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Shareholder Sustainability Activism in the Netherlands

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May 2018

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Abstract

Corporations play a crucial role in achieving a sustainable world. In achieving corporate sustainability, the current regulatory frameworks generally emphasize the role of the corporate board, but today's media suggest that institutional investors are becoming more involved. In this study, we explore the actual role of shareholders as an important class of corporate actors in promoting corporate sustainability in the Netherlands. It is common practice for Dutch companies to disclose full transcripts of their meetings on their websites, including shareholder questions. We studied shareholder activism on corporate sustainability in 763 AGMs of Dutch listed companies and found that, despite the lack of mandatory regulation and the use of shareholder proposals, shareholders in the Netherlands, including institutional investors, seem to increasingly care about corporate sustainability issues. We found that the share of questions and remarks of institutional investors related to corporate sustainability matters increased from close to two percent in 2004 to over twenty percent in 2017. Taking into account the large variety of topics shareholders may ask questions about, including remuneration matters, the corporate strategy, board elections, dividend policies, auditing, and so on, twenty percent is substantial. Despite the increasing interest of institutional investors regarding corporate sustainability matters, institutional investors' use of the forum right in AGMs is still low. Since these investors and larger shareholders often make use of other, private activist tools, further research as to whether the use of other shareholder tools for advocating corporate sustainability goals has increased too is important.

Keywords: shareholders, shareholder activism, corporate social responsibility, corporate governance question right, general meeting

JEL Classifications: A13, D22, D23, G34, G38, K22, M14, O16

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Abstract

Corporations play a crucial role in achieving a sustainable world. In achieving corporate sustainability, the current regulatory frameworks generally emphasize the role of the corporate board, but today's media suggest that institutional investors are becoming more involved. In this study, we explore the actual role of shareholders as an important class of corporate actors in promoting corporate sustainability in the Netherlands. It is common practice for Dutch companies to disclose full transcripts of their meetings on their websites, including shareholder questions. We studied shareholder activism on corporate sustainability in 763 AGMs of Dutch listed companies and found that, despite the lack of mandatory regulation and the use of shareholder proposals, shareholders in the Netherlands, including institutional investors, seem to increasingly care about corporate sustainability issues. We found that the share of questions and remarks of institutional investors related to corporate sustainability matters increased from close to two percent in 2004 to over twenty percent in 2017. Taking into account the large variety of topics shareholders may ask questions about, including remuneration matters, the corporate strategy, board elections, dividend policies, auditing, and so on, twenty percent is substantial. Despite the increasing interest of institutional investors regarding corporate sustainability matters, institutional investors' use of the forum right in AGMs is still low. Since these investors and larger shareholders often make use of other, private activist tools, further research as to whether the use of other shareholder tools for advocating corporate sustainability goals has increased too is important.

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1. Introduction

Corporations play a crucial role in achieving a sustainable world.[1] In achieving corporate sustainability, the current regulatory frameworks usually emphasize the (potential) role of the corporate board. For example, the European Directive 2014/95/EU on the disclosure of non-financial and diversity information by certain large undertakings and groups contains binding disclosure obligations for boards of certain 'public-interest entities' with more than 500 employees[2] regarding non-financial information.[3] In the Netherlands, the 2016 Dutch Corporate Governance Code (hereinafter: DCGC), has 'long-term value creation' as its very first key principle and requires the corporate board 'to act in a sustainable manner by focusing on long-term value creation in the performance of their work'[4]. It adds that 'long-term sustainability is the key consideration when determining strategy and making decisions', and that stakeholder interests need to be taken into careful consideration. In addition, principle 3.1 on the remuneration policy of the management board now states that it 'should focus on long-term value creation for the company and its affiliated enterprise'. The emphasis on *all* stakeholders in the Dutch regulatory framework[5] provides the corporate board with large autonomy to include corporate sustainability in their corporate strategy and risk management systems, thereby not being bound to the demands of shareholders.

Contrary to corporate boards, the potential role of shareholders in reaching corporate sustainability goals is usually considered less pivotal and looked at with far more skepticism. Previous research indicates that shareholder primacy has a strong negative impact on corporate

[1] Sustainability is often described as the development that meets the needs of the present while safeguarding earth's life-support system, on which the welfare of current and future generations depends. See D. Griggs et al, 'Policy: Sustainable development goals for people and planet', *Nature* 495, 305-307 (21 March 2013).

[2] Recital 14 indicates that 'the obligation to disclose a non-financial statement should apply only to those large undertakings which are public-interest entities and to those public-interest entities which are parent undertakings of a large group, in each case having an average number of employees in excess of 500, in the case of a group on a consolidated basis.' Also see article 19a(1).

[3] Article 19a states that the boards of these public-interest entities must include a non-financial statement in their management report that contains information regarding 'the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters'. Article 29a(1) contains the provisions for consolidated non-financial statements of public-interest entities.

[4] Principle 1.1.1, section vi of the DCGC 2016 mentions that attention should also be paid to 'any other aspects relevant to the company and its affiliated enterprise, such as the environment, social and employee-related matters, the chain within which the enterprise operates, respect for human rights, and fighting corruption and bribery' when developing the company's strategy. Note that the DCGC 2008 did not mention the word 'sustainability' at all, and moreover the DCGC 2003 mentioned in its preamble that 'the company endeavors to create long-term shareholder value'.

[5] In addition, in Dutch case law it is emphasized that the interests of shareholders do not take priority over the interests of other stakeholders. For example see the ABN-AMRO Case 13 July 2007, JOR 2007, 178 and the recent Akzo Nobel Case 29 May 2017, JOR 2017, 261.

sustainability.[6] However, today's evidence suggest that institutional investors are becoming more involved with corporate sustainability. Environmental (including climate change) and social issues seem to be high on the agenda of institutional investors.[7] For example, ExxonMobil's management was defeated in its 2017 annual general meeting as shareholders, including some major financial investors, voted for the reporting on global climate change measures.[8] And, in September 2017, Sustainvest Asset Management LLC submitted a shareholder proposal to "request that Apple Inc. produce a report assessing the climate benefits and feasibility of adopting store-wide requirements for having all retail locations implement a policy on keeping entrance doors closed when climate control […] is in use. […]."[9] Recently, Larry Fink, the CEO and Chairman of BlackRock, announced in its annual letter (2018) that BlackRock will sharply increase its focus on social responsibility issues.[10]

In this research, we investigate the role of shareholders as an important class of corporate actors in promoting corporate sustainability in the Netherlands. While shareholders may be constrained in their direct powers of steering the company in corporate sustainability, the willingness of shareholders transcending these limitations offers valuable insights in the seriousness of shareholders in striving for sustainability in corporate goals. It is well-known that US shareholders generally make more use of shareholder proposals as a tool for shareholder activism than their European counterparts.[11] This makes research on shareholder involvement in corporate sustainability particularly complex in the European context. However, shareholders may voice their concerns for example during 'question and answers sessions' in the general meeting. As most Dutch

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[6] *See* B. Sjåfjell, 'Achieving Corporate Sustainability: What is the Role of the Shareholder?' in: H. Birkmose (ed.), Shareholders' Duties in Europe (Alphen aan den Rijn, the Netherlands: Kluwer Law International, 2017).

[7] ProxyPulse, *2017 Proxy Season Review*, September 2017, p. 3. Also *see* Mishra, S. 'An Overview of U.S. Shareholder Proposal Filings', *Harvard Law School Forum on Corporate Governance and Financial Regulation,* 28 February 2018.

[8] S. Mufson, 'Financial firms lead shareholder rebellion against ExxonMobil climate change policies' (Washington Post, 31 May 2017), available at <www.washingtonpost.com/news/energy-environment/wp/2017/05/31/exxonmobil-is-trying-to-fend-off-a-shareholder-rebellion-over-climate-change/?utm_term=.22f718b06d86>, accessed 19 January 2018.

[9] For more information, *see* Climate Case Chart, Rule 14a-8 No-Action Request from Apple, Inc. Regarding Shareholder Proposal of Sustainvest Asset Management, LLC (Climate Case Chart, 12 December 2017; <www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2017/sustainvestasset121217-14a8.pdf>). Available at <www.climatecasechart.com/case/rule-14a-8-no-action-request-apple-inc-regarding-shareholder-proposal-sustai nvest-asset-management-llc/> accessed 15 January 2018. However, the proposal was rejected with 94.4 per cent of the votes (available at <https://www.businessinsider.com.au/apple-shareholders-just-gave-a-huge-vote-of-confidence-to-tim-cook-2018-2>, accessed 20 March 2018).

