



REWARD VALUE

BINDING AND ADVISORY VOTES ON EXECUTIVE REMUNERATION REPORTS:
A COMPARATIVE STUDY ON SAY-ON-PAY LEGISLATION AND PRACTICES IN KEY
JURISDICTIONS

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ABSTRACT

In this study commissioned by Eumedion, the status and efficacy of current Dutch say-on-pay frameworks were evaluated in comparison with several other key jurisdictions. These jurisdictions were that of Australia, France, Switzerland, the United Kingdom and the United States – all so selected for their particularity in say-on-pay regulations. A legal review was carried out for all of the above jurisdictions, whereafter several key differences and areas of influence were identified. Some important legal lacunae were also exposed, as well as potential solutions thereto. Following this evaluation, a statistical analysis of the impact of (binding, advisory, and non-defined) say-on-pay legislation on pay levels was conducted, without rendering any clear empirical results. An additional analysis of voting data across the jurisdictions was performed in order to provide insights into the trends of shareholder dissent – whereby the Netherlands was a clear outlier in terms of negative votes, but on a statistically insignificant scale. Here, the differences in voting trends between shareholders as a whole and proxy advisors was also highlighted. This latter point was provided with more qualitative insight in the market study, which was conducted by use of surveys and interviews with relevant stakeholders – mainly investors, board directors and the VEVO. By way of conclusion, the study posits that incompleteness of the legislation on say-on-pay is not limited to Dutch legislation, and that many of the current issues are visible in other jurisdictions as well. As such, legislative reforms may best be governed from a single-market perspective through, for example, a Shareholders' Rights Directive III. In support of such a project, additional empirical research is recommended to be performed once the current policies implementing the Shareholders' Rights Directive II have come into maturity.



**BINDENDE EN ADVISERENDE STEM OP REMUNERATIE RAPPORTEN:
EEN VERGELIJKEND ONDERZOEK NAAR “SAY-ON-PAY”-WETGEVING EN -DE PRAKTIJK
IN BELANGRIJKE RECHTSGEBIEDEN**

Februari 2023

ABSTRACT IN HET NEDERLANDS

In dit onderzoek - in opdracht van Eumedion - zijn de status en effectiviteit van de huidige Nederlandse 'say-on-pay'-regels geëvalueerd in vergelijking met die in enkele andere belangrijke jurisdicties. De betreffende jurisdicties zijn die van Australië, Frankrijk, Zwitserland, het Verenigd Koninkrijk en de Verenigde Staten – allemaal geselecteerd vanwege hun eigen beleid op het gebied van say-on-pay-regelgeving. Voor alle bovengenoemde rechtsgebieden is een juridische analyse uitgevoerd, waarna een aantal belangrijke verschillen en invloedsgebieden zijn geïdentificeerd. Ook werden enkele belangrijke juridische lacunes blootgelegd, evenals mogelijke oplossingen daarvoor.

In vervolg op deze evaluatie is een statistische analyse uitgevoerd van de impact van (bindende, adviserende en niet-gedefinieerde) 'say-on-pay'-wetgeving op de beloningsniveaus. Dit heeft geen duidelijk empirisch resultaat opgeleverd. Ook werd een aanvullende analyse van het stemgedrag in de jurisdicties uitgevoerd om inzicht te krijgen in de trends van uiteenlopende meningen van aandeelhouders. Nederland valt hierbij op in termen van een negatieve stem, maar op een statistisch onbelangrijke schaal. Ook werden de verschillen in stemtrends tussen aandeelhouders als geheel en 'proxy advisors' bekeken. Dit laatste punt heeft een meer kwalitatief inzicht gekregen in het verdere onderzoek, dat is uitgevoerd door middel van enquêtes en interviews met relevante stakeholders – voornamelijk investeerders, commissarissen en de VEUO.

Concluderend stelt het onderzoek dat de onvolledigheid van de wet- en regelgeving rond 'say-on-pay' niet beperkt is tot de Nederlandse wetgeving. Veel van de huidige onvolkomenheden zijn ook in andere jurisdicties zichtbaar. Als zodanig kunnen wetgevende hervormingen het beste worden geregeld vanuit het bredere ('single market') perspectief, bijvoorbeeld via een Shareholder Rights Directive III. In dit verband is het aan te bevelen eerst aanvullend empirisch onderzoek te doen naar het huidige beleid ter uitvoering van de Shareholder Rights Directive II, nadat de effecten daarvan meer volledig zichtbaar worden.

SUMMARY

Company regulations do not exist in isolation. Local contexts, including institutional arrangements, social phenomena and economic realities have a large impact on the way in which laws are developed. Shareholders' rights are no different; the legal system (civil or common law-based), governance models (shareholder, stakeholder or board-centric), and the extent to which shareholders are well represented as a group, are some of the factors that must be taken into consideration when analysing these rights.

As a result, the nature, applicability, mechanism and consequences of say-on-pay differ greatly across jurisdictions. There is evidence to support the theory that some level of convergence in Europe is taking place as a result of Europeanisation; however, differences remain.

Dutch rules on say-on-pay are, similarly, shaped by their context. Despite being an early adopter of say-on-pay and upgrading these rules in parallel to the developments in their periphery, evaluation of the legal framework itself, and the resulting trends from voting data show that there may still be room for improvement.

A salient challenge with the evaluation of the need for reforms is the lack of sufficiently consequential data on the effectiveness of the current framework to deal with these, and other issues that may arise. The current Dutch say-on-pay framework, following the 2019 amendments, has only been in effect for three voting seasons.

Open-ended issues such as the lack of effective legal consequences following a failed vote on remuneration reports, as well as a lack of sanctions for failing to put the remuneration policy or report to a shareholder vote, are key examples of areas that could become ripe for reform. While (ab)use of these lacunae is not a widespread phenomenon, current offenders are generally shown to repeat infractions. Jurisdictions like the UK may offer interesting solutions to these and other issues.

Some problems may require deeper analysis. One such issue is that of the friction that exists between investors and directors. This is due not only to historical misconduct by corporates, but also the difference in orientation between the respective actors. Say-on-pay rights must necessarily be paired with obligations. The duties of shareholders are usually covered in Stewardship Codes, for the jurisdictions who have them. Engagement forms an integral part of these Codes, not only requiring, but setting the rules for how it should be carried out.

The existing literature on say-on-pay provides mixed views on the effect of say-on-pay on executive remuneration. An analysis carried out as part of this study proved no different: data is limited, and the picture that can be inferred is ambiguous at best, and at worst, statistically insignificant.

Participants in the survey and interviews conducted as part of this study reported high levels of satisfaction with current say-on-pay configurations as they relate to the remuneration policy. There are divergent views on other aspects, such as transparency, engagement and the remuneration report. Opinions on appropriate solutions to issues of engagement were similarly diverse, though the majority support developments in line with that of the UK's model. Support for reform whereby the shareholder's vote on the remuneration report would become binding received mixed responses, with a notable contribution during a focus group adding that this would be out of step with current trends of multi-stakeholderism across Europe, in that it would grant extensive rights to only one group of stakeholders, to the detriment of others. Highly favoured solutions to issues of

transparency included the enhancement of the expertise of the Remuneration Committee, as well as enhanced disclosures with regard to metrics used in evaluating performance.

Potential recommendations for reform centre primarily around soft law instruments, which can be leveraged to enhance the expertise requirements of Remuneration Committees, enhanced transparency in disclosure as well as improved engagement between parties. Other issues such as non-compliance with existing rules, and deadlock, should be dealt with through legislation. In this case, a full-scale analysis is required to evaluate the true need for these interventions, as well as its potential side-effects, and the weighing up hereof. It is important for this evaluation to also include an assessment of the appropriate channels for reform, as current trends dictate that such interventions may best be dealt with at the European level.

SUMMARY OF RECOMMENDATIONS

- Corporate Governance Codes and Stewardship Codes should be amended in order to:
 - Better encourage engagement (obligations) between companies and investors on one hand, but also between stakeholders and companies;
 - Enhance the level of transparency of remuneration practices of companies through detailed disclosure requirements;
 - Improve the expertise of remuneration committees through the imposition of specific criteria for membership.
- Reforms should be pursued at the European level (through Directives or Regulations, as the case may be or through the revision of the Shareholder Rights Directive) in response to certain structural lacunae in current frameworks, including amendments in order to:
 - Provide direct consequences for non-compliance with say-on-pay requirements, without relying on stakeholder civil action;
 - Map out robust mechanisms for situations of deadlock arising from failed say-on-pay votes that both engage with and meet stakeholder and company needs.

SAMENVATTING

Regelgeving staat niet op zichzelf. De maatschappelijke- en juridische lokale context en de economische realiteit, hebben een grote invloed op de manier waarop wetten tot stand komen. Voor de rechten van aandeelhouders is dat niet anders; het rechtssysteem (gebaseerd op civiel of 'common law'), governance modellen (gericht op aandeelhouder, stakeholder, of het bestuur) en de mate waarin aandeelhouders als groep goed vertegenwoordigd zijn, zijn enkele van de factoren waarmee rekening moet worden gehouden bij het analyseren van deze rechten.

Als gevolg hiervan verschillen de aard, toepasbaarheid, het mechanisme en de gevolgen van 'say-on-pay' sterk tussen jurisdicties. Er zijn aanwijzingen die de theorie ondersteunen dat er een zekere mate van convergentie in Europa plaatsvindt als gevolg van Europeanisering; er blijven echter verschillen.

Ook de Nederlandse regels voor 'say-on-pay' zijn gevormd door hun context. Ondanks dat Nederland in een vroeg stadium 'say-on-pay' regels heeft ingevoerd en deze regels parallel aan de ontwikkelingen verder heeft aangepast, blijkt uit evaluatie van het wettelijk kader zelf en de resulterende trends uit het stemgedrag dat er ruimte voor verbetering is.

Een uitdaging bij het beoordelen van de noodzaak van hervormingen is het gebrek aan voldoende relevante gegevens over de doeltreffendheid van het huidige kader. Het huidige Nederlandse 'say-on-pay'-kader is, na de wijzigingen van 2019, nog maar drie stemseizoenen van kracht.

Kwesties, zoals het ontbreken van effectieve juridische consequenties na een negatieve stem op het beloningsrapport, evenals het ontbreken van sancties voor het niet ter stemming brengen van het beloningsbeleid of het beloningsrapport, zijn belangrijke voorbeelden van gebieden die wellicht kunnen worden hervormd. Hoewel (mis)gebruik van deze 'lacunes' geen wijdverbreid fenomeen is, blijkt over het algemeen dat de huidige 'overtreders' wel herhaaldelijk overtredingen begaan. Jurisdicties zoals het Verenigd Koninkrijk kunnen interessante oplossingen bieden voor deze en andere kwesties.

Sommige problemen vereisen mogelijk een diepere analyse. Een voorbeeld van zo'n probleem is dat van het gebrek aan wederzijds begrip dat bestaat tussen investeerders en bestuurders. Dit is niet alleen te wijten aan conflicten uit het verleden, maar ook aan het verschil in belangenafwegingen tussen partijen. Say-on-pay-rechten moeten noodzakelijkerwijs gepaard gaan met verplichtingen. De verantwoordelijkheden van aandeelhouders worden meestal behandeld in 'Stewardship Codes'. Onderlinge afstemming, ofwel de dialoog, ('engagement') vormt een integraal onderdeel van deze Codes, die dit niet alleen vereisen, maar ook regels stellen voor de uitvoering hiervan.

De bestaande literatuur over 'say-on-pay' geeft een divers beeld over het effect van 'say-on-pay' op de beloning van bestuurders. Een analyse die als onderdeel van dit onderzoek is uitgevoerd, geeft geen ander beeld: de gegevens zijn beperkt en het beeld dat kan worden afgeleid is voor meerdere interpretaties vatbaar en statistisch irrelevant.

Deelnemers aan de enquête en interviews die als onderdeel van dit onderzoek zijn gehouden, gaven aan zeer tevreden te zijn met de huidige say-on-pay regels aangaande het beloningsbeleid. Over andere aspecten, zoals transparantie, dialoog ('engagement') en het remuneratierapport lopen de meningen uiteen. De meningen over oplossingen waren eveneens divers, hoewel de meerderheid ontwikkelingen in overeenstemming met die van het Britse model steunt. Steun voor hervorming waarbij de stem van de aandeelhouder over het remuneratierapport bindend zou worden, kreeg gemengde reacties. Tijdens een focusgroep sessie werd hieraan toevoegd dat dit niet in lijn zou zijn

met de huidige trends van multi-stakeholderisme in heel Europa, in die zin dat het de rechten uitbreidt van slechts één groep belanghebbenden ten nadele van anderen. Sterke aanbevelingen voor het oplossen van transparantiekwesties waren onder meer de verbetering van de expertise van het Remuneratiecomité, evenals verbeterde transparantie in het publiceren van maatstaven die worden gebruikt bij het evalueren van prestaties.

Potentiële aanbevelingen voor hervormingen zijn voornamelijk gericht op 'soft law'-instrumenten, die kunnen worden gebruikt om de expertisevereisten van remuneratiecommissies te verbeteren, de transparantie in rapportages te vergroten en de dialoog tussen partijen te verbeteren. Andere kwesties, zoals niet-naleving van bestaande regels en lacunes, moeten via wetgeving worden geregeld. Hiervoor is een volledige analyse nodig om de afweging te kunnen maken van de werkelijke noodzaak van deze interventies en de mogelijke neveneffecten. Het is belangrijk dat er daarbij ook wordt gekeken naar de meest geschikte manier om te hervormen. De huidige trends laten zien dat dergelijke interventies wellicht het best op Europees niveau kunnen worden aangepakt.

SAMENVATTING VAN DE AANBEVELINGEN

- Het aanpassen van Corporate Governance Codes en Stewardship Codes teneinde:
 - De dialoog ('engagement') tussen bedrijven en investeerders enerzijds, maar ook tussen stakeholders en bedrijven, te stimuleren;
 - Het niveau van verslaggeving (beloningsverslag) van bedrijven te verbeteren door middel van gedetailleerde transparantie vereisten;
 - De deskundigheid van remuneratiecommissies te vergroten door het opleggen van specifieke criteria.
- Als antwoord op structurele lacunes in de huidige regelgeving, kunnen hervormingen op Europees niveau nagestreefd worden (door middel van richtlijnen of verordeningen, of door de herziening van de Shareholders Rights Directive), waarbij:
 - Rechtstreekse gevolgen verbonden worden aan niet-naleving van de vereisten van "say-on-pay" regelgeving (zonder een civiele procedure te hoeven starten);
 - Geanalyseerd wordt welke aanvullende regelgeving wenselijk en effectief is om de onvolkomenheden die voortkomen uit een negatieve stem op het beloningsbeleid of beloningsverslag te adresseren. Dergelijke regelgeving dient te voldoen aan de behoeften van alle belanghebbenden.

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INTRODUCTION

1.1 Background and assignment

Executive remuneration is a topic of growing societal debate. Following a series of high-level scandals in the early 2000s, research shows that corporate managers are generally regarded with feelings of mistrust not only by investors but also society at large.¹ Over the past few years, a series of legislative reforms has taken place and continues to take place, aimed at re-establishing transparency and trust between companies and their stakeholders. The consensus across sectors appears to posit that companies can be more successful if led by trustworthy managers.²

Despite an increase in the study of impact of executive remuneration on corporate governance over the past few years, the analysis provided thus far regarding this area has been widely regarded as insufficient.³ Alongside commentary that sketches executive remuneration to be “the most egregious corporate governance failure of the 20th century”⁴, increased negative voting on remuneration has brought the interests of shareholders with regards to “Say-on-Pay” sharply into public focus.⁵

In that same spirit, Eumedion has concluded that non-executive directors of Dutch-listed firms do not take sufficient responsibility for, nor engage action to address the concerns of shareholders when a negative advisory vote on the remuneration report is issued. Thus, it is deemed necessary to examine the situation from the viewpoint of other jurisdictions, which impose stricter rules with regards, specifically, to the shareholder vote on the annual remuneration report. To that end, Eumedion has commissioned Reward Value to assess say-on-pay legislation in several key jurisdictions.

Specifically, Eumedion observes that say-on-pay legislation in jurisdictions such as France, Switzerland, the UK and Australia provide more content to shareholders’ rights. On the recommendation of various stakeholders, Reward Value has increased the range of this study to include the United States as an additional point of reference.

¹ K Naughton (2002) “The CEO party is over”. *Newsweek*. Accessible at : <https://www.newsweek.com/ceo-party-over-141319> ; Harris Interactive, Inc (2002) “Harris 2002 Public Opinion Survey, study no. 16829”. *Dataverse*. Accessible at

<https://dataverse.unc.edu/dataset.xhtml?sessionId=72653be68370625763177c501206?persistentId=hdl%3A1902.29%2FH-16829&version=&q=&fileTypeGroupFacet=%22Data%22&fileAccess=Public&fileTag=&fileSortField=&fileSortOrder=>; K Keszowski (2003). “Building Corporate Corruption: Building Public Confidence During Times Of Mistrust”. *Seton Hall University Dissertations and Theses (ETDs)*. 1162. pp1-2. S Khlifi and G Zouaria (2022) “The moderating role of good corporate governance on the relationship between corporate social responsibility and real earnings management”. *Journal of Accounting and Management Information Systems*. 21(4). p525.

² T Ahrens (2008) “The hidden ethics of corporate governance and the practical uses of corporate governance codes: A commentary on Bhimani”. *JMG*. 12(2). p151.

³ Mumu et al. (2022) “Corporate governance and remuneration: a bibliometric analysis”. *JABES*. 28(4).

⁴ Mason et al. (2017) “Say-on-Pay: Is Anybody Listening?” *Multinational Finance Journal*. 20(4). p281.

⁵ CG Lytics (2019) “Making their voices heard: Shareholders increase opposition to executive pay”. *CG Lytics Blog*. Accessible at <https://www.cglytics.com/the-increasing-trend-of-shareholder-opposition-to-executive-pay/>; Minerva Analytics (2021) “Executive Pay Watch: How Shareholders Voted At UK Top 350 Companies”. *Wealth Briefing*. Accessible at <https://www.wealthbriefing.com/html/article.php?id=192170#.YvYhTuxBxB0>

1.2 Outline of research methodology

The bottom-line question of the research is whether Dutch say-on-pay legislation is fit for purpose or should be amended in line with developments in other jurisdictions. One-to-one cross-country analyses are often complicated by the intricacies of the legal, economic and societal realities that impact on corporate behaviour. In order to come to a conclusion on this question, Reward Value made use of triangulation: an approach combining different research methodologies, which aids in the development and reinforcement of the evidence base. The theory behind triangulation is that where research outputs from different methodologies are concordant, the credibility of conclusions drawn from these data points is increased. Such an approach is especially relevant in cross-country empirical corporate governance research as differences in governance outcomes (here: remuneration issues) may be caused by a variety of variations in the legal and regulatory frameworks (here: unrelated to say-on-pay).

The Legal Review was established through means of qualitative legal analysis of primary and secondary sources available. These sources are discussed in more detail under section 2.1 (*Definitions and Scope*). Comparing legal systems requires textual analysis of the laws and norms at hand, as well as an evaluation of the historical, societal and economic context in which these frameworks developed. As reality can also often differ from what is prescribed, a section dedicated to the (non-)functioning of laws and norms in practice is included.

Theoretical frameworks are strengthened through data driven empirics. For this study, Reward Value has leveraged its strategic partnerships in order to access important data on firm market and accounting outcomes, compensation packages, board members and shareholder voting behaviour. These information points provide additional insights on the effects of binding say-on-pay legislation.

The study seeks to further reinforce the findings with a survey. This survey is shared with institutional investors, non-executive board directors and companies (through corporate secretaries) to obtain a balanced view of related parties. The survey provides insights from the perspective of all respective stakeholders. Reward Value together with SEO designed the survey and, through SEO, distributed this survey. The survey was open for a period of twenty-three days, between 5 and 28 October 2022.

As a final point of inquiry, and to enhance the results of the survey, focus groups representing different stakeholder categories (corporations, non-executive directors, investors, and academics) were invited to share their insights on binding say-on-pay. Focus groups took the form of a semi-structured interview, focusing on broad thematic categories rather than predefined lines of questioning. The participants were drawn from the network of Reward Value and included one Dutch academic, one representative from the Dutch- and French associations of listed companies, respectively, twenty-five representatives of institutional investors and seven non-executive directors. Some participants, such as those from the corporate base and institutional investors, are representatives of a larger stakeholder base, while academics and non-executive directors represent only their individual opinion and expertise.

1.3 Challenges

Undertaking research inherently involves several challenges, some common to all, and some specific to the topic at hand.

A common issue that arises in the conducting of research is the question of whether methodologies such as surveys and interviews deliver sufficiently representative data. The anonymous nature of

the survey conducted in this study prevents a full analysis of the representativeness of the results. 30 participants completed the survey in full: fifteen investors, twelve non-executives and three other participants (e.g., executive directors). In keeping with these considerations, survey results were interpreted in conjunction with, and through the lens of, the other sources of information in the study.

Specific issues associated with the research question were also present. One significant challenge is that of the relative novelty of the laws (both hard and soft) being evaluated. Policy evaluation typically assesses three areas: output, outcome and impact. While outputs, the actual instrument used to enact the policy, can be evaluated on an “immediate” basis, evaluating for outcomes and impacts require an analysis of the audience targeted by the policy over a period of time sufficiently long so as to yield data points as the policy takes effect.⁶ Dutch say-on-pay in its current form has existed for only three voting seasons, having come into force partially by 1 December 2019, and fully by 3 September 2020.⁷ This limited time period poses a significant challenge to the extent and quality of data that can be produced for the Dutch experience.

1.4 Reader’s Guide

The report is designed to be read sequentially. As such, each section is organised in a way that builds on the knowledge of the former. This first chapter details the background to the research, the task put to Reward Value by Eumedion, as well as the research methodology. It concludes with this Reader’s Guide.

The second chapter, entitled Legal Review, sets forth an analysis of the legal frameworks in the jurisdictions of the Netherlands, France, Switzerland, the United Kingdom, the United States and Australia. This analysis contains a summary of the historical development of say-on-pay, an in-depth review of the legal particularities of each jurisdiction, as well as a section exploring the (non-)functioning of these frameworks in practice. It concludes with a checkpoint, wherein the most salient aspects of the Legal Review are reiterated for the reader’s convenience.

The third chapter serves to discuss the foundation and results of the data analysis exercise. In this chapter, a brief literature review is provided in order to outline the state of the art, following which a description of the data set and methods is provided. The results of the data analysis, as well as a discussion of these results, follows.

The fourth chapter, entitled Survey and Focus Groups, is the final material chapter. The first section of this chapter discusses the results of the survey and provides visual insight into the responses. The second section provides a summary of the outcomes of the focus groups.

The final chapter serves to present the reader with a conclusion. Here, Reward Value provides a summary of the key takeaways from the current research, as well as its recommendations regarding possible reform of say-on-pay in the Netherlands.

⁶ E Vedung (2017) *Public Policy and Program Evaluation*. p20 ; S Smismans (2020) “Policy Evaluation in the EU: The Challenges of Linking *Ex Ante* and *Ex Post* Appraisal”. *European Journal of Risk Regulation*. 6(1). p7.

⁷ Besluit van 25 november 2019 tot vaststelling van het tijdstip van inwerkingtreding van de Wet van 6 november 2019 tot wijziging van Boek 2 van het Burgerlijk Wetboek, de Wet op het financieel toezicht en de Wet giraal effectenverkeer ter uitvoering van Richtlijn 2017/828/EU van het Europees Parlement en de Raad van 17 mei 2017 tot wijziging van Richtlijn 2007/36/EG wat het bevorderen van de langetermijnbetrokkenheid van aandeelhouders betreft (PbEU 2017, L 132) (Stb. 2019, 423).

LEGAL REVIEW

The legal analysis consists of a comparative overview of key jurisdictions in the global financial market and is aimed at providing context for the evolution of shareholders' voting rights with regards to executive remuneration reports.

As a primary aim, this section will provide analysis into the way that different approaches have influenced shareholders' rights with regard to remuneration reports over a set time frame, established with regards to the implementation of say-on-pay legislation in the various highlighted jurisdictions.

This chapter is structured as follows. In section 2.1 the scope and definitions are given. In the following section the historical development of say-on-pay legislation is addressed. Section 2.3 discusses the factors influencing say-on-pay legislation as driven by different regional governance models. Subsequently, section 2.4 will address the current say-on-pay legal frameworks in the in-scope jurisdictions, and section 2.5 will discuss these legislations in practice and discusses some concerns with the existing frameworks. In section 2.6 a short summary is given of this paragraph for easier reference.

2.1 Definitions and Scope

2.1.1 Terminology

A remuneration policy is an internal document that provides information on the remuneration practices within a company or organisation. It describes the details of each remuneration component, the performance indicators linked to the remuneration envisaged, as well as any other information prescribed by law or the articles of association.⁸ This report is limited to the executive remuneration policy of listed companies.

A remuneration report, which forms an integral part of the company's annual report, is an account of the compensation received by executives. Its content and form vary depending on the jurisdiction, though common trends and minimum disclosures can be observed across legal systems.⁹

Choices on board structure differ across jurisdictions. In one-tier models, elected officials fulfilling executive and supervisory roles sit together on one committee. In two-tier models, these officials form part of two separate committees ; the "board" performs executive functions, and the "supervisory board": functions of oversight.¹⁰ In Australia, the United Kingdom and the United States, listed companies, in line with the Anglo-American tradition, typically function under a one-tier structure.¹¹ In France, Switzerland and in the Netherlands, in conformity with the Continental

⁸ Human Resources Management Handbook (n.d.) "Compensation Policy". *HRM Handbook*. Accessible at <https://hrmhandbook.com/hrp/compensation/policy/>.

⁹ S Haag (n.d.) "The remuneration report: transparency from a variety of perspectives". *PwC*. Accessible at [https://www.pwc.ch/en/insights/disclose/23/the-remuneration-report-transparency-from-a-variety-of-perspectives.html#:~:text=Aremuneration%20report%20\(also%20known%20as,at%20the%20annual%20general%20meeting](https://www.pwc.ch/en/insights/disclose/23/the-remuneration-report-transparency-from-a-variety-of-perspectives.html#:~:text=Aremuneration%20report%20(also%20known%20as,at%20the%20annual%20general%20meeting).

¹⁰ Kamer van Koophandel (n.d.) "One-tier or two-tier board as a governance model". *Business.gov.nl*. Accessible at <https://business.gov.nl/running-your-business/business-management/governance/one-tier-or-two-tier-board-as-a-governance-model/>

¹¹ D Wightman & H Richardson (2021) "At a glance: responsibilities of company boards in Australia". *Lexology*. Accessible at <https://www.lexology.com/library/detail.aspx?g=395542d8-a197-4261-85e6-e0e6dbf1c6a1> ;

European trend, companies may elect to adopt a two-tier structure.¹² In the Netherlands, the majority of companies adopt a two-tier structure.¹³ *Structuurvenootschappen* are two-tier by statutory default.¹⁴

The typical configuration for Anglo-American jurisdictions is that of a one-tier board model, which comes as a result of the principle of shareholder primacy. This is opposed to the two-tiered model that typically prevails in Continental Europe, whereunder stakeholders are said to be better represented.¹⁵

For clarity purposes, when the term “executives” is used, members of the management board are intended. When the term “directors” is used, non-executives or members of the supervisory board are intended.

Shareholders’ voting on remuneration – as a whole, or separately on the report and policy, is not uniform across jurisdictions. As will be explored in detail below, the way in which SOP is envisaged and enforced differs greatly according to the “political, institutional, cultural, economic and social factors that shape local governance and compensation practices”.¹⁶ Corporate literature generally corroborates this fact:

“Not only technologies and markets shape [organisational] culture, but by the cultural preferences of leaders and employees, national culture has a strong impact on people’s interpretations, understandings, and assessment of those with whom they work. Cultural values are important for interpersonal trust, teamwork, and the role of women in the workplace, among other issues”¹⁷

An advisory shareholder vote is non-binding in nature, meaning that company behaviour can deviate from its outcome.¹⁸ By contrast, a legally binding vote compels its assignees to the action prescribed by the vote’s outcome.¹⁹ The consequences of each vote across jurisdictions are not uniform, and many different mechanisms can influence the way in which a company can take action following a negative advisory or binding vote, as will be discussed in more detail below.

P Davies (2013) “Corporate Boards in the United Kingdom” in P Davies et al. (2013) *Corporate Boards in Law and Practice: A Comparative Analysis in Europe* explains that this is not a written rule in the United Kingdom, but a generally accepted practice.

¹² Code de Commerce. L225-57 – 58 ; Burgerlijk Wetboek. arts 2:129a, 2:239a ; L Olgiati & M Weber (2020). “Global Practice Guide: Corporate Governance Switzerland”. *Chambers Global Practice Guide*. Accessible at https://www.swlegal.com/media/filer_public/d7/70/d77090ff-b219-4e36-a669-7c7bba5634f1/chambers_corporate_governance_2020_027_switzerland.pdf.

