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Authorizations to issue shares and disapply pre-emption rights in the UK, Belgium and France: law, economics and practice

Tom Vos[1]

Abstract

In this paper, I analyze the role of shareholder approval and pre-emption rights in protecting shareholders in share issuances by listed corporations in the UK, Belgium and France. In these jurisdictions, shareholder approval and pre-emption rights are in principle required for share issuances, but the general meeting can authorize the board of directors to issue shares and disapply pre-emption rights. Therefore, the protection offered by pre-emption rights and shareholder approval crucially depends on the support for these legal strategies by shareholders. Proxy advisors and institutional investors have adopted guidelines that signal that investors strongly support pre-emption rights and shareholder approval of share issuances. However, I provide new empirical evidence that these guidelines are often not followed in France and Belgium, especially for smaller corporations with high levels of insider ownership. I contrast this with the strong impact of the guidelines from institutional investors in the UK. I also offer a few explanations for these differences. Whether stricter authorizations would be efficient is uncertain, but if policymakers believe this is a problem, I offer some low-cost policy options that would give shareholders a larger say on the balance between flexibility and accountability with regard to authorizations to issue shares and disapply pre-emption rights.

Keywords

Share issuances, equity finance, authorizations, shareholder protection, pre-emption rights, shareholder approval

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1. Introduction

Share issuances and shareholder protection. Corporations often issue shares to finance their activities. Such share issuances also come with a risk: if the new shares are not issued pro rata to the existing shareholders, the voting rights and financial interests of some of the existing shareholders may be diluted. Some dilution of the existing shareholders may be necessary to raise capital successfully and allow the corporation to engage in value-increasing projects that benefit all shareholders. However, "insiders", such as significant shareholders or managers, can use their influence over the corporation to cause the corporation to issue shares for their personal benefit (an agency problem), thereby diluting the financial or voting rights of minority shareholders without a good business reason. To protect shareholders in such situations, jurisdictions have adopted several legal strategies.

The three functions of shareholder protection in share issuances. In this paper, I argue that such legal strategies to protect shareholders in share issuances fulfill essentially three functions in listed corporations. Firstly, some legal strategies fulfill what I call an "anti-tunneling function", by protecting shareholders if corporations issue shares to insiders or to other related parties at a price that is lower than the true value of the shares, thereby diluting the minority shareholders financially. Secondly, some legal strategies protect shareholders in the case of share issuances that create, entrench or transfer control over the corporation, which I call the "control protection function". Thirdly, the legal strategies help to prevent that share issuances are used without a business purpose but rather as a way to inject additional free cash flows into the corporation, which can then be extracted by insiders. I call this last function the "disciplining function".

The important role of pre-emption rights and shareholder approval in the EU. In the EU, pre-emption rights and shareholder approval have been considered the traditional answer to the need to protect shareholders in share issuances by listed corporations.[2] Both protections have been required for share issuances since the Second Company Law Directive[3], now incorporated

[2] See for example: Marco Ventoruzzo, 'Issuing new shares and preemptive rights: a comparative analysis' [2013] Richmond Journal of Global Law & Business 517; Edward Rock, Paul Davies, Hideki Kanda, Reinier Kraakman and Wolf-Georg Ringe, 'Fundamental changes' in John Armour and Luca Enriques (eds), *The Anatomy of Corporate Law. A Comparative and Functional Approach* (OUP 2016) 180-183.

[3] Second Directive Council 77/91/EEC on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent [1977] *OJ L*26/1.

in the Codified Company Law Directive[4]. While other legal strategies of shareholder protection also exist, pre-emption rights and shareholder approval are the only legal strategies that can conceivably fulfill all three functions of shareholder protection in the EU.[5]

The limited role of pre-emption rights and shareholder approval in the EU? On the other hand, the role of shareholder approval and pre-emption rights is also limited in the EU. Pre-emption rights can be disapplied by corporations with approval by the general meeting. In addition, shareholders can authorize the board to issue shares, without shareholder approval of the specific issuance.[6] Such authorizations can also include an authorization for the board to disapply pre-emption rights. In other words, the ability of shareholder approval and pre-emption rights to protect shareholders in share issuances crucially depends on the extent to which shareholders support these legal strategies. Whether shareholders should support these strategies is not clear a priori. While shareholder approval and pre-emption rights can protect shareholders (reducing agency costs), they can also prevent corporations from quickly and cheaply raising capital (causing principal costs).[7] Corporations will therefore have to balance these opposing concerns. Institutional investors and proxy advisors have adopted guidelines on when they will support authorizations to the board and the disapplication of pre-emption rights. The impact of these guidelines in practice has not yet been extensively researched.

Focus of this paper. To what extent shareholder approval and pre-emption rights actually provide protection to shareholders in share issuances therefore depends on the legal modalities for opting out of shareholder approval and pre-emption rights, on the guidelines of institutional investors and proxy advisors, and on the impact of these guidelines in practice. This paper aims to illuminate how these factors interrelate. It does so by studying the law and practice of authorizations in three selected jurisdictions: the UK, Belgium and France. Belgium and France were selected as examples of a typical continental European jurisdiction with a concentrated shareholder structure.[8] There is also no empirical evidence available on authorizations in Belgium and France, so this paper can help to better understand authorizations in these countries. The UK was selected because it has a very different typical shareholder structure,

[4] Directive European Parliament and Council 2017/1132 relating to certain aspects of company law (codification) [2017] *OJ L*169/46.
[5] See further in part 2.
[6] See further in part 3.
[7] See further in part 2.
[8] Gur Aminadav and Elias Papaioannou, 'Corporate Control around the World' [2020] Journal of Finance 1191, 1205.

which is much more dispersed.[9] In addition, pre-emption rights and shareholder approval play an important role in the UK, thanks to institutional investor support for these legal strategies in guidelines (see further in part 4.1 and 5.1). The UK approach can therefore be contrasted to the approach in Belgium and France. However, because the practical impact of the guidelines is already well understood for the UK, no new empirical evidence is collected for the UK.

Roadmap to the paper. Part 2 of this paper first analyzes the economic rationale behind pre-emption rights and shareholder approval of share issuances in listed corporations. Part 3 then discusses the legal requirements of shareholder approval and pre-emption rights in the three selected jurisdictions (the UK, Belgium and France) and the modalities for opting out of these protections. Next, part 4 analyzes the guidelines by proxy advisors and institutional investors that stipulate which authorizations to issue shares and disapply pre-emption rights are considered acceptable. Part 4.1 discusses the Pre-emption Guidelines and the Share Capital Management Guidelines in the UK, while part 4.2 discusses similar guidelines by proxy advisors and institutional investors in Belgium and France.

Part 5 discusses the evidence on the impact of these guidelines in practice. The existing evidence suggests that the guidelines in the UK are almost always followed by corporations with a premium listing. I also provide novel empirical evidence on the size and modalities of authorizations in a sample of Belgian and French listed corporations. I find that the French and Belgian guidelines have a much smaller influence in practice, especially for smaller corporations, Belgian corporations and corporations with high levels of insider ownership.

In Part 6, I interpret the evidence. One interpretation is that the broader authorizations in smaller corporations and corporations with high levels of insider ownership are evidence of an "accountability gap", i.e., insiders using their power over the corporation to reduce their accountability to inefficient levels. Another interpretation is that the broader authorizations are efficient, because they are justified by specific needs of smaller firms and firms with more concentrated insider ownership.[10] This paper does not investigate which of these interpretations is correct, and therefore whether the status quo is efficient, as this would require a different

[9] Gur Aminadav and Elias Papaioannou, 'Corporate Control around the World' [2020] Journal of Finance 1191, 1205.
[10] This is the criticism from Lund on the paper by Nili and Kastiel mentioned in the previous footnote: Dorothy Lund, 'In Search of Good Corporate Governance' [2022] Yale Law Journal Forum 854.

empirical research design. Nevertheless, I do formulate some low-cost policy options that could help shareholders to hold insiders accountable with regards to authorizations to issue shares and disapply pre-emption rights, without eliminating the flexibility for corporations to adopt broad authorizations where these are desirable. For example, I argue that shareholders could vote on authorizations on an annual basis, that shareholders could vote separately on authorizations to disapply pre-emption rights, and that local guidelines could be developed in Belgium by institutional investors and other stakeholders. Part 7 concludes.

2. The economics of pre-emption rights and shareholder approval of share issuances

Agency problems in share issuances. The main function of pre-emption rights and shareholder approval of share issuances is to protect shareholders against the agency problems that may affect share issuances.[11] More precisely, the agency problems that may affect share issuances can be divided into three different problems.

Cheap-stock tunneling and the anti-tunneling function. First, share issuances may be motivated by cheap-stock tunneling. Cheap-stock tunneling can be defined as "*an equity issue to the insiders* [or to other related parties] *at a low price that economically dilutes the interest of outside shareholders"*[12] (own addition). The conflict of interest is clear in that case: the minority shareholders of the corporation want the issue price to be as high as possible, while the insiders of the corporation want the issue price to be as low as possible. Hence, there is a role for shareholder protections that fulfill an "anti-tunneling function".

The anti-tunneling function of shareholder approval and pre-emption rights. Intuitively, shareholder approval can prevent the problem of cheap-stock tunneling (the anti-tunneling function): shareholders can vote against the transaction if they believe that the shares are issued at a price that is too low, or if they are not convinced that the shares should only be issued to the insiders. However, if a controlling shareholder dominates the general meeting, shareholder approval will be ineffective in combatting cheap-stock tunneling in share issuances to the controlling shareholder.[13] This problem is remedied to some extent by requiring supermajority

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[11] See for a discussion of the different agency problems: John Armour, Henry Hansmann, Reinier Kraakman and Mariana Pargendler, 'What is corporate law?' in John Armour and Luca Enriques (eds), *The Anatomy of Corporate Law. A Comparative and Functional Approach* (OUP 2016) 2.

[12] Jesse Fried and Holger Spamann, 'Cheap-stock tunneling around preemptive rights' [2020] Journal of Financial Economics 353.

[13] Making this argument: Edward Rock, Paul Davies, Hideki Kanda, Reinier Kraakman and Wolf-Georg Ringe, 'Fundamental changes' in John Armour and Luca Enriques (eds), *The Anatomy of Corporate Law. A Comparative*

approval from shareholders or by prohibiting conflicted shareholders from voting on the share issuance.

Pre-emptions rights also help to combat cheap-stock tunneling, by allowing minority shareholders to participate pro rata in the share issuance at the same conditions as the insiders, thereby avoiding dilution even if the issue price is too low.[14] Shareholders who are unable or unwilling to subscribe to additional shares can avoid financial dilution by selling the rights to investors who are willing to participate in the share issuance.[15] Pre-emption rights may fail to protect shareholders completely against cheap-stock tunneling if information asymmetries are present, because investors do not know when exercising the rights is financially attractive, unlike the insiders.[16] However, this problem is reduced to a large extent in Belgium and France, as it is market practice that issuers disclose whether insiders will participate in the rights offering, reducing the information asymmetry.[17]

Voting rights dilution and the control protection function. The second problem in share issuances is that the voting rights of the existing shareholders could be diluted. The primary purpose of a share issuance may not be to raise capital, but rather to create, transfer or entrench control over the corporation. Creating a new blockholder may create value for the corporation and its stakeholders, for example through increased monitoring[18] or superior entrepreneurial

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and Functional Approach (OUP 2016) 181-182; Eilis Ferran and Look Chan Ho, *Principles of Corporate Finance Law* (OUP 2014) 109.

[14] Jesse Fried, 'Powering Preemptive Rights with Presubscription Disclosure' in Luca Enriques and Tobias Tröger (eds), *The Law and Finance of Related Party Transactions* (CUP 2019) 80, citing Edward Rock, Paul Davies, Hideki Kanda, Reinier Kraakman and Wolf-Georg Ringe, 'Fundamental changes' in John Armour and Luca Enriques (eds), *The Anatomy of Corporate Law. A Comparative and Functional Approach* (OUP 2016) 182 (*"preemptive rights [...] discourage controlling shareholders from acquiring additional shares from the firm at low prices"*); Simeon Djankov, Rafael La Porta, Florencio Lopez-De-Silanes and Andrei Shleifer, 'The Law and Economics of Self-Dealing' [2008] Journal of Financial Economics 430, 454 (*"in the absence of preemptive rights, insiders may expropriate minority shareholders by offering shares to related parties, or even to themselves, at below-market prices"*).

[15] See, for example: Marco Ventoruzzo, 'Issuing new shares and preemptive rights: a comparative analysis' [2013] Richmond Journal of Global Law & Business 517, 520; Eilis Ferran and Look Chan Ho, *Principles of Corporate Finance Law* (OUP 2014) 107; Louise Gullifer and Jennifer Payne, *Corporate Finance Law: Principles and Policy* (Hart 2015) 135.

