

# Georgeson's 2020 AGM Season Review



UK | GERMANY | FRANCE | SWITZERLAND | NETHERLANDS | ITALY | SPAIN | DENMARK

CERTAINTY | INGENUITY | ADVANTAGE

**Georgeson**

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# Introduction

We are proud to present a thorough analysis of the seven major markets where Georgeson has a widespread client base, and where we are privileged to work closely with many of the leading issuers. Additionally we have included Denmark, in view of our expanding presence in the region. Our local client support, thorough investor engagement and deep market expertise allow us to highlight the issues and trends which will be of interest to both companies and investors.

As the world's leading shareholder engagement firm and corporate governance advisor, Georgeson works hard to ensure that our clients understand the critical issues, trends and personalities which affect and motivate their shareholders, so that they do not become a statistic highlighted in this or any other report.

With the pandemic raging through Europe at precisely the time when most European companies were preparing for their annual meetings, the health crisis has posed numerous challenges in the preparation and logistics of this year's shareholder meetings. At Georgeson we have stepped up our efforts to assist our clients in these unprecedented times.

In order to share our experience of the pandemic's effect on the 2020 AGM season, this year's report includes some additional data points to reflect how the pandemic affected shareholder meetings across the continent and presents some additional information which we hope you will find useful.

In particular, we have looked at each market and how the pandemic has influenced the format of shareholder meetings, and whether the restrictions had any impact on shareholder rights. Alongside that, we have also looked at dividend and executive pay practices and how these were affected by the crisis.

We also cover the usual ground. During the 2020 AGM season we found that, across the seven major markets, proxy advisors continue to hold great influence on voting outcomes with a vast majority of resolutions opposed by proxy advisors receiving high levels of opposition from investors. This highlights how important it is for companies not only to address investor concerns but to proactively engage with proxy advisors as well.

Executive remuneration continues to remain a key focal point for investors, with remuneration-related resolutions being amongst the most contested resolutions in the majority of the markets surveyed by Georgeson. However we have also recorded a calibrated 9% reduction in contested remuneration votes from 2019.

Director elections also continue to attract investor scrutiny and negative votes. Nonetheless, across the seven main European markets, there was a calibrated 24% decrease in contested director elections from 2019.

With respect to executive remuneration, the revised Shareholder Rights Directive has finally been introduced in most markets as of the 2020 AGM season, while Germany will join the rest of the major European markets in introducing annual remuneration votes in 2021.

We hope that our report will give you greater insight into these markets both in terms of the general trends and of the particular issues that have arisen during the last AGM season. Georgeson remains available to help you with any more specific queries. For any support needed at your next general meeting, please do not hesitate to let us apply our market intelligence, which will help you avoid any possible pitfalls raised both by local developments and complex international trends that can affect a dispersed shareholder base.

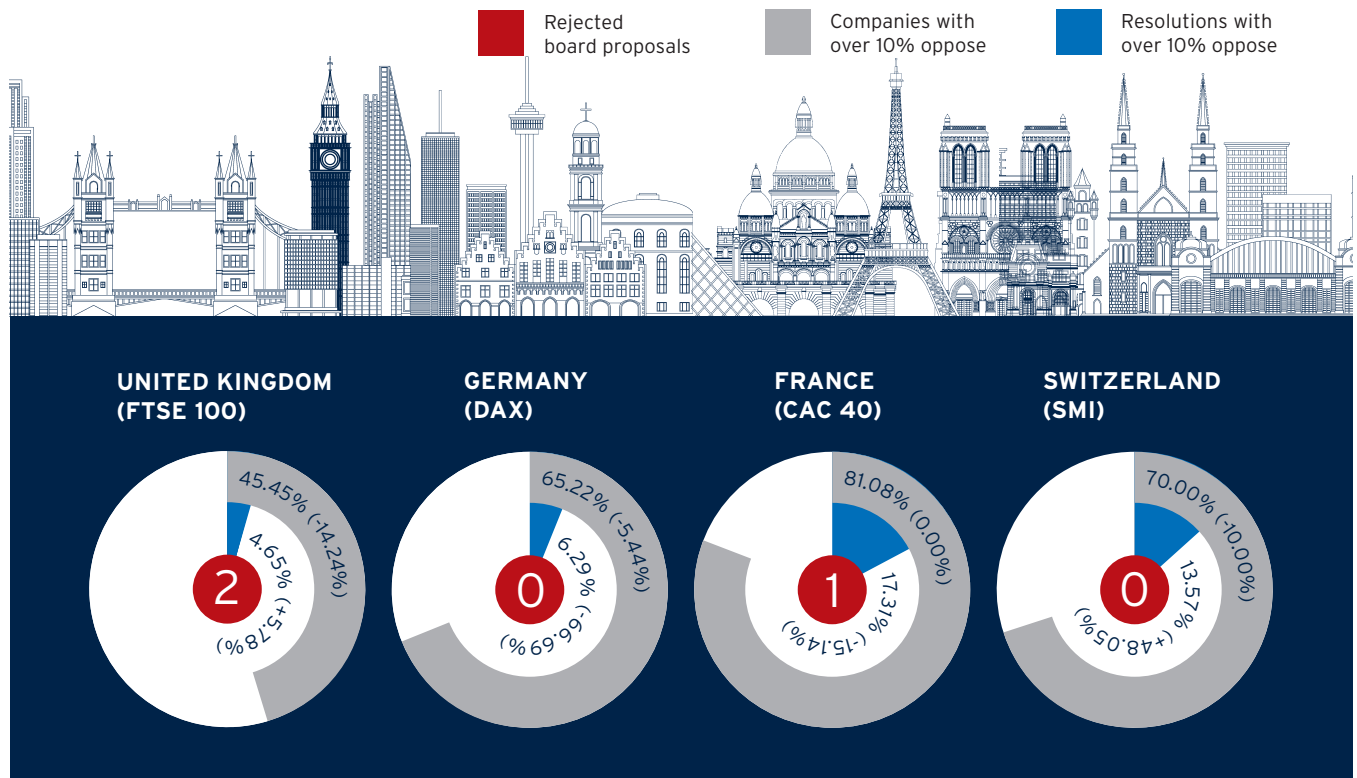
A special thank you to all our colleagues across Europe who contributed to the production of this document, and in particular Daniele Vitale, our Head of Governance UK & Europe, who edited the report.



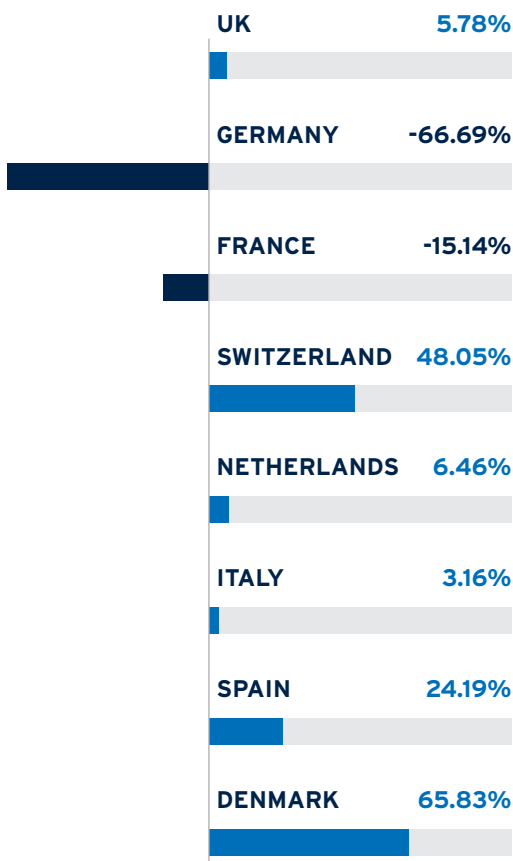
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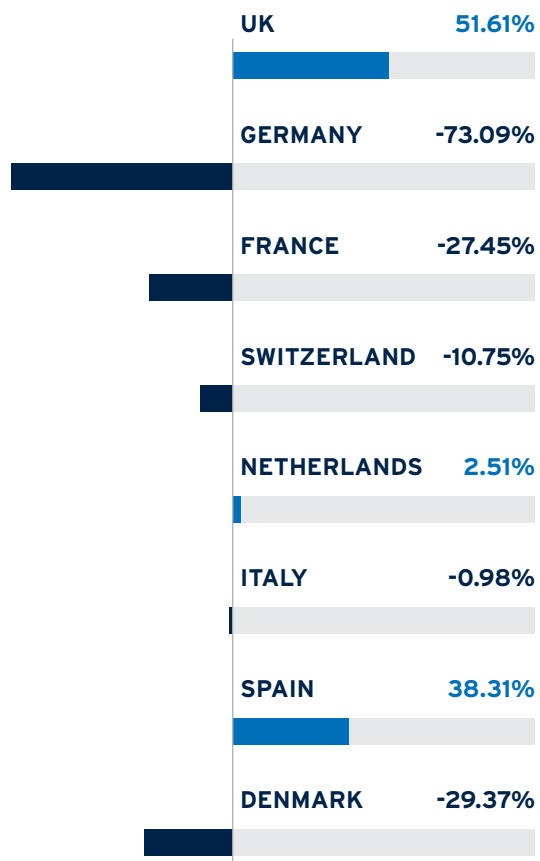
# Key Figures



% change in contested resolutions (vs 2019)



% change in ISS negative recommendations (vs 2019)



# Key Figures

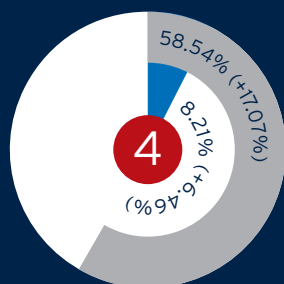
Rejected  
board proposals

Companies with  
over 10% oppose

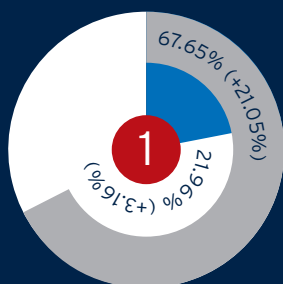
Resolutions with  
over 10% oppose



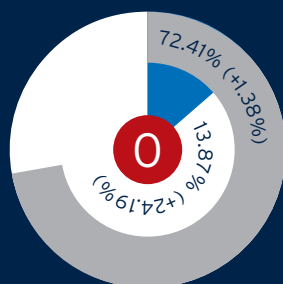
**NETHERLANDS**  
(AEX+AMX)



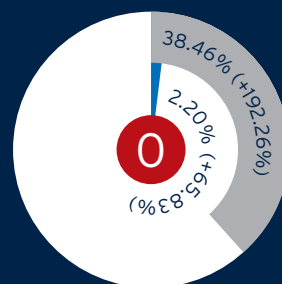
**ITALY**  
(FTSE MIB)



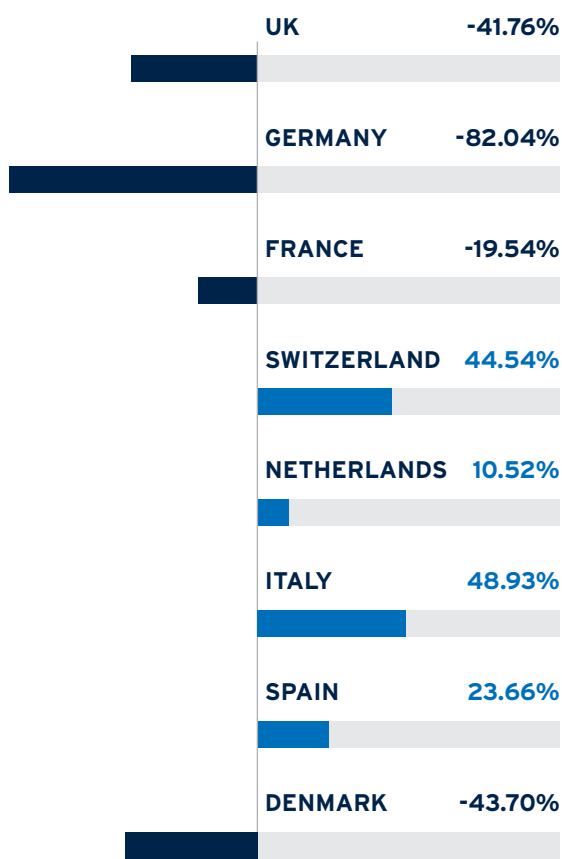
**SPAIN**  
(IBEX 35)



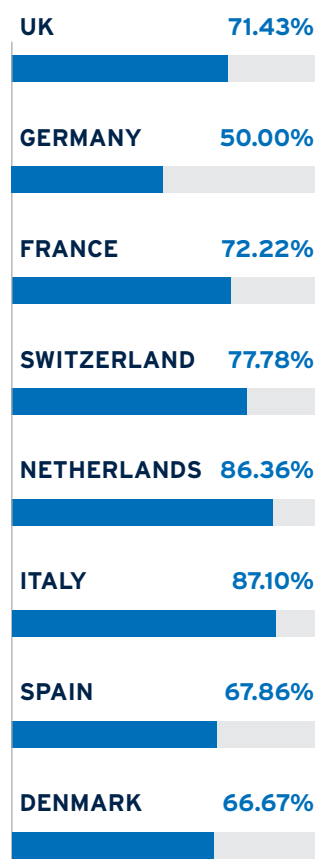
**DENMARK**  
(OMX)



% change in Glass Lewis negative  
recommendations (vs 2019)



% of resolutions with less than  
80% support which had a negative  
ISS or Glass Lewis recommendation



# Key Trends

- The COVID-19 outbreak had a major impact on the 2020 AGM season, causing many AGMs to be postponed, live voting rights to be restricted, and changes to dividend and remuneration proposals.
- SRD II has been introduced across most of the EU from the 2020 AGM season; this has affected the Netherlands in particular, which previously did not have annual remuneration votes.
- Germany delayed implementation of the SRD II remuneration vote requirements to the 2021 AGM season. Therefore, it remained the last major market in Europe with no annual vote on remuneration.
- Across the seven main European markets, 79.6% of AGMs had live voting rights (cast during the meeting) restricted, both physically and virtually.
- Executive remuneration continues to be a flashpoint for investors across all major European markets. However, across the European markets covered, there was a calibrated 9% reduction in contested remuneration votes from 2019.
- Director elections remain an area of focus and negative votes. However, across the European markets covered, there was a calibrated 24% decrease in contested director elections from 2019.

## EXECUTIVE REMUNERATION

Executive remuneration continues to be an important area of focus for many investors.

- The EU's revised Shareholder Rights Directive introduced annual remuneration votes across the EU from the 2020 AGM season. The market most affected by this change has been the Netherlands, where only a minority of companies (33.33%) held votes on executive remuneration in 2019, while this year every company has put forward a remuneration vote. Germany remained the only major European market without a mandatory annual remuneration vote during the 2020 AGM season.
- In the UK (FTSE 100) dissent over remuneration policy and LTIP votes has increased, resulting in 14 such resolutions being contested (10%+ opposition) in 2020, compared to 11 in 2019 and 8 in 2018. However, it should be noted that across the 2020 season, 58 remuneration policy votes were put forward compared to only 19 in 2019. Therefore, considering only remuneration policy votes and calibrating for the total number of resolutions put forward, there was a decrease of 50% in contested proposals (10%+ opposition). Regarding remuneration report votes, dissent has decreased with only 12 remuneration reports being contested (10%+ opposition), a 43% reduction compared to 2019 on a calibrated basis. This represents the lowest level of opposition on remuneration reports since 2015.
- In Germany (DAX), 25% of remuneration system votes were contested (10%+ opposition) during the 2020 AGM season. It should be noted that only 8 companies put forward an executive remuneration vote in 2020.
- In France (CAC40), 66 remuneration proposals were contested (10%+ opposition) representing 27.7% of the total. Remuneration proposals are the most contested resolution category in France. However we note that opposition over remuneration proposals, calibrated for the total number of resolutions put forward, decreased by 30% compared to 2019. It should be noted that given the way SRD II has been implemented in France, overall 238 remuneration proposals were put forward in France during the 2020 season (against 175 in 2019 and 160 in 2018). Finally, we note that almost every proposed severance payment agreement was contested (9 out of 10), which represents a 170% calibrated increase compared to 2019.
- In Switzerland (SMI), remuneration report votes were contested (10%+ opposition) in 59% of cases (10 out of 17). Compared to last year and calibrating for the total number of resolutions put forward, there was a 9% decrease in contested remuneration report votes. However, this continues to be the highest level of contested resolutions for remuneration proposals across all markets.

# Key Trends

- In the Netherlands (AEX and AMX), 19 remuneration proposals out of 118 were contested (10%+ opposition), representing 22.4% of the total. It should be noted that, given the implementation of SRD II, there was a 247% increase in the number of remuneration proposals put forward compared to 2019.
- In Italy (FTSE MIB), remuneration-related proposals continue to be the most contested resolution type (10%+ opposition) for the sixth year in a row within the FTSE MIB. In particular, 44% of the remuneration policy votes and 48% of remuneration report votes were contested by shareholders during 2020 proxy season. After Switzerland, Italy has the highest rate of contested remuneration proposals across all the countries covered.
- In Spain (IBEX 35), 22 remuneration proposals were contested (10%+ opposition) representing 30% out of the total. Remuneration-related proposals remain the second most penalized topic among investors at AGMs. Compared to 2019 and calibrating for the total number of resolutions put forward, there was an 11% increase in remuneration proposal opposition.
- In Denmark (OMX Large Cap) remuneration continues to be the most contested resolution type representing 73% of the total contested resolutions. Compared to 2019, and calibrated for the total number of resolutions put forward, there was a 120% increase in contested (10%+ opposition) remuneration proposals.

## DIRECTOR ELECTIONS

Director elections continue to grow as an area of focus and negative votes.

- In the UK (FTSE 100), since 2019 there has been a 15% increase in the proportion of director elections that were contested (10%+ opposition).
- In Germany (DAX) 12 director election resolutions out of 62 were contested (10%+ opposition) representing 19.4% of the total. It should be noted that the number of director election proposals and the number of discharge proposals considered are significantly lower compared to last year (partly due to the number of AGMs postponed as a result of the COVID-19 outbreak).
- In France (CAC40), 14% of the total number of contested (10%+ opposition) proposals was related to director elections, representing the third most contested resolution type across the index. However, compared to last year and calibrating for the total number of resolutions put forward, there was a 14% decrease in the director elections that were contested by shareholders. This was the second consecutive year in which contested director elections saw a decrease in France, and, compared to 2018, there has been a 48% calibrated reduction in the contested director election resolutions.
- In Switzerland (SMI), directors receiving more than 10% opposition continues to be the most contested resolution type within the SMI, representing 34% of all contested proposals in 2020. Compared to 2019 and calibrating for the total number of resolutions, there was a 53% increase in the number of contested director elections and a 101% calibrated increase in the number of contested compensation committee elections.
- In the Netherlands (AEX+AMX) 6 director election resolutions out of 132 were contested (10%+ opposition) representing 4.5% of the total. Compared to last year, this represents a 22% calibrated decrease in contested director elections.
- In Italy (FTSE MIB), 20% of the total director elections were contested (10%+ opposition) by shareholders during 2020 AGM season.
- In Spain (IBEX 35), director elections continue to be the most contested (10%+ opposition) resolution type, representing 39% of the contested proposals brought forward during the 2020 AGM season. Compared to 2019, this represents a 29% calibrated increase in contested director elections.

# Impact of COVID-19 on the AGM season

As the COVID-19 pandemic was gaining pace in Europe at the beginning of the 2020 AGM season, companies made efforts to adjust the logistics of their annual general meetings to take into account the public health concerns resulting from large gatherings, while at the same time complying with the legislative and regulatory requirements that safeguard, to the extent possible, shareholder voting rights.

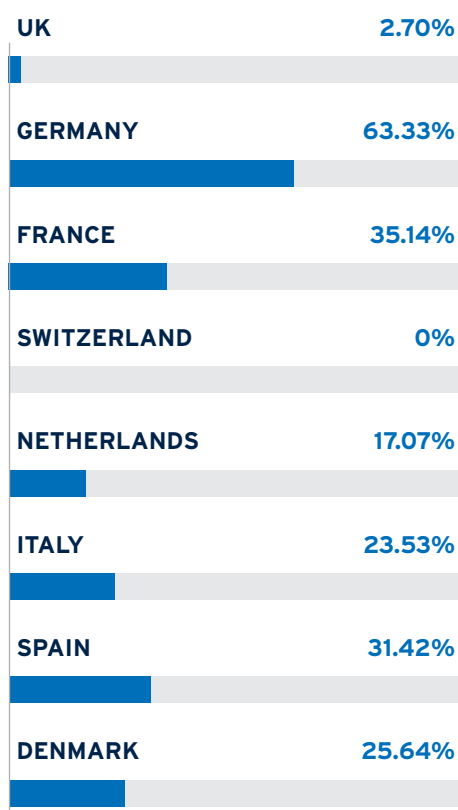
## AGM TYPES AND RESTRICTED LIVE VOTING RIGHTS

In this year's season review we have reviewed the types of AGMs that took place and the implications of these new formats for shareholders. Most interestingly we note the extent to which temporary public health requirements led companies to restrict the live voting rights (physical or virtual) that shareholders are normally entitled to.

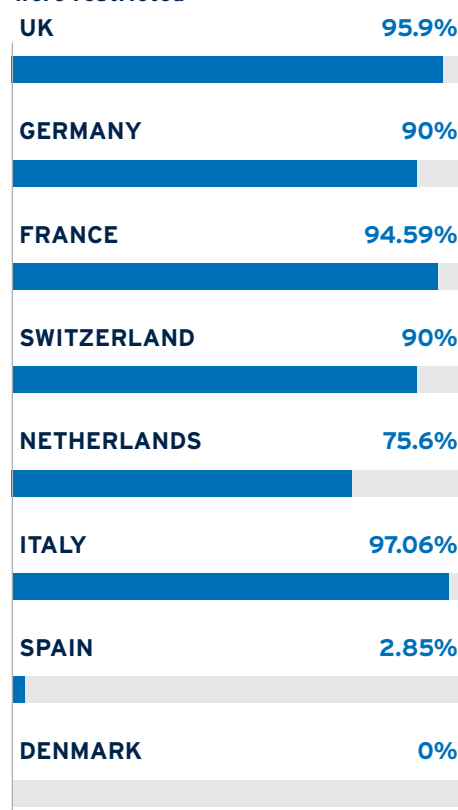
Notably, European markets have reacted differently to the challenges posed by the pandemic and both companies and the regulatory environment have followed a local approach. In Italy, for example, shareholders were barred from attending AGMs and could only attend by granting a proxy to an appointed representative (rappresentante designato) who would act as proxy for all shareholders. In the Netherlands, the government provided that where attendance at the meeting was barred shareholders had the right to follow the meeting via electronic means and submit questions on the items on the agenda up to 72 hours before the meeting. In Switzerland, from mid-March onwards, shareholders were also banned from attending AGMs and were provided with the choice to exercise their voting rights in writing, electronically or through a proxy.

While responses to COVID-19 have been diverse across Europe, most countries have reacted by introducing restrictions on shareholder attendance at the annual general meeting and companies have swiftly adapted by holding meetings, sometimes in uncertain and developing frameworks – such as in the UK where definitive legislation facilitating remote participation only came into force in June 2020 – and held their meetings in various different formats, ranging from restricted physical attendance to virtual-only meetings. Further details on each market approach to holding AGMs during COVID-19 can be found under the relevant market's Corporate Governance Developments section throughout our report.

### % of AGMs that were postponed

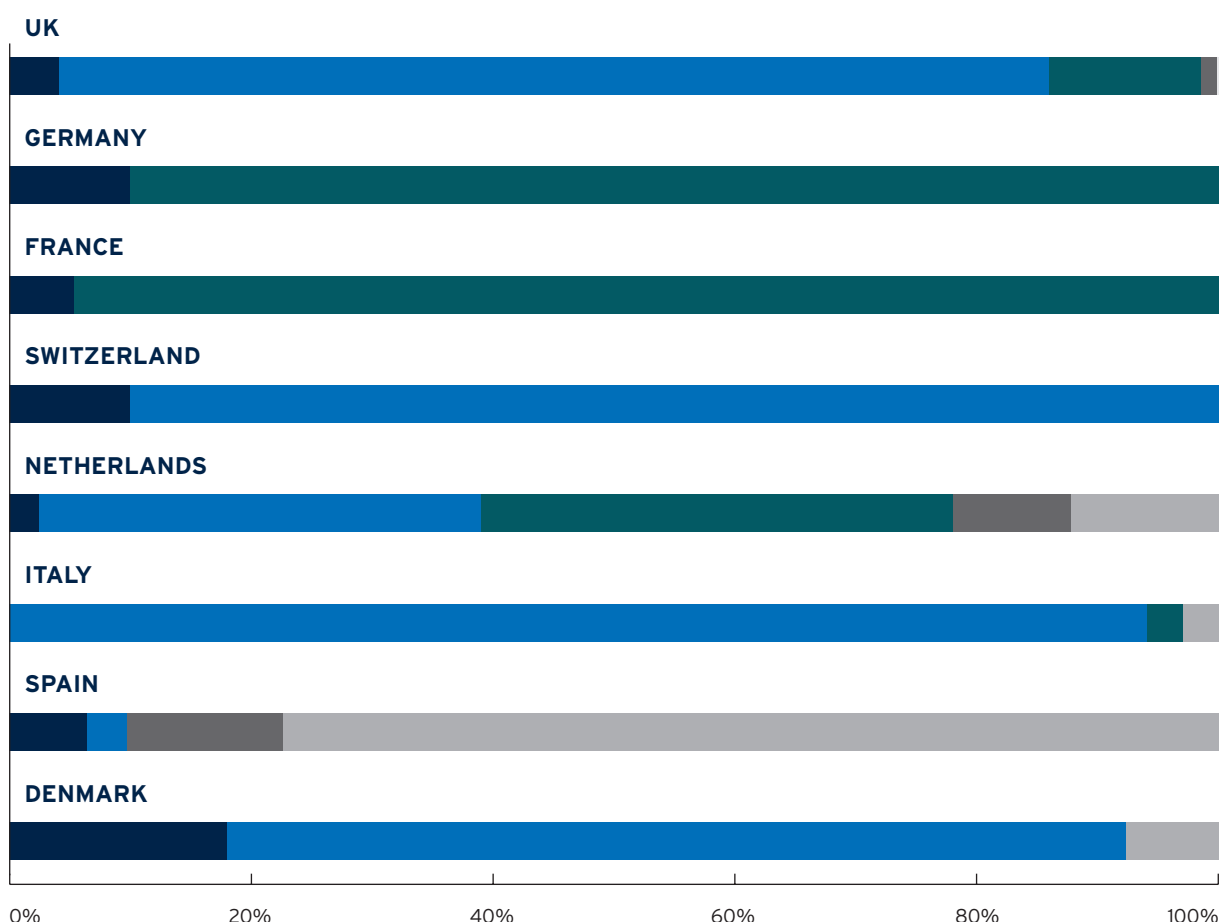


### % of AGMs where live voting rights were restricted





# Impact of COVID-19 on the AGM season



- Physical**  
Investors were able to attend the meeting location and vote in person without any restrictions. No live virtual voting was available.
- Physical (restricted)**  
Investor attendance at the meeting location (and voting in person) was restricted/discouraged (due to COVID-19). No live virtual voting was available.
- Webcast only**  
Investors were not able to attend the meeting location nor were they given the opportunity to cast live votes electronically during the meeting from a different location. However, they could follow the meeting live through a webcast.
- Hybrid (restricted)**  
Investors could choose to either attend the meeting in person (but attendance at the meeting location and voting in person was restricted/discouraged due to COVID-19), or to cast live votes electronically during the meeting from a different location.
- Virtual**  
Investors could not attend the meeting in person but could cast live votes electronically during the meeting from a different location.

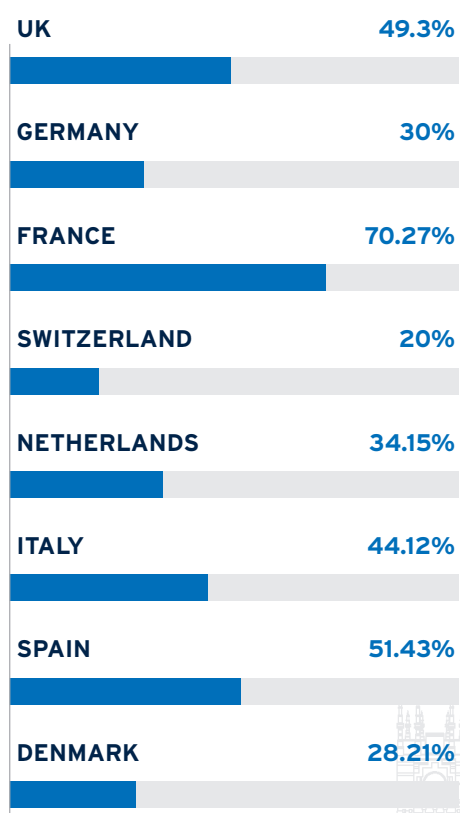
# Impact of COVID-19 on the AGM season

## EFFECT ON DIVIDEND DISTRIBUTION

Another clear impact of the pandemic across listed companies in Europe was on the distribution of dividends. Most companies across Europe were impacted by lockdowns and, as such, profit distributions have seen major disruption as many companies chose to either cancel, postpone, or reduce their expected dividend distribution. We have reviewed whether any change was made to dividend distribution due to COVID-19. In this regard, we note that “adjusted” includes reduced, delayed, suspended and cancelled dividends or any other dividend policy change due to the COVID-19 pandemic.

While the approach on dividends was fragmented, some industries received guidance on the distribution of dividends during the pandemic with the aim of preserving healthy balance sheets in tumultuous times. In Europe, the ECB has issued guidance requesting banks not to pay dividends for financial years 2019 and 2020 until 1 January 2021 at least in order to boost capacity to absorb losses and support lending. The ECB was joined in Italy by the Bank of Italy which issued its own recommendation to refrain from making dividend distributions at least until 1 January 2021. Another example is in Switzerland where the Swiss Financial Market Authority FINMA urged Swiss-domiciled companies to re-consider their dividend proposals. Further details on legislative action on dividends distribution can be found under the relevant market's Corporate Governance Developments section below.

### % of companies that adjusted dividends



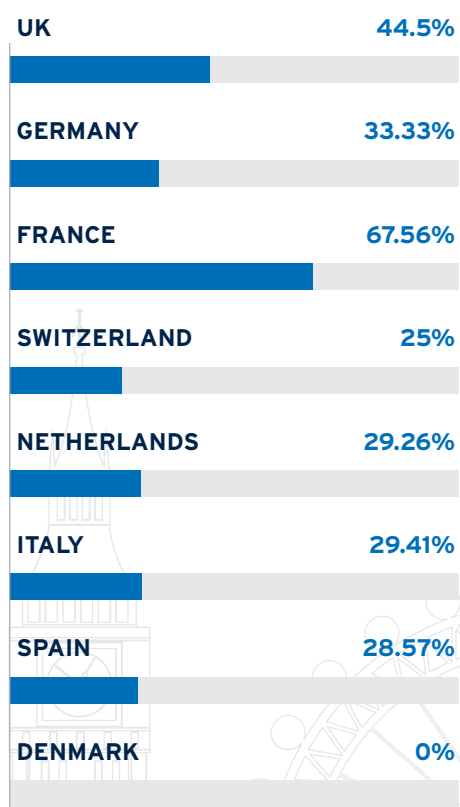
# Impact of COVID-19 on the AGM season

## ADJUSTING EXECUTIVE REMUNERATION

On the other hand the remuneration of executives also took a hit. As shareholder saw their payouts reduced or cancelled in many instances, and as employees were furloughed, made redundant, or saw their pay reduced, Boards have often taken steps to apply temporary reduction in executive pay (in various forms). We have reviewed whether any executive pay changes were announced in connection with the COVID-19 pandemic.

While some markets implemented measures to ban certain types of distributions many companies across the markets surveyed implemented changes to executive remuneration - ranging from salary reduction for executives to elimination of annual bonuses - without regulatory intervention. On the other hand, investors and proxy advisors have become increasingly focused on the idea that where dividends or workers were affected by the pandemic then executive directors should "share the pain" as well.

### % of companies that adjusted executive pay



# Review of the U.S. AGM season

## *Excerpt of Georgeson's U.S. Annual Corporate Governance Review*

### **ESG SHAREHOLDER PROPOSAL DEVELOPMENTS IN THE U.S.**

An examination of voting statistics among Russell 3000 companies reveals that climate-related investor concerns had a meaningful impact on the 2020 U.S. proxy season. This is not surprising given the focus paid to this topic by both BlackRock and State Street in their respective CEO letters published in January 2020. This impact was seen through increased support for climate-focused shareholder proposals, as well as a notable factor influencing the degree of support for director elections.

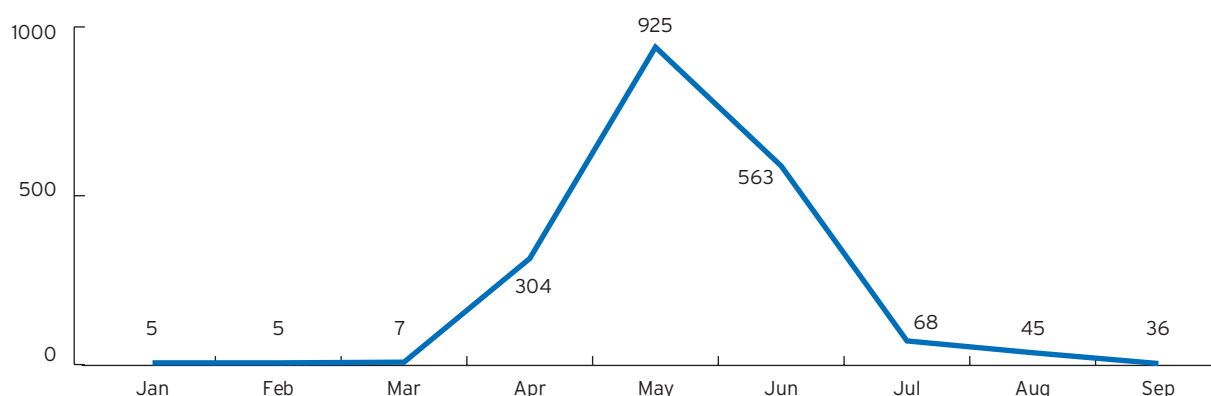
In addition, support for proposals seeking to separate the roles of chair and CEO increased significantly this proxy season. Historically, U.S.-based investors have been relatively agnostic about leadership structure so long as the lead independent director role was well-defined. However, it appears viewpoints may be meaningfully shifting, with investors challenging companies who maintain a combined role with greater frequency this season, particularly in instances where investors have broader governance concerns.

### **CHANGING MEETING LOGISTICS**

Worldwide, due to travel and large gathering restrictions combined with growing global health and safety concerns, many companies quickly modified the logistics of their 2020 annual shareholder meetings. In the U.S., while COVID-19 caused some companies to postpone or cancel their meetings, the majority of companies shifted to a virtual-only or hybrid format.<sup>1</sup> Most U.S. companies with mid-March and later meeting 2020 dates quickly opted to transition to a virtual meeting format—a total of 1,958 companies in the Russell 3000, which includes the S&P 1500, as of July 2020 according to ISS.<sup>2</sup> The use of virtual meetings will likely continue into the Fall 2020 proxy season as the pandemic continues to maintain momentum in the U.S.

#### **Graph:**

Number of Virtual Meetings for Russell 3000 Companies (January-September 2020)<sup>3</sup>



1) 272 U.S. companies adjourned their meeting as of July 22, 2020, according to ISS Corporate Solutions

2) According to ISS Corporate Solutions July 22, 2020 data

3) Chart indicates number of virtual meetings hosted or to be hosted for companies in the Russell 3000 as of filing disclosure data available of July 22, 2020 according to ISS Corporate Solutions

# Review of the U.S. AGM season

## *Excerpt of Georgeson's U.S. Annual Corporate Governance Review*

### **SEC GUIDANCE AND INVESTOR PERCEPTIONS**

U.S. regulatory bodies, state governments, investors and proxy advisory firms made rapid adjustments to accommodate COVID-19's disruption of the 2020 proxy season. Read more in Georgeson U.S.'s mid-season Annual Meeting Adjustments Amid COVID-19.<sup>4</sup>

Recognizing the need to prioritize health and safety, many investors were understanding of a company's choice to hold a virtual meeting in 2020.

In March 2020, the U.S. Securities and Exchange Commission (SEC) published guidance to provide publicly listed companies with additional flexibility with respect to certain annual meeting-related requirements, such as companies communicating with shareholders about the change in meeting format and details about additional filings.<sup>5</sup> The SEC guidance, which was later updated in April 2020, states that, if a company has already mailed and filed its proxy materials, the company can notify shareholders of a change to the annual or special meeting (i.e., from a physical location to a virtual location) without mailing additional soliciting materials or amending proxy materials, so long as the company:<sup>6</sup>

- issues a press release announcing such change;
- files the release as definitive additional soliciting material; and
- takes reasonable steps necessary to inform other related parties of such change.<sup>7</sup>

Read more about these trends in Georgeson U.S.'s upcoming 2020 Annual Corporate Governance Review.<sup>8</sup>

Want to learn more about the U.S. AGM season?  
Download **Georgeson's U.S. Annual Corporate Governance Review** at:

<https://www.georgeson.com/us/news-insights/annual-corporate-governance-review>

4) <https://www.georgeson.com/us/pages/Annual-Meeting-Adjustments-Amid-COVID-19.aspx>

5) U.S. Securities and Exchange Commission. "Staff Guidance for Conducting Shareholder Meetings in Light of COVID-19 Concerns." April 2020. <https://www.sec.gov/ocr/staff-guidance-conducting-annual-meetings-light-COVID-19-concerns>

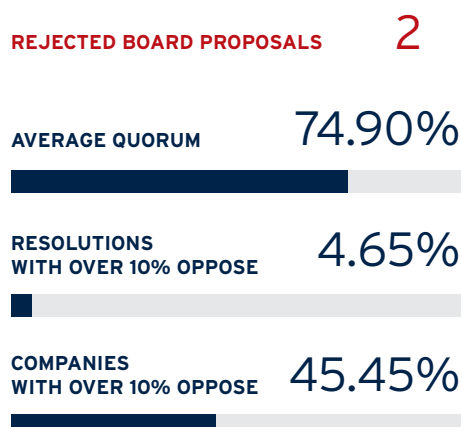
6) Change in in the date, time or location of the meeting

7) Including intermediaries in the proxy process and other relevant market participants

8) Subscribe at <https://www.georgeson.com/us/pages/Annual-Meeting-Adjustments-Amid-COVID-19.aspx> to receive the report



# United Kingdom (FTSE 100)



- The average quorum across the FTSE 100 increased from 73.8% in 2019 to 74.9% in 2020.
- Across the FTSE 100 there were two board-proposed AGM resolutions rejected by shareholders.
- The number of FTSE 100 companies that had at least one contested proposal (10%+ opposition) was 45. The overall number of contested resolutions increased from 95 in 2019 to 101 in 2020. Calibrated for the total number of resolutions in each year, this represents a 5.78% increase compared to the 2019 AGM season.
- In the FTSE 100 there has been a 15% increase in contested director elections (10%+ opposition) since 2019.
- Dissent over remuneration policy/LTIP votes has increased, resulting in 14 such resolutions being contested (10%+ opposition) in 2020, compared to 11 in 2019 and 8 in 2018.
- There was a 40% decrease in contested (10%+ opposition) remuneration report votes across the FTSE 100 in 2020 (13 resolutions out of 99), compared to 2019 (22 resolutions out of 99).
- ISS recommended negatively on 32 resolutions in 2020, compared to 21 resolutions in 2019 (a calibrated 51.61% increase).
- Glass Lewis recommended negatively on 24 resolutions in 2020, compared to 41 resolutions in 2019 (a calibrated 41.76% decrease).
- Proxy advisors continue to have a big impact on the outcome of proposals, and there is a clear correlation between negative proxy advisor recommendations and lower vote results. For instance, in the FTSE 100, the seven remuneration reports with the lowest level of support all received a negative ISS recommendation, while Glass Lewis recommended against 3 out of the 4 remuneration reports with the least support.

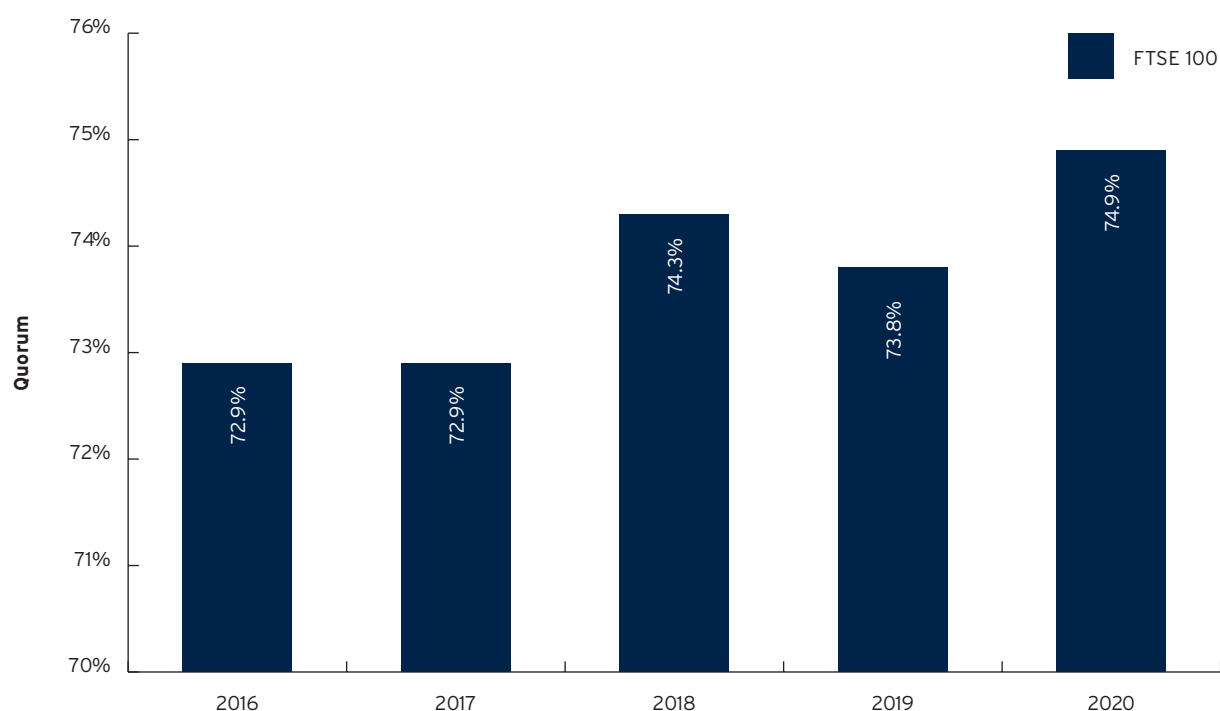
# 1 | Voting in the United Kingdom

## 1.1 QUORUM OVERVIEW

Georgeson has reviewed the quorum levels of FTSE 100 companies over the past five years. This year's review includes the companies that were part of the index as of 1 May 2020, and which held their AGMs between 1 July 2019 and 30 June 2020<sup>1</sup>. In the FTSE 100 the average quorum for the reporting period was 74.9%. This is a slight increase compared to the average 2019 quorum, and a 2.7 percentage point increase over quorum levels in 2016.

**Graph 1:**

Average AGM quorum levels in the FTSE 100 between 2016 and 2020.



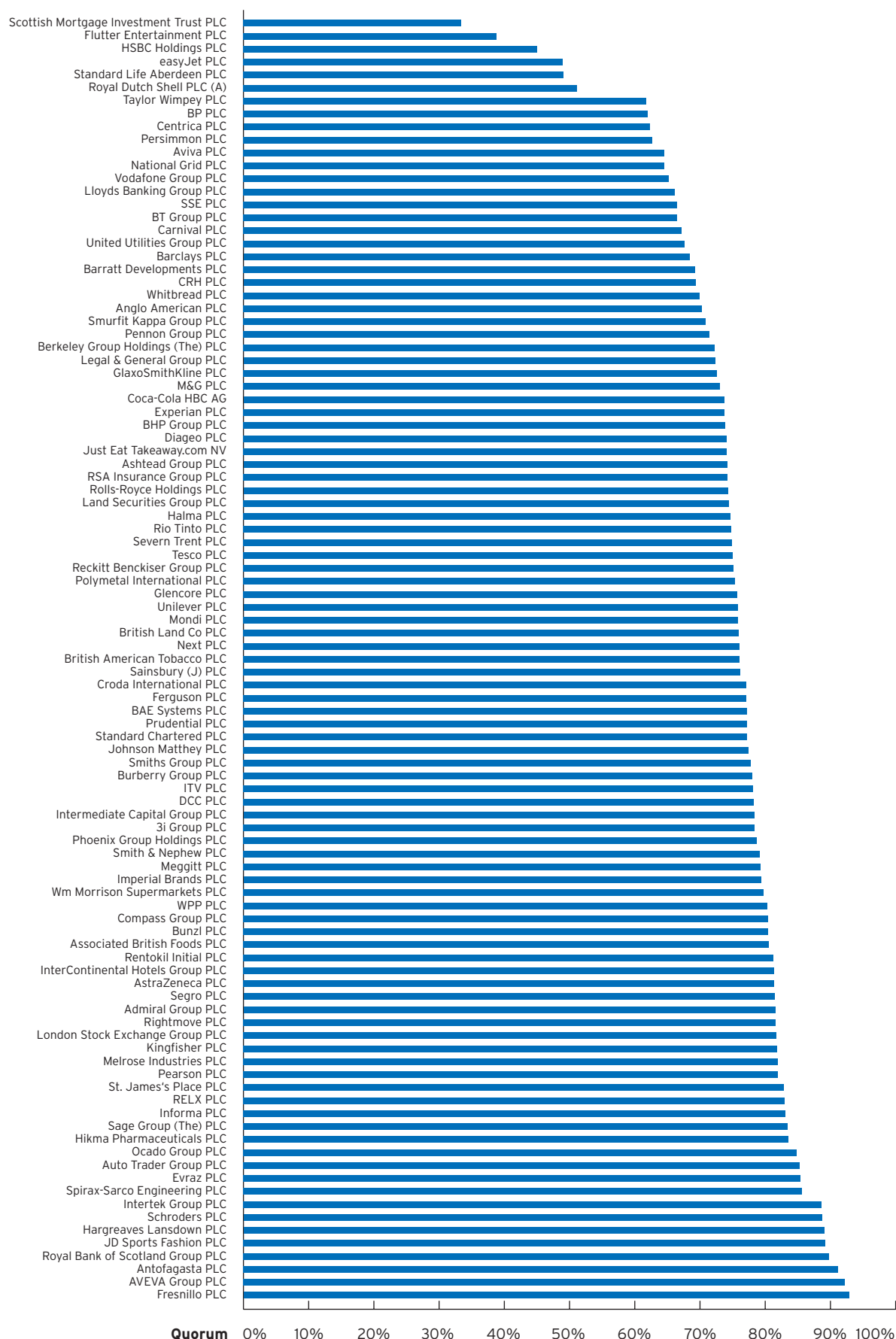
<sup>1</sup>) With the exception of Whitbread Plc for which we considered the July 2020 AGM given they held the 2019 AGM in June.



# 1 | Voting in the United Kingdom

**Graph 2:**

Quorum levels at FTSE 100 companies during the 2020 reporting period.



# 1 | Voting in the United Kingdom

## 1.2 REJECTED RESOLUTIONS

### FTSE 100

Within the reporting period, two companies in the FTSE 100 had a management-proposed AGM resolution rejected by shareholders.

#### Tesco

On 26 June 2020 Tesco announced that the vote on their remuneration report failed to pass with 67.29% shareholders' opposition.

Before the AGM, media reports<sup>2</sup> highlighted that the £6.4m wage package of its outgoing chief executive, Dave Lewis, was facing opposition from a large number of investors.

After the AGM, the company stated<sup>3</sup>: "while the Board is pleased that all other resolutions were carried with very large majorities, we are disappointed that the advisory vote on the Directors' Remuneration Report was not passed. Following recent engagement on our Remuneration Report with a number of our larger shareholders, we have been reassured that the majority agree that the overall outcome of the 2017 PSP award is proportionate given the outstanding turnaround delivered by management. We recognise, however, that a significant number of shareholders had concerns with the principle of the Committee's adjustment to the TSR comparator group. Following the AGM, the Remuneration Committee will continue to engage with shareholders to fully understand their concerns and will consider the full range of feedback as we prepare to put our Remuneration Policy to shareholders at the 2021 AGM in accordance with the requirements of the Companies Act. We will publish an update on our engagement, in accordance with the UK Corporate Governance Code, within six months of the 2020 AGM."

We note that ISS, Glass Lewis and PIRC recommended against this proposal while IVIS issued a red top on the remuneration report.

#### Standard Life Aberdeen

On 12 May 2020 Standard Life Aberdeen announced that the vote on their proposed amendments to the article of associations failed to pass with 62.64% shareholder support (while a special resolution requires 75% approval).

Media reports stated<sup>4</sup> that "investors cast just over 37 percent of votes against a resolution to adopt new articles of association, which would have allowed the company to call meetings where shareholders could attend remotely. Being a special resolution, it needed 75 percent approval to pass."

After the AGM, the company stated<sup>5</sup>: "the Board recognises the significant percentage of votes cast against this resolution. The Board believed that the proposed update to the Company's current articles was uncontroversial and appropriate. One of the proposed changes was to provide the Company with the option to allow for shareholders to join meetings remotely and to convene meetings at which electronic facilities were available for remote participation; this would address the constraints currently in force that prevent gatherings of more than a very few participants. Feedback suggests it was this element that caused investor concern. We understand that some shareholders were concerned that the Company could and possibly would use the permission to hold 'virtual' meetings with no shareholders present. The Board recognises the importance of the AGM and values engaging with shareholders, in particular due to the strong retail shareholding in the Company. The Board has no plans to do away with physical meetings, but believes that allowing shareholders to also participate by electronic means would be in the interests of shareholders and allow engagement with those unable to travel to the meeting. In the coming months, we will engage with institutional shareholders on the concerns raised on this resolution. In accordance with the UK Corporate Governance Code, we will publish an update on that engagement within six months of the AGM."

We note that, in the end, both ISS and Glass Lewis supported the proposal. ISS had originally recommended against the resolution on the basis that the changes appeared to allow for virtual-only shareholder meetings.

2) <https://news.sky.com/story/coronavirus-tesco-faces-defeat-in-investor-revolt-over-bosss-pay-12010294>

3) <https://www.tescopl.com/media/756030/2020-agm-voting-results-tesco-plc-rns-final.pdf>

4) <https://www.irmagazine.com/esg/standard-life-suffers-investor-revolt-over-online-shareholder-meetings>

5) <https://www.standardlifeaberndeen.com/investors/shareholder-information/annual-general-meeting-2020>

# 1 | Voting in the United Kingdom

## FTSE 250

Across the FTSE 250, six companies saw at least one management-proposed AGM resolution rejected by shareholders during the period under review: Shaftesbury, Capital & Counties Properties, TI Fluid Systems, Playtech, Vietnam Enterprise Investments and Petropavlovsk.

### Shaftesbury

At Shaftesbury's 2020 AGM two special resolutions (requiring a 75% vote in favour) relating to share issuances without pre-emptive rights failed to gain sufficient support, with 70.5% of shareholders voting in favour of issuances without pre-emptive rights in connection with an acquisition, and 71.6% voting in favour of general issuances without pre-emptive rights. Moreover, a special proposal to authorize the Company to call general meeting with two weeks' notice failed to pass with 68.4% of shareholders supporting it. These resolutions failed following the negative vote of Mr Samuel Tak Lee, owner of 28.36% of the issued share capital of the Company.

Commenting on the results, the Company stated<sup>6</sup>: "Aside from the matters related to the litigation, the Board will continue its efforts to engage with Mr Lee on all other aspects of the Company's business."

### Capital & Counties Properties

At Capital & Counties Properties' 2020 AGM the approval of the remuneration report failed to gain sufficient support, with 32.2% of shareholders voting in favour. The company stated<sup>7</sup>: "The Board notes that there was a significant vote against resolutions 7 and 12 and the advisory vote in respect of resolution 13 at the Annual General Meeting. Given 2019 was a year of transition, positioning Capco as a strongly capitalised prime central London focused REIT, the Board is disappointed but understands these results. The Remuneration Committee will continue to engage with shareholders to ensure views are fully understood. The Company will publish an update on shareholder engagement within six months of the Annual General Meeting."

### TI Fluid Systems

At the TI Fluid Systems 2020 AGM the approval of the final dividend proposal failed to pass, receiving 42.7% shareholders' support. Media reports<sup>8</sup> stated that "shareholder groups such as the Investment Association have told companies to be wary of paying dividends when employees and taxpayers are shouldering the burden during the COVID-19 crisis."

After the AGM, the company stated<sup>9</sup>: "the Board notes the outcome of the shareholder vote on Resolution 3 concerning the payment of the 2019 final dividend. As a consequence, the 2019 final dividend will not be paid to shareholders."

### Playtech

At the Playtech 2020 AGM the vote on the remuneration report failed to pass, receiving 36.28% shareholders support. After the AGM, the company stated<sup>10</sup>: "the company has considered the reasons for the results of today's meeting, reflected in the voting outcomes for the resolutions regarding the directors' remuneration report and the re-election of Ian Penrose, the Chairman of the Remuneration Committee. In implementing the Directors' Remuneration Policy during the financial year ending 31 December 2019 the Remuneration Committee has sought to balance the parameters of a publicly listed company's remuneration policy with the need to retain and incentivise its leadership team [...] Ahead of the AGM, the Remuneration Committee consulted further with shareholders to better understand their views on the remuneration report. There was a mix of feedback and this will be considered when designing a new remuneration policy, which will be put to shareholders for approval at the 2021 AGM."

6) <https://www.shaftesbury.co.uk/content/dam/shaftesbury/corporate/Investor-Relations/2020%2001%2031%20-%20RNS%20Announcement%20-%20AGM%202020%20-%20Results%20of%20AGM.pdf>

7) [https://www.capitalandcounties.com/sites/default/files/2020\\_agm\\_poll\\_vote\\_results\\_0.pdf](https://www.capitalandcounties.com/sites/default/files/2020_agm_poll_vote_results_0.pdf)

8) <https://www.sharecast.com/news/news-and-announcements/ti-fluids-27m-dividend-ditched-after-bain-opposes--7490898.html>

9) [https://otp.tools.investis.com/clients/uk/ti\\_automotive/rns/regulatory-story.aspx?cid=1993&newsid=1391207](https://otp.tools.investis.com/clients/uk/ti_automotive/rns/regulatory-story.aspx?cid=1993&newsid=1391207)

10) <https://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/PTEC/14547940.html>

# 1 | Voting in the United Kingdom

## **Vietnam Enterprise Investments**

At the Vietnam Enterprise Investments 2020 AGM, the special resolution to wind up the company effective from 31 December 2022 failed to pass, gaining only 0.46% shareholders' support. The resolution has been put forward by the management following article 133 of the company's articles (which force the company to put forward a winding up resolution every five years). However the management itself recommended shareholders to vote against the proposal stating that "despite the uncertainty caused by COVID-19 pandemic, Vietnam remains a market with excellent medium to long term prospects and the company remains an attractive means for investors to obtain exposure to Vietnam."

