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ALIGNING SHAREHOLDER VOTING AND SHAREHOLDER ENGAGEMENT

Christoph Van der Elst

1. INTRODUCTION

With the first Shareholder Rights Directive of 2007 (hereinafter: SRD I), the European Commission facilitated shareholder voting as a tool for improving corporate governance. Recital 3 of the Directive provided: 'Holders of shares carrying voting rights should be able to exercise those rights given that they are reflected in the price that has to be paid at the acquisition of the shares. Furthermore, effective shareholder control is a prerequisite to sound corporate governance and should, therefore, be facilitated and encouraged.'[1] Obstacles deterring shareholders from voting and the exercise of voting rights without physically attending the general meeting, in particular for non-resident shareholders, were to be removed.[2] Furthermore, limitations and constraints which make proxy voting cumbersome and costly had to be abolished.[3] SRD I also emphasised the role of electronic voting for enabling shareholders to vote at general meetings. Article 8 of SRD I compelled all European Member States to provide the shareholders with general meeting participation rights consisting of real-time transmission, real-time two-way communication and/or 'a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting.' According to the directive, the latter way of participation must only be subject to requirements and constraints necessary to ensure the identification of shareholders and the security of the electronic communication.

In the second Shareholder Rights Directive of 2017[4], the European Commission further developed the relationship between shareholders and their

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1 Recital 3 Directive 2007/36/EC of 11 July 207 of the European Parliament and of the Council on the exercise of certain rights of shareholders in listed companies [2007] OJ L184/17.

2 Ibid. Recital 5.

3 Ibid. Recital 10.

4 Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement [2017] OJ L132/60 (hereinafter SRD II).

investees. Whilst SRD I facilitated the relationship between companies and its shareholders, SRD II emphasised the need to further strengthen and develop this relationship. The European Commission considered the shareholder engagement of institutional investors and asset managers currently inadequate: 'there is clear evidence that the current level of 'monitoring' of investee companies and engagement by institutional investors and asset managers is often inadequate and focuses too much on short-term returns, which may lead to suboptimal corporate governance and performance'.[5] Thereto, these shareholder types should publicly disclose information about the implementation of their engagement policy and in particular how they have exercised their voting rights. According to article 3g of the SRD II 'the policy shall describe how they monitor investee companies on relevant matters, including strategy, financial and non-financial performance and risk, capital structure, social and environmental impact and corporate governance, conduct dialogues with investee companies, exercise voting rights and other rights attached to shares, cooperate with other shareholders, communicate with relevant stakeholders of the investee companies and manage actual and potential conflicts of interests in relation to their engagement.'

It is generally understood that the electronic casting of the votes prior to the general meeting became common practice for many shareholders. However, there is currently no insight as to how important this type of remote voting is and which shareholders commonly make use of this voting tool. Further, if it is found that voting *in absentia* is common practice, it raises questions as to how the cooperation with other shareholders, being part of the engagement policy can take place, as the general meeting can, in the case of this remote voting, no longer be considered as a platform for reflection and deliberation between the shareholders.

In the next sections I first address whether the SRD I has had effects on the voting turnouts. As it became easier and less expensive to vote at general meetings, it can be expected that voting turnouts increased after the transposition of the Directive in the different Member States. Next, I study the different voting modes that shareholders make use of. For this analysis we use a hand-collected database of data of French companies. In the last section I suggest that the different voting techniques and the request for more shareholder engagement that currently takes different forms, can be aligned with the use of modern technology.

2. VOTING TURNOUTS

An important aim of the SRD I was the abolishment of shareholder voting obstacles. All shareholders should be enabled to cast their votes in or before the general meeting of shareholders. Reducing corporate voting hindrances should have a positive effect on the voting turnouts of general meetings. As the costs of

5 Ibid. Recital 2.

voting diminishes, more shareholders will find it beneficial to participate in the voting process as their marginal benefits of voting will exceed the marginal cost of this voting.

Table 1 shows the development of the participation of shareholders in general meetings of index listed companies in nine European countries between 2007 and 2017. These numbers include all voting mechanisms, like attending in person, voting by mail, proxy voting or any other mode.

