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Answering the Say for No Pay

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Keywords: Say on pay, shareholder votes, CEO compensation, shareholder activism, disclosure

JEL Classifications: K22, G34, G38, J33, M12

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Answering the Say for No Pay

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Abstract

Say on pay is considered an important tool to mitigate inappropriate remuneration practices. Over the years, many countries provided shareholders with this say on pay-tool, although often the vote is exclusively of an advisory nature. We analyse the regulatory framework of say on pay in two of these countries, the UK and Belgium. We provide evidence on the evolution of the dissenting votes of the remuneration report and identify the companies that experienced a disapproved remuneration report. We assess the effect of this dissenting vote by analysing the subsequent remuneration report and shareholders' vote as well as the evolution of the stock price. Although there are only limited guidelines how to address the dissenting vote and how to compile an adequate response, we found that many companies adjusted their remuneration practices, in particular the disclosing of pay-related information and amending bonus schemes. Remuneration levels are generally not adjusted. However, not all companies responded to the discontentment of the shareholders. The shareholders often positively react on the presented amendments in the subsequent vote of the remuneration report, but shareholder remain critical. Some subsequent shareholder approvals are hard to interpret. The research shows that say on pay positively affects communication between shareholders and companies but more is to be done on guiding the information exchange. We provide in a number of suggestions thereto.

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1. INTRODUCTION

Executive remuneration is the hottest topic in corporate governance. Remuneration is considered key in the alignment of the interests of management and shareholders. However, until recently it was exclusively the board of directors that hold the reins of executive remuneration. Shareholders were at best informed of the remuneration packages the managers were provided with. Voicing the shareholders' views on pay was a footnote in the minutes of the general meetings. However, since a number of years, there has been a wave of say on pay legislation enacted in countries around the world, including the U.S., Australia, Italy, Belgium, the Netherlands, Sweden and so on. Shareholders are provided with the powers to vote in some ways on the remuneration of top management. It is claimed that this say on pay shifts the assigned powers from the (supervisory) board back to the shareholders enabling them to hold the reins of executive pay. Over the last number of years, it is noticed that in the countries that enacted say on pay legislation, the agenda item of remuneration is one of the most discussed items and it is regularly found that shareholders refuse to approve this agenda item. According to Semler Brossy, every year between 1.4 to 2.7 per cent of the American Russell 3000 companies fail their say on pay vote (Semler Brossy, 2015). Consequently, the say on pay vote should also have an important signalling effect. Knowing the shareholders will vote on the remuneration package, it is likely that boards will take into account that only appropriate remuneration packages will be backed. However, the most recent developments of the practice of say on pay indicates that the shift of power is far from absolute. Pay packages are still skyrocketing according to some studies (Weaver 2016) and the pay for performance relationship is according to many studies low (Bebchuk and Fried 2004). Studies of the effects of the American Dodd-Frank say on pay show that low support does not affect management and board to enhance firm value (Brunarski, Campbell and Harman 2015). Say on pay does not automatically have a deterrent effect on pay packages and the American system whereby shareholders are not mandatorily provided with an annual say on pay result in the insulation of shareholders from voting on the remuneration (Weaver 2016). The advisory nature of the most say on pay systems is neither helpful in mitigating the nonalignment of remuneration of the CEO and the shareholders' interests. During the 2016 general meeting of Renault, the French car manufacturer in which the French government holds 20 per cent of the shares and 23.5 per cent of the voting rights (Renault 2015), 54 per cent of the shares were voted against the remuneration package of €7.3m. of the CEO. The board of directors of Renault made the decision to leave the remuneration package unchanged which upset the French government, including the president that threatened to introduce more stringent rules (Stothard and Chassany 2016).

Outside the United States the effects of say on pay and more in particular how companies respond to the dissenting vote on the remuneration report has not been addressed in a qualitative study. This research aims to fill this gap and studies the effects of the voting down of the remuneration report and suggests improvements to the existing system in light of the findings of the companies responses to dissenting shareholders.

This article proceeds as follows. In the first section, we provide an overview of the current regulatory state of say on pay in the United Kingdom and Belgium. Both countries introduced a mandatory but advisory say on pay vote of the remuneration report, the first country in 2002 and the second in 2012, after both countries advised in say on pay already years before. Section two studies the evolution of the voting results of the remuneration report in the UK and Belgium. In both countries significant more opposition can be found for the general meeting's agenda item "remuneration report" than for most other voting items. The third section surveys the companies that experienced a dissenting vote of their remuneration report over the last five years. We identify the reasons for which the shareholders provide in a dissenting vote. We also review the evolution of the stock price around the time the remuneration report was disapproved. Further, we address the adjustments of the remuneration practices in the aftermath of a dissenting vote. Finally, the section highlights the effect of the adjustments on the voting outcome in the next general meeting. The last section discusses the findings and advises policy makers of a number of improvements for the say on pay mechanism.

2. THE LEGISLATIVE FRAMEWORK OF SAY ON PAY

2.1.The United Kingdom

Historically, the office of director is aligned in law with that of a trustee and is not entitled to be paid, unless it was explicitly provided for by the shareholders' meeting. In the case *Re George Newman & Co.* it was held that:

> Directors have no right to be paid for their services, and cannot pay themselves or each other, or make presents to themselves out of the company's assets, unless authorized so to do by the instrument which regulates the company or by the shareholders at a properly convened meeting (*Re George Newman & Co.*1895).

Hence it is up to the shareholders to set the remuneration package of the directors or authorise in an instrument for an alternative mechanism. The latter mechanism is standard. It is common that the articles of association delegate the general meeting's power to authorize the payment of directors' fees to the board (Mclaughlin 2013, p. 232). The Companies Act 1985, reneged in the Companies Act 2006, states that the shareholders must approve payments for loss of office as a director and the particulars of the proposed payments is made available (Section 312 CA 1985 and Section 221 CA 2006). Exceptions are made for small payments of less than £200 (Section 221 CA 2006), for pensions, for the discharge of an existing legal obligation or by way of damages for the breach of such an obligation (Section 220 CA 2006).

Since the late 1980s the interest in the remuneration of directors increased and the Cadbury Code of 1992 started a debate of shareholder involvement in the remuneration practices which remained a political and regulatory issue until the current days. In that Code it was only recommended that the shareholders vote for service contracts of directors lasting for more than three years. Say on pay was not considered as a best practice. To the contrary, the Cadbury Committee considered say on pay as unworkable (Committee on the Financial Aspects of Corporate Governance 1992, Best Practice 4.43):

> A director's remuneration is not a matter which can be sensibly reduced to a vote for or against; were the vote to go against a particular remuneration package, the board would still have to determine the remuneration of the director concerned. In addition, there are such practical considerations as the need to agree directors' remuneration on appointment.

This view quickly changed. In 2002 the U.K. was the first country to adopt mandatory nonbinding shareholder votes on director compensation (say on pay), according to the Directors' Remuneration Report Regulations 2002 (DRR). Directors of a quoted company must provide in a yearly remuneration report and the report must be put to the vote of the general meeting of shareholders (Section 241A Companies Act 1985). Schedule 7A of the DRR 2002 provides in the details of the content of the remuneration report. The first part must not be submitted to the external auditor's review, while the second part must be externally audited.

In the first part of the remuneration report, the following information must be provided:

1. The remuneration committee and its composition.
2. a statement of the company's policy on directors' remuneration which must address the performance conditions for each director for share options or a long-term incentive scheme (LTIP) and the motivation why these particular conditions have been selected, the methods for assessing whether the conditions have been met, if any, the external factors for comparison with other companies, if any, the amendments of the terms and conditions and entitlements not subject to performance conditions, the relative importance of the elements related to performance (and those not related to performance), the duration of contracts and the notice periods and termination payments.
3. a line performance graph which compares the performance of the company's shares with those of an index.
4. the date of each service contract, the unexpired term and the details of any notice periods, any provision for compensation payable upon early termination of the contract, provisions allowing to understand the liability of the company for early termination.

In the second part of the remuneration report audited information must be provided:

1. the remuneration of each director (split in fixed fees, bonuses, expenses, compensation for loss of office, other benefits and the total).
2. the nature of non-cash elements of remuneration.
3. the share options with the awarding price, the exercise price, date and expiring date, the performance criteria, the market price of the exercised share options as well as of the unexpired share options at the end of the year.

4. agreement or arrangement under which money or other assets may become receivable by a person and which includes one or more qualifying conditions with respect to service or performance that cannot be fulfilled within a single financial year (LTIP).
5. details of the pension scheme and the excess retirement scheme.

In the Companies Act 2006 another remuneration issue is put to a shareholders' vote. The shareholder approval is required in advance of directors' service contract of longer than two years. While it is only the term exceeding two years that needs approval of the shareholders (Section 188 (2) CA 2006), a copy of the entire proposed contract must be made available for inspection by the shareholders (Section 188 (5) CA 2006). More generally, all service contracts of directors must be held available for inspection free of charge at the company's registered office or a place specified in the regulations (Section 227-228 CA 2006). The DRR regulations 2002 was retaken in schedule 8 of the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008.

