

# SHAREHOLDER ACTIVISM IN BELGIUM

## THE ACTIVIST'S TOOLBOX



# Agenda

1. About Deminor
2. Our experience in activism
3. Long-only activism VS short sellers' activism
4. Typical activist toolbox
5. Stakeholders' interests VS shareholders' value
6. Strong momentum for ESG activism
7. How to react when investors decide to engage

# 1. About Deminor



- European leader in commercial litigation, antitrust and investment recovery
- International team (Europe, Asia, North America)
- Clients are mainly companies and institutional investors

- Legal, corporate finance and governance specialists assisting companies and shareholders
- Focussing on Benelux markets
- Clients are families, companies, boards, institutional and private shareholders

## 2. Our experience in activism

|             |                                                                                                     |
|-------------|-----------------------------------------------------------------------------------------------------|
| <b>1990</b> | Creation of Deminor                                                                                 |
| <b>1993</b> | Launching of the <b>corporate governance</b> activity                                               |
| <b>1997</b> | Creation of the <b>proxy voting</b> activity, later carved out and sold to ISS to become ISS Europe |
| <b>2006</b> | Creation of the <b>Active Governance Fund</b> in the Netherlands                                    |
| <b>2008</b> | Launching of the <b>Governance Platform</b> in the Netherlands                                      |
| <b>2009</b> | Launching of the <b>investment recovery</b> activity, carved out in 2012                            |
| <b>2012</b> | Creation of the <b>PVBuyBack Fund</b> (UCIT SICAV)                                                  |

All in all, Deminor initiated or took part in more than 30 engagements in major listed and non-listed companies, exclusively for long-only shareholders or investment recovery missions:

- CIWLT
- Fortis
- Dieselgate
- BIS
- Olympus
- Saipem
- Parmalat
- LHSP
- Vestas
- Madoff
- Picanol
- etc.

### 3. Long-only activism VS short sellers' activism

- The investor/activist type could be similar in both cases (mainly hedge funds)
- Their **toolbox** could also be the same
- An in-depth **analysis of the case** is also fundamental for both approaches
- ... BUT their **objectives** are complete **opposites**
  - The long-only investor is aiming to “unlock value”
  - The short sellers consider the stock price to be too inflated

## 4. The typical activist toolbox (1/2)

|                            |                                                                                                       |
|----------------------------|-------------------------------------------------------------------------------------------------------|
| <b>Preparation</b>         | Collect information about the case                                                                    |
|                            | Buy shares if not yet a shareholder                                                                   |
|                            | In-depth analysis of the facts, figures, board decisions, value creation, responsibility, etc.        |
| <b>Contact with target</b> | Get in contact with the company                                                                       |
|                            | Be clear on your goals and objectives                                                                 |
|                            | Evacuate or address potential conflict of interests                                                   |
|                            | Based on the target's reaction, decide if an engagement makes sense                                   |
| <b>Engagement</b>          | Issue a press release and plan public communication                                                   |
|                            | Be vocal at the general meetings, if needed                                                           |
|                            | Proxy solicitation: get organized, find some allies, convince proxy advisors (ISS, Glass Lewis, etc.) |
|                            | Focus on thresholds for quorum and voting rights                                                      |
|                            | If needed, add new topics to the general meetings' agenda                                             |
| <b>Litigation</b>          | Consider litigation if there is a strong case                                                         |

## 4. The typical activist toolbox (2/2)

**Thresholds** in Belgian listed companies (SA/NV):

- Shareholders owning **10% of the share capital** may request the board to **convene a general meeting**, with at least their requested items/topics on the agenda (7:126 BCCA)
- Shareholders owning **3% of the share capital** may request the board to add **new items/topics on the agenda** of a general meeting (7:130 BCCA)
- Shareholders must pay attention to declare passing the threshold of 5%, 10%, 15%... of the voting rights.  
Companies can decrease these threshold to 1%, 2%, 3%, 4% and 7,5%

## 5. Stakeholders' interests VS shareholders' value (1/2)

- Focus on shareholders' value is probably **not the future of activism**
- Activism is increasingly being used to **tackle ESG issues** (e.g. Roger Cox in Shell)
- Governance (**G**) issues are already well addressed...
- ... but Environment (**E**) and Social (**S**) activism is still in their **early stages**
- Activists are well organised for "G" and shareholders' value, but not yet for "S" and "E"



## 5. Stakeholders' interests VS shareholders' value (2/2)

### Reasons for shareholders engagements

- Equity value lower than book value
- Financial underperformance VS peers
- No clear strategy
- Significant cash reserves
- Conflicts of interests
- Fraud
- Bad governance
- Unreasonable management compensation

### Future targets of activists

- Climate change
- Use of fossil energy
- Pollution and CO<sup>2</sup> emissions
- LGBTQ+ rights
- Racial issues
- Business with forbidden countries
- Food, drugs or products composition
- Respect for populations and social classes
- Reaction to pandemics
- etc.

