



# Georgeson's 2016 Proxy Season Review

Bridging the gap between  
issuers and investors

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FRANCE  
NETHERLANDS  
GERMANY  
SWITZERLAND  
ITALY  
SPAIN

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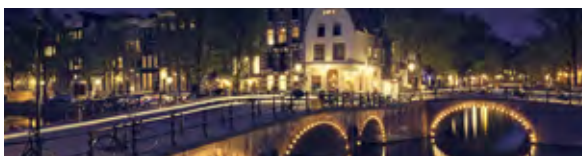
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# Executive summary

## UK

- › The average FTSE 100 AGM quorum was 72.40% (70.60% in 2015).
- › Two FTSE 100 companies and four FTSE 250 companies saw a board-proposed resolution rejected by shareholders.
- › The most commonly contested resolutions were authorities to issue shares.
- › Twelve FTSE 100 companies received less than 80% support on their remuneration report, compared to six in 2015.
- › Across the FTSE 100, 25 companies received a negative recommendation from ISS (18 in 2015) and 85 from Glass Lewis (same in 2015).

## France

- › The average AGM quorum for the 35 CAC40 companies in our sample was 65.81% (65.34% in 2015).
- › Across our CAC40 sample three board-proposed resolutions were rejected by shareholders.
- › The most commonly contested resolutions were authorities to issue shares.
- › For the first time since the implementation of the say-on-pay vote in 2014, two advisory votes on remuneration failed.
- › Across our CAC40 sample 27 companies received a negative recommendation from ISS (28 in 2015) and 24 from Glass Lewis (22 in 2015).

## Netherlands

- › The average AEX and AMX AGM quorum was 70.49% and 69.68% respectively (70.40% and 62.70% in 2015).
- › Across our AEX and AMX sample no companies had a resolution rejected by shareholders.
- › However three resolutions were withdrawn, compared to five resolutions in 2015.
- › The most commonly contested resolutions were authorities to issue shares.
- › Across our AEX and AMX sample six companies received a negative recommendation from ISS (same in 2015) and 12 from Glass Lewis (11 in 2015).

## Germany

- › The average DAX AGM quorum was 59.85% (54.88% in 2015).
- › One DAX and one MDAX company saw a board-proposed resolution rejected by shareholders.
- › The most commonly contested resolutions in the DAX related to supervisory board elections.
- › Across the DAX nine companies received a negative recommendation from ISS (5 in 2015), and eight from Glass Lewis (7 in 2015).

## Switzerland

- › The average SMI AGM quorum was 62.96% (64.22% in 2015).
- › Across the SMI and SMI MID no companies saw a resolution rejected by shareholders.
- › The most commonly contested resolutions in the SMI were director elections.
- › Across the SMI six companies received a negative recommendation from ISS (nine in 2015) and 11 from Glass Lewis (10 in 2015).

## Italy

- › The average FTSE MIB AGM quorum was 66.64% (65.14% in 2015).
- › Across the FTSE MIB and FTSE Italia Mid Cap two companies saw a board-proposed resolution rejected by shareholders.
- › The most commonly contested resolutions in the FTSE MIB were remuneration report votes.
- › Across the FTSE MIB 21 companies received a negative recommendation from ISS and 15 from Glass Lewis.

## Spain

- › The average IBEX 35 AGM quorum was 68.17% (67.77% in 2015).
- › Across the IBEX 35 one issuer had three board-proposed resolutions rejected by shareholders.
- › The most commonly contested resolutions were director elections.
- › Across the IBEX 35 26 companies received a negative recommendation from ISS and 21 from Glass Lewis.



UK





## UK Highlights

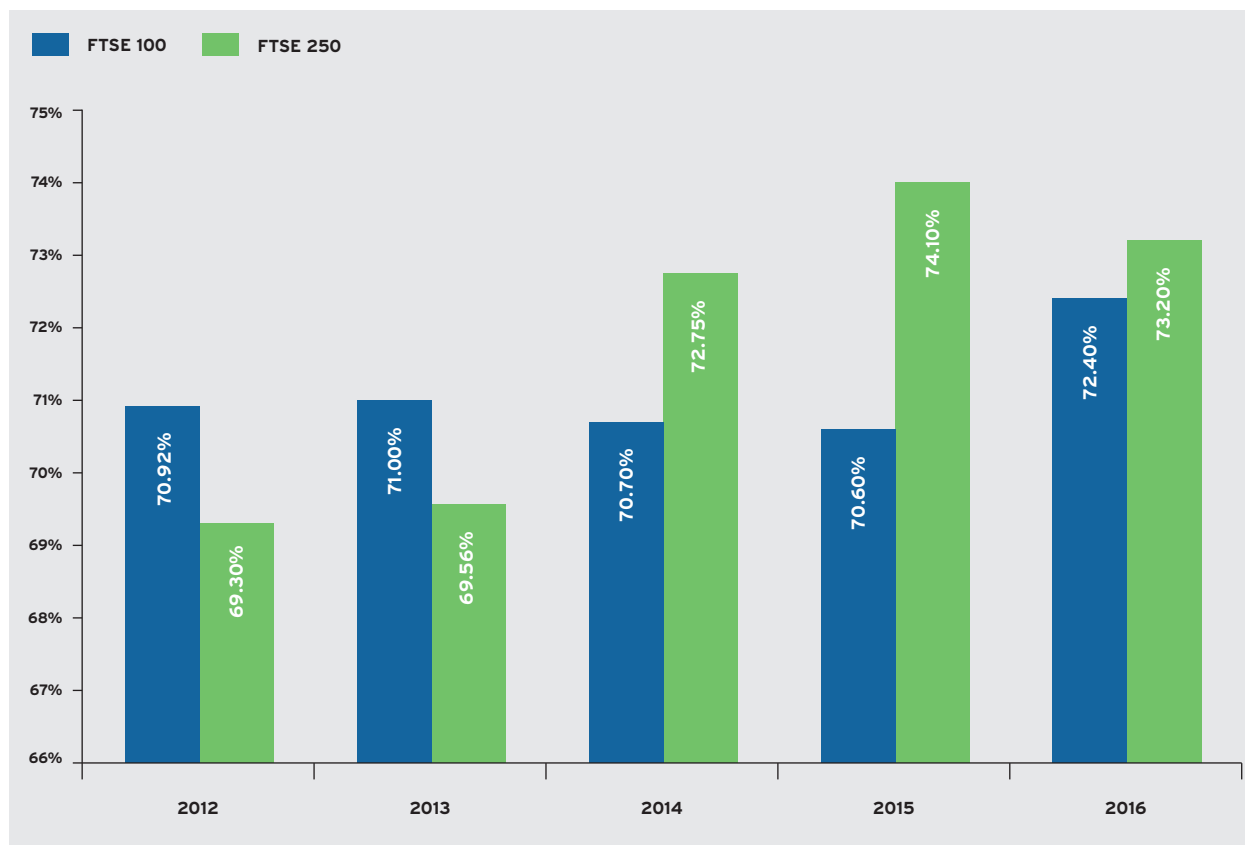
- The average quorum for FTSE 100 companies during the 2016 AGM season was 72.40%, compared to 70.60% in 2015.
- In our FTSE 100 sample two companies saw a board-proposed resolution rejected by shareholders during the 2016 AGM season: BP and Smith & Nephew.
- In the FTSE 250 four companies saw a board-proposed resolution rejected by shareholders during the 2016 AGM season: Weir Group, SVG Capital, Renewables Infrastructure Group and Paysafe Group.
- In our FTSE 100 sample, the most commonly contested resolutions were authorities to issue shares with and without pre-emptive rights.
- The second most commonly contested resolutions were remuneration report and remuneration policy votes. The third most commonly contested resolutions were proposals to allow companies to call EGMs on 14 days' notice.
- During the 2016 AGM season 12 FTSE 100 companies received less than 80% support on their remuneration report, compared to only six during the 2015 AGM season. Additionally two FTSE 100 companies received less than 80% support on their remuneration policy, compared to none during the 2015 AGM season.
- During the 2016 AGM season 25 companies out of our FTSE 100 sample received at least one negative recommendation from ISS and 85 companies received at least one negative recommendation from Glass Lewis (due to their standard opposition to short notice periods for EGMs).

# 1. VOTING IN THE UNITED KINGDOM

## 1.1 Quorum overview

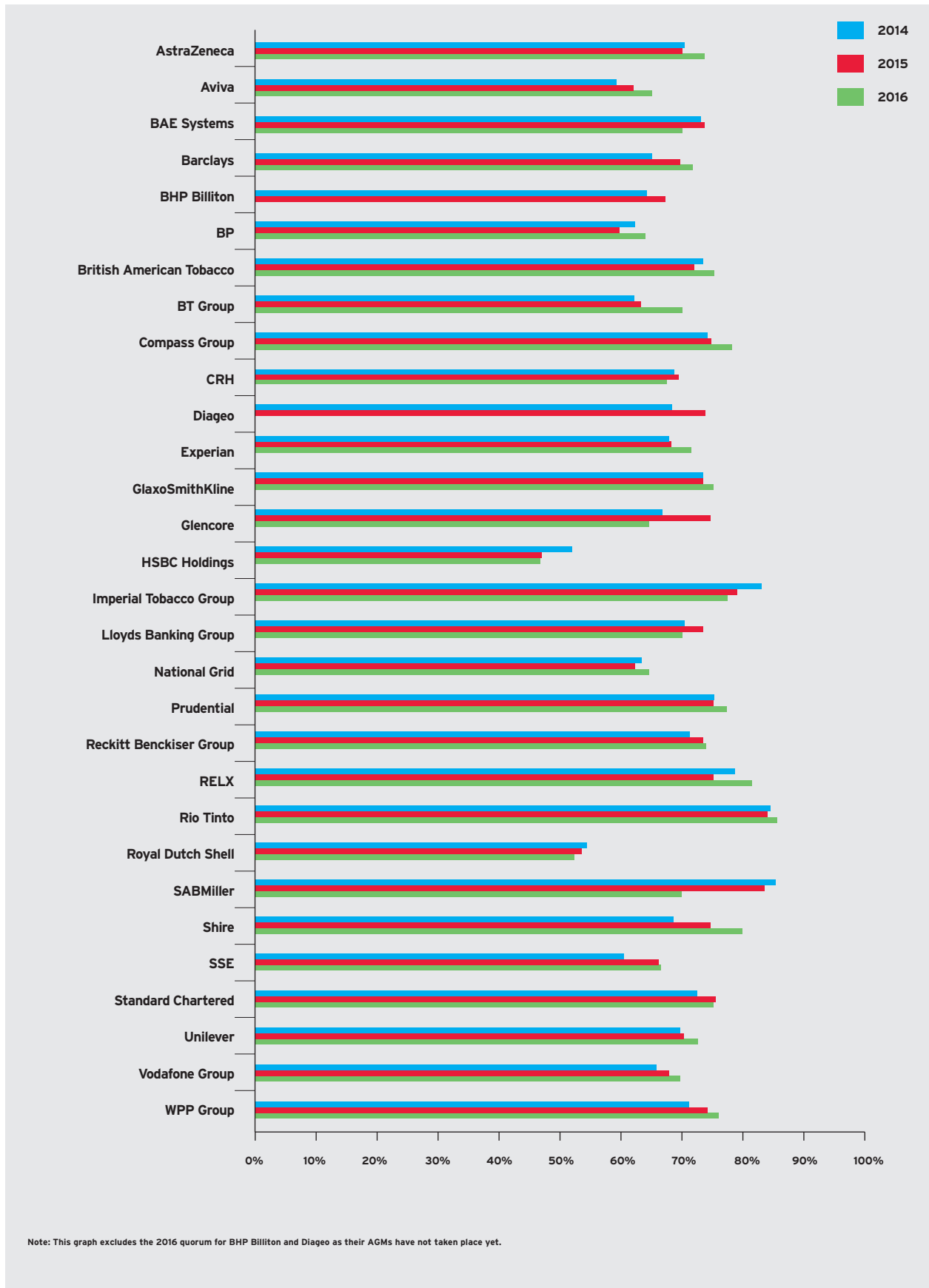
Georgeson has reviewed the quorum levels of FTSE 100 companies for a number of years. This year’s review includes the companies that were part of the index as of 1 January 2016, and which have held their AGM between 1 August 2015 and 31 July 2016. The average quorum for FTSE 100 companies during the 2016 proxy season has been 72.40%. This is a slight increase compared to the average 2015 quorum, which amounted to 70.60%, and the average 2014 quorum, which amounted to 70.70%.

**Graph 1: Shareholder attendance levels: comparison of FTSE 100 and FTSE 250 between 2012 and 2016**





**Graph 2: Shareholder attendance levels at the top 30 FTSE 100 companies by market capitalisation between 2014 and 2016 (displayed alphabetically)**



## 1.2 Rejected resolutions

### FTSE 100

We have reviewed the meeting results for FTSE 100 companies which held their AGMs between 1 August 2015 and 31 July 2016. Within this sample two companies had two management-proposed resolutions rejected by shareholders: BP plc and Smith & Nephew plc.

#### BP

BP<sup>1</sup> is one of the world's leading integrated oil and gas companies. At their 2016 AGM the advisory vote on the Directors' Remuneration Report failed to achieve support from shareholders, with 59.29% votes against the resolution.

Following the meeting the board stated<sup>2</sup>: "We were disappointed that the advisory vote for this year's remuneration report was not carried. We have already spoken to a number of shareholders and have a continuing dialogue. They are seeking changes to our remuneration policy for the future. We will continue that engagement and will bring a revised policy to our next AGM in 2017."

According to the Telegraph<sup>3</sup> "the shareholder rebellion came after the board unveiled plans to award Mr Dudley a pay rise in the same year that BP reported record losses amid a global oil price slump. [...] Mr Dudley's total pay package is 20pc higher than his 2014 payout despite the group reporting record losses of \$5.2bn last year compared to a \$8.1bn profit in 2014. BP has been hit by plummeting global oil prices, forcing it to slash its headcount by 4,000. Its share price is 25% lower year on year at around 350p."

We note that ISS, Glass Lewis and PIRC recommended a vote against the remuneration report, while IVIS raised a blue top on this meeting.

#### Smith & Nephew

Smith & Nephew<sup>4</sup> is a global medical technology business. At their 2016 AGM the advisory vote on the Directors' Remuneration Report failed to achieve support from shareholders, with 53.01% votes against the resolution.

Following the meeting the board stated<sup>5</sup>: "Looking ahead, as mentioned in our 2015 Annual Report, the Remuneration Committee is undertaking a thorough review of remuneration arrangements during 2016, ahead of putting a revised Remuneration Policy to shareholder vote in 2017. Over the summer, they will consult with a broad range of shareholders to solicit their views on how best to align executive reward with shareholder interests."

According to Alliance News<sup>6</sup> "the crux of the opposition from shareholders surrounded bonus payments totalling £2.1m to 60 senior executives that was awarded at the discretion of Smith & Nephew's remuneration committee, even though under the company's existing policy these executives would not have received the bonuses otherwise."

We note that ISS and PIRC recommended a vote against the remuneration report, while Glass Lewis supported it and IVIS raised an amber top.

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<sup>1</sup> <http://www.bp.com/en/global/corporate/about-bp/bp-at-a-glance.html>

<sup>2</sup> <http://www.bp.com/content/dam/bp/pdf/investors/bp-agm-poll-results-2016.pdf>

<sup>3</sup> <http://www.telegraph.co.uk/business/2016/04/11/bp-faces-fresh-attack-on-bob-dudleys-20m-pay-packet/>

<sup>4</sup> <http://www.smith-nephew.com/about-us/>

<sup>5</sup> <http://www.smith-nephew.com/investor-centre/events/agm/annual-general-meeting-poll-results1/>

<sup>6</sup> [http://www.morningstar.co.uk/uk/news/AN\\_1460715956215387600/smith-nephew-shareholders-vote-against-executive-bonuses.aspx](http://www.morningstar.co.uk/uk/news/AN_1460715956215387600/smith-nephew-shareholders-vote-against-executive-bonuses.aspx)

## FTSE 250

Among FTSE 250 companies four companies saw five management-proposed resolutions rejected by shareholders: Weir Group, SVG Capital, Renewables Infrastructure Group and Paysafe Group.

### Weir Group

Weir Group<sup>7</sup> design and manufacture highly-engineered products and services for minerals, oil and gas, and power industries. At their 2016 AGM<sup>8</sup> the binding vote on the Directors' Remuneration Policy (resolution 4) and the proposed LTIP amendments (resolution 17) failed to achieve support from shareholders, with 72.36% and 72.24% votes against the resolutions respectively.

Following the meeting the board stated<sup>9</sup>: "The Group's resolution on the Directors' Remuneration Policy did not gain sufficient support and will not now proceed. During an extensive consultation period, the Board had tried to forge a consensus between different shareholder views. [...] The Board looks forward to further engagement with shareholders regarding remuneration, as we jointly develop a revised policy for consideration in the future. [...] In the meantime, Weir will continue to operate under the remuneration policy which was approved by shareholders in 2014 and which runs until 2017, with awards made tomorrow under these rules."

According to Sky News<sup>10</sup> a "revolt at Weir is also important because it underlines the philosophical objection of some institutional investors to the practise of paying restricted stock [...]" Under the plans the executive directors would "receive a new strand of pay in the form of restricted stock worth 90% of their salaries, which will vest equally in the third, fourth and fifth years after their award. Restricted stock is a rare phenomenon in British boardrooms, and is disliked by some investors because of the absence of performance conditions."

We note that both ISS and Glass Lewis recommended a vote against both resolutions.

### SVG Capital

SVG Capital<sup>11</sup> is a leading international private equity investor which listed on the London Stock Exchange in 1996. At their 2016 AGM<sup>12</sup> they proposed a special resolution to disapply pre-emption rights in compliance with the Pre-emption Group Principles<sup>13</sup> (see section 3.2). The resolution failed to obtain approval from shareholders, with 68.01% of shareholders supporting the resolution.

Following the meeting the board stated<sup>14</sup>: "Resolution 15 was proposed as a special resolution, which required a 75% majority of the votes to be cast in favour and was defeated with 68.01% of votes cast voting in favour. The resolution was a standard resolution to give the Directors the general power to dis-apply pre-emption rights on the issue of new shares for cash of up to 5% of the Company's issued share capital. [...] The Board is mindful of the notable vote against four of the resolutions at this year's Annual General Meeting. The Board notes that, similar to prior years, one large shareholder's vote represented a very significant percentage of the vote against the respective four resolutions. Through the year the Board has engaged with our larger shareholders on remuneration and, in particular, notes the comments raised concerning disclosure of retrospective bonus targets. The Board will seek to address these comments in future reports. We look forward to continuing an open and constructive dialogue with shareholders."

We note that both ISS and Glass Lewis recommended a vote in favour of resolution 15.

<sup>7</sup> <https://www.global.weir/about-us/>

<sup>8</sup> <https://www.global.weir/assets/files/investors/AGM/AGM%20Voting%20Results%20280416a.pdf>

<sup>9</sup> <https://www.global.weir/assets/files/investors/AGM/AGM%20statement%20280416.pdf>

<sup>10</sup> <http://news.sky.com/story/weir-faces-investor-revolt-over-pay-policy-10252485>

<sup>11</sup> <http://www.svgcapital.com/about-us/overview>

<sup>12</sup> [http://www.svgcapital.com/system/files/uploads/financialdocs/SVG\\_AR16%20FINAL\\_0.pdf#95](http://www.svgcapital.com/system/files/uploads/financialdocs/SVG_AR16%20FINAL_0.pdf#95)

<sup>13</sup> [http://www.svgcapital.com/system/files/uploads/financialdocs/SVG\\_AR16%20FINAL\\_0.pdf#101](http://www.svgcapital.com/system/files/uploads/financialdocs/SVG_AR16%20FINAL_0.pdf#101)

<sup>14</sup> <http://www.svgcapital.com/sites/default/files/attachments/Announcement%20Poll%20and%20Proxy%20Results%20of%20AGM%20-%202016.pdf>

### **Renewables Infrastructure Group**

The Renewables Infrastructure Group<sup>15</sup> is a closed ended investment company limited by shares incorporated in Guernsey. At their 2016 AGM<sup>16</sup> a special resolution to adopt new articles of incorporation failed to obtain approval from shareholders with 58.27% votes in favour of the resolution.

Following the meeting the board stated<sup>17</sup>: “The special resolution, which required a 75% majority vote, concerned amendments to update the Company’s Articles of Incorporation in line with the latest changes to Guernsey’s Companies Law (such as no longer requiring a company to seek shareholder authority in order to issue shares, which previously under Guernsey law needed to be sought at least every five years) and to bring them in line with market practice. [...] The Board will take into account Shareholders’ concerns on this Resolution before proposing changes to the Articles in the future.”

We note that both ISS and Glass Lewis recommended a vote against this resolution.

### **Paysafe Group**

Paysafe Group<sup>18</sup> is a provider of payments solutions. At their 2016 AGM the advisory vote on the Directors’ Remuneration Report failed to achieve support from shareholders, with 51.67% votes against the resolution.

Following the meeting the board stated<sup>19</sup>: “In the context of approval of its Remuneration Policy, the Company is disappointed at the result of the advisory vote on the Directors’ Remuneration Report and intends to continue its dialogue with shareholders on pay and wider governance matters in 2016. A number of shareholders have communicated specific areas of concern to the Company and we will seek to engage on these issues. The points communicated related to the period prior to the Company’s admission to the Official List (when the Company was quoted on AIM, where remuneration practice is different) or to the transition in preparation for adoption of the new Remuneration Policy now approved by shareholders. The Company looks forward to demonstrating to its shareholders the operation of the approved policy during the course of 2016.”

We note that both ISS and Glass Lewis recommended a vote against this resolution.

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<sup>15</sup> <http://www.trig-ltd.com/about-trig>

<sup>16</sup> [http://www.trig-ltd.com/assets/downloads/AGM\\_Notice\\_2016.pdf](http://www.trig-ltd.com/assets/downloads/AGM_Notice_2016.pdf)

<sup>17</sup> <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/TRIG/12803797.html>

<sup>18</sup> <https://www.paysafe.com/about/>

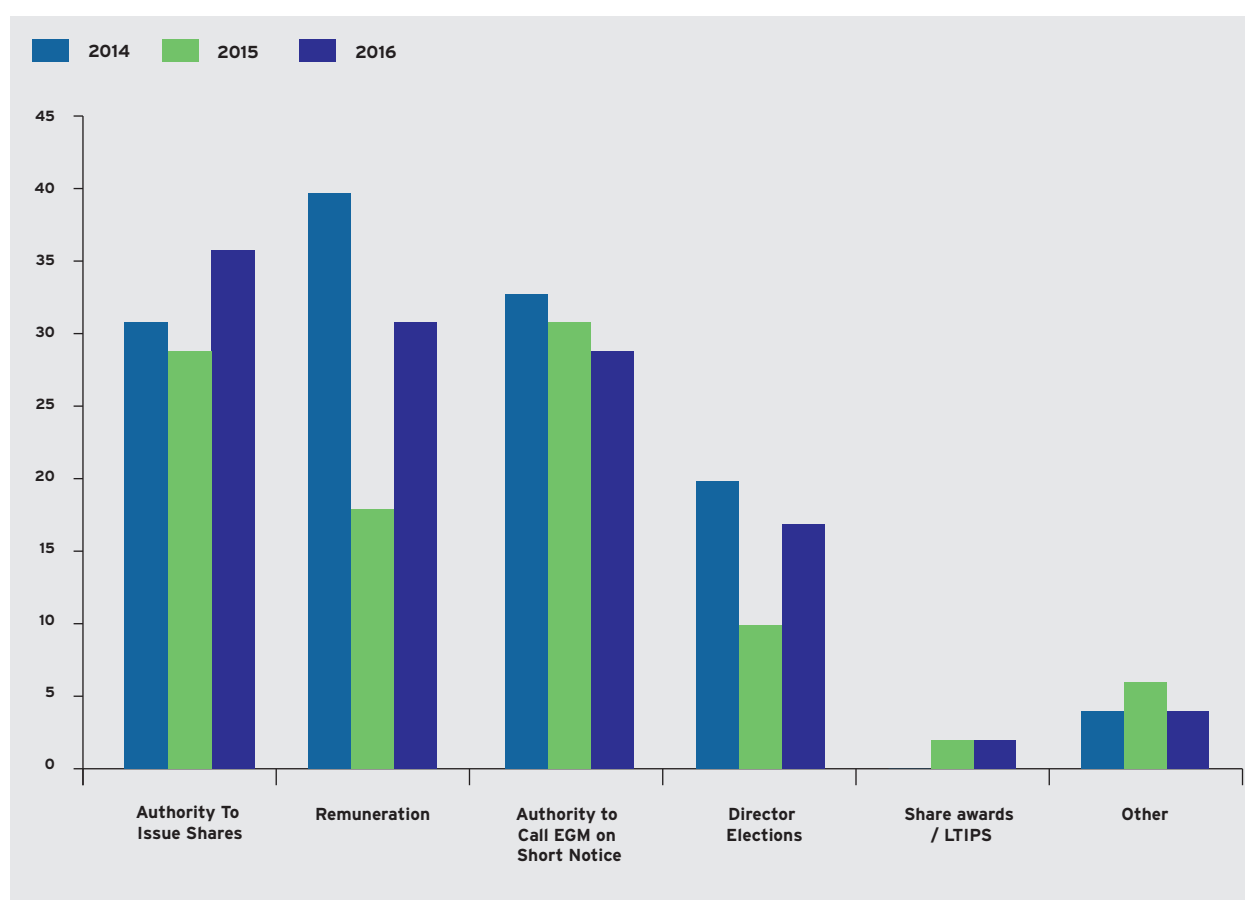
<sup>19</sup> <https://otp.tools.investis.com/clients/uk/paysafe/rns/regulatory-story.aspx?cid=1261&newsid=726525>

### 1.3 Contested resolutions

Among our sample of FTSE 100 companies that held their AGM between 1 August 2015 and 31 July 2016, 67 companies saw at least one management-proposed resolution receive more than 10% shareholder opposition (compared to 52 in 2015). The total number of resolutions that received over 10% opposition amounted to 119 (including the rejected resolution discussed in section 1.2), compared to 96 resolutions in 2015.

The graph below summarises the subjects of all resolutions that received more than 10% opposition from shareholders.

**Graph 3: Resolutions which received more than 10% against votes in the FTSE 100 (by resolution type)**



In the UK resolutions can be either ordinary<sup>20</sup> or special<sup>21</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>22</sup>.

In our FTSE 100 sample, the 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 second most commonly contested resolutions were remuneration report and remuneration policy votes. The third most commonly contested resolutions were proposals to allow companies to call EGMs on 14 days' notice, which are proposed as special resolutions.

<sup>20</sup> <http://uk.practicallaw.com/4-107-6940>

<sup>21</sup> <http://uk.practicallaw.com/9-107-7287>

<sup>22</sup> 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.ivas.co.uk/media/12250/Share-Capital-Management-Guidelines-July-2016.pdf>

### 1.3.1 Authorities to issue shares

Authorities to issue shares with pre-emptive rights<sup>23</sup> are proposed as ordinary resolutions (requiring a simple majority), while authorities to issue shares without pre-emptive rights<sup>24</sup> are proposed as special resolutions (requiring 75% approval). Most UK-based investors and the larger proxy advisors refer to the Investment Association's Share Capital Management Guidelines<sup>25</sup> to assess authorities with pre-emptive rights, and to the Pre-emption Group's Statement of Principles<sup>26</sup> (also see section 3.2) to assess authorities without pre-emptive rights.

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

- Old Mutual (with pre-emptive rights: 74.6% in favour; without pre-emptive rights: 83.5% in favour)
- Intu Properties (with pre-emptive rights: 79.2% in favour; without pre-emptive rights: 98.4% in favour)
- British American Tobacco (with pre-emptive rights: 81.6% in favour; without pre-emptive rights: 91.6% in favour)
- Anglo American (with pre-emptive rights: 82.1% in favour; without pre-emptive rights: 85.2% in favour)

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

### 1.3.2 Remuneration Policy and Remuneration Report

Since 2002<sup>27</sup> 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.

In 2013 the UK Government introduced regulations<sup>28</sup> requiring a binding vote on executive remuneration. Under the regulations, remuneration reporting is comprised of three elements:

- Annual Statement: The remuneration report must contain an annual statement from the chairman of the remuneration committee summarising, for the financial year, the major decisions on directors' remuneration, any substantial changes made and the context in which those changes occurred.
- Annual Remuneration Report: The explanatory memorandum<sup>29</sup> states: "The DRR will continue to include information on an annual basis explaining how much directors have been paid in the reporting year, and how the pay policy will be implemented in the current financial year. The most substantive introduction is the requirement for companies to disclose the amount each director has been paid and to express this as a single figure taking account of all elements of remuneration. The company must also explain the director's actual performance, and the basis on which it has made decisions on the level of variable pay that is received."
- Directors' Remuneration Policy: "The 2013 Act (section 79) introduces a new part to the DRR: the directors' remuneration policy. These regulations set out the minimum requirements for disclosure of this policy. The pay policy must explain how each element of a directors' remuneration package supports the short and long-term strategy of the company, its potential value, and explain any performance measures relating to it. It must also set out a policy for paying newly recruited directors and a policy for loss of office payments."

<sup>23</sup> Companies Act 2006, s. 551: <http://www.legislation.gov.uk/ukpga/2006/46/section/551>

<sup>24</sup> Companies Act 2006, s. 570: <http://www.legislation.gov.uk/ukpga/2006/46/section/570>

<sup>25</sup> <https://www.ivas.co.uk/media/12250/Share-Capital-Management-Guidelines-July-2016.pdf>

<sup>26</sup> <http://www.pre-emptiongroup.org.uk/getmedia/655a6ec5-fecc-47e4-80a0-7aea04433421/Revised-PEG-Statement-of-Principles-2015.pdf.aspx>

<sup>27</sup> The requirement was introduced in the UK by the Directors' Remuneration Report Regulations 2002 (SI 2002/1986) (see here: <http://www.legislation.gov.uk/uksi/2002/1986/contents/made>), amending the Companies Act 1985 (Companies Act 1985, s. 241A: <http://www.legislation.gov.uk/ukpga/1985/6/section/241A> and <http://www.legislation.gov.uk/uksi/2002/1986/regulation/7/made>). This requirement was re-enacted in the subsequent "consolidating" act covering company law, the Companies Act 2006, s. 439: <http://www.legislation.gov.uk/ukpga/2006/46/section/439>.

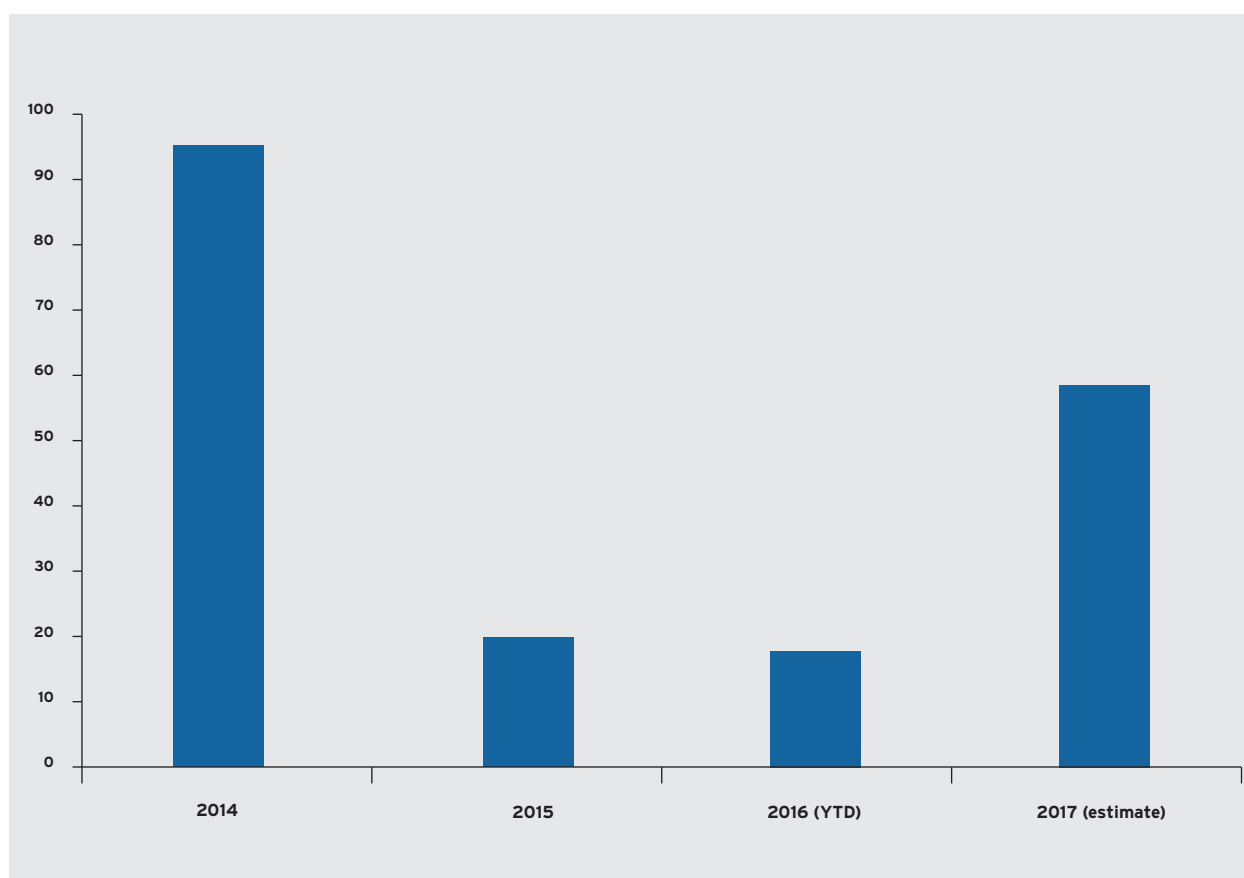
<sup>28</sup> The Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013 (SI 2013/1981): <http://www.legislation.gov.uk/uksi/2013/1981/contents/made>.

<sup>29</sup> [http://www.legislation.gov.uk/uksi/2013/1981/pdfs/uksem\\_20131981\\_en.pdf](http://www.legislation.gov.uk/uksi/2013/1981/pdfs/uksem_20131981_en.pdf)

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.

The new requirement came into force for the 2014 AGM season. Among current FTSE 100 constituents 96 companies held a Remuneration Policy vote in the 2014 calendar year, while 20 companies held such a vote in 2015. During the 2016 calendar year (to date) 18 companies have proposed a Remuneration Policy vote at their AGM. We estimate that in 2017 (or late 2016) approximately 59 FTSE 100 companies will hold a Remuneration Policy vote.

**Graph 4: Number of remuneration policy votes held by current FTSE 100 constituents by calendar year**



It should be noted that the Directors' Remuneration Reporting Guidance 2016<sup>30</sup> published by the GC100 and Investor Group<sup>31</sup> states: "It is generally expected that companies will put forward their remuneration policy for approval every three years, unless the company needs to change the policy, or fails to obtain approval of the annual remuneration report, and therefore puts forward an amended policy for approval before the end of the three-year period. Investors would generally not find it helpful if companies put forward their policy for approval annually as a matter of standard practice. If a company wishes to put forward a new policy to shareholders mid-cycle, investors generally expect a coherent rationale as to the reasons for doing so."

<sup>30</sup> <http://uk.practicallaw.com/2-632-2324> (see pg 27)

<sup>31</sup> <http://uk.practicallaw.com/groups/uk-gc100-investor-group>

During the 2016 AGM season (1 August 2015 - 31 July 2016) a total of 12 companies in our FTSE 100 sample received less than 80% support on their Remuneration Report (including the rejected resolutions mentioned in section 1.2). In contrast, during the 2015 AGM season only six companies received less than 80% support.

The companies with the lowest level of support on the Remuneration Report among our sample were (excluding the rejected resolutions mentioned in section 1.2):

- > Shire (50.6% in favour)
- > Babcock International Group (57.9% in favour)
- > Anglo American (58.4% in favour)
- > Aberdeen Asset Management (65.7% in favour)
- > WPP (66.6% in favour)
- > Paddy Power Betfair (68.2% in favour)
- > Dixons Carphone (73.0% in favour)
- > Ashtead Group (73.2% in favour)
- > Bunzl (73.8% in favour)
- > Standard Life (77.7% in favour)

ISS recommended a vote against each of these resolutions with the exception of WPP, while Glass Lewis recommended a negative vote at Shire, Babcock International Group, Aberdeen Asset Management, WPP, Paddy Power Betfair and Dixons Carphone and supported the other proposals.

During the 2016 AGM season (1 August 2015 - 31 July 2016) two companies in our FTSE 100 sample received less than 80% support on the Remuneration Policy (compared to none during the 2015 AGM season).

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

- > CRH (59.2% in favour)
- > Reckitt Benckiser Group (76.2% in favour)
- > Sports Direct (81.4% in favour)
- > Royal Mail (83.5% in favour)

ISS recommended against at Sports Direct and CRH while Glass Lewis recommended against at Sports Direct and Reckitt Benckiser.



### 1.3.3 Short notice period for EGMs

At the time of enactment, the Companies Act 2006 enabled listed companies to call a general meeting (other than an AGM) on 14 clear days' notice<sup>32</sup>. However, article 5.1 of the 2007 European Shareholder Rights Directive<sup>33</sup> requires listed companies to call such general meetings on at least 21 clear days' notice. The Directive allows EU members to permit a shorter notice period of at least 14 days on two conditions: that a company provides "the facility for shareholders to vote by electronic means accessible to all shareholders", and that the company's general meeting has approved such a course of action by "a majority of not less than two thirds of the votes". Therefore the Companies Act 2006 now states<sup>34</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).

It should be noted that - unlike ISS and others - Glass Lewis has routinely recommended a vote against requests for a shortened notice period.

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

- > ARM Holdings (81.6% in favour)
- > The British Land Company (82.9% in favour)
- > Admiral Group (83.5% in favour)
- > Anglo American (84.5% in favour)

In each of these cases ISS recommended a vote in favour, while Glass Lewis recommended opposition.

### 1.3.4 Director elections

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

- > Persimmon (Nigel Mills: 52.7% in favour)
- > WPP (Ruigang Li: 69.9% in favour)
- > Whitbread (Ian Cheshire: 71.6% in favour)
- > Dixons Carphone (Roger Taylor: 79.5% in favour)

We note that ISS recommended against Nigel Mills and Roger Taylor, while Glass Lewis recommended against Ruigang Li, Ian Cheshire and Roger Taylor.

<sup>32</sup> Companies Act 2006, s. 307: <http://www.legislation.gov.uk/ukpga/2006/46/section/307/enacted>

<sup>33</sup> Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:0024:EN:PDF>

<sup>34</sup> Companies Act 2006, s. 307A: <http://www.legislation.gov.uk/ukpga/2006/46/section/307A>

## 2. PROXY ADVISORS

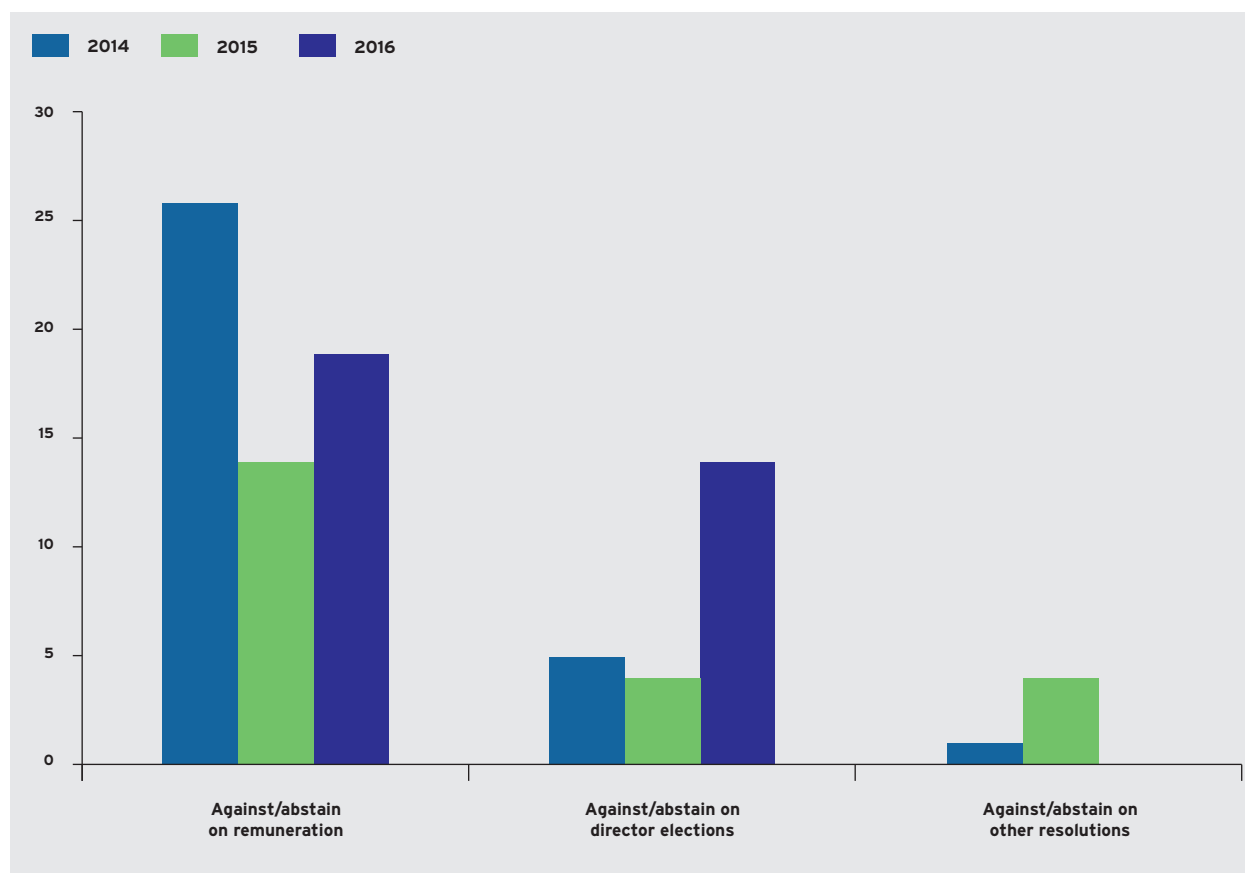
Many institutional investors rely on proxy advisory firms, such as ISS, Glass Lewis, IVIS and PIRC for meeting agenda analysis and vote recommendations to inform their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a given resolution.

### 2.1 ISS

Institutional Shareholder Services<sup>35</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers. ISS has over 1,600 clients, and approximately 900 employees spread across 18 offices in 12 countries and covers approximately 39,000 meetings in 115 countries. They were acquired by Vestar Capital Partners in March 2014. In Europe they have offices in Berlin, Brussels, Copenhagen, London, Paris and Stockholm.

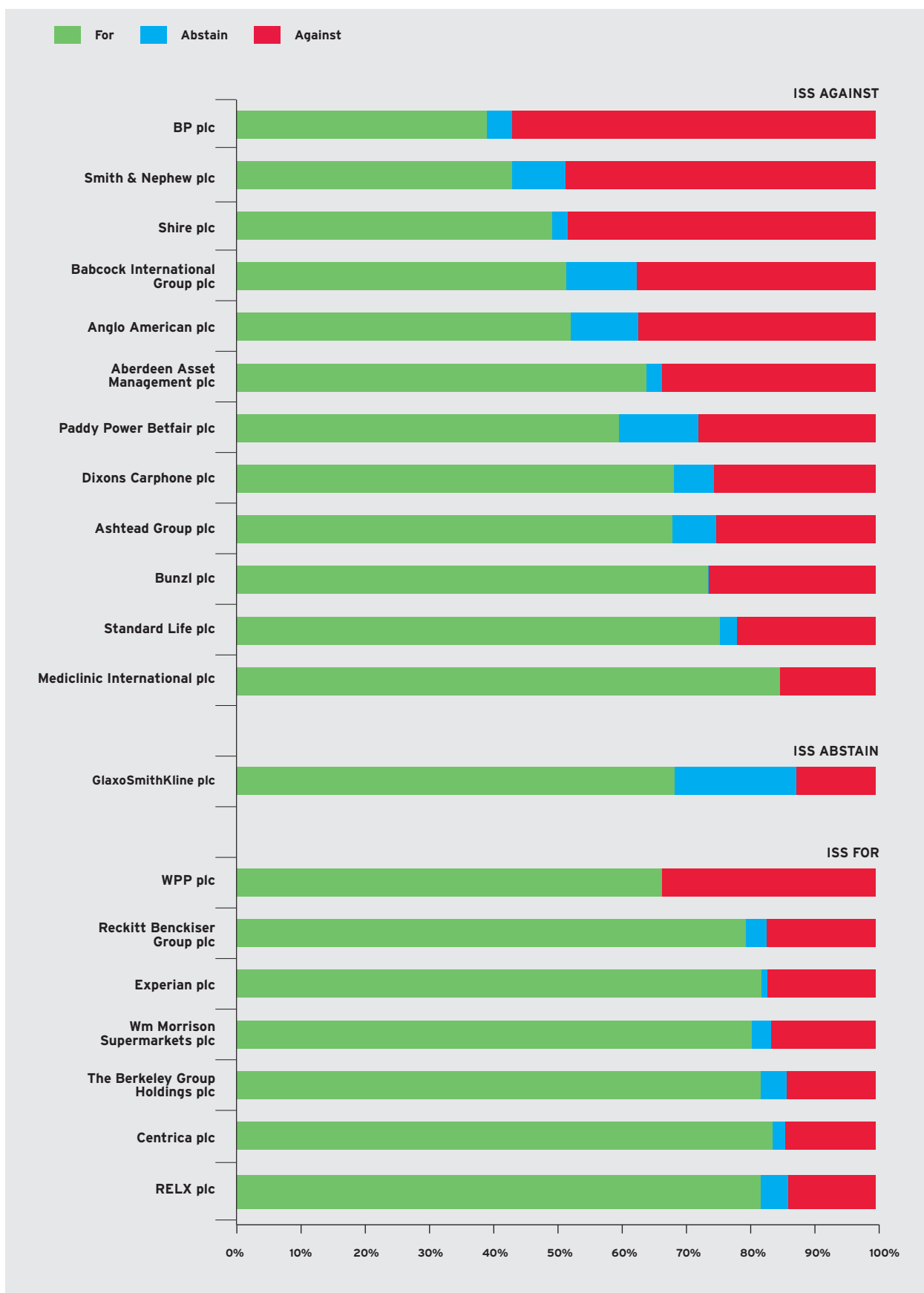
Between 1 August 2015 and 31 July 2016, 25 companies out of the FTSE 100 received at least one against or abstain recommendation from ISS, for a total of 33 resolutions. Below is an overview of the types of resolutions that have received a negative recommendation from ISS at FTSE 100 AGMs over the past three years.