¹³ Kamer van Koophandel (n.d.) “One-tier of two-tier board als bestuursmodel”. *Ondernemersplein KVK*. Accessible at <https://ondernemersplein.kvk.nl/one-tier-of-two-tier-board-als-bestuursmodel/>.

¹⁴ Burgerlijke Wetboek. arts 2:153(2), 2:263(2).

¹⁵ D Block & A Gerstner (2016) “One-Tier vs. Two-Tier Board Structure: A Comparison Between the United States and Germany”. *Comparative Corporate Governance and Financial Regulation*. 1. pp 16-17.

¹⁶ Mason et al. p57.

¹⁷ M A Khan & L Smith Law (2018) “The Role of National Cultures in Shaping the Corporate Management Cultures: A Three-Country Theoretical Analysis” in J Vveinhardt (ed.) *Organizational Culture*. p36.

¹⁸ D Levit & N Malenko (2011) “Nonbinding Voting for Shareholder Proposals”. *The Journal of Finance*. 66(5). p2.

¹⁹ *Idem*. p27.

2.1.2 Jurisdictions and Sources

The jurisdictions presented in this report include Australia, France, the Netherlands, Switzerland, the United Kingdom (“UK”) and the United States (“US”). Half of the jurisdictions (France, the Netherlands and Switzerland) follow a civil law system. The other half (Australia, the UK and the US) are based on common law. In civil law jurisdictions, laws are generally formalised into a code: “a body of general principles carefully arranged and closely integrated”²⁰, whose drafting and implementation notes, as well as parliamentary discussions, are regarded as key for interpretation. On the other hand, common law jurisdictions, while still making statutes, rely more heavily on law-making through “the rules that could be generalised out of [court] decisions”.²¹ A direct comparison can be drawn through the nature of legislation versus the nature of case law : in the civil law tradition, codes prescribe general rules and jurisprudence is utilised to clarify particular situations that arise from those laws; under common law, jurisprudence prescribes the general rules, and statutes are enacted to provide specific rules for specific situations.²² Even as common law jurisdictions have increasingly taken to codifying their law, they remain classified as common law, due to the importance attributed to court decisions and their ability to bind future court decisions of the same nature.²³ While the configuration of a legal system has interesting consequences for how shareholder rights might be categorised or enforced, literature has shown that it holds no bearing on the strength of shareholder rights, nor their engagement.²⁴

The sources utilised by this report include both hard and soft (guidance) law. The former category of law includes legislation such as Companies Acts, or Codes of Obligations, to mention only a few. The latter category, in this case, concerns primarily Corporate Governance Codes, which are by and large applied through the principle of “comply or explain”. Originated in the UK legal system, the “comply or explain principle” foresees that companies in scope must conform with the recommended action or provide an account of why they have chosen not to do so.²⁵

The above-mentioned jurisdictions have many important differences, both institutional and jurisdictional (as illustrated above). However, it is not without merit to note the increasing, albeit slow process of ‘Europeanisation’ of company law across the European continent, of which four of the jurisdictions under investigation form part.²⁶ ‘Europeanisation’ is defined as a “a process of domestic adaptation to European regional integration”²⁷ ; in sum, a harmonisation of norms and standards, especially of a legal and political nature, across European countries.

²⁰ J Dainow (1966) “The Civil Law and the Common Law: Some Points of Comparison”. *Am. J. Comp. Law.* 15(3). p424.

²¹ *Idem.* p425.

²² *Idem.* p425-426.

²³ T M Fine (1997) *American Legal Systems: A Resource and Reference Guide*. Accessible at <https://www.lexisnexis.com/en-us/lawschool/pre-law/intro-to-american-legal-system.page>.

²⁴ C van der Elst (2022). “Shareholder Engagement and Corporate Voting in Action: The Comparative Perspective” in Harpreet et al. (eds.) *The Cambridge Handbook of Shareholder Engagement and Voting*. p504.

²⁵ V H Ho (2017) “‘Comply or Explain’ and the Future of Non-financial Reporting”. *Lewis & Clark Law Review* . 317. p321.

²⁶ A S Reid (2003) “The Increasing Europeanisation of Company Law”. *Business Law Review*. 24(7). p165.

²⁷ M P Vink & P Graziano (2007) “Challenges of a New Research Agenda” in P Graziano & M P Vink (eds.) *Europeanization : New Research Agendas?* . p7.

Table 2.1 Corporate Governance Soft Law

Corporate Governance Soft Law						
	Netherlands	Switzerland	France	Australia	UK	US
Name of instrument	Dutch Corporate Governance Code, 2022	Swiss Code of Best Practice for Corporate Governance, 2016	APEF-MEDEF Code, 2020	The Corporate Governance Principles and Recommendation , 2019	UK Corporate Governance Code, 2018	N/A
Drawn up by ²⁸	Investor community, Unions, Stock Exchange, and business community	Business community	Two associations representing companies	Investor and business community	Accounting community	N/A
Nature	Self-regulatory	Self-regulatory	Self-regulatory	Self-regulatory; Contractual	Self-regulatory	N/A
Applicable to	Listed companies	Public limited companies	Listed companies ²⁹	Listed companies	Listed companies	N/A
Mechanism	“Apply or explain”	“Comply or explain”	“Comply or explain”	“If not, why not” (Comply or explain)	“Comply or explain”	N/A
Consequences of deviation from Code	None, if explained	None, if explained	None if explained (name and shame if considered bad practice)	None, if explained	None, if explained	N/A
Consequences of non-compliance with Code	Shareholder initiative	Shareholder initiative	Name and shame	Shareholder initiative; possible contractual consequences due to Listing Requirements	Shareholder initiative	N/A

²⁸ Taking into consideration the support of other stakeholders during consultation periods, such as academics and other interested parties, as the case may be.

²⁹ The High Committee in the case of Airbus on Thomas Enders confirmed that listed companies in France who are registered elsewhere are not bound to follow the APEF-MEDEF Code, and may rather elect to follow the Corporate Governance Code of the country they are registered in.

2.2 Historical development of Say-on-Pay

Say-on-pay can be said to have taken its first steps in the United States. In 1992, the Securities and Exchange Commission (“SEC”) published a communication detailing a reform of proxy rules, under which shareholders were entitled to bring proposals regarding executive remuneration.³⁰

Ultimately, this development generated limited impact due to other SEC provisions which restricted the types of proposals that could be brought forward in practice. For example, a broad prohibition of proposals that “interfered with a manager’s right to conduct the company’s ‘ordinary business’” ended up stifling this type of shareholder engagement in many cases.³¹

In 2002, the United Kingdom became the first country to legislate on the shareholder’s right to vote on executive remuneration.³² This first iteration of say-on-pay, introduced by the Directors’ Remuneration Report Regulations, inserted into the Companies Act³³ a duty on directors to produce a remuneration report and for this report to be put to a vote by “members” (shareholders).³⁴ This vote was advisory in nature, as illustrated by the section below, which persists to this day:

“(8) No entitlement of a person to remuneration is made conditional on the resolution being passed by reason only of the provision made by this section”³⁵

In 2003, say-on-pay was introduced onto the Dutch scene by way of the Corporate Governance Code (“Tabaksblat”). The new principle, which would be enforced by means of the Code’s recently imported “comply or explain” approach, described a shareholders’ vote on the remuneration policy.³⁶ A few months later, the Civil Code (*Burgerlijk Wetboek*) introduced into hard law a provision requiring the remuneration policy of a listed company to be “adopted” (*vastgesteld*) by shareholders.³⁷

Australia was the next major economy to follow. In 2004, the CLERP 9³⁸ reform of the Corporations Act³⁹ inserted an advisory shareholders’ vote on the remuneration report. Also in 2004, the European Commission (“EC”) began issuing guidance on executive remuneration.⁴⁰ Several years later, following the financial crisis in 2008, the European Commission issued a further Recommendation to Member States, stressing that: “The structure of director’s remuneration should promote the long-term sustainability of the company and ensure that remuneration is based on performance”.⁴¹ A document published by the EC in 2010 reported on the progress of Member States in implementing the recommended guidelines into their national legal system.⁴² At this point, nine

³⁰Securities and Exchange Commission (1992). “Regulation of Communication Among Shareholders”. Securities Exchange Act of 1934. Release no. 31,326, 57 Federal Register 48,276, Oct.

³¹Mason et al. (2016) “Say-on-Pay: Is Anybody Listening?”. *Multifinance Journal* , p285.

³²The Directors’ Remuneration Report Regulations, 2002. Accessible at <https://www.legislation.gov.uk/ukxi/2002/1986/contents/made>

³³Companies Act 2006.

³⁴ The Companies (Directors’ Remuneration Policy and Directors’ Remuneration Report) Regulations 2019. arts 3,7.

³⁵ Directors’ Remuneration Report Regulations. art 7(8) ; Companies Act. art 439(5).

³⁶ Nederlandse Corporate Governance Code, 2003. Principle II.2 ; Burgerlijk Wetboek. art 2:391(5).

³⁷ Burgerlijk Wetboek. art 2:135(1).

³⁸ Corporate Law Economic Reform (Audit Reform & Corporate Disclosure) Act, 2004.

³⁹ 2001.

⁴⁰ 2004/913/EC ; 2005/162/EC.

⁴¹ 2009/385/EC para 6.

⁴² Report on the application by Member States of the EU of the Commission 2009/385/EC Recommendation (2009 Recommendation on directors’ remuneration) complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies.

of twenty-seven had “taken action” with regards to shareholder votes on compensation, either through national legislation or through corporate governance frameworks.⁴³

In the US in 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act⁴⁴ implemented a triannual advisory shareholder vote on remuneration packages, as well as a separate advisory vote on golden parachutes (an agreement between a company and executives on termination of their employment as a result of a merger or acquisition).⁴⁵ This same year, Australia undertook another large reform of their Corporations Act. The Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill⁴⁶ was legislated for the precise and sole purpose of introducing what has come to be known as the “two strikes rule” which will be addressed later in this report.⁴⁷ An explanatory memorandum on the amendment provides that these reforms were enacted in the aims of :

“empower shareholders to hold directors accountable for their decisions on executive remuneration, to address conflicts of interest in the remuneration setting process, and to increase transparency and accountability in executive remuneration matters”⁴⁸

The UK, forming part of the nine member states who had taken steps in implementing the EC’s guidelines on remuneration, went a step further in 2013, following the Netherlands’ lead in introducing a binding vote on remuneration policies.⁴⁹ These developments also impacted on countries outside of the EU.

The “Minder Initiative” of 2013, for example – a national referendum proposing reform on several key issues of corporate governance, resulted in the constitutional enshrinement of say-on-pay in Switzerland.⁵⁰ France, having attempted several legislative reforms on the topic prior, first succeeded in regulating say-on-pay through soft law.⁵¹ The AFEP-MEDEF Corporate Governance Code, enforced through the “comply and explain” mechanism, recommended an advisory vote on directors’ individual remuneration.⁵² This approach was said to have worked “rather satisfactorily” for some time.⁵³ However, the voting outcomes of AGMs held in 2016 demonstrated that more needed to be done. In this year, the State as majority shareholder voted against two remuneration packages, the outcome of which was ignored by the company.⁵⁴ Some few months later, the

⁴³ *Idem.* para 2.

⁴⁴ 2010.

⁴⁵ sec 951 ; A Hayes (2021) “Golden Parachutes: Definition, Examples, Controversy”. *Investopedia*. Accessible at <https://www.investopedia.com/terms/g/goldenparachute.asp>.

⁴⁶ 2011.

⁴⁷ *Idem.* art 9. ; Monem & Ng (2013) “Australia’s ‘two-strikes’ rule and the pay-performance link: Are shareholders judicious?”. *Journal of Contemporary Accounting and Economics*. 9(2). p240.

⁴⁸ Parliament of the Commonwealth of Australia (2011) “Corporations Amendment Act (Improving Accountability on Director and Executive Remuneration) Bill 2011: Explanatory Memorandum”. Accessible at https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4520_ems_8c4bda75-efce-4fa8-9515-e0e829811fbc/upload_pdf/352601.pdf;fileType=application%2Fpdf.

⁴⁹ Enterprise and Regulatory Reform Act 2013. art 79.

⁵⁰ Mason et al. p287 ; Initiative populaire fédérale 'contre les rémunérations abusives'. 2013. Accessible at <https://www.bk.admin.ch/ch/f/pore/vi/vis348t.html>.

⁵¹ AFEP-MEDEF. Code de gouvernement d’entreprises des sociétés cotées. 2013.

⁵² art 24.3

⁵³ A Pietrancosta (2017) “Say on pay: The new French legal regime in light of the Shareholders’ Rights Directive II”. *Colloque*. 3. para 10.

⁵⁴ para 11.

legislature passed *Loi Sapin II*⁵⁵, introducing what is still today the world's strongest shareholder rights over remuneration: a double binding shareholder vote.⁵⁶

The introduction of the European Shareholders' Directive II⁵⁷ ("SRD II"; "the Directive") sparked legal reform across the continent, requiring – rather than simply recommending – for the first time, the legal transposition of shareholder votes on remuneration into the national legislation of member states. While the Directive favours binding votes on remuneration policies, it leaves the door open for member states to implement advisory resolutions instead; remuneration reports are subject to an advisory vote, here leaving the option for states to implement a binding vote.⁵⁸ Several jurisdictions who previously had no legal requirements regarding say-on-pay, such as Austria and Luxembourg, have implemented new legislation transposing the SRD II.⁵⁹ Several others with existing regulation, such as the Netherlands, updated their legislation to reflect relevant changes.⁶⁰ France, by contrast, whose current framework exceeds that of the SRD II's requirements, has merely supplemented their existing laws with several elements of the Directive.⁶¹

2.3 Factors Influencing Say-on-Pay

2.3.1 Governance Models and Directors' Duties

Governance models can be understood via the conceptualisation of two intercepting axes: **centricity** and **interest**. **Centricity** is focused on primacy: "reflecting the ends and means or purpose and power of the corporation".⁶² **Interest** refers to the "aspects relevant to the corporation and its affiliated undertaking", here concentrated on one main area towards which it is oriented.⁶³

⁵⁵ LOI n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique.

⁵⁶ Pietrancosta. para 11 ; Loi Sapin. art 161.

⁵⁷ 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.

⁵⁸ *Idem.* arts 9a, 9b ; Glass Lewis (2020). *SRD II - Say on Pay Requirements: An Overview of Key Changes and the Glass Lewis Approach*. Accessible at https://www.glasslewis.com/wp-content/uploads/2020/02/SRDII_SoP.pdf.

⁵⁹ Glass Lewis (2020) *SRD II Remuneration Voting: State of Play*. Accessible at https://www.glasslewis.com/wp-content/uploads/2020/03/SRDII_RemChart.pdf ; *Stock Corporation Amendment Act 2019, Federal Law Gazette I No. 63/2019 of 23 July 2019* ; Loi du 1er août 2019 modifiant la loi modifiée du 24 mai 2011 concernant l'exercice de certains droits des actionnaires aux assemblées générales de sociétés cotées aux fins de transposer la directive (UE) 2017/828 du Parlement européen et du Conseil du 17 mai 2017 modifiant la directive 2007/36/CE en vue de promouvoir l'engagement à long terme des actionnaires.

⁶⁰ Clifford Chance (2019). *New Legislation Implementing Revised Shareholders' Rights Directive in the Netherlands*. Accessible at <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2019/11/new-legislation-implementing-revised-shareholders-rights-directive-in-the-netherlands.pdf>. ; Wet van 6 november 2019 tot wijziging van Boek 2 van het Burgerlijk Wetboek, de Wet op het financieel toezicht en de Wet giraal effectenverkeer ter uitvoering van Richtlijn 2017/828/EU van het Europees Parlement en de Raad van 17 mei 2017 tot wijziging van Richtlijn 2007/36/EG wat het bevorderen van de langetermijnbetrokkenheid van aandeelhouders betreft (PbEU 2017, L 132).

⁶¹ Pietrancosta p107-108 ; LOI n° 2019-486 du 22 mai 2019 relative à la croissance et la transformation des entreprises.

⁶² D S Lund & E Pollman (2021) "The Corporate Governance Machine". *Faculty Scholarship at Penn Law*. 2775. p2565, Footnote 2.

⁶³ M Lokin & J Veldman (2019) "The Potential of the Dutch Corporate Governance Model for Sustainable Governance and Long Term Stakeholder Value". *Erasmus Law Review*. N° 4. p53.

Those to whom the company is considered **centric**, holds a position of “discretionary space and protect[ion]... as they focus on ... interests”.⁶⁴

As regards directors’ duties, a significant point of cohesion among the entirety of the examined jurisdictions is the adherence to duties of care and duties of loyalty. These duties are entrenched in the legal codes of each jurisdiction and therefore expose directors to the threat of civil or criminal liability in the case of breach. However, stark differences between jurisdictions do exist, which will be addressed presently.

It is no surprise that the first adoption of an annual shareholder vote on executive remuneration took place in the United Kingdom, the historical champion of the enlightened shareholder model: a governance framework that is both shareholder-centric and shareholder-oriented. While this vote may have been advisory only in nature, its introduction is reflective of the primacy ascribed to shareholders in this jurisdiction. Directors in the United Kingdom are held to common law fiduciary duties, which are owed unequivocally to the corporation itself.⁶⁵ Where these duties are breached, it is a generally-held view that “it is a matter for the shareholders to do something”.⁶⁶ On the other side of the Anglo-Saxon tradition is the board-centric, shareholder-oriented United States, where directors’ duties are quite general in nature, and flexible to interpretation. Directors in the board-centric United States enjoy the strong protection granted by a particularly strong iteration of the “business judgment rule”, which confirms the primacy of the board as a decision-making entity: a fact which has been lauded as “the centrepiece of Delaware corporation law”⁶⁷ : the heart of American corporate legal activity. Ultimately, American courts have ruled in consensus that directors owe an “undivided and unselfish loyalty to the corporation”.⁶⁸ The development of these approaches is also preliminary evidence of the influence of governance models on similar developments in other jurisdictions, such as Australia, whose corporate governance frameworks has been described as somewhere between board-centric, and shareholder-centric, but shareholder-oriented.⁶⁹

By contrast, jurisdictions such as the Netherlands and France have adopted approaches under which the promotion of the interests of stakeholders is becoming increasingly more important (a comparatively more stakeholder-oriented approach). This philosophy manifests in various ways in both jurisdictions, with notable examples being the inclusion of “social acceptance / interest” in

⁶⁴ *Idem*. p59.

⁶⁵ Companies Act. arts 170-177.

⁶⁶ A Keay (2014) “The Public Enforcement of Directors’ Duties: A Normative Inquiry”. *Common Law World Review*. 40(2). p95.

⁶⁷ State of Delaware (n.d.) ”The Delaware Way: Deference to the Business Judgment of Directors Who Act Loyally and Carefully”. *Delaware Corporate Law*. Accessible at <https://corplaw.delaware.gov/delaware-way-business-judgment/>.

⁶⁸ *Guth v Loft, Inc.* 23 Del. Ch. 255 (1939). para 270. The Supreme Court accepted the general principle dictating that a director can be “entirely free to engage in an independent, competitive business” as long as he does not violate any legal or moral duty with respect to the fiduciary relation that exists between the corporation and himself. Nevertheless, in the present case, Guth appropriated an opportunity that belonged to his enterprise, Pepsi Cola, by leveraging for his own benefit and advantage the money, resources and facilities of Pepsi, as well as the services of its officials. In the same spirit, see also *Jasper v. Appalachian Gas Co.*, 152 Ky. 68 (1913) para 79, *Trice v. Comstock*, 121 F. 620 (1903) para 623, *Charter Township of Clinton Police and Fire Retirement System vs. Craig Martin & al.*, Los Angeles County Super. Ct. para 11.

⁶⁹ Corporations Act. arts 180-183 ; T Gordon (2020) “Capital raises and shareholder primacy”. *Gilbert + Tobin*. Accessible at <https://www.gtlaw.com.au/insights/capital-raises-shareholder-primacy> ; K Backhouse & M Wickham (2020) “Corporate Governance, Boards of Directors and Corporate Social Responsibility: The Australian Context”. *Corporate Ownership & Control*. 17(4). p66.

Dutch company remuneration policies, and the representation of employees and other stakeholders on the board of directors in France.⁷⁰ This being said, the Netherlands retains some elements of board-centricity meaning that any interest owed to stakeholders is so afforded by virtue of the ability of directors to direct the corporations towards these objectives, or at least away from harming them. As posited by Lokin & Veldman:

“Within the Dutch corporate governance model, directors have a positive duty of care towards the company... and a negative duty of care towards its stakeholders...”⁷¹

Directors’ duties in the Netherlands are technical in their approach, trading the high-level, purpose-driven characteristics of other jurisdictions for clear directions and enumeration of the content of directors’ duties as such.⁷² While shareholders are considered as recipients of directors’ duties, the interests of individual shareholders are not.⁷³ This narrow approach is shared in Switzerland, where the directors’ duties are owed to the company as principal recipient, and shareholders as a group in some circumstances.⁷⁴

This stands in opposition to the shareholder-centric, yet stakeholder-oriented jurisdiction of France – whose shareholders take on a more active role in guiding corporate purpose towards stakeholder objectives. Directors owe their duties not only to the company as an entity, but to shareholders as a group and, in some cases, as individuals.⁷⁵ The concept of good faith underpins all business transactions, and employment relationships necessarily oblige loyalty on the contracting parties.⁷⁶ French corporate governance generally views directors’ duties as “transcending the mere interests of shareholders”.⁷⁷

There is little correlation to be found between the legal design of shareholders’ voting rights on remuneration and that of directors’ duties. The jurisdictions of the UK and Australia, who both display a shareholder-centric and shareholder-interested trend to governance, do not follow the same pattern when legislating on directors’ duties and the shareholders’ power to enforce them. France and the United States stand out in this analysis, both following their respective trends: the US protecting the board, and France traditionally taking a strong stance for the shareholders vis-à-vis directors. This latter position must, however, be taken with certain reservations. The majority of reforms in France aimed at protecting shareholders against directors were so undertaken at the time when the government, as major shareholder, felt disempowered at the hands of director-driven corporate governance scandals. This issue is explored in more detail in the section Historical Background, as well as Additional Factors.⁷⁸

⁷⁰ Van der Elst (2022) p510 ; Code de Commerce. L225-79.

⁷¹ Lokin & Veldman. p52.

⁷² Burgerlijk Wetboek. art 2:9.

⁷³ *Idem.* art 2:129, 140.

⁷⁴ Code des Obligations. art 538, 717.

⁷⁵ Code de Commerce. art L223-22

⁷⁶ Code Civil arts 1104, 1194 ; Code du Travail L1222-1.

⁷⁷ M Gelter & G Helleringer (2015) ”Lift Not the Painted Veil! To Whom Are Directors’ Duties Really Owed?” *University of Illinois Law Review.* 2015(3). p1091.

⁷⁸ Market Screener provides ownership data showing the French government as holding 15% of Renault shares. In 2017, at the time of the scandal, the French government held 19.7%. (Accessible at <https://www.marketscreener.com/quote/stock/RENAULT-4688/company/>). At that point the French Government was also able to exercise 39.4% of voting rights (i.e. rights equal to twice its shareholding). This was secured by the French government during a vote in 2015, for which it increased its stake in the carmaker by 4.73% to secure double voting rights for long-term investors. (Accessible at <https://www.nytimes.com/2015/05/01/business/dealbook/renault-shareholders-back-french-governments-voting-rights-plan.html>).

2.3.2 Additional Factors

As a general rule, policy reform does not exist in a vacuum, nor is it shielded from the impacts of socio-economic realities. In the United States, while still lacking much of the vigour of other jurisdictions, significant change on say-on-pay came to pass in the wake of the Great Recession and the resulting tensions between corporations, shareholders, and stakeholders. Important in this analysis is the political context: the years following the 2008 crisis was a time in the US history in which a democratic majority in executive and legislative branches allowed the governing administration to more easily pass this legislation. It was at this time that the EU, as discussed, also began to publish more regular guidance on executive remuneration.

Other global shocks are equally relevant. A study from the Harvard Law School Forum on Corporate Governance has attributed 10 of 37 failed say-on-pay votes to corporate action taken during the COVID-19 pandemic.⁷⁹

In the instance of France, there is a case to be made that public sector shareholding provides a more direct means of monitoring corporate governance, and possibly leads to reform in cases of repeated non-compliance.⁸⁰ In 2016, France's then-consultative shareholder vote on remuneration was brought under national scrutiny when the management board of Nissan dismissed shareholder dissent on the compensation of former CEO Carlos Ghosn.⁸¹ Notably, the French government was the majority stakeholder at the time, controlling 19,74%.⁸² What is important to note is that in 2015, one year prior, a number of French companies, including Renault, had their voting structure changed by *Loi Florange*⁸³ whereunder shareholders who had held their rights in a company for at least two years, could be attributed a double vote.⁸⁴ François Hollande, then President of the French Republic, warned in a public interview that legislative consequences would be forthcoming, should management boards not exercise appropriate control over exorbitant remunerations.⁸⁵ Several months later, *Loi Sapin II* was passed, introducing a binding shareholder vote.

2.4 Say-on-Pay: Current Legal Frameworks

2.4.1 Remuneration Committees

With little differentiation between jurisdictions Remuneration committees are, generally in charge of reviewing and drafting the remuneration policy and proposing the remuneration of chairs, executives and senior management. In the majority of jurisdictions, the board of directors retains

⁷⁹ T Sirras et al. (2021) "2021 Say on Pay Failures Partly Due to Covid-19 Related Pay Actions". *Harvard Law School Forum on Corporate Governance*. Accessible at <https://corpgov.law.harvard.edu/2021/06/19/2021-say-on-pay-failures-partly-due-to-covid-19-related-pay-actions/>.

⁸⁰ C van der Elst (2022) "Shareholder Engagement and Voting in France" in Harpreet et al. (eds.) *The Cambridge Handbook of Shareholder Engagement and Voting*. p287.

⁸¹ ProxInvest (2016) "1er rejet de Say On Pay en France : les actionnaires de Renault rejettent la rémunération de Carlos Ghosn". ProxInvest. Accessible at <https://www.proxinvest.com/2016/04/29/1er-rejet-de-say-on-pay-en-france-les-actionnaires-de-renault-rejettent-la-remuneration-de-carlos-ghosn/>.

⁸² M Albouy (2016) "Carlos Ghosn, François Hollande et le 'say on pay'". *The Conversation*. Accessible at <https://theconversation.com/carlos-ghosn-francois-hollande-et-le-say-on-pay-59636>

⁸³ LOI n° 2014-384 du 29 mars 2014 visant à reconquérir l'économie réelle (1).

⁸⁴ Code de Commerce L225-123 ; Reuters (2015) "Renault shareholders reject 'one share, one vote'". *Reuters*. Accessible at <https://www.reuters.com/article/uk-renault-nissan-vote-idUKKBN0NL24320150430>.

⁸⁵ Europe1 (2016). "Impôt, loi Travail, 2017... Revivez l'interview de François Hollande". Europe1. at 07.58. Accessible at <https://www.europe1.fr/politique/francois-hollande-une-heure-pour-convaincre-2747047>

the right to decide the remuneration.⁸⁶ In the UK, the remuneration of executives is "set" by the remuneration committee itself.⁸⁷ In the Netherlands, this decision is taken by the board of directors.⁸⁸ The NYSE Listing Rules indicate that while the remuneration committee sets CEO pay, it only recommends the level of pay for other executives – which is then decided upon by the board of directors.⁸⁹

With regards to the remuneration policy, some key jurisdictional differences concern the Netherlands and France. In the Netherlands, the remuneration policy is developed by the remuneration committee, but before being proposed to the board of directors, must be submitted to the Works Council (*ondernemingsraad*), if established in the company statute, for their advice. This advice, whether followed or not, is presented to the general assembly during the vote.⁹⁰ Most listed companies in the Netherlands do not have a Works Council at holding level, and as such the involvement of the Works Council with the executive remuneration policy in the form of an advice is relatively rare.

While independence is a common criterion for membership of the remuneration committee across all jurisdictions, the level to which it is considered important varies. In the UK, Switzerland and the US, all members must be independent and non-executive.⁹¹ In Australia, France and the Netherlands, only a majority must be independent.⁹² In France, additionally, the Corporate Governance Code provides that where the Chair is independent, it is permissible for only half of the committee to be independent, as long as this situation is temporary in nature.⁹³

The definition of "independent" differs slightly across jurisdictions, but in all cases is determined on a case-by-case basis. While all jurisdictions display a clear preference for a member who has never served on the executive of the company, several jurisdictions allow a time lapse whereafter this involvement would no longer immediately be deemed inappropriate. For Switzerland and Australia, this is a period of three years ; for the Netherlands and France, five years ; for the UK, nine.⁹⁴ The Listing Rules of the NYSE, as well as those of NASDAQ, do not prescribe a time period, but place more emphasis on the existence of a "materiality relationship" between the member and the company, a requirement that is similarly present in the UK Corporate Governance Code and the Dutch

⁸⁶ Australian Corporate Governance Principles and Recommendations. Recommendation 8.1 ; Afep-MEDEF. Code de gouvernement d'entreprise des sociétés cotées. d'entreprise. Principe 18.2 ; Code Suisse de bonnes pratiques pour le gouvernement d'entreprise. Principe 31, 33-34.