Table 1: Average AGM Voting Turnouts of Companies of the National Major Index (2007-2017)

	Belgium	France	Germany	Italy	Netherlands	Spain	Switzerland	UK	Mean
2007	45.4	53.5	58.3	49.1	43.4	69.4	43.5	62.0	53.1
2008	45.4	58.9	60.0	61.2	47.5	71.7	48.3	61.8	56.9
2009	48.6	63.7	57.7	59.6	47.9	72.6	51.0	64.5	58.2
2010	46.6	61.5	56.1	58.8	48.9	69.1	53.1	67.2	57.7
2011	46.9	64.7	56.5		58.1	72.2	55.4	69.0	60.4
2012	53.5	65.4	53.7	64.6	63.7	68.3	57.6	70.9	62.2
2013	57.0	65.7	49.9	65.2	62.7	66.2	60.5	71.0	62.3
2014	59.4	64.5	55.1	66.6	68.4	67.6	58.0	70.3	63.7
2015	62.7	65.3	54.9	65.1	70.4	67.8	64.2	71.8	65.3
2016	59.2	65.8	59.9	66.6	70.5	68.2	63.0	72.9	65.8
2017	65.7	65.4	60.0	66.5	72.1	71.7	66.7	73.4	67.7

Sources: Georgeson, Georgeson's 2017 Proxy Season Review, 2017; Georgeson, Georgeson's 2016 Proxy Season Review, 2016; Georgeson, Georgeson's 2014 Proxy Season Review, 2014; Georgeson, Georgeson's 2014 Proxy Season Review UK & Europe, 2007; for specific years Belgium: own research; the Netherlands 2007-2009: Eumedion, Evaluatie AVA-seizoen 2010; Italy and Switzerland 2008-2010: ISS, Voting Results Report Europe 2010.

Table 1 shows that since 2007 the participation rates of shareholders significantly increased from 53 per cent in 2007 to 68 per cent in 2017. This development is not to be found equally in all countries. France experienced soaring participation rates at the end of the last decade. In Spain the average participation rate was already close to 70 per cent since 2007 and it remained stable over time. Germany had relatively high voting turnouts at the start and the end of the research period and lower turnouts in the middle. In Belgium and Switzerland a significantly higher number of shareholders were incentivised to vote. In both countries the average participation turnout increased with more than 20 per cent. A similar evolution is noticed in the Netherlands. While the participation was the lowest among the eight European countries in 2007, it soared to over 72 per cent in 2017, the second highest turnout of all countries in this study. In the latter year, only shareholders in the UK showed more willingness to participate in general meetings.

The data show that the transposition of the SRD I caused some increase in participation rates. I collected the transposition legislation of the European Member States in our sample. While most countries were late in transposing SRD I, almost all transposing legislations came into effect shortly after their enactment and the effects should be noticeable from 2011 onwards. Only in Germany and Belgium, companies had to comply with the new rules from 2010 and 2012 onwards (table 2). In all countries but Germany the year after the transposition of the SRD I the participation rates increased. In two countries, the Netherlands and Belgium, this increase was – with 10 per cent and 6.5 per cent – the largest in the whole decade. The other countries show more modest increases of 2 to 4 per cent. These findings confirm a previous study, making use of a difference-in-difference estimation with companies from Belgium, the Netherlands and France and a control group from the UK. The results of this study confirmed the positive impact of the SRD I on the turnout rates of general meetings.[6]

Table 2. Transposition of the Shareholder Rights Directive I

Country	Transposition SRD I	Effect	Noticeable from
Belgium	20 December 2010	January 2012	2012
France	23 June 2010	October 2010	2011
Germany	30 July 2009	November 2009	2010
Italy	27 January 2010	October 2010	2011
The Netherlands	30 June 2010	July 2010	2011
Spain	2 July 2010	September 2010	2011
UK	2 July 2010	August 2010	2010/11

3. VOTING MODES

Whereas data on the evolution of the participation rates become more and more available, the voting mode that shareholders make use of is not frequently disclosed. In this section I investigate how the shareholders vote at the general meeting of shareholders and whether large and small shareholders make use of different voting techniques. In particular, I focus on the importance of electronic voting. This technique can affect the ways shareholders communicate with each other. For this study I made use of data that French companies disclose. French companies are among the few companies in Europe that publicly disclose this voting information. As far as I am aware no other study has empirically investigated the different voting modes shareholders make use of.

6 A. Lafarre, *The AGM in Europe: Theory and Practice of Shareholder Behaviour*, Emerald Publishing Limited, Bingley 2017, pp. 205-226.

3.1. DATA COLLECTION

First, I hand-collected all documents related to the annual general meetings of companies that are part of the French SBF-120 index of Euronext in July 2018. This index consists of all companies included in the CAC Large 60, which includes the main CAC 40 index, and CAC Mid 60 indices. The SBF-120 includes 9 companies with a statutory seat outside France which were excluded from the sample.[7] Further, the merger between Lafarge and the Swiss Holcim created a group with its seat in Switzerland. Therefore, LafargeHolcim was also excluded from the study. Of the remaining 110 companies the available documents of all AGMs between 2011 and 2018 were collected and studied.