**Graph 5: Overview of the number of negative recommendations by ISS at FTSE 100 AGMs over the past three years**



<sup>35</sup> <http://www.issgovernance.com/about/about-iss/>

**Graph 6: The 20 remuneration report votes receiving the lowest level of support in the FTSE 100 grouped by ISS recommendation. The bars include the abstain votes, which are not counted towards the vote result but nevertheless indicate negative shareholder sentiment.**

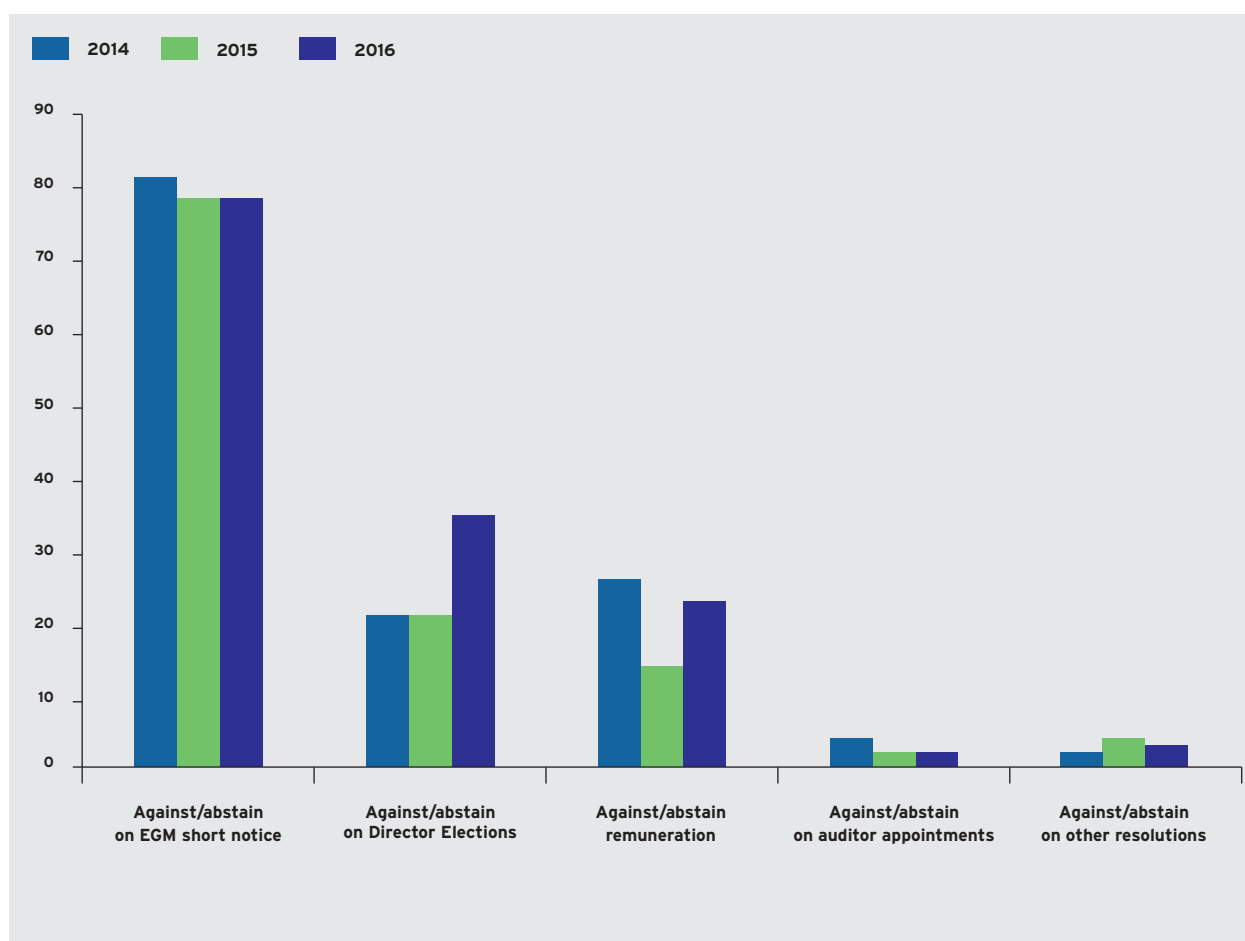


## 2.2 Glass Lewis

Glass Lewis is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms. Glass Lewis has over 1,200 clients and more than 360 employees. They cover more than 20,000 meetings in 100 countries. They are owned by the Ontario Teachers' Pension Plan Board and the Alberta Investment Management Corporation. In Europe they have offices in London, Limerick and Karlsruhe (since their acquisition of IVOX in June 2015).

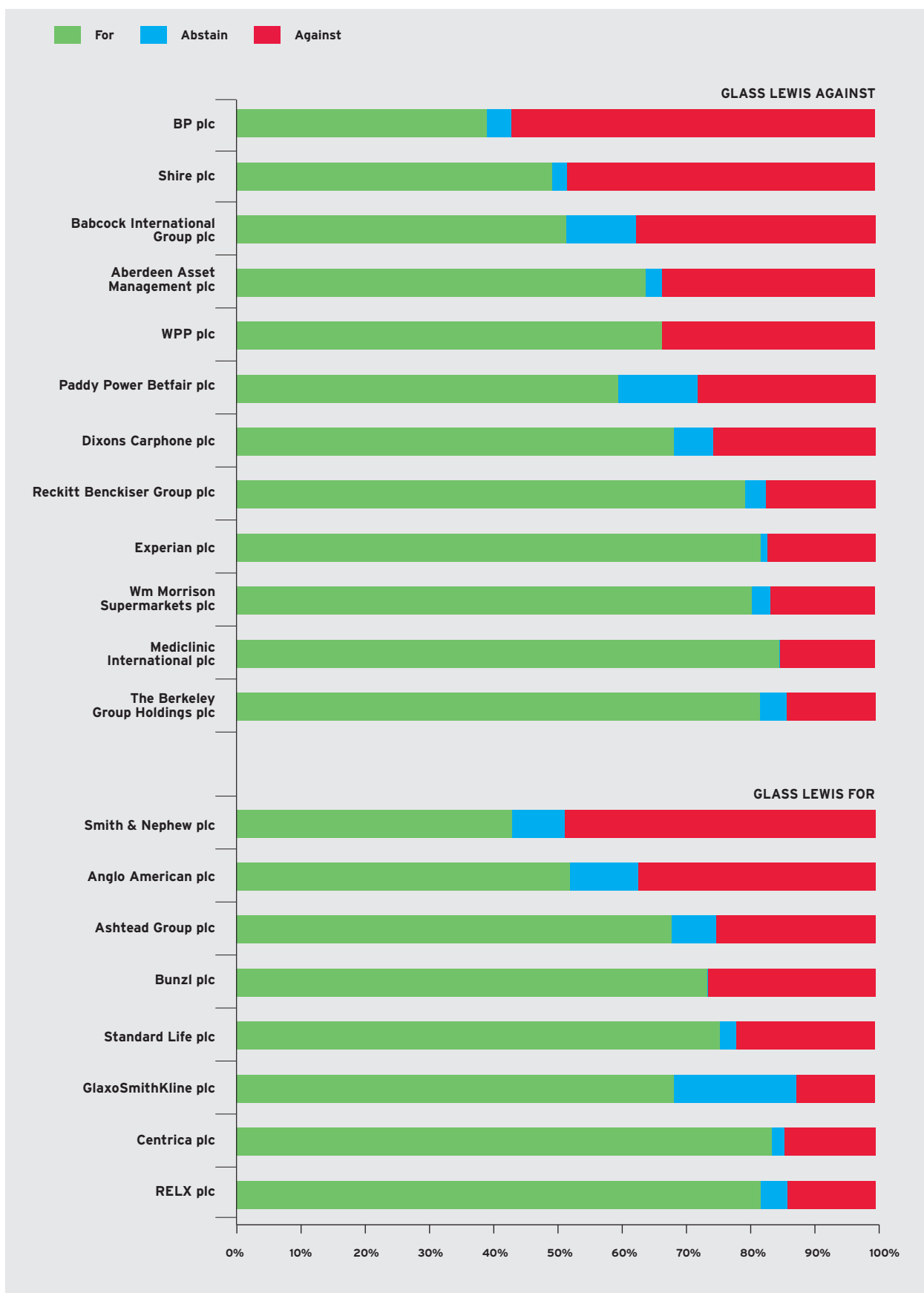
Between 1 August 2015 and 31 July 2016, 85 companies out of the FTSE 100 received at least one against or abstain recommendation from Glass Lewis, for a total of 140 resolutions. It should be noted that the bulk of these negative recommendations depend on the fact that Glass Lewis routinely recommends against short notice periods for EGMs, which are proposed by most FTSE 100 companies. Below is an overview of the types of resolutions that have received a negative recommendation from Glass Lewis at FTSE 100 AGMs over the past three years.

**Graph 7: Overview of the number of negative recommendations by Glass Lewis at FTSE 100 AGMs over the past three years**



<sup>36</sup> <http://www.glasslewis.com/about-glass-lewis/>

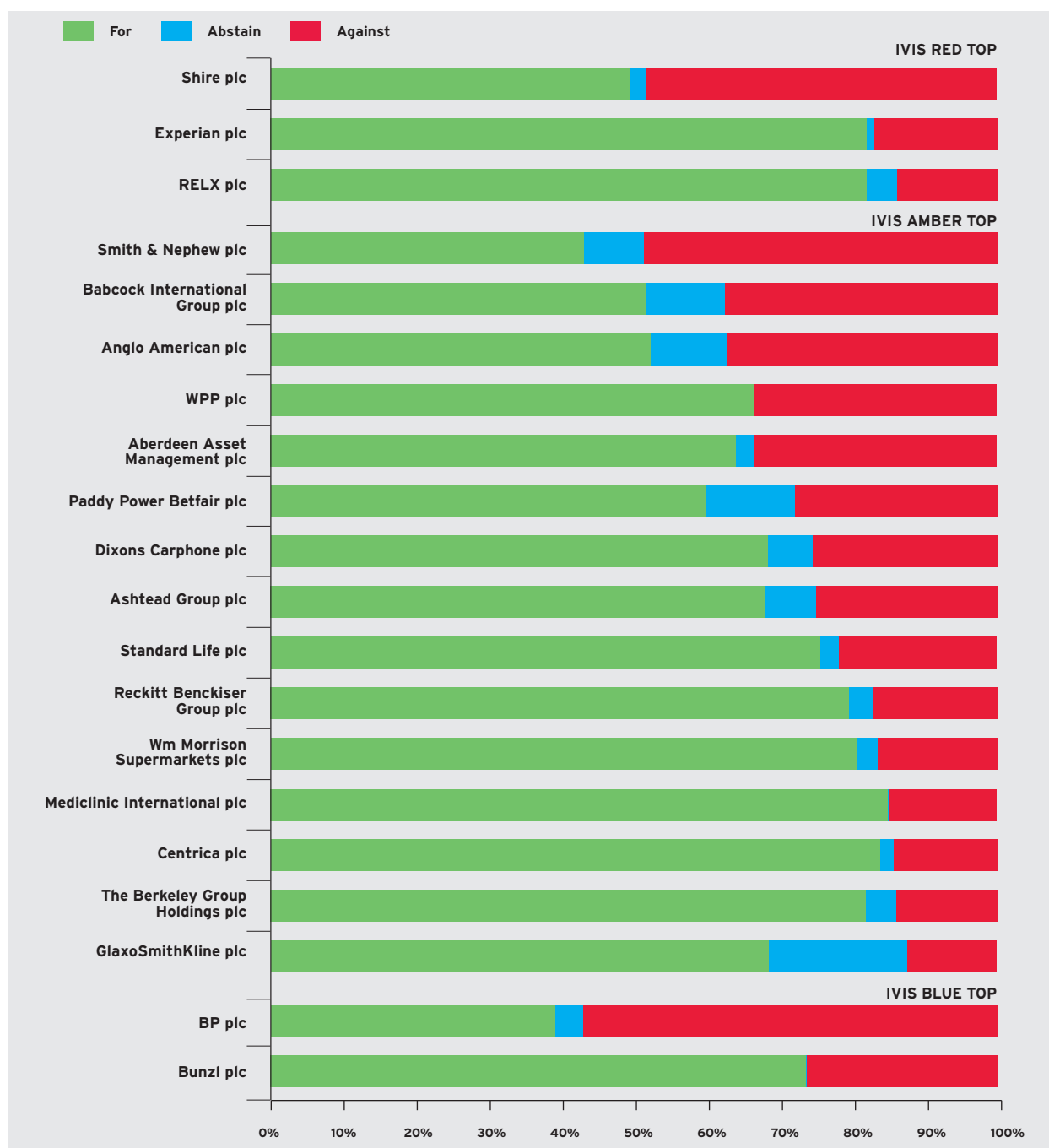
**Graph 8: The 20 remuneration report votes receiving the lowest level of support in the FTSE 100 grouped by Glass Lewis recommendation. The bars include the abstain votes, which are not counted towards the vote result but nevertheless indicate negative shareholder sentiment.**



## 2.3 IVIS

The Institutional Voting Information Service<sup>37</sup> (IVIS) was founded by the Association of British Insurers (ABI) in 1993. Following the merger of the ABI's Investment Affairs division with the IMA (the former name of the Investment Association) in June 2014, IVIS is now part of the Investment Association. IVIS does not issue explicit vote recommendations. However, they use 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: The 20 remuneration report votes receiving the lowest level of support in the FTSE 100 grouped by IVIS alert level. The bars include the abstain votes, which are not counted towards the vote result but nevertheless indicate negative shareholder sentiment.**

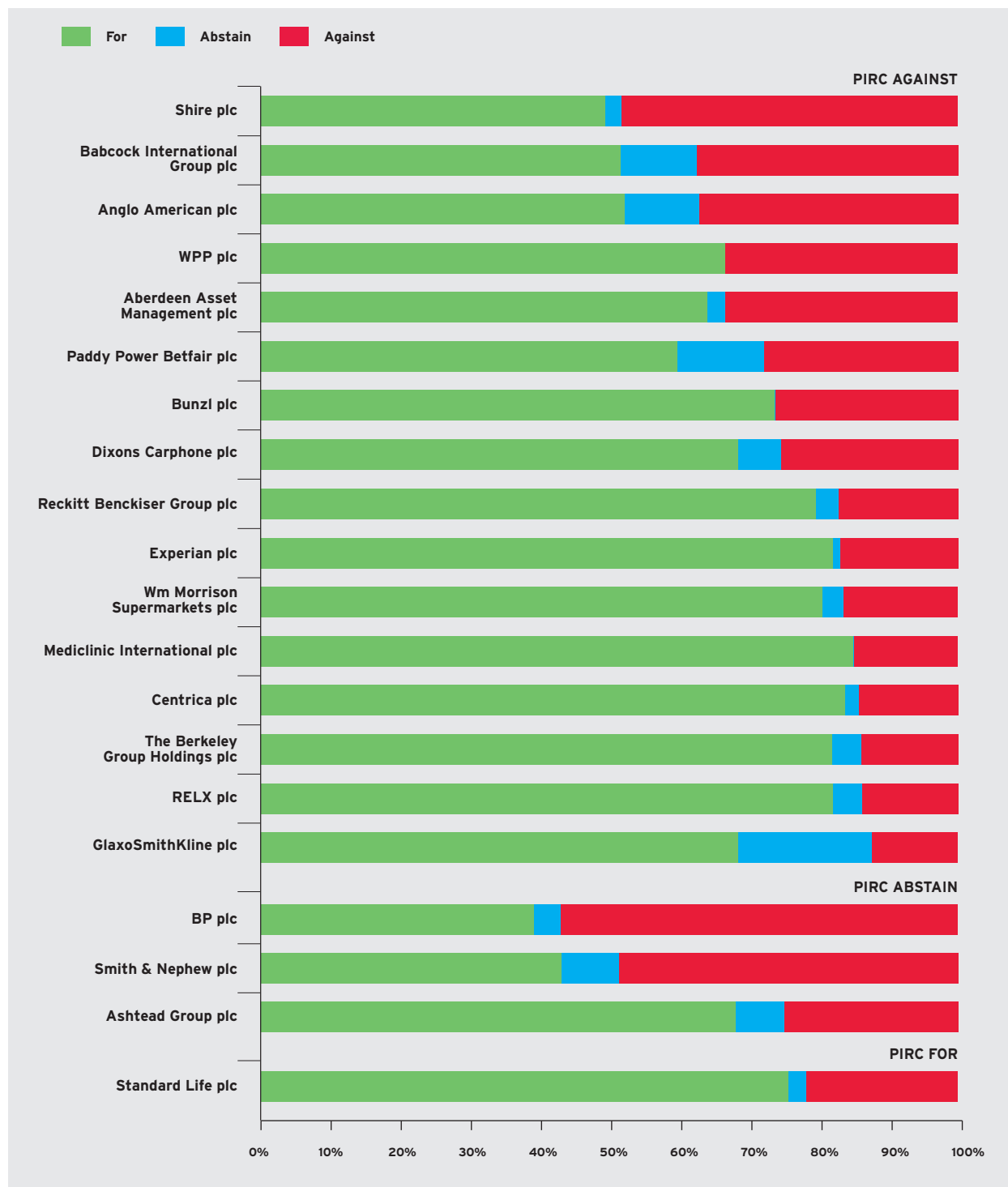


<sup>37</sup> <https://www.ivas.co.uk/about-ivas/>

## 2.4 PIRC

Pensions & Investment Research Consultants<sup>38</sup> (PIRC) was established in 1986 by a group of public sector pension funds. They provide proxy research services to institutional investors on governance and other ESG issues

**Graph 10: The 20 remuneration report votes receiving the lowest level of support in the FTSE 100 grouped by PIRC recommendation. The bars include the abstain votes, which are not counted towards the vote result but nevertheless indicate negative shareholder sentiment.**



<sup>38</sup> <http://pirc.co.uk/about-us-1>

## 3. CORPORATE GOVERNANCE DEVELOPMENTS

### 3.1 Corporate Governance Code

The current UK Corporate Governance Code has its roots in the Cadbury Report<sup>39</sup> which was issued on 1 December 1992, by the Committee on the Financial Aspects of Corporate Governance, chaired by Sir Adrian Cadbury<sup>40</sup>. The UK Corporate Governance Code<sup>41</sup> “sets standards of good practice in relation to board leadership and effectiveness, remuneration, accountability and relations with shareholders. All companies with a Premium Listing of equity shares in the UK are required under the Listing Rules<sup>42</sup> to report on how they have applied the Code in their annual report and accounts. [...] The Code contains broad principles and more specific provisions. Listed companies are required to report on how they have applied the main principles of the Code, and either to confirm that they have complied with the Code’s provisions or – where they have not – to provide an explanation.”

The latest version of the UK Corporate Governance Code<sup>43</sup> was published by the Financial Reporting Council<sup>44</sup> (FRC) in April 2016 and applies to reporting periods beginning on or after 17 June 2016. The FRC published<sup>45</sup> the updates<sup>46</sup> “to the UK Corporate Governance Code and the associated Guidance on Audit Committees to reflect forthcoming UK legislation on audit committees and auditor appointments. The FRC has committed to avoid further updates to the Code until at least 2019.”

### 3.2 Pre-emption Group Principles

The Pre-emption Group<sup>47</sup> was initially set up in 1987<sup>48</sup> to produce a Statement of Principles to be taken into account when considering the case for disapplying pre-emption rights. Their most influential guideline provides that “listed companies will continue to require annual approval by shareholders of a resolution to disapply in advance pre-emption rights for the following year. Any non-rights issues made will be limited to a maximum in any one year of 5% of the fully diluted issued capital of the company, but with a further restriction limiting such issues to one-and-a-half times each year’s entitlement [i.e. 7.5%] in any rolling three-year period.”

The Pre-emption Group Principles have had almost universal acceptance among the UK institutional investor community and are applied by most proxy advisors when analysing UK AGM resolutions.

<sup>39</sup> [http://www.ecgi.org/codes/code.php?code\\_id=132](http://www.ecgi.org/codes/code.php?code_id=132)

<sup>40</sup> <http://www.icaew.com/en/library/subject-gateways/corporate-governance/codes-and-reports/cadbury-report>

<sup>41</sup> <http://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx>

<sup>42</sup> <https://www.handbook.fca.org.uk/handbook/LR/9/8.html>

<sup>43</sup> <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf>

<sup>44</sup> <https://www.frc.org.uk/About-the-FRC.aspx>

<sup>45</sup> <https://frc.org.uk/News-and-Events/FRC-Press/Press/2016/April/Revised-UK-Corporate-Governance-Code,-Guidance-on.aspx>

<sup>46</sup> The changes are detailed here: <https://frc.org.uk/Our-Work/Publications/Audit-and-Assurance-Team/Feedback-Statement-and-Impact-Assessment-Consultation.pdf#29>

<sup>47</sup> <http://www.pre-emptiongroup.org.uk/About-Us.aspx>

<sup>48</sup> <http://www.bankofengland.co.uk/archive/Documents/historicpubs/qb/1987/qb87q4545549.pdf>

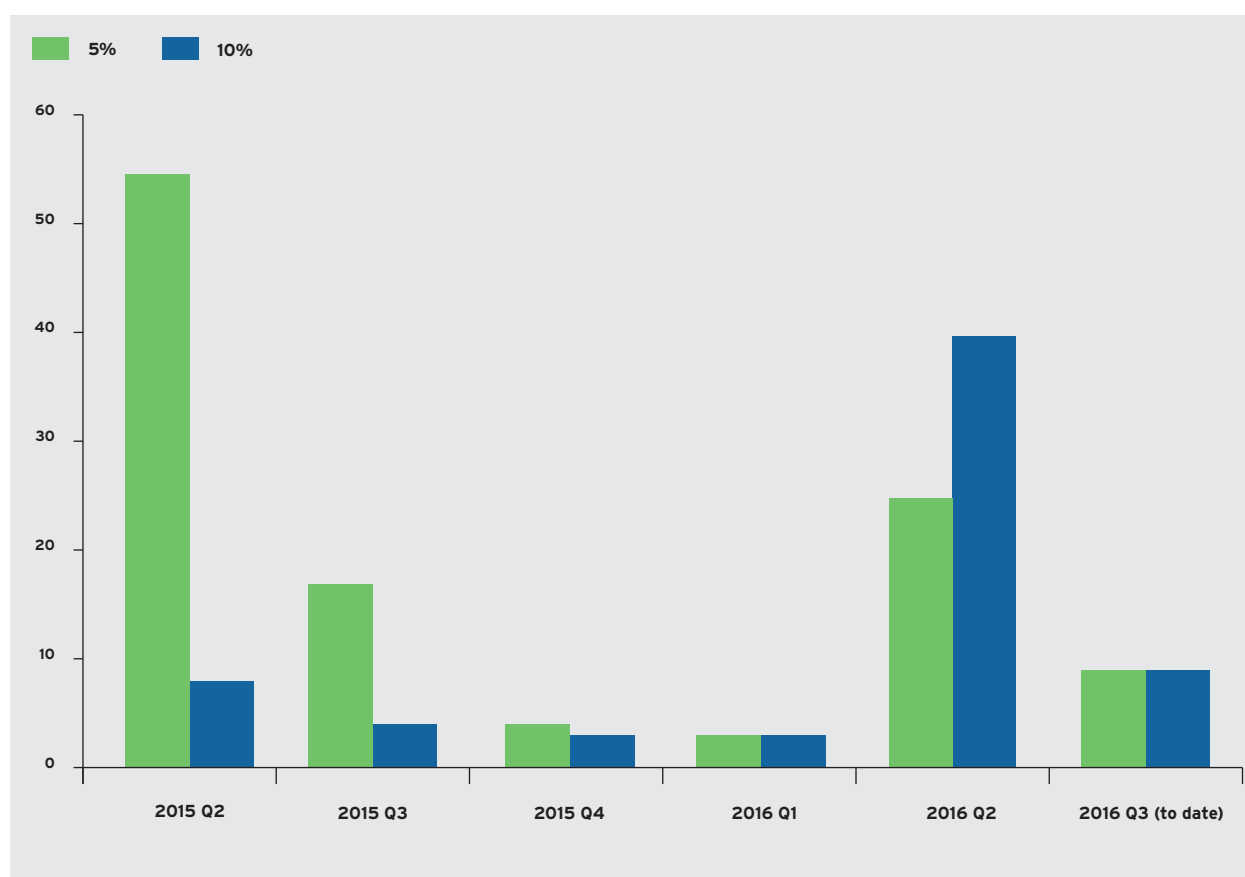


In March 2015 the Group published<sup>49</sup> a revised version of their Statement of Principles<sup>50</sup>. “Key amendments to the 2008 Statement of Principles include:

- Clarification of the scope of the Statement, making it clear that it applies to both UK and non-UK incorporated companies whose shares are admitted to the premium segment of the Official List of the UK Listing Authority. Companies whose shares are admitted to the standard segment of the Official List, to trading on AIM, or to the High Growth Segment of the London Stock Exchange’s Main Market are encouraged to adopt the Statement.
- Clarification that the Statement applies to all issues of equity securities that are undertaken to raise cash for the issuer or its subsidiaries, irrespective of the legal form of the transaction, including, for example, ‘cashbox’ transactions.
- Flexibility to undertake non-pre-emptive issuance of equity securities in connection with acquisitions and specified capital investments, consistent with existing market practice.
- Greater transparency on the discount at which equity securities are issued non-pre-emptively.

No changes have been made to the key thresholds for general disapplication of pre-emption rights.”

**Graph 11: Share issuance requests without pre-emptive rights across the FTSE 100 broken down by maximum dilution (per quarter)**



<sup>49</sup> <https://frc.org.uk/News-and-Events/FRC-Press/Press/2015/March/The-Pre-Emption-Group-publishes-a-revised-Statement.aspx>

<sup>50</sup> <http://www.pre-emptiongroup.org.uk/getmedia/655a6ec5-fecc-47e4-80a0-7aea04433421/Revised-PEG-Statement-of-Principles-2015.pdf.aspx>

In May 2016 the Pre-Emption Group released<sup>51</sup> a monitoring report<sup>52</sup> looking at implementation of the Statement of Principles and published a template resolution<sup>53</sup> outlining good practice in requests for disapplication. "This template recommends companies propose two separate resolutions to cover the disapplications envisaged by the Statement of Principles.

- The first resolution requests a five per cent disapplication to be used on an unrestricted basis.
- The second resolution, to be put forward by companies when appropriate, requests authority to disapply in cases when boards consider the use to be for the purposes of an acquisition or specified capital investment in accordance with the Statement of Principles.

When an additional five per cent disapplication authority is used, investors would expect companies to disclose in the relevant placing announcement the circumstances that have led to its use and detail the consultation process undertaken by the company. Companies are encouraged to consider using the draft template resolution at their next meeting, however, the PEG would expect companies to use this template for meetings held from 1 August 2016."

It should be noted that among proxy advisors ISS, Glass Lewis and IVIS have all confirmed that they are supportive of the revised version of the Pre-Emption Group Statement of Principles, while PIRC<sup>54</sup> have explicitly rejected it (and therefore will generally continue to accept a maximum dilution without pre-emptive rights of up to 5% and not 10%).

### 3.3 Proposed government reforms

On 11 July 2016 Theresa May, who would shortly become the UK's Prime Minister, gave a speech<sup>55</sup> in which she stated: "And I want to see changes in the way that big business is governed. The people who run big businesses are supposed to be accountable to outsiders, to non-executive directors, who are supposed to ask the difficult questions, think about the long-term and defend the interests of shareholders. In practice, they are drawn from the same, narrow social and professional circles as the executive team and - as we have seen time and time again - the scrutiny they provide is just not good enough. So if I'm Prime Minister, we're going to change that system - and we're going to have not just consumers represented on company boards, but employees as well."

On 1 September 2016 the High Pay Centre published a paper<sup>56</sup> entitled "Restoring Responsible Ownership: Ending the ownerless corporation and controlling executive pay" by Conservative MP Chris Philp. "In his paper Chris calls for the introduction of a Swedish-style 'shareholder committee' of the five biggest shareholders in a company, which would provide more effective governance in particular with regard to executive pay. This measure would help tackle the problem of 'ownerless corporations'. He also supports the call for binding annual votes on executive pay, and the introduction of the mandatory publication of pay ratios. He recognises the advantage in including the employees' point of view in discussions over pay at the top. [...] We note also the persuasive support of two well-regarded names in this field: Neil Woodford and Lord (Paul) Myners."

On 7 September 2016 the Prime Minister included the following comments in her statement<sup>57</sup> to the House of Commons: "And to restore greater fairness, we will be consulting on new measures to tackle corporate irresponsibility. These will include cracking down on excessive corporate pay, poor corporate governance, short-termism and aggressive tax avoidance - and giving employees and customers representation on company boards."

<sup>51</sup> <http://www.pre-emptiongroup.org.uk/getmedia/f71a61f8-f0af-4b38-b8b6-1df004c57b4c/Press-Notice-Pre-emption-050516.pdf.aspx>

<sup>52</sup> <http://www.pre-emptiongroup.org.uk/getmedia/09343697-051a-440c-acd1-dbb3a6ca4d00/PEG-Monitoring-Report.pdf.aspx>

<sup>53</sup> <http://www.pre-emptiongroup.org.uk/getmedia/963da194-742f-45b2-84d9-d1ee83b786bb/PEG-Template-resolution-for-disapplication-of-pre-emption-rights.pdf.aspx>

<sup>54</sup> <http://pirc.co.uk/news-and-resources2/news-and-resources2/guidelines>

<sup>55</sup> <http://press.conservatives.com/post/147947450370/we-can-make-britain-a-country-that-works-for>

<sup>56</sup> <http://highpaycentre.org/blog/restoring-responsible-ownership-new-paper-by-chris-philp-mp>

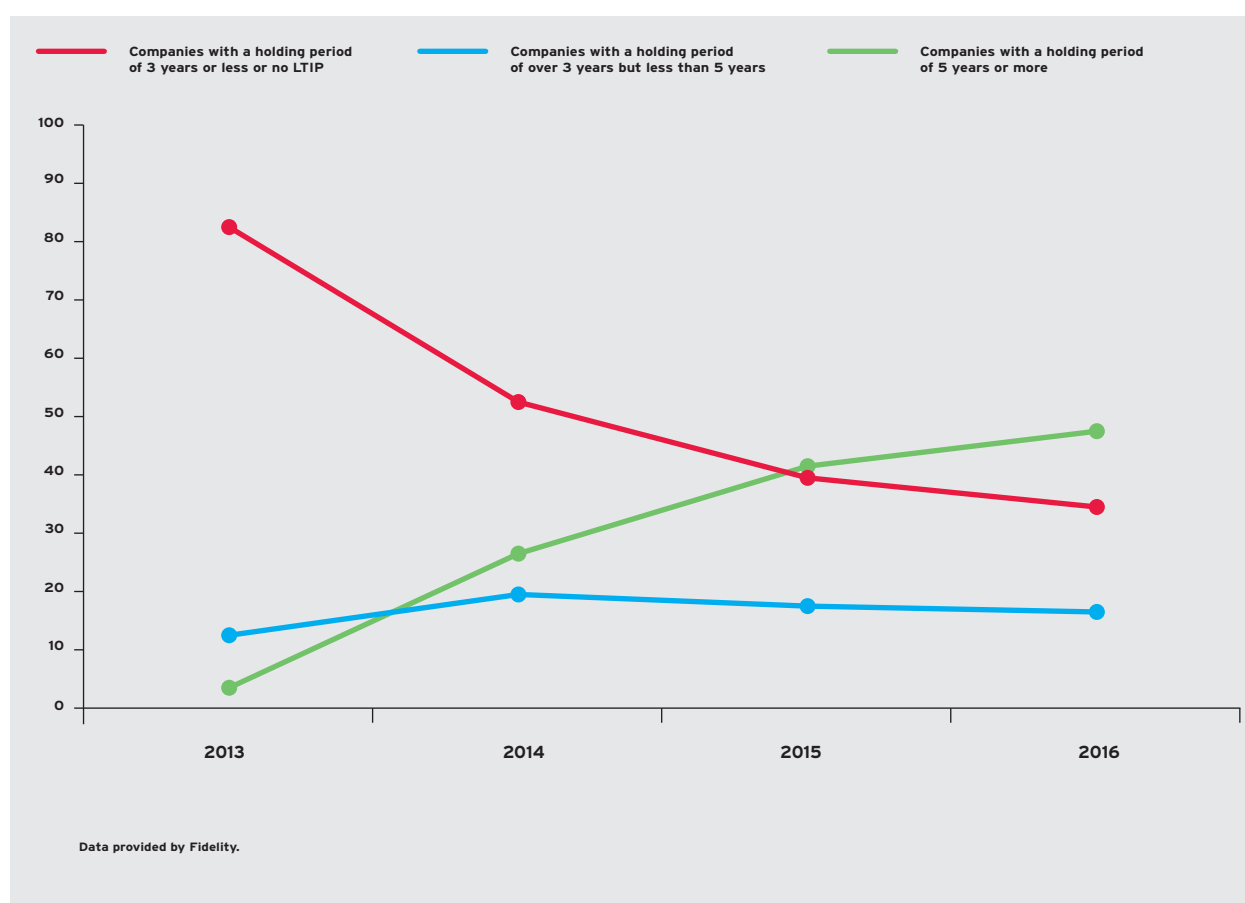
<sup>57</sup> <https://www.gov.uk/government/speeches/g20-summit-pm-commons-statement-7-september-2016>

### 3.4 Holding periods for long-term incentives

In September 2013 Fidelity International announced that a review of the FTSE 350 showed that only 14 companies had a long-term incentive plan (LTIP) which extended to five years, and only 52 companies had an LTIP with a duration of between three and five years. Having written to 400 publicly-listed companies across Europe in July 2012 to encourage them to lengthen the durations of their LTIPs beyond three years, Fidelity announced that failure to make changes would affect their proxy voting behaviour and that from 1 January 2015 they would require the minimum LTIP holding period to be five years.

In July 2016 FT Adviser<sup>58</sup> reported that “according to the firm, it has been able to bring about significant change in the executive pay rewards of the UK’s largest companies as a result of this move. Furthermore, the firm believes making the binding vote annual would provide further impetus for the campaign to encourage companies to make long-term plans on performance and pay. At the start of 2013, only four companies in the FTSE 100 had holding periods of five years or more and a further 13 of between three and five years. However, Fidelity International claimed as a result of its engagement, 48 now have five-year LTIPs and a further 17 are between three and five years.”

Graph 12: LTIP holding periods across FTSE 100



<sup>58</sup> <http://www.ftadviser.com/2016/07/20/investments/uk/fidelity-backs-theresa-may-on-executive-pay-4eYqdH09x9WH67Ctr1DVPP/article.html>

### 3.5 Share buybacks

In March 2016 PIRC published their UK Shareowner Voting Guidelines 2016<sup>59</sup> as well as a policy paper<sup>60</sup> introducing their new policy on share buybacks: "PIRC will not support share buyback authorities unless the board has made out a clear, cogent and compelling case demonstrating (1) how the authority would benefit long-term shareholders and (2) that the directors are not conflicted in recommending the authority. In other words, PIRC is not necessarily opposed to share buy backs in themselves, but we recognise the dangers they pose to good governance and shareholder value and expect company boards to justify their use with reference to overall capital strategy. It appears that all too often, share buyback authorities are placed on the AGM agenda unthinkingly as routine business, with little or no explanation as to their coherent strategic use."

The BBC<sup>61</sup> reported that "companies should explain why they are buying and cancelling their own shares and not paying more dividend or using cash to expand their businesses, Pirc told the BBC's Today programme. Buying up shares can make a company's performance seem better, often leading to bigger bonuses for bosses. It used to be illegal in the UK. [...] Using company cash to buy shares on the stock exchange means the company can then cancel them, reducing the number of shares in existence, said Mr Bush. Each remaining shareholder then owns proportionately more of the company. It also means that profits are divided between fewer shares. This value - earnings per share - is one measure which can determine the bonus of big company bosses. If earnings are sluggish, you can reduce the number of shares to improve the ratio. [...] It's also a more expensive way of handing money to shareholders, said Mr Bush. Companies have to pay 0.5% stamp duty when they buy their own shares, while paying more dividend costs next to nothing."

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<sup>59</sup> <http://pirc.co.uk/news-and-resources2/news-and-resources2/guidelines>

<sup>60</sup> PIRC 2016 Policy Position: Share Buybacks: [http://www.shareholderforum.com/wag/Library/20160309\\_PIRC.pdf](http://www.shareholderforum.com/wag/Library/20160309_PIRC.pdf)

<sup>61</sup> <http://www.bbc.co.uk/news/business-35888608>





France





## France Highlights

- The average quorum for the 35 CAC40 companies in our sample (excluding ones whose registered office is outside France) during the 2016 AGM season was 65.81% compared to 65.34% in 2015.
- Amongst the CAC40 companies surveyed a total of three resolutions were rejected by shareholders at the AGMs of three companies: Renault, Valeo and Vivendi.
- Four shareholder proposals were filed at the AGMs of Orange and Safran. They all failed to gather sufficient support from shareholders and were therefore rejected.
- The most commonly contested resolutions were authorities to issue shares with and without pre-emptive rights.
- The second most commonly contested resolutions were say-on-pay resolutions. On average, shareholder support for this second year of advisory vote on executive remuneration increased from 85.35% in 2015 to 88.12% in 2016.
- For the first time since the implementation of the say-on-pay vote in 2014, two advisory votes on remuneration failed (at Renault and Alstom).
- Amongst the 35 CAC40 companies surveyed, 27 companies received at least one negative recommendations from ISS and 24 companies received at least one negative recommendation from Glass Lewis. The AFG raised at least one alert at the AGMs of 20 companies in our CAC40 sample.

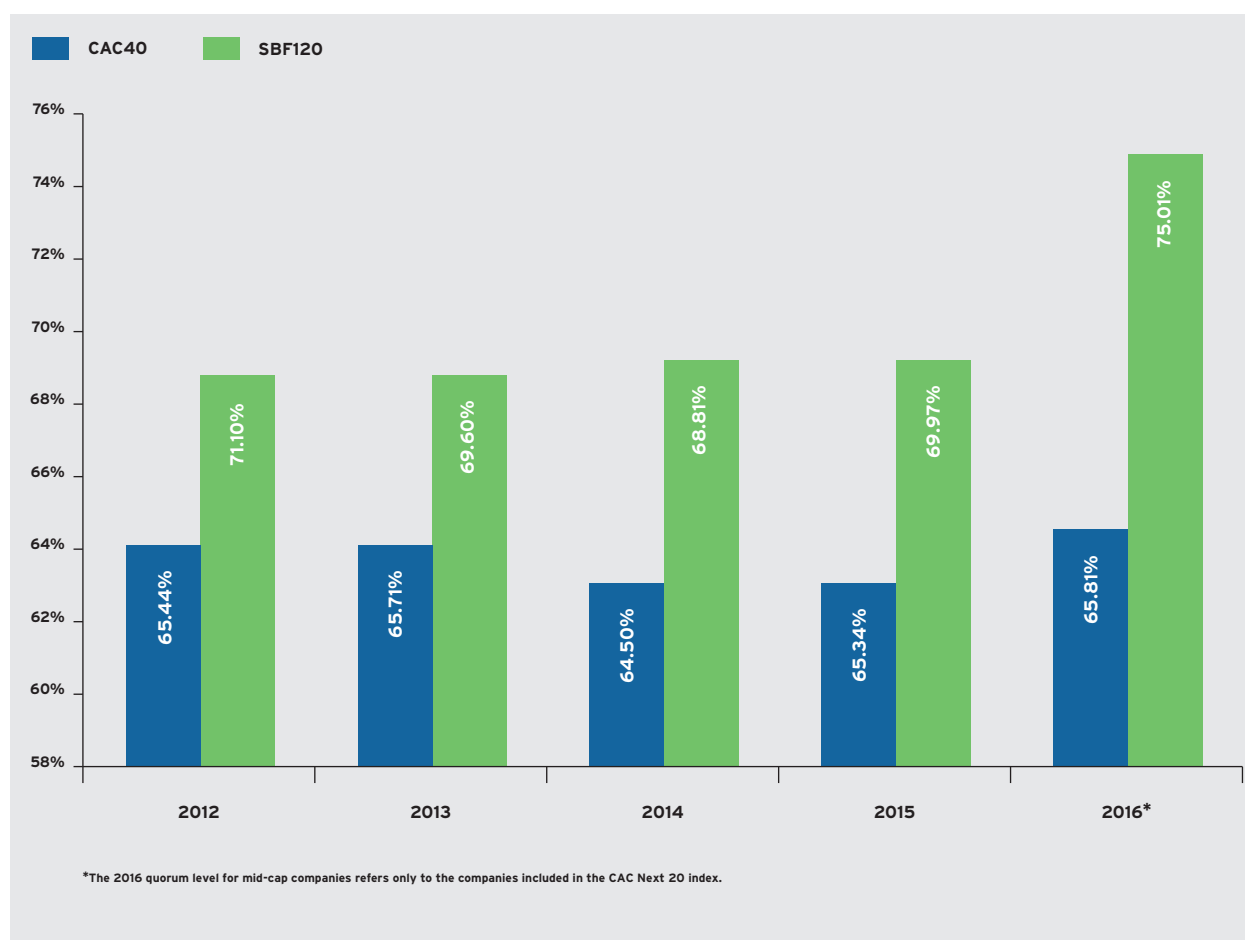
# 1. VOTING IN FRANCE

## 1.1 Quorum overview

We have reviewed the quorum levels of the CAC40 index<sup>1</sup> over the past five years. Our survey includes the 35 CAC40 companies with their corporate headquarters located in France and having held their shareholder meetings between 1 August 2015 and 31 July 2016. Therefore our analysis excludes Airbus Group, ArcelorMittal, LafargeHolcim, Nokia and Solvay, as their corporate headquarters are located outside France.

The average shareholder vote participation at the AGMs of our CAC40 sample during the 2016 proxy season has been 65.81%. This is similar to the average 2015 quorum, which amounted to 65.34%. The below graph illustrates the evolution of the average of CAC40 and SBF120<sup>2</sup> quorums over the past five years.

**Graph 1: Shareholder attendance levels: comparison of CAC40 and SBF120 between 2012 and 2016**

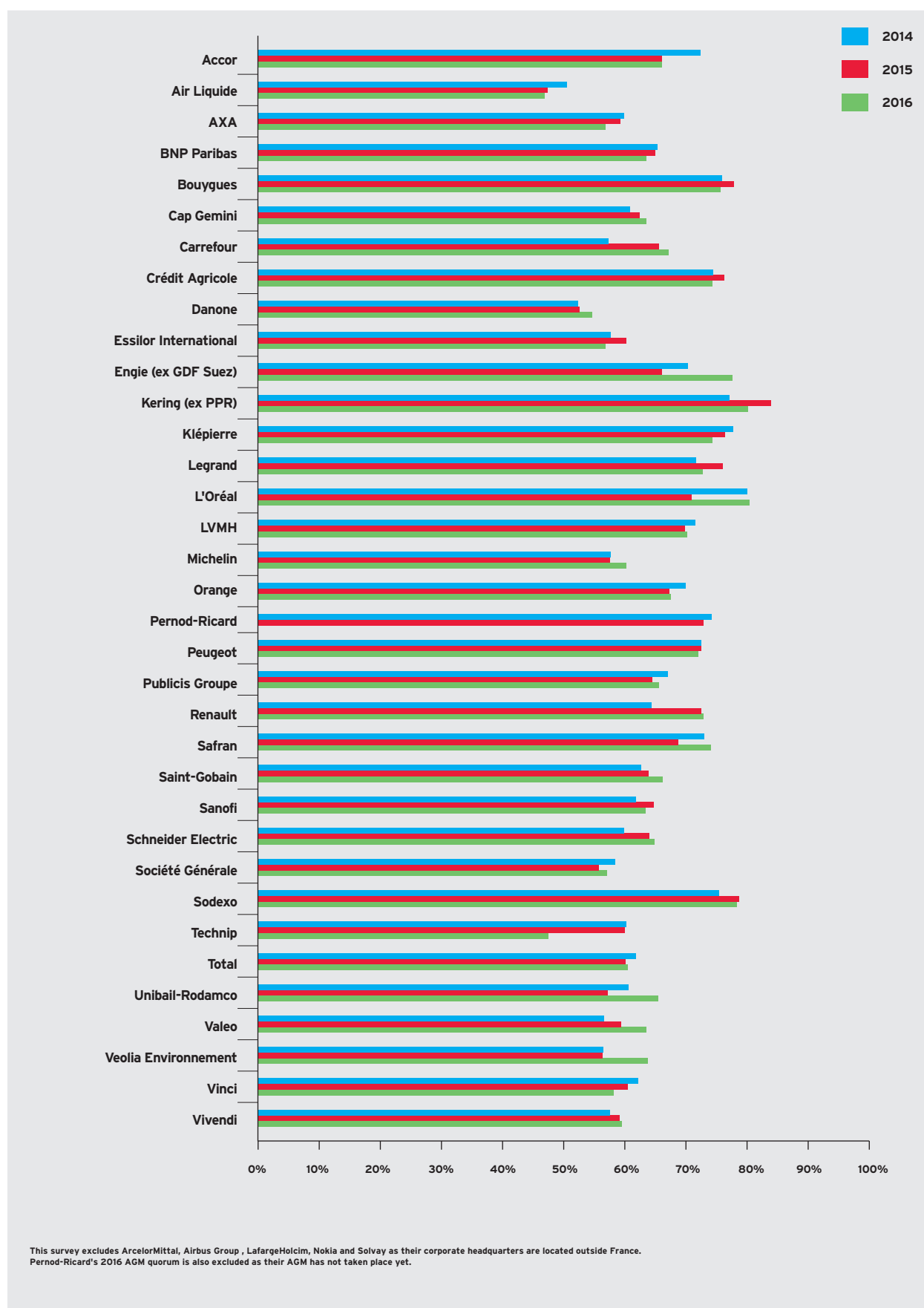


<sup>1</sup> The CAC40 is a benchmark French stock market index which comprises the 40 largest and most liquid stocks trading on the Euronext Paris. See here: <https://indices.euronext.com/en/products/indices/FRO003500008-XPAN>

<sup>2</sup> 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/FRO003999481-XPAN>



Graph 2: Shareholder attendance levels at the 35 CAC40 companies surveyed between 2014 and 2016 (displayed alphabetically)



## 1.2 Rejected resolutions

Amongst the 35 CAC40 companies in our sample that held their AGM between 1 August 2015 and 31 July 2016, a total of three resolutions proposed by the board were rejected by shareholders at the AGMs of three companies: Renault, Valeo and Vivendi.

