



# PROXY SEASON REVIEW

## **GERMANY**

# CMi2i LETTER

I am delighted to provide you, for the third year in a row, the CMi2i Proxy Season Review, a corporate governance analysis of the main European markets. The purpose of this analysis is to allow you to better understand the latest corporate governance developments and to highlight the latest trends that are predominant in the market.

2023 marks a very important year for CMi2i, with it being our 10 year anniversary. During this time, CMi2i's Capital Markets Intelligence and insights consistently made the difference to the success of deals, AGMs, Activist Defences, IR strategies and proxy battles. We have invariably identified investors where others have not. We continue to provide unrivalled expertise and put our intelligence into context. And ultimately, giving you the edge you need to win.

When we started in 2013, the capital market environment was a very different picture than today. In particular, we have observed the rise of ESG considerations that just a few years ago were not considered as essential for issuers and investors. Today, partly driven by new responsibilities and accountability imposed by the Stewardship Codes, investors have become increasingly vocal and want to play a more active role in the companies they are investing into. Moreover, proxy advisors' influence is stronger than ever. Most resolutions that received an Against recommendation from proxy advisors often also received high shareholders dissent. Finally, more and more investors have taken the opportunity to onboard "pass-through voting initiatives" where funds

and retail investors are being given more of a voice in voting the proxies. This has made the identification of shareholders at the Fund level even more of an imperative when establishing who will support a company – as it is based on who controls the vote. As a result an AGM average quorum increase has been observed among almost all the countries analysed.

With increased scrutiny, more stringent regulations and new corporate governance requirements approved every year, CMi2i is best placed to help your next general meeting preparation in order to gather optimal AGM representation and to maximise shareholders support.

A special thanks goes to the CMi2i Proxy team that contributed to the production of this latest series of reports and to all our clients that trusted our global market intelligence services once again.



Mark Simms, CEO





# METHODOLOGY

This review is a chapter of the “2023 CMi2i European Season Review”.

As every year, CMi2i gathered the Annual General Meeting data for the main European markets in order to analyse and present the predominant trends related to Governance, Sustainability and Shareholder Activism.

Continental Europe has been divided into ten main regions: Italy, Spain, Switzerland, France, Netherlands, BeLux (Belgium + Luxembourg), Germany, Nordics (Sweden + Norway + Finland), Ireland and UK. The following stock indices have been investigated: FTSE MIB 40 (Italy), IBEX 35 (Spain), SMI 20 (Switzerland), CAC 40 (France), AEX (Netherlands), BEL 20 + LUXX 10 (Belgium + Luxembourg), DAX 40 (Germany), STOXX NORDIC 30 (Nordics), ISEQ (Ireland) and FTSE 100 (UK). In the case that a company is a member of more than one index, we will consider it only as part of the market where it is headquartered.

Moreover, a brief analysis of the Secondary index will be present where relevant, especially for the bigger markets.

For editorial reasons, this review will focus only on the meetings that took place between 1 August 2022 and 31 July 2023. Only Annual General Meeting are considered, with the limit of one meeting per company, in case a issuer had multiple meetings during the period under review. Only management proposed resolutions are being counted, while shareholder proposed resolutions will be analysed separately when relevant.

Every meeting has been analysed according to company provided disclosure and public available information. The quorum gathered is the figure published by the companies; in the case a company did not disclose the meeting quorum the highest number amongst each resolution has been considered.

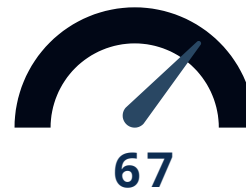
In order to compare markets, all the proposed resolutions have been split into 10 different main categories: Auditor, Board Related, Bylaws Amendment, Capital Related, Dividend, Financial Statement, Remuneration, E&S, M&A, Other.