[10] *See* A.R. Sorkin, 'BlackRock's Message: Contribute to Society, or Risk Losing Our Support', *The New York Times*, 15 January 2018, available at <www.nytimes.com/2018/01/15/business/dealbook/blackrock-laurence-fink-letter.html> accessed 15 January 2018. The author quotes Laurence Fink from his draft letter, stating that "[s]ociety is demanding that companies, both public and private, serve a social purpose".

[11] For example, *see See* P. Cziraki, L. Renneboog, & P.G. Szilagyi, 'Shareholder Activism through Proxy Proposals: The European Perspective', 16 European Financial Management 5, 738-777 (2010).

companies publish full transcripts of their general meetings, this offers a unique opportunity to evaluate the course of affairs of the meetings regarding corporate sustainability activism.

We first outline the Dutch regulatory tools for shareholders to actively be engaged in corporate sustainability in the next section. Afterwards we turn to the analysis of how shareholders of Dutch companies value corporate sustainability in practice.[12] We explore the use of shareholder proposals and the course of affairs at Dutch Annual General Meeting of shareholders ('AGMs'). However, as we will see, in many European member states shareholders do not use shareholder proposals as a tool to advocate corporate sustainability. However, section 4 contains an in-depth analysis of the use of the forum rights of shareholders for corporate sustainability activism in the Netherlands, showing that despite the lack of use of shareholder proposals, shareholders actually care about corporate sustainability. The AGM minutes, which are published on the corporate websites, are investigated using text mining techniques. Section 5 provides some concluding remarks.

2. Regulatory Tools for Shareholder Activism

2.1. The Dutch Corporate Law Framework

Dutch listed companies are subject to statutory law, the Dutch Corporate Governance Code (hereinafter: DCGC) with its mandatory comply or explain regime and the articles of association. Dutch corporate statutory law is embedded in Book 2 of the Dutch Civil Code (hereinafter: DCC). The NV (in Dutch: *Naamloze Vennootschap*) is the Dutch 'public' or 'open' company. Listed NVs typically have a two-tier board structure with a management board (in Dutch: *Raad van Bestuur*) and a supervisory board (in Dutch: *Raad van Commissarissen*). The management board is responsible for the day-to-day management and the company's strategy (article 2:129(1) DCC); the supervisory board supervises and advises the management board and monitors the general course of the company's affairs pursuant to article 2:140 DCC.[13] In the two-tier board system, the supervisory board is appointed by the AGM (following articles 2:142 jo 2:144 DCC), and has the legal duty to appoint and to remove members of the management board under the structuurregime (article 2:162 DCC).[14] The AGM has the right to remove the directors that are appointed by the AGM at any time and without

[12] This empirical analysis will partly be published in the forthcoming Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability (*forthcoming*, 2019).

[13] Until 2013, the two-tier board structure was mandatory for NVs that classify as a 'large' company under the so-called Dutch *structuurregime* (*see* article 2:153(2) DCC). With the introduction of the Dutch Board and Governance Act (*Staatsblad* 2011, 265) which went into effect on January 1, 2013, Dutch companies may determine in their articles of association whether they follow a one-tier or a two-tier board structure. Nonetheless, many large Dutch listed companies still use the two-tier board structure.

[14] And, since the Board and Governance Act, ex article 2:164a DCC for the one-tier board system.

reason ex article 2:134(1) DCC.[15] In addition, the employees' council has the binding right to nominate one-third of the members of the supervisory board (article 2:158(6) DCC).

Besides mandatory, statutory corporate law, the Dutch corporate governance system is governed by the DCGC. In the aftermath of the large-scale scandals like Enron, WorldCom and Ahold, the DCGC 2003 was introduced. A few years later, short-termism of hedge funds and other short-term oriented active investors became one of the main subjects in the Dutch corporate governance debate.[16] Accordingly, the Dutch Code was amended in 2008. In December 2016 the DCGC was again revised, emphasizing 'long-term value creation'. Dutch corporate law determines that a listed company must disclose, in their annual report, whether it complies with the Code's governance principles or explain why it deviates from its principles (article 2:391(5) DCC).

In addition to the appointment and removal of directors, shareholders are granted several other legal rights. Shareholders may put items on the agenda when they hold 3% or more of the share capital (article 2:114a DCC). In addition, the threshold for the right to call a general meeting is set at 10% of the share capital pursuant to article 2:110 DCC. Next, shareholders in the Netherlands have, *inter alia*, the right to adopt the remuneration policy (article 2:135(1) DCC), to approve pay schemes in the form of shares and options (article 2:135(5) DCC), to approve the remuneration of supervisory board members (article 2:145 DCC), to approve capital increases (article 2:96 DCC) and the waiver of pre-emption rights (2:96a DCC), to approve amendments to the articles of association (2:121 *et seq* DCC) and to discharge their directors (2:101(3) DCC). In addition to these shareholder rights, shareholders – including the holders of depository receipts – that meet certain ownership thresholds may perfect the right to inquiry (in Dutch: *enquêterecht*) and request the start of an investigation into the state of affairs and the policy of the company.[17]

2.2. Shareholder Forum Rights

Article 9 of the Shareholder Rights Directive (Directive 2007/36/EC, amended by Directive (EU) 2017/828) grants shareholders the general right to ask questions. Paragraph 1 of this article indicates that 'every shareholder shall have the right to ask questions related to items on the agenda of the general meeting. The company shall answer the questions put to it by shareholders'. The Dutch

[15] However, one may note that all resolutions must be in accordance with a standard of reasonableness and fairness ex article 2:15(1) DCC (following Nowak, 2013, p. 471).
[16] Well-known Dutch cases on shareholder short-termism are the ABN Amro case and the Stork case. *See* for example M.J.G.C. Raaijmakers 'Annotaties: Overnamestrijd ABN AMRO',(2007) 56(10) *Arse Aequi*, 785-792; M.J.G.C. Raaijmakers, 'Annotaties: Stork' (2007) 56(4) *Arse Aequi* 2007 , 346-353.
[17] The right to inquiry can be found in article 2:344 *et seq* DCC including the admissibility requirements for shareholders (article 2:346 DCC).

shareholder question right (denoted as the right to request information), was already incorporated in article 2:107(2) DCC in 1971. This provision states that the management board and supervisory board must provide the general meeting of shareholders with all requested information, unless such information would run contrary to a substantial company interest.[18] Whether the term 'substantial interest', should be interpreted in a broad or narrow way is not entirely clear. Scholars generally argue that the refusal of an answer should only be exceptional.[19] The Dutch legislature has confirmed that article 2:107(2) DCC includes the right to ask questions as stipulated in article 9 of the Shareholder Rights Directive and hence, no new provision was adopted with the implementation of the Shareholder Rights Directive.[20] In addition to the right to request information, all shareholders also have the right to speak during general meetings (ex article 2:117(1) DCC).

In contrast to article 9(1) of the Shareholder Rights Directive, article 2:107(2) DCC does not limit the scope of the questions to the items on the agenda of the AGM, and thus shareholders will also have the right to request information about matters other than agenda items under Dutch law.[21] However, whereas article 9(1) grants the right to ask questions to every shareholder, this is not explicitly stated under Dutch law. The Dutch attorney general (in Dutch: *advocaat-generaal*) however concluded that the Dutch provision should be interpreted in compliance with the Shareholder Rights Directive, and that each individual shareholder indeed may request information in AGMs under Dutch law.[22] With the *ASMI*-verdict[23] and implementation of the Shareholder Rights Directive under Dutch law there remains no uncertainty regarding the individual right to request information.

Note that there are no legal provisions under Dutch law that explicitly allow the chairman to limit shareholders' question rights.[24] The role of the chairman is also not defined in the DCC. However,

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[18] According to the Dutch legislature this article already included the right to ask questions as stipulated in article 9 of the Shareholder Rights Directive (Directive 2007/36/EC, amended by Directive (EU) 2017/828) and hence, no new provision was adopted with the implementation of Directive 2007/36/EC in Dutch law.

[19] For example, refer to Van Solinge and Nieuwe Weme (2009) (2-II*), no. 327.

[20] Since the Dutch provision includes the phrase 'unless a substantial interest of the company opposes this', it already entailed the second paragraph of article 9 of the Directive as well. In a parliamentary document, the Dutch legislature provides an example of a 'substantial interest' (in Dutch: *zwaarwichtig belang*): information that may harm the competitiveness of the company. *Kamerstukken* II (2008-2009) 31 746, no. 3 (*Memorie van Toelichting*), p. 15. The parliamentary document refers to, *inter alia,* Maeijer (2000). Also see Vletter-Van Dort (2001).