⁸⁷ UK Corporate Governance Code. Provision 33.

⁸⁸ Nederlandse Corporate Governance Code, 2022. Principe 3.1.1.

⁸⁹ Rule 303A.05(A) - (B).

⁹⁰ Burgerlijke Wetboek. art 2:135a(3).

⁹¹ UK Corporate Governance Code. Principe 32 ; Code Suisse de bonnes pratiques pour le gouvernement d'entreprise. Principe 32 ; Securities and Exchange Act (1934). sec 10C ; New York Stock Exchange Listing Rule 303A.05(a).

⁹² Australian Corporate Governance Principles and Recommendations. Principe 8.1(a) ; Afep-MEDEF. Code de gouvernement d'entreprise des sociétés cotées. Principe 18.1 ; Nederlandse Corporate Governance Code, 2022. Principe 2.3.4.

⁹³ Haut Comité de Gouvernement d'Entreprise (2022). *Guide d'Application du Code Afep-MEDEF de Gouvernement d'Entreprise des Sociétés Cotées*. p10. Accessible at https://hcge.fr/wp-content/uploads/2022/06/Guide_Juin_2022.pdf.

⁹⁴ Code Suisse de bonnes pratiques pour le gouvernement d'entreprise. Principe 14 ; Australian Corporate Governance Principles and Recommendations. Recommendation 2.3, Box 2.3 ; Nederlandse Corporate Governance Code. Principe 5.1.1 Toelichting ; Code de gouvernance d'entreprise des sociétés cotées. Principe 9.5 ; UK Corporate Governance Code. Provision 10.

Corporate Governance Code.⁹⁵ Significant shareholders are excluded across jurisdictions from the definition of independent, as well as employees and other persons having “business relations” with the company.⁹⁶

In France, it is recommended that a workers’ representative is a member of the remuneration committee.⁹⁷ In the case of statutory two-tier (*structuurvenootschappen*) companies, the Dutch Civil Code prescribes that a supervisory director is automatically appointed to the remuneration committee where recommended by the Works Council.⁹⁸

Few jurisdictions provide rules or recommendations on the qualifications or expertise of remuneration committee members. In Switzerland, it is recommended that the members have ‘specialist knowledge’.⁹⁹ In the UK, the chair of the committee must have previous experience of serving on a remuneration committee for a period of at least twelve months.¹⁰⁰

2.4.2 Remuneration policy

As discussed above, SOP policies across jurisdictions have developed in a fairly interdependent manner, taking influence from and inspiring one another towards regulatory reform. One characteristic common to three of the six jurisdictions is that of the binding vote on remuneration policies. In the US, as discussed above, shareholders vote on compensation as a whole in the form of a Compensation Discussion and Analysis, which forms part of the annual report and contains elements which, in European jurisdictions for example, would be part of the policy or report respectively.¹⁰¹ The effect of this vote is advisory only in nature.¹⁰² Australia, as the other outlier, takes the approach whereby companies provide “information” regarding their remuneration policy to shareholders ; no vote on the policy is held.¹⁰³ In Switzerland, while the vote is of a binding nature, it does not deal with the remuneration policy or report, as such – but rather, as in the case of the US, compensation as a whole.¹⁰⁴

In the case of France and Switzerland, the vote takes place on an annual basis.¹⁰⁵ In the UK and the Netherlands, shareholders vote every 3 and 4 years, respectively, or upon every change to the policy.¹⁰⁶ While France, Switzerland and the UK share the approach of requiring a simple majority to pass the resolution on the remuneration policy, the Netherlands is a clear outlier, requiring a 75%

⁹⁵ New York Stock Exchange Listing Rules. Rule 303A.02 ; NASDAQ Listing Rules. Rule 5605 ; UK Corporate Governance Code Provision 10 ; Nederlandse Corporate Governance Code, 2022. Principle 2.1.8.

⁹⁶ Code Suisse de bonnes pratiques pour le gouvernement d’entreprise. Principle 14 ; UK Corporate Governance Code. Provision 10 ; New York Stock Exchange Listing Rules. Rule 303A.02 ; NASDAQ Listing Rules. Rule 5605 ; Australian Corporate Governance Principles and Recommendations. Recommendation 2.3, Box 2.3 ; Code de gouvernance d’entreprise des sociétés cotées. Principle 9.5.

⁹⁷ AFEP-MEDEF. Code de gouvernement d’entreprise des sociétés cotées. d’entreprise. Principle 18.

⁹⁸ Burgerlijke Wetboek. art 2:160a.

⁹⁹ Code Suisse de bonnes pratiques pour le gouvernement d’entreprise. Principle 25.

¹⁰⁰ UK Corporate Governance Code. Principle 32.

¹⁰¹ Legal Information Institute (n.d.) “17 CFR §229.402 – (Item 402) Executive Compensation”. *Cornell Law School*. Accessible at <https://www.law.cornell.edu/cfr/text/17/229.402> shows that CD&A disclosures under SEC Listing Requirements reflect both the information found in a European-style remuneration report and remuneration policy, demanding both quantitative and qualitative data.

¹⁰² Dodd-Frank Act. art 951.

¹⁰³ Corporations Act. art 300A(1)

¹⁰⁴ Constitution Fédérale. art 95(3).

¹⁰⁵ Code de Commerce. art L22-10-8 (II) ; Constitution Fédérale. art 95(3a).

¹⁰⁶ Companies Act. art 439a ; Burgerlijk Wetboek. art 135a.

majority.¹⁰⁷ Another area where the Netherlands stands out is its requirement for the remuneration policy to address "social acceptance" (*het maatschappelijk draagvlak*).¹⁰⁸

In the case of a resolution not being passed, the binding nature of the vote foresees certain consequences. France, the Netherlands and the UK oblige as part of these consequences the revision of the rejected remuneration policy, and its resubmission to the general assembly for a re-vote. In the interim, the former policy applies.¹⁰⁹ In addition to these requirements, the UK Corporate Governance Code recommends that, in the case of any resolution receiving less than 80% approval, the company actively engage with investors and publish feedback on their views and the actions taken in connection therewith, within six months of the meeting.¹¹⁰ While this rule applies to the totality of resolutions in a general meeting, it is particularly relevant to these voting items, as its addition to the Code was enacted in the context of remuneration.¹¹¹

The Swiss legislation leaves the functioning of the vote (as well as the consequences of a negative vote) to the deliberation of the company concerned but stipulates that – whatever action taken – the vote must be conducted annually, must contain a separate vote for the management, the board of directors and the advisory board, and must remain binding in nature.¹¹² The Swiss Code of Best Practice for Corporate Governance further recommends that the board expressly strives to communicate with the general assembly upon the rejection of a resolution.¹¹³

¹⁰⁷ Burgerlijk Wetboek. art 2:135a(2) ; a lower threshold is permitted in the Articles of Association of a company.

¹⁰⁸ Burgerlijk Wetboek. art 2:135a(6)(d)(3^o)

¹⁰⁹ Code de Commerce. L22-10-8(II) ; Burgerlijk Wetboek art 135(9) ; Department for Business Innovation and Skills (2013) *Directors' Remuneration Reforms: Frequently Asked Questions*. p10. Accessible at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/158048/13-727-directors-remuneration-reforms-faq.pdf

¹¹⁰ UK Corporate Governance Code. Provision 4.

¹¹¹ Department for Business, Energy & Industrial Strategy (2017) "Corporate Governance Reform: The Government response to the green paper consultation". pp 3, 18. Accessible at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/640631/corporate-governance-reform-government-response.pdf.

¹¹² Ordonnance contre les rémunérations abusives dans les sociétés anonymes cotées en bourse. section 8.

¹¹³ Code suisse de bonnes pratiques pour le gouvernement d'entreprise. Provision 8.

Table 2.2 Say-on-pay practices regarding remuneration policy

Remuneration Policy						
	Netherlands	Switzerland	France	Australia	UK	US
Advisory Binding	Binding	Binding budget or report vote	Binding	Information only	Binding	Advisory CD&A vote ¹¹⁴
Frequency	Every 4 years and on changes	Annual	Annual and on significant changes	N/A	Every 3 years and on changes.	Every 3 years or more frequently.
% vote in favour	75% Note: Unless otherwise specified in the by-laws	Simple majority	Simple majority	N/A	Simple majority	N/A
Consequences of negative vote	Revision of policy; revert to former policy / practice	No default rule; possible "second shot" in extraordinary GM	Revision of policy; revert to former policy / practice	N/A	Revision of policy ; Where <80% approval, investigate investor concerns and publish feedback within 6 mo. (CG Code); revert to former policy / practice	N/A
Specific requirements in excess of SRD-II	- 75% majority vote - Address "social acceptance"	Budget submission (ex-ante) Note: the SRD II is not directly applicable to Switzerland, but certain circumstances might require compliance	- Annual voting	N/A	None	N/A
Source	Burgerlijk Wetboek	Constitution Fédérale	Code de Commerce	Corporations Act	Companies Act	Dodd-Frank Act
Year of implementation	2004; majority changed with introduction of SRD II in 2020.	2014	2017	N/A	2013	2011

¹¹⁴ Legal Information Institute (n.d.) "17 CFR §229.402 – (Item 402) Executive Compensation". *Cornell Law School*. Accessible at <https://www.law.cornell.edu/cfr/text/17/229.402> shows that CD&A disclosures under SEC Listing Requirements reflect both the information found in a European-style remuneration report and remuneration policy, demanding both quantitative and qualitative data.

2.4.3 Remuneration report

The structure of SOP regulation across Europe has been harmonised to a great extent. However, local transposition has contributed several differences to the content of these regulations, as will be seen below.

As an important point of departure, it is important to note that with the exception of France and Switzerland, all jurisdictions treat shareholder votes on the remuneration report as advisory only.¹¹⁵ As a result, the consequences of a negative vote are by and large limited: across the board, jurisdictions with advisory votes direct companies to consider the shareholder's vote for the following season.¹¹⁶ The UK Companies Act, while maintaining the vote's advisory nature, requires companies whose remuneration reports were not approved by the general meeting, to put their remuneration policy to a vote in the following year, provided that it was not voted upon in that same year.¹¹⁷ The UK Corporate Governance Code, in addition to the above rule, goes a step further in recommending that, in the case of even 20% or more of votes being negative, directors investigate investor concerns and publish feedback within six months.¹¹⁸ As mentioned above, while this provision relates to all resolutions, it has a specific relevance to executive remuneration.

In the case of Australia, however, the "Two Strikes" rule, where at least 25% of the votes cast are not in favour of the report for two consecutive years, a spill resolution is put to the general assembly. Where this resolution is passed, the directors holding office at the time of the remuneration report "cease to hold office", and the company must within the 90 following days hold a spill meeting whereby resolutions for the appointment of (new) directors are held.¹¹⁹ The managing director is, however, not affected by these provisions, who remains in office.¹²⁰ Research has shown that while shareholders in the past generally voted in support of management, dissent has become more common since the enactment of the Two Strikes rule.¹²¹

Switzerland, as discussed above, does not treat the remuneration policy and report as separate items for voting, and as such, the binding vote is cast on compensation as a whole.¹²²

France, by stark contrast, possesses a double binding vote on remuneration policy and report, and suspends the pay-out of variable and exceptional remuneration in the case of a negative vote on the remuneration report. Another important consequence is the resubmission of the relevant remuneration policy to a vote of the shareholders at the next general meeting.¹²³

The US' exceptional omission of a binding vote on either the remuneration policy or report can be understood as a reflection of the 'board-centric' and 'managerialist' paradigm of the US culture of corporate governance, which emphasises board empowerment and a diminution of the shareholders' voice in corporate decision-making. Furthermore, guidelines on what should be disclosed as part of the Compensation Discussion & Analysis (a document encompassing elements of both the Remuneration Policy and Report) have historically been vague and greatly left to the

¹¹⁵ Code de Commerce. L22-10-34(1).

¹¹⁶ Burgerlijk Wetboek. art 2:135b(2) ; Companies Act. art 437.

¹¹⁷ Companies Act. art 439(3).

¹¹⁸ UK Corporate Governance Code. Section 1(4).

¹¹⁹ Corporations Act. art 250V.

¹²⁰ art 250V (1)(b)(ii).

¹²¹ K Sheehan (2012) "Say on Pay and the Outrage Constraint" in R S Thomas et al. *Research Handbook on Executive Pay*. pp24-25. ; W Mackay et al. (2015) "The impact of binding vote 'Say on Pay' regulations, Australian evidence". *AFZAANZ 2015 Annual Meeting Paper*.

¹²² Constitution Fédérale. art 95(3).

¹²³ Code de Commerce. art L22-10-34.

interpretation of the board.¹²⁴ Recent updates to these disclosures have brought greater clarity, particularly relating to the link between performance and pay, which was finalised as a disclosure item in late 2022.¹²⁵

Table 2.3 Say-on-pay practices regarding remuneration report

Remuneration Report						
	Netherlands	Switzerland	France	Australia	UK	US
Advisory Binding /	Advisory	Binding budget report or vote	Binding (Approval)	Advisory	Advisory	Advisory CD&A vote ¹²⁶
Frequency	Annual	Annual	Annual	Annual	Annual	Every 3 years or more frequently
% vote in favour	Simple majority	Simple majority	Simple majority	>75% (or >25% negative)	Simple majority (CA)	N/A
Consequences of negative vote	None ; consider vote for following report.	No default rule ; possible "second shot" in extraordinary GM	No payout of variable pay	Two-strike rule + Spill resolution	If policy not voted upon in same year, forced vote in next AGM ; Where <80% approval, investigate investor concerns and publish feedback within 6 mo. (CG Code)	N/A
Directly impacting	N/A	Executives	Executives ; Non-Executive Chairperson	Non-Executives	N/A (except in years where policy not voted upon)	N/A
Source	Burgerlijk Wetboek	Constitution Federale	Code de Commerce	Corporations Act	Companies Act ; Corporate Governance Code	Dodd-Frank Act
Year of implementation	2020	2014	2020	2004 / 2011 Note: Two-strike rule introduced in 2011	2003 (CA) ; 2018 (CG)	2011

¹²⁴ Mason et al. p34.

¹²⁵ Securities and Exchange Commission (2022) "17 CFR Parts 229, 232 and 240". Accessible at <https://www.sec.gov/rules/final/2022/34-95607.pdf>. p14

¹²⁶ Legal Information Institute (n.d.) "17 CFR §229.402 – (Item 402) Executive Compensation". *Cornell Law School*. Accessible at <https://www.law.cornell.edu/cfr/text/17/229.402> shows that CD&A disclosures under SEC Listing Requirements reflect both the information found in a European-style remuneration report and remuneration policy, demanding both quantitative and qualitative data.

2.4.4 Shareholders' Obligations with respect to Engagement

Shareholders are bearers of both rights and obligations. While the previous sections were dedicated to the rights that shareholders have in relation to executive remuneration of the company, they hold securities in, this section will focus on the obligations that exist on the other end of these rights. This discussion will focus primarily on institutional investors and asset managers (referred to collectively as “investors”).

In the United Kingdom, the Stewardship Code places emphasis on Engagement as a key principle for effective stewardship. Notably, the UK Code employs the ‘apply and explain’ principle to twelve of its provisions, which is a stronger version of ‘comply or explain’.¹²⁷ Engagement forms one of these twelve principles in terms of which this higher standard is applied. The reporting segment of this principle includes a range of disclosures relating to how this engagement is carried out, the objectives pursued under that engagement, and the reasons for their chosen approach.¹²⁸ Where the engagement is collaborative, investors must explain with whom this collaboration was carried out, as well as its methods and purposes.¹²⁹ Escalation is encouraged where needed to influence issuer behaviour, but must be reported on, in line with the foregoing sections.¹³⁰ Where investors exercise their voting rights, they must report on their reasons for making certain choices – notably, where they have voted against the board on a certain resolution.¹³¹

The Dutch Stewardship Code, drafted by Eumedion, envisages investors as having a responsibility to participate in promoting good governance, and defines engagement as follows: “conducting meaningful dialogue with listed companies on [...] issues that are the subject of votes at general meetings”.¹³² The principles further set out that voting by investors should be informed, transparent and proactive.¹³³ In particular, where a vote is cast against a board proposal, the investor should actively engage with management to explain their reasons for their negative vote.¹³⁴ Significant votes, such as where the item has strategic or economic importance, or where the investor votes against the recommendation of the board, should similarly be explained.¹³⁵ Many of the above responsibilities of shareholders have also now been integrated into the 2022 Dutch Corporate Governance Code.¹³⁶ The 2022 Code also foresees the drawing up of an ‘engagement policy’ by institutional investors, which, along with annual reports on implementation, should be published on their website.¹³⁷

¹²⁷ Financial Reporting Council. UK Stewardship Code 2020. p4.

¹²⁸ Principle 9.

¹²⁹ Principle 10.

¹³⁰ UK Stewardship Code. Principle 11.

¹³¹ Principle 12.

¹³² Eumedion (2018). Dutch Stewardship Code. Preamble (1),(2).

¹³³ Principle 7.

¹³⁴ Principle 7.

¹³⁵ Principle 7, Guidance on Principle 7, Guidance on Principle 11.

¹³⁶ Principle 4.3.1 sets out that shareholders (and institutional investors) should exercise informed voting practices. In the particular case of institutional investors making use of proxy advisors, the Code encourages these investors to engage in dialogue with management and to exercise votes in line with their policies ; the annual report on the implementation of the investors’ engagement policy, as set out in Principle 4.3.6 also includes provisions relating to the explanation by institutional investors on annual significant votes, votes that were cast against or abstained from management proposals, and details on the engagement activities conducted with companies each quarter.

¹³⁷ Principle 4.3.5 – 4.3.6

Australia, like the UK, prescribes disclosure of how investors approach their stewardship duties.¹³⁸ In particular, they must also disclose their voting policies and specific voting behaviour, including the principles followed for voting against or abstaining from a resolution.¹³⁹ Engagement with the company board, as covered under Principle 3, is defined as involving “two way constructive communication”.¹⁴⁰ Escalation, which forms part and parcel of these engagement activities, includes voting against certain resolutions, as well as expressing concerns to company representatives.¹⁴¹

In the United States, a list of ‘Stewardship Principles’ was published by the Investor Stewardship Group (“ISG”), which includes among its signatories BlackRock, CalSTRS and Vanguard.¹⁴² Principle E of this list is set out as follows: “Institutional investors should address and attempt to resolve differences with companies in a constructive and pragmatic manner”.¹⁴³ While not as fleshed out as the principles considered under the UK, Australian or Dutch Stewardship Code, this principle ensures that investors make themselves available for dialogue.

Notably, neither France does not have a stewardship code, nor do they foresee any specific obligations on shareholders for engagement with the company. Under the SRD II, however, institutional investors are required to publicly release an ‘engagement policy’, whereby the activities generally covered by stewardship (voting behaviour, monitoring of company behaviour and conduct dialogue) are disclosed.¹⁴⁴ Investors in France (an EU member) will be required to follow these rules, as implemented by decreed amendment to the *Code de Commerce*.¹⁴⁵

The Swiss ‘Investors’ Code¹⁴⁶, dating to 2013, sets forth five overarching principles for institutional investors. As part of these principles, they “shall disclose the manner in which they have exercised their participation rights”.¹⁴⁷ Participation rights, according to the Code, are deeply linked to the investors’ role in maintaining “long-term, effective corporate governance” in companies, and contain the right to be registered as shareholder, as well as exercise voting rights.¹⁴⁸ The obligation (enforced via the mechanism of ‘comply or explain’) on investors to disclose their participation does not, as expressly pointed out by the Code, include the obligation to provide detail on voting on a case-by-case basis.¹⁴⁹ Despite the fact that Switzerland does not directly apply SRD II, several Swiss entities will still be bound by its requirements where they “provide[] services of safekeeping of

¹³⁸ ACSI (2018). *Australian Asset Owner Stewardship Code*. Principle 1.

¹³⁹ Principle 2.

¹⁴⁰ Australian Asset Owner Stewardship Code.

¹⁴¹ Principle 3.

¹⁴² ISG (2018). “Stewardship Principles”. *Investor Stewardship Group*. Accessible at <https://isgframework.org/stewardship-principles/>; A Meyer et al. (2018). “The Investor Stewardship Group’s Governance Principles”. *Harvard Law School Forum on Corporate Governance*. Accessible at <https://corpgov.law.harvard.edu/2018/05/11/the-investor-stewardship-groups-governance-principles/>.

¹⁴³ ISG (2018). Principle E.

¹⁴⁴ Shareholders’ Rights Directive II. art 3(g).

¹⁴⁵ Décret N° 2022-888 du 14 juin 2022. art 3; Code de Commerce. L228-32-2.

¹⁴⁶ Guidelines for Institutional Investors Governing the Participation of Institutional Investors in Public Limited Companies.

¹⁴⁷ Guidelines for Institutional Investors Governing the Participation of Institutional Investors in Public Limited Companies (2013). p3. Accessible at https://swissinvestorscode.ch/wp-content/uploads/2013/06/Richtlinien_16012013_e.pdf.

¹⁴⁸ *Idem*. p4.

¹⁴⁹ *Idem*. p6.

shares, administration of shares or maintenance of securities on behalf of shareholders or other persons [who] are in scope of SRD II”.¹⁵⁰

2.5 Say-on-Pay: In Practice

2.5.1 Institutional Investors behaviour and activism

While the shareholder structure mechanism that is used to determine or even foresee the outcome of say-on-pay remains relatively unexplored by academic research, there are some general trends that can aid in explaining institutional behaviour.

On the one hand, institutions will generally vote in support of management regarding small-scale investments in order for them to save resources needed to acquire information, avoid costs associated with confronting management, or in passive cooperation.¹⁵¹ On the other hand, institutions generally feel more empowered to cast negative votes against management where there is a clear need for closer monitoring of the company’s board, or where adverse consequences (for example, relating to the stock-price) of a failed say-on-pay vote, are relatively small.¹⁵²

Behaviour of small shareholders when it comes to SOP voting seems also to be dependent on the presence of large block holders in the voting process. There are several factors that explain this change in their behaviour; they either want to weaken the management, express their dissatisfaction with the benefits large block holders enjoy, or simply decrease monitoring costs.¹⁵³

The way in which institutional investors make use of their votes on remuneration indicates how corporate governance policies can be utilised for the fulfilment of ESG objectives. In general, larger institutional investors are more likely to have ESG investment professionals who provide input in the voting process.¹⁵⁴

2.5.2. Non-compliance

The treatment of cases where management fails to put the remuneration policy (or report) to a shareholder vote in the AGM, differs starkly across jurisdictions in terms of content and structure.

In the UK, failing to provide notice for a vote, or failing to put to the vote the remuneration policy or report, is considered an offence for which a fine “not exceeding level 3 on the standard scale” is imposed.¹⁵⁵ Switzerland is equally clear in its sanction: non-compliance is punishable by three years imprisonment, as well as a fine not exceeding an amount equal to six annual remunerations.¹⁵⁶

Australia, despite following a similar style of legislation to the UK, does not prescribe the consequences for non-compliance with the obligation to put the remuneration report to an advisory

¹⁵⁰ P Rosenauer (2018) “Are You Ready for the New Shareholders Rights Directive II Requirements?”. PwC. Accessible at <https://www.pwc.ch/en/insights/tax/the-new-shareholder-rights-directive-ii-requirements.html> ; In addition hereto, Swiss law is increasingly influenced by EU law requirements, in part due to the Swiss Federal Parliamentary Act, which requires parliamentary reflection on the connection of national laws to European law, and in part due to the inherent pressure of the shared European market which encourages uniform regulation.

¹⁵¹ M Schwartz-Ziv & R Wermers (2018) “Why do institutional investors monitor their large vs small investments differently? Evidence from the say-on-pay vote”. *Finance working paper 541/2017. ECGI*. p4

¹⁵² *Idem*.

¹⁵³ *Idem*, p. 5.

¹⁵⁴ J Bander et al. (2022). Say-on-pay and equity compensation plan voting. *Harvard Law School Forum on Corporate Governance*. p.3

¹⁵⁵ Companies Act 2006. section 440 (1),(2),(4) ; At the time of writing, the standard scale 3 for fines is equal to £1.000

¹⁵⁶ Constitution Fédérale. art 95(3)(d).

vote.¹⁵⁷ However, where a spill resolution is passed, but no spill meeting follows as prescribed by law, the directors of the company "commit an offence"¹⁵⁸ for which they are held strictly liable.¹⁵⁹ Article 250U(c) of the same Act ensures that even where this offence has been committed and sanctioned, the obligation to hold a spill meeting still stands.¹⁶⁰ Where the board fails to hold a general meeting at all, strict liability is also prescribed.¹⁶¹

In France, a non-compliance with the obligations to submit to a shareholder's vote the remuneration policy or report, results in the nullification of the associated pay-outs.¹⁶² How these payments are rendered void is not clear.

Aside from publishing the names of non-compliant companies on the stock exchange website, it is unclear what the consequences are of non-compliance with the obligation to provide shareholders with an advisory vote on compensation in the US.¹⁶³ The SEC's Final Rule on the Implementation of the Dodd-Frank Act fails to disclose specific sanction mechanisms against corporations for non-compliance.¹⁶⁴ In its current form, the SEC largely imposes financial penalties, develops corporate reform programs, and calls for corporate admissions in cases of non-compliance with its general rules.¹⁶⁵ In cases of severe non-compliance with general requirements, delisting may be possible.

The Dutch say-on-pay law appears to have no direct legal consequences for non-compliance with the requirement to submit a remuneration policy or report to a vote at the general meeting.¹⁶⁶ While the possibility remains open for a civil suit to be brought against the director, in the case of non-compliance with say-on-pay requirements, this would likely only be allowed if pursued by the company itself, rather than the shareholders who can only sue directors for direct harm.¹⁶⁷ Actions by third parties against directors, also called the 'piercing of the corporate veil', are rare.¹⁶⁸

While non-compliance with laws of this kind is expected to be low, there are situations in which it occurs. Where jurisdictions fail to provide sanctions, loopholes are created and exploited by companies. This is the case, for example, with Dutch-incorporated multinational BE Semiconductor Industries N.V. ("Besi"), who, following two consecutive rejections of their remuneration policy, chose in the third year to omit the shareholder's vote. In their remuneration report for the year 2021, they explained that:

¹⁵⁷ Corporations Act. art 250R(2).

¹⁵⁸ Corporations Act. art 250W.

¹⁵⁹ art 250W (6) ; "strict liability" applies under the Australian Criminal Code Act, and does not require fault as part of its assessment.

¹⁶⁰ Corporations Act.

¹⁶¹ art 250N (2),(2A).

¹⁶² Code de Commerce. L22-10-26 (II), L22-10-34.

¹⁶³ New York Stock Exchange. Continued Listing Criteria ; New York Stock Exchange (n.d.).

Noncompliant Issuers. New York Stock Exchange. Accessible at

<https://www.nyse.com/regulation/noncompliant-issuers>.

¹⁶⁴ Securities and Exchange Commission (2011) "Final Rule: Shareholder Approval of Executive Compensation and Golden Parachute Compensation". p 99. Accessible at <https://www.sec.gov/rules/final/2011/33-9178.pdf>.

¹⁶⁵ Securities and Exchange Commission (2022) "Press Release: SEC Announces Enforcement Results for FY22". Accessible at <https://www.sec.gov/news/press-release/2022-206>.

¹⁶⁶ Burgerlijk Wetboek. arts 2:134,2:135, 2:135a.

¹⁶⁷ P van Voorst (2019) "Workshop Directors' Liability, IPG – Barcelona: Questions and Answers from the Netherlands". *Hoens & Souren Advocaten*. Accessible at <https://hslaw.nl/en/nieuwsbericht/directors-liability-in-the-netherlands/>.

¹⁶⁸ Business Netherlands (n.d.) "Directors' Liability in the Netherlands". *Business Netherlands*. Accessible at <https://business-netherlands.com/liability-directors-netherlands.html>.

“Given the proximity to the expiration date of the current remuneration policy and the material nature of prospective amendments, the Supervisory Board feels that the current policy should be maintained this year. Consequently, no amendments to the Remuneration Policy 2020-2023 will be proposed for approval at the 2022 AGM”.¹⁶⁹

Despite these justifications, the failure of Besi to provide a vote to shareholders on the remuneration policy is in contravention of the Dutch Civil Code, which, as discussed above, prescribes that the remuneration policy, when not approved by the general meeting, be revised and proposed in the following year.¹⁷⁰

The lack of sanctioning on non-compliance of the obligations owed by companies to shareholders in terms of their voting rights lends itself to an overly large and unjustified exercise of discretionary power by companies.

