

THE FUTURE OF GENERAL SHAREHOLDER MEETINGS

BETTER FINANCE-DSW Study on the
2020 virtual shareholder meetings in the EU



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About BETTER FINANCE

BETTER FINANCE, the European Federation of Investors and Financial Services Users, is the European public interest non-governmental organisation solely dedicated to the interests of European citizens as savers, individual investors and financial services users at the European level to lawmakers and the public to promote research, information and training on investments, savings and personal finances. BETTER FINANCE represents through its member organisations roughly 4 million private, non-professional shareholders.

BETTER FINANCE acts as an independent financial expertise and advocacy centre to the direct benefit of European financial services users. Since the BETTER FINANCE constituency includes individual and small shareholders, fund and retail investors, savers, pension fund participants, life insurance policyholders, borrowers, and other stakeholders who are independent from the financial industry, it has the best interests of all European citizens at heart. As such, its activities are supported by the European Union since 2012.

About DSW

Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW) is Germany's leading association for private investors. Its main goal is to foster the equity culture in Germany and to improve investment skills. Founded in 1947, DSW now has about 30,000 members. DSW represents its members at approximately 700 general meetings per year. Next to the representation of private investors' interests both at general meetings and at a political level, DSW acts as the head office of 7,000 investment clubs in Germany.

About the author

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I. Executive summary

The annual general meeting of shareholders (AGM) is the cornerstone for sound corporate governance. It is through the shareholders' vote at the AGM that board members' actions get legitimacy and validity. However, it is not only voting that takes place at an AGM. The shareholders' meeting is the only place where directors must report to shareholders on their management and their performance and answer questions. It is also a body where shareholders can exchange directly with each other and board members, form an opinion on all matters to be decided upon, give feedback advice on key business decisions, and hold board members to account. For private, non-professional shareholders it is very often the only opportunity to engage with managers, auditors, or members of the supervisory body.

The Covid-19 pandemic has had a significant impact on the general meeting season 2020 throughout Europe. In almost all countries, gatherings of people and the freedom of movement had been temporarily restricted. Holding a general meeting on-site under these conditions was impossible in most jurisdictions. Governments in several member states, therefore, decided to relax existing rules governing the participation in general meetings – regularly by way of emergency acts – allowing companies to hold their general meeting purely virtual, provided certain conditions were met. This has led to an unprecedented rise in virtual meetings across the EU.

Emergency laws in several member states prohibited general meetings with physical attendance and reduced in one way or the other shareholders' rights to speak and ask questions as well as the right to vote based on appropriate information.

A survey conducted among shareholders and their representative organisations throughout the EU shows that the owners of listed companies see both advantages and weaknesses in the traditional on-site meeting and the virtual-only meeting. While on-site meetings are not easily accessible for non-residents, involve costs and are time-consuming, they give especially private, non-professional shareholders a unique opportunity to be "eye to eye" with the management and interact very directly with both management and other shareholders. On top, they are very transparent: questions asked by shareholders and the board's answers are being heard by everyone in the room.

Virtual-only meetings, on the other hand, can be accessed from everywhere in the world and with a lower environmental impact, they are less costly and time consuming for shareholders and can be watched at any time, if recorded. However, virtual-only meetings are not accessible for people without internet access or poor IT skills and impact especially on the communication aspect which results in an essential part of the meeting, namely the discussion and discourse, getting lost.

From a shareholder's perspective, a hybrid general meeting model should, therefore serve as the future model for EU listed companies as it can combine the best of both worlds. To that end, such a model needs to become attractive both for shareholders and companies, which means that the weaknesses need to be addressed.

This report provides an overview of the status of shareholders' rights connected to general meetings of listed companies prior to the pandemic. It further analyses measures that have been taken in selected European Member States in response to the pandemic and how these measures

have been perceived by shareholders and their representative organisations. Finally, the report ends with lessons learned and identifies best practices for post-pandemic general meetings.

II. Pre-crisis status of general meeting regulations across Europe

The Shareholder Rights Directive states that *"companies should face no legal obstacles in offering to their shareholders any means of electronic participation in the general meeting. Voting without attending the general meeting in person, whether by correspondence or by electronic means, should not be subject to constraints other than those necessary for the verification of identity and the security of electronic communications."*¹

In this respect, Article 8 of the Directive governs the participation in general meetings by electronic means, thereby obliging Member States to permit *companies to offer to their shareholders any form of participation in the general meeting by electronic means, notably through the real-time transmission of the general meeting, real-time two-way remote communication and/or a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting.*

Prior to the pandemic, Member States had regularly implemented distance voting options, but only a few Member States had provided an opportunity for listed companies with a broad shareholder base to hold a virtual-only shareholder meeting.

The laws of **Spain** and **Germany**, for example, allowed for virtual-only meetings but only where companies had introduced such regulation in their articles of association. In **Portugal**, the legal framework allowed for virtual-only meetings already pre-crisis unless provision is made to the contrary in the articles of association. In addition, the company must vouch for the authenticity of declarations made and the security of communications. It must also register the content of the meeting and anyone intervening in it.² In **Finland**, virtual-only meetings were allowed pre-crisis but only where shareholders have unanimously consented to this format. In various other countries, like **France**, **Luxembourg**, **Iceland**, or **Italy**, virtual-only meetings have only been introduced during the crisis while in **Poland** and **Slovenia** such a format is still not foreseen in the respective country's company laws. In Slovenia, a respective draft law is meanwhile under discussion.³ The **UK** law has not provided for any changes to general meeting procedures during the season (a respective emergency law had only been introduced in late June 2020⁴). UK guidance endorsed hybrid AGMs and insisted that virtual-only meetings "may not constitute valid meetings." Companies could consider several options including a delay of the general meeting, postponement (if the company articles permit), adjournment, or the decision to hold a hybrid meeting. Updated guidance on AGMs was published late March 2020 stating that companies should make it clear that shareholders are not allowed to attend the meeting in person and should vote by proxy. If a company had already issued its AGM notice for an on-site meeting, but its articles allow a hybrid

¹ Shareholder Rights Directive 2007/36/EC, recital 9

² <https://www.cmvm.pt/en/Legislacao/LegislacaoComplementar/EmitentesOfertasInformacaoValoresMobiliarios/PageS/Commercial-Company-Act.aspx?v=> Article 377 (6) b

³ ZAKON O INTERVENTNIH UKREPIH ZA OMILITEV POSLEDIC DRUGEGA VALA EPIDEMIJE COVID-19 (PKP6): <https://www.gov.si/assets/vlada/Seja-vlade-SZI/2020/11-2020/PKP6.pdf>

⁴ See also section III. 3 in this report

AGM, it could change to a hybrid AGM.⁵ Despite the guidance note, many companies in the UK held their meetings in a way that shareholders could only attend virtually.

Moreover, even though legislation in most member states had conditioned the use of participating by electronic means or distance voting in addition to on-site AGMs, the vast majority of companies had not made full use of this option prior to the pandemic. This, however, changed significantly during the crisis.⁶

How many companies of your major index held their meetings virtual-only in 2020?

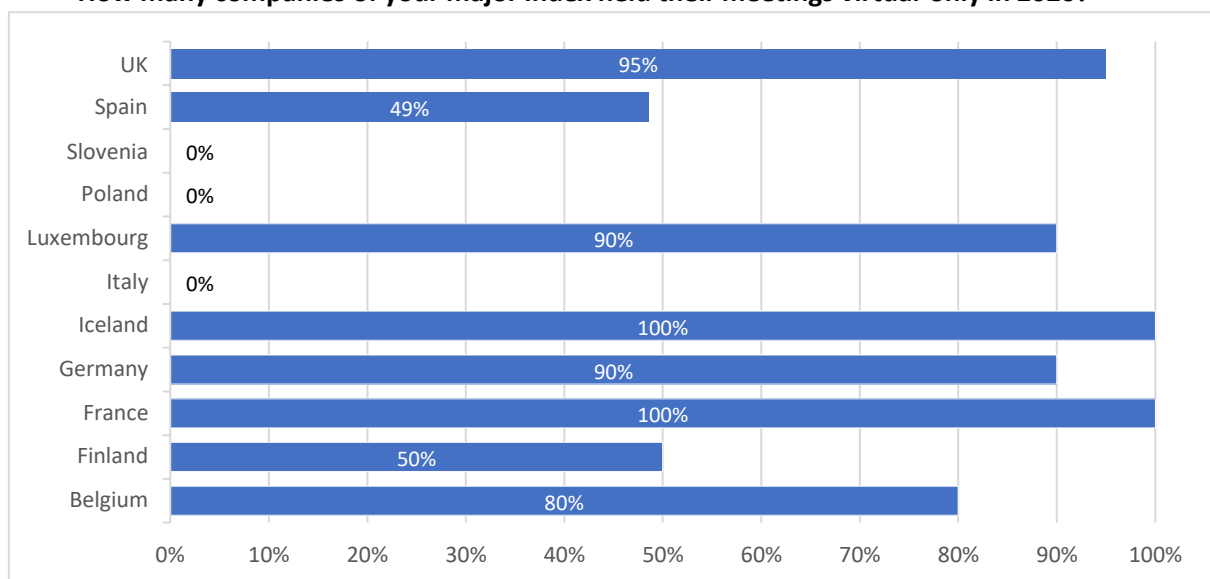


Figure 1 Result from individual investor associations' questionnaire, see Annex 1

Overall, 67% of the companies in the major indexes surveyed held their general meeting 2020 in a purely virtual format.

III. Relief measures introduced across Europe

This part of the report focuses on measures introduced to convene a general meeting as well as on those measures that relate to the conduct of the general meeting itself and their impact on shareholders' rights.

1. Convocation of the meeting

The pandemic began to afflict Europe in February/March 2020, just before the start of the general meeting season. As a consequence, companies were forced to delay the filings of their annual accounts. Since a general meeting may only be held once the audited financial statements are available to shareholders, emergency legislation of many member states introduced measures to

⁵ <https://www.icsa.org.uk/assets/files/pdfs/guidance/agms-and-impact-of-covid-19-supplement-web.pdf>

⁶ There is no data available for Europe but in the US, the number of virtual shareholder meetings hosted on the platform of Broadridge increased from 248 in 2019 to 1,494 in 2020, and accounted for 39% of all meetings held during the season. See <https://www.broadridge.com/assets/pdf/broadridge-proxypulse-2020-review.pdf> for details.

postpone general meetings. This was especially necessary as company law in many member states foresees that general meetings must be held within the first eight months after the end of the fiscal year.

The following table gives an overview of selected countries and their relief measures regarding the postponement of general meetings.

Member State	Maximum possible delay
Austria	12 months after the end of the fiscal year
Belgium	30 June 2020 ⁷
Denmark	8 weeks after the end of the ban on the gatherings of more than 10 persons
Finland	30 September 2020
France	3 months
Germany	31 December 2020
Italy	180 days after the end of the fiscal year
Luxembourg	6 months after the end of the fiscal year
The Netherlands	30 October 2020
Portugal	30 June 2020
Spain	1 November 2020

⁷ Or five months after the end of the crisis period, see http://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=2020020781&la=F (Article 2)

For companies with the legal form of an SE (Societas Europaea), the deadline to hold general meetings had been extended to 12 months after the end of a company's financial year, but no later than 31 December 2020.⁸

The postponement of deadlines for holding the general meeting allowed companies to make full use of the relief measures introduced by member states. It further gave service providers like Computershare time to establish technical platforms or adapt them to the increased needs of companies and shareholders.

2. Registration procedure/convocation

Next to the extension of the deadline for companies to hold their general meeting, emergency laws of some member states foresee a shortening of the convocation period or amendments to convocations that had already been published.⁹

3. Conduct of the meeting

Given the restrictions the Covid-19 pandemic imposed on gatherings of people and the fact that company law of several member states was conflicting with the emergency measures to tackle the pandemic, the second aim of legislative crisis responses throughout Europe was to make use of digital means also in the area of general meetings. Where people cannot meet in person, other means of gatherings needed to be taken into consideration. To address this conflict, emergency laws in several member states entitle the management (where appropriate with approval of the supervisory board) to eliminate the shareholders' right to attend an AGM in person albeit the rules vary from member state to member state.

In **Austria**, virtual-only general meetings are now permitted if there is an opportunity to participate in the meeting from any location by means of an acoustic and optical connection in real-time, whereby the individual shareholder can only follow the course of the meeting, but is "otherwise" enabled to speak during the meeting and to vote. In addition to the virtual implementation of the general meeting, the general meeting can also be broadcasted and/or a vote by letter is sufficient, even if this is not provided for in the articles of association.¹⁰

In **France**, emergency law provides for the possibility of holding all general meetings without shareholders being present in person (i.e., "à huis clos") or by videoconference or conference call or by written consultation.¹¹

In **Germany**, general meetings can be held virtual-only if shareholders are provided with a live transmission of the event, a distance voting opportunity, an opportunity to ask questions through

⁸ Council Regulation (EU) 2020/699, Article 1

⁹ In Germany, the convening period can be reduced from 30 to 21 days. We note, though, that companies made use of this opportunity only at the very beginning of the AGM season 2020.

¹⁰ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011116>, § 3

¹¹ https://www.legifrance.gouv.fr/loda/id/JORFTEXT000041755899?tab_selection=all&searchField=ALL&query=2020-321+&page=1&init=true, Article 4. The emergency law is currently being reviewed and should require a live transmission of the meetings in the future.

electronic means, and an opportunity to voice their dissent against a resolution to the notary public of the general meeting.¹²

In **Italy**, general meetings can be held virtual-only if shareholders can attend by means of telecommunication and or can cast their votes by electronic means provided that the identification of shareholders, their participation and the exercise of their voting rights is possible.¹³

In **Luxembourg**, general meetings can be held virtually where shareholders are enabled to participate in the meeting and to exercise their rights.¹⁴

In the **Netherlands**, emergency law allows boards to determine that shareholders do not have physical access to the general meeting if the meeting can be followed electronically and if shareholders have been given the opportunity to ask questions prior to the meeting.¹⁵

In the **UK**, a new emergency law came into force only in June 2020. It provides that general meetings held between 26 March 2020 and 30 September 2020 do not have to be held physically to be considered valid and quorum requirements will be met even without the attendance of shareholders.¹⁶

While in some member states, e.g. **Austria**, online participation in the virtual-only meeting seems to be considered equal to the on-site participation, emergency law of other jurisdictions, e.g. **Germany**, is not fully clear in that respect.¹⁷

In many member states, the typical way of conducting a virtual-only general meeting during the season 2020 was by way of audio and video transmission, either streamed or by way of two-way communication. However, in **France**, none of the SBF 120 companies had chosen the option of organising the general meeting through a conference call or audiovisual allowing the identification of shareholders but used the opportunity to hold the meeting behind closed doors ('à huis clos'). In **Italy**, all major companies prevented shareholders from attending general meetings and allowed attendance only by granting a proxy to an appointed representative.