[21] Nonetheless, one may note that the annual report is usually one of the agenda items, also offering a broad scope for shareholder questions.

[22] *ASMI*-case, *Hoge Raad* 9 July 2010, *JOR* 2010, 228.

[23] Whereas the Court of Amsterdam in an earlier verdict ruled that a shareholder has no individual right to request information (*Rechtbank Amsterdam* 15 June 1988, KG 1988/276), the *Hoge Raad* ruled that every shareholder has this right (*ASMI*-case, *Hoge Raad* 9 July 2010, *JOR* 2010, 228).

[24] In an earlier version of the revised DCGC (2008) the provision that the chairman of the meeting could limit the speaking time of shareholders was explicitly included. In a later stage this provision was again removed. Nowak (2009) claims that this provision was not important, as it included already common practice.

it is common practice that the chairman of the general meeting, in accordance with standards of reasonableness and fairness, may limit the shareholder speaking time during the meeting,[25] and may even refuse a shareholder's right to request information in particular cases.

3. Shareholder activism in practice: shareholder proposals

In the US, shareholder activism regarding corporate sustainability matters often takes place via shareholder proposals and proxy contests,[26] but literature and practice suggests that shareholder proposals are seldom used as a shareholder activism tool in Europe.[27] Analyzing recent data on shareholder proposals that are submitted to AGMs of listed companies in Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the UK in the period 2013-2017 using the Proxy Insight database provides us with a total number of 2,427 shareholder proposals. Most of these shareholder proposals are with Italian companies (780 in total) and Swedish companies (744 in total). In Finland, Belgium, Ireland and the Netherlands, the use of shareholder proposals as a shareholder activism tool is especially low, with respectively eighteen, seventeen, eight and seven shareholder proposals during the entire 2013-2017 period. Of the 2,427 shareholder proposals, only 207 proposals address corporate sustainability issues, including for example the adoption or amending a diversity policy, addressing working place safety requirements, human rights matters and environmental and energy issues. Table 1 summarizes our findings:

[25] A.G.H. Klaassen, 'Handreikingen voor de voorzitter tot beperking van het spreekrecht van aandeelhouders', Ondernemingsrecht, 2, 66-76 (2011).

[26] *See* Gibsonn Dunn, M&A Report – 2016 Year-End Activism Update, available at <www.gibsondunn.com/ma-report-2016-year-end-activism-update/>, accessed 15 January 2018. Also *see* Mishra, S. 'An Overview of U.S. Shareholder Proposal Filings', *Harvard Law School Forum on Corporate Governance and Financial Regulation,* 28 February 2018. In this post it is stated that more than two-thirds of filed proposals in the 2018 US proxy season are related to social or environmental issues, with political spending and actions, board and workplace diversity and parity and climate and sustainability being the key themes.

[27] *See* P. Cziraki, L. Renneboog, & P.G. Szilagyi, 'Shareholder Activism through Proxy Proposals: The European Perspective', 16 European Financial Management 5, 738-777 (2010).

Table 1: Shareholder proposals in Europe

Country	# Shareholder Proposals	# Shareholder Proposals on Sustainability Matters
Austria	31	0
Belgium	17	0
Denmark	188	8
Finland	18	0
France	106	1
Germany	142	0
Ireland	8	1
Italy	780	0
Luxembourg	51	0
Netherlands	7	0[28]
Norway	49	14
Portugal	68	0
Spain	56	0
Sweden	744	174
UK	162	9
Total	2,427	207

Note to table: The data shown in this table are retrieved from the Proxy Insight database and show the aggregate results for the shareholder meetings in the period from 1 January 2013 till 31 December 2017. Final search: 18 January 2018.

Table 1 shows that shareholders in Sweden make larger use of the possibility to add corporate sustainability issues to the agendas of their companies' general meetings compared to shareholders in other European countries. Of the 174 shareholder proposals that Proxy Insight provided, 172 were related to social sustainability; two shareholder proposals were related to political activities. More specifically, of those 172 social sustainability proposals in total 97 proposals were related to (gender) diversity and equality. 64 proposals concerned policies regarding workplace accidents and six proposals focused on a zero tolerance policy regarding the eating disorder anorexia in the particular

[28] Three shareholder proposals that concerned corporate sustainability issues were put on the agenda of Royal Dutch Shell's AGMs in 2015, 2016 and 2017. Since the company is registered in the UK, these shareholder proposals are included in the reported number for the UK.

industry. Five resolutions were about human rights and refraining from (investment) activities that are related to nuclear weapons.[29]

Interestingly, in Italy, shareholders add the highest number of shareholder proposals to the agenda, but none of these proposals concerns corporate sustainability.[30] Moreover, also in Austria, Belgium, Finland, Germany, Luxembourg, the Netherlands, Portugal and Spain, none of the shareholder proposals were about corporate sustainability matters. Does this mean that shareholders in many European countries, contrary to the United States simply do not care about sustainability issues? We have found reasons to believe this is not the case.

4. Shareholder activism in practice: shareholder questions

In section 2 we have shown that (Dutch) shareholders have several tools to actively voice their interests; these include the right to ask questions. AGMs can serve as a platform for shareholders to ask questions and to engage in discussions with the board about corporate matters. Since most Dutch companies publish full transcripts of their general meetings, as the DCGC 2016 (but also the 2008 and 2003 versions) requires companies to provide the shareholders, upon request, with the "report" of the general meeting (principle 4.1.10), these transcripts offer a unique dataset to evaluate the course of affairs at AGMs, including shareholder activism with respect to corporate sustainability. For this contribution, we are particularly interested in if and how particular types of shareholders address corporate sustainability matters in these meetings by using their forum rights. In the section 4.2 we outline our sample selection and methodology and in section 4.3 we present our findings. However, before doing this, we first consider the studies that studied the shareholder right to ask questions in practice before in the next section.

4.1. Related literature on shareholder questions

Scholars have criticized this function of AGMs, arguing that these meetings generally lack a meaningful dialogue and that relevant issues are usually not discussed.[31] Nonetheless, despite these

[29] A deeper look at the different shareholder proposals and their initiators in Sweden learns that there is a very small group of activist private shareholders in Sweden who put many proposals related to social issues on the agenda. It seems that a vast majority of these shareholder proposals are defeated.

[30] A further analysis of the data shows that most of these proposals have to do with corporate elections. Note that in Italy 'slate voting' is used, thereby reserving some seats to representatives of minority shareholders. For instance, *see* M. Belcredi,, S. Bozzi, .and C. Di Noia, 'Board Elections and Shareholder Activism: the Italian Experiment' in: M. Belcredi and F. Ferrarini (eds.), Boards and Shareholders in European Listed Companies(Cambridge, United Kingdom: Cambridge University Press, 2013).

[31] For instance, *see*, A.G.H. Klaassen, 'Handreikingen voor de voorzitter tot beperking van het spreekrecht van aandeelhouders', Ondernemingsrecht, 2, 66-76 (2011); H. Short, & K. Keasey, 'Managerial Ownership and the Performance of Firms: Evidence from the UK. Journal of Corporate Finance', 5, 79-101 (1999).

criticisms, scholars have remained rather silent about what actually happens at AGMs. Only very few scholars (at least to our knowledge) have discussed some empirics in the past. In an early empirical study of Belgian AGMs, Van der Elst and Wymeersch (1997) investigated the use of the right to ask questions using a questionnaire send to all listed Belgian companies; 65 companies participated, a response rate of 40%, including all large companies.[32] The authors found that shareholders have used this right at 75% of the AGMs in their sample. Most questions concern the board's report or 'general questions' (p. 83). Most questions were asked by '*andere natuurlijke personen*' (other individuals), including private investors. Institutional investors asked questions in the AGMs of around 30% of the companies. In Germany, Shilling (2001) studies the results from around 100 interviews with supervisory board members of large German corporations.[33] And Apostolides (2007) discusses the actual course of affairs during 22 AGMs in the UK since 2001.[34] Besides these studies, there are also some scholars that study shareholder question rights in the Netherlands. De Jong, Mertens and Roosenboom (2003) investigate 245 AGMs of Dutch companies that are part of the AEX-25 or AMX-25 in the period 1998-2002 and find that on average around ten shareholders speak in these AGMs.[35] Accordingly, they conclude that only few shareholders use their right to speak in practice. The authors also find that most questions are regarding the strategy of the company. During the 2002 AGMs more questions were asked about the auditing, which, according to the authors, can be explained by the large accounting scandals in that period. Van der Elst (2012) investigates the questions that were asked during the 2011 AGMs of 81 listed companies in the Netherlands.[36] He concludes that the right to ask questions is of importance to small private shareholders and their representatives. The most recent study is the study of Lafarre (2017), who investigates the 2004-2015 period with 556 AGM minutes and finds that on average 8 shareholders ask questions,[37] who on average ask 42 questions per meeting. Lafarre finds that executive remuneration is one of the most discussed topics by shareholders in AGMs.