2.5.3. Deadlock

A particular situation arises in jurisdictions wherein the shareholder’s vote on the remuneration policy is binding, but the vote on the remuneration report is advisory in nature. While this configuration of say-on-pay exists in many jurisdictions, especially in the EU following the SRD II, it is of particular concern in the Netherlands, where a lower threshold is needed for the remuneration policy to be rejected by the general meeting, and where consequences of a rejected report can be, for all intents and purposes, simply overlooked by management.¹⁷¹

In 2016, investors and Eumedion noted issues with approval rates of Dutch-based company Flow Traders’ revised remuneration policy, which shareholders found was lacking clarity as to its proposed changes. A substantial 21% of votes cast were negative.¹⁷² As confirmed by the 2016 annual report, Flow Traders’ remuneration policy passed, despite the controversy.¹⁷³

In 2021, and for the second consecutive year, shareholders once again voted in substantial numbers against the adoption of the Flow Traders remuneration policy.¹⁷⁴ Eumedion, in reporting on this issue, raised concerns regarding a potential “stalemate” (*patstelling*) between shareholders and directors.¹⁷⁵ This deadlock comes about as a result of the fact that where the revised policy is rejected by the general meeting, the management board continues to remunerate in accordance with the previous policy or practice, as prescribed by law.¹⁷⁶ This policy is, in these specific situations, not in accordance with the shareholders’ wishes, and therefore results in their rejection

¹⁶⁹BE Semiconductor Industries N.V. (2022) *Agenda AGM 2022*. p6. Accessible at https://www.besi.com/fileadmin/data/Investor_Relations/AGM/2022/Agenda_AGM_April_29_2022_-_in_English.pdf.

¹⁷⁰ Burgerlijke Wetboek. art 2:135(9).

¹⁷¹ Burgerlijk Wetboek. art 2:135a(2) specifies a 75% approval requirement for the remuneration policy.

¹⁷² Eumedion (2016) “Nieuwsbrief: Maandelijks uitgave, editie mei 2016”. pp5-6. Accessible at <https://www.eumedion.nl/nl/public/kennisbank/nieuwsbrieven/2016/nieuwsbrief-2016-05.pdf>

¹⁷³ Flow Traders (2016) *Annual Report 2016*. p46. Accessible at <https://www.flowtraders.com/sites/flowtraders-corp/files/flowtraders/investor-relations/reports-presentations/annual-report-2016-flow-traders-nv.pdf>.

¹⁷⁴ Flow Traders (2021). *Annual Report 2021*. p68. Accessible at <https://www.flowtraders.com/sites/flowtraders-corp/files/Investor%20Relations/Annual%20Report/flow-traders-jv-2021-nv-ia.pdf> ; Flow Traders (2020). *Annual Report 2020*. P63. Accessible at <https://www.flowtraders.com/sites/flowtraders-corp/files/flowtraders/investor-relations/reports-presentations/Flow%20Traders%20-%202020%20Annual%20Report.pdf> ; Eumedion (2021) “Nieuwsbrief: Maandelijks uitgave, editie april 2021”. pp5-6. Accessible at <https://www.eumedion.nl/clientdata/215/media/clientimages/NIEUWSBRIEF-2021-04.pdf>

¹⁷⁵ Eumedion (2021). p5.

¹⁷⁶ Burgerlijk Wetboek. art 2:135(a).

of the remuneration report. As this latter vote is advisory only, shareholders find themselves in a situation where their views are not fully taken into account by the board.

Several solutions to this system exist, such as a French-style binding vote on the remuneration report, which effectively blocks remuneration pay-outs. However, this approach has been criticised as “excessively rigid, cumbersome, and a new manifestation of needless red tape”.¹⁷⁷ Even the policy focused approach of the UK model, whereunder disagreement on the remuneration report can be effectively handled through an obligation on management to investigate investor concerns following a negative vote on the remuneration report and a new policy needs to be submitted in the following year, still leaves room for such stalemate.¹⁷⁸ Where the vote takes place in a year where the remuneration policy was not voted on, a negative result on the remuneration report immediately triggers the obligation on directors to hold a vote on the remuneration policy at the following annual meeting.¹⁷⁹ In the interim, the former policy continues to take effect. A negative vote on the new remuneration policy would, similarly, maintain the former policy.¹⁸⁰ Mechanisms that respond effectively and timeously to these dead-ends in the current frameworks must be developed.

2.6 Checkpoint

The legal frameworks underpinning say-on-pay differ vastly across jurisdictions, both in content and form. The United Kingdom was the first to enact law providing shareholders with voting rights on remuneration; this is in line with their shareholder-centric approach towards corporate governance. France, however, has emerged as the jurisdiction with the most far-reaching shareholder rights. These developments, while corresponding with the stakeholder-centric model to a certain extent, may also be representative of the French State’s role as majority shareholder in many corporations who have previously been the topic of compensation scandals. It is also unclear to what degree these rights are appropriate or required. Australia and the United States are outliers in the general trend. Australia has attracted much interest in their “Two Strike” model, which foresees the (re-)election of directors following two consecutive failed say-on-pay votes on the remuneration report. By contrast, shareholder rights with regard to the remuneration policy are limited, extending only to the right of information. The United States, whose corporate jurisdictions are typically board-centric, allows an advisory vote for shareholders on compensation as a whole, the efficacy of which in reducing abusive remuneration is relatively limited. In practice, most say-on-pay legislation is not impermeable. Many open ends and loopholes exist in current frameworks, which are in need of detailed reform.

¹⁷⁷ Pietrancosta (2017) para 14.

¹⁷⁸ Section 1(4) Corporate Governance Code.

¹⁷⁹ Companies Act 2006. art 439A(2).

¹⁸⁰ Department for Business Innovation and Skills (2013) *Directors’ Remuneration Reforms: Frequently Asked Questions*. p10. Accessible at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/158048/13-727-directors-remuneration-reforms-faq.pdf

DATA ANALYSIS

3.1 Say-on-pay effects on total pay

Theoretically, the introduction of say-on-pay legislation could result in (at least) two effects. On the one hand, shareholders could use their voting power to dampen (the growth of) executive pay. On the other, the prospect of negative say-on-pay votes could result in CEOs demanding a risk premium, thus increasing (average) pay.

The existing empirical literature focuses on the effect of say-on-pay legislation in general, rather than binding or non-binding legislation. This study extends the existing literature by estimating several regressions that differentiate between binding and non-binding say-on-pay legislation, as well as between legislation targeting the remuneration policy and the remuneration report. Following a brief discussion of the literature, the dataset and estimation results are presented. Statistically significant effects of binding or non-binding legislation on total CEO pay is not reported, neither for the remuneration policy, nor the remuneration report. In short, without further study, the effects of binding versus non-binding say-on-pay legislations remain (empirically) unclear.

3.2 Related literature

The literature examined focuses mainly on individual countries, namely the United States (Armstrong et al.¹⁸¹, Brunarski et al.¹⁸², Burns & Minnick¹⁸³, Cai & Walkling¹⁸⁴, Cuñat et al.¹⁸⁵ and Fisch et al.¹⁸⁶), the United Kingdom (Ferri & Maber¹⁸⁷), and Australia (Grosse et al.¹⁸⁸). Correa & LeI¹⁸⁹, by way of exception, perform a cross-country analysis on the effects of Say-on-Pay legislation as a whole in a given jurisdiction.

Key takeaways from these first group of papers (excluding Correa & LeI) include the finding that negative voting on remuneration does not affect the total pay of executives.¹⁹⁰ Rather, SOP votes indicating high dissent with management pay proposals result in (i) the modification of the structure of remuneration¹⁹¹, (ii) the altering of remuneration policies and contracts, especially regarding severance clauses and vesting conditions¹⁹², (iii) the increase of disclosures relating to

¹⁸¹ C S Armstrong et al. (2013) "The Efficacy of Shareholder Voting: Evidence from Equity Compensation Plans". *Journal of Accounting Research*. 51(5). pp 909-950.

¹⁸² K R Brunarski et al. (2015). "Evidence on the outcome of Say-on-Pay votes: How managers, directors, and shareholders respond". *Journal of Corporate Finance*. 30. pp 132-149.

¹⁸³ N Burns & K Minnick (2013) "Does Say-on-Pay Matter? Evidence from Say-on-Pay Proposals in the United States". *The Financial Review*. 48. pp 233-258.

¹⁸⁴ J Cai & R K Walking (2009). "Shareholders' Say on Pay: Does It Create Value?". *Journal of Financial and Quantitative Analysis*. 46(2). pp 229-339.

¹⁸⁵ V Cunat et al. (2015) "Say Pays! Shareholder voice and firm performance". *Review of Finance*. 20(5). pp 1899-1834.

¹⁸⁶ J E Fisch (2018). "Is Say on Pay All About Pay? The Impact of Firm Performance". *Faculty Scholarship at Penn Law*. 1931. pp 101-129

¹⁸⁷ F Ferri & D A Maber (2013). "Say on Pay Votes and CEO Compensation: Evidence from the UK". *Review of Finance*. pp 527-563.

¹⁸⁸ M Grosse et al. (2015). "Shareholder say on pay and CEO compensation: three strikes and the board is out". *Accounting & Finance*. 57(3). pp 701-725.

¹⁸⁹ R Correa & U LeI (2016). "Say on Pay Laws, Executive Compensation, Pay Slice, and Firm Valuation around the World". *Journal of Financial Economics*. 122(3). pp 500 – 520.

¹⁹⁰ Burns & Minnick ; Fisch et al. ; Cuñat et al. ; Gross et al.

¹⁹¹ Burns & Minnick ; Grosse et al.

¹⁹² Ferri & Maber.

remuneration¹⁹³, (iv) the modification of significant operating decisions relating to capital expenditure, research and development and dividends¹⁹⁴ and (v) an increase in firm productivity. In the case of Burns & Minnick, a shift away from cash-based bonuses towards equity-based incentives was observed.¹⁹⁵ In the case of Grosse et al., the discretionary elements of CEO pay were significantly decreased.¹⁹⁶ Ferri & Maber observed that changes to remuneration policies and contracts occurred ex-post, but also ex-ante in order to avoid shareholder dissent.¹⁹⁷ Rather than attempting to make changes to remuneration, Australian firms who have received a first strike, appear to "try and explain remuneration"¹⁹⁸ through increased disclosure. The authors indicate that this strategy's efficacy is dubious, as no correlation existed between disclosure and negative voting.¹⁹⁹ Brunarski et al. find that management expenditure in acquiring or upgrading fixed assets, as well as R&D, tend to increase following failed shareholder votes on remuneration.²⁰⁰ In Cuñat et al., evidence was produced to support the theory that say-on-pay legislation acts as a vote of confidence toward a CEO ; the authors observed an increase in the long-term productivity of the firms concerned.²⁰¹

The cross-country analysis by Correa & Lel indicate an average decrease of seven per cent in the growth rate of CEO compensation and an average increase of five per cent in pay-for-performance sensitivity following the adoption of say-on-pay laws. Such effects are amplified in firms with demonstrated poor performance, primarily concentrated within firms with problematic pay practices such as excess CEO pay, high shareholder dissent, and weaker governance structures.²⁰² This study also produced evidence that disparity between management pay levels decreased in jurisdictions with say-on-pay laws.²⁰³

Several of the studies indicated a positive correlation between an increase in firm market value and say-on-pay practices.²⁰⁴ In some cases, such as examined by Cuñat et al., these increases may even be significant.²⁰⁵ Cai & Walkling made an important observation, however, that this increase could be limited to firms who stand to benefit from an improvement of their compensation structures, and where a vote is likely to trigger the needed changes.²⁰⁶

3.3 Data and method

This study extends a stylized model of the level of executive pay in the spirit of Edmans et al.²⁰⁷, and relates (ln) total pay to the presence of say-on-pay legislation, share returns (as a proxy for firm performance), share volatility, (ln) total assets (proxy for firm size), (ln) sales and year and country fixed effects. In short, the specification is:²⁰⁸

¹⁹³ Grosse et al.

¹⁹⁴ Brunarski et al.

¹⁹⁵ p235.

¹⁹⁶ p15.

¹⁹⁷ p529.

¹⁹⁸ Grosse et al. p18.

¹⁹⁹ *Idem*.

²⁰⁰ p134.

²⁰¹ p5.

²⁰² p1-2.

²⁰³ p2.

²⁰⁴ Correa & Lel. pp 2-3 ;

²⁰⁵ p4.

²⁰⁶ pp 11,20.

²⁰⁷ A Edmans et al. (2017) "Executive Compensation: A Survey of Theory and Evidence". *National Bureau of Economic Research. Working Paper 23596. Accessible at* https://www.nber.org/system/files/working_papers/w23596/w23596.pdf .

²⁰⁸ Ln is the natural logarithm, a standard transformation in the literature and in mathematics in general.

$$\ln(\text{total pay}_{ijt}) = \text{SoP}_{ijt} + \text{returns}_{it} + \text{volatility}_{it} + \ln(\text{assets}_{it}) + \ln(\text{sales}_{it}) + \phi_t + \varphi_j + \varepsilon_{it}$$

Data is collected from S&P CapitalIQ for a sample of countries²⁰⁹ between 2010 and 2021, on total CEO pay, share prices, and firm assets and sales, as well as the firm's country of domiciliation. Data on say-on-pay legislation per country is hand-collected and differentiated between binding and non-binding legislation, as well as legislation mandating a vote on remuneration policy and mandating a vote on the remuneration report.

Using the share price data, the log stock returns and volatility is calculated. Log stock returns refers to the difference of the log stock value and volatility: the standard deviation of log-returns in a rolling window of 60 months, with a minimum of 48 observations required. The monthly standard deviations are then averaged annually to determine volatility for each company-year.

Several criteria were used in these analytics. Firstly, CEO pay that does not lie between one thousand and 500 million dollars annually is excluded. Additionally, only firms with at least USD 1 million in assets, non-negative sales and whose returns volatility does not exceed three, are included.

Table 3.1 presents descriptive statistics and Figure 3.1 shows the evolution of the sample over time. The full sample contains 55,700 observations that earn around USD 2.5 million annually on average. Note that the sample that starts in 2010 still contains 46,077 observations, despite omitting ten years of data. This implies that later years are overrepresented in the sample.

Figure 3.1 highlights that the sample is consistently growing over time. Note furthermore that the share of firms subject to (some kind of) say-on-pay legislation is steadily increasing over time as well, with a significant spike in 2011. In that year, Italy and Spain introduced a binding shareholder vote on the remuneration policy. Additionally, Spain also introduced an advisory vote on the remuneration report. In this same year, the United States introduced an advisory vote on remuneration as a whole.

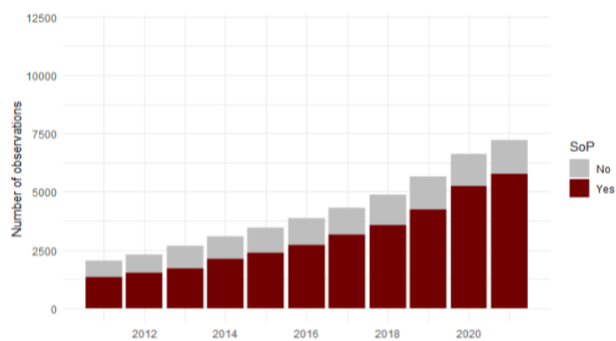
Table 3.1 Descriptive statistics

	N	Mean	Median	Min	Max
Total pay	46,077	2,657,530	894,768	1008	451,207,726
Stock return	41,326	0.003	0.004	-2.885	5.801
Volatility	34,763	0.194	0.125	0.000	2.971
Total assets (x million \$)	46,077	8,249	407	1.001	4,074,279
Sales (x million \$)	46,077	3120	224	0.000	556,933

Source: Reward Value / SEO Amsterdam Economics based on S&P CapitalIQ.

²⁰⁹ The sample consists of the countries Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hong Kong, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, United Kingdom, and the United States.
Binding and advisory votes on executive remuneration reports

Figure 3.1: Yearly number of observations with and without say-on-pay legislation²¹⁰



Source: Reward Value / SEO Amsterdam Economics based on hand collected say-on-pay data and from S&P CapitalIQ (see Table 3.1).

3.4 Results

3.4.1 Main Results

The estimation results of the study are presented in Table 3.2. As a point of departure, robust estimates for the effects of binding versus non-binding say-on-pay legislation on total pay are not forthcoming, nor is the effect of say-on-pay on any other variable.

Column (1) reports the effect of any say-on-pay legislation on (log) total pay. The coefficient on say-on-pay is not significant.

Column (2) reports estimates for the effect of advisory and binding say-on-pay legislation for the remuneration policy on (log) total pay. The coefficient on binding say-on-pay is insignificant. The coefficient on the advisory vote is negative and significant, implying around 20% lower pay. Given the unbalanced nature of the dataset, the magnitude of this coefficient must be interpreted with caution, as selection effects may bias estimates. Note that in Figure 3.1, the share of firms not subject to say-on-pay is comparatively small. This results in a comparatively small control group. Selection here risks biased estimates. Selection may arise from the absence of say-on-pay legislation: if CEO pay disclosures are of a lower quality in the absence of say-on-pay legislation, and if, as a result, these compensations are underrepresented in our data. This poses a particular challenge if the CEOs in the control group are relatively highly paid, experiencing high growth in their compensation packages. This would bias the estimation results downwards.

Column (3) reports estimates for the effect of advisory and binding say-on-pay for the remuneration report on (log) total pay. Coefficient on say-on-pay variables is insignificant.

²¹⁰ Here, “say-on-pay legislation” is taken to mean any legislation regulating (binding or advisory) shareholder votes on executive remuneration (reports, policy or as a whole).

Table 3.2 Results

	(1)	(2)	(3)
Any SoP	-0.068 (0.080)		
Advisory SoP Policy		-0.241** (0.113)	
Binding SoP Policy		-0.085 (0.094)	
Advisory SoP Report			-0.116 (0.081)
Binding SoP Report			0.120 (0.126)
Stock returns	0.806*** (0.194)	0.804*** (0.194)	0.811*** (0.194)
Volatility	0.078* (0.040)	0.078** (0.040)	0.077* (0.040)
Ln Assets	0.249*** (0.009)	0.249*** (0.009)	0.249*** (0.009)
Ln Sales	0.118*** (0.008)	0.118*** (0.008)	0.119*** (0.008)
Constant	11.387*** (0.103)	11.306*** (0.072)	11.438*** (0.104)
Year fixed effects	Yes	Yes	Yes
Country fixed effects	Yes	Yes	Yes
N_firms	8,495	8,495	8,495
N_total	34,289	34,289	34,289
Adjusted R ²	0.622	0.622	0.622
F Statistic	341.872*** (df = 41; 8453)	333.971*** (df = 42; 8452)	333.845*** (df = 42; 8452)

Source: Reward Value / SEO Amsterdam Economics based on hand collected say-on-pay data and from S&P CapitalIQ (see Table @PM). Note: * $p < 0.1$; ** $p < 0.05$; *** $p < 0.01$

3.5 Discussion

The estimation results of the study are not robust to minor changes in the model specification or the sampling period. It can therefore not be confidently concluded that there is a significant non-zero effect of (binding versus non-binding) say-on-pay legislation on total CEO pay. This finding in part echoes country-level studies such as Burns & Minnick, Ferri & Maber, Cuñat et al., and Grosse et al., who also documented no effect of say-on-pay on total pay.

However, the results of this study appear to be at odds with the earlier cross-country study of Correa & LeI, which reported an effect of say-on-pay legislation on the growth rate of CEO pay. Given that a different sample and model specification were employed in the current study, the estimate results need not necessarily be at odds with Correa & LeI, but highlight the sensitivity of the estimated say-on-pay legislation on pay to the sample and model specification. In sum, without further study, the effects of binding versus non-binding say-on-pay legislation remain (empirically) unclear.

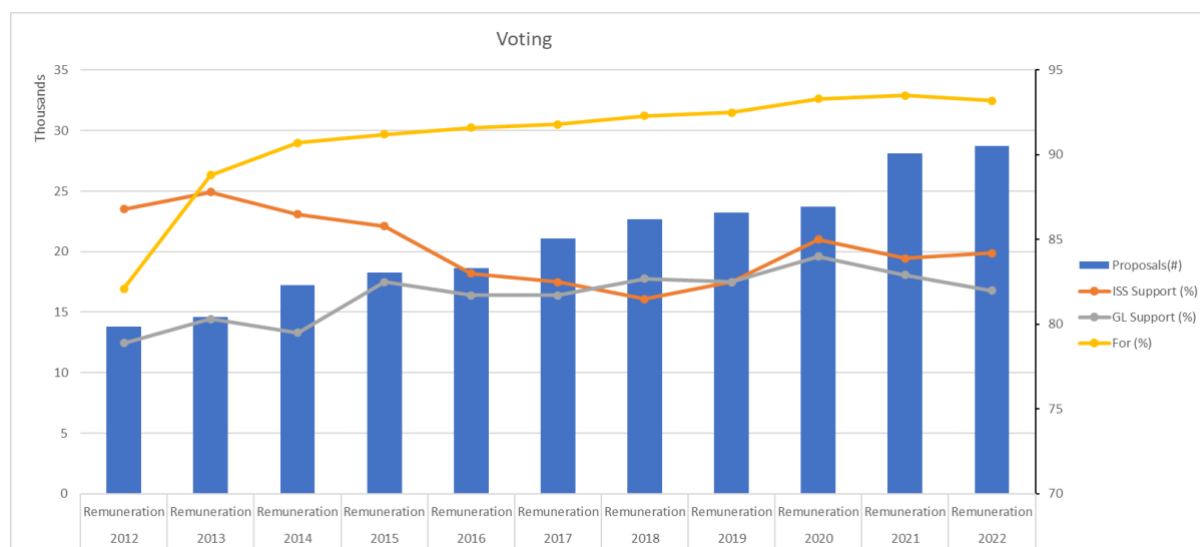
3.6 Say-on-Pay Voting Insights

This section examines data on voting trends across the jurisdictions of France, the Netherlands, Switzerland, the United Kingdom and the United States.

The data on voting trends was collected from Insightia via their web application Insightia One.

Figure 3.2 below displays the rates of approval for remuneration proposals across all jurisdictions for a time period spanning ten years (2012-2022). Different segments are used to show the differences in voting trends of shareholders and proxy advisors.

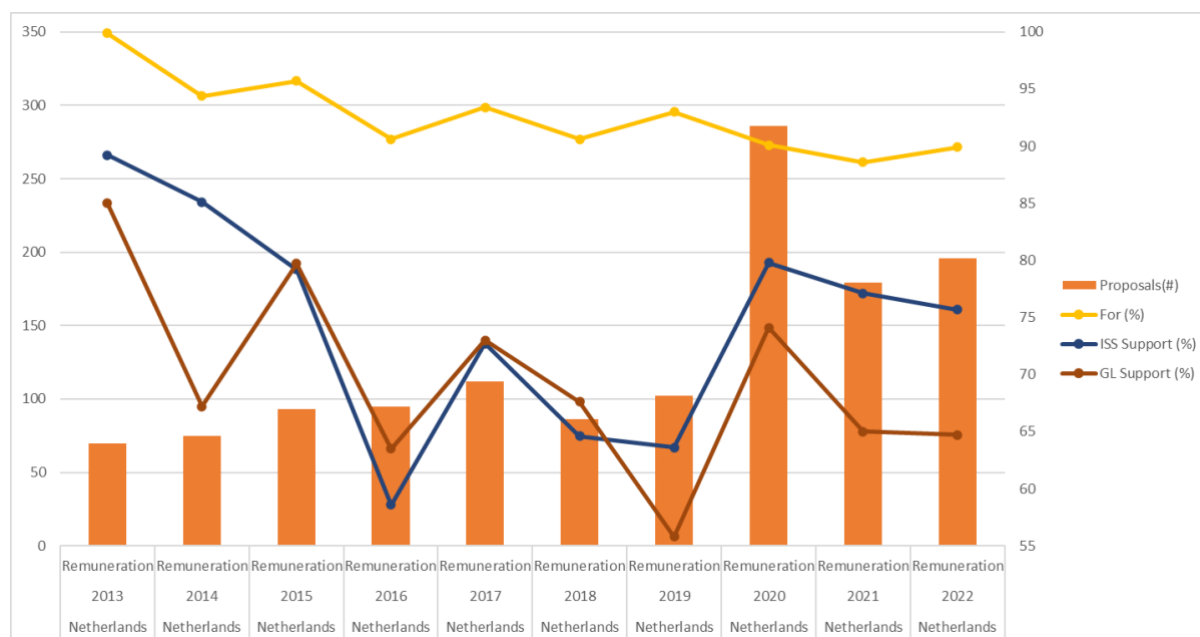
Figure 3.2



According to these insights, remuneration-related proposals almost doubled in number between 2012 and 2022. Accordingly, the approval rate of these proposals also increases; however, proxy advisor and shareholder voting differ on average by ten per cent.

Figure 3.3 below displays the same proposal- and voting-data for a period spanning nine years (2013-2022), but restricted to the jurisdiction of the Netherlands.

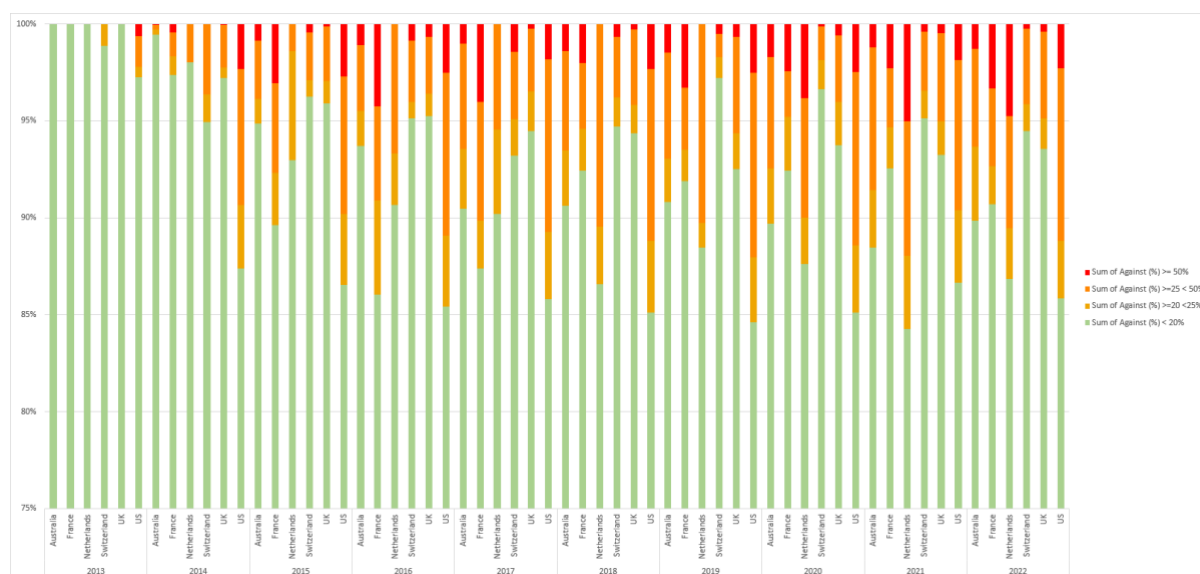
Figure 3.3



In the Netherlands, the number of remuneration-related proposals more than doubled in the period 2013-2022, with a spike in 2020. While approval of these proposals was shown to increase across jurisdictions (Figure 3.2 above), in the Netherlands, approval rates follow a downward trend. The proxy advisor - shareholder relation shows a comparatively more irregular pattern.

Figure 3.4 displays the percentual development of negative shareholder votes over a nine-year period.

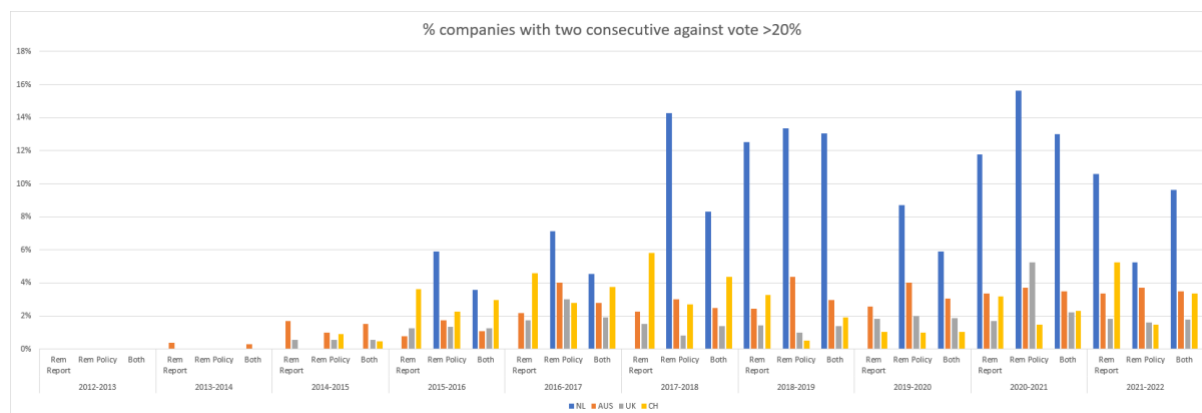
Figure 3.4



Of all the jurisdictions under consideration, the US receives, year on year, the highest number of negative votes. In the Netherlands, shareholder dissent surpassing 20 per cent grows significantly over time. Shareholder dissent surpassing 50 per cent also increases, though to a lesser extent.

