

# LIGHTHOUSE

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MORROWSODALI

## THE 2021 EUROPEAN AGM SEASON SPAIN

THIS UPDATED EDITION INCLUDES  
AN OVERVIEW OF THE UPCOMING  
PROXY SEASON 2022



# SPAIN<sup>1\*</sup>

The COVID pandemic has forced issuers to change the form of shareholders' meetings by submitting to shareholder vote certain bylaw amendments following recent regulatory changes. In 2020, urgent legal procedures (royal decree-laws 8/2020 and 11/2020) allowed issuers to hold virtual-only meetings in the FY2020, even if this possibility was not in their bylaws. Later, this temporary measure was extended to 2021.

However, most companies decided to use a provision of the SRD II bill to amend their bylaws in 2021 without needing those extraordinary measures. Such amendment requires the approval by a majority of two-thirds of the votes and establishes the following additional requirement: the participation to the GM through remote means, either audio or video, must be effective and complemented by real-time text messaging in order for shareholders to exercise their rights to speak and interact with management and the board, vote, and table agenda items.

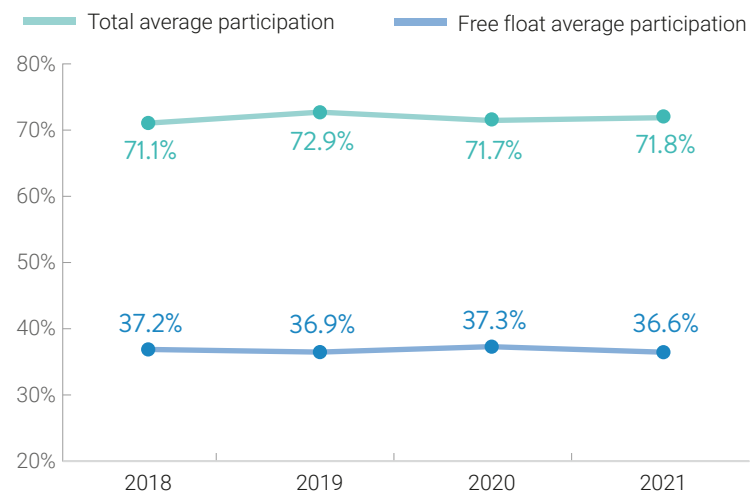
In general, considering the new legal environment and issuers' commitment to hold remote-only meetings only in extraordinary occasions, such amendments were deemed positive by proxy advisors. Shareholder opposition was slightly higher than in other similar items addressing other amendments, but still approval levels were high in broad terms (above **90%** on average).

## GENERAL MEETINGS UNDER COVID REGULATIONS

Average participation at Ibex-35 proxy seasons remains constant across the years despite (i) the usual changes in the index composition, (ii) the general disruption created by the COVID pandemic, which impacted investors' ability to participate at shareholders' meetings, and (iii) the escalation of remote-only shareholders' meetings. Proxy season 2021 records a similar average quorum to the past three seasons, slightly improving the previous year's quorum (**71.8%** versus **71.7%**).

The average participation of the free float also remains very stable at this time. Despite the variety of index constituents being wide (some issuers' free float hit **100%**, while with some others the strategic shareholders hold up to **70.1%** of the equity), the average participation of the free float has not significantly changed in the last four years. In fact, most of the average votes at the Ibex-35 proxy season comes from the free float. Nonetheless, average free float participation at the 2021 proxy season reached the lowest record of the time series (**36.6%** versus **37.3%**).

## QUORUM - IBEX-35



The form of shareholders' meetings does make an impact on shareholder participation. Since the beginning of the COVID pandemic and the resulting restrictions affecting physical gatherings, remote-only meetings have increasingly become the most common form of shareholders' meeting. While in 2020, **62%** of the Ibex-35 issuers organised remote-only meetings, in 2021 the percentage grew to **68%**. At any rate, all Ibex-35 issuers offer shareholders the possibility to attend the meetings by telematic means.

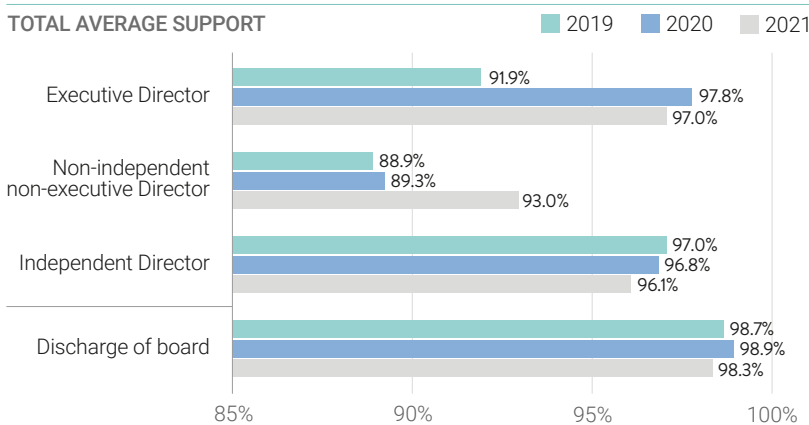
1. ArcelorMittal has been excluded from this research on Ibex-35 issuers given that the form of this Luxembourgian issuer's governance and shareholders' meeting does not follow Spanish parameters.