### CAC40

#### BOARD PROPOSALS

##### Renault

At Renault's AGM on 29 April 2016 the advisory vote on the remuneration of Carlos Ghosn (the Chairman/CEO) was rejected by shareholders with over 54% against votes. The French State, which holds a 19% stake, voted against this resolution. Additionally, the proxy advisors ISS and Proxinvest had recommended an against vote on this resolution, criticising the remuneration for its lack of transparency (while Glass Lewis supported). This is the first time a say-on-pay resolution has failed in France since its introduction in June 2013. It should be noted that the say-on-pay vote is non-binding in France.

Following the meeting, Renault's board decided to leave Mr Ghosn's pay unchanged, stating that "upon proposal of its Remuneration Committee, the Board of Directors approved keeping the compensation decided for the Chief Executive Officer related to 2015". This triggered a public backlash. The Financial Times<sup>3</sup> reported that "the French government has threatened to change the law if the board of Renault does not amend the pay of chief executive Carlos Ghosn following a shareholder revolt."

In this context the AFEP-MEDEF<sup>4</sup> (two leading employers' associations) announced a major revision of their corporate governance code<sup>5</sup>. One amendment amongst others relates to the say-on-pay vote becoming "imperative". "A negative vote by shareholders obliges the board to determine amendments to the remuneration owed or awarded during the year under review or the future remuneration policy: this provision is mandatory". A full overview of the revision of the Code is covered in section 3.2.

On 27 July 2016 Renault's board announced that it had approved a recommendation by the company's remuneration committee to cut the variable portion of CEO's salary by 20% and bring it down from 150% to 120% of the fixed portion<sup>6</sup>.

##### Valeo

Valeo's proposal to amend their articles of association to lower the statutory age limit for directors failed to achieve the required two-thirds majority of the voting rights cast and was rejected with over 35.7% negative votes. It should be noted that the proxy advisors ISS and Glass Lewis had recommended an against vote on this resolution.

##### Vivendi

At Vivendi's AGM, the proposed authority to increase capital with pre-emptive rights was rejected with over 37.3% against votes. It should be noted that the proxy advisors ISS and Glass Lewis had recommended an against vote on this resolution. They contended that the authority could be used for anti-takeover purposes as the company failed to exclude its use during a public offer period.

<sup>3</sup> <http://www.ft.com/cms/s/0/7d633ec8-113d-11e6-91da-096d89bd2173.html#axzz4AE0It0xX>

<sup>4</sup> The AFEP and MEDEF are two employers' associations which jointly publish the main corporate governance code in France.

<sup>5</sup> [http://www.afep.com/uploads/medias/documents/Communique\\_presse\\_commun\\_Afep\\_medef\\_Revision\\_code\\_20052016.pdf](http://www.afep.com/uploads/medias/documents/Communique_presse_commun_Afep_medef_Revision_code_20052016.pdf)

<sup>6</sup> <http://media.renault.com/global/en-gb/renaultgroup/Media/PressRelease.aspx?mediaid=81124>

## SHAREHOLDER RESOLUTIONS

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

### Orange

At Orange's AGM, three shareholder proposals were filed. The FCPE Cap'Orange<sup>7</sup> proposed three resolutions which were rejected with dissent at over 96%. The FCPE Cap'Orange proposed:

- To reduce the dividend amount to be distributed to €0.50 per share (compared to the €0.60 per share proposed by the board);
- To modify the method of payment of the dividend so that shareholders could opt for a share dividend instead of a cash dividend;
- To amend an article of the company's articles of association to set a maximum number of external mandate for directors.

It should be noted that both ISS and Glass Lewis had issued against recommendations on these resolutions.

### Safran

At Safran's AGM, a shareholder resolution was put forward by the FCPE Safran Investissement which proposed an authority to grant free shares for use in restricted performance share plans reserved for employees and corporate officers. The resolution failed to obtain approval from shareholders and was rejected with dissent at over 82.5%. It should be noted that both ISS and Glass Lewis had issued an against recommendation on this resolution.

## SBF120

### Alstom

Amongst the 17 CAC Next 20<sup>8</sup> companies that held their AGM between 1 August 2015 and 31 July 2016, a total of 10 resolutions proposed by the board were rejected by shareholders at the AGM of Alstom.

The nine authorities to increase capital without pre-emptive rights failed to achieve the required two-thirds majority of voting rights cast and were rejected by shareholders with over 35% against votes. It should be noted that ISS and Glass Lewis had recommended an against vote. They contended that the authorities could be used for anti-takeover purposes as the company failed to explicitly exclude its use during a public offer period.

Additionally, the advisory vote on the remuneration of the former Chairman/CEO, Patrick Kron, was rejected by shareholders with over 62% negative votes. The French State, which is Alstom's biggest shareholder with a 20% stake, voted against this resolution. It should be noted that ISS and Glass Lewis had recommended an against vote.

According to Bloomberg<sup>9</sup> "France's government led Alstom SA shareholders who voted against the 6.6 million-euro (\$7.3 million) pay deal awarded to former Chief Executive Officer Patrick Kron, part of a state crackdown on top salaries at some of the country's biggest companies [...]. Kron's deal doesn't 'conform to the doctrine of the state,' a representative for the body that manages the French government's shareholdings said in e-mailed comments. Authorities are pushing for a moderation in executive pay across all companies, according to the statement."

<sup>7</sup> A FCPE which stands for "Fond commun de placement d'Entreprise" is an employee collective investment fund used in France.

<sup>8</sup> The CAC Next 20 is an index that includes the 20 companies whose market capitalizations are ranked after those of the 40 companies who compose the CAC 40. These 20 are possible candidates to replace the members of the CAC 40 index.

<sup>9</sup> <http://www.bloomberg.com/news/articles/2016-07-05/alstom-investors-reject-6-6-million-euro-pay-deal-for-former-ceo>

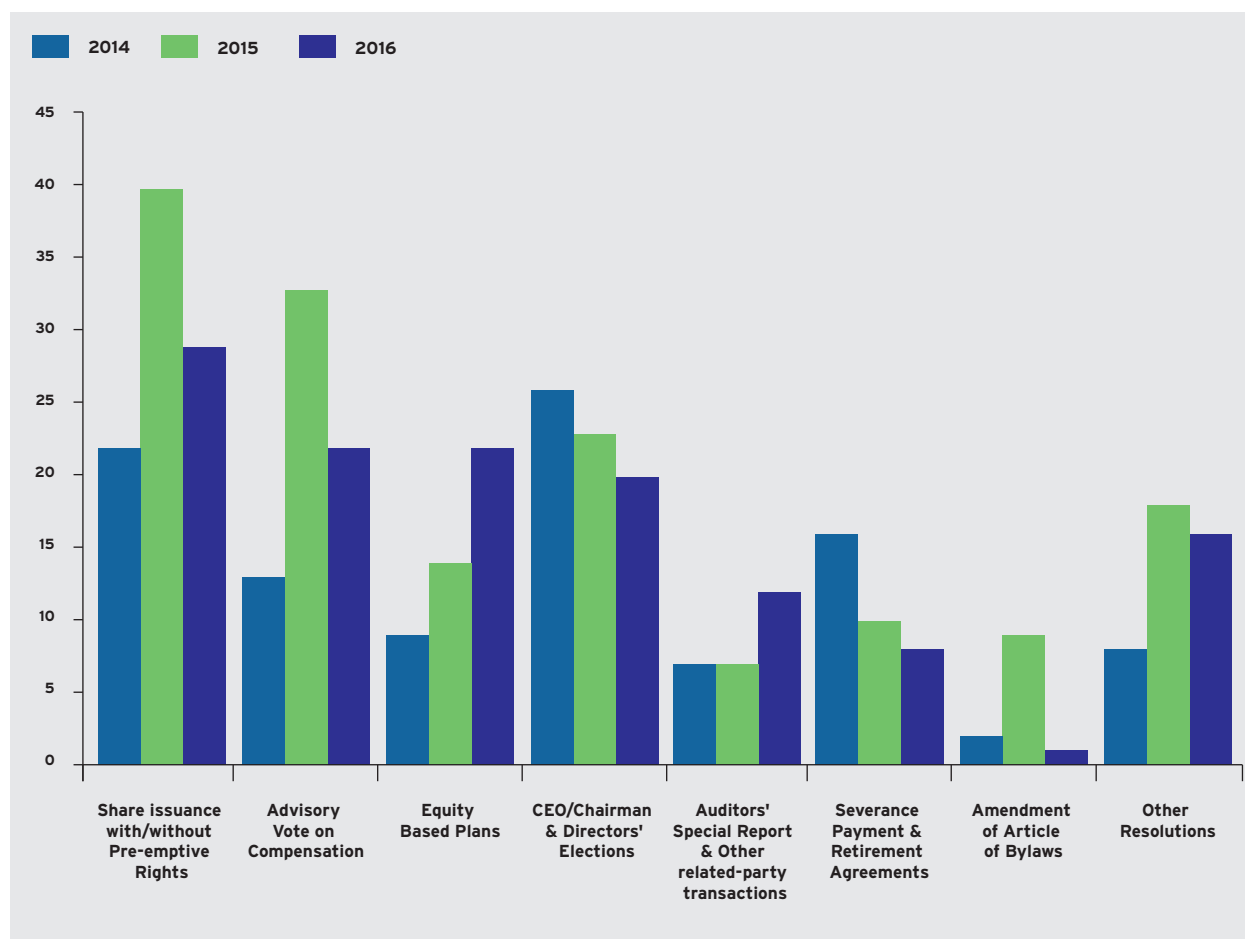
### 1.3 Contested resolutions

Amongst the 35 CAC40 companies in our sample that held their AGM between 1 August 2015 and 31 July 2016, 30 companies saw at least one resolution receive more than 10% shareholder opposition. The total number of resolutions that received over 10% dissent amounted to 130 (including the rejected resolutions discussed in section 1.2).

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

The most commonly contested resolutions were authorities to issue share capital with 29 resolutions receiving more than 10% negative votes. The second most commonly contested resolutions were advisory votes on compensation.

**Graph 3: Resolutions which received more than 10% against votes in the CAC40 (by resolution type)**



### 1.3.1 Authorities to issue shares

Authorities to issue shares with or without pre-emptive rights are proposed as extraordinary agenda items (requiring a two-thirds majority of the voting rights cast).

This year, at CAC40 AGMs, 29 authorities to issue shares, including 23 without pre-emptive rights, received more than 10% negative votes. Capital dilution remains the main concern for investors who are keen to protect their shareholder rights, followed by the possibility that such authorities may be used as anti-takeover devices.

Among the 35 CAC40 companies surveyed, the resolutions with the lowest level of support on share issuance authorities were (excluding the rejected resolutions discussed in section 1.2):

- › Peugeot (Authority to issue Warrants: 68.96% in favour)
- › Engie (Authority to issue capital for private placements: 69.94% in favour)
- › Engie (Greenshoe<sup>10</sup> authorisation: 71.52% in favour)
- › Engie (Authority to issue capital for contribution in kind: 71.85% in favour)
- › Engie (Capital increase without pre-emptive rights: 72.48% in favour)
- › Engie (Capital increase with pre-emptive rights: 73.02% in favour)

Each of these authorisations did not exclude their use during public offer periods. Therefore ISS and Glass Lewis recommended against votes on them.

### 1.3.2 Executive compensation

Since the 2014 AGM season, companies who refer to the AFEP-MEDEF Code propose an advisory vote on executive remuneration at their AGM. Shareholders vote on the fixed and variable elements of the compensation due, received or awarded during the fiscal year under review.

All 35 CAC40 companies in our sample that held their AGM between 1 August 2015 and 31 July 2016, refer to the AFEP-MEDEF code and proposed advisory votes on executive remuneration at their AGM. On average, we recorded an increase in the level of support for the say-on-pay resolutions at the 2016 CAC40 AGMs (88.12% on average) compared to the lower level of support (85.35% on average) seen in 2015.

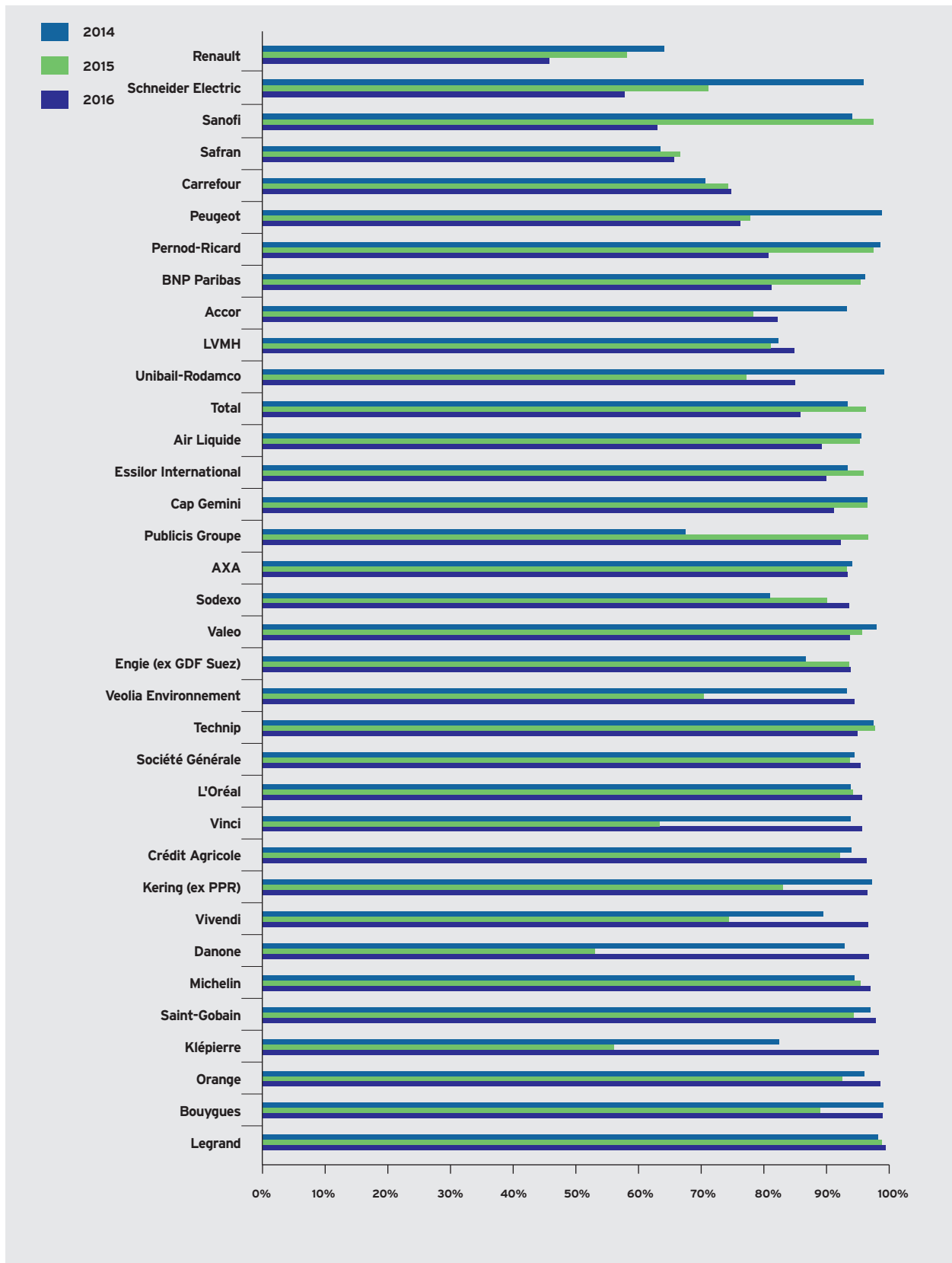
However, for the first time since the implementation of the say-on-pay vote, two advisory votes on remuneration failed at Renault, with 54% against vote on the Chairman/CEO's remuneration and at Alstom, with 62% negative votes on the former Chairman/CEO's remuneration.

Nevertheless, twenty companies registered an increase in the level of support for their say-on-pay resolutions at their 2016 AGM compared to their 2015 vote results, notably Danone and Klépierre.

On the following page is a graph showing the levels of shareholder approval for the advisory vote on the CEO's remuneration of the 35 CAC40 companies surveyed.

<sup>10</sup> In the event of exceptional public demand, the company would be authorised to issue additional shares. Under French law, the maximum number of shares that could be issued is limited to up to 15% of the initial issuance request and must be made at the same price as the initial issuance.

Graph 4: Vote results for the advisory vote on CEO remuneration among the 35 CAC40 companies surveyed (over the past three years)



### 1.3.3 Performance Share Plans

In August 2015, the Macron law<sup>11</sup> introduced changes to the terms under which tax-qualified performance shares may be granted to employees of companies in France. The Macron law intends to render the use of performance shares more attractive by introducing, amongst several modifications, a more favourable tax regime for employees and companies. Another significant modification is the decrease of the minimum legal vesting and holding periods, from two years each (for a total of four years) to one year each (for a total of two years).

In 2016, 18 CAC40 companies proposed an authority to issue shares for use in performance share plans to benefit from the provisions of the enacted Macron law. All 18 authorities registered more than 10% dissent votes. The companies with the lowest level of support were:

- > Schneider Electric (75.15% in favour)
- > Technip (75.21% in favour)
- > Publicis (75.60% in favour)
- > Bouygues (75.89% in favour)
- > Vinci (75.93% in favour)

It should be noted that ISS had issued an against recommendation on all five resolutions while Glass Lewis recommended against the performance share plan proposed by Bouygues and supported the other four authorities.

### 1.3.4 Director elections

In 2016, director elections continued to register significant dissent votes. The main driver behind investor opposition to board elections is the perceived lack of independence on boards. The AFEP-MEDEF Code and the proxy advisors recommend that at least half of the board should be composed of independent directors at companies without controlling shareholders. The companies with the lowest level of support on director elections among the 35 CAC40 companies surveyed were:

- > Total (Re-election of Gerard Lamarche: 74.38 % in favour)
- > Peugeot (Ratify appointment of Dongfeng Motor International Co: 76.98 % in favour)
- > Peugeot (Ratify appointment of Zhu Yanfeng: 77.42 % in favour)

We note that ISS recommended against the re-election of Gerard Lamarche, while Glass Lewis recommended in favour. Both ISS and Glass Lewis recommended against the other two resolutions.

<sup>11</sup> <http://www.pwcavocats.com/fr/ealertes/ealertes-international/free-shares-granted-under-the-macron-law-expected-comments-from-the-french-tax-authorities.html>

## 2. PROXY ADVISORS

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

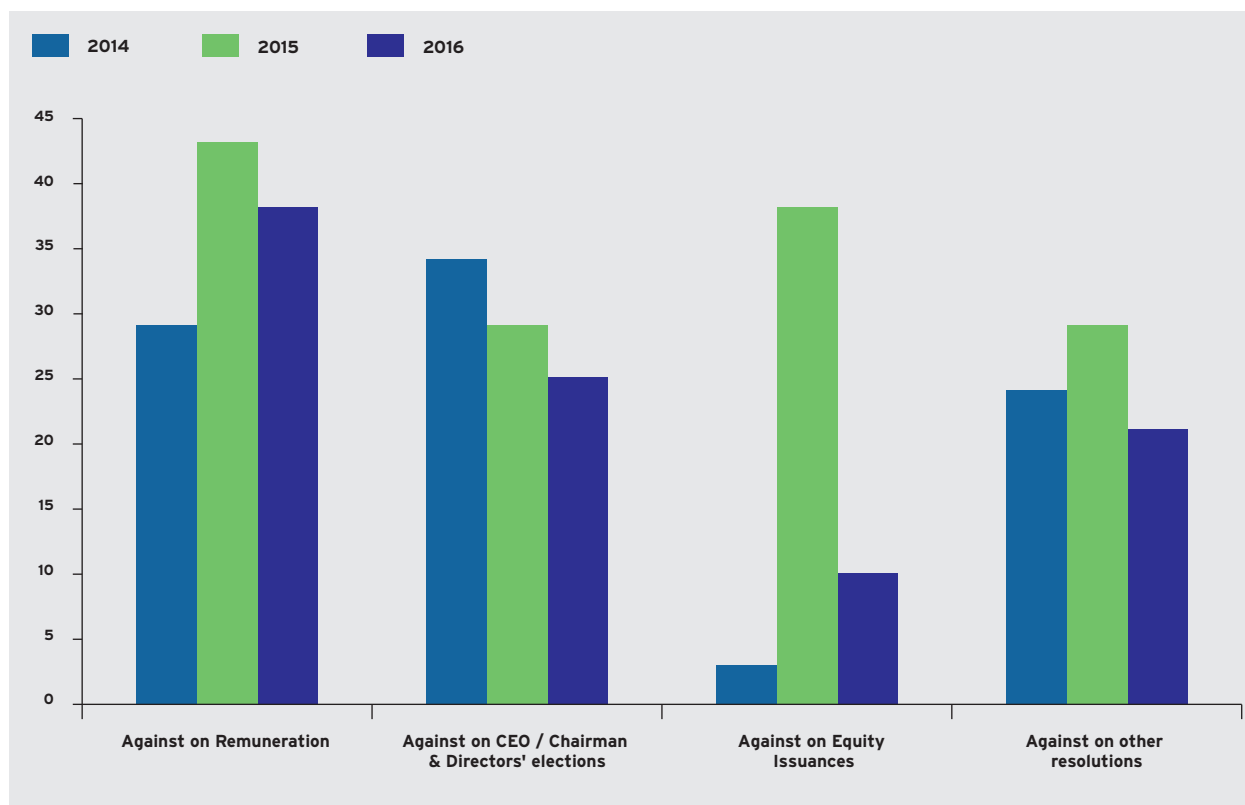
### 2.1 ISS

Institutional Shareholder Services<sup>12</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers. ISS has over 1,600 clients, and approximately 900 employees spread across 18 offices in 12 countries and covers approximately 39,000 meetings in 115 countries. They were acquired by Vestar Capital Partners in March 2014. In Europe they have offices in Berlin, Brussels, Copenhagen, London, Paris and Stockholm.

Between 1 August 2015 and 31 July 2016, 27 companies out of the 35 CAC40 companies surveyed received at least one against recommendation from ISS. The approval of remuneration resolutions (which include executive say-on-pay, equity incentive plans, severance payment agreement, pension scheme and non-compete agreement) are the resolutions which have received the highest number of against recommendations (38 resolutions). This is followed by the CEO/Chairman and directors' elections (25 resolutions).

Below is an overview of the number of negative recommendations by ISS at the 35 CAC40 AGMs we surveyed over the past three years. The total number of against recommendations has decreased from 139 in 2015 to 94 in 2016.

**Graph 5: Overview of the number of negative recommendations by ISS at CAC40 AGMs over the past three years**

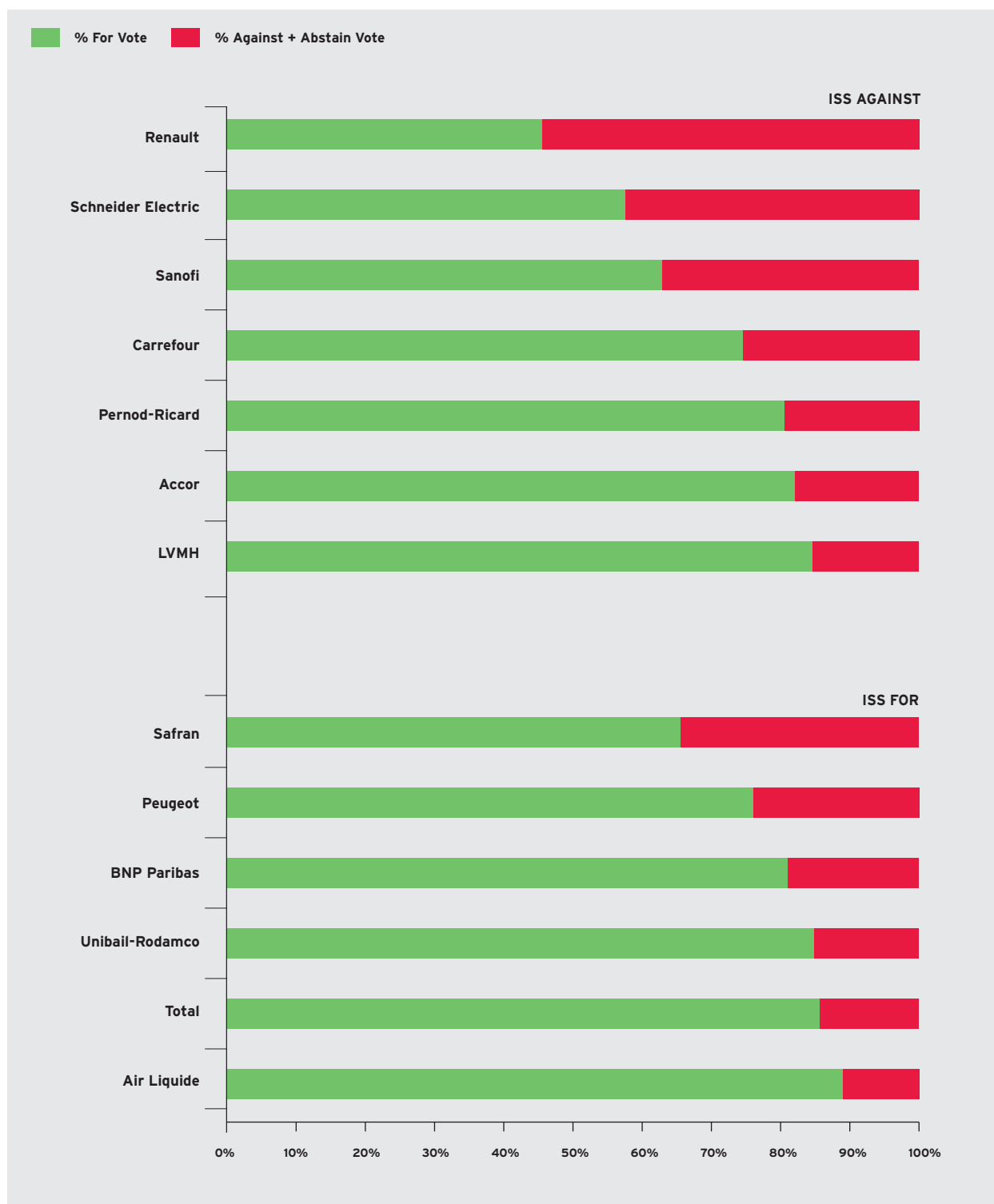


<sup>12</sup> <http://www.issgovernance.com/about/about-iss/>



Below is an overview of the CAC40 companies surveyed whose CEO say-on-pay resolution received less than 90% shareholder support categorised by ISS recommendation.

**Graph 6: Say-on-Pay resolutions with less than 90% support categorised by ISS recommendation**



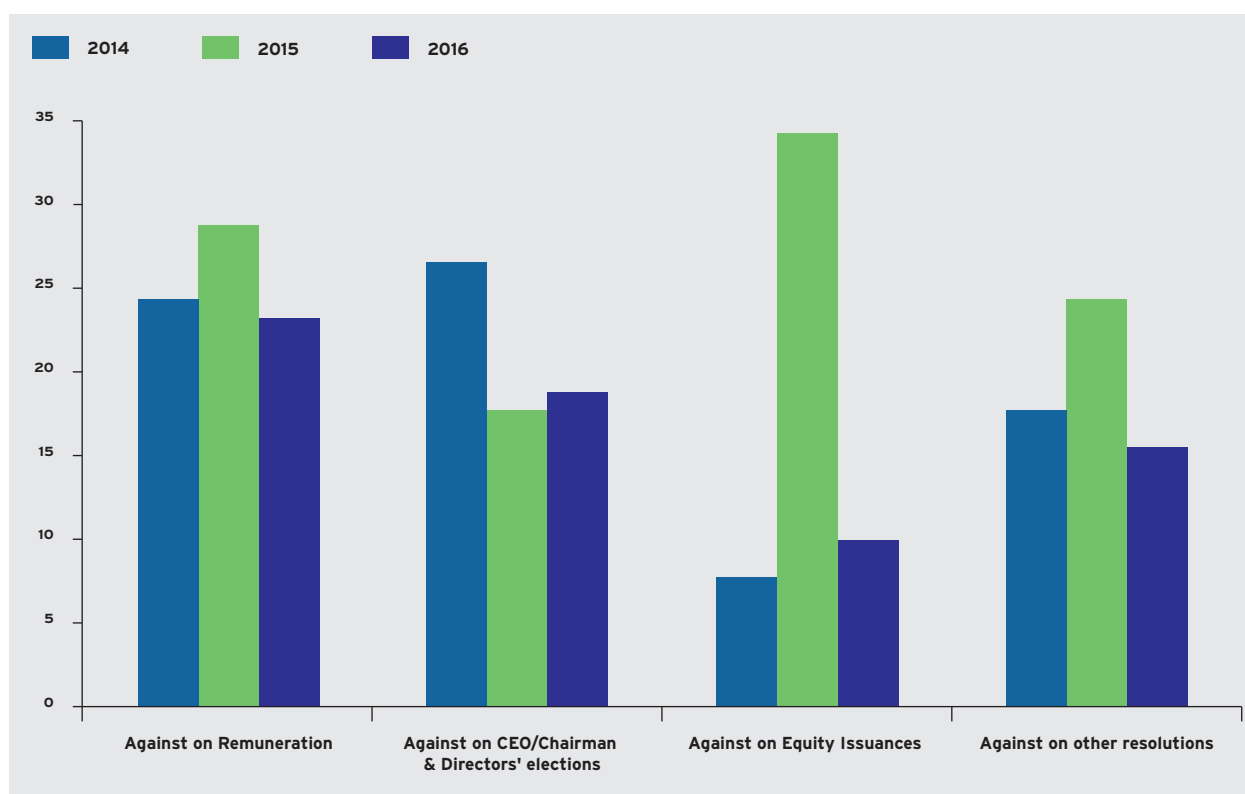
## 2.2 Glass Lewis

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. Glass Lewis has over 1,200 clients and more than 360 employees. They cover more than 20,000 meetings in 100 countries. They are owned by the Ontario Teachers' Pension Plan Board and the Alberta Investment Management Corporation. In Europe they have offices in London, Limerick and Karlsruhe (since their acquisition of IVOX in June 2015).

Between 1 August 2015 and 31 July 2016, 24 companies out of the 35 CAC40 companies surveyed, received at least one against or abstain recommendation from Glass Lewis. The approval of remuneration resolutions (which include executive say-on-pay, equity incentive plans, severance payment agreement, pension scheme and non-compete agreement) has received the highest number of against recommendations (21 resolutions). This is followed by director elections (17 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 95 in 2015 to 61 in 2016.

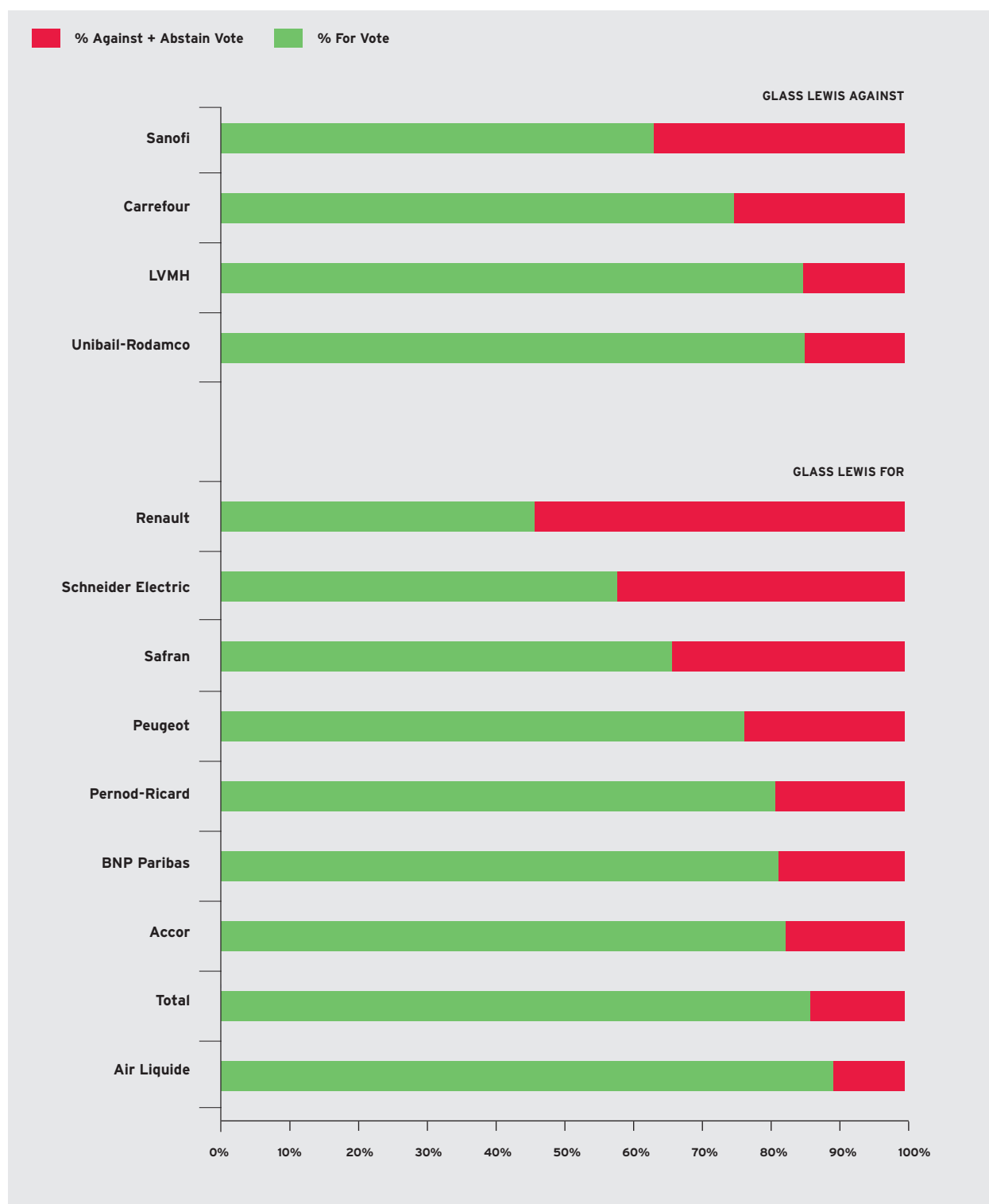
**Graph 7: Overview of the number of negative recommendations by Glass Lewis at the CAC40 AGMs over the past two years**



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

Below is an overview of the CAC40 companies surveyed whose CEO say-on-pay resolution received less than 90% shareholder support categorised by Glass Lewis recommendation.

**Graph 8: Say-on-Pay resolutions with less than 90% support categorised by Glass Lewis recommendation**



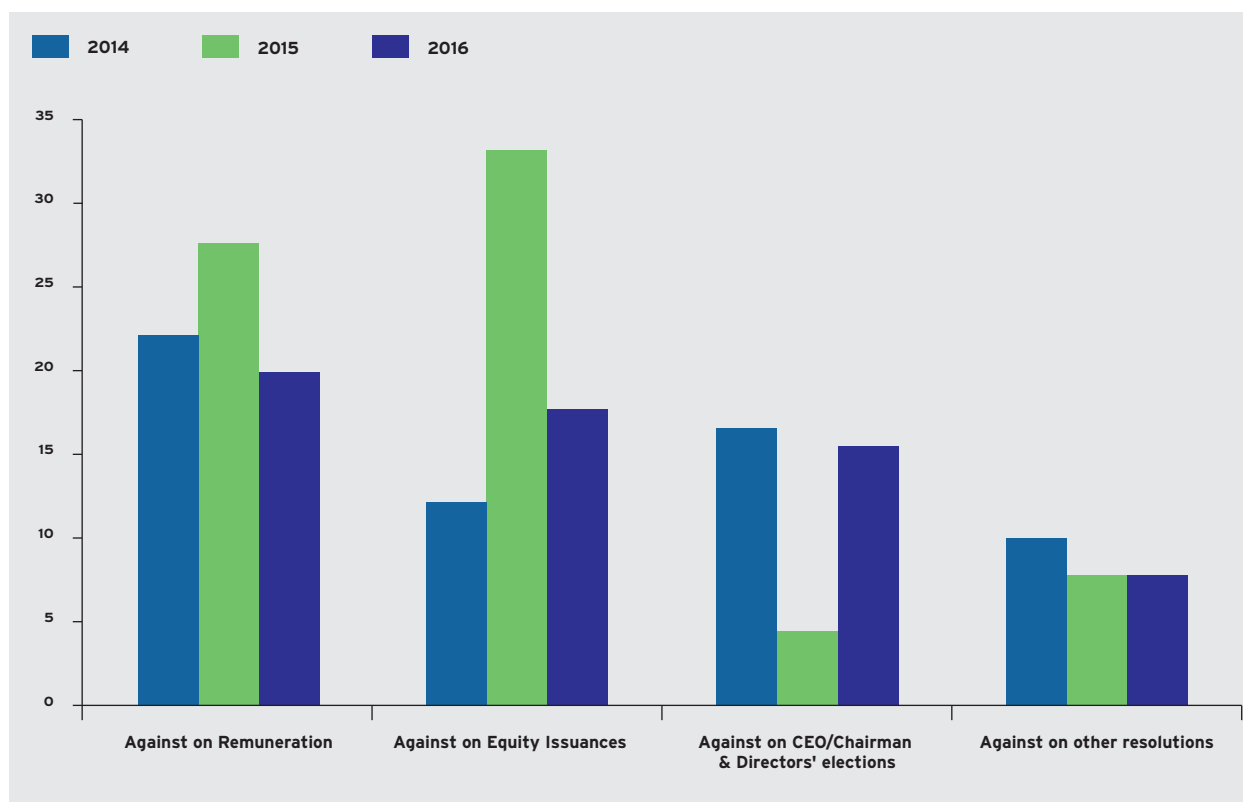
## 2.3 AFG

The AFG (Association Française de la Gestion financière), the French asset management association, represents and promotes the interests of the French asset management industry. Its members include all market participants working for individual investors or collective investment schemes. As of 10 July 2016, the AFG has 930 members, including 398 management companies<sup>14</sup>. Since 1998, the AFG has published a Corporate Governance Code<sup>15</sup>. The code is intended as a guideline for its members' exercise of their voting rights and deals with the AGMs of publicly listed French companies. 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 2015 and 31 July 2016, 20 companies out of the 35 CAC40 companies surveyed received at least one alert from the AFG. The approval of remuneration resolutions (which include executive say-on-pay, equity incentive plans, severance payment agreement, pension scheme and non-compete agreement) has received the highest number of alerts (18 resolutions). This is followed by the approval of share issuance authorities (16 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 alert has decreased from 66 in 2015 to 55 in 2016.

**Graph 9: Overview of the number of alerts raised by the AFG at the CAC40 AGMs over the past three years**



<sup>14</sup> <http://www.afg.asso.fr/index.php/en/who-are-we-/members>

<sup>15</sup> [http://www.afg.asso.fr/index.php?option=com\\_content&view=article&id=5999%3Agouvernement-dentreprise-lafg-reaffirme-le-principe-une-action-une-voix-et-limportance-du-role-des-assemblees-generales&catid=549%3A2014&lang=fr](http://www.afg.asso.fr/index.php?option=com_content&view=article&id=5999%3Agouvernement-dentreprise-lafg-reaffirme-le-principe-une-action-une-voix-et-limportance-du-role-des-assemblees-generales&catid=549%3A2014&lang=fr)

### 3. CORPORATE GOVERNANCE DEVELOPMENTS

#### 3.1 Gender diversity

The Copé-Zimmermann law<sup>16</sup> came into force in January 2011 and provides for balance of men and women on companies' executive and supervisory boards. The law requires that companies listed on the stock exchange and non-quoted companies with at least 500 employees and a €50 million turnover over the previous three consecutive years must have at least 20% of the underrepresented gender on their board at the end of the first AGM held after 2014 and 40% at the end of the first AGM held after 2017.

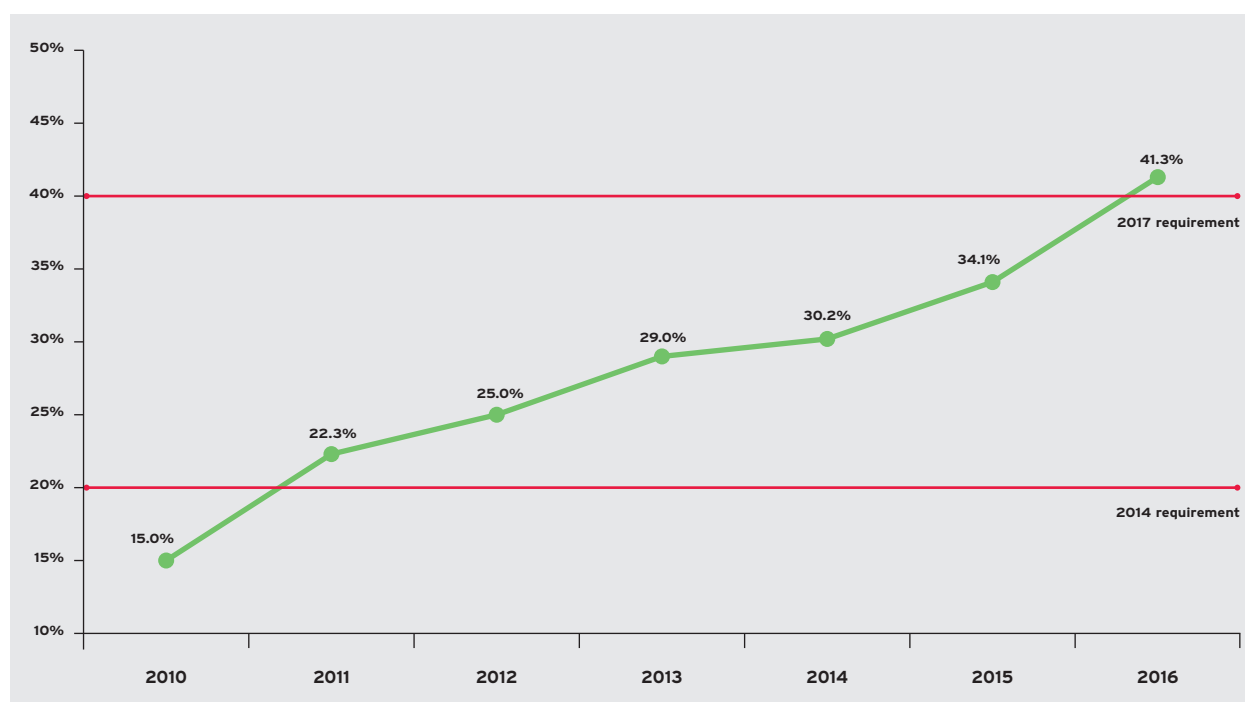
If these thresholds are not reached:

- Irregular appointments will be deemed null and void but will not invalidate any collective decision taken with the participation of the null and void appointee(s);
- Directors' remuneration will be suspended and that fact will require mention in the directors' report.

According to the Financial Times<sup>17</sup> "France's traditionally male-dominated companies are scrambling to appoint women to their boards in time to hit ambitious legal quotas on female representation by next year's deadline. Women account for 28 of the 44 board appointments that the members of the CAC 40 index have so far proposed for approval at their general meetings this year, according to proxy adviser Proxinvest. But competition for strong candidates is fierce: Clara Gaymard, who was until last month the head of General Electric in France, accounts for three of the 28 appointments, at Danone, LVMH and Bouygues. She already sits on Veolia's board. And in a clear sign that France's most prominent companies are looking further afield, more than half of this year's female appointees are foreign."

Following the 2016 AGM season, the boards of directors at CAC40 companies are now composed on average of 41.3% women versus 15% in 2010. The graphs below show the evolution of the average number of women on CAC40 boards over the past seven years and the percentage of women on board at the 35 CAC40 companies we surveyed in 2016.

