

# Georgeson's 2018 Proxy Season Review

Bridging the gap between Issuers and Investors



UK  
GERMANY  
FRANCE  
SWITZERLAND  
NETHERLANDS  
ITALY  
SPAIN

CERTAINTY

INGENUITY

ADVANTAGE

Georgeson

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# Introduction

We are presenting a thorough analysis of seven markets where Georgeson has a widespread client base, and where we are privileged to work closely with many of the leading issuers. 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 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.

During the 2018 AGM season we have seen that the number of contested resolutions has fallen in some European markets. This decrease is likely due to an increased effort by issuers to engage on contentious topics. At the same time the proxy advisors have become more demanding in many markets, while a number of resolutions that were supported by the proxy advisors also received significant levels of opposition. This highlights how important it is for companies to go beyond superficial assumptions in order to fully understand and engage effectively with all relevant stakeholders.

One of the most notable findings in our analysis is how much more willing investors are becoming in opposing board members directly when they consider that there have been corporate governance failings. At the same time, there is no question that executive remuneration continues to remain a key focal point for investors.

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 Corporate Governance Manager, who edited the report.

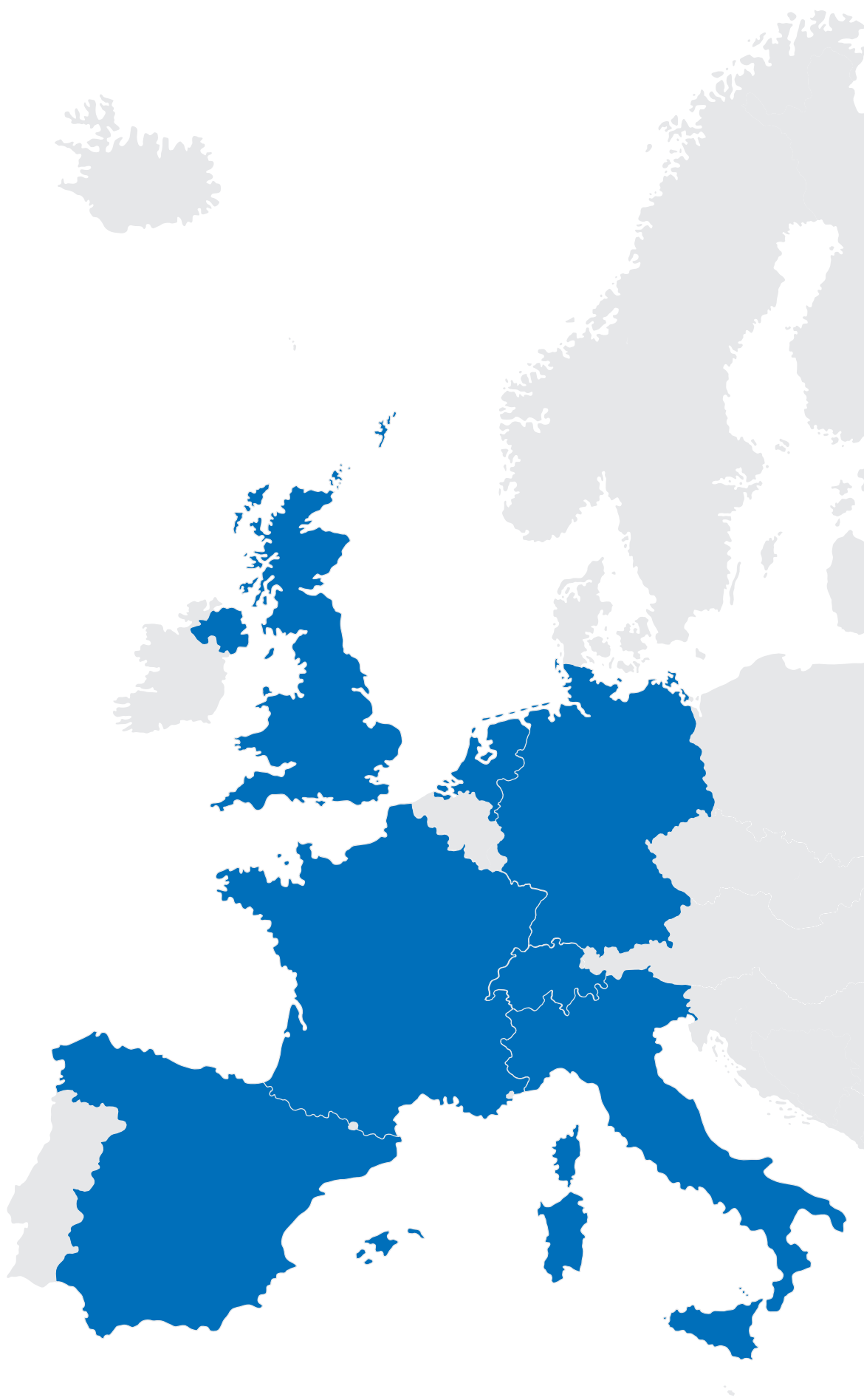


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# Key trends

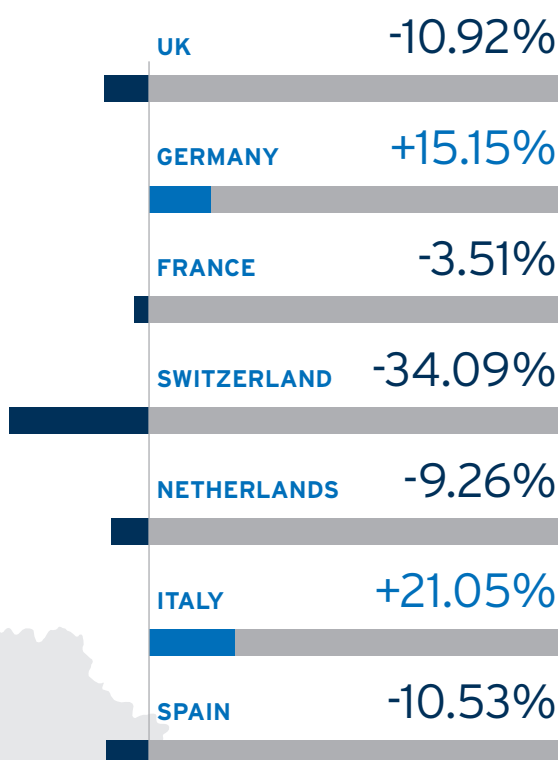
**UK**  
**GERMANY**  
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**NETHERLANDS**  
**ITALY**  
**SPAIN**



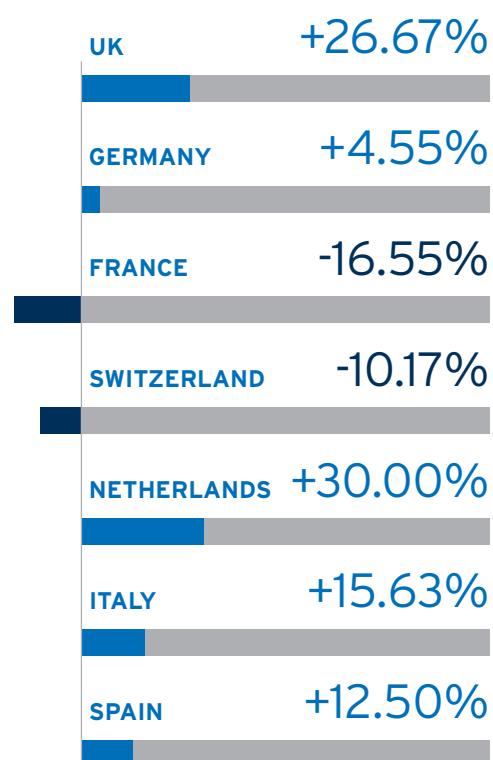
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\* Excluding share issuance authorities.

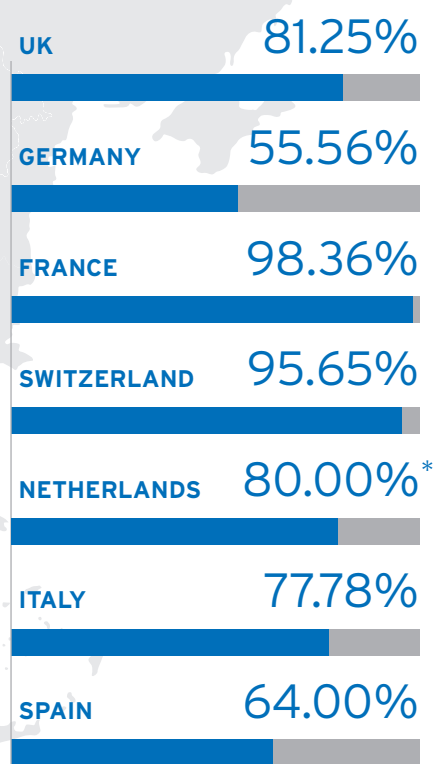
% change in number of contested resolutions (vs 2017)



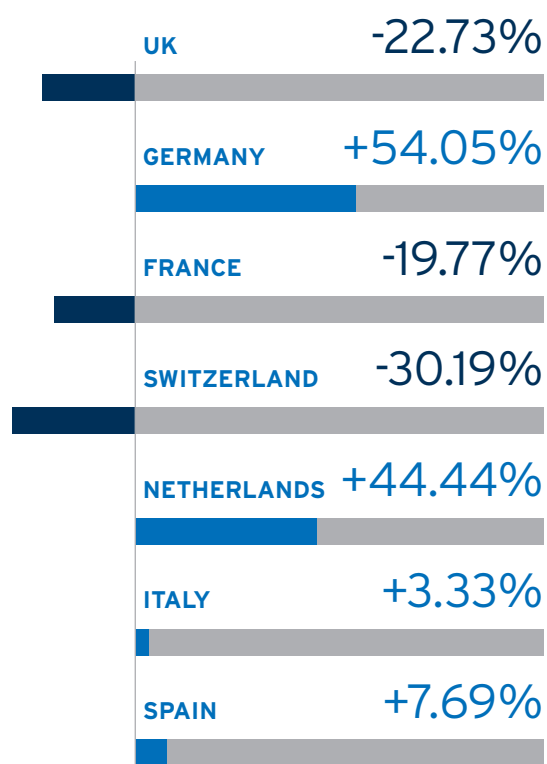
% change in number of ISS negative recommendations (vs 2017)



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



% change in number of Glass Lewis negative recommendations (vs 2017)





# Notable European Trends

- **Director elections continue to grow as an area of focus and negative votes**
- **Executive remuneration continues to be a major flashpoint for investors**

## DIRECTOR ELECTIONS

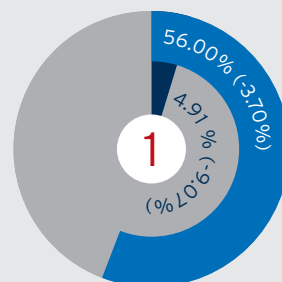
The election of directors continues to grow as an area of focus for investors. Across Europe investors are increasingly focused on directors when companies show a lack of responsiveness to shareholder concerns.

- In the UK (FTSE 100), since 2016 there has been a 128% increase in the number of contested (10%+ opposition) proposals relating to director elections. In 2016 only 18 directors received over 10% oppose votes, while this increased to 38 directors in 2017 and 41 directors in 2018.
- In France (CAC40), since 2016 there has been a 95% increase in the number of contested (10%+ opposition) proposals relating to director elections. In 2016 only 20 directors received over 10% oppose votes, while this increased to 27 directors in 2017 and 39 directors in 2018.
- Additionally, the French market showed that there is increasing investor opposition to combined Chairman/CEO mandates. During the year, over 70% of Chairman/CEO re-elections (across the CAC40 and Next20) received a higher level of dissent than at their previous elections.
- In Germany (DAX), opposition to the election of supervisory board members remained stable. However, investors used alternative means to express their concerns with board members, with a 114% increase since 2017 in the number of contested proposals relating to the discharge of the management and supervisory boards.
- In Italy (FTSE MIB), while the average level of support for minority director slates was down compared to 2017 (from 32% to 22%), in a rare occurrence a minority slate succeeded in winning control of the board at Telecom Italia (in connection with an activist campaign).
- In Spain (IBEX 35), director elections continue to be the most contested (10%+ opposition) resolution type, representing 41% of the contested proposals brought forward during the 2018 AGM season.
- In Switzerland (SMI), despite a 33% decrease in the number of directors receiving more than 10% opposition, this proposal type was still the most contested within the SMI and made up 31% of all contested proposals in 2018.

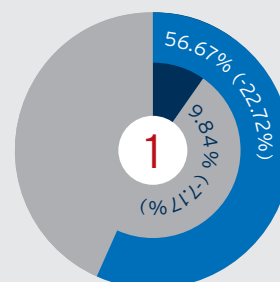
## Key Figures

- Companies with over 10% oppose
- Resolutions with over 10% oppose
- Rejected board proposals

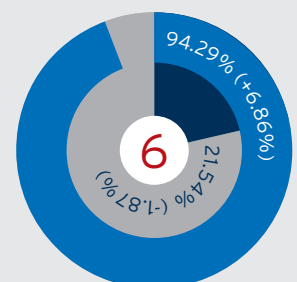
UNITED KINGDOM  
(FTSE 100)



GERMANY  
(DAX)



FRANCE  
(CAC 40)

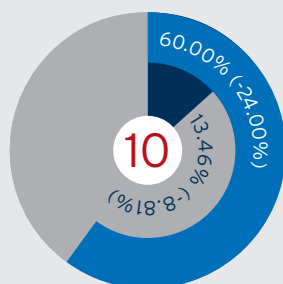


## EXECUTIVE REMUNERATION

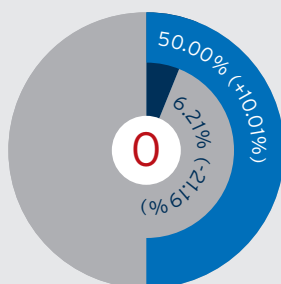
Executive remuneration continues to be an area of focus for many investors.

- In Italy (FTSE MIB), there has been a 43% increase in the number of contested (10%+ opposition) remuneration-related proposals within the FTSE MIB (compared to the 2017 AGM season). Since 2016 the number of contested proposals has increased by 80%.
- In the UK (FTSE 100) there has been a 39% increase in contested (10%+ opposition) remuneration report votes across the FTSE 100 (compared to the 2017 AGM season). Furthermore, the number of remuneration report resolutions receiving less than 80% support has increased by 63%.
- In France (CAC40), there was a 33% increase in the number of remuneration report ("ex post") resolutions which received less than 60% support from investors compared to 2017. However, there was a 22% decrease in the number of contested (10%+ opposition) remuneration report ("ex post") resolutions.
- In Switzerland (SMI), there was no change in the number of contested (10%+ opposition) advisory remuneration report votes (compared to 2017). These proposals remain very contentious, with 65% of remuneration report proposals receiving more than 10% opposition.
- In Germany (DAX), 56% of remuneration system votes within the DAX were contested (10%+ opposition) during the 2018 AGM season. Additionally, across the DAX and MDAX, there was a 71% increase (compared to 2017) in remuneration system resolutions that received more than 20% opposition.
- In the Netherlands (AEX and AMX), remuneration was a prominent theme with 22% of remuneration proposals being contested (10%+ opposition) in 2018, a 46% increase over the 2017 AGM season. Additionally, the public debate over remuneration was so intense that two companies decided to withdraw remuneration-related resolutions.
- In Spain (IBEX 35), the average level of opposition on remuneration-related contested (10%+ opposition) resolutions showed an increase of 1.45 percentage points (compared to 2017). Despite a 36% decrease in the number of contested (10%+ opposition) remuneration-related proposals (compared to 2017), they remain the second most penalized topic among investors at AGMs.

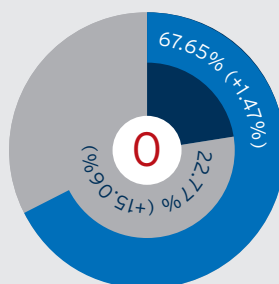
**SWITZERLAND  
(SMI)**



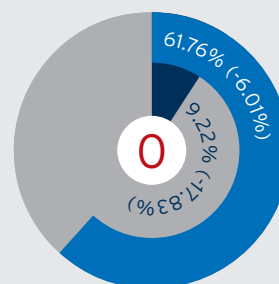
**NETHERLANDS  
(AEX)**



**ITALY  
(FTSE MIB)**



**SPAIN  
(IBEX 35)**



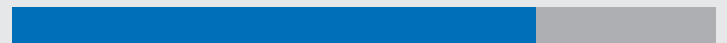


## United Kingdom (FTSE 100)



REJECTED BOARD PROPOSALS **1**

AVERAGE QUORUM **74.43%**



RESOLUTIONS  
WITH OVER 10% OPPOSE **4.91%**



COMPANIES  
WITH OVER 10% OPPOSE **56.00%**





## Highlights

- Across the FTSE 350 there were 11 board-proposed AGM resolutions rejected by shareholders. Remuneration and the issuance of shares without pre-emption rights were the most prominent themes. In addition, 14 board-proposed AGM resolutions were withdrawn (four of which in the FTSE 100).
- In the FTSE 100 there has been a 128% increase in contentious director elections (10%+ opposition) since 2016. In 2016 only 18 directors received over 10% oppose votes, while this increased to 38 directors in 2017 and 41 directors in 2018.
- In a rare occurrence, Deloitte failed to be re-appointed as the external auditors of SIG plc, with 78% of investors voting against.
- There was a 39% increase in contentious (10%+ opposition) remuneration report votes across the FTSE 100 in 2018 (25 resolutions), compared to 2017 (18 resolutions). This increase offsets the slight decrease seen in 2017, and brings the number of contested remuneration report proposals back in line with levels seen in 2016 (25 proposals).
- Across the FTSE 100, ISS was more stringent during 2018, with negative recommendations up 27% from 2017. Conversely, Glass Lewis appears to be less stringent with negative recommendations down by 23%.
- 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 nine remuneration reports with the lowest level of support all received a negative recommendation from the majority of the proxy advisors covered in our analysis.

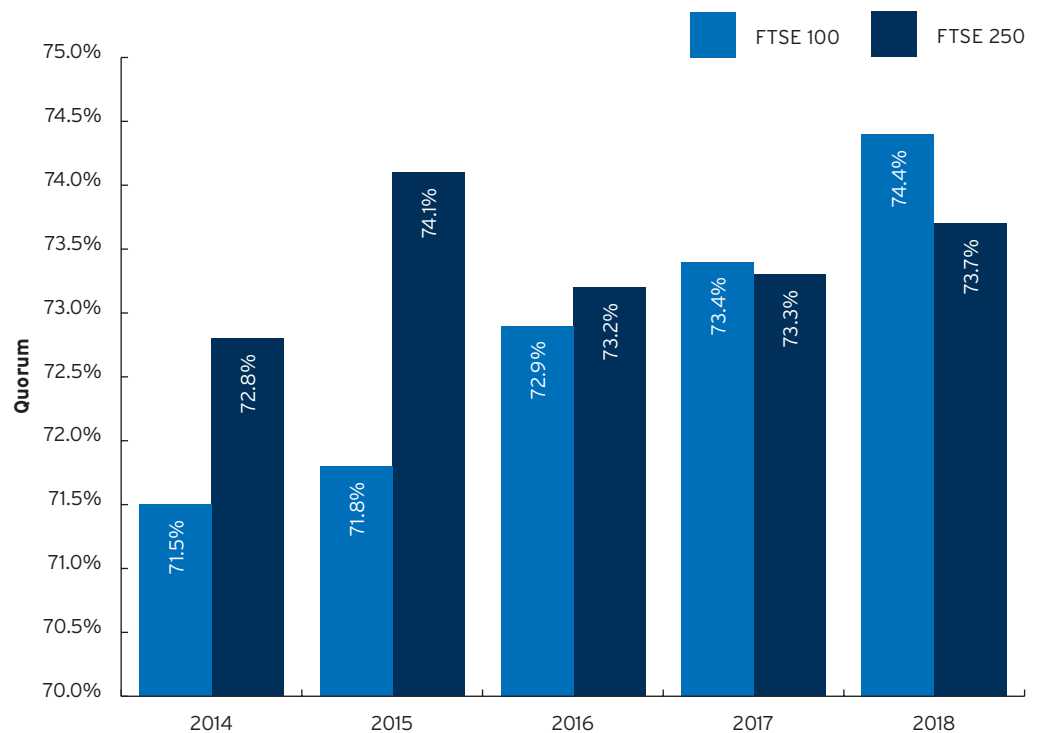
# 1 | Voting in the United Kingdom

## 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 the 1 June 2018, and which have held their AGMs between 1 August 2017 and 31 July 2018. In the FTSE 100 the average quorum for the reporting period was 74.4%. This is a slight increase compared to the average 2017 quorum, and a 2.9 percentage point increase over quorum levels in 2014. Meanwhile in the FTSE 250, the average quorum was 73.7% in 2018, up 0.4 percentage points from the 2017 quorum level.

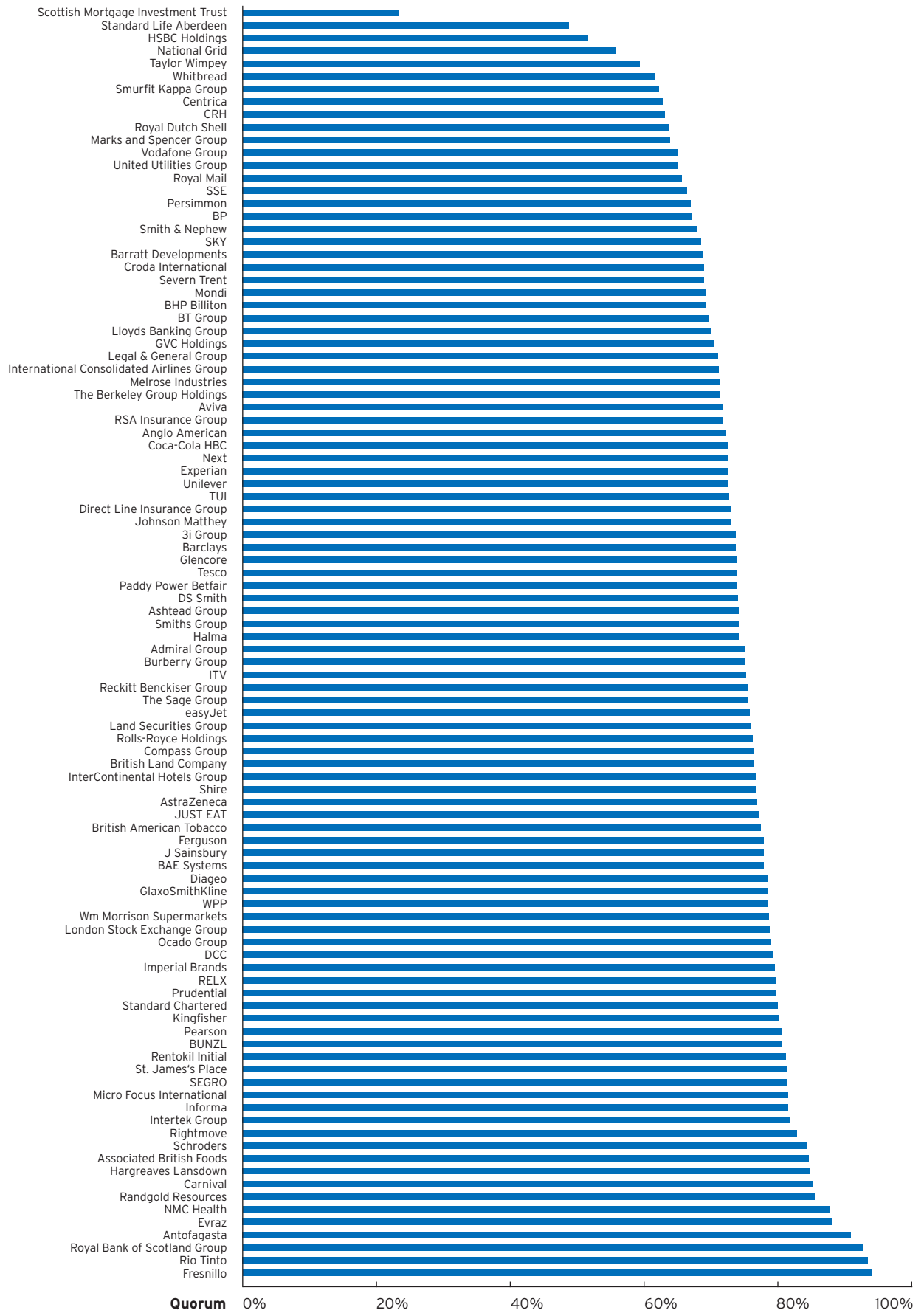
**Graph 1:**

Average AGM quorum levels in the FTSE 100 and FTSE 250 between 2014 and 2018.



**Graph 2:**

Quorum levels at FTSE 100 companies during the 2018 reporting period.



## 1.2 REJECTED RESOLUTIONS

### FTSE 100

Within the reporting period, Royal Mail was the only company in the FTSE 100 that had a management-proposed AGM resolution rejected by shareholders.

#### Royal Mail

At Royal Mail's 2018 AGM the advisory vote on the Directors' Remuneration Report failed to pass, with 29.8% of shareholders supporting the proposal. Following the meeting the board stated<sup>1</sup> that the first "and most critical concern" for shareholders was the contractual entitlements of Moya Greene, the retiring CEO, and while these "arrangements have been in place since 2010 [...] many shareholders believe we have not been clear enough about it in our communications. I would like to apologise to our shareholders for our failure to communicate about this contract in a clear and detailed enough fashion."

The second shareholder concern was the remuneration of Rico Back, the incoming Group CEO. "In our engagement with shareholders, we explained that the retiring CEO's and the incoming CEO's overall fixed cash remuneration - their base salary, pension entitlements and benefits - are broadly the same. The incoming CEO's pension entitlement is lower and the salary is higher than the retiring CEO. We did not feel it was appropriate to reduce the fixed pay for this very demanding role. Any potential increase in Rico Back's variable pay is subject to meeting stringent performance conditions. Those performance conditions are challenging. In the event that this extra pay is awarded, significant shareholder value would have been created. We believe that this approach is aligned with our focus on aligning pay to performance and reflects the responsible position we have taken on this key issue."

We note that both ISS and Glass Lewis recommended against this proposal. IVIS issued an amber alert on the remuneration report, while PIRC recommended an abstain vote on the proposal.

### FTSE 250

Across the FTSE 250, seven companies saw at least one management-proposed AGM resolution rejected by shareholders during the reporting period: SIG, Playtech, Redrow, Inmarsat, Centamin, Workspace Group, and Shaftesbury.

#### SIG

At SIG's 2018 AGM the proposal to re-elect Deloitte as the Company's auditor failed to gain sufficient support with 21.6% of shareholders voting in favour. According to the FT<sup>2</sup>, the vote came three months after the company discovered "misstatements after a whistleblowing allegation about irregularities at its core UK insulation and exteriors business". In June 2018 the FRC stated<sup>3</sup> it had formally "commenced an investigation into the audit by Deloitte LLP of the financial statements of SIG plc for the years ended 31 December 2015 and 2016".

We note that ISS, and PIRC opposed the proposal, while Glass Lewis recommended shareholders vote in favour.

1) <https://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/RMG/13724538.html>

2) <https://www.ft.com/content/a8c97aa2-5469-11e8-b24e-cad6aa67e23e>

3) <https://www.frc.org.uk/news/june-2018/investigation-into-the-financial-statements-of-sig>

### Playtech

At Playtech's 2018 AGM the advisory vote on the Directors' Remuneration Report failed to gain sufficient support with only 40.6% of shareholders voting in favour. The Times reported<sup>4</sup> that "Mor Weizer, the chief executive of Playtech, was paid about £4.2 million last year, up from £2.3 million the year before. [...] The Company issued a profit warning in November amid expectations that its full-year profits would be 5 per cent lower than market expectations".

We note that ISS, Glass Lewis, and PIRC opposed the proposal.

### Redrow

At Redrow's 2018 AGM a proposal to waive a tender-bid requirement failed to gain sufficient support with 41.3% of shareholders voting in favour. The Company stated<sup>5</sup> that the waiver "would have permitted the Concert Party's percentage interest in the Company's shares to increase from 32.67% to a maximum of 36.30% [...] as a result of share buy backs authorised by Resolution 19 without requiring the Concert Party to make a mandatory offer for other shareholders' shares. The Board respects and values the views of shareholders and will assess the feedback it has received to inform future consultations, including ahead of future AGMs."

We note that ISS, Glass Lewis, and PIRC opposed the proposal.

### Inmarsat

At Inmarsat's 2018 AGM the advisory vote on the Directors' Remuneration Report failed to gain sufficient support with 41.5% of shareholders voting in favour. The FT reported<sup>6</sup> that the pay revolt came at a "difficult time for the company [...] Inmarsat's value has more than halved over the past year". Investors have previously expressed concerns over executive pay, with significant shareholder opposition at the 2017 AGM where 51.1% of shareholders supported the remuneration report.

We note that ISS, Glass Lewis, and PIRC opposed the proposal.

### Centamin

At Centamin's 2018 AGM the vote on the Directors' Remuneration Policy failed to gain sufficient support with 48% of shareholders voting in favour. Andrew Pardey, CEO of Centamin commented<sup>7</sup>: "The Company regularly engages with our major shareholders and proxy advisors for their input on, but not limited to, matters of remuneration. We are disappointed with the results of today's advisory vote against the Remuneration Policy. We will continue to proactively consult with our shareholders and proxy advisors to ensure their feedback is better understood and implemented where appropriate."

We note that ISS, and PIRC opposed the proposal, while Glass Lewis recommended shareholders vote in favour.

4) <https://www.thetimes.co.uk/article/playtech-investors-refuse-to-play-ball-k2xpsf95l>

5) <https://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/RDW/13426705.html>

6) <https://www.ft.com/content/93f38c5e-4e14-11e8-a7a9-37318e776bab>

7) <https://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/CEY/13581407.html>



### **Workspace Group**

At Workspace's 2018 AGM two special proposals (requiring a 75% vote in favour) relating to share issuances without pre-emptive rights failed to gain sufficient support, with 58.2% of shareholders voting in favour of issuances without pre-emptive rights in connection with an acquisition, and 64.2% of shareholders voting in favour of general issuances without pre-emptive rights. The Company stated<sup>8</sup>: "The Company is disappointed by this outcome, as these resolutions are considered routine for UK listed companies and would have renewed the disapplication authorities granted at the Company's previous Annual General Meeting. The Company will continue to engage with shareholders in order to fully understand their views and explain why it considers these resolutions are in shareholders' best interests as a whole."

We note that ISS and Glass Lewis were supportive of both proposals, while PIRC opposed the proposal authorising issuances without pre-emptive rights in connection with an acquisition, but supporting the general issuance proposal.

### **AA**

At AA's 2018 AGM a special proposal (requiring a 75% vote in favour) relating to share issuances without pre-emptive rights in connection with an acquisition failed to gain sufficient support, with 63% of shareholders voting in favour. The Company stated<sup>9</sup>: "The Company intends to continue to split the resolutions in relation to the authority to allot shares at future meetings to allow shareholders to fully express their views. The Company will also consider the format of the resolution to disapply pre-emption rights and whether it is appropriate in future years to put this resolution to shareholders."

We note that ISS, and PIRC opposed the proposal, while Glass Lewis recommended shareholders vote in favour.

### **Shaftesbury**

At Shaftesbury's 2018 AGM two special proposals (requiring a 75% vote in favour) relating to share issuances without pre-emptive rights failed to gain sufficient support, with 71.5% of shareholders voting in favour of issuances without pre-emptive rights in connection with an acquisition, and 72.5% voting in favour of general issuances without pre-emptive rights. Commenting on the results, Jonathan Nicholls, Chairman, said<sup>10</sup>: "Following the successful placing in December 2017, currently the Board does not anticipate the need to raise further equity for some time. Continuing investment in our portfolio will be funded using the remaining proceeds of the recent placing, existing, committed debt facilities and any new facilities which may be arranged in the future. The need to maintain a prudent balance between debt and equity, appropriate for a UK-listed company, is kept under constant review by the Board."

We note that ISS and Glass Lewis were supportive of both proposals, while PIRC opposed the proposal seeking authority for issuances without pre-emptive rights in connection with an acquisition, while supporting the general issuance proposal.

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8) <https://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/WKP/13719298.html>

9) <https://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/AA./13671766.html>

10) <https://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/SHB/13528501.html>

### 1.3 WITHDRAWN RESOLUTIONS

#### Micro Focus International

On 1 September 2017, Stephen Murdoch stepped down from his position as a Non-Executive Director to become Chief Operating Officer of the Company<sup>11</sup>. Therefore, the Company withdrew the resolution to re-elect him from the AGM on 4 September 2017.

#### Compass Group PLC

On 31 December 2017, Richard Cousins, the CEO of Compass Group, passed away shortly prior to the 2018 AGM which took place on 8 February 2018<sup>12</sup>.

#### Taylor Wimpey plc

Taylor Wimpey announced on 20 April 2018 (six days before the AGM) that Ryan Mangold, Group Finance Director, would be leaving his role “after almost eight years in that position”<sup>13</sup>.

#### Royal Bank of Scotland Group plc

Effective 30 April 2018 Yasmin Jetha stepped down as a Director of RBS Group, “and will hold the position of Non-executive Director on the boards of the Ring-Fenced Bank Entities”<sup>14</sup>. The Company therefore withdrew the resolution to re-elect her at the AGM on 30 May 2018.

### 1.4 CONTESTED RESOLUTIONS

Among our sample of FTSE 100 companies that held their AGMs during the reporting period, 56 companies saw at least one management-proposed resolution receive more than 10% shareholder opposition (compared to 54 in 2017). The total number of resolutions that received over 10% opposition amounted to 106 (including the rejected resolution discussed in section 1.2), compared to 119 in 2017.

In the UK resolutions can be either ordinary<sup>15</sup> or special<sup>16</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>17</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 report votes.

11) <https://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/MCRO/13349981.html>

12) <https://www.telegraph.co.uk/news/2018/08/21/british-businessman-killed-sydney-plane-crash-leaves41-million/>

13) <https://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/TW./13611944.html>

14) <https://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/RBS/13620990.html>

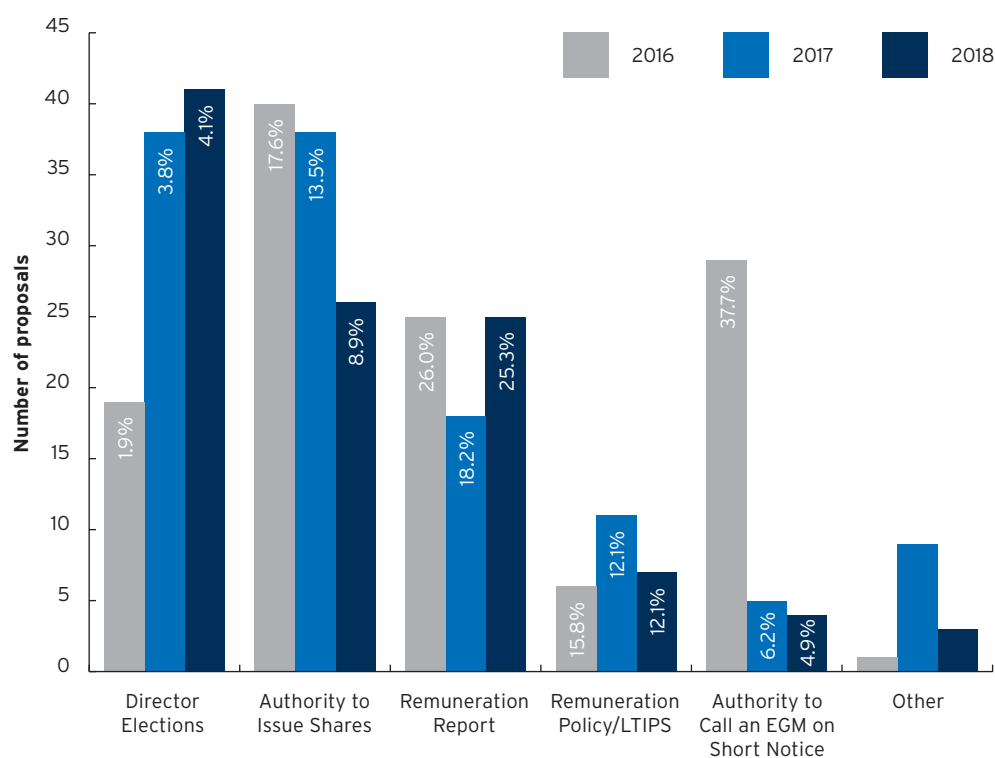
15) <https://uk.practicallaw.com/4-107-6940>

16) <https://uk.practicallaw.com/9-107-7287>

17) 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>

**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.



#### 1.4.1 Director elections

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

- GVC Holdings (Peter Isola - 57.4% in favour)
- British American Tobacco (Marion Helmes - 59.3% in favour)
- Rightmove (Scott Forbes - 61% in favour, and Peter Williams - 62.7% in favour)
- Royal Mail (Peter Long - 65.6% in favour)
- Berkeley Group Holdings (Adrian Li - 66.5% in favour)

We note that ISS recommended against all six director candidates, while Glass Lewis recommended against Peter Isola, Marion Helmes, and Adrian Li.

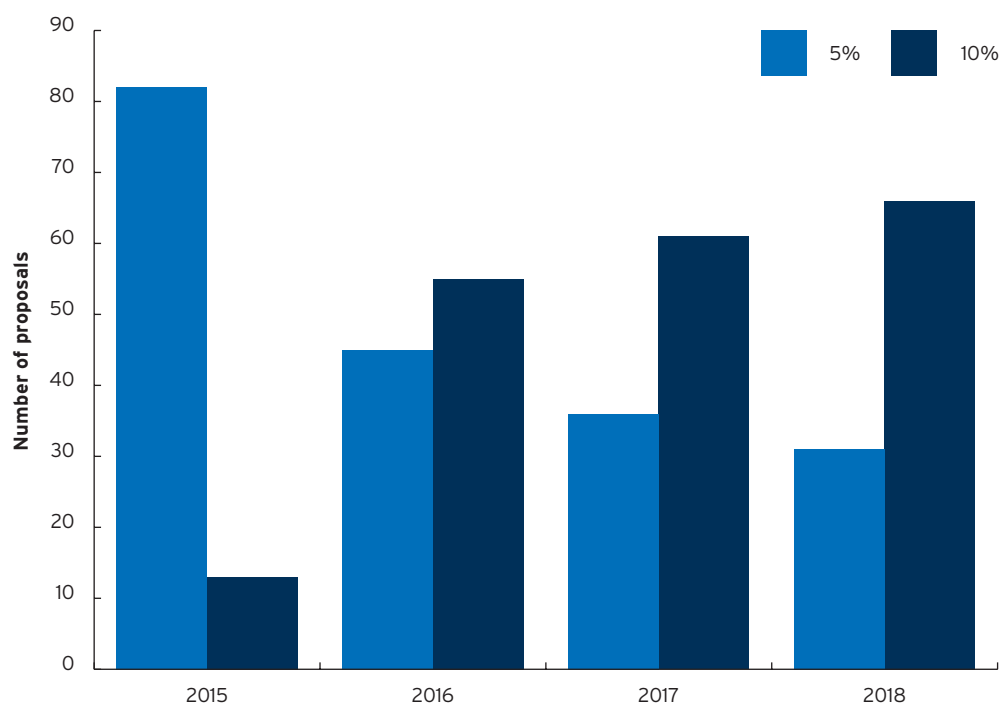
### 1.4.2 Authorities to issue shares

Authorities to issue shares with pre-emptive rights<sup>18</sup> are proposed as ordinary resolutions (requiring a simple majority), while authorities to issue shares without pre-emptive rights<sup>19</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>20</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>21</sup> allows 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>22</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 82 in 2015, to 31 in 2018 (first three quarters of the calendar year).

**Graph 4:**

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



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

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

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

21) <https://www.frc.org.uk/medialibraries/FRC/FRC-Documents/Preemption%20Group/Revised-PEG-Statement-of-Principles-2015.pdf>

22) <https://www.frc.org.uk/medialibraries/FRC/FRC-Documents/Preemption%20Group/PEG-Template-resolution-for-disapplication-of-pre-emption-rights.pdf>

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

- British American Tobacco (issue equity with pre-emptive rights: 77.1% in favour; and issue equity without pre-emptive rights: 96.6% in favour).
- Anglo American (issue equity with pre-emptive rights: 78.2% in favour; and issue equity without pre-emptive rights: 91.5% in favour).
- International Consolidated Airlines Group (issue convertible bonds with pre-emptive rights: 79.4% in favour; issue equity with pre-emptive rights: 79.6% in favour; and authorisation to exclude pre-emption rights: 99.7%).
- Ocado Group (issue equity with pre-emptive rights in connection with a rights issue: 79.9% in favour; issue equity without pre-emptive rights in connection with an acquisition or other capital investment: 98% in favour; issue equity without pre-emptive rights: 98.9% in favour; and issue equity with pre-emptive rights: 99.6% in favour).
- Pearson (issue equity without pre-emptive rights in connection with an acquisition or other capital investment: 80.8% in favour; issue equity with pre-emptive rights: 83.9% in favour; and issue equity without pre-emptive rights: 86.9% in favour).

We note that ISS and Glass Lewis recommended in favour of each of these resolutions.

### 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>23</sup>. In 2013 regulations were introduced requiring a binding vote on executive remuneration<sup>24</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.

#### Remuneration report

During the reporting period a total of 25 companies in our FTSE 100 sample received less than 90% support on their remuneration report, compared to 18 companies in 2017.

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

- Royal Mail (29.8% in favour)
- Persimmon (51.5% in favour)
- GVC Holdings (56.1% in favour)
- CRH (60.3% in favour)
- AstraZeneca (65.1% in favour)

ISS recommended a vote against each of these resolutions with the exception of Persimmon where they recommended an abstain vote. Glass Lewis recommended a negative vote against Royal Mail, Persimmon and GVC Holdings.

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

24) 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>



### Remuneration policy

During the reporting period five companies in our FTSE 100 sample received less than 90% support on their Remuneration Policy vote, compared to seven companies in 2017.

The five companies in our sample proposing a Remuneration Policy vote and receiving more than 10% opposition were:

- Unilever (64.2% in favour)
- Informa (64.2% in favour)
- Rentokil Initial (75% in favour)
- Micro Focus International (86.5% in favour)
- Shire (89.4%)

ISS recommended against at Unilever, Informa and Rentokil Initial, while Glass Lewis recommended in favour of all proposals.

### LTIPs

Two proposals received less than 90% support during the reporting period, compared to four companies in 2017.

The two companies in our sample proposing a LTIP proposal with more than 10% opposition were:

- Informa (2014 Long-Term Incentive Plan - 69.5% in favour)
- Rentokil (2016 Performance Share Plan - 74.6% in favour)

ISS recommended against both resolutions, while Glass Lewis recommended in favour of both proposals.