[16] Jesse Fried and Holger Spamann, 'Cheap-stock tunneling around preemptive rights' [2020] Journal of Financial Economics 353.

[17] I discuss this issue in a separate paper: Tom Vos, 'The transaction structure of rights offerings in France and Belgium', working paper on file with the author. It is also discussed in part 6.4 of my doctoral thesis: Tom Vos, *Shareholder protection in share issuances. A comparative law and economics approach* (unpublished doctoral thesis KU Leuven 2021).

[18] Ronald J. Gilson, 'Controlling shareholders and corporate governance: complicating the comparative taxonomy' [2006] Harvard Law Review 1641, 1651.

vision.[19] However, the presence of a blockholder may also increase the risk of tunneling[20] and can entrench management by making a control challenge impossible.[21] Share issuances can also be used to entrench the control of the insiders, for example by increasing the voting rights of the insiders and/or diluting the voting rights of the raider or activist that challenges the insiders' control. Such defensive share issuances may allow the management of a corporation to protect the long-term vision of the corporation and protect shareholders from (mistakenly) accepting a takeover bid or activist proposal that does not create value for the corporation and its shareholders; but they may also allow managers to entrench their positions and avoid being held accountable to shareholders.[22] Because of the potential risks associated with the creation or entrenchment of control, legislators have also adopted shareholder protection with a control protection function.

The control protection function of shareholder approval and pre-emption rights. Shareholder approval can help protect shareholders against voting rights dilution: shareholders can vote against the transaction if they disagree with the entrenchment or change of control, even if the conditions of the issuance are financially fair. Pre-emption rights also provide a control protection function: shareholders who are willing and able to invest more money in the corporation can maintain their participation and their percentage of voting rights by exercising the rights. Again, the protection offered by pre-emption rights is imperfect. For example, insiders can structure the transaction in such a way as to make it less interesting for minority shareholders to participate, for example by not making the pre-emption rights transferable or by setting the issue price above the market price to discourage the existing shareholders from exercising their rights.[23] The insiders can then subscribe for the shares not bought by the

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[19] Zohar Goshen and Assaf Hamdani, 'Corporate Control and Idiosyncratic Vision' [2016] Yale Law Journal 560, 560 and 566.

[20] Luca Enriques and Paolo Vulpin, 'Corporate Governance Reforms in Continental Europe' [2007] Journal of Economic Perspectives 117, 122.

[21] Luca Enriques and Matteo Gatti, 'Creeping Acquisitions in Europe: Enabling Companies to be Better Safe than Sorry' [2015] Journal of Corporate Law Studies 55, 63.

[22] Compare, for example, the arguments against takeover defenses generally: Lucian Bebchuk, 'The Case Against Board Veto in Corporate Takeovers' [2002] University of Chicago Law Review 973; Paul Davies, Klaus Hopt and Wolf-Georg Ringe, 'Control transactions' in John Armour and Luca Enriques (eds), *The Anatomy of Corporate Law. A Comparative and Functional Approach* (OUP 2016) 207; with some of the arguments against takeover defenses: Martin Lipton, 'Takeover Bids in the Target's Boardroom' [1979] Business Lawyer 101, 108 and 113-116; Zohar Goshen and Richard Squire, 'Principal costs: a new theory for corporate law and governance' [2017] Columbia Law Review 767, 817.

[23] A pre-emption right is essentially an option for the minority shareholder, which only has value as long as the market price of the shares is above the issue price. See: DTI, *Pre-Emption Rights: Final Report. A study by Paul Myners into the impact of shareholders' pre-emption rights on a public company's ability to raise new capital"* (URN 05/679, February 2005) 11.

minority shareholders, increasing their control over the corporation. Nevertheless, pre-emption rights reduce the impact of share issuances on control.

The agency costs of free cash flows and the disciplining function. The third agency problem that can arise in share issuances is related to concept of the "agency costs of free cash flows", developed by Jensen.[24] Jensen argued that managers of the corporation have incentives to grow the size of the corporation and retain free cash flows inside the corporation. This insight can be extended to share issuances: managers have incentives to use share issuances to inject additional free cash flows into the corporation that can be extracted by the insiders through related party transactions, excessive executive compensation, empire building, or other forms of tunneling.

The disciplining function of shareholder approval and pre-emption rights. It is clear that shareholder approval can fulfill a disciplining function: shareholders can hold insiders accountable by only approving share issuances for which a specific and value-creating business purpose exists. Although this is less obvious, it has been argued (especially in the UK) that pre-emption rights also provide an important disciplining function,.[25] As such, pre-emption rights do not prevent insiders from using the proceeds of the issuance for their personal benefit. Insiders could even set the issue price of the rights offering very low to induce the existing shareholders to exercise their rights to avoid being diluted, thereby guaranteeing the success of the issuance. Nevertheless, the advantage of pre-emption rights is that the insiders will no longer be able to hand-pick the investors who can subscribe to the share issuance, as the opportunity to subscribe needs to be offered pro rata to the existing shareholders. This eliminates the possibility for management to allocate underpriced shares to friendly investors who will implicitly or explicitly support them if their position is challenged.[26] If the shares are

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[24] Michael C. Jensen, 'Agency Costs of Free Cash Flow, Corporate Finance, and Takeovers [1986] American Economic Review 323. According to Jensen, free cash flows are cash flows in excess of those required to fund all valuable projects of the corporation.

[25] For sources that (implicitly or explicitly) make this argument, see: Alain Couret, *Le droit préferentiel de souscription de l'actionnaire* (unpublished doctoral thesis Université de Toulouse 1978) 176-177; Julian Franks, Colin Mayer and Luc Renneboog, 'Who disciplines management in poorly performing companies?' [2001] Journal of Financial Intermediation 209; Eilis Ferran, 'Legal Capital Rules and Modern Securities Markets - The Case for Reform, as Illustrated by the UK Equity Markets' in Klaus Hopt and Eddy Wymeersch (eds), *Capital markets and company law* (OUP 2003) 121-122; DTI, *Pre-Emption Rights: Final Report. A study by Paul Myners into the impact of shareholders' pre-emption rights on a public company's ability to raise new capital"* (URN 05/679, February 2005) 12; Eilis Ferran and Look Chan Ho, *Principles of Corporate Finance Law* (OUP 2014) 106; Louise Gullifer and Jennifer Payne, *Corporate Finance Law: Principles and Policy* (Hart 2015) 138; Paul Davies and Sarah Worthington, *Gower's principles of modern company law* (10th edn, Sweet & Maxwell 2016) 813.

[26] Julian Franks, Colin Mayer and Luc Renneboog, 'Who disciplines management in poorly performing companies?' [2001] Journal of Financial Intermediation 209, 244 (*"managers have incentives to drop pre-emption rights to allow equity issues to be made to new shareholders at a discount to the equilibrium price, thereby diluting*

issued on a pre-emptive basis, the existing shareholders have the ability to protect themselves against dilution by subscribing to the share issuance. However, the existing shareholders will not be pleased that they are forced to invest additional money in the corporation to avoid being diluted if the purpose for the additional free cash flows is not clear. In such case, the "angry" existing shareholders can hold the management and the directors accountable at the next general meeting, because no "supportive" new investors were able to enter the corporation through the share issuance.[27] The protection offered by pre-emption rights is not perfect, as it is also necessary that the existing minority shareholders have the possibility to dismiss the management at a general meeting, but they do help to discipline management.

Other strategies that fulfill the three functions of shareholder protection. Shareholder approval and pre-emption rights are not the only legal strategies for protecting shareholders in share issuances – other legal strategies also play a role. For example, specific procedures for share issuances to related parties (as well as the general rules for related party transactions) also fulfill an anti-tunneling function. In addition, the mandatory bid rule can prevent that share issuances are used to create or transfer control, and takeover rules in some jurisdictions may limit the use of share issuances as a takeover defense. Such rules therefore also fulfill a control protection function. However, in contrast to pre-emption rights and shareholder approval, such rules cannot fulfill a disciplining function in share issuances. Finally, in theory, general standards, such as the corporate interest, fiduciary duties or abuse of majority, could fulfill all three functions of shareholder protection in share issuances. In practice, standards do not play an important role in protecting shareholders in European listed corporations, because of the existence of several obstacles to shareholder litigation.[28] In addition, standards are mainly used

existing shareholder wealth. The discount would be in exchange for implicit or explicit agreements to new shareholders to leave existing management in place").

[27] Bernard S. Black and John C. Coffee, Jr., 'Hail Britannia? Institutional Investor Behavior under Limited Regulation' [1994] Michigan Law Review 1997, 2037 (*"companies know that if they attempt a coercive, deep discount offer, they are likely to face a shareholder revolt at the next annual meeting, and investment bankers know that a coercive rights offering will alienate their best customers"*); Julian Franks, Colin Mayer and Luc Renneboog, 'Who disciplines management in poorly performing companies?' [2001] Journal of Financial Intermediation 209, 228 (*"senior management at the largest fund managers in the United Kingdom informed us that although they might intervene where there was very poor performance, in the face of management opposition, they were likely to avoid confrontation because they disliked the consequent publicity and the costs of organizing other shareholders. However, it was a different story when the poorly performing company required new financing: 'it comes to a crunch when companies raise additional finance' or 'it all unpicks when a company needs money."*).

[28] See for such arguments, for example: John Armour, Bernard S. Black, B. Cheffins and Richard Nolan, 'Private Enforcement of Corporate Law: An Empirical Comparison of the United Kingdom and the United States' [2009] Journal of Empirical Legal Studies 687; Martin Gelter, 'Why do shareholder derivative suits remain rare in continental Europe?' [2012] Brook Journal of International Law 843; John Armour, Henry Hansmann and Reinier

to challenge transactions that have a conflict of interest or a change of control, as courts are reluctant to review the business purpose of a transaction. Therefore, pre-emption rights and shareholder approval are the only legal strategies in European jurisdictions that conceivably play a disciplining function with regard to share issuances.

The principal costs of shareholder approval and pre-emption rights. Legal strategies that aim to protect shareholders by giving them more power over the decision-making process also come with costs, which are sometimes called "principal costs".[29] For example, preparing a general meeting takes time and money for corporations and their management. The additional delay may also prevent a corporation from quickly raising capital when it is necessary, for example in a moment of crisis or when market conditions are favorable.[30] In addition, outside shareholders are generally less informed than insiders and may make mistakes when deciding whether to approve a share issuance. Becoming informed about a share issuance is costly for the shareholders, who must read the disclosures of the corporation, do their own research and make up their mind about the proposed transaction. In addition, shareholder decision-making is plagued by the rational apathy problem:[31] although a share issuance may be bad for shareholders as a group, because the costs of becoming informed are borne privately, individual shareholders may lack incentives to become informed and block a value-decreasing share issuance.

Pre-emption rights also cause principal costs. First, share issuances with pre-emption rights generally take more time than share issuances without pre-emption rights, because the law typically stipulates a minimum exercise period for pre-emptive share issuances.[32] Again, this

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Kraakman, 'Agency Problems and Legal Strategies' in John Armour and Luca Enriques (eds), *The Anatomy of Corporate Law. A Comparative and Functional Approach* (OUP 2016) 41-42.

[29] Zohar Goshen and Richard Squire, 'Principal costs: a new theory for corporate law and governance' [2017] Columbia Law Review 767.

[30] Noting this problem, for example: Louise Gullifer and Jennifer Payne, *Corporate Finance Law: Principles and Policy* (Hart 2015) 130; Eilis Ferran and Look Chan Ho, *Principles of Corporate Finance Law* (OUP 2014) 110-111.

[31] Stephen Bainbridge, 'Director Primacy and Shareholder Disempowerment' [2006] Harvard Law Review 1735, 1745; Frank Easterbrook and Daniel Fischel, *The economic structure of corporate law* (Harvard University Press 1991) 66-67; Sanford Grossman and Oliver Hart, 'One share - one vote and the market for corporate control' [1988] Journal of Financial Economics 175; Bernard S. Black, 'Agents Watching Agents: The Promise of Institutional Investor Voice' [1992] *UCLA Law Review* 811, 821-822; Bernard S. Black, 'Shareholder Passivity Reexamined' [1990] Michigan Law Review 520, 526-529.