In June 2012, the Department for Business Innovation & Skills (BIS) released a consultation proposing a binding say on pay in the U.K. (Department for Business, Innovation & Skills 2012a, p. 15). BIS found in a study that in a significant number of cases the management of the company failed to respond to substantial shareholder opposition against the remuneration report and argued that the advisory vote had limited effect (Department for Business, Innovation & Skills 2012b, p. 11).[1] BIS proposed to introduce two separate votes. The first vote is for the policy report "setting out all elements of a company's remuneration policy and key factors that were taken into account in setting the policy". This vote will be mandatory and binding when the remuneration policy is set or changed. The second, advisory vote regards the implementation of the policy, "setting out actual payments to directors and details on the link between company performance and pay". It resulted in the Enterprise and Regulatory Reform Act 2013 and the Statutory Instrument "the Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013" which came into force October 1, 2013.

The latest set of rules require the remuneration report to contain three separate parts: an annual statement, the annual report on remuneration and the directors' remuneration policy. The annual statement can take the form of a letter of the chairman of the remuneration committee providing summarized information of the major decisions on directors' remuneration, substantial changes made and an explanation why these changes have been made.

The annual report on remuneration must contain the single total figure of remuneration of each director, with the total amount of salary and fees, all taxable benefits, receivables as a result of the achievement of performance measures related to a period ending in that year (short term incentives), those for periods of more than one financial year (long term incentives), the pension and any other item of remuneration. Each of these remuneration

[1] BIS does not take into account the rejection of the remuneration report but referred to four companies that experienced shareholder opposition of more than 20% four times, in a time frame of nine years.

elements must be further set out in sufficient detail. It resembles the DRR regulations 2008 but contains also new requirements like the aforementioned single total figure of remuneration. Another novelty is the disclosure of information regarding the votes of the resolutions to approve the remuneration report and the remuneration policy and “where there was a significant percentage of votes against either such resolution, a summary of the reasons for those votes, as far as known to the directors, and any actions taken by the directors in response to those concerns.” It upgraded the UK Corporate Governance Code Provision E.2.2. requiring in an explanation what actions the board intends to take to understand the reasons behind the vote result when according to the board a significant proportion of votes have been cast against a resolution. However, the corporate governance provision envisages all resolutions whereas the law only requires action of the board in case a remuneration resolution encounters significant dissent. Neither the Regulation nor the Corporate Governance Code provide guidance as to what should be considered as a significant proportion. In the CG100 and Investor Group’s Directors’ Remuneration Reporting Guidance it is suggested

> ‘to consider votes against in excess of 20 per cent as being significant, although there may be reasons why, for some companies, a higher or lower level might be more appropriate [...] companies may wish to consider disclosing in the annual remuneration report the level of votes against that they deem to be significant’.

The report continues to state that also this proportion can be taken as a benchmark if the number of votes withheld passes this threshold.

The third part, the directors’ remuneration policy must be submitted to a binding vote at least once every three years. Section 439A of the UK Companies Act requires the directors’ remuneration policy to address the matters mentioned in section 421(2A) which refers to the statutory instruments that must make sure that “any information required to be included in the report as to the policy of the company with respect to the making of remuneration payments and payments for loss of office (within the meaning of Chapter 4A of Part 10) is to be set out in a separate part of the report”. This policy must be provided *in extenso* in the report and must set out the company’s approach to all different aspects of the remuneration that can be found in the single total figure table, including the recruitment, the service contracts and the payments for loss of office.

2.2.Belgium[2]

The Belgian legal rules relating to compensation are straightforward: the company’s articles of association (or, if they are silent, the general meeting of shareholders) determine both whether the directors shall be remunerated[3] (art. 517 Companies Code) and, if they are to be paid, the remuneration package for the services as board member (Willermain 2008, p. 236). Alternatively, the shareholders at the general meeting could indirectly decide to pay the directors by approving the company’s accounts in which the remuneration is included (as a

[2] This part has been taken from my co-authored contribution Thomas and Van der Elst 2015, p. 675-678.
3.The Belgian director can be remunerated, but does not have to be (art 517 Companies Code).

cost) (Willermain 2008, p. 236, note 95). The general meeting of shareholders' decision about the remuneration of the directors only relates to the total amount granted to the board of directors. The board of directors decides how this total compensation package will be divided between the directors (Willermain 2008, p. 237).
In 2002, the statutory creation of a modified two-tier board structure in the Belgian Companies Code affected the director remuneration rules (Law of 2 August 2002, *Offical Gazette* 22 August 2002). Firms have the option through their articles of association to empower the board of directors to delegate a large part of its powers to a management committee. In the event that the company's articles of association do not to provide rules for setting the compensation of the management committee members, the board of directors is empowered to set the remuneration package (art. 524 Companies Code). The board of directors has the power to set the pay of the corporate senior officers, such as the members of the management board and/or officers empowered to execute the day-to-day management of the company. The duties of the executive board members are therefore split between board membership and providing their services as executives.

Shareholders' powers to determine executive compensation at Belgian companies were increased after the financial crisis and the national and international debates regarding excessive remuneration of top executives. The law of April 6, 2010 altered the corporate governance rules for executive pay for listed and state-owned companies (Law of 6 April 2010, *Offical Gazette* 23 April 2010). As a result, in their annual reports Belgian firms must now include a corporate governance statement, as well as a detailed remuneration report. Moreover, they must establish a remuneration committee, set criteria for the variable part of the executive remuneration and have generous golden parachutes approved by the shareholders.

In addition, the general meeting of shareholders must every year vote on the company's remuneration report, a say on pay vote. According to the Companies Act, the remuneration report must provide detailed information on eleven remuneration items: (i) the process the board used in developing the remuneration policy, (ii) a statement of how the directors applied the remuneration policy during the accounting period, (iii) the remuneration package of each individual non-executive board member, (iv) the remuneration that senior executive officers receive for their role as directors, (v) the criteria and procedure to grant performance related pay to executive board members and senior executive officers, (vi) a detailed description of the individual remuneration package of the chief executive officer, (vii) a detailed description of the global remuneration package of the other senior executive officers, (viii) the number and main characteristics of shares, options and other rights granted, vested and/or executed, (ix) severance pay commitments, (x) the applied severance pay in case an executive board member or senior executive officer departed, and (xi) claw back provisions for variable pay based on misleading financial information (art. 96, § 3 Companies Code).
The shareholder vote is advisory so that the company is not obliged to revise any contractual engagements. Nor does the disapproval of the remuneration report affect the validity of the company's financial statements. However, if the shareholders disapprove the remuneration

report, the board of directors is likely to revise the company's remuneration policy.[4] The disapproval leaves the company in doubt as to which of the different remuneration report components drove the shareholders to vote against the report.

The law of April 6, 2010 amended the Belgian Companies Code to give shareholders further power to restrict the structuring of the variable remuneration package and the share-based remuneration of the executives. It now requires a shareholder vote, or a facilitating article of association (Belgian House of Representatives, 2009, p. 18),[5] if the remuneration package of an executive board member or a senior executive provides for variable remuneration of which more than half is based on performance criteria of one year or less, or grants more than one quarter of the variable remuneration based on performance criteria measured over less than two years, or awards more than one quarter of the variable remuneration based on performance criteria measured over less than three years (Article 520ter Companies Code). This provision is not applicable if the variable part of the remuneration is less than 25 percent of the total remuneration. Furthermore, the Belgian Companies Code also requires a shareholder approval, or a facilitating article of association, to deviate from a minimum vesting period for shares and share-based remuneration. Shares must not be vested earlier than three years after they are granted, while share options or other share-based benefits must not be exercisable earlier than three years after they are granted (art. 520ter, § 1 Companies Code; De Wulf, Van der Elst and Vermeesch 2010).[6] Finally, severance pay arrangements with executive directors and senior executive officers that exceed the amount of 12 months[7] remuneration[8] require the pre-approval of the general meeting of shareholders.[9]

The 2010 legislation made a lot of the best practices of the Belgian Corporate Governance Code of 2009 redundant. The Corporate Governance Code dedicated not less than eighteen comply-or-explain provisions on the remuneration of the board of directors and senior management, belonging to the principle that the company must compensate the directors and executive managers fair and responsibly (Corporate Governance Committee 2009, p. 21-23). Next to five non-specific principles on the remuneration report and conflicts of interest regarding the fixation of the remuneration, the Corporate Governance Code contains three provisions on the remuneration of the non-executive directors, the remainder being provisions on the remuneration of the executive directors and managers, the contract of the latter and severance pay arrangements. For executive directors and managers an appropriate part of the compensation must be tied to the company's and individual performance of these persons (Provision 7.11). Severance pay arrangements for early termination of the contract must be

4.Reported in Belgian House of Representatives (22 December 2009), report nr. 2336/001.

5.For which the general meeting of shareholders need to provide in the amendment of the articles of association.

6. This provision is not applicable in case the variable part of the remuneration is less than 25 percent of the total remuneration (De Wulf, Van der Elst, Vermeesch, 2010).

7.In legal doctrine, it is debated whether the legislation requires the approval of the general meeting of shareholder from twelve months onwards, (De Wulf, Van der Elst & Vermeesch, 2010, note 6, 946), or from eighteen months onwards, (Wyckaert, M., and Boedts, T., 2010, 306).

8.The Dutch wording in the law is "wage."

