareholder - 29.2%	Boardroom control	Failure
Simpsons of Cornhill Plc	Shareholders' poll - 40 %	Shareholder proposal : election two new directors	Failure
Lonrho Africa Plc	Institutional investors (PIRC)	Appointment to non executive directors	
Amstrad Plc	Institutional investors - 58.7 %	Privatisation	Success
BLP Group Plc	ESOP - 10 %	Majority control	
Invesco Group Ltd	Minority management group's non American operations	Removal of the chief executive	
Ecclesiastic Insurance Plc	Institutional investors	Control bid	
Arthur Shaw and Co Plc	Shareholders' poll - 49%	Boardroom control	Success
Etonbrook Properties Plc	Shareholders' poll - 51%	Boardroom control	Success
Berisford International UK Ltd	Shareholders' poll supported by three directors	Shareholder proposal	
Tiphook Group Ltd	Scottish Amicable - 5 %	Separation of the roles of chairman and chief executive	
Hanson Plc	Institutional investors	Topic from Apartheid to aids and the environments	Failure
Spring Ram Holdings Plc	Institutional investors - 35 %	Separation of the roles of chairman and chief executive	
Asda Group Plc	NAPF and ABI	Executive share options	
Ferranti International Ltd	Institutional investor	Takeover	
Chater Land Holdings Ltd	Institutional investors	Bid price	
Watergate properties Ltd	Shareholders' poll - 41 %	Removal of the board	Partial victory
Srafield Holdings Ltd	Shareholders' poll - 25.4 %	Boardroom control	
Queens Moat Houses Plc	QMH shareholders action group - 10 %	Board's lack of confidence	Success
British Assets Trusts	Shareholders' poll	Capital reorganisation	Failure
Legal & General Group Plc	Shareholders' poll	Reappointment of three directors	Failure
Northern Electric Plc	Guy Wyser Pratte - 10%	Shareholder resolution	Failure
Yorshire Water Services Ltc	Shareholders' poll	Unlawful acts on water issues	Failure
British Gas Energy Centres Ltd	PIRC – UK shareholders association	Boardroom pay structure	Failure
Signet Group Plc	Shareholders' poll – 18 %	Reconstruction of the balance sheet	Failure
Scholl UK Ltd	Institutional investors (AVF)	Removal of three non executive directors	Partial victory
Country Casual Ltd	Institutional investors	Hostile bid	Success
Forte UK Ltd	Institutional investors	Shareholder proposal	

Kenwood Appliances Plc	Institutional investors (AVF) – 10.4 %	Shareholder proposal : demand a merger	
Christian Salvesen Plc	Shareholders’ poll with the former chairman	Financial performance	
Care First Group Plc	Shareholders’ Poll	Removal of the chairman	Failure
Liberty Plc	Shareholders’ Poll – 17 %	Minority control	Partial victory
Tandem Group Plc	Shareholders’ Poll – 16.2 %	Managerial performance	
Oliver Group Plc	Private shareholders and founding family – 40 %	Managerial proposal	
Countrywide Assured Group Plc	UK Active Value Fund – 3 %	Underperformance	
Manchester United Football Club Public Co Ltd	INDAC	Removal of the words “football club”	
Balfour Beatty Plc	Online activists	Involvement in the Iisu dam project in Turkey	
Huntingdon Life Sciences Group Plc	Animal Welfare activists	Animal protection	
Premier Oil Plc	Shareholders’ association	Appointment of directors	Failure
Thames Water plc	Institutional investors	Price paid for US acquisitions	
Norwich Union Plc	Institutional investors	Appointment of directors	
Huntsworth Plc			

## Conclusion

American and British activism are institutional activism, but the objectives and the influence activities of activism aren't the same. D. Del Guercio and J. Hawkins (1999, p. 302-304) show that the American institutional objectives depending on their investment decisions are shareholder value and corporate governance criteria. The British institutional activism objective is the separation of the posts of chairman or directors and they are reluctant to intervene because of the highest coordination costs. B. Black and J. C. Coffee (1997, p. 2086) conclude that U. K. institutions are more involved in corporate governance and more active than their U. S. counterparts. With researches on 49 countries, R. La Porta and *al.* (1999, 1998) show that we can distinguish Common Law from French Civil Law countries with measures of shareholder protection and measures of enforcement. French Civil Law countries is characterized by weak shareholders' protections. But, in fact, “legal blanks” give dissident coalition an opportunity to win judicial contests. The French enforcement reduce these “legal blanks” and it is based on the majority rule. The French judges want to avoid appearance of professional plaintiffs like in the United States with the class action. But it seems that a report

will be presented to the European Commission at the end of this year to recognize this judicial form of activism. Furthermore, the frequency of proxy contests is higher and, for the first time, a minority dissident coalition has succeeded in its activism by obtaining the majority of control in Group André. Does the French model move to the institutional activism ? Is there today an international convergence ?

**APPENDIX : Influence activities used by rebel shareholders in France and in the United Kingdom**

**Table 5 : Influence activities used by each class of active minority shareholders in France in quoted firms**

INSTE : foreign institutional investors. INSTF : French institutional investors. FIN : financial investors. ADAM, ANAF and AEDE are specialized associations. ASSOP : selective associations. Déminor is a Belgium professional society. FGIS : Franklin Global Investor Services . IND : individual shareholders. ACCOLL : collective action between individual shareholders who don't use an association to represent their collective interests.

The percentage represent the fraction of each influence activity for each class of minority active shareholders.

<b>Motives</b>	<b>INSTE</b>		<b>INSTF</b>		<b>FIN</b>		<b>ADAM</b>		<b>ANAF</b>		<b>AEDE</b>		<b>ASSOP</b>		<b>Déminor</b>		<b>FGIS</b>		<b>IND</b>		<b>ACCOLL</b>		<b>TOTAL</b>	
<b>Judicial actions</b>	4	31%	9	47%	7	44%	18	38%	1	25%	3	60%	5	42%	2	33%	1	33%	15	68%	8	42%	73	44%
<b>Proxy fights</b>	5	38%	5	27%	3	19%	14	30%	2	50%	0	0%	4	33%	3	50%	1	33%	0	0%	6	32%	43	26%
<b>Others influence activities</b>	4	31%	5	27%	6	37%	15	32%	1	25%	2	40%	3	25%	1	17%	1	33%	7	32%	5	26%	50	30%

**Table 6 : Influence activities by each class of minority active shareholders in the United Kingdom in quoted firms**

The percentage represent the fraction of each influence activity for each class of minority active shareholders.

<b>Motives</b>	<b>Institutional investors</b>		<b>Financial investors</b>		<b>Internal shareholders Individual action</b>		<b>PIRC</b>		<b>Association of British Insurance</b>		<b>NAPF</b>		<b>U.K. Shareholders Association</b>		<b>U.K. Active Value Fund</b>		<b>Shareholders group Collective action</b>		<b>TOTAL</b>	
<b>Judicial activities</b>	1	6%	1	25%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	4	10%	6	8%
<b>Proxy contests</b>	3	18%	2	50%	4	100%	4	100%	0	0%	0	0%	1	100%	1	33%	33	85%	48	48%
<b>Pressure</b>	10	59%	1	25%	0	0%	0	0%	1	50%	1	100%	0	0%	2	67%	1	3%	16	21%
<b>Negotiations</b>	3	18%	0	0%	0	0%	0	0%	1	50%	0	0%	0	0%	0	0%	1	3%	5	7%

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