4. Shareholders' rights before the meeting

Shareholders have rights pertaining to them not only during but also already before the general meeting. They can launch **their** own proposals, file counterproposals, or convene a general

¹² https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/Bgbl_Corona-Pandemie.pdf?__blob=publicationFile&v=1, Article 2, § 1

¹³ https://www.confindustria.it/wcm/connect/e633da49-7ac9-427d-bad0-23f9a78cd546/Decree-Law_18_17032020.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE-e633da49-7ac9-427d-bad0-23f9a78cd546-n4lhvQj, Article 106

¹⁴ <http://legilux.public.lu/eli/etat/leg/rgd/2020/03/20/a171/jo#:~:text=la%20version%20PDF,-,R%C3%A8glement%20grand%2Ddual%20du%2020%20mars%202020%20portant%20introduction%20de,dans%20les%20autres%20personnes%20morales.&text=La%20soci%C3%A9t%C3%A9%20est%20habilit%C3%A9e%20%C3%A0,juin%202020%20au%20plus%20tard>, Art. 1^{er}

¹⁵ <https://zoek.officielebekendmakingen.nl/stb-2020-124.html>, Article 6

¹⁶ <https://www.legislation.gov.uk/ukpga/2020/12/schedule/14/enacted>, schedule 14

¹⁷ See also section III. 4 in this report

meeting themselves. These rights have likewise been impacted by emergency legislation in certain member states.

In **Finland**, shareholders have a general right to present counterproposals during the meeting. The emergency law requires all counterproposals and advance votes to be delivered in advance within a certain timeframe.¹⁸

In **Germany**, shareholders can file a counterproposal within a certain deadline before the general meeting but need to repeat the counterproposal at the AGM itself.¹⁹ While some German companies treated counterproposals they received as being repeated in the AGM through the proxy representing shareholders (the company representative who can only act upon clear instructions from the shareholders), others denied the acceptance of counterproposals arguing that the proxy does only represent shareholders which themselves are not "present" in the virtual-only meeting and therefore are not participating and not entitled to file a counterproposal.

Especially in France, it occurred that non-resident individual shareholders could not get access to all general meetings. The main reason for that was the use of a certain platform (Votaccess) for administering the registration process, which is not connected to non-French intermediaries.

5. Shareholders' rights during the meeting

This section of the report analyses the impact emergency laws had on the most important rights shareholders has during the general meeting, i.e. the right to speak, to ask questions, to receive answers and the right to vote.

a. Right to speak, ask questions and receive answers

The emergency laws of several member states have impacted in one way or the other the right to speak and the right to ask questions, e.g. through restricting the opportunity to ask questions to a deadline before the general meeting. In addition, companies have pursued different approaches in answering questions.

Questions had been omitted, grouped, or rephrased by the management with the risk that the original sense of the question got lost. Certain member states, like **Germany**, only allowed for questions but did not provide shareholders with the right to speak. As a consequence, the discussion character of the general meeting got lost during the general meeting season 2020 in various member states due to a lack of discourse.

In **Austria**, virtual-only general meetings are permitted if the individual shareholder is "otherwise" enabled to speak during the meeting and to vote. Companies with more than 50 shareholders can, however, provide that the submission of a resolution proposal, the casting of votes and the raising of an objection in the virtual-only general meeting can only be carried out by a special

¹⁸ <https://www.borenium.com/2020/04/23/practical-considerations-for-covid-19-and-its-impact-on-2020-annual-general-meetings-in-finland/>

¹⁹ https://www.gesetze-im-internet.de/aktg/_126.html, § 126 AktG

proxy. In addition, companies can restrict the right to speak completely, if they choose the option to allow for broadcasting and/or vote by mail only.²⁰

In **France**, emergency law foresees that shareholders can exercise their voting rights only remotely before the general meeting, namely by voting by correspondence, or by giving a proxy to a third party or the chairman of the meeting.²¹

In **Germany**, general meetings can be held virtual-only if shareholders are provided with a live transmission of the event, a distance voting opportunity, an opportunity to ask questions through electronic means, and an opportunity to voice their dissent against a resolution to the notary public of the general meeting. The management board (with the approval of the supervisory board) decides according to its best judgement which questions to answer and how; the management board can also foresee that questions must be submitted by electronic communication no later than two days prior to the meeting.²²

In **Italy**, general meetings can be held virtual-only if shareholders can attend by means of telecommunication and or can cast their votes by electronic means provided that the identification of shareholders, their participation and the exercise of their voting rights is possible.²³

In **Luxembourg**, general meetings can be held virtually where shareholders are enabled to participate in the meeting and to exercise their rights (1) by a remote vote in writing or in electronic form, provided that the full text of the resolutions or decisions to be taken has been published or communicated to them, (2) through an agent appointed by the company or (3) by videoconference or other means of telecommunication allowing their identification.

As the examples show, the emergency laws in different jurisdictions have chosen different approaches. While some countries offer companies and thereby shareholders the opportunity to transfer the on-site character to the virtual sphere by foreseeing in their emergency laws a two-way communication, the emergency rules of other jurisdictions allow for broadcasting of the meeting only, in some cases allow even for an audio-only transmission, like in **Ireland** and the **UK**. In France, broadcasting the closed-door meetings to shareholders is not even required.

Example

*In **Ireland**, a company listed in the DAX 30 index, transmitted their general meeting only by audio means without any video transmission.*

²⁰ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011116>, § 3 and also above section III. 3 in this report

²¹ https://www.legifrance.gouv.fr/loda/id/JORFTEXT000041755899?tab_selection=all&searchField=ALL&query=2020-321+&page=1&init=true, Article 4 and <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000041794017/>, Article 5 et seqq.

²² https://www.bmfv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/Bgbl_Corona-Pandemie.pdf?blob=publicationFile&v=1, Article 2, § 1

²³ https://www.confindustria.it/wcm/connect/e633da49-7ac9-427d-bad0-23f9a78cd546/Decree-Law_18_17032020.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE-e633da49-7ac9-427d-bad0-23f9a78cd546-n4lhvQj, Article 107.

In **Austria**, shareholders' rights during the virtual-only AGM seem to remain comparable to those of an on-site AGM. Shareholders are entitled to follow the virtual-only AGM in sound and vision and can raise questions or speak up also during the meeting if the company provides for this opportunity. In contrast, **German** emergency law gives far-reaching discretion to the management board which can decide on the form of the virtual-only AGM (streaming, two-way communication) and on the communication with shareholders by restricting their questions to a deadline that can be set up to two days before the general meeting. It further foresees that the management board is not mandated to answer shareholders' questions. In addition, the German legislator has not limited the reasons for refusing to provide information. Experience has shown that companies made far-reaching use of legal discretion in **Germany**. None of the 160 largest companies provided for two-way communication at their general meeting 2020 and all these companies restricted questions to the two-day deadline before the general meeting. The emergency law in **France** allows meetings behind closed doors with no audio or video transmission and no shareholder questions during the meeting if the company opts to do so.

b. Right to vote based on appropriate information

Certain member states, like **France** and the **Netherlands**, restrict the opportunity to cast votes to a specific deadline before the general meeting. In the **Netherlands**, this deadline can be set at until 72 hours before the general meeting (but Dutch companies can allow for voting until and during the virtual-only general meeting), in **France** until 24 hours before the meeting.

Shareholders who have to vote before the general meeting have to do this without access to important information. They have to do it without the opportunity to participate in and listen to the exchange between shareholders and the board members during the general meeting. Therefore, they do not have the chance to take a well-informed decision. While this is less an issue for institutional investors who vote their shares normally in advance through voting platforms like Broadridge, it is a big concern for private, non-professional shareholders. While the former have ample opportunities to engage with the management during the year, e.g. in one-on-one sessions, capital market days or the like and may not see the AGM as the only opportunity for influencing management's behaviour, the latter do not have equal opportunities for an exchange and engagement with the management.

6. Shareholder rights after the meeting

Where member states provide shareholders with additional rights after the general meetings, also those rights have been impacted by emergency laws.

In **Germany**, the emergency law explicitly granted shareholders also in case of a virtual general meeting the right to object a resolution. Companies were obliged to provide for such an opportunity on the platform used to transmit the general meeting. However, the right to challenge a resolution was restricted by the emergency law to cases of willful intent on the side of the management.²⁴

²⁴ https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/Bgbl_Corona-Pandemie.pdf?__blob=publicationFile&v=1, Article 2 § 1

IV. Perception of shareholders and their representative organisations

The general meeting is the key body of shareholders. It is therefore essential to listen to the views of shareholders on how a general meeting should take place. To complete the report with the views of the owners of listed companies, we therefore conducted a survey among private, non-professional investors and among organisations that represent individual shareholders.

a. Survey among individual investors

The survey among individual shareholders gathered respondents from the following countries: **Austria, Belgium, France, Germany, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Spain, the UK** as well as from **various non-EU countries**.

The complete questionnaire including a profile of the respondents can be found in the Annex.



Figure 2 Geographical coverage of EU jurisdictions included in the individual investors' questionnaire

Private, non-professional shareholders consider that virtual-only meetings have both advantages and weaknesses.

The main advantages in their view are the reduced costs for companies and the opportunity to reach a broader audience.

**What in your experience are positive aspects of virtual-only meetings
(multiple answers possible)?**

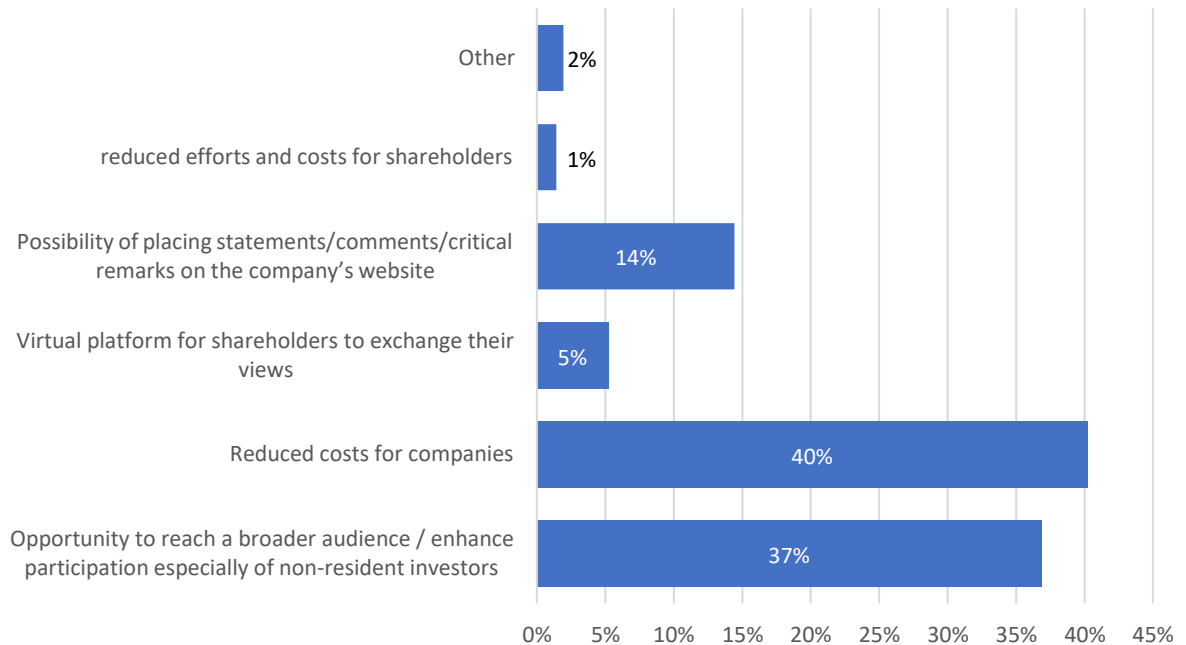


Figure 3 Individual investors' questionnaire

Shareholders noted as further advantages the reduced environmental impact/lower carbon footprint of virtual-only meetings and the avoidance of travel effects. Where there is no need to travel this enables, on the one hand, handicapped shareholders to participate in the general meeting. Virtual access to meetings on the other hand is an opportunity for shareholders to attend more general meetings during a season. Others mentioned that they prefer to voice questions in writing instead of doing so in front of other shareholders at an on-site meeting.

On the other side, shareholders voiced a number of negative aspects connected to virtual-only meetings, the main one being that this format impacts the discussion character of the general meeting.

**What in your experience are negative aspects of virtual-only meetings
(multiple answers possible)?**

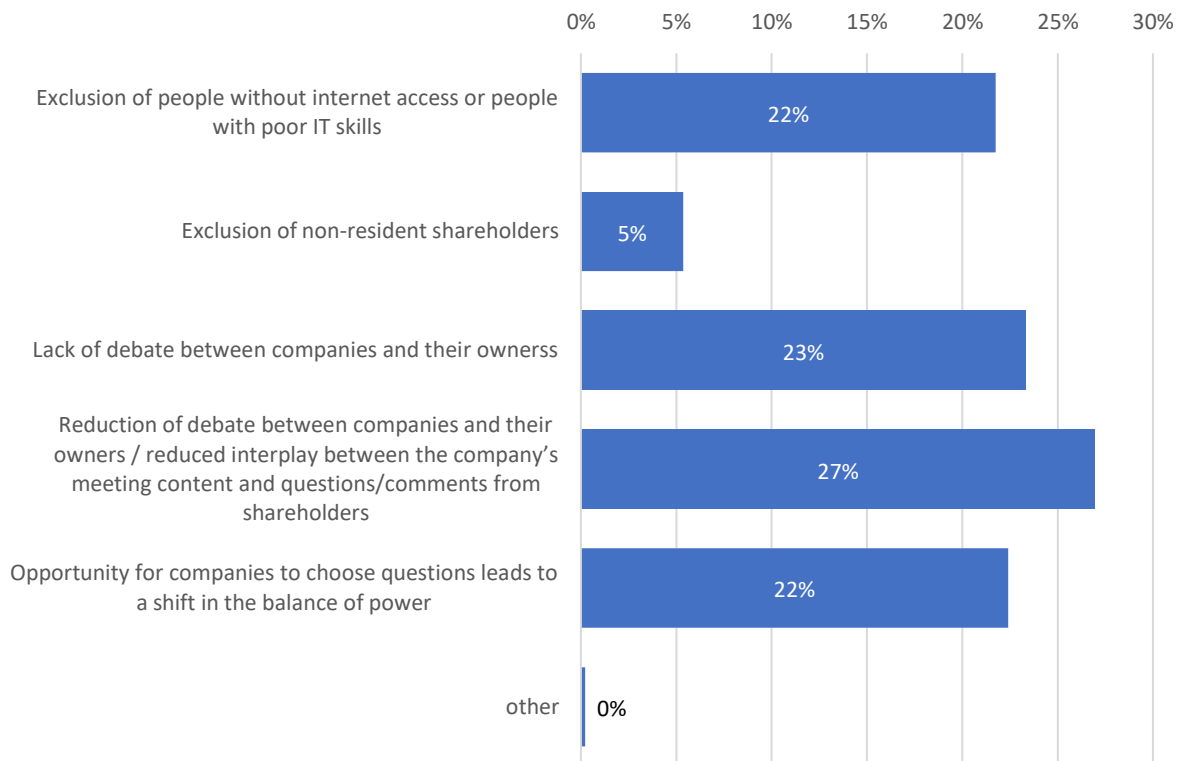


Figure 4 Individual investors' questionnaire

Next to that, shareholders noted the risk that people without internet access or poor IT skills will be excluded in case of virtual-only meetings. Shareholders furthermore are skeptical that companies may take the opportunity to choose questions they prefer and leave out the unfavourable ones, something which is not possible at an on-site meeting where all shareholders hear the questions being raised and where shareholders have the chance to follow-up on questions that have not been answered by the board. This is perceived as a means of shifting the balance of power between owners and managers.