9.The *next* general meeting of shareholders must *pre*-approve this severance pay arrangement. The arrangement is null and void in case this procedure is not applied.

specified and should not exceed twelve months fixed and variable pay or eighteen months' pay except for justified reasons specified by the board of directors (Provision 7.17).
The Corporate Governance Code requires full transparency of the remuneration package of the CEO and of the other executive members in the remuneration report. Information on the compensation package should be split into the fixed remuneration, variable remuneration, pensions and other remuneration elements (Provision 7.14-7.15). The criteria for setting the variable remuneration and the term of evaluation must also be disclosed in the remuneration report (Provision 7.12). Next, shareholders should be informed about the number of shares, options and other rights to acquire shares, granted, executed and lapsed at individual level, including their key features (Provision 7.16). Share (option) schemes should be approved by the general meeting of shareholders and contain a vesting term of not less than three years (Provision 7.13).[10]

3. SAY ON PAY IN THE BELGIAN AND UK PRACTICE

3.1.Introduction

The say on pay legislation shifted power from the board of directors to the shareholders. While previously the board was holding the reins over the compensation packages of the top executives, part of this power – depending how the say on pay was enacted in the particular country – shifted to the shareholders. Consequently companies had to spend time and devotion in their reporting on remuneration practices. It became immediately clear that the vote provided shareholders a powerful tool for ventilating their discontent. Already from the start in 2003, GlaxoSmithKline saw its remuneration resolution defeated because of its US-like pay package for its CEO, urging from its chairman a lot of effort to restore trust of its major shareholders and the investor community. Gradually say on pay was embedded in the corporate governance practices. In this section we discuss the evolution of say on pay practices in the UK and Belgium.

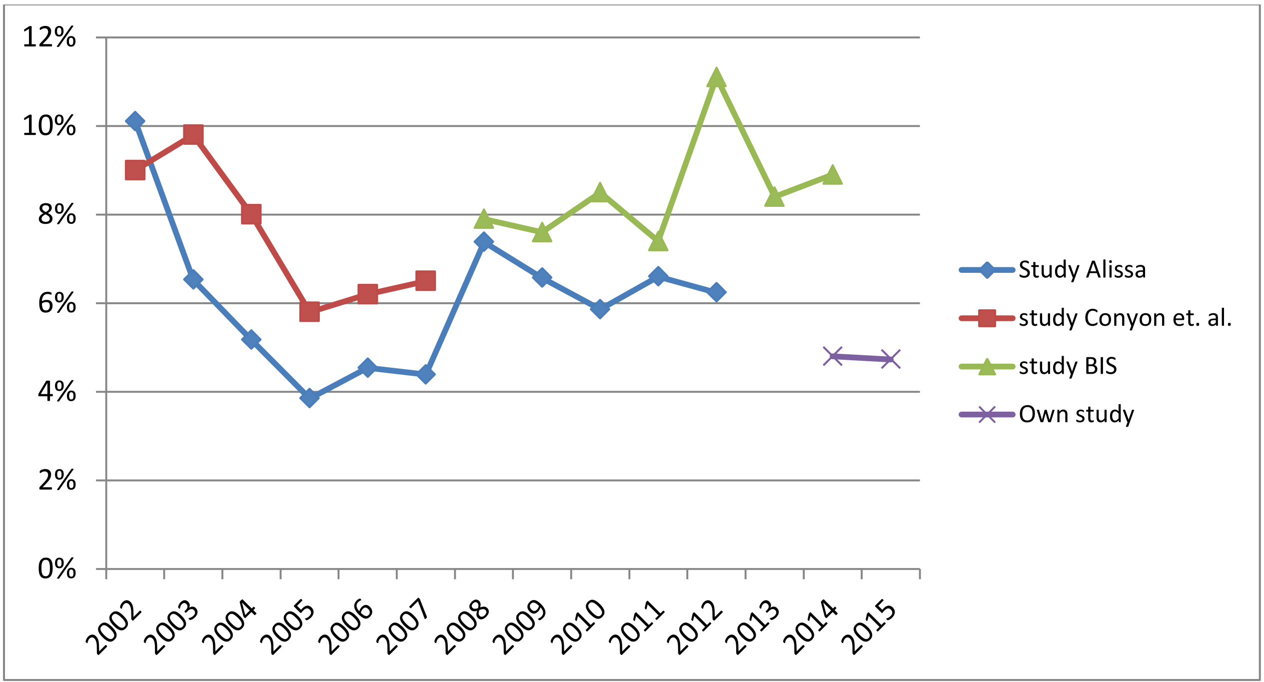
3.2.UK Practice of Say on Pay

The remuneration agenda item developed into the most critical item at many general meetings of shareholders, both in the UK and in Belgium. For the UK, both Conyon and Sadler (2010) and more recently the Department for Business Innovation & Skills (2015) found that pay resolutions received on average three to five times more dissenting votes than other voting items. Figure 1 summarizes the findings of these and two other studies. While non-voting items never breached the threshold of three per cent on average, the voting items went as high as 11 per cent on average in 2012 according to the BIS study. Over the longer term, the different studies indicate that say-on-pay started off with a high opposition rate in 2002 which fell in the years after the introduction. The years of the financial crisis experienced an increase after which the average dissenting levels further dropped to less than 5 per cent in 2015. This trend summarizes the findings; a limited number of large companies sometimes experience

10. The vesting term is a guideline which is not subject to the mandatory comply-or-explain part of the Code.

high opposition, which was the case in 2012 when the BIS study, with its smaller sample, identified a peak in shareholder opposition. While the samples in the four studies presented in figure 1 are different, the dissatisfaction is calculated in a similar way: The total amount of votes cast against the proposed item together with the votes that were positively abstained or withheld divided by the total votes cast and withheld. It is however common in the UK to report the proportion of votes cast "for" the agenda item divided by the votes for and against without the votes withheld being taken into account.

Figure 1: Evolution of the dissenting votes for the remuneration reports* in the UK



Sources: Walid Alissa (2015), 'Boards' Response to Shareholders' Dissatisfaction: The Case of Shareholders' Say on Pay in the UK', *European Accounting Review*, DOI:10.1080/09638180.2015.1058719, table 2; Martin Conyon and Graham Sadler (2010), 'Shareholder Voting and Directors' Remuneration Report Legislation: Say on Pay in the UK', *Corporate Governance: An International Review*,18, nr. 4, Figure 1, p. 304; BIS (Department for Business Innovation & Skills), *How companies and shareholders have responded to new requirements on the reporting and governance of directors' remuneration*, March 2015, nr. 208, figure 16.
Note: study Alissa: 217 companies of the Footsie 350 companies ; study Conyon et al.: all listed companies in the proxy voting agency Manifest database; study BIS: 93 companies selected from large (>20000 employees), medium (<20000 employees) and small companies (SME EU definition)(for 2014 report and policy); own research: 226 companies of the Footsie 350 (Roy Coenders provided in research assistance).
*: the study of Conyon is based on all remuneration items: the directors' remuneration report, resolutions on share options, on long-term incentive plans, and resolutions related to bonuses.

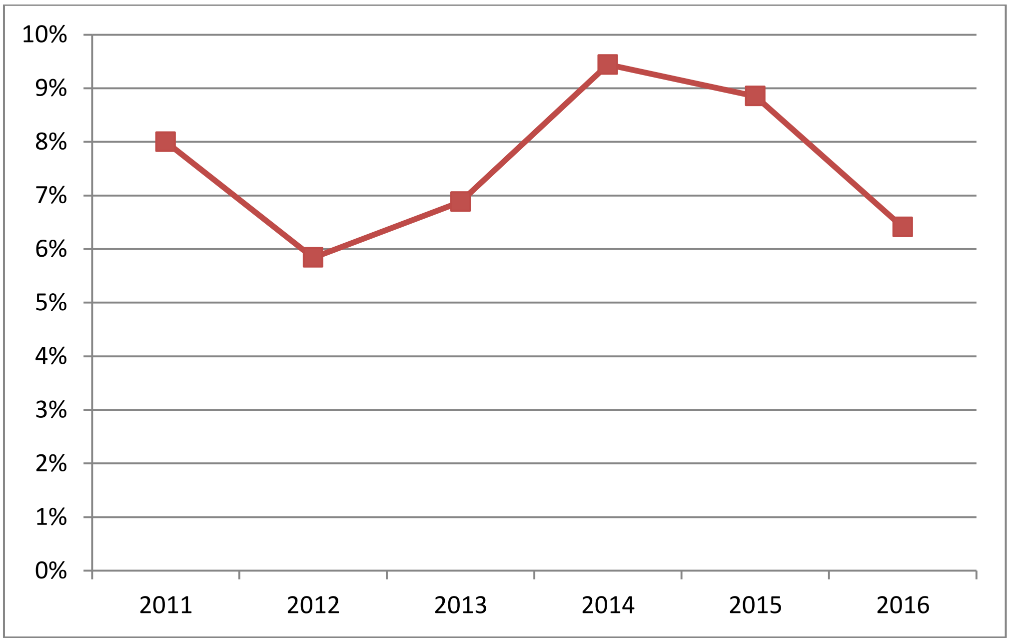
3.3.Belgian Practice of Say on Pay

Since 2010 we collect all minutes of the meetings and or voting results of all Belgian listed companies which must be disclosed according to article 533bis, §2 and 546 of the Belgian Companies Code on the companies' websites. In 2012 it became a mandatory requirement to disclose the results of the votes of the general meeting. Previously the Belgian Corporate Governance Code, in 2004 denominated as the Lippens Code, contained the provision 8.11 requiring the posting of the results of the votes and the minutes of the general meeting on the company's website as soon as possible after the meeting. The 2009 Belgian Code on Corporate Governance resumed this provision literally. Hence companies had to disclose the voting results or explain why they do not comply with this recommendation. In an earlier study we found that in 2011 approximately 60 per cent of the companies complied with provision 8.11 of the Belgian code (Van der Elst 2011).