## BOARD

Board-related items represented **24.8%** of the total items of the 2021 Ibx-35 proxy season. Nearly one out of four items addressed board issues, thus becoming the most frequent type of item.

When it comes to the discharge of the board, average support records very high levels. This indicates that this item, which is at times voted jointly with the approval of the financial statements in Spain, is becoming a routine formality. Taking a closer look at the individual voting outcomes, the lowest support was recorded in proxy season 2021 at **90.0%**, which is a reasonably high low.

### BOARD ELECTIONS - IBEX-35



Overall support of board elections also remains high in 2021 amongst Ibx-35 issuers. Indeed, in 2021 the average support (**95.4%**) outperforms the levels of 2020 (**94.5%**) and 2019 (**93.6%**). However, support varies depending on the nominee category. The 2021 proxy season confirmed the trend of 2020, which shows that executive nominees received the highest average support levels, while independent nominees are the second most voted candidates. Non-independent, non-executive nominees are the least supported nominees on average. The 2019 voting outcome showed that independent candidates used to be the shareholders' favourites.

Up to 124 agenda items addressed the individual election, re-election, or ratification of this number of nominees to the boards of the Ibx-35 issuers in the 2021 proxy season. While this number is not representative since it broadly relies on the occurrences of board mandates that come to an end, it is interesting to note that proxy advisor ISS only issued eight against recommendations (**6.5%** of the election-related items), based on situations of insufficient board independence, excessive outside boards of the nominees, or the combination of the roles of CEO and chair under a single nominee. This percentage implies a significant decrease year-on-year in the 2018-2021 time series, but mainly regards the 2020 proxy season, where **15.5%** of the election-related items received an adverse recommendation by the said proxy advisor.

In 2021, investors' support also varies on the gender of the nominees. In the case of male nominees, average support amounted to **94.7%**, while female nominees received an average support of **96.7%**.

Interestingly, most female nominees were appointed as independent candidates (**87.8%**), which is a category that in general terms is widely supported by shareholders. In the case of male nominees, the independence also is their preferred status, although it is less frequent (**47.8%** of male nominees).

The occurrence of non-independent non-executive nominees follows closely (**36.1%** of male nominees). The latter is the least favourite director category for shareholders across the genders.

Finally, **67%** of all Ibx-35 nominees in 2021 were male, while the remaining **33%** were female. Only one of the total of 41 female nominees (**2.4%**) was proposed to shareholder election in an executive capacity. Indeed, 12 out of a total of 13 executive nominations were filled by male nominees (**92.3%**).

Interestingly, despite the adverse ISS recommendations in 2021, which were singularly infrequent in election-related items, its influence is still meaningful: the average support in the presence of an ISS against recommendation dropped to **82.6%** (2021), **82.9%** (2020), and **72.9%** (2019). This implies an average downturn of circa 13 percentage points regarding the support to all election items, and circa 15 percentage points regarding election-related items that received only favourable recommendations by ISS.

The new corporate realities triggered by the sudden impact of the pandemic have modified compensation practices too.

However, while proxy advisors and institutional investors remained relatively flexible to accept the extraordinary changes implemented by issuers, there are certain red lines that are still highly controversial.

One of those red lines is the payment of extraordinary bonuses to executive directors. Even when certain amounts are waived to mitigate the damage of the pandemic, the payment of one-offs should be explained in detail and based on disclosed extraordinary achievements in the context of robust financial and economic corporate momentum.