More precisely, I include in my sample those companies that not only disclose the voting turnouts and the results for each resolution but interpreted the following requirement in the transposed French rule extensively:

> "Companies whose shares are admitted to trading on a regulated market publish on the website referred to in Article R. 210-20, within fifteen days of the meeting, the results of the votes including at least: 1° the number of shareholders present or represented at the meeting; 2° the number of votes of the shareholders present or represented at the meeting; 3° For each resolution, the total number of votes related to the number of shares and the proportion of the share capital they represent, the number and percentage of votes in favor of the resolution, the number and percentage of votes against the resolution, as well as the abstentions" (Article R225-106-1 French Commercial Code, own translation).

Those companies not only provided the results of the voting but also identified for each voting method the number of shareholders that made use of this voting method as well as the number of accompanying shares and votes. Table 3 provides in an example of a disclosure document.

7 These companies are: 5 Dutch companies (Airbus, Aperam, Euronext, Gemalto and STMicrolelectronics), 2 Luxemburgish companies (ArcelorMittal and SES), 1 Belgian company (Solvay) and one UK company (TechnipFMC).

Table 3. Example of the Participation Disclosures of the 2018 AGM of Sanofi

SANOFI			
Assemblée Générale Mixte 02/05/2018			
Nombre d'actions composant le capital: 1248988931			
Nombre d'actions ayant le droit de participer au vote: 1247546965			
Partie Ordinaire	Nombre	Actions	Voix
Actionnaires Présents	1058	120163697	239025303
Pouvoirs au président	8180	3211424	5405423
Pouvoirs mandatés à des tiers	797	2671433	5090245
Votes par correspondance	6489	683772009	685096990
Total	16524	809818563	934617961
	Quorum	64,91%	

Source: Voting results 2018 Sanofi AGM (last accessed 27 October 2018)

This disclosure does not always provide information whether voting rights of shares have been suspended, which is the case for the treasury shares. Neither is disclosed the total number of votes attached to the shares. While the total number of issued shares is reported as well as how many shares of participating shareholders have double voting rights, the double voting rights attached to non-participating shareholders is often not divulged. Thereto I also consulted the monthly disclosure document that a listed company must publish in accordance with Article L 233-8-II of the Commercial Code and Article 223-16 of the general regulation of the French supervisory authority AMF in which the total number of voting rights and the total number of shares are disclosed.[8]

Third, I also identified whether the companies have a controlling shareholder or controlling group and if so how many shares and votes this controlling shareholder holds. This information is disclosed in a dedicated section in the annual registration document[9] and in the document of passing a voting or capital threshold[10] as identified in Article L. 233-7 of the Commercial Code.

In total 40 companies divulge all these data for one or more years and 15 companies provided all data for all years.[11] Especially in more recent years, more companies provide in details which voting methods the shareholders have used.

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8 For the example of Sanofi, see https://www.sanofi.com/fr/investisseurs/action-sanofi-et-adrs/action-sanofi/droits-de-vote-et-actions (last consulted 18 March 2019).

9 'Document de Référence'.

10 'Déclaration de franchissement de seuil'.

11 Pernod Ricard not included. This company also disclosed all data but the general meeting 2018 of Pernod Ricard has not yet taken place at the moment of finalizing this study. Annex 1 gives an overview of the companies that disclosed the data, companies in italic provided the data for all years in the sample.

3.2. SHAREHOLDERS AND VOTING MODES[12]

First I analysed how many shareholders participate in a general meeting. In 2011 the average number of shareholders voting at the general meeting of large French companies was over 6,500 (Figure 1). This number dropped over time. In 2018 the average number was 5,500 shareholders. The median number of participating shareholders is significantly lower with 2,300 participants in 2011, decreasing to 1,600 in 2016 and soaring to close to 2,000 in 2018. At the meetings of Michelin more than 30,000 shareholders participated between 2011 and 2016 after which Total took over as with the most frequented meetings with over 40,000 participants in 2017 and 28,000 in 2018. It is not uncommon for French companies to welcome votes of more than 10,000 shareholders. Conversely, at some meetings of these large companies, only 50 shareholders participated.

Figure 1. Evolution of the number of participating shareholders at AGMs of French companies (2011-2018)