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[32] C.F. Van der Elst, & E. Wymeersch, 'De Werking van de Algemene Vergadering in de Belgische Beursgenoteerde Vennootschappen: Een Empirisch Onderzoek', Tijdschrift voor Belgisch Handelsrecht/ Revue de Droit Commercial Belge, 72-92 (1997).

[33] F. Shilling, 'Corporate Governance in Germany: The Move to Shareholder Value. Corporate Governance an International Review', 9(3), 148-151 (2001).

[34] N. Apostolides, 'Directors versus Shareholders: Evaluating Corporate Governance in the UK using the AGM Scorecard'. Corporate Governance, 15(6), 1277-1287 (2007).

[35] A. De Jong, G.M.H. Mertens, & , P.G.J. Roosenboom, 'Weinig aandeelhouders houden serieus toezicht', Economisch Statistische Berichten, 88(4419), 532-534 (2003).

[36] C.F. Van der Elst, 'Question Time? The Shareholder's right to ask questions as appropriate stewardship tool', Law and Economy, 4(4), 5-62 (2012).

[37] A.J.F. Lafarre, 'The AGM in Europe: Theory and Practice of Shareholder Behaviour' (Emerald Publishing Limited, Bingley 2017).

4.2. Methodology and sample

We gathered the minutes of 1,013 AGMs from Dutch companies belonging to the large-cap and midcap indices (respectively AEX-25 and AMX-25) in the period 2004-2017 from the websites of these companies. Afterwards, we posed the requirements that i) there should be meeting minutes of at least seven AGMs in the period 2004-2017 of a particular company available so that the analysis of longitudinal patterns is possible; ii) the company's registered office should be in the Netherlands guaranteeing the application of the Dutch rules; and iii) the documents should be, after conversion, searchable, leaving us with a sample of 763 AGMs of 69 different companies.

The Dutch Corporate Governance Code requires companies to provide the shareholders, upon request, with the report of the AGM. There is no specific format for drawing up the minutes; whereas some minutes contain literally the recordings of the meeting, others are merely a summary of what has been said and asked. Only in the first case our data contains the full quotes of the shareholders. Likely, this has no large impact on our results as we chose to analyse the data based on keyword categorization (*cf. infra*, section 4.2.3).

4.2.1. Qualifying shareholder questions and remarks

Analysing the use of the shareholders' forum right for corporate sustainability matters requires the recording of all interventions of the shareholders during the AGMs. However, shareholders intervene in different ways in the AGM: shareholders can make comments, remarks, or pose questions. The differences are subtle and not always easy to identify and often hard to differentiate. Shareholders may make several remarks to introduce their question(s) or provide in a comment or remark that not necessarily contains a question whereas the chairman either does provide in a reaction or feels obliged to (further) comment the raised topic. For example, during the 2007 AGM of ING NV one shareholder commented that many meetings are taking place almost simultaneously: "[*aandeelhouder] suggereert in dit verband dat het opkomst percentage ook kan worden verhoogd door de AVA-vergaderingen van de verschillende beursfondsen beter te spreiden*" (translation: "[shareholder] suggests that, in this context, the turnout rate could also be increased if the AGMs of listed companies are planned on more different dates"). Although formally this suggestion remark is not a question, the chairman of the meeting responded as if it were a question .[38]

[38] The chairman replies: '*[…] dat al geprobeerd wordt zoveel mogelijk te voorkomen dat AVA-vergaderingen samenvallen. Bovendien kan door volmachtverlening of door proxy voting toch gestemd worden zonder aanwezig te zijn in de vergadering. En in de toekomst komt daar wellicht elektronisch stemmen tijdens de vergadering bij.*' (translation: […] that efforts are already being made to prevent AVA meetings from coinciding as much as possible. Moreover, with proxy voting, voting is possible without being present at the meeting. And in the future

Another qualification issue is related to the follow-up of questions and remarks. Since some follow-up questions and remarks may include requests for clarification or address the incompleteness of a provided answer, others may address a different aspect following an answer. Moreover, follow-up questions (and remarks) may also be posed by other shareholders. In order to process the data as soundly as possible, we applied the following qualification rules: i) follow-up questions and remarks without any new elements[39] are considered to be and recorded as the same question or remark[40]; ii) follow-up questions and remarks that address a new element, which was not discussed in the initial question or remark, are processed as a new entry; and iii) follow-up questions and remarks by a shareholder other than the shareholder that posed the initial question or made the initial remark are always considered as a separate question or remark. Lastly, shareholder or proxy holder voting statements without any explanation or argumentation whatsoever are not considered a question, comment or remark in this research.[41]

4.2.2. Qualifying shareholder types

Two shareholders' associations usually ask questions on behalf of private shareholders during AGMs in the Netherlands. These are the VEB (Association for Securities Holders) and the VBDO (Association for investors of sustainable development). The VBDO describes itself as "the only association of investors in the Netherlands that stands up for the interests of institutional and private investors that want to contribute to sustainable development"[42]. Besides these two shareholder organisations, we also include the category 'institutional investors and other funds', which includes banks, pension funds, investment funds and insurance companies, asset managers and other financial institutions or portfolio investors, and 'private investors', in our analysis. The remaining shareholders are included in the category 'other'.[43]

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there will perhaps be electronic voting during the meeting). Whereas remarks are often treated as questions during meetings, sometimes, for example the 2004 ING NV AGM, remarks do not receive any response.

[39] These 'any new elements' are subject to the author's considerations, and, unfortunately, are thus subject to the author's choice.

[40] The text of these follow-up questions and remarks is added to the case of the initial question or remark in the database.

[41] For example, during the 2010 AGM of Brunel, it was recorded in the minutes: "*De heer Noordhoek: Ik spreek namens de stichting SECVA. Ik heb 44.600 stemmen tegen*" (translation: Mr. Noordhoek: I speak on behalf of the SECVA foundation. I have 44,600 votes against). These kinds of voting statements are not recorded as a question or a remark in this research.

[42] *See* <http://www.vbdo.nl/en/> accessed 15 January 2018.

[43] Note that a very particular type of shareholder is the trust office (in Dutch: *stichting administratiekantoor*) in companies that issue non-voting depository receipts. Trust offices are not considered in this contribution.

4.2.3. Qualifying corporate sustainability keywords

In order to assess the use of the shareholder right to ask questions and speak during AGMs, we introduce a categorization framework that contains corporate sustainability keywords. To determine the relevant corporate sustainability keywords, the different sources of (soft) laws applicable to Dutch listed companies as outlined in section 2.2 were considered.[44] From these documents, 591 keywords were retrieved. With the inclusion of the Dutch (or, in case of MVO Nederland, the English) translation of the keywords, a list of 1,154 keywords was generated.[45] Sustainability is defined as a state when business and finance on aggregate create value in a manner that is (a) environmentally sustainable in that it ensures the long-term stability and resilience of the ecosystems that support human life, (b) socially sustainable in that it facilitates the respect and promotion of human rights and other basic social rights as well as good governance, and (c) economically sustainable in that it satisfies the economic needs necessary for stable and resilient societies.[46] We used this definition to structure the keywords in four categories:[47]

a. 'environmental sustainability' keywords, i.e., all that is related to the environment, natural resources, ecosystems, etc.;

b. 'social sustainability' keywords, i.e., all that is related to social issues, including employees, human rights, ethics, health, security, corruption, etc.;

c. 'economic sustainability' keywords, i.e., all that is related to economic aspects that are not included in one of the other categories, including tax policy, customer affairs, market conduct, etc.;

d. 'Overall sustainability' keywords, i.e., those that do not fall in one of the aforementioned categories.[48]

We identified the questions and remarks that contained one or more corporate sustainability keywords using text mining techniques. These questions were manually[49] analysed and categorized

[44] Keywords were retrieved from international soft law guidelines (the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights, the ILO MNE Declaration, ISO 26000 standards Social responsibility, the Global Reporting Initiative and the United Nations Global Compact), Dutch soft law guidelines (SER Dutch Banking Sector Agreement and *MVO Nederland*), the DCGC 2016 and the Directive 2014/95/EU.

[45] This list is on file with the authors.

[46] B. Sjåfjell, 'Regulating for Corporate Sustainability' in: B. Choudhury, M. Petrin (eds.), Understanding the Company: Corporate Governance and Theory (Cambridge, UK: Cambridge University Press, 2017).