#### 1.4.4 Short notice period for EGMs

The Companies Act 2006 states<sup>25</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).

Glass Lewis had routinely recommended a vote against requests for a shortened notice period until they changed their policy at the beginning of 2017. Glass Lewis now supports these proposals when "companies provide assurances that such authority would only be used when merited by exceptional circumstances"<sup>26</sup>. Following the change, the number of resolutions that have received more than 10% against votes has fallen from 29 in the 2016 AGM season to five proposals in 2017, and four proposals during the 2018 AGM season.

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

- British Land Company (86.1% in favour)
- SEGRO (86.2% in favour)
- Persimmon (87.2% in favour)
- Reckitt Benckiser (89.3% in favour)

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

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

26) Glass Lewis - 2017 Guidelines: [http://www.glasslewis.com/wp-content/uploads/2016/11/Guidelines\\_UK.pdf](http://www.glasslewis.com/wp-content/uploads/2016/11/Guidelines_UK.pdf)

## 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.

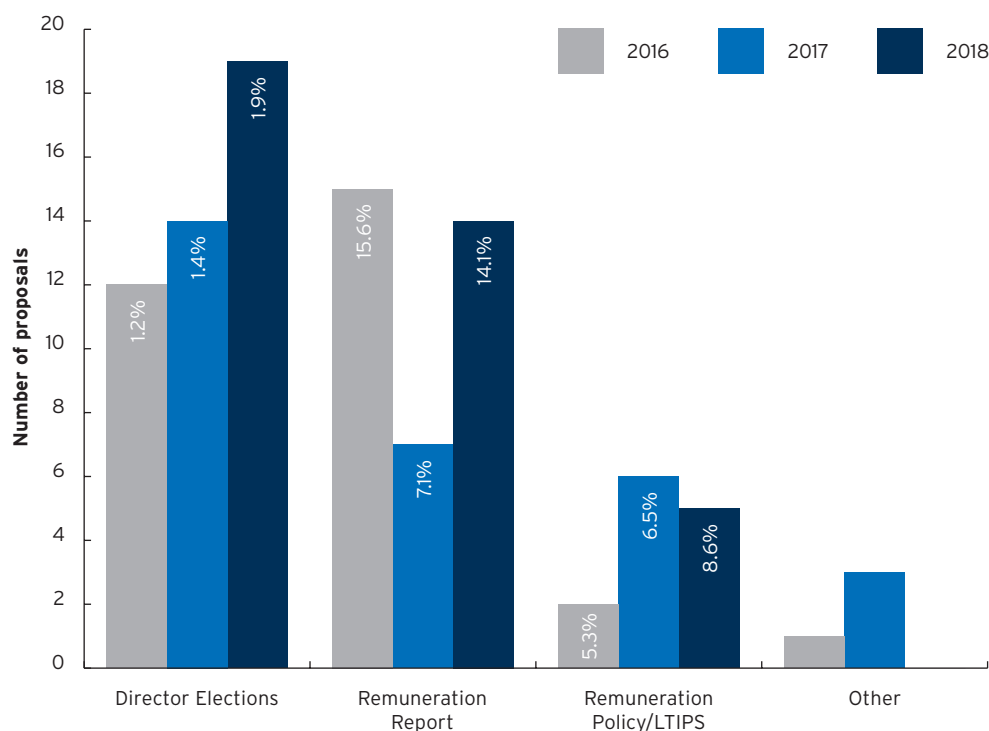
### 2.1 ISS

Institutional Shareholder Services<sup>27</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers.

Between 1 August 2017 and 31 July 2018, 27 companies out of the FTSE 100 received at least one against or abstain recommendation from ISS (compared to 20 in 2017), for a total of 38 resolutions (compared to 30 resolutions in 2017).

**Graph 5:**

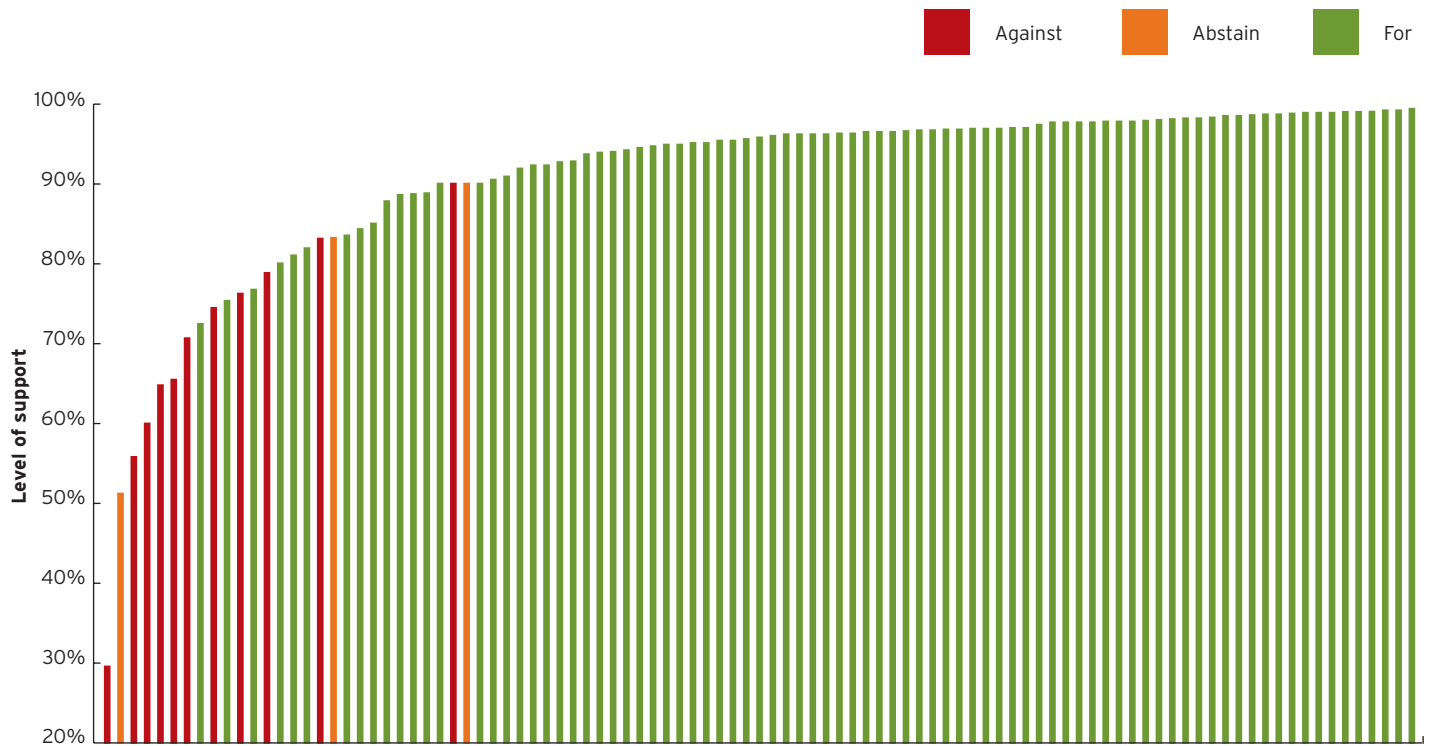
Overview of the number of against/abstain recommendations by ISS at FTSE 100 AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative ISS recommendation and the total number of proposals in each category.



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

**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.



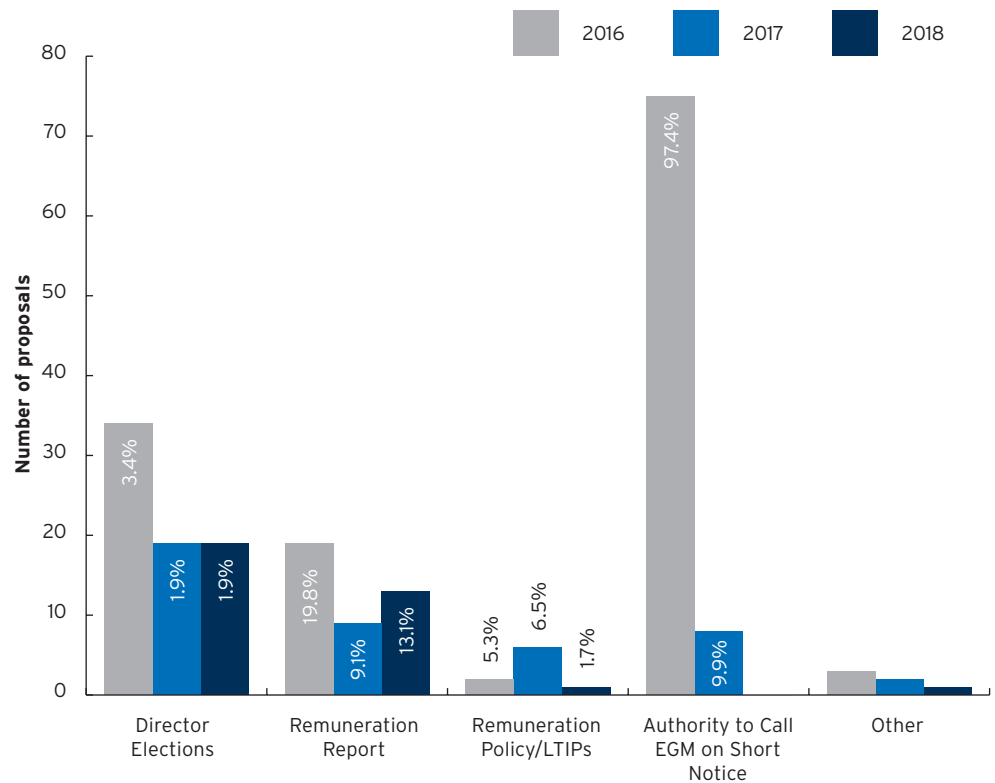
## 2.2 GLASS LEWIS

Glass Lewis<sup>28</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 August 2017 and 31 July 2018, 21 companies out of the FTSE 100 received at least one against or abstain recommendation from Glass Lewis (compared to 29 in 2017), for a total of 34 resolutions (compared to 44 resolutions in 2017).

### Graph 7:

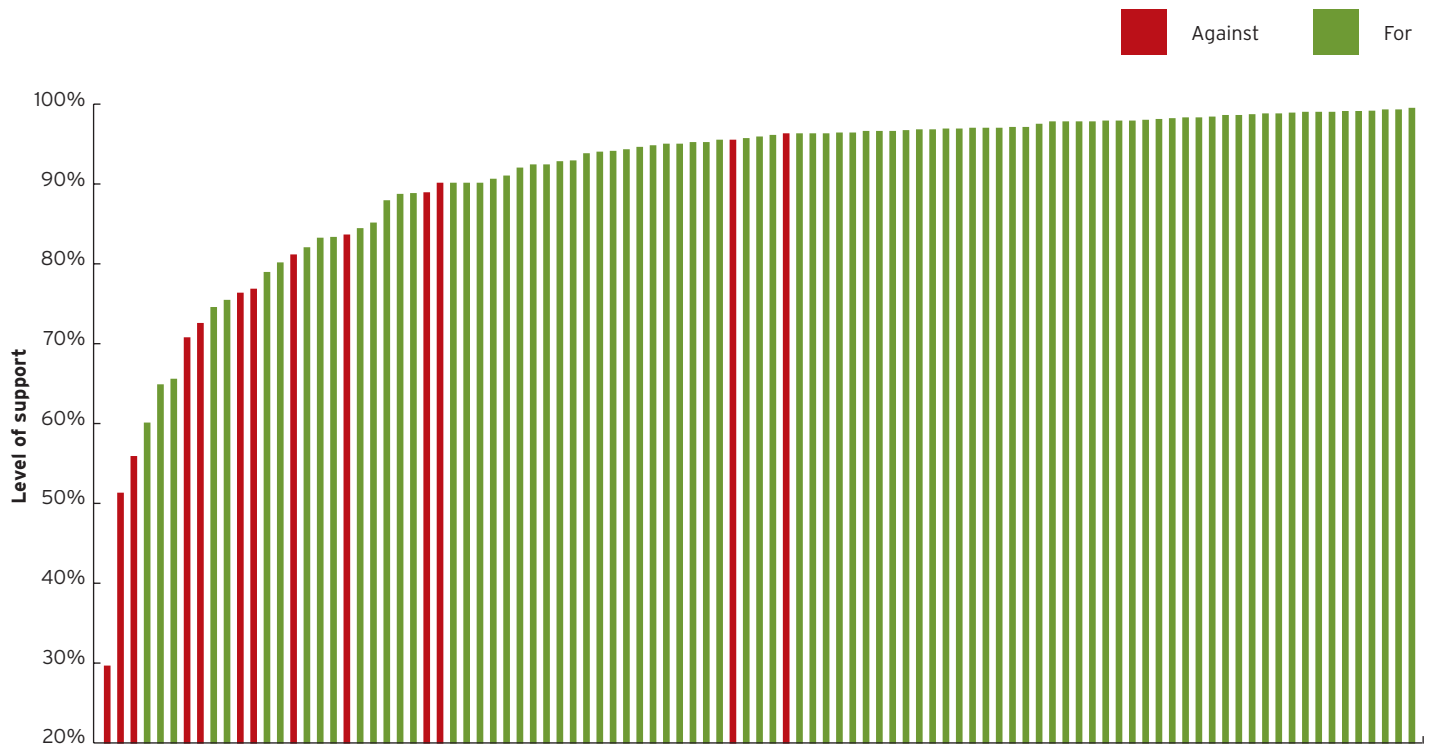
Overview of the number of negative/abstain recommendations by Glass Lewis at FTSE 100 AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative Glass Lewis recommendation and the total number of proposals in each category.



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

**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.



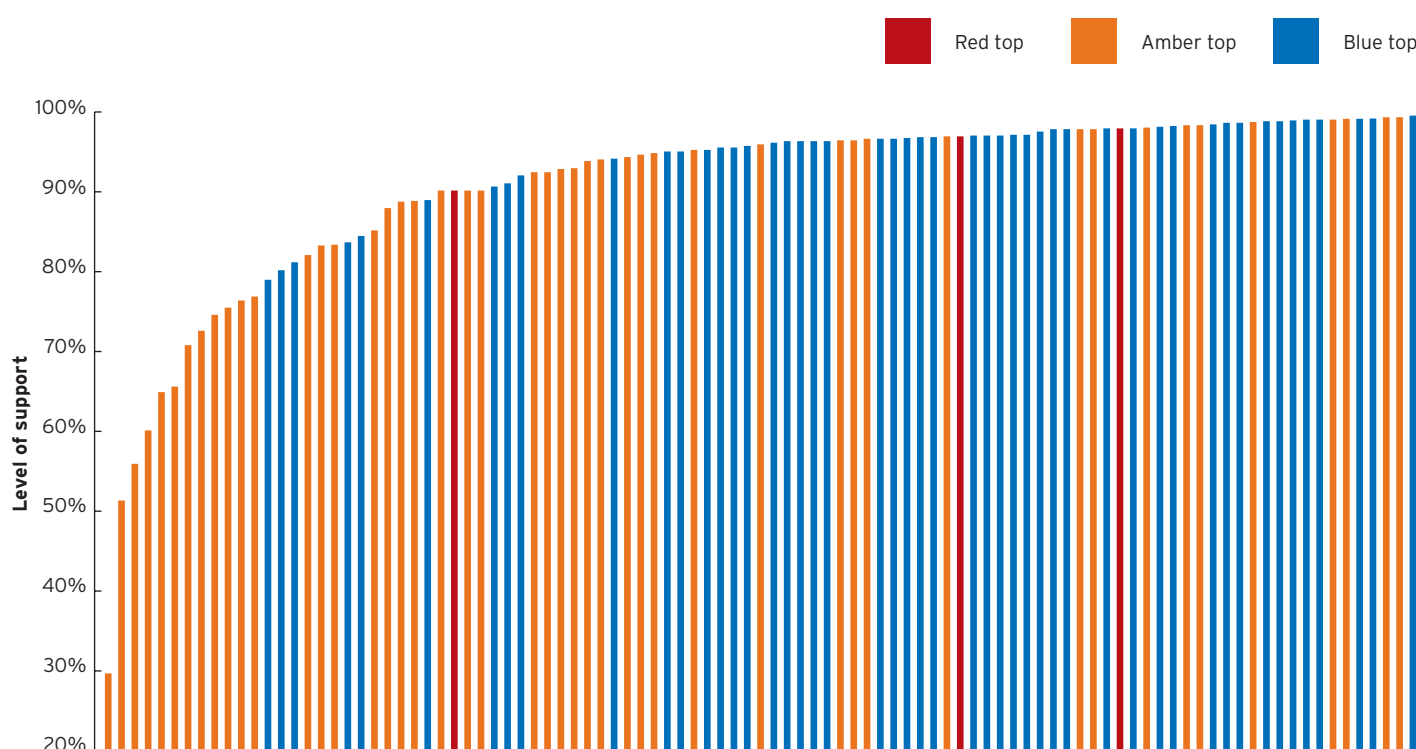


## 2.3 IVIS

The Institutional Voting Information Service<sup>29</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.



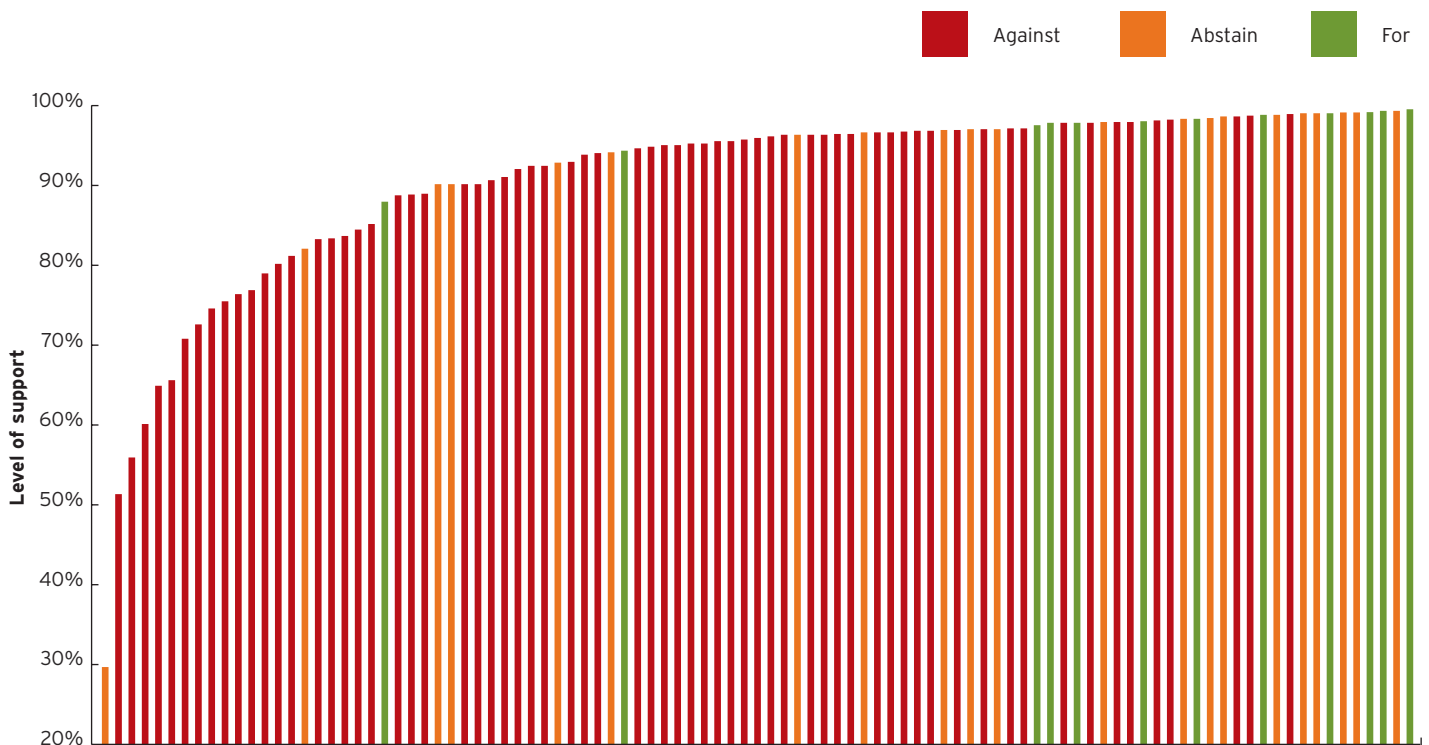
<sup>29</sup>) <https://www.ivis.co.uk/about-ivis/>

## 2.4 PIRC

Pensions & Investment Research Consultants<sup>30</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.



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

# 3 | Corporate Governance developments

## 3.1 UK CORPORATE GOVERNANCE CODE

On 16 July 2018, the Financial Reporting Council released the 2018 UK Corporate Governance Code<sup>31</sup> “which puts the relationships between companies, shareholders and stakeholders at the heart of long-term sustainable growth in the UK economy. The new shorter, sharper Code is the product of extensive consultation.”

The new code applies to accounting periods beginning on or after 1 January 2019.

Key provisions of the code include:

### Board Leadership and Company Purpose

- Significant shareholder opposition is now defined as 20% against votes and the reporting requirements when this arises are more detailed (i.e. requiring companies to follow up post AGM, six months after the AGM, and in the following Annual Report).
- Boards are encouraged to engage with the wider workforce through either the appointment of an employee representative, a formal workforce advisory panel, or a designated non-executive director tasked with interpreting the views of the workforce.

### Division of Responsibilities

- “When making new appointments, the board should take into account other demands on directors’ time [...] Additional external appointments should not be undertaken without prior approval of the board”.

### Composition, Succession and Evaluation

- Chairmen should “not remain in post beyond nine years from the date of their first appointment to the board. To facilitate effective succession planning and the development of a diverse board, this period can be extended for a limited time.”
- The code recommends the use of “open advertising and/or an external search consultancy” when finding candidates for the board, and for the process to be clearly disclosed in the annual report with disclosure of any prior connections.
- The nomination committee should report on “the gender balance of those in the senior management and their direct reports”.

### Audit, Risk and Internal Control

- “The board should carry out a robust assessment of the company’s emerging and principal risks. The board should confirm in the annual report that it has completed this assessment, including a description of its principal risks, what procedures are in place to identify emerging risks, and an explanation of how these are being managed or mitigated.”

29) <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf>

### Remuneration

- The Code stipulates that remuneration committee chairmen should have previously served on the committee for twelve months.
- Share awards should “promote long-term shareholding by executive directors that support alignment with long-term shareholder interests” and should be subject to a “total vesting and holding period of five years or more”.
- Remuneration schemes should “enable the company to recover and/or withhold sums”.
- Pension contributions “should be aligned with those available to the workforce”.
- The committee should ensure that “directors’ terms of appointment do not reward poor performance”.

## 3.2 CLIMATE-RELATED RISK REPORTING

The House of Commons Environmental Audit Committee published its report “Greening Finance: embedding sustainability in financial decision making”. The report<sup>32</sup> recommends that the Government “set a deadline that it expects all listed companies and large asset owners to report on climate-related risks and opportunities in line with the TCFD recommendations<sup>33</sup> on a comply or explain basis by 2022. [...] For example, the Government should issue guidance making it clear that the Companies Act already requires companies to report on climate change where it is a material financial risk to their business. Companies and investors with high exposure to carbon intensive activities should already be reporting on climate risks in their annual reports as a matter of course.”

## 3.3 FEMALE REPRESENTATION

### 3.3.1 Gender pay gap reporting

The Government Equalities Office (“GEO”) works on policies relating to a range of equalities legislation. Under new regulations that came into force in April 2017, all employers with over 250 employees were required to report their gender pay gap data by the 4 April 2018. Companies are also required to publish details of the proportion of men and women in the company who receive bonuses and the breakdown of men and women in different pay quartiles. The GEO reports<sup>34</sup> that: “the data has shown that more than three out of four in scope UK companies pay their male staff more on average than their female staff, more than half give higher bonuses to men, on average, than women, and over 80% have more women in their lowest paid positions than in their highest paid positions.”

32) <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/1063/1063.pdf>

33) <https://www.fsb-tcf.org/publications/final-recommendations-report/>

34) <https://www.gov.uk/government/news/100-of-uk-employers-publish-gender-pay-gap-data>

### 3.3.2 Female representation in Executive ranks

A report<sup>35</sup> by Cranfield School of Management has criticised the lack of progress in improving gender diversity at the highest executive echelons of FTSE 350 companies.

In the FTSE 100 “while the percentage of female non-executive directors is at an all-time high of 35.4%, female executive positions have flat-lined for a fourth consecutive year at 9.7%. Despite this, the percentage of women on boards has increased from 27.7% in October 2017 to 29% in June 2018, meaning it may be possible to reach the target set by the Hampton-Alexander Review of 33% by the end of 2020.”

In the FTSE 250 “the number of female executive directorships dropped from 38 to 30 between October 2017 and June 2018. There has also only been a marginal increase in the number of women on boards, from 22.8% in October 2017 to 23.7% in June 2018.”

## 3.4 AUDIT REFORM

### 3.4.1 Review of the Financial Reporting Council (“FRC”)

The Government has launched an independent review of the FRC, the regulator for auditors, accountants and actuaries. The Government has stated: “The review will be led by Sir John Kingman, who has extensive private and public sector experience [...] The root and branch review, due for completion by the end of 2018, will assess the FRC’s governance, impact and powers, to help ensure it is fit for the future. The review<sup>36</sup> aims to make the FRC the best in class for corporate governance and transparency, while helping it fulfil its role of safeguarding the UK’s leading business environment.” The review included a consultation that ran from 6 June 2018 to 6 August 2018 calling for evidence asking for views on the FRC’s role in the British economy.

### 3.4.2 Audit only firms

Earlier in the year Stephen Haddrill, the CEO of the FRC, in an interview with the FT, called for an investigation into whether KPMG, Deloitte, PwC and EY should have to spin off their UK audit arms into separate businesses<sup>37</sup>. The call for audit only firms has increased following the scandals that have taken place over the past few years, most recently with Carillion and SIG. In a press release issued in June 2018<sup>38</sup>, the FRC noted that there was a decline in the overall audit quality stating: “overall results from the most recent inspections of eight firms by the FRC show that in 2017/18 72% of audits required no more than limited improvements compared with 78% in 2016/17. Among FTSE 350 company audits, 73% required no more than limited improvements against 81% in the prior year.”

35) <https://www.cranfield.ac.uk/som/press/cranfield-ftse-report-highlights-female-under-representation-in-executive-ranks>

36) <https://www.gov.uk/government/news/government-launches-review-of-audit-regulator>

37) <https://www.ft.com/content/6c07f5d8-591b-11e8-bdb7-f6677d2e1ce8>

38) <https://www.frc.org.uk/news/june-2018/big-four-audit-quality-review-results-decline>



### 3.5 BUYBACKS AND EXECUTIVE PAY

In January 2018 the Government announced<sup>39</sup> that it would be conducting research into whether some companies are repurchasing their own shares to artificially inflate executive pay. "This review is part of the broader package of corporate governance reforms announced in August 2017 to address concerns that executive pay can sometimes be disconnected from company performance. The government has appointed consultants PwC to undertake the research into share buybacks and will be supported by Professor Alex Edmans, a leading academic at the London Business School. The findings will be published later this year."

### 3.6 RESTRICTED SHARES

Following the findings of the Investment Association's Executive Remuneration Working Group<sup>40</sup>, Weir Group proposed the introduction of restricted share awards ("RSAs") into its remuneration structure at the 2016 AGM. This amendment to the Company's remuneration policy was rejected by 72.4% of investors. Following extensive shareholder consultation, Weir Group proposed an amended version of its proposed 2016 remuneration policy to a shareholder vote at the 2018 AGM. The Company simplified its remuneration structure by eliminating performance share awards, increased the vesting period of the RSAs, increased executive ownership thresholds, and subjected payouts to several discretionary performance underpins. This move was supported by 92.35% of investors<sup>41</sup>, and may signal the green light for other companies to eliminate traditional LTIPs in favour of time-vesting RSAs.

39) <https://www.gov.uk/government/news/government-to-research-whether-companies-buy-back-their-own-shares-to-inflate-executive-pay>

40) <https://www.theinvestmentassociation.org/media-centre/press-releases/2016/executive-remuneration-working-group-issues-ten-recommendations-to-rebuild-trust-in-pay.html>

41) <https://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/WEIR/13620645.html>



## Germany (DAX)



REJECTED BOARD PROPOSALS **1**

AVERAGE QUORUM

63.20%



RESOLUTIONS  
WITH OVER 10% OPPOSE

9.84%



COMPANIES  
WITH OVER 10% OPPOSE

56.67%



## Highlights

- Across the DAX and MDAX, there were three management-proposed AGM resolutions rejected by shareholders. The three proposals related to: share issuances, director elections, and the discharge of the supervisory board.
- The number of DAX companies that had at least one contested proposal (10%+ opposition) was down 23% compared to the 2017 AGM season. However, the overall number of contested proposals across the DAX increased by 15% in 2018.
- Proposals relating to the discharge of the Management and Supervisory Board saw a 114% increase in the number of contested proposals (10%+ opposition) compared to 2017. In 2016 there were 11 contested proposals, this decreased by 36% in 2017 to seven proposals, and then increased to 15 proposals in 2018.
- Auditor approvals across the DAX saw a 200% increase in contested proposals (10%+ opposition) compared to 2017. While in 2016 no auditor appointments were contested, in 2017 one proposal received more than 10% opposition, and this rose to three proposals in 2018.
- Across the DAX and MDAX, 75% of Remuneration System votes received more than 10% opposition. Among these contested proposals, two-thirds were issued a negative recommendation by ISS.
- During the 2018 AGM season the main proxy advisors all issued more negative recommendations compared to the 2017 AGM season. ISS increased its negative recommendations by 5%, Glass Lewis by 54%, and DSW (a local proxy advisor) by 41%.

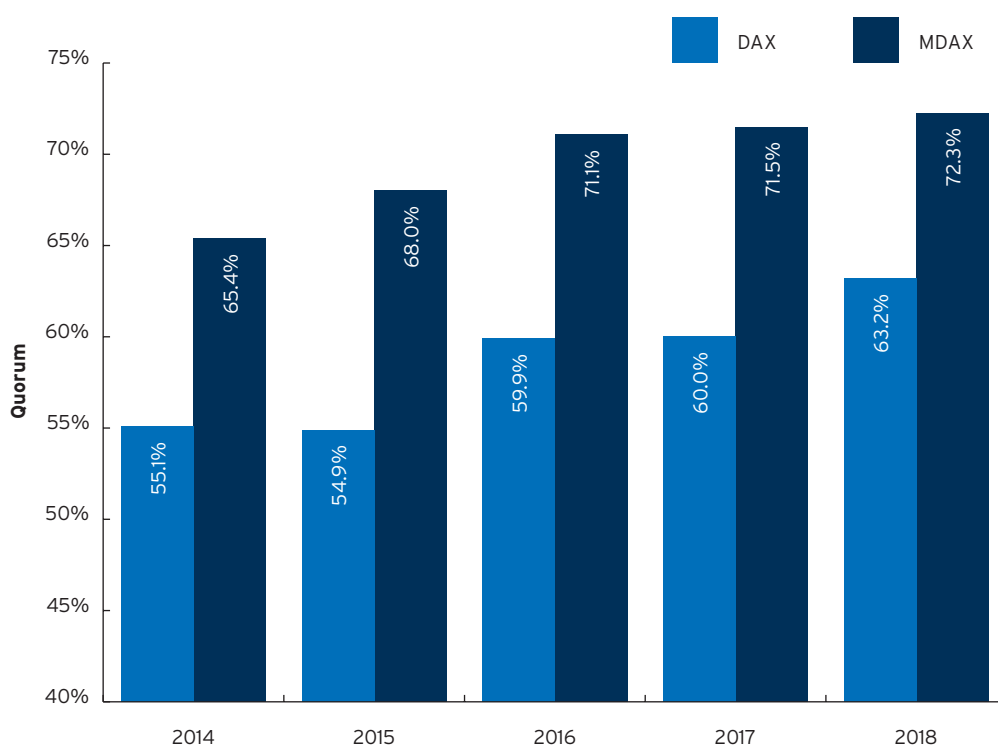
# 1 | Voting in Germany

## 1.1 QUORUM OVERVIEW

Georgeson has reviewed the quorum levels of the DAX Index<sup>1</sup> and the MDAX Index<sup>2</sup> over the past five years. Our survey includes the companies that were part of the index as of 1 January 2018, and which held their AGMs between 1 August 2017 and the 31 July 2018.

In the DAX the average quorum was 63.2%, an increase over the 2017 quorum of 60.0%, and a 14.7 percentage point increase from quorum levels in 2014. In the MDAX, the average quorum level is substantially higher on average. In 2018 the average quorum was 72.3%, representing an increase of 1.1 percentage points compared to the 2017 figure and 10.6 percentage points higher compared to the 2014 quorum levels.

**Graph 1:**  
Average AGM quorum levels in the DAX and MDAX between 2014 and 2018.

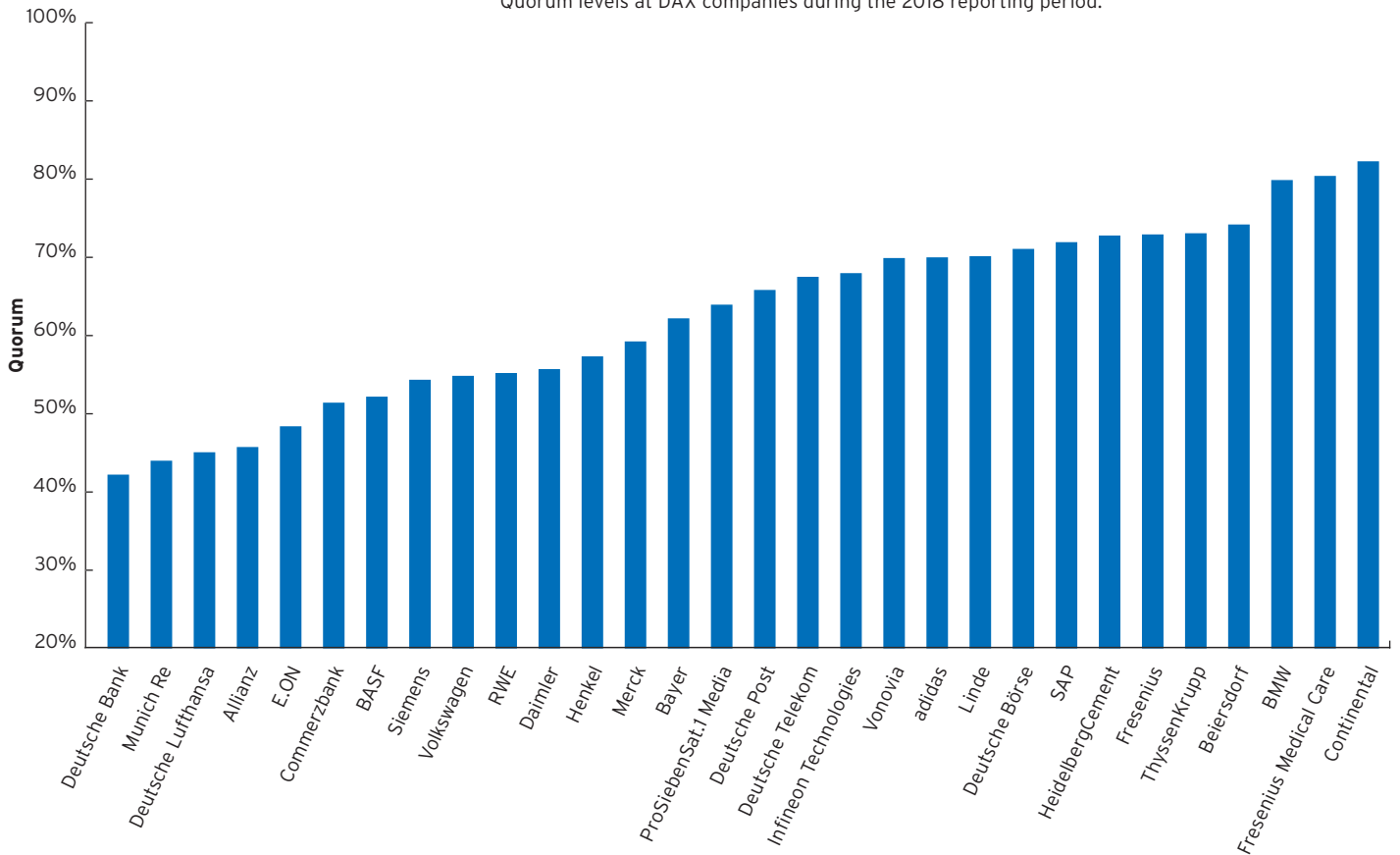


1) The DAX Index tracks the segment of the largest and most important companies on the German equities market. It contains the shares of the 30 largest and most liquid companies admitted to the FWB Frankfurt Stock Exchange in the Prime Standard segment. The DAX represents about 80% of the aggregated prime standard's market cap. See here: [https://www.dax-indices.com/documents/599858594/616692974/Factsheet\\_DAX.pdf](https://www.dax-indices.com/documents/599858594/616692974/Factsheet_DAX.pdf)

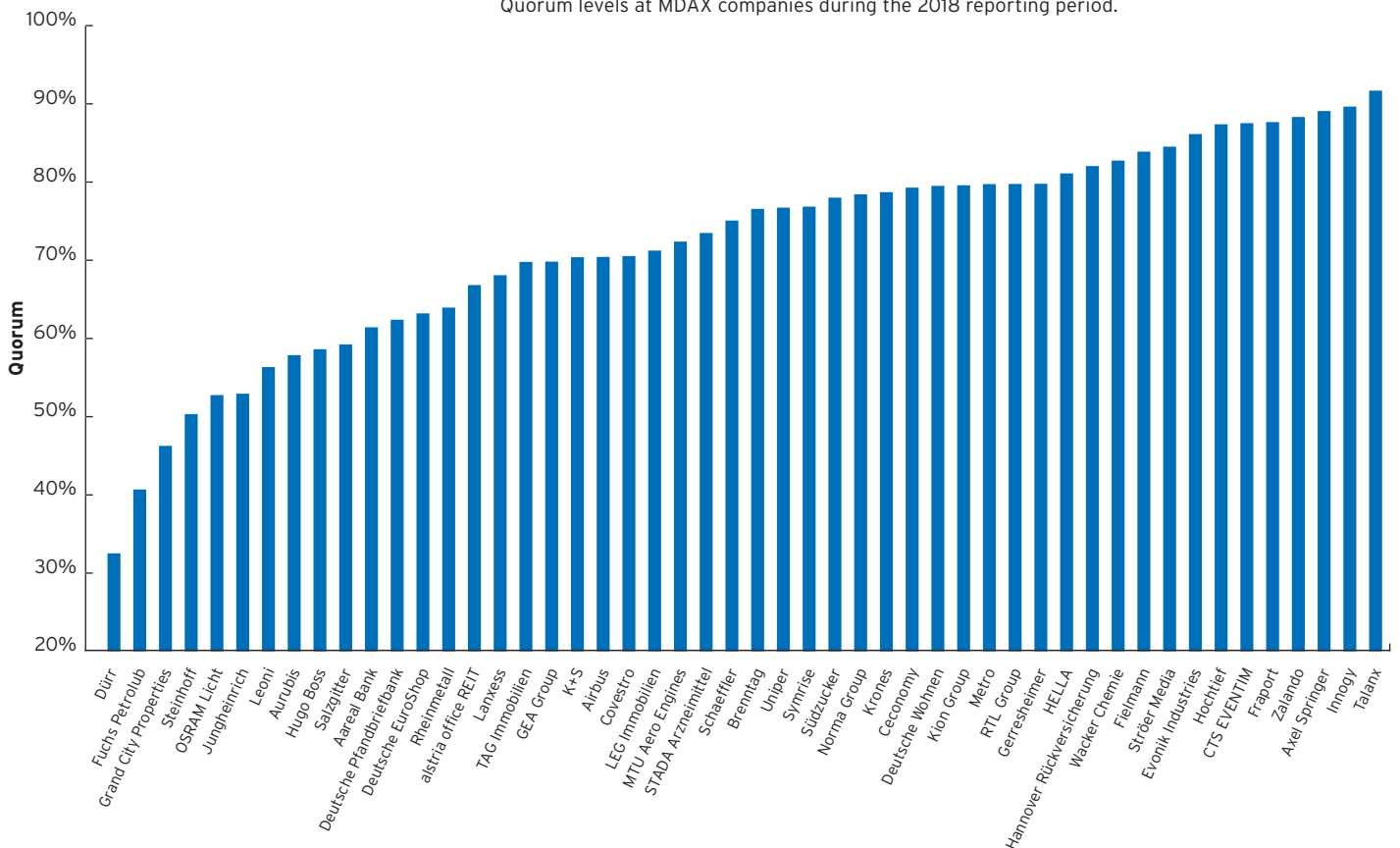
2) The MDAX tracks the segment of mid-sized industrials. It contains the shares of the 50 companies listed in the Prime Segment of Deutsche Börse, which follow the 30 DAX companies with regard to market cap and stock exchange turnover. See here: [https://www.dax-indices.com/document/Resources/Guides/FS\\_MDAX.pdf](https://www.dax-indices.com/document/Resources/Guides/FS_MDAX.pdf)

**Graph 2:**

Quorum levels at DAX companies during the 2018 reporting period.

**Graph 3:**

Quorum levels at MDAX companies during the 2018 reporting period.



## 1.2 REJECTED RESOLUTIONS

### DAX

Within the reporting period one company, Deutsche Börse, had a management-proposed resolution rejected by shareholders relating to the discharge of the management board Chairman.

#### Deutsche Börse

At its 16 May 2018 AGM Deutsche Börse requested approval for the discharge of individual management board members including the Chairman of the management board, Carsten Kengeter. The non-binding resolution on Mr Kengeter's discharge was rejected with over 74% of shareholders represented at the AGM voting against this resolution.

The discharge of the management and supervisory boards are mandatory items at German AGMs and shareholders are given the chance on an annual basis to express their confidence in the management of the company.

Following the AGM, the Financial Times reported<sup>3</sup> on investors' dissent due to the failed merger between Deutsche Börse and the London Stock Exchange. The German Shareholder Association DSW raised concerns, stating that "Deutsche Börse's leadership had failed to take into account the risks that Brexit could pose when designing the deal, which was announced three months before the UK vote."

### MDAX

Across the MDAX, two proposals were rejected by shareholders. A capital-raising resolution at LEG Immobilien, and the election of the supervisory board chairman at Norma Group failed to gain sufficient shareholder support.

#### LEG Immobilien

At its 17 May 2018 AGM, LEG Immobilien proposed amongst other resolutions, the creation of an authorized capital to issue shares of up to 50% of its issued share capital over a period of 5 years. The proposal also provided for the exclusion of pre-emptive right of up to 20% of issued share capital. An additional statement issued by the company<sup>4</sup> in advance of the AGM, however clarified that "In particular, the Management Board will exercise the authority to exclude shareholders' subscription rights for cash or contributions in kind where the newly issued shares exceed more than 5% of the existing share capital at the time this authorization is first exercised, only if the proceeds generated thereby are used to finance growth investments."