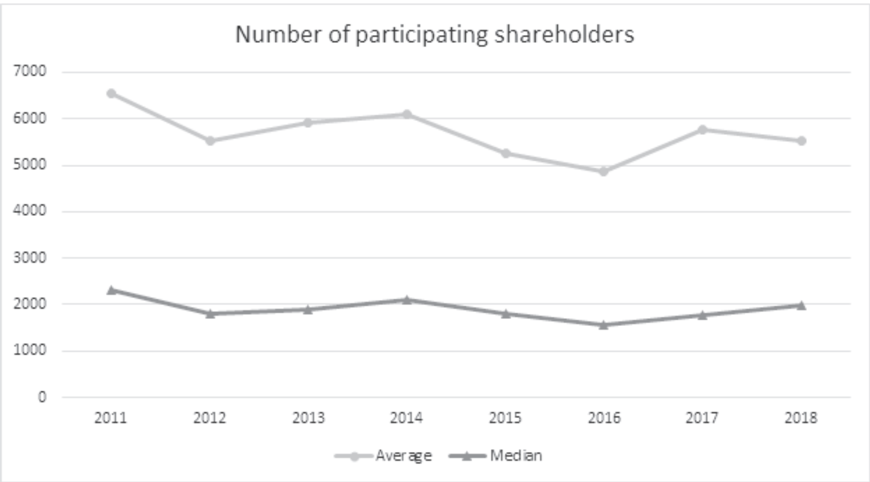


Figure 2 divides the participating shareholders in the four classes according to their voting mode: shareholders that attend the general meeting in person, those that are represented by a third party, shareholders that provided a proxy to the chairman and shareholders that have send their votes by mail.

The first group is in steady decline. While the relative number of these shareholders was close to 20 per cent in 2011 and 2012, in 2018 less than 7 per cent of the shareholders were present *in personam* at the meeting. In absolute numbers, the average number of attending shareholders dropped from 583 shareholders in 2011 to 371 shareholders in 2018. During the research period

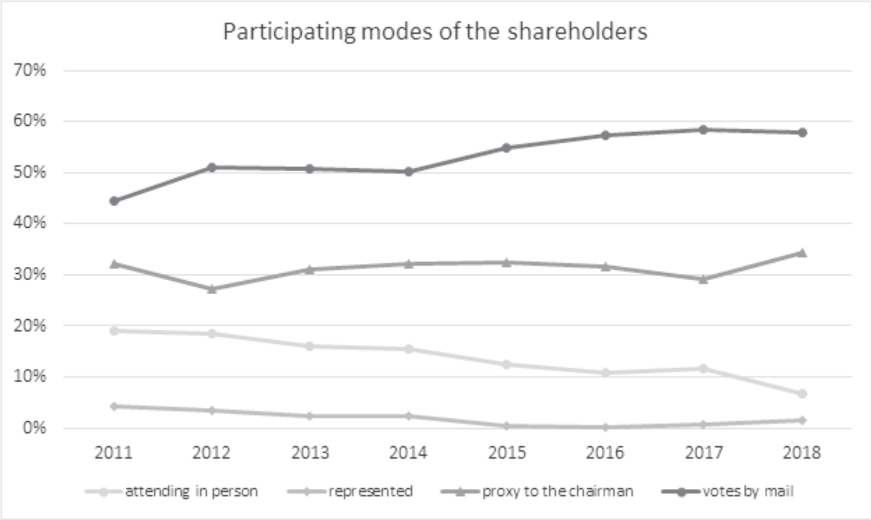
[12] This part is partially based on C. Van der Elst, 'Attending at the General Meeting or Voting by Mail: The French Case' [2018] 4, *RTDF*, pp. 61-67.

the median of attending shareholders dropped from 350 shareholders to 120 shareholders. An absolute low in the number of attending shareholders was found at the 2018 general meeting of Maison du Monde: 2 shareholders were present with a total number of 1,004 shares, representing 0.003 per cent of all participating votes. Meetings where only 10 to 20 shareholders are attending in person are not uncommon.

Authorising a proxy to participate on behalf of a shareholder at the general meeting is not common practice. Only 5 per cent of the shareholders made use of a proxy at the meeting in 2011 and this number dropped to less than 0.5 per cent in 2017, with a limited revival of this mechanism in 2018 when 1.5 per cent of the shareholders used a proxy.

A far more common technique that shareholders of French companies use, is providing a power of attorney to the chairman of the general meeting, who is commonly the chairman of the (supervisory) board of directors. Between 27 per cent (2012) and 34 per cent (2018) of the shareholders empowered the chairman of the board to vote their shares at the general meeting.

Figure 2. Evolution of the use of different voting modes of AGM participating shareholders of French companies (2011-2018)



The most common technique for participating in the general meeting of shareholders is remote voting or voting by mail. Since 2012 over 50 per cent of all shareholders participate in the general meeting of shareholders "from a distance". This number stabilised around 58 per cent between 2016 and 2018. However, the higher average participation via proxy by mail compared to the proxy for the chairman is due to the absence of the use of the latter mode in a number of companies.

3.3. VOTING RIGHTS AND VOTING MODES[13]

The former analysis of the different voting modes used by the individual shareholders is not taking into account the different number of shares and voting rights these shareholders hold. With the disclosure of the number of voting rights and shares for each of the different voting modes, also the preference of the shareholders with different voting blocks can be studied.