[32] See, for example: Edward Rock, Paul Davies, Hideki Kanda, Reinier Kraakman and Wolf-Georg Ringe, 'Fundamental changes' in John Armour and Luca Enriques (eds), *The Anatomy of Corporate Law. A Comparative and Functional Approach* (OUP 2016) 182: Marco Ventoruzzo, 'Issuing new shares and preemptive rights: a comparative analysis' [2013] Richmond Journal of Global Law & Business 517, 518 and 521.

additional delay may be costly for the corporation. Secondly, share issuances with pre-emption rights will normally require a prospectus,[33] which increases the costs of a rights offering in comparison to a private placement.[34]

Mandating uniform shareholder protections could increase principal costs for corporations, as corporations differ significantly in their need to raise additional capital and the need to hold insiders accountable. Some level of financial flexibility may be valuable for the corporation, for example to quickly react to investment opportunities. Finance scholars have argued that the optimal level of financial flexibility differs between corporations, depending on the size, maturity and growth options available to the corporation.[35] In addition, several authors have argued that a firm's investment opportunities and financing needs, and therefore also its optimal governance structure, changes over time as the corporation enters into different lifecycles (the so-called lifecycle theory).[36] For example, a young and innovative technology firm will often rely heavily on repeated capital injections to finance its investments, for which a quick access to the capital markets is needed, preferably by issuing shares to specialized institutional investors. Strong shareholder protections in such firms may hinder management in flexibly raising capital to pursue valuable investments. On the other hand, as the firm matures, the firm may generate more cash flows internally, which it can use to finance its investments. In that case, accountability of the management towards shareholders, including with regards to share issuances, is needed to ensure that the management does not tunnel these cash flows away.

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[33] Under the EU Prospectus Regulation, rights offerings will normally constitute an offer to the public in the member states where the corporation is listed, and will therefore require a prospectus, unless one of the exemptions to the prospectus requirement applies, for example if the corporation has fewer than 150 investors who are not qualified investors or if the issuance is sufficiently small. See: Charles Howarth and Amy Waddington, 'Private placements' in Raj Panasar and Philip Boeckman (eds), *European Securities Law* (OUP 2021) 235; Marie-Laurence Tibi, "France" in Raj Panasar and Philip Boeckman (eds), *European Securities Law* (OUP 2021) 767-768.

[34] Charles Cardon, 'L'augmentation du capital par placement privé issue de l'ordonnance du 22 janvier 2009' [2009] RTDF 45, 51-52.

[35] See, for example: Michael C. Jensen, 'Agency Costs of Free Cash Flow, Corporate Finance, and Takeovers [1986] American Economic Review 323, 324 (*"The control function of debt is more important in organizations that generate large cash flows but have low growth prospects, and even more important in organizations that must shrink"*). See also: Richard A. Brealy, Stewart C. Myers and Franklin Allen, *Principles of corporate finance* (13th edn, McGraw-Hill 2020) 500.

[36] See, for example: Harry DeAngelo, Linda DeAngelo and René M. Stulz, 'Seasoned equity offerings, market timing, and the corporate lifecycle' [2010] Journal of Financial Economics 275 (finding evidence in support of the lifecycle theory that young firms with low operating cash flows issue shares to fund investments, while more mature firms pay out dividends and fund investment internally, although the lifecycle theory cannot explain all share issuances).

Conclusion. In conclusion, shareholder approval and pre-emption rights can play an important role in share issuances in Europe by fulfilling the three functions of protecting shareholders. However, the accountability towards shareholders should be balanced with a corporation's need for flexibility in raising capital. This balance between flexibility and accountability differs between corporations and over time within a corporation. This explains why European jurisdictions often allow corporations to opt out for shareholder approval and pre-emption rights, making shareholder protection more depend on the support for these legal strategies by investors, as I describe in the following parts.

3. Legal requirements of pre-emption rights and shareholder approval of share issuances

Introduction. This part discusses the legal requirements relating to pre-emption rights and shareholder approval of share issuances. I focus first on the law in the books – the law in practice is dealt with in the next parts. I focus on the law in the UK, France and Belgium, as examples of the European approach to regulating share issuances.

Shareholder approval of share issuances in Europe. Since the Second Company Law Directive, shareholder approval of share issuances has been in principle required in the EU (now article 68 of the Codified Company Law Directive). This requirement has also been implemented in Belgium, France and the UK.[37] Since Brexit, the UK is no longer obliged to implement the Codified Company Law Directive[38], but so far, the UK does not seem to intend to deviate from EU law in this regard. In Belgium and France, share issuances require "supermajority" approval: three-quarters (Belgium) and two-thirds (France) of the votes cast, with abstentions not counting in the numerator or denominator.[39] By contrast, in the UK, a simple majority of votes cast suffices, except if pre-emption rights are disapplied, in which case a supermajority of at least three-quarters of the votes cast is required.[40]

Authorizations of the board to issue shares. Article 68 of the Codified Company Law Directive also allows the general meeting to authorize the board of directors to decide on a

[37] Article 7:177 Belgian Companies Code; article L225-129 French Commercial Code; section 549 and 551 of the UK Companies Act.

[38] Peter Böckli et al., 'The Consequences of Brexit for Companies and Company Law' (2016) University of Cambridge Faculty of Law Research Paper No. 22/2017 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2926489>.

[39] Article 7:177 *iuncto* article 7:153 Belgian Companies Code; article L225-129 *iuncto* L225-96 French Commercial Code.

[40] Section 551(8) *iuncto* section 282 UK Companies Act and section 571 *iuncto* section 283 UK Companies Act, respectively.

share issuance.[41] Because the Codified Company Law Directive is considered to be minimum harmonization on this topic, member states may also impose additional protections for shareholders.[42] For example, article 7:198 of the Belgian Companies Code limits the maximum amount of the authorization to the current amount of share capital for corporations listed on a regulated market. In addition, certain types of share issuances must be specifically mentioned in the authorization, for example share issuances that disapply pre-emption rights.[43] In Belgium, authorizations must also explicitly authorize the board to issue shares in case of a takeover bid for the board to be able to do so.[44] France has the opposite default rule: boards are allowed to use authorizations to issue shares in response to a takeover bid, unless explicitly provided otherwise by the authorization.[45] Finally, some types of share issuances that are riskier for shareholders are also plainly prohibited through a board authorization, including share issuances to defend against a takeover bid in the UK.[46]

Limits to the duration of the authorization. Both in Belgium and the UK, authorizations must be limited to five years, the maximum allowed by the Codified Company Law Directive.[47] In France, the maximum duration of the authorization is shorter: 26 months if the board is generally authorized to decide on a share issuance,[48] and 18 months if the authorization allows the board to issue shares to *"one or more persons designated by name or to categories of persons sharing certain characteristics"*.[49]

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[41] This possibility has been implemented by the following provisions: section 549 and 551 UK Companies Act; articles L225-129-1 and L225-129-2 French Commercial Code; article 7:198 Belgian Companies Code.
[42] Stefan Grundmann, *European Company Law* (Intersentia 2012) 236.
[43] Section 570 UK Companies Act 2006; article L225-129-2, subsection 3 *iuncto* article L225-135 and following French Commercial Code; article 7:200, 1° Belgian Companies Code.
[44] Article 7:202 of the Belgian Companies Code. This provision also limits the size of the issuance to 10% of capital and requires an issue price that is at least equal to the bid price. In addition, it limits the duration of the authorization to three years.
[45] Article L233-32, I of the French Commercial Code.
[46] Article 21 of the Takeover Code limits the use of defensive measures in general (including share issuances) in response to a takeover bid. See also: article 7:201 Belgian Companies Code (prohibition for authorizations with regard to the issuance of subscription rights, shares with multiple voting rights, shares in exchange for a contribution in kind by a 10% shareholder, or a new class of shares); article L225-147 French Commercial Code (with regard to shares issued in exchange for contributions in kind, with some exceptions in article L22-10-53 French Commercial Code). In the UK, the Listing Rules also require shareholder approval for certain shares issuances, for example for share issuances to related parties (LR 11) or for share issuances at a discount higher than 10% (LR 9.5.10), with exceptions for rights issues.
[47] Article 7:199 Belgian Companies Code; section 551(3) and (4) UK Companies Act 2006.
[48] Article L225-129-2 French Commercial Code (the so-called "*délégation de competence*"). The general meeting can also decide on the share issuance itself but delegate the modalities of implementation to the board of directors, a *"délégation de pouvoir"* (article L225-129-1 *iuncto* article L225-129 French Commercial Code). The latter delegation is valid for a longer period of five years. In practice, however, listed corporations in France always opt for a shorter, but more general authorization, as appears from the empirical research described in part 5.2.
[49] Article L225-138, III French Commercial Code.

Pre-emption rights in Europe. Pre-emption rights have also been required since the Second Company Law Directive. Article 72 of the Codified Company Law Directive requires that share issuances against consideration in cash are conducted with pre-emption rights, i.e., with the right for the existing shareholders to participate in the issuance in proportion to the capital represented by their shares.[50] Pre-emption rights cannot be excluded in the articles of association, but the general meeting can disapply pre-emption rights for a specific share issuance. Alternatively, the general meeting can authorize the board to disapply pre-emption rights. Even though this is not required by the Codified Company Law Directive, the law in Belgium, France and the UK stipulates that pre-emption rights are in principle transferable.[51]

Additional protections if pre-emption rights are disapplied. Article 72(4) of the Codified Company Law Directive requires that the board of directors justifies the reasons for disapplying pre-emption rights and the proposed issue price.[52] The directive constitutes minimum harmonization, so member states may also provide additional shareholder protection to shareholders.[53] For example, shareholders or directors are often prohibited from voting if they participate in a share issuance without pre-emption rights.[54] In France and the UK, the discount of the issue price to the market price is also limited by law to 10% if pre-emption rights are disapplied, with some important exceptions.[55] In Belgium, discounts of the issue price to the

[50] This requirement has been implemented by the following provisions: Article 7:188 Belgian Companies Code; article L225-132 French Commercial Code; section 561 UK Companies Act.

[51] Article L225-132, subsection 3 French Commercial Code; article 7:189, subsection 4 Belgian Companies Code; section 561(2) UK Companies Act. However, corporations can disapply pre-emption rights and grant shareholders extra-statutory non-transferable pre-emption rights. See for France: Renaud Mortier, *Opérations sur capital social* (LexisNexis 2015) 236-237 and 244-247; Alain Couret and Hervé Le Nabasque, *Valeurs mobilières. Augmentations de capital. Nouveau régime. Ordonnances des 25 mars et 24 juin 2004* (Editions Francis Lefebvre 2004) 122-126. See for Belgium: Marieke Wyckaert and Joris De Wolf, 'Transacties met verbonden partijen in genoteerde vennootschappen na SRD II' [2020] Bank en Financieel Recht 247, 257. See for the UK: Louise Gullifer and Jennifer Payne, *Corporate Finance Law: Principles and Policy* (Hart 2015) 136.

[52] See also the implementation in the following provisions: article 7:191 Belgian Companies Code; article 7:193 Belgian Companies Code; article L225-135 French Commercial Code; article L225-138 French Commercial Code; section 571(6) UK Companies Act; UK Listing Rule 13.8.2.

[53] Stefan Grundmann, *European Company Law* (Intersentia 2012) 239-240. See also: ECJ 19 November 1996, Case C-42/95 *Siemens AG v. Henry Nold* [1996] ECR I-06017-I (holding that member states may also grant pre-emption rights when shares are issued in exchange for a contribution in kind and that they may subject the disapplication of pre-emption rights to additional conditions).

[54] See, for example: article 7:193 Belgian Companies Code (voting prohibition for 10% shareholders in whose favor pre-emption rights are disapplied); article 7:200, 2° Belgian Companies Code (voting prohibition for directors who are a de facto representative of a counterparty in a non-pre-emptive share issuance); article 7:97 Belgian Companies Code (voting prohibition for directors who are "involved" in a transaction with a related party, which includes non-pre-emptive share issuances to related parties); article L225-138 French Commercial Code (voting prohibition for shareholders in whose favor pre-emption rights are disapplied); UK Listing Rule 11.1.7 (voting prohibition for shareholders who participate in related party transactions, which includes non-pre-emptive share issuances to related parties).

[55] See for the UK: Listing Rule 9.5.10 (maximum discount of 10% for share issuances that are not a rights issue with transferable rights, unless a higher discount is specifically approved by shareholders). See for France: articles

market price used to be prohibited if pre-emption rights were disapplied in favor of specific persons, but this rule was abolished with the 2019 corporate law reform because it was considered too burdensome.[56] Finally, in France, if pre-emption rights are disapplied to conduct a private placement, the size of the share issuance is limited to 20% of existing share capital, unless the shares are issued to specifically identified persons or categories of investors.[57]

4. Guidelines by proxy advisors and institutional investors

Introduction. The conclusion from the legal analysis above is that corporate law in the UK, Belgium and France leaves significant discretion to corporations to adopt broad authorizations to the board to issue shares, even without pre-emption rights. The substantive differences between these jurisdictions remain limited, although France imposes a stricter maximum duration of 26 month, and Belgium imposes a maximum percentage for the authorization of 100% of share capital. The practical role of shareholder approval as a strategy to protect shareholder therefore depends on the extent to which (mainly institutional) investors support such broad authorization of the board in practice. Certain institutional investors and proxy advisors have developed guidelines on whether they will support authorizations of the board, and under what conditions. This part analyzes these guidelines to get a better understanding of shareholder protection in share issuances in practice.