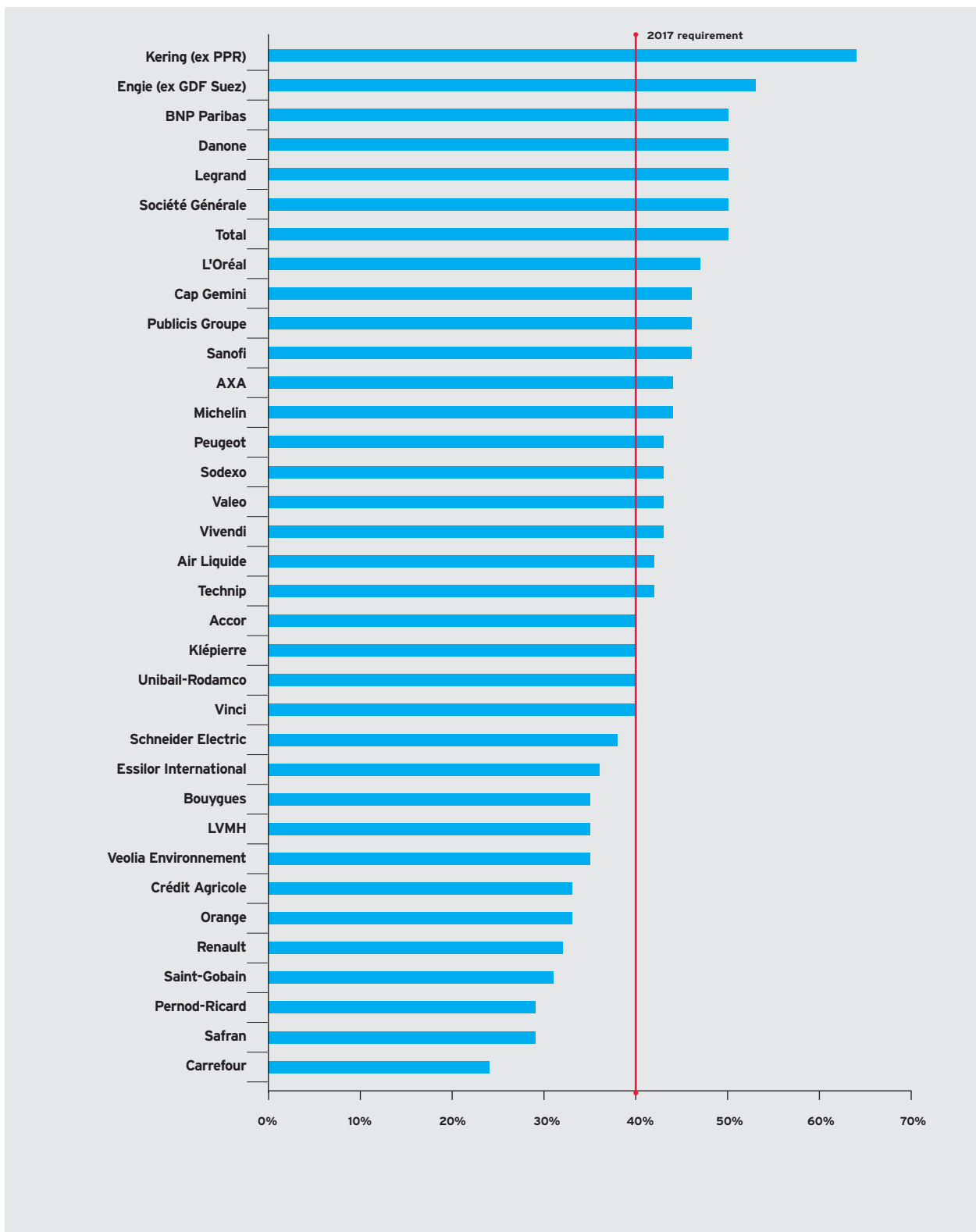
**Graph 10: Evolution of the average percentage of women on CAC40 boards since 2010**



<sup>16</sup> <http://www.eurofound.europa.eu/observatories/eurwork/articles/french-law-to-increase-number-of-women-directors>

<sup>17</sup> <http://www.ft.com/cms/s/0/5b542782-ee9e-11e5-aff5-19b4e253664a.html#axzz43iNoQJgs>

Graph 11: The percentage of women on the boards of the 35 CAC40 companies we surveyed in 2016



### 3.2 AFEP-MEDEF

In November 2015, the AFEP-MEDEF published a new edition of their corporate governance code<sup>18</sup> “to rapidly introduce the principle of a shareholder vote when a disposal is being considered which relates to at least half of the company’s assets. Another amendment ensures consistency between the Code and the new legal provisions introduced by the Macron Act on supplementary pensions. ”

In May 2016, following the controversy over the shareholder vote rejecting the remuneration of Renault’s CEO Carlos Ghosn, the AFEP-MEDEF announced a major revision of their Code and launched a public consultation. According to their press release<sup>19</sup>:

“The changes relate in particular to three areas:

1. The ‘say-on-pay’ becomes imperative: A negative vote by shareholders obliges the board to determine amendments to the remuneration owed or awarded during the year under review or the future remuneration policy: this provision is mandatory.
2. Remuneration - stringency and transparency are strengthened: The conditions of the variable remuneration must be stringent, transparent and aligned with the long-term interests of the company.
3. Justification of executive severance pay decisions: The code establishes two strong principles regarding the possible compensation of an executive who leaves the company:
  - a. Remuneration must be conditional on achievement of performance criteria (failure cannot be rewarded); and,
  - b. The board of directors must justify and make its decisions public.”

Following the public consultation, the revised code will be available by the end of the year.

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<sup>18</sup> <http://www.medef.com/medef-tv/actualites/detail/article/communiqué-commun-afep-medef.html>

<sup>19</sup> [http://www.afep.com/uploads/medias/documents/Communique\\_presse\\_commun\\_Afep\\_medef\\_Revision\\_code\\_20052016.pdf](http://www.afep.com/uploads/medias/documents/Communique_presse_commun_Afep_medef_Revision_code_20052016.pdf)

### 3.3 Sapin II Law

The Sapin II law<sup>20</sup> is a legislative proposal 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.

In May 2016, following the decision of Renault's board to make no changes to their CEO's remuneration arrangements despite the shareholder vote rejecting the say-on-pay resolution, French President François Hollande stated<sup>21</sup>: "If there is no drastic action from companies, all decisions on pay by shareholders will be binding and the board of directors will not be able to undo them." An amendment to make shareholder votes on executive pay binding was added to the Sapin II law going through parliament.

On 14 June 2016, the proposed law was adopted by the French parliament's lower house<sup>22</sup>, the National Assembly, making the annual shareholder vote on the remuneration and benefits of executives at listed companies mandatory and binding. The proposed law was sent to the Senate, the parliament's upper house, to be reviewed.

On 8 July 2016, after a long series of amendments, the Senate adopted<sup>23</sup> a revised, scaled down version of the law. The Senate proposed an advisory annual shareholder vote on the executive compensation due, received or awarded during the fiscal year under review and a binding vote, at least every four years, on the remuneration policy.

The text was examined on 14 September 2016 by a joint commission in charge of finding a common version for both houses of parliament. The joint commission failed to reach an agreement<sup>24</sup>. The draft text should be examined again by the National Assembly on the 28 and 29 September. Afterwards, it will be examined by the Senate at the beginning of October and the National Assembly will then have the final say<sup>25</sup>.

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<sup>20</sup> <http://www.gouvernement.fr/en/sapin-ii-law-transparency-the-fight-against-corruption-modernisation-of-the-economy>

<sup>21</sup> <http://www.ft.com/cms/s/0/6217b61e-1c1c-11e6-b286-cddde55ca122.html#axzz4Ji5FXbc7>

<sup>22</sup> <http://uk.reuters.com/article/france-bosses-idUKL8N192112>

<sup>23</sup> [https://www.senat.fr/espace\\_presse/actualites/201606/le\\_senat\\_examine\\_la\\_loi\\_sapin\\_2.html](https://www.senat.fr/espace_presse/actualites/201606/le_senat_examine_la_loi_sapin_2.html)

<sup>24</sup> <https://www.senat.fr/presse/cp20160914b.html>

<sup>25</sup> <http://www.lagazettedescommunes.com/460669/projet-de-loi-sapin-2-echec-de-la-commission-mixte-paritaire/>







Netherlands





# Netherlands Highlights

- ▶ The average quorum for the AEX and AMX companies increased in 2016. The average AEX quorum reached 70.49% (from 70.40% in 2015) and the average AMX quorum reached 69.68% (from 62.70% in 2015).
- ▶ Amongst our sample of AEX and AMX companies, no companies had a resolution rejected in 2016. Core Laboratories and Tie Kinetix (small cap constituents of the AEX All Share Index) did record two rejected resolutions.
- ▶ This year three resolutions were withdrawn in the AEX and AMX, compared to five resolutions in 2015.
- ▶ The most commonly contested resolutions were authorities to issue shares and authorities to restrict or exclude pre-emptive rights. The second most commonly contested resolutions were the discharge of the Management or Supervisory Board, followed by remuneration related proposals.
- ▶ Out of the AEX and AMX companies surveyed six issuers received at least one against recommendation from ISS and twelve issuers received at least one against recommendation from Glass Lewis.

# 1. VOTING IN THE NETHERLANDS

## 1.1 Quorum overview

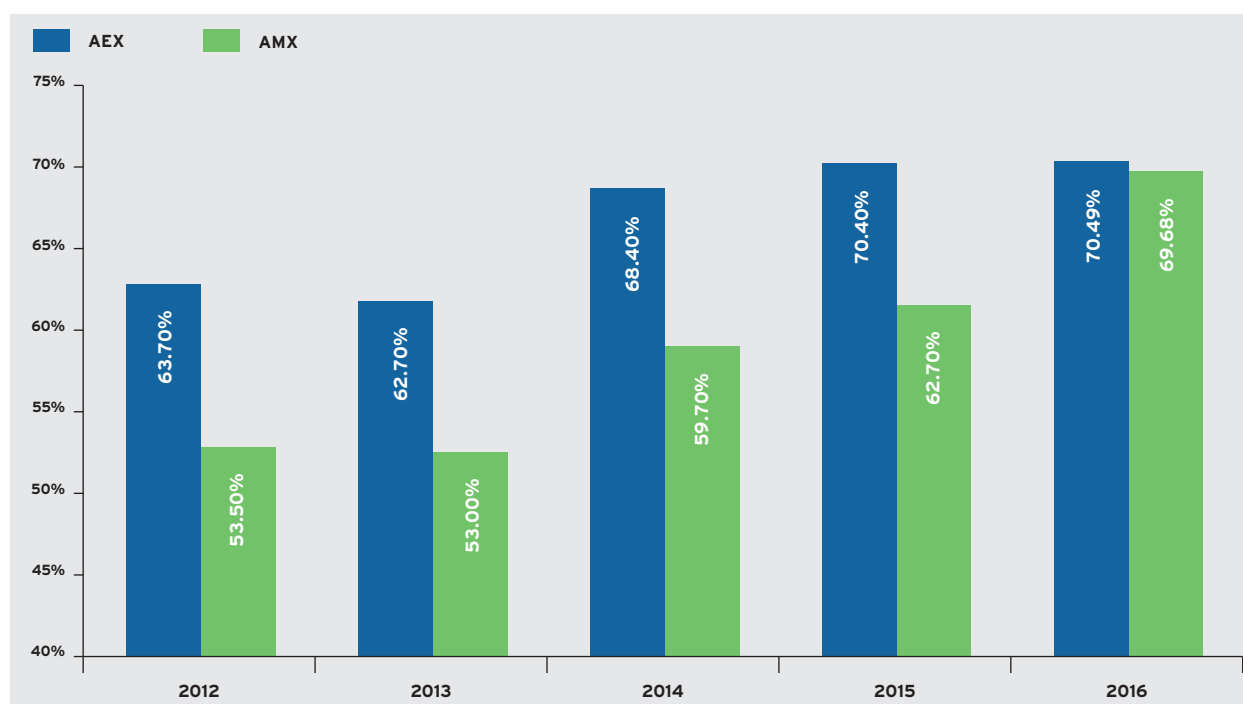
Since 2010 Georgeson has reviewed the quorum levels of AEX<sup>1</sup> and AMX<sup>2</sup> companies<sup>3</sup>. We have taken into account companies that were part of the above-mentioned indices on 31 July 2016 and held their AGM between 1 August 2015 and 31 July 2016. This includes 22 companies in the AEX and 22 companies in the AMX.

The graph below displays an average of the quorum levels of the AEX and AMX indices.

In the AEX<sup>4</sup> index eleven companies experienced an increase in quorum and ten companies experienced a decrease in quorum compared to 2015. The companies that saw the biggest drop in their quorum between 2015 and 2016 were TNT Express (from 80.3% in 2015 to 63.9% in 2016), RELX (from 84.6% in 2015 to 71.1% in 2016), and NN Group (from 83.1% in 2015 to 71.8% in 2016). The companies that saw the largest increase in their quorum between 2015 and 2016 were Wolters Kluwer (from 54.8% in 2015 to 71.2% in 2016), Royal Dutch Shell (from 54.7% in 2015 to 64.8% in 2016) and SBM Offshore (from 52.4% in 2015 to 62.5% in 2016).

In the AMX<sup>5</sup> index nine companies experienced an increase in quorum and ten companies experienced a decrease in quorum compared to 2015. The companies that saw the biggest drop in their quorum between 2015 and 2016 were BE Semiconductors (from 54.2% in 2015 to 45.5% in 2016), Delta Lloyd (from 58.6% in 2015 to 51.9% in 2016) and Wereldhave (from 59.7% in 2015 to 53.10% in 2016). The companies that saw the largest increase in their quorum between 2015 and 2016 were Corbion (from 47.6% in 2015 to 64.48% in 2016), BAM Groep (from 20.2% in 2015 to 35.2% in 2016) and Royal Wessanen (from 43.9% in 2015 to 53.9% in 2016).

**Graph 1: Shareholder Attendance Levels comparison AEX/AMX 2012 - 2016**



<sup>1</sup> 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>

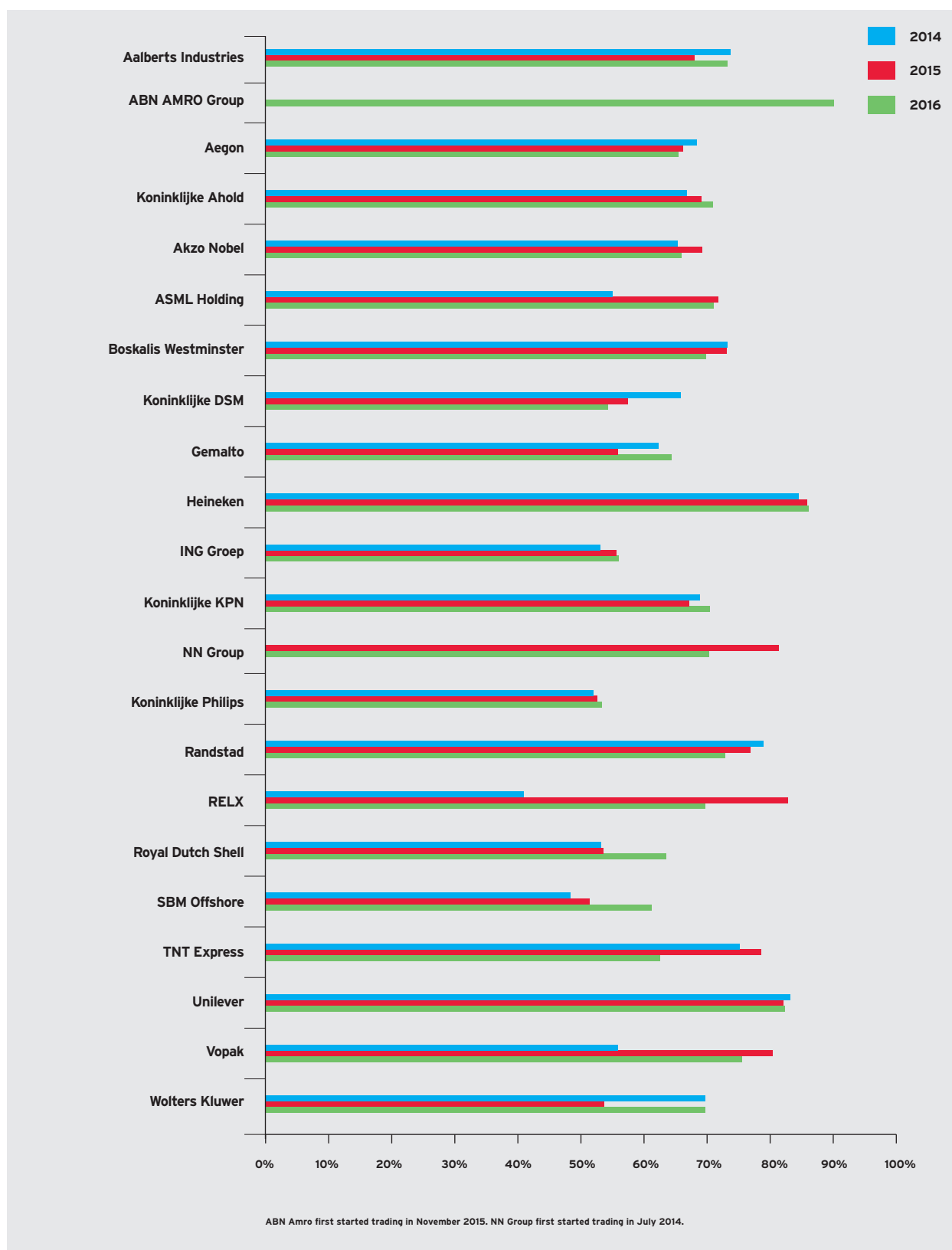
<sup>2</sup> The AMX reflects the performance of the next 25 most actively traded shares listed on NYSE Euronext Amsterdam. See here: <https://www.euronext.com/en/products/indices/NL0000249274-XAMS/market-information>

<sup>3</sup> We have included Dutch-incorporated companies only. For the AEX this excludes Altice, Galapagos and Unibail-Rodamco. For the AMX it excludes Air France-KLM, Aperam, and WDP

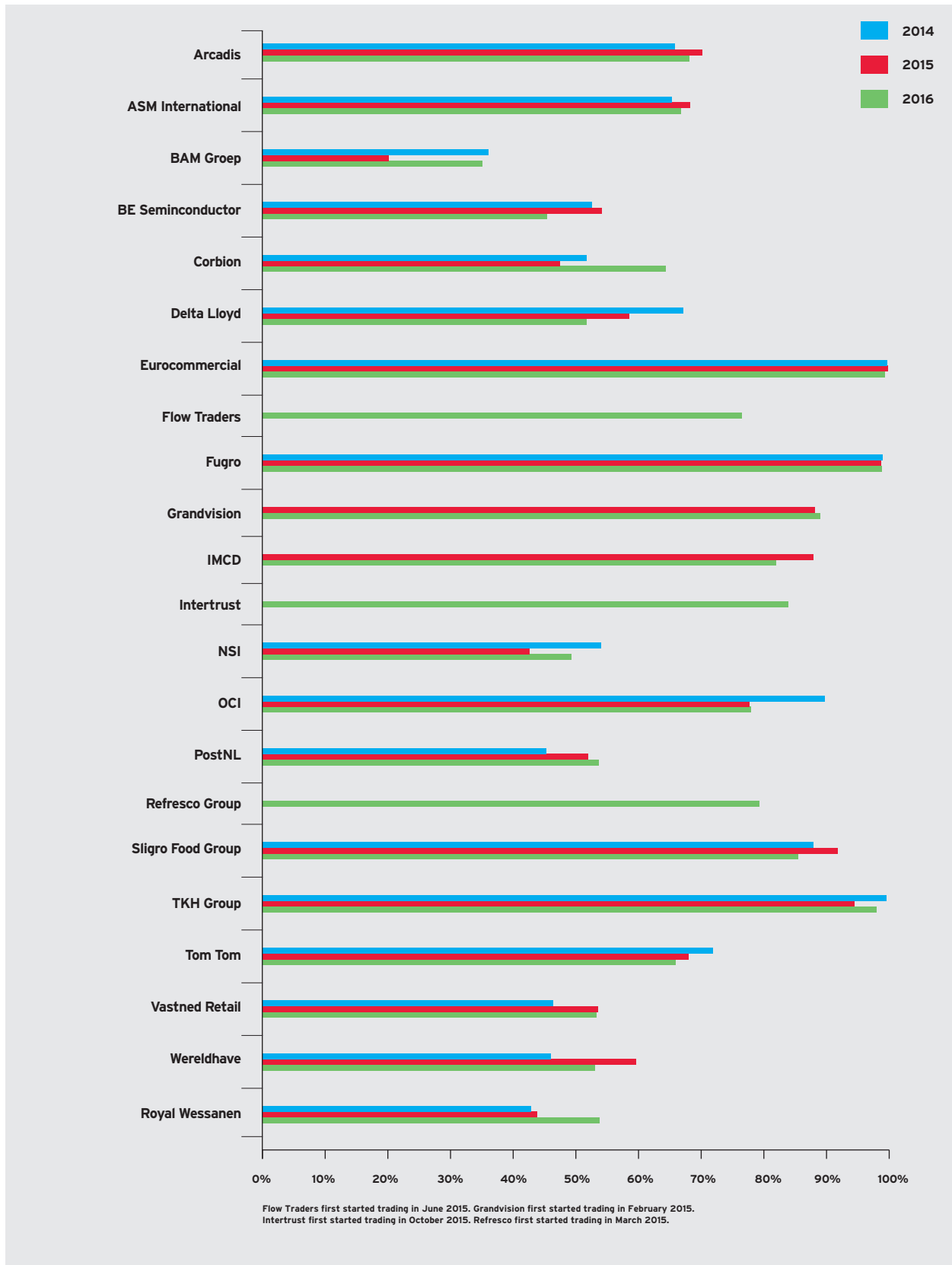
<sup>4</sup> ABN Amro was not included in the comparison, because they held their first AGM in 2016.

<sup>5</sup> Flow Traders, Intertrust and Refresco Group were not included in the comparison because they held their first AGM in 2015.

Graph 2. Shareholder attendance levels at the AEX companies surveyed between 2014 and 2016 (displayed alphabetically)



Graph 3. Shareholder attendance levels at the AMX companies surveyed between 2014 and 2016



## 1.2 Rejected resolutions

### AEX and AMX

We have reviewed the meeting results of the 44 AEX and AMX constituents' AGMs held between 1 August 2015 and 31 July 2016. During the 2016 proxy season no company within our sample recorded a management-proposed resolution that was rejected by shareholders.

### AEX All Share Index

Among AEX All Share Index companies Core Laboratories<sup>6</sup> and Tie Kinetix<sup>7</sup> (both small cap companies) each recorded a rejected resolution.

#### Core Laboratories NV

At the Core Laboratories AGM<sup>8</sup>, which took place in May 2016, one resolution (to amend the articles of association to extend Supervisory Board terms from three to four years) was rejected. ISS recommended a vote against this proposal. The resolution received 42.6% support.

#### Tie Kinetix NV

At the Tie Kinetix AGM<sup>9</sup>, which took place in March 2016, one resolution (to extend the authority to issue shares and exclude pre-emptive rights) was rejected. The resolution received 11.5% support. Neither ISS or Glass Lewis produced a report on this meeting.

## 1.3 Withdrawn resolutions

In comparison to last year we have seen a decrease in the number of resolutions that were withdrawn prior to a shareholder meeting. This year three resolutions in the AEX and AMX were withdrawn as opposed to five resolutions in 2015. In 2015 resolutions were withdrawn from the agendas of Ahold, TNT Express and Wereldhave.

#### Ahold

The Ahold Management and Supervisory Boards announced prior to the EGM held in March 2016 that they had decided to withdraw resolution 5 (amendment of the articles of association concerning the Option Right to the Stichting Ahold Continuïteit) and resolution 8 (amendment of the Remuneration Policy of the Management Board).

Ahold issued the following statement<sup>10</sup> prior to the EGM concerning resolution 5: "The decision to withdraw this item from the EGM agenda follows feedback from investors that there is no direct relation to the merger. There is also no pressing need to have this amendment implemented on short notice as the current SAC option agreement continues through 2018."

Concerning resolution 8 Ahold stated that "agenda item 8 for the EGM proposed a remuneration policy for the Ahold Delhaize Management Board upon completion of the intended merger. This proposal included a one-time retention and recognition incentive award that the members of the Management Board would be eligible to earn in stock if they meet performance targets related to the implementation of the merger. However, the Supervisory Board of Ahold and the Board of Directors of Delhaize Group did not feel that this element of the remuneration proposal had the same

<sup>6</sup> <http://www.corelab.com/corporate/>

<sup>7</sup> <http://investorcenter.tiekinetix.com/ties-corporate-story/tie-kinetix?trail=739|787>

<sup>8</sup> See here for the 2016 AGM agenda: [http://www.corelab.com/investors/cms/docs/proxy/2016\\_proxy\\_document.pdf](http://www.corelab.com/investors/cms/docs/proxy/2016_proxy_document.pdf)

<sup>9</sup> See here for the 2016 AGM agenda and minutes (including the vote results): <http://investorcenter.tiekinetix.com/financial-information/annual-general-meeting-2016?trail=794|1647>

<sup>10</sup> [https://www.afm.nl/registers/kgi\\_documents/201603080000000012\\_160308\\_Press-release\\_AGM\\_EGM\\_ENG.pdf](https://www.afm.nl/registers/kgi_documents/201603080000000012_160308_Press-release_AGM_EGM_ENG.pdf)

broad base of support that investors and other stakeholders have expressed for the merger overall. As a result, it will not be considered at the upcoming EGM, and Ahold will instead submit the remuneration policy without this award for consideration at its AGM on April 19."

At the EGM the Chairman stated<sup>11</sup> that "the Board considered the entire transformation process. The remuneration proposal will be proposed for approval without the retention element. Notwithstanding, the transformation process is very complicated. It consists of multiple countries and multiple company cultures. Those will pose certain risks for the company, especially since the organisation only has a limited time to realise the synergies. At a certain point in time, certain people may not be needed anymore, then one should try to retain them and have them cooperate meaningfully to the realisation of synergies."

It should be noted that ISS had recommended an against vote on both resolutions while Glass Lewis recommended an against vote on resolution 5 and a vote in favour on resolution 8.

When proposed at the AGM<sup>12</sup> in April 2016, the revised proposal to amend the Remuneration Policy of the Management Board was passed with 90.9% of votes in favour.

### **DSM**

DSM withdrew a proposed amendment to the articles of association relating to the Cumulative Preference Shares A. DSM stated the following in their press release<sup>13</sup>: "DSM actively seeks dialogue with stakeholders in preparation for the AGM. Initial consultations during preparation of the proposed amendment relating to the Cumprefs A have been followed by further discussions as DSM has engaged on the Agenda items in more detail. Given the range of views offered during these further discussions, DSM has chosen to withdraw Agenda item 12 from this year's Agenda to continue the dialogue before determining the most appropriate way forward for all stakeholders."

It should be noted that ISS had recommended an against vote on the amendments to the articles of association while Glass Lewis recommended an abstain vote (the proposal had already been withdrawn at the time of publication of their report).

## **1.4 Contested resolutions**

Among our sample of 44 AEX and AMX companies that held their AGM between 1 August 2015 and 31 July 2016 we saw a 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 54 in 2015, compared to 33 resolutions in 2016. The graph below summarises the subjects of all resolutions that received more than 10% opposition from shareholders.

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

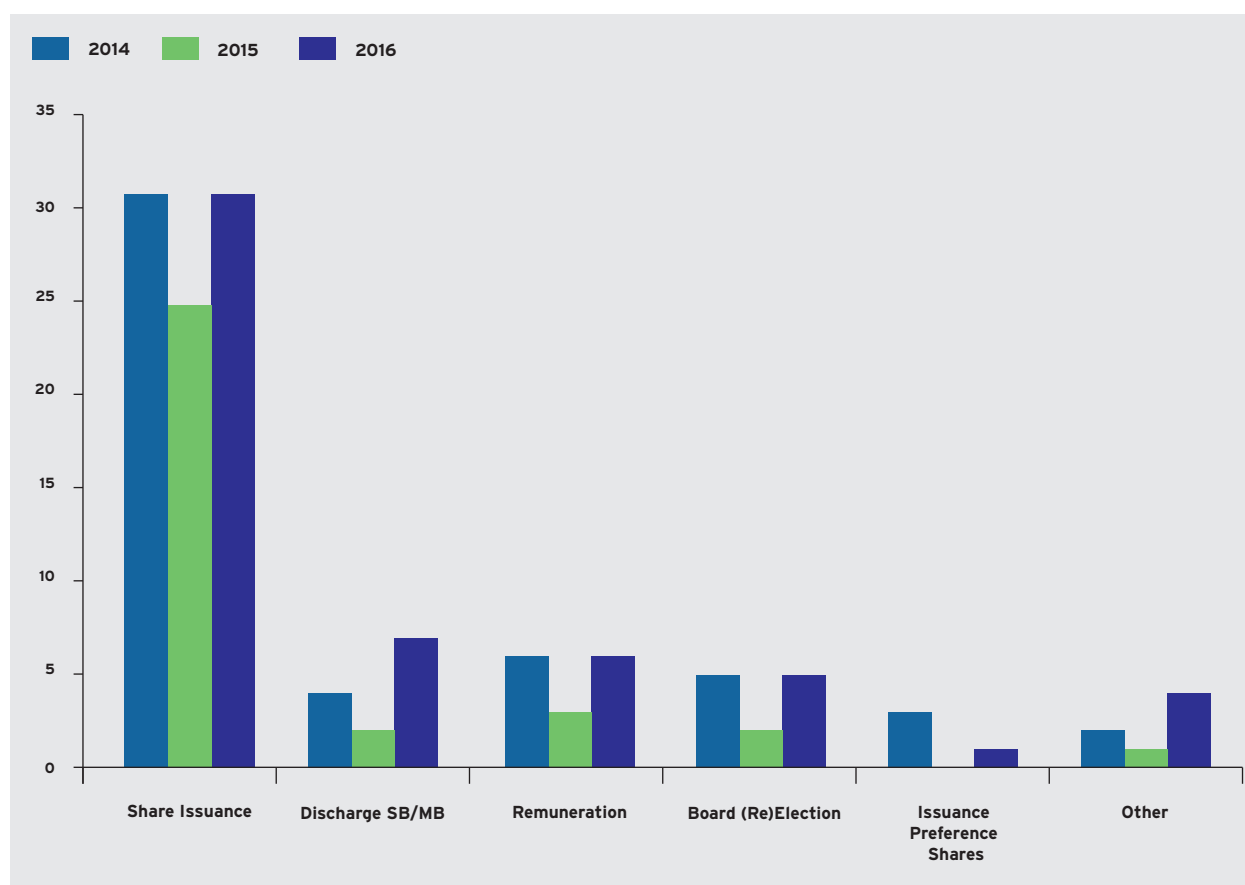
<sup>11</sup> See page 11 of the 2016 EGM minutes: <https://www.aholdelhaize.com/media/1674/ahold-egm-2016-minutes-nl.pdf>

<sup>12</sup> [https://www.aholdelhaize.com/media/1727/ahold-agm-2016-adopted-resolutions\\_en\\_final.pdf](https://www.aholdelhaize.com/media/1727/ahold-agm-2016-adopted-resolutions_en_final.pdf)

<sup>13</sup> [http://www.dsm.com/content/dam/dsm/cworld/en\\_US/documents/annual-general-meeting-apr-2016-dsm-amends-agenda.pdf](http://www.dsm.com/content/dam/dsm/cworld/en_US/documents/annual-general-meeting-apr-2016-dsm-amends-agenda.pdf)



Graph 4: Resolutions which received more than 10% negative votes in the AEX and AMX (broken down by resolution type)



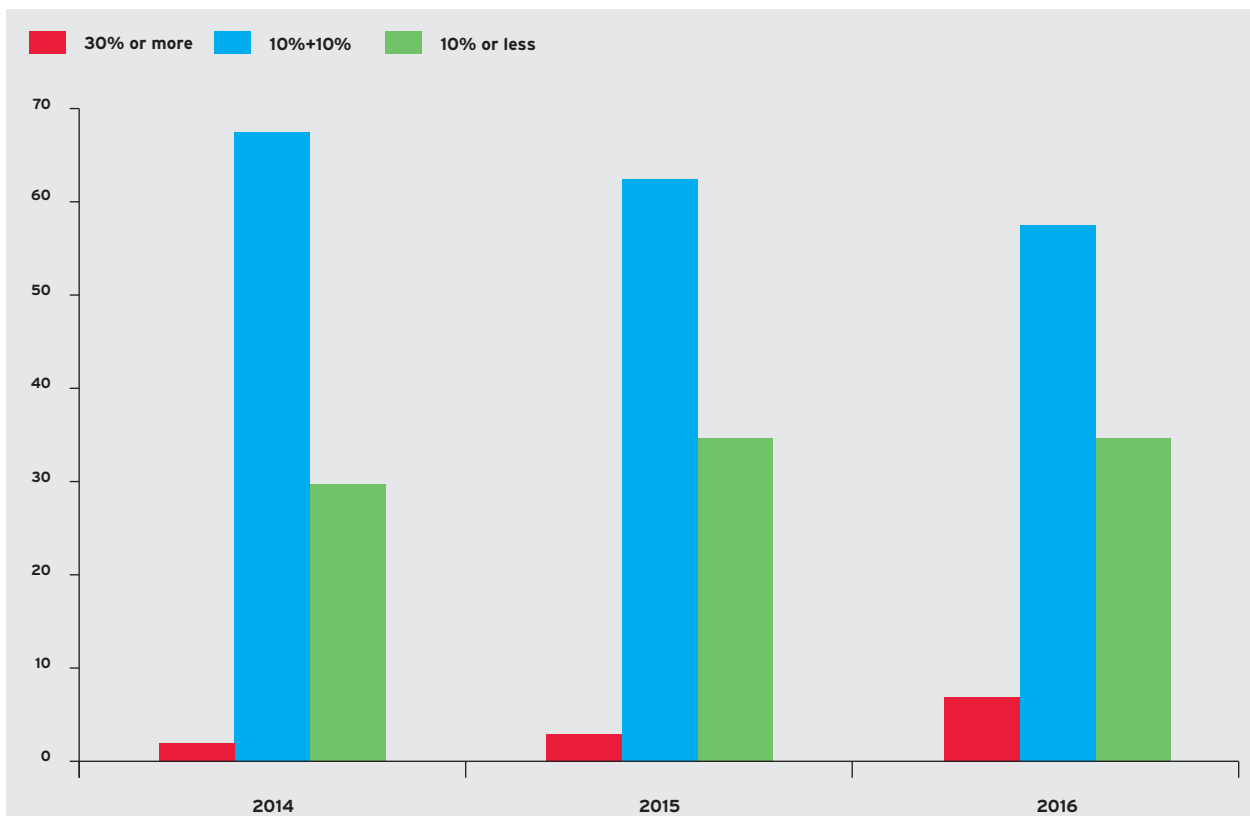
#### 1.4.1 Authorities to issue shares with or without pre-emptive rights

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.

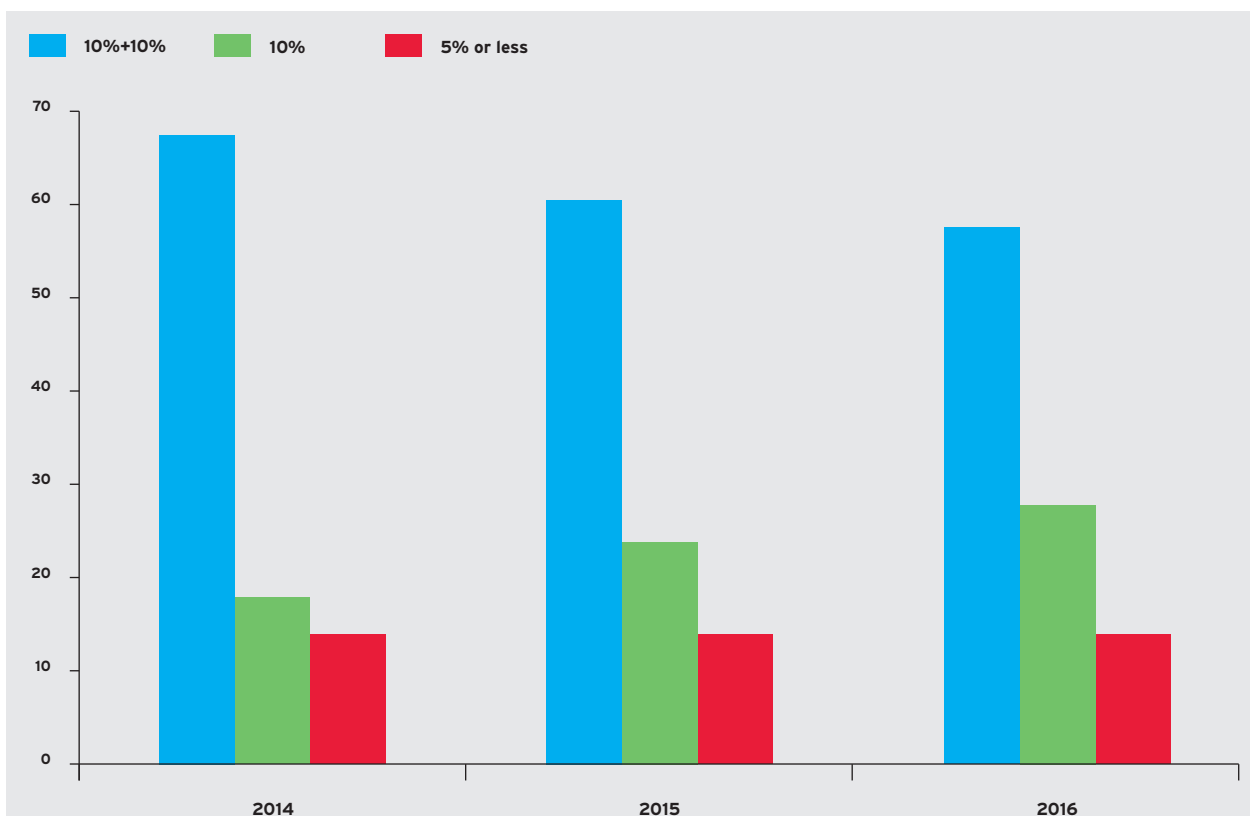
Over the years we have seen a gradual shift in the authorisations sought for shares to be issued with and without pre-emptive rights. Although the majority of companies still request authorities of up to 20% of issued share capital with and without pre-emptive rights, a number of companies have started requesting a higher authority with pre-emptive rights, and a lower authority without pre-emption.

The graphs below shows that the percentage of issuers that requested a higher authority with pre-emptive rights has increased from 2% in 2014 to 7% in 2016 and the percentage of issuers that requested a lower authority than 20% of issued share capital without pre-emptive rights has increased from 32% in 2014 to 42% in 2016.

**Graph 5: Authorisations to issue shares with pre-emptive rights grouped by maximum dilution.**



**Graph 6: Authorisations to issue shares without pre-emptive rights grouped by maximum dilution.**



**Gemalto**

During the 2016 AGM, Gemalto proposed two authorisations to issue shares<sup>14</sup>. The first related to a general authorisation to issue shares without pre-emptive rights up to 5% of issued share capital. The second request related to an authorisation to issue shares with pre-emption up to 25% of issued share capital. Of these shares Gemalto requested a separate authorisation to exclude pre-emptive rights up to 5% of issued share capital (in cases of mergers or acquisitions). Therefore, in total Gemalto requested authorisations of up to 30% of issued share capital, from which pre-emptive rights could be excluded for up to 10% of issued share capital. All requests were approved with a majority of over 90%<sup>15</sup>.

**ING Group**

ING Group requested an authorisation for the issuance of shares with pre-emptive rights of up to 40% of issued share capital<sup>16</sup>. In addition they submitted an authorisation for a further 10% of issued share capital without pre-emption. While leading Dutch pension fund PGGM criticized the proposals<sup>17</sup> the resolutions were approved with a majority of 94.02% and 96.80% respectively (including the Stichting ING votes)<sup>18</sup>

**1.4.2 Discharge of the Management Board or 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.

**Fugro**

Fugro received a total of 30.2% of votes against the discharge of both the Management Board as the Supervisory Board<sup>19</sup>. In 2015 Boskalis, which owns approximately 25.14% of Fugro shares<sup>20</sup>, requested the board add a resolution to the agenda concerning a non-binding vote on Fugro's anti-takeover devices. Although Fugro's board decided not to put the resolution up for a vote, they did make it a non-voting resolution. At subsequent court hearings initiated by Boskalis the judges ruled in favour of Fugro<sup>21</sup>. The high opposition to the discharge of the Management Board and Supervisory Board may be a result of this dispute.

**Delta Lloyd**

Delta Lloyd received a total of 18.42% of votes against the discharge of both the Management Board as the Supervisory Board<sup>22</sup>. Previously Delta Lloyd had a public dispute with their largest shareholder concerning a proposed rights issue that was initiated in early 2016<sup>23</sup>. The high opposition to the discharge of the Management Board and Supervisory Board may be a result of this dispute.

<sup>14</sup> [http://www.gemalto.com/investors-site/agm-site/Documents/AGM2016/GemaltoNV-AGM2016-Agenda\\_Exp\\_notes.pdf](http://www.gemalto.com/investors-site/agm-site/Documents/AGM2016/GemaltoNV-AGM2016-Agenda_Exp_notes.pdf)

<sup>15</sup> <http://www.gemalto.com/investors-site/agm-site/Documents/AGM2016/2016-05-19-Detailed-voting-results.pdf>

<sup>16</sup> The pre-emptive rights could be limited or excluded in certain territories

<sup>17</sup> <http://fd.nl/ondernemen/1149027/ing-wil-carte-blanche-voor-forse-emissie>

<sup>18</sup> <http://www.ing.com/Investor-relations/Shareholders-meeting/Annual-General-Meeting/Archive.htm>

<sup>19</sup> <https://www.fugro.com/docs/default-source/investor-publications/2016/voting-results-2016.pdf?sfvrsn=0>.

<sup>20</sup> <http://www.fugro.com/investors/share-information/shareholders>

<sup>21</sup> [https://www.afm.nl/registers/kgj\\_documents/201503170000000012\\_150317%20pr%20judge%20rules%20in%20favour%20of%20Fugro.pdf](https://www.afm.nl/registers/kgj_documents/201503170000000012_150317%20pr%20judge%20rules%20in%20favour%20of%20Fugro.pdf) and <https://www.fugro.com/media-centre/press-releases/fulldetails/2016/05/31/court-of-appeal-rules-in-favour-of-fugro-and-dismisses-boskalis-claim>

<sup>22</sup> <https://www.deltalloyd.com/media/205460/voting-results-agm-2016.pdf>.

<sup>23</sup> <http://www.wsj.com/articles/delta-lloyd-locked-in-spat-with-highfields-over-rights-issue-1457016011>

### 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<sup>24</sup>. In January 2014 “claw back” legislation<sup>25</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<sup>26</sup>. 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<sup>27</sup>, 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<sup>28</sup> which came into force on 1 January 2015 caps the variable pay for financial institutions in the Netherlands at 20% of fixed remuneration.

Remuneration related issues were the cause of intense debates at certain AGMs. One example has been discussed in paragraph 1.3 above. Two additional companies that stood out in this regard are Altice and BE Semiconductors.

#### Altice

Altice put forward eight remuneration-related proposals at their AGM<sup>29</sup>, seven of which received more than 10% against votes<sup>30</sup>. ISS and Glass Lewis recommended against these seven resolutions. Concerns were raised regarding the quantum of awards, the possibility of option repricing as well as the level of disclosure provided on performance conditions and periods.

The resolutions were each passed with a majority of approximately 86%. Altice have a controlling shareholder, Next Alt S.a.r.l., holding 57.9% of the issued share capital.

#### BE Semiconductors

BE Semiconductors proposed an amendment to its remuneration policy. The policy included a discretionary authority to grant additional shares to executives on the basis of one-off events. This led to negative recommendations from both ISS and Glass Lewis.

BE Semiconductors disclosed additional information concerning the remuneration policy, committing that discretionary awards would only be granted to executives who have met or exceeded prior specified performance targets, that no individual executive would receive more than 60,000 discretionary shares in any one year within the overall dilution of 1.5% per annum<sup>31</sup> and that discretionary shares would not be awarded in the case of a transaction and/or for the purpose of management board member retention<sup>32</sup>. Additionally, the company disclosed that in the past discretionary shares have only been awarded in the case of executives exceeding pre-defined targets<sup>33</sup> and stated that in future the maximum number of shares available will not exceed 200,000 in any year<sup>34</sup>.

Although ISS and Glass Lewis did not change their voting recommendations, the resolution was passed with 68.3% approval<sup>35</sup>.

<sup>24</sup> Article 2:391 of the Dutch Civil Code

<sup>25</sup> <https://zoek.officielebekendmakingen.nl/Kst-32512-2.html>.

<sup>26</sup> Article 2:135 §5a of the Dutch Civil Code

<sup>27</sup> [http://wetten.overheid.nl/BWBR0029246/geldigheidsdatum\\_30-10-2013](http://wetten.overheid.nl/BWBR0029246/geldigheidsdatum_30-10-2013)

<sup>28</sup> <https://zoek.officielebekendmakingen.nl/dossier/33964/h-ek-20142015-18-3?resultIndex=0&sorttype=1&sortorder=4>

<sup>29</sup> <http://altice.net/wp-content/uploads/2016/07/Alt-20160906-explanatory-notes.pdf>.

