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**Shareholders as Stewards:
Evidence of Belgian General Meetings**

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Abstract

Shareholder activism is at the heart of the corporate governance debate. This study investigates shareholder activism through the voting turnout as well as the voting behavior of large and small shareholders and the resolutions voted at annual general meetings (AGMs) of Belgian listed companies.

The mean voting turnout was 56.0 per cent in 2012, up from 49.9 per cent in 2011. The attendance of small shareholders is significantly lower at 20.4 per cent, providing evidence that large shareholders control de facto almost 80 per cent of all Belgian listed entities. Opposition is generally low while dissent for the remuneration report and for some director elections is higher. When small shareholder approval rates would be taken in consideration, several board proposals would have been defeated, including almost 20 per cent of the remuneration reports. Similarly, almost 10 per cent of the candidate directors are not supported by a majority of the small shareholders. However, all directors were (re)elected due to the majority position of the blockholders at Belgian AGMs.

As the important decision taking body, we recommend reforming the position of the AGM providing in better stewardship. The role of the AGM should be oriented towards a discussion platform between board and different types of shareholders for eg. policy making rather than its present function of formal decision making body. We end with policy recommendations to enhance the role of the AGM and empower the AGM for taking for policy decisions.

Shareholders as Stewards: Evidence of Belgian General Meetings

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1. Introduction

The year 2012 is classified as the year of "shareholder spring" (Stewart 2012, Hogg 2012). Shareholders are more active than ever before. Protests against, in particular, excessive remuneration packages illustrate shareholders have raised their voice (Ng, Sibilkov, Wang, Zaiats 2011). Companies are more than ever challenged to take into account long-term shareholder value. Many of these statements are based on anecdotic evidence of individual shareholder actions and opposition at general meetings of companies. The analysis of activism outside the US and the UK is relatively scarce (Poulsen, Strand, Thomsen 2010). Some of these studies can be found in this journal. For a large sample of Dutch companies De Jong, Mertens and Roosenboom (2006) showed low representation of shareholders at meetings concluding that the general meeting is not used as an influential governance mechanism. Only pension funds were active participants. More recently Mallin (2012) found evidence that institutional investors became more active in both starting up a dialogue with the company and opposing a wide variety of general meetings agenda items. Even in the US the issue of corporate voting received relatively little attention in corporate governance, dominated by executive compensation and boards (Yermack 2011). In this paper we extend these studies with data on the role and importance of Belgian general meetings and we address the behavior of shareholders at the 2012 annual general meeting (AGM) of a large sample of Belgian listed companies. Preliminary we address the disclosure of AGM information in accordance with - in article 546 Belgian Companies Code transposed - article 14 of the European Shareholder Rights Directive 2007/36/EC. It serves as a proxy as to how important the company considers the (role of the) AGM. Next we study the attendance of shareholders at the AGM. In combination with information of the shareholder structure we identify the participation behavior of small shareholders. Third we analyse the voting behavior of shareholders for a number agenda items: the approval of the accounts, the remuneration report, the discharge of the directors and the (re)election of directors. Section four provides in a discussion of the role of the AGM and highlights two recommendations to improve the status of the AGM: empowering the AGM to decide on the orientation of the company's goals and integrate the different communication mechanisms of the company.

2. Disclosure of AGM information

Since January 1, 2012 and according to article 533bis, §2 and 546 of the Belgian Companies Code listed companies must disclose on their website the agenda of the AGM and the proposals for decision, the number of shares for which the votes are validly cast split between the votes for, against and abstentions and the percentage of these shares in the share capital. Previously, this requirement needed to be complied with in accordance with the Belgian Corporate Governance Code. Principle 8.7 and 8.10 of both the 2004 and 2009 Code state that the company must disclose explanations on the agenda items and the resolutions, the results of the votes and the minutes of the meeting on its website. Since April 2010 this Code was provided with a legal status through the publication of the Law of April 6 2010 to enforce corporate governance in listed entities (Belgian Official Gazette 2010). These developments result in three corporate governance eras. The first runs from 2005 to 2010 during which the company had to disclose information on the conduct of the general meeting on a voluntary basis[1], the second era starts in 2010 and runs to the end of 2011 during which the companies had to disclose the information on the conduct of the meeting or mandatory provide an explanation why it did not comply with this information requirement and the last era during which companies must legally disclose this information. An analysis of the 119 company websites of the Belgian companies listed on Euronext over the period 2007 to 2012 (figure 1) shows a steady increase in the disclosure of the relevant information from 50% in 2007 to more than 80% in 2012. The numbers do not indicate any rupture between the three eras. Even when mandatory rules require companies to comply, almost one company in five does

[1] Some information, like the agenda of the meeting and the proposals had to be publicly disclosed since 1991.

not (timely) provide the required information. It results from the data that many companies to not take the role and position of the AGM as pivotal for corporate governance.

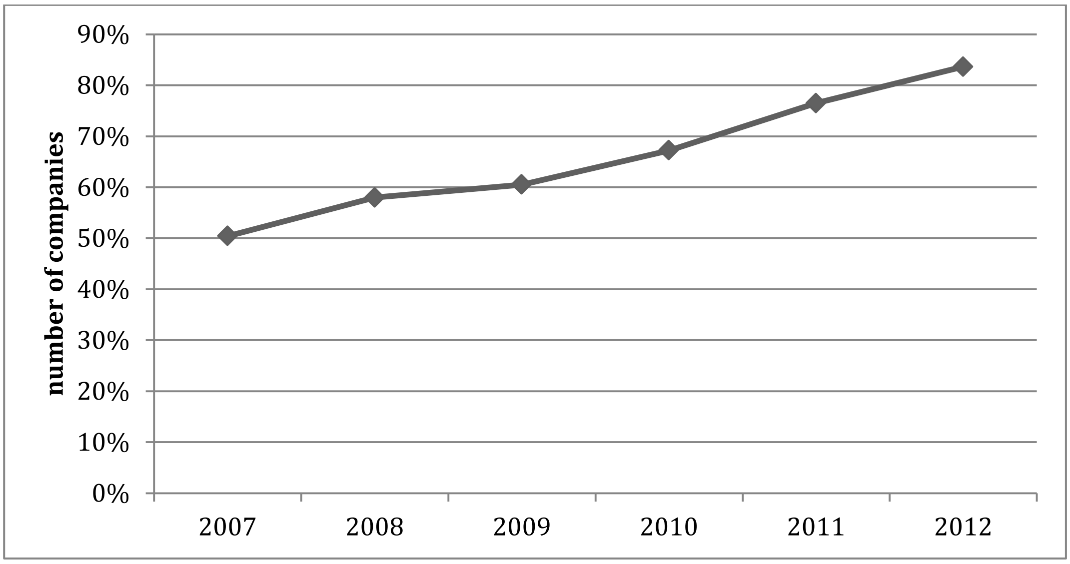

Fig. 1 Evolution of the disclosure of the minutes of AGMs with attendance and votes cast (compliance rate)

In 2012 77% of the companies disclosed the minutes of the meeting in accordance with the in article 546 Companies Code required information (figure 2).[2] Four companies disclosed the minutes but they failed to provide all (required) information. 13% of the companies failed to disclose the information within the regulatory timeframe of 15 days after the general meeting.[3] Finally 7% of the AGMs take place in the second half of the civil year. All Bel 20 companies and all but one Bel mid companies had their minutes published on their websites. More than one out of four Bel small companies and other companies failed to (timely) disclose the required AGM-information.

[2] The difference with 84% compliance rate in figure 1 follows from the inclusion of companies that hold their meetings in the second half of the year. For comparability of the data over the period 2007-2012 we considered that these companies will disclose the minutes in 2012 as they also did the previous years.

[3] We controlled all websites of the listed entities up to July 1, 2012. Companies that held their meetings between June 15 and June 30 already disclosed the minutes.