## REMUNERATION

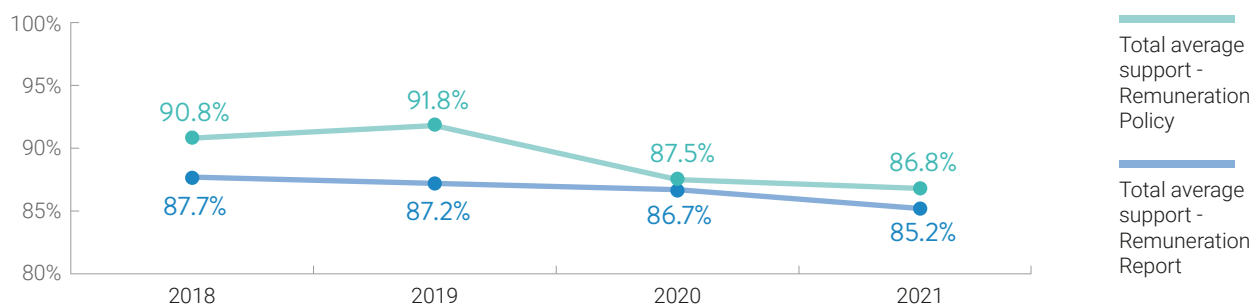
In 2021, remuneration-related items were **14.4%** of the total items submitted to the shareholder vote by Ibx-35 issuers, being the third most frequent type of item at the AGMs, behind board items and those related to the approval of the different financial and legal corporate reports.

When it comes to the annual remuneration report, which most Ibx-35 issuers submit as an advisory item with the sole exception of two companies, the average support was **85.2%** of votes, which is worse than the level recorded in 2020 by more than one percentage point. This low average level relates to the concerning cases of up to nine Ibx-35 issuers, who in 2021 received the support of less than **80%** of cast votes under this item. Remarkably, one of them failed to approve the advisory remuneration report, which implies that a remuneration policy will have to be submitted to the binding vote of shareholders in 2022. This was, in fact, the only item in the 2021 Ibx-35 proxy season that has not passed.

Regarding the voting outcome of the binding approval of the remuneration policy—a forward-looking document that describes the company's approach on board and executive compensation for the following three years—the average support in 2021 recorded **86.8%** of the votes. As usual, shareholders tend to be less strict when voting on this item than when voting on the remuneration report. Nonetheless, the average support in 2021 is slightly lower than in 2020.

In both cases, shareholder opposition is a growing factor that, on average, makes these two items the most controversial at Ibx-35 shareholders' meetings in terms of support. This is an increasing concern for all issuers as shareholders are very sensitive to remuneration aspects.

## REMUNERATION REPORTS AND POLICIES - IBEX-35



Despite the diminishing levels of shareholder support, proxy advisor ISS had issued 15 against recommendations under these types of items (**15.5%** of these items received an against recommendation by ISS). This percentage implies a significant decrease year-on-year in the 2018-2021 time series, but mainly regarding the 2020 proxy season, where **24.4%** of these items received an adverse recommendation by the said proxy advisor. Consequently, institutional investors do not seem to relax their stringency on remuneration items regardless of proxy advisors' recommendation trends.

## CLIMATE AND ENVIRONMENTAL ACTION IN SPAIN

Spain was the first country in the world that passed a law that mandated issuers to annually submit their externally assured non-financial information to the binding vote of shareholders under a separate agenda item. While this was firstly implemented in the 2019 proxy season, proxy advisors and most institutional investors keep relying on the auditor's opinion to decide their vote.

Nonetheless, certain new developments and actions have appeared at shareholders' meetings regarding climate matters, proving that the appetite of investors for these items is not yet satisfied. In the 2021 proxy season, up to three different Ibex-35 issuers decided to table specific climate-related items (four in total), besides the release of their annual non-financial statements. Three of these items addressed the climate strategy and action plans and were prepared following the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and the Climate Disclosure Standards Board (CDSB). One of them includes the evolution of emissions of the different business activities, facilities, and assets over which the company maintains control, in accordance with international standards (ISO 14064 or equivalent), indicating annual progress with respect to the company's Greenhouse Gas Emissions Reduction Plan, and the Report was verified by an independent body, in accordance with specific internationally approved auditing standards (ISAE 3410 or equivalent). The fourth item addressed a Greenhouse Gas Emission Reduction Plan, which included a four-page document where the company provided (i) an overview of its GHG emission reduction track record for the period 2009-2020; (ii) its plan for the period 2020-2030; and (iii) forecast from 2030 to 2050.

For the moment, these were proposed under a voluntary vote and were strongly backed by shareholders (all four items received more than **95%** votes in favor). Proxy advisors' opinions were unequal, which shows room for maturing, given that their policies tend to share similar views in most conventional matters: while ISS recommended in favor of all these items, Glass Lewis decided to recommend not in favour of three of them.

Shareholders and proxy investors unanimously backed non-financial information statements that issuers proposed under binding separate items. Both ISS and Glass Lewis recommended in favor of all these resolutions and the average support was **99.4%** of votes.

While these approval levels imply that issuers perfectly adjust their non-financial contents to the expectations and demands of investors, proxy advisors and shareholders, it may also indicate that the way this information is tabled may not be relevant given that most parties address these items' voting as a routinary formality, which contrasts with the dynamic character of ESG matters.