## 6. Strong momentum for ESG activism (1/3)

- Compliance with **ESG regulation**
- Are companies **doing enough**, and fast enough?
- Good for health, good for people, good for the Earth
- Campaigns to reach all **stakeholders** (shareholders, employees but also consumers)
- Activists love **communication** ... and communication loves activism as well
- **Class actions and collective actions** are becoming a major tool
- Some oppositions between **ESG activists** and **shareholders activists** may occur

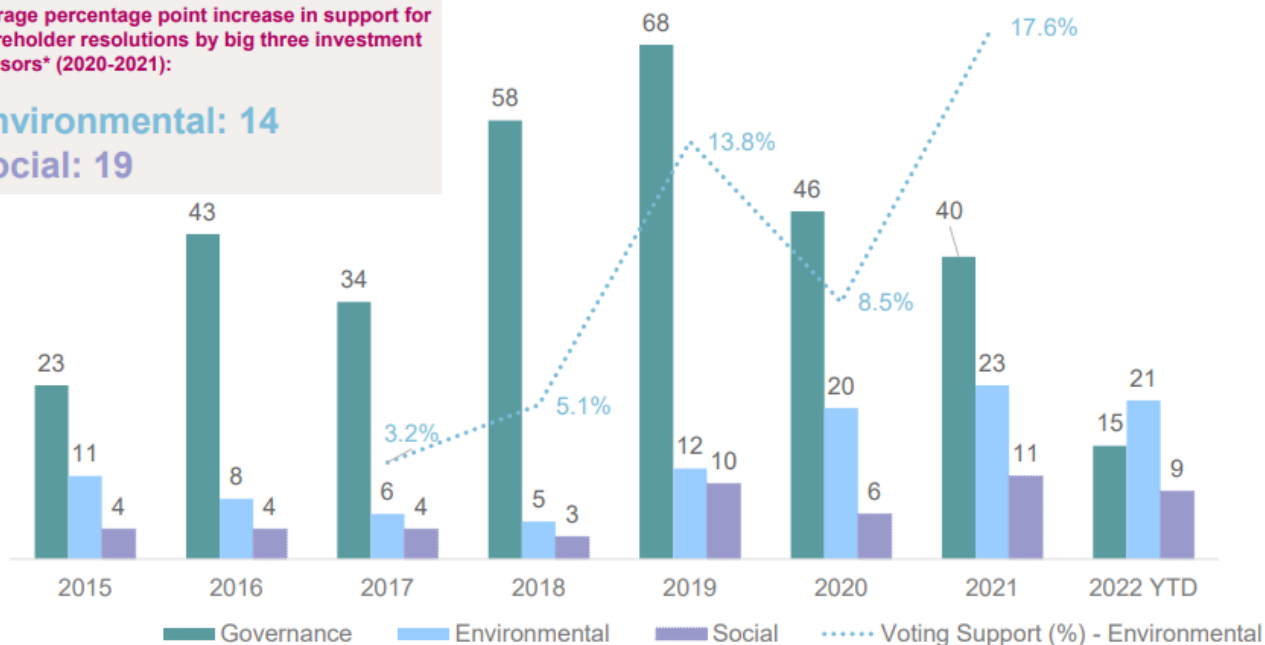
## 6. Strong momentum for ESG activism (2/3)

# E&S considerations are playing an increasingly important role in activist campaigns

ESG-related shareholder resolutions at European companies, 2015-2022YTD

Average percentage point increase in support for shareholder resolutions by big three investment advisors\* (2020-2021):

**Environmental: 14**  
**Social: 19**



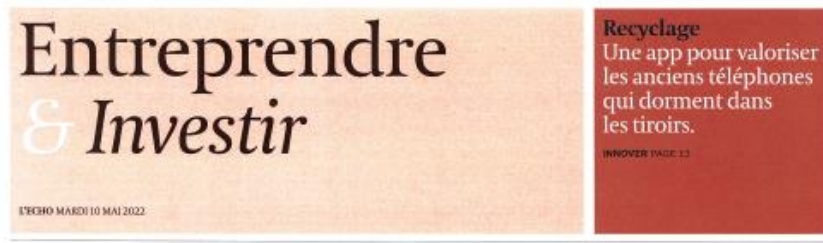
- Governance has been a central issue for activists but increasingly the focus is also on 'E' and 'S'
- The number of E&S shareholder resolutions submitted in 2022 to date has almost matched 2021's total
- While the majority of environmental resolutions have been unsuccessful they are seeing increased levels of support
- Emergence of 'ESG-flavoured' M&A activism pushing companies to separate 'green' and 'brown' businesses

Source: Activist Insight, Proxy Insight

Note: Data reflects individual shareholder proposals (may include numerous demands by same investor to the same company). \* Blackrock, Vanguard & State Street 2022 YTD: to May 5

Linklaters

## 6. Strong momentum for ESG activism (3/3)



Informing the market VS suffering damage

Après un premier trimestre au-delà de toutes les attentes, le groupe chimique Solvay a fait le plein de confiance avant son Assemblée générale de ce mardi. Mais le fonds activiste Bluebell, tiré à l'arrière par une action, entend bien jouer les trouble-fêtes.