<sup>30</sup> <http://altice.net/wp-content/uploads/2016/07/20160704-Altice-AGM-Voting-results-form.pdf>

<sup>31</sup> [http://www.besi.com/fileadmin/data/Investor\\_Relations/AGM/2016/Additional\\_information\\_on\\_agenda\\_item\\_3b\\_-\\_4\\_April\\_2016.pdf](http://www.besi.com/fileadmin/data/Investor_Relations/AGM/2016/Additional_information_on_agenda_item_3b_-_4_April_2016.pdf)

<sup>32</sup> [http://www.besi.com/fileadmin/data/Investor\\_Relations/AGM/2016/Additional\\_information\\_on\\_agenda\\_item\\_3b\\_-\\_11\\_April\\_2016.pdf](http://www.besi.com/fileadmin/data/Investor_Relations/AGM/2016/Additional_information_on_agenda_item_3b_-_11_April_2016.pdf)

<sup>33</sup> [http://www.besi.com/fileadmin/data/Investor\\_Relations/AGM/2016/Additional\\_information\\_on\\_agenda\\_item\\_3b\\_-\\_15\\_April\\_2016.pdf](http://www.besi.com/fileadmin/data/Investor_Relations/AGM/2016/Additional_information_on_agenda_item_3b_-_15_April_2016.pdf)

<sup>34</sup> [http://www.besi.com/fileadmin/data/Investor\\_Relations/AGM/2016/Additional\\_information\\_on\\_agenda\\_item\\_3b\\_-\\_26\\_April\\_2016.pdf](http://www.besi.com/fileadmin/data/Investor_Relations/AGM/2016/Additional_information_on_agenda_item_3b_-_26_April_2016.pdf)

<sup>35</sup> [http://www.besi.com/fileadmin/data/Investor\\_Relations/AGM/2016/Voting\\_Results\\_AGM\\_2016.pdf](http://www.besi.com/fileadmin/data/Investor_Relations/AGM/2016/Voting_Results_AGM_2016.pdf)

## 2. PROXY ADVISORS

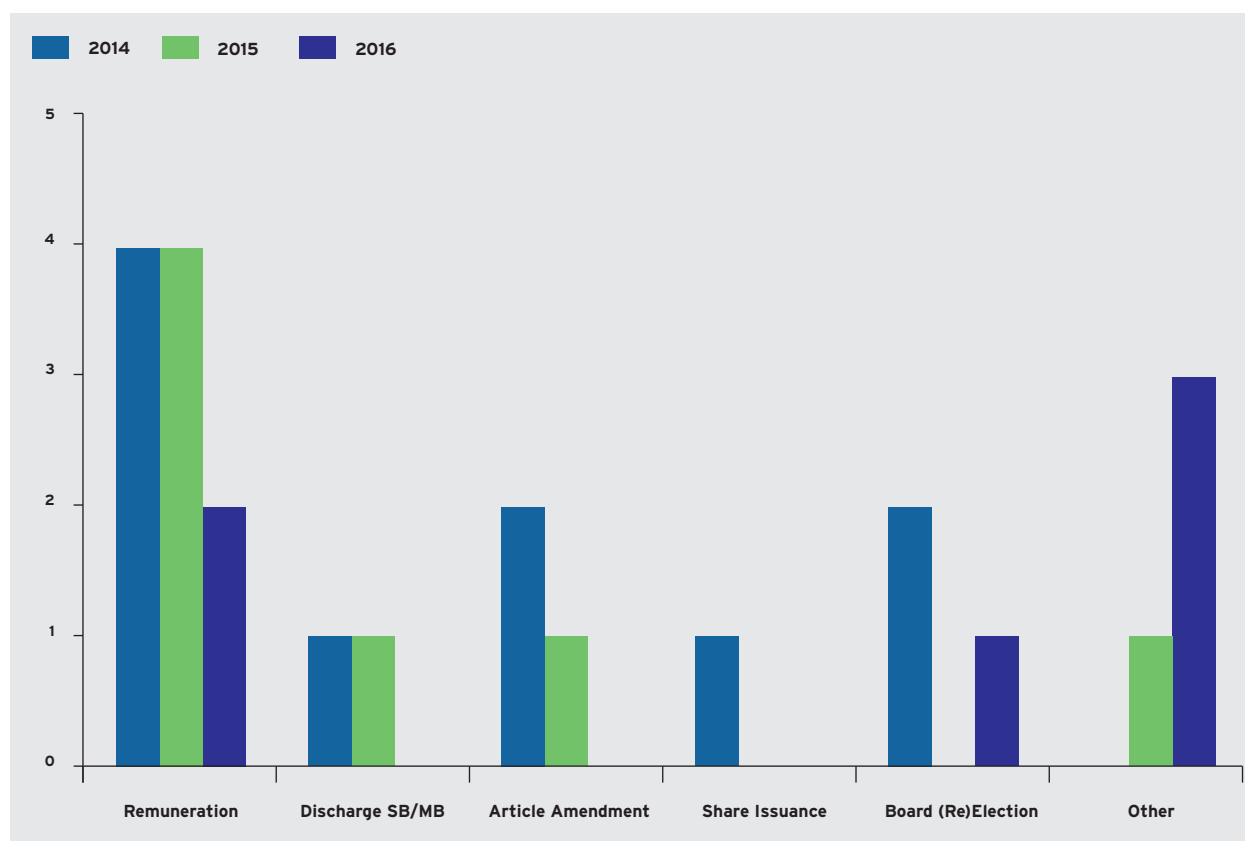
Many institutional investors rely on proxy advisory firms, such as ISS and Glass Lewis for meeting agenda analysis and vote recommendations to inform their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a given resolution.

### 2.1 ISS

Institutional Shareholder Services<sup>36</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers. ISS has over 1,600 clients, and approximately 900 employees spread across 18 offices in 12 countries and covers approximately 39,000 meetings in 115 countries. They were acquired by Vestar Capital Partners in March 2014. In Europe they have offices in Berlin, Brussels, Copenhagen, London, Paris and Stockholm.

During the 2016 proxy season, six companies out of the AEX and AMX companies surveyed received at least one against recommendation from ISS. Below is an overview of the number of companies in our sample that have received negative recommendations from ISS at AEX and AMX AGMs over the past three years. The table shows that the 2016 proxy season saw the lowest number of negative recommendations from ISS in the last three years. Please note that withdrawn resolutions were not included.

**Graph 7: Overview of the number of negative recommendations by ISS at AEX and AMX AGMs over the past three years**



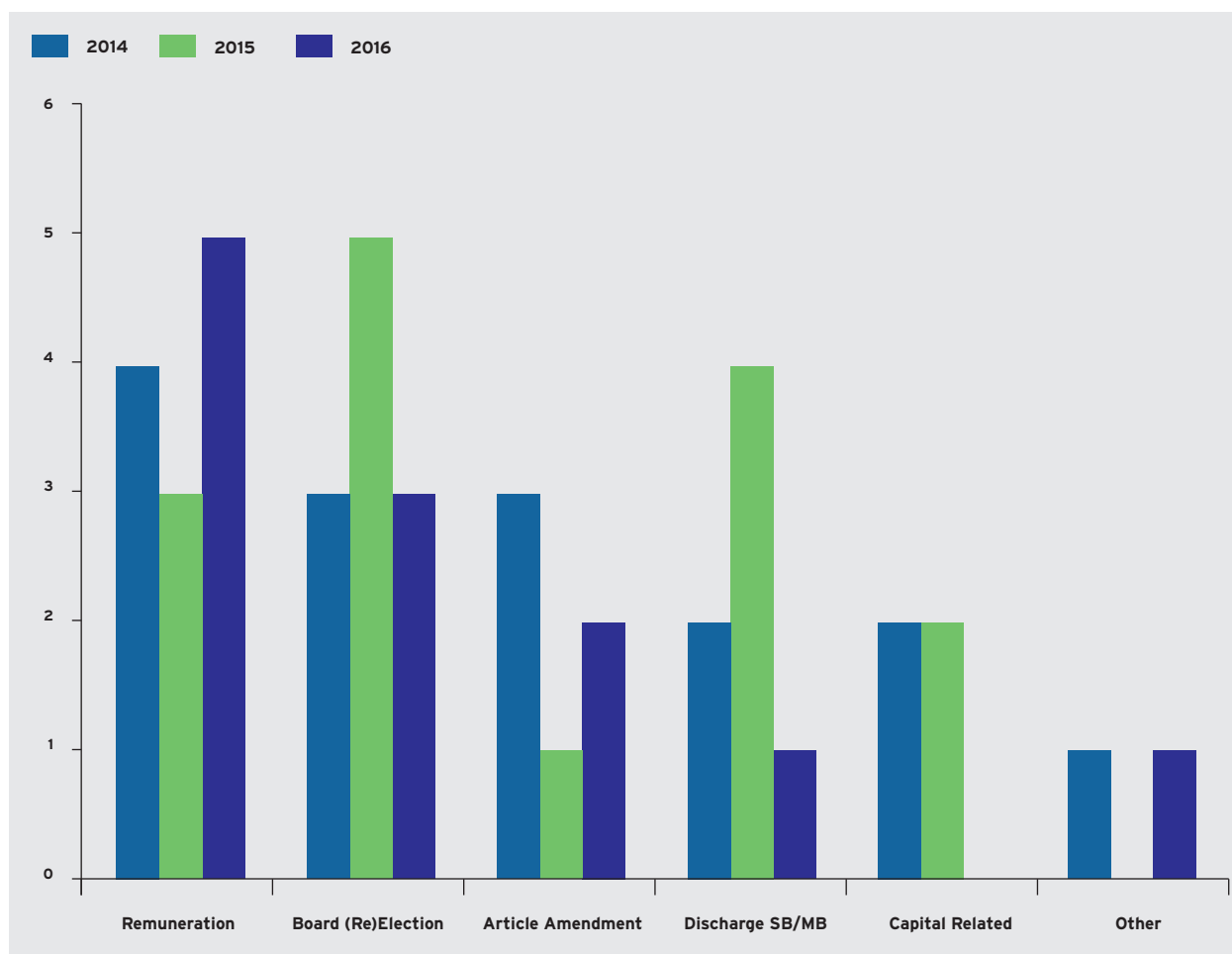
<sup>36</sup> <http://www.issgovernance.com/about/about-iss/>

## 2.2 Glass Lewis

Glass Lewis<sup>37</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. Glass Lewis has over 1,200 clients and more than 360 employees. They cover more than 20,000 meetings in 100 countries. They are owned by the Ontario Teachers' Pension Plan Board and the Alberta Investment Management Corporation. In Europe they have offices in London, Limerick and Karlsruhe (since their acquisition of IVOX in June 2015).

During the 2016 proxy season, twelve companies out of the AEX and AMX companies surveyed received at least one against recommendation from Glass Lewis. Below is an overview of the number of companies in our sample that have received negative recommendations from Glass Lewis at AEX and AMX AGMs over the past three years. The table shows that the 2016 had the lowest amount of against recommendations from Glass Lewis of the past three years. Please note that withdrawn resolutions were not included.

**Graph 8: Overview of the number of negative recommendations by Glass Lewis at AEX and AMX AGMs over the past two years**



<sup>37</sup> <http://www.glasslewis.com/about-glass-lewis/>

### 3. CORPORATE GOVERNANCE DEVELOPMENTS

#### 3.1 Proposal for revision of the Dutch Corporate Governance Code

The Dutch Corporate Governance Code Monitoring Committee published a consultation document on proposals for revision of the Dutch Corporate Governance Code in February 2016. The consultation period lasted for eight weeks, from 11 February to 6 April 2016<sup>38</sup>.

The proposals for revision can be summarised in seven themes: i) more focus on long-term value creation; ii) risk management reinforcement; iii) new accents in effective management and supervision; iv) the introduction of culture as an explicit element of corporate governance; v) remuneration: cleaned up and simplified; vi) relationship with shareholders; and, vii) clarification of requirements regarding the quality of the explanation.

##### **Eumedion reaction at the proposed revisions of the Code**

Eumedion<sup>39</sup> expressed concerns regarding the proposals to include more representatives of major shareholders in the Supervisory Board, to reward supervisory directors with stock options and to allow supervisory directors with a personal or financial interest to sit on a special transaction or takeover committee. Eumedion also distanced itself from the proposed deletion of a series of remuneration provisions, stating that “for shareholders and other stakeholders it is very important that the supervisory board when implementing and rendering extern[al] accountability on the remuneration policy complies with the generally accepted principles for a remuneration policy respectively the remuneration report.”

Eumedion was positive about the proposals to focus more on long term value creation, internal culture, the scope extension of the “in control” statement, the emphasis on proper succession planning and the increase in the number of provisions concerning the internal audit function.

In February 2016 the Monitoring Committee Corporate Governance Code published their “Rapport Monitoring Boekjaar 2014”<sup>40</sup>. The report includes an evaluation of compliance with the Corporate Governance Code, an evaluation of the effectiveness of the Code and an assessment of next steps.

#### 3.2 Consultation on the application of the Code to one-tier boards

On the 3 August 2016 the Monitoring Committee Corporate Governance Code published a proposal<sup>41</sup> for the application of the Revised Dutch Corporate Governance Code by companies with a one-tier board. All stakeholders and interested parties are invited to respond to this consultation document during the consultation period, which will last for eight weeks, from 3 August through 28 September 2016. “Due to the increase in the number of listed companies with a one-tier board, the Committee deems it useful to further clarify how the Code can be applied by such companies. The Committee proposes to add a principle and best practices provisions to the revised Code and, in addition, to publish a document containing additional guidance. This guidance elaborates on the way in which the Code can be applied by companies with a one-tier board.”

<sup>38</sup> <http://www.commissiecorporategovernance.nl/nieuws/2742/Publicatie-Consultatiedocument-herziening-Corporate-Governance-Code-op-11-februari-2016> and <http://www.commissiecorporategovernance.nl/?page=2840>

<sup>39</sup> <http://www.eumedion.nl/en/public/knowledgenetwork/consultations/2016-04-comments-revision-cg-code.pdf>.

<sup>40</sup> <http://www.commissiecorporategovernance.nl/download/?id=2766>

<sup>41</sup> <http://www.commissiecorporategovernance.nl/?page=3075>.



Germany







# Germany Highlights

- ▶ The average quorum at the AGMs of DAX companies increased from 54.88% in 2015 to 59.85% in 2016, while the average shareholder vote participation level at the AGMs of MDAX companies increased from 67.99% in 2015 to 71.68% in 2016.
- ▶ During the 2016 AGM season one DAX company saw a board-proposed resolution rejected by shareholders (Deutsche Bank AG). In the MDAX, one company saw two board-proposed resolutions rejected by shareholders (TAG Immobilien AG).
- ▶ In the DAX, 18 companies saw at least one resolution receive more than 10% shareholder opposition in 2016. The most commonly contested resolutions related to supervisory board elections followed by resolutions to approve the remuneration system for executives. The third most commonly contested resolutions related to the discharge of supervisory board and management board members.
- ▶ During the 2016 AGM season, nine out of the 30 DAX companies received at least one negative recommendation from ISS. In comparison, eight companies in the DAX received a negative recommendation from Glass Lewis and seven companies received a negative recommendation from DSW.

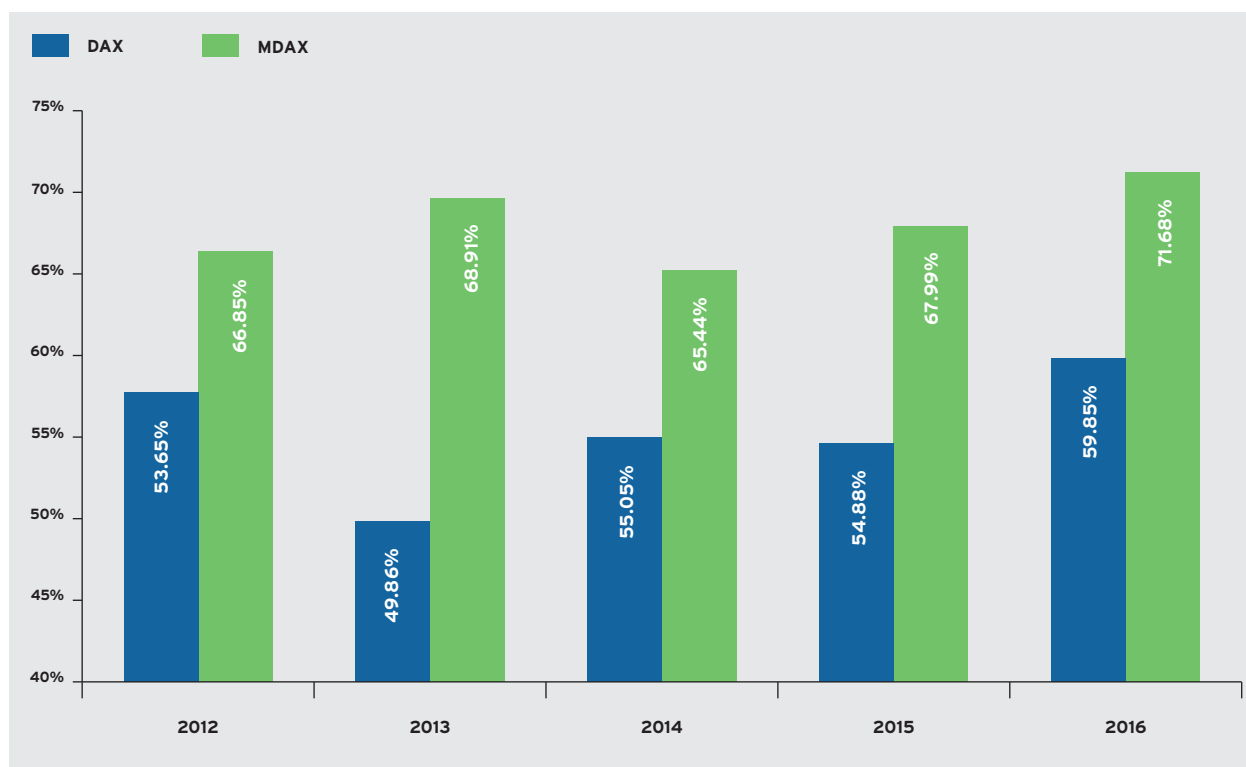
# 1. VOTING IN GERMANY

## 1.1 Quorum overview

Georgeson has reviewed the quorum levels of the 30 companies which comprise the DAX Index<sup>1</sup> and the 50 companies which comprise the MDAX Index<sup>2</sup> over the past five years.

The average participation level for the DAX increased by 4.97 percentage points from 54.88% in 2015 to 59.85% in 2016, while the average participation level in the MDAX increased by 3.69 percentage points from 67.99% in 2015 to 71.68% in 2016<sup>3</sup>.

**Graph 1: Shareholder attendance levels: comparison of DAX and MDAX between 2012 and 2016**

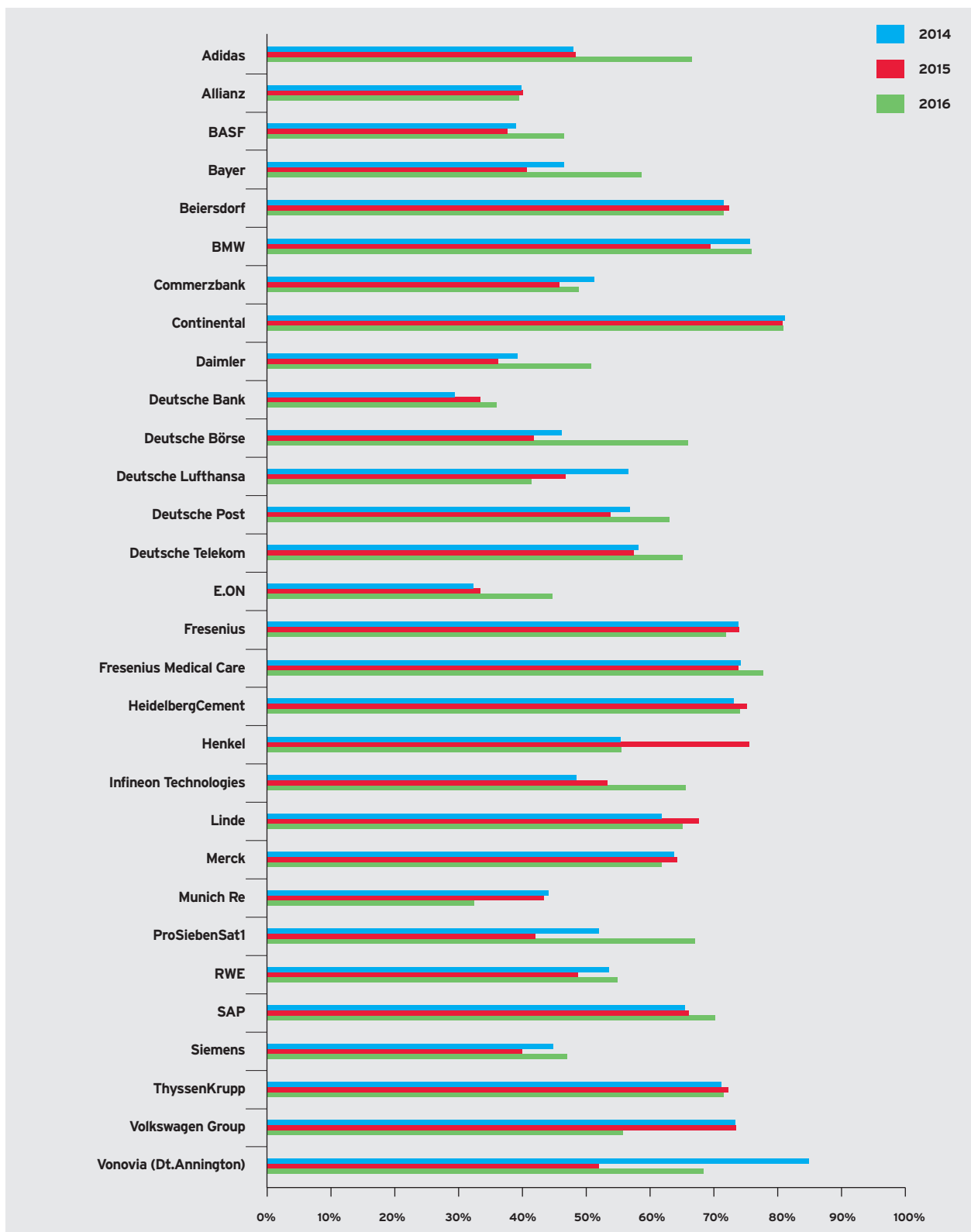


<sup>1</sup> The DAX Index tracks the segment of the largest and most important companies on the German equities market. It contains the shares of the 30 largest and most liquid companies admitted to the FWB Frankfurt Stock Exchange in the Prime Standard segment. The DAX represents about 80% of the aggregated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

<sup>2</sup> The MDAX tracks the segment of mid-sized industrials. It contains the shares of the 50 companies listed in the Prime Segment of Deutsche Boerse, which follow the 30 DAX companies with regard to market cap and stock exchange turnover. See here: [http://dax-indices.com/EN/MediaLibrary/Document/FS\\_MDAX.pdf](http://dax-indices.com/EN/MediaLibrary/Document/FS_MDAX.pdf)

<sup>3</sup> Our sample of the MDAX for 2016 excludes Stada AG as their AGM was moved from 9 June 2016 to 26 August 2016.

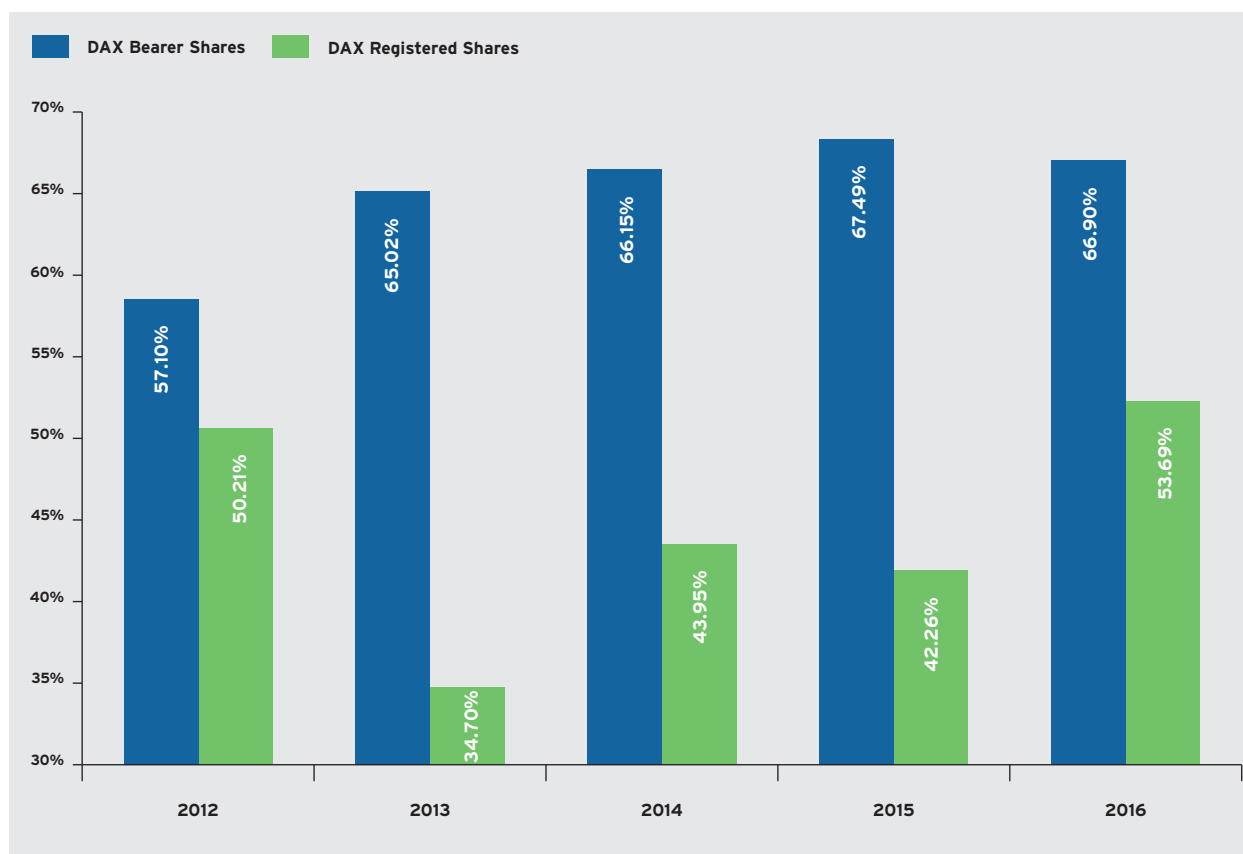
Graph 2: Shareholder attendance levels: comparison since 2014 of the 30 DAX companies surveyed (displayed alphabetically)



### 1.1.1 Registered shares vs. bearer shares

While the average participation level of all 30 DAX companies (bearer and registered shares) increased by 4.97 percentage points compare to 2015, the participation level for the 16 DAX companies with registered shares increased more significantly by 11.43 percentage points, (from 42.26% in 2015 to 53.69% in 2016).

**Graph 3: Shareholder attendance levels: comparison between DAX companies with registered shares vs. bearer shares between 2012 and 2016**



### Legal developments

The German "Kleinanlegerschutzgesetz"<sup>4</sup> clarifies since July 2015 that the beneficial owner is responsible for the notification of crossing ownership thresholds (and not the registered bank or custodian holding the shares on behalf of a client).

A 2012 ruling of the Higher Regional Court (OLG) in Cologne had previously implied that not only the beneficial owner of shares but also the registered nominee (such as a custodian bank) had a co-responsibility to ensure that the issuer and subsequently the market would be notified of crossing disclosure thresholds. This led, to the imposition of temporary registration requirements in the issuers' share register for shareholders who wanted to vote at an upcoming shareholder meeting. As processes differed and manual intervention was often required, some share positions were unavailable for settlement while the holder of the voting rights appeared on the register (instead of the custodian bank). The fear of share blocking led a number of foreign shareholders not to exercise their voting rights for their full share positions in German companies with registered shares.

<sup>4</sup> [https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Meldung/2015/meldung\\_150710\\_kleinanlegerschutzgesetz.html](https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Meldung/2015/meldung_150710_kleinanlegerschutzgesetz.html)

While processes were optimized in 2014, a significant increase in shareholder participation was not seen until the clarification through the “Kleinanlegerschutzgesetz” in July 2015 which had its first major impact in late 2015 and throughout the 2016 proxy season.

### Article provisions

While the generalised issue relating to companies with registered shares has now been resolved from a legal standpoint, two companies in the DAX index (with registered shares) continue to have depressed quorum levels likely due to provisions in their articles of association: Allianz SE and Munich RE. Both companies stipulate in their articles of association that nominees above a certain level must disclose to the issuer who the underlying beneficial owners are in order to maintain their voting rights.

In the case of Allianz SE<sup>5</sup>, nominees are allowed to register their position without providing any further disclosure for holdings of up to 0.2% of share capital. Registered positions in the name of the nominee above 0.2%, but below 3%, are permitted as long as the nominee is willing to disclose to Allianz who the beneficial owners are. Holdings of 3% or above need to be registered in the beneficial owner's name.

The articles of association of Munich RE<sup>6</sup> only allow registration in the nominee's name up to 0.1%. Holdings above 0.1%, but below 3%, obligate the holder to disclose who the beneficial owners are if requested. Similarly to Allianz SE holdings of 3% or above must be registered in the beneficial owner's name.

As a result both companies have not benefited from the quorum increases seen at other companies with registered shares. Allianz SE's quorum dropped by 0.6 percentage points from 40.05% in 2015 to 39.45% in 2016. Munich RE's quorum dropped by 11 percentage points from 43.40% in 2015 to 32.40% in 2016.

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<sup>5</sup> [https://www.allianz.com/v\\_1441272453000/media/investor\\_relations/en/corporate\\_governance/statutes/1506\\_statutes.pdf](https://www.allianz.com/v_1441272453000/media/investor_relations/en/corporate_governance/statutes/1506_statutes.pdf)

<sup>6</sup> [https://www.munichre.com/site/corporate/get/documents\\_E1059786179/mr/assetpool.shared/Documents/O\\_Corporate%20Website/5\\_Investor%20Relations/satzung\\_en.pdf](https://www.munichre.com/site/corporate/get/documents_E1059786179/mr/assetpool.shared/Documents/O_Corporate%20Website/5_Investor%20Relations/satzung_en.pdf)

## 1.2 Rejected resolutions

We have reviewed the meeting results of the 30 DAX and 50 MDAX constituents' AGMs held between 1 August 2015 and 31 July 2016.

### DAX

In the DAX, one management proposed resolution was rejected by shareholders during the 2016 proxy season.

#### Deutsche Bank

Deutsche Bank faced significant shareholder opposition at its 6 April 2016 AGM after having reported a €6.8bn loss for the financial year 2015<sup>7</sup>.

In April 2015 Libor-related settlements reached €2bn<sup>8</sup> and the company announced in October 2015<sup>9</sup> that dividends would be suspended for at least two years to allow the company to recover financially and to set money aside for any future claims resulting from ongoing legal investigations against the bank.

At their 2016 AGM the proposal to approve a new executive remuneration system failed to receive shareholder approval with 52% against votes. Taking the abstentions into account, more than 60% of voting shareholders did not support the newly proposed remuneration system.

Furthermore, Deutsche Bank received significant against votes on the discharge of its supervisory board members (with more than 13% against votes for each member) and management board members (with up to 16% against votes for each member).

In addition to its AGM management proposals, Deutsche Bank received four shareholder proposals in advance of the AGM which all requested a special audit to ascertain if staff had committed criminal negligence (causing losses to Deutsche Bank's shareholders). One out of the four shareholder proposals received significant support with 46.4% of votes in favour of the special audit. The other three shareholder proposals received around 9% of votes in favour.<sup>10</sup>

### MDAX

In the MDAX, two management proposed resolutions were rejected by shareholders during the 2016 proxy season, both at TAG Immobilien AG.

#### TAG Immobilien AG

TAG Immobilien proposed two authorisations to issue shares as part of their 2016 AGM agenda.

- Resolution 7 requested shareholder approval for a new authorized capital to issue shares representing up to 19.8% of share capital. The exclusion of pre-emptive rights across all outstanding authorizations of the same kind was to be capped at 20% of share capital.
- Resolution 8 would have allowed the board to create a new conditional capital of up to 14.6% ISC, with the exclusion of pre-emptive rights capped at 10% of share capital.

While the exclusion of pre-emptive rights for any share issuance requests capped at 20% generally meets the guidelines of the majority of institutional investors, the combined authorisations would have allowed an exclusion of pre-emptive rights of up to 30%, which is in breach of most investor and proxy advisor guidelines.

Both resolutions were rejected at the AGM as they did not meet the required 75% majority and received 60.9% and 59.7% support respectively.

<sup>7</sup> <http://www.ft.com/fastft/2016/01/28/deutsche-bank-reports-e6-8bn-net-loss/>

<sup>8</sup> <http://www.wsj.com/articles/deutsche-bank-expects-1q-profit-despite-litigation-costs-1429724845>

<sup>9</sup> [https://www.db.com/newsroom\\_news/2015/img/3Q2015\\_Earnings\\_Release\\_engl.29.10.2015.pdf](https://www.db.com/newsroom_news/2015/img/3Q2015_Earnings_Release_engl.29.10.2015.pdf)

<sup>10</sup> [https://agm.db.com/en/docs/HV2016\\_Abstimmungsergebnisse\\_en.pdf](https://agm.db.com/en/docs/HV2016_Abstimmungsergebnisse_en.pdf)

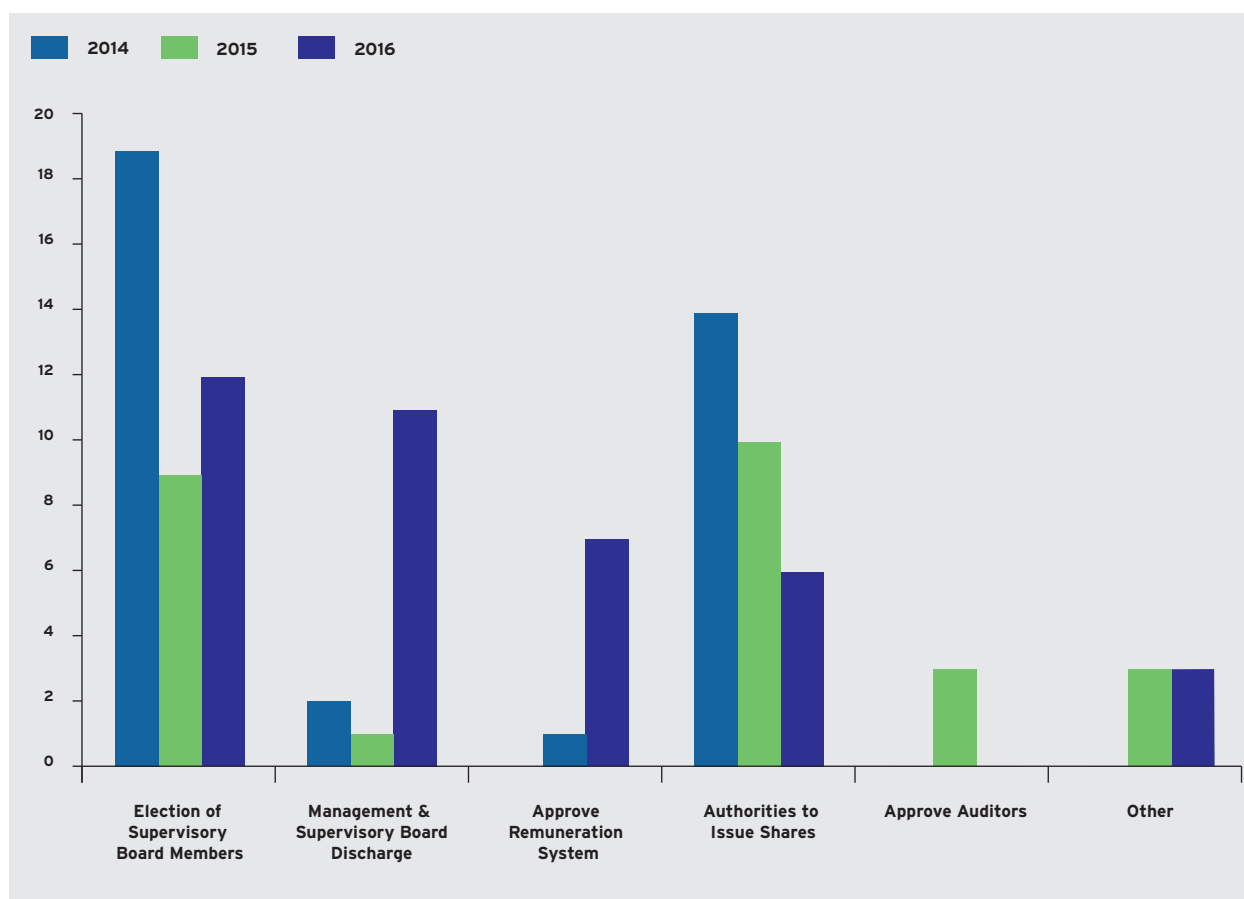
### 1.3 Contested resolutions

Among our sample of 30 DAX companies that held their AGM between 1 August 2015 and 31 July 2016, we saw an increase in the number of companies and number of resolutions that received more than 10% votes against.

In 2016 18 companies saw at least one resolution receive more than 10% shareholder opposition, compared to 14 companies in 2015. The total number of resolutions that received more than 10% opposition amounted to 39, compared to 27 resolutions in 2015.

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

**Graph 4: Main resolutions which received more than 10% negative votes at the 30 DAX AGMs surveyed (broken down by resolution type)**



The most commonly contested resolutions related to supervisory board member elections, with 12 resolutions receiving more than 10% negative votes. The second most commonly contested resolution was the approval of the remuneration system for executives, followed by the discharge of the management board and supervisory board.

### 1.3.1 Supervisory Board member elections

During the 2016 proxy season, 21 of the 30 DAX companies had supervisory board member elections on their agenda, which accounted for a total of 67 individual resolutions. This compares to 16 companies in 2015 and a total of 51 individual resolutions.

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 are concerns relating to the overall independence of the supervisory board (including for tenure reasons) and overboarding concerns.

As up to 50% of the supervisory board in Germany is required by law<sup>11</sup> to comprise employee representatives (elected separately by employees of the company) many institutional investors require at least 1/3 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. While some investors and proxy advisors only consider mandates at publicly listed companies, others also state that they count significant positions at non-listed companies or foundations. 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.

Among all DAX AGMs, seven companies recorded a total of twelve supervisory board candidates receiving more than 10% opposition on their election.

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

- RWE (Guenther Schartz - 65.7%, Peter Ottmann - 66.9%; Ullrich Sierau - 71.6% & Dagmar Muehlenfeld - 77.7% in favour)
- Fresenius Medical Care (Dieter Schenk - 70.8%; Rolf Classon - 85.2% & Gerd Krick - 86.0% in favour)
- Adidas (Ian Galiene - 84.4% in favour)

### 1.3.2 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>12</sup>) in August 2009, the majority of 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 (as happens in Switzerland, for instance). 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 is long-term oriented.

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<sup>11</sup> <http://www.gesetze-im-internet.de/mitbestg/>

<sup>12</sup> [https://www.bundesanzeiger-verlag.de/fileadmin/Betrifft-Unternehmen/Arbeitshilfen/Transparenz/VorstAG\\_Managegehaelter.pdf](https://www.bundesanzeiger-verlag.de/fileadmin/Betrifft-Unternehmen/Arbeitshilfen/Transparenz/VorstAG_Managegehaelter.pdf)



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.

While in the past votes on the executive remuneration system have typically received high approval rates (well above 90%), in 2016 the approval rates for almost all companies was below that threshold. 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.

So far no binding vote on executive remuneration exists in Germany. Draft legislation, known as “Gesetz zur Verbesserung der Kontrolle der Vorstandsvergütung und zur Änderung weiterer aktienrechtlicher Vorschriften” (VorstKoG) which had been approved by the Bundestag (the lower chamber of the German Parliament) and which would have introduced a binding shareholder vote on executive remuneration, was voted down in the Bundesrat (the upper chamber) in September 2013.

Among DAX AGMs seven proposals (out of a total of eight) to approve the remuneration system received more than 10% opposition during the 2016 proxy season, compared to only one in 2015.

The companies with the highest level of opposition on the approval of the remuneration system among our sample were:

- > Deutsche Bank (48.1% in favour)
- > SAP (54.7% in favour)
- > Fresenius Medical Care (76.0 % in favour)
- > Bayer (81.1% in favour)
- > Deutsche Börse (84.8% in favour)

### 1.3.3 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.

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.

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

### 1.3.4 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 5 years. These authorities are split between “authorised” and “conditional” capital, but are subject to the same overall dilution limits.

Even though a supermajority of 75% is required to pass this kind of resolution, most issuers passed these resolutions comfortably, in particular when the exclusion of pre-emptive rights was limited to 20% of the issued share capital.

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 continue to accept the exclusion of pre-emptive rights for up to 20% of the issued capital over a period of 5 years in the German market, in recent years investor attitudes towards share issuance authorities (in particular without pre-emptive rights) have become significantly stricter. Additionally, investors increasingly consider 5-year terms to be excessive for this kind of proposal with some investors requiring a strict 18 month limit for this kind of authorisation.

Among DAX AGMs three share capital authorizations received more than 10% opposition during the 2016 proxy season, which is the same number as in 2015.

The companies with the highest level of opposition on share issuance authorities among our sample were:

- > Linde (78.2% in favour)
- > ProSiebenSat1 Media (87.5% in favour)
- > Vonovia (86.7 % in favour)

### 1.3.5 Issuance of warrants and bonds

Although the issuance of warrants and bonds are proposed as separate resolutions, they are generally reviewed by investors in conjunction with other resolutions to issue shares, as investors take an overall view of all possible dilution mechanisms.

In addition to the resolution allowing companies to issue convertible instruments, companies are required to propose a separate linked resolution to issue conditional capital in order to fund those convertible instruments.

While examining the conditions under which these instruments can be issued, investors tend to apply the same overall dilution guidelines to the maximum number of shares that could be issued through the proposed conversion rights.

Among DAX AGMs three conditional capital resolutions received more than 10% opposition in 2016, the same number as in 2015:

- > Vonovia (87.2% in favour)
- > Lufthansa (88.1% in favour)
- > ProSiebenSat1 Media (88.2% in favour)

## 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.

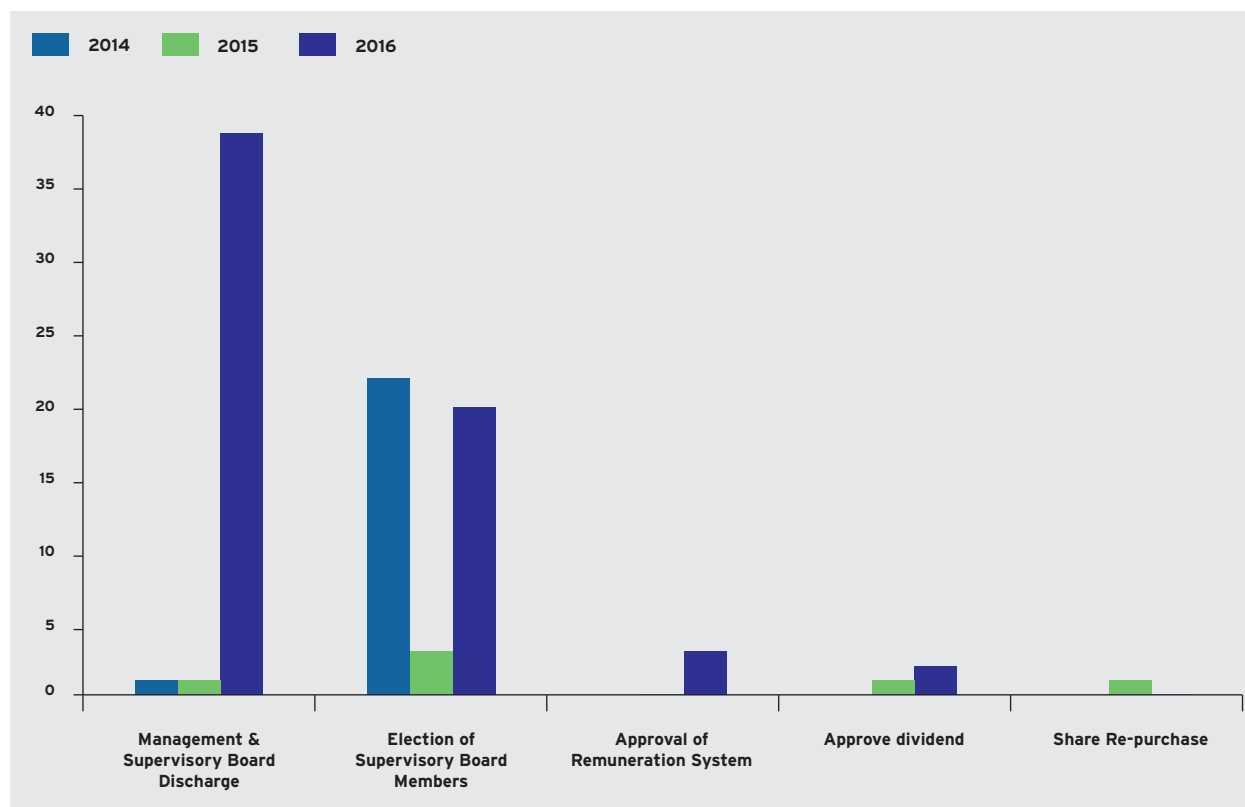
### 2.1 ISS

Institutional Shareholder Services<sup>13</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers. ISS has over 1,600 clients, and approximately 900 employees spread across 18 offices in 12 countries and covers approximately 39,000 meetings in 115 countries. They were acquired by Vestar Capital Partners in March 2014. In Europe they have offices in Berlin, Brussels, Copenhagen, London, Paris and Stockholm.

During the 2016 proxy season, nine 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 64, compared to only 6 in 2015. The difference is mainly due to the Volkswagen AGM where the discharge was proposed for each supervisory and management board member individually and ISS recommended against 43 resolutions.

Below is an overview of the negative recommendations by ISS at DAX AGMs in 2014, 2015 and 2016. The graph shows that the 2016 proxy season saw the highest number of negative recommendations from ISS in the last three years.