Expectations and perceptions

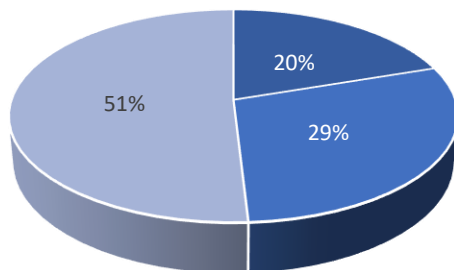
Companies and their representatives expected various advantages of virtual-only meetings before the start of the general meeting season 2020:

- The attendance rate would increase as a broader audience can be reached by online means,
- the number of questions raised at an AGM would be lower while
- the quality of responses by the boards would be enhanced as a consequence of a longer preparation time.
- Likewise, it was expected that the average length of a virtual-only meeting would be shorter than that of an on-site meeting.

The perception of shareholders when being asked to compare the general meetings 2020 to those of 2019 confirms these expectations only partly.

The majority of respondents felt that the average attendance rate had decreased, not increased. In the largest German indices, DAX 30, MDAX and SDAX, the change to virtual meetings on average did not have a significant impact on the attendance rate which remained rather stable: While there was a slight increase in the average turnouts at DAX 30 companies (increased from 66.2% to 67.37%), the average turnouts at MDAX companies decreased from 71.74% to 71.13%. Likewise, the average turnouts at SDAX companies decreased from 68.09% to 67.13%. The expectation that virtual-only meetings would lead to a broader attendance of shareholders therefore – at least in Germany – has not yet become manifest in the general meeting season 2020.²⁵

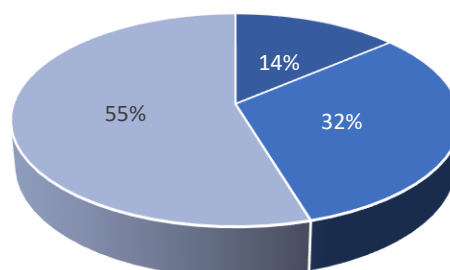
In your experience, has the average the attendance rate at AGMs...



■ increased ■ remained stable ■ decreased

Figure 5 Individual investors' questionnaire

In your experience, has the average number of questions asked at AGMs...



■ increased ■ remained stable ■ decreased

Figure 6 Individual investors' questionnaire

- Shareholders also perceived that the average number of questions had decreased compared to 2019 but unlike the expectation of companies,
- the majority of respondents did not observe that the quality of board responses had enhanced.

Part of the individual shareholders' questionnaire was a comparison of the general meetings seasons 2019 and 2020, the years where virtual-only shareholders meetings changed from exception to the rule.

²⁵ Data collected by SJS HV-Consult, see annex 2 for details

In your experience, has the quality of responses by the boards to shareholder questions on average...

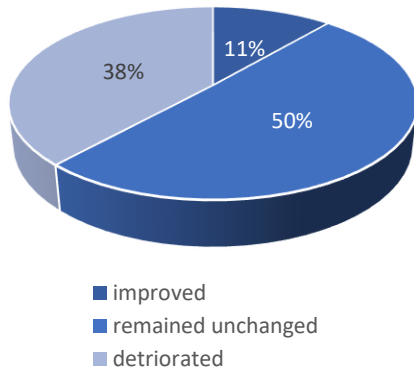


Figure 8 Individual investors' questionnaire

In your experience, was the average length of the virtual AGM ...

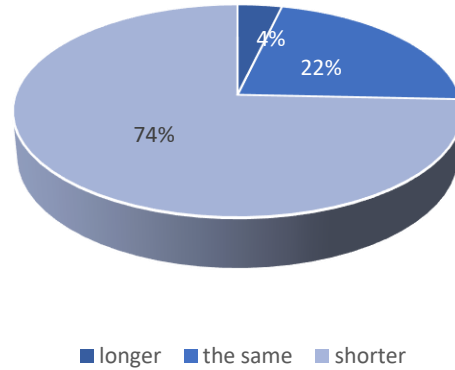


Figure 7 Individual investors' questionnaire

- Consistent with the companies' expectation, also shareholders by the vast majority had the impression that the average length of virtual meetings was shorter than in 2019, where virtual meetings still were the exception.

b. Survey among associations representing individual investors

Next to the survey among individual investors, we have also conducted a survey among associations that represent private, non-professional shareholders in the following countries:

Belgium, Denmark, Finland, France, Germany, Iceland, Italy, Luxembourg, Poland, Portugal, Slovenia, Spain, the UK.



Figure 9 Geographical coverage of EU jurisdictions included in the individual investor associations' survey

The survey does not claim to provide an exhaustive overview of Europe but includes a balanced geographical coverage of both larger and smaller member states. It was conducted to show the sentiment of shareholder representative organisations regarding the different models for general meetings. The complete questionnaire can be found in the Annex.

Where both virtual-only meetings and on-site meetings were possible, individual investor associations considered that various shareholders' rights are restricted at virtual-only meetings:

Which shareholder rights have been restricted at virtual-only AGMs in your view (multiple answers possible)?

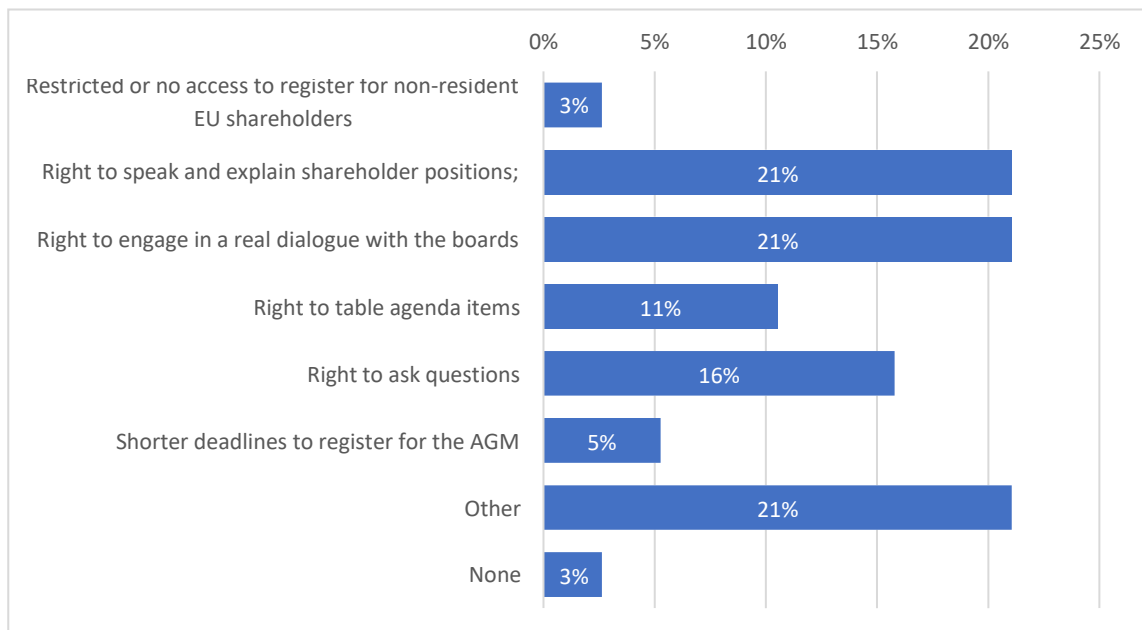


Figure 10 Individual investor associations' questionnaire

The main concerns of the shareholder representatives relate to the limitations to the right of shareholders to speak and explain shareholder positions as well as to the right to engage in a real dialogue with the boards followed by the right to ask questions.

The shareholder representatives also reasoned their assessment. They argue that where there is less room for questions, explanations, justifications, and accountability of the management is being impacted.

Shareholder representatives also noted that the supervision of the voting process and control of votes were inadequate and that the dialogue with shareholders was much more limited. The decrease in shareholder rights was perceived, especially where meetings were held by proxy voting only, without a live session.

Nevertheless, shareholder representatives found also positive aspects in virtual-only meetings.

**What in your experience are positive aspects of virtual-only meetings
(multiple answers possible)?**

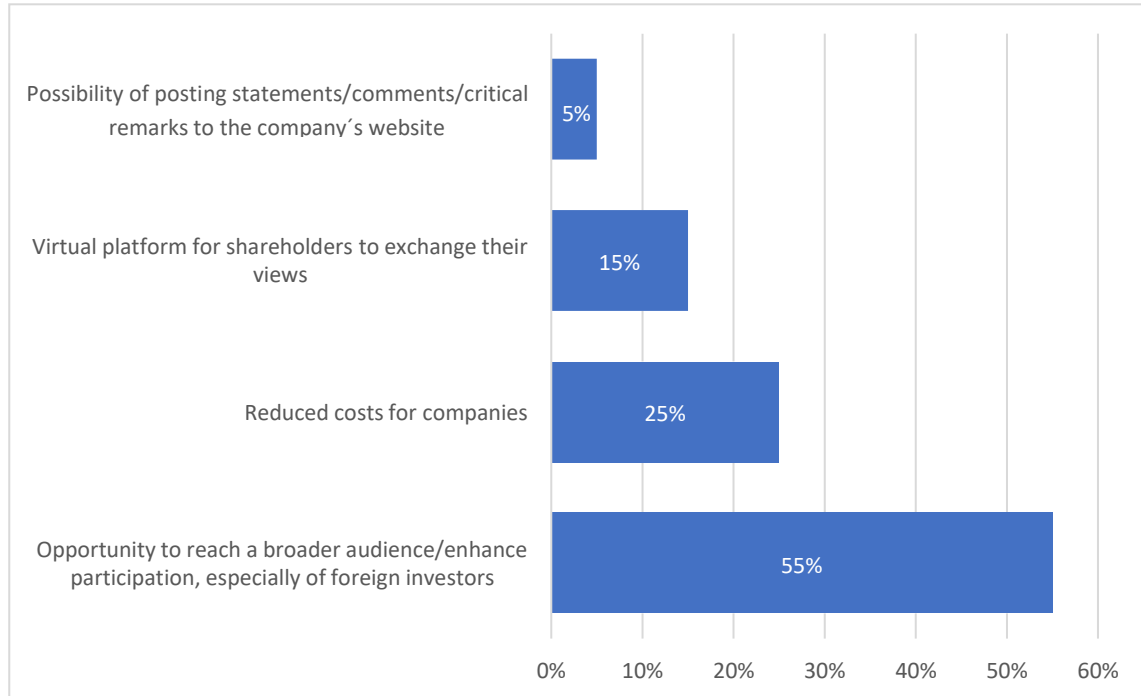


Figure 11 Individual investor associations' questionnaire

They see the main advantage in the opportunity to reach a broader audience so participation, especially of foreign shareholders, can be enhanced. But also the reduction in costs for companies to hold a general meeting was considered as an advantage also for shareholders. The opportunity to establish a virtual platform for shareholders or the possibility of posting statements etc. on the company's website was considered a less important advantage.

Even though the survey offered the opportunity to add further advantages, no shareholder representative organisation made use of this option.

On the other side, shareholder representatives noted the following negative aspects of virtual-only meetings:

**What in your experience are negative aspects of virtual-only meetings
(multiple answers possible)?**

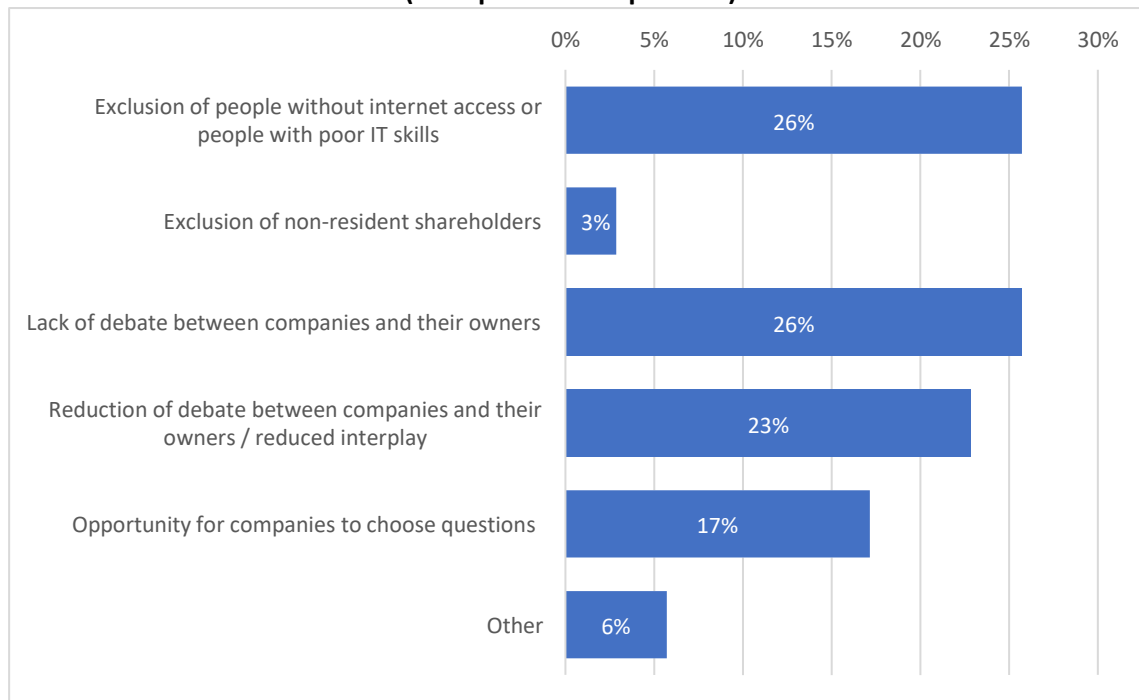


Figure 12 Individual investor associations' questionnaire

Here again, the main concerns of shareholder representatives focus on the impact of virtual-only meetings on the debate between companies and shareholders. 49% noted a lack or reduction of debate as a negative aspect of the virtual-only meeting. Where attendance is restricted to virtual means, a discussion with the boards is only possible if the company provides for such an opportunity. Even if so, the company may impose certain limits to the discussion, e.g. where it does not allow any follow-up questions.

Furthermore, shareholder representatives note that virtual-only meetings will exclude people without internet access or poor IT skills. Even though statistics show that the level of households with internet access has risen to 90% in 2019, some 26 percentage points higher than in 2009,²⁶ this concern seems to be still valid where especially aged shareholders may meanwhile be used to use the internet on a regular basis but may nevertheless struggle to access a general meeting online.

Next to the theoretical impact on basic shareholders' rights, it is also important to look at the real cases: How have companies during the season 2020 dealt with the change in the modus operandi? Have they made use of all technical opportunities to transfer the general meeting into the virtual sphere or not? For the analysis of this question, we have excluded the replies of shareholder representative organisations from **Italy, Poland and Slovenia** as in those countries no meetings were held virtual-only in 2020.