4.1. Guidelines in the UK

Share Capital Management Guidelines in the UK. In the UK, the Investment Association, a trade body of UK-based asset managers, has published the (non-binding) "Share Capital Management Guidelines"[58], which include guidance on the approval of share issuances by shareholders. The guidelines only apply to corporations with a premium listing, but

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L225-136 and R22-10-32 French Commercial Code. However, for a limit of 10% of capital per year, the general meeting can authorize the board to decide on a share issuance with a higher discount (article L22-10-52, subsection 2 French Commercial Code). In addition, the 10% limit to the discount does not apply when shares are issued to one or more persons designated by name or to categories of persons sharing certain characteristics (article L225-138 French Commercial Code). This arguably allows corporations to circumvent the limit to the discount. See: Stéphane Torck, 'Position AMF sur les offres de titres financiers par placement privé: la voie de la raison' [2012] *Droit des sociétés* 168, para 3; Renaud Mortier, *Opérations sur capital social* (LexisNexis 2015) 252-253; Michael Loy, 'L'augmentation de capital sans droit préférentiel de souscription par placement privé (Ordonnance n° 2009-80 du 22 janvier 2009)' [2009] *JCP E* 1766, para 8. See also further in part 5 about this possibility of circumvention.

[56] Explanatory Statement on the New Belgian Companies Code, Parliamentary Proceedings Chamber of Representatives (2017-2018), nr. 3119/001, 260.

[57] Article L225-136 *iuncto* article L225-138 French Commercial Code.

[58] The Investment Association, 'Share Capital Management Guidelines' (July 2016) <https://www.theia.org/sites/default/files/2019-06/20160701-SCM-Share-Capital-Management-Guidelines.pdf> (hereinafter "Share Capital Management Guidelines").

corporations with a standard listing, a listing on the High Growth Segment, or a listing on the AIM are encouraged to adopt these guidelines as well. Section 1.1.1 of the Share Capital Management Guidelines provides that an authorization of the board to issue shares shall be regarded as routine as long as it is limited to two-thirds of the existing share capital. In addition, any amount in excess of one-third of existing issued shares can only be used for fully pre-emptive rights issues (i.e., share issuances with transferable rights). The other third of the existing share capital may be used for other types of pre-emptive share issuances, for example an "open offer" (a share issuance with non-transferable pre-emption rights).[59] These limits do not mean that authorizations above these amounts cannot be approved, but rather that they will not be regarded as routine and therefore be subject to stricter individual scrutiny. The Share Capital Management Guidelines also require that the authorization to the board is granted until the next annual general meeting (section 1.1.3), which is much shorter than the statutory maximum of five years.

Pre-emption Guidelines in the UK. In addition, the Pre-emption Group in the UK, which consists of representatives of listed corporations, investors and intermediaries, has adopted (non-binding) guidelines detailing when the disapplication of pre-emption rights should be considered routine.[60] Again, the guidelines only apply to corporations with a premium listing, but other listed corporations are encouraged to adopt these guidelines as well. The Pre-emption Guidelines support general authorizations to disapply pre-emption rights of maximum 5% of issued ordinary share capital, and an additional 5% that can be used only in connection with an acquisition or a specified capital investment that is announced contemporaneously with the share issuance, or has taken place in the six months preceding the share issuance. If the disapplication of pre-emption rights is asked with regards to a specific share issuance (instead of a general authorization), the Pre-emption Guidelines recommend that shareholders should vote on the transaction on a case-by-case basis on the basis of a list of criteria. In addition, the Pre-emption Guidelines recommend that in any rolling three-year period, the corporation should not issue shares that represent more than 7.5% of the issued ordinary share capital on a non-pre-emptive basis. This limit excludes shares issued pursuant either to a specific

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[59] See for a more detailed discussion of the difference between rights issues and open offers: Seth Armitage, 'Discounts in Placing Pre-renounced Shares in Rights Issues' [2007] Journal of Business Finance & Accounting 1345; Eilis Ferran and Look Chan Ho, *Principles of Corporate Finance Law* (OUP 2014) 116-117 and 124-125.

[60] Pre-Emption Group, 'Disapplying pre-emption rights. A statement of principles' (2015) <https://www.frc.org.uk/medialibraries/FRC/FRC-Document-Library/Preemption%20Group/Revised-PEG-Statement-of-Principles-2015.pdf> (hereinafter "Pre-emption Guidelines").

disapplication or to a general disapplication of pre-emption rights that is used to fund an acquisition or specific investment. Finally, the Pre-emption Guidelines also recommend that corporations try to limit the discount of non-pre-emptive shares issuances to the market price to 5%, but authors have noted that this recommendation is often ignored.[61] Similar to the Share Capital Management Guidelines, the disapplication of pre-emption rights may only be granted for a period of 15 months or until the next annual general meeting, whichever is the shorter period.[62] This is again stricter than the statutory maximum duration for authorizations.

4.2. Guidelines in France and Belgium

Guidelines in France. In France, several actors have established guidelines that cover authorizations to the board to decide on share issuances: the major international proxy advisors ISS and Glass Lewis, the French proxy advisor Proxinvest, and the "Association française de la gestion financière" (AFG), a trade association for asset managers.[63] All these guidelines consistently recommend voting against general authorizations to issue shares with pre-emption rights amounting to more than 50% of existing share capital and against authorizations to issue shares without pre-emption rights amounting to more than 10% of existing share capital. The voting guidelines for continental Europe of the three largest US index funds also recommend voting in favor of authorizations under the same conditions.[64] These limits can be ignored if a compelling justification can be made for a deviation by the corporation, for example because of a specific project or investment. Specific share issuances subject to a vote by the general meeting are analyzed by investors on a case-by-case basis.

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[61] Charles Howarth and Amy Waddington, 'Private placements' in Raj Panasar and Philip Boeckman (eds), *European Securities Law* (OUP 2021) 236.

[62] Part 2A, paragraph 4 of the Pre-emption Guidelines.

[63] ISS, 'Continental Europe - Proxy Voting Guidelines - Benchmark Policy Recommendations' (12 March 2021), 17-18 <https://www.issgovernance.com/file/policy/active/emea/Europe-Voting-Guidelines.pdf>; Glass Lewis, 'Guidelines. An overview of the Glass Lewis approach to proxy advice. France' (2021), 18-19 <https://www.glasslewis.com/wp-content/uploads/2020/11/UK-Voting-Guidelines-GL.pdf?hsCtaTracking=76856133-1eee-4e4c-b972-823beec7dfa8%7Cd5c0d76d-1d22-4947-bdcf-2e91b6b21322>; Proxinvest, 'Principes de gouvernement d'entreprise et Politique de vote 2021' (January 2021) 65-66 <https://www.proxinvest.com/wp-content/uploads/2021/01/Politique_de_vote_Proxinvest_2021.pdf> ; AFG, 'Recommandations sur le gouvernement d'entreprise' (January 2021), 7 <https://www.afg.asso.fr/wp-content/uploads/2021/01/afg-tref-gouve-210119web.pdf>.

[64] Blackrock Investment Stewardship, 'Proxy voting guidelines for European, Middle Eastern, and African securities' (January 2021), 9-10 and 22 <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-emea.pdf>; Vanguard Funds, 'Summary of the proxy voting policy for UK and European portfolio companies' (1 December 2020), 10 <https://about.vanguard.com/investment-stewardship/portfolio-company-resources/INEUPOL_122020.pdf>; State Street Global Advisors, 'Proxy Voting and Engagement Guidelines. Europe' (March 2021), 6 >https://www.ssga.com/library-content/pdfs/ic/proxy-Voting-and-engagement-guidelines-europe.pdf>.

Guidelines for Belgium. In contrast to France and the UK, Belgium has no "homegrown" guidelines on authorizations by a local proxy advisor or association of asset managers and investors. Nevertheless, the voting guidelines of the major international proxy advisors and asset managers also cover Belgium. For example, the guidelines of ISS, BlackRock, Vanguard and State Street Global Advisors all recommend a limit to authorizations of 50% of existing share capital for share issuances with pre-emption rights; and of 10% for share issuances without pre-emption rights.[65] These thresholds are the same as for France. On the other hand, the guidelines by Glass Lewis are more flexible, recommending a maximum limit of 100% of existing share capital for share issuances with pre-emption rights and of 20% for share issuances without pre-emption rights.[66] Glass Lewis has stricter guidelines for France.

Guidelines for takeover defenses. Both in France and Belgium, the relevant guidelines by proxy advisors and institutional investors (except for those by Vanguard) also oppose takeover defenses and therefore also the possibility of using an authorization to issue shares in the context of a takeover bid without specific shareholder approval at the moment of the issuance.[67] In the UK, such guidelines are not necessary, because the UK Takeover Code (article 21) already restricts the use of share issuances as a takeover defense without specific shareholder approval.

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[65] ISS, 'Continental Europe - Proxy Voting Guidelines - Benchmark Policy Recommendations' (12 March 2021), 17 <https://www.issgovernance.com/file/policy/active/emea/Europe-Voting-Guidelines.pdf>; Blackrock Investment Stewardship, 'Proxy voting guidelines for European, Middle Eastern, and African securities' (January 2021), 9-10 and 12 <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-emea.pdf>; Vanguard Funds, 'Summary of the proxy voting policy for UK and European portfolio companies' (1 December 2020), 10, <https://about.vanguard.com/investment-stewardship/portfolio-company-resources/INEUPOL_122020.pdf>; State Street Global Advisors, 'Proxy Voting and Engagement Guidelines. Europe' (March 2021), 6 <https://www.ssga.com/library-content/pdfs/ic/proxy-Voting-and-engagement-guidelines-europe.pdf>

[66] Glass Lewis, 'Guidelines. An overview of the Glass Lewis approach to proxy advice. Belgium' (2021), 13 <https://www.glasslewis.com/wp-content/uploads/2020/12/Belgium-Voting-Guidelines-GL.pdf?hsCtaTracking=caa2141d-4296-4d70-b1b0-555f8c9109fb%7C367fa4c2-c9d8-4a10-a453-566158125328>.

[67] ISS, 'Continental Europe - Proxy Voting Guidelines - Benchmark Policy Recommendations' (12 March 2021), 27 <https://www.issgovernance.com/file/policy/active/emea/Europe-Voting-Guidelines.pdf>; Glass Lewis, 'Guidelines. An overview of the Glass Lewis approach to proxy advice. Belgium' (2021), 13 <https://www.glasslewis.com/wp-content/uploads/2020/12/Belgium-Voting-Guidelines-GL.pdf?hsCtaTracking=caa2141d-4296-4d70-b1b0-555f8c9109fb%7C367fa4c2-c9d8-4a10-a453-566158125328>; Glass Lewis, 'Guidelines. An overview of the Glass Lewis approach to proxy advice. France' (2021), 20-21 <https://www.glasslewis.com/wp-content/uploads/2020/11/UK-Voting-Guidelines-GL.pdf?hsCtaTracking=76856133-1eee-4e4c-b972-823beec7dfa8%7Cd5c0d76d-1d22-4947-bdcf-2e91b6b21322>; Proxinvest, 'Principes de gouvernement d'entreprise et Politique de vote 2021' (January 2021), 65-66 <https://www.proxinvest.com/wp-content/uploads/2021/01/Politique_de_vote_Proxinvest_2021.pdf>; AFG, 'Recommandations sur le gouvernement d'entreprise' (January 2021), 7 <https://www.afg.asso.fr/wp-content/uploads/2021/01/afg-tref-gouve-210119web.pdf>; Blackrock Investment Stewardship, 'Proxy voting guidelines for European, Middle Eastern, and African securities' (January 2021), 22-23 <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-emea.pdf>; State Street Global Advisors, 'Proxy Voting and Engagement Guidelines. Europe' (March 2021), 7 <https://www.ssga.com/library-content/pdfs/ic/proxy-Voting-and-engagement-guidelines-europe.pdf>

5. Impact of the guidelines on authorizations in practice

Introduction. The analysis of the guidelines by proxy advisors and institutional investors reveals that the difference in the guidelines between the UK, Belgium and France are rather small, although the guidelines in the UK are slightly more stringent. The more important difference, however, is that the guidelines in the UK have a much larger impact in practice than the guidelines in France and especially Belgium.

5.1. Impact of the guidelines in the UK

Impact of the guidelines in practice. In the UK, the guidelines are widely supported in the financial community, despite their non-binding nature.[68] They are also supported by the voting guidelines of the main proxy advisors in the UK, including ISS and Glass Lewis.[69] In addition, two monitoring reports by the Pre-emption Group, in 2016 and 2017, concluded that the Pre-emption Guidelines were generally observed by corporations in the FTSE All-Share Index.[70] The 2017 monitoring report did not find a single example of an authorization to disapply pre-emption rights for more than 10% of share capital in the FTSE 350, only 6 such examples in the FTSE Small Cap (out of 200 corporations requesting an authorization), and 2 examples in the FTSE Fledgling (out of 64 corporations requestion an authorization).[71] The evidence for the UK therefore suggests that the guidelines have a large impact in practice on authorizations to the board to issue shares and disapply pre-emption rights.