Despite this statement, the resolutions received 73.3% of votes in favour, missing the required 75% majority to pass. LEG Immobilien proposed the same resolution at the 2017 AGM and had received 80.9% support. The frequency and utilization of the approved authorization in past years are likely to have contributed to significant number of against votes on this item. Furthermore, more stringent investor guidelines on the exclusion of pre-emptive rights would have been a further reason for investors to vote against this specific item.

3) <https://www.ft.com/content/95cab7c8-3aec-11e7-ac89-b01cc67cfeec>

4) [https://www.leg-wohnen.de/fileadmin/user\\_upload/Assets/PDFs/Unternehmen/Investor\\_Relations/Hauptversammlung/2018/LEG\\_-\\_Self-commitment\\_of\\_Board\\_of\\_Management.pdf](https://www.leg-wohnen.de/fileadmin/user_upload/Assets/PDFs/Unternehmen/Investor_Relations/Hauptversammlung/2018/LEG_-_Self-commitment_of_Board_of_Management.pdf)

### Norma Group

At its 17 May 2018 AGM, Norma Group proposed the re-election of its incumbent chairman, Stefan Wolf. The company confirmed in its press statement following the AGM<sup>5</sup>: "At today's Annual General Meeting of NORMA Group SE in Frankfurt/Main, Dr. Stefan Wolf was voted down as Chairman of the Supervisory Board with 50.41% of the votes against him. The Supervisory Board elected Lars Magnus Berg as his successor. Mr. Berg has been Deputy Chairman of the Supervisory Board of NORMA Group SE for many years."

The German newspaper Handelsblatt reported<sup>6</sup> that proxy advisors had recommended against the re-election of Stefan Wolf due to overboarding concerns. At the time of the AGM, besides his Chairmanship of Norma, Mr Wolf was CEO of ElringKlinger AG and held a position on the supervisory board of Elgaier Werke GmbH (a non-listed company). The newspaper claimed that a large number of foreign investors, especially in the United States and the UK, would have followed the advice of proxy advisors, taking an excessive number of board seats occupied by Mr. Wolf into consideration.

## 1.3 CONTESTED RESOLUTIONS

Among our sample of 30 DAX companies that held their AGMs during the reporting period, 17 companies saw at least one management-proposed AGM resolution receive more than 10% shareholder opposition (compared to 22 in 2017). The total number of resolutions that received over 10% opposition amounted to 38 proposals (including rejected resolutions discussed in section 1.2), up from 33 proposals in 2017.

The most commonly contested resolutions related to the Management and Supervisory Board discharge. The second most contested resolution was the election of Supervisory Board members, while the third most contested resolution was the remuneration system proposal.

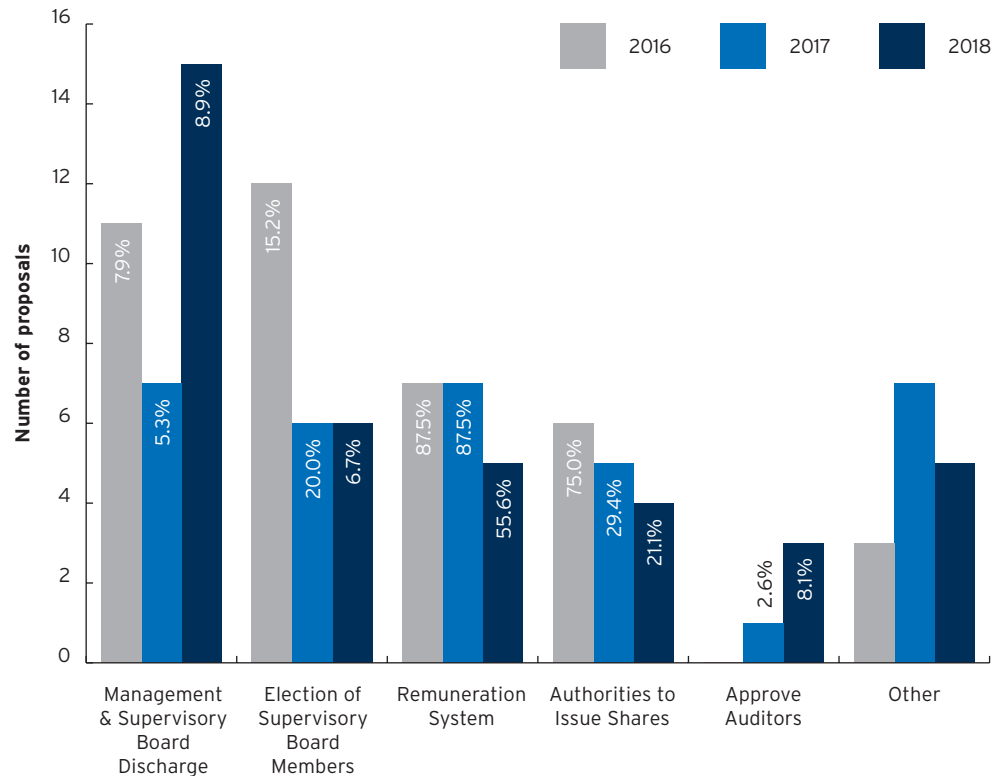
5) [https://otp.investis.com/clients/de/norma\\_group/omx/omx-story.aspx?cid=1328&newsid=63175&culture=en-US](https://otp.investis.com/clients/de/norma_group/omx/omx-story.aspx?cid=1328&newsid=63175&culture=en-US)

6) <https://www.handelsblatt.com/unternehmen/industrie/nachfolge-offen-norma-aktionaere-setzen-chefaufseher-wolf-vor-die-tuer/22578600.html>



**Graph 4:**

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.



### 1.3.1 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 do not change based on the results of this vote. This has led to an increased number of shareholders voting against the discharge based on corporate governance concerns which can often include lack of disclosure of individual supervisory board members' meeting attendance records as well as concerns about the current executive remuneration system (in terms of disclosure, structure, pay outcomes or proposed changes).

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 on the proxy card, at the time of the meeting being announced.

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.

The companies with the highest level of opposition on Management and Supervisory Board discharge were:

- Deutsche Börse (26.0% in favour of the discharge of the Chairman of the management board)
- Fresenius SE & Co KGaA (89.0% in favour of the discharge of the Supervisory Board)
- Continental AG (89.8% in favour of the discharge of Georg Schaeffler)

### 1.3.2 Supervisory Board member elections

During the reporting period six supervisory board candidates received more than 10% opposition on their election at six companies, compared to the same number at four companies in 2017.

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.

As up to 50% of the Supervisory Board in Germany is required by law to comprise 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 are also increasingly likely to consider poor attendance or undisclosed attendance records for board members 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, which includes 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:

- Infineon Technologies AG (Wolfgang Eder - 82.9% in favour)
- Linde Aktiengesellschaft (Wolfgang Reitzle - 83.4% in favour)
- Deutsche Telekom AG (Ulrich Lehner - 85.1% in favour)
- Siemens AG (Benoît Potier - 88.5% in favour)
- Deutsche Post AG (Günther Bräunig - 89.3% in favour)

### 1.3.3 Vote on the executive remuneration system

Since the introduction of the German Act on the Appropriateness of Management Board Remuneration (Gesetz zur Angemessenheit der Vorstandsvergütung – “VorstAG”<sup>7</sup>) in August 2009, DAX and MDAX companies have put their executive remuneration system up for a non-binding shareholder vote. This is only required when the Company is proposing changes to its remuneration system, and no company has so far introduced a voluntary annual remuneration vote. 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.

Despite companies only proposing votes on the remuneration system, and only doing so when a change to the system is proposed, investors and proxy advisors increasingly use this non-binding vote as a way to 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 guidelines<sup>8</sup> for German AGMs, that companies should propose a vote on their remuneration system at least every five years, even if no changes have been made. Failure to hold a vote at least every five years or if a change to the system has been made, 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. 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. Among the nine remuneration system proposals put forward during the reporting period, five received more than 10% votes against. Although this represents a decrease in opposition from 2016 and 2017 (compounded by the fact that no resolutions of this type were rejected in 2018 compared to three in 2017), this 56% opposition is still representative of large levels of shareholder dissent on this resolutions type.

Based on our experience, shareholders have become more critical of executive remuneration levels and disclosures at German issuers. This is partially driven by the fact that most other leading European markets have introduced annual remuneration-related votes in recent years.

The five remuneration proposals that received more than 10% oppose votes in 2018 were:

- Fresenius SE & Co KGaA (63.0% in favour)
- adidas AG (70.2% in favour)
- Bayerische Motoren Werke AG (BMW) (78.7% in favour)
- BASF SE (79.6% in favour)
- Deutsche Post AG (86.1% in favour)

7) [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)

8) [https://www.bvi.de/fileadmin/user\\_upload/Regulierung/Branchenstandards/ALHV/ALHV\\_2017.pdf](https://www.bvi.de/fileadmin/user_upload/Regulierung/Branchenstandards/ALHV/ALHV_2017.pdf)

### 1.3.4 General authorities to issue shares

German companies routinely request shareholder authority to issue shares up to 50% of the current issued share capital, generally over a period of up to five years. These authorities are split between “authorised” and “conditional” capital, but are subject to the same overall dilution limits.

It has 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 a number of years. However, in recent years it has become common practice to either cancel any outstanding authorities or to incorporate them as part of the new authority.

While the main proxy advisors continued to accept the exclusion of pre-emptive rights for up to 20% of the issued capital over a period of five years in the German market for the 2018 proxy season, in recent years investor attitudes towards share issuance authorities (in particular without pre-emptive rights) have become significantly stricter. This has led a leading proxy advisor, ISS, to announce in the autumn of 2017 that they would change the threshold for the exclusion of pre-emptive rights in their guidelines to 10% from February 2019 onwards.

During the reporting period four proposals relating to share issuance received more than 10% in opposition, compared to five in 2017:

- Vonovia SE (75.3% in favour for the creation of a pool of capital)
- Vonovia SE (76.9% in favour for the issuance of warrants & bonds)
- Infineon Technologies AG (80.5% in favour)
- Merck KGaA (88.3% in favour)

## 2 | Proxy Advisors

Many institutional investors rely on proxy advisory firms, such as ISS, Glass Lewis and DSW, 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.

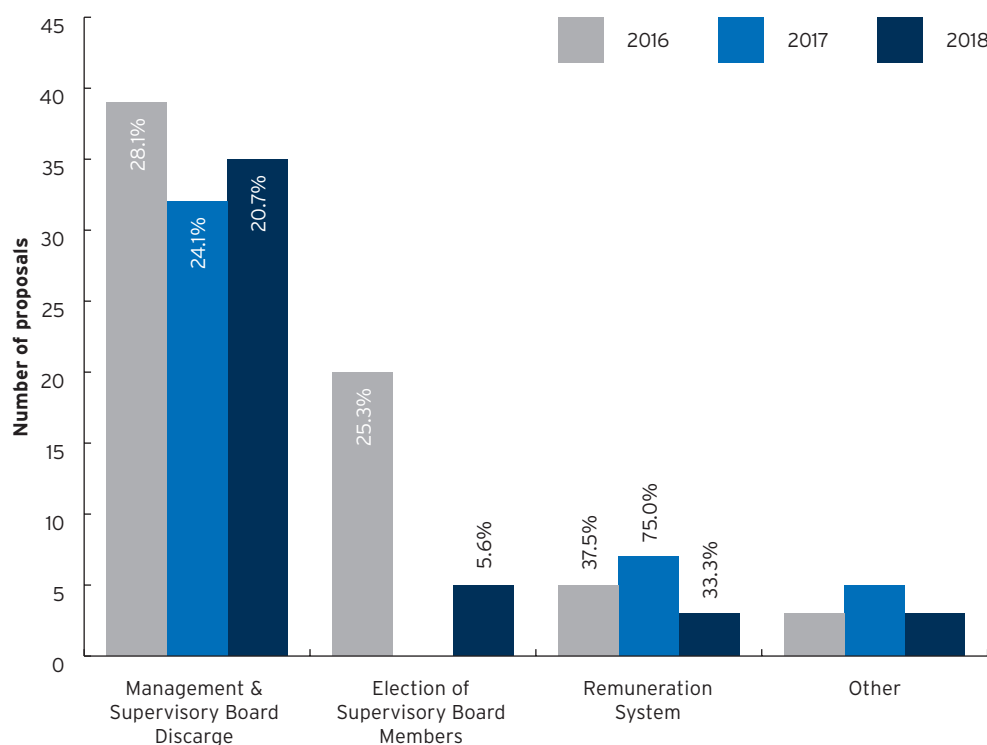
### 2.1 ISS

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

During the 2018 AGM season, 9 companies out of the DAX index received at least one against recommendation from ISS. The total number of resolutions where ISS recommended its clients to vote against amounts to 46, compared to 43 in 2017.

**Graph 5:**

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.



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

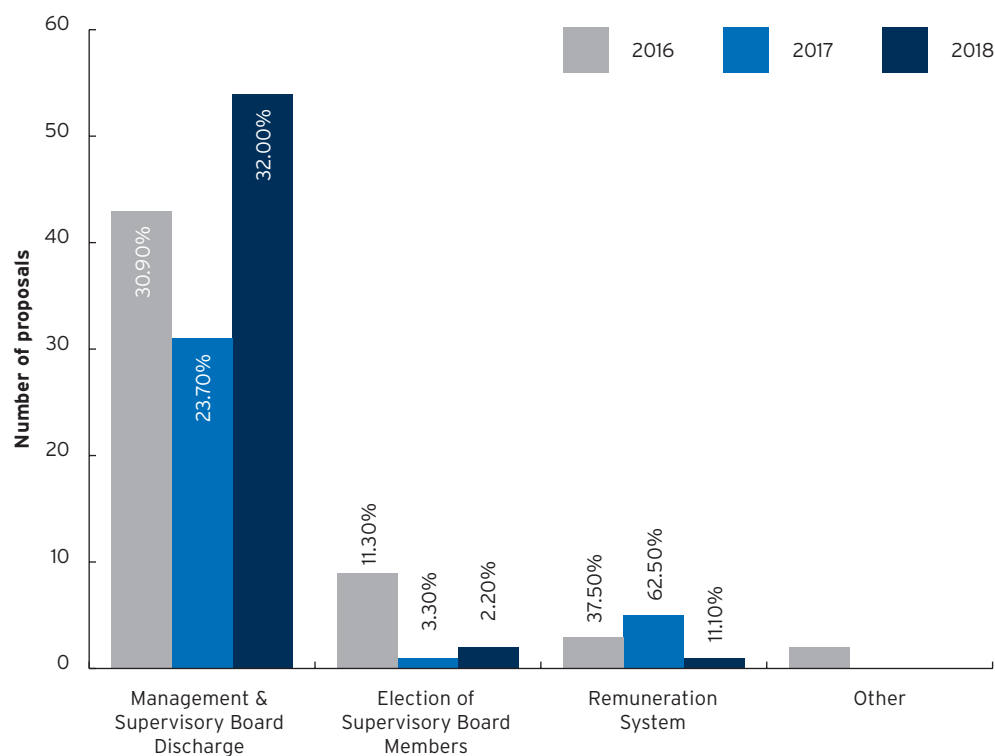
## 2.2 GLASS LEWIS

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.

During the 2018 AGM season, six companies out of 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 amounts to 57, compared to 37 in 2017.

### Graph 6:

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.



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

## 2.3 DSW

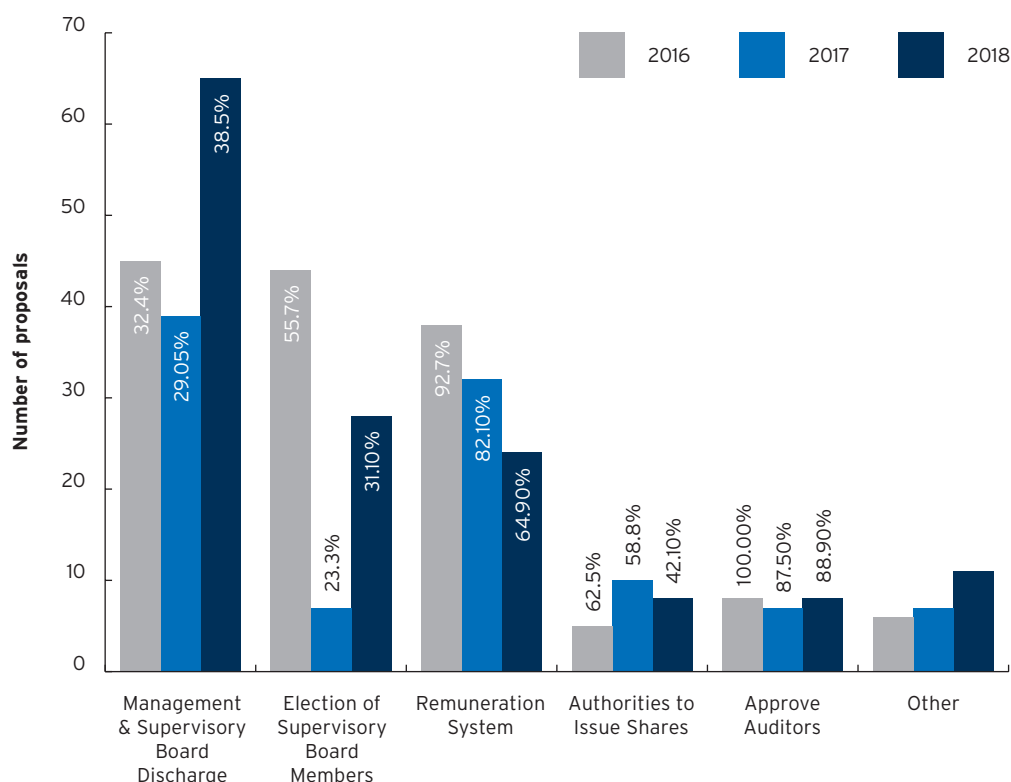
The Deutsche Schutzvereinigung für Wertpapierbesitz e.V.<sup>11</sup> (DSW) is Germany's oldest and largest shareholder association. It is also a member of the Expert Corporate Governance Service<sup>12</sup> (ECGS), a partnership of independent local proxy advisors.

Founded in 1947, DSW now has about 25,000 members, which includes institutional and retail investors. DSW represents its members at approximately 650 annual general meetings per year and aims to publish voting recommendations for all AGM resolutions. The below mentioned recommendations are based on the reports issued by DSW through ECGS whose clients comprise institutional investors.

During the 2018 proxy season, 29 companies out of the DAX index received at least one against recommendation from DSW, compared to 28 companies 2017. The majority of against recommendations related to the discharge of the Management and Supervisory board members, followed by the appointment of the auditor. The total number of resolutions where DSW recommended its clients to vote against amounts to 144 in 2018, compared to 102 in 2017.

**Graph 7:**

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



11) <https://www.dsw-info.de/en/>

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





# 3 | Corporate Governance developments

## 3.1 GERMAN INDICES ADJUSTMENTS

Deutsche Börse Group announced changes to the structure of its indices in May 2018. These changes, implemented during the quarterly index review in September, will affect the size and composition of the DAX, MDAX, SDAX, and TecDAX.<sup>13</sup>

In terms of size changes, the MDAX and SDAX will increase from 50 to 60, and 50 to 70 constituents respectively. Additionally, technology stocks conventionally assigned to the TecDAX will now be open for inclusion in the MDAX and SDAX based on the usual parameters of market cap and liquidity.

## 3.2 CHANGES IN THE OWNERSHIP STRUCTURE OF GERMAN LISTED COMPANIES

Handelsblatt reported in late 2017<sup>14</sup> about the “DAX’s Foreign Invasion”. The paper claimed that “New research shows that foreigners now own more than half of the stock in Germany’s top 30 listed companies.” Based on its own research, it appears that greater foreign ownership is linked to greater performance.

Handelsblatt suggests that foreign investors own now more than half of the stock – 53 percent – in DAX companies. At several well-known firms, such as Bayer, Deutsche Börse and Adidas, foreign ownership is well over 70 percent.

The major exception to the trend is among management: here, Germans still predominate. According to the Handelsblatt report, “two-thirds of the most senior 200 executives are German nationals. Just six percent of non-executive board members are American, even though 25 percent of the revenues of large German firms come from the US, and 20 percent of their shares are held by American shareholders.”

13) <http://deutsche-boerse.com/dbg-en/media-relations/press-releases/Deutsche-Boerse-decides-rule-changes-for-MDAX--SDAX-and-TecDAX--indices/3405648>

14) <https://global.handelsblatt.com/finance/the-daxsforeign-invasion-839570>





## France (CAC 40)



REJECTED BOARD PROPOSALS **6**

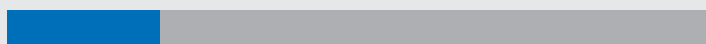
AVERAGE QUORUM

**67.10%**



RESOLUTIONS  
WITH OVER 10% OPPOSE

**21.54%**



COMPANIES  
WITH OVER 10% OPPOSE

**94.29%**



## Highlights

- Amongst the 35 CAC40 companies surveyed there were six board-proposed AGM resolutions rejected by shareholders. Remuneration and CEO/Chairman elections were the most prominent themes. In addition, six shareholder proposals were filed but failed to gather sufficient support from shareholders and were therefore rejected.
- Amongst the 35 CAC40 companies surveyed 33 companies had at least one contested proposal (10%+ opposition), and over 21% of the total resolutions proposed during the 2018 AGM season were contested. The most commonly contested proposals related to executive remuneration.
- Despite remuneration being the most commonly contested proposal (10%+ opposition), contention against remuneration (executive remuneration and remuneration policy proposals) within the CAC40 sample decreased by seven percentage points in 2018, from 47% in 2017 to 40% in 2018. On average, shareholder support for the binding vote on executive remuneration increased from 83.7% in 2017 to 85.9% in 2018.
- Proposals relating to the election of a combined CEO/Chairman continued to record high levels of dissent. Of the fifteen CEO/Chairman mandates put forward in 2018 amongst the CAC40 and Next20, 73% were contested (10%+ opposition) and those up for re-election recorded a higher level of dissent than at their previous election. Under their European policy, ISS is not in favour of combined CEO/Chairman roles and recommended to vote against the election of 87% of the CEO/Chairman mandates put forward.

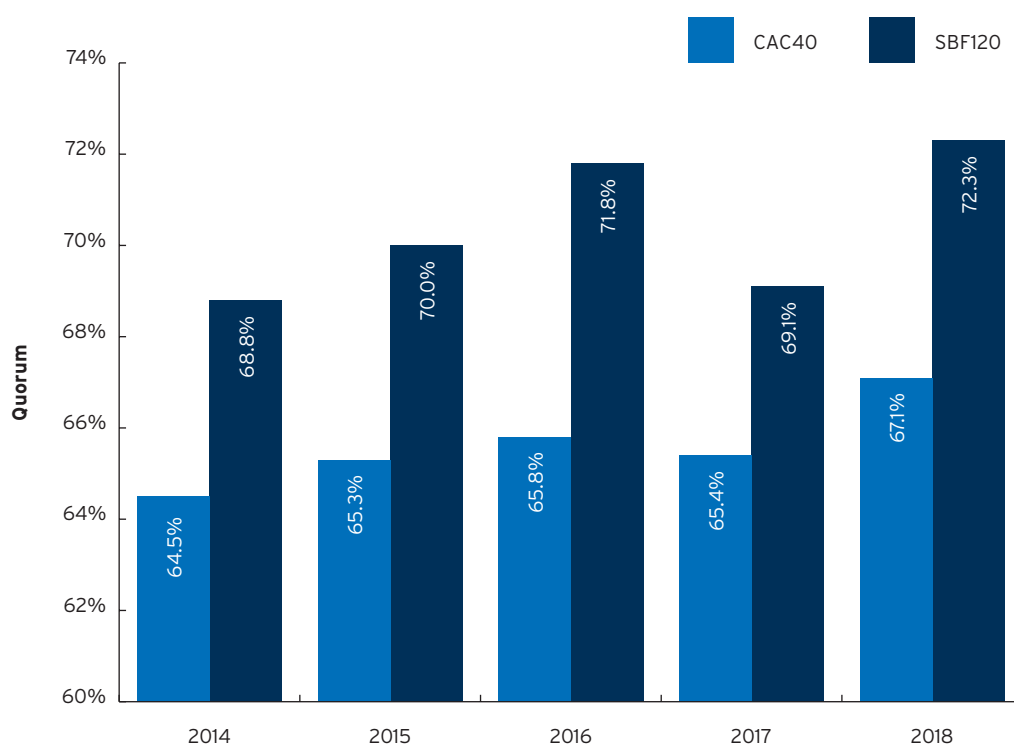
# 1 | Voting in France

## 1.1 QUORUM OVERVIEW

Georgeson has reviewed the quorum levels of the CAC40 index<sup>1</sup> over the past five years. Our survey includes the 35 CAC40 companies with corporate headquarters located in France and having held their AGM between 1 August 2017 and 31 July 2018. Therefore our analysis excludes Airbus Group, ArcelorMittal, Solvay, 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 2018 proxy season increased from 65.4% in 2017 to 67.1% in 2018. The below graph illustrates the evolution of the average of CAC40 and SBF120<sup>2</sup> quorums over the past five years.

**Graph 1:**  
Average AGM quorum levels in the CAC40 and SBF120 between 2014 and 2018.

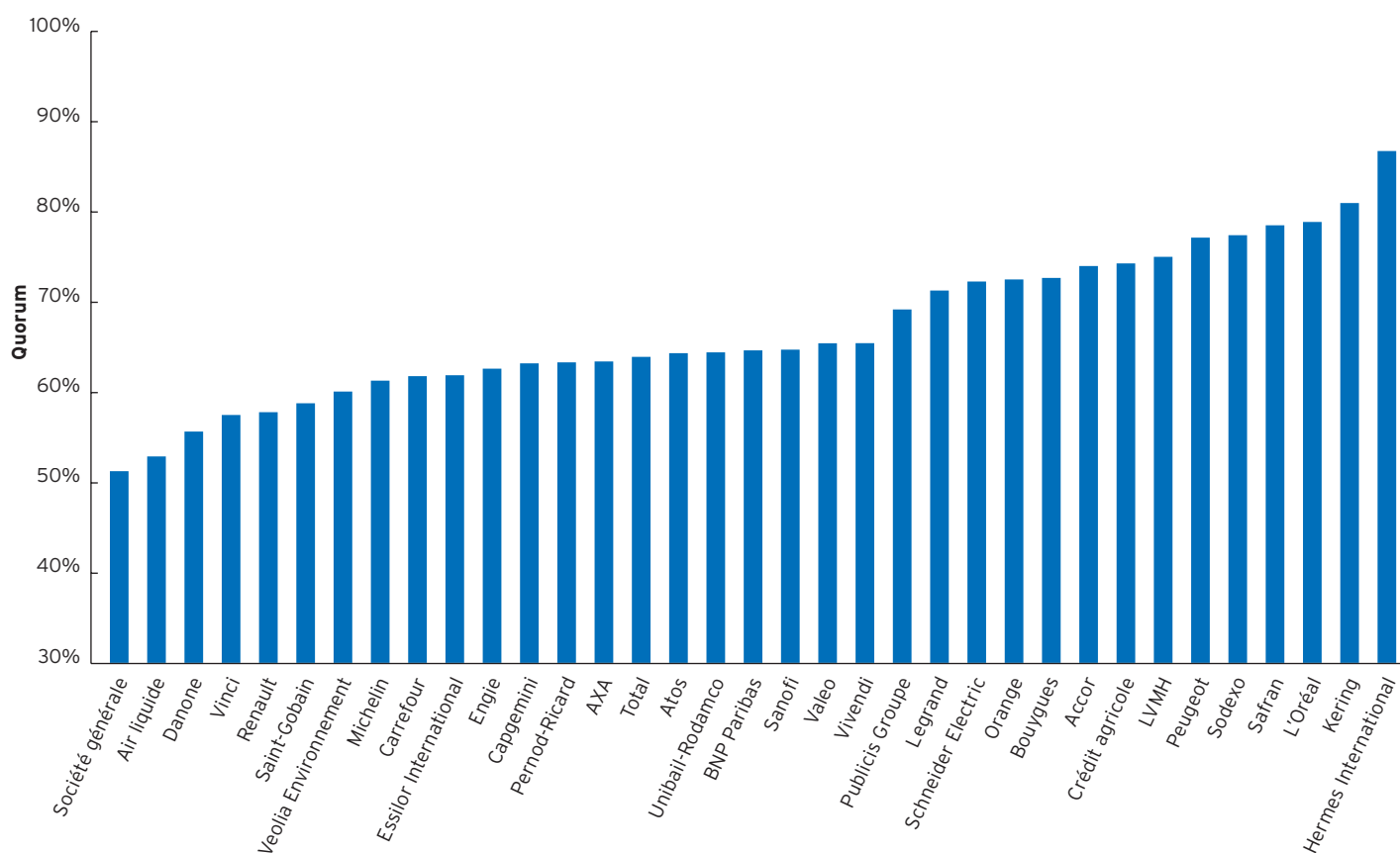


1) The CAC40 is a benchmark French stock market index which comprises the 40 largest and most liquid stocks trading on the Euronext Paris. See here: <https://indices.euronext.com/en/products/indices/FR0003500008-XPAR>

2) The SBF 120 is a French stock market index which comprises the 120 most actively traded stocks listed in Paris. It includes all 40 stocks in the CAC40 index and a selection of 80 additional stocks listed on the Premier Marché and Second Marché trading on the Euronext Paris. See here: <https://indices.euronext.com/en/products/indices/FR0003999481-XPAR>

**Graph 2:**

Quorum levels at CAC40 companies during the 2018 reporting period.



## 1.2 REJECTED RESOLUTIONS

### BOARD PROPOSALS

Amongst the 35 CAC40 companies in our sample that held their AGM between 1 August 2017 and 31 July 2018, six resolutions proposed by the board were rejected by shareholders, at the AGMs of Engie and Vinci.

#### Engie

At the Engie AGM<sup>3</sup>, on May 18, 2018, five authorities to increase share capital which could be used in the event of a public tender or exchange offer failed to achieve the required two-thirds majority of voting rights cast and were rejected by shareholders (with over 37% against votes). It should be noted that ISS and Glass Lewis had recommended an against vote, as they contended that the authorities could be used for anti-takeover purposes.

3) [https://www.engie.com/wp-content/uploads/2018/05/resultatsvote\\_20180518175441.pdf](https://www.engie.com/wp-content/uploads/2018/05/resultatsvote_20180518175441.pdf)

### **Vinci**

At the Vinci AGM<sup>4</sup>, on April 17, 2018, the proposal to approve the awarding of a €330,000 consultancy contract to YTSeuropaconsultants, a company controlled by Yves Thibault de Silguy, who serves as Lead Director on the Vinci board, failed to achieve the required simple majority of voting rights cast and was rejected (with 50.39% negative votes). Both ISS and Glass Lewis had recommended an against vote on this resolution, arguing that the transaction represents a potential conflict of interest.

It should be noted that the resolution was initially announced as being approved at the AGM. However, due to a mistake in the vote count, the AGM quorum was corrected on August 1, 2018 from 59% to 57.59%. The correction of this erroneous vote count led to the rejection of the resolution<sup>5</sup>.

## **SHAREHOLDER RESOLUTIONS**

Additionally, five shareholder proposals (which were not supported by the board) were filed at the AGMs of Orange and Total. All five failed to gather sufficient support from shareholders and were therefore rejected.

### **Orange**

Four shareholder proposals<sup>6</sup> were filed at Orange's AGM by the FCPE<sup>7</sup> Orange Actions but were rejected with dissent at over 84%. The FCPE Orange Actions proposed:

- To approve the allocation of a dividend of €0.55 per Share (resolution A)
- To authorize the board to propose an option between cash and shares for the payment of the dividend balance (Resolution B)
- To authorize the board to propose an option between cash and shares for the payment of the whole interim dividend (Resolution C)
- To amend an article of the company's bylaws regarding overboarding of directors.

### **Total**

At Total's AGM<sup>8</sup>, a shareholder resolution was put forward by the Central Works Council of UES Amont-Global Services-Holding of Total which proposed to amend the bylaws regarding a new procedure for selecting the employee shareholder representative. The resolution failed to obtain approval from shareholders and was rejected with against votes at 93.39%.

It should be noted that both ISS and Glass Lewis had issued against recommendations on the shareholder resolutions proposed at Orange and Total.

4) [https://www.vinci.com/vinci.nsf/en/ag2018/\\$file/vinci-2018-combined-shareholders-general-meeting-amended-result-vote-esolutions.pdf](https://www.vinci.com/vinci.nsf/en/ag2018/$file/vinci-2018-combined-shareholders-general-meeting-amended-result-vote-esolutions.pdf)

5) <https://www.vinci.com/vinci.nsf/fr/communiqués/pages/20180801-1745.htm>

6) [https://www.orange.com/en/content/download/46448/1361711/version/2/file/ORANGE\\_ADC\\_VA.pdf](https://www.orange.com/en/content/download/46448/1361711/version/2/file/ORANGE_ADC_VA.pdf)

7) An FCPE, which stands for "Fond commun de placement d'Entreprise", is a collective employee investment fund used in France.

8) <https://www.total.com/sites/default/files/atoms/files/notice-of-meeting-2018.pdf>

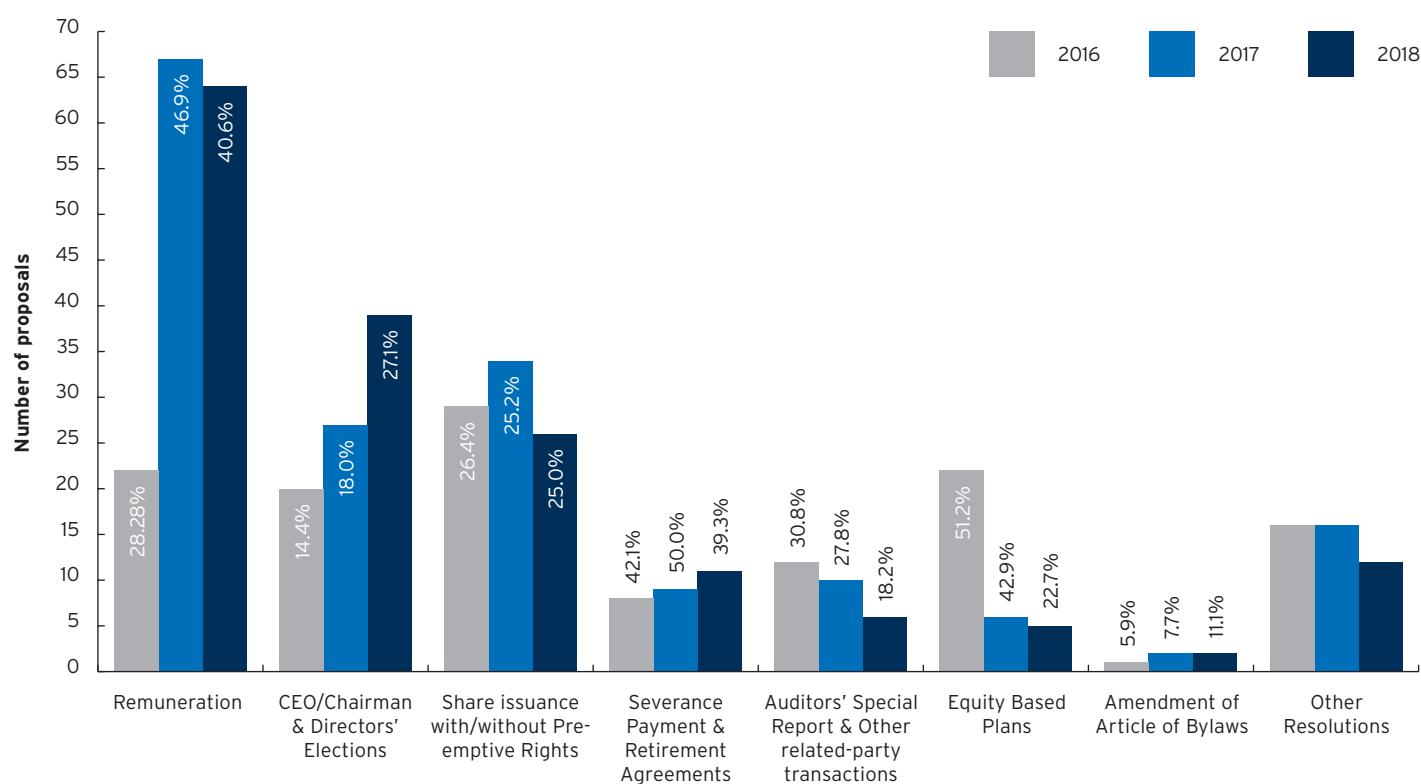
### 1.3 CONTESTED RESOLUTIONS

Among the 35 CAC40 companies in our sample that held their AGM between 1 August 2017 and 31 July 2018, 33 companies saw at least one resolution receive more than 10% shareholder opposition (compared to 30 companies in 2017). The total number of resolutions that received over 10% dissent amounted to 165 (including the rejected resolutions discussed in section 1.2), compared to 171 resolutions in 2017.

The most commonly contested resolutions were votes on executive compensation and remuneration policy with 64 resolutions receiving more than 10% negative votes. The second most commonly contested resolutions were CEO/Chairman and director elections.

**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.





### 1.3.1 Binding vote on executive remuneration and remuneration policy

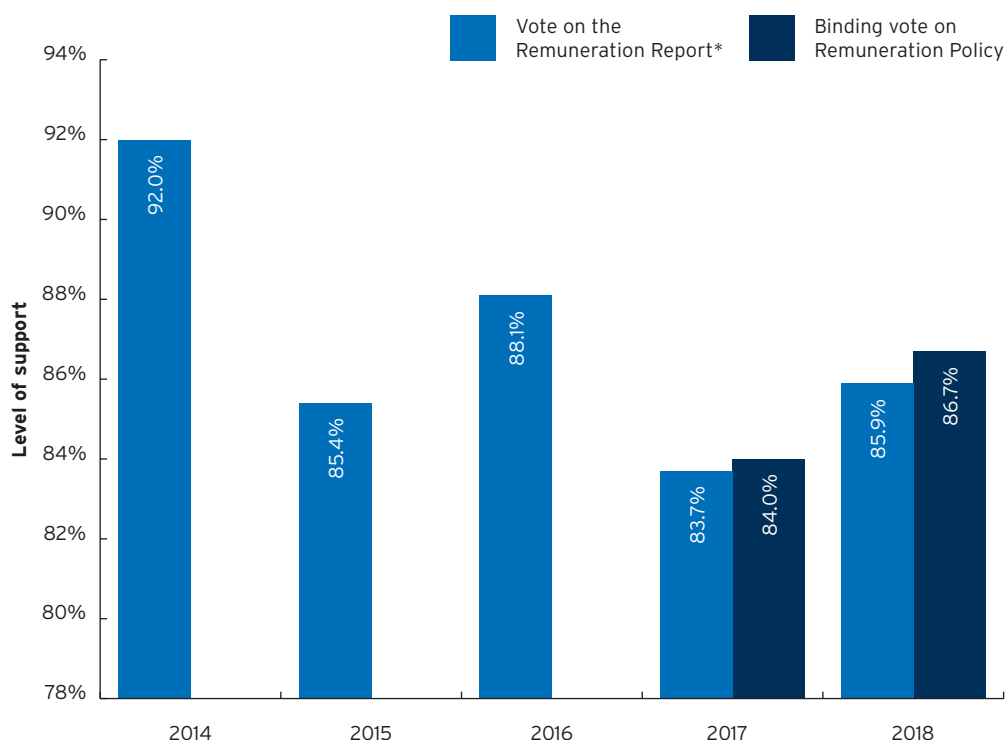
Since 2014, companies who refer to the AFEP-MEDEF Code have proposed an advisory vote on executive remuneration at their AGM.

In 2018, pursuant to the enactment of the Sapin II law<sup>9</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.

On average, we recorded an increase in the level of support for the vote on CEO remuneration resolutions at 2018 CAC40 AGMs (85.9% on average) compared to 2017 (83.7% on average). The level of support for the vote on the CEO remuneration policy also increased at this year's AGMs (86.7% on average in 2018 versus 84% in 2017). The below graph illustrates the average of the 35 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 2014 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.

9) 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.

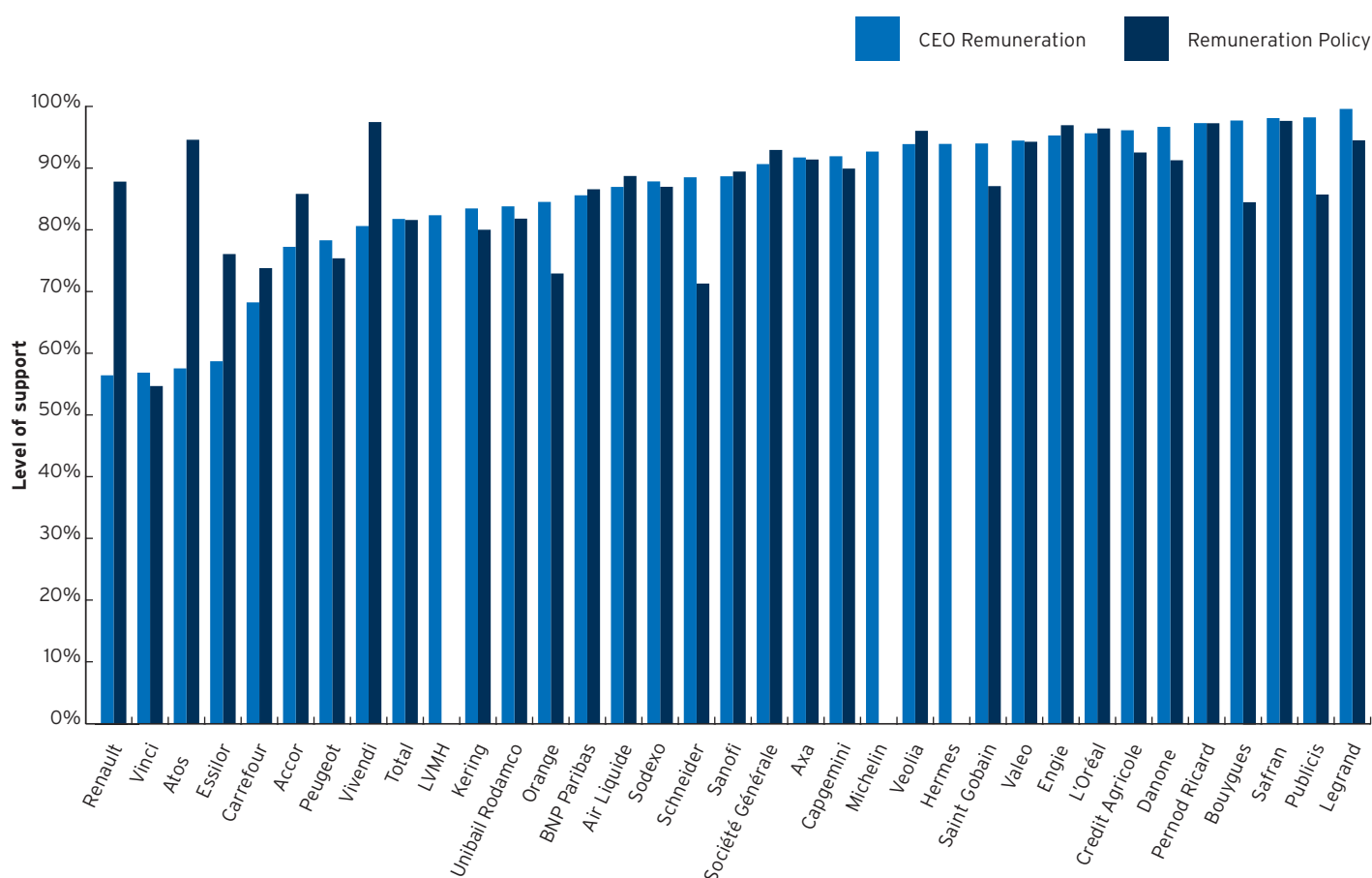
This year, at CAC40 AGMs, all executive remuneration resolutions successfully passed. Seventeen of the 35 CAC40 companies surveyed registered an increase in the level of positive votes on executive remuneration compared to their 2017 vote results, notably Publicis, Safran, Valeo, Air Liquide and Veolia.