Overall, voting items are seldom contested at AGMs of Belgian companies. In a study of ISS the average opposition was found to be 1,4 per cent in 2008 and 2,6 per cent in 2010. Only one item received more than 25 per cent dissent (ISS 2010). In 2009 this average was 8.2 per cent, but the proxy advisor did not provide specific information why the average is significantly different from the year before and after. Overall, opposition increased recently. In 2015, the average opposition of agenda items soared to 4.6 per cent, equal to the 4.6 per cent in 2014 (ISS 2015). Most likely, some agenda items experienced high levels of dissent[11], in particular the remuneration report. It can explain the difference with 2010 and 2008, the pre-say on pay era.

Aforementioned, it was shown that since 2012 the general meeting of shareholders must approve the remuneration report of Belgian listed companies and the voting results are part of the disclosed information. We selected all these voting results from 2012 onwards and report the average results per year in figure 2. As the law was enacted in 2010, a limited number of ten companies already started to have the remuneration report approved in 2011 (Van der Elst 2012), while only being mandatory obliged to have this report approved from 2012 onwards. We included the results of 2011 in figure 2 too.

Figure 2: Evolution of the dissenting votes for the remuneration reports in Belgium



[11] For example: in 2012, the accounts of Cimescaut, a company that was delisted in 2013, were opposed with 35 per cent of the votes (Van der Elst, C. 2013)

Sources: own research based on the analysis of the minutes of the meeting of Belgian listed companies (sample sizes are: 2011: 10 (only a recommended voting item); 2012: 94, 2013:95; 2014: 98; 2015: 103; 2016:94. For 2016 not all companies already held their AGM).

In 2012, once the new say on pay law went into effect, over 90% of the companies put the item "remuneration report" on the agenda of the general meeting of shareholders.[12] The Belgian Companies' remuneration reports received high levels of approval of approximately 94 per cent, higher than in 2011, when the "voluntary" voting of the remuneration report resulted in an average dissent of 8 per cent. In Bel 20 companies,[13] the mean approval rate for companies' remuneration reports was 90.6%. A broader set of companies showed an even higher approval rate of 95.3%. In the years after the introduction of the say on pay vote, shareholders of Belgian companies became more and more dissatisfied with the remuneration reports. In 2014, the average opposition almost reached 10 per cent and remained high around 9 per cent in 2015. In 2016 there was a significant drop in the average opposition rate to less than 7 per cent. The latter might be influenced by the fact that not all the data have been disclosed (yet). However, as 85 per cent of the companies provided the results of the votes, it is more than likely that shareholders are more satisfied with the 2016 remuneration reports than with those in the previous years.

Figure 2 conceals some companies where shareholder opposition was significant. Already back in 2012, the shareholders of Agfa approved the company's remuneration report by a bare minimum with only 50.3% of the votes cast in favor, while the AGM of EVS approved its report with 64%, and only 69% of the Delhaize shareholders approved its report (Van der Elst 2013, p. 15). Importantly, all three companies have a relatively dispersed-ownership structure, and the other agenda items for the AGM, including the remuneration of the board members, were overwhelmingly approved (Van der Elst 2013, p. 16). Since 2013 there are every year a limited number of general meetings during which the shareholders voted down the remuneration report while at a number of other meetings more than 20 per cent of the shareholders were dissatisfied with the report. The companies that experienced a disapproval of their remuneration report will be studied in the next section.

4. CORPORATE RESPONSE ON DISAPPROVED REMUNERATION REPORTS

4.1. United Kingdom

While the number of stock exchange listed companies in the UK is much larger than in Belgium, the number of disapproved remuneration reports is in both countries less diverging. The research of the Department for Business Innovation & Skills found that between 2007 and 2011 there were 11 companies in the FTSE All-Share Index that had failed having their remuneration report approved (Department for Business Innovation & Skills 2012, p. 11).

12. The other companies did not comply with the law (Van der Elst, C. 2013)
13. Bel 20 is an index of the twenty Belgian blue chip stocks.

This number increased to 19 when also the votes withheld would be counted. Since 2012 and up to 2015, we found 10 more companies that experienced a no-vote of their remuneration report. Our findings are based on the reports of the National Association of Pension Funds, Lexis Nexis Market Tracker Trend Reports, Georgeson Proxy Season Reviews, Proxy Insight, Computershare and Capita Asset Services. For two companies, William Hill in 2012 and Diploma in 2015, the remuneration report was legally approved as the withheld votes were not taken into account, resulting in a 51 per cent and 57 per cent approval.[14] Further, Kents Corporation failed the remuneration report vote in 2014 but later that year it was acquired by the Canadian SNC-Lavalin and there was no further follow up. The other companies that experienced the rejection of the remuneration report between 2012 and 2015 are reported in table 2. The voting results are based on the disclosed AGM results on the websites of the companies.[15] Aviva, Cairn Energy, Pendragon and WPP all experienced a disapproval of their remuneration report in 2012, Afren in 2013, Burberry in 2014 and Intertek in 2015. The reports of Afren, Cairn Energy and Pendragon received supportive votes of less than one third of the total votes. For the other companies, only a small majority of the shareholders disapproved the report. We not that from the aforementioned legal analysis it follows that the vote on the remuneration policy was mandatorily introduced in 2014. As far as we could ascertain, voting policies have not been disapproved so far. Consequently, in the remainder of our study we disregard this voting item.[16]

At the AGM that followed upon the disapproval of the remuneration report, all but one company managed to get more than 90 per cent support for the new remuneration report. Only at WPP a large number of shareholders remained concerned about the reported remuneration. WPP will be studied in more detail further in this chapter.

Table 1: Evolution of approval rates of the remuneration reports of UK companies of which at least one report was disapproved (%)

	2012 report	2013 report	2014 report	2014 policy	2015 report	2016 report
Afren	71.40%	**<u>20.29%</u>**	91.78%	91.62%	in administration**	
Aviva	**<u>45.59%</u>**	99.29%	98.09%	96.88%	98.68%	96.36%
Burberry	96.95%	96.83%	**<u>47.32%</u>**	84.92%	92.27%	-*
Cairn Energy	**<u>32.97%</u>**	99.51%	99.30%	98.06%	98.59%	93.00%
Intertek	90.93%	94.02%	96.82%	96.44%	**<u>47.88%</u>**	96.48%
Pendragon	**<u>32.21%</u>**	97.87%	97.29%	99.31%	84.70%	91.46%
WPP	**<u>40.48%</u>**	80.58%	81.75%	81.93%	79.97%	66.55%

*: AGM 2016 did not yet take place; according to their website, the company Afren is under administration since 31 July 2015. In short, administration is a corporate rescue mechanism for companies that are operational viable but facing serious threats from its creditors.

[14] If the yes votes would have been offset against the total votes, the approval rates would only have been 48.5 and 49.6 per cent.
[15] All AGM results are on file with the author.
[16] For a study on the evolution of the vote of the remuneration policy, see Van der Elst, C. and Lafarre, A. (2016), 'Shareholder Voice on Executive Pay: A Decade of Dutch Say on Pay', *European Business Organization Law Review*, 2016 accepted for publication.

Next, we studied the letter of the chairman of the subsequent remuneration report identifying the steps the company has taken following the dismissed report, which elements of the report the shareholders dissatisfied as well as how the company adjusted the remuneration of the board and the executives to regain the support of the shareholders. A summary of the findings can be found in table 2.

Table 2 Summary of the effects of the disapproved remuneration report of UK companies

company (SOP dismissal)	procedural follow up	identified problem	adjustment	vote subsequent year
Intertek (2015)	contacts with shareholders; deep dive review of all components	reported subsequent DRR: joining arrangement and guaranteed bonus	bonus is subject to performance criteria, change annual bonus, holding period of LTIP of six months post vesting retained; introduction of an all employee share plan	96,48%
Burberry (2014)	contact with majority of 50 largest	reported subsequent DRR: structure CEO package; too much discretion in policy; one million shares award 2013 (countering offer other brand), 0,5 million welcome of perf. shares	better explanations, i.c. details on performance conditions of share allowance; no changes in discretion (but infrequent application)	92,27%
Afren (2013)	contact with institutional investors	reported subsequent DRR: the payment of an additional exceptional performance award to Executive Directors for enhanced project delivery in addition to their annual bonus payment.	new annual bonus plan without this kind of award; 50% deferred bonus for three years; reduce to vesting of awards for achieving medium TSR to 25% (from 30%);CEO must have five years annual salary in shares; six months retention of shares granted in 2014 under share plan	91,78%
Cairn Energy (2012)	"we will continue to engage with and listen closely to all relevant stakeholders"	reported outside DRR: bonus award for moving from the role of chief executive to chairman*	Reweighting of KPI for bonus scheme, assessment of the performance conditions governing the vesting of the LTIP awards, The adoption of certain changes to the termination provisions, The introduction of clawback provisions in the annual bonus scheme and LTIP, The creation of share ownership requirements, a change in the weighting of the elements used to determine the level of annual bonus for 2013, The amendment of the LTIP so as to give the Committee the flexibility to grant nil-cost options as well as conditional share awards	99,51%

WPP (2012)	A series of meetings with share owners and representative bodies to listen to their issues and concerns	no reporting	CEO's remuneration package has been reduced, STIP has been reformed, new reformed LTIP, Leadership equity acquisition plan will be measured on a common currency basis only, with no application of a fairness review.	80,58%
Aviva (2012)	major institutional shareholders and proxy agencies	no reporting in DRR but response is in detail explained: ensure that bonus payouts are more closely aligned to shareholder experience; make any future buyouts on the hire of senior executives on a strict 'like for like' basis	continue regular dialogue with shareholders; base pay unchanged in 2013; no short term bonus (would have been 52% of max.); chairman fees frozen in 2012; pension plan standardized; pay package more closely aligned with performance	99,29%
Pendragon (2012)	engagement with a range of shareholders and advisory bodies	no reporting	revised remuneration policy; annual bonus reduced to 100% instead of 150%, increased annual bonus requirements, vesting schedule of LTIP lowered to 30% (from 60% before), revised remuneration policy with annual cap variable pay, deferral of awards in company shares, reduction of LTIP, clawback; new structure of remuneration report	97,87%

*https://www.theguardian.com/business/2012/may/17/cairn-energy-shareholder-rebellion-pay, last accessed 1 June 2016.