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[68] Louise Gullifer and Jennifer Payne, *Corporate Finance Law: Principles and Policy* (Hart 2015) 137; Eilis Ferran and Look Chan Ho, *Principles of Corporate Finance Law* (OUP 2014) 125; Paul Davies and Sarah Worthington, *Gower's principles of modern company law* (10th edn, Sweet & Maxwell 2016) 812 (arguing that the Pre-emption Guidelines constitute *"a 'strong' default rule whose alteration creates a significant hurdle for the management of the company"*.

[69] Proxy advisors are firms that generally offer research and voting advice to institutional shareholders. A list of proxy advisors in the UK can be found on the website of the FCA: https://www.fca.org.uk/markets/primary-markets/proxy-advisors. See for the voting guidelines: ISS, 'United Kingdom and Ireland Proxy Voting Guidelines' (19 November 2020), 26 <https://www.issgovernance.com/file/policy/active/emea/UK-and-Ireland-Voting-Guidelines.pdf>; Glass Lewis, 'Guidelines. An overview of the Glass Lewis approach to proxy advice. United kingdom' (2021), 36-37 <https://www.glasslewis.com/wp-content/uploads/2020/11/UK-Voting-Guidelines-GL.pdf?hsCtaTracking=76856133-1eee-4e4c-b972-823beec7dfa8%7Cd5c0d76d-1d22-4947-bdcf-2e91b6b21322> Another proxy advisor, Minerva Analytics, does not publish voting guidelines, as its clients have bespoke voting policies, but it also takes the Pre-emption Guidelines as the starting point. E-mail conversation with Sarah Wilson (CEO of Minerva Analytics), 25 May 2021, on file with the author.

[70] Pre-Emption Group, 'Monitoring report May 2017', 11 <https://www.frc.org.uk/medialibraries/FRC/FRC-Document-Library/Preemption%20Group/170512-PEG-monitoring-report.pdf>; Pre-Emption Group, 'Monitoring report May 2016', 12 <https://www.frc.org.uk/medialibraries/FRC/FRC-Document-Library/Preemption%20Group/PEG-Monitoring-Report.pdf>

[71] Pre-Emption Group, 'Monitoring report May 2017', 3, 6 and 8 <https://www.frc.org.uk/medialibraries/FRC/FRC-Document-Library/Preemption%20Group/170512-PEG-monitoring-report.pdf>.

5.2. Impact of the guidelines in Belgium and France

Sample selection. Because there was no empirical evidence available on authorizations in Belgium and France, I hand-collected this evidence for a sample of listed corporations.[72] The data was collected in July 2021 (for Belgium) and February 2022 (for France). For Belgium, I started with all corporations incorporated in Belgium and listed on Euronext Brussels (112 corporations). I then excluded 19 "regulated real estate corporations"[73] and 1 closed-end investment fund[74] because they are subject to specific regulations on authorized capital,. I also excluded the National Bank of Belgium from the sample, because as Belgium's central bank and financial supervisor, it is not comparable to other listed corporations. Finally, I excluded Nyrstar from the sample, because it is in the process of a liquidation and attracted litigation regarding a major restructuring of the corporation, making it incomparable to other corporations.[75] Corporations which did not adopt a new authorization to the board to issue shares after their IPO were also excluded from the sample. A sample of 84 corporations remains. Of those 84 corporations, 15 are part of the BEL 20 index, 25 are part of the BEL MID index, 18 are part of the BEL SMALL index, and 26 are not part of an index. I refer to these last corporations as the "BEL REST". For France, the sample consists of all the corporations incorporated in France and listed on Euronext Paris that are a member of the CAC 40 (33 corporations), the CAC Next 20 (17 corporations) or the CAC Mid 60 (52 corporations), or that are one of the 60 largest French corporations (by market capitalization) in the CAC Small. I again excluded corporations that were engaged in a financial restructuring[76] or that did not adopt a new authorization to the board to issue shares after their IPO. I also excluded Veolia Environment from the sample, where the authorized capital was adopted to realize a specifically

[72] For the collection of the data, I am indebted to Theo Monnens, a research assistant who worked under my supervision.

[73] The so-called *"Gereglementeerde vastgoedvennootschap" (GVV)/"sociétés immobilières réglementées" (SIR)*. These corporations are governed by the Law of 12 May 2014 "betreffende de gereglementeerde vastgoedvennootschappen" [concerning regulated real estate corporations"], *Belgian Official Journal* 30 June 2014. For example, article 26 of that law stipulates that regulated real estate corporation can only issue shares on a pre-emptive basis (although the statutory pre-emption rights may be replaced by extra-statutory pre-emption rights that are not transferable and have a shorter exercise period), except within the framework of the authorized capital for an amount of 10% of share capital per 12 months.

[74] The closed-end investment fund is Quest for Growth, a so-called *"privak"/"pricafs"*, which invests in non-listed corporations and growth corporations. Such a corporation is subject to the Royal Decree of 10 July 2016 "met betrekking tot de alternatieve instellingen voor collectieve belegging in niet-genoteerde vennootschappen en in groeibedrijven" [concerning alternative funds for the investment in non-listed corporations and growth corporations], *Belgian Official Journal* 4 August 2016. Article 7 of that decree states that a private investment corporation can in principle only issue shares on a pre-emptive basis (although the statutory pre-emption rights may be replaced by extra-statutory pre-emption rights that are not transferable and have a shorter exercise period).

[75] See on the Nyrstar restructuring: 'Beurswaakhond vraagt Nyrstar vereffening uit te stellen' (*De Tijd*, 2 June 2020).

[76] More specifically, I excluded the following corporations for this reason: Vallourec, Air France – KLM, Compagnie des Alpes, Technicolor and Latécoère.

announced takeover of Suez. Finally, I excluded Unibail-Rodamco-Westfield from the sample because of the unique stapled share structure, with shares listed on the stock exchanges in Paris and Amsterdam. This resulted in a total of 162 French corporations. The total sample of both Belgian and French corporations therefore consists of 246 observations. Some of the corporations in the sample have missing data for some variables, so some of the analyses are run on smaller samples.

Data collection and coding of the variables. Data on the terms of the authorizations was collected in July 2021 from the articles of association that listed corporations publish on their websites (for Belgium) and in February 2022 from universal registration documents and the notices and minutes of the general meeting that were published by the corporations on their website (for France). The data reflects the percentage of the last authorization by the general meeting in relation to the total share capital at the moment of the decision of the general meeting.[77] A distinction is made between the size of authorizations for share issuances with pre-emption rights and authorizations for share issuances without pre-emption rights, as the latter are often limited to a lower percentage of share capital. Some authorizations in France also provide for lower limits for share issuances through private placements than for share issuances through public offerings, but this paper does not analyze these lower limits.[78] For purposes of simplicity, the paper also does not include authorizations that can only be used to issue shares to specific persons, to issue shares in exchange for a contribution in kind, to issue shares to employees, or to issue shares to incorporate reserves into share capital. Authorizations given for a specific transaction that was already announced were also ignored, as the focus in this paper is on general authorizations.

The percentage of insider voting rights was coded for each corporation, as insiders may influence the terms of the authorizations. Data on insider ownership was collected from the last annual report before the decision by the general meeting on the authorization. If there is no authorization, the ownership structure from the last annual report before July 2021 (for Belgium) or before February 2022 (for France) is used. Shareholders were coded as "insiders"

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[77] In some cases, the amount of the authorization as a percentage of share capital is not mentioned, in which case this information was obtained from other sources, such as the annual report, the universal registration document or the minutes of the general meeting.

[78] Of the 130 French corporations with an authorization, 55 (42%) stipulate a lower percentage for private placements. In 34 of these corporations (62%), the lower percentage was 20% of share capital, which is the legal maximum for authorizations to issue shares through a private placement (Article L225-136 *iuncto* article L225-138 French Commercial Code – see above in part 3).

if they own more than 15% of the voting rights, or if they own between 5 and 15% of the voting rights and have a representative on the board of directors or have strong commercial ties with the corporation. Employees who hold shares are not counted as insiders unless they are represented in the board of directors. Non-diluted ownership was used.

Other variables were collected from S&P Capital IQ Pro, with the exception of data on director independence, which was collected from BoardEx. For information from the financial accounts, the data from the last financial year completed before the decision of the general meeting was used. For corporations without an authorization, data from the last available financial year (typically 2021, but sometimes 2020) was used. The market capitalization is calculated on the date of the general meeting deciding on the authorization, or on 28 February 2022 if there is no authorization. The trading volume is calculated as the average daily trading volume over the past year on the first trading day of the year of the decision of the general meeting on the authorization. If there is no authorization, the data on the first trading day of 2022 is used. To calculate the institutional ownership at the moment of the general meeting that decided on the authorization, I extracted data from S&P Capital IQ Pro on the historical ownership by the current largest 200 institutional investors in that corporation, and manually aggregated their ownership, as S&P Capital IQ Pro (unfortunately) does not contain historical aggregates of institutional ownership.[79] Institutions owning more than 15% of shares were not taken into account for aggregating institutional ownership, as these shareholders are classified as insiders in my methodology. The variables are more precisely defined in the Appendix.

Widespread use of long authorizations. Table 1 below provides descriptive statistics on the authorizations for the sample of listed corporations in France and Belgium. It is clear that authorizations of the board to issue shares are ubiquitous: almost all corporations have them. Most corporations also authorize the board to disapply pre-emption rights. If authorizations are granted, they are almost always granted for the statutory maximum duration in France and Belgium, respectively 26 months and five years (see above in part 3 on the legal maximum duration). This is in contrast to the law and market practice in the UK, where authorizations are typically only granted until the next annual general meeting.

[79] I also ran the regressions with the aggregate institutional ownership at the moment of data collection (July 2022) instead of my measure of the historical aggregate institutional ownership. This change does not materially affect the results.

	CAC 40	CAC Next 20	CAC Mid 60	CAC SMALL	BEL 20	BEL MID	BEL SMALL	BEL REST
Authorization for pre-emptive issuances (dummy)	100%	100%	90%	78%	80%	84%	100%	50%
If authorization: 26 months (dummy)	100%	94%	98%	94%	/	/	/	/
If authorization: 5 years (dummy)	/	/	/	/	75%	100%	94%	100%
Average % authorization (general)	29%	32%	34%	31%	20%	59%	94%	44%
Median % authorization (general)	33%	30%	35%	37%	10%	55%	100%	10%
Authorization for non-pre-emptive issuances (dummy)	85%	88%	79%	77%	73%	84%	100%	50%
If authorization: smaller for non-pre-emptive issuances (dummy)	88%	94%	91%	47%	25%	24%	0%	0%
Average % authorization (non-pre-emptive)	10%	11%	14%	27%	19%	51%	94%	44%
Authorization as takeover defense (dummy)	9%	18%	15%	52%	13%	36%	78%	35%

Table 1: characteristics of the authorizations by the general meeting to the board for a sample of Belgian and French corporations. The dummy variables are calculated with in the denominator the total number of corporations per index in the sample, except for the dummies measuring the duration of the authorization and the dummy for smaller authorizations for non-pre-emptive issuances, which only include corporations with an authorization in the denominator. For the variables measuring the size of authorizations as a percentage of share capital, corporations without an authorization are counted as having a 0% authorization.

Size of authorizations in Belgium. The descriptive statistics also suggest that important differences in the size of authorizations exist between Belgian and French corporations, and between small and large corporations. Large corporations on average have smaller authorizations than large corporations. The difference between small and large corporations is especially noteworthy for Belgian corporations. In fact, only one corporation of the BEL 20 does not observe the guideline to limit authorizations to maximum 50% of share capital: Colruyt Group has an authorized capital of 100% of share capital, the statutory maximum. However, Colruyt Group was controlled by a control group owning 65% of the voting rights, which is probably enough to unilaterally approve an authorization, since retail shareholders often do not vote their shares. This explains why the voting guidelines of institutional investors could be safely ignored at Colruyt Group. In contrast to the BEL 20, in the other indices, most corporations have an authorization that is (close to) the statutory maximum of 100% of share capital. Compliance with the limit of 50% from the guidelines of institutional investors is the exception outside the BEL 20, rather than the rule.

For authorizations to disapply pre-emption rights, the guidelines seem to have an even smaller impact in Belgium: only 10% of corporations have a smaller authorization for non-pre-emptive than for pre-emptive share issuances. 55% of corporations do not observe the 20% limit (recommended by Glass Lewis) and 69% do not observe the 10% limit (recommended by ISS). Although the guidelines are more often observed in the BEL 20, even in this index, 27% of corporations do not observe the 20% limit and 47% of corporations the 10% limit.