Nevertheless, four of the 35 CAC40 companies surveyed saw their executive remuneration resolutions passed with less than 60% support. As in 2017, Renault continues to register the highest level of dissent for the remuneration of their CEO, Carlos Ghosn, which passed with 56.50%. The French State, which holds a 15% stake, voted against Carlos Ghosn's remuneration as they did at the 2017 AGM. In June 2018, Reuters<sup>10</sup> reported that "the government has told Renault it will oppose Ghosn's 2017 pay, in line with its policy, company and official sources said, raising the prospect of a second negative vote in two years. French 'say on pay' votes have become binding since the last rejection."

The below graph shows the levels of shareholder approval for the binding vote on the CEO's remuneration as well as the remuneration policy among the 35 CAC40 companies surveyed.

**Graph 5:**

Level of support during the reporting period for the binding vote on CEO remuneration and remuneration policy among the 35 CAC40 companies surveyed.



10) <https://www.reuters.com/article/us-renault-pay-ghosn/renault-boss-ghosn-faces-tight-shareholder-vote-on-pay-idUSKBN1J92K4>

### 1.3.2 CEO/Chairman re-elections

Fifteen CEO/Chairman mandates were set to be renewed via shareholder approval in 2018 among the CAC40 and Next20 companies in our sample which have a combined CEO/Chairman: Alstom, Air Liquide, Bouygues, Capgemini, Carrefour, Edenred, l'Oréal, Orange, Renault, Saint Gobain, Teleperformance, Thales, Total, Veolia and Vinci.

According to Reuters<sup>11)</sup> "Corporate France is bucking the global trend of splitting the roles of chairman and CEO, with Thomson Reuters data showing a steady growth in the number of French companies that have merged the posts in the past 15 years. Almost three quarters of listed French companies tracked by Thomson Reuters now have or have had one person holding both positions, compared to 60 percent in the United States and fewer than 20 percent in Britain, Germany and Japan, according to an analysis of more than 6,500 companies. On average, around one in three companies globally now combines the two roles, down from a little over 50 percent in 2002, when France was on a par with the global average."

Over 70% of the CAC40 and Next20 Chairmen/CEOs who were up for re-election in 2018 received a higher level of dissent than at their previous election. It should be noted that ISS recommended to vote against the re-election of thirteen out of the fifteen CAC40 and Next20 CEO/Chairman mandates to be renewed in 2018 as under current ISS policy in Europe (which became more restrictive as of 1 February 2011) the only reason for which combined CEO/Chairman roles may be acceptable is if the company provides assurances that this is an interim arrangement, i.e. for less than two years.

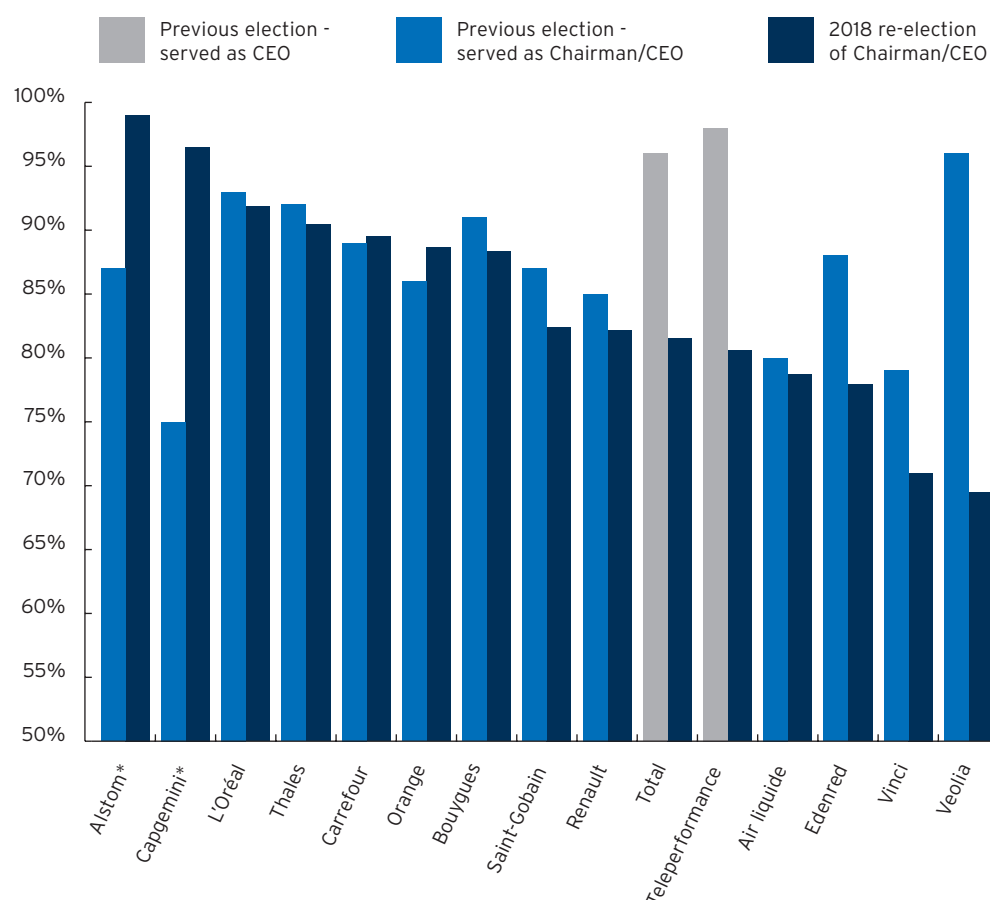
ISS decided to support the re-election of the CEO/Chairman of Capgemini and Alstom. At Capgemini's AGM, in the context of the succession of the current CEO/Chairman, Paul Hermelin, ISS recommended a vote in favour of his re-election for a four year term as the board of directors stated in March 2018 that Mr Hermelin would renounce his CEO role and concentrate on his chairmanship halfway through his mandate. At Alstom's AGM, ISS recommended to vote for the re-election of Henri Poupart-Lafarge as the company announced that the CEO and Chairman positions would be split following the combination of Alstom and Siemens' mobility businesses.

The graph below compares the 2018 voting results of the fifteen CAC40 and Next20 Chairman/CEO mandates that were voted on this year and compare them to the voting results of their previous re-election. As noted in the chart, two CEOs/Chairmen served only as CEO at their previous election: Total and Teleperformance.

11) <https://www.reuters.com/article/us-france-business-governance/corporate-france-swims-against-tide-on-chairman-independence-idUSKBN1CZ1QN>

**Graph 6:**

2018 CEO/Chairman re-election voting results compared to the voting results of their previous election.



\* The company committed to splitting the roles in the near future.

### 1.3.3 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, 26 authorities to issue shares, including 19 without pre-emptive rights, received more than 10% negative votes.

Among the 35 CAC40 companies surveyed, the companies with the lowest level of support on authorities to issue shares were:

- Accor: Its authority to issue free warrants during a public tender offer received 53.3% votes in favour. However, the authority gathered a sufficient level of support from shareholders for the resolution to pass. Indeed, although the authority to issue free warrants is proposed as an extraordinary agenda item, the resolution only needs a simple majority to pass. The four main proxy advisers (ISS, Glass Lewis, Proxinvest and the AFG) recommended against the resolution as they considered that it could be used as an anti-takeover device.
- Engie: Five of its capital issuance authorities registered less than 63% positive votes and were rejected. This is discussed in section 1.2. Each of these authorisations could be used in the event of a public tender offer. Therefore a number of proxy advisors recommended against them.

## 2 | Proxy Advisors

Many institutional investors rely on proxy advisory firms, such as ISS, Glass Lewis, the AFG and Proxinvest 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.

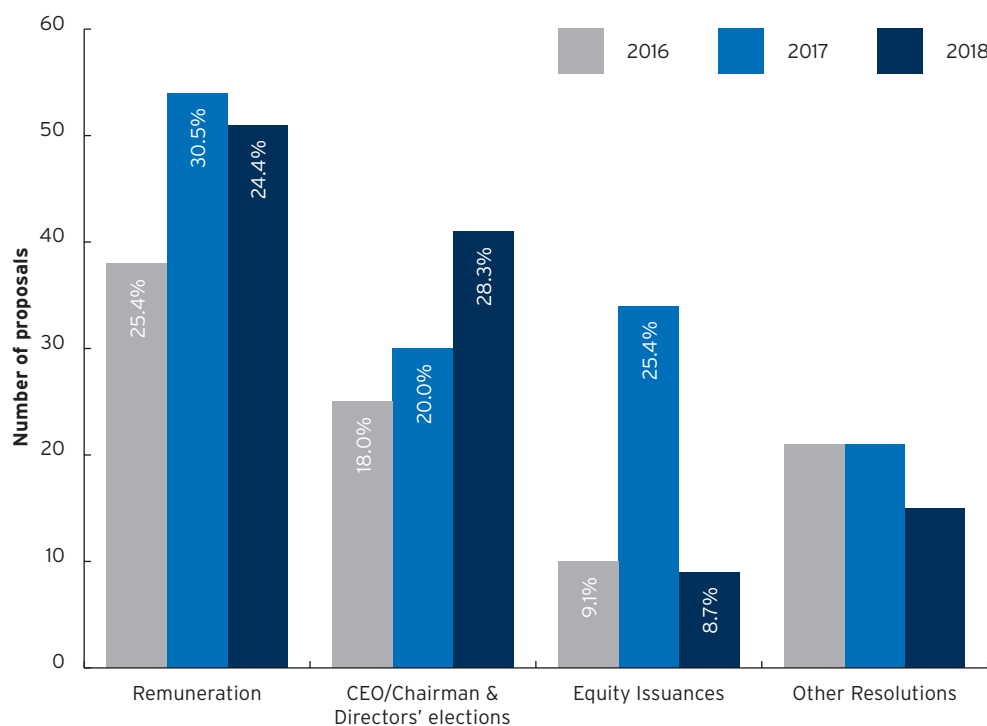
### 2.1 ISS

Institutional Shareholder Services<sup>12</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers.

Between 1 August 2017 and 31 July 2018, 26 companies out of the 35 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 (51 resolutions). This is followed by the CEO/Chairman and directors' elections (41 resolutions). The total number of against recommendations has decreased from 139 in 2017 to 116 in 2018.

#### Graph 7:

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.

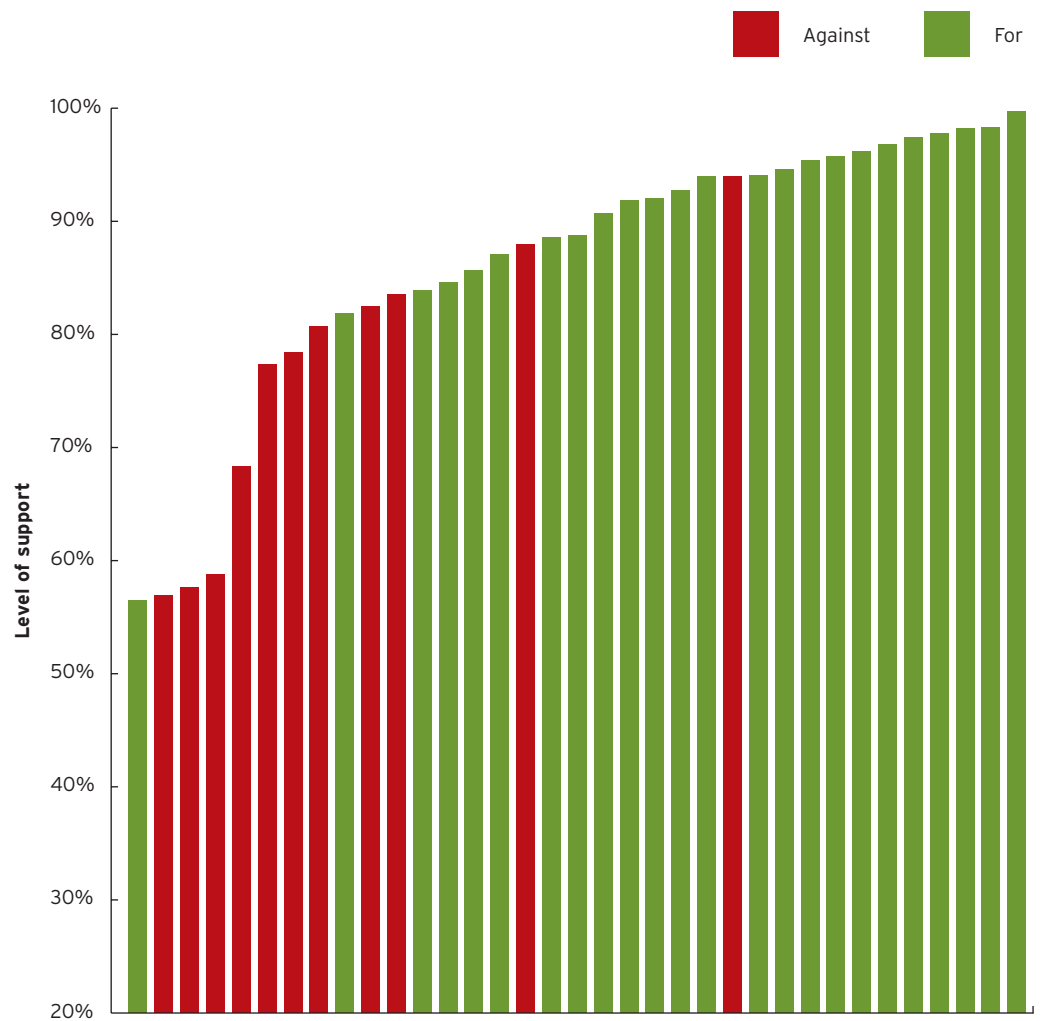


12) <http://www.issgovernance.com/about/about-iss/>

Below is an overview of the level of support for the advisory vote on CEO remuneration among the 35 CAC40 companies surveyed (ordered by level of support) and colour coded by ISS vote recommendation.

**Graph 8:**

Level of support for the CEO remuneration of the 35 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.

## 2.2 GLASS LEWIS

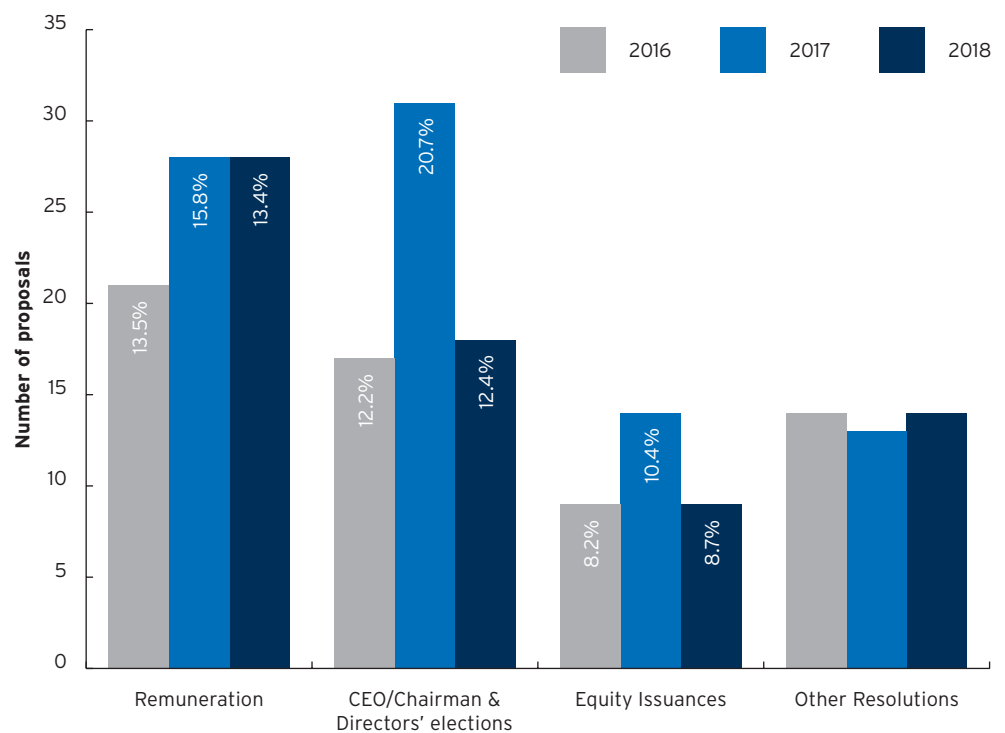
Glass Lewis<sup>13</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms.

Between 1 August 2017 and 31 July 2018, 22 companies out of the 35 CAC40 companies surveyed, received at least one against or abstain recommendation from Glass Lewis. The approval of remuneration resolutions are the resolutions that have received the highest number of against recommendations (28 resolutions). This is followed by the CEO/Chairman and directors' elections (18 resolutions).

Below is an overview of the number of negative recommendations by Glass Lewis at the 35 CAC40 AGMs we surveyed over the past three years. The total number of against or abstain recommendations has decreased from 86 in 2017 to 69 in 2018.

**Graph 9:**

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.

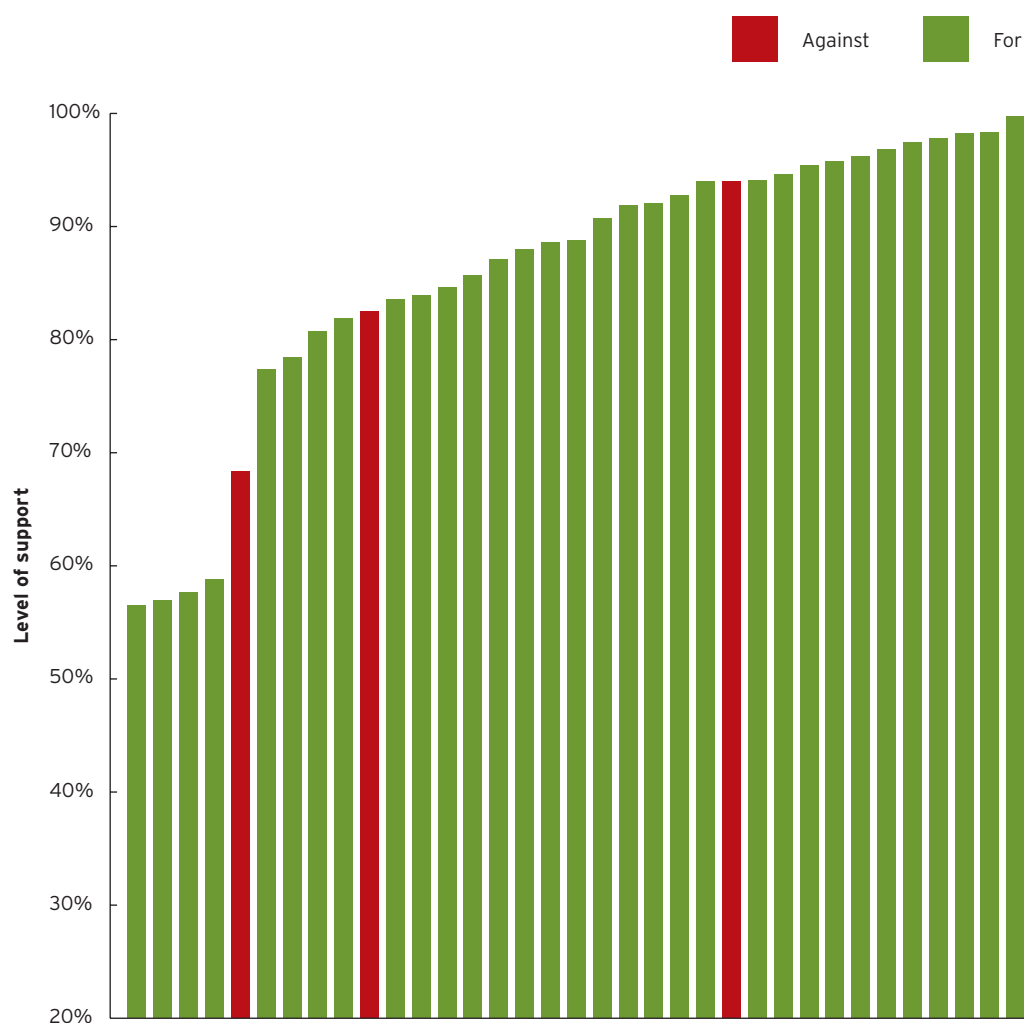


13) <http://www.glasslewis.com/about-glass-lewis/>

Below is an overview of the level of support for the CEO remuneration among the 35 CAC40 companies surveyed (ordered by level of support) and colour coded by Glass Lewis vote recommendations.

**Graph 10:**

Level of support for the CEO remuneration among the 35 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 the individual who served the longest.



## 2.3 AFG

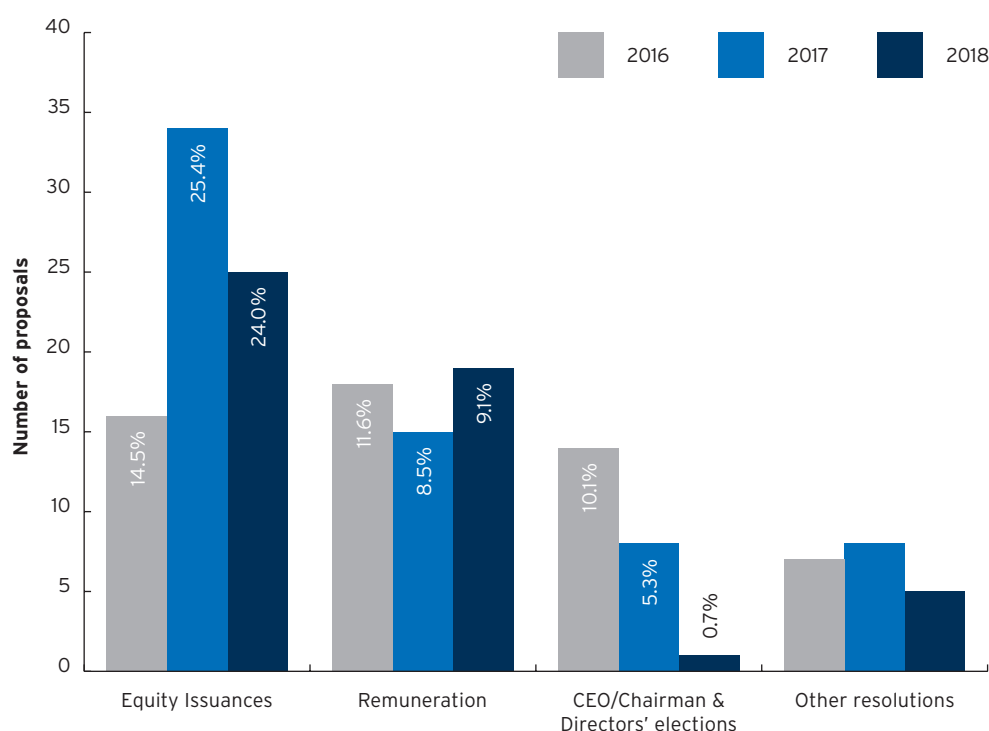
The AFG (Association Française de la Gestion financière)<sup>14</sup>, the French asset management association, represents and promotes the interests of the French asset management industry. The AFG, via its alert programme, issues a report for each AGM in the SBF120 index which either highlights resolutions that do not comply with their code or states that all resolutions are in line with their code.

Between 1 August 2017 and 31 July 2018, 21 companies out of the 35 CAC40 companies surveyed received at least one alert from the AFG. The approval of share issuance authorities has received the highest number of alerts (25 resolutions). This is followed by the approval of remuneration resolutions (19 resolutions).

Below is an overview of the number of alerts raised by the AFG at the 35 CAC40 AGMs we surveyed over the past three years. The total number of alerts has decreased from 65 in 2017 to 50 in 2018.

**Graph 11:**

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.



14) <https://www.afg.asso.fr/en/afg/about-us/overview/>

## 2.4 PROXINVEST

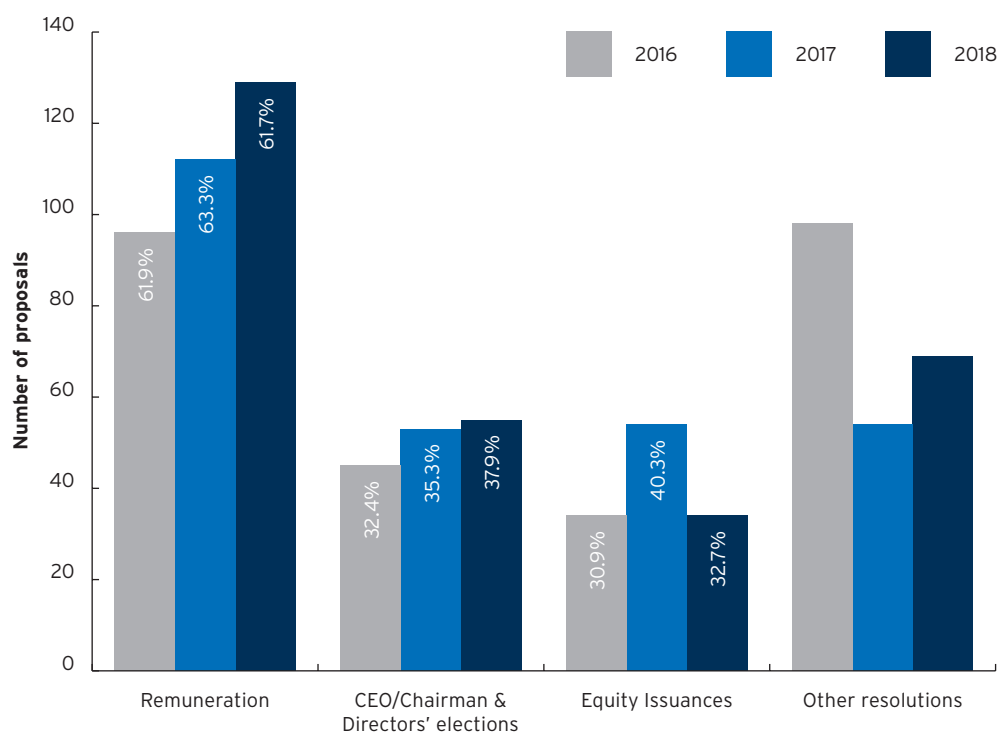
Proxinvest<sup>15</sup> is a French independently-owned proxy advisory firm supporting the engagement and proxy analysis processes of investors. Proxinvest are members of the Expert Corporate Governance Service<sup>16</sup> (ECGS), a partnership of independent local proxy advisors.

Between 1 August 2017 and 31 July 2018, all the 35 CAC40 companies surveyed received at least one against or abstain recommendation from Proxinvest. The approval of remuneration resolutions (which include executive remuneration, 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 (129 resolutions). This is followed by the CEO/Chairman and directors' elections (55 resolutions).

Below is an overview of the number of negative recommendations by Proxinvest at the 35 CAC40 AGMs surveyed over the past three years. The total number of against recommendations has increased from 273 in 2016 to 287 in 2018.

**Graph 12:**

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



15) [http://www.proxinvest.fr/?page\\_id=689&lang=en](http://www.proxinvest.fr/?page_id=689&lang=en)

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

# 3 | Corporate Governance developments

## 3.1 AFEP-MEDEF

In June 2018, the AFEP-MEDEF, the association of French corporations and listed companies, published a revised version of their corporate governance code<sup>17</sup>.

The main updates to the corporate governance code include:

- “1) Employee directors placed at the proper strategic level;
- 2) High Committee on corporate governance given new resources and prerogatives;
- 3) Companies’ commitments regarding non-discrimination and diversity raised to the highest level;
- 4) Further advances with regard to compensation as well as the imposition of even stricter clauses relating to the departure of company officers;
- 5) Shareholders’ dialogue with the Board of Directors encouraged;
- 6) Tighter ethical rules for directors on the subject of conflicts of interest; and,
- 7) Improved transparency and clarity of the information regarding the Board of Directors.”

## 3.2 AFG

In January 2018, the AFG (the French asset management association) reinforced its recommendations for their 20th anniversary and “published an updated version of their recommendations<sup>18</sup> on corporate governance relating to general meetings and board of directors of listed companies to help the management companies in the exercise of their votes”.

The main updates to the corporate governance code include:

- Increase the percentage of women on executive committees;
- Disclosure to shareholders of any changes of the composition of the board;
- Specification of the AFG’s disclosure requirements on remuneration, particularly on the variable part, including disclosure on the post-mandate vesting of long term incentive awards.

In April 2018 the AFG also published a report<sup>19</sup> entitled *Exercice des droits de vote par les sociétés de gestion 2017* (Exercise of voting rights by asset management companies 2017). “

The main results of the survey are as follows:

- Increase in the generalization of voting and international coverage;
- The actual exercise of voting rights reflects the strengthening of the level of the asset managers’ commitment;
- Differences between AGM resolutions and asset managers’ voting policies persist; and,
- Intensification of dialogue and a rather positive judgment of issuer governance.”

17) [www.afep.com/wp-content/uploads/2018/06/Afep-Medef-Code-revision-June-2018-ENG.pdf](http://www.afep.com/wp-content/uploads/2018/06/Afep-Medef-Code-revision-June-2018-ENG.pdf)

18) [http://www.afg.asso.fr/wp-content/uploads/2017/01/Recommandations\\_sur\\_le\\_gouvernement\\_d\\_entreprise\\_2018.pdf](http://www.afg.asso.fr/wp-content/uploads/2017/01/Recommandations_sur_le_gouvernement_d_entreprise_2018.pdf)

19) [http://www.afg.asso.fr/wp-content/uploads/2018/04/2018\\_04\\_24\\_Etude-exercice-des-droits-de-vote-2017.pdf](http://www.afg.asso.fr/wp-content/uploads/2018/04/2018_04_24_Etude-exercice-des-droits-de-vote-2017.pdf)





## Switzerland (SMI)

REJECTED BOARD PROPOSALS 10

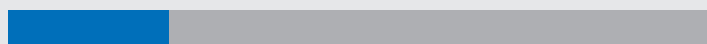
AVERAGE QUORUM

63.74%



RESOLUTIONS  
WITH OVER 10% OPPOSE

13.46%



COMPANIES  
WITH OVER 10% OPPOSE

60.00%



## Highlights

- Quorum levels across Switzerland decreased during the 2018 AGM season. The average quorum of the SMI went down from 66.7% in 2017, to 63.7% in 2018. In the SMI MID the average quorum decreasing from 70.7% in 2017 to 69.3% in 2018.
- In the SMI there was only one company that had 10 rejected resolutions relating to the discharge of the board members and to remuneration. These resolutions failed as a result of the long-running dispute between Sika and the Burkard family. However, this dispute has now been resolved with an agreement made in May 2018, and a subsequent EGM in June 2018 ratifying the agreement.
- The number of contested proposals (10%+ opposition) in SMI dropped by 34% in 2018 when compared to 2017. There were 58 proposals that were contested in 2018, compared to 88 contested proposals in 2017.
- Decreased opposition to the binding vote on executive remuneration was also observed in the SMI in 2018. The average proportion of these resolutions that were contested (10%+ opposition) in 2016 and 2017 was 28%, but in 2018 this went down to 8.2%.

# 1 | Voting in Switzerland

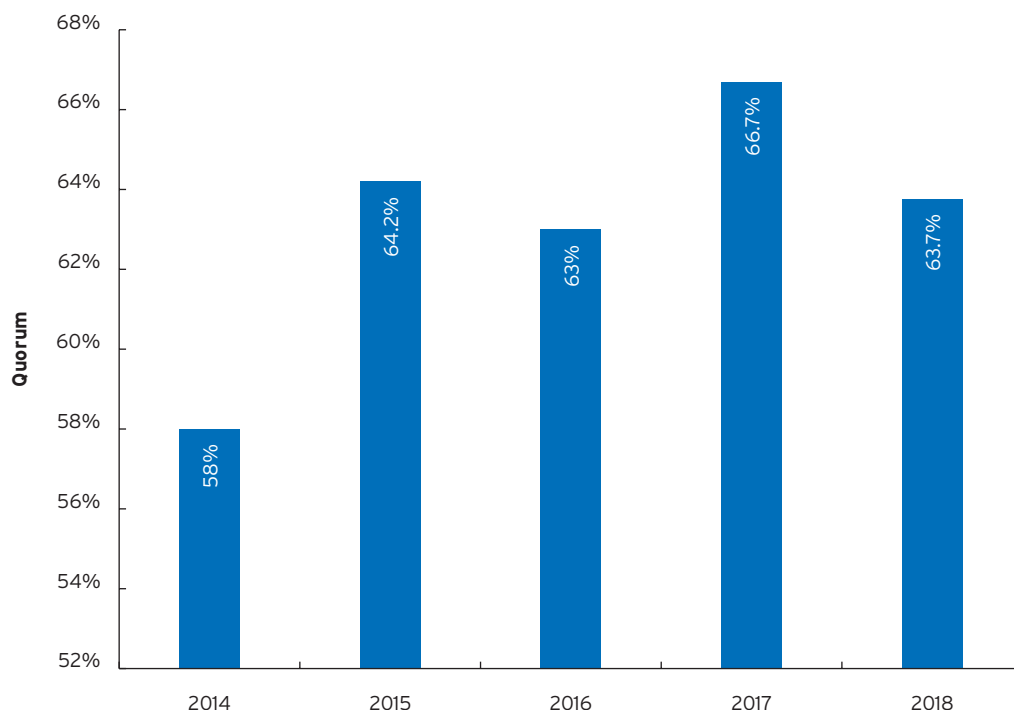
## 1.1 QUORUM OVERVIEW

Georgeson has reviewed the quorum levels of the 20 companies which comprise the SMI<sup>1</sup> index over the past five years and the 30 companies which comprise the SMI MID<sup>2</sup> index over the past two years. We have taken into account companies that held their AGM between 1 August 2017 and 31 July 2018.

The average quorum for the SMI was 63.7%<sup>3</sup> during the reporting period. This represents a decrease of 4.0 percentage points compared to 2017 and an increase of 5.7 percentage points over quorum levels in 2014. In addition, it is noted that the average quorum of the SMI MID was 69.3% during the reporting period, a decrease of 1.4 percentage points over quorum levels in 2017.

**Graph 1:**

Average AGM quorum levels in the SMI between 2014 and 2018.



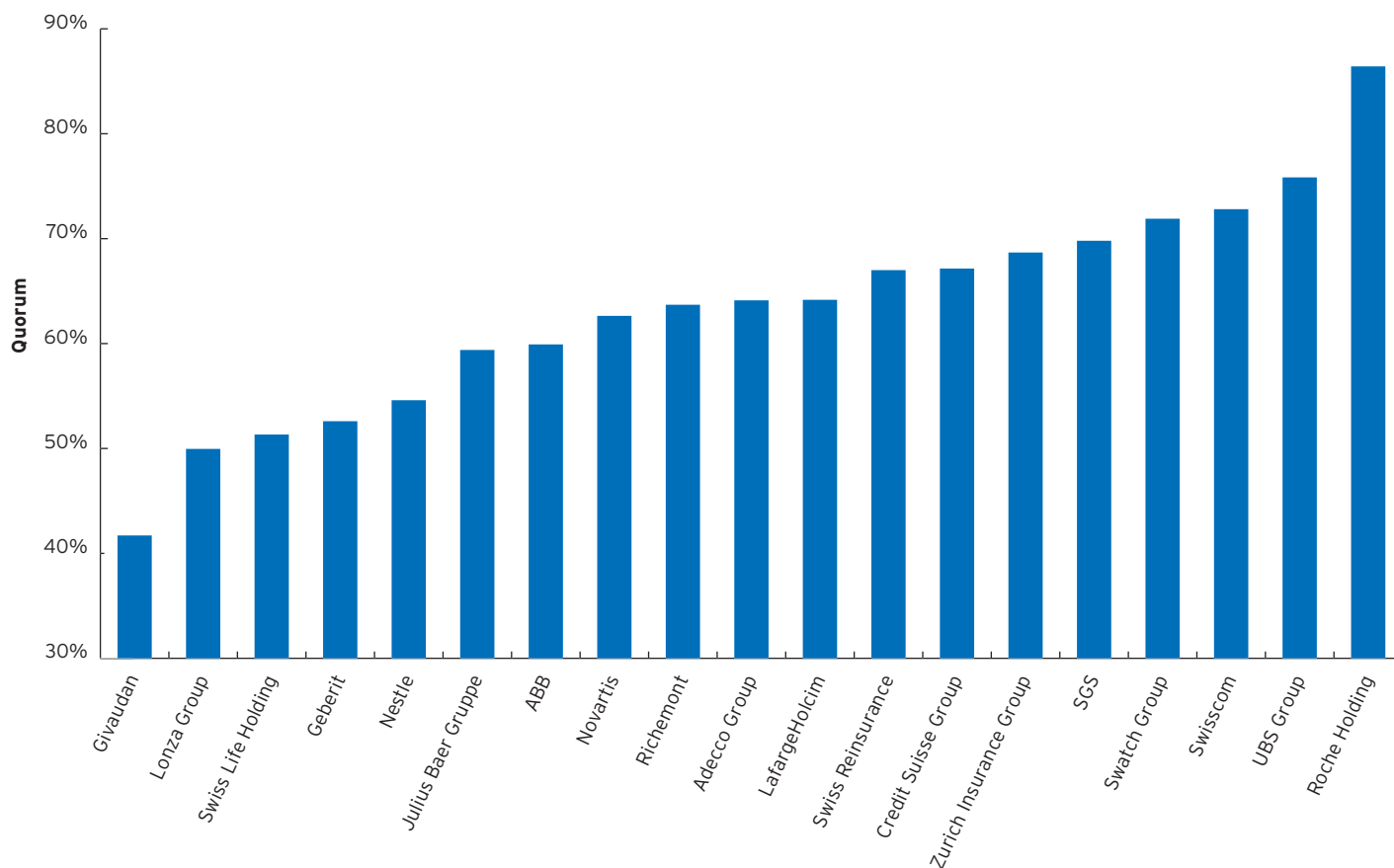
1) The SMI is Switzerland's most important stock index and comprises the 20 largest equities in the SPI (a selection of companies which includes all Swiss companies listed on the SIX Swiss Exchange). The SMI represents about 80% of the total capitalisation of the Swiss equity market. See here: [http://www.six-swiss-exchange.com/indices/data\\_centre/shares/smi\\_en.html](http://www.six-swiss-exchange.com/indices/data_centre/shares/smi_en.html)

2) The SMI MID (SMIM) comprises the 30 largest mid-cap stocks in the Swiss equity market that are not included in the blue chip SMI index. See here: [https://www.six-swiss-exchange.com/indices/data\\_centre/shares/smi\\_mid\\_en.html](https://www.six-swiss-exchange.com/indices/data_centre/shares/smi_mid_en.html)

3) Please note, this figure excludes Sika, as the quorum figures for the 2018 AGM had not been published by the time this research was finalised.

**Graph 2:**

Quorum levels at SMI companies during the 2018 reporting period.



## 1.2 REJECTED RESOLUTIONS

### SMI

Among SMI companies, only one company had management proposals rejected by shareholders. This was at Sika, where there had been a long-standing dispute between the founding family and the Board.

### Sika

Sika's April 2018 AGM was their fifth shareholder meeting since the December 2014 announcement by the founding Burkhard-Schenker family of their intention to sell their ownership stake (16% of share capital and 52% of voting rights) to Compagnie de Saint-Gobain, which would become the new controlling shareholder. Sika's board and minority investors were opposed to the deal as in their view it lacked strategic rationale and excluded all other shareholders from receiving a control premium.

The articles of association provide for a voting rights ceiling of 5%, from which the Burkhard-Schenker family had been exempted by the board. The board however has argued since the April 2015 AGM that as the shares are subject to a sale agreement this position is now effectively under the control of St. Gobain and therefore the exemption no longer applies.



Previously, the board decided to cap the voting rights of the Burkhard-Schenker family on all resolutions relating to board elections at the 2015 AGM, at a July 2015 EGM, at the 2016 AGM, and for some resolutions, at the 2017 AGM.

While Sika had not published the full voting results of their 17 April 2018 AGM by the time of completion of this review, a statement was made by the company following their 2018 AGM<sup>4</sup> that the independent Board members Monika Ribar, Paul Hälgi, Frits van Dijk, Daniel Sauter, Ulrich Suter and Christoph Tobler were not granted discharge of their responsibilities.

The shareholder proposals by Schenker-Winkler Holding AG to elect Jacques Bischoff to the board and to conduct a special audit were also rejected. Furthermore, shareholders rejected the compensation report for 2017 and did not approve the Board's compensation for the three preceding terms of office nor its future compensation until the next Annual General Meeting, respectively.

The announcement further confirmed that Schenker-Winkler Holding AG's voting rights had been restricted to 5% for certain resolutions, namely on the re-election of Monika Ribar, Paul Hälgi, Frits van Dijk, Daniel Sauter, Ulrich Suter and Christoph Tobler to the board, their own shareholder proposal to elect Jacques Bischoff to the board and the election of chairman of the board of directors. Furthermore voting rights were restricted on the re-election to the nomination and compensation committee, with the exception of Urs Burkard.

Following the controversial AGM, Sika announced on 11 May 2018<sup>5</sup> that the company had reached an agreement with the Burkard family and Saint-Gobain terminating and resolving their dispute "to the common benefit of all parties involved and that of their respective shareholders and stakeholders".

At a subsequent EGM held on 11 June 2018<sup>6</sup>, shareholders approved a number of resolutions relating to the abolishment of shares with multiple vote rights through the creation of unitary registered shares, the abolishment of opting-out and transfer restrictions and the cancellation of the registered shares of Sika purchased from Schenker-Winkler Holding AG (representing 6.97% of the share capital) by way of a share capital reduction. Furthermore Justin Howell was elected as a member of the board of directors and of the nomination and compensation committee.