[47] The list of keywords and the categorization is on file with the authors.

[48] For instance, 'best practice', 'UN', 'sustainable', etc.

[49] The analysis of these questions was conducted with the use of the surrounding words of these keywords in every question. In addition to the corporate sustainability topic categorization, the authors also added an index to the database of keywords indicating the possible relevance of each keyword. The authors identified those keywords that were highly likely to address a corporate sustainability matter, for instance 'sustainable', 'anti-

in one of the aforementioned categories or, in case a question turned out not to be related to corporate sustainability, deleted from the analysis. Questions that involved more than one sustainability topic were included in 'category d.'.[50]

4.3. Sample Statistics

The sample this is used in this research contains 763 AGMs of 69 different companies. Table 2 provides an overview of the AGMs per year that are included in our sample:[51]

Table 2: Sample of AGMs

Year	Number of AGMs	Year	Number of AGMs
2004	21	2011	65
2005	29	2012	66
2006	39	2013	67
2007	48	2014	68
2008	62	2015	65
2009	60	2016	58
2010	65	2017	50

The ICB industry classification for 23 of these 69 companies is 'Industrials'. In addition, thirteen companies are classified in the industry 'Financials'.[52] Eleven of these companies were delisted during the sample period. For measuring the market capitalization we take June 2017 as a reference date for the companies that were not delisted during the sample period; for the companies that were delisted we used the market capitalization of December 2010. The average market capitalization of the 58 companies that were not delisted in the sample period is 6,555 million euros, with a median of 1,128

corruption', 'child_labour', etc. Other keywords were likely to include corporate sustainability matters, depending on the context, such as 'diversity', 'emissions', etc. Lastly, keywords were identified that, although (highy) unlikely, could also include corporate sustainability matters, such as 'guidelines', '*natuurlijk*' (Dutch translation of 'natural', also meaning 'of course'), etc. This categorization was used to further manually assess those questions that contained one or more of the identified keywords.

[50] For instance, during the 2016 AGM of Aalberts, VBDO asked: '*In het jaarverslag staat een voorbeeld van een Frans bedrijf van Aalberts Industries dat een sustainable development plan heeft ontwikkeld. Mevrouw [naam] vraagt of de Directie bereid is beleid te ontwikkelen dat dit soort initiatieven binnen de groep stimuleert.' [translation: The annual report contains an example of a French company from Aalberts Industries that has developed a sustainable development plan. Ms [name] asks whether the Management is prepared to develop policy that stimulates these types of initiatives within the group.]*

[51] The authors may be contacted for more information regarding the sample of AGMs used in this research. The gathering of the data was finished on 30 December 2017.

[52] Besides these two classifications, the industry of nine companies is classified as 'Technology', eight as 'Consumer Services', eight as 'Consumer Goods', three as 'Basic Materials', two as 'Health Care', two as 'Oil & Gas' and one as 'Telecommunications'.

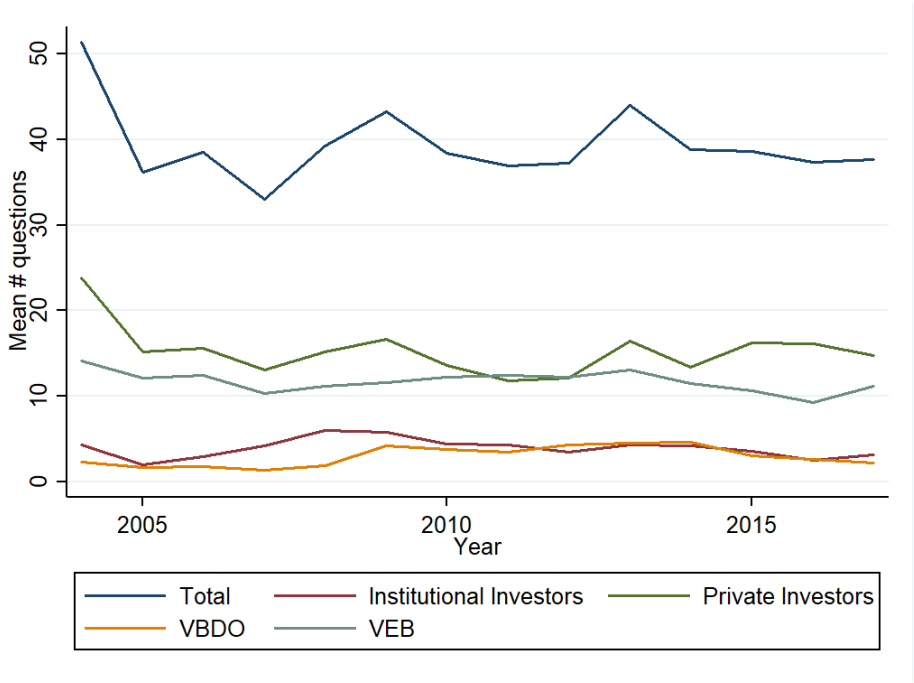
million euros.[53] In case we consider all companies, we find an average market capitalization of 6,935 million euros with a median of 1,1181 million euros.

The total amount of questions and remarks that were identified in the overall analysis of the 763 AGMs is 29,744. Consequently, the average amount of questions and remarks per AGM is 39.0, with a standard deviation of 20.8. These numbers indicate that there are significant differences between AGMs. During nine meetings, no questions or remarks were asked or made by shareholders, in ten others over 100 questions were raised. The average number of speakers (shareholders or shareholder representative organizations) during the 763 AGMs was 7.8 with a standard deviation of 4.0. Private investors ask on average 14.8 questions per meeting with a standard deviation of 12.4. For institutional investors this is an average of 4.8 (standard deviation of 5.8) and for the VBDO this is 3.2 (with a standard deviation of 3.8). The VEB asks on average 11.6 questions per AGM, with a standard deviation of 8.2.

Figure 1 shows the descriptive information regarding the average amount of questions and remarks per year, also broken down to private investors, institutional investors and the VBDO. It shows that average total number of questions per meeting remains relatively stable during the years, with a peak in 2004:

[53] Reference date is June 2017. Note that Unilever, ING Group and ASML have a market capitalization of more than 50,000 million euros. In contrast, ten of the 60 companies have a market capitalization of less than 100 million euros.

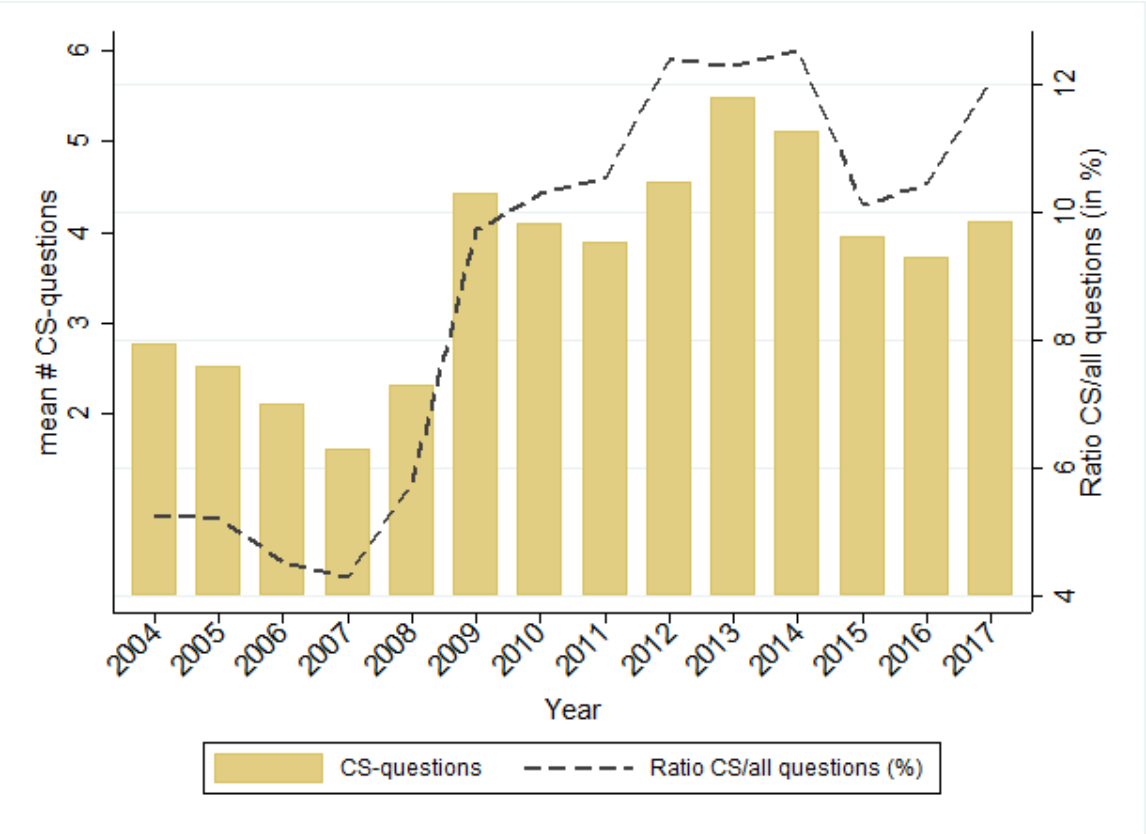
Figure 1: Average amount of questions per meeting per type of shareholder