Figure 3 introduces the findings with an overview of the total number of voting rights that were participating in the voting process. Overall, both the median as well as the average attendance of shareholders calculated in terms of their voting stakes remained stable over time and varied between 72 per cent and 76 per cent. As the number of participating shareholders dropped, the average voting block of participating shareholders increased moderately. Overall the companies in my sample have a higher voting turnout than the CAC-40 companies in the Georgeson studies (see section 2) that have an average voting turnout of 65 per cent.

Figure 3. Evolution of the voting turnout of the participating shareholders of French companies (2011-2018)

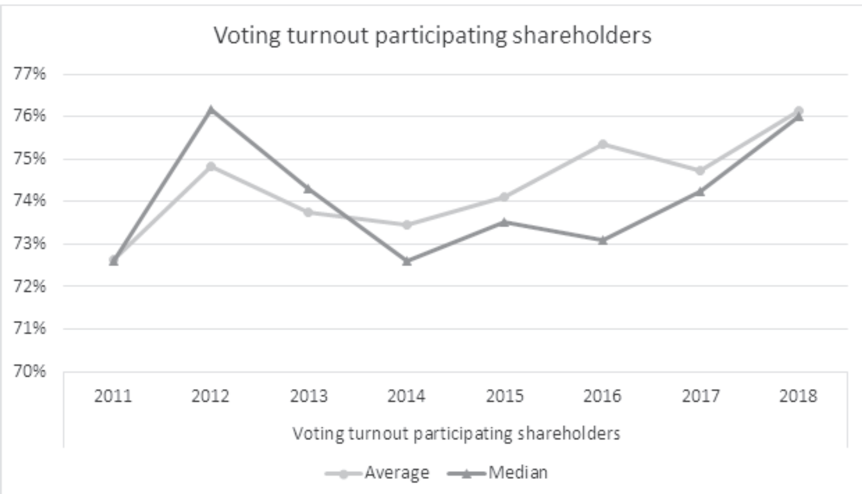


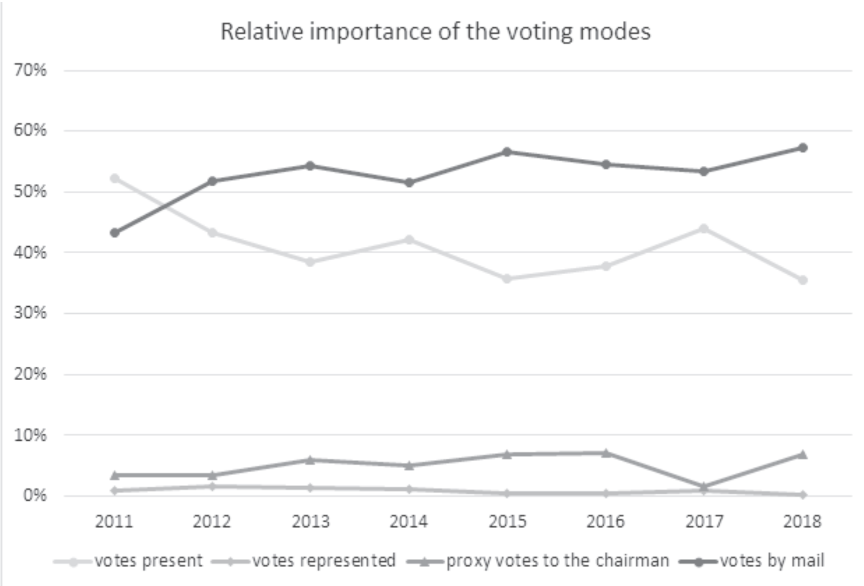
Figure 4 shows that two modes measured by voting turnout are common: shareholders that attend in person and vote at the meeting and shareholders that vote by mail. The two other techniques, making use of a power of attorney for the chairman of the general meeting or being represented at the meeting are, if measured by the number of voting rights, little used.

[13] This part is based on C. Van der Elst, 'Attending at the General Meeting or Voting by Mail: The French Case' [2018] 4, *RTDF*, pp. 61-67.

First, remote voting gains importance over time. While only 43 per cent of all the votes were voted through the channel of mail voting, this percentage increased to 57 in 2018, similar to the average number of shareholders that make use of this voting mode (Figure 2). However, the annual average of voting by mail, which is almost equal to the median per cent, covers significant differences at company level. At the start of the research period shareholders of some companies did not make use of voting by mail at all. Towards the end of the research period there were no longer companies without shareholder voting by mail although even then some companies disclosed that only 5 per cent of all the votes were received by mail. Conversely, already in 2011, in some companies all important shareholders were participating at the meeting by voting by mail and this voting mode is sometimes standing for over 95 per cent of all the votes participating in those meetings. In 2011 half of the companies received more than half of the votes by mail, in 2018 this number soared to two thirds of the companies and in close to 20 per cent of the companies, voting by mail stands for more than 90 per cent of the voting turnout. Most companies with very low levels of voting by mail are companies with a (large) majority shareholder that attends *in personam* the general meeting of shareholders.