The compensation of the board of directors for the terms of office from the Annual General Meeting 2015 to the Annual General Meeting 2019 was subsequently approved and the administrative bodies were granted unconditional discharge.

## SMI MID

Among SMI MID companies, none had management proposals rejected.

4) <https://www.sika.com/en/group/Media/Mediareleases/2018/AGM2018-decisions.html>

5) <https://www.sika.com/en/group/Media/Mediareleases/2018/agreement-reached.html>

6) <https://www.sika.com/en/group/Media/Mediareleases/2018/extraordinary-general-meeting-of-sika-ag--shareholders-approve-a.html>

### 1.3 CONTESTED RESOLUTIONS

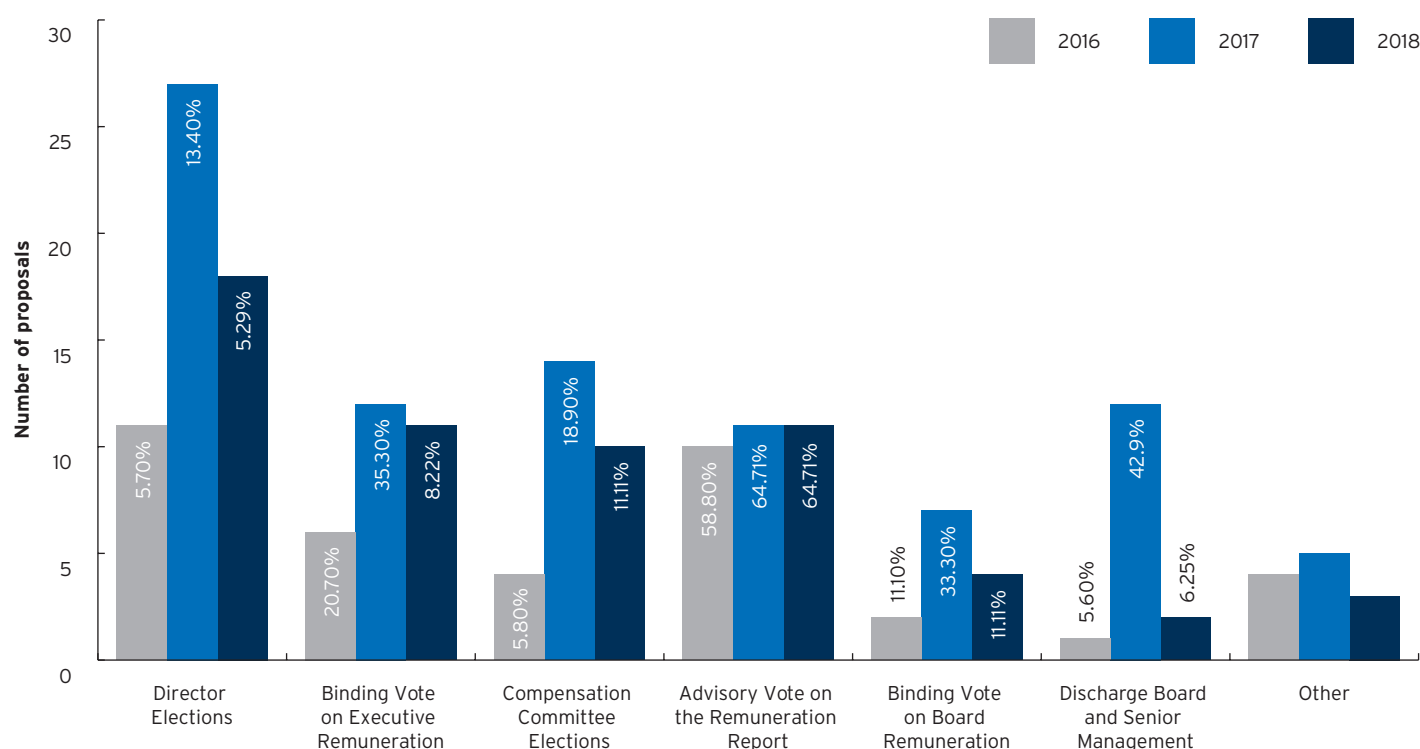
The number of SMI companies who saw at least one resolution receive more than 10% shareholder opposition, decreased from 15 in 2017 to 12 in 2018. The total number of resolutions that received over 10% opposition amounted 58 in 2018, compared to 88 in 2017.

It should be noted that all vote results in this section exclude Compagnie Financière Richemont SA<sup>7</sup> which, for both their 2018 and 2017 AGMs, only confirmed that all their resolutions were approved by shareholders. Furthermore, the results also do not include details on the Sika 2018 AGM resolutions (please refer to Section 1.2 for details on Sika).

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

**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.



7) [https://www.richemont.com/images/investor\\_relations/agm/2017/com\\_fin\\_richemont\\_sa\\_minutes\\_of\\_agm\\_13092017.pdf](https://www.richemont.com/images/investor_relations/agm/2017/com_fin_richemont_sa_minutes_of_agm_13092017.pdf)

### 1.3.1 Director elections

As required under the 'Minder' Ordinance<sup>8</sup>, Swiss companies introduced annual director elections in 2014, which led to an increased number of AGM resolutions. Previously, members of the Supervisory Board were usually elected for multi-year terms.

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.

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

- SGS SA (August von Finck - 65.9%; Ian Gallienne - 67.0%; Gerard Lamarche - 67.2%; Paul Desmarais - 67.8%; Sergio Marchionne - 68.0%; August Francois von Finck - 71.4%; Christopher Kirk - 73.6%; Shelby R. du Pasquier - 81.1% votes in favour)
- Swatch Group (Ernst Tanner - 77.1%; Daniela Aeschlimann - 78.5%; Georges Hayek - 81.2%; Nayla Hayek - 84.8%; and Claude Nicollier - 85.3% votes in favour)
- Swiss RE (Walter Kielholz - 87.3% votes in favour)

### 1.3.2 Binding votes on Executive Remuneration

Under the provisions of the 'Minder' Ordinance, 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 as advisory votes do not fulfil the requirements of the ordinance, which came into effect starting with the 2015 proxy season. 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.

However, as noted in section 1.3.3 above, 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.

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8) Verordnung gegen übermässige Vergütungen bei börsenkotierten Aktiengesellschaften (Ordinance against excessive compensation with respect to listed corporations): <http://www.admin.ch/opc/de/classified-compilation/20132519/index.html>

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

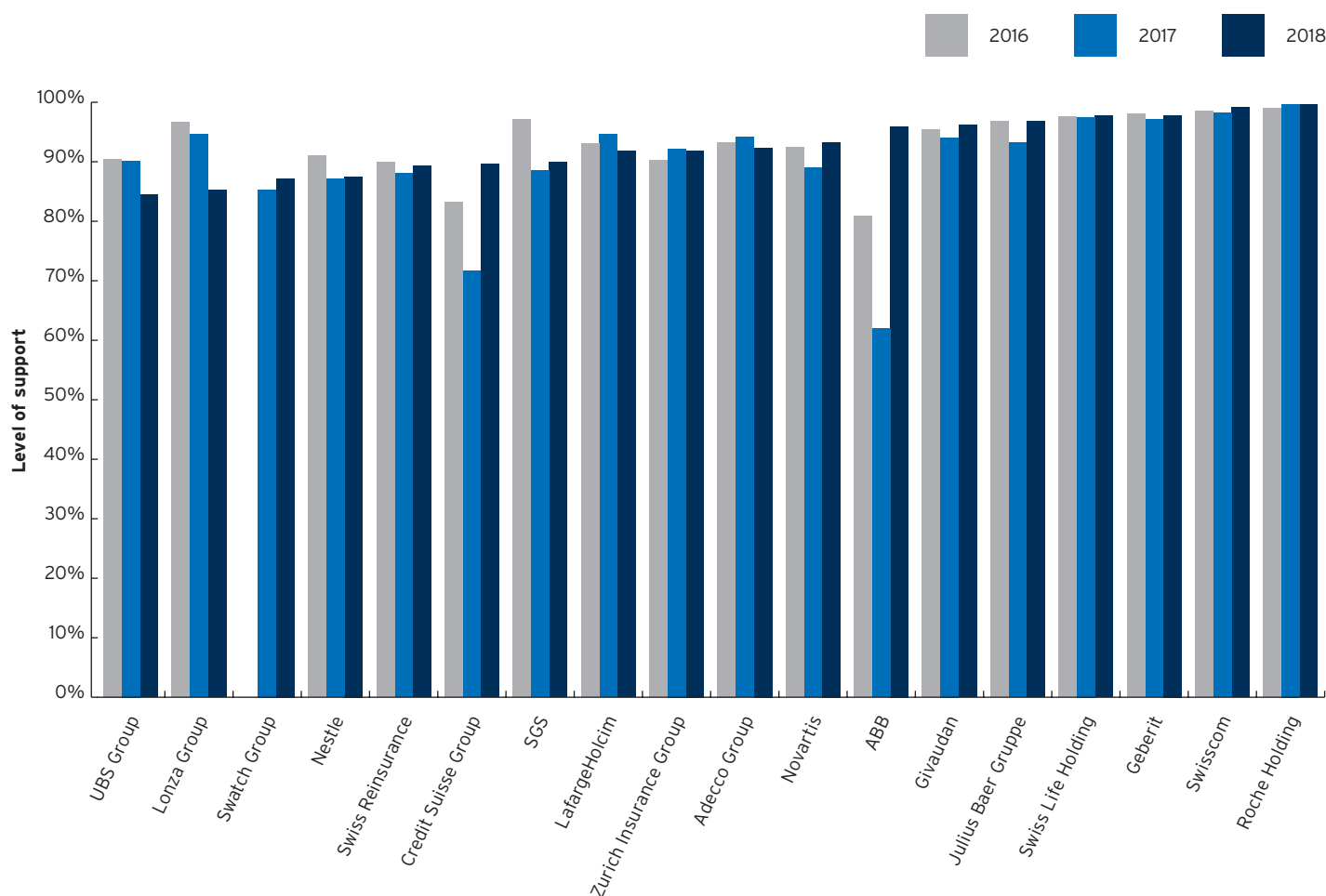
- UBS Group (86.1% votes in favour)
- Nestle SA (87.2% votes in favour)
- Credit Suisse Group AG (87.8% votes in favour)

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

- Lonza Group (63.6% votes in favour)
- Swatch Group (71.1% votes in favour)
- SGS SA (75.8% votes in favour)

**Graph 4:**

Average level of support for all binding resolutions relating to executive remuneration at each company.



### 1.3.3 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.

As this represents a separate voting item since 2014, investors are able 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 (August von Finck - 63.9%; and Ian Gallienne - 65.0%; Shelby R. du Pasquier - 80.6% votes in favour)
- Swatch Group (Georges Hayek - 69.6%; Nayla Hayek - 70.2%; Ernst Tanner - 74.3%; Daniela Aeschlimann - 77.2%; Claud Nicollier - 84.2% votes in favour)
- LafargeHolcim Ltd. (Paul Desmarais - 85.3%; Nassef Sawiris - 88.6% votes in favour)

### 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>9</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, seventeen companies submitted a vote on their remuneration report during the 2018 proxy season. The exceptions were Compagnie Financière Richemont, Roche and Swatch, which did not put their remuneration report up for an advisory shareholder vote in connection with their 2018 AGM.

Of the sixteen SMI companies<sup>10</sup> who published results for their advisory vote on the remuneration report, ten received opposition in excess of ten percent.

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

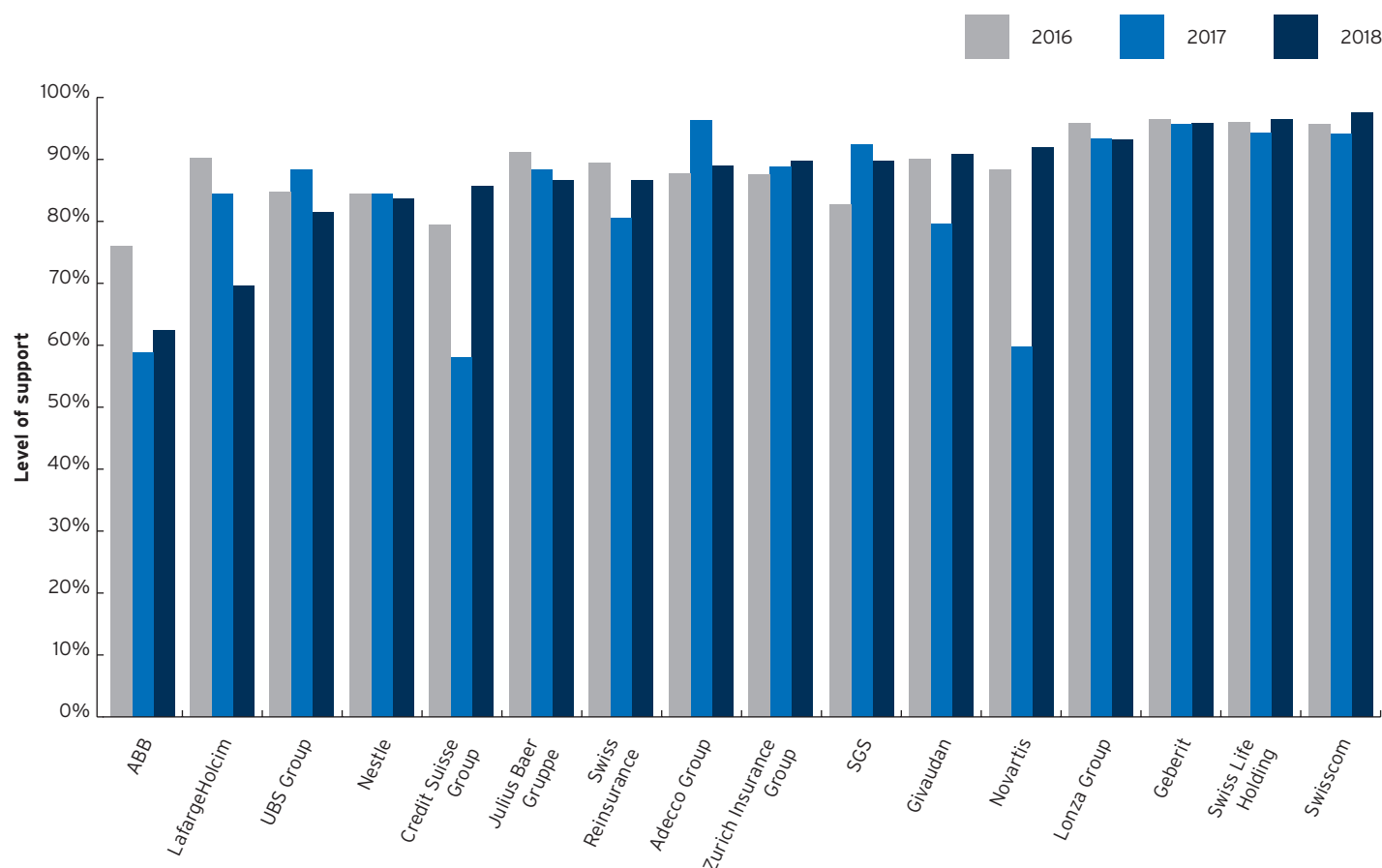
- ABB Ltd. (62.4% of votes in favour)
- LafargeHolcim Ltd (69.6% of votes in favour)

9) [https://www.economiesuisse.ch/sites/default/files/publications/economiesuisse\\_swisscode\\_e\\_web.pdf](https://www.economiesuisse.ch/sites/default/files/publications/economiesuisse_swisscode_e_web.pdf)

10) Figures exclude Sika, please see section 1.2 "Rejected resolutions" for further details

**Graph 5:**

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



#### 1.3.4 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. The vote is non-binding.

A few investors routinely vote against the discharge, as granting discharge to the board and senior management would prevent them from taking legal action against the company in the future for facts which were publicly known at the time of the vote. However this would not affect any future rights on unknown facts.

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.

The two companies with the highest level of opposition on the discharge among our sample were:

- LafargeHolcim Ltd. (Discharge of the board and senior management in one bundled resolution - 77.7% votes in favour)
- UBS Group AG (Discharge of the board and senior management in one bundled resolution - 89.7%)

## 2 | Proxy Advisors

Many institutional investors rely on proxy advisory firms, such as ISS, Glass Lewis and Ethos 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.

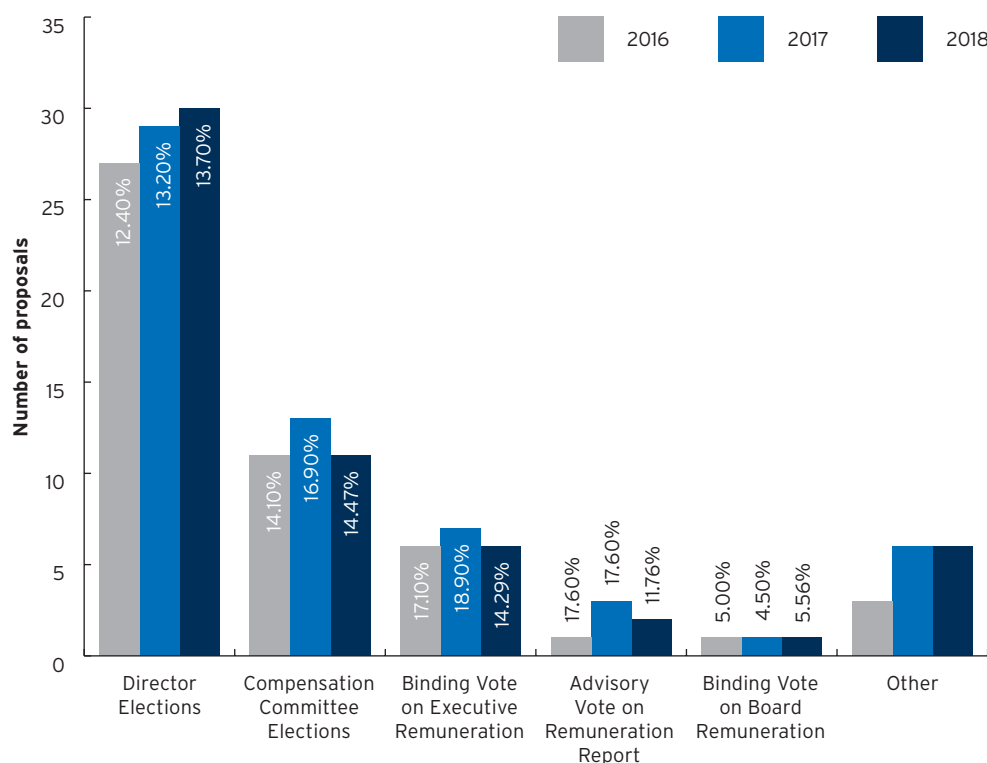
### 2.1 ISS

Institutional Shareholder Services<sup>12)</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers.

During the 2018 reporting period, 9 companies of the SMI received at least one against recommendation from ISS, compared to 10 in 2017. The total number of resolutions where ISS recommended a vote against amounted to 53 in 2018, compared to 59 in 2017.

**Graph 6:**

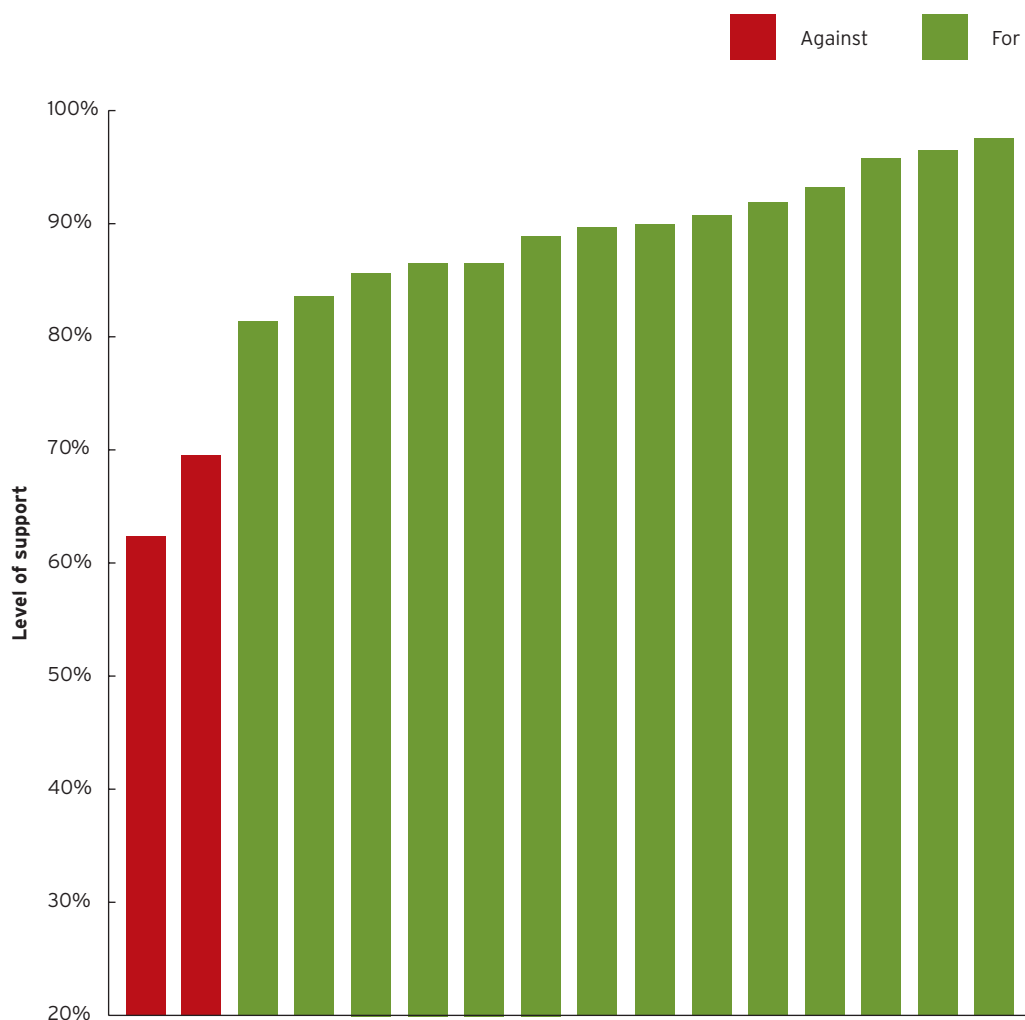
Overview of negative recommendations by ISS at SMI AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative ISS recommendation and the total number of proposals in each category.



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

**Graph 7:**

Level of support for the advisory vote on the remuneration report among the SMI companies surveyed<sup>12</sup> (ordered by level of support) and colour coded by ISS vote recommendations



12) Excludes Sika as the company had not published their full voting results at the time this research was finalised



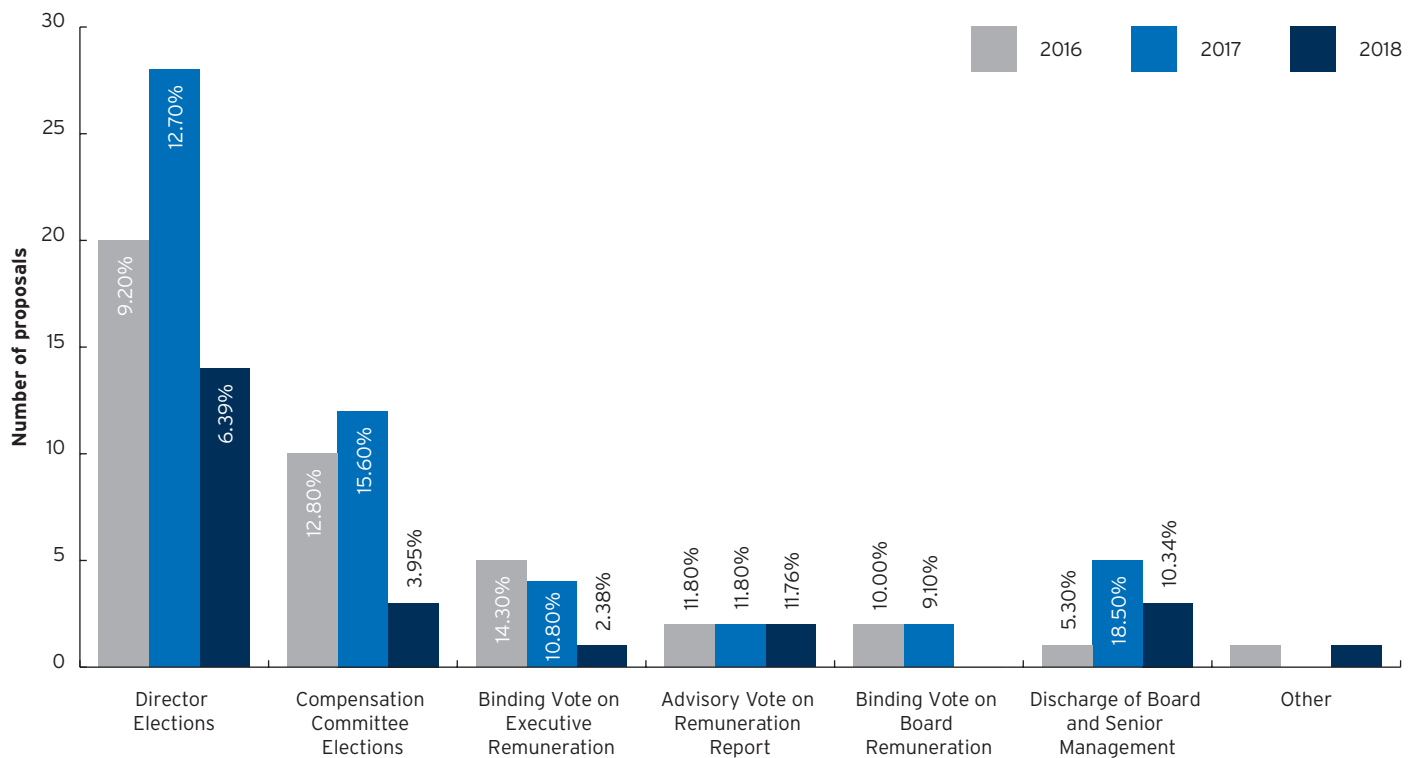
## 2.2 GLASS LEWIS

Glass Lewis<sup>13</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 2018 reporting period, 8 companies out of the SMI received at least one against recommendation from Glass Lewis, compared to 11 in 2017. The total number of resolutions where Glass Lewis recommended its clients to vote against amounts to 37, compared to 53 in 2017.

**Graph 8:**

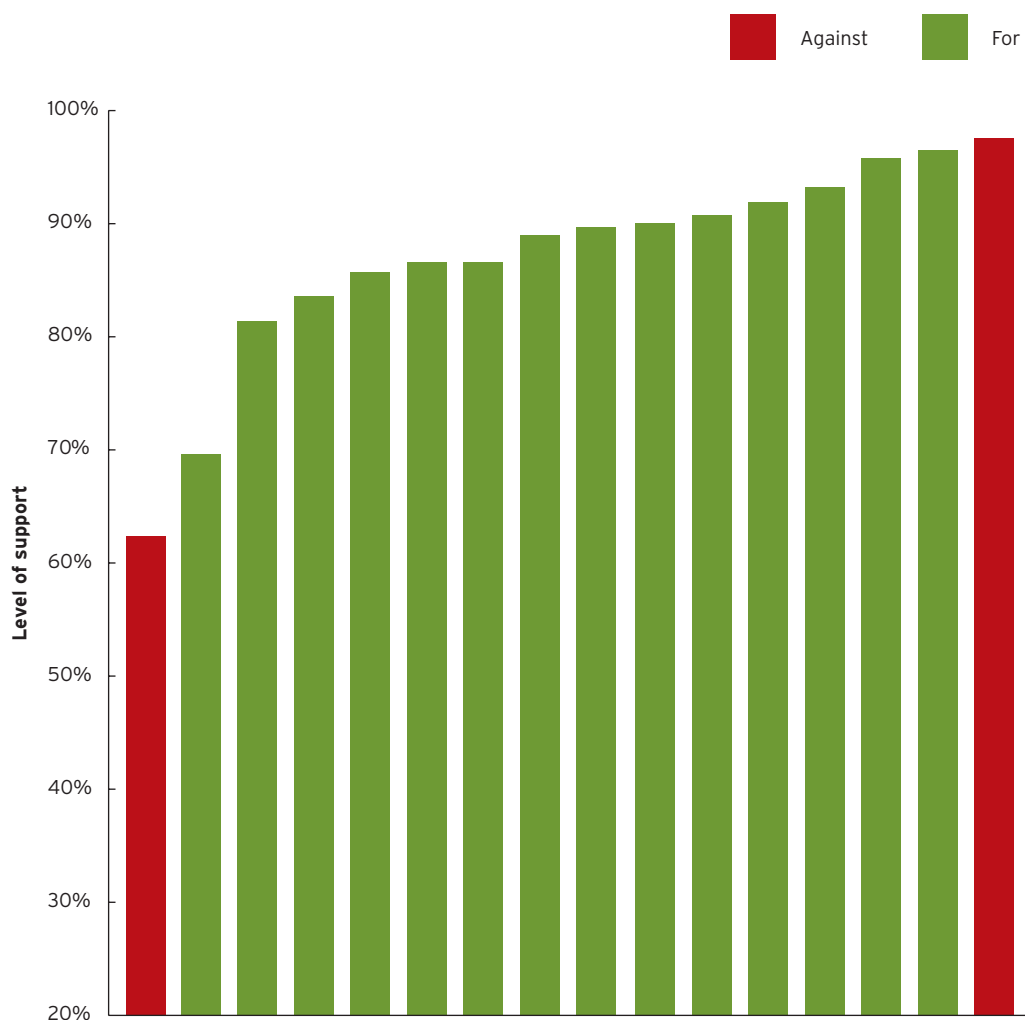
Overview of the number of negative recommendations by Glass Lewis at SMI AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative Glass Lewis recommendation and the total number of proposals in each category.



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

**Graph 9:**

Level of support for the advisory vote on the remuneration report among the SMI companies surveyed<sup>14</sup> (ordered by level of support) and colour coded by Glass Lewis vote recommendations



14) Excludes Sika as the company had not published their full voting results at the time this research was finalised

## 2.3 ETHOS

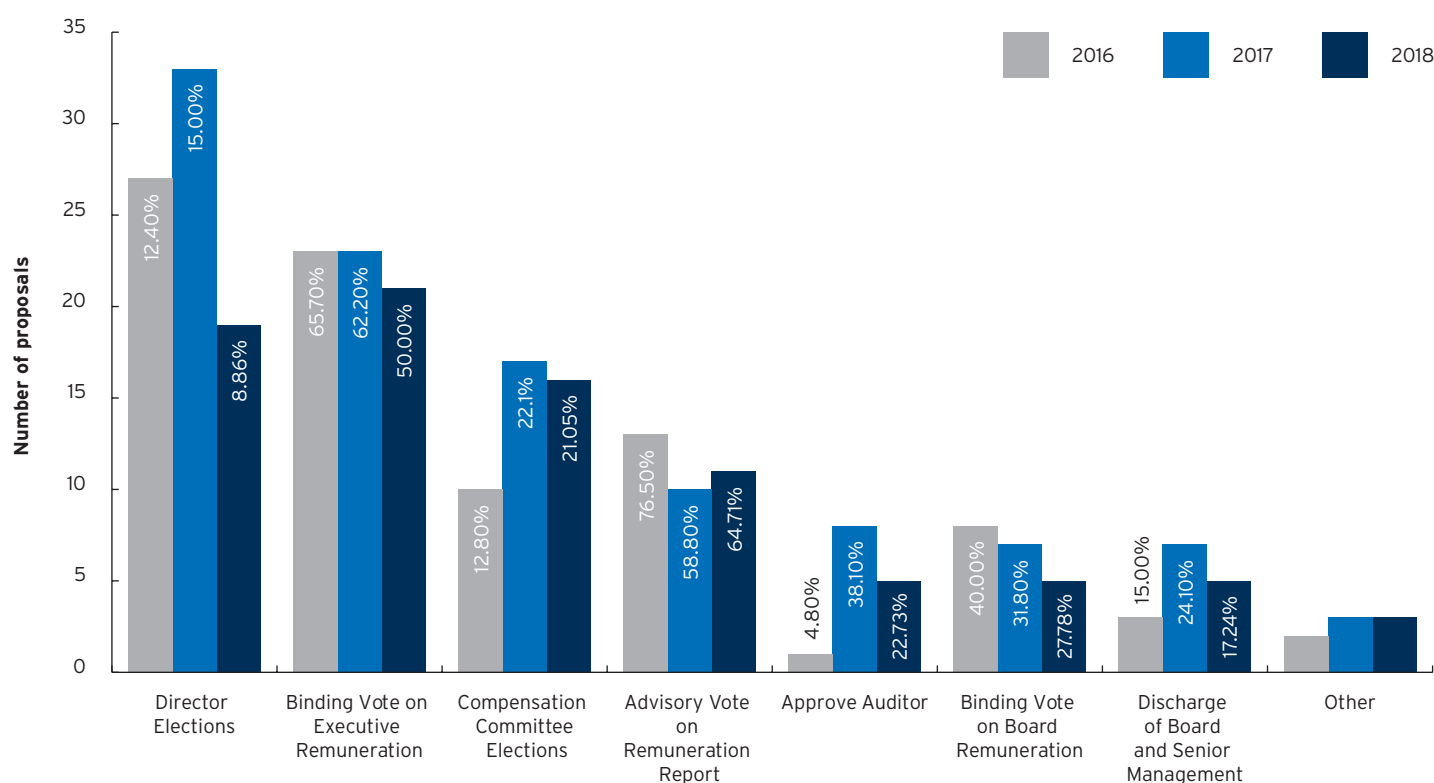
Ethos<sup>15</sup>, the Swiss Foundation for Sustainable Development was founded in 1997. It is composed of 230 Swiss pension funds and other tax-exempt institutions and aims at promoting socially responsible investment (SRI). They are also members of the Expert Corporate Governance Service<sup>16</sup> (ECGS), a partnership of independent local proxy advisors.

Ethos offers a wide range of SRI-funds, provides analyses of general meeting agendas including voting recommendations, a shareholder engagement programme as well as sustainability and corporate governance ratings and analyses of listed companies. All activities of Ethos Services are based on the concept of sustainable development and the Charter of the Ethos Foundation.

During the 2018 reporting period, 17 companies out of the SMI received at least one against recommendation from Ethos, compared to 18 in 2017. The total number of resolutions where Ethos recommended voting against amounts to 84, compared to 108 in 2017.

**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.

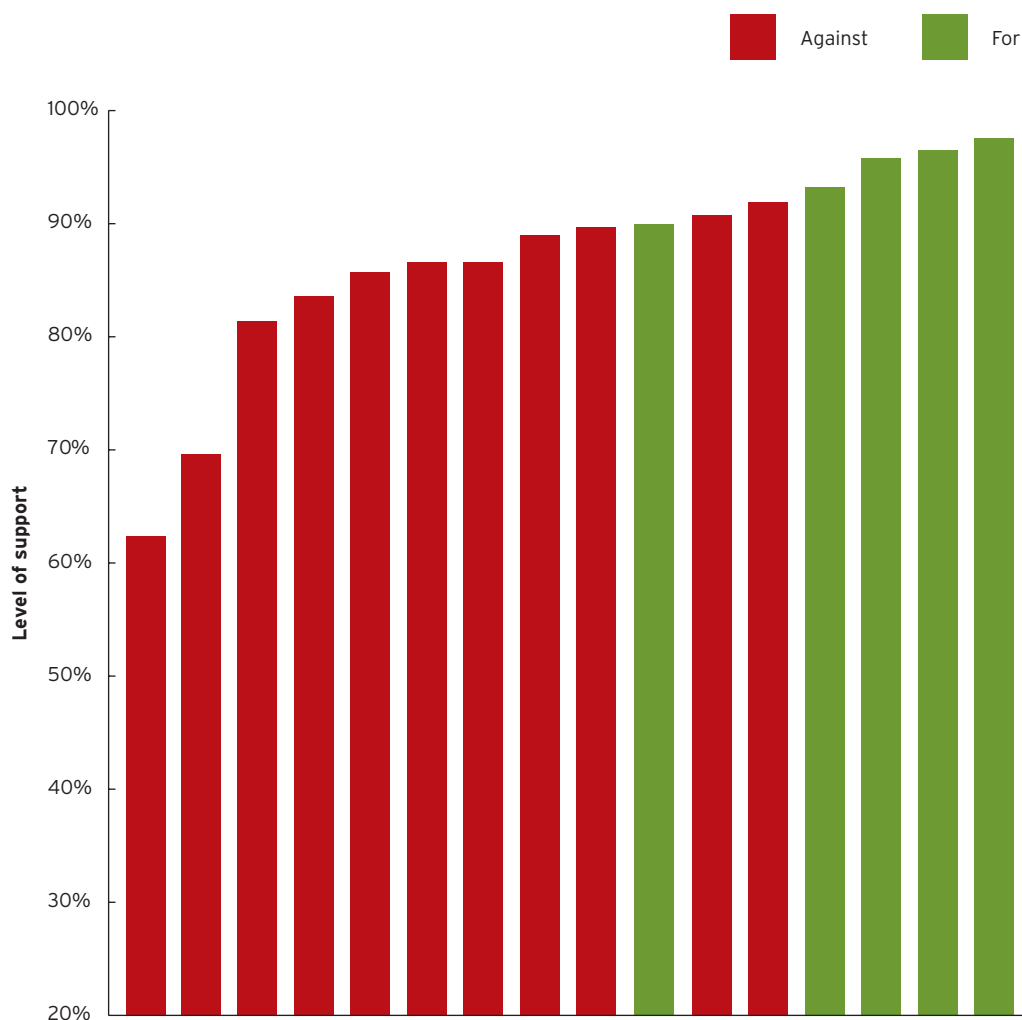


15) <http://www.ethosfund.ch/e/ethos-foundation/ethos-foundation.asp>

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

**Graph 11:**

Level of support for the advisory vote on the remuneration report among the SMI companies surveyed<sup>17</sup> (ordered by level of support) and colour coded by Ethos vote recommendations



15) Excludes Sika as the company had not published their full voting results at the time this research was finalised

## 3 | Corporate Governance developments

### 3.1 PARLIAMENT APPROVES GENDER QUOTAS FOR BIG BUSINESS

At the end of June 2018, the Swiss parliament voted for gender quotas<sup>18</sup> in the boardrooms of large publicly-traded companies who have between five and ten years to make the changes. The vote in the House of Representatives, led by Justice Minister Simonetta Sommaruga, was narrow and swung by just a single vote (95 for, 94 against, three abstentions). It is important to note that no sanctions are attached to non-adherence, rather an injunction to 'explain' any failure to comply - "the mere mention of the word 'quota' represents a leap forward", Sommaruga told Swiss public broadcaster, RTS following the vote.

### 3.2 MANAGEMENT CHANGES AT ETHOS

Ethos Foundation and Ethos Services has seen a number of high-profile exits during the reporting period. In late 2017, two board directors, Francoise Bruderer and Monika Roth, resigned from the board of directors citing concerns with Co-Founder and Supervisory Board President of Ethos, Dominique Biedermann.<sup>19</sup> Their concerns centred on both Biedermann's alleged management style and "the position of his [Dominique Biedermann's] wife, Yola Biedermann, in Ethos' top management as a failing in governance."<sup>20</sup> Following these resignations, Swiss Post, who had been represented on Ethos' board by Francoise Bruderer, decided to end its membership with Ethos.<sup>21</sup>

In late January of 2018, Dominique Biedermann announced his plans to step down later in 2018. Handing over the presidency of Ethos at the general assembly on 14 June 2018 to Rudolf Rechsteiner as chairman of Ethos Foundation and Beth Krasna as Chairman of Ethos Services.<sup>22</sup>

18) [www.parlament.ch/press-releases/Pages/mm-rk-s-2018-06-29.aspx?lang=1033](http://www.parlament.ch/press-releases/Pages/mm-rk-s-2018-06-29.aspx?lang=1033)

19) <https://www.ethosfund.ch/de/news/abgaenge-aus-dem-ethos-stiftungsrat-und-dem-verwaltungsrat-von-ethos-services>

20) <https://www.finews.com/news/english-news/30454-peoplemoves-ethos-dominique-biedermann-resignation-ubs-credit-suisse>

21) <https://www.ipe.com/news/returns/swiss-roundup-pk-post-quits-ethos-following-governance-concerns/www.ipe.com/news/returns/swiss-roundup-pk-post-quits-ethos-following-governance-concerns/10022925.fullarticle>

22) <https://www.ethosfund.ch/de/news/stabuebergabe-bei-der-ethos-stiftung>





## Netherlands (AEX)



REJECTED BOARD PROPOSALS 0

AVERAGE QUORUM 72.94%



RESOLUTIONS WITH OVER 10% OPPOSE 6.21%



COMPANIES WITH OVER 10% OPPOSE 50.00%



## Highlights

- Across the AEX and AMX, only one company had one management proposal relating to share issuance without pre-emptive rights fail to pass at the AGM. In addition, three companies withdrew a management proposal during the year.
- The total number of contested proposals (10%+ opposition) within the AEX and AMX decreased by 9% during the 2018 AGM season from 55 proposals in 2018 to 50 proposals in 2017. However, while the overall number of contested proposals decreased, the average level of opposition at contested proposals increased from 19.7% in 2017 to 21% in 2018.
- Proposals relating to share issuances were the most contested (10%+ opposition), with 33% of share issuance proposals being put forward within the AEX and AMX receiving more than 10% opposition.
- Remuneration was a prominent theme at Dutch AGMs during 2018. Of the 28 remuneration related proposals put forward within the AEX and AMX, 22% were contested (10%+ opposition), 40% received a negative recommendation from ISS, and 33% received a negative recommendation from Glass Lewis. Furthermore, one proposal was withdrawn prior to the AGM, and two companies failed to put forward a remuneration vote despite indicating in their Annual Reports that remuneration would be a voting item at the AGM.
- Across the AEX and AMX the proxy advisors were more stringent during 2018, with negative recommendations from ISS up 27% compared to 2017, and Glass Lewis up by 100% when compared to 2017.