All companies started up discussions with shareholders, be it only with their largest shareholders or with their institutional shareholders, identifying the concerns which brought them to oppose the remuneration report of the company. Some companies went even beyond the group that voted at the meeting. The proxy agency or representative bodies of shareholders, like the Association of British Insurers, can be helpful understanding the arguments of shareholders that voted against the remuneration report as some shareholders base their vote upon the advice of these bodies. The chairman of the remuneration committee of Cairn Energy reported contacts with “all relevant stakeholders”. It is unclear which other parties, next to shareholders and advisory bodies, regarding the voting of the remuneration report, should be engaged.

Most subsequent remuneration reports disclose the important shareholders’ concerns that the company identified in its discussions with the shareholders of the company in the aftermath of the dissenting vote for the remuneration report. The common triggering factor for many shareholders to vote against the remuneration report is the (procedure to award the) bonus, in particular when an insufficient relationship between the bonus and the performance of the company is evidenced. The weak link between performance and pay is closely related with another feature that shareholders consider critical: the discretion of the board and/or the remuneration committee in determining the compliance with the goals for the variable pay. We also discovered that not all companies report the concerns of the shareholders. We consider this a weakness in the current model of disclosing and voting the remuneration report, as we will discuss in the final section.

All subsequent reports provide in adjustments of the remuneration packages and/or policies of the executive directors in the aftermath of a no-vote. Broadly speaking, companies opted for two types of changes. First, some companies, like Burberry changed the disclosure policy, in particularly illustrating better the pay-for-performance package of top executives. While at first sight, the subsequent DRR of 2014/15 of Burberry does less address this performance-pay relationship, the decrease in profit before tax in the accounting period 2015/16 resulted in a sharp decline of the remuneration package of the CEO of 75 per cent, foregoing the share awards and long term incentive.[17] Second, other companies have made significant changes in the structure and/or the incentivising mechanisms of the remuneration package, in particular in schemes providing in a short and/or a long term bonus for executives, intensifying targets or lowering maximum bonus targets.

The absolute amounts of the pay packages seems to be less of an issue, or at least it is less formally stressed as a criterion for voting against the remuneration report. Shareholders must be convinced that weak performance seriously deteriorates the pay of top executives. Anecdotic evidence shows that large remuneration packages alert shareholders scrutinizing the performance-pay relationship. The remuneration report 2012 of WPP, the advertising company, was voted down. While the total pay package of the CEO increased, the total shareholder return in 2013 was -13 per cent. WPP restructured the remuneration package of

[17] The total remuneration of the CEO was £7,5 mio in 2014/15, it dropped to £1,9 mio in 2015/16.

its top executive team. However, it did not clarify in its subsequent remuneration report which pay concerns led shareholders to issue the dissenting vote. As the remuneration package of its CEO is considered to be among the highest in the UK, shareholders continue to question the like-for-like performance growth of the company and the pay package (Budden and Oakley 2013, p. 16). The 2013 remuneration report experienced significant opposition of 20 per cent, and even more than 25 per cent if the votes withheld would have been counted, opposition rates that continued to be found in the subsequent general meetings (table 1).

The amendments of the targets in the remuneration packages and policies do not necessarily result in an overall lower remuneration of the top executives, as WPP illustrates. At WPP the CEO experienced a decrease of the basic salary of just over 10 per cent and a 20 per cent decrease in pension benefits (table 2). Conversely, the reformed LTIP and STIP turned out to progressively increase the remuneration of the CEO. In 2015 the CEO earned more than £ 70 mio., probably the highest remuneration package ever given in the UK. Shareholder opposition is growing but the remuneration report was approved by 2/3 of the shareholders. Also the chairman of the remuneration committee received 8.4 per cent no votes, against 6.6 per cent in 2015 and only 1 per cent in 2014. It should be noted that the focus on the structure of the pay package instead of the levels of pay is recently questioned. The Norwegian sovereign wealth fund announced that it will also take into account the levels before approving the remuneration item (Milne 2016, p. 1). The manager of Hermes Investment Management declared that she felt “highly uncomfortable” with the “excessive” size of the pay of the CEO of WPP (table 3) (Cookson 2016, p. 13).

Table 3: Evolution of the remuneration package of the CEO of WPP (in 000£)

	Base salary	Benefits	DEPs[a]	Pension	STIP	LTIP	Total	share price	dividend
2010	1009	374	1081	400	2850	3629[c]	9343[d]	789	17.8
2011 (in report 11)	1306	459	1340	585	5005[e]	5575[f]	12961[d]	675	24.6
2011 (in report 12)	1306	466	1339	585	5005	3239	11941		
2012	1300	356	940	586	3078	11368	17628	888	28.5
2013	1150	350	1101	460	4115	22670	29846	1380	34.2
2014	1150	453[b]	1288	456	3590	36041	42978	1345	38.2
2015	1150	200	1545	460	4278	62783	70416	1563	44.7

[a]: Dividend Equivalent Payments; [b]: report of 2015 discloses 179 as the CEO repais 274 spouses travel costs;: [c]: LEAP value on vest/deferral date; [d]: due to different disclosed amounts, the total differs from the sum; [e]: 2011 Annual cash bonus and deferred share bonus (annual report mentions 5005 on p. 137 and 3696 on p. 138); [f]: LEAP award.

Summary of data based on disclosures in the DRR of the company

We also assessed whether shareholders would take the share performance-pay relationship into account when voting on the remuneration report. Thereto, we consider the stock price development before and after the no-vote. The share price at the start of the accounting period related to which the remuneration report is disapproved – which vote is taking place during the next accounting period - is considered as 100 per cent. This period is identified as period T. We mark in the evolution the stock price of the general meeting that took place during the accounting period T and which voted on the remuneration report of accounting period T-1, the stock price at the end of the accounting period T, the stock price at the moment of the general meeting that disapproved the remuneration report, the stock price at the end of the subsequent accounting period and the stock price at the moment the next general meeting took place that approved the subsequent remuneration report. The timeline is presented in figure 3.

Figure 3: Timeline of stock price evolution of companies that experienced a no vote of the remuneration report.

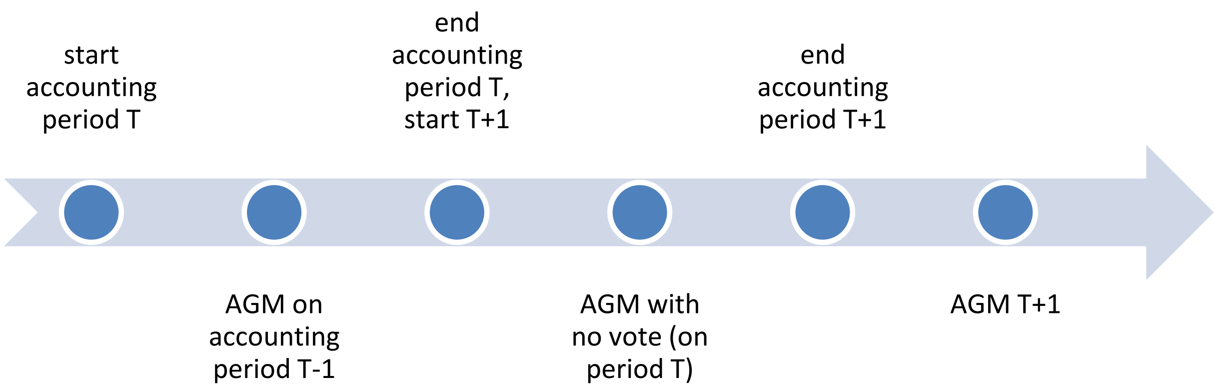
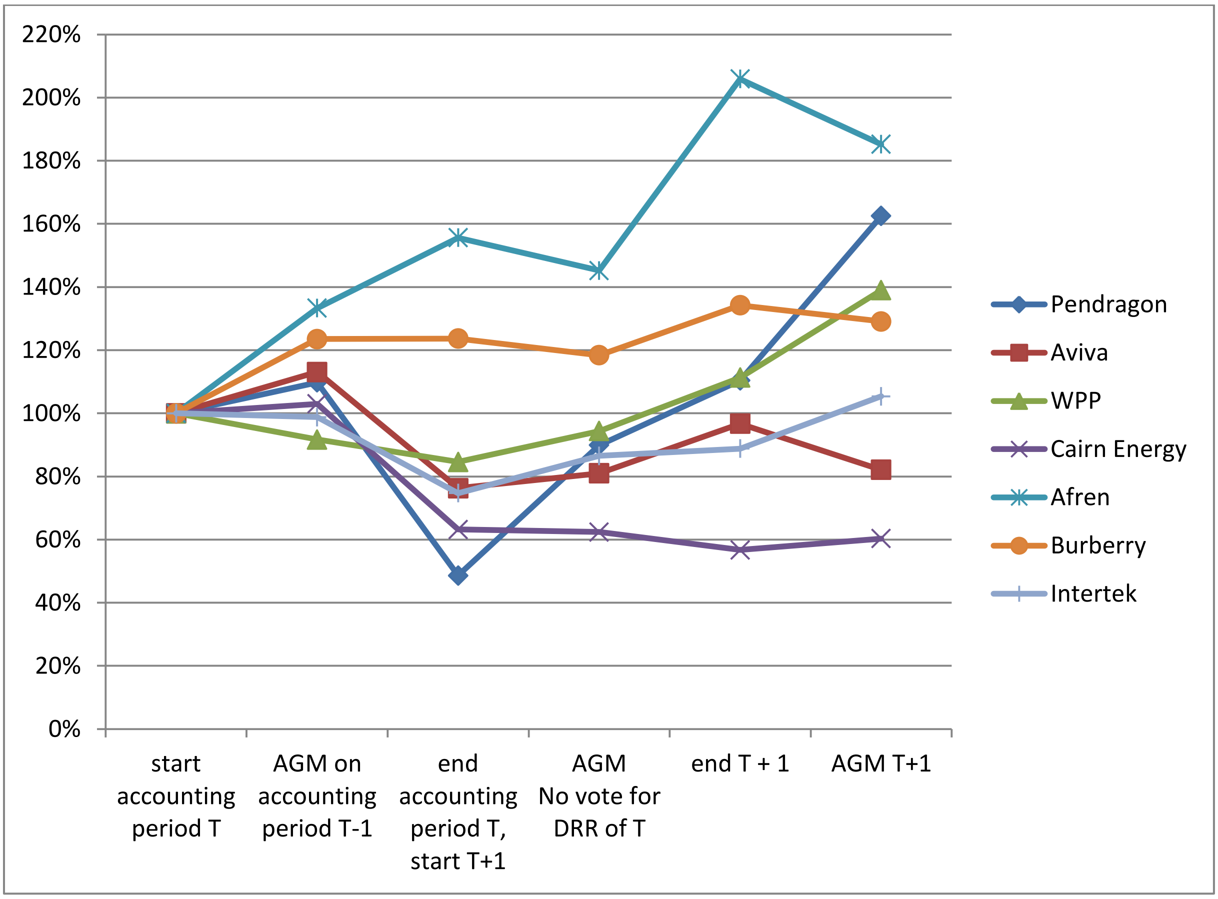