Two level of shareholder dissent will be considered relevant in this review: above 10% and above 20%. Therefore, all the resolutions that gathered at least 90.1% support will not be marked as contested. Resolutions that received between 80.1% and 90% will be considered contested while resolutions receiving less than 80% support will be considered highly contested. When it comes to failed resolutions, resolutions that received below 50% support are generally considered failed. However, in some markets and cases, the threshold might be higher at 75% or 2/3 of the vote cast, in these eventuality, we will clarify the market specificity case-by-case.



# HIGHLIGHTS

AVERAGE  
QUORUM



COMPANIES  
WITH  
SIGNIFICANT  
DISSENT\*



HIGHLY  
CONTESTED  
RESOLUTIONS  
(>20% DISSENT)



E&S PROPOSALS



FAILED  
PROPOSALS



\*At least one resolution with 20% or more against votes.



# GERMANY DAX 40 OVERVIEW

The following 40 issuers have been analysed as part of the DAX 40 index: Adidas, Allianz, BASF, Bayer, Beiersdorf, BMW, Brenntag, Commerzbank, Continental, Covestro, Daimler Truck Holding, Deutsche Bank, Deutsche Boerse, Deutsche Post, Deutsche Telekom, EON, Fresenius Medical Care, Fresenius SE, Hannover Rueck, HeidelbergCement, Henkel, Infineon, Mercedes Benz, Merck, MTU Aero Engines, Münchener Rück, Porsche AG, Porsche SE, Qiagen, Rheinmetall, RWE, SAP, Sartorius, Siemens, Siemens Energy, Siemens Healthineers, Symrise, Volkswagen, Vonovia, Zalando.

During the 2023 German Season Review 780 management resolutions were put forward across 40 companies, with an average support rate of 96%. Moreover, 0 (zero) resolutions failed to be approved, although 75 were contested (with at least 10% dissent) and 20 were highly contested (with at least 20% dissent). 12 companies received significant dissent (20% or more) on at least one resolution and therefore will be required to address shareholder dissent ahead of next season's AGM. These companies include: Adidas, Allianz, Bayer, Beiersdorf, Brenntag, Fresenius Medical Care, Infineon, Merck, MTU Aero Engines, Münchener Rück, Vonovia and Zalando.

The German 2023 Proxy Season was more contested overall than the previous year. A big factor was the tangible dissent increase in the article changes category, with particular focus over Virtual-Only Meetings.

Remuneration, Capital Related proposals and Board Related resolutions were the other categories that generated shareholder dissent.