### Bluebell Capital, l'activiste en col blanc qui veut gâcher la fête de Solvay

**MICHAEL VANDE WEYER**  
**«Nous avons envoyé 106 questions à la direction au vu de l'assemblée générale.»**

**BARBARA BRUNA**  
**ASSOCIÉE ET**  
**CO-MANAGÈRE GÉNÉRALE**  
**AT&T INVESTMENT**

**De financeur à défenseur de l'environnement**  
 D'investisseur d'une série de sociétés, le fonds Bluebell (il gère au total de 100 millions d'euros) est entré dans le vif du poivre belge en juin. Favorisé par l'indice Galopée Bluevax, sa stratégie, celle d'investir de l'énergie Bluebell, Goldman Sachs et Morgan Stanley. Bluebell dispose également de son propre fonds de capital de risque et de son propre fonds de capital de risque. Depuis deux ans, il est passé d'un investisseur passif à un investisseur actif, ciblant particulièrement les ODD Bluebell, comme l'empresse de décarboner des sociétés Bluebell et d'acquiescer à la mise à l'écart de l'énergie de transition.

Mais les choses ne sont pas si simples. Malgré les déclarations, le dialogue

après une tenue consacrée de ses obligations qui ont été plus de 100 questions. Une démission pour laquelle Bluebell a d'ailleurs fait appel, mais sans succès. En effet, à l'heure Solvay, il ne s'agit pas de faire pression sur Bluebell, mais de faire pression sur Bluebell. Bluebell a d'ailleurs fait appel, mais sans succès. En effet, à l'heure Solvay, il ne s'agit pas de faire pression sur Bluebell, mais de faire pression sur Bluebell.

Mais ces explications ne sont pas de nature à satisfaire l'activiste. Malgré ses déclarations, le dialogue est resté en panne. Bluebell a d'ailleurs fait appel, mais sans succès. En effet, à l'heure Solvay, il ne s'agit pas de faire pression sur Bluebell, mais de faire pression sur Bluebell.

est resté en panne de confiance. Les investisseurs ont été surpris par le fait que Bluebell ait été élu à la présidence de la direction de la société. Bluebell a d'ailleurs fait appel, mais sans succès. En effet, à l'heure Solvay, il ne s'agit pas de faire pression sur Bluebell, mais de faire pression sur Bluebell.

Bluebell a d'ailleurs fait appel, mais sans succès. En effet, à l'heure Solvay, il ne s'agit pas de faire pression sur Bluebell, mais de faire pression sur Bluebell.

Bluebell Capital, l'activiste en col blanc qui veut gâcher la fête de Solvay. Bluebell a d'ailleurs fait appel, mais sans succès. En effet, à l'heure Solvay, il ne s'agit pas de faire pression sur Bluebell, mais de faire pression sur Bluebell.

Bluebell a d'ailleurs fait appel, mais sans succès. En effet, à l'heure Solvay, il ne s'agit pas de faire pression sur Bluebell, mais de faire pression sur Bluebell.



## 7. How to react when investors decide to engage (1/2)

- Consider they may be (at least partly) **right**
- Open the **discussion** and be empathic
- Don't provide any information that could be used against the board or the management, if not justified
- Don't let the activists dictate the agenda
- Know what their true **motivation and constraints** are (funding, return, etc.)
- Always keep a **close relationship** with shareholders' base (dividend is not enough)
- Always provide **yield and liquidity** (or at least one of both)
- If you cannot provide either yield, nor liquidity ... you might be in the **danger zone**
- Maintain a **regular flow** of good news, without overstatement
- Comply with ISS' and Glass Lewis' main **policies**
- Be extra careful with **thresholds**

## 7. How to react when investors decide to engage (2/2)

- An **efficient and balanced governance** at board level should always be a priority
- Competent and committed people is always better than prestigious names with limited availability
- Always keep a **humble and modest approach**
- Don't always follow your "expert advisors" (e.g. lawyers) – **listen and assess** arguments and facts
- When performing an audit, make sure your **auditor's independence** cannot be questioned and challenged by some shareholders
- **Explain and inform** analysts and journalists (before the engagement if possible)
- Always keep an **open dialogue** with activists
- **Reply to all their questions** at general meetings, even if it takes you the whole day

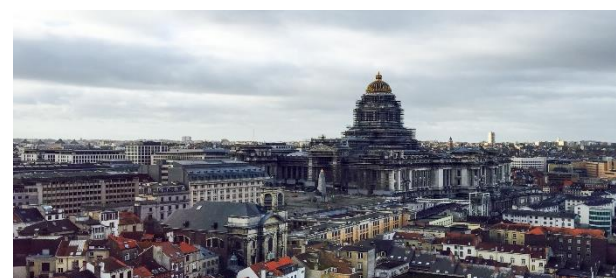
## Q&A and contact



**Pierre Nothomb**

*Managing Partner*

[pierre.nothomb@deminor.com](mailto:pierre.nothomb@deminor.com)



**Deminor SA** (*Brussels office*)

Rue Joseph Stevens 7

1000 Brussels

**T** +32 2 674 71 10

**M** [info@deminor.com](mailto:info@deminor.com)