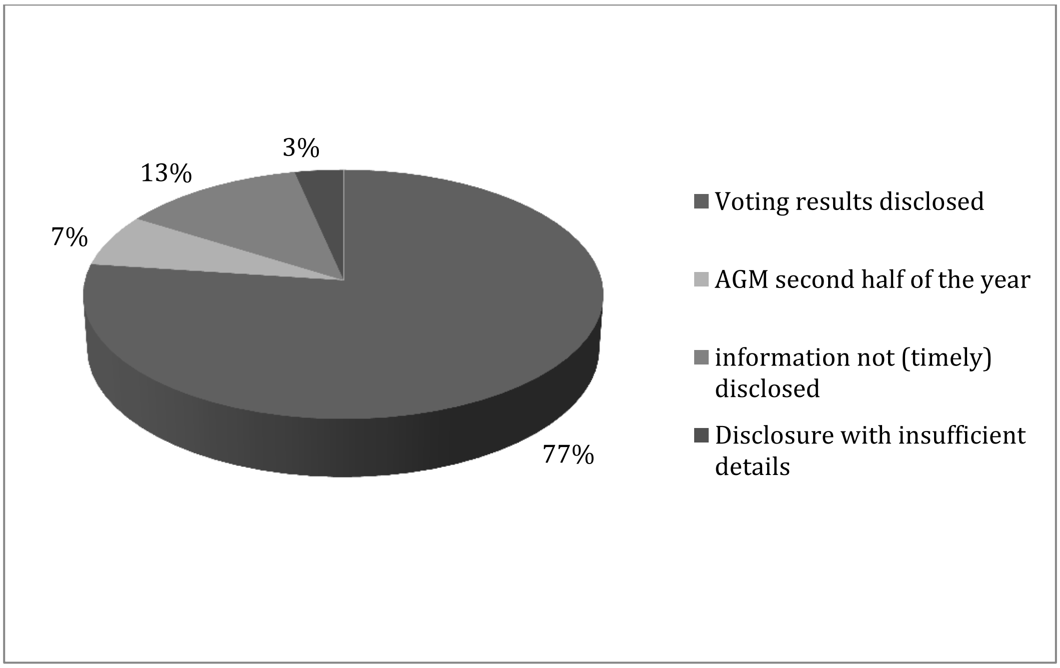

Fig. 2 Disclosure of the minutes of the AGM 2012

3. Attendance at AGMs

3.1.Overall Attendance

Attendance at AGMs is calculated as the total number of shares and other financial instruments with voting rights represented at the meeting to the total number of shares with voting rights issued less the treasury shares and shares of subsidiaries of which the voting rights are suspended. Under Belgian law, one share one vote is applicable.[4] On average, shareholders representing almost 56% of the total number of votes participated in the AGM 2012 (figure 3). A limited number of shareholder meetings lowered the mean as the median attendance was 58.3%. We subdivided the sample in four groups of indexed companies: Bel 20, Bel mid, Bel small and non-indexed other companies. This subdivision shows that AGMs of smaller companies have higher voting turnouts than AGMs of larger companies: in Bel 20 companies only 51.9% of the shares were represented while in the "other" companies the attendance was on average more than 62%. However the lowest voting turnout is lower in smaller classes of companies than in the larger classes: The lowest attendance is 21% for the Bel 20 (Cofinimmo) and Bel Mid (Agfa) companies while it is 14,5% in a Bel Small company

[4] It is possible to issue non voting shares and some other financial instruments have also voting rights. Listed companies hardly make use of these instruments (the exceptions are eg Cofinimmo and D'Ieteren and some smaller companies).

(Quest for Growth) and only 2.3% (Serviceflats) in one other company. In no Bel 20 company more than 70% of the votes were represented while in the other types of companies the highest attendance was almost or even more than 90% (Fluxys, Picanol, Sabca).

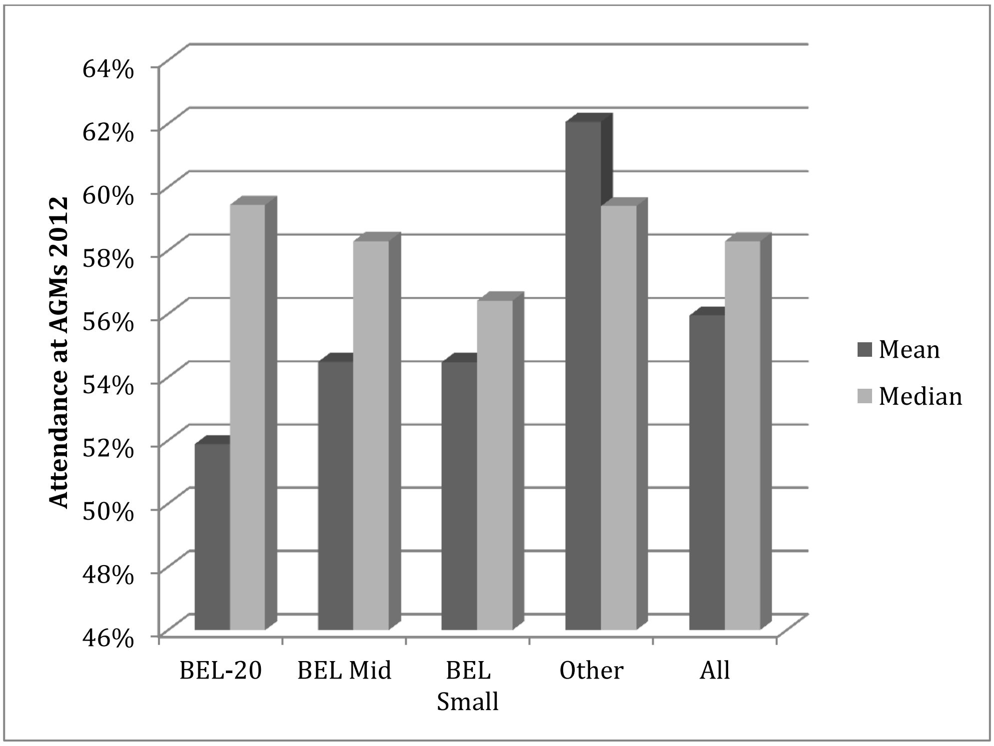

Fig. 3 Voting turnouts at AGMs 2012

Figure 4 presents the evolution of the attendance at Belgian AGMs. Overall this attendance remained around 50% during the period of 2007-2011 and significantly increased in 2012 to 56%. This pattern is more or less similar for Bel 20, Bel Mid and other companies but for Bel small companies the level of 2012 is still lower than in the period before the financial crisis. Is not clear why the smaller companies experience significant yearly differences in the attendance at AGMs. We assume that the composition of the Bel small index can explain the difference. The increase in 2012 is particularly striking for Bel 20 companies and less for the other types of companies. Although it cannot be proven we assume that the 2012 increase is due to the abolishment of the “blocking of shares” before the general meeting and the replacement of this ‘old fashioned’ system with the “record date” system. As institutional investors are reluctant to block the shares before the meeting and those investors can more commonly be found as shareholders in larger companies, it is logic that the 2012 increase is more visible in the Bel 20 companies. Overall, the numbers prove that a large number of shareholders do not act as stewards as they remain absent at this influential corporate platform.