**Graph 5: Overview of the number of negative recommendations by ISS at DAX AGMs over the past three years**



<sup>13</sup> <http://www.issgovernance.com/about/about-iss/>

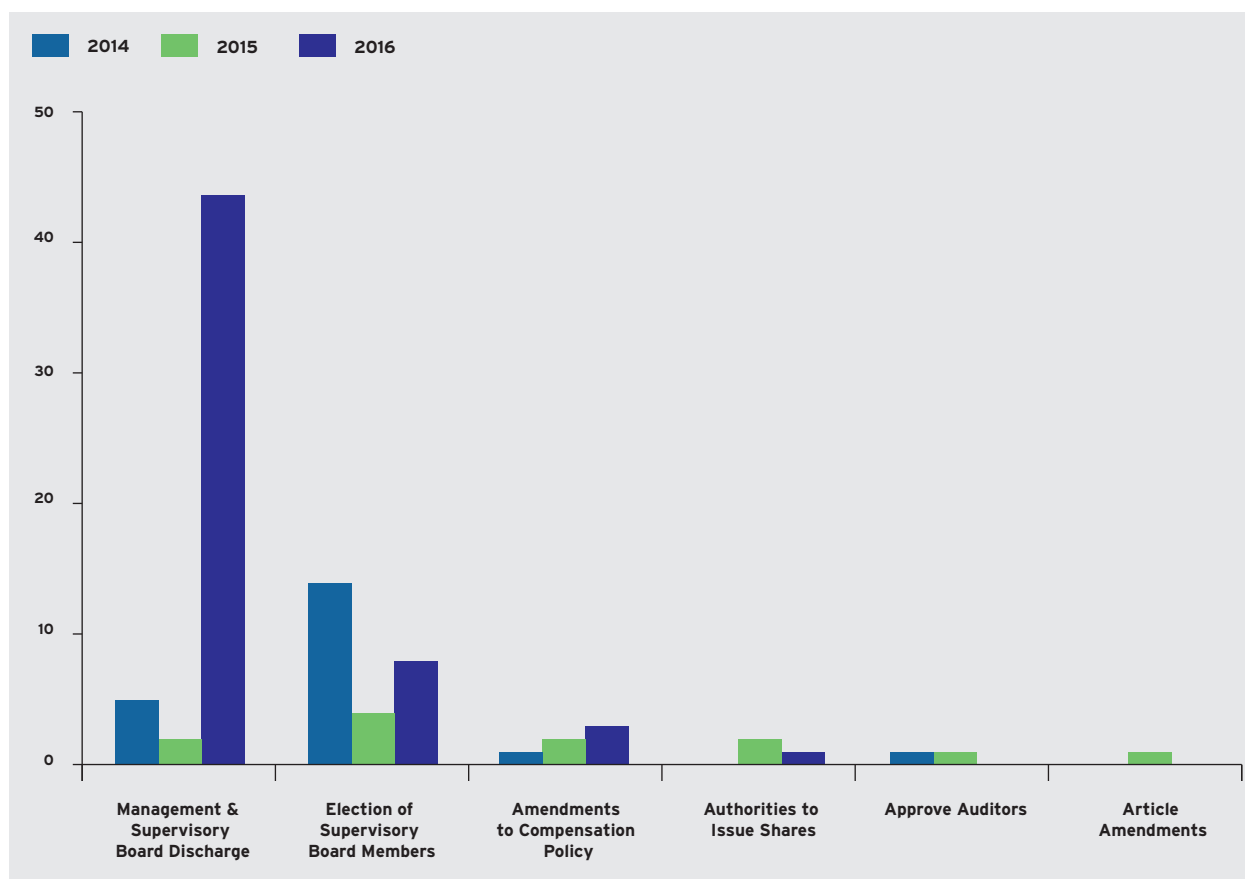
## 2.2 Glass Lewis

Glass Lewis<sup>14</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. Glass Lewis has over 1,200 clients and more than 360 employees. They cover more than 20,000 meetings in 100 countries. They are owned by the Ontario Teachers' Pension Plan Board and the Alberta Investment Management Corporation. In Europe they have offices in London, Limerick and Karlsruhe (since their acquisition of IVOX in June 2015).

During the 2016 proxy season, 8 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 client's to vote against amounts to 56, compared to only 12 in 2016. The difference is mainly due to the Volkswagen AGM where the discharge was proposed for each supervisory and management board member individually and Glass Lewis recommended against 39 resolutions.

Below is an overview of the negative recommendations by Glass Lewis at DAX AGMs in 2016. In 2016 the discharge of supervisory board members received the highest number of negative recommendations, followed by recommendations against the discharge of members of the management board and the election of supervisory board members.

**Graph 6: Overview of the number of negative recommendations by Glass Lewis at DAX AGMs over the past three years**



<sup>14</sup> <http://www.glasslewis.com/about-glass-lewis/>

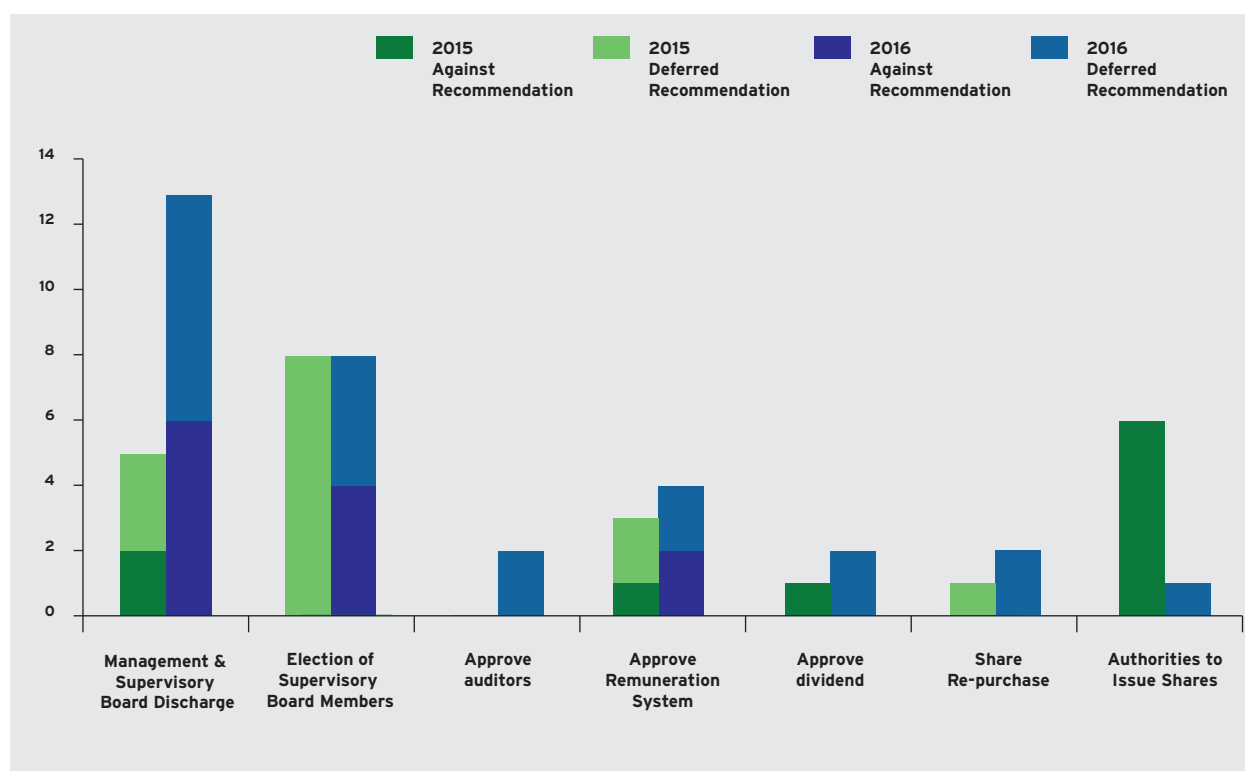
## 2.3 DSW

The Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW) is Germany's oldest and largest shareholder association.<sup>15</sup> They are also members of the Expert Corporate Governance Service (ECGS)<sup>16</sup>, a partnership of independent local proxy advisors.

Founded in 1947, DSW now has about 25,000 members, which include 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. However, in a limited number of cases, where they plan on requesting additional information at the AGM itself, they issue a "deferred recommendation" alert in advance and then decide on how to vote on behalf of their members at the AGM itself.

During the 2016 proxy season, seven out of the DAX index received at least one against recommendation from DSW and a further nine companies at least one "deferred recommendation". The majority of against recommendations related to authorities to issue shares. The most "deferred recommendations" were issued in connection with the election of supervisory board members.<sup>17</sup>

**Graph 7: Overview of the number of negative & deferred recommendations issued by DSW per resolution type at DAX AGMs since 2015**



<sup>15</sup> <http://www.dsw-info.de/Englisch.943.0.html>

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

<sup>17</sup> <http://www.hauptversammlung.de/dax.html>

## 3. CORPORATE GOVERNANCE DEVELOPMENTS

### 3.1 The German Corporate Governance Code

The German Corporate Governance Code Commission has announced that Amendments to the Code likely for 2017, after a two-year pause<sup>18</sup>. The "Regierungskommission Deutscher Corporate Governance Kodex" (German Corporate Governance Code Commission) is currently discussing possible amendments to the Code, to be implemented in 2017. Amendments may include that the Supervisory Board report should state the number of independent members - to be determined by the Supervisory Board - and the names of members deemed independent. A further recommendation under discussion concerns communication between investors and the Supervisory Board. According to the Commission, quoting the German Public Limited Companies Act, this is exclusively a Management Board task, while at the same time there are questions a German Management Board cannot answer because factual responsibility lies with the Supervisory Board alone. A recommendation in the Code may clarify that discussions concerning issues specific to the Supervisory Board are permitted with its Chairman.

In addition, the German Corporate Governance Code Commission appointed five new members, in order to comply with its internal rules in place since 2014, which state that representatives of companies are to form the majority of commission members. Michael Guggemos (CEO of Hans-Böckler-Stiftung), Margarete Haase (Member of the Management Board of Deutz AG) and Wulf von Schimmelmann (Chairman of the Supervisory Board of Deutsche Post AG), were appointed with effect from 1 February 2016. In addition, Claudia Kruse (Managing Director Sustainability & Governance at APG Asset Management) and Jens Wilhelm (Chief Investment Officer of Union Asset Management) were appointed to the Code Commission as of 1 March 2016.

### 3.2 Gender quota

Since 1 January 2016, listed companies in Germany are required to comply with a gender quota of 30% for their supervisory board and have to gradually comply with this rule when proposing new members. Non-compliance will now lead to companies having to void elections that are not in line with the new law. The law<sup>20</sup> implementing those changes was passed by the German Bundestag last year, on 6 March 2015. In the public sector, boards of governors also have to apply the same rule as long as the German government is entitled to a minimum of three seats on such a board.

A number of listed companies in Germany have not yet reached the minimum of 30 percent gender quota, even though a significant number of female representatives have been proposed at AGMs this year. The lack of full compliance with the new rules is partially due to the requirement of large German companies to have up to 50% employee representatives on the board. It appears that among employee representatives (which the company cannot influence) female participation is lagging compared to shareholder-elected representatives. In terms of shareholder representatives, the majority of larger German companies have met the required 30% quota or have put plans into place to comply in the coming years, in line with supervisory board seats becoming available due to expiration of regular terms or resignations.

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<sup>18</sup> <http://www.dcgk.de/en/press/details/id-15th-german-corporate-governance-code-conference.html>

<sup>19</sup> <http://www.dcgk.de/en/press/details/five-members-appointed-to-the-regierungskommission.html>

<sup>20</sup> <http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=213364.html>





Switzerland







# Switzerland Highlights

- The average quorum at the AGMs of SMI companies decreased from 64.22% in 2015 to 62.96% in 2016. The 2016 level is nonetheless higher than the average quorum in 2012, 2013 and 2014.
- In the SMI and SMI MID no companies saw resolutions rejected by shareholders during the 2016 AGM season.
- In the SMI two companies did not provide detailed voting results on their website: Compagnie Financière Richemont SA and Swatch Group SA (however, they confirmed that all resolutions were approved).
- In the SMI, 12 companies saw at least one resolution receive more than 10% shareholder opposition in 2016. The most commonly contested resolutions were director elections. The second most commonly contested resolutions were voluntary advisory votes on the remuneration report, followed by mandatory binding votes on remuneration budgets.
- During the 2016 AGM season, six out of the 20 SMI companies received at least one negative recommendation from ISS. In comparison, 11 SMI companies received a negative recommendation from Glass Lewis and 18 companies received a negative recommendation from Ethos.

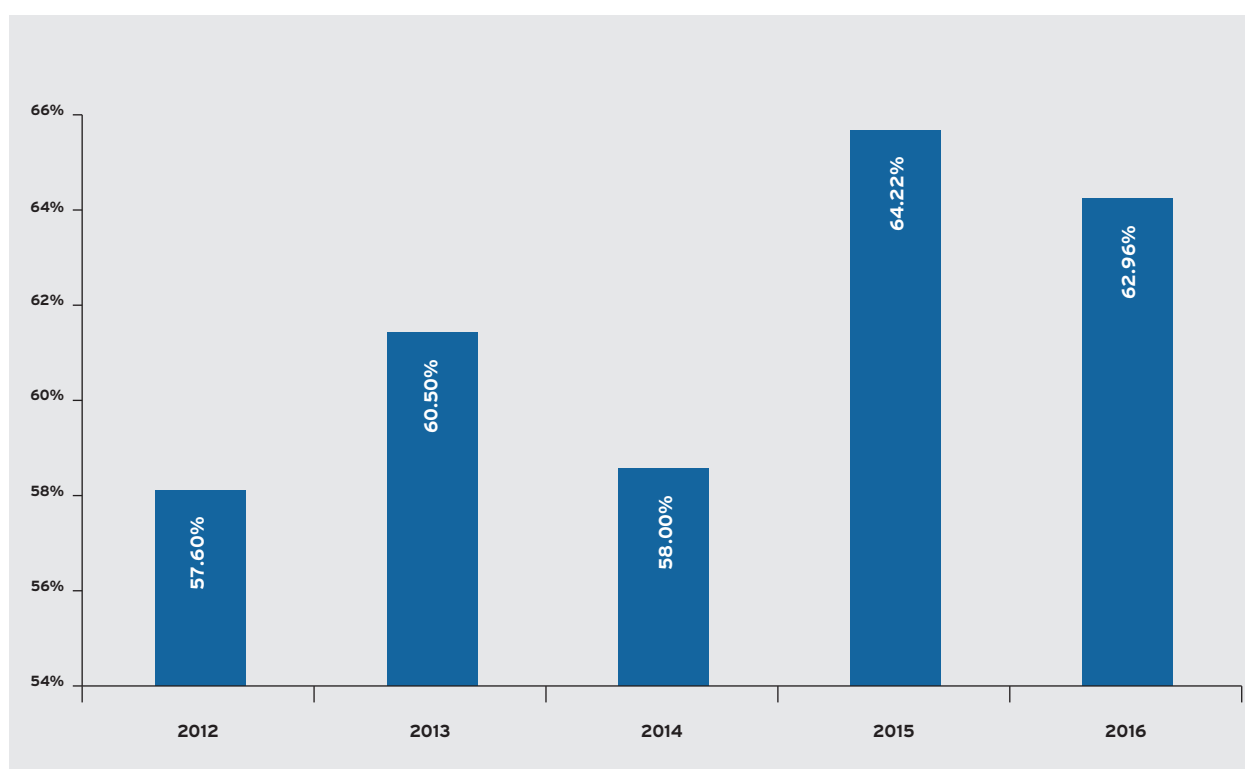
# 1. VOTING IN SWITZERLAND

## 1.1 Quorum overview

Georgeson has reviewed the quorum levels of the 20 companies which comprise the SMI index<sup>1</sup> over the past five years. We have taken into account companies that held their AGM between 1 August 2015 and 31 July 2016.

The average participation level for the SMI decreased by 1.3 percentage points from 64.2% in 2015 to 62.9% in 2016. In contrast the average quorum level in the SMI MID index<sup>2</sup> (SMIM) was 70.3%.

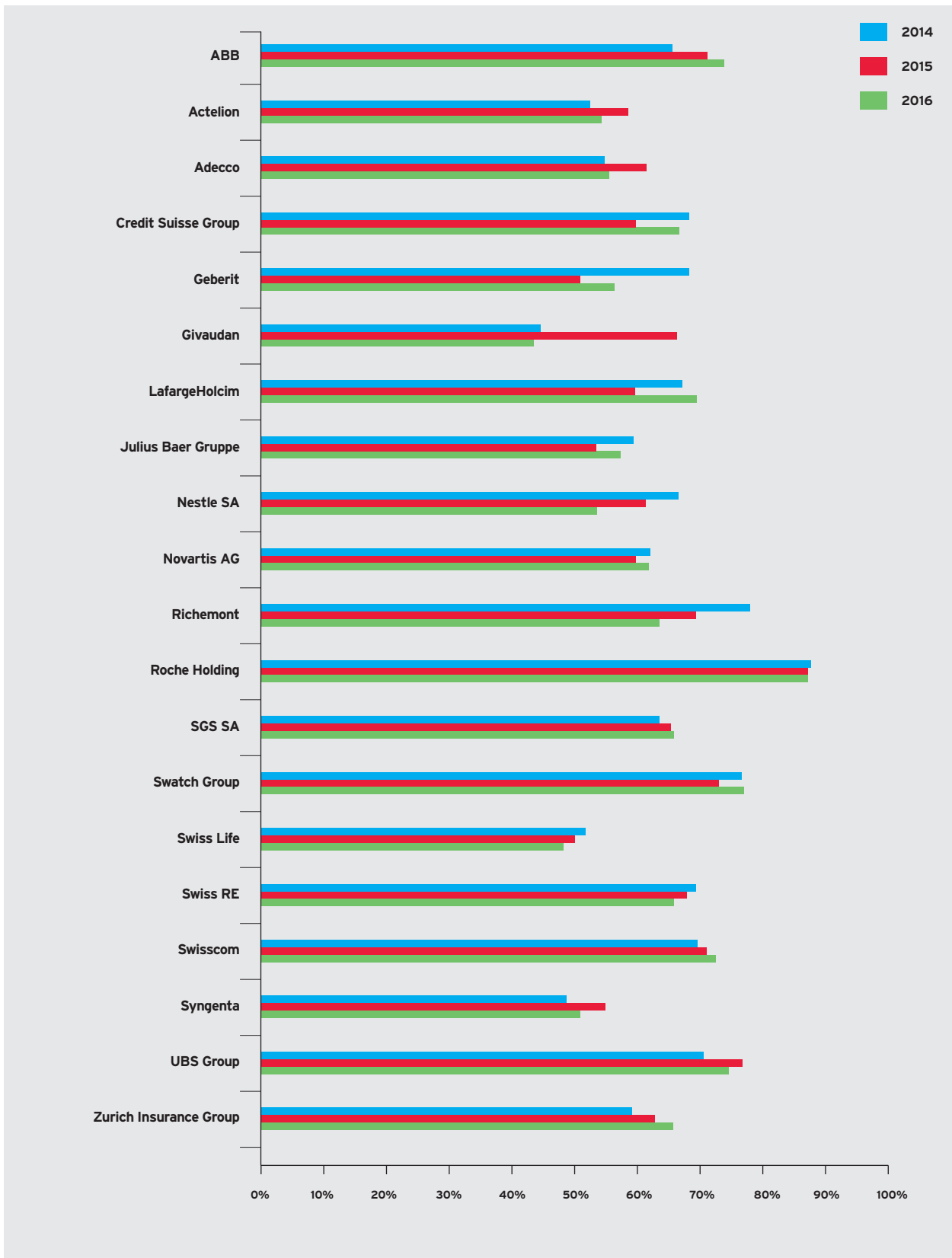
**Graph 1: Shareholder attendance levels of the SMI between 2012 and 2016**



<sup>1</sup> 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 85% 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)

<sup>2</sup> 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). Our sample excludes Sika, Swiss Prime Site and Sunrise all of whom had not published their attendance quorum at the time of our analysis.

Graph 2: Shareholder attendance levels at the 20 SMI companies surveyed since 2014



## 1.2 Rejected resolutions

### SMI

Among SMI companies, no management-proposed resolutions were rejected by shareholders during the 2016 proxy season.

### SMI (MID)

Among SMI MID companies, no management-proposed resolutions were rejected by shareholders during the 2016 proxy season. However, a notable AGM in this context was the Sika meeting where one proposal put forward by the controlling shareholder was rejected.

#### Sika

Sika's April 2016 AGM was the third 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 are opposed to the deal as in their view it lacks strategic rationale and excludes 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.

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 and at the 2016 AGM. Therefore all candidates proposed by the board of Sika were elected, while the proposals to remove board members made by the Burkhard-Schenker family both at the AGMs and at the EGM were rejected by shareholders (due to the voting rights cap). This also resulted in none of the counter candidates proposed by the Burkhard-Schenker family being elected<sup>3</sup>

The outcome of the dispute is now in the hands of the Swiss courts, which are expected to decide before the end of the year on the legality of the board's move to limit the family holding's voting rights on decisions material to the future of the company.

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<sup>3</sup> <http://www.sika.com/en/group/investors/general-meetings.html>

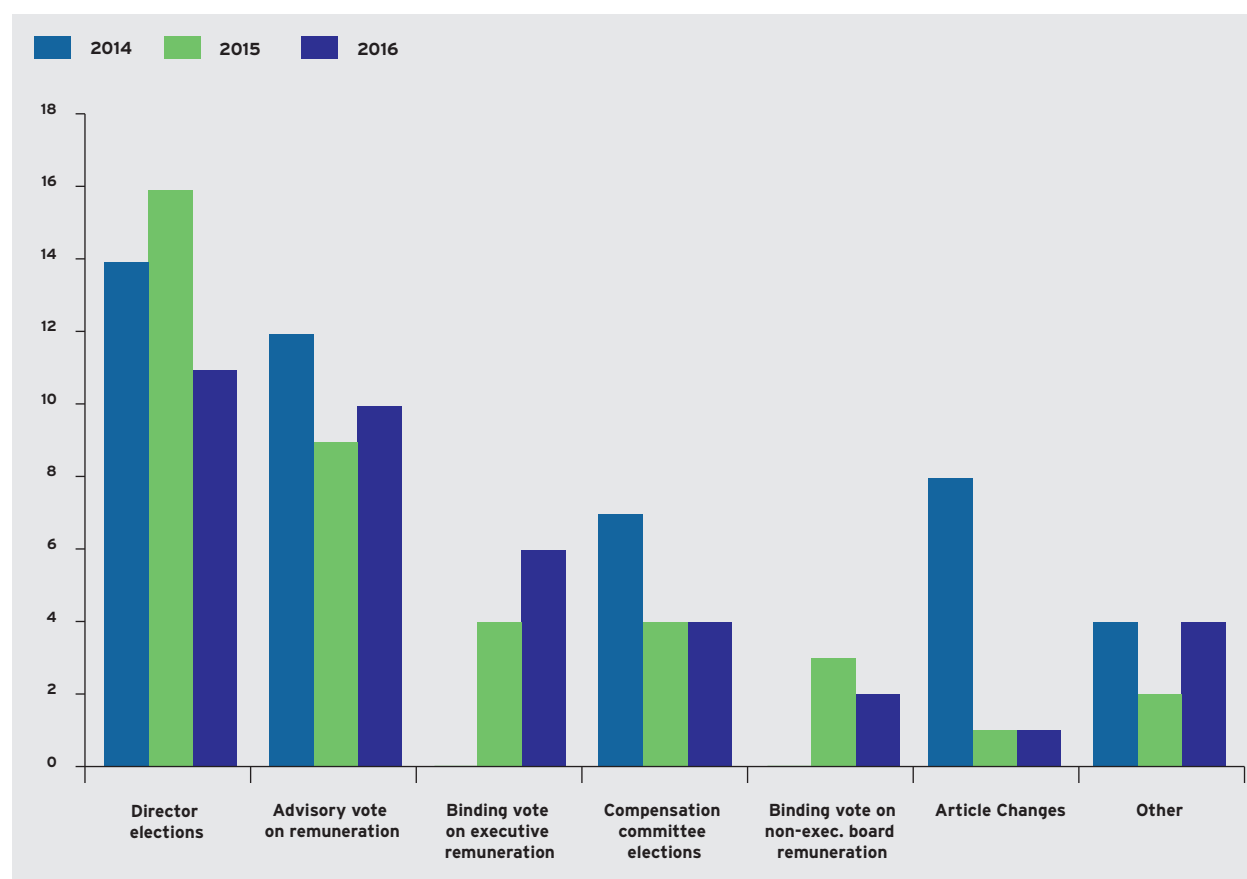
### 1.3 Contested resolutions

The number of SMI companies who saw at least one resolution receive more than 10% shareholder opposition, increased from 11 in 2015 to 12 in 2016. The total number of resolutions that received over 10% opposition amounted to 38 in 2016, compared to 39 in 2015.

It should be noted that all vote results in this section exclude Compagnie Financière Richemont SA<sup>4</sup> and Swatch Group SA<sup>5</sup>, which only confirm that all their resolutions were approved by shareholders but do not provide detailed vote results in the minutes available on their website, as other Swiss companies do.

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

**Graph 3: Main resolutions which received more than 10% against votes at 20 SMI AGMs surveyed (broken down by resolution type)**



The most commonly contested resolutions were director elections with 11 resolutions receiving more than 10% against votes. The second most commonly contested resolutions were relating to the approval of the remuneration report for the past financial year. These were followed by shareholder approval of the maximum remuneration to be paid to the board of directors, and compensation committee elections.

<sup>4</sup> [https://www.richemont.com/images/investor\\_relations/agm/2015/com\\_fin\\_richemont\\_sa\\_minutes\\_of\\_agm\\_held\\_16092015.pdf](https://www.richemont.com/images/investor_relations/agm/2015/com_fin_richemont_sa_minutes_of_agm_held_16092015.pdf)

<sup>5</sup> [http://www.swatchgroup.com/en/content/download/5452/215253/file/2016\\_05\\_11\\_swatchgroup\\_ordinary\\_general\\_meeting\\_decisions\\_en\\_.pdf](http://www.swatchgroup.com/en/content/download/5452/215253/file/2016_05_11_swatchgroup_ordinary_general_meeting_decisions_en_.pdf)

### 1.3.1 Director Elections

As required under the “Minder” Ordinance<sup>6</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 2015, 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 challenge Swiss issuers continue to face is that neither the Swiss Code of Best Practice for Corporate Governance nor Swiss law define when board members can no longer be considered independent based on the number of years they have been serving on a board. It has however become common practice amongst institutional investors to draw a line at 12 years of board membership for a board member to no longer be considered independent. As a consequence, a number of investors voted against board members they did not deem independent.

Further challenges arose from the maximum number of board seats allowed by the articles of several Swiss companies versus the guidelines of a number of international investors. One of the requirements of the “Minder” Ordinance is that the articles of association must limit the external positions that a director may hold, which in a number of cases are higher than the thresholds allowed by some institutional investors.

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

- ABB Ltd. (Frederico Fleury Curado- 62.5% of votes in favour)
- SGS SA (Gerard Lamarche - 72.3%; August Von Finck - 72.5%; Paul Desmarais - 72.9%; Ian Gallienne - 74.4%; August François von Finck - 76.3%; Christopher Kirk - 78.3% & Sergio Marchionne - 79.0% of votes in favour)

### 1.3.2 Advisory vote on remuneration

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 in line with the Swiss Code of Best Practice for Corporate Governance<sup>7</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 (see also paragraph 1.3.3).

Of the 20 SMI companies, 17 companies submitted a vote on their remuneration report during the 2016 proxy season. The only 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 2016 AGM.

Out of the 17 SMI companies who held an advisory shareholder vote on the remuneration report, 10 received opposition in excess of 10%.

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<sup>6</sup> 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>

<sup>7</sup> [http://www.economiesuisse.ch/sites/default/files/downloads/economiesuisse\\_swisscode\\_e\\_web.pdf](http://www.economiesuisse.ch/sites/default/files/downloads/economiesuisse_swisscode_e_web.pdf)

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

- > ABB Ltd. (76.0% of votes in favour)
- > Credit Suisse (79.4% of votes in favour)
- > SGS SA (82.7% of votes in favour)
- > Nestle SA (84.5% of votes in favour)
- > UBS Group (84.8% of votes in favour)

### 1.3.3 Binding vote on 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 and 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 paragraph 1.3.2 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.

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

- > Credit Suisse (83.3% of votes in favour)
- > Swiss RE (88.3% of votes in favour)

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

- > ABB Ltd. (80.9% of votes in favour)
- > Credit Suisse (81.5%% of votes in favour)
- > UBS Group (85.8% of votes in favour)
- > Swiss RE (89.4% of votes in favour)

#### **1.3.4 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:

- > ABB Ltd. (Frederico Fleury Curado - 61.5% of votes in favour)
- > SGS SA (August von Finck - 70.7% and Ian Gallienne - 72.0% of votes in favour)
- > Givaudan (Ingrid Deltenre - 86.7% of votes in favour)



## 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.

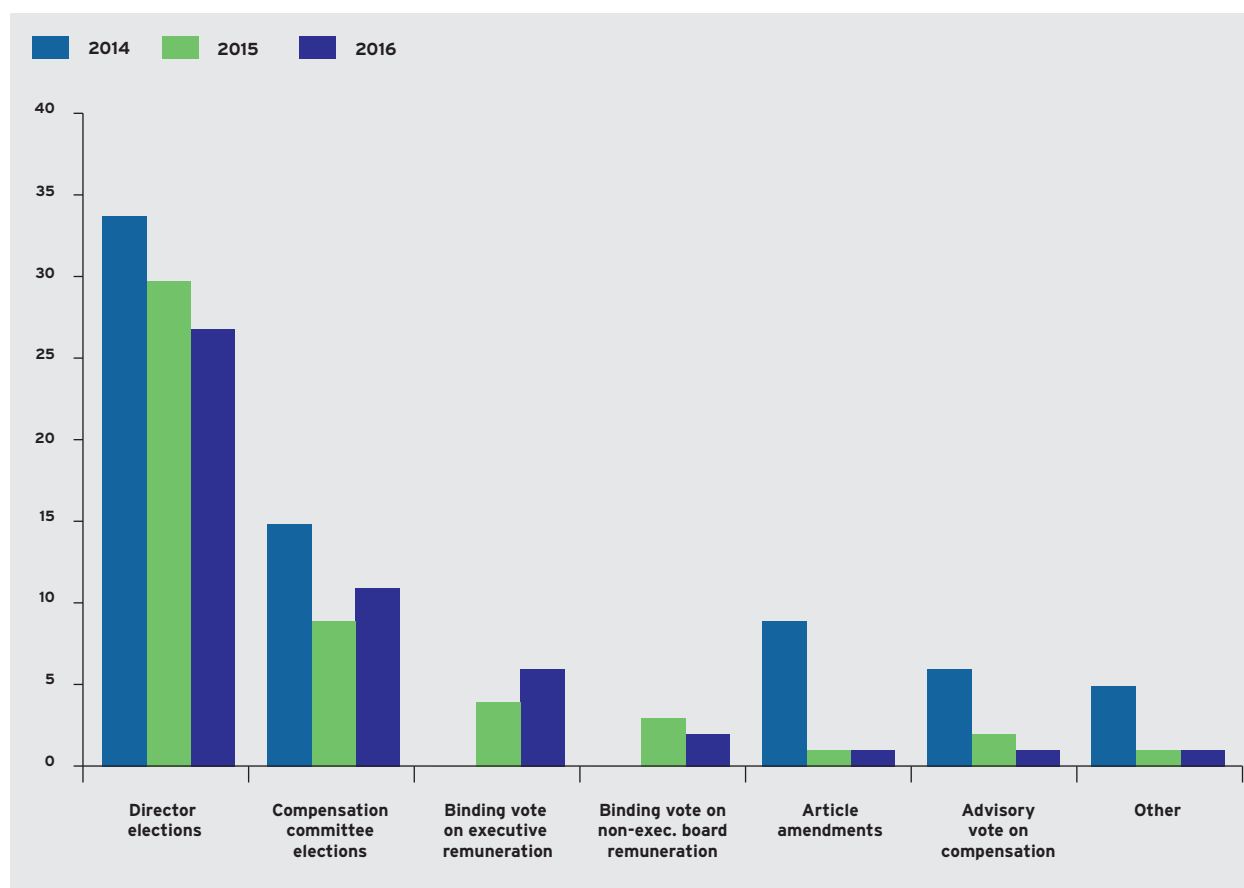
### 2.1 ISS

Institutional Shareholder Services<sup>8</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers. ISS has over 1,600 clients, and approximately 900 employees spread across 18 offices in 12 countries and covers approximately 39,000 meetings in 115 countries. They were acquired by Vestar Capital Partners in March 2014. In Europe they have offices in Berlin, Brussels, Copenhagen, London, Paris and Stockholm.

During the 2016 proxy season, 6 companies out of the SMI received at least one against recommendation from ISS, compared to 9 in 2015. The total number of resolutions where ISS recommended a vote against amounted to 49 in 2016, compared to 50 in 2015.

The graph below shows the number of resolutions which received against recommendations by ISS in 2014, 2015 and 2016 (grouped by resolution type).

**Graph 4: Overview of the number of negative recommendations by ISS at SMI AGMs over the past three years**



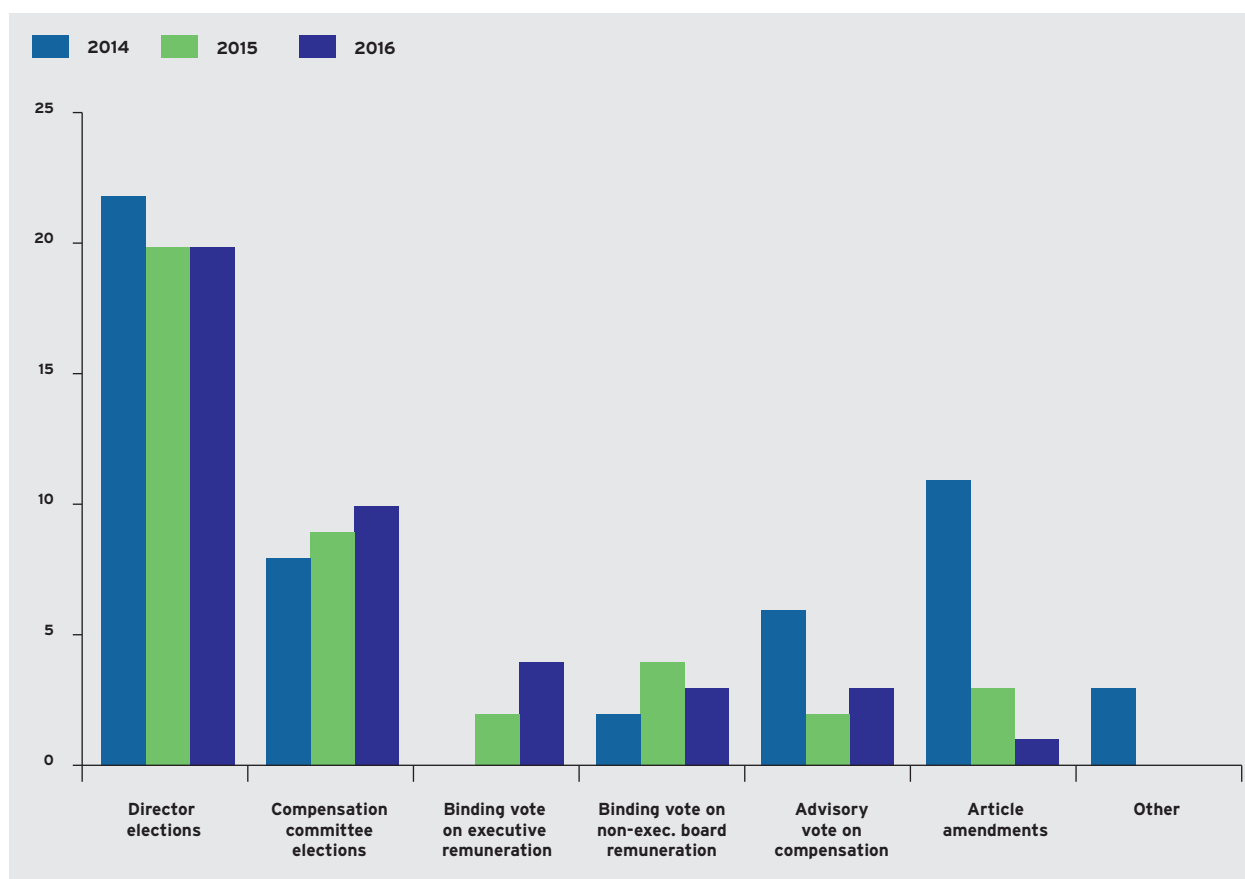
<sup>8</sup> <http://www.issgovernance.com/about/about-iss/>

## 2.2 Glass Lewis

Glass Lewis<sup>9</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms. Glass Lewis has over 1,200 clients and more than 360 employees. They cover more than 20,000 meetings in 100 countries. They are owned by the Ontario Teachers' Pension Plan Board and the Alberta Investment Management Corporation. In Europe they have offices in London, Limerick and Karlsruhe (since their acquisition of IVOX in June 2015).

During the 2016 proxy season, 11 companies out of the SMI received at least one against recommendation from Glass Lewis, compared to 10 in 2015. The total number of resolutions where Glass Lewis recommended its clients to vote against amounts to 41, compared to 40 in 2015.

**Graph 5: Overview of the number of negative recommendations by Glass Lewis at SMI AGMs since 2014**



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

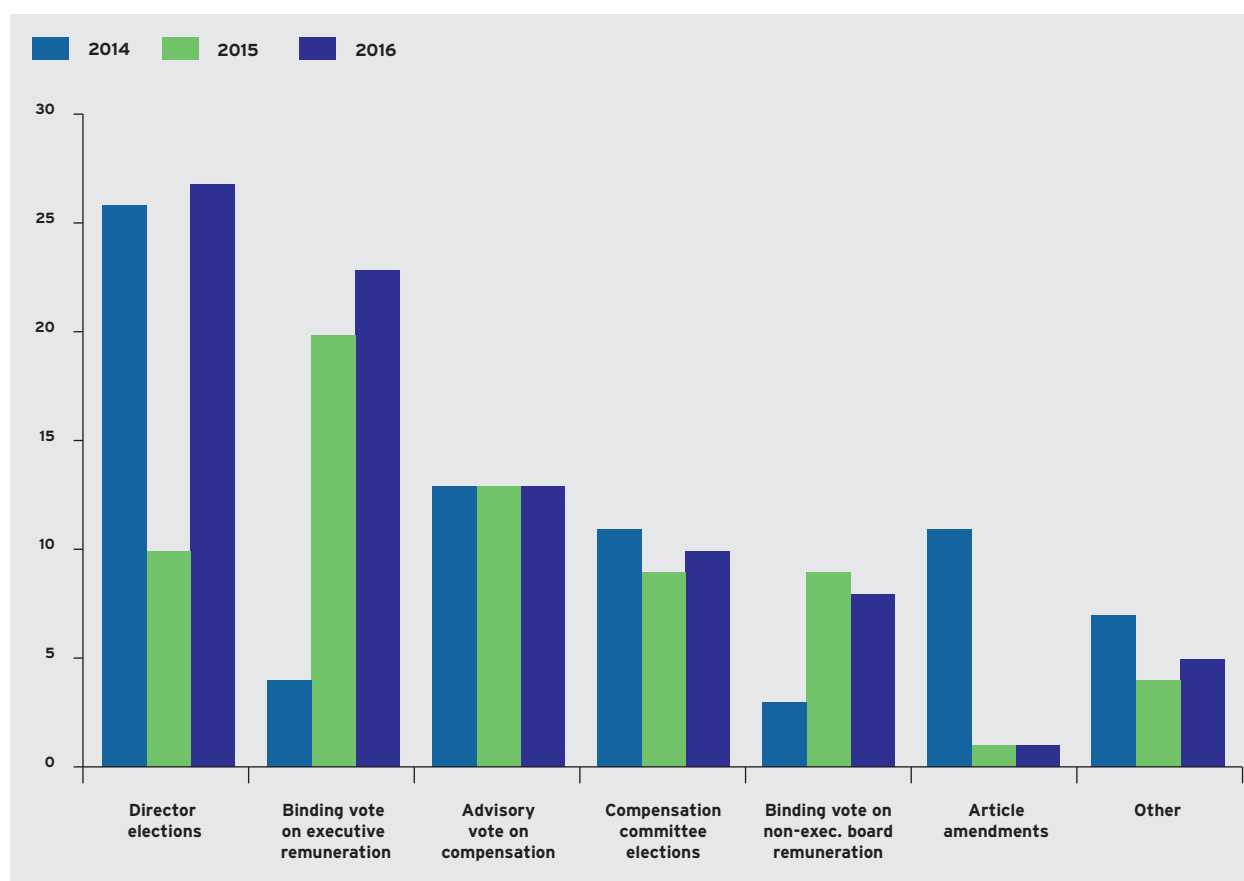
### 2.3 Ethos

Ethos<sup>10</sup>, the Swiss Foundation for Sustainable Development was founded in 1997. It is composed of 222 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 (ECGS)<sup>11</sup>, 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 2016 proxy season, 18 companies out of the SMI received at least one against recommendation from Ethos, the same number as in 2015. The total number of resolutions where Ethos recommended to vote against amounts to 87, compared to 66 in 2015.

Graph 6: Overview of the number of negative recommendations by Ethos at SMI AGMs since 2014



<sup>10</sup> <http://www.ethosfund.ch/e/ethos-foundation/ethos-foundation.asp>

<sup>11</sup> <http://www.ecgs.org/partners>

## 3. CORPORATE GOVERNANCE DEVELOPMENTS

### 3.1 Revision of Swiss company law

On 4 December 2015, the Federal Council made its initial decisions on the reform of listed companies. It acknowledged the outcomes of the consultation process which took place earlier in 2015, and determined the key elements of the proposals which were submitted to Parliament.

According to the Federal Council's press release<sup>12</sup> "the revision will focus on strengthening shareholder rights and introducing more flexible rules on establishing companies and on capital. Gender representation guidelines will also be introduced for major listed companies."

It is also expected that the interim rules established under the so called "Minder Ordinance" will be ratified through changes to be made to the Swiss Code of Obligations, the Occupational Pensions Act, and the Swiss Criminal Code. The Federal Council states that "it is intended to set certain guidelines for joining bonuses (outlawing 'golden welcome packages'), and for the level of compensation paid in connection with non-compete clauses."

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<sup>12</sup> <http://www.ejpd.admin.ch/ejpd/en/home/aktuell/news/2015/2015-12-04.html>





| Italy





# Italy Highlights

- ▶ The average quorum for FTSE MIB companies during the 2016 AGM season (excluding companies whose registered office is outside Italy) has been 66.64%, registering a slight increase compared to the 2015 quorum (65.14%).
- ▶ Among FTSE MIB and FTSE Italia Mid Cap companies two issuers had a management-proposed resolution rejected by shareholders: Azimut Holding and Cerved Information Solutions.
- ▶ In our FTSE MIB sample, the most commonly contested resolutions were remuneration report votes followed by share issuance authorities related to long-term incentive plans.
- ▶ During the year under review 11 FTSE MIB companies re-elected their Board of Directors and 8 FTSE MIB companies re-elected their Board of Statutory Auditors (using the slate voting system).
- ▶ Following legislation requiring the conversion of large cooperative banks into joint stock companies, only UBI Banca has so far succeeded in completing the conversion.
- ▶ During the year under review 21 FTSE MIB companies received at least one against or abstain recommendation from ISS (for a total of 36 resolutions) and 15 FTSE MIB companies received at least one against or abstain recommendation from Glass Lewis (for a total of 30 resolutions).

# 1. VOTING IN ITALY

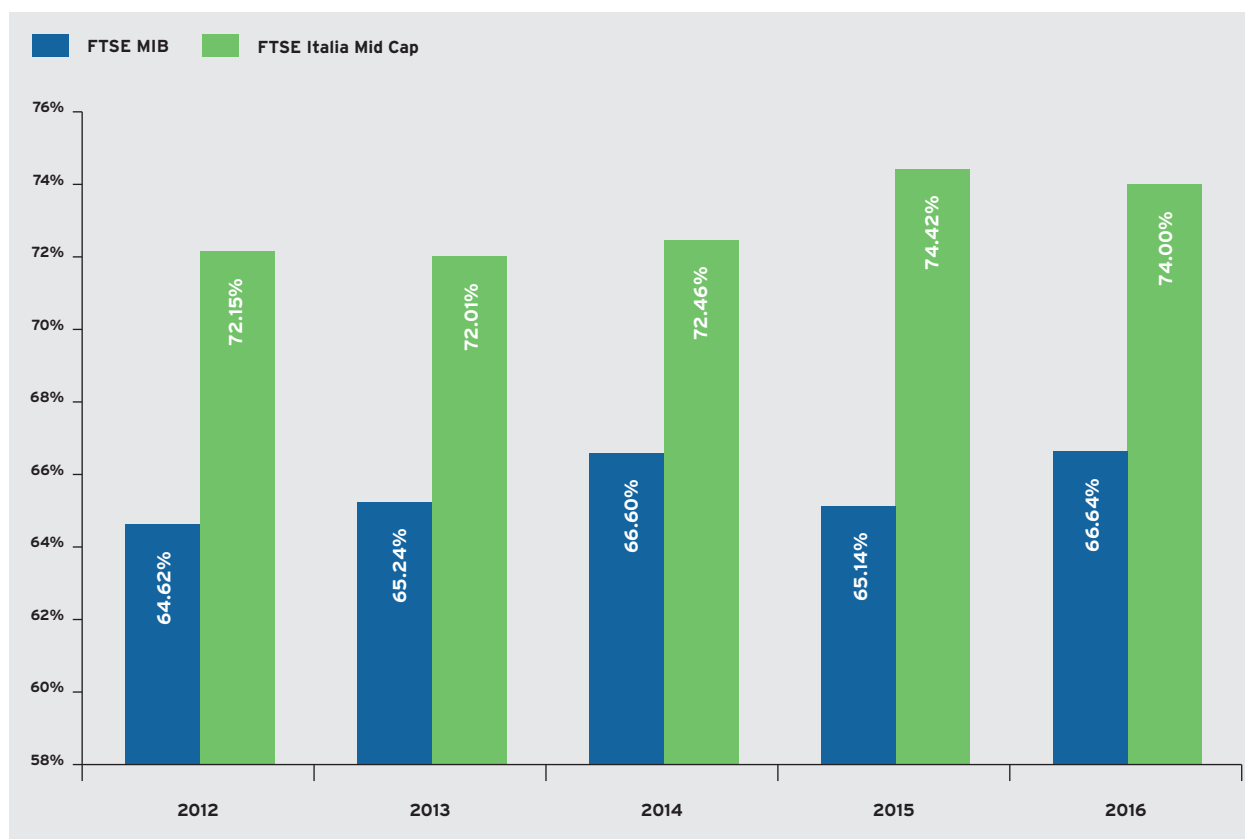
## 1.1 Quorum overview

Georgeson has reviewed the quorum levels of FTSE MIB and FTSE Italia Mid Cap companies for a number of years. This year’s review includes 31 companies that were a part of the FTSE MIB index as of 31 May 2016, and which have held their AGM between 1 August 2015 and 31 July 2016. 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).