Figure 4 provides the evolution of the share price of the companies that experienced a dissenting vote on the remuneration report. The majority of the companies experienced a significant decrease of the share price during the accounting period of 15 to over 50 per cent, which took place after the general meeting that took place during the relevant accounting period. At first sight, it indicates that shareholders could take this evolution into consideration at the moment they vote on the remuneration report. However, Burberry and Afren saw their share price increasing with 20 to more than 50 per cent. At the moment the shareholders had to vote the remuneration report, the share price of all but one already started to soar, while for Burberry and Afren it still was looking very promising. At the moment that the subsequent remuneration report had to be voted, only two companies had a stock price that was lower than the price at the start of the criticized accounting period. In short, the shareholders of these companies seem not to be taken the development of the stock price as such into consideration when they issued their no vote for the remuneration report.

Figure 4: Stock price evolution of UK companies before and after the no-vote



Sources: http://www.pendragonplc.com/investors/share_price/; http://www.aviva.com/investor-relations/share-price/ordinary-shares/share_chart/; http://wpp.co.uk/wpp/investor/shareprice/historic/; http://cairnenergy.com/index.asp?pageid=168; http://www.londonstockexchange.com/exchange/prices-and-markets/stocks/summary/; http://www.quotenet.com/stocks/historical-prices/

4.2.Belgium

In the previous section it was shown that the dissatisfaction with the remuneration report is significantly higher than any other agenda item of the AGM, but the averages of dissatisfaction are seldom higher than 10 per cent. However, some companies experienced a disapproval of the remuneration report. Our database of the Belgian AGM voting results show that between 2012 and 2016 six companies had one or more remuneration reports voted down. It happened for the first time in 2013 at the meetings of Proximus[18] and Galapagos. In 2014, at the meetings of Fagron and Agfa Gevaert the remuneration reports were voted down, while Delhaize and, for a second consecutive time, Fagron had their remuneration reports disapproved in 2015. In all cases the dissatisfaction of the remuneration report was very high. At the meeting of Proximus only 5% of the represented shares approved the report in 2013, while at the meeting of Nyrstar in 2015 only 1 of every 5 represented rights voted yes. The other disapproved remuneration report received between 55 per cent to 75 per cent no-votes.
Different from the subsequent UK AGMs where the large majority of the shareholders approved the adjusted reports, in the majority of the Belgian subsequent AGMs a large number of shareholders remained concerned that the remuneration report contained, in their

[18] Formerly Belgacom.

view, inappropriate remuneration issues. Aside the specific Proximus case which will be discussed next, two companies managed to have all concerns of shareholders waived with an approval of the new report with more than 97 and 99 per cent.

Table 4: Evolution of approval rates of the remuneration reports of Belgian companies of which at least one report was disapproved

	2012	2013	2014	2015	2016
Proximus	89.10%	**5.07%**	92.31%*	98.19%	97.57%
Fagron	95.99%	84.21%	**43.96%**	**45.33%**	72.44%
Nyrstar	85.61%	77.84%	58.05%	**20.55%**	99.91%
Delhaize	69.61%	89.12%	52.40%	**45.63%**	52.02%
Agfa Gevaert	50.28%	55.60%	**33.96%**	97.59%	95.55%
Galapagos	99.66%	**25.69%**	60.13%	60,96%	55.93%

*79,97% withheld its votes.
Source: own research based on the minutes of the meetings of listed companies

In Belgium it has not been studied which drivers activated the shareholders to express their dissatisfaction with the remuneration report, with the exception of the specific case of Proximus. The size of the remuneration package of the CEO of this government controlled telecom operator was already questioned a number of years[19]. The socialist party that, together with the catholic and liberal parties, controlled the government during that era and that for many years was considered supportive vis-à-vis the CEO Bellens, lost its confidence in this CEO in 2013. As a result, at the 2013 general meeting the shareholders disapproved the remuneration report. The government withheld its votes, while over 70% of the remaining shareholders[20] voted against the report because it showed again the too generous considered remuneration packages for the managers and directors.[21] Later that year, the CEO was dismissed and replaced (Temmerman 2013). The new CEO had to agree with a salary of maximum €650,000, less than half of the remuneration package of the previous CEO (Van Belle 2014). In 2014 the remuneration report of Proximus was approved, although the government still abstained.[22]

The arguments for disapproving some other remuneration reports and the responses of the companies confronted with the dissatisfied shareholders have not been studied. Similar to our study of the reasons for voting against the UK remuneration reports and the responses of the UK companies which had their remuneration report disapproved, we assessed the Belgian disapproved remuneration report and responses. The summary of our findings are presented in table 5.

[19] When the contract of the CEO was prolonged in 2009, it was announced that the size of the remuneration package had to be significantly reduced. However the following years his remuneration stayed at a similar level in 2009 and 2010 (BM and BBD 19 March 2012)

20.Only 5% of the attending shareholders supported the remuneration report.

21.The minutes of the meeting are available at http://www.belgacom.com/assets/ content/mbimport/%7B6B2D2E46-9049-46DA-8C21-1BB1DCAF3C1A%7D?transformationID= CustomContent&contentType=content/custom&previewSite=cow (last accessed May 3, 2013), *archived at* http://perma.cc/GB8Y-F3A3.

22.The minutes of the meeting are available at http://www.belgacom.com/assets/content/ mbimport/%7B4685B5C8-7E07-486D-A94F-7AD0F9AC23E3%7D?transformationID=Custom Content&contentType=content/custom&previewSite=cow (last visited August 20, 2014), *archived at* http://perma.cc/6E9C-PH88.

Table 5: Summary of the effects of the disapproved remuneration report of Belgian companies

company (SOP dismissal)	discussion with shareholders	identified problem	details	adjustment	year after vote
Nyrstar (2015)	no information in follow-up remuneration report	no info in follow-up remuneration report	no info in follow-up remuneration report	In the minutes of the year of rejection: re-evaluation of remuneration policy; provide additional disclosure on the performance criteria under the short term variable remuneration plan for the executive management of the Company. In addition, while the meeting in 2013 previously approved the implementation of a Leveraged Employee Share Ownership Plan, the Board will reconsider the further implementation of this plan.	99,91%
Fagron (2014)	The chairman states during the AGM and after the dissenting vote that in the past the company has explained why the company - based on reasons that are company specific- deviates from some corporate governance principles which explanations, in accordance with the Code have been provided in the annual report. The chairman opines that some of the shareholders are voting in accordance with the recommendations of the proxy advisors without taking into account the company specific reasons and arguments of deviating from the best practices	The annual report provides in one explanation related to the loss of office of 18 months fixed and variable pay whereas a maximum of 12 months is recommended in the code		There is no plan to change in the next period of two years the remuneration policy of the executive directors and the members of the executive committee	45,33%
Fagron (2015)	The chairman provides in an identical statement according to the minutes of the meeting	idem previous year		idem previous year	72,44%