## A BRIEF FORECAST ON THE UPCOMING PROXY SEASON 2022

Year 2022 appears to bring a consolidating season for Spanish issuers. Several incipient trends that have been appearing during the last years will take form in a more solid and consistent manner. These shall be the main challenges issuers may have to face in 2022:

- **Board gender diversity:** Considering the increasing appetite for more gender diverse boards and that the Spanish Corporate Governance Code recommends that the least represented gender at the board shall reach at least 40% in 2022, we can expect that those boards that do not present a minimum gender balance of 70%-30% may face significant opposition levels in board elections.
- **Accountability of the board and the committees:** Boards are expected to prove more explicitly which actions have been taken to address meaningful shareholder discontent in previous shareholders' meetings. In line with this, board elections impacting directors that also are committee members may receive relevant levels of against votes if the committee action has been deemed poor or negative.
- **Say on Climate:** Climate has become a worldwide topic that is already impacting shareholders' meetings at international and domestic levels. Indeed, several Spanish issuers (both Ibex-35 and non-Ibex-35) have already presented items addressing climate strategy and commitments. In fact, diverse forms of shareholder activism are concentrating around climate action and global proxy advisers are reformulating their guidelines to better analyze these items that no longer are expected to be isolated cases.



## WHAT IS NEW IN ISS AND GLASS LEWIS VOTING POLICIES?

The three topics above and other features have been included for the first time to the voting policies of both global proxy advisers -changes effective in proxy season 2022:

MATTER	ISS	GLASS LEWIS
<b>Board gender diversity</b>	<ul style="list-style-type: none"> <li>Widely-held issuers: <math>\geq 30\%</math> of the least represented gender.</li> <li>Controlled issuers: Representation of both genders.</li> </ul>	All IBEX-35 and IBEX Medium Cap issuers: $\geq 30\%$ of the least represented gender.
<b>Board Committees</b>	N/A	<ul style="list-style-type: none"> <li>Vote against the re-election of the audit committee chair and/or other committee members when Glass Lewis have been unable to determine through disclosure provided that at least one member of the audit committee has accounting or audit skills.</li> <li>If a recommendation is to be issued against any committee chair but the chair is not up for election, the election of a long-standing committee member will be opposed.</li> </ul>
<b>Board Responsiveness</b>	N/A	If 20% or more of minority shareholders vote contrary to the recommendation of management, the board should, depending on the issue, demonstrate responsiveness to address shareholder concerns.
<b>Board ESG accountability</b>	<p>Significant GHG emitters (Climate Action 100+ Focus Group list), minimum requirements:</p> <ul style="list-style-type: none"> <li>Detailed disclosure of climate-related risks, such as according to TCFD.</li> <li>Appropriate GHG emissions reduction targets.</li> </ul>	Vote against the re-election of the corresponding committee chair of Ibex-35 issuers that fail to provide disclosure concerning the board's role in overseeing material E & S issues.
<b>Say on Climate</b>	<ul style="list-style-type: none"> <li>Vote case-by-case on management proposals on company's climate transition action plan, taking into account the completeness and rigor of the plan.</li> <li>Vote case-by-case on shareholder proposals that request the company to disclose a report providing its GHG emissions levels and reduction targets and/or its upcoming/approved climate transition action plan.</li> </ul>	<ul style="list-style-type: none"> <li>Shareholder proposals: Requests on companies adopting a say on climate vote will be generally opposed.</li> <li>Management proposals: Glass Lewis will evaluate companies' climate transition plans on a case-by-case basis, considering: <ul style="list-style-type: none"> <li>The disclosure of the board's role in setting company strategy.</li> <li>The disclosure on how the board intends to interpret the vote results.</li> <li>The engagement with shareholders on the issue.</li> <li>The design of climate transition plans in the context of the issuers' unique profile.</li> </ul> </li> </ul>
<b>Remuneration</b>	<ul style="list-style-type: none"> <li>Average remuneration of company employees.</li> <li>Suitability of ESG metrics.</li> <li>Alignment of executive pay with financial and non-financial performance.</li> </ul>	<ul style="list-style-type: none"> <li>The pension provisions will be taken into account in relation to its peers, when assessing a company's overall remuneration policy.</li> <li>Executives who are significant owners (10-20% s.c.) shall not participate in equity plans.</li> <li>If E&amp;S metrics are included, it is expected a robust disclosure on metrics, the rigour of targets, and the determination of bonus opportunities.</li> </ul>
<b>Equity-Based Compensation</b>	Clarification: Equity-based compensation refers to long-term incentive plans, even if settled in cash.	N/A
<b>Share repurchases</b>	Clarification: The 10% limit includes treasury shares.	N/A
<b>Virtual shareholder meetings</b>	N/A	Clear procedures should be set and disclosed to ensure that shareholders can effectively participate in virtual-only shareholder meetings and meaningfully communicate with company management and directors.

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