Second, the number of voting rights of shareholders attending the meeting in person is decreasing steadily. Standing for more than 50 per cent of all the voting rights participating in the meeting in 2011, the attending shareholders voted on average only 35 per cent of the participating votes in 2018, the median percentage even dropped to 22 per cent of all participating votes. Companies with a controlling shareholder heavily influenced these levels, as all those companies had shareholders attending *in personam* that were voting with close to 90 per cent or more of all participating voting rights.

Figure 4. Evolution of the relative importance of the different voting modes in French companies (2011-2018)



The numbers show that the shareholders that make use of the proxy to the chairman are commonly very small shareholders. With a median of 450 to 1,100 shareholders making use of this voting mechanism, the total voting turnout of this mode stand for 1.7 to 7.2 per cent of the participating votes in the meeting. In 2017, when the approximately 3,300 shareholders provided this power of attorney to the chairman, their votes counted for 1.7 per cent of all the participating votes. Proxies to other participants are negligible in size. Less than 2 per cent of the voting turnout flows from this voting technique.

3.4. VOTING MODES OF CONTROLLING, LARGE AND SMALL SHAREHOLDERS

For 2018, I combined the ownership data with the number of shareholders and the different types of voting modes that shareholders make use of. 31 companies disclosed the different voting modes and the number of participating shareholders per voting mode in 2018. Of this group of companies, eleven companies were controlled by the largest shareholder. The average voting block of this group of controlling shareholders was 70.3 per cent, the average share block 59.2 per cent. Only two of these companies apply the one share one vote rule. One of these companies had a shareholder with a controlling minority voting block of 40 per cent, while all other controlling shareholders hold both a majority share and a majority voting block.

3.4.1. Methodology

As these controlling shareholders hold more than half of the voting rights attached to the attending shares, it is possible to deduct from the data of the different modes of voting, which voting mode the controlling shareholders made use of. An example can illustrate this deductive method. Suppose that a company has issued 100 shares of which 50 have double voting rights (hence there are 150 votes in total) and the controlling shareholder owns 55 shares of which 35 have double voting rights, *ie* she controls 90 votes (60 per cent of all the votes). At the general meeting 110 votes are 'participating', belonging to 3 shareholders that attend in person with 60 shares and 95 voting rights and 2 shareholders vote by mail their 12 shares with 15 votes. It follows from these data that a) the controlling shareholder is participating and b) this shareholder attends in person (with most likely all her shares).

Next, I deducted for companies with a controlling shareholder the number of votes of this shareholder from the total number of votes of the according voting mode this shareholder made use of. From the data result that the controlling shareholder almost always attend the meeting in person. I also deducted its votes from the total number of participating votes at the general meeting. Further, I divided the total number of participating votes by the total number of the participating shareholders (excluding the controlling shareholders). Similarly, for each voting mode I divided the number of votes by the number of participating shareholders. The results of each voting mode are compared with the average voting block of each participating shareholder. We illustrate this process using the aforementioned example. Next to the controlling shareholder there are 4 other shareholders participating in the general meeting, 2 shareholders attend in person holding together 5 shares with 5 votes (resulting with the controlling shareholder in an attendance *in personam* of 60 shares and 95 votes) and 2 shareholders that vote by mail their 12 shares and 15 votes. It results from these presumptions that the average voting block of the non-controlling shareholders is 5 votes ((5+15)/4), the average voting block of the shareholders attending in person is 2.5 votes (which equals to 50 per cent of the overall average voting block of 5 votes) and the average voting block of the shareholders voting by mail is 7,5 votes (which equals to 150 per cent of the overall average voting block of 5 votes). The overall attendance of the non-controlling shareholders is 33 per cent (20 votes of a total of 60 votes belonging to the non-controlling shareholders) of which 25 per cent is voted by shareholders attending the meeting (5 votes) and 75 per cent was voted by mail (15 votes).

Similarly, I calculated all these outcomes for shareholders participating in the general meeting of 2018 of French companies in this sample. Figure 5 (below) is presenting the relative median result of each of the voting modes for all companies as well as the median results of both groups of companies, the group of controlled companies and the group of companies without a controlling shareholder.[14] I discuss the major findings next.

3.4.2. Voting modes of controlling shareholders

The data show that it is common practice that these controlling shareholders attend the meeting in person. Only two controlling shareholders provided a proxy to the chairman of meeting. In one case the majority shareholder is a subsidiary of a Belgian holding company, in the other case the majority shareholder is itself indirectly controlled by a family. The chairman of the listed company is a family member. In a third company, the two concerting and controlling shareholders used different modes to participate in the meeting. One shareholder attended the meeting in person whilst the second shareholder voted by mail.