Delhaize (2015)	There was consultation with shareholders and related stakeholders	one off elements in 2014 (e.g.: payout in 2014 of retention awards granted in 2013, which lie outside the framework of the remuneration policy)		the Company has made some additional changes to some programs (e.g.: moving away from accelerated vesting of equity based instruments following involuntary termination without cause or voluntary for good reason) and to its disclosure	52,02%
Agfa Gevaert (2014)	The company contacted those 'Top 25 Institutional Shareholders' that voted against the 2013 Remuneration Report, as well as ten other known larger shareholders.	Shareholders expect us to disclose additional information	more detailed disclosure on our remuneration policies and practices as well as on our performance metrics	very detailed information on calculation of remuneration of "management employees"	97,59%
Galapagos (2013)	the Company would attempt to gather information from its Shareholders so as to better understand this result, in order to submit to the Shareholders at the Annual General Shareholders' Meeting of 2014 a Remuneration Report relating to the financial year ending on 31 December 2013 that meets their expectations.	no info in follow-up remuneration report	no info in follow-up remuneration report	not indicated at all	60,13%

Contrary to the UK companies, not all Belgian companies consulted with their major shareholders in the aftermath of the disapproved remuneration report. The subsequent remuneration report of Nyrstar disclosed a number of adjustments to satisfy the shareholders but it remained unclear how the company identified the causes of the no-vote. However, the adjusted remuneration report received an almost unanimous support. It should be noted that in the meantime a new shareholder, Trafigura gained a significant voting block in Nyrstar of approximately 25 per cent and had at its meeting of 2015 two representatives of this shareholder elected in their board of directors. Hence, if these representatives support the new remuneration report the company could be confident that the shareholders would approve the report during the subsequent meeting. Indeed, the voting block of Trafigura represents approximately 2/3 of the attending votes of the 2016 general meeting and the meeting approved the report. Another company, Fagron, not only did not consult its shareholders after the defeat of the remuneration report, the chairman of the board was angered that shareholders voted against the report. According to the minutes of the meeting he declared that “the remuneration report is an integral part of the annual report in which it is explained from which provisions in the Corporate Governance Code the remuneration report deviates”. The chairman continued that “the company already in the past had explained why the company - based on reasons that are company specific- considers it desirable to deviate from some corporate governance “regulations”[23] which were, in accordance with the Corporate Governance Code explained in a comply-or-explain manner in the annual report”. He opined that “the new shareholder structure creates the problem that some of the shareholders are voting negatively in accordance with the recommendations of the proxy advisors for the only reason that some elements are not in compliance with the Corporate Governance Code, irrespective the underlying and company specific reasons and arguments of the company to deviate from these points.”[24] The shareholders did not raise any question before the agenda item was voted. The minutes of the meeting of the AGM of the subsequent year during which the remuneration report was again disapproved, contains the identical remarks of the chairman. The company not only did not consult the shareholders, it made clear that the board of directors considers the negative advisory vote of the shareholders as inappropriate. Before the dissenting vote of the second remuneration report, the shareholders raised a number of questions. However those questions were related to the new Warrant Plan and it is hard to see how this plan could have influenced the no-vote of the shareholders. For the second year in a row the company announced that there were no plans to make adjustments to the remuneration policy. The remuneration package of both the CEO and the other members of the executive committee remained more or less unchanged (but the composition of the committee changed) with the exception of the short term bonus which was curbed in 2015 as the targets were not reached (table 6).

Table 6: remuneration of top management of Fagron 2013-2015

in 000€	CEO			other members exec. com.		
	2013	2014	2015	2013	2014	2015

[23] The Belgian Corporate Governance Code does not use the term “regulation”.
[24] Own translation of the minutes of the meeting of Fagron of 12 May 2014, p. 11.

base salary	500	600	598	1174	1009	1882
variable remuneration	600	720	0	410	430	222
pensions and other remuneration	32	31	35	30	0	108
granted warrants	0	0	0	0	0	0
share options/warrant	325000	200000	75000	265000	115000	397875

While the approach of the board of directors and the chairman, blaming the inappropriate dissenting votes of the majority of the participating shareholders can hardly be considered as cooperative, the response of the shareholders is of limited value. The shareholders are ventilating their discontentment with the remuneration report. If shareholders do not stand up during the meeting disclosing their reasons disapproving the report, the board of directors might consider this response of the chairman of the board as sufficient. The logic of this shareholder voicing is difficult to interpret. After two disapprovals, the third, similar, remuneration report of Fagron was approved. During the Q&A that preceded the vote, one of the shareholders addressed for the first time a particular remuneration report issue, *i.e.*, the termination benefits of 18 months for the previous CEO which the shareholder considered excessive. This issue was in the previous remuneration reports explained as the main deviation of the best compensation practices in the Belgian Corporate Governance Code. It could have been expected that this shareholder raised the issue during one of the previous general meetings.[25] In the meantime some shareholders that agreed to recapitalize this company[26], acquired larger stakes in the company, are already involved in the management of the company and it is therefore reasonable to assume that they are supportive vis-à-vis the current remuneration report and its included remuneration policy.

Belgian companies that consulted the shareholders do not necessarily report the results of the inquiry nor the arguments of the shareholders or the adjustments the company has taken, aligning the remuneration report with the views of the consulted shareholders. Galapagos announced that it would try to identify the reasons of the shareholders disapproving the remuneration report but never disclosed any information about the (results of the) quest. Two other companies addressed the defeat of the report and the sequential actions more in detail. Agfa explained in a very detailed manner the performance metrics which were used as well as of the ways to calculate the remuneration of the top management. As far as we could ascertain the remuneration (policy) itself was not adjusted. Delhaize identified that the no-vote was related to, according to the responding shareholders, the inadequacy of the remuneration itself. Following these findings, the company "has made some additional changes to some programs". While the shareholders appreciated the approach of the former company and were satisfied with the additional disclosure, "some additional changes" were considered as largely insufficient by a large number of shareholders of the latter company. Consequently, Agfa had its subsequent remuneration report approved with more than 97 per cent, Delhaize's

[25] However, it is not known whether this shareholder was also present and/or a shareholder in the previous accounting periods.
[26] All information of these recapitalization procedures can be found on the website of the company (www.fagron.be, last accessed 15 June 2016).

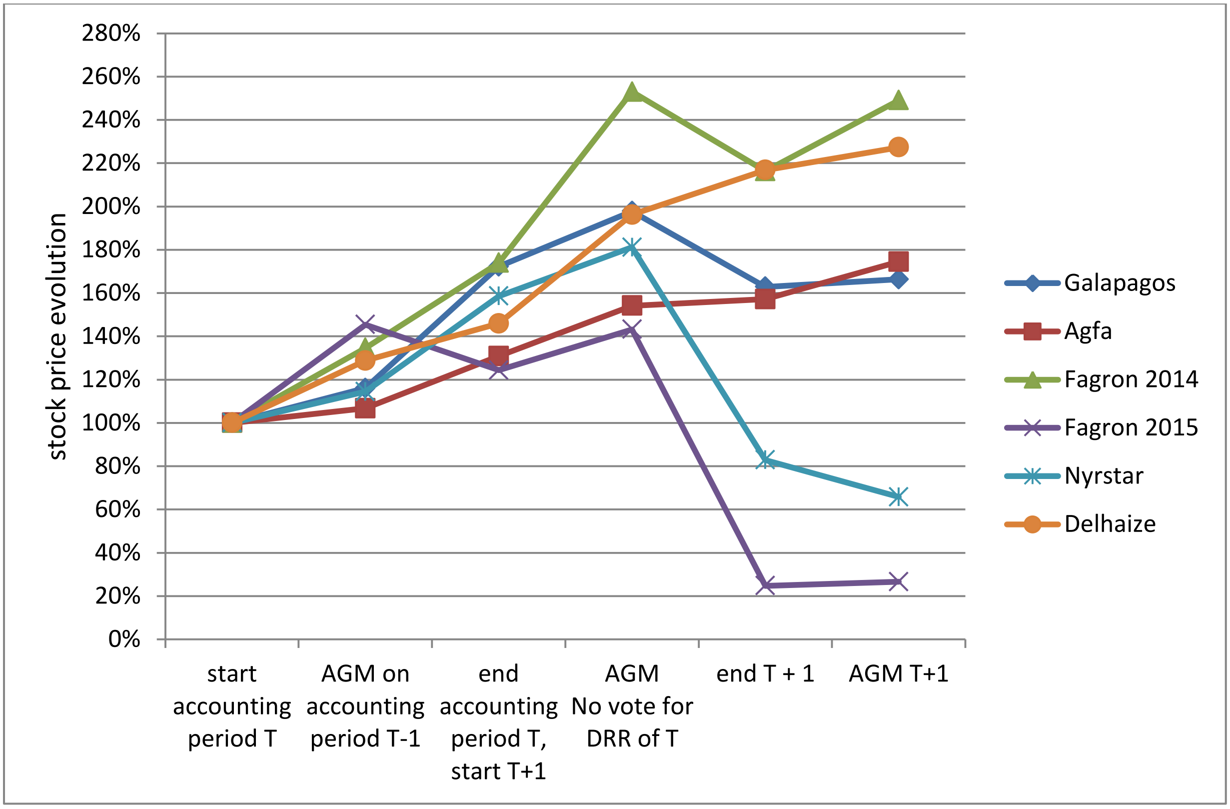
subsequent remuneration report was barely sufficient as only 52 per cent of the shareholders supported the report.