4.4. Shareholder corporate sustainability questions

In this section we investigate the use of forum rights to advocate corporate sustainability. Of the 29,744 questions and remarks in the sample, 2,913 questions and remarks that concern corporate sustainability topics were identified, which is around ten percent. The average amount of corporate sustainability questions in the meetings was 3.8 with a standard deviation of 4.4 and a median of 3. The highest number of corporate sustainability questions is 34; the lowest is zero. The 25th percentile has a value of zero; the 75th percentile a value of six; the 95th percentile a value of twelve and the 99th percentile a value of nineteen. When we consider the average number of corporate sustainability questions per AGM per year, we see an increasing trend. Whereas in 2004 only 2.8 corporate sustainability questions on average were asked, in recent years this amount increased to 4.1 questions, with a peak in the 2012-2014 period with around five questions per meeting on average. In addition, when comparing the number of corporate sustainability questions per year to the number of all questions and remarks asked per year, we find that the ratio of corporate sustainability questions to all questions soared from 5.2% in 2004 to 12.0% in 2017. Not only the average number of questions and remarks per meeting has increased, also the share of questions that address corporate sustainability matters shows an increasing trend during the research period as Figure 2 shows:

Figure 2: Corporate sustainability questions (all shareholders)



If we compare the means of corporate sustainability questions per year, we find that there is a significant increase in means from 2009 onwards.[54]

4.4.1. Corporate sustainability categories

Next we consider the different corporate sustainability topics that shareholders discuss during the meetings. These include four categories; a. environmental sustainability; b. social sustainability; c. economic sustainability, and; d. overall sustainability. Of the 2,913 corporate sustainability questions, 782 questions were related to environmental sustainability (26.8%), 900 questions to social responsibility (30.9%), 84 to economic sustainability (2.9%) and 1,146 to the overall sustainability category (39.3%). Figure 3 shows the trends for the four categories:

Figure 3: Mean amount corporate sustainability questions per topic (all shareholders)

[54] We tested whether the means before and since 2009 are different. The means for 2005, 2006, 2007 and 2008 are significantly smaller than all means since 2009.

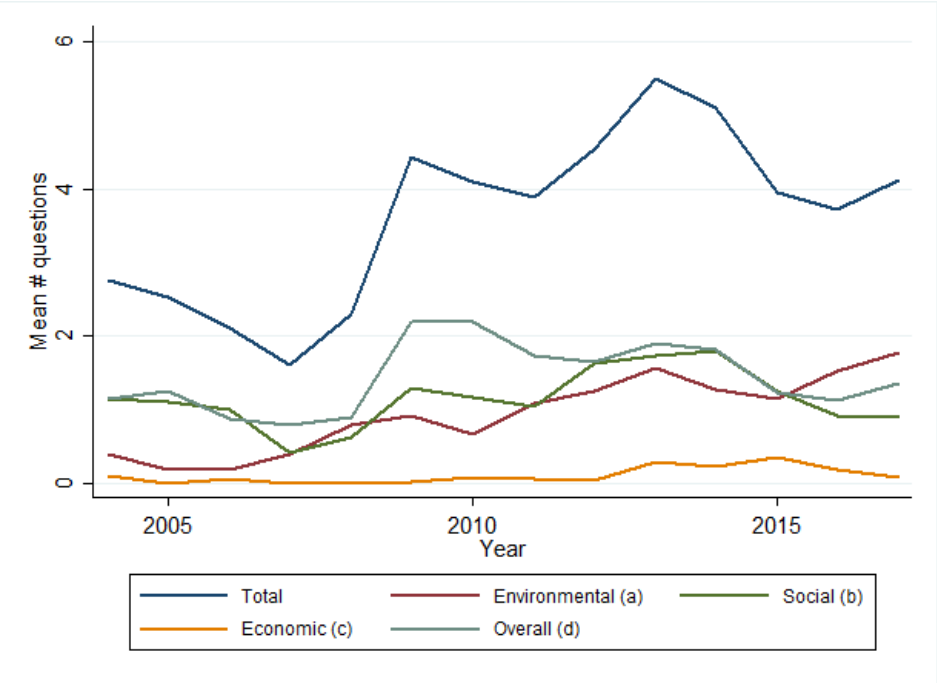


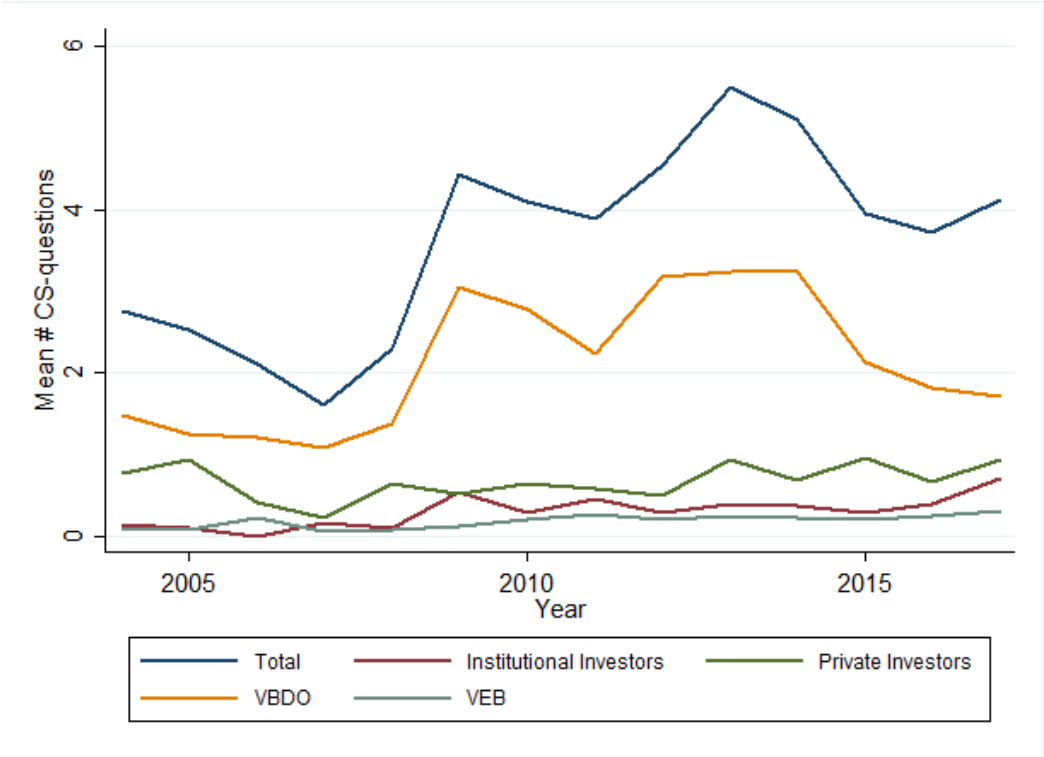
Figure 3 shows the average total amount of corporate sustainability questions and the different corporate sustainability categories. First of all we can note that the interest of shareholders in environmental sustainability (category a) issues has significantly increased during the research period.[55] The attention for social sustainability topics (category b) shows a less clear trend, but we can note an increase since the year 2007 until 2014. There were virtually no questions on economic sustainability until 2012, but since 2013 shareholders ask a question on this topic in about one out of three AGMs (an average amount of questions of around 0.3 per meeting). In general, most questions related to corporate sustainability of shareholders are contained in the overall category (category d). Here we can note a peak in the years 2009 and 2010. Only since the year 2015, environmental sustainability questions were more frequent than overall sustainability questions. We could not identify reasons why the different categories of CSR issues experienced different interests of shareholders over time. It could be that shareholders want to interrogate the board to what extent it is responsible for new regulatory developments upon appearance while later refrain from asking how the follow up of these developments is taken place.

[55] We tested whether the means before and since 2008 are different.. The means for 2004, 2005, 2006 and 2007 are significantly smaller than all means since 2008.