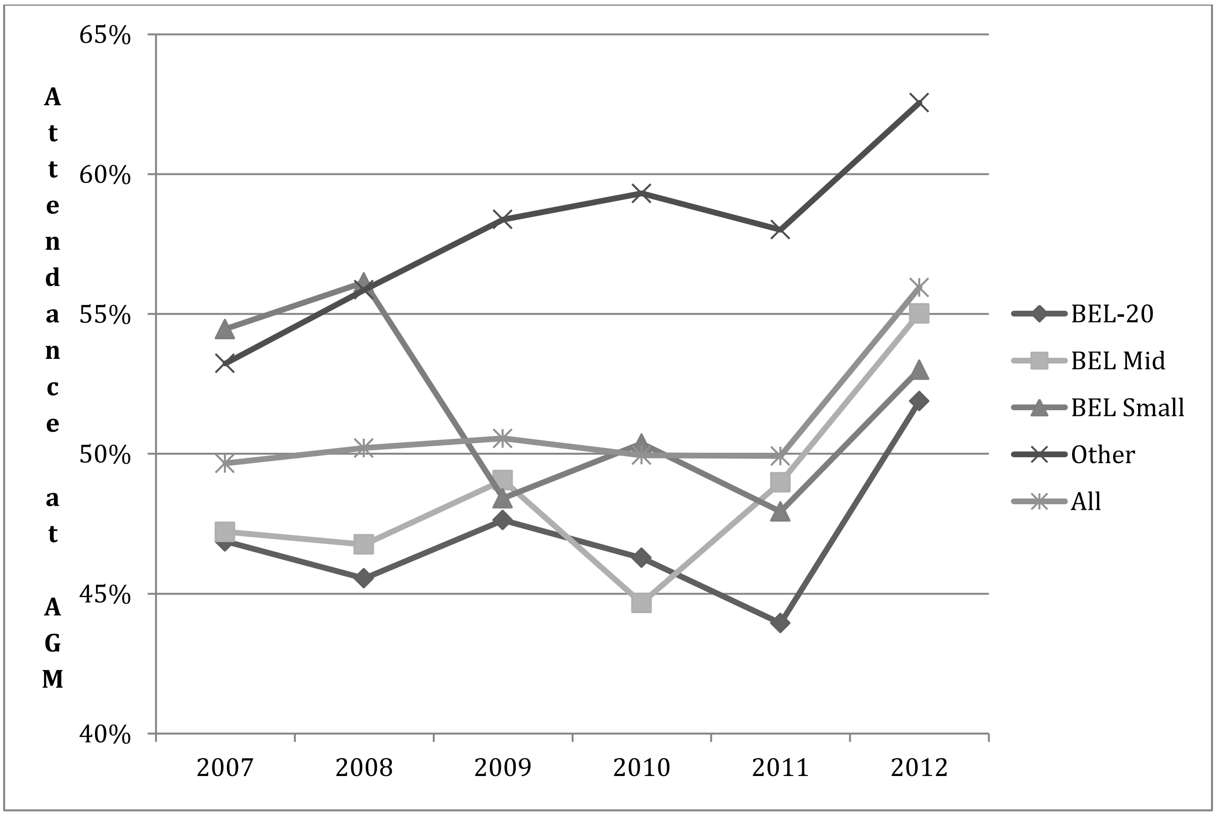

Fig. 4 Evolution of the voting turnouts at AGMs

3.2.Attendance and Ownership

In the previous section it was illustrated that the attendance at the 2012 AGMs varies significantly. In previous studies we proved that the attendance is related to the voting blocks of the largest shareholder/parties acting in concert (Van der Elst 2010). In this study we explore if this relationship continues to exist, and next we analyse this relationship. Further we presume that controlling concert parties take part in the meeting and vote with the board of directors.[5] Given this assumption, relative attendance of the other, non-controlling shareholders can be estimated. To do so, we first collected the voting blocks of all large shareholders and concert parties as published in the annual reports 2011. Next, we updated the ownership data with the notifications of holdings between the end of the accounting period

5 Often the board members are the controlling shareholders. In other controlled companies, the board of directors will discuss the agenda items beforehand avoiding public conflict.

and the AGM as published on the STORI – Storage for Regulated Information - website which contains all regulated information submitted to the Belgian supervisory agency Financial Services and Markets Authority (FSMA) since January 1, 2011.

3.2.1. Ownership Structure of Belgian Companies

It is well documented that Belgian companies have concentrated ownership structures (Renneboog 1997, La Porta et al. 1999, Van der Elst 2003, Van der Elst 2004). This has not significantly changed in 2012. Figure 5 provides the median voting block of the concert parties in Belgian companies. In case there are no concerting parties, the voting block of the largest shareholder is withheld. Only when the voting block of the concert parties or of the largest shareholder are above the threshold of 5%, it is taken into account. In case no shareholder owns more than 5% of the voting rights, the ownership structure is considered to be fully dispersed. Overall the mean voting block of concert parties in Belgian companies is 42.1%, somewhat lower than the median voting block of 46.3%. Two companies have concerting shareholders owning more than 90% of the votes (Spadel and VGP) with 93.3% as an absolute maximum number, three others have shareholders with more than 85% of the votes (PCB, Fluxys, Picanol). Only two companies have no shareholders owning more than 5% of the shares (Cofinimmo and Serviceflats Invest). 46% of the companies have concerting shareholders with an absolute controlling voting block. The larger the companies are the lower the concentration is. In Bel 20 companies the median voting block is 34.2% rising to 40.8% in Bel mid companies over 45.4% in Bel small companies to more than 50% in the other companies.

We compared the median voting block of the concerting shareholders with their voting position at the AGM. Assumed that the concerting shareholders attend with all their shares, we calculate their voting power as the ratio of their voting block to the total attendance. As is visible in figure 5, the concerting shareholders have significantly more power at the general meeting than the voting block suggests. Overall the mean voting block of the concerting shareholders at the AGM is more than 72% (with a median block of more than 82%). The larger the company the lower the voting power of the concert parties at the AGM. However with a median controlling block of 59% at AGM meetings of Bel 20 companies, it is obvious that the approval of the agenda items is most of the time a pure formality at most AGMs of Belgian companies.

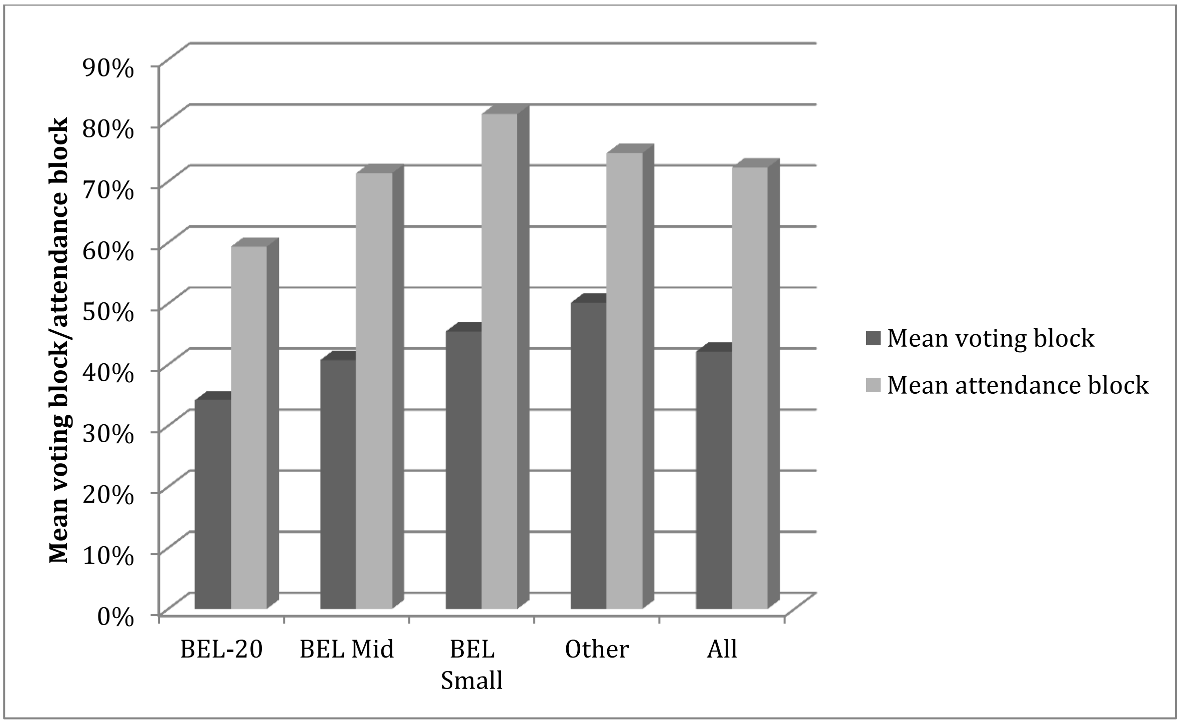

Fig. 5 Mean voting block of concert parties and mean attendance block of concert parties at AGM

3.2.2. Voting Power of Concerting Shareholders

In 43% of the companies the concerting parties hold a majority voting block (figure 6). In Bel 20 companies this is only in one out of three companies the case, while other classes of companies are in the majority of the cases under absolute control.[6] As it was already illustrated in figure 5, the voting power at AGMs of the concerting shareholders is significantly higher. Using a 50% threshold of attending votes, almost 80% of the meetings of Belgian companies are controlled by the concerting shareholders. Even at the AGMs of the Bel 20 companies most large shareholders control the meeting. Hence it can be expected that the mandatory agenda items will all be approved in the large majority of the cases and that agenda items that are not supported by the major shareholders will not be scheduled.