3.4.3. Voting modes of other shareholders

Figure 5 presents the results of the median voting block of each of the voting modes relative to the average voting block of each participating shareholder. The first part of figure 5 presents the results for all shareholders participating in the meeting. The median voting block of the shareholders using the remote voting tool is the largest and almost 60 per cent larger than the median voting block of all participating shareholders. Shareholders that vote remotely are the larger shareholders, more than likely institutional shareholders. The median value of the number of shares of shareholders making use of electronic voting is close to the average value of 163 per cent and the standard deviation is low. It provides evidence that a large number of the envisaged shareholders hold a comparable voting block.

Next, also shareholders that attend in person the general meeting have a voting block that is 22 per cent larger than the median voting block of all participating shareholders. Contrary to the voting blocks of shareholders making use of remote voting, shareholders attending in person differ substantially from each other: the average voting block of this shareholder is over 220 per cent of the average voting block of all participating shareholders. Both a number of larger shareholders as well as a larger number of the small shareholders attend the general meeting in person.

From the foregoing follows that the two other voting modes attract shareholders with small to very small voting blocks. The median voting block of shareholders that proxy the chairman is only 6 per cent of the overall median, the shareholders that make use of another proxyholder is less than 0.5 per cent.

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14 In the previous example, there are next to the controlling shareholder, 4 shareholders participating,

Only a limited number of larger shareholders make use of both instruments: the average proxy to the chairman is 21 per cent, the average of another proxyholder is 3 per cent, a multiple of the median value.

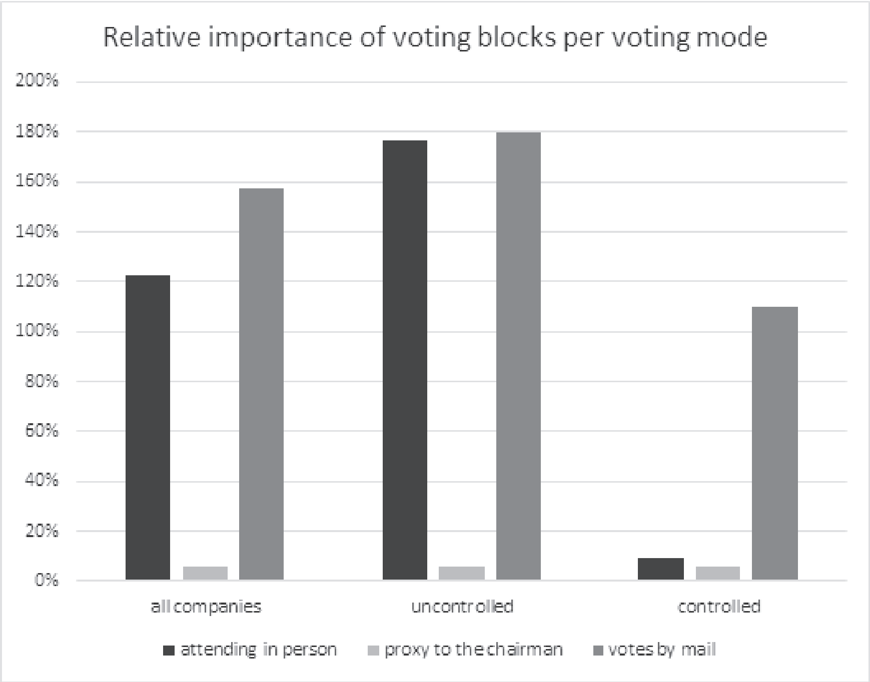
The results for the group of companies with a controlling shareholder and the group of uncontrolled companies show a significant difference for shareholders attending the meeting in person. Next to the controlling shareholder attending in person, the other shareholders attending the meeting have only very small voting blocks: the median voting block of this kind of shareholders is only 9 per cent of the median voting block of all the participating shareholders. It should be noted that there are still some larger shareholders in controlled companies that prefer to attend in person. The average voting block is almost twice the size of the overall average voting block of participating shareholders in this group of companies. This result is due to the participation of a very limited number of other blockholders, next to the controlling shareholder.

In the group of the uncontrolled companies the median voting block of shareholders attending in person of 176 per cent is much larger than the overall average voting block (and an even higher average of 240 per cent). Shareholders with larger voting blocks, of which a number have been disclosed according to the transparency rules, prefer to attend in person in companies without a controlling shareholder.

In the latter group of uncontrolled companies the largest median voting block of participating shareholders belongs to the shareholders that vote by mail. This is even more outspoken the case in the group of the controlled companies where at meetings the median voting block of the shareholders making use of another voting mode is very moderate to negligible. Further, in the former group of uncontrolled companies, the median voting block of shareholders voting by mail is significantly larger than the median voting block of shareholders that vote by mail in controlled companies.