After the AGM, the company stated that "the Board of Directors of the Company announces that at the Annual General Meeting of the Company held on 18 June 2020, the resolutions numbered 1 to 9 in the notice of meeting for the 2020 AGM were passed by the required majority on a poll vote and the resolution numbered 10 was not passed."

## **Petropavlovsk**

At Petropavlovsk 2020 AGM, 9 different resolutions failed to pass: the vote over the remuneration policy (42.3% shareholders' support), an additional authority to issue equity (23.6% shareholders' support) and seven director election proposals (45.3% shareholders' support on average). Media reports<sup>11</sup> stated that "Petropavlovsk said it believed the outcome of the vote had been orchestrated by UGC, which acquired a 22 per cent stake this year, and Nikolai Lustiger, a businessman it said represents the interests of two other shareholders."

After the AGM, the company stated that "Following the events from the voting at the Company's AGM, the Company has formed an interim Board which complies with the rules and regulations of the UK Corporate Governance Code. Petropavlovsk will endeavour to discuss the next steps with all of its key shareholders ahead of the calling for a General Meeting to constitute a Board which is not only aligned with the wishes of all of its stakeholders, but will also provide the highest levels of corporate governance and stakeholder protection befitting the leading gold mining company it is, listed on both the London Stock Exchange and the Moscow Exchange. [...] in respect of Resolution 20 relating to the authority to issue shares, the authority sought by the Company is aligned with the Investment Association's share capital guidelines and market practice for FTSE listed companies. Given that this Resolution failed, the Board will also consult with shareholders to understand their concerns in this respect. The Remuneration Committee is disappointed to note that despite a consultation process, during which major shareholders confirmed their support for the new Remuneration Policy (the 'Revised Policy'), certain of these shareholders voted against the Revised Policy. Consequently, the previous Policy approved by shareholders on 29 June 2018 will remain in force. The Remuneration Committee will consider whether a further consultation process is required, with a further Policy being proposed for approval at the 2021 Annual General Meeting or potentially at a General Meeting to be convened prior to this date. A further statement detailing the outcome of the Company's consultation with its shareholders, including any actions taken as a result, will be published by the Company within six months of the 2020 Annual General Meeting in accordance with the revised UK Corporate Governance Code published in July 2018."

11) <https://www.ft.com/content/91637abd-4a3e-414a-9f2a-d1368490f604>

# 1 | Voting in the United Kingdom

## 1.3 WITHDRAWN RESOLUTIONS

Across the FTSE 100, twenty resolutions were withdrawn within the reporting period. Sixteen of them (at Aviva, Bunzl, Lloyds, Meggit, Melrose, Mondi, Persimmon, Rightmove, Royal Bank of Scotland, RSA Insurance Group, Smurfit Kappa, St. James Place, Standard Chartered and Taylor Wimpey) related to dividend proposals which were withdrawn following the COVID-19 outbreak, while three were director elections (two at Imperial Brands and one at Smith & Nephew) and one was an authorisation to make political donations (at Hargreaves Lansdown).

### **Imperial Brands**

Imperial Brands withdrew the resolutions to re-elect their CEO, Alison Cooper, and Matthew Phillips, Chief Development Officer, after the company announced they were stepping down from their positions in October 2019.

### **Smith & Nephew**

Smith & Nephew withdrew a resolution to re-elect their CFO, Graham Baker, after they announced he was stepping down from his position on 5 March 2020.

### **Hargreaves Lansdown**

Hargreaves Lansdown announced on 10 October 2019 they withdrew a resolution to make political donations. The resolution was withdrawn over the fears<sup>12</sup> that it would have been voted down by their founder and largest shareholder, Peter Hargreaves.

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<sup>12</sup>) [https://www.morningstar.co.uk/uk/news/AN\\_1570790779192669900/hargreaves-lansdown-pulls-political-donation-motion-from-agm-voting.aspx](https://www.morningstar.co.uk/uk/news/AN_1570790779192669900/hargreaves-lansdown-pulls-political-donation-motion-from-agm-voting.aspx)

# 1 | Voting in the United Kingdom

## 1.4 CONTESTED RESOLUTIONS

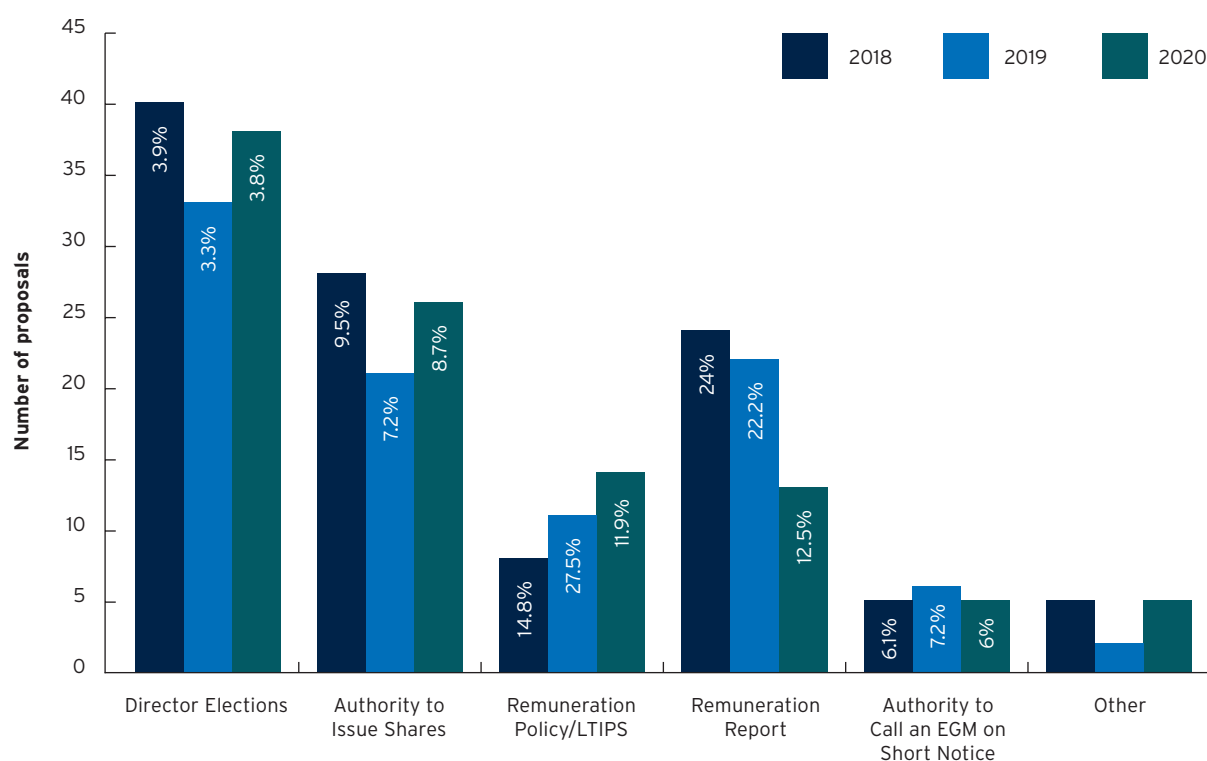
Among our sample of FTSE 100 companies which held their AGMs during the reporting period, 45 companies saw at least one management-proposed resolution receive more than 10% shareholder opposition (compared to 53 in 2019). The total number of resolutions that received over 10% opposition amounted to 101 (including the rejected resolution discussed in section 1.2), compared to 95 in 2019.

In the UK resolutions can be either ordinary<sup>13</sup> or special<sup>14</sup>. Ordinary resolutions require a simple majority of votes cast, while special resolutions require a 75% majority. Whether a resolution must be proposed as a special resolution is defined in the Companies Act. However, in some cases institutional investor bodies expect a resolution to be put forward as a special resolution even though this is not required by law<sup>15</sup>.

In our FTSE 100 sample, the most commonly contested resolutions were director elections. The second most commonly contested resolutions were authorities to issue shares with and without pre-emptive rights. Authorities with pre-emptive rights are proposed as ordinary resolutions while authorities to issue shares without pre-emptive rights are proposed as special resolutions. The third most commonly contested resolutions were remuneration policies/long-term incentive plans.

**Graph 3:**

Number of resolutions which received more than 10% against votes in the FTSE 100 (by resolution type). The percentages represent the ratio between the number of proposals that received more than 10% against and the total number of proposals in each category.



13) <http://uk.practicallaw.com/4-107-6940>

14) <http://uk.practicallaw.com/9-107-7287>

15) For instance, in relation to authorities to repurchase own shares, the Investment Association states that "companies should seek authority to purchase their own shares whether on market or off market by special resolution and not simply an ordinary resolution as is allowed by Sections 694 and 701 of the Companies Act 2006". See section 2.1.1 here: <https://www.ivis.co.uk/media/12250/Share-Capital-Management-Guidelines-July-2016.pdf>

# 1 | Voting in the United Kingdom

## 1.4.1 DIRECTOR ELECTIONS

The five companies with the lowest level of support on director elections among our sample were:

- Berkeley Group Holdings (Adrian Li – 53.7% in favour)
- Pearson (Mark Lynton – 67.5% in favour)
- Morrison Supermarkets (Belinda Richards – 79.5% in favour)
- Ocado (Andrew Harrison – 80.3% in favour)
- Flutter Entertainment (Zillah Byng-Thorne – 81.8% in favour)

We note that both ISS and Glass Lewis recommended against the elections of Adrian Li and Andrew Harrison, while they supported the other directors.

## 1.4.2 AUTHORITIES TO ISSUE SHARES

Authorities to issue shares with pre-emptive rights<sup>16</sup> are proposed as ordinary resolutions (requiring a simple majority), while authorities to issue shares without pre-emptive rights<sup>17</sup> are proposed as special resolutions (requiring 75% approval). Many institutional investors and proxy advisors refer to the Investment Association's Share Capital Management Guidelines<sup>18</sup> to assess authorities with pre-emptive rights, and to the Pre-emption Group's Statement of Principles to assess authorities without pre-emptive rights.

The revised Pre-emption Group Statement of Principles published in March 2015<sup>19</sup> allow a company to undertake non-pre-emptive issuances of up to 10% of the share capital, as long as the company specifies that 5% of the authority will only be used in connection with an acquisition or specified capital investment. The Pre-emption Group recommends that this additional 5% should be put forward in a separate resolution<sup>20</sup>. The graph below shows that the number of FTSE 100 companies seeking only a 5% authority (as the previous Principles recommended) has decreased from 45 in 2016, to 26 in 2020.

16) Companies Act 2006, s. 551: <http://www.legislation.gov.uk/ukpga/2006/46/section/551>

17) Companies Act 2006, s. 570: <http://www.legislation.gov.uk/ukpga/2006/46/section/570>

18) <https://www.ivas.co.uk/media/12250/Share-Capital-Management-Guidelines-July-2016.pdf>

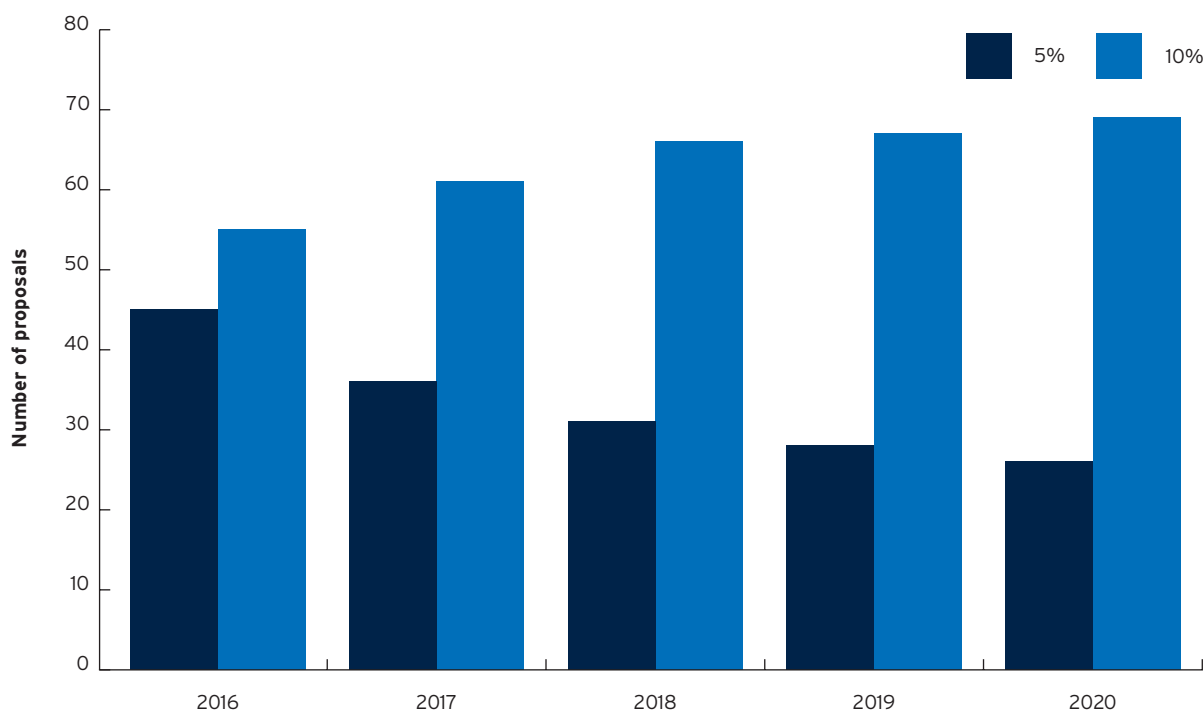
19) <http://www.pre-emptiongroup.org.uk/getmedia/655a6ec5-fecc-47e4-80a0-7aea04433421/Revised-PEG-Statement-of-Principles-2015.pdf.aspx>

20) <http://www.pre-emptiongroup.org.uk/Principles-and-template-resolutions.aspx>

# 1 | Voting in the United Kingdom

**Graph 4:**

Number of FTSE 100 companies who put forward a share issuance requests without pre-emptive rights broken down by 5% or 10% maximum dilution.



Among our sample, the five companies with the lowest level of support on these types of resolutions were:

- Just Eat Takeaway (issue equity with pre-emptive rights: 60.1% in favour).
- British American Tobacco (issue equity without pre-emptive rights: 72.3% in favour).
- Flutter Entertainment (issue equity with pre-emptive rights: 73.7% in favour).
- Anglo American (issue equity without pre-emptive rights: 79.8% in favour).
- Meggit (issue equity with pre-emptive: 80.3% in favour).

We note that ISS and Glass Lewis recommended in favour of each of these resolutions except for the one at Just Eat Takeaway.

## 1.4.3 REMUNERATION

Since 2002 quoted companies in the UK have been required to prepare a Directors' Remuneration Report and to offer shareholders an opportunity to vote on an advisory ordinary resolution approving this report<sup>21</sup>. In 2013 regulations were introduced requiring a binding vote on executive remuneration<sup>22</sup>. Under the regulations, remuneration reporting is comprised of three elements: the Annual Statement; the Annual Remuneration Report; and the Directors' Remuneration Policy. The Annual Remuneration Report continues to be subject to an annual advisory vote. The Directors' Remuneration Policy is subject to a binding vote at least once every three years.

21) Companies Act 2006, s. 439: <http://www.legislation.gov.uk/ukpga/2006/46/section/439>.

22) The Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013 (SI 2013/1981): <http://www.legislation.gov.uk/uksi/2013/1981/contents/made>.



# 1 | Voting in the United Kingdom

## Remuneration report

During the reporting period a total of 13 companies in our FTSE 100 sample received less than 90% support on their remuneration report, compared to 22 companies in 2019.

The five companies with the lowest level of support on the Remuneration Report among our sample were:

- Tesco (32.7% in favour)
- British American Tobacco (61.9% in favour)
- JD Sports Fashion (69.4% in favour)
- Ocado (70.2% in favour)
- Ferguson (74.4% in favour)

ISS recommended a vote against each of these resolutions. Glass Lewis recommended a negative vote against Tesco, JD Sports Fashion and Ocado.

## Remuneration policy

During the reporting period ten companies in our FTSE 100 sample received less than 90% support on their Remuneration Policy/LTIP votes, compared to nine companies in 2019.

The five companies with the lowest level of support on the Remuneration Policy among our sample were:

- Berkeley Group Holdings (56.9% in favour)
- Intertek (57.1% in favour)
- Lloyds (63.6% in favour)
- Informa (64.8% in favour)
- Morrison Supermarkets (65.1% in favour)

ISS recommended against Berkeley, Intertek, Lloyds, Informa and Morrison while Glass Lewis recommended against Berkeley and Morrison.

### 1.4.4 SHORT NOTICE PERIOD FOR EGMS

The Companies Act 2006 states<sup>23</sup> that a general meeting that is not an AGM may be called on 14 days' notice if the company "offers the facility for members to vote by electronic means accessible to all members" and if this has been approved by the previous AGM (or a subsequent general meeting) as a special resolution (requiring 75% approval).

Among our sample, the companies with the lowest level of support on these types of resolutions were:

- Segro (85.3% in favour)
- The British Land Co. (86.1% in favour)
- Reckitt Benckiser Group (87.1% in favour)
- BP (88.7% in favour)
- British American Tobacco (89.7% in favour)

In each of these cases, both ISS and Glass Lewis recommended a vote in favour.

<sup>23</sup>) Companies Act 2006, s. 307A: <http://www.legislation.gov.uk/ukpga/2006/46/section/307A>

## 2 | Proxy Advisors

Many institutional investors rely on proxy advisory firms, such as ISS, Glass Lewis, IVIS and PIRC for meeting agenda analysis and vote recommendations to inform their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a given resolution.

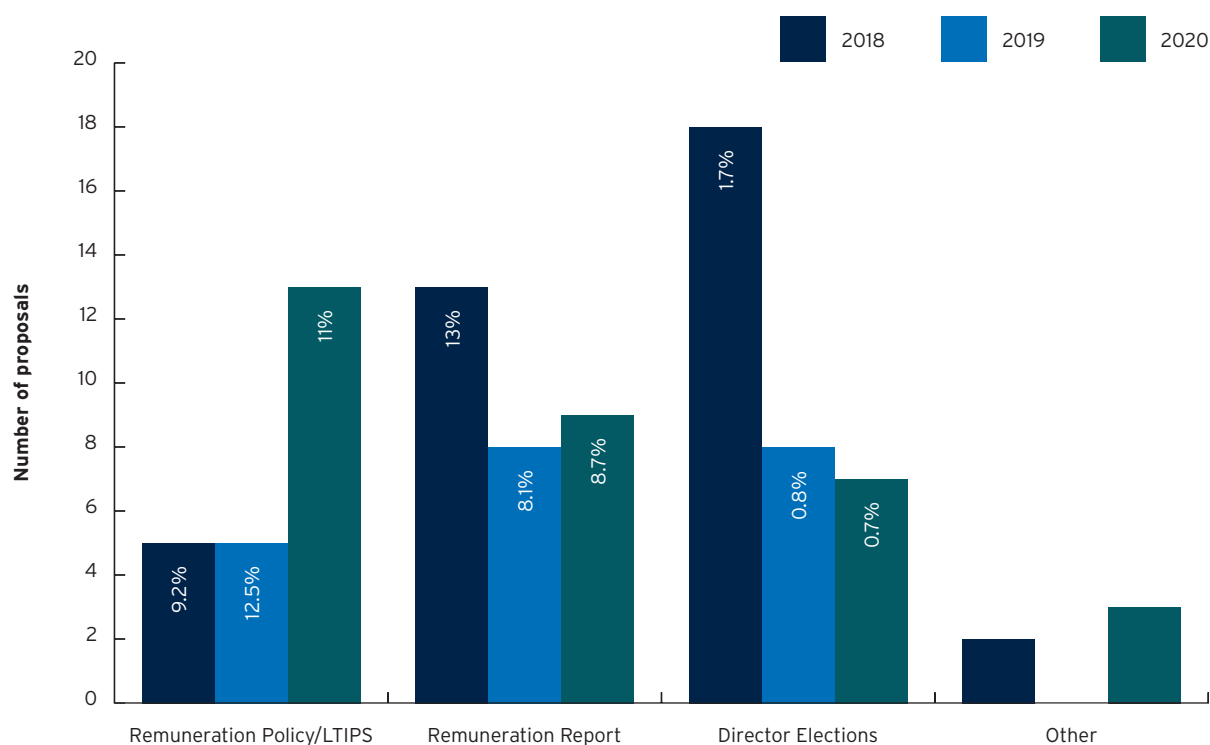
### 2.1 INSTITUTIONAL SHAREHOLDER SERVICES (ISS)

Institutional Shareholder Services<sup>24</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers.

Between 1 July 2019 and 30 June 2020, 30 companies out of the FTSE 100 received at least one against or abstain recommendation from ISS (compared to 17 in 2019), for a total of 32 resolutions (compared to 21 resolutions in 2019).

**Graph 5:**

Overview of the number of against/abstain recommendations by ISS at FTSE 100 AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative ISS recommendation and the total number of proposals in each category.

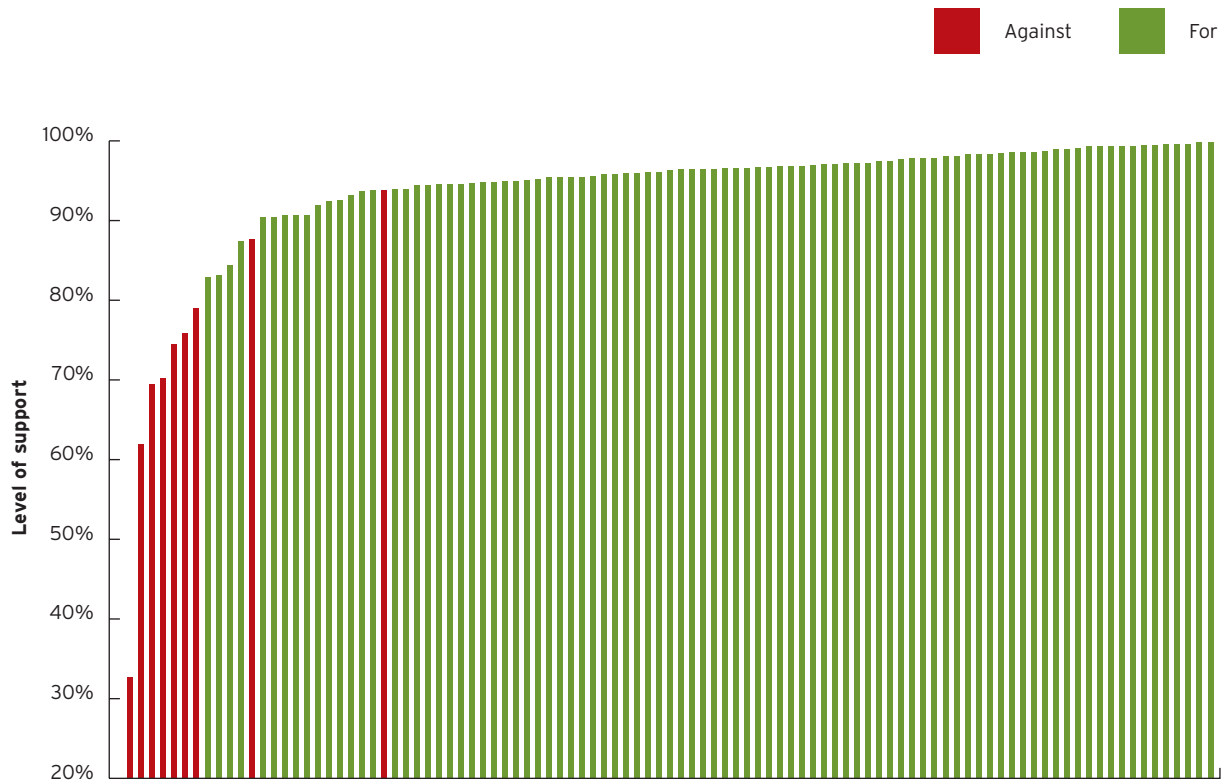


24) <http://www.issgovernance.com/about/about-iss/>

## 2 | Proxy Advisors

**Graph 6:**

Vote in favour of the Remuneration Report among FTSE 100 companies (ordered by level of support), and colour coded by ISS vote recommendation.



## 2 | Proxy Advisors

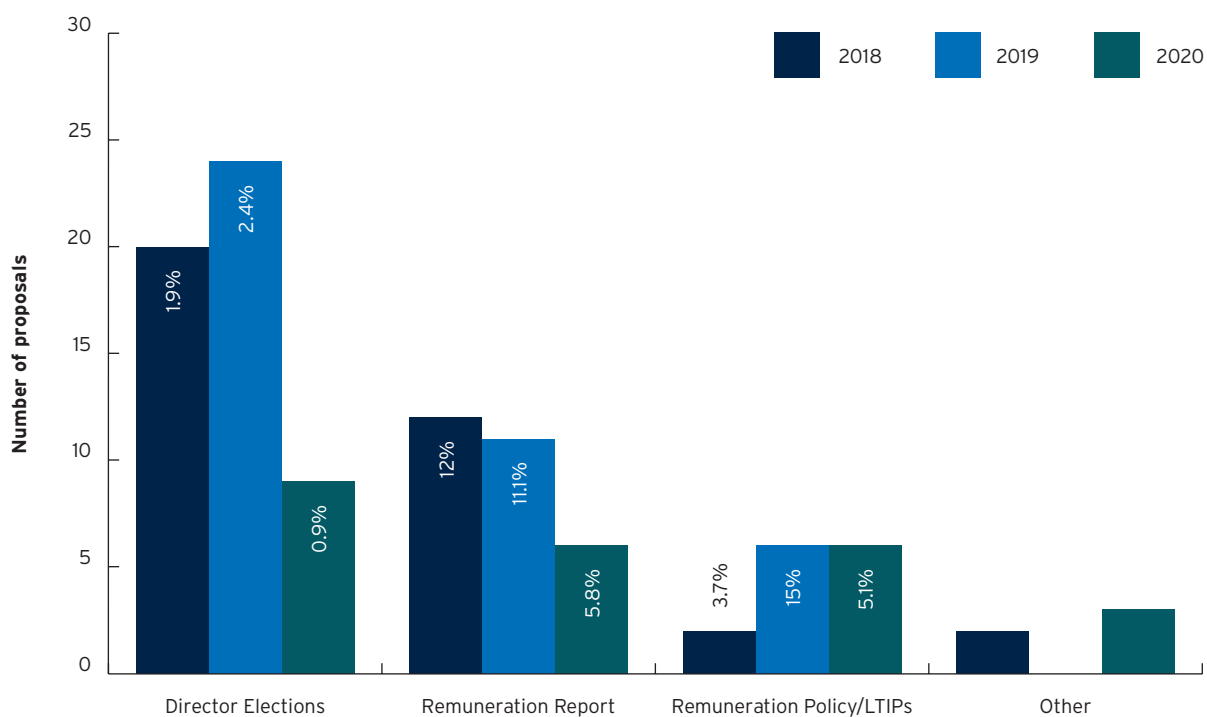
### 2.2 GLASS LEWIS

Glass Lewis<sup>25</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms.

Between 1 July 2019 and 30 June 2020, 23 companies out of the FTSE 100 received at least one against or abstain recommendation from Glass Lewis (compared to 25 in 2019), for a total of 24 resolutions (compared to 41 resolutions in 2019).

**Graph 7:**

Overview of the number of negative/abstain recommendations by Glass Lewis at FTSE 100 AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative Glass Lewis recommendation and the total number of proposals in each category.

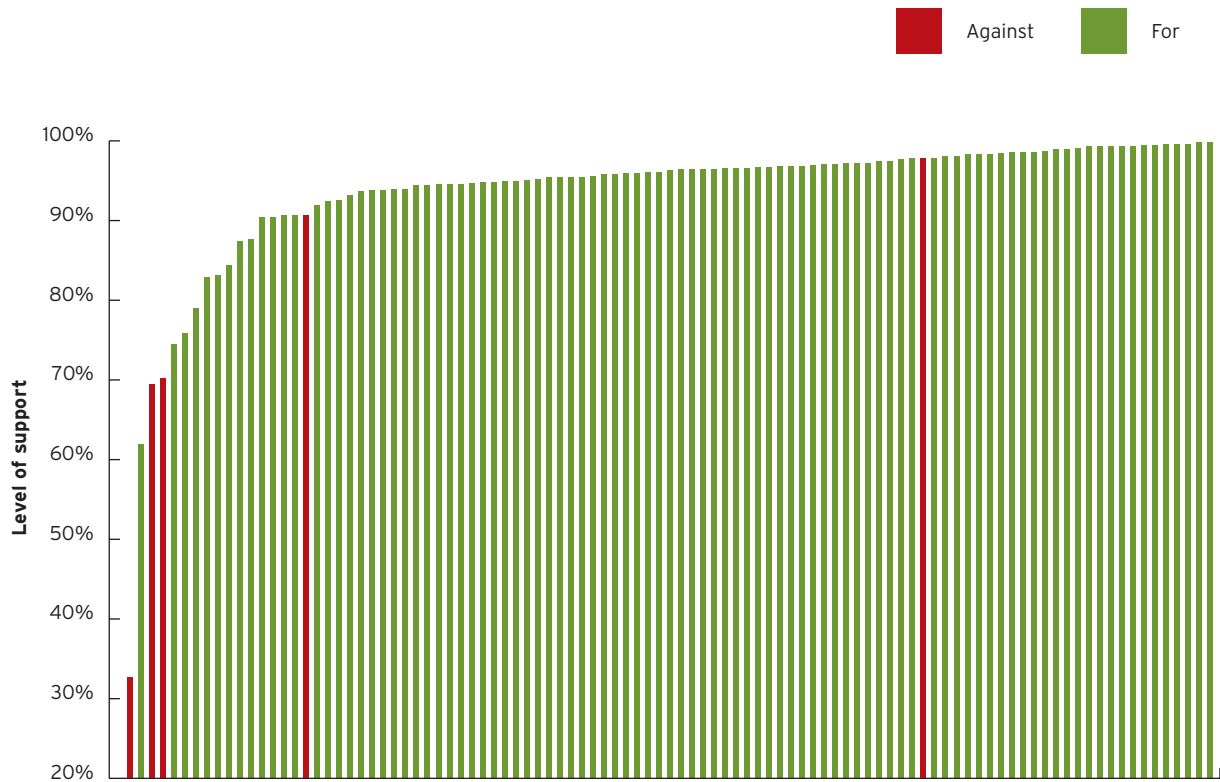


25) <http://www.glasslewis.com/about-glass-lewis/>

## 2 | Proxy Advisors

**Graph 8:**

Vote in favour of the Remuneration Report among FTSE 100 companies (ordered by level of support), and colour coded by Glass Lewis vote recommendation.



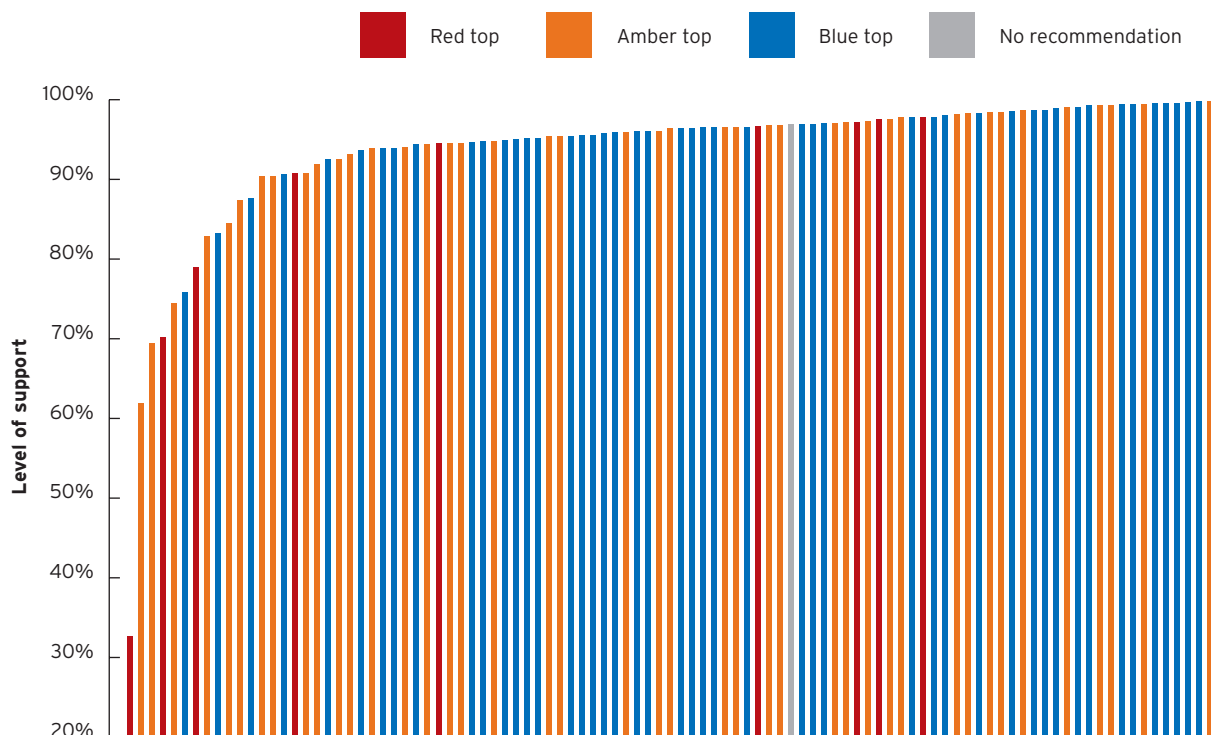
## 2 | Proxy Advisors

### 2.3 IVIS

The Institutional Voting Information Service<sup>26</sup> (IVIS) was founded by the Association of British Insurers (ABI) in 1993. Since June 2014 IVIS is part of the Investment Association. IVIS does not issue explicit vote recommendations. However, it uses a colour coded system which some investors will use as guidance on whether to vote negatively. The colour showing the strongest concern is Red, followed by Amber which raises awareness to particular elements of the report. A Blue Top indicates no areas of major concern, while a Green Top indicates an issue that has now been resolved.

**Graph 9:**

Vote in favour of the Remuneration Report among FTSE 100 companies (ordered by level of support), and colour coded by IVIS alert level.



<sup>26</sup>) <https://www.ivis.co.uk/about-ivis/>

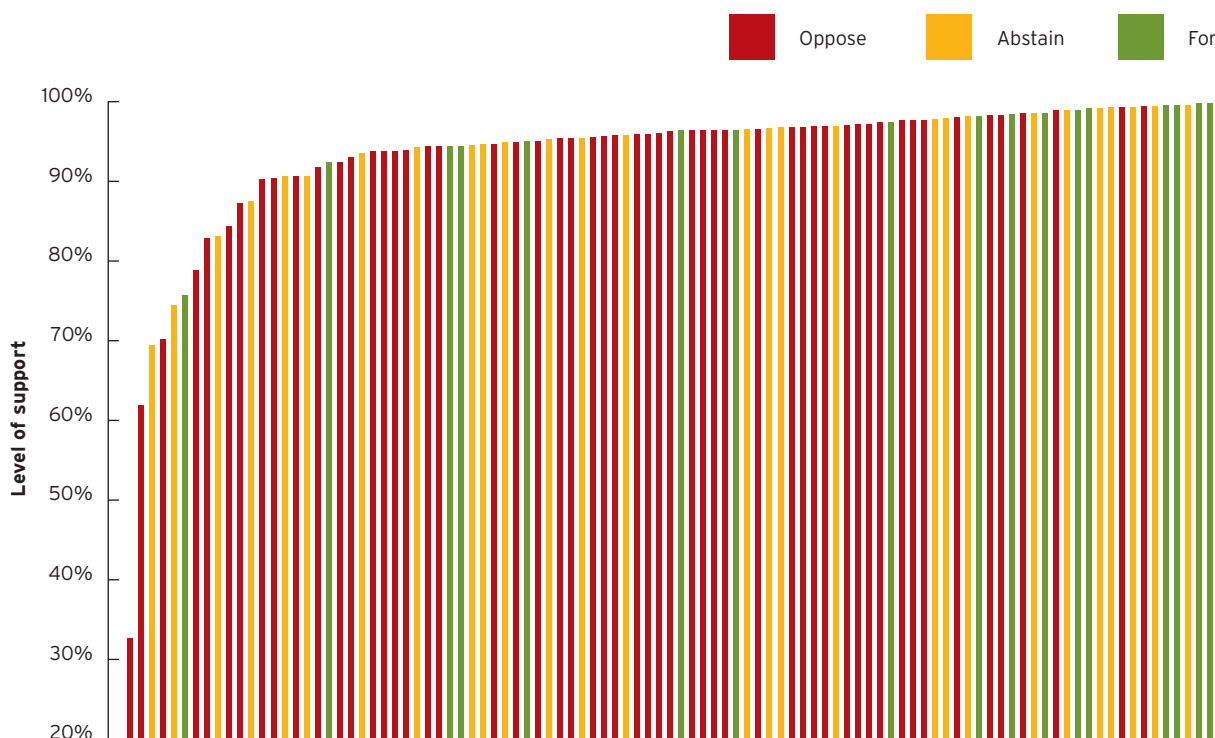
## 2 | Proxy Advisors

### 2.4 PIRC

Pensions & Investment Research Consultants<sup>27</sup> (PIRC) was established in 1986 by a group of public sector pension funds. It provides proxy research services to institutional investors on governance and other ESG issues.

**Graph 10:**

Vote in favour of the Remuneration Report among FTSE 100 companies (ordered by level of support), and colour coded by PIRC vote recommendation.



27) <http://pirc.co.uk/about-us-1>

# 3 | Corporate Governance developments

## 3.1 LEGISLATIVE CHANGES IN RESPONSE TO COVID-19

On 26 June 2020, the Corporate Insolvency and Governance Act came into force.<sup>28</sup> Under the new UK legislation, a number of temporary measures came into force, including specific rules allowing companies to hold their AGMs.

The Corporate Insolvency and Governance Act includes in particular provides that general meetings held between 26 March 2020 and 30 September 2020 do not have to be held physically to be considered valid and quorum requirements will be met even without the attendance of shareholders. At the same time, the Act provides that members have no right to attend the meeting physically and the meeting can be validly held and votes can be validly cast with the assistance of electronic means.

Furthermore, the Act introduces a number of additional provisions aimed at allowing extension of statutory deadlines for companies filings along with other relief measures for companies in financial distress.

On 9 July 2020, ICSA's Chartered Governance Institute published guidance note<sup>29</sup> on Shareholders meetings under the Corporate Insolvency and Governance Act 2020 noting that the passed legislation brings about "a significant erosion - albeit temporary and very necessary - of shareholder rights enshrined in the articles of association" addressing matters such as, amongst others, forms of meetings under during COVID-19, companies' ability to limit attendance at shareholders' meetings, and rights of members.

Earlier this year, on 14 May 2020, the Financial Reporting Council jointly with the Department for Business, Energy and Industrial Strategy (BEIS) has issued a Q&A<sup>30</sup> in respect of company filings, AGMs and other general meetings during COVID-19 which provided guidance on the above matters while the legislation was still in the process to be approved and eventually come into effect.

According to Annex A of the Q&A, "where the physical exclusion of members appears the only safe option, organisations should explore how they might actively participate in a meeting by virtual means. It is possible that there may be some challenges in ensuring the availability of technology to support member attendance virtually as part of the meeting quorum. Where that is not viable, organisations might look to transmit the proceedings of their AGM in real time over their website and give viewing members the opportunity to raise questions prior to the meeting. Wherever possible, answers should be provided before voting takes place, or proxy voting closes.

## 3.2 EQUITY ISSUANCES DURING COVID-19

On 1 April 2020, the Pre-Emption Group has issued a statement on expectations for issuances during the COVID-19 pandemic<sup>31</sup>. According to the statement, "In order to help companies raise equity capital in these difficult circumstances, the Pre-Emption Group (PEG) recommends that investors, on a case-by-case basis, consider supporting issuances by companies of up to 20% of their issued share capital on a temporary basis, rather than the 5% for general corporate purposes with an additional 5% for specified acquisitions or investments, as set out in the Statement of Principles." In case the additional flexibility provided for in the statement is required, a number of additional conditions should also be satisfied including the making of the issuance on a "soft pre-emptive basis".

Shortly after, on 8 April 2020, the FCA released a Statement of Policy<sup>32</sup> on listed companies and recapitalisation issuances during the coronavirus crisis welcoming the Pre-Emption Group statement and including a combination of temporary policy interventions and reminders of some existing options aimed at "assisting companies to raise new share capital in response to the coronavirus crisis while retaining an appropriate degree of investor protection".

In particular, the FCA stressed that "issuers should play a role in delivering 'soft pre-emption' rights in placing" by directing bookrunners to "allocate shares to investors in accordance with an allocation policy that seeks, to the extent possible within the constraints of the exercise, to replicate the existing shareholder base."

28) <https://www.gov.uk/government/publications/corporate-insolvency-and-governance-act-2020>

29) <https://www.icsa.org.uk/knowledge/resources/share-meet-insolvency-govact2020>

30) <https://www.frc.org.uk/getattachment/e3224310-c39c-4b48-b56b-cc703936beeb/Updated-QA-AGMs-Best-Practice-Final.pdf>

31) <https://www.frc.org.uk/getattachment/9d158c89-f0d3-4afe-b360-8fafa22d2b6a/200401-PEG-STATEMENT.pdf>

32) <https://www.fca.org.uk/news/statements/listed-companies-recapitalisation-issuances-coronavirus>



# 3 | Corporate Governance developments

On this matter, however, it has been reported by Morningstar<sup>33</sup> that “some of the UK’s largest investment platforms have come together to make sure listed companies in London accommodate private investors in equity raises”. The investment platforms have publicly come out in a letter<sup>34</sup> signed amongst others by the founders of Hargreaves Lansdown, AJ Bell and the CEO of fidelity International, stating that “UK retail investors are not receiving their entitlements to participate in these often discounted fundraisings” and raised the concern that “no protections are being afforded to retail investors” whom are left out by the discounted capital raisings which are instead offered directly to institutional investors with almost no attempt to offer the issues on a soft pre-emptive basis.

## 3.3 AUDIT REFORM

On 6 July 2020 the Guardian reported<sup>35</sup> that “The UK’s “big four” accountancy firms have been told to fence off their auditing operations as part of a drive to improve oversight of corporate finances in the wake of high-profile collapses such as Carillion and BHS.”

On the same day, the Financial Reporting Council (FRC) issued a series of principles<sup>36</sup> for the operational separation of the audit functions of the Big 4 Audit firms. According to the FRC, “the objectives of operational separation, which is world leading, are to ensure that audit practices are focused above all on delivery of high-quality audits in the public interest, and do not rely on persistent cross subsidy from the rest of the firm.”

The reform overhaul is meant to prioritise audit quality and protect the auditors independence, align partners’ profits in the audit practice and the audit contribution to profits, encourage the promotion of ethical behaviour and professionalism in the audit profession as well as the auditors’ duty to act in the public interest.

The FRC expects the Big 4 Audit firms to submit a plan in line with the principles by 23 October 2020. Upon agreement of the plan between the firms and the FRC is reached, the Big 4 will have until 30 June 2024 to implement the operational separation in the form agreed with the regulator.

## 3.4 NEW STEWARDSHIP CODE

Effective from 1 January 2020, the new Stewardship Code has come into effect<sup>37</sup>. According to the Financial Reporting Council, the new Code is a substantial and ambitious revision to the 2012 edition of the Code”.

As reported by the FRC, “There is a strong focus on the activities and outcomes of stewardship, not just policy statements. There are new expectations about how investment and stewardship is integrated, including environmental, social and governance (ESG) issues. The Code asks investors to explain how they have exercised stewardship across asset classes. For example, for listed equity, fixed income, private equity, infrastructure investments, and in investments outside the UK.”

The new Code is comprised of “12 Principles for asset managers and asset owners, and six Principles for service providers. These are supported by reporting expectations which indicate the information that should be publicly reported in order to become a signatory.”

33) [https://www.morningstar.co.uk/uk/news/AN\\_1587386121041504300/investment-platforms-demand-private-investors-not-ignored-amid-virus-.aspx](https://www.morningstar.co.uk/uk/news/AN_1587386121041504300/investment-platforms-demand-private-investors-not-ignored-amid-virus-.aspx)

34) <https://allinvestorsmatter.co.uk/>

35) <https://www.theguardian.com/business/2020/jul/06/uk-big-four-accountancy-audit-frc-kpmg-pwc-deloitte-ey>

36) <https://www.frc.org.uk/getattachment/281a7d7e-74fe-43f7-854a-e52158bc6ae2/Operational-separation-principles-published-July-2020.pdf>

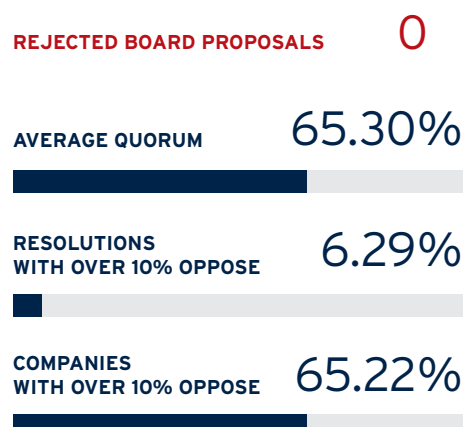
37) <https://www.frc.org.uk/investors/uk-stewardship-code>



# Germany (DAX)

# Highlights

## GERMANY



- The average quorum across the DAX increased from 63.9% in 2019 to 65.3% in 2020.
- Across the DAX, no board-proposed AGM resolutions have been rejected by shareholders.
- This year, due to the COVID-19 pandemic, only 19 companies held their AGM between the analysed period July 2019-June 2020. Therefore, we considered the period between July 2019-July 2020, where 23 companies held their AGM. Last year, 29 companies out of 30 held their AGM between July 2018 and June 2019.
- The number of DAX companies that had at least one contested proposal (10%+ opposition) was 15. The overall number of contested resolutions decreased from 87 in 2019 to 22 in 2020.
- The election of supervisory board members continues to be the most contested resolution type across the DAX, where 12 resolutions out of 62 received at least 10%+ opposition (19.4%).
- Across the DAX, 25% of remuneration system votes received more than 10% opposition. However, it should be noted that only eight DAX companies held such a vote in 2020.
- Remuneration system votes saw a 100% increase in the number of contested resolutions (10%+ opposition) from 1 in 2019 to 2 in 2020.
- ISS recommended negatively on 19 resolutions in 2020, opposing 5.43% of the total resolutions.
- Glass Lewis recommended negatively on 12 resolutions in 2020, opposing 3.43% of the total resolutions.

# 1 | Voting in Germany

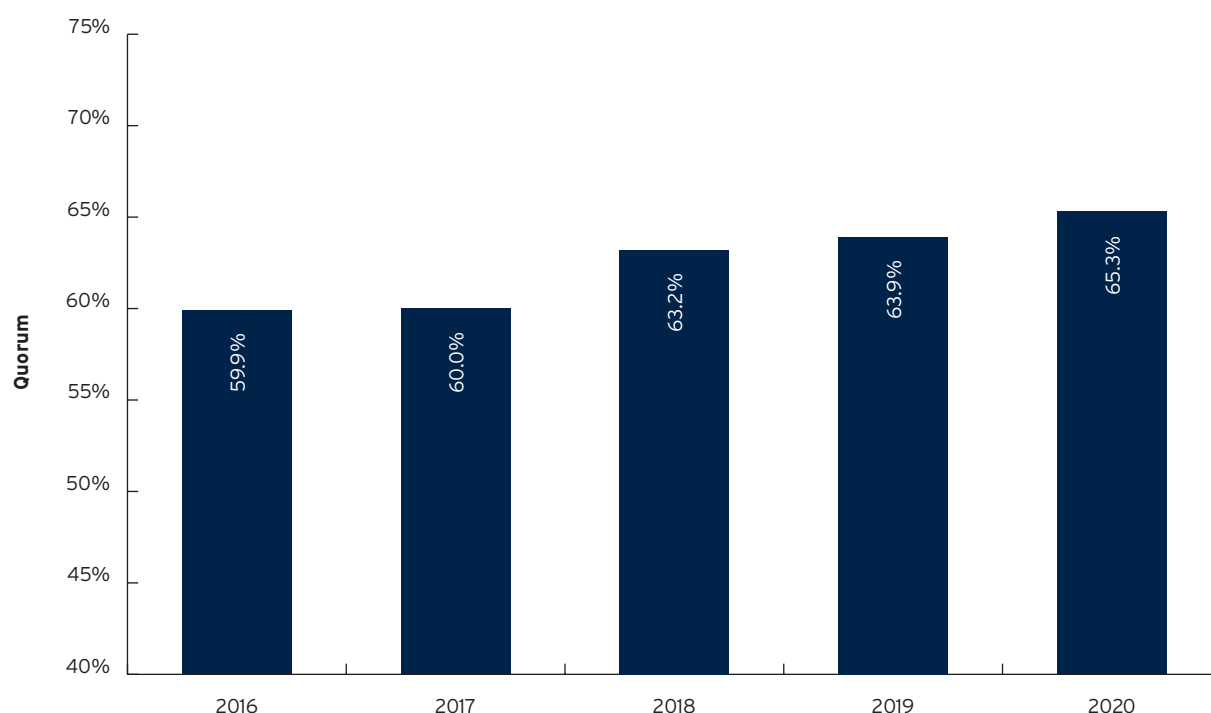
## 1.1 QUORUM OVERVIEW

Georgeson has reviewed the quorum levels of the DAX Index<sup>1</sup> over the past five years. Our survey includes the companies that were part of the index as of 1 May 2019, and which held their AGMs between 1 July 2019 and 31 July 2020. Due to the COVID-19 pandemic, many German companies postponed their AGMs which are usually held between February and June and therefore, despite having considered July 2020 in order to include more AGMs, only 23 out of 30 companies were analysed this year.<sup>2</sup>

In the DAX, the average quorum was 65.3%, an increase over the 2019 quorum of 1.4 percentage points, and a 5.4 percentage point increase from quorum levels in 2016.

**Graph 1:**

Average AGM quorum levels in the DAX between 2016 and 2020.



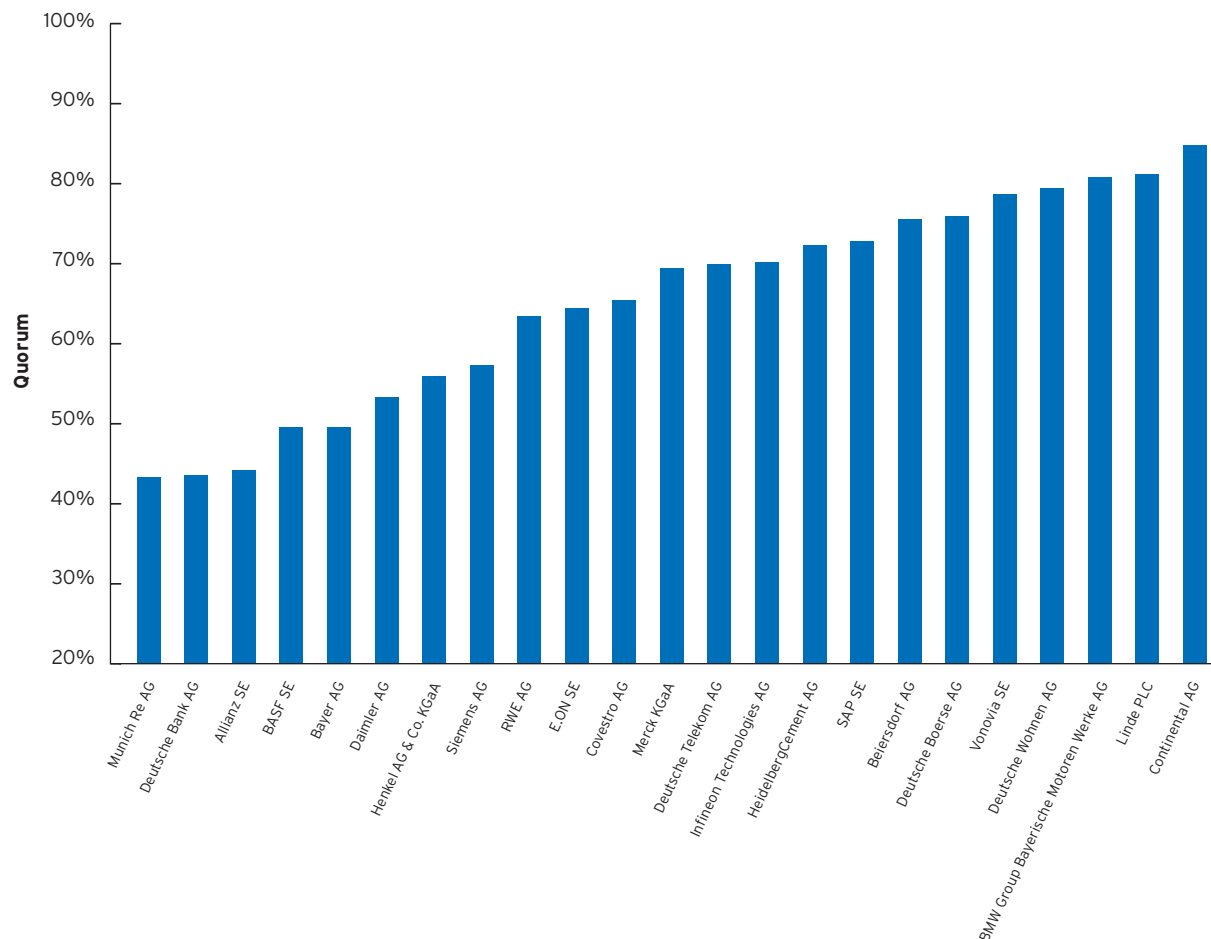
1) The DAX Index tracks the segment of the largest and most important companies on the German equities market. It contains the shares of the 30 largest and most liquid companies admitted to the FWB Frankfurt Stock Exchange in the Prime Standard segment. The DAX represents about 80% of the aggregated prime standard's market cap. See here: <https://deutsche-boerse.com/dbg-en/our-company>.

2) Companies not included in our analysis are MTU Aero Engines, Adidas, Wirecard, Fresenius Medical Care, Deutsche Post, Fresenius and Volkswagen.