[6] Id est the concerting parties control more than 50% of the voting rights.

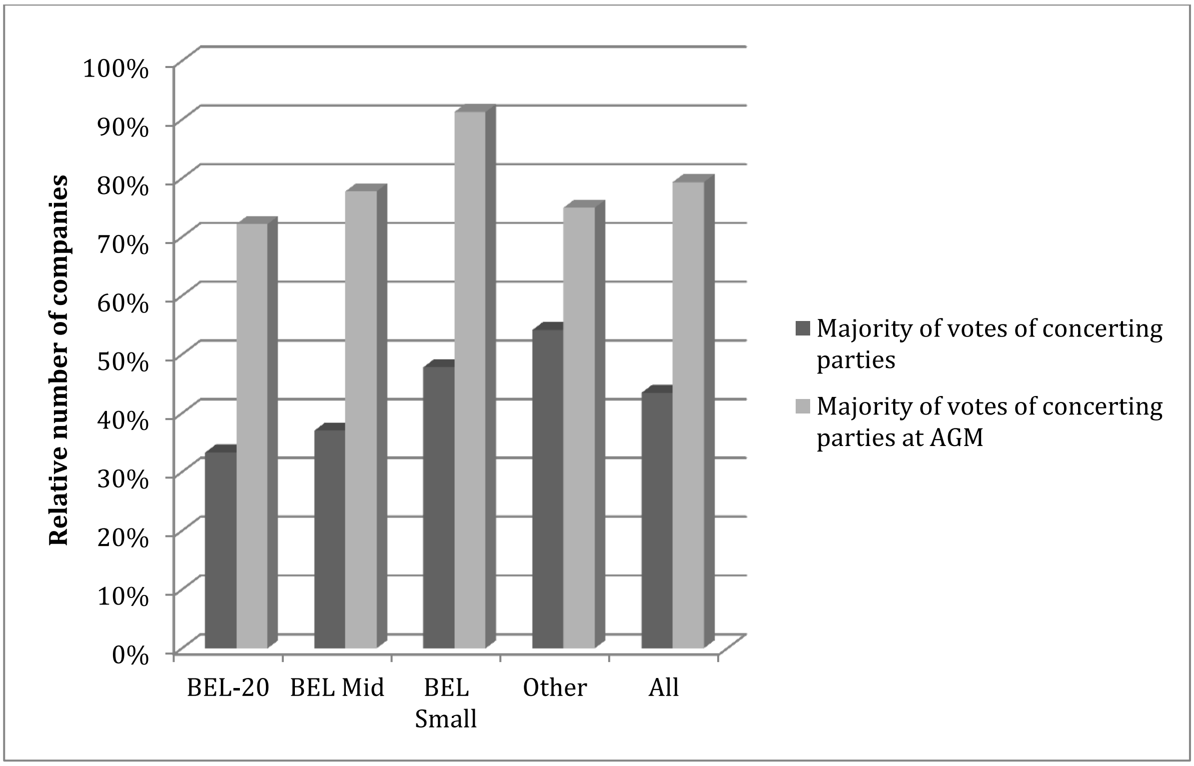

Fig. 6 Number of controlled companies

Next, we plotted the voting block of the concerting parties (or in the absence of concerting parties, the largest shareholder) to the total attendance at the AGM (figure 7). Simple linear regression analysis was used to develop a model for predicting voting turnouts from voting blocks of concerting parties. The predictor variable 'voting block concert parties' had a significant positive ($p < .001$) effect on voting turnout (table 1). The predictor model was able to account for 63% of the variance in voting turnout, $F(1, 90) = 155.56$, $p < .001$, $R^2 = .63$ and suggesting that other types of shareholders are of less importance.

Table 1 Results of simple linear regression analysis for predicting voting turnout

Independent variable	unstandardized coefficient (*B*)	95% C.I.	t-value	P-value
constant	0,285	0,235 to 0,335	11,331	0,000
voting block concert parties	0,638	0,536 to 0,739	12,472	0,000

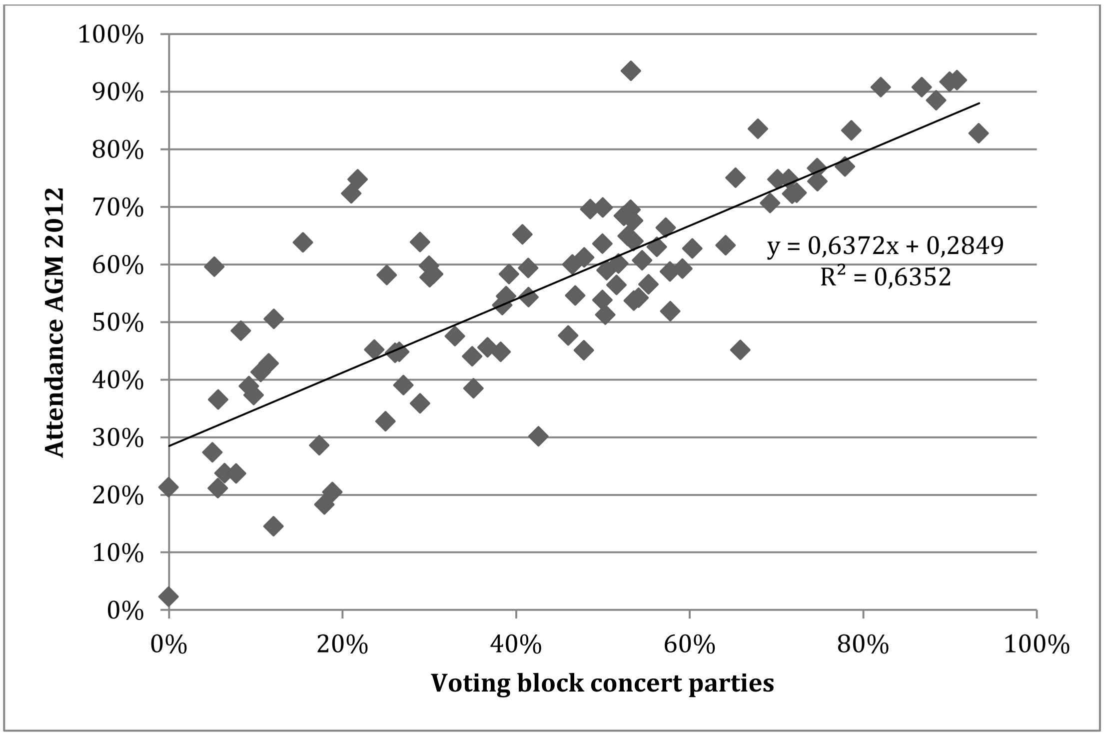

Fig. 7 Relationship between attendance at AGMs (y) and voting block concert parties (x)

3.2.3. Attendance of Small Shareholders

Assuming that large controlling (and concerting) shareholders have a larger interest to attend the general meeting of shareholders and attend with their voting block, we can assess the willingness of small shareholders to attend the AGM and vote.[7] For companies that have controlling parties or a controlling shareholder holding more than 30% of the votes we calculate the attendance of the small shareholders as

(total voting turnout –voting block of the concert parties) / (issued shares – voting block of the concert parties) [8]

65% of the companies in our sample have a largest shareholder or concert parties holding more than 30% of the votes. The threshold of 30% is used to distinguish the controlled and non-controlled companies as it is considered the mandatory threshold to start a takeover bid according to article 50 of the Royal Decree on Public Takeover (Belgian Official Gazette 2007). Next, as the mean attendance is less than 60%, a mean 30% voting block results in a

[7] Only a limited number of companies publish the attendance lists of shareholders.

[8] Changes in voting blocks of large shareholders must only be disclosed when a mandatory threshold is passed. It is possible that the number of voted shares of the large shareholder differs from the disclosed number of votes of the large shareholder to the extent the difference is smaller than the difference between two disclosure thresholds.

controlling stake. Third, the use of this threshold is also supported by anecdotic evidence. Smaller blockholders not necessarily support the board proposals. At RHJInternational, its largest shareholder Templeton holds more than 15% and independently votes all issues, whereas one of the directors, Timothy Collins who holds 13% of the shares, (most likely) supports the board proposals.