Overall these findings make it possible to differentiate three groups of shareholders that make use of different voting modes. The first group are the large and controlling shareholders. Those shareholders have the common practice to attend the meeting in person. Next, a large group of shareholders with significant voting blocks participate in the meeting through the mechanism of remote voting. Most likely, although it does not follow from my data in this study, it includes the group of the institutional investors. The third group, are small to very small shareholders, more than likely retail shareholders that combine different voting techniques: some attend the meeting in person, others provide in a proxy to the chairman, sometimes and only the very small shareholders authorise another person to vote at the meeting.

Figure 5. Median voting block of each of the voting modes relative to the average voting block of each participating shareholder in controlled (excluding the controlling shareholder) and uncontrolled French companies (2018)



Note: the represented shareholders are not presented in the figure as the results are close to 0 per cent.

4. CORPORATE VOTING MODES, THE AGM AS PLATFORM FOR ENGAGEMENT AND NEW TECHNOLOGIES

In the first section, I referred to the European requirement for institutional investors and the asset managers to develop an engagement policy with information on how these shareholders monitor their investees, exercise their voting rights and conduct dialogues with companies and cooperate with other shareholders.

In the previous sections, I provide evidence that remote voting became the current technique for voting. More than half of the votes are from shareholders that vote *in absentia*. While the largest shareholders seem to be participating and voting *in personam*, large shareholders, most likely institutional investors, make use of the technique of remote voting. These remote votes matter. A recent Dutch case illustrates this finding. When the board of directors of Unilever announced its proposal to simplify the corporate structure and locate its headquarters in Rotterdam, the board cancelled the general meeting between the date of the notice of the meeting and the date of the meeting.[15] It is not unlikely that the company received sufficient 'remote votes' to notice that it was unlikely that the resolution would have passed. Consequently, the technique erodes the 'forum function' of the "physical" general meeting of shareholders as the place where presentations by the board are followed by a fruitful debate and discussion with the shareholders helping to further form their opinion before issuing an informed vote. It comes on top of the current platforms that companies and shareholders already make use of, like telephone calls, e-mails, in person discussions, exchange of letters to inform, communicate, discuss and deliberate.[16] It raises questions as to which instruments the shareholders, and in particular the institutional investors and asset managers will make use to comply with the new requirements in the Shareholder Rights Directive.

I believe that this fragmented approach of voting, cooperating and conducting dialogues leads to suboptimal results and both companies as well as shareholders could easily miss relevant information. However, returning to the old style general meetings with shareholders participating *in personam* cannot reasonably be expected as the way forward in modern times. Thereto, new technological developments should be considered for shareholder engagement. Distributed ledger technology, like blockchain, is certainly one avenue that deserves further study to serve as an alternative tool for the development of the voting and communication process in an accessible, open and transparent way. In a private blockchain, managed by the company or another ' 'administrator' only accessible for shareholders, the company and shareholders that hold sufficient shares can place proposals and all shareholders can communicate and cooperate with each other. It can replace many functions of the general meeting of shareholders.[17]

15 A. Mooney, 'Unilever must learn to listen to mood music' [15 October 2018], *Financial Times FTfm*, 8.

16 For an analysis of the use of these communication techniques see J. McCahery, Z. Sautner and L. Starks, 'Behind the Scenes: The Corporate Governance Preferences of Institutional Investors' [2016], *Journal of Finance*, 2905-2932.

17 C. Van der Elst and A. Lafarre, 'Blockchain and Smart Contracting for the Shareholder Community' [2019] 20 *European Business Organization law Review* 1, 111-137; A. Lafarre and C. Van der Elst, 'Legal Tech and Blockchain for Corporate Governance and Shareholders', in *Research Handbook on Data Science and Law*, Edward Elgar, Cheltenham 2018, 153-181; C. Van der Elst and A. Lafarre, 'Blockchain and the 21st Century Annual General Meeting' [2017] 14 *European Company Law* 4, 167-176.

ANNEX 1. FRENCH COMPANIES IN THE SAMPLE

Accor	**DBV Technologies**	**Maison du Monde**	**Saint Gobain**
Altran Techn.	*EDF*	*Michelin*	*Sanofi*
Amundi	Elior	*Nexans*	Sartorius Sted Bio
Arkema	Elis	*Orange*	Schneider Electric
Atos	Eutelsat	*Pernod-Ricard*	Tarkett
Biomérieux	GTT	Plastic Omnium	Thales
BNP Paribas	Iliad	Renault	Total
Bouygues	*Imerys*	Rexel	*Unibail Rodamco*
Cap Gemini	Legrand	*Rubis*	*Veolia*
Dassault Aviation	LVMH	*Safran*	Worldline

Companies in italic provided all data over the period of study.