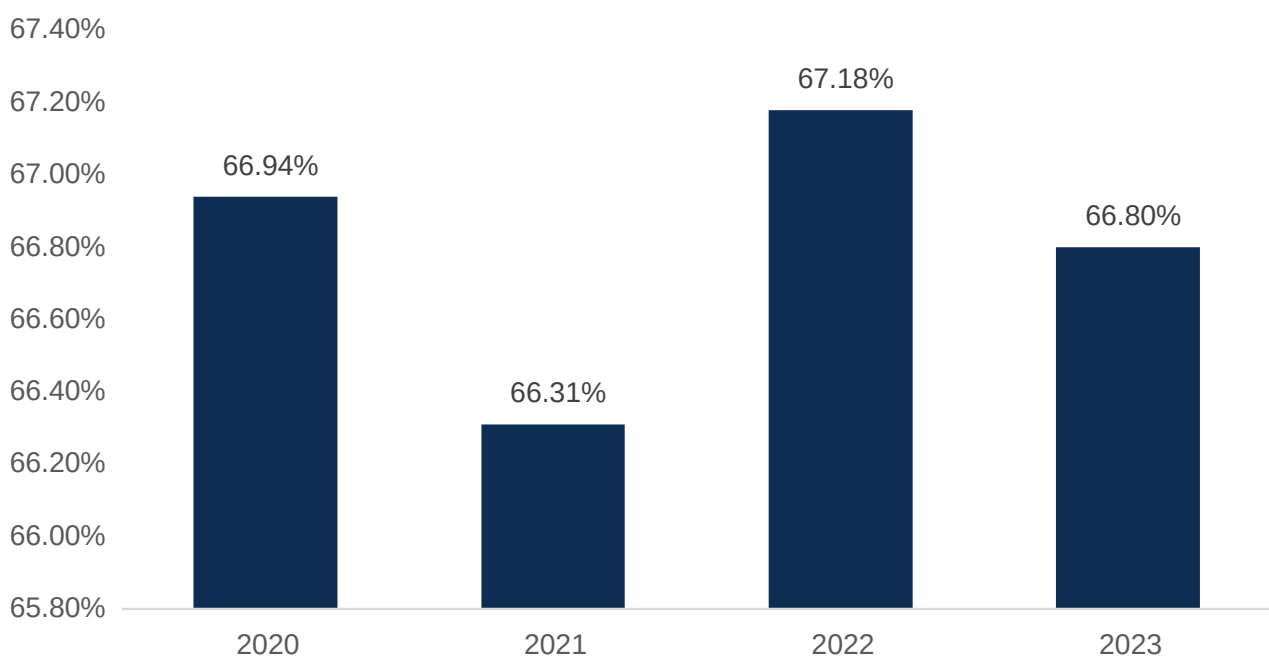
While in Germany no E&S (environmental and sustainable) proposals were put forward this year, it is worth noticing that on 5 July 2023 BaFin, the German Financial Supervisory Authority, outlined its Sustainable Finance Strategy. The Strategy focuses on five areas that BaFin view as key to supporting the transition to a more sustainable economy and to protect investors from receiving misleading information. According to the Strategy, taking sustainability aspects into account is a medium-term goal for BaFin, and is one of ten priorities the authority has set for the coming years. It is therefore expected that German issuers will be required to put forward an E&S strategy and, potentially, a Say-on-Climate vote sooner rather than later.

# GERMANY DAX 40 QUORUM

The overall AGM representation (quorum) for the German 2023 proxy season was 66.80%, slightly lower than the one recorded in 2022. Germany represents one of the few countries that did not experience an increase in the AGM representation this year.

Usually, a decrease in the participation level is not seen as a good signal for a company. While the decrease is somewhat moderate (- 0.38%) and still represents an increase compared to the 2021 season (+ 0.49%), the German quorum level sits well below the European average.