We opted for the voting block of the concert parties and not for the voting block of the largest shareholder because in most cases the agreement between the concert parties relates to the strategic decision taking of the company. Further there is some anecdotic evidence that the largest shareholder not always is the controlling shareholder. At Cimescaut, the largest shareholder CBR, holding approximately 1/3 of the shares, already proposes at the AGM for several years in a row to elect one director but the nomination is every year rejected by the concerting parties, controlling together the majority of the shares.

In a limited number of cases the voting block of the concert parties is larger than the number of represented shares. In those cases and for the calculation of the results in figure 8 the attendance of small shareholders is considered to be zero.[9]

Compared to the overall attendance, the attendance of small shareholders at the AGM is very low. Only in Bel 20 companies the mean attendance of these shareholders exceeds the 25% threshold (figure 8). In all other company types the mean attendance remains under 15%. In more than half of the Bel small and other companies less than 10% of the shares of small shareholders were represented at the AGM. Overall only one company had non-controlling shareholders that attended with more than half of their relative voting rights, in casu 86%. This was due to the participation of the second largest shareholder owning more than 43% of the total voting rights. Given the concentration of the ownership and the limited participation of small shareholders it can be expected that the approval rates of the agenda items for which a decision of the AGM is required, will be very high. This will be studied in section 4.

[9] And hence the results in table 8 will probably (modestly) underestimate the attendance at the AGM.

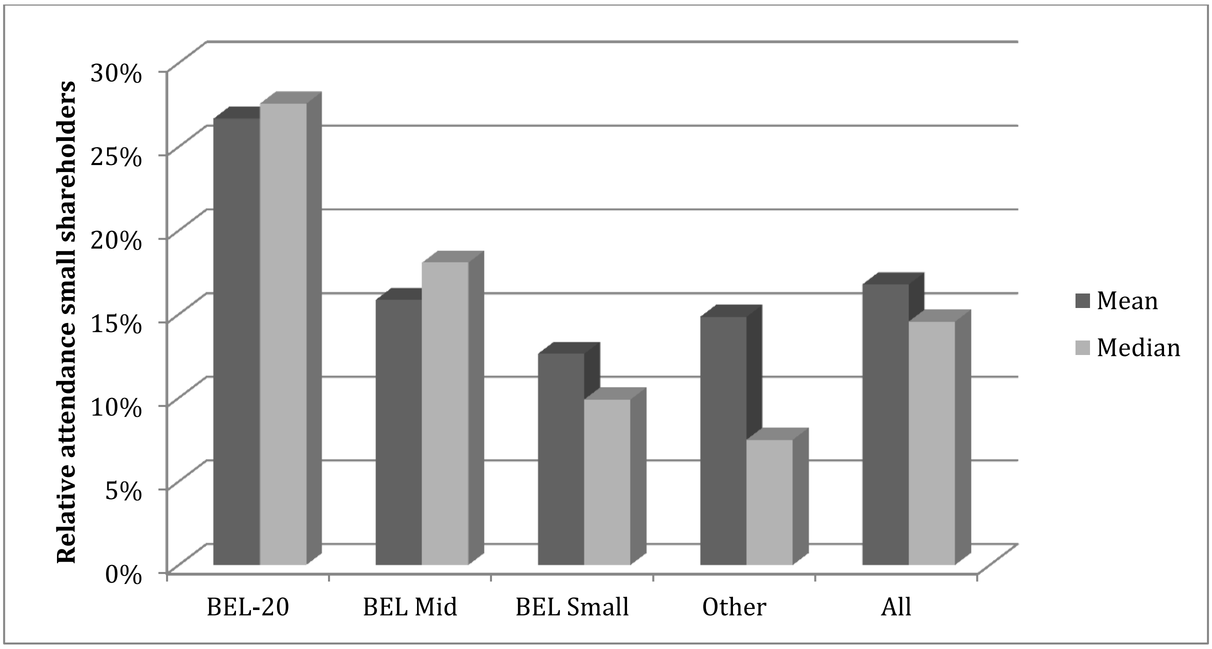

Fig. 8 Relative attendance of small shareholders

Eight companies provided not only the number of attending shares but also the attendance list including the names of the shareholders. The results of an analysis of this list are presented in table 2.

Table 2 Number of small shareholders attending the meeting

		Number of attending shareholders with a voting block of								
Company	Class	>5%	3-5%	1-3%	0,5-1%	0,1-0,5%	<0,1%	Total	attendance	concert
Connect Group	other	4	2	2	2		3	13	72,30%	21,05%
Devgen	Bel Small	3	4	2	1	3	5	18	50,48%	12,14%
Econocom	Bel Mid	1	1	1	2	6	4	15	59,94%	46,51%
Intervest Offices	Bel Mid	1		2		3	19	26	53,68%	53,61%
Keyware	other	2	1	1		1		5	52,87%	38,46%
MDx Health	Bel Small	4	3		2	1	1	11	42,79%	11,53%
PCB	other	2		1	2	2	3	10	90,76%	86,78%
Telenet	Bel 20	1	2		7	17	72	99[10]	69,85%	50,04%
Texaf	other	1	2	1		3	4	11	76,97%	77,92%

All but two, non-controlling blockholders attended the AGM 2012. In these two cases it was the asset manager of the investment company that did not participate. As some companies in

[10] According to the minutes of the meeting only 79 shareholders were (re)present(ed). Most likely, the company grouped the votes of funds that belong to the same institutional investor. As the attendance list does not indicate which funds vote "in concert" we identified all the funds individually.

this sample have several blockholders that do not act in concert, the attendance is significantly higher than the voting block of the concert shareholders. This is the case in Connect Group, Devgen and MDx Health. If the company has no other blockholders than the concerting parties, the attendance is close to the voting block of the concerting parties and the number of small shareholders attending the meeting is limited. This is the case at Intervest Offices. The findings confirm the overall results that were presented in figure 8. It questions the role of the AGM as a decision taking body. The decision of the AGM most likely equals the decision of the major blockholders.

4. Approval of AGM Agenda Items

In a previous study we showed that every AGM had to approve a mean of 9 resolutions (Van der Elst 2011). In this study we focus on four agenda items. First we compare the voting result of the approval of the accounts, the approval of the remuneration report, the discharge of the directors and the (re)election of directors. Next we study the approval of the latter three items. The approval rate is calculated as the number of votes "for" to the total number of shares represented at the meeting. It results that the abstentions are not taken into account in the nominator but are included in the denominator.[11]

In the majority of the companies the accounts are unanimously approved (figure 9). In almost 64% of the companies all shareholders agreed with the annual accounts. Only in the majority of the Bel 20 companies a limited number of shareholders opposed the annual accounts. As a result the mean approval rate was slightly less than 100% and close to 99%.

In two meetings a large minority voted against the accounts or abstained. The largest, non controlling shareholder of Cimescaut did not approve the accounts which were adopted with a 65% majority. CBR, the largest, but non controlling shareholder of Cimescaut rejects the accounts due to an inappropriate consolidation of a subsidiary. At Galapagos 23% of the shareholders abstained, while all other agenda items, including the remuneration report were approved with more than 99% of the votes. The minutes do not disclose the reasons of the abstaining shareholders.

[11] Only for Ageas it was not possible to perform this calculation as the minutes of the company only provide the votes "for" and not the votes "against" neither the abstentions.

Unanimous approvals are less common for the other agenda items. None of the AGMs of Bel 20 companies unanimously approved the remuneration report, nor unanimously discharged the directors, nor unanimously (re)elected (new) directors. Shareholders of Bel mid companies exceptionally approved the remuneration report and the (re)election of directors unanimous. Unanimously discharging the directors is still common practice in Bel mid firms. Bel small companies approved most of the agenda items unanimously with the exception of the remuneration report. In other companies even the remuneration report was not disapproved by the attending shareholders.