Size of authorizations in France. In France, the size of authorizations seems to be smaller than in Belgium, especially when comparing small French corporations to small Belgian corporations. The guidelines of institutional investors seem to be respected more often than in Belgium. For example, in the CAC 40, the largest index in France, there are no corporations that do not respect the 50% limit and only 4 corporations that do not respect the 10% limit for non-pre-emptive share issuances. Outside the CAC 40, compliance with the guidelines is less common: 28% of corporations do not respect the 50% limit and 67% of corporations do not respect the 10% limit.

Multiple regression model of the size of authorizations. The descriptive statistics suggest that the country and the stock exchange index of the corporation could have an impact on the size of authorizations. The question is whether this relationship also holds up when controlling

for multiple variables at once. To investigate this, I run a multiple regression analysis. As the country seems to matter, I add a dummy that is equal to 1 in case of a French corporation and 0 in case of a Belgian corporation. Membership of an index is largely determined by the market capitalization of a corporation, which is why the natural logarithm of this variable is added to the model. The liquidity of the shares is also influenced by membership of an index, so I add a proxy for this to the model: the natural logarithm of the average daily trading volume over a period of a year, divided by the number of outstanding shares ("Log Turnover Ratio").

In addition, the shareholder structure of a corporation may have an impact on the size of the authorization. One could expect that firms with higher levels of insider ownership face less accountability to outside investors and will therefore be able to adopt larger authorizations, as this gives more flexibility to insiders. In addition, the percentage of shares held by institutional investors may matter. Institutional investors have adopted guidelines that propose limits to authorizations, and they have better incentives to monitor insiders than small retail investors. It can therefore be expected that institutional ownership is negatively associated with the size of authorizations.

There are several other firm-specific characteristics that could influence the size of authorizations. For example, independent directors may help to monitor insiders and ensure that the authorizations requested are not unnecessarily large. Therefore, I include the percentage of independent directors (in relation to the total number of directors) as a control variable, which I expect to be negatively associated with the size of authorizations. In addition, more profitable firms may have less need for share issuances to finance themselves, as they can rely on internally generated cash flows, which is why I add a proxy for profitability (return on assets or "ROA") to the model. A firm's capital structure could have an impact on its need to issue shares in the future, and therefore on its authorizations, which is why I also add leverage (total debt over total assets) to the model. A firm with many investment opportunities may need larger authorizations, in order to issue more shares quickly, which is why I add a proxy for investment opportunities, the market-to-book ratio, to the model. Another variable that may be relevant is the age of the firm, as younger firms may need more capital more quickly, and could therefore have larger authorizations. That is why I add the natural logarithm of the number of years since the establishment of the firm to the model. Finally, different industries may have different

capital needs and different needs for financial flexibility, which is why I add industry dummies to the model, on the basis of the Fama-French 17 industry classifications.[80]

The resulting model can be written down as follows (the variables are defined in the appendix):

$$Size\ Authorization = \beta_0 + \beta_1 * France + \beta_2 * Log\ Market\ Cap + \beta_3 * Log\ Turnover\ Ratio + \beta_4 * Insider\ Ownership + \beta_5 * Institutional\ Ownership + \beta_6 * Director\ independence + \beta_7\ ROA + \beta_8 * Leverage + \beta_9 * Market\ to\ Book\ Ratio + \beta_{10} * Log\ Age + \beta_{11} * Industry\ Dummies + \varepsilon$$

Results of the multiple regression analysis. Table 2 presents the results of the multiple regression analysis. Model 1, 3 and 5 use the size of the authorization to issue shares with pre-emption rights (as a percentage of share capital) as a dependent variable, while model 2, 4 and 6 use the size of the authorization to issue shares without pre-emption rights. The different models use different control variables. The conclusion from all of the models is relatively clear and consistent with what was suggested by the descriptive statistics. First, the size of a corporation is significantly associated with the size of authorizations: in the models with the most control variables, a 10% increase in market capitalization is associated with an average increase in the size of authorizations of 0.56 percentage points for pre-emptive share issuances and of 0.60 percentage points for non-pre-emptive share issuances. These relationships are significant at the 1% confidence level.

Secondly, it is also clear that both general and non-pre-emptive authorizations are much smaller in France than in Belgium: on average, the difference is 20 and 28 percentage points (significant at the 1% confidence level), respectively, in the models with the most control variables.

Thirdly, trading volume is positively associated with the size of authorizations. One could have expected perhaps that shares that are more heavily traded would receive more scrutiny from investors, and would therefore have "better governance", i.e., lower authorizations, but the opposite seems to be the case. One possible explanation is that firms with higher trading volumes have more short-term focused shareholders that are less interested in monitoring the size of authorizations.

[80] This classification was developed in the following paper: Eugene F. Fama and Kenneth R. French, 'Industry costs of equity' [1997] Journal of Financial Economics 153.

Authorization (%)	Model 1 General	Model 2 Non-pre-emptive	Model 3 General	Model 4 Non-pre-emptive	Model 5 General	Model 6 Non-pre-emptive
Log Market Cap	-0.052***	-0.058***	-0.048***	-0.054***	-0.056***	-0.060***
	(0.010)	(0.011)	(0.012)	(0.013)	(0.014)	(0.015)
France (dummy)	-0.21***	-0.29***	-0.22***	-0.30***	-0.20***	-0.28***
	(0.047)	(0.051)	(0.047)	(0.052)	(0.051)	(0.056)
Log Turnover Ratio	0.049***	0.043***	0.046***	0.041***	0.046***	0.041***
	(0.0032)	(0.0037)	(0.0035)	(0.0038)	(0.0040)	(0.0045)
Insider Ownership	0.18**	0.25***	0.16*	0.24**	0.15*	0.21**
	(0.080)	(0.091)	(0.086)	(0.096)	(0.092)	(0.098)
Institutional Ownership	0.090	-0.092	0.11	-0.018	0.16	-0.038
	(0.13)	(0.14)	(0.13)	(0.14)	(0.15)	(0.16)
Director Independence			-0.11	-0.16	-0.085	-0.15
			(0.11)	(0.11)	(0.11)	(0.11)
Market-to-Book Ratio			0.00011	0.00016	0.00012	0.00017
			(0.00015)	(0.00016)	(0.00015)	(0.00015)
Log Age			-0.018	-0.030	-0.011	-0.024
			(0.023)	(0.026)	(0.025)	(0.029)
Leverage			0.0017	-0.14	-0.043	-0.19
			(0.092)	(0.10)	(0.10)	(0.12)
ROA			-0.086	-0.13	-0.077	-0.10
			(0.15)	(0.16)	(0.15)	(0.16)
Industry dummies	No	No	No	No	Yes	Yes
Constant	1.24***	1.18***	1.32***	1.36***	1.44***	1.53***
	(0.092)	(0.10)	(0.13)	(0.14)	(0.15)	(0.16)
N	222	222	219	219	219	219
R^2	0.446	0.436	0.455	0.460	0.487	0.497

Table 2: OLS regressions with as dependent variable the percentage of the general authorization to issue shares (model 1, 3 and 5) and the percentage of the authorization for non-pre-emptive share issuances (model 2, 4 and 6). Variables are defined in the Appendix. Robust standard errors are reported in parentheses. * p < 0.10, ** p < 0.05, *** p < 0.01

Fourthly, consistent with what was expected, insider ownership is positively associated with the size of authorizations, especially for non-pre-emptive authorizations: on average, an increase in insider ownership of 10 percentage points is associated with an increase of the size of the authorization of 1.5 percentage points for general authorizations and 2.1 percentage points for non-pre-emptive authorizations. These results are significant at the 10% and 5% confidence level, respectively.[81]

Somewhat surprisingly, institutional ownership does not seem to be associated with the size of authorizations. Untabulated regressions show that institutional ownership is negatively associated with the size of authorizations, consistent with the expectation that institutional investors monitor the size of authorizations more closely. For example, none of the corporations with more than 40% institutional ownership (39 corporations in total) have an authorization to issue shares with pre-emption rights for more than 50% and without pre-emption rights for more than 20%. However, table 2 shows that the relationship between institutional ownership and the size of authorizations does not hold when adding control variables (in particular insider ownership) to the model. A potential explanation could be that many types of institutional investors lack the proper incentives to monitor compliance with the guidelines on authorizations,[82] that they do not have sufficient power to pressure corporations to comply with the guidelines, or that the size of authorizations is not sufficiently important for them to engage with the corporation. In addition, institutional ownership is also highly correlated (0.72) with insider ownership. Such multicollinearity makes it more difficult to detect statistically significant associations for the affected variables.[83] A final explanation is that it is possible that the data on institutional ownership is not measured completely accurately.[84]

Director independence is not significantly associated with the size of authorizations. A potential explanation is that independent directors are not effective in monitoring insiders. Another potential explanation is that a lack of director independence is simply a consequence of high

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[81] The statistical significance is stronger when fewer control variables are added to the model. The small sample makes it more difficult to detect statistically significant results when adding more control variables.

[82] See generally about the incentives of institutional investors to monitor their portfolio corporations: Lucian Bebchuk, Alma Cohen and Scott Hirst, 'The Agency Problems of Institutional Investors' [2017] Journal of Economic Perspectives 89.

[83] See for example: James Stock and Mark Watson, *Introduction to econometrics* (Pearson 2020) 230-231. However, in all of the models, the Variance Inflation Factor (VIF) is significantly below 10, typically considered to be an indication of problematic multicollinearity.

[84] The database that I use, S&P Capital IQ Pro, unfortunately does not contain historical aggregates of institutional ownership, so I had to aggregate this data manually from the current largest 200 institutional investors in the corporation. However, this introduces some noise in the measurement of institutional ownership.

levels of insider ownership, as the two variables are strongly negatively associated with each other (as confirmed by untabulated analysis). Indeed, untabulated regressions show that a statistically significant association exists between director independence and the size of authorizations for non-pre-emptive share issuances, but that this disappears when adding control variables, in particular insider ownership.

Descriptive statistics on authorizations as a takeover defense. Share issuances can also be used as a takeover defense. The descriptive statistics in table 1 suggest that the guidelines of proxy advisors and institutional investors (which generally oppose takeover defenses) again have a stronger impact in large corporations. Relatively few corporations in larger indices, such as the CAC 40 (9%) and the BEL 20 (13%), have an authorization to issue shares that can be used as a takeover defense, especially compared to the smallest indices (52% for the CAC Small and 78% for the BEL SMALL).[85]

Multiple regression model of authorizations as a takeover defense. I again develop a multiple regression model to determine what could explain the adoption of an authorization that can be used as a takeover defense.[86] I construct a dummy that is equal to 1 if a corporation has an authorization to issue shares that can be used as a takeover defense, and 0 otherwise. I use the same control variables as in the regression models for the size of authorizations. This results in the following regression equation (variables are defined in the appendix):

$$Authorization\ Takeover\ Defense\ Dummy = \beta_0 + \beta_1 * France + \beta_2 * Log\ Market\ Cap + \beta_3 * Log\ Turnover\ Ratio + \beta_4 * Insider\ Ownership + \beta_5 * Institutional\ Ownership + \beta_6 * Director\ Independence + \beta_7 * ROA + \beta_8 * Leverage + \beta_9 * Market\ to\ Book\ Ratio + \beta_{10} * Log\ Age + \beta_{11} * Industry\ Dummies + \varepsilon$$

[85] Recall that the default rule is different in Belgium and in France: in Belgium, authorizations can only be used as a takeover defense if they allow this explicitly; in France, authorizations can be used as a takeover defense unless provided otherwise. See above in part 3.

[86] Angrist and Pischke argue that a linear probability model (essentially an OLS regression with a binary dependent variable), as is used here, is more appropriate and easier to interpret in many circumstances than a probit model. See: Joshua Angrist and Jörn-Steffen Pischke, *Mostly harmless econometrics: an empiricist's companion* (Princeton University Press 2009) 94-107. In any case, the results are very similar if a probit model is used.