Figure 3.5 below displays the percentage of listed companies in selected jurisdictions who received two negative shareholder votes across two consecutive years, whether on the remuneration policy, report or both.

Figure 3.5



The scope of jurisdictions in this graph is limited to four jurisdictions (the Netherlands, Australia, the UK and Switzerland) for comparative reasons. France and the United States have been excluded from this particular analysis point, as the data is not representative and would lead to a distorted picture. This is because in France, remuneration proposals are put forward for each individual board member, rather than as a single proposal, as in the jurisdictions displayed here. In the United States, annual voting is not mandatory, and as such analysis on two consecutive years is not practically feasible.

According to this above data point, Dutch listed companies are met with significantly higher levels of shareholder dissent than companies in other jurisdictions. This is true especially of proposals relating to the remuneration policy. However, it is important to take into consideration the number of companies in each case. For example, the 14% (2017 – 2018) representing corporations who received a second consecutive negative vote on remuneration policy in Figure 3.5 concerns only two companies.

Over time, shareholders have become more vocal on remuneration proposals. The data suggests that increased say-on-pay rights stimulate shareholders to more frequently express their concerns and vote against company proposals. However, as dissent continues to increase over time, a mutual understanding between company and its shareholders seems to be still far away. On the other hand, however, the number of companies that receive substantial negative votes in two consecutive years is relatively low, suggesting that most corporations take negative votes seriously.

SURVEY AND FOCUS GROUP RESULTS

The questions in the survey focused on the perceived effects of say-on-pay arrangements in order to establish, as the primary research objective, whether stakeholders feel that Dutch say-on-pay legislation is fit for purpose or requires amendment. The questions' content and format are available in Appendix C.

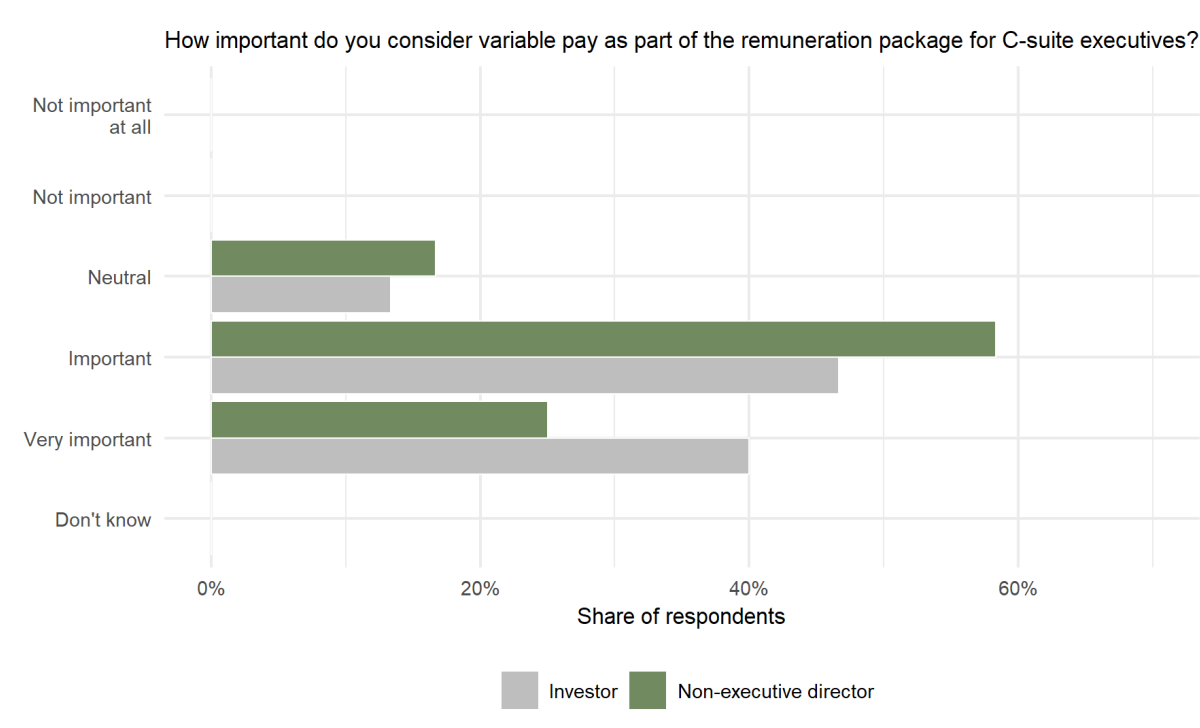
The below results are divided by category of stakeholder (fifteen investors ; twelve non-executive directors). The analysis follows this same division, providing insights on each question's responses according to stakeholder category. Due to a small number of respondents and for readability purposes, the group representing other stakeholders has been omitted.

4.1 Survey results

4.1.1 Remuneration in general

The majority of investors and non-executives consider variable pay as an important part of the C-suite remuneration package. Figure 4.1 below shows that 87 per cent of investors and 83 per cent of non-executives directors, respectively, view variable pay as 'Important' or 'Very Important'.

Figure 4.1

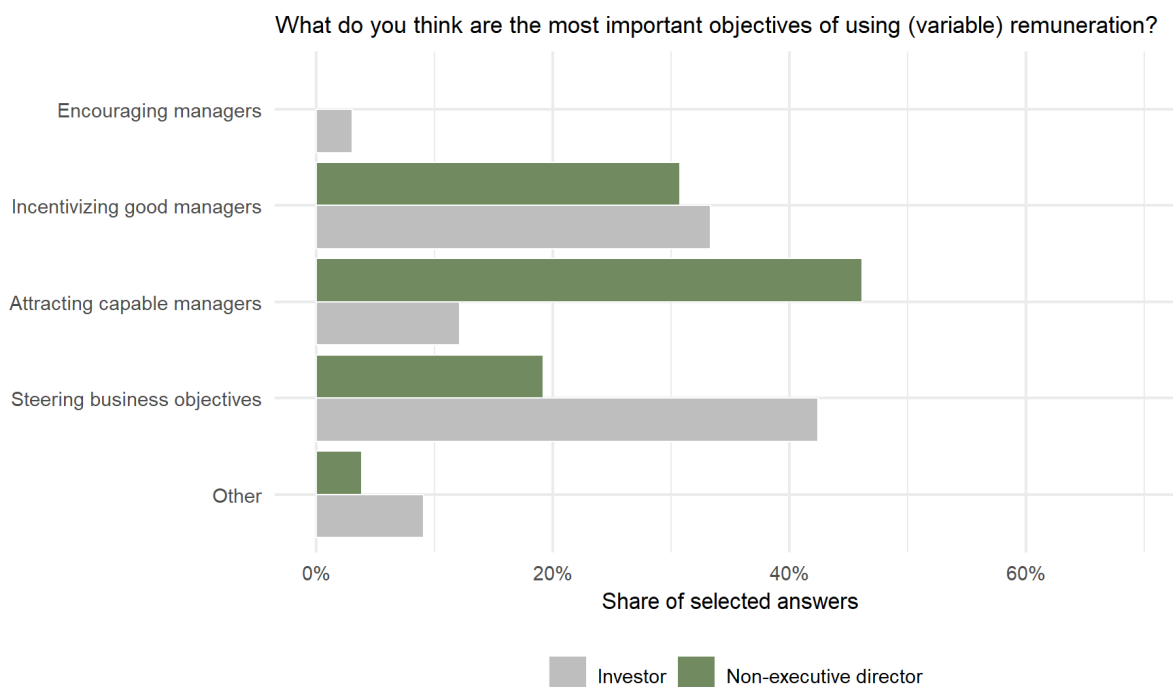


Source: Survey Reward Value & SEO (2022). Based on 27 respondents; investors (n=15) non-executive directors (n=12).

The respondents were requested to indicate, by percentage, the importance of different objectives of executive remuneration. These objectives included (i) Encouraging managers, (ii) Incentivising good managers, (iii) Attracting capable managers, (iv) Steering business objectives, and (v) Other. Figure 4.2 below shows that both investors and non-executives agree that incentivising good managers is one of the most important objectives of (variable) remuneration. While investors believe that the most important objective for remuneration is to steer business objectives, non-executives feel that remuneration should primarily be used to attract capable managers. Objectives

mentioned under the category of ‘Other’ included: Stimulating long-term value creation, sharing successes and failures of the firm and creating alignment with long-term shareholder value drivers.

Figure 4.2

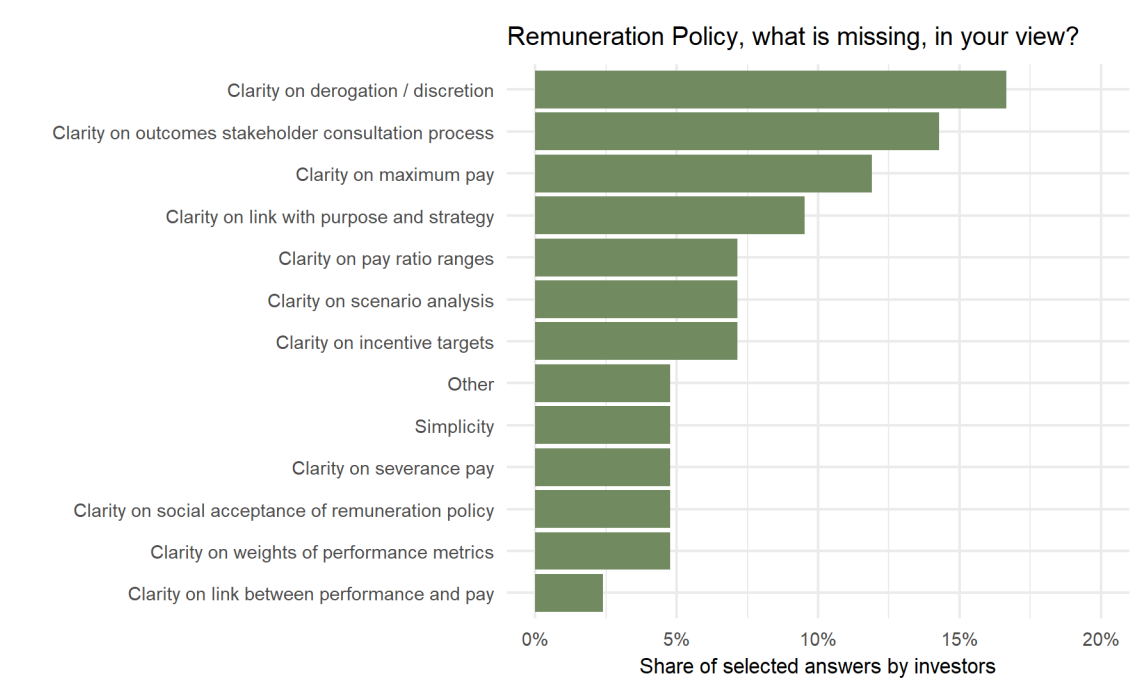


Source: *Survey Reward Value & SEO (2022)*. Based on 27 respondents; investors (n=15), non-executive directors (n=12).

4.1.2 Remuneration policy

Investors are divided on whether the requirements regarding the content of remuneration policies instil sufficient confidence in shareholders on the ex-post execution of the policy. Those who believe that the requirements do create enough confidence represent 40 per cent of the sample, while another 40 per cent believe that they do not. The remaining 20 per cent answered ‘Do not know’. When questioned on what was missing in current remuneration policies (Figure 4.3), the most popular answer amongst shareholders was ‘Clarity on derogation / discretion’. The next most popular answers were ‘Clarity on outcomes of the stakeholder consultation process’ and ‘Clarity on maximum pay’.

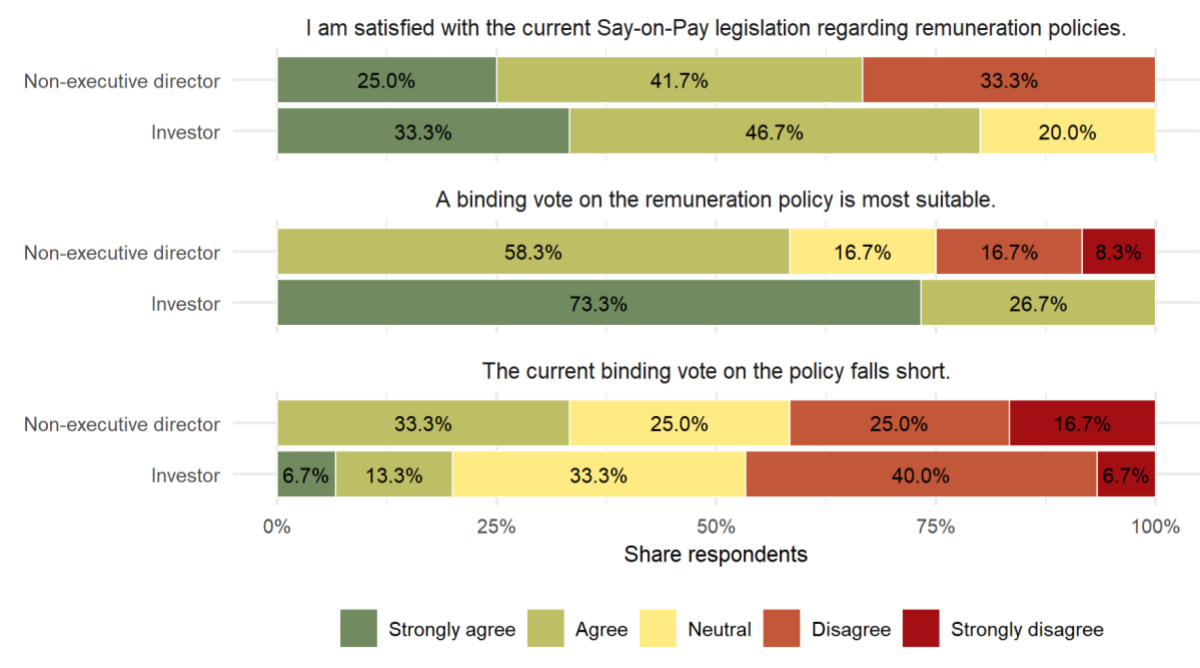
Figure 4.3



Source: *Survey Reward Value & SEO (2022). Investors (n=15)*

Figure 4.4 below lists three statements regarding the remuneration policy that were put to investors and non-executives during the survey. The first statement ('I am satisfied with the current Say-on-Pay legislation regarding remuneration policies') received a similar result for both groups, with the majority responding 'Strongly Agree' or 'Agree'. The second statement asked whether the respondents agreed that a binding vote on the remuneration policy is most suitable, and received mixed responses. While investors unanimously agreed that the binding vote was appropriate, non-executives were divided, with a majority expressing agreement and 41,7 per cent expressing neutrality, disagreement or strong disagreement. When asked whether respondents agreed that the current binding vote on the remuneration policy does not go far enough, opinions recorded proved to be diverse. On the one hand, approximately half of the respondents (both investors and non-executives) do not agree with the statement, indicating their satisfaction with the current binding vote on the policy. On the other hand, 20 per cent of investors and one third of non-executives believe that the current binding vote on policy falls short.

Figure 4.4



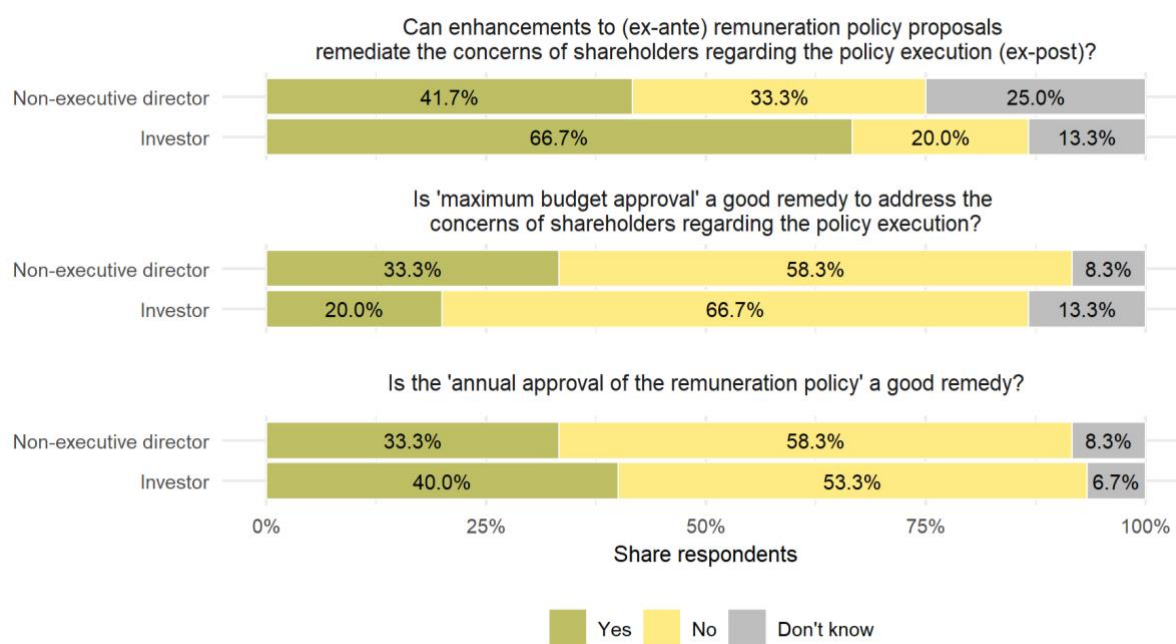
Survey Reward Value & SEO (2022). Based on 27 respondents; investors (n=15), non-executive directors (n=12).

4.1.3 Remuneration policy: Alternatives

Investors, and to a lesser extent non-executives, believe that enhancement to (ex-ante) proposals for remuneration policies would alleviate the concerns of shareholders regarding (ex-post) policy execution, as shown in Figure 4.5.

Two alternatives to the current remuneration policy voting requirements were presented to respondents. These options were (i) a maximum budget approval (ex ante), and (ii) an annual approval of the remuneration policy. Figure 4.5 shows the reactions to these alternatives. Both options were considered unfavourable, as represented by more than fifty per cent dissent for both investors and non-executives.

Figure 4.5

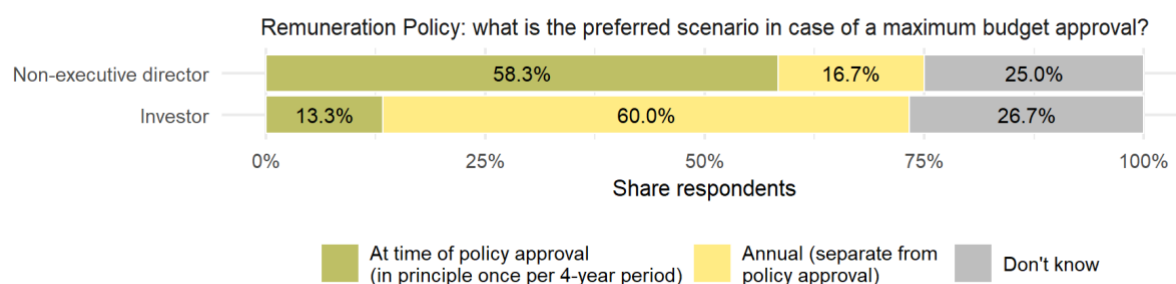


Source: *Survey Reward Value & SEO (2022)*. Based on 27 respondents; investors (n=15), non-executive directors (n=12).

The survey also asked the respondents to evaluate these two alternatives in depth. These results are discussed here, although these alternatives received very low support from both groups.

When asked how voting on an annual budget should be structured, as shown in Figure 4.6, investors displayed a preference for annual voting, while non-executives prefer 'at the time of policy' (ie: every four years).

Figure 4.6

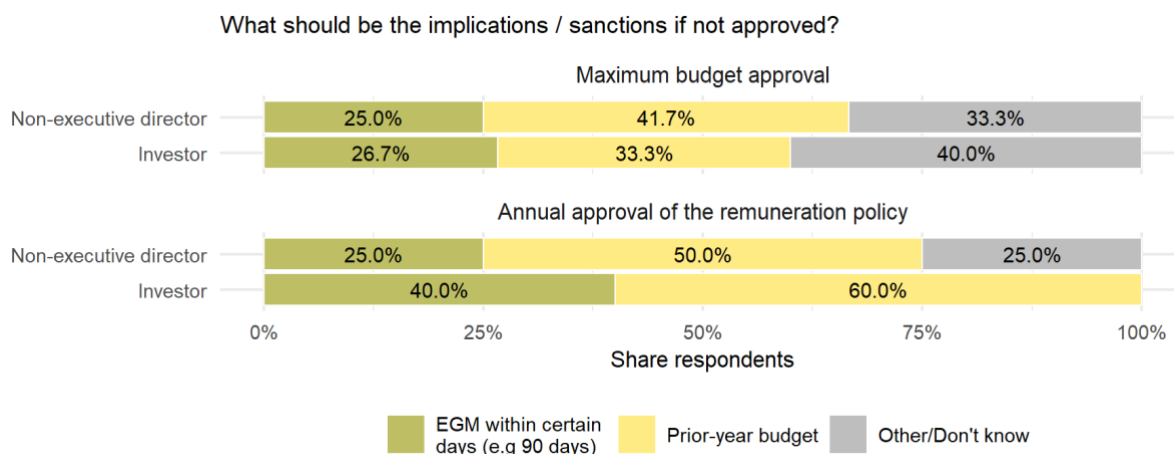


Source: *Survey Reward Value & SEO (2022)*. Based on 27 respondents; investors (n=15), non-executive directors (n=12).

Figure 4.7 explored the implications of a failed vote on the maximum budget, or on the annual policy.

In cases where the annual budget is not approved, non-executives prefer to revert to the previous year’s budget. Investors, for the most part, were unsure of what action should be taken. In cases where the annual vote on the policy fails, investors and non-executives agreed that reverting to the former year’s policy was the best approach.

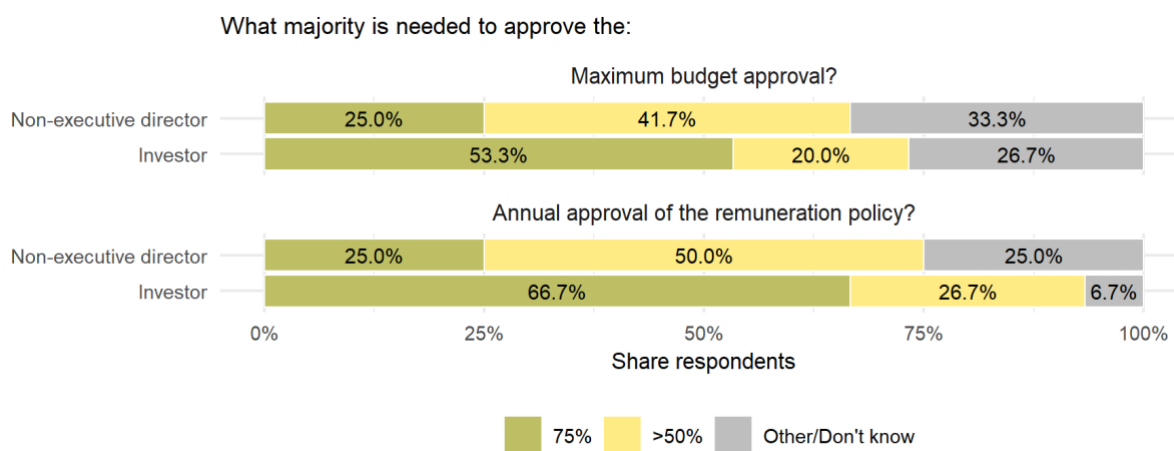
Figure 4.7



Source: Survey Reward Value & SEO (2022). Based on 27 respondents; investors (n=15), non-executive directors (n=12).

Figure 4.8 displays a striking divide between non-executives and investors with regards to what the groups believe an adequate majority should be in order to pass the two resolutions. While investors favour a 75 per cent majority to pass both resolutions, non-executives prefer a simple majority.

Figure 4.8

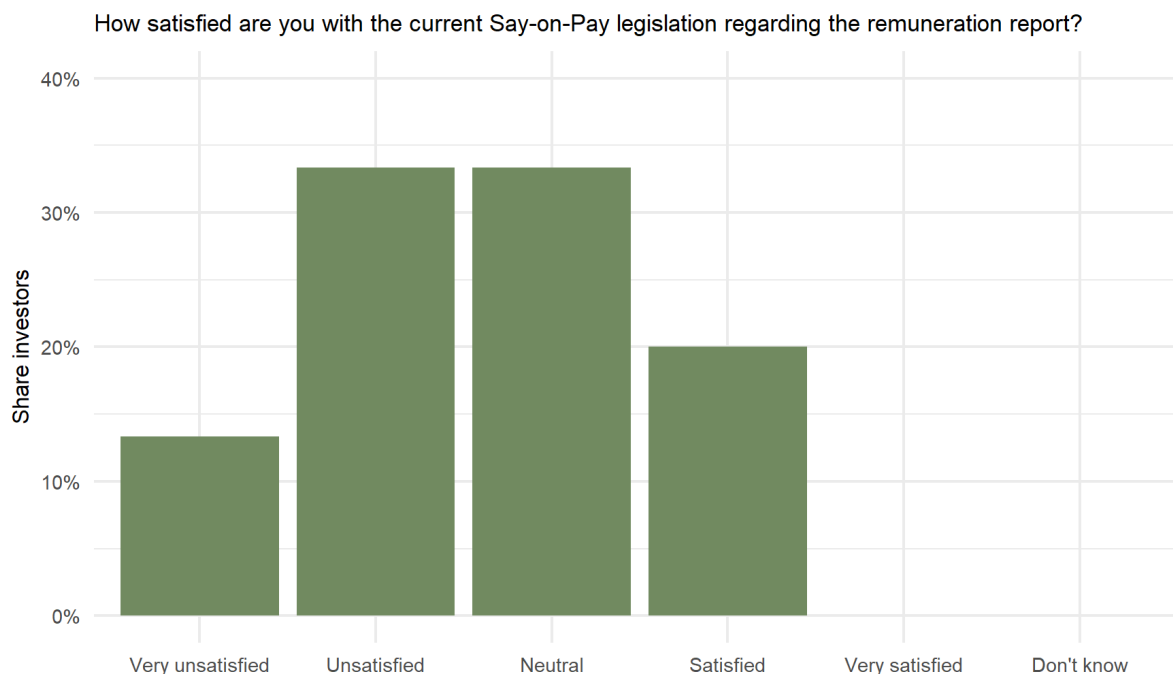


Source: Survey Reward Value & SEO (2022). Based on 27 respondents; investors (n=15), non-executive directors (n=12).

4.1.4 Remuneration report

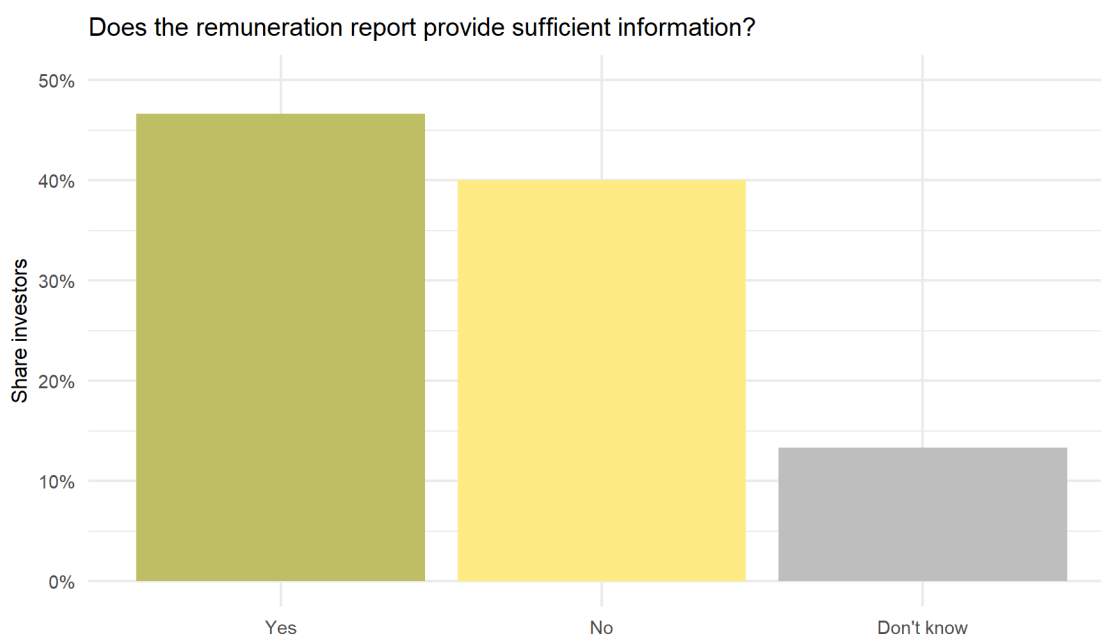
Figure 4.9 shows that more than half of investors are unsatisfied with the current Say-on-Pay framework as it affects the remuneration report. Only 20 per cent reported satisfaction. This statistic goes hand in hand with the fact that only approximately half of investors believe the remuneration report provides sufficient information, as opposed to 40 per cent who do not (Figure 4.10).