²⁶ https://ec.europa.eu/eurostat/statistics-explained/index.php/Digital_economy_and_society_statistics_-_households_and_individuals#Internet_access

**Compared to 2019: In your experience, have companies in your country in 2020
(each on a scale from 1 to 5 where 1 is YES and 5 is NO)...**

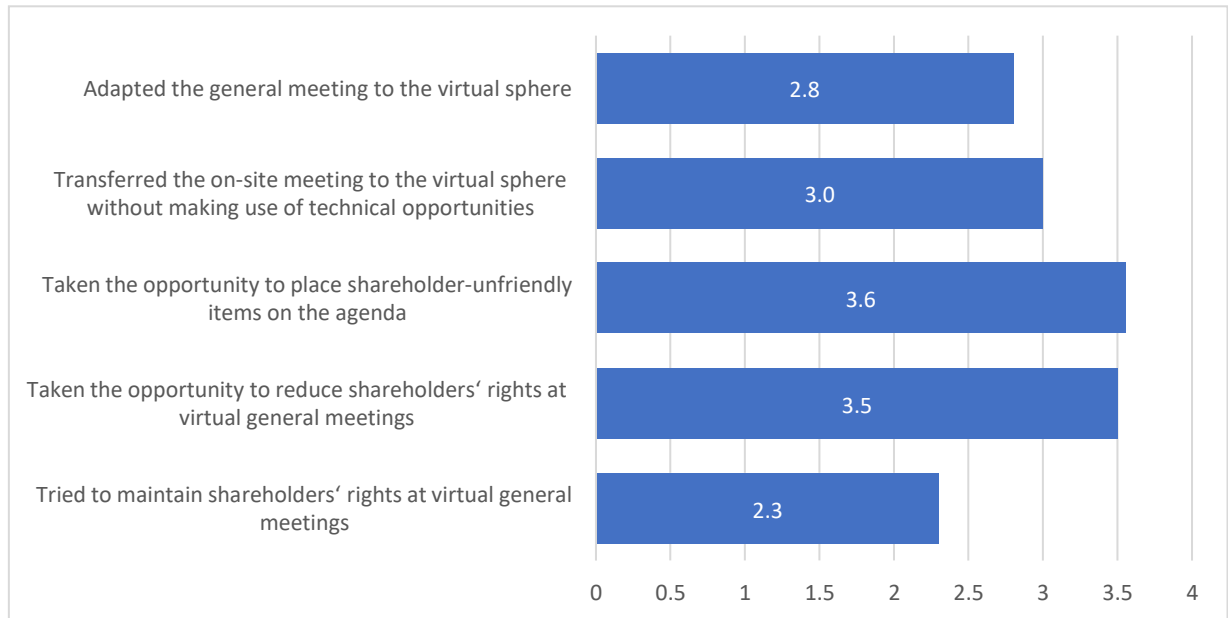


Figure 13 Individual investor associations' questionnaire

Across the surveyed member states the picture is relatively positive: the overall perception is that companies tried to maintain the rights of shareholders at general meetings and not to reduce them or to place unfriendly items on the agenda. The switch of the on-site to a virtual meeting, however, leaves room for improvement, from the shareholder representatives' perceptions.

Overall, the outcome of the responses is, however, rather mixed and makes it necessary to investigate the individual country responses, especially the extreme positions:

Have companies adapted the general meeting to the virtual sphere?

While the **German** shareholder association considered that companies in general have failed to adapt the general meeting to the virtual sphere and assigned only 2 points, individual investor associations from **Denmark** and **Luxembourg** found that companies did a good job in that respect and assigned the maximum points to this question.

Have companies transferred the on-site meeting to the virtual sphere without making use of technical opportunities?

The shareholder associations from **Belgium** and **Finland** perceived that companies had failed to make use of technical opportunities when holding their general meeting virtually (2 points) while the perception in **Iceland** and **Spain** was relatively positive in that respect (4 points). The remaining shareholder associations assigned 3 points to this question.

Have companies taken the opportunity to place shareholder-unfriendly items on the agenda?

The association from **Germany** considered that companies had taken the opportunity to place shareholder-unfriendly items on the agenda and assigned 1 point only while the representative

organisations from **France, Luxembourg and Italy** considered that this had not been the case (5 points).

Example

During the German general meeting season 2020, several listed companies decided to squeeze-out their minority shareholders and proposed this agenda item at a virtual-only general meeting. Questions had to be sent in advance and no follow-up questions were allowed during the meetings. Another German company had undergone a delisting and proposed the necessary agenda items also at virtual-only general meetings. Since a squeeze-out is not a routine agenda item, shareholders should not be expected to take such rather fundamental decisions in virtual-only meetings without the opportunity to discuss it in detail with the boards.

Have companies taken the opportunity to reduce shareholders' rights at virtual general meetings?

Especially in **Finland** and the **UK**, shareholder representatives noted that companies had taken the opportunity to reduce shareholder rights at general meetings (2 points) while **Denmark** and **Luxembourg** considered that shareholders' rights in 2020 remained fully retained compared to 2019 (5 points).

Have companies tried to maintain shareholders' rights at virtual general meetings?

Representative associations in **Denmark, Iceland and Luxembourg** found that companies had done what they could to maintain shareholders rights (1 point) while the **Finnish** shareholder association voiced concerns in that respect (4 points).

The experience during the season 2020 allows further to draw conclusions for improvements that could be made for a general meeting in a virtual format.

Imagine that virtual general meetings were the future. Which tools would you consider necessary for a general meeting in a virtual format (multiple answers possible)?

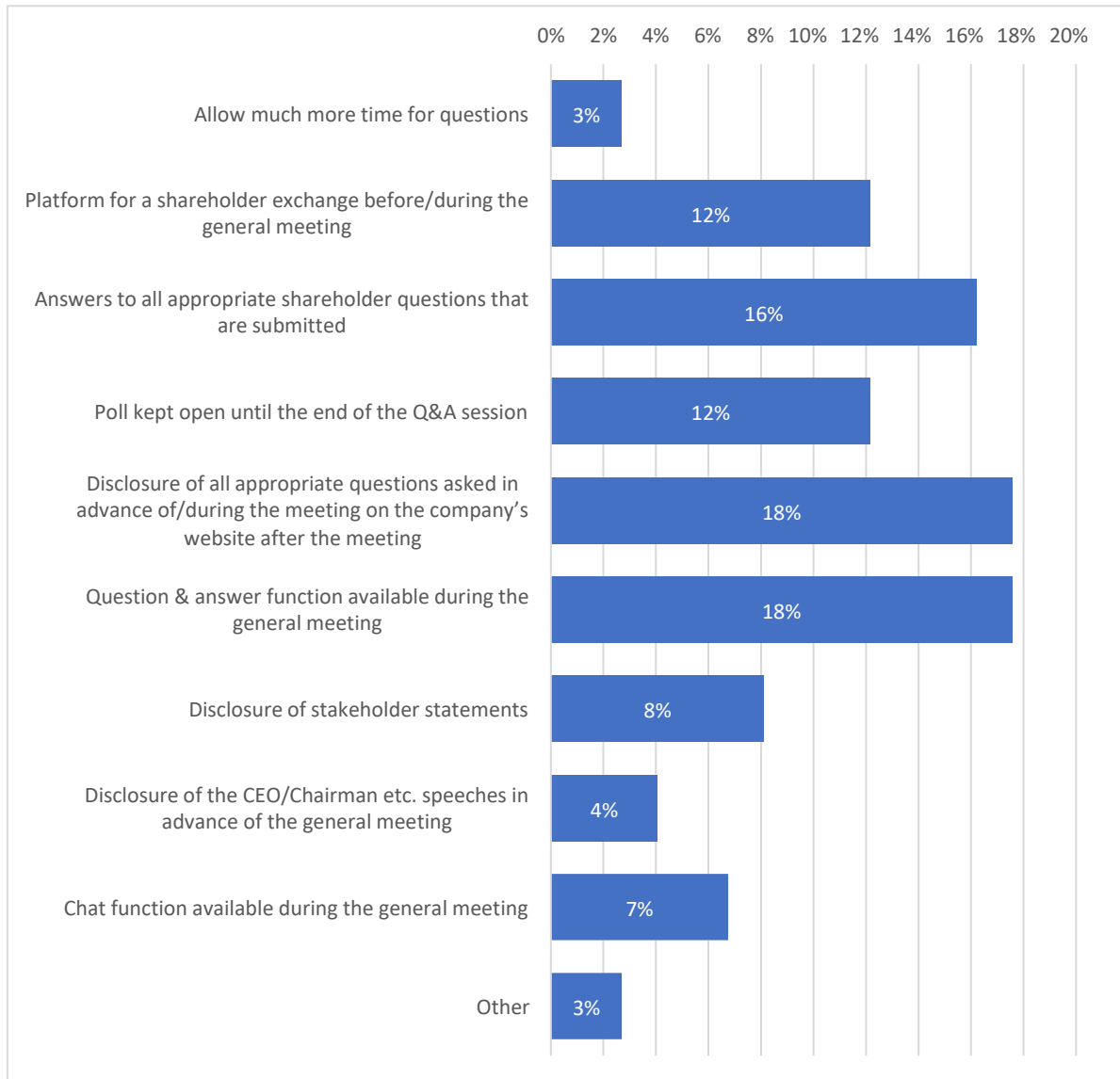


Figure 14 Individual investor associations' questionnaire

The graph shows clearly what shareholder representatives request from companies: more information. Information should be provided before the meeting, e.g. by disclosing the speeches of the CEO/Chairman, stakeholder statements or questions from shareholders and by providing a platform for shareholders to exchange among them. During the meeting, shareholder representatives consider it necessary to have sufficient time for a Q&A session, where all appropriate shareholder questions are being answered. Also, they found it important that the poll is kept open until the end of the Q&A session.

V. Analysis of the pros and cons of the virtual shareholder meeting

Both the pure on-site general meeting and the virtual-only meeting have advantages and weaknesses from a shareholder perspective.

7. Weaknesses of the pure on-site general meeting

On-site meetings are not easily accessible for non-resident shareholders who need to travel to the meeting place. This further involves costs and can be very time-consuming. As it is a live event, shareholders who are still working may need to take a day off to attend the meeting. Especially larger companies claim that much higher costs are involved in holding a general meeting on-site. These costs will be borne by shareholders as the owners of the company.

8. Advantages of the pure on-site general meeting

On-site meetings give especially private, non-professional shareholders a unique opportunity to be "eye to eye" with their management. Shareholders can interact very directly with the management and consider the body language of board members. Furthermore, the on-site meeting is a chance to meet and exchange with other shareholders, hear their opinion or to meet with the management after the event for a more informal exchange. Lastly, the on-site meeting is very transparent – where a shareholder raises a question, all other shareholders can hear it and also the answer provided by the management. For small-cap companies, an on-site meeting may be even less expensive than a virtual-only one, depending on the turnout or location of the meeting.

9. Weaknesses of the virtual-only general meeting

Virtual-only meetings are not accessible to people without internet access or poor IT skills. Likewise, they may exclude non-resident shareholder where platforms are used that are accessible only to resident shareholders. Technical glitches can occur, like problems in accessing the protected website. In addition, it is up to the company to decide what and how to present the general meeting.

Example

A German MDAX company transmitted its virtual-only general meeting both in German and in English. At a certain point in time, however, the transmission was only available in English and it took several moments to provide for the German original transmission.

Like any other virtual event, a virtual-only general meeting, however, impacts especially on the communication aspect. Where meetings are streamed instead of conducted by means of two-way communication, an essential part of the shareholder meeting, namely the discussion that leads shareholders to take informed decisions, gets lost. This is especially important where non-routine items, like squeeze-out, capital measures or other measures that impact on fundamental shareholder rights are placed on the agenda.

Below we list some further aspects that were raised in the Individual Investors' survey:

What in your view are the negative aspects of virtual-only meetings?
No opportunity to talk to the managers after the meeting is closed
No opportunity to talk to other shareholders
Shareholder (representative) statements providing opinions are missing
No interaction possible
No assessment of the personalities of board members possible
No product presentations
Virtual-only meetings are extremely boring

Table 1 Selected responses from the Individual Investors' survey

Another aspect is that shareholders feel less able to scrutinise the procedure and handling of the general meeting including the voting process where the meeting is held virtual-only, especially in jurisdictions where there is no notary public required to oversee the general meeting procedure and to count the votes.

Example

We experienced a cross-border issue at two Spanish general meetings during the season 2020. A German shareholder wanted to vote in advance through the intermediaries' chain and provided specific vote instructions for both meetings. He chose this procedure as he could not appoint an independent proxy due to travel restrictions and did not want to grant a proxy to the chairman of the meeting. Subsequently, the shareholder was informed by the company's registrar that the votes arrived, but they did not match his instructions. After inquiries, the shareholder found out that an intermediary had sent own vote instructions instead of forwarding those of the real shareholder. A subsequent change of the vote instructions was impossible on the company side as the deadline for voting meanwhile had expired. If the shareholder could have sent his designated proxy, as he had done in the years before, such a situation could not have happened. This example shows not only the necessity of enabling shareholders to scrutinise the votes having been cast but also the need to come to a common European understanding of who holds the voting rights.

Where shareholders' questions cannot be provided orally, further concern relates to the potential for suppression of questions that are uncomfortable for the management. If a shareholder raises a question at an on-site meeting, everyone can see him or her. When this is done virtually, it can be completely opaque.

10. Advantages of the virtual-only general meeting

Virtual-only meetings can be accessed from everywhere in the world – no need to be present at a certain place at a certain point in time. The environmental impact is reduced because of less travel and they are less costly and time-consuming for shareholders and – if recorded – can be watched at any time. This allows shareholders who prefer to remain passive but are still interested in the debate at the general meeting and the messages from the management to attend, watch and listen whenever they want to. Virtual-only meetings are also less costly for those companies having to accommodate a larger number of shareholders where on-site meetings come with higher costs of logistics.

Both the on-site meeting and the virtual-only meeting have advantages and weaknesses from a shareholder perspective. Considering the pros and cons, a hybrid model would offer the opportunity to strengthen the importance of the general meeting even further, especially if it would combine the best of both worlds.

This is also the outcome of the three surveys among shareholders and their representative organisations:

Among the shareholder representatives, 92% voted for a hybrid meeting and 8% preferred a purely on-site meeting. None of the respondents was in favour of virtual-only meetings.

Going forward, how would you prefer general meetings to be held?

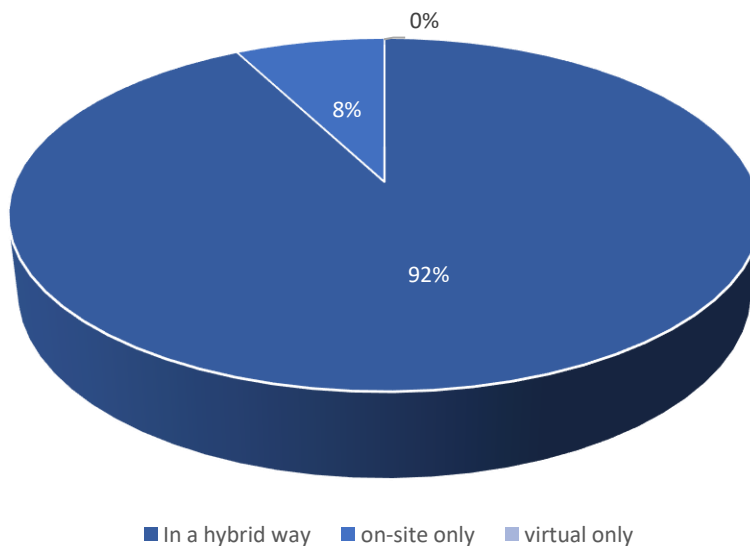


Figure 15 Result from individual investor associations' questionnaire, see Annex 1

The outcome of the individual investors' survey was not as extreme but nevertheless clear in its position: 58% preferred a hybrid format for future general meetings, 32% wanted to retain the on-site format and 10% opted for the virtual-only model.

Going forward, how would you prefer general meetings to be held?