# 1 | Voting in Germany

**Graph 2:**

Quorum levels at DAX companies during the 2020 reporting period.



# 1 | Voting in Germany

## 1.2 REJECTED RESOLUTIONS

### DAX

Within the reporting period from 1 July 2019 until 31 July 2020 across the DAX, no proposal were rejected by shareholders.

### MDAX

Across the MDAX, 7 proposals were rejected by shareholders at the AGMs of 5 companies.

#### QIAGEN NV

German listed QIAGEN NV held its combined AGM & EGM to approve resolutions relating to Thermo Fisher's cash offer for QIAGEN shareholders on 30 June 2020<sup>3</sup>. While all resolutions relating to the offer passed with a high majority, the proposals relating to the approval of the remuneration report (34.2% votes in favour), remuneration policy (38.5% votes in favour) and the resolution to exclude pre-emptive rights for an authorized capital (59.2% votes in favour) failed to receive the required votes in favour in order to pass.

#### Rheinmetall AG

In reaction to negative voting recommendation issued by proxy advisors, Rheinmetall had issued a statement<sup>4</sup> on its website in advance of the 19 May 2020 AGM laying out the process they had gone through before proposing its amended remuneration system to shareholders for approval as part of the AGM agenda. Rheinmetall conclude that "the supervisory board regards the redesigned remuneration policy as an appropriate instrument to offer an attractive compensation package, while at the same time the stretch or degree of tension for the eligible board members has been increased significantly." Despite the company's efforts, the company's revised remuneration system only received 43.1% of votes in favour, failing the simple majority required to pass.

#### Deutsche Pfandbriefbank AG

The Deutsche Pfandbrief Bank AGM was held on 28 May 2020. As part of the AGM agenda, the company had proposed an article amendment which would have allowed the company (in line with legislation applicable to financial institutions) to reduce the calling period and registration period in advance of a shareholder meeting in extraordinary circumstances. The provision was rejected by shareholders, only receiving 46.3% of votes in favour.

#### Aroundtown SA

Aroundtown was another company to ask its shareholders to approve its revised remuneration system at its 24 June 2020 AGM. The company received 49.5% of votes in favour for this item, narrowly missing the required 50% majority to pass. The company had in addition asked shareholders to approve the remuneration report for the past financial year - this resolution passed with 58.2% of votes in favour.

#### HelloFresh SE

HelloFresh proposed an article amendment at its 30 June 2020 AGM, stipulating the extension of the term of the original supervisory board members as per the IPO of the company by an additional year (from approx. 1 years to approx. 2 years). The resolution failed to receive the required 75% majority, with only 67.7% of shareholders voting in favour of this resolution.

3) [https://corporate.qiagen.com/newsroom/press-releases/2020/20200630\\_agm](https://corporate.qiagen.com/newsroom/press-releases/2020/20200630_agm)

4) [https://ir.rheinmetall.com/rheinmetall/pdf/hv2020/20200504\\_Rheinmetall\\_Statement\\_Voting\\_Guidelines.pdf](https://ir.rheinmetall.com/rheinmetall/pdf/hv2020/20200504_Rheinmetall_Statement_Voting_Guidelines.pdf)

# 1 | Voting in Germany

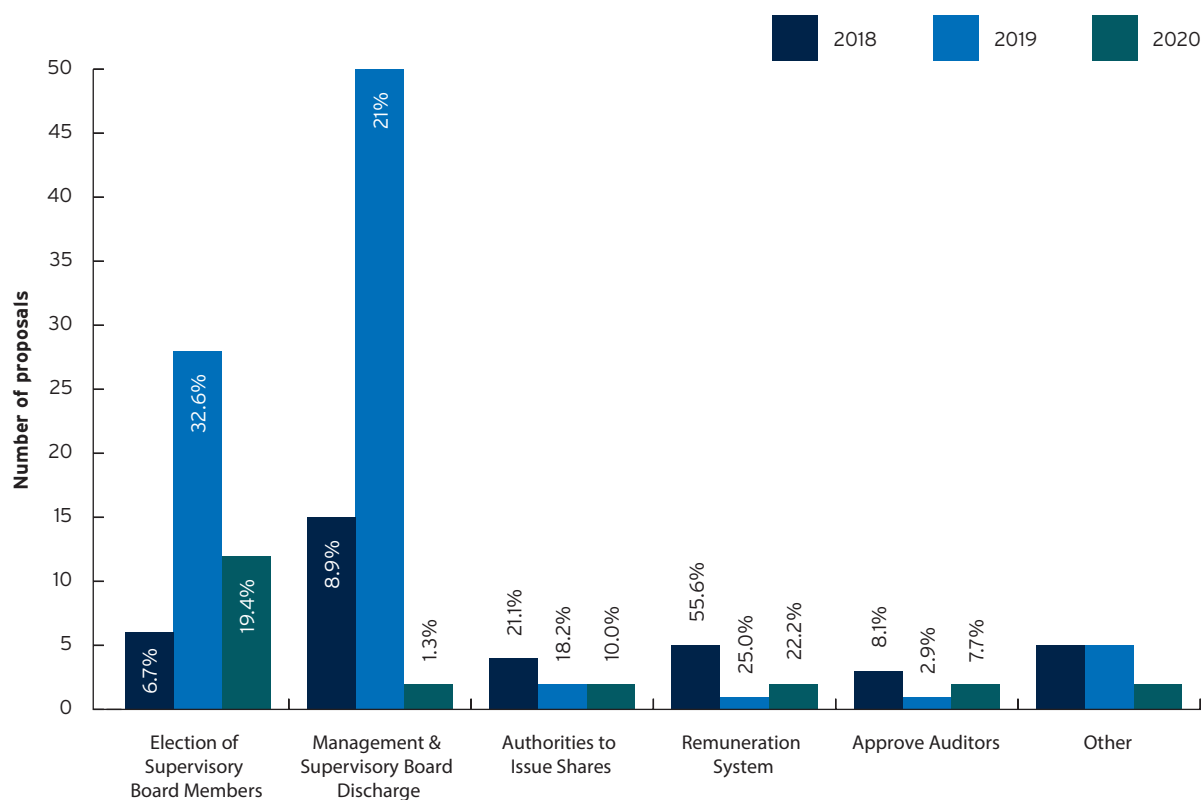
## 1.3 CONTESTED RESOLUTIONS

Among our sample of 23 DAX companies that held their AGMs during the reporting period, 15 companies saw at least one management-proposed AGM resolution receive more than 10% shareholder opposition (20 in 2019). The total number of resolutions that received over 10% opposition amounted to 22 proposals, down from 87 proposals in 2019.

The most commonly contested resolutions related to the election of supervisory board members. The second most contested resolution was related to management and supervisory board discharge, while the third most contested resolution was the general authority to issue shares.

**Graph 3:**

Number of resolutions which received more than 10% against votes in the DAX (by resolution type). The percentages represent the ratio between the number of proposals that received more than 10% against and the total number of proposals in each category.



# 1 | Voting in Germany

## 1.3.1 SUPERVISORY BOARD MEMBER ELECTIONS

During the reporting period, 11 supervisory board candidates received more than 10% opposition on their election at 10 companies, compared to 28 candidates in 2019.

Based on feedback Georgeson has gathered from investors and proxy advisors, the main reasons to vote or recommend against the election of supervisory board members in Germany continue to be concerns relating to the overall independence of the supervisory board (including for tenure reasons) and overboarding concerns. Some investors have gradually changed their guidelines to allow fewer external mandates for newly elected or re-elected supervisory board members. The lack of independence on key board committees has also led investors to vote against the re-election of incumbent board members. Extra scrutiny is applied by investors due to the long term length in Germany (which can last up to 5 years) compared to an average of 3 years across major European markets. ISS announced at the end of 2020 that they will recommend their clients from February 2021 to vote against any new board terms exceeding 4 years and it is expected that this may also be reflected in the voting guidelines of some investors for the next proxy season.

As up to 50% of the supervisory board in Germany is required by law to be comprised of employee representatives (elected separately by employees of the Company), many institutional investors require at least one-third of the full Supervisory Board and/or half of the shareholder-elected members to be independent.

Overboarding concerns are generally raised for supervisory board candidates who have a significant number of other board seats or serve as executives at other companies. Shareholders also continue to consider poor attendance or undisclosed attendance records as reasons to vote against the re-election of a supervisory board member. In addition, some investors in the domestic market require more transparency on the supervisory board members and candidates, to include full CVs and biographical details, such as when they were first elected and their nationality.

The companies with the highest level of opposition on supervisory member elections among our sample were:

- ▶ Linde (Martin H. Richenhagen - 60% in favour)
- ▶ BASF (Kurt Bock - 67.3% in favour)
- ▶ Deutsche Wohnen (Matthias Huenlein - 76.1% in favour)
- ▶ Infineon Technologies (Manfred Puffer - 80.2% in favour)
- ▶ Daimler (Timotheus Hoettges - 80.5% in favour)

## 1.3.2 DISCHARGE OF THE MANAGEMENT AND SUPERVISORY BOARDS

It is a legal requirement in Germany for companies to propose a discharge vote on the supervisory board and on the management board. The vote is largely symbolic as the legal position of shareholders and board members does not change based on the results of this vote. As a result, shareholders have been using these resolutions to express their discontent with the current Management and/or Supervisory Board. The reasons for not granting discharge range from corporate governance concerns, to investigations into misconduct or fraud. Corporate governance concerns may include the lack of disclosure of individual supervisory board members' meeting attendance records, as well as concerns about the current executive remuneration system. This may include the lack of responsiveness to shareholder concerns on a previously proposed remuneration system, which received significant shareholder opposition or the lack of a regular vote on this item.

While it is common practice to propose the discharge of the whole supervisory board and the whole management board each as a single resolution, in many cases at the AGM itself, the vote is split into individual discharge votes on each board member following a request from a shareholder. Additionally, in a limited number of cases, the company may decide to split this resolution up on the proxy card.

In cases where shareholders consider the discharge of a single member (or group of management or supervisory board members) to be controversial, this practice would allow shareholders present at the meeting to grant discharge for the remaining members.



# 1 | Voting in Germany

The companies with the highest level of opposition on management and supervisory board discharge were:

- Daimler (88.45% in favour of the discharge of the supervisory board)
- HeidelbergCement (89.33% in favour of the discharge of the supervisory board member Fritz-Juergen Heckmann)

## 1.3.3 GENERAL AUTHORITIES TO ISSUE SHARES

German companies routinely request shareholder authority to issue shares over a period of up to five years for general purposes, to allow for smaller acquisitions or for the conversion of financial instruments. These authorities are split between “authorised” and “conditional” capital, but are subject to the same overall dilution limits.

There has been a notable reduction in the number of shares that can be issued without pre-emptive rights, including for contributions in kind. While a threshold of 20% was commonly accepted in Germany, most investors now lean towards a threshold of max. 10%. Based on this, ISS lowered the threshold in its guidelines from 20% to 10% in February 2019, while Glass Lewis still allows for pre-emptive rights to be excluded for up to 20% of issued share capital.

The BVI (Bundesverband Investment und Asset Management e.V.) changed its guidelines<sup>5</sup> for the 2020 proxy season to limit each authority to issue shares to 30%, while the exclusion of pre-emptive rights is now subject to an overall limit of 10% (including any outstanding authorities). By law, the overall number of shares to be issued under a single authorization cannot exceed 50% of the current issued share capital, which is in line with the guidelines of the major proxy advisors ISS and Glass Lewis.

In addition, it had been common practice in the past to disregard any outstanding authorizations from previous AGMs which may have only been used partially, potentially allowing the accumulation of several authorities over several years. However, in recent years it has become more common to either cancel any outstanding authorities or to incorporate them as part of the new authority, applying an explicit overall threshold for the max. exclusion of pre-emptive rights for all outstanding authorities.

During the reporting period, two proposals relating to share issuance received more than 10% in opposition, compared to two in 2019:

- Covestro (82.6% in favour for an authority to issue share without pre-emptive rights)
- Beiersdorf (84.4% in favour for an authority to reissue repurchased shares)

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5) <http://www.issgovernance.com/about/about-iss/>

# 1 | Voting in Germany

## 1.3.4 VOTE ON THE EXECUTIVE REMUNERATION SYSTEM

With the introduction of the German Act on the Appropriateness of Management Board Remuneration (Gesetz zur Angemessenheit der Vorstandsvergütung – “VorstAG”<sup>6</sup>) in August 2009, provisions were put into place for the first time in Germany for shareholders to have a vote on executive remuneration. This provision enabled companies to put their executive remuneration system up for a non-binding vote, which was subsequently also included with further details in the German Corporate Governance Kodex.

Since the ratification of the Act, it has also been the responsibility of the Supervisory Board to ensure that the Company’s remuneration system is set out in line with shareholders’ expectations, that there be a link between pay and performance and that the system be long-term oriented. While most DAX and MDAX companies held an initial vote on their executive remuneration system following the introduction of the law in 2010, a large number of issuers appear to have avoided holding a vote at regular intervals, considering that this would only be appropriate if major changes to the system were made.

The implementation of the shareholder rights directive in Germany through ARUG II (please see section 3.2) brought significant changes, now requiring issuers for AGMs held after 31. December 2020 to hold a vote on their remuneration policy (“remuneration system”), for both the executive board and the supervisory board at least every 4 years (or if notable changes have been made). Furthermore, in the future companies will have to put their remuneration report up for a non-binding shareholder vote as well.

Despite irregular votes in the past, investors and proxy advisors had increasingly used the non-binding vote on the remuneration system as a way to also show their discontent over the level of disclosure provided in the remuneration report and over the remuneration levels awarded in the previous year. In addition, the German investment funds association BVI (Bundesverband Investment und Asset Management e.V.) clarifies in their voting 2020 guidelines<sup>7</sup> for German AGMs, that companies should propose a vote on their remuneration system at least every four years, even if no changes have been made. This is now in line with the new requirements under ARUG II. The guidelines previously required companies to hold a vote at least every five years (or earlier, if changes were made to the policy), and failure to hold the vote would result in the BVI recommending its members to vote against the discharge of the management and supervisory boards at the companies in question.

While in the past votes on the executive remuneration system have typically received high approval rates (well over 90%), since 2016 the approval rates for almost all companies has been below that threshold, even though only a limited number of companies have held a vote. In 2017, seven out of eight remuneration system proposals, i.e. 88% of all proposals in this category, received more than 10% against votes. This trend of high opposition continued in 2018 with five contested resolution among nine remuneration system proposals representing 56% on the total. In 2019, only four remuneration related proposals were put forward and just one, representing 25% of the total, received more than 10% against votes (this was Deutsche Lufthansa which only received 57.4% of votes in favour).

In 2020, eight proposals relating to the executive remuneration system (out of the 23 DAX companies observed) were put forward with two, representing 25% of the total, receiving notable shareholder opposition which were at:

- Deutsche Boerse (65.5% in favour)
- SAP (78.4% in favour)

6) [https://www.bundesanzeiger-verlag.de/fileadmin/Betrifft-Unternehmen/Arbeitshilfen/Transparenz/VorstAG\\_Managergehaelter.pdf](https://www.bundesanzeiger-verlag.de/fileadmin/Betrifft-Unternehmen/Arbeitshilfen/Transparenz/VorstAG_Managergehaelter.pdf)

7) [https://www.bvi.de/fileadmin/user\\_upload/Regulierung/Branchenstandards/ALHV/191031\\_ALHV\\_ENG\\_fin.pdf](https://www.bvi.de/fileadmin/user_upload/Regulierung/Branchenstandards/ALHV/191031_ALHV_ENG_fin.pdf)

## 2 | Proxy Advisors

Many institutional investors rely on proxy advisory firms, such as ISS and Glass Lewis, for meeting agenda analysis and vote recommendations to inform their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a given resolution.

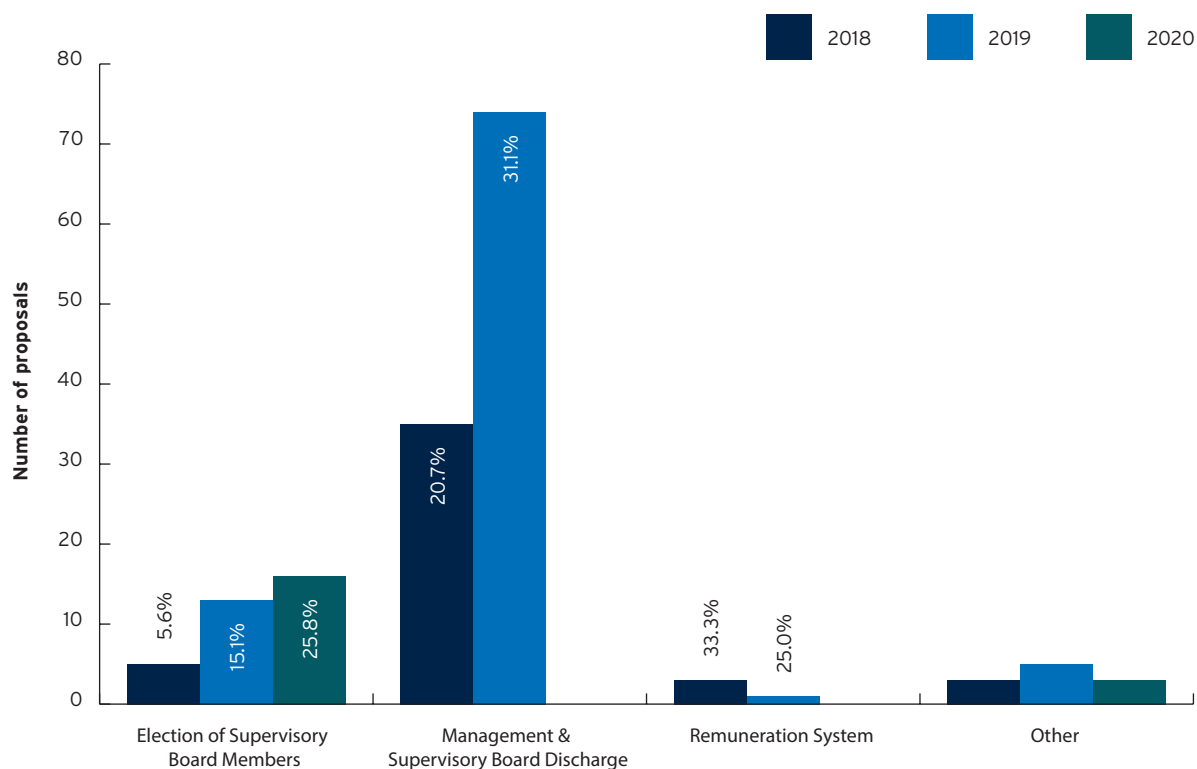
### 2.1 ISS

Institutional Shareholder Services<sup>8</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers.

During the 2020 AGM season, five companies from the DAX index received at least one against recommendation from ISS. The total number of resolutions where ISS recommended its clients to vote against amounted to 19, compared to 93 in 2019.

**Graph 4:**

Overview of negative recommendations by ISS at DAX AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative ISS recommendation and the total number of proposals in each category.



8) <http://www.issgovernance.com/about/about-iss/>

# 2 | Proxy Advisors

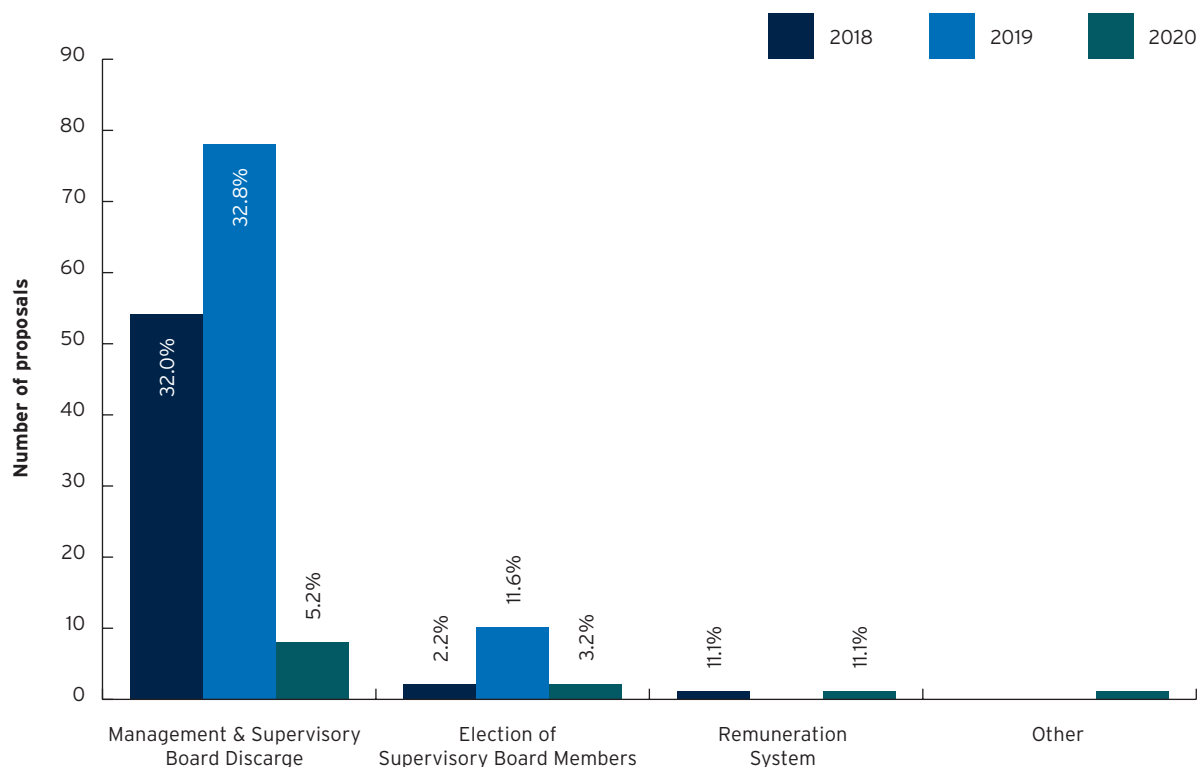
## 2.2 GLASS LEWIS

Glass Lewis<sup>9</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms.

During the 2020 AGM season, eight companies from the DAX index received at least one against recommendation from Glass Lewis. The total number of resolutions where Glass Lewis recommended its clients to vote against amounted to 12, compared to 88 in 2019.

**Graph 5:**

Overview of the number of negative recommendations by Glass Lewis at DAX AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative Glass Lewis recommendation and the total number of proposals in each category.



9) <http://www.glasslewis.com/about-glass-lewis/>

# 3 | Corporate Governance developments

## 3.1 LEGISLATIVE CHANGES IN RESPONSE TO COVID-19

At the end of March, the German Government passed legislative changes intending to address challenges and uncertainties in the preparation and conduct of general meetings. The legislation covers how “virtual general” meetings should be conducted, the approach to time limits and other aspects, such as the dividend policy of German companies.

The possibilities for online participation and the use of electronic communication channels have been opened up, even for those companies which have no provisions for such means in their articles of association including allowing online participation and postal vote, participation of member of the Supervisory Board by video conference and the transmission of the AGM online. Furthermore, the legislator allowed to hold a general meeting without the physical presence of shareholders at the meeting venue; however, both the Chair and the notary, as well as the company's proxy should be in the same place. An important regulation was also introduced in the context of the shareholders' right to ask questions at the AGM: while not being able to be present to ask questions, shareholders have to be given the opportunity to submit questions at least two days before the general meeting, but without the right for a direct answer - instead the management board should be providing answers which are “dutiful”, and at “their discretion”. In addition, the legislator has not limited the reasons for refusing to provide information. What should also be noted is that if questions are answered in advance, for example as part of a FAQ, they do not have to be answered (again) at the AGM. Lastly, shareholders who were not physically present and who exercised their voting rights have the right to object the minutes which could be done electronically.

Under the “emergency legislation” the management board has been granted with the ability to shorten the AGM notice period to 21 days (without the registration period being extended), with the record date referring to the beginning of the twelfth day prior to the meeting date. Requests for additions to the agenda must be received by the issuer at least 14 days before the meeting (if the issuer decides to shorten its notice period). The company is only required to hold the general meeting before the end of the fiscal year; however, this is only applicable for stock corporations (AG) or partnerships limited by shares (KGaA) and not for companies having the legal form of a European Company (Societas Europaea, SE), which have to hold the general meeting within the first six months of the financial year.

Another notable change is that the management board is entitled to pay a portion on the net profit to shareholders (in advance of the ratification of a dividend payment by the AGM), even without the proper authorisation in the articles of association, allowing the fear of a delay in the dividend to be counteracted.

## 3.2 IMPLEMENTATION OF THE REVISED EUROPEAN SHAREHOLDER RIGHTS DIRECTIVE THROUGH ARUG II

In March 2017 the European Parliament approved amendments to the 2007 EU Shareholder Rights Directive (Directive 2007/36/EC) with the aim of encouraging “long-term shareholder engagement”. The revised Directive (Directive (EU) 2017/828) was published in the Official Journal of the European Union on 20 May 2017.

The final implementation law for revised Shareholder Rights Directive in Germany (ARUG II) was ratified by the German parliament on 14 November 2019<sup>10</sup>, implementing major changes to the German Stock Corporation Act (AktG) with some rules coming into effect later in 2020 and some only applicable from 2021 onwards. Once the law comes into force, it will particularly strengthen shareholders' rights in German listed/incorporated companies.

<sup>10</sup>) [https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/DE/Aktionaersrechterichtlinie\\_II.html](https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/DE/Aktionaersrechterichtlinie_II.html)

# 3 | Corporate Governance developments

## **Remuneration policy for the management board**

New provisions under ARUG II require the supervisory board to adopt a remuneration policy for members of the management board. The law contains a number of requirements for the elements that the remuneration policy must comprise of, including a fixed cap on remuneration for the members of the management board.

At the AGM, shareholders must vote at least once every four years (or in the case of material changes) on the remuneration policy proposed by the supervisory board. The vote is non-binding (advisory) and requires a simple majority to pass. Shareholders cannot bring legal challenges against the vote following the shareholder meeting. In the event that shareholders do not approve the remuneration policy, the supervisory board is obliged to submit a revised remuneration policy no later than at the next AGM.

Furthermore, the AGM may reduce the maximum remuneration for the management board that was determined by the supervisory board by a vote that is binding both on the management and the supervisory board. Shareholders would need to request this by means of a shareholder proposal which can be put forward by shareholders representing at least 5% (or €500,000 of nominal share capital).

## **Remuneration policy for the supervisory board**

A remuneration policy must also be adopted for members of the supervisory board, with a vote also to be held at least every 4 years, even if no changes to the supervisory board fees have been made.

## **Remuneration report**

ARUG II requires companies to publish a separate remuneration report, covering the remuneration of both the management board and the supervisory board in a single document. The remuneration report must also contain information on the ratio of the average remuneration for directors to the average remuneration for the company's full-time employees over the past five years. In this context, it is up to the company to decide how to determine a suitable comparative group for calculating average remuneration. The company is obliged to explain in the remuneration report how it determined the comparative group. The remuneration report must be put up for shareholder vote on an annual basis. The vote is also nonbinding, subject to a simple shareholder majority for approval and has an advisory character.

## **Approval for related party transactions**

As SRD II aims to ensure that the company's and its shareholder's interests are adequately protected in cases involving related party transactions, ARUG II specifies that related party transactions are subject to the supervisory board's approval if the economic value of the transaction exceeds 1.5% of the total of the company's/group's fixed and current assets as per its most recently approved annual financial statements.

## **Disclosure obligations for institutional investors, asset managers and proxy advisors**

Institutional investors, asset managers and proxy advisors are now subject to extensive new disclosure obligations under AURG II. In terms of applicability, ARUG II refers to the rules set out in SRD II with German specifications. Under the new rules, e.g. proxy advisors must explain on an annual basis whether they have complied with the requirements of a particular code of conduct, such as for example the Best Practice Principles for Shareholders Voting Research put together by an industry group at the request of the European Securities and Markets Authority (ESMA). Proxy advisors also have to publish information regarding their methods and main sources of information, their quality assurance process, qualifications and their voting policies. All information must be made publicly available on their website for a period of least three years from the date of publication, and, in addition, has to be updated at least once a year. Proxy advisors must also promptly notify their clients about conflicts of interests and relevant countermeasures taken.

Further significant rules under ARUG II relate to:

- › Transfer of information from the company to shareholders
- › Facilitating the exercise of shareholder rights; and
- › Arrangements concerning improved shareholder identification and information ("know your shareholder")

# 3 | Corporate Governance developments

## Implementation

It is important to note that even though ARUG II became effective on 1 January 2020, the rules concerning improved shareholder identification and information transfer from companies to shareholders will only be applicable from 3 September 2020. It will only become mandatory for companies to put remuneration policies up for a shareholder vote for AGMs held after 31 December 2020. As a result, only a limited amount of German companies had put up a remuneration policy vote on the AGM agenda this proxy season. This significantly differs from the implementation in neighbouring EU countries. The Netherlands, for example, made it mandatory for all listed companies to put their remuneration policy up for a shareholder vote in 2020 already. In addition, the vote in the Netherlands is binding and subject to a minimum approval rate of 75% of all votes cast.

The first remuneration reports based on the new provisions will have to be prepared for the fiscal year 2021 in Germany and will have to be put through the shareholder voting process in 2022 by the latest.

## 3.3 REVISED GERMAN CORPORATE GOVERNANCE KODEX

With the publication in the German Federal Gazette on 20 March 2020<sup>11</sup>, a revised Corporate Governance Code (“Kodex”) dated 16 December 2019<sup>12</sup> entered into force. Besides recommendations and suggestions, the new Code comprises principles, which are used to inform investors, other stakeholders, as well as the general public, about material legal requirements on responsible governance.

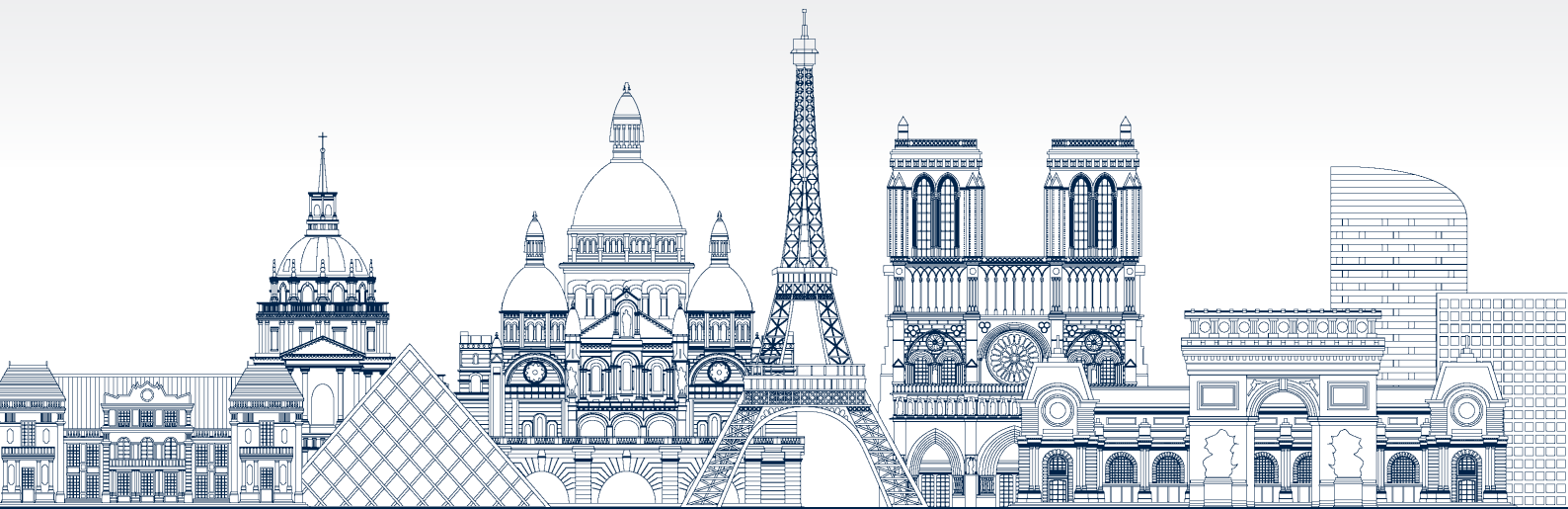
Amendments to the code include specification of the independence requirement regarding shareholder representatives in the supervisory board, including the requirement for the board to state what it considers to be an appropriate number of independent members. The code lists a number of reasons for a potential conflict of interest arising out of the proximity to the company or its management board, own interests (e.g. as customer, supplier, lender, or by virtue of a close personal relationship), from the position as controlling shareholder, or solely by tenure on the board.

The revised code furthermore deals with rules regarding management board remuneration, also taking into account the implementation of ARUG II. According to the corporate governance code commission, the objective of management board remuneration should be to create “the right incentives for the actions of the management board, to pay adequate remuneration for the performance rendered, to respect social acceptance and to explain clearly and understandably how much the individual management board member receives, and for what performance the remuneration is paid.”

Further material amendments to the code dealt with the simplification of corporate governance reporting and the removal of references to legal requirements from the code, by formulating principles (to reduce requirements to update the code based on changes to the text of quoted laws).

11) <https://www.dcgk.de/files/dcgk/usercontent/en/download/pressrelease/200320%20PM%20Code%202020.pdf>

12) [https://www.dcgk.de/files/dcgk/usercontent/en/download/code/191216\\_German\\_Corporate\\_Governance\\_Code.pdf](https://www.dcgk.de/files/dcgk/usercontent/en/download/code/191216_German_Corporate_Governance_Code.pdf)



# France (CAC 40)



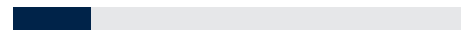
REJECTED BOARD PROPOSALS

1

AVERAGE QUORUM 70.10%



RESOLUTIONS WITH OVER 10% OPPOSE 17.31%



COMPANIES WITH OVER 10% OPPOSE 81.08%



## Highlights

- The average quorum across the CAC 40 increased from 68.7% in 2019 to 70.1% in 2020.
- Across the CAC40 there was one board-proposed AGM resolution rejected by shareholders.
- The number of CAC40 companies that had at least one contested proposal (10%+ opposition) was 30. The overall number of contested resolutions decreased from 173 in 2019 to 161 in 2020. Calibrated for the total number of resolutions in each year, this represents a 15.14% decrease compared to the 2019 AGM season.
- The number of resolutions which received more than 20% opposition from investors was 61 (6.55% of the total).
- The most commonly contested proposals (10%+ opposition) were related to executive remuneration where 27.7% of the resolutions received at least 10% shareholders' opposition. On average, shareholder support for the binding vote on CEO remuneration increased from 85.6% in 2019 to 88.4% in 2020.
- Proposals relating to authorities to issue shares (with or without pre-emptive rights) remain a high contested proposal in France where, across the analysed period, 31 share issuance proposals got contested (10%+ opposition) representing 28.2% of the total.
- ISS recommended negatively on 109 resolutions in 2020, compared to 137 in 2019 (a calibrated 27.4% decrease).
- Glass Lewis recommended negatively on 75 resolutions in 2020, compared to 85 in 2019 (a calibrated 19.5% decrease).

# 1 | Voting in France

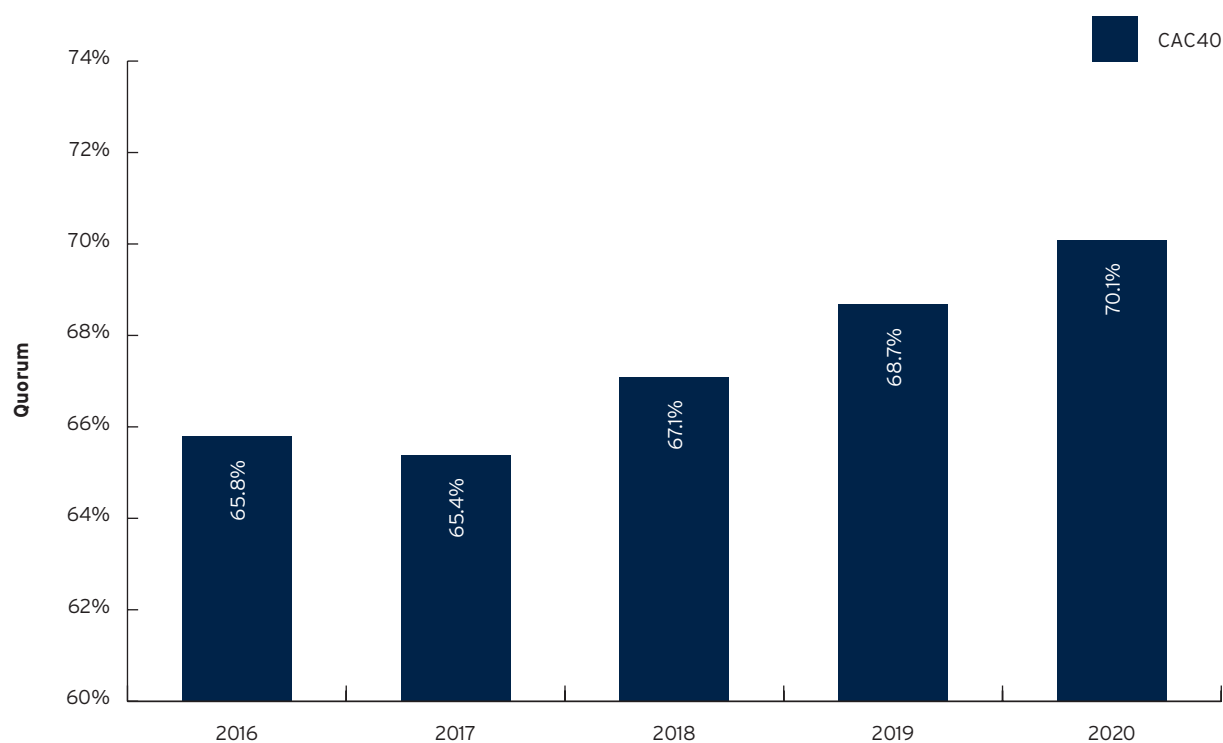
## 1.1 QUORUM OVERVIEW

Georgeson has reviewed the quorum levels of the CAC40 index<sup>1</sup> over the past five years. This year's survey includes the 37 CAC40 companies with corporate headquarters located in France and which held their AGM between 1 July 2019 and 30 June 2020. Therefore our analysis excludes Airbus Group, ArcelorMittal, STMicroelectronics and Technip, as their corporate headquarters are located outside France.

The average shareholder vote participation at the AGMs of our CAC40 sample during the 2020 proxy season increased from 68.7% in 2019 to 70.10% in 2020. The below graph illustrates the evolution of the average of CAC40 quorum over the past five years.

**Graph 1:**

Average AGM quorum of shareholder meetings in the CAC40 between 2016 and 2020.

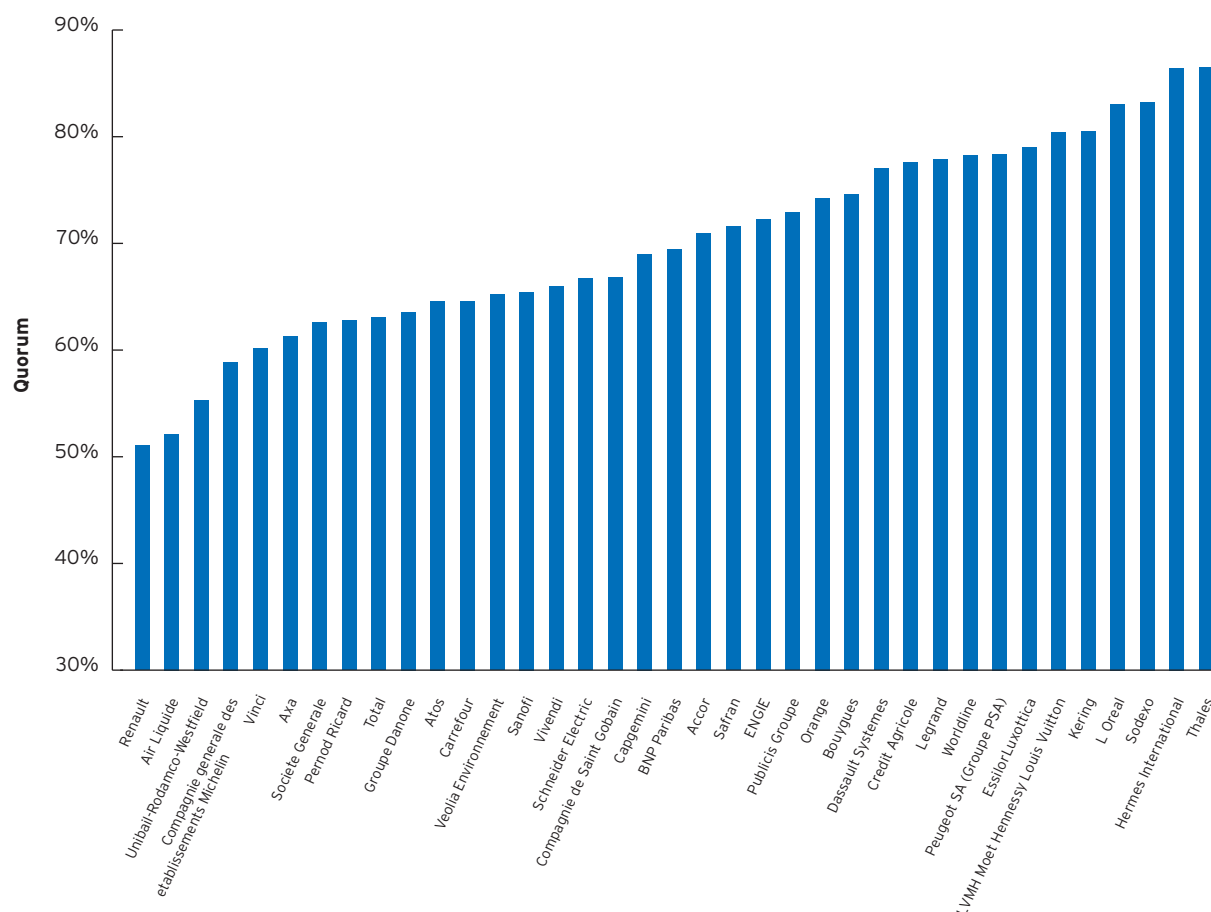


1) The CAC40 is a benchmark French stock market index which comprises the 40 largest and most liquid stocks trading on the Euronext Paris. See here: <https://www.euronext.com/en/products/indices/FR0003500008-XPAR/market-information>

# 1 | Voting in France

**Graph 2:**

Quorum levels at CAC40 companies during the 2020 reporting period.



## 1.2 REJECTED RESOLUTIONS

Amongst the 37 CAC40 companies in our sample which held their AGM between 1 July 2019 and 30 June 2020, one resolution proposed by the board was rejected by shareholders, at the AGM of Sanofi.

### BOARD PROPOSALS

#### Sanofi

At the Sanofi AGM<sup>2</sup>, on 28 April 2020, a proposal to approve the compensation of Olivier Brandicourt, CEO until 31 August 2019, failed to achieve the required majority of voting rights cast and was rejected by shareholders with 58.08% negative votes.

It should be noted that the Company stated after the meeting that “all resolutions submitted to the vote were adopted by the shareholders, except for the nineteenth resolution relating to the compensation awarded for the 2019 financial year to Olivier Brandicourt, former Chief Executive Officer in office until August 31, 2019. The Board of Directors met after the meeting. The final financial terms of Olivier Brandicourt’s departure will be communicated in a separate press release”.

2) [https://www.sanofi.com/-/media/Project/One-Sanofi-Web/Websites/Global/Sanofi-COM/Home/en/investors/docs/2020\\_04\\_28\\_Votes\\_EN.pdf?la=en&hash=F39EFD7CDAEE4A69C3BD57551E062A02](https://www.sanofi.com/-/media/Project/One-Sanofi-Web/Websites/Global/Sanofi-COM/Home/en/investors/docs/2020_04_28_Votes_EN.pdf?la=en&hash=F39EFD7CDAEE4A69C3BD57551E062A02)

# 1 | Voting in France

## SHAREHOLDER RESOLUTIONS

Additionally, seven shareholder proposals (which were not supported by the board) were filed at the AGMs of Orange, Safran and Total. All seven failed to gather sufficient support from shareholders and were therefore rejected. Moreover, we mention the Lagardère Group (CAC mid-60) proxy fight against Amber Capital.

### Orange

Four shareholder proposals<sup>3</sup> were filed at Orange's AGM by the Orange Action savings plan's mutual fund, but were rejected with dissent at over 83%. The Orange Action savings plan proposed:

- To amend the sixteenth resolution, an authorisation to be granted to the Board to purchase or transfer shares in the company (resolution A);
- To amend an article of the company's bylaws regarding overboarding of directors (Resolution B);
- To amend the nineteenth resolution, an authorisation given to the Board to allocate company's shares for free to corporate officers and certain Orange group employees without shareholder subscription rights (Resolution C); and
- To increase the share capital in cash reserved for members of savings plans without shareholder subscription rights extraordinary (Resolution D).

### Safran

At Safran's AGM<sup>4</sup>, two shareholder resolutions were put forward by shareholders proposing the appointment of Carlos Arvizu and Fernanda Saraiva as shareholder representatives. The resolutions failed to obtain approval from shareholders gaining less than 2% support.

### Total

At Total's AGM<sup>5</sup> on 29 May 2020, a shareholder resolution proposing GHG reduction targets, which was not supported by the board, failed to pass gaining 16.80% shareholders' support only.

### Lagardère Group / Amber Capital Proxy fight

On 5 May 2020, one of the major proxy fights in France in recent years took place at the Lagardère Group AGM held virtually due to the coronavirus crisis. The French publishing and media group "fended off Amber Capital's most daring attempt yet to shake up governance at the company, after shareholders rejected the activist investor's call to replace the supervisory board" reported Reuters<sup>6</sup>. Shareholders voted against Amber Capital proposals to dismiss seven existing members of the board and replace them with eight candidates nominated by Amber. Prior to the AGM, the French group Vivendi, took a large stake and supported the company's resolutions.

On 11 August 2020, Vivendi and Amber Capital, the largest shareholders of Lagardère, respectively holding 23.5% and 20% of the share capital, announced that they have decided to sign a pact: "They will initiate steps with Lagardère to each seek a minority Supervisory Board representation of three members for Amber Capital and one member for Vivendi."<sup>7</sup>

3) <https://www.orange.com/en/content/download/54166/1485191/version/2/file/Notice%20of%20meeting%20Orange%202020%20GM.pdf>

4) <https://www.safran-group.com/finance/general-meeting>

5) <https://www.total.com/investors/shareholders-meetings>

6) <https://uk.reuters.com/article/us-lagardere-agm/frances-lagardere-sees-off-activist-amber-in-shareholder-showdown-idUKKBN22H0JG>

7) <https://www.vivendi.com/en/press/press-releases/vivendiamber-capital-agreement-regarding-lagardere/>

# 1 | Voting in France

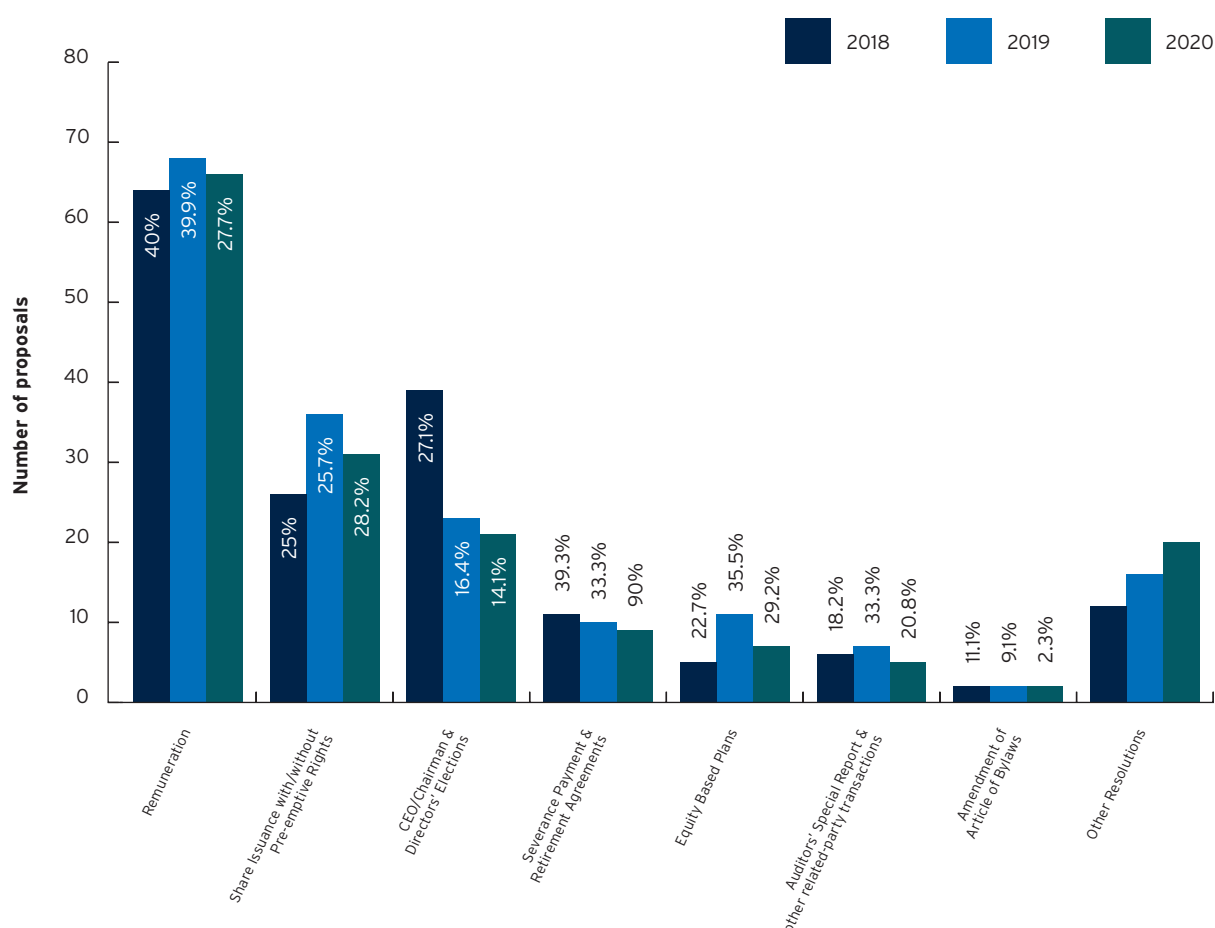
## 1.3 CONTESTED AGENDA ITEMS

Among the 37 CAC40 companies in our sample that held their AGM between 1 July 2019 and 30 June 2020, 30 companies saw at least one resolution receive more than 10% shareholder opposition (compared to the same number in 2019). The total number of resolutions that received over 10% dissent amounted to 161 (including the rejected resolutions discussed in section 1.2), compared to 173 resolutions in 2019.

The most commonly contested resolutions were votes on executive compensation and remuneration policy with 66 resolutions receiving more than 10% negative votes. The second most commonly contested resolutions were share issuance with or without pre-emptive rights.

**Graph 3:**

Number of resolutions which received more than 10% against votes in the CAC 40 (by resolution type). The percentages represent the ratio between the number of proposals that received more than 10% against and the total number of proposals in each category.



# 1 | Voting in France

## 1.3.1 BINDING VOTE ON EXECUTIVE REMUNERATION AND REMUNERATION POLICY

Since 2014, companies which refer to the AFEP-MEDEF Code have proposed an advisory vote on executive remuneration at their AGM.

Since 2018, pursuant to the enactment of the Sapin II law<sup>8</sup>, companies are required to propose an annual binding vote to approve the remuneration of executive directors paid or allocated in respect of the previous financial year. The Sapin II law, which was adopted by the French parliament in November 2016, also provides that from 2017 an annual binding vote approving the future remuneration policy is required.

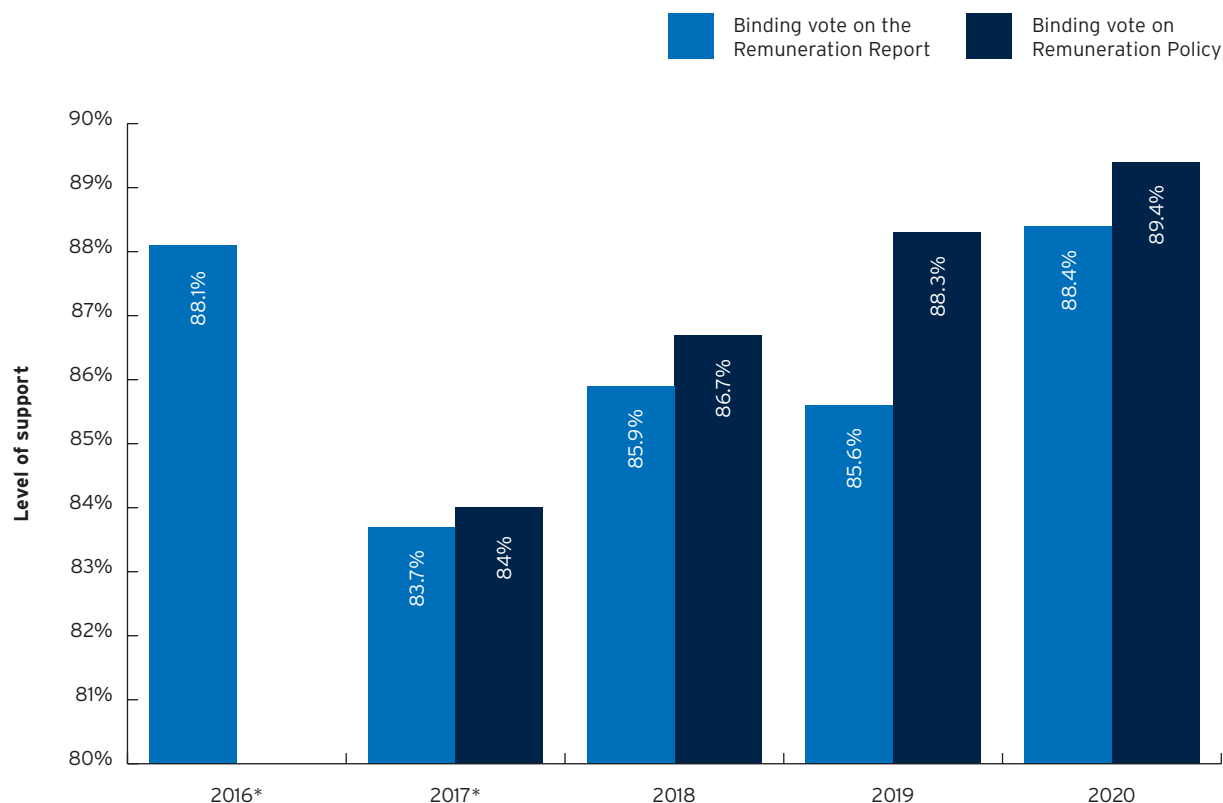
The Ordinance of November 27, 2019 following the adoption of the May 22, 2019 PACTE law transposing the EU directive on shareholders' rights, introduces an additional vote on the remuneration report which includes all remunerations paid to the executive and non-executive corporate officers during the year under review, as well as additional disclosures, including the ratio of pay between the CEO and employees (on an average and median basis) and a five-year comparison of pay and performance.