Figure 4.9



Source: *Survey Reward Value & SEO (2022)*. Based on 15 investors.

Figure 4.10

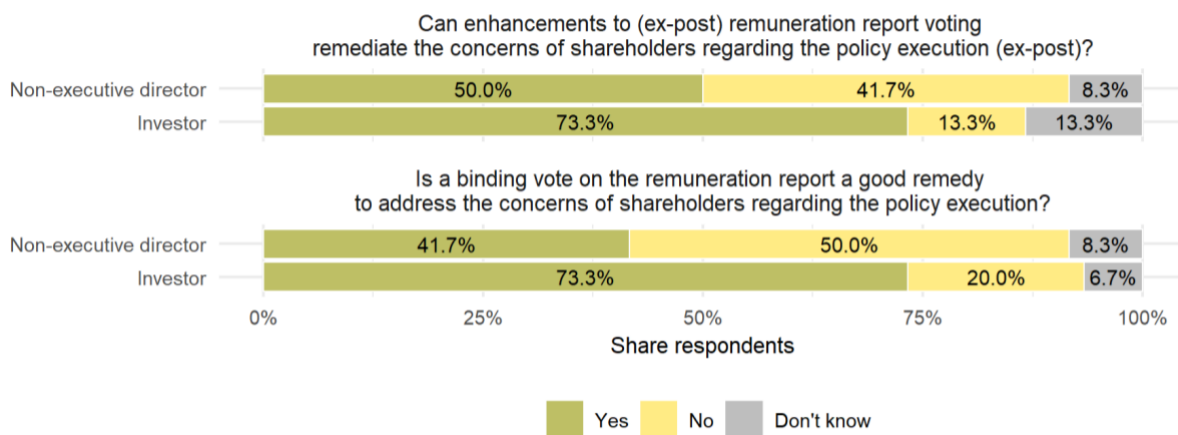


Source: *Survey Reward Value & SEO (2022)*. Based on 15 investors.

Figure 4.11 below shows that most investors believe that enhancements to (ex-post) remuneration report voting would alleviate the concerns of shareholders regarding the execution of remuneration policies. A small majority of non-executives agree with this assessment.

The question of whether a binding vote on the remuneration report would serve as an appropriate enhancement received mixed responses. While investors were by and large in favour of this approach, a small majority of non-executives believed that it was not the correct approach.

Figure 4.11

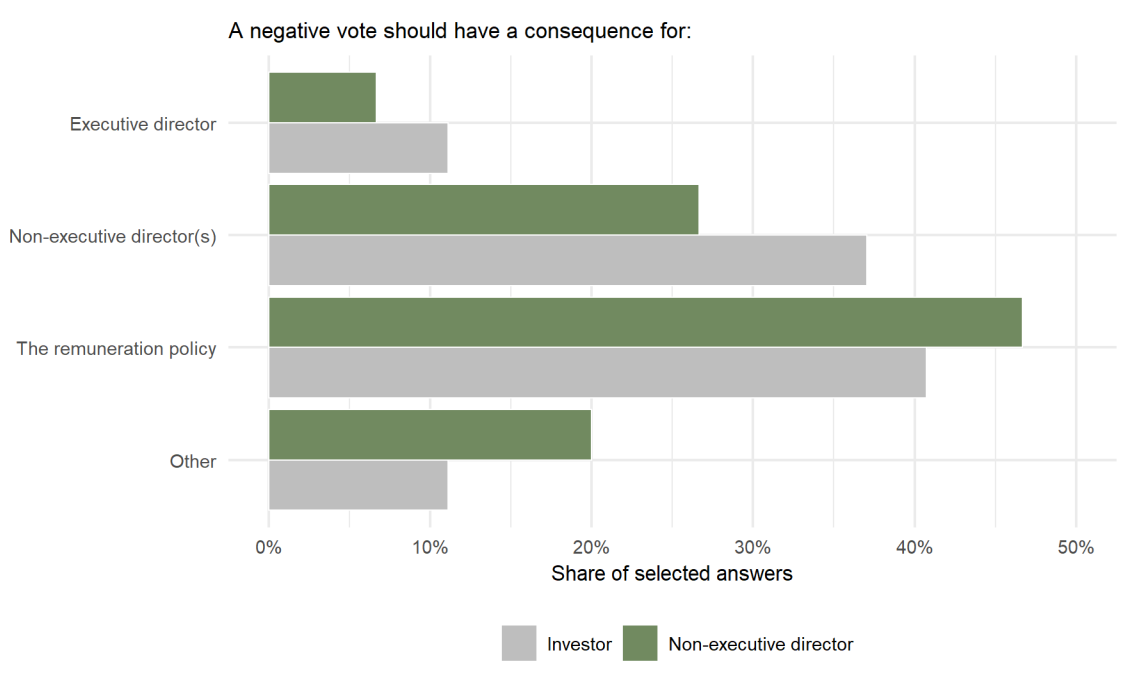


Source: *Survey Reward Value & SEO (2022)*. Based on 27 respondents; investors (n=15), non-executive directors (n=12).

4.1.5 Impact of a binding vote on the remuneration report

Respondents were asked to analyse the impact of a binding vote on the remuneration report in more depth. Figure 4.12 below shows that the majority of investors and non-executives believe that the consequences of a negative vote on the remuneration report should be borne by the remuneration policy. It was also believed amongst the participants that non-executives should bear consequences. Notably, neither investors and non-executives were in favour of the binding vote on the remuneration report having an impact on executive directors. Other respondents mentioned that it would depend on the situation, or that the remuneration report itself should be impacted.

Figure 4.12

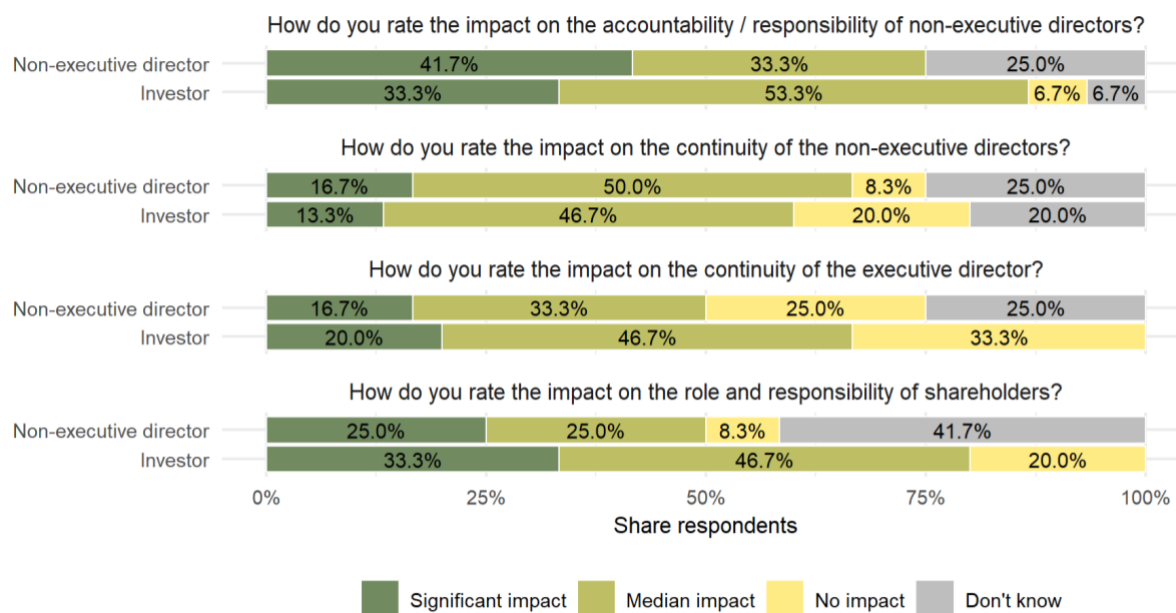


Source: *Survey Reward Value & SEO (2022)*. Based on 27 respondents; investors (n=15), non-executive directors (n=12).

Next, respondents were asked, in the context of the previous question, how each of these outcomes would impact on the given stakeholders.

First, respondents were asked to evaluate the impact of a binding vote on the remuneration report which has consequences primarily for the remuneration policy. As shown in Figure 4.13, the majority of investors and non-executives expect a median impact on all four stakeholders.

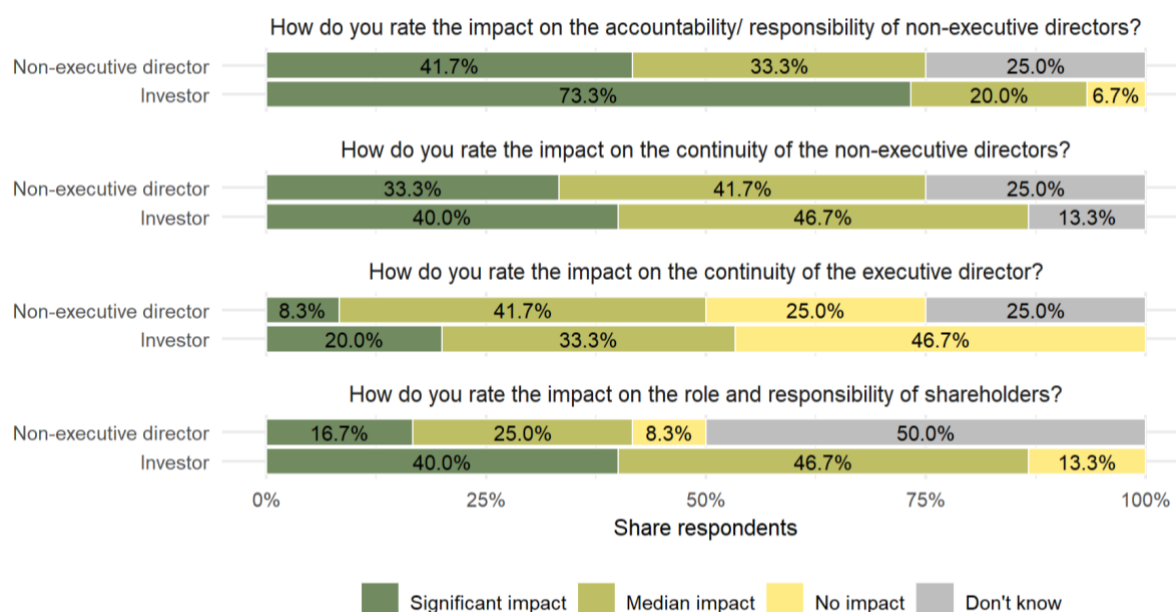
Figure 4.13



Source: Survey Reward Value & SEO (2022). Based on 27 respondents; investors (n=15), non-executive directors (n=12).

In the event of a binding vote on the remuneration report having consequences primarily for the non-executive directors, Figure 4.14 shows that investors rate the impact on the accountability/responsibility of non-executives as significant. Non-executives feel dissimilarly, with the majority rating this impact as 'median'. Here, investors also foresee median impact on the role and responsibility of shareholders, while the majority of non-executives responded that they were unsure of the impact on shareholders.

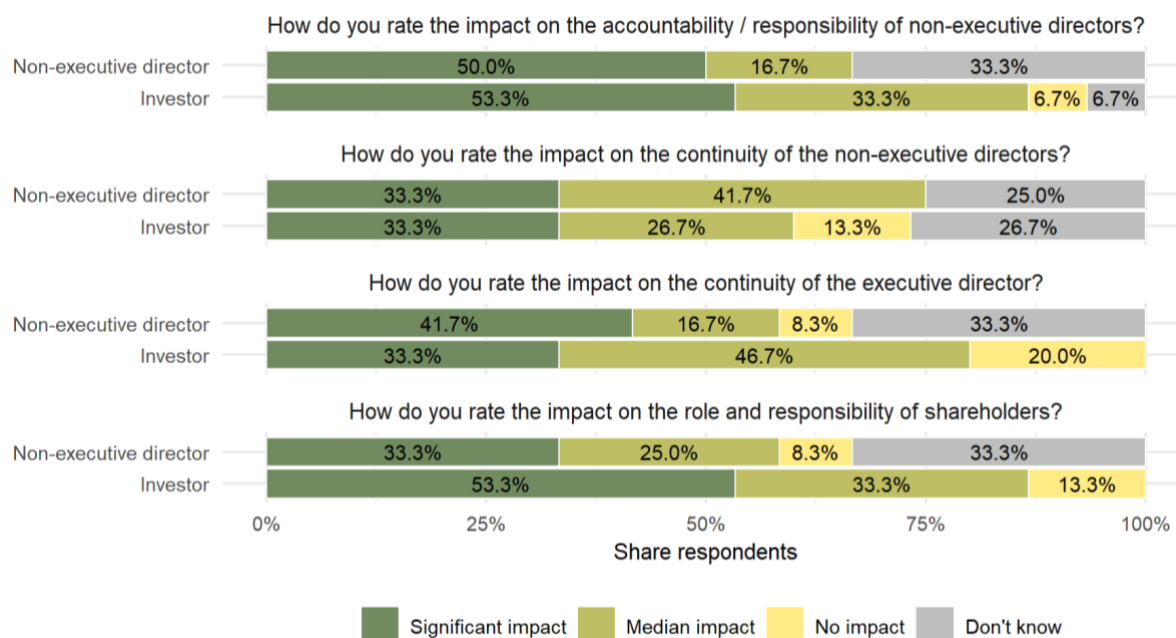
Figure 4.14



Source: Survey Reward Value & SEO (2022). Based on 27 respondents; investors (n=15), non-executive directors (n=12).

Finally, respondents were asked to rate the impact on various stakeholders in the case of the binding vote on the remuneration report having consequences for the executive. As shown in Figure 4.15, both investors and non-executives expect a significant impact on the accountability and responsibility of non-executive directors, the continuity of non-executive and executive directors, as well as the role and responsibility of shareholders

Figure 4.15

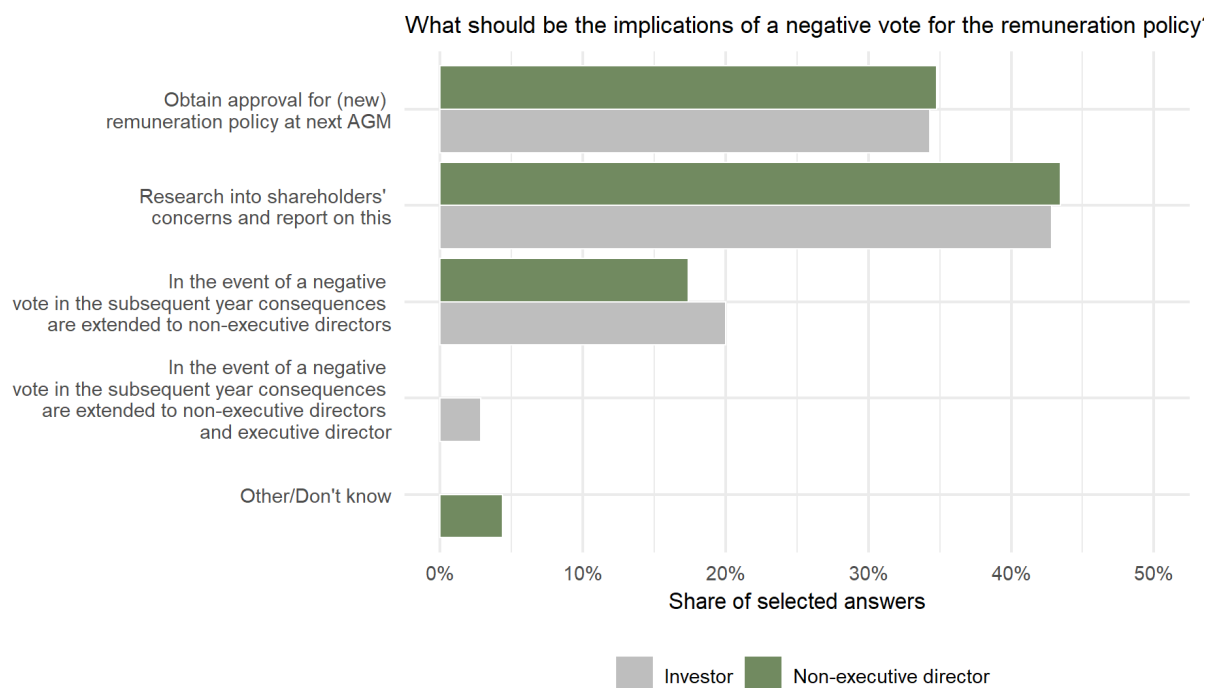


Source: Survey Reward Value & SEO (2022). Based on 27 respondents; investors (n=15), non-executive directors (n=12).

Respondents were also asked to evaluate the nature of implications a negative binding vote on remuneration reports should have on different stakeholders.

Figure 4.16 shows the results of respondents' views on the implications this negative vote should have on the remuneration policy. In this case, investors and non-executives concur on their opinion of the majority of actions proposed. Indeed, most believe that the negative vote should result in an obligation to research shareholder concerns and report on these outcomes. The next preferred action would be to obtain approval for (a new) remuneration policy at the following AGM.

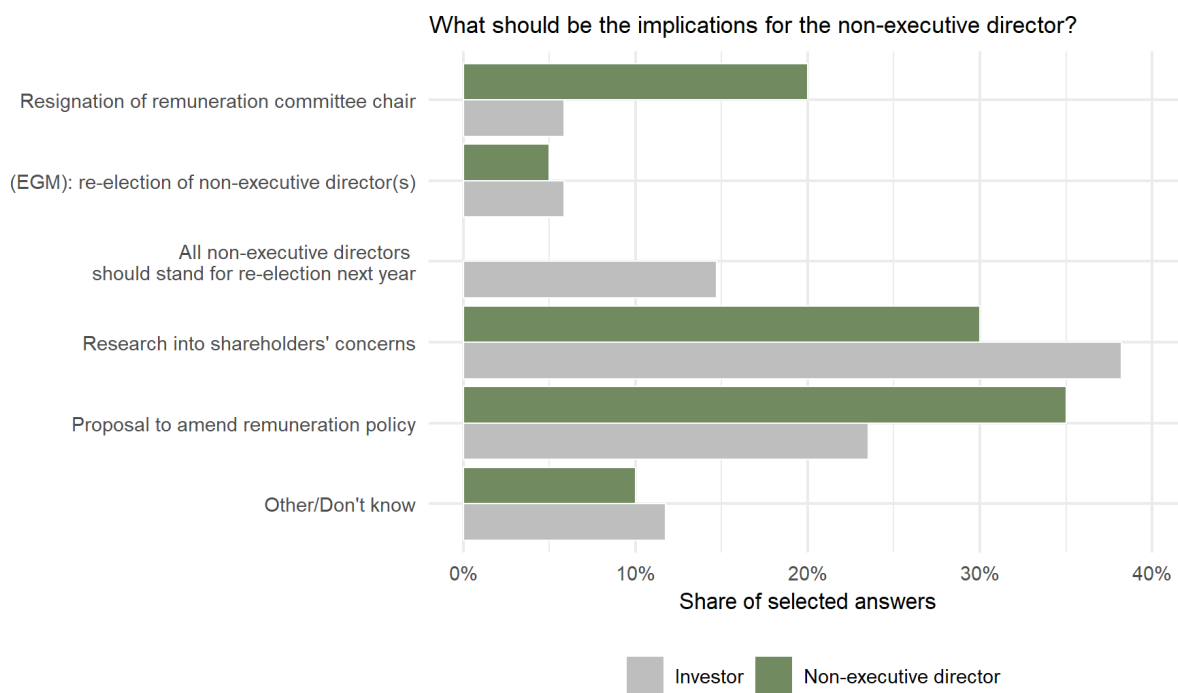
Figure 4.16



Source: *Survey Reward Value & SEO (2022)*. Based on 27 respondents; investors (n=15), non-executive directors (n=12).

Where implications of a negative vote on the remuneration report are borne primarily by the non-executive director, Figure 4.17 shows that the proposal to amend the remuneration policy emerges as the preferred action by non-executives, and the second preferred action by investors. Investors' first preferred option is that non-executives be obliged to research shareholders' concerns, with around 30 per cent of non-executives similarly supporting this idea. 20 per cent of non-executives believe that a negative vote on the remuneration report should result in the resignation of the Remuneration Committee chair.

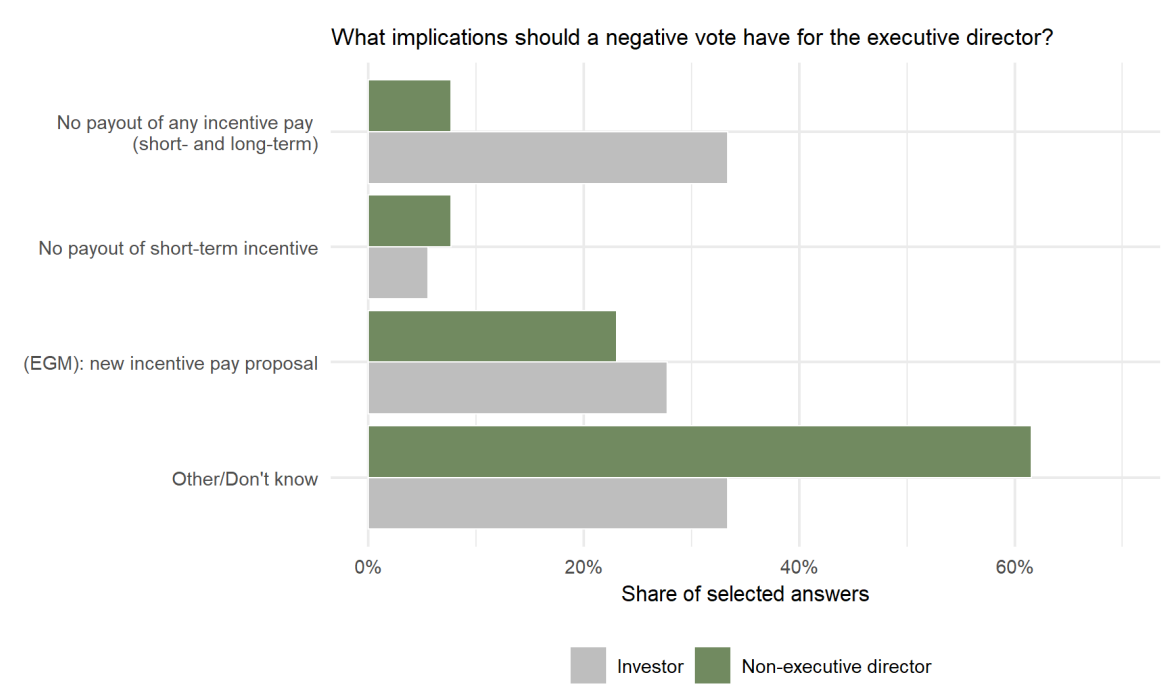
Figure 4.17



Source: *Survey Reward Value & SEO (2022)*. Based on 27 respondents; investors (n=15), non-executive directors (n=12).

Figure 4.18 shows insight into the views of respondents regarding the nature of implications for the executive directors. Here, the majority of non-executive directors responded that they either did not know, that there should not be consequences for the executive directors, or that other solutions such as the investigation of shareholder concerns, or an Australian-inspired spill resolution. Investors and non-executives were more or less in agreement that a new incentive pay proposal be put forward at an EGM. A significant number of investors expressed favour for an approach whereby executives would not receive a pay out of incentive pay, whether short-term or long-term.

Figure 4.18

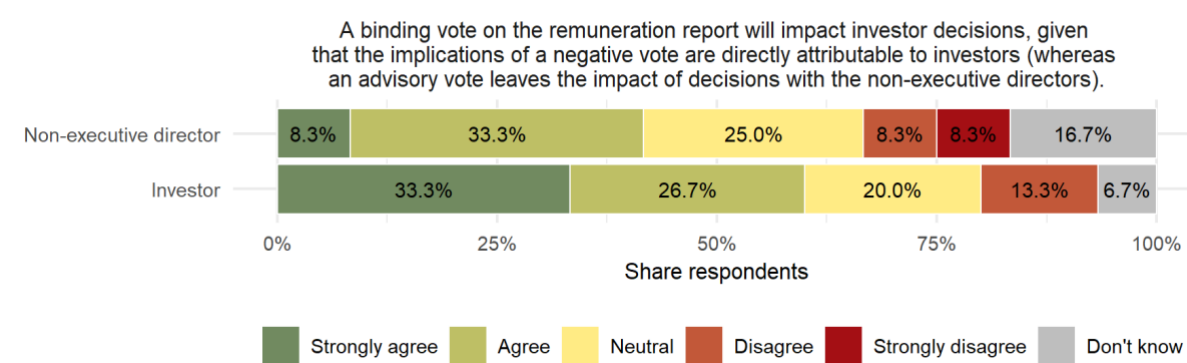


Source: Survey Reward Value & SEO (2022). Based on 27 respondents; investors (n=15), non-executive directors (n=12).

4.1.6 Binding vote

Figure 4.19 below shows that a majority of investors, and to a lesser extent non-executives, agree that investor behaviour will be impacted by a binding vote on the remuneration report.

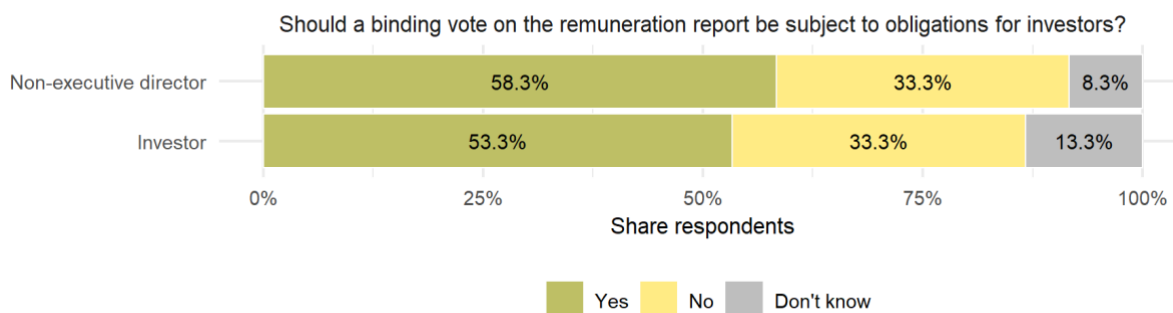
Figure 4.19



Source: Survey Reward Value & SEO (2022). Based on 27 respondents; investors (n=15), non-executive directors (n=12).

More than half of both the non-executive directors and the investors believe that a binding vote on the remuneration report should be subject to obligations for investors (Figure 4.20). In both groups one third of the respondents disagrees. In case of possible obligations, investors most often mention a mandatory explanation/rationale for the negative vote with public disclosure. Non-executive directors also prefer a mandatory explanation/rationale for the negative vote but are divided whether this should be provided to the company only or if there should be public disclosure.