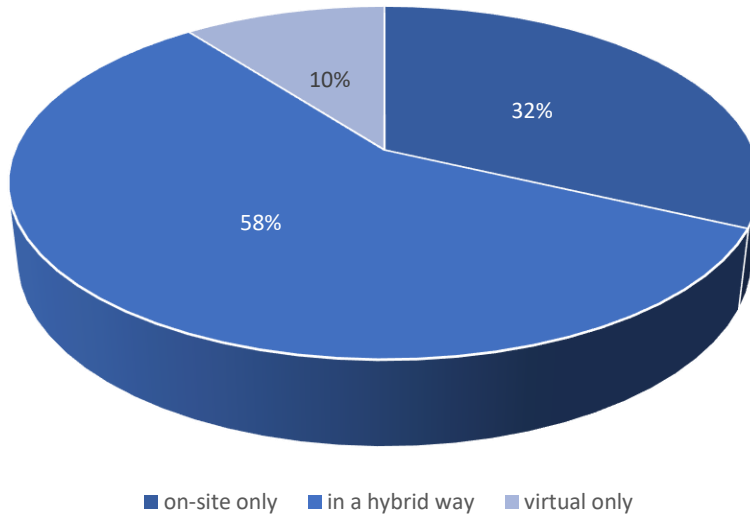


Figure 16 Result from individual investors' questionnaire, see Annex 1

In addition, we have conducted a Twitter poll to find out whether the perception of shareholders that are considered to be familiar with virtual means is comparable to that of those having answered our survey. The result of the poll was comparable to that of the two other surveys: A majority of 66.7% opted for the pure on-site or hybrid model. However, the relative number of those respondents opting for a virtual-only meeting was significantly higher (33.4%).



Figure 17 Results from BETTER FINANCE Twitter poll, conducted between 7 and 14 October 2020

Quote from DSW:

"We cannot put the genie back in the bottle, but technological progress should not lead to a setback in shareholder rights. Rather it should enhance individual shareholders' connection with the company."

11. What needs to be done to make the hybrid AGM a future model for the EU?

If a hybrid general meeting should serve as the future model for EU listed companies after the pandemic, it needs to become attractive, both for shareholders and companies which means that the weaknesses described above need to be addressed.

Companies, on the one hand, need assurance that only (but all, including non-resident ones) shareholders can attend the general meeting, i.e. that a proper shareholder identification process can be performed before granting access to the applicant. In fact, the general meeting season 2020 showed in many member states that technical platforms offering such service are available already.²⁷ The issue does not appear to be significantly different for virtual or on-site participation

²⁷ Service providers like Computershare, Link Market Service or Broadridge offer respective solutions for companies.

and could be further facilitated once SRD II Implementing Regulation has been fully implemented across the EU.

Shareholders, on the other side, need assurance that they are treated in the same way, regardless of which means of participation they choose, be it in person or virtually. Thus, it is first and foremost important that virtual participation is accepted as full participation (including virtual voting) and the shareholder is recognised as being "present" also by virtual means.

Secondly, shareholders should have a say in the decision to hold a general meeting virtual-only through an amendment of the articles of association.

Further, where companies establish virtual access to a general meeting, they should provide for the possibility to exercise all shareholders' rights also via the technical platform. This relates in particular to:

- The right to access all documents usually made available at a general meeting. This can include for example the convocation, the annual reports and accounts, the articles of association but also the list of participants whereby adhering to data protection rules;
- The right to appoint a proxy to an (independent) third party;
- The right to listen, to speak, to ask questions and to receive answers;
- The right to propose items to the agenda or amend items;
- The right to vote until the end of the Q&A session;

This last but not least right is critical, and the most damaged during the 2020 voting season, as many virtual and/or closed-doors general meetings forced shareholders to vote BEFORE the meeting actually took place: so what is the use of such a meeting if all resolutions have already been voted and decided before?

Where certain jurisdictions provide for further rights to shareholders before, at or after an on-site meeting, shareholders should be entitled to the same rights also when they participated in the meeting virtually.

Where a notary public is not required to scrutinise the voting process, the meeting should expressly recognise that independent third parties may follow the proceedings through technical means and that this is approved at the beginning of the meeting.

In addition, the publication of the votes should clearly distinguish between shareholders having attended the meeting on-site, having attended virtually, those who use other means of distance voting, e.g. vote by post, and those who attended by proxy. Where shareholders have not been recognised for voting, this should likewise be stated in the publication of the votes including a reason as to why these votes had not been counted.

Furthermore, technical platforms need to be designed in a way that they do not exclude foreign investors. Here, a respective amendment of the Implementing Regulation to SRD II could be considered by way of including a field in the confirmation of entitlement:²⁸ the information

²⁸ Concretely, a respective field would need to be added in table 4 (confirmation of entitlement) of the Annex of Implementing Regulation (EU) 2018/1212

necessary to access the meeting virtually (e.g. an access code) would then be required to be transmitted – either via the intermediaries chain in case of bearer shares or directly to the shareholder in case of registered shares.

Last but not least, robust disclosure needs to be in place in a company's proxy statement which assures shareholders that they will enjoy the same rights and opportunities to participate virtually as they would at an in-person meeting.²⁹

Quote from IVA³⁰:

"We need more interested private shareholders for a lively shareholder democracy, which becomes visible through a general meeting. "

VI. Conclusions

The general meeting is the highest decision body of the company. It is the place and time where shareholders (the owners of the company) are expected to have the opportunity to exercise their basic rights.

In addition, it is the place where shareholders can meet, exchange their views, and listen to opinions other than that of the management board. The special functions of the general meeting as a forum for personal exchange with the management, but also between the shareholders and as an instrument for forming opinions must be considered. There will always be agenda items that require the creation of a direct impression of the counterpart.

As shown in this report, the emergency laws of member states have negatively impacted many of those fundamental rights. While this was exceptionally acceptable for the general meeting season 2020 given the short timeframe for both lawmakers and companies, going forward, the format of the general meeting needs to return to one that acknowledges and ensures its deliberative function, and which enables shareholders to exercise all of their rights regardless of the means of participation.

One key consideration for **the deep cuts in essential shareholders' rights associated with the Covid-19 emergency laws** was the failure by many but not all companies to provide the necessary technical infrastructure for granting all shareholder rights in good time and the lack of technical experience with the virtual format. Such considerations are no longer valid. The companies had and still have time to create the necessary technical infrastructure for a virtual general meeting while safeguarding shareholder rights. Here, the companies can certainly make use of the experience from 2020.

Interaction of the management with the shareholders and especially the possibility of asking questions is a central element of the design of the general meeting. The crucial question therefore is about the relationship of companies and their bodies to their owners. The general meeting for most shareholders and especially for the private, non-professional ones, is the only option to have

²⁹ Implementing Regulation (EU) 2018/1212 already requires in table 3 (meeting notice) part D. that the meeting notice includes an information about all available methods of participation.

³⁰ Interessenverband für Anleger – BETTER FINANCE Member Organisation which represents the interest of Austrian savers and shareholders

an exchange with the management. How can shareholders exercise their control function when this platform is removed or restricted in its powers? Strengthening and engaging shareholders is precisely the goal and purpose of most legislative initiatives over the past 10 to 15 years. **Shareholders are supposed not only to take more responsibility but to think sustainably and long-term and are expected to voice this by exercising their voting rights in an informed manner.** To do so, it is important to exercise the right to ask questions, receive meaningful answers and base the voting decision upon this exchange.

To that end, a general meeting must always provide for that opportunity. If not, shareholders will find other venues to enforce their interests and perceptions. Whether this is a better alternative to the previous model with all shareholder rights is to be doubted. To promote good corporate governance within the company, the key player should remain the body of shareholders who have direct interests in the company.

Should the format of the general meeting change from an on-site meeting to a hybrid meeting or a virtual-only meeting? The opinion of shareholders and their representatives is very clear in that respect. An overwhelming majority of both groups prefers to retain the on-site general meeting, purely or coupled with virtual components.

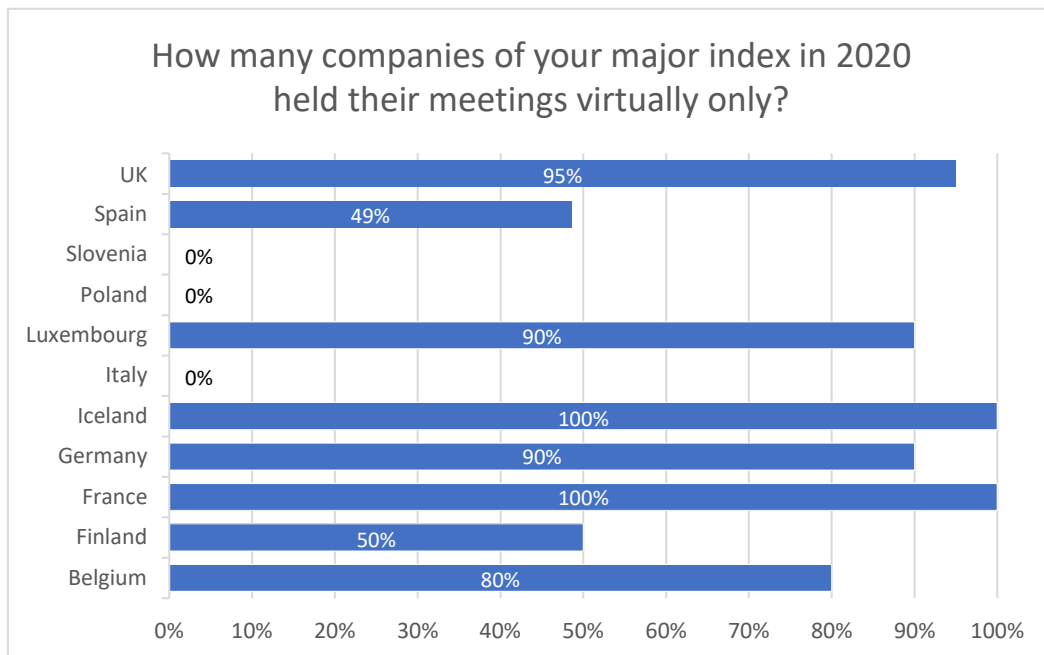
Annex 1

Detailed BETTER FINANCE surveys results

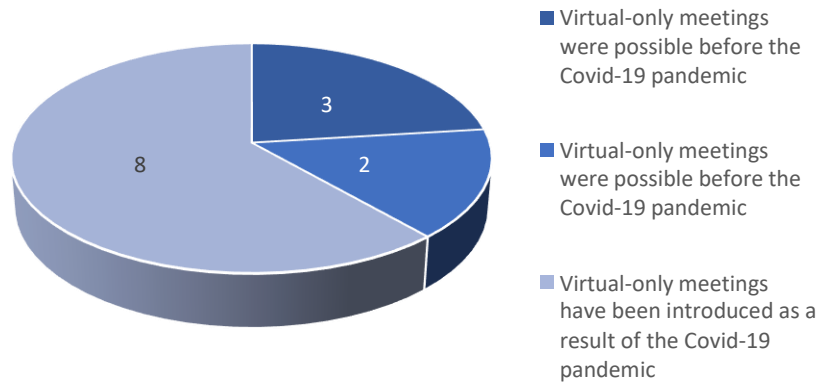
1. Survey among associations representing individual investors

This survey covers responses from individual investor associations from Belgium, Denmark, Finland, France, Germany, Iceland, Italy, Luxembourg, Poland, Portugal, Slovenia, Spain, the UK. It does not claim to be exhaustive but shows the sentiment of shareholder representative organisations regarding virtual-only AGMs.

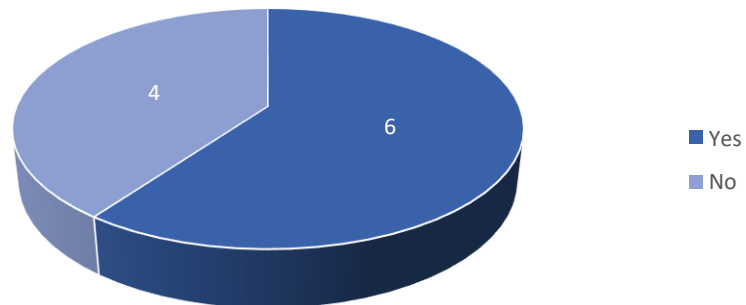
The survey was conducted between 7 September and 10 November 2020 online via Microsoft Forms.