The average quorum for FTSE MIB companies during the 2016 proxy season has been 66.66%, registering a slight increase compared to the 2015 quorum (65.14%). Focusing on the companies experiencing substantial fluctuations in quorum from 2015 to 2016, two companies saw a significant increase of ten or more percentage points. The highest increases in shareholder participation were recorded at the AGMs of Banca Mediolanum (+29.60 percentage points) and Yoox Net-A-Porter Group (+12.90 percentage points). The change in quorum may depend on the recent merger by incorporation of Mediolanum into Banca Mediolanum and the merger by incorporation of Largenta Italia S.p.A. (controlled by Net-A-Porter Group) into Yoox, resulting in Yoox Net-A-Porter Group.

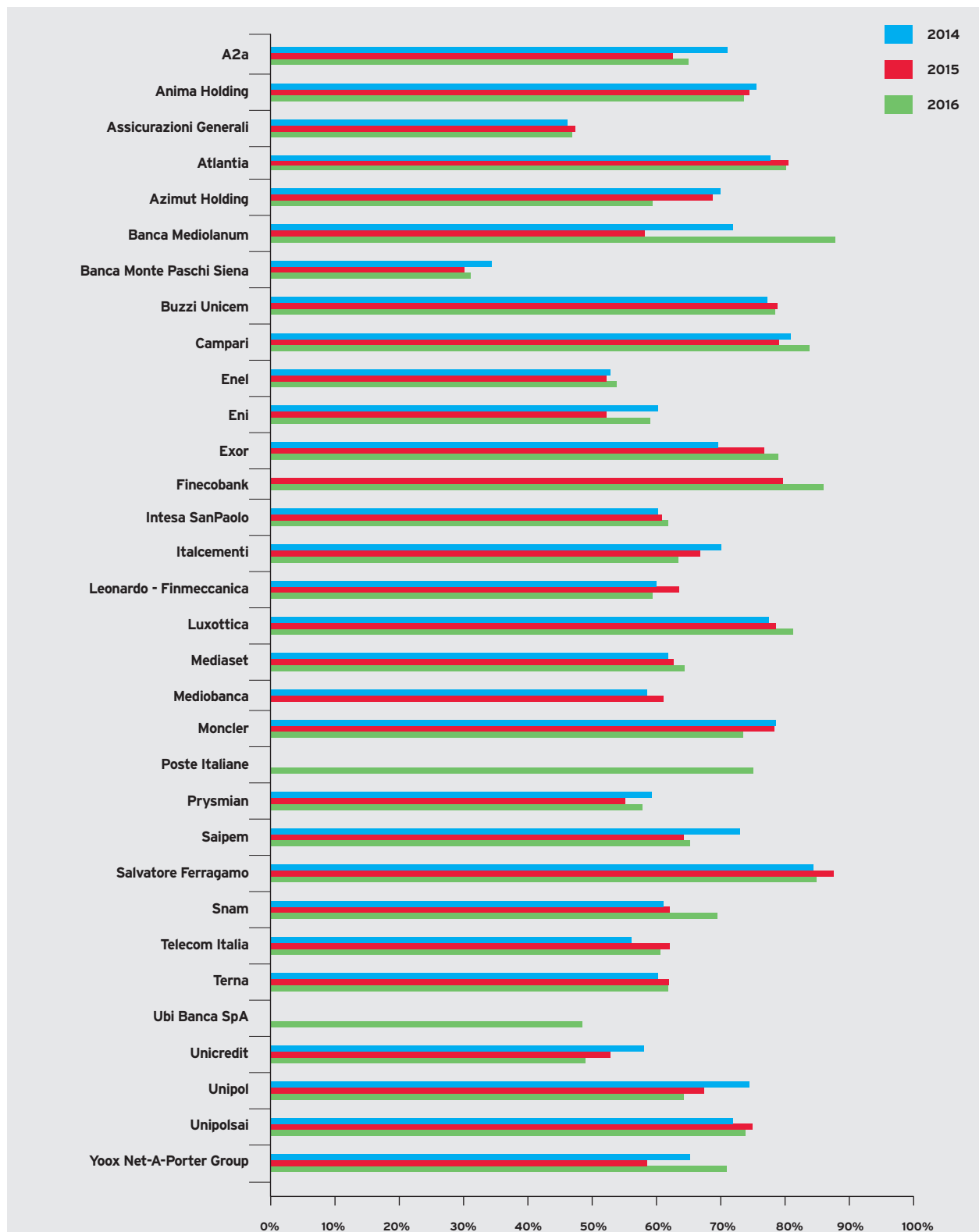
In previous years the average quorums have been as follows: 66.60% in 2014, 65.24% in 2013 and 64.62% in 2012. Higher attendance levels have been registered in the FTSE Italia Mid Cap, with a multiyear average quorum of 74.42%.

**Graph 1: Shareholder attendance levels: comparison of FTSE MIB and FTSE ITALIA MID CAP between 2012 and 2016**





Graph 2: Shareholder attendance levels at the 32 FTSE MIB companies between 2014 and 2016 (displayed alphabetically)



This survey excludes CNH Industrial, Ferrari, Fiat Chrysler Automobiles, STMicroelectronics and Tenaris (as their corporate headquarters are located outside Italy) and the co-operative banks (as their voting rights follow the "one head - one vote" principle). Please note also that i) Poste Italiane listed in October 2015, ii) Finecobank listed in July 2014 and the first relevant AGM was held in April 2015, and, iii) Ubi Banca completed its transformation from a "joint stock co-operative company" into a "joint stock company" in October 2015. Mediobanca's 2016 AGM quorum is also excluded as their AGM has not taken place yet.

## 1.2 Rejected resolutions

### FTSE MIB

Within our sample of FTSE MIB companies one company had one management-proposed resolution rejected by shareholders: Azimut Holding.

#### Azimut Holding

Azimut Holding<sup>1</sup> is Italy's leading independent asset manager specialised in asset management and advisory services to investors primarily via its advisor networks. It has been listed on the Italian stock exchange since 2004.

At its 2016 AGM<sup>2</sup> the management proposal to award an extraordinary bonus to the retiring directors (both executive and non-executive) up to an aggregate €5 million failed to achieve support from shareholders, with 64.03% of shareholders voting against the resolution.

Following questions raised by CONSOB on 21 April 2016 seeking clarification on the rationale for the bonus, the Chairman Pietro Giuliani stated that "the proposal of awarding an extraordinary bonus to the Board is justified by the profound efforts requested and performed by the Board during its mandate and by the extraordinary results registered by the Company during the period, with particular regard to 2015 when, notwithstanding the adverse market conditions, the Company registered the highest results ever"<sup>3</sup>

Reuters<sup>4</sup> reported that "with the decisive vote of the funds, Azimut's shareholders rejected the proposal of integrating the remuneration of exiting directors [...]. ISS and Glass Lewis [...] recommended not to support the maxi bonus to the management".

### FTSE Italia Mid Cap

Within our sample of FTSE Italia Mid Cap companies one company had one management-proposed resolution rejected by shareholders: Cerved Information Solutions.

#### Cerved Information Solutions

Cerved<sup>5</sup> is the Italian leader in credit risk analysis and the top independent market player for credit management. On 24 June 2014, Cerved Information Solutions made its debut on the MTA, Borsa Italiana's main market and it is currently included in Italian FTSE Italia Mid Cap index.

At its 2016 AGM<sup>6</sup> the management proposal to approve the Remuneration Report (an advisory vote) failed to achieve support from shareholders, with 55.39% of shareholders voting against the resolution. According to a Cerved announcement<sup>7</sup>, with the full exit of CVC Capital Partners, after the IPO in June 2014, Cerved is now considered a non-controlled company. Among our sample of 56 FTSE Italia Mid Cap companies Cerved is the only issuer not directly or indirectly controlled.

<sup>1</sup> <http://www.azimut.it/en/web/-/>

<sup>2</sup> <http://www.azimut.it/c/portal/rest/globalbase/drive/documentproxy?documentId=0B70Bzm7-A9bySnhBZzJRYIVHROE>

<sup>3</sup> <http://www.azimut.it/c/portal/rest/globalbase/drive/documentproxy?documentId=0B70Bzm7-A9byUktkeUtzOTRDeFE>

<sup>4</sup> <http://it.reuters.com/article/italianNews/idITL5N17V5BL>

<sup>5</sup> <https://company.cerved.com/en/about-us>

<sup>6</sup> [https://company.cerved.com/sites/company.cerved.dev/files/Rendiconto%20sintetico\\_CERVED\\_ENG.pdf](https://company.cerved.com/sites/company.cerved.dev/files/Rendiconto%20sintetico_CERVED_ENG.pdf)

<sup>7</sup> [https://company.cerved.com/sites/company.cerved.dev/files/Cerved%20COS%20Preliminary%20FY2015\\_ITA\\_vFinal.pdf](https://company.cerved.com/sites/company.cerved.dev/files/Cerved%20COS%20Preliminary%20FY2015_ITA_vFinal.pdf)

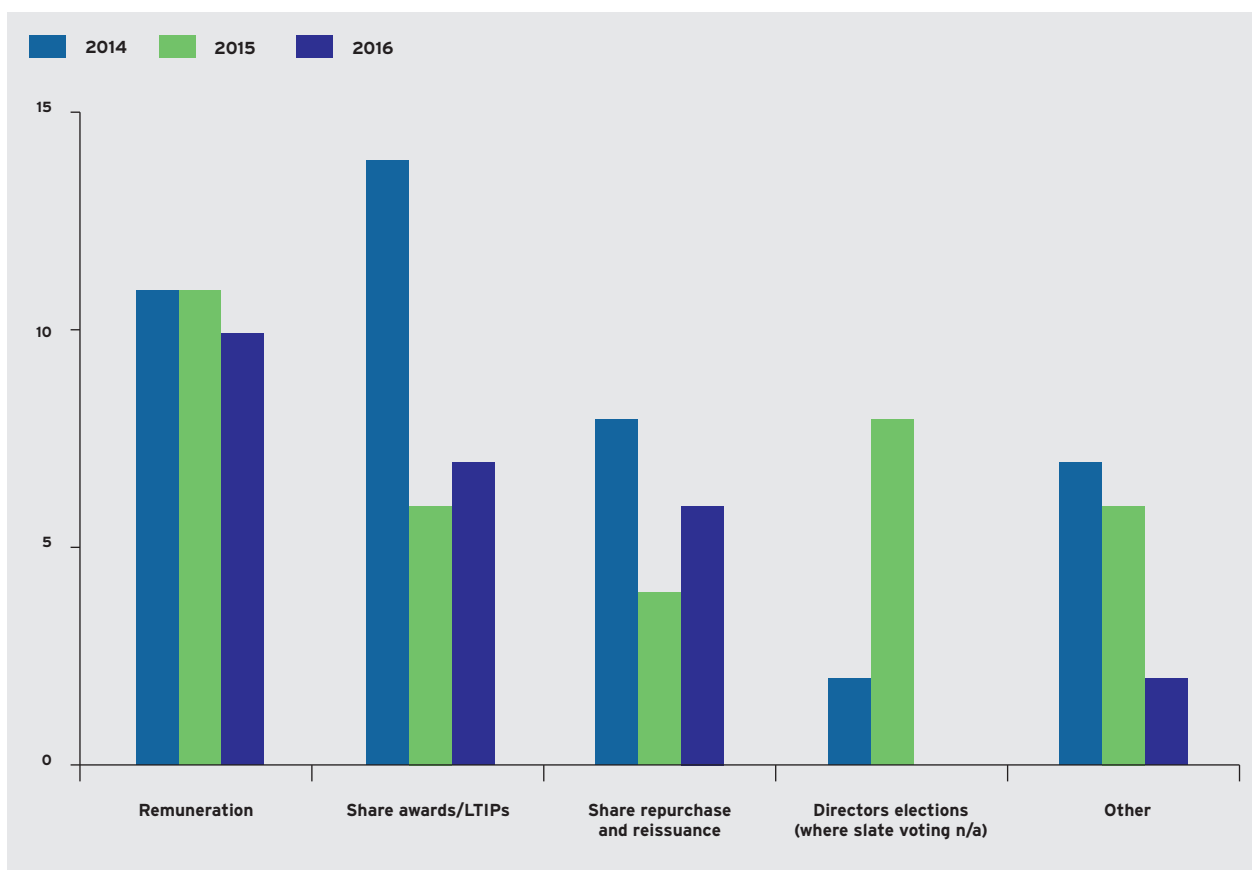
### 1.3 Contested resolutions

Among our sample of 31 FTSE MIB companies that held their AGM between 1 August 2015 and 31 July 2016, 16 companies saw at least one management-proposed resolution receive more than 10% shareholder opposition (compared to 18 in the preceding year). The total number of resolutions that received over 10% opposition amounted to 25 (including the rejected resolution discussed in section 1.2), compared to 35 resolutions in 2015 and 42 resolutions in 2014. It should be noted that from 2014 the total number of contested resolutions has decreased steadily.

In our FTSE MIB sample, the most commonly contested resolutions were Remuneration Report votes. The second most commonly contested resolutions were share issuance authorities related to long-term incentive plans. The third most commonly contested resolutions were authorities to repurchase and reissue shares. 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.

The graph below summarises the subjects of all resolutions that received more than 10% opposition from shareholders.

**Graph 3: Resolutions which received more than 10% against votes in the FTSE MIB (by resolution type)**



### 1.3.1 Remuneration report

As mentioned above, resolutions pertaining to remuneration matters are those which generally generate the highest number of contested resolutions. Italian law<sup>8</sup> provides that issuers are obliged to publish a remuneration report at least 21 days prior to the relevant annual general meeting.

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>9</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 director general and the top management overall.

The first section must be submitted to a mandatory non-binding vote of shareholders. With regard to financial institutions, a specific regulation<sup>10</sup> issued by the Bank of Italy provides that the vote on the remuneration policy is mandatory and binding<sup>11</sup>. Similar provisions are applicable to insurance companies that are subject to the IVASS<sup>12</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 (excluding the rejected resolution mentioned in section 1.2):

- Mediaset (60.6% in favour)
- Telecom Italia (61.6% in favour)
- Luxottica (83.1% in favour)
- Banca Mediolanum (84.5% in favour)

ISS and Frontis Governance recommended a vote against the remuneration reports of all the companies mentioned above, while Glass Lewis issued a positive recommendation on the remuneration report of Banca Mediolanum, and against at the other three companies.

### 1.3.2 Adoption of share award plans

According to Italian law<sup>13</sup> the adoption of remuneration plans that rely on financial instruments (such as stock options or share awards) 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:

<sup>8</sup> 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.

<sup>9</sup> [http://www.consob.it/main/documenti/Regolamentazione/normativa/regemit.htm#Art.\\_84-quater](http://www.consob.it/main/documenti/Regolamentazione/normativa/regemit.htm#Art._84-quater)

<sup>10</sup> [https://www.bancaditalia.it/compiti/vigilanza/normativa/archivio-norme/circolari/c285/Circ\\_285\\_16\\_Aggto\\_testo\\_integrale\\_segnaibri.pdf](https://www.bancaditalia.it/compiti/vigilanza/normativa/archivio-norme/circolari/c285/Circ_285_16_Aggto_testo_integrale_segnaibri.pdf)

<sup>11</sup> 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.

<sup>12</sup> Institution for the Supervision of Insurance<sup>8</sup> 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.

<sup>13</sup> Article 114-bis of the Italian Consolidate Financial Law, introduced by Law n. 262 of 28 December 2005

- > Telecom Italia (61.5% in favour)
- > Moncler (77.0% in favour)
- > Davide Campari (81.1% in favour)
- > Unipol (85.8% in favour)

ISS recommended against all four resolutions mentioned above, while Glass Lewis issued a positive recommendation for Moncler and Unipol and against the others. Frontis Governance recommended against at Telecom Italia, Moncler and Davide Campari.

### 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:

- > Atlantia (82.9% in favour)
- > Unipol (84.8% in favour)
- > Azimut Holding (84.9% in favour)
- > Davide Campari (86.6% in favour)

ISS recommended against all of the proposals mentioned above, while Glass Lewis recommended in favour of all. Frontis Governance recommended against at Atlantia, Azimut Holding and Davide Campari.

It should be noted that, out of the six contested resolutions in this category, in four cases (Atlantia, Exor, Mediaset and Moncler) the proposals could be used to implement stock option plans, as the authorisation included the discretion to assign the repurchased shares to beneficiaries of the incentive plans adopted by the those issuers. In the remaining two cases (Azimut Holding and Davide Campari), the repurchase programmes were intended for share-price stabilisation and negotiation purposes only.

### 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 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.

<sup>14</sup> Article 2386 of the Italian Civil Code

<sup>15</sup> 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 it is possible to see, in the context of an issuer's renewal of the board of directors:

- (i) 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,
- (ii) 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 in 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 in 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.

#### 1.3.5.1 Election of the Board of Directors

Among the companies included in the FTSE MIB, 11 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.

Please note that at all AGMs under consideration ISS, Glass Lewis and Frontis Governance recommended that investors support the main Minority Slate (except for Azimut Holding where only one slate was put forward).

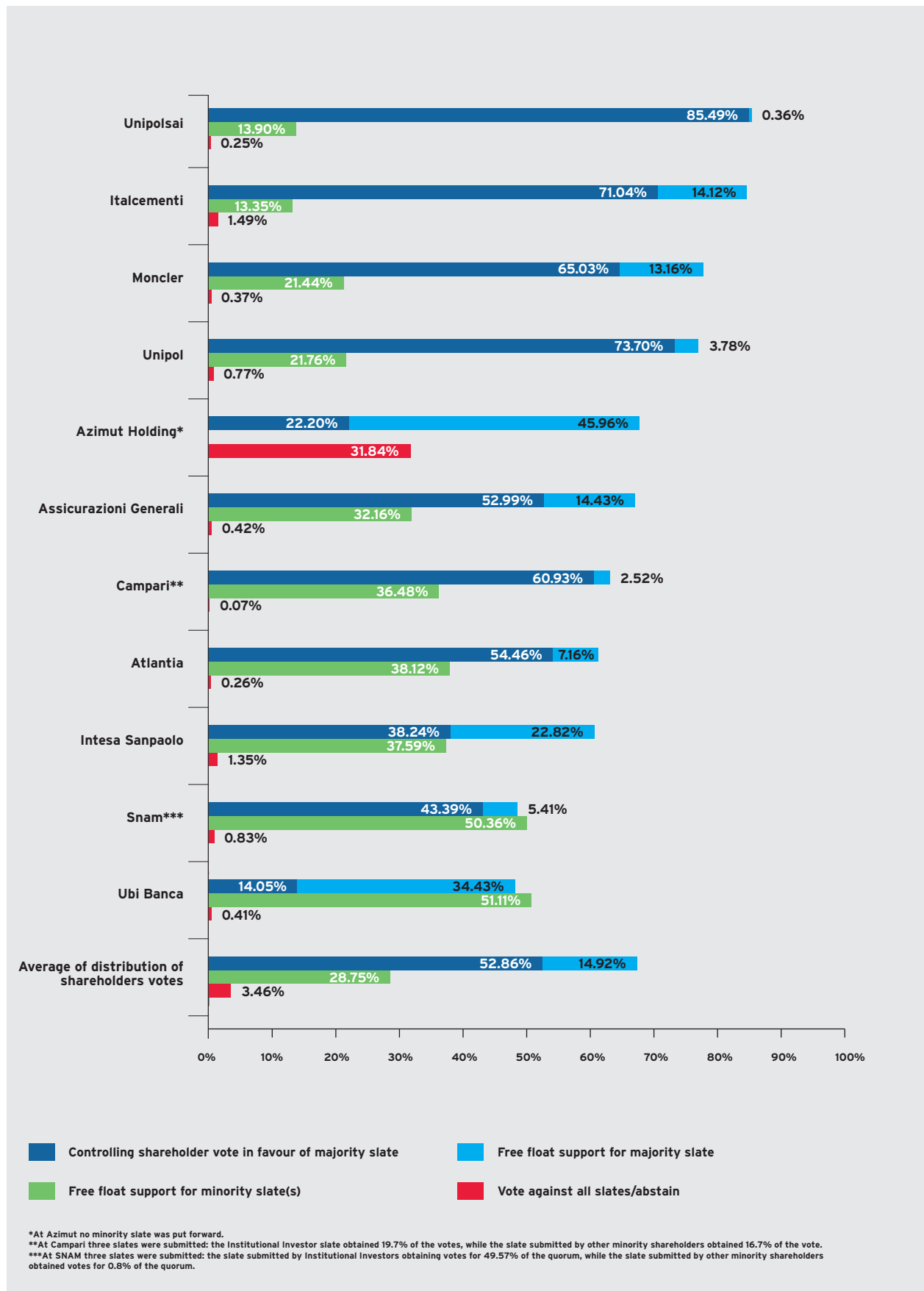
<sup>16</sup> This requirement relates to the Italian Traditional Model, which provides that the Board of Directors acts as the company's governing body and the Board of Statutory Auditors acts as the company's supervisory/compliance body. This model is adopted by the vast majority of Italian companies. 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. UBI Banca, for instance, 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). The only Italian issuer that has adopted the Monistic Model is Intesa Sanpaolo, following shareholder approval (with 98.96% support) at the Extraordinary Shareholder's Meeting on 26 February 2016.

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

<sup>18</sup> [http://www.consob.it/mainen/documenti/english/laws/fr\\_decree58\\_1998.htm#Article\\_148](http://www.consob.it/mainen/documenti/english/laws/fr_decree58_1998.htm#Article_148)

Graph 4: Distribution of shareholder votes on all board of director slate elections taking place at FTSE MIB companies in 2016



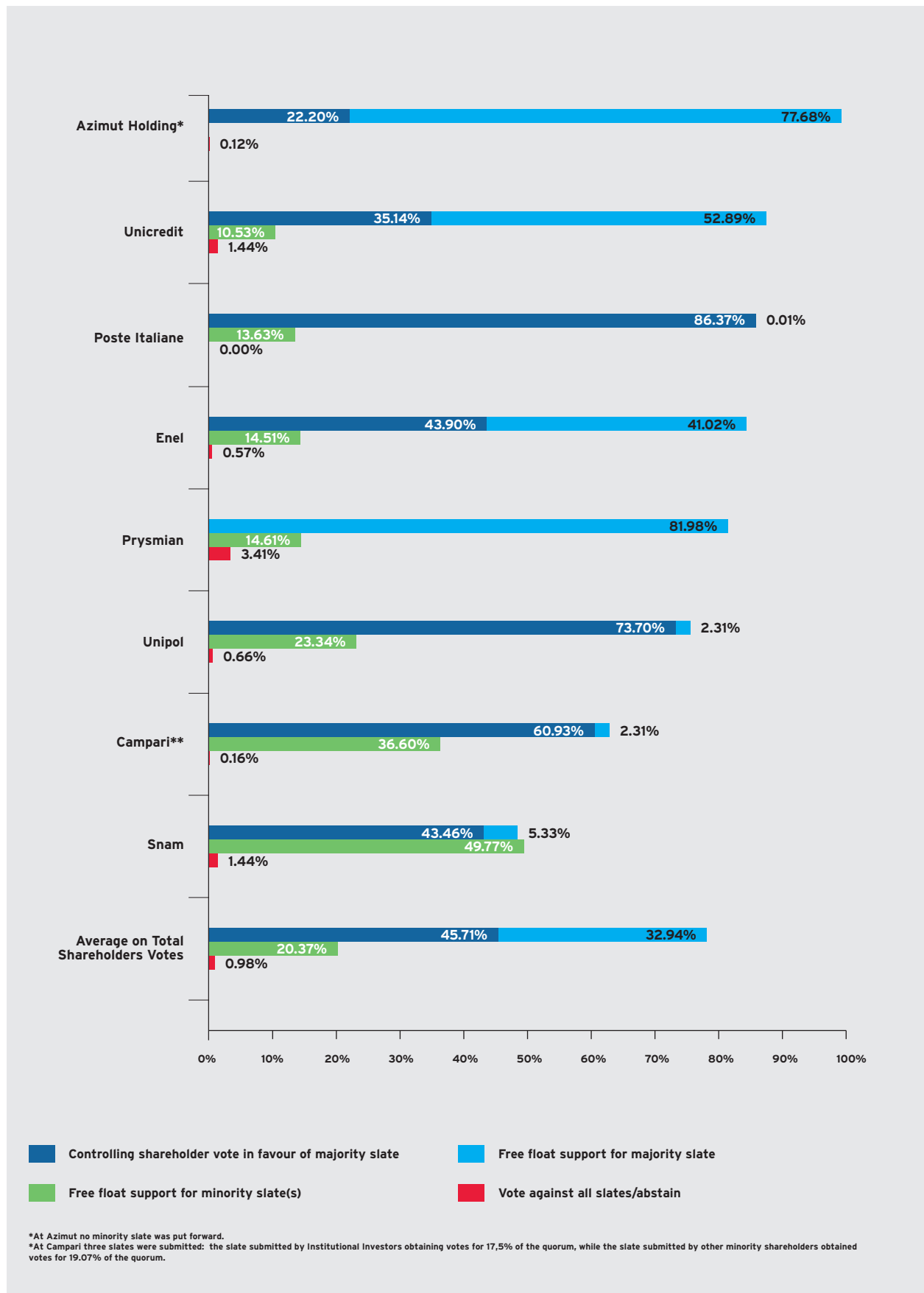
### **1.3.5.2 Election of the Board of Statutory Auditors**

Among the companies included in the FTSE MIB, eight issuers held a vote on the renewal of the Board of Statutory Auditors 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.

Please note that in the case of Enel, Prysmian and UniCredit, proxy advisors ISS, Glass Lewis and Frontis Governance recommended that investors support the Majority Slate to ensure that the Chairman of the Board of Statutory Auditors would be selected among the candidates put forward in the Minority Slate (as the Chairman is automatically chosen from the slate receiving the second highest number of votes, and proxy advisor support for the Minority Slate would risk it receiving the highest number of votes). In the other AGMs under consideration ISS, Glass Lewis and Frontis Governance recommended that investors support the main Minority Slate (except for Azimut Holding where only one slate was put forward).



Graph 5: Distribution of shareholder votes on all board of statutory auditors slate elections taking place at FTSE MIB companies in 2016



## 2. PROXY ADVISORS

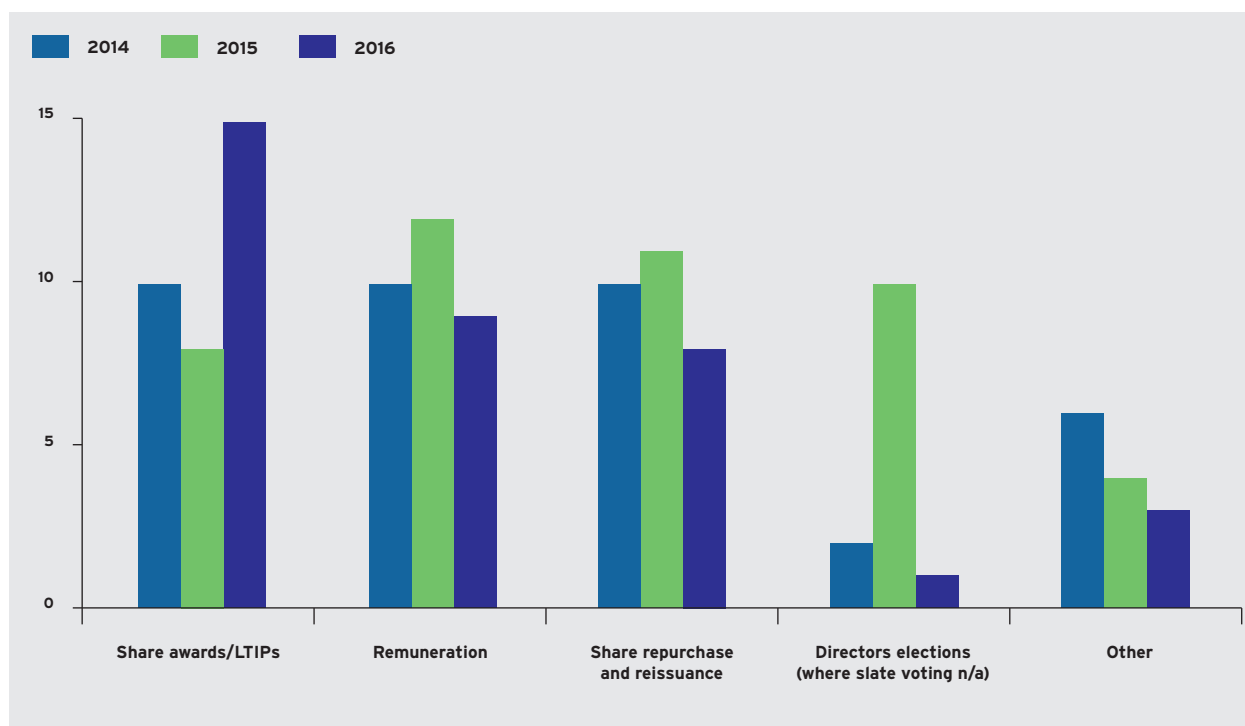
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### 2.1 ISS

Institutional Shareholder Services<sup>19</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers. ISS has over 1,600 clients, and approximately 900 employees spread across 18 offices in 12 countries and covers approximately 39,000 meetings in 115 countries. They were acquired by Vestar Capital Partners in March 2014. In Europe they have offices in Berlin, Brussels, Copenhagen, London, Paris and Stockholm.

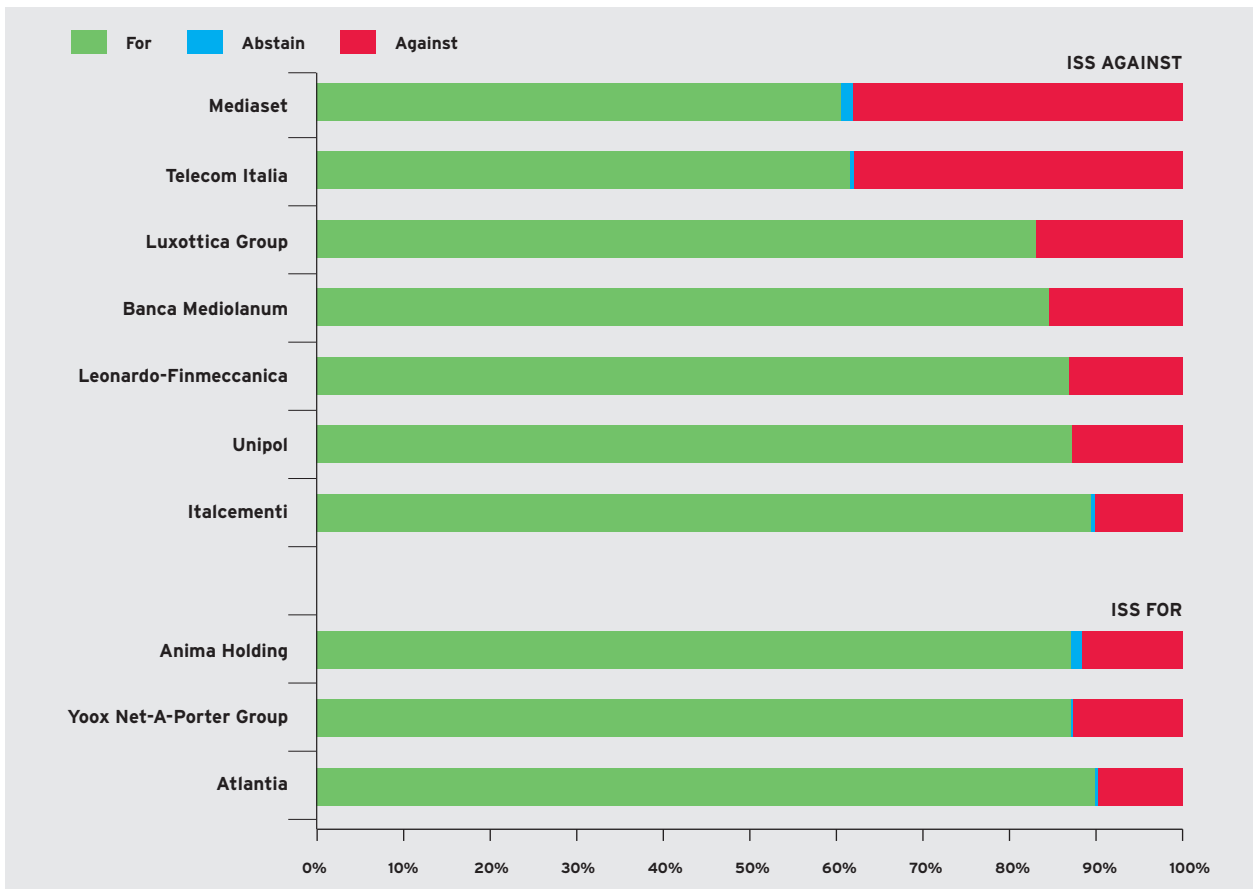
Between 1 August 2015 and 31 July 2016, 21 companies out of the FTSE MIB received at least one against or abstain recommendation from ISS, for a total of 36 resolutions. Below is an overview of the types of resolutions that have received a negative recommendation from ISS at FTSE MIB AGMs over the past three years.

**Graph 6: Overview of the number of negative recommendations by ISS at FTSE MIB AGMs between 2014 and 2016**



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

Graph 7: The 10 remuneration report votes receiving the lowest level of support in the FTSE MIB grouped by ISS recommendation

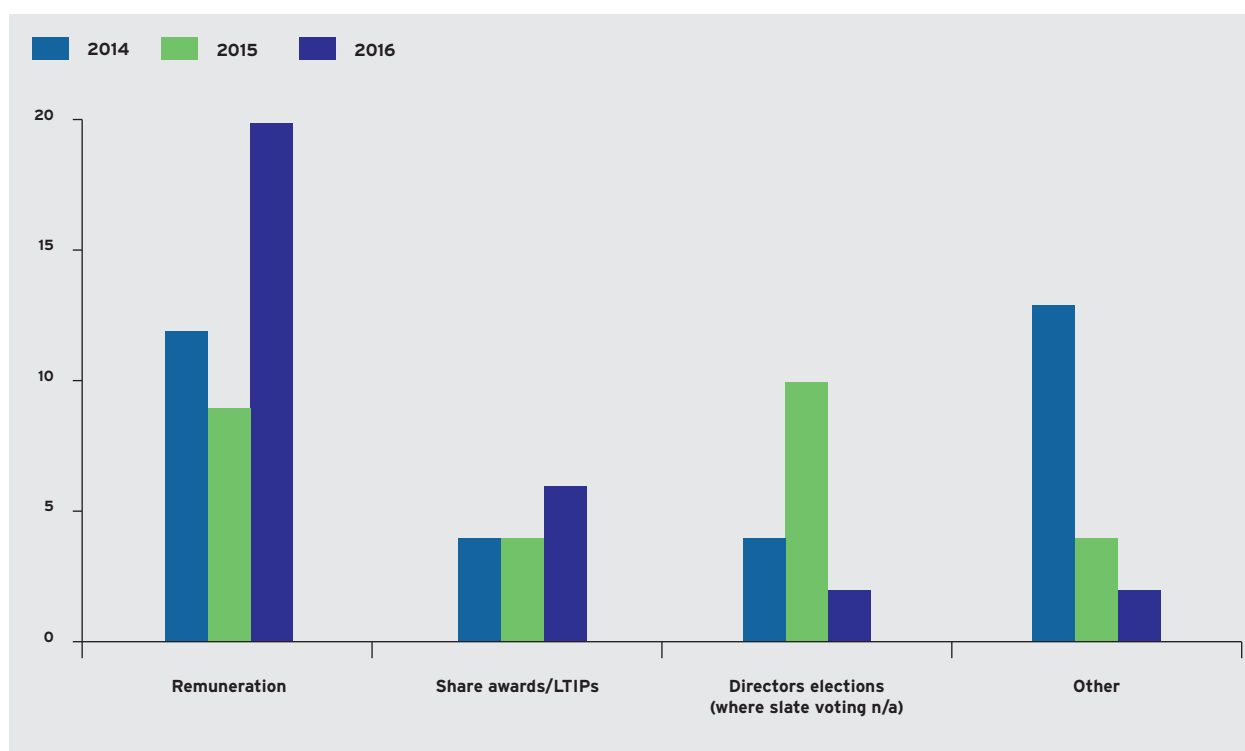


## 2.2 Glass Lewis

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. Glass Lewis has over 1,200 clients and more than 360 employees. They cover more than 20,000 meetings in 100 countries. They are owned by the Ontario Teachers' Pension Plan Board and the Alberta Investment Management Corporation. In Europe they have offices in London, Limerick and Karlsruhe (since their acquisition of IVOX in June 2015).

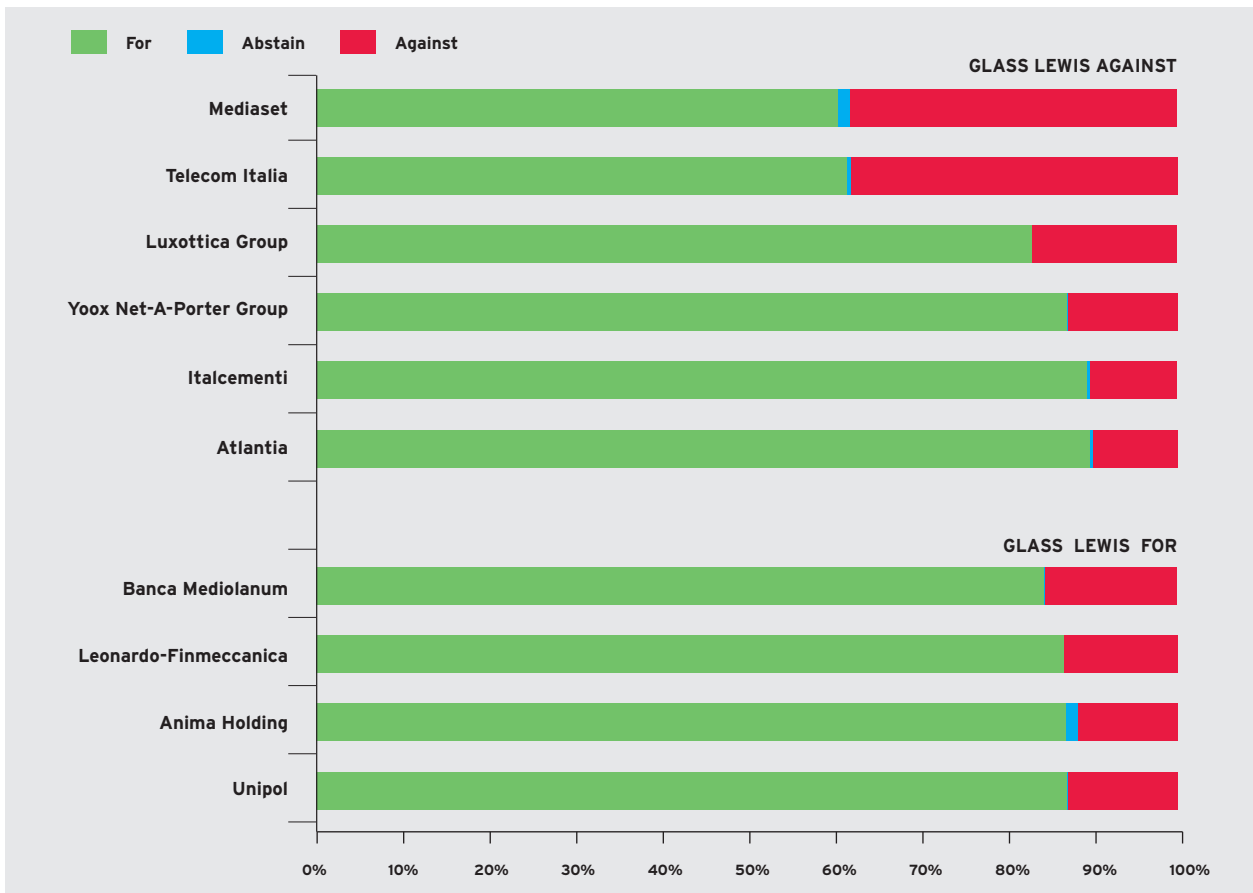
Between 1 August 2015 and 31 July 2016, 15 companies out of the FTSE MIB received at least one against or abstain recommendation from Glass Lewis, for a total of 30 resolutions. Below is an overview of the types of resolutions that have received a negative recommendation from Glass Lewis at FTSE MIB AGMs over the past three years.

**Graph 8: Overview of the number of negative recommendations by Glass Lewis at FTSE MIB AGMs between 2014 and 2016**



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

Graph 9: The 10 remuneration report votes receiving the lowest level of support in the FTSE MIB grouped by Glass Lewis recommendation.

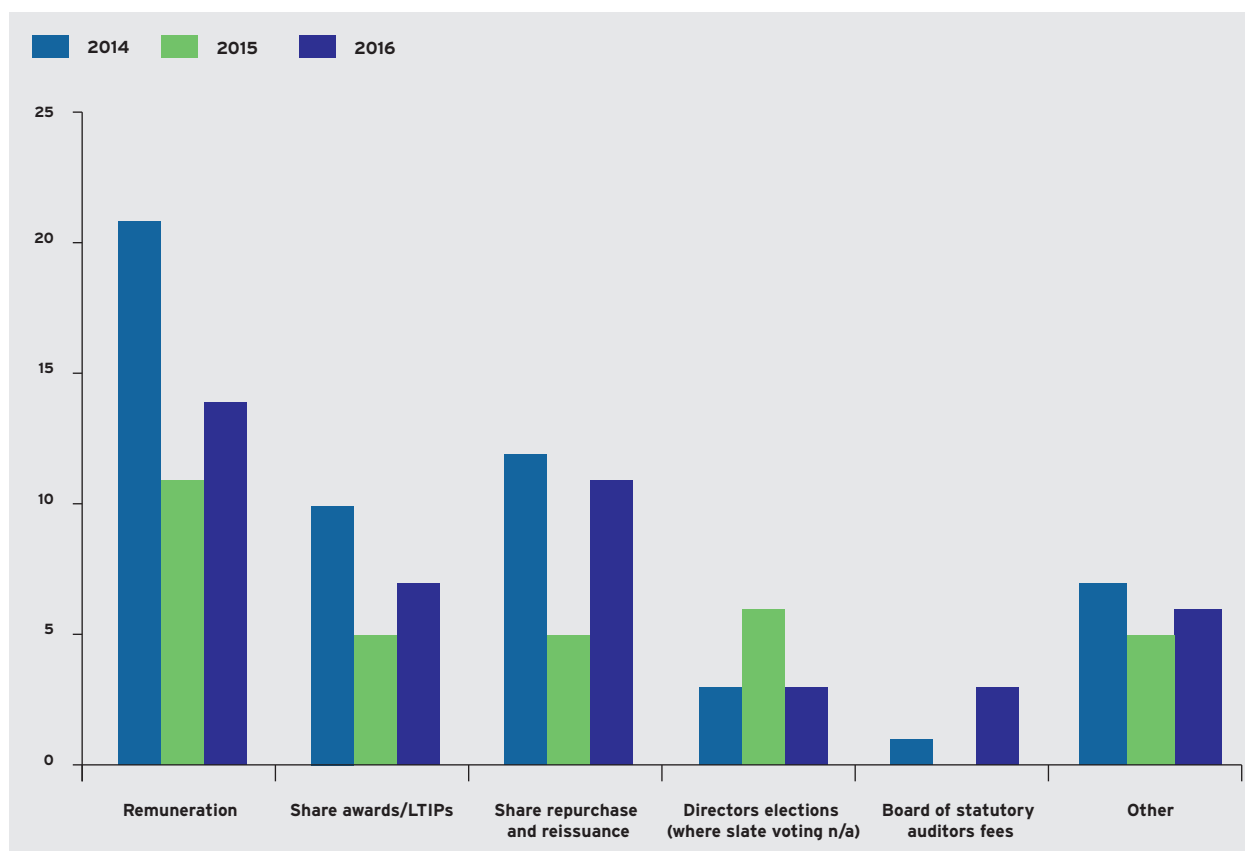


## 2.3 Frontis Governance

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

Between 1 August 2015 and 31 July 2016, 19 companies out of the FTSE MIB received at least one against or abstain recommendation from Frontis Governance, for a total of 44 resolutions. Below is an overview of the types of resolutions that have received a negative recommendation from Frontis Governance at FTSE MIB AGMs over the past three years.