# 1 | Voting in the Netherlands

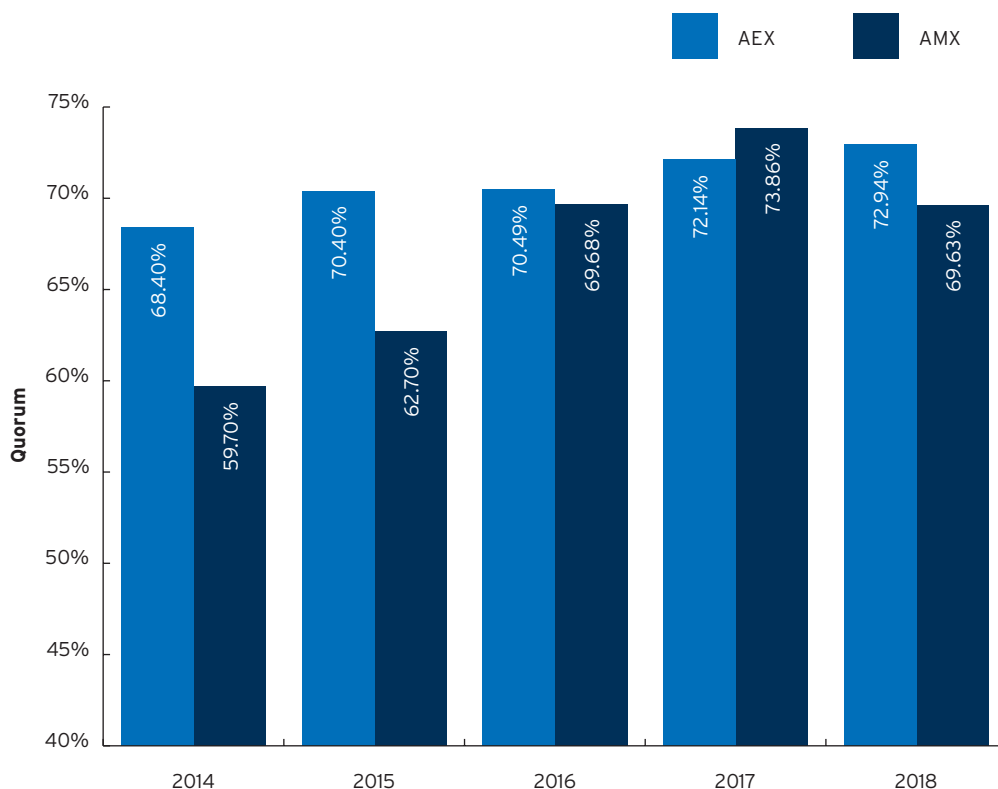
## 1.1 AEX AND AMX QUORUM OVERVIEW

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 on 31 July 2018 and held their AGM between 1 August 2017 and 31 July 2018. This includes 22 companies in the AEX and 22 companies in the AMX<sup>3</sup>.

The average quorum for AEX listed companies increased slightly in 2018 to 72.94%, up from 72.14% in 2017. The AMX average quorum decreased in 2018 to 69.63% from 73.86% in 2017. This is mainly due to the significant drop in shareholder participation at BAM Group and PostNL. The average quorum of the AMX is now back at the same level as in 2016.

**Graph 1:**

Average AGM quorum levels in the AEX and AMX between 2014 and 2018



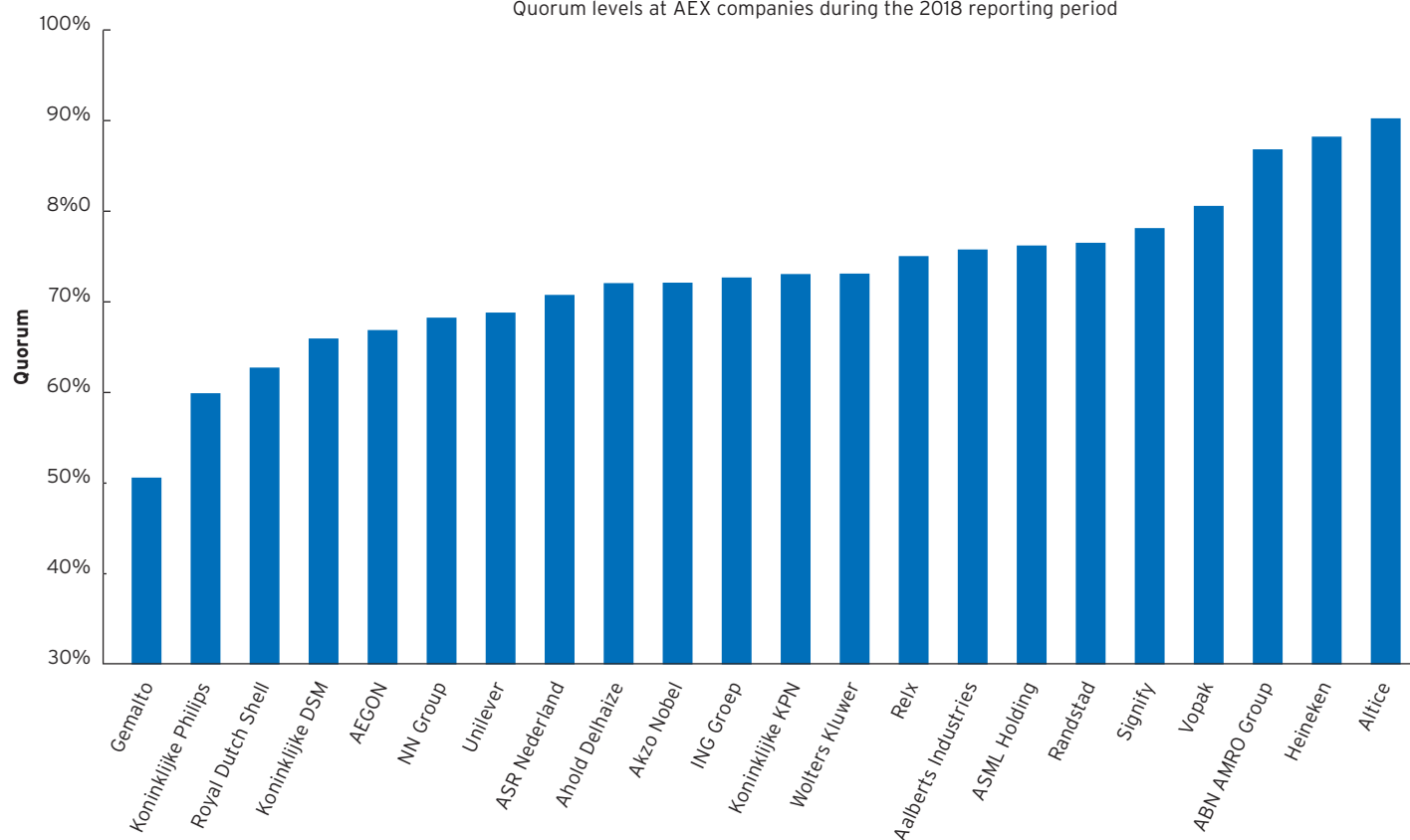
1) The AEX reflects the performance of the 25 most actively traded shares listed on NYSE Euronext Amsterdam. See here: <https://www.euronext.com/en/products/indices/NL0000000107-XAMS/market-information>

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

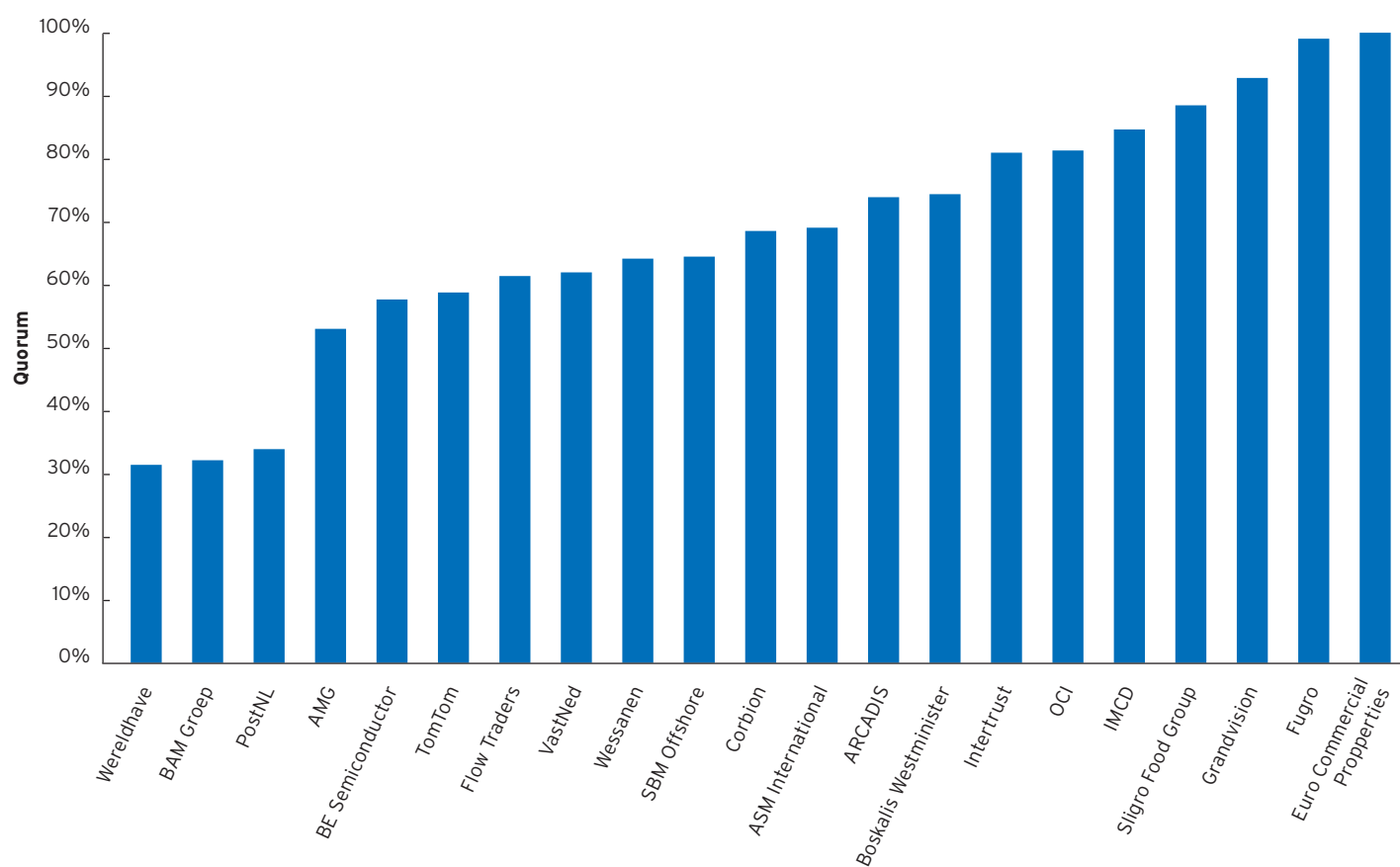
3) We have included Dutch-incorporated companies only. For the AEX this excludes ArcelorMittal, Galapagos and Unibail-Rodamco-Westfield. For the AMX it excludes Air France-KLM, Aperam, and WDP.

**Graph 2:**

Quorum levels at AEX companies during the 2018 reporting period

**Graph 3:**

Quorum levels at AMX companies during the 2018 reporting period



## 1.2 REJECTED RESOLUTIONS

Among the 44 AEX and AMX companies in our sample that held their AGM between 1 August 2017 and 31 July 2018, one company recorded a management-proposed resolution that was rejected by the shareholders: Wereldhave NV. Furthermore, one shareholder proposal at Royal Dutch Shell was rejected by shareholders.

### Royal Dutch Shell

At the Royal Dutch Shell AGM<sup>4</sup>, which took place in May 2018, a shareholder proposal (to request Shell to set and publish targets that are aligned with the goal of the Paris Climate Agreement to limit global warming to well below 2°C) was rejected. The resolution received support of 5.54% of shares represent at the meeting<sup>5</sup> (compared to 6.94% support in 2017 for a similar proposal). Both ISS and Glass Lewis recommended to vote against the resolution.

### Wereldhave

At the Wereldhave AGM<sup>6</sup> in April 2018, one resolution (to authorize the Board to exclude pre-emptive rights from share issuances) was rejected. In the Dutch market, an authority to issue shares without pre-emptive rights is an ordinary resolution, but requires a majority of two-thirds of the votes cast when less than 50% of the issued share capital is represented at the meeting<sup>7</sup>. Although 55.17% of shares voted at the meeting supported the resolution, 31.42% of issued share capital was represented. Therefore the resolution required a two-thirds majority to pass, which the proposal did not receive<sup>8</sup>. Both ISS and Glass Lewis recommended a vote in favour of the resolution.

## 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 three resolutions in the AEX and AMX and one in the AScX<sup>9</sup> where withdrawn as opposed to one resolution in 2017. In 2018 resolutions where withdrawn from the agenda of ASR Nederland, Boskalis Westminster, ING Groep and Vastned.

### ASR Nederland

On 11 May 2018 ASR announced<sup>10</sup> that Stephanie Hottenhuis had withdrawn as a candidate for the Supervisory Board of ASR Nederland and that therefore resolution 6c would not be voted on. The parties involved came to this conclusion to prevent any possible risk of conflicting interests after the candidate accepted the role as Chair of the Board of Management at KPMG Netherlands.

4) See here for the Royal Dutch Shell 2018 AGM Agenda: <https://www.shell.com/investors/retail-shareholder-information/annual-general-meeting.html>

5) See here for the Royal Dutch Shell 2018 voting results: [https://www.shell.com/investors/retail-shareholder-information/annual-general-meeting/\\_jcr\\_content/par/textimage\\_d70a.stream/1526997842037/fbe3c4d4f8484b6a2095857b3a4a615109ad844e1615f800490469cf8b127c9f/2018-agm-results.pdf](https://www.shell.com/investors/retail-shareholder-information/annual-general-meeting/_jcr_content/par/textimage_d70a.stream/1526997842037/fbe3c4d4f8484b6a2095857b3a4a615109ad844e1615f800490469cf8b127c9f/2018-agm-results.pdf)

6) <https://www.wereldhave.com/group/corporate-governance/meeting-shareholders/agm-20-april-2018/>

7) Article 2:96a of the Dutch Civil Code

8) See here for the Wereldhave 2018 AGM Voting Results: [https://www.wereldhave.com/siteassets/documents/agm\\_egm/meeting-documents/2018/agm-2018-voting-results.pdf](https://www.wereldhave.com/siteassets/documents/agm_egm/meeting-documents/2018/agm-2018-voting-results.pdf)

9) <https://www.euronext.com/en/products/indices/NL0000249142-XAMS/market-information>

10) <https://newsroom.asrnederland.nl/en/stephanie-hottenhuis-withdraws-as-a-candidate-for-the-supervisory-board-of-asr-nederland-nv/>

**Royal Boskalis Westminster**

On page 4 of its 2017 Remuneration Report<sup>11</sup>, which was published on 8 March 2018, Boskalis announced that based on a remuneration survey the Supervisory Board has decided to propose an adjustment in the remuneration policy for the Board of Management at the AGM to be held on 9 May 2018. However, this proposed change never appeared on the published AGM agenda<sup>12</sup>. The Dutch Financial Times reported on 28 April<sup>13</sup> that a Boskalis representative confirmed that the proposal of the Supervisory Board to increase the remuneration of the three members of the Management Board had been withdrawn. The board was concerned that the public debate about remuneration would damage the company's reputation.

**ING Group**

The Supervisory Board announced on 13 March 2018 that it had withdrawn item 6 (Amendment to the remuneration policy for members of the Executive Board) from the 2018 AGM<sup>14</sup>.

ING Group issued the following statement: "The ING Group Supervisory Board has taken notice of the reactions of many Dutch stakeholders following the proposal to amend the Executive Board remuneration policy as explained in the Annual Report 2017. In light of this, the Supervisory Board has reconsidered the proposal and has decided to not put it up for a vote at the Annual General Meeting."<sup>15</sup>

**Vastned (AScX listed)**

At the Vastned AGM<sup>16</sup> one resolution (to amend the Articles of Association) was withdrawn. Vastned had proposed to amend their articles of association so that the stated 1% threshold required to propose items on the general meeting agenda be replaced with a reference to Dutch law<sup>17</sup>. This would have raised the threshold required from 1% or 3% of issued share capital and would have made it more difficult for smaller shareholders to add items to the agenda of a general meeting. The proposal to amend the articles of association of Vastned was withdrawn from the agenda "to maintain the current threshold for shareholders to add items to the agenda, following advice from Eumedion and ISS."<sup>18</sup>

11) <https://boskalis.com/ir/corporate-governance/board-of-management.html>

12) <https://boskalis.com/ir/corporate-governance/general-meeting-of-shareholders.html>

13) <https://fd.nl/ondernemen/1252126/boskalis-schraapt-beloningsverhogingen-top-uit-angst-voor-reputatieschade>

14) <https://www.ing.com/Investor-relations/Shareholders-meeting/Annual-General-Meeting.htm>

15) <https://www.ing.com/Newsroom/All-news/Press-releases/ING-Supervisory-Board-withdraws-remuneration-proposal.htm>

16) <https://vastned.com/en/investor-relations/agm>

17) Article 2:114a of the Dutch Civil Code

18) <https://press.vastned.com/vastned-shareholders-adopt-all-resolutions/>

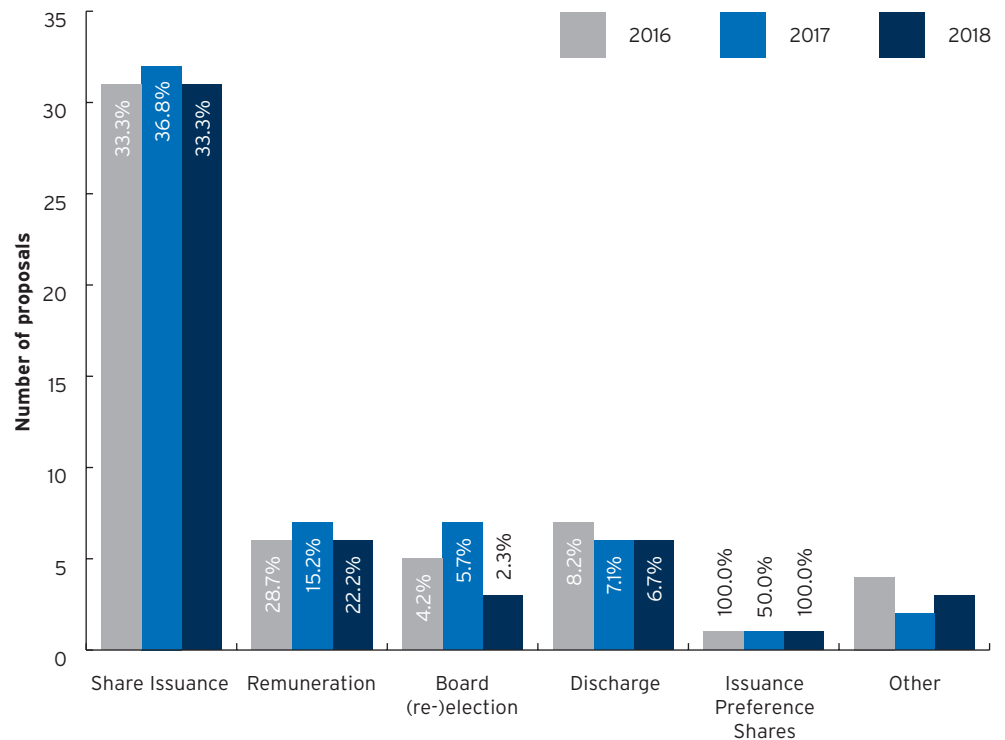
## 1.4 CONTESTED RESOLUTIONS

Among our sample of 44 AEX and AMX companies that held their AGM between 1 August 2017 and 31 July 2018 we saw a slight decrease 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 50 in 2018, compared to 55 resolutions in 2017.

The most commonly contested resolutions were authorities to issue shares and authorities to restrict or exclude pre-emptive rights. Discharge of the Management and Supervisory Board proposals were the second most contested resolutions and the third most contested resolutions were proposals related to remuneration and Board elections.

**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.



### 1.4.1 Authorities to issue shares with or without pre-emptive rights

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 is 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.

In recent years we have seen a gradual shift in the authorisations sought for shares to be issued with and without pre-emptive rights, with larger companies moving away from the standard Dutch market practice (10% + 10%), while midcaps continue to follow local market traditions. This trend continued in 2018. During the year four companies changed their routine authorisation requests:

- Akzo Nobel decreased their authorisation (with and without pre-emptive rights) to 10% of issued share capital in 2018<sup>19</sup> from 10% + 10% of issued share capital in 2017<sup>20</sup>.
- Philips decreased their authorisation (with and without pre-emptive rights) to 10% of issued share capital in 2018<sup>21</sup> from 10% + 10% of issued share capital in 2017<sup>22</sup>.
- Signify (formerly Philips Lighting) decreased their authorisation (with and without pre-emptive rights) to 10% of issued share capital in 2018<sup>23</sup> from 10% + 10% of issued share capital in 2017<sup>24</sup>.
- Unilever aligned the requested authorities for the NV and PLC and subsequently changed the requested authority for the NV to 33% with pre-emptive rights and 5%+5% without pre-emptive rights of issued share capital in 2018<sup>25</sup>, from 10% + 10% of issued share capital in 2017<sup>26</sup>.

All companies received more than 90% support on these resolutions.

In addition to its unchanged routine authorisation for the issuance of shares, Aegon also requested to issue shares in the context of replacing Solvency II grandfathered securities<sup>27</sup> (up to 30% of issued share capital for a period of 5 years). This proposal received almost 94% of votes in favour.

19) <https://www.akzonobel.com/en/generic-content/annual-general-meeting-shareholders-2018>

20) <https://www.akzonobel.com/generic-content/annual-general-meeting-shareholders-2018>

21) <https://www.philips.com/c-dam/corporate/about-philips/investors/shareholder-info/agm-2018/agenda-and-explanatory-notes-agm-2018-6-pages.pdf>

22) [https://www.philips.com/c-dam/corporate/about-philips/investors/shareholder-info/agm-2017/Agenda\\_AGM\\_2017.pdf](https://www.philips.com/c-dam/corporate/about-philips/investors/shareholder-info/agm-2017/Agenda_AGM_2017.pdf)

23) <https://www.signify.com/static/shareholder-info/AGM-agenda-and-explanation.pdf>

24) <https://www.signify.com/static/shareholder-info/Philips-Lighting-AGM-2017-invitation.pdf>

25) [https://www.unilever.com/Images/unilever-nv-chairmans-letter-and-notice-of-agm-2018-english\\_tcm244-519570\\_1\\_en.pdf](https://www.unilever.com/Images/unilever-nv-chairmans-letter-and-notice-of-agm-2018-english_tcm244-519570_1_en.pdf)

26) [https://www.unilever.com/Images/unilever-nv-chairmans-letter-and-notice-of-annual-general-meeting-2017-english\\_tcm244-501105\\_en.pdf](https://www.unilever.com/Images/unilever-nv-chairmans-letter-and-notice-of-annual-general-meeting-2017-english_tcm244-501105_en.pdf)

27) <https://www.aegon.com/contentassets/1d82d4b77b3a45978657fdb08d39b15a/20180409---english---aegon-agenda-agm-may-18-2018---final.pdf>

#### 1.4.2 Discharge of the Management and Supervisory Board

The discharge of the Management Board and Supervisory Board are common items on Dutch agendas and represent a vote of confidence in the decisions made during the financial year. Under normal circumstances these agenda items generally receive high levels of support. Not receiving shareholder approval does not have any direct consequences and supporting the proposal does not affect the shareholders' right to bring legal action against directors for breaches of their duties. Voting against these items is a way for shareholders to express their lack of trust or dissatisfaction with the decisions made by the Management or Supervisory Board.

##### **AkzoNobel**

AkzoNobel received a total of 10.35% and 15.61% of votes against the discharge of the Management board and Supervisory board respectively<sup>28</sup> (although still a relatively high level of opposition, it was an improvement compared to the 2017 AGM when the resolutions received 27.52% and 28.25% against votes respectively). We expect the increased level of dissent on these resolutions to be linked to discontent of the shareholders over the refusal of AkzoNobel's boards to discuss PPG's takeover offers in 2017.

We note that Glass Lewis recommended their clients to vote against the discharge of the Management as the Supervisory board, while ISS recommended its clients to vote in favour of both resolutions.

##### **Gemalto NV**

Gemalto put forward five discharge-related proposals at their 2018 AGM. Three resolutions were related to the recommended public offer made by Thales<sup>29</sup>. Out of the five resolutions three received more than 10% against votes<sup>30</sup>. A possible cause of the increased levels of against votes could be the relatively high level of French shareholders who generally vote against discharge resolutions (which are optional in France).

Both ISS and Glass Lewis recommended their clients to vote for the discharge of the Management as the Supervisory board.

##### **Philips**

Philips received a total of 11.43% of votes against the discharge of Supervisory board<sup>31</sup>.

We note that Glass Lewis recommended their clients to vote against the discharge of the Management as the Supervisory board while ISS recommended its clients to vote in favour of both resolutions.

28) [https://84e1202b204d21a1cb9b-0e1ab5244fd095dbeb138ed6f973369e.ssl.cf3.rackcdn.com/voting\\_results\\_agm\\_2018\\_2.pdf](https://84e1202b204d21a1cb9b-0e1ab5244fd095dbeb138ed6f973369e.ssl.cf3.rackcdn.com/voting_results_agm_2018_2.pdf)

29) <https://www.gemalto.com/investors-site/agm-site/Documents/AGM2018/2018-AGM-Agenda-and-explanatory-notes.pdf>

30) <https://www.gemalto.com/investors-site/agm-site/Documents/AGM2018/Voting-results-AGM-2018.pdf>

31) [https://www.philips.com/c-dam/corporate/about-philips/investors/shareholder-info/agm-2018/Voting\\_results\\_and\\_Resolutions\\_2018\\_AGM.pdf](https://www.philips.com/c-dam/corporate/about-philips/investors/shareholder-info/agm-2018/Voting_results_and_Resolutions_2018_AGM.pdf)

### 1.4.3 Remuneration

Current legislation in the Netherlands requires listed companies to put remuneration up for a vote if there is a change in the remuneration policy. In January 2014 “claw back” legislation<sup>32</sup> came into force. One element of this legislation requires listed companies to add the remuneration report as a discussion (non-voting) item to the AGM agenda before the approval of the annual accounts. Unlike most European markets, remuneration is not put on the agenda for shareholder approval and only shareholders that attend the AGM can participate in the discussion of the remuneration report. Additionally, pursuant to the Decree on Restrained Remuneration Policies, which came into effect on 1 January 2011, financial institutions that have received exceptional State support are prohibited from paying variable awards to their directors. Another law which came into force on 7 February 2015 caps the variable pay for financial institutions in the Netherlands at 20% of fixed remuneration.

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

- SBM Offshore (30,01% against votes for the remuneration policy)
- Unilever (26,94% against votes for the remuneration policy)
- Royal Dutch Shell (25,22% against votes for the remuneration report)
- Randstad (19,81% against votes for the remuneration policy)
- TomTom (17,94% against votes for the granting of subscription rights under the stock option plan)
- Vastned (11,18% against votes for the remuneration policy)

We note that ISS recommended their clients to vote against the remuneration related proposals at SBM Offshore, Unilever, Royal Dutch Shell, Randstad and TomTom while Glass Lewis recommended its clients to vote against at SBM Offshore, TomTom and Vastned.

32) <http://www.allenoverly.com/publications/en-gb/european-finance-litigation-review/northern-europe/Pages/Legislation-on-Claw-Back-of-Bonuses-.aspx>



## 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.

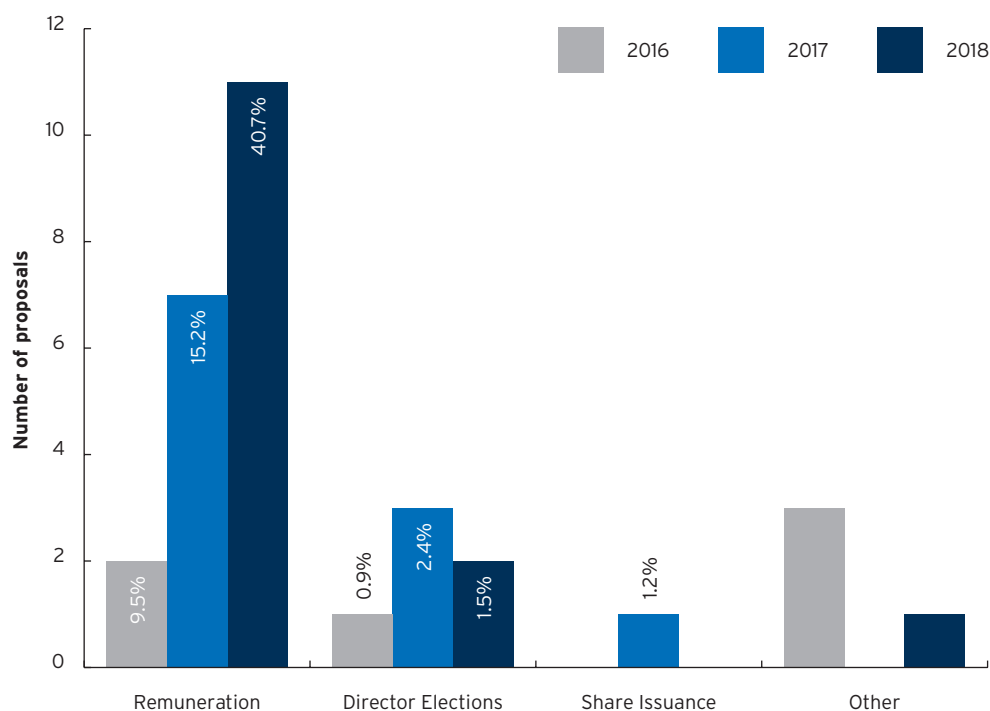
### 2.1 ISS

Institutional Shareholder Services<sup>33</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers.

During the 2018 proxy season, eight companies out of 45 of the AEX and AMX companies surveyed received at least one against recommendation from ISS. The 2018 AGM season saw the highest number of negative recommendations from ISS in the last three years. Please note that withdrawn resolutions were not included.

**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.



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

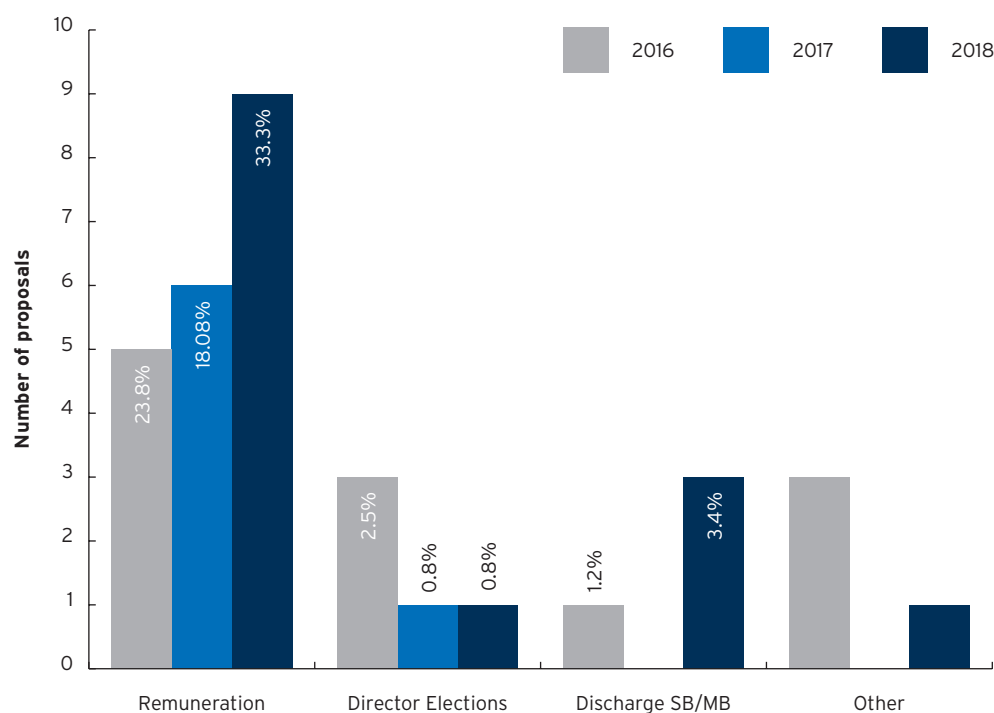
## 2.2 GLASS LEWIS

Glass Lewis<sup>34</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 2018 proxy season, 8 companies out of the AEX and AMX companies surveyed received at least one against recommendation from Glass Lewis. The 2018 AGM season had the highest amount of against recommendations from Glass Lewis of the past three years. Please note that withdrawn resolutions were not included.

**Graph 6:**

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.



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

# 3 | Corporate Governance developments

## 3.1 DUTCH STEWARDSHIP CODE

Following a public consultation period during 2017, which resulted in adjustments to some principles and the guidance to a number of principles being clarified, the first Dutch Stewardship Code ("The Code") was adopted on 20 June 2018<sup>35</sup>. This Code builds on, and supersedes, the Eumedion Best Practices for Engaged Share-Ownership of 2011<sup>36</sup>. The Stewardship Code will enter into force on 1 January 2019. As from 10 June 2019, all Dutch asset owners and Dutch asset managers will be legally required to apply the Code on a "comply or explain basis". From book year 2019 onwards, asset owners and asset managers are expected to apply the principles of the Code and report on the implementation of it.

This Code also incorporates the best practices of the Dutch Corporate Governance Code that apply to asset owners and asset managers and the new stewardship obligations for asset owners and asset managers stemming from the Shareholder Rights Directive<sup>37</sup>.

The Code consists out of eleven principles. The main elements of the Code are:

- explaining how asset owners and asset managers can meet their stewardship responsibilities in a way that contributes to long-term value creation
- making asset owners more accountable to their beneficiaries and asset managers more accountable to their clients
- it accommodates companies in identifying which of its investors are committed to vote in an informed manner and are prepared to enter into a constructive dialogue.

## 3.2 EUMEDION

Eumedion<sup>38</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>39</sup>, which consists of 25 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 August 2017 and 31 July 2018, Eumedion issued an alert on six Dutch listed companies, for a total of six resolutions (compared to seven resolutions in 2017). The remuneration related resolutions received the highest number of alerts (three resolutions). This is followed by the resolutions related to changes in the articles of association, discharge of Management and Supervisory Board and other (each subject had one resolution receiving an alert).

35) <https://www.eumedion.nl/en/public/knowledgenetwork/best-practices/2018-07-dutch-stewardship-code-final-version.pdf>

36) [https://www.eumedion.nl/en/public/knowledgenetwork/best-practices/best\\_practices-engaged-share-ownership.pdf](https://www.eumedion.nl/en/public/knowledgenetwork/best-practices/best_practices-engaged-share-ownership.pdf)

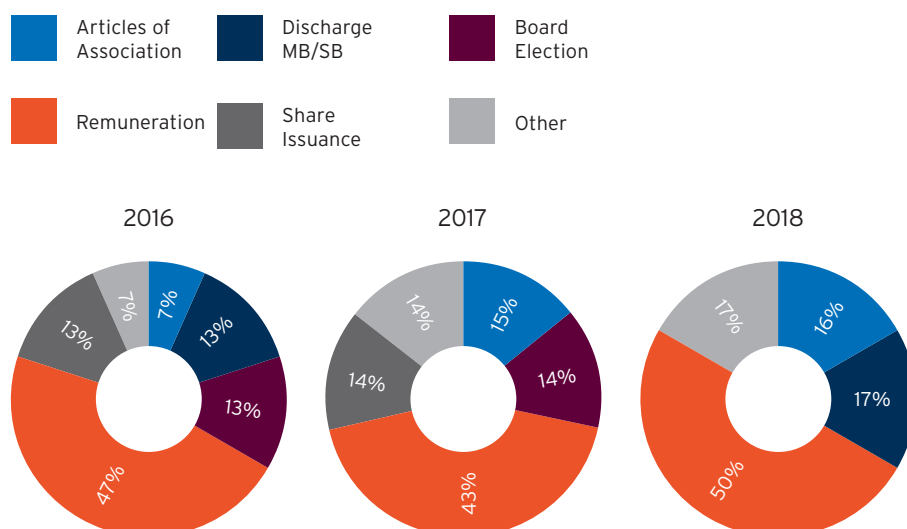
37) <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017L0828&from=en>

38) <https://www.eumedion.nl/en>

39) <https://www.eumedion.nl/en/abouteumedion#investment-committee>

**Graph 7:**

Eumedion alerts issued on shareholder meetings for companies listed in the Euronext Amsterdam.



### 3.3 REMUNERATION

The announced intention by ING Group to increase the pay of the CEO led to a public and political debate on remuneration (for banks and other financial institutions). In an initial response to Parliament, the Minister of Financial Affairs, Wopke Hoeksta, stated that the proposed increase was “excessive” and “in no way contributes to restoring confidence in banks”<sup>40</sup>. The Dutch Prime Minister, Mark Rutte, publicly expressed his discontent about the proposed increase and referred to banks as semi-government institutions which would make them incomparable with other companies<sup>41</sup>.

The parliamentary discussion was intensified by Jesse Klaver from Groen Links who initiated talks about adopting an emergency law and amending the Act on Remuneration Policies of Financial Undertakings, which would require approval from the Minister of Finance to increase the pay of management at systemically important banks<sup>42</sup>. The further tightening of regulation governing remuneration of financial institutions was supported by other left wing parties and the Ministry of Financial Affairs indicated its support for legal action.

Following the withdrawal of the proposed increase by ING Group, the Minister of Financial Affairs, Wopke Hoeksta, stated that he was unsure whether he would proceed with legal changes<sup>43</sup>. The withdrawal allowed for time to consider the next steps. Even following the withdrawal, Jeroen van der Veer, Chairman of ING Group, had to defend its proposal in front of Parliament<sup>44</sup>.

40) <https://fd.nl/economie-politiek/1245070/verontwaardiging-in-den-haag-over-zelfverrijking-bij-ing>

41) <https://www.nrc.nl/nieuws/2018/03/09/verkiezingen-rutte-noemt-banken-semioverheid-en-bedankt-bij-voorbaat-voor-commissarispost-a1595156>

42) <https://fd.nl/economie-politiek/1245415/klaver-wil-spoedwet-die-salarisverhoging-hamers-blokkeert>

43) <https://fd.nl/economie-politiek/1245784/hoekstra-wil-rustig-bestuderen-of-loonwet-voor-bankwezen-nog-nodig-is-na-terugtrekking-van-ing>

44) [https://www.tweedekamer.nl/debat\\_en\\_vergadering/commissievergaderingen/details?id=2018A00970](https://www.tweedekamer.nl/debat_en_vergadering/commissievergaderingen/details?id=2018A00970)

## 3.4 ANTI-TAKEOVER MECHANISMS

### 3.4.1 Discussion on the introduction of legislation on a “time out period”

In our 2017 season review we reported on the extensive public debate regarding the protection of Dutch listed companies that evolved following the unsolicited offers on AkzoNobel and Unilever.

One of the options considered by the Dutch Government was to offer Dutch companies faced with an activist shareholder or a hostile bidder to be able to invoke a “time out period” to ensure they have the opportunity to weigh short-term interests of activist shareholders against the long-term interests of the company. While the period initially considered was one year, in a letter<sup>45</sup> to Parliament on 12 December 2017, the Minister of Financial Affairs, Eric Wiebes, mentioned a period of 250 days (compared to the current 180 days<sup>46</sup>). In the same letter he stated that he expected to consult the Parliament on a draft law in the first quarter of 2018. The Dutch Government still intends to introduce such a “time out period”, however, the debate is still ongoing without a clear view on when such a law may be introduced.

### 3.4.2 Ahold Delhaize

At Ahold Delhaize there were discussions with investors around the expiration of the Option Agreement with Stichting Continuïteit Ahold Delhaize (SCAD), which some investors consider an anti-takeover device. While shareholders were under the impression that they would get the opportunity to vote on the extension of this agreement, in the explanatory notes of the 2018 AGM agenda Ahold Delhaize stated that “the Agreement provides for the possibility of extension by both parties’ consent which, on the part of Ahold Delhaize, is at the discretion of the Management Board subject to the approval of the Supervisory Board.”<sup>47</sup>

French hedge fund CIAM<sup>48</sup> criticized plans by Ahold Delhaize to renew a governance structure that it said acts as a poison pill to potential suiters. They were joined by the VEB and Bernstein in the demand to put the poison pill structure renewal up for voting. On 9 May 2018 Ahold Delhaize announced it had agreed to extend its option agreement with the SCAD while making two additional commitments:

- Within six months after the option is exercised, Ahold Delhaize will call a shareholders meeting to discuss the situation with shareholders
- Within one year after the option is exercised, Ahold Delhaize will call a shareholders meeting to vote on cancellation of the shares issued to SCAD; SCAD will not vote its shares on that matter.

After weeks of discussions CIAM dropped the opposition. The Chief Executive of CIAM Catherine Berjal<sup>50</sup> said she was “pleased” with the compromise put forward by Ahold Delhaize.

45) <https://www.rijksoverheid.nl/regering/bewindspersonen/eric-wiebes/documenten/kamerstukken/2017/12/12/kamerbrief-over-bescherming-tegen-vijandelijke-bedrijfsovernames-en-de-bescherming-van-vitale-sectoren>

46) Principle 4.1.7 of the Dutch Corporate Governance Code

47) <https://www.aholddelhaize.com/media/6386/ahold-delhaize-agm-2018-agenda-and-explanatory-notes.pdf>

48) <https://fd.nl/beurs/1249516/activist-eist-aparte-vergadering-over-beschermingswal-ahold>

49) <https://www.aholddelhaize.com/en/media/media-releases/ahold-delhaize-extends-scad-option-agreement-adopts-additional-commitments-following-shareholder-feedback/>

50) <https://www.reuters.com/article/us-ahold-delhaize-shareholders-ciam/activist-investor-ciam-drops-opposition-to-ahold-poison-pill-idUSKBN1IA235>



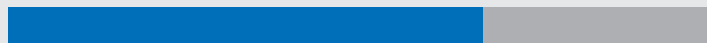


## Italy (FTSE MIB)



REJECTED BOARD PROPOSALS 0

AVERAGE QUORUM 67.49%



RESOLUTIONS WITH OVER 10% OPPOSE 22.77%



COMPANIES WITH OVER 10% OPPOSE 67.65%



## Highlights

- Within the FTSE MIB, the average quorum increased from 66.31% in 2017 to 67.49% in 2018.
- Notably, the proportion of average quorum across the FTSE MIB that was voted by non-core shareholders (the free float) has increased to 28.67% in 2018, compared to 28.30% in 2017.
- The total number of contested proposals (10%+ opposition) increased by 15% during the 2018 AGM season.
- Executive pay remains a key area of focus for investors, with the number of contested proposals relating to executive pay up by 43% in 2018 compared to 2017.
- ISS and Glass Lewis were both more stringent during the year under review, with negative recommendations up respectively 16% and 3% from 2017 levels within the FTSE MIB. Conversely, Frontis Governance has been less stringent compared to the 2017 AGM season.
- A key highlight of the 2018 Italian AGM season was the election of Telecom Italia's board, where the Italian slate voting system was used by Elliott (holding 8.27%) to win control of the Telecom Italia board from Vivendi (holding 23.94%).