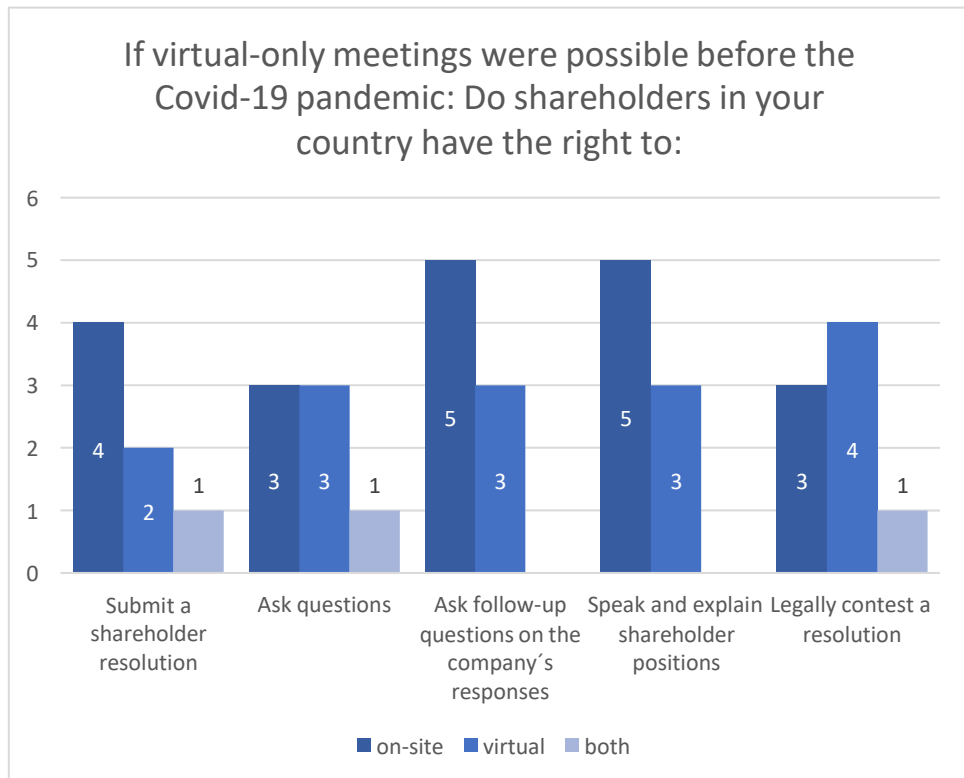


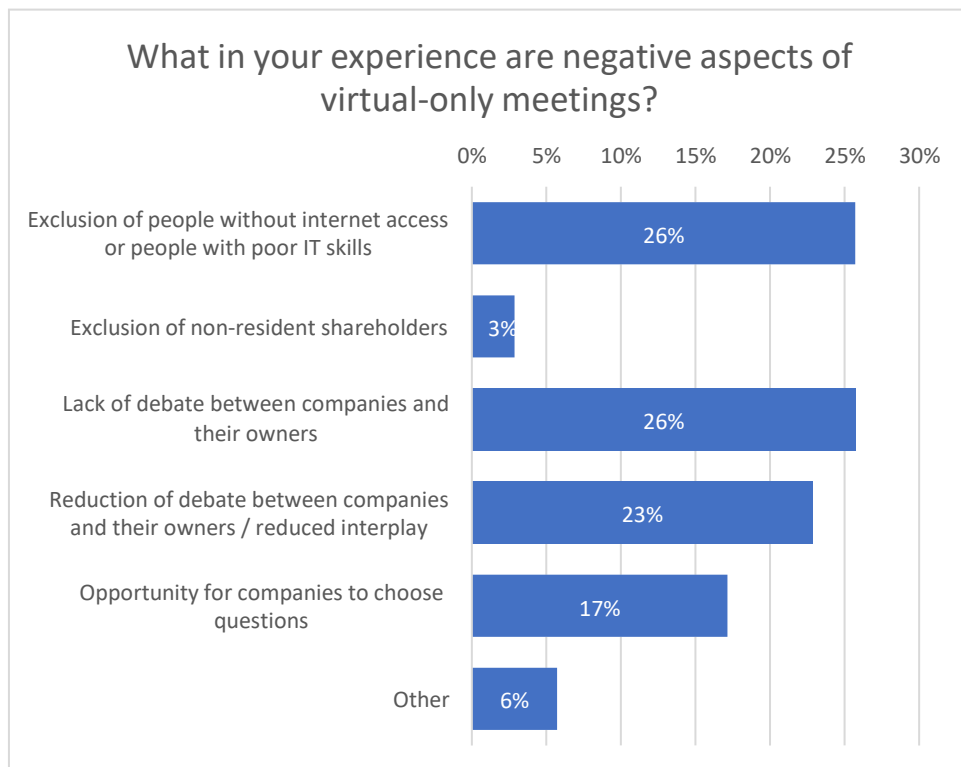
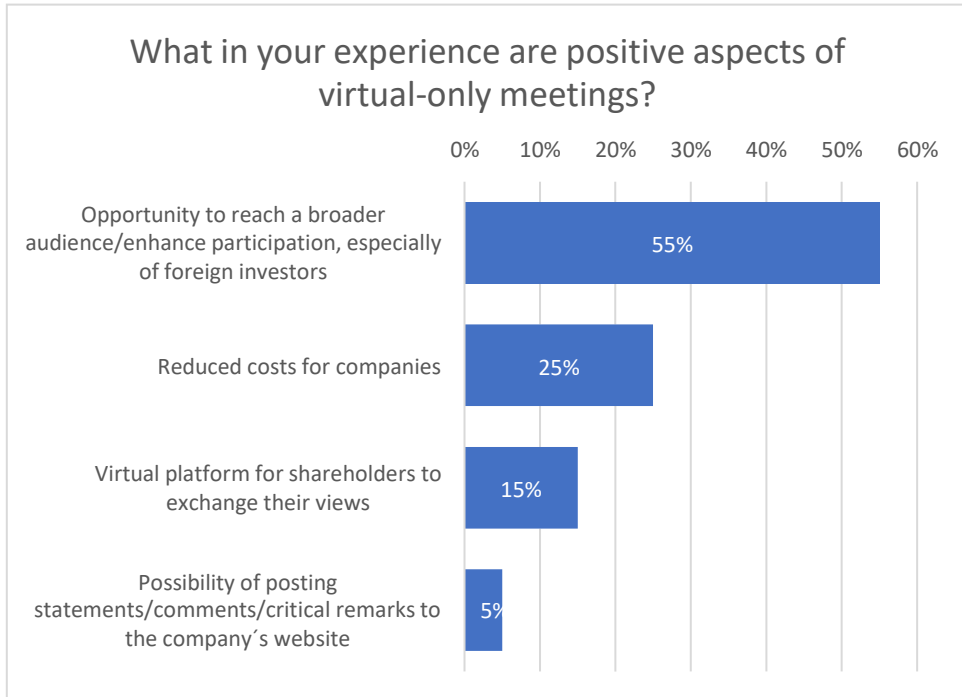
Were companies in your jurisdiction allowed to hold virtual-only (AGMs) prior to 2020 ?



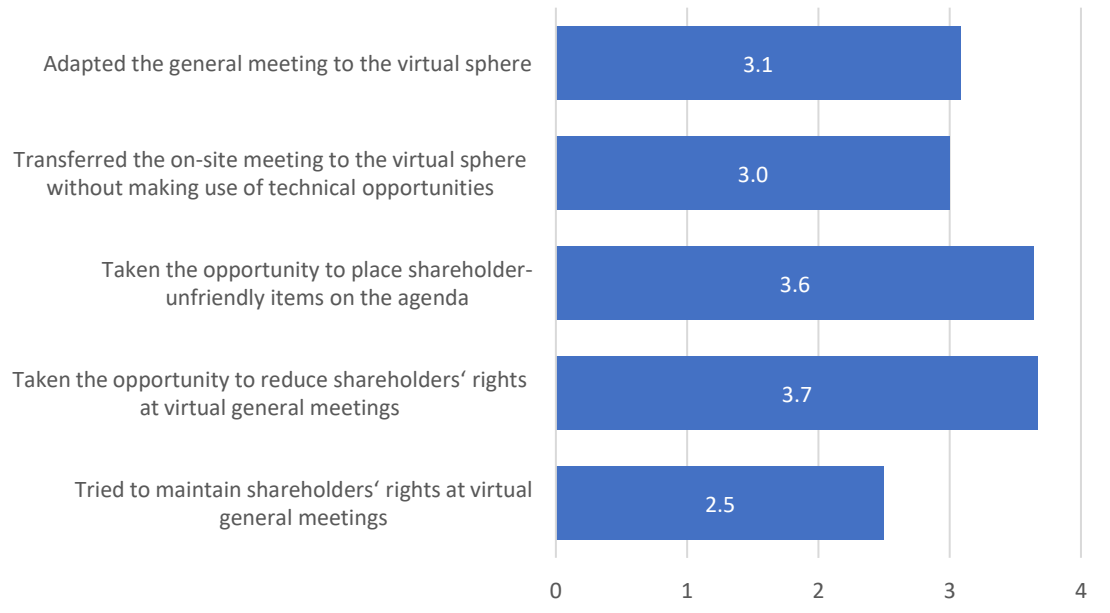
If virtual meetings have only been introduced as a response to the pandemic: Do shareholders enjoy the same rights at a virtual meeting as at on-site meetings?



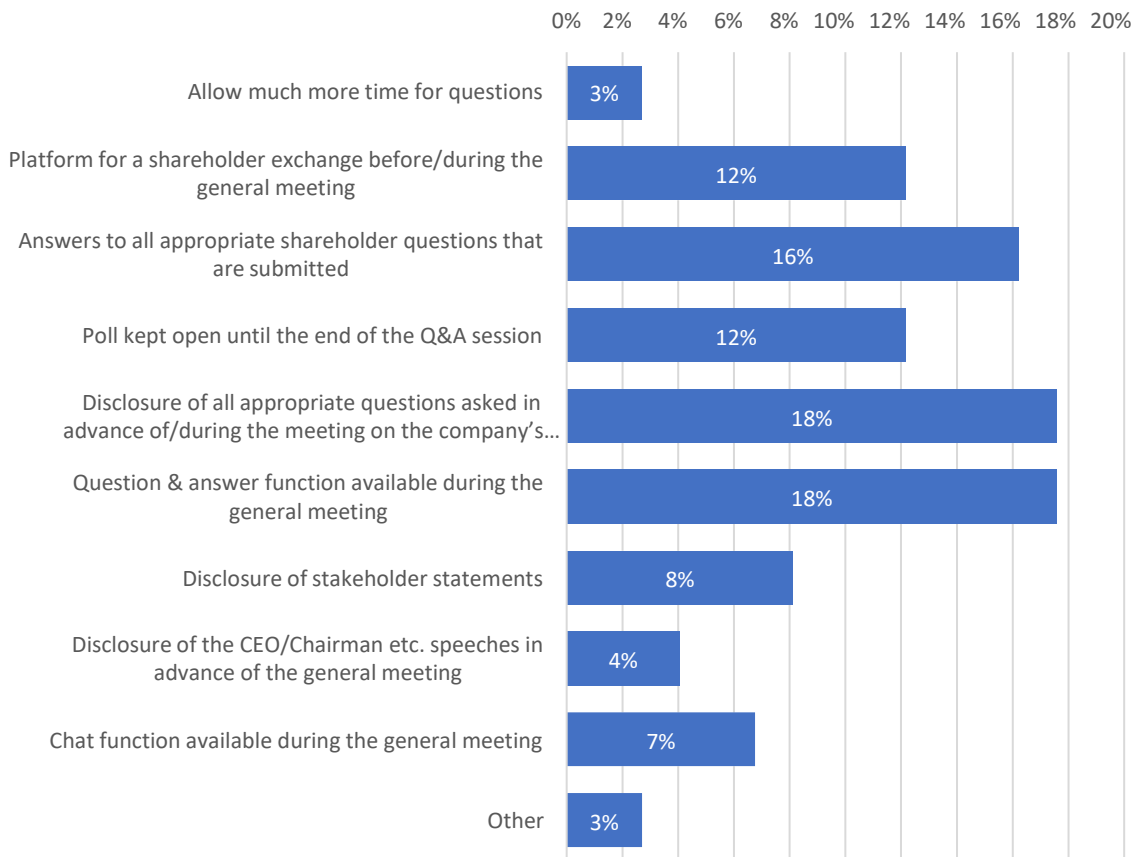




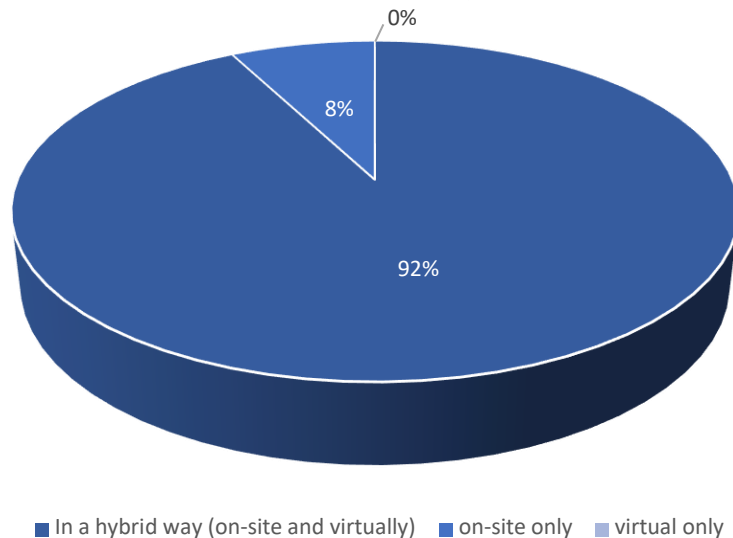
Compared to 2019: In your experience, have companies in your country in 2020 (each on a scale from 1 to 5 where 1 is YES and 5 is NO)?:



Imagine that virtual general meetings were the future. Which tools would you consider necessary for a general meeting in a virtual format?



Going forward, would you prefer to hold general meetings...



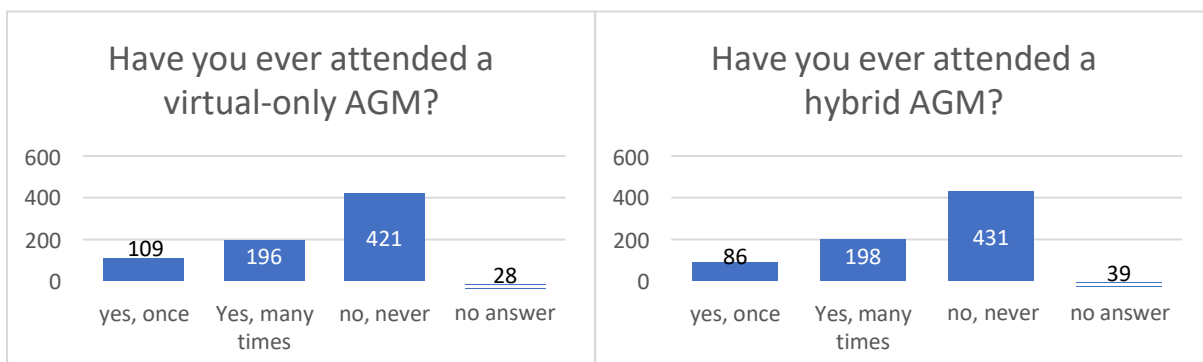
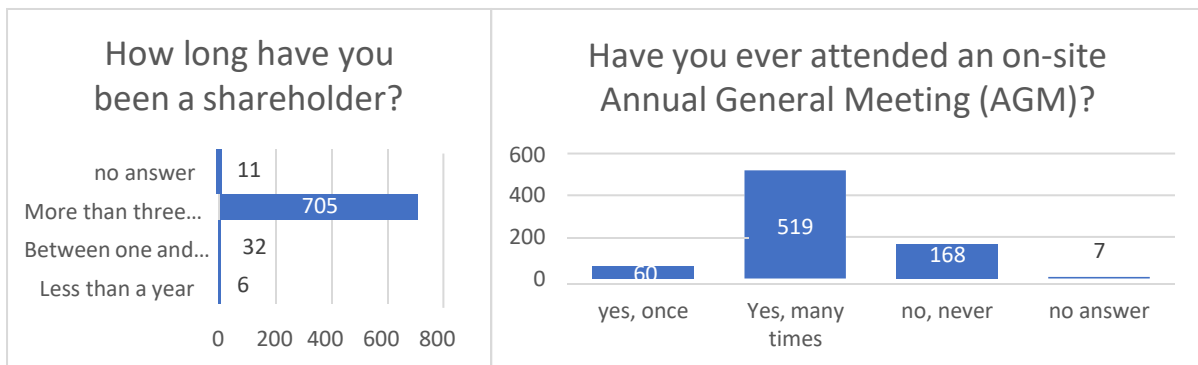
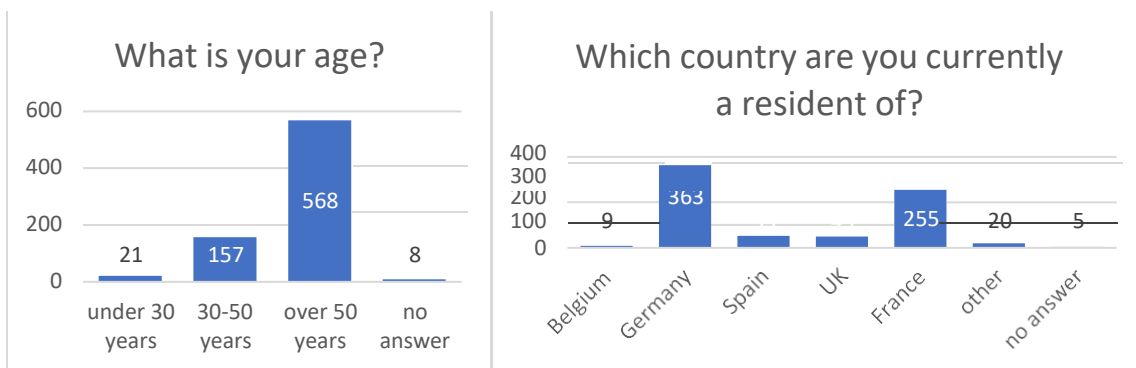
2. Survey among individual shareholders

This survey includes feedback from shareholders resident in the following countries: Belgium, Denmark, Finland, France, Germany, Iceland, Italy, Luxembourg, Poland, Portugal, Slovenia, Spain, the UK.