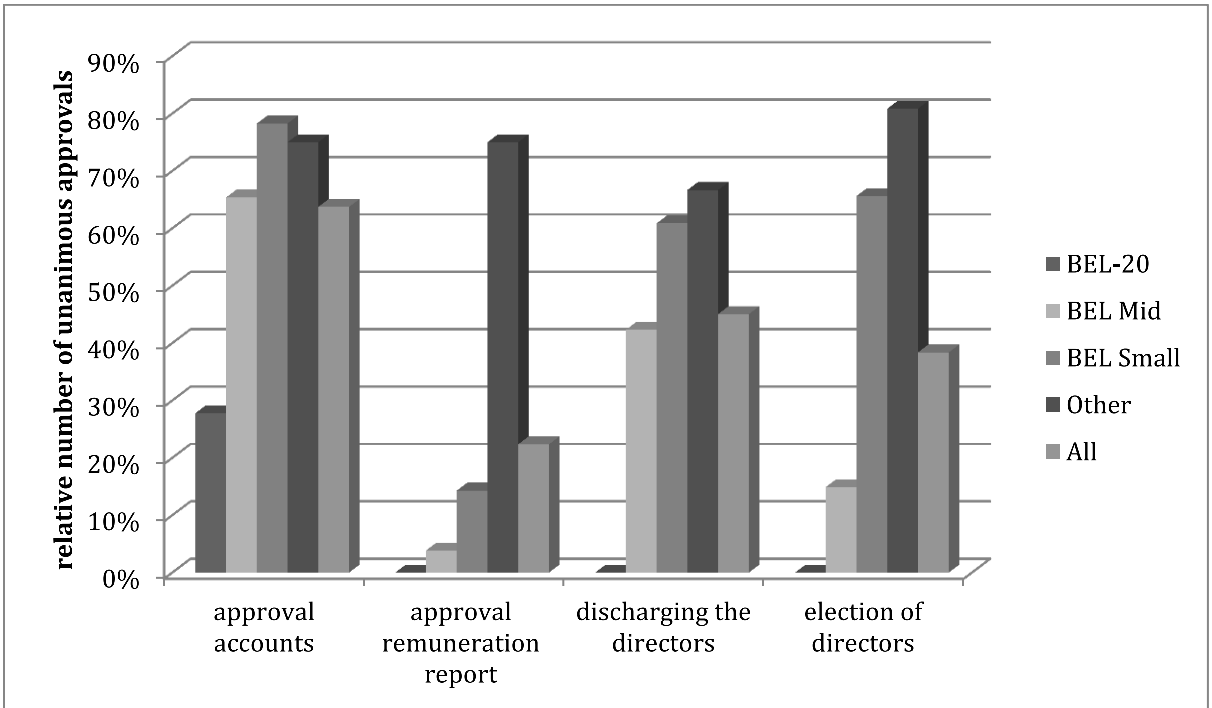

Fig. 9 Unanimous approval of different agenda items

In light of the findings in figure 8 it does not come as a surprise that the mean average approval rates of all agenda items are very high. Like in the UK (Conyon and Sadler 2009), the remuneration report attracts more shareholder dissent. In Bel 20 and Bel mid companies the mean approval rate of the remuneration report is 90%, increasing to 97% for Bel small companies and even 99% for the other companies. The medians are even higher for all different types of companies. In some companies the opposition is significant. The shareholders of Agfa approved the remuneration report with 50.3% of the votes, the AGM of EVS approved the report with 64%, at the Delhaize meeting shareholder dissent was 31%. All three companies have a relatively dispersed ownership structure and the other agenda items were overwhelmingly approved. It is clearly signaling the discontent of the shareholders with the remuneration policy.

We also studied the approval rates of minority shareholders in controlled companies. We assumed that the controlling concert parties holding more than 30% of the voting rights approved the agenda items and we deducted this voting block in the nominator from the votes "for" and in the denominator from the total attendance. The approval rate of minority shareholders equals:

(number of votes "for" the remuneration report – number of votes of concert parties) / (number of votes attending – number of votes of concert parties).[12]

The results are presented in the second columns in figure 10. The remuneration report was on average approved by 70% to 75% of the small shareholders of Bel 20 and Bel mid companies and between 80% and 90% in Bel small and other companies.
In almost one company out of five companies the majority of the small shareholders disapproved the remuneration report. In four Bel 20 companies more than 60% opposed the remuneration report. It is already clear that not only the size of the remuneration package of the chief executive officer nor of the chairman of the board, nor the total cost of the board of directors pushed these shareholders to vote against the report or to abstain from voting. Based on data of the financial newspaper "De Tijd" related to the remuneration of the CEO, the chairman of the board and the total board, the Bel 20 companies at which the majority of the small shareholders opposed the report were not the best paying companies (Michielsen 2012 (a), (b), (c)). According to recent American studies shareholders' concern is related to the sensitivity of remuneration to shareholder return (Semler Brossy 2012). The limited number of Belgian listed companies hinders an empirical assessment of this American finding. As more data will become available during the following AGM seasons, it will be studied what triggers the small shareholders to oppose the remuneration report.

Six companies did not provide shareholders the opportunity to vote on the remuneration report. All companies belong to the Bel small or are non indexed companies. Nevertheless article 554 Companies Act does not contain any kind of exception to the duty to provide in

[12] In two cases the result was negative. This is due to the fact that in some case not all concert parties attended or only attended with part of their shares. In those two cases it is assumed that the minority shareholder voted against the approval of the remuneration report.

this kind of say on pay, even if the company does not pay the board members. Four of the companies did provide in a remuneration report, one other company provide in information of the remuneration of the directors but not the remuneration policy that the company developed and applied. The last company, Solvac, explicitly discloses that the board members, the chairman and the board member empowered with the day-to-day management perform their duties for free. The company does not employ employees. The company reports that the development of a remuneration report is of no use as there is nobody remunerated. Solvac recognizes that a remuneration report is required by the Companies Code. Although we agree that this rule is of no use, the company could have complied by providing a report mentioning that the policy is to provide the board services for free and have this report voted at the AGM.

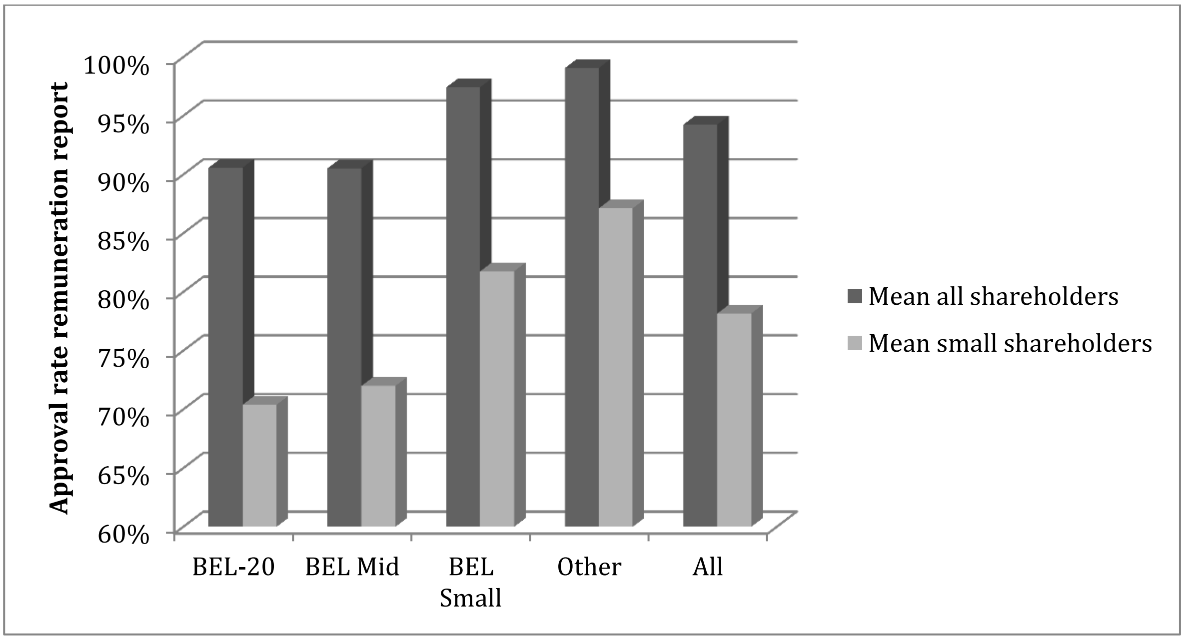

Fig. 10 Mean approval rate of remuneration report

The agenda item related to the discharge of the directors is mandatory according to article 554 Companies Code. The item is hardly ever questioned. Overall 98% approves the discharge of the directors (figure 11). The shareholders of Dexia, the troubled and bailed out financial institution, approved the discharge because abstentions are not taken into account. Only 43.9% of the attending Dexia-shareholders voted for the discharge of the directors, a majority compared to the dissenting votes. Approximately all small shareholders opposed the approval.