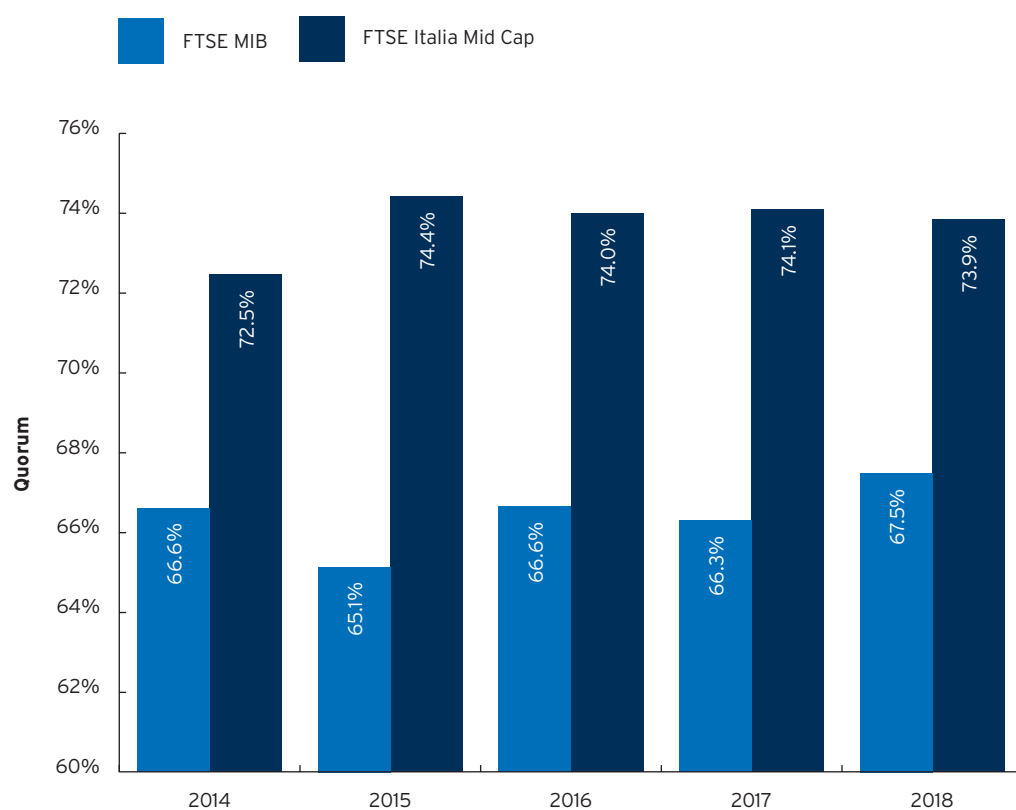


## 1.1 QUORUM OVERVIEW

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 a part of the FTSE MIB index as of 31 May 2018, and which held their AGM between 1 August 2017 and 31 July 2018. In particular, the analysis excluded companies with their headquarters abroad or which do not qualify as joint stock companies (in relation to which specific voting right provisions apply).

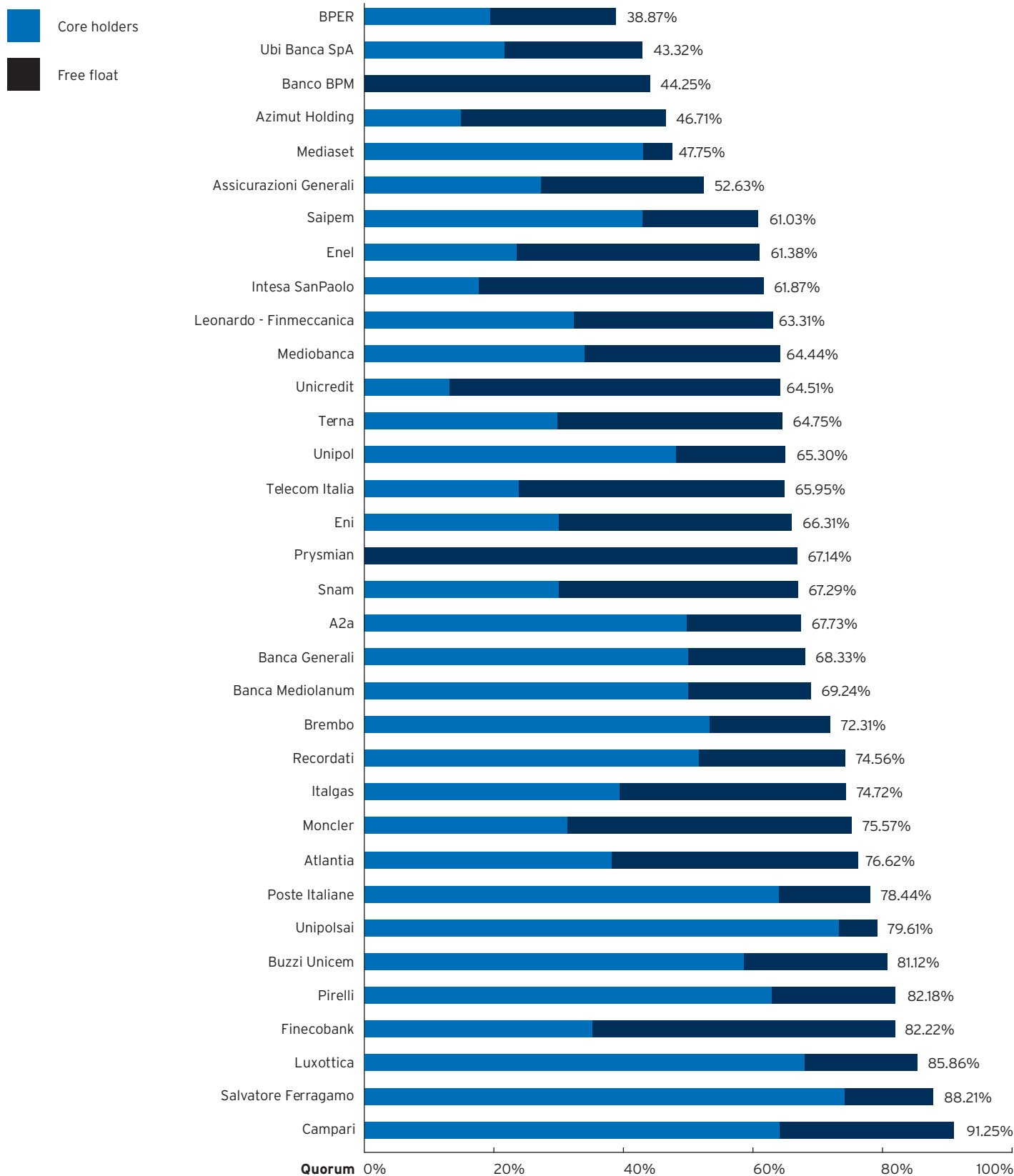
**Graph 1:**

Average AGM quorum levels in the FTSE MIB and FTSE Italia Mid Cap between 2014 and 2018.



**Graph 2:**

Quorum levels at FTSE MIB companies during the 2018 reporting period split between core shareholders and the free float<sup>1</sup>.



This survey excludes CNH Industrial, Exor, Ferrari, Fiat Chrysler Automobiles, STMicroelectronics and Tenaris as their corporate headquarters are located outside Italy.

1) The free float participation has been calculated by subtracting the shares referable to core shareholders from the AGM quorum.

## 1.2 REJECTED RESOLUTIONS

### FTSE MIB

Within our sample of FTSE MIB companies there have been no management-proposed resolutions rejected by shareholders.

### FTSE Italia Mid Cap

Within our sample of FTSE Italia Mid Cap companies, two companies had management-proposed resolutions rejected by shareholders: Ansaldo STS S.p.A. and FMN S.p.A.

#### **Ansaldo STS**

Ansaldo STS<sup>2</sup> is a leading company operating in the sector of high technology for railway and urban transport. The company is subject to the direction and coordination of Hitachi Corporation, which holds the majority of the share capital of Ansaldo (50.77%).

At its 2018 AGM<sup>3</sup> the proposal by the management regarding ordinary distribution of dividends was rejected, with the against vote of Hitachi Rail Italy Investment.

#### **FNM S.p.A.**

FNM<sup>4</sup> is the main transport and mobility Group in Lombardy. It is the most important Italian non-state investor in the sector. FNM S.p.A. is responsible for the management and strategic and operational coordination of all its subsidiaries. FNM core shareholders are Regione Lombardia (57.57%) and Ferrovie dello Stato Italiane (14.47%)<sup>5</sup>.

At its 2018 AGM<sup>6</sup> the management proposals to approve the remuneration report (an advisory vote), failed to achieve support from Regione Lombardia and Ferrovie dello Stato Italiane attending the meeting (holding, in aggregate, 314,500,081 shares out of the 337,267,284 present at the meeting), who abstained.

## 1.3 CONTESTED RESOLUTIONS

Among our sample of 34 FTSE MIB companies that held their AGM between 1 August 2017 and 31 July 2018, 23 companies saw at least one management-proposed resolution receive more than 10% shareholder opposition (compared to 22 in the preceding year). The total number of resolutions that received over 10% opposition amounted to 46, compared to 38 resolutions in 2017.

In our FTSE MIB sample, the most commonly contested resolutions were remuneration report votes. The second 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). The third most commonly contested resolutions were share repurchase programmes, including those related to long-

2) <http://www.ansaldo-sts.com/en/about-us-0>

3) <http://www.ansaldo-sts.com/en/documents/summary-account-votes-items-agenda-2>

4) <http://www.fnmgroup.it/en/chi-siamo-fnm>

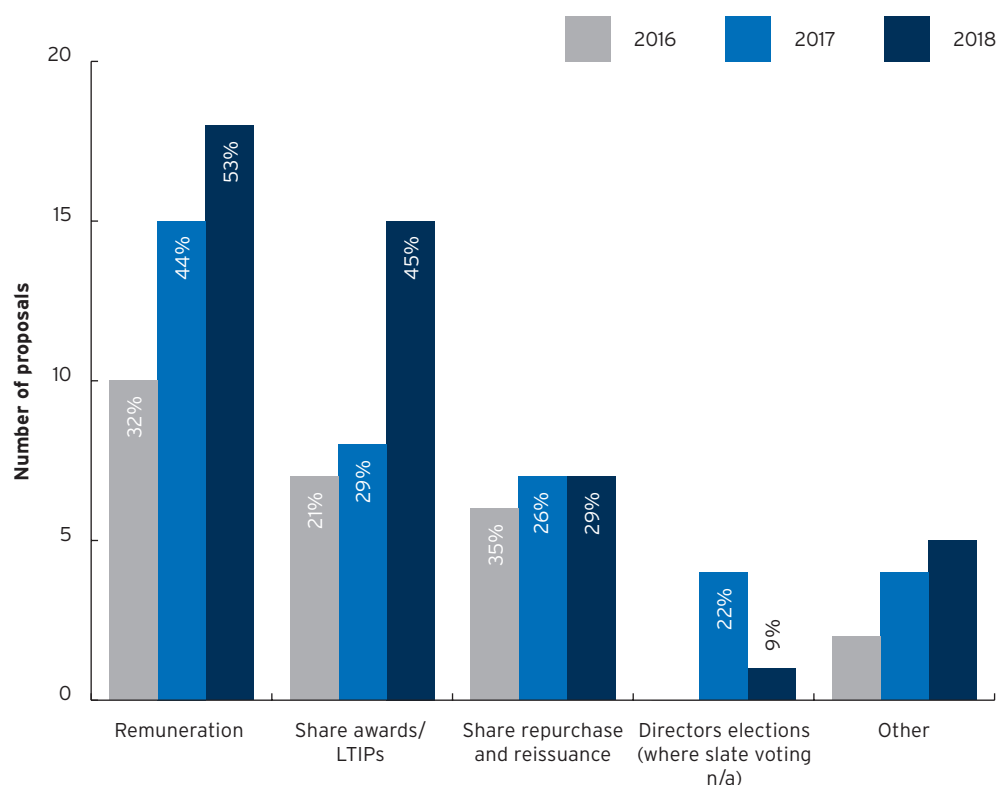
5) <http://www.fnmgroup.it/it/il-gruppo-fnm-in-borsa>

6) <http://www.fnmgroup.it/documents/11605/337842/Rendiconto+sintetico+delle+votazioni+dell%27Assemblea+degli+azionisti+del+21.05.2018/9f38a9c0-4755-4788-b8ae-65da06a4212a>

term incentive plans. Finally, the fourth most commonly contested resolutions were elections of individual directors and Chairmen (outside the slate voting system, see section 1.3.5 below), which in Italy only take place to fill a casual vacancy, or, in the case of a general election, to appoint the Chairman 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 proposals in each category.



### 1.3.1 Remuneration report

As mentioned above, resolutions pertaining to remuneration matters are those which generated the highest number of contested resolutions. Italian law<sup>7</sup> provides that issuers are obliged to publish, at least 21 days prior to the relevant annual general meeting, a remuneration report.

Such a 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>8</sup>. The first section illustrates the general principles guiding the way executives will be compensated in the following year and the applicable procedures; the second section provides for a detailed disclosure on the compensation paid to each board member, the managing director and the top management overall.

7) Legislative Decree n. 259 of 30 December 2010, implementing the EC Recommendations 2004/193 EC and 2009/385 EC, amended the Legislative Decree n. 58 of 24 February 1998 (the Italian "Consolidated Financial Law") by inserting article 123 ter.

8) CONSOB Regulation no. 18049 of 23 December 2011 published in the Official Gazette no. 303 of 30 December 2011 and in CONSOB Fortnightly Bulletin no. 12.2, December 2011.

The first section must be submitted to a mandatory non-binding vote of shareholders. With regard to financial institutions, a regulation<sup>9</sup> issued by the Bank of Italy provides that the vote on the remuneration policy is mandatory and binding<sup>10</sup>. Similar provisions are applicable to insurance companies that are subject to IVASS<sup>11</sup> regulation no. 39 of 9 June 2011, in relation to which the remuneration policy vote is mandatory and binding.

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

- Telecom Italia (66.69% in favour)
- Recordati (72.20% in favour)
- BPER (74.85% in favour)
- Azimut Holding (75.75% in favour)

The available proxy advisor reports recommended a vote against the remuneration reports of both Telecom Italia and Recordati; divergent recommendations were issued for the other two companies.

### 1.3.2 Adoption of share awards plans

According to Italian law<sup>12</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:

- Moncler (60.5% in favour)
- Atlantia<sup>13</sup> (69.2% in favour)
- Telecom Italia (69.8% in favour)
- Recordati (71.9% in favour)

ISS recommended against all four resolutions mentioned above, while Glass Lewis and Frontis Governance issued a positive recommendation for Atlantia.

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9) [https://www.bancaditalia.it/compiti/vigilanza/normativa/archivio-norme/circolari/c285/Circ\\_285\\_16\\_Aggto\\_testo\\_integrale\\_segnalibri.pdf](https://www.bancaditalia.it/compiti/vigilanza/normativa/archivio-norme/circolari/c285/Circ_285_16_Aggto_testo_integrale_segnalibri.pdf)

10) In particular Part I, Title IV, Chapter 2, Section II, paragraph 1 of Regulation of Bank of Italy n. 285 of 17 December 2013, provides that the Shareholders' Meeting approves, among others, the remuneration policies of the controlling and supervisory bodies, the applicable share awards plans and the relevant severance payments.

11) Institution for the Supervision of Insurance.

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

13) Proposal to amend an existing equity related incentive plan.

### 1.3.3 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:

- Moncler (67% in favour)
- Azimut Holding (69.5% in favour)
- Atlantia (75.1% in favour)
- Davide Campari (77.4%)

ISS recommended against all of the proposals mentioned above, while Glass Lewis recommended in favour of all. Frontis Governance issued a negative recommendation for Atlantia and Davide Campari.

### 1.3.4 Director elections (where slate voting was not applicable)

Italian law requires the Board of Directors to be elected by a slate voting system (see section 1.3.5 below). However when casual 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>14</sup>.

With regard to the election of the chairman of the Board, Italian law<sup>15</sup> provides that they be appointed by the members of the Board, unless an individual is named by the shareholders. However, the appointment by a majority vote of shareholders is the common practice.

Among our sample, only the resolution proposed by the Board of Directors of Salvatore Ferragamo, regarding the appointment of the honorary chairman of the Board of Directors received less than 90% of support: 88.8% of the voting quorum.

14) Article 2386 of the Italian Civil Code.

15) Article 2380 of the Italian Civil Code.

### 1.3.5 Slate voting system

Italian law requires the application of a slate voting system for the election and renewal of a company's governing body (the Board of Directors) and supervisory body (the Board of Statutory Auditors)<sup>16</sup>.

Under this system, in the context of an issuer's renewal of the board of directors, one generally finds:

- one slate generally proposed by the controlling or reference shareholder of the company (and usually putting forward candidates for all or most of the available vacancies), and,
- one or more additional slates, generally proposed by a group of institutional shareholders or other minority shareholders (usually putting forward a smaller number of candidates, generally equal to the seats reserved to minority shareholders - between one seat and 50% of the board - depending on the provisions of the articles of association).

Under normal circumstances the slate proposed by the controlling or reference shareholders gains the majority of votes and qualifies as the Majority Slate, while the most voted slate among the remaining slates (i.e. excluding the Majority Slate) qualifies as the Minority Slate. The Minority Slate may appoint as many directors as the number of seats reserved to minority shareholders by the articles of association.

Italian law<sup>17</sup> requires that the elections of the board take place through a vote on slates of candidates proposed by shareholders holding at least between 0.5% and 2.5% of the issued shares (the threshold depends on the total nominal value of the company's share capital). The slates must comply with provisions regarding gender balance (at least one third of the appointed directors must belong to the gender less represented) and independence (at least one director has to be independent, or two for boards larger than seven members). Additionally, at least one director (or a higher number, as defined by the company's articles of association) must be selected among the candidates included in the Minority Slate receiving the highest number of votes (i.e. the slate which has no links with the Majority Slate - which is assumed to receive the highest number of votes - and has gathered the second largest number of votes).

Similar provisions apply to the election of the Board of Statutory Auditors, however in this case the Chairman of the Board of Statutory Auditors must be selected among the candidates from the Minority Slate<sup>18</sup>. This is seen as a guarantee of the rights of minority shareholders.

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16) This requirement relates to the Italian Traditional Model, which provides that the Board of Directors acts as the company's governing body and the Board of Statutory Auditors acts as the company's supervisory/compliance body. This model is adopted by the vast majority of Italian companies. Italian law also provides for two alternative corporate structures:

- The Dual System, which provides for a Supervisory Board (entrusted with control and strategic functions) and a Management Board (entrusted with the operational management of the company). In this case the requirements applicable under the Italian Traditional Model to the Board of Statutory Auditors (in terms of independence, minority shareholder representation and balance of gender) apply to the Supervisory Board, which, in turn, appoints the Management Board. For instance UBI Banca has adopted this system. Intesa Sanpaolo also adopted this system until February 2016.
- The Monistic Model, which provides for a Board of Directors (entrusted with the operational management of the company) and a Supervisory Committee (entrusted with supervisory functions). The Supervisory Committee is composed of the independent members of the Board of Directors, and its Chairman must be selected among the Directors elected from a minority shareholder slate (article 148, paragraph 4ter of Italian Legislative Decree n.58 of 24 February 1998).

17) The combined provisions of articles 2364 and 2383 of the Italian Civil Code and article 147-ter of the Italian Consolidated Financial Law.

18) Legislative Decree no. 58 of 24 February 1998 - Consolidated Law on Financial Intermediation (TUF), Article 148, 2bis.

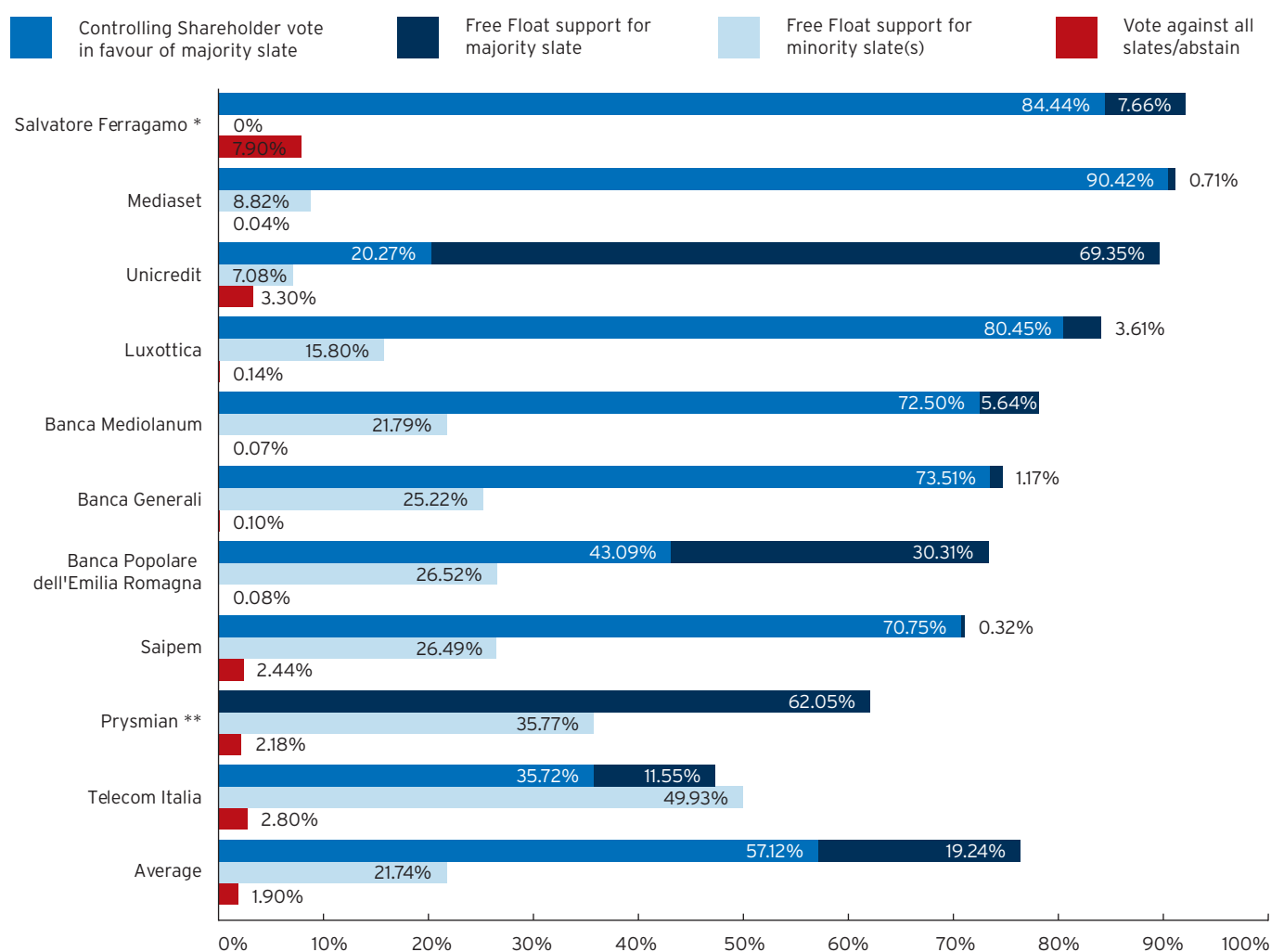
### 1.3.5.1 Election of the Board of Directors

Among the companies included in the FTSE MIB, 10 issuers held a vote on the renewal of their Board of Directors during the year under review. The graph below shows the vote result at each of these slate elections, highlighting the votes received by the Majority Slate, the votes received by the Minority Slate (with a note when more than one Minority Slate was put forward), and the votes cast against all slates or to abstain. With regard to the Majority Slate, the graph highlights the split between the votes cast by controlling shareholder(s) and the votes cast by the free float.

ISS and Frontis Governance recommended support for the Majority Slate only at UniCredit, while, at the other AGMs under consideration, support for a Minority Slate was recommended. Glass Lewis recommended support for the Majority Slate both at UniCredit and at BPER.

**Graph 4:**

Distribution of shareholder votes at Board of Directors slate elections taking place at FTSE MIB companies during the reporting period.



\* At Salvatore Ferragamo no Minority Slate was put forward.

\*\* At Prysmian there is no controlling shareholder and three slate were submitted: The slate submitted by the BoD (considered as the majority slate) receiving 62.05% of the votes, the slates submitted by Institutional Investors (Assogestioni) obtaining votes for 28.66% of the quorum, while the slate submitted by other minority shareholders (Clubtre) obtained votes for 7.12% of the quorum.



## 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 ISS

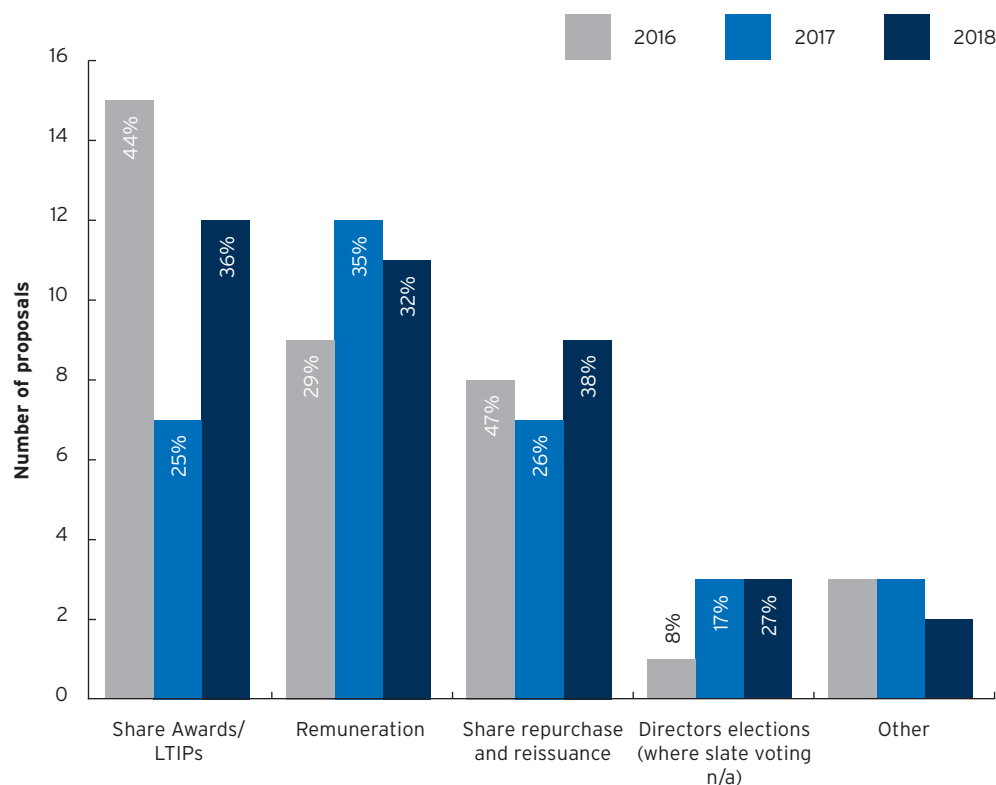
Institutional Shareholder Services<sup>19</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers.

Between 1 August 2017 and 31 July 2018, 22 companies out of the FTSE MIB received at least one against or abstain recommendation from ISS, for a total of 37 resolutions.

The proposals connected to remuneration areas (approval of incentive plans and approval of remuneration reports) collected the main part of negative recommendations from ISS. Graph 6 suggests that companies receiving a negative recommendations from ISS generally failed to receive high levels of support from shareholders, with a notable exception, due to a strong strategic shareholder.

**Graph 5:**

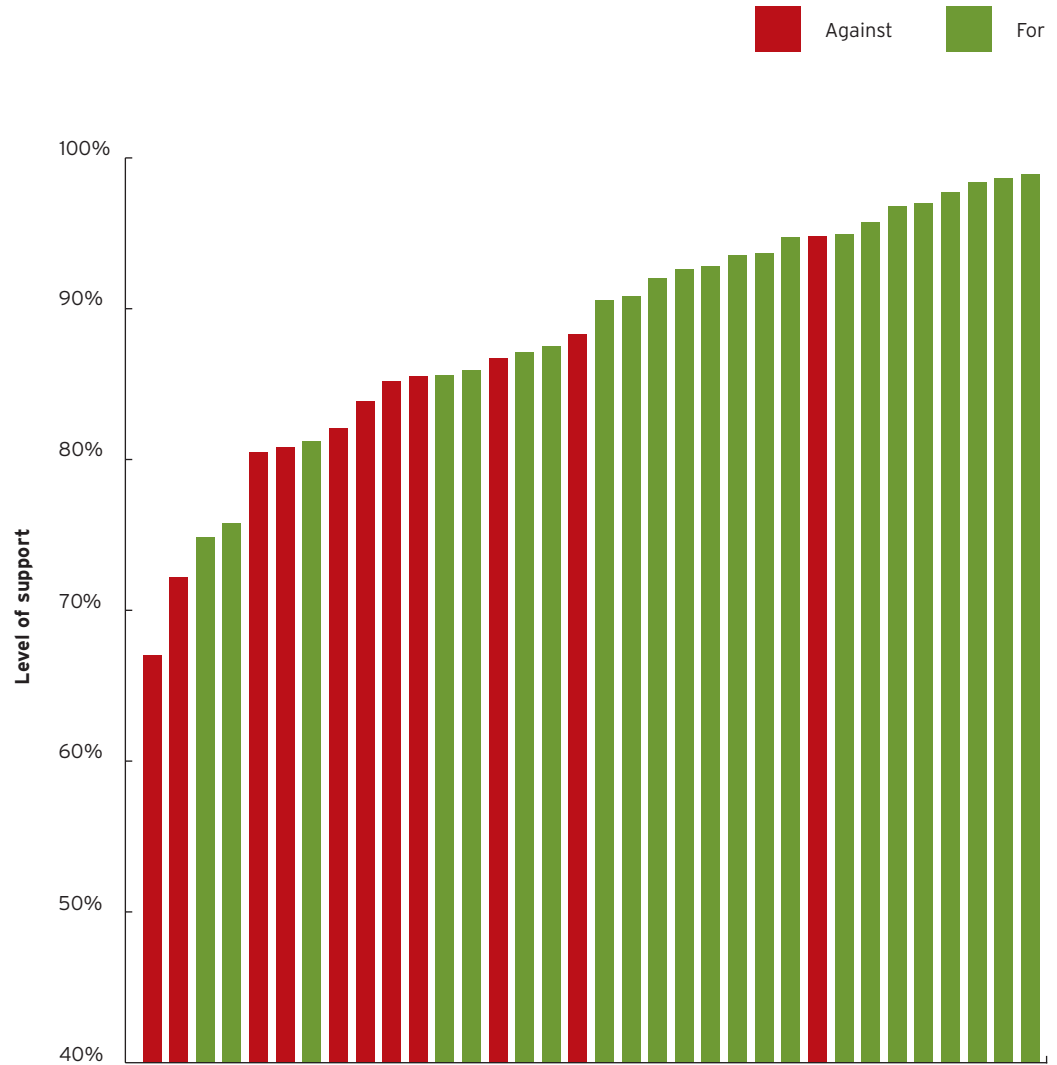
Overview of the number of negative recommendations by ISS at FTSE MIB AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative ISS recommendation and the total number of proposals in each category.



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

**Graph 6:**

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



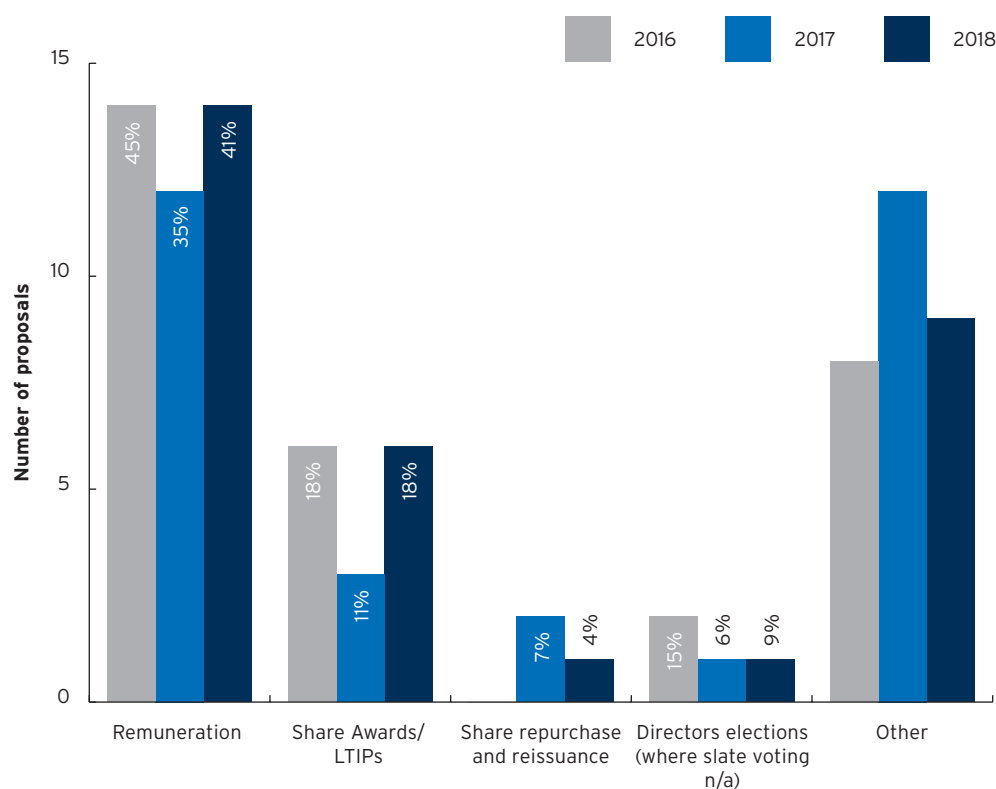
## 2.2 GLASS LEWIS

Glass Lewis<sup>20</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 August 2017 and 31 July 2018, 15 companies out of the FTSE MIB received at least one against or abstain recommendation from Glass Lewis, for a total of 31 resolutions. Also in this case items connected to remuneration themes have been the most sensitive ones.

### Graph 7:

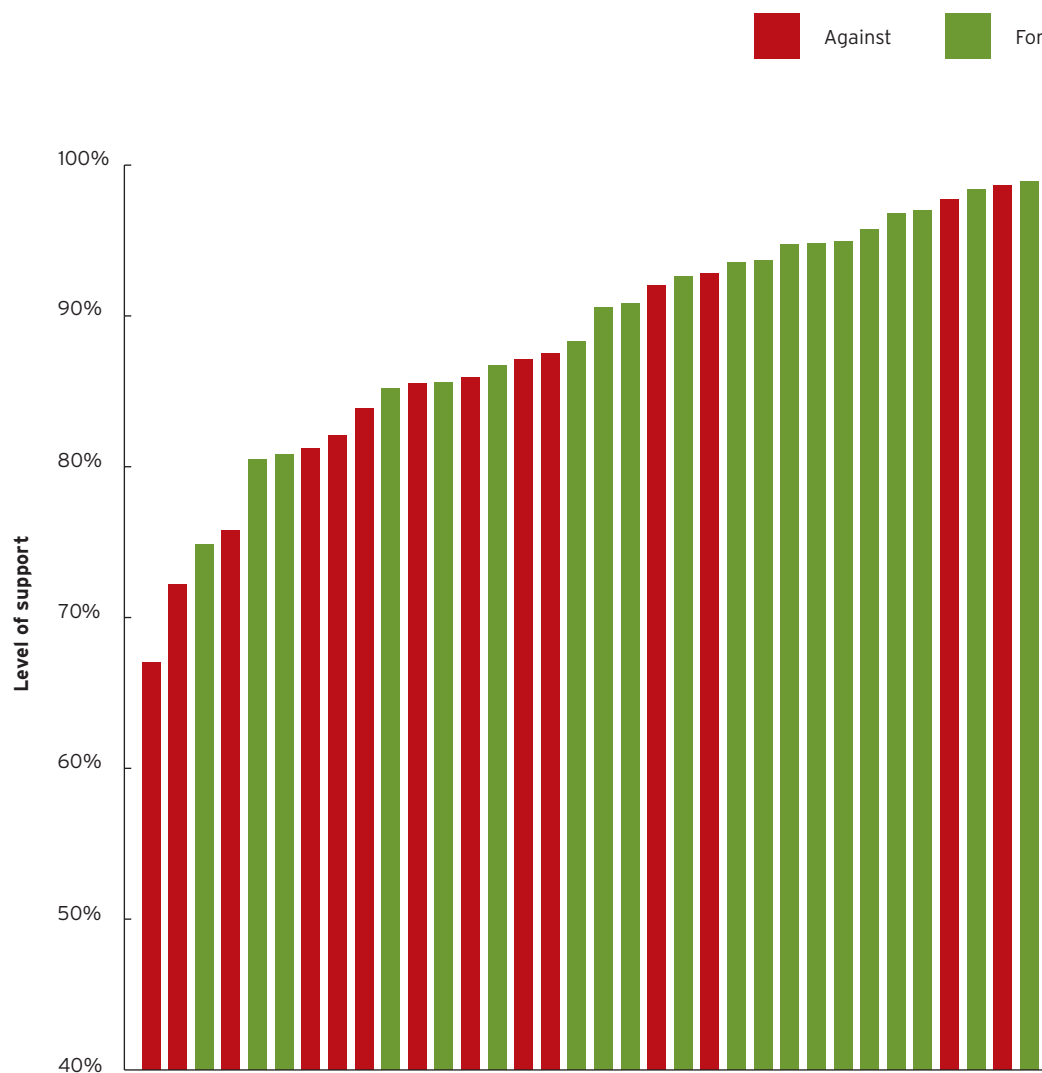
Overview of the number of negative recommendations by Glass Lewis at FTSE MIB AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative Glass Lewis recommendation and the total number of proposals in each category.



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

**Graph 8:**

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



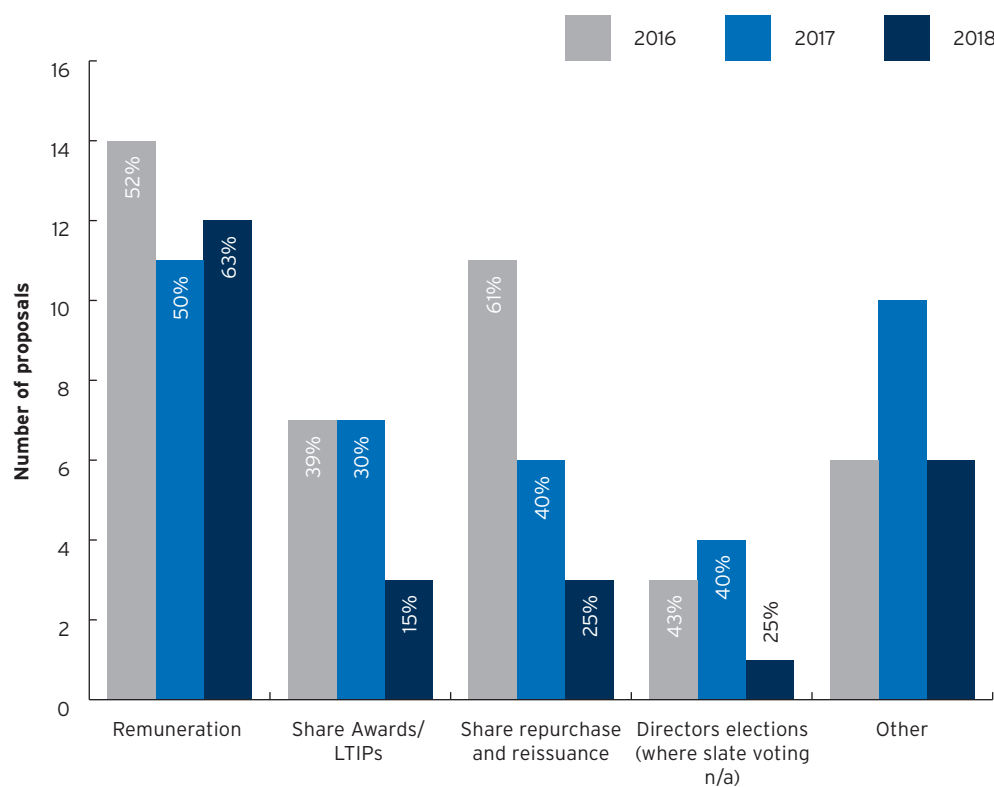
## 2.3 FRONTIS GOVERNANCE

Frontis Governance<sup>21</sup> is an Italian proxy advisory firm founded in September 2011. They are members of the Expert Corporate Governance Service (ECGS)<sup>22</sup>, a partnership of independent local proxy advisors.

Between 1 August 2017 and 31 July 2018, 12 companies out of the FTSE MIB received at least one against or abstain recommendation from Frontis Governance, for a total of 25 resolutions.

### Graph 9:

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.

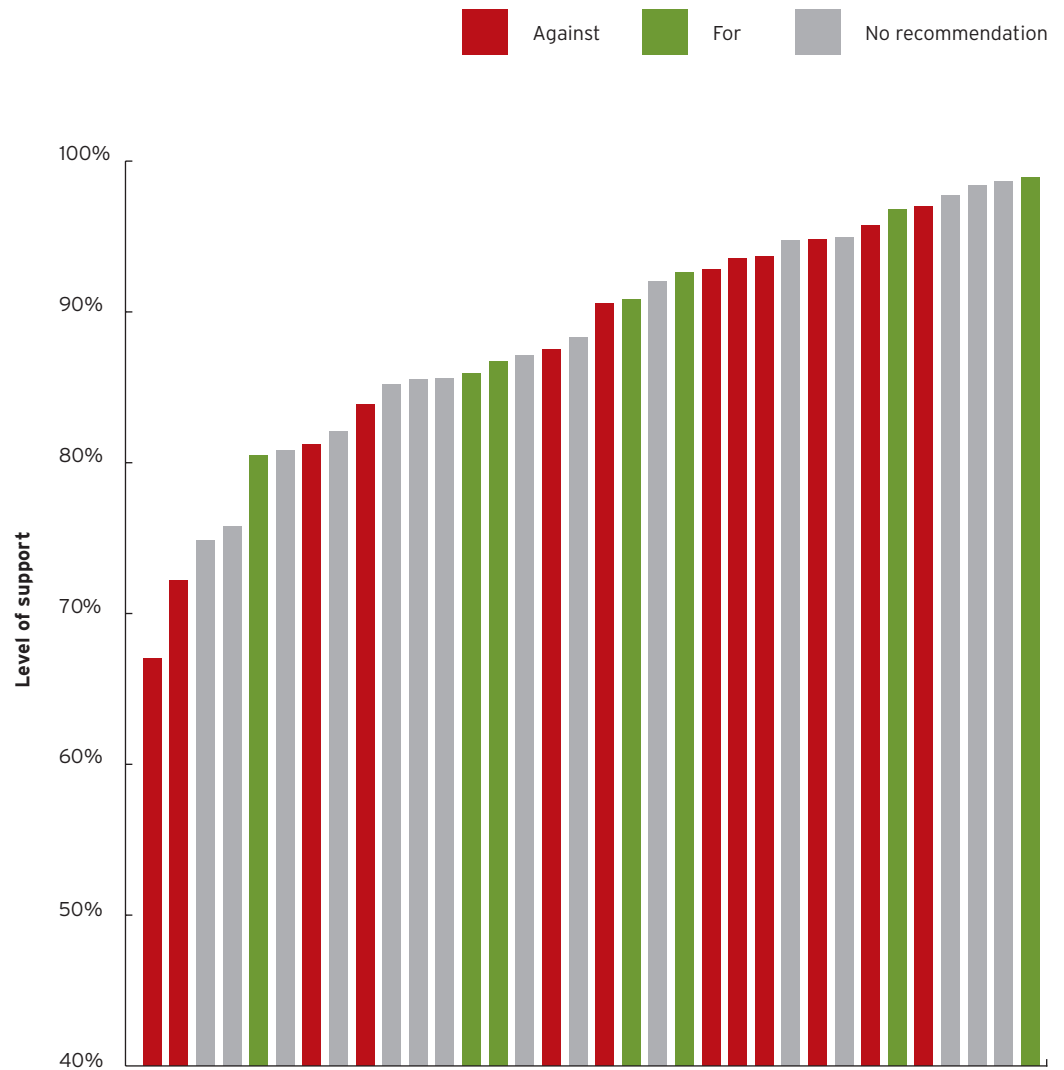


21) <http://www.frontisgovernance.com/en/>

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

**Graph 10:**

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



# 3 | Corporate Governance developments

## 3.1 IMPLEMENTATION OF NON-FINANCIAL REPORTING

The 2018 AGM season saw the implementation by issuers of the provisions regarding non-financial reporting after the full entering into force of European Directive 2014/95 on non-financial reporting as implemented by the Legislative Decree 254/2016.