Figure 4.20

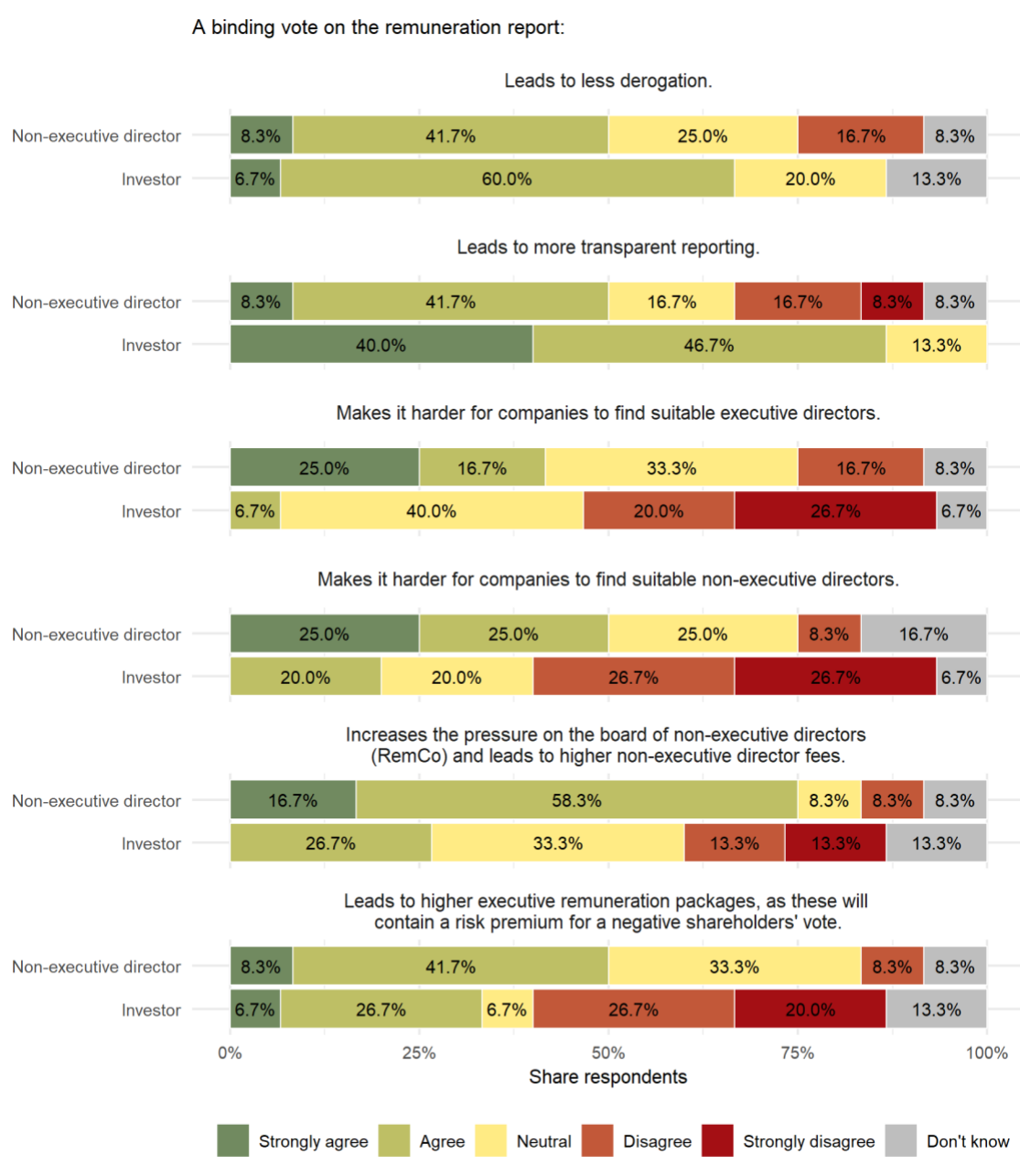


Source: Survey Reward Value & SEO (2022). Based on 27 respondents; investors (n=15), non-executive directors (n=12).

Respondents were presented with several statements regarding a binding vote on the remuneration report. The first half of these statements are represented, with results, in Figure 4.21.1 The other half are represented in Figure 4.21.2.

Figure 4.21.1 shows that half of the non-executive directors in the survey and 67 per cent of the investors either agree or strongly agree that a binding vote on the remuneration report leads to less derogation. While nearly all investors believe the binding vote will lead to more transparency, only half of the non-executive directors agree. The third and fourth bar shows that more than 90 per cent and 80 per cent of the investors do not believe it will be harder for companies to attract executive or non-executive talent respectively. In case of the non-executive directors close to half of them believe it does become harder. The fifth statement reveals that non-executives view a binding vote on the remuneration report as increasing the pressure on the Remuneration Committee and that it leads to higher non-executive directors' fees, while investors do not. The final bar states that especially investors (strongly) disagree to the statement that a binding vote leads to higher executive remuneration packages, as these will contain a risk premium for a negative shareholders' vote.

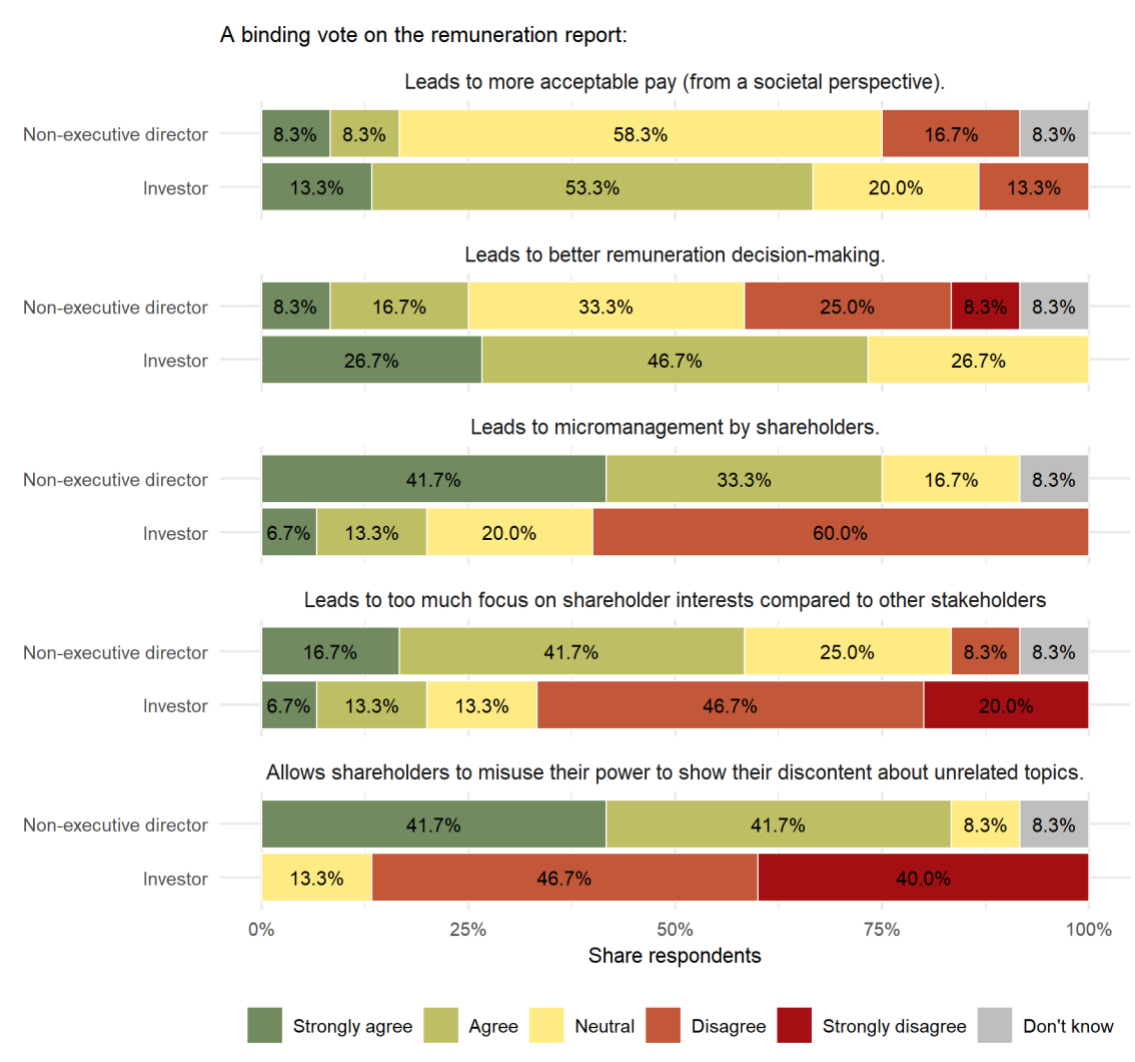
Figure 4.21.1



Source: Survey Reward Value & SEO (2022). Based on 27 respondents; investors (n=15), non-executive directors (n=12).

Figure 4.21.2 shows that investors agree that a binding vote leads to more acceptable pay and to better remuneration decision making. The third bar indicates that non-executives believe that the binding vote will amount to micromanagement by shareholders while 60 percent of the investors disagree. In the fourth and fifth bar again a clear difference in opinion between investor and non-executives arises. The fourth bar shows that 67 per cent of the investors (strongly) disagree with the statement that a binding vote leads to too much focus on shareholder interest compared to other stakeholders. On the other side, more than half of the non-executive directors believe that this is true. Finally, the fifth bar shows an ever-bigger difference in opinions between the two groups. While 87 per cent of the investors (strongly) disagree that shareholders will misuse their power to show their discontent about unrelated topics in case of a binding vote, 83 percent of the non-executives (strongly) agree that misuse of power will take place.

Figure 4.21.2



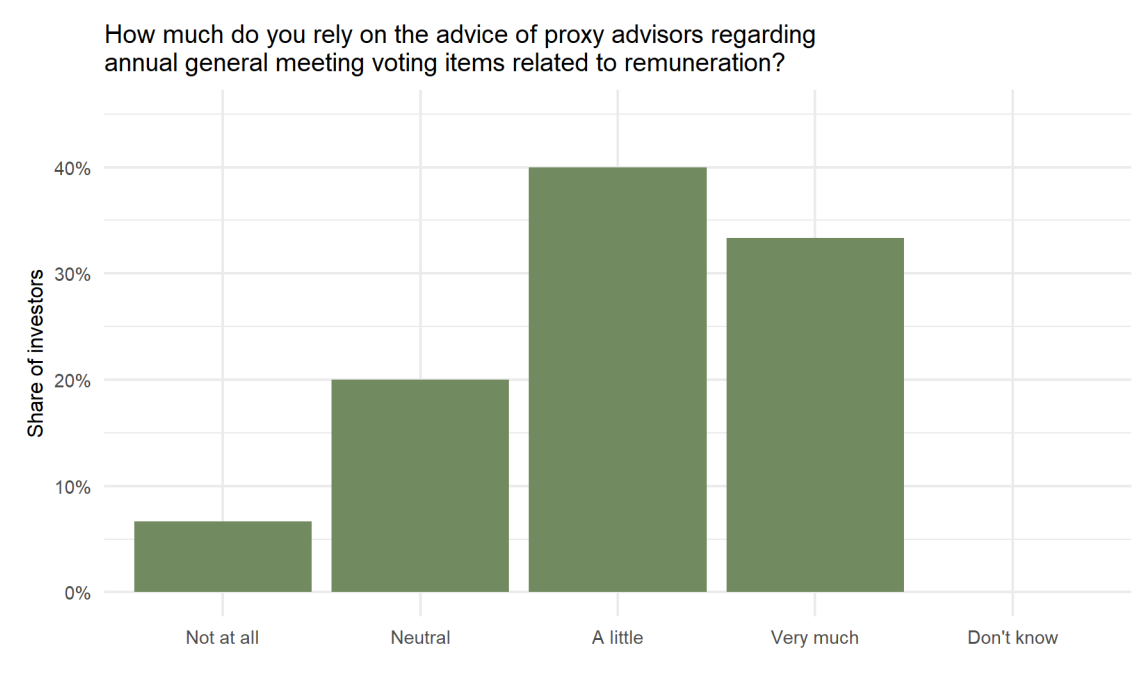
Source: Survey Reward Value & SEO (2022). Based on 27 respondents; investors (n=15), non-executive directors (n=12).

4.1.7 Proxy advisors

Figure 4.22 shows the relationship of reliance between shareholders and proxy advisors.

While most investors indicate that they rely either a little or very much on the advice of proxy advisors regarding their vote on remuneration during an AGM, another question reveals that 93 per cent of the investors are open to accepting policies that deviate from (proxy advisors’) standard advice.

Figure 4.22



Source: *Survey Reward Value & SEO (2022). Investors (n=15)*

4.2 Insights from focus groups

Focus groups took the form of semi-structured group interviews where participants from different groups (corporations, non-executive directors, investors and academics) were invited to share their views on various themes.

Common to all groups was the sentiment that engagement between shareholders and companies needed improvement. Both parties, directors, and shareholders, feel the need for a better mutual understanding of company-specific circumstances and shareholder views. While some directors felt that interest in engagement was increasing among shareholders, others felt that this remains an issue. Investors, on the other hand, felt that transparency on the company's efforts to engage with shareholders needed to be augmented. There was some incongruity between the groups as to whether engagement was primarily the obligation of the board, or shareholders – though the majority felt that this was a shared responsibility. Engagement requires an active reach-out by both parties and cannot be delegated to proxy advisors, whose role should be to analyse trends in the marketplace and advise their clients accordingly.

It was similarly agreed upon that several different methods could be used to achieve this enhanced engagement between parties – some borrowing from other jurisdictions, some yet unexplored. Support of the UK Corporate Governance Code model (whereby directors are obliged, within a certain time frame, to investigate shareholder concerns and publish the results of these efforts) was unanimous across groups, though it was mentioned that this was only effective in jurisdictions with strong shareholder representation. This also requires shareholders to be transparent about their concerns and rationale for a negative vote. Investors suggested that this model could be supplemented with the Australian-inspired mechanism of director re-election in the case of a repeated failed vote. It was generally felt that should this be the case, the Chair of the Remuneration Committee should also be concerned in a re-election. Yet another solution proffered was that of a clawback mechanism in the case of a failed vote on the remuneration report; this option was specifically mentioned in reference to bonus pay-outs. It was thus suggested that existing regulations and guidance on clawback should be expanded to include the possibility of claw back in case of a voted down remuneration report.

Annual voting on the remuneration policy was viewed as unsuitable as a solution for engagement by both non-executive directors and investors. Both groups considered that this would be a destabilising factor for the company as a whole, and not provide a good basis for dialogue. The majority of non-executive directors viewed binding votes on the remuneration reports as undesirable, due to the vulnerability of this type of vote to misuse and abuse, as well as its potential to create a divide between directors and shareholders rather than promote engagement. Overall, it was felt by directors and corporations that making the remuneration report subject to a binding vote would be against the general trend of 'multi-stakeholderism' across Europe. It was suggested that granting extensive powers only to one of these stakeholders (in this case, shareholders) would be out of step with these developments. However, the majority of investors displayed support for this option, citing its ability to create engagement between the parties. Some investors responded that this might be too strong, and – similarly to the reasoning provided by non-executive directors, that it might be open to misuse, and trigger the relegation of other, inappropriate, topics to the domain of shareholder approval.

Another shared issue between investors and non-executive directors was that of transparency. While it was acknowledged that ex-ante transparency is difficult to achieve due to considerations of competition, ex-post transparency, especially in the Netherlands, needed improvement. It was generally felt by investors that metrics utilised by companies when remunerating were vague, in

particular non-financial metrics, and those linked to ESG and sustainability. Non-executive directors were generally in agreement with these criticisms, citing that further development on KPI transparency was needed, despite recent improvements in dialogue.

Investors, in particular, also felt that more transparency was required on the inclusion of stakeholders. This issue ties in with another comment that was raised in the interviews (by some non-executive directors) indicating the apparent lack in expertise of Remuneration Committees. It was suggested by non-executive directors that the requirement of qualified knowledge to serve on the committee (a requirement similar to that of audit committee members under the Dutch rules) would be helpful in building accountability as well as improving the quality of committee outputs.

While those representing corporate interests considered that the current framework was working sufficiently well, and that it might be too early to fully evaluate its effects on the market, investors felt that the open-ended situations that arise out of failed votes on remuneration policies as well as on remuneration reports were already cause for concern that required reform. In connection herewith, it was suggested, however, that legislative reform may be unnecessary, considering the efficacy with which quasi-legal tools, such as Corporate Governance Codes, can deal with these matters.

Overall, the focus groups discussion outlined that specific attention should be given to three areas. The first being the quality of the remuneration committee and the expected expertise needed to deal with the complexity of the role. The second area: the need for increased transparency, allowing stakeholders to better understand the link between performance and pay, as well as the way decisions were made and how stakeholder views have been incorporated. Finally, engagement between companies and shareholders is to be stimulated: a responsibility to be shared by both parties. The levels of dialogue required in these situations is also easier to reach with experienced committees and shareholders on the basis of transparent disclosures.

CONCLUSIONS

In this study commissioned by Eumedion, the status and efficacy of current Dutch say-on-pay frameworks were evaluated in comparison with several other key jurisdictions. These jurisdictions were that of Australia, France, Switzerland, the United Kingdom and the United States – all so selected for their particularity in say-on-pay regulations. A legal review was carried out for all of the above jurisdictions, whereafter several key differences and areas of influence were identified. Some important legal lacunae were also exposed, as well as potential solutions thereto. Following this evaluation, a statistical analysis of the impact of (binding, advisory, and non-defined) say-on-pay legislation on pay levels was conducted, without rendering any clear empirical results. An additional analysis of voting data across the jurisdictions was performed in order to provide insights into the trends of shareholder dissent – whereby the Netherlands was a clear outlier in terms of negative votes, but on a statistically insignificant scale. Here, the differences in voting trends between shareholders as a whole and proxy advisors was also highlighted. This latter point was provided with more qualitative insight in the market study, which was conducted by use of surveys and interviews with relevant stakeholders – mainly investors, board directors and the VEVO.

In sum, say-on-pay has come a long way.

The Netherlands has distinguished itself from the continental trends in corporate governance by acting as an early adopter of say-on-pay, with its first introduction dating back to 2004. Since then, and in particular over the past five years, a general trend of convergence of the content and form of say-on-pay policy can be seen in Europe. This is in part due to the influence of important jurisdictions for corporate governance such as the United Kingdom, but also due to the European Shareholders' Rights Directive II in 2019, under which several European countries were obliged to enact a shareholders' vote on remuneration for the first time. At the time of writing of this report, the current framework has been in place for three voting seasons.

Engagement and transparency, as seen in the results of the survey and focus groups, are pertinent issues. As it stands, investors report issues with regards to access to key performance indicators; where this access is granted, clarity is often an issue. The survey indicated, as well, that there are divided views on whether the remuneration policy provides sufficient information regarding execution. On the other hand, survey participants reported low satisfaction with the information provided in remuneration reports. Companies can do more to instil confidence in shareholders through enhanced disclosures on KPIs for remuneration.

There exists also a shared responsibility between companies and their shareholders to improve levels of engagement. Companies reported issues with the level of shareholder interest in company affairs, as well as the opaque nature of voting outcomes. Shareholder engagement forms an important part of Stewardship Codes in jurisdictions such as the United Kingdom and the Netherlands. The general feeling of respondents in the focus groups and survey was that engagement can be enhanced through the adoption of provisions such as can be found in the UK Corporate Governance Code. As explored in the Legal Review chapter, companies who receive less than 80 per cent support on any resolution are recommended to investigate shareholder concerns and to report on their findings within six months. In keeping with the favour for the United Kingdom's configuration, it was also suggested that a negative vote on the remuneration report should trigger a vote on the remuneration policy in the following year.

In general, jurisdictions make use of both legislation and Corporate Governance Codes (under many names) to direct corporate behaviour. The Dutch Corporate Governance Code in particular has been

instrumental in guiding legal developments and norms in the Netherlands and should not be excluded when considering key aspects of legal reform, such as in order to enhance engagement between investors and directors, who have historically and as a result of their different orientations, been prone to mutual mistrust. Issues relating to transparency of remuneration practices are, similarly, best dealt with through soft law instruments such as Corporate Governance Codes. Remuneration Committees require experienced members with specialised knowledge on remuneration practices, another aspect of governance which can, and should, be addressed through an instrument such as the Corporate Governance Code.

Certain other aspects, however, such as consequences of non-compliance with current requirements, as well as the lack of mechanisms to break deadlocks that arise from failed say-on-pay votes, should be dealt with in legislation. In this case, a full analysis is needed in order to evaluate the need for such intervention, its potential side-effects, and the weighing up of the two. It should also be pointed out that given the current policy trends in the European Union, the globalised state of business, and the policy phenomenon known as Europeanisation, it would be most beneficial and effective to pursue legislative reform at the European level. The incomplete nature of the legislation on say-on-pay is not a Dutch issue, and many of the undesired consequences are visible in other jurisdictions. Similarly, other jurisdictions may have issues caused by the particular drafting of their own frameworks. As such, addressing these and other issues is best governed through a single market perspective through, for example, a Shareholders' Rights Directive III.

In all situations, reform should be embarked on as a participatory exercise; contributions from stakeholders representing all facets of the corporate sphere should be considered a vital requirement. The stakeholder model of corporate governance should also remain a key guiding principle in reform: as discussed in the study, frameworks that provide considerably more rights to one group of stakeholders, while neglecting the others, is out of step with current corporate trends.

Additional research in this domain is sorely needed. Legal reviews, surveys and interviews can provide an insight into what may increasingly become an issue over time; in this study these were identified as key candidates for soft law reform through Corporate Governance Codes and Stewardship Codes, for example. However, robust empirical analyses are needed in order to fully appreciate the effects of these regulations on the market and its participants before any full-scale legislative reform should be embarked on. Failing to allow the policy to come of a certain maturity (at the five-year mark) prior to engaging in legislative overhaul with robust data may result in the misidentification of the policy problem as a whole, and thereby the creation of redundant and potentially harmful legal reality.

SUMMARY OF RECOMMENDATIONS

- Corporate Governance Codes and Stewardship Codes should be amended in order to:
 - Better encourage engagement (obligations) between companies and investors on one hand, but also between stakeholders and companies;
 - Enhance the level of transparency of remuneration practices of companies through detailed disclosure requirements;
 - Improve the expertise of remuneration committees through the imposition of specific criteria for membership.
- Reforms should be pursued at the European level (through Directives or Regulations, as the case may be or through the revision of the Shareholder Rights Directive) in response to certain structural lacunae in current frameworks, including amendments in order to:
 - Provide direct consequences for non-compliance with say-on-pay requirements, without relying on stakeholder civil action;
 - Map out robust mechanisms for situations of deadlock arising from failed say-on-pay votes that both engage with and meet stakeholder and company needs.

APPENDIX A : BIBLIOGRAPHY

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Legislation, Codes and Case Law

European Union

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Commission Recommendation of 30 April 2009 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for remuneration of directors and listed companies

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

Australia

Binding and advisory votes on executive remuneration reports

Australian Asset Owner Stewardship Code

Australian Corporate Governance Principles and Recommendations, 2019.

Corporate Law Economic Reform (Audit Reform & Corporate Disclosure) Act, 2004.

Corporations Act, 2001.

France

Code de gouvernement d'entreprises des sociétés cotées, 2020.

Code Civil.

Code de Commerce.

Code du Travail.

Décret N° 2022-888 du 14 juin 2022 relatif à l'identification des actionnaires, la transmission d'informations et la facilitation de l'exercice des droits des actionnaires.

LOI n° 2014-384 du 29 mars 2014 visant à reconquérir l'économie réelle.

LOI n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique.

LOI n° 2019-486 du 22 mai 2019 relative à la croissance et la transformation des entreprises.

The Netherlands

Burgerlijk Wetboek, 1992.

Dutch Corporate Governance Code, 2022.

Wet van 6 november 2019 tot wijziging van Boek 2 van het Burgerlijk Wetboek, de Wet op het financieel toezicht en de Wet giraal effectenverkeer ter uitvoering van Richtlijn 2017/828/EU van het Europees Parlement en de Raad van 17 mei 2017 tot wijziging van Richtlijn 2007/36/EG wat het bevorderen van de langetermijnbetrokkenheid van aandeelhouders betreft.

Switzerland

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Code Suisse de bonnes pratiques pour le gouvernement d'entreprise, 2014.

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United Kingdom

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United States

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APPENDIX B: DATA ANALYSIS JURISDICTION TABLE

Jurisdiction	Year Advisory SoP		Year Binding SoP		
	Policy	Report	Policy	Report	
Australia	n/a	2004/2011*	n/a	n/a	Shareholders are provided with information only on remuneration policy. 2004: Initial introduction of vote; 2011 Two-Strike rule.
Austria	2020	2021	n/a	n/a	
Belgium	n/a	2012	2019	n/a	
Bermuda	n/a	n/a	n/a	n/a	
Canada	n/a	n/a	n/a	n/a	
Chile	n/a	n/a	n/a	n/a	
China	n/a	n/a	n/a	n/a	No legislative tool to this effect. CG Code (widely followed by listed companies) has binding vote on remuneration since 2008.
Denmark	n/a	2019	2019	n/a	
Finland	2020	2021	n/a	n/a	
France	2013	n/a	2017	2017	
Germany	2009*	2020	n/a	n/a	2009: Optional advisory vote on policy. Mandatory in 2020.
Hong Kong	n/a	n/a	n/a	n/a	
Iceland	n/a	n/a	n/a	n/a	
India	n/a	n/a	n/a	n/a	
Ireland	2020	2020	*		No Irish requirement pre-2020, but UK alignment common practice.
Israel	2014*	2014			Vote on policy binding for certain company structures.
Italy	2011*	n/a	2011	2020	Since 2011, binding vote on policy of certain financial institutions.
Japan	1898	1898	1898	1898	Current form 2005. Without real effect, due to the fact that these resolutions only limit aggregate fixed remuneration.
Jordan	n/a	n/a	n/a	n/a	
Luxembourg	2020	2020	n/a	n/a	2011: Advisory vote on compensation as whole.
Malaysia	n/a	n/a	n/a	n/a	
the Netherlands	n/a	2019	2004	n/a	
New Zealand	n/a	n/a	n/a	n/a	
Norway	n/a	2022	2022	n/a	
Oman	n/a	n/a	n/a	n/a	
Pakistan	n/a	n/a	n/a	n/a	
Philippines	n/a	n/a	n/a	n/a	
Poland	2011*	2022	2022	n/a	2011: Advisory vote on “guidelines” of remuneration.
Portugal	n/a	2021	2021	n/a	
Singapore	n/a	n/a	n/a	n/a	
South Africa	n/a	n/a	n/a	n/a	King Code (considered Listing Requirements) prescribe advisory vote for remuneration policy
Spain	n/a	2011	2011	n/a	
Sweden	n/a	2021	2006	n/a	
Switzerland	n/a	n/a	2014*	2014*	2014 vote on “compensation” as a whole ; no distinction in legislation on report / policy

Taiwan	n/a	n/a	*	n/a	*Shareholder vote on remuneration is present in legislation, but no data as to date is available. It is not utilised in practice. ²¹¹
Thailand	n/a	n/a	n/a	n/a	
United Kingdom	n/a	2003	2013	n/a	
United States	2011*	2011*	n/a	n/a	2011 vote on “compensation” as a whole ; no distinction in legislation on report / policy

²¹¹ A Lafarre (2022) ”Shareholder Engagement and Corporate Voting in a Comparative Perspective” in Harpreet et al. (eds.) *The Cambridge Handbook of Shareholder Engagement and Voting*. p479.
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APPENDIX C : LITERATURE REVIEW TABLE

Study	Scope	Effects on ...			Disclosures	Attract and retain talent	Firm performance
		Executive pay	Non-executive pay	Shareholder engagement and voting			
Cai & Walkling (2011)	US, 2003-2008			Activist-sponsored SoP proposals target large firms, and not necessarily firms with excessive CEO pay, poor governance or poor performance.			Passing of SoP bill has a positive market value reaction for firms with high abnormal CEO compensation, low pay-for-performance sensitivity, and responsiveness to shareholder pressure. Markets respond negatively to labor-sponsored SoP proposals.
Burns & Minnick (2013)	US, 2006-2010	Receiving a SoP proposal has no effect on total compensation. Receiving a SoP proposal causes the compensation mix to substitute bonuses for other forms of incentive compensation.	Compensation to directors at firms that receive a SOP proposal increases less than at non-SOP firms.	Shareholders target firms whose CEOs are well compensated, especially with cash-based compensation.			
Ferri & Maber (2013)	UK, 2000-2005	Receiving high dissent on a SoP vote causes firms to alter compensation practices / contracts. There may also be an ex-ante effect (firms removing controversial pay provisions to avoid high dissent). Post- introduction period no (shift) effect on level of total or cash bonus, but increasing pay-for-performance sensitivity, especially at poor performing firms.					Positive stock price reaction of the regulation's announcement at firms with weak penalties for poor performance / excess pay

Armstrong, Gow & Larcker (2013)							
Brunarski et al. (2015)	US, 2008-2011	Regardless of the outcome of a SoP vote, excess compensation increases after the SoP vote for managers that were previously overcompensated.					Managers that receive a low-support vote increase R&D, CapEx, and dividends, and decrease leverage, but these actions do not have a net effect on market value ('window dressing').
Correa & Lele (2016)	Global (38 countries), 2001-2012	After the adoption of SoP laws, the growth rate of CEO pay decreases and the pay-for-performance sensitivity increases. These effects are concentrated in firms with high excess pay, high shareholder dissent, long CEO tenure, and weaker governance (less independent boards). Decrease in difference compensation of CEO's and other executives.					SoP legislation positively associated with market value, perhaps mainly driven by changes in market value at firms where CEO compensation accounts for a larger part of total (cumulative) board compensation.
Cunat et al. (2016)	US, 2006-2010	No effect on pay levels or composition.					Event study shows that market value increases in response to firms adopting a SoP proposal. SoP adopters display stronger profitability, higher labor productivity, and a reduction in overhead and CapEx.
Grosse et al. (2017)	Australia, 2011-2012	Firms that receive a negative vote significantly reduce the CEO's (discretionary) bonus the next year, but no effect on total pay.		No association between measures of CEO pay and receiving a negative vote. Shareholders dissent against remuneration resolutions at firms with higher book-to-market-ratio's and leverage.	No association between remuneration disclosures and receiving a negative vote. Firms that receive a negative vote increase remuneration disclosures.		
Fisch, Palia & Solomon (2018)	US, 2010-2015						

APPENDIX D: SURVEY QUESTIONS

Start

Survey Say-on-Pay

Executive remuneration is the topic of a growing debate in society. In line with this, the European Union has strengthened the power of shareholders to voice their dissent – although to a limited extent - via the introduction of the Shareholders' Rights Directive II ("SRD II"). National governments have implemented the Say-on-Pay legislation in different ways.