4.4.2. Shareholder types

In this paragraph we examine the types of shareholders that ask corporate sustainability questions. Of the 2,913 corporate sustainability questions and remarks the VBDO, i.e. the association for investors of sustainable development, posed the majority, namely 1,737 or 59.6 percent. Of these questions, around 24.8 percent is part of the category environmental sustainability, 26.9 percent of social sustainability, and 46.1 percent of the overall sustainability category. The VEB asked almost 9,000 questions during the entire sample period, however, only 144 of these were related to corporate sustainability. Private investors had 513 questions or remarks related to corporate sustainability during the AGMs, which is 17.5 percent of all corporate sustainability questions; this group of investors asked in total 11,325 questions, and thus only 4.5 percent of their questions were about corporate sustainability. Most of these questions were about social sustainability (39.4 percent) and environmental sustainability (34.1 percent). Institutional investors asked 246 questions related to corporate sustainability issues – and 3,679 questions in total – which is around 8.4 percent of all corporate sustainability questions and 6.7 percent of all questions asked by this class of investors. Of these 246 questions, 131 questions (53.3 percent) were related to overall sustainability Figure 4 shows the average number of corporate sustainability questions each type of shareholder asks per meeting:

Figure 4: Mean amount corporate sustainability questions per type of shareholder



If we consider the amount of questions that was asked by institutional investors on average per meeting, we see that these investors ask on average 4.8 questions per meeting, but only 0.3 questions on average are related to corporate sustainability. Nonetheless, Figure 4 shows an increasing trend in the average number of corporate sustainability questions this type of shareholder has; this increase is statistically significant.[56] Especially in the year 2017 we can note a sharp increase: from 0.4 questions on average in 2016 to 0.7 in 2017. Note that the increase in the year 2017 is statistically significant.[57]

We also test whether the different types of shareholders are more interested in different sustainability topics. We find the following descriptive results:

Table 3: Corporate sustainability category per shareholder type

[56] We tested whether the means before and since 2008 are different. This is the case for almost all years, including the years 2016 and 2017.
[57] We also tested whether the mean of 2017 is significantly different from the years before. This is the case for the years 2004-2008, 2010 and 2012-2015.

Category	Institutional Investors	Private Investors	VBDO	VEB	Total
Environmental (a)	55 (22.4)	175 (34.1)	430 (24.8)	44 (30.3)	780 (26.8)
Social (b)	56 (22.8)	202 (39.3)	467 (26.9)	42 (29.0)	902 (31.0)
Economic (c)	4 (1.6)	24 (4.7)	38 (2.2)	10 (6.9)	85 (2.9)
Overall (d)	131 (53.3)	113 (22.0)	801 (46.1)	49 (33.8)	1,145 (39.3)
Total (100%)	246	514	1,736	145	2,912

Table 3 shows that institutional investors and VBDO ask most often questions that are related to the overall corporate sustainability category; private investors on the other hand seem to be more interested in social sustainability and environmental sustainability. The Chi-square test shows that the observed differences for the different shareholder types are statistically different.

Next, we consider the ratio of corporate sustainability questions to all questions for the different types of shareholders during our research period (Figure 5):

Figure 5: Ratio corporate sustainability questions to all questions per type of shareholder

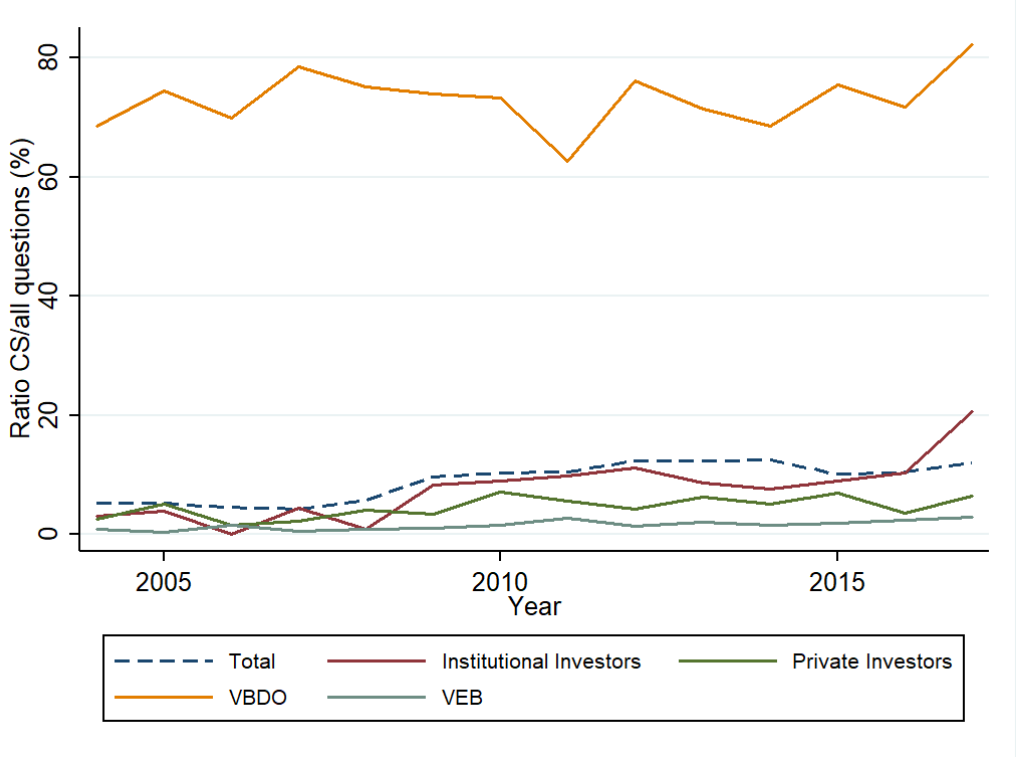


Figure 5 shows that the share of corporate sustainability questions has (somewhat) increased for all types of investors over the years. The ratio of corporate sustainability questions to all questions for institutional investors has significantly increased from around two percent in 2004 to twenty percent in 2017.[58] Also for private investors we can note a somewhat increasing trend, but the part of the questions that is related to corporate sustainability questions of individual investors is still only around six percent in 2017. The VEB seems to have virtually no interest in corporate sustainability, although their share of questions increased from around one to almost three percent over the research period.

Besides the institutional investors, private investors and the main shareholders' associations VBDO and VEB, some environmental or social interest organizations also ask questions or make remarks during the AGMs in the research period. Greenpeace Netherlands and Friends of the Earth Netherlands (also called: 'Milieudefensie')[59] raised 21 questions and remarks during the 763 AGMs.[60] Oxfam Novib asked one question during the 2011 AGM of ING regarding the 'Eerlijke Bankwijzer'[61] and the investment in weapons manufacturers. In addition, the European Women Lawyers Association asked two questions during two different AGMs in 2015 regarding gender equality matters.

4.4.3. Company industry and size

The industry in which a company operates can determine the focus of sustainability related questions during the AGMs. Figure 6 shows the number of corporate sustainability questions per industry, the average number of questions per company and the sustainability topics addressed by shareholders.

[58] We tested whether the ratios before and since 2008 are different. This is the case for almost all years, including the years 2016 and 2017. In addition, the mean of 2017 is significantly different from the years before (except for the year 2012).

[59] Note that during the 2008 AGM of Royal Dutch Shell, Milieudefensie actively addressed the board of Royal Dutch Shell regarding the oil pollution in Nigeria that involved one of its subsidiaries. Also *see* Hof Den Haag, 18 December 2015, ECLI:NL:GHDHA:2015:3586. Since Royal Dutch Shell does not have its registered office in the Netherlands, this company was not considered in this research (*cf. supra*, nt 39).

[60] Greenpeace Netherlands asked the most questions in the year 2016, namely seven during two different meetings.

[61] Also called 'Fair Bank Guide', *see* <www.eerlijkegeldwijzer.nl/bankwijzer/?_ga=2.126349197.1288026217.1516278128-1828895292.1516278128>, accessed 18 January 2018.