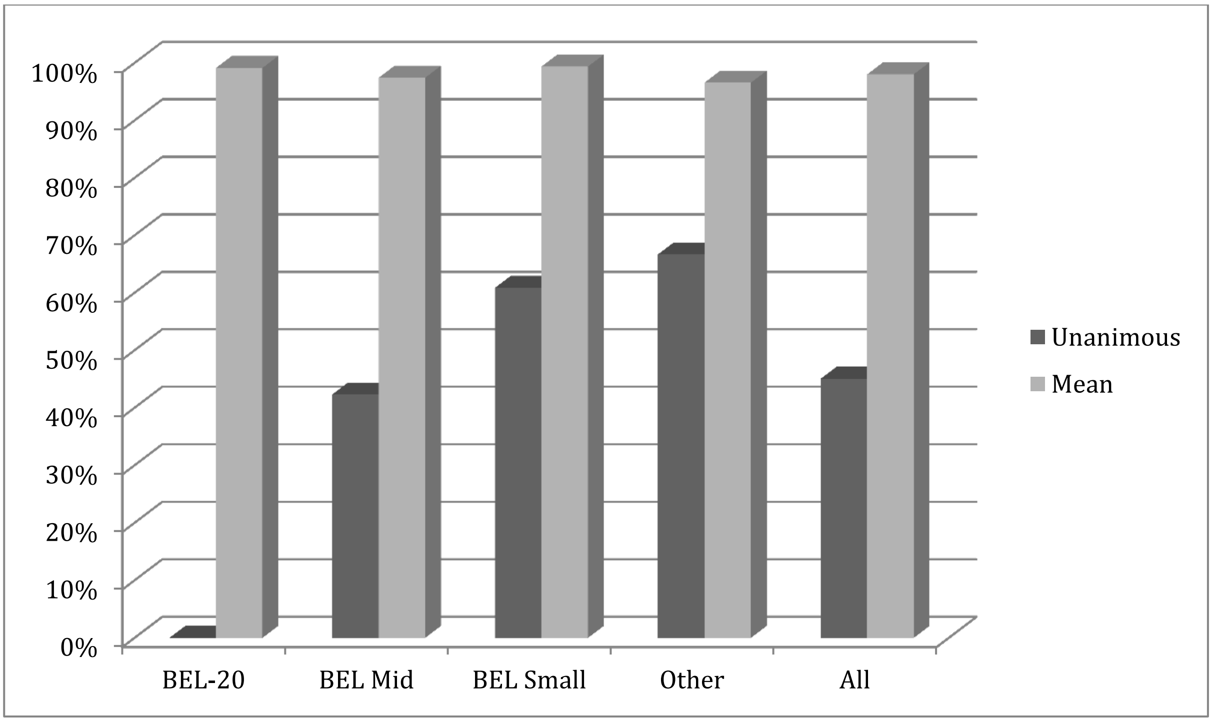

Fig. 11 Approval rate of discharging of the directors

The financial difficulties of many financial institutions and the underperformance of many other companies highlight the importance of dedicated and experienced directors. Approximately 2 companies out of 3 (re)elected directors at the 2012 general meeting (table 2). While the law provides in a term of maximum six year, the corporate governance code recommends in provision 4.6. (re)electing the director every four years. On average each meeting (re)elects between two – small companies – and four – Bel 20 companies – directors.

Table 3 Director (re)elections

	BEL-20	BEL Mid	BEL Small	Other	All
number of companies with director (re)elections	12	17	16	17	62
% of total number of companies	66,67%	62,96%	69,57%	68,00%	66,67%
total number of directors (re)elected	46	47	32	47	172
average number of directors (re)elected	3,83	2,76	2,00	2,76	2,77

The total number of dissenting votes for director elections is low. Most candidates receive 95% or more supporting votes (figure 12). In Bel 20 and Bel mid companies the approval rates are modestly lower but still significantly higher than 90%. Minority shareholders in controlled companies have more doubts about the selected directors, resulting in mean approval rates of only 75% in Bel 20 companies and between 86% and 88% in Bel mid and

Bel small companies. All board nominated directors are elected. One director, nominated by the largest shareholder of Cimescaut was not supported by the controlling shareholders acting in concert and was not elected. In two other companies two directors only were supported by 68% of all attending shareholders. In case only minority shareholders in controlled companies can elect directors, 10% of all the nominated directors (in seven companies) would not have been (re)elected. In a follow up study we will analyse the determinants of shareholder support for directors. As minority shareholders who did not support some director elections approved the election of other directors in the same company, it can be assumed that shareholders use their voting rights diligently and use specific criteria to vote "for" or "against" the director.

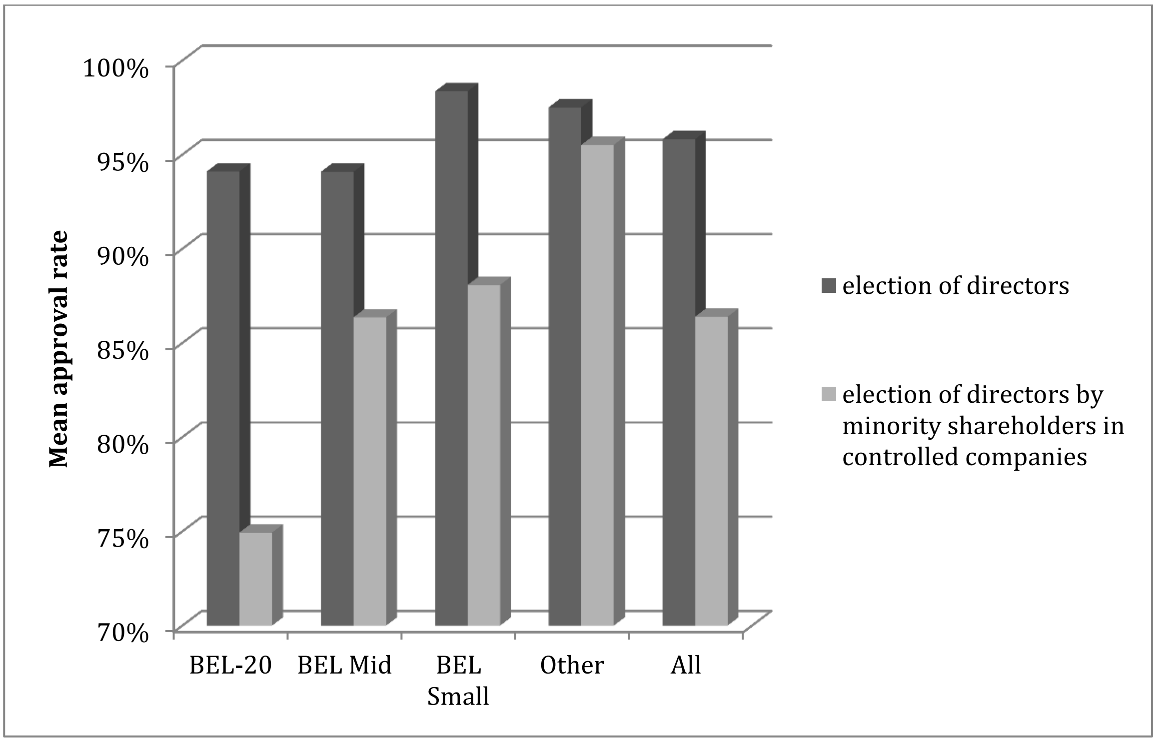

Fig. 12 Mean approval rate of director elections

5. <u>Discussion and Policy Recommendations</u>

Shareholder voting is considered pivotal to align the interests of the shareholders and the interests of the board of directors and management. Shareholder voting takes place in a general meeting. Hence, shareholders are called to become stewards of the company and act as a sounding board for the board of directors. Shareholders should report on their stewardship practices and the way they interact with their investees.