Eumedion, which represents the interests of institutional investors in the field of corporate governance and sustainability, is of the opinion that non-executive directors of Dutch-listed firms do not take sufficient responsibility for and take insufficient action to address the concerns of shareholders when a negative advisory vote on the remuneration report is issued (=ex post, addressing the policy execution). Therefore, Eumedion is considering requesting, stronger legislation from the Dutch government.

Reward Value in cooperation with SEO Amsterdam Economics has been commissioned by Eumedion to conduct research to investigate the current Dutch Say-on-Pay legislation, to establish where it may be applied differently or more stringently.

The purpose of this survey is to obtain your views as an important stakeholder.

The survey takes about 15-25 minutes of your time to complete.

Thank you for your participation.

Next

If you have any questions or remarks, please send an email to [Astrid Lensink](mailto:Astrid.Lensink)

IntroQ1

General information

With which role do you associate yourself the most?

- IntroQ1=1 Non-executive director
- IntroQ1=2 Executive director/manager
- IntroQ1=3 Investor
- IntroQ1=4 Other

Previous

Next

0%  100%

If you have any questions or remarks, please send an email to [Astrid Lensink](mailto:Astrid.Lensink)

RemunerationQ1

General information

How important do you consider variable pay as part of the remuneration package for C-suite executives?

- RemunerationQ1=1 Not important at all
- RemunerationQ1=2 Not important
- RemunerationQ1=3 Neutral
- RemunerationQ1=4 Important
- RemunerationQ1=5 Very important
- RemunerationQ1=6 Don't know

RemunerationQ2


What do you think are the most important objectives of using (variable) remuneration?

Select one or more answers

- RemunerationQ2_1 Encouraging managers
- RemunerationQ2_2 Incentivizing good managers
- RemunerationQ2_3 Attracting capable managers
- RemunerationQ2_4 Steering business objectives
- RemunerationQ2_5 Other, namely
- RemunerationQ2_6 Don't know

Previous

Next

0%  100%

If you have any questions or remarks, please send an email to [Astrid Lensink](mailto:astrid.lensink@...)

Remuneration Policy and Report

Pursuant to the amended European Shareholder Rights Directive (“SRD II”), shareholders will have the right to vote on a company’s remuneration policy and remuneration report. In the Netherlands this has been implemented as outlined below:

Remuneration Policy - Binding vote (requires a 75% majority of votes)

Companies must offer a vote (*ex-ante*) on the remuneration policy at least every four years or whenever a material amendment to the existing policy is to be implemented. The remuneration policy will have to reflect a company’s strategy, long-term interests and sustainability.

Variable remuneration components must be based on clear, comprehensive and varied criteria, including corporate social responsibility criteria, where appropriate. Additionally, equity-based remuneration should be subject to vesting periods.


Companies will be allowed to temporarily deviate from the remuneration policy that has been approved by shareholders in exceptional circumstances, provided that the policy includes a description of said circumstances and of the terms of the potential deviation.

Remuneration Report – Annual advisory vote

Companies will have to present a “clear and understandable” report on the most recent financial year. This report will be subject to an annual advisory vote. The vote is backward-looking (*ex-post*).

Previous

Next

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

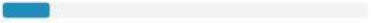
Remuneration Policy and Report

The following set of questions focuses on the remuneration policy.

This set is followed by a set of questions about the remuneration reports.

Previous

Next

0%  100%

If you have any questions or remarks, please send an email to [Astrid Lensink](#)

PolicyQ1A

Remuneration Policy

For more information about the SRD requirements for remuneration policies, please click [here](#).

Statements

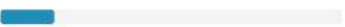
	Strongly disagree	Disagree	Neutral	Agree	Strongly agree	Don't know
I am satisfied with the current Say-on-Pay legislation regarding remuneration policies.	<input type="radio"/> PolicyQ1A_r1=1	<input type="radio"/> PolicyQ1A_r1=2	<input type="radio"/> PolicyQ1A_r1=3	<input type="radio"/> PolicyQ1A_r1=4	<input type="radio"/> PolicyQ1A_r1=5	<input type="radio"/> PolicyQ1A_r1=6
A binding vote on the remuneration policy is most suitable.	<input type="radio"/> PolicyQ1A_r2=1	<input type="radio"/> PolicyQ1A_r2=2	<input type="radio"/> PolicyQ1A_r2=3	<input type="radio"/> PolicyQ1A_r2=4	<input type="radio"/> PolicyQ1A_r2=5	<input type="radio"/> PolicyQ1A_r2=6
The current binding vote on the policy falls short.	<input type="radio"/> PolicyQ1A_r3=1	<input type="radio"/> PolicyQ1A_r3=2	<input type="radio"/> PolicyQ1A_r3=3	<input type="radio"/> PolicyQ1A_r3=4	<input type="radio"/> PolicyQ1A_r3=5	<input type="radio"/> PolicyQ1A_r3=6

PolicyQ1B

Please elaborate on your answer(s). *Optional*

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

PolicyQ2A

Remuneration Policy

Do the requirements regarding remuneration policies (ex-ante) give you enough confidence in the policy execution (ex-post)?

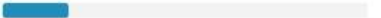
- PolicyQ2A=1 Yes
- PolicyQ2A=2 No
- PolicyQ2A=3 Don't know

PolicyQ2B

Please elaborate on your answer(s). *Optional*

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If you have any questions or remarks, please send an email to [Astrid Lensink](mailto:Astrid.Lensink)

Remuneration Policy

What is missing, in your view?

Select one or more answers

- PolicyQ3A_1 Clarity on link with purpose and strategy
- PolicyQ3A_2 Clarity on incentive targets
- PolicyQ3A_3 Clarity on link between performance and pay
- PolicyQ3A_4 Clarity on maximum pay
- PolicyQ3A_5 Clarity on scenario analysis
- PolicyQ3A_6 Clarity on derogation / discretion
- PolicyQ3A_7 Clarity on weights of performance metrics
- PolicyQ3A_8 Clarity on benchmarks used
- PolicyQ3A_9 Clarity on outcomes stakeholder consultation process
- PolicyQ3A_10 Clarity on pay ratio ranges
- PolicyQ3A_11 Clarity on social acceptance of remuneration policy
- PolicyQ3A_12 Clarity on severance pay
- PolicyQ3A_13 Simplicity
- PolicyQ3A_14 PolicyQ3A_14_other Other, namely
- PolicyQ3A_15 Nothing is missing
- PolicyQ3A_16 Don't know

PolicyQ3B

Please elaborate on your answer(s). *Optional*

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

PolicyQ4A

Remuneration Policy

Can enhancements to (ex-ante) remuneration policy proposals remediate the concerns of shareholders regarding the policy execution (ex post)?

- PolicyQ4A=1 Yes
- PolicyQ4A=2 No
- PolicyQ4A=3 Don't know


PolicyQ4B

If you answered 'yes' to the previous question, why? And what might be possible remedies?

If you answered 'no' to the previous question, why not?

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If you have any questions or remarks, please send an email to [Astrid Lensink](mailto:Astrid.Lensink)

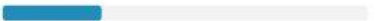
Remuneration Policy

Two potential alternatives to current remuneration policy voting requirements are:

1. Approval of maximum budget (= ex ante)
2. Annual approval of the remuneration policy

In the next set of questions we ask you about these alternatives.

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If you have any questions or remarks, please send an email to [Astrid Lensink](mailto:Astrid.Lensink)

PolicyQ5A

Remuneration Policy - alternatives

The following questions are about alternative 1: Approval of maximum budget (= ex ante).

Is “maximum budget approval” a good remedy to address the concerns of shareholders regarding the policy execution?


- PolicyQ5A=1 Yes
- PolicyQ5A=2 No
- PolicyQ5A=3 Don't know

PolicyQ5B

Please elaborate on your answer. *Optional*

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

Remuneration Policy - alternatives

You indicated that a maximum budget approval is not a good remedy to address the concerns of shareholders regarding the policy execution. However, we would still like to ask you for your views on possible alternatives. If you do not wish to do so, please tick *Don't know* to the following questions.

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PolicyQ5C

Remuneration Policy - alternatives

What is the preferred scenario? Maximum budget approval:

- PolicyQ5C=1 At time of policy approval (in principle once per 4-year period)
- PolicyQ5C=2 Annual (separate from policy approval)
- PolicyQ5C=3 Don't know

PolicyQ5D

What should be the implications / sanctions if not approved?

- PolicyQ5D=1 Extraordinary general meeting (EGM) within certain days (e.g 90 days)
- PolicyQ5D=2 Prior-year budget
- PolicyQ5D=3 Other, namely
- PolicyQ5D=4 Don't know

PolicyQ5E

What majority is needed to approve the maximum budget?

- PolicyQ5E=1 75% (same as for policy)
- PolicyQ5E=2 >50%
- PolicyQ5E=3 Other, namely
- PolicyQ5E=4 Don't know

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PolicyQ6A

Remuneration Policy - alternatives

The following questions are about alternative 2: Annual approval of the remuneration policy.

Is the "annual approval of the remuneration policy" a good remedy?

PolicyQ6A=1 Yes

PolicyQ6A=2 No

PolicyQ6A=3 Don't know

PolicyQ6B

Please elaborate on your answer. *Optional*

PolicyQ6C

What should be the implications / sanctions if not approved?

PolicyQ6C=1 Extraordinary general meeting (EGM) within certain days (e.g 90 days)

PolicyQ6C=2 Prior approved policy applies

PolicyQ6C=3 Other, namely:

PolicyQ6C=4 Don't know

PolicyQ6D

What majority is needed?

PolicyQ6D=1 75% (current)

PolicyQ6D=2 >50%

PolicyQ6D=3 PolicyQ6D_3_other

Other, namely:

PolicyQ6D=4 Don't know

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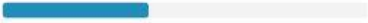
Remuneration Report

The following questions are about the remuneration report.

For more information about the SRD requirements for the remuneration report, please click [here](#).

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

ReportQ1

Remuneration Report

How satisfied are you with the current Say-on-Pay legislation regarding the remuneration report?

ReportQ1=1 Very unsatisfied

ReportQ1=2 Unsatisfied

ReportQ1=3 Neutral

ReportQ1=4 Satisfied

ReportQ1=5 Very satisfied

ReportQ1=6 Don't know

ReportQ2A

Does the remuneration report provide sufficient information?

ReportQ2A=1 Yes

ReportQ2A=2 No


ReportQ2A=3 Don't know

ReportQ2B

Please elaborate on your answer(s). *Optional*

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ReportQ3A

Remuneration Report

What, in your view, is missing in most remuneration reports? *Select one or more answers*

- ReportQ3A_1 Clarity on underlying incentive targets
- ReportQ3A_2 Clarity on actual performance against targets
- ReportQ3A_3 Clarity on link between performance and pay
- ReportQ3A_4 Clarity on applied derogation / discretion
- ReportQ3A_5 Standardised presentation
- ReportQ3A_6 Explanation of bonus pay-out
- ReportQ3A_7 Explanation of (changes in) internal pay ratio
- ReportQ3A_8 Simplicity
- ReportQ3A_9 A clear table with an overview of total remuneration of each individual executive
- ReportQ3A_10 ReportQ3A_10_other Other, namely:
- ReportQ3A_11 Don't know

ReportQ3B

Please elaborate on your answer(s). *Optional*

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

ReportQ4A

Remuneration Report

Can enhancements to (ex-post) remuneration report voting remediate the concerns of shareholders regarding the policy execution (ex post)?

- ReportQ4A=1 Yes
- ReportQ4A=2 No
- ReportQ4A=3 Don't know

ReportQ4B

If you answered 'yes' to the previous question, why? And what might be possible remedies?

If you answered 'no' to the previous question, why not?

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If you have any questions or remarks, please send an email to [Astrid Lensink](mailto:Astrid.Lensink)

Reporttext

Remuneration Report - binding vote

Some countries apply different voting requirements for remuneration reports. Examples include:

1. Binding vote on remuneration report. Consequences for the executive directors if voted down.
2. Binding vote on remuneration report. Consequences for the board of directors if voted down.
3. Binding vote on remuneration report. Consequences for the remuneration policy if voted down.

ReportQ5

Is a binding vote on the remuneration report a good remedy to address the concerns of shareholders regarding the policy execution?

- ReportQ5=1 Yes
- ReportQ5=2 No
- ReportQ5=3 Don't know

ReportQ6B

Please elaborate on your answer(s). *Optional*

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If you have any questions or remarks, please send an email to [Astrid Lensink](mailto:astrid.lensink@ec.europa.eu)

Remuneration Report - binding vote

You indicated that a binding vote on the remuneration report is not a good remedy to address the concerns of shareholders regarding the policy execution. However, we would still like to ask you for your views on possible alternatives. If you do not wish to do so, please tick *Don't know* to the following questions.

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

Remuneration Report

Binding vote on remuneration report with consequences for the executive director.

The next set of questions concern possible consequences for the executive director.

What implications should a negative vote have for the executive director?

Select one or more answers

- ReportQ7ConsequenceExec_1** No payout of any incentive pay (short- and long-term)
- ReportQ7ConsequenceExec_2** No payout of short-term incentive
- ReportQ7ConsequenceExec_3** No vesting of long-term incentive
- ReportQ7ConsequenceExec_4** Extraordinary general meeting (EGM): new incentive pay proposal
- ReportQ7ConsequenceExec_5** **ReportQ7ConsequenceExec_5_other** Other, namely
- ReportQ7ConsequenceExec_6** Don't know

ReportQ8A

What majority is needed?

- ReportQ8A=1** 75% (current)
- ReportQ8A=2** >50%
- ReportQ8A=3** **ReportQ8A_3_other** Other, namely:
- ReportQ8A=4** Don't know

ReportQ8B

Please elaborate on your answer(s). *Optional*

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

ReportQ9A

Remuneration Report

Binding vote on remuneration report with consequences for the executive.

In the event of a binding vote on the remuneration report with a consequence for the executive:

	No impact	Median impact	Significant impact	Don't know
How do you rate the impact on the accountability / responsibility of non-executive directors?	ReportQ9A_r1=1 <input type="radio"/>	ReportQ9A_r1=2 <input type="radio"/>	ReportQ9A_r1=3 <input type="radio"/>	ReportQ9A_r1=4 <input type="radio"/>
How do you rate the impact on the continuity of the non-executive directors?	ReportQ9A_r2=1 <input type="radio"/>	ReportQ9A_r2=2 <input type="radio"/>	ReportQ9A_r2=3 <input type="radio"/>	ReportQ9A_r2=4 <input type="radio"/>
How do you rate the impact on the continuity of the executive director?	ReportQ9A_r3=1 <input type="radio"/>	ReportQ9A_r3=2 <input type="radio"/>	ReportQ9A_r3=3 <input type="radio"/>	ReportQ9A_r3=4 <input type="radio"/>
How do you rate the impact on the role and responsibility of shareholders?	ReportQ9A_r4=1 <input type="radio"/>	ReportQ9A_r4=2 <input type="radio"/>	ReportQ9A_r4=3 <input type="radio"/>	ReportQ9A_r4=4 <input type="radio"/>

ReportQ9B

Please elaborate on your answer(s). *Optional*

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

Remuneration Report

Binding vote on remuneration report with consequences for the non-executive director.

The next set of questions concern possible consequences for the non-executive director.

What should be the implications for the non-executive director?

Select one or more answers

- ReportQ10AConsequeNonExe_1 Resignation of remuneration committee chair
- ReportQ10AConsequeNonExe_2 Resignation of all remuneration committee members
- ReportQ10AConsequeNonExe_3 Extraordinary general meeting (EGM): re-election of non-executive director(s)
- ReportQ10AConsequeNonExe_4 All non-executive directors should stand for re-election next year
- ReportQ10AConsequeNonExe_5 Research into shareholders' concerns
- ReportQ10AConsequeNonExe_6 Proposal to amend remuneration policy
- ReportQ10AConsequeNonExe_7 Other, namely:
- ReportQ10AConsequeNonExe_8 Don't know

ReportQ10B

What majority is needed?

- ReportQ10B=1 75%
- ReportQ10B=2 >50%
- ReportQ10B=3 Other, namely:
- ReportQ10B=4 Don't know

Please elaborate on your answer(s). *Optional*

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Remuneration Report

Binding vote on remuneration report with consequences for the non-executive director.

In the event of a binding vote on the remuneration report with consequences for the non-executive directors:

	No impact	Median impact	Significant impact	Don't know
How do you rate the impact on the accountability/responsibility of non-executive directors?	ReportQ11A_r1=1 <input type="radio"/>	ReportQ11A_r1=2 <input type="radio"/>	ReportQ11A_r1=3 <input type="radio"/>	ReportQ11A_r1=4 <input type="radio"/>
How do you rate the impact on the continuity of the non-executive directors?	ReportQ11A_r2=1 <input type="radio"/>	ReportQ11A_r2=2 <input type="radio"/>	ReportQ11A_r2=3 <input type="radio"/>	ReportQ11A_r2=4 <input type="radio"/>
How do you rate the impact on the continuity of the executives?	ReportQ11A_r3=1 <input type="radio"/>	ReportQ11A_r3=2 <input type="radio"/>	ReportQ11A_r3=3 <input type="radio"/>	ReportQ11A_r3=4 <input type="radio"/>
How do you rate the impact on the role and responsibility of shareholders?	ReportQ11A_r4=1 <input type="radio"/>	ReportQ11A_r4=2 <input type="radio"/>	ReportQ11A_r4=3 <input type="radio"/>	ReportQ11A_r4=4 <input type="radio"/>

ReportQ11B

Please elaborate on your answer(s). *Optional*

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Remuneration Report

Binding vote on remuneration report with consequences for the remuneration policy.

The next set of questions concern possible consequences for the remuneration policy.

What should be the implications of a negative vote for the remuneration policy?

Select one or more answers

- Q1ConsequenceRemunPolicy_1 Obtain approval for (new) remuneration policy at next AGM
- Q1ConsequenceRemunPolicy_2 Research into shareholders' concerns and report on this
- Q1ConsequenceRemunPolicy_3 In event of a negative vote in the subsequent year consequences are extended to non-executive directors
- Q1ConsequenceRemunPolicy_4 In event of a negative vote in the subsequent year consequences are extended to executive director
- Q1ConsequenceRemunPolicy_5 In event of a negative vote in the subsequent year consequences are extended to non-executive directors and executive director
- Q1ConsequenceRemunPolicy_6 Other, namely: Q1ConsequenceRemunPolicy_6_other
- Q1ConsequenceRemunPolicy_7 Don't know

Q2A

What majority is needed?

- Q2A=1 75% (current)
- Q2A=2 >50%
- Q2A=3 Q2A_3_other Other, namely:
- Q2A=4 Don't know

Q2B

Please elaborate on your answer(s). *Optional*

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If you have any questions or remarks, please send an email to [Astrid Lensink](mailto:Astrid.Lensink)

Q3A

Remuneration Report

Binding vote on remuneration report with consequences for the remuneration policy.

In the event of a binding vote on the remuneration report with a consequence for the remuneration policy:

	No impact	Median impact	Significant impact	Don't know
How do you rate the impact on the accountability / responsibility of non-executive directors?	<input type="radio"/> Q3A_r1=1	<input type="radio"/> Q3A_r1=2	<input type="radio"/> Q3A_r1=3	<input type="radio"/> Q3A_r1=4
How do you rate the impact on the continuity of the non-executive directors?	<input type="radio"/> Q3A_r2=1	<input type="radio"/> Q3A_r2=2	<input type="radio"/> Q3A_r2=3	<input type="radio"/> Q3A_r2=4
How do you rate the impact on the continuity of the executives?	<input type="radio"/> Q3A_r3=1	<input type="radio"/> Q3A_r3=2	<input type="radio"/> Q3A_r3=3	<input type="radio"/> Q3A_r3=4
How do you rate the impact on the role and responsibility of shareholders?	<input type="radio"/> Q3A_r4=1	<input type="radio"/> Q3A_r4=2	<input type="radio"/> Q3A_r4=3	<input type="radio"/> Q3A_r4=4

Q3B

Please elaborate on your answer(s). *Optional*

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

BindingVote

Remuneration Report

A negative vote should have consequences for:

Select one or more answers

- BindingVote_1 Executive director
- BindingVote_2 Non-executive director(s)
- BindingVote_3 The remuneration policy
- BindingVote_4 Other, namely
- BindingVote_5 Don't know

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

BindingVQ1

Remuneration Report - binding vote

Statement

A binding vote on the remuneration report will impact investor decisions, given that the implications of a negative vote are directly attributable to investors (whereas an advisory vote leaves the impact of decisions with the non-executive directors).

- BindingVQ1=1 Strongly disagree
- BindingVQ1=2 Disagree
- BindingVQ1=3 Neutral
- BindingVQ1=4 Agree
- BindingVQ1=5 Strongly agree
- BindingVQ1=6 Don't know

BindingVQ2

Should a binding vote on the remuneration report be subject to obligations for investors?

- BindingVQ2=1 Yes
- BindingVQ2=2 No
- BindingVQ2=3 Don't know

BindingVQ3

What should these obligations entail?

- BindingVQ3=1 Mandatory explanation / Rationale for negative vote. Provide to company
- BindingVQ3=2 Mandatory explanation / Rationale for negative vote. Public disclosure
- BindingVQ3=3

Other, namely:

Don't know

BindingVQ4A

Above what ownership percentage should this requirement apply? (e.g. >1%, >5%)

Numerical values only

BindingVQ4B

Please elaborate on your answer(s). *Optional*

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

Remuneration Report - binding vote

Statements

A binding vote on the remuneration report:

	Strongly disagree	Disagree	Neutral	Agree	Strongly agree	Don't know
Leads to less derogation.	BindingVQ5_r1=1 <input type="radio"/>	BindingVQ5_r1=2 <input type="radio"/>	BindingVQ5_r1=3 <input type="radio"/>	BindingVQ5_r1=4 <input type="radio"/>	BindingVQ5_r1=5 <input type="radio"/>	BindingVQ5_r1= <input type="radio"/>
Leads to more transparent reporting.	BindingVQ5_r2=1 <input type="radio"/>	BindingVQ5_r2=2 <input type="radio"/>	BindingVQ5_r2=3 <input type="radio"/>	BindingVQ5_r2=4 <input type="radio"/>	BindingVQ5_r2=5 <input type="radio"/>	BindingVQ5_r2= <input type="radio"/>
Makes it harder for companies to find suitable executive directors.	BindingVQ5_r3=1 <input type="radio"/>	BindingVQ5_r3=2 <input type="radio"/>	BindingVQ5_r3=3 <input type="radio"/>	BindingVQ5_r3=4 <input type="radio"/>	BindingVQ5_r3=5 <input type="radio"/>	BindingVQ5_r3= <input type="radio"/>
Makes it harder for companies to find suitable non-executive directors.	BindingVQ5_r4=1 <input type="radio"/>	BindingVQ5_r4=2 <input type="radio"/>	BindingVQ5_r4=3 <input type="radio"/>	BindingVQ5_r4=4 <input type="radio"/>	BindingVQ5_r4=5 <input type="radio"/>	BindingVQ5_r4= <input type="radio"/>
Increases the pressure on the board of non-executive directors (RemCo) and leads to higher non-executive director fees.	BindingVQ5_r5=1 <input type="radio"/>	BindingVQ5_r5=2 <input type="radio"/>	BindingVQ5_r5=3 <input type="radio"/>	BindingVQ5_r5=4 <input type="radio"/>	BindingVQ5_r5=5 <input type="radio"/>	BindingVQ5_r5= <input type="radio"/>
Leads to higher executive remuneration packages, as these will contain a risk premium for a negative shareholders' vote.	BindingVQ5_r6=1 <input type="radio"/>	BindingVQ5_r6=2 <input type="radio"/>	BindingVQ5_r6=3 <input type="radio"/>	BindingVQ5_r6=4 <input type="radio"/>	BindingVQ5_r6=5 <input type="radio"/>	BindingVQ5_r6= <input type="radio"/>

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If you have any questions or remarks, please send an email to [Astrid Lensink](mailto:Astrid.Lensink)

Remuneration Report - binding vote

Statement

A binding vote on the remuneration report:

	Strongly disagree	Disagree	Neutral	Agree	Strongly agree	Don't know
Leads to more acceptable pay (from a societal perspective).	<input type="radio"/> BindingVQ6_r1=1	<input type="radio"/> BindingVQ6_r1=2	<input type="radio"/> BindingVQ6_r1=3	<input type="radio"/> BindingVQ6_r1=4	<input type="radio"/> BindingVQ6_r1=5	<input type="radio"/> BindingVQ6_r1=6
Leads to better remuneration decision-making.	<input type="radio"/> BindingVQ6_r2=1	<input type="radio"/> BindingVQ6_r2=2	<input type="radio"/> BindingVQ6_r2=3	<input type="radio"/> BindingVQ6_r2=4	<input type="radio"/> BindingVQ6_r2=5	<input type="radio"/> BindingVQ6_r2=6
Leads to micromanagement by shareholders.	<input type="radio"/> BindingVQ6_r3=1	<input type="radio"/> BindingVQ6_r3=2	<input type="radio"/> BindingVQ6_r3=3	<input type="radio"/> BindingVQ6_r3=4	<input type="radio"/> BindingVQ6_r3=5	<input type="radio"/> BindingVQ6_r3=6
Leads to too much focus on shareholder interests compared to other stakeholders.	<input type="radio"/> BindingVQ6_r4=1	<input type="radio"/> BindingVQ6_r4=2	<input type="radio"/> BindingVQ6_r4=3	<input type="radio"/> BindingVQ6_r4=4	<input type="radio"/> BindingVQ6_r4=5	<input type="radio"/> BindingVQ6_r4=6
Allows shareholders to misuse their power to show their discontent about unrelated topics.	<input type="radio"/> BindingVQ6_r5=1	<input type="radio"/> BindingVQ6_r5=2	<input type="radio"/> BindingVQ6_r5=3	<input type="radio"/> BindingVQ6_r5=4	<input type="radio"/> BindingVQ6_r5=5	<input type="radio"/> BindingVQ6_r5=6

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If you have any questions or remarks, please send an email to Astrid.Lensink

Proxy advisors

How much do you rely on the advice of proxy advisors regarding annual general meeting voting items related to remuneration?

- ProxyQ1=1 Not at all
- ProxyQ1=2 Neutral
- ProxyQ1=3 A little
- ProxyQ1=4 Very much
- ProxyQ1=5 Don't know

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If you have any questions or remarks, please send an email to [Astrid Lensink](mailto:Astrid.Lensink)

Proxy advisors

How do you value the advice of proxy advisors regarding annual general meeting (AGM) voting items related to remuneration?

- ProxyQ2=1 Not valuable at all
- ProxyQ2=2 Not valuable
- ProxyQ2=3 Neutral
- ProxyQ2=4 Valuable
- ProxyQ2=5 Very Valuable
- ProxyQ2=6 Don't know

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Proxy Q3A

Proxy advisors

Are you open to accepting policies that deviate from (proxy advisor) standard policies?

- ProxyQ3A=1 Yes
- ProxyQ3A=2 No
- ProxyQ3A=3 Don't know

Proxy Q3B

Please elaborate on your answer. *Optional*

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If you have any questions or remarks, please send an email to [Astrid Lensink](mailto:Astrid.Lensink)

cqi

Concluding remarks

Anything else you would like to share about Say-on-Pay legislation?

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

cq2

Concluding remarks

Would you like to give any further feedback on this questionnaire?

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

Ctext

You have completed the survey. You still have the possibility to modify your answers. This can be done by clicking on the 'previous' button. When you click on 'next', you can no longer change your answers.

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If you have any questions or remarks, please send an email to [Astrid Lensink](#)

Terminate

Thank you for your time and input. You can now close the survey



If you have any questions or remarks, please send an email to [Astrid Lensink](#)

Executive remuneration today is driven by incentives that may no longer align with shareholder interests or reflect broader societal responsibilities.

Reward Value Foundations' mission is to support the development of remuneration policies that contribute to long-term sustainable and inclusive value creation. The Foundation seeks to further the debate on executive remuneration with investors, business schools, and the business community at large to develop evidence-based, long-term, sustainable, and stakeholder-inclusive executive remuneration policies.

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