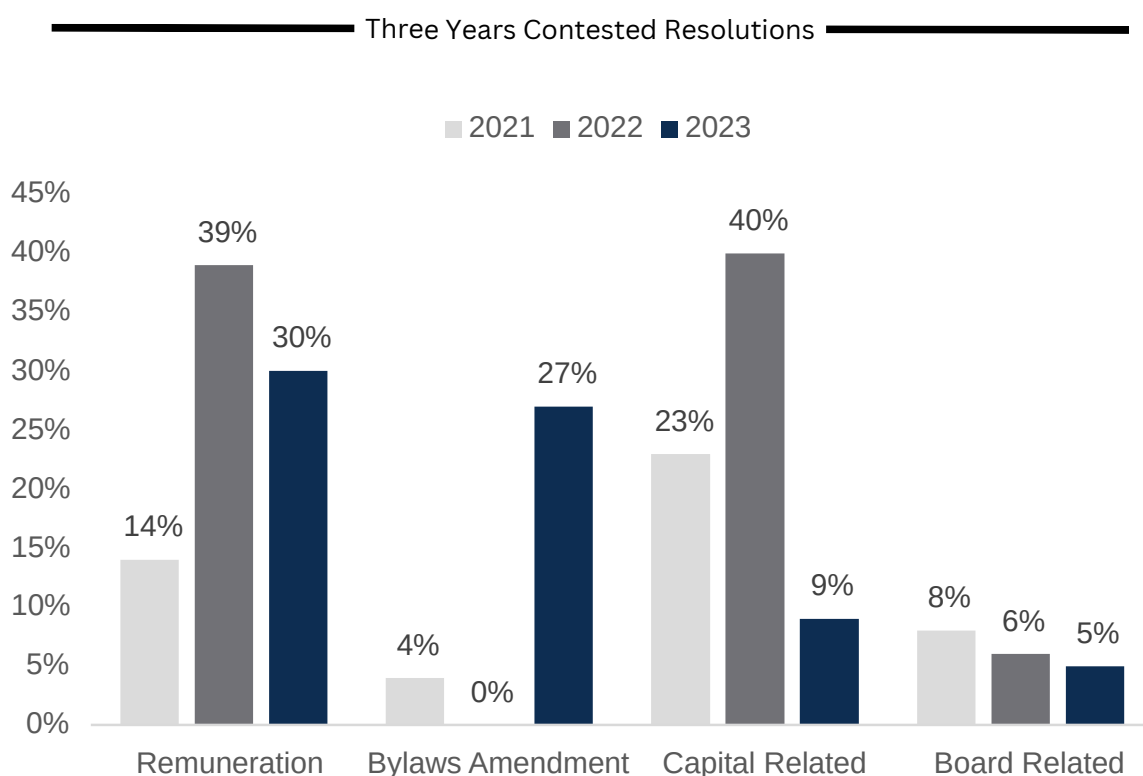
Four Years Quorum Evolution



# GERMANY DAX 40 CONTESTED RESOLUTIONS

Based on the disclosed results, and considering 10% dissent as a threshold for opposition, Remuneration related proposals were once again the most contested item with 30% of such proposals opposed by shareholders. The second most contested category were Bylaws Amendment, mainly due to the Virtual Only Meeting dissent which will be covered later in this report. Capital Related resolutions were the third most contested category with 9% of such proposals being contested, followed by Board Related proposals with 5% being contested.

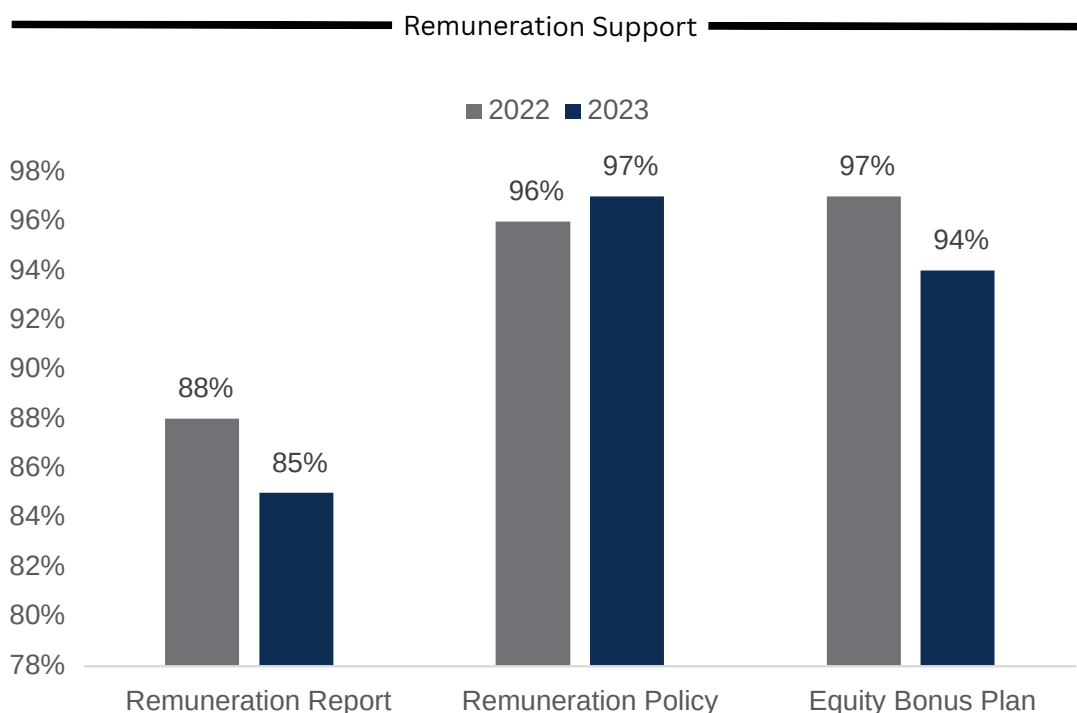
Overall, the number of contested proposals increased by 45% compared to last season. While this data was mainly driven by the Bylaw Amendment category, it still signals that institutional investors are expressing their discontent towards German issuers. The situation may even worsen in the next few years, especially if the dissent is addressed on time by issuers.