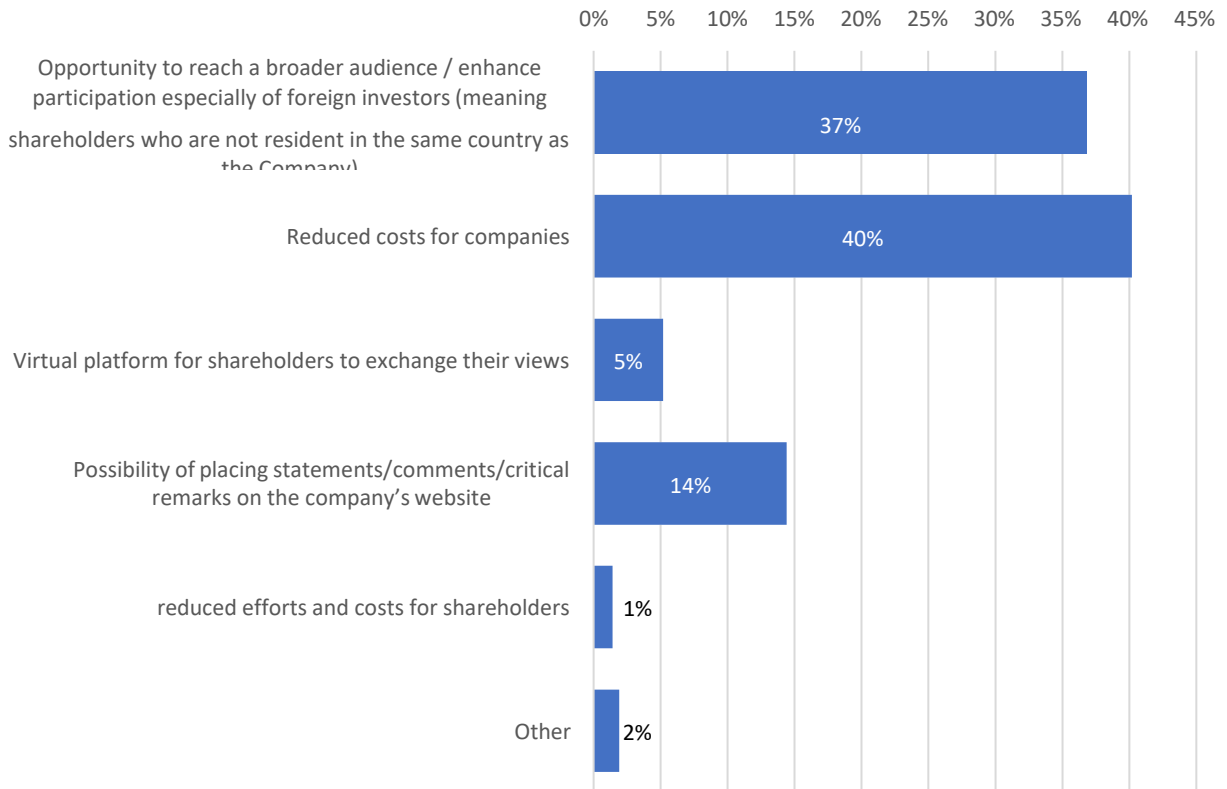
The survey was conducted between 7 September and 10 November 2020 online via Microsoft Forms.

Number of respondents: 754

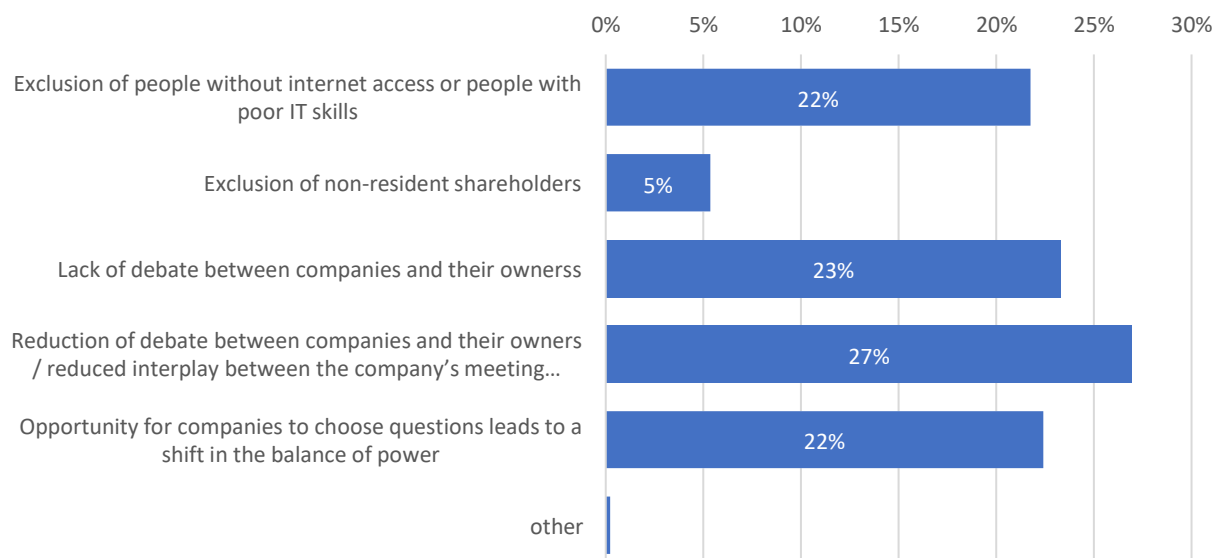
Profile of respondents: On average 50+, resident in Germany/France, shareholder for more than 3 years and attended many general meetings on-site, rarely virtual-only-meetings or hybrid meetings.



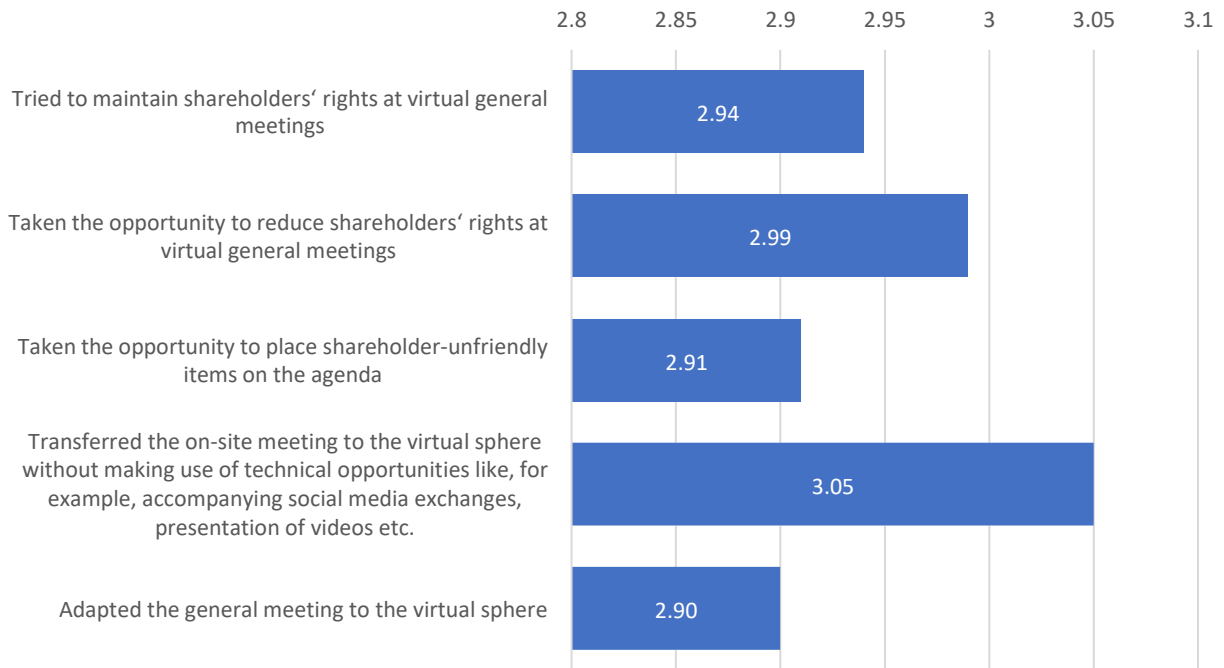
What in your experience are positive aspects of virtual-only meetings?



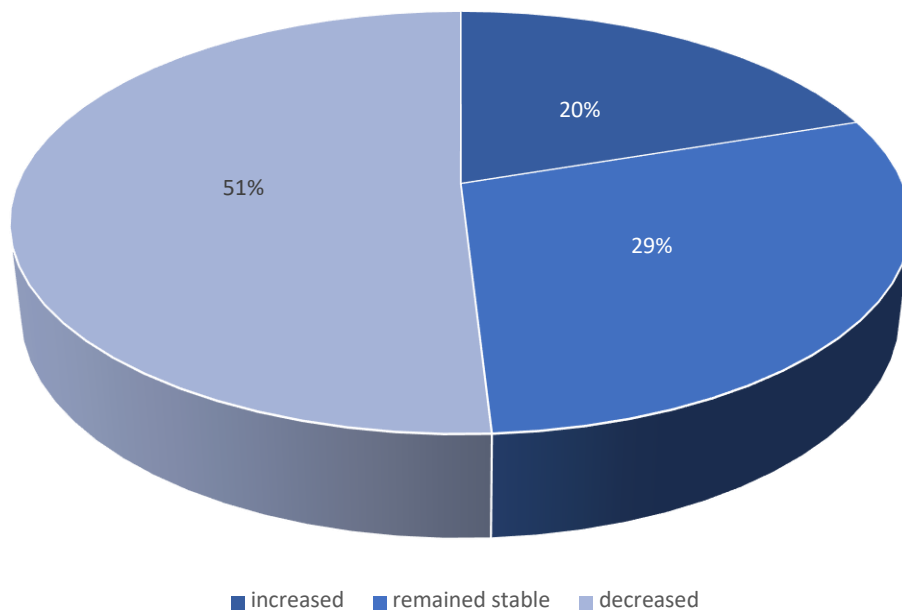
What in your experience are negative aspects of virtual-only meetings?



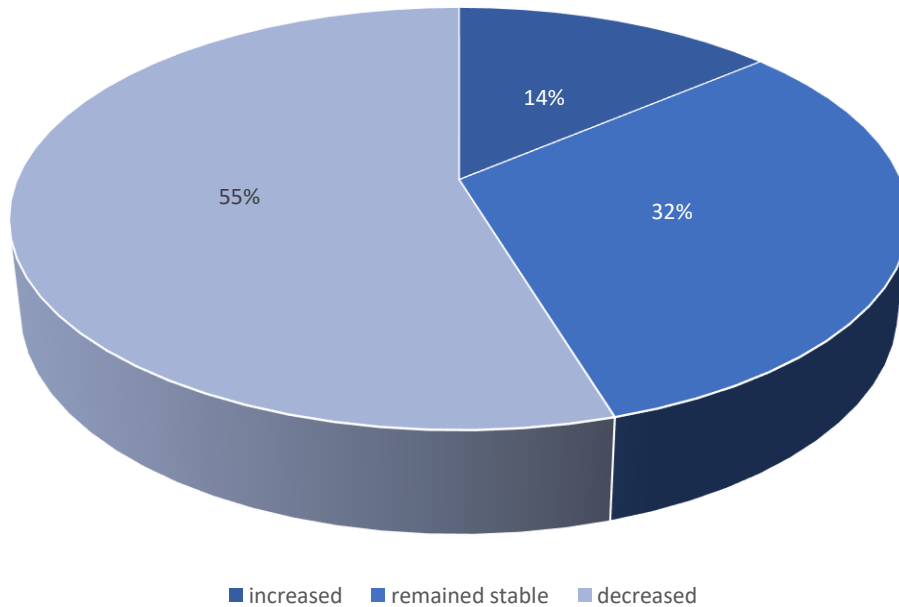
Compared to 2019: In your experience, have companies in your country in 2020... (each on a scale from 1 to 5 where 1 is YES and 5 is NO)?



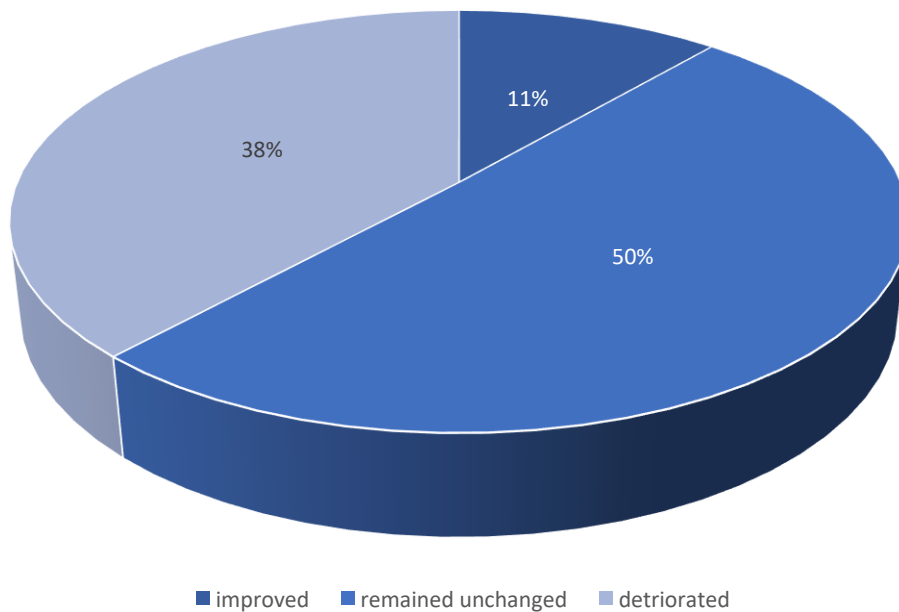
Compared to 2019: In your experience, has the average attendance rate at annual general meetings of listed companies in 2020...



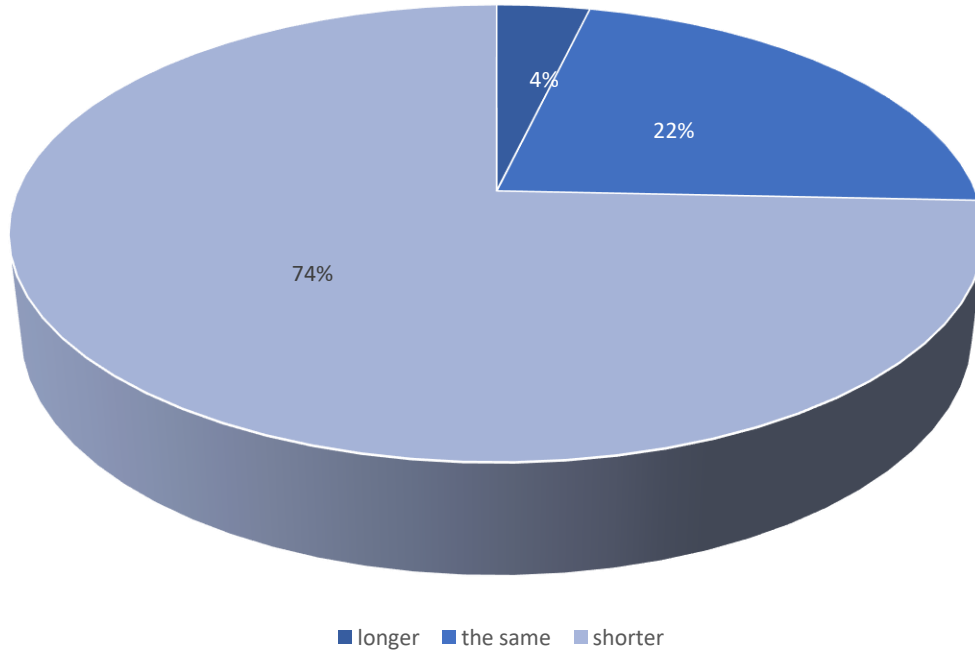
Compared to 2019: In your experience, has the average number of questions asked at annual general meetings of listed companies in 2020...