The ordinance also requires an annual binding vote on the remuneration policy of all executive and non-executive corporate officers, including board members and covers termination packages and pension schemes (previously subject to the related party transactions regime).

On average, we recorded a notable increase in the level of support for the vote on CEO remuneration resolutions at 2020 CAC40 AGMs (88.4% on average) compared to 2019 (85.6% on average). The level of support for the vote on the CEO remuneration policy also increased at this year's AGMs (89.4% on average in 2020 versus 88.3% in 2019). The below graph illustrates the average of the 37 CAC40 companies vote results for the vote on CEO remuneration over the past five years and the vote results on the executive remuneration policy since 2017.

**Graph 4:**

Average level of support for the binding vote on CEO remuneration and remuneration policy among the CAC40 companies surveyed.



\*From 2016 to 2017, companies proposed an annual advisory vote on the Remuneration Report. Since 2018, companies are required to propose an annual binding vote on the Remuneration Report.

8) The Sapin II law is aimed at fostering economic transparency, fighting corruption and modernising the economy. As part of this law the French government proposed the introduction of a binding vote on executive remuneration.

# 1 | Voting in France

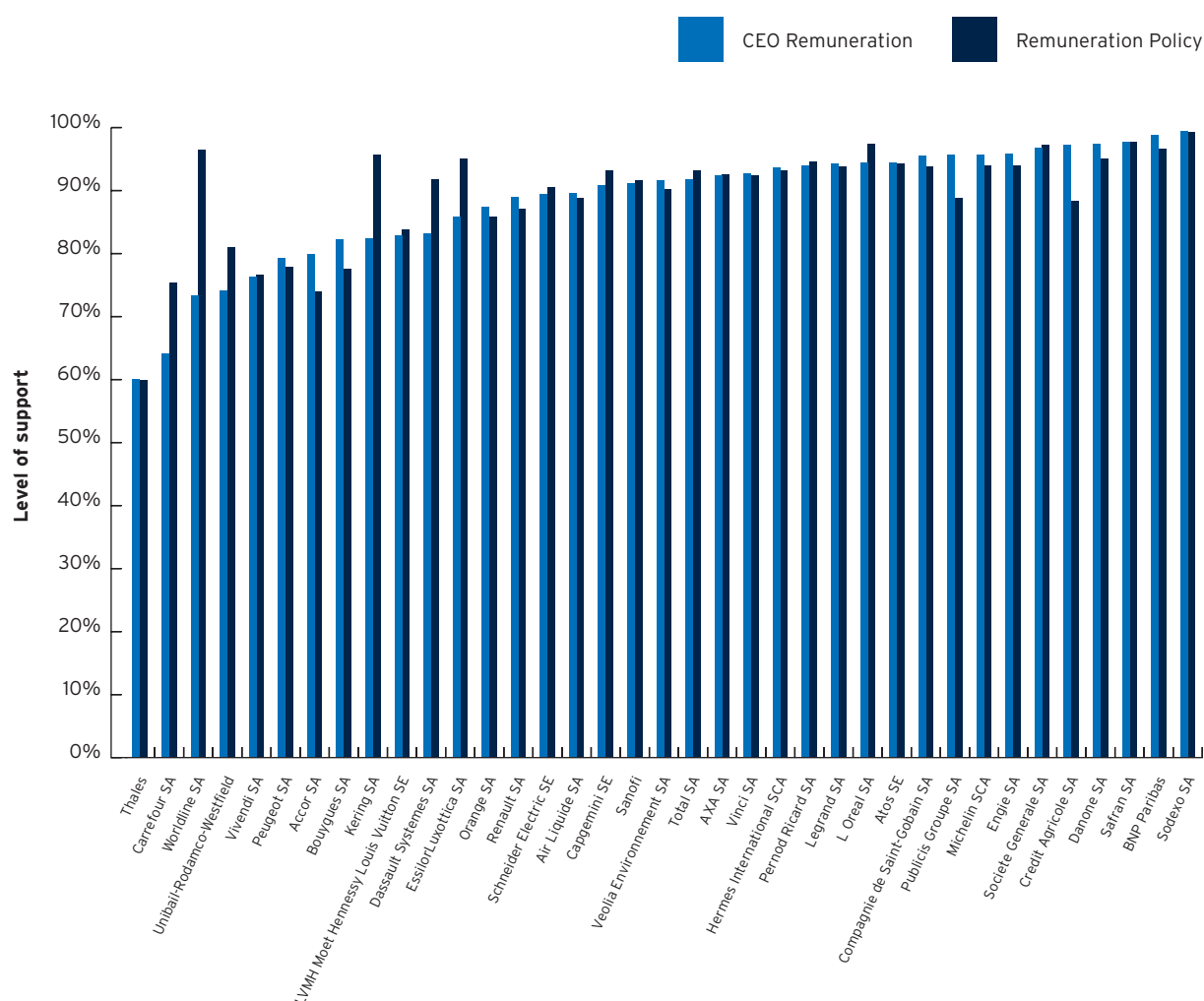
This year, at CAC40 AGMs, all executive remuneration resolutions successfully passed except for one at Sanofi (compensation of the former CEO, Olivier Brandicourt). However, since in our analysis we always considered the voting result over the current CEO (Paul Hudson), the failed resolution is not being counted in graphs 4 and 5.

Generally, the 37 companies surveyed registered a slight increase in the level of positive votes on CEO remuneration, from 87.6% in 2019 to 88.4%. Only two companies saw their executive remuneration resolutions passed with less than 70% in 2020 (Thales and Carrefour).

The below graph shows the levels of shareholder approval for the binding vote on the CEO's remuneration as well as the CEO's remuneration policy among the 37 CAC40 companies surveyed.

**Graph 5:**

Level of support during the reporting period for the binding vote on CEO remuneration and remuneration policy among the 37 CAC40 companies surveyed.



# 1 | Voting in France

## 1.3.2 AUTHORITIES TO ISSUE SHARES

In France, every two years issuers usually propose an array of resolutions requesting shareholders to authorise the board to issue shares with or without pre-emptive rights. Capital increase authorities are proposed as extraordinary agenda items.

This year, at CAC40 AGMs, 31 authorities to issue shares, including 25 without pre-emptive rights, received more than 10% negative votes.

Among the 37 CAC40 companies surveyed, the companies with the lowest level of support on authorities to issue shares were:

- Peugeot: approve issuance of shares with pre-emptive rights (68.96%)
- Bouygues: approve issuance of shares with pre-emptive rights (72.99%)
- Engie: approve issuance of shares with pre-emptive rights (78.17%)

## 1.3.3 DIRECTOR ELECTIONS

This year, at CAC40 AGMs, 21 director elections were contested.

The five companies with the lowest level of support on director elections among our sample were:

- Atos (Jean Fleming- 61.1% in favour)
- Veolia Environnement (Jacques Aschenbroich- 65.1% in favour)
- Worldline (Aldo Cardoso - 66.5% in favour)
- Vivendi (Yannick Bollore - 74.2% in favour)
- Peugeot (Zhang Zutong - 76.8% in favour)

We note that ISS recommended against all of these directors except for Jean Fleming and Jacques Aschenbroich, while Glass Lewis recommended against Jean Fleming, Yannick Bollore and Zhang Zutong.



## 2 | Proxy Advisors

Many institutional investors rely on proxy advisory firms, such as ISS, Glass Lewis and the AFG for meeting agenda analysis and vote recommendations to inform their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a given resolution.

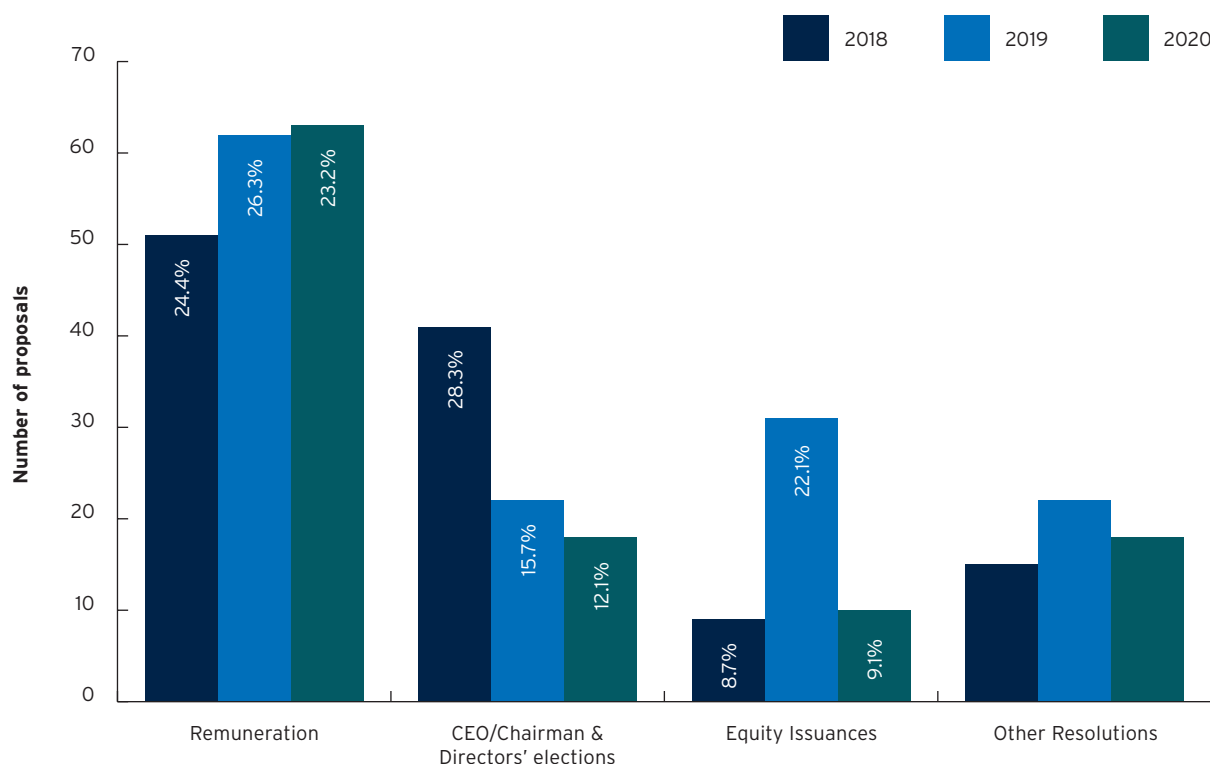
### 2.1 ISS

Institutional Shareholder Services<sup>9</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers.

Between 1 July 2019 and 30 June 2020, 18 companies out of the 37 CAC40 companies surveyed received at least one against recommendation from ISS. The approval of remuneration resolutions (which include executive remuneration and remuneration policy, equity incentive plans, severance pay agreements, pension schemes and non-compete agreements) are the resolutions which have received the highest number of against recommendations (63 resolutions). This is followed by director elections (18 resolutions) and equity issuances (10 resolutions). The total number of against recommendations has decreased from 137 in 2019 to 109 in 2020.

#### Graph 6:

Overview of the number of negative recommendations by ISS at CAC40 AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative ISS recommendation and the total number of proposals in each category.

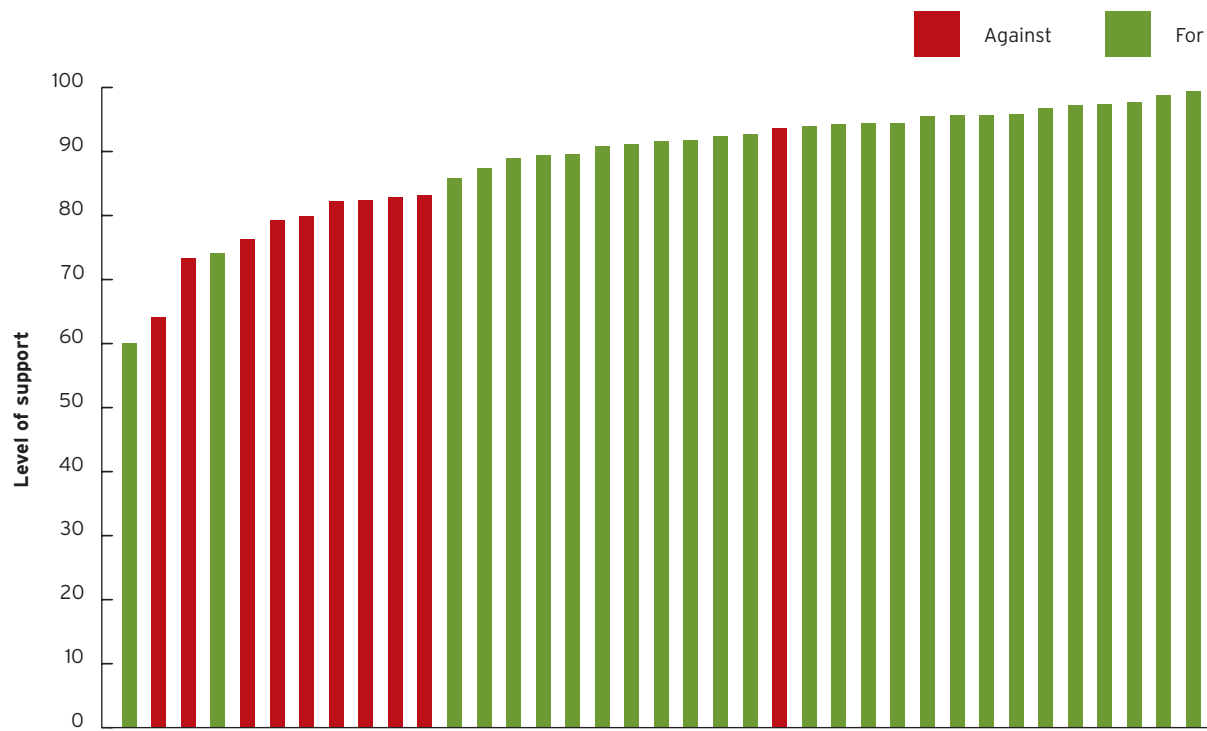


9) <http://www.issgovernance.com/about/about-iss/>

# 2 | Proxy Advisors

Below is an overview of the level of support for the advisory vote on CEO remuneration among the 37 CAC40 companies surveyed (ordered by level of support) and colour coded by ISS vote recommendation.

**Graph 7:**  
Level of support for the CEO remuneration of the 37 CAC40 companies surveyed (ordered by level of support) and colour coded by ISS vote recommendation.



For each year, in cases where more than one CEO served during the year, the vote results reflect the resolution relating to the individual who served the longest.

## 2 | Proxy Advisors

### 2.2 GLASS LEWIS

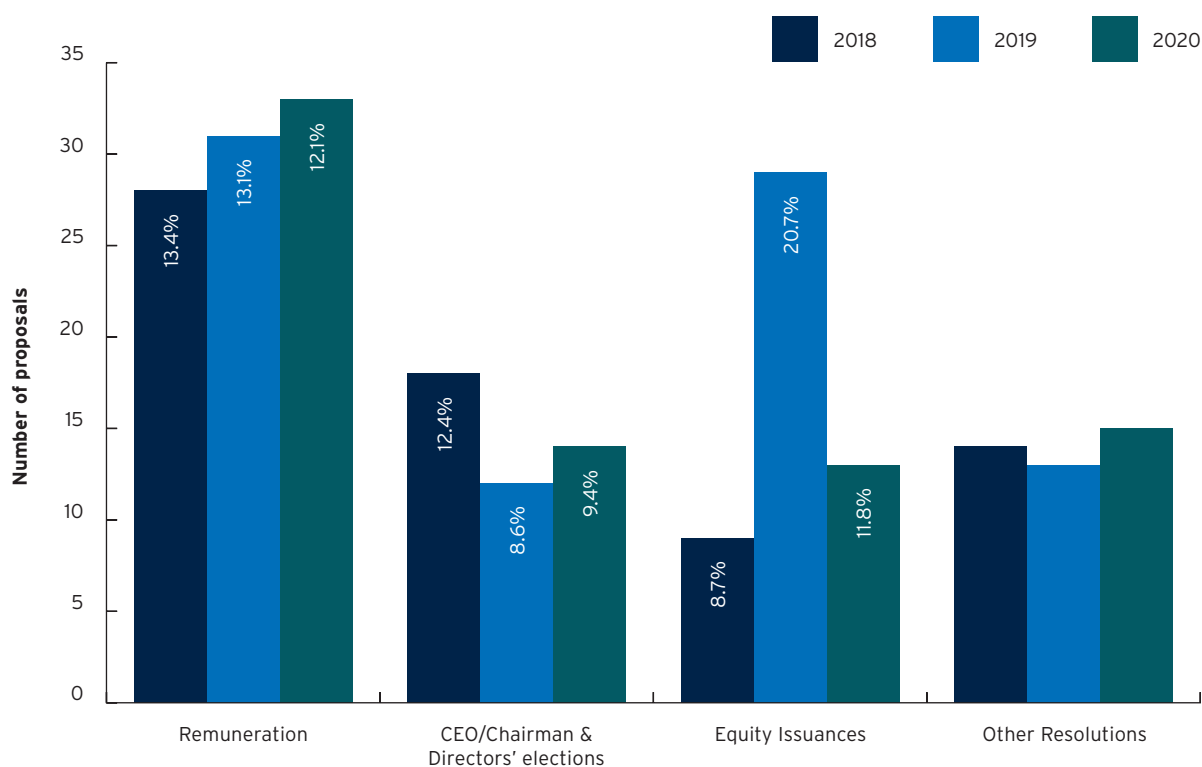
Glass Lewis<sup>10</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms.

Between 1 July 2019 and 30 June 2020, 18 companies out of the 37 CAC40 companies surveyed, received at least one against or abstain recommendation from Glass Lewis. The approvals of remuneration resolutions are the resolutions that have received the highest number of against recommendations (33 resolutions). This is followed by director elections (14 resolutions) and equity issuances (13 resolutions).

Below is an overview of the number of negative recommendations by Glass Lewis at the 37 CAC40 AGMs we surveyed over the past three years. The total number of against or abstain recommendations has decreased from 85 in 2019 to 75 in 2020.

**Graph 8:**

Overview of the number of negative recommendations by Glass Lewis at CAC40 AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative Glass Lewis recommendation and the total number of proposals in each category.



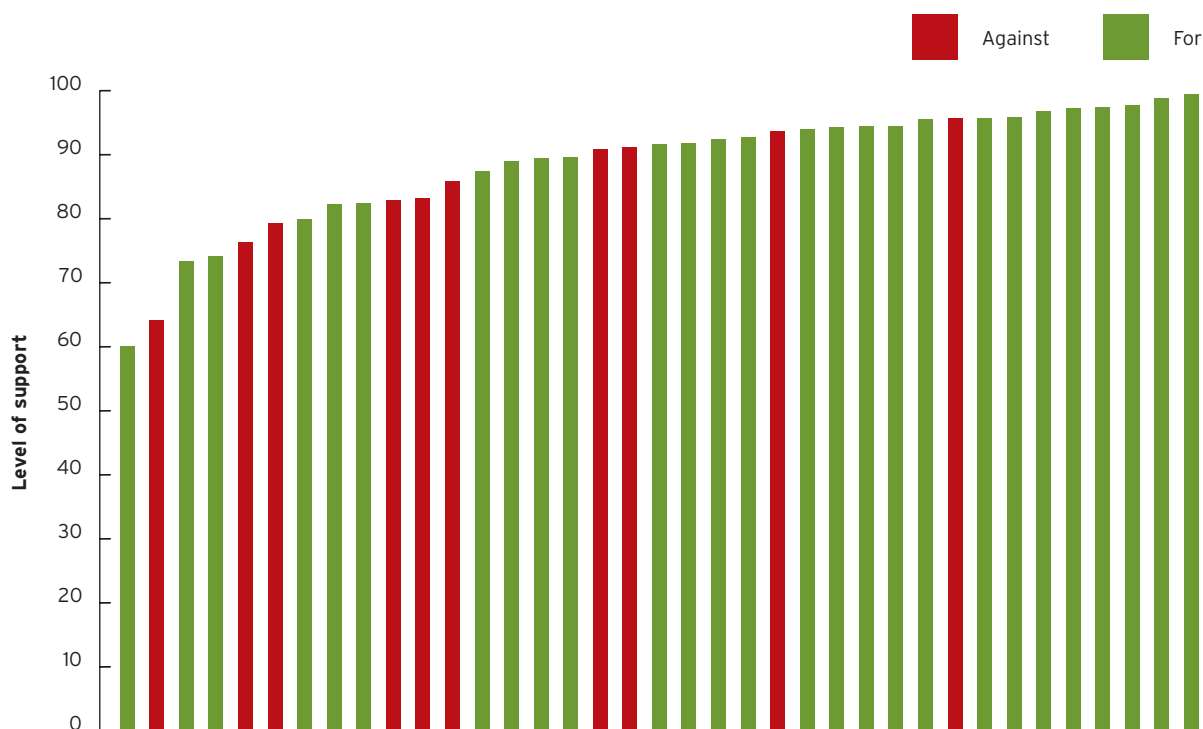
<sup>10</sup>) <http://www.glasslewis.com/about-glass-lewis/>

## 2 | Proxy Advisors

Below is an overview of the level of support for the CEO remuneration among the 37 CAC40 companies surveyed (ordered by level of support) and colour coded by Glass Lewis vote recommendations.

**Graph 9:**

Level of support for the CEO remuneration among the 37 CAC40 companies surveyed (ordered by level of support) and colour coded by Glass Lewis vote recommendation.



For each year, in cases where more than one CEO served during the year, the vote results reflect the resolution relating to the individual who served the longest.

## 2 | Proxy Advisors

### 2.3 AFG

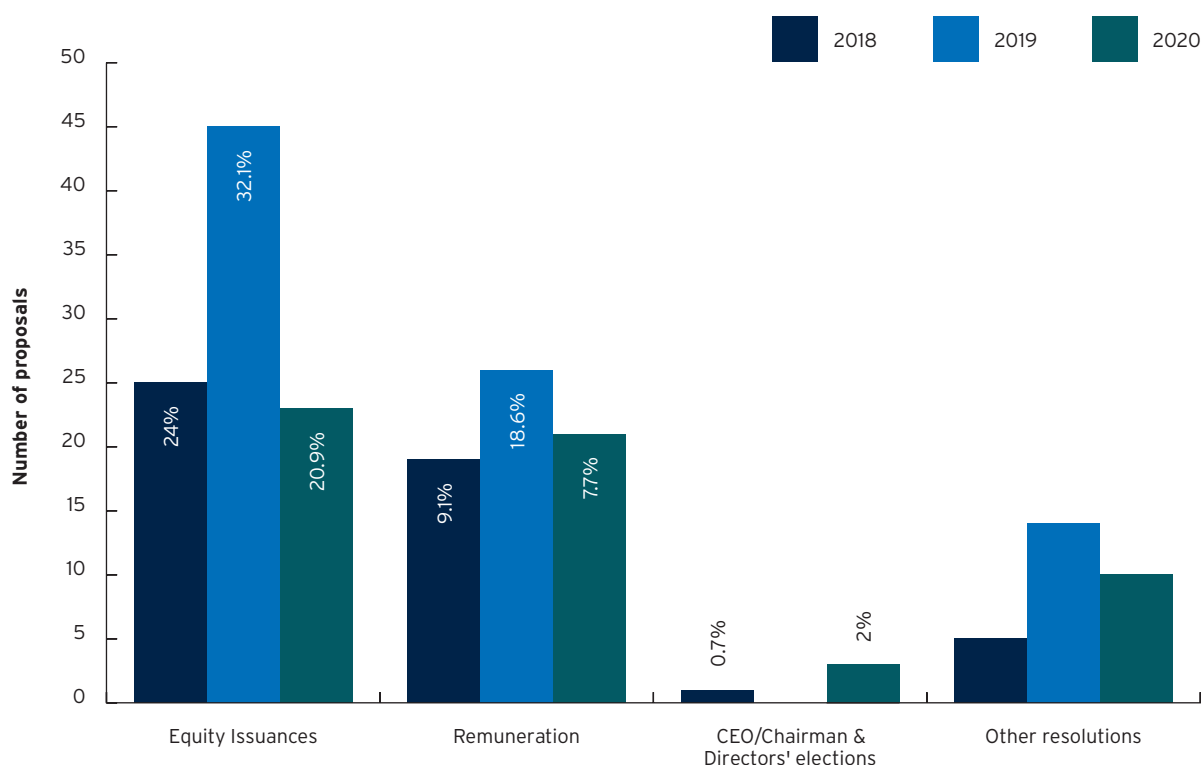
The AFG (Association Française de la Gestion financière)<sup>11</sup>, the French asset management association, represents and promotes the interests of the French asset management industry. The AFG, via its alert programme, issues a report for each AGM in the SBF120 index which either highlights resolutions that do not comply with their code or states that all resolutions are in line with their code.

Between 1 July 2019 and 30 June 2020, 28 companies out of the 37 CAC40 companies surveyed received at least one alert from the AFG. The approval of share issuance authorities has received the highest number of alerts (23 resolutions). This is followed by the approval of remuneration resolutions (21 resolutions).

Below is an overview of the number of alerts raised by the AFG at the 37 CAC40 AGMs we surveyed over the past three years. The total number of alerts has decreased from 85 in 2019 to 57 in 2020.

**Graph 10:**

Overview of the number of alerts raised by the AFG at CAC40 AGMs over the past three years. The percentages represent the ratio between the number of proposals that received an alert and the total number of proposals in each category.



<sup>11</sup>) <http://www.afg.asso.fr/en/afg/about-us/overview-2/>

# 3 | Corporate Governance developments

## 3.1 LEGISLATIVE CHANGES IN RESPONSE TO COVID-19

The emergency law passed on 23 March 2020 authorises the French Government, in order to respond to the consequences of the COVID-19 epidemic, to take, by way of orders (ordonnance), all measures simplifying and adapting the assembly and deliberation conditions of the general meetings, the rules relating to general meetings, as well as the rules relating to financial accounts and documents and those relating to the allocation of profits and the payment of dividends.

Pursuant to this emergency law, the French government issued orders on 25 March 2020 containing several provisions to simplify and adapt the rules for convening, informing, holding and deliberating at shareholders' meetings. The provisions which were of an exceptional and temporary nature, were applicable to meetings held between 12 March 2020 and 31 July 2020. However, on 30 July 2020, the emergency provisions issued on 25 March, were extended till 30 November 2020.

The AMF issued on 27 March 2020 a press release<sup>12</sup> to inform shareholders and listed companies of the exceptional provisions contained in the March 25 order:

- "Under this order, companies are exceptionally authorised to hold their shareholders' meeting without their shareholders – and any other persons who are entitled to attend these meetings, such as statutory auditors and employee representatives – attending physically.
- Consequently, shareholders may exercise their voting right only remotely, prior to the shareholders' meeting."

The AMF indicates that "the aim [of the exceptional measures] is to enable the management bodies of the entities concerned to continue to carry out their duties despite the confinement measures and also to ensure the continuity of operations of these entities."

The AMF encourages issuers to inform shareholders as early as possible, prior to the shareholders' meeting:

- The special procedures for holding the shareholders' general meeting in the health context (held in camera, without physical attendance of shareholders)
- The various possible procedures for participating
- The procedures for asking written question prior to the general meeting
- If applicable, the impossibility of asking questions during the general meeting
- If applicable, the impossibility to request a vote on "new resolutions" during the general meeting

## 3.2 THE 19 JULY 2019 SIMPLIFICATION LAW - ABSTENTION VOTES

The law of 19 July 2019 on the simplification, clarification and updating of company law (called SOILHI Law), that came into force on 21 July, and introduces a new method of calculating the majority required for the adoption of resolutions of ordinary and extraordinary general meetings of listed and unlisted companies. Abstentions, as well as blank or void votes, are no longer counted as negative votes, but are excluded from the calculation of the majority required for the adoption of a resolution.<sup>13</sup>

To reflect this new method of calculation, the official voting form for French general meetings was changed:

The voting form includes now three options to vote on each resolution:

- Vote FOR the resolution
- Vote AGAINST the resolution
- Vote ABSTAIN (new option)

12) <https://www.amf-france.org/en/news-publications/news-releases/amf-news-releases/COVID-19-amf-informs-shareholders-and-listed-companies-exceptional-measures-taken-organisation>

13) New Article L. 225-96 and L. 225-98 Code de commerce

# 3 | Corporate Governance developments

## 3.3 SHAREHOLDERS RIGHTS DIRECTIVE II - TRANSPOSITION INTO FRENCH LEGISLATION

The 22 May 2019 PACTE law<sup>14</sup> transposed the SRD II into French legislation and introduced a series of changes to the remuneration of corporate officers and directors and to the related-party transactions procedure, including:

- › introduction of a new remuneration vote on the total remuneration granted to all corporate officers and submitted on an annual basis;
- › the remuneration policy covers termination packages and pension schemes (previously subject to the related-party transactions regime); and
- › indirectly interested parties must abstain from voting (was already the case for directly interested parties) on related party transactions and directly and indirectly interested parties must also abstain from taking part in the deliberations of the board on the requested authorisation.

## 3.4 AFEP-MEDEF

On January 2020, the AFEP-MEDEF, the association of French corporations and listed companies, published a revised version of their corporate governance code<sup>15</sup>: The main updates to the corporate governance code include:

- › "Recommendations for companies' gender diversity policy for upper management
- › Recommendations on how to apply the new pay ratio calculation following the enactment of the PACTE Law on 22 May 2019 that requires the publication of a pay ratio between company officers and its employees."

## 3.5 AMF REPORT ON SHAREHOLDER ACTIVISM

On 28 April 2020, the Autorité des marchés financiers ("AMF"), the French securities regulator, published a report<sup>16</sup> on shareholder activism. The report was issued following the AMF's review of recent activism matters in France, including its recent €20m fine levied against Elliott Management for obstructing an investigation into a takeover bid and failing to adequately disclose its positions in connections with the 2015 tender offer by XPO Logistics for Norbert Dentressangle. In the document, the AMF makes several targeted proposals concerning shareholder activism to "improve transparency and dialogue between issuers and shareholders":

- › "Enhance transparency on stake-building and knowledge of the shareholder structure, by lowering the first legal notification threshold and making public any statutory threshold crossing reported to the company;
- › ensure better information for the market regarding investors' financial exposure, by supplementing the reporting on net short positions by information on the debt instruments also held by the investor (bonds and credit default swaps, for example). The AMF will support such proposals on the European level;
- › foster an open, loyal dialogue between listed companies and their shareholders: the AMF will supplement its guide on ongoing information and management of inside information to include certain developments on shareholder dialogue. It will add to its policy to specify that, subject to compliance with the rules on market abuse, issuers may provide the market with any necessary information in reply to public statements concerning them, even during 'quiet periods'. It will also recommend that any shareholder who initiates a public campaign should immediately disclose to the issuer in question the material information that it would send to the other shareholders;
- › increase the analysis and response capabilities of the AMF to enable swift and appropriate answers when the circumstances so require: for example, via the introduction of a power to impose fines with regard to administrative injunctions and the possibility to order any investor, and no longer only an issuer, to make corrective or supplementary publications if errors or omissions have been identified in its public statements."

14) <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000038496102>

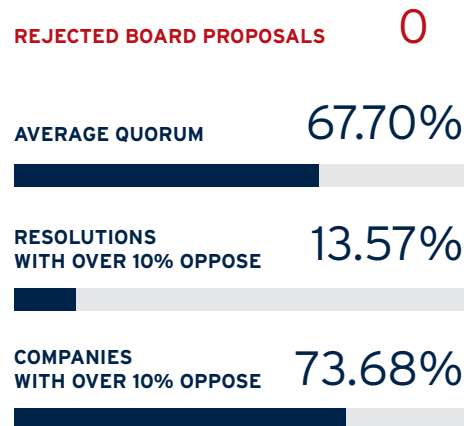
15) <https://www.medef.com/fr/content/code-afep-medef-revise-de-gouvernement-dentreprise-des-societes-cotees-janvier-2020>

16) [https://www.amf-france.org/sites/default/files/2020-04/report-by-the-autorite-des-marches-financiers-on-shareholder-activism\\_5.pdf](https://www.amf-france.org/sites/default/files/2020-04/report-by-the-autorite-des-marches-financiers-on-shareholder-activism_5.pdf)



# Switzerland (SMI)





## Highlights

- The average quorum across the SMI decreased from 67.7% in 2019 to 66.7% in 2020.
- Across the SMI there are no board-proposed AGM resolution rejected by shareholders.
- The number of SMI companies that had at least one contested proposal (10%+ opposition) was 14. The overall number of contested resolutions increased from 46 in 2019 to 62 in 2020. Calibrated for the total number of resolutions in each year, this represents a 48% increase compared to the 2019 AGM season.
- Across the SMI the voluntary advisory vote on the remuneration report was contested (10%+ opposition) in 59% of cases (10 out of 17). This is a decrease compared to 2019, when these resolutions were contested 65% of the time.
- A slight decrease in opposition to the mandatory remuneration proposals was observed in the SMI in 2020. The proportion of binding votes on executive remuneration that were contested (10%+ opposition) in 2020 was 31%, representing a 3% decrease compared to the proportion in 2019.
- 2020 saw a notable increase in opposition to compensation committee elections resolutions. In 2020, 15 resolutions were contested (10%+ opposition) compared to 7 resolutions in 2019. This represents a 114% increase year on year.
- Increased opposition to the binding votes on board remuneration was again observed in the SMI in 2020. 4 resolutions were contested (10%+ opposition) compared to 2 resolutions in 2019. This represents a 100% increase year on year.
- ISS recommended negatively on 39 resolutions in 2020, compared to 48 resolutions in 2019 (a calibrated 10.8% decrease).
- Glass Lewis recommended negatively on 25 resolutions in 2020, compared to 19 resolutions in 2019 (a calibrated 44.5% increase).

# 1 | Voting in Switzerland

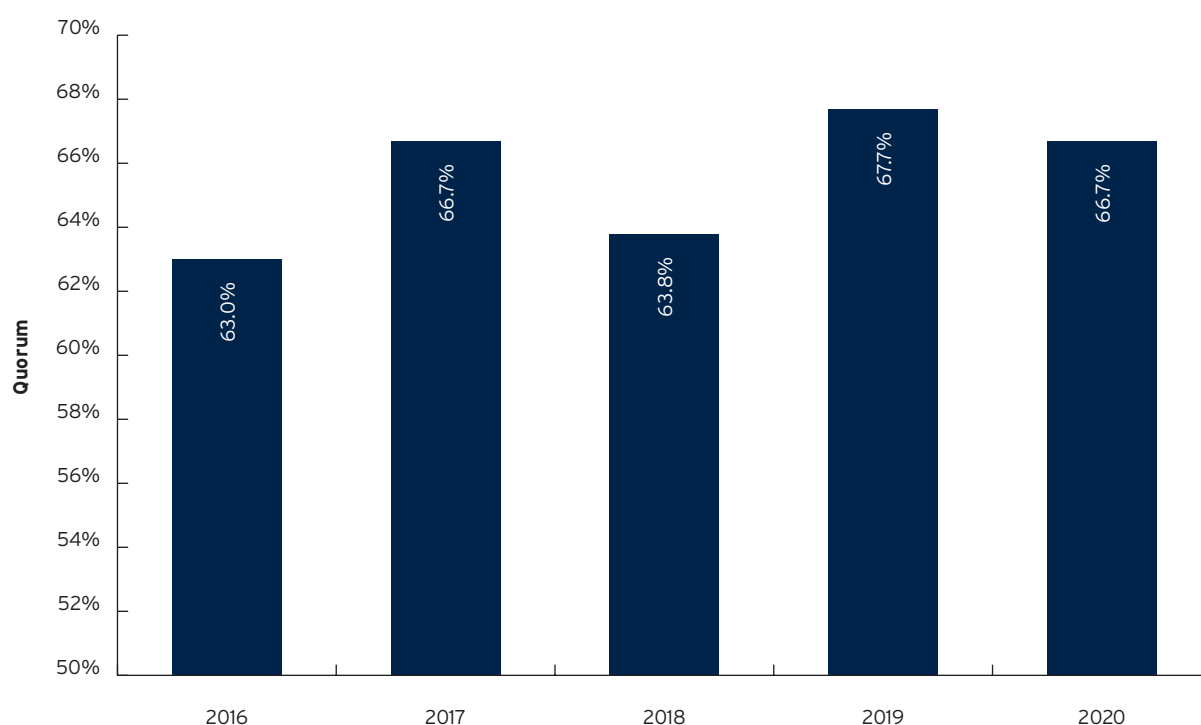
## 1.1 QUORUM OVERVIEW

Georgeson has reviewed the quorum levels of the 20 companies which comprise the SMI<sup>1</sup> index over the past five years. We have considered companies which comprised the index on 23 March 2020 and held their AGM between 1 July 2019 and 30 June 2020.

The average quorum for the SMI was 66.7% during the reporting period. This represents an increase of 1.0 percentage points compared to 2019 and an increase of 3.7 percentage points over quorum levels in 2016.

**Graph 1:**

Average AGM quorum levels in the SMI between 2016 and 2020.

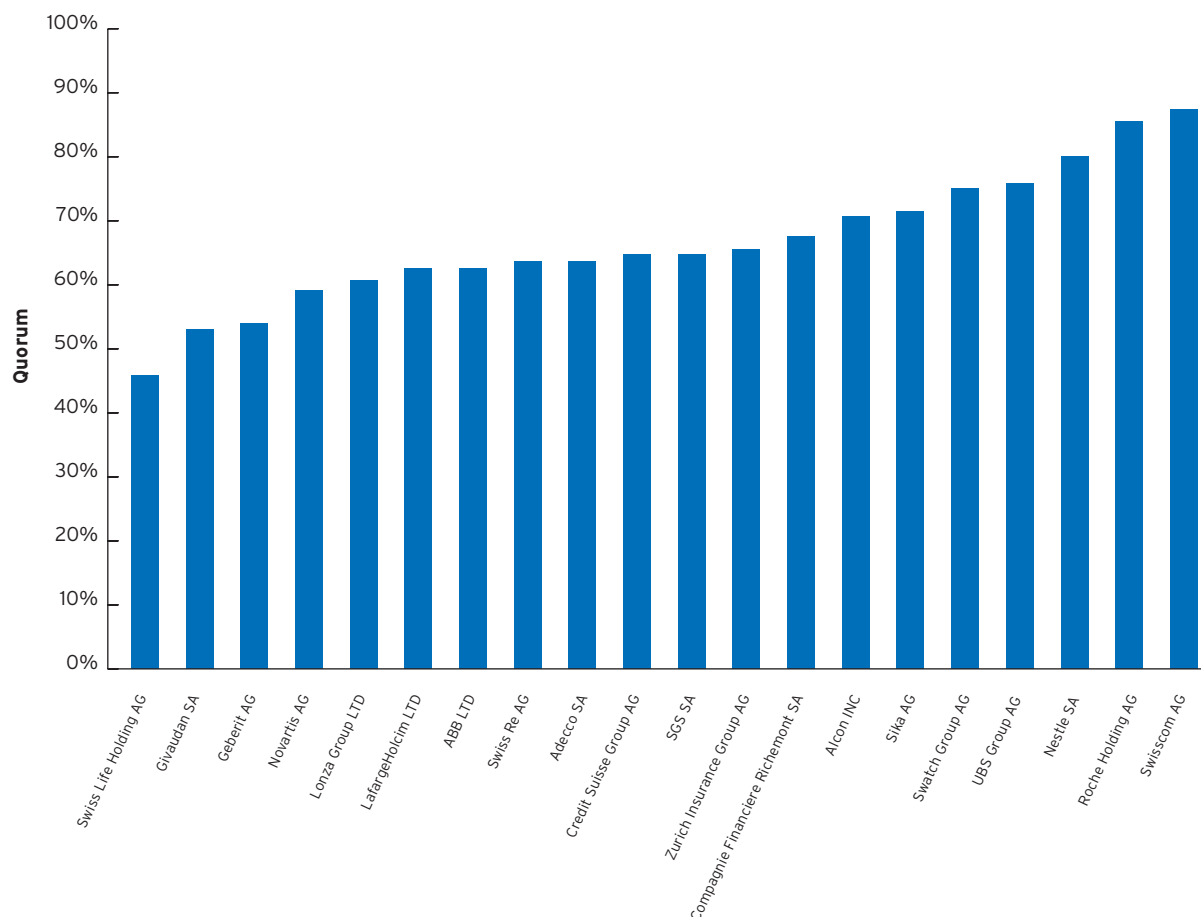


1) The SMI is Switzerland's most important stock index and comprises of the 20 largest equities in the SPI (a selection of companies which includes all Swiss companies listed on the SIX Swiss Exchange). The SMI represents about 80% of the total capitalisation of the Swiss equity market.  
See here: <https://www.six-group.com/dam/download/market-data/Indices/equity-indices/six-factsheet-smifamily-en.pdf>

# 1 | Voting in Switzerland

**Graph 2:**

Quorum levels at SMI companies during the 2020 reporting period.



# 1 | Voting in Switzerland

## 1.2 REJECTED RESOLUTIONS

### SMI

Among SMI companies no management proposal were rejected by shareholders.

## 1.3 CONTESTED RESOLUTIONS

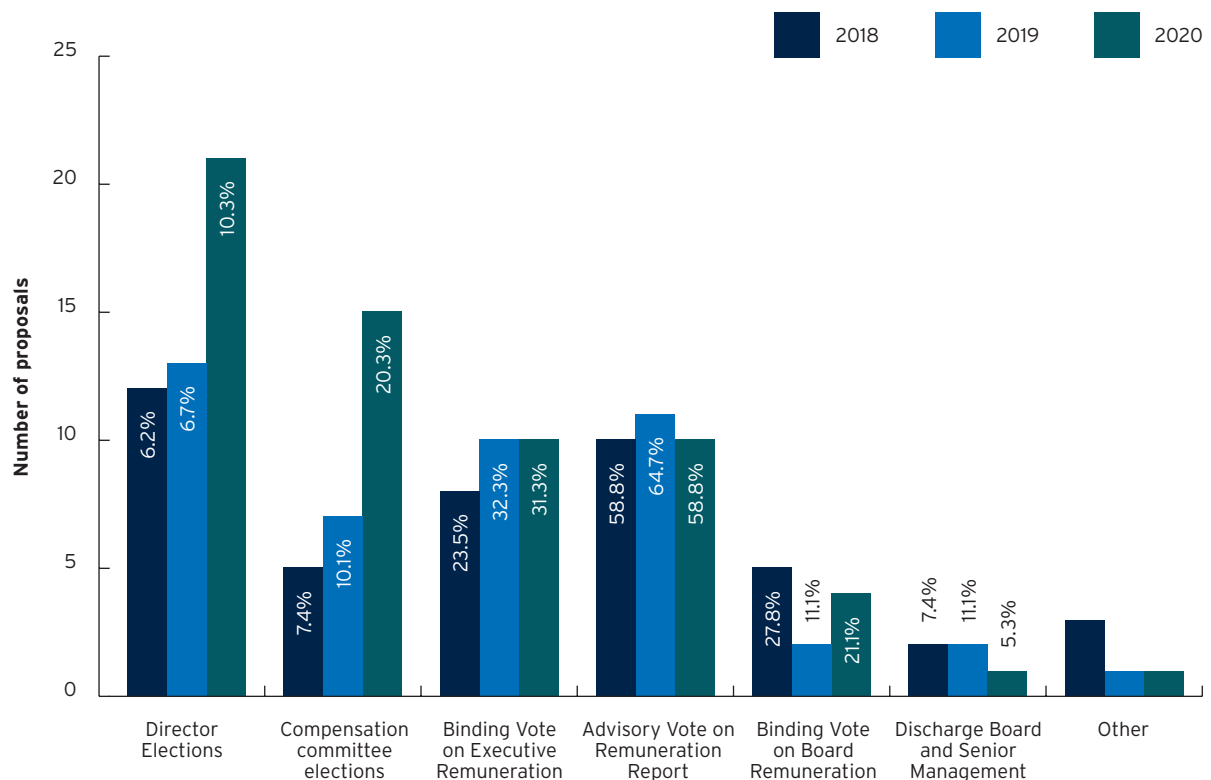
The number of SMI companies that saw at least one resolution receive more than 10% shareholder opposition, was 14 in 2020, the same number as in the previous year. The total number of resolutions that received over 10% opposition amounted to 62 in 2020, compared to 46 in 2019.

It should be noted that all vote results in this section exclude Compagnie Financière Richemont<sup>2</sup> which at the time of this writing only confirmed that all their resolutions were approved by shareholders and did not provide a breakdown of their voting results for each resolution.

In our SMI sample, the most commonly contested resolutions were director elections. The second most commonly contested resolutions related to the advisory vote on the remuneration report, followed by the binding vote on executive remuneration, and compensation committee elections.

**Graph 3:**

Number of resolutions which received more than 10% against votes in the SMI (by resolution type). The percentages represent the ratio between the number of proposals that received more than 10% against and the total number of proposals in each category.



2) [https://www.richemont.com/images/investor\\_relations/agm/2019/minutes\\_agm\\_11092019.pdf](https://www.richemont.com/images/investor_relations/agm/2019/minutes_agm_11092019.pdf)

# 1 | Voting in Switzerland

## 1.3.1 DIRECTOR ELECTIONS

Swiss companies are required to hold annual votes to (re-)elect all non-executive directors on an annual basis. Furthermore, shareholders must vote on the position of the Chairman and all members of the compensation committee must be confirmed with a spearhead shareholder vote for each member (please also see 1.3.2)

As in prior years, it appears that the main reasons for investors to vote against the election of directors were related to the overall independence of the board and the number of external positions held by individual board members. We have observed a trend with institutional investors to lower the maximum number of mandates they allow directors to hold before considering overboarded. In addition, a number of institutional investors will also count mandates at non-listed companies and may include other mandates e.g. at international organisations, premiums or academic teaching positions.

The companies with the highest level of opposition on director elections among our sample were:

- Geberit (Albert Baehny - 72.5% votes in favour)
- SGS (Ian Gallienne - 73.6%; Paul Desmarais - 76.1%; Shelby du Pasquier - 77.5% votes in favour)
- Credit Suisse Group (Urs Rohner - 77.5% votes in favour)

## 1.3.2 COMPENSATION COMMITTEE ELECTIONS

Until 2014 shareholders were only able to vote on the election of directors, but not on their membership of a board committee. Since the implementation of the 'Minder' Ordinance, shareholders have the opportunity to vote on the election of directors to serve on the compensation committee. Based on investor feedback collected by Georgeson, some institutional investors have used the election to express their dissatisfaction against certain pay practices at Swiss issuers. This may be in addition to a vote against the remuneration report or executive and/or non-executive compensation put up for a shareholder vote.

As this represents a separate voting item, investors are able (for example) to support the election of a candidate to the Board but oppose their election to the compensation committee.

The companies with the highest level of opposition on compensation committee member elections in the SMI were:

- SGS SA (Shelby du Pasquier - 68.2% Ian Gallienne - 69.5% votes in favour)
- Swatch Group (Georges Hayek - 71.5% ; Daniela Aeschlimann - 74.9%; Claude Nicollier - 75.3%; Nayla Hayek - 78.2%; Ernst Tanner - 79.8% votes in favour)
- Geberit (Hartmut Reuter - 87.9%; Werner Karlen - 80.1% votes in favour)

## 1.3.3 BINDING VOTES ON EXECUTIVE AND NON-EXECUTIVE REMUNERATION

In Switzerland, the general meeting of shareholders has to vote on an annual basis on the compensation of the board of directors, of the executive management, and of the advisory board.

The articles of association must define the details of the vote and the steps to take in case the proposals are rejected. The votes have a binding effect. The ordinance allows companies to implement either prospective or retrospective binding votes on the quantum of fixed and variable remuneration, while votes on the remuneration report or policy are not required.

In order to comply with the ordinance, most SMI companies opted for a forward looking binding vote on an overall budget covering both fixed and variable executive remuneration, and a forward looking binding vote on a budget for non-executive fees. Many companies consider this to be the least risky option as a failed binding retrospective vote may involve a legal obligation to claw back remuneration to an extent that is not practicable.

# 1 | Voting in Switzerland

However, in order to complement the binding votes required by the ordinance, 17 out of 20 SMI companies have continued to propose a voluntary advisory vote on their remuneration report. This allows shareholders to express a backward-looking view on the way companies have used the budget and the level of disclosure provided on their remuneration decisions.

The companies with the lowest level of support on the binding vote on non-executive board compensation in the SMI were:

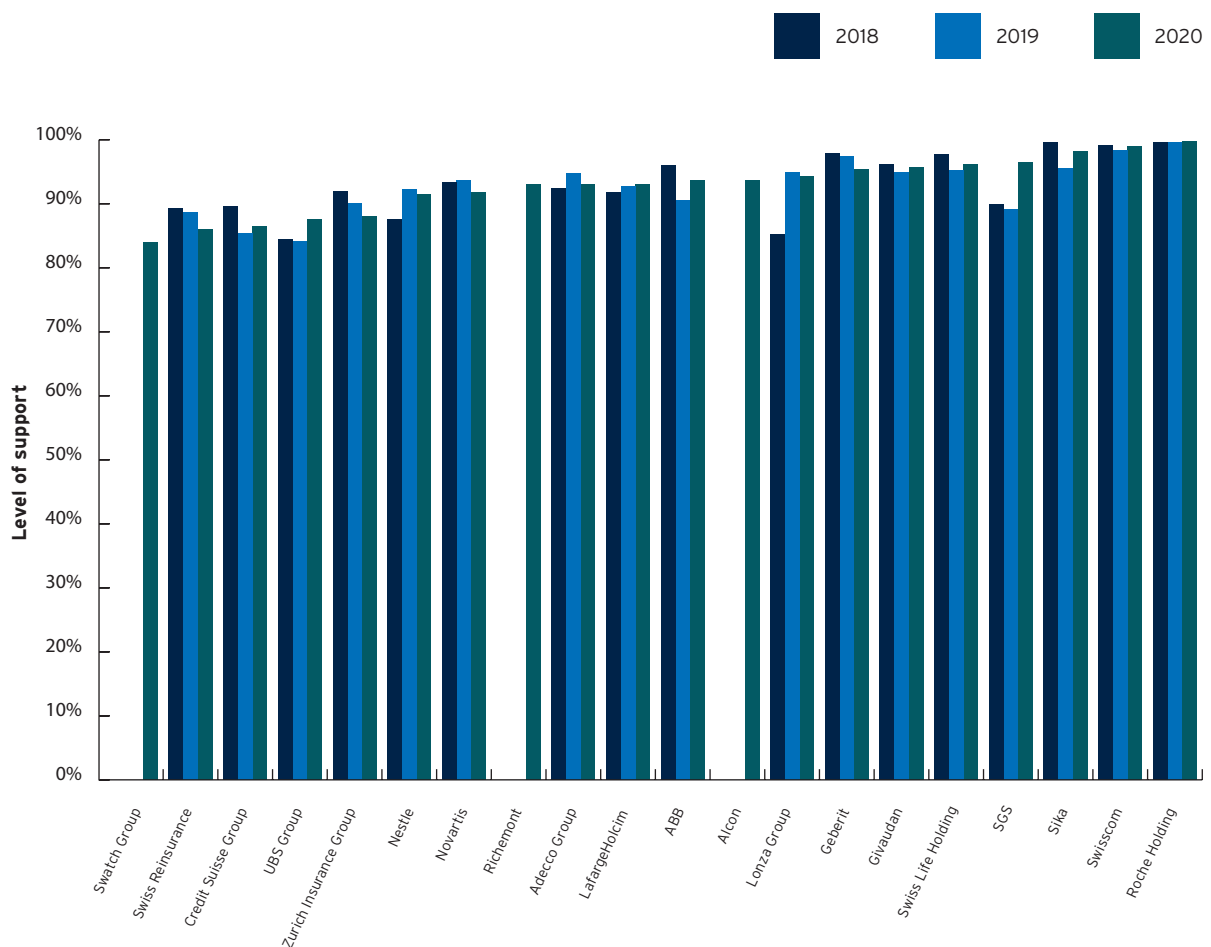
- Swatch Group (71% votes in favour)
- UBS Group (83.8% votes in favour)
- Credit Suisse Group (84.6% votes in favour)

The companies with the lowest level of support on the binding vote on executive compensation in the SMI were:

- Swiss RE (84.7% votes in favour)
- Credit Suisse (87.1% votes in favour)
- Zurich Insurance Group (87.2% votes in favour)

**Graph 4:**

Level of support for the binding vote of executive remuneration over three years at the SMI companies surveyed.



# 1 | Voting in Switzerland

## 1.3.4 ADVISORY VOTE ON THE REMUNERATION REPORT

Even though a binding vote on remuneration was introduced under the 'Minder' Ordinance, the majority of Swiss issuers continue to voluntarily offer shareholders an advisory vote on the remuneration report. This practice is aligned with the Swiss Code of Best Practice for Corporate Governance<sup>3</sup>.

This practice allows shareholders to express their satisfaction or dissatisfaction retrospectively over the payments made to executives and non-executives as well as the disclosure provided in the remuneration report of the past financial year.

Of the 20 SMI companies, 17 companies submitted a vote on their remuneration report during the 2020 proxy season. The exceptions were Compagnie Financière Richemont, Roche and Swatch Group, which did not put their remuneration report up for an advisory shareholder vote in connection with their 2020 AGM.