# GERMANY DAX 40 REMUNERATION

Compensation concerns have once again led institutional investors' agendas and Remuneration related proposals remained the most contested category in Germany. In fact, out of 63 Remuneration related resolutions, 19 or 30% of all proposals, received 10% or more shareholder dissent.

The 2023 AGM season was the first in which it was mandatory for DAX 40 issuers to hold a non-binding Remuneration Report vote and, interestingly, all of the 19 contested Remuneration proposals were Remuneration Report votes. This has been reflected in an overall 3% decrease in the level of Remuneration Report support. The Equity Bonus Plan average support also decreased by 3%, while Remuneration Policy votes were less contested this year, averaging 97% support.

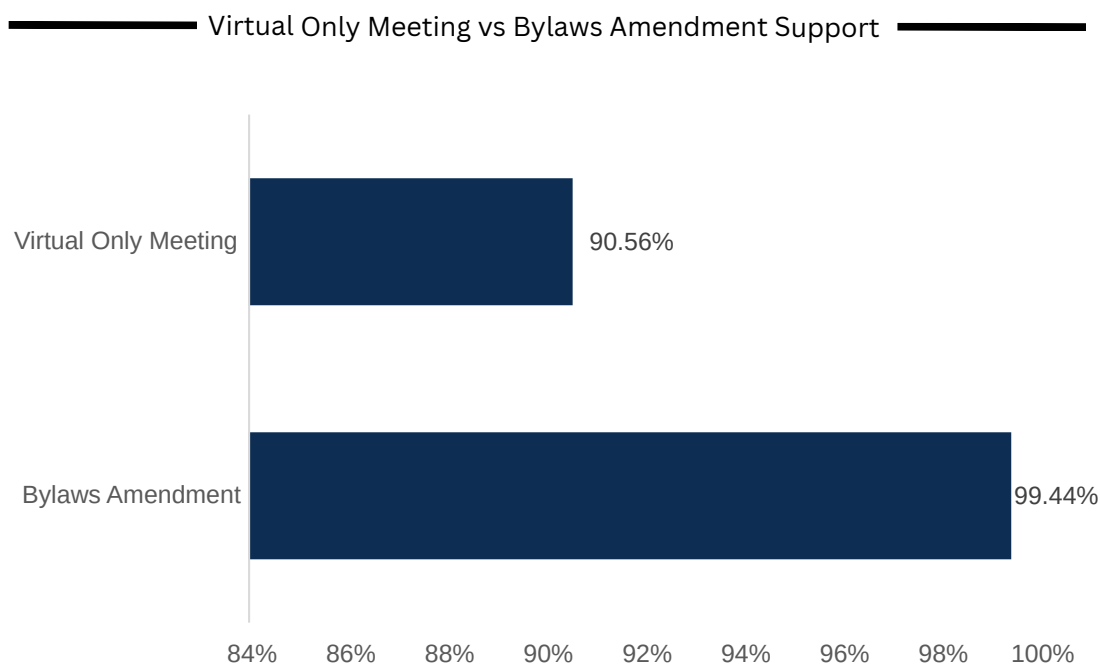




# GERMANY DAX 40 VIRTUAL AGMs

As mentioned above this season Germany experienced an increase in the number of Bylaws Amendment resolutions up for a vote. Most of these resolutions were related to the approval of Virtual Only General Meetings following legislative changes. In fact, during 2022 the German Government adopted a bill on the introduction of virtual AGMs on a permanent basis, to replace previous COVID related legislation.