Authorization as takeover defense	(1)	(2)	(3)
Log Market Cap	-0.048***	-0.057***	-0.064***
	(0.015)	(0.016)	(0.017)
France (dummy)	-0.10	-0.13*	-0.086
	(0.066)	(0.068)	(0.074)
Log Turnover Ratio	0.056***	0.058***	0.062***
	(0.0049)	(0.0051)	(0.0052)
Insider Ownership	0.58***	0.61***	0.49***
	(0.15)	(0.17)	(0.17)
Institutional Ownership	-0.79***	-0.64**	-0.83***
	(0.24)	(0.25)	(0.25)
Director Independence		-0.13	-0.092
		(0.18)	(0.18)
Market-to-Book Ratio		-0.00017	-0.000096
		(0.00027)	(0.00025)
Log Age		-0.025	-0.021
		(0.033)	(0.032)
Leverage		-0.18	-0.23
		(0.15)	(0.16)
ROA		0.25	0.28
		(0.27)	(0.25)
Industry Dummies	No	No	Yes
Constant	1.12***	1.30***	1.58***
	(0.15)	(0.19)	(0.22)
N	222	222	222
R^2	0.408	0.424	0.502

Table 3: linear probability model with as dependent variable a dummy that is coded as 1 if the corporation has adopted an authorization that can be used as a takeover defense, and 0 otherwise. Variables are defined in the Appendix. Robust standard errors are reported in parentheses. * p < 0.10, ** p < 0.05, *** p < 0.01

Results of the multiple regression model regression. Table 3 presents the results of the multiple regression model on takeover defenses. The conclusions are similar to those of the regression models on the size of authorizations: the size of a corporation is still strongly negatively related with the likelihood of adopting authorizations that can be used as takeover defenses. Insider ownership and the logarithm of the turnover ratio are also still positively associated with the likelihood of adopting authorizations that can be used as a takeover defense. However, the difference between French and Belgian corporations is no longer statistically significant, except in model 2 and only at the 10% significance level.

Another interesting difference with the models that have the size of the authorization as the dependent variable is that institutional ownership is negatively related with the likelihood of adopting an authorization that can be used as a takeover defense, even after adding control variables and even at the 1% significance level. These results are consistent with the idea that institutional investors disfavor takeover defenses and are able to monitor insiders. It also suggests that institutional ownership does matter for compliance with the guidelines on authorizations, at least for the possibility to use authorizations to issue shares as a takeover defense.

6. Interpretation of the empirical evidence and policy implications

Caution in interpreting the results. The empirical evidence suggests that the guidelines of proxy advisors and institutional investors have less of an impact in smaller corporations (compared to large corporations), in Belgian corporations (compared to French and British corporations), in corporations with high insider ownership (compared to corporations with low insider ownership) and in corporations with low levels of institutional ownership (but only with regards to the use of authorizations as a takeover defense). One interpretation of the results is that these differences are caused by barriers for shareholders to hold insiders accountable in those corporations. In other words, these factors could be considered to create an accountability gap. The empirical results should be interpreted with caution, however. It is also possible that the less strict authorizations in smaller corporations, Belgian corporations and corporations with high levels of insider ownership are not harmful to shareholders, as the additional flexibility could be efficient for the corporation, for example because the corporation needs to be able to raise capital often and quickly. The empirical research design used in this paper is not designed to test whether more limited authorizations are value-creating or not. In addition, the empirical

research design does not allow to draw causal inference. It is possible that other unobserved variables are associated with both the characteristics of authorizations and the explanatory variables, although the models try to address this issue by adding several control variables. Finally, the empirical analysis in this paper is run on a relatively small sample. The robustness of the associations could be tested by extending the sample to more corporations, to other countries and in time. However, the costs associated with hand-collecting this data explains why this paper relies on a smaller sample.

Explaining the difference: ownership structure. Nevertheless, if we assume that insider ownership, size and the country of incorporation are truly the cause for more limited authorizations, what could explain these differences? Explaining the more flexible authorizations for corporations with high insider ownership is relatively straightforward. Higher insider ownership makes it easier for insiders to control the vote in the general meeting and force through authorizations that benefit them. This does not necessarily mean that high levels of insider ownership are inefficient, as controlling shareholders also have many benefits (see above in Part 2). This explanation can also explain why the guidelines of institutional investors on authorizations seem to have a much lower impact in Belgium and France, where insider ownership is generally high, than in the UK, where dispersed shareholder structures are more common.[87]

A similar story can be told about corporations with high levels of institutional ownership. Such high levels of institutional ownership could facilitate compliance with the guidelines of institutional investors and proxy advisors by giving these actors a larger percentage of the vote. Institutional ownership could also explain the difference in the impact of the guidelines between Belgium and France, on the one hand, and the UK, on the other hand, as institutional ownership is in general lower in Belgium and France than in the UK.[88] However, the relationship between institutional ownership and the authorization is only statistically significant with regards to the use of authorizations as takeover defenses. A potential explanation for this could be that institutional investors more strongly oppose takeover defenses than deviations from the

[87] See for empirical evidence on shareholder structures: Gur Aminadav and Elias Papaioannou, 'Corporate Control around the World' [2020] Journal of Finance 1191, 1205.
[88] Adriana De La Cruz, Alejandra Medina and Yung Tang, 'Owners of the world's listed companies' (17 October 2019), *OECD Capital Markets Series*, 37 <http://www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.htm>.

maximum limits on the size of authorizations, although further research would have to confirm this theory, for example through interviews with institutional investors.

Explaining the difference: small corporations. Explaining why small corporations may have less strict authorizations is more difficult. Nili and Kastiel have offered several explanations for a related question, because they found a similar difference between small corporations and large corporations with regards to several aspects of corporate governance in the US.[89] Eckstein, too, has found evidence in the US that larger corporations are more responsive to corporate guidelines.[90] Nili and Kastiel offer several potential explanations for the lower level of accountability in smaller corporations. Firstly, they provide evidence that institutional investors tend to engage more with larger corporations. They explain this by arguing that institutional investors have limited resources and that the costs of engagement are fixed to a large extent, while the benefits of engagement (i.e., the presumed increase in shareholder value) increase proportionately with the market capitalization of the corporation. Secondly, Nili and Kastiel also provide empirical evidence that corporations in the S&P 500 in the US attract more shareholder proposals than corporations in the smaller indices. Thirdly, Nili and Kastiel argue that smaller corporations receive less attention from the media, research analysts and public and private enforcers, which also help to discipline insiders. Fourthly, Nili and Kastiel argue that smaller firms often disclose less information, in contrast to large, listed corporations, who often voluntarily disclose more information than is legally required. A lack of information also makes disciplining insiders more difficult. Fifthly, Nili and Kastiel provide evidence for the US that small firms typically have a different shareholder structure than large firms, with higher insider ownership and lower institutional ownership. Both factors also undermine the influence of outside investors over corporate governance at smaller firms.

These arguments could also explain why smaller corporations in France and Belgium tend to have larger authorizations. Interestingly, my evidence also supports the last argument of Nili

[89] Yaron Nili and Kobi Kastiel, 'The Corporate Governance Gap' [2022] Yale Law Journal 782 (providing novel empirical evidence on various corporate governance provisions in the US for a large sample of both small and large corporations and finding that smaller corporations have not moved away from provisions that entrench insiders to the same extent as larger corporations have; Nili and Kastiel do not study authorizations to issue shares, however, as such provisions are not used in the US to discipline insiders, but their explanations of the corporate governance gap remain relevant).

[90] Asaf Eckstein, 'The Rise of Corporate Guidelines in the Unites States, 2005-2021: Theory and Evidence' [2022] Indiana Law Journal (forthcoming), 7 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3705140#> (finding that larger corporations in the US are more likely to reference corporate governance guidelines of (associations of) institutional investors in their proxy statement).

and Kastiel: in Belgian and French corporations, the size of the corporation (as measured by the natural logarithm of their market capitalization) is negatively correlated with insider ownership and positively correlated with institutional ownership. My evidence also confirms that insider ownership is associated with more limited authorizations, although the association with institutional ownership is only significant for the ability to use authorizations as a takeover defense.

Finally, it may also be the case that smaller corporations have higher capital needs, and therefore need more flexible authorizations. This explanation is linked to the lifecycle theory of the firm (discussed above in part 2), which argues that young and dynamic firms have different optimal capital structures and governance systems. I try to test this explanation by controlling for firm age, industry and a proxy for investment opportunities (market-to-book ratio), neither of which turned out to be significant. However, it is possible that these control variables fail to fully capture the different financing needs of firms.

Explaining the difference: Belgium versus France (and the UK). Finally, the question arises what could explain the difference in the size of authorizations between Belgian and French corporations, as identified in the empirical evidence. I see three potential factors relating to the decision-making procedure for shareholders on authorizations that could explain this difference. All of these factors could also explain why the guidelines of institutional investors have a stronger impact in the UK. These explanations are inevitably somewhat speculative, as it is also possible that the differences observed in practice can be explained by other differences between jurisdictions that were not controlled for by the empirical models. Nevertheless, the three factors identified below are the only relevant differences in the institutional framework between the three jurisdictions that I could identify and they offer an explanation for the differences in authorizations that is at least conceptually plausible.

A first factor is the duration of authorizations. French law limits the maximum duration of authorizations to 26 months, which means that they need to be renewed by the general meeting every two years. In the UK, the statutory maximum duration of authorizations is five years, but annual voting on authorizations has become adopted by nearly all listed corporations and is widely supported by investors, including in the Pre-emption Guidelines and the Share Capital Management Guidelines. In contrast, there is no market practice in Belgium to adopt authorizations with a shorter duration than the statutory maximum of five years. The empirical

evidence that I collected shows that almost 94% of the Belgian corporations that have an authorization opted for a duration of five years. Authorizations with such a long duration likely make it more difficult for shareholders to hold insiders accountable: if shareholders do not like how the board has made use of the existing authorization, for example, they may need to wait several years before they can express their discontent through a negative vote on a new authorization (unless shareholders file a shareholder proposal, but this rarely happens in practice[91]).[92] This could explain why the guidelines of institutional investors have less impact in Belgium.

A second factor relates to how shareholders vote on authorizations. In French law, shareholders have to vote on separate resolutions for authorizations that respect pre-emption rights and authorizations that disapply pre-emption rights.[93] In the UK, this is not required by law, but this is a practice recommended by the Pre-emption Group,[94] and almost always followed by corporations.[95] Separate resolutions for pre-emptive and non-pre-emptive share issuances can ensure that shareholders are not coerced into voting for excessive authorizations for non-pre-emptive share issuances out of a fear of voting against any form of authorization for the corporation, which would likely be inefficient. Instead, shareholder can vote in favor of a general authorization, but against an authorization for non-pre-emptive share issuances if it does not contain a lower limit. In Belgium, authorizations to the board to issue shares are typically adopted in a single resolution that also authorizes the board to disapply pre-emption rights. This market practice can explain in particular why only 8 Belgian corporations (in a sample of 84 Belgian corporations) adopted stricter limits for non-pre-emptive share issuances than for share issuances in general.

[91] See for an empirical study of shareholder proposals in several countries, including Belgium and France: Viktor Verheyden, 'When shareholders use their rights to convene meetings and to submit proposals. A comparative and empirical analysis of activism in four EU Member States' [2020] Tijdschrift voor Rechtspersoon en Vennootschap – Revue pratique des sociétés 975.

[92] See for a similar argument that more frequent votes give shareholders more power to hold managers accountable, but with regards to director elections: Lucian Bebchuk, 'The Myth of the Shareholder Franchise' [2007] Virginia Law Review 675, 695-696.

[93] Cass. com. (FR) 25 September 2012, *Bulletin Joly Sociétés* 2012, 847, note Renaud Mortier; Position-recommendation AMF DOC-2020-06, 'Guide d'élaboration des prospectus et information à fournir en cas d'offre au public ou d'admission de titres financiers' (29 April 2021), 87 <https://www.amf-france.org/sites/default/files/private/2021-04/2020-06.pdf>

[94] Separate resolutions are provided for by the template resolutions drafted by the Pre-Emption Group: Pre-Emption Group, 'Template resolutions for the disapplication of pre-emption rights complying with the Pre-Emption Group's Statement of Principles', 4 <https://www.frc.org.uk/medialibraries/FRC/FRC-Document-Library/Preemption%20Group/PEG-Template-resolution-for-disapplication-of-pre-emption-rights.pdf>.

[95] Pre-Emption Group, 'Monitoring report May 2017', 4 <https://www.frc.org.uk/medialibraries/FRC/FRC-Document-Library/Preemption%20Group/170512-PEG-monitoring-report.pdf>.

A final factor that could explain the differences between jurisdictions is the presence of "homegrown" guidelines. The close-knit investor community in the UK has drafted guidelines that were developed specifically for the UK and has made sure that these guidelines were "fit for purpose" and acceptable to market participants. Similarly, France also has guidelines that were developed by a local proxy advisor (Proxinvest) and by a local trade association of asset managers (AFG). It is plausible that such "homegrown" guidelines are more likely to have an impact in practice. Such guidelines can be adapted to local conditions and supported by local market participations. By contrast, Belgium has no homegrown guidelines and the most relevant guidelines for authorizations have been imposed by international proxy advisors and institutional investors, often without adaptations to the local context. This could also explain why these guidelines have a lower impact in practice in Belgium.