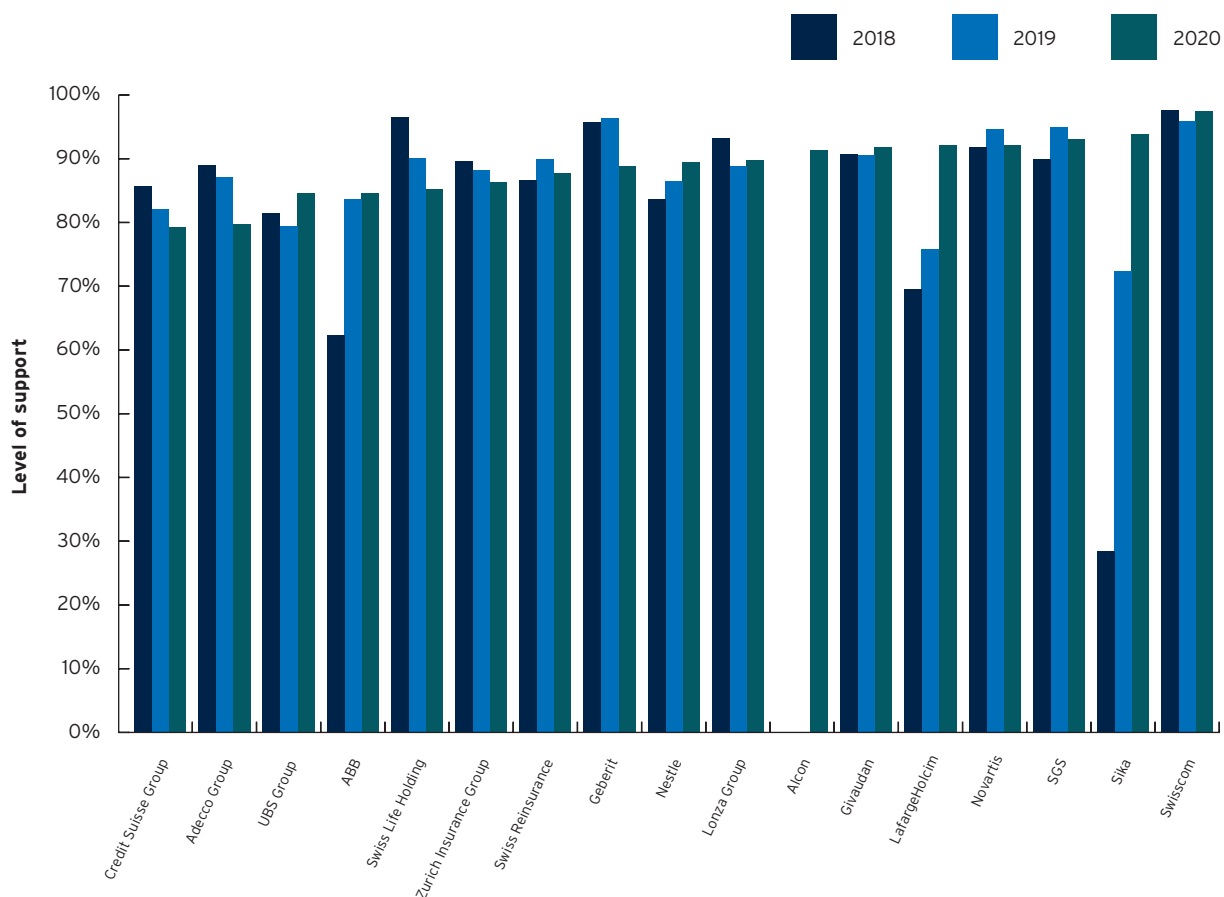
Of the 17 SMI companies which published results for their advisory vote on the remuneration report, eleven received opposition in excess of ten percent compared to ten last year.

The companies with the lowest level of support on the remuneration report were:

- Credit Suisse (79.2% of votes in favour)
- Adecco Group (79.7% of votes in favour)
- UBS Group (84.6% of votes in favour)
- ABB (84.6% of votes in favour)
- Swiss Life Holding (85.3% of votes in favour)

**Graph 5:**

Level of support for the advisory vote on the remuneration report over three years at the SMI companies surveyed.



3) [https://ecgi.global/sites/default/files/codes/documents/swiss\\_code\\_26sep2014\\_en.pdf](https://ecgi.global/sites/default/files/codes/documents/swiss_code_26sep2014_en.pdf)

# 1 | Voting in Switzerland

## 1.3.5 DISCHARGE BOARD AND SENIOR MANAGEMENT

Issuers in Switzerland are required to place a discharge vote for their board and senior management on the AGM agenda. While there are no immediate legal consequences for failing to pass this resolution, according to Article 758 of the Swiss Code of Obligations<sup>4</sup> shareholders who do not vote in favour of the discharge or who have acquired shares following the ratification, have a six month period to file claims against the company. However, the discharge from liability is binding for any shareholder who voted in favour of the proposal, reacting to any misconduct or offences which were known at the time the discharge vote took place. As this may restrict claims against board members, a number of shareholders have decided to routinely vote against the discharge.

A high level of opposition on the discharge vote is often a result of ongoing investigations against a company, concerns about its performance or discontent with a single or multiple members of the board or senior management. The resolution may be presented by the company in a single vote or as individual discharge resolutions by board/senior management member. There have been occasions when the company has decided to postpone the discharge vote to a future AGM date, especially if investigations were still ongoing at the time the AGM would have routinely voted on the discharge of the past financial year.

The company with the highest level of opposition (over 10% of votes against) on the discharge among our sample was Credit Suisse Group (Discharge of the board and senior management in one bundled resolution - 79.6% votes in favour).

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4) <https://www.admin.ch/opc/de/classified-compilation/19110009/index.html#a758>



## 2 | Proxy Advisors

Many institutional investors rely on proxy advisory firms, such as ISS, Glass Lewis and Ethos (ECGS), for meeting agenda analysis and vote recommendations to inform their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a given resolution.

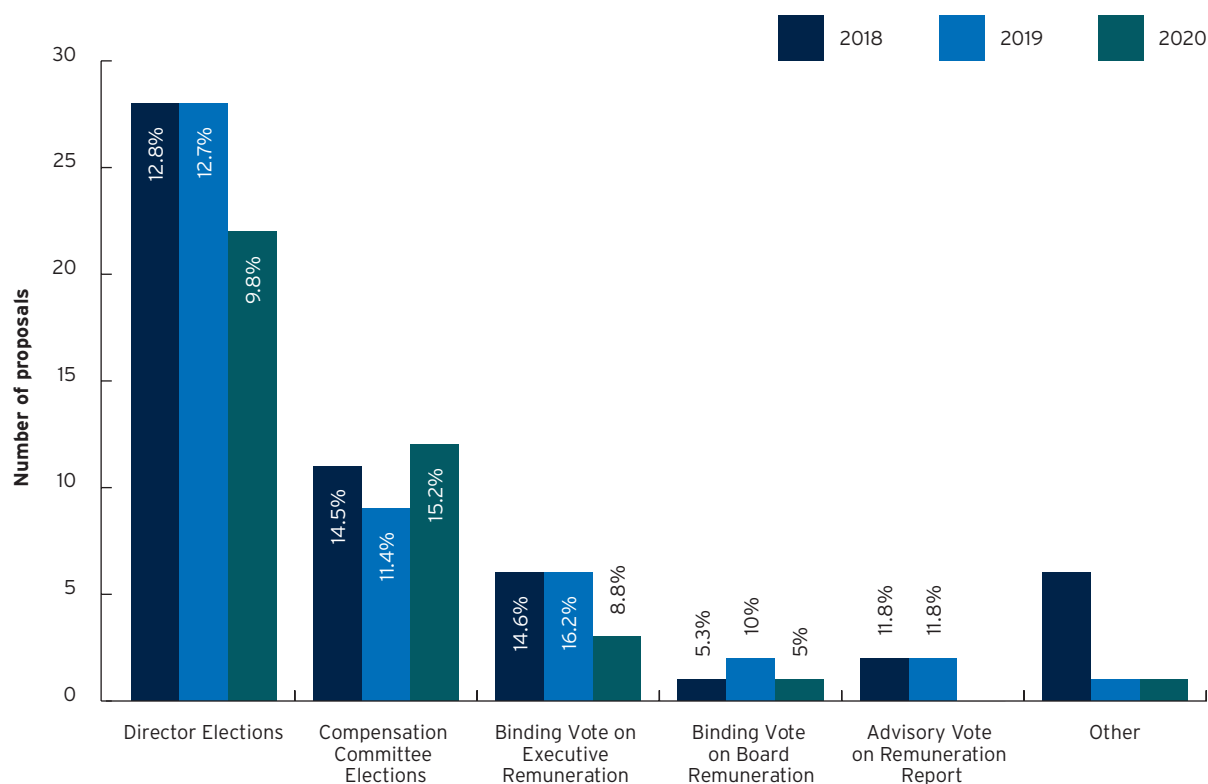
### 2.1 ISS

Institutional Shareholder Services<sup>5</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers.

During the 2020 reporting period, 6 companies of the SMI received at least one against recommendation from ISS, compared to 7 in 2019. The total number of resolutions where ISS recommended a vote against amounted to 39 in 2020, compared to 48 in 2019.

**Graph 6:**

Overview of negative recommendations by ISS at SMI AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative ISS recommendation and the total number of proposals in each category.

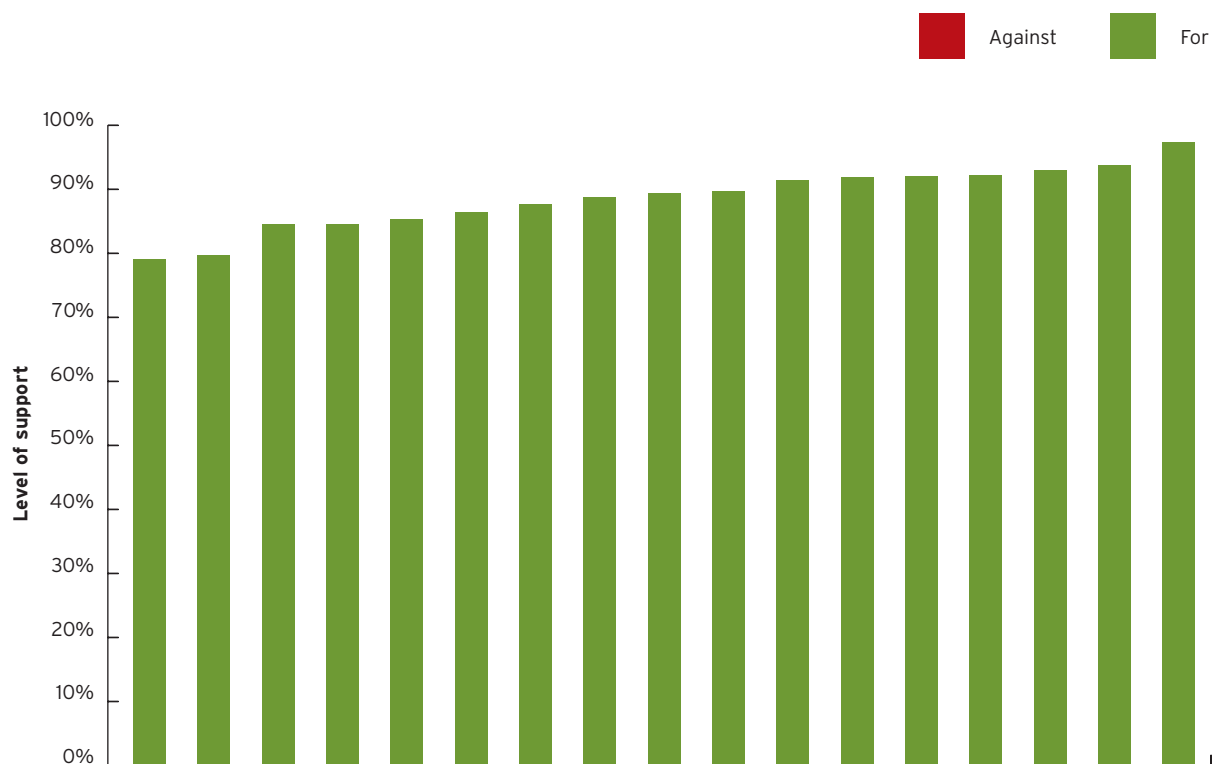


5) <https://www.issgovernance.com/about/about-iss/>

## 2 | Proxy Advisors

**Graph 7:**

Level of support for the advisory vote on the remuneration report among the SMI companies surveyed<sup>6</sup> (ordered by level of support) and colour coded by ISS vote recommendations.



<sup>6</sup>) Excludes Swatch Group, Compagnie Financière Richemont and Roche Holding AG as the companies did not put forward a vote on the remuneration report.

## 2 | Proxy Advisors

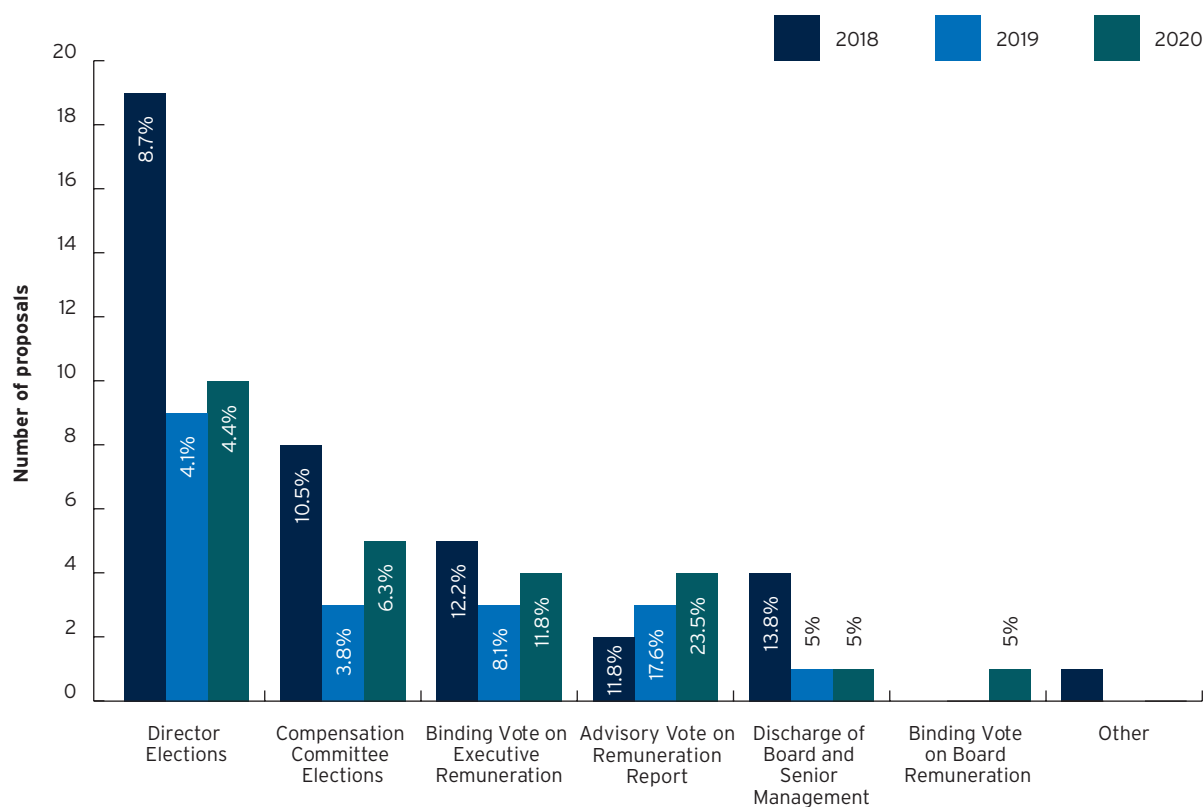
### 2.2 GLASS LEWIS

Glass Lewis<sup>7</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms.

During the 2020 reporting period, 8 companies out of the SMI received at least one against recommendation from Glass Lewis, compared to 7 in 2019. The total number of resolutions where Glass Lewis recommended its clients to vote against amounts to 25, compared to 19 in 2019.

**Graph 8:**

Overview of the number of negative recommendations by Glass Lewis at SMI AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative Glass Lewis recommendation and the total number of proposals in each category.

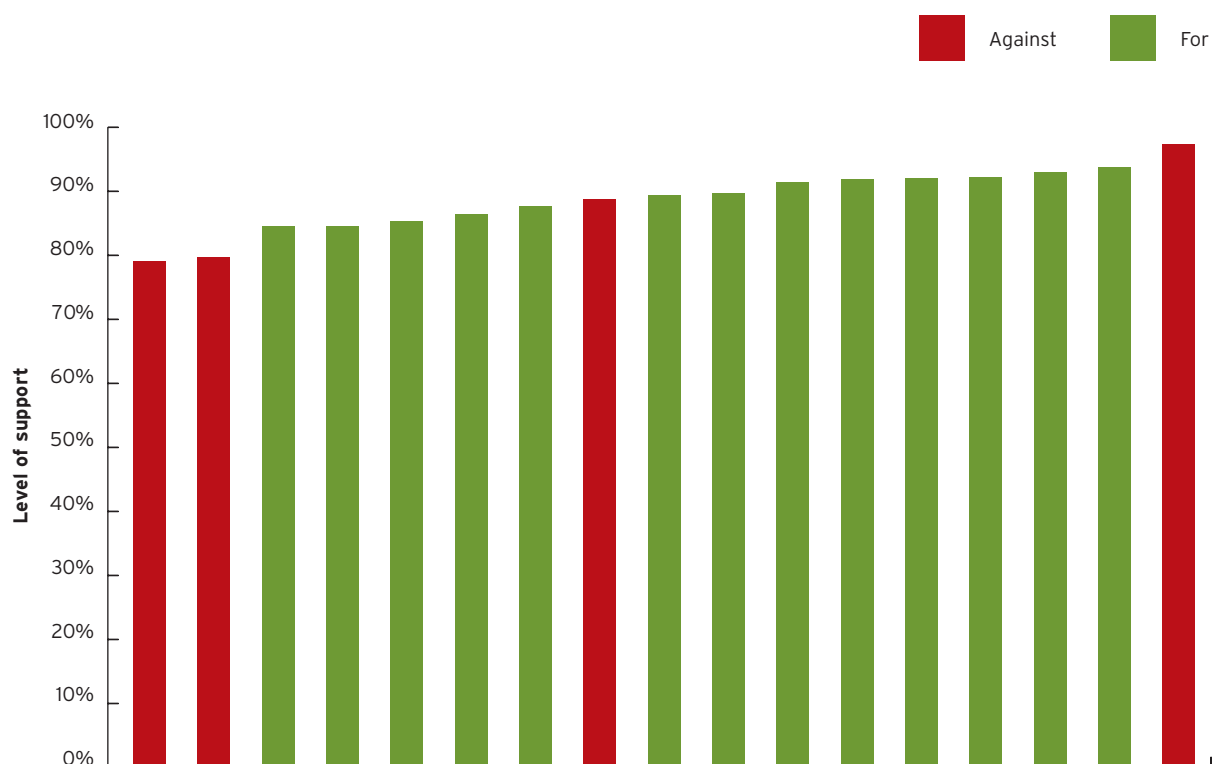


7) <http://www.glasslewis.com/about-glass-lewis/>

## 2 | Proxy Advisors

**Graph 9:**

Level of support for the advisory vote on the remuneration report among the SMI companies surveyed<sup>8</sup> (ordered by level of support) and colour coded by Glass Lewis vote recommendations.



8) Excludes Swatch Group, Compagnie Financière Richemont and Roche Holding AG as the companies did not put forward a vote on the remuneration report.

## 2 | Proxy Advisors

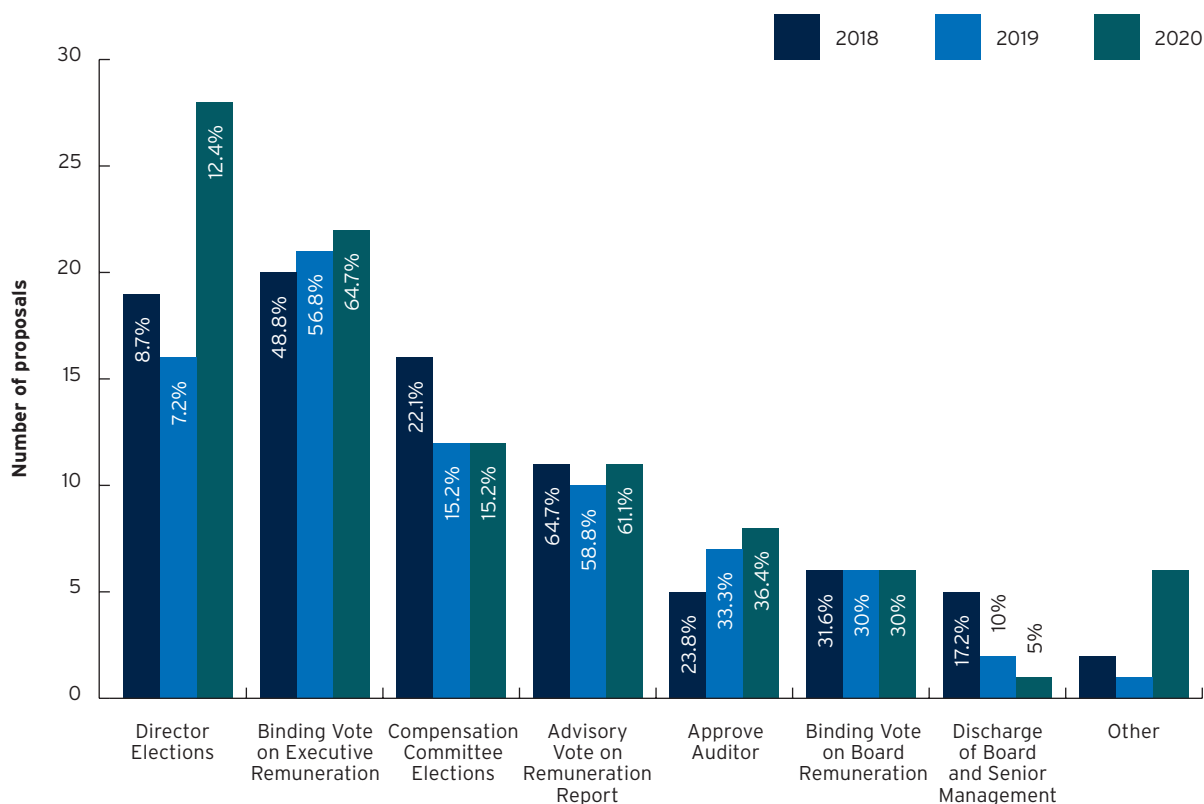
### 2.3 ETHOS

Ethos<sup>9</sup>, the Swiss Foundation for Sustainable Development was founded in 1997. It is composed of 225 Swiss pension funds and other tax-exempt institutions and aims at promoting socially responsible investment (SRI). They are also members of the Expert Corporate Governance Service<sup>10</sup> (ECGS), a partnership of independent local proxy advisors.

During the 2020 reporting period, 19 companies out of the SMI received at least one against recommendation from Ethos, compared to 17 in 2019. The total number of resolutions where Ethos recommended voting against amounts to 94, compared to 75 in 2019.

**Graph 10:**

Overview of the number of negative recommendations by Ethos at SMI AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative Ethos recommendation and the total number of proposals in each category.



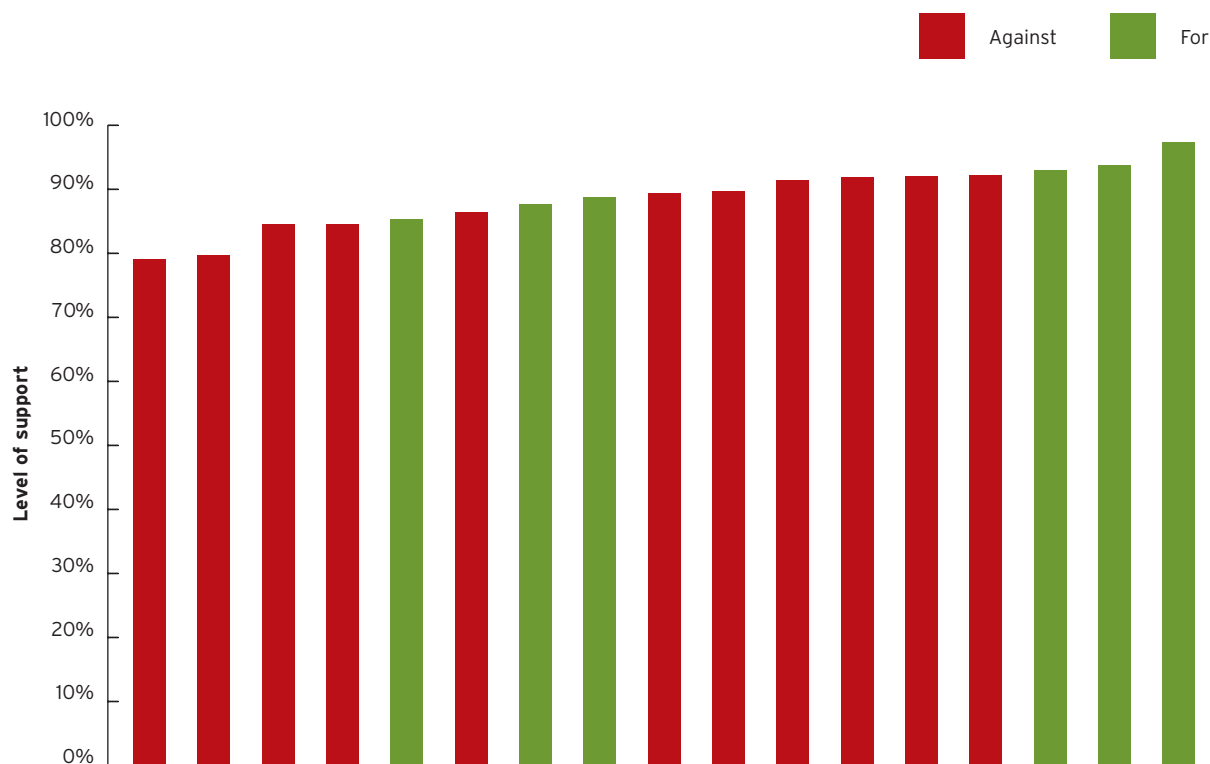
9) <https://ethosfund.ch/en/about-ethos/overview-of-ethos>

10) <http://ecgs.com/partners>

## 2 | Proxy Advisors

**Graph 11:**

Level of support for the advisory vote on the remuneration report among the SMI companies surveyed<sup>11</sup> (ordered by level of support) and colour coded by Ethos vote recommendations.



<sup>11</sup>) Excludes Swatch Group, Compagnie Financière Richemont and Roche Holding AG as the companies did not put forward a vote on the remuneration report.

# 3 | Corporate Governance developments

## 3.1 LEGISLATIVE CHANGES IN RESPONSE TO COVID-19

The Swiss Federal Council introduced Ordinance 2 COVID-19<sup>12</sup>, Article 6b on 13 March 2020, relating to restrictions for shareholder meeting to be held up to 10 May 2020. The ordinance was subsequently extended on 6 June 2020 (as article 6f).

This new article allows AGM organisers to require shareholders to exercise their voting rights in writing, electronically or through a representative (proxy). As a result, all major Swiss companies held their AGMs behind closed doors from mid-March onwards.

While these measures were put in place, the Swiss Federal Council confirmed that no extension would be given for companies to hold their AGMs later, past the mandatory six-month period from the end of the company's financial year. In addition, companies would still be obliged to adhere to the minimum notice period either as per the company's articles of association or as provided by law (min. 20 days). Furthermore, shareholders would need to be informed no later than four days before the meeting date that they will need to exercise their rights electronically or in writing, or through an independent representative (proxy).

## 3.2 FINMA'S STANCE ON DIVIDEND PAYMENTS DURING THE COVID-19 PANDEMIC

At the end of March 2020, the Swiss Financial Market Supervisory Authority FINMA urged financial institutions domiciled in Switzerland to re-consider their dividend proposals. FINMA went on to say that banks who still opt to pay dividends after March 25 will not be able to claim relief on recently eased leverage ratio requirements for money that would be paid out to shareholders. FINMA further confirmed that it was looking to set very specific rules for individual institutes, if necessary.<sup>13</sup>

As a result, UBS Group AG and Credit Suisse Group AG announced on 9 April 2020 that they would postpone half of their planned dividend distributions for 2019 to the fourth quarter of 2020 (subject to approval by shareholders at a subsequent EGM to be held later in the year). FINMA welcomed this step, which was taken after FINMA wrote to the boards of directors of both banks asking them to reconsider their dividend plans.<sup>14</sup> Julius Baer Gruppe AG subsequently announced on 14 April 2020 that it would as well split its proposed dividend distribution into two payments and will postpone its annual general meeting until May in response to the coronavirus pandemic.

12) <https://www.admin.ch/opc/en/classified-compilation/20200744/index.html>

13) <https://www.finews.com/news/english-news/40630-finma-dividends-banks-switzerland-capital-relief-leverage-ratio>

14) <https://www.finma.ch/en/news/2020/04/20200409-mm-dividende/>



# Netherlands (AEX+AMX)



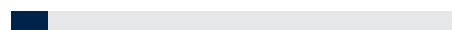
REJECTED BOARD PROPOSALS

4

AVERAGE QUORUM 70.78%



RESOLUTIONS WITH OVER 10% OPPOSE 8.21%



COMPANIES WITH OVER 10% OPPOSE 58.54%



## Highlights

- The average quorum across AEX and AMX decreased from 72.3% in 2019 to 70.78% in 2020.
- Across AEX and AMX there were four management-sponsored AGM resolution rejected by shareholders.
- The number of AEX and AMX companies that had at least one contested proposal (10%+ opposition) was 23. The overall number of contested resolutions increased from 39 in 2019 to 47 in 2020. Calibrated for the total number of resolutions in each year, this represents a 4.42% increase compared to the 2019 AGM season.
- Proposals relating to the issuance of shares were the most contested (10%+ opposition), with 22.4% of the share issuance proposals put forward within the AEX and AMX receiving more than 10% opposition.
- Remuneration was a prominent theme at the Dutch AGMs during 2020. Of the 118 remuneration proposals put forward within the AEX and AMX 16.1% were contested (10%+ opposition). 16 remuneration resolution received an against recommendation from ISS, whilst Glass Lewis recommended against 10.2% of the remuneration related resolutions.
- ISS recommended negatively on 31 resolutions in 2020, compared to 27 resolutions in 2019 (a calibrated 13.36% increase).
- Glass Lewis recommended negatively on 22 resolutions in 2020, compared to 18 resolutions in 2019 (a calibrated 5.90% increase).

# 1 | Voting in the Netherlands

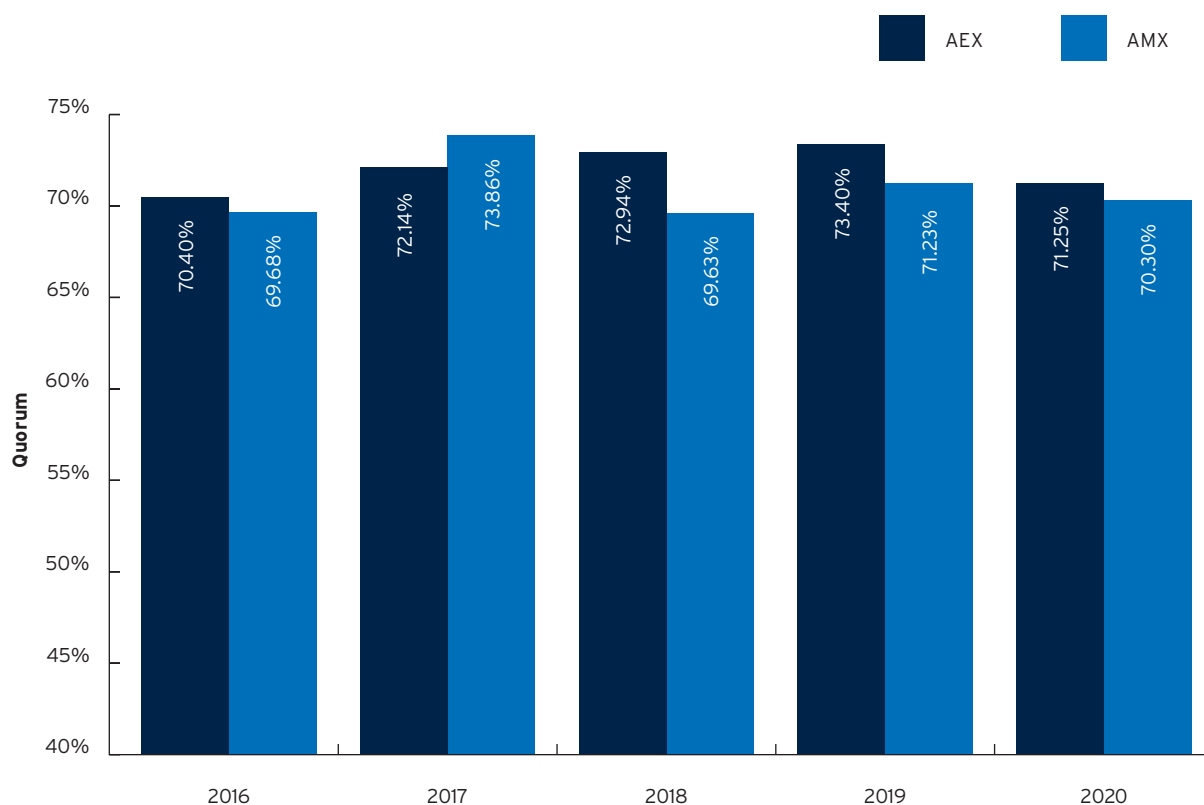
## 1.1 AEX AND AMX QUORUM OVERVIEW

We have reviewed the quorum levels of AEX<sup>1</sup> and AMX<sup>2</sup> companies over the past five years. Our survey includes companies that were part of the above-mentioned indices as at 30 June 2020 and held their AGM between 1 July 2019 and 30 June 2020. This includes 20 companies in the AEX and 21 companies in the AMX<sup>3</sup>.

The average quorum level in the AEX has decreased in 2020 compared to 2019. The average quorum in 2020 for AEX listed companies was 71.25% as opposed to 73.42% in 2019. The average AMX quorum in 2020 was 70.30%, indicating a 0.93% decrease with respect to last year.

**Graph 1:**

Average AGM quorum levels in the AEX and AMX between 2016 and 2020.

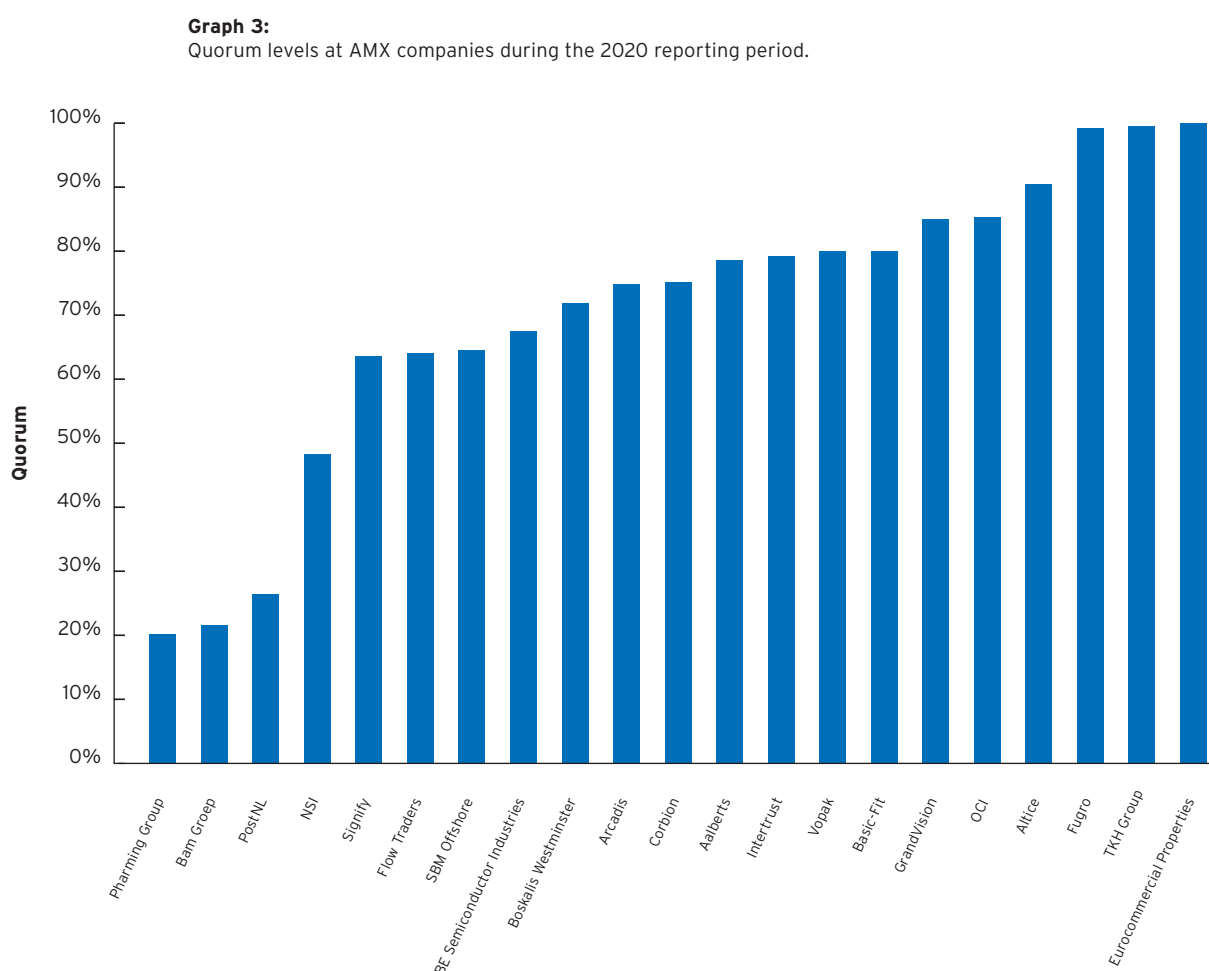
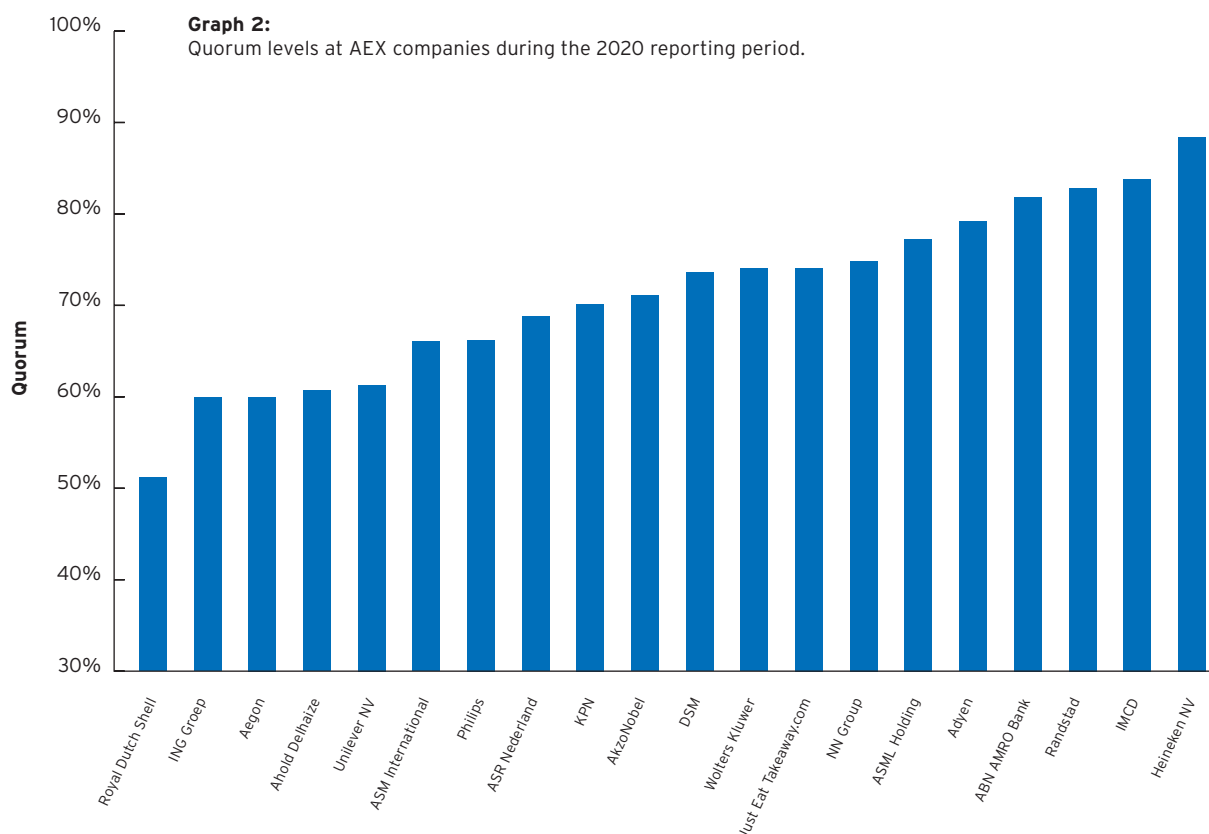


1) The AEX reflects the performance of the 25 most actively traded shares listed on NYSE Euronext Amsterdam. See here: <https://live.euronext.com/en/product/indices/NL0000000107-XAMS/market-information>

2) The AMX reflects the performance of the next 25 most actively traded shares listed on NYSE Euronext Amsterdam. See here: <https://live.euronext.com/en/product/indices/NL0000249274-XAMS/market-information>

3) We have included Dutch-incorporated companies only. For the AEX this excludes ArcelorMittal, Galapagos, Relx, Prosus and Unibail-Rodamco-Westfield. For the AMX it excludes Air France-KLM, Aperam, Fagron and WDP.

# 1 | Voting in the Netherlands



# 1 | Voting in the Netherlands

## 1.2 REJECTED AGENDA ITEMS

Among the 41 AEX and AMX companies in our sample that held their AGM between 1 July 2019 and 30 June 2020, four companies recorded management-proposed resolutions that were rejected by shareholders. Additionally in the AScX<sup>4</sup> four management-proposed resolutions were rejected by shareholders.

### AEX

#### Wolters Kluwer

At the Wolters Kluwer AGM, which took place in April 2020 one resolution (remuneration policy for the Management Board) was rejected by shareholders with 47.87% support<sup>5</sup>. Glass Lewis supported the resolution, whilst ISS recommended to vote against it. See section 1.4.2 for further information on trends relating to remuneration.

### AMX

#### BE Semiconductor Industries (BESI)

At the BESI AGM in April 2020, one resolution (remuneration policy for the Management Board) was rejected with 50.34% support<sup>6</sup>. Both ISS and Glass Lewis recommended a vote against this resolution.

#### Flow Traders

At the Flow Traders AGM in June 2020, one resolution (remuneration policy for the Management Board) was rejected. The resolution received 56.01% support<sup>7</sup>. Glass Lewis supported the resolution, whilst ISS recommended to vote against it.

#### SBM Offshore

At the SBM Offshore AGM in June 2020, one resolution (remuneration policy for the Management Board) was rejected. The resolution received 69.98% support<sup>8</sup>. Glass Lewis supported the resolution, whilst ISS recommended to vote against it.

### AScX

#### Vastned Retail

At the Vastned Retail AGM held on 25 June 2020 four resolutions were rejected<sup>9</sup>. The resolution to approve the remuneration report failed with 61.6% of shareholder opposition. The discharge of the management board and the remuneration policy for the management board also failed with 55.9% and 61.5% opposition, respectively. Finally the share buy-back resolution was rejected by shareholders with 61.1% opposition. ISS supported all the resolutions.

4) <https://live.euronext.com/en/product/indices/NL0000249142-XAMS/market-information>

5) <https://www.wolterskluwer.com/en/investors/governance/agms>

6) <https://www.besi.com/investor-relations/annual-general-meeting/>

7) <https://www.flowtraders.com/investors/events/agm>

8) <https://www.sbmoffshore.com/investor-relations-centre/shareholder-information/share-holder-meetings/2020-2/>

9) [https://vastned.com/Upload/2020.06.25\\_AGM-Voting-Results-FY-2019.pdf](https://vastned.com/Upload/2020.06.25_AGM-Voting-Results-FY-2019.pdf)

# 1 | Voting in the Netherlands

## 1.3 WITHDRAWN RESOLUTIONS

In comparison to last year we have seen an increase in the number of resolutions that were withdrawn prior to a shareholder meeting. This year, 12 resolutions in the AEX and AMX were withdrawn as opposed to four resolutions in 2019. This includes 2 dividend related proposal at banks and insurers that were withdrawn following guidance from the Dutch National Bank (DNB)<sup>10</sup>, European Central Bank (ECB)<sup>11</sup> and The European Insurance and Occupational Pensions Authority (EIOPA)<sup>12</sup>.

### Dividend (AEX and AMX)

In March 2020 the ECB<sup>13</sup> and in April the DNB<sup>14</sup> asked banks to pay no dividend in respect of 2019 and 2020 at least until 1 October 2020 and not to undertake any share buybacks. On 29 July the ECB issued an update extending its recommendation to banks on dividend distributions and share buy-backs until 1 January 2021 and asked banks to be extremely moderate with regard to variable executive remuneration<sup>15</sup>. Likewise, EIOPA issued a statement urging (re)insurers to temporarily suspend all discretionary dividend distributions and share buy backs aimed at remunerating shareholders<sup>16</sup>.

Following the recommendation of the aforementioned regulatory bodies, the following companies announced that they were postponing their dividend payments: ABN AMRO Bank<sup>17</sup>, AEGON<sup>18</sup>, ASR Nederland, ING Groep<sup>19</sup> and NN Group<sup>20</sup>.

Additionally a number of companies outside the banking and insurance sector also announced that they were withdrawing from or would not be putting dividend related resolutions on the AGM agenda.

### Randstad

In their Q1 update Randstad announced that the 2019 dividend proposal had been withdrawn to focus on capital preservation<sup>21</sup>.

### Philips

On 20 April 2020 Philips announced their plans to withdraw the dividend resolution from the 2020 AGM and to convene an EGM to approve a revised dividend proposal (to pay the dividend in shares rather than a cash dividend). At the EGM, which was held on 26 June 2020, the dividend resolution received shareholder approval.<sup>22</sup>

### Arcadis

On 24 April 2020, in their 2020 trading update for Q1, Arcadis announced that they would be withdrawing the dividend proposal from their AGM.<sup>23</sup>

10) <https://www.dnb.nl/en/news/dnb-nieuwsbrieven/nieuwsbrief-banken/nieuwsbrief-banken-april-2020/index.jsp>

11) <https://www.ecb.europa.eu/home/html/index.en.html>

12) <https://www.eiopa.europa.eu/>

13) <https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr200327~d4d8f81a53.en.html>

14) <https://www.dnb.nl/en/news/dnb-nieuwsbrieven/nieuwsbrief-banken/nieuwsbrief-banken-april-2020/index.jsp>

15) [https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr200728\\_1~42a74a0b86.en.html](https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr200728_1~42a74a0b86.en.html)

16) [https://www.eiopa.europa.eu/content/eiopa-statement-dividends-distribution-and-variable-remuneration-policies-context-COVID-19\\_en](https://www.eiopa.europa.eu/content/eiopa-statement-dividends-distribution-and-variable-remuneration-policies-context-COVID-19_en)

17) <https://www.abnamro.com/en/newsroom/press-releases/2020/abn-amro-to-postpone-dividends-on-the-recommendation-of-the-ecb.html>

18) <https://www.aegon.com/investors/press-releases/2020/aegon-convenes-2020-agm/#:~:text=Furthermore%2C%20Aegon%20announces%20that%20it,temporarily%20postpone%20all%20dividend%20distributions.>

19) <https://www.ing.com/Newsroom/News/Press-releases/ING-provides-update-on-dividend-in-the-context-of-the-coronavirus-pandemic.htm>

20) <https://www.nn-group.com/financial-article/nn-group-follows-recommendations-of-eiopa-and-dnb-regarding-dividend-distributions-.htm>

21) <https://tools.eurolandir.com/tools/Pressreleases/GetPressRelease/?ID=3744032&lang=en-GB&companycode=nl-rand&v=>

22) <https://www.philips.com/a-w/about/news/archive/corpcomms/news/press/2020/philips-first-quarter-results-2020.html>

23) <https://www.arcadis.com/en/europe/news/corporate-press-releases/arcadis-trading-update-q1-2020/2288521/>

# 1 | Voting in the Netherlands

## **BAM Groep**

On 31 March 2020 BAM announced their measures responding to the COVID-19 challenges amongst which they had decided to withdraw the dividend proposal from their 2020 AGM.<sup>24</sup>

## **Boskalis Westminster**

On 2 April 2020, Boskalis Westminster published an update where they stated “given this uncertainty and to preserve the strong financial position as much as possible Boskalis has decided not to schedule a dividend proposal over the financial year 2019 for the agenda of the AGM and to suspend its share buy-back program as of next week”.<sup>25</sup>

## **Grandvision**

On 5 May 2020, Grandvision put out their Q1 results and COVID-19 update in which they announced that they had decided not to schedule a dividend distribution proposal for the agenda of the AGM.<sup>26</sup>

## **Intertrust**

On 2 April 2020, Intertrust published their agenda items and announced that they would cancel their final dividend for 2019.<sup>27</sup>

## **Signify**

In a press release published on 24 April 2020, Signify announced, amongst other cost saving measures, the withdrawal of the dividend proposal from their 2020 AGM.<sup>28</sup>

## **AMX**

### **Pharming Group**

At Pharming Group's AGM, held on 20 May 2020, three proposals related to remuneration (remuneration policy for Management Board, share option plan and remuneration policy for Supervisory Board) were withdrawn.<sup>29</sup> As a result of this withdrawal, the current remuneration policies, and accordingly existing remuneration packages, will remain in force.

24) <https://www.bam.com/nl/pers/persberichten/2020/3/bam-responding-to-COVID-19-challenges?position=2&list=aycqU5XRp2JN7JS98hSusopuxRqOn-K-kSEqqrYOPAI>

25) <https://boskalis.com/press/press-releases-and-company-news/detail/boskalis-COVID-19-update.html>

26) <https://www.grandvision.com/media/news/grandvision-reports-1q20-results-and-COVID-19-update.htm>

27) <https://www.intertrustgroup.com/investors/press-releases/pr-story?ResultPageURL=https://www.globenewswire.com/HexMLItem/Content/FullText/Attachments/All/Identifier/2010444/language/en>

28) [https://www.signify.com/static/quarterlyresults/2020/q1\\_2020/signify-first-quarter-results-2020-report.pdf](https://www.signify.com/static/quarterlyresults/2020/q1_2020/signify-first-quarter-results-2020-report.pdf)

29) <https://www.pharming.com/sites/default/files/imce/Press%20releases/PR%20AGM%202020%2020%20May%202020%20final.pdf>

# 1 | Voting in the Netherlands

## 1.4 CONTESTED AGENDA ITEMS

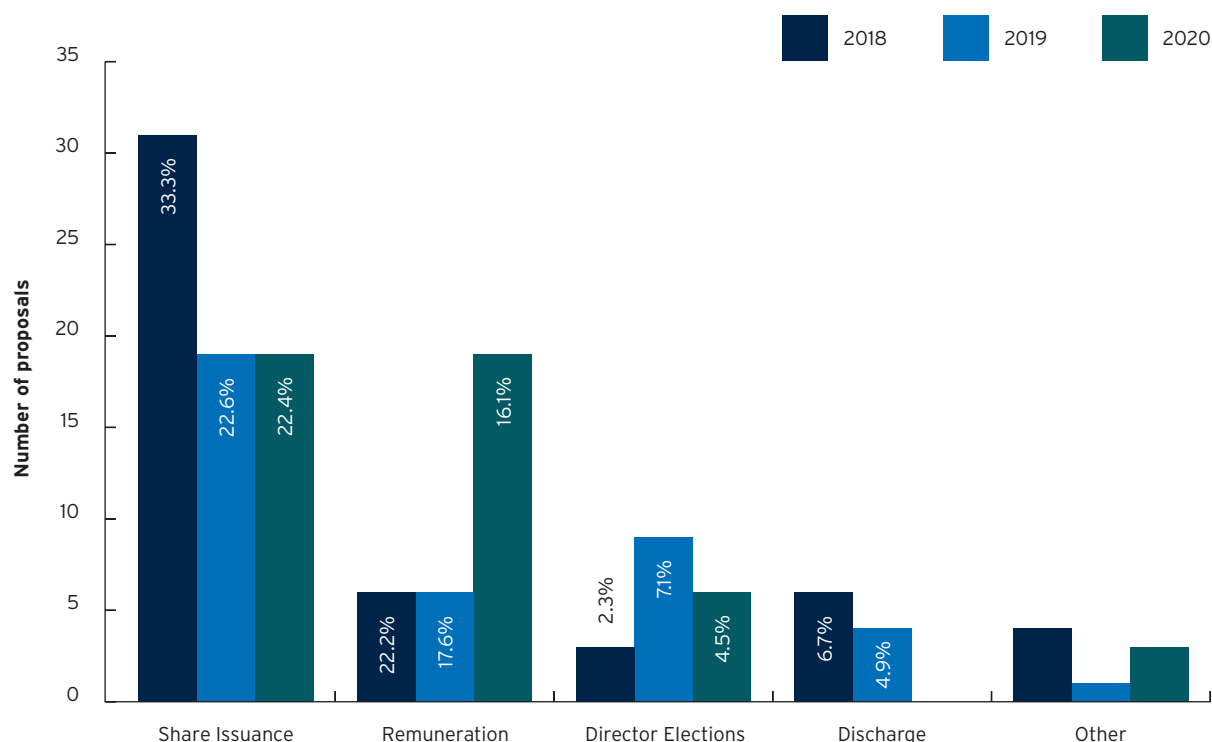
Among our sample of 41 AEX and AMX companies that held their AGM between 1 July 2019 and 30 June 2020, we saw an increase in the number of companies and number of resolutions that received more than 10% shareholder opposition. The total number of resolutions that received more than 10% opposition amounted to 47 in 2020, compared to 39 resolutions in 2019.

The increase in the number of contested resolutions is predominantly driven by the implementation of SRDII that required companies to put their remuneration policy up for a binding vote and remuneration report up for an advisory vote. Contested remuneration related resolutions accounted for 19 contested resolutions compared to just 6 in the previous year.

The most commonly contested resolutions were authorities to issue shares and authorities to restrict or exclude pre-emptive rights as well as remuneration related resolutions. Both categories had 19 contested resolutions.

**Graph 4:**

Number of resolutions which received more than 10% against votes in the AEX/AMX (by resolution type). The percentages represent the ratio between the number of proposals that received more than 10% against and the total number of proposals in each category.



# 1 | Voting in the Netherlands

## 1.4.1 SHARE ISSUANCE

Authorities to issue shares with pre-emptive rights are proposed as ordinary resolutions, requiring a simple majority. Authorities to issue shares without pre-emptive rights require a majority of two-thirds of the votes cast when less than 50% of the issued share capital is represented at the meeting. The Dutch general market practice has been to request authorities of up to 20% of issued share capital (10% for general purposes and 10% for mergers and acquisitions) with pre-emptive rights, combined with a separate resolution authorising the disapplication of pre-emptive rights for the full amount.

The issuance of shares was the most contested proposal category with 26% of the resolutions put forward receiving 10% or more of shareholder opposition.

The opposition over the issuance of shares has decreased since 2018 where there were 31 recorded share issuance resolutions. However the remaining shareholder opposition is mainly focused on those companies that are asking for authority's exceeding 10% of issued share capital.