As a consequence, most German issuers proposed changes to their articles of association. However, a good number of investors decided to object the amendments stating they prefer hybrid options and that they would support virtual only meeting only in exceptional circumstances. This resulted in a good number of such proposals being contested. In particular, out of 96 Bylaws Amendment resolutions, 65 were related to Virtual Only Meetings, with 26 of these (40%) being contested. The overall support level on this proposal was 90.56%, almost 9% lower than the average support of the rest of Bylaws Amendment proposals.



# GERMANY DAX 40 HIGH DISSENT AGMs

This year's German AGM season was more contested than the previous one despite no resolutions failing to be approved by shareholders. In particular, some companies experienced high overall dissent at their Annual General Meeting and will be required to improve their governance practices ahead of next season in order to avoid failing one or more resolutions next year.

In particular, we identified three companies that experienced high contested AGMs: Bayer, Zalando and Vonovia. All three companies were not new to shareholders' dissent and were bringing over issues from the previous years' AGMs. These companies had similar issues around Remuneration and on top of that lacked to acknowledge dissent from previous years ('or the previous year'). Investors are being extremely vocal about seeking changes in companies with bad governance practices and will potentially start disinvesting should the situation not be addressed promptly.



Average AGM Support: 88%  
 Number of 20% Dissent Proposals: 3  
 Number of 10% Dissent Proposals: 3  
 Lowest Support on a single resolution: 52%



Average AGM Support: 92%  
 Number of 20% Dissent Proposals: 2  
 Number of 10% Dissent Proposals: 4  
 Lowest Support on a single resolution: 56%



Average AGM Support: 94%  
 Number of 20% Dissent Proposals: 2  
 Number of 10% Dissent Proposals: 4  
 Lowest Support on a single resolution: 61%



# GERMANY DAX 40 CONCLUSIONS

While some categories, with the likes of Capital Related and Board Related resolutions, experienced a decrease in the level of dissent, Germany remained one of the most contested markets and experienced a noticeable increase in the level of dissent, with an astonishing 45% increase in the number of contested resolutions. In particular, 12 companies, representing 30% of the index, will be forced to address investor dissent ahead of next season. The trend of the season was surely the introduction of Virtual Only AGMs that was highly contested by investors.

So far, German issuers have not been legally forced to put forward E&S proposals and this season saw no issuers voluntarily decided to put any climate votes forward. However, following the BaFin Finance Sustainable Strategy, it is likely that this will change in the near future. At this time, it does not appear that German companies are ready for this, and it is therefore expected that the already very high dissent rate will continue to increase.

## POSITIVES

- No resolutions failed to be approved.
- Capital Related dissent decreased year-on-year.
- Board Related dissent decreased year-on-year.

## NEGATIVES

- 12 companies received significant dissent.
- 45% increase in the number of contested resolutions.
- AGM representation has decreased compared to previous year.
- Investor were not happy with the introduction of Virtual Only AGMs.

# CONTACTS

CMi2i is a capital markets intelligence firm headquartered in London that specialises in helping issuers and their advisers to identify debt and equity investors and to understand their behaviour. Our senior team brings decades of experience in market data analysis, investor identification, targeting, Corporate Governance advisory and proxy solicitation, drawn from detailed working knowledge of the key capital market participants, corporate governance, and regulation. Our bondholder and shareholder identification reports are used by issuers and their advisers to plan day-to-day IR activities as well as to successfully navigate corporate actions, including debt restructurings, consent solicitations, tender offers, refinancing, and M&As. CMi2i also provides bondholder and shareholder identification reports designed to meet regulatory and tax certification requirements, including withholding tax exemption rules and SEC Rule 802. Over the years we have provided support and advice to over 500 of the largest, most structurally complex companies in the world, and our team has worked on over 1000 transactions, analysing over \$200billion worth of bondholders in the secondary market.



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### CMi2i

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