Several issuers included in their meeting's agenda a non-voting item, regarding the discussion on the non-financial declaration. There have not been reports of any particular area of criticism from investors regarding such material. Instead the market appreciated the increase in the disclosure, also as a consequence of a consistent reporting framework: GRI standards have been used as a guideline by the vast majority of issuers.

## 3.2 ACTIVISM CAMPAIGNS: A PRACTICAL CASE

As widely reported in the Italian and foreign press, in 2018 Telecom Italia (TIM) was targeted by the activist fund Elliott, seeking an enhancement of company value through a change in management.

Some background information:

- On March 6, 2018, activist hedge fund Elliott Management started to build up a stake in Telecom Italia.
- On March 14, 2018, Elliott's funds presented two proposals to integrate the agenda of the upcoming general meeting of TIM (to be held on 24 April 2018), asking for (i) revocation of six directors from the board and (ii) appointment of six directors to replace the revoked directors.
- On 23 March, 2018, eight TIM directors (all elected in 2017 on the Majority Slate put forward by Vivendi) stepped down. On the same date, the Board (despite opposition from the directors appointed in 2017 on the Minority Slate put forward by Assogestioni) resolved to not integrate the AGM agenda with the resolutions proposed by Elliott; pursuant to Italian Law, if the majority of Board members resigns, the entire Board is deemed to have resigned, and a new General Meeting must be called to appoint the new Board of Directors. Consequently a new general meeting of TIM shareholders was convened for 4 May 2018 to elect the new Board of Directors via the slate system.
- Despite a favourable opinion from the Board of Statutory Auditors on the validity and effectiveness of Elliott's supplemental agenda request for the 24 April 2018 General Meeting, the Board of Directors decided to not integrate the agenda. The said decision was ultimately confirmed by the Milan Court following the filing of claims by Vivendi and TIM.
- On April 5, 2018, Italian state-owned lender Cassa di Risparmio di Roma (CDR) announced its plan to buy a 5% stake in Telecom Italia.
- Between April 6 and 9, both Vivendi and Elliott presented their own slate of candidates for the General Meeting of May 4.

Following an intense campaign, with the three leading proxy advisors (ISS, Glass Lewis and Frontis Governance) in favour of Elliott's proposals, investors backing the Elliott slate surpassed the Vivendi supporters by 1.7897% of share capital.

The success of the campaign is a testament to the accrued ability of foreign funds in understanding how the mechanics of the Italian slate system may serve the scope of activism initiatives. Yet, an instrument which was born to preserve minorities' interest against controlling shareholder's power, has been deployed to gain control of a major Italian issuer, thanks to an extensive engagement campaign.





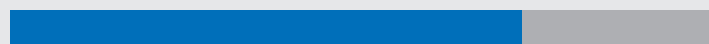
## Spain (IBEX 35)

REJECTED BOARD PROPOSALS 0



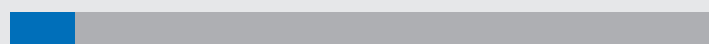
AVERAGE QUORUM

72.75%



RESOLUTIONS  
WITH OVER 10% OPPOSE

9.22%



COMPANIES  
WITH OVER 10% OPPOSE

61.76%



## Highlights

- Quorum levels across the IBEX 35 and IBEX Medium Cap continues to follow a positive trend for the fifth year in a row. The average quorum of the IBEX 35 has increased by 5.1 percentage points since 2014 to 72.75% in 2018.
- There were no failed management proposals during the 2018 AGM season in the IBEX 35 and IBEX Mid Cap. However, there were a total of eight shareholder proposals (all of which were rejected) at two companies across the IBEX 35 and IBEX Mid Cap.
- Proposals relating to director elections continue to be the most contested agenda item within the IBEX 35, with 21 proposals receiving more than 10% opposition during the 2018 AGM season. This is the same number of contested director elections as in 2017.
- There was a 36% decrease in the number of contested proposals (10%+ opposition) relating to remuneration during the 2018 AGM season, compared to 2017.
- Across the IBEX 35, ISS and Glass Lewis were more stringent during 2018, with negative recommendations up 13% and 8% respectively compared to 2017. In comparison, ECGS showed a more lenient approach, with negative recommendations down by 33% compared to the previous year.
- Proposals relating to remuneration continue to be the most penalized by proxy advisors within the IBEX 35, with all the proxy advisors considered in this study granting the highest proportion of negative recommendations to this topic.

# 1 | Voting in Spain

## 1.1 QUORUM OVERVIEW

Georgeson has analysed the quorum levels of IBEX 35 and IBEX Medium Cap companies for a number of years. This year's review includes the 35 companies that are part of the IBEX 35 and the 20 additional companies that are part of the IBEX Medium Cap as of 30 June 2018 and which have held their Annual General Meeting (AGM) between 1 August 2017 and 31 July 2018.

In the 2018 AGM season, the average quorum for IBEX 35 and IBEX Medium Cap companies continues to show a positive trend for the fifth consecutive year, standing at 72.75% and 74.71%, respectively. In the case of the IBEX Medium Cap, it is worth highlighting the 2.52 percentage point increase relative to 2017.

The three highest quorums among the IBEX 35 companies were experienced by:

- Cie Automotive (94.92%)
- Inditex (88.24%)
- Naturgy Energy Group (83.82%).

All of them have core holders representing around 60% or more of the issued share capital.

Among the top five IBEX 35 companies with highest quorums in 2018, who also formed part of the index in 2017, only three of them experienced an increase in quorum with respect to last year. The highest increase in shareholder participation was recorded by Cellnex (+6.23 percentage points). In the case of the IBEX Medium Cap companies, only Hispania experienced an increase (+7.00 percentage points).

In the analysis of free float participation<sup>1</sup> against total quorum<sup>2</sup> it is worth mentioning the results at three companies whose quorum is above the IBEX 35 average but whose share capital included a high proportion of free float:

- Amadeus achieved a quorum of 73.11% (of which 99.87% consisted of free float)
- Iberdrola achieved a quorum of 76.09% (of which 97.53% consisted of free float)
- Viscofan achieved a quorum of 80.37% (of which 78.55% consisted of free float)

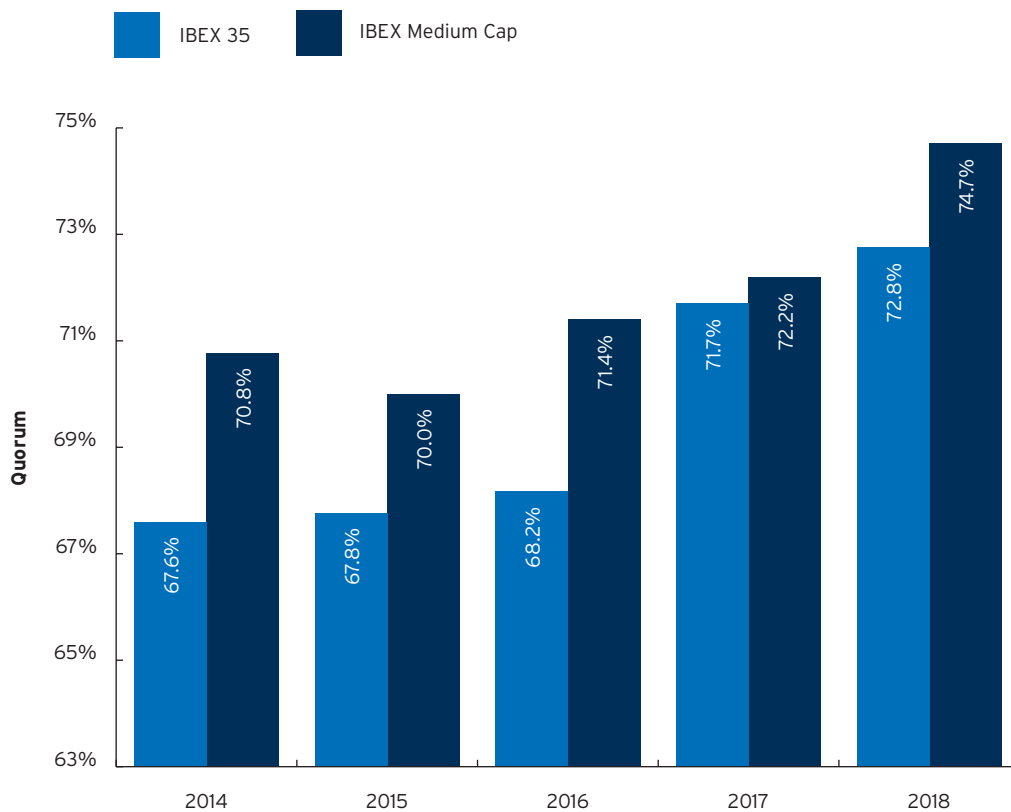
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1) We have included in the free float all institutional investors, including those that have communicated to the financial authority their significant position when crossing the 3% minimum threshold.

2) Please note that these figures are based on the "deliberative quorum" and not on the "constitutive quorum".

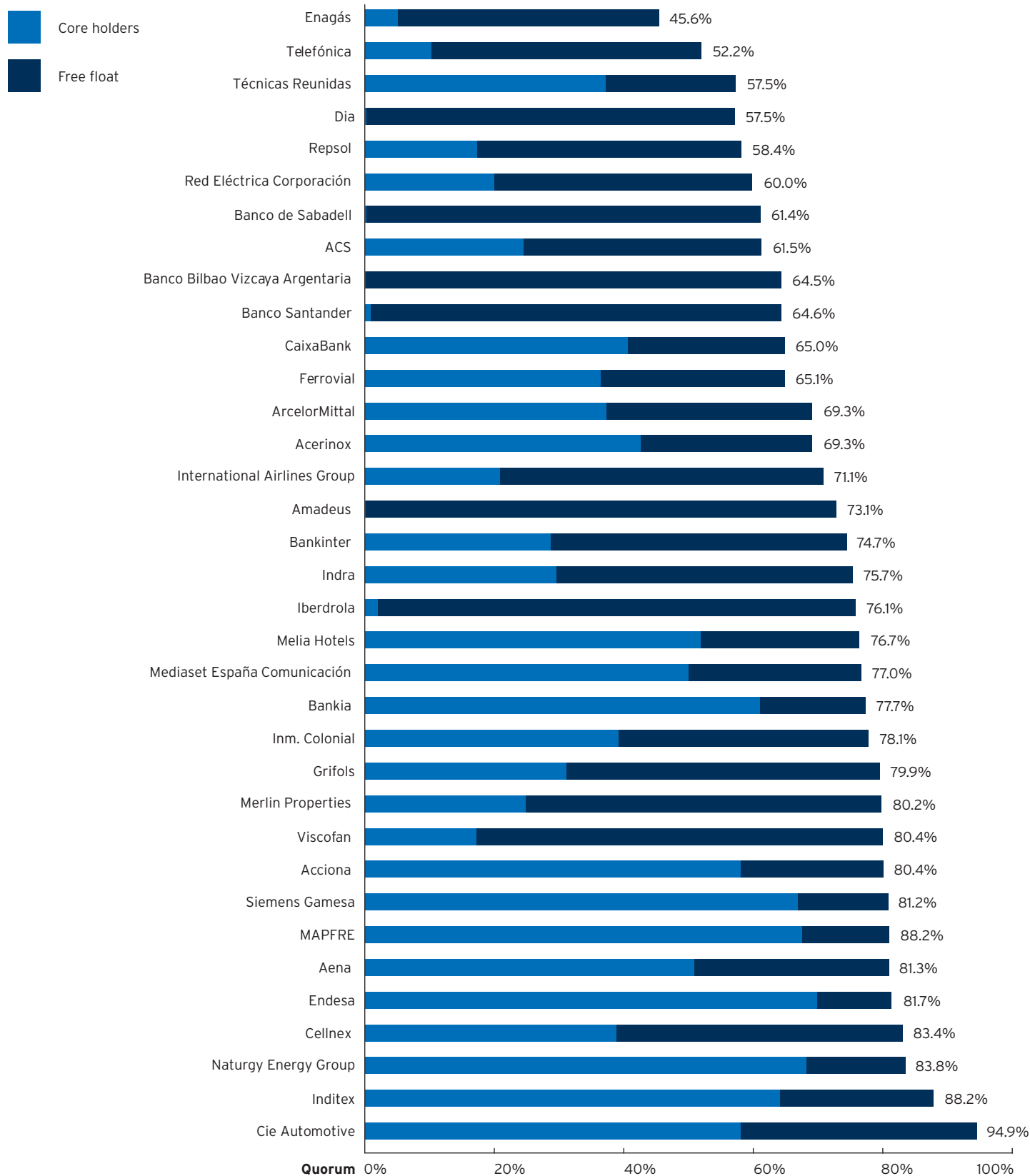
**Graph 1:**

Average AGM quorum levels in the IBEX 35 and IBEX Medium Cap between 2014 and 2018.



**Graph 2:**

Quorum levels at IBEX 35 companies during the 2018 reporting period. Each column is colour coded to show the proportion of shares voted which are represented by the core holders (blue) and the proportion which are part of the free float (dark blue). The analysis assumes that core holders vote their full shareholding.



## 1.2 REJECTED RESOLUTIONS

We have reviewed the meeting results for the 34<sup>3</sup> companies in the IBEX 35 and the 20 companies in the IBEX Medium Cap which held their AGMs between 1 August 2017 and 31 July 2018.

This year there were no board proposals rejected in either the IBEX 35 or the IBEX Medium Cap.

However, regarding shareholder proposals, we note that in the IBEX 35 one company, Siemens Gamesa Renewable Energy, had two resolutions rejected. Both proposed resolutions were requested as additional items of the Agenda by Iberdrola Participaciones S.A.U, in exercise of its right as a significant shareholder of the company (8.07% of issued share capital). As such, items 10 and 11 of the agenda<sup>4</sup> obtained 22.95% and 12.90% support. Likewise, in the IBEX Medium Cap, six<sup>5</sup> resolutions were rejected at the AGM of Sacyr Vallermosto. All of them were related to amendments of the Articles of Association and had a support level of between 27.38% and 27.51%.

## 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 51 resolutions (among 553 resolutions voted). During 2017, 57 resolutions were contested (among a total of 508 resolutions voted). This comparison makes the 2018 ratio (contested resolutions / total resolutions) lower than 2017.

In the IBEX 35, the highest number of contested resolutions this year related to director elections, where 21 resolutions received more than 10% against votes (representing 13% of the total resolutions in this category). On the other hand, proposals related to capital increases had the highest ratio of contested resolutions with respect to its total (6 resolutions out of 20, representing 30% of the total resolutions in this category).

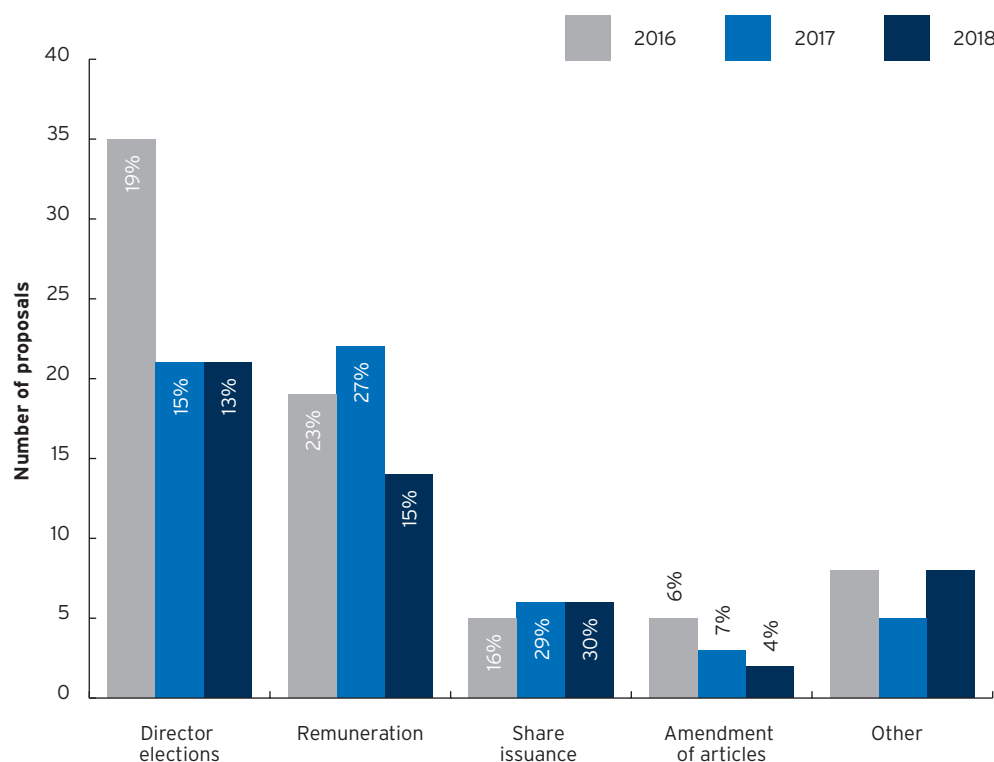
3) ArcelorMittal has been excluded in the rest of the document as their corporate headquarters are located outside of Spain and due to its differences with the rest of the analyzed companies.

4) Item 10 of the Agenda was related to the strengthening of the corporate governance of the Company in the area of related-party transactions for the protection of minority shareholders. Item 11 was related to the compliance regarding the maintenance in Spain of business, operational headquarters, etc.

5) Resolutions proposed by a dissident shareholder who decided to include additional items in the Agenda.

**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.



### 1.3.1 Remuneration

Spanish law<sup>6</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, 14 resolutions regarding remuneration matters received more than 10% negative votes, representing 15% of the total resolutions in that category. Contested resolutions in this category dropped significantly this year compared to 2017, when 22 resolutions received more than 10% negative votes, representing 27% of the total resolutions in that category.

The companies with the lowest levels of support were the same three companies from the past year:

- Merlin Properties (56.46% in favour of the remuneration report)
- ACS (58.89% in favour of the remuneration policy; 59.10% in favour of the remuneration report)
- Grifols (63.14% in favour of the remuneration report)

6) 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)

### 1.3.2 Director elections

During the reporting period, board elections included 21 resolutions with more than 10% against votes. In line with last year, the lack of independence was the main motivation for negative shareholder votes. As such, only 2 of the contested resolutions were related to directors classified as independent. Spanish legislation does not require the separation of roles or set specific thresholds for board independence. However, the Code of Good Governance recommends that external (non-executive) directors constitute a broad majority of the Board and that independent directors amount to at least half of the board (except for controlled companies, in which case the number is reduced to one-third).

This year the only resolutions with a support level below 80% were at Mediaset España Comunicación (with a support level between 75.90% and 79.45%).

### 1.3.3 Share issuance

In compliance with 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, six proposals relating to share issuance received more than 10% negative votes (the same as last year).

The resolutions with the lowest levels of support in the IBEX 35 index were:

- Acerinox (73.69% in favour)
- International Airlines Group (79.46% in favour)

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



## 2 | Proxy Advisors

Many institutional investors rely on proxy advisory firms, such as ISS, Glass Lewis and 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.

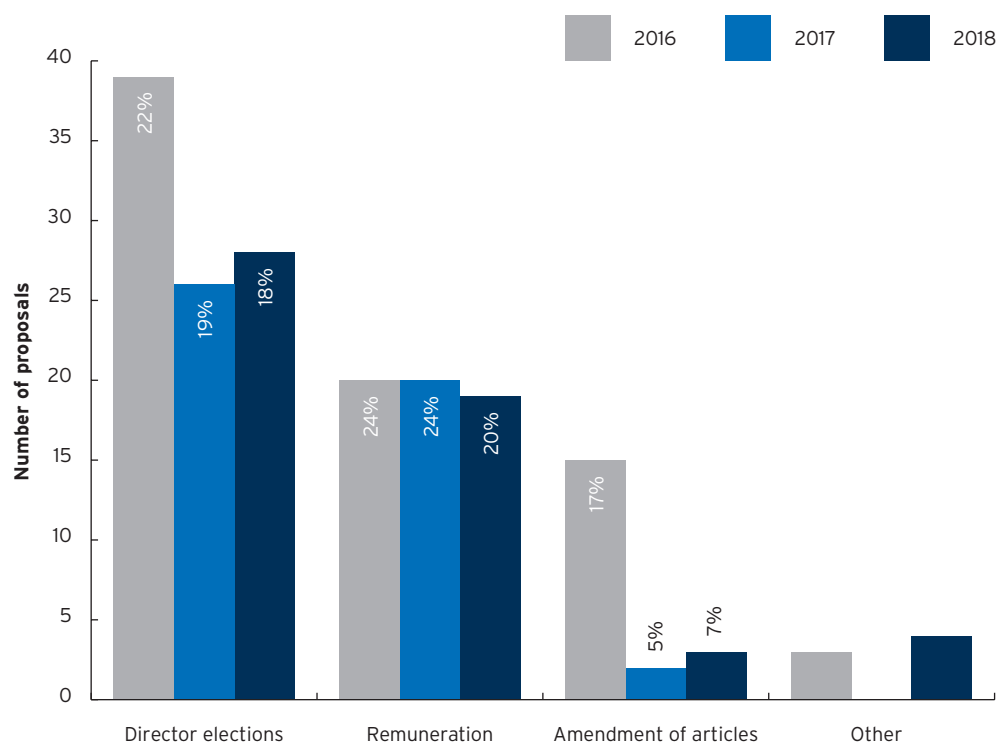
### 2.1 ISS

Institutional Shareholder Services<sup>8</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, 18 companies in the IBEX 35 received at least one negative recommendation from ISS, for a total of 54 resolutions. The highest number of resolutions that received unfavourable recommendations were related to director elections (28), where 18% of those proposals received an against or abstain recommendation from ISS. The topic that received the highest proportion of negative recommendations from ISS is related to remuneration, where the ratio of resolutions with an unfavourable recommendation reached 20% (19 out of 94 total resolutions).

**Graph 4:**

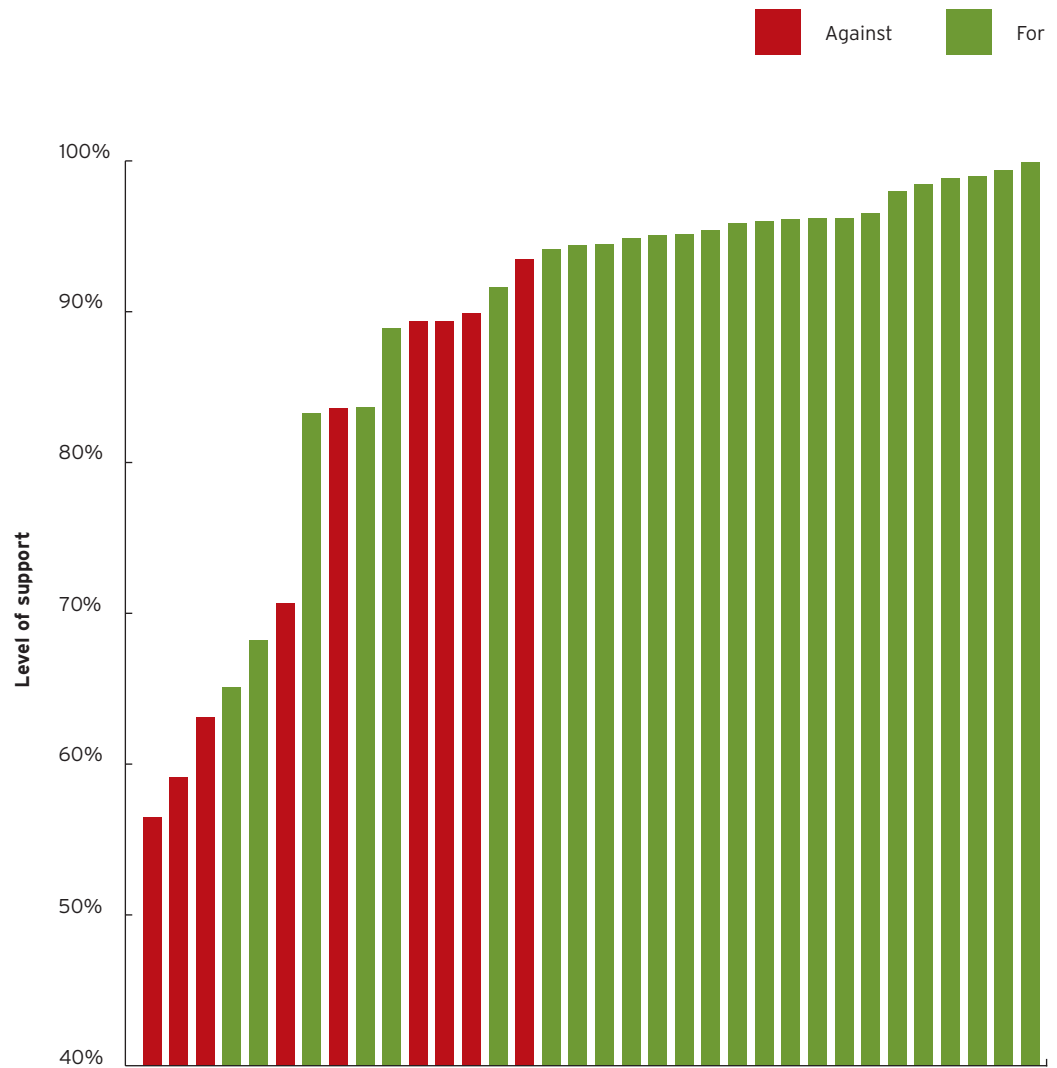
Overview of negative recommendations by ISS at IBEX 35 AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative ISS recommendation and the total number of proposals in each category.



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

**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.



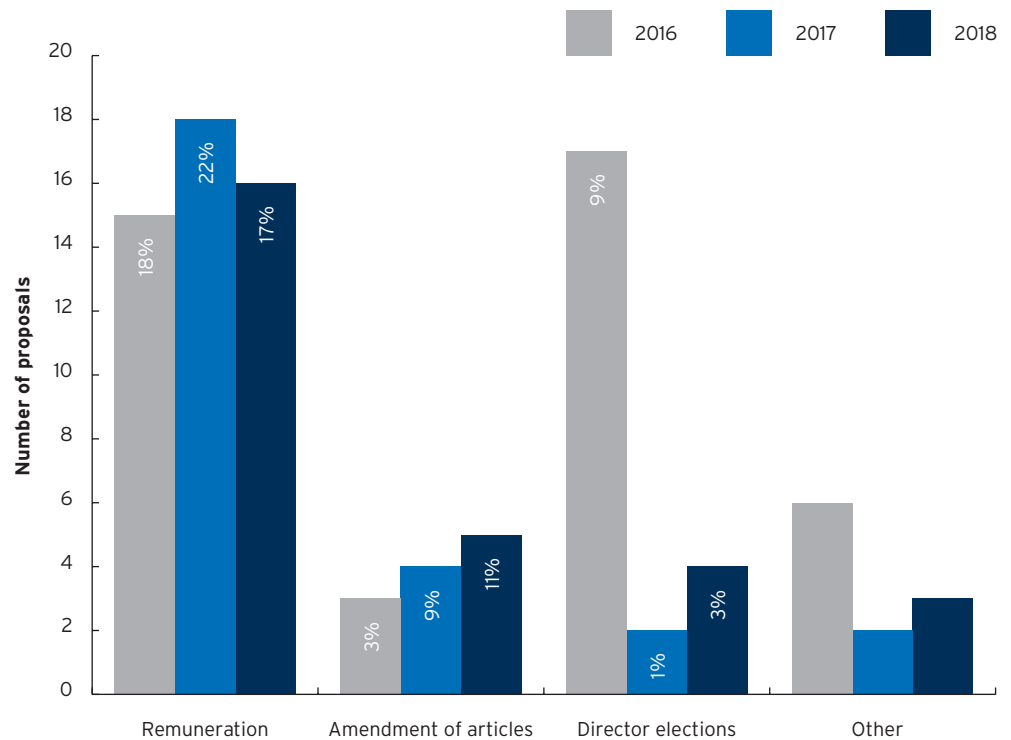
## 2.2 GLASS LEWIS

Glass Lewis<sup>9</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.

During the reporting period, 13 companies in the IBEX 35 received at least one negative recommendation from Glass Lewis, for a total of 28 resolutions. The highest number of resolutions as well as highest proportion of resolutions with negative recommendations related to remuneration, receiving 16 negative recommendations out of the total 94 (17%).

### Graph 6:

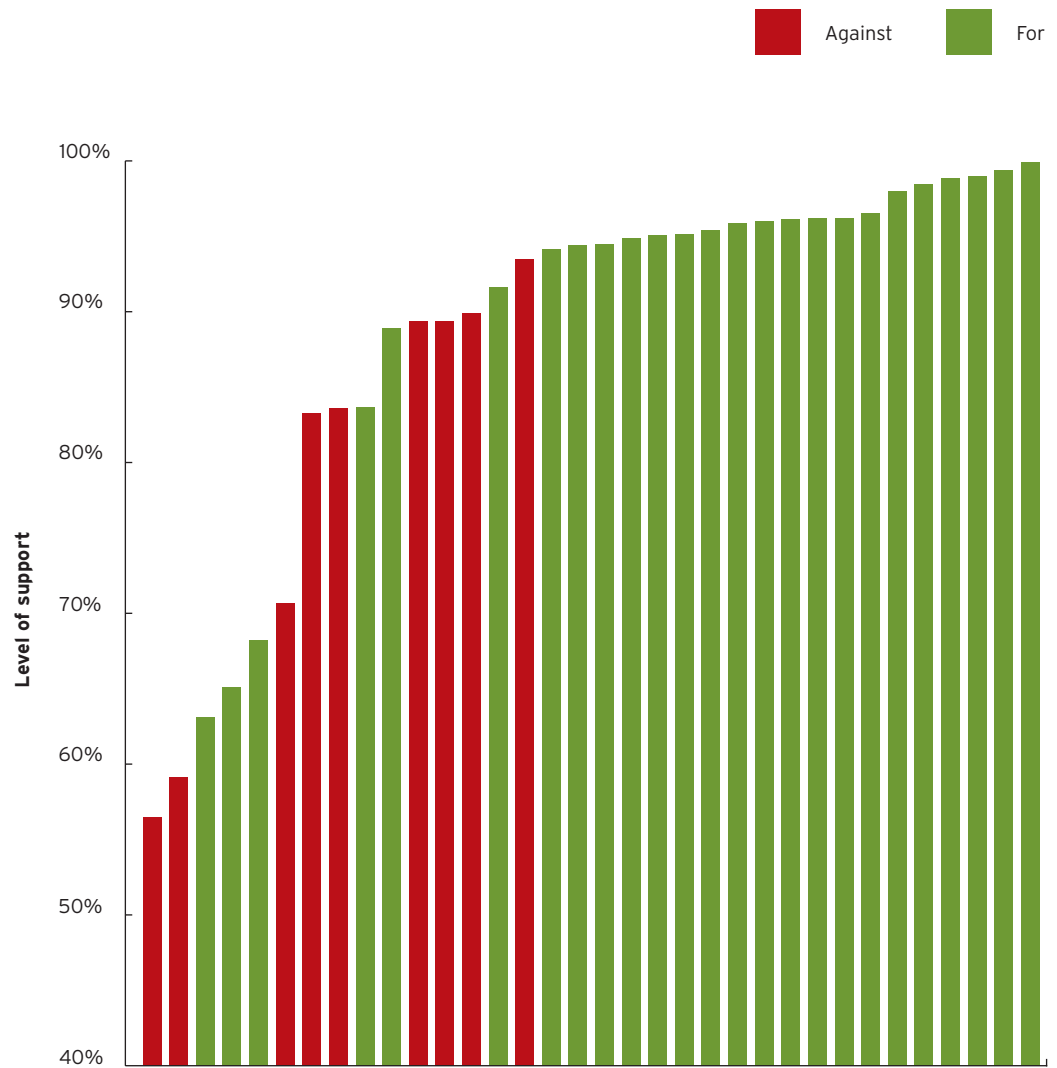
Overview of the number of negative recommendations by Glass Lewis at IBEX 35 AGMs over the past three years. The percentages represent the ratio between the number of proposals that received a negative Glass Lewis recommendation and the total number of proposals in each category.



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

**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.



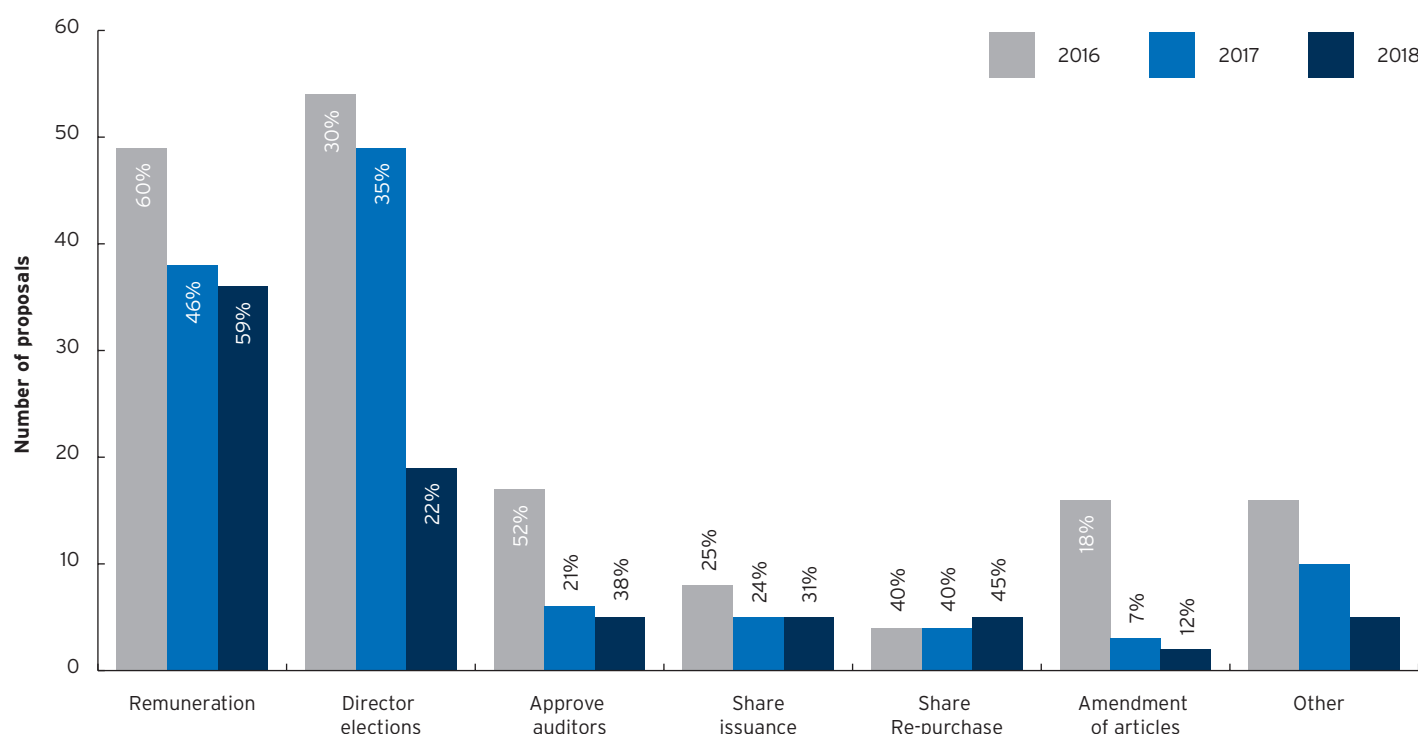
## 2.3 ECGS

The Expert Corporate Governance Service<sup>10</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>11</sup>.

For the reporting period, 20 companies in the IBEX 35 received at least one negative recommendation from ECGS, for a total of 77 resolutions. The highest number of negative recommendations, which is also the subject with the highest proportion of negative recommendations, were related to remuneration (36), where 59% of that category received an against or abstain recommendation from ECGS. Indeed, only 3 out of the 22 AGMs for which ECGS provided an analysis received a favourable recommendation on the remuneration report during the reporting period.

**Graph 8:**

Overview of the number of negative recommendations by 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.

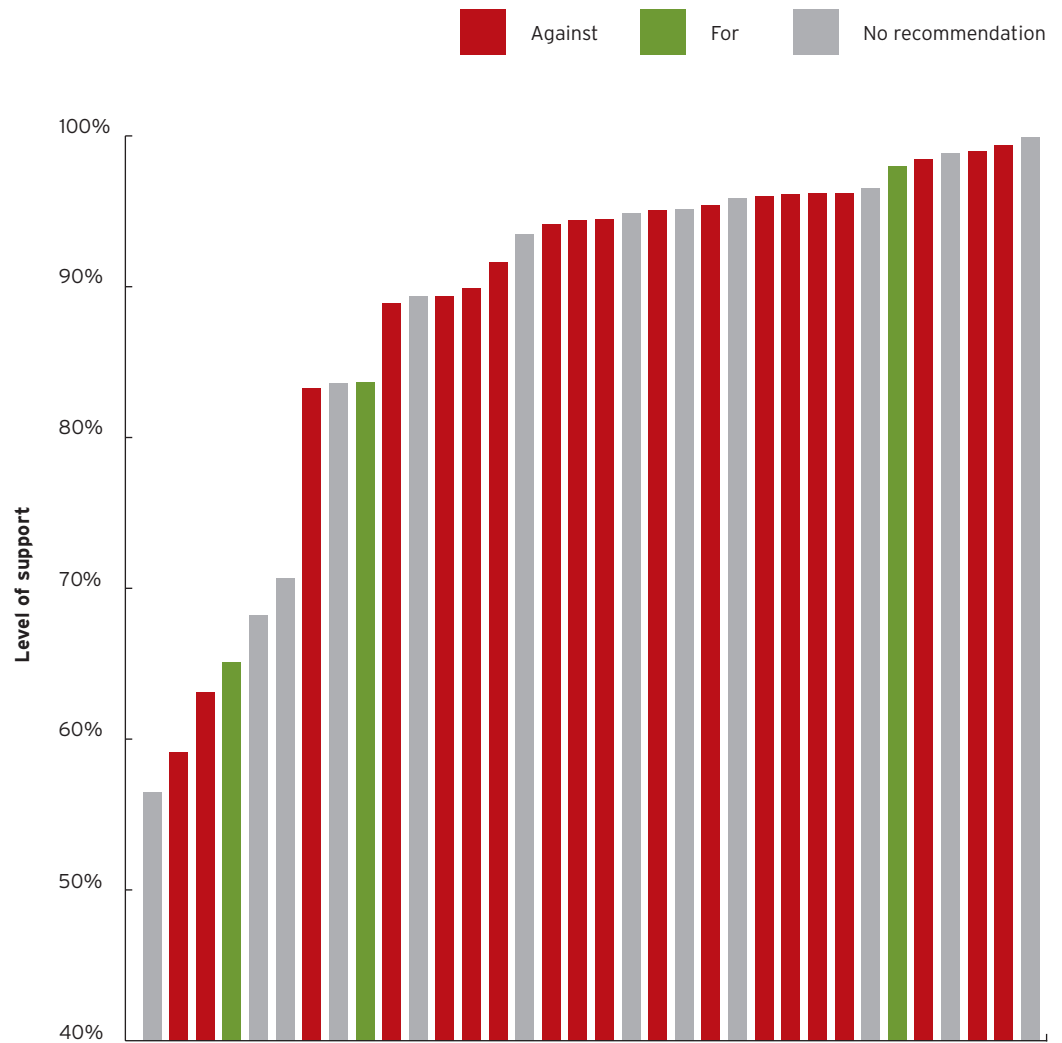


10) <http://www.ecgs.org/about-ecgs>

11) 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.

**Graph 9:**

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



# 3 | Corporate Governance developments

## 3.1 NO CHANGES IN LEGISLATION DURING THE YEAR

After significant changes occurred in the Spanish market during 2014 and 2015, 2018 has been characterized by regulatory stability in terms of corporate governance for listed companies. In this context, the Spanish market supervisor, Comisión Nacional del Mercado de Valores (CNMV), does not expect to make any major reform in 2018, but rather to contribute to the companies' improvement in the application of previous reforms.

## 3.1 ISSUANCE OF A NEW TEMPLATE CIRCULAR

The most relevant activity with an impact to the Spanish Corporate Governance framework has been addressed by the CNMV this year with the issuance of a new template Circular<sup>12</sup> on June 13th. This Circular modifies current templates of the Annual Corporate Governance Report (IAGC) and the Annual Directors' Remuneration Report (IAR) and includes new content required by law<sup>13</sup> in terms of experience, training, age and diversity of directors, as well as reducing those sections that have lost relevance. Within this new Circular companies will have more flexibility in the way they disclose information.

In addition, according to the 2018 Activity Plan<sup>14</sup> of the CNMV, it is expected that the Market Supervisor will address the following activities during the second half of the year:

- Analysis of the practical functioning of the Appointments and Remuneration committees, including an international comparison, with the aim of assessing whether a technical guide should be drawn up with the criteria and practices that the CNMV considers appropriate in this area.
- Analysis of the director remuneration policy in Spain, in comparison with other countries, studying to what extent it is in line with good practices according to international standards and relating it to company and market indicators.

12) That amends the previous Circular 5/2013

13) Section 540 of the Spanish Corporate Enterprises Act (Texto Refundido de la Ley de Sociedades de Capital)

14) [http://www.cnmv.es/DocPortal/Publicaciones/PlanActividad/Plan\\_Actividades\\_2018\\_weben.pdf](http://www.cnmv.es/DocPortal/Publicaciones/PlanActividad/Plan_Actividades_2018_weben.pdf)





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