## 1.4.2 REMUNERATION

This AGM season was dictated by the implementation of SRD II. This meant that, for the first time, companies in the Netherlands were obligated to put the remuneration report up for an advisory vote.

Most had also to put their remuneration policy up for a vote, as it is now required every 4 years and in order to comply with the Dutch regulation implementing the SRDII. Until now, Dutch applicable law only required that the remuneration policy was put up for a vote if there were material changes made to it.

According to the act implementing SRD II in the Netherlands, the remuneration policy has to be approved by at least 75% of the votes cast (unless the company's articles of association set a simple majority requirement) and both the Management and Supervisory Board remuneration policy has to be voted on.

The following companies received more than 10% against votes for remuneration related resolutions:



# 1 | Voting in the Netherlands

The following companies received more than 10% against votes for remuneration related resolutions:

- Wolters Kluwer (47.87% against votes on the remuneration policy and 46.97% on the remuneration report)<sup>30</sup>
- Ahold Delhaize (17.36% against votes on the remuneration report)<sup>31</sup>
- Aegon (16.43% votes against on the remuneration policy and 16.21% against votes on the remuneration report)<sup>32</sup>
- ASR (15.55% votes against on the remuneration policy)<sup>33</sup>
- BE Semiconductor Industries (49.66% against votes on the remuneration policy and 48.47% on the remuneration report)<sup>34</sup>
- Flow Traders (39.4% against votes on the remuneration policy and 32.48% on the remuneration report)<sup>35</sup>
- Pharming Group (26.21% against votes on the remuneration report)<sup>36</sup>
- Basic-Fit (22.74% against votes on the remuneration policy and 24.13% on the remuneration report)<sup>37</sup>
- Aalberts (20.25% against votes on the remuneration policy and 20.04% on the remuneration report)<sup>38</sup>
- Signify (15.89% against votes on the remuneration report)<sup>39</sup>
- Altice (12.97% against votes on the remuneration report)<sup>40</sup>

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30) <https://www.wolterskluwer.com/en/investors/governance/agms>

31) [https://www.aholddelhaize.com/media/10251/agm\\_resolutions\\_en\\_v1\\_2020.pdf](https://www.aholddelhaize.com/media/10251/agm_resolutions_en_v1_2020.pdf)

32) <https://www.aegon.com/contentassets/0a620a508b4c47d2bb566b846dd8b4e1/agm-2020-resolutions.pdf>

33) <https://www.asrnl.com/investor-relations/shareholders/general-meeting>

34) [https://www.besi.com/fileadmin/data/Investor\\_Relations/AGM/2020/Voting\\_Results\\_AGM\\_2020.pdf](https://www.besi.com/fileadmin/data/Investor_Relations/AGM/2020/Voting_Results_AGM_2020.pdf)

35) <https://www.flowtraders.com/sites/flow-traders/files/agm/2020/Flow%20Traders%20Voting%20results%20AGM%202020-2.pdf>

36) <https://www.pharming.com/sites/default/files/imce/AGM%20documentation/AGM%202020/Voting%20results%20AGM%202020.pdf>

37) [http://corporate.basic-fit.com/Cms\\_Data/Contents/California/Media/Annualreport/2020/overzicht-stemresultaten-Basic-Fit-220420.pdf](http://corporate.basic-fit.com/Cms_Data/Contents/California/Media/Annualreport/2020/overzicht-stemresultaten-Basic-Fit-220420.pdf)

38) <https://aalberts-website.s3.eu-west-1.amazonaws.com/media/App/Models/Download/000/000/296/attachment/original/Voting%20behaviour%202020.pdf>

39) <https://www.signify.com/static/shareholder-info/Voting-results-AGM-2020.pdf>

40) <http://altice.net/sites/default/files/pdf/AENV%20-%20AGM%2020.06.2020%20-%20Voting%20results.pdf>

## 2 | Proxy Advisors

Many institutional investors rely on proxy advisory firms, such as ISS and Glass Lewis for meeting agenda analysis and vote recommendations to inform their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a given resolution.

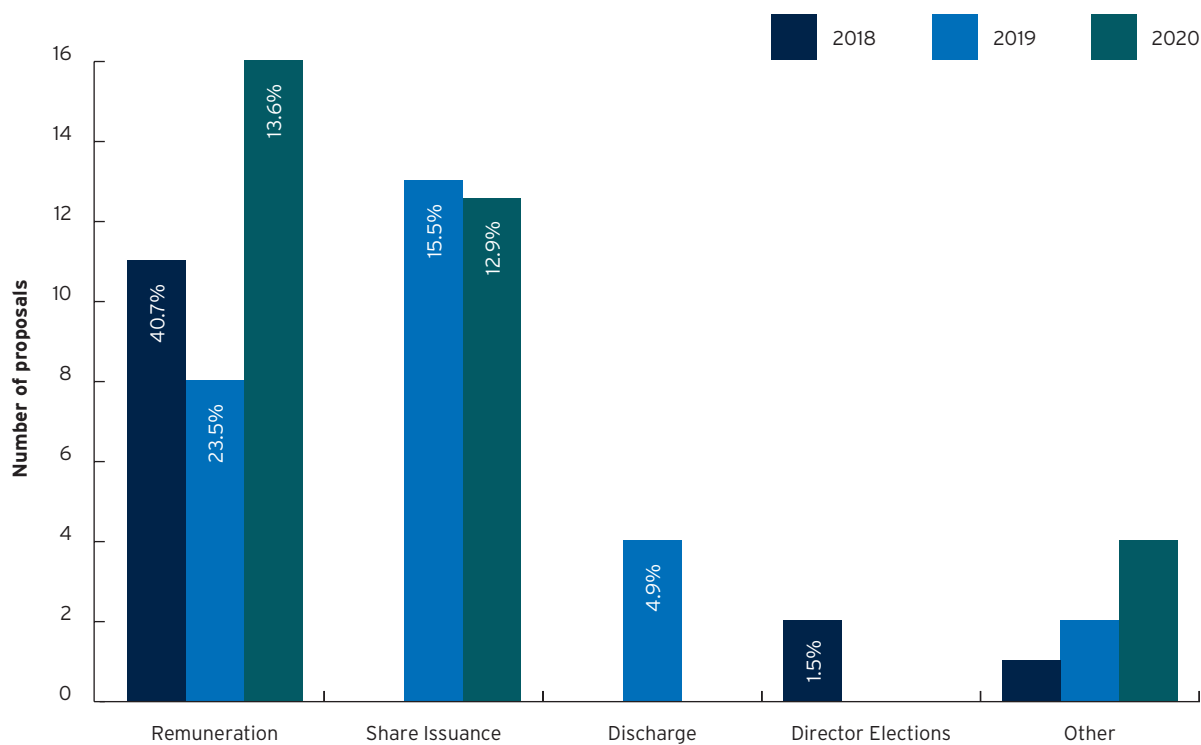
### 2.1 INSTITUTIONAL SHAREHOLDER SERVICES (ISS)

Institutional Shareholder Services<sup>41</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers.

During the 2020 proxy season, 11 companies out of the 41 AEX and AMX companies surveyed received at least one against recommendation from ISS. The 2020 AGM season saw the highest number of negative recommendations from ISS in the last three years.

#### Graph 5:

Overview of negative recommendations by ISS at AEX and AMX AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative ISS recommendation and the total number of proposals in each category.

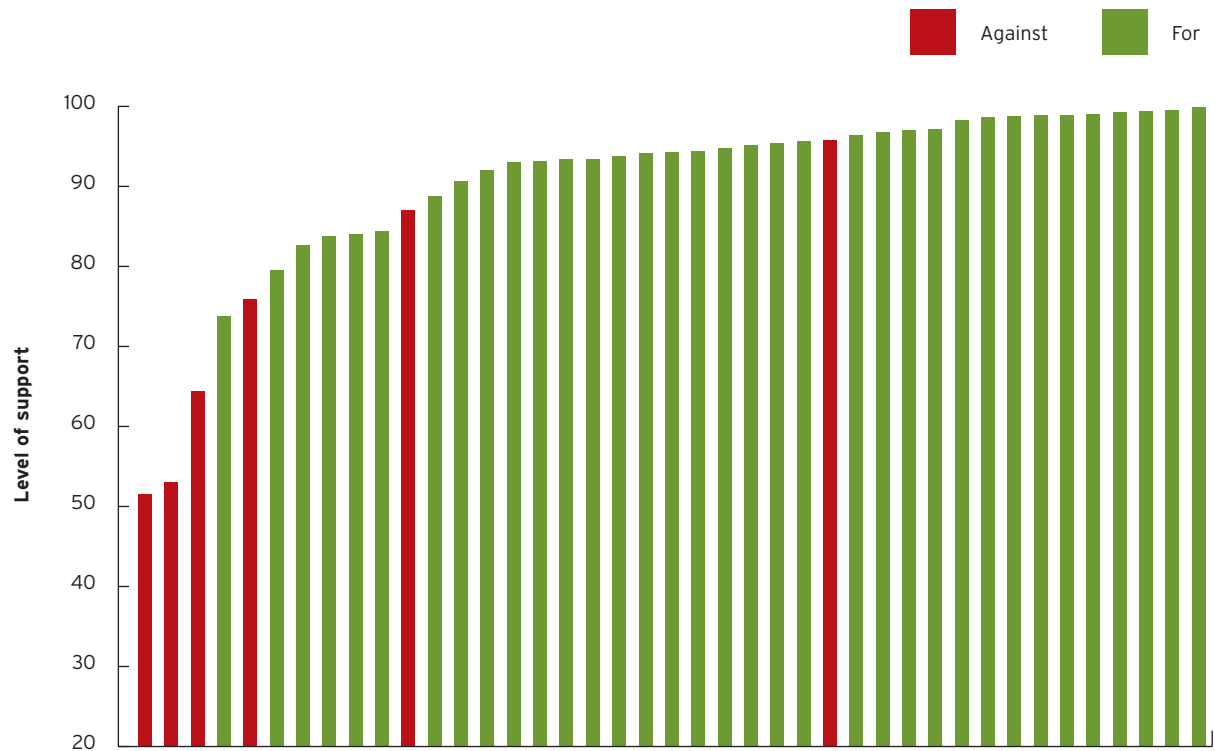


41) <http://www.issgovernance.com/about/about-iss/>

## 2 | Proxy Advisors

**Graph 6:**

Vote in favour of the Remuneration Report among AEX and AMX companies (ordered by level of support), and colour coded by ISS vote recommendations.



## 2 | Proxy Advisors

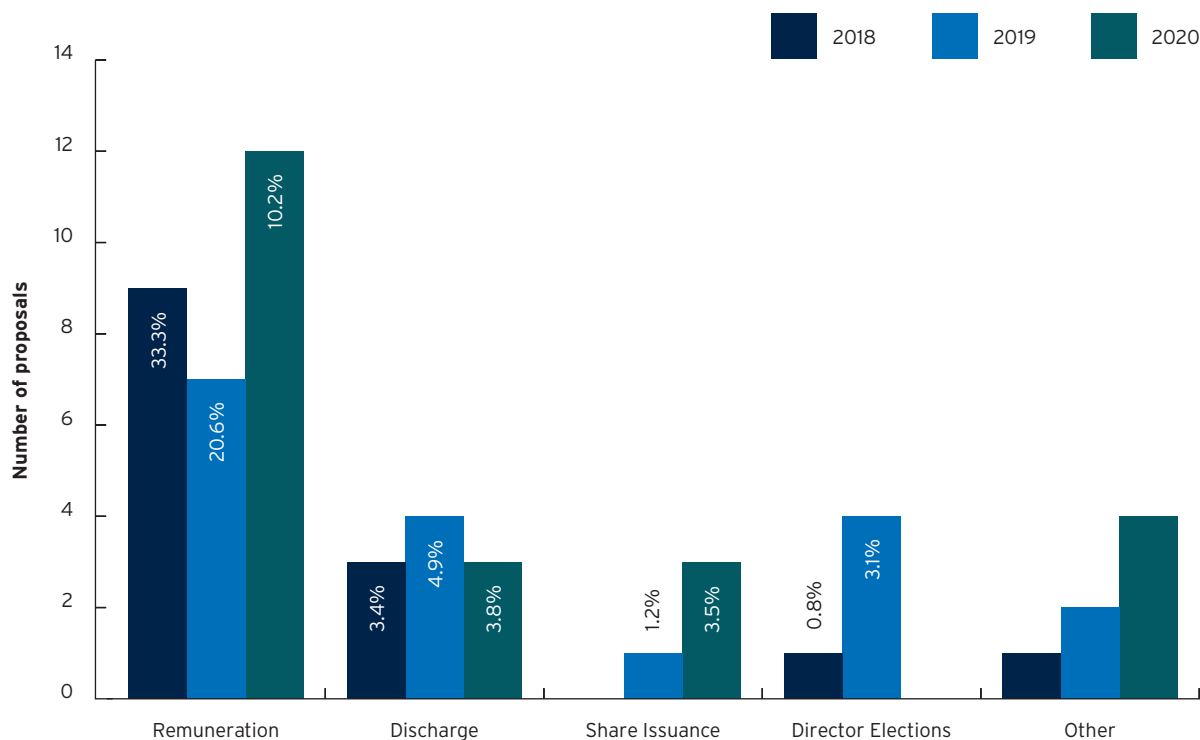
### 2.2 GLASS LEWIS

Glass Lewis<sup>42</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms.

During the 2020 proxy season, 6 companies out of the 41 AEX and AMX companies surveyed received at least one against recommendation from Glass Lewis. The 2020 proxy season saw the highest number of negative recommendations from Glass Lewis in the last three years.

**Graph 7:**

Overview of negative recommendations by Glass Lewis at AEX and AMX AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative Glass Lewis recommendation and the total number of proposals in each category.

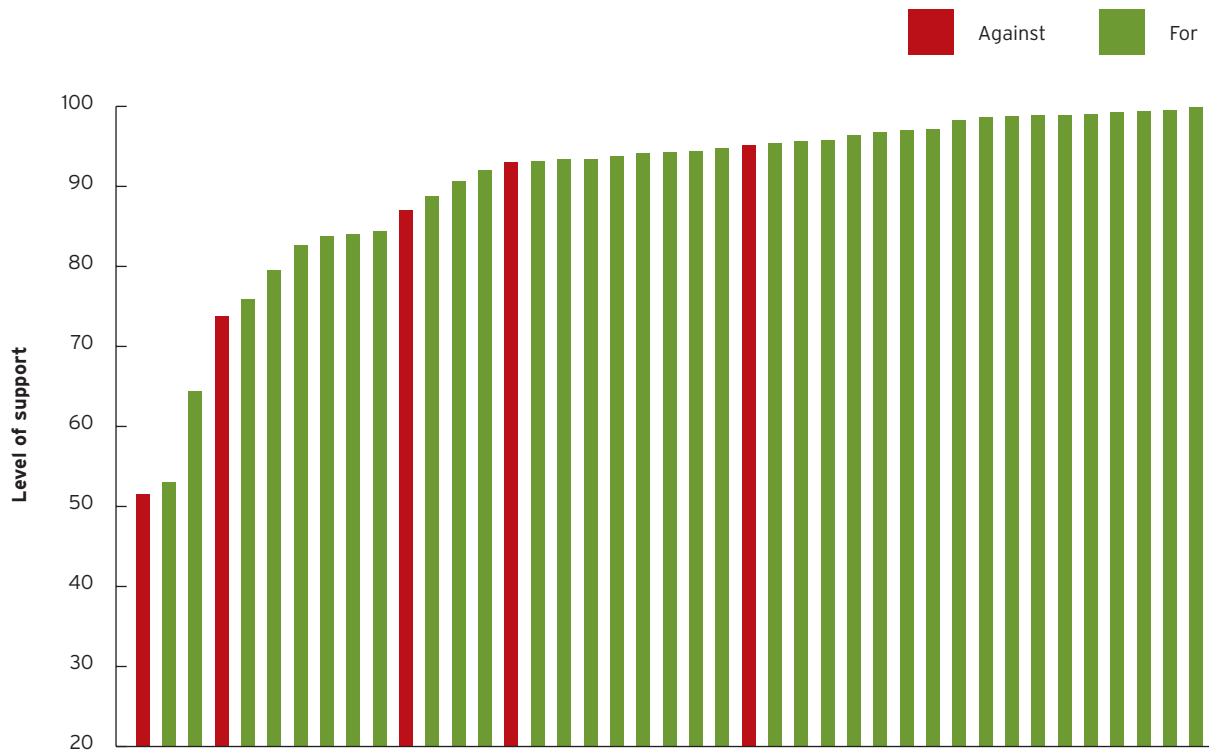


<sup>42</sup>) <http://www.glasslewis.com/about-glass-lewis/>

## 2 | Proxy Advisors

**Graph 8:**

Vote in favour of the Remuneration Report among AEX and AMX companies (ordered by level of support), and colour coded by Glass Lewis vote recommendations.



# 3 | Corporate Governance developments

## 3.1 LEGISLATIVE CHANGES IN RESPONSE TO COVID-19

On 24 April 2020 the Temporary law COVID-19 Justice and Security<sup>43</sup> was published (which retroactively entered into force from 19 March 2020). Among other things, the emergency legislation included elements relating to the organisation of annual general meetings of listed companies. The emergency legislation allows Dutch listed companies to deviate from several articles of Book 2 of the Dutch Civil Code including:

- › Under normal circumstances AGMs must be held within six months after the end of the financial year. The emergency legislation allows the board to postpone the AGM by up to four months (until 30 October 2020).
- › Under normal circumstances shareholders have the right to physically attend general meetings of listed companies, vote and ask questions. The emergency legislation allows the board to determine that shareholders do not have physical access to the general meeting under the following conditions:
  - › the general meeting can be followed electronically by shareholders; and
  - › the shareholders have been given the opportunity to ask questions, up to 72 hours prior to the meeting, in writing or electronically about the subjects mentioned in the convening notice.

The emergency legislation is valid until 1 September 2020 at least. However, the government has the possibility to extend the validity of the legal provisions by 2 months at a time.

## 3.2 EUMEDION

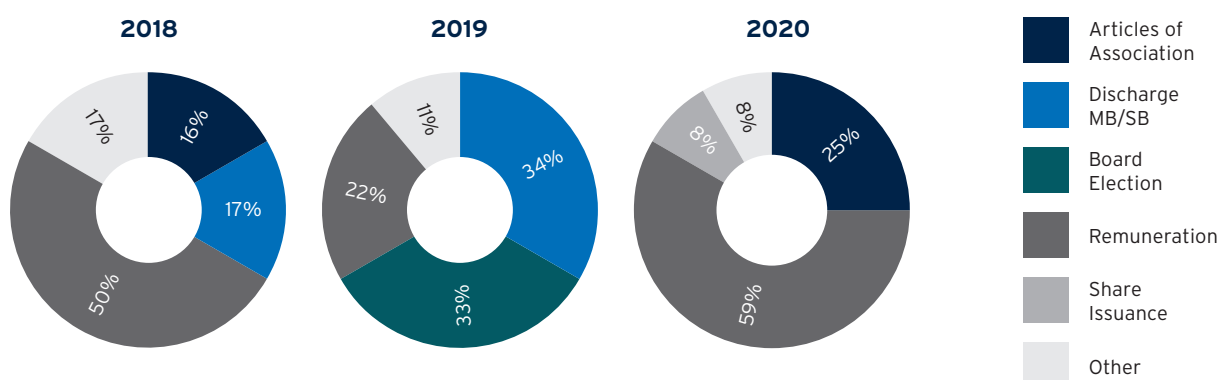
"Eumedion<sup>44</sup> is a Dutch corporate governance and sustainability platform operating on behalf of institutional investors. Eumedion currently has about 60 institutional investor participants.

The Eumedion investment committee<sup>45</sup>, which consists of 24 participants, is responsible for their alert programme which covers the AGMs of all Dutch listed companies. Eumedion members receive an alert to highlight any highly controversial voting item on the agenda of a shareholders' meeting of a Dutch listed company. These alerts are not intended as a vote recommendation, but are aimed at providing additional information to Eumedion's participants."

Between 1 July 2018 and 30 June 2019, 8 companies out of the companies listed on Euronext Amsterdam received at least one alert from the Eumedion. Remuneration related resolutions have received the highest number of alerts (seven). This is followed by the resolutions related to amendments of the articles of association (three)

Below is an overview of the number of alerts raised by the Eumedion at the AGMs of issuers listed on Euronext Amsterdam we surveyed over the past three years. The total number of alerts in 2020 increased by three in comparison to 2019 and by six in comparison to 2018.

**Graph 9:**  
Eumedion alerts issued on shareholder meetings for companies listed in the Euronext Amsterdam.



43) <https://zoek.officielebekendmakingen.nl/stb-2020-124.html>

44) <https://en.eumedion.nl/>

45) <https://en.eumedion.nl/About-Eumedion/Committees-and-Working-Groups.html>

# 3 | Corporate Governance developments

## 3.3 IMPLEMENTATION OF THE REVISED EUROPEAN SHAREHOLDER RIGHTS DIRECTIVE (SRD II)

In March 2017 the European Parliament approved amendments to the 2007 EU Shareholder Rights Directive (Directive 2007/36/EC) with the aim of encouraging “long-term shareholder engagement”. The revised Directive (Directive (EU) 2017/828) was published in the Official Journal of the European Union on 20 May 2017.

The Dutch bill<sup>46</sup> implementing the revised European Shareholders Rights Directive entered into force on 1 December 2019 requiring that the remuneration policy and the remuneration report (over the 2019 financial year) must be submitted for a vote at the AGM of 2020. The bill states that shareholders will be given the option to express their views on remuneration through two votes:

Remuneration Policy

- Binding vote at least every 4 years
- To be approved by at least 75% votes cast (unless the company’s articles of association set a lower majority requirement)
- Both the Management as well as the Supervisory Board remuneration policy must be voted on

Remuneration Report

- Advisory vote every year

## 3.4 INITIATIVES FOR A STATUTORY GENDER DIVERSITY QUOTA

On 29 June 2018, the Dutch government requested<sup>47</sup> the Social and Economic Council<sup>48</sup> (“SER”) to issue advice on the initiatives that the Netherlands could undertake to achieve more cultural and gender diversity at the top of its business community.

Upon such request, on 20 September 2019 the SER issued a report entitled “Diversity at the top. Time for acceleration”<sup>49</sup>. According to the recommendations contained in the report, the SER proposed for Dutch listed companies to meet a 30% quota of women on their Supervisory Boards.

Indeed, the report recommendations goes as far as to suggest that companies that have not yet achieved the proposed 30% quota should only be able to appoint a woman when a seat becomes available under penalty of the appointment becoming null and void.

SER recommendations came about after the Minister of Education, Culture and Science van Engelshoven received a report<sup>50</sup> from the commission Monitoring Target Act mapping the presence of women on Management and Supervisory Boards of large Dutch companies and called the results ‘to cry over’.

In the government’s response to the SER advice dated 7 February 2020<sup>51</sup> the cabinet has indicated that it will take over the recommendations from the SER advice in full. A draft bill was opened for an internet consultation in April 2020<sup>52</sup>. On 10 July 2020, during an update to the Parliament, the Minister announced that the aim is to have the bill to come into force in 2021<sup>53</sup>.

46) <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/07/05/kamerbrief-consultatie-wetsvoorstel-nadere-beloningsmaatregelen-financiële-sector>

47) <https://www.ser.nl/-/media/ser/downloads/adviesaanvragen/diversiteit-in-de-top.pdf?la=nl&hash=D7C8EB8921C63060EFE3F60B85F8D1CC>

48) <https://www.ser.nl/en>

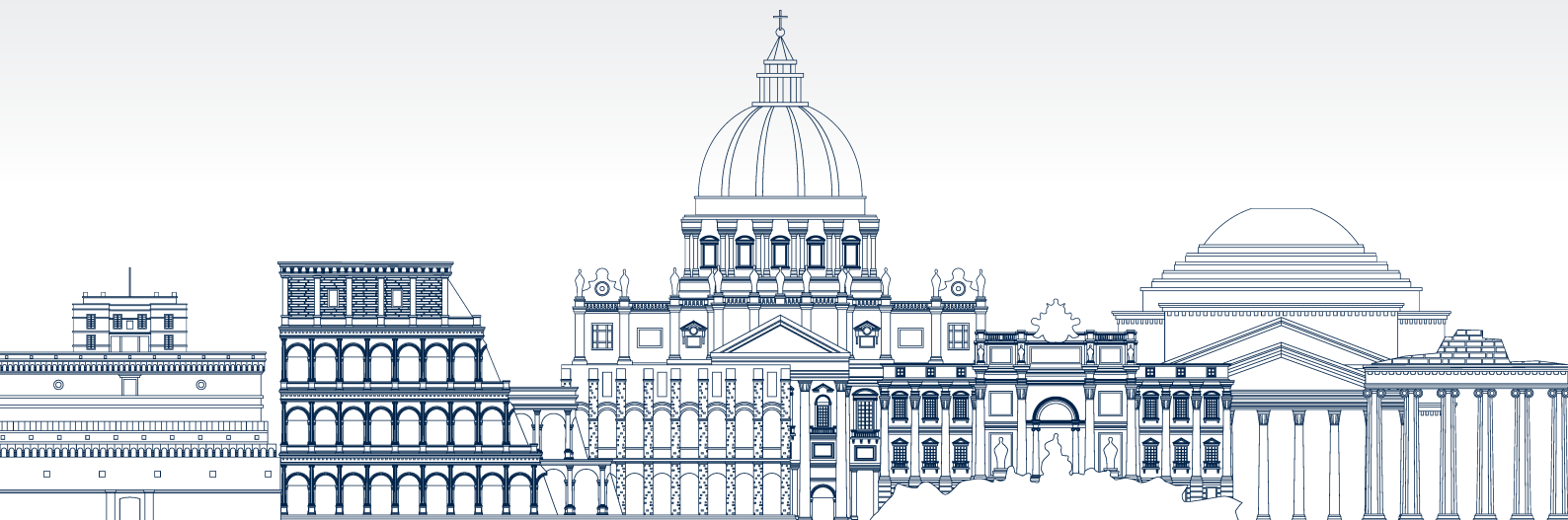
49) <https://www.ser.nl/nl/actueel/Nieuws/maatregelen-diversiteit-top>

50) <https://www.rijksoverheid.nl/documenten/rapporten/2019/09/20/bedrijvenmonitor-topvrouwen-2019>

51) <https://zoek.officielebekendmakingen.nl/kst-29544-999.html#ID-924202-d36e82>

52) <https://www.internetconsultatie.nl/nvenmv>

53) <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/07/10/kamerbrief-voortgang-genderdiversiteit-in-de-top-tweede-kamer>



# Italy (FTSE MIB)



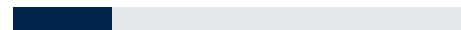
REJECTED BOARD PROPOSALS

1

AVERAGE QUORUM 70.92%



RESOLUTIONS WITH OVER 10% OPPOSE 21.96%



COMPANIES WITH OVER 10% OPPOSE 67.65%



## Highlights

- The average quorum across the FTSE MIB increased from 69.0% in 2019 to 70.9% in 2020.
- Across the FTSE MIB there was one board-proposed AGM resolutions rejected by shareholders.
- The number of FTSE MIB companies that had at least one contested proposal (10%+ opposition) was 23. The overall number of contested resolutions increased from 43 in 2019 to 56 in 2020. Calibrated for the total number of resolutions in each year, this represents a 3.16% increase compared to the 2019 AGM season.
- There was a 11.76% decrease in contested (10%+ opposition) remuneration policy votes across the FTSE MIB in 2020 (15 resolutions), compared to 2019 (17 resolutions).
- Across the FTSE MIB there has been a 64.0% decrease in contested director elections (10%+ opposition) from 5 in 2019 to 2 in 2020.
- ISS recommended negatively on 45 resolutions in 2020, compared to 36 resolutions in 2019 (a calibrated 0.98% decrease).
- Glass Lewis recommended negatively on 47 resolutions in 2020, compared to 25 resolutions in 2019 (a calibrated 48.93% increase).
- Proxy advisors continue to have a big impact on the outcome of proposals, and there is a clear correlation between negative proxy advisor recommendations and lower vote results. For instance, in the FTSE MIB, the four remuneration reports (second section) with the lowest level of support all received a negative recommendation from the majority of the proxy advisors covered in our analysis.

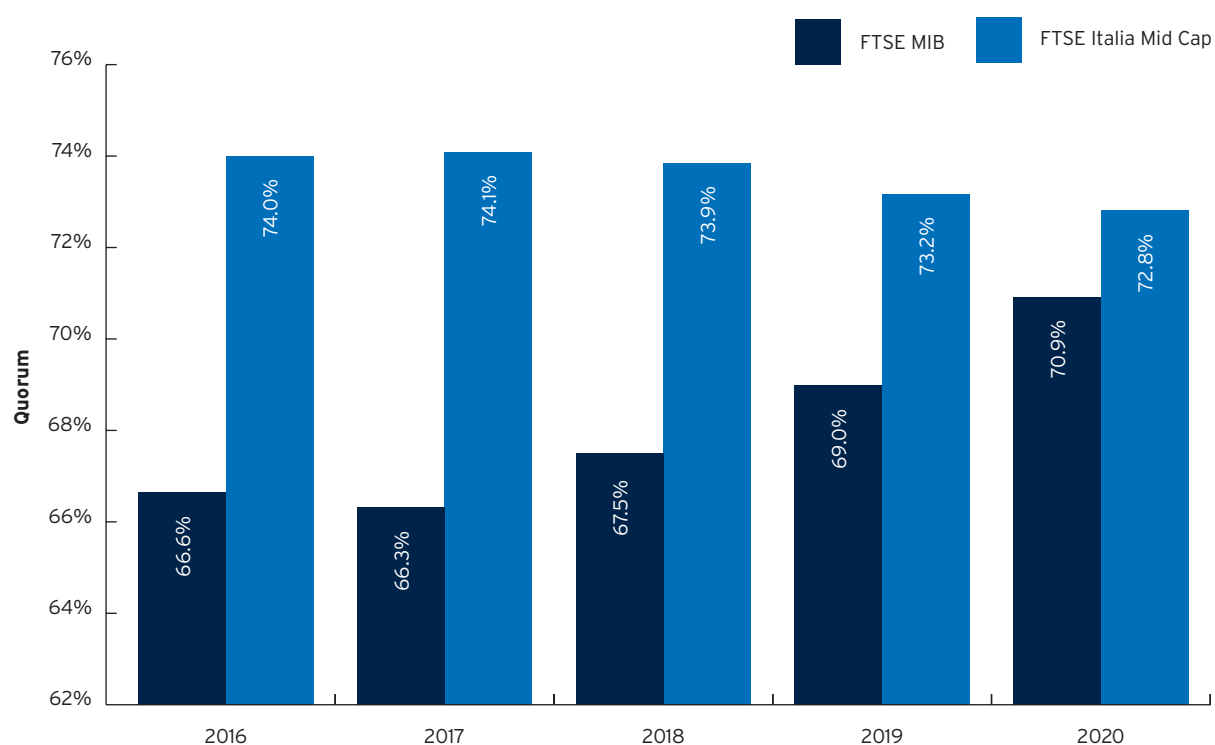
# 1 | Voting in Italy

## 1.1 QUORUM OVERVIEW

Georgeson has reviewed the quorum levels of FTSE MIB and FTSE Italia Mid Cap companies over the past five years. This year's review includes 34 companies that were part of the FTSE MIB index as of 30 June 2020, and which held their AGM between 1 July 2019 and 30 June 2020. In particular, the analysis excluded companies with their corporate headquarters located outside Italy (Cnh Industrial, Exor, Ferrari, Fiat Chrysler Automobiles, Stmicroelectronics, Tenaris).

**Graph 1:**

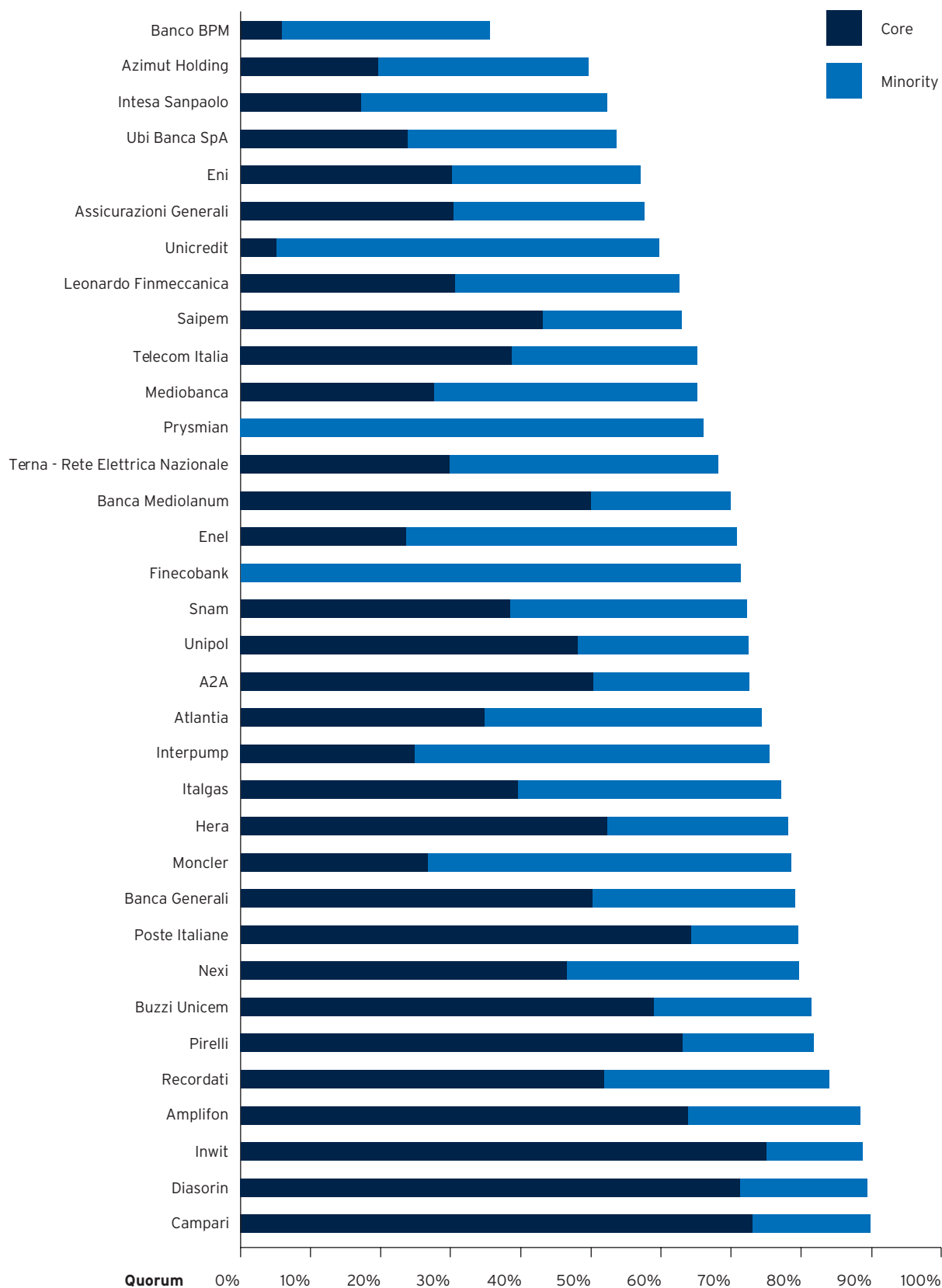
Average AGM quorum levels in the FTSE MIB and FTSE Italia Mid Cap between 2016 and 2020.



# 1 | Voting in Italy

**Graph 2:**

Quorum levels at FTSE MIB companies during the 2020 reporting period split between core shareholders and minorities<sup>1</sup>.



1) Minorities' participation was calculated by subtracting the shares referable to core shareholders from the meeting quorum

# 1 | Voting in Italy

## 1.2 REJECTED RESOLUTIONS

### FTSE MIB

Within our sample of FTSE MIB companies, Azimut Holding S.p.A was the only company that had a management-proposed resolution rejected by shareholders.

#### **Azimut Holding S.p.A.**

Azimut Holding is Italy's leading independent asset manager, listed on Italian stock exchange since 2004.

On 23 April 2020, the Company announced<sup>2</sup> that the management proposal on the first section of the remuneration report, i.e. the remuneration policy, failed to achieve support from shareholders, with 57.61% of shareholders voting against the resolution.

We note that all the major proxy advisors covering the meeting, ISS, Glass Lewis and Frontis Governance, recommended that investors vote against the first and the second section of the remuneration report. According to proxy advisors, main concerns derive from: I) the insufficient disclosure on the company variable pay program and on the non-compete agreements, and II) from the possibility for the company to pay discretionary bonuses.

### FTSE Italia Mid Cap

Within our sample of FTSE Italia Mid Cap companies, 2 management-proposed resolutions were rejected by shareholders:

- De' Longhi (24.3% in favour)
- RCS MediaGroup (3.5% in favour)

In both cases, the Shareholders' Meeting rejected the income allocation proposal made by the Company's Board of Directors after the majority shareholders, De Longhi Industrial S.A.<sup>3</sup>, and Cairo Communications S.p.A.<sup>4</sup>, respectively, announced their decision to vote against the proposal of dividend distribution with the aim of providing financial support to the Company and to strengthen it against the possible impacts of the COVID-19 emergency.

Following the vote against the proposed distribution of the dividend, the net profit for the year was carried forward in full.

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2) <https://www.azimutgroup.com/documents/20195/1438140/23.04.20+AZIMUT+HOLDING+S.p.A.+ANNUAL+SHAREHOLDERS+MEETING.pdf/f0333266-94ac-4044-89cb-9bd1c2fc51cb>

3) [https://www.delonghigroup.com/sites/default/files/DeLonghi%20press%20release\\_AGM\\_22%2004%202020%20final.pdf](https://www.delonghigroup.com/sites/default/files/DeLonghi%20press%20release_AGM_22%2004%202020%20final.pdf)

4) <https://www.rcsmediagroup.it/en/press-release/press-release-rcs-mediagroup-shareholders-meeting-2/?print=print>

# 1 | Voting in Italy

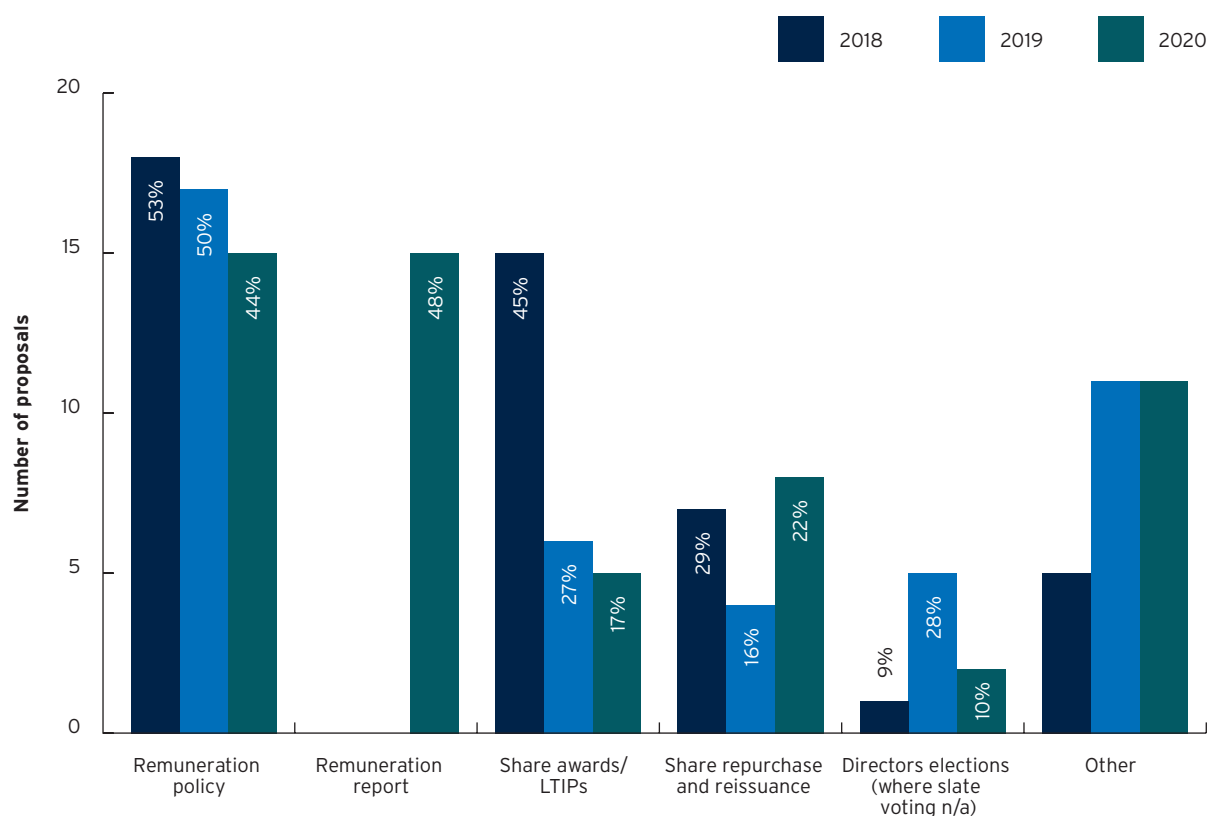
## 1.3 CONTESTED RESOLUTIONS

Among our sample of 34 FTSE MIB companies that held their AGM between 1 July 2019 and 30 June 2020, 23 companies saw at least one management-proposed resolution receive more than 10% shareholder opposition (compared to 19 the previous year). The total number of resolutions that received over 10% opposition amounted to 56, compared to 43 resolutions in 2019.

In our FTSE MIB sample, the most commonly contested resolutions were remuneration policy and remuneration report votes. The second most commonly contested resolutions were share repurchase programmes, including those related to long-term incentive plans. Finally, the third most commonly contested resolutions were share awards plans (incentive plans providing for the granting of equity instruments and/or monetary incentives based on stock value) followed by elections of individual directors and Chairs (outside the slate voting system), which in Italy only take place to fill a random vacancy, or, in the case of a general election, to appoint the Chair of the Board among the candidates elected through the slate system.

**Graph 3:**

Number of resolutions which received more than 10% against votes in the FTSE MIB (by resolution type). The percentages represent the ratio between the number of proposals that received more than 10% against and the total number of proposal in each category.



# 1 | Voting in Italy

## 1.3.1 FIRST SECTION OF THE REMUNERATION REPORT

As mentioned above, resolutions pertaining to remuneration matters are those which generated the highest number of contested resolutions. Italian law<sup>5</sup> provides that issuers are obliged to publish a remuneration report at least 21 days prior to the relevant annual general meeting.

The said report is comprised of two sections and their contents have been defined by the Italian stock market regulator (Consob) with an ad hoc regulation adopted on 23 December 2011<sup>6</sup>. The first section illustrates the general principles guiding how executives will be compensated in the following year and the applicable procedures and must be submitted to a mandatory binding vote of shareholders at least every three years and whenever the board proposes to change the remuneration policy.

The companies with the lowest level of support on the first section of the remuneration report among our sample were:

- Azimut Holding (42.4% in favour)
- Interpump (60.2% in favour)
- Unipol (67.8% in favour)
- Assicurazioni Generali (69.6% in favour)

All the available proxy advisor reports recommended a vote against the remuneration reports of the above-listed companies except for Assicurazioni Generali, for which divergent recommendations were issued.

## 1.3.2 SECOND SECTION OF THE REMUNERATION REPORT

The second section of the remuneration report provides for a detailed disclosure on the compensation paid to each board member, the managing director and the top management overall and must be submitted, as a separate item of the agenda, to a mandatory and advisory vote every year.

The companies with the lowest level of support on the second section of the remuneration report among our sample were:

- Azimut Holding (50.9% in favour)
- Atlantia (57.1% in favour)
- Interpump (61.1% in favour)
- Assicurazioni Generali (64.9% in favour)

All the available proxy advisor reports recommended a vote against the remuneration reports of all the companies listed above.

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5) Article 123 ter of the Italian Financial Law, available at:  
<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-02-24;58!vig=>

6) <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-02-24;58!vig=>

# 1 | Voting in Italy

## 1.3.3 ADOPTION OF SHARE AWARDS PLANS

According to Italian law<sup>7</sup>, the adoption of remuneration plans that relate to financial instruments (such as stock options, share awards and/or phantom shares) and aim to remunerate, among others, members of a company's controlling or supervisory bodies must be approved by shareholders.

The companies with the lowest level of support on the approval of equity related plans among our sample were:

- Assicurazioni Generali (67.8% in favour)
- Banco BPM (78.5% in favour)
- Banca Mediolanum (82.4% in favour)
- Davide Campari (83.5% in favour)

ISS and Glass Lewis recommended against three out of the four resolutions mentioned above, while Frontis Governance issued two out of four positive recommendations.

## 1.3.4 AUTHORITIES TO REPURCHASE AND REISSUE SHARES

According to article 2357 of the Italian Civil Code, share repurchase programmes and the use of repurchased shares are subject to the approval of shareholders. The law requires issuers to disclose limitations in terms of scope, amount and duration of the authorisation.

The companies with the lowest level of support on the approval of share repurchase programmes among our sample were:

- Assicurazioni Generali (67.8% in favour)
- Banco BPM (78.7% in favour)
- Interpump (80.3% in favour)
- Unipol (81.5% in favour)

ISS recommended against all of the proposal mentioned above apart from Banco BPM, Glass Lewis recommended for all of the proposal mentioned above except for Assicurazioni Generali and Frontis Governance recommended against all of the proposal mentioned above.

## 1.3.5 DIRECTOR ELECTIONS (WHERE SLATE VOTING WAS NOT APPLICABLE)

Italian law requires that the Board of Directors be elected by a slate voting system. However, when random vacancies arise (affecting less than 50% of the board elected by the shareholders' meeting) and directors are co-opted to the Board, they are subject to an individual shareholder vote decided by a simple majority<sup>8</sup>.

With regard to the election of the Chair of the Board, Italian law<sup>9</sup> provides that they be appointed by the members of the Board, unless an individual is named by the shareholders. However, appointment by a majority vote of shareholders is the common practice.

The companies with the lowest level of support on director elections and election of the Chair of the Board among our sample were:

- Recordati - director election (63.9% in favour)
- Interpump - election of the Chair (85.3% in favour)

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7) Article 114-bis of the Italian Consolidate Financial Law, introduced by Law n. 262 of 28 December 2005

8) Article 2386 of the Italian Civil Code

9) Article 2380 of the Italian Civil Code

## 2 | Proxy Advisors

Many institutional investors rely on proxy advisory firms such as ISS, Glass Lewis and Frontis Governance for meeting agenda analysis and vote recommendations to inform their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the voting outcome of a given resolution.

### 2.1 INSTITUTIONAL SHAREHOLDER SERVICES (ISS)

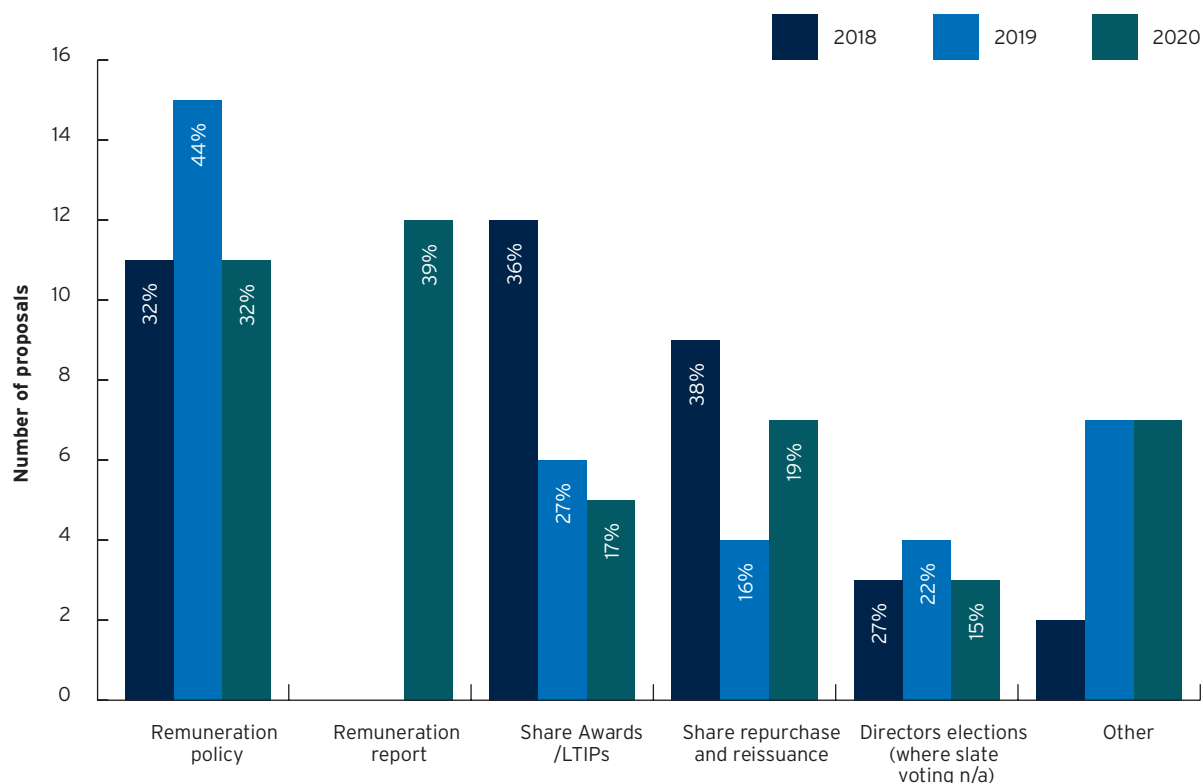
Institutional Shareholder Services<sup>10</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers.

Between 1 July 2019 and 30 June 2020, 18 companies out of the FTSE MIB received at least one against or abstain recommendation from ISS, for a total of 45 resolutions.

The proposals related to remuneration (approval of incentive plans and approval of remuneration reports) received the highest part of negative recommendations from ISS. Graph 5 suggests that companies receiving a negative recommendations from ISS generally failed to receive high levels of support from shareholders.

**Graph 4:**

Overview of the number of negative recommendations by ISS at FTSE MIB AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative ISS recommendation and the total number of proposals in each category.



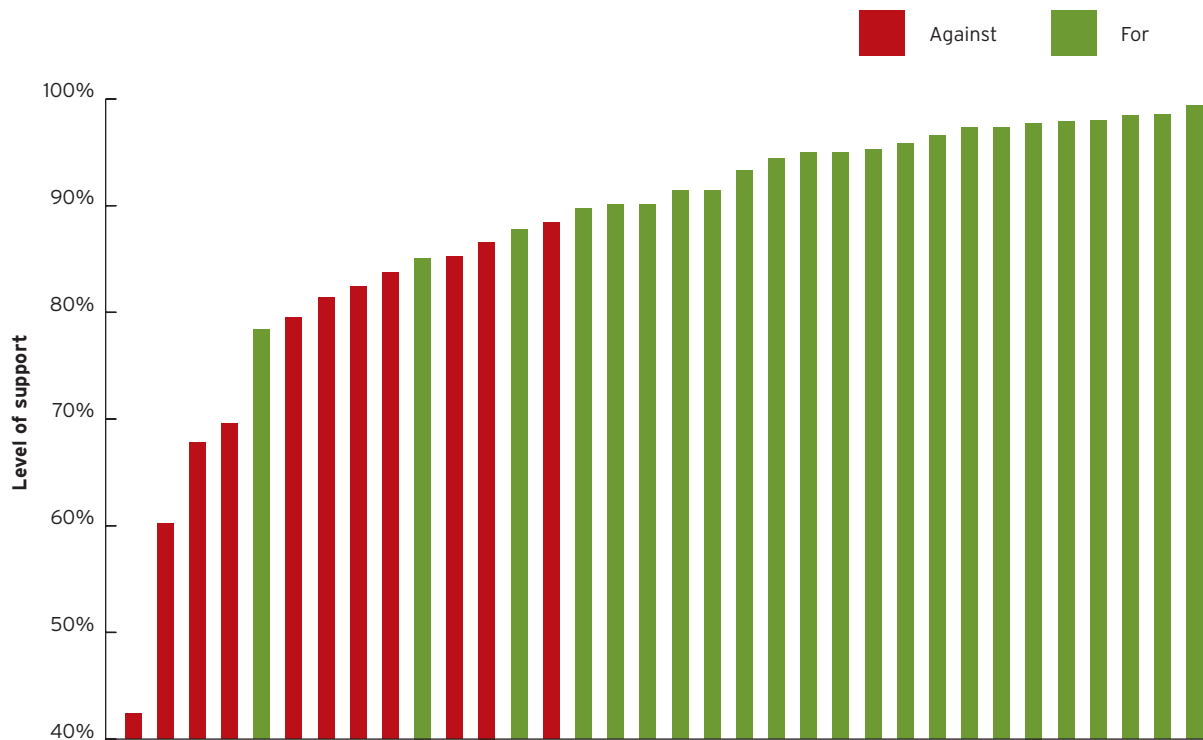
<sup>10</sup>) <http://www.issgovernance.com/about/about-iss/>



## 2 | Proxy Advisors

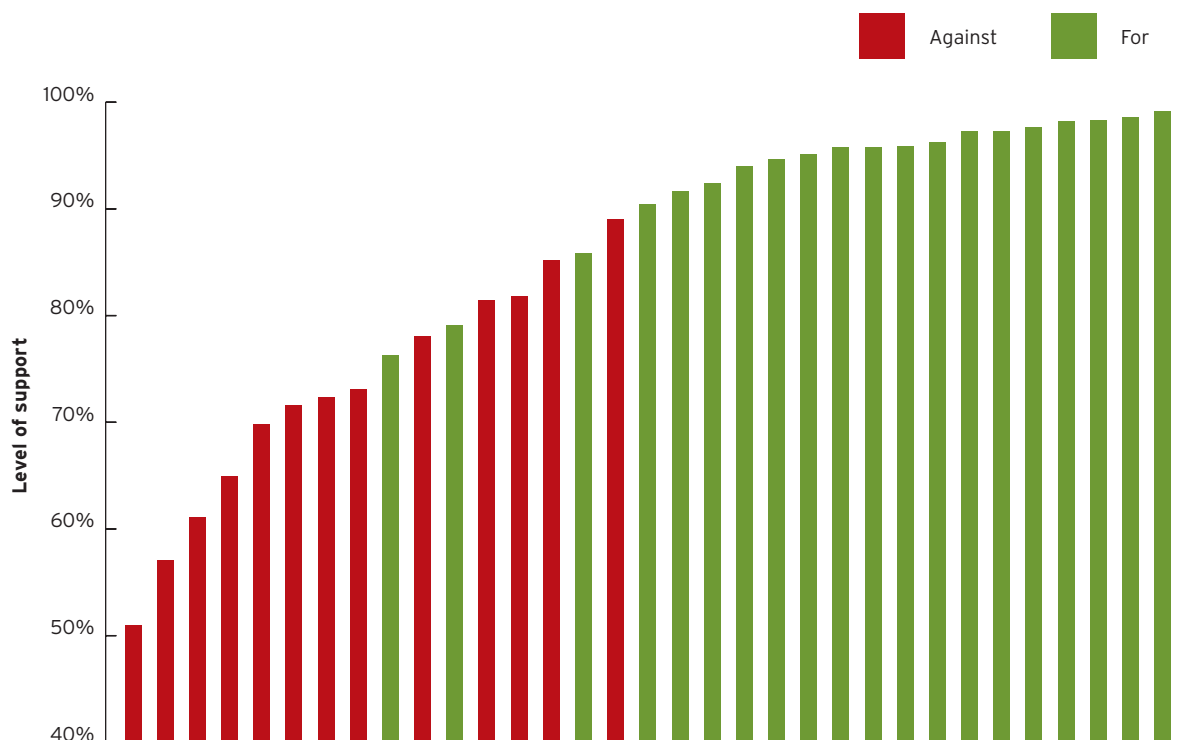
**Graph 5a:**

Level of support for the Remuneration Policy of companies in the FTSE MIB (ordered by level of support), and colour coded by ISS vote recommendations.