In Belgium and most likely in other continental European countries, this stewardship idea is all but reality. Real time dissemination of financial and other information further reduces the role of the general meeting as an channel informing the shareholders about the past performance. Further the globalisation of the product market, the labor market and the capital market including the market for shares, conflicts with the static country-bound physical gathering of shareholders.

The results of this analysis show that many shareholders question their role in an AGM and the appropriate use – if any – of their shareholder votes. First, a large minority of the shareholders do not vote. Over the last year the mean attendance rate of shareholders of Belgian companies increased significantly from less than 50% to almost 56%, most likely due to the abolishment of blocking of shares before the AGM, but an absenteism of more than 40% has a major impact on the voting outcomes.[13] As many companies have large shareholders, their voting blocks significantly influence the total voting turnout. The mean attendance of small shareholders is less than 20%. Second a large number of shareholders vote in advance and in absentia or empower the (chairman of the) board of directors to represent them. They send their proxy card before the meeting. The voting results of the general meeting are often even available to the board before the meeting takes place. Telenet, the only Bel 20 company that disclosed the list of attending and/or represented shareholders shows that 73 shareholders were represented by the (independent) chairman of the board of directors while 19 shareholders were represented by two other representatives. It results in a limited number of shareholders “discussing” – listen is more appropriate - in personam the AGM agenda items. Third the agenda items are often all but inviting shareholders to actively participate. Most common the agenda only contains the mandatory prescribed items. The 2012 AGM of D’Ieteren, a Bel 20 company lasted 25 minutes during which the report of the board of directors and the auditor was presented, the annual account was approved as well as the remuneration report and the directors and auditor were discharged. The main financial results were already disclosed months before the AGM, the financial and other reports weeks before the meeting.

[13] Often identified as rational apathy and free riding behavior of many shareholders.

These findings question a number of functions of the general meeting of shareholders. Most commonly it is argued that the AGM serves four purposes (Van der Krans 2009). First, the AGM is a corporate decision taking body and it approves the accounts or the (proposed) decisions of other corporate bodies. The AGM takes eg. the decision to merge and to (re)elect directors and approves the accounts. Next, the AGM serves as a platform for discussion and concert. The shareholders have the right to question the board and negotiate with other shareholders[14]. Third, the board is accountable to the shareholders through the AGM. In Belgium, but also in Germany and the Netherlands the AGM discharges the board for its responsibilities during the previous accounting period. Finally, during the AGM the board is informing the shareholders on the different policies. Most meetings start with a presentation of the results of the previous accounting period and the board commonly informs the shareholders on the results for the current accounting period.

In particular the first and the last function falls short in its execution. An overwhelming majority of the AGM agenda items is approved with an overwhelming majority of more than 99%. The AGM's corporate decision taking function looks like an old-fashioned corporate ceremony. Next the information related to the financial results that are presented to the shareholders at the meeting is already incorporated in the stock price and market. Shortly after the end of the accounting period the company discloses its most important results and discusses with the major shareholders and institutional investors immediately after the publication of the (quarterly) reports the results of the company and expectations of the shareholders in much more detail than during the AGM. The first quarterly results of the new accounting period are provided even before the AGM "discusses" the results of the previous accounting period. What remains for the AGM is a general presentation by the management in combination with shareholder specific viewpoints or idiosyncratic grievances, statements and questions.

This pessimistic outlook should not be used to plea for the abolishment of the AGM but to the reposition the role and function of the AGM in two ways. Indeed the AGM remains the most appropriate platform for the accountability of the board of directors.

[14] But attention should be paid that the discussion does not result in common actions that can be identified as acting in concert and requiring the launch of a takeover bid.

First, the function of the AGM is to provide valuable dialogues with boards and management over long-term policies of the company like strategy, risk management with in particular the company's risk appetite, and corporate social responsibility. The AGM must be empowered to play a more important role in determining corporate policies. The first steps to provide in this function are already taken. In different countries, including Belgium, the AGM must approve – with an advisory or binding vote - the remuneration policy of the company. While only being advisory under Belgian law, the shareholders seem to consider the vote for the remuneration report (containing the remuneration policy) with due care. The success should not be judged by the number of negative votes but the presented preliminary findings suggest shareholders make a well-considered vote for or against the report. Instead of focusing heavily on the previous results and past performance of the company, more emphasis should be placed on the (future) policies of the company.

Second the means to communicate with the shareholders are manyfold and include one-on-one meetings with important shareholders, roadshows, broker conferences, other individual shareholder and investor meetings and the AGM. While the former are oriented towards the large and often institutional investors, the latter is aiming at individual and small shareholders. This "separation" of means results in a significant loss of information and superfluous work. At present the AGM is the last in row to be informed and its position must be reconsidered. An electronically company-controlled discussion platform where all information is gathered and where shareholders will be registered upon the acquisition of the shares and will be deregistered as soon as the shares are sold with continuously updated information can, if appropriately constructed, replace most other meeting opportunities. The information exchange and discussion must - on regular occasions - result in a vote on the major policy issues. It can be discussed how often the items must be voted. The platform shall contain the Q&A that actually are raised during the different kinds of meetings rather than the Q&A section of companies' websites which most of the time are limited to procedural AGM related issues.

At the AGM many questions are raised and most of them are relevant (Van der Elst 2012). The topics that are discussed during the AGM and in the majority of the cases raised by small individual investors can often be classified in the same category as those questions that institutional investors raise during other meeting occasions. Ten Belgian companies disclosed either the questions or the topics that were asked during the AGM (table 3). On average shareholders raised eleven questions of which three were related to financial issues and four to the operational activities of the company. Almost all boards of directors were confronted with financial or operational related questions. Governance related questions were good for more than 15% of all questions. Strategic and stock exchange and share price related questions were raised in almost half of the companies.

Table 4 Classification of questions raised at AGM s2012

		Financial	Operational	Governance	CSR	Shares	Strategic	Total
Accentis	Bel Small	7	8	7		2	4	28
Arseus	Bel Mid	4	9	2	3	1		19
Elia	Bel 20	1	6	4			1	12
Henex	Other	1						1
Intervest Off	Bel Mid		3					3
Intervest Ret	Bel Small		2					2
KBC	Bel 20	1	5	2			3	11
Punch	Bel Small	9	1	1		2	1	14
Sabca	Other			1		1		2
Tessenderlo	Bel Mid	9	8	1		1		19
		32	42	18	3	7	9	111
	Mean	3,2	4,2	1,8	0,3	0,7	0,9	11,1

The Investment Management Association (IMA) (2012) studied the adherence to the British Stewardship Code and reported in June 2012 which issues result in engagement by institutional investors. The results are based on a questionnaire returned by 83 institutions. The study shows that most companies are contacted regarding remuneration and strategy and also board composition and environment/social issues are often discussed with investees. It overlaps partially with the questions raised at Belgian AGMs. Board issues (governance related items) are more common in meetings with investment managers than at AGMs while operational and financial issues are more often discussed during the AGM. Both – small shareholders in AGMs and institutional investors in other types of meetings - debate regularly the strategy and the objectives of the investee. Combining the efforts through a common platform can provide in synergies, generate a quality enhancing effect and increase participation. Moreover, the IMA-report also shows that the majority of institutional investors are silent and institutions do not participate in any kind of activism[15], like many shareholders at the AGM. Easy access via the AGM channel can enhance engagement levels.

[15] Overall, less than 40% of the investment managers engage with their investees.

In short, the present AGM has only limited powers regarding the determination of policies. The shareholders have a formal say on capital, a say on short term major transactions and recently, an advisory say on pay. They are deprived of formal advisory rights in the determination of the long term direction of the company, its mission, its expansion strategies, its risk policies and the like. As a result many (larger) shareholders seek other mechanisms discussing their needs and desiderata in other types of engagement. What remains is an undervalued AGM with at best active small shareholders, while the AGM is the best platform to guarantee equal treatment of all shareholders. In light of the modern technology it must be possible to further encourage the use of the AGM as the best stewardship instrument, providing easy access and equal opportunities to all kinds of shareholders.

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