Figure 6: Corporate sustainability topics per industry

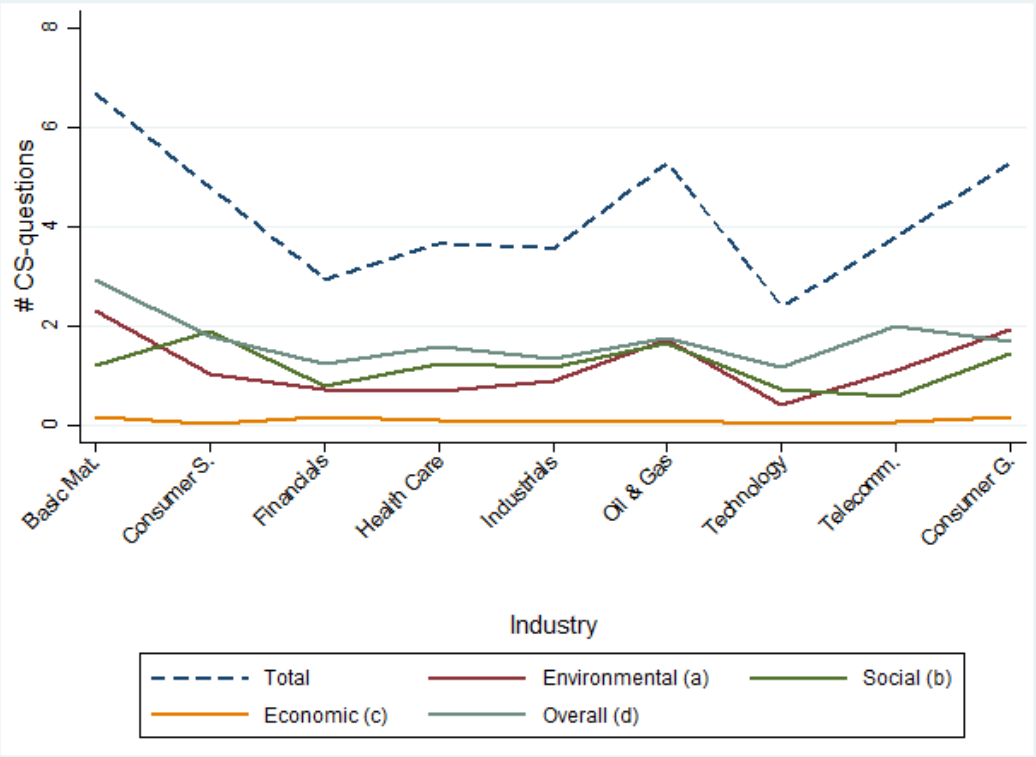
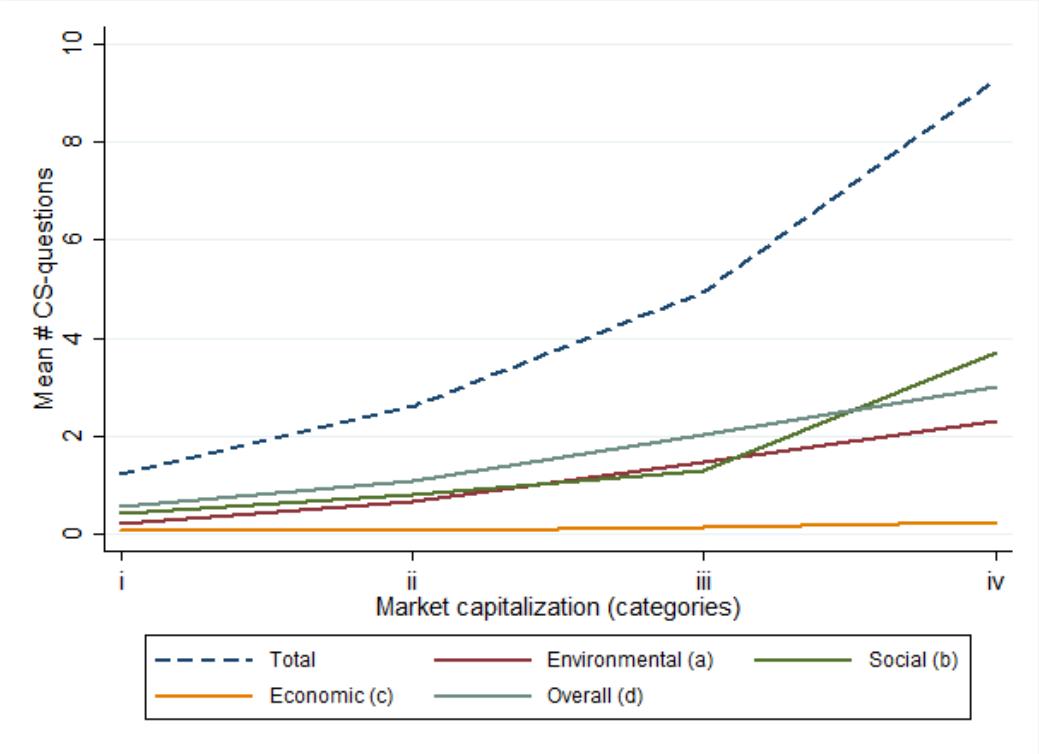


Figure 6 shows that shareholders ask most corporate sustainability related questions during AGMs of companies in the Basic Materials industry; this difference in means is statistically significant for all industries, except for Oil & Gas and Consumer Goods. In the Technology and Financials industries, shareholders were significantly less interested in corporate sustainability matters on average. Environmental issues were most often raised at the meetings of companies in the Basic Materials, Oil & Gas and Consumers Goods industries. In Telecommunications, shareholders most often raised questions that were related to the category 'Overall' sustainability (category d). In the Consumer Services industry, corporate sustainability issues were more often related to social sustainability. One may note that in the Oil & Gas industry, the share of environmental, social and overall sustainability questions was more or less the same. There are very few questions are about economic sustainability in every industry. Using a Chi-square test, we find that the observed differences for the different industries are statistically significant.[62]

[62] For this test we categorized the variable that represents the total amount of corporate sustainability questions in three categories; i) when the amount of corporate sustainability questions is smaller or equal to three (50th percentile); ii) when the amount of corporate sustainability questions is larger than three but smaller or equal to eight, and; iii) when the amount of corporate sustainability questions is larger than eight (90th percent percentile). Category i) contains 425 observations, category ii) 251 observations and category iii) 87 observations.

Besides the differences among industries, we can also note the effect of market capitalization on the amount of questions and remarks made regarding corporate sustainability issues. For example, in the AGMs of Unilever N.V., the largest company in our research in terms of market capitalization, we find an average of 10.9 corporate sustainability questions per meeting. For the AGMs of ING N.V. (the second largest company), we found 9.9 questions on average; for the AGMs of Heineken N.V. (the third largest company) an average of 13.6 and for Ahold N.V. (sixth largest company) even an average of 14.3 questions and remarks per AGM. When we categorize the market capitalization for the 69 companies in our sample, we find a positive relationship between the market capitalization and corporate sustainability activism (Figure 7): [63]

Figure 7: Corporate sustainability topics per industry



[63] We use the following categories: i. smaller or equal to 154 million euros (25th percentile); ii. larger than 154 million euros, but smaller or equal to 1,181 million euros (50th percentile); iii. larger than 1181 million euros but smaller or equal to 19,188 million euros (90th percentile), and; iv. larger than 19,188 million euros. Category i) contains 192 observations, category ii) 200 observations, category iii) 297 observations and category iv) contains 75 observations.

Figure 7 shows that the average numbers of shareholder questions related to all corporate sustainability topics all increase with the firm's market capitalization. Using the Chi-square test we find that the observed differences are statistically significant.[64]

5. Concluding remarks

Just like corporate boards, shareholders can play a pivotal role in achieving corporate sustainability goals. In this research we explored whether shareholders, as important corporate actors, are keen on promoting corporate sustainability using the existing shareholder tools in the Netherlands. Previous research and recent data suggest that shareholders in Europe do not use the right to put a shareholder proposal on the agenda very often let alone address corporate sustainability items using this activist tool. Our research has shown that, despite the lack of mandatory regulation and the use of shareholder proposals, shareholders in the Netherlands, including institutional investors, seem to care increasingly about sustainability issues. The share of questions and remarks made by institutional investors that is related to corporate sustainability matters significantly increased from around two percent in 2004 to over twenty percent in 2017. Taking into account the large variety of topics shareholders may ask questions about, including for example remuneration matters, the corporate strategy, board elections, dividend policies, auditing, and so on, twenty percent is substantial. However, it is important to note that despite the increasing interest of institutional investors regarding corporate sustainability matters, their use of the forum right in AGMs is still low. Since institutional investors and larger shareholders often have the opportunity to meet the corporate management directly in private meetings outside the AGM, further research as to whether the use of other shareholder tools for advocating corporate sustainability goals has increased too is important. The new Shareholder Rights Directive (EU) 2017/828 that focuses inter alia on transparent shareholder engagement may provide further insights on corporate sustainability activism by institutional investors.

[64] *Cf. supra*, see footnote 62 for the categorization of the corporate sustainability questions variable.

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