Anecdotic evidence shows that the presentation of the adjustments might significantly influence the support of the shareholders. Previously we noticed that Agfa extensively addressed the measures of performance and the accompanying remuneration packages of the management while no major changes to this package were introduced. The subsequent report received a very high level of support. Galapagos did not report on any kind of adjustments of the remuneration package or policies. The subsequent report was only approved with a majority of 60 per cent. In the latter case, it could be that the remuneration practices are adjusted without explicitly disclosing these newly applied practices. Therefore, we also compared the remuneration policy, packages as well as goals and metrics that the company is using for motivating the management of the company between the year during which the remuneration report was disapproved with those of the subsequent year. We found two differences. First the goals for setting the short term bonus were adjusted. The bonus is partially depending on the goals of the company which included in 2012 "revenue, cash flow, operating profitability, clinical trial results and licensing; all of these objectives were considered to be of equal importance", while in 2013 these objectives included "elements of revenue, operating profitability, clinical trial progression and business development", again all of equals importance. Next, the 2013 report added a new discretionary power for the board. It can grant "exceptional special bonuses, outside the scope of the regular bonus schemes, can […] upon recommendation of the Nomination and Remuneration Committee in the event of and for exceptional achievements." More discretionary power for the board of directors is generally less appreciated by the shareholders. Therefore it could be that the lower level of support for the new remuneration report is partially due to this newly granted right for the board of directors.

For the UK companies we studied the share performance-pay relationship before and after the no-vote. Similarly we also investigate for the Belgium companies whether shareholders take the share price development into account for voting against the remuneration report. Figure 5 shows the evolution of the share price of the companies that experienced a dissenting vote on the remuneration report. The share price at the start of the accounting period related to which the remuneration report is disapproved is considered as 100 per cent. We included the stock price of the general meeting that took place during the accounting period, the stock price at the end of the accounting period, the stock price at the moment of the general meeting that disapproved the remuneration report, the stock price at the end of the subsequent accounting period and the stock price at the moment the next general meeting that approved or dissented the subsequent remuneration report, took place.

Contrary to the UK companies, all Belgian companies experienced a significant increase of the share price during the accounting period of 7 to 45 per cent, which, for all but one, continued to soar after the accounting period running to the general meeting that disapproved the remuneration report. The share price development after the no vote shows a mixed picture. For Nyrstar and Fagron 2015 the stock price dramatically dropped to levels that required capital increases, while the share price of other companies steamed up. Overall, the results confirm the UK findings. The share price developments as such seem unrelated to the no-vote on the remuneration report.

Figure 5: Stock price evolution of Belgian companies before and after the no-vote



Source: Euronext

5. DISCUSSION AND CONCLUSION

This qualitative study of the effects of the no vote of the remuneration report shows that since its start, say on pay regularly results in disapproved remuneration reports. Say on pay established a new trend in shareholders' voicing their discontentment with board's decision and policy making. Before, the shareholders' voice was only exceptionally heard.

The disapproval of the remuneration report signals the board of directors that responding is key. Especially in the UK, the boards are conscious for this dissenting opinion and directors are discussing with the shareholders which remuneration elements raised the concerns of the shareholders. The chairman of the remuneration committee reports the reasons the company identified as drivers for the dissent and the subsequent report provides details of the measures to align the remuneration practices with the interests of the shareholders. Belgian companies are less transparent. Some companies do not disclose no reason why shareholders could have disapproved the remuneration report and another blames the indulgency of shareholders following the one-size-fits-all opinion of proxy advisors. At best, the Belgian companies are more transparent about the applied remuneration practices. Consequently the support for the subsequent remuneration report of Belgian companies remains significantly lower than that of shareholders in the UK after a dissenting vote.

Further, our study shows how the process of say on pay could be further improved. While the legislator provides in details how the remuneration report should be structured, the shareholder can only approve or disapprove the overall report. Shareholders can disclose their opinion on how they will cast their vote either before or during the general meeting, but not many shareholders are actively disseminating their voting intentions. After the votes have been cast, only the UK provides in guidelines of the steps that the company must take: it must identify the reasons for the dissenting votes and the actions taken. The results of the effect of these guidelines are visible. The Belgian reports are vague and hardly informative in the follow-up of the dissenting vote while the UK companies address these issues in their reports. It is recommended to provide in guidelines similar to those applicable in the UK.

There is another issue that regulators can consider related to the vote for the remuneration report. Boards of directors can, but must not take measures after the company experienced a no-vote. It is a key feature of an advisory vote. Hence, the phenomenon of say on pay is at odds with the traditional legal framework. It is the first item on the agenda of the shareholders that is legally consolidated with an *advisory* vote in most countries that introduced say on pay. Contrary to many other "corporate governance code-related" proposals, say on pay is being upgraded in the Corporate Act or Code. This upgrade only concerns the duty to organize a shareholder's vote. The voting result is not binding.[27] Other AGM agenda items, which are not supported by the majority of the votes are consequently rejected and the board of directors is not allowed to execute the rejected proposal. Contrary, for the remuneration report, we found that Fagron experienced twice a dissenting vote but it did not amend the remuneration practices and neither did the shareholders express their reasons for disapproving those remuneration reports. Also, some other boards provided in some minor changes of the remuneration practices, like the board of Delhaize, or the board could convince shareholders that it was a one-time occurrence, like the board of Burberry. Tiny changes can do the job but the voting results of the subsequent general meeting of Delhaize shows that shareholders expected an in-depth review. Consequently, even when the vote for the remuneration report is only advisory and/or the second remuneration report is approved, it risks to unnecessarily escalate towards other, binding issues or voting items when the shareholders' concerns for the remuneration practices are not taken seriously.[28] Van der Elst and Lafarre show that when shareholders of the Dutch company Vastned disagreed with the proposed additional bonus, they refused to discharge the (supervisory) board (Van der Elst and Lafarre 2016). Only when Vastned's board promised not to provide this kind of bonuses in the future, the shareholders approved the discharge of the board members in the follow-up general meeting. A similar opposition of shareholders could be found at the meeting of Heineken. However, as this company is family controlled, only the majority of the outsider shareholders disapproved the discharge of the supervisory board. It is reasonable to expect similar behaviour of

[27] There are exceptions, like the UK vote on the remuneration policy which is binding.
[28] We refer to the Vastned case, cf. infra.

shareholders that disagree with the remuneration report and experience a poor response of the board of directors.

Therefore it can be considered to add, next to the aforementioned guidelines, that after a dissenting vote, the vote for the subsequent remuneration report is binding and that the board must, if the report is voted down for the second time, take measures to amend the remuneration practices in accordance with the views of the shareholders. This duty should be shared with the shareholders. Shareholders that continue to be dissatisfied with the remuneration practices must motivate their vote for the subsequent report. At first sight this rule resembles the Australian two-strike rule. However, our proposal does not require a resolution to determine whether the board must stand up for re-election (Thomas and Van der Elst 2015, p. 670-673). Neither does it set the threshold at 25 per cent like the Australian rule does. However, the latter can serve as an example to structure the process. The combination of an advisory and a binding vote will also solve the awkward voting results for the remuneration report at Fagron where two times the remuneration report was disapproved and the third, but still unchanged remuneration report was supported. The combination of a first advisory and second binding vote for the remuneration report can prevent other institutional changes[29] that disturb this fragile equilibrium of the first advisory vote of the remuneration report.

We note that the combination of an advisory and a subsequent binding vote can also strengthen the binding vote for the remuneration policy which was implemented in the UK and is proposed at European level, as the company should not only apply an approved remuneration policy but also adhere to remuneration practices that shareholders support. The remuneration policy should in particular address the issue of golden hello or other welcome packages. Currently, the remuneration report is backward looking, shareholders are informed of the entrance fee of the executives too late. It was the major concern of the shareholders of Intertek and Burberry when disapproving their remuneration reports.

Related to the previous finding of the fragile nature of a mandatory advisory vote, we also noticed that a majority vote of the shareholders is no longer considered as sufficient support for the board's behaviour. Although it was no part of this investigation of the current voting practices, we observed that the remuneration resolution must be adopted with an overwhelming majority before the remuneration practices are considered appropriate. Depending on the source, dissenting votes of 10 per cent, 20 per cent or 30 per cent require the company, its board of directors and remuneration committee's response. A response is even mandatory in the UK when (an undefined) significant dissent is registered.[30] Previously, it was shown that the CG100 requires the board of directors to take action as soon as the remuneration item is not supported by at least 80 per cent of the represented shares at the meeting. This practice brings the remuneration issue from the common agenda items to the

[29] Like the Renault case illustrates (cf. aforementioned in the introduction and footnote 8).

[30] In Australia the 25 per cent dissenting votes threshold can be considered a special majority as in the two-strike rule there is the opportunity to "spill the board" if the company remuneration report receives a negative reception of 25 per cent of the votes at two consecutive AGMs (*Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011* (Cth), para 300A(1)(g); *see also Explanatory Memorandum, supra* note 104, at 6)

special agenda items. It is common practice in many countries that decisions which are considered pivotal for companies, like a change of the articles of association or a merger or division of the company need a supermajority approval. As the remuneration item must be supported with a majority of 80 per cent of the attending shares preventing the board of directors to take action, a similar supermajority requirement is de facto introduced.[31] To the extent that many of these features are addressed in the proposal for a new European shareholder's right directive, we support this directive. Our findings suggest that the remuneration is a key topic for developing a sound debate between the board and the shareholders.

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[31] It must be noticed that important decisions of the general meeting not only need a supermajority approval but often also a minimum quorum requirement, which is not required for the approval of the remuneration item.

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