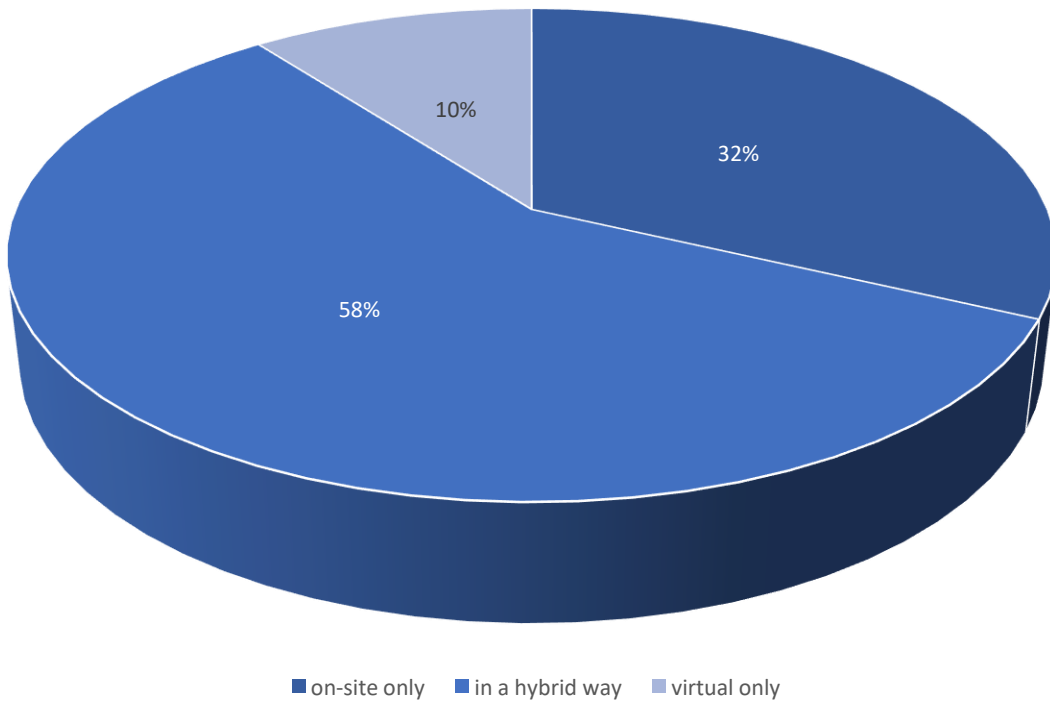
Compared to 2019: In your experience, has the quality of responses by the boards to shareholder questions in 2020 on average...



Compared to 2019: In your experience, was the average length of the virtual general meeting in 2020...



Going forward, would you prefer to hold general meetings...



ANNEX 2

GA Meetings turnouts 2020 vs. 2019 in Germany

The turnouts at DAX 30, MDAX and SDAX companies during the general meeting season 2020 where almost all meetings were held virtual-only compared to those of the general meeting season 2019, where virtual-only meetings were not yet possible in Germany. The figures show that in the largest German indices the change to virtual meetings on average did not have a significant impact on the attendance rate which remained rather stable: While there was a slight increase in the average turnouts at DAX 30 companies (increased from 66.2% to 67.37%), the average turnouts at MDAX companies decreased from 71.74% to 71.13%. Likewise, the average turnouts at SDAX companies decreased from 68.09% to 67.13%. The expectation that virtual-only meetings would lead to a broader attendance of shareholders, therefore – at least in Germany – has not yet become manifest in the general meeting season 2020.

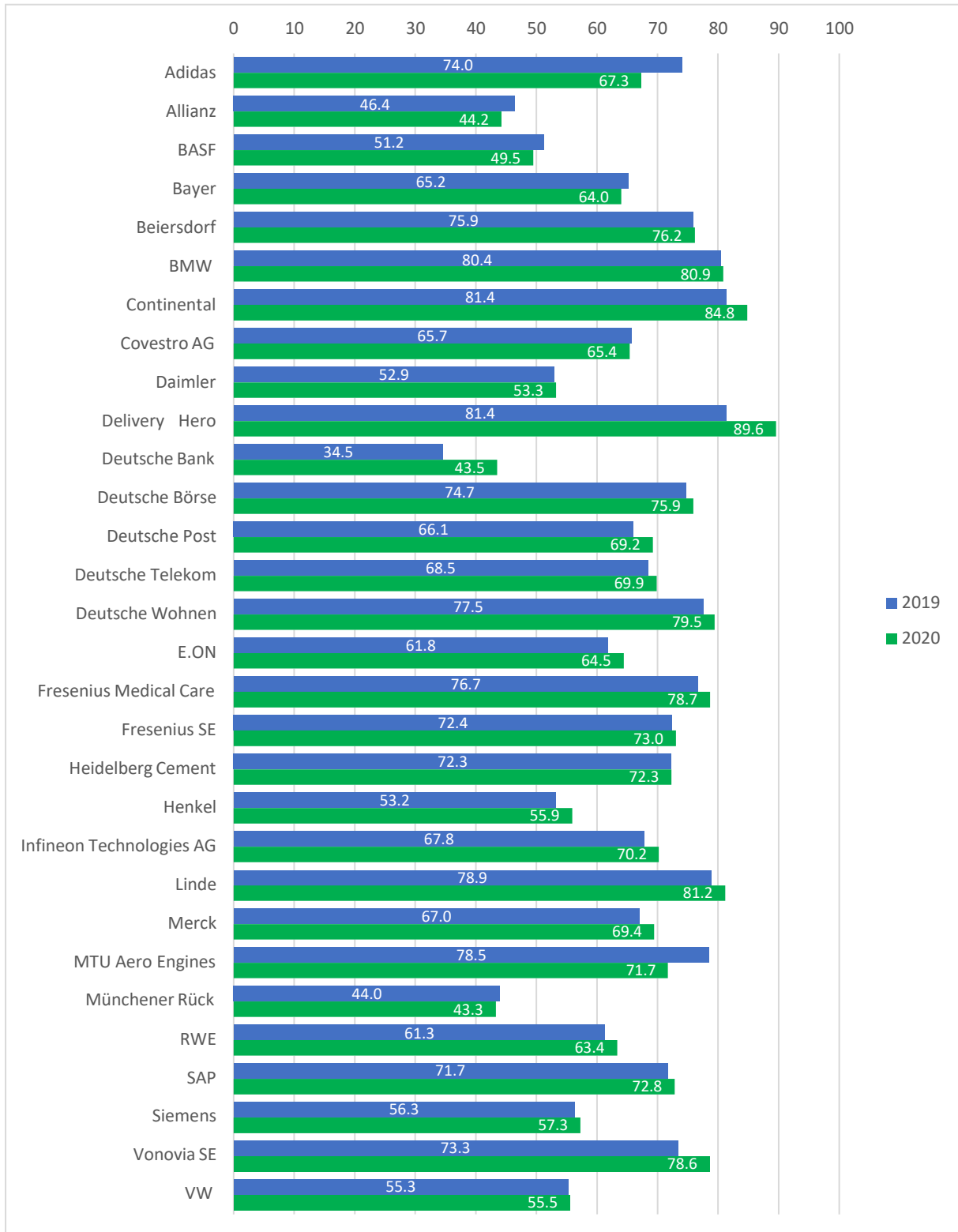


Figure 18 Turnouts at DAX 30 companies 2019-2020 © SJS HV-Consult

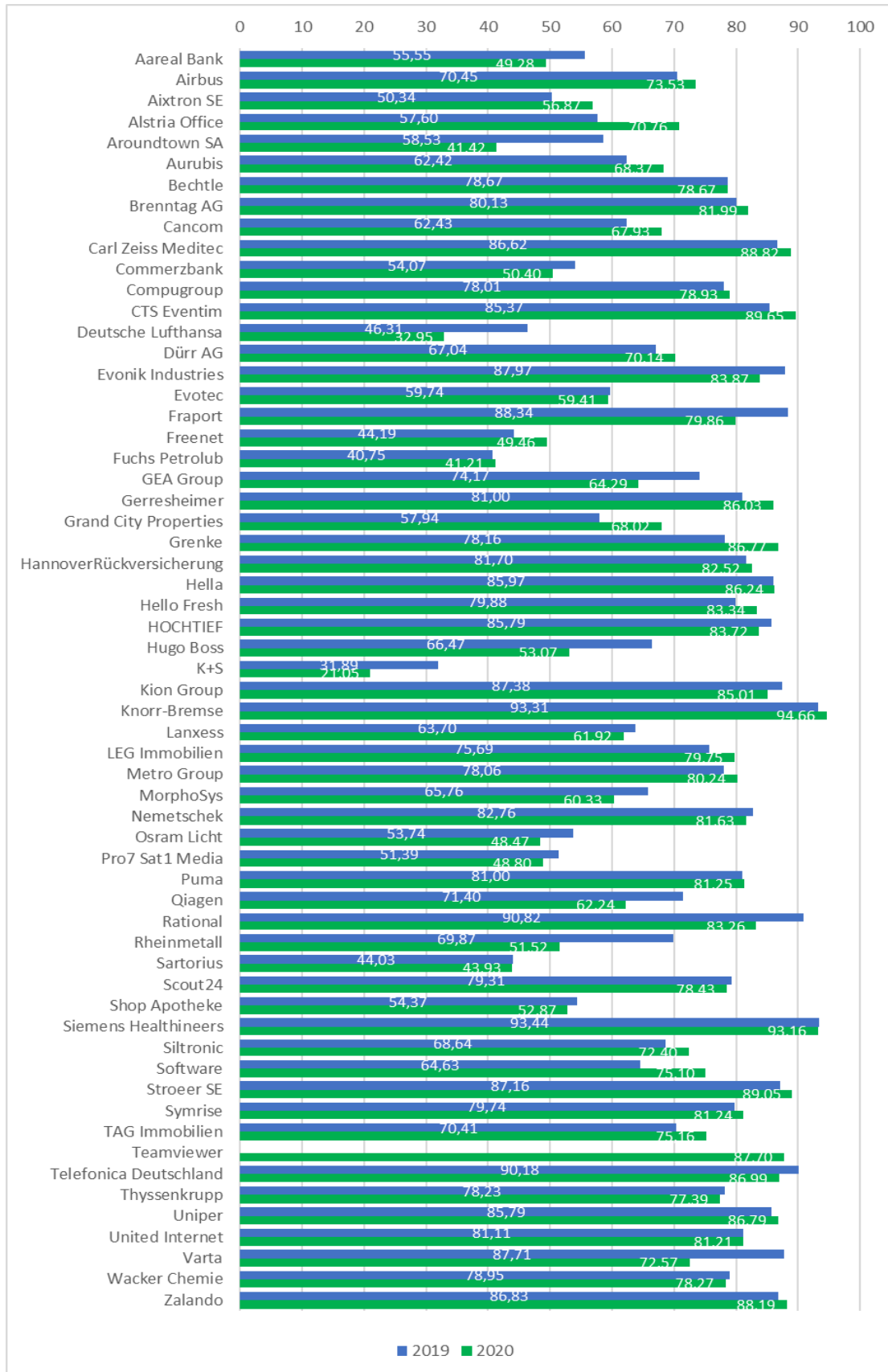


Figure 19 Turnouts at MDAX companies 2019-2020 © SJS HV-Consult

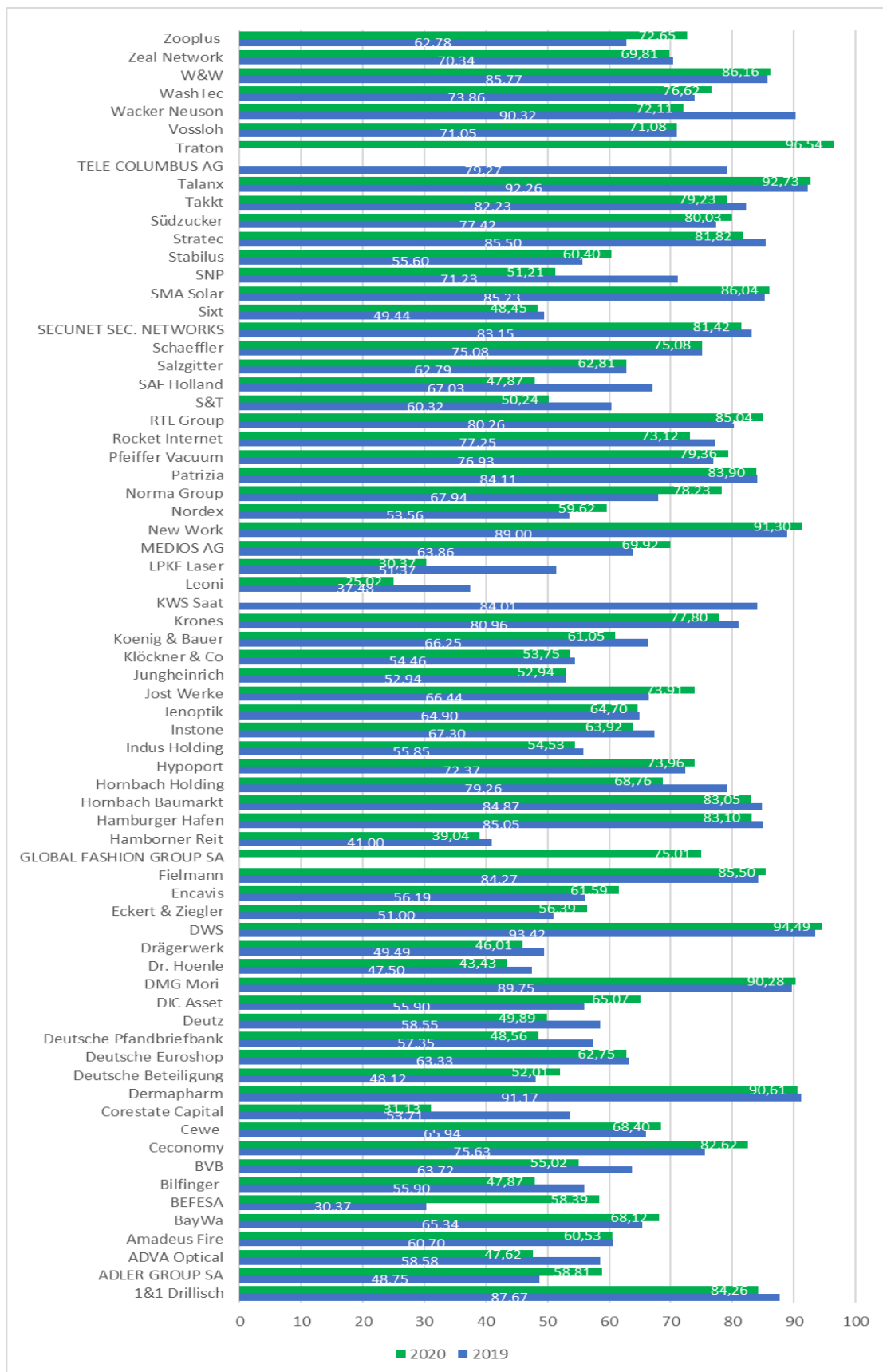


Figure 20 Turnout at SDAX companies 2019-2020 © SJS HV-Consult

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