**Graph 5b:**

Level of support for the Remuneration Report of companies in the FTSE MIB (ordered by level of support), and colour coded by ISS vote recommendations.



## 2 | Proxy Advisors

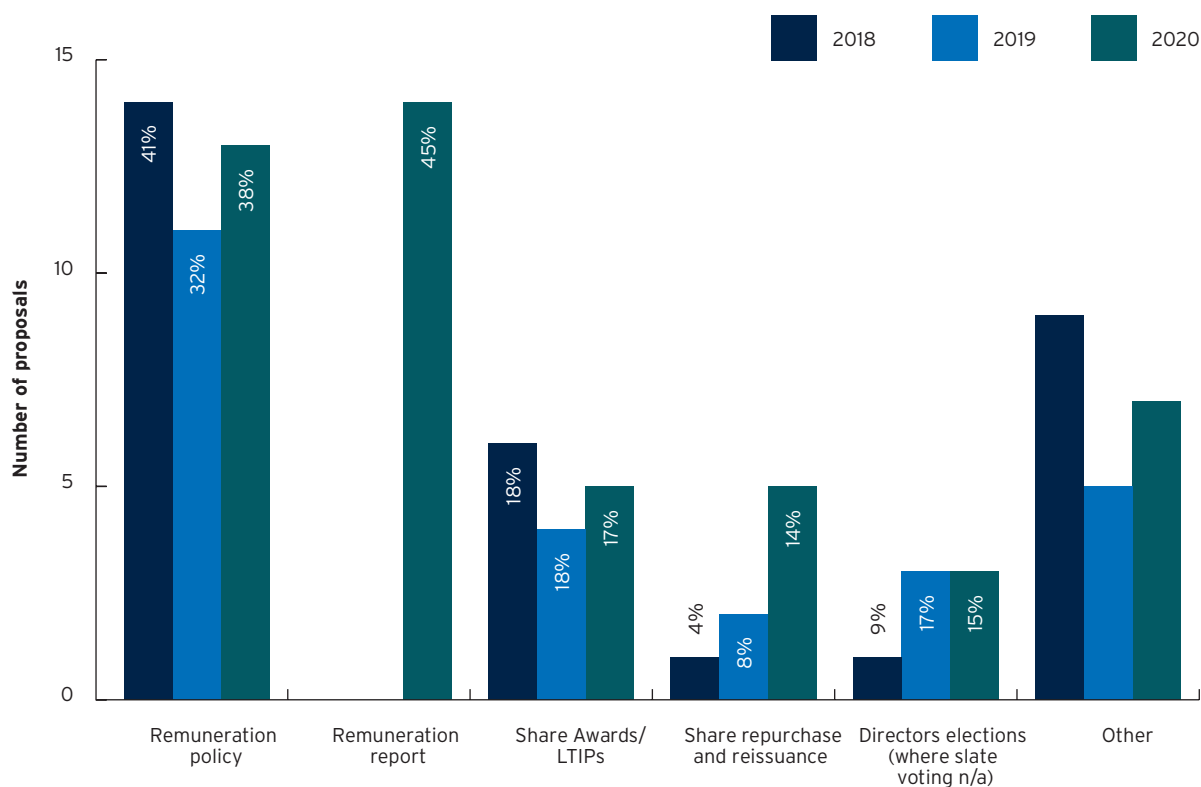
### 2.2 GLASS LEWIS

Glass Lewis<sup>11</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms.

Between 1 July 2019 and 30 June 2020, 18 companies out of the FTSE MIB received at least one against or abstain recommendation from Glass Lewis, for a total of 47 resolutions. Also in this case items related to remuneration were the most sensitive ones.

**Graph 6:**

Overview of the number of negative recommendations by Glass Lewis at FTSE MIB AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative Glass Lewis recommendation and the total number of proposals in each category.

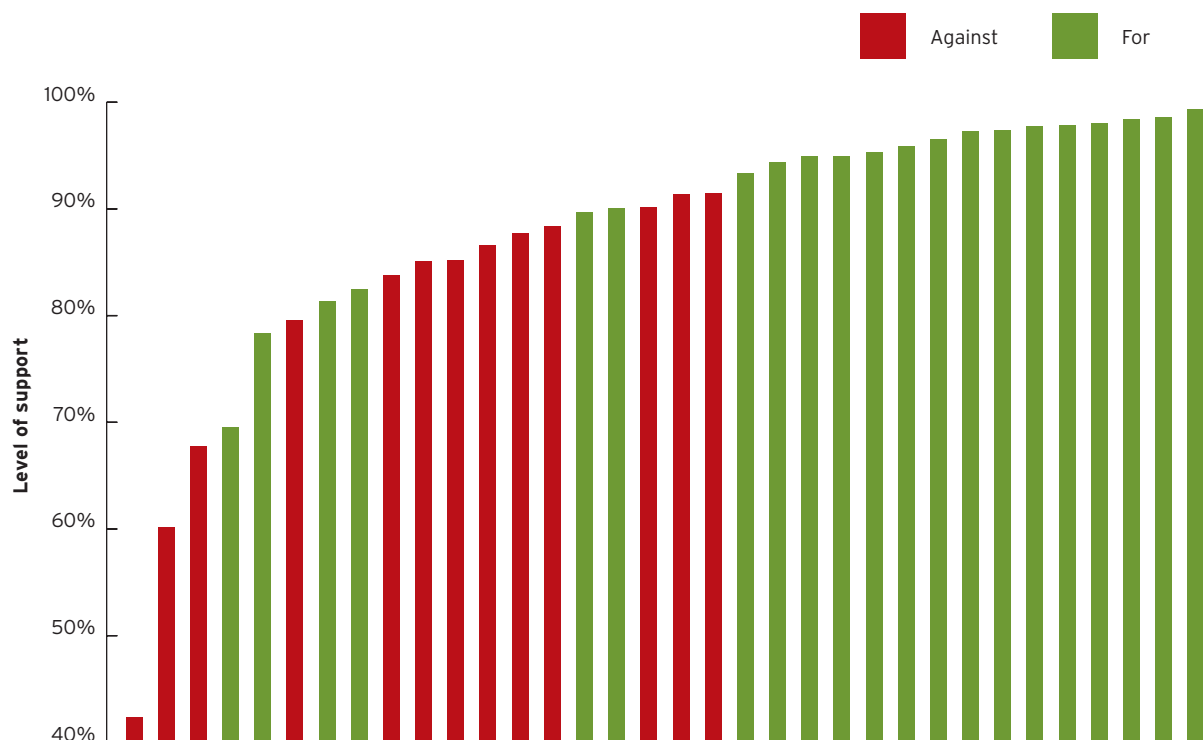


<sup>11</sup> <http://www.glasslewis.com/about-glass-lewis/>

## 2 | Proxy Advisors

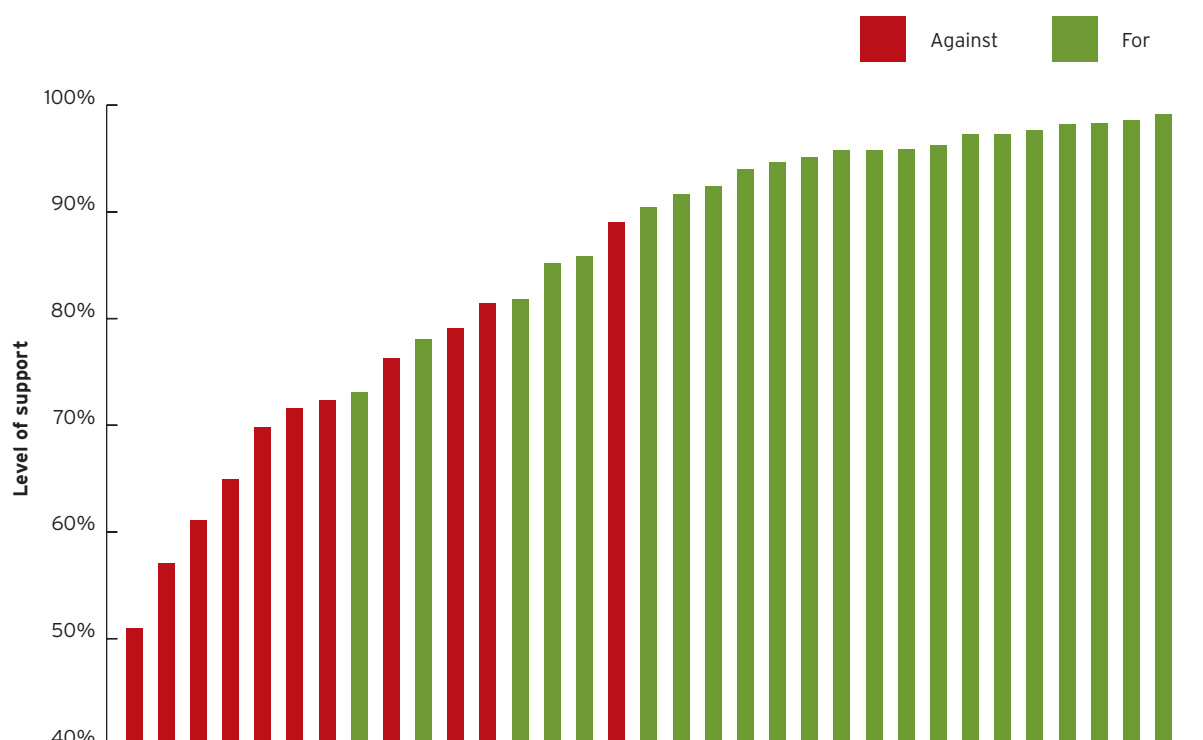
**Graph 7a:**

Level of support for the Remuneration Policy of companies in the FTSE MIB (ordered by level of support), and colour coded by Glass Lewis vote recommendations.



**Graph 7b:**

Level of support for the Remuneration Report of companies in the FTSE MIB (ordered by level of support), and colour coded by Glass Lewis vote recommendations.



## 2 | Proxy Advisors

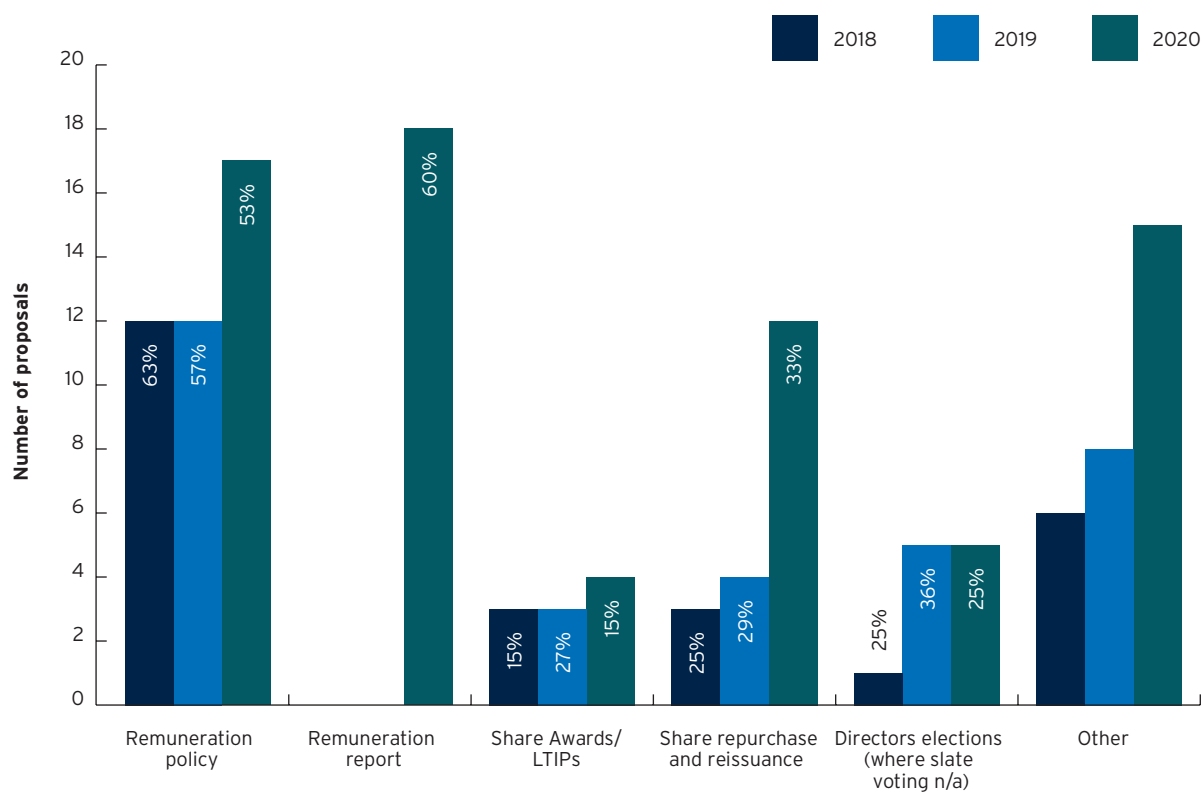
### 2.3 FRONTIS GOVERNANCE

Frontis Governance<sup>12</sup> is an Italian proxy advisory firm founded in September 2011. It is member of the Expert Corporate Governance Service (ECGS)<sup>13</sup>, a partnership of independent local proxy advisors.

Between 1 July 2019 and 30 June 2020, 26 FTSE MIB companies received at least one against or abstain recommendation from Frontis Governance, for a total of 71 resolutions.

**Graph 8:**

Overview of the number of negative recommendations by Frontis Governance at FTSE MIB AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative Frontis Governance recommendation and the total number of proposals in each category.



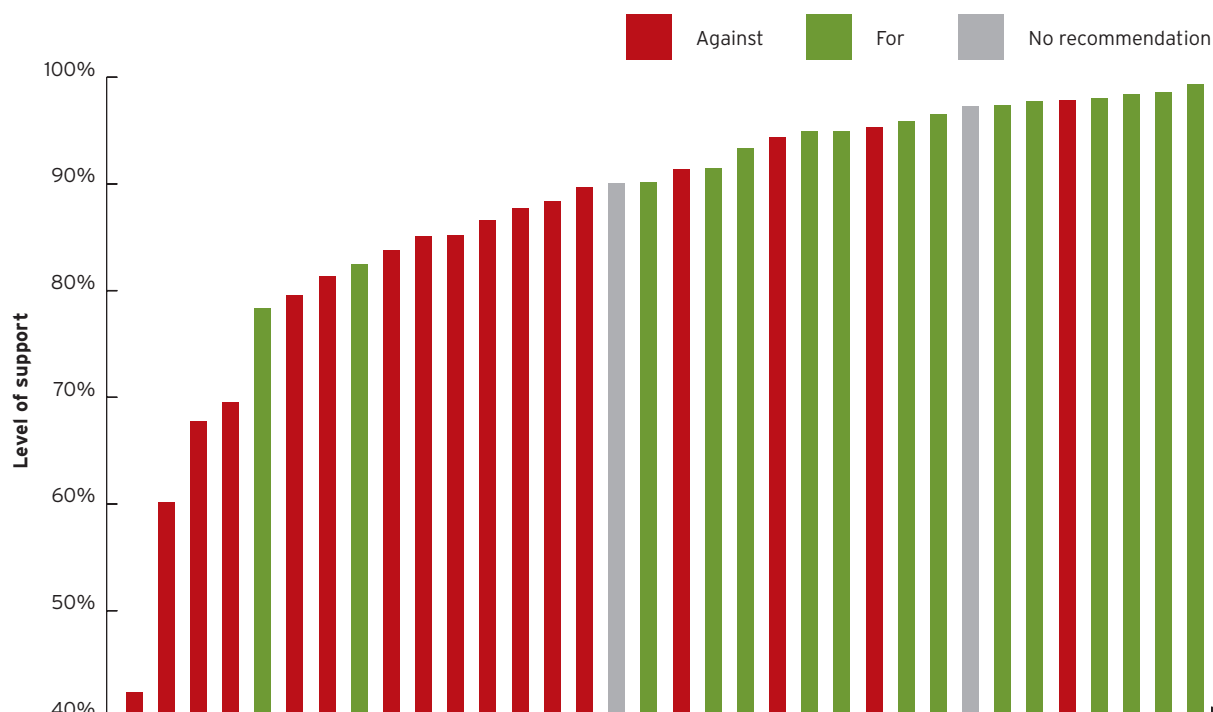
12) <http://www.frontisgovernance.com/en/>

13) <http://www.ecgs.org/partners>

## 2 | Proxy Advisors

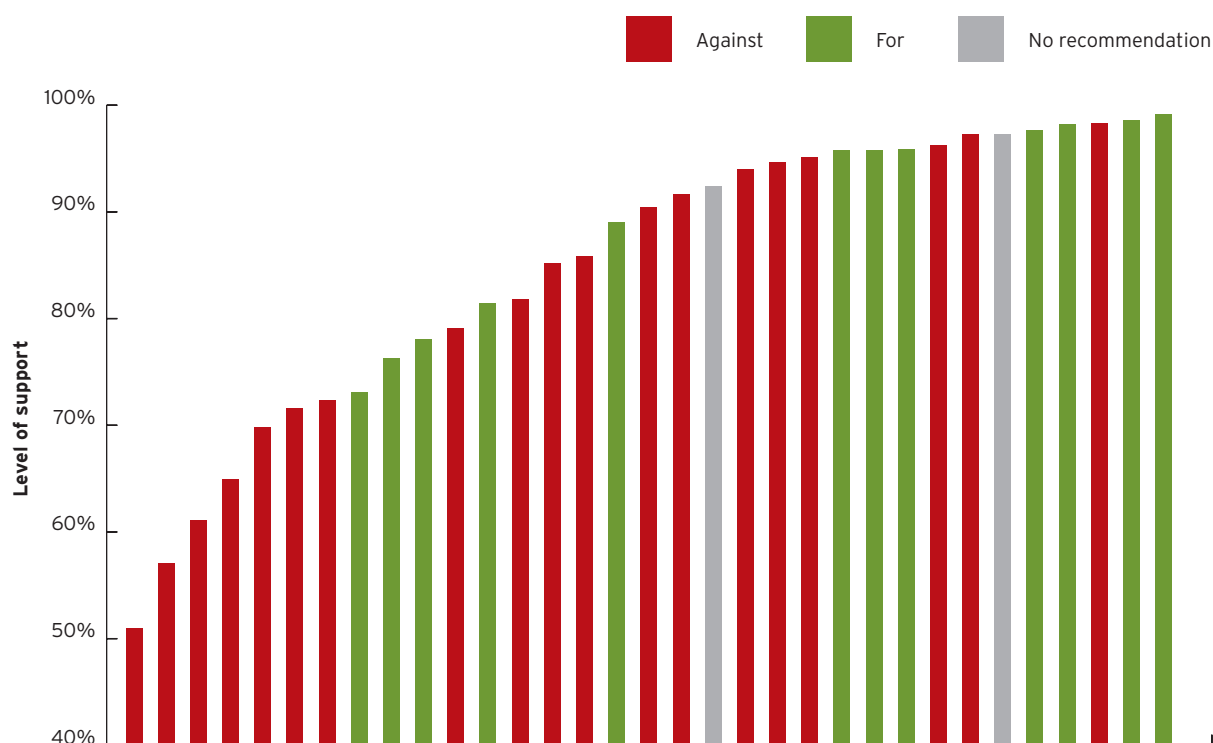
**Graph 9a:**

Level of support for the Remuneration Policy of companies in the FTSE MIB (ordered by level of support), and colour coded by Frontis Governance vote recommendations.



**Graph 9b:**

Level of support for the Remuneration Report of companies in the FTSE MIB (ordered by level of support), and colour coded by Frontis Governance vote recommendations.



# 3 | Corporate Governance developments

## 3.1 LEGISLATIVE CHANGES IN RESPONSE TO COVID-19

### 3.1.1 ANNUAL GENERAL MEETINGS

In response of the COVID-19 emergency, the Italian Government issued Decree Law no. 18 of 17 March 2020 ("Cura Italia Decree")<sup>14</sup>, which includes, among other measures, extraordinary provisions regulating I) the terms for Italian listed companies to approve the financial statements and, consequently, to convene the AGMs and II) the procedures for holding the shareholders' meeting.

As regards the first point, Article 106 of the Cura Italia Decree, established that, in derogation to the provisions of Article 2364, paragraph 2, and Article 2478-bis of the Italian Civil Code, the AGMs approving 2019 financial statements could be convened within 180 days from the end of the financial year, i.e. until 30 June 2020 instead of 30 April 2020.

Secondly, with the aim of reducing the gathering of people during companies meetings, the Italian Government required that "the shareholders' meeting be held, even exclusively, by means of telecommunications guaranteeing the identification of the participants, their participation and the exercise of their voting rights [...] without in any case requiring the chairman, secretary or notary to be in the same place, where applicable". In addition, in the notice of call, listed companies were required to communicate that attendance at the shareholders' meeting would take place exclusively via the appointed representative (rappresentante designato).

### 3.1.2 DISTRIBUTION OF DIVIDENDS AND VARIABLE REMUNERATION

On 27 March 2020, following the European Central Bank (ECB) Recommendation 2020/19<sup>15</sup>, the Bank of Italy, recommended<sup>16</sup> that all banks and banking groups under its supervision refrain from the following until at least 1 October 2020:

- making dividend distributions, including distribution of reserves;
- take on any irrevocable commitments regarding the payment of dividend for financial years 2019 and 2020;
- performing share buy-backs aimed at remunerating shareholders.

On 28 July 2020, due to the persistent economic uncertainty linked to the COVID-19 pandemic and in line with the ECB, the Bank of Italy decided to extend the suspension of dividend distributions and share buybacks by less significant banks and investment firms subject to the CRR/CRD IV rules until 1 January 2021<sup>17</sup>.

With the same provision, the Bank of Italy also recommends the adoption of a prudent approach on remuneration policies, considering:

- the reduction of the variable component of pay "to the extent necessary to preserve or replenish a solid financial base"; or
- the increase of the percentages and deferral of the variable component
- the increase of use of financial instrument instead of cash.

14) [https://www.confindustria.it/wcm/connect/e633da49-7ac9-427d-bad0-23f9a78cd546/Decree-Law\\_18\\_17032020.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=ROOTWORKSPACE-e633da49-7ac9-427d-bad0-23f9a78cd546-n4lhvQJ](https://www.confindustria.it/wcm/connect/e633da49-7ac9-427d-bad0-23f9a78cd546/Decree-Law_18_17032020.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE-e633da49-7ac9-427d-bad0-23f9a78cd546-n4lhvQJ)

15) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020HB0019&from=EN>

16) [https://www.bancaditalia.it/media/comunicati/documenti/2020-01/cs-dividend-policy-recommendation.pdf?language\\_id=1](https://www.bancaditalia.it/media/comunicati/documenti/2020-01/cs-dividend-policy-recommendation.pdf?language_id=1)

17) [https://www.bancaditalia.it/media/comunicati/documenti/2020-02/CS\\_Raccomandazione\\_politiche\\_dividendi\\_ENG.pdf?language\\_id=1](https://www.bancaditalia.it/media/comunicati/documenti/2020-02/CS_Raccomandazione_politiche_dividendi_ENG.pdf?language_id=1)

# 3 | Corporate Governance developments

## 3.1.3 ITALIAN GOLDEN POWER REGIME

With Article 15 of the Decree Law no. 23 of 8 April 2020<sup>18</sup> (“Liquidity Decree”), the Italian Government temporarily extended the scope of the golden power regime to new sectors, with the aim of preventing speculative transactions on Italian companies involved in national strategic activities during the health emergency. In particular, the new sectors included in the Liquidity Decree are: financial, credit and insurance; critical infrastructures and technologies, including energy, transport, water and health; food; access to sensitive information, including personal data, artificial intelligence, robotics, semiconductors, cybersecurity, as well as nanotechnologies and biotechnologies.

For the above-mentioned sectors, the Liquidity Decree extended the obligation to notify within 10 days to the Prime Minister’s Office all the relevant information on:

- intra-European acquisitions having an impact on the control of the strategic company or changing the availability or destination of strategic assets;
- extra-EU acquisition if I) the participation acquired exceed the threshold of 10% of the share capital or of the voting rights (taking into account the shares already directly or indirectly owned) or II) the total amount of the investment is equal to or exceed 1 million €. Any subsequent acquisition exceeding 15%, 20%, 25% and 50% must be notify as well.

## 3.1.4 STRENGTHENED TRANSPARENCY OBLIGATIONS

With Resolutions no. 21326 and no. 21327 of 9 April 2020, Italian stock market regulator (Consob) decided to temporarily strengthen the transparency obligation for listed companies by lowering the minimum threshold for the disclosure of significant shareholdings. In particular, for a period of three months, the minimum thresholds were reduced as follows:

- from 3% to 1% of the voting capital for companies with a large market capitalisation;
- from 5% to 3% of the voting capital for SMEs.

On 8 July 2020, Consob decided to leave the reduced thresholds unchanged until 12 October 2020.

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<sup>18</sup>) <https://www.gazzettaufficiale.it/eli/id/2020/04/08/20G00043/s>

# 3 | Corporate Governance developments

## 3.2 THE NEW CORPORATE GOVERNANCE CODE AND OTHER CG DEVELOPMENTS

### 3.2.1 THE NEW CORPORATE GOVERNANCE CODE

The latest Italian Corporate Governance Code<sup>19</sup> was released in January 2020 and the companies adopting the Code will be required to apply it starting from the first financial year that begins after 31 December 2020, while the disclosure shall be provided in the corporate governance report to be published during 2022.

This new Code, rather than an update of the previous one (published in 2018), appears to be a brand-new Code. Even though its framework is in many facets in continuity with previous one, this Code brings forward some original features and, above all, some innovative principle for Italian Corporate Governance such as proportionality, flexibility and simplification.

The new Code following those principles has issued some recommendations for “large companies” only, i.e. issuers whose market capitalisation over the past 3 years was greater than €1 billion or “Companies with concentrated ownership”, meaning companies in which a single shareholder (or a shareholders’ voting agreement) holds, directly or indirectly, the majority of the votes that can be exercised at the ordinary shareholders’ meeting. This new approach is aimed at encouraging some issuers, such as SMEs, to access capital markets by easing the compliance burden.

Among the new features of the Code, the most relevant is the inclusion of “sustainable success” as a core priority for Italian issuers. The Code defines sustainable success as the objective that guides the actions of the board of directors and that consists of creating long-term value for the benefit of the shareholders, taking into account the interests of other stakeholders relevant to the company.

In line with the aforementioned principles, the new Code has made amendments to the recommended best practices, among others the most relevant changes and additions are:

- Engagement Policy: The Issuer adopts and describes in the corporate governance report the Engagement Policy for managing dialogue with the generality of shareholders;
- Chair Independence: The Chair of the board of directors can be deemed independent if none of the circumstances that jeopardise the independence of a director occurs;
- Board Independence: The board of directors includes at least two independent directors, other than the Chair. In large companies with concentrated ownership, independent directors account for at least one third of the board. In other large companies, independent directors account for at least half of the board;
- Succession Plan: In large companies, the board of directors elaborates, with the support of the nomination committee, a plan for the succession of the chief executive officer and executive directors by identifying, at least, the procedures to be followed in the event of an early termination of office; and, ascertains the existence of appropriate procedures for the succession of the top management;
- Board Evaluation: The board evaluation is conducted at least every three years, before the renewal of the board of directors. In large companies other than those with concentrated ownership, the board evaluation is conducted on an annual basis and can be diversified according to the term of the board’s mandate. In such companies, the board considers whether to appoint an external facilitator for its evaluation at least once every three years;
- Performance Objectives: Performance criteria are consistent with the company’s strategic objectives and with the aim of promoting its sustainable success and, where relevant, includes non-financial parameters;
- Long-term Incentives: The incentives are aligned with the interests of the shareholders over a long-term horizon, providing that a predominant part of the plan has an overall vesting and holding period of at least five years.

<sup>19</sup>) <https://www.borsaitaliana.it/comitato-corporate-governance/codice/2020eng.en.pdf>



# 3 | Corporate Governance developments

## 3.2.2 NEW GENDER DIVERSITY LAW

The new Corporate Governance Code confirms previous recommendations on gender diversity representation on the Board of Directors (at least a third of the board of directors and the control body, where the latter is autonomous, is to be comprised of members of the less represented gender). However, it is worth noting that the Law No. 160 of 27 December 2019 recently amended Articles 147-ter and 148 of the Italian Consolidated Act increasing the representation on board of the less represented gender for the next six mandates to two fifths.

## 3.2.3 IMPLEMENTATION OF THE SRD II IN ITALY

In 2020, for the first time, Italian issuers faced a double vote on remuneration matters, one on the Remuneration Policy (first section of the Remuneration Report) and one on the Remuneration Paid in the previous FY (second section of the Remuneration Report). The vote on the second section is advisory but must be submitted every year while the vote on the first section is binding and must be submitted at least every 3 years. In other words, issuers can decide the duration of the policy up to a maximum of three years.

It is worth noting that, in the 2020 Proxy Season, only a handful of companies submitted a 3-year Remuneration Policy; the majority of companies opted for an annual one to be submitted again next year.



# Spain (IBEX 35)

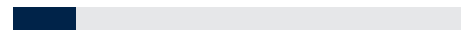
REJECTED BOARD PROPOSALS

0

AVERAGE QUORUM 71.50%



RESOLUTIONS WITH OVER 10% OPPOSE 13.87%



COMPANIES WITH OVER 10% OPPOSE 72.41%



## Highlights

- In the 2020 proxy season, the average quorum for IBEX 35 companies slightly decreased to 71.5% with respect to 2019, arresting the positive trend of the last 7 years. However, it is worth to mention that the average quorum of the 5 excluded companies in 2019 amounted to 74.5%.
- Across the IBEX 35 there are no rejected board resolutions during the 2020 AGM season.
- Proposals relating to director elections are the most contested agenda items within the IBEX 35, where 28 resolutions received more than 10% against votes during the 2020 AGM season, 2 more proposals than in 2019 AGM season (representing 22% of the total resolutions in this category compared to 17% in 2019).
- Contested resolutions relating to share issuance had the highest ratio again this year, but, decreased of 34% compared to 2019. Namely, 14 out of 36 resolutions regarding share issuance matters received more than 10% negative votes, representing 39% of the total resolutions in that category, while during the 2019 AGM season there were 10 resolutions, representing 59% of the total.
- 22 proposals related to remuneration received more than 10% against votes, representing 30% of the total resolutions, with an increase of 11% with respect to last year (27%).
- The category that received the highest proportion of negative recommendations from ISS was related to share issuance requests (39% of the total). It is noteworthy that this percentage has decreased by 17% compared to 2019 (47%), where there was the effect of the update of their Europe Voting Guidelines.
- Proposals relating to remuneration continue to be the resolutions most penalized by Glass Lewis, receiving 16 negative recommendations out of the total (22%), with an increase of 38% with respect to 2019.
- The category that received the highest proportion of negative recommendations from ECGS was related to remuneration as well, where 47% of the category received an against or abstain recommendation.

# 1 | Voting in Spain

## 1.1 QUORUM OVERVIEW

Georgeson has analysed the quorum levels of IBEX 35 companies for a number of years. Given the circumstances of the COVID-19, the proxy season in Spain has been extended until October 2020 and this year's review includes the companies that are part of the IBEX 35 which have delayed their Annual General Meeting (AGM) throughout July. Therefore, the period taken into consideration for the scope of the analysis is between 31 July 2019 to 31 July 2020 and it covers 86% of the IBEX 35<sup>1</sup>. 5 companies that as of July 31 have not published their AGM results or that will be holding their AGM starting from September have not been taken into consideration<sup>2</sup>.

In the 2020 proxy season, the average quorum for IBEX 35 companies slightly decreased to 71.5% with respect to 2019, arresting the positive trend of the last 7 years. However, it is worth to mention that the average quorum of the 5 excluded companies in 2019 amounted to 74.5%.

In this period, the three highest quorums among the IBEX 35 companies were recorded by:

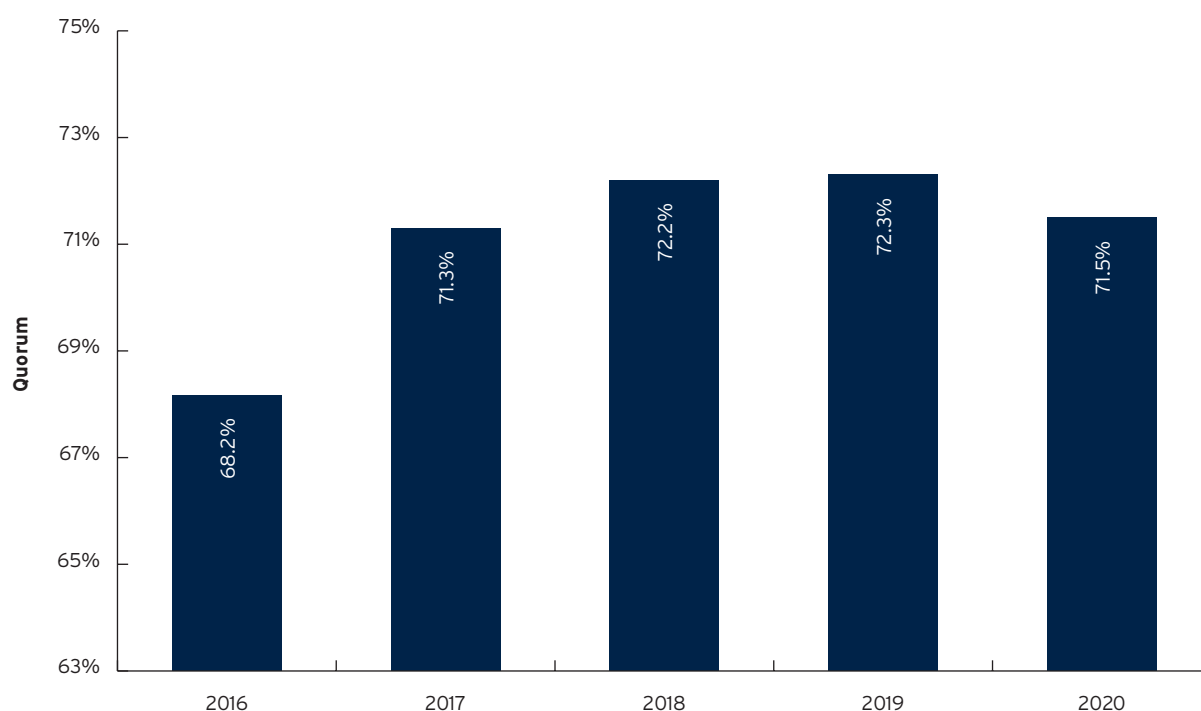
- Industria de Diseño Textil (87.62%)
- Viscofan (87.57%)
- Siemens Gamesa Renewable Energy (87.55%)

Additionally, it should be noted that there have been changes in the composition of the IBEX 35 with respect to 2019. Mediaset España and Técnicas Reunidas left the index in June 2020 and were replaced by Almirall and MasMovil Ibercom. The IBEX 35 companies that experienced the greatest increase in their quorum with respect to 2019 are: CIE Automotive (+13.6), Viscofan (+5.10) and Mapfre (+4.47).

The companies that have suffered the highest decrease of quorum are: MasMovil Ibercom (-10.59), Ence Energia y Celulosa (-12.15) and ACS Actividades de Construcción y Servicios (-12.91).

**Graph 1:**

Average AGM quorum levels in the IBEX 35 and IBEX Medium Cap between 2016 and 2020.



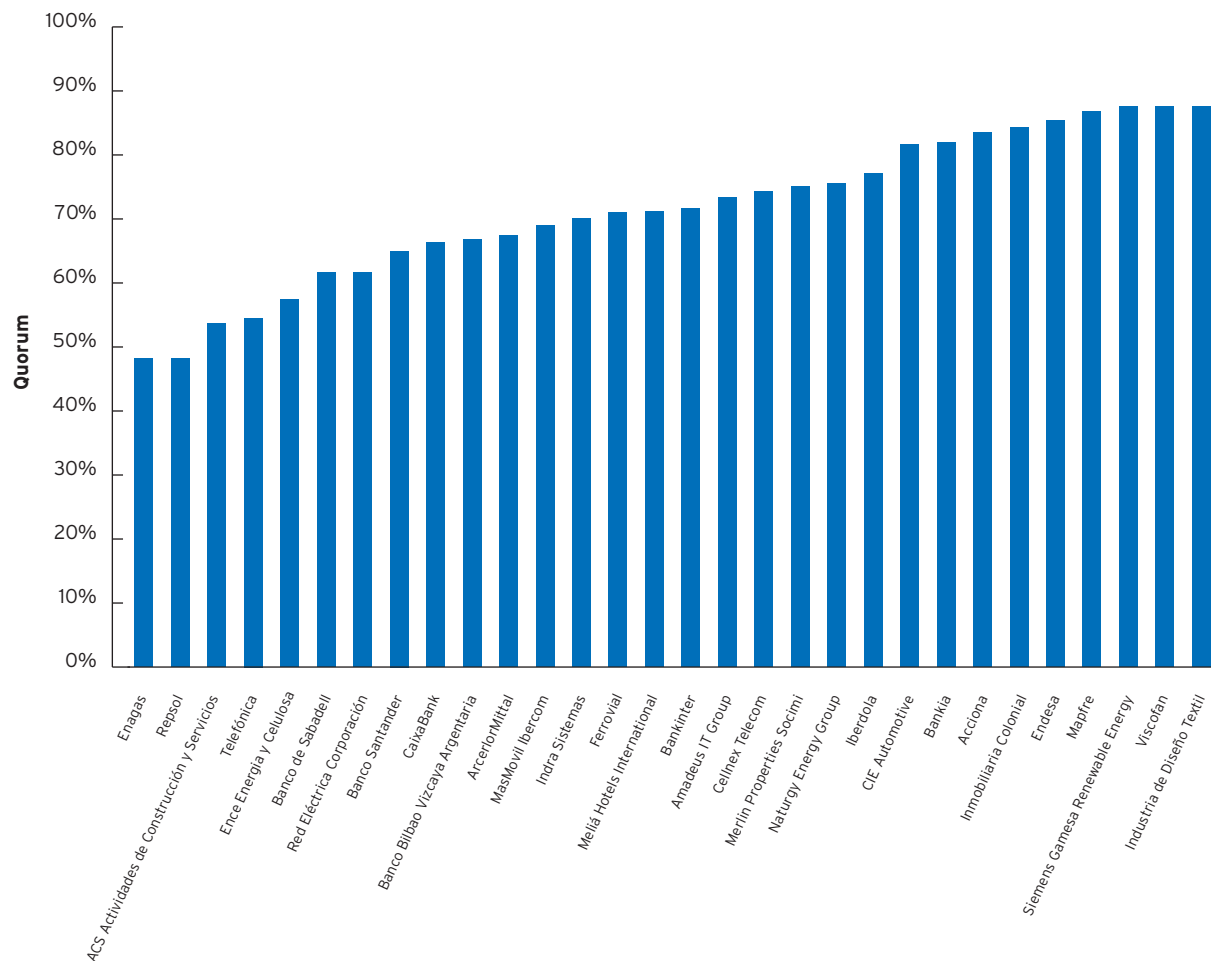
1) The AGM taken into consideration for Industria de Diseño Textil is the one celebrated in July 2019.

2) Acerinox, Aena, Almirall, IAG and Grifols.

# 1 | Voting in Spain

**Graph 2:**

Quorum levels at IBEX 35 companies during the 2020 reporting period.



# 1 | Voting in Spain

## 1.2 REJECTED RESOLUTIONS

Among the 29<sup>3</sup> IBEX 35 companies that are part of this review, no one had a rejected board proposal during the 2020 AGM season. However, in one AGM there was a shareholder proposal that received 76.29% of abstentions.

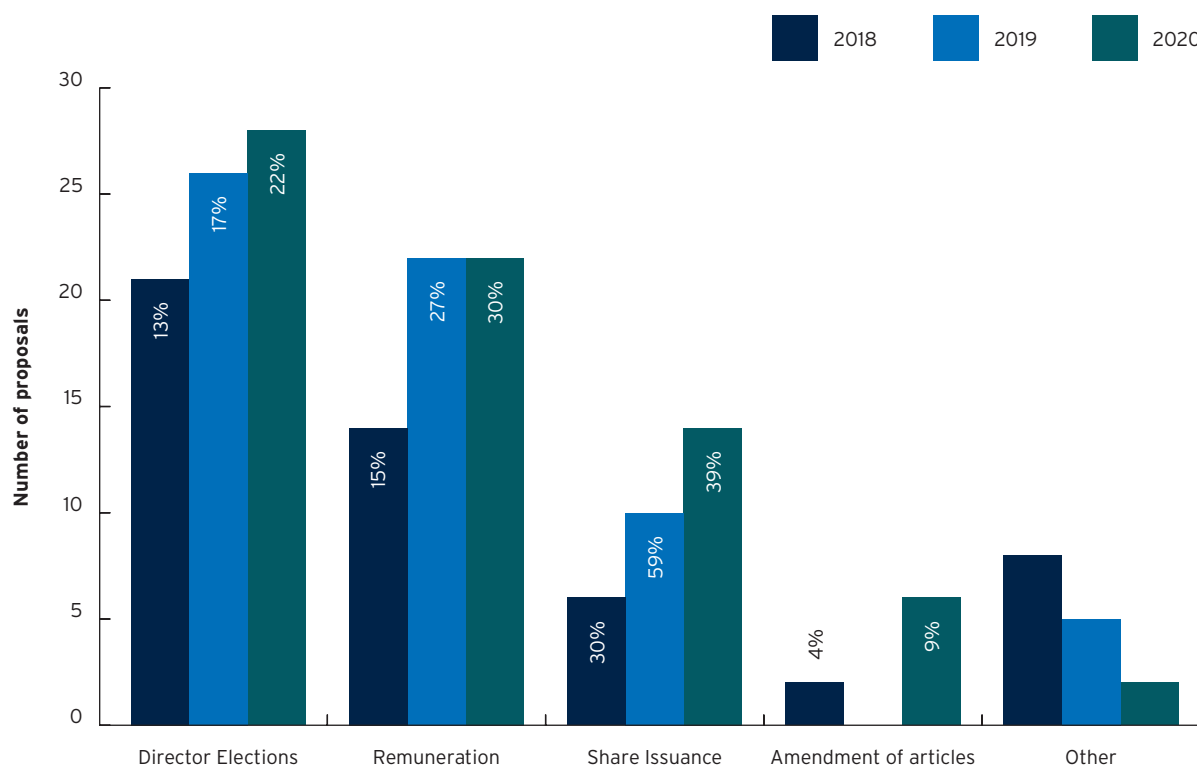
## 1.3 CONTESTED RESOLUTIONS

Among our IBEX 35 sample, 21 companies saw at least one management-proposed resolution receive more than 10% shareholder opposition, for a total of 72 resolutions (which represents 13.87% of total resolutions voted). During 2019, 63 resolutions were contested (12.28% of total resolutions voted). This comparison makes the 2020 ratio (contested resolutions / total resolutions) similar to 2019 ratio, with an increase of only one point.

In the IBEX 35, the highest number of contested resolutions this year is related to director elections, where 28 resolutions received more than 10% against votes (representing 22% of the total resolutions in this category). On the other hand, proposals related to share issuance had the highest ratio of contested resolutions again this year with respect to its total, 14 resolutions out of 36, representing 39% of the total resolutions in this category. In 2019 proposals related to capital increases represented a 59% (10 resolutions out of 17).

**Graph 3:**

Number of resolutions which received more than 10% against votes in the IBEX 35 (by resolution type). The percentages represent the ratio between the number of proposals that received more than 10% against and the total number of proposals in each category.



3) ArcelorMittal has been excluded in the rest of the document as their corporate headquarters are located outside of Spain and due to its differences with the rest of the analyzed companies.

# 1 | Voting in Spain

## 1.3.1 REMUNERATION

Spanish law<sup>4</sup> requires companies to submit their remuneration report for non-binding shareholder approval on an annual basis, in addition to a binding remuneration policy proposal at least every three years.

This year, at IBEX 35 AGMs, 22 resolutions regarding remuneration matters received more than 10% negative votes, representing 30% of the total resolutions in that category. The number of contested resolutions in this category remained stable this year compared to 2019, when 22 resolutions as well received more than 10% negative votes, while the ratio of the total resolutions in that category is increased in 11% (in 2019 it was 27%).

The companies with the lowest levels of support were the following:

- ▶ Red Eléctrica Corporación (63.04% in favour of the remuneration report and 66.39% in favour of the remuneration of directors)<sup>5</sup>
- ▶ Merlin Properties (63.45% in favour of the remuneration report)
- ▶ Ferrovial (64.65% in favour of the remuneration report)
- ▶ Inmobiliaria Colonial (66.57% in favour of the remuneration report)

## 1.3.2 DIRECTOR ELECTIONS

During the reporting period, board elections included 28 resolutions with more than 10% against votes, representing 22% of the total. This number represents an increase if compared with previous years where 26 resolutions with more than 10% against votes in 2019 and 21 in 2018, with a ratio of 17% and 13% respectively. In line with previous years, the lack of independence was the main motivation for negative shareholder votes.

The companies with the lowest levels of support were the following:

- ▶ ACS Actividades de Construcción y Servicios (2 resolutions with a support level of 52.6% and 52.7%)
- ▶ Inmobiliaria Colonial (3 resolutions with a support level between 64.6% and 72.3%)
- ▶ Indra (one resolution with a support level of 73.1%)<sup>6</sup>

## 1.3.3 SHARE ISSUANCE

According to the Spanish Companies Law<sup>7</sup>, Spanish companies may seek shareholder approval to issue new shares for a maximum period of five years. Shareholders can delegate to the board the authority to increase the company's share capital without prior consultation of the general meeting of shareholders. The total increase cannot exceed 50% of the company's share capital at the moment the resolution was passed.

This year at IBEX 35 AGMs, 14 proposals relating to share issuance received more than 10% negative votes (4 resolutions more than last year). However, the ratio decreased from 59% in 2019, to 39% in 2020. This could be partly due to the fact that Spanish companies adapted to international best practices, setting their limits at 50% for capital increases with pre-emptive rights and at 10% for capital increases without pre-emptive rights.

The resolutions with the lowest levels of support in the IBEX 35 index were<sup>8</sup>:

- ▶ ACS Actividades de Construcción y Servicios (with a support level of 76%)
- ▶ Telefónica (two resolutions with a support level between 78.2% and 79.1%)
- ▶ Siemens Gamesa Renewable Energy (with a level of support of 83.2%)

4) Article 529 novodecies - Point 1 of Spanish Companies Law: Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital (last update: 4 December 2014)

5) This low level of support is mostly explained by the vote of SEPI (Sociedad Estatal De Participaciones Industriales), a significant state shareholder of Red Eléctrica (20% ISC) that according to its internal policy always abstain in remuneration-related items.

6) This low level of support should be explained by the expected against vote of SEPI, a significant state shareholder of Indra (18,7% ISC).

7) Article 297 - Point 1a and 1b of Spanish Companies Law.

8) ACS, Siemens Gamesa and Telefónica proposed a capital increase without pre-emptive rights up to 20% of the share capital.

## 2 | Proxy Advisors

Many institutional investors rely on proxy advisory firms, such as ISS, Glass Lewis, and Corporance (ECGS), for meeting agenda analysis and vote recommendations to inform their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a given resolution.

### 2.1 INSTITUTIONAL SHAREHOLDER SERVICES (ISS)

Institutional Shareholder Services<sup>9</sup> (ISS) is a leading provider of corporate governance and responsible investment solutions for asset owners, asset managers, hedge funds and asset service providers.

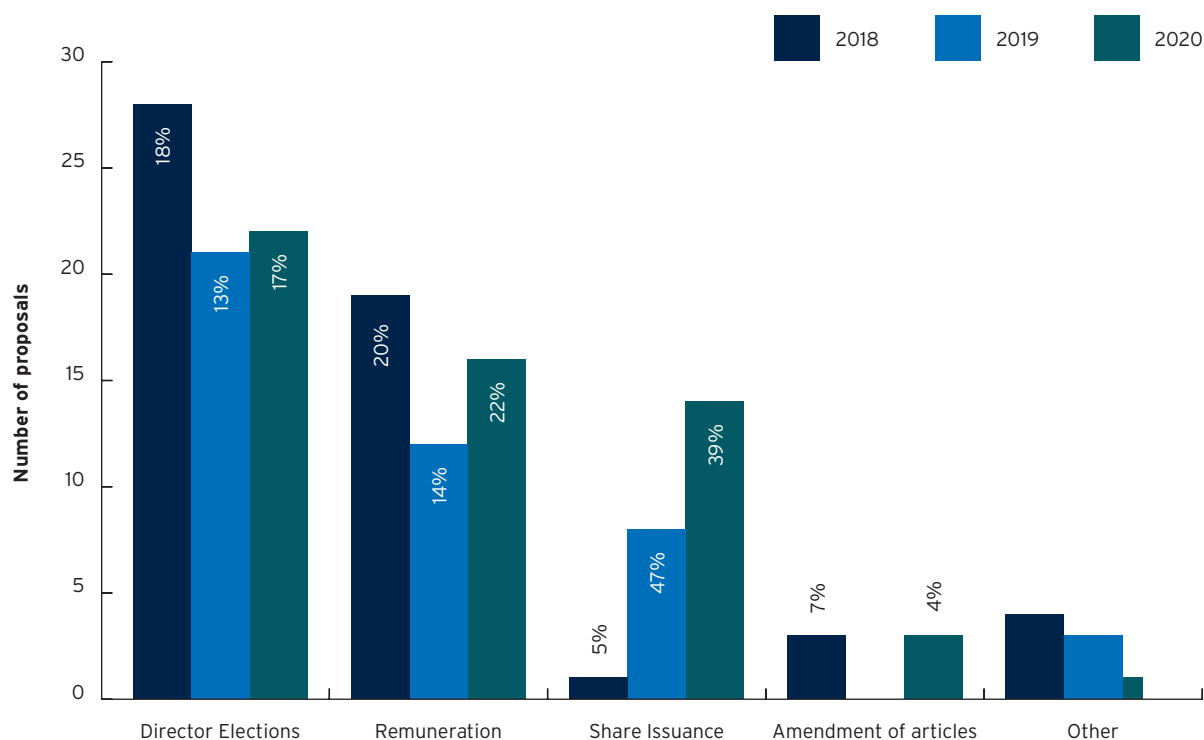
During the reporting period, the total number of resolutions where ISS recommended its clients to vote against or abstain amounts to 56, compared to 44 in 2019, in the IBEX 35.

The highest number of resolutions that received unfavourable recommendations were related to director elections (22), where 17% of those proposals received an against or abstain recommendation from ISS. The category that received the highest proportion of negative recommendations from ISS is related to authorities to issue shares, where the ratio of resolutions with an unfavourable recommendation reached 39% (14 out of 36 total resolutions).

During the 2020 AGM, 8 companies in the IBEX 35 received negative recommendations related to the Remuneration Report.

#### Graph 4:

Overview of negative recommendations by ISS at IBEX 35 AGMs over the past three years. The percentages atop the bars represent the ratio between the number of proposals that received a negative ISS recommendation and the total number of proposals in each category.



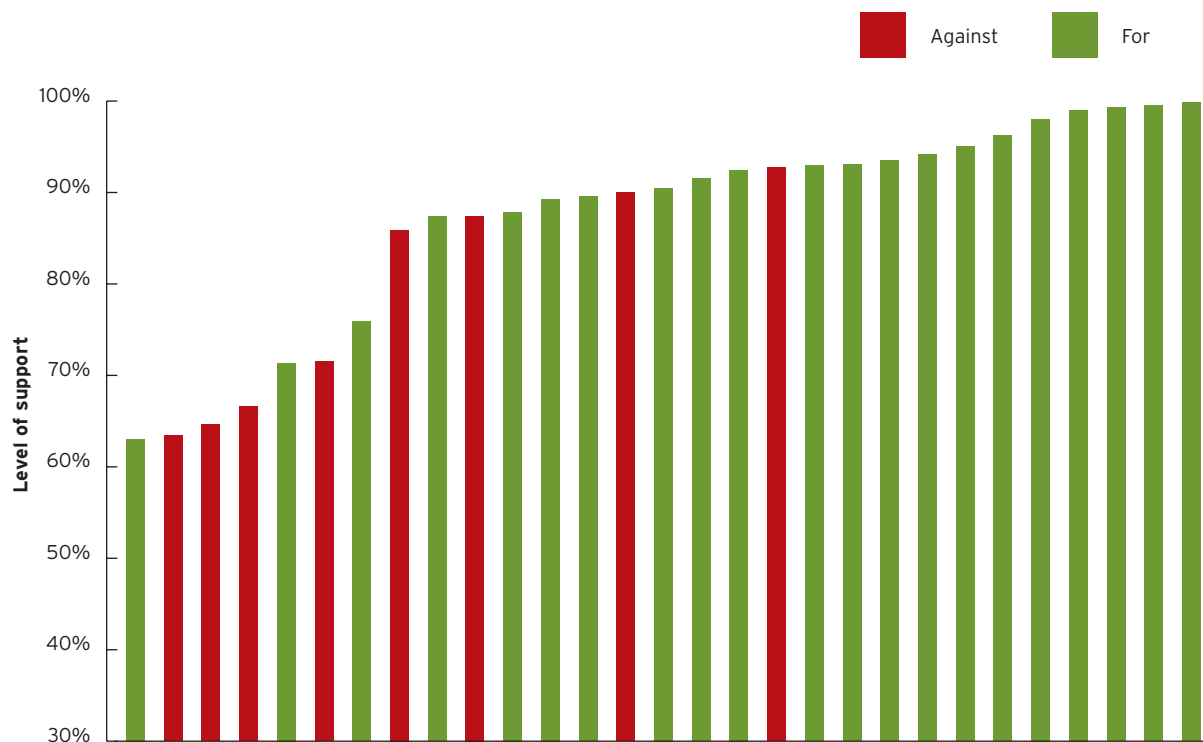
9) <http://www.issgovernance.com/about/about-iss/>



## 2 | Proxy Advisors

**Graph 5:**

Vote in favour of the Remuneration report among IBEX 35 companies (ordered by level of support), and colour coded by ISS vote recommendation. Excludes ArcelorMittal.