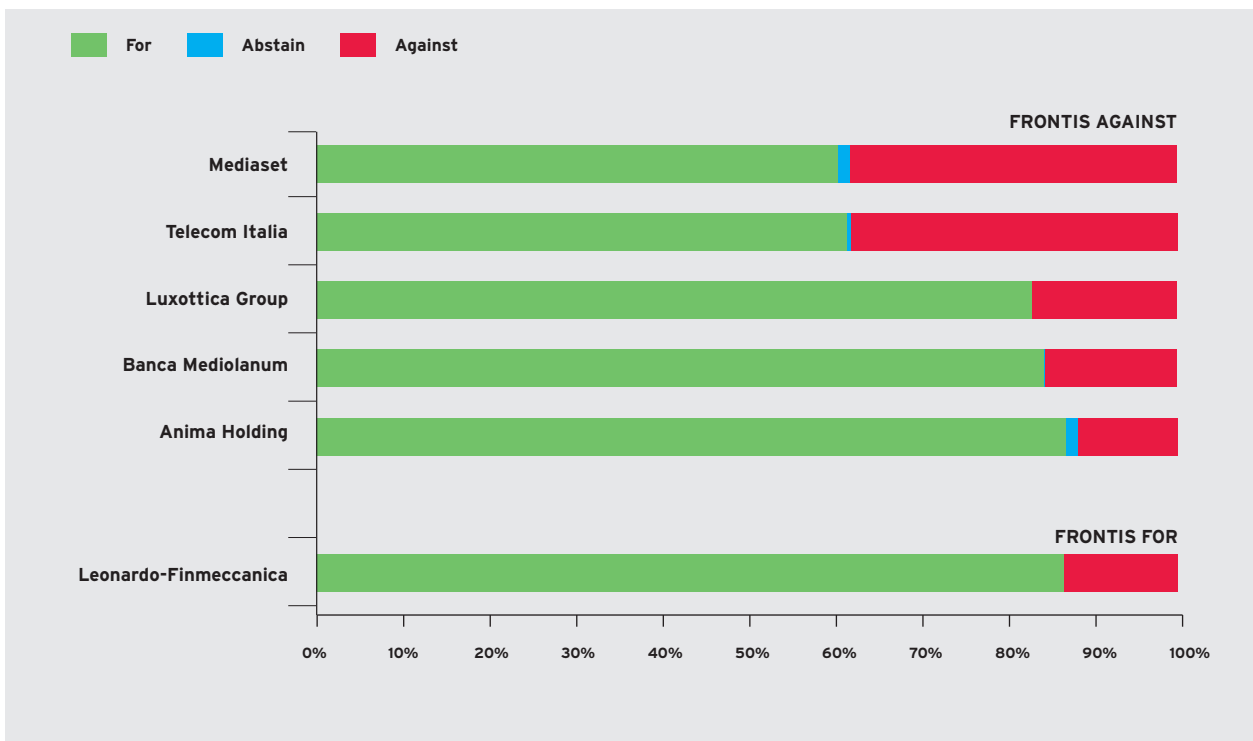
**Graph 10: Overview of the number of negative recommendations by Frontis Governance at FTSE MIB AGMs between 2014 and 2016**



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

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

Graph 11: The remuneration report votes receiving the lowest level of support in the FTSE MIB grouped by Frontis Governance recommendation



### 3. CORPORATE GOVERNANCE DEVELOPMENTS

#### 3.1 Conversion of cooperative banks into joint stock companies

Cooperative banks were introduced in Italy in 1865 and in light of their original social institutional functions, maintained a special legal and regulatory framework, with relevant exceptions from the general model. Their characteristics include ownership limits and the “one person - one vote” principle<sup>23</sup>.

In 2015 new legislation<sup>24</sup> introduced significant changes to the Italian legal framework applicable to cooperative banks. In particular the amended article 29 of Legislative Decree 385 of 1 September 1993 (the “Italian Consolidated Banking Act”)<sup>25</sup> now provides that the assets of a cooperative banks may not exceed €8bn. If this cap is exceeded, the bank must either convert to a joint stock company or reduce the value of its assets. Failure to do so would result in sanctions from the Bank of Italy (which may include revocation of the banking license). These provisions represent one step in a wider programme of reorganisation of the Italian banking sector and seek to comply with the introduction of the European Single Supervisory Mechanism<sup>26</sup>.

The cooperative banks have been given 18 months from the publication of the implementing regulation (issued by the Bank of Italy on June 2015<sup>27</sup>) to perform the conversion. As of 31 July 2016 only UBI Banca has succeeded in completing the conversion (approved by shareholders at the Extraordinary General Meeting held on 10 October 2015).

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<sup>23</sup> According to the “voto capitario” system, regulated under article 30 of Legislative Decree 385 of 1 September 1993, each shareholder is entitled to one vote, with no regard to the number of shares held: <https://www.bancaditalia.it/compiti/vigilanza/intermediari/Testo-Unico-Bancario.pdf>

<sup>24</sup> Law Decree n.3 of 24 January 2015, converted into Law n.33 of 24 March 2015

<sup>25</sup> <https://www.bancaditalia.it/compiti/vigilanza/intermediari/Testo-Unico-Bancario.pdf>

<sup>26</sup> <http://www.dirittobancario.it/approfondimenti/banche-e-intermediari-finanziari/riforma-disciplina-banche-popolari-dl-24-gennaio-2015-n-3>

<sup>27</sup> <https://www.bancaditalia.it/media/notizia/banche-popolari-disposizioni-di-attuazione-della-riforma>



### 3.2 Corporate Governance Code

In October 1999 the Committee for Corporate Governance<sup>28</sup> promoted by Borsa Italiana and chaired by Stefano Preda introduced the Italian Corporate Governance Code<sup>29</sup>. This Code has been revised a number of times and the current version was issued in July 2014 and amended in July 2015.

The goal of the Code is to provide a set of principles aligned with international best practice and adapted to the specific features of the Italian market, in order to promote - through the adoption of the principles set out therein - the reliability of Italian Companies among investors<sup>30</sup>.

The Code is structured through general principles, implementation criteria and explanatory comments. The implementation criteria set out the recommended practices whose application is necessary to reach the objectives described in the principles. The explanatory comments provide examples and alternatives observed in the market as well as clarifications on the scope and objectives set out in the principles and implementation criteria.

Compliance with the Code is on a voluntary basis: "the companies adhering to the Code are requested by Italian Law to annually provide, in their annual Corporate Governance Report, information on the adherence to a code of conduct relating to the field of corporate governance promoted by a company active in the management of a regulated stock exchange, justifying the potential misalignment with one or more provisions set out in the code, as well as practices adopted which go beyond the legal and/or regulatory requirements"<sup>31</sup>. Hence, even if compliance is on a voluntary basis, issuers must follow a comply or explain approach<sup>32</sup>.

On the basis of information available as of November 2015<sup>33</sup>, 97.1% of companies included in the FTSE MIB index and 96.6% of companies included in the FTSE Mid Cap index formally adhered to the Corporate Governance Code.

The Code amendments adopted in 2015<sup>34</sup> include, among others, references to: i) the duty of the Board of Directors to supervise and manage the company with a medium-long term approach, through an adequate balance of risk and opportunities (Principle 1); ii) the right and obligation of independent directors to hold meetings separately (Principle 3); iii) the duty of the Board of Directors to evaluate the possibility of establishing a dedicated committee supervising sustainability matters and stakeholder relations, as opposed to imposing such duties on pre-existing committees (Principle 4).

<sup>28</sup> In June of 2011 issuers and investor associations, as well as the Italian Stock Exchange defined the configuration of the current Corporate Governance Committee, whose purpose is the promotion of good corporate governance of Italian listed companies: <http://www.borsaitaliana.it/comitato-corporate-governance/comitato/comitato.en.htm>

<sup>29</sup> <http://www.borsaitaliana.it/comitato-corporate-governance/codice/1999.pdf>

<sup>30</sup> Corporate Governance Code, Committee for the Corporate Governance, 1999, page 20<sup>31</sup> Report on Corporate Governance issued by Assonime in November 2015: <http://www.assonime.it/AssonimeWeb2/servletDocAllegati?idSelectedDocument=262174&idSelectedDocumentType=374&idSelectedAttach=262307&reserved=false>

<sup>32</sup> Article 192-bis of Italian Consolidate Financial Law, as amended by Legislative decree n. 25 of 15 February 2016, introduces specific administrative sanctions in case of breach to the provisions set out in article 123-bis paragraph 2, item a), regarding the obligation of an issuer to provide specific information regarding either the adoption of the corporate governance code and the practices on corporate governance actually implemented or the reason for which such issuer elected not to comply with one or more provisions in the code.

<sup>33</sup> Report on Corporate Governance issued by Assonime on November 2015.

<sup>34</sup> <http://www.borsaitaliana.it/comitato-corporate-governance/codice/2015mk.pdf>



Spain





# Spain Highlights

- ▶ The average quorum for IBEX 35 companies during the 2016 AGM season was 68.17%, compared to 67.77% in 2015.
- ▶ Among IBEX 35 companies one issuer had three management-proposed resolutions rejected by shareholders: Merlin Properties. Two of these resolutions related to remuneration, while the third was an authorisation for a shortened notice period.
- ▶ In our IBEX 35 sample, the most commonly contested resolutions were director elections, followed by remuneration report votes. The third most commonly contested resolutions were share issuance authorities.
- ▶ During the 2016 AGM season 26 companies out of our IBEX 35 sample received at least one negative recommendation from ISS and 21 companies received at least one negative recommendation from Glass Lewis.

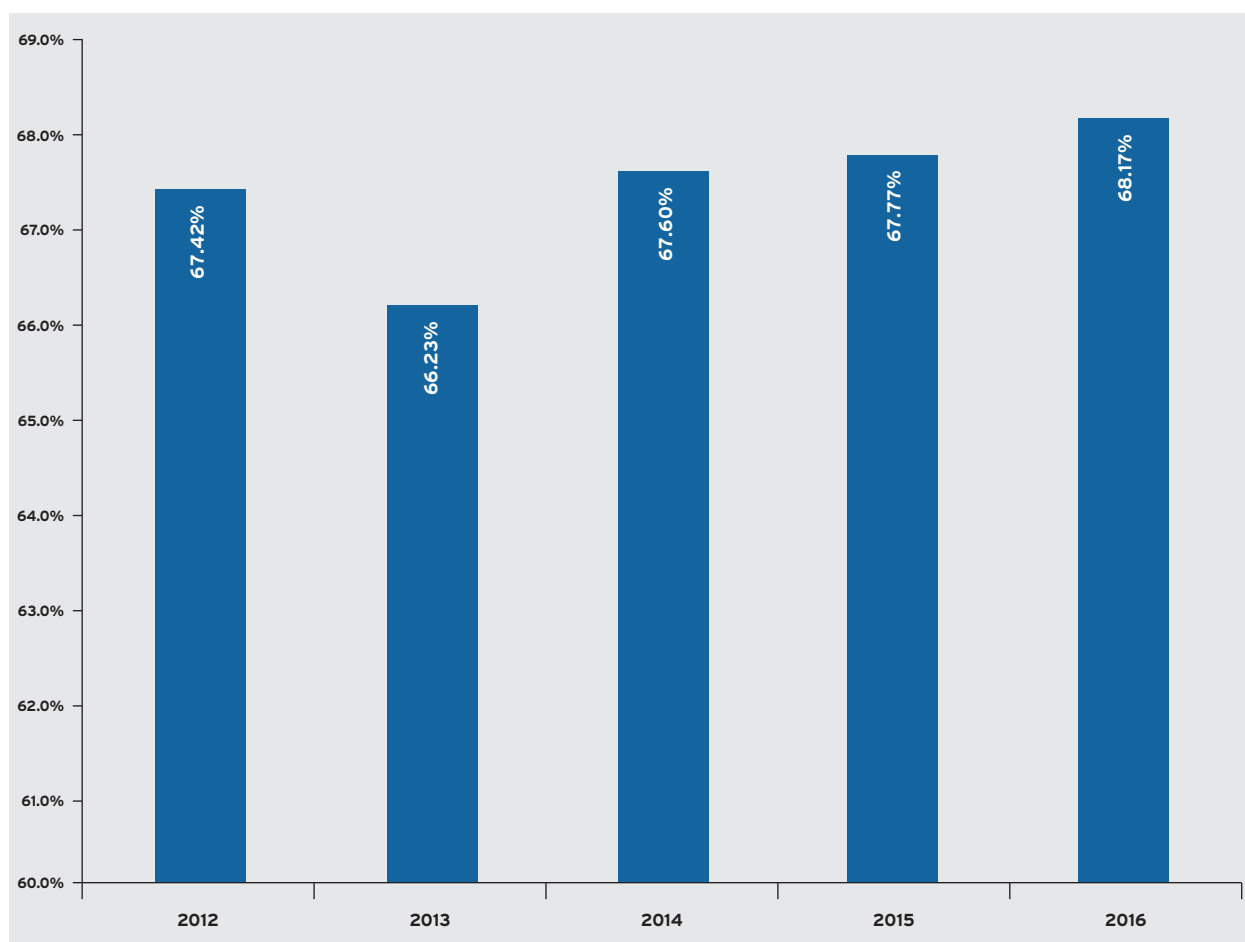
# 1. VOTING IN SPAIN

## 1.1 Quorum overview

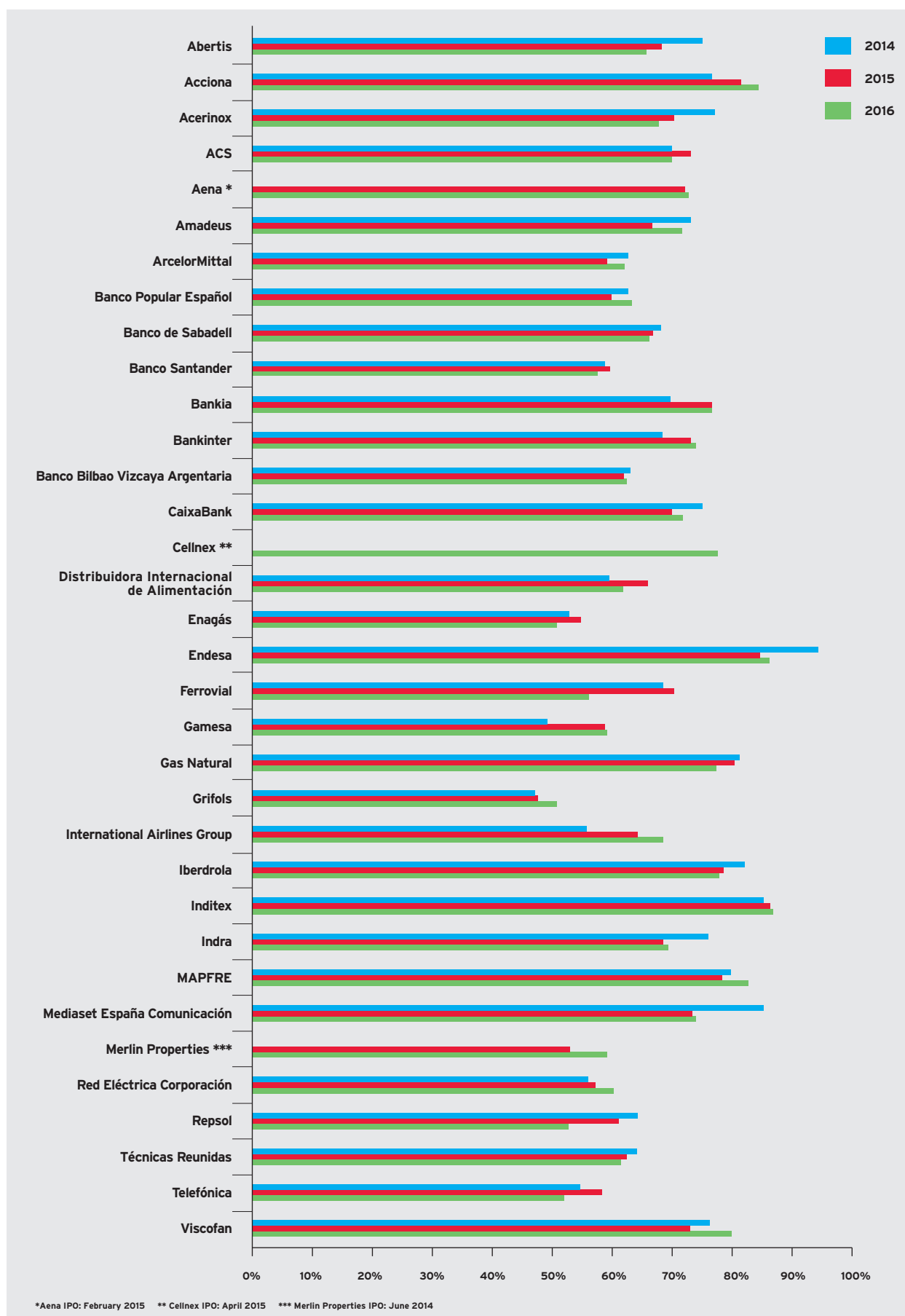
Georgeson has analysed the quorum levels of IBEX 35 companies for a number of years. This year’s review includes the 34 companies that are part of the index as of 31 July 2016 and which have held their AGM between 1 August 2015 and 31 July 2016. The average quorum for IBEX 35 companies during the 2016 proxy season has been 68.17%. This is similar to the average 2015 quorum, which amounted to 67.77%, and the average 2014 quorum, which amounted to 67.60%.

Among the top 10 companies with the highest quorum, seven of them experienced an increase in quorum from 2015 to 2016. The highest increase in shareholder participation was recorded by Viscofan with a quorum of 80.08% in 2016, compared to 73.06% in 2015. Other significant increases were seen at Merlin Properties (+6.24 percentage points) and Amadeus (+4.96% percentage points). The biggest decreases were seen at Ferrovial (-14.32 percentage points) and Repsol (-8.37 percentage points).

**Graph 1: Shareholder attendance levels in the IBEX 35 between 2012 and 2016**



Graph 2: Shareholder attendance levels at the IBEX 35 companies between 2014 and 2016 (displayed alphabetically)



## 1.2 Rejected resolutions

### IBEX 35

We have reviewed the meeting results for the 34 IBEX 35 companies which held their AGMs between 1 August 2015 and 31 July 2016. Within this sample one company had three management-proposed resolution rejected by shareholders: Merlin Properties.

#### **Merlin Properties**

MERLIN Properties SOCIMI, S.A. is a leading real estate company, focused on the acquisition and management of commercial assets in the Iberian Peninsula. The company has been listed on the Spanish Stock Exchange since December 2015.

At their 2016 AGM, fifteen resolutions on the agenda were approved by shareholders while three were rejected.

Two of the rejected resolutions related to the remuneration of the directors of the company (resolutions 5 and 8):

- Approval of the directors' compensation policy. The resolution received 53.55% against votes and 1.7% abstentions.
- Advisory vote on the remuneration report. The resolution received 53.16% against votes and 2.52% abstentions.

The third rejected resolution related to a shortened notice period for EGMs (resolution 14):

- Authorisation to shorten the notice period for calling EGMs to 15 days. This was a special resolution, requiring 66% shareholder support to pass. The proposal received 51.34% votes in favour and was therefore rejected.

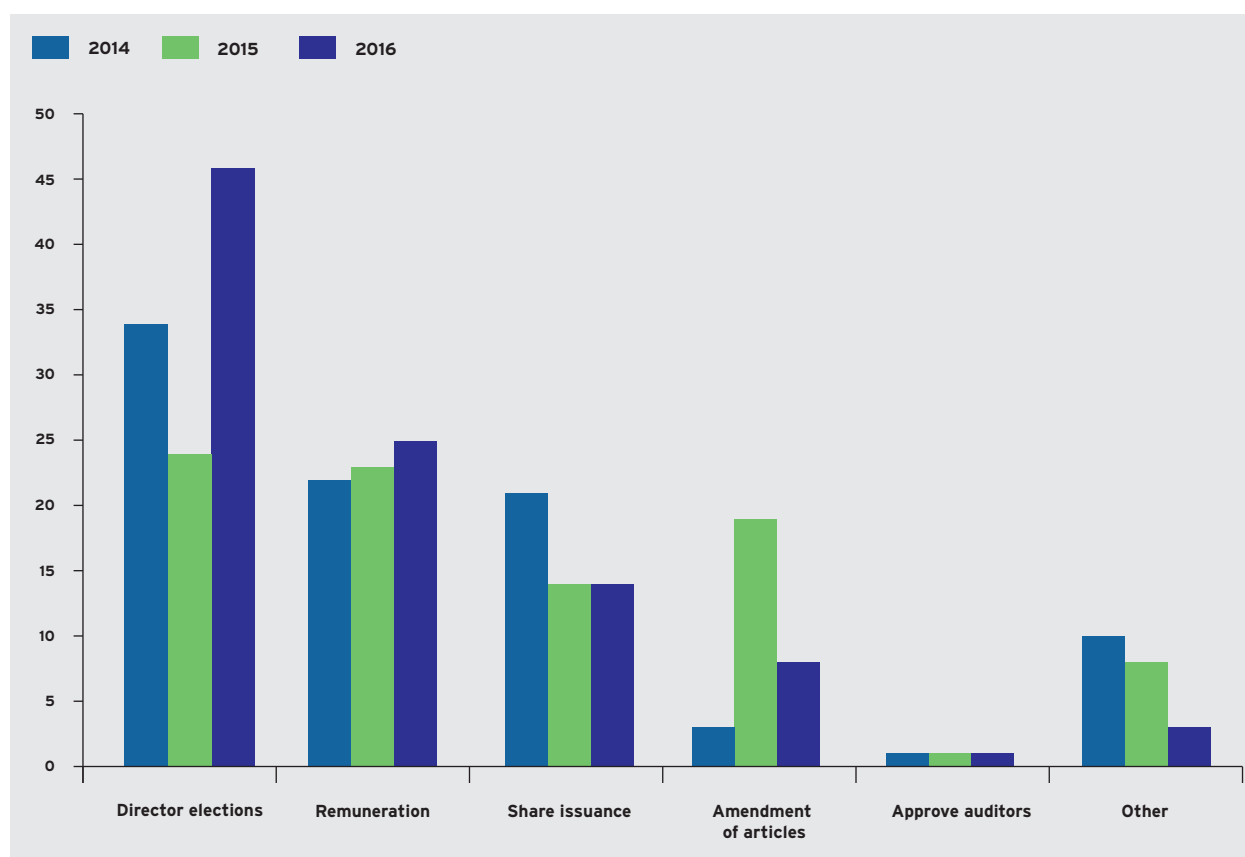
It should be noted that both ISS and Glass Lewis had issued an against recommendation on the remuneration related proposals (resolutions 5 and 8), while resolution 14 received a positive recommendation from ISS but a negative one from Glass Lewis. Concerns that were raised on resolutions 5 and 8 included a lack of disclosure, termination benefits exceeding best practice parameters and insufficiently long holding periods for long-term incentives.

## 1.3 Contested resolutions

Among our IBEX 35 sample 26 companies saw at least one management-proposed resolution receive more than 10% shareholder opposition for a total of 97 resolutions. This compares to 89 contested resolutions during the 2015 season and 91 contested resolutions during the 2014 season.

The graph below summarises the subjects of all resolutions that received more than 10% opposition from shareholders. In our IBEX 35 sample, the most commonly contested resolutions were director elections. The second most commonly contested resolutions were remuneration report votes. The third most commonly contested resolutions were share issuance authorities followed by proposals to amend the articles of association.

Graph 3: Resolutions which received more than 10% against votes in IBEX 35 (broken down by resolution type)



### 1.3.1 Director elections

In the period between 1 August 2015 and 31 July 2016 board elections registered 46 resolutions with more than 10% of votes against. A lack of independence and the combination of Chairman and CEO roles were the main motivations for negative shareholder votes. Spanish legislation does not require the separation of roles or set specific requirements for the board of directors. The Unified Code recommends that the board adopt measures to correct weaknesses in diversity within the board and sets the goal of having at least 30% of seats occupied by women.

The companies with the highest level of shareholders opposition were:

- > Telefónica (Isidro Fainé Casas: 64.36% in favour)
- > Gamesa (Ignacio Martín San Vicente: 67.69% votes in favour)
- > Ferrovial (Santiago Bergareche Busquet: 69.55% votes in favour)
- > ACS (Javier Echenique Landiribar: 72.93% votes in favour)

### 1.3.2 Remuneration

Spanish law<sup>1</sup> requires companies to submit their remuneration report for non-binding shareholder approval annually, in addition to receiving binding shareholder approval of the remuneration policy at least every three years.

The companies with highest level of shareholders opposition were:

- > Merlin Properties (44.32% in favour)
- > Red Eléctrica Corporación (65.93% in favour)
- > Grifols (67.35% in favour)
- > Indra Sistemas (68.82% in favour)

### 1.3.3 Share issuance

In compliance with the Spanish Companies Law<sup>2</sup>, Spanish companies may seek shareholder approval to issue new shares for a maximum period of five years. Shareholders can delegate to the board authority to increase the company's share capital without prior consultation of the general meeting of shareholders. The total increase cannot exceed 50% of the company's share capital at the moment the resolution was passed. This year, at IBEX 35 AGMs, 14 authorities to issue shares, including 5 without pre-emptive rights, received more than 10% negative votes.

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

- > Distribuidora Internacional de Alimentación (67.48% in favour)
- > Acerinox (82.67% in favour)
- > Iberdrola (82.93% in favor)

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<sup>1</sup> 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).

<sup>2</sup> Article 297 - Point 1a and 1b of Spanish Companies Law.



## 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.

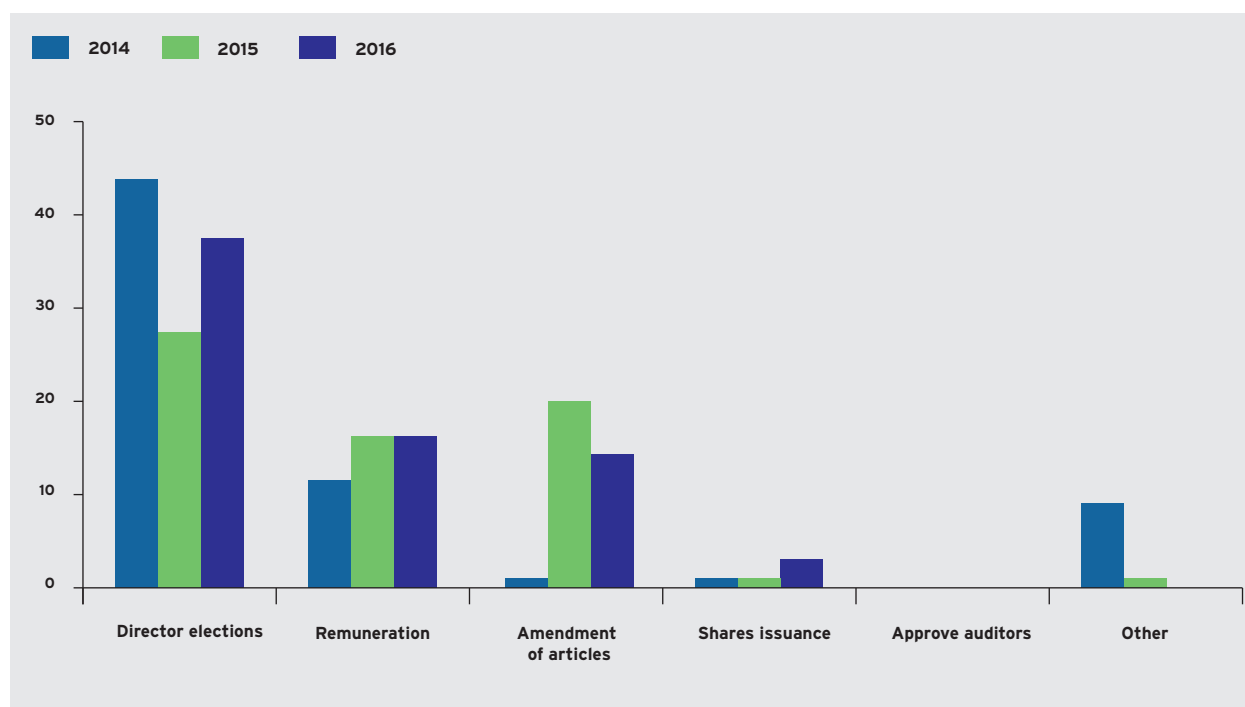
### 2.1 ISS

Institutional Shareholder Services<sup>3</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers. ISS has over 1,600 clients, and approximately 900 employees spread across 18 offices in 12 countries and covers approximately 39,000 meetings in 115 countries. They were acquired by Vestar Capital Partners in March 2014. In Europe they have offices in Berlin, Brussels, Copenhagen, London, Paris and Stockholm.

Between 1 August 2015 and 31 July 2016, 26 companies out of the IBEX 35 received at least one against or abstain recommendation from ISS, for a total of 72 resolutions.

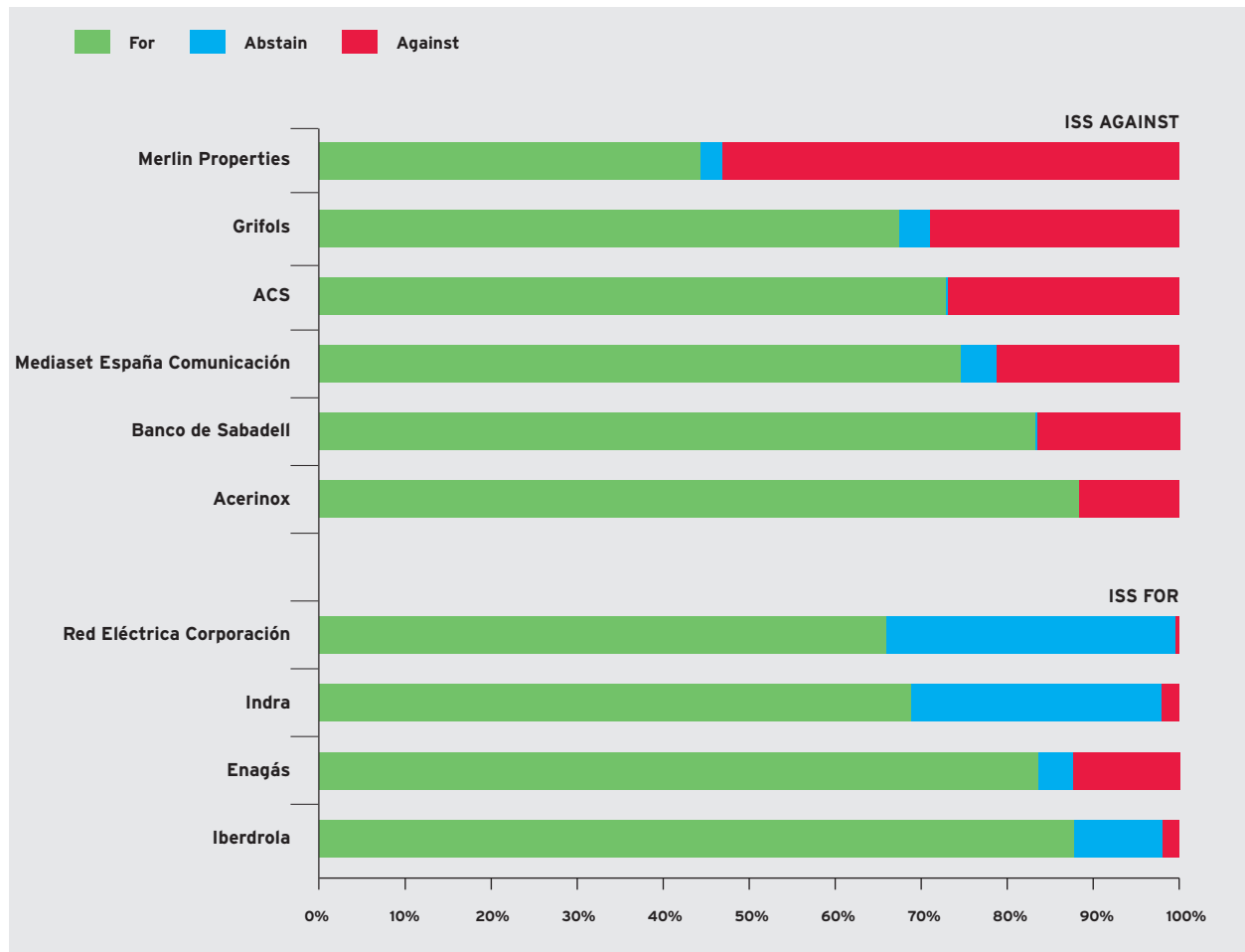
Below is an overview of the types of resolutions that have received a negative recommendation from ISS at IBEX 35 AGMs over the past three years.

**Graph 4: Overview of the number of negative recommendations by ISS at IBEX 35 AGMs between 2014 and 2016**



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

Graph 5: The 10 remuneration report votes receiving the lowest level of support in the IBEX 35 grouped by ISS recommendation

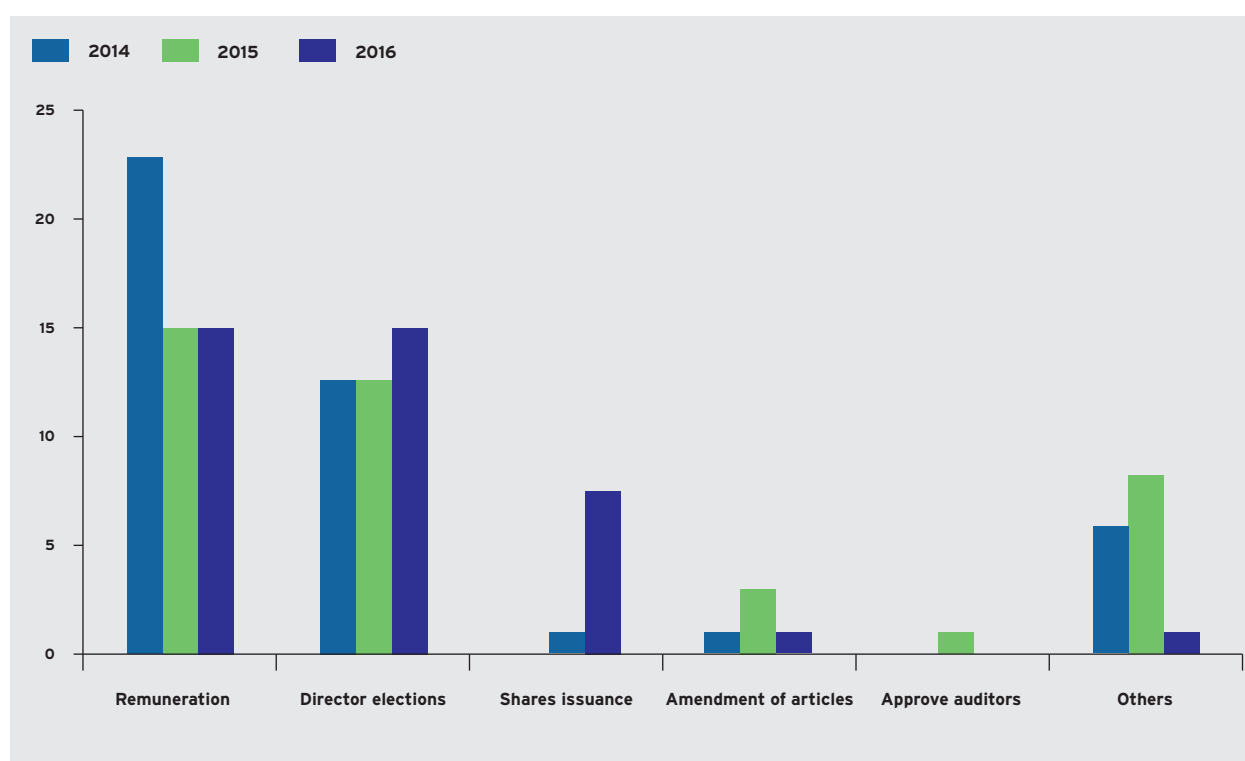


## 2.2 Glass Lewis

Glass Lewis<sup>4</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms. Glass Lewis has over 1,200 clients and more than 360 employees. They cover more than 20,000 meetings in 100 countries. They are owned by the Ontario Teachers' Pension Plan Board and the Alberta Investment Management Corporation. In Europe they have offices in London, Limerick and Karlsruhe (since their acquisition of IVOX in June 2015).

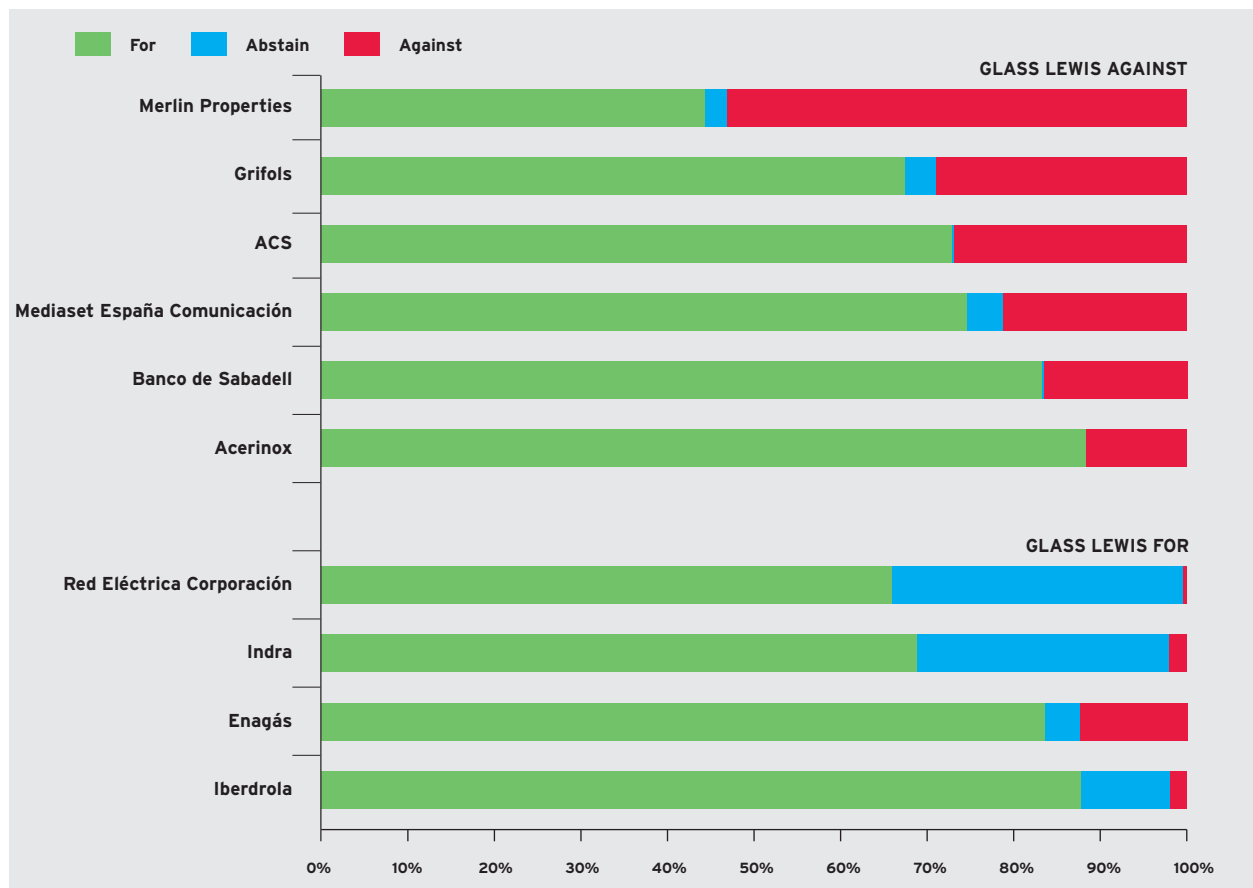
Between 1 August 2015 and 31 July 2016, 21 companies from the IBEX 35 received at least one against recommendation from Glass Lewis for a total of 39 resolutions. Below is an overview of the types of resolutions that have received a negative recommendation from Glass Lewis at IBEX 35 AGMs over the past three years.

**Graph 6: Overview of the number of negative recommendations by Glass Lewis at IBEX 35 AGMs between 2014 and 2016**



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

Graph 7: The 10 remuneration report votes receiving the lowest level of support in the IBEX 35 grouped by Glass Lewis recommendation



### 3. CORPORATE GOVERNANCE DEVELOPMENTS

In the last two years the corporate governance framework in Spain has evolved significantly, with several issues developing from a “comply or explain” principle to a regulatory requirement. As a consequence the Spanish Corporate Governance Code has also evolved, covering new subjects not considered in its 2006 version and removing aspects that have been included in the new legislation. What follows is a brief overview of these initiatives.

#### 3.1 Law 31/2014

Law 31/2014<sup>5</sup> which amended the Companies Act with the aim of improving corporate governance was introduced in December 2014. The law mainly focuses on the annual general meeting, the board of directors and its committees and on executive directors’ remuneration.

##### **General Meeting:**

New measures were introduced to strengthen the General Meeting’s role and to encourage shareholder participation. Among others the reform aims to ensure that shareholders vote separately on the appointment, re-election or removal of directors, article changes and the remuneration policy.

##### **Board of Directors and its Committees:**

Some of the main aspects relate the introduction of powers that the Board cannot delegate, the approval of policies relating to company strategy, the equal treatment of all shareholders, risk management, and professionalization of directors. The law also introduces a requirement to establish a Nomination and Remuneration Committee which must be composed of only non-executive directors, at least two of whom must be independent. The chairman of the committee must also be selected from among the independent directors.

##### **Remuneration:**

The law establishes new measures to ensure that director compensation properly reflects the actual development of the company and are properly aligned with the interests of the company and its shareholders. Also, it requires further transparency on the contracts between the company and executive directors.

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<sup>5</sup> Ley 31/2014, de 3 de diciembre, por la que se modifica la Ley de Sociedades de Capital para la mejora del gobierno corporativo.

### 3.2 Corporate Governance Code

The Unified Good Governance Code of Listed Companies (the Unified Code) was approved by the Board of the Spanish stock market regulator, the Comisión Nacional del Mercado de Valores (CNMV) on 22 May 2006<sup>6</sup>. Since its introduction, a number of legal texts have affected some of its recommendations. In order to adapt the Code to new legislation, in 2013 CNMV approved a first update of the Unified Code<sup>7</sup>.

On February 2015, after Law 31/2014 came into force, the Spanish stock market regulator approved the new Unified Code<sup>8</sup>, removing those recommendations that had been included in Spanish law, and including new recommendations based on proposals made by the Committee of Experts<sup>9</sup> regarding corporate governance. The main changes in the Unified Code relate to these three categories:

#### **Board of directors:**

The most important provisions relate to the structure of the Board. The Unified Code recommends that at least half of the board be comprised of independent members and recommends an increase in gender diversity (at least 30% female representation to be achieved by 2020).

#### **Annual General Meeting (AGM):**

Regarding transparency and disclosure, the Unified Code recommends the publication online of all documents relating to the AGM and that the AGM be transmitted live online. Additional recommendations relate to the transparent publication of the requirements that allow the exercise of voting rights and regarding the timely publication and fair voting conditions proposed on shareholder resolutions.

#### **General aspects:**

The Unified Code includes new aspects related to corporate social responsibility. It also recommends that companies introduce a communication policy with shareholders, institutional investors and proxy advisors. In addition the Code recommends that during the AGM, the Chairman should report on the company's level of compliance with the Code. Finally, the Code recommends that authorities to issue shares without pre-emptive rights should not exceed 20% of share capital.

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<sup>6</sup> [https://www.cnmv.es/DocPortal/Publicaciones/CodigoGov/Codigo\\_unificado\\_Esp\\_04.pdf](https://www.cnmv.es/DocPortal/Publicaciones/CodigoGov/Codigo_unificado_Esp_04.pdf)

<sup>7</sup> [http://www.cnmv.es/DocPortal/Publicaciones/CodigoGov/CUBGrefundido\\_JUNIO2013.pdf](http://www.cnmv.es/DocPortal/Publicaciones/CodigoGov/CUBGrefundido_JUNIO2013.pdf)

<sup>8</sup> [http://www.cnmv.es/DocPortal/Publicaciones/CodigoGov/Codigo\\_buen\\_gobierno.pdf](http://www.cnmv.es/DocPortal/Publicaciones/CodigoGov/Codigo_buen_gobierno.pdf)

<sup>9</sup> The Committee of Experts was appointed by the Ministry of Economy and Sustainability in May 2013 with the aim of improving the current framework of Corporate Governance in Spain. In October 2013, this Committee published a Study with regulatory changes proposals.

### 3.3 Audit Act

On 17 June 2016 the new Spanish Audit Act<sup>10</sup> came into force. This Act, which is a transposition of a European directive<sup>11</sup> aims to strengthen the independence of auditors and restore confidence in the audited financial information, especially following a number of scandals that occurred at some Spanish listed companies.

This law particularly affects Public Interest Entities (PIE)<sup>12</sup>, and introduces significant new obligations on them. These include:

- To establish an audit committee whose members must be majority independent and whose functions will be supervised by the CNMV (the Spanish stock market regulator).
- External auditor rotation must take place every ten years, extendable to four additional years if a public tender is held and if the work is done with a new audit partner.
- Under the new rules, up to eleven service categories will be incompatible with the role of external auditor. These services include, among others, accounting, internal audit, legal advice, design of internal control procedures, and, risk management related to financial reporting. Tax and valuation services will also be incompatible, unless they have no direct impact on the audited statements or are immaterial.
- As for fees, professional service firms may only perform non-audit services if they do not represent more than 70% of the average revenue per statutory audit in the last three years. Additionally, audit fees in relation to a single client and in the last three consecutive years may not exceed 15% of the firm's annual income.

Despite the restrictive aspects listed above, this law strengthens the role of the auditor. The audit report will now include more information about the risks that companies face. Also, in order to improve transparency, the report will have more information and details about the accounts analyzed.

<sup>10</sup> Ley 22/2015, de 20 de julio, de Auditoría de Cuentas: <http://www.boe.es/boe/dias/2015/07/21/pdfs/BOE-A-2015-8147.pdf>

<sup>11</sup> Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0056&from=EN>

<sup>12</sup> Public Interest Entities include credit institutions, insurance companies and listed companies, including those operating in the Spanish Alternative Stock Market, such as collective investment institutions, pension funds and mutual guarantee companies and companies that bill more than €2bn and employ 4,000 people for two consecutive years.

# Global locations

## **Georgeson Australia**

### **Melbourne**

Yarra Falls 452 Johnston Street  
Abbotsford 3067 Vic  
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### **Sydney**

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## **Georgeson Hong Kong**

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