Finally, it is noteworthy that the difference between French corporations and Belgian corporations was smaller and not statistically significant with regards to whether authorizations could be used as a takeover defense. One explanation is that the sample is too small to establish whether the difference is statistically significant, as the signs do have the hypothesized sign and the difference is significant in model 2 at the 10% confidence level. Another explanation relates to a difference in the law between France and Belgium. As discussed above in part 3, the default rule with regards to the use of authorizations as a takeover defense is different: in Belgium, authorizations to issue shares cannot be used as a takeover defense, unless explicitly authorized; in France, the authorization to issue shares can be used as a takeover defense, unless the authorization stipulates otherwise. Although the different legal rule is only a difference in the default rule, it may still have an impact on what is considered acceptable by the market in each country. In addition, share issuances in response to a takeover bid are less useful in Belgium, because they are limited by law to 10% of share capital and because the issue price must be equal to the bid price.[96] These factors may be enough to counterbalance the general trend of less strict authorizations in Belgium than in France.

Policy conclusions. It is difficult to draw policy conclusions from the empirical evidence, as the empirical research design does not show whether the differences in the authorizations are inefficient, and if the differences are inefficient, in which direction corporate governance should

[96] Article 7:202 of the Belgian Companies Code.

change. This discussion is not unique to authorizations in Europe, but also exists in other countries and with regards to other elements of corporate governance. For example, Nili and Kastiel argue that the corporate governance gap between small and large corporations is harmful for shareholders and they propose several policy changes to remedy this in the US.[97] Lund has criticized these policy conclusions, however, arguing that small corporations may simply have difference corporate governance needs and that the "corporate governance gap" identified by Nili and Kastiel may actually be efficient.[98]

This paper does not take a stance whether the status quo with regards to authorizations is inefficient. Nevertheless, the empirical evidence shows that corporations in the UK and France, where shareholder oversight over authorizations is facilitated to a larger extent, also tend have smaller authorizations than corporations in Belgium. Although other explanations are also possible, the evidence is at least consistent with the theory that an annual vote on authorizations and a separate vote on authorizations to disapply pre-emption rights (as required in France and the UK) make it easier for shareholders to hold insiders accountable with regards to authorizations. Therefore, if policymakers in Belgium would consider the current authorizations to be inefficiently large, requiring an annual vote on authorizations and a separate vote on authorizations to disapply pre-emption rights in Belgium would likely make it easier for institutional investors to cause corporations to adopt authorizations in line with the guidelines.

The principal costs of such policy changes are arguably low: management may need to spend some extra effort in convincing shareholders that the authorization is justified, but the authorization can simply be approved during the annual general meeting that would have to be organized anyway. In addition, corporations would retain the possibility to adopt more flexible authorizations if this is efficient, provided that they can convince a sufficient number of shareholders of this.

Still, one could argue that giving shareholders a larger say in the governance of the corporation is inefficient, because institutional investors dominate the shareholder vote and because these institutional investors have incentives that are not aligned with those of shareholders

[97] Yaron Nili and Kobi Kastiel, 'The Corporate Governance Gap' [2022] Yale Law Journal 782.
[98] Dorothy Lund, 'In Search of Good Corporate Governance' [2022] Yale Law Journal Forum 854.

generally.[99] In my view, such an argument is not convincing: the empirical evidence suggests that if the interests of institutional investors are not aligned with those of other shareholders, it is likely because they are overly deferential to management.[100] This is therefore hardly an argument against empowering shareholders. It is possible that further empowering shareholders does not change the size of authorizations, either because institutional investors are not interested in monitoring authorizations, or because institutional investors believe flexible authorizations are efficient. Even in that case, however, the policy changes would be relatively harmless, as the costs of implementing them are limited.

Finally, the higher impact of the guidelines in the UK and (to a lesser extent France) that can be observed in practice, suggests that the "homegrown" character of the guidelines may be more effective, as coordination costs between shareholders are reduced. Such homegrown guidelines may therefore also be useful in Belgium, which does not yet have such guidelines, potentially because Belgium is a small and open economy with few purely domestic investors. To facilitate the creation of homegrown guidelines and reduce the coordination costs for investors, actors such as the FSMA (the financial supervisor), the Federation of Belgian Enterprises (VBO-FEB – an interest group for large Belgian corporations), the Corporate Governance Committee (the drafting committee of the Belgian Corporate Governance Code), Euronext Brussels (the stock exchange), and/or the Belgian Asset Managers Association (BEAMA – an interest group for asset managers) could play a coordinating role in the drafting of guidelines on authorizations.

7. Conclusion

[99] This is the position taken by Dorothy Lund, at least with regards to passive institutional investors: Dorothy Lund, 'In Search of Good Corporate Governance' [2022] Yale Law Journal Forum 854. See also in more detail: Dorothy Lund, 'The Case Against Passive Shareholder Voting' [2018] Journal of Corporation Law 493.

[100] See for this argument: Lucian Bebchuk, Alma Cohen and Scott Hirst, 'The Agency Problems of Institutional Investors' [2017] Journal of Economic Perspectives 89, 102-103. See for empirical evidence: Gerald F. Davis and E. Han Kim, 'Business Ties and Proxy Voting by Mutual Funds' [2007] Journal of Financial Economics 552 (finding that fund families with more pension-related business ties to corporations vote more often with management with regard to shareholder proposals in general); Rasha Ashraf, Narayanan Jayaraman and Harley E. Ryan, JR., 'Do Pension-Related Business Ties Influence Mutual Fund Proxy Voting? Evidence from Shareholder Proposals on Executive Compensation' [2012] Journal of Financial and Quantitative Analysis 567 (finding that fund families with more pension-related business ties to corporations vote more often with management with regard to votes on executive compensation); Dragana Cvijanovi, Amil Dasgupta and Konstantinos E. Zachariadis, 'Ties That Bind: How Business Connections Affect Mutual Fund Activism' [2016] Journal of Finance 2933 (providing empirical evidence in the US between 2003 and 2011 that mutual fund families with business ties to the corporation (through the management of pension plans) vote more often with management on shareholder proposals in closely contested votes); Lucian Bebchuk and Scott Hirst, 'Index funds and the future of corporate governance: theory, evidence, and policy' [2019] Columbia Law Review 2091 (providing evidence that the three biggest index funds tend to vote with management in say-on-pay votes, much more often than more actively managed funds do and more often than proxy advisors recommend).

This paper is the first paper to analyze the practical impact of the legal rules and guidelines on authorizations to the board to issue shares and disapply pre-emption rights. The paper finds evidence of more flexible authorizations for smaller corporations and corporation with high insider ownership, especially in Belgium. This may be evidence of a lack of accountability of the insiders towards shareholders, although it is also possible that these corporations simply have different governance and financing needs. I have suggested several low-cost policy changes (which are especially relevant for Belgium) that can be implemented if policymakers consider the current authorizations too large, including establishing local guidelines by institutional investors, limiting the duration of authorizations to one year, and requiring a separate shareholder vote on the disapplication of pre-emption rights. These policy options can empower shareholders to decide how the balance between flexibility and accountability should be struck with regards to authorizations to issue shares.

Appendix: definition of variables

Variable	Description
Authorization (%): general	The size of the most recent authorization (as a percentage of share capital) adopted by the general meeting to the board to issue shares with pre-emption rights, as of July 2021 (for Belgium) and February 2022 (for France). If the corporation did not adopt an authorization, this variable as coded as 0. The data was hand-collected from the articles of association that listed corporations publish on their websites (for Belgium) and from universal registration documents and the notices and minutes of the general meeting that were published by the corporations on their website (for France).
Authorization (%): non-pre-emptive	The size of the most recent authorization (as a percentage of share capital) adopted by the general meeting to the board to issue shares without pre-emption rights, as of July 2021 (for Belgium) and February 2022 (for France). If the corporation did not adopt an authorization, this variable as coded as 0. The data was hand-collected from the articles of association that listed corporations publish on their websites (for Belgium) and from universal registration documents and the notices and minutes of the general meeting that were published by the corporations on their website (for France).
Authorization as takeover defense (dummy)	A dummy variable that is equal to 1 if the authorization to issue shares can be used as a takeover defense, and 0 otherwise (including if there is no authorization). Considering the different default rules in Belgium and France, this means that this variable is equal to 1 for Belgian corporations if the authorization explicitly mentions that shares can be issued as a takeover defense, while it is equal to 1 in France if the authorization does not explicitly prohibit corporations from using it as a takeover defense. This data was hand-collected from the articles of association that listed corporations publish on their websites (for Belgium) and from universal registration documents and the notices and minutes of the general meeting that were published by the corporations on their website (for France).
Authorization for non-pre-emptive issuances (dummy)	A dummy variable that is equal to 1 if the general meeting of the corporation has adopted an authorization to the board to issue shares without pre-emption rights, and 0 otherwise. The data was hand-collected from the articles of association that listed corporations publish on their websites (for Belgium) and from universal registration documents and the notices and minutes of the general meeting that were published by the corporations on their website (for France).
Authorization for pre-emptive issuances (dummy)	A dummy variable that is equal to 1 if the general meeting of the corporation has adopted an authorization to the board to issue shares with pre-emption rights, and 0 otherwise. The data was hand-collected from the articles of association that listed corporations publish on their websites (for Belgium) and from universal registration documents and the notices and minutes of the general meeting that were published by the corporations on their website (for France).

Director independence	The percentage of independent directors in in relation to the total number of directors at the moment of the authorization (or on 28 February 2022 if the corporation did not adopt an authorization). This data was collected from the BoardEx database by manually linking the BoardEx identifiers to the S&P Capital IQ Pro identifiers.
France (dummy)	A dummy variable that is equal to 1 if the corporation is incorporated in France, and 0 if the corporation is incorporated in Belgium. The sample does not contain any corporations incorporated in another country than Belgium or France. This information is hand-collected from the corporations' websites and articles of association.
Industry dummies	A series of dummies that indicate whether a corporation belongs to that specific industry (coded as 1) or not (coded as 0). The industry classification is based on the Fama-French 17 industry classifications. The underlying SIC codes were extracted from S&P Capital IQ Pro.
Insider Ownership	The aggregate percentage of shares held by all "insiders". Insiders are defined as shareholders owning more than 15% of the voting rights or shareholders owning between 5 and 15% of the voting rights while having a representative on the board of directors or having strong commercial ties with the corporation. Employees who hold shares are not counted as insiders unless they are represented in the board of directors. Non-diluted ownership was used. This data was hand-collected from the last annual report before the decision by the general meeting on the authorization. For corporations without an authorization, the ownership structure is based on the last available annual report before July 2021 (for Belgium) or before February 2022 (for France).
Institutional Ownership	The aggregate percentage of shares held by the 200 largest institutional investors in a corporation at the moment of the general meeting that decided on the authorization. If the corporation did not adopt an authorization, the institutional ownership as of 28 February 2022 was used. Shares held by institutions owning more than 15% of the total were ignored. The data was extracted from S&P Capital IQ Pro.
Leverage	The ratio between the total debt and the total assets of the corporation. The data from the last financial year before the decision of the general meeting was used. For corporations without an authorization, data from the last available financial year (typically 2021, but sometimes 2020) was used. The data was extracted from S&P Capital IQ Pro.
Log Age	The natural logarithm of the difference between the year of the general meeting that decided on the authorization (or 2021 if there was no authorization) and the year of establishment. The data was extracted from S&P Capital IQ Pro. If the year of establishment was missing from S&P Capital IQ Pro, the year of incorporation was used. If this was also missing, the year of incorporation was looked up manually in the corporation's articles of association.
Log Market cap	The natural logarithm of the market capitalization of the corporation (in millions of euros) as of the date of the general meeting that decided on the authorization. If the corporation did not adopt an

	authorization, the market capitalization on 28 February 2022 was used. The data was extracted from S&P Capital IQ Pro.
Log Turnover Ratio	The natural logarithm of the turnover ratio, i.e., the ratio between the daily average volume of shares traded over a year and the number of outstanding shares. The daily average volume was calculated over the year leading up to the first trading day of the year of the general meeting that decided on the authorization. If the corporation did not adopt an authorization, the daily average volume was calculated over the period of a year ending on 3 January 2022 (the first trading day of 2022). The number of outstanding shares was taken from the financial accounts from the last financial year before the decision of the general meeting. For corporations without an authorization, the number of outstanding shares from the last available financial year (typically 2021, but sometimes 2020) was used. The data was extracted from S&P Capital IQ Pro.
Market-to-book ratio	The ratio between the market capitalization of the corporation (as of the date of the general meeting that decided on the authorization) and the book value of equity (as from the last financial year before the decision of the general meeting was used). For corporations without an authorization, the market capitalization was calculated as of 28 February 2022 and the book value of equity was taken from the last available financial accounts (typically 2021, but sometimes 2020). The data was extracted from S&P Capital IQ Pro.
ROA	The ratio between net income and the total assets of the corporation. The data from the last financial year before the decision of the general meeting was used. For corporations without an authorization, data from the last available financial year (typically 2021, but sometimes 2020) was used. The data was extracted from S&P Capital IQ Pro.