## 2 | Proxy Advisors

### 2.2 GLASS LEWIS

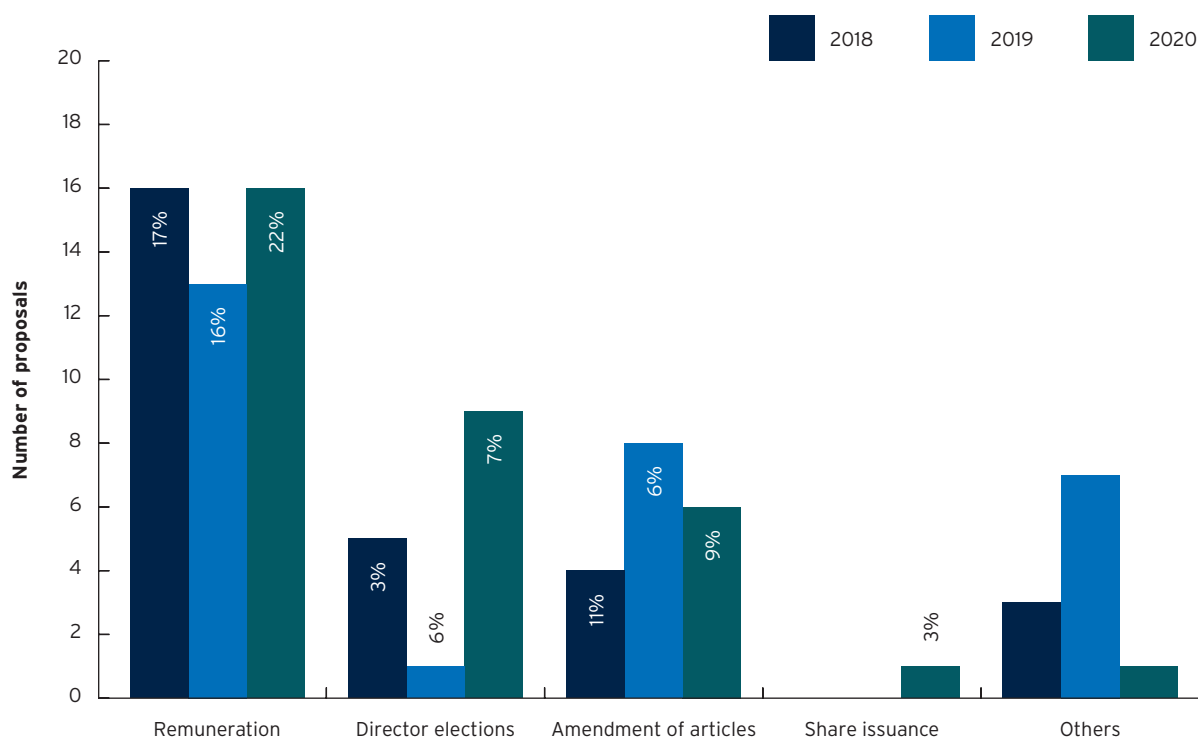
Glass Lewis<sup>10</sup> is a leading provider of governance services that supports engagement among institutional investors and corporations through its research, proxy vote management and technology platforms.

For the reporting period, the highest number of resolutions as well as highest proportion of resolutions with negative recommendations are related to remuneration, receiving 16 negative recommendations out of the total 74 (22%).

Regarding the remuneration report, 7 companies received an unfavourable recommendation from Glass Lewis.

**Graph 6:**

Overview of the number of negative recommendations by Glass Lewis at IBEX 35 AGMs over the past three years. The percentages atop the bars represent the ratio between the number of proposals that received a negative Glass Lewis recommendation and the total number of proposals in each category.

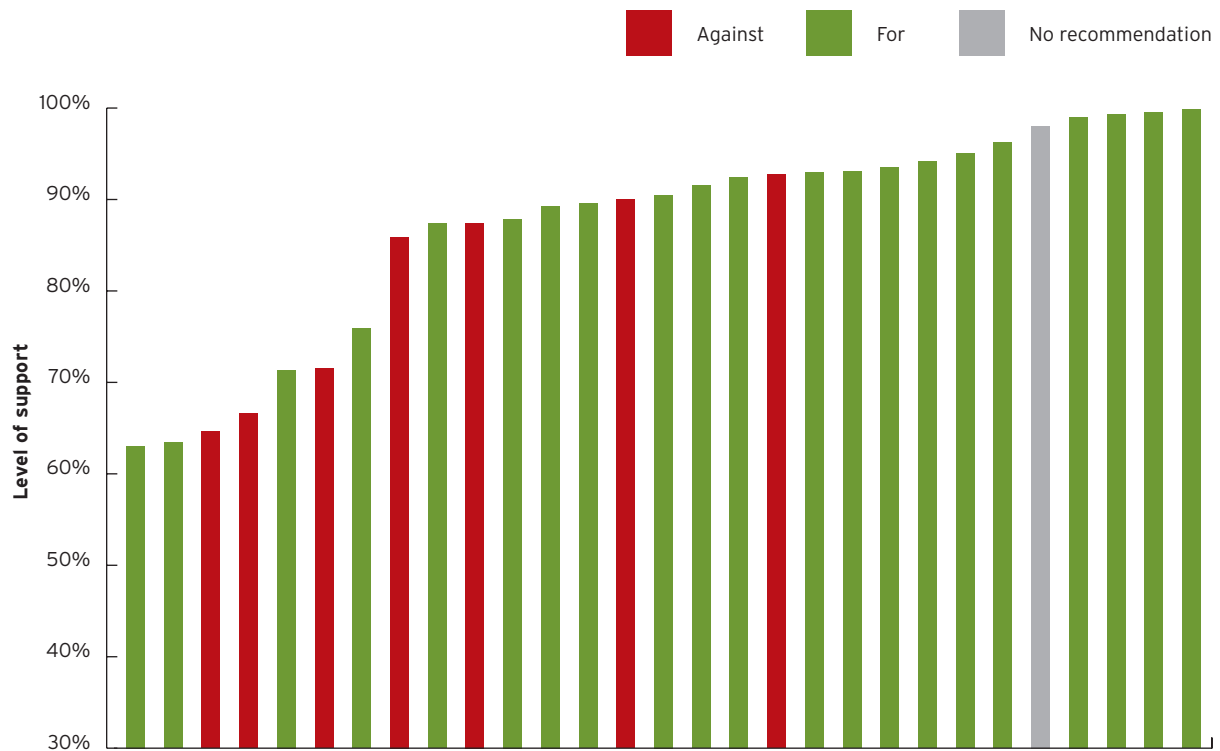


<sup>10</sup>) <http://www.glasslewis.com/about-glass-lewis/>

## 2 | Proxy Advisors

**Graph 7:**

Vote in favour of the Remuneration Report among IBEX 35 companies (ordered by level of support), and colour coded by Glass Lewis vote recommendation. Excludes ArcelorMittal.



## 2 | Proxy Advisors

### 2.3 CORPORANCE (ECGS)

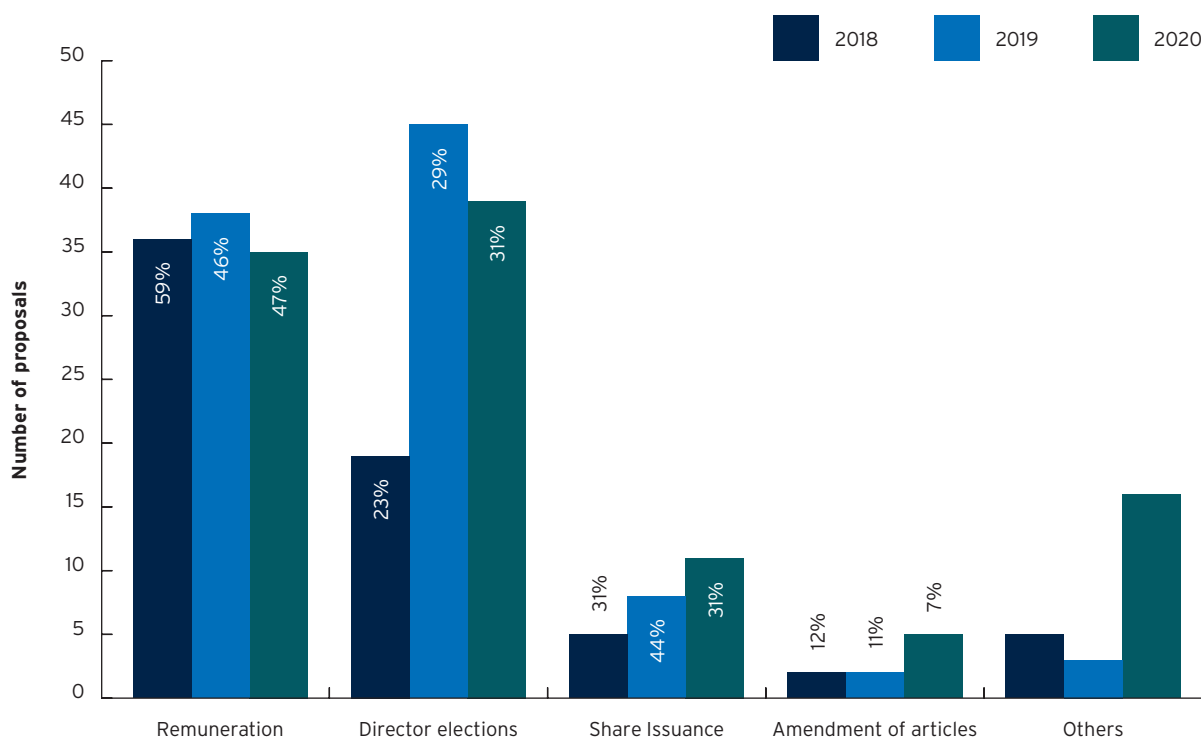
The Expert Corporate Governance Service<sup>11</sup> (ECGS) is a partnership of independent local proxy advisors that was founded in 2001. ECGS analyses are carried out by each partner for their reference markets<sup>12</sup>.

For the reporting period, the subject with the highest proportion of negative recommendations, were related to remuneration proposals (35), where 47% of that category received an against or abstain recommendation from ECGS.

Regarding the remuneration report, only 10 companies received a favourable recommendation from ECGS.

**Graph 8:**

Overview of the number of negative recommendations by CORPORANCE / ECGS at IBEX 35 AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative ECGS recommendation and the total number of proposals in each category.



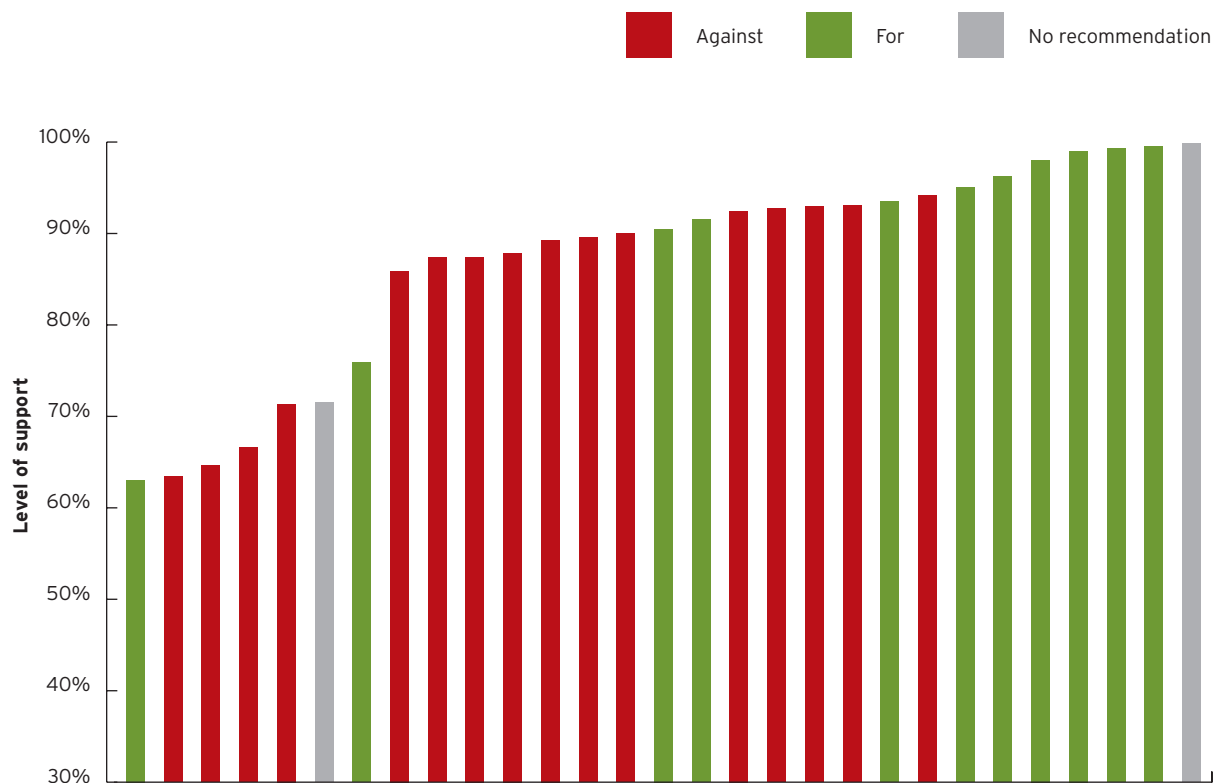
11) <http://www.ecgs.org/about-ecgs>

12) In early 2017, ECGS entered into a partnership with Spain's CORPORANCE Asesores de Voto, the first local proxy advisor and provider of advisory services in Spain and Portugal. Before this agreement, these markets were covered by Frontis Governance, the Italian partner of ECGS.

## 2 | Proxy Advisors

**Graph 9:**

Vote in favour of the Remuneration Report among IBEX 35 companies (ordered by level of support), and colour coded by CORPORANCE / ECGS vote recommendation. Excludes ArcelorMittal.



# 3 | Corporate Governance developments

## 3.1 LEGISLATIVE CHANGES IN RESPONSE TO COVID-19

On 18 March 2020, the Government approved Royal Decree-Law 8/2020<sup>13</sup>, on urgent extraordinary measures to face the economic and social impact of COVID-19. This Royal Decree-Law adopted large-scale economic and social measures, with the aim of helping to avoid a prolonged economic impact beyond the health crisis, giving priority to protecting the families, self-employed and businesses most directly affected.

Regarding extraordinary measures with impact on Corporate Governance practices of listed companies, this Royal Decree establishes some relevant changes in relation to the annual general meetings, the most relevant are:

- I) the deadline extension for holding the Annual General Meeting within the first 10 months of the financial year (in normal circumstances such deadline is established within the first 6 months of the financial year);
- II) the authorization of attendance to the meeting by electronic means, and
- III) other changes related to allow more relaxed requirements for the celebration of the meeting (ie. venue of meeting).

## 3.2 ANNUAL ACCOUNTS AND DISTRIBUTION OF PROFITS DURING COVID-19

The Spanish Corporate Law (art. 253) requires that in listed companies, directors prepare within the first three months of the year the annual accounts, the management report and the proposal for the distribution of profit/allocation of loss. This same Law establishes that, as part of the minimum content of the annual report, which is one of the components of the individual annual accounts, it should be included the proposal for the distribution of profit/allocation of loss, which should be approved by the general meeting. Although, the approval of all these matters simultaneously is not required, this is the usual practice.

However, due to the fact that the situation derived from the COVID-19 crisis is an absolutely extraordinary circumstance, the College of Registrars of Spain and the CNMV considered it appropriate that entities could choose alternatives that would allow them to adapt their Financial information and annual accounts to the current economic context. In particular, with this joint statement, companies have been given the option to modify their report regarding “the proposal for the distribution of profit/allocation of loss”.

In this sense, the Board of Directors could choose between:

- I) the restatement of the annual accounts and modify the proposal for the distribution of profit/allocation of loss, which would imply calling off the General Shareholders’ Meeting if it had been previously called, or;
- II) to adapt only the proposal for the distribution of profit/allocation of loss without the restatement of the annual accounts and submitting it to the approval of the General Shareholders’ Meeting accompanied by a letter from the accounts auditor, stating that the amendment would not have modified its audit opinion.

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13) Real Decreto-ley 8/2020, de 17 de marzo, de medidas urgentes extraordinarias para hacer frente al impacto económico y social del COVID-19 (Spanish): <https://www.boe.es/buscar/act.php?id=BOE-A-2020-3824>

# 3 | Corporate Governance developments

## 3.3 UPDATE OF THE ACTIVITIES PLAN OF THE SPANISH MARKET SUPERVISOR, CNMV, FOR 2020<sup>14</sup>

As a result of the situation created by the COVID-19 pandemic, the CNMV has been forced to delay part of its Business Plan for 2020 disclosed at the beginning of the year (February 2020).

The revised Plan maintains 33 of the 44 initial objectives, incorporating two additional actions regarding amendments to internal policies or Technical Guide, to include the “working from home” model, and on-line examinations on a permanent basis, as a direct consequence of COVID-19.

Among the objectives that have been postponed, with regards to corporate governance issues, is the analysis and preparation of a possible Code of good practices to encourage the long-term participation of shareholders, known in other countries as the Stewardship Code.

## 3.4 PARTIAL REFORM OF THE SPANISH GOOD GOVERNANCE CODE FOR LISTED COMPANIES<sup>15</sup>

After the latest update of the Spanish Good Governance Code, in force since February 2015, the Spanish National Securities Market Commission, Comisión Nacional del Mercado de Valores (CNMV) considered appropriate to modify some of its recommendations, in order to adapt them to legal changes that have taken place since the Code's latest update or provide them with greater clarity. The new text was submitted for public consultation at the beginning of the year and was finally approved on June 26, 2020, allowing Spain to continue aligning itself with the highest international standards in Corporate Governance.

With this partial reform, at least 20 out of the 64 recommendations included in the Code have been adapted, with most relevant developments introduced in the following areas: promotion of gender diversity at Boards of directors, greater relevance to non-financial information and sustainability, higher attention to reputational risks (in general, to non-financial risks) and clarification of aspects related to the remuneration of executive directors.

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14) Activities Plan updated (English): <https://www.cnmv.es/portal/verDoc.axd?t={3f6fbb80-6218-4733-8695-fbeb32683700}>

15) Code: <https://www.cnmv.es/portal/verDoc.axd?t={4ce49c19-170e-4e3d-beba-e42bfad1a8d7}>

Press release: <https://www.cnmv.es/Portal/verDoc.axd?t={4ce49c19-170e-4e3d-beba-e42bfad1a8d7}>

# 3 | Corporate Governance developments

## 3.5 PUBLIC CONSULTATION ON THE DRAFT CIRCULAR AMENDING CURRENT TEMPLATES USED FOR THE ANNUAL CORPORATE GOVERNANCE REPORT AND THE ANNUAL REPORT ON THE REMUNERATION OF DIRECTORS<sup>16</sup>

The approval of the partial reform of the Spanish Good Governance Code for listed companies by the CNMV, on 26 June 2020, makes also necessary the modification of the current templates of the Annual Corporate Government Report (ACGR) and the Annual Report on the Remuneration of Directors (ARRBM), to adapt it to the new wording and recommendations of the Code. Both corporate governance reports, must be submitted by listed companies on an annual basis.

In this sense, CNMV launched on 28 July 2020, the public consultation for the amendment of those templates. Main changes for both reports include:

- Annual Corporate Government Report: mainly affects section G of the document, related to the “Level of compliance with the corporate governance recommendations”.
- Annual Report on the Remuneration of Directors: two new sections are included, in accordance with recommendation 59<sup>17</sup> of the new Code related to variable remuneration. It should be disclosed, in more depth, the criteria applied to verify the effective compliance of the conditions to which the variable remuneration is linked.

Finally, the term “relevant fact” used in both reports, has been removed in accordance with the changes introduced in the Securities Market Law, in relation to market abuse, by Royal Decree-Law 19/2018<sup>18</sup>, of November 23, regarding payment services and other urgent measures in financial matters. Thus, the expression “relevant fact” has been modified to “other relevant information”.

Both reports have been submitted to public consultation. The deadline for interested parties to send their comments is 18 September 2020. According to the Draft Circular, listed companies should report within these new templates for the year closed from December 31, 2020.

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16) Draft Circular: <https://www.cnmv.es/portal/verDoc.axd?t={4748604b-a54d-40c6-a7ca-a393c42ad829}>  
Press release: <https://www.cnmv.es/Portal/verDoc.axd?t={4748604b-a54d-40c6-a7ca-a393c42ad829}>

17) Recommendation 59 (Spanish): “Que el pago de los componentes variables de la remuneración quede sujeto a una comprobación suficiente de que se han cumplido de modo efectivo las condiciones de rendimiento o de otro tipo previamente establecidas. Las entidades incluirán en el informe anual de remuneraciones de los consejeros los criterios en cuanto al tiempo requerido y métodos para tal comprobación en función de la naturaleza y características de cada componente variable...”

18) [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2018-16036](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-16036)



# 3 | Corporate Governance developments

## 3.6 IMPLEMENTATION OF THE REVISED EUROPEAN SHAREHOLDER RIGHTS DIRECTIVE (SRD II)

On 24 May 2019, a Draft Law was published in Spain, regarding the promotion of long-term shareholders implication in listed companies which was subject to public consultation until 14 June 2019. Its aim was the transposition of the Directive (UE) 2017/828, regarding long term shareholders implication into the Spanish legal system.

On 14 July 2020, the Council of Ministers has approved, for submission to the Spanish Parliament, the Draft Law which transposes the Directive (UE) 2017/828.

At the moment, only the approval of such Draft Law has been announced<sup>19</sup> pending the final text. Along with the approval announcement some of the highlights are the following:

- Loyalty shares have finally been introduced with the aim of reinforcing the long-term shareholders implication. This measure will be in favor of those investors who remain at least two years in the share capital of Spanish listed companies. It specifically establishes that shareholders should get an additional vote for each share that is held for at least two years. In this sense, long-term shareholders in listed companies will have more political rights than rest of shareholders, if a qualified majority adopts such decision in a general meeting, thus breaking the principle in Spain of 'one share, one vote'.
- Also, it is relevant to mention that for the first time, the figure of "proxy advisors" will be regulated in Spain, establishing the obligation to publish information about their codes of conduct. However, no further information regarding the application of such measure, has been yet released.

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19) (Spanish): <https://www.lamoncloa.gob.es/consejodeministros/Paginas/enlaces/140720-enlacesociedades.aspx>



# Denmark (OMX Large Cap)

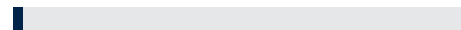
REJECTED BOARD PROPOSALS

0

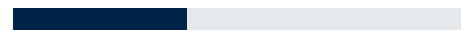
AVERAGE QUORUM 67.91%



RESOLUTIONS WITH OVER 10% OPPOSE 2.20%



COMPANIES WITH OVER 10% OPPOSE 38.46%



## Highlights

- The average quorum at the AGMs of the OMX C25 and Large Cap companies has increased slightly from 67.87% in 2019 to 67.91% in 2020.
- In our 2020 OMX C25 and Large Cap sample, no board resolutions failed to gather sufficient support.
- 59% of the OMX C25 and Large Cap companies surveyed received at least one against recommendation from ISS or Glass Lewis.
- Of the OMX C25 and Large Cap companies surveyed, 12 (31.58%) had at least one contested management resolution (+10% opposition). They received more than 10% shareholder opposition for a total of 15 management resolutions.
- Remuneration continue to be the most contested resolution type. 73.33% of the total number of against votes were related to remuneration.
- ISS recommended negatively on 25 management resolutions in 22 companies.
- Glass Lewis recommended negatively on 12 management resolutions in 8 companies.
- Proxy advisors continue to have a big impact on the outcome of proposals, and there is a clear correlation between negative proxy advisor recommendations and lower vote results.
- A total of 28 shareholder proposals were filed at the AGMs of Copenhagen Airports, Danske Bank, Novo Nordisk, Rockwool and Topdanmark. All proposals were rejected due to insufficient support.

# 1 | Voting in Denmark

## 1.1 QUORUM OVERVIEW

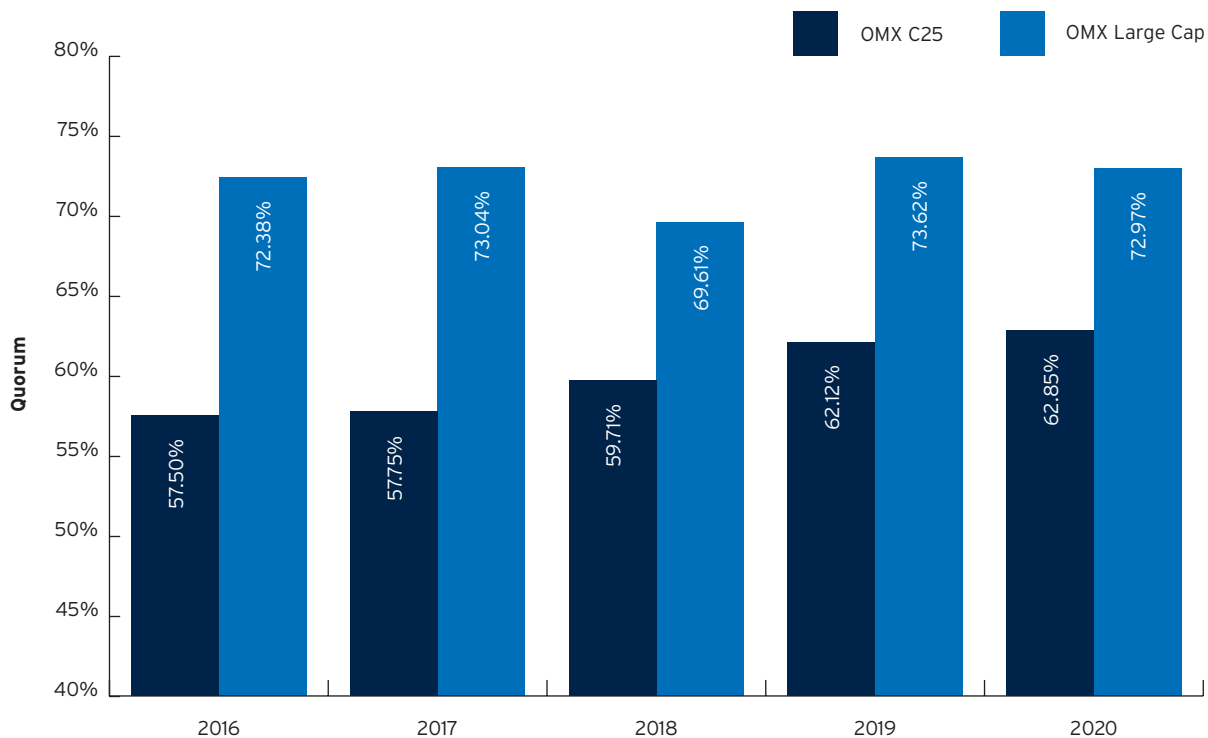
We have reviewed the quorum levels of the OMX C25 and Large Cap<sup>1</sup> companies over the past five years. The survey includes the companies that were part of the index as of 1 July 2020, and which held their AGMs between 1 July 2019 and 30 June 2020.

The average quorum at the AGMs of the OMX C25 companies has increased slightly from 62.12% in 2019 to 62.85% in 2020. The average quorum level for the Large Cap index showed a slight decrease from 73.62% in 2019 to 72.97% in 2020.

The average AGM quorum level has increased steadily since 2016, which is a clear indication that shareholders have become increasingly aware of their potential for influence. This trend has been further supported by the implementation of the revised Shareholder Rights Directive (SRD II), which is intended to increase transparency and enhance long-term shareholder engagement.

**Graph 1:**

Average AGM quorum levels in the OMX C25 and Large Cap index between 2016 and 2020.



1) [http://www.nasdaqomxnordic.com/index/index\\_info?Instrument=SE0001776667](http://www.nasdaqomxnordic.com/index/index_info?Instrument=SE0001776667)  
not including GS4 and Nordea Bank as they are headquartered abroad.

# 1 | Voting in Denmark

## 1.2 REJECTED RESOLUTIONS

### 1.2.1 BOARD RESOLUTIONS

Among the surveyed OMX Large Cap companies that held their AGMs between 1 July 2019 and 30 June 2020, no board resolutions failed to get sufficient support.

### 1.2.2 SHAREHOLDER PROPOSALS

In the 2020 AGM season, a total of 28 shareholder proposals were filed at the AGMs of Copenhagen Airports, Danske Bank, Novo Nordisk, Rockwool and Topdanmark.

All 28 proposals were rejected due to insufficient support.

#### **Copenhagen Airports**

At the AGM of Copenhagen Airports 6 shareholder proposals were on the agenda:

- To make data from CPH's bird radar publicly available.
- To call for a stop to EU agricultural subsidies and nature conservation measures at Vestamager, Saltholm and Aflandshage.
- To let foreign experts evaluate whether CPH measures up to its international obligations in terms of air safety.
- To terminate the collaboration with the interest group DOF Birdlife (DOF), including the use of data from DOF's database.
- To advise flights in real time by use of round-the-clock supervision out to the action radius of the bird radar.
- To apply to the authorities for permission to regulate the population of geese in the areas adjacent to the airport areas in a radius of 13 kilometres from the airport.

All proposals were rejected with 100% negative votes.

Voting recommendations from ISS and Glass Lewis not available.

# 1 | Voting in Denmark

## **Danske Bank**

At the AGM of Danske Bank 19 shareholder proposals were on the agenda:

- › Recommendation in relation to sustainability and responsible investments.
- › Amendment of articles of association regarding option for completely electronic general meetings.
- › Divestment of the Board of Directors' and Executive Leadership Team's shareholdings in the oil, gas and coal industry.
- › Cease investing in oil, gas and coal.
- › Investing and lending policy in accordance with "EIB ENERGY LENDING POLICY"
- › Mistrust in Karsten Dybvad and Chris Vogelzang in relation to the threat to the climate.
- › Legal proceedings against auditors.
- › Legal proceedings against former management.
- › Forum for shareholder proceedings against auditors.
- › Determination of administration margins and interest rates.
- › Information regarding assessments and calculations.
- › Ceasing advisory services to commercial customers within real estate mortgages.
- › Confirmation of receipt of enquiries.
- › Respondent to enquiries.
- › Deadline for reply to enquiries.
- › Minutes of the annual general meeting.
- › Use of the researcher tax scheme.
- › Reduction of tax rate under the researcher tax scheme.
- › No increase in the remuneration of the Board of Directors.

All proposals failed to gain a significant level of support from shareholders and were rejected.

Both ISS and Glass Lewis issued 'against' recommendations on all resolutions.

## **Novo Nordisk**

At the AGM of Novo Nordisk one shareholder proposal was on the agenda:

- › Information on the ratio between executive and employee remuneration.

The proposal was rejected with 94.02% negative votes.

Both ISS and Glass Lewis issued an 'against' recommendation on this resolution.

## **Rockwool**

At the AGM of Rockwool one shareholder proposal was on the agenda:

- › Shareholder Proposal Regarding Report on Environmental and Community Impacts of Manufacturing Facilities.

The proposal was rejected with 99.65% negative votes.

Both ISS and Glass Lewis issued an 'against' recommendation on this resolution.

## **Topdanmark**

At the AGM of Topdanmark one shareholder proposal was on the agenda:

- › Instruct Board to Annually Publish Statement for the Exercise of Active Ownership in Coal, Oil and Gas Companies; Dispose Shares in Coal, Oil and Gas Companies where Active Ownership does Not Lead to Fulfillment of the Paris Agreement.

The proposal was rejected with 97.48% negative votes.

Both ISS and Glass Lewis issued an 'against' recommendation on this resolution.

# 1 | Voting in Denmark

## 1.3 CONTESTED RESOLUTIONS

Among our sample of OMX C25 and Large Cap companies that held their AGM during the reporting period, not all companies provide a precise breakdown of vote results by resolution as this is not a legal requirement.

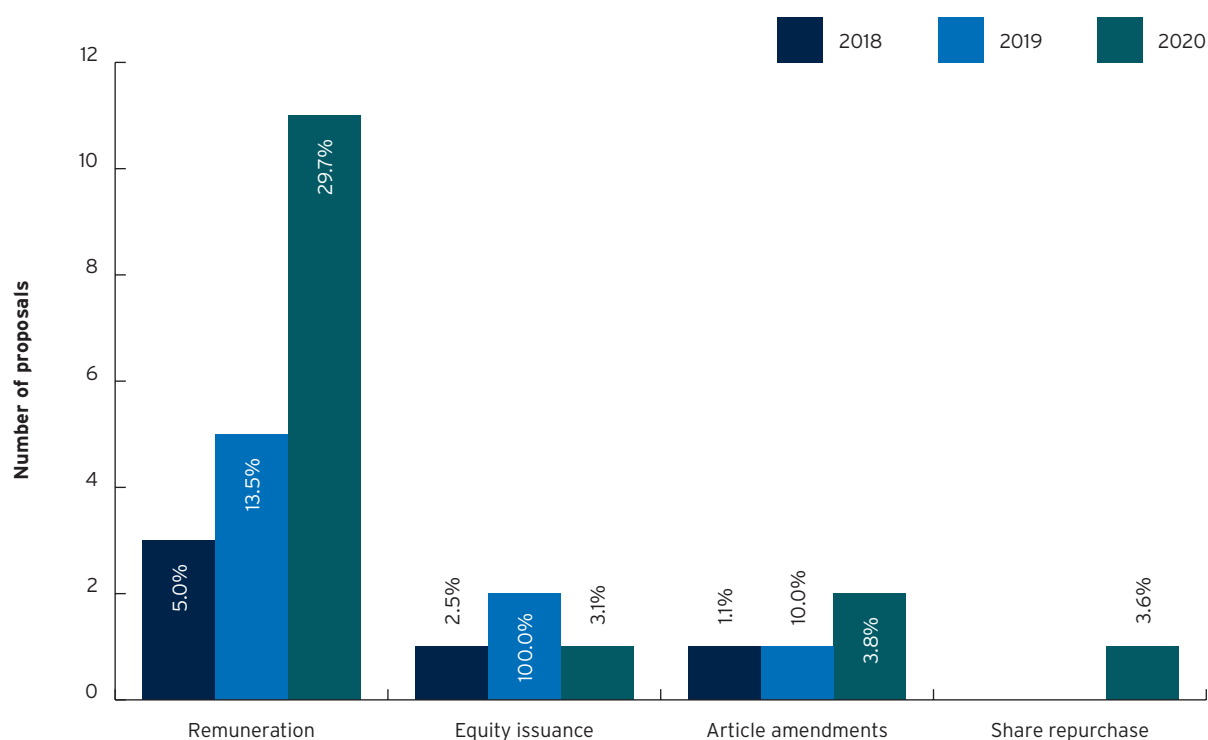
Of the companies which provided detailed vote results, the total number of management resolutions that received more than 10% shareholder opposition amounted to 15 resolutions (12 companies) in 2020 compared to 8 resolutions (4 companies) in 2019.

The most commonly contested resolutions were related to remuneration (11 resolutions) followed by article amendments (2 resolutions), equity issuance authorities (1 resolution) and share repurchase authorities (1 resolution).

The graph below summarises the main categories of management resolutions that received more than 10% opposition from shareholders.

**Graph 2:**

Number of resolutions which received more than 10% against votes in the OMX C25 and Large Cap companies (by resolution type) 2018-2020. The percentages represent the ratio between the number of proposals that received more than 10% against votes and the total number of proposals in each category.



# 1 | Voting in Denmark

## 1.3.1 REMUNERATION

Under the Danish Companies Act (§139), the board of a listed company must prepare general guidelines for incentive based compensation for executive management and board members before entering into any specific agreement on incentive pay with a member of management. These guidelines must be considered and adopted by the AGM.

The following companies received more than 10% against votes on remuneration related resolutions:

### **Copenhagen Airports**

➤ Approval of the company's remuneration policy (39.89% against)

Voting recommendations from ISS and Glass Lewis not available.

### **Danske Bank**

➤ Approval of the company's remuneration policy (12.61% against)

ISS issued an 'against' recommendation while Glass Lewis issued a 'for' recommendation.

### **Demant**

➤ Approval of the company's remuneration policy (16.25% against)

ISS issued a 'for' recommendation while Glass Lewis issued an 'against' recommendation.

### **Genmab**

➤ Approval of the company's remuneration policy (44.03% against)

➤ Approve Remuneration for the Board of Directors for 2020 (38.28% against)

Both ISS and Glass Lewis issued 'against' recommendations for the resolutions.

### **Jyske Bank**

➤ Approval of the company's remuneration policy (23.06% against)

Voting recommendations from ISS and Glass Lewis not available.

### **Lundbeck**

➤ Approval of the company's remuneration policy (10.06% against)

ISS issued an 'against' recommendation while Glass Lewis issued a 'for' recommendation.

### **Netcompany**

➤ Approval of the company's remuneration policy (26.01% against)

ISS issued an 'against' recommendation while Glass Lewis issued a 'for' recommendation.

### **Novo Nordisk**

➤ Approval of the company's remuneration policy (10.10% against)

➤ Approval of Director's Fees 2020 (10.01% against)

Both ISS and Glass Lewis issued 'for' recommendations for the resolutions.

### **Pandora**

➤ Approval of the company's remuneration policy (43.39% against)

ISS issued an 'against' recommendation while Glass Lewis issued a 'for' recommendation.



# 1 | Voting in Denmark

## 1.3.2 AMENDMENTS TO ARTICLES

### **Bavarian Nordic**

➤ Proposal to introduce the possibility of holding general meetings by electronic means only (21.86% against)

ISS issued an 'against' recommendation while Glass Lewis issued a 'for' recommendation.

### **Ringkjøbing Landbobank**

➤ Amendments to Articles (25.15% against)

ISS issued an 'against' recommendation while Glass Lewis issued a 'for' recommendation.

## 1.3.3 AUTHORITIES TO ISSUE SHARES / REPURCHASE SHARES

Among our sample the companies with with more than 10% against votes on approval of equity issuance were:

### **Scandinavian Tobacco Group**

➤ Authority to increase the company's share capital without preemptive rights (14.53% against)

➤ Authority to repurchase shares (11.95% against)

ISS issued 'against' recommendations while Glass Lewis issued 'for' recommendations.

## 2 | Proxy Advisors

At the end of June 2020, 55.5% of the Danish listed shares were held by foreign investors<sup>2</sup>.

To an increasing extent, foreign investors rely on proxy advisory firms such as ISS and Glass Lewis for meeting agenda analysis and vote recommendations, and it is therefore very important to stay updated on the proxy advisors' guidelines. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a give resolution.

In the 2020 AGM season, 22 (57.89%) of the OMX C25 and Large Cap companies surveyed received at least one against recommendation from ISS or Glass Lewis for a total of 32 management resolutions.

A total of 26 shareholder proposals in 4 companies received at least one against recommendation from ISS or Glass Lewis.

### 2.1 INSTITUTIONAL SHAREHOLDER SERVICES (ISS)

Institutional Shareholder Services<sup>3</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers.

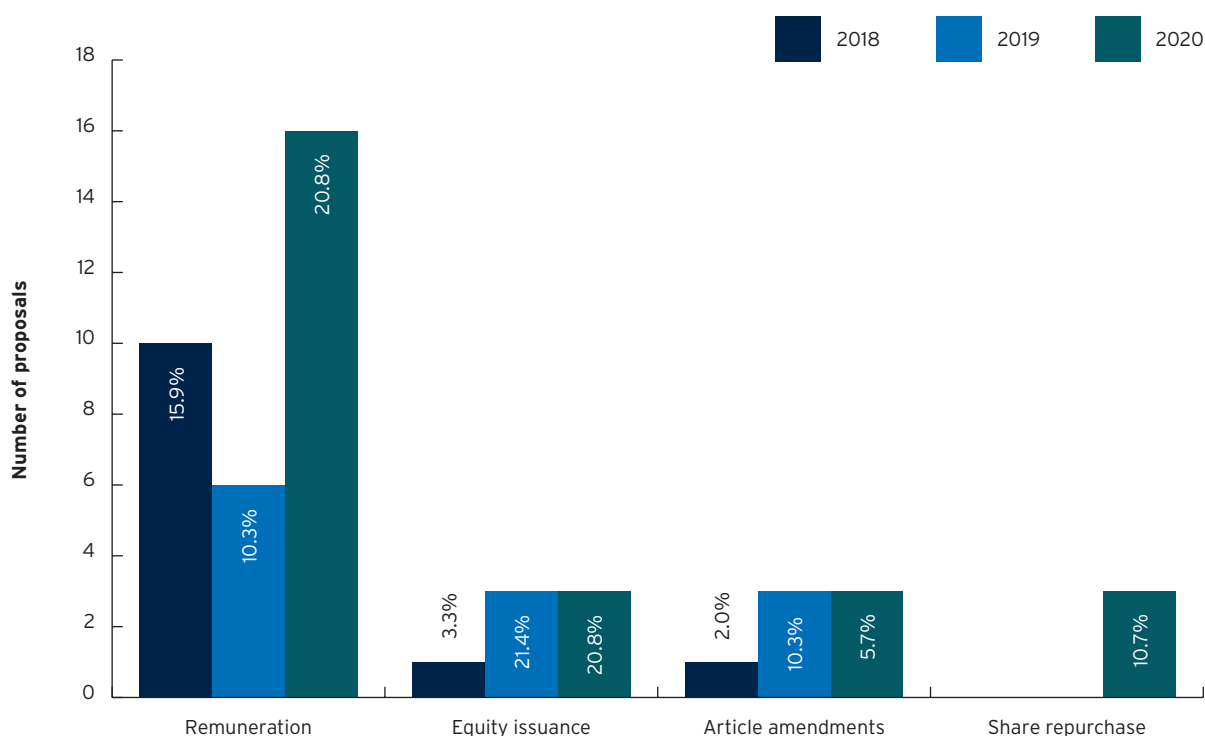
In the 2020 proxy season, 22 (57.89%) of the OMX C25 and Large Cap companies surveyed received at least one against recommendation from ISS for a management resolution.

A total of 25 negative recommendations were issued by ISS on resolutions put forward by management compared to 12 in 2019. Remuneration related resolutions received 16 of the 25 against recommendations, followed by equity issuance, share repurchase authorities and article amendments.

Below is an overview of the number of against recommendations by ISS at the OMX C25 and Large Cap AGMs surveyed over the past three years.

**Graph 3:**

Overview of the number of against recommendations by ISS at OMX C25 and Large Cap AGMs over the three years. The percentages represent the ratio between the number of proposals that received a negative ISS recommendation and the total number of proposals in each category.



2) <https://nationalbanken.statistikbank.dk/906>

3) <http://www.issgovernance.com/about/about-iss/>

## 2 | Proxy Advisors

### 2.2 GLASS LEWIS

Glass Lewis<sup>4</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms.

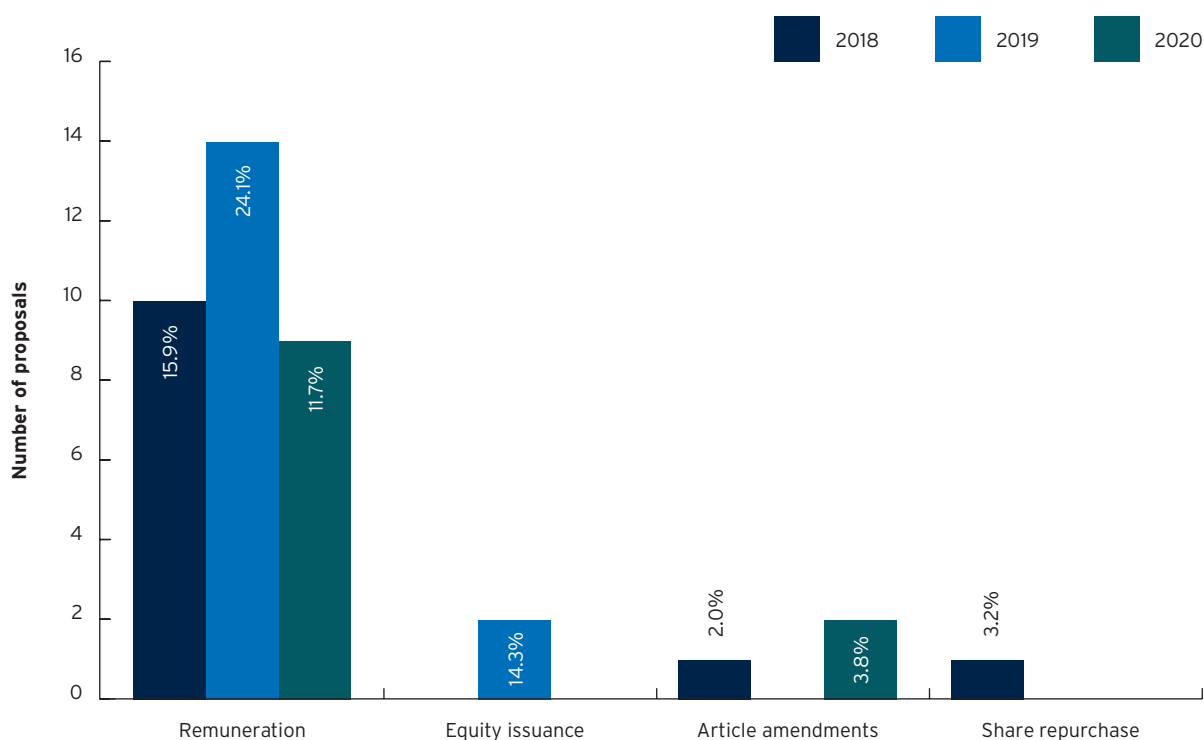
In the 2020 proxy season, 8 (21%) of the OMX C25 and Large Cap companies surveyed received at least one against recommendation from Glass Lewis.

A total of 12 negative recommendations were issued by Glass Lewis on resolutions put forward by management compared to 16 in 2019. Remuneration related resolutions received 9 against recommendations.

Below is an overview of the number of negative recommendations by Glass Lewis at the OMX C25 and Large Cap AGMs surveyed over the past three years.

**Graph 4:**

Overview of the number of against recommendations by Glass Lewis at the OMX C25 and Large Cap AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative Glass Lewis recommendation and the total number of proposals in each category.



4) <http://www.glasslewis.com/about-glass-lewis/>

# 3 | Corporate Governance developments

## 3.1 LEGISLATIVE CHANGES IN RESPONSE TO COVID-19

The COVID-19 outbreak has had significant impact on the Danish annual general meetings and has forced companies to rethink their arrangements for the 2020 AGM in response to restrictions on mass gatherings.

The Danish government imposed lockdown measures in Denmark on 18 March 2020 (10 persons) and extended them on 8 June (50 persons) and again on 8 July (100 persons) causing only few companies to be able to convene their annual general meeting in the traditional way.

In connection with COVID-19, the Danish government issued two executive orders on temporary deviations from companies' obligations with effect from 8 April 2020:

### **Extended deadline for convening annual general meetings and submitting annual reports**

Temporary authority to postpone the deadline for submitting the annual report by three months. In addition, listed companies can deviate from the eight-week deadline for announcing the date of the annual general meeting and the six-week deadline for the shareholders' right to have an item on the agenda. Notwithstanding the extension of the deadline, the companies may submit the annual report no later than 8 weeks after the end of the assembly ban if they are unable to convene the general meeting as a result of an extended assembly ban.

### **Virtual annual general meeting without amendments to the articles of association**

Temporary authority for the management to decide that the annual general meeting is held electronically without access to physical attendance, regardless of whether this has been adopted and included in the company's articles of association.

Of the 39 companies surveyed, nine annual general meetings were postponed to be convened pre 31 July 2020 and one meeting has been postponed to be convened post 31 July 2020.

Furthermore, the companies have taken the following steps to encourage shareholders to:

- Submit their proxy votes or cast a postal vote in advance of the meeting and offering extended deadlines for submitting votes to the latest possible date and time before the meeting.
- Submit questions in advance rather than physically attending the general meeting to speak.
- Follow the meeting via webcast rather than attending the physical meeting.
- Cancel any servings of food and drinks.
- Check the company's website for any AGM updates.

74% of the companies surveyed held a physical AGM with restricted attendance encouraging shareholders not to attend the meeting in person resulting in most AGMs being convened with few or no shareholders physically present.

# 3 | Corporate Governance developments

## **Hybrid and virtual general meetings**

TCOVID-19 has pushed for a (long-awaited) modernization of the annual general meeting and facilitates access for all shareholders – regardless of their geographic location. The digital solutions have proved their worth allowing companies to convene their general meeting and get the annual report approved while allowing both domestic and foreign shareholders to exercise their shareholder rights via real-time questioning and online voting.

In Denmark, we have seen a significant increase in hybrid and fully virtual meetings kickstarted by COVID-19 and the new, temporary executive orders that made it possible to convene fully virtual general meetings without it being stated in the company's articles of association.

Two of the 39 companies surveyed in this year's Proxy Season Review held their annual general meeting as a fully virtual meeting. They both adopted changes to the articles of association providing the opportunity to convene general meetings by electronic means only.

In the 2020 AGM season, Computershare Denmark has managed nine hybrid and virtual annual general meetings, including Bavarian Nordic, Bang & Olufsen, D/S Norden, Nilfisk and Grundfos.

# 3 | Corporate Governance developments

## 3.2 IMPLEMENTATION OF THE REVISED EUROPEAN SHAREHOLDER RIGHTS DIRECTIVE (SRD II)

In March 2017 the European Parliament approved amendments to the 2007 EU Shareholder Rights Directive (Directive 2007/36/EC) with the aim of encouraging “long-term shareholder engagement”.

Among the most notable changes in regard to executive remuneration policy votes and disclosure, it is now provided that:

- a rejected vote on remuneration policy will imply that a new remuneration policy will have to be submitted to a shareholder vote at the next AGM;
- a remuneration policy will have to clearly set out the decision-making process in regard to its definition, implementation and review; and
- a remuneration policy will have to provide details about vesting periods, holding periods, and any deferral in respect of share-based compensation arrangements.

With regard to the directors’ remuneration report disclosure, it is provided, amongst others, that the remuneration report must:

- show the split between fixed and variable remuneration for each individual director;
- specify any changes to the exercise price and exercise dates for shares or stock options granted to directors; and
- provide a comparison of the annual change in directors’ compensation with the annual change of employees’ pay and with the company’s performance over a five-year period.

On 4 April 2019, the Danish Parliament passed the bill to adopt the amendments to the Shareholder Rights Directive (SRD II). Most of the Danish legislation entered into force on 10 June 2019, but certain provisions will not come into force until 3 September 2020. These provisions aim to make it easier for shareholders to exercise their rights, especially across different markets or countries, encouraging the use of modern technology to aid communication between companies, their shareholders and the intermediaries between them.

### Shareholder identification

SRD II provides listed companies with a right to request certain information from intermediaries (depository banks, central securities depositories, etc.) about their shareholders for the purpose of enabling shareholders to exercise shareholder engagement. Intermediaries will be required to disclose information to facilitate the exercise of shareholder rights.

### Transmission of information

Intermediaries shall transmit information, without delay, from the company to the shareholder or to a third party nominated by the shareholder.

### Facilitating the exercise of shareholder rights

Shareholders can request confirmation of their rights from the last intermediary (any intermediary who provides the securities accounts in the chain of intermediaries for the shareholder). If voting is electronic, the person who cast the vote must receive electronic confirmation from the company that votes were received and counted.

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4) [https://corporategovernance.dk/sites/default/files/180921\\_positivliste\\_aktivt\\_ejerskab\\_170918\\_002.pdf](https://corporategovernance.dk/sites/default/files/180921_positivliste_aktivt_ejerskab_170918_002.pdf)

# 3 | Corporate Governance developments

## 3.3 UPDATE OF THE RECOMMENDATIONS FOR CORPORATE GOVERNANCE

The Danish Recommendations for Corporate Governance are best practice guidelines for the management of companies admitted to trading on a regulated market, including NASDAQ OMX Copenhagen. The objective is that the “comply or explain” recommendations are appropriate for such companies and comply with Danish and EU company law, the OECD’s Principles of Corporate Governance and recognised best practice.

With the implementation of SRD II, which regulate parts of the Committee’s recommendations regarding management’s remuneration, the Committee issued a draft for the revised recommendations on 1 July 2020 for consultation.

In light of this, the Committee has been working to revise the Recommendations for Corporate Governance. In its review, the Committee has placed particular emphasis on the importance of the companies’ long-term value creation, including increased dialogue with a wide range of stakeholders, sustainability and transparency regarding management remuneration and the companies’ position in connection with their essential purpose.

Board evaluations have also been clarified, and the Committee has phased out the recommendations on remuneration policy and remuneration report, which have been replaced by legal requirements following the implementation of SRD II. In addition, the Committee has updated the recommendations to follow developments and thus remain a driving force in good corporate governance.

In connection with annual general meetings, the Committee recommends that the Board of Directors ensure that shareholders have the opportunity to attend the general meeting via webcast or other digital transmission.

Publication of the updated recommendations is expected by the end of 2020. The updated recommendations shall apply to fiscal years starting January 1, 2021 and thereafter.

## 3.4 DANISH STEWARDSHIP CODE

The Danish Stewardship Code has been phased out. With Act no. 369 of 9 April 2019, legal rules for active ownership have been adopted. The rules concern institutional investors as well as asset managers’ preparation and publication of active ownership policies as well as reporting on the implementation of active ownership policies. This means that six of the seven recommendations in the Danish Stewardship Code have been covered by legislation.

The new rules requires institutional investors and asset managers to develop and publish an engagement policy on active ownership or explain why they have chosen not to do so. It must be clear how their active ownership policy has been implemented, including a general description of voting records, an explanation of the most significant resolutions and the use of proxy advisors.

# About Georgeson

Established in 1935, Georgeson is the world's original and foremost provider of strategic services to corporations and investors working to influence corporate strategy. We offer unsurpassed advice and representation for annual meetings, mergers and acquisitions, proxy contests and other extraordinary transactions. Our core proxy expertise is enhanced with and complemented by our strategic consulting services, including solicitation strategy, investor identification, corporate governance analysis, vote projections and insight into investor ownership and voting profiles. Our local presence and global footprint allow us to analyse and mitigate operational risk associated with various corporate actions worldwide. For more information, visit [www.georgeson.com](